



SPECIAL CITY COUNCIL MEETING

January 17, 2024 at 6:30 PM

City Council Chambers, 16 Colomba Rd.

DeBary, Florida 32713

AGENDA

CALL TO ORDER

Invocation

Flag Salute

ROLL CALL

PUBLIC PARTICIPATION: For any items **ON THE AGENDA**, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11)

NEW BUSINESS

1. City Manager is requesting City Council award RFQ 08-23 bid to Wharton-Smith, Inc., and approve the Contract for Construction Management/General Contracting Services for Pre-Construction Phase Services for Fire Station #39.
2. Staff is requesting City Council approve the Easement Agreement with Metronet Infrastructure Group, LLC., for the installation of Fiber Optic Equipment on City property.
3. City Manager is requesting City Council approve Mersino Dewatering pump rentals for the current month which expires on January 18, 2024, and to extend these rentals for another 30 days through February 18, 2024.
4. City Manager is requesting City Council approve the Perpetual Conservation Easement between the City of DeBary and the St. Johns River Water Management District for the Palm Drive property.

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

- A. Mayor and Council Members
- B. City Manager
- C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP

Regular City Council Meeting February 7, 2024, 6:30 p.m.

ADJOURN

If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing he/she will need a record of the proceedings, and for such purpose he/she 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 (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.



City Council Meeting City of DeBary AGENDA ITEM

Subject: RFQ 08-23; CMAR Services for Fire Station #39; Bid Award & Pre-Construction Services Contract	Attachments: <input type="checkbox"/> Ordinance
From: Carmen Rosamonda, City Manager	<input type="checkbox"/> Resolution
Meeting Hearing Date January 17, 2024	<input checked="" type="checkbox"/> Supporting Documents/ Contracts
	<input type="checkbox"/> Other

REQUEST

City Manager is requesting City Council award the RFQ 08-23 bid to Wharton-Smith, Inc., and approve the Contract for Construction Management/General Contracting Services for Pre-Construction Phase Services for Fire Station #39.

PURPOSE

The purpose of the RFQ 08-23 and the Pre-Construction Phase Services is to obtain a Guaranteed Maximum Price (GMP) to build the Fire Station.

CONSIDERATIONS

- Fire Station #39 is fully engineered by Neel-Schaffer Engineering and fully permitted by the SJRWMD. Initially, The City issued a RFP advertisement in 2022 and received 3 bids. All were significantly over budget.
- The City Engineers valued engineered the project and the City issued a RFQ advertisement for a Construction Manager At Risk (CMAR) contract. The City received two bids, Wharton-Smith, Inc. and Meade Construction, Inc. The Selection Committee analyzed and scored each proposal. It also conducted interviews with construction teams with each organization.
- The Selection Committee selected Wharton-Smith, Inc., as the best bid to build the fire station. The Selection Committee consisted of Carmen Rosamonda, City Manager, Richard Villasenor, City Engineer and Yoandy Flores, Senior Engineer.
- The City has been negotiating the Pre-Construction Phase Services contract and the associated cost for these services. These services are necessary in order for Wharton-Smith to issue a GMP. If the GMP is acceptable to the City and the Contractor, this Pre-Construction Phase Services Contract will be amendment to include a GMP.

COST/FUNDING

The cost for the Pre-Construction Phase Services is \$51,480.80. These monies are included in the Fire Station budget allocation for FY 2023-24.

RECOMMENDATION

It is recommended that the City Council award the RFQ 08-23 bid to Wharton-Smith, Inc., and approve the Contract for Construction Management/General Contracting Services for Pre-Construction Phase Services for Fire Station #39 with the total cost of \$51,480.80.

IMPLEMENTATION

Immediately upon Approval

ATTACHMENTS

- Contract for Construction Management/General Contracting Services for Pre-Construction Phase Services for Fire Station #39
- Pre-Construction Services Worksheet
- RFQ 08-23 Advertisement
- Selection Committee Scoring Sheets

**CONTRACT FOR CONSTRUCTION MANAGEMENT/GENERAL
CONTRACTING SERVICES FOR PRE-CONSTRUCTION PHASE
SERVICES FOR FIRE STATION #39**

Between

THE CITY OF DEBARY

AND

WHARTON-SMITH, INC.

Contract No.

RFQ 08-2023

CONTRACT FOR CONSTRUCTION MANAGEMENT/GENERAL CONTRACTING SERVICES

PRECONSTRUCTION PHASE SERVICES

This Contract for Construction Management/General Contracting Services for Preconstruction Phase Services for the Fire Station #39 on the City of DeBary Public Services Department Campus (hereinafter the "Contract"), by and between the City of DeBary, Florida, a Florida municipal corporation, whose address is City of DeBary, 16 Colomba Road, DeBary, Florida 32713 (hereinafter the "City") and Wharton-Smith, Inc., 750 Monroe Road, Sanford, FL 32771 (hereinafter the "Construction Manager/General Contractor or "CM/GC").

RECITALS

WHEREAS, the City intends to design and construct Fire Station #39 with related site improvements. The City intends to construct the project via the Construction Manager/General Contractor (CM/GC) procurement process. Therefore, the selected CM/GC will be required to work cooperatively with the Architect/Engineer throughout design and ultimately construction, in accordance with the Design prepared by the Architect/Engineer" or "A/E"). The work described in this paragraph is hereinafter collectively referred to as the "Project"; and

WHEREAS, the City desires the services of the CM/GC to provide expert estimating and pricing, technical evaluation and other advisory services during the preconstruction phase of the Project, as stipulated herein; and

WHEREAS, it has been determined that the execution of this Contract is beneficial to the people of the City of DeBary.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and other specific consideration set forth in this Contract, the receipt and sufficiency of which is acknowledged by CM/GC and City, the parties agree and stipulate as follows:

ARTICLE 1

GENERAL DEFINITIONS

1.0 For this Contract and any incorporated exhibits, certain terms, phrases, words and their respective derivations will have the meaning set forth and defined therein and shall be applicable in both. Definition of terms in the Contract shall first be governed by this Contract and second by the incorporated Scope of Services/Work (Exhibit A). In the event of any conflict among the foregoing, the conflict will be resolved in the order of priority set forth in the preceding sentence. If there is no applicable definition as described above, the terms, phrases, and words, and their respective derivations when used in this Contract and the Scope of Service, will have the meanings ascribed to them in Merriam-Webster's Collegiate Dictionary (Merriam-Webster, Inc., 11th ed., 2020, or any subsequent edition).

1.1 ACCEPTANCE, FINAL ACCEPTANCE

A formal action by the City of accepting the Work as being complete after certification by

the City Representative or his designee of final completion.

1.2 ADDENDUM

A written explanation, interpretation, change, correction, addition, deletion, or modification of equal dignity herewith affecting the Contract Documents including drawing and specifications prepared by the CM/GC, approved and issued by the City and/or distributed to third parties

1.3 AFFIDAVIT

The instrument which is to be signed by the Contractor or CM/GC and submitted to the City upon the City's request through the Project Manager, upon completion of the Work, showing that all bills have been paid. It shall also mean such instrument that may be requested by the City incidental to partial payments.

1.4 AGENCY

The State, a State agency, a municipality, a political subdivision, a school district, or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under Florida Statutes §380.06 or 163.3220-163.3243.

1.5 AMENDMENT

An amendment to this Contract in writing by the City, approved by the Public Services Director, and signed by the City of equal dignity herewith authorizing an addition, deletion, or revision in the Scope of Work, adjustment in the Contract Price or the time for completion that is issued after execution of this Contract.

1.6 APPLICATION FOR PROGRESS PAYMENT

The current estimate form furnished and certified by the CM/GC, Construction Manager, or General Contractor which is to be used by the foregoing in requesting progress payments for work performed in the Project.

1.7 CALENDAR DAY

Any day, including Saturdays, Sundays, and holidays regardless of weather conditions.

1.8 CHANGE ORDER

A written order to the CM/GC signed by the City or its designated representative(s) as specified in the Contract Documents authorizing an addition, deletion, or revision in the work, or an adjustment in the contract price or time.

1.9 COMPENSATION

The amount paid by the City to CM/GC for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated which includes the total monies payable to the CM/GC under this Contract which includes all services, labor, materials,

supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Scope of Work.

1.10 COMPLETION DATE

The date that the City or its designated representative approves and accepts all Work or Services for a Scope of Work or this Contract.

1.11 CONSENT OF SURETY OF FINAL PAYMENT

A document from the CM/GC's surety indicating that said surety has either made a careful examination of the books and records of the CM/GC, or received the CM/GC's affidavit, which satisfies the surety that all claims for labor and materials have been satisfactorily settled, and therefore approve final payment to the CM/GC.

1.12 CONSTRUCTION

All labor, services, and materials provided in connection with the alteration, repair, demolition, construction, reconstruction, or any other improvements to real property.

1.13 CONSTRUCTION MANAGER/GENERAL CONTRACTOR

These terms shall be synonymous with "Construction Manager" and/or "General Contractor" and "CM/GC." The CM/GC is the entity identified as such throughout this Contract and is referred to as if singular in number and neutral in gender. The term "CM/GC" means the CM/GC or his representative.

1.14 CONSULTANT

The professional architectural firm of Neel-Schaffer . Also referred to herein as the A/E.

1.15 CONTRACT

This binding agreement between the City and CM/GC, with binding legal force, covering the work to be performed in exchange for money.

1.16 CONTRACT ADMINISTRATOR

The City's Public Services Director or his designee responsible for addressing any concerns within this Contract.

1.17 CONTRACT BONDS

The securities (Performance and Payment Bonds) furnished by the CM/GC and the surety as a guarantee that the CM/GC will fulfill the terms of the contract in accordance with the specifications, drawings, and other contract documents.

1.18 CONTRACT DOCUMENTS

The contract documents comprise the entire contract and its attached exhibits and addenda between the City and the CM/GC that are attached to this contract, are made part of this contract, and includes, but are not limited to, the following:

- (1) This Contract ("Basic Contract");
- (2) Exhibits;
- (3) Any valid modifications or Amendments to this Contract issued after its execution of this Contract, and any Amendments to the foregoing;
- (5) Certificates of insurance;
- (6) Notice of Award and/or Notice to Proceed;
- (7) The conditions of this Contract (general, special, supplementary, and other);
- (8) Drawings;
- (9) Project specifications;
- (10) Written interpretations;
- (11) Change orders;
- (12) Project manuals; and
- (13) Addenda (including RSQs, RFPs and Consultant's responses to RFPs) issued before the execution of this Contract.

1.19 CONTRACT PRICE

The total monies payable to the CM/GC under the contract documents for a project.

1.20 CONTRACT TIME

The number of consecutive days of the contract for the completion of the work.

1.21 CONTRACTOR

The person or entity qualified to perform work pursuant to Florida Statutes §489.105, under the Project and who is registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances, other than a materialman or laborer, who enters into a contract with the City for improving real property in accordance with the Contract Documents.

1.22 CM/GC PROJECT MANAGER OR PROJECT MANAGER

The individual responsible for the day-to-day administration of the project for the CM/GC.

1.23 CM/GC'S RELEASE

A document wherein the CM/GC acknowledges receipt of full and final payment from the City in complete satisfaction of all the City's obligations under the contract and which releases and discharges City and the architect/engineer from all claims and demands arising from the work performed pursuant to the contract documents.

1.24 CITY

Shall mean the City of DeBary, Florida.

1.25 CITY PROJECT MANAGER OR PROJECT MANAGER

The City employee or authorized representative of the architect/engineer who is assigned to the Project and is responsible for the day-to-day administration of the Project for the City. The City may change the project manager at any time by providing notice to the CM/GC.

1.26 CITY REPRESENTATIVE

Also known as the Owner's representative who is the City Engineer or person designated by the City to review, approve and make decisions regarding the scope of work.

1.27 DAY

A calendar day of twenty-four hours measured from midnight to the next midnight.

1.28 DELIVERABLE

The result(s) or end products or services of a Project that meet the defined design or construction specifications, warranties, and functional parameters articulated in the Scope of Work for this Contract which, e.g., include but are not limited to: design drawings\specifications, structures, equipment, machinery, studies, reports, written documentation, training, systems or processes.

1.29 DIRECT LABOR COST

Represent those actual costs, exclusive of overhead and profit, reasonably and necessarily incurred and paid by the CM/GC in the construction performance phase services of this Contract, from the date of the Notice to Proceed until the completion of the Project, for payroll payments made to its employees working on the Project site, as described, and defined in the Contract Documents.

1.30 DRAWINGS/PLANS

The official approved drawings or plans or exact reproductions thereof, which have been prepared and signed and sealed by an architect/engineer, which show the location, character, dimensions, and details of the work to be done and which are considered as part of the Contract Documents.

1.31 EFFECTIVE DATE

The date that this Contract, Addendum, Amendment, Modification is fully executed by CM/GC and the City.

1.32 ENGINEER OF RECORD

The professional engineer or engineering firm contracted or employed by the City and registered in the State of Florida who develops criteria and concept for the work, performs the analysis and is responsible for the preparation of the plans and specifications. The engineer of record may be City in-house staff, or a consultant retained by the City.

1.33 EQUIPMENT

The machinery and equipment, together with the necessary supplies for maintenance, including the tools and apparatus necessary for the proper construction and acceptable completion of the work.

1.34 FIELD ORDER

A written instrument issued by the City to the CM/GC, which clarifies or interprets the drawings and technical specifications, and/or orders minor variations in the work, as opposed to a change in the work, and which does not involve an adjustment in contract price or time.

1.35 FIRM

Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

1.36 FORCE ACCOUNT WORK

Work performed in addition to that set forth in the original contract or in supplemental contracts or change orders, and which is paid for on the basis of actual cost of materials and labor, plus a fixed percentage of such costs.

1.37 GUARANTEED MAXIMUM PRICE (GMP)

Guaranteed Maximum Price shall represent CM/GC's guaranteed offer to the City of the maximum price for which it will construct the Project as represented in the Design Documents, including a fee for CM/GC's services. There shall be two separate GMP's provided pursuant to this Contract: one to construct only the utility administration building improvements; and one to construct only the wastewater treatment plant expansion and improvements.

1.38 IMPROVEMENT

Any building, structure, construction, demolition, excavation, solid-waste removal, landscaping, or any part thereof existing, built, erected, placed, made, or done on land or other real property for its permanent benefit.

1.39 LABORER

Any person other than an architect, landscape architect, engineer, surveyor and mapper, and the like who, under properly authorized contract, personally performs on the site of the improvement labor or services for improving real property and does not furnish materials or labor service of others.

1.40 LUMP SUM

A pay item within the contract documents, which is paid without regard to quantities or unit of measure.

1.41 MATERIALMAN

Any person who furnishes materials under contract to the owner, CM/GC, Subcontractor, or Sub-subcontractor on the site of the improvement or for direct delivery to the site of the improvement or, for specially fabricated materials, off the site of the improvement for the particular improvement, and who performs no labor in the installation thereof.

1.42 MATERIALS

Any substance used in connection with the construction of any structure, facility, or appurtenance, or of other work under the contract.

1.43 MODIFICATON

A written amendment to the Contract Documents approved by the City and signed by the Contractor and the City or City's designated representative(s) (including the CM/GC and/or A/E) which includes but is not limited to, Addenda, Amendments, Change Orders or Field Orders.

1.44 NOTICE TO PROCEED (NTP)

The official letter from the City to the CM/GC establishing a date on which the Work will commence.

1.45 ORIGINAL EXPIRATION DATE

The date that this Contract was originally intended to expire excluding any extensions or renewals of this Contract for a time certain.

1.46 OWNERS

The owner is the City of DeBary for whom all Work or Services under the contract documents are performed by the CM/GC.

1.47 CONSTRUCTION PHASE CONTRACT (this term intentionally not listed in alphabetical order)

The fixed capital outlay for Construction Performance Phase Services for either or both the utility administration building improvements and the wastewater treatment plant expansion and improvements, which shall be performed in accordance with the Contract Documents.

1.48 PAYMENT BOND

A bond, which assures payments, as required by law, to all persons supplying labor or material for the completion of work under the contract.

1.49 PENAL SUM

The amount in which a bond is issued is called the “penal sum,” or the “penalty amount,” of the bond.

1.50 PERFORMANCE BOND

A bond given by a surety on behalf of the CM/GC to ensure the timely performance of the SOW of this Contract.

1.51 PERSON

The word “person” shall mean and includes any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, or capacity, whether appointed by a court or otherwise, and any combination of individuals or “persons.”

1.52 PRE-CONSTRUCTION CONFERENCE

The meeting of all the parties involved with the planning and execution of the construction of the project.

1.53 PRINCIPAL

When used in the bid bond, the word “principal” means the same as the word “bidder.” When used in the performance and payment bonds, the word “principal” means the same as the word “CM/GC.”

1.54 PROJECT

1.54.1 Fixed capital outlay study or planning activity described in the public notice of the City which includes the entire Scope of Work which shall be performed in accordance with the Contract Documents. A Project may include:

1.54.1.1 A grouping of minor construction, rehabilitation, or renovation activities.

1.54.1.2 A grouping of substantially similar construction, rehabilitation, or renovation activities.

1.54.1.3 The entire work to be performed pursuant to the Contract Documents.

1.55 PROPOSAL

The document submitted by the CM/GC in response to a formal solicitation used to determine if the CM/GC is highly qualified.

1.56 PROVIDE

To furnish, install, complete, and have ready to use.

1.57 PROVIDED

As used in the specifications or upon the drawings provided shall mean, "furnished and installed." Where as shown, as indicated, as detailed or words of similar import are used, it shall be understood that references to the drawings and/or specifications accompanying these documents are intended unless otherwise expressly stated.

1.58 REQUEST FOR INFORMATION (RFI)

Prospective Bidders', CM/GCs' or Consultants' inquiries for information.

1.59 RESIDENT PROJECT REPRESENTATIVE

An employee of the City or an authorized representative of the architect/engineer who is assigned to the project and is responsible for overseeing that the work is constructed in accordance with the requirements of the drawings and specifications.

1.60 SCOPE OF SERVICES/WORK

The general services/work, herein defined in this Contract, including responsibility for performing and complying with all incidental matters pertaining thereto, as set out in the Contract Documents.

1.61 SHOP DRAWINGS

All diagrams, illustrations, brochures, schedules, and/or other data which are prepared by CM/GC, a Subcontractor, manufacturer, supplier, distributor, or other person on behalf of the CM/GC, and which illustrate the equipment, material, or some portion of the work.

1.62 SPECIFICATIONS

The document or Scope of Work that establishes the material and performance requirements of goods and services.

1.63 STATE

State of Florida.

1.64 SUBCONTRACTOR

A person other than a materialman or laborer who enters into a contract with a General Contractor for the performance of any part of the contract documents.

1.65 SUB-SUBCONTRACTOR

A person other than a materialman or laborer who enters into a contract with a Subcontractor for the performance of any part of such Subcontractor's contract.

1.66 SUBSTANTIAL COMPLETION (CONSTRUCTION)

The date in which the construction of the project, or specified part thereof, of any

substantial nature has been completed, as certified by the architect/engineer in accordance with the contract documents, so that the project, or specified part, can be utilized for the purposes for which it was intended. If the City has authorized a person, firm, or corporation, other than the architect/engineer, to act as City's representative, then such City's representative shall certify the completion date and when the project is substantially completed.

1.67 SURETY

An individual or corporation legally liable for the debt, default, or failure of a principal to satisfy the obligations of a contract.

1.68 SUPERINTENDENT

The CM/GC's authorized executive representative responsible for the work at all times.

1.69 TRADE CONTRACTOR

The person or entity qualified to perform work under this Contract including a Contractor, Subcontractor, supplier, laborer or materialman that has a direct contract with the CM/GC to perform work in the Project.

1.70 WORK

Any and all obligations, services, duties, and responsibilities necessary to the successful completion of the Project including supplying and installing of all labor, materials, equipment and other incidentals related thereto.

ARTICLE 2

PURPOSE AND INTENT, CONTRACT DOCUMENTS

2.0 The primary purpose and intent of this Contract is to secure for the City the services of a firm thoroughly experienced and highly qualified in both the "hands-on" construction methods and techniques, as well as the efficient management of construction operations to provide technical consultation on the Project; to determine the cost of constructing each component of the Project and the associated contingency funds required, thereby arriving at the estimated Project Budget and ultimately establish the Guaranteed Maximum Price, hereinafter referred to as the "GMP," to schedule the Project efficiently for construction phases and prepare the Project Schedule such that the Project will be ready for occupancy at the earliest practical date; and to review the design documents of the Project with the design professionals and advise upon the most efficient use of materials and construction methods to be employed for achieving quality construction at the least cost.

2.0.1 The CM/GC covenants with the City to furnish its best skill and judgment in furthering the interests of the City. The CM/GC agrees to furnish efficient business administration, construction management, and superintendence and to use its best efforts to complete the Project in an expeditious and economical manner consistent with the interest of the City. To that end, the CM/GC will maintain adequate cost and schedule control systems and perform screening of Trade Contractors to assure a high quality of construction consistent with the requirements of the Contract Documents.

- 2.0.2** Upon notice that the City elects to proceed with the Construction Performance Phase Services for the Fire Station #39 project (hereinafter referred to as "Construction Phase Contract"), the CM/GC shall post performance and payment bonds each in the amount of 100% of the Guaranteed Maximum Price, and on written "Notice to Proceed," shall immediately commence the performance of the services required in the Construction Phase Contract.
- 2.0.3** The CM/GC shall provide the insurance and bonding for the Project as required in Article 6 and shall be reimbursed the cost in accordance with Article 3, section 3.11.2.5, hereunder.

2.1 EXHIBITS

2.1.1 The exhibits listed below are incorporated into and made a part of this Contract.

- 2.1.1.1** Exhibit "A" – Scope of Services
- 2.1.1.3.** Exhibit "D" – Insurance Requirements

2.2 AUTHORITY FOR CONTRACTING

2.2.1 By executing this Contract, the CM/GC represents that it has visited the site, familiarized itself with the local conditions under which the Work is to be performed, and correlated its observations with the requirements of the Contract Documents. The CM/GC and each Trade CM/GC shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation:

- 2.2.1.1** The location, conditions, layout and nature of the Project site and surrounding areas,
- 2.2.1.2** Anticipated labor supply and costs,
- 2.2.1.3** Availability and cost of materials, tools, equipment, and other similar issues, and,
- 2.2.1.4** The City assumes no responsibility or liability for the physical conditions or safety of the Project site or any improvements located on the Project site. The CM/GC shall be solely responsible for providing a safe place for the performance of the Work and the City shall not be required to make any adjustment in either the agreed amount of the GMP or the Contract Time in connection with any failure by the CM/GC.

2.2.2 This Contract between the City and the CM/GC is intended solely for the benefit of the City and the CM/GC and no other persons or entities. The services to be performed hereunder shall be performed by the CM/GC's own staff, unless otherwise authorized by the City. The employment of, contract with, or use of the services of any other person or firm by the CM/GC, as consultant or otherwise, shall be subject to the prior written

approval of the City. Such approval shall not be construed as constituting a contract between the City and any such person or firm.

- 2.2.3 If the parties hereto enter into a subsequent Contract specifically modifying this Contract between City and CM/GC, it is expressly agreed that such modification will take precedence over this Contract to the extent of such modification only.
- 2.2.4 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one will be as binding as if required by all.
- 2.2.5 Work not covered in the Contract Documents will not be required unless it is consistent therewith and is reasonably inferable there from as being necessary to produce the intended results.
- 2.2.6 Words and abbreviations that have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.2.7 The organization of the Technical Specifications into divisions, sections, and articles, and the arrangement of Drawings will not control the CM/GC in dividing the Work among Trade Contractors or in establishing the extent of Work to be performed by any one of them.
- 2.2.8 **Order of Precedence.** If CM/GC finds a conflict, error, or discrepancy in the Contract Documents, it shall call it to the A/E's attention, in writing, and request the A/E's interpretation and direction before proceeding with the Work affected thereby. Such notice shall be provided by the CM/GC to the A/E in a timely fashion so as not to cause additional costs due to delay. In resolving such conflicts, errors and discrepancies, the documents will be given precedence in the following order:
 - 2.2.8.1 Modifications to the Contract
 - 2.2.8.2 This Contract between the City and CM/GC
 - 2.2.8.3 Addenda or Exhibits to this Contract
 - 2.2.8.4 Detailed (Technical) Specifications
 - 2.2.8.5 Project Plans (Drawings)
 - 2.2.8.6 Procedures for Advertising, Pre-Qualification, Bidding and Contract Award for Trade Contracts
 - 2.2.8.7 Bonds and Guaranties
- 2.2.9 In the case of conflicts between drawings or between provisions of the specifications, the more detailed or specific of the conflicting provisions or representations will take precedence. For example, where figured dimensions are shown on the drawings, they shall take precedence over scaled distances and scaled dimensions, and detail drawings shall govern over general drawings.
- 2.2.10 In those cases where it is not reasonably clear which of the conflicting provisions or representations is the more detailed or specific, the CM/GC will be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless he has, prior to submitting the GMP, asked for and obtained a written decision of the A/E as to which quantity or quality or method or materials shall be required.

ARTICLE 3

CONSTRUCTION MANAGER/GENERAL CONTRACTOR'S SERVICES

- 3.0 Review of Plans and Specifications.** The CM/GC shall review all plans and specifications and advise on site, foundation, building systems, materials and equipment, construction feasibility, availability of labor and materials, time requirements for procurement, installation and construction relative costs, and provide recommendations for economies as appropriate. Technical consultation to the A/E and its professional disciplines shall not infringe upon the design responsibility of those disciplines. The CM/GC shall make recommendations relating to the cost, constructability and other such technical and economical characteristics of a particular design or material selection; however, if such recommendations are accepted for incorporation into the Project, their application with regard to structural stability and life safety shall be the responsibility of the A/E. The CM/GC will not be assigned responsibilities that duplicate those assigned in the design professionals' contract for A/E services.
- 3.1 Technical Proposals.** The CM/GC shall review performance specifications, consult with the A/E on the structuring of requests for proposals for the procurement and installation of technical systems and components of the Project and verify their availability. The CM/GC shall be responsible for coordinating w/ the City regarding its procurement procedures in issuing requests for proposals to qualified sources and receiving proposals.
- 3.2 Cost Consultation.** The CM/GC shall provide a continuous cost consultation service for the duration of this Contract. The CM/GC shall prepare solicitation and purchasing documents and be responsible for all procurement and construction cost estimates. The CM/GC shall prepare final cost estimates for all early procurement of equipment and materials; for all building systems and components; and for all construction labor. The CM/GC shall notify the City when, in its opinion, the estimated construction cost will exceed the GMP and at any time the anticipated completion date will exceed the approved scheduled completion.
- 3.3 Value Engineering.** The CM/GC shall review the plans and specifications as prepared by the Consultant and perform value engineering services. The City Representative, the Consultant and the CM/GC shall review the proposed changes, and the City shall determine which of those changes will be incorporated into the plans and specifications. As an optional service, not included in the cost of this Contract, the CM/GC may be called upon to develop these changes into drawing formats generally compatible with the existing plans and specifications. The fee for this optional work will be determined when required and as mutually agreed upon by the City and the CM/GC.
- 3.4 Long Lead Time Procurement.** The CM/GC shall identify, recommend for purchase, and expedite the procurement of equipment, materials, and supplies that require long lead time for procurement or manufacture.
- 3.5 Construction Documents.** The CM/GC shall make recommendations to the City and the Consultant regarding the division of Work into separate bid packages to affect economy and permit phasing of procurement and construction. Consideration must be given to such factors as type and scope of work, time of performance, availability of labor and materials, community relations, factory versus on-site production costs, shipping costs and size limitations, building code restrictions, local ordinances requirements, and other limiting factors.
- 3.6 Trade Work Coordination.** CM/GC shall review and analyze the plans, specifications, and schedules for the Project and make the necessary recommendations to minimize conflict and overlap of jurisdiction between Trade Contractors.

- 3.7 Project Site Facilities.** The CM/GC shall review the Plans and Specifications to ensure that they provide for all necessary temporary facilities required for the performance, management, inspection, and supervision of the Work.
- 3.8 Bidding Documents and Advertisement for Bids.** The CM/GC shall, in collaboration with the A/E, review all design documents, divide the Work in bid packages, and assemble complete bid data, including copies of plans and specifications provided by the A/E, so as to achieve maximum competition among qualified bidders to obtain the most reasonable price for good quality work. The CM/GC shall prepare invitation for bids describing each package clearly, accurately, and in sufficient detail to inform prospective bidders of the nature and scope of the work, including instructions for submitting qualifications. The CM/GC shall also prepare a list of potential bidders for the various portions of the Work for review with the City, verify references and previous performance of potential bidders, and review all such findings with appropriate representatives of the City. The procedure for advertising, pre-qualification, bidding, and awarding trade contracts must be agreed upon by the City and the CM/GC.
- 3.9 Obtaining Competitive Bids.** The CM/GC shall endeavor to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable work. Using its best business skills, the CM/GC shall develop and attract Trade Contractors' interest in the Project by publicizing the invitation for bids through distribution to reputable local Trade Contractors and suppliers, posting in public places, advertising in newspapers and trade journals, and using such other means as may be appropriate in sufficient time to enable prospective bidders to prepare and submit their qualifications. In close collaboration with the City's representative's schedule, the CM/GC will conduct pre-bid conferences to inform prospective bidders of the requirements of the Contract Documents, provide clarifications, and answer questions as necessary. The specific requirements of compliance with the laws and regulations of various governmental agencies having jurisdiction over the Project (i.e., Public Entity Crimes law, etc.) shall be fully explained and emphasized at the pre-bid conference. The CM/GC may require bidders to submit bid bonds and evidence of bonding capacity, as well as meet specified qualifications as prerequisite to bidding on the Work; however, unnecessarily restrictive requirements which might unduly limit the number of bidders should be avoided. Specific instructions stating clearly whether bonding is required or not must be included with each bid package.
- 3.9.1** The CM/GC shall also: (i) solicit competitive bids on appropriate bidding packages from qualified Trade Contractors; (ii) analyze and evaluate the bids received and their relationship to budgeted amounts and prepare for review with the City bid tabulation and such other supporting data as necessary to properly compare the bids and their responsiveness to the desired scope of work; (iii) review the scope of work in detail with apparent qualified low bidders and attempt to achieve additional savings through negotiation whenever practical; maintain records of all pre-award interviews with apparent low bidders; (iv) prepare and submit written recommendations to the City for award of trade contracts; (v) award and execute trade contracts with the successful bidders; and (v) provide to the City copies of fully executed trade contracts, insurance certificates and bonds.
- 3.9.2** If the City has objections to awarding a contract to any pre-qualified Trade Contractor or supplier, the City shall timely notify the CM/GC upon review of the pre-qualified bidders list. The CM/GC shall not solicit a bid proposal from a bidder so rejected.
- 3.9.3** All permanent construction for the Project must be performed under trade contracts between the CM/GC and its Trade Contractors. The procurement activity of the CM/GC should be such as to preclude any conflict of interest. In particular, the CM/GC shall avoid

bidding work in competition with bidding Trade Contractors. Neither the CM/GC nor any firm in which a principal stockholder or member of the CM/GC's firm has a financial interest, may, during the term of the Contract, make or cause to be made any bid for construction work on the Project. Notwithstanding the foregoing and upon City's written approval, the CM/GC may perform with its own employees work of a Trade Contractor who fails to perform in accordance with the provisions of its trade contract or if CM/GC's performance of some portions of the Work will result in cost savings to the City.

3.10 Management Control System. The CM/GC shall initiate and, upon execution of Construction Phase Contract, of the Contract, activate a management control system (MCS) as an integral part of the Project Control System, using both manual and automated procedures to support functions such as planning, organizing, scheduling, budgeting, reporting construction progress and expenditures, accounting, documentation, identifying variances and problems, and facilitating decision making. The data provided by the MCS must be timely, must be responsive to the needs of management at all levels, and must be fully capable of providing a sound basis for managing the construction of the Project.

3.10.1 Subsystems of MCS. The Management Control System must incorporate three major subsystems for use in meeting the objectives of the City for timely completion, economy, and quality. Upon execution of the Construction Phase Contract, the CM/GC shall provide the services, facilities, and support equipment necessary to implement the MCS for the entire duration of the construction phase.

3.10.2 Planning and Progress Monitoring Subsystem. The CM/GC shall prepare a schedule that integrates the projected activities of the CM/GC, the A/E, and the City particularly as they relate to the value engineering effort and the preparation of the GMP. The CM/GC shall produce a preliminary construction schedule for review and approval by the City. The CM/GC shall prepare a final construction schedule incorporating changes required as a result of the City's review. This schedule shall be based on the Critical Path Method (CPM) and shall be updated and included in monthly progress reports.

3.10.3 Budget Control and Accounting Subsystem. The CM/GC shall provide for the periodic inclusion of approved change orders in the original budget. The new budget figure will be identified as the "current working estimate." The CM/GC shall also identify variances between "current working estimate" and the original budget and report them promptly to the City.

3.10.4 Documentation and Historical Subsystem. The CM/GC shall provide documentation of all changes made in the original schedule and original budget so that complete traceability is maintained between the original plan (schedule and budget) and the latest approved plan.

3.10.5 Reports. The MCS, when fully implemented, will generate reports necessary for effective control of the overall construction program. Reports will be provided to management in summary form. Reports will also be provided to subordinate levels of management in sufficient detail consistent with their respective requirements and responsibilities.

3.10.5 Preparation of the Guaranteed Maximum Price (GMP). The CM/GC shall prepare and submit for City's approval an itemized GMP to construct Fire Station #39, each clearly summarizing the cost for each component of the Work as it was packaged and bid and establishing the amount of contingency funds required. Upon contract of the City and CM/GC on the GMP, the detailed itemization of costs, prices and supporting data comprising the selected GMP will be incorporated as Exhibit "A" in the Construction

Phase Contract to be executed by the City and CM/GC. The GMP shall represent CM/GC's guaranteed offer to the City of the maximum price for which it will construct the Project, as represented in the design documents, including a fee for CM/GC's services. During the construction phase, the GMP will be subject to modification for changes in the Construction Documents approved by the City and for additional costs arising from delays caused by persons, entities, events or circumstances entirely beyond the control of the CM/GC as provided in Construction Phase Contract. The Plans and Specifications, the Site Plan and Survey, and all soil and subsurface investigations upon which the GMP is established must be identified in the Construction Phase Contract as Exhibit "B" thereto. The GMP shall be the sum of the following:

3.10.6 Direct Labor Cost. This category of expenses includes (provided the GMP is not exceeded) and is limited to the following cost items:

3.10.6.1 Wages and employee benefits, as may be payable, paid for labor and Project site supervisory and office employees in the direct employ of the CM/GC and which are used for performing the Contract work;

3.10.6.2 Travel and lodging expenses of CM/GC's officers or employees incurred in the discharge of duties connected with the Project in accordance with the City of DeBary's Travel Reimbursement policy. Relocation costs of CM/GC's employees in connection with this Project are not reimbursable.

3.10.7 Cost of the Work. The Cost of the Work shall include, without limitation, the cost items set forth as follows:

3.10.7.1 The cost of all materials, supplies, and equipment incorporated in the Work, and the cost of transportation and storage thereof. The City, in its sole discretion, may make payment for materials, supplies, or equipment stored off-site;

3.10.7.2 Payments made by the CM/GC to its Trade Contractors for work performed for the Project under trade contracts;

3.10.7.3 The cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers, which are used and consumed in the performance of the Work, and the cost, less salvage value, on items used but not consumed which remain the property of the CM/GC. This cost does not include the cost of materials, supplies, equipment, temporary facilities, and hand tools furnished by Trade Contractors as part of their trade work which must be incorporated in the trade contracts cost;

3.10.7.4 Rental charges of all necessary motor vehicles, machinery, and equipment, including hand tools, whether rented from the CM/GC or others, and including transportation and delivery costs, installation, maintenance, repair and replacement, and dismantling and removal, at rental charges consistent with those prevailing in the area of the Project;

3.10.7.5 Actual cost, without mark-up, of the premium for all insurance and bonds that the CM/GC is required to provide pursuant to this Contract;

3.10.7.6 Sales, use, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the CM/GC is liable;

building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than CM/GC's own negligence;

- 3.10.7.7** Losses, expenses, or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the City;
- 3.10.7.8** The cost of corrective work (within the GMP limit);
- 3.10.7.9** Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- 3.10.7.10** Cost of debris and trash removal including daily cleanup;
- 3.10.7.11** Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc;
- 3.10.7.12** Cost related to emergencies affecting the safety of persons and loss of property;
- 3.10.7.13** Legal costs properly resulting from prosecution of the Work for the City, provided that they are not the result of CM/GC's own negligence or malfeasance. Legal costs incurred in connection with disputes with the City may not be included in the Cost of the Work;
- 3.10.7.14** Cost of items related to the Project Safety Program including barricades, firefighting equipment and extinguishers, special and protective wearing apparel and safety equipment, temporary roads and parking, dust and noise control, installation and operation of temporary hoists, scaffolds, ladders and runways, and other similar items;
- 3.10.7.15** Cost of watchmen or similar security services to secure the project site and materials and equipment;
- 3.10.7.16** Cost of survey, measurement, and layout work required for the proper execution of the Work;
- 3.10.7.17** Cost of purchase or rental of office equipment such as typewriters, cameras, radio communications, computers, pagers, copiers, dictating units, and other items such as office and tool trailers, vehicles and furniture purchased by CM/GC in connection with the Work;
- 3.10.7.18** Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation;
- 3.10.7.19** Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work; and
- 3.10.7.20** Costs incurred during the warranty period after completion of the Project (within the GMP limit).

3.10.8 CM/GC's Fee. The City and the CM/GC hereby agree that the CM/GC's fee may not exceed (8.0%) of the "Direct Labor Cost" and "Cost of the Work" (See Sections 3.10.6 and 3.10.7,

above). The intent and purpose of the GMP is to establish a maximum not-to-exceed price for the total Contract price, not a maximum price for line items, which line items are subject to adjustment by the CM/GC, as approved by the A/E and the City, provided that such adjustments do not cumulatively exceed this Contract's GMP. The CM/GC fee shall include the following:

- 3.10.8.1** Salaries or other compensation of CM/GC's employees at the principal office and branch offices, except employees listed in Section 3.10.6 *supra*;
- 3.10.8.2** General administrative and operating expenses of CM/GC's principal and branch offices other than the Project site office;
- 3.10.8.3** Any part of CM/GC's capital expenses, including interest on CM/GC's capital employed for the Project, if any;
- 3.10.8.4** Overhead and any other costs incurred by the CM/GC in the performance of the Contract; and,
- 3.10.8.5** Cost in excess of the Guaranteed Maximum Price, if any is incurred.

3.10.9 Adjustments of the Fee shall be made only as follows:

- 3.10.9.1** For approved changes in the Work (additional), an increase to the fee in an equitable amount to be included in the Change Order.
- 3.10.9.2** If the CM/GC is placed in charge of the reconstruction of any insured or uninsured loss, the fee will be increased in the same proportion as set forth in Section 3.10.8.

3.10.10 The GMP includes only those taxes that are legally enacted at the time the GMP is established. Taxes included in the GMP must be indexed and identified by category of tax so that the City may insure that the tax exemptions applicable to City are excluded from the GMP.

3.10.11 The value included in the GMP for General Conditions and supervision will be defined as a fixed amount and agreed upon by the City and the CM/GC at the time the GMP is accepted by the City. All cost savings, if any, must be returned to the City as part of the net aggregate savings established at the time the final accounting is submitted upon completion of the Work.

3.10.12 Exclusions. The GMP may not include such Project expenses as cost of site, professional design fees, or moveable equipment and furnishings.

ARTICLE 4

TIME FOR PERFORMANCE

4.0 The CM/GC shall submit its first estimate of the GMP as described in Section 3.11 to the City for review within forty-five (45) days of receipt of all design documents. Based upon this estimate, the CM/GC and the City will collaborate to resolve any budget estimate differences in order to reach a GMP satisfactory to both the CM/GC and the City. Such action by the CM/GC and the City must be accomplished within a maximum of twenty-one (21) days of submission of the GMP

unless additional time is mutually agreed to in writing. Approval of the GMP may not be unreasonably withheld.

ARTICLE 5

EXECUTION OF CONSTRUCTION PHASE CONTRACT, CONSTRUCTION PERFORMANCE PHASE SERVICES

- 5.0** Upon the City's timely approval of the GMP as provided under Section 4.0 *supra*, the CM/GC agrees to enter into the Construction Phase Contract on the basis of the proposed GMP as provided in Section 4.0 *supra*.
- 5.1** During the performance of this Contract and the Construction Phase Contract when it is entered into by City and CM/GC, the CM/GC is not and may not be considered or deemed to be an employee of the City or the City's agent. The CM/GC shall perform its services and duties consistently with such status and will make no claim or demand for any right or privilege applicable to an officer or employee of the City, including, but not limited to, workman's compensation, disability benefits, accident or health insurance, unemployment insurance, social security or retirement membership.

ARTICLE 6

INSURANCE AND BONDING

6.0 INSURANCE REQUIREMENTS.

6.0.1 Required Types of Insurance. The CM/GC shall purchase and maintain at its own expense, during the term of this Contract the types and amounts of insurance with limits no less than those shown on Exhibit "D," in the form and from companies satisfactory to the City.

6.1 Bonding Requirements

6.1.1 The CM/GC and/or Trade Contractor shall furnish separate performance and payment bonds as security for the faithful performance and payment of all its obligations under the Contract Documents. These bonds shall be in amounts equal to the GMP and in such form as prescribed pursuant to § 255.05 Florida Statutes and with such sureties as are acceptable to the City. The bonds shall become effective upon execution of this Contract and shall remain in effect for one (1) year beyond the date of the Certificate of Substantial Completion of the Work as a protection to the City against losses resulting from latent defects in materials or improper performance of work under the Contract, which may appear or be discovered during that period. The bonds shall provide one hundred percent (100%) coverage for CM/GC's or Trade Contractor's default on either performance or payment.

6.1.2 The performance and payment bonds must have as the surety thereon only such surety company or companies as are authorized to write bonds of such character and amount under the laws of the State of Florida and with an agent resident in the State of Florida. The Attorney-in-Fact, or other officer who signs such bonds for the surety company must file with such bonds a certified copy of its Power-of-Attorney authorizing it to do so.

6.1.3 Qualification of Sureties. The following requirements shall be met by surety companies furnishing performance, payment or any other type of bonds:

6.1.3.1 The surety shall be rated "A+" or better on the Financial Strength Rating (FSR), published by A. M. Best Company. Financial Strength Rating of companies providing insurance for the project shall be "A-" or better.

6.1.3.2 The surety shall also be listed on the U.S. Department of Treasury (Dept. Circular 570) entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies."

6.1.3.3 The surety companies proposed by the CM/GC or Trade Contractor for the Project are subject to City's approval which approval shall not be unreasonably withheld. At any time after approval, if the City, for cause (such cause being defined as the filing for liquidation, appointment of receiver to manage said surety business, insolvency, filing petitions or applications for protection or liquidation under federal bankruptcy laws, or other causes adversely affecting the surety's ability to perform under its bonds), becomes dissatisfied with any surety or sureties then upon the bond(s), the CM/GC or Trade Contractor shall, within fifteen (15) days after written notice from the City to do so, substitute acceptable bond(s) in such form and sum, and signed by such other surety or sureties as may be satisfactory to the City. The premiums on the bond(s) shall be paid by the CM/GC or Trade Contractor. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished acceptable bond(s) to the City.

ARTICLE 7

CM/GC'S COMPENSATION FOR PRE-CONSTRUCTION SERVICES

7.0 The City will pay the CM/GC as total compensation for all pre-construction phase services required in this Contract, and as provided in Article 3 hereof, a fee of **FIFTY ONE THOUSAND FOUR HUNDRED EIGHTY ONE AND 00/100 (\$51,481.00) DOLLARS.**

7.1 Payments for services performed under this Contract and in accordance with the requirements of Article 3 hereof, will be made after receipt of properly executed requests for payment as follows:

7.1.1. The CM/GC shall submit to the City a monthly statement for services rendered to the date of statement accompanied by such supporting data as required by the City. Within twenty (20) business days and reviewed and approved by City representative if receipt by the City of the work for which the CM/GC has submitted the monthly statement, the CM/GC shall be paid the unpaid balance of any money due for work covered by said statement less any disputed amounts. The CM/GC shall be notified of disputed amounts within twenty (20) business days of the receipt of the statement. All payments made by City shall be subject to the Florida Prompt Payment Act (Part VII of Chapter 218, Florida Statutes).

7.1.2. Upon satisfactory completion by the CM/GC and acceptance by the City of all services

specified in Article 3 of this Contract, the CM/GC shall be paid the balance due under this Contract. Acceptance by the City shall be evidenced by the City's concurrence with a GMP and the execution of the Construction Phase Contract.

ARTICLE 8

TERMINATION

- 8.0 City's Right to Stop the Work.** The City shall have the right to stop the Work or a designated portion thereof, for major changes in design, because of non-conformance of the Work with the Plans and Specifications and shop drawings, or for such other reason as would make the continuance of the Work or a designated portion thereof no longer feasible. Notice of such action by the City shall be made in writing to the CM/GC and shall not restrict or limit in any way the remaining provisions of this Contract.
- 8.1 Termination by the City for Cause.** If the CM/GC fails to perform any of its obligations under this Contract, including any obligation it assumes to perform portions of the Work with its own forces, the City may give the CM/GC written notice of the deficiency and direct immediate corrective action. If the CM/GC fails to perform in accordance with such notice, within seven (7) days from the receipt of City's written notice, the City may perform the work involved and deduct the costs from funds due or to become due CM/GC. The CM/GC shall have the right, however, to make good any deficiencies or commence and continue to cure any default during the seven (7) day period following written notice.
- 8.1.1** If the CM/GC fails to furnish City with assurances satisfactory to the City evidencing the CM/GC's ability to complete the Work in compliance with all the requirements of the Contract Documents, or if it fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents or if it makes a general assignment for the benefit of its creditors approved by City Council prior to said assignment, or if a trustee or receiver appointed on account of its insolvency is unable to maintain progress, or if it refuses or fails to supply enough properly skilled workers or proper materials, or if it fails to make proper payment to Trade Contractors for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or breaches a material provision of this Contract, then the City may, without prejudice to any right or remedy and after giving the CM/GC and its surety ten (10) days' written notice, during which period the GM/GC fails to commence and continue to cure the violation, terminate the employment of the CM/GC and take possession of the Project site and of all materials, equipment, tools, construction equipment and machinery thereon and may finish the Project by whatever reasonable method the City may deem expedient. In the event of such termination, the City shall reimburse the CM/GC for any unpaid and undisputed portion of the Cost of Work incurred by CM/GC under Article 6A (subject to the GMP) up to the time of termination. The CM/GC shall not be entitled to any additional payment of Fee. The CM/GC shall not be entitled to any compensation for City's use of such materials, equipment, tools, construction equipment and machinery. However, at the completion of the Work, such materials, equipment, tools, construction equipment and machinery which were not incorporated in the Project shall be returned to the CM/GC. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Section 8.1.1 in the event of termination under the terms therein.

- 8.2 Termination by the City for Convenience.** If the City terminates this Contract other than pursuant to Section 8.1.1, the CM/GC shall be reimbursed for any unpaid portion of the Cost of Work which has been incurred up to the time of termination, plus the unpaid portion of the Fee earned up to the time of termination, plus Trade Contract and purchase order cancellation charges, if any, incurred by the CM/GC as a direct result of the termination. The City shall also pay to the CM/GC fair compensation, either by purchase or rental, at City's option, for any equipment used or retained by the City for completion of the Work. In case of such termination of the Contract, the City shall further assume and become liable for the obligations, commitments and unsettled claims that the CM/GC has previously undertaken or incurred in good faith in connection with the Project. The CM/GC shall, as a condition of receiving the payments referred to in this Section 8.2, execute and deliver all documents and take all steps, including the legal assignment of his contractual rights, as the City may require, for the purpose of fully vesting in the City the rights and benefits of the CM/GC under such obligations or commitments, and shall execute a complete waiver and release of the City.
- 8.3 Termination by CM/GC.** If the Project is stopped in whole or a substantial part, through no act or fault of the CM/GC, 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 material unavailable, or because of City's failure to make payment for work performed in accordance with the Contract Documents (unless the City is withholding payment as provided in Section 8.1.1), then the CM/GC may, upon ten (10) days' written notice to the City and the Program Manager, terminate this Contract and recover from the City payment for the unpaid and undisputed portion of the Cost of Work which has been incurred up to the date of termination, the unpaid portion of the Fee earned up to the date of termination, and any cancellation charges on existing obligations of the CM/GC related to the Project. The City shall have the right; however, to make any required payment or cure any default during the seven (7) day period following written notice and, in such event, neither the Contract nor the Work under the Contract shall be terminated. The CM/GC shall not be entitled to additional compensation for damages, claims or reimbursement of any kind other than those specifically stated in this Section 8.3 in the event of termination under the terms therein.

ARTICLE 9

CLAIMS, DISPUTES, AND INDEMNIFICATION

- 9.0 Claims.** Under this Contract the CM/GC shall not have the right to compensation to satisfy any claim for costs, liabilities, or debt of any kind whatsoever from any act or omission attributable to the City unless the CM/GC has provided notice to the City within twenty (20) days of the event giving rise to the claims and unless the detailed claim therefore is delivered to the City within sixty (60) days following the notice. The detailed claim shall include:
- 9.0.1** The date of the occurrence of the event giving rise to the claim and the date and manner of CM/GC's compliance with the notice requirements of this Article 9, and
 - 9.0.2** The reasons upon which the CM/GC bases his claim, demonstrating thereby that the costs, liabilities or debts reflected in the claim are not already a part of the GMP and its compensation under the Contract and therefore specific relief is due it for the claim.
 - 9.0.3** The City shall respond to the claim within twenty (20) days after receipt of a claim. In the event there is no resolution of the claim from that response, the CM/GC reserves his right to seek legal redress.

9.0.4 Sovereign Immunity. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes (as amended). Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract may be deemed as a waiver of immunity or limits of liability of the City beyond any statutorily limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Contract may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

9.1 Mediation.

9.1.1 The parties to this Contract shall exercise their best efforts to negotiate and settle promptly any dispute that may arise with respect to this Contract in accordance with the provisions set forth in this Section. The CM/GC and City Project Manager shall use reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, to address and work toward resolution of issues that arise in performance of this Contract and any applicable scope of services. Issues shall be escalated to successive management levels as indicated in Section 9.1.3 below.

9.1.2 If a dispute develops between the parties concerning any provision of this Contract, or the interpretation thereof, or any conduct by the other party under these contracts, and the parties are unable to resolve such dispute within ten (10) days, that party, known as the Invoking Party, through its applicable Project Manager, shall promptly bring the disputed matter to the attention of the non-Invoking Party's Project Manager or designated representative, as the case may be, of the other party in writing ("Dispute Notice") in order to resolve such dispute.

9.1.3 Upon issuance of a Dispute Notice, the Project Managers or designated representative(s) shall furnish to each other all non-privileged information with respect to the dispute believed by them to be appropriate and germane. The Project Managers or designated representative(s) shall negotiate in an effort to resolve the dispute without the necessity of any formal proceeding. If such dispute is not resolved by the Project Managers or designated representative(s) within ten (10) business days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Business Days	CM/GC's Representative	City Representative
10	Project Executive Manager	Project Manager
20	CM/GC's COO or President	City Manager

9.2 Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may initiate formal non-binding mediation before a single mediator, which mediation shall be completed within thirty (30) days of initiation in accordance with the rules of practice and procedure adopted by the Supreme Court of Florida for court-ordered mediation, Rule 1.700 et seq. of the Florida Rules of Civil Procedure, and Chapter 44, Florida Statutes. If the dispute remains unresolved after conducting such mediation, then either party may proceed to finalize

such termination remedies and commence litigation in a court of competent jurisdiction. If litigation is prematurely commenced, it shall be stayed until the mediator makes the required certification.

- 9.3** The CM/GC shall carry on the Work and maintain the progress scheduled during any administrative or judicial proceeding, unless otherwise agreed by the CM/GC and the City in writing, and the City shall continue to make payments on undisputed pay requests or invoices to the CM/GC in accordance with the provisions of this Contract.
- 9.4** All claims, disputes and other litigation shall be determined under the judicial system of the State of Florida. Venue for litigation will be exclusively in Volusia County, Florida, unless suit is brought in federal court, in which case, venue will lie in the Middle District of Florida, Orlando Division.
- 9.5 Truth in Negotiation.** CM/GC's signature on this Contract acts as the execution of truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete, and current at the time of contracting and that the CM/GC has disclosed to the City prior to the execution of this Contract all debts, fees, or obligations owed to or pending before the City.
- 9.6 Indemnification.** The CM/GC shall indemnify and hold harmless the City including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status and the State of Florida, including its officers and employees, from and against all liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CM/GC or its subcontractors, agents, employees, or any persons employed or utilized by the CM/GC in the performance of the CM/GC's obligations or services under this Contract. Such obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exhaust as to a party or person describe in this Contract.
- 9.6.1** In all claims against City, including its districts, authorities, separate units of government established by law, ordinance or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status, and any employee of CM/GC or anyone directly or indirectly employed by CM/GC or anyone for whose acts Consultant may be held legally liable, no indemnification obligation shall be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CM/GC, or any contractor, subcontractor or sub-subcontractor thereof under Florida's Workers' Compensation acts, disability benefit acts, or other employee benefit acts.
- 9.6.2** CM/GC's obligations or services shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity or insurance defense of additional or named insureds which would otherwise exhaust or be unavailable as to a party or person described in this Contract.
- 9.6.3** The indemnification requirements stated in subsection 9.6 and 9.6.1 herein shall survive the termination of this Contract. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the City's sovereign immunity.
- 9.6.4** If this Agreement constitutes a contract subject to the limitations of § 725.06 or § 725.08, Florida Statutes, any indemnification provision contained herein will be

deemed or otherwise interpreted to provide the maximum indemnification allowed by such statute and require the CM/GC to indemnify and hold harmless the City, including its officers and employees, from liabilities damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CM/GC and persons employed or utilized by CM/GC in the performance of this Agreement. Furthermore, if (and only if) applicable law requires that there be a maximum monetary limit of indemnification for which CM/GC is responsible so that any such indemnification provision remains enforceable, such limit for any indemnification provision(s) contained within this Agreement or the Original Government Contract is two million dollars (\$2,000,000) per occurrence, which the City and Vendor agree bears a commercially reasonable relationship to this Agreement and the work and services to be performed hereunder.

ARTICLE 10

MISCELLANEOUS

- 10.0 Force Majeure.** Neither party will be liable for any failure or delay in the performance of its obligations under the Contract to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any unanticipated government law or regulation not otherwise in effect at the time of execution of this Contract, acts of God, acts of domestic or international terrorism, pandemic, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, and/or any other unforeseeable cause whatsoever beyond the reasonable control of the parties (and such cause being referred to as a "Force Majeure Event"). Accordingly, the parties further agree that:
- 10.0.1** Upon the occurrence of Force Majeure Event, the non-performing party will be excused from any further performance of those obligations under this Contract that are affected by the Force Majeure Event for as long as (a) the Force Majeure Event continues; and (b) the non-performing party continues to use commercially reasonable efforts to recommence performance whenever and to whatever extent possible without delay.
- 10.0.2** Upon the occurrence of a Force Majeure Event, the non-performing party shall notify the other party of the occurrence of such event and describe in reasonable detail the effect(s) of such event upon the party's performance of its obligations and duties pursuant to this Contract. Such notice must be delivered or otherwise communicated to the other party within three (3) business days following the failure or delay caused by the Force Majeure Event or as soon as possible after such failure or delay if the Force Majeure Event precludes the non-performing party from providing notice within such time period.
- 10.0.3** In the event of a Force Majeure Event, the time for performance by the parties under the applicable statement of work will be extended for a period of time equal to the time lost by reason of such cause through execution of a Change Order pursuant to the terms of the Contract. Additionally, the CM/GC will be entitled to reasonable compensation for any additional compensable project costs and expenses directly resulting from the Force Majeure Event, subject to the City's verification of such costs via documentation and mutual agreement between the parties.

10.1 Claims Notice. The CM/GC shall timely report in writing to the City's Director of Risk Management any incident it believes might result in claims under any of the coverages mentioned herein.

Name: Carmen Rosamonda, City Manager
Address: 16 Colomba Road
DeBary, Florida 32713
Telephone: 386-601-0218
Email: crosamonda@debary.org

10.2 Successors and Assigns. City and CM/GC each binds itself and its partners, successors and successors in interest, affiliates, executors, administrators, assigns and legal representatives to the other party to this Contract and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, contracts and obligations of this Contract. Neither City nor CM/GC shall assign, sublet or transfer any rights under or interest in this Contract without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Contract.

10.3 Additional Rights and Remedies. The rights and remedies of the City provided for under this Contract are in addition to any other rights and remedies provided by law; the City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, with-holding, recoupment, or counterclaim, either during or after performance of this Contract.

10.4 MBE. This Contract is entered into by the City and CM/GC pursuant to the minority business enterprise procurement goals under Section 287.09451, F.S.

10.5 Local Government Policies

10.5.1 Public Records Law. Pursuant to section 119.0701(2)(a), Florida Statutes, the City is required to provide CM/GC with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE CM/GC HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM/GC'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-601-0219 OR EMAIL AT AHATCH@DEBARY.ORG.

By entering into this Contract, CM/GC acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Contract are public records subject to the public records disclosure requirements of section 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to section 119.0701, Florida Statutes, any CM/GC entering into a contract for services with the City is required to:

10.5.1.1 Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.

- 10.5.1.2** Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- 10.5.1.3** Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the CM/GC does not transfer the records to the City.
- 10.5.1.4** Upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the CM/GC or keep and maintain public records required by the City to perform the service. If the CM/GC transfers all public records to the City upon completion of the Contract, the CM/GC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CM/GC keeps and maintains public records upon completion of the Contract, the CM/GC shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- 10.5.1.5** Requests to inspect or copy public records relating to the City's Contract for services must be made directly to the City. If CM/GC receives any such request, CM/GC shall instruct the requestor to contact the City. If the City does not possess the records requested, the City shall immediately notify the CM/GC of such request, and the CM/GC must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.
- 10.5.1.6** CM/GC acknowledges that failure to provide the public records to the City within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.
- 10.5.1.7** CM/GC further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the City.

CM/GC shall indemnify, defend, and hold the City harmless for and against any and all claims, damage awards, and causes of action arising from the CM/GC's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by CM/GC's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney's fees and costs arising therefrom. CM/GC authorizes City to seek declaratory, injunctive, or other appropriate relief against CM/GC from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

- 10.5.2 Financial Records.** CM/GC agrees to maintain such financial records and other records as may be prescribed by the City or by applicable federal and state laws, rules, and regulations. City shall have the right to audit the books, records, and accounts of CM/GC that are directly related to the Contract. CM/GC shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Contract. CM/GC shall preserve and make available, at reasonable times for

examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings; provided, however, that it shall be City's responsibility to notify CM/GC of the pendency of such audit. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

10.5.3 Payments Subject to Appropriation. Notwithstanding any other term or provision of this Contract, the continuation of this Contract beyond a single fiscal year of City is subject to the appropriation and availability of funds in accordance with § 166.241, Florida Statutes. If at any time funds are not appropriated for the Services and Deliverables provided or to be provided under this Contract, cancellation must be accepted by CM/GC with thirty (30) days prior written notice, but failure to give such notice shall be of no effect. Termination by the City due to non-appropriation shall be without a termination charge by CM/GC. City is not obligated to pay CM/GC under this Contract beyond the date of termination. CM/GC has no right to compel the City of DeBary Council to appropriate funds for any fiscal year to pay the compensation.

10.5.4 Prohibition Against Contingent Fees.

10.5.4.1 The CM/GC warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CM/GC to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CM/GC any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

10.5.4.2 Neither CM/GC, nor any parent or subsidiary corporation of CM/GC warrants has employed or retained any company or persons, other than a bona fide employee working solely for CM/GC, to solicit or secure this Contract and that they have not paid or agreed to pay any persons, company, corporation, individual or firm, other than a bona fide employee working solely for CM/GC, any fee, commission, percentage, gift, or other consideration contingent upon award of this Contract. For the breach or violation of this provision, City shall have the right to terminate this Contract at its discretion, without liability and to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

10.5.4.3 For the breach or violation of this section, the City shall have the right to terminate this Contract without liability and, at its discretion, to deduct from the Contract Price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

10.5.5 Truth in Negotiation. CM/GC's signature on this Contract shall act as the execution of truth-in-negotiation certificate stating that wage rates, and other factual unit costs supporting the compensation set forth in this Contract are accurate, complete and current at the time of contracting and that it has disclosed to the City prior to the execution of this Contract all debts, fees or obligations owed to or pending before the City.

- 10.5.6 No Code Violation or Past Due Debt.** The CM/GC warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of DeBary Code of Ordinances, and does not owe the City any past due debt. Any breach of the foregoing warranty and representation shall be a material breach of this Contract and the City shall have the right to terminate this Contract as set forth herein.
- 10.5.7 Changes Due to Public Welfare.** The City and CM/GC agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law or Ordinance.
- 10.5.8 Compliance with Applicable Laws.** CM/GC shall perform its obligations hereunder in accordance with all applicable federal, state and local laws, ordinances, rules, regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner affect the performance of this Contract. Additionally, CM/GC shall obtain and maintain at its own expense all applicable licenses and permits to conduct business pursuant to this Contract from the federal government, State of Florida, City of DeBary, or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 10.5.9 Drug Free Workplace.** The City of DeBary is a drug-free and smoke-free workplace. CM/GC agrees that it shall provide a drug-free environment to its personnel during the terms of the Contract and shall comply, subject to the prior receipt, with the City's policies on drug-free and smoke-free work place during the term of this Contract.
- 10.5.10 Background Checks.** CM/GC and its Trade Contractors understand that certain areas of the City's premises may not be available to CM/GC or Trade Contractor personnel without background checks and that such access may be required to perform the Services contemplated by this Contract.
- 10.5.11 Employment of Illegal Aliens.** CM/GC certifies that it does not knowingly or willingly and shall not during the performance of the Contract employ illegal alien workers or otherwise violate the provisions of the Federal Immigration Reform and Control Act of 1986, as amended.
- 10.5.12 Nondiscrimination and Americans with Disabilities Act.** CM/GC may not unlawfully discriminate against any person in the operations and activities in the use or expenditure of the funds or any portion of the funds provided by this Contract. CM/GC agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any Services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In performing under this Contract, CM/GC agrees that it shall not commit an unfair employment practice in violation of any state or federal law and that it shall not discriminate against any member of the public, employee or applicant for employment for work under this Contract because of race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, gender, sexual orientation, age, national origin, political affiliation, or disability.

- 10.5.13** In accordance with the American Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing a special accommodation to participate in the proceedings, or an interpreter to participate in any proceedings, should contact the City Clerk at 386-601-0219 for assistance, at least two business days before any meeting date. Assisted listening system receivers are available for the hearing impaired and can be obtained from the City Clerk.
- 10.5.14 E-VERIFY.** The CM/GC shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CM/GC on or after the effective date of this Contract and thereafter during the remaining term of the Contract, including sub-contractors. Any sub-contract entered into by CM/GC with any sub-contractor performing work under this contract shall include the following language: "The Sub-Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CM/GC on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The CM/GC covenants and agrees that if it is found in violation of this section or the Executive Order, such violation shall be a material breach of this Contract and CM/GC shall indemnify, defend and hold harmless the City from any fines or penalties levied by a government agency, including the loss or repayment of grant funds by the City.
- 10.5.15 Controlling Law.** This Contract is to be governed by the laws of the State of Florida. Venue for any litigation between the parties to this Contract shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract.
- 10.5.16 Modifications to Contract.** This Contract and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto.
- 10.5.17 Entire Contract.** This Contract, together with any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between City and CM/GC and supersede all prior written or oral understandings.
- 10.5.18 Scrutinized Companies, FL Statue Section 287.135 and 215.473.** CM/GC must certify that the company is not participating in a boycott of Israel. For Contracts for goods or services of one million dollars or more, CM/GC must also certify that CM/GC is not on the Scrutinized Companies that Boycott Israel List, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has not been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law. The City will not contract for the provision of goods or services with (i) any company participating in a boycott of Israel, and, (ii) for Contracts for goods or services of one million dollars or more, any other scrutinized company as described above. CM/GC must have submitted the certification form with their response to City Solicitation 20- SQ-118IF. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the CM/GC of the City's determination concerning the false certification. The CM/GC shall have five (5) Calendar days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active contract term, the CM/GC shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the CM/GC does not demonstrate that the City's determination of false certification was made in error then the City shall have the right to terminate the Contract

and seek civil remedies pursuant to Section 287.135, Florida Statutes, as amended from time to time.

IN WITNESS WHEREOF, the parties have made and executed this Contract for DeLeon Springs Utility Extensions, Part A, the day and year below written.

CM/GC: WHARTON-SMITH, INC.

(SEAL)

BY: _____
(Signature)

BY: _____
Corporate Officer & Title

Date: _____

ATTEST: _____ Date: _____

City of DeBary

B: _____
Karen Chasez
Mayor – Seat 5

ATTEST:

Annette Hatch, MMC, City Clerk

APPROVED AS TO FORM AND LEGALITY:

A. Kurt Ardaman, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Preconstruction Phase Services:

- Prepare submit and negotiate with City pre-construction management price proposals for cost of pre-construction services.
- Attend Project Meetings
- Work side by side with the city project manager, city staff and the architect/ engineer consultant throughout
- Submit GMP estimate, critical path method calendar schedules and reports at phased levels of completion
- Solicit and evaluate subcontractor qualifications
- Solicit, schedule and lead pre-bid meetings
- Prepare subcontract bid packages utilizing the architect/ engineer consultant drawings and specification
- Solicit and evaluate subcontract bids
- Develop bid alternates and value engineering options to meet established construction budget
- Prepare guaranteed maximum price(s)(GMP)

EXHIBIT D
INSURANCE REQUIREMENTS

1. Required Types of Insurance

The CM/GC shall purchase and maintain at its own expense, during the term of the Agreement, the types and amounts of insurance with limits no less than those shown below, in the form and from companies satisfactory to the City. The CM/GC shall review the additional requirements in this Exhibit and ensure that the insurance policies comply with the specific terms and conditions therein.

- A. **General.** For the purposes of indemnification of the City or an endorsement or insurance coverage under this Agreement/Contract under which the City is a “named insured”, “additional named insured”, or “additional insured”, the term “City” includes the City of DeBary, including its districts, authorities, separate units of government established by law, ordinance, or resolution, partners, elected and non-elected officials, employees, agents, volunteers, and any party with whom the City has agreed by contract to provide additional insured status.
- B. **Claims Made Basis Insurance Policies.** All insurance policies written on a Claims Made Form shall maintain a retroactive date prior to or equal to the effective date of the Agreement. For any Claims Made policies acquired by the CM/GC in connection with this Project, the CM/GC shall purchase a Supplemental Extended Reporting Period (“SERP”) with a minimum reporting period of not less than three (3) years in the event the policy is canceled, not renewed, switched to occurrence form, or any other event which requires the purchase of a SERP to cover a gap in insurance for claims which may arise under or related to the Agreement. The CM/GC’s purchase of the SERP shall not relieve the CM/GC of the obligation to provide replacement coverage. In addition, the CM/GC shall require the carrier immediately inform the CM/GC, the City’s Risk Manager, and the City’s procurement department of any contractual obligations that may alter its professional liability coverage under the Agreement.
- C. **Additional Insured, Policies, Coverages, Limits, Primary and Non-Contributory Basis.** Under all insurance policies where the City is required to be an additional insured, the coverage and limits provided to the City under CM/GC’s insurance policies shall be at least the limits required herein or the CM/GC’s actual limits, whichever is higher. All coverage provided to the City as an additional insured by said policies shall be primary and shall not be additional to or contributing with any other insurance carried by or for the benefit of the City with any other insurance available to the City. The CM/GC shall utilize ISO Form CG 20 38 04 13 or equivalent to provide additional insured status to the City and any party to whom the City is contractually bound to provide additional insured status under a commercial general liability policy.

- D. **Pollution Coverage.** If the services provided require the disposal of any hazardous or non-hazardous materials off the job site, the disposal site operator must furnish a certificate of insurance for Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under the Agreement.
- E. **Commercial General Liability Insurance.** The CM/GC shall acquire and maintain Commercial General Liability insurance, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate. CM/GC may not obtain an insurance policy wherein the policy limits are reduced by defense and claim expenses. Such insurance must be issued on an occurrence basis and include coverage for the CM/GC's operations, independent contractors, subcontractors and "broad form" property damage coverages protecting itself, its employees, agents, contractors or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations including what is commonly known as groups A, B, and C. Such policies shall include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by the CM/GC or by any of its subcontractors arising from work or services performed under the Agreement. Public liability coverage shall include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly the CM/GC's Agreement to indemnify, defend and hold harmless the City as provided in the Agreement. The commercial general liability policy shall provide coverage to City when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability which would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, independent contractors, Property of City in Contractor's Care, Custody or Control or Property of City on which contracted operations are being performed, Explosion, Collapse or Underground hazards (XCU Coverage, Contractual Liability or Separation of Insureds. When City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent shall be used and shall provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. If City has agreed by separate contract to require CM/GC to name another party as an additional insured, CM/GC shall add said party as an additional insured to the commercial general liability policy by ISO Endorsement CG 20 38. CM/GC shall require its subcontractors performing work under this Agreement to add the City and any other party that the City has agreed by separate contract to require CM/GC to name as an additional insured to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. All commercial general liability policies shall provide a waiver of subrogation in favor of the City

and any other party required by this Agreement to be named as an additional insured. The commercial general liability policy shall be provided on a project or location specific basis for the location or project site where the work or services are to be performed under the Agreement. In the alternative, the commercial general liability policy shall be endorsed to provide the designated aggregate per location endorsement or equivalent on a form approved or requested by the City's Risk Manager.

- F. **Motor Vehicle Liability.** The CM/GC shall secure and maintain during the term of the Agreement motor vehicle coverage in the combined single limit of one million dollars (\$1,000,000) with "Any Auto", Coverage Symbol 1, providing coverage for all autos operated regardless of ownership, and protecting itself, its employees, agents or lessees, or subsidiaries and their employees or agents against claims arising from the ownership, maintenance, or use of a motor vehicle. The City shall be added as an additional insured under this policy.
- G. **Professional Liability.** The CM/GC shall ensure that it secures and maintains, during the term of the Agreement, Professional Liability insurance with limits of no less than the combined single limit amount of one million dollars (\$1,000,000) in respect only to the project(s) contemplated by the Agreement. Such policy shall cover all the CM/GC's and its subcontractors' professional liabilities whether occasioned by the CM/GC or its subcontractors, or its agents or employees [and broad enough to include errors and omissions specific to CM/GC's professional liability for direct and contingent design errors and Architect's/Engineers professional liability with no exclusions for design-build work]. The City shall be an additional insured under this policy when required in Figure 1.
- H. **Primary and Excess Coverage.** Any insurance required may be provided by primary and excess insurance policies.

2. Insurance Requirements

- A. General Requirements.
 - i. All insurance policies shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of A- and a Financial category size of VIII or greater in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
 - ii. Approval by City of any policy of insurance shall not relieve CM/GC from its responsibility to maintain the insurance coverage required herein for the performance of work or services by the CM/GC or its Subcontractors for the entire term of the Agreement and for such longer periods of time as may be required under other clauses of the Agreement.
 - iii. Waiver of Subrogation. The CM/GC hereby waives all rights

against the City and its Subcontractors for damages by reason of any claim, demand, suit or settlement (including workers' compensation) for any claim for injuries or illness of anyone, or perils arising out of the Agreement. The CM/GC shall require similar waivers from all its Subcontractors. CM/GC's insurance policies shall include a waiver of subrogation in favor of the City. This provision applies to all policies of insurance required under the Agreement (including Workers' Compensation, and general liability).

- iv. City Not Liable for Paying Deductibles. For all insurance required by CM/GC, the City shall not be responsible or liable for paying deductibles for any claim arising out of or related to the CM/GC's business or any Subcontractor performing work or services on behalf of the CM/GC or for the CM/GC's benefit under the Agreement.
- v. Cancellation Notices. During the term of the Agreement, CM/GC shall be responsible for promptly advising and providing the City's Risk Manager and the Purchasing and Contracts divisions with copies of notices of cancellation or any other changes in the terms and conditions of the original insurance policies approved by the City under the Agreement within two (2) business days of receipt of such notice or change.
- vi. Deductibles. If the CM/GC maintains and administers a self-insured retention or a large deductible program exceeding the insurance requirements listed in this solicitation using a formal program to fund either program may submit a request to be considered as meeting the insurance requirements of this Agreement. The request must include a summary of the program's design, funding method, and the program's supporting financial information. If additional information is necessary, the City will request more specific information, which must be provided by the CM/GC. The City's Risk Manager will review the information submitted and determine whether the program is acceptable to the City. If the CM/GC has no formal risk management program in place to manage and fund deductibles or self-insured retentions, then the program is ineligible for consideration. Subject to City approval, CM/GC may obtain a letter of credit in the amount equivalent to the deductible, which must remain in effect during the term of the Agreement at no additional cost to the City.

3. Proof of Insurance

- A. The CM/GC shall be required to furnish evidence of all required insurance in the form of certificates of insurance, which shall clearly outline all hazards covered as itemized herein, the amounts of insurance applicable to each hazard and the expiration dates.
- B. The CM/GC shall furnish proof of insurance acceptable to the City prior to or at the time of execution of the Agreement and the CM/GC shall not

commence work or provide any service until the CM/GC has obtained all the insurance required under the Agreement and such insurance has been filed with and approved by the City. Upon request from the City, the CM/GC shall furnish copies of all requested policies and any changes or amendments thereto, immediately, to the City, the City Risk Manager, and Purchasing and Contracts Divisions, prior to the commencement of any contractual obligations. The Agreement may be terminated by the City, without penalty or expense to City, if at any time during the term of the Agreement proof of any insurance required hereunder is not provided to the City.

- C. All certificates of insurance shall clearly indicate that the CM/GC has obtained insurance of the type, amount and classification required by this Section. No work or services by CM/GC may be commenced until City has approved these certificates of insurance. Further, the CM/GC agrees that the City shall make no payments pursuant to the terms of the Agreement until all required proof or evidence of insurance has been provided to the City. The Agreement may be terminated by the City, without penalty or expense, if proof of any insurance required hereunder is not provided to the City.
 - D. The CM/GC shall file replacement certificates with the City at the time of expiration or termination of the required insurance occurring during the term of the Agreement. In the event such insurance lapses, the City expressly reserves the right to renew the insurance policies at the CM/GC's expense or terminate the Agreement but City has no obligation to renew any policies.
4. **Survival.** The provisions of this Exhibit D, will survive the cancellation or termination of the Agreement.

PRECONSTRUCTION SERVICES WORKSHEET
 City of Debary Fire Station #39 Project

Tuesday, October 24, 2023

Wharton-Smith, Inc.

Labor Burden 45.00%

GMP DEVELOPMENT		Unit Costs				
Staff Name	Title/Responsibility	Base Rate	Burden	Loaded Rate	Hours	Total \$
Rick Bundy	Project Executive	\$90.00	\$40.50	\$130.50	8	\$1,044.00
Duncan Graham	Project Manager	\$66.00	\$29.70	\$95.70	40	\$3,828.00
Paul Radenhausen	Senior Superintendent	\$80.00	\$36.00	\$116.00	8	\$928.00
Daniel Kemack	Lead Cost Estimator	\$80.00	\$36.00	\$116.00	80	\$9,280.00
Estimators	Estimators	\$66.00	\$29.70	\$95.70	360	\$34,452.00
Carly Bureson	Precon Coordinator	\$44.00	\$19.80	\$63.80	16	\$1,020.80
Michael Christian	Scheduler	\$80.00	\$36.00	\$116.00	8	\$928.00
					520	\$51,480.80

REIMBURSABLES			
	Quantity	Cost	Total \$
Equipment		\$250.00	\$0.00
Printing Services	0	\$500.00	\$0.00
Advertisement for Bid	0	\$1,000.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
			\$0.00

PRECONSTRUCTION TOTALS	
	Totals
60% & 90% CD'S	\$0.00
GMP DEVELOPMENT	\$51,480.80
REIMBURSABLES	\$0.00
Total Preconstruction:	\$51,480.80



**City of DeBary, Florida
RFQ 08-2023
Request for Qualifications
Construction Manager at Risk Services
Fire Station #39**

Bids remitted to:

City of DeBary
Attention: Carmen Rosamonda
City Manager
16 Colomba Road
DeBary, Florida 32713

Questions in Writing to:

Mike Jones
City of DeBary
16 Colomba Road
DeBary, Florida 32713
miones@debary.org

BID SUBMITTAL DEADLINE: Friday, August 11, 2023 at 10:00 a.m.

**City of DeBary, Florida
RFQ 08-2023
Request for Qualifications
Construction Manager at Risk Services
Fire Station #39**

PURPOSE

The City of DeBary, Florida, in conformance with the Consultants' Competitive Negotiations Act (CCNA), Florida Statutes Section 287.055, et seq., and the policies and procedures of the City of DeBary (City) is soliciting Statements of Qualifications (proposal) from qualified construction management firms that are interested in providing construction services related to DeBary Fire Station #39.

PROPOSER

For the purpose of this Request for Qualifications (RFQ), the term "Proposer" is defined as the legal entity submitting a proposal. Proposals will be evaluated in accordance with Section 287.055, Florida Statutes.

Proposers intending to submit a bid as a joint venture with another company must provide documentation attesting to the formation of that joint venture with their submittal.

BACKGROUND

In 2020, the City acquired a 10-acre parcel on Fort Florida Road for a new fire station.

In 2021, the City contracted with Neel-Schaffer under a Continuing Service contract to provide Professional Engineering and Architectural Design for a 3-bay fire station. 100% plans are completed.

An RFP in March, 2023 resulted in no proposals that fell with-in the City's budget restraints and all bids were rejected.

The original plans and specs have been reviewed by our City Engineer with the goal of reducing costs. All revisions are indicated as redline mark-ups and shall be used as the plans & specs for this RFQ. Additional information provided in RFP 01-23, Addendum 2 has been provided as well for your reference.

SCOPE OF WORK

Construction Phase Services

If the City accepts the selected CMAR's GMP Proposal, an agreement will be executed. Activities associated with the agreement include but are not limited to the tasks listed below.

- Administer a formal construction management software package for use by the CMAR, Engineer, and City for management of construction documents, including submittals,

progress reports, schedule reports, cost controls, Requests for Information (RFIs), Field Orders, Change Orders, Operations and Maintenance Manual, photographs and videos, and other construction-related documentation.

- Manage and maintain the open-book GMP.
- Obtain all permits. Secure all necessary construction permits, including dewatering. Coordinate all compliance inspections.
- Coordinate inspection activities associated with all permits. Close out permits at final completion and provide a copy of the closed permits to the City.
- Conduct monthly project meetings during the construction phases. CMAR shall prepare and distribute meeting agendas and summaries.
- Create a schedule of values and distribute for City and Engineer review. Manage and maintain the schedule of values throughout construction.
- Prepare a detailed safety plan for Contractor staff, City employees, and the engineering team.
- Prepare and maintain a detailed construction schedule. Schedule shall include all major sequences of the preconstruction and construction work, material supplies, long-lead procurement, Engineer's approval of shop drawings, and performance testing requirements.
- Manage distribution of submittals, RFIs, Change Orders, and Field Orders. Proactively look for options for reducing costs associated with change orders through value engineering and/or schedule reductions.
- Determine composition and prepare final construction packages. Conduct pre-construction meeting(s) with subcontractors prior to beginning work. Supervise all subcontractors. Conduct bidding of specialized commodity materials.
- Manage all aspects of construction, including project administration, invoicing, start-up services, training activities, health and safety requirements, and subcontractor management.
- Ensure the performance of the constructed facility meets its design intent.
- Maintain As-Built Drawings throughout construction. Provide As-Built Drawings in CAD format to the City at the completion of construction. Coordinate with the Engineer on completeness and accuracy of the final Record Drawings.
- Organize and distribute one file containing all approved Operations and Maintenance Manuals.

RFQ SCHEDULE

Qualifications packages must be received no later than Friday, August 11, 2023 at 10:00 a.m. Any qualifications packages received after this time will not be accepted under any circumstances. Any uncertainty regarding the time a qualification package is received will be resolved against the respondent. Qualification packages submitted after this designated time will be returned unopened.

A final RFQ award decision will be made no later than Wednesday, October 4, 2023.

The City, through written inquiries, will receive questions regarding the RFQ. The deadline for receipt of written inquiries is by the close of business Friday, July 14, 2023. Submit such inquiries via email to mjones@debary.org.

Pursuant to Section 287.133(2)(a), Florida Statutes, interested firms who have been placed on the convicted vendor list following a conviction for public entity crimes may not submit a proposal on a contract to provide services for a public entity, may not be awarded a Consultant contract, and may not transact business with a public entity for services the value of which exceeds \$15,000 for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

RFQ documents are available at the VENDORLINK and DEMANDSTAR web applications and at www.debary.org, and navigating from the home page to; Departments; Finance/Purchasing; Bids & RFPs; Bid No. 08-23 - Fire Station #39 CMAR Services

PROPOSAL REQUIREMENTS AND ORGANIZATION

Submission Requirements

Proposers shall submit three (3) hard copies. The package for the selection of the CMAR shall be sealed and clearly labeled on the outside of the package with the following title of the proposal:

**Request for Qualifications - RFQ #08-23
Construction Management at Risk Services
DeBary Fire Station #39**

Faxed or emailed submissions will not be accepted.

Cover Page

The cover page shall include the title of this proposal, followed by Proposer's name and contact information.

Section 1— Cover Letter

Provide a cover letter signed by an authorized representative of the Proposer. The letter shall include:

- A brief statement describing the services to be provided with the proposal.
- The name, physical address, email address, and mailing address of the person who will respond to questions about this proposal.

- Highlight CMAR qualifications and the ability to provide services requested in the proposal.
- Acknowledgment of receipt of addendum (and number).

Section 2 — Executive Summary: Understanding and Approach to Project

The Executive Summary shall include a brief description of the approach to the work, understanding of the project goals and objectives, with identification of potential problems or concerns associated with the project.

Section 3 — Organizational Chart

Provide a 1-page organizational chart depicting the proposed Construction Management Team. Include all staff members that will be connected to the project, especially superintendents, project schedulers, and cost estimators. The staff members called out in the organizational chart will be used for the project; substitutions are disallowed without prior approval by the City.

Section 4 — Firm and Staff Experience

The Construction Management firm selected for this project should have a minimum of 7 years of experience in the construction management of projects similar in complexity. Focus should be on construction within Florida. List five projects. Provide the following information for each project:

- Project name
- Project location
- Owner's name
- Project description
- Contract method (CM, CMAR, etc.)
- Project start date
- Project initial budget and final budget
- Number of change orders
- Initial and final substantial completion dates
- Summary of work performed by your firm
- Reference for the project including contact name and phone number

Staff assigned to this project should have a minimum of five years' experience in similar project roles.

Provide the following summaries:

- **Project experience for the Project Manager** shown on the Organizational Chart, including education, certifications and professional affiliations, number of years in present position, project experience, and number of years employed by this firm.
- **Project experience for the Project Engineer** shown on the Organizational Chart, including education, certifications and professional affiliations, number of years in present position, project experience, and number of years employed by this firm.
- **Project experience for the Superintendent(s)** shown on the Organizational Chart, including education, certifications and professional affiliations, number of years in present position, number of years employed by this firm, and experience/ability of superintendent to identify/solve issues during construction.
- **Project experience for the Lead Cost Estimator and Lead Scheduler** as shown on the Organizational Chart, including education, certifications and professional affiliations, number of years in present position, and number of years employed by this firm.

Section 5 — Value Engineering, Design Support, Project Scheduling, and Project Communication

Describe your firm's approach to partnering with the City and Engineer. Provide examples of previous opportunities and experience providing value engineering throughout all phases of the project. Discuss recommended protocols for meshing value engineering with budget, schedule, and potential redesign. Describe the benefits and the challenges associated with CMAR involvement in design activities. (No points will be provided if the Proposer believes that there are no challenges.) Describe your firm's experience in expediting a project schedule through design and construction and the anticipated opportunities to do so on this project. Provide your firm's ideal scenario for maintaining open communication between the City, Engineer, and CMAR throughout construction.

Section 6 — Understanding of GMP and Loan Requirements

Detail Proposer's approach to creating an open-book, guaranteed maximum price (GMP). Provide the bid review process(es) that would be recommended for this project. Describe your firm's approach for adhering to the agreed-upon GMP in the face of construction delays, price escalation, errors, and omissions.

Section 7 — Firm Availability

Describe your firm's current workload in tabular format. List the size of the project, construction costs, client's name, scheduled substantial completion date of project, and scheduled final completion date of project. The project with the nearest substantial completion date should be listed first, with other projects listed in order of substantial completion dates. Projects that have been awarded but are not yet under contract should appear at the end of the table. Discuss resources available to dedicate to this project. Discuss the approach to maintaining the project schedule.

Section 8 — Safety Record

Provide a brief summary of your standard safety plan and enforcement methods. Describe how your firm handles site visits from outside vendors and engineers. Provide a list of OSHA citations levied during the past five years and outcomes. Include details from your organization's OSHA 300A log for the past five years including number of lost workday cases, restricted workday cases, cases requiring medical attention, and number of fatalities.

Appendices

Proposer may provide additional information in appendices to the proposal. Information in the appendices will not be considered for scoring purposes but will be considered after scoring for use in contract and project execution.

SELECTION CRITERIA AND SCORING

It is the intent of the City to award a contract to the Proposer who, in the sole opinion of the City, is most qualified to perform the scope of services required. The following selection criteria, including financial and non-financial criteria, will be used to score the proposals. A total of 100 points will be allocated. The Proposer with the highest score will be the selected as the CMAR.

<u>Section 2</u> - Understanding and Approach to Project	20 points
<u>Sections 3-4</u> - Organizational Chart, Firm and Staff Experience	25 points
<u>Section 5</u> - Value Engineering, Design Support, Project Scheduling, and Project Communication	30 points
<u>Section 6</u> - Understanding of GMP and Loan Requirements	10 points
<u>Section 7</u> - Firm Availability	10 points
<u>Section 8</u> - Safety Record	5 points

Acceptance or Rejection of Proposals

- The City reserves its rights to waive any irregularities in the solicitation process, to reject any or all proposals, or to re-solicit this RFQ if desired.
- Any proposal that is incomplete, conditional, obscured, or which contains irregularities of any kind, may be rejected by the City. If the successful Proposer defaults upon its obligations or otherwise refuses to enter into the City contract upon selection, the City reserves the right to accept the next best proposal of any other Proposer or to re-advertise using the same or revised documentation in the City's sole discretion.

Requests by the City Engineer to a Proposer(s) for clarification of proposal(s) must be in writing. A Proposer's failure to respond to request for clarification may result in such Proposer being deemed non-responsive and serve as just cause to reject the Proposer's response to this solicitation.

No proposal may be withdrawn after it is filed unless the Proposer requests withdrawal in writing addressed to and received by the City prior to the time set for the closing of RFQ submittal. Acceptance of the proposal does not guarantee issuance of any other governmental approvals.

All proposals received by the City (unless duly withdrawn as provided above) remain valid for a period of one hundred eighty (180) days following the date of submission to the City for consideration.

Evaluation of Bids/Proposals (Procedure)

The City's procedure for evaluation and selection is as follows:

1. The City Manager shall appoint an Evaluation Committee to review all RFQs submitted. There will be a minimum of three members on the committee.
2. Shortlisting of firms will be based on converting each Committee Member's Total Score into a ranking with the highest score ranked first, second highest score ranked second, etc. Once converted, the Committee Member's ranking for each firm will be entered into a shortlist summary. The Total Score recorded on the summary sheet will determine the ranking and shortlisting.
3. Each response will be evaluated for full compliance with the RFQ instructions to the respondents and the terms and conditions set forth within the RFQ document. The objective of the evaluation will be to recommend the firm(s) whom is most fully qualified based upon the herein described needs of the City. The final recommendation will be decided based on review of scores and consensus of committee.

In general, the City wishes to avoid the expense to the City and Proposers of unnecessary oral interviews. Therefore, the City will make every reasonable effort to achieve the ranking using written submittals alone. If no single top ranked individual/firm can be clearly identified by review of the written submittals alone, then the evaluator(s) will request the City Engineer to schedule the top three ranked individuals/firm (s) for oral presentations/interviews.

The City reserves the right to withdraw this RFQ at any time and for any reason, and to issue such clarifications, modifications, and/or amendments as the City may deem appropriate. Receipt of a submittal by the City or a submission of a submittal to the City confers no rights upon the Proposer nor obligates the City in any manner.

Ambiguity, Conflict, or Other Errors in the RFQ

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in the RFQ Proposer must immediately notify the Purchasing Manager, noted herein, of such error in writing and request modification or clarification of the document. The City Engineer will make modifications by issuing a written addendum/revision and will give written notice to all parties who have received this RFQ.

The Proposer is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error in the RFQ prior to submitting a submittal or any such ambiguity, conflict, discrepancy, omission, or other claimed error will be deemed waived by the Proposer.

Proposal, Presentation, and Protest Costs

The City will not be liable in any way for any costs or expenses incurred by any Proposer in the preparation of its response to this RFQ or proposal, nor for the presentation of the Proposer's

Qualification and/or participation in any discussions, negotiations, or, if applicable, any protest procedures.

Acceptance or Rejection of Proposals

The City reserves its rights to waive any irregularities in the solicitation process, to reject any or all proposals, or to re-solicit this RFQ if desired.

Any proposal that is incomplete, conditional, obscured, or which contains irregularities of any kind, may be rejected by the City. If the successful Proposer defaults upon its obligations or otherwise refuses to enter into the City contract upon selection, the City reserves the right to accept the next best proposal of any other Proposer or to re advertise using the same or revised documentation in the City's sole discretion.

Requests for Clarification of Proposal

Requests by the City Engineer to a Proposer(s) for clarification of proposal(s) must be in writing. A Proposer's failure to respond to request for clarification may result in such Proposer being deemed non-responsive and serve as just cause to reject the Proposer's response to this solicitation.

Validity of Proposal

No proposal may be withdrawn after it is filed unless the Proposer requests withdrawal in writing addressed to and received by the City prior to the time set for the closing of RFQ submittals.

All proposals received by the City (unless duly withdrawn as provided above) remain valid for a period of one hundred eighty (180) days following the date of submission to the City for consideration.



NOTICE OF INTENDED DECISION

for

BID #08-23

CMAR SERVICES FIRE STATION #39

September 15, 2023

This notice is to inform all respondents to the above referenced solicitation of the City of DeBary's intent to submit award recommendation to the City Council for approval to:

Wharton-Smith, Inc.

This letter is not to be construed as the final award of the contract.

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes, or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, Florida Statutes.

Thank you for participating in our formal solicitation process.

Mike Jones
Purchasing Manager



City Council Meeting City of DeBary AGENDA ITEM

Subject: Metronet Network Fiber Optic Equipment Easement	Attachments: <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other
From: Richard Villasenor, City Senior Engineer	
Meeting Hearing Date January 17, 2024	

REQUEST

Staff is requesting City Council approve Easement Agreement with Metronet Infrastructure Group, LLC for the installation of Fiber Optic Equipment on City property.

PURPOSE

The Fiber Optic Equipment is to provide signal boosting function where this general location is central to their distance requirement needs.

CONSIDERATIONS

- The equipment can be beneficial to its customers in providing improved service considering remote work-from-home offices and general use.
- This is infrastructure equipment that may help improve or maintain service during severe weather events.
- The equipment is to be located at the south east corner of the DeBary Sherriff's Office property.

COST/FUNDING

There is no cost.

RECOMMENDATION

It is recommended that the City Council approve the Easement Agreement with Metronet Infrastructure Group, LLC.

IMPLEMENTATION

Effective upon council approval.

ATTACHMENTS

Easement Agreement
Easement Sketch
Equipment Construction Plans
Intersection Sight Triangle Presentation

Upon recording, return to:

City of DeBary
16 Colomba Road
DeBary, FL 32713
Attn: City Clerk

This document prepared by:

Metronet Infrastructure Group, LLC
8837 Bond Street
Overland Park, Kansas 66214
Attn: Legal Department

EASEMENT

This Easement Agreement (“Easement”), dated as of this _____ day of _____, 2024 (“Effective Date”), is made by the City of DeBary, a Florida municipal corporation, (“Grantor”), having an address of 16 Colomba Road, DeBary, Florida 32173, in favor of Metronet Infrastructure Group, LLC, a Delaware limited liability company (“Grantee”), having an address of 8837 Bond Street, Overland Park, Kansas 66214.

1. Grant of Easement. Grantor owns the real property described on the attached Exhibit A (the “Grantor Property”). For and in consideration of \$1.00, the receipt of which is hereby acknowledged, commencing on the Effective Date, Grantor, for itself and its heirs, personal representatives, successors and assigns, hereby grants, bargains, sells and conveys to Grantee and Grantee’s tenants, lessees, sublessees, licensees, agents, successors and assigns (collectively, the “Grantee Parties”), a perpetual, non-exclusive easement over, under, and across the portion of the Grantor Property described on the attached Exhibit B, and those portions of the Grantor Property necessary to bring supporting utilities to the Easement Facilities (defined below) (the “Easement Area”).

2. Permitted Use of Easement Area. The Grantee Parties have the right to use the Easement Area for the purpose of and with the right to construct, install, maintain, operate, repair, remove, connect, alter, and renovate a communications system, which may include, without limitation, above or below ground wires, cables, poles, cabinets, supporting structures, surface mounted equipment, conduits, and appurtenances thereto (collectively, the “Easement Facilities”). The Grantee Parties will, at all times, have the right to ingress and egress to, in, over, under, across and through the Grantor’s Property as may be reasonably necessary to access the Easement Area and Easement Facilities. Grantor will not prevent or interfere with the use of the Easement Area or access thereto by the Grantee Parties, including, without limitation, by improving or constructing within any portion of the Easement Area; however, Grantor reserves the right to access the Easement Area for the purpose of accessing, maintaining, or otherwise constructing its own municipal infrastructure in the Easement Area, provided that such activities do not negatively impact the Grantee Parties’ Easement Facilities.

3. Easement Facilities. By virtue of their location within the Grantor's right of way, the Easement Facilities will not be deemed part of the Grantor Property, they will remain the property of the Grantee Parties, as applicable, and may be removed by the Grantee Parties at any time. If Grantee vacates the Easement Area, Grantee shall remove the Easement Facilities and restore the Easement Area to its previous condition, normal wear and tear excepted. Any Easement Facilities not removed by Grantee will automatically become the property of Grantor without warranty or representation by Grantee as to the condition thereof.

4. Covenants. Grantor represents that it owns the Grantor Property in fee simple, free and clear of any liens, encumbrances, litigation, condemnation, or legal violations that interfere (or could reasonably be expected to interfere) with the right of Grantee to use the Easement Area as permitted by this Easement, and that it has all necessary power and authority to enter into and perform this Easement.

5. Miscellaneous. This Easement may not be amended or modified except by an instrument in writing that is signed by the Grantor and Grantee. This Easement along with Exhibit A and Exhibit B constitutes the entire agreement between the parties with respect to the matters set forth herein and supersedes all prior negotiations, discussions, and agreements between them in connection therewith. No provision of this Easement may be construed against any party hereto by reason of such party being deemed to have drafted or structured any provision hereof. If any provision of this Easement is deemed unenforceable in whole or in part, such provision will be limited or modified to the minimum extent necessary to render the same valid. This Easement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Either party hereto may record this Easement at its option. The rights and benefits under this Easement are private in nature and will run with the affected lands and inure to the benefit of and be binding upon all future owners and lessees of the affected lands and all persons claiming under them. This easement is for the exclusive benefit of the Grantor and Grantee, and neither the Grantor nor the Grantee may assign their respective rights under this easement to any other person or entity unless agreed to in writing.

[Remainder of page intentionally blank; Signature pages follow]

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed effective as of the date first written above.

GRANTOR:

City of DeBary, a Florida municipal corporation,

By: _____
Name: Karen Chasez
Title: Mayor

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF: (Two witnesses
Required by Florida Law)

Witness Signature

(Print or Type Name)

Signature

(Print or Type Name)

Witness Signature

(Print or Type Name)

Signature

(Print or Type Name)

STATE OF FLORIDA)
) ss.
COUNTY OF VOLUSIA)

On this _____ day of _____, 20___, before me personally appeared Karen Chasez, to me personally known, who, being by me duly sworn, did say that they are the Mayor of the City of DeBary, a Florida municipal corporation formed under the laws of the State of Florida, and the said instrument was signed on behalf of said municipal corporation as its free act and deed.

In testimony whereof, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(SEAL)

Notary Public
Print Name: _____
My Commission Expires: _____

EXHIBIT A

GRANTOR PROPERTY

Lots 26 and 27, block A, PLANTATION ESTATES UNIT NO. 2, according to the plat thereof, as recorded in Map Book 11, Page 183, of the Public Records of Volusia County, Florida.

LESS AND EXCEPT: Portions conveyed in Official Records Book 4493, Page 4017, more particularly described as follows:

A portion of Lot 26, Block A, PLANTATION ESTATES NO. 2, according to the plat thereof, as recorded in Map Book 11, Page 183, of the Public Records of Volusia County, Florida, being more particularly described as follows:

Commencing at the Northwest corner of said Lot 26, said corner being on the Easterly right-of-way line of State Road Number 3 (U.S. Highway 17-92); thence departing said line, South 89 degrees 45 minutes 13 seconds East along the Northerly line of said Lot 26, said line also being the Southerly line of Lot 25, Block A of said Plantation Estates Unit Number 2, a distance of 28.16 feet to an intersection with the Southwesterly line of an existing single story commercial structure, said intersection being the Point of Beginning; thence continue South 89 degrees 45 minutes 13 seconds East along said Northerly line of Lot 26, a distance of 17.48 feet to an intersection with the Southeasterly line of said existing single story commercial structure; thence departing said Northerly line of Lot 26, South 12 degrees 41 minutes 43 seconds West along the said Southeasterly line of existing structure, a distance of 3.77 feet to the most Southerly corner of said existing structure; thence North 77 degrees 18 minutes 17 seconds West along the said Southwesterly line of existing structure, a distance of 17.07 feet to the Point of Beginning.

EXHIBIT B

EASEMENT AREA

A portion of Lot 27, Block A, PLANTATION ESTATES NO. 2, according to the plat thereof, as recorded in Map Book 11, Page 183, of the Public Records of Volusia County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of said Lot 27, being common to the Northwest corner of Lot 28 and being on the Easterly Right of Way line of U.S. Highway 17 (Charles Richard Beall Boulevard);

Thence along a 1° curve to the left, as being subtended by a chord of North 13°26'57" East a distance of 8.04 feet to the POINT OF BEGINNING;

Thence continuing along said 1° curve to the left, as being subtended by a chord of North 13°16'26" East a distance of 27.00 feet;

Thence South 76°43'34" East a distance of 16.00 feet;

Thence South 13°16'26" West a distance of 27.00 feet;

Thence North 76°43'34" West a distance of 16.00 feet to the POINT OF BEGINNING.

Containing 432 Square Feet, more or less.

METRONET NETWORK CABINET CONSTRUCTION DRAWINGS

metronet

3701 COMMUNICATIONS WAY
EVANSVILLE, IN 47715
812-213-1095

THIS PRINT AND DESIGN ARE THE SOLE PROPERTY OF METRONET TECHNOLOGIES L.C. AND SHALL BE CONSIDERED CONFIDENTIAL. THIS PRINT MAY NOT BE REPRODUCED IN ANY WAY WITHOUT THE WRITTEN CONSENT OF METRONET TECHNOLOGIES L.C. AND SHALL BE RETURNED UPON REQUEST.

4-BAY NETWORK
CABINET
DEBARY, FL

SITE LOCATION MAP
LAT/LONG: 28.883783, -81.308261



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CABINET DETAILS	03-05
ELECTRICAL DETAILS/ GROUNDING PLAN	06

DESIGN ENG: LWW
DRAWN BY: SLF
REVIEWED BY: LWW

SUBMITTALS		
DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A

PERMITTING

SCALE: NTS
SITE ADDRESS:
28.883783, -81.308261
SITE NAME:
DEBARY CABINET
SHEET NAME:
COVER SHEET
SHEET NUMBER:
1

CALL 48 HOURS
BEFORE DIGGING



Know what's below.
Call before you dig.

METRONET CONTACTS:

PROJECT DIRECTOR:

CHRIS DEER
334-805-7607
CHRISTOPHER.DEER@METRONET.COM

ENGINEER:

LEE W. WRIGHT, P.E.
METRONET
8837 BOND ST
OVERLAND PARK, KS 66214
(810)-333-2303
LEE.WRIGHT@METRONET.COM



metronet

3701 COMMUNICATIONS WAY
EVANSVILLE, IN 47715
812-213-1095

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4-BAY NETWORK CABINET DEBARY, FL

DESIGN ENG: LWW

DRAWN BY: SLF

REVIEWED BY: LWW

SUBMITTALS		
DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A

PERMITTING

SCALE: 1" = 32'

SITE ADDRESS: 28.883783, -81.308261

SITE NAME: DEBARY CABINET

SHEET NAME: SITE PLAN

SHEET NUMBER: 2

SEE SHEET 3 FOR DETAILS

UNKNOWN GPR MARKS

PROPOSED EASEMENT 16' X 27'

TRAFFIC SIGHT TRIANGLE (DESIGNED FOR A 40MPH STREET, 15' X 370')

LEGEND	
	WATER LINE
	FIBER OPTIC CABLE
	GAS LINE
	TELEPHONE LINE
	BURIED ELETRIC



**4-BAY NETWORK CABINET
DEBARY, FL**

DESIGN ENG: LWW

DRAWN BY: SLF

REVIEWED BY: LWW

SUBMITTALS

DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A

PERMITTING

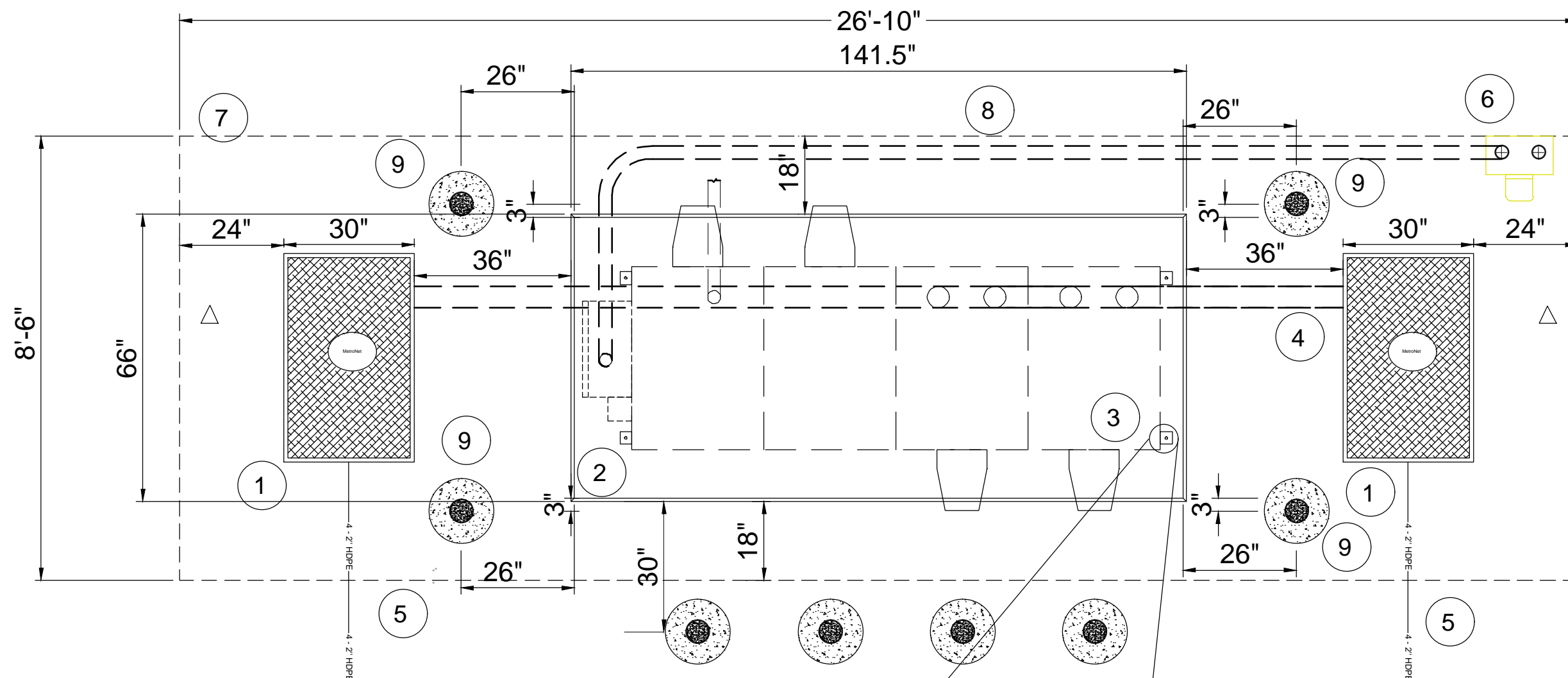
SCALE: NTS

SITE ADDRESS:
28.883783, -81.308261

SITE NAME:
DEBARY CABINET

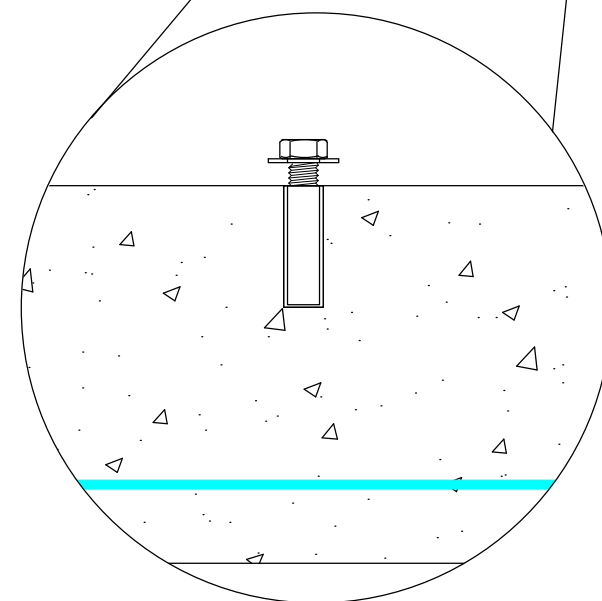
SHEET NAME:
CABINET DETAILS

SHEET NUMBER:
3



NOTES:

- 30"W X 48"L X 30"D Handhole
- Cabinet Concrete Pad 141.5"L X 66"W
- Cabinet Footprint 121"L X 42"W X 62.5"H
- 4" SCH 40 PVC Conduit
- 4 Ea. 2" HDPE Duct
- Meter Pedestal (ELECTRICAL)
- 2" SCH 40 PVC Elect. Conduit-UL Listed
- Ground Field Extents
- 6" ID DIA x 7'L Steel Pipe Bollard, Concrete Filled. (As Required, Site Specific)



CONCRETE FASTENING TYPICAL
1/2" STAINLESS STEEL DROP IN
ANCHOR - 1/2" NUT & FLAT WASHER

INSTALLATION NOTE:
DRILL AND INSTALL WEDGE ANCHORS
DURING PLACEMENT OF THE CABINET
ONTO THE PAD TO INSURE
PLACEMENT ACCURACY.

**BOLLARDS - OPTIONAL AS SITE DICTATES
PIPE BOLLARD SPECIFICATIONS:**

CARBON STEEL PIPE SHALL BE 6"ID DIA X 7'L, CONFORMING TO SCHEDULE 40 ASTM A 53 GRADES A AND B.

1. PIPE SHALL BE FILLED WITH A MIN 3,000 PSI CONCRETE. A DOMED CAP 1" HIGH SHALL BE HAND FORMED TO PROVIDE WATER RUNOFF. PIPE WILL BE 4' ABOVE GRAD AND 3' BELOW GRADE.
2. CONCRETE FOOTER SHALL BE A MIN 3,000 PSI CONCRETE, 40"D X 15" DIA.
3. PIPE SHALL BE PROVIDED FACTORY PAINTED WITH RUST INHIBITOR PRIMER FINISH. THE FINAL FINISH SHALL BE PAINTED YELLOW.

GENERAL NOTE:

- A.) A FINAL INSPECTION OF THE SITE CONFIRMING THE SITE IS RESTORED AND CLEANED UP SHALL BE COMPLETED BY THE PROJECT MANAGER PRIOR TO FINAL METRONET ACCEPTANCE OF THE WORK.

metronet

3701 COMMUNICATIONS WAY
EVANSVILLE, IN 47715
812-213-1095

THIS PRINT AND DESIGN ARE THE SOLE PROPERTY OF METRONET TECHNOLOGIES LLC, AND SHALL BE CONSIDERED CONFIDENTIAL. THIS PRINT MAY NOT BE REPRODUCED IN ANY WAY WITHOUT THE WRITTEN CONSENT OF METRONET TECHNOLOGIES LLC, AND SHALL BE RETURNED UPON REQUEST.

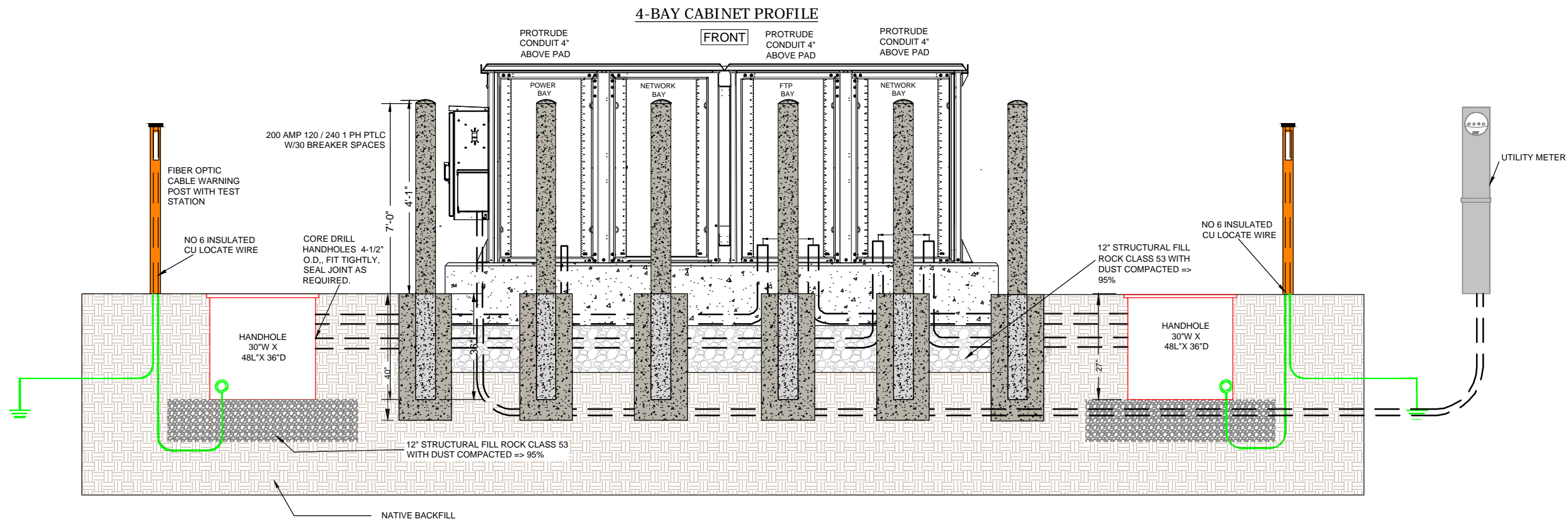
4-BAY NETWORK
CABINET
DEBARY, FL

DESIGN ENG: LWW

DRAWN BY: SLF

REVIEWED BY: LWW

SUBMITTALS		
DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A



PERMITTING

SCALE:	NTS
SITE ADDRESS:	28.883783, -81.308261
SITE NAME:	DEBARY CABINET
SHEET NAME:	CABINET DETAILS
SHEET NUMBER:	4

**4-BAY NETWORK CABINET
DEBARY, FL**

DESIGN ENG: LWW

DRAWN BY: SLF

REVIEWED BY: LWW

SUBMITTALS

DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A

PERMITTING

SCALE: NTS

SITE ADDRESS:
28.883783, -81.308261

SITE NAME:
DEBARY CABINET

SHEET NAME:
CABINET DETAILS

SHEET NUMBER:
5

SPECIFICATIONS AND NOTES

SITE:

STRUCTURAL FILL SHALL BE MECHANICALLY COMPACTED IN 6" LIFTS TO 95% OR GREATER PROCTOR (ASTM D-698). WITH A COMPACTION TEST RUN ON EACH LIFT (1 TEST PER 248 SF). STRUCTURAL FILL SHALL EXTEND A MINIMUM OF 12" BEYOND THE PAD PERIMETER. ALL SUBGRADE WITHIN THE SLAB AREA SHALL BE COMPACTED TO 95% STANDARD PROCTOR. THE CONTRACTOR SHALL MAINTAIN POSITIVE DRAINAGE ON THE SITE AT ALL TIMES. ALL EXCAVATION SHALL BE FREE OF WATER BEFORE PLACING CONCRETE.

CONCRETE CODE:

ALL CONCRETE SHALL BE MIXED, FORMED, FINISHED, CURED, AND PROTECTED IN CONFORMANCE WITH THE RECOMMENDATIONS OF THE PORTLAND CEMENT ASSOCIATION (PCA) AND THE AMERICAN CONCRETE INSTITUTE (ACI)

MIX:

PORTLAND CEMENT SHALL CONFORM TO ASTM C150, TYPE II. MIX SHALL HAVE 20% (BY CEMENTITIOUS MATERIAL WEIGHT) FLY ASH CONFORMING TO ASTM C618, CLASS F. MIX SHALL BE FIBER REINFORCED CONFORMING TO ASTM A820-06 - STANDARD SPECIFICATIONS FOR FOR COMMERCIAL FIBER-REINFORCED CONCRETE. AGGREGATE SIZE SHALL BE 1/2" NOMINAL AND SHALL CONFORM TO ASTM C33. MINIMUM COMPRESSIVE STRENGTH AT 28 DAYS SHALL BE 4000 PSI. MAXIMUM SLUMP SHALL BE 5.5 INCHES. NO STRENGTH ACCELERATING ADDITIVES WITHOUT APPROVAL OF ENGINEER.

REINFORCEMENT STEEL:

REINFORCING SHALL BE DEFORMED BILLET-STEEL BARS CONFORMING TO ASTM A615, GRADE 60. REINFORCEMENT SHALL BE COLD BENT AND SHALL NOT BE WELDED. REINFORCEMENT SHALL BE CLEANED SO AS TO BE FREE OF OIL, DIRT, LOOSE MILL SCALE, AND LOOSE RUST OR OTHER COATINGS THAT WOULD DESTROY OR REDUCE THE BOND.

REINFORCEMENT CONTINUITY:

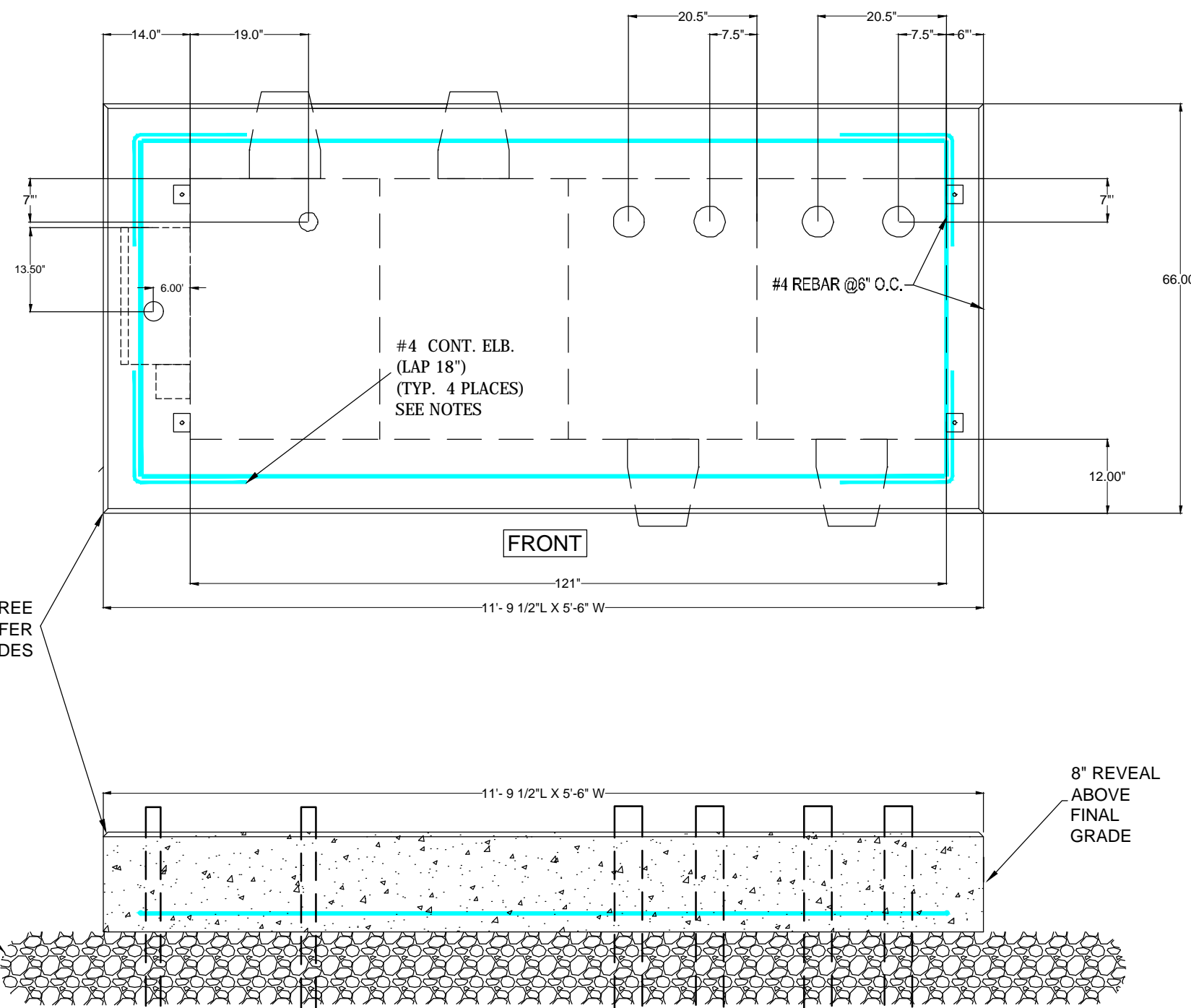
UNLESS SHOWN OTHERWISE ON THE DESIGN DRAWINGS, ALL REINFORCEMENT SHALL BE PLACED CONTINUOUS BY LAP SPlicing, UNLESS DETAILED OTHERWISE ON DESIGN DRAWINGS. REINFORCEMENT SHALL BE ACCURATELY PLACED AS PER ACI 301 AND SECURELY TIGHTLY TIED INTO POSITION WITH NO. 16 GA. ANNEALED WIRE NO GREATER THAN 2" INTERVALS ALONG THE LAP SPlicing.

PLACEMENT AND CURE:

PRODUCTION OF CONCRETE SHALL COMPLY WITH CHAPTER 7 OF ACI 301. PLACEMENT OF CONCRETE SHALL BE IN ACCORDANCE WITH CHAPTER B OF ACI 301. DURING HOT WEATHER, THE TEMPERATURE OF THE CONCRETE, AS PLACED, SHALL NOT EXCEED 90° F. DURING COLD WEATHER, CONCRETE SHALL BE MAINTAINED ABOVE 50° F FOR AT LEAST 7 DAYS AFTER PLACEMENT. HOT AND COLD WEATHER CONCRETE PLACEMENT SHALL BE IN ACCORDANCE WITH ACI 305 AND ACI 306. FRESHLY DEPOSITED CONCRETE SHALL BE PROTECTED FROM PREMATURE DRYING AND EXCESSIVELY HOT OR COLD TEMPERATURES AND SHALL BE MAINTAINED WITH MINIMAL MOISTURE LOSS AT A RELATIVELY CONSTANT TEMPERATURE FOR THE PERIOD OF TIME NECESSARY FOR THE HYDRATION OF THE CEMENT AND PROPER HARDENING OF THE CONCRETE. ALL NEWLY PLACED CONCRETE SHALL BE KEPT MOIST FOR A MINIMUM OF 7 DAYS. CURING SHALL CONFORM TO THE REQUIREMENTS IN CHAPTER 12, ACI 301.

FINISHING:

TIE HOLES, HONEYCOMBS, AND OTHER CONCRETE SURFACE DEFECTS SHALL BE REPAIRED IN ACCORDANCE WITH CHAPTER 9 OF ACI 301 AS SOON AS PRACTICABLE AFTER FORM REMOVAL. THE REPAIR SHALL BE PERFORMED IN SUCH A MANNER AS TO NOT DELAY, INTERFERE WITH, OR IMPAIR THE PROPER CURING OF THE FRESH CONCRETE. THE ENGINEER SHALL BE NOTIFIED BEFORE PROCEEDING WITH REPAIR IF THE DEFECT IS GREATER THAN 5 INCHES DEEP AND LARGER THAN 200 SQUARE INCHES IN SURFACE AREA, OR IF THE DEPTH IS OVER 1/3 THE THICKNESS OF THE MEMBER AND GREATER THAN 6 INCHES IN ANY OTHER DIRECTION.



NETWORK 4-BAY CABINET CONCRETE PAD CONSTRUCTION

**4-BAY NETWORK CABINET
DEBARY, FL**

DESIGN ENG: LWW

DRAWN BY: SLF

REVIEWED BY: LWW

SUBMITTALS

DATE	DESCRIPTION	REV
11/2/23	PERMITTING	A

PERMITTING

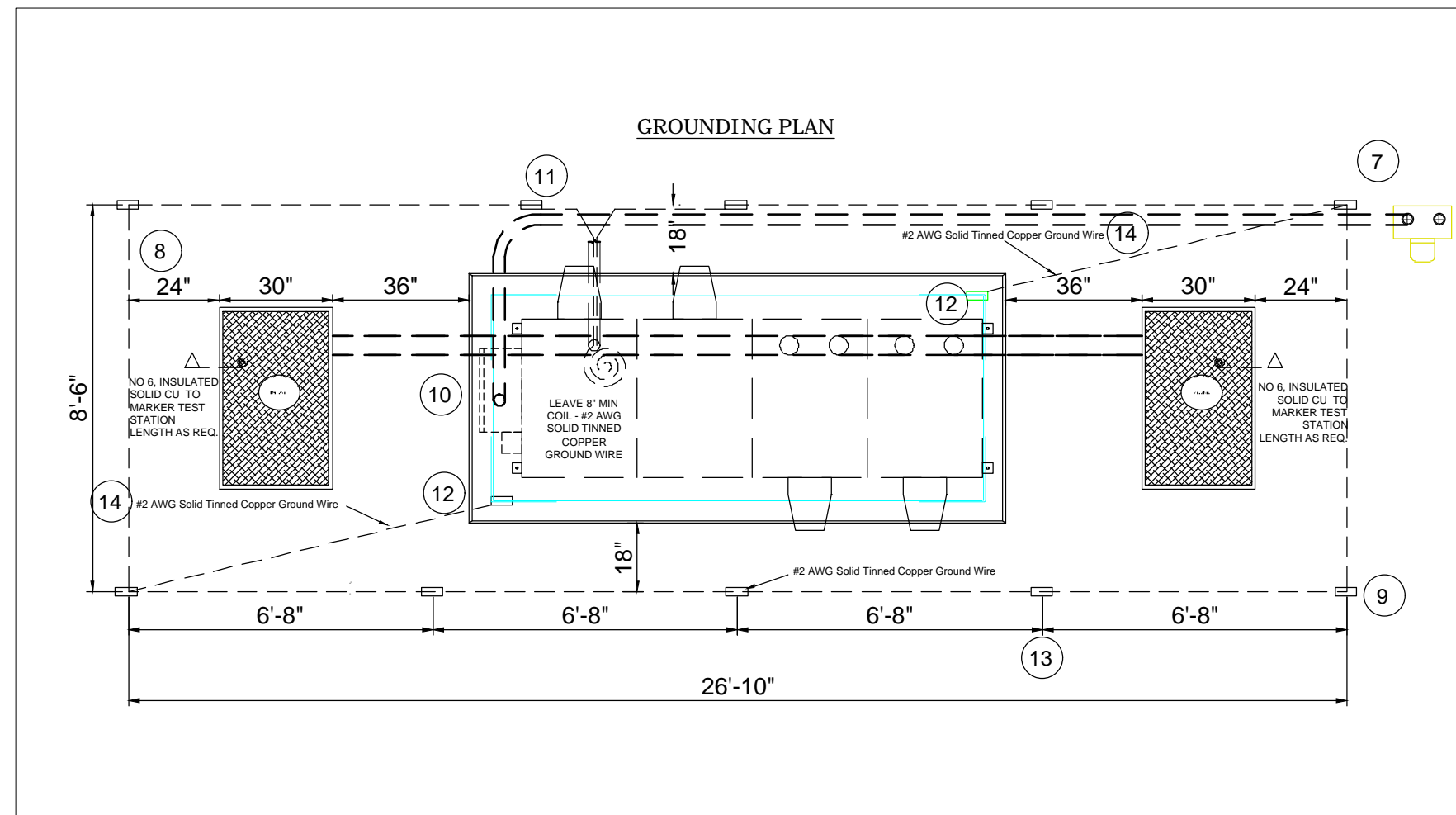
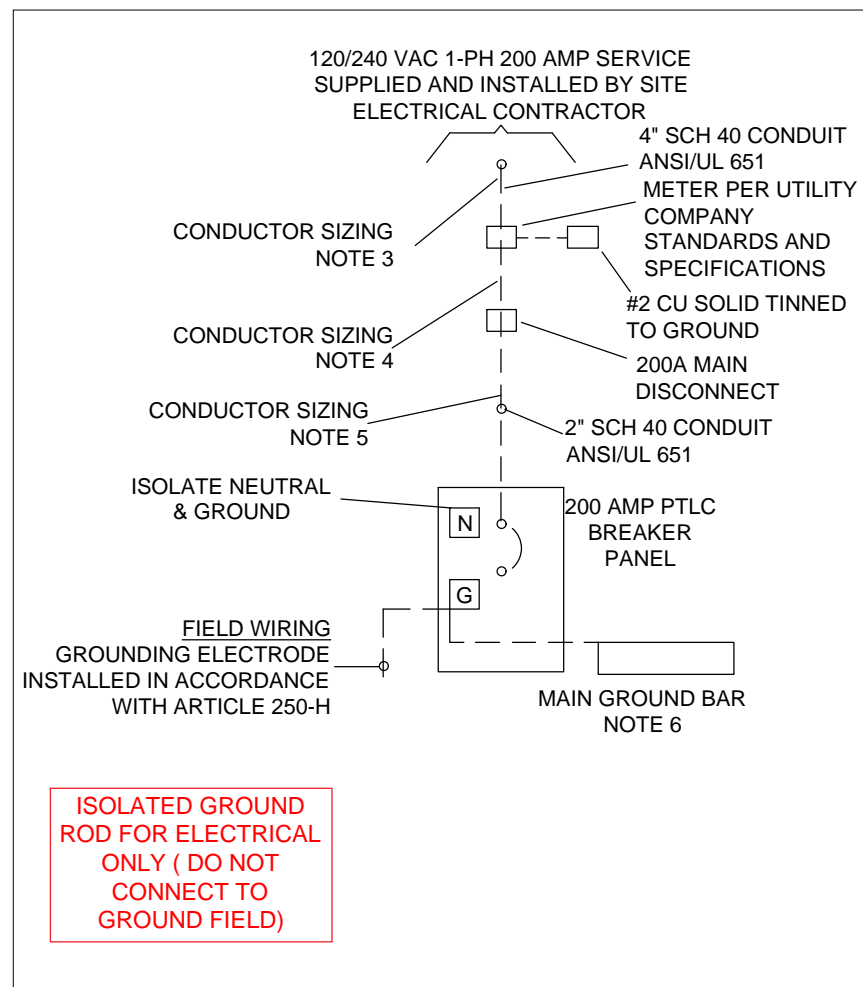
SCALE: NTS

SITE ADDRESS:
28.883783, -81.308261

SITE NAME:
DEBARY CABINET

SHEET NAME:
CABINET ELECTRICAL DETAILS/
GROUNDING PLAN

SHEET NUMBER:

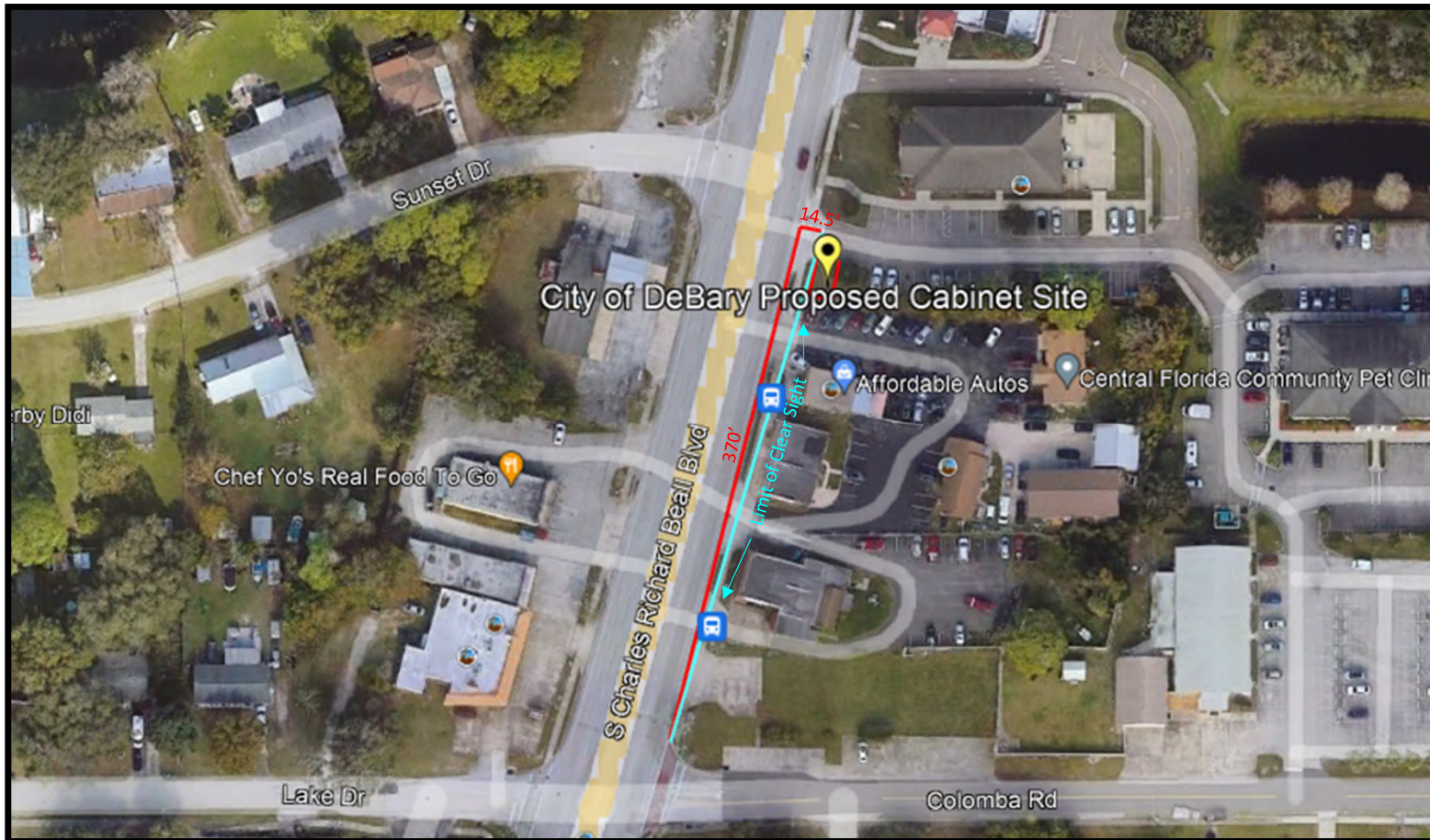


NOTES:

- DASHED LINES DENOTE FIELD WORK.
- ISOLATE NEUTRAL & GROUND
- FEEDER CONDUCTORS (2) 3/0 CU THHN AND (1) 2/0 CU THHN NEUTRAL IN ACCORDANCE WITH NEC (ARTICLE 215.2)
- FEEDER CONDUCTORS (2) 3/0 CU THHN AND (1) 2/0 CU THHN NEUTRAL IN ACCORDANCE WITH NEC (ARTICLE 215.2).
- FEEDER CONDUCTORS (2) 3/0 CU THHN, (1) 2/0 CU THHN NEUTRAL AND #4 CU THHN GROUND IN ACCORDANCE WITH NEC (ARTICLE 215.2)
- #2 THHN BOND BETWEEN BREAKER GROUND AND MAIN GROUND BAR
- ALL LUGS THAT HOLD MORE THAN ONE WIRE SHALL BE LISTED FOR MULTI-BARRELL CONNECTIONS.
- ALL CONDUCTORS SHALL BE COPPER.
- 120/240 VAC, 200AMP, SINGLE PHASE PEDESTAL COORDINATE INSTALLATION WITH LOCAL ELECTRIC UTILITY.
- 3" SCHEDULE 40 CONDUIT, ANSI/UL 651. MEETING OR OR EXCEEDING THE REQUIREMENTS OF NEMA TC-2
- COPPER CLAD STEEL GROUND RODS, 5/8" X 8', 10 EA.
- INTERSECT 200 AMP 120/240 SINGLE PHASE POWER TRANSFER LOAD CENTER (PTLC)
- ALL GROUND RING CONDUCTORS AND GROUND ROD CONNECTIONS SHALL BE EXOTHERMIC WELDED.
- UFER GROUND-EXOTHERMIC WELD TO NO 4 REBAR, COORDINATE WITH CONCRETE CONTRACTOR.
- GROUND RING CONDUCTORS AND TOP OF GROUND RODS SHALL BE BURIED A MINIMUM DEPTH OF 18".
- HANDHOLE GROUND ROD ISOLATED FROM GROUND FIELD

metronet™

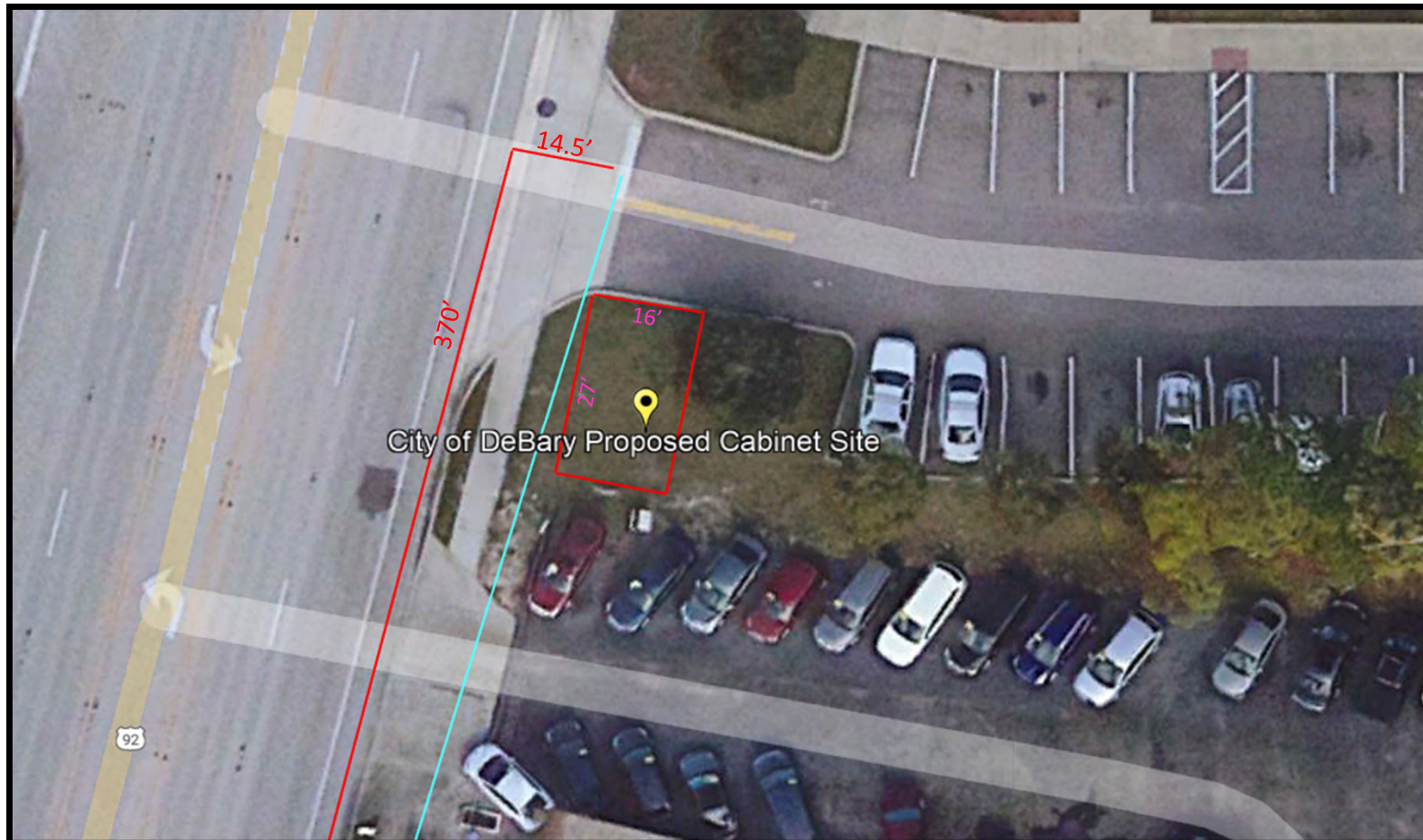
Clear Sight Line – Based on FDOT Design Standards FY 2012/2013 – Design Speed 40 MPH



By: Eugene Hunton



Aerial View of Proposed Cabinet Area in relation to the Limit of Clear Sight



By: Eugene Hunton

LAST REVISION
07/01/10

DESCRIPTION:

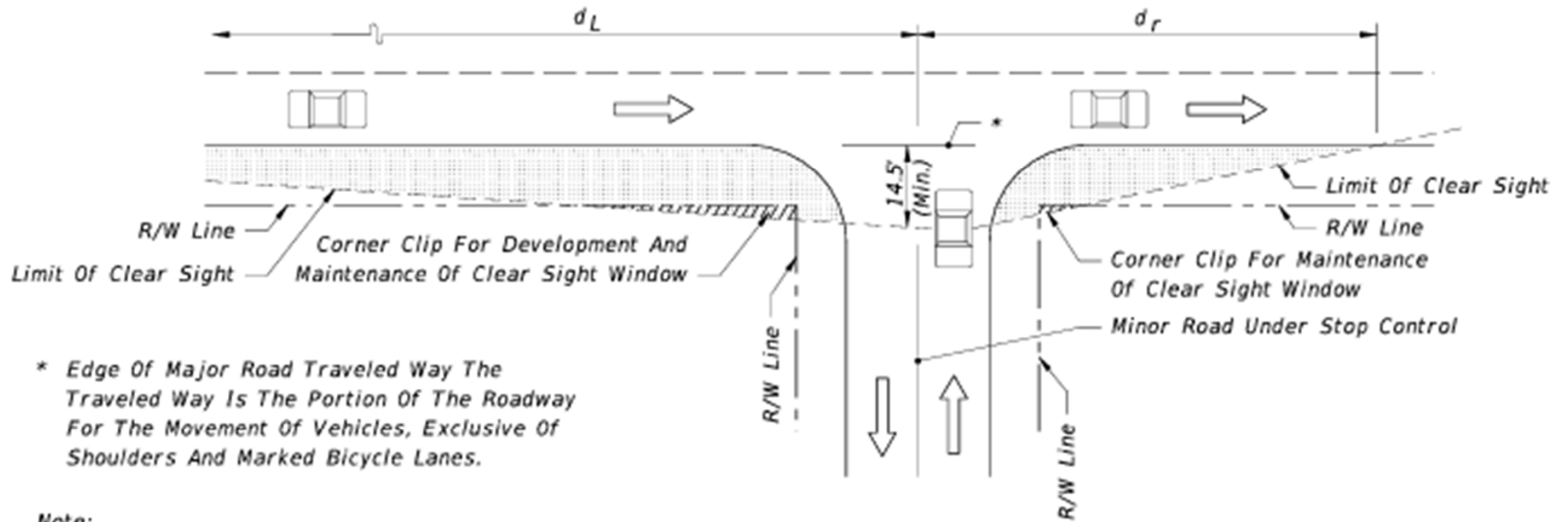


FDOT DESIGN STANDARDS
FY 2012/2013

SIGHT DISTANCE AT INTERSECTIONS

INDEX NO.
546

SHEET NO.
2



* Edge Of Major Road Traveled Way The Traveled Way Is The Portion Of The Roadway For The Movement Of Vehicles, Exclusive Of Shoulders And Marked Bicycle Lanes.

Note:
Lines For 'Limit Of Clear Sight' Are Opposite Hand When Major Road Near Lane Traffic Moving Left (e.g., One-Way Left).

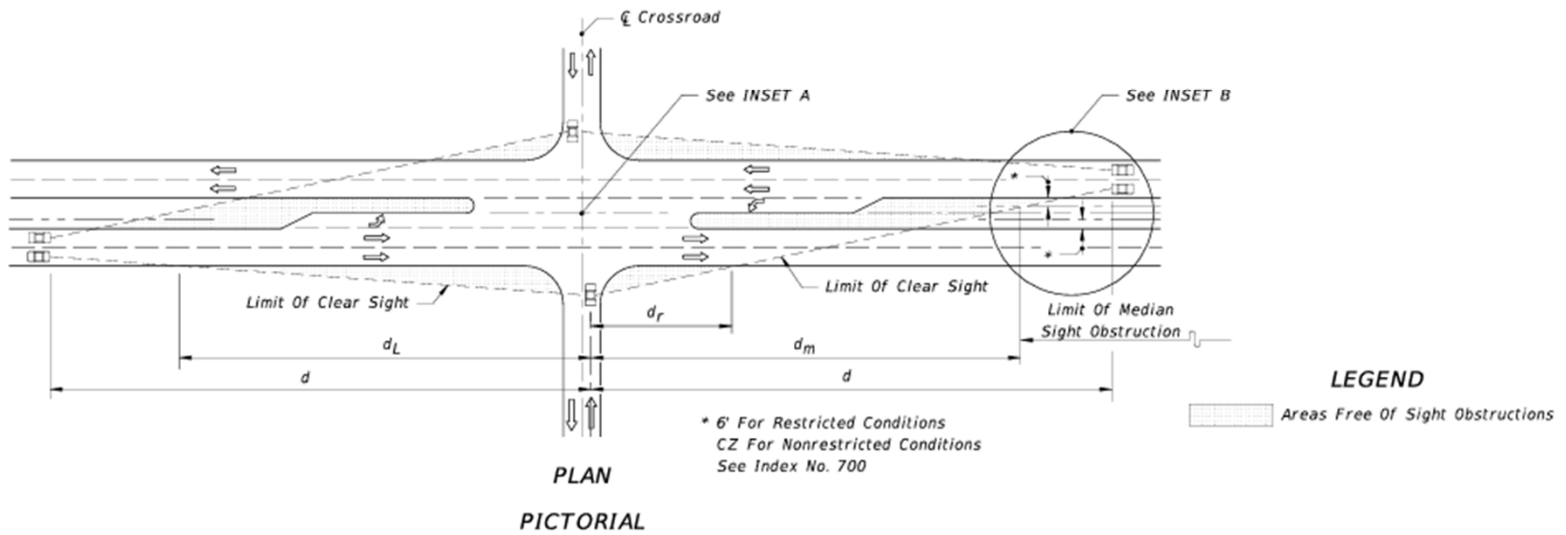
PICTORIAL
ORIGIN OF CLEAR SIGHT LINE
ON MINOR ROAD



Design Speed	MEDIAN 22' OR LESS			
	d	d _L	d _r	d _m
30	390	280	90	320
35	460	330	100	380
40	520	370	110	430
45	590	420	130	480
50	650	460	140	530
55	720	510	160	590
60	780	550	170	640
65	850	600	190	700

Design Speed	25'-64" MEDIAN			
	d	d _L	d _v	d _{vL}
30	290	210	330	230
35	330	230	390	280
40	380	270	440	310
45	430	300	500	350
50	480	340	550	390
55	530	370	610	430
60	570	400	660	470
65	620	440	720	510

PASSENGER VEHICLE (P)



METRONET EASEMENT SKETCH

THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

U.S. HIGHWAY 17
S. CHARLES RICHARD BEALL BLVD.

L1 P.O.B.



LOT 26
LOT 27

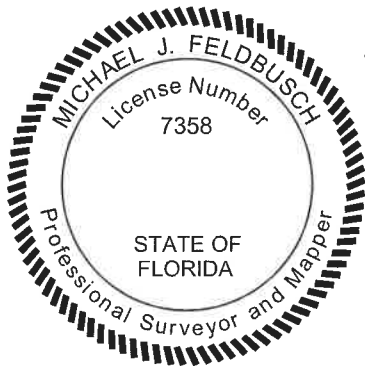
N/F
CITY OF DEBARY
INST. No. 2013189207
PARCEL ID 803411010270
LOTS 26 & 27, BLOCK A
PLANTATION ESTATES UNIT No. 2
MAP BOOK 11, PAGE 183

LINE	BEARING	DISTANCE
L1	N 13°26'57" E	8.04'
L2	N 13°16'26" E	27.00'
L3	S 76°43'34" E	16.00'
L4	S 13°16'26" W	27.00'
L5	N 76°43'34" W	16.00'

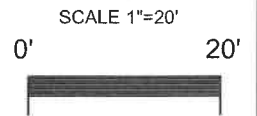
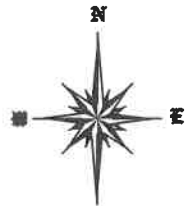
LOT 27
LOT 28

P.O.C.
SW CORNER
LOT 27

N/F
HENRY, THOMAS M. TRUST
INST. No. 2020066087
PARCEL ID 803411010280



MICHAEL J. FELDBUSCH, PSM
FLORIDA REGISTRATION No. 7358
DATE OF CERTIFICATION 10/18/2023
U.S. SURVEYOR, Inc.
4929 Riverwind Pointe Drive
Evansville, IN 47715



METRONET EASEMENT CONTAINS 432 SQ. FT.

CITY OF DEBARY, VOLUSIA COUNTY, FLORIDA

A UTILITY EASEMENT SITUATED IN:
LOT 27, BLOCK A, PLANTATION ESTATES
UNIT NO. 2, according to the plat thereof, as
recorded in Map Book 11, Page 183, of the
Public Records of Volusia County, Florida

DRAWN BY: MJF	SCALE: 1" = 20'	SHEET: 3 OF 3
CHECKED BY: MJF	DATE: 10/16/2023	JOB NUMBER: ss56400



City Council Meeting City of DeBary AGENDA ITEM

Subject: Stormwater Pump Rentals – Mersino Dewatering, LLC	Attachments: () Ordinance
From: Carmen Rosamonda, City Manager	() Resolution
Meeting Hearing Date January 17, 2024	() Supporting Documents/ Contracts
	() Other

REQUEST

City Manager is requesting City Council approve Mersino Pump Rentals for the current month which expires on January 18, 2024 and to extend these rentals for another 30 days through February 18, 2024.

PURPOSE

The purpose of these pump rentals is to manage stormwater levels at DeBary Plantation and James Pond.

CONSIDERATIONS

- An El Niño weather pattern, like the ongoing one, usually brings more rainfall to the Southeast. The National Oceanic and Atmospheric Administration is predicting a 70% chance of above-average rainfall there this winter.
 - In Florida, we are experiencing two fast-moving, cold fronts every week. Each front is dropping significant rainfall to an already saturated ground. The St. Johns River is rising up to 4 feet, which is an abnormal trend during the winter months.
 - James Pond water levels are high which is the cause for the pump rental. DeBary Plantation has two issues. We are currently in-process in repairing the air release valves and we have only one pump currently working at the station. The additional pump rental serves as backup to the second pump which was removed for repairs. Once the air release valves are repaired, the system will be tested. At this point, we will make a determination of whether the rebuilt pumps are adequate or new pumps will need to be purchased.
-
- The two approvals are as follows...
 - Current Month Rental
 - Approve 8" Pump Rental for DeBary Plantation Station 12/19/23 - 01/18/24

- Approve 12” Pump Rental for James Pond 12/19/23 - 01/18/24
- Next Month Rental
 - Approve 8” Pump Rental for DeBary Plantation Station 01/19/24 – 02/18/24
 - Approve 12” Pump Rental for James Pond 01/19/24 – 02/18/24

COST/FUNDING

The total cost for both pump rentals for the period of 12/19/23 - 01/18/24 is \$20,723.

The total cost for both pump rentals for the period of 01/19/24 – 02/18/24 is \$20,723.

RECOMMENDATION

It is recommended that the City Council approve the current month pump rental (12/19/23 – 01/18/24) and the next month pump rental (01/19/24 – 02/18/24) totaling \$41,446. These funds will be allocated to the Stormwater Fund – Equipment Rentals. A budget amendment will be done later this fiscal year to cover the costs in this line item.

IMPLEMENTATION

Immediately upon approval. Finance will issue POs for next month rental.

ATTACHMENTS

Purchase Order James Pond Rental (12/19/23 – 01/18/24)

Purchase Order DeBary Plantation Rental (12/19/23 – 01/18/24)

CITY OF DEBARY

16 COLOMBA ROAD
 DEBARY, FL 32713
 TEL (386)668-2040 FAX (386)668-4122

PURCHASE ORDER	
THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKING LISTS, CORRESPONDENCE, ETC.	
NO.	24-00640

SHIP TO	CITY HALL 16 COLOMBA ROAD DEBARY, FL 32713
	VENDOR #: MED001 MERSINO DEWATERING, LLC 900 N. Squirrel Road Suite 210 Auburn Hills, MI 48326

ORDER DATE: 12/19/23
 REQUISITION NO: R4-01967
 DELIVERY DATE:
 STATE CONTRACT:
 F.O.B. TERMS:

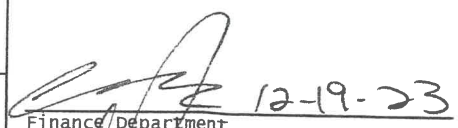
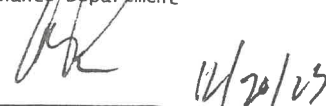
PAYMENT RECORD	
CHECK NO.	
DATE PAID	

NOTICE: TAX ID #59-3217634 - TAX EXEMPT

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	SW-8" Pump Rental Plantation	120-3800-538-4430	5,726.0000	5,726.00
1.00	SW-8" Pump Rental Plantation Pick up Fee.	Mgt & Flood - Equipment Rentals 120-3800-538-4430	1,500.0000	1,500.00
		Mgt & Flood - Equipment Rentals	TOTAL	7,226.00


Boonly

*Nuel
P.O.*

CLAIMANT'S CERTIFICATION & DECLARATION	OFFICER'S CERTIFICATION	APPROVAL TO PURCHASE
I do solemnly declare and certify under penalties of the law that the within bill is correct in all its particulars; that the articles have been furnished or services rendered as stated therein; that no bonus has been given or received by any person or persons within the knowledge of this claimant in connection with the above claim; that the amount therein stated is justly due and owing; and that the amount charged is a reasonable one. X _____ VENDOR SIGN HERE _____ OFFICIAL POSITION DATE _____ TAX ID NO. OR SOCIAL SECURITY NO.	I, having knowledge of the facts, certify that the materials and supplies have been received or the services rendered; said certification being based on signed delivery slips or other reasonable procedures. _____ DEPT. HEAD DATE VENDOR MUST SIGN CERTIFICATION STATEMENT ON THIS VOUCHER. MAIL VOUCHER & ITEMIZED BILLS TO: CITY OF DEBARY 16 COLOMBA ROAD DEBARY, FL 32713	DO NOT ACCEPT THIS ORDER UNLESS IT IS SIGNED BELOW.  Finance Department 12-19-23  City Mgr If > \$1,500/Single Vendr

CITY OF DEBARY

16 COLOMBA ROAD
 DEBARY, FL 32713
 TEL (386)668-2040 FAX (386)668-4122

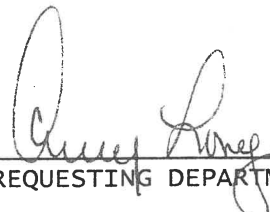
REQUISITION	
NO. 	R4-01967

SHIP TO	CITY HALL 16 COLOMBA ROAD DEBARY, FL 32713
VENDOR	MERSINO DEWATERING, LLC 900 N. Squirrel Road Suite 210 Auburn Hills, MI 48326

VENDOR #: MED001

ORDER DATE: 12/19/23
 DELIVERY DATE:
 STATE CONTRACT:
 F.O.B. TERMS:

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
	5w-84 Pump Rental -Plantation	120-3800-538-4430	TOTAL	<u>85.72</u> 0.00



 REQUESTING DEPARTMENT

12/19/23

 DATE



Rental Agreement

386.426.2411
 386.426.2111
 www.mersino.com

Project #: 53312
 Project Name City of Debarry Plantation Pump Station Back Up

Account Manager: Brad Flood
 Phone #: (386) 410-9621

Customer Account #: 18799
 Company Name: City Of Debarry
 Address: Plantation Rd
 City, State ZIP: Debarry, FL 32713
 Phone #: 386-664-2040

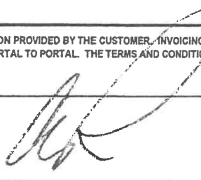
Ship To Address
 Address: Plantation Road
 City, State: Debarry, FL
 Attention: Bailey Hart
 Phone #: 3522869999

Today's Date: 12/18/23
 Est Delivery Date: 12/18/23

Item	Description	Qty	Monthly Rate	MonthlyTotal
PLANTATION PUMP STATION BACK UP				
GST08OPR	8" GLOBAL STANDARD TRASH PUMP	1	\$4,167.00	\$4,167.00
HSSNQD080010R	8" X 10' QD CRIMPED SUCTION HOSE	3	\$324.00	\$972.00
FTQDBS08R	8" MALE QD STRAINER BASKET	1	\$252.00	\$252.00
FTQD080890R	8" QD 90 DEGREE ELBOW	1	\$201.00	\$134.00
FTQDQDFM0808R	8" FEMALE QD X FLANGE (SUPPLIED POINT OF DISCHARGE)	1	\$201.00	\$201.00
TOTAL MONTHLY RENT				\$5,726.00
BCVHTK04	BOOM TRUCK DAILY CHARGE DELIVERY (DELIVERY)	1	\$1,500.00	\$1,500.00
BCVHTK04	BOOM TRUCK DAILY CHARGE DELIVERY (PICKUP)	1	\$1,500.00	\$1,500.00
<p>SW-8" pump rental - (20-3800-538-9430)</p>				
<p>RECEIVED DEC 19 2023 MERSINO</p>				

THE QUANTITIES QUOTED ARE ESTIMATES BASED UPON INFORMATION PROVIDED BY THE CUSTOMER. INVOICING WILL BE BASED UPON ACTUAL QUANTITIES AND ITEMS REQUIRED BY THE CUSTOMER. ALL MOBILIZATIONS WILL BE CHARGED PER OCCURRENCE. ALL LABOR IS PROVIDED AT AN HOURLY RATE. PORTAL TO PORTAL. THE TERMS AND CONDITIONS ON THE LAST PAGE OF THIS AGREEMENT SHALL APPLY AT ALL TIMES. RENTAL TERMS - 3 DAYS = 1 WEEK, 3 WEEKS = 1 MONTH

Special Instructions:

Signature/Date  12/19/23

M-01967

TERMS AND CONDITIONS - USA

Mersino Dewatering, LLC (the "Lessor") and the leasing party on the preceding page (the "Lessee") agree that these Terms and Conditions govern the parties' Rental Agreement and these Terms and Conditions are incorporated by reference into the Rental Agreement, any Proposals, and any Quotes as if fully stated therein. Acceptance of any goods or equipment by Lessee shall constitute acceptance of these terms.

- 1. Payment.** Lessee agrees to lease the equipment listed on the preceding page and shall pay the amount set forth therein. The lease charge is due and payable in full prior to commencement of this lease unless otherwise agreed in writing. Any amount unpaid 10 days after the date that payment is due will be subject to monthly interest of 1.5% (18% true annual rate). Lessee agrees to review the invoices promptly and notify Lessor in writing of any questions or discrepancies within ten (10) days of the invoice date or Lessee shall be deemed to have approved the invoice(s) and irrevocably waived the right to dispute. If any amount remains unpaid over 10 days after it is due, Lessee shall pay all costs of collection, including attorneys' fees, court costs, and repossession costs.
- 2. Lease Charge.** The lease charge is based on 8 hours per day, 40 hours per week, or 176 hours per four-week period. Lessee will pay additional lease charges for any excess usage on a pro rata basis. If Lessee does not return the equipment immediately upon expiration of the lease, Lessee shall pay additional lease charges. If Lessee uses equipment on a shift and a half per day basis, Lessee will be charged a time and a half rate. If Lessee uses equipment double time on a per day basis, Lessee will be charged double the rate. The hour meter on the rented units will determine this. Lessee is not to tamper with the hour meter and if a meter is not functional, Lessee is to notify Lessor immediately. The lease charge is earned in advance and is due regardless of actual use of equipment for any reason, including breakdown, downtime, change in project plans, termination of Lessee's contract with third parties, or acts of nature. Lessee is responsible for any fines, license fees, and all taxes levied while in possession of the leased equipment.
- 3. Use and Maintenance.** Lessee agrees to keep equipment in good operating condition, repair, and appearance and to furnish all labor and parts required therefore at its expense. Lessee agrees to use equipment as instructed by Lessor and in the regular course of business, within normal operating capacity, without abuse, and to comply with all laws. Lessee acknowledges that it is a sophisticated user of the equipment leased. Lessee shall not make alterations to equipment without authorization from Lessor. Lessor shall have the right to enter premises where equipment is located to inspect, observe, and/or remove it. Lessee is responsible for all damages other than normal wear and will pay lease charges for time required for repair or replacement, regardless of fault or reason for damage.
- 4. Labor.** All labor charges are additional charges unless otherwise stated in writing. Lessee will pay the cost of setting up or breaking down any rented items along with any service. All required labor is leased on a per hour basis and will be charged upon actual hours worked, regardless of use of the equipment. Overtime charges apply for any hours over 8 hours on a weekday and for any work performed on weekends.
- 5. Confined Space Entry.** Lessor will quote the rental of sewer plugs, but not the installation of said plugs. Lessor is not equipped for and shall not take responsibility for confined space entry.
- 6. Title to Equipment.** Lessor has full title to the equipment and under no circumstances shall title pass to Lessee. Lessee shall not remove or tamper with anything the Lessor has affixed to the equipment. Lessee shall protect and defend Lessor's title to the equipment against any outside influences and will keep the equipment free from liens and encumbrances. This equipment will remain the personal property of the Lessor and the Lessee will make this a known public fact to defend the Lessor's right to the equipment.
- 7. Trucking and Fuel.** Trucking charges are additional to the lease charge unless stated in writing. Lessee will pay the cost of trucking equipment to and from Lessor. Lessee is responsible for loading and unloading equipment. Lessee is responsible for returning equipment full of fuel, otherwise fuel will be charged at the greater of \$9.50 per gallon or the average fuel rate at the time of filling.
- 8. Risk of Loss.** Lessee bears the entire risk of loss of, damage to, or destruction of the equipment from all causes whatsoever during the term of this lease and thereafter until redelivery to Lessor. In the event of loss, damage, or destruction of equipment, Lessee, at its expense and at Lessor's option, shall repair such item, pay Lessor for repair, or if damaged beyond repair pay Lessor fair market value for the item. Above and beyond these costs, Lessee will still be responsible for the lease charge. Lessee assumes the full risk that the equipment leased will not perform the job for which it was leased, and regardless of outcome will be obligated to pay the lease charge.
- 9. Indemnity.** Lessee shall indemnify Lessor and hold it and its officers, directors, agents, employees, successors, and assigns harmless from any and all claims, liability, damage, or loss, including attorneys' fees, arising out of Lessee's lease or use of the equipment, including any failure of equipment to comply with or to be operated in accordance with any and all health and safety standards promulgated by law, including any OSHA regulation. Lessee shall, at its expense, defend Lessor against any and all suits or proceedings brought against Lessor, alone or in conjunction with others, based in any way upon Lessee's use or operation of the leased equipment, including claims of property damage, personal injury, or wrongful death. Lessee shall satisfy, pay, and discharge any judgments or fines that may be recovered against Lessor on such claims. This indemnity shall survive the termination of this lease.
- 10. Default and Enforcement.** If Lessee fails to pay any amount due within ten days that it is due; breaches any provision of this Agreement; or becomes insolvent, files for bankruptcy, executes an assignment for the benefit of creditors, ceases doing business, has a writ of execution or other legal process issued against it or the leased equipment, then Lessor has the right to enter Lessee's premises and take immediate possession of the equipment, without demand or notice, and without court order or other process of law. Lessee waives any and all damages or claims, including claims of trespass, stemming from such repossession. By accepting delivery of the equipment, Lessee expressly grants Lessor permission and consent to enter Lessee's property in order to retrieve the equipment. Lessor retains the right to pursue any other remedy. Lessee agrees and acknowledges that if it asserts a claim against Lessor for any reason and is not 100% successful in obtaining the relief sought, including being awarded each and every dollar that it asserts it is owed, Lessee will pay all of Lessor's costs and attorneys' fees incurred in the litigation or proceeding, including any appeals.
- 11. Insurance.** Lessee shall be the absolute insurer of the equipment during the term of this lease, and agrees during the term of this lease, while in transit to and from Lessee and until safely returned to Lessor, to keep the equipment fully insured and to pay all insurance premiums, at its expense, for not less than the replacement value of the equipment as of the commencement date of this lease and against all risks, including adequate public liability, bodily injury, and property damage liability insurance.
- 12. Environmental Sites.** Lessee is responsible for informing Lessor before equipment is delivered to any site where EPA decontamination procedures are required. Lessee is responsible for the decontamination of all equipment and accessories on any job. If equipment cannot be decontaminated, Lessor may hold Lessee liable for immediate payment of fair market value of the equipment.
- 13. Disclaimer of Warranties.** Lessee warrants that it leases the equipment "as is." Lessor has not made and does not make any representation or warranty with respect to the merchantability, condition, fitness for a particular use, quality, durability, or suitability of the equipment for the purposes and uses of Lessee, or any other representation or warranty of any kind or character—express, implied, or arising out of any law—with respect to the equipment. Lessor does not guarantee that the equipment will produce any outcome desired by Lessee. Lessor will not be liable for damages arising from improper use or malfunction of the equipment. Lessee acknowledges that it has had an opportunity to inspect the equipment and finds it suitable for its needs and in good condition. Lessee will inspect the equipment daily and promptly notify Lessor of any defects.
- 14. Non-Assignment.** Lessee shall not assign, transfer, pledge, relet, sublet, or hypothecate this Lease or the equipment. The Agreement shall inure to the benefit of Lessor, its affiliates, subsidiaries, parent companies (if any), successors, and assigns.
- 15. Lessee's Waivers; Absolute Obligations.** To the extent permitted by law, Lessee waives any and all rights and remedies conferred upon Lessee by the Michigan Uniform Commercial Code, including its rights to (a) cancel the lease, (b) repudiate the lease, (c) reject the equipment, (d) revoke acceptance of the equipment, (e) recover damages from the Lessor for breach of warranty or for any other reason, and to (f) deduct all or part of any claim of damages resulting from alleged default. Lessee's obligations under this lease are absolute and unconditional, regardless of any alleged breach by Lessor, and shall not be subject to any abatement, reduction, set-off, defense, counterclaim, or recoupment, for any reason whatsoever.
- 16. Choice of Law and Forum.** This Agreement shall be deemed executed in the State of Michigan and shall be interpreted in accordance with the laws of Michigan, regardless of any conflicts of law provision or rules of any state. Any lawsuit brought to resolve a dispute arising from this Agreement must be brought in an appropriate court in Michigan. Lessor and Lessee waive any defense that they may otherwise have as to forum non conveniens and waive any objection to personal jurisdiction in the State of Michigan. Lessor and Lessee acknowledge and express that Michigan is a reasonably convenient place for the trial of any such action.
- 17. NO CONSEQUENTIAL DAMAGES. REGARDLESS OF FAULT OR NEGLIGENCE, LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND EQUIPMENT PROVIDED BY LESSOR, WHATEVER THE ALLEGED CAUSE, INCLUDING BUT NOT LIMITED TO, DELAY IN DELIVERY OF EQUIPMENT, FAILURE OF EQUIPMENT, ANY ALLEGED DEFECT IN ANY EQUIPMENT, OR FOR ANY OTHER REASON. LESSEE'S SOLE REMEDY IN ANY CLAIM AGAINST LESSOR WILL BE FOR REPAIR OR REPLACEMENT OF THE EQUIPMENT RENTED.**
- 18. Agreement.** This unexecuted agreement is valid for 30 days. By signing either these Terms and Conditions or any preceding pages of this lease, or by accepting delivery of the equipment, Lessee specifically acknowledges and agrees that it has received, has read, understands, and agrees to all terms set forth herein and set forth on the preceding pages hereof and that the same are hereby incorporated into the parties' agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement. This Agreement cannot be amended except by a written agreement executed by the party or parties to be charged with the amendment.
- 19. Non Waiver.** Acceptance by either party of actions in nonconformity of the Rental Agreement or these Terms and Conditions shall not constitute a waiver to subsequently enforce any rights or obligations under the Agreement.

I understand and agree to the above terms and conditions as well as the acceptance of the equipment and pricing set forth on the preceding page. I also agree that the equipment I received reflects the proper quantities and is in good working order.

Date _____

Customer Signature _____

CITY OF DEBARY

16 COLOMBA ROAD
DEBARY, FL 32713

TEL (386)668-2040 FAX (386)668-4122

PURCHASE ORDER

THIS NUMBER MUST APPEAR ON ALL INVOICES,
PACKING LISTS, CORRESPONDENCE, ETC.

NO. 24-00641

ORDER DATE: 12/19/23
REQUISITION NO: R4-01968
DELIVERY DATE:
STATE CONTRACT:
F.O.B. TERMS:

PAYMENT RECORD

CHECK NO.

DATE PAID

NOTICE: TAX ID #59-3217634 - TAX EXEMPT

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CITY HALL
16 COLOMBA ROAD
DEBARY, FL 32713

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MERSINO DEWATERING, LLC
900 N. Squirrel Road
Suite 210
Auburn Hills, MI 48326

VENDOR #: MED001

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
1.00	SW-12" Pump Rental James Pond	120-3800-538-4430	11,997.0000	11,997.00
		Mgt & Flood - Equipment Rentals		
1.00	SW-12" Pump Rental James Pond Pick up Fee.	120-3800-538-4430	1,500.0000	1,500.00
		Mgt & Flood - Equipment Rentals		
			TOTAL	13,497.00

Doonly

Need copy P.O.

CLAIMANT'S CERTIFICATION & DECLARATION

I do solemnly declare and certify under penalties of the law that the within bill is correct in all its particulars; that the articles have been furnished or services rendered as stated therein; that no bonus has been given or received by any person or persons within the knowledge of this claimant in connection with the above claim; that the amount therein stated is justly due and owing; and that the amount charged is a reasonable one.

X

VENDOR SIGN HERE

OFFICIAL POSITION

DATE

TAX ID NO. OR SOCIAL SECURITY NO.

OFFICER'S CERTIFICATION

I, having knowledge of the facts, certify that the materials and supplies have been received or the services rendered; said certification being based on signed delivery slips or other reasonable procedures.

DEPT. HEAD

DATE

VENDOR MUST SIGN CERTIFICATION STATEMENT ON THIS VOUCHER. MAIL VOUCHER & ITEMIZED BILLS TO:

CITY OF DEBARY
16 COLOMBA ROAD
DEBARY, FL 32713

APPROVAL TO PURCHASE

DO NOT ACCEPT THIS ORDER UNLESS IT IS SIGNED BELOW.

[Signature] 12-19-23
Finance Department

[Signature] 12/19/23
City Mgr If > \$1,500/sign/vendr

CITY OF DEBARY

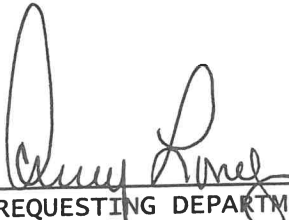
16 COLOMBA ROAD
 DEBARY, FL 32713
 TEL (386)668-2040 FAX (386)668-4122

REQUISITION	
NO.	R4-01968

SHIP TO	CITY HALL 16 COLOMBA ROAD DEBARY, FL 32713
VENDOR	MERSINO DEWATERING, LLC 900 N. Squirrel Road Suite 210 Auburn Hills, MI 48326 VENDOR #: MED001

ORDER DATE: 12/19/23
 DELIVERY DATE:
 STATE CONTRACT:
 F.O.B. TERMS:

QTY/UNIT	DESCRIPTION	ACCOUNT NO.	UNIT PRICE	TOTAL COST
	Sw-12" Pump Rental - James Pond	120-3800-538-4120	TOTAL	<u>\$11,907.00</u> 0.00


 REQUESTING DEPARTMENT

12/19/23
 DATE



Rental Agreement

386.426.2411
386.426.2111
www.mersino.com

Project #: 50287
Project Name City of Debarry James Pond 12in Pump

Account Manager: Brad Flood
Phone #: (386) 410-9621

Customer Account #: 18799
Company Name: City Of Debarry
Address: 16 Columbia Rd
City, State ZIP: Debarry, FL 32713
Phone #: 386-664-2040

Ship To Address
Address: Multiple Locations in Debarry
City, State: Debarry, FL
Attention: Bailey Hart
Phone #: 3522869999

Today's Date: 12/18/23
Est Delivery Date: 12/18/23

Table with 5 columns: Item, Description, Qty, Monthly Rate, Monthly Total. Includes items like GLOBAL STANDARD TRASH PUMP, CRIMPED SUCTION HOSE, and BOOM TRUCK DAILY CHARGE DELIVERY. Total Monthly Rent is \$11,997.00.

Sw 12" pump rental - to 3860-538-4430

RECEIVED
DEC 19 2023
FINANCE

THE QUANTITIES QUOTED ARE ESTIMATES BASED UPON INFORMATION PROVIDED BY THE CUSTOMER. INVOICING WILL BE BASED UPON ACTUAL QUANTITIES AND ITEMS REQUIRED BY THE CUSTOMER. ALL MOBILIZATIONS WILL BE CHARGED PER OCCURRENCE. ALL LABOR IS PROVIDED AT AN HOURLY RATE. PORTAL TO PORTAL. THE TERMS AND CONDITIONS ON THE LAST PAGE OF THIS AGREEMENT SHALL APPLY AT ALL TIMES. RENTAL TERMS - 3 DAYS = 1 WEEK, 3 WEEKS = 1 MONTH

Special Instructions:

Signature/Date [Handwritten Signature] 12/19/23

RU-01928

TERMS AND CONDITIONS - USA

Mersino Dewatering, LLC (the "Lessor") and the leasing party on the preceding page (the "Lessee") agree that these Terms and Conditions govern the parties' Rental Agreement and these Terms and Conditions are incorporated by reference into the Rental Agreement, any Proposals, and any Quotes as if fully stated therein. Acceptance of any goods or equipment by Lessee shall constitute acceptance of these terms.

- 1. Payment.** Lessee agrees to lease the equipment listed on the preceding page and shall pay the amount set forth therein. The lease charge is due and payable in full prior to commencement of this lease unless otherwise agreed in writing. Any amount unpaid 10 days after the date that payment is due will be subject to monthly interest of 1.5% (18% true annual rate). Lessee agrees to review the invoices promptly and notify Lessor in writing of any questions or discrepancies within ten (10) days of the invoice date or Lessee shall be deemed to have approved the invoice(s) and irrevocably waived the right to dispute. If any amount remains unpaid over 10 days after it is due, Lessee shall pay all costs of collection, including attorneys' fees, court costs, and repossession costs.
- 2. Lease Charge.** The lease charge is based on 8 hours per day, 40 hours per week, or 176 hours per four-week period. Lessee will pay additional lease charges for any excess usage on a pro rata basis. If Lessee does not return the equipment immediately upon expiration of the lease, Lessee shall pay additional lease charges. If Lessee uses equipment on a shift and a half per day basis, Lessee will be charged a time and a half rate. If Lessee uses equipment double time on a per day basis, Lessee will be charged double the rate. The hour meter on the rented units will determine this. Lessee is not to tamper with the hour meter and if a meter is not functional, Lessee is to notify Lessor immediately. The lease charge is earned in advance and is due regardless of actual use of equipment for any reason, including breakdown, downtime, change in project plans, termination of Lessee's contract with third parties, or acts of nature. Lessee is responsible for any fines, license fees, and all taxes levied while in possession of the leased equipment.
- 3. Use and Maintenance.** Lessee agrees to keep equipment in good operating condition, repair, and appearance and to furnish all labor and parts required therefore at its expense. Lessee agrees to use equipment as instructed by Lessor and in the regular course of business, within normal operating capacity, without abuse, and to comply with all laws. Lessee acknowledges that it is a sophisticated user of the equipment leased. Lessee shall not make alterations to equipment without authorization from Lessor. Lessor shall have the right to enter premises where equipment is located to inspect, observe, and/or remove it. Lessee is responsible for all damages other than normal wear and will pay lease charges for time required for repair or replacement, regardless of fault or reason for damage.
- 4. Labor.** All labor charges are additional charges unless otherwise stated in writing. Lessee will pay the cost of setting up or breaking down any rented items along with any service. All required labor is leased on a per hour basis and will be charged upon actual hours worked, regardless of use of the equipment. Overtime charges apply for any hours over 8 hours on a weekday and for any work performed on weekends.
- 5. Confined Space Entry.** Lessor will quote the rental of sewer plugs, but not the installation of said plugs. Lessor is not equipped for and shall not take responsibility for confined space entry.
- 6. Title to Equipment.** Lessor has full title to the equipment and under no circumstances shall title pass to Lessee. Lessee shall not remove or tamper with anything the Lessor has affixed to the equipment. Lessee shall protect and defend Lessor's title to the equipment against any outside influences and will keep the equipment free from liens and encumbrances. This equipment will remain the personal property of the Lessor and the Lessee will make this a known public fact to defend the Lessor's right to the equipment.
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- 17. NO CONSEQUENTIAL DAMAGES. REGARDLESS OF FAULT OR NEGLIGENCE, LESSOR SHALL NOT BE LIABLE TO LESSEE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES AND EQUIPMENT PROVIDED BY LESSOR, WHATSOEVER THE ALLEGED CAUSE, INCLUDING BUT NOT LIMITED TO, DELAY IN DELIVERY OF EQUIPMENT, FAILURE OF EQUIPMENT, ANY ALLEGED DEFECT IN ANY EQUIPMENT, OR FOR ANY OTHER REASON. LESSEE'S SOLE REMEDY IN ANY CLAIM AGAINST LESSOR WILL BE FOR REPAIR OR REPLACEMENT OF THE EQUIPMENT RENTED.**
- 18. Agreement.** This unexecuted agreement is valid for 30 days. By signing either these Terms and Conditions or any preceding pages of this lease, or by accepting delivery of the equipment, Lessee specifically acknowledges and agrees that it has received, has read, understands, and agrees to all terms set forth herein and set forth on the preceding pages hereof and that the same are hereby incorporated into the parties' agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes all prior written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement. This Agreement cannot be amended except by a written agreement executed by the party or parties to be charged with the amendment.
- 19. Non Waiver.** Acceptance by either party of actions in nonconformity of the Rental Agreement or these Terms and Conditions shall not constitute a waiver to subsequently enforce any rights or obligations under the Agreement.

I understand and agree to the above terms and conditions as well as the acceptance of the equipment and pricing set forth on the preceding page. I also agree that the equipment I received reflects the proper quantities and is in good working order.

Date _____

Customer Signature _____



City Council Meeting City of DeBary AGENDA ITEM

Subject: Perpetual Conservation Easement – Palm Drive Property	Attachments: <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other
From: Carmen Rosamonda, City Manager Here	
Meeting Hearing Date January 17, 2024	

REQUEST

City Manager is requesting City Council approve the Perpetual Conservation Easement between the City of DeBary and the St. Johns River Water Management District for the Palm Drive property.

PURPOSE

The purpose of this easement is to preserve this property from development, act as a natural buffer and stormwater drainage for the immediate area, and to assist in transfer of conservation easement rights from the 2.17 acre property located at the corner of Ft. Florida Road and Highway 17-92.

CONSIDERATIONS

- On May 3, 2023, the City entered into a Purchase and Sales Agreement with N.O.W. organization to purchase approximately 24.21 acres adjacent to Palm Drive and Gardenia Avenue. This property was prime for development as it was zoned B-9 commercial.
- The City closed on the Palm Drive property on January 8, 2024 for a cost of \$975,000. The sale is complete.
- DeBary Town Center, LLC has been trying to mitigate and transfer the conservation easement on 2.17 acres of property for more than 4 years. The mitigation costs is \$390,000.
- The City Manager put together a deal to purchase the Palm Drive property and use it to transfer the conservation easement of the 2.17 acres at Ft. Florida Road to the approximate 20 acres of Palm Drive. In essence, an approximate 18 additional acres will be placed into conservation because of this deal.
- DeBary Town Center, LLC will pay \$390,000 to the City reimbursing this portion of the purchase price.
- Florida Department of Transportation is interested in the approximately 4 acres on the northernmost part of the property for stormwater maintenance for the proposed expansion of I-

4. Once the I-4 expansion project gets funded, FDOT will seek to purchase this 4 acres. Ultimately, the total long-term cost for the City to purchase Palm Drive will be \$0.00.

- There are two more steps to complete this deal.
 - Volusia County will authorize the transfer of the 2.17 acres to the City and the City will keep the road and trail right-of-way and transfer the remaining property to DeBary Town Center, LLC. The City entered into an Exchange Agreement with DeBary Town Center, LLC in July 2023 regarding this transaction.
 - The SJRWMD Board will approve the entire package, including approving the Perpetual Conservation Easement on the Palm Drive property.

COST/FUNDING

There is no cost on the approval of the easement.

RECOMMENDATION

It is recommended that the City Council approve the Perpetual Conservation Easement between the City of DeBary and the St. Johns River Water Management District for the Palm Drive property.

IMPLEMENTATION

Upon approval by the SJRWMD Board

ATTACHMENTS

Perpetual Conservation Easement

Volusia County Parcel Nos: 900200000040, 900200000041 and 900200000042
SJRWMD LA# _____

This document constitutes a conveyance from a state agency or instrumentality to an agency of the state and is not subject to documentary stamp tax pursuant to 12B-4.014(10), F.A.C.

PERPETUAL CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT (“Easement”), made and entered into this ___ day of _____, 2023, by and between the **CITY OF DEBARY, FLORIDA**, a municipal corporation of the State of Florida, whose mailing address is 16 Colomba Road, DeBary, Florida 32713, (hereinafter referred to as the Grantor) and the **ST. JOHNS RIVER WATER MANAGEMENT DISTRICT**, a public body existing under Chapter 373 of the Florida Statutes, whose address is Post Office Box 1429, Palatka, Florida 32178-1429 (hereinafter referred to as the Grantee).

WITNESSETH:

WHEREAS the Grantor is the owner in fee simple of certain real property lying and being situated in Volusia County, Florida, more specifically described in Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the Property); and,

WHEREAS, the Grantor wishes to grant a Perpetual Conservation Easement in favor of the Grantee; and

WHEREAS, the Grantor and the Grantee mutually recognize the natural, scenic and special character of the Property and have the common purpose of conserving the natural value and character of the Property by conveyance to the Grantee of a Perpetual Conservation Easement on, over and across the Property, which shall conserve the ecological and hydrological integrity of the Property, conserve and protect the animal and plant populations on the Property, and prohibit and provide for certain further development activity on the Property.

NOW, THEREFORE, the Grantor, in consideration of TEN AND NO/100 DOLLARS and other good and valuable consideration in hand paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, hereby voluntarily grants, and conveys to the Grantee and its successors and assigns forever this Easement pursuant to Section 704.06 Florida Statutes, on, over, upon, and across the Property of the nature, character, and extent hereinafter set forth.

I. PURPOSE OF THE EASEMENT.

The purpose of this Easement is to foster, preserve and protect, in perpetuity, the ecological, biological and hydrological integrity of the Property, including the Property's natural features, water resource benefits, cultural attributes, wildlife and plant life features, and recreational values, and to prevent any development or other use of the Property that interferes with the accomplishment of these purposes. It is also the purpose of this Easement to reserve to the Grantor public recreational uses of the Property that are consistent with the conservation purposes of this Easement, which generally includes activities such as hiking, biking, wildlife observation, environmental education, and picnicking, and subject to the limitations contained herein. The Easement intends perpetual retention and preservation of the Property predominantly in its current natural or improved condition. Accordingly, Grantor hereby acknowledges a continuing duty of care to Grantee imposed by this Easement upon Grantor to carry out the intent

and purpose of this Easement in regard to Grantor's ownership of the Property.

II. PROHIBITIONS AND RESTRICTIONS ON USE.

Grantor and Grantee acknowledge that a purpose of this Easement is to prevent any use of the Property that will cause or result in a sustained degradation of the present environmental and conservation quality of the Property. No activity on or use of the Property inconsistent with the purposes of this Easement is permitted. Therefore, subject to the rights and interests of Grantor hereinafter reserved in this Easement, and in furtherance of the affirmative rights of Grantee described herein, Grantor, for itself and its successors and assigns, and with the intent that the same shall run with and bind the Property in perpetuity, do hereby make and impose with respect to the Property the following general covenants, prohibitions and restrictions relating to the use of the Property. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited; provided, however, that uses expressly authorized under Section III or the Management Plan approved by the Grantee (the Management Plan is described in Section VII herein), are not prohibited:

1. Uses. Except as may be expressly allowed in the Management Plan or under Section III herein, no commercial, residential, agricultural, or industrial activity shall be undertaken or allowed on the Property, nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with said activities.

2. Roads. Except as may be expressly allowed under Section III herein, no additional roads or paving of existing roads is allowed.

3. Waters. No topographical or hydrological modifications or activities detrimental to water quality or quantity shall be allowed, except that Grantor may, subject to applicable permitting requirements, conduct activities as provided for in Section III herein. Commercial water wells, including wells for a public utility, shall not be allowed on the Property.

4. Drainage and Wildlife. There shall be no activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

5. Revenues Produced from the Property. Revenues produced from any use of the Property must be dedicated to the program for management of the Property and/or for the construction or maintenance of resource-based recreational activities and amenities on the Property.

6. Construction and Fences. Except as may be expressly allowed under this Easement or the Management Plan, there shall be no construction of, or the placing of, buildings, mobile homes, utilities, infrastructure, roads, or other structures on, under, or above the ground. The construction and maintenance of fences permitted under this Easement shall not substantially impede the movement of wildlife (i.e., fences must be Wildlife Friendly) onto, upon, or across the Property.

7. Dumping. There shall be no dumping or placing of trash, solid or liquid waste (including sludge material and biowaste), or hazardous materials, wastes or substances, toxic waste or substances, pollutants or contaminants, or unsightly or offensive materials, including but not

limited to those as defined by the Federal Solid Waste Disposal Act (SWDA), the Federal Clean Air Act (CAA), the Federal Clean Water Act (CWA), the Federal Resource Conservation and Recovery Act of 1976 (RCRA), the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), the Federal Emergency Planning and Community Right-To-Know Act (EPCRA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), Chapters 161, 253, 373, 376, and 403, Florida Statutes, and the rules and regulations of the (i) United States Environmental Protection Agency, (ii) the Florida Department of Environmental Protection, and the St. Johns River Water Management District, now or at any time hereafter in effect, or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants, or contaminants (hereinafter collectively referred to as Contaminants) on the Property. This prohibition shall not be construed to prohibit the use and lawful application of chemicals, pesticides, herbicides or fertilizers, in accordance with the activities allowed under this Easement.

8. Animal Feeding Operations. There shall be no animal feeding areas for bovine, swine, poultry, or other animals on the Property.

9. Invasive Exotic Species. Grantor shall not plant, nor take any action to intentionally encourage the spread of, Invasive Exotic Species on the Property, and shall use best efforts to control the spread of any Invasive Exotic Species on the Property. Invasive Exotic Species shall mean those invasive exotic plants described in Category I or Category II of the Florida Exotic Pest Plant Council's (or its successor's) list of Invasive Species, as it is periodically updated.

10. Pesticides, Herbicides and Fertilizer. Pesticides, herbicides, and fertilizer must be applied in accordance with manufacturer's label instructions, and such use shall be included in the Management Plan described in Section VII below. All such applications shall further be subject to any applicable permitting requirements and shall be in accordance with Best Management Practices (BMPs), described in Section V below.

11. Mining, Excavation, Filling and Dredging. There shall be no mining, drilling, excavation, filling or dredging on the Property. Under no circumstance shall there be any exploration for or extraction of oil or gas (including all petroleum or hydrocarbons), sand, loam, peat, gravel, phosphate, rock, soil, or other surface or subsurface material for commercial purposes.

12. Commercial Signs or Billboards. Except for signs identifying the Property or the allowed activities thereon, including a park entrance sign, or regulatory signs such as "No Hunting" and "No Trespassing", there shall be no commercial signs or billboards, temporary or permanent, constructed, placed, or maintained upon the Property.

13. Historical, Archaeological and Cultural Resources. There shall be no acts or uses of the Property inconsistent with the Management Procedures for Archaeological and Historical Sites and Properties on State-Owned or Controlled Properties", as may be revised from time to time.

14. Sale and Subdivision. There shall be no direct or indirect subdivision of the Property. Also, Grantor shall not transfer or convey title to the Property without the prior written consent of Grantee, pursuant to Paragraph III.2 below.

III. RIGHTS RESERVED TO GRANTOR.

Grantor reserves unto itself and its successors and assigns, all rights accruing from ownership of the Property that are not inconsistent with the purposes of this Easement. Grantor's reserved rights include the right to engage in or permit or invite others to engage in all uses of the Property that: (a) are not expressly prohibited herein; (b) are expressly provided for in the Management Plan; and (c) follow BMPs, as described in Section V.16 herein, and (d) include the following reserved rights:

1. Fee Simple Title. Grantor has, and shall be deemed hereby to have retained, the underlying fee simple title absolute in the Property. Further Grantor retains and reserves all rights of, in, and to the Property not expressly prohibited to Grantor in this Easement or expressly conveyed to Grantee in this Easement.

2. Sale or Lease of Property. Grantor shall have the right to sell or lease the Property provided that prior written consent is received from Grantee, which consent shall not be unreasonably withheld. Grantor shall provide to Grantee within 60 days of any sale or conveyance of any interest in the Property a copy of the fully executed and recorded instrument of conveyance.

3. Resource-Based Recreation. Grantor reserves the right to allow the public to use the Property for resource-based recreational activities, provided such use is provided for in the Property's Land Management Plan. Resource-based recreational activities include, but are not limited to, hiking, bicycling, birding, wildlife observation, and environmental education.

4. Structures, Roads, Recreational Trails, Wells and Surfaces.

a. Structures and Facilities. Grantor reserves the right to construct structures and facilities on the Property to carry out the public use purpose in a manner similar to a State Park. To do so, Grantor reserves the right to construct structures and facilities, including ancillary utilities, (Structures) as identified in the Management Plan, that are compatible with resource-based public recreational uses. The Structures must be located as indicated in the Management Plan. The Structures may include boardwalks, support utilities, restrooms, shelters, pavilions, and parking areas. Grantor may, subject to applicable permitting requirements, install wells for the structures and activities allowed under this Easement.

b. Roads, Trails, and Fire Breaks. Grantor may maintain the existing roads on the Property, as identified in the Easement Documentation Report. Fire breaks may be constructed as necessary to provide protection to visitors and natural resources. Care will be given to ensure these fire breaks are not utilized as roads for vehicular traffic and that the breaks are not above and beyond the recommendation of the Florida Forest Service or Volusia County Fire Department. All such construction and maintenance shall be subject to applicable permitting processes, shall be included in the Management Plan prior to construction, and shall be in accordance with applicable BMP's.

c. Impervious Surfaces. The areas identified in Paragraph 4.a. and 4.b. above are the only areas of impervious surface that may be improved in the future except as otherwise authorized in the Management Plan or specifically approved in writing by the Grantee.

5. Silviculture.

a. Wetlands. Wetlands are those areas depicted as Wetlands in the Easement Documentation Report (Wetlands). In emergency situations that pose an imminent threat to the resource and/or public safety, Grantor is authorized to preemptively cut trees and vegetation in the Wetlands, such as in defensive measure for wildfires. Grantor must provide Grantee at least three

days advance notice before preemptively cutting trees or vegetation in the Wetlands in defensive measure against infestation or disease. Subject to applicable permitting requirements, Wetland road crossings associated with timber extractions are authorized, provided BMPs are followed.

b. Disaster Harvesting. Salvage harvesting following natural disasters, including but not limited to insect infestations, floods, drought, storms, plant disease, or wildfires, shall be allowed in all areas of the Property in accordance with applicable BMPs. Following such natural disasters, all site preparation and re-establishment activities shall be conducted according to BMPs. However, Grantor is not required to re-establish areas following natural disasters.

6. Non-native or Nuisance Animals. Grantor reserves the right to undertake actions to control nuisance or non-native animals, provided these actions are conducted in compliance with applicable federal, state, and local laws.

7. Access. Grantor retains the right to control and limit all access to the Property subject to the Grantee's right of access as herein granted.

8. Restoration and Enhancement. Grantor retains the right to engage in activities on the Property designed to enhance or restore the natural communities on the Property, provided Grantee is notified in writing prior to the commencement of such activities, and provided such activities are properly permitted by the appropriate authority and are described in the Management Plan.

9. Quiet Use and Enjoyment. Grantor retains all rights and use of the Property not otherwise prohibited by the express terms of this Easement, including all rights of possession and of quiet use and enjoyment.

10. Vendor Agreements. Grantor is authorized to engage the services of a third party vendor(s) to perform various activities on behalf of Grantor that are related to the public use of the Property, including but not limited to guided trail rides/hikes and the sale of food or goods.

IV. GRANTEE' S AFFIRMATIVE RIGHTS.

Subject to the rights and interests of Grantor herein reserved, Grantor gives, grants, and conveys the following affirmative rights to Grantee:

1. Grantee shall have visual and physical access to the Property for the purposes of:
 - a. inspection, monitoring, and enforcement of the terms and conditions of this Easement, including, but not limited to, the prohibitions and restrictions on use set forth in Section II, *supra.*; and
 - b. scientific investigation and to monitor water resources on the Property, including the right to install wells and monitoring equipment.
 - c. Grantee shall furnish Grantor with reasonable advance notice of any physical access to or inspection of the Property.
 - d. As provided in Section V below, Grantee shall have the right to enforce, by proceedings at law or in equity, compliance with this Easement, including, but not limited to, the right to require restoration by Grantor of the Property to the pre-violation condition.
2. Grantor acknowledges and agrees that all development rights that are now or

hereafter allocated to, implied, reserved, or inherent in the Property, except as may be specifically reserved to the Grantor in this Easement, are hereby irrevocably transferred to the Grantee. Neither the Property nor any portion thereof may be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been transferred by this Easement shall be transferred to any other land pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nor shall any development rights or density credits be transferred onto the Property from other property.

V. GENERAL PROVISIONS.

1. Grantee's Remedies. In the event that Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor in accordance with the Notice provisions of this Section (Notice of Violation). Failure by Grantor to initiate curative action within fifteen (15) days of receipt of the Notice of Violation and to discontinue, abate, or cure the violation within thirty (30) days after receipt of the Notice of Violation, or a longer period of time if provided for in the Notice of Violation, shall entitle Grantee to bring an action at law or in equity before a court of competent jurisdiction to: (i) enforce the terms of this Easement; (ii) require the restoration of the Property to the condition that existed prior to such activity; (iii) recover liquidated damages in lieu of restoration of harvested sod or timber in the event Grantor harvests or causes to be harvested sod or timber in violation of this Easement, Grantor stipulates to liquidated damages for such violation in an amount equal to four hundred percent (400%) of the then fair market value of the harvested sod or timber; provided, however, nothing herein shall be construed to alter or waive Grantee's right to seek restoration of any portions of the Property altered in violation of this Easement; (iv) enjoin such noncompliance by a temporary or permanent injunction in a court of competent jurisdiction; (v) seek a mandatory injunction in a court of competent jurisdiction to compel Grantor to take such corrective action as required to remedy the violation; and (vi) recover any damages arising from noncompliance with this Easement. Damages arising from noncompliance with this Easement, when recovered, may be applied by Grantee, in its sole discretion, to corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire; provided, however, that Grantee shall provide notice to Grantor of the violation and Grantee's actions to prevent or mitigate said damage at the earliest feasible time.

Grantee does not waive or forfeit the right to take such action as may be necessary to ensure compliance with this Easement by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by Grantee in acting to enforce any restriction or exercise any rights under this Easement.

Nothing herein shall be construed to entitle Grantee to institute any enforcement proceedings against Grantor for any changes to the Property or plant or animal life thereon due to causes beyond Grantor's control, such as, without limitation, changes caused by fire, flood, storm, earthquake, major plant, or animal disease, acts of God, or the unauthorized wrongful acts of third persons. In the event of violations of this Easement caused by wrongful acts of unauthorized persons, if Grantee requests, Grantor agrees to assign such right of action to Grantee, to join in any

suit and/or to appoint Grantee as attorney-in-fact of Grantor for the purposes of pursuing an action against such third person.

2. Recordation. Grantor shall record this Easement in the Official Records of Volusia County, Florida, and provide the Grantee with a copy of the Easement with recording information affixed thereto within thirty (30) days of the recording date of the Easement. Grantee may request this Easement be re-recorded at any time Grantee may so require to preserve its rights. Grantor shall pay all recording costs necessary to record or re-record this Easement in the public records.

3. Taxes and Assessments. Grantor agrees to pay when due any real estate taxes or other assessments levied on the Property. Upon request of Grantee, Grantor shall furnish to Grantee timely proof of such payment. In the event that Grantor fails to pay any tax or assessment on the Property when due, Grantee, subject to the notice and cure provision of this Easement and in Grantee's absolute discretion, may pay such tax or assessment. Notwithstanding the foregoing provisions, Grantor shall have the right to contest in good faith by all appropriate proceedings the amount, applicability, or validity of any such taxes or assessments, and in connection with and during the pendency of such contest, the Grantor may refrain from paying such taxes or assessments.

4. Transfers by Grantor. Grantor agrees that Grantee's written approval is necessary prior to the transfer of any fee simple interest in the Property. Grantor agrees to notify Grantee of the names and addresses of any party to whom any interest in the Property is to be transferred at least sixty (60) days prior to the date of such transfer, and to incorporate by specific reference to this Easement's Public Records recording information the terms of this Easement in any deed or other legal instrument by which Grantor transfers any interest in the Property, including, without limitation, a leasehold or other possessory interest. The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit their enforceability in any way. This subsection V.4 does not apply to the "Excluded Parcel" as defined in this Easement.

5. Modification. The terms and conditions of this Easement may be modified only by mutual agreement, in writing, between the Grantor and the Grantee, or their respective successors or assigns and shall be recorded in the Public Records of Volusia County, Florida.

6. Attorneys' Fees and Costs. In any dispute between Grantor and Grantee arising out of this Easement which results in the filing of a lawsuit, each party in such action shall bear its own attorney fees and costs (including fees and costs of appeal) incurred by such party in regard to this dispute.

7. Successors and Assigns. The terms Grantor and Grantee as used herein shall include, without limitation, the successors and assigns of Grantor and Grantee. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of such Grantor and Grantee and shall continue as a servitude running in perpetuity with the Property.

8. Notices. Any notice, demand, consent, or communication that either party is required to give to the other hereunder shall be in writing and either served personally by hand-delivery, overnight mail, next-day courier delivery, by e-mail, which shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by "return receipt requested" function, as available, or a return email specifically acknowledging receipt; out-of-office or other automatic reply is not acceptable proof of receipt), by registered with a return

receipt or by certified mail, postage prepaid, addressed as follows:

To City: City of Debarry
16 Colomba Road
Debarry, FL 32713
Phone: (386) 668-2040
Email: crosamonda@debarry.org

To the District: St. Johns River Water Management District
Real Estate Services Program
4049 Reid Street
Palatka, Florida 32177
Phone: (386) 312-2342
Email: RealEstateServices@sjrwmd.com

or to such other address as any of the above parties shall from time to time designate by written notice, delivered pursuant to the terms of this paragraph. All such notices delivered hereunder shall be effective upon delivery or within five (5) days from the date of mailing if sent by registered or certified mail.

9. Good Faith Covenant. Each party hereto agrees that it shall act in good faith and deal fairly with the other party in performing its obligations and enforcing its rights as set forth in this Easement. Each party affirmatively commits to fulfill its obligations under this Easement honestly and with diligence and integrity. Each party further agrees to avoid impairing the other's performance, and each shall cooperate with the other party to fulfill its obligations timely and efficiently.

10. Mediation. From time to time, the terms and conditions of this Easement will require Grantor and Grantee to reach agreement on certain plans and courses of action described and contemplated herein. Grantor and Grantee agree to attempt to reach agreement on such plans and courses of action in good faith. In the event that, after a reasonable effort, Grantor and Grantee fail to reach agreement on a plan or course of action required to be undertaken pursuant to this Easement, then in that event, Grantor and Grantee may submit such issue to mediation. Mediation shall be held at a time and place mutually agreeable to Grantor and Grantee provided, however, in no event shall the mediation be scheduled later than ninety (90) days after notice provided by one party to the other requesting mediation on the issue in dispute. The mediation shall be held before a mediator who is mutually acceptable to both Grantor and Grantee and having expertise in the subject matter in dispute. This mediation provision is intended to apply to good faith disputes regarding mutual decisions to be reached by Grantor and Grantee under the terms and conditions of this Easement. In no event shall this mediation provision supplant or impede election of the remedies set forth in Paragraph V.1. herein. Grantor and Grantee shall share equally in the cost of the mediation.

11. Construction of Document. As used herein shall is always mandatory. This Easement was jointly prepared by the parties upon the review and advice of their respective legal counsel. It is the intent of the parties that, in construing the intent of the parties hereto, there shall be no presumption in favor of either party by virtue of which party is primarily responsible for

drafting this Easement.

12. Sovereign Immunity and Regulatory Authority. Nothing in this Easement shall be construed to constitute a waiver of the Grantor or Grantee's sovereign immunity over and above the waiver of sovereign immunity set forth in section 768.28, Florida Statutes, or waiver of any other statutory or common law immunity, including the recreational use immunity of the Grantee set forth in section 373.1395, Florida Statutes. Nothing herein shall be construed to restrict or abrogate the lawful regulatory jurisdiction or authority of Grantor or Grantee or relieve Grantor from the responsibility of obtaining all necessary permits or other regulatory authorizations from Grantee or other governmental agencies asserting jurisdiction over Grantor's activities.

13. Condemnation. If the Property, or any portion thereof, excluding the Excluded Parcel, is condemned under the power of eminent domain, or determined necessary for public utility purposes, Grantee and Grantor shall be entitled to compensation in accordance with applicable law to the extent and in the proportion that the rights of each party are affected by any such act of condemnation.

14. Environmental Warranty and Indemnification. Grantor shall not take any action to cause the Property to fail to be in compliance with applicable Environmental Laws. Moreover, subject to the limits of liability provided by Section 768.28, Florida Statutes, Grantor hereby indemnifies and agrees to save, defend and hold harmless, to the extent allowed by law, Grantee from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs and other liabilities (whether legal or equitable in nature including, without limitations, attorney's fees and costs) claimed or asserted by or on behalf of any person or governmental authority arising from or connected with the release or threatened release by Grantor of any Hazardous Materials on, at, beneath, or from the Property, or arising from or connected with a violation by Grantor (or Grantor's agents, employees, invitees or guests) of Environmental Laws. Provided, however, in the event that Grantee is named or joined as a party in a suit or proceeding alleging a violation of Environmental Laws (or a violation by Grantor's agents, employees, invitees or guests), Grantee shall give Grantor timely notice of such suit or proceeding. Upon receipt of such notice, Grantor shall tender a defense of Grantee in such action or proceeding. Grantee shall have the right to reasonably approve Grantor's selection of counsel for such defense. So long as Grantor tenders and maintains such defense on behalf of Grantee, the indemnity provisions of this Paragraph shall not extend to attorney's fees and costs incurred or paid by Grantee in defense of such suit or proceeding if such fees and costs are independent of the defense tendered by Grantor.

The term Environmental Law shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements regulating or imposing standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive materials, resource protection, subdivision, inland wetlands and water courses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect, including, but not limited to, as amended, the Federal Solid Waste Disposal Act (SWDA"), the Federal Clean Air Act (CAA), the Federal Clean Water Act (CWA), the Federal Resource Conservation and Recovery Act of 1976 (RCRA"), the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), the Federal Emergency Planning and Community Right-To-Know Act (EPCRA), the Federal Insecticide,

Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA"), Chapters 161, 253, 373, 376, and 403, Florida Statutes, and the rules and regulations of the (i) United States Environmental Protection Agency, (ii) the Florida Department of Environmental Protection, and (iii) the St. Johns River Water Management District, now or at any time hereafter in effect.

The term Hazardous Materials shall mean any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment. The term Hazardous Materials shall not include pesticides, herbicides, and fertilizer applied in accordance with (i) label instructions, (ii) any applicable permitting process, and (iii) any applicable BMPs.

15. General Indemnification. To the extent allowed by law, Grantor shall indemnify and hold harmless the Grantee, their employees, agents and assigns for any and all liabilities, claims, demands, losses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs and reasonable attorney's fees and attorney's fees on appeal) to which Grantee may be subject or incur relating to the Property, which may arise from Grantor's or its agent's contractor's, or invitee's negligent acts or omissions or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations by Grantor or its agents, contractors, or invitees of any federal, state or local laws, including all Environmental Laws, all subject to the limits of liability provided by Florida Statute 768.28. Provided, however Grantor has no obligation under subsections V.14, V.15, or otherwise to indemnify or hold harmless Grantee or its employees, agents, successors, or assigns for damages, injuries, claims, disputes, judgments related to or caused solely by Grantee, its employees, agents successors or assigns.

16. Best Management Practices. As used in this Easement, the term Best Management Practices shall be deemed to be those BMPs that are or may be established for permissible uses of the Property by the Florida Department of Agriculture and Consumer Services (FDACS), University of Florida Institute of Food and Agricultural Sciences (IFAS), Natural Resources Conservation Service (NRCS), the local soil and water conservation district, or in the absence of the foregoing, those BMPs then utilized as the prevailing practices for such use.

VI. EASEMENT DOCUMENTATION REPORT.

Grantor and Grantee acknowledge and agree that an Easement Documentation Report (the Report) of the Property was prepared prior to closing and attached hereto as Exhibit B. Grantor and Grantee acknowledge and agree that the Report is based upon the best available data, but the limits depicted have not been fully verified. In the event a controversy arises with respect to the nature and extent of the physical, ecological, or biological condition of the Property, the parties may utilize the Report and any other relevant documents, surveys, photographs, field inspections, or other information to assist in the resolution of the controversy. The Report shall serve, however, as the principal base line for the biological, ecological, and physical condition of the Property on the date of this Easement.

VII. MANAGEMENT PLAN AND ANNUAL REPORT.

Grantor shall manage the Property in accordance with the Management Plan until such time as the Management Plan is revised by Grantor. The Management Plan, and any revision thereto, shall be approved by Grantee and shall describe Grantor's uses, operations and improvements upon the Property as reserved or allowed to Grantor by this Easement. The Management Plan shall set forth Grantor's plans for the Property; silvicultural operations; public recreation (including appropriate limitation on the number of persons utilizing the Property); use of pesticides, herbicides, and fertilizers; wildlife management; construction, including, but not limited to, structures, and trails; restoration plans; and other land use activities upon the Property. The Management Plan shall specify that these activities are to be conducted upon the Property in accordance with the applicable BMPs and this Easement.

The Management Plan shall be subject to revision by amendment submitted by Grantor to Grantee pursuant to Paragraph V.8. herein. Proposed amendments shall be submitted for Grantee's review and approval no more frequently than semi-annually, but no less frequently than every ten (10) years. Grantee shall have up to sixty (60) days to review the Management Plan amendment and submit comments to Grantor or approve the amended Plan. Grantor within sixty days, the amendment shall be deemed to have been approved by Grantee. Grantor shall incorporate Grantee's comments in the Management Plan or otherwise address the comments to Grantee's satisfaction. If Grantee does not respond to the Management Plan and each amendment shall be consistent with the purposes and provisions of this Easement.

Each year, on or before the anniversary date of the date of recording of this Easement, or such other date that is mutually agreed upon in writing by Grantor and Grantee, Grantor shall prepare and furnish to Grantee an annual report that includes: (i) a statement documenting Grantor's compliance with the Management Plan and the Easement for the preceding year, or if Grantor is in not in compliance with any part of the Management Plan or Easement, a statement identifying which part of the Management Plan or Easement Grantor is not in compliance with, and explanation as to why Grantor is not in compliance, and the steps Grantor intends to take to come into compliance along with a timeline for each item identified; (ii) Grantor's activities upon and use of the Property during the preceding year; and (iii) Grantor's proposed activities upon and use of the Property during the current/upcoming year.

VIII. DUTY OF CARE.

Grantor and Grantee recognize and acknowledge the natural, scenic, aesthetic, ecological and hydrological character of the Property and have the common purpose and intent of the conservation and preservation of the Property in perpetuity. Accordingly, Grantor hereby acknowledges a continuing duty of care to Grantee imposed by this Easement upon Grantor to carry out the intent and purpose of this Easement with regard to Grantor's ownership and occupancy of the Property.

IX. EXCLUDED PARCEL.

That certain property generally identified on the attached Exhibit "C" consisting of approximately four (4) acres and part of the Property needed for the FDOT road expansion project (FDOT Project Number 408464-2-32-01) as depicted in Exhibit "C" attached hereto and incorporated herein, and referenced on that certain plan sheet issued by FDOT for the construction and long-term maintenance of an FDOT project's stormwater management pond is excluded from this Easement.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have duly executed this Easement, to become effective as of the day and year first above written.

GRANTOR

ATTEST:

CITY OF DEBARY

Carmen Rosamonda
City Manager

By _____
Karen Chasez, Mayor

Date: _____

Date: _____

Approved by City Counsel
as to form and legality
By _____

Signed, sealed, and delivered
in the presence of:

GRANTEE

**ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT**, a public body
existing under Chapter 373, F.S.

BY: _____
Robert M. Bradley, Governing Board Chair

(SEAL)

ATTEST:

BY: _____
J. Chris Peterson, Governing Board Secretary

**For use and reliance only by
St. Johns River Water Management District,
Legal Form and Content Approved:**

By: _____
Karen Ferguson, Esq.
Office of General Counsel

STATE OF FLORIDA
COUNTY OF PUTNAM

The foregoing instrument was acknowledged before me by means of **physical presence** or **online notarization**, this ___ day of _____, 2023, by Robert M. Bradley, as Chair of the Governing Board of the St. Johns River Water Management District, on behalf of the District, who is personally known to me and who did not take an oath.

NOTARY PUBLIC, State of Florida
My Commission Expires: _____
My Commission No.: _____

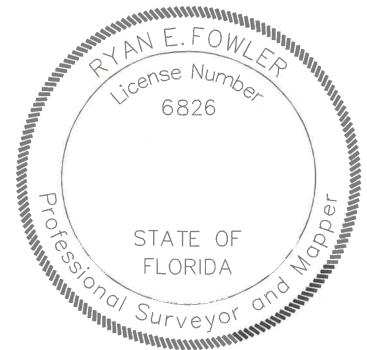
Sketch & Description
Palm Road
Parcel Exhibit A
Section 35, Township 18 South, Range 30 East
Section 2, Township 19 South, Range 30 East
Volusia County, Florida

Parcel Description: From American Surveying & Mapping, Inc ALTA Survey Dated 08/05/2021.

A PARCEL OF LAND SITUATED IN SECTION 35, TOWNSHIP 18 SOUTH, RANGE 30 EAST AND SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:
 BEGIN AT THE NORTHWEST CORNER OF LOT 43, BLOCK A, PLANTATION ESTATES UNIT 5, ACCORDING TO A MAP IN MAP BOOK 11, PAGE 239, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM ROAD RUN NORTH 13°15'20" EAST A DISTANCE OF 813.32 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF GARDENIA AVENUE PER THE PLAT OF PLANTATION ESTATES UNIT 25 AS RECORDED IN MAP BOOK 23, PAGE 91, OF SAID PUBLIC RECORDS; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE ALONG SAID SOUTHEASTERLY RIGHT-OF-WAY LINE OF GARDENIA AVENUE RUN NORTH 65°00'00" EAST A DISTANCE OF 1524.71 FEET TO A POINT ON THE WESTERLY LIMITED ACCESS RIGHT-OF-WAY LINE OF STATE ROAD 400 (INTERSTATE HIGHWAY NO. 4) PER STATE OF FLORIDA STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. 79000-2871, SECTION NO. 7716-401 AND 7911-401; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY LINE ALONG SAID WESTERLY LIMITED ACCESS RIGHT-OF-WAY LINE RUN THE FOLLOWING SEVEN (7) COURSES AND DISTANCES: (1) SOUTH 15°37'15" WEST A DISTANCE OF 567.41 FEET; (2) TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2784.79 FEET AND A CENTRAL ANGLE OF 03°47'25", AND A CHORD DISTANCE OF 184.19 FEET WHICH BEARS SOUTH 23°15'53" WEST; THENCE RUN SOUTH WESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 184.22; (3) TO A POINT OF COMPOUND CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 610.00 FEET AND A CENTRAL ANGLE OF 16°36'27", AND A CHORD DISTANCE OF 176.19 FEET THAT BEARS SOUTH 33°27'50" WEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 176.81 FEET; (4) TO A POINT OF COMPOUND CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 350.00 FEET AND A CENTRAL ANGLE OF 31°51'39"; AND A CHORD DISTANCE OF 192.13 FEET THAT BEARS SOUTH 57°41'53" WEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 194.63 FEET; (5) THENCE DEPARTING SAID CURVE ALONG A TANGENT LINE RUN SOUTH 73°37'42" WEST A DISTANCE OF 320.00 FEET; (6) TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 400.00 FEET, AND A CENTRAL ANGLE OF 88°26'57", AND A CHORD DISTANCE OF 557.98 FEET WHICH BEARS SOUTH 30°17'35" WEST; THENCE RUN SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 617.49 FEET; (7) THENCE DEPARTING SAID CURVE RUN SOUTH 13°50'04" EAST A DISTANCE OF 16.38 FEET TO A POINT ON THE NORTHERLY LINE OF AFOREMENTIONED BLOCK A OF THE PLAT OF PLANTATION ESTATES UNIT 5; THENCE DEPARTING AFORESAID WESTERLY LIMITED ACCESS RIGHT-OF-WAY LINE AND ALONG SAID NORTHERLY LINE OF BLOCK A RUN NORTH 80°39'40" WEST A DISTANCE OF 4.29 FEET TO A POINT AT A CHANGE OF DIRECTION ALONG SAID NORTHERLY LINE OF BLOCK A; THENCE ALONG SAID NORTHERLY LINE OF BLOCK A RUN NORTH 76°44'40" WEST A DISTANCE OF 508.00 FEET RETURNING TO THE POINT OF BEGINNING.

SURVEY NOTES:

- 1.) Paper copies of this survey are not valid without the original signature and raised seal of a Florida Licensed Surveyor and Mapper. Digital copies are not valid without the digital signature of a Florida Licensed Surveyor and Mapper.
- 2.) The bearing structure for this survey is based on an assumed bearing of N 13°15'20" E for the Easterly right-of-way boundary of Palm Road.
- 3.) No record could be found defining Parcels ID: 900200000041 & 900200000042 independently.
- 4.) Due to discrepancies within the legal description, the boundary of Parcels 1 and 2 could not be defined with any certainty.
- 5.) This exhibit is based on a survey prepared by American Surveying & Mapping, Inc ALTA survey dated 08/05/2021, Inc. Drawing: 210732 - PALM ROAD ALTA_UPDATED
- 6.) This exhibit has been performed without benefit of title policy or abstract. Therefore surveyor can make no guarantees to ownership or encumbrances. There may be additional easements and restrictions that can be found within the Public Records of Volusia County.
- 7.) THIS IS NOT A BOUNDARY SURVEY.



Ryan E. Fowler P.S.M. No. 6826
 SurvTech Solutions, Inc. LB No. 7340

Drafted By: K. Bowman
 Date Drafted: 06/23/23

Approved By: R. Fowler
 Date Approved: 07/14/23

Last Field Date: N/A
 Field Book/Page: N/A

Project No.: 230994
 Ref. No.: N/A

Drawing Name: 230994_SK
 Revision Date: N/A



SURVTECH SOLUTIONS, INC. SURVEYORS AND MAPPERS
 10220 U.S. Highway 92 East, Tampa, FL 33610
 phone: (813)-621-4929, fax: (813)-621-7194, Licensed Business #7340
 email: rfowler@survtechsolutions.com http://www.survtechsolutions.com

Sketch & Description

Palm Road

Parcel Exhibit A

Section 35, Township 18 South, Range 30 East

Section 2, Township 19 South, Range 30 East

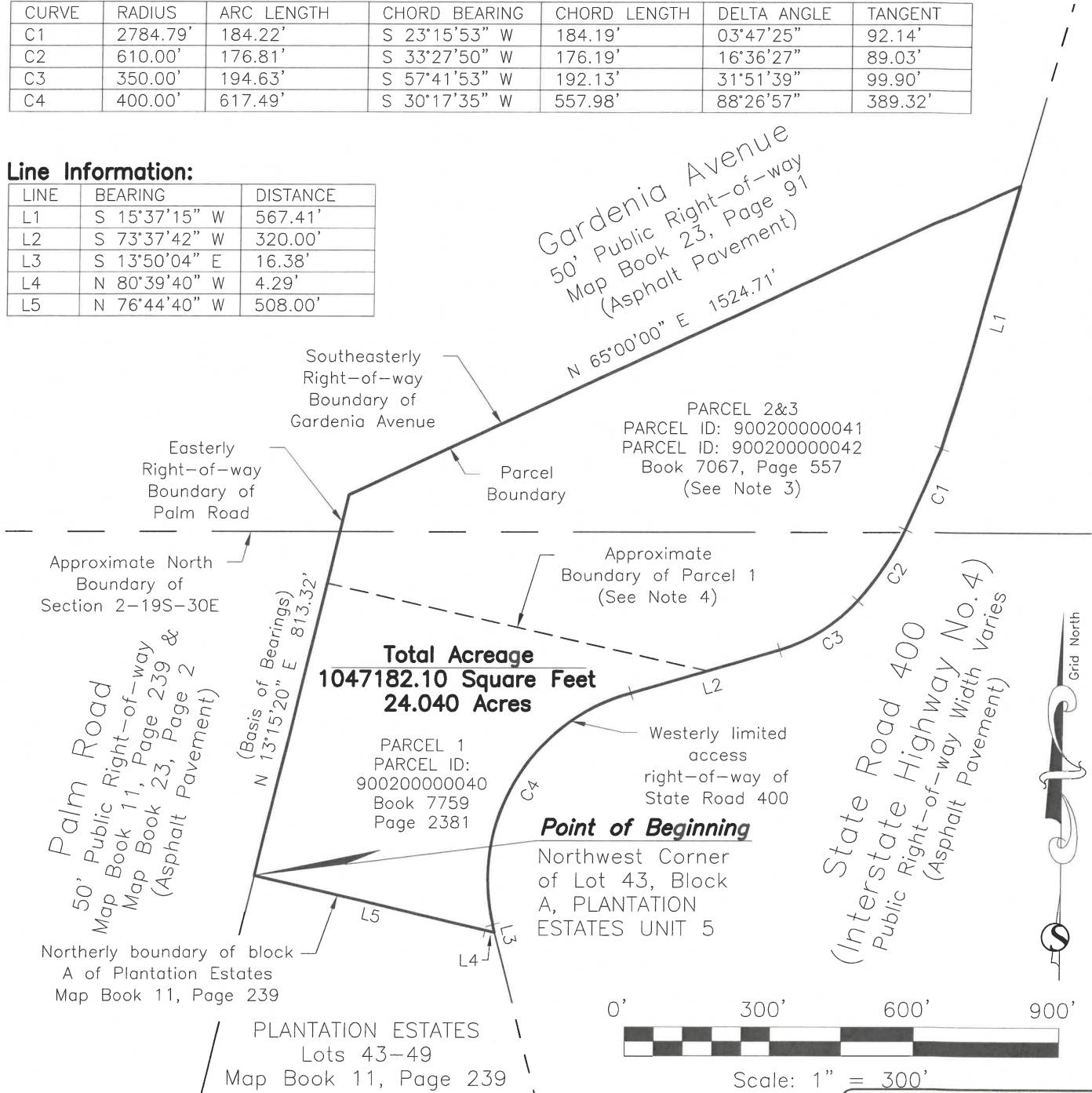
Volusia County, Florida

Curve Information:

CURVE	RADIUS	ARC LENGTH	CHORD BEARING	CHORD LENGTH	DELTA ANGLE	TANGENT
C1	2784.79'	184.22'	S 23°15'53" W	184.19'	03°47'25"	92.14'
C2	610.00'	176.81'	S 33°27'50" W	176.19'	16°36'27"	89.03'
C3	350.00'	194.63'	S 57°41'53" W	192.13'	31°51'39"	99.90'
C4	400.00'	617.49'	S 30°17'35" W	557.98'	88°26'57"	389.32'

Line Information:

LINE	BEARING	DISTANCE
L1	S 15°37'15" W	567.41'
L2	S 73°37'42" W	320.00'
L3	S 13°50'04" E	16.38'
L4	N 80°39'40" W	4.29'
L5	N 76°44'40" W	508.00'



PROJECT NO.: 230994
 REF. No.: N/A
 LAST FIELD DATE: N/A



SURVTECH SOLUTIONS, INC.

10220 U.S. Highway 92 East, Tampa, FL 33610
 phone: (813)-621-4929, fax: (813)-621-7194, Licensed Business #7340
 email: rfwler@survtechsolutions.com <http://www.survtechsolutions.com>

APPROVED
 Richard Guilfoyle

EXHIBIT B

B-1 – Wetland Delineation

B-2 – Tree Canopy and Open Space

B-3 – Existing Roads, Trails & Fire lines

B-4 - SOILS MAP

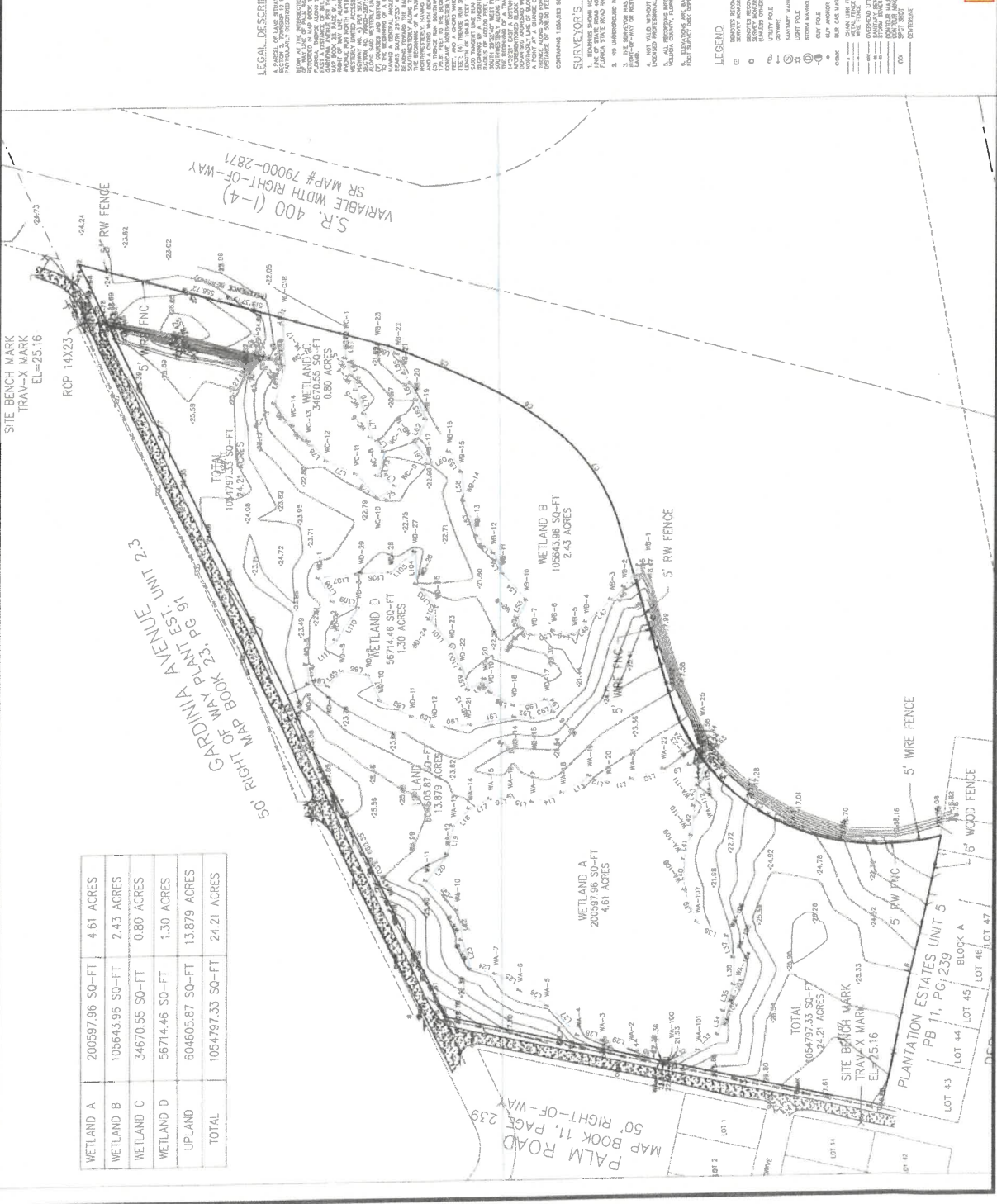
1. I HEREBY CERTIFY THAT THE SURVEY CONTAINED HEREIN IS A TRUE AND CORRECT STATEMENT OF THE FACTS AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF FLORIDA. I AM NOT PROVIDING ANY PROFESSIONAL OPINION OR CONSTRUCTION OF THE SURVEY. I AM NOT PROVIDING ANY PROFESSIONAL OPINION OR CONSTRUCTION OF THE SURVEY. I AM NOT PROVIDING ANY PROFESSIONAL OPINION OR CONSTRUCTION OF THE SURVEY.

NO.	DATE	REVISIONS

TOPOGRAPHIC SURVEY
OF
PALM ROAD
PORTION OF SECTION 35, TOWNSHIP 19 SOUTH, RANGE 30 EAST AND SECTION 35 AND 2
SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST AND SECTION 35 AND 2
VOLUCLIA COUNTY, FLORIDA



JOB NO. 21022
FIELD DATE: 1/15/21
DRAWN BY: SK
APPROVED BY: EBT
DRAWING FILE #
PALM ROAD TPO-082



LEGAL DESCRIPTION

SUBJECTS TO BE SURVEYED ARE SHOWN IN RED ON THE ORIGINAL SURVEY MAP AND ARE NOT TO BE CONSIDERED AS PART OF THE SURVEY UNLESS SPECIFICALLY NOTED OTHERWISE.

LEGEND

EXHIBIT B-1, PG 1 OF 2

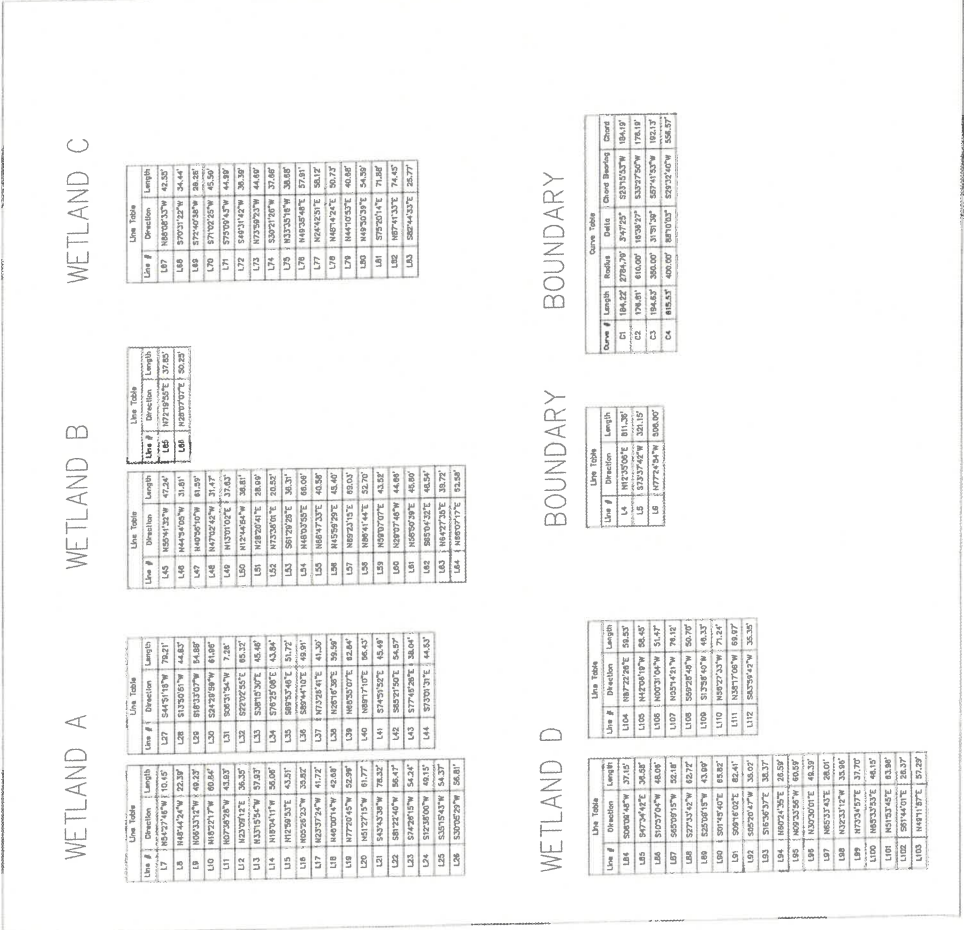


TOPOGRAPHIC SURVEY
 OF
 PALM ROAD
 SECTION 2, TOWNSHIP 18 SOUTH, RANGE 30 EAST AND
 SECTION 35 AND 2
 VOLUCLA COUNTY, FLORIDA

NO.	DATE	REVISIONS

SHEET 2 OF 2

EXHIBIT B-1, PG 2 OF 2



WETLAND A

Line #	Direction	Length
L17	N85°27'46"W	10.15'
L8	N44°54'24"W	22.35'
L9	N00°33'17"W	69.25'
L10	N19°23'17"W	69.64'
L11	N07°38'28"W	43.83'
L12	N42°30'14"E	38.35'
L13	N42°13'54"W	59.83'
L14	N18°44'11"W	26.05'
L15	N12°39'53"E	43.21'
L16	N02°39'32"W	38.62'
L17	N62°37'24"W	41.72'
L18	N46°30'14"W	43.88'
L19	N77°29'05"W	32.98'
L20	N01°27'15"W	10.77'
L21	S42°33'28"W	78.32'
L22	S81°42'49"W	28.47'
L23	S72°58'08"W	38.52'
L24	S21°42'13"W	64.33'
L25	S20°22'29"W	58.61'

WETLAND B

Line #	Direction	Length
L17	S44°13'18"W	78.21'
L28	S11°32'01"W	44.83'
L29	S81°33'07"W	54.88'
L30	S04°31'54"W	7.28'
L31	S72°02'55"E	65.32'
L32	S28°15'20"E	43.84'
L33	S89°33'46"E	51.72'
L34	S89°44'10"E	46.91'
L37	N17°32'41"E	41.30'
L38	N05°15'20"E	39.98'
L39	N46°30'14"W	43.88'
L40	N89°17'07"E	86.63'
L41	S14°33'22"E	18.49'
L42	S80°27'20"E	24.07'
L43	S17°42'25"E	28.07'
L44	S73°30'31"E	14.03'

WETLAND C

Line #	Direction	Length
L45	N25°41'32"W	42.24'
L46	N44°34'00"W	21.81'
L47	N49°24'07"W	61.23'
L48	N17°02'42"W	31.47'
L49	N13°01'07"E	37.62'
L50	N12°44'54"W	36.41'
L51	N18°26'41"E	28.89'
L52	N12°28'01"E	20.82'
L53	S01°28'25"E	30.31'
L54	N48°53'28"E	65.40'
L55	N48°47'33"E	45.98'
L56	N45°58'29"E	43.46'
L57	N49°23'13"E	63.03'
L58	N08°41'44"E	32.70'
L59	N39°47'42"W	44.88'
L60	N05°29'48"W	46.89'
L61	S85°15'32"E	46.29'
L62	N44°37'22"E	48.33'
L63	N42°27'17"E	52.85'

BOUNDARY

Line #	Direction	Length
L45	N45°41'32"W	42.24'
L46	N17°18'35"E	37.65'
L47	N28°37'07"E	58.29'

BOUNDARY

Line #	Direction	Length
L67	N85°27'46"W	24.44'
L68	S72°42'38"W	28.35'
L69	S71°02'25"W	45.59'
L70	S75°09'42"W	44.88'
L71	S49°31'42"W	38.39'
L72	S30°27'10"W	44.89'
L73	N43°23'18"W	38.88'
L74	N49°35'48"E	57.81'
L75	N24°23'21"E	50.12'
L76	N44°30'14"E	43.88'
L77	N44°30'14"E	43.88'
L78	N44°30'14"E	43.88'
L79	N44°30'14"E	43.88'
L80	N44°30'14"E	43.88'
L81	S75°20'15"E	71.45'
L82	N89°43'32"E	74.85'
L83	S85°44'32"E	25.77'

BOUNDARY

Curve #	Length	Radius	Delta	Chord Bearing	Chord
C1	194.82'	2781.70'	57°25'	S33°15'37"W	19.418'
C2	176.81'	616.00'	63°30'	S33°27'50"W	176.118'
C3	184.83'	380.00'	37°30'	S29°13'30"W	182.118'
C4	184.83'	400.00'	38°10'	S29°24'08"W	188.237'

BOUNDARY

Line #	Direction	Length
L4	N12°20'07"E	811.20'
L5	S13°37'42"W	221.15'
L6	S77°24'54"W	108.00'

BOUNDARY

Line #	Direction	Length
L4	N12°20'07"E	811.20'
L5	S13°37'42"W	221.15'
L6	S77°24'54"W	108.00'

BOUNDARY

Line #	Direction	Length
L4	N12°20'07"E	811.20'
L5	S13°37'42"W	221.15'
L6	S77°24'54"W	108.00'

BOUNDARY

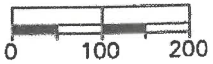
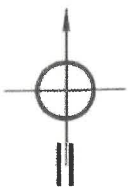
Line #	Direction	Length
L4	N12°20'07"E	811.20'
L5	S13°37'42"W	221.15'
L6	S77°24'54"W	108.00'

BOUNDARY

Line #	Direction	Length
L4	N12°20'07"E	811.20'
L5	S13°37'42"W	221.15'
L6	S77°24'54"W	108.00'



N



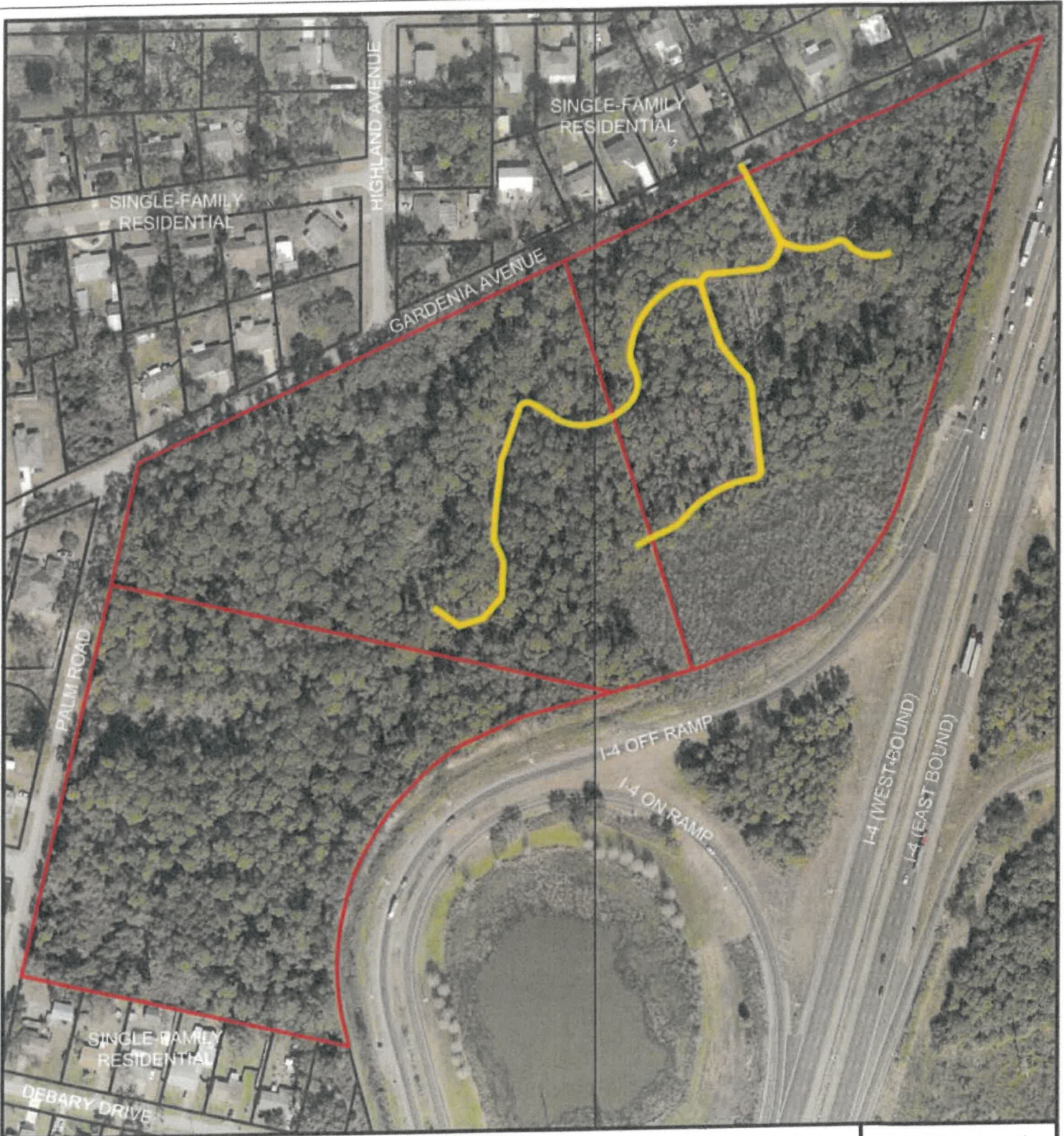
- PARCEL LINE
(VOLUSIA COUNTY GIS PARCEL DATA)
- LANDUSE LINE (APPROXIMATE)
(FDEP GEOSPATIAL OPEN DATA)

UPLAND: 13.88 ACRES
 WETLAND: 9.14 ACRES
 TOTAL: 24.21 ACRES
 (VALUES AS PROVIDED BY AMERICAN SURVEYING & MAPPING, INC., NOV. 2021)

AERIAL IMAGERY FROM
 FDOT 2021

EXHIBIT "B-2"

TREE CANOPY & OPEN SPACE



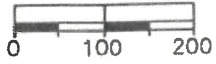
AERIAL IMAGERY FROM
FDOT 2021

- PARCEL LINE
(VOLUSIA COUNTY GIS PARCEL DATA)
- UNPAVED VEHICULAR ACCESS
(APPROXIMATE, NOT FIELD SURVEYED)

*NO KNOWN EXISTING BUILDING OR SLAB STRUCTURES.

EXISTING ROADS, TRAILS, AND FIRE LINES

EXHIBIT "B-3"



Custom Soil Resource Report for Volusia County, Florida

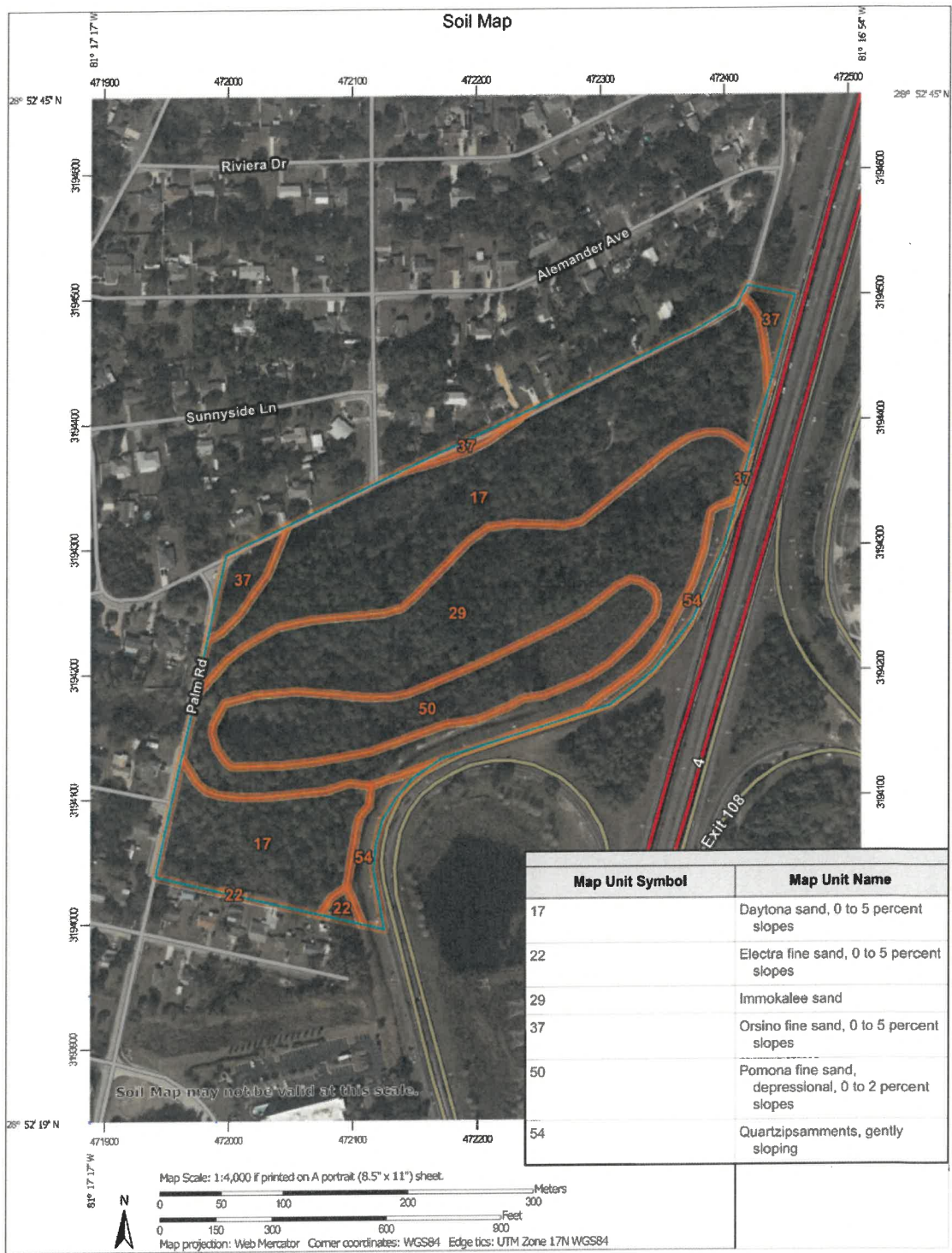


October 23, 2023



SOILS MAP

EXHIBIT "B-4"
PG 1 OF 3



SOILS MAP



SOILS MAP

MAP LEGEND

- Area of Interest (AOI)
 - Area of Interest (AOI)
- Soils
 - Soil Map Unit Polygons
 - Soil Map Unit Lines
 - Soil Map Unit Points
- Special Point Features
 - Blowout
 - Borrow Pit
 - Clay Spot
 - Closed Depression
 - Gravel Pit
 - Gravelly Spot
 - Landfill
 - Lava Flow
 - Marsh or swamp
 - Mine or Quarry
 - Miscellaneous Water
 - Perennial Water
 - Rock Outcrop
 - Saline Spot
 - Sandy Spot
 - Severely Eroded Spot
 - Sinkhole
 - Slide or Slip
 - Sodic Spot
- Water Features
 - Streams and Canals
- Transportation
 - Rails
 - Interstate Highways
 - US Routes
 - Major Roads
 - Local Roads
- Background
 - Aerial Photography
- Soil Map Unit Features
 - Spill Area
 - Stony Spot
 - Very Stony Spot
 - Wet Spot
 - Other
 - Special Line Features

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:20,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL:
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Volusia County, Florida
 Survey Area Date: Version 22, Sep 6, 2023

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jan 6, 2022—Mar 21, 2022

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Exxhibit C
Excluded Parcel

Sketch & Description

Palm Road

Parcel Exhibit D

Section 35, Township 18 South, Range 30 East

Section 2, Township 19 South, Range 30 East

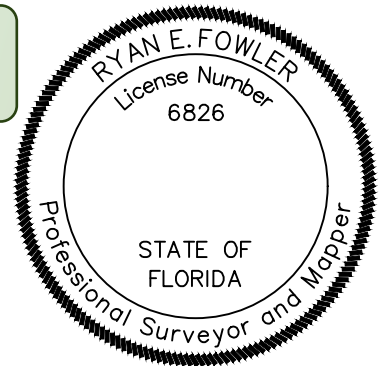
Volusia County, Florida

Parcel Description: The approximate location of the proposed pond boundary for the FDOT Financial Project ID: 408464-2-32-01

A PARCEL OF LAND SITUATED IN SECTION 35, TOWNSHIP 18 SOUTH, RANGE 30 EAST AND SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT A POINT MARKING THE NORTHWEST CORNER OF LOT 43, BLOCK A, PLANTATION ESTATES UNIT 5, ACCORDING TO MAP BOOK 11, PAGE 239, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE COINCIDENT WITH THE EASTERLY RIGHT-OF-WAY BOUNDARY OF PALM ROAD PER SAID PLANTATION ESTATES UNIT 5, NORTH 13°15'20" EAST A DISTANCE OF 813.32 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY BOUNDARY OF GARDENIA AVENUE PER THE PLAT OF PLANTATION ESTATES UNIT 25 AS RECORDED IN MAP BOOK 23, PAGE 91, OF SAID PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY BOUNDARY, COINCIDENT WITH SAID SOUTHEASTERLY RIGHT-OF-WAY BOUNDARY OF GARDENIA AVENUE, NORTH 65°00'00" EAST A DISTANCE OF 1524.71 FEET TO A POINT ON THE WESTERLY LIMITED ACCESS RIGHT-OF-WAY BOUNDARY OF STATE ROAD 400 (INTERSTATE HIGHWAY NO. 4) PER STATE OF FLORIDA STATE ROAD DEPARTMENT RIGHT-OF-WAY MAP SECTION NO. 79000-2871, SECTION NO. 7716-401 AND 7911-401; THENCE DEPARTING SAID SOUTHEASTERLY RIGHT-OF-WAY BOUNDARY, COINCIDENT WITH SAID WESTERLY LIMITED ACCESS RIGHT-OF-WAY BOUNDARY THENCE SOUTH 15°37'15" WEST A DISTANCE OF 370.51 FEET TO THE **POINT OF BEGINNING**; THENCE COINCIDENT WITH SAID WESTERLY LIMITED ACCESS RIGHT-OF-WAY BOUNDARY FOR THE FOLLOWING FIVE (5) COURSES: 1) SOUTH 15°37'15" WEST A DISTANCE OF 196.91 FEET TO A POINT ON A NON-TANGENT CURVE TO THE RIGHT, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 2784.79 FEET AND A CENTRAL ANGLE OF 03°47'25", AND A CHORD DISTANCE OF 184.19 FEET WHICH BEARS SOUTH 23°15'53" WEST; 2) THENCE COINCIDENT WITH THE ARC OF SAID CURVE 184.22 FEET TO A POINT OF COMPOUND CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 610.00 FEET AND A CENTRAL ANGLE OF 16°36'27", AND A CHORD DISTANCE OF 176.19 FEET THAT BEARS SOUTH 33°27'50" WEST; 3) THENCE COINCIDENT WITH THE ARC OF SAID CURVE 176.81 FEET TO A POINT OF COMPOUND CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 350.00 FEET AND A CENTRAL ANGLE OF 31°51'39", AND A CHORD DISTANCE OF 192.13 FEET THAT BEARS SOUTH 57°41'53" WEST; 4) THENCE COINCIDENT WITH THE ARC OF SAID CURVE 194.63 FEET TO A POINT OF TANGENCY; (5) THENCE SOUTH 73°37'42" WEST A DISTANCE OF 79.04 FEET; THENCE DEPARTING SAID WESTERLY LIMITED ACCESS RIGHT-OF-WAY BOUNDARY NORTH 16°15'15" WEST A DISTANCE OF 333.22 FEET; THENCE NORTH 60°43'10" EAST A DISTANCE OF 635.63 FEET TO THE **POINT OF BEGINNING** CONTAINING AN AREA OF 164.853 SQUARE FEET, 3.78 ACRES, MORE OR LESS

APPROVED



SURVEY NOTES:

- 1.) Paper copies of this survey are not valid without the original signature and raised seal of a Florida Licensed Surveyor and Mapper. Digital copies are not valid without the digital signature of a Florida Licensed Surveyor and Mapper.
- 2.) The bearing structure for this survey is based on an assumed bearing of N 13°15'20" E for the Easterly right-of-way boundary of Palm Road.
- 3.) This exhibit is based on the approximate location of the proposed pond boundary in FDOT Financial Project ID: 408464-2-32-01 and a survey prepared by American Surveying & Mapping, Inc ALTA survey dated 08/05/2021, Inc. Drawing: 210732 - PALM ROAD ALTA_UPDATED for informational purposes only.
- 4.) This exhibit has been performed without benefit of title policy or abstract. Therefore surveyor can make no guarantees to ownership or encumbrances. There may be additional easements and restrictions that can be found within the Public Records of Volusia County.
- 5.) THIS IS NOT A BOUNDARY SURVEY.

Ryan E. Fowler P.S.M. No. 6826
SurvTech Solutions, Inc. LB No. 7340

Drafted By: K. Bowman
Date Drafted: 12/15/23

Approved By: R. Fowler
Date Approved: 12/15/23

Last Field Date: N/A
Field Book/Page: N/A

Project No.: 230994
Ref. No.: N/A

Drawing Name: 230994_D
Revision Date: 12/15/23

Sur VEYING Today With
Tomor row's technology



Sur vtch solutions, Inc. surveyors and mappers

10220 U.S. Highway 92 East, Tampa, FL 33610

phone: (813)-621-4929, fax: (813)-621-7194, Licensed Business #7340

email: rfowler@survtechsolutions.com http://www.survtechsolutions.com

Sketch & Description

Palm Road

Parcel Exhibit D

Section 35, Township 18 South, Range 30 East

Section 2, Township 19 South, Range 30 East

Volusia County, Florida

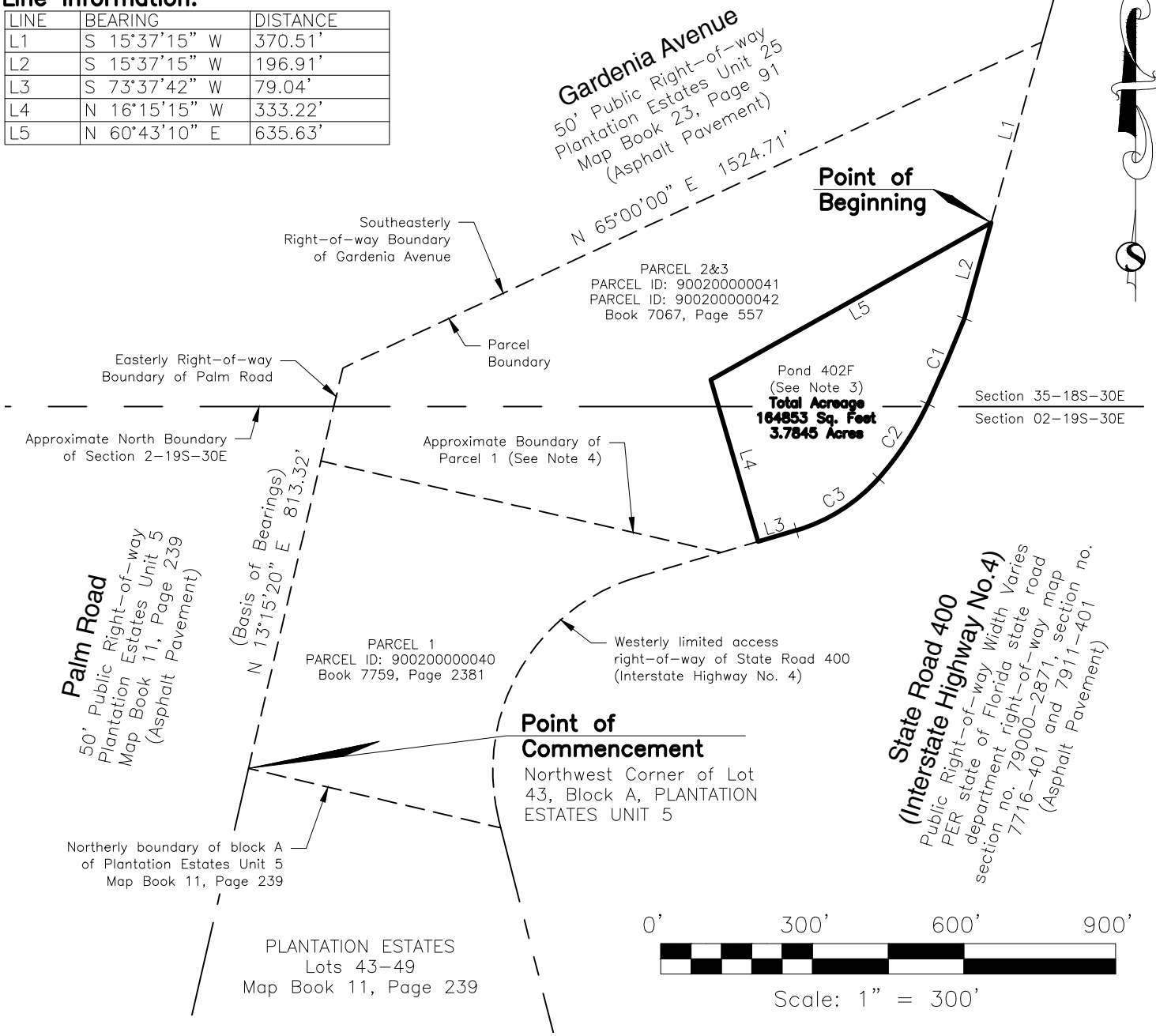
Curve Information:

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	2784.79'	184.22'	184.19'	S 23°15'53" W	3°47'25"
C2	610.00'	176.81'	176.19'	S 33°27'50" W	16°36'27"
C3	350.00'	194.63'	192.13'	S 57°41'53" W	31°51'39"

APPROVED

Line Information:

LINE	BEARING	DISTANCE
L1	S 15°37'15" W	370.51'
L2	S 15°37'15" W	196.91'
L3	S 73°37'42" W	79.04'
L4	N 16°15'15" W	333.22'
L5	N 60°43'10" E	635.63'



PROJECT NO.: 230994
 REF. No.: N/A
 LAST FIELD DATE: N/A



SURVTECH SOLUTIONS, INC. SURVEYORS AND MAPPERS

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