



CITY COMMISSION - CITY OF WILDWOOD

Mayor/Commissioner – Ed Wolf – Seat 1

Mayor Pro Tem/Commissioner – Pamala Harrison-Bivins – Seat 2

Joe Elliott – Seat 3

Marcos Flores – Seat 4

Julian Green – Seat 5

Jason McHugh – City Manager

Agenda

Special Meeting

March 6, 2023 9:00 AM

City Hall Commission Chamber

100 N Main Street

Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Department, ADA Coordinator, at 352-330-1330, Ext. 102, forty-eight (48) hours in advance of the meeting.

F.S.S. 286.0105A - If a person decides to appeal any decision made by the Commission with respect to any matter considered at this meeting, they will need a record of the proceedings, and that for such purpose they 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. The City of Wildwood DOES NOT provide this verbatim record.

1. Call to Order

2. Consent Agenda/Informational Items

(A consent agenda may be presented by the Mayor at the beginning of a meeting. Items may be removed from the consent agenda at the request of any one Commissioner. Items not removed may be adopted by general consent without debate. Removed items may be either taken up immediately after the consent agenda or placed later on the agenda at the discretion of the Commission.)

3. Presentations and/or Proclamations

A. *DEVELOPMENT UPDATE*

4. Public Hearings - Timed

5. Public Forum - 4 minute time limit
6. Ordinances First Reading Only (No Vote)
7. Resolutions for Approval
8. Financial & Contracts & Agreements

A. *WWTP CMAR CONTRACT WITH PC CONSTRUCTION*

9. General Items for Consideration/Discussion and Other Business

A. *COMMISSION MEETING RULES AND ORDER*

10. Appointments
11. City Manager Reports
12. Other Department Reports
13. Commission Members Reports
14. City Attorney Reports
15. Adjournment

Upcoming Events

March 11, 2023 - March Wildwood Madness Basketball Tournament at MLK Park
at 10am

March 13, 2023 - City Commission Meeting at 9am

March 27, 2023 - City Commission Meeting at 7pm

March 6, 2023 9:00 AM

CITY COMMISSION OF THE CITY OF WILDWOOD
EXECUTIVE SUMMARY

SUBJECT: Development Update

REQUESTED ACTION: For Information Only

CONTRACT:

Vendor/Entity:

Effective Date:

Termination Date:

Managing Division/Department:

BUDGET IMPACT:

HISTORY/FACTS/ISSUES:

Please see the attached development update to be presented by Development Services Director Melanie Peavy.



WILDWOOD
FLORIDA

DEVELOPMENT UPDATE

City of Wildwood

Melanie Peavy, AICP, CPM



Purpose

- Demonstrate how the city is currently meeting infrastructure demands
- Determine Commission's level of comfort with the current rate of development
- Ascertain Commission direction on how to proceed with development inquires

How We Got Here

Influx of new residents
to central Florida

Pro-
Growth/Development-
Friendly Commission

Peripheral
development

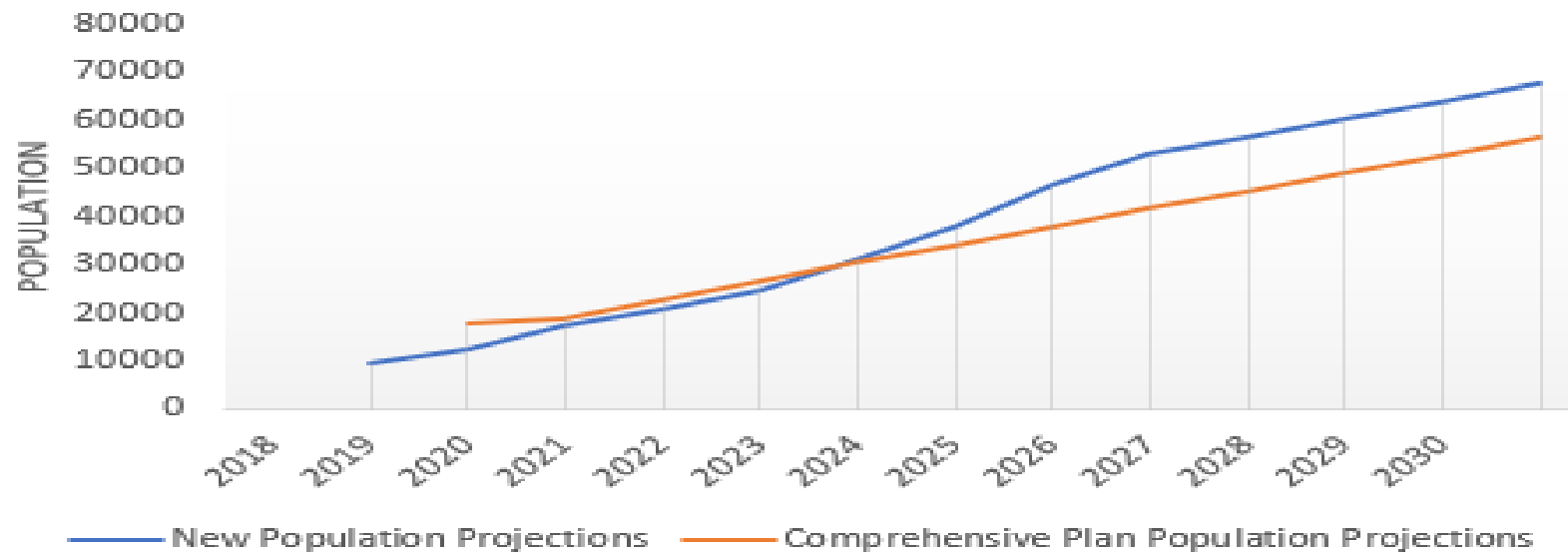
- The Villages®

Growth – Population Projections

Table 1 - 2. City of Wildwood Population Estimates and Projections Through 2050

	1990	2000	2010	2020	2025	2030	2035	2040	2045	2050
Permanent	3,421	3,924	6,709	17,354	34,950	51,679	68,842	86,004	103,167	120,329
Seasonal	372	384	953	1,535	3,092	4,571	6,090	7,608	9,126	10,644
Total	3,793	4,308	7,662	18,889	38,042	56,250	74,931	93,612	112,292	130,973

Population Projection Comparison





Residential Developments

- 8,200+ units under construction/development review excluding The Villages® development
- Existing residential land uses and development rights
- The Villages®

Challenges

Utilities

- Water
- Wastewater

Transportation impacts

- Multiple agencies
- Lengthy process
 - Funding
 - Design
 - Construction

Rapid Growth

- Impacts to Levels of Service (LOS)
- Competing interests

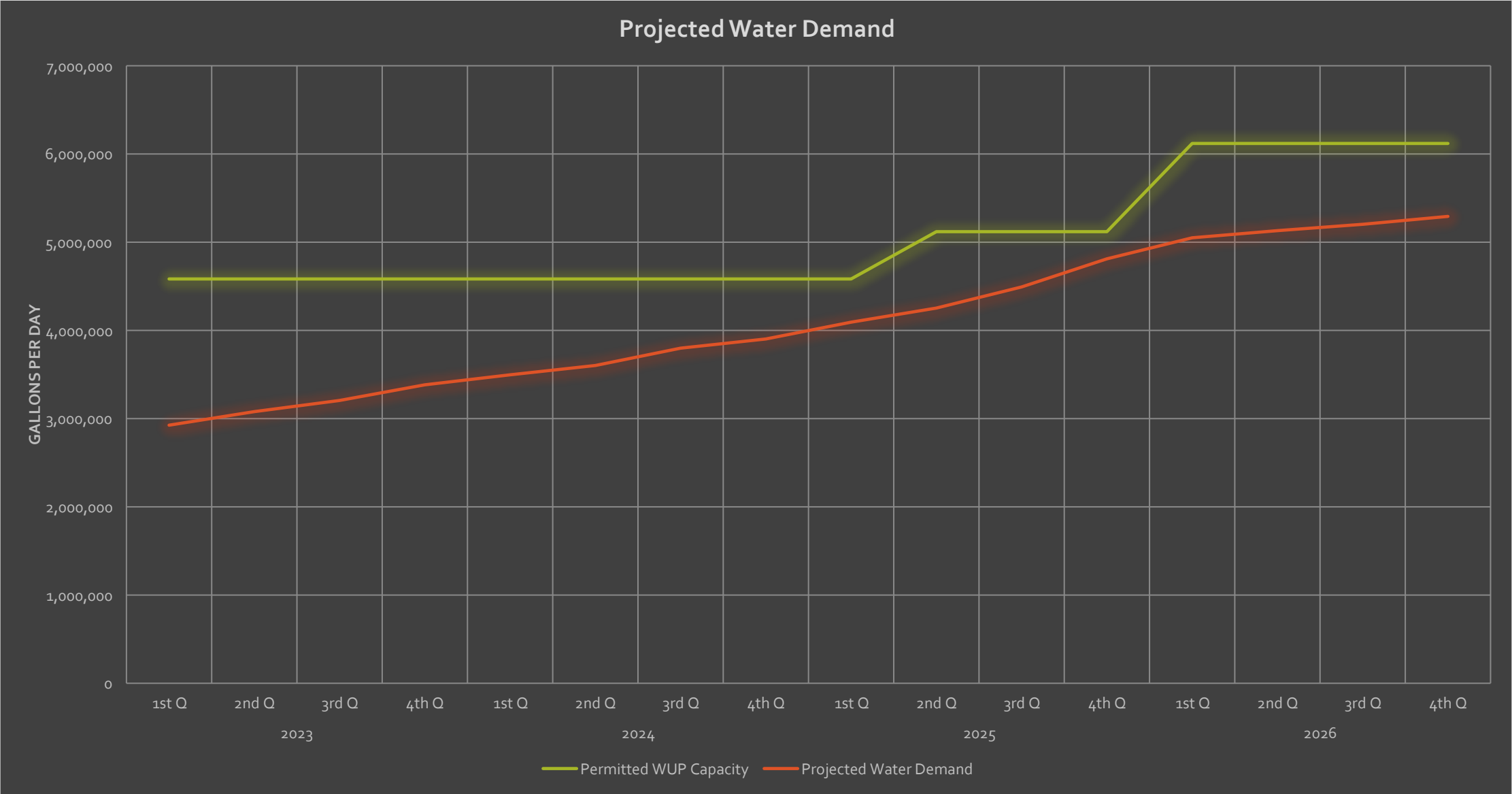


Responsibilities

- Objective 4.1
 - Water
 - Wastewater
 - Solid waste
 - Drainage and stormwater
 - Parks and recreation
- Objectives 2.2, 2.3, 2.5, 2.6
 - Transportation

Comprehensive Plan Objectives

- Objective 4.1 – “The city shall ensure adequate public facility capacity to serve the current and future city population.”
- Objective 2.2 – “The city shall strive to make the transportation system safe and convenient for all transportation modes and users.”
- Objective 2.3 – “The city shall use various tools to improve the operational efficiency of all transportation facilities.”
- Objective 2.5 – “The city shall ensure the transportation system meets the needs of the current and future residents.”
- Objective 2.6 – “The city shall provide for the coordination of city transportation plans with the plans and programs of other local, state and federal agencies as well as affected groups and organizations.”



Wastewater Flow Projections



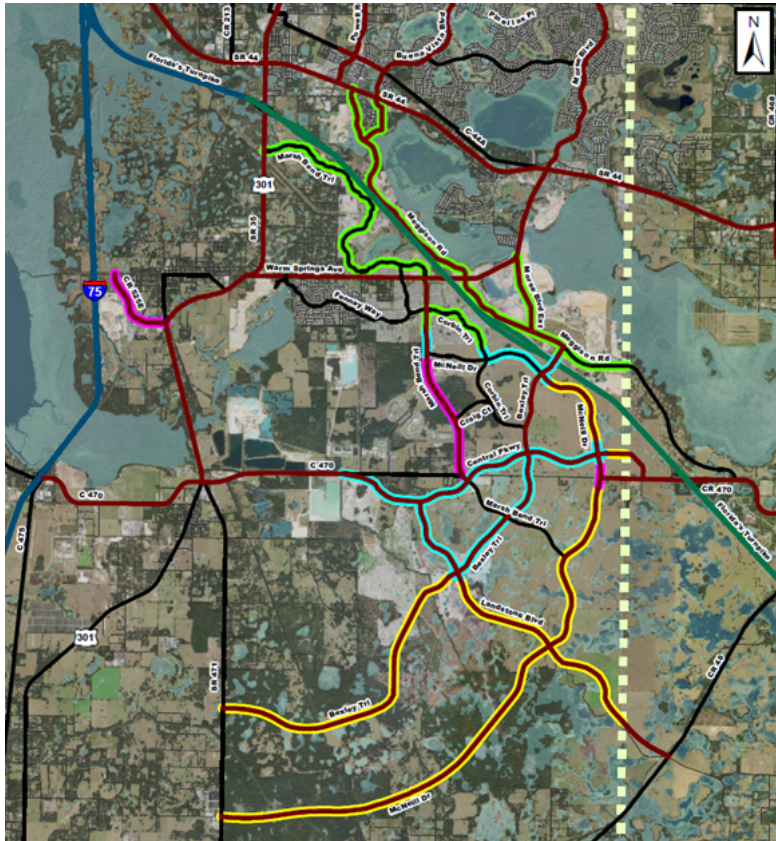
Transportation Impacts to Regional Network

- City of Wildwood development impacts regional transportation network
- TIAs reviewed by Sumter County under the ISBA/JPA
- Shared network
 - Sumter County - regionally-significant roads
 - Sumter County controls signalization of intersections within the network
 - FDOT - US 301 and SR 44
 - Turnpike Authority – Florida Turnpike
 - City of Wildwood – local roads
- Transportation mitigation agreements (Sumter County/City of Wildwood)
 - Turkey Run PD – construction of Inspiration Drive
 - Twisted Oaks PD – realignment of C-462

COORDINATION



Regional Road Update – Financial Review of Road Funding



Legend

- Completed Regional Road
- Regional Road Under Construction
- Regional Road Under Design
- Future Regional Road

Number of Lanes

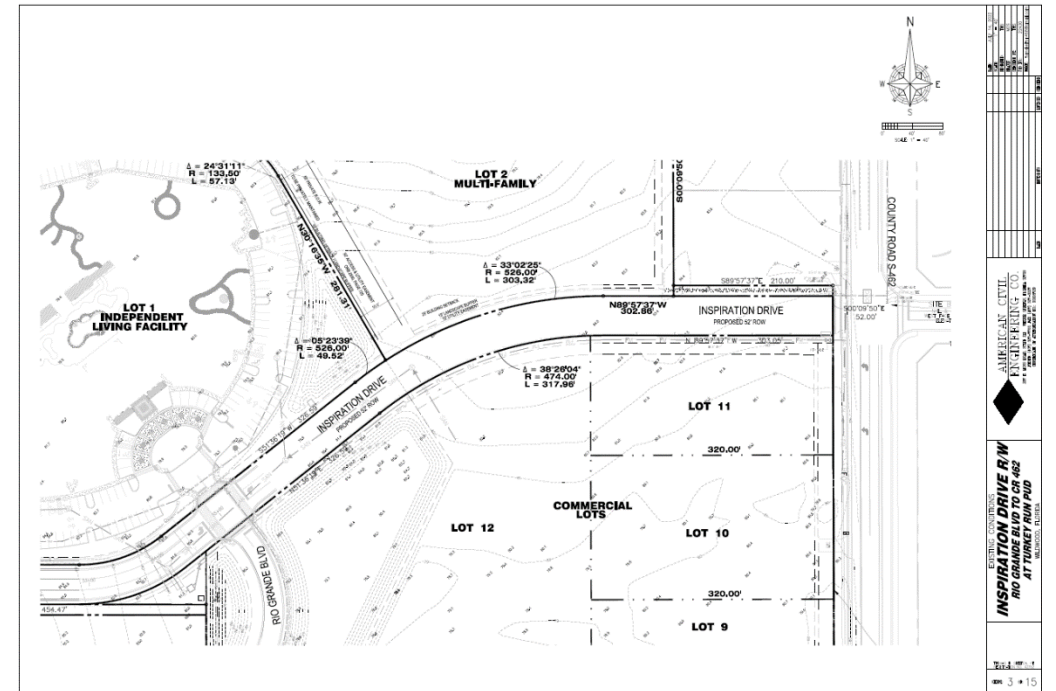
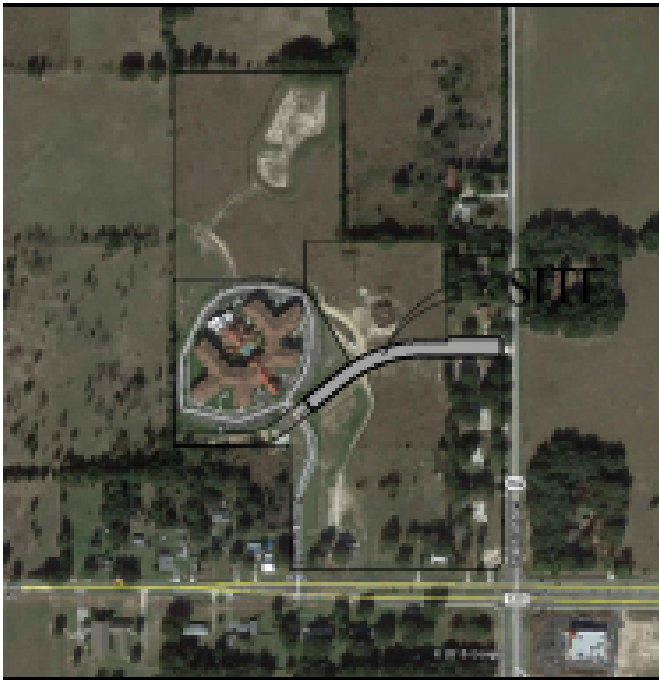
- 2-Lane Facility
- 4-Lane Facility
- 6-Lane Facility
- 8+Lane Facility

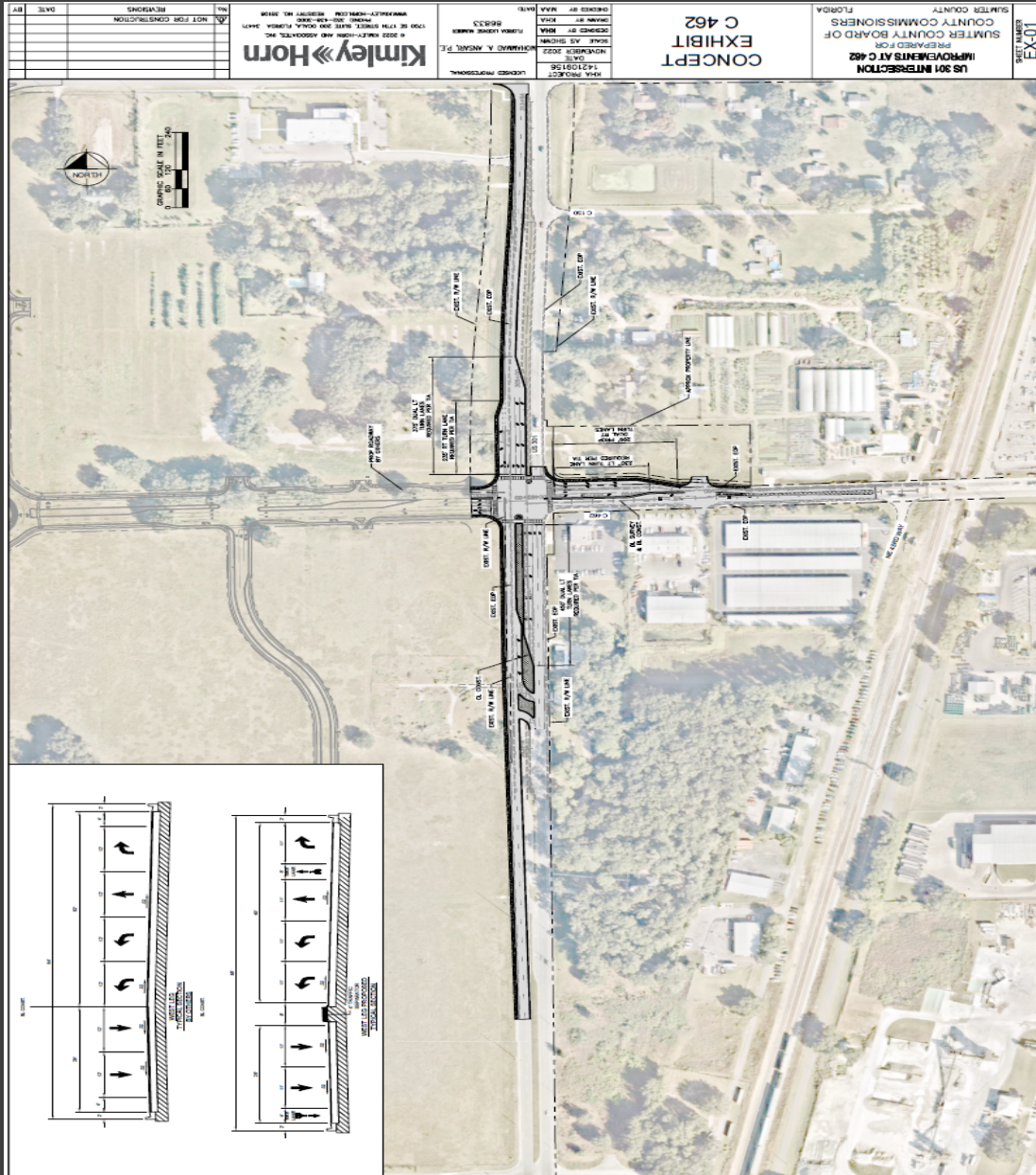
Transportation Mitigation Agreements

- Sumter County/City of Wildwood
 - Turkey Run PD – Inspiration Drive
 - Twisted Oaks PD – Realignment of C-462
- The Villages - Regional Road Agreements
 - Sumter County
 - FDOT

Inspiration Drive

- Turkey Run Planned Development





Realignment of C-462

Twisted Oaks Planned Development

New District Road Impacts Fund – Design Phase

Sumter County

C-472 at US 301 Intersection Improvements Concept



Current Design Activities

- Stormwater Modeling/Design
- Coordination with Adjacent Property Owners

Future Design Activities

- 60% submittal -March 2023
- 90% submittal – April 2023
- Final Plans – September 2023

Advanced Traffic Management System (ATMS)

Current Activities

- Installation of Bluetooth Detectors on C 466
 - travel time information for the corridor 24 hours per day, 7 days a weeks, 365 days a year
- Implement new time-of-day coordinated signal timing plans for the corridor
- Prepare a before and after study to document the changes in travel times and delays due to the implementation of the coordinated signal timings.

Future Activities

- Implement new time-of-day coordinated signal timing plans for the C 466A corridor.
- Installation of Bluetooth Detectors at other locations in the County
 - travel time information for the corridor 24 hours per day, 7 days a weeks, 365 days a year
- Pursue grant funding to expand ATMS network

Florida Department of Transportation (FDOT) and Turnpike Coordination

US 301:

- Widening design C 470 to SR 44 awarded to DRMP
- Between CR 521 and SR 44 resurfacing design ongoing, summer 2023

SR 44:

- US 301 to Lake County Line - construction ongoing
 - New mast arm signal at US 301 and SR 44
 - Dual left turn lane from SR 44 to Powell Road/mast arm traffic signal upgrade
 - New right turn lane on SR 44 at Lake Okahumpka Park
 - New sidewalks on both sides of SR 44

- Continue with current development review and consideration pattern
- Restrict development based on Commission's intended outcomes:
 - Temporarily suspend FLUM and Zoning Map amendments which would change designation
 - This would not impact existing entitlements and development rights
 - Development can still occur in accordance with the property's existing FLUM designation and zoning
 - Temporarily suspend FLUM and Zoning Map amendments which would increase residential density
 - This would not impact existing entitlements and development rights
 - Development can still occur in accordance with the property's existing FLUM designation and zoning
 - This would only impact residential properties; applications for amendments to commercial and industrial could still be considered
- Seek additional data

Where do
we go
from here?



QUESTIONS?

CITY COMMISSION OF THE CITY OF WILDWOOD

EXECUTIVE SUMMARY

SUBJECT: **WWTP CMAR Contract with PC Construction**

REQUESTED ACTION: City Manager Recommends Approval

CONTRACT: Vendor/Entity: PC Construction
Effective Date: 3/6/2023 Termination Date:
Managing Division/Department:

BUDGET IMPACT:

HISTORY/FACTS/ISSUES:

The City issued RFQ #2023-03 in December of 2022 to solicit qualified contractors to complete the planned improvements at the City's main wastewater treatment plant. The City Commission accepted the selection committee's ranking and authorized the City Manager to engage in contract negotiations with the top-ranked firm, PC Construction.

The attached contract has been agreed upon by the City Manager, City Attorney, and the PC Construction team. The contract is structured to expedite the construction of the Phase 1A improvements and to allow the City to purchase long lead time equipment identified for Phase 1B and/or Phase 2. Time is of the essence for this improvement as expedited construction is necessary to meet projected demands. Further, the contract is intended to be amended once future costs can be established, including pre-construction costs and the establishment of Guaranteed Maximum Prices (GMPs) for each construction phase.

This initial contract establishes an Owner's Contingency in the amount of \$3,000,000 that will be utilized by the City Manager to pay for the contractor's work per the Scope of Work and Rate Table and order equipment.

CONTRACT FOR CONSTRUCTION MANAGEMENT AT RISK
PRECONSTRUCTION PHASE SERVICES FOR CITY OF
WILDWOOD
WILDWOOD WRF EXPANSION AND BNR IMPROVEMENTS

Between

THE CITY OF WILDWOOD

AND

PC CONSTRUCTION COMPANY dba PCEO, Inc.

In Response to:
RFQ #2023-03

PRECONSTRUCTION PHASE SERVICES AGREEMENT

This Contract is for Construction Management At Risk Preconstruction Phase Work for the City of Wildwood WRF Expansion and BNR Improvements, by and between the City of Wildwood, a Florida municipal corporation, whose address is City of Wildwood, 100 North Main Street, Wildwood, FL 34785 (hereinafter referred to as the "City") and PC Construction Company dba PCEO, Inc., 193 Tilley Drive, South Burlington, VT 05403 (hereinafter referred to as the "Construction Manager or "CM").

RECITALS

WHEREAS, the City intends to construct certain facilities to expand the treatment capacity of the City of Wildwood Water Reclamation Facility ("WRF") and the addition of a new Biological Nutrient Removal ("BNR") system at the existing City of Wildwood WRF (hereinafter described as the "Project"), as generally described in the City's Request for Qualifications ("RFQ") #2023-03 and Appendix A thereto. The City intends to construct the project via a Construction Manager at Risk contract. Therefore, the CM will be required to work cooperatively with the Project Engineer, CPH, LLC (hereinafter referred to as the "Engineer"), throughout design and construction, in accordance with the applicable design documents prepared by the Engineer; and

WHEREAS, the City desires the services of the CM to provide construction management services, estimating and pricing, value engineering services, constructability reviews, technical evaluation, and other advisory services as described in Exhibit A to this Contract; and

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

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 and City, the parties agree and stipulate as follows:

ARTICLE 1

GENERAL DEFINITIONS

- 1.0 The Construction Team** – The Construction Manager, the City and the Engineer, collectively known as the "Construction Team" shall work jointly during pre-construction, design and through final construction completion and shall be available thereafter should additional services be required. The Engineer will provide leadership during the design phase and shall be responsible for the plans, specifications and other design documents, with support from the Construction Manager, and the Construction Manager shall provide leadership to the Construction Team on all matters relating to construction.
- 1.1** Definitions of terms in this Contract shall first be governed by this Contract and second by the incorporated Scope of Work (Exhibit A). In the event of any conflict between the foregoing, the conflict shall 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, shall have the meanings ascribed to them in Webster's New Collegiate Dictionary (G&C Merriam Co., 11th ed., July 2003, or any subsequent edition).

1.1.1 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.

1.1.2 APPLICATIONS FOR PROGRESS PAYMENT

The monthly invoices furnished and verified by the CM, which are to be used by the CM in requesting progress payments for work performed under this Contract, in a form agreed by the CM and the City.

1.1.3 CALENDAR DAY

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

1.1.4 CHANGE ORDER

A written modification to this Contract, signed by the CM and the City or its designated representative(s) authorizing an addition, deletion, or revision in the Scope of Work, or an adjustment in any Guaranteed Maximum Price amount or time, or other change to this Contract.

1.1.5 CITY

The City of Wildwood (a body corporate and politic and a subdivision of the State of Florida) including its districts, authorities, and separate units of government established by law, ordinance or resolution.

1.1.6 CITY PROJECT MANAGER

The City employee or authorized representative 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 written notice to the CM.

1.1.7 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 Work.

1.1.8 CM PROJECT MANAGER

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

1.1.9 COMPENSATION

The amount paid by the City to CM for services under this Contract, regardless of whether stated as lump-sum compensation, hourly rates, overhead rates, fee or other figures or formulas from which compensation can be calculated, which includes the total monies payable to the CM under this Contract including all services, labor, materials, supplies, travel, training, profit, overhead, costs, expenses, and any other costs necessary to complete the Scope of Work and authorized under this Contract.

1.1.10 CONSTRUCTION

All labor, services, and materials provided in connection with the alteration, repair, demolition, construction, reconstruction, or any other improvements to real property. The parties contemplate the possible performance of limited preliminary construction activities under this Contract, as described in the Scope of Work, with the bulk of construction taking place under the Construction Phase Contract. The Scope of Work for this Contract contemplates construction work for Phase IA. If City and CM agree to proceed with

construction of Phase IA under this Contract, such Work shall be added by Change Order funded by the contingency reference herein. Any unused portion of the contingency shall be retained by Owner or carried forward to the Construction Phase Contract GMPs.

1.1.11 CONSTRUCTION MANAGER or “CM”

The entity identified above as the Construction Manager. The CM shall be qualified to perform work pursuant to Florida Statutes §489.105 and registered and licensed under the Florida Department of Business and Professional Regulation and in compliance with local laws or ordinances.

1.1.12 CONSTRUCTION PHASE CONTRACT

The contract between City and CM for construction performance phase work for the Project.

1.1.13 CONSTRUCTION PHASE GMPs

The Guaranteed Maximum Price amendments agreed to by CM and the City for Work under Construction Phase Contract.

1.1.14 CONSULTANT

Any entity performing services for which design professional licensing and registration is required under Florida law. In addition, Consultant must be a professional engineer or engineering firm, an architect or architectural firm, a surveyor and mapper, or registered landscape architect providing professional services within the meaning of Section 287.055, F.S.), who is registered in the State of Florida.

1.1.15 CONTRACT

This agreement between the City and CM for Preconstruction Work, with binding legal force, covering the Scope of Work in exchange for compensation. The Project requires a phased approach, the parties intend to execute amendments to this Contract for portions of “Phase I Improvements” and “Phase II Improvements” as generally described in Appendix A to the RFQ.

1.1.16 CONTRACT ADMINISTRATOR

The City Manager who is responsible for addressing any concerns within this Contract.

1.1.17 CONTRACT BONDS

The securities (Security, Performance, and Payment Bonds, including coverage for material and workmanship under the Performance Bond) furnished by the CM and the surety under the Construction Phase Contract as a guarantee that the CM will fulfill the terms of the Construction Phase Contract in accordance with the specifications, drawings and other contract documents. Such securities shall fully comply with Florida law.

1.1.18 CONTRACT DOCUMENTS

The Contract Documents comprise this entire Contract and its attached exhibits and addenda between the City and the CM, including the following:

- (1) This Contract;
- (2) Exhibits;
- (3) Any Change Orders to this Contract issued after its execution;

- (4) Certificates of insurance;
- (5) Addenda (including RFIs and Engineer's responses to RFIs) issued before the execution of this Contract; and
- (6) Forms 4,5, 6, and 18 included in CM's Proposal.

1.1.19 CONTRACT PRICE

The Contract Price for this Contract will be based on the Scope of Work in Exhibit A, subject to adjustment for Change Orders, excusable delays, and any scope changes, additions or deletions. Change Order pricing shall be based on the rates set forth in Exhibit C for CM's workforce, together with the price of any contracts executed by CM with third parties, and Fee at a rate to be agreed by the Parties on such third-party contracts. The Contract Price includes an owner contingency amount of \$3,000,000 for currently estimated costs of construction Work that may be performed under this Contract or for other uses determined by Owner.

1.1.20 DAY

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

1.1.21 DELIVERABLES

The documents to be provided by CM under this Contract and other documents that may be required that meet the requirements defined in the Contract Documents.

1.1.22 DRAWINGS/PLANS

The final "Issued for Construction" specifications, drawings and plans which have been prepared and signed and sealed by the Engineer, which show the location, character, dimensions and details of the work to be done under the Construction Phase Contract. The CM shall provide input to the Engineer as required by this Contract, but final design decisions are made by the Engineer, and the CM shall have no liability in connection with the Project design except where design is delegated to CM under applicable subcontracts or purchase orders.

1.1.23 EFFECTIVE DATE

The date that this Contract is fully executed by CM and the City.

1.1.24 ENGINEER OR ENGINEER OF RECORD

CHP, LLC. or such other individual or entity as Owner may designate in writing. City shall promptly notify CM if the Engineer of Record is replaced.

1.1.25 FORCE ACCOUNT WORK

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

1.1.26 GUARANTEED MAXIMUM PRICE (GMP)

The CM's proposed, guaranteed maximum price for Phase I of the Project, if and as accepted by the City pursuant to the terms of this Contract.

1.1.27 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.

1.1.28 LABOR COST

Costs of labor for all of the personnel identified in Exhibit C attached hereto ("Rate Sheet"), reasonably incurred by the CM in the performance of this Contract. Labor costs shall be charged and paid at the rates set forth in the Rate Sheet.

1.1.29 MATERIALMAN

Any person who furnishes materials under contract to the City, CM, Subcontractor, or Sub-subcontractor for incorporation into the Project no labor or incidental labor in the installation thereof.

1.1.30 MATERIALS

Any goods intended for incorporation into any structure, facility, or appurtenance, or of other work.

1.1.31 NOTICE TO PROCEED

Mutual execution of this Contract by the City and the CM shall constitute full Notice to Proceed with Work under this Contract.

1.1.32 OWNER

The City of Wildwood, Florida.

1.1.33 OWNER'S CONTINGENCY

A Contingency for use by the Owner. In addition to the cost, the GMP will include an agreed upon sum as the Owner's construction contingency which is included for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. This contingency shall be the last line item of the GMP proposal. The use of said Contingency shall be determined by the Owner.

1.1.34 OWNER'S DIRECT PURCHASE

Ability of the City to purchase equipment and materials as stated in Article 3, Paragraph 3.10.

1.1.35 PAYMENT BOND

A bond, which assures payments, as required by law, to persons and entities supplying labor or material for the completion of the Construction Phase Contract.

1.1.36 PENAL SUM

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

1.1.37 PERFORMANCE BOND

A bond given by a surety on behalf of the CM to ensure the proper performance of the Work under the Construction Phase Contract.

1.1.38 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."

1.1.39 PRE-CONSTRUCTION CONFERENCE

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

1.1.40 PRECONSTRUCTION DURATIONS

Exhibit A to this Contract establishes expected durations for Preconstruction. Actual start and end dates for such activities cannot be established in the Contract and will vary depending on the timing of design and other activities not under the control of CM. CM shall use best efforts to complete tasks and activities within the durations stated in Exhibit A, subject to delays by Owner, Engineer or Force Majeure and Change Orders. The CM and the City may agree to durations for activities and tasks for which no specific duration is stated in the Scope of Work.

1.1.41 PRINCIPAL

When used in bonds, the word "principal" means the same as "CM."

1.1.42 PROPOSAL

The document submitted by the CM in response to the RFQ and used to determine if the CM is highly qualified.

1.1.43 RESIDENT PROJECT REPRESENTATIVE

An employee of the City or an authorized representative of the 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.

1.1.44 SECURITY BOND

A bond which assures the public that that services will be performed during the completion of the Construction Phase Contract.

1.1.45 SCOPE OF WORK

The general services/work to be performed under this Contract are set forth in the Scope of Work attached hereto as Exhibit A. Contractor acknowledges that City is seeking expedited construction of Phase IA and may include other work not included in Exhibit A be performed under this Contract. In such case, the City and CM shall execute a change order adding such work to the Scope of Work under this Agreement and adjusting the Contract Price and the schedule. Further, City and CM intend that this Contract include both the "Phase I" and "Phase II" preconstruction services as such terms are used in the RFQ. As such, the Scope of Work under this Contract may include preconstruction Work for both the Phase I construction

contract as described in Appendix A to the RFQ and the Phase II construction contract as described in Exhibit A to the RFQ. Additionally, as set forth in Section 1.15, the parties intend to execute amendment(s) to this Contract as needed.

1.1.46 SPECIFICATIONS

The document or Scope of Work prepared by or on behalf of the Engineer that establishes the material, performance and other requirements of goods and services. The City may authorize CM to utilize specifications prior to issuance of “issued for construction” specifications to allow CM to timely proceed with Work under this Contract, provided that Contractor shall not be responsible for any costs, expenses or damages due to later modification of such preliminary or interim specifications in the final design documents.

1.1.47 SUBCONTRACTOR

A person other than a materialman or equipment lessor who enters into a contract with the CM for the performance of any part of the Work.

1.1.48 SUB-SUBCONTRACTOR

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

1.1.49 SUPERINTENDENT

The CM's authorized representative responsible for the Work at all times.

1.1.50 SURETY

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

1.1.51 TIME

The number of consecutive days for the completion of Work tasks and activities under this Contract, as set forth in Exhibit A.

1.1.52 TRADE CONTRACTOR

Any subcontractor utilized by CM to perform construction services.

1.1.53 WORK

The pre-construction and construction services required by this agreement and the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager.

ARTICLE 2

PURPOSE AND INTENT OF THE CONTRACT DOCUMENTS

- 2.0** The primary purpose and intent of this Preconstruction Contract for the Wildwood WRF Expansion and BNR Improvements Project 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 establishing the Phase I and Phase II GMPs, to schedule the Project efficiently for construction phases and prepare Phase I and Phase II project schedules such that the Project will be ready for occupancy at the earliest reasonably practical date; and to review the design documents for the Project with the Engineer and the City and advise upon efficient use of materials and construction methods to be employed for achieving quality construction at reasonable cost.

- 2.0.1** The CM covenants with the City to furnish prudent and professional skill and judgment in the performance of the Work, in accordance with the standard of care applicable to CMs experienced with similar projects. The CM agrees to furnish efficient business administration, construction management and superintendence and to always endeavor to complete the Project in an expeditious and economical manner consistent with the interest of the City. To that end, the CM will maintain cost and schedule control systems and perform screening of Trade Contractors to obtain 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 Phase I, Construction Performance Phase Work for the Wildwood WRF Expansion and BNR Improvements Project, the CM shall post performance, payment, and security bonds each in the amount of 100% of the Phase I Guaranteed Maximum Price, and upon written "Notice to Proceed," shall immediately commence the performance of the work required under the Construction Phase Contract.
- 2.0.3** The CM shall provide the insurance and bonding for the Project as required in Article 6.
- 2.0.4** As set forth in Article 5, it is the intention of the City and CM to enter into a more detailed Construction Phase Contract(s). The Parties have agreed to cooperate with each other to effectuate this intent.

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 Work
 - 2.1.1.2** Exhibit "B" – Insurance and Bonding Requirements
 - 2.1.1.3** Exhibit "C" – Rate Table
 - 2.1.1.4** Exhibit "D" – GMP – Reimbursable Costs, Adjustments, and Exclusions

2.2 AUTHORITY FOR CONTRACTING

- 2.2.1** By executing this Contract, the CM represents that it has visited the site and generally familiarized itself with project and local conditions in accordance with the pre-Proposal activities ordinarily performed by experienced and prudent CMs, which will assist the CM in developing the Deliverables and completing the Work under this Contract. Such initial activities include, without limitation:
 - 2.2.1.1** The location, conditions (not including concealed conditions of pre-existing hazardous materials at the Project site), layout and nature of the Project site,
 - 2.2.1.2** Anticipated labor supply and costs, and
 - 2.2.1.3** Availability and anticipated cost of materials, tools, equipment, and other similar matters.
- 2.2.2** Prior to commencing on-site Work, CM shall submit to the City for City's approval the CM's

safety plan for on-site Work to be performed under this Contract. CM shall comply with the approved safety plan at all times, and City shall have no responsibility for any unsafe acts, omissions of practices of CM. CM shall require any subcontractors and other persons or entities performing Work on the site to comply with CM's approved safety plan or to develop separate safety plans at least as stringent as CM's safety plan. CM's safety plan and any subcontractor safety plan shall fully comply with the requirements of the Federal Occupational Safety and Health Act and any safety requirements imposed by Florida or local law.

- 2.2.3 This Contract between the City and the CM is intended solely for the benefit of the City and the CM and no other persons or entities.
- 2.2.4 The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.
- 2.2.5 Work not covered in the Contract Documents shall not be required or authorized unless it is authorized in advance by City and agreed by Change Order.
- 2.2.6 Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 2.2.7 **Order of Precedence.** In the event of any conflict, inconsistency, error or discrepancy in the Contract Documents, the order of precedence of documents shall be as follows:
 - 2.2.7.1 Change Orders and other modifications to the Contract, including any GMP amendment
 - 2.2.7.2 Form 4 "Statement of Terms and Conditions for RFPs, RFQs and Bids" submitted by CM
 - 2.2.7.3 This Contract
 - 2.2.7.4 Addenda or Exhibits to this Contract

ARTICLE 3

CONSTRUCTION MANAGER SERVICES

- 3.0 The services the Construction Manager shall provide include, but are not limited to, those described or specified in Exhibit A: CMAR Scope of Work. The services described below shall not be deemed to constitute a comprehensive specification having the effect of excluding services not specifically mentioned in Exhibit A. Services in addition to those listed below shall be as directed by Owner and agreed by Construction Manager. The Construction Manager's services under this Agreement include Design Phase Services (Pre-Construction) and Phase I construction phase services which occur after GMPs have been established for the Project.
- 3.1 Design Phase Services (Pre-Construction): The price for pre-construction services for each applicable phase cannot be determined at this time. When the price can be established, it shall be agreed upon by the Owner and Construction Manager and incorporated into this Agreement as an amendment. The Construction Manager shall generally provide the following services:
 - 3.1.1 **Review of Plans and Specifications.** Review all plans and specifications prepared by Engineer 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 preliminary evaluations and recommendations for economies as appropriate. Technical consultation to the Engineer and Engineer's consultants shall not infringe upon or limit the design responsibility of those disciplines. The CM shall make

recommendations relating to the cost, constructability and other such technical and economical characteristics of a particular design or material selection; provided 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 Engineer and the City.

- 3.1.2 Technical Proposals.** Review performance specifications, consult with the Engineer and City 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 shall issue requests for proposals for goods and services authorized by this Contract to qualified sources and shall receive proposals and execute purchase orders and subcontracts as approved by Owner.
- 3.1.3 Cost Consultation.** The CM shall provide regular cost consultation service for the duration of this Contract. The CM shall prepare solicitation
- 3.1.4** and purchasing documents for authorized purchases and be responsible for procurement and construction cost estimates. The CM shall prepare final cost estimates for all early procurement of equipment and materials; for all building systems and components; and for all construction labor.
- 3.1.5 Value Engineering.** The CM shall review the plans and specifications as prepared by the Engineer and perform value engineering services. The City Representative, the Engineer and the CM shall review the proposed changes and the City shall determine which shall be incorporated into the plans and specifications. Value engineering by CM shall be in accordance with Section 8.2(A)(5) of the RFQ.
- 3.1.6 Long Lead Time Procurement.** Identify, recommend for purchase, and expedite the procurement of equipment, materials and supplies which require long lead time for procurement or manufacture.
- 3.1.7 Construction Documents.** Make recommendations to the City and the Engineer regarding the division of Work into separate bid packages to affect economy and permit phasing of procurement and construction. Consideration shall be given to relevant factors such as the 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.
- 3.1.8 Trade Work Coordination.** Review and analyze the plans, specifications and schedules for the Project and make the necessary recommendations to minimize conflict between Trade Contractors.
- 3.1.9 Project Site Facilities.** Review the Plans and Specifications to verify that they contain provision for all temporary facilities required for the performance, management, inspection and supervision of the Work.
- 3.1.10 Documents and Advertisement for Bids.** In collaboration with the Engineer, review all design documents, divide the Work in bid packages, and assemble complete bid data, including copies of plans and specifications provided by the Engineer, so as to encourage maximum competition among qualified bidders and to obtain a reasonable price for good quality work. Prepare invitations 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. 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 the City. The procedure for advertising, pre-qualification, bidding and awarding trade contracts shall be agreed upon by the City and the CM.
- 3.1.11 Review 30%, 60%, and 90% design documents.** Advise on site use and improvements, selection of materials and equipment, and methods of Project delivery. Provide recommendations on relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to cost including, but not limited to,

costs of alternative designs or materials, preliminary budgets and possible economies.

3.1.12 Project and Construction Schedule. Develop Project and Construction Schedules providing for all major elements such as phasing of construction and times of commencement and completion required of each Sub-Contractor. Provide the Project Construction Schedule for each set of bidding documents. Develop a plan for the phasing of construction.

3.1.13 Meetings. Schedule and conduct meetings of the Construction Team, and prepare and distribute minutes, frequency to be mutually agreed upon by the Construction Team, with Owner having final decision-making authority. Construction Manager shall also, at City's request, attend public meetings and hearings concerning the development and schedule of the Project, if necessary.

3.1.14 Preparation of Construction Phase GMPs. The Construction Manager shall develop, on an open-book basis, and submission to City of proposed Guaranteed Maximum Prices for the Phase I scope of work at 60% design completion. The 60% design GMP Proposal shall be subject to revision as agreed by Owner and Construction Manager at 90% design completion to account for design changes and other factors. The GMP Proposals shall be submitted within forty-five (45) days of completion of 60% and 90% design. All GMP Proposals shall be valid and binding for Construction Manager for 60 days after submission of the GMP Proposals to the Owner by the CM. Construction Manager shall also provide estimated Construction Phase Contract GMP pricing at 30% completion of design for the applicable Phase. The GMP Proposals shall include itemized GMPs, summarizing the agreed or anticipated cost for each component of the Work as it was packaged and bid and establishing the amount of contingency funds required. Upon agreement between the Owner and the Construction Manager on the 60% Phase I GMP, as modified by the 90% GMP, a Phase I GMP amendment shall be mutually executed and incorporated into this Contract by amendment. The GMP shall represent the maximum price for which Construction Manager will construct the applicable phase of the Project, as represented in the Design Documents, including a fee for CM's services.

If the documents as prepared by the Engineer are not adequate for the development of a Guaranteed Maximum Price, the Construction Manager shall notify the Owner immediately, prior to developing the GMP. All assumptions made by the Construction Manager in the development of the GMP shall be specifically stated in the GMP proposals and the GMP will not be adjusted due to assumptions made by the Construction Manager, but not stated in the GMP proposal. If the 90% GMP proposal is accepted by the Owner, it will be made a part of this Contract and will establish the GMP, Contract Time, Liquidated Damages and specific Project Team for each individual Project GMP phase of the Work. The GMP will be incorporated into the contract via execution of an amendment.

Reimbursable Costs under the Construction Phase Contracts are listed in the attached Exhibit D.

3.1.15 Rejection of GMP. If the GMP proposal is not accepted by the Owner, the Owner shall so notify the Construction Manager in writing. The Construction Manager shall then recommend adjustments to the Work through value engineering. The Construction Team will discuss and negotiate these recommendations for no more than 30 calendar days, unless an extension is granted in writing by the Owner. If an acceptable GMP is not developed, negotiations may be terminated, and the Owner may initiate negotiations with another firm.

3.1.16 Construction Manager Rate Table. Pricing for the Pre-Construction Work shall be based on the rates set forth in Exhibit B for CM's workforce, together with the price of any contracts executed by Construction Manager with third parties. Construction Manager shall provide a monthly statement showing, in detail, the date of the fee, the time spend by the individual labor category charging the fee, and the total rate charged for the service/work performed.

3.1.17 Payment to Construction Manager. Owner shall remit payment to the Construction Manager in accordance with Article 12.

3.2 Construction of Phase I Improvements. The Owner wishes to expedite the pre-construction and

construction of the Phase IA improvements pursuant to the design plans provided by the Engineer and approved by Owner. Further, Owner wishes to procure long lead time equipment identified in Phase IB so as to not delay the completion of Phase I improvements. Construction Manager and Owner agree to the following:

3.2.1 Initial Owner's Contingency. Upon approval of this Contract Owner shall allocate an Owner's Contingency in the amount of \$3,000,000.00 to fund the pre-construction and construction Work of Phase IA. The Owner's Contingency may also be used by Owner to procure long lead time equipment associated with Phase 1B. Nothing in this Contract shall prohibit Owner from utilizing the Owner's Contingency. The remaining Owner's Contingency at the end of Phase IA and after the purchase of long lead time equipment shall revert back to Owner unless modified by an amendment to this Contract.

3.2.2 Construction Manager Rate Table. Pricing for the Phase IA Work shall be based on the rates set forth in Exhibit B for CM's workforce, together with the price of any contracts executed by Construction Manager with third parties and agreed CM's Fee on such contracts.

3.2.3 Payment to Construction Manager. Owner shall remit payment to the Construction Manager in accordance with Article 12.

3.3 Obtaining Competitive Bids. The CM shall endeavor to achieve competition among qualified bidders to obtain a reasonable price for acceptable work. Using its experience and knowledge as a CM experienced with this type of Project, the CM shall develop 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 such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit their qualifications. CM shall, in close collaboration with the City's representatives, schedule and 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 shall be fully explained and emphasized at the Preconstruction Conference. The CM may require bidders to submit bid bonds and evidence of bonding capacity, as well as meet specified qualifications as a prerequisite to bidding on the Work; however, unnecessarily restrictive requirements which might unduly limit the number of bidders shall be avoided. Specific instructions stating clearly whether bonding is required or not shall be included with each bid package.

3.3.1 Solicit competitive bids on all bid packages from qualified Trade Contractors, in accordance with Section 8.2(A)(6) of the RFQ. 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. 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. Prepare and submit written recommendations to the City for award of trade contracts. Award and execute trade contracts as authorized under the Contract Documents with the successful bidders. Provide to the City copies of any fully executed trade contracts, insurance certificates and bonds.

3.3.2 Should the City have objections to awarding a contract to any pre-qualified Trade Contractor or Materialman, the City shall timely notify the CM upon review of the pre-qualified bidders list. The CM shall not solicit a bid proposal from a bidder if so rejected.

3.3.3 CM may self-perform any part of the Preconstruction or Construction Phase Work for which CM holds any necessary legal authorizations. However, if CM intends to self-perform any trade Work, CM shall submit to the City its bid for the proposed Work and the bids of two

subcontractors to the City and Engineer, and the lowest-price responsive bid submitted by a responsible bidder shall be selected. Notwithstanding the foregoing and upon City's written approval, the CM 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's performance of some portions of the Work will result in cost savings to the City.

- 3.4 Owner Direct Purchasing.** Owner may from time to time elect to purchase materials and/or equipment through a direct purchasing plan. Construction Manager shall provide Owner with a direct purchasing plan approved by the State of Florida and shall manage the process for the benefit of Owner. The Owner will provide the Construction Manager with a Certificate of Entitlement showing proof of tax exemption.

ARTICLE 4

TIME FOR PERFORMANCE

- 4.0** CM shall endeavor to complete Work under this Contract with the durations established in Exhibit A. Based upon the 30% Phase I and Phase II GMP estimates and the 60% and 90% Phase I and Phase II GMP Proposals, the CM and the City will collaborate to address any budget estimate differences in order to reach Phase I and II GMPs satisfactory to both the CM and the City. Such action by the CM and the City shall be accomplished within a maximum of twenty-one (21) days of submission of the applicable GMP Proposal unless additional time is mutually agreed to. Approval of the GMPs shall not be unreasonably withheld.

ARTICLE 5

EXECUTION OF CONSTRUCTION PERFORMANCE PHASE CONTRACT

- 5.0** Upon the City's approval of the Phase I GMP Proposal as provided for herein, the CM agrees to enter into the Construction Phase Contract on the basis of the agreed Phase I GMP. The Phase II GMP shall be executed by City and CM at an agreed time after execution of the Construction Phase Contract.
- 5.1** During the performance of this Contract and the Construction Phase Contract when it is entered into by City and CM, the CM shall not be considered an employee of the City, or City's agent. The CM 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, workers 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 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 B, in the form and from companies satisfactory to the City. Any additional insurance required for on-site Work under this Contract shall be added if the parties execute a Change Order for on-site Work.

6.1 Bonding Requirements

- 6.1.1** Upon agreement to a GMP under the Construction Phase Contract, the CM shall furnish separate performance, security, and payment bonds as security for the faithful performance and payment of all its obligations under the Construction Phase Contract Documents. These bonds shall be in amounts equal to the total value of all agreed GMPs at any time and in such form as prescribed pursuant to §255.05 Florida Statutes and otherwise in compliance with Florida law and with such sureties as are acceptable to the City. The bonds shall become effective upon execution of the GMP I for Construction Phase Contract and shall remain in effect for one (1) year beyond the date of the certificate of substantial completion of the Phase I 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 coverage for CM's default on either performance or payment at one hundred percent (100%) of the Phase I GMP amount. The same requirements shall apply to the Phase II GMP. If the City and the CM agree to performance of construction Work under this Contract, CM shall also provide performance, and payment bonds for the full value of such construction Work and a Security Bond for 5% of the GMP amount for the Construction Phase contract.
- 6.1.2** The bonds shall 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 with an agent registered 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) and Class "V" or better on the Financial Size Category by Best's Rating Center, published by A. M. Best Company. Financial Strength Rating of companies providing insurance for the project shall be "A" or better and the amount required shall not exceed 5% of the reported policy holders' surplus, all as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc. of 75 Fulton Street, New York, New York 10038.
- 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."

ARTICLE 7

CM'S PAYMENT UNDER THIS CONTRACT

- 7.0** Payments for services performed under this Contract will be made after receipt of properly executed requests for payment as follows:
- 7.0.1.** The CM shall submit to the City a monthly invoice for Work completed under this Contract in

accordance with schedule of values to be agreed by City and CM. Invoices shall detail cost reports, monies paid out, costs accumulated during the previous period, along with the amount of CM's fees due. Monthly invoices will be subject to review by City and Engineer.

- 7.0.2.** Within twenty (20) days after CM's submission of a proper monthly statement, the CM shall be paid any money due for Work covered by said statement less any disputed amounts. The CM shall be notified of disputed amounts within twenty (20) days of the City's receipt of the statement. All payments made by City shall be subject to the Florida Prompt Payment Act (Florida Statue §218.70). CM is also permitted to include in its monthly statements any funds that are anticipated to be required to be paid to vendors of long-lead items within forty-five (45) days following the date of submission of the applicable monthly statement.
- 7.0.3.** CM shall pay any portions due, but not in dispute, to all subcontractors and material suppliers in compliance with Section 255.071 of the Florida Statutes after receipt of payment from the Owner.

ARTICLE 8A

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, 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 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 fails to perform any of its material obligations under this Contract, the City may give the CM written notice of the deficiency and direct immediate corrective action. If the CM 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. The CM shall have the right, however, to make good any deficiencies or commence to cure any default during the seven (7) day period following written notice and thereafter diligently pursue cure efforts.
- 8.1.1** If the CM fails to furnish City with assurances satisfactory to the City evidencing the CM's ability to complete the Work in compliance with 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 Commission 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 Materialmen, subcontractors or others with whom CM contracts under this Contract, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or is guilty of a substantial violation of a provision of this Contract, then the City may, without prejudice to any right or remedy and after giving the CM and its surety ten (10) days' written notice, during which period the GM/GC fails to commence and thereafter continue to cure the violation, terminate this Contract 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. CM shall be liable for excess completion costs incurred by City. In the event of such termination, the City shall reimburse the CM for any unpaid and undisputed portion of the Cost of Work incurred by CM under Article 6 (subject to the GMP) up to the time of termination. The CM 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.

8.2 Termination by the City for Convenience. The performance of Work under this Contract may be terminated by the City in accordance with this clause in whole, or from time to time in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be affected by delivery to the CM of a Notice of Termination for Convenience specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. If the City terminates this Contract other than pursuant to Section 8.1.1, the CM shall be reimbursed for any unpaid portion of the Cost of Work which has been incurred up to the time of termination, post-termination costs including reasonable demobilization costs, plus reasonable Fee on such Cost of Work, plus subcontractor and purchase order cancellation charges, if any, incurred by the CM as a direct result of the termination. CM shall make every reasonable attempt to mitigate its costs resulting from the City's Termination for Convenience. 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 has previously undertaken or incurred in good faith in connection with the Project. The CM shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the City may require, for the purpose of fully vesting in the City the rights and benefits of the CM under such obligations or commitments. In no event shall CM be entitled to recover any anticipated or lost profit on Work not performed as a result of the termination.

8.3 Termination by CM. If the Project is stopped in whole or a substantial part, through no act or fault of the CM, for a period of ninety (90) 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, then the CM may, upon ten (10) days' written notice to the City and the Program Manager, terminate this Contract and recover from the City payment in accordance with Section 8.2 above. The City shall have the right; however, to make any required payment or cure any default during the 90-day period following written notice and, in such event, neither the Contract nor the Work under the Contract shall be terminated.

ARTICLE 9

CLAIMS, DISPUTES, AND INDEMNIFICATION

9.0 Claims. Under this Contract the CM shall not have the right to compensation to satisfy any claim for costs, liabilities, or debt of any kind from any act or omission attributable to the City unless the CM 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 twenty (20) 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's compliance with the notice requirements of this Article 9A, and

9.0.2 The reasons upon which the CM bases its 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 reserves his right to seek legal redress.

9.1 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 shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory 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, shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall 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.

9.2 Mediation.

9.2.1 The CM and the City 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 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 9.2.3 below.

9.2.2 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.

9.2.3 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) days, the Project Managers or designated representative(s) shall escalate the dispute as indicated below.

Days	CM's Representative	City Representative
10	CM Operations Manager	Project Manager
10	CM's Director of Operations	Assistant City Manager
20	CM's COO or President	City Manager

9.3 Formal Dispute Resolution. At any point after issuance of a Dispute Notice under this section, either party may initiate 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 commence litigation in the Circuit Court in and For Sumter County, Florida. Any trial shall be non-jury, each party expressly agreeing to waive any right to a trial by jury for any and all claims. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Contract.

- 9.4** The CM shall carry on the Work and maintain the progress under the agreed schedule during any administrative or judicial proceeding, unless otherwise agreed by the CM and the City in writing, and the City shall continue to make payments on undisputed pay requests or invoices to the CM in accordance with the provisions of this Contract.
- 9.5** All claims, disputes and other litigation shall be determined under the judicial system of the State of Florida. Venue for litigation shall be the Circuit Court in and For Sumter County, Florida.
- 9.6** **Truth in Negotiation.** CM's signature on this Contract shall act as the execution of a truth-in-negotiation certificate, as required by and in accordance with Section 287.055 of the Florida Statutes, stating that negotiations were entered into after being identified as the most qualified firm for professional services and that rates, wages, 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. CM warrants and represents that each required form submitted by CM to the City with its Proposal, pursuant to Appendix B to the RFQ, is true, correct and complete.
- 9.7** **Indemnification.** The CM shall indemnify and hold harmless the City of Wildwood and their elected officials, employees, and volunteers from and against any and all claims, damages, losses and expenses, (including legal costs), or liabilities based on third-party claims for injury to persons, sickness, disease, death of personal injury or damage to property or loss of use of property arising out of or resulting, in whole or in part, from a negligent act or omission of willful misconduct of CM or its employees, subcontractors, agents or representatives.
- 9.7.1** 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 for this Contract, and any employee of CM or anyone directly or indirectly employed by CM or anyone for whose acts CM is 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, or any contractor, subcontractor or sub- subcontractor thereof under Florida's Workers' Compensation acts, disability benefit acts, or other employee benefit acts.
- 9.7.2** The indemnification requirements stated in subsections 9.7 and 9.7.1 herein shall survive the completion and/or termination of this Contract.

ARTICLE 10

MISCELLANEOUS

- 10.0 Force Majeure.** Neither party shall be liable for any failure or delay in the performance of its obligations under the Contract, except the City's obligation to pay amounts owed under this Contract, to the extent such failure or delay necessarily results from the occurrence of a Force Majeure Event," defined as an event beyond the control or reasonable anticipation of either party, including, but not limited to, compliance with any government law or regulation not otherwise in effect at the time of execution of this Contract or any modification of law or regulation, acts of God, acts of domestic or international terrorism, any virus, bacterium, or other microorganism capable of inducing physical distress, illness, or disease, whether due

to a pandemic or otherwise, unforeseeable governmental acts or omissions, fires, strikes, natural disasters, wars, riots, transportation problems, supply chain issues 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"). No Party shall be excused from performance if such Party fails to use commercially reasonable efforts to remedy the situation and remove the causes of nonperformance. Accordingly, the parties further agree that:

- 10.0.1** Upon the occurrence of a Force Majeure Event, the affected party shall 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 affected party shall notify the other party of the occurrence of such event in writing 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 shall be delivered or otherwise communicated to the other party within seven (7) days following the impact 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 affected 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 shall 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. If a Force Majeure event causes CM to incur additional and unanticipated costs that cannot be avoided through the exercise of due diligence, Contractor may seek an equitable adjustment to the Contract Price.
- 10.0.4** The key personnel identified in the Proposal shall be available to perform the services described in the Proposal, barring illness, accident or other unforeseeable event of a similar nature, in which case CM must be able to promptly provide a qualified replacement. In the event CM wishes to substitute key personnel, CM shall propose personnel with equal or higher qualifications and each replacement person is subject to prior written City approval. If the requested substitute person is not satisfactory to City and the matter cannot be resolved to City's satisfaction, City reserves the right to terminate this Contract for cause.
- 10.1** CM warrants and represents that, pursuant to Sections 287.132 and 287.133, Florida Statutes, it has at no time been placed on the Convicted Vendor list, and that in no event will CM execute any contract in connection with the Work with any person or entity that has been placed on the Convicted Vendor list.
- 10.2** **Claims Notice.** The CM shall timely report in writing to the City's Director of Risk Management any incident which it believes might result in claims under any of the coverages mentioned herein.

Name: Melissa Tuck, Human Resources Director
Address: 100 North Main Street, Wildwood, FL 34787

- 10.3 Successors and Assigns.** City and CM 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 shall assign, sublet or transfer any rights under or interest in this Contract without the written consent of the other, except that CM is permitted to execute subcontracts, purchase orders and other agreements to perform portions of the Work. 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.
- 10.4 Assumption of Risk.** CM shall not request additional compensation or time to complete, if delays and complicating factors should reasonably have been anticipated based on information available to CM at the time of agreeing to a GMP or based on CM's failure to conduct due diligence in accordance with the standard of care stated in this Contract.
- The CM shall become familiar with and prepare for the normal seasonal weather conditions existing in Sumter County, Florida. Normal seasonal weather conditions are expected to impact the Project in numerous ways, including, but not limited to, delays during and after periods of rainfall, temporary flooding and ponding, wet ground, high winds and debris. The CM's Project Schedule, GMP, and any subsequent, approved revisions to either or both, shall sufficiently anticipate and include unfavorable weather days based on historical data for the locale.
- 10.4.1 CM will, during the preconstruction phase, ascertain such Project site conditions as may be readily determined by inspection and inquiry, such as the location, accessibility and general character of the Project site.
- 10.4.2 In connection with the CM's Phase I services, as provided herein: In the case of unforeseen conditions, which could not reasonably have been anticipated, the extent of impact on costs shall be determined, documented and approved by the City. The City shall provide the final determination as to whether or not such unforeseen conditions could reasonably have been anticipated, subject to the claims and disputes provisions of this Contract.
- 10.5 Additional Rights and Remedies.** The City may assert its right of recovery by any appropriate means including, but not limited to, set-off, suit, withholding, recoupment, or counterclaim, either during or after performance of this Contract.
- 10.6 MBE.** This Contract is entered into by the City and CM pursuant to the minority business enterprise procurement goals under Section 287.09451, F.S.
- 10.7 FDEP Requirements.** This Contract does not include any requirements, terms or conditions that may be imposed by the Florida Department of Environmental Protection ("FDEP") in connection with financing. If the City executes an SRF Loan with the FDEP, CM agrees to comply with any applicable requirements imposed pursuant to the FDEP loan, subject to equitable adjustment of GMPs and schedule to account for any additional requirements and/or risks imposed pursuant to such FDEP loan.
- 10.8 City Direct Purchases.** City retains the option, as a tax-exempt entity, to directly purchase materials and/or equipment for the improvements. In such case, CM shall coordinate its Work with the work of ODP suppliers and shall be responsible for storage after delivery to the Project site and for installation of materials and/or equipment furnished by ODP suppliers. If Owner will or may assign and OPD purchase orders or agreement to CM, CM shall be afforded the opportunity to participate in negotiations of such purchase orders or agreements, and shall be paid Fee at the rate stated herein for the value of such assigned ODP purchase orders or agreements.

10.9 Local Government Policies

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

IF THE CM HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CM'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-330-1330 or spatterson@wildwood-fl.gov.

By entering into this Contract, CM acknowledges and agrees that any non-confidential, non-privileged, non-proprietary 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 entering into a contract for services with the City is required to:

- 10.9.1.1** Keep and maintain public records required by the City to perform the services and work provided pursuant to this Contract.
- 10.9.1.2** 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.
- 10.9.1.3** 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 does not transfer the records to the City.
- 10.9.1.4** Upon completion of the Contract, transfer, at no cost, to the City all public records in the possession of the CM or keep and maintain public records required by the City to perform the service. If the CM transfers all public records to the City upon completion of the Contract, the CM shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements, except that CM may retain copies of such records for its files. If the CM keeps and maintains public records upon completion of the Contract, the CM 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.
- 10.9.1.5** Requests to inspect or copy public records relating to the City's Contract for services must be made directly to the City. If CM receives any such request, CM shall instruct the requester to contact the City. If the City does not possess the records requested, the City shall immediately notify the CM of such request, and the CM must provide the records to the City or otherwise allow the records to be inspected or copied within a reasonable time.
- 10.9.1.6** CM 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.
- 10.9.1.7** CM 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 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's failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by CM'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 authorizes City to seek declaratory, injunctive, or other appropriate relief against CM from a Circuit Court in Sumter County on an expedited basis to enforce the requirements of this section.

10.9.2 Financial Records. CM 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 that are directly related to the Contract, such rights not to extend to the composition of the agreed rates set forth on Exhibit C. CM shall keep such books, records, and accounts as may be necessary to record complete and correct entries related to the Contract. CM 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 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. The City's audit rights shall not extend to fixed prices, agreed rates or multipliers.

10.9.3 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 Chapter 129, Florida Statutes and the City of Wildwood Code of Ordinances. If at any time funds are not appropriated for the Work and Deliverables provided or to be provided under this Contract, cancellation shall be accepted by CM with thirty (30) days prior written notice. City shall not be obligated to pay CM under this Contract beyond the date of termination and CM shall have no obligation to incur and costs that, together with vendor and subcontractor cancellation charges, demobilization costs and other costs of ceasing Work, would cause CM's costs and Fee to exceed the maximum appropriated amount. CM shall have no right to compel the Wildwood City Council to appropriate funds for any fiscal year.

10.9.4 Prohibition Against Contingent Fees.

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

10.9.4.2 Neither CM, nor any parent or subsidiary corporation of CM has employed or retained any company or persons, other than a bona fide employee working solely for CM, 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, any fee, commission, percentage, gift, or other consideration contingent upon award of this Contract.

- 10.9.4.3** 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.
- 10.9.5 No Code Violation or Past Due Debt.** The CM warrants and represents that neither the business, nor any officer or significant stakeholder of the business is in violation of the City of Wildwood 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.
- 10.9.6 Changes Due to Public Welfare.** The City and CM 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.
- 10.9.7 Compliance with Applicable Laws.** CM 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 shall obtain and maintain at its own expense all applicable licenses, permits and other governmental authorizations to conduct business pursuant to this Contract from the federal government, State of Florida, City of Wildwood, or municipalities when legally required and maintain same in full force and effect during the term of this Contract.
- 10.9.8 Drug Free Workplace.** The City of Wildwood is a drug-free workplace. CM 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 work place during the term of this Contract. CM shall fully comply with the Drug Free Workplace Certification submitted with CM's Proposal (Form 6) as to any Work at the Project site.
- 10.9.9 Background Checks.** CM and its Trade Contractors understand that certain areas of the City's premises may not be available to CM or Trade Contractor personnel without background checks and that such access may be required to perform the Work contemplated by this Contract.
- 10.9.10 Employment of Illegal Aliens.** CM certifies that it does not knowingly or willing 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.
- 10.9.11 Nondiscrimination and Americans with Disabilities Act.** CM shall 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 under this Contract. CM agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) while providing any Work 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 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.

10.9.11.1 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's ADA Coordinator at 352-330-1330 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 by contacting the City's ADA Coordinator at spatterson@wildwood-fl.gov].

10.10 E-VERIFY.

The CM 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 to Work at the Project site on or after the effective date of this Contract and thereafter during the remaining term of the Contract. Any subcontract entered into by CM with any subcontractor 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 on or after the effective date of this Contract and thereafter during the remaining term of the Contract." The CM 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 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.

10.11 Public Entity crime information Statement. "A person or affiliate who has been placed on the convicts vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform Work as a Construction Manager, contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of thirty-six (36) months from the date of being placed on the convicted vendor list."

10.12 No Third Party Beneficiary. This contract is for the sole benefit of the CM and City and not for subcontractor(s) or sub-subcontractor(s). Except as expressly provided in this Article, there are no third-party beneficiaries of this Agreement. This Agreement does not create or confer any legal claim or cause of action in favor of any party not a signatory to this Agreement and the obligations and legal duties imposed on any party by this Agreement are owed exclusively to the other party or parties and are not owed to any party not a signatory to this Agreement

10.13 Controlling Law and Venue. This Contract is to be governed by the laws of the State of Florida. The venue for all civil and administrative actions against the City shall be in Sumter County, Florida.

10.14 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.

10.15 Entire Contract. This Contract, any exhibits, schedules, attachments and amendments thereto constitute the entire Contract between City and CM and supersede all prior written or oral understandings.

10.16 Scrutinized Companies, FL Statue Section 287.135 and 215.473. CM shall certify that the company is not participating in a boycott of Israel. CM shall certify that that CM 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 and has not been

engaged in business operations in Cuba or Syria. 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. Submitting a false certification shall be deemed a material breach of contract. The City shall provide notice, in writing, to the Contractor of the City's determination concerning the false certification. The Contractor 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 Contractor shall have thirty (30) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor 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. Contractor will require each subcontractor and vendor, prior to executing a contract with such subcontractor or vendor, to certify that is not on any of the above scrutinized company lists.

- 10.17** Headings. Paragraph headings are for the convenience of the parties only and are not to be construed as part of this Contract.

ARTICLE 11

ON-SITE WORK UNDER THIS CONTRACT

- 11.1** The parties contemplate that certain limited on-site construction Work may be performed under this Contract. Such Work is not currently included in Exhibit A. If such Work is to be performed, the parties shall execute a Change Order adding such work and adjusting the schedule and equitably adjust the Contract Price. The parties currently intend to use EJCDC forms C-525 "Agreement Between Owner and Contractor for Construction – Cost-Plus" (2018) and EJCDC® C-700, "Standard General Conditions of the Construction Contract" (2018), with any agreed modifications and any required Supplementary Conditions, as the Contract Documents for the Construction Phase Contract. Any Change Order for on-site work under this Contract shall also include certain terms from the above standard EJCDC forms, including the provisions of Articles 5 ("Site; Subsurface and Physical Conditions; Hazardous Environmental Conditions"), 7.14 ("Hazard Communications Program"), 7.15 ("Emergencies"), 7.17 ("General Warranty and Guarantee"), and 14.03 ("Defective Work") shall apply, in addition to any other agreed provisions. If construction work is added to the Work under this Contract, Contractor shall not be responsible for any damages or delays caused by sinkholes, and the Contract price and durations shall be equitably adjusted for impacts caused by sinkholes.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

Witness:

Witness:

Construction Manager:

PC Construction Company

By: _____

Name: _____

Title: _____

Owner:

CITY OF WILDWOOD, FLORIDA

By: _____

Name: _____ Jason F. McHugh _____

Title: _____ City Manager _____



BUILDING STRONGER,
TOGETHER

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West Palm Beach, FL 33401
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EXHIBIT A: CMAR SCOPE OF WORK

CONSTRUCTION MANAGER AT RISK SERVICES FOR THE WILDWOOD WRF EXPANSION AND BNR IMPROVEMENTS PRECONSTRUCTION SERVICES

Project Background/Description

The existing Wildwood WRF is classified as a Wastewater Treatment plus Filtration Facility (Category III, Class B) utilizing the oxidation ditch modification of the activated sludge process to treat the raw wastewater from the service area and is operating under FDEP Operations Permit No. FLA013497. The Wildwood WRF has undergone numerous upgrades since the installation of the first package treatment plant in the 1970's. However, a significant portion of the facility infrastructure is aging, corroding, outdated and failing. In addition, there are hydraulic and operational issues that are currently limiting the treatment capacity of the facility to approximately 2.80 MGD AADF.

The existing facility processes include mechanical screening, flow equalization, secondary treatment through two (2) pair of oxidation ditches operating in a "series" configuration, secondary clarification, tertiary (disc) filtration, high-level disinfection using sodium hypochlorite, two lined reject/reuse water storage ponds and high service pumping to the reclaimed water distribution system, North Sumter Utilities (NSU) and the City's R-12 site. The sludge treatment system consists of aerobic digestion and dewatering (belt filter press) prior to final disposal. In 2022, the City contracted with CPH, LLC to provide engineering services for evaluation of the existing treatment facility, development of a Conceptual Design Report (CDR) for the proposed improvements, and engineering design and construction administration services associated the capacity expansion and BNR treatment process improvements to the WRF to meet the projected service area demands/capacity. The proposed project will include the following improvements: (1) short-term improvements to the existing Wildwood WRF (Phase I); and (2) construction of the first phase of a new 6.0 MGD WRF, on City property located adjacent to the existing Wildwood WRF, capable of producing an advanced wastewater treatment (AWT) effluent (Phase II). CPH, LLC is the Engineer of Record (EOR) for the project and will work with City management/staff and the CMAR Contractor during design, pre-construction activities, and construction of the proposed WRF expansion and BNR improvements.

The Wildwood WRF Expansion and BNR Improvements project will be funded by City resources and potentially a State Revolving Fund (SRF) Loan from the Florida Department of Environmental Protection (FDEP). Neither the State of Florida nor any of its departments, agencies or employees is or will be a party to this RFQ or any resulting Contract. The Contractor shall be required to abide by the FDEP Supplementary Conditions (Construction and Materials/Equipment), Davis-Bacon wage rates and submittal of weekly certified payrolls and the American Iron and Steel (AIS) requirements should the City execute an SRF Loan with the FDEP.

The City of Wildwood intends to use the Construction Manager at Risk (CMAR) delivery for construction of the Wildwood WRF Expansion and BNR Improvements. The City of Wildwood proposes to initially enter into a contract with the selected CMAR firm, which will include Pre- Construction Services and later negotiation of a Guaranteed Maximum Price (GMP). A second contract including Construction Services based on the negotiated GMP will follow if an agreement is reached.

CMAR Responsibilities

The CMAR shall provide consulting, scheduling, value engineering services, constructability reviews, estimating, and cost control services and function as one of the key project team members, along with The City of Wildwood and CPH, LLC in accordance with Section 8.2 of the RFQ. The CMAR will participate in project chartering, partnering, kickoff or similar team meetings, and participate in project status and progress meetings throughout final design and construction. The preconstruction scope incorporates the efforts to support Task Order No 1 and Task Order No 3 to support immediate improvements and increasing the plant capacity to 4.3 MGD.

The CMAR will be responsible for:

- Developing a cost model in conjunction with the Owner and Engineer. (Estimate format and assumptions)
- Providing open book cost estimates for, 30 percent, 60 percent and 90 percent design submissions
- Developing multiple Guaranteed Maximum Prices (GMP's) to construct the Project
- Scheduling and estimating services
- Recommending optimal maintenance of plant operations (MOPO) in collaboration with Owner staff and the Engineers
- Value Engineering services and constructability reviews

Pre-Construction Phase Services – Pre-Construction Phase Services included in this scope of work include the following:

- Task 1** Preconstruction Management and Administration for Design and Preconstruction Phase
- Task 2** Design Support and Value Engineering Support
- Task 3** Cost Estimates & GMP Development
- Task 4** Scheduling
- Task 5** Additional Services Allowance (Preconstruction Contingency to Accommodate Owner Requests)
- Task 6** Contingency Allowance for Funding Phase 1A.1B Construction

Construction Phase Services (Future) - Upon execution of the Construction Services Contract, the CMAR shall provide Construction Phase Services as provided in the Contract Documents, including, without limitation:

- Collaborate with The City of Wildwood and CPH, LLC to execute the Project
- Develop and update Project schedules
- Provide reporting and Project management of CMAR forces
- Provide construction management services during construction

Scope of Services

Task 1 Preconstruction Management and Administration for Design and Preconstruction Phase

Description. This task is for CMAR project management and administration activities during the Pre-Construction phase of the project, which are further described in this Section. It is anticipated that Project Management for Pre-Construction Services will cover the CMAR's reporting, communication, and overall oversight of the project, and includes management, invoicing, safety, administrative and managerial meetings, and training. The CMAR shall develop a reporting and communication protocol among Owner, CMAR, and Engineers, Contractors and other parties to the project, that includes the type of information for reporting, the reporting format, and the desired frequency for distribution of reports.

Deliverables/Key Meetings. Deliverables for the Pre-Construction Project Management and Administration for Design and Construction Phase include the following:

- Provide a construction management plan that includes the approach to safety, quality, cost estimating, and scheduling, during both the preconstruction and construction phases. This plan should include the following:
 - o Construction emergency response plan and site safety plan.

- Quality management plan that ensures conformance to the project design and to every section of the specifications.
- Environmental management plan detailing programs for a storm water pollution prevention plan and handling other environmental issues (dust, on-site chemicals, and fuel, etc.) as required to comply with permits and regulations applicable to the Project.
- Document management and storage protocols. Provide tools to support this process if the Owner or Engineer does not already have a system in-place.
- Hurricane/Tropical Storm Preparedness Plan
- Establish a protocol for developing meeting minutes for the design phase.
- Establish a protocol for reporting and communication among all parties.
- Finalize a cost model
- Attendance at and participation in a Kickoff and Partnering Meeting
- Risk Register Review Meetings to provide suggested risk register and outline future management expectations of the risk register through the preconstruction and construction phases

Task 2. Design Support and Value Engineering/Constructability Support

Description. Provide the following services to support the design of the Project.

- Consult with, advise, and provide recommendations to the Owner and the Engineer on all aspects of the planning, design, and proposed construction.
- Participate in meetings or workshops with the Engineer, and Owner as needed. Engineer will lead these meetings, highlighting specific design/scope items which warrant CMAR input as well as any proposed changes in the design. CMAR is responsible for notifying the project team of any perceived cost or schedule impacts during these meetings and following up with the appropriate documentation. It is also the expectation of the CMAR to highlight potential cost and schedule saving alternates during these meetings.
- Participate in value-engineering reviews which identify, evaluate, and propose cost-effective alternatives to all aspects of the project design. Results are to be presented in a format (report, sketches, drawings, PowerPoint presentation, etc.) that allows for Owner and the Design Engineer to readily evaluate proposed alternatives on the basis of their potential project cost and time savings. These reviews should be coordinated constructability reviews at the key design milestones
- Facilitate up to two maintenance of plant operations (MOPO) workshops and develop a MOPO plan concurrent with the GMP.
- Participate in key milestone design reviews (e.g., 60% design deliverable, 90% design deliverable, and final construction deliverable) to be conducted by the Engineer.
- Work with the design team to develop bid packages that align with the proposed sequence of construction and Procurement. This includes an approach to multiple GMP's and early work packages, if required by the project schedule.
- Coordinate with the Design Engineer and local authority having jurisdiction to ensure seamless transition into construction.
- Work with Owner and Design Engineer to capture any additions to the design necessary to facilitate commissioning and acceptance.

Deliverables.

- Attendance at and participation in recurring design meetings/workshops
- Facilitation of MOPO Workshops (2 workshops)
- Development of MOPO Plan submitted at the 90% design milestone
- Materials to support value engineering reviews

Pricing Guidance and Assumptions. All costs for Task 2 should be included the Pre-Construction Services Price Section, for Task 2 of the CMAR Price Proposal. Other assumptions are identified below:

- There will be weekly meetings with Owner, CMAR, and Engineers (to be scheduled by the Owner/Engineer). These meetings will be used for design reviews, value engineering, cost estimate review, progress reports, and other topics as needed. The intent is to use these standing meetings as a forum for communication. The Owner/Engineer will generally facilitate these meetings and provide meeting notes with all parties providing meeting materials or facilitating individual agenda items as needed. For meetings or workshops scheduled outside of these standing meetings (see Deliverables), the CMAR will be responsible for meeting facilitation, meeting materials and meeting notes.
 - CMAR has included fifty-two (52) weekly meetings
 - 4 additional “topic specific” meetings as needed
 - CMAR will develop a value engineering matrix used to track value engineering concepts and status. The matrix will be initiated at the first estimate deliverable and will be managed by the CMAR for real-time tracking of value engineering ideas.
 - 30% Milestone Design Workshop will be one half-day workshop with the agenda managed by the design Engineers
 - 60% Milestone Design Workshop will be one half-day workshop with the agenda managed by the design Engineers.
 - 90% Milestone Design Workshop will be one half-day workshop with the agenda managed by the design Engineers.
 - Value Engineering/Constructability Workshop will be one workshop with the agenda managed by the CMAR
 - Permitting and Work Analysis Workshop will be one workshop with the agenda managed by the design Engineers.
 - CMAR will have access to Owner and design Engineers’ electronic files to support value engineering efforts including CAD, native Revit (or similar) files.

Task 3 Cost Estimates & GMP Development

Cost Model Development. The CMAR will provide a cost model template that shall be used, as negotiated prior to contract negotiation and modified during this task. The CMAR will be required to develop its GMP estimate, and all subsequent GMP iterations in accordance with the level of detail set forth in the approved cost model template. The intent of the cost model development and review is to have Owner and the CMAR agree on the format for presenting cost estimates that will be used consistently throughout the Project, so that the Owner can easily track the evolution of estimated costs through successive cost estimate submittals that will allow the Owner to modify priorities and requirements, based on the overall budget. The cost model shall breakdown costs to show labor classification and hours (including overtime and night shift), material, equipment, and any subcontract costs for each item. All contingency and escalation factors shall be identified. Scope related contingencies shall be based on probabilistic assessment of risks and risk costs for the Project. The cost model shall include both cost details, and a section for summary costs of major cost categories, CMAR markups, and contingencies.

Cost Estimates. The CMAR shall develop and submit Project cost estimate updates regularly over the course of Pre-Construction Phase, with the first submission provided no later than 30 days after issuance of the 30% design documents. Updates shall be provided as required if there are large design changes along with the outlined estimates below.

The CMAR will develop cost estimates in a transparent and open-book manner concurrent with design development to create an acceptable cost (including contingencies) to which the CMAR’s proposed fee and other fixed allocations or allowances will be added.

Cost estimates are to be provided on an iterative, progressive basis as design detail is developed. Full cost estimates shall be provided at the outset of the project (30%) and then at subsequent major design milestones (i.e., 60% and 90%). Each estimate shall include a log of additive or deductive changes from the previous cost estimate submission, with a description of the basis for changes (e.g., design changes, updated quotes, revised contingencies, etc.).

Once design has progressed to a degree acceptable to the Owner, The Owner shall have the authority to direct the CMAR to submit a GMP Proposal, assumed to be at 60% design. Early or multiple GMP's are expected to help accelerate schedule. CMAR and the Owner and Engineer shall meet and confer about each cost estimate submission, with CMAR identifying the evolution of the costs from the previous estimate (if any). The CMAR shall revise the cost estimate submittals as needed in response to comments and incorporate said responses into the subsequent cost estimate submittal.

The CMAR Contractor shall develop comprehensive and competitively bid packages for each construction trade during the GMP subcontractor bidding. The City Clerk and FDEP SRF Loan Manager (if loan is used) shall approve the process used by the CMAR Contractor for noticing, accepting and awarding subcontracts for each of the trades. The CMAR Contractor shall solicit at least three (3) qualified subcontractor bidders (or self-performed work plus two subcontractor bids); shall diligently work to include local area businesses; identify long-lead delivery materials and equipment.

Deliverables.

1. Cost Model
2. 30% cost estimate submitted no more than 30 days following 30% design submission.
3. Bid Package/Subcontractor & Vendor Procurement Plan
4. 60% cost estimate (GMP Estimate) submitted no more than 45 days following the 60% design submission.
5. 90% cost estimate (Amendment or modification to the 60% GMP)
6. Early GMP's for Phase 1A and Early Equipment are anticipated

Pricing Guidance and Assumptions. All costs for Task 3 should be included the Pre-Construction Services Price Section, for Task 3 of the CMAR Price proposal. Other assumptions are identified below:

- CMAR will provide an early cost proposal funded from the contingency for the Phase 1A/1B/scope of work
- CMAR will provide a 30% Cost Estimate on the mutually agreed-to format of the initial cost estimate.
- CMAR will manage the agenda for the 30% Cost Estimate Review Workshop. This workshop will be an in-person meeting at City Hall
- CMAR will provide a 60% Cost Estimate (basis of the GMP) on the mutually agreed-to format of the initial cost estimate.
- CMAR will manage the agenda for the 60% Cost Estimate Review Workshop. This workshop will be an in-person meeting at City Hall
- CMAR will provide a 90% Cost Estimate on the mutually agreed-to format of the 60% GMP estimate.
- CMAR will manage the agenda for the 90% Cost Estimate Review Workshop. This workshop will be an in-person meeting at City Hall
- CMAR will provide an early GMP for select equipment

Task 4 Scheduling

Description. The CMAR shall prepare a critical path method network analysis (Baseline Design Schedule) to be updated over the duration of the Project. The Baseline Design Schedule shall be consistent with plans described in the CMAR's Proposal and shall include detailed scheduling for Pre-Construction activities. The final schedule shall consider the Owner's budget and design requirements for the project. A draft schedule shall be submitted within 45 days of the Notice to Proceed. As the project progresses the CMAR shall prepare and submit a Construction Phase Procurement Schedule to be used in connection with soliciting bids from contractors and suppliers.

Minimum activities for the Baseline Design Schedule shall include the following:

1. All workshops and significant meetings
2. Development and review of all Engineering Pre-Construction deliverables, including 30%, 60% and 90% design submittals, engineering studies, and site work.

Schedule development scope shall end upon acceptance of the CMAR's GMP Proposal.

Minimum Schedule Requirements. Each activity in the detailed network diagram for all schedules shall include the following information:

1. Sequential activity number
2. Activity description
3. Activity dependencies
4. Activity duration in units of working days
5. Early start date
6. Early finish date
7. Planned start date
8. Planned finish date
9. Late start date
10. Late finish date
11. Free and total float
12. Percent complete
13. Activity cost

Schedules shall have multiple sort capabilities including the following:

1. By activity number
2. By the amount of total float
3. By responsibility
4. Early start dates
5. Actual start dates
6. Late start dates
7. Activities on the critical path
8. Listing of all deliverable related activities
9. A graphical cost curve based on early start/finish and late start/finish

The Schedule shall be updated on a monthly basis. In addition, the Schedule shall be updated whenever a Project change occurs that would significantly affect the nature of Project activities, duration of activities, network logic, or the scheduled Substantial Completion, Acceptance, or Final Completion Dates. All schedule updates shall be assigned a sequential revision number Deliverables.

1. Baseline Design schedule
2. Construction Phase Procurement Schedule
3. All schedule updates

Pricing Guidance and Assumptions. All costs for Task 4 should be included the Pre-Construction Services Price Section, for Task 4 of the CMAR Price proposal. Other assumptions are identified below:

- CMAR will provide a 30% Schedule baseline schedule. This will include a brief schedule narrative
- CMAR will manage the agenda for the 30% Schedule Workshop. This workshop will be an in-person meeting at City Hall.
- CMAR will provide a 60% GMP Schedule in similar format to the initial baseline schedule.

- CMAR will manage the agenda for the 60% Schedule Workshop. This workshop will be an in-person meeting at City Hall. CMAR will provide an update to the 60% GMP workshop at 90% if there are changes to the scope of work that warrant schedule reconfiguration

Task 5 Additional Services Allowance (Preconstruction Contingency to Accommodate Owner Requests)

Description. CMAR is an iterative process requiring multiple meetings, submittals and reviews by Owner and Engineer that may not be fully quantified at the outset. An effort has been made to quantify these assumptions for pricing purposes. This task represents a contingency amount for the cost of additional meetings, submittals and reviews that are in excess of those defined in this Preliminary Scope of Pre-Construction Services. Additionally, this contingency can be utilized for investigation work on-site to assist in design progression at the approval of the Owner.

Deliverables. Additional review submittals as requested by Owner

Pricing Guidance and Assumptions. All costs for Task 5 should be included the Pre-Construction Services Price Section, for Task 5 of the CMAR Price proposal. This is a contingency amount that shall be used at the sole discretion of Owner for additional services as directed by Owner. Other assumptions are identified below:

- Underground exploration (also known as potholing or test pitting) will be a contingency item performed by CMAR at the direction of Owner/Engineer.
- Additional meetings or deliverables

Task 6 Contingency Allowance for Funding Phase 1A.1B Construction

Description. The City of Wildwood has expressed interest in expediting the work associated with Task No. 1 and No. 2. This contingency allowance would be developed to providing an immediate funding source while the pricing for Task No. 2 is being developed in Task 3. The CMAR would provide an open book GMP that would be funded from this Contingency source.

Deliverables. Open Book Change Order

Overall Preconstruction Schedule

- A. The CMAR and Owner acknowledge that time is of the essence and that the Preconstruction efforts will overlap with early construction activities. The CMAR has outlined reasonably anticipated durations and efforts for preconstruction activities.
- B. Preconstruction services will facilitate overall support of the project for a period of approximately 12 months from Notice to Proceed and will commence at the completion of the final GMP for Phases 1 and 2 or after the 90% design review/cost reconciliation whichever is later.
- C. The anticipated duration of the outlined tasks are as follows:
 - a. Task 1 Preconstruction Management and Administration for Design and Preconstruction Phase – **12 Months**
 - b. Task 2 Design Support and Value Engineering Support – **Intermittent over 9 Months**
 - c. Task 3 Cost Estimates & GMP Development - **Intermittent over 9 Months**
 - d. Task 4 Scheduling – **12 Months**
 - e. Task 5 Additional Services Allowance (Preconstruction Contingency to Accommodate Owner Requests) - **TBD**
 - f. Task 6 Contingency Allowance for Funding Phase 1A 1B Construction - **TBD**

Contract Milestone	Days to Achieve Substantial Completion	Days to Achieve Final Completion after Substantial Completion
Phase 1A (Early Work) Construction	To be Established in a Change Order developed in Preconstruction	To be Established in a Change Order developed in Preconstruction
Early Equipment Purchase	To be Established in a future GMP developed in Preconstruction	To be Established in a future GMP developed in Preconstruction
Phase 1/2 Construction	To be Established in a future GMP developed in Preconstruction	To be Established in a future GMP developed in Preconstruction

Insurance and Bonds Exhibit

Construction Manager at Risk (CMAR) Services - Wildwood WRF Expansion and BNR Improvements

10. STANDARD INSURANCE REQUIREMENTS

10.1 General

The Proposer shall maintain, on a primary basis and at its sole expense, at all times while performing work for the City, the "Standard Insurance Requirements" described herein. **Proposers responding to this RFQ shall provide with their submittal, a Certificate of Insurance (COI) or a letter from the insurance company stating required coverage is obtainable.** Prior to commencement of any work being done for the City, a COI will be required. Work is defined as any service provided to the City by a Vendor/Consultant/Proposer who must access City property in order to provide the service(s). The requirements contained herein, as well as the City's review or acknowledgment, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Proposer under this Contract.

10.2 Financial Rating of Insurance Companies

All insurance companies must have a financial rating of A or higher by A.M. Best Company, Inc., except for self-insured insurance companies.

10.3 Commercial General Liability Insurance

The Proposer shall maintain Commercial General Liability Insurance at a limit of liability not less than **\$1,000,000** each occurrence and **\$2,000,000** annual aggregate. Due to the nature of the work involved, Consultants performing program and/or contract management services are required to maintain **\$1,000,000** each occurrence and **\$1,000,000** annual aggregate. The coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Independent Consultants, Broad Form Property Damage, X-C-U Coverage, Contractual Liability or Cross Liability. The self-insured retention or deductible shall not exceed **\$25,000**.

10.4 Business Automobile Liability Insurance

The Proposer shall maintain Business Automobile Liability Insurance at a limit of liability not less than **\$500,000** each occurrence. Coverage shall include liability for owned, non-owned and hired automobiles. In the event the Proposer does not own automobiles, the Proposer shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

10.5 Worker's Compensation Insurance and Employers Liability Insurance

The Proposer shall maintain its own Worker's Compensation Insurance and Employers Liability in accordance with Florida Statute Chapter 440. ***NOTE - Elective exemptions or coverage through an employee leasing arrangement will be on a case by case basis.***

10.6 Umbrella or Excess Liability Insurance (Required for Large Contracts)

The Proposer shall maintain either a Commercial Umbrella or Excess Liability Insurance at a limit of liability not less than **\$2,000,000** each occurrence and **\$2,000,000** aggregate. The Proposer shall endorse the City as an "Additional Insured" on the Umbrella or Excess Liability Insurance, unless the Commercial Umbrella/Excess Liability Insurance provides coverage on a pure "True Follow-Form" basis, or the City is automatically defined as an additional protected person. Any self-insured retention or deductible shall not exceed **\$25,000**.

10.7 Professional or Errors and Omissions Liability Insurance (When Applicable)

The Proposer shall maintain a Professional Liability or Errors & Omissions policy at a limit of liability no less than **\$2,000,000**. The Proposer shall endorse the City as an "Additional Insured" on the Professional and/or Errors & Omissions Liability Insurance.

10.8 Additional Insured

The Proposer shall endorse the City as an "Additional Insured" on the Commercial General Liability Insurance with a CG 2010 Additional Insured - City's, Lessees, or Contractors, or CG2026 Additional Insured - City's, Lessees, or Contractors - Scheduled Person or Organization endorsement, or similar endorsement providing equal or broader Additional Insured coverage.

In addition, the Proposer shall endorse the City as an Additional Insured under the Proposer's Commercial Umbrella/Excess Liability as required herein.

10.9 Indemnification

The Proposer shall indemnify and hold harmless the City and their elected officials, employees, agents, representatives, and volunteers from and against any and all claims, damages, losses and expenses, (including legal costs), or liabilities based on third-party claims of injury to persons or damage to property arising out of or resulting, in whole or in part, from a negligent act or omission or willful misconduct of consultant or its employees, subcontractors, agents or representatives.

10.10 Deductibles, Coinsurance Penalties, and Self-Insured Retention

The Proposer shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation. For deductible amounts that exceed the amounts stated herein that are acceptable to the City, the Proposer shall, when requested by the City, maintain a Commercial Surety Bond in an amount equal to said deductible amount.

10.11 Waiver of Subrogation

The Proposer shall provide a Waiver of Subrogation in favor of the City, subconsultant, architects, or engineers for each required policy providing coverage

during the life of this Contract. When required by the insurer, or should a policy condition not permit the Proposer to enter into a pre-loss agreement to waive subrogation without an endorsement, then the Proposer shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Proposer enter into such an agreement on a pre-loss basis.

10.12 Right to Revise or Reject

The City reserves the right, but not the obligation, to review and revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due to its poor financial condition or failure to operate legally. In such events, the City shall provide the Proposer written notice of such revisions or rejections.

10.13 No Representation of Coverage Adequacy

The coverages, limits or endorsements required herein protect the primary interests of the City, and these coverages, limits or endorsements shall in no way be required to be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Proposer against any loss exposures, whether as a result of the Project or otherwise.

10.14 Certificate(s) of Insurance (COI)

The Proposer shall provide the City with a COI clearly evidencing that all coverage, limits and endorsements required herein are maintained and in full force and effect. A minimum thirty (30) day endeavor to notify due to cancellation or non-renewal of coverage shall be identified on each Certificate of Insurance. In the event the City is notified that a required insurance coverage will cancel or expire during the period of this Contract, the Proposer agrees to furnish the City prior to the expiration of such insurance, a new Certificate of Insurance (COI) evidencing replacement coverage. When notified by the City, the Proposer agrees not to continue work pursuant to this Contract, unless all required insurance remains in effect.

The City shall have the right, but not the obligation, of prohibiting the Proposer from entering the WRF Project site until a new COI is provided to the City evidencing the

replacement coverage. The Proposer agrees the City reserves the right to withhold payment to the Proposer until evidence of reinstated or replacement coverage is provided to the City. If the Proposer fails to maintain the insurance as set forth herein, the Proposer agrees the City shall have the right, but not the obligation, to purchase replacement insurance, and the Proposer agrees to reimburse any premiums or expenses incurred by the City.

The Proposer agrees the Certificate(s) of Insurance shall:

1. Clearly indicate the City has been endorsed on the Commercial General Liability Insurance with a CG 2010 Additional Insured - City's, Lessees, or Consultants, or CG 2026 Additional Insured - City's, Lessees, or Contractors - Scheduled Person or Organization endorsement, or similar endorsement providing equal or greater Additional Insured coverage.
2. Clearly indicate the City is endorsed as an Additional Insured, or Loss Payee, on the Builder's Risk Insurance, and when applicable, Additional Insured on the Commercial Umbrella/Excess Liability Insurance as required herein.
3. Clearly identify each policy's limits, flat and percentage deductibles, sub-limits, or self-insured retentions, which exceed the amounts or percentages set forth herein.

4. Clearly indicate a minimum thirty (30) day endeavor to notify requirement in the event of cancellation or non-renewal of coverage.
5. Forward original to and clearly indicate Certificate Holder and Additional Insured as follows:

City of Wildwood
100 North Main Street
Wildwood, FL 34785

The Proposer shall be responsible for all sub-consultants and their insurance.

All deductibles or self-insured retention shall appear on the certificate(s) and shall be subject to approval by the City. At the option of the City, the insurer shall reduce or eliminate such deductible or self-insured retention; or the Proposer shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

All insurance companies must be authorized to transact business in the State of Florida.

The City shall be exempt from, and in no way liable for, any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Proposer and/or subconsultant providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the City of any insurance supplied by the Proposer, nor a failure to disapprove that insurance, shall relieve the Proposer of full responsibility of liability, damages and accidents as set forth herein.



**BUILDING STRONGER,
TOGETHER**

224 Datura Street, Suite 1315
West Palm Beach, FL 33401
pcconstruction.com

100% EMDT OVER OWNED

EXHIBIT C: RATE TABLE

CONSTRUCTION MANAGER AT RISK SERVICES FOR THE WILDWOOD WRF EXPANSION AND BNR IMPROVEMENTS PRECONSTRUCTION SERVICES

Pre-Construction Phase Services All-Inclusive Billing Rates		
Key Firm	Labor Category	All-Inclusive Billing Rate
PC Construction	Construction Executive	\$ 232
PC Construction	Preconstruction Manager	\$ 218
PC Construction	Senior Project Manager	\$ 185
PC Construction	Project Manager	\$ 162
PC Construction	Senior Superintendent	\$ 194
PC Construction	Project Superintendent	\$ 156
PC Construction	Purchasing Manager	\$ 165
PC Construction	Purchasing Assistant	\$ 81
PC Construction	Virtual Construction Engineer	\$ 96
PC Construction	Senior Project Engineer	\$ 125
PC Construction	Project Engineer	\$ 102
PC Construction	Senior Estimator	\$ 135
PC Construction	Project Estimator	\$ 123
PC Construction	Staff Estimator	\$ 93
PC Construction	Senior Field Office Manager	\$ 101
PC Construction	Scheduler	\$ 150
PC Construction	Preconstruction Coordinator	\$ 92

- Pre-construction rates valid for the Pre-construction period outlined in Exhibit D.

Exhibit D

GMP

Reimbursable Costs, Adjustments and Exclusions

1. Direct Labor Cost. This category of expenses shall include direct labor costs limited to the following cost items:

- a. Wages and employee benefits as may be payable, paid for labor, supervisory and office employees, in the direct employ of the CM and used for performing the Contract work, whether at the site or off-site, invoiced and paid in accordance with the Rate Schedule developed by CM and approved by City and to be attached to the GMP amendments;

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

- a. The cost of all materials, supplies and equipment incorporated in the Work and the cost of transportation and storage thereof.
- b. Payments made by the CM to its Trade Contractors for work performed for the Project under trade contracts;
- c. 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/or 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. This cost shall not include the cost of materials, supplies, equipment, temporary facilities and hand tools furnished by Trade Contractors as part of their trade work, which shall be incorporated in the trade contracts cost;
- d. Rental charges of all necessary motor vehicles, machinery and equipment, including hand tools, whether rented from the CM 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;
- e. Cost of the bonds which the CM is required to provide. Insurance reimbursement to CM may be at a fixed rate agreed by the CM and City;
- f. Sales, use, excise, gross receipt, or similar taxes related to the performance of the Work, imposed by any governmental authority and for which the CM

or it vendors or subcontractors are liable;

- g. Building and operating permit fees, inspection and filing fees, sewer and water fees and deposits lost for causes other than CM's own negligence;
- h. Losses, expenses or damages to the extent not compensated by insurance or otherwise, including settlement made with the written approval of the City;
- i. The cost of corrective work
- j. Minor expenses such as telegrams, long-distance telephone calls, telephone service at the Project site, postage, office supplies, and similar items;
- k. Cost of debris and trash removal including daily cleanup;
- l. Cost of final cleanup prior to occupancy including window washing, dusting of all surfaces, carpet cleaning and vacuuming, floor polishing, fixture cleaning etc.;
- m. Cost related to emergencies affecting the safety of persons and loss of property;
- n. Legal costs properly resulting from prosecution of the Work for the City, provided that they are not the result of CM's own negligence or malfeasance. Legal costs incurred in connection with disputes with the City shall not be included in the Cost of the Work;
- o. Cost of items related to the Project Safety Program including but not limited to 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 likely items;
- p. Cost of watchmen or similar security services;
- q. Cost of survey, measurement and layout work required for the proper execution of the Work;
- r. 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 in connection with the Work;

- s. Cost of preparation of shop drawings, coordination drawings, photographs, and "as-built" documentation;
 - t. Cost of data processing, computerized scheduling and document reproduction services required in the performance of the Work;
 - u. Costs of background checks if required by the City; and
 - v. Other costs incurred in connection with the Work, with the City's prior approval, and costs that CM may charge against Contingency as agreed in any GMP Amendment.
- 3. CM's Fee.** CM's Fee for Change Orders to this Contract and for all Work under the Construction portion shall be 9.5 % of the Cost of the Work. The Parties agree to renegotiate the CM's Fee with the establishment of any GMP's pursuant to any amendment to this Contract. The intent and purpose of the GMP is to establish a maximum price for the Work under the Construction Phase Contract, not a maximum price for line items, said line items being subject to adjustment by the CM, provided that such adjustments do not cumulatively exceed the Construction Phase Contract's GMPs. The CM fee shall include the following:
- a. Salaries or other compensation of CM's employees at the principal office and branch offices, except employees listed in the Rate Sheet attached as Exhibit C to the Contract; should additional CM employees be required for the Work, Parties agree to amend the Rate Sheet to add such employees.
 - b. General administrative and operating expenses of CM's principal and branch offices other than the Project site office;
 - c. Any part of CM's capital expenses, including interest on CM's capital employed for the Project, if any; and,
 - d. Cost in excess of the Guaranteed Maximum Price, if any is incurred.
- 4. Adjustments.** Adjustments of the fee shall be made only as follows:
- a. For approved changes in the Work, an increase to the fee in an equitable amount to be included in the Change Order.
- 5. Exclusions.** The GMPs shall not include such Project expenses as cost of site, site survey and subsurface investigations, professional design fees except for professional design services required of the CM under the Contract Documents or applicable law.

6. **Contingency.** The parties contemplate that GMP Amendments will include a Contractor contingency amount, for use by Contractor as agreed in the applicable GMP Amendment. GMP Amendments may also include an Owner contingency at Owner's request.

CITY COMMISSION OF THE CITY OF WILDWOOD
EXECUTIVE SUMMARY

SUBJECT: Commission Meeting Rules and Order

REQUESTED ACTION:

CONTRACT:

Vendor/Entity:

Effective Date:

Termination Date:

Managing Division/Department:

BUDGET IMPACT: None

HISTORY/FACTS/ISSUES:

The City Commission recently held a workshop to discuss the rules and laws that apply to certain types of agenda items. There was also discussion on creating a policy for how Commission meetings are to be run. Attached is a draft of the policy and speaker's card for the Commission to review.

MEETING RULES AND ORDER

CITY OF WILDWOOD



Adopted: March 13, 2023

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SECTION 1 SCOPE

1.1 SCOPE

These rules shall establish the procedures for the conduct of all meetings of the City Commission of the City of Wildwood. The purpose of these rules is to establish procedures which will be convenient for the public, be fair to all members of the City Commission and contribute to orderly conduct of city business. For any items not addressed in these rules, the ruling of the Chair shall govern unless overruled by a majority of the Commission.

SECTION 2 PRESIDING OFFICER

2.1 DEFINITION

A. The presiding officer at the Commission meeting shall be the mayor or in his/her absence, the mayor pro tem, and in his/her absence, the Commission member in attendance at the meeting with the longest continuous tenure on Commission.

B. If the meeting is being chaired by a Commission member other than the highest ranking presiding officer of the Commission, upon the arrival of a higher ranking presiding officer, the officer shall immediately relinquish the chair upon the conclusion of the business at hand.

2.2 DESIGNATED DUTIES

The presiding officer shall be well-versed in these rules and shall also preserve order and decorum at all Commission meetings. He/she shall maintain control of the meeting and keep it focused.

2.3 CALL TO ORDER

The presiding officer shall take the chair precisely at the hour appointed for the meeting and shall call the Commission to order.

2.4 RECESS DURING MEETINGS

The presiding officer has the power to call for a recess. Recesses requested by any other Commission members require a majority vote of Commission.

SECTION 3 ROLL CALL

3.1 ROLL CALL

As the first order of business, the mayor shall note the absence of any member of the Commission. The city clerk shall notate the attendance of each member in the minutes.

3.2 QUORUM

A. A majority of all members serving on the City Commission shall constitute a quorum at any meeting of the Commission.

B. In the absence of a quorum, two or more members may adjourn any regular, special, or workshop meeting to a later date.

3.3 TARDINESS

If a Commission member arrives after a meeting has convened, the tardiness will be reflected in the minutes under Roll Call, next to the Commission member's name. The arrival of the Commission member will be indicated in the appropriate section of the minutes. If a vote is taken prior to the Commission member's arrival, the member's absence will be noted in the vote in the minutes.

3.4 ABSENTEEISM

A. Absence from three (3) consecutive regular meetings of the Commission, without being excused by the Commission, may result in the forfeiture of the seat of the member. The city clerk shall notify the Commission of the third consecutive absence of any Commission member.

B. When a Commission member leaves a meeting and does not return, the member needs only to inform the presiding officer that he/she will not return to the meeting. The presiding officer will inform the Commission and public of same.

3.5 ATTENDANCE BY COMMUNICATIONS TECHNOLOGY MEDIA

A. A Commission member who, due to extraordinary circumstances such as a physical disability or illness, is unable to attend a scheduled Commission meeting, may

participate and vote in a Commission meeting by the use of communications media technology, that is currently utilized by the city, provided a quorum is physically present at the meeting and a majority of the Commission members present vote in favor of approving such participating.¹ An absent Commission member may not be counted for purposes of constituting a quorum.

B. The communications media utilized must enable the absent member to participate in the discussions, to be heard and/or seen by the other Commission members and the public, and to hear discussions taking place during the meeting. (AGO 92-44 and 94-55). With regard to quasi-judicial hearings, an absent Commission member must have access to all of the evidence presented to the Commission members present, and must have sufficient means to judge the credibility of witnesses and otherwise fully participate as if physically present, in order to vote.

C. The city shall incur the cost for the use of communication media technology in an amount not to exceed One Hundred Dollars (\$100.00) per meeting. Costs exceeding the maximum amount shall be borne by the absent Commission member.

¹Whether the absence of a Commission member constitutes an extraordinary circumstance is a determination that must be made in the good judgment of the City Commission. (AGO 03-41). The Attorney General's Office "has been reluctant to extend the participation in public meetings of public officials by electronic means to situations other than those involving a serious medical condition and the presence otherwise of a quorum at the public meeting.

SECTION 4 DECORUM

4.1 ORDER AND DECORUM

The presiding officer shall be responsible for maintaining the order and decorum of meetings. It shall be the duty and responsibility of the presiding officer to ensure that the rules of operation and decorum contained herein are observed. The presiding officer shall maintain control of communication between the Commission members and between the Commission, staff and public. The City Commission and members of staff shall work to preserve appropriate order and decorum during all meetings.

4.2 COURTESY

All members of the Commission shall accord the utmost courtesy to each other, to city employees, and to public members appearing before the Commission and shall refrain at all times from rude and derogatory remarks, reflections as to integrity, abusive comments, and statements as to motives and personalities. Commission members shall confine their remarks to the issues before the Commission.

4.3 COMMUNICATION BY COMMISSION MEMBERS

A. Commission members should request the floor from the presiding officer before speaking.

B. When one member of the Commission has the floor and is speaking, other Commission members shall not interrupt or otherwise disturb the speaker, nor shall they engage in side conversations with other Commission members.

4.4 ADDRESSING CITY STAFF

Every Commission member desiring to question the city staff shall address the question to the city manager. The city manager shall be entitled either to answer the inquiries him/herself, designate some member of the city staff for that purpose, or request that the question be discussed at a later date.

4.5 COMMUNICATION WITH MEMBERS OF THE PUBLIC ADDRESSING COMMISSION

A. The presiding officer shall open the floor for public testimony as appropriate.

B. Commission members may question a person addressing the Commission at the conclusion of the person's comments or upon expiration of the person's time to speak. Such questions should be directed to the person through the presiding officer, unless the presiding officer grants the Commission member permission to directly question the person.

C. Staff members, through the city manager, shall be a resource to the City Commission to answer questions arising during discussion between Commission members and members of the public. Communications in this regard shall be through the presiding officer.

D. Members of the public shall direct their questions and comments through the presiding officer.

4.6 CITY STAFF ADDRESSING CITY COMMISSION

A. Members of the city staff and employees of the city shall observe the same rules of procedures and decorum applicable to members of the Commission. While the presiding officer shall have the authority to preserve decorum in meetings as far as staff members and city employees are concerned, the city manager also shall be responsible for the orderly conduct and decorum of all city employees under his/her direction and control. The city manager shall take such disciplinary action as may be necessary to ensure that such decorum is preserved at all times by city employees at Commission meetings.

1. Any staff member requesting to address the Commission shall be recognized through the city manager, who in turn shall be recognized by the presiding officer, and shall approach the lectern, if requested, stating his/her name for the record, limiting his/her remarks to the matter under discussion.

2. All remarks and questions shall be addressed to the Commission as a whole and not to any individual member thereof.

3. No staff member, other than the staff member having the floor, shall enter into any discussion either directly or indirectly without permission of the presiding officer.

4.7 INTERRUPTION OF MEETING

Persons demonstrating disruptive behavior at meetings or violating established rules of order will be called to order by the presiding officer. If such conduct continues, the presiding officer may call a recess, request the removal of such person(s) from the Commission chambers upon a finding of "disorder", adjourn the meeting if determined to be the appropriate action, or take such other appropriate action as permitted by law.

4.8 DEFINING DISORDER AND DISRUPTION

A. A speaker who is disorderly at a meeting may be removed upon a finding by the presiding officer that such disorder causes a "disruption". Disorder at public meetings usually takes one of three forms:

1. Refusal to confine the speech to the subject matter being addressed.
2. Refusal to conform to time limits on speaking:

a. Courts have held that a valid removal order for time limit or subject limit violations should include advising the speaker of available, alternative methods of presenting his/her views, such as:

- 1) leaving a written transcript of the speech for the record;
- 2) mailing the speech to each member of the Commission; and/or
- 3) appearing at future meetings to discuss the subject.

3. The speaker's demeanor and conduct during the meeting.

B. Disruption includes any conduct that significantly violates generally or specifically established rules of order and truly disrupts the meeting. Examples are:

1. Violent or tumultuous conduct threatening the safety of another.
2. Conduct creating danger to another's property.
3. Provoking or engaging in a fight.
4. Use of words that may threaten or outrage others.
5. Not speaking on the subject matter being addressed and refusing to do so when requested by the presiding officer.
6. Using obscene, profane, or vulgar language.

C. A speaker may not be removed merely because the content of the speech is not politically pleasing or acceptable.

4.9 ENFORCEMENT OF ORDER

Any Commission member may request the presiding officer to enforce the rules of decorum upon a motion and majority vote by Commission.

4.10 SERGEANT-AT-ARMS

The Police Chief or their designee shall be sergeant-at-arms of the Commission meetings and shall carry out all orders and instructions given by the presiding officer for the purpose of maintaining order and decorum at the Commission meeting.

4.11 REMOVAL FROM MEETING

Upon the instructions of the presiding officer, it shall be the duty of the sergeant-at-arms to escort and/or remove any person from the room who disrupts the meeting. The sergeant-at-arms should attempt to calm the person and explain the law on trespass and Section 871.01, Florida Statutes, Disturbing Schools and Religious and Other Assemblies. If the individual

refuses or resists removal, he/she may be placed under arrest.

4.12 RE-ENTRY TO MEETING

The length of time a removed offender must remain outside a meeting, or whether he/she may reenter during the same meeting shall be decided by a majority vote of the City Commission.

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SECTION 5 ORDER OF BUSINESS ¹

5.1 ORDER OF BUSINESS

A. The business of the City Commission shall be taken up for consideration and disposition in substantially the following order:

1. Call to Order with Pledge of Allegiance and Invocation

The presiding officer calls the meeting to order at the designated time.

2. Consent Agenda/Informational Items

Items listed under the Consent Agenda are considered and adopted by City Commission on one motion. If discussion on a Consent Agenda item is desired by an individual Commission member, that item will be removed from the Consent Agenda, and will be considered in the appropriate section of the Agenda.

3. Presentations and/or Proclamations

Organizations, individuals, and groups are recognized through proclamations or certificates.

Presentations are scheduled by individuals or businesses to inform Commission of issues, projects, etc., and provide an opportunity for discussion by city Commission. No more than two (2) presentations shall normally be scheduled for any given Commission meeting.

Other than motions to adopt proclamations, the Commission shall not take formal action upon issues or matters presented under presentations at the same meeting. If formal action is desired, such matters shall be deferred and scheduled for a subsequent or future Commission meeting for consideration. Commission may, however, by a majority vote, act on items they deem necessary and appropriate. Items not requiring Commission action shall be directed to the city manager for consideration and further action.

4. Public Hearings

5. Public Forum

Speaker's card to be completed and submitted to clerk on duty. There will be no response to the speaker by Commission or city staff. Commission members desiring to address a comment will do so under paragraph 13 of this section.

6. Ordinances First Reading Only

7. Resolutions for Approval

8. Financial & Contracts & Agreements

9. General Items for Consideration/Discussion and Other Business

10. Appointments

11. City Manager Reports

The city manager may provide updates on current city activities, report on issues raised at previous Commission meetings or special recognitions, and respond to comments of the public forum in paragraph 5 of this Section. These are non-action items. Notwithstanding the foregoing, the Commission may direct the city manager to further pursue the items addressed in the city manager reports.

12. Other Department Reports

Commission members may give updates on activities of individual members of the Commission or respond to comments of the public forum in paragraph 8 of this Section. These are non-action items.

13. Commission Members Reports

14. City Attorney Report

The city attorney may provide updates on current litigation.

15. Adjournment

B. The City Commission may modify the order of business, and add or delete agenda headings, upon a majority vote of Commission.

SECTION 6 AGENDAS

6.1 PREPARATION

The city manager's office shall prepare agendas for all formal and informal meetings.

6.2 POSTING OF NOTICE AND AGENDA

A. Posting of Notice and Agenda. For every regular or special meeting, the city clerk or other authorized person, shall post a notice of the meeting, specifying the time and place at which the meeting will be held, and an agenda containing a brief description of all items of business to be discussed at the meeting. The notice and agenda may be combined in a single document.

B. Location of Posting. The notice and agenda shall be posted on the City's website.

C. Posting for Regular Commission Meetings. For any regular Commission meeting of the City Commission, the notice and agenda shall be posted no later than seventy-two (72) hours prior to the time set for the meeting.

D. Posting for Special Commission Meetings. For any special meetings of the City Commission, the notice and agenda shall be posted and provided to Commission members, no later than forty-eight (48) hours prior to the time for the meeting. Special meetings may be convened by the mayor. The City Commission shall prescribe the means of serving or furnishing notice to its members.

E. Posting for Emergency Commission Meetings. In cases where immediate action by the Commission must be taken in order to prevent and/or respond to conditions where property, equipment, public health or life is endangered, the notice and agenda shall be posted and provided to Commission members as soon as practicable.

6.3 SUBMISSION OF ITEMS

All reports, communications, ordinances, resolutions, contract documents or other matters to be considered at a Commission meeting must be delivered to the city manager within the time frame determined by him/her. The office of the city manager shall arrange an agenda packet, with all attachments, that will be submitted to the Commission, by Thursday, the week before the meeting.

6.4 PLACING AN ITEM ON THE AGENDA FOR ACTION BY COMMISSION MEMBERS

A. Any Commission member may request an item be placed on a future agenda:

1. During a meeting.
2. Advising the city manager of the item during the preparation of the agenda.

6.5 PLACING AN ITEM ON THE AGENDA (THE PUBLIC)

A. A member of the public may request an item be placed on a future agenda:

1. During public comments at a meeting and upon consensus of Commission.
2. Contacting a Commission member who in turn requests through the city manager that the item be placed on the agenda during the preparation process of the agenda.

6.6 AGENDA CONTENTS

A. Description of Matters. All items of business to be discussed at a meeting of the City Commission shall be briefly described in the agenda. The description should set forth as clearly as practical a description of the item and the proposed action to be considered so that members of the public will know the nature of the action under review and consideration.

B. Availability of the Agenda to the Public. The agenda for any regular or special meeting shall be made available to the general public as soon as it is practical after delivery to the Commission members.

C. Limitation to Act on Only Items on the Agenda. No action shall be taken by the Commission members on any item not on the posted agenda, subject only to the exceptions listed below:

1. Upon a majority determination that an “emergency situation” (as defined by State Law) exists; or
2. Upon a determination by a majority vote of the City Commission that there is a need to take immediate action and that the need to take the action came to the attention of the city officials subsequent to posting of the agenda.

6.7 MODIFICATION OF AGENDA

A. The City Commission, by a majority vote or general consent of its members, may modify the agenda at a meeting by:

1. Adding an additional item per the request of a Commission member or the city manager.
2. Proposing the rearranging of agenda items.

3. Removing an agenda item per the request of a Commission member or the city manager.

6.8 DISTRIBUTION

The agenda will be posted on the City's website once completed. A link to the agenda shall be provided via email to the local news media who have requested it. A reasonable number of extra copies of the agenda will be available for the public at the meeting., and

Agendas will be emailed to individuals who provide the office of the city manager with an valid email address.

SECTION 7 CONSENT AGENDA

7.1 PURPOSE

The use of the consent agenda is a tool for shortening the time spent on unnecessary discussion and the number of motions made at a Commission meeting. The consent agenda items are considered as one item of business and is an agenda heading. It contains routine items which are not considered controversial in nature, and which do not need further discussion. The items on the consent agenda will usually be ones which the City Commission is familiar with or self-explanatory enough to the point that no discussion is needed. The consent agenda, therefore, is a list of items which can be acted upon officially by the City Commission, without discussion, by means of a single motion and vote. A motion is made and seconded that the consent agenda be approved as submitted.

7.2 REMOVAL OF AGENDA ITEMS FROM CONSENT

A. Items may be removed from consent agenda and considered during the regular agenda per a Commission member's request. If an item need discussing, it is removed from the consent agenda at that time by the Commission member requesting same and discussed and acted upon separately in its normal sequence on the regular agenda.

B. The Commission may remove an item upon the request of a member of the public if there is a majority consensus of Commission to do so. If approved, the item will be considered in its normal sequence on the agenda.

7.3 MINOR QUESTIONS

A Commission member may ask questions on any item without it being pulled from the consent agenda when clarification is sought that will not involve extended discussion. The question will be addressed prior to the motion for adopting the consent agenda. Commission members are encouraged to seek clarification prior to the meeting, if at all possible.

7.4 PUBLIC HEARINGS EXCLUDED

Items for "Public Hearings" are not considered under the consent agenda as they are open to public comment and discussion.

7.5 DETERMINATION OF CONSENT ITEMS

The city manager shall determine the items to be placed on the consent agenda. Items that may be included on the consent agenda include, but are not limited to, the following:

- Informational items
- Site Plans
- Plats
- Budgeted Financial Items that Meet the Requirements of the Procurement Policy

SECTION 8 PUBLIC COMMENTS

8.1 PURPOSE

These procedures are established to provide an orderly method for the City Commission to receive comments from the public on specific agenda items and general matters at public meetings. Public presentations to the City Commission shall be in accordance with the following rules and guidelines, which shall be enforced by the presiding officer.

8.2 PUBLIC COMMENTS

A. Public Hearing Items

1. Individuals addressing “Public Hearing” items do not have to ask for nor complete a ‘Public Comment’ card for time to address the City Commission prior to the meeting.

2. Individuals present to address specific agenda items listed under “Public Hearings” will address the City Commission, using the guidelines established for same, at the time the item is considered by the City Commission.

3. The presiding officer will read the agenda item being considered, open the public hearing, and ask for public comments on the item. Individuals wishing to address Commission will raise their hands at the appropriate time and the presiding officer will call upon the individuals to approach the lectern.

4. The City Commission may recall an individual to provide additional information or to answer questions.

5. The speaker shall be limited to four (4) minutes time. Any unused time by a speaker may not be donated to another speaker.

B. Agenda Items Listed Under Consent Agenda

1. The City Commission will determine if an agenda item listed under consent agenda will be removed and opened for discussion if an individual submits a public comment card to address same.

2. The presiding officer may allow a speaker who has completed a public comment card on an agenda item under consent agenda to address the City Commission prior to action being taken on the consent agenda. If the city Commission indicates that it has no discussion on the item after the speaker addresses the Commission, it will remain on the consent agenda.

3. The speaker shall be limited to four (4) minutes.

4. The City Commission may recall an individual to provide additional information or to answer questions.

C. Public Forum After Public Hearings

1. Individuals who wish to address items not specifically listed on the agenda will be given the opportunity to address the City Commission under the agenda heading of “Public Forum” after the heading of “Public Hearings”.

2. Individuals may request to speak by completing a “Public Comment” card at the meeting and submitting it to the clerk.

3. The speaker shall be limited to four (4) minutes. Time may not be donated to another speaker.

4. The City Commission may respond to selected comments under the heading of “City Commission Reports”. The city manager may also respond to selected comments under the heading of “City Manager Reports”.

8.3 ADDRESSING PUBLIC COMMENTS

The City Commission may address the comments from the public as stated above. There shall be no input or additional remarks from the audience while Commission is addressing comments. The Commission may recall an individual to the lectern to provide additional information or to answer questions.

8.4 ACTION ON ITEMS

The Commission shall not take formal action upon issues or matters presented by the citizenry under public comments at the same meeting. If formal action is required, the item will be scheduled for the next regular Commission meeting for consideration. Items not requiring Commission action shall be directed to the city manager for consideration and further action. Commission may, by a majority vote, act on items that are declared by Commission to constitute an emergency.

8.5 WORKSHOPS AND SPECIAL MEETINGS

Public comments are not scheduled as an agenda heading for workshops and special meetings. The City Commission shall make such a determination at the beginning of the special meeting or workshop as to whether public comments will be allowed. A decision to allow public comments shall be approved by a majority vote, or in the case of a workshop, by a consensus of the City Commission.

SECTION 9 MOTIONS

9.1 PRESIDING OFFICER; RIGHTS AND PRIVILEGES

The presiding officer may discuss and vote on matters being considered by Commission. The presiding officer may make motions and discuss issues from the chair. When doing so, he/she shall relinquish the chair to the Mayor Pro-Tem or the next Commission member in line until a vote is taken on the matter. The presiding officer may second a motion without relinquishing the chair; he/she may not be deprived of any of the rights and privileges of any other Commission member by reason of holding such position.

9.2 RECOGNITION BY PRESIDING OFFICER

Commission members desiring to speak shall address the presiding officer, and upon recognition by the presiding officer, shall confine themselves to the subject matter under discussion.

9.3 INTRODUCTION OF MOTION.

- A. They presiding officer may call for a motion on business to be acted upon.
- B. Business to be acted upon is brought before Commission by motion in the affirmative only. A motion may also follow the presentation of a report or communication.
- C. There can be only one main motion on the floor at a time; it requires a second. A main motion is debatable, and all discussion must be germane to the motion.
- D. To make a motion, a Commission member must be recognized by the presiding officer. The maker will have the right to speak first in the discussion.

9.4 SECOND TO A MOTION

- A. The purpose of a second to a motion is to place the motion before the Commission for discussion and action. A second merely implies that the seconder agrees that the motion should come before the meeting and not that he/she necessarily favors the motion.
- B. The requirement of a second is for the presiding officer's guidance as to whether the motion should be placed before the Commission for consideration. The purpose of a second is to prevent time from being consumed by the Commission having to consider a motion that only one person desires to see introduced.
- C. A motion that fails to obtain a second dies.

9.5 STATING THE MOTION

- A. Neither the making nor the seconding of a motion places it before the

City Commission; only the presiding officer can place the motion before Commission for discussion. The presiding officer may change the wording in order to make it easier to understand provided the meaning is not changed. When the presiding officer has placed the motion before Commission, the motion is pending and open to discussion.

B. All discussion must deal only and specifically with the subject of the motion. When the remarks of a Commission member begin to stray from the topic at hand, it is the duty of the presiding officer to interrupt the speaker and insist that discussion be to the point. When discussion has been exhausted, the presiding officer puts the issue to a vote.

C. After the vote, the presiding officer announces whether the motion carries or fails. If a Commission member disputes the result as announced or the presiding officer is unable to determine the vote, the presiding officer shall ask for a roll call vote to make certain of the decision.

9.6 INTERRUPTIONS

A Commission member, once recognized by the presiding officer, shall not be interrupted when speaking unless the presiding officer or another Commission member calls a point of order, or unless the speaker chooses to yield to questions for another member. If Commission members, while speaking, are called to order, they shall cease speaking until the issue regarding order is determined, and if in order, they shall be permitted to proceed.

9.7 POINT OF ORDER

A. When a Commission member questions a procedure or notices a violation of the rules that he/she considers will do harm if allowed to pass, the member can make a point of order without waiting for recognition from the presiding officer and may interrupt another member speaking. This action calls the attention of the presiding officer to the procedure being questioned or the violation of a rule when the presiding officer fails to notice it or neglects to call it.

B. A point of order must be raised when the breach occurs. After any discussion or business has intervened, it is too late. Points of order should not be raised on minor irregularities of a purely technical character.

C. The point of order interrupts business. The presiding officer either rules that the point of order is well taken and orders the mistake, omission, or violation to be corrected, or rules that the point of order is not well taken and resumes business at the point where it was interrupted.

9.8 APPEAL ON RULING OF POINT OF ORDER

A. Commission members have no right to criticize a ruling of the presiding officer on a point of order unless they appeal the decision. An appeal is by motion, which allows two members who disagree with a ruling to submit it to the entire Commission for a decision. An appeal requires a motion and its purpose is to reverse the ruling of the presiding

officer. This motion requires a second and is immediately open for discussion. The appeal must be made immediately after the ruling has occurred.

B. Upon an appeal, the presiding officer must state the reason for the decision. Commission members may speak only once. When Commission members are through with discussion, the presiding officer may speak a second time.

C. A majority of the Commission may reverse or modify the presiding officer's decision. A motion to appeal is lost or fails with a tie vote and sustains the decision of the presiding officer.

9.9 WITHDRAWAL OF MOTION

A. A Commission member may withdraw his/her motion at any time before it is put to a vote. When a motion is withdrawn, it is no longer under consideration. The second need not be withdrawn as the withdrawal of the motion makes the second moot.

B. A seconder cannot prohibit the maker from withdrawing the motion by refusing to withdraw the second.

9.10 MOTION TO RECONSIDER

The reconsideration of issues previously-acted upon is discouraged, but any member of Commission may make a motion to reconsider any action taken by the Commission during the meeting at which such action was taken. A matter may be reconsidered by the City Commission if a member on the prevailing side of the vote requests reconsideration. Such a motion may be made at a meeting where such action is taken or at a subsequent meeting of the Commission.

9.11 SECONDARY MOTIONS

A. When any main motion is upon the floor and the subject matter is under discussion, no motion shall be received except the following, which must also have a second, and such motions shall have precedence in the following order, to-wit:

1. Discussion can take place on the motion:
 - a) To amend the main motion
 - b) To appeal the ruling on a point of order.
2. Discussion cannot take place on the motion:
 - a) To table, postpone, continue, defer, extend, delay
 - b) To call the question.

B. A secondary motion is a procedural motion that is considered before a vote on a main motion. When a secondary motion is made, it becomes the immediately-pending motion,

while the main motion remains pending.

9.12 AMENDMENT TO MOTION

A. When a main motion is made, it can be amended. Commission members can make as many amendments as they like until the main motion accurately reflects the will of the majority. Only one amendment at a time to the main motion shall be entertained. There shall be no amendments to amendments to the main motion.

B. To present an amendment to a motion, a Commission member must first be recognized by the presiding officer. An amendment must be moved and seconded. Amendments must be specifically worded. The presiding officer shall restate the motion to amend and also read how the main motion will change if the amendment is passed. Discussion can only take place on the amendment. Once discussion has been exhausted, the presiding officer shall call for a vote on the amendment.

C. If an amendment is approved, prior to the vote being taken on the main motion, the Commission member who seconded the main motion has the right to withdraw the second if he/she does not agree with the main motion as amended. If the second is withdrawn, the presiding officer shall ask for another second to the motion. If the maker withdraws the main motion, the main motion is moot.

9.13 RECESS DURING MEETINGS

A. A recess is a short intermission within a meeting which does not destroy its continuity as a single gathering, and after which proceedings are immediately resumed at the point at which the meeting was interrupted.

B. The presiding officer has the power to call for a recess. Recesses requested by other Commission members require a majority vote of Commission. The presiding officer will announce the amount of time allotted for the recess.

9.14 MOTION TO TABLE

A. 'Table' shall mean the resetting or rescheduling of an item or issue placed on an agenda for consideration by the City Commission which includes, but is not limited to, extensions, continuances, delays, deferrals, and postponements.

B. Motions shall not be tabled; only items or issues can be tabled.

C. The time frame in which a tabled issue or item will be considered or reconsidered shall be determined by the City Commission, except when provided by city code. The Commission shall determine when the issue or item will be next considered, the extent of discussion to be permitted, and where the item or issue will be placed on the agenda. An item or issue shall not be tabled indefinitely.

9.15 CALL THE QUESTION

If a Commission member desires to close the discussion on a pending motion so that it will come to an immediate vote, he/she can 'call the question'. Because it takes away the right of Commission members to continue discussion, it requires a motion, a second, and a majority vote.

There is no discussion on this motion. In making the motion, the maker cannot interrupt a speaker.

9.16 ADJOURNMENT

Adjournment is announced by the presiding officer asking if there is any further business. If there is none and there are no objections, the presiding officer shall call for a motion to adjourn the meeting. Upon a motion, second, and majority vote of the Commission the meeting shall be adjourned.

9.17 FAILURE TO OBTAIN A MOTION

Failure to obtain a motion by the City Commission to act upon an issue or item being considered, which requires Commission action to dispose of same, shall be considered a denial or rejection of the item or issue.

SECTION 10 VOTING

10.1 QUORUM

The presence of three (3) Commission members at a meeting shall constitute a quorum for the transaction of business, however, no action shall be taken on items which require the affirmative vote of a supermajority of the Commission at a meeting where only three (3) Commission members are present.

10.2 MAJORITY

A. Three (3) Commission members present at a meeting shall constitute a majority.

B. No action of the Commission, except as otherwise provided by law and/or except raising a quorum, shall be valid or binding unless adopted by the affirmative vote of at least three (3) members of the Commission.

C. A super majority is one (1) more than half the number of members on Commission. Thus, a five-member Commission requires four (4) votes, which votes must all be in the affirmative or negative.

10.3 VOTING REQUIREMENTS AND CONFLICTS

A. The sections of the Florida Statutes pertaining to voting requirements and conflicts are summarized as follows:

1. Florida Statutes, Chapter 286.012, Voting Requirement

Each Commission member present at a meeting is required to vote on official matters and a vote recorded in the minutes for each unless there is a conflict of interest.

2. Florida Statutes, Chapter 112.3143(3)(a), Voting Conflicts

No Commission member shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss, or which he/she knows would inure to the special private gain or loss of any principal by whom he or she is retained, of the parent organization or subsidiary of a corporate principal by which he or she is retained, of a relative, or of a business associate. Commission members are required to abstain from voting and must publicly announce the nature of their interests before the vote. A memorandum of voting conflict must be filed with the city clerk within 15 days after the vote occurs, disclosing the nature of their interests in the matters. The city clerk will provide the form to the Commission member after the vote is taken.

10.4 EFFECT ON QUORUM DUE TO ABSTENTION FROM VOTING

When a Commission member is required to abstain from voting, the Commission member is disqualified from voting and may not be counted for purposes of determining a quorum (AGO 85-40).

10.5 VOTES TO BE STATED ‘AYE’

A. In putting a motion to a vote, the presiding officer shall first call for the positive vote, and all who wish to vote in favor of the motion to indicate by saying “aye”; the presiding officer then calls for the negative vote and those who wish to vote against the motion to indicate by saying “aye”. The presiding officer must always call for the negative vote, no matter, how nearly unanimous the positive vote may appear. When there is any possibility of confusion, the presiding officer, before calling for the vote, should make sure that the members understand the effect of a positive vote and of a negative vote.

B. The votes shall be reflected in the minutes as “yea” for a positive vote and “nay” for a negative vote.

10.6 SILENCE CONSTITUTES POSITIVE VOTE

Silence by a member of the Commission during the taking of a vote shall be recorded as a positive vote.

10.7 CHANGE OF VOTE

When the presiding officer calls for a vote, Commission members shall not be permitted to change their votes as recorded.

10.8 ROLL CALL VOTE

A roll call vote shall be taken upon the request of any Commission member. The names of Commission members shall be called in the following order: the maker of the motion, the seconder of the motion, Commission members in order of tenure on Commission, presiding officer. The order for Commission members with the same tenure shall be determined by the highest to the lowest vote getter. The name to be called first shall be advanced one position in each successive roll call vote for that meeting, except that the presiding officer shall always be called last.

10.9 VOTING BY PROXY

Proxy voting is prohibited by state law.

10.10 ABSENCE OF COMMISSION MEMBER DURING A VOTE

When a Commission member leaves the room to attend to other matters and Commission takes a vote, the member cannot vote on the subject matter when he/she returns to the room. The

Commission member's name will not be reflected in the vote. The minutes will indicate when the member left the room and returned. If the vote has not been taken by the time the Commission member returns to the meeting, the Commission member shall vote. A Commission member is prohibited from leaving the room to avoid voting on a motion.

10.11 CONFLICT OF INTEREST

When a Commission member announces there is a conflict of interest on an issue or item, the member is prohibited from voting on or discussing the measure and must "abstain". Prior to the vote being taken, the Commission member must publicly announce the nature of the conflict of interest in the issue or item from which the member is abstaining.

10.12 VOTE CONSTITUTES

A. Tie Vote:

1. A tie vote shall be recorded as a failed or rejected motion.
2. In the event of a tie vote, the City Commission may, by a majority vote, have an item or issue brought back before Commission for reconsideration at the next meeting at which a full Commission is present.

SECTION 11 MINUTES

11.1 PURPOSE

Florida Statutes, Chapter 286, requires that minutes of meetings be taken. Although the statute does not detail what minutes should include, the proper content of minutes is suggested by their purpose. The purpose of minutes is to provide an official record or proof of Commission actions. Therefore, at a minimum, the minutes should include two sorts of material. First, the actions taken by Commission should be stated specifically enough to be identifiable and provable. Second, proof of any conditions necessary to action, i.e., a quorum. More may be desired by Commission but is legally unnecessary.

11.2 ADOPTION

The minutes of previous meeting(s) for adoption shall be listed on the agenda. Such minutes may be approved without reading. Copies of the minutes shall have been distributed to Commission members prior to the meeting. A motion is required to adopt the minutes.

11.3 REVISIONS

A. Revisions to the minutes may be made by Commission members at the meeting that the minutes are considered for adoption.

B. Commission may revise the minutes, if found to be incorrect, upon the majority vote of Commission.

11.4 REMARKS BY COMMISSION MEMBER WHEN ENTERED INTO MINUTES

A Commission member may request, through the presiding officer, the privilege of having an abstract of his/her statement on any subject under consideration by the Commission entered into the minutes. If the Commission consents thereto, such statement shall be entered into the minutes.

11.5 VERBATIM TRANSCRIPTS

A. In accordance with Florida Statutes, Chapter 286.0105, individuals deciding to appeal any decision made by the City Commission are responsible for ensuring that a verbatim record of the proceedings is made.

B. The office of the city clerk is not required to prepare verbatim transcripts or parts of any minutes of City Commission meetings unless the City Commission, by a majority vote, directs verbatim transcripts for the audible parts of any minutes it deems necessary and proper for the conduct of the internal affairs of the city.

SECTION 12 AMENDMENTS

12.1 AMENDMENTS

A. These Rules and Order may be amended by Resolution adopted by a majority vote of the entire Commission at any regular meeting of the Commission..

B. Any of the foregoing rules may be temporarily suspended for the meeting then in session by a unanimous vote of the members of Commission then present, unless such waiver is in conflict with the City Charter or state or local law.



Speaker's Card
Request to Address the City Commission

Name: _____
(Please Print)

City Commission Meeting Date: _____

Agenda Item: _____

Provide a brief overview of what you wish to discuss:

Speaker Information

Do you represent an organization? Yes _____ No _____

Name of organization: _____

Speaker street address: _____

City: _____ State: _____ Zip Code: _____

Phone number (optional): _____

Email address (optional): _____

NOTE: ONCE COMPLETED, THIS CARD BECOMES A PUBLIC DOCUMENT