



City of Mount Dora
510 North Baker Street
Mount Dora, Florida 32757
352-735-7126

Mount Dora City Council
Mount Dora City Hall Board Room
510 North Baker Street, Mount Dora, Florida 32757
August 1, 2023, 6:00 PM

****REVISED AGENDA****

CALL TO ORDER

MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATIONS

1. Mount Dora Fun Fact
2. Public Works Complex Project - Update of 60% Estimate 4

PUBLIC COMMENTS

- This is the time for the public to come forward with any comments on any subject related to City business that is not listed on the Agenda.
- Please complete a speaker card and provide it to the City Clerk prior to the meeting.
- Please clearly state your name and address for the record. If you are part of a group, try to designate a speaker.
- Please address all comments to the Mayor.

APPROVAL OF AGENDA

CONSENT AGENDA

1. Request Approval of Piggyback Agreement Between the City of Mount Dora and ENCO Utility Services Related to Utility Billing Services 19
2. Request Authorization to Purchase Electric Distribution Materials from Gresco Utility Supply Inc., in the amount of \$134,683.50 24
3. Request Authorization to Apply for a Broadband Multi-Purpose Community Facilities Program Grant From the Department of Economic Opportunity 44
4. Request Approval of Meeting Minutes 41
 - July 10, 2023 Budget Workshop Minutes
 - July 18, 2023 Regular Session Minutes

ACTION ITEMS

1. Request Authorization for Mayor to Execute an Engagement Letter with Daniel F. Mantzaris, Esq. of de Beaubien, Simmons, Knight, Mantzaris & Neal for Interim City Attorney Services 112
2. Request Approval of Task Authorization/GMP (Guaranteed Maximum Price) with Faden Builders, Inc., Related to the Downtown Streetscape Repairs and Enhancement Program. 119
3. Discussion and Decision Regarding the Hiring of Outside Counsel to Address Employee Complaint Against the City Manager 125
4. Authorize the City Manager to settle disputed billing with Wharton-Smith, in an Amount not to Exceed \$50,000 132
5. Request Approval of Agreement between the School Board of Lake County and the City of Mount Dora for School Resource Officer Program 203-2024 204

PUBLIC HEARINGS

1. Request Adoption of **Resolution No. 2023-29**, Early Equipment Procurement and Owner Direct Purchase for Mount Dora Public Works Facility 216

DISCUSSION ITEM

1. Strong Towns Work Session

319

CITY MANAGER'S REPORT

CITY ATTORNEY'S REPORT

COMMUNICATIONS AND REPORTS

- Councilmember John Cataldo
- Councilmember Cal Rolfson
- Councilmember Dennis Dawson
- Councilmember Nate Walker
- Councilmember Doug Bryant
- Vice-mayor Marc Crail
- Mayor Crissy Stile

FUTURE MEETING DATES

- August 15, 2023, 6:00 PM, Regular Session
- August 28, 2023, 6:00 PM, Final Budget Workshop
- September 7, 2023, 6:00 PM, Regular Session
- September 21, 2023, 6:00 PM, Regular Session

ADJOURNMENT

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

NOTICE: IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING A SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT THE CITY CLERK AT LEAST 48 HOURS PRIOR TO THE PROCEEDINGS. TELEPHONE (352) 735-7126 FOR ASSISTANCE. IF HEARING IMPAIRED, TELEPHONE THE FLORIDA RELAY SERVICE NUMBERS, (800) 955-8771 (TDD) OR (800) 955-8770 (VOICE) FOR ASSISTANCE.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Public Works Complex Project - Update of 60% Estimate

Introduction:

This is an opportunity for an update on the Public Works Complex Project.

Discussion:

The Mount Dora Public Works Facility is being created to serve the needs of the city for operations and storage of public works, leisure services, logistics, and construction management, as well as administrative offices. This update presents the design at 60%, including renderings and cost estimates.

Budget Impact:

N/A

Strategic Impact:

N/A

Recommendation:

Council view the presentation.

Attachment(s):

1. 2023.08.01_Mount Dora PW_DESIGN UPDATE_COUNCIL PRESENTATION

Prepared by: Merry Lovern, Executive Assistant
Reviewed by: Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/26/2023
Final Approval - 7/26/2023

Mount Dora Public Works Facility

60% Design Update



The Mount Dora Public Works Facility is being created to serve the needs of the city for operations and storage of public works, leisure services, logistics, and construction management, as well as administrative offices.

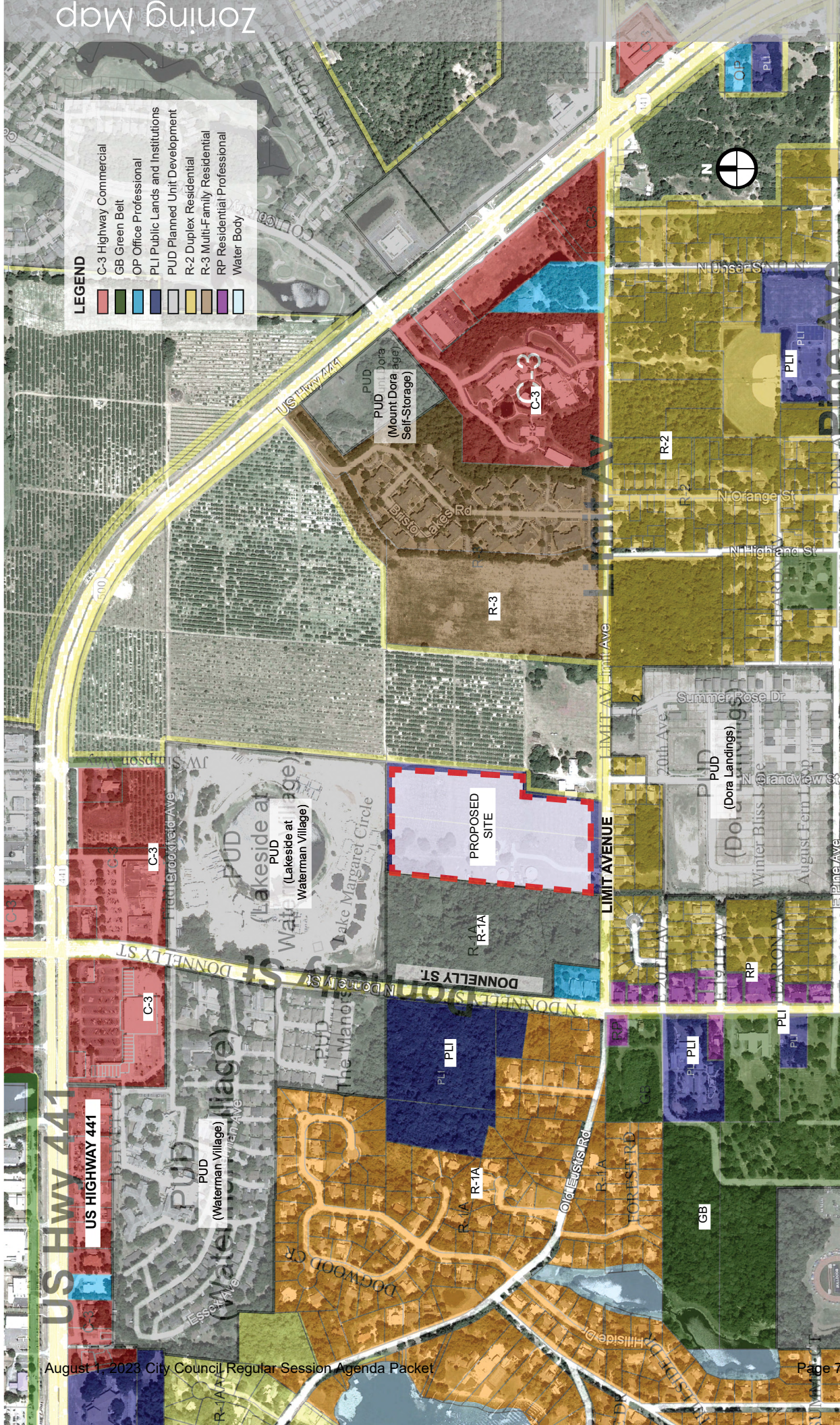


PROJECT FACT SHEET

- **Location:** Limit Avenue
- **Site Size:** 17.65 acres (768,818.68 sf)
- **Site Development Area:** 15.15 acres
- **Facility includes:**
 - Operations and Inventory Warehouse, 29,010 sf.
 - Covered Material Storage Area, 14,075sf.
 - Covered Non-Inventory Rolling Asset Storage, 30,000 sf.
- Designed to withstand Category 2 Hurricane force winds
- Electrical generator back up system with fuel tank
- A laydown yard
- **Proposed building materials:**
 - Pre-engineered metal building (PEMB) structure
 - Insulated metal panel skin with upgraded stucco finish on the street facing sides.
 - Storefront glazings on the front and east side of the building
 - Standard metal panels are used only at the rear and west side of the building.

LEGEND

- C-3 Highway Commercial
- GB Green Belt
- OP Office Professional
- PLI Public Lands and Institutions
- PUD Planned Unit Development
- R-2 Duplex Residential
- R-3 Multi-Family Residential
- RP Residential Professional
- Water Body



KEY

- 1 ENTRY / EXIT
- 2 VISITOR PARKING (10)
- 3 INVENTORY WAREHOUSE
- 4 LOADING DOCK
- 5 CENTRAL UTILITY PLANT (CUP)
- 6 COVERED INVENTORY STORAGE
- 7 STAFF PARKING (120)
- 8 NON-INVENTORY ROLLING ASSETS
- 9 LAYDOWN YARD
- 10 DUMPSTER
- 11 FUTURE ROAD
- 12 FUTURE TREATMENT EXPANSION
- 13 VISITOR WATER POND
- 14 FUTURE GATE

LEGEND

- PROPERTY LINE
- SETBACK
- PROJECT SCOPE
- FUTURE ROAD
- SITE ENTRY

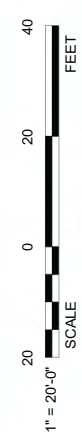
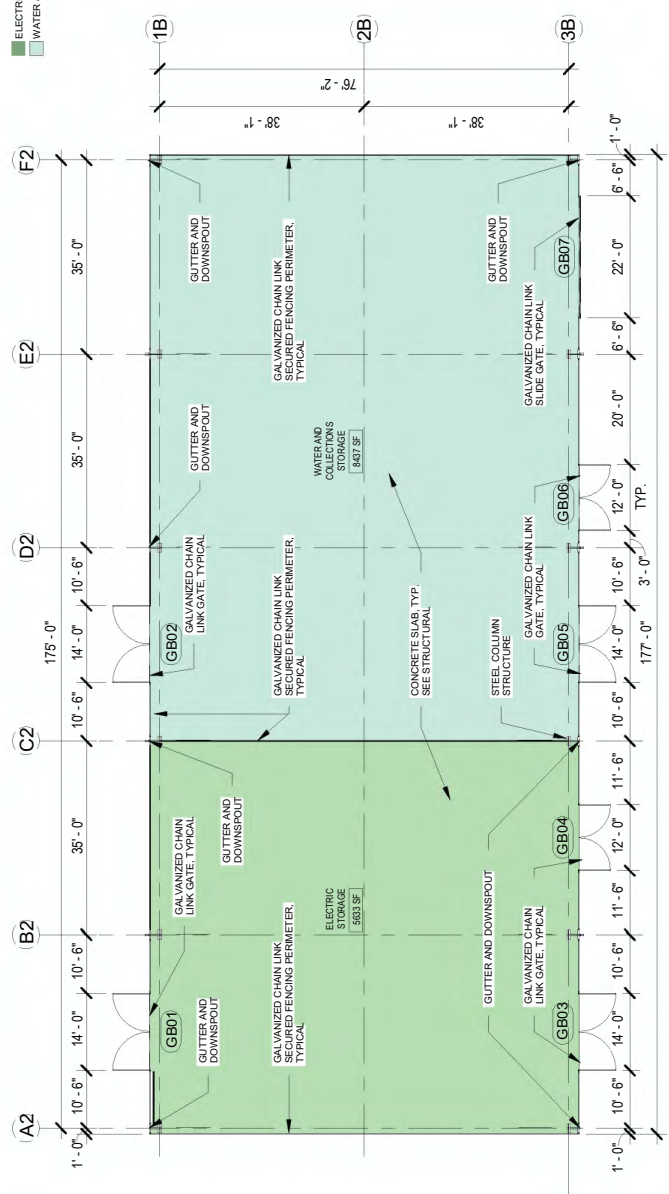
DEVELOPMENT DATA

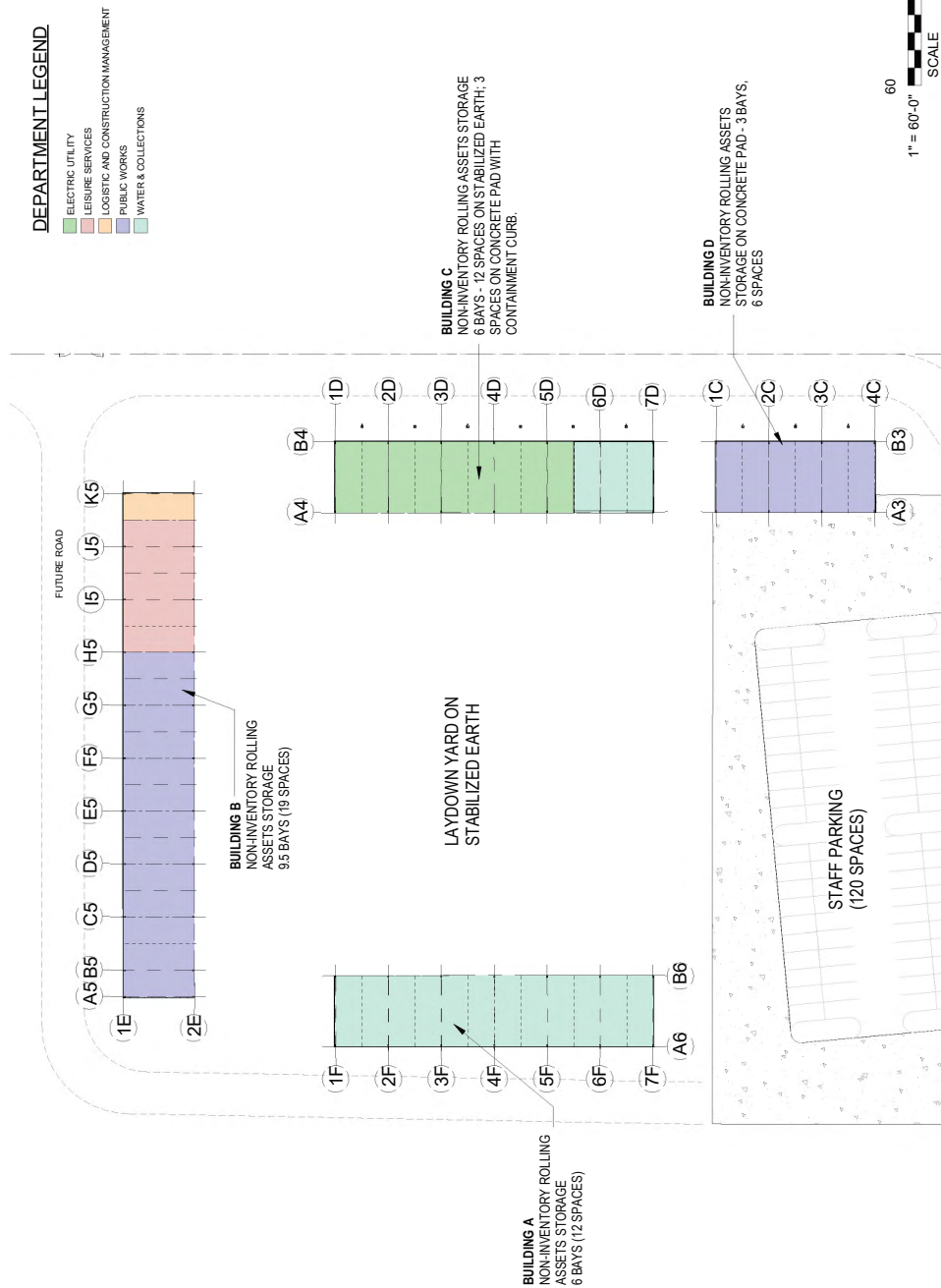
SITE DEVELOPMENT AREA	15.15 ACRES
PARKING COUNT	10
PUBLIC	120
SECURED	130
TOTAL	



DEPARTMENT LEGEND

- ELECTRIC UTILITY
- WATER & COLLECTIONS



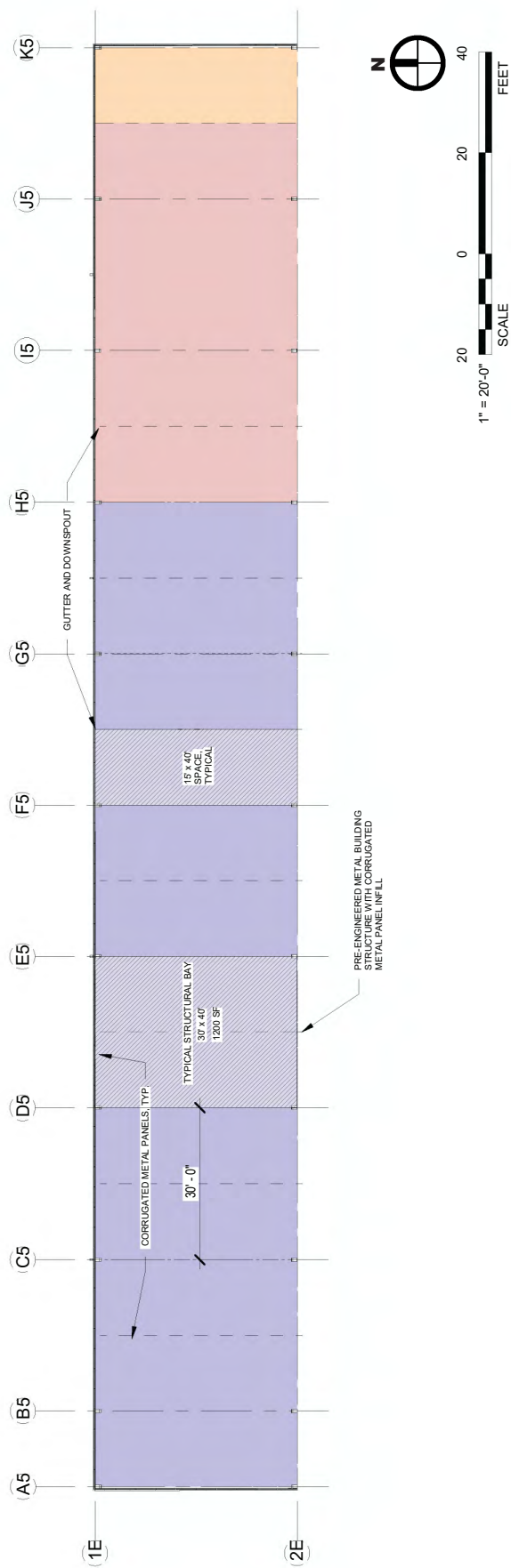


KEY PLAN
PRE-ENGINEERED METAL BUILDINGS

PUBLIC WORKS FACILITY - MOUNT DORA, FL

DEPARTMENT LEGEND

- LEISURE SERVICES
- LOGISTIC AND CONSTRUCTION MANAGEMENT
- PUBLIC WORKS









Cost Management Recap



Sort Sequences:

1. Elem
2. Major Item Code
3. Not Used
4. Not Used

Estimate File: :Mtdora_202009_23048_60CD_03. est - MT DORA PUE WORKS (NEW 60 CD), MOUNT DORA, FL
Estimator: AJAX ESTIMATING
Primary Project Qty: 73541
Secondary Project Qty: C
Estimate UM: Imperi

10:23:40AM

Report Includes Taxes & Insurance.

NOTICE : This Document is considered proprietary information and shall not be distributed beyond the intended recipient without the express written consent of Ajax Building Company, LLC.!!

Description	Unit\$	Total \$
Total Major Item Code 01300.000 GENERAL CONDITIONS		\$27,804
Total Major Item Code 01300.300 GENERAL REQUIREMENTS		\$4,500
Total Major Item Code 13120.000 PRE-ENGINEERED STRUCTURES		\$3,986,997
Total Major Item Code 23000.000 HEATING, VENTILATION, & AIR CONDITIONING		\$166,867
Total Major Item Code 26000.000 ELECTRICAL WORK		\$280,716
Total Item A PRE-CONSTRUCTION EARLY RELEASE PHASE		\$4,466,883
Total Major Item Code 01300.000 GENERAL CONDITIONS		\$985,546
Total Major Item Code 01300.300 GENERAL REQUIREMENTS		\$895,193
Total Major Item Code 03000.000 CONCRETE WORK		\$1,252,389
Total Major Item Code 05000.000 MISCELLANEOUS & FABRICATED METALS		\$117,155
Total Major Item Code 06000.000 LUMBER & ROUGH CARPENTRY		\$1,500
Total Major Item Code 07100.000 WATERPROOFING & DAMPPROOFING		\$2,970
Total Major Item Code 07900.000 JOINT SEALERS		\$40,000
Total Major Item Code 08100.000 METAL DOORS & FRAMES		\$64,375
Total Major Item Code 08200.000 WOOD & PLASTIC DOORS		\$11,242
Total Major Item Code 08300.000 SPECIALTY DOORS		\$48,003
Total Major Item Code 08400.000 ENTRANCES & STOREFRONTS		\$181,709
Total Major Item Code 08500.000 WINDOWS		\$1,664
Total Major Item Code 08700.000 FINISHED HARDWARE		\$60,780
Total Major Item Code 09100.000 GYP BOARD, PLASTER, & STUCCO SYSTEMS		\$609,942

Page 1



Sort Sequences:

1. Elem
2. Major Item Code
3. Not Used
4. Not Used

Estimate File: :Mtdora_202009_23048_60CD_03. est - MT DORA PUE WORKS (NEW 60 CD), MOUNT DORA, FL
Estimator: AJAX ESTIMATING
Primary Project Qty: 73541
Secondary Project Qty: C
Estimate UM: Imperi

10:23:40AM

Report Includes Taxes & Insurance.

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Description	Unit\$	Total \$
Total Major Item Code 09300.000 TILE		\$30,470
Total Major Item Code 09500.000 CEILINGS		\$50,704
Total Major Item Code 09600.000 FINISHED FLOORING		\$116,934
Total Major Item Code 09700.000 WALL FINISHES		\$27,216
Total Major Item Code 09800.000 ACOUSTICAL TREATMENT		\$4,752
Total Major Item Code 09900.000 PAINTS & COATINGS		\$124,241
Total Major Item Code 10000.000 MISCELLANEOUS BUILDING SPECIALTIES		\$125,997
Total Major Item Code 11000.000 BUILDING EQUIPMENT		\$97,781
Total Major Item Code 12000.000 BUILDING FURNISHINGS		\$107,860
Total Major Item Code 13000.000 SPECIAL CONSTRUCTION		\$11,000
Total Major Item Code 21000.000 FIRE SUPPRESSION SYSTEMS		\$128,382
Total Major Item Code 22000.000 PLUMBING WORK		\$443,466
Total Major Item Code 23000.000 HEATING, VENTILATION, & AIR CONDITIONING		\$969,910
Total Major Item Code 26000.000 ELECTRICAL WORK		\$1,806,900
Total Major Item Code 27000.000 COMMUNICATIONS SYSTEMS		\$198,716
Total Major Item Code 28000.000 ELECTRONIC SAFETY & SECURITY SYSTEMS		\$890,503
Total Major Item Code 31000.000 SITEWORK		\$1,009,268
Total Major Item Code 32000.000 SITE IMPROVEMENTS		\$2,615,585
Total Major Item Code 33000.000 SITE UTILITIES		\$755,654
Total Item B CONSTRUCTION - COST OF WORK		\$13,487,807
Total Major Item Code 36000.000 BONDS & INSURANCE		\$446,613
Total Major Item Code 37000.000 WARRANTIES		\$8,281
Total Major Item Code 50000.000 ESCALATION COST		\$424,659
Total Major Item Code 80000.000 CONTINGENCY		\$1,283,977
Total Item C CONTINGENCY, BONDS, INSURANCE		\$2,163,530

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PUBLIC WORKS FACILITY - MOUNT DORA, FL

Sort Sequences:
1. Estimate
2. Major Item Code
3. Not Used
4. Not Used

Estimate File: :MDora_202009_23048_60CD_03.est - MT DORA PUB
WORKS (NEW 60 CD), MOUNT DORA
Estimator: AJAX ESTIMATING
Primary Project Qy: 73541 ;
Secondary Project Qy: ;
Estimate UM: Imperi

Report Includes Taxes & Insurance		
10:23-40AM	6/26/2023	
Description	Unit\$	Total \$
NOTICE : This Document is considered proprietary information and shall not be distributed beyond the intended recipient without the express written consent of Ajax Building Company, LLC !!		
Total Major Item Code 90000.000 OVERHEAD & FEE		\$1,114,730
Total Element D CONSTRUCTION MANAGER FEE		\$1,114,730
ESTIMATE TOTALS		\$21,232,950

- Pre-Construction Early Phase Release (Does not include taxes, contingency and bond) \$ 4,466,883
- Construction - Cost of Work \$ 13,487,807
- Contingency, Bonds, Insurance \$ 2,163,530
- Construction Manager Fee \$ 1,114,730
- Total \$ 21,232,950**

Mount Dora Public Works Facility - Project Schedule

Notice to Proceed: 01/04/2023 - Council Re-Authorization
Date: 7/19/2023 (Wednesday)

TASK	Time Allotted	START	END	DAYS	WORK DAYS	Status
1 Schematic Design	8 weeks					
1.1 SD Kickoff Meeting			01/05/23			
1.2 SD Package	5 weeks	Mon 1/09/23	Mon 2/13/23	36	26	DELIVERED TO MT. DORA / AJAX 2/13/23
Planning Meeting with Public Works/Stormwater Engineering George Merek						
Planning Meeting with Planning Director Vince Sandersfeld						
Meeting with Pre Engineered Metal Bldg. Manufacturer						COMPLETED
0.1 Owner Review / CM Review & Estimate	3 week	Tue 2/14/23	Mon 3/06/23	21	15	
Presentation to Council			Tue 3/07/23			
2 60% DESIGN - Construction Documents	12 weeks					
2.1 DD / 60% Construction Documents	10 weeks	Wed 3/08/23	Tue 5/16/23	70	50	DELIVERED TO MT. DORA / AJAX 5/16/23
- Early Procurement Packages (PEMB, HVAC equipment, Generator - BIDDING)	6 weeks	Tue 5/16/23	Fri 6/30/23	45	30	COMPLETED
2.2 Owner Review and CM DD Cost Estimate	2 weeks	Mon 7/03/23	Mon 7/17/23	14	10	
VE - Design Items Review (IF APPLICABLE)						
2.2.1 Planning & Zoning Submittal w/Site Review						
2.2.2. Building Design Review						
2.2.3. DRC Meeting						
2.2.4 P & Z Meeting						
Presentation to Council			Tue 8/01/23			EARLY PROCUREMENT PACKAGE
3 Site Permitting	12 weeks					
3.1 90% CD Document Submittal		Fri 6/30/23	Fri 9/22/23	84	61	
3.1.1 St. John's Water Management District Permit Pre-Application		Fri 6/30/23	Wed 7/12/23	12	9	COMPLETED
3.1.2 St. John's Water Management District Permit Final Application		Fri 6/30/23	Mon 7/31/23	31	22	SUBMITTAL BY CIVIL ENGINEER
3.1.3 Lake County ROW Permitting		Fri 6/30/23	Mon 7/31/23	31	22	SUBMITTAL BY CIVIL ENGINEER
4 90% Construction Documents	8 weeks					
4.1 90% Documents & Specs/ GMP / Permit review	6 weeks	Wed 8/02/23	Fri 9/15/23	42	33	
4.2 Owner Review / CM Review & Estimate	2 weeks	Fri 9/15/23	Fri 9/29/23	15	11	
5 Permit & Final Construction Documents	3 weeks					
5.1 Permit & Final Construction Documents & Specs	3 weeks	Mon 10/02/23	Mon 10/23/23	22	16	
6 Bidding & Permit	7 weeks					
6.1 Bid/GMP Preparation	7 weeks	Mon 10/23/23	Mon 12/11/23	49	36	
6.2 City Commission Meeting			Mon 12/18/23			
7 Construction Period	56 weeks					
7.1 From NTP to Substantial & Final Completion	56 weeks	Mon 1/22/24	Sun 2/16/25	392	280	



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Approval of Piggyback Agreement Between the City of Mount Dora and ENCO Utility Services Related to Utility Billing Services

Introduction:

This is a request for Council to approve the renewal of a piggyback agreement to the Florida Municipal Power Agency's Agreement for Utility Billing and Ancillary services provided by ENCO.

Discussion:

On January 5, 2021 City Council approved Resolution 2021-001, Piggyback agreement with Florida Municipal Power Agency Agreement (FMPA) for Utility Billing and Ancillary Services provided by ENCO. The agreement is scheduled to expire in August 2023. This is a request to renew the piggyback agreement for one (1) additional year. Call center support services to be provided by ENCO include:

1. Call Center Services
2. Billing
3. Bill Printing & Mailing
4. Lockbox
5. Courtesy Notifications

Staff recommends renewing the piggyback agreement with Florida Municipal Power Agency's to maintain utility billing services with enhanced call center services that allows for after-hours and peak dispatch services through August 2024.

Budget Impact:

There is a 3% increase in the prices which would affect the budget for the General Fund, Customer Service in GL account 001-1220-513.34-01.

Strategic Impact:

Fiscal Sustainability

Recommendation:

Council approve the one year renewal of the Piggyback agreement with Florida Municipal Power Agency for Utility Billing and Ancillary Services provided by ENCO.

Attachment(s):

1. Amendment 1.Mount Dora.Enco Utility Services.08.01.2023

Prepared by: Jeanann Hand, City Clerk

Reviewed by: Rita Meade, Interim Finance Director

Aneta Barton, Budget Director

Sherry Sutphen, City Attorney

Jeanann Hand, City Clerk

Patrick Comiskey, City Manager

Approved - 7/7/2023

Approved - 7/7/2023

Approved - 7/26/2023

Approved - 7/26/2023

Final Approval - 7/26/2023

**AMENDMENT 1 TO THE AGREEMENT BETWEEN
THE CITY OF MOUNT DORA AND
ENCO UTILITY SERVICES FLORIDA**

THIS AMENDMENT 1 is entered into by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter referred to as the “CITY” and ENCO Utility Services Florida, 8141 E. Kaiser Boulevard, Suite 212, Anaheim, California 92808, hereinafter referred to as the “CONTRACTOR”.

WHEREAS, on January 5, 2021, the CITY adopted Resolution 2021-01, which authorized the Agreement between the CITY and the CONTRACTOR related to utility call center support and billing services (“Agreement”); and

WHEREAS, the Term of the Agreement was for an initial period of two (2) years with the option to extend for an additional period of five (5) additional one- year periods; and

WHEREAS, the parties have determined that it is in their mutual best interest to amend the Agreement to extend the Term accordingly.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CITY and the CONTRACTOR agree as follows:

1. Section 1, Term, is hereby amended to extend the Term through August 10, 2024.
2. Section 2, Compensation, is amended to reflect the 3% price increase set forth in the Cooperative Contract attached to the Agreement. The increased prices are attached hereto as **Exhibit “A”**
3. All other terms and conditions of the Agreement shall remain in full force and effect.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives, have executed this Amendment 1 effective this ____ day of _____ 2023.

CITY OF MOUNT DORA

**CRISSY STILE, MAYOR of the City
of Mount Dora, Florida**

ATTEST:

Jeanann Hand, City Clerk

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.

Sherry G. Sutphen, City Attorney

CONTRACTOR

By: _____

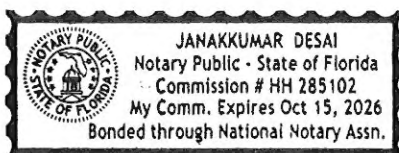
Print: Katherine L. Demeritte.

Title: Sr. Vice President Customer Serv.

STATE OF FLORIDA
COUNTY OF MARION

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of KATHERINE L. DEMERITTE, as Sr. VICE PRESIDENT CUSTOMER SERV of Enco Utility Services Florida, who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Contractor, and who is personally known to me or who produced FLORIDA DRIVER'S LIC as identification, and who did/did not take an oath this 25th day of JULY, 2023.

(stamp)



NOTARY PUBLIC, State of Florida

Exhibit "A"

Updated Pricing

	Start	0.0%	0.0%	3.0%	14.2%	3.0%	3.0%	3.0%
	2018	2019	2020	2021	2022	2023	2024	2025
Bill Print & Mail								
Set up - per statement type	\$ 400.00	\$ 400.00	\$ 400.00	\$ 412.00	\$ 470.50			
Changes - Hourly after initial set up	\$ 175.00	\$ 175.00	\$ 175.00	\$ 175.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
Ongoing								
Monthly Base Charge	\$ 500.00	\$ 500.00	\$ 500.00	\$ 515.00	\$ 588.13	\$ 605.77	\$ 623.95	\$ 642.67
Ongoing per Bill	\$ 0.1050	\$ 0.1050	\$ 0.1050	\$ 0.1082	\$ 0.1235	\$ 0.1272	\$ 0.1310	\$ 0.1350
NCOA	\$ 0.0175	\$ 0.0175	\$ 0.0175	\$ 0.0180	\$ 0.0206	\$ 0.0212	\$ 0.0218	\$ 0.0225
Paper Cost + / statement	\$ -	\$ -	\$ -	\$ -	\$ 0.0150	\$ 0.0155	\$ 0.0159	\$ 0.0164
Total per standard Statement w/ NCOA	\$ 0.1225	\$ 0.1225	\$ 0.1225	\$ 0.1262	\$ 0.1591	\$ 0.1639	\$ 0.1688	\$ 0.1738
Minimum per Cycle Batch	\$ 100.00	\$ 100.00	\$ 100.00	\$ 100.00	\$ 114.20	\$ 114.20	\$ 114.20	\$ 114.20
Postage Deposit								
postage per statement - At cost					\$ 0.466			
monthly statements 67,500 x 2			67500	72,113	144,226			
Postage Deposit Total					\$ 67,209			
Lockbox Services for Mailed in Payments					2022	2023	2024	2025
Set up	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00	\$ 3,605.00	\$ 4,116.91	\$ 4,240.42	\$ 4,367.63	\$ 4,498.66
Ongoing								
Monthly Base Charge	\$ 350.00	\$ 350.00	\$ 350.00	\$ 360.50	\$ 411.69	\$ 424.04	\$ 436.76	\$ 449.87
Per payment Processed	\$ 0.35	\$ 0.35	\$ 0.35	\$ 0.36	\$ 0.41	\$ 0.42	\$ 0.44	\$ 0.45
Remitweb online Access								
Courtesy Notifications					2022	2023	2024	2025
Set up					None			
Ongoing								
Monthly Base Charge	\$ 150.00	\$ 150.00	\$ 150.00	\$ 154.50	\$ 176.44	\$ 181.73	\$ 187.18	\$ 192.80
Email	\$ 0.22	\$ 0.22	\$ 0.22	\$ 0.23	\$ 0.26	\$ 0.27	\$ 0.27	\$ 0.28
Text	\$ 0.20	\$ 0.20	\$ 0.20	\$ 0.21	\$ 0.24	\$ 0.24	\$ 0.25	\$ 0.26
IVR Calls	\$ 0.30	\$ 0.30	\$ 0.30	\$ 0.31	\$ 0.35	\$ 0.36	\$ 0.37	\$ 0.39
Customer Service Billable Rates								
Customer Service Project Mgr	\$ 110.00	\$ 110.00	\$ 110.00	\$ 113.30	\$ 129.39	\$ 133.27	\$ 137.27	\$ 141.39
Data Programming	\$ 175.00	\$ 175.00	\$ 175.00	\$ 180.25	\$ 205.85	\$ 212.02	\$ 218.38	\$ 224.93
Billing Software Programming	\$ 225.00	\$ 225.00	\$ 225.00	\$ 231.75	\$ 264.66	\$ 272.60	\$ 280.78	\$ 289.20
IT Senior Technician	\$ 85.00	\$ 85.00	\$ 85.00	\$ 87.55	\$ 99.98	\$ 102.98	\$ 106.07	\$ 109.25
Data Senior Technician	\$ 65.00	\$ 65.00	\$ 65.00	\$ 66.95	\$ 76.46	\$ 78.75	\$ 81.11	\$ 83.55
Clerical	\$ 25.00	\$ 25.00	\$ 25.00	\$ 25.75	\$ 29.41	\$ 30.29	\$ 31.20	\$ 32.13



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Authorization to Purchase Electric Distribution Materials from Gresco Utility Supply Inc., in the amount of \$134,683.50

Introduction:

This is a request for authorization to purchase electric utility materials in the amount of \$134,683.50, as part of stock replacement, Grantham Point re-build project and Dora Drawdy underground conversion project.

Discussion:

Utility material items are purchased on a routine basis to ensure materials are available for emergencies and maintenance work. Large electric projects that are part of the Capital Improvement Plan (CIP) budget are pulled from inventory and therefore must be ordered as part of standard inventory purchases. However, according to Mount Dora purchasing policy (3.9-2) utility material purchase orders that exceed \$100,000 require Council approval. Therefore, staff requests Council approval to purchase electric distribution materials from Gresco Utility Supply Inc., in the amount of \$134,683.50 for 12,000 feet of 750 Aluminum cable and 54 15KV fault indicators. These items were competitively bid using the Advanced Utility Resource and Supply system (AURSI) which links Electric Utility material standards and their material request with vendors that provide quotes electronically back to the Utility.

These material items are part of two CIP projects, Grantham Point and Dora Drawdy, that have been approved in the 2022-2023 capital budget and ongoing stock replacement. Grantham Point is critical in order to ensure reliability of the existing underground cable in this area. After recent inspections, it was found that the switching devices and cable cables had greatly deteriorated and could fail at any time. Therefore, we are moving ahead to replace this equipment to prevent any lengthy outages. As part of the project, we are also upgrading the direct buried cable with a much larger capacity cable placed in a protective conduit, allowing for a major circuit tie to provide backup for the downtown district. Dora Drawdy is the next underground conversion project in the downtown area.

Budget Impact:

These projects are funded in the FY 2022-23 Electric Capital Improvement Plan (CIP).

- Grantham Point Rebuild - \$415,0000 415-5555-580.63-01-EL2322
- Dora Drawdy Underground Conversion - \$200,000 415-5555-580.63-01-EL2301

Strategic Impact:

Infrastructure – This underground upgrade project is critical to improve the electric infrastructure by upgrading underground lines to improve reliability of service to Mount Dora customers while enhancing the safety in maintenance and operation of electric facilities.

Recommendation:

City Council authorize the purchase of electric distribution materials from Gresco Utility Supply Inc.

Attachment(s):

1. 86. Full Results AURSI RFQ-6-7-7-2023-SV

Prepared by: Wayne Zimmerman, Deputy Electric Utility Director

Reviewed by: Steve Langley, Electric Utility Director

Aneta Barton, Budget Director

Sherry Sutphen, City Attorney

Jeanann Hand, City Clerk

Patrick Comiskey, City Manager

Approved - 7/24/2023

Approved - 7/25/2023

Approved - 7/26/2023

Approved - 7/26/2023

Final Approval - 7/26/2023

City of Mt Dora - Electric, FL

[View](#)

Event # RFQ-6-7/7/2023-SV

Creation Date 7/7/2023

Due Date-Time 7/21/2023-10:00 AM EST

Description Combined Inventory

Event Notes Key for "Internal Tracking:" - we will utilize this for our own records. GP=Grantham Point DD=Dora
Drawdy ST=Warehouse Stock

Award Notes

Selection Basis -

Lowest Price: Lines 1,2,4,6,8,9,10,13,14,15,16,19,20,21

No Bids: Lines 3,7,12,17

Total QTY Quoted vs Requested: Lines 5,18

Combination of Price & Lead Time: Lines 11

Supplier Awards

Electric Supply of Tampa - Tampa, FL Event #RFQ-6-7/7/2023-SV					
ItemID	Description	QtyBid	UOM	Alternates?	
11 285-091-00014	ELBOW LOADBREAK 200A 2/0 AL/CU 15KV / with Test Points	80	Each	No	
Buyer Notes: Internal Tracking: DD=66					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
Hubbell	215LE46T	80	No	168	
Vendor Remarks: 20 per carton - need to be 60 or 80					
Price	Extended				
51.85000	4148.00000				
ItemID	Description	QtyBid	UOM	Alternates?	
18 285-130-00029	WASHERS, SQUARE, GALVANIZED	250	Each	No	
Buyer Notes: Internal Tracking: GP=50, ST=200					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
HPS	6813	250	No	10	
Vendor Remarks:					
Price	Extended				
0.75000	187.50000				
Total Supplier Award = \$4,335.50000					

GRESO - Wildwood, FL Event #RFQ-6-7/7/2023-SV

ItemID	Description	QtyBid	UOM	Alternates?
2 280-080-00016	CABLE, ALUMINUM, 750 kcm, 1C, 15kV, TRXLP,STRAND-FILLED WATER BLOCKING CONDUCTOR	12000	Foot	No

Buyer Notes: No Kingwire approved as alternate at this time. Internal Tracking: GP=6000, ST=4000

Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
Order per OUC spec		12000	No	102

Vendor Remarks: MOQ=12,000/PRICE MAY BE ADJ AT TIME OF SHIPMENT

Price	Extended
10.75000	129000.00000

ItemID	Description	QtyBid	UOM	Alternates?
9 285-091-00009	FAULT INDICATOR, 15KV GROUND	54	Each	No

Buyer Notes: Internal Tracking: GP=5, DD=36, ST=13

Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
SCHWEITZER	1TPRI0300	54	No	35

Vendor Remarks:

Price	Extended
105.25000	5683.50000

Total Supplier Award = \$134,683.50000

Stuart C. Irby - Lake Mary, FL Event #RFQ-6-7/7/2023-SV					
ItemID	Description	QtyBid	UOM	Alternates?	
1 280-080-00002	CABLE, 2 PRIMARY 15KV EPR 220 MIL, CABLE, #2 15KV FULL NEUTRAL	4750	Foot	No	
Buyer Notes: Internal Tracking: GP=3250, DD=1500					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
OKONITE	#163-23-3060	4750	No	455	
Vendor Remarks:					
Price	Extended				
4.25000	20187.50000				

ItemID	Description	QtyBid	UOM	Alternates?	
4 285-033-00002	CLAMP, GROUND ROD 5/8"	100	Each	No	
Buyer Notes: Internal Tracking: GP=20, ST=30					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
Anderson	GC5G5	100	No	28	
Vendor Remarks: Please order in standard pack quantities of 100					
Price	Extended				
2.57000	257.00000				

ItemID	Description	QtyBid	UOM	Alternates?	
6 285-067-00003	SWITCH, DISCONNECT,15KV, 900A S&C LOADBUSTER	6	Each	No	
Buyer Notes: Internal Tracking: GP=6					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
S & C	18932R1-A	6	No	84	
Vendor Remarks:					
Price	Extended				
419.16000	2514.96000				

ItemID	Description	QtyBid	UOM	Alternates?	
8 285-091-00003	TERMINATION KIT, 750-1000 MCM, 15KV COLD SHRINK, OUTDOOR, FOR USE WITH SHEAR BOLT LUG, 150kV BIL	6	Each	No	
Buyer Notes: Internal Tracking: GP=6					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
3M	3M# -7655-S-4(L) QT-III	6	No	28	
Vendor Remarks:					
Price	Extended				
218.71000	1312.26000				

ItemID	Description	QtyBid	UOM	Alternates?	
10 285-091-00011	BUSHING, STANDOFF 200AMP, PARKING STAND	68	Each	No	
Buyer Notes: Internal Tracking: GP=8, DD=60					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
ELASTIMOLD	161S0P	68	No	126	
Vendor Remarks:					
Price	Extended				
40.17000	2731.56000				

ItemID	Description	QtyBid	UOM	Alternates?	
13 285-091-00016	T-BODY KIT DEAD BREAK 600A 750 AL/CU 15KV SHEAR BOLT	6	Each	No	
Buyer Notes: Internal Tracking: GP=6					
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days	
ELASTIMOLD (T&B)	K65 6 DLR L AC04	6	No	266	
Vendor Remarks:					
Price	Extended				
430.11000	2590.66000				

August 1, 2023 City Council Regular Session Agenda Packet

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ItemID	Description	QtyBid	UOM	Alternates?
14 285-091-00017	TERMINATION, QUICK TERM, 15KV 1/0- 4/0 USING SHEAR BOLT CONNECTOR,150kV BIL	6	Each	No
Buyer Notes: Internal Tracking: DD=6				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
3M	3M # 7652-S-4(L) QT-III	6	No	42
Vendor Remarks:				
Price	Extended			
115.03000	690.18000			

ItemID	Description	QtyBid	UOM	Alternates?
15 285-092-00008	CONNECTOR, 5/8" TRANSFORMER STUD 6-POS SOOMCM INSULATED	18	Each	No
Buyer Notes: Internal Tracking: GP=3, DD=12				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
UTILICO	PTF6-500CJNU58P	18	No	252
Vendor Remarks: please order in standard pack multiples of 6				
Price	Extended			
21.97000	395.46000			

ItemID	Description	QtyBid	UOM	Alternates?
16 285-092-00014	CONNECTOR, MECH- 6-CONDUCTOR 8-HOLE 500 MCM	12	Each	No
Buyer Notes: Internal Tracking: DD=15				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
CMC	L6D8-500	12	No	140
Vendor Remarks: Please order in standard pack multiples of 12				
Price	Extended			
53.68000	644.16000			

ItemID	Description	QtyBid	UOM	Alternates?
19 285-130-00030	CLEVIS,DEADEND, SECONDARY SPOOL	35	Each	No
Buyer Notes: Internal Tracking: GP=7, ST=25				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
AB CHANCE	468	35	No	28
Vendor Remarks: Please order in standard pack multiples of 35				
Price	Extended			
6.23000	218.05000			

ItemID	Description	QtyBid	UOM	Alternates?
20 832-040-00002	TAPE, ELECTRIC BLACK 1-1/2" X 44' VINYL	50	Each	No
Buyer Notes: Internal Tracking: GP=15, ST=30				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
3M	SUPER 88	50	No	5
Vendor Remarks: Please order in standard pack multiples of 10				
Price	Extended			
6.33000	316.50000			

ItemID	Description	QtyBid	UOM	Alternates?
21 832-040-00003	TAPE, ELECTRIC- BLACK, 3/4" X 66" X 7 MIL	100	Each	No
Buyer Notes: Internal Tracking: GP=15, DD=50, ST=40				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
3M		100	No	5
Vendor Remarks: Please order in standard pack quantities of 100				
Price	Extended			
6.13000	613.00000			

Total Supplier Award = \$32,461.29000				
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Tri-State Utility Products - Havana, FL Event #RFQ-6-7/7/2023-SV				
ItemID	Description	QtyBid	UOM	Alternates?
5 285-033-00004	CONNECTOR, 5/8" TRANSFORMER GROUND LUG	50	Each	No
Buyer Notes: Internal Tracking: GP=20, DD=24				
Manufacturer	Catalog Number	QtyAward	Bid Alt.	Days
BLACKBURN	TTC2	50	No	14
Vendor Remarks: QUOTING HPS EQUAL - GTCS34A STANDARD PACK = 50 CANNOT BREAK STANDARD PACK				
Price	Extended			
6.40000	320.00000			
Total Supplier Award = \$320.00000				

American Wire Group - Miami, FL

No Awards

Anixter Inc - Orlando, FL

No Awards

Electric Sales Associates, Inc. - Weston, FL

No Awards

Torres Electrical Company - Stuart, FL

No Awards

WESCO - Orlando, FL

No Awards

Grand Total of RFQ-6-7/7/2023-SV Award = \$171,800.29000

No attached boiler plates.

City of Mt Dora - Electric, FL

[View](#)

Event # RFQ-6-7/7/2023-SV

Creation Date 7/7/2023

Due Date-Time 7/21/2023-10:00 AM EST

Description Combined Inventory

Event Notes Key for "Internal Tracking:" - we will utilize this for our own records. GP=Grantham Point
DD=Dora Drawdy ST=Warehouse Stock

LineNo ItemID Description Qty UOM Alt Notes
 1 280-080-00002 CABLE, 2 PRIMARY 15KV EPR 220 MIL, 4750 Foot No Internal Tracking: GP=3250,
 CABLE, #2 15KV FULL NEUTRAL DD=1500

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
4750	4.25000	20187.50000	455	Stuart C. Irby - Lake Mary, FL	OKONITE	#163-23-3060	
4750	5.21000	24747.50000	14	Electric Supply of Tampa - Tampa, FL	Houston Wire	per description	
4750	5.90000	28025.00000	7	Anixter Inc - Orlando, FL	Houston Wire	per description	
4750	6.25000	29687.50000	21	GRESO - Wildwood, FL	Houston Wire	per description	

2 280-080-00016 CABLE, ALUMINUM, 750 kcm, 1C, 15KV, 10000 Foot No No Kingwire approved as
 TRXL, STRAND-FILLED WATER BLOCKING CONDUCTOR alternate at this time.
 Internal Tracking: GP=6000,
 ST=4000

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
12000	10.75000	129000.00000	102	GRESO - Wildwood, FL	Order per OUC spec		MOQ=12,000/PRICE MAY BE ADJ AT TIME OF SHIPMENT
20000	11.40000	228000.00000	112	Anixter Inc - Orlando, FL	Order per OUC spec		Quoting AWG A750-01UD15UX050J/ 750 15KV UD-AL 220X 15X10 JKT. MOQ 20,000 FT. Quote is for 20,000 FT.
10000	14.23000	142300.00000	357	Stuart C. Irby - Lake Mary, FL	Order per OUC spec		

3 285-009-00012 POLYMER CONCRETE HANDHOLE WITH 10 Each No Internal Tracking: DD=10
 20K LID, 24X36X24

No bids were submitted for this item!

4 285-033-00002 CLAMP, GROUND ROD 5/8" 50 Each No Internal Tracking: GP=20,
 ST=30

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
100	2.57000	257.00000	28	Stuart C. Irby - Lake Mary, FL	Anderson	GC5G5	Please order in standard pack quantities of 100
50	2.80000	140.00000	10	Electric Supply of Tampa - Tampa, FL	Anderson	GC5G5	
100	2.83000	283.00000	3	Tri-State Utility Products - Havana, FL	Anderson	GC5G5	IN STOCK FOR IMMEDIATE SHIPMENT STANDARD PACK = 100 CANNOT BREAK STANDARD PACK
50	4.55000	227.50000	42	GRESO - Wildwood, FL	BLACKBURN	G5	

5 285-033-00004 CONNECTOR, 5/8" TRANSFORMER 44 Each No Internal Tracking: GP=20,
 GROUND LUG DD=24

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
100	5.58000	558.00000	28	Stuart C. Irby - Lake Mary, FL	BLACKBURN	TTC2	Please order in standard pack multiples of 100
100	6.21000	621.00000	42	GRESO - Wildwood, FL	BLACKBURN	TTC2	MOQ=100
50	6.40000	320.00000	14	Tri-State Utility Products - Havana, FL	BLACKBURN	TTC2	QUOTING HPS EQUAL - GTC534A STANDARD PACK = 50 CANNOT BREAK STANDARD PACK

100	12.55000	1255.00000	24	Electric Supply of Tampa - Tampa, FL	BLACKBURN	TTC2	This item is 100 per carton
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- 6 285-067-00003 SWITCH, DISCONNECT, 15KV, 900A S&C LOADBUSTER 6 Each No Internal Tracking: GP=6

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
6	419.16000	2514.96000	84	Stuart C. Irby - Lake Mary, FL	S & C	18932R1-A	

- 7 285-067-00005 CONCRETE LARGE SWITCH GEAR BOX, USE WITH FEDERAL PACIFIC PSE-9 SWITCH DEADFRONT 1 Each No Internal Tracking: GP=1

No bids were submitted for this item!

- 8 285-091-00003 TERMINATION KIT, 750-1000 MCM, 15KV COLD SHRINK, OUTDOOR, FOR USE WITH 6 SHEAR BOLT LUG, 150KV BIL 6 Each No Internal Tracking: GP=6

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
6	218.71000	1312.26000	28	Stuart C. Irby - Lake Mary, FL	3M	3M# -7655-S-4(L) QT-III	
6	242.00000	1452.00000	28	Anixter Inc - Orlando, FL	3M	3M# -7655-S-4(L) QT-III	

- 9 285-091-00009 FAULT INDICATOR, 15KV GROUND 54 Each No Internal Tracking: GP=5, DD=36, ST=13

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
54	105.25000	5683.50000	35	GRESKO - Wildwood, FL	SCHWEITZER	1TPRI0300	
54	106.87000	5770.98000	42	Stuart C. Irby - Lake Mary, FL	SCHWEITZER	1TPRI0300	
54	113.80000	6145.20000	25	Anixter Inc - Orlando, FL	SCHWEITZER	1TPRI0300	

- 10 285-091-00011 BUSHING, STANDOFF 200AMP, PARKING STAND 68 Each No Internal Tracking: GP=8, DD=60

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
68	40.17000	2731.56000	126	Stuart C. Irby - Lake Mary, FL	ELASTIMOLD	161S0P	
75	50.30000	3772.50000	140	Anixter Inc - Orlando, FL	ELASTIMOLD	161S0P	Standard pk QTY 25. Quote is for QTY 75.
68	54.56000	3710.08000	294	GRESKO - Wildwood, FL	COOPER POWER	ISB215	
68	56.80000	3862.40000	308	Electric Supply of Tampa - Tampa, FL	HUBBELL	215SB	
68	61.70000	4195.60000	285	Tri-State Utility Products - Havana, FL	HUBBELL	215SB	

- 11 285-091-00014 ELBOW LOADBREAK 200A 2/0 AL/CU 15KV / with Test Points 66 Each No Internal Tracking: DD=66

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
80	38.15000	3052.00000	574	GRESKO - Wildwood, FL	COOPER POWER	LE215AB07T W/LONG BIMETAL 2639043A07B	SP=20
80	51.85000	4148.00000	168	Electric Supply of Tampa - Tampa, FL	Hubbell	215LE46T	20 per carton - need to be 60 or 80
80	52.37000	4189.60000	140	Stuart C. Irby - Lake Mary, FL	Hubbell	215LE46T	Please order in standard pack quantities of 20
80	59.00000	4720.00000	130	Tri-State Utility Products - Havana, FL	Hubbell	215LE46T	STANDARD PACK = 20 CANNOT BREAK STANDARD PACK
66	68.35000	4511.10000	287	Anixter Inc - Orlando, FL	ABB ELASTIMOLD	162LR-8-5250	

- 12 285-091-00015 ELBOW FUSED LOADBREAK 200A #2 AL - General Purpose Current Limiting 3 Each No Internal Tracking: GP=3

No bids were submitted for this item!

- 13 285-091-00016 T-BODY KIT DEAD BREAK 600A 750 AL/CU 6 Each No Internal Tracking: GP=6

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
6	430.11000	2580.66000	266	Stuart C. Irby - Lake Mary, FL	ELASTIMOLD (T&B)	K65 6 DLR L AC04	

- 14 285-091-00017 TERMINATION, QUICK TERM, 15KV 1/0-4/0 USING SHEAR BOLT CONNECTOR, 150KV BIL 6 Each No Internal Tracking: DD=6

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
6	115.03000	690.18000	42	Stuart C. Irby - Lake Mary, FL	3M	3M # 7652-S-4(L) QT-III	
6	133.00000	798.00000	28	Anixter Inc - Orlando, FL	3M	3M # 7652-S-4(L) QT-III	

- 15 285-092-00008 CONNECTOR, 5/8" TRANSFORMER STUD 6-POS 500MCM INSULATED 15 Each No Internal Tracking: GP=3, DD=12

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
18	21.97000	395.46000	252	Stuart C. Irby - Lake Mary, FL	UTILICO	PTF6-500CJNU58P	please order in standard pack multiples of 6
18	22.30000	401.40000	238	GRESKO - Wildwood, FL	UTILICO	PTF6-500CJNU58P	SP=6

- 16 285-092-00014 CONNECTOR, MECH- 6-CONDUCTOR 8-HOLE 500 MCM 15 Each No Internal Tracking: DD=15

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
12	53.68000	644.16000	140	Stuart C. Irby - Lake Mary, FL	CMC	L6D8-500	Please order in standard pack multiples of 12
15	61.70000	925.50000	130	Tri-State Utility Products - Havana, FL	CMC	L6D8-500	
15	61.70000	925.50000	140	Anixter Inc - Orlando, FL	CMC	L6D8-500	

- 17 285-095-00021 TRANSFORMER PAD, CONCRETE, 18"X48" CABLE OPENING 5 Each No Internal Tracking: GP=1, DD=4

No bids were submitted for this item!

- 18 285-130-00029 WASHERS, SQUARE, GALVANIZED 250 Each No Internal Tracking: GP=50, ST=200

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
400	0.67000	268.00000	5	Stuart C. Irby - Lake Mary, FL	MPS	J1075	Please order in standard pack quantities of 200
400	0.72000	288.00000	14	Anixter Inc - Orlando, FL	MPS	J1075	Standard pk 200. Quoting QTY 400.
250	0.75000	187.50000	10	Electric Supply of Tampa - Tampa, FL	HPS	6813	
400	0.75000	300.00000	28	GRESKO - Wildwood, FL	MPS	J1075	SP=200
400	0.89000	356.00000	3	Tri-State Utility Products - Havana, FL	HPS	6813	IN STOCK FOR IMMEDIATE SHIPMENT STANDARD PACK = 200 MUST BUY 200 OR 400 CANNOT BREAK STANDARD PACK

- 19 285-130-00030 CLEVIS, DEADEND, SECONDARY SPOOL 32 Each No Internal Tracking: GP=7, ST=25

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
35	6.23000	218.05000	28	Stuart C. Irby - Lake Mary, FL	AB CHANCE	468	Please order in standard pack multiples of 35
50	6.90000	345.00000	56	Anixter Inc - Orlando, FL	AB CHANCE	468	Quoting MPS Prt#J093 /Standard pk 25. Quoting QTY 50.
32	7.60000	243.20000	42	Electric Supply of Tampa - Tampa, FL	AB CHANCE	468	
35	8.50000	297.50000	14	Tri-State Utility Products - Havana, FL	AB CHANCE	468	STANDARD PACK = 35 CANNOT BREAK STANDARD PACK

20 832-040-00002 TAPE, ELECTRIC BLACK 1-1/2" X 44' VINYL 45 Each No Internal Tracking: GP=15, ST=30

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
50	6.33000	316.50000	5	Stuart C. Irby - Lake Mary, FL	3M	SUPER 88	Please order in standard pack multiples of 10
50	10.00000	500.00000	21	Anixter Inc - Orlando, FL	3M	SUPER 88	Sold in increments of 10. Quote is for QTY 50.

21 832-040-00003 TAPE, ELECTRIC- BLACK, 3/4" X 66" X 7 MIL 105 Each No Internal Tracking: GP=15, DD=50, ST=40

QtyQuoted	Price	Extended	Delivery	SuppName	Manufacturer	CatNo	Remarks
100	6.13000	613.00000	5	Stuart C. Irby - Lake Mary, FL	3M		Please order in standard pack quantities of 100
100	6.90000	690.00000	7	Anixter Inc - Orlando, FL	3M		Sold in increments of 100. Quote is for QTY 100.

No attached boiler plates.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Authorization to Apply for a Broadband Multi-Purpose Community Facilities Program Grant From the Department of Economic Opportunity

Introduction:

This is a request for City Council to authorize staff to submit a Broadband Multi-Purpose Community Facilities Program Grant Application to the Florida Department of Economic Opportunity (DEO) for the Community Resource and Recreation Center.

Discussion:

Staff is requesting authorization to submit the online grant application to the Florida Department of Economic Opportunity (DEO) for the Community Resource and Recreation Center. Staff will be requesting the maximum grant award of \$4,000,000 for this project. There may be an additional grant opportunity in the near future for an additional \$2,000,000 of broadband connectivity funding. Staff is required to submit the grant application through a web portal to be eligible for the grant. As such, Adam Sumner will need authorization to electronically sign the grant application. If the City is awarded this grant, the State will provide a grant agreement for review and approval by the City Council.

Funding through the Multi-Purpose Community Facility Projects Program is designed to expand broadband access, prioritizing unserved and underserved Florida communities and communities with Internet service speeds below symmetrical download and upload speeds of 100Mbps. Subrecipients will be required to partner with their CareerSource Florida Local Workforce Development Board, providing convenient locations for Floridians to apply for jobs, take continuing education classes, or receive training in digital skills, resume writing, how to interview for a position and other skills. Applications are due by October 3rd, 2023 and it is competitive based on the published scoring system. DEO will obligate/award all project funds before December 31, 2024, and ensure all projects are completed by Dec. 31, 2026.

Budget Impact:

N/A

Strategic Impact:

Redevelopment, investment in human capital, job training, telehealth, increased broadband connectivity for Mount Dora residents.

Recommendation:

City Council approve the submission of the Broadband Multi-Purpose Community Facilities Program Grant Application to the Department of Economic Opportunity and authorize the necessary staff to sign the electronic application.

Attachment(s):

1. DEO Broadband Grant Executive Summary

Prepared by: Adam Sumner, CRA Administrator

Reviewed by: Vince Sandersfeld, Planning and Development Director

Aneta Barton, Budget Director

Sherry Sutphen, City Attorney

Jeanann Hand, City Clerk

Patrick Comiskey, City Manager

Approved - 7/25/2023

Approved - 7/25/2023

Approved - 7/26/2023

Approved - 7/26/2023

Final Approval - 7/26/2023

CAPITAL PROJECTS FUND
EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Internet connectivity has become foundational for most activities of modern life; however, many Floridians still lack internet access, or access to internet services, at speeds adequate to conduct remote learning, telehealth appointments, and work from home. This lack of adequate internet access is particularly acute in the rural areas of the state.

OBJECTIVES

The Florida Office of Broadband (Office), housed within the Florida Department of Economic Opportunity (DEO), intends to use funds from the Capital Projects Fund (CPF) to deploy broadband Internet infrastructure in unserved and underserved areas throughout the state, prioritizing rural areas. Florida's legislature has designated 32 counties as rural, defined in section 288.0656(2)(e), Florida Statutes, as a county with a population of 75,000 or fewer. Twenty-nine of these counties are organized into three Rural Areas of Opportunity (RAO). Rural counties are among the least served areas of the state and have among the lowest per capita personal incomes in the state.

This Grant Plan addresses each of the Capital Projects categories outlined in the guidance. The Office will also use guidance provided in the Florida Strategic Plan for Broadband to identify partnerships, adoption and use goals, and accountability of the projects. The Office will accept applications from local governments, non-profits, or private entities, and award grants based on the allocations shown below.

ALLOCATIONS

Total Allocation	\$ 366,036,869
Administration 5%	\$ 18,301,843
Available for Subrecipient awards	\$ 347,735,026
• 1A-Broadband Infrastructure Projects (70%)	\$ 247,761,206
• 1B-Digital Connectivity Technology Projects (5%)	\$ 13,040,063
• 1C-Multi-Purpose Community Facility Projects (25%)	\$ 86,933,757

PROGRAM PLANS

Broadband Infrastructure Projects will prioritize broadband infrastructure deployment in areas where broadband internet service is not currently available from a terrestrial provider. In areas with internet service at advertised speeds below the Federal Communications Commission (FCC) definition of broadband, the Office will prioritize deployments at scalable speeds of 100 Mbps downstream and upstream. These areas can be identified through current FCC Form 477 data and supplemented by local area speed tests and crowd sourced mapping. Awards will be prioritized by the number of homes and businesses that will be served by the new infrastructure. In the 29 RAO counties, more than 29% of households access the internet with no subscription or have no internet access.

The Office will give priority to Broadband Infrastructure Projects where networks will be owned, operated, or affiliated with local governments, non-profit organizations, and co-operatives. These entities will make their networks available to any service provider who requests access, as long as such access is on a non-discriminatory basis and service is made available to anyone receiving service over

the CPF funded network. Where feasible, the Office will encourage fiber-optic networks deployed directly to the home or business. Other technologies capable of delivering service at the levels mentioned in U.S. Treasury guidance may be deployed where fiber-optic networks are not economically feasible, or other environmental factors make fiber deployment impractical. Internet service providers (ISPs) will be required to offer low-cost plans at speeds no less than the minimum speeds required in treasury guidance. ISPs will also be required to participate in Federal broadband assistance programs including the Affordable Connectivity Plan currently offered by the FCC and any successor plan designated by U.S. Treasury.

The second program will make funding available for **Digital Connectivity Technology Projects**. Areas eligible for these projects may be based on areas having incomes below the state average. Individual household eligibility may be based on participation in Federal income assistance programs, such as free or reduced school lunch, supplemental security income, social security disability income, Supplemental Nutrition Assistance Program (SNAP), and other public assistance programs. The U.S. Treasury defines digital connectivity projects as covering the purchase or installation of devices and equipment. Based on surveys, workshop feedback, and information gathered by the Local Technology Planning Teams (LTPTs), the gap in access is partially related to the availability of electronic devices. Proposals for broadband connectivity to students and other populations will address methods to deliver services through devices and equipment available in public facilities. These projects will make computers and tablets available to qualifying households through a long-term loan program administered by local entities. Such entities may include libraries and other community anchor institutions. Subrecipients will maintain ownership of the devices throughout the term of the loan. Qualifying households will also be eligible to borrow equipment, such as routers, needed to access the internet. The Office will develop a monitoring plan to ensure that households with no computers are prioritized over those receiving laptops from school districts and other programs.

For the third program, the Office will use funding to build and improve **Multi-Purpose Community Facility (MPCF) Projects**. Priority will be given to areas of the state with low to moderate incomes as identified by the U.S. Department of Housing and Urban Development (HUD) data. The highest priority will be given to areas with no or inadequate community facilities. Communities will be encouraged to submit plans that include spaces for community recreational activities and other services. Monitoring plans will be developed to ensure that communities requesting funding for MPCF Projects are not receiving funding from other programs funding similar projects in the community.

IDENTIFYING COMMUNITY NEEDS

The Office considered factors such as location, population density, socioeconomic factors, and population demographics, including low to moderate income families, when seeking input from communities across Florida. Discussions were held with stakeholders about needs, expectations, and opinions regarding broadband access. The Office used the Federal Communication Commission (FCC) Form 477 data, speed test data from the Florida Broadband Availability Map, the Faster Florida Broadband Map, regional workshops, and LTPTs to identify critical needs within the state.

The LTPTs established under Section 288.9961(4)(b), Florida Statutes, will play a leading role in identifying and prioritizing the critical needs of their respective communities. These teams are composed of stakeholders from various sectors of the community who are familiar with their community's needs and capabilities. This will be particularly important in identifying communities that do not have access to reliable broadband internet services to enable remote learning, working, and telehealth services and identifying facilities that can be upgraded under the Multi-Purpose Community Facility Projects.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Approval of Meeting Minutes

- July 10, 2023 Budget Workshop Minutes
- July 18, 2023 Regular Session Minutes

Introduction:

This is a request for City Council to approve meeting minutes.

Discussion:

The City Clerk prepares minutes and presents them to City Council as an opportunity to make suggestions or corrections prior to final approval.

Budget Impact:

N/A

Strategic Impact:

N/A

Recommendation:

City Council to approve Meeting Minutes.

Attachment(s):

1. 07.10.2023.Budget Workshop.Minutes_DRAFT
2. 07.18.2023.Regular Session Minutes_Abridged DRAFT

Prepared by: Jeanann Hand, City Clerk



City of Mount Dora
510 North Baker Street
Mount Dora, Florida 32757
352-735-7126

Mount Dora City Council
Mount Dora City Hall Board Room
510 North Baker Street, Mount Dora, Florida 32757
July 10, 2023, 6:00 PM

WORK SESSION AGENDA

CALL TO ORDER

Having been duly advertised as required by law, at 6:00 p.m. Mayor Crissy Stile called to order the July 10, 2023 City Council Budget Work Session.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Stile.

ROLL CALL

Members Present

John Cataldo, District 1
Cal Rolfson, District 2
Dennis Dawson, District 3
Nate Walker, District 5
Doug Bryant, At Large
Crissy Stile, Mayor

Also Present

Patrick C. Comiskey, City Manager
Aneta Barton, Budget Director
Jeanann Hand, City Clerk

Members Not Present

Mar Crail, Vice-mayor

DISCUSSION ITEMS

1. CIP and Capital Outlay

City Budget Director Aneta Barton began with an overview of her PowerPoint presenting the meeting's subject matter. The presentation is attached to the minutes as Exhibit A. She told those present the meeting would cover Capital Expenditures, including Capital Outlay and Capital Improvements, Enterprise Funds, Rates, the Utility Customer Base, the Electric Fund (410), the Water/Wastewater Fund (421), the Sanitation Fund (430), the Stormwater Fund (440), and the next steps in the process. She explained budget terminology related to the meeting.

Interim Police Chief Michael Gibson was present to answer questions related to the Police budget. The purchase of tasers, a message board, vehicles and cameras were discussed.

Fire Chief Joseph Hightower was present to answer questions regarding the Fire budget. Questions were asked about the fire event mobile unit; Chief Hightower distributed a relevant document, which is attached to the minutes as Exhibit B.

Questions were asked about a water craft proposed during last year's budget meeting. It may be considered in the future. Ms. Barton explained the division of the City's budget and the availability of funds. The water craft was further discussed, with Councilmembers requesting additional information on the craft and response times. Also discussed was a second, smaller street sweeper,

GENERAL CAPITAL (310)

Due to protected information, Internet Technology data will be discussed in one-on-one meetings between Councilmembers and staff. CRA budgeting and streetscape enhancement and repair were mentioned, as were the tree replacement program, which will draw funds from the tree bank, and parking solutions. Planning Director Vince Sandersfeld answered questions from Council members.

Funding for the recreation center and its continued priority for the city were discussed.

Pedestrian crossings, sidewalks, and ADA compliance were discussed. Public Works Director George Marek informed Council on these topics.

Parks and Recreation Operations Manager Jen Schwarz answered questions regarding work planned for Gilbert Park.

Library Director Cathy Lunday answered questions about the goat pond and its context within the work being done at the Simpson Farmhouse and other inquiries about the Farmhouse and the Forest Preserve project. It was noted that parking is a priority. Relocation of the garden was mentioned. Ms. Lunday distributed material attached to the minutes as Exhibit C.

Councilmember Walker confirmed the security of gravesites at the church near the library.

Mr. Marek spoke with Council about erosion at Donnelly Park and work to be done at the pickleball courts.

Ms. Schwarz spoke further on the pickleball courts at Donnelly. Preferred tennis court locations were mentioned.

Ms. Barton presented a five-year plan for General Capital Improvements.

Mayor Stile asked for further planning and research before a portion of city funding is spent on traffic calming. City Manager Comiskey informed a policy on traffic calming is currently being created. The policy will be presented to Council and that policy will guide traffic calming measures as different locations are treated. The Loch Leven park was discussed.

ELECTRIC FUND (415)

Ms. Barton reviewed material presented regarding the Electric Fund. She spoke about related Capital Improvement Projects. The status of the Mount Dora Groves project and associated funding were discussed.

WATER/WASTEWATER

Ms. Barton noted concerns regarding WWTP#2 funding. She spoke about projects moved to the next fiscal year due to funding. The timing of projects and rate increases were addressed. Further information will be provided to Council to answer their questions.

STORMWATER

Ms. Barton informed that the City is lacking adequate funding for current and immediate projects. Rate increases and an effective increase amount were discussed. Increasing rates to \$30 may be sufficient for funding the upcoming year. A five-year plan for Stormwater may be helpful.

Mr. Marek spoke with Council regarding solutions related to the Unser pond. Prioritizing projects according to urgency was suggested. Ms. Barton spoke about moving staff between departments and its effect on budgeting funds.

ENTERPRISE FUNDS

Ms. Barton reviewed the definition and characteristics of Enterprise Funds. She provided a recap of the rates related to Enterprise Funds and explained what would be taking place in the future.

Ms. Barton shared information on the City's customer base. Rates charged to customers outside the city were discussed. Electric Utility Director Steve Langley spoke about service territory agreements. Growth of the city's customer footprint was explored. Ms. Barton provided details relate to power cost and base rate.

Ms. Barton spoke on Electric revenues, expenses, and divisions. She mentioned the electric fund is in good financial standing.

Water/Wastewater revenues, expenditures and divisions were reviewed. The City expects little change in those funds, with perhaps a slight variation due to health insurance.

The Sanitation fund was reviewed in the same manner as the previously discussed enterprise funds. Personnel would be moved to the General Fund to help balance this fund. Raftelis is still reviewing administrative cost allocation.

Ms. Barton presented information related to the Stormwater fund. Personnel costs will be moved to the General Fund. She answered questions relate to carryovers and the Liberty Avenue Stormwater Treatment project. There was a difference between what was presented in the PowerPoint and what would actually be happening, as the Liberty Avenue project will not be accomplished with new monies.

The budget would continue to be a work in progress until September.

Ms. Barton announced upcoming dates of interest related to the budget.

Ms. Barton answered questions regarding the City's compliance with new requirements for utility services administrative funding. It was suggested the City allocate funds for the Lake Cares Food Pantry, which serves many in the Mount Dora community. A resolution for this purpose would be presented to Council in August.

ADJOURNMENT

MOTION BY COUNCILMEMBER WALKER TO ADJOURN; MOTION APPROVED BY A

UNANIMOUS VOICE VOTE.

There being no further business for discussion, Mayor Stile adjourned the meeting at approximately 7:48 p.m.

CRISSY STILE, MAYOR
City of Mount Dora

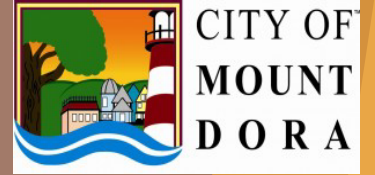
JEANANN HAND, CITY CLERK
City of Mount Dora



CITY OF MOUNT DORA, FL

BUDGET WORKSHOP
JULY 10TH, 2023

OVERVIEW



- ▶ Capital Expenditures
 - ▶ Capital Outlay
 - ▶ Capital Improvements
- ▶ Enterprise Funds Budget Overview
- ▶ Rates
- ▶ Utility Customer Base
- ▶ 410 Electric Fund
- ▶ 421 Water/Wastewater Fund
- ▶ 430 Sanitation Fund
- ▶ 440 Stormwater Fund
- ▶ Next steps

CAPITAL EXPENDITURES



Types of Capital Expenditures

Capital Outlays

Tangible asset \$5,000 or more in value and useful life more than 1 year (machinery, equipment)

CIP - Projects

Capital Improvement Plan/Program/Projects

Funding Process per Capital Expenditure

New monies from the FY23-24 budget

CARRYOVERS

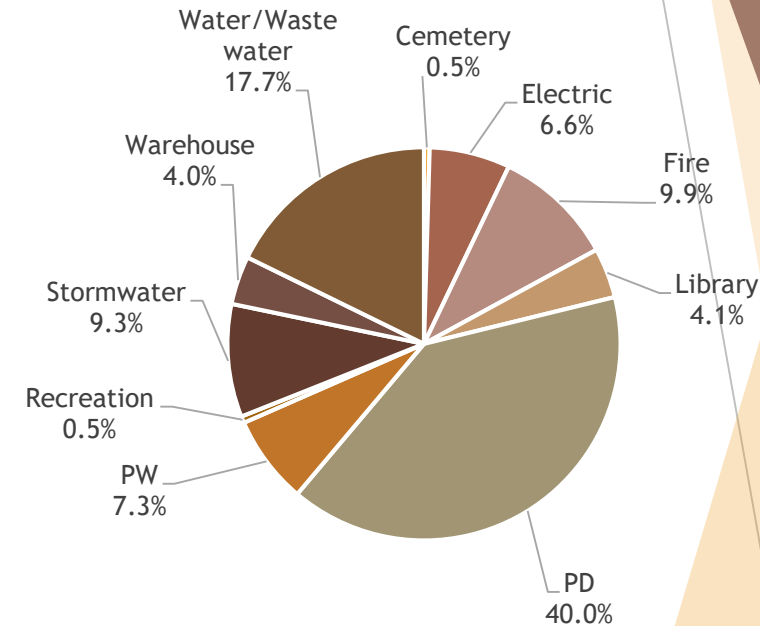
Unused monies from last Fiscal Year (2022-23)

CAPITAL OUTLAY – CM RECOMMENDED



Capital Outlays

Project Name	Proposed 2023-24	Dept.
001 - General Fund	\$ 604,176	Dept.
Lighting Console for Mount Dora Music Hall	12,300	Recreation
12 AEDs replacements	17,700	PD
4 Balistic Shields	26,899	PD
15 Body Cameras	26,025	PD
Camera System for Interview room	9,426	PD
Online Training and Inventory System	5,173	PD
4 Vehicle radars and 2 Motorcycle radars	16,120	PD
Reduction Software for Video	7,245	PD
45 New Tasers	205,236	PD
1 Large Message Boards	23,655	PD
Telescopic Boom Lift	164,397	PW
2 Hybrid Small Pick-up trucks as spares	90,000	Warehouse
111 - Discretionary	\$ 565,924	
5 Marked Hybrid Patrol Vehicles	386,565	PD
Ufitting for Vehicles	81,040	PD
Body & Vehicle Camera Upgrades	98,319	PD
126 - Library Impact Fund	\$ 93,000	
Library Collections	93,000	Library
131 - Fire Assessment Fund	\$ 224,750	
1 Lifepak Heart Monitor	25,000	Fire
Kawasaki Mule with skid unit for backboard, hose, & water tank.	24,000	Fire
PPE & Bunker Gear	75,000	Fire
Firehouse Innnovations Forcible Entry Training Prop	15,000	Fire
FireVent mobile unit	85,750	Fire
150 - Cemetery	\$ 10,500	
Mower - 52" Toro Zmaster 4000 Model # 74002 with Mulch Kit	10,500	Cemetery
410 - Electric	\$ 150,000	
Rear-Lot Machine with an Altec BD41	150,000	Electric
421 - Water/Wastewater	\$ 401,000	
TV Truck Retrofit - Camera Truck	159,000	Water/Wastewater
Mini Excavator	64,000	Water/Wastewater
Ford F150 XLT Crew Cab 4x4	51,000	Water/Wastewater
Ford F250 XL Super Duty Super Cab 4x4x2B	70,000	Water/Wastewater
350 Dumpbed Single Cab 4x4 Diesel	57,000	Water/Wastewater
440 - Stormwater	\$ 210,000	
Street Sweeper, small	210,000	Stormwater
TOTAL USES	\$ 2,259,350	



GENERAL CAPITAL (310) CAPITAL IMPROVEMENTS REQUEST

Dept.	Project Name	New Projects 2023-24	2024-25	2025-26	2026-27	2027-28	Totals
IT	IT - CONFIDENTIAL	160,000					160,000
CRA	Existing Streetscape Repair and Enhancement Construction	75,000					75,000
CRA	Parking Solution per the Redevelopment Plan	625,000					625,000
CRA	Downtown Streetscape - Future Phases Plan	350,000	3,760,500				4,110,500
CRA	Signage	30,000					30,000
CRA	Information Kiosks	24,400					24,400
Northeast CRA	Community Resource & Recreation Center Construction	13,000,000					13,000,000
Northeast CRA	Community Resource & Recreation Center Phase II - Construction drawings	150,000					150,000
Northeast CRA	Property purchase per redevelopment plan	250,000					250,000
Northeast CRA	Signage and Community Beautification	25,000					25,000
Northeast CRA	Northeast Streetlight Enhancement Program	25,000					25,000
Northeast CRA	Information Kiosks	30,000					30,000
Library	Forest Preserve Phase II (Goat Pond)	50,000	358,000				408,000
Library	Simpson Farmhouse Expansion	15,000	64,500	397,000			476,500
PW	Donnelly Street Repaving	3,000,000	-	-	-	-	3,000,000
PW	Pedestrian Crossings - ADA	60,000	73,500	75,500	77,500	79,500	366,000
PW	Sidewalk ADA Compliance R&R	100,000	122,000	125,500	129,000	132,500	609,000
PW	Traffic Calming	300,000	366,000	376,500	386,500	397,000	1,826,000
PW	Tree Replacement Program	200,000	55,500	57,000	58,500	60,000	431,000
PW	4th Ave Dock Rebuild	300,000	1,000,000	1,000,000	-	-	2,300,000
Parks	Summerview Park Basketball Court	100,000					100,000
Parks	Gilbert Park Playground	700,000					700,000
Parks	Mount Dora Music Hall Landscaping & Irrigation	25,100					25,100
Parks	Donnelly Park Pickleball reconstruction including erosion issues	182,020					182,020
Parks	Sunset & Gilbert Park Restrooms	168,500					168,500
Cemetery	Cemetery Lighting	85,000					85,000
Fire	Renovation of Station 34 (Design and Engineering)	500,000	2,000,000				2,500,000

GENERAL CAPITAL (310) CAPITAL IMPROVEMENTS 5 YEAR PLAN

Dept.	Project Name	2024-25	2025-26	2026-27	2027-28	Totals
5 year CIP planning						-
PW	Roads Resurfacing	609,500	627,000	644,000	661,500	2,542,000
PW	11th Avenue Pedestrian and Traffic Calming Solutions - Sylvan to Hilltop	1,035,000				1,035,000
PW	Johns Street Roadway Improvements		590,000			590,000
Parks	Frank Brown Park Renovation	587,000				587,000
Parks	Frank Brown Park Playground	275,000				275,000
Parks	Summer View Park Lighting	259,700				259,700
Cemetery	Cemetery Fence	372,500	50,000	50,000	50,000	522,500
		\$10,938,700	\$ 3,298,500	\$ 1,345,500	\$ 1,380,500	\$ 37,493,220

ELECTRIC (FUND 415)

CAPITAL IMPROVEMENTS REQUEST



Project Name	New Projects 2023-24	2024-25	2025-26	2026-27	2027-28
IT - CONFIDENTIAL	200,000	506,000	90,000	90,000	90,000
Substation	200,000	122,000	125,500	129,000	132,500
Bristol Park Apartments - Developer Project	353,000				
Mount Dora Groves - Developer Project	1,119,295				
5 year CIP planning					
M596 11th Street		555,000			
Donnelly St UG Conversion w/ SL -Commercial UG			627,000	116,000	
Baker St. UG Conversion-Commercial UG				322,000	
Old Eustis Circuit Tie					397,000
Sylvan Shores UG Conversion					397,000
TOTAL USES	\$ 1,872,295	\$ 1,183,000	\$ 842,500	\$ 657,000	\$ 1,016,500

WATER/WASTEWATER (FUND 425)

CAPITAL IMPROVEMENTS REQUEST



Project Name	New Projects 2023-24	2024-25	2025-26	2026-27	2027-28	Totals
WWTP#2 Plant (mirror the existing plant)	3,000,000	45,000,000				48,000,000
WTP#1 Ground Storage Tanks Repair	425,000					425,000
Eudora Roundabout Utility Relocation	1,000,000					1,000,000
Round Lake Elementary Water Main	200,000					200,000
Odor Control – Raz Lines	90,000					90,000
5 year CIP planning						
WWTP#1 Alternative Improvement Plan		1,828,500	1,880,500	2,000,000	10,580,000	16,289,000
Water Treatment Plant #2 New Well		1,585,000				1,585,000
Water Treatment Plant #1 High Service Pump replacement		1,800,000	10,000,000			11,800,000
Round Lake Rd Utility Relocate			130,000	1,288,000		1,418,000
WWTP #1 Rehabilitation				1,288,000	10,580,000	11,868,000
TOTAL USES	\$ 4,715,000	\$ 50,213,500	\$ 12,010,500	\$ 4,576,000	\$ 21,160,000	\$ 92,675,000

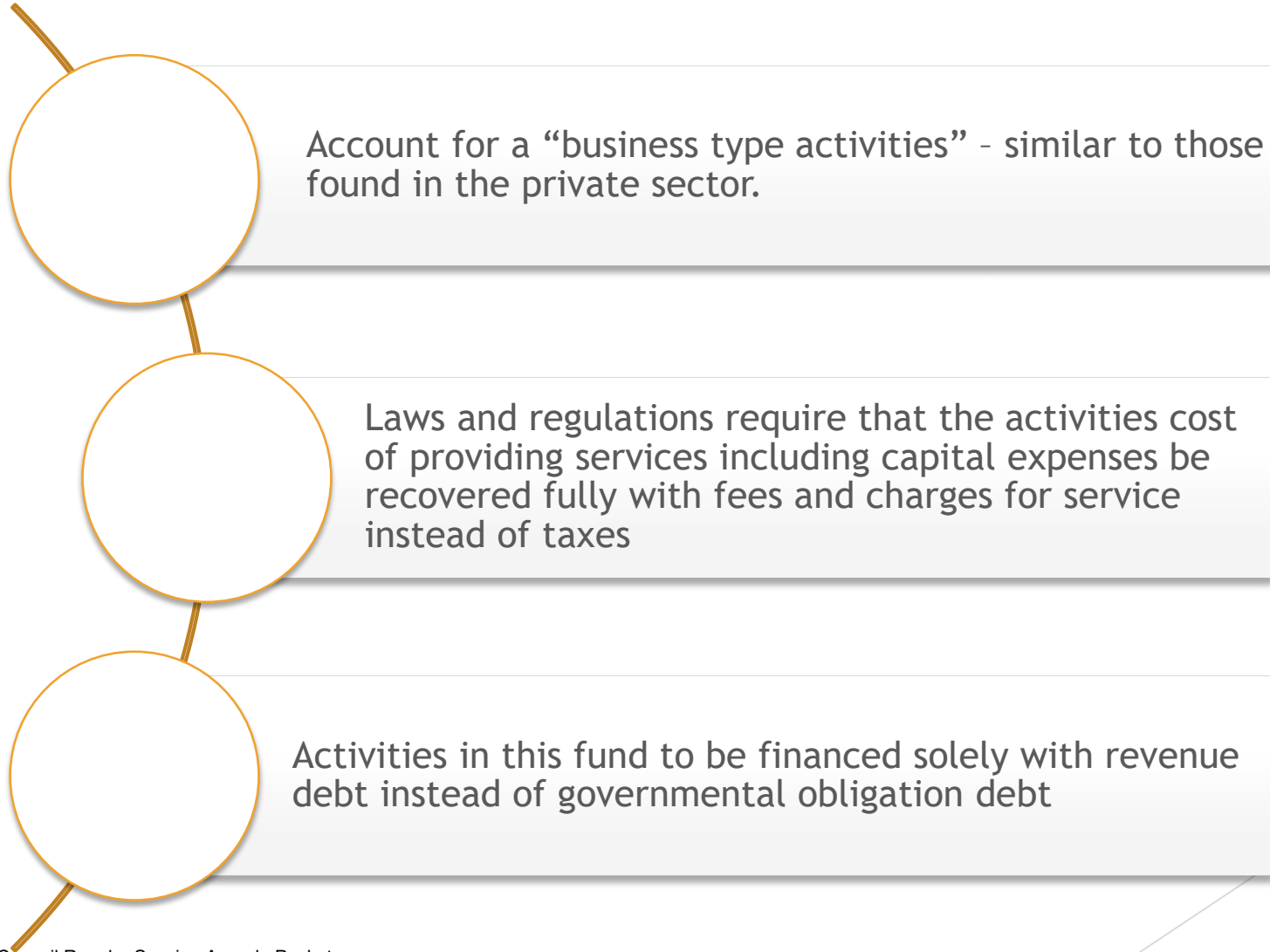
STORMWATER (FUND 445)

CAPITAL IMPROVEMENTS REQUEST



Project Name	New Projects 2023-24	2024-25	2025-26	2026-27	2027-28	Totals
Liberty Avenue Storm Sewer Installation - Railroad Crossing to Tremaine	980,000					980,000
Street Resurfacing and Repair - Underdrainage Improvements - St Andrews	100,000	1,500,000				1,600,000
Unser Pond Relocation	180,000	1,500,000				1,680,000
Forres Park Drainage and Paving Project	80,000	300,000				380,000
TOTAL USES	\$ 1,340,000	\$ 3,300,000	\$ -	\$ -	\$ -	4,640,000

ENTERPRISE FUNDS EXPLAINED



ENTERPRISE FUNDS BUDGET OVERVIEW



FY 2023/24 Proposed

Enterprise Funds Operating Budget	\$	28,335,947
Electric		11,298,145
Water/Wastewater		12,077,758
Sanitation		2,927,528
Stormwater		2,032,516
Capital Outlay portion	\$	761,000
Electric		150,000
Water/Wastewater		401,000
Stormwater		210,000
Capital Improvement Projects portion	\$	5,081,395
Electric		1,872,295
Water/Wastewater		1,869,100
Stormwater		1,340,000
Enterprise Debt portion (Principal and Interest)	\$	877,396
Water/Wastewater		877,396
TOTAL BUDGET	\$	35,055,738

FY 2023/24 Proposed

Electric	13,320,440
Water/Wastewater	15,225,254
Sanitation	2,927,528
Stormwater	3,582,516
TOTAL BUDGET	\$ 35,055,738

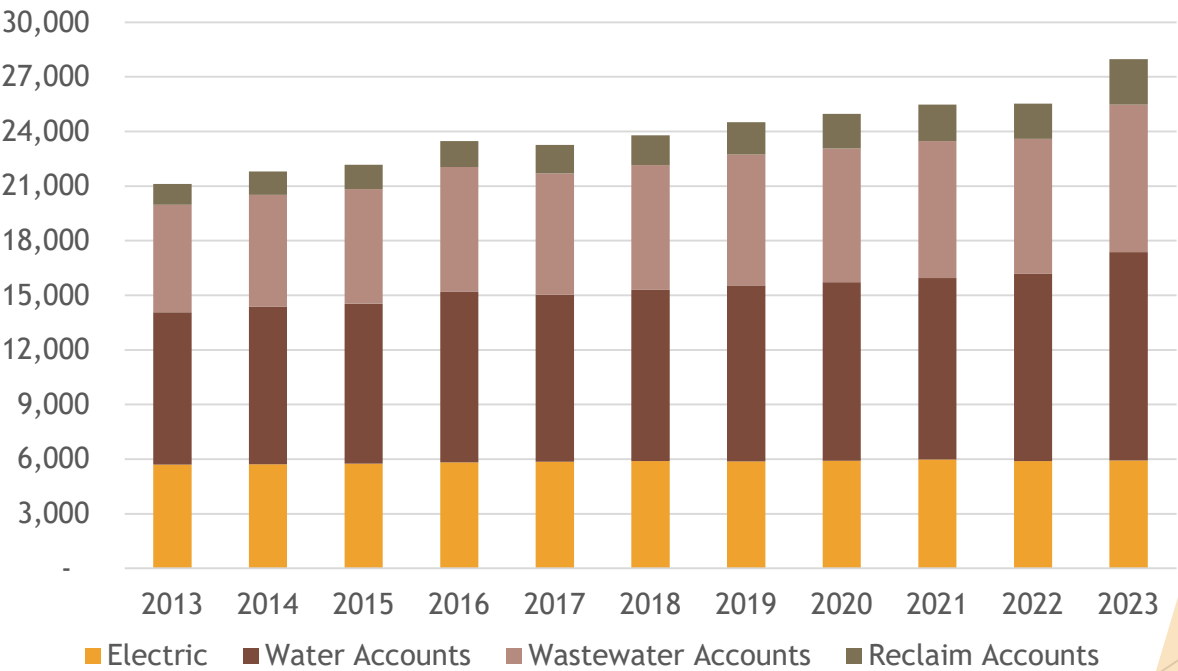
RATES RECAP



Rates	
Electric	Reviewed with Electric Dept. Director
Water/Wastewater	6.5% increase per last year Raftelis Study
Sanitation	8.3% Increase from \$22.11 to estimated \$23.95 monthly - <i>to begin to recover reserves</i>
Stormwater	Increase from \$15.50 to \$30.00 monthly - <i>to accommodate CIP</i>

UTILITY CUSTOMER BASE

	Number of Customer Accounts
Electric	5,933
Electric	5,933
Water/Wastewater	22,046
Water Accounts	11,434
Wastewater Accounts	8,119
Reclaim Accounts	2,493
Sanitation	6,586
Sanitation	6,586
Stormwater	6,732
Stormwater	6,732
TOTAL NUMBER OF ACCOUNTS	<u>41,297</u>



ELECTRIC RATES



Electric Rates consist of two major components and are adjusted every October and April or as necessary to recover fuel costs

- ▶ Power Cost
- ▶ Base Rate

Power Cost

Power Cost Charge incorporates:

- Wholesale Power rate
- Fuel Cost projections
- Transmission Service

Power Cost charge is simply a “pass-through” mechanism to recover actual purchase of power from OUC

Power Cost Charge is updated every 6 months due to potential fluctuations energy sales and fuel costs

Base Rate

Perform detailed rate study no less than every three years - Current Reso.

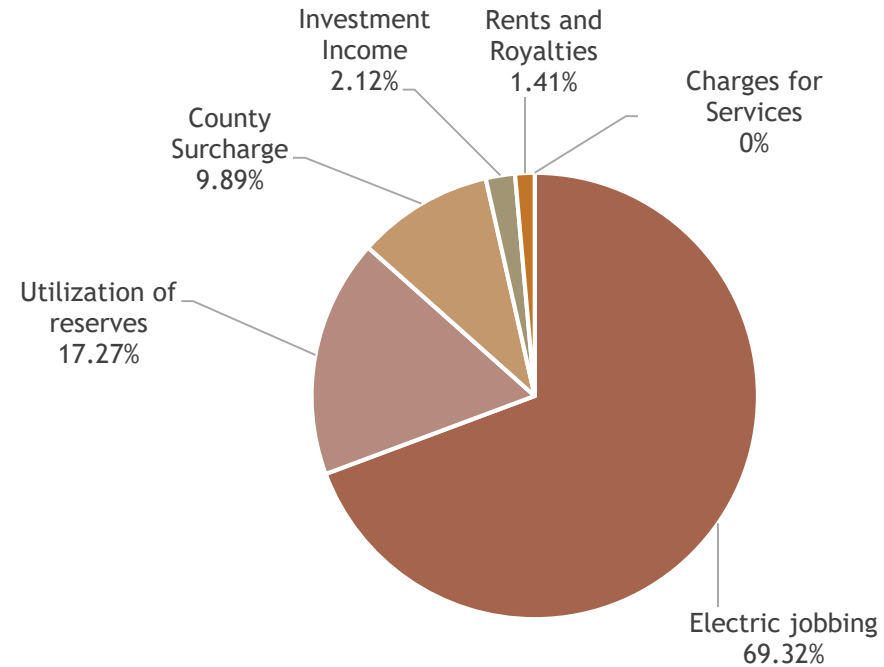
During a year when no rate study is performed - increase per Annual Price index - Florida Public Service Commission

With the new base rate increase and power cost charge, the plan is to keep the overall rate with no increase

ELECTRIC REVENUES



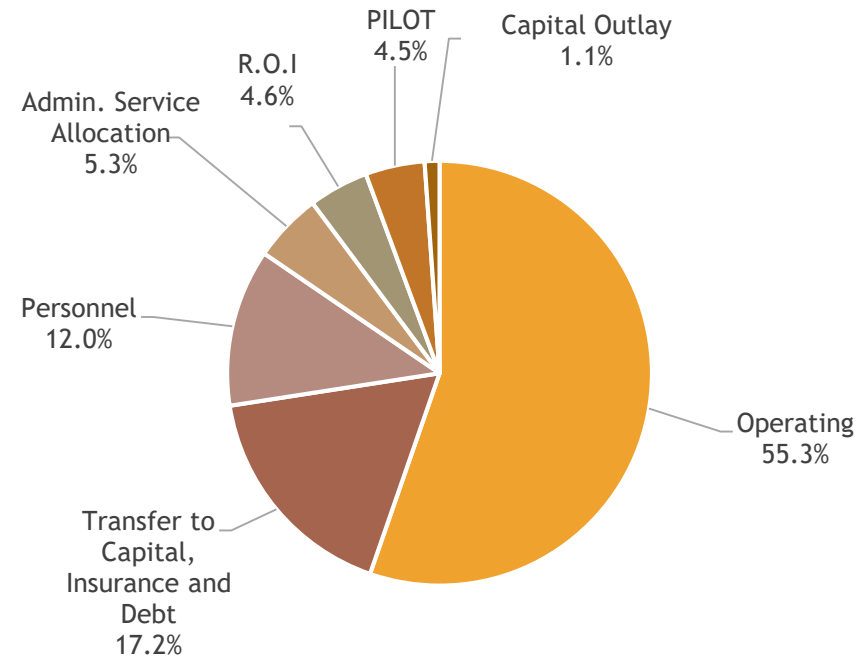
REVENUES	FY 2023/24 Proposed	% of Total
Charges for Services	\$11,196,399	84.05%
Electric jobbing	\$1,472,295	11.05%
Utilization of reserves	\$366,746	2.75%
County Surcharge	\$210,000	1.58%
Investment Income	\$45,000	0.34%
Rents and Royalties	\$30,000	0.23%
Total	\$13,320,440	100%



ELECTRIC EXPENDITURES



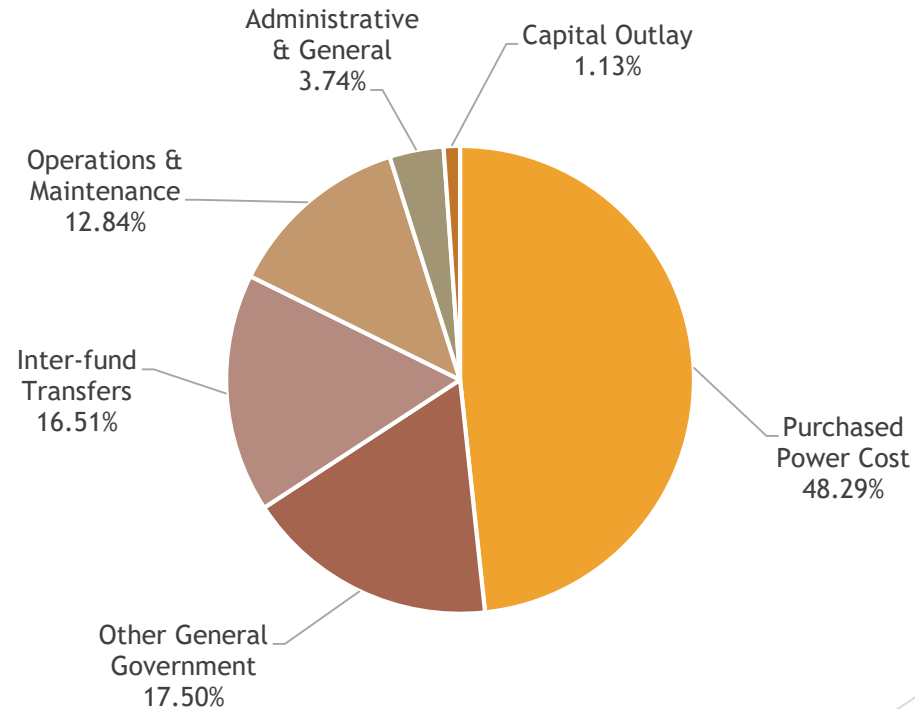
EXPENSE	FY 2023/24 Proposed	% of Total
Operating	\$7,367,289	55.31%
Transfer to Capital, Insurance and Debt	\$2,296,752	17.24%
Personnel	\$1,596,500	11.99%
Admin. Service Allocation	\$700,949	5.26%
R.O.I	\$607,650	4.56%
PILOT	\$601,300	4.51%
Capital Outlay	\$150,000	1.13%
Total	\$13,320,440	100%



ELECTRIC DIVISIONS

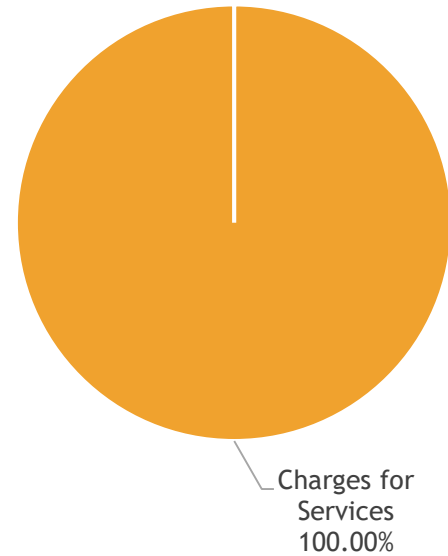


Division Expenditures	FY 2023/24 Proposed	% of Total
Purchased Power Cost	\$6,432,900	48.29%
Other General Government	\$2,331,110	17.50%
Inter-fund Transfers	\$2,199,041	16.51%
Operations & Maintenance	\$1,709,799	12.84%
Administrative & General	\$497,590	3.74%
Capital Outlay	\$150,000	1.13%
Total	\$13,320,440	100%



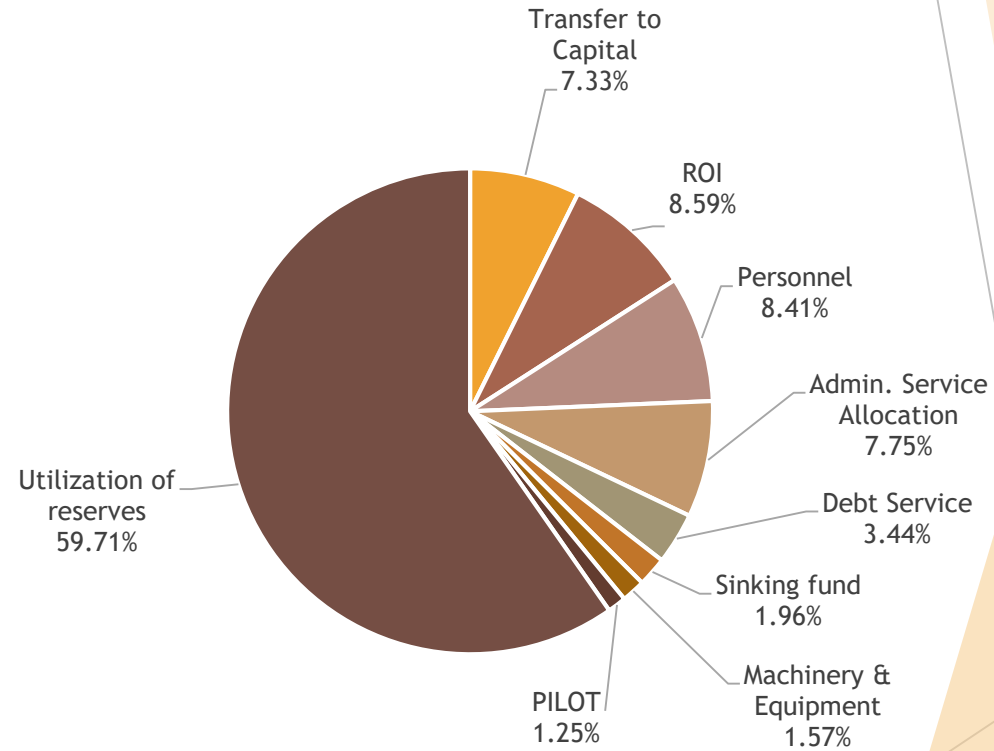
WATER/WASTEWATER REVENUES

REVENUES	FY 2023/24 Proposed	% of Total
Charges for Services	\$15,225,254	100.00%
Total	\$15,225,254	100%



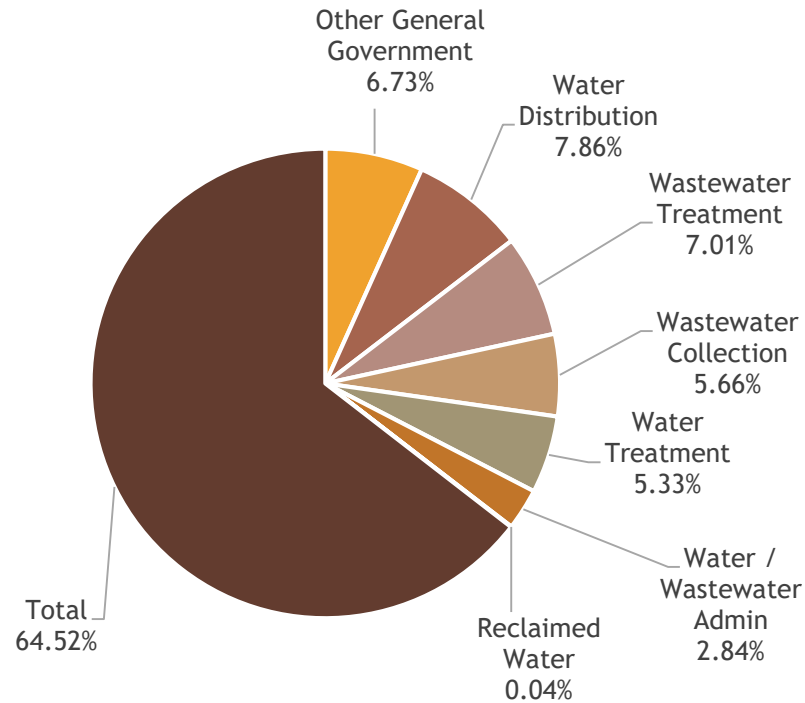
WATER/WASTEWATER EXPENDITURES

EXPENDITURES	FY 2023/24 Proposed	% of Total
Operating	\$4,949,827	32.51%
Transfer to Capital	\$1,869,100	12.28%
ROI	\$2,190,150	14.38%
Personnel	\$2,143,714	14.08%
Admin. Service Allocation	\$1,976,367	12.98%
Debt Service	\$877,396	5.76%
Sinking fund	\$500,000	3.28%
Machinery & Equipment	\$401,000	2.63%
PILOT	\$317,700	2.09%
Utilization of reserves	\$15,225,254	100%



WATER/WASTEWATER DIVISIONS

Division Expenditures	FY 2023/24 Proposed	% of Total
Inter-fund Transfers	\$6,853,317	45.01%
Other General Government	\$1,589,241	10.44%
Water Distribution	\$1,854,186	12.18%
Wastewater Treatment	\$1,653,200	10.86%
Wastewater Collection	\$1,335,734	8.77%
Water Treatment	\$1,258,854	8.27%
Water / Wastewater Admin	\$671,322	4.41%
Reclaimed Water	\$9,400	0.06%
Total	\$15,225,254	100%

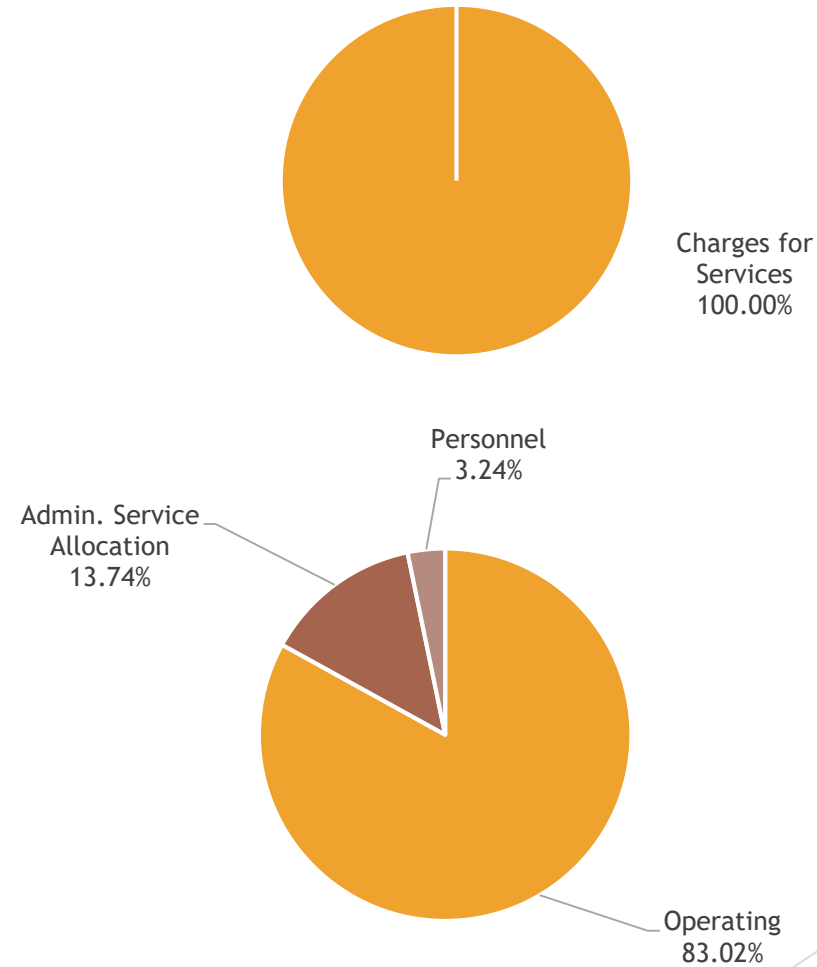


SANITATION REVENUES/EXPENDITURES



REVENUES	FY 2023/24 Proposed	% of Total
Charges for Services	\$2,927,528	100.00%
Total	\$2,927,528	100%

EXPENDITURES	FY 2023/24 Proposed	% of Total
Operating	\$2,430,436	83.02%
Admin. Service Allocation	\$402,192	13.74%
Personnel	\$94,900	3.24%
Utilization of reserves	\$2,927,528	100%

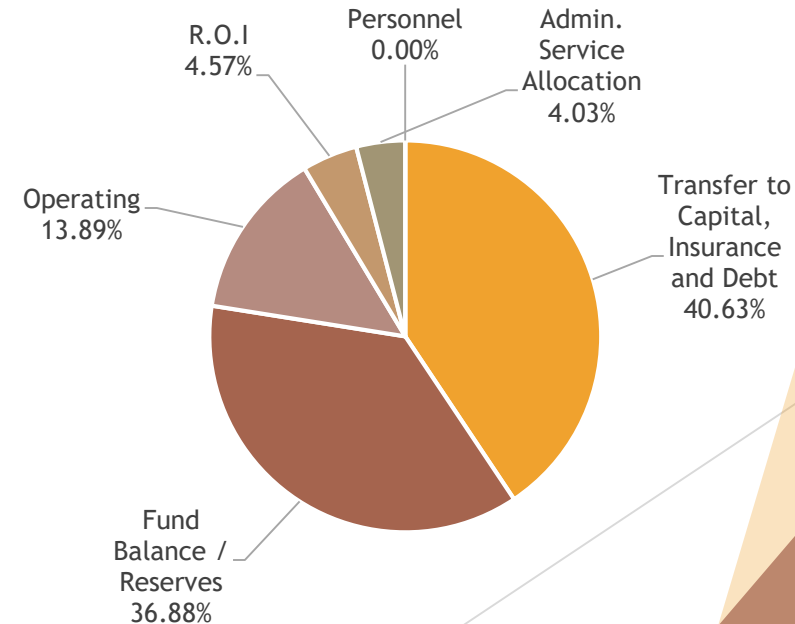
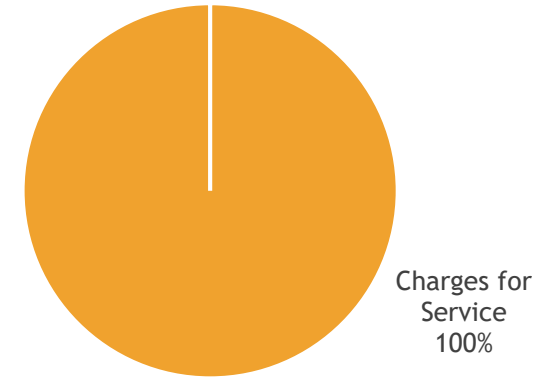


STORMWATER REVENUES/EXPENDITURES



REVENUES	FY 2023/24 Proposed	% of Total
Charges for Service	\$3,582,516	100.00%
Total	\$3,582,516	100%

EXPENDITURES	FY 2023/24 Proposed	% of Total
Transfer to Capital, Insurance and Debt	\$1,455,467	40.63%
Fund Balance / Reserves	\$1,321,154	36.88%
Operating	\$497,594	13.89%
R.O.I	\$163,800	4.57%
Admin. Service Allocation	\$144,501	4.03%
Personnel	\$0	0.00%
Total	\$3,582,516	100%



NEXT STEPS



► Budget Workshops

- Governmental and Internal Service Funds - July 24th - 6:00 pm
- Final Budget Workshop - August 28th - 6:00 pm

► Meeting for Action Items

- Set Maximum Millage - July 18th - Regular Council Meeting 6 pm

► Public Hearings

- Fire Assessment September 7th - 6:00 pm
- 1st Thursday September 7th - 6:00 pm
- 2nd Thursday September 21th - 6:00 p.m.

QUESTIONS

??

1. Retirees vs Employees Health Insurance Costs split

	2019-2020	2020-2021	2021-2022	2022-2023 as of 5.31.23
Retiree's portion	\$ 529,303	\$ 371,680	\$ 360,443	\$ 173,995
Employee/Spouse/Dependents portion	\$ 1,112,523	\$ 990,436	\$ 1,340,280	\$ 1,422,821
	<u>\$ 1,641,826</u>	<u>\$ 1,362,116</u>	<u>\$ 1,700,723</u>	<u>\$ 1,596,816</u>
Retiree %	32%	27%	21%	11%

This does not include all costs - clinic, stop loss, ASO not included. This is simply claims and pharmacy costs.

2. Does fire Assessment includes new construction?

No, its based on the 2022 counts. I will provide updated as soon as this becomes available.

3. Median vs Average house value in Mount Dora

The \$311,000 house used as an example of "average" house in Mount Dora was not intended to be the actual median nor average house by calculation of the property values by Property Appraiser. This is just an example of house from a resident of Mount Dora that has been used for past several years to demonstrate how taxes are calculated and affect "average" resident. I reach out to Property Appraiser to see if they can provide more scientific data for average vs median house in Mount Dora - pending response.

4. Waterman Village Tax abatement

	FY2023-24	FY2024-25	FY2025-26	FY2026-27	FY2027-28
Tax Abatement % <i>Per Ordinance No 2018-15</i>	50%	40%	30%	20%	10%
Taxable Value <i>Alt Key 3929344</i>	\$ 32,941,834	\$ 33,930,089	\$ 34,947,992	\$ 35,996,431	\$ 37,076,324
City's Millage Rate	5.9603	5.9603	5.9603	5.9603	5.9603
Waterman Village Total Ad Valorem Tax	\$196,343	\$202,234	\$208,301	\$214,550	\$220,986
Abatement (Rebate) <i>To be paid to Waterman Communities Inc.</i>	\$98,172	\$80,893	\$62,490	\$42,910	\$22,099
		Potential Total Abatement			\$306,563.67

Estimate only 2024-25 and above at 3% cap increase annually



FireFighter Training Equipment



US PATENTS # 8.360.782, # 9.646.515, # 10.242.594

The Hands-On Training You Need...Where You Need It.



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The Hands-On Training You Need...Where You Need It.

Extremely mobile, versatile and affordable. Designed to give firefighters valuable hands on training while remaining in service at their station. Numerous single engine or truck company evolutions. This heavy duty, rugged and self-contained unit is ideal for individual departments or to be shared by multiple agencies.



- Variable Pitch, Vertical Ventilation,
- Gable End Ventilation (Elevated Vertical Wall).
- Forcible Entry
- Overhead Door Forcible Entry/Cutting,
- Confined Space Entry.
- Activated Sprinkler Heads With Fire Department Connection.
- Salvage & Overhaul.
- Haz-Mat Dome Leak Simulator.
- Through The Floor / Basement Rescue.
- Ceiling (Sheet Rock) Pulling / Breaching.
- Second Story Window Rescue and Ladder Evolutions.
- Firefighter Bailout Window.
- Many Other Possible Training Evolutions



Mobile • Versatile • Affordable



Portable Units



FireVent's Portable Units are designed to be easy to set up and take down and move from location to location. These units are able to go from a flat position to a 12/12 pitch. There are currently two sizes available; 8ft x 12ft and 10ft x 16ft.

- Completely Portable, Easy To Set Up And Take Down.
- Use Outside Or Inside, At Individual Stations Or The Training Center.
- Two Sizes Currently Available: 8ft x 12ft & 10ft x 16ft.
- Able To Go From Flat To 12/12 pitch.
- All Tubular Steel Construction.
- All Components Are Powder Coated.
- Able To Mount On Shipping Container.
- Patent Pending





5998 MORGAN MILL RD CARSON CITY, NV 89701

P: 775.230.9953 F: 775.883.2387

info@FireVent.us

PRODUCT INFORMATION



Mobile Units

Our mobile units have a very unique, innovative and fully patented design that allows the props to open and close, from the traveling position to the training position, with the use of two heavy-duty hydraulic cylinders. Mobile FireVent units are much more than just ventilation props; they are multi-discipline training units. There are three base model units that can be customized and configured with numerous options to meet your department's needs



Stationary Units

Our stationary units are an excellent addition to a planned or established training center. Each stationary unit is extremely heavy duty and well made. They are custom-built at the time of order with the same high-quality materials and craftsmanship as the mobile units. The stationary units are designed and engineered in a modular fashion to enable ease of shipping and erecting on site. Stationary units can be placed and secured on a slab or footing style foundation



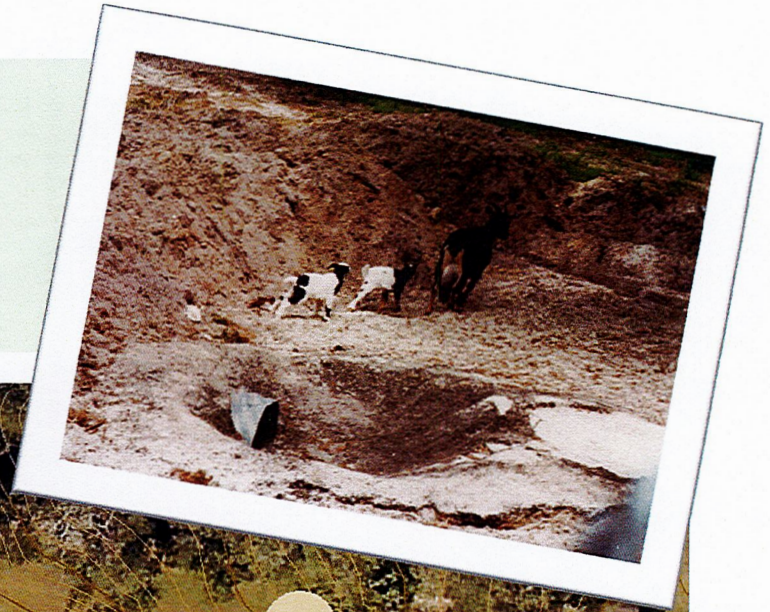
Auto-X Simulator

The Auto-X Simulator is excellent for entry-level learning (academy setting) or first-time exposure to the extrication tools (hydraulic spreaders, cutters, ram and sawzall, rotary saw, and rescue strut). The Auto-X allows for the safe use and operation of the tools in a controlled environment, with predictable results, and enables high repetition (lots of tool time) for students to gain confidence and understanding of the tools, making time spent with acquired vehicles far more productive.



Forest Preserve Phase II

Goat Pond
2023-24 Proposed CIP





**CITY OF MOUNT DORA, FLORIDA
CITY COUNCIL REGULAR SESSION MINUTES
July 18, 2023, 6:00 PM
Mount Dora City Hall
510 N. Baker St., Mount Dora, FL 32757**

CALL TO ORDER

Having been duly advertised as required by law, Mayor Crissy Stile called to order the Regular Session of City Council at 6:00 p.m. in the Mount Dora City Hall Council Chambers.

MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

A moment of silence and Pledge of Allegiance were led by Councilmember Bryant.

ROLL CALL

Members Present

Crissy Stile, Mayor
Marc Crail, Vice-mayor
Cal Rolfson, District 2
Nate Walker, District 5
Doug Bryant, At-large

Also Present

Patrick C. Comiskey, City Manager
Sherry G. Sutphen, City Attorney
Jeanann Hand, City Clerk

Members Not Present

John Cataldo, District 1
Dennis Dawson, District 3

PRESENTATIONS

1. Home Rule Hero Awards

Florida League of Cities University Director Lynn Tipton presented the Home Rule Hero Award to Councilmember Cal Rolfson.

2. FCCMA Senior Advisor Ken Parker Presentation: Council-Manager Government

Florida City and County Management Association Senior Advisor Ken Parker delivered a presentation related to the City Council-City Manager form of government. The presentation is attached to the minutes as Exhibit A.

3. Mount Dora Fun Fact

Mayor Stile directed attention to the feature of Mount Dora's Electric Utility Department in Florida Municipal Electric Association's Relay Magazine.

PUBLIC COMMENTS

Mayor Stile opened public comment.

Sonia Rivera, 1021 East Third Avenue, spoke about tree laws and an issue with overhanging tree branches. Mayor Stile assured Ms. Rivera the issue would be addressed. Ms. Rivera also wished for misting fountains.

Joe Lewis, 148 Charles Avenue, requested Council reevaluate long term plans and policies to help chart direction. He wished to see development of vision for projects, policies, and priorities. He referenced 2011's Envision Mount Dora, pointing out it was created pre-pandemic.

Michell Middleton, 112 East Fifth Avenue, thanked City Planning Director Vince Sandersfeld and Planning staff for their assistance in working with a vendor in the Mount Dora Marketplace.

Josh Hemingway, 1177 East Fifth Avenue, spoke about Council, the City Manager, the City Attorney, the Mayor, and the current conflict within the City. He expressed displeasure with opposition to the City Manager.

Michelle Middleton, 112 East Fifth Avenue, clarified that there are others in the community who share a viewpoint differing from Mr. Hemingway's.

Mayor Stile closed public comment.

APPROVAL OF AGENDA

Councilmember Rolfson requested Consent Agenda Item Eight, Request Approval for Mayor to Execute Engagement Letter with Fisher & Phillips, LLP for Legal Representation regarding FOP Negotiations and General Labor & Employment Services, be moved to the Regular Agenda Action Items.

MOTION BY COUNCILMEMBER WALKER TO APPROVE THE AGENDA WITH CONSENT AGENDA ITEM EIGHT BEING MOVED TO ACTION ITEM THREE; VICE-MAYOR CRAIL SECONDED THE MOTION. MOTION PASSED WITH A UNANIMOUS VOICE VOTE.

CONSENT AGENDA

1. Request Approval of Interlocal Agreement Between the City of Mount Dora and Lake County Related to Funding for the Relocation of City Utilities for the Lake County Roundabout Project at Eudora Road/CR19/Old Highway 441
2. Request Approval of the Agreement Between the City of Mount Dora and Debris Tech, LLC in Response to RFP 23-PW-014 Related to Emergency Debris Monitoring Services
3. Request Approval of Piggyback Agreement Between the City of Mount Dora and Mader Electric, Inc. Related to Motor Repair Services.

4. Request Approval of Amendment 1 to State Revolving Fund Loan Agreement WW351480, WWTP#1 Rehabilitation Project
5. Request Adoption of **Resolution 2023-26**, Approval of the Urban County Cooperation Agreement with Lake County for the Community Development Block Grant Program
6. Request Approval of the Task Authorization with Faden Builders for Donnelly Park Building Deck Repair
7. Request Approval of the Task Authorization with Faden Builders for WWTP#2 Drainage Improvements at 2055 James P. Snell Drive
8. * Request Approval for Mayor to Execute Engagement Letter with Fisher & Phillips, LLP for Legal Representation regarding FOP Negotiations and General Labor & Employment Services
**This item was moved to the Regular Agenda, Action Item Three.*
9. Request Approval of Designation of Acting City Manager for Future Leave
10. Request Approval of Meeting Minutes
 - April 10, 2023 Regular Session Minutes
 - June 15, 2023 Special Meeting Minutes
 - June 20, 2023 Regular Session Minutes

MOTION BY COUNCILMEMBER WALKER TO APPROVE THE CONSENT AGENDA WITH THE EXCEPTION OF CONSENT AGENDA ITEM EIGHT, WHICH WOULD BE PLACED ON THE REGULAR AGENDA AS ACTION ITEM THREE; COUNCILMEMBER ROLFSON SECONDED THE MOTION. MOTION APPROVED BY A UNANIMOUS VOICE VOTE.

ACTION ITEMS

1. Ratification of a Purchase Outside the Parameters of the City Purchasing Policy in the amount of \$331,341.00 for Tymco Model 600 Street Sweeper from Container Systems and Equipment Co., Inc.

City Manager Comiskey explained the reason this item was included in the agenda. It was not until after this purchase was made that it was identified as one requiring Council approval. Upon recognizing the requirement for this purchase, which had already taken place, to be brought to Council, the City Manager worked with staff to ensure all purchases requiring Council approval will be presented to Council before the purchase is made.

Council discussed the City Manager's authority regarding spending increases. The sweeper is now in City possession. Councilmember Bryant asked about the smaller sweeper being presented with fiscal year 2023-2024 proposed budget information. Mr. Comiskey explained the reasons the purchases were made in this order.

Vice-mayor Crail reviewed caveats established when the last street sweeper was purchased, especially in relation to its use in gated communities which contribute tax revenue to the City. The Vice-mayor confirmed the same conditions would apply with the new sweeper purchases.

Councilmember Rolfson asked about the necessity for the purchase and expressed concern for following policy.

Discussion ensued regarding the consequences of voting no on the ratification.

Mayor Stile opened public comment. No one spoke. Mayor Stile closed public comment.

MOTION BY VICE-MAYOR CRAIL TO RATIFY THE PURCHASE OUTSIDE THE PARAMETERS OF THE CITY PURCHASING POLICY IN THE AMOUNT OF \$331,341.00 FOR THE TYMCO MODEL 600 STREET SWEEPER FROM CONTAINER SYSTEMS AND EQUIPMENT CO., INC.; COUNCILMEMBER BRYANT SECONDED THE MOTION. MOTION PASSED WITH A UNANIMOUS ROLL CALL VOTE.

<i>YES</i>	Crail Bryant Rolfson Walker Stile
<i>NO</i>	None

2. Vote to Designate a Voting Delegate for the Florida League of Cities Annual Conference Annual Business Session

MOTION BY COUNCILMEMBER BRYANT TO NOMINATE COUNCILMEMBER ROLFSON TO BE THE CITY'S VOTING DELEGATE FOR THE FLORIDA LEAGUE OF CITIES ANNUAL BUSINESS SESSION. NOMINATION WAS APPROVED BY A UNANIMOUS VOICE VOTE.

3. Request Approval for Mayor to Execute Engagement Letter with Fisher & Phillips, LLP for Legal Representation regarding FOP Negotiations and General Labor & Employment Services
****Moved from Consent Agenda Item 8***

The City Manager spoke of Fisher & Phillips associate Jeffrey Mandel. He explained the City had been using Fisher & Phillips for many years for labor issues, but staff could not locate a letter of engagement with the firm.

Councilmember Rolfson asked for the scope of the Fisher & Phillips contract and its relation to the City Attorney's duties. Mr. Comiskey stated the firm would handle labor cases and personnel issues, reviews and investigations, and provide advice. Councilmember Rolfson referenced City Human Resources policy related to that department's investigative responsibilities and their authority to make related decisions.

Ms. Sutphen noted that prior to the meeting, she had been told the letter of engagement was strictly for union-related work, and did not involve responsibilities that are customarily assigned to her. She mentioned her professional respect for and positive working relationship with Mr. Mandel, but stated she had not expected Mr. Mandel to be taking on duties for which she is usually responsible.

Councilmember Rolfson stated he could support the engagement letter for union issues only, but does not support it as a work-around for the use of the City Attorney.

Mayor Stile brought up the status of the Interim Human Resources Director and the impact of her complaint. Councilmembers spoke about the importance of following City policy. Councilmember Rolfson would oppose the letter of engagement unless Fisher & Phillips is used strictly for labor relations for which the City requires specific labor law assistance. He expressed his opinion that the letter would essentially make Fisher & Phillips Assistant City Attorney. He pointed out that the named client in the letter is the City of Mount Dora, meaning the decision-maker is the City Council.

Councilmember Walker asked for the most recent date Fisher & Phillips was used. City Manager Comiskey would provide that information after the meeting. Councilmember Walker expressed trepidation regarding the possible circumvention of City policies. Councilmember Rolfson asked if policy had been followed when Fisher & Phillips was used in the past. Mr. Comiskey stated the firm had previously been used for personnel issues and labor relations according to policy.

Councilmember Bryant asked about past activity, agreements or arrangements with the firm, and whether the City is departing from past behavior and scope with the firm. He enquired whether there would be a budget adjustment for their use if their duties may be expanded.

The City Manager explained this would not be an expansion of Fisher & Phillips's duties. The item is being brought to Council because City staff discovered there was no letter of engagement with Fisher & Phillips and felt it would be prudent to have such a letter.

Ms. Sutphen stated when Fisher & Phillips had been used in the past for specialized employment issues, she had been involved and consulted. The City Manager disagreed.

MOTION BY COUNCILMEMBER BRYANT TO TABLE THIS ITEM UNTIL THE AUGUST 1, 2023 MEETING.

Councilmember Bryant requested additional information about arrangements made with Fisher & Phillips in the past, and what the parameters were, even if the information needs to be gathered on a case-by-case basis. Councilmember Rolfson agreed and asked for precise parameters in writing so Council knows exactly what they are approving.

VICE-MAYOR CRAIL SECONDED THE MOTION.

Vice-mayor Crail stated his understanding that this item would allow Fisher & Phillips to continue whatever work they do for the City, but would not authorize them to expand beyond that.

Ms. Sutphen informed of the necessity for her awareness of the City's dealings with Fisher & Phillips as she is the City Attorney and legal advisor regularly present at City Council meetings.

Mr. Walker asked Ms. Sutphen for a description of the specialized legal services Fisher & Phillips provided to the City. Ms. Sutphen explained the value of Fisher & Phillips in labor union or contract negotiations, which is their specialization. She noted that her own firm has an attorney for labor law who would first be consulted before Fisher & Phillips was brought in on a labor law matter.

Ms. Sutphen referenced the letter attached to this item (included with the minutes as Exhibit B) and its purpose.

Councilmember Rolfson spoke regarding the crucial nature of appropriate reliance on a City Attorney, who should be the first call in City legal issues.

It was mentioned a complaint from the Interim Human Resources Director against the City Manager was sent to City Council. It was suggested a complaint against the City Manager should not be addressed by an attorney contracted by the City Manager, as that may be perceived as unfair. Ms. Sutphen spoke about appropriate procedures for staff complaints and the necessity for "safe space."

The Mayor reminded Council it is incumbent upon them to decide on the process and provide direction regarding how an investigation should be conducted.

Councilmember Rolfson asked for recommendations regarding alternatives for this purpose. Ms. Sutphen suggested gathering names or reaching out to Mr. Mandel for recommendations on who might investigate the complaint and how the process might take place. By a vocal consensus of

Council, Vice-mayor Crail was tasked with reaching out to Mr. Mandel for recommendation on how to proceed with the investigation of the complaint. Ms. Sutphen was asked to assist the Vice-mayor with this task.

Councilmember Walker asked about the status of acquiring the third party consultant for conflict resolution. The City Manager stated he would address that later.

MOTION BY COUNCILMEMBER BRYANT TO TABLE THIS ITEM UNTIL THE AUGUST 1, 2023 MEETING; VICE-MAYOR CRAIL SECONDED THE MOTION. MOTION PASSED WITH A UNANIMOUS ROLL CALL VOTE.

<i>YES</i>	Bryant
	Crail
	Rolfson
	Walker
	Stile
<i>NO</i>	None

PUBLIC HEARINGS

1. Request Adoption of **Resolution No. 2023-27**, Maximum Millage Rate for Fiscal Year 2023-2024 Budget

City Attorney Sherry Sutphen read Resolution No. 2023-27, Maximum Millage Rate for Fiscal Year 2023-2024 Budget by title only.

RESOLUTION NO. 2023-27

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA PERTAINING TO THE PROPOSED MILLAGE RATE OF 6.1000 MILLS FOR FISCAL YEAR 2023-24 FOR THE CITY OF MOUNT DORA, FLORIDA; PROVIDING FOR THE PROPOSED LEVY OF AD VALOREM TAXES AND PERCENTAGE INCREASES FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2023 AND ENDING SEPTEMBER 30, 2024; PROVIDING A PUBLIC HEARING SCHEDULE FOR BUDGET ADOPTION; PROVIDING FOR CERTIFIED COPIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR THE IMPLEMENTATION OF ADMINISTRATIVE ACTIONS; PROVIDING FOR SCRIVENER’S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

City Budget Director Aneta Barton explained the calculation of the millage rate and the budget hearing process from this point forward. The content of the resolution is consistent with the July 10th Budget Workshop at which the maximum millage rate of 6.1 was set.

Mayor Stile opened public comment. No one spoke. Mayor Stile closed public comment.

MOTION BY COUNCILMEMBER ROLFSON TO ADOPT RESOLUTION NO. 2023-27, MAXIMUM MILLAGE RATE FOR FISCAL YEAR 2023-2024 BUDGET; COUNCILMEMBER WALKER SECONDED THE MOTION. MOTION PASSED WITH A UNANIMOUS ROLL CALL VOTE.

<i>YES</i>	Rolfson Walker Bryant Crail Stile
<i>NO</i>	None

CITY MANAGER'S REPORT

Mr. Comiskey announced he would not be in town for the rest of the week due to his attendance at a professional conference. Internet Technology Director Jim Faulkner would assume the role of Acting City Manager.

Mr. Comiskey updated on the Conflict Resolution solicitation, which had just been published by the Purchasing Manager. Interested parties have thirty days to respond.

CITY ATTORNEY'S REPORT

Ms. Sutphen announced no new lawsuits had been filed against the City.

COMMUNICATIONS AND REPORTS

1. Councilmember Doug Bryant commented on Mount Dora's Electric Utility feature in Relay magazine, directing attention to the photos and article's mention of Mount Dora's solar, underground and manufactured energy.

Mr. Bryant also mentioned speaking with Public Works Director George Marek about nominating Wolf Branch Drainage Area as Critical Wetland Area, which would open up the City and County to funding for acquisition of some of the critical wetlands.

Ms. Sutphen requested a motion regarding scheduling the AMCO shade meeting.

MOTION BY COUNCILMEMBER ROLFSON TO ALLOW THE SETTING OF A SHADE MEETING IN AUGUST RELATING TO THE AMCO FLORIDA STATUTE SECTION 70.51 MEDIATION; COUNCILMEMBER WALKER SECONDED THE MOTION. MOTION PASSED WITH A UNANIMOUS VOICE VOTE.

2. Councilmember Cal Rolfson reported on his trip to North Dakota.
3. Councilmember Nate Walker thanked Mount Dora Fire Chief Joseph Hightower and members of the Mount Dora Police Department for their participation at a food give-way last weekend.

4. Vice-mayor Marc Crail congratulated Councilmember Rolfson on his Home Rule Hero Award. He reiterated the need for the City to update its Strategic Plan. Councilmember Bryant agreed and mentioned the Envision Mount Dora plan and the role of community engagement. He referred to the commitment to return to plans for review.
5. Mayor Crissy Stile spoke about the success of Freedom on the Waterfront.

ADJOURNMENT

MOTION BY COUNCILMEMBER WALKER TO ADJOURN; COUNCILMEMBER ROLFSON SECONDED THE MOTION. MOTION PASSED BY A UNANIMOUS VOICE VOTE.

There being no further business for discussion, Mayor Stile adjourned the meeting at approximately 7:45 p.m.

CRISSY STILE, MAYOR
City of Mount Dora

JEANANN HAND, CITY CLERK
City of Mount Dora

Council–Manager Relations: Understanding the Roles

The Florida City and County Management
Association
www.fccma.org

Council–Manager Form of Government

- ▶ First created in the early 1900s, this form is a result of governmental reformers looking for a response to corruption
- ▶ Virginia, South Carolina and North Carolina local governments were among the first to try a “professional manager” position
- ▶ In Florida: approximately 280 out of 411 cities have this form

Goal of the C–M Form

- ▶ Supporters of the C–M form hoped to separate political pressures from the administration of a local government
- ▶ Hoped the administrator would focus on merit-based employment, professional service delivery
- ▶ Patterned after business model: with voters as stockholders; commission as board of directors making policy; manager as CEO responsible for administration

Council–Manager Form Details

- ▶ Charter or articles of incorporation define the role of the legislative body (council or commission)
- ▶ Charter or AOI defines powers and duties of the appointed manager (administrator)
- ▶ Additional policies related to both roles can be written into city policies that are adopted and revised by the council

Not a Separation of Powers Government

- ▶ Examples of Governments with Separate Powers:
 - Federal Government
 - State Government
 - Mayor–Council Government

Power in the Council–Manager Form

- ▶ The power rests with the Council (the elected body) for the City of Mount Dora. (Article 1, Section 3)
- ▶ Power is not separated
- ▶ Responsibilities *are* separated

More Details

- ▶ The Council usually has odd-number of seats; one seat is a mayor or council chair/president. Your Charter provides for a 7 member Council including the Mayor. (Article 2, Section 4)
- ▶ Powers of the mayor vary in the C-M form. Your charter in Article 4, Section 18 outlines the Mayor's Power.
- ▶ Council appoints manager and attorney. (Article 1, Section 3) In some Charters, the Council appoints the City Clerk.

Legislative Role

- ▶ Council is the legislative body; state law requires appropriation of funds and most city charter details other fiscal, fiduciary, legislative and oversight responsibilities
- ▶ Council works toward these decisions in publicly-noticed meetings (Open Meeting Laws) – including workshops, public hearings and legislative meetings
- ▶ Your Charter in Article 2, Section 9 outlines the duties of the Council.

Administrative Role

- ▶ Manager is responsible for day-to-day administration and usually has hiring, firing authority for all staff
- ▶ Manager prepares the budget to present to council; manager usually has expenditure authority after appropriations occur
- ▶ Manager prepares agenda material with recommendations/research for council
- ▶ Your Charter in Article 5, Section 23 establishes powers and duties of the manager.

Key Steps in Mastering the C-M Form

- ▶ The International City/County Management Association (ICMA) recommends that councils discuss expectations and performance measurements with manager
- ▶ The ICMA Code of Ethics
- ▶ Communication is the key: managers should set regular discussion times with mayor and council for issue discussions and questions

Orientations and Retreats

- ▶ Many councils find it helpful to take half-day retreats for goal-setting, communications work, long-range planning and other issues with manager and key staff (Open Meetings Laws apply)
- ▶ Newly-elected council members need orientation time with the manager and key staff to learn roles/responsibilities

Help with the C–M Form

- ▶ Florida is fortunate to have Senior Advisors: retired city and county managers who assist those cities and counties with the C–M plan
- ▶ Senior Advisors are counselors, not consultants, and work with the elected body and manager on issues about the form of government
- ▶ Senior Advisors are available at no charge to the city through ICMA–FCCMA

Additional Resources

- ▶ The ICMA bookstore has several great publications related to council–manager communications, work skills – order at www.icma.org
- ▶ Senior Advisors may be requested through FCCMA at Ken Parker and (386) 299–0014 and information at www.fccma.org



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200 South Orange Avenue
Suite 1100
Orlando, FL 32801

(407) 541-0888 Tel
(407) 541-0887 Fax

Writer's Direct Dial:

407-541-0850

Writer's E-mail:

jmandel@fisherphillips.com

July 10, 2023

VIA E-MAIL [COMISKEYP@CL.MOUNT-DORA.FL.US]

Patrick Comiskey, City Manager
City of Mount Dora
510 North Baker Street
Mount Dora, FL 32757

Re: *Legal Representation – FOP Negotiations & General Labor and Employment Services*

Dear Mr. Comiskey:

Thank you for considering Fisher & Phillips to provide legal services to the City of Mount Dora in the above-referenced matters.

Fisher & Phillips LLP is one of the oldest and largest firms in the nation engaged exclusively in the practice of labor and employment law, representing management. It has always been our philosophy to provide efficient, specialized services in the labor and employment area at rates comparable to or below those of our competitors and most general practice firms. We believe having a reputation for providing high-quality work at reasonable rates is much more beneficial in the long run than charging the maximum going rate for our kind of services.

I would be primarily responsible for this representation but may call upon other lawyers and legal assistants as I believe appropriate in the circumstances. The City's current rate of \$295 per hour for all attorneys runs through September 30, 2023 and will increase to \$305 per hour on October 1, 2023. We re-evaluate our hourly rates for attorneys at least annually, and we find that on occasion we must increase them. We will not seek to increase these rates, however, without first seeking the City's approval. Other charges are explained in the accompanying Appendix, which sets forth in greater detail the terms on which we will represent you. Please review the Appendix carefully. If you agree to these terms, please return a signed copy of this letter and the Appendix to me for our files.

Because it is reasonable to anticipate that at some point you might be served with discovery requests requesting copies of all documents and electronically stored materials, e.g., e-mails, please note that you are under an affirmative duty to suspend or modify normal electronic- and

document-purge protocols in order to ensure that all data that might be relevant to this matter is preserved.

We charge for travel costs, photocopying, courier services, express delivery, computer-aided legal research, and similar items connected with our handling your work. Ordinarily, these amounts will be set forth separately on your billing statement. Please let us know if you have any questions about the way we compute non-fee charges.

Also, sometimes we must incur third-party charges on our client's behalf, such as for process servers, court reporters, interpreters or translators, outside printing or copying, expert witnesses or consultants, and the like. Our policy is to forward all invoices from third-party vendors to our client for direct payment. The City agrees to pay these invoices no later than 30 days following receipt and acknowledge that its failure to pay any such invoice will constitute a default of this agreement.

Our practice is to send bills on a monthly basis. Our statements generally cover fees and expenses incurred through the end of the prior month, although sometimes fee totals or charges might not be immediately available for one reason or another and will therefore be billed later. This is particularly true at the end of a case. We expect our statements to be paid within 30 days of receipt. If the City ever has a question about an invoice, you should contact us promptly to discuss it.

If for any reason the City finds itself unable to pay a statement within 30 days after receipt, please call us promptly so we can discuss it. We do reserve the right to withdraw from our representation of the City in the event any statement remains unpaid for more than 60 days. Also, if it should ever be necessary for us to resort to legal action to collect our fees and expenses, it is agreed that the prevailing party shall recover its reasonable attorney's fees and costs in connection with any such action.

We will bill the City for the time we spend working on its legal matters. It is important that the City understands that while we will always seek the most expeditious and economical resolution to the various legal problems we handle on its behalf, we cannot guarantee any specific result. Particularly where litigation and other contested matters are involved, there are many variables that determine whether a particular party will prevail. Unless we specifically enter into a separate express contingency fee arrangement with the City on a specific matter, our fees are not based on contingencies and are due and payable regardless of the outcome of the matter at issue.

We reserve the right to stop performing services and to withdraw from representation of the City if it fails to cooperate with us or follow our advice, if we determine that the City has made material misrepresentations to us, or if the City, fails to pay our fees or expenses incurred on its behalf. The City agrees that we may withdraw from the representation under these circumstances, subject to court approval where that is required.

Clients and attorneys must communicate effectively with one another to exchange information and to discuss developments and possible courses of action. We will keep the City informed as developments occur and will consult with the City as to the appropriate steps to take. We also ask that the City keep us informed of its objectives and wishes and that, if we ask for specific information or for instructions necessary to adequately carry out our representation, the City will respond accurately, completely, and as quickly as possible.

The codes of professional responsibility applicable to attorneys in some states require that law firms advise clients whether the firms have errors-and-omissions insurance coverage. Fisher & Phillips LLP does have such coverage.

We regret the length of this letter, but as we noted at the outset, we take our professional responsibilities seriously and want to comply scrupulously with all ethical requirements. We also want to set forth herein all material terms of our agreement with the City.

If you have any questions, please call. Once again, we appreciate the opportunity to work with the City and will always strive to maintain your confidence and trust.

Very truly yours,

A handwritten signature in blue ink, appearing to read "J. Mandel", is positioned above the printed name.

Jeffrey E. Mandel

Accepted by:

CITY OF MOUNT DORA

By: _____

Its: _____

Date: _____

APPENDIX SUMMARY OF ENGAGEMENT

We appreciate your confidence in considering Fisher & Phillips LLP to represent you in connection with the matter described in the accompanying letter. The rules of professional responsibility applicable to lawyers strongly encourage written agreements between lawyers and their clients to ensure that there are no misunderstandings that could compromise the representation. For that reason, this sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

Scope and Duration of Representation

It is our policy that the person or entity that we represent is the person or entity that is identified in our engagement letter. Unless the Firm agrees in writing to do so, our engagement does not include any employees, affiliates, or members of that person or entity.

Our practice focuses on advising and representing employers and comparable entities in matters arising under the laws governing labor, employment, immigration and benefits, and our representation is limited to the matter or matters described in the accompanying letter (although the scope of that representation might be enlarged by a supplemental engagement letter). We do not provide advice or representation concerning whether any matters are covered by a client's insurance policies, and, in the event of a dispute over coverage, we cannot advise or represent you in connection with such a dispute. We therefore urge you to review your policies to determine whether any matter for which you might retain us is covered by such a policy; if you believe that the policy might cover any such matter, it will be your responsibility to notify the insurer.

We do not practice securities law or corporate law, and we do not advise our clients on such matters. Neither do we undertake to determine or advise our clients whether any particular matter or potential matter is material or must be disclosed for financial-audit purposes.

An attorney/client relationship will exist between us for the duration of the matter for which we have been engaged, unless that relationship is earlier terminated in writing by either of us. In cases in which we have been engaged to provide general labor and employment advice, the relationship will end twelve months after the last substantive work you ask us to perform. The term "substantive work" does not include routine responses to auditors' requests.

During the representation, our advice will be consistent with applicable legal principles and interpretations as of the date we provide it. Those principles and interpretations are subject to change and we cannot undertake to advise you of later changes at our initiative. We will be pleased to respond to future requests that we reevaluate our advice in light of any such developments.

Management of Engagement

Each client is served by a responsible lawyer who has primary responsibility for communication between the Firm and the client. The responsible lawyer should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of the responsible lawyer by request to the Managing Partner of the office where the responsible lawyer is located or to a member of the Firm's Management Committee. The responsible lawyer may delegate your work, or parts of it, to other lawyers or staff. This delegation may be for the purpose of involving other lawyers who have special expertise or to provide services on the most efficient and timely basis.

Fees and Charges

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible, we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed-fee quotation unless otherwise agreed in writing signed by you and us. The ultimate cost frequently is more or less than the estimated amount.

We normally review our fees annually and adjust them at that time. In addition to the fees for legal services described in the accompanying letter, we will charge you for long-distance telephone calls, travel-and-lodging, photocopying, express delivery, facsimile transmissions, computer-aided legal research, and similar items connected with our handling your work. Ordinarily, these amounts will be set forth separately on your billing statement. Please let us know should you have any questions about the way in which we compute non-fee charges. On some occasions, there might be third-party charges, such as for deposition transcripts, outside printing or copying, expert witnesses, or any one of a variety of other things. Our policy is to submit all invoices from third-party vendors to you for direct payment, and we request that you pay these invoices immediately.

Billing Procedures

Our practice is to send bills on a monthly basis. Our statements generally cover fees and charges for the prior calendar month, although sometimes fees or charges might not be immediately available for one reason or another and will therefore be billed later. We ask that our statements be paid upon presentation to you. If you ever have questions about an invoice, please do not hesitate to contact us promptly to discuss them. If for any reason a statement cannot be paid upon presentation, please call us promptly so that we can discuss this.

Occasionally clients may make an overpayment on a bill. If this happens, unless you tell us otherwise, we will apply the overpayment to any outstanding fees and expenses or to the next bill, with notice to you as to how we have applied the overpayment. If there are no outstanding fees or expenses and no work in process, we will refund the overpayment to you.

We do reserve the right to impose interest charges at 1½% per month in connection with any balance that remains unpaid more than 30 days after the statement date. Also, if it ever should be necessary for us to resort to legal action to collect our fees and expenses, it is agreed that the prevailing party shall recover its reasonable attorney's fees and costs in connection with any such action.

Client Responsibilities

You understand and agree that, in order for us to represent you effectively, it is necessary for you to assist and cooperate with the Firm. You agree to (1) make yourselves (including your employees if applicable) available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions, court proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to us on a timely basis; and (4) make timely payment to any experts or vendors retained in connection with our services.

Communications

It is of course essential that clients and attorneys communicate effectively with one another to exchange information and to discuss developments and possible courses of action. Naturally, we will keep you informed as developments occur and will consult with you as to the appropriate steps to take. By the same token, we ask that you keep us informed of your objectives and wishes and that, if we ask for specific information or for instructions necessary to our adequately carrying out our representation, you will respond accurately, completely, and as quickly as possible.

As you know, communications between clients and attorneys are generally privileged and are not discoverable by third parties. However, court decisions have emphasized how easily that privilege can be lost, such as where attorney correspondence is routed through a client's routine intra-office mail, or where attorney/client communications are discussed with persons outside the attorney/client relationship. Any practical steps you can take to ensure that our attorney/client communications are not disclosed to third parties will be important in protecting your right to claim that privilege.

It is also important that we agree from the outset what kind of communications technology we will employ in the course of this engagement. Unless you specifically direct us to the contrary, we agree that it is appropriate for us to use fax machines and e-mail in the course of the engagement without any encryption or other special protections. In that regard, please specify an e-mail address which you would like us to use to communicate with you. Please also notify the Firm if you have any other requests or requirements in connection with the methods of telecommunication, or persons to be included or copied in the circulation of documents relating to the engagement.

Avoidance of Conflicts

In the event you have a potential dispute with a third party, and you wish to discuss with us the possibility of us representing you in connection with that potential dispute, we request that you do not disclose the nature of that dispute or any relevant facts until you have provided us with the name of the potential adverse party and afforded us the opportunity to determine whether the representation would create a conflict with another client.

Similarly, because we represent a number of staffing agencies or Professional Employer Organizations (PEOs), it is important that, before you ask us to comment upon such an entity's actions taken, advice given, or services otherwise rendered, you first disclose to us the name of that organization or agency.

Termination of Representation

You may terminate our representation at any time, with or without cause, by notifying us. If you do, papers and property which you have provided to us will be returned to you promptly upon receipt of payment for outstanding fees and costs. Our internal files regarding administrative matters pertaining to the case will be retained. Termination of our services will not affect your responsibility for payment of legal services rendered and additional charges incurred both before termination and in connection with an orderly transition of the matter, including the copying of any files that you request that we provide to you or to substitute counsel.

The rules of professional responsibility for the jurisdictions in which we practice list several types of conduct or circumstances that require or allow us to withdraw from representing a client. These include, for example: nonpayment of fees or costs, use of our services to perform a criminal or fraudulent act, misrepresentation of or failure to disclose material facts, action contrary to our advice, and conflicts-of-interest with another client. In addition, we reserve the right to stop our work for you if you fail to cooperate with us, or if any account is past due and we have been unable to agree on a mutually acceptable plan for payment. You agree that we may withdraw from the representation under these circumstances, subject to court approval where such approval is required for such withdrawals. In the event we seek to withdraw, you agree to engage new counsel immediately.

Document Retention

At the conclusion of the Representation, we return to the client any documents that are specifically requested to be returned. As to any documents so returned, we might elect to keep a copy of the documents in our files. At the close of any matter, we will maintain the files electronically for a period of ten years. After that time, we reserve the right to destroy the electronically stored documents without further notice to you. You hereby consent to such destruction of your documents in our files, unless we receive from you, within ten years after the close of the matter, written instructions for a different disposition of your documents.

Your Right to Arbitrate Fee Disputes

If you disagree with the amount of our fee, please take up the question with your principal lawyer contact or with the Firm's Managing Partner. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. In the event of a fee dispute which is not readily resolved, you have the right to request arbitration under supervision of the state or district bar associations for the jurisdictions in which we practice, and we agree to participate fully in that process.

Errors-and-Omissions Insurance

The rules of professional responsibility applicable to attorneys in some states require that law firms advise clients whether the firms have errors-and-omissions insurance coverage. Fisher & Phillips of course does have such coverage.

Miscellaneous Matters

We publish a bi-monthly *Labor Letter* and other, more-narrowly-focused newsletters in which we cover topical matters relating to employment laws and labor relations. In addition, when circumstances warrant, we publish a *Labor Alert* to let our clients know about particularly time-sensitive issues of importance. These publications are intended to keep our clients advised about matters which we think will be of interest to them. Of course, due to the generalized nature of these publications, we cannot undertake to address in them every pertinent legal development which might be important to a particular client, and the materials published therein do not constitute legal advice.

We also present seminars periodically. In these seminars, we discuss a broad spectrum of relevant labor and employment-law issues. These seminars are provided as a service to our clients, and you will be invited to them as they are scheduled.

Accepted by:

CITY OF MOUNT DORA

By: _____

Its: _____

Date: _____



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Authorization for Mayor to Execute an Engagement Letter with Daniel F. Mantzaris, Esq. of de Beaubien, Simmons, Knight, Mantzaris & Neal for Interim City Attorney Services

Introduction:

This is a request for City Council to authorize the Mayor to execute an engagement letter with Daniel F. Mantzaris, Esq. of de Beaubien, Simmons, Knight, Mantzaris & Neal for Interim City Attorney services.

Discussion:

Daniel F. Mantzaris, partner with de Beaubien, Simmons, Knight, Mantzaris & Neal, is Board Certified in City, County & Local Government Law. He currently serves as the City Attorney for the City of St. Cloud, Florida and the City of Clermont, Florida. He also serves as Code Enforcement Special Magistrate for the City of Maitland and counsel to the Seminole County and Orange County Code Enforcement Boards, the Orange County Building Codes Board of Adjustments and Appeals, and the Orange County Nuisance Abatement Board.

Budget Impact:

N/A

Strategic Impact:

City Attorney services affect all strategic functions of the City.

Recommendation:

City Council authorize the Mayor to execute an engagement letter with Daniel F. Mantzaris, Esq. of de Beaubien, Simmons, Knight, Mantzaris & Neal for Interim City Attorney services.

Attachment(s):

1. Attachment #1 Daniel F. Mantzaris _ DSK Law

2. Interim engagement letter

Prepared by: Merry Lovern, Executive Assistant
Reviewed by: Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/27/2023
Final Approval - 7/27/2023



- Supreme Court of the United States

Education

University of Florida Levin College of Law

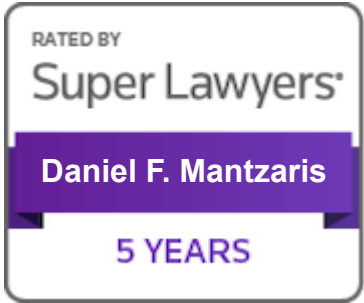
- Juris Doctor – 1985

Hobart College (Geneva, NY)

- Bachelor of Arts in Political Science – 1982

Awards & Recognition

- [Martindale-Hubbell AV Preeminent Status](#)
- Florida Trend – Legal Elite 2016-2018
- [Florida Super Lawyers 2015-2020](#)



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1825 Riverview Drive
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321-421-5529

Get Directions



de Beaubien • Simmons • Knight • Mantzaris • Neal

EST. 1976

Attorneys and Counselors at Law

Post Office Box 87

332 North Magnolia Avenue

Orlando, Florida 32802-0087

Office: (407) 422-2454

Writer's Direct: (407) 992-3540

Writer's e-Mail: dmantzaris@dsklawgroup.com

Telefax: (407) 849-1845

July 27, 2023

Mayor Crissy Stile and Council Members

City of Mount Dora

510 N. Baker Street

Mount Dora, Florida 32757

Dear Mayor Stile and Council Members:

Our Firm is pleased to offer to serve as Interim City Attorney for the City of Mount Dora. Our legal services will be provided principally through Firm Partners Lindsay Greene and Daniel Mantzaris and other Firm attorneys and staff as may be assigned. The term of this engagement shall extend until such time as the City selects a permanent City Attorney. Nothing herein shall preclude our Firm from being named as the permanent City Attorney for the City of Mount Dora.

The purpose of this letter is to set forth our mutual understanding regarding this engagement and the manner in which we will charge for professional services rendered. We will provide all legal services as requested by the City Council and the City Manager, or his designees, with regard to City matters. For services provided, our Firm will be compensated for actual hours provided at the rate of \$190 per hour for Partners and \$175 per hour for associates with a minimum charge of one tenth of an hour for any activity completed on the City's behalf. We shall not charge for travel time except when a Firm attorney is required to be physically present at the City, or on behalf of the City, on more than three occasions in one calendar week.

We will render statements for services on a monthly basis including a description of all services provided to include the name of the City department(s) related to the services provided. It is agreed that payments on such statements will be made by ACH bank transfer by the 30th day of each month. The City agrees to carefully read all billing statements and promptly notify us, in writing, of any claimed errors, discrepancies or objections, within ten (10) days from the date of the statements.

**Mayor Crissy Stile and Council Members
City of Mount Dora
July 27, 2023
Page 2**

If the foregoing is acceptable to the City Council, we ask that Mayor Stile execute this letter below and that a copy be provided to us.

We sincerely appreciate the opportunity to be of service to the City of Mount Dora and its citizens and look forward to working with the City Council and City staff.

DEBEAUBIEN, SIMMONS, KNIGHT,
MANTZARIS & NEAL, LLP

By: *Daniel F. Mantzaris*
Daniel F. Mantzaris

Agreed to and accepted by the City of Mount Dora by action of the City Council at its August 1, 2023 meeting.

CITY OF MOUNT DORA

By: _____
Mayor Crissy Stile

cc: Patrick Comiskey, City Manager
Lindsay Greene, Esq.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Approval of Task Authorization/GMP (Guaranteed Maximum Price) with Faden Builders, Inc., Related to the Downtown Streetscape Repairs and Enhancement Program.

Introduction:

This is a request for City Council to approve the Task Authorization/GMP (Guaranteed Maximum Price) with Faden Builders, Inc., related to the Downtown Streetscape Repairs and Enhancement Program.

Discussion:

Staff is seeking City Council approval of the Task Authorization and Guaranteed Maximum Price (GMP) with Faden Builders, Inc., for streetscape repairs and enhancements within the Downtown. The project will utilize CRA funds to improve the Downtown by installing new aluminum railings along the storm inlet curbs; installing composite grating at the street gutter/curb locations; replacing electrical boxes along Donnelly Street between 4th and 5th Avenue with in-ground receptacles; and removing the raised curbs at Donnelly and 3rd Avenue. The Task Authorization is consistent with the 100% plans provided by CPH, Corp., dated May 10, 2022.

The proposed composite grating will enhance the appearance of the stormwater channels and increase their efficiency by preventing debris from infiltrating the stormwater system. In conjunction with the handrail installation, some landscaping and electric outlets within the landscape islands will be replaced.

City Council allocated \$275,000 for this project in the CRA budget for Fiscal Year 2022-2023. The first estimate was more than \$300,000, but Staff, Faden Builders and CPH Engineers were able to use value engineering to decrease the cost to \$237,315.17. This project utilizes CRA funds.

Budget Impact:

\$237,315.17 in GL 310-5555-580.63-01-CR1801, which has \$255,975 available as of 7/25/2023

Strategic Impact:

Goal 2: Infrastructure/Public Safety, Objective 2.4. Sustain City Infrastructure, Redevelopment, economic development, quality of place.

Recommendation:

City Council approve the Task Authorization/GMP (Guaranteed Maximum Price) related to the Downtown Streetscape Repairs and Enhancement Program.

Attachment(s):

1. Faden Task Authorization Citywide CMAR.SGS Streetscaperepair

Prepared by: Adam Sumner, CRA Administrator
Reviewed by: Michele Janiszewski, Senior Planner
Aneta Barton, Budget Director
Sherry Sutphen, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/18/2023
Approved - 7/25/2023
Approved - 7/26/2023
Approved - 7/26/2023
Final Approval - 7/26/2023

CITY OF MOUNT DORA/CRA/Northeast CRA TASK AUTHORIZATION

In accordance with the terms and conditions of the Agreement between Faden Builders, Inc. (Construction Manager) and the City of Mount Dora/CRA/Northeast CRA, dated April 7, 2020, the parties hereto agree to the scope of work, pricing/GMP, schedule, construction team and subcontractors attached hereto.

City Project Manager:

Chet Cramer

Construction Manager Contact:

Philip Rapalje

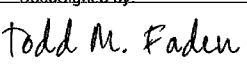
Project Name:

Downtown Streetscape Repair & Enhancement

Project Number:

23-04CRA

NOTE: THE CONTRACTOR MAY NOT BEGIN WORK UNTIL THIS FULLY SIGNED TASK AUTHORIZATION IS DELIVERED TO THE CONSTRUCTION MANAGER.

SUMMARY OF WORK TO BE COMPLETED	
<u>Each Task Authorization package shall include:</u> Exhibit A – Scope of Work Exhibit B – Price/GMP Breakdown Exhibit C – Basic Schedule Exhibit D – Construction Team Exhibit E – Construction Manager's Staff Exhibit F – Sub-Contractors	
Recommended By: Print: _____ Date: _____ Signature: _____	
Reviewed By (if applicable): Print: _____ Date: _____ Signature: _____	
CONTRACTOR ACCEPTANCE	CITY APPROVAL
Print Name: Todd M. Faden	Print Name: Crissy Stile
Title: President	Title: Mayor
Signature: 	Signature:
Date: 7/18/2023	Date:



7/7/2023

Faden Proposal No. 23-298

Chet Cramer
Construction Project Manager
City of Mount Dora
510 N Baker Street
Mount Dora, Florida 32757

RE: Downtown Streetscape Repair and Upgrade

Scope Summary: Install new aluminum railings along the storm inlet curbs, composite grating at the street gutter/curb locations, new electrical boxes along Donnelly St from 4th to 5th Ave and remove the raised curbs at Donnelly and 3rd Ave per the 100% Submittal plans provided by CPH Corp, dated 5-10-22.

Exhibit A: Scope of Work

1. General Conditions
 - a. Project Management and Supervision
 - b. Mobilization/Demobilization
 - c. MOT
2. Site Prep / Demolition
 - a. Site layout
 - b. Sawcut existing concrete curbs (1,970 LF)
 - c. Remove pavers and concrete curb at Donnelly / 3rd Ave intersection
3. New Construction
 - a. Install 42"H black industrial aluminum railings (479 LF)
 - b. Install 2x2x3/16" steel angle set in epoxy at cut curbs (985 LF)
 - c. Install 2" square mesh composite grate – gray (492.5 LF)
 - d. Form and pour concrete ribbon curbs at Donnelly / 3rd Ave and re-set existing pavers
 - e. Replace 4 existing weatherproof duplex receptacles with in-ground 120v duplex receptacles as specified

Qualifications and Exclusions:

1. Work to be completed 1st shift, M-F, no overtime is included.
2. The scope is limited to the items listed in Exhibit A. Any other added scope items or items required by the AHJ for permitting are excluded and will be charged as a change order.
3. Permit fees are excluded.
4. Engineering is excluded.
5. Geotechnical testing/reports are excluded.
6. Dewatering is excluded.
7. Landscaping, irrigation and sod are excluded.
8. Painting and staining are excluded.
9. It is assumed that the curb sawcutting scope of work can be completed within 9 mobilizations (max) and that vehicle access is available within 100ft of the active jobsite.

**Exhibit B: Price/GMP Breakdown**

1. General Conditions	\$ 32,040.63
2. Site Prep / Demolition	\$ 38,218.13
3. New Construction	\$ 122,210.97
Subtotal	\$ 192,469.72
General Liability Insurance	\$ 2,502.11
Contingency (10%)	\$ 19,246.97
Contractor's Fee	\$ 23,096.37
Permit Fee	excluded
Performance and Payment Bond	excluded
Gross Maximum Price (GMP):	\$ 237,315.17

The prices included in this proposal are valid for 30 days.

Exhibit C: Basic Schedule

Procurement will begin promptly after the issuance of the Purchase Order.

Proposed duration schedule:

- 4 weeks for scheduling, material procurement and submittals
- 1 week for mobilization and layout
- 6 weeks for demo/construction
- 2 workdays for demobilization

Project Management Information System (PMIS) will not be required for this project.



Exhibit D: Construction Team

Owner's Representative: Chet Cramer (City of Mount Dora)
Construction Manager: Todd Faden (Faden Builders)

Exhibit E: Construction Manager's Staff

Principal: Todd Faden
Project Manager: Philip Rapalje
Site Superintendent: Rob Bennett
Staff Accountant: Helen Johnson
Safety Director: Jes Pedersen
Administrative Assistant: Nicole Rakes

Exhibit F: Sub-Contractors

Mossy Oak Fence
The Yard Stop

Please feel free to contact me with any questions. We look forward to working with you.

Best regards,

PHILIP RAPALJE

Philip Rapalje
Faden Builders, Inc.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Discussion and Decision Regarding the Hiring of Outside Counsel to Address Employee Complaint Against the City Manager

Introduction:

This is a request for Council to discuss and move forward with decision(s) regarding the hiring of outside counsel to address an employee complaint against the City Manager.

Discussion:

At the July 18, 2023, City Council Regular Session, Council assigned Vice-mayor Crail, with the assistance of City Attorney Sutphen, to contact Fisher & Phillips partner Jeffrey Mandel for a recommendation on how to proceed with the investigation of a staff complaint against the City Manager. Attorney Lindsay Greene was contacted and will be providing the City an engagement retainer agreement. Ms. Greene's rates remain comparable to what they were during her last engagement with the City in relation to a past investigation. Ms. Greene advised she will be able to begin immediately upon engagement.

Budget Impact:

N/A

Strategic Impact:

N/A

Recommendation:

Council discuss and move forward with decision(s) regarding the hiring of outside counsel to address an employee complaint against the City Manager.

Attachment(s):

1. ATTACHMENT #1 Email Fw_ Retainer Agreement Re_ Internal Investigation
2. ATTACHMENT #2 Mount Dora Retainer

Prepared by: Jeanann Hand, City Clerk

Reviewed by: Patrick Comiskey, City Manager

Final Approval - 7/27/2023

ATTACHMENT #1

From: Greene, Lindsay <lgreene@dsklawgroup.com>
Sent: Thursday, July 27, 2023 5:27 PM
To: Crail, Marc; Barker, Erica
Subject: Retainer Agreement Re: Internal Investigation

**** This message originated outside of the City of Mount Dora network. Please think before you click. ****

Dear Vice-Mayor Crail,

It was my pleasure speaking with you. Attached hereto, please find the retainer agreement for your approval. Upon my receipt of the executed agreement and payment of the initial retainer, we will coordinate interviews. Please identify the contact person for the purpose of coordinating interviews and I will promptly do so.

I have copied my assistant, Erica Barker, to this email and she will assist with any administrative matters. Do not hesitate to contact me with any questions or concerns. Thank you.

Lindsay N. Greene
Partner



332 North Magnolia Avenue
Orlando, Florida 32801
P 407.422.2454 | D 407.992.3536
F 407.849.1845 | www.dsklawgroup.com





REPLY TO:
ORLANDO OFFICE

July 27, 2023

Mr. Marc Crail
Vice Mayor
City of Mount Dora
VIA E-MAIL: CrailM@ci.mount-dora.fl.us

Re: ***City of Mount Dora Internal Investigation***
Retainer Agreement for Representation

Dear Vice Mayor Crail:

Thank you for your consideration of de Beaubien, Simmons, Knight, Mantzaris & Neal, LLP.

We appreciate the opportunity to be of service and want you to be informed of our billing procedures and charges for services.

Please read this carefully and contact us if anything is unclear. By executing this Agreement, you agree that our firm has been retained to conduct an internal investigation. The firm is being retained in anticipation of potential litigation, thus subjecting the work performed to work-product and attorney-client privileges.

1. This firm will work upon the basis of \$350.00 per hour for partner and of counsel attorneys' fees, \$200.00 per hour for associate attorneys' fees and \$100.00 per hour for non-attorney legal professional fees. These rates depend on each attorney's expertise and experience, and are subject to adjustment each January 1st, subject to City approval. To minimize costs, we will utilize non-attorney legal professionals, under the supervision of an attorney, whenever possible.

2. We will bill for our expenses including but not limited to: court costs, computerized research charges, digital reproductions (copies, scans and prints at \$.10

cents per page), long distance telephone calls (\$.10 a minute), faxes (\$1.00 per page), court reporter fees, hearing transcript costs, deposition transcript costs, witness fees, and expert witness fees. Such costs are not included in the hourly rate for attorneys' and non-attorney legal professionals' fees.

3. An invoice will be forwarded to you each month that will describe the services rendered and the total fee charged. The invoice itemizes costs and charges. All invoices are payable upon receipt. A client who has money in escrow for legal fees and costs in more than one case authorizes transfer, if necessary, of fees from one case to another case if the one case is completed and funds are owed on the other case.

4. In the event that this firm perceives any conflict of interest whatsoever, if you fail to pay fees and/or costs in a timely manner, if you fail to abide by the legal advice, we give you or if you fail to cooperate with us, we have the right to immediately withdraw from our representation of you. In the event of any litigation arising out of this Agreement, the prevailing party is entitled to reasonable attorneys' fees and costs, both at trial and on appeal. The venue for any such action shall be solely and exclusively in Orange County, Florida.

5. If there are two or more clients represented by this firm in this matter, each of you understands, and agrees to waive, all conflicts that may exist between your interests to the extent of our representation of you in this matter. You acknowledge that this conflicts issue has been fully discussed with you.

6. Unless we hear from you otherwise, all notices and other information regarding this matter will be sent to the above address. If you want to change the address to which we should send notices and information, please let me know in writing as soon as possible.

7. Our policy is that the attorney-client relationship is terminated upon completion of any services we have been retained to perform. If you later retain us to perform further or additional services, our attorney-client relationship will be renewed subject to these terms of engagement, as they exist, or a subsequent engagement agreement we may later enter.

8. Our policy with respect to document retention is, when our engagement on any matter is completed, we close our files, return original documents obtained to the client, and store copies of documents for three (3) years, after which, unless different arrangements are made, we destroy our closed files.

9. You shall pay an advance for fees and costs in the amount of \$5,000.00 at this time. Immediately upon the mailing of an invoice to you, the advance monies shall be disbursed and applied to the current invoice. If you have a problem concerning any disbursements, you shall notify us within fifteen (15) days of date of the bill. We reserve the right to request that you provide our firm with an additional advance amount at any time during our representation of you in this matter.

10. We make no representations to you, nor have you relied upon any representations not contained in this Agreement. This Agreement is the entire agreement between us and shall not be modified or amended except in writing and signed by both parties.

11. By signing this Agreement, you agree and acknowledge that you are responsible for any and all taxes if any, including Federal, State, and Local income taxes, Medicare taxes, and/ or Social Security taxes related to this matter, arising out of it, and incurred either in the past or future. You agree and acknowledge that the law firm of de Beaubien, Simmons, Knight, Mantzaris & Neal, LLP, and its attorneys, have not rendered, and will not render, any tax advice regarding this matter or otherwise. You should have the tax implications of this matter explained to you by your own tax professional prior to signing this Agreement if you have any questions or need any advice regarding any tax issues.

We invite you to discuss any questions you have concerning the determination and billing of our fees and costs. We want to satisfy you with both the quality of legal work and the reasonableness of the fees we charge for those services.

If this Agreement meets with your approval, please sign below and return the original to us. A copy of this Agreement is enclosed for your files.

Until we receive the executed Agreement, our firm cannot and will not take any action on your behalf.

Please contact me if you have any questions or comments.

Thank you for the opportunity to provide legal representation to you.

Sincerely,

de Beaubien, Simmons, Knight,
Mantzaris & Neal, LLP

By: LINDSAY N. GREENE, Partner
On Behalf of DSK Law
Florida Bar Number 269610

LNG:lng

ACCEPTED AND AGREED TO THIS _____ DAY OF _____, 2023.

CITY OF MOUNT DORA, FLORIDA

By:
Its: Vice Mayor

Printed Name: _____

Signature: _____



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Authorize the City Manager to Settle Disputed billing with Wharton-Smith, Inc. in an Amount not to Exceed \$50,000

Introduction:

This is a request for City Council to authorize the City Manager to settle disputed billing with Wharton-Smith, Inc. in an amount not to exceed \$50,000.

Discussion:

On March 16, 2021, City Council approved Resolution No. 2021-32, authorizing Wharton-Smith, Inc. to perform pre-construction services related to Wastewater Treatment Facility #1 (WWTF#1) Rehabilitation, in the amount of \$92,477.53 (see Attachment #1). Wharton-Smith states that it performed additional work on the project totaling, by their estimate, \$76,405.00, without seeking a change order or additional approval of City Council. On March 23, 2023, Wharton-Smith presented a letter seeking to amend the agreement and requesting payment from the City for additional work totaling \$76,405.00 (see Attachment #2). The City Manager seeks authorization from City Council to negotiate and settle the disputed billing with Wharton-Smith, Inc. in an amount not to exceed \$50,000.

Budget Impact:

Staff will bring a future budget amendment for City Council approval for the final agreed-upon amount.

Strategic Impact:

N/A

Recommendation:

City Council authorize the City Manager to settle disputed billing with Wharton-Smith, Inc. in an amount not to exceed \$50,000.

Attachment(s):

1. Attachment 1 - Reso No. 2021-32 CMAR for WWTF #1 Rehab Project RFQ-21-PW-003
2. Attachment 2 - MountDora_WWTF#1_PreconAmendment_3-23-23

Prepared by: Merry Lovern, Executive Assistant

Reviewed by: Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/27/2023

Final Approval - 7/27/2023

RESOLUTION NO. 2021-32

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA, PERTAINING TO CONSTRUCTION MANAGER AT RISK SERVICES FOR THE CITY'S WASTEWATER TREATMENT FACILITY #1 REHABILITATION PROJECT PURSUANT TO RFQ-21-PW-003; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR APPROVAL OF AGREEMENT AND AUTHORIZATION TO EXECUTE; PROVIDING FOR THE IMPLEMENTATION OF ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has competitively solicited for construction manager at risk services for the Wastewater Treatment Plant #1 Rehabilitation Project, pursuant to the City's Purchasing Policy and RFQ-21-PW-003; and

WHEREAS, the evaluation committee ranked the proposals during the selection process and Wharton-Smith, Inc., was deemed to be the most responsive, responsible and qualified firm to provide construction manager at risk services for the Wastewater Treatment Plant #1 Rehabilitation Project as contemplated by RFQ-21-PW-003; and

WHEREAS, on February 2, 2021, pursuant to Resolution 2021-12, the City authorized negotiations with Wharton-Smith Inc., for construction manager at risk services for the Wastewater Treatment Plant #1 Rehabilitation Project; and

WHEREAS, the City has successfully negotiated a contract with Wharton-Smith, Inc., and has determined that it is in its best interest to hereby approve the execution of the same.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings and Intent. The City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution. The above recitals are hereby adopted.

SECTION 2. Approval of Agreement and Authorization to Execute. The Agreement between the City of Mount Dora and Wharton-Smith, Inc., attached hereto as **Exhibit "A"** is hereby approved. The Mayor or designee thereof is authorized to execute the Agreement on behalf of the City.

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such actions as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City pertaining to the solicitation for construction manager at risk services for the Wastewater Treatment Facility #1 Rehabilitation Project, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. 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.

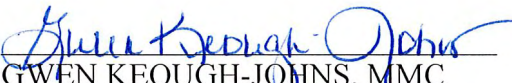
SECTION 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 16th day of March, 2021.



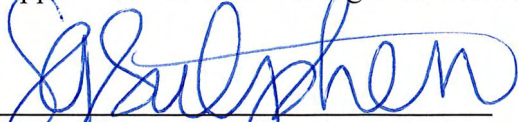
CATHERINE T. HOECHST,
MAYOR of the City of Mount Dora, Florida

ATTEST:



GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.



Sherry G. Sutphen, City Attorney

Exhibit “A”
Agreement with Wharton-Smith, Inc.
for construction manager at risk services for
the Wastewater Treatment Facility #1 Rehabilitation Project

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter "Owner" and Wharton-Smith, Inc., 750 Monroe Road, Sanford, Florida 32771, hereinafter "Construction Manager".

ARTICLE I

THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT

The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the soundest and most expeditious and economical manner, consistent with the interests of the Owner.

1.1 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required related to the Project. The Architect and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect or any of its consultants of which the Owner was not copied.

The specific representatives of the Construction Team are set forth in **Exhibit "A"** attached hereto.

1.2 Extent of Agreement:

This Agreement for Pre-construction and Construction Management Services for the Project, between the Owner and the Construction Manager supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of the GMP Amendment by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each set of drawings, that it is the set upon which the GMP is based. Thereafter

one set of the documents shall be sent to the Owner along with the GMP proposal. This Agreement shall not be superseded by any provisions/revisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

- 1.3 **Definitions:** The following definitions shall be applicable to this Agreement. Any words which are not set forth below but are found capitalized throughout this Agreement shall have the meanings established in the various Articles and/or Sections of this Agreement:

Architect-Engineer - CPH, Inc.

Construction Documents - This Contract, the Drawings, Specifications and related Construction Documents or any other documents incorporated herein by reference.

Construction Manager - Wharton-Smith, Inc.

Estimate - The Construction Manager's latest estimate of probable project construction costs

Final Completion - The following items have been completed or satisfied:

1. Construction of the Project is totally complete, including all work on the Contract Documents and certified as such by the Owner and Architect.
2. The Project is suitable for full use and occupancy as determined by the Owner and Architect.
3. All Punch List items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.
4. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.
5. Final executed Releases of Lien have been delivered to the Owner by Construction Manager.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

Owner - City of Mount Dora, a municipal corporation of the State of Florida

Owner's Representative - The Owner's Representative is its Construction Project Manager, who is Chet Cramer, or such other individual designated, in writing, by the City Manager.

Project - The Project is the total work to be performed under this Agreement. The Project consists of Wastewater Treatment Facility #1 Rehabilitation.

Punch List - List of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance/completion.

Substantial Completion Date - The date, certified by the Architect, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion.

1.4 Owner's Construction Budget:

Owner's funds budgeted and requested for construction of the Project: The Owner's Construction Budget is estimated at Twelve Million and 00/100 Dollars (\$12,000,000.00) including all Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2
CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS):

1. General:

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.

C. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.

D. The PMIS shall be described in terms of the following major subsystems:

1. Narrative Reporting, on a monthly basis,
2. Schedule Control, on a monthly basis,
3. Cost Control, and estimating,
4. Project Accounting,
5. Accounting and Payment, and
6. Action Reports.

2. Narrative Reporting Subsystem:

A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.

B. The Narrative Reporting Subsystem shall include the following reports:

1. Monthly Executive Summary - which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
2. Monthly Cost Narrative - describing the current construction cost estimate status of the Project.
3. Monthly Scheduling Narrative - summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

4. Monthly Accounting Narrative - describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 5. Monthly Construction Progress Report - summarizing the work of the various subcontractors during the construction phase. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations and plans for the succeeding month.
 6. Daily Construction Diary - during the construction phase describing events and conditions on the site.
- C. The reports outlined above shall be bound with applicable computer reports and submitted monthly during design and construction phases and shall be current through the end of the preceding month. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition. Additional copies of the report outlined above shall be bound separately and distributed monthly as directed by the Owner's Representative.
- D. The report outlined in Article 2.1(2)(B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the Owner at the conclusion of the Project
3. Scheduled Control Subsystem:
- A. Master Project Schedule - Within thirty (30) days of award of this Agreement, the Construction Manager shall submit, to the Owner for approval, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. Revisions, activity additions, activity deletions and/or logic changes to the Master Project Schedule, or any other schedule previously approved by the Owner, shall not be made without the Owner's approval.
 - B. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed with construction, the Construction Manager shall prepare and submit for approval, to the Owner's Representative, a construction schedule in quadruplicate with sufficient detail to graphically depict the activities contemplated for completion of the Project and which shows the sequence that the Construction Manager proposes for each such activity to occur and

the duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated herein and thereafter such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as set forth hereinabove shall be sufficient grounds for the Owner to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule acceptable to the Owner is submitted.

- C. During the period of time required to finally complete the Project, at the end of each such calendar month or at such earlier intervals as circumstances may require, the Construction Manager shall update the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates thereto as reflected in the updated construction schedule last submitted. Each such update to the construction schedule shall be submitted to the Owner in duplicate. Failure of the Construction Manager to update, revise and submit the construction schedule as set forth herein shall be sufficient grounds for the Owner to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.
- D. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
 - 1. Subcontractor Construction Schedules - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.

2. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.
- E. All schedules will be provided to the Owner in an electronic format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 9, Direct Costs of the Project.

4. Budget Control Subsystem:

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates - Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of sixty percent (60%) Design Development Documents.
- B. Completion of one hundred percent (100%) Design Development Documents.
- C. One hundred percent (100%) GMP Estimate - When the Construction Documents are sufficiently complete enough to establish the GMP.

5. Project Accounting Subsystem:

The operation of this subsystem shall enable the Construction Team to monitor and control the funds available for the Project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- A. Cost Status Report - presenting the budget, estimate and base commitment for any given contract or budget line item. It shall show approved change

orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.

- B. Payment Status Report - showing the value in place, both current and cumulative, the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative) and the balance remaining. A summary of this report shall accompany each pay request.
- C. Detailed Status Report - showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates and proposed and approved dollar amounts. Pending or rejected change orders shall also be shown.
- D. Cash Flow Diagram - showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- E. Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The Job Ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

2.2 Project Manual:

When directed by the Owner, the Construction Manager shall provide the following:

1. Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval, providing a plan for the control, direction, coordination and evaluation of work performed, including identification of key personnel, responsibilities of Construction Manager, responsibilities of Owner and responsibilities of Architect-Engineer, work flow diagrams and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:

- A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
- B. Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
- C. Project Strategy - A narrative description of the Project delivery methods being utilized to accomplish the project goals shall be listed.
- D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.
- E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts shall be included, one each for the Construction Manager, the Architect Engineer and the Owner, showing the organizational elements participating in the Project.
- F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- G. Flow Diagrams - Charts displaying the flow of information and the decisional process for the review and approval of shop drawings, submittals, progress and change orders.
- H. Written Procedures – Procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews and other necessary communications.

2.3 Design and Review and Recommendations:

The Construction Manager shall perform the services described in this Article. The services to be provided herein constitute the Pre-construction phase services. The parties acknowledge the Construction phase may commence before the Pre-construction phase is completed, and to a certain extent both phases may proceed concurrently.

1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's Project and Project budget requirements, each in terms of the other.
2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.
3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, if applicable.
4. Review Reports - Within thirty (30) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Articles 2.3(1) and 2.3(2) above and on factors set out in Article 2.3(7) below. Promptly after completion of the review, the Construction Manager shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF THE CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in anyway the responsibilities of the Architect, in particular, the responsibility of assuring that the

Drawings and Specifications, which are identified in **Exhibit "B"** are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations; however, if the Construction Manager recognizes that portions of the Drawings and Specifications are inconsistent with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations , the Construction Manager shall promptly notify the Architect and the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items such as machinery, equipment, materials and supplies. When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the work, as required to meet the Project Schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.
6. Separate Contracts Planning - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. Interfacing -
 - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the General Conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package

clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.

B. Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.

8. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. The cost of such equipment shall be a Direct Cost of the Project, as defined in Article 9. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner

may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit, to the Construction Team, recommendations as to needed requirements of this nature and as to the contract or contracts in which such weather protection requirements should be included. The Construction Manager is totally responsible for all weather protection necessary to ensure that all new construction and renovation projects are adequately protected from the normal inclement elements.
10. Market Analysis and Stimulation of Bidder Interest -
 - A. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; the Construction Manager shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surplus of labor or material, and (2) in light of such determinations, make recommendations to the Owner as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
 - B. The Construction Manager shall submit to the Owner a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
 - C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase:

1. Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to

act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in **Exhibit "C"** to this Agreement. The Construction Manager shall not change any of those persons named in Exhibit "C" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of any replacement personnel. Such approval will not be unreasonably withheld.

2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide notice of the same to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, in order to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.
3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual, a total number of copies not to exceed seven (7) hard copies and an electronic version in a format acceptable to the Owner, developed and updated as required by Article 2.2, expanded for the Construction Phase, employing the respective milestones, beginning and finishing dates, the respective responsibilities for performance and the relationships of the work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current and up to date scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. Furthermore, the Construction Manager shall be responsible for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable the same to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meetings or inspections, giving each at least one weeks-notice, unless such notice is made impossible by conditions beyond the control of the Construction Manager. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and solutions and to coordinate future work with all subcontractors.

4. Solicitation of Bids -

- A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

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, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the work. The Construction Manager shall strive to receive at least three (3) competitive bids per trade package. Should the nature of the trade package prohibit three (3) competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.

- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
- C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
- D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within three (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right to reject any award of subcontract

providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the GMP budget for that work item, the Owner shall issue a change order to the Construction Manager, increasing the GMP, for the amount of the difference between the proposed award and that which the Owner has requested.

5. Bonds - In accordance with the provisions of Florida Statutes, Section 255.05, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Articles 7, 8 and 9. To be acceptable to the Owner, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
 - A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
 - B. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
 - C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
 - D. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time a bond is issued.
 - E. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

Contract Amount	Policy Holder's Rating	Required Financial Rating
\$500,000 to \$1,000,000	A	Class IV
\$1,000,000 to \$2,500,000	A	Class V
\$2,500 000 to \$5,000 000	A	Class VI
\$5,000,000 to \$10,000 000	A	Class VII
\$10,000,000 to \$25,000,000	A	Class VIII

\$25 000 000 to \$50,000,000	A	Class IX
\$50,000,000 to \$75,000,000	A	Class X

6. Quality Control - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
7. Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work begins on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall carefully review all shop drawings and forward the same to the Architect for review and action. The Architect shall transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer via the Owner to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.
8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost of the project, but not subject to a Construction Phase Fee, as described in Article 8.1(3).
9. Job Site Requirements -
 - A. The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Cost:

1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving any subcontractor of responsibilities to perform work in accordance with the best acceptable practices.
 6. Provide a quality control program.
 7. Provide miscellaneous office supplies that support the construction efforts.
 8. Travel to and from its home office to the project site, as the project requires.
- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
10. Job Site Administration - The Construction Manager shall provide administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project implementation process, assure timely submittals, expedite processing approvals and return of shop drawings and samples; Coordinate and expedite critical ordering and delivery of

materials, work sequences, inspection and testing and labor allocation; Review and coordinate each subcontractor's work; Review and implement revisions to the project schedule; Monitor and promote safety requirements.

Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solutions. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.

A regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.

- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.
- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries and to implement checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer through the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the subcontractor's work and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial

completion inspection. Prior to the Owner's and Architect's pre-substantial completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a Certificate of Substantial Completion in the format prescribed in **Exhibit "D"**, when the work on the Construction Manager's pre-substantial Punch List has been accomplished, to the best of the Construction Manager's ability.

- I. Final Completion - Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books, including issuance of the Certificate of Final Completion attached as **Exhibit "E"**.
 - J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
 - K. Record Drawings - The Construction Manager shall monitor the progress of its own forces or its Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect-Engineer through the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain, at the job site, current and up to date files and records such as, but not limited to the following:

Contracts or Purchase Orders
Davis Bacon Federal Compliance Documents
ARRA / Build America Bonds Compliance Documentation
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Warranties and Guarantees
Cost Accounting Records:
Labor Costs
Material Costs
Equipment Costs
Cost Proposal Requests
Payment Request Records

Meeting Minutes
Cost-Estimates
Bulletin Quotations
Lab Test Reports
Insurance Certificates and Bonds
Contract Changes
Purchase Orders
Material Purchase Delivery Logs
Technical Standards
Design Handbooks
"As-Built" Marked Prints
Operating & Maintenance Instruction
Daily Progress Reports
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Project Manual
Job Photographs

The Project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy -

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on-line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary Punch List inspection and coordinate the completion of all Punch List work to be done with Owner occupancy requirements in mind. The Construction Manager shall videotape all major equipment startup procedures and deliver videos as part of the closeout documents.

Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey the same to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for all such operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate maximum enforcement and assure meaningful implementation.

The Owner may occupy or take control of portions of the Project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2.4 above have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Owner Occupancy.

13. Warranty -

Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. With respect to the same work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of Substantial Completion or partial occupancy of any portion of the building, whichever comes first, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. In addition, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection in approximately eleven (11) months after the date of Owner Occupancy.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project.

3.2 Owner's Representatives:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to the Project, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to state or county laws or codes. Functions to be performed by the Owner as set forth in this Agreement can be delegated by the Owner only by written notice

to the Construction Manager from the Owner. The Construction Manager shall be entitled to rely on directions, and it shall be required to follow such directions, from the Owner's Representative designated in Article 1.3 and such other representatives from time to time designated in writing within the authority conferred by the City of Mount Dora City Council in this Agreement or any Amendment or Change Order to this Agreement. The City of Mount Dora City Council hereby authorizes the Article 1.3 Owner's Representative to: (1) act as the Owner's agent and execute documents associated with this Project. Examples of these documents are Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the Owner; and (4) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner.

The City of Mount Dora City Council additionally authorizes the City Manager, in conjunction with the Owner's Representative, to authorize changes in the work up to Fifty Thousand and 00/100 Dollars (\$50,000.00) or such other dollar amount as authorized by policy adopted by the City Council. Said work can be funded from the Owner's Contingency and shall not cause an increase to the overall project budget.

3.3 Architect-Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare Construction Documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations and a legal description for the Project.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such document examination and interpretation as may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys and Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects:

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding:

The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.

3.11 Lines of Communication:

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.12 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4
PERMITS, FEES AND NOTICES

- 4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permits, which are customarily secured by a General Contractor.
- 4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project.
- 4.3 It is not the Construction Manager's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations; however, if the Construction Manager observes that portions of the Contract Documents are inconsistent therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs work knowing it to be contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such work and shall bear all attributable costs and damages.
- 4.5 Cost for all re-inspections of work found to be defective and subsequently repaired, shall be borne by the Construction Manager if such defective work was performed knowingly contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations.

ARTICLE 5
SUBCONTRACTS

5.1 Definition:

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor.

5.2 Proposals:

Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after reviewing all proposals with the Owner and Architect-Engineer and all are satisfied that the subcontractor/supplier is qualified to perform work or provide materials for the Project.

5.3 Required Subcontractors' Qualifications and Subcontract Conditions:

1. Sub-contractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the Owner under this Agreement, to the extent of the work to be performed by the Subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its sub-subcontractor.

Insurance requirements for Subcontractors shall be no more stringent than those requirements imposed on the Construction Manager by the Owner.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

2. All subcontracts shall provide -

LIMITATION OF REMEDY- NO DAMAGES FOR DELAY

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its negotiated costs for such changes plus no more than seven percent (7%) for overhead, profit and bond costs.

The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedy for delays and changes in the work and eliminates any other remedies or claims for increase in the contract price, damages, losses or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions:

The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees, agents, subcontractors, the agents thereof and employees thereof, and all

other persons performing any of the work or supplying materials for the Project under a contract to the Construction Manager.

ARTICLE 6
SCHEDULE, TIME OF COMMENCEMENT
AND SUBSTANTIAL COMPLETION

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. These liquidated damages are the sole remedy for delay, shall in no way be deemed a waiver of the Owner's right to all other legal remedies in this Agreement.

In the event the Construction Manager does not achieve the Substantial Completion Date the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) for each calendar day the actual time of performance exceeds the authorized Substantial Completion Date for each separate GMP as applicable.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion Date, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

ARTICLE 7
GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the design documents are sufficiently complete to establish the scope of work for the Project, or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval, a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the Project to support the project phasing and schedule. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10; however, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs as defined under Article 9, plus the Construction Manager's costs and fees, or the GMP, whichever is less when the work is complete.

7.2 The GMP will only include those taxes, in the cost of the Project, which are legally enacted at the time the GMP is established.

7.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. Included in the GMP will be a Contractor's Contingency, which is included for the Construction Manager to use, with the Owner's consent. The contingency is intended to cover the costs associated with Project scope that were not adequately detailed at the time of GMP. The Contractor's Contingency is also intended to protect against price increases between the GMP and the completion of the 100% construction documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction and for price increases attributable to any code compliance reviews. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Contractor's Contingency prior to the release of funds by the Owner. Documentation for use of the Contractor's Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. The Architect-Engineer shall verify the actual costs. If there are funds remaining in the Contractor's Contingency at the conclusion of the Project, said funds will be returned to the Owner, through deductive change order.

7.4 When the Project is bid and one hundred percent (100%) of the trade contracts have been executed, the contingency within the GMP may be decreased in proportion to the percent of the work completed up to a maximum of fifty percent (50%). In other words, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten percent (10%) of the contingency within the GMP will be removed from the GMP by change order up to a maximum of fifty percent (50%) of the initial GMP contingency value. During the buyout period of the trade contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency as defined in Article 7.5

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

7.5 The Owner's Buyout Contingency shall be created by the savings generated by subcontractor buyout as set forth in Article 7.4 and also by reductions in scope that otherwise could reduce the GMP. The intent of this Owner's Buyout Contingency is to allow funds already within the GMP to remain in the GMP and be used at the Owner's discretion for scope issues that may become required and/or desired during the course of the Project.

Authorizations up to Fifty Thousand and 00/100 Dollars (\$50,000.00), or such other dollar amount as authorized by policy adopted by the City Council, for the use of the Owner's Buyout Contingency, may be granted by the City Manager. Authorizations, for more than Fifty Thousand and 00/100 Dollars (\$50,000.00), will be granted by the City Council unless the City Council authorizes an increase in the City Manager's authority for the same.

ARTICLE 8

CONSTRUCTION MANAGER'S COSTS

8.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, costs or fees, as set forth herein.

1. Design Phase/Pre-construction Costs - For the performance of the services set forth under Article 2 and for profit and overhead related to these services, the Construction Manager shall be paid a total amount of Ninety-two Thousand Four Hundred Seventy-seven and 53/100 Dollars (\$92,477.53) as set forth in **Exhibit "F"**, attached hereto. The Design Phase/Pre-construction Costs shall be paid according to the percent complete of the design phase.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit "C".

2. Construction Phase Costs - Prior to commencement of each Construction Phase, the Owner will direct the Construction Manager in writing to proceed into said Construction Phase. The Construction Phase Cost for work or services performed during the Construction Phase shall be an amount of *(To Be Determined at GMP)*. The Construction Phase Costs shall be paid according to the percent complete of the Project. The first monthly payment shall be due thirty (30) days following the issuance of the first Construction Authorization by the Owner's Representative and the final monthly payment shall be paid only when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, accepted by the Owner. If construction is authorized only for a part of the Project, the costs paid shall be proportionate to the amount of work authorized by the Owner.

A. Adjustments in Costs - For changes in the Project as provided in Article 10, the Construction Phase Costs shall be adjusted as follows:

1. The Construction Manager shall be paid an additional amount subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.

2. Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs paid to the Construction Manager unless such delays are as defined in Article 10.2.
3. The Construction Manager will not be due any additional Construction Phase Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed a cumulative total of two percent (2%) for each separate GMP. Should a GMP be increased by more than (*To Be Determined at GMP*) under the terms of Article 10 hereinafter, due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be eight percent (8%) of that portion of the accumulative increases in the GMP that exceed the GMP by more than two percent (2%).

Construction Manager's Exclusive Remedy - In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the Substantial Completion Date and payment of additional Construction Phase Costs and Construction Phase Fee as provided above.

B. Costs and Expenses Included in Construction Phase Costs – The following are included in the Construction Phase Costs for services during the Construction Phase:

1. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.
2. General operating expenses of the Construction Manager's principal and branch offices related to the Project.
3. The costs of all data processing staff.
4. Salaries or other compensation of the Construction Manager's employees at the job site.
5. General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
6. Those services set forth in Article 2.4(9)(A).
7. Job office supplies including but not limited to paper, pencils, paper clips, file folders, staples and janitorial supplies.

3. Construction Phase Fee - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the amount shall be eight percent (8%) of the GMP and shall be converted to a fixed amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid proportionally to the ratio of the cost of the work in place, including stored materials, as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less. The balance of the fee shall be paid when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by the Owner. The Construction Manager's exclusive remedy for any adjustments in the Construction Phase Fee is provided in Article 8.1(2)

ARTICLE 9

DIRECT COSTS OF THE PROJECT

9.1 Definition:

The term Direct Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction Services and paid by the Construction Manager, which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Direct Costs of the Project as defined herein. Such payment shall be in addition to the Construction Phase Costs stipulated in Article 8. Invoices submitted under this Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.2 Direct Cost Items:

1. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
2. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for work performed pursuant to contract under this Agreement.
3. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, employed or consumed in the performance of the work.
4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, transportation and delivery costs thereof, which are used in the support of a sub-

contractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.

5. Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction of the Project. The cost of the work shall include any subcontractor bonds the Construction Manager deems appropriate. There shall be no Construction Phase Fee on this item.
6. Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles provided they have resulted from causes other than the negligent misconduct of Construction Manager.
7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship or other problems caused by the negligence of the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Contract Documents or to correct any deficiency or damage caused by the negligent acts by the Construction Manager.
9. Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of subcontractors, except in the case of a subcontractor's default.
10. Costs for trash and debris control and removal from the site.
11. Costs incurred due to an emergency affecting the safety of persons and property.
12. Legal costs reasonably and properly resulting from the Project on behalf of the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - A. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - B. The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.

13. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Phase Costs as set forth in Article 8.
14. If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions work as a Direct Cost of the Project.
15. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit as a Direct Cost of the Project.
16. Transportation outside of Lake, Orange or Seminole for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and will be in accordance with the Construction Manager's standard personnel policy.
17. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
18. Costs for watchman and security services for the Project.
19. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel and costs for adequate storage and parking.
20. Costs for such temporary facilities and temporary protection during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
21. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Project.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders:

The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Substantial and/or Final Completion Dates being adjusted

accordingly. All changes in the Project, not covered by an authorized contingency, shall be authorized by a Change Order signed by the Owner before the change is implemented.

1. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Phase Fee, or other attributable cost of the Project.
2. The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:
 - A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - B. by unit prices stated in the Agreement or subsequently agreed upon;
 - C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Article 10.1(3).
 - E. Should any costs be required for design of an alternative system that would be advantageous to the Project and result in a deductive change order, the Construction Manager shall include the cost of the redesign services of the Architect-Engineer so that the Owner can make proper assessment of the cost of such change. Payment for additional services shall be made by the Owner.
3. If none of the methods set forth in Article 10.1(2) is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work if the cost exceeds that estimate without prior written approval by the Owner.
4. In the event of either Article 10.1(2) or Article 10.1(3) above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, of the increase in the Direct Cost of the Project as outlined in Article 9.
5. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

6. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
7. In the performance of the work, should concealed conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing structure be inconsistent with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial and/or Final Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.
8. In the event the Construction Manager encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
9. The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to this Article 10.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and such delay extends the Substantial and/or Final Completion Date, then the dates for completion may be equitably adjusted.

Only delays which are determined to extend the critical path for the schedule for constructing the Project, will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project:

The Owner will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial and/or Final Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. Changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11
DISCOUNTS

All discounts for prompt payment shall accrue to the Owner to the extent the cost of the item(s) purchased is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the cost associated with the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment, shall be credited to the cost of the Project.

ARTICLE 12
PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements:

The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1(5), showing, in detail, all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit "G"**. Five percent (5%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when such payment is generally the practice of the industry. At seventy-five percent (75%) completion, the Owner may approve a reduction of the retainage from five percent (5%) to two and one-half percent (2.5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in this Article 12. As a condition to application for a monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within thirty (30) days after receipt of information that a change to the Construction Documents has occurred.

12.2 Final Payment:

Final payment constituting the unpaid balance of the Construction Phase Cost of the Project and the Construction Phase Fee, shall be due and payable as described in Article 12.4 after Final Completion, provided that the Project has been finally completed, that the Construction Manager has verified by appropriate signature that it has completed all items and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager, the Owner, and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing the unfinished items are likewise listed separately. Thereafter, Owner shall pay the Construction Manager monthly, the amount retained for each incomplete item after each such item is completed.

12.3 Payments to Subcontractors:

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors less a retainage of five percent (5%) until the project is seventy-five percent (75%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from five percent (5%) to two and one-half percent (2.5%) thereafter. If there should remain items to be completed, the Construction Manager, the Owner and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to five percent (5%) of

the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors monthly, the amount retained for each incomplete item after each such item is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 Construction Manager's Payment Rights:

All payments for construction services shall be governed by and made in accordance with Florida's Prompt Payment Act, Florida Statutes, Section 218.735.

12.5 Payments for Materials and Equipment:

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at a Project site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments to Subcontractors:

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur, the Construction Manager shall return such moneys to the Owner, adjusting pay requests and project bookkeeping as required. However, this provision shall not apply should payments to subcontractors be withheld as a result of procuring normal process paperwork in accordance with the Construction Manager's contract with said subcontractor. The Construction Manager shall, if requested by the Owner, notify the Owner in writing as to the reason for withholding payment.

ARTICLE 13
INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity:

The Construction Manager agrees to be liable for any and all damages, losses and expenses incurred, by the Owner, in any way related to or caused by the acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers or the like, to the extent stemming from the services provided by this Agreement. The Construction Manager agrees to indemnify, defend and hold the Owner harmless for any and all claims, suits, judgments, damages, losses and expenses, including

but not limited to, court costs, expert witness fees, consultation services and attorney's fees, through and including any appeals, arising from and related to any and all acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like, to the extent stemming from the services provided by this Agreement. Said indemnification, defense and hold harmless activities shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural expiration of this Agreement.

13.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be from insurers qualified and doing business in Florida with an AM Best Company rating of no less than A.
2. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees, and the like, connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with Florida Worker's Compensation Law. In case any class of employees, engaged in hazardous work on the Project, is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be no less than \$1,000,000/1,000,000/1,000,000.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance to protect it from claims of damage for personal injury, including accidental death, as well as claims for property damage which may arise from its operations under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by it, and the amount of such insurance shall have the following minimum limits:
 - A. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence; GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00). There shall not be an EFIS Exclusion Endorsement on any general liability policy;

- B. Automobile Liability Coverages, One Million Dollars (\$1,000,000.00) combined single limit, and One Million Dollars (\$1,000,000.00) for each occurrence of bodily injury and property damage;
 - C. Excess Liability, Umbrella Coverage, Two Million Dollars (\$2,000,000.00) each occurrence.
- 4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain during the life of any such subcontract, insurance coverage of the types specified above or insure the activities of the subcontractors in the Construction Manager's policies, as specified above.
 - 5. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
 - 6. Products and completed operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages. The products and completed operations portions of the liability coverage shall extend for a period of two (2) years after the Final Acceptance of the Project by the Owner.
 - 7. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
 - 8. Indemnification Rider -
 - A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.

- B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - C. The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his agents or employees, 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 instruction by Architect-Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.
 - D. The Construction Manager hereby acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Owner and acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Articles 13.1 and 13.2.
9. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, issued to provide coverages on an "all risk" basis including theft. This coverage shall not lapse or be canceled because of partial occupancy by the Owner prior to Final Acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance policy shall have a deductible for each occurrence of Five Thousand and 00/100 Dollars (\$5,000.00). The Construction Manager shall be responsible for paying any deductible amount.
10. Certificate of Insurance - For every insurance policy required hereunder, the Construction Manager shall provide the Owner with a Certificate of Insurance evidencing such coverage for the duration of this Agreement, or such longer period if required hereunder. Said Certificate of Insurance shall be dated and show:
- A. The name of the insured Construction Manager;
 - B. The specified job by name and job number;
 - C. List the "CITY OF MOUNT DORA" as an Additional Insured;
 - D. Recognizes the Indemnification requirements of this Agreement;
 - E. The name of the insurer;
 - F. The number of the policy;

- G. The effective date;
- H. The termination date;
- I. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.

- 11. Receipt of certificates or other documentation of insurance or policies or copies of policies by the Owner, or by any of its representatives, which indicates less coverage than is required hereunder, does not constitute a waiver of the Construction Manager's obligation to fulfill the insurance requirements specified herein.
- 12. The Construction Manager shall ensure that any sub-contractor(s), hired to perform any of the work on any part of the Project, maintain appropriate insurance as determined by the Construction Manager. In addition, the Construction Manager shall maintain proof of same on file and made readily available upon request by the Owner.

13.3 Waiver of Subrogation:

- 1. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent they are covered by such insurance except such rights as either may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
- 3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
- 4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed and failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO
PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

1. If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may correct any deficiencies after providing seven (7) days written notice to the Construction Manager. In such an event, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of correcting such deficiencies and the Construction Manager's Construction Phase Fee shall also be reduced by the amount required to manage the correction of such deficiencies.
2. The Owner may, without prejudice to any other right or remedy and upon providing the Construction Manager and its surety, if any, seven (7) days written notice of failures or deficiencies, terminate this Agreement with the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever means or method the Owner, in its sole discretion, deems appropriate.
3. If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Construction Manager's insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule by falling forty-five (45) days or more behind the schedule adopted by the Construction Team, or if the Construction Manager fails to make prompt payments to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations or orders of any public authority having jurisdiction, or

otherwise is in breach of a material provision of this Agreement, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable termination expenses incurred by the Owner may be deducted from any payments which remain owed to the Construction Manager, excluding any monies owed the Construction Manager for subcontract work.

14.3 Termination by Owner Without Cause:

1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient without prejudice to any right or remedy.
2. Upon seven (7) days written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:
 - A. cease operations as directed by the Owner in the notice;
 - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and
 - C. terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for work directed to be performed prior to the effective date of termination stated in the notice.
3. In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with a reasonable fee, as defined in Article 8.1(2), overhead and profit on the work performed.

ARTICLE 15
ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Lake County, Florida. The parties waive all rights to trial by jury.

ARTICLE 16
NOTICE OF CLAIM; WAIVER OF REMEDIES

- 16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not

limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:

1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
2. The Construction Manager must submit a Notice of Claim to Owner within twenty (20) days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
3. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to submit the Request for Change Order.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus eight percent (8%) for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in work, and eliminates any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17

DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT

PURCHASE PROCEDURES FOR PUBLIC PROJECTS

17.1 Direct Materials Acquisition by Owner - Supply Bonds:

1. The Construction Manager shall ensure that each subcontractor includes Florida state tax and other applicable sales tax for all material, supplies and equipment included in a subcontractor's bid.

2. The Owner may, if not prohibited by law, exercise a right to purchase directly, various construction materials, supplies and equipment that may be part of this Agreement or of a subcontract, provided that the Owner receives proper authorization from the State of Florida in the form of a Technical Assistance Advisement as set forth in Florida Administrative Code, Rule 12-11.003. Any materials purchased by the Owner shall be referred to as "Owner Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner Purchased Materials shall be governed by the terms and conditions of this Article, which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
3. The Owner will issue its own purchase orders directly to a vendor. The Owner's Purchase Order shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address and exemption number with issue and expiration date shown. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager or subcontractor for prices negotiated by the Construction Manager or subcontractor, as applicable. The Construction Manager will provide all the necessary information for preparation of the purchase orders by the Owner and will coordinate the purchase of the materials in a timely manner so as to not negatively impact the performance of the construction activity of the Project.
4. The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and the management of all applicable warranties.
5. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the same manner that all other Owner invoices are processed. The Owner shall have the right to

assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.

6. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
7. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
8. The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and the Construction Manager. If a supply bond is required, the cost of the bond will be added to the amount of the Purchase Order. The premium cost for this supply bond shall be included in the bid price. Verifying that a designated material supplier can furnish a supply bond, if required, will be the responsibility of the Construction Manager. Owner reserves the right to waive the requirement of providing a supply bond at the discretion of Owner.
9. If the State of Florida assesses any sales tax penalties and/or interest against the Construction Manager or any of its subcontractors or material suppliers relating to the direct acquisition of materials and/or equipment by Owner as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by Owner to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

18.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

1. The Construction Manager has included Florida sales tax and other applicable taxes in its bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in any subcontractor's bid and/or contract.
2. Any equipment, materials or supplies directly purchased by the Owner that are included in the Construction Manager's contract or any subcontract shall be referred to as Owner Purchased Materials and the responsibilities of both the Owner and the subcontractor relating to such Owner Purchased Materials shall be governed by these procedures.
3. Material suppliers shall be selected by the Construction Manager or subcontractor, as applicable.

4. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis and the contract amount shall be reduced by the net undiscounted amount of the purchase orders issued by the Owner, plus all sales tax included.
5. The Construction Manager shall provide a list of all intended suppliers, vendors and materialmen for consideration as Owner Purchased materials with a description of the materials to be supplied, estimated quantities and prices. This information shall be submitted to the Owner as soon as practicable.
6. The Construction Manager or subcontractors, as applicable, shall prepare a purchase order requisition form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials, which Owner has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:
 - A. the name, address, telephone number and contact person for the material supplier;
 - B. manufacturer or brand, model or specification number of the item;
 - C. estimated quantity needed;
 - D. the price quoted by the supplier for the materials identified therein;
 - E. any sales tax associated with such quote; and
 - F. delivery dates
7. Construction Manager or subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors, such as payment terms, warranties, retainage and the like. The purchase order requisition forms are to be submitted to the Owner's Representative no less than seven (7) days prior to the need for ordering such Owner Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such directly purchased materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project
8. After receipt of the purchase order requisition form, Owner shall prepare the Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager or subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Construction Manager shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Owner's

Purchase Orders shall be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown.

9. In conjunction with the execution of the Purchase Orders, by the suppliers, one or more deductive Change Orders shall be issued, referencing the full value of all Owner Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in the Construction Manager's price or subcontractor's bid.
10. Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by the Owner in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment and materials following acceptance of items by the Owner. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation and other arrangements normally required for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of the Construction Manager.
11. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
12. The Construction Manager shall ensure that Owner Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformity in the Owner Purchased Material, upon such visual inspection, the Construction Manager shall not utilize such

nonconforming or defective materials in the work, shall promptly take action to remedy the defect or nonconformance so as not to delay the Project and shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Construction Manager shall notify the Owner of such occurrence. If the Construction Manager fails to perform such inspection and otherwise incorporates defective or nonconforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the Owner resulting from the incorporation of such materials into the Project, including liquidated or delay damages.

13. The Construction Manager shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession. The Construction Manager shall account monthly to the Owner for any Owner Purchased Materials delivered into the Construction Manager's possession, including portions of all such materials, which have been incorporated into the work.
14. The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products. All repairs, maintenance or damage repair calls shall be handled by the Construction Manager for resolution with the appropriate supplier or vendor.
15. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
16. The transfer of possession of Owner Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the Construction Manager. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner Purchased Materials. Owner Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the project. The Construction Manager shall have the duty to safeguard, store and protect all Owner Purchased Materials.
17. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner Purchased equipment, materials or supplies. Such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
18. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials.

19. On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of Owner Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects in such materials.
20. In order to arrange for the prompt payment to the supplier, the Construction Manager shall provide the Owner with a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. The check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.
21. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amounts shall be credited with an additive Change Order to the applicable subcontractor agreement with the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the Owner's direction.

ARTICLE 18

MISCELLANEOUS

18.1 Harmony:

1. The Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.
2. The Construction Manager further agrees that the above provision will be included in all contracts with the subcontractors; however, said provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.2 Dispute Resolution:

1. All claims, disputes and other matters in question, hereinafter referred to as a "Controversy", between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the

American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.

2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

18.3 Construction Manager's Project Records:

The Construction Manager's Project records shall be maintained for the minimum period required by state and federal law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

18.4 Consequential Damages:

The parties mutually waive all claims for consequential damages, except to the extent paid for by insurance maintained for this project.

18.5 Public Records:

1. Pursuant to Florida Statutes, Section 119.0701:

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S/OWNER'S CUSTODIAN OF PUBLIC RECORDS:

**CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM**

2. Construction Manager agrees to comply with public records laws, specifically to:
 - A. Keep and maintain public records required by the City/Owner to perform the services set forth herein.
 - B. Upon request from the City's/Owner's custodian of public records, provide the City/Owner 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 Florida Statutes, Chapter 119, or as otherwise provided by law.

- C. Ensure that public records which 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 Construction Manager does not transfer the records to the City/Owner.
- D. Upon completion of the contract, transfer, at no cost to the City/Owner, all public records in possession of the Construction Manager or keep and maintain public records required by the City/Owner to perform the services set forth herein. If the Construction Manager transfers all public records to the City/Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City/Owner, upon request from the City's/Owner's custodian of public records, in a format that is compatible with the information technology systems of the City/Owner.

18.6 Severability:

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

18.7 Waiver:

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

18.8 Notice:

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the Owner and the Construction Manager. All notices required and/or made pursuant to this Agreement to be given to the Owner and the Construction Manager shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner: City of Mount Dora
Attention: City Manager
510 N. Baker Street
Mount Dora, Florida 32757

with copy to: City Attorney
Bell & Roper, P.A.
2707 E. Jefferson Street
Orlando, Florida 32803

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

18.9 Modification:

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

18.10 Headings:

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

18.11 Joint Authorship:

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

18.12 Equal Opportunity Employer:

The Construction Manager is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Construction Manager will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws. During the performance of this contract, the Construction Manager agrees as follows:

1. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation,

gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
3. The Construction Manager will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.
4. The Construction Manager will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Construction Manager's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
6. The Construction Manager will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
7. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules,

regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

8. The Construction Manager will include the provisions of paragraphs (1) through and including this paragraph (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontract or purchase order as necessary.

18.13 Compliance with the Davis-Bacon Act:

1. To be determined at GMP, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Construction Manager shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
2. The Construction Manager is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

18.14 Compliance with the Copeland "Anti-Kickback" Act:

1. The Construction Manager shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Construction Manager shall ensure that any subcontracts contain the above clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all such contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the Agreement.

18.15 Clean Air Act:

1. The Construction Manager agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Construction Manager agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Construction Manager agrees to include these requirements in each subcontract exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA.

18.16 Applicable Licensing and Compliance with all Laws:

The Construction Manager, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein. The Construction Manager, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards and officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement, including any required processes, procedures or actions necessary to assist the Owner with reimbursement or enable the Owner to seek reimbursement from FEMA if the need arises. Notwithstanding any language herein to the contrary, in the event that any laws, ordinances, judicial decisions, orders, or regulations of the federal, state, county, or municipal governments change after execution of this Agreement, Construction Manager shall be entitled to an equitable adjustment in time as applicable and price to the extent the Construction Manager's direct costs, not including labor, are affected. Any such adjustment will be determined at the time of such an occurrence and there shall only be a construction phase fee on this item if it exceeds two percent (2%) for each separate GMP.

18.17 Employment Eligibility Verification (E-Verify):

Pursuant to Florida Statutes, Section 448.095, the CONTRACTOR shall be registered with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. In addition, the CONTRACTOR shall require any and all subcontractors performing work in accordance with this Agreement to register with and utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility status of all employees performing work under this Agreement as well as all newly hired employees. Any such subcontractor shall provide an affidavit to the CONTRACTOR stating that the subcontractor does not employ, contract with or subcontract with any ineligible individuals and the CONTRACTOR must keep a copy of

said affidavit for the duration of this Agreement. Violation of this section is subject to immediate termination of this Agreement by the CITY without regard to any notice otherwise required herein. In the event the CITY incurs costs as a result of the CONTRACTOR'S breach of this provision, any and all such costs shall be paid by the CONTRACTOR immediately upon receipt of notice of the same from the CITY. Information on registration for and use of the E-Verify Program may be obtained at the Department of Homeland Security website: <http://www.dhs.gov/E-Verify>.

18.18 Sovereign Immunity:

The city expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section, article or paragraph of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of sovereign immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature, and the cap on the amount and liability of the CITY for damages, attorney fees and costs, regardless of the number or nature of claims in tort, equity or contract, shall not exceed the dollar amount set by the Florida Legislature for tort. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the CITY which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law. This section shall not limit any remedies as specifically contained in this Agreement.

18.19 Use of City Logo, Name, Seal and/or Flag:

The Construction Manager may only use the City of Mount Dora's name, logo seal and/or flag with the express written permission of the City and consistent with any City policy related to use of the same.

(Signatures on the following page)

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the 16 day of March, 2021.

WHARTON-SMITH, INC.

By: [Signature]

Print: Ronald F. Davoli

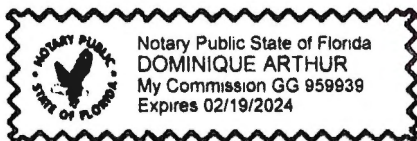
Title: President / CEO

STATE OF FLORIDA

COUNTY OF Seminole

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of Ronald F. Davoli, as President / CEO of Wharton-Smith, Inc., who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Construction Manager, who is personally known to me or who produced personally known as identification, and who did/did not take an oath this 11 day of March, 2021.

(stamp)



[Signature]
NOTARY PUBLIC, State of Florida

CITY OF MOUNT DORA

[Signature]
CATHERINE T. HOECHST

MAYOR of the City of Mount Dora, Florida

ATTEST:

[Signature]
GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.

[Signature]
Sherry G. Sutphen
City Attorney

EXHIBIT “A”
Construction Team

The Construction Team for the Project shall consist of the following:

- Owner’s Representative: City Construction Project Manager
- Architect-Engineer: CPH, Inc.
- Construction Manager: Wharton-Smith, Inc.

EXHIBIT “B”
Drawings and Specifications
(upon completion)

EXHIBIT “C”
Construction Manager Staff
(To be determined at GMP)

EXHIBIT "D"
CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:

TO OWNER:
Name
Address

TO CONSTRUCTION MANAGER:
Name
Address

Copy to:
___ Architect
___ Engineer
___ Field
___ Other

Project or portion of Project Designated for Partial Occupancy or Use:

The work performed on the Project under the Agreement has been reviewed and found, the Architect's best knowledge, information and belief to be substantially complete. Substantial Completion is the stage in the progress of the work when the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The date of substantial completion of the Project or portion designated above is the date of issuance established by this Certificate of Substantial Completion, which is also the date of commencement of applicable warranties required by the Contract Documents as stated below:

Architect

By: _____

Date of Substantial Completion: _____

Print: _____

(Warranty Date of Commencement)

A Punch List of items to be completed or corrected is attached hereto. The failure to include any items on such Punch List does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost Estimate of Work that is incomplete or defective: _____

The Construction Manager will complete or correct the work on the Punch List within ____ days from the above date of Substantial Completion.

Construction Manager

By: _____

Date: _____

Print: _____

The Owner hereby accepts the work or designated portions as substantially complete and will assume full possession at _____ am/pm on _____, 20__.

Owner

By: _____

Date: _____

Print: _____

The responsibilities of the Owner and Construction Manager for security, maintenance, utilities, damage and insurance are as follows:

EXHIBIT "E"
CERTIFICATE OF FINAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:
SUBSTANTIAL COMPLETION DATE:
FINAL PUNCHLIST INSPECTION DATE:

The Construction Manager hereby certifies that the work and all other requirements have been completed in accordance with the Contract Documents, including, but not limited to:

- ☐ completion of all discrepancies (Punchlist Items) noted at the time of Substantial Completion
- ☐ submission of "as-built" plans and specifications, shop drawings, and other record documents
- ☐ completion of all Owner training – submission of all contractually required stock and spare parts
- ☐ submission of all final Operation & Maintenance documents and other closeout deliverables
- ☐ submission of consent of Builder's surety
- ☐ submission and approval of all remaining change order proposals, claims, and applications for payment
- ☐ payment of all costs incurred for equipment, material, labor and services against the Project

The Construction Manager further certifies that:

- ☐ no liens have been attached against the Project
- ☐ no suits are pending by reason of work on the Project under the Contract for Construction
- ☐ all Workers' compensation claims are covered by Workers' Compensation Insurance as required by law
- ☐ all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
- ☐ all public liability claims are adequately covered by insurance and that the Construction Manager shall save, protect, defend, indemnify and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event, occurrence, or omission related to performance of the work on the Project contemplated under said Contract for Construction.

Upon execution below, this Project will be considered complete. This consideration does not relieve the Construction Manager from its post-construction responsibilities, including correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract or under Florida law.

Construction Manager

By: _____

Date: _____

Print: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization of _____, as _____ of Wharton-Smith, Inc., who is authorized to bind Wharton-Smith, Inc., and who is personally known to me OR has produced _____ as identification this ____ day of _____, 202__.

(stamp)

NOTARY PUBLIC, State of Florida

Recommend By:

Architect

By: _____

Date: _____

Print: _____

Accepted By:

Owner

By: _____

Date: _____

Print: _____

EXHIBIT “F”
Pre-construction Phase Costs

OWNER: CITY OF MOUNT DORA
PROJECT: WWTP #1 REHABILITATION
BUDGET: \$12M
CURRENT DESIGN STATUS: 60%

				OFFICE AND FIELD MANAGEMENT STAFF														ESTIMATING STAFF										SUPPORT STAFF								WHARTON-SMITH PERSONNEL				SUBCONTRACTOR			
				Project Executive	Project Director	Preconstruction Manager	Senior Project Manager	Project Manager	Assistant Project Manager	General Superintendent	Director of Estimating	Estimator DIV 3 4	Estimator DIV 2	Estimator DIV 15	Estimator DIV 4 14	Administrative Assistant	Quality Manager	Safety Manager	Project Accountant																								
Item	TASK	QTY	UNIT	Rate	\$134.00	Rate	\$130.00	Rate	\$112.00	Rate	\$119.00	Rate	\$83.00	Rate	\$74.00	Rate	\$115.00	Rate	\$138.00	Rate	\$77.00	Rate	\$70.00	Rate	\$71.00	Rate	\$71.00	Rate	\$64.00	Rate	\$117.00	Rate	\$95.00	Rate	\$70.00	HR's	LABOR COSTS	MISC. COSTS (PRO-RATED)	SUBTOTAL	SUB	COST	\$ TOTALS	
TASK 1	GENERAL																																										
1.1	PROJECT KICKOFF MEETING	1	EA		-	5.0	650	5.0	560	5.0	595		-		-		-		-		-		-		-		-	2.0	128		-	-	-	-	17.0	1,933.00	37.23	1,970.23			1,970.23		
1.2	DESIGN SUBMITTAL REVIEW WORKSHOPS (60% / 90%)	2	EA		-	10.0	1,300	10.0	1,120	10.0	1,190	5.0	415		-		-		-		-		-		-		-	4.0	256		-	-	-	-	39.0	4,281.00	85.41	4,366.41			4,366.41		
1.3	MONTHLY PROGRESS MEETINGS	8	EA		-	16.0	2,080	16.0	1,792	16.0	1,904	8.0	664		-		-		-		-		-		-		-		-		-	-	-	56.0	6,440.00	122.64	6,562.64			6,562.64			
1.4	VALUE ENGINEERING REVIEW MEETING	1	EA		-	4.0	520	4.0	448	4.0	476		-		-		-		-		-		-		-		-		-		-	-	-	12.0	1,444.00	26.28	1,470.28			1,470.28			
1.5	SUBJECT SPECIFIC MEETINGS (ELECTRICAL, ETC.)	6	EA		-	6.0	780	12.0	1,344	12.0	1,428	6.0	498		-		-		-		-		-		-		-		-		-	-	-	36.0	4,050.00	78.84	4,128.84			4,128.84			
1.6	SITE VISITS & INVESTIGATION	1	EA		-		-	4.0	448		-	4.0	332		-		-		-		-		-		-		-		-		-	-	-	12.0	1,240.00	26.28	1,266.28			1,266.28			
1.7	SUBSURFACE UTILITY EXPLORATION (WS FIELD SUPPO	0	LS		-		-		-		-		-		-		-		-		-		-		-		-		-		-	-	-	0.0			-		-				
	SUBTOTALS			0.0	-	41.0	5,330	51.0	5,712	47.0	5,593	23.0	1,909	0.0	-	4.0	460	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	6.0	384	0.0	-	0.0	-	0.0	-	172.0	19,388.00	376.68	19,764.68			19,764.68	
TASK 2	PRELIMINARY COST ESTIMATES																																										
2.1	60% SUBMITTAL COST ESTIMATE	1	EA	2.0	268	2.0	260	8.0	896	8.0	952		-		-		-	24.0	3,312	20.0	1,540	8.0	560	12.0	852	4.0	284	8.0	512		-	-	-	-	96.0	9,436.00	210.24	9,646.24			9,646.24		
2.2	90% SUBMITTAL COST ESTIMATE	1	EA	2.0	268	2.0	260	8.0	896	8.0	952		-		-		-	24.0	3,312	20.0	1,540	8.0	560	12.0	852	4.0	284	8.0	512		-	-	-	-	96.0	9,436.00	210.24	9,646.24			9,646.24		
	SUBTOTALS			4.0	536	4.0	520	16.0	1,792	16.0	1,904	0.0	-	0.0	-	0.0	-	48.0	6,624	40.0	3,080	16.0	1,120	24.0	1,704	8.0	568	16.0	1,024	0.0	-	0.0	-	0.0	-	192.0	18,872.00	420.48	19,292.48			19,292.48	
TASK 3	DESIGN REVIEW AND VALUE ENGINEERING																																										
3.1	60% SUBMITTAL CONSTRUCTABILITY REVIEW	1	EA		-	4.0	520	16.0	1,792	4.0	476	8.0	664		-	4.0	460		-		-		-		-		-	8.0	512		-	-	-	-	44.0	4,424.00	96.36	4,520.36			4,520.36		
3.2	90% SUBMITTAL CONSTRUCTABILITY REVIEW	1	EA		-	4.0	520	16.0	1,792	4.0	476	8.0	664		-	4.0	460		-		-		-		-		-	8.0	512		-	-	-	-	44.0	4,424.00	96.36	4,520.36			4,520.36		
3.3	100% SUBMITTAL CONSTRUCTABILITY REVIEW	1	EA		-	2.0	260	8.0	896	2.0	238	2.0	166		-		-		-		-		-		-		-	4.0	256		-	-	-	-	18.0	1,816.00	39.42	1,855.42			1,855.42		
	SUBTOTALS			0.0	-	10.0	1,300	40.0	4,480	10.0	1,190	18.0	1,494	0.0	-	8.0	920	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	20.0	1,280	0.0	-	0.0	-	0.0	-	106.0	10,664.00	232.14	10,896.14	-		10,896.14	
TASK 4	CPM MASTER SCHEDULE																																										
4.1	SCHEDULE DEVELOPMENT (60% SUBMITTAL)	1	EA	1.0	134	2.0	260	2.0	224	2.0	238	24.0	1,992		-	2.0	230		-		-		-		-		-	2.0	128		-	-	-	-	35.0	3,206.00	76.65	3,282.65			3,282.65		
4.2	SCHEDULE UPDATE (90% SUBMITTAL)	1	EA	1.0	134	2.0	260	2.0	224	2.0	238	16.0	1,328		-	2.0	230		-		-		-		-		-	2.0	128		-	-	-	-	27.0	2,542.00	59.13	2,601.13			2,601.13		
4.3	FINAL UPDATE (100% SUBMITTAL)	1	EA		-	1.0	130	1.0	112	1.0	119	8.0	664		-		115		-		-		-		-		-	1.0	64		-	-	-	-	13.0	1,204.00	28.47	1,232.47			1,232.47		
	SUBTOTALS			2.0	268	5.0	650	5.0	560	5.0	595	48.0	3,984	0.0	-	5.0	575	0.0	-	0.0	-	0.0	-	0.0	-	0.0	-	5.0	320	0.0	-	0.0	-	0.0	-	75.0	6,952.00	164.25	7,116.25			7,116.25	
TASK 5	BIDDING, PROCUREMENT, AND GMP																																										
5.1	OWNER DIRECT PURCHASE PLAN	1	LS		-		-	4.0	448	2.0	238	4.0	332		-		-		-		-		-		-		-	2.0	128		-	-	-	-	12.0	1,146.00	26.28	1,172.28			1,172.28		
5.2	LONG LEAD EQUIPMENT / EARLY WORK PACKAGES	1	LS	2.0	268	2.0	260	8.0	896	4.0	476	4.0	332	4.0	296		-		-		-		-		-		-	2.0	128		-	-	-	-	26.0	2,656.00	56.94	2,712.94			2,712.94		
5.3	GMP DEVELOPMENT (BID PACKAGES)	1	LS		-	8.0	1,040	32.0	3,584	8.0	952	32.0	2,656	4.0	296		-	16.0	2,208	8.0	616	8.0	560	8.0	568	8.0	568	4.0	256		-	-	-	-	136.0	13,304.00	297.84	13,601.84			13,601.84		
5.4	PRE-BID SITE VISITS	1	EA		-		-	4.0	448	4.0	476	4.0	332		-		-		-		-		-		-		-		-		-	-	-	-	12.0	1,256.00	26.28	1,282.28			1,282.28		
5.5	RECEIVE BIDS (SINGLE BID DAY)	1	EA		-		-	6.0	672		-	6.0	498	6.0	444		-		-		-		-		-		-	6.0	384		-	-	-	-	24.0	1,998.00	52.56	2,050.56			2,050.56		
5.6	REVIEW BIDS AND RECOMMEND AWARD	1	LS		-	2.0	260	8.0	896	2.0	238	8.0	664		-		-		-		-		-		-		-	4.0	256		-	-	-	-	24.0	2,314.00	52.56	2,366.56			2,366.56		
5.7	FINAL GMP ASSEMBLY	1	EA	2.0	268	2.0	260	16.0	1,792	2.0	238	4.0	332		-		-		-		-		-		-		-	16.0	1,024		-	-	-	-	42.0	3,914.00	91.98	4,005.98			4,005.98		
	SUBTOTALS			4.0	536	14.0	1,820	78.0	8,736	22.0	2,618	62.0	5,146	14.0	1,036	0.0	-	16.0	2,208	8.0	616	8.0	560	8.0	568	8.0	568	34.0	2,176	0.0	-	0.0	-	0.0	-	276.0	26,588.00	604.44	27,192.44			27,192.44	
TASK 6	MISCELLANEOUS																																										
6.1	SITE SPECIFIC SAFETY PLAN	0	EA		-		-		-		-		-		-		-		-		-		-		-		-		-		-	-	-	-	0.0	-	-	-	-	-			
6.2	SITE SPECIFIC QUALITY PLAN	0	EA		-		-		-		-		-		-		-		-		-																						

EXHIBIT “G”
Partial Pay Request Form



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Approval of Agreement between the School Board of Lake County and the City of Mount Dora for School Resource Officer Program 2023-2024

Introduction:

This is a request for City Council to approve the agreement between the School Board of Lake County and the City of Mount Dora for School Resource Officer (SRO) Program for the 2023-2024 school year.

Discussion:

This is an agreement to provide SROs to Mount Dora High School, Mount Dora Middle School, and Triangle Elementary School to interact with students during the regular class schedule and at extra-curricular school activities so as to provide additional security to students, school personnel, the school community, and school property.

Budget Impact:

Reimbursement of \$201,342.43 for Mount Dora Police Department officers' salaries and benefits dedicated to each of the three schools during the school year.

Strategic Impact:

Goal 2: Public Safety

Partnership between the City of Mount Dora and the School Board of Lake County provides a safe environment for students, faculty, and staff and allows for positive relationship building between the SROs and students.

Recommendation:

City Council approve the agreement between the School Board of Lake County and the City of Mount Dora for School Resource Officer Program 2023-2024.

Attachment(s):

1. City of Mount Dora SY23-24

Prepared by: Jeanann Hand, City Clerk

Reviewed by: Michael Gibson, Interim Chief of Police
Aneta Barton, Budget Director
Sherry Sutphen, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/17/2023

Approved - 7/25/2023

Approved - 7/26/2023

Approved - 7/26/2023

Final Approval - 7/26/2023

**AGREEMENT BETWEEN THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA,
AND THE CITY OF MOUNT DORA, FOR
SCHOOL RESOURCE OFFICER PROGRAM [2023-2024]**

This **AGREEMENT** is entered into by and between the **City of Mount Dora**, a Florida municipal corporation, hereinafter referred to as “**LAW ENFORCEMENT AGENCY**” and the **School Board of Lake County, Florida**, a political subdivision of the State of Florida, hereinafter referred to as “**SCHOOL BOARD**”.

WITNESSETH:

WHEREAS, the **SCHOOL BOARD** is seeking three (3) School Resource Officers (SROs) to interact with students during the regular class schedule and at extra-curricular school activities so as to provide additional security to students, school personnel, the school community and school property; and

WHEREAS, the **LAW ENFORCEMENT AGENCY** is willing to place three (3) **City of Mount Dora** Police Officers at **Triangle Elementary (1), Mount Dora Middle (1), Mount Dora High (1)** for the purpose of carrying out this school program.

NOW, THEREFORE, in and for consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree that the **LAW ENFORCEMENT AGENCY** will provide three (3) sworn Police Officers who are certified pursuant to Section 943.10(1) *Florida Statutes* to the **SCHOOL BOARD** to act as SROs at the three (3) designated schools under the terms and conditions of this Agreement.

1. Term of Agreement. The term of this Agreement shall be for the next school year, beginning the 10th day of August 2023 through the last day of school for students in May 2024.

2. Compensation. The **SCHOOL BOARD** will pay the **City of Mount Dora** the sum of Two hundred one three hundred forty-two Dollars and Forty-three Cents (\$201,342.43) for services of the three (3) SROs provided pursuant to the terms of this Agreement. Such compensation shall be invoiced to the **SCHOOL BOARD** by the **LAW ENFORCEMENT AGENCY** in equal quarterly installments (September, November, February and May) commencing on the 1st day of September 2023. Invoices shall be paid by the **SCHOOL BOARD**

within fifteen (15) days of receipt. In the event that The Board of County Commissioners of Lake County, Florida, agrees to pay for any or all of the police officers assigned to the schools pursuant to this Agreement, then the LAW ENFORCEMENT AGENCY agrees that the SCHOOL BOARD may assign its obligation to pay under this section to The Board of County Commissioners of Lake County, Florida.

3. Scope. The LAW ENFORCEMENT AGENCY shall assign an SRO for three (3) designated schools. The SROs shall interact with students and provide security at the three (3) designated schools. In addition, the SROs shall have the duties and responsibilities listed in Exhibit “A” attached hereto.

4. Background Investigations. The LAW ENFORCEMENT AGENCY represents and warrants to the SCHOOL BOARD that the LAW ENFORCEMENT AGENCY has read and is familiar with Sections 1012.32, 1012.465, 1012.467 and 1012.468, *Florida Statutes* regarding background investigations. The LAW ENFORCEMENT AGENCY covenants to comply with all requirements of the above-cited statutes and shall provide SCHOOL BOARD with proof of compliance upon request. The LAW ENFORCEMENT AGENCY agrees, to the extent permitted by law and only to the extent permitted by 768.28, *Florida Statutes*, to indemnify and hold harmless the SCHOOL BOARD, it’s officers, agents and employees from any liability in the form of physical injury, death, or property damage resulting from the LAW ENFORCEMENT AGENCY’s failure to comply with the requirements of this paragraph or Florida Statute Sections, 1012.32, 1012.465, 1012.467 and 1012.468, *Florida Statutes*. Any claim against the LAW ENFORCEMENT AGENCY by the SCHOOL BOARD under the preceding sentence shall not include punitive damages or any interest for the period before judgment. Additionally, the LAW ENFORCEMENT AGENCY shall not be liable pursuant to this indemnity to pay a claim or judgment by any one person which exceeds the sum of \$200,000 or any claim or judgment, or portions thereof, which, when totaled with all other claims or judgments paid by the LAW ENFORCEMENT AGENCY arising out of the incident or occurrence, exceeds the sum of \$300,000. Further, nothing in this paragraph shall be construed as an admission of liability on behalf of the LAW ENFORCEMENT AGENCY.

5. Assignment of Officers. The LAW ENFORCEMENT AGENCY shall determine which SROs will be assigned under this Agreement and will also determine the particular school to which the SRO will be assigned to. The LAW ENFORCEMENT AGENCY shall provide a notice of the assigned SROs to the school principals of the three (3) designated schools. In the event that the principal of the school where the SRO is assigned believes that the particular SRO is not effectively performing his/her duties and responsibilities, the principal shall notify the SRO in writing. If the situation is not corrected within three (3) working days, the principal shall contact the SRO's immediate supervisor and the Superintendent's designee in writing and provide a copy of said notice to each of them. If the situation is not resolved to the mutual satisfaction of both the SRO's immediate supervisor and the Superintendent's designee within ten (10) days, or if, during the same contract period, the principal determines for a second time that the SRO is not effectively performing his/her duties and responsibilities, then the Principal shall recommend to the Superintendent that the SRO be removed from the program at his/her school, and shall state the reasons as well as the efforts to resolve the problems in writing. The Superintendent, or his/her designee, shall review the request and, if approved, shall provide written notification to the LAW ENFORCEMENT AGENCY who shall transfer the SRO or take other appropriate action within ten (10) business days. In the event the principal considers the SRO's conduct to present a threat to the safety or well-being of the students or staff, the principal will immediately notify the Superintendent and the LAW ENFORCEMENT AGENCY. Upon receipt of such notification, the LAW ENFORCEMENT AGENCY shall take appropriate action.

6. Dismissal/Replacement/Absence.

The LAW ENFORCEMENT AGENCY may dismiss or reassign SROs with or without cause. In the event of the resignation, dismissal, or reassignment of an SRO, or in the case of long-term absences by an SRO, the LAW ENFORCEMENT AGENCY shall provide a temporary replacement for the SRO as soon as practical.

7. Leaves/Coverage.

The Chief of Police or another designated scheduling officer will approve vacations, sick leaves, and other leaves of absence for the SRO. The SRO will communicate approved vacation,

sick leaves, trainings or any other leave that impacts SRO presence in schools with the SCHOOL BOARD'S Safety and Security Specialist.

LAW ENFORCEMENT AGENCY shall provide coverage of an SRO during any time in which the SRO will be off campus of the school to include, but not be limited to vacations, sick leaves, other leaves of absence or due to other related assignments.

8. Hours of Assignment. The SROs will be stationed at the three (3) designated schools for eighty (80) hours per two-week period, Monday through Friday, as assigned and scheduled by the respective school principal and as approved by the LAW ENFORCEMENT AGENCY.

9. Additional Hours of Assignment. Additional hours of assignment during a two-week period may be made with prior approval of the LAW ENFORCEMENT AGENCY, if requested by the respective school principal. If the additional hours worked require that overtime be paid to the SROs, the SCHOOL BOARD will reimburse the LAW ENFORCEMENT AGENCY for overtime paid at the SRO's existing pay rate.

10. Off Campus Assignments. Upon the request of the respective school principal and with the prior approval of the LAW ENFORCEMENT AGENCY, an SRO's duties may occasionally include his/her assignment at school functions and activities that are held off campus.

11. Reassignment in Emergency Situations. Nothing in this Agreement shall prevent or interfere with the ability of the LAW ENFORCEMENT AGENCY to temporarily withdraw an assigned SRO from his/her post at the three (3) designated schools to respond to emergency situations as determined in the sole judgment and discretion of the LAW ENFORCEMENT AGENCY.

12. Supervising Authority. During the term of this Agreement, the SROs assigned shall remain employees of the LAW ENFORCEMENT, under the authority of the chain of command of the LAW ENFORCEMENT AGENCY and subject to all other rules and regulations of the LAW ENFORCEMENT AGENCY. The SROs will report to their respective school principal for assignment of duties and work schedules, including the extracurricular activities during the regular school day for up to eighty (80) hours for each officer per two-week period. Each SRO shall

remain, at all times, an employee of the LAW ENFORCEMENT AGENCY. Workers Compensation coverage, as required by law, will be provided for the officer by the LAW ENFORCEMENT AGENCY.

13. Salary and Benefits. The LAW ENFORCEMENT AGENCY will provide the salary and benefits to each SRO assigned, including uniforms and equipment and any applicable overtime pay as agreed to above.

14. Vehicle. The LAW ENFORCEMENT AGENCY will provide vehicles for SROs if or when determined necessary by the LAW ENFORCEMENT AGENCY.

15. Threats to School Safety.

A. Pursuant to Section 1006.13(4), *Florida Statutes*, any acts that pose a threat to school safety, whether committed by a student or adult, shall be reported to the School Principal, or his or her designee, who shall report the acts to the SRO and the School Board's School Safety Specialist.

B. If requested by the School Principal, or his or her designee, the SRO, or other appropriate law enforcement officers, shall assist in the investigation of the acts that pose a threat to school safety; upon conclusion of the investigation, the SRO shall report the findings of the investigation to the School Board's School Safety Specialist to properly document the disposition of the incident. Additionally, the School Principal, or his or her designee, shall consult with SRO concerning appropriate delinquent acts and crimes.

16. Termination of Agreement. This Agreement may be terminated by either party upon thirty (30) days written notice. Notice shall be deemed given as of the date of deposit of such written NOTICE in the course of transmission in the United States Postal Service and addressed as follows:

SCHOOL BOARD:

Superintendent of Schools
School Board of Lake County
201 West Burleigh Boulevard
Tavares, FL 32778

LAW ENFORCEMENT
AGENCY:

Chief of Police
City of Mount Dora Police
Department
1300 N. Donnelly Street
Mount Dora, FL 32757

Upon termination pursuant to this subsection, payment will be made by the SCHOOL BOARD or reimbursement made by the LAW ENFORCEMENT AGENCY based on a pro rata charge for services for that portion of the school year covered by this Agreement prior to termination.

17. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereto and supersedes all prior Agreements, representations and understandings either oral, written or otherwise relating thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates under each signature.

“SCHOOL BOARD”

**THE SCHOOL BOARD OF LAKE COUNTY,
FLORIDA**

By: _____,
Mark Dodd, Chairperson

Date: _____

Approved as to form:

Attest: _____
Diane S. Kornegay, Superintendent

School Board Attorney

**“LAW ENFORCEMENT AGENCY”
CITY OF MOUNT DORA**

By: _____
Crissy Stile, Mayor

Date: _____

Approved as to form:

Sherry Sutphen, City Attorney

Attest: _____

EXHIBIT “A”

In addition to the routine duties and responsibilities of the SROs, the SROs shall have the following specific duties and responsibilities:

1. Each SRO shall at all times perform his/her duties in accordance with City of Mount Dora Police Department’s standard operating procedures.
2. The SROs shall serve as resource instructors providing programs in crime prevention that encourage students to become responsible citizens.
3. The SROs shall also assist the orderly flow of traffic on school grounds.
4. Each SRO shall maintain all law enforcement powers, duties, and responsibilities inclusive of his/her position as City of Mount Dora Police Officers while assigned to the SRO program.
5. Each SRO shall be responsible to his/her agency in all matters relating to employment, however, activities conducted by the SROs which are part of the regular school instruction program shall be under the direction of the principal or his/her designee.
6. Each SRO shall be at his/her school during normal school hours of operation and shall utilize the school’s computer-based management system to sign in and out to verify attendance. During times that the SROs are unable to be on campus or need to leave campus, those times will be coordinated with the principal or his/her designee and each SRO’s supervisor. The SRO supervisor will assure that the School has a replacement SRO on campus.
7. The SROs shall perform such duties as directed by his/her agency when school is not in session. The principal or his/her designee shall advise the Officers’ supervisor of the school’s calendar.
8. The SROs may contact students during school hours in conjunction with a criminal investigation so long as such contact does not interfere with or impede the orderly operation of the school or the rights of the individual students.
9. All student record information will be maintained in accordance with the provisions of Florida Statutes.
10. The SROs shall interface with students between class breaks, during lunch periods, before and after school and at school activities at which the SROs are in attendance. The SROs will not be assigned to a permanent school related duty post so as not to establish predictable patterns.
11. In the interest of maintaining a safe and orderly school environment, student and campus supervision is of critical importance. The SROs shall take a prominent role in supervision responsibilities, which shall be coordinated with and agreed to by the SROs and the designated

school principal. While school is in session, the SROs shall be present on and around the school campus except as permitted in paragraph 6 of this Exhibit A.

12. The SROs will serve as a referral resource for students, faculty and parents to community agencies.

13. The SROs will serve as a Law Enforcement resource to school administration and the district manager of security services.

14. The SROs will serve as the mandated sworn law enforcement officer on the school Behavior Threat Assessment (BTA) team; and accordingly will complete the required Comprehensive Threat Assessment Guidelines (CSTAG) training in accordance with 6A-1.0018, F.A.C. and 1006.07, Florida Statutes.

15. The SROs shall be familiar and offer support with the plans and strategies for the prevention and control of dangerous situations at the school.

16. The SROs will coordinate activities with the school administration and the school guidance department in an effort to identify those students who exhibit indications of early delinquent behavior.

17. The SROs shall attend meetings of school faculty and requested administrative meetings during school hours on a regular basis.

18. The SROs shall not act as a school disciplinarian, as disciplining students is a school responsibility. However, the principal shall contact the SROs for any violations of the law, and the SROs shall determine whether law enforcement action is appropriate.

19. The SROs shall take law enforcement action as necessary and as permitted under Florida law and shall inform the school principal of such action unless it would impede a criminal investigation, under such circumstances as practical. The SROs shall take appropriate law enforcement action against intruders and unwanted guests who may appear at the school and related school functions, to the extent that the SROs may do so under the authority of law. Whenever practical, the SROs shall advise the principal before requesting additional law enforcement assistance on campus.

20. The SROs shall be informed by school personnel of any situation occurring on school grounds that would appear to be a violation of the law of criminal nature.

21. The SROs shall maintain detailed accurate records of his/her activities, and provide a written monthly report to the LAW ENFORCEMENT AGENCY who shall provide such information to the Safe Schools Department of the SCHOOL BOARD.

22. The SROs and school administration shall work together to keep each other informed during the course of all criminal investigations as permitted by law and as practical. This

provision shall not be interpreted so as to interfere with or impede the SROs' law enforcement duties, obligations and/or powers.

23. The SROs shall work with school administration when determining whether an arrest should be made, or if there is an alternative solution to the incident which would still be in compliance with Florida law. The final decision on whether arrest is appropriate will lie with the attending SRO or other law enforcement officer on scene at the incident. This provision shall not be interpreted so as to interfere with or impede the SROs' law enforcement duties, obligations or powers.

24. The SROs shall affect a physical arrest for felonies committed on school grounds, particularly those that are "Zero Tolerance", as permitted by law.

25. The SROs shall give assistance to other law enforcement officers and government agencies in matters regarding his/her school assignment, whenever necessary.

26. The parties shall comply with the provisions of the Family Educational Rights and Privacy Act ("FERPA").



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Request Adoption of **Resolution No. 2023-29**, Early Equipment Procurement and Owner Direct Purchase for Mount Dora Public Works Facility

Introduction:

This request is for City Council to approve Resolution No. 2023-29, which allows for the early procurement and owner direct purchase of the pre-engineered metal building, HVAC units, and generator equipment for the new Public Works facility.

Discussion:

On April 7, 2020, City Council adopted Resolution No. 2020-23, approving the agreement between the City and Ajax Building Company, LLC for construction manager at risk (CMAR) services (Attachment #1). Among the provisions included in the agreement are competitive bid solicitation requirements included in Article 2 and direct purchase guidelines included in Article 17.

The Public Works Building is in the final design stage and Ajax is in the process of developing the Guaranteed Maximum Price (GMP). Due to a global steel shortage, the current market conditions include rising prices and excessively long lead times for steel products, which includes the metal building and electrical equipment. Although the GMP has not yet been accepted by the City, Ajax has advised the early purchase of certain materials in order to meet the tight schedule and keep costs from increasing. Because the design and purchasing process is not quite complete for these items, staff requests Council to approve an estimated not to exceed amount. Therefore, it is requested to approve the purchase of the pre-engineered metal building, HVAC air handling and compressor units, and electrical switchgear and generator for a price not to exceed \$5,124,924 At the time of GMP approval, which is scheduled for December 2023, Council will approve the GMP less what is actually spent, up to \$5,124,924, for this early procurement.

It is also requested that Council approve these purchases through the owner direct purchase option, as it is estimated that the owner direct purchase will save the city \$101,698 in sales

tax. In order to get the best price for these items, Ajax uses the competitive bid process pursuant to Section 2.4.4 of the agreement. The metal building vendor was already competitively bid by Ajax and awarded to Harrell Construction.

Budget Impact:

Funds for construction of Mount Dora Public Works Facility, including the pre-engineered metal building, HVAC system, and generator equipment referenced in Resolution No. 2023-29, are budgeted in 500-5555-580.63-01.

Strategic Impact:

Resolution No. 2023-29 meets Goal 2: Infrastructure and Public Safety and Goal 3: Fiscal Resources / Human Resources.

Recommendation:

City Council approve Resolution No. 2023-29, early purchase and Owner Direct Purchase of Pre-engineered metal buildings, HVAC units, and generator/switchgear for Mount Dora Public Works Facility.

Attachment(s):

1. Attachment 1 Res No. 2020-23 Approval of Pre-Construction Services Agreement for CMAR Services for Public Works Facility
2. Resolution 2023-29 direct advance purchase PW.SGS (003)sgs

Prepared by: Jeanann Hand, City Clerk

Reviewed by: Steve Langley, Electric Utility Director
Aneta Barton, Budget Director
Sherry Sutphen, City Attorney
Jeanann Hand, City Clerk
Patrick Comiskey, City Manager

Approved - 7/24/2023

Approved - 7/25/2023

Approved - 7/26/2023

Approved - 7/26/2023

Final Approval - 7/26/2023

ATTACHMENT 1

RESOLUTION NO. 2020-23

A RESOLUTION OF THE CITY OF MOUNT DORA, FLORIDA, PERTAINING TO CONSTRUCTION MANAGER AT RISK (CMAR) SERVICES FOR THE CITY'S PUBLIC WORKS COMPLEX AND RELATED ADJOINING FACILITIES; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR APPROVAL OF AGREEMENT AND AUTHORIZATION TO EXECUTE; PROVIDING FOR THE IMPLEMENTATION OF ADMINISTRATIVE ACTIONS; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City has competitively solicited for construction manager at risk services for the City's public works complex and associated adjoining facilities, pursuant to the City's Purchasing Policy and RFQ-19-PW-036; and

WHEREAS, the evaluation committee ranked the proposals during the selection process and Ajax Building Corporation n/k/a Ajax Building Company, LLC, was deemed to be the most responsive, responsible and qualified firm to provide construction manager at risk services for the City's new public works complex and associated adjoining facilities as contemplated by RFQ-19-PW-036; and

WHEREAS, on May 21, 2019, pursuant to Resolution No. 2020-18, the City authorized negotiations with Ajax Building Corporation n/k/a Ajax Building Company, LLC, for construction manager at risk services for the City's new public works complex and associated adjoining facilities; and

WHEREAS, the City has successfully negotiated a contract with Ajax Building Company, LLC, and has determined that it is in its best interest to hereby approve the execution of the same.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA, FLORIDA, AS FOLLOWS:

SECTION 1. Legislative Findings and Intent. The City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution. The above recitals are hereby adopted.

SECTION 2. Approval of Agreement and Authorization to Execute. The Agreement with Ajax Building Company, LLC attached hereto as **Exhibit "A"** is approved and the Mayor or designee thereof is authorized to execute the same.

Resolution No. 2020-23

1 of 3

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such actions as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City pertaining to the solicitation for construction manager at risk services for the City's new public works complex and associated adjoining facilities, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

SECTION 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. Conflicts. All Resolutions or parts of Resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 7. 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 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 7th day of April, 2020.



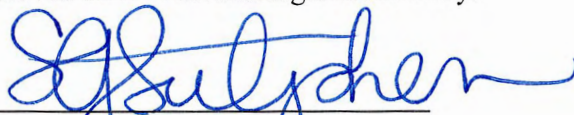
CATHERINE T. HOECHST,
MAYOR of the City of Mount Dora, Florida

ATTEST:



GWEN KEOUGH-JOHNS, MMC
CITY CLERK

For the use and reliance of City of Mount Dora only.
Approved as to form and legal sufficiency.



Sherry G. Sutphen, City Attorney

Resolution No. 2020-23

2 of 3

Exhibit "A"
Agreement with Ajax Building Company, LLC
for construction manager at risk services for
public works complex and associated adjoining facilities
RFQ-19-PW-036



Tampa Office
109 Commerce Boulevard
Oldsmar, Florida 34677
813.792.3900 Phone
813.792.3938 Fax
www.ajaxbuilding.com

FL - CGC 042112
GA - GCCO 006464
GA - GCQA 006462
SC - G122422
NC - 83174
AL - 54552
TN - 74075

March 26, 2020

Marilyn Douglas
City of Mount Dora
510 N Baker Street
Mount Dora, FL 32757

**RE: City of Mount Dora Public Works Complex
Agreement Between Owner and Construction Manager
Ajax Job No. 2020**

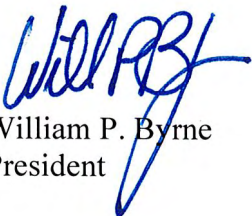
Dear Marilyn:

Enclosed, please find three (3) originals of the Agreement Between Owner and Construction Manager for the above referenced project.

Please return one (1) fully executed original to us for our file. We look forward to working with you on this project.

Sincerely,

AJAX BUILDING COMPANY, LLC



William P. Byrne
President

xc: File 1.1C

**AGREEMENT
BETWEEN OWNER AND CONSTRUCTION MANAGER**

THIS AGREEMENT made by and between the City of Mount Dora, a municipal corporation of the State of Florida, 510 N. Baker Street, Mount Dora, Florida 32757, hereinafter "Owner" and Ajax Building Company, LLC, 109 Commerce Blvd, Oldsmar, FL 34677, hereinafter "Construction Manager".

**ARTICLE I
THE CONSTRUCTION TEAM AND EXTENT OF AGREEMENT**

The Construction Manager accepts the relationship of trust and confidence established between it and the Owner by this Agreement. The Construction Manager covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect-Engineer in furthering the interests of the Owner. The Construction Manager agrees to furnish efficient business administration and superintendence and use its best efforts to complete the project in the soundest and most expeditious and economical manner, consistent with the interests of the Owner.

1.1 The Construction Team:

The Construction Manager, the Owner and the Architect-Engineer, called the "Construction Team", shall work jointly during design and through final construction completion and shall be available thereafter should additional services be required related to the Project. The Architect and the Construction Manager shall communicate through the Owner, except as may otherwise be provided in this Agreement or when direct communications have been specifically authorized by the Owner. The Construction Manager shall copy the Owner on all correspondence sent to or received from the Architect or any of its consultants of which the Owner was not copied.

The specific representatives of the Construction Team are set forth in **Exhibit "A"** attached hereto.

1.2 Extent of Agreement:

This Agreement for Pre-construction and Construction Management Services for the Project, between the Owner and the Construction Manager, supersedes any prior negotiations, representations or agreements. When drawings, specifications and other descriptive documents defining the work to be included in the guaranteed maximum price (GMP) are complete, an Amendment to the Agreement shall be signed by the Owner and Construction Manager, acknowledging the GMP amount and the drawings, specifications and other descriptive documents upon which the GMP is based. To expedite the preparation of the GMP Amendment by the Owner, the Construction Manager shall obtain two (2) sets of dated drawings, specifications and other documents upon which the GMP is based from the Architect-Engineer via the Owner. The Construction Manager shall acknowledge on the face of each set of drawings, that it is the set upon which the GMP is based. Thereafter one set of the documents shall be sent to the Owner along with the GMP proposal. This

Agreement shall not be superseded by any provisions/revisions of the documents for construction and may be amended only by written instrument signed by both Owner and Construction Manager.

- 1.3 **Definitions:** The following definitions shall be applicable to this Agreement. Any words which are not set forth below but are found capitalized throughout this Agreement shall have the meanings established in the various Articles and/or Sections of this Agreement:

Architect-Engineer - ADG, Inc.

Construction Documents - This Contract, the Drawings, Specifications and related Construction Documents or any other documents incorporated herein by reference.

Construction Manager - Ajax Building Company, LLC

Estimate - The Construction Manager's latest estimate of probable project construction costs

Final Completion - The following items have been completed or satisfied:

1. Construction of the Project is totally complete, including all work on the Contract Documents and certified as such by the Owner and Architect.
2. The Project is suitable for full use and occupancy as determined by the Owner and Architect.
3. All Punch List items have been completed or otherwise disposed of or accounted for to the Owner's satisfaction and approval.
4. A Final Certificate of Occupancy and all other permits and approvals required have been legally and validly issued.
5. Final executed Releases of Lien have been delivered to the Owner by Construction Manager.

General Conditions - Those items that are not specific to any trade and are required for the construction of the Project. Examples of General Conditions items include daily cleanup and safety rails.

Owner - City of Mount Dora, a municipal corporation of the State of Florida

Owner's Representative - The Owner's Representative is its Construction Project Manager, who is Chet Cramer, or such other individual designated, in writing, by the City Manager.

Project - The Project is the total work to be performed under this Agreement. The Project consists of planning, design, permitting, construction and code inspection for the City's public works complex and related adjoining facilities.

Punch List - List of items of work to be completed and deficiencies to be corrected, which items shall not affect the attainment of Substantial Completion. Such items shall be complete or otherwise disposed of prior to final acceptance/completion.

Substantial Completion Date - The date, certified by the Architect, that the Project, or designated portion thereof, is sufficiently complete, in accordance with the Construction Documents and a Certificate of Occupancy issued, so that the Owner can reasonably occupy or utilize the Project, or designated portion thereof, for its intended use. Additionally, complete all items referred to as necessary for Substantial Completion.

1.4 Owner's Construction Budget:

Owner's funds budgeted and requested for construction of the Project: The Owner's Construction Budget is estimated at Eleven Million Eight Hundred Seventy-seven Thousand Eight Hundred and 00/100 Dollars (\$11,877,800.00) including all Construction Manager fees, costs of the work and the Owner's and Construction Manager's construction and interface contingencies as defined in Articles 8 and 9. This acknowledgment of the Owner's budgeted funds is not to be construed as the Construction Manager's Guaranteed Maximum Price. A Guaranteed Maximum Price will be offered by separate documentation as outlined in Article 7.

ARTICLE 2
CONSTRUCTION MANAGER'S SERVICES

The services which the Construction Manager shall provide include, but are not limited to, those described or specified herein. The services described or specified shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned.

2.1 Project Management Information System (PMIS):

1. General:

- A. Commencing immediately after contract award, the Construction Manager shall implement and shall utilize throughout the life of this Contract all subsystems of the Project Management Information System hereinafter referred to as PMIS.
- B. The reports, documents, and data to be provided shall represent an accurate assessment of the current status of the Project and of the work remaining to be accomplished and it shall provide a sound basis for identifying variances and problems and for making management decisions. It shall be prepared and furnished to the Owner and the Architect-Engineer monthly.

C. If requested by the Owner, the Construction Manager shall conduct a comprehensive workshop for participants designated by the Owner and additional seminars as required, to provide instruction. This workshop and the seminars shall facilitate each participant's and the Owner's representatives' use and understanding of PMIS; shall support, in-part, the function of organizing in concert with the Architect-Engineer for the design and construction of the Project; and shall establish, with the full concurrence of the Owner and the Architect-Engineer, procedures for accomplishing the management control aspect of the Project.

D. The PMIS shall be described in terms of the following major subsystems:

1. Narrative Reporting, on a monthly basis,
2. Schedule Control, on a monthly basis,
3. Cost Control, and estimating,
4. Project Accounting,
5. Accounting and Payment, and
6. Action Reports.

2. Narrative Reporting Subsystem:

A. The Construction Manager shall prepare written reports as described hereunder. No other PMIS narrative reports shall be required. All reports shall be in 8.5" X 11" format, unless directed otherwise by the Owner.

B. The Narrative Reporting Subsystem shall include the following reports:

1. Monthly Executive Summary - which provides an overview of current issues and pending decisions, future developments and expected achievements, and any problems or delays, including code violations found by any permitting authority.
2. Monthly Cost Narrative - describing the current construction cost estimate status of the Project.
3. Monthly Scheduling Narrative - summarizing the current status of the overall project schedule. This report shall include an analysis of the various project schedules, a description of the critical path, and other analyses as necessary to compare planned performance with actual performance.

4. Monthly Accounting Narrative - describing the current cost and payment status of the entire project. This report shall relate current encumbrances and expenditures to the budget allocations.
 5. Monthly Construction Progress Report - summarizing the work of the various subcontractors during the construction phase. This report shall include information from the weekly job site meetings, as applicable, such as general conditions, long lead supplies, current deliveries, safety and labor relations programs permits, construction problems and recommendations and plans for the succeeding month.
 6. Daily Construction Diary - during the construction phase describing events and conditions on the site.
- C. The reports outlined above shall be bound with applicable computer reports and submitted at conclusion of each design deliverable during the design phase and then monthly during the construction phase and shall be current through the end of the preceding report. Copies shall be transmitted to the Owner and the Architect-Engineer and others as designated by the Owner's Representative with the monthly pay requisition. Additional copies of the report outlined above shall be bound separately and distributed monthly as directed by the Owner's Representative.
- D. The report outlined in Article 2.1(2)(B)(6) above shall be maintained at the site available to the Owner and Architect-Engineer. A bound copy of the complete Daily Construction Diary shall be submitted to the Owner at the conclusion of the Project
3. Scheduled Control Subsystem:
- A. Master Project Schedule - Within thirty (30) days of award of this Agreement, the Construction Manager shall submit, to the Owner for approval, a master project schedule covering the planning and design approvals, construction and Owner occupancy of the Project. This schedule shall serve as the framework for the subsequent development of all detailed schedules. The master project schedule shall be produced and updated monthly throughout the project. Revisions, activity additions, activity deletions and/or logic changes to the Master Project Schedule, or any other schedule previously approved by the Owner, shall not be made without the Owner's approval.
 - B. Within thirty (30) days after the date of the Owner's issuance of a Notice to Proceed with construction, the Construction Manager shall prepare and submit for approval, to the Owner's Representative, a construction schedule in quadruplicate with sufficient detail to graphically depict the activities contemplated for completion of the Project and which shows the sequence

that the Construction Manager proposes for each such activity to occur and the duration (dates of commencement and completion, respectively) of each such activity. The Owner shall determine whether the construction schedule developed and submitted by the Construction Manager meets the requirements stated herein and thereafter such determination shall be binding on the Construction Manager. Failure of the Construction Manager to develop and submit a construction schedule as set forth hereinabove shall be sufficient grounds for the Owner to find the Construction Manager in substantial default and certify that sufficient cause exists to terminate the contract or to withhold payment to the Construction Manager until a schedule acceptable to the Owner is submitted.

- C. During the period of time required to finally complete the Project, at the end of each such calendar month or at such earlier intervals as circumstances may require, the Construction Manager shall update the construction schedule to show the actual progress of the work performed and the occurrence of all events which have affected the progress of performance of the work already performed or will affect the progress of the performance of the work yet to be performed in contrast with the planned progress of performance of such work, as depicted on the original construction schedule and all updates thereto as reflected in the updated construction schedule last submitted. Each such update to the construction schedule shall be submitted to the Owner in duplicate. Failure of the Construction Manager to update, revise and submit the construction schedule as set forth herein shall be sufficient grounds for the Owner to find the Construction Manager in substantial default, and certify that sufficient cause exists to terminate the Contract or to withhold payment to the Construction Manager until a schedule or schedule update acceptable to the Owner is submitted. No revisions, activity additions, activity deletions or logic changes shall be made without the Owner's approval, which shall not be unreasonably withheld.
- D. When required by the Owner, the Construction Manager shall prepare and incorporate into the schedule database, at the required intervals, the following schedules:
 - 1. Subcontractor Construction Schedules - Upon the award of each sub-contract, the Construction Manager shall jointly, with the subcontractor, develop a schedule which is more detailed than the pre-bid schedule included in the specifications, taking into account the work schedule of the other subcontractors. The construction schedule shall include as many activities as necessary to make the schedule an effective tool for construction planning and for monitoring the performance of the subcontractor. The construction schedule shall also show pertinent activities for material purchase orders, shop drawing schedules and material delivery schedules.

2. Occupancy Schedule - The Construction Manager shall jointly develop with the Architect-Engineer and Owner a detailed plan, inclusive of punch lists, final inspections, maintenance training and turn-over procedures, to be used for ensuring accomplishment of a smooth and phased transition from construction to Owner occupancy. The Occupancy Schedule shall be produced and updated monthly from its inception through final Owner occupancy.

- E. All schedules will be provided to the Owner in an electronic format acceptable to the Owner. The Construction Manager will provide the Owner with the appropriate software, if necessary, to read the data. The cost of providing the licenses and software shall be part of the cost of construction and included as part of Article 9, Direct Costs of the Project.

4. Budget Control Subsystem:

The operation of this subsystem shall provide sufficient timely data and detail to permit the Construction Team to control and adjust the Project requirements, needs, materials, equipment and systems by building and site elements so that construction will be completed at a cost which, together with all other Project costs, will not exceed the maximum total Project budget. Requirements of this subsystem include the following submissions at the following phases of the project:

Estimates - Prior to the start of pre-construction services, the requirement of the following estimates will be determined by the Owner:

- A. Completion of Schematic Documents.
- B. Completion of fifty percent (50%) Design Development Documents.
- C. Completion of one hundred percent (100%) Design Development Documents.
- D. One hundred percent (100%) GMP Estimate - When the Construction Documents are sufficiently complete enough to establish the GMP.

5. Project Accounting Subsystem:

The operation of this subsystem shall enable the Construction Team to monitor and control the funds available for the Project, cash flow, costs, change orders, payments and other major financial factors by comparison of budget, estimate, total commitment, amounts invoiced, amounts payable and to plan effectively. This subsystem will be produced and updated monthly and includes the following reports, which together will serve as a basic accounting tool and an audit trail. This report will also provide for accounting by building and site element.

- A. Cost Status Report - presenting the budget, estimate and base commitment for any given contract or budget line item. It shall show approved change orders for each contract which when added to the base commitment will become the total commitment. Pending change orders will also be shown to produce the total estimated probable cost to complete the work.
- B. Payment Status Report - showing the value in place, both current and cumulative, the amount invoiced (both current and cumulative), the amount retained, the amount payable (both current and cumulative) and the balance remaining. A summary of this report shall accompany each pay request.
- C. Detailed Status Report - showing the complete activity history of each item in the Project accounting structure. It shall include the budget, estimate and base commitment figures for each contract. It shall give the change order history including change order numbers, description, proposed and approved dates and proposed and approved dollar amounts. Pending or rejected change orders shall also be shown.
- D. Cash Flow Diagram - showing the projected accumulation of cash payments against the project. Cash flow projections shall be generated for anticipated monthly payments as well as cumulative payments.
- E. Job Ledger - shall be maintained as necessary to supplement the operation of the Project accounting subsystem. The Job Ledger will be used to provide construction cost accountability for general conditions work, on-site reimbursable expenses and costs requiring accounting needs.

2.2 Project Manual:

When directed by the Owner, the Construction Manager shall provide the following:

1. Upon award of contract the Construction Manager shall develop a draft comprehensive Project Manual describing the services set forth in this Contract for Owner's approval, providing a plan for the control, direction, coordination and evaluation of work performed, including identification of key personnel, responsibilities of Construction Manager, responsibilities of Owner and responsibilities of Architect-Engineer, work flow diagrams and strategy for bidding the work. The Project Manual shall be updated as necessary with the Owner's approval throughout the design, construction and Owner occupancy phases. Two copies of the Project Manual and any updates shall be submitted to the Owner and Architect-Engineer. In developing the Project Manual, the Construction Manager shall coordinate with the Owner and the Architect-Engineer.
2. Contents of Project Manual - The Project Manual shall describe in detail the procedures for executing the work and the organizations participating. The Project Manual shall include as a minimum the following sections:

- A. Project Definition - The known characteristics of the project or sub-projects shall be described in general terms which will provide the participants a basic understanding of the project or sub-projects.
- B. Project Goals - The schedule, budget, physical, technical and other objectives for the Project shall be defined.
- C. Project Strategy - A narrative description of the Project delivery methods being utilized to accomplish the project goals shall be listed.
- D. Project Work Plan - A matrix display of the program of work to be performed by the Construction Manager, the Architect-Engineer and the Owner during each phase of the Project.
- E. Project Organization - A summary organization chart showing the interrelationships between the Owner, the Construction Manager and the Architect-Engineer, and other supporting organizations and permitting review agencies. Detailed charts shall be included, one each for the Construction Manager, the Architect Engineer and the Owner, showing the organizational elements participating in the Project.
- F. Responsibility Performance Chart - A detailed matrix showing the specific responsibilities and interrelationships of the Owner, the Architect Engineer, and Construction Manager. The Responsibility Performance Chart shall indicate major responsibility, and minor responsibility, for each specific task required to deliver the project. The Construction Manager shall develop a similar chart for the personnel within his own organization who are assigned to the project, and also for the personnel of the Owner and the Architect-Engineer from data supplied by each.
- G. Flow Diagrams - Charts displaying the flow of information and the decisional process for the review and approval of shop drawings, submittals, progress and change orders.
- H. Written Procedures – Procedures for communications and coordination required between Construction Team members throughout the Project. Procedures shall cover such items as correspondence, minutes, reports, inspections, team meetings, technical reviews, design reviews and other necessary communications.

2.3 Design and Review and Recommendations:

The Construction Manager shall perform the services described in this Article. The services to be provided herein constitute the Pre-construction phase services. The parties acknowledge the Construction phase may commence before the Pre-construction phase is completed, and to a certain extent both phases may proceed concurrently.

1. Preliminary Evaluation - The Construction Manager shall provide a preliminary evaluation of the Owner's Project and Project budget requirements, each in terms of the other.
2. Consultation - The Construction Manager will jointly schedule and attend regular meetings with the Owner and Architect. The Construction Manager will consult with the Owner regarding site use and improvements, and the selection of materials, building systems and equipment. The Construction Manager will provide recommendations on construction feasibility; actions designated to minimize adverse effects of labor or material shortages; time requirements for procurement, installation, and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets, and possible economies.
3. Phased Construction - The Construction Manager shall make recommendations to the Owner regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Project, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities, if applicable.
4. Review Reports - Within thirty (30) days after receiving the Construction Documents for each phase of the Project, the Construction Manager shall perform a specific review thereof, focused upon factors of a nature encompassed in Articles 2.3(1) and 2.3(2) above and on factors set out in Article 2.3(7) below. Promptly after completion of the review, the Construction Manager shall submit to the Owner, with copies to the Architect-Engineer, a written report covering suggestions or recommendations previously submitted, additional suggestions or recommendations as may be deemed appropriate, and all actions taken by the Architect-Engineer with respect to same, any comments deemed to be appropriate with respect to separating the work into separate contracts, alternative materials, and all comments called for under Article 2.3(7).

THE CONSTRUCTION MANAGER SHALL WARRANT, TO THE BEST OF THE CONSTRUCTION MANAGER'S KNOWLEDGE, WITHOUT ASSUMING ANY ARCHITECTURAL OR ENGINEERING RESPONSIBILITY, THAT THE PLANS AND SPECIFICATIONS ARE CONSISTENT, PRACTICAL, FEASIBLE AND CONSTRUCTIBLE. THE CONSTRUCTION MANAGER SHALL WARRANT THAT THE WORK DESCRIBED IN THE PLANS AND SPECIFICATIONS FOR THE VARIOUS BIDDING PACKAGES IS CONSTRUCTIBLE WITHIN THE SCHEDULED CONSTRUCTION TIME.

The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and Owner's professional consultants. Construction Manager shall not assume in anyway the responsibilities of the Architect, in particular, the responsibility of assuring that the

Drawings and Specifications, which are identified in **Exhibit "B"** are in accordance with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations; however, if the Construction Manager recognizes that portions of the Drawings and Specifications are inconsistent with applicable laws, statutes, ordinances, Building Codes, Rules and Regulations, the Construction Manager shall promptly notify the Architect and the Owner, in writing.

5. Long Lead Procurements - The Construction Manager shall review the design for the purpose of identifying long lead procurement items such as machinery, equipment, materials and supplies. When each item is identified, the Construction Manager shall notify the subcontractors, the Owner and the Architect-Engineer of the required procurement and schedule. Such information shall be included in the bid documents and made a part of all affected sub-contracts. The Construction Manager shall keep himself informed of the progress of the respective subcontractors or suppliers, manufacturing or fabricating such items and advise Owner and Architect-Engineer of any problems or prospective delay in delivery. The Construction Manager may recommend to the Owner a schedule for procurement of the long-lead time items, which will constitute part of the work, as required to meet the Project Schedule. If such long-lead time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall assist in expediting the delivery of long-lead time items.
6. Separate Contracts Planning - Without assuming any design responsibilities, the Construction Manager shall review the design with the Architect-Engineer and make recommendations to the Owner with respect to dividing the work in such manner as will permit the Construction Manager to take bids and award separate construction sub-contracts on the current schedule while the design is being completed. He shall take into consideration such factors as natural and practical lines of severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, availability of labor and materials, community relations and any other factors pertinent to saving time and cost by overlapping design and construction that are authorized by the Owner.
7. Interfacing -
 - A. The Construction Manager shall take such measures as are appropriate to provide that all construction requirements will be covered in the separate subcontracts for procurement of long lead items, the separate construction subcontracts and the General Conditions items performed without duplication or overlap, sequenced to maintain completion of all work on schedule. Particular attention shall be given to provide that each bid package

clearly identifies the work included in that particular separate subcontract, its schedule for start and completion and its relationship to other separate contractors.

B. Without assuming any design responsibilities of the Architect-Engineer, the Construction Manager shall include in the reports required under Article 2.3(4) comments on overlap with any other separate subcontracts, omissions, lack of correlation between drawings, and any other deficiencies noted, in order that the Owner and Architect-Engineer may arrange for necessary corrections.

8. Job-Site Facilities - The Construction Manager shall arrange for all job-site facilities necessary to enable the Construction Manager and the Owner's representatives and the Architect-Engineer to perform their respective duties in the management, inspection, and supervision of construction.

Tangible personal property otherwise referred to as job-site facilities, include but are not limited to such things as trailers, toilets, computers and any other equipment necessary to carry on the Project. The method of acquiring such job-site facilities, which are planned to become the property of the Owner at the conclusion of the Project, shall be evaluated based on cost over the life of the Project. Owning versus leasing shall be considered by the Construction Manager obtaining at least three (3) proposals for leasing and at least three (3) proposals for purchasing and then analyzing which is least expensive over the usage life of the item. The Construction Manager shall present his evaluation with recommendation to the Owner for approval.

When the Construction Manager wishes to supply job-site facilities from his own equipment pool, he shall first evaluate buy versus lease as discussed in the paragraph above. If leasing is found to be the least expensive approach, then he may lease such job-site facilities from his own equipment pool at a price not greater than the lowest of the three (3) lease proposals obtained.

For all such facilities purchased, which are to become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain care and custody responsibilities of such facilities until the Project conclusion. The cost of such equipment shall be a Direct Cost of the Project, as defined in Article 9. At the conclusion of the Project, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment that has been purchased for the Owner. The inventory shall describe the equipment and identify the purchase price, serial number, model number, current location, and condition. Where said equipment has a title, said title shall be properly transferred to the Owner or to his designee.

The Construction Manager is responsible for proper care and maintenance of all equipment while in his control. At the time of transfer to the Owner, the Owner

may refuse acceptance of the equipment if the Owner determines in its sole discretion that the equipment has not been properly cared for by the Construction Manager. In such event, the Construction Manager shall reimburse Owner for such item.

9. Weather Protection - The Construction Manager shall ascertain what temporary enclosures, if any, of building areas should be provided for and may be provided as a practical matter, in order to assure orderly progress of the work in periods when extreme weather conditions are likely to be experienced. The Construction Manager shall submit, to the Construction Team, recommendations as to needed requirements of this nature and as to the contract or contracts in which such weather protection requirements should be included. The Construction Manager is totally responsible for all weather protection necessary to ensure that all new construction and renovation projects are adequately protected from the normal inclement elements.
10. Market Analysis and Stimulation of Bidder Interest -
 - A. The Construction Manager shall monitor conditions in the construction market to identify factors that will or may affect costs and time for completing the Project; the Construction Manager shall make analysis as necessary to (1) determine and report on availability of labor, material, equipment, potential bidders, and possible impact of any shortages or surplus of labor or material, and (2) in light of such determinations, make recommendations to the Owner as may be appropriate with respect to long lead procurement, separation of construction into bid packages, sequencing of work, use of alternative materials, equipment or methods, other economics in design or construction, and other matters that will promote cost savings and completion within the scheduled time.
 - B. The Construction Manager shall submit to the Owner a written "Construction Market Analysis and Prospective Bidders Report" setting out recommendations and providing information as to prospective bidders. As various bid packages are prepared for bidding, the Construction Manager shall submit to the Owner and the Architect-Engineer a list of potential bidders. The Construction Manager shall be responsible to stimulate bidder interest in the local market place and identify and encourage bidding competition.
 - C. The Construction Manager shall carry out an active program of stimulating interest of qualified contractors in bidding on the work and of familiarizing those bidders with the requirements of this project.

2.4 Construction Phase:

1. Construction Manager's Staff - The Construction Manager shall maintain sufficient off-site support staff, and competent full time staff at the Project site authorized to

act on behalf of the Construction Manager to coordinate, inspect and provide general direction of the work and progress of the subcontractors and the Construction Manager shall provide no less than those personnel during the respective phases of construction that are set forth in **Exhibit "C"** to this Agreement. The Construction Manager shall not change any of those persons named in Exhibit "C" unless mutually agreed to by the Owner and Construction Manager. In such case, the Owner shall have the right to approve the qualifications of any replacement personnel. Such approval will not be unreasonably withheld.

2. Lines of Authority - The Construction Manager shall establish and maintain lines of authority for its personnel, and shall provide notice of the same to the Owner and all other affected parties such as the code inspectors of the Permitting Authority, the subcontractors, the Architect-Engineer and the Owner's representatives, in order to provide general direction of the work and progress of the various phases and subcontractors. The Owner and Architect-Engineer may attend meetings between the Construction Manager and his subcontractors; however, such attendance shall not diminish either the authority or responsibility of the Construction Manager to administer the subcontractors.
3. Schedule and Project Manual Provisions - The Construction Manager shall provide subcontractors and the Owner, its representatives and the Architect-Engineer with copies of the Project Manual, a total number of copies not to exceed seven (7) hard copies and an electronic version in a format acceptable to the Owner, developed and updated as required by Article 2.2, expanded for the Construction Phase, employing the respective milestones, beginning and finishing dates, the respective responsibilities for performance and the relationships of the work with respect to subcontractors and suppliers. The Construction Manager shall also continue to provide current and up to date scheduling information, direction and coordination regarding milestones, and beginning and finishing dates. Furthermore, the Construction Manager shall be responsible for performance and the relationships of the Construction Manager's work to the work of its subcontractors and suppliers to enable the same to perform their respective tasks so that the development of construction progresses in a smooth and efficient manner in conformance with the overall project schedule. The schedule shall include all phases of the construction work, material supplies, long lease procurement, approval of shop drawings, change orders in progress, schedules for change orders, and performance testing requirements. The Construction Manager shall advise the Owner, its representatives and the Architect-Engineer of their required participation in any meetings or inspections, giving each at least one weeks-notice, unless such notice is made impossible by conditions beyond the control of the Construction Manager. The Construction Manager shall hold job-site meetings at least once each month with the Construction Team or more frequently as required by work progress, to review progress, discuss problems and solutions and to coordinate future work with all subcontractors.

4. Solicitation of Bids -

- A. Without assuming responsibilities of the Architect-Engineer, the Construction Manager shall prepare invitations for bids, or requests for proposal when applicable, for all procurement of long lead items, materials and services, for Subcontractor contracts and for site utilities. Such invitations for bids shall be prepared in accordance with the following guidelines:

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, vendors, consultants and from suppliers of materials or equipment fabricated to a special design for the work. The Construction Manager shall strive to receive at least three (3) competitive bids per trade package. Should the nature of the trade package prohibit three (3) competitive bids, the Construction Manager shall notify the Owner in writing as to the reason and offer suggestions, if any, to create trade interest.

- B. The Construction Manager shall be responsible for coordinating with the Architect-Engineer and preparing all information that is the responsibility of the Construction Manager for bidding of the separate bid packages.
- C. As part of such preparation, the Construction Manager shall review the specifications and drawings prepared by the Architect-Engineer. Ambiguities, conflicts or lack of clarity of language, use of illegally restrictive requirements, and any other defects in the specifications or in the drawings noted by the Construction Manager shall be brought to the attention of the Owner and Architect-Engineer in written form.
- D. The Construction Manager and the Owner's Representative shall mutually agree when and if to conduct a pre-bid conference with prospective bidders and the Architect-Engineer. In the event questions are raised which require an interpretation of the bidding documents or otherwise indicate a need for clarification or correction of the invitation, the Construction Manager shall transmit these to the Owner and the Architect-Engineer and upon receiving clarification or correction in writing shall prepare an addendum to the bidding document, and issue same to all of the prospective bidders.
- E. The Construction Manager shall not enter into contracts without the Owner reviewing the proposed successful bidder. The Owner shall promptly, within three (3) business days, review all proposals and provide comments so as not to cause delay in the award of a contract. Owner's failure to respond within this time frame shall constitute acceptance of the proposed contract. Owner shall have the right to reject any award of subcontract

providing such rejection is justifiable and with cause. Should the Owner reject a proposal and should the next bondable, qualified bidder that is acceptable to the Construction Manager, be greater than the GMP budget for that work item, the Owner shall issue a change order to the Construction Manager, increasing the GMP, for the amount of the difference between the proposed award and that which the Owner has requested.

5. Bonds - In accordance with the provisions of Florida Statutes, Section 255.05, the Construction Manager shall provide to the Owner, on forms furnished by the Owner, a one hundred percent (100%) Performance Bond and a one hundred percent (100%) Labor and Material Payment Bond each in an amount not less than the total construction cost as defined in Articles 7, 8 and 9. To be acceptable to the Owner, as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:
 - A. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
 - B. The Surety Company shall have currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
 - C. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
 - D. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code at the time a bond is issued.
 - E. The Surety Company shall have at least the following minimum ratings in the latest issue of Best's Key Rating Guide.

Contract Amount	Policy Holder's Rating	Required Financial Rating
\$500,000 to \$1,000,000	A	Class IV
\$1,000,000 to \$2,500,000	A	Class V
\$2,500 000 to \$5,000 000	A	Class VI
\$5,000,000 to \$10,000 000	A	Class VII
\$10,000,000 to \$25,000,000	A	Class VIII

\$25 000 000 to \$50,000,000	A	Class IX
\$50,000,000 to \$75,000,000	A	Class X

6. Quality Control - The Construction Manager shall develop and maintain a written program, acceptable to the Owner and Architect-Engineer, to assure quality control of the construction. He shall supervise the work of all subcontractors providing instructions to each when their work does not conform to the requirements of the plans and specifications and he shall continue to exert his influence and control over each subcontractor to ensure that corrections are made in a timely manner so as to not affect the efficient progress of the work. Should disagreement occur between the Construction Manager and Architect-Engineer over acceptability of work and conformance with the requirements of the specifications and plans, the Owner shall be the final judge of performance and acceptability.
7. Subcontractor Interfacing - The Construction Manager shall be the single point of interface with all subcontractors for the Owner and all of its agents and representatives including the Architect-Engineer. He shall negotiate all change orders, field orders and request for proposals, with all affected subcontractors and shall review the costs of those proposals and advise the Owner and Architect-Engineer of their validity and reasonableness, acting in the Owner's best interest prior to requesting approval of each change order from the Owner. Before any work begins on any change order, a written authorization from the Owner must be issued. However, when health and safety are threatened, the Construction Manager shall act immediately to remove the threat to health and safety. The Construction Manager shall carefully review all shop drawings and forward the same to the Architect for review and action. The Architect shall transmit them back to the Construction Manager who will then issue the shop drawings to the affected subcontractor for fabrication or revision. The Construction Manager shall maintain a suspense control system to promote expeditious handling. The Construction Manager shall request the Architect-Engineer via the Owner to make interpretations of the drawings or specifications requested of the Construction Manager by the subcontractors and shall maintain a suspense control system to promote timely response. The Construction Manager shall advise the Owner and Architect-Engineer when timely response is not occurring on any of the above.
8. Permits - The Construction Manager shall secure all necessary building permits from the Permitting Authority and all necessary utility connection permits, the cost of which will be considered a Direct Cost of the project, but not subject to a Construction Phase Fee, as described in Article 8.1(3).
9. Job Site Requirements -
 - A. The Construction Manager shall provide for each of the following activities as a part of its Construction Phase Cost:

1. Maintain a log of daily activities, including manpower records, weather, delays, major decisions, etc.
 2. Maintain a roster of companies on the project with names and telephone numbers of key personnel.
 3. Establish and enforce job rules governing parking, clean-up, use of facilities and worker discipline.
 4. Provide labor relations management for a harmonious, productive project.
 5. Provide a safety program for the project to meet OSHA requirements. Monitor for subcontractor compliance without relieving any subcontractor of responsibilities to perform work in accordance with the best acceptable practices.
 6. Provide a quality control program.
 7. Provide miscellaneous office supplies that support the construction efforts.
 8. Travel to and from its home office to the project site, as the project requires.
- B. The Construction Manager shall provide personnel and equipment or shall arrange for separate subcontracts to provide each of the following as a direct cost item:
1. Schedule the services of independent testing laboratories for the necessary testing of materials to ensure conformance to contract requirements.
 2. The printing and distribution of all required bidding documents and shop drawings, including the sets required by the Permitting Authority's inspectors.
10. Job Site Administration - The Construction Manager shall provide administrative functions during construction to assure proper documentation, including but not limited to such things as the following:
- A. Job Meetings - Hold weekly progress and coordination meetings to provide for an easy flowing project implementation process, assure timely submittals, expedite processing approvals and return of shop drawings and samples; Coordinate and expedite critical ordering and delivery of materials, work sequences, inspection and testing and labor allocation;

Review and coordinate each subcontractor's work; Review and implement revisions to the project schedule; Monitor and promote safety requirements.

Use the job site meeting as a tool for planning of work and enforcing schedules and for establishing procedures, responsibilities, and identification of authority for all to clearly understand.

Identify party or parties responsible for follow up on any problems, delay items or questions and record course for solutions. Revisit each pending item at each subsequent meeting until resolution is achieved. Require all present to make any problems or delaying events known to those present for appropriate attention and resolution.

A regular monthly project status meeting will be held between the Architect-Engineer, Owner and Construction Manager.

- B. Shop Drawing Submittals/Approvals - Provide staff to check shop drawings and to implement procedures to be approved by Owner for submittal and transmittal to the Architect-Engineer and Owner of such drawings for action, and closely monitor their submittal and approval process.
- C. Material and Equipment Expediting - Provide staff to closely monitor material and equipment deliveries and to implement checking and follow-up procedures on supplier commitments of all subcontractors.
- D. Payments to subcontractors - Develop and implement a procedure for review, processing and payment of applications by subcontractors for progress and final payments.
- E. Document Interpretation - Refer all questions for interpretation of the documents prepared by the Architect-Engineer to the Architect-Engineer through the Owner.
- F. Reports and Project Site Documents - Record the progress of the project. Submit written progress reports to the Owner and the Architect-Engineer, including information on the subcontractor's work and the percentage of completion. Keep a daily log available to the Owner, the Architect-Engineer and the Permitting Authority inspectors.
- G. Subcontractor's Progress - Prepare periodic punch lists for the subcontractor's work including unsatisfactory or incomplete items and schedules for their completion.
- H. Substantial Completion - Ascertain when the work, or designated portions thereof, are ready for the Owner's and the Architect-Engineer's substantial completion inspection. Prior to the Owner's and Architect's pre-substantial

completion inspection, the Construction Manager shall issue a list of incomplete items. After the Owner's and the Architect-Engineer's inspection, the Construction Manager shall prepare a schedule for the completion of the list, indicating completion dates for the Owner's review. The Owner and the Architect-Engineer will issue a Certificate of Substantial Completion in the format prescribed in **Exhibit "D"**, when the work on the Construction Manager's pre-substantial Punch List has been accomplished, to the best of the Construction Manager's ability.

- I. Final Completion - Monitor the Subcontractor's performance on the completion of the Project and provide notice to the Owner and Architect-Engineer that the work is ready for final inspection. Secure and transmit to the Owner, through the Architect-Engineer, all required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings and maintenance books, including issuance of the Certificate of Final Completion attached as **Exhibit "E"**.
 - J. Start-Up - With the Owner's personnel, direct the checkout of utilities, operations, systems and equipment for readiness and assist in their initial start-up and testing by the trade contractors.
 - K. Record Drawings - The Construction Manager shall monitor the progress of its own forces or its Subcontractors on marked up field prints, which at project completion, shall be sent to the Architect-Engineer through the Owner who will prepare the final record drawings. Continuously review "As-Built" Drawings and mark up progress prints to provide as much accuracy as possible.
11. Administrative Records - The Construction Manager may be required to maintain, at the job site, current and up to date files and records such as, but not limited to the following:

Contracts or Purchase Orders
Davis Bacon Federal Compliance Documents
ARRA / Build America Bonds Compliance Documentation
Shop Drawing Submittal/Approval Logs
Equipment Purchase/Delivery Logs
Contract Drawings and Specifications with Addenda
Warranties and Guarantees
Cost Accounting Records:
Labor Costs
Material Costs
Equipment Costs
Cost Proposal Requests
Payment Request Records
Meeting Minutes

Cost-Estimates
Bulletin Quotations
Lab Test Reports
Insurance Certificates and Bonds
Contract Changes
Purchase Orders
Material Purchase Delivery Logs
Technical Standards
Design Handbooks
"As-Built" Marked Prints
Operating & Maintenance Instruction
Daily Progress Reports
Monthly Progress Reports
Correspondence Files
Transmittal Records
Inspection Reports
Bid/Award Information
Bid Analysis and Negotiations
Punch Lists
PMIS Schedule and Updates
Suspense (Tickler) Files of Outstanding Requirements
Project Manual
Job Photographs

The Project records shall be available at all times to the Owner and Architect-Engineer for reference or review.

12. Owner Occupancy -

The Construction Manager shall:

Provide services during the design and construction phases, which will provide a smooth and successful Owner occupancy of the Project. The Construction Manager shall provide consultation and project management to facilitate Owner occupancy and provide transitional services to get the work, as completed by the contractors, "on-line" in such conditions as will satisfy Owner operational requirements.

Conduct the Construction Manager's preliminary Punch List inspection and coordinate the completion of all Punch List work to be done with Owner occupancy requirements in mind. The Construction Manager shall videotape all major equipment startup procedures and deliver videos as part of the closeout documents.

Catalog operational and maintenance requirements of equipment to be operated by maintenance personnel and convey the same to the Owner in such a manner as to promote their usability. The Construction Manager shall provide operational training, in equipment use, for all such operators.

The Construction Manager shall secure required guarantees and warranties, assemble and deliver same to the Owner in a manner that will facilitate maximum enforcement and assure meaningful implementation.

The Owner may occupy or take control of portions of the Project providing the above items discussed in this paragraph have been completed and the "Substantial Completion", "Start-Up", "Record Drawing", and "Warranty" requirements specified in Article 2.4 above have been completed to the Owner's satisfaction for the portions to be occupied, excluding the requirements for a warranty inspection eleven (11) months after Owner Occupancy.

13. Warranty -

Where any work is performed by the Construction Manager's own forces or by subcontractors under contract with the Construction Manager, the Construction Manager shall warrant that all materials and equipment included in such work will be new except where indicated otherwise in Contract Documents, and that such work will be of good quality, free from improper workmanship and defective materials and in conformance with the Contract Documents. With respect to the same work, the Construction Manager further agrees to correct all work found by the Owner to be defective in material and workmanship or not in conformance with the Contract Documents for a period of one year from the date of Substantial Completion or partial occupancy of any portion of the building, whichever comes first, or for such longer periods of time as may be set forth with respect to specific warranties contained in the trade sections of the Specifications. The Construction Manager shall collect and deliver to the Owner any specific written warranties given by others as required by the Contract Documents. In addition, the Construction Manager shall conduct, jointly with the Owner and the Architect-Engineer, a warranty inspection in approximately eleven (11) months after the date of Owner Occupancy.

ARTICLE 3
OWNER'S RESPONSIBILITIES

3.1 Owner's Information:

The Owner shall provide full information regarding its requirements for the Project.

3.2 Owner's Representatives:

The Owner shall designate in writing any additional representatives authorized to act on the Owner's behalf with respect to the Project, not previously defined in Article 1.3, together with the scope of his/her respective authority. In no event shall any delegation of authority be contrary to state or county laws or codes. Functions to be performed by the Owner as set forth in this Agreement can be delegated by the Owner only by written notice to the Construction Manager from the Owner. The Construction Manager shall be entitled

to rely on directions, and it shall be required to follow such directions, from the Owner's Representative designated in Article 1.3 and such other representatives from time to time designated in writing within the authority conferred by the City of Mount Dora City Council in this Agreement or any Amendment or Change Order to this Agreement. The City of Mount Dora City Council hereby authorizes the Article 1.3 Owner's Representative to: (1) act as the Owner's agent and execute documents associated with this Project. Examples of these documents are Construction Manager's Contingency Authorizations, Notices of Commencement, Certificates of Substantial Completion and permits from applicable agencies; (2) administer, coordinate, interpret and otherwise manage the contractual provisions and requirements of this Agreement; (3) negotiate a duly authorized Change Order on behalf of the Owner; and (4) issue a duly authorized purchase order, memorandum, letter or other instrument covering the services and work to be provided pursuant to this Agreement. Directions and decisions made by Owner's Representatives shall be binding on the Owner.

The City of Mount Dora City Council additionally authorizes the City Manager, in conjunction with the Owner's Representative, to authorize changes in the work up to \$35,000.00 (Thirty-five Thousand and 00/100 Dollars) or such other dollar amount as authorized by policy adopted by the City Council. Said work can be funded from the Owner's Contingency and shall not cause an increase to the overall project budget.

3.3 Architect-Engineer's Agreement:

The Owner shall retain an Architect-Engineer for design and to prepare Construction Documents for the Project. The Architect-Engineer's services, duties and responsibilities are described in the Agreement between the Owner and the Architect-Engineer, a copy of which will be furnished to the Construction Manager. The Agreement between the Owner and the Architect-Engineer shall not be modified without written notification to the Construction Manager.

3.4 Site Survey and Reports:

The Owner shall provide all surveys describing the physical characteristics, soil reports, and subsurface investigations, legal limitations, utility locations and a legal description for the Project.

3.5 Approvals and Easements:

The Owner shall pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

3.6 Legal Services:

The Owner shall furnish such legal services as may be necessary for providing the items set forth in Article 3.5 and such document examination and interpretation as may require.

3.7 Drawings and Specifications:

The Construction Manager will be furnished a reproducible set of all copies of Drawings and Specifications reasonably necessary and ready for printing.

3.8 Cost of Surveys and Reports:

The services, information, surveys and reports required by the above paragraphs shall be furnished with reasonable promptness in accordance with the approved schedule at the Owner's expense, and the Construction Manager shall be entitled to rely upon the accuracy and completeness thereof.

3.9 Project Fault Defects:

If the Owner becomes aware of any fault or defect in the Project or non-conformance with the Drawings and Specifications, it shall give prompt written notice thereof to the Construction Manager and Architect-Engineer.

3.10 Funding:

The Owner shall furnish, in accordance with the established schedule, reasonable evidence satisfactory to the Construction Manager that sufficient funds will be available and committed for the cost of each part of the Project. The Construction Manager shall not commence any work, unless authorized in writing by the Owner.

3.11 Lines of Communication:

The Owner and the Architect-Engineer, through the Owner, shall communicate with the subcontractors or suppliers only through the Construction Manager while such method of communication is effective in maintaining project schedules and quality.

3.12 Permitting & Code Inspections:

The Owner recognizes and coordinates with the appropriate Permitting Authority and expects the Construction Manager to do the same.

ARTICLE 4
PERMITS, FEES AND NOTICES

4.1 Unless otherwise provided in the Contract Documents, the Construction Manager shall secure and pay for the building permits, which are customarily secured by a General Contractor.

4.2 The Construction Manager shall comply with and give notices, as required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Project.

- 4.3 It is not the Construction Manager's responsibility to ascertain whether the Contract Documents are in accordance with applicable laws, statutes, ordinances, Building Codes and Rules and Regulations; however, if the Construction Manager observes that portions of the Contract Documents are inconsistent therewith, the Construction Manager shall promptly notify the Architect-Engineer and Owner in writing and necessary changes shall be accomplished by appropriate modification.
- 4.4 If the Construction Manager performs work knowing it to be contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations without such notice to the Architect-Engineer and Owner, the Construction Manager shall assume full responsibility for such work and shall bear all attributable costs and damages.
- 4.5 Cost for all re-inspections of work found to be defective and subsequently repaired, shall be borne by the Construction Manager if such defective work was performed knowingly contrary to applicable laws, statutes, ordinances, Building Codes and Rules and Regulations.

ARTICLE 5

SUBCONTRACTS

5.1 **Definition:**

A subcontractor is a person or organization who has a direct contract with the Construction Manager to perform any of the work at on the Project. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or Architect-Engineer and any subcontractor.

5.2 **Proposals:**

Subject to Article 9 and, in accordance with Article 2.4(4), the Construction Manager shall request and receive proposals from subcontractors and suppliers and will award those contracts to the qualified low bidder after reviewing all proposals with the Owner and Architect-Engineer and all are satisfied that the subcontractor/supplier is qualified to perform work or provide materials for the Project.

5.3 **Required Subcontractors' Qualifications and Subcontract Conditions:**

1. Sub-contractual Relations - The Construction Manager shall require each Subcontractor to assume all the obligations and responsibilities which the Construction Manager owes the Owner under this Agreement, to the extent of the work to be performed by the Subcontractor. Said agreements shall be made in writing and shall preserve and protect the rights of the Owner and Architect-Engineer under the Contract Documents with respect to the work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with its sub-subcontractor.

The Construction Manager shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound.

2. All subcontracts shall provide -

LIMITATION OF REMEDY- NO DAMAGES FOR DELAY

The subcontractor's exclusive remedy for delays in the performance of the contract caused by events beyond its control, including delays claimed to be caused by the Owner or Architect-Engineer or attributable to the Owner or Architect-Engineer and including claims based on breach of contract or negligence, shall be an extension of its contract time and shall in no way involve any monetary claim.

In the event of a change in the work, the Subcontractor's claim for adjustments in the contract sum are limited exclusively to its negotiated costs for such changes plus no more than ten percent (10%) for overhead, profit and bond costs.

The subcontract shall require the subcontractor to expressly agree that the foregoing constitutes the sole and exclusive remedy for delays and changes in the work and eliminates any other remedies or claims for increase in the contract price, damages, losses or additional compensation. Each subcontract shall require that any claims by the subcontractor for delay or additional cost must be submitted to the Construction Manager within the time and in the manner in which the Construction Manager must submit such claims to the Owner, and that failure to comply with the conditions for giving notice and submitting claims shall result in the waiver of such claims.

5.4 Responsibilities for Acts and Omissions:

The Construction Manager shall be responsible to the Owner for the acts and omissions of its employees, agents, subcontractors, the agents thereof and employees thereof, and all other persons performing any of the work or supplying materials for the Project under a contract to the Construction Manager.

**ARTICLE 6
SCHEDULE, TIME OF COMMENCEMENT
AND SUBSTANTIAL COMPLETION**

- 6.1 At the time a Guaranteed Maximum Price (GMP) is established as provided for in Article 7, a Project Substantial Completion Date, a Project Final Completion Date and an Owner Occupancy Date for completion of the Project in accordance with the master project schedule, shall also be established by the Construction Team. The Construction Manager agrees to complete the construction in accordance with the agreed Substantial Completion Date, Final Completion Date and Owner Occupancy Date. The Construction Manager acknowledges that failure to complete the Project within the construction time set forth in the approved schedule will result in substantial damages to the Owner. These liquidated

damages are the sole remedy for delay, shall in no way be deemed a waiver of the Owner's right to all other legal remedies in this Agreement.

In the event the Construction Manager does not achieve the Substantial Completion Date the Construction Manager shall pay the Owner, as liquidated damages and not as a penalty, in the amount of Five Hundred Dollars (\$500.00) for each calendar day the actual time of performance exceeds the authorized Substantial Completion Date for each separate GMP as applicable.

- 6.2 The date of Owner Occupancy shall occur as described in Article 2.4(12) herein above. Warranties called for by this Agreement or by the Contract Documents shall commence on the Substantial Completion Date, unless otherwise agreed to, in writing, between the Owner and Construction Manager.

ARTICLE 7

GUARANTEED MAXIMUM PRICE FOR CONSTRUCTION

- 7.1 When the design documents are sufficiently complete to establish the scope of work for the Project, or any portion thereof, as generally defined by a design document listing to be provided by the Architect-Engineer, or at such time thereafter designated by the Owner, the Construction Manager will establish and submit in writing to the Owner for approval, a Guaranteed Maximum Price (GMP), guaranteeing the maximum price to the Owner, for the construction cost of the Project or designated part thereof. The Construction Manager acknowledges multiple GMPs may be required for the portions of the Project to support the project phasing and schedule. Such Guaranteed Maximum Price will be subject to modification for changes in the Project as provided in Article 10; however, the actual price paid for the work by the Owner shall be the actual cost of all work subcontracts, supply contracts, direct labor costs, direct supervision costs and direct job costs as defined under Article 9, plus the Construction Manager's costs and fees, or the GMP, whichever is less when the work is complete.
- 7.2 The GMP will only include those taxes, in the cost of the Project, which are legally enacted at the time the GMP is established.
- 7.3 At the time of submission of a GMP, the Construction Manager will verify the time schedule for activities and work, which were adopted by the Construction Team and used to determine the Construction Manager's cost of work. Included in the GMP will be a Contractor's Contingency, which is included for the Construction Manager to use, with the Owner's consent. The contingency is intended to cover the costs associated with Project scope that were not adequately detailed at the time of GMP. The Contractor's Contingency is also intended to protect against price increases between the GMP and the completion of the 100% construction documents, as well as for the purpose of defraying the expenses due to unforeseen circumstances relating to construction and for price increases attributable to any code compliance reviews determined to be the responsibility of the Construction Manager. The Construction Manager will be required to furnish documentation evidencing expenditures charged to the Contractor's Contingency prior to the release of funds by the

Owner. Documentation for use of the Contractor's Contingency shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. The Architect-Engineer shall verify the actual costs. If there are funds remaining in the Contractor's Contingency at the conclusion of the Project, said funds will be returned to the Owner, through deductive change order.

- 7.4 When the Project is bid and one hundred percent (100%) of the trade contracts have been executed, the available contingency within the GMP may be decreased in proportion to the percent of the work completed up to a maximum of fifty percent (50%). In other words, if ten percent (10%) of the work has been completed and the Owner requests that the contingency within the GMP be adjusted, then ten percent (10%) of the contingency within the GMP will be removed from the GMP by change order up to a maximum of fifty percent (50%) of the initial GMP contingency value. During the buyout period of the trade contracts, at a point mutually agreed upon between the Owner and Construction Manager, the net amount of the buyout will be reviewed. If the net amount of the total buyout results in excess funds being required, those funds will be taken from the Contractor's Contingency.

If the net amount of the buyout results in a savings, the savings will be assigned to the Owner's Buyout Contingency as defined in Article 7.5

If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work or negotiate for its performance for the specified line item lump sum amount or less.

- 7.5 The Owner's Buyout Contingency shall be created by the savings generated by subcontractor buyout as set forth in Article 7.4 and also by reductions in scope that otherwise could reduce the GMP. The intent of this Owner's Buyout Contingency is to allow funds already within the GMP to remain in the GMP and be used at the Owner's discretion for scope issues that may become required and/or desired during the course of the Project.

Authorizations up to Thirty-five Thousand and 00/100 Dollars (\$35,000.00), or such other dollar amount as authorized by policy adopted by the City Council, for the use of the Owner's Buyout Contingency, may be granted by the City Manager. Authorizations, for more than Thirty-five Thousand and 00/100 Dollars (\$35,000.00), will be granted by the City Council unless the City Council authorizes an increase in the City Manager's authority for the same.

ARTICLE 8

CONSTRUCTION MANAGER'S COSTS

- 8.1 In consideration of the performance of this Agreement, the Owner agrees to pay the Construction Manager as compensation for his services, costs or fees, as set forth herein.

1. Design Phase/Pre-construction Costs - For the performance of the services set forth under Article 2 and for profit and overhead related to these services, the Construction Manager shall be paid a total amount of One Hundred Thirty-four Thousand Seven Hundred Sixty-one and 00/100 Dollars (\$134,761.00) as set forth in **Exhibit "F"**, attached hereto. The Design Phase/Pre-construction Costs shall be paid according to the percent complete of the design phase.

The Construction Manager's personnel to be assigned during this phase and their duties and responsibilities to this project and the duration of their assignments are shown on Exhibit "C".

2. Construction Phase Costs - Prior to commencement of the Construction Phase, the Owner will direct the Construction Manager in writing to proceed into said Construction Phase. The Construction Phase Cost for work or services performed during the Construction Phase shall be an amount of *(To Be Determined at GMP)*. The Construction Phase Costs shall be paid according to the percent complete of the Project, plus an initial mobilization cost. The first monthly payment shall be due thirty (30) days following the issuance of the first Construction Authorization by the Owner's Representative and the final monthly payment shall be paid only when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, accepted by the Owner. If construction is authorized only for a part of the Project, the costs paid shall be proportionate to the amount of work authorized by the Owner.

A. Adjustments in Costs - For changes in the Project as provided in Article 10, the Construction Phase Costs shall be adjusted as follows:

1. The Construction Manager shall be paid an additional amount subject to negotiation if the Construction Manager is placed in charge of reconstruction of an insured or uninsured loss excluding any condition that may have been caused from negligent acts by the Construction Manager.
2. Should the construction duration for any phase extend longer than stipulated above, there shall be no additional Construction Phase Costs paid to the Construction Manager unless such delays are as defined in Article 10.2.
3. The Construction Manager will not be due any additional Construction Phase Fee on increases in the Guaranteed Maximum Price (GMP) that do not exceed a cumulative total of two percent (2%) for each separate GMP. Should a GMP be increased by more than two percent (2%) under the terms of Article 10 hereinafter, due to no fault of the Construction Manager, the Construction Manager's additional Construction Phase Fee will be five percent (5%) of that

portion of the accumulative increases in the GMP that exceed the GMP by more than two percent (2%).

Construction Manager's Exclusive Remedy - In the event the construction Substantial or Final Completion date is extended, regardless of whether delay is caused by any act or neglect of the Owner or the Architect-Engineer, or is attributable to the Owner or the Architect-Engineer, the Construction Manager's sole and exclusive remedy is an extension of the Substantial Completion Date and payment of additional Construction Phase Costs and Construction Phase Fee as provided above.

B. Costs and Expenses Included in Construction Phase Costs – The following are included in the Construction Phase Costs for services during the Construction Phase:

1. Salaries or other compensation of the Construction Manager's employees at its principal office and branch offices.
 2. General operating expenses of the Construction Manager's principal and branch offices related to the Project.
 3. The costs of all data processing staff.
 4. Salaries or other compensation of the Construction Manager's employees at the job site.
 5. General operating expenses incurred in the management and supervision of the Project, except as expressly included in Article 9.
 6. Those services set forth in Article 2.4(9)(A).
 7. Job office supplies including but not limited to paper, pencils, paper clips, file folders, staples and janitorial supplies.
3. Construction Phase Fee - For overhead, profit and general expenses of any kind, except as may be expressly included in Article 9, for services provided during and related to the construction phase, the amount shall be five and one quarter percent (5.25%) of the GMP and shall be converted to a fixed amount upon acceptance of the GMP, subject to changes as described herein, and shall be paid proportionally to the ratio of the cost of the work in place, including stored materials, as it bears on the latest estimate of the total construction cost and/or to the GMP, whichever is less. The balance of the fee shall be paid when construction of the Project, or portion thereof, is finally completed and occupancy of the Project, or portion thereof, is accepted by the Owner. If construction is authorized only for a part of the Project, the fee paid shall be proportionate to the amount of work authorized by

the Owner. The Construction Manager's exclusive remedy for any adjustments in the Construction Phase Fee is provided in Article 8.1(2).

ARTICLE 9

DIRECT COSTS OF THE PROJECT

9.1 Definition:

The term Direct Cost of the Project shall mean costs necessarily incurred in the Project during the Construction Phase for Construction Services and paid by the Construction Manager, which are not included in the Construction Phase Fee. Such costs shall include the items set forth below in this Article.

The Owner agrees to pay the Construction Manager for the Direct Costs of the Project as defined herein. Such payment shall be in addition to the Construction Phase Costs stipulated in Article 8. Invoices submitted under this Article 9 shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

9.2 Direct Cost Items:

1. Cost of all materials, supplies and equipment incorporated in the Project, including costs of transportation and storage thereof.
2. Payments due to subcontractors from the Construction Manager or made by the Construction Manager to subcontractors for work performed pursuant to contract under this Agreement.
3. Cost including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen, employed or consumed in the performance of the work.
4. Rental charges on all necessary machinery and equipment, exclusive of hand tools used at the site of the Project, whether rented from the Construction Manager or other, including installation, repairs and replacement, dismantling, removal, transportation and delivery costs thereof, which are used in the support of a subcontractor or the Construction Manager's own forces in the performance of the work, at rental charges consistent with those prevailing in the area.
5. Cost of the premiums for all insurance and cost of premiums for all bonds, which the Construction Manager is required to procure by this Agreement specifically for the construction of the Project. The cost of the work shall include any subcontractor bonds or other security the Construction Manager deems appropriate. There shall be no Construction Phase Fee on CM bond and CM Liability insurance cost.

6. Losses and expenses sustained by the Construction Manager in connection with the work, not compensated by insurance, including deductibles provided they have resulted from causes other than the negligent misconduct of Construction Manager.
7. Sales, use, gross receipts or similar taxes related to allowable direct costs of the Project imposed by any governmental authority, and for which the Construction Manager is liable.
8. The cost of corrective work, subject to the GMP, except for any corrective work made necessary because of defective workmanship or other problems caused by the negligence of the Construction Manager or its subcontractors or suppliers. No costs shall be paid by the Owner to the Construction Manager for any expenses made necessary to correct defective workmanship or to correct any work not in conformance with the Contract Documents or to correct any deficiency or damage caused by the negligent acts by the Construction Manager.
9. Costs for repairs and maintenance, which are consistent with industry standards associated with work required during the warranty period, which may be the responsibility of Construction Manager. This shall not apply to work, which is the responsibility of subcontractors, except in the case of a subcontractor's default.
10. Costs for trash and debris control and removal from the site.
11. Costs incurred due to an emergency affecting the safety of persons and property.
12. Legal costs reasonably and properly resulting from the Project on behalf of the Owner, including handling claims for changes by Subcontractors and Vendors, subject to the following limitations:
 - A. The Owner approved incurring such costs in advance, which approval shall not be unreasonably denied; and
 - B. The legal costs were not incurred as result of the Construction Manager's own negligence or default.

This paragraph does not provide for payment of legal costs incurred in preparing or asserting claim or requests, by Construction Manager itself, for change orders or in enforcing the obligations of this contract.
13. All costs directly incurred in the performance of the Project for the benefit of the Project and not included in the Construction Phase Costs as set forth in Article 8.
14. If requested by the Owner, the Construction Manager will perform all or a portion of the General Conditions work as a Direct Cost of the Project.

15. If approved by the Owner, the Construction Manager, when qualified, may perform all or a portion of the work for any item listed on the estimate or GMP breakdown where it is deemed advantageous due to schedule or economic benefit as a Direct Cost of the Project.
16. Transportation outside of Lake, Orange or Seminole for those personnel employed directly for the Project, not including relocation expenses. Such transportation must be approved in advance by the Owner, and will be in accordance with the Construction Manager's standard personnel policy.
17. Costs of all reproductions used for bidding or information purposes required by the Project to directly benefit the Project.
18. Costs for watchman and security services for the Project.
19. Costs for efficient logistical control of the site, including horizontal and vertical transportation of materials and personnel and costs for adequate storage and parking.
20. Costs for such temporary facilities and temporary protection during construction, as approved by the Owner, including temporary water, heat, power, sanitary facilities, telephones, radios and computers with software.
21. Costs for any job site items not referenced herein, not normally provided by the subcontractors, which will be provided by the Construction Manager as required to complete the Project.

ARTICLE 10

CHANGES IN THE PROJECT

10.1 Change Orders:

The Owner, without invalidating this Agreement, may order changes in the Project within the general scope of this Agreement consisting of additions, deletions or other revisions, with the GMP and the Substantial and/or Final Completion Dates being adjusted accordingly. All changes in the Project, not covered by an authorized contingency, shall be authorized by a Change Order signed by the Owner before the change is implemented.

1. A Change Order is a written order to the Construction Manager signed by the Owner issued after the execution of this Agreement, authorizing a change in the Project, the Construction Phase Fee, or other attributable cost of the Project.
2. The increase or decrease in the GMP resulting from a change in the Project shall be determined in one or more of the following ways:

- A. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Architect-Engineer and Owner;
 - B. by unit prices stated in the Agreement or subsequently agreed upon;
 - C. by cost as defined in Article 9 and a mutually acceptable fixed or percentage fee; or
 - D. by the method provided in Article 10.1(3).
 - E. Should any costs be required for design of an alternative system that would be advantageous to the Project and result in a deductive change order, the Construction Manager shall include the cost of the redesign services of the Architect-Engineer so that the Owner can make proper assessment of the cost of such change. Payment for additional services shall be made by the Owner.
3. If none of the methods set forth in Article 10.1(2) is agreed upon, the Construction Manager, provided it receives a written order signed by the Owner, shall promptly proceed with the work involved. The cost of such work shall then be determined on the basis of the reasonable expenditures and savings of those performing the work attributed to the change. In the event a Change Order is issued under these conditions, the Construction Manager shall establish an estimated cost of the work and the Construction Manager shall not perform any work if the cost exceeds that estimate without prior written approval by the Owner.
4. In the event of either Article 10.1(2) or Article 10.1(3) above, the Construction Manager shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, of the increase in the Direct Cost of the Project as outlined in Article 9.
5. The amount of decrease in the Guaranteed Maximum Price to be allowed by the Construction Manager to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.
6. If unit prices are stated in the Agreement or subsequently agreed upon, and if the quantities originally contemplated are so changed in a proposed Change Order, and that application of the agreed unit prices to the quantities of work proposed will cause substantial inequity to the Owner or the Construction Manager, the applicable unit prices and Guaranteed Maximum Price shall be equitably adjusted.
7. In the performance of the work, should concealed conditions be encountered below the surface of the ground or should concealed or unknown conditions in an existing structure be inconsistent with the conditions indicated by the Drawings, Specifications, or Owner furnished information or should unknown physical

conditions exist below the surface of the ground or should concealed or unknown conditions in an existing structure of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, be encountered, the Guaranteed Maximum Price and the Substantial and/or Final Completion Dates shall be equitably adjusted by Change Order upon a request for Change Order in accordance with Article 10.2.

8. In the event the Construction Manager encounters material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, petroleum waste, biohazardous substances, radioactive waste or any other substance falling within the category of hazardous or toxic waste under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other state or federal environmental statute or regulation, hereinafter collectively referred to as "hazardous waste," the Construction Manager shall immediately stop work in the area affected and report the condition to the Owner in writing. Owner shall thereafter as soon as reasonably possible conduct a thorough investigation to determine if the suspected material in the affected area is in fact hazardous waste and shall certify to Construction Manager that such material is not hazardous waste or if such material is in fact hazardous waste that such hazardous waste has been abated and that it is safe to return to the affected area and resume work. The Construction Manager may require the Owner to furnish copies of reports of tests conducted by a qualified testing laboratory acceptable to Construction Manager verifying the absence of such hazardous waste before Construction Manager will be required to resume work. The Contract time and amount shall thereafter be equitably adjusted to account for the time lost due to the encountering of the hazardous waste and the reasonable cost associated therewith. The Construction Manager shall, through an analysis of network schedule, prove such time delays and associated costs.
9. The Construction Manager shall not be required to perform any work relating to hazardous waste without consent pursuant to this Article 10.

10.2 Claims for Additional Cost or Time:

All claims for additional cost or time shall be made by request for a Change Order submitted as provided in Article 16.

The Substantial Completion date shall be extended by Change Order for such reasonable time as the Construction Manager may determine. If the Construction Manager is delayed at any time in the progress of the work by any act or neglect of the Owner or the Architect-Engineer or of any employee of either or by any separate Construction Manager employed by the Owner or by any changes ordered in the work by labor disputes, fire or unusual delay in transportation, unavoidable casualties or any causes beyond the Construction Manager's control or by delay authorized by the Owner pending resolution of disputes, and

such delay extends the Substantial and/or Final Completion Date, then the dates for completion may be equitably adjusted.

Only delays which are determined to extend the critical path for the schedule for constructing the Project, will result in a time extension. Neither the Owner nor the Construction Manager shall be considered to own the schedule float time.

10.3 Minor Changes in the Project:

The Owner will have authority to order minor changes in the Project not involving an adjustment in the Guaranteed Maximum Price or an extension of the Substantial and/or Final Completion Date and not inconsistent with the intent of the Contract Documents. Such changes shall be affected by written order. The Documentation of changes shall be determined by the Construction Team, included in the Project Manual and displayed monthly in the Project Management Information System. Changes shall be approved by the Owner and Architect-Engineer.

10.4 Emergencies:

In any emergency affecting the safety of persons or property, the Construction Manager shall act at its discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the Construction Manager on account of emergency work shall be determined as provided in this Article 10.

ARTICLE 11
DISCOUNTS

All discounts for prompt payment shall accrue to the Owner to the extent the cost of the item(s) purchased is paid directly by the Owner or from a fund made available by the Owner to the Construction Manager for such payments. To the extent the cost associated with the Project is paid with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment, shall be credited to the cost of the Project.

ARTICLE 12
PAYMENTS TO THE CONSTRUCTION MANAGER

12.1 Monthly Statements:

The Construction Manager shall submit to the Owner a sworn statement, along with the cost reports required under Article 2.1(5), showing, in detail, all moneys paid out, cost accumulated or costs incurred during the previous period and the amount of the Construction Phase Fees due as provided in Article 8. This data shall be attached to the Partial Pay Request form shown in **Exhibit "G"**. Ten percent (10%) retainage shall be held on all payments until the contract is fifty percent (50%) complete, except when approved by the Owner certain suppliers and subcontractors may be paid the entire amount due when

such payment is generally the practice of the industry. At fifty percent (50%) completion, the Owner may approve a reduction of the retainage from ten percent (10%) to five (5%) at its discretion. Retainage shall not be withheld on services or fees set forth in Article 8. Payments by the Owner to the Construction Manager shall be made as described in this Article 12. As a condition to application for a monthly partial pay requisition, the Construction Manager agrees that all as-built information will be recorded within thirty (30) days after receipt of information that a change to the Construction Documents has occurred.

12.2 Final Payment:

Final payment constituting the unpaid balance of the Construction Phase Cost of the Project and the Construction Phase Fee, shall be due and payable as described in Article 12.4 after Final Completion, provided that the Project has been finally completed, that the Construction Manager has verified by appropriate signature that it has completed all items and that this Agreement has been finally performed. However, if there should remain work to be completed, the Construction Manager, the Owner, and the Architect-Engineer shall list those items prior to receiving final payment and the Owner may retain a sum equal to the estimated cost of completing any unfinished work and portion of the Construction Manager's retainage, provided that said unfinished items are listed separately and the estimated cost of completing the unfinished items are likewise listed separately. Thereafter, Owner shall pay the Construction Manager monthly, the amount retained for each incomplete item after each such item is completed.

12.3 Payments to Subcontractors:

The Construction Manager shall promptly, within ten (10) days after receipt of payment from the Owner, pay all the amounts due to subcontractors less a retainage of ten percent (10%) until the project is fifty percent (50%) complete, and based on Construction Manager's evaluation of the subcontractor's acceptable performance, the Owner may approve a reduction in retainage from ten percent (10%) to five percent (5%) thereafter. If there should remain items to be completed, the Construction Manager, the Owner and Architect-Engineer shall list those items required for completion and the Construction Manager shall require the retainage of a sum equal to five percent (5%) of the estimated cost of completing any unfinished items, provided that said unfinished items are listed separately and the estimated cost of completing any unfinished items are likewise listed separately. Thereafter, the Construction Manager shall pay to the subcontractors monthly, the amount retained for each incomplete item after each such item is completed. Before issuance of final payment without any retainage, the subcontractor shall submit satisfactory evidence that all payrolls, material bills and other indebtedness connected with the Project have been paid or otherwise satisfied, warranty information is complete, as-built markups have been submitted and instruction for the Owner's operating and maintenance personnel is complete.

Final payment may be made to certain select subcontractors whose work is satisfactorily completed prior to the total completion of the Project but only upon approval of the Owner.

12.4 Construction Manager's Payment Rights:

All payments for construction services shall be governed by and made in accordance with Florida's Prompt Payment Act, Florida Statutes, Section 218.735.

12.5 Payments for Materials and Equipment:

Payments will be made for material and equipment not incorporated in the work but delivered and suitably stored at a Project site or another location that is insured to protect the Owner's assets subject to prior approval and acceptance by the Owner on each occasion.

12.6 Withholding Payments to Subcontractors:

The Construction Manager shall not withhold payments to subcontractors if such payments have been made to the Construction Manager. Should this occur, the Construction Manager shall return such moneys to the Owner, adjusting pay requests and project bookkeeping as required. However, this provision shall not apply should payments to subcontractors be withheld as a result of procuring normal process paperwork in accordance with the Construction Manager's contract with said subcontractor. The Construction Manager shall, if requested by the Owner, notify the Owner in writing as to the reason for withholding payment.

ARTICLE 13
INSURANCE, INDEMNITY AND WAIVER OF SUBROGATION

13.1 Indemnity:

The Construction Manager agrees to be liable for any and all damages, losses and expenses incurred, by the Owner, in any way related to or caused by the acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers or the like, to the extent stemming from the services provided by this Agreement. The Construction Manager agrees to indemnify, defend and hold the Owner harmless for any and all claims, suits, judgments, damages, losses and expenses, including but not limited to, court costs, expert witness fees, consultation services and attorney's fees, through and including any appeals, arising from and related to any and all acts and/or omissions of the Construction Manager, or any of its employees, agents, sub-contractors, representatives, volunteers, or the like, to the extent stemming from the services provided by this Agreement. Said indemnification, defense and hold harmless activities shall not be limited by any required insurance coverage amounts set forth herein and shall survive termination or natural expiration of this Agreement.

13.2 Construction Manager's Insurance:

1. The Construction Manager shall not commence any construction work in connection with this Agreement until he has obtained all of the following types of insurance and such insurance has been approved by the Owner, nor shall the

Construction Manager allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All insurance policies shall be from insurers qualified and doing business in Florida with an AM Best Company rating of no less than A.

2. Worker's Compensation Insurance - The Construction Manager shall take out and maintain during the life of this Agreement Worker's Compensation Insurance for all his employees, and the like, connected with the work of this Project and, in case any work is sublet, the Construction Manager shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the subcontractor's employees unless such employees are covered by the protection afforded by the Construction Manager. Such insurance shall comply with Florida Worker's Compensation Law. In case any class of employees, engaged in hazardous work on the Project, is not protected under the Worker's Compensation statute, the Construction Manager shall provide adequate insurance, satisfactory to the Owner, for the protection of employees not otherwise protected. Employers' liability shall be no less than \$1,000,000/1,000,000/1,000,000 for Hazardous Material coverage.
3. Construction Manager's Public Liability and Property Damage Insurance - The Construction Manager shall take out and maintain during the life of this Agreement, Comprehensive General Liability and Comprehensive Automobile Liability Insurance to protect it from claims of damage for personal injury, including accidental death, as well as claims for property damage which may arise from its operations under this Agreement whether such operations are by the Construction Manager or by anyone directly or indirectly employed by it, and the amount of such insurance shall have the following minimum limits:
 - A. GENERAL LIABILITY: One Million Dollars (\$1,000,000.00) each occurrence; GENERAL AGGREGATE: Two Million Dollars (\$2,000,000.00). There shall not be an EFIS Exclusion Endorsement on any general liability policy;
 - B. Automobile Liability Coverages, One Million Dollars (\$1,000,000.00) combined single limit, and One Million Dollars (\$1,000,000.00) for each occurrence of bodily injury and property damage;
 - C. Excess Liability, Umbrella Coverage, Two Million Dollars (\$2,000,000.00) each occurrence.
4. Subcontractor's Public Liability and Property Damage Insurance - The Construction Manager shall require each of its subcontractors to procure and maintain during the life of any such subcontract, insurance coverage of the types specified above or insure the activities of the subcontractors in the Construction Manager's policies, as specified above.

5. "XCU" (Explosion, Collapse, Underground Damage) - The Construction Manager's Liability Policy shall provide "XCU" coverage for those classifications in which they are excluded.
6. Products and completed operations Coverages - The Construction Manager's Liability Policy shall include Broad Form Property Damage Coverage, Products and Completed Operations Coverages. The products and completed operations portions of the liability coverage shall extend for a period of two (2) years after the Final Acceptance of the Project by the Owner.
7. Contractual Liability Work Contracts - The Construction Manager's Liability Policy shall include Contractual Liability Coverage designed to protect the Construction Manager for contractual liabilities assumed by the Construction Manager in the performance of this Agreement.
8. Indemnification Rider -
 - A. To cover to the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the Owner and the Architect-Engineer and their agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from the performance of the Project, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself), and to the extent it (2) is caused in whole or in part by any negligent act or omission of the Construction Manager, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right to obligation of indemnity which would otherwise exist as to any party or person described in this Article.
 - B. In any and all claims against the Owner or the Architect-Engineer or any of their agents or employees by any employee of the Construction Manager, any subcontractor, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, the indemnification obligations under this Paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Construction Manager or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
 - C. The obligations of the Construction Manager under this Article 13.2(8) shall not extend to the liability of Architect-Engineer, his agents or employees, 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 instruction by Architect-Engineer, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage.

- D. The Construction Manager hereby acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Owner and acknowledges receipt of Ten Dollars (\$10.00) and other good and valuable consideration from the Architect-Engineer in exchange for giving the Owner and Architect-Engineer, respectively, the indemnification provided above in Articles 13.1 and 13.2.
9. Builder's Risk Coverage - The Construction Manager shall take out and maintain during the life of this Agreement a "Builder's Risk Policy" completed value form, issued to provide coverages on an "all risk" basis including theft. This coverage shall not lapse or be canceled because of partial occupancy by the Owner prior to Final Acceptance of the Project. The Owner may elect to take out and maintain this insurance coverage. Should the Owner purchase said insurance, the insurance policy shall have a deductible for each occurrence of Five Thousand and 00/100 Dollars (\$5,000.00). The Construction Manager shall be responsible for paying any deductible amount.
10. Certificate of Insurance - For every insurance policy required hereunder, the Construction Manager shall provide the Owner with a Certificate of Insurance evidencing such coverage for the duration of this Agreement, or such longer period if required hereunder. Said Certificate of Insurance shall be dated and show:
- A. The name of the insured Construction Manager;
 - B. The specified job by name and job number;
 - C. List the "CITY OF MOUNT DORA" as an Additional Insured;
 - D. Recognizes the Indemnification requirements of this Agreement;
 - E. The name of the insurer;
 - F. The number of the policy;
 - G. The effective date;
 - H. The termination date;
 - I. A statement that the insurer will mail notice to the CITY at least thirty (30) days prior to any material changes in the provisions or cancellation of the policy.
11. Receipt of certificates or other documentation of insurance or policies or copies of policies by the Owner, or by any of its representatives, which indicates less coverage than is required hereunder, does not constitute a waiver of the Construction Manager's obligation to fulfill the insurance requirements specified herein.

12. The Construction Manager shall ensure that any sub-contractor(s), hired to perform any of the work on any part of the Project, maintain appropriate insurance as determined by the Construction Manager. In addition, the Construction Manager shall maintain proof of same on file and made readily available upon request by the Owner.

13.3 Waiver of Subrogation:

1. The Owner and the Construction Manager waive all rights against each other, for damages caused by perils covered by insurance provided under Article 13.2 to the extent they are covered by such insurance except such rights as either may have to the proceeds of such insurance held by the Owner and Construction Manager as trustees. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
2. The Owner and Construction Manager waive all rights against each other for loss or damage to any equipment used in connection with the Project and covered by any property insurance. The Construction Manager shall require similar waivers from all subcontractors and their sub-subcontractors.
3. The Owner waives subrogation against the Construction Manager on all property and consequential loss policies carried by the Owner on adjacent properties and under property and consequential loss policies purchased for the Project after its completion.
4. If the policies of insurance referred to in this Article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Owner of such policies will cause them to be so endorsed and failure to obtain proper endorsement nullifies the waiver of subrogation.

ARTICLE 14
TERMINATION OF THE AGREEMENT AND OWNER'S RIGHT TO
PERFORM CONSTRUCTION MANAGER'S OBLIGATION

14.1 Termination by the Construction Manager:

If the Project is stopped for a period of thirty (30) days under an order of any court or other public authority having jurisdiction or as a result of an act of government, such as a declaration of a national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Project should be stopped for a period of sixty (60) days by the Construction Manager, for the Owner's failure to make payments thereon, then the Construction Manager may, upon seven (7) days written notice to the Owner, request payment for all work executed, the Construction Manager's fees earned to date, and for any proven loss sustained upon any materials, equipment, tools, construction equipment and machinery, including reasonable profit thereon and termination expenses incurred by the Construction Manager.

14.2 Owner's Right to Perform Construction Manager's Obligations and Termination by Owner for Cause:

1. If the Construction Manager fails to perform any of its obligations under this Agreement, including any obligation it assumes to perform work with its own forces, the Owner may correct any deficiencies after providing seven (7) days written notice to the Construction Manager. In such an event, the GMP, or the actual cost of the Project, whichever is less, shall be reduced by the cost to the Owner of correcting such deficiencies and the Construction Manager's Construction Phase Fee shall also be reduced by the amount required to manage the correction of such deficiencies.
2. The Owner may, without prejudice to any other right or remedy and upon providing the Construction Manager and its surety, if any, seven (7) days written notice of failures or deficiencies, terminate this Agreement with the Construction Manager and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever means or method the Owner, in its sole discretion, deems appropriate.
3. If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the Construction Manager's insolvency, or if it persistently or repeatedly refuses or fails, except in cases for which an extension of time is provided, to supply enough properly skilled workmen or proper materials and fails to maintain an established schedule by falling forty-five (45) days or more behind the schedule adopted by the Construction Team, or if the Construction Manager fails to make prompt payments to subcontractors for materials or labor, or persistently disregards laws, rules, ordinances, regulations or orders of any public authority having jurisdiction, or otherwise is in breach of a material provision of this Agreement, the Construction Manager shall not be entitled to receive any further payment until the Project is finished nor shall it be relieved from its obligations assumed under Article 6. Reasonable termination expenses incurred by the Owner may be deducted from any payments which remain owed to the Construction Manager, excluding any monies owed the Construction Manager for subcontract work.

14.3 Termination by Owner Without Cause:

1. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon, owned by the Construction Manager, and may finish the Project by whatever method he may deem expedient without prejudice to any right or remedy.
2. Upon seven (7) days written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

- A. cease operations as directed by the Owner in the notice;
 - B. take actions necessary, or that the Owner may direct, for the protection and preservation of the work; and
 - C. terminate all existing subcontracts and purchase orders and not enter into further subcontracts and purchase orders, except for work directed to be performed prior to the effective date of termination stated in the notice.
3. In case of such termination for the Owner's convenience, the Construction Manager shall be entitled to receive payment for work executed, and costs incurred by reason of such termination, along with a reasonable fee, as defined in Article 8.1(2), overhead and profit on the work performed.

ARTICLE 15

ASSIGNMENT AND GOVERNING LAW

- 15.1 Neither the Owner nor the Construction Manager shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds.
- 15.2 This Agreement shall be governed by the laws of the State of Florida. Venue shall be in Lake County, Florida. The parties waive all rights to trial by jury.

ARTICLE 16

NOTICE OF CLAIM; WAIVER OF REMEDIES

- 16.1 The Owner's liability to the Construction Manager for any claims arising out of or related to the subject matter of this Agreement, whether in contract or tort, including, but not limited to, claims for extension of construction time, for payment by the Owner of the costs, damages or losses because of changed conditions under which the work is to be performed, or for additional work, shall be governed by the following provisions:
- 1. All claims must be submitted as a Request for Change Order in the manner as provided herein;
 - 2. The Construction Manager must submit a Notice of Claim to Owner within twenty (20) days of the Construction Manager becoming aware of the occurrence, or the event, giving rise to the claim; and
 - 3. Within ten (10) days of submitting its Notice of Claim, the Construction Manager shall submit to the Owner its Request for Change Order, which shall include a written statement of all the details of the claim, including a description of the work affected.

The Construction Manager agrees that the Owner shall not be liable for any claim that the Construction Manager fails to submit as a Request for Change Order as provided in this

paragraph to the extent that the Owner is prejudiced by the failure of the Construction Manager to submit the Request for Change Order.

- 16.2 After receipt of a Request for Change Order, the Owner, in consultation with the Architect-Engineer, shall deliver to the Construction Manager its written determination of the claim.
- 16.3 For work the Construction Manager performs with its own forces, and in addition to the adjustments provided for in Article 8, the Construction Manager's exclusive remedy for delays in performance of the construction caused by events beyond its control, including delays claimed to be caused by or attributable to the Owner or the Architect-Engineer, including claims based on breach of contract or negligence, shall be a claim submitted in compliance with Article 16.1 above, for an extension of the scheduled construction time. In the event of a change in such work, the Construction Manager's claims for adjustments in the contract sum are limited exclusively to its actual costs for such changes plus five percent (5%) for profit. The Construction Manager expressly agrees that the foregoing constitutes its sole and exclusive remedy for delays and changes in work, and eliminates any other remedies for claims for increase in the contract price, delays, changes in the work, damages, losses or additional compensation.

ARTICLE 17
DIRECT MATERIALS ACQUISITION AND SALES TAX EXEMPT
PURCHASE PROCEDURES FOR PUBLIC PROJECTS

- 17.1 Direct Materials Acquisition by Owner - Supply Bonds:
 1. The Construction Manager shall ensure that each subcontractor includes Florida state tax and other applicable sales tax for all material, supplies and equipment included in a subcontractor's bid.
 2. The Owner may, if not prohibited by law, exercise a right to purchase directly, various construction materials, supplies and equipment that may be part of this Agreement or of a subcontract, provided that the Owner receives proper authorization from the State of Florida in the form of a Technical Assistance Advisement as set forth in Florida Administrative Code, Rule 12-11.003. Any materials purchased by the Owner shall be referred to as "Owner Purchased Materials" and the responsibilities of both the Owner and the Construction Manager relating to such Owner Purchased Materials shall be governed by the terms and conditions of this Article, which shall take precedence over other conditions and terms of this Agreement where inconsistencies or conflicts exist.
 3. The Owner will issue its own purchase orders directly to a vendor. The Owner's Purchase Order shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address and exemption number with issue and expiration date shown. The materials shall be purchased from the vendors and suppliers selected by the Construction Manager or subcontractor for prices negotiated by the Construction Manager or subcontractor, as applicable, The

Construction Manager will provide all the necessary information for preparation of the purchase orders by the Owner and will coordinate the purchase of the materials in a timely manner so as to not negatively impact the performance of the construction activity of the Project.

4. The subcontract amount shall be reduced by the net, undiscounted amount of these purchase orders, plus all sales taxes. Issuance of the purchase orders by the Owner shall not relieve the subcontractor or the Construction Manager of any of their responsibilities regarding material purchases, or installation, with the exception of the payments for the material so purchased. The Construction Manager and the subcontractor shall remain, with respect to materials, supplies and equipment, fully responsible for coordination, correct quantities ordered, submittals, protection, storage, scheduling, shipping, security, expediting, receiving, installation, cleaning and the management of all applicable warranties.
5. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the same manner that all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
6. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
7. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner purchased equipment, materials or supplies. Such insurance shall cover the value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
8. The material supplier may be required to provide a supply bond in the amount of 100% of the purchase order price. The bond shall be from a qualified surety company authorized to do business in the State of Florida and acceptable to the Owner and the Construction Manager. If a supply bond is required, the cost of the bond will be added to the amount of the Purchase Order. The premium cost for this supply bond shall be included in the bid price. Verifying that a designated material

supplier can furnish a supply bond, if required, will be the responsibility of the Construction Manager. Owner reserves the right to waive the requirement of providing a supply bond at the discretion of Owner.

9. If the State of Florida assesses any sales tax penalties and/or interest against the Construction Manager or any of its subcontractors or material suppliers relating to the direct acquisition of materials and/or equipment by Owner as authorized by this paragraph, such taxes, penalties, interest and/or any legal and administrative fees expended by the Construction Manager as a direct result of any action or assessment made by the State of Florida, shall be reimbursed by Owner to the Construction Manager in a prompt and reasonable manner and shall not be considered a Project Cost.

18.2 Sales Tax Exempt Purchasing Procedures for Public Projects:

1. The Construction Manager has included Florida sales tax and other applicable taxes in its bid for material, supplies and equipment. The Owner, being exempt from sales tax, reserves the right to make direct purchases of various construction equipment, materials or supplies included in any subcontractor's bid and/or contract.
2. Any equipment, materials or supplies directly purchased by the Owner that are included in the Construction Manager's contract or any subcontract shall be referred to as Owner Purchased Materials and the responsibilities of both the Owner and the subcontractor relating to such Owner Purchased Materials shall be governed by these procedures.
3. Material suppliers shall be selected by the Construction Manager or subcontractor, as applicable.
4. Owner purchasing of construction materials, if selected, will be administered on a deductive Change Order basis and the contract amount shall be reduced by the net undiscounted amount of the purchase orders issued by the Owner, plus all sales tax included.
5. The Construction Manager shall provide a list of all intended suppliers, vendors and materialmen for consideration as Owner Purchased materials with a description of the materials to be supplied, estimated quantities and prices. This information shall be submitted to the Owner as soon as practicable.
6. The Construction Manager or subcontractors, as applicable, shall prepare a purchase order requisition form in a form acceptable to the Owner and the Construction Manager, to specifically identify the materials, which Owner has, at its sole option, elected to purchase directly. The purchase order requisition form shall include:

- A. the name, address, telephone number and contact person for the material supplier;
 - B. manufacturer or brand, model or specification number of the item;
 - C. estimated quantity needed;
 - D. the price quoted by the supplier for the materials identified therein;
 - E. any sales tax associated with such quote; and
 - F. delivery dates
7. Construction Manager or subcontractor shall include reference to any terms and conditions, which have been negotiated with the vendors, such as payment terms, warranties, retainage and the like. The purchase order requisition forms are to be submitted to the Owner's Representative no less than seven (7) days prior to the need for ordering such Owner Purchased Materials, in order to provide sufficient time for Owner review and approval and to assure that such directly purchased materials may be directly purchased by Owner and delivered to the Project site without any delay to the Project
 8. After receipt of the purchase order requisition form, Owner shall prepare the Purchase Order for equipment, materials or supplies which the Owner chooses to purchase directly. Pursuant to the Purchase Order, the vendor will provide the required quantities of material at the price established in the vendor's quote to the Construction Manager or subcontractor, less any sales tax associated with such price. Promptly upon receipt of each Purchase Order, the Construction Manager shall verify the terms and conditions of the Purchase Order prior to its issuance to supplier and in a manner to assure proper and timely delivery of items. The Owner's Purchase Orders shall be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown.
 9. In conjunction with the execution of the Purchase Orders, by the suppliers, one or more deductive Change Orders shall be issued, referencing the full value of all Owner Purchased Materials to be provided by each supplier from whom the Owner elected to purchase material directly, plus all sales tax savings associated with such materials in the Construction Manager's price or subcontractor's bid.
 10. Construction Manager shall be fully responsible for all matters relating to the receipt of materials furnished by the Owner in accordance with these procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees required by the Contract Documents, inspection and acceptance of the goods at the time of delivery, and loss or damage to equipment

and materials following acceptance of items by the Owner. The Construction Manager shall coordinate delivery schedules, sequence of delivery, loading orientation and other arrangements normally required for the particular materials furnished. The Construction Manager shall provide all services required for the unloading, handling and storage of materials through installation. The Construction Manager agrees to indemnify and hold harmless the Owner from any and all claims of whatever nature resulting from non-payment of goods to suppliers arising from the actions or directions of the Construction Manager.

11. As Owner Purchased Materials are delivered to the jobsite, the Construction Manager, as Owner's representative, shall visually inspect all shipments from the suppliers and approve the vendor's invoice for material delivered. The Construction Manager shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the purchase order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the purchase order, together with such additional information as the Owner or Construction Manager may require. The Construction Manager, as Owner's representative, shall verify in writing to the Owner the accuracy of the delivery ticket. The vendor will then forward the invoice to the Owner through the Construction Manager for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner all other Owner invoices are processed. The Owner shall have the right to assign Owner personnel to verify and audit the accuracy of all Direct Purchase documents.
12. The Construction Manager shall ensure that Owner Purchased Materials conform to the Specifications, and determine prior to incorporation into the work if such materials are patently defective and whether such materials are identical to the materials ordered and match the description on the bill of lading. If the Construction Manager discovers defective or nonconformity in the Owner Purchased Material, upon such visual inspection, the Construction Manager shall not utilize such nonconforming or defective materials in the work, shall promptly take action to remedy the defect or nonconformance so as not to delay the Project and shall promptly notify the vendor of the defective or non-conforming condition in order to pursue repair or replacement of those materials without any undue delay or interruption to the Project. Additionally, the Construction Manager shall notify the Owner of such occurrence. If the Construction Manager fails to perform such inspection and otherwise incorporates defective or nonconforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, the Construction Manager shall be responsible for all damages to the Owner resulting from the incorporation of such materials into the Project, including liquidated or delay damages.
13. The Construction Manager shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession. The Construction Manager shall account monthly to the Owner for any Owner Purchased Materials delivered into the Construction Manager's possession,

including portions of all such materials, which have been incorporated into the work.

14. The Construction Manager shall be responsible for obtaining and managing all warranties and guarantees for all materials and products. All repairs, maintenance or damage repair calls shall be handled by the Construction Manager for resolution with the appropriate supplier or vendor.
15. Notwithstanding the transfer of Owner Purchased Materials by the Owner to the Construction Manager's possession, the Owner shall retain title to any and all Owner Purchased Materials.
16. The transfer of possession of Owner Purchased Materials from the Owner to the Construction Manager shall constitute a bailment for mutual benefit of the Owner and the Construction Manager. The Owner shall be considered the bailor and the Construction Manager the bailee of the Owner Purchased Materials. Owner Purchased Materials shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the project. The Construction Manager shall have the duty to safeguard, store and protect all Owner Purchased Materials.
17. The Owner shall purchase and maintain insurance which shall be sufficient to protect against any loss of or damage to Owner Purchased equipment, materials or supplies. Such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project from the time the Owner first takes title.
18. The Owner shall in no way be liable for interruption or delay in the Project, for any defects or other problems with the Project, or for any extra costs or time resulting from delay in the delivery of, or defects in, Owner Purchased Materials.
19. On a monthly basis, the Construction Manager shall be required to review invoices submitted by all suppliers of Owner Purchased Materials delivered to the Project site during that month and either concur or object to the Owner's issuance of payment to the suppliers, based upon the Construction Manager's records of materials delivered to the site and any defects in such materials.
20. In order to arrange for the prompt payment to the supplier, the Construction Manager shall provide the Owner with a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a check drawn to the supplier based upon the receipt of data provided. The check will be released, delivered and remitted directly to the supplier. The Construction Manager agrees to assist the Owner to immediately obtain partial or final release of lien waivers as appropriate.

21. At the end of the Project, any refund for surplus materials returned to suppliers plus applicable sales tax savings amounts shall be credited with an additive Change Order to the applicable subcontractor agreement with the Construction Manager. Salvage materials shall be the property of the Owner and stored or removed from the site by the Construction Manager at the Owner's direction.

ARTICLE 18

MISCELLANEOUS

18.1 Harmony:

1. The Construction Manager is advised and hereby agrees that it will exert every reasonable and diligent effort to assure that all labor employed by the Construction Manager and its Subcontractors for work on the Project shall work in harmony with and be compatible with all other labor being used by building and construction contractors now or hereafter on the site of the Project.
2. The Construction Manager further agrees that the above provision will be included in all contracts with the subcontractors; however, said provision shall not be interpreted or enforced so as to deny or abridge, on account of membership or non-membership in any labor union or labor organization, the right of any person to work as guaranteed by Article 1, Section 6 of the Florida Constitution.

18.2 Dispute Resolution:

1. All claims, disputes and other matters in question, hereinafter referred to as a "Controversy", between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall be initially submitted to mediation if mutually agreeable in accordance with the Construction Mediation Rules of the American Arbitration Association ("AAA") or any other mutually agreeable mediation firm.
2. Should either the Owner or the Construction Manager feel it necessary and appropriate to take any legal action to enforce any of the terms or conditions of this Agreement, then each party shall be responsible for its own attorney's fees and costs associated with such litigation.

18.3 Construction Manager's Project Records:

The Construction Manager's Project records shall be maintained for the minimum period required by state and federal law, and shall be made available to the Owner or its authorized representative at mutually convenient times.

18.4 Consequential Damages:

The parties mutually waive all claims for consequential damages, except to the extent paid for by insurance maintained for this project.

18.5 Public Records:

1. Pursuant to Florida Statutes, Section 119.0701:

IF YOU HAVE QUESTIONS REGARDING THE APPLICATION OF FLORIDA STATUTES, CHAPTER 119, TO YOUR DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S/OWNER'S CUSTODIAN OF PUBLIC RECORDS:

**CITY CLERK: GWEN JOHNS
510 NORTH BAKER STREET
MOUNT DORA, FL 32757
(352) 735-7126
JOHNSG@CITYOFMOUNTDORA.COM**

2. Construction Manager agrees to comply with public records laws, specifically to:
 - A. Keep and maintain public records required by the City/Owner to perform the services set forth herein.
 - B. Upon request from the City's/Owner's custodian of public records, provide the City/Owner 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 Florida Statutes, Chapter 119, or as otherwise provided by law.
 - C. Ensure that public records which 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 Construction Manager does not transfer the records to the City/Owner.
 - D. Upon completion of the contract, transfer, at no cost to the City/Owner, all public records in possession of the Construction Manager or keep and maintain public records required by the City/Owner to perform the services set forth herein. If the Construction Manager transfers all public records to the City/Owner upon completion of the contract, the Construction Manager shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Construction Manager keeps and maintains public records upon completion of the contract, the Construction Manager shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City/Owner, upon request from the City's/Owner's

custodian of public records, in a format that is compatible with the information technology systems of the City/Owner.

18.6 Severability:

All clauses found herein shall act independently of each other. If a clause is found to be illegal or unenforceable, it shall have no effect on any other provision of this Agreement. It is understood by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Florida or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

18.7 Waiver:

Failure of the parties to insist upon strict performance of any of the covenants, terms, provisions, or conditions of this Agreement or to exercise any right or option herein contained, shall not be construed as a waiver or a relinquishment for the future of any such covenant, term, provision, or condition, or right of election, but same shall remain in full force and effect.

18.8 Notice:

The parties hereto agree and understand that written notice, mailed or delivered to the last known mailing address, shall constitute sufficient notice to the Owner and the Construction Manager. All notices required and/or made pursuant to this Agreement to be given to the Owner and the Construction Manager shall be in writing and given by way of the United States Postal Service, first class mail, postage prepaid, addressed to the following addresses of record:

Owner:	City of Mount Dora Attention: City Manager 510 N. Baker Street Mount Dora, Florida 32757
with copy to:	City Attorney Bell & Roper, P.A. 2707 E. Jefferson Street Orlando, Florida 32803
Construction Manager:	Ajax Building Company, LLC 109 Commerce Boulevard Oldsmar, Florida 34677

18.9 Modification:

The covenants, terms, and provisions of this Agreement may be modified by way of a written instrument, mutually accepted by the parties hereto. In the event of a conflict between the covenants, terms, and/or provisions of this Agreement and any written Amendment(s) hereto, the provisions of the latest executed instrument shall take precedence.

18.10 Headings:

All headings of the sections, exhibits, and attachments contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit, or change the provisions contained in such sections, exhibits, and attachments.

18.11 Joint Authorship:

This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

18.12 Equal Opportunity Employer:

The Construction Manager is an Equal Opportunity Employer and will comply with all equal opportunity employment laws. The Construction Manager will further ensure that all sub-contractors it utilizes in providing the services required hereunder will comply with all equal opportunity employment laws. During the performance of the construction phase of this contract, the Construction Manager agrees as follows:

1. The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin. The Construction Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Construction Manager agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. The Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.

3. The Construction Manager will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing or action, including an investigation conducted by the employer or is consistent with the contractor's legal duty to furnish information.
4. The Construction Manager will comply with all provisions of Executive Order 11246 of September 24, 1965, as applicable, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The Construction Manager will furnish all applicable information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the Construction Manager's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part and the Construction Manager may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The Construction Manager will include the provisions of paragraphs (1) through and including this paragraph (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Construction Manager will take such action with respect to any subcontract or purchase order as necessary.

18.13 Compliance with the Davis-Bacon Act:

1. To be determined at GMP, all transactions regarding this Agreement shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148)

and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Construction Manager shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

2. The Construction Manager is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

18.14 Compliance with the Copeland "Anti-Kickback" Act:

1. The Construction Manager shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
2. The Construction Manager shall ensure that any subcontracts contain the above clause and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors include these clauses in any lower tier subcontracts. The Construction Manager shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all such contract clauses.
3. A breach of the contract clauses above may be grounds for termination of the Agreement.

18.15 Clean Air Act:

1. The Construction Manager agrees, to the extent applicable, to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The Construction Manager agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The Construction Manager agrees to include these requirements in each subcontract exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA.

18.16 Applicable Licensing and Compliance with all Laws:

The Construction Manager, at its sole expense, shall obtain all required federal, state, and local licenses, occupational and otherwise, required to successfully provide the services set forth herein. The Construction Manager, at its sole expense, shall comply with all laws, ordinances, judicial decisions, orders, and regulations of federal, state, county and municipal governments, as well as their respective departments, commissions, boards and

officers, which are in effect at the time of execution of this Agreement or are adopted at any time following the execution of this Agreement, including any required processes, procedures or actions necessary to assist the Owner with reimbursement or enable the Owner to seek reimbursement from FEMA if the need arises. Notwithstanding any language herein to the contrary, in the event that any laws, ordinances, judicial decisions, orders, or regulations of the federal, state, county, or municipal governments change after execution of this Agreement, Construction Manager shall be entitled to an equitable adjustment in time as applicable and price to the extent the Construction Manager's direct costs, not including labor, are affected. Any such adjustment will be determined at the time of such an occurrence and there shall only be a construction phase fee on this item if it exceeds two percent (2%) for each separate GMP.

18.17 Use of City Logo, Name, Seal, Flag and/or Letterhead:

The Construction Manager may only use the City of Mount Dora's name, logo seal and/or flag with the express written permission of the City and consistent with any City policy related to use of the same. In addition, the Construction Manager shall not use the City's letterhead, or any attempted rendition thereof, for issuing any correspondence related to this Agreement without the express written permission of the City.

Signatures on following page

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the 7 day of April, 2020.

AJAX BUILDING COMPANY, LLC

By: [Signature]
Print: William P. Byrne
Title: President

STATE OF FLORIDA
COUNTY OF Pinellas

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization of William P. Byrne, as President, of Ajax Building Company, LLC, who personally swore or affirmed that he/she is authorized to execute this Agreement and thereby bind the Construction Manager, and who is personally known to me or who produced _____ as identification, and who did/did not take an oath this 26th day of March, 2020.

(stamp)



[Signature]
NOTARY PUBLIC

CITY OF MOUNT DORA

[Signature]
CATHERINE T. HOECHST
MAYOR of the City of Mount Dora, Florida

ATTEST:

For the use and reliance of City of Mount Dora only. Approved as to form and legal sufficiency.

[Signature] on behalf of
GWEN KEOUGH-JOHNS, MMC
CITY CLERK

[Signature]
Sherry G. Sutphen
City Attorney

EXHIBIT "A"
Construction Team

The Construction Team for the Project shall consist of the following:

- Owner's Representative: City Construction Project Manager
- Architect-Engineer: ADG, Inc.
- Construction Manager: Ajax Building Company, LLC

EXHIBIT “B”
Drawings and Specifications
(*upon completion*)

EXHIBIT “C”
Construction Manager Staff
(To be determined at GMP)

EXHIBIT "D"
CERTIFICATE OF SUBSTANTIAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:

TO OWNER:

Name _____
Address _____

TO CONSTRUCTION MANAGER:

Name _____
Address _____

Copy to:

____ Architect
____ Engineer
____ Field
____ Other

Project or portion of Project Designated for Partial Occupancy or Use:

The work performed on the Project under the Agreement has been reviewed and found, the Architect's best knowledge, information and belief to be substantially complete. Substantial Completion is the stage in the progress of the work when the work or designated portion is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the work for its intended use. The date of substantial completion of the Project or portion designated above is the date of issuance established by this Certificate of Substantial Completion, which is also the date of commencement of applicable warranties required by the Contract Documents as stated below:

Architect

By: _____

Date of Substantial Completion: _____

Print: _____

(Warranty Date of Commencement)

A Punch List of items to be completed or corrected is attached hereto. The failure to include any items on such Punch List does not alter the responsibility of the Construction Manager to complete all work in accordance with the Contract Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

Cost Estimate of Work that is incomplete or defective: _____

The Construction Manager will complete or correct the work on the Punch List within ____ days from the above date of Substantial Completion.

Construction Manager

By: _____

Date: _____

Print: _____

The Owner hereby accepts the work or designated portions as substantially complete and will assume full possession at _____ am/pm on _____, 20__.

Owner

By: _____

Date: _____

Print: _____

The responsibilities of the Owner and Construction Manager for security, maintenance, utilities, damage and insurance are as follows:

EXHIBIT "E"
CERTIFICATE OF FINAL COMPLETION

PROJECT NAME:
PROJECT ADDRESS:
PROJECT NUMBER:
CONTRACT DATE:
CONSTRUCTION MANAGER:
SUBSTANTIAL COMPLETION DATE:
FINAL PUNCHLIST INSPECTION DATE:

The Construction Manager hereby certifies that the work and all other requirements have been completed in accordance with the Contract Documents, including, but not limited to:

☐ completion of all discrepancies (Punchlist Items) noted at the time of Substantial Completion
☐ submission of "as-built" plans and specifications, shop drawings, and other record documents
☐ completion of all Owner training – submission of all contractually required stock and spare parts
☐ submission of all final Operation & Maintenance documents and other closeout deliverables
☐ submission of consent of Builder's surety
☐ submission and approval of all remaining change order proposals, claims, and applications for payment
☐ payment of all costs incurred for equipment, material, labor and services against the Project

The Construction Manager further certifies that:

☐ no liens have been attached against the Project
☐ no suits are pending by reason of work on the Project under the Contract for Construction
☐ all Workers' compensation claims are covered by Workers' Compensation Insurance as required by law
☐ all insurance required of the Construction Manager beyond final payment, if any, is in effect and will not be cancelled or allowed to be expired without notice to the Owner
☐ all public liability claims are adequately covered by insurance and that the Construction Manager shall save, protect, defend, indemnify and hold the Owner harmless from and against any and all claims which arise as a direct or indirect result of any transaction, event, occurrence, or omission related to performance of the work on the Project contemplated under said Contract for Construction.

Upon execution below, this Project will be considered complete. This consideration does not relieve the Construction Manager from its post-construction responsibilities, including correction of discrepancies noted during the first year after Substantial Completion, warranty issues, latent defects, and other requirements of the Contract or under Florida law.

Construction Manager

By: _____

Date: _____

Print: _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was executed before me this ____ day of _____, 202_, by _____, as _____ of Ajax Building Company, LLC, who is authorized to bind Ajax Building Company, LLC, and who is personally known to me OR has produced _____ as identification.

(stamp)

NOTARY PUBLIC, State of Florida

Recommend By:

Architect

By: _____

Date: _____

Print: _____

Accepted By:

Owner

By: _____

Date: _____

Print: _____

EXHIBIT “F”
Pre-construction Phase Costs

CITY OF MOUNT DORA NEW PUBLIC WORKS FACILITY
Ajax Building Company - Design Phase Fee Proposal

I. Programming / Conceptual Design Phase

<i>Project Personnel</i>							
Description	Weeks	Hours/Week	Total Quantity	Unit	Unit Cost	Total	
Project Executive	2.00	4	8	Man Hours	\$120.19	\$962	
Operations Manager	9.00	8	72	Man Hours	\$96.15	\$6,923	
Project Manager	4.00	8	32	Man Hours	\$60.10	\$1,923	
Project Superintendent	2.00	4	8	Man Hours	\$64.90	\$519	
Project Administrator	4.00	8	32	Man Hours	\$31.25	\$1,000	
Chief Estimator	2.00	8	16	Man Hours	\$60.10	\$962	
Estimator	0.00	8	0	Man Hours	\$57.69	\$0	
BIM Coordinator	0.00	0	0	Man Hours	\$88.94	\$0	
Subtotal - Project Personnel						\$12,288	
Labor Burden @ 47%						\$5,776	
TOTAL - PROJECT PERSONNEL						\$18,064	

Materials and Equipment				
Description	Quantity	Unit	Unit Cost	Total
Policy & Procedure Manual	1	Each	\$125.00	\$125
Project Schedule	1	Each	\$150.00	\$150
Schedule Updates	2	Each	\$150.00	\$300
Mileage	225	Miles	\$0.445	\$100
Deliverable Reports	1	Each	\$300.00	\$300
Construction Document Reproductions*	1	Sets	\$125.00	\$125
Data Processing	1	Each	\$100.00	\$100
Postage	1	Each	\$150.00	\$150
Project Photographs	0	Each	\$500.00	\$0
Communications	1	Each	\$200.00	\$200
Office Supplies	1	Each	\$300.00	\$300
TOTAL - MATERIALS & EQUIPMENT				\$1,850

TOTAL PROGRAMMING / CONCEPTUAL PHASE \$19,914

II. Schematic Design Phase

<i>Project Personnel</i>							
Description	Weeks	Hours/Week	Man Hours	Unit	Unit Cost	Total	
Project Executive	6.00	2	12	Man Hours	\$120.19	\$1,442	
Operations Manager	8.00	8	64	Man Hours	\$96.15	\$6,154	
Project Manager	5.00	8	40	Man Hours	\$60.10	\$2,404	
Project Superintendent	2.00	4	8	Man Hours	\$64.90	\$519	
Project Administrator	6.00	10	60	Man Hours	\$31.25	\$1,875	
Chief Estimator	3.00	8	24	Man Hours	\$60.10	\$1,442	
Estimator	3.00	20	60	Man Hours	\$57.69	\$3,462	
BIM Coordinator	1.00	4	4	Man Hours	\$88.94	\$356	
Subtotal - Project Personnel						\$17,654	
Labor Burden @ 47%						\$8,297	
TOTAL - PROJECT PERSONNEL						\$25,951	

Materials and Equipment

Description	Quantity	Unit	Unit Cost	Total
Policy & Procedure Manual Updates and Revisions	1	Each	\$125.00	\$125
Schedule Updates	2	Each	\$150.00	\$300
Mileage	200	Miles	\$0.445	\$89
Deliverable Reports	1	Each	\$100.00	\$100
Construction Document Reproductions*	3	Sets	\$125.00	\$375
Data Processing	1	Each	\$100.00	\$100
Postage	1	Each	\$150.00	\$150
Project Photographs	0	Each	\$75.00	\$0
Communications	1	Each	\$150.00	\$150
Office Supplies	1	Each	\$300.00	\$300
TOTAL - MATERIALS & EQUIPMENT				\$1,689

TOTAL SCHEMATIC PHASE \$27,640

III. Design Development Phase

Project Personnel

Description	Weeks	Hours/Week	Total Quantity	Unit	Unit Cost	Total
Project Executive	5.00	2	10	Man Hours	\$120.19	\$1,202
Operations Manager	10.00	8	80	Man Hours	\$96.15	\$7,692
Project Manager	8.00	8	64	Man Hours	\$60.10	\$3,846
Project Superintendent	7.00	6	42	Man Hours	\$64.90	\$2,726
Project Administrator	7.00	10	70	Man Hours	\$31.25	\$2,188
Chief Estimator	4.00	10	40	Man Hours	\$60.10	\$2,404
Estimator	4.00	24	96	Man Hours	\$57.69	\$5,538
BIM Coordinator	2.00	8	16	Man Hours	\$88.94	\$1,423
Subtotal - Project Personnel						\$27,019
Labor Burden @ 47%						\$12,699
TOTAL - PROJECT PERSONNEL						\$39,718

Materials and Equipment

Description	Quantity	Unit	Unit Cost	Total
Policy & Procedure Manual	0	Each	\$125.00	\$0
Project Schedule	0	Each	\$150.00	\$0
Schedule Updates	3	Each	\$150.00	\$450
Mileage	250	Miles	\$0.445	\$111
Deliverable Reports	1	Each	\$200.00	\$200
Construction Document Reproductions*	1	Sets	\$250.00	\$250
Data Processing	1	Each	\$250.00	\$250
Postage	1	Each	\$150.00	\$150
Project Photographs	0	Each	\$75.00	\$0
Communications	1	Each	\$250.00	\$250
Office Supplies	1	Each	\$350.00	\$350
TOTAL - MATERIALS & EQUIPMENT				\$2,011

TOTAL DESIGN DEVELOPMENT PHASE \$41,730

IV. Construction Document Phase (GMP-Ind)

Project Personnel

Description	Weeks	Hours/Week	Total Quantity	Unit	Unit Cost	Total
Project Executive	8.00	2	16	Man Hours	\$120.19	\$1,923
Operations Manager	12.00	8	96	Man Hours	\$96.15	\$9,231
Project Manager	11.00	10	110	Man Hours	\$60.10	\$6,611
Project Superintendent	8.00	10	80	Man Hours	\$64.90	\$5,192
Project Administrator	11.00	12	132	Man Hours	\$31.25	\$4,125
Chief Estimator	5.00	8	40	Man Hours	\$60.10	\$2,404
Estimator	0.00	30	0	Man Hours	\$57.69	\$0
BIM Coordinator	0.00	4	0	Man Hours	\$88.94	\$0
Subtotal - Project Personnel						\$29,466
Labor Burden @ 47%						\$13,858
TOTAL - PROJECT PERSONNEL						\$43,344

Materials and Equipment		Quantity	Unit	Unit Cost	Total
Description					
Policy & Procedure Manual		0	Each	\$125.00	\$0
Project Schedule		0	Each	\$150.00	\$0
Schedule Updates		2	Each	\$150.00	\$300
Mileage		300	Miles	\$0.445	\$134
Deliverable Reports		1	Each	\$200.00	\$200
Construction Document Reproductions*		2	Sets	\$250.00	\$500
Data Processing		1	Each	\$250.00	\$250
Postage		1	Each	\$150.00	\$150
Project Photographs		0	Each	\$75.00	\$0
Communications		1	Each	\$250.00	\$250
Office Supplies		1	Each	\$350.00	\$350
TOTAL - MATERIALS & EQUIPMENT					\$2,134
TOTAL 50% DOCUMENTS PHASE					\$45,477

*Does not include Subcontractor bid sets which are a cost of the work.

SUMMARY		
Programming / Conceptual Phase		\$19,914
Schematic Phase		\$27,640
Design Development Phase		\$41,730
Construction Documents Phase		\$45,477
TOTAL DESIGN PHASE FEE		\$134,761

EXHIBIT "G"
Partial Pay Request Form

TO: CONNEK:	City of Miami-Dade 1250 N. Highland Ave Miami-Dade, FL 33127	PROJECT: Mosquito Deterrent Public Works Complex	100
FROM: DBB:	Alcon Building Company 100 Commerce Blvd 100 Commerce Blvd	APPLICATION NO: DATE PERIOD TO OWNER'S PROJECT NO: CM PROJECT NO: CONTRACT DATE:	100 100 100 100 100

ERIC CH
Ame Building Company
100 Commerce Blvd
Chicago, IL 60677

**CONTRACT FOR Construction Management Services for Mount Dora Public Works Center
DESIGN BUILDER'S APPLICATION FOR PAYMENT**

CHANGE ORDER SUMMARY			ADDITIONS	DEDUCTIONS
Change Orders approved in previous months by Owner				
TOTAL				
Approved this Month				
Number	Dollars Approved			
TOTALS			\$	\$
Net change for Change Orders			\$	\$

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

CONSTRUCTION MANAGER: Alan P. Kling, CMAA

100

Application is made for Payment, as shown below, in connection with the Contract, Confirmation Sheet, MIA Document 0703, is attached.

1. ORIGINAL CONTRACT SUM	\$	TBD
2. Net change by Charge Orders	\$	TBD
3. CONTRACT SUM TO DATE (Line 1+2)	\$	TBD
4. TOTAL COMPLETED & STORED TO DATE	\$	TBD
5. LESS RETAINAGE	\$	TBD
6. LESS OWNER PURCHASE PAYMENTS	\$	TBD
7. TOTAL EARNED LESS RETAINAGE & OWNER PUR (Line 4 less Line 5 less Line 6 Total)	\$	TBD
8. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 7 less prior Certificate)	\$	0.00
9. CURRENT PAYMENT DUE	\$	TBD
10. BALANCE TO FINAL PAYMENT PACKAGE (Line 7 less Line 8 plus Line 9)	\$	TBD

ABSTRACT CERTIFIED

(Attach explanation if necessary certified copies from the source applied for.)

ARCHIVES:

Date: _____

THIS CERTIFICATE IS NOT NEGOTIABLE. THE AMOUNT CERTIFIED IS PAYABLE ONLY TO THE CONTRIBUTION MANAGER NAMED HEREIN. INSURANCE, PAYMENT AND ACCEPTANCE OF PAYMENT ARE WITHOUT PREJUDICE TO ANY RIGHTS OF THE OWNER OR CONTRIBUTION MANAGER UNDER THE CHARTER.

RESOLUTION NO. 2023-29

**A RESOLUTION OF THE CITY OF MOUNT DORA,
FLORIDA, PERTAINING TO THE EARLY DIRECT
PURCHASE OF PRE-ENGINEERED METAL BUILDINGS
AND RELATED EQUIPMENT FOR THE CITY PUBLIC
WORKS FACILITY; PROVIDING FOR LEGISLATIVE
FINDINGS AND INTENT; PROVIDING AUTHORIZATION
FOR DIRECT MATERIALS ACQUISITION; PROVIDING
FOR THE IMPLEMENTATION OF ADMINISTRATIVE
ACTIONS; PROVIDING A SAVINGS CLAUSE;
PROVIDING FOR SCRIVENER'S ERRORS; PROVIDING
FOR CONFLICTS; PROVIDING FOR SEVERABILITY;
AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, on April 7, 2020, the City adopted Resolution 2020-23, which approved the Agreement between the City and Ajax Building Company, LLC (Contractor) for construction manager at risk services related to the City's new public works complex and associated adjoining facilities (Agreement); and

WHEREAS, the City is in the final stages of design for its public works facility project and the Contractor is in the process of developing the Guaranteed Maximum Price (GMP) for the project; and

WHEREAS, the construction industry has been slow to resume production in the aftermath of the COVID-19 pandemic which has created a massive equipment shortages and major price increases throughout the industry; and

WHEREAS, although the GMP has not yet been accepted by the City, the Contractor has advised the City that making certain advance direct materials acquisitions pursuant to Article 17 of the Agreement would be in the City's best interest; and

WHEREAS, the City has determined that taking the necessary steps to directly purchase the pre-engineered metal buildings and certain associated equipment for the public works facility project advances a legitimate public purpose and is in the best interest of the citizens of the City of Mount Dora.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF MOUNT DORA,
FLORIDA, AS FOLLOWS:**

SECTION 1. Legislative Findings and Intent. The City of Mount Dora has complied with all requirements and procedures of Florida law in processing this Resolution. The above recitals are hereby adopted.

SECTION 2. Authorization for Direct Materials Acquisition.

A. The City of Mount Dora hereby authorizes the advance direct acquisitions of the following materials necessary for the construction of the new public works complex with estimated fees and miscellaneous amounts, to be bid by the Contractor pursuant to the Agreement, in the total estimated cost not to exceed **\$5,026,886.00**, as set forth in **Exhibit “A”** attached hereto:

1. Pre-engineered metal building – Design/Assist
2. HVAC Equipment including Air Handling Units and Condensing Units
3. Electrical Gear
4. Generator

B. In addition to the early purchase of the above materials, the City of Mount Dora hereby authorizes an additional amount not to exceed **\$98,038.00**, for Insurance and Bonds, as more specifically set forth in **Exhibit “A”** attached hereto:

C. The above amounts will be reconciled at the time of the final Project GMP.

D. The City waives the requirement for the Contractor to provide a Florida Administrative Code, Rule 12-11.003, Technical Assistance Advisement as required by Article 17, Section 17.1.2 of the Agreement, related to the advance direct material purchases set forth herein related to the new public works facility. The adoption of this Resolution shall in no way waive any other requirements of the Agreement, nor shall it serve to waive the Technical Assistance Advisement requirement for future direct purchases by the City in accordance with the Agreement.

SECTION 3. Implementing Administrative Actions. The City Manager is hereby authorized and directed to take such action as may be deemed necessary and appropriate in order to implement the provisions of this Resolution. The City Manager may, as deemed appropriate, necessary and convenient, delegate the powers of implementation as herein set forth to such City employees as deemed effectual and prudent.

SECTION 4. Savings Clause. All prior actions of the City of Mount Dora pertaining to the advance direct purchase of the materials set forth herein related to the new public works complex, as well as any and all matters relating thereto, are hereby ratified and affirmed consistent with the provisions of this Resolution.

SECTION 5. Scrivener’s Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

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

SECTION 7. 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 8. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

PASSED AND DULY ADOPTED this 1st day of August, 2023.

CRISSY STILE
MAYOR of the City of Mount Dora, Florida

For the use and reliance of City of
Mount Dora only. Approved as to
form and legal sufficiency

ATTEST:

Jeanann Hand, City Clerk

Sherry G. Sutphen, City Attorney

Exhibit “A”
Public Works Facility – Advance Material Acquisition



July 17, 2023

Mr. Chet Cramer
Construction Project Manager
City of Mount Dora
510 N Baker Street
Mount Dora, FL 32757

Re: Mount Dora Public Works Facility
Early Equipment Procurement Package v4

Dear Chet:

Ajax Building Company is pleased to provide you with our proposal for the Early Equipment Procurement Package on the new Mount Dora Public Works Facility. Our proposal provides the estimated values for the following early equipment, which is needed to be procured due to current market lead times to support the overall Project Schedule:

1. Pre-Engineered Metal Buildings – Design/Assist (Allowance)
2. HVAC Equipment including Air Handling Units, Condensing Units (Allowance)
3. Electrical Gear (Allowance)
4. Generator (Allowance)

The proposed Early Procurement Package totals *Five Million One Hundred Twenty-Four Thousand, Nine Hundred Twenty-Four Dollars (\$5,124,924)*.

The scope of services that Ajax Building Company has included in this proposal is provided on the attached Early Equipment Procurement Package estimate, inclusive of the Qualifications, Clarifications and Assumptions noted.

Ajax Building Company appreciates the opportunity to be of service to the City of Mount Dora as your Construction Manager on this exciting new project. Should you have any questions, please do not hesitate to call.

Sincerely,
AJAX BUILDING COMPANY



Jeremy Cox
Regional Director

xc: James De La Rosa, Ajax
Tim Sewell, Ajax



Mount Dora Public Works Facility - Cost Estimate
Early Equipment Procurement Package

7/17/2023
v4

BASE BID					
Estimate Item	Qty	Unit	Unit Rate	Total Cost	Division Total
A. PRE-CONSTRUCTION EARLY RELEASE PHASE					
Precon Early Release PKG - Operations Manager Allowance	1	LS	\$ 1,232.00	\$ 1,232.00	
Precon Early Release PKG - Project Manager Allowance	1	LS	\$ 15,496.00	\$ 15,496.00	
Precon Early Release PKG - Project Engineer Allowance	1	LS	\$ 9,466.00	\$ 9,466.00	
Precon Early Release PKG - Project Administrator Allowance	1	LS	\$ 1,610.00	\$ 1,610.00	
Precon Early Release PKG - Reimbursable Allowance	1	LS	\$ 4,500.00	\$ 4,500.00	
Subtotal					\$ 32,304
PRE-CONSTRUCTION EARLY RELEASE SUBTOTAL					\$ 32,304
B. CONSTRUCTION - COST OF WORK					
Division 13.01 - Pre-Engineered Metal Building (Design-Assist) Allowance					
Warehouse - Allowance (Quote #01: Harrell Construction)	1	Ea	\$ 2,475,800.00	\$ 2,475,800	
Storage Buildings - Allowance (Quote #01: Harrell Construction)	1	Ea	\$ 1,357,400.00	\$ 1,357,400	
PEMB Miscellaneous Allowance	1	Ea	\$ 133,800.00	\$ 133,800	
Subtotal					\$ 3,967,000
Division 23.01 - Mechanical Allowance					
HVAC Air Handling Units & Condensing Units (Quote #03: Carrier)	1	Ea	\$ 139,172.00	\$ 139,172	
HVAC Miscellaneous Allowance	1	Ea	\$ 13,917.22	\$ 13,917	
Subtotal					\$ 153,089
Division 26.01 - Electrical Allowance					
Electrical Switchgear / Equipment (Quote #02: Square D)	1	Ea	\$ 63,140.00	\$ 63,140	
Electrical Miscellaneous Allowance	1	Ea	\$ 6,314.00	\$ 6,314	
Generator (Quote #03: Ring Power CAT)	1	Ea	\$ 170,985.00	\$ 170,985	
Generator Miscellaneous Allowance	1	Ea	\$ 17,098.50	\$ 17,099	
Subtotal					\$ 257,538
Sales Tax (not included in above numbers) Allowance					
Estimate Tax - Allowance	1	Ea	\$ 101,698.36	\$ 101,698	
Subtotal					\$ 101,698
COST OF WORK SUBTOTAL					\$ 4,479,325
C. CONTINGENCY, BUILDER'S RISK, WARRANTY					
Contingency (5%)		5.000%		\$ 251,345	
Builders Risk - Ajax Supplemental Policy	1	NIC			
Warranty Management (0.0399%)	1	NIC			
Subtotal					\$ 251,345
CONTINGENCY, BUILDER'S RISK, WARRANTY					\$ 251,345
D. CONSTRUCTION MANAGER FEE					
CM Fee		5.250%		\$ 263,912	
Subtotal					\$ 263,912
CONSTRUCTION MANAGER FEE					\$ 263,912
SUBTOTAL CM COSTS & DIRECT COSTS, LESS INSURANCE & BONDS					\$ 5,026,886
E. INSURANCE & BONDS					
Insurance (1.09%) - Early Release Pkg Value		1.090%		\$ 54,793	
Bonds (0.851%) - Early Release Pkg Value		0.851%		\$ 43,245	
Subtotal					\$ 98,038
INSURANCE & BONDS					\$ 98,038
EARLY EQUIPMENT PROCUREMENT PACKAGE TOTAL					\$ 5,124,924

QUALIFICATIONS, CLARIFICATIONS & ASSUMPTIONS

- All values of this estimate are estimated and considered Allowances which will be reconciled back to actual vendor pricing with the associated bid tabs and quote backup being provided as part of the final project GMP submission.
- Preconstruction Phase Fee (PO # 20-973) is not included in this estimate as these services have been previously agreed upon and included in the Agreement between Owner and Construction Manager.
- Performance and Payment Bonds are included. The final Performance and Payment Bond costs shall be reconciled at Project Completion.

We have included this project's portions of our Umbrella / General Liability Insurance Policy with the Early Procurement Package. The charge for this coverage shall be 1.03% of the Early Procurement Package value. The amount is \$51,266 and shall be billed upon approval of the Early Procurement Package and issuance of the Notice to Proceed. The final Umbrella / General Liability Insurance Policy shall be reconciled at Project Completion.
- The Project shall utilize the Direct Purchase Order process to save sales tax, the tax for actual purchases will be credited to the Owner. As these Direct Purchase Orders will be directly issued by the Owner to equipment vendors without the involvement of Subcontractors, all increases or credits to the Owner Direct Purchase Orders shall be reconciled at Project Completion.
- This Early Equipment Procurement Package Proposal includes a portion of the work inherent to the total construction cost and is being executed to procure long-lead material and equipment. When the final construction documents are completed and priced, the final project costs will include the cumulative value of this Early Equipment Package Proposal and all other remaining cost of the work items as the total final Project GMP.



510 N. Baker St.
Mount Dora, FL 32757
352-735-7126

DATE: August 1, 2023

TO: Honorable Mayor and City Council Members

FROM: Patrick C. Comiskey, City Manager *Patrick C. Comiskey*

SUBJECT: Strong Towns Work Session

Introduction:

This is an opportunity for Council to discuss the possibility of a Work Session on Strong Towns.

Discussion:

Strong Towns (ST) is a not-for-profit company which offers land use planning experts willing to share their ideas for avoiding urban sprawl. The Lake County Board of County Commissioners hired Strong Towns to help elected officials, government employees, and the public to evaluate growth patterns and make decisions about land use.

As Strong Towns examines these matters locally, concern has been raised regarding the annexation of large tracts of rural land for housing developments. Reasons for concern include the following:

- It obligates local governments to maintain infrastructure forever at tremendous expense to the taxpayers.
- It reduces the amount of clean water returning to the aquifer.
- It destroys wildlife habitat.
- It encourages dependence upon motor vehicles, thus increasing greenhouse gas emissions.

It has been suggested an alternative to the above may be the construction of affordable houses near to where people work and shop – in existing urban areas.

Other talking points raised by Strong Towns include:

- In Lake County, up to 90,000 housing units have been approved, but not built yet. Lake County government is spending more than twice as much on encouraging growth than on maintaining infrastructure.

- Lake County is already facing financial distress, deferring maintenance on infrastructure. Lake County is \$50 million short on road maintenance funds.
- Most cities do not calculate the future cost of suburban development. The taxes and fees paid by suburban residents are usually grossly inadequate to cover what these residents are costing the city.
- All roads should be walkable. People feel safer walking along a street with parked cars, than along a sidewalk next to a four-lane highway. Many suburban developments have walls around them, which discourage walking.
- A vacant lot in most cities provides more value (taxes paid less the cost of services) than a lot of equal size in a suburban development. Infill lots will produce more revenue than suburban lots in the long run.
- Cities should be encouraging developers to build homes within the city – where we already have infrastructure –by making the permitting process easier.
- Cities should allow accessory dwelling units (ADU), so that homeowners can add an apartment on a second floor or in the back, and allow mixed uses. This will help the shortage of affordable housing. Some states are passing laws that allow ADUs regardless of local zoning laws.
- Cities should allow mixed uses. A small store or a doctor’s office should be allowed on a “residential street.”
- A sustainable community must be environmentally sustainable, too.
- Many elected officials are hoping that residents will demand sustainable growth.
- ST is willing to provide training to county and city staff on how to say “no” to development that is not sustainable. This is part of their two-year contract with Lake County.

Budget Impact:

N/A

Strategic Impact:

Discussion only.

Recommendation:

Council discuss scheduling a Strong Towns Work Session.

Attachment(s):

Prepared by: Jeanann Hand, City Clerk
Reviewed by: Patrick Comiskey, City Manager

Final Approval - 7/27/2023