

**AGENDA
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, MARCH 8, 2021 5:30 PM**

1. CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS

3. PRESENTATIONS

A. Employee Service Award Recognition:

Five Years: Kandi Harper, Planning & Zoning; and Michael Todd, Police

Twenty Years: Angela Smith, Finance

Twenty-Five Years: Alden "Al" Purvis, Public Works

Thirty Years: Ronald Hancock, Electric; and Sandra Lovett, Electric

B. Retirement Plaques:

Joyce Brown

Sabrina Hubbell

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

A. CITY COMMISSION MEETING MINUTES:

1. Regular meeting held February 22, 2021

B. PURCHASING ITEMS:

1. Award of Request for Qualifications 210013 and resolutions authorizing execution of professional services agreements with CPH, Inc. for design of three (3) elements of the downtown master plan improvements.
 - a. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a professional services agreement with CPH, Inc. for the design of the Market Street Festival Street as part of downtown improvements for an amount not to exceed \$207,972.00; and providing an effective date.
 - b. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a professional services agreement with CPH, Inc. for the design of the South Canal Street & Dixie Avenue Entryway as part of downtown improvements for an amount not to exceed \$121,495.00; and providing an effective date.
 - c. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a professional services agreement with CPH, Inc. for the design of the Pine Street Improvements conceptual and engineering services as part of downtown improvements for an amount not to exceed \$85,100.00; and providing an effective date.
2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a construction services agreement with Citrus Sandblast, LLC, for the recoating of the College Street Elevated Water Storage Tank for an amount of \$187,000.00; and providing an effective date.
3. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Construction Services Agreement with a Guaranteed Maximum Price (GMP) with Evergreen Construction Management, Inc., for construction of the Leesburg Teen Center in the amount of \$2,406,500.00; and providing an effective date.

C. RESOLUTIONS:

1. Resolution of the City Commission of the City of Leesburg, Florida,

accepting and approving a Warranty Deed from Speed Society, LLC, to the City of Leesburg, Florida, for property lying in the Official Plat of the City of Leesburg, Lake County, Florida; and providing an effective date.

2. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Amendment to Amended and Restated Ground Lease between the City of Leesburg and the Venetian Gardens Site Holdings, LLC; and providing an effective date.
3. Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Impact Fee Credit Agreement between the City of Leesburg and Bentley Ridge Holdings, LLC; and providing an effective date.

6. **PUBLIC HEARINGS AND NON-ROUTINE ITEMS:
COMPREHENSIVE PLAN INFORMATION SIGN-UP SHEET (YELLOW)
AVAILABLE**

A. **SECOND READING OF ORDINANCES**

1. None

B. **FIRST READING OF ORDINANCES**

1. An Ordinance of the City of Leesburg, Florida, vacating 212.38 +/- feet of right of way and consisting of approximately 4,884 square feet, and generally located on the east side of Barrett Avenue, west of Lots 15, 16, and 17 of the Harlem Subdivision, of Leesburg, Florida; and providing an effective date.
2. Normal 0 false false false EN-US X-NONE X-NONE An Ordinance of the City of Leesburg, Florida, modifying the conditions of approval for a SPUD (Small Planned Unit Development) zoning on approximately 0.21 acres for property generally located south of West Main Street and east of south Moss Street, as legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.
3. An Ordinance of the City of Leesburg, Florida, modifying the conditions of approval for a SPUD (Small Planned Unit Development) on approximately 0.43 acres, for property generally located south of West Main Street and west of Oakland Street, as legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.

4. **An Ordinance of the City of Leesburg, Florida, rezoning approximately 0.28 acres from C-1 (Neighborhood Commercial) to SPUD (Small Planned Unit Development) to allow for a mechanic shop for a property generally located north of West Main Street and west of Lone Oak Drive as Legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.**

C. NON-ROUTINE ITEMS

1. **None**

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required.

- A. None**

8. CITY ATTORNEY ITEMS:

9. CITY MANAGER ITEMS:

10. ROLL CALL:

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "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 Leesburg does not provide this verbatim record.

**AGENDA MINUTES
CITY COMMISSION MEETING
VENETIAN CENTER, 1 DOZIER COURT
MONDAY, FEBRUARY 22, 2021 5:30 PM**

1. CALL TO ORDER

The City of Leesburg Commission held a regular meeting Monday, February 22, 2021, at the Venetian Center. Mayor Christian called the meeting to order at 5:30 p.m. with the following members present:

Commissioner Jimmy Burry
Commissioner Jay Connell
Commissioner Dan Robuck
Commissioner Mike Pederson
Mayor John Christian

Also present were City Manager (CM) Al Minner, City Clerk (CC) J. Andi Purvis, City Attorney (CA) Fred Morrison, the news media, and others.

INVOCATION

Commissioner Robuck gave the invocation followed by the Pledge of Allegiance to the Flag of the United States of America.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

2. PROCLAMATIONS

There were none.

3. PRESENTATIONS

A. Certificate Recognizing Madison Rowland

Mayor Christian presented Madison Rowland with a certificate of appreciation recognizing her dedication and commitment to the betterment of both the citizens and the City of Leesburg. She has put in countless hours volunteering to help the children, youth and the elderly. It is commendable and the community thanks her for being such an outstanding ambassador for this great city. He congratulated her on the well deserved recognition from the Florida's Hometown USA program.

4. PUBLIC COMMENTS:

This section is reserved for members of the public to bring up matters of concern or opportunities for praise. Issues brought up will not be discussed in detail at this meeting. Issues will either be referred to the proper staff or will be scheduled for consideration at a future City Commission Meeting. Comments are limited to three minutes.

David Serdar provided the Commission with a brief overview of the different communities and meetings he has attended over the past few months.

5. CONSENT AGENDA:

Routine items are placed on the Consent Agenda to expedite the meeting. If the Commission/Staff wish to discuss any item, the procedure is as follows: (1) pull the item(s) from the Consent Agenda; (2) vote on remaining items with one roll call vote, (3) discuss each pulled item and vote by roll call

Items pulled for discussion:

5.C.3 - Lease Agreement with Bases Loaded Consultant Group for office space at the Leesburg Business Incubator;

and

5.C.7 - Authorizing City Manager to disperse an additional \$169,687 of Cares Act funding.

Commissioner Pederson moved to adopt the Consent Agenda except for 5.C.3 and 5.C.7, and Commissioner Robuck seconded the motion.

The roll call vote was:

Commissioner Connell	Yes
Commissioner Robuck	Yes
Commissioner Burry	Yes
Commissioner Pederson	Yes
Mayor Christian	Yes

Five yeas, no nays, the Commission adopted the Consent Agenda, as follows:
(Each item has its coordinating Resolution number listed below the header)

A. CITY COMMISSION MEETING MINUTES:

- 1. Regular meeting held February 8, 2021**
- 2. Regular meeting held December 21, 2020**
- 3. Regular meeting held December 14, 2020**

B. PURCHASING ITEMS:

- 1. Resolutions authorizing execution of task orders with Booth & Associates,**

LLC for professional engineering services related to substation transformer replacements by the Electric Department.

- a. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Task Order with Booth & Associates, LLC to provide design services related to the transformer change-out at Picciola Substation Transformer #1 for an amount not to exceed \$109,705.00; and providing an effective date.**

Resolution 10,804

- b. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Task Order with Booth & Associates, LLC to provide design services related to the transformer change-out at Center Substation Transformer #2 for an amount not to exceed \$109,705.00; and providing an effective date.**

Resolution 10,805

2. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Amendment One with Halff Associates, Inc. (fka BESH, Inc.) approving assignment of the Agreement and renewing the Agreement through September 30, 2022; and providing an effective date.**

Resolution 10,806

C. RESOLUTIONS:

1. **Resolution of the City Commission of the City of Leesburg, Florida, enacting revised Rate Schedules for rental lighting and municipal lighting services, to add rates for newer LED fixtures now available; nullifying any previous Rate Schedules for these services; and providing an effective date.**

Resolution 10,807

2. **Resolution of the City Commission of the City of Leesburg, Florida, authorizing the Mayor and City Clerk to execute an Agreement with Kimley-Horn for Planning Review Services; and providing an effective date.**

Resolution 10,808

4. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an agreement with Lake County to approve terms set forth in the Tourist Development Sponsorship of the BIG 10 Softball Tournament; and providing an effective date.**

Resolution 10, 809

5. **Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute the Community Development Block Grant Program Sub-Recipient Agreement and Declaration of Covenants Restrictions between the City of Leesburg and Lake County Government for construction of the Leesburg Teen Enrichment Center; and providing an effective date.**

Resolution 10,810

6. **Resolution of the City Commission of the City of Leesburg, Florida, accepting and approving a plat for Liberty Preserve, a subdivision of the City of Leesburg, Florida, being a portion of Section 10, Township 19 South, Range 25 East, City of Leesburg, Lake County, Florida, and accepting and dedicating to the use of the public any easements or public places shown thereon as being dedicated to the public; and providing an effective date. (Liberty Preserve Plat)**

Resolution 10,811

3. **Resolution of the City Commission of the City of Leesburg, Florida, authorizing the City Manager and City Clerk to execute a Lease Agreement between Bases Loaded Consultant Group and the City of Leesburg for office space at the Leesburg Business Incubator for a three-year term; and providing an effective date.**

ADOPTED RESOLUTION 10,812

Commissioner Robuck introduced the resolution to be read by title only. CC Purvis read the resolution by title only.

Commissioner Robuck made motion to adopt the resolution and Commissioner Pederson seconded the motion.

Mayor Christian requested comments from the Commission and the audience.

Mayor Christian stated he pulled this item because he wants to hear more from the applicant and staff because this company just opened in November of 2020 and they have only been in business for four

months. He wanted to make sure staff has done their due diligence to make sure this company is stable. He would also like the applicant to provide an overview of what the company offers and what their plans are for Leesburg.

Deborah Jayne, Bases Loaded Consulting Group, stated her company offers virtual assistance and event planning. She is new to Leesburg and is looking to get involved in the community. **Mayor Christian** commented that he was concerned with this being a new company. He does not know what the city's vision was for the incubator but he was aware that it was three-year term. He wanted to verify that staff did their vetting to make sure this company will be made to fulfill this lease. **CM Minner** replied that staff is comfortable in moving forward with this lease. **Mayor Christian** mentioned this company just started four months ago and this is a big leap with no financials or background. He wanted to make sure we are not creating a precedent for other companies that come in asking for a lease because we will have to treat them with the same respect. We need to make sure we are not setting a precedent for other businesses like this to come in where they have only been in business for a few months with no background.

The roll call vote was:

Commissioner Robuck	Yes
Commissioner Burry	Yes
Commissioner Pederson	Yes
Commissioner Connell	Yes
Mayor Christian	No

Four yeas, one nay, the Commission adopted the resolution.

7. Resolution of the City Commission of the City of Leesburg, Florida, authorizing the City Manager to disperse an additional \$169,687 of Cares Act funding; and providing an effective date.

ADOPTED RESOLUTION 10,813

Commissioner Pederson introduced the resolution to be read by title only. CC Purvis read the resolution by title only.

Commissioner Robuck made motion to adopt the resolution and Commissioner Pederson seconded the motion.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Pederson asked for clarification on how this money will be spent. He understands there were applicants left over from the first go round and that this money would go to them. He has heard nothing but compliments on this program and it appears to be going well; but requested further clarification. **CM Minner** commented that originally we received just under 1.2 million dollars from Lake County in Cares Act funding. In October of 2020 the Commission divided the City into four categories; category one (mall), category two (downtown business/property owners), category three (Leesburg businesses) and category four (CDC and Chamber help). For the current businesses that held a business tax receipt, if they had five or more employees they would be awarded ten thousand dollars and if they had five or less employees they would receive five thousand dollars, and that was originally funded at approximately two hundred and fifty thousand dollars. The County came back towards the end

of December and said there maybe more money but that did not pan out; however, they did say they may go back and fund the public safety expenses. He remembers reporting to the Commission that if we received the funds of seventy five thousand dollars for the public safety expenses, that the suggestion would be that instead of reimbursing ourselves we would take that county grant and apply it to the program. In essence, the City would eat the public safety expenses associated with Covid for the last fiscal year, which was in the neighborhood of about seventy five thousand dollars. The city was awarded that money and received a check for one hundred sixty nine thousand dollars. He asked that instead of reimbursing ourselves, we take that money and apply it to category three. With the first submittal of requests we received over a hundred applications and were able to fund almost the first seventy-five applicants. There were two or three that were disqualified because they were not in the city limits. That left about twenty five to thirty of the original applicants pending, so if we shift this money to category three we should be able to cover everyone who was left pending.

The roll call vote was:

Commissioner Burry	Yes
Commissioner Pederson	Yes
Commissioner Connell	Yes
Commissioner Robuck	Yes
Mayor Christian	Yes

Five yeas, no nays, the Commission adopted the resolution.

**6. PUBLIC HEARINGS AND NON-ROUTINE ITEMS:
COMPREHENSIVE PLAN INFORMATION SIGN-UP SHEET (YELLOW)
AVAILABLE**

A. SECOND READING OF ORDINANCES

1. None

B. FIRST READING OF ORDINANCES

- 1. An Ordinance of the City of Leesburg, Florida, implementing the will of the Electors of Leesburg as expressed in a Referendum approving the Amendment of Article I, Sections 8 and 9 of the City Charter, to Create Five (5) Single Member Districts for City Commissioners; establishing new District boundaries based on updated Census information to as to create Districts which are reasonably compact and roughly equivalent in population; establishing a staggered schedule for the Election of Commissioners from the various New Districts; providing a savings clause; repealing conflicting Ordinances; and providing an effective date.**

Commissioner Pederson introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience.

Mayor Christian commented he has spoken with the City Manager about this since the last meeting because with district two; which would be the future district one, when running the numbers from the census data in the spirit of the federal lawsuit they started talking about the census popularity and population. When staff went through the formatting they did not think about voting and the voting age or that even though we may have an equal number of residents, if not looking at the voting age that takes away from the spirit of the federal consent decree. Staff is looking into more information and will bring back more data at the next meeting. He asked that the commission allow the city manager more time to work with the numbers and the data to look at those above eighteen to make sure that we are still within the intent of the 1984 lawsuit. For example, if we have a house of two adults and three children and another house that has just two adults, referring to voting we really are not a majority because we have a minority. Staff will review the voting age and check to see that we get those numbers verified so that we are in compliance. **CM Minner** agreed that we are looking for a minority majority district over fifty percent with voters eighteen years and older. He believes we will get there; however, he does not think we can go across town and replicate the current district two. He remarked that we would have to nip a couple of the census tracks; 313, 1175, and 1119, and that would only be talking about two hundred or so folks to get to that number above that fifty percent. We will get there while keeping the intent of the lawsuit, the continuity of the districts, both compact and contiguous, and in keeping with what the districts look like now.

Commissioner Robuck questioned as we have more and more retirement communities coming in should not those districts be underrepresented, population wise, given that they are ninety-nine percent over voting age and our core district is probably nowhere close to that. **CM Minner** answered that when we have that growth we will be redrawing the lines again; The Villages is looking to start construction on the 470 property in 2023, with a finish buildout by mid 2024. Three thousand units times two means we would have about six thousand more people in that district and that would be the future district two. That means six months before the election that district would be filled and depending on how much hubbub happens we would be redrawing that district by 2024 or 2026. **Commissioner Robuck** asked if after he makes the tweaks would he provide the voting populations of all districts. **CM Minner** provided a handout representing the voting ages for the districts. Referring to his handout, he stated it does not change any of the drawn districts, but the biggest change was in district one, going from a fifty four percent minority majority to a forty five percent minority majority. Referring to the chart he also stated that the numbers in the gray area represent the percentages of the total districts and the numbers below that, which are not shaded, represent the percentages of the districts that are over eighteen.

Commissioner Robuck asked the city attorney when drawing these districts are we allowed to look at the voting age versus the non-voting age. **CA Morrison** responded that he has not seen any specific authority on that, but just using commonsense, since these are supposed to be divisions for voting purposes, he would think that would be appropriate.

Commissioner Robuck stated what strikes him is if we have thirty six hundred in one district and forty seven hundred in another we are under representing that district by twenty five to thirty percent because district one has three thousand six hundred and sixty over the age of eighteen and district three has four thousand seven hundred and eight over the age of eighteen, which is a huge percentage difference.

Commissioner Pederson commented that both commissioners have brought up excellent points and he would like an additional line added for every district that shows the number of people old enough to vote. **CM Minner** said he does not think that number is that significant because the ratio is affecting everyone about the same, except for district three because that district is primarily a retirement area. With doing some quick math the difference in each district would be; district one six hundred, district two eight hundred, district three three hundred, district four five hundred and district five six hundred.

Commissioner Robuck pointed out that district one is one thousand one hundred and fifty and we would need a lot more people in that district. We need to keep this in mind for 2024 because this is going to

start impacting the core of Leesburg as we have a district that is one hundred percent over the age of eighteen.

CM Minner asked when was the public hearing. **CC Purvis** responded March 8. **CM Minner** asked the city attorney if they could hold this item over until the March 22 meeting to allow for time to advertise the new map. **CA Morrison** stated that would be advisable.

Mayor Christian announced that the public hearing for this item will be held on March 22, 2021.

2. **An Ordinance amending the comprehensive plan of the City of Leesburg, Florida, changing the Future Land Use designation of certain property containing approximately 4.87 acres, from Institutional to Low Density Residential, for a property generally located west of Lee Street, south of West Line Street and east of Perkins Street, as legally described in Section 26, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (*Lee Street Village FLUM*)**

Commissioner Burry introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience.

Commissioner Robuck stated he is excited to see something happening with this property. **CM Minner** echoed Commissioner Robuck's comments. **Commissioner Pederson** also commented that this is a great project for Leesburg.

Greg Beliveau, for the applicant, stated they are ready to start.

3. **An Ordinance of the City of Leesburg, Florida, amending the development conditions on a SPUD (Small Planned Unit Development) zoning on approximately 4.87 acres, to allow for residential development for a property generally located west of Lee Street, south of West Line Street, and east of Perkins Street, as legally described in Section 25, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date. (*Lee Street Village SPUD*)**

Commissioner Pederson introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience. There were none.

4. **An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Comprehensive Plan to establish criteria for a Historic District Density Bonus, based on certain criteria, establishing appropriate policies to ensure compatibility, providing for conflict with other ordinances, providing a savings clause; and providing an effective date. (*CPTA Historic District Density Bonus*)**

Commissioner Robuck introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience. There were none.

5. **An Ordinance of the City of Leesburg, Florida, amending the City of Leesburg Land Development Regulations by establishing criteria for density bonuses in Article IV – Section 25-292 *Supplemental District Requirements*; providing for conflict with other ordinances, providing a savings clause; and providing an effective date. (Historic District Density Bonus Chapter 25)**

Commissioner Burry introduced the ordinance to be read by title only. CC Purvis read the ordinance by title only.

Mayor Christian requested comments from the Commission and the audience. There were none.

C. NON-ROUTINE ITEMS

1. **None**

7. INFORMATIONAL REPORTS:

The following reports are provided to the Commission in accordance with the Charter/Ordinances. No action required. NONE

8. CITY ATTORNEY ITEMS:

CA Morrison had nothing this evening.

9. CITY MANAGER ITEMS:

CM Minner had nothing this evening.

10. ROLL CALL:

Commissioner Pederson had nothing.

Commissioner Burry had nothing.

Commissioner Robuck had nothing.

Commissioner Connell had nothing.

Mayor Christian stated he hopes everyone celebrates black history month and encouraged everyone to learn something new about the African American culture and share that with their friends and family.

11. ADJOURN:

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE HUMAN RESOURCES DEPARTMENT, ADA COORDINATOR, AT 728-9740, 48 HOURS IN ADVANCE OF THE MEETING.

F.S.S. 286.0105 "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 Leesburg does not provide this verbatim record.

The meeting adjourned at 6:00 p.m.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.1.

Meeting Date: March 8, 2021

From: Mike Thornton, (Purchasing Manager), Cliff Kelsey, (Public Works Director)

Subject: Award of Request for Qualifications 210013 and resolutions authorizing execution of professional services agreements with CPH, Inc. for design of three (3) elements of the downtown master plan improvements.

Staff Recommendation:

Staff recommends award of Request for Qualifications (RFQ) 210013 to CPH, Inc. and approval of each of the resolutions for engineering design services related to downtown improvements.

Analysis:

The purpose of this item and RFQ was to contract with an engineering professional or firm to provide design services related to the projects in the City's recently completed Downtown Master Plan. The projects contained within the Downtown Master Plan document to be undertaken for engineering design are:

- Market Street Festival Street Improvement - \$207,972.00
- South Canal Street & Dixie Avenue Entryway - \$121,495.00
- Pine Street Conceptual Design & Engineering - \$85,100.00

Procurement Analysis:

The Procurement Division issued RFQ 210013. The City received 4 responses to RFQ 210013. City staff evaluated the responses in accordance with Florida Statute 287.055 which legislates how the City selects and contacts for professional architect and engineering (A/E) services. Following evaluations the top ranked firm is CPH, Inc. The final ranking of all responding firms is included here.

<u>Rank</u>	<u>Firm Name</u>	<u>Quality Score</u>
1	CPH, Inc.	85.56%
2	BESH Halff	78.76%
3	Stantec	71.12%
4	Marquis Latimer+Halback, Inc.	64.31%

Options:

1. Approve award of RFQ 210013 to CPH, Inc. and approve each of the resolutions for professional engineering design on each of the downtown improvement projects with CPH, Inc.; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are specifically budgeted and available for each of the three projects.

Account No.	031-5112-541.63-10
Project No.	310051
WF No.	WF1191153 / 001 - Market Street
	WF1313072 / 001 - Canal/Dixie
	WF1335703 / 001 - Pine Street
Requisition	53129
	53091
	53186
Budget	\$525,255.00
Available	\$525,092.50

Submission Date and Time: 3/3/2021 3:36:32 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH CPH, INC. FOR THE
DESIGN OF THE MARKET STREET FESTIVAL STREET AS PART OF
DOWNTOWN IMPROVEMENTS FOR AN AMOUNT NOT TO EXCEED
\$207,972.00; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute a Professional Services Agreement with CPH, Inc. whose address is 500 W. Fulton Street, Sanford, Florida 32771 for Professional Engineering Services related to the design of the Market Street Festival Street improvement pursuant to Request for Qualification (RFQ) 210013.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the 8th day of March in the year 2021, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY” or “CLIENT”), and **CPH, INC.** whose address is 500 W. Fulton Street, Sanford, Florida 32771 (hereinafter referred to as “PROFESSIONAL” or “CPH”).

WHEREAS, the CITY issued Request for Qualifications (RFQ) 210013 to contract with a qualified professional or firm to provide professional services to design improvements to the Leesburg Downtown Area as detailed in the City’s Downtown Master Plan.

WHEREAS, the CITY evaluated all responses to RFQ 210013 in accordance with Florida Statute 287.055 – Consultants Competitive Negotiation Act and CPH, Inc. is the top ranked firm among all firms submitting proposals;

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.
 - a. This Agreement; and
 - b. Request for Qualifications (RFQ) package 210013 – Downtown Improvements – Professional Design Services; and
 - c. PROFESSIONALS response to RFQ 210013 submitted November 3, 2020 at 011:56:39 AM EST; and
 - d. PROFESSIONALS Scope of Services included as Attachment ‘A’.
2. **Services.** The PROFESSIONAL shall perform the services as described in PROFESSIONAL’s Scope of Services included as Attachment ‘A’ and generally described as, Engineering Services for the Market Street Festival Street. Nothing herein shall limit the CITY’S right to obtain proposals or services from other professionals for similar projects.
3. **Compensation.** Compensation shall be in accordance with the professional services compensation included in Attachment ‘A’.
 - a. The cost of the Professional Design Services shall not exceed **\$204,972.00** unless the CITY has executed a written change order approving any increase in compensation.

- b. PROFESSIONAL may also be reimbursed directly for Reimbursable Expenses such as travel, printing, postage, and reprographics for an amount not to exceed **\$3,000.00** unless the CITY has executed a written change order approving any increase in compensation.

4. **Payment.** CITY shall compensate PROFESSIONAL for their services in accordance with the Florida Prompt Payment Act and the Terms and Conditions of this Agreement.

5. **Authorized Expenses.** The CITY will not be liable for any expenses incurred by the PROFESSIONAL prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. **Term.** The term of this Agreement shall be for a period of three (3) years or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall begin within ten (10) calendar days from the date the CITY issues a Notice of Award.

7. **Termination.** All or part of this Agreement may be terminated under the following conditions;

a. **For Convenience**

- i. The CITY may, by written notice to the PROFESSIONAL, terminate this Agreement for its convenience and without cause or default on the part of PROFESSIONAL. Upon receipt of the notice of termination, except as explicitly directed by the CITY, the PROFESSIONAL must immediately discontinue all services affected.
- ii. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.
- iii. CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.
- iv. CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

b. Termination for Default

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- i. **Termination by Owner:** The CITY may terminate this Agreement in whole or in part, for the failure of the PROFESSIONAL to:
 - 1. Perform the services within the time specified in this contract or by CITY approved extension;
 - 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 - 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the PROFESSIONAL must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.

CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.

CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the CITY determines the PROFESSIONAL was not in default of the Agreement, the rights and

obligations of the parties shall be the same as if the CITY issued the termination for the convenience of the CITY.

- ii. **Termination by Professional:** The PROFESSIONAL may terminate this Agreement in whole or in part, if the CITY:
 - 1. Defaults on its obligations under this Agreement;
 - 2. Fails to make payment to the PROFESSIONAL in accordance with the terms of this Agreement;
 - 3. Suspends the Project for more than one-hundred eighty (180) days due to reasons beyond the control of the PROFESSIONAL.

Upon receipt of a notice of termination from the PROFESSIONAL, CITY agrees to cooperate with PROFESSIONAL for the purpose of terminating the agreement or portion thereof, by mutual consent. If CITY and PROFESSIONAL cannot reach mutual agreement on the termination settlement, the PROFESSIONAL may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the CITY's breach of the contract.

In the event of termination due to CITY breach, the PROFESSIONAL is entitled to invoice CITY and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the PROFESSIONAL through the effective date of termination action. Owner agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

8. **Reengagement.** Should the CITY not immediately construct the project covered under this design, the CITY may reengage the PROFESSIONAL at a future date to review and make updates to the design and specifications as may be required resulting from items such as change in site locations, change in legal requirements for construction, etc . . . Such a Reengagement will be documented through an Amendment to this Agreement.

9. **Insurance.** The PROFESSIONAL will maintain throughout this Agreement the following insurance:

- a. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by PROFESSIONAL prior to starting work, together with evidence that the premiums have been paid.
- b. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

- c. The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- d. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- e. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL'S interests or liabilities, but are merely required minimums.
- f. All liability insurance, except professional liability, shall be written on an occurrence basis.
- g. The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- h. Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.
- i. Except for workers' compensation and professional liability, the PROFESSIONAL'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.
- j. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630
- k. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- l. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- m. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- n. The PROFESSIONAL, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

10. **Individual Liability.**

PURSUANT TO SECTION 558.0035, FLORIDA
STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT
OF PROFESSIONAL MAY NOT BE HELD
INDIVIDUALLY LIABLE FOR NEGLIGENCE.

11. **Indemnification.** The PROFESSIONAL shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the PROFESSIONAL and persons employed or utilized by the PROFESSIONAL in the performance of this Agreement. The liability of the PROFESSIONAL shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to intentional misconduct or negligent acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the PROFESSIONAL shall not be obligated to indemnify the CITY against losses arising from the negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the intentional misconduct or negligent acts or omissions of the PROFESSIONAL, or any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

12. **Codes, Laws, and Regulations.** PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

13. **Permits, Licenses, and Fees.** PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL'S performance of the Scope of Services.

14. **Access to Records.** PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL'S normal business hours.

Additionally, PROFESSIONAL must maintain an acceptable cost accounting system. The PROFESSIONAL agrees to provide the CITY or any of their duly authorized representatives, access to any books, documents, papers, and records of the PROFESSIONAL which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The PROFESSIONAL agrees to maintain all books, records and reports required under this contract for a period of not less than five (5) years after final payment is made and all pending matters are closed.

15. **Public Records Retention.** PROFESSIONAL shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by PROFESSIONAL herein in accordance with Chapter 119, Florida Statutes. PROFESSIONAL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. PROFESSIONAL shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the PROFESSIONAL upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by PROFESSIONAL in a format that is compatible with the information technology systems of the CITY.

16. **Contingent Fees Prohibited.** The PROFESSIONAL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

17. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the PROFESSIONAL.

18. **Independent Contractor.** The PROFESSIONAL agrees that it is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the PROFESSIONAL. PROFESSIONAL will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

19. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

20. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

21. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

22. **Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be John Baer, AIA, Vice-President/Associate (email: jbaer@cphcorp.com). The primary contact person under this Agreement for the CITY shall be Travis Rima, Director of Recreation (email: travis.rima@leesburgflorida.gov).

23. **Notices.** All notices required under this Agreement shall be in writing and sent by United States mail, certified or registered, with return receipt requested and postage prepaid, or by nationally recognized courier service to the address of the party set forth below. Any such notices shall be deemed given when received by the party to whom it is intended.

CONTRACTOR: Nikhel Jindal GCC, Assoc., DBIA, ENV SP
500 West Fulton Street
Sanford, FL 32771
Phone: 407.322.6841
Email: info@cphcorp.com

CITY: City of Leesburg
Attn: Mike Thornton, Purchasing Manager
204 N. 5th Street

Leesburg, FL 34748
Phone: 352.728.9880
Email: mike.thornton@leesburgflorida.gov

24. **Approval of Personnel.** Key Personnel: The City reserves the right to discontinue (terminate) when key personnel identified in the PROFESSIONAL's response to the original Request for Qualifications are not available. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement, CITY may require PROFESSIONAL assign a different person or persons be designated to be the contact person or to perform the PROFESSIONAL services hereunder.

25. **Employment Eligibility.** The PROFESSIONAL is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors/subconsultants to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor/subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the PROFESSIONAL, the PROFESSIONAL may not be awarded a public contract for a period of ONE (1) year after the date of termination.

26. **Subcontractors.** The CITY reserves the right to approve all subcontractors for tasks performed under this Agreement. Responsibility for the performance of the contract remains with the PROFESSIONAL exclusively. Subcontractors may be added to this contract during the contract period only with prior written permission from the CITY

27. **Disclosure of Conflict.** The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

28. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

29. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

CPH, INC.

By: _____

Printed: _____

Its: _____
Title

THE CITY OF LEESBURG, FLORIDA

By: _____
John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form and content:

Fred A. Morrison, City Attorney



SCOPE OF SERVICES

CITY OF LEESBURG

Market Street Festival Street

January 15, 2021

Revision 3 – February 25, 2021

CPH, Inc.

ENGINEERING DESIGN SERVICES

BASIC SERVICES OF THE CONSULTANT

PART I

PROJECT DESCRIPTION

The City of Leesburg (City) has requested CPH, Inc. (CPH) to provide engineering design services for the proposed Market Street Festival Street in accordance with the Downtown Master Plan. The Market Street improvements shall include the design of curbless street in which all, or a portion, of the street may be temporarily closed to vehicular traffic and converted into a pedestrian area to host events. Improvements to the corridor may include roadway reconstruction/resurfacing with pavers, landscape, irrigation, hardscape, lighting, and minor stormwater and utility adjustments.

SCOPE OF SERVICES

A. SURVEYING

1.0 TOPOGRAPHIC SURVEY

Depict Right of Way Geometry (see “Survey Site Exhibit” for limits):

- Compute right of way geometry based on recorded plat.
- Field locate existing monumentation and verify platted rights of way contained within the plats (approximately 1,320 linear feet including 30’ beyond the returns on side streets).
- Evaluation of ownership and encumbrances, i.e., title reports and research for right of way takes, are not included in this scope of services.

Topographic Survey: Perform a Topographic Survey as per Rule Chapter 5J-17 of the Florida Administrative Code in compliance with the Standards of Practice of Surveying and Mapping of the State of Florida (see “Survey Site Exhibit” for limits – 1.6± acres). CPH will use a High Definition Laser Scanner which has the ability to collect up to 2,000,000 points per second at an unparalleled rate of speed which produces a very dense and accurate collection of measurements. The benefits of using the High Definition Laser Scanner includes direct field cost savings, schedule reductions, increased safety and eliminates the need for site re-visits.

Attachment 'A'

- Collect topographic data at 25' cross-sections of approximately 1,320 linear feet including 30' beyond the returns on the side streets (see "Survey Site Exhibit" for limits).
- A certified right of way map will **not** be provided.
- Location of all visible above ground improvements and visible utilities within scope to include alcoves, doorways and overhead lighting where accessible.
- Location and elevation of accessible thresholds along route.
- Locate trees at diameter at breast height (size and type only) within scope.
- Invert information and pipe sizes to be collected on accessible structures only. Any sewer as-built information to be provided to surveyor. Coordination with the City for inaccessible structures is not included as part of this scope.

State Plane: The project coordinate system will be based horizontally on the North American Datum 1983(1990) (NAD 83/90). The project will be referenced to state plane coordinates by field locating published control points. This base of reference will be used to establish the coordinate system for the project.

Set Control Line: Horizontal and vertical control points both will be established for the project as required by the Standards of Practice of the State of Florida Rule Chapter 5J-17, Florida Administrative Code are as follows:

"Horizontal control monumentation for road center-lines, right-of-way lines, reference lines or base lines shall be at least a minimum of two (2) points placed so that no point on the line being monumented is more than 700 feet from a control monument."

"Vertical control for linear type construction sites such as roads and sewer lines shall have a maximum of 1,100 feet between existent or established benchmarks."

Benchmarks and Horizontal Control: The project will be based on the North American Vertical Datum 88 (NAVD 88). The project will be referenced to this datum by field locating published benchmarks. The benchmarks will be researched and verified in the field.

2.0 UNDERGROUND UTILITY DESIGNATION/LOCATION

Underground Utility Designation/Location (Sub-consultant):

- Underground Utility Designation/Location to be performed by Subsurface Utility Engineering Sub-consultant (see attached "Survey Site Exhibit" for limits). See Separate Proposal from Sub-consultant.

SURVEY SITE EXHIBIT



The following related services are not included in the scope of this proposal, and may or may not be required, but can be provided at an additional fee: Boundary Survey, ALTA/NSPS Land Title Survey, As-built Survey, Platting, Soil Borings, Certified Tree Survey, Sketch and Descriptions, Wetland Location/Delineation and Ordinary High Water/Mean High Water.

B. ENGINEERING SERVICES

1.0 CONCEPTUAL DESIGN

Upon receipt of the survey CPH will review the cross-sectional grades and prepare two (2) Conceptual Roadway layouts (2-D line work) based on the Downtown Master Plan Report and City Staff correspondence. The Concept Design will also include typical sections and preliminary Engineer's Estimate of Probable Construction Costs (EEOPCC). Within the fee identified for this task, the scope includes coordination with City Staff and two (2) modifications. For the purposes of this proposal, the roadway plan is limited to Market Street from 1st Street to 5th Street and 6th Street to 7th Street. The Conceptual Roadway layout will include the horizontal elements including the roadway, sidewalks, parking, landscape areas, and preliminary lighting layout. During the Conceptual Design phase, CPH will also coordinate with the project geotechnical consultant to obtain the geotechnical services. Refer to the geotechnical proposal as submitted by Universal Engineering included herein.

Any alterations to the concept plan after the second modification will be handled as additional service, and billed in accordance with our Standard Hourly Rates.

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2.0 DESIGN DEVELOPMENT

Based on the City approved Conceptual Plan; CPH will prepare the construction plans to the 60% completion level. This plan set will include refining the concept design to include the proposed vertical profile and cross-sections using AutoCAD Civil 3-D. The design shall follow the City of Leesburg Design Criteria, FDOT Greenbook, FDOT Standard Plans, and adhere to ADA requirements. The plan set will consist of the following sheets:

- Key Sheet
- General Notes
- Summary of Pay Items
- Typical Sections
- Plan/Profile Sheets
- Cross-Sections at 25-ft
- Miscellaneous Details (as needed)
- Signing and Pavement Marking Plans
- Traffic Control Plans (TCP General Notes and applicable FDOT Standard Index Sheets)
- Traffic Control Plans (Detours Plans)
- SWPPP and Erosion Control Plans
- Survey Sheets

Plans will be prepared in accordance with the City of Leesburg, and the St. Johns River Water Management District (SJRWMD). Storm Water Management will be designed in accordance with the current standards of the City of Leesburg. Due to the relatively flat roadway grades for a Festival Street, CPH will perform runoff spread analysis to determine the required inlet spacing (if needed) to prevent runoff from impacting the existing buildings. It is anticipated the proposed stormwater improvements will connect to and utilize the existing stormwater conveyance system. Hydraulic analysis of the existing stormwater conveyance system is not included in this scope of services. CPH will coordinate with the City before designing the appropriate stormwater management facilities.

Traffic Control Plans (TCP) will be designed in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) and FDOT Standards Plans. For this scope of services, the TCP will consist of closing Market Street with a series of detour plans.

CPH assumes the CITY has approved Front End Documents for the advertisement and contractual agreement with a prospective contractor. CPH will utilize FDOT Standard Specifications as the governing specifications for the roadway and drainage improvements, incorporating any Supplemental Specifications for items not covered by the FDOT Specifications. CPH will update the EEOPCC for the 60% Plans submittal. Upon review of the 60% Plans, a meeting with the City will be held to discuss the specific design elements. This submittal will also include the Geotechnical Report.

Within this service are up to two (2) meetings or conference calls with the City and architects to discussed/review preliminary plans. Plans will be supplied to the City in reproducible form at a suitable scale to fit on an eleven-inch by seventeen-inch (11"x17") plan sheet and will be accurate, legible, complete in design, and suitable for submittal to the City of Leesburg for preliminary review and approval.

3.0 Final Design Phase

Upon completion of the City's review of the 60% Plans, CPH will address the City's comments and prepare the plans to a 90% plan level. The 90% plans will include, but may not be limited to the following sheets:

Attachment 'A'

- Key Sheet
- General Notes
- Summary of Pay Items
- Summary of Drainage Structures
- Typical Sections
- Plan/Profile Sheets
- Cross-Sections at 25-ft
- Miscellaneous Details (as needed)
- Signing and Pavement Marking Plans
- Traffic Control Plans (TCP General Notes and applicable FDOT Standard Index Sheets)
- Traffic Control Plans (Detours, as needed)
- SWPPP and Erosion Control Plans
- Survey Sheets
- Landscape Plans (see Section D below)
- Landscape Details (see Section D below)
- Irrigation Plans (see Section D below)
- Irrigation Details (see Section D below)
- Lighting Plans (see Section C below)
- Lighting Details (see Section C below)

CPH will update the Supplemental Specification and EEOPCC for the 90% submittal. Upon City review of the 90% submittal, CPH will address the City's comments and prepare the Final plans.

Any modifications to the plans requested by the City pertaining to the infrastructure design in the previously mentioned plans, required to meet code, will be addressed by CPH as part of these services. Any modifications that require redesign or additional design after a phase review, CPH will prepare an amendment to this scope of services for review and approval.

4.0 PERMITTING

Permitting is anticipated with the St Johns River Water Management District (SJRWMD). It is assumed the roadway reconstruction will be exempt from permitting. Upon approval of the City's preferred Conceptual Plan, CPH will schedule a Pre-Application meeting with SJRWMD to discuss the project. Upon receipt of the City's approval of the 60% plans listed above, CPH will prepare the permit determination/exemption request application.

Any modifications requested that are not code or design standards issues, or modifications requested by the permitting agencies that require significant plan revisions (as agreed upon by the City and CPH), or if any other permits are identified to be required during the design or review process, and not outlined above, CPH will prepare an amendment to this scope of services for review and approval. Permitting and/or application fees will be the responsibility of the City.

5.0 UTILITY COORDINATION

CPH understands these projects will require utility coordination for underground and overhead utilities. CPH will utilize the horizontal utility locates prepared in Task A-2.0 above, will coordinate with the City and other private utilities, and propose a design that minimizes conflict. CPH will furnish plans of the 60% plan stages to the utilities for review and confirmation of utility location. Upon completion of the 90% Plans, CPH will furnish the plans to the utilities to develop relocation plans (as needed). CPH is not responsible for the

Attachment 'A'

design or cost of the relocated utilities. If City owned utilities (water, sewer, reclaim) are unavoidable, CPH can provide a proposal to design the relocation plans.

6.0 STAKEHOLDER PARTICIPATION

During the project, CPH will utilize Amanda Wettstein, APR, CPRC (AW) to assist with stakeholder participation. Please refer to the scope of service as receive from AW.

C. ELECTRICAL ENGINEERING

1.0 ELECTRICAL ENGINEERING

In general, this project comes from the desire by the City of Leesburg to change Market Street into a curbsless festival street. A part of that renovation includes the removal / replacement of existing market light fixtures, new pedestrian level pole or bollard lighting, and festival vendor power connections.

The CPH electrical engineer will attend a Zoom or similar meeting for kickoff and initial data gathering (Qty 1). This will include a Q&A with the City on the requirements for the space from performance and aesthetic standpoints.

CPH will research any relevant federal, State or local building and electrical codes; and any relevant electrical utility requirements that apply to the project. This will include a discussion on location for power feeds and clearances from other utility structures in the area. The design will also include an analysis of voltage drop for the new circuits required for the project (based on the voltages available from the utility) and short circuit availability at any new electrical equipment

CPH will prepare permit / bid / construction documents for the project that will include a site electrical drawing with electrical equipment and light fixture locations, a single-line electrical power distribution drawing, technical specifications on a drawing that describe the electrical equipment, wiring, conduit, etc. and construction requirements for those pieces, an additional site plan with photometrics at grade for the fixtures and fixture layout approved by the City, and any details required for permitting, bidding and construction of the project. The CPH electrical engineer will participate in two (2) progress and plan review meetings via Zoom or similar.

D. LANDSCAPE ARCHITECTURE

1.0 PRELIMINARY LANDSCAPE DESIGN

CPH will provide Landscape Architecture design services to implement the improvements detailed in the Master Plan Exhibit and correspondences with City Staff for Market Street as described in the Project Description above. CPH Landscape Architects will attend a field review meeting with the CITY and project team in order to confirm the Master Plan amenities and define the design vocabulary of its proposed improvements. Following this meeting, CPH Landscape Architect will coordinate with the Civil Engineer to assist with up to two (2) concept landscape and hardscape layouts of the improvements, detailing amenity design consistent with the design vocabulary discussed with the City. Hardscape elements include but are not limited to signage element design, festival streetscape elements, site furnishings

Attachment 'A'

including litter receptacles, benches, bike racks, and decorative hardscape surface materials. CPH Landscape Architects will attend up to four (4) coordination meetings with CITY staff.

2.0 LANDSCAPE DESIGN DEVELOPMENT

CPH will prepare 60% Plans based on staff direction and coordination of the concept layout, consisting of plan view sheets of the improvements, detailing the proposed streetscape improvements associated with the project. The 60% Plans will be prepared on a 11" x 17" sheet at a reasonable scale to clearly detail the proposed construction required for the program elements. CPH will submit the 60% Plans to the City for review, and will make revisions to the plans as requested. The 60% Plans will consist of the following sheets:

- Tree Protection and Mitigation Plan
- Landscape Design
- Landscape Notes and Details
- Hardscape Design
- Hardscape Notes and Details

3.0 FINAL LANDSCAPE PLAN

Based on the City's review of the 60% Plans, CPH will prepare 90% Construction Plans on 24"x36" paper at a reasonable scale to clearly detail the proposed construction required to meet City and ADA criteria. At this submittal CPH will also prepare an irrigation plan for an automatic irrigation system that responds to the requirements of the landscape design and City's design criteria. This drawing will be a construction document and include a materials list, watering schedule, irrigation details and general notes regarding implementation requirements. The 90% Construction Plans will consist of the following sheets:

- Tree Protection and Mitigation Plan
- Landscape Plans
- Landscape Notes and Details
- Hardscape Plans
- Hardscape Notes and Details
- Irrigation Plans
- Irrigation Notes and Details

Based on the City's 90% Submittal review, CPH will prepare Final Bidding Documents (100%) and Specifications.

CITY-FURNISHED INFORMATION

It is understood that CPH will perform services under the sole direction of the City. In the performance of these services, CPH will coordinate its efforts with the City's Project Manager, or designated person and other project team members as required. The City shall provide CPH with available project-related technical data including, but not limited to, the following:

- Previous Roadway Plans or data
- Previous Stormwater Plans or data
- Previous Utility Plans or data
- Any other pertinent information concerning this project to which the City may have.

Attachment 'A'

CPH will rely upon the accuracy and completeness of City-furnished information in connection with the performance of services under this Agreement.

CPH will begin performance of the above services upon verbal authorization followed by written authorization within 7 days of the verbal authorization to proceed is received. The schedule is also subject to timely delivery of information by the City and is exclusive of City and local review of interim products. If the City requests that work under this agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

COMPENSATION

Labor

CPH will perform the Scope of Services contained in this Agreement as identified on each task, either lump sum or time and materials. Refer to the Standard Hourly Rate Schedule to be utilized on this project. The following is the break down of fees for each task. Tasks that are identified as Time and Materials (Hourly) have been provided an 'Upset Limit' (USL) budget. The City will be informed when the services are about to exceed this limit.

Phase No.	Phase Description	Billing Method	Fee
A.	SURVEYING		
1.0	Topographic Survey	Lump Sum	\$14,250.00
2.0	Underground Utility Designation/ Location (subconsultant)	Lump Sum	\$10,071.00
	OPTIONAL SERVICES:		
2.1	Vertical Utility Test Holes (Up to 20)	Allowance	\$9,600.00
2.2	MOT Lane Closures	Allowance	\$10,965.00
2.3	MOT/Lane Closure Permitting	Allowance	\$600.00
2.4	MOT Administration Management	Allowance	\$551.00
B.	ENGINEERING SERVICES		
1.0	Conceptual Design	Lump Sum	\$15,000.00
	Geotechnical (subconsultant)	Lump Sum	\$4,185.00
2.0	Design Development	Lump Sum	\$65,000.00
3.0	Final Design Phase	Lump Sum	\$40,000.00
4.0	Permitting (Exemption)	Lump Sum	\$2,500.00
5.0	Utility Coordination	Lump Sum	\$4,500.00
6.0	Stakeholder Participation	Hourly, NTE	\$5,000.00
C.	ELECTRICAL ENGINEERING		
1.0	Electrical Design	Lump Sum	\$11,250.00
D.	LANDSCAPE ARCHITECTURE		
1.0	Preliminary Landscape Design	Lump Sum	\$4,000.00
2.0	Landscape Design Development	Lump Sum	\$4,000.00
3.0	Final Landscape Plans	Lump Sum	\$4,000.00
	Total		\$204,972.00

Attachment 'A'

Reimbursable Expenses

In addition to the labor compensation outlined above, CPH shall be reimbursed directly for project specific expenditures such as, but not limited to travel, printing and reprographics, postage, and telephone usage. Reimbursable expenses will be billed at their actual cost, without increase. Expenses not to exceed \$3,000.00.

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- Storm water modeling and/or analysis of the existing storm water pond system for retrofitting of the existing site
- Traffic studies or signalization design
- Environmental studies and coordination of environmental issues with the regulatory agencies
- Any permits not identified herein
- Special meetings with agencies or other consultants not normally required to perform the work described in the Scope of Services, except those meetings specifically identified in the above Scope of Work
- Easement or right-of-way vacation or dedication services or platting services
- Design and permitting of buildings and structures
- Site Specific Maintenance of Traffic Plans
- Construction Engineering & Inspection (CEI) or Construction Administration
- Expert witness for litigation.
- Any other issues not specifically described in this proposal

Should work be required in any of these areas, or areas not previously described, CPH will prepare a proposal or amendment, at the CITY's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

CPH, INC. AUTHORIZATION

By: 
Kurt R. Luman, Jr., P.E.
Sr. Vice President / Associate

Attachments:

Universal Engineering: Geotechnical Exploration Proposal

Southeastern Surveying: Horizontal Utility Designation & Test Holes Proposal

Amanda Wettstein, APR, CPRC: Stakeholder Participation

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH CPH, INC. FOR THE
DESIGN OF THE SOUTH CANAL STREET & DIXIE AVENUE ENTRYWAY
AS PART OF DOWNTOWN IMPROVEMENTS FOR AN AMOUNT NOT TO
EXCEED \$121,495.00; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute a Professional Services Agreement with CPH, Inc. whose address is 500 W. Fulton Street, Sanford, Florida 32771 for Professional Engineering Services related to the design of the South Canal Street and Dixie Avenue Entryway pursuant to Request for Qualification (RFQ) 210013.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the 8th day of March in the year 2021, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY” or “CLIENT”), and **CPH, INC.** whose address is 500 W. Fulton Street, Sanford, Florida 32771 (hereinafter referred to as “PROFESSIONAL” or “CPH”).

WHEREAS, the CITY issued Request for Qualifications (RFQ) 210013 to contract with a qualified professional or firm to provide professional services to design improvements to the Leesburg Downtown Area as detailed in the City’s Downtown Master Plan.

WHEREAS, the CITY evaluated all responses to RFQ 210013 in accordance with Florida Statute 287.055 – Consultants Competitive Negotiation Act and CPH, Inc. is the top ranked firm among all firms submitting proposals;

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.
 - a. This Agreement; and
 - b. Request for Qualifications (RFQ) package 210013 – Downtown Improvements – Professional Design Services; and
 - c. PROFESSIONALS response to RFQ 210013 submitted November 3, 2020 at 011:56:39 AM EST; and
 - d. PROFESSIONALS Scope of Services included as Attachment ‘A’.
2. **Services.** The PROFESSIONAL shall perform the services as described in PROFESSIONAL’s Scope of Services included as Attachment ‘A’ and generally described as, Engineering Services for the South Canal and Dixie Avenue Entry Feature. Nothing herein shall limit the CITY’S right to obtain proposals or services from other professionals for similar projects.
3. **Compensation.** Compensation shall be in accordance with the professional services compensation included in Attachment ‘A’.
 - a. The cost of the Professional Design Services shall not exceed **\$116,495.00** unless the CITY has executed a written change order approving any increase in compensation.

- b. PROFESSIONAL may also be reimbursed directly for Reimbursable Expenses such as travel, printing, postage, and reprographics for an amount not to exceed **\$5,000.00**.

4. **Payment.** CITY shall compensate PROFESSIONAL for their services in accordance with the Florida Prompt Payment Act and the Terms and Conditions of this Agreement.

5. **Authorized Expenses.** The CITY will not be liable for any expenses incurred by the PROFESSIONAL prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. **Term.** The term of this Agreement shall be for a period of three (3) years or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall begin within ten (10) calendar days from the date the CITY issues a Notice of Award.

7. **Termination.** All or part of this Agreement may be terminated under the following conditions;

a. **For Convenience**

- i. The CITY may, by written notice to the PROFESSIONAL, terminate this Agreement for its convenience and without cause or default on the part of PROFESSIONAL. Upon receipt of the notice of termination, except as explicitly directed by the CITY, the PROFESSIONAL must immediately discontinue all services affected.
- ii. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.
- iii. CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.
- iv. CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

b. **Termination for Default**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the

terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- i. **Termination by Owner:** The CITY may terminate this Agreement in whole or in part, for the failure of the PROFESSIONAL to:
 1. Perform the services within the time specified in this contract or by CITY approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the PROFESSIONAL must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.

CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.

CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the CITY determines the PROFESSIONAL was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the CITY issued the termination for the convenience of the CITY.

- ii. **Termination by Professional:** The PROFESSIONAL may terminate this Agreement in whole or in part, if the CITY:
 - 1. Defaults on its obligations under this Agreement;
 - 2. Fails to make payment to the PROFESSIONAL in accordance with the terms of this Agreement;
 - 3. Suspends the Project for more than one-hundred eighty (180) days due to reasons beyond the control of the PROFESSIONAL.

Upon receipt of a notice of termination from the PROFESSIONAL, CITY agrees to cooperate with PROFESSIONAL for the purpose of terminating the agreement or portion thereof, by mutual consent. If CITY and PROFESSIONAL cannot reach mutual agreement on the termination settlement, the PROFESSIONAL may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the CITY's breach of the contract.

In the event of termination due to CITY breach, the PROFESSIONAL is entitled to invoice CITY and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the PROFESSIONAL through the effective date of termination action. Owner agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

8. **Reengagement.** Should the CITY not immediately construct the project covered under this design, the CITY may reengage the PROFESSIONAL at a future date to review and make updates to the design and specifications as may be required resulting from items such as change in site locations, change in legal requirements for construction, etc . . . Such a Reengagement will be documented through an Amendment to this Agreement.

9. **Insurance.** The PROFESSIONAL will maintain throughout this Agreement the following insurance:

- a. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by PROFESSIONAL prior to starting work, together with evidence that the premiums have been paid.
- b. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."
- c. The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are

required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

- d. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- e. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL'S interests or liabilities, but are merely required minimums.
- f. All liability insurance, except professional liability, shall be written on an occurrence basis.
- g. The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- h. Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.
- i. Except for workers' compensation and professional liability, the PROFESSIONAL'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.
- j. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:
 - City of Leesburg
 - Attention: Mike Thornton, Purchasing Manager
 - P.O. Box 490630
 - Leesburg, Florida 34749-0630
- k. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- l. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- m. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- n. The PROFESSIONAL, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

10. Individual Liability.

**PURSUANT TO SECTION 558.0035, FLORIDA
STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT**

OF PROFESSIONAL MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

11. **Indemnification.** The PROFESSIONAL shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the PROFESSIONAL and persons employed or utilized by the PROFESSIONAL in the performance of this Agreement. The liability of the PROFESSIONAL shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to intentional misconduct or negligent acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the PROFESSIONAL shall not be obligated to indemnify the CITY against losses arising from the negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the intentional misconduct or negligent acts or omissions of the PROFESSIONAL, or any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

12. **Codes, Laws, and Regulations.** PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

13. **Permits, Licenses, and Fees.** PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL'S performance of the Scope of Services.

14. **Access to Records.** PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL'S normal business hours.

Additionally, PROFESSIONAL must maintain an acceptable cost accounting system. The PROFESSIONAL agrees to provide the CITY or any of their duly authorized representatives, access to any books, documents, papers, and records of the PROFESSIONAL which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The PROFESSIONAL agrees to maintain all books, records and reports

required under this contract for a period of not less than five (5) years after final payment is made and all pending matters are closed.

15. **Public Records Retention.** PROFESSIONAL shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by PROFESSIONAL herein in accordance with Chapter 119, Florida Statutes. PROFESSIONAL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. PROFESSIONAL shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the PROFESSIONAL upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by PROFESSIONAL in a format that is compatible with the information technology systems of the CITY.

16. **Contingent Fees Prohibited.** The PROFESSIONAL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

17. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the PROFESSIONAL.

18. **Independent Contractor.** The PROFESSIONAL agrees that it is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the

CITY to the PROFESSIONAL. PROFESSIONAL will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

19. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

20. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

21. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

22. **Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be John Baer, AIA, Vice-President/Associate (email: jbaer@cphcorp.com). The primary contact person under this Agreement for the CITY shall be Travis Rima, Director of Recreation (email: travis.rima@leesburgflorida.gov).

23. **Notices.** All notices required under this Agreement shall be in writing and sent by United States mail, certified or registered, with return receipt requested and postage prepaid, or by nationally recognized courier service to the address of the party set forth below. Any such notices shall be deemed given when received by the party to whom it is intended.

CONTRACTOR: Nikhel Jindal GCC, Assoc., DBIA, ENV SP
500 West Fulton Street
Sanford, FL 32771
Phone: 407.322.6841
Email: info@cphcorp.com

CITY: City of Leesburg
Attn: Mike Thornton, Purchasing Manager
204 N. 5th Street
Leesburg, FL 34748
Phone: 352.728.9880
Email: mike.thornton@leesburgflorida.gov

24. **Approval of Personnel.** Key Personnel: The City reserves the right to discontinue (terminate) when key personnel identified in the PROFESSIONAL's response to the original Request for Qualifications are not available. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement, CITY may require PROFESSIONAL assign a different person or persons be designated to be the contact person or to perform the PROFESSIONAL services hereunder.

25. **Employment Eligibility.** The PROFESSIONAL is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors/subconsultants to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor/subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the PROFESSIONAL, the PROFESSIONAL may not be awarded a public contract for a period of ONE (1) year after the date of termination.

26. **Subcontractors.** The CITY reserves the right to approve all subcontractors for tasks performed under this Agreement. Responsibility for the performance of the contract remains with the PROFESSIONAL exclusively. Subcontractors may be added to this contract during the contract period only with prior written permission from the CITY

27. **Disclosure of Conflict.** The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

28. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

29. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

CPH, INC.

By: _____

Printed: _____

Its: _____
Title

THE CITY OF LEESBURG, FLORIDA

By: _____
John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form and content:

Fred A. Morrison, City Attorney



SCOPE OF SERVICES

CITY OF LEESBURG

S. Canal Street and Dixie Avenue Entry Feature

**January 15, 2021
Rev. January 20, 2021**

CPH, Inc.

ENGINEERING DESIGN SERVICES

BASIC SERVICES OF THE CONSULTANT

PART I

PROJECT DESCRIPTION

The City of Leesburg (City) has requested CPH, Inc. (CPH) to provide engineering design services for the proposed S. Canal Street and Dixie Avenue Entry Feature as described in the Downtown Master Plan and correspondence with City Staff. The S. Canal Street/Dixie Avenue entry feature shall include monument signage, entry wall features, landscape, irrigation, and lighting similar to the existing entry feature located at Main St and 14th Street. The improvements also include converting the existing strain-pole signal to a mast arm signal and decorative pavement treatment (crosswalk and/or roadway surface treatments).

SCOPE OF SERVICES

A. SURVEYING

1.0 TOPOGRAPHIC SURVEY

Depict Right of Way Geometry (see "Survey Site Exhibit" for limits):

- Compute right of way geometry based on recorded plats and available right of way maps.
- Field locate existing monumentation and verify rights of way contained within the survey area.
- Evaluation of ownership and encumbrances, i.e., title reports and research for right of way takes, are not included in this scope of services.

Topographic Survey: Perform a Topographic Survey as per Rule Chapter 5J-17 of the Florida Administrative Code in compliance with the Standards of Practice of Surveying and Mapping of the State of Florida (see "Survey Site Exhibit" for limits – 2.6± acres). CPH will use a High Definition Laser Scanner which has the ability to collect up to 2,000,000 points per second at an unparalleled rate of speed which produces a very dense and accurate collection of measurements. The benefits of using the High Definition Laser Scanner includes direct field cost savings, schedule reductions, increased safety and eliminates the need for site re-visits.

Attachment 'A'

- Collect topographic data of the intersection of S. Canal Street and W. Dixie Avenue within the area depicted in red to include 200' east, west and south and 300' north (see "Survey Site Exhibit" for limits).
- A certified right of way map will **not** be provided.
- Location of visible above ground improvements and visible utilities within scope to include signals, fences and landscape areas (underground utilities optional).
- Locate trees at diameter at breast height (size and type only) within scope.
- Invert information and pipe sizes to be collected on accessible structures only. Any sewer as-built information to be provided to surveyor. Coordination with the City for inaccessible structures is not included as part of this scope. Manholes lying in or near travel lanes will not be opened.

State Plane: The project coordinate system will be based horizontally on the North American Datum 1983(1990) (NAD 83/90). The project will be referenced to state plane coordinates by field locating published control points. This base of reference will be used to establish the coordinate system for the project.

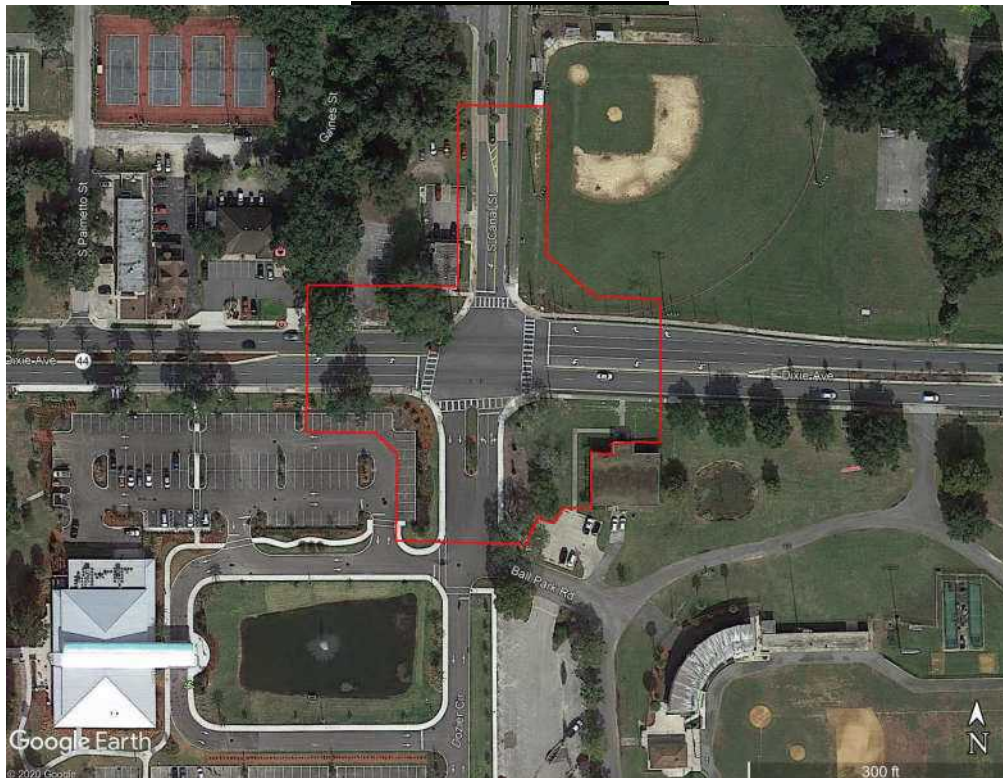
Benchmarks and Horizontal Control: The project will be based on the North American Vertical Datum 88 (NAVD 88). The project will be referenced to this datum by field locating published benchmarks. The benchmarks will be researched and verified in the field.

2.0 UNDERGROUND UTILITY DESIGNATION/LOCATION

Underground Utility Designation/Location (Sub-consultant):

- Underground Utility Designation/Location to be performed by Subsurface Utility Engineering Sub-consultant (see area depicted in red on the attached "Survey Site Exhibit" for limits). See Separate Proposal from Sub-consultant.

SURVEY SITE EXHIBIT



Attachment 'A'

The following related services are not included in the scope of this proposal, and may or may not be required, but can be provided at an additional fee: Boundary Survey, ALTA/NSPS Land Title Survey, As-built Survey, Platting, Soil Borings, Certified Tree Survey, Sketch and Descriptions, Wetland Location/Delineation and Ordinary High Water/Mean High Water.

B. ENGINEERING SERVICES

1.0 CONCEPTUAL SITE DESIGN

Upon receipt of the survey, CPH will review the right-of-way and property lines locations, and existing infrastructure to identify the available space for the entry features and the signal mast arm foundations. CPH will coordinate with the Landscape Architect and develop three (3) Conceptual Site Layouts (2-D line work) for the entry features and mast arm signal based on the Downtown Master Plan Report and City Staff correspondence. The Concept Design will also include placement of the proposed mast arm signal to minimize conflicts with existing utilities, required sidewalk/curb ramp revisions, and decorative pavement treatment options. Within the fee identified for this task, it will allow up to two (2) CLIENT requested modifications. For the purposes of this proposal, the roadway plan is limited to the intersection of S. Canal Street and Dixie Avenue (approx. 200-ft in all directions). During the development of the conceptual designs, CPH will meet with FDOT to discuss the potential project and identify any project concerns. The concept layout will include the key elements including the roadway improvement, sidewalks modifications, signal location, entry wall and signage location, landscape areas, preliminary lighting layout, and decorative pavement treatment options.

During the Conceptual Design phase, CPH will also coordinate with the project geotechnical consultant to obtain the geotechnical services. Please refer to the geotechnical proposal, as submitted by Universal Engineering, contained herein.

Any alterations to the concept plan after the second modification will be handled as additional service, and billed in accordance with our Standard Hourly Rates.

2.0 FINAL SITE DESIGN

Based on the City approved Conceptual Plan; CPH will prepare the construction plans to the 90% completion level. This plan set will include refining the concept design to include the site grading plan, site dimension plan coordinated with the sign and mast arm signal designs following the City of Leesburg Design Criteria, FDOT Greenbook, FDOT Standard Plans, Manual of Uniform Traffic Control Devices (MUTCD), and ADA requirements. The plan set will consist of the following sheets:

- Key Sheet
- General Notes
- Summary of Pay Items
- Site Dimension Plan
- Site Grading Plan
- Miscellaneous Details (as needed)
- Signing and Pavement Marking Plans
- Traffic Control Plans (TCP General Notes and applicable FDOT Standard Index Sheets)
- Signal Plans (see Section B - 3.0)

Attachment 'A'

- SWPPP and Erosion Control Plans
- Survey Sheets
- Landscape Plans (see Section D below)
- Landscape Details (see Section D below)
- Irrigation Plans (see Section D below)
- Irrigation Details (see Section D below)
- Lighting Plans (see Section C below)
- Lighting Details (see Section C below)

CPH assumes the CITY has approved Front End Documents for the advertisement and contractual agreement with a prospective contractor. CPH will utilize FDOT Specifications as the governing specifications for the roadway, signal, and drainage improvements, incorporating any Supplemental Specifications for items not covered by the FDOT Specifications. CPH will also prepare a draft Engineer's Estimate of Probable Construction Cost (EEOPCC) for the 90% Plans submittal. Upon review of the 90% Plans, a meeting with the City will be held to discuss the specific design elements. This submittal will also include the Geotechnical Report.

Stormwater design will be prepared in accordance with the City of Leesburg, and the St. Johns River Water Management District (SJRWMD). Significant revisions to the existing stormwater conveyance systems are not anticipated. Minor Storm Water Management revisions will be designed in accordance with the current standards of the City of Leesburg, and will include the "Best Management Practices".

TCP design will include one (1) FDOT Lane Closure Analysis (LCA) to determine the off-peak travel times. CPH will utilize existing the FDOT Traffic Online Data for the LCA. No site specific traffic data collection is included in this scope of services.

Within this service are up to two (2) meetings or conference calls with the City to discussed/review the development of the Final Plans. Plans will be supplied to the CLIENT in reproducible form at a suitable scale to fit on an eleven-inch by seventeen-inch (11"x17") plan sheet and will be accurate, legible, complete in design, and suitable for submittal to the City of Leesburg for review and approval. The plans and data will be reviewed with the City, prior to moving forward to the Final Design Phase.

Based on the City reviewed and approved 90% Plans, CPH will address the City review comments and prepare the plans to a 100% (Final) plan level. CPH will update the Supplemental Specification and EEOPCC for the 100% (Final) submittal.

Any modifications to the plans requested by the City pertaining to the infrastructure design in the previously mentioned plans, required to meet code, will be addressed by CPH as part of these services. Any modifications requested that are not code issues, or modifications requested by the City after a phase review will be addressed as additional services and billed at the Standard Hourly Rates enclosed.

3.0 SIGNAL DESIGN

Upon approval of the Concept Design, CPH will prepare 90% traffic signalization plans for the subject intersection. The design will be prepared in accordance with FDOT, MUTCD, and the maintaining agency standards. The plans will include a design of the signal installation at an appropriate scale showing traffic lanes assignments, striping and signing,

Attachment 'A'

mast arms, number and type of signal heads, detectors (loops or optical), controller cabinet, and other standards detail of Traffic Signal installation. It is assumed the existing lane assignments, turn lane lengths, and signal timings will be maintained. A full traffic analysis is not included in this scope of service. The signals will be structurally analyzed in accordance with the FDOT Standard Plans 649-030 and 649-031, and the specific soil parameters described in the geotechnical report. Upon completion of the 90% Plans, CPH will submit the plans to the City and maintaining agency for review. The signal plans will consist of the following sheets:

- Signal General Notes
- Signal Tabulation of Quantities
- Signal Plan Sheets
- Mast Arm Tabulation Sheets
- Standard Mast Arm Assemblies
- Signal Guidesign Worksheets
- FDOT Signal Standards Plan Details

CPH will rely upon and utilize the FDOT Specifications as the required construction specifications. If any additional specifications or other bidding documents are required, CPH will prepare and submit an amendment to this scope of services for review and approval.

It is anticipated after the 90% design phase of the signal improvements and subsequent review by the City and maintaining agency, CPH will prepare the 100% (Final) Design Phase submittal to the City and maintaining agency. CPH will respond to comments received from the maintaining agency that are required to meet design criteria. Any comments received from the City or maintaining agency that requests a change after an acceptance has been received, the redesign will require an amendment to this scope of services.

4.0 PERMITTING

Permitting is anticipated with the Florida Department of Transportation FDOT and the St Johns River Water Management District (SJRWMD).

It is assumed the improvement will be exempt from SJRWMD permitting. Upon approval of the City's preferred Conceptual Plan, CPH will schedule a Pre-Application meeting with SJRWMD to discuss the project. Upon receipt of the City's approval of the 90% plans listed above, CPH will prepare the permit determination/exemption request application to SJRWMD.

FDOT permitting will commence during the Concept Design Phase. CPH will attend a pre-application meeting with FDOT during the Concept Design Phase to discuss the potential project and identify any project concerns. Upon review and acceptance of the 90% Plans by the City, CPH will submit the 90% Plans to FDOT through FDOT One-Stop Permitting for a Driveway Connection/Right-of-Way Use Permit. CPH will continue to coordinate with FDOT, including submittal of the 100% (Final) Plans upon their completion. Any requested modifications to the City approved plans that are require revision to meet FDOT criteria will be discussed and coordinated with City prior to making any design revisions. Design revisions that are not required to meet code or design standards issues, or modifications requested by the permitting agencies that require significant plan revisions (as agreed upon by the City and CPH), CPH will prepare an amendment to this scope of services for review and approval.

Attachment 'A'

Any other permits that may arise during the design or review process, and not outlined above, will be handled as an additional service. Permitting and/or application fees will be the responsibility of the CITY.

5.0 UTILITY COORDINATION

CPH understands these projects will require utility coordination for underground and overhead utilities. CPH will coordinate with the City and other private utilities and propose a design that minimizes conflict. CPH will furnish plans of the 30% plan stages to the utilities for review and confirmation of utility location. Upon completion of the 90% Plans, CPH will furnish the plans to the utilities to develop relocation plans (as needed). CPH is not responsible for the design or cost of the relocated utilities. If City owned utilities (water, sewer, reclaim) are unavoidable, CPH can provide a proposal to design the relocation plans.

6.0 BID PHASE SERVICES

CPH will assist in the bidding of the construction contract by attending the pre-bid meeting, responding to Requests for Information (RFI) during bidding of the project, and assist with preparing the Conformed Documents.

7.0 – POST DESIGN SERVICES

CPH proposes to conduct the minimum number of site inspections necessary to certify the proposed stormwater improvements, preliminary walkthrough, and final walkthrough. For purposes of this proposal, no more than six (6) are included within this scope. Should additional meetings, site inspections, or extension contractor coordination be required, they will be handled as additional services and billed at the Standard Hourly Rates enclosed.

C. ELECTRICAL DESIGN

1.0 ELECTRICAL DESIGN

In general, this project comes from the desire by the City of Leesburg to add vertical features and landscaping to the corner of S. Canal Street and Dixie Avenue. A part of that renovation includes lighting and electrical power to the new vertical features at the corner, landscape and pedestrian lighting for the area immediately around the corner, and additional power points for seasonal or festival, and water feature pump loads.

The CPH electrical engineer will attend a Zoom or similar meeting for kickoff and initial data gathering (Qty 1). This will include a Q&A with the City on the requirements for the space from performance and aesthetic standpoints.

CPH will research any relevant federal, State or local building and electrical codes that apply to the project. CPH will research any relevant electrical utility requirements that apply to the project. This will include a discussion on location for power feeds and clearances from other utility structures in the area. The design will also include an analysis of voltage drop for the new circuits required for the project (based on the voltages available from the utility) and short circuit availability at any new electrical equipment.

CPH will prepare permit / bid / construction documents for the project that will include a site electrical drawing with electrical equipment and light fixture locations, a single-line electrical

Attachment 'A'

power distribution drawing, technical specifications on a drawing that describe the electrical equipment, wiring, conduit, etc. and construction requirements for those pieces, an additional site plan with photometrics at grade for the fixtures and fixture layout approved by the City, and any details required for permitting, bidding and construction of the project. The CPH electrical engineer will participate in two (2) progress and plan review meetings via Zoom or similar.

2.0 ELECTRICAL POST DESIGN

CPH will answer questions that are generated during the bidding process and will provide up to two (2) addenda to the documents to address those questions. CPH will include construction administration to include shop drawing review, up to 4 RFI responses, a pre-bid or pre-construction meeting on site, and a final inspection meeting on site.

D. LANDSCAPE ARCHITECTURE

1.0 PRELIMINARY LANDSCAPE DESIGN

CPH will provide Landscape Architecture design services to implement the improvements detailed in the Master Plan Exhibit for Canal/Dixie Street as described in the Project Description above. CPH Landscape Architects will attend a field review meeting with the City and project team in order to confirm the Master Plan amenities and define the design vocabulary of its proposed improvements. Following this meeting, CPH Landscape Architect will coordinate with the Civil Engineer to assist with up to three (3) concept landscape and hardscape layouts of the improvements, detailing amenity design consistent with the design vocabulary discussed with the City. Hardscape elements include but are not limited to entry signs, a monument Lakefront in the median on the south side with water feature element and up lighting, stamped concrete at the intersection. CPH Landscape Architects will attend up to four (4) coordination meetings with City staff.

2.0 FINAL LANDSCAPE PLAN

Based on the City's review and approval of the Concept/Preliminary Plans, CPH will prepare 90% Construction Plans on 11"x17" paper at a reasonable scale to clearly detail the proposed streetscape and entry sign improvements associated with the project. CPH will design the foundations based on the final size of the sign and specifications provided by the sign manufacturer. the proposed construction required to meet City and ADA criteria. At this submittal CPH will also prepare an irrigation plan for an automatic irrigation system that responds to the requirements of the landscape design and City's design criteria. This drawing will be a construction document and include a materials list, watering schedule, irrigation details and general notes regarding implementation requirements. The 90% Construction Plans will consist of the following sheets:

- Tree Protection and Mitigation Plan
- Landscape Plans
- Landscape Notes and Details
- Hardscape Plans

Attachment 'A'

- Hardscape Notes and Details
- Irrigation Plans
- Irrigation Notes and Details

Following acceptance of the Concept Plans, and along with developing the 90% Plans, CPH will develop 3D rendering graphics with appropriate views concerning building massing and buffer intensities as necessary for the proposed site improvements. Perspective graphics will be generated utilizing Sketch-up, Adobe CS Suite, and Lumion 3D.

During this process, CPH will respond to the site layout plan as approved by the City and shall provide for sign locations, roadway layout, building placement and style, supporting features, and design specifics such as materials, textures and colors for development of the subject site. Materials and pantone colors shall be provided to CPH Landscape Architects by the City.

- CPH will provide one (1) rendering with three (3) perspective views for review and comment with one set of modifications.

Any alterations to the rendering after the first modification will be handled as an additional service.

Based on the City's 90% Submittal review, CPH will prepare Final Bidding Documents (100%) and Specifications.

3.0 LANDSCAPE POST DESIGN

CPH will answer questions that are generated during the bidding process and will provide up to two (2) addenda to the documents to address those questions. CPH will include construction administration to include shop drawing review, up to 4 RFI responses, a pre-bid and pre-construction meeting on site, and a final inspection meeting on site.

CITY-FURNISHED INFORMATION

It is understood that CPH will perform services under the sole direction of the City. In the performance of these services, CPH will coordinate its efforts with the City's Project Manager, or designated person and other project team members as required. The City shall provide CPH with available project-related technical data including, but not limited to, the following:

- Previous Roadway Plans or data
- Previous Stormwater Plans or data
- Previous Utility Plans or data
- Any other pertinent information concerning this project to which the City may have.

CPH will rely upon the accuracy and completeness of City-furnished information in connection with the performance of services under this Agreement.

Attachment 'A'

CPH will begin performance of the above services upon verbal authorization followed by written authorization within 7 days of the verbal authorization to proceed is received. The schedule is also subject to timely delivery of information by the City and is exclusive of City and local review of interim products. If the City requests that work under this agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

Attachment 'A'

COMPENSATION

Labor

CPH will perform the Scope of Services contained in this Agreement as identified on each task, either lump sum or time and materials. Refer to the Standard Hourly Rate Schedule to be utilized on this project. The following is the break down of fees for each task. Tasks that are identified as Time and Materials (Hourly) have been provided an 'Upset Limit' (USL) budget. The City will be informed when the services are about to exceed this limit.

Phase No.	Phase Description	Billing Method	Fee
A.	SURVEYING		
1.0	Topographic Survey	Lump Sum	\$13,150.00
2.0	Underground Utility Designation/ Location	Lump Sum	\$3,260.00
2.1	Signal Foundation Clearances	Allowance	\$3,560.00
B.	ENGINEERING SERVICES		
1.0	Conceptual Site Design	Lump Sum	\$7,500.00
	Geotechnical (subconsultant)	Lump Sum	\$4,725.00
2.0	Final Site Design Phase	Lump Sum	\$14,000.00
3.0	Signal Design	Lump Sum	\$20,000.00
4.0	Permitting	Lump Sum	\$7,000.00
5.0	Utility Coordination	Lump Sum	\$3,500.00
6.0	Bidding Assistance	Lump Sum	\$3,500.00
7.0	Post Design	Lump Sum	\$5,000.00
C.	ELECTRICAL DESIGN		
1.0	Electrical Design	Lump Sum	\$6,000.00
2.0	Electrical Post Design	Lump Sum	\$4,000.00
D.	LANDSCAPE ARCHITECTURE		
1.0	Preliminary Landscape Design	Lump Sum	\$4,500.00
2.0	Final Landscape Plan	Lump Sum	\$3,500.00
2.1	Structural Foundation Design	Lump Sum	\$6,000.00
2.2	3-D Rendering	Lump Sum	\$4,500.00
3.0	Landscape Post Design	Lump Sum	\$3,300.00
Total			\$116,495.00

Reimbursable Expenses

In addition to the labor compensation outlined above, CPH shall be reimbursed directly for project specific expenditures such as, but not limited to travel, printing and reprographics, postage, and telephone usage. Reimbursable expenses will be billed at their actual cost, without increase. Expenses not to exceed \$5,000.00.

Attachment 'A'

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- Storm water modeling and/or analysis of the existing storm water pond system for retrofitting of the existing site
- Traffic studies
- Environmental studies and coordination of environmental issues with the regulatory agencies
- Any permits not identified herein
- Special meetings with agencies or other consultants not normally required to perform the work described in the Scope of Services, except those meetings specifically identified in the above Scope of Work
- Easement or right-of-way vacation or dedication services or platting services
- Site Specific Maintenance of Traffic Plans
- Construction Engineering & Inspection (CEI) or Construction Administration
- Expert witness for litigation.
- Any other issues not specifically described in this proposal

Should work be required in any of these areas, or areas not previously described, CPH will prepare a proposal or amendment, at the CITY's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

CPH, INC. AUTHORIZATION

By: **Kurt R Luman Jr** Digitally signed by
Kurt R Luman Jr
Date: 2021-01-20 14:00:30
Kurt R. Luman, Jr., P.E.
Sr. Vice President / Associate

Attachments:

Universal Engineering: Geotechnical Exploration Proposal

Southeastern Surveying: Horizontal Utility Designation & Test Holes Proposal

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
PROFESSIONAL SERVICES AGREEMENT WITH CPH, INC. FOR THE
DESIGN OF THE PINE STREET IMPROVEMENTS CONCEPTUAL AND
ENGINEERING SERVICES AS PART OF DOWNTOWN IMPROVEMENTS
FOR AN AMOUNT NOT TO EXCEED \$85,100.00; AND PROVIDING AN
EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute a Professional Services Agreement with CPH, Inc. whose address is 500 W. Fulton Street, Sanford, Florida 32771 for Professional Engineering Services related to the design of the Pine Street Improvements pursuant to Request for Qualification (RFQ) 210013.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made as of the 8th day of March in the year 2021, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY” or “CLIENT”), and **CPH, INC.** whose address is 500 W. Fulton Street, Sanford, Florida 32771 (hereinafter referred to as “PROFESSIONAL” or “CPH”).

WHEREAS, the CITY issued Request for Qualifications (RFQ) 210013 to contract with a qualified professional or firm to provide professional services to design improvements to the Leesburg Downtown Area as detailed in the City’s Downtown Master Plan.

WHEREAS, the CITY evaluated all responses to RFQ 210013 in accordance with Florida Statute 287.055 – Consultants Competitive Negotiation Act and CPH, Inc. is the top ranked firm among all firms submitting proposals;

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.
 - a. This Agreement; and
 - b. Request for Qualifications (RFQ) package 210013 – Downtown Improvements – Professional Design Services; and
 - c. PROFESSIONALS response to RFQ 210013 submitted November 3, 2020 at 011:56:39 AM EST; and
 - d. PROFESSIONALS Scope of Services included as Attachment ‘A’.
2. **Services.** The PROFESSIONAL shall perform the services as described in PROFESSIONAL’s Scope of Services included as Attachment ‘A’ and generally described as, Engineering Services for the Pine Street Improvements. Nothing herein shall limit the CITY'S right to obtain proposals or services from other professionals for similar projects.
3. **Compensation.** Compensation shall be in accordance with the professional services compensation included in Attachment ‘A’.
 - a. The cost of the Professional Design Services shall not exceed **\$83,600.00** unless the CITY has executed a written change order approving any increase in compensation.

- b. PROFESSIONAL may also be reimbursed directly for Reimbursable Expenses such as travel, printing, postage, and reprographics for an amount not to exceed **\$1,500.00** unless the CITY has executed a written change order approving any increase in compensation.

4. **Payment.** CITY shall compensate PROFESSIONAL for their services in accordance with the Florida Prompt Payment Act and the Terms and Conditions of this Agreement.

5. **Authorized Expenses.** The CITY will not be liable for any expenses incurred by the PROFESSIONAL prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. **Term.** The term of this Agreement shall be for a period of three (3) years or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall begin within ten (10) calendar days from the date the CITY issues a Notice of Award.

7. **Termination.** All or part of this Agreement may be terminated under the following conditions;

a. **For Convenience**

- i. The CITY may, by written notice to the PROFESSIONAL, terminate this Agreement for its convenience and without cause or default on the part of PROFESSIONAL. Upon receipt of the notice of termination, except as explicitly directed by the CITY, the PROFESSIONAL must immediately discontinue all services affected.
- ii. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.
- iii. CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.
- iv. CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

b. **Termination for Default**

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party [7] days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- i. **Termination by Owner:** The CITY may terminate this Agreement in whole or in part, for the failure of the PROFESSIONAL to:
 - 1. Perform the services within the time specified in this contract or by CITY approved extension;
 - 2. Make adequate progress so as to endanger satisfactory performance of the Project;
 - 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the PROFESSIONAL must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the PROFESSIONAL must deliver to the CITY all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the PROFESSIONAL under this contract, whether complete or partially complete.

CITY agrees to make just and equitable compensation to the PROFESSIONAL for satisfactory work completed up through the date the PROFESSIONAL receives the termination notice. Compensation will not include anticipated profit on non-performed services.

CITY further agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the CITY determines the PROFESSIONAL was not in default of the Agreement, the rights and

obligations of the parties shall be the same as if the CITY issued the termination for the convenience of the CITY.

- ii. **Termination by Professional:** The PROFESSIONAL may terminate this Agreement in whole or in part, if the CITY:
 - 1. Defaults on its obligations under this Agreement;
 - 2. Fails to make payment to the PROFESSIONAL in accordance with the terms of this Agreement;
 - 3. Suspends the Project for more than one-hundred eighty (180) days due to reasons beyond the control of the PROFESSIONAL.

Upon receipt of a notice of termination from the PROFESSIONAL, CITY agrees to cooperate with PROFESSIONAL for the purpose of terminating the agreement or portion thereof, by mutual consent. If CITY and PROFESSIONAL cannot reach mutual agreement on the termination settlement, the PROFESSIONAL may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the CITY's breach of the contract.

In the event of termination due to CITY breach, the PROFESSIONAL is entitled to invoice CITY and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the PROFESSIONAL through the effective date of termination action. Owner agrees to hold PROFESSIONAL harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

8. **Reengagement.** Should the CITY not immediately construct the project covered under this design, the CITY may reengage the PROFESSIONAL at a future date to review and make updates to the design and specifications as may be required resulting from items such as change in site locations, change in legal requirements for construction, etc . . . Such a Reengagement will be documented through an Amendment to this Agreement.

9. **Insurance.** The PROFESSIONAL will maintain throughout this Agreement the following insurance:

- a. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by PROFESSIONAL prior to starting work, together with evidence that the premiums have been paid.
- b. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

- c. The PROFESSIONAL shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- d. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- e. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the PROFESSIONAL'S interests or liabilities, but are merely required minimums.
- f. All liability insurance, except professional liability, shall be written on an occurrence basis.
- g. The PROFESSIONAL waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- h. Insurance required of the PROFESSIONAL, or any other insurance of the PROFESSIONAL shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.
- i. Except for workers' compensation and professional liability, the PROFESSIONAL'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.
- j. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:
 - City of Leesburg
 - Attention: Mike Thornton, Purchasing Manager
 - P.O. Box 490630
 - Leesburg, Florida 34749-0630
- k. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- l. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- m. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- n. The PROFESSIONAL, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the PROFESSIONAL'S liability coverage(s).

10. **Individual Liability.**

PURSUANT TO SECTION 558.0035, FLORIDA
STATUTES, AN INDIVIDUAL EMPLOYEE OR AGENT
OF PROFESSIONAL MAY NOT BE HELD
INDIVIDUALLY LIABLE FOR NEGLIGENCE.

11. **Indemnification.** The PROFESSIONAL shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the PROFESSIONAL and persons employed or utilized by the PROFESSIONAL in the performance of this Agreement. The liability of the PROFESSIONAL shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the PROFESSIONAL to indemnify the CITY shall be limited to intentional misconduct or negligent acts, omissions, or defaults of the PROFESSIONAL; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the PROFESSIONAL shall not be obligated to indemnify the CITY against losses arising from the negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the intentional misconduct or negligent acts or omissions of the PROFESSIONAL, or any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

12. **Codes, Laws, and Regulations.** PROFESSIONAL will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

13. **Permits, Licenses, and Fees.** PROFESSIONAL will obtain and pay for all permits and licenses required by law that are associated with the PROFESSIONAL'S performance of the Scope of Services.

14. **Access to Records.** PROFESSIONAL will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY during PROFESSIONAL'S normal business hours.

Additionally, PROFESSIONAL must maintain an acceptable cost accounting system. The PROFESSIONAL agrees to provide the CITY or any of their duly authorized representatives, access to any books, documents, papers, and records of the PROFESSIONAL which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The PROFESSIONAL agrees to maintain all books, records and reports required under this contract for a period of not less than five (5) years after final payment is made and all pending matters are closed.

15. **Public Records Retention.** PROFESSIONAL shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by PROFESSIONAL herein in accordance with Chapter 119, Florida Statutes. PROFESSIONAL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. PROFESSIONAL shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the PROFESSIONAL upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by PROFESSIONAL in a format that is compatible with the information technology systems of the CITY.

16. **Contingent Fees Prohibited.** The PROFESSIONAL warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROFESSIONAL, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the PROFESSIONAL any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

17. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the PROFESSIONAL (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the PROFESSIONAL shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the PROFESSIONAL.

18. **Independent Contractor.** The PROFESSIONAL agrees that it is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the PROFESSIONAL. PROFESSIONAL will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The PROFESSIONAL shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

19. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

20. **No Third Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the PROFESSIONAL and the CITY.

21. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

22. **Contact Person.** The primary contact person under this Agreement for the PROFESSIONAL shall be John Baer, AIA, Vice-President/Associate (email: jbaer@cphcorp.com). The primary contact person under this Agreement for the CITY shall be Travis Rima, Director of Recreation (email: travis.rima@leesburgflorida.gov).

23. **Notices.** All notices required under this Agreement shall be in writing and sent by United States mail, certified or registered, with return receipt requested and postage prepaid, or by nationally recognized courier service to the address of the party set forth below. Any such notices shall be deemed given when received by the party to whom it is intended.

CONTRACTOR: Nikhel Jindal GCC, Assoc., DBIA, ENV SP
500 West Fulton Street
Sanford, FL 32771
Phone: 407.322.6841
Email: info@cphcorp.com

CITY: City of Leesburg
Attn: Mike Thornton, Purchasing Manager
204 N. 5th Street

Leesburg, FL 34748
Phone: 352.728.9880
Email: mike.thornton@leesburgflorida.gov

24. **Approval of Personnel.** Key Personnel: The City reserves the right to discontinue (terminate) when key personnel identified in the PROFESSIONAL's response to the original Request for Qualifications are not available. The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of PROFESSIONAL pursuant to this Agreement, CITY may require PROFESSIONAL assign a different person or persons be designated to be the contact person or to perform the PROFESSIONAL services hereunder.

25. **Employment Eligibility.** The PROFESSIONAL is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors/subconsultants to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor/subconsultant knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the PROFESSIONAL, the PROFESSIONAL may not be awarded a public contract for a period of ONE (1) year after the date of termination.

26. **Subcontractors.** The CITY reserves the right to approve all subcontractors for tasks performed under this Agreement. Responsibility for the performance of the contract remains with the PROFESSIONAL exclusively. Subcontractors may be added to this contract during the contract period only with prior written permission from the CITY

27. **Disclosure of Conflict.** The PROFESSIONAL has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the PROFESSIONAL and his duties under this Agreement.

28. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

29. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

CPH, INC.

By: _____

Printed: _____

Its: _____
Title

THE CITY OF LEESBURG, FLORIDA

By: _____
John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form and content:

Fred A. Morrison, City Attorney



SCOPE OF SERVICES

CITY OF LEESBURG

Pine Street Improvements

**January 20, 2021
Revised February 25, 2021**

CPH, Inc.

ENGINEERING DESIGN SERVICES

BASIC SERVICES OF THE CONSULTANT

PART I

PROJECT DESCRIPTION

The City of Leesburg (City) has requested CPH, Inc. (CPH) to provide conceptual and engineering design services for the proposed Pine Street Improvements in accordance with the Downtown Master Plan and correspondences with City staff. The Pine Street improvements may include roadway widening to accommodate on-street parking, widened sidewalks to establish larger pedestrian paths, roadway revisions to accommodate the UF Health Central Florida operations, off-site parking areas, traffic calming elements, parklet area, landscape areas, hardscape features, and lighting improvements.

SCOPE OF SERVICES

A. SURVEYING

1.0 TOPOGRAPHIC SURVEY

Depict Right of Way Geometry (see “Survey Site Exhibit” for limits):

- Compute right of way geometry based on recorded plats.
- Field locate existing monumentation and verify platted rights of way contained within the plats (approximately 2,700 linear feet including 50’ beyond the returns on side streets).
- Evaluation of ownership and encumbrances, i.e., title reports and research for right of way takes, are not included in this scope of services.

Topographic Survey: Perform a Topographic Survey as per Rule Chapter 5J-17 of the Florida Administrative Code in compliance with the Standards of Practice of Surveying and Mapping of the State of Florida (see “Survey Site Exhibit” for limits – 5.0± acres). CPH will use a High Definition Laser Scanner which has the ability to collect up to 2,000,000 points per second at an unparalleled rate of speed which produces a very dense and accurate collection of measurements. The benefits of using the High Definition Laser Scanner includes direct field cost savings, schedule reductions, increased safety and eliminates the need for site re-visits.

Attachement 'A'

- Collect topographic data at 50' cross-sections of approximately 2,700 linear feet including 50' beyond the returns on the side streets and a 20' overlap outside the apparent right-of-way (where accessible) along Pine Street (see "Survey Site Exhibit" for limits).
- A certified right of way map will **not** be provided.
- Location of all visible above ground improvements and visible utilities within scope.
- Location and elevation of accessible thresholds along route if available.
- Locate trees at diameter at breast height (size and type only) within scope.
- Invert information and pipe sizes to be collected on accessible structures only. Any sewer as-built information to be provided to surveyor. Coordination with the City for inaccessible structures is not included as part of this scope. Manholes lying in or near travel lanes will not be opened.

State Plane: The project coordinate system will be based horizontally on the North American Datum 1983(1990) (NAD 83/90). The project will be referenced to state plane coordinates by field locating published control points. This base of reference will be used to establish the coordinate system for the project.

Set Control Line: Horizontal and vertical control points both will be established for the project as required by the Standards of Practice of the State of Florida Rule Chapter 5J-17, Florida Administrative Code are as follows:

"Horizontal control monumentation for road center-lines, right-of-way lines, reference lines or base lines shall be at least a minimum of two (2) points placed so that no point on the line being monumented is more than 700 feet from a control monument."

"Vertical control for linear type construction sites such as roads and sewer lines shall have a maximum of 1,100 feet between existent or established benchmarks."

Benchmarks and Horizontal Control: The project will be based on the North American Vertical Datum 88 (NAVD 88). The project will be referenced to this datum by field locating published benchmarks. The benchmarks will be researched and verified in the field.

2.0 UNDERGROUND UTILITY DESIGNATION/LOCATION

- Underground Utility Designation/Location to be performed by Subsurface Utility Engineering Sub-consultant (see attached "Survey Site Exhibit" for limits). See Separate Proposal from Sub-consultant.

SURVEY SITE EXHIBIT



The following related services are not included in the scope of this proposal, and may or may not be required, but can be provided at an additional fee: Boundary Survey, ALTA/NSPS Land Title Survey, As-built Survey, Platting, Soil Borings, Certified Tree Survey, Sketch and Descriptions, Wetland Location/Delineation and Ordinary High Water/Mean High Water.

B. ENGINEERING SERVICES

1.0 CONCEPTUAL DESIGN

Upon receipt of the survey CPH will review the available right-of-way, and future right-of-way proposed by the Leesburg Aquatic Complex and other properties available to the City, to develop up to three (3) Conceptual Roadway layouts (2-D line work) based on the Downtown Master Plan Report and City staff correspondence. These improvements may include roadway widening to accommodate on-street parking, widened sidewalks to establish larger pedestrian paths, roadway revisions to accommodate the UF Health Central Florida operations, off-site parking areas, traffic calming elements, parklet area, landscape areas, hardscape features, and lighting improvements. The Concept Design will also include typical sections and preliminary Engineer's Estimate of Probable Construction Costs (EEOPCC). Within the fee identified for this task, the scope includes up to four (4) coordination meeting with City Staff, and two (2) modifications. Through coordination with the City, CPH will attend up to four (4) meeting with special interest groups for discussion of the proposed improvements (City Commission, UF Health Central Florida, community advocacy groups, etc.). CPH will prepare color 2-D renderings based on the Conceptual Roadway layouts over an aerial based drawing to graphically display the proposed improvements. Upon selection of the preferred Conceptual Design, CPH will prepare an amendment to this scope of services to prepare the final design and permitting of the project.

Any alterations to the concept plan after the second modification will be handled as additional service, and billed in accordance with our Standard Hourly Rates.

2.0 STAKEHOLDER PARTICIPATION

During the Conceptual Design phase, CPH will utilize Amanda Wettstein, APR, CPRC (AW) to assist with stakeholder participation. Please refer to the scope of service as receive from AW.

C. LANDSCAPE ARCHITECTURE

1.0 PRELIMINARY LANDSCAPE DESIGN

CPH will provide Landscape Architecture design services to implement the improvements detailed in the Master Plan Exhibit and correspondences with City Staff for Pine Street as described in the Project Description above. CPH Landscape Architects will attend a field review meeting with the City and project team to discuss the proposed amenities and define the design vocabulary of the proposed improvements. Following this meeting, CPH Landscape Architects will coordinate with the Project Engineer to assist with up to three (3) concept landscape and hardscape layouts of the improvements, detailing amenity design consistent with the design vocabulary discussed with the City. Hardscape elements include but are not limited to signage and monument element design, streetscape elements, site furnishings including litter receptacles, benches, bike racks, and decorative hardscape surface materials. CPH Landscape Architects will attend up to four (4) coordination meetings with City staff, 2 modifications to the concept plans. Through coordination with the City, CPH will attend up to four (4) meeting with special interest groups for discussion of the proposed improvements (City Commission, UF Health Central Florida, community advocacy groups, etc.).

Following acceptance of the preferred Concept Plan, CPH will develop 3D rendering graphics with appropriate views concerning building massing as necessary for the proposed site improvements. Perspective graphics will be generated utilizing Sketch-up, Adobe CS Suite, and Lumion 3D as necessary for presentation to the City Commission.

During this process, CPH will respond to the roadway layout plan as approved by the City and shall provide for roadway layout, building placement and style, supporting hardscape features, and design specifics such as materials, textures and colors for development of the subject roadway. Materials and pantone colors shall be provided to CPH Landscape Architects by the City.

- CPH will provide one (1) rendering with three (3) perspective views for review and comment with one set of modifications.

CITY-FURNISHED INFORMATION

It is understood that CPH will perform services under the sole direction of the City. In the performance of these services, CPH will coordinate its efforts with the City's Project Manager, or designated person and other project team members as required. The City shall provide CPH with available project-related technical data including, but not limited to, the following:

- Previous Roadway Plans or data
- Previous Stormwater Plans or data
- Previous Utility Plans or data
- Any other pertinent information concerning this project to which the City may have.

Attachement 'A'

CPH will rely upon the accuracy and completeness of City-furnished information in connection with the performance of services under this Agreement.

CPH will begin performance of the above services upon verbal authorization followed by written authorization within 7 days of the verbal authorization to proceed is received. The schedule is also subject to timely delivery of information by the City and is exclusive of City and local review of interim products. If the City requests that work under this agreement be stopped, the schedule is subject to renegotiation when written authorization to continue is received.

COMPENSATION

Labor

CPH will perform the Scope of Services contained in this Agreement as identified on each task, either lump sum or time and materials. Refer to the Standard Hourly Rate Schedule to be utilized on this project. The following is the break down of fees for each task. Tasks that are identified as Time and Materials (Hourly) have been provided an 'Upset Limit' (USL) budget. The City will be informed when the services are about to exceed this limit.

Phase No.	Phase Description	Billing Method	Fee
A.	SURVEYING		
1.0	Topographic Survey	Lump Sum	\$16,565.00
2.0	Underground Utility Designation/ Location (subconsultant)	Lump Sum	\$14,335.00
B.	ENGINEERING SERVICES		
1.0	Conceptual Design	Lump Sum	\$28,000.00
2.0	Stakeholder Participation	Hourly, NTE	\$5,000.00
C.	LANDSCAPE ARCHITECTURE		
1.0	Preliminary Landscape Design	Lump Sum	\$15,200.00
1.1	3-D Rendering	Lump Sum	\$4,500.00
Total			\$83,600.00

Reimbursable Expenses

In addition to the labor compensation outlined above, CPH shall be reimbursed directly for project specific expenditures such as, but not limited to travel, printing and reprographics, postage, and telephone usage. Reimbursable expenses will be billed at their actual cost, without increase. Expenses not to exceed \$1,500.00.

Attachement 'A'

SERVICES NOT INCLUDED

The following services are not anticipated and, therefore, not included in this Agreement at this time:

- Storm water modeling and/or analysis of the existing stormwater sewer or pond system
- Traffic studies or signalization design
- Environmental studies and coordination of environmental issues with the regulatory agencies
- Any permits not identified herein
- Special meetings with agencies or other consultants not normally required to perform the work described in the Scope of Services, except those meetings specifically identified in the above Scope of Work
- Easement or right-of-way vacation or dedication services or platting services
- Construction Engineering & Inspection (CEI) or Construction Administration
- Expert witness for litigation.
- Any other issues not specifically described in this proposal

Should work be required in any of these areas, or areas not previously described, CPH will prepare a proposal or amendment, at the CITY's request, that contains the Scope of Services, fee, and schedule required to complete the additional work item.

CPH, INC. AUTHORIZATION

By: 
Kurt R. Luman, Jr., P.E.
Sr. Vice President / Associate

Attachments:

Amanda Wettstein, APR, CPRC: Stakeholder Participation
Southeastern Surveying: Horizontal Utility Designation Proposal

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.2.

Meeting Date: March 8, 2021

From: Mike Thornton, (Purchasing Manager), Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a construction services agreement with Citrus Sandblast, LLC, for the recoating of the College Street Elevated Water Storage Tank for an amount of \$187,000.00; and providing an effective date.

Staff Recommendation:

Staff recommends award of Invitation for Bid (ITB) 210121 to Citrus Sandblast, LLC, and approve the resolution authorizing execution of the Construction Services Agreement for an amount of \$187,000.00.

Analysis:

The purpose of this project is to recoat the exterior of the 500,000 gallon College Street Elevated Water Tower located on College Street. The coating on the exterior of the water tower is failing and in need of recoating. The water tower has already been coated to it's maximum thickness of coating. All the exterior surfaces of the water tower will need to be stripped of the current coating and then primed and coated with new high performance Tnemec brand paint. Elevated water towers need to be cleaned and recoated about every 5 years. Ensuring the coating is sound reduces environmental effects on the tower, primarily rust.

The fact that the water tower has reached it's maximum thickness of coating was discovered last year when the bid was issued for some interior renovations and recoating. At that time there was insufficient funds to proceed with the exterior. Staff only anticipated a cleaning and recoating. The fact the entire tower needed to be striped, primed, and recoated caused the cost to exceed the available funds at that time. Only the interior rehab and recoating were completed at that time. The City's logo will also be painted on the tower in a single color the same as the water tower at US-441 and CR-44 (Newell Hill Road).

Procurement Analysis:

On December 10, 2020 the Procurement Division issued Invitation for Bids (IFB) 210121 for the College Street Water Tower Recoating. On January 14, 2021 the City received eight bid responses. The summary of the bid responses is provided here.

<u>Bidder Name</u>	<u>Bidder Business Location</u>	<u>Total Bid Amount</u>
Citrus Sandblast, LLC	Winter Garden, FL	\$187,000
Quick Painting Group Corporation	Orlando, FL	\$188,500
Lenard Bell Painting, Inc.	Monte Verde, FL	\$205,000
Tank Pro, Inc.	Northport, AL	\$266,985
Seven Brothers Painting, Inc.	Shelby Township, MI	\$324,300
Utility Service Company, Inc.	Perry, GA	\$368,500
Razorback, LLC	Tarpon Springs, FL	\$424,000
Classic Protective Coatings, Inc.	Menomonie, WI	\$485,958

Procurement staff reviewed the bid responses for responsiveness and have deemed Citrus Sandblast, LLC a responsible bidder submitting the lowest responsive bid. Staff recommends award to Citrus Sandblast, LLC. Staff verified four past project references for the company. Two came back with an overall rating of Very Good and the other two had a rating of Exceptional.

Staff did apply the City's Local Vendor Preference policy to the total bid amounts. Doing so did not result in a change in the low bidder.

Options:

1. Approve the resolution authorizing execution of the agreement with Citrus Sandblast, LLC for \$187,000.00; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are specifically budgeted and available for this project.

Account No.	043-3099-533.62-10
Project No.	430006
WF No.	WF1312953 / 001
Requisition	52739
Budget	\$200,000
Available	\$200,000

Submission Date and Time: 3/3/2021 3:40:47 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A
CONSTRUCTION SERVICES AGREEMENT WITH CITRUS SANDBLAST,
LLC, FOR THE RECOATING OF THE COLLEGE STREET ELEVATED
WATER STORAGE TANK FOR AN AMOUNT OF \$187,000.00; AND
PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an agreement with **CITRUS SANDBLAST, LLC**, whose address is 12537 Westfield Lakes Circle, Winter Garden, Florida for construction services on the City's College Street Water Tower Recoating project pursuant to Invitation for Bids 210121.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT is made as of the 8th day of March in the year 2021, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and CITRUS SANDBLAST, LLC whose address is 12537 Westfield Lakes Circle, Winter Garden, Florida 34787 (hereinafter referred to as the “CONTRACTOR”) having FEIN 81-4112106.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Contract Documents.** The following documents and information are incorporated by reference and made part hereof; and shall comprise the Contract Documents.

- a. This Agreement; and
- b. Invitation for Bid (IFB) 210121 – College Street Water Tower Recoating in its entirety; and
- c. Schedule of Contract Items included as Attachment ‘A’; and
- d. Supplemental Conditions included as Attachment ‘B’; and
- e. The CONTRACTOR’S response to IFB 210121 made electronically on January 14, 2021 at 12:11:30 PM EST.

2. **Scope of Services.** The CONTRACTOR shall furnish the following services generally described as the “COLLEGE STREET WATER TOWER RECOATING” to the CITY as listed in Invitation for Bid 210121. Nothing herein shall limit the CITY’S right to obtain bids or proposals for services from other contractors for same or similar work.

3. **Total Construction Cost.** The CONTRACTOR shall perform the Services for a total price not to exceed **\$187,000.00**. The cost of these services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

4. **Labor and Materials.** The CONTRACTOR shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the inspection and approval of the CITY's representative.

5. **Term of Agreement.** This Agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been completed, and accepted by the CITY’s authorized representative, unless earlier terminated in accordance with its provisions. Those portions imposing warranty requirements on CONTRACTOR, together with any implied warranties under law, will continue to remain in effect until completion of the expressed and/or implied warranty periods.

6. **Commencement and Completion.** The CITY and the CONTRACTOR mutually agree time is of the essence with respect to the dates and times set forth in the Agreement Documents. To that end, the CONTRACTOR will commence work not later than THIRTY (30) continuous calendar days after CITY issues a Notice to Proceed, and will diligently and continuously prosecute the work at such a rate, and with sufficient forces as will allow the CONTRACTOR to achieve Final Completion no later ONE-HUNDRED FIFTY (150) continuous calendar days after CITY issues a Notice to Proceed, subject only to any adjustments in the contract time that may be authorized by change orders properly issued in accordance with the Agreement Documents. In executing this Agreement, CONTRACTOR affirms the time set for completion is reasonable.

7. **Liquidated Damages.** The CONTRACTOR shall consider all contingent work which has to be done by other parties arising from any cause whatsoever, and shall not plead his need of knowledge of said contingent work as an excuse for delay in his work or for non-performance.

If the work is not completed in full by the deadline specified, then for each day thereafter on which the work has not been completed, CONTRACTOR shall pay to the CITY liquidated damages in the amount of **One Hundred Twenty-Five Dollars (\$125.00)** per calendar day, which CITY is hereby authorized to deduct from the final draw before paying any remaining amount to CONTRACTOR. The parties agree that it would be impossible or extremely difficult to compute the actual damages suffered by the CITY due to late completion of the work, that it is therefore appropriate to provide for liquidated damages in this Contract, and that the amount of liquidated damages specified is reasonable and bears a substantial relationship to the probable amount of actual damages the CITY would suffer, and therefore does not constitute a penalty or forfeiture. CONTRACTOR acknowledges that this provision is material to the CITY and that the Owner would not have entered into this Contract but for this provision and that as a result of the Owner's reliance on this provision, the CONTRACTOR shall be stopped to deny or dispute the validity or enforceability of this liquidated damage clause.

Nothing shall be construed as limiting the right of the CITY to declare the Contract forfeited, or to take over the work, or to claim damages for the failure of the CONTRACTOR to abide by each and every one of the terms of the Contract Documents. The completion date shall be construed as being the date on which the work is fully accepted by the CITY.

8. **Termination for Convenience or Cause.**

a. **For Convenience.** The CITY may terminate this Agreement at any time without cause by providing the CONTRACTOR with SEVEN (7) calendar days advance notice in writing, delivery by email is acceptable. In the event of termination for convenience, all finished or unfinished deliverable items prepared by the CONTRACTOR under this Agreement shall, at the option of the CITY, become the CITY's property. If the Agreement is terminated for convenience by the CITY as provided herein, the CONTRACTOR shall be paid for services satisfactorily completed, less payment or compensation previously made. The CONTRACTOR shall not incur any additional expenses after receiving the written notice of termination.

b. **For Cause or Default.** If, through any cause, the CONTRACTOR should fail to fulfill in a timely and proper manner its obligations under this Agreement, other than for the instances listed below due to "Force Majeure," the CITY will have the right to terminate this Agreement by providing a written notice (Show Cause Notice) to the CONTRACTOR requiring a written response due within FIVE (5) calendar days from receipt of the written notice as to why the Agreement should not be terminated for default. The CITY's Show Cause Notice shall include an Agreement termination date at least SEVEN (7) calendar days subsequent to the due date for the CONTRACTOR's response. Should the CONTRACTOR fail to respond to such show cause notice, or if the CITY determines that the reasons provided by the CONTRACTOR for failure of the CONTRACTOR to fulfill its contractual obligations do not justify continuation of the contractual relationship, the Agreement shall be considered to have been terminated for default on the date indicated in the Show Cause Notice. Should the CITY determine that the CONTRACTOR provided adequate justification that a termination for default is not appropriate under the circumstances; the CITY shall have a unilateral option to either continue the Agreement according to the original contract provisions or to terminate the contract for convenience. In the event that the CITY terminates the contract for default, all finished or unfinished deliverable items under this contract prepared by the CONTRACTOR shall, at the option of the CITY, become CITY property, and the CONTRACTOR shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials. Notwithstanding this compensation, the CONTRACTOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of any breach of this Agreement, and the CITY may withhold any payment due the CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due the CITY from such breach can be determined.

In case of default by the CONTRACTOR, the CITY may procure the services from other sources and hold the CONTRACTOR responsible for any excess cost occasioned thereby. The CITY reserves the right to require a performance bond or other acceptable alternative performance guarantees from the successor CONTRACTOR without expense to the CITY.

In addition, in the event of default by the CONTRACTOR under this Agreement, the CITY may immediately cease doing business with the CONTRACTOR, immediately terminate for cause all existing Agreements the CITY has with the CONTRACTOR, and debar the CONTRACTOR from doing future business with the CITY.

Upon the CONTRACTOR filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CONTRACTOR, the CITY may immediately terminate, for cause, this Agreement and all other existing agreements the CONTRACTOR has with the CITY, and debar the CONTRACTOR from doing future business with the CITY.

The CITY may terminate this Agreement for cause without penalty or further obligation at any time following Agreement execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the CITY is at any time while the Agreement or any extension thereof is in effect, an employee or agent of

any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the CITY from any other party to the Agreement.

Upon receipt of a termination action, for convenience or cause, the CONTRACTOR shall promptly discontinue all affected work (unless the notice directs otherwise) and deliver or otherwise make available to the City all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the CONTRACTOR in performing this contract, whether completed or in process.

9. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this contract, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

10. **Insurance Requirements.**

a. Scope of Insurance - The CONTRACTOR shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the Contract Documents.

- i All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least A: VII.
- ii The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
- iii The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
- iv. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR's interests or liabilities, but are merely required minimums.
- iv The provisions of the required insurance are subject to the approval of the City's Risk Manager, and upon request, the CONTRACTOR shall make available certified copies of the various policies for inspection.
- v All liability insurance, except professional liability, shall be written on an occurrence basis.
- vi The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance policies.
- vii Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the

CITY, if any, shall be considered excess as applicable to any claims which arise out of the agreement, Contract or lease.

b. Certificate of Insurance - The CONTRACTOR shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms acceptable to the Risk Manager for the CITY, before any work under the agreement, Contract or lease begins.

- i Except for workers' compensation and professional liability, the CONTRACTOR's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the agreement, Contract or lease.
- ii The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
- iii The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
- iv The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) days in advance of cancellation.
- v The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.
- vi The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR's liability coverage(s).

c. Comprehensive General Liability - The CONTRACTOR shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed operations*, independent Contractors, Contractual liability covering the agreement, Contract or lease, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- i. For remodeling and construction projects, the CONTRACTOR shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY's acceptance of the project.

d. Business Automobile Liability - The CONTRACTOR shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-

site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.

e. Workers' Compensation - The CONTRACTOR shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employers liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.

12. **Waiver of Lien.** The CONTRACTOR agrees to make payment of all proper charges for labor and materials supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, or materials furnished for the project covered by this Agreement.

13. **Indemnification.** The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and CONTRACTOR shall indemnify CITY and hold it harmless from and against any loss or damage, claim or cause of action, and any attorneys' fees and court costs, arising out of: any unpaid bills for labor, services or materials furnished to this project; any failure of performance of CONTRACTOR under this Agreement; or the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or any act or omission on the part of the CONTRACTOR, his agents, employees, or servants. CONTRACTOR shall defend, indemnify, and save harmless the CITY or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR'S duties under this Agreement, or through the negligence of the CONTRACTOR in the performance of its duties under this Agreement, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants.

If however, this Agreement is a "construction contract" as defined in and encompassed by the provision of Florida Statutes § 725.06, then the following shall apply in place of the aforementioned indemnification provision:

The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars (\$1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory

violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, material men, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

14. **Codes, Laws, and Regulations.** CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

15. **Permits, Licenses, and Fees.** CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services. All permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions.

16. **Public Records Retention.** CONTRACTOR shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONTRACTOR herein. CONTRACTOR shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONTRACTOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONTRACTOR shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONTRACTOR in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 352-728-9731, 501 W. MEADOW STREET, LEESBURG, FLORIDA 34748.

17. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONTRACTOR shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

18. **Contingent Fees Prohibited.** The CONTRACTOR warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for

the CONTRACTOR, to solicit or secure this Agreement 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 the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

19. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONTRACTOR, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and shall be in compliance with the terms herein, fully in accord with the specifications and of the highest quality.

Any goods and/or services purchased as a result of this solicitation and/or Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to terminate the solicitation or initiate corrective action on the part of the CONTRACTOR, to include return of any non-compliant goods to the CONTRACTOR at the CONTRACTOR's expense, requiring the CONTRACTOR to either provide a direct replacement for the item, or a full credit for the returned item. The CONTRACTOR shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

In addition, any defective product or service or any product or service not delivered or performed by the date specified in the purchase order or contract, may be procured by the CITY on the open market, and any increase in cost may be charged against the awarded contractor. Any cost incurred by the CITY in any re-procurement plus any increased product or service cost shall be withheld from any monies owed to the CONTRACTOR by the CITY for any contract or financial obligation.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

20. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

21. **Independent Contractor.** The CONTRACTOR agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

22. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

23. **No Third-Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

24. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

25. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

26. **Disclosure of Conflict.** The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

27. **Contact Person.** The primary contact person under this Agreement for each party is listed here. Contact person and information may be updated as needed by written, electronic mail is acceptable, communication to the other party. Notifying party shall receive confirmation the other party has received the change to the Contact Person.

CONTRACTOR Contact Information

Name/Title: Brandon Trimble

Address: 12537 Westfield Lakes Circle

City, State & Zip: Winter Garden, Florida 34787

Telephone: (407) 488-5927

Email Address: brandon@citrussandblast.com

CITY Contact Information

Name/Title: Al Purvis

Telephone: Ofc: (352) 728-9786 x2457 Mobile: (352) 516-7129

Email Address: al.purvis@leesburgflorida.gov

28. **Warranty.** The CONTRACTOR agrees that, unless expressly stated otherwise in the bid or proposal, the product and/or service furnished as a result of an award from this solicitation shall be covered by the most favorable commercial warranty the CONTRACTOR gives to any customer for comparable quantities of products and/or services and the rights and remedies provided herein are in addition to said warranty and do not limit any right afforded to the CITY by any other provision of this solicitation.

The CONTRACTOR hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONTRACTOR in conjunction with this Agreement shall be new, warranted for their merchantability, and fit for a particular purpose.

29. **Risk of Loss.** The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

30. **Employment Eligibility.** The CONTRACTOR is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than TWENTY (20) calendar days after the date of termination. If this contract is terminated for a violation of the statute by the CONTRACTOR, the CONTRACTOR may not be awarded a public contract for a period of ONE (1) year after the date of termination.

31. **Illegal Alien Labor** - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall

not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is following the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

32. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

33. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

CITRUS SANDBLAST, LLC

By: _____

Printed: _____

Its: _____
(Title)

CITY OF LEESBURG, FLORIDA

John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

Approved as to form:

Fred A. Morrison, City Attorney

Attachment 'A'

SCHEDULE OF CONTRACT ITEMS

Item	Description	Unit	Price
1	GENERAL CONDITIONS	LUMP SUM	\$15,000
2	COST FOR STRIPPING AND PREPARATION FOR RECOATING	LUMP SUM	\$100,000
3	COST FOR RE-COATING WATER STORAGE TANK AS SPECIFIED	LUMP SUM	\$72,000
TOTAL PRICE			\$187,000

Attachment 'B'
SUPPLEMENTAL CONDITIONS – CONSTRUCTION

1. DEFINITIONS

The following definitions shall apply. Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

- a. **City Project Representative:** There shall be authorized representative(s) of the CITY assigned to make all necessary inspections of the work performed by the CONTRACTOR and for such other purposes as outlined in the Contract Documents.
- b. **City Technical Representative:** There may be a designated Project Representative assigned by the CITY to inspect the technical aspects of the project. To insure the project is being constructed as designed.
- c. **Engineer of Record:** The Engineer of Record designated by the CITY following Contract Execution.
- d. **Engineer:** The design professional (engineer, architect, landscape architect or surveyor) designated by the CITY to serve as the design professional representing the CITY.
- e. **Notice to Proceed (NTP):** The official Notice from the CITY to the CONTRACTOR providing the date work may begin and the date the performance period begins. The NTP date will be mutually agreed to at or following the pre-construction meeting. CONTRACTOR shall sign the acknowledgement section of the NTP and return to the Purchasing Division. The NTP shall become a part of the Contract Documents.
- f. **Subcontractor:** Includes only those having a direct contract with the CONTRACTOR and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- g. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- h. **Manual(s):** Equipment documentation meant for the end user/consumer of the equipment. CONTRACTOR shall provide all Manuals to the CITY upon substantial completion. Retainage may not be released until the CITY has received all Manuals relevant to the equipment incorporated into the project.
- i. **Surety:** The corporate body which is bound with and for the CONTRACTOR which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.
- j. **Plans, Drawings and/or Sketches:** Graphic representations of the work to be performed or reproductions thereof.
- k. **Specifications:** Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation, Supplemental Conditions (if any), other detailed technical specifications, exhibits and all addenda.

- l. **Defective:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion or CITY has taken beneficial use of completed portions.
- m. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.
- n. **Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
- o. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

2. INSPECTION OF WORK

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the CONTRACTOR shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the CITY and is subject to inspection by his appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provisions of the specifications without written authorization of the CITY, nor shall the presence or absence of an inspector relieve the CONTRACTOR from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONTRACTOR shall give the CITY timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the CITY, it shall, if required by the Project Representative, be uncovered for examination at the CONTRACTOR's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the CONTRACTOR. If such work is found in accordance with the contract documents, the CITY will pay the cost of re-examination and replacement. If

such work is found not in accordance with the contract documents, the CONTRACTOR shall pay such cost.

3. TESTS

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the CONTRACTOR furnish the source

before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the CONTRACTOR of his responsibility to furnish satisfactory material. The CONTRACTOR shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the CITY. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the CONTRACTOR and should be included in the bid items as such.

4. TOOLS, PLANT AND EQUIPMENT

If any time before the commencement or during the progress of the work, tools, plant or equipment appears to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the CITY of such conditions. The Engineer will provide written notification to the CONTRACTOR of CITY's quality and/or schedule concerns. The CONTRACTOR will respond in writing within 5 business days of receiving the CITY's notice and will propose remedial actions to address the quality and/or schedule concerns.

5. COLLECTION AND DISPOSAL OF WASTE

The CONTRACTOR shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The CONTRACTOR shall be responsible for the transportation and disposal costs of all waste construction materials.

6. BURNING OF DEBRIS

For any areas where the burning of debris is permitted, the CONTRACTOR will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

7. MAINTENANCE OF TRAFFIC

Where construction is located in public right of ways, traveled streets and roads, the CONTRACTOR shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The CONTRACTOR shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the CITY of Leesburg upon request.

8. PROTECTION AGAINST POLLUTION

The CONTRACTOR shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

CONTRACTOR shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

9. TEMPORARY FENCING AND BARRICADES

The CONTRACTOR shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the CONTRACTOR's personal property and materials. The CITY shall not be held responsible for the loss, theft, or vandalism of the CONTRACTOR's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the CONTRACTOR shall at his cost provide suitable flagmen to control vehicular traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the CONTRACTOR prior to actual beginning of work. The CONTRACTOR shall, at his cost, remove all temporary protection from the work site upon completion of the work.

10. WORKMANSHIP, MATERIALS, APPLIANCES, AND EMPLOYEES

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the CONTRACTOR for permanent incorporation in the work shall be new and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the CITY's intent to obtain a high-quality job that will operate and function with least maintenance costs. The CONTRACTOR shall, if requested by CITY, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the CONTRACTOR shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The CONTRACTOR shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

11. GENERAL QUALITY AND STANDARDS

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the CITY, the CONTRACTOR and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume its completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the CONTRACTOR by others are assumed to be matters governed by agreement between the CONTRACTOR and his Subcontractors and suppliers and not by agreement between the CITY and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the CITY may elect to contract other work for the project. The CONTRACTOR shall coordinate his operations with those of any other such CONTRACTORS as well as any work of constructing or adjusting utilities by any other

authorities, to the end that the least practical handicap to the work of all such CONTRACTORS or authorities will result.

12. PROJECT COORDINATION

The CONTRACTOR shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The CONTRACTOR shall make adequate provisions to accommodate items scheduled for later installation.

The CONTRACTOR shall inspect both the substrate and conditions under which the work is to be performed. The CONTRACTOR shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The CONTRACTOR shall inspect materials or equipment immediately upon delivery and again prior to installation. The CONTRACTOR shall reject damaged and defective items.

The CONTRACTOR shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following: Unprotected storage, Improper shipping and handling, Theft, Vandalism.

13. COORDINATION WITH UTILITY COMPANIES

CONTRACTOR shall coordinate with all utility installations. CONTRACTOR shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, and Cable Television. CONTRACTOR shall coordinate the installation of "sleeves" for the utility companies as may be required.

CONTRACTOR shall supply the CITY with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) days, thirty (30) days and two (2) weeks prior to the time at which the utility installation should begin.

14. SUPERVISION

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the CONTRACTOR, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONTRACTORS' risk.

15. CONSTRUCTION SUPERINTENDENT

CONTRACTOR shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the CITY. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

16. WAGE RATES/EQUAL EMPLOYMENT OPPORTUNITY

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for this work, as may be attached hereto. The CONTRACTOR must insure Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the CONTRACTOR.

17. SUBCONTRACTS

The CONTRACTOR shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The CONTRACTOR shall not employ subcontractors, unless they are approved by the Project Representative.

The CONTRACTOR agrees that he is as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the CITY.

18. PRE-CONSTRUCTION MEETING

The CITY shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and CONTRACTOR shall attend this mandatory meeting. The following items shall be completed:

- a. Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- b. Designation of Personnel representing the parties in Contract, and the Engineer.
- c. Use of premises by CITY and the CONTRACTOR.
- d. Survey layout and scheduling.
- e. Security and housekeeping procedures.
- f. Requirements for start-up of equipment.
- g. Inspection and acceptance of equipment put into service during construction period.

At least ten (10) days before submission of the first Application for Payment a conference attended by CONTRACTOR, Engineer and others as appropriate will be held to finalize the schedules submitted by CONTRACTOR. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

19. ORDER OF COMPLETION

The CONTRACTOR shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the CONTRACTOR proposes to carry on the work with dates on which the CONTRACTOR will start the several parts of the work and estimated dates of completion of the several parts. The CITY retains the right to dictate to the CONTRACTOR the order of completion of the work.

20. MATERIALS AND EQUIPMENT SCHEDULES

As soon as practicable and within ten (10) days after the date of award of contract and before any material or equipment is purchased, the CONTRACTOR will submit to the CITY for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams; drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the CITY for items not specified shall be obtained before they may be used.

21. CONTRACTOR'S REQUESTS FOR INTERPRETATION (RFIs)

Should CONTRACTOR be unable to determine from the Contract Documents the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of Work is described differently at more than one place in the Contract Documents; the CONTRACTOR shall request that the Architect/Engineer (AE), or CITY Representative, make an interpretation of the requirements of the Contract Documents to resolve such matters. CONTRACTOR shall comply with procedures specified herein to make Requests for Interpretation (RFIs).

- a. Submission of RFIs: RFIs shall be prepared and submitted on a form provided by the CITY.
 - i. Forms shall be completely filled in, and if prepared by hand, shall be fully legible after copying by xerographic process.
 - ii. Each RFI shall be given a discrete, consecutive number.

- iii. Each page of the RFI and each attachments to the RFI shall bear the CITY's project name, project number, date, RFI number and a descriptive title.
 - iv. CONTRACTOR shall sign all RFIs attesting to good faith effort to determine from the Contract Documents the information requested for interpretation. Frivolous RFIs shall be subject to reimbursement from CONTRACTOR to CITY for fees charged by A/E, A/E consultants and other design professionals engaged by the CITY.
- b. Subcontractor-Initiated and Supplier-Initiated RFIs: RFIs from subcontractors and material suppliers shall be submitted through, be reviewed by and be attached to an RFI prepared, signed and submitted by CONTRACTOR. RFIs submitted directly by subcontractors or material suppliers will be returned unanswered to the CONTRACTOR.
 - i. CONTRACTOR shall review all subcontractor- and supplier-initiated RFIs and take actions to resolve issues of coordination, sequencing and layout of the Work.
 - ii. RFIs submitted to request clarification of issues related to means, methods, techniques and sequences of construction or for establishing trade jurisdictions and scopes of subcontracts will be returned without interpretation. Such issues are solely the CONTRACTOR'S responsibility.
 - iii. CONTRACTOR shall be responsible for delays resulting from the necessity to resubmit an RFI due to insufficient or incorrect information presented in the RFI.
- c. Requested Information: CONTRACTOR shall carefully study the Contract Documents to ensure that information sufficient for interpretation of requirements of the Contract Documents is not included. RFIs that request interpretation of requirements clearly indicated in the Contract Documents will be returned without interpretation.
 - i. In all cases in which RFIs are issued to request clarification of issues related to means, methods, techniques and sequences of construction, for example, pipe and duct routing, clearances, specific locations of Work shown diagrammatically, apparent interferences and similar items, the CONTRACTOR shall furnish all information required for the A/E or CITY's Representative to analyze and/or understand the circumstances causing the RFI and prepare a clarification or direction as to how the CONTRACTOR shall proceed.
 - ii. If information included with this type RFI by the CONTRACTOR is insufficient, the RFI will be returned unanswered.
- d. Unacceptable Uses for RFIs: RFIs shall not be used to request the following:
 - i. Approval of submittals
 - ii. Approval of substitutions
 - iii. Changes that entail change in Contract Time and Contract Sum
 - iv. Different methods of performing Work than those indicated in the Contract Drawings and Specifications
- e. Disputed Requirements: In the event the CONTRACTOR believes that a clarification by the CITY's A/E, or Representative, results in additional cost or time, CONTRACTOR shall comply with the method for requesting a Change Order.
- f. RFI Log: CONTRACTOR shall prepare and maintain a log of RFIs, and at any time requested by the CITY's Representative, the CONTRACTOR shall furnish copies of the log showing all outstanding RFIs.

- g. Review Time: Architect/Engineer or CITY Representative (CITY) shall return RFIs to CONTRACTOR and within five (5) calendar days of receipt. RFIs received after 12:00 noon shall be considered received on the next regular working day for the purpose of establishing the start of the five-calendar day response period.

22. SUBMITTAL REQUIREMENTS OF CONTRACTOR

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONTRACTOR shall submit to Engineer for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

CONTRACTOR shall also submit to Engineer for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONTRACTOR shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review of each such variation.

Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONTRACTOR shall make corrections required by Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called Engineer's attention to each such variation at the time of submission as required by this Article and Engineer has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by Engineer relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

23. CHANGES IN THE WORK

Any Change in the Work will be documented in writing and approved by the CITY in writing. Changes that increase the cost of the work may need to be approved by CITY Commission depending on the dollar value of the increase change order. No work may be performed prior to the change being approved by CITY.

The Contract Price constitutes the total compensation payable to the CONTRACTOR for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the CONTRACTOR shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price, shall be delivered in writing to the CITY and the Engineer within fifteen days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within forty-five days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the CITY and CONTRACTOR cannot otherwise agree on the amount involved. The Engineer(s) decision shall be final and binding. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, or ii. by mutual acceptance of a lump sum, or
- b. on the basis of the cost of the work plus a CONTRACTOR's fee for overhead and profit.

24. DETAIL DRAWINGS AND INSTRUCTIONS

The CITY will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

25. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the CITY are the property of the CITY. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the CITY, at the request of the CITY upon the completion of the work.

26. SURVEYS, PERMITS AND REGULATIONS

The CITY will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the CITY shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the CONTRACTOR to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The CONTRACTOR shall maintain and preserve all stakes and marks established by the CITY and should such stakes or marks be carelessly or willfully destroyed or damaged by the CONTRACTOR, said stakes or marks shall be replaced by the CITY at the expense of the CONTRACTOR.

The CONTRACTOR will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the CITY as specified above shall be the responsibility of the CONTRACTOR.

The CITY will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The CITY will furnish environmental permits unless otherwise specified. The CONTRACTOR shall obtain any and all required permits from all appropriate government agencies.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the CITY unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONTRACTOR observes that the drawings and specifications are at variance therewith, he shall promptly notify the CITY in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the CONTRACTOR performs work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the CITY, he shall bear all cost arising there from.

27. ROYALTIES AND PATENTS

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the CONTRACTOR shall secure indemnity

from his subcontractors or material suppliers that will protect and save harmless the CITY from all loss on account thereof.

The CONTRACTOR shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONTRACTOR has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the CITY.

28. PROTECTION OF WORK AND PROPERTY

The CONTRACTOR shall continuously maintain adequate protection of all his work from damage and shall protect the CITY's property from injury or loss arising in connection with this contract. The CONTRACTOR shall at all times protect all public and privately-owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONTRACTOR. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the CONTRACTOR except such as may be directly due to errors in the contract documents or caused by the agents or employees of the CITY.

29. DEDUCTIONS FOR UNCORRECTED WORK

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

30. DELAYS AND EXTENSION OF TIME

If the CONTRACTOR be delayed at any time, in the progress of the work by an act of neglect of the CITY or of his employees, or by any other CONTRACTOR employed by the CITY or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the CONTRACTOR's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) days before claim therefore is made in writing to the CITY. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

31. CORRECTION OF WORK BEFORE FINAL PAYMENTS

The CONTRACTOR shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the CONTRACTOR shall promptly replace and re-execute his own work in accordance

with the contract and without expense to the CITY and shall bear the expense of making good all work of other CONTRACTORS destroyed or damaged by such removal or replacement.

If the CONTRACTOR does not correct such condemned work and material within a reasonable time fixed by written notice, the CITY may correct it at the expense of the CONTRACTOR. If the CONTRACTOR does not pay the expense of such correction within three (3) days thereafter, the CITY may, upon three (3) days written notice, deduct all the cost and expenses that should have been borne by the CONTRACTOR.

32. THE CITY'S RIGHT TO DO WORK

If the CONTRACTOR should neglect to prosecute the work properly or fail to perform any provision of this contract, the CITY after three (3) days written notice to the CONTRACTOR, may, without prejudice to any other remedy he may have, make good such deficiencies at the CONTRACTOR's expense.

33. SUSPENSION OF WORK

The CITY may at any time suspend the work or any part thereof by giving five (5) days notice to the CONTRACTOR in writing. The work shall be resumed by the CONTRACTOR within ten (10) days after the date fixed in a written notice to resume work from the

CITY to the CONTRACTOR. The CITY will reimburse the CONTRACTOR for expense incurred by the CONTRACTOR in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the CITY by the Project Representative to enforce the contract or for any violation of the contract.

34. REMOVAL OF EQUIPMENT

In the case of annulment of this contract before completion, from any cause whatever, the CONTRACTOR, if notified to do so by the CITY, shall promptly remove any part or all of his equipment and supplies from the property of the CITY, failing which, the CITY will have the right to remove such equipment and supplies at the expense of the CONTRACTOR.

35. USE OF COMPLETED PORTIONS

Use by CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which CITY, Engineer and CONTRACTOR agree constitutes a separately functioning and useable part of the Work that can be used by CITY without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. CITY at any time may request CONTRACTOR in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees, CONTRACTOR will certify to CITY and Engineer that said part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify CITY and Engineer in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such

- request, CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify CITY and CONTRACTOR in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Substantial Completion will apply with respect to certification of that part of the Work and the division of responsibility in respect thereof and access thereto.
- b. CITY may at any time request CONTRACTOR in writing to permit CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer and within a reasonable time thereafter CITY, CONTRACTOR and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONTRACTOR does not object in writing to CITY and Engineer that such part of the Work is not ready for separate operation by CITY, Engineer will finalize the list of items to be completed or corrected and will deliver such list to CITY and CONTRACTOR together, with a written recommendation as to the division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon CITY and CONTRACTOR at the time when CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, CITY shall allow CONTRACTOR reasonable access to complete or correct items on said list and to complete other related Work.
 - c. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

36. PROMPT PAYMENT

It is the policy of the CITY that payment for all purchases by the CITY shall be made in a timely manner and that interest payments will be made on late payments in accordance with Part VII, Chapter 218, Florida Statutes, known as the Florida Prompt Payment Act.

37. APPLICATION FOR PAYMENT

The CONTRACTOR shall submit to the CITY, at least 20 days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by CONTRACTOR covering the work completed as of the date of the Application. Upon review and approval by the CITY and Engineer (if applicable).

The retained percentage (retainage) amount with respect to the progress payments shall initially be 10% unless stated otherwise in the Construction Services Agreement. Retainage amounts and retainage process shall be governed by Florida Statute 255.078 – Public Construction Retainage.

CONTRACTOR shall, before any draw is issued, provide a sworn statement to CITY attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the CITY shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to CONTRACTOR, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the CITY shall pay those to whom such amounts are due on a pro rata basis until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The CITY shall not be required to issue progress payments pursuant to the draw schedule until the CITY has verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon “completion” shall not be payable until the CITY, its Project Representative or Engineer of Record has determined the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the CITY.

38. PAYMENTS WITHHELD

The CITY may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the CITY from loss on account of—

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONTRACTOR to make payments properly to subcontractors or for materials or labor.
- d. The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- e. Damage to another CONTRACTOR.
- f. Failure to maintain adequate progress. vii. Damage to the building resulting from the negligence of the CONTRACTOR.

When the above grounds are removed, payment will be made for amounts withheld because of them.

39. FINAL PAYMENT APPLICATION

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- a. Completion of Project closeout requirements.
- b. Completion of items specified for completion after Substantial Completion.
- c. Assurance that unsettled claims will be settled.
- d. Transmittal of required project construction records to CITY.
- e. Final Clean Up as outlined in these General Conditions

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, Engineer will make a final inspection with CITY and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

After CONTRACTOR has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents--all as required by the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation--all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application to CITY for payment. Thereupon Engineer will give written notice to CITY and CONTRACTOR that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, Engineer will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application. Thirty days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with Engineer's recommendation and notice of acceptability, the amount recommended by Engineer will become due and will be paid by CITY to CONTRACTOR.

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed and if Engineer so confirms, CITY shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to Engineer with the Application for such

payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40. CONTRACTOR'S CONTINUING OBLIGATION

CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Engineer, nor any correction of defective Work by CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims)

41. DAMAGES

Any claim for damage arising under a resulting Agreement shall be made in writing to the party liable within ten (10) days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

42. EQUIPMENT STARTUP

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and CITY in accordance with the specifications. The CONTRACTOR shall provide 30-days notice to the Engineer and CITY of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the CITY's operational schedule with consideration of the schedule needs of the Engineer and CONTRACTOR.

43. COMPLETION OF WORK

The CONTRACTOR shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous days, and in the opinion of the CITY, it's Project Representative or Engineer of Record, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of completion which allows the CITY to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the CITY in writing with copies to the CONTRACTOR. The date of contract completion shall be the same date at which the CONTRACTOR is considered substantially complete by the Engineer.

44. ACCEPTANCE OF FINISHED WORK

The CITY shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents. CONTRACTOR shall furnish to the Engineer or CITY Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) days following the completion of the work.

45. FINAL CLEAN UP

The CONTRACTOR shall complete all cleaning operations before requesting final inspection.

The CONTRACTOR shall, as directed by the Project Representative, remove from the CITY's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste materials resulting from his operation.

The CONTRACTOR shall remove temporary protection and facilities installed for protection of the work during construction.

The CONTRACTOR shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The CONTRACTOR shall not burn waste materials. The CONTRACTOR will not discharge volatile, harmful or dangerous materials into drainage systems. The CONTRACTOR will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The CONTRACTOR will arrange for the disposition of these materials as directed by the CITY.

The CONTRACTOR shall rake the grounds that are neither paved nor planted to a smooth, even textured surface.

46. TREES

It shall be the responsibility of the CONTRACTOR to protect all trees within the limits of the work and as designated by the Project Representative.

47. GUARANTY

CONTRACTOR warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONTRACTOR. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled 'Inspections, Correction, Removal Of Defective Work'.

All equipment, materials and installation and workmanship furnished by the CONTRACTOR under the terms of the Contract, shall be guaranteed by the CONTRACTOR against defective workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of two (2) years or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the CITY, and each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the CITY, by the CONTRACTOR or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the CITY, provided however, that where any item or equipment or material comes with a manufacturer's warranty of two (2) years or longer, that warranty shall take precedence over the warranty of CONTRACTOR hereunder.

48. INDEMNITY

The CONTRACTOR agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the CITY and Engineer or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY and Engineer or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONTRACTOR's duties under the Contract, or through the negligence of the CONTRACTOR in the performance of its duties under this Contract, or through any act or omission on the part of the CONTRACTOR, his agents, employees, or servants or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the CONTRACTOR to defend, indemnify or hold harmless an CITY and Engineer shall be limited to an obligation to indemnify and hold harmless the CITY and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Contract.

49. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the CONTRACTOR assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

50. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the CITY's forces, or by the other CONTRACTORS, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

51. SEPARATE CONTRACTS

The CITY reserves the right to let other contracts in connection with this work. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the CONTRACTOR's work depends, for proper execution or results upon the work of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other CONTRACTOR's work as fit and proper for the reception of his work, except as to defects which may develop in the other CONTRACTOR's work after the execution of the work.

To insure the proper execution of his subsequent work, the CONTRACTOR shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

52. LANDS FOR WORK

The CITY will provide the lands upon which the work under this contract is to be done, except that the CONTRACTOR shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

53. ACCESS TO RECORDS

The CITY, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the CONTRACTOR that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for five (5) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period.

54. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Agreement shall be signed in quadruplicate by the CITY and the CONTRACTOR. The Contract Documents comprise the entire agreement between CITY and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONTRACTOR or Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these Supplemental Conditions. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Engineer; however, CONTRACTOR shall not be liable to CITY or Engineer for failure to

report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

55. CONTRACTOR'S UNDERSTANDING

CONTRACTOR has visited the site, has called for utility locates and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

56. FAMILIARITY WITH LAWS

The CONTRACTOR is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the CONTRACTOR will in no way relieve him from responsibility.

57. SALES TAX

The CONTRACTOR is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document. All Florida sales and use taxes will be included in the submitted bid price(s).

58. CLARIFICATIONS AND INTERPRETATIONS OF CONTRACT DOCUMENTS

It is the duty of the CONTRACTOR to notify the Engineer, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The Engineer's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the Engineer. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONTRACTOR shall notify CITY in accordance with the Agreement.

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by

the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, Engineer will not show partiality to CITY or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as permitted by the Agreement.) will be a condition precedent to any exercise by CITY or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

59. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither Engineer's authority to act nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

Engineer will not be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

60. SAFETY AND PRECAUTION

CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;

- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONTRACTOR that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to CITY.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from Engineer or CITY, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give

Engineer prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

61. RECORD DOCUMENTS

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents or as-builts, samples and Shop Drawings will be delivered to Engineer for CITY. Upon delivery of such

documents to Engineer, the CONTRACTOR shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Item 66. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the Engineer.

62. PHYSICAL CONDITIONS-UNDERGROUND FACILITIES

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and data furnished to CITY or Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. CITY and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- b. CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is intended to connect a facility with a user. The word Utility as used in this subsection titled "Utilities" refers to the entity having legal owner-ship of the facility, service connection, irrigation pipe, or traffic signal wiring.

The Engineer has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records is shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONTRACTOR shall make his own investigations, including exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

Damage, injury, or loss resulting in whole or in part from the CONTRACTOR's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts

or omissions of the CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONTRACTOR discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONTRACTOR shall promptly notify in writing the CITY, Engineer and the Utility. The CITY may make changes in the alignment and grade of the work.

At no additional cost to the CITY, the CONTRACTOR shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the CITY, the CONTRACTOR shall adjust the top elevation of all valve boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONTRACTOR.

63. PHYSICAL CONDITIONS

- a. Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- b. Unforeseen Conditions: CONTRACTOR shall promptly notify CITY and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. Engineer will promptly review those conditions and advise CITY in writing if further investigation or tests are necessary.

Promptly thereafter, CITY shall obtain the necessary additional investigations and tests and furnish copies to Engineer and CONTRACTOR. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONTRACTOR, a Change Order shall be issued incorporating the necessary revisions.

64. REVIEW OF APPLICATION FOR PROGRESS PAYMENT

Engineer will, within ten days after receipt of each Application for Payment, to either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONTRACTOR indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

Ten (10) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will become due and when due will be paid by CITY to CONTRACTOR.

Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to CITY, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONTRACTOR is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by CITY or CITY to withhold payment to CONTRACTOR.

Engineer's recommendation of final payment will constitute an additional representation by Engineer to CITY that the conditions precedent to CONTRACTOR's being entitled to final payment have been fulfilled.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to CITY. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended; to such extent as may be necessary in Engineer's opinion to protect CITY from loss.

CITY may refuse to make payment of the full amount recommended by Engineer because claims have been made against CITY on account of CONTRACTOR's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling CITY to a set-off against the amount recommended, but CITY must give CONTRACTOR immediate written notice (with a copy to Engineer) stating the reasons for such action.

65. SUBSTANTIAL COMPLETION

When CONTRACTOR considers the entire Work ready for its intended use, CONTRACTOR shall notify CITY and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONTRACTOR and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CONTRACTOR in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to CITY a tentative certificate of

Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen days after submission of the tentative certificate to CITY notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of CITY's objections, Engineer considers the Work substantially complete, Engineer will within said fourteen days execute and deliver to CITY and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from CITY. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to CITY and CONTRACTOR a written recommendation as to division of responsibilities pending final payment between CITY and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless CITY and CONTRACTOR agree otherwise in writing and so inform Engineer prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendations will be binding on CITY and CONTRACTOR until final payment.

CITY shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but CITY shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

66. INSPECTIONS, CORRECTION, REMOVAL OF DEFECTIVE WORK

Engineer and Engineer's representatives, other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

CONTRACTOR shall give Engineer timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONTRACTOR shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by CITY (unless otherwise specified). All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to CITY and CONTRACTOR (or by Engineer if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given Engineer timely notice of CONTRACTOR's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at CONTRACTOR's expense.

If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, CONTRACTOR, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Special Conditions. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Special Conditions.

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONTRACTOR or any other party.

If required by Engineer, CONTRACTOR shall promptly either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

67. ACCEPTANCE OF DEFECTIVE WORK; CORRECTION OF DEFECTIVE WORK BY THE CITY

If, instead of requiring correction or removal and replacement of defective Work, CITY (and, prior to Engineer's recommendation of final payment) prefers to accept it, CITY may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to CITY's

evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to CITY.

If CONTRACTOR fails within a reasonable time after written notice of Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, CITY may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow CITY, CITY's representatives, agents and employees such access to the site as may be necessary to enable CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of CITY in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

68. ARBITRATION

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment, the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten days after receipt of Party A's notice. Notice by Party B that he does not wish

to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the Engineer. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty days from the date Party B agrees to arbitrate the issues in question.

Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONTRACTOR shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the CITY's sole option, any and all arbitration arising out of or relating to any of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the State of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONTRACTOR is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless CITY agrees to the contrary, the location of any and all arbitration proceedings shall be in Lake County, Florida.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.B.3.

Meeting Date: March 8, 2021

From: Mike Thornton, (Purchasing Manager), Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute a Construction Services Agreement with a Guaranteed Maximum Price (GMP) with Evergreen Construction Management, Inc., for construction of the Leesburg Teen Center in the amount of \$2,406,500.00; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the resolution authorizing execution of the Construction Services Agreement with a Guaranteed Maximum Price (GMP) with Evergreen Construction for an amount of \$2,406,500.00.

Analysis:

The purpose of this item is to approve the Construction Services Agreement for the Leesburg Teen Center. Approval of the Agreement will authorize Evergreen Construction Management, Inc. to begin construction activities on this project.

Procurement Analysis:

The City issued RFQ 200273 to select a Construction Manager at Risk (CMAR) for this project. Evergreen was the top ranked respondent to the RFQ. The City Commission at their meeting on June 8, 2020 approved award of the RFQ to Evergreen. The City Commission also approved an agreement for pre-construction services. This Agreement is necessary to start construction.

Options:

1. Approve the resolution authorizing execution of the Construction Services Agreement with a Guaranteed Maximum Price (GMP) with Evergreen Construction Management, Inc. in the amount of \$2,406,500.00; or
2. Such alternative action as the Commission may deem appropriate.

Fiscal Impact:

Funds are budgeted and available in the current year Teen Center Project budget. The City will also be receiving funds from Lake County through a Community Development Block Grant (CDBG).

Account No.	031-8125-572.62-10
Project No.	310081
WF No.	WF1253677 / 001
Requisition	TBD
Budget	\$2,961,958.00
Available	\$2,701,035.46

Submission Date and Time: 3/3/2021 3:42:53 PM

RESOLUTION NO. _____

RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE A CONSTRUCTION SERVICES AGREEMENT WITH A GUARANTEED MAXIMUM PRICE (GMP) WITH EVERGREEN CONSTRUCTION MANAGEMENT, INC., FOR CONSTRUCTION OF THE LEESBURG TEEN CENTER IN THE AMOUNT OF \$2,406,500.00; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute a Construction Services Agreement with a Guaranteed Maximum Price (GMP) with EVERGREEN CONSTRUCTION MANAGEMENT, INC. whose address is 30941 Suneagle Drive, Mount Dora, Florida 32758 for construction services to construct the **Leesburg Teen Center** pursuant to Request for Qualifications 200273.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

**AGREEMENT FOR
CONSTRUCTION SERVICES WITH
GUARANTEED MAXIMUM PRICE (GMP)**

THIS AGREEMENT is made as of the 8th day of March in the year 2021, between The City of Leesburg, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the “CITY”), and **EVERGREEN CONSTRUCTION MANAGEMENT, INC.** whose address is 30941 Suneagle Drive, Mount Dora, Florida 32758 (hereinafter referred to as the “CONSTRUCTION MANAGER or CM”).

RECITALS:

WHEREAS, the CONSTRUCTION MANAGER was selected following a competitive solicitation process to select a company to provide Construction Manager at Risk (CMaR) services for the City’s Teen Center Project.

WHEREAS, the CONSTRUCTION MANAGER was selected as the top ranked company following evaluations.

WHEREAS, the CITY and CONSTRUCTION MANAGER desire to enter into this Agreement for Constructions Services with a Guaranteed Maximum Price (GMP).

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the parties agree as follows:

1. **Contract Documents.** The Contract Documents consist of:
 - a. This Agreement; and
 - b. Request for Qualifications 200273 – Construction Manager at Risk (CMAR) Services – Teen Center; and
 - c. Supplemental Conditions attached as Attachment ‘A’; and
 - d. Federal Contracting Provisions and Requirements included as Attachment ‘B’; and
 - e. The CONSTRUCTION MANAGER’S response to RFQ 200263 made electronically on March 3, 2020 at 11:56:41 AM.
 - f. The City’s Engineer of Record Drawings prepared by CPH, Inc.;
 - g. The CONSTRUCTION MANAGERS Guaranteed Maximum Price (GMP) Proposal incorporated as Attachment ‘C’
2. **Scope of Services.** The Scope of Services is generally described as the construction of the City of Leesburg Teen Center project (the “Project” or the “Work”).
 - a. The CONSTRUCTION MANAGER shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.
 - b. The CONSTRUCTION MANAGER will carry out the Work effectively, to maintain the progress of the Work in accordance with the requirements of the

Project Schedule, and to satisfy all obligations of the CONSTRUCTION MANAGER under the Contract Documents.

3. **Guaranteed Maximum Price.** The CONSTRUCTION MANAGER shall perform the Project for a Guaranteed Maximum Price (GMP) of TWO MILLION FOUR HUNDRED SIX THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$2,406,500.00). A detailed GMP breakout is attached as Attachment 'C'. The cost of the project shall not exceed the GMP. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the CONSTRUCTION MANAGER without reimbursement by the CITY.

4. **Changes in the Project**

- a. **Request for a Change Order.** The work schedule or contract time may be changed by a Change Order. The CONSTRUCTION MANAGER's request or claim for a work schedule and/or contract time adjustment shall be in writing delivered to the CITY Representative within ten (10) business days following the discovery of the event that prompted the claim or the date when the event should have been discovered. Where accepted by CITY, changes to the work schedule will only adjust for critical path impacts. Upon receipt of the CONSTRUCTION MANAGER's request for a change in the Work schedule, the CITY will provide any additional directions in writing detailing the procedures that will be used to resolve the request, including provision of time impact or manpower and equipment loading schedules. Where CITY and the CONSTRUCTION MANAGER are unable to reach a mutually acceptable resolution of request, CITY will make a commercially reasonable determination.
- b. **Acceptable Ways of Determining Increases or Decreases in the GMP On Change Orders.** An increase or decrease in the Guaranteed Maximum Price resulting from a change in the Project or other factor entitling CONSTRUCTION MANAGER to an equitable adjustment of the GMP shall be determined in one or more of the following ways:
 - i. by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by CITY;
 - ii. by unit prices stated in the Contract or subsequently agreed upon, if less; or
 - iii. as otherwise mutually agreed to by CITY and the CONSTRUCTION MANAGER
- c. **Itemized Accounting on Change Orders.** If the parties are unable to agree to the pricing of a change order in accordance with this Contract, the CONSTRUCTION MANAGER, provided he receives a written order signed by CITY, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the reasonable expenditures and savings of those performing the Work attributed to the change. However, in the event a Change Order is issued under these conditions, CITY will establish an estimated cost of the Work and the CONSTRUCTION MANAGER shall not perform any Work which cost exceeds that estimate without prior written

approval by CITY. In such case, the CONSTRUCTION MANAGER shall keep and present, in such form as CITY may prescribe, an itemized accounting together with appropriate supporting data organized and maintained consistent with reasonable generally accepted accounting principles and practices of the increase in the Cost of the Project as outlined herein of the Contract. The amount of decrease in the Guaranteed Maximum Price to be allowed by the CONSTRUCTION MANAGER to CITY for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease.

- d. **Emergencies.** In any emergency affecting the safety of persons or property, the CONSTRUCTION MANAGER shall act at his discretion, to prevent threatened damage, injury or loss. Any increase in the Guaranteed Maximum Price or extension of time claimed by the CONSTRUCTION MANAGER on account of emergency Work shall be determined as provided in this Article 9, as long as the emergency was not caused by the CONSTRUCTION MANAGER.

5. **Construction Manager Contingency.** The amount set forth in the GMP which is available for CONSTRUCTION MANAGER's exclusive use for unanticipated costs that are incurred in performing the Work that are not the basis for a Change Order such as overtime, acceleration, and Subcontractor defaults.

6. **Contingency Usage.** The CONSTRUCTION MANAGER will be required to receive CITY authorization, which shall not be unreasonably withheld without limitation, prior to using any of the CONSTRUCTION MANAGER Contingency funds. If CITY does not deny within three (3) business days of request, the CONSTRUCTION MANAGER may use the Contingency funds as if the request had been approved by CITY.

The Contingency may be used for any costs of the work, as defined herein, that are required to execute the work as defined in the GMP. No increase in the Contingency will be allowed once the GMP is established, unless such cost arises from a latent condition or differing site condition. Risk to any other unforeseen circumstance shall be at the risk of the CONSTRUCTION MANAGER, unless approved by CITY via change order and contract amendment. The Construction Manger shall document to CITY with a log and detailed backup including receipts, contracts, invoices or communications to itemize the use Contingency identified in the GMP. The Contingency for this Project will be negotiated at the time of GMP Proposal submission. Any remaining Contingency at the completion of the Project shall be disbursed in accordance with this Contract.

7. **Contingency Savings.** If the CONSTRUCTION MANAGER contingency funds are not used, the amount not spent ("Savings") shall be shared as follows; provided, however, that any liquidated damages due to CITY shall be deducted from any Savings due to CONSTRUCTION MANAGER:

- a. Fifty percent (50%) to CONSTRUCTION MANAGER and Fifty (50%) to CITY.
- b. Except as provided herein. savings shall be calculated and paid as part of Final Payment, with the understanding that to the extent CONSTRUCTION MANAGER incurs costs after Final Completion which would have been

payable to CONSTRUCTION MANAGER as a Cost of the Work, CONSTRUCTION MANAGER shall be entitled to payment from CITY for that portion of such costs that were distributed to CITY as Savings.

8. **Relationship of the Parties.** The CONSTRUCTION MANAGER accepts the relationship of trust and confidence established by this Agreement and covenants with the CITY as follows: to cooperate fully with the CITY and the CITY's Engineer of Record, Hydro Solutions Consulting, LLC, on this Project and exercise the CONSTRUCTION MANAGER's skill and judgment in furthering the interests of the CITY; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the CITY's interests. The CITY agrees to furnish and approve, in a timely manner, information required by the CONSTRUCTION MANAGER and to make payments, in a timely manner, to the CONSTRUCTION MANAGER in accordance with the requirements of the Contract Documents.

9. **Labor and Materials.** The CONSTRUCTION MANAGER shall furnish all labor, material and equipment necessary for satisfactory contract performance. When not specifically identified in the technical specifications, such materials and equipment shall be of a suitable type and grade for the purpose. All material, workmanship, and equipment shall be subject to the reasonable inspection and approval of the CITY's representative.

10. **Owner Direct Purchases (ODP).** The CITY will be using Owner Direct Purchase on certain materials, supplies, goods and equipment. Any materials purchased by the CITY will be referred to as "Owner Direct Purchases" (ODP). The responsibilities of both CITY and CONTRACTOR relating to such ODP will be governed by the Owner Direct Purchase Conditions of Florida Administrative Code (FAC) 12A-1.094, which will take precedence over other conditions and terms of the Contract Documents where inconsistencies or conflicts exist.

The CONTRACTOR will secure an Installation Floater for the full values of the materials and equipment to be purchased using ODP. The policy must include all materials intended for installation including those purchased by the CITY. Coverage shall be on an "all-risk" basis and the CONTRACTOR will be responsible for all deductibles. The CITY will reimburse CONTRACTOR for the actual cost of the additional insurance coverage.

Reduction in contract value will not affect or reduce the amount of the CONSTRUCTION MANAGER's Contractor's Fee (5%) as reflected on Attachment 'C'.

Following execution of this Agreement the CITY and CONSTRUCTION MANAGER will agree to those purchases that will be made using ODP.

11. **Term of Agreement.** This Agreement shall commence upon the date of execution and shall remain in effect until such time as the contracted services have been completed, and accepted by the CITY's authorized representative, unless earlier terminated in accordance with its provisions. Those portions imposing warranty requirements on CONSTRUCTION MANAGER will continue to remain in effect until completion of the expressed warranty periods.

12. **Commencement and Completion.** The CITY and the CONSTRUCTION MANAGER mutually agree time is of the essence, to that end, the CONSTRUCTION MANAGER will commence work upon receipt of a Notice to Proceed. Substantial Completion of the entire Project shall be reached no later than **ONE HUNDRED NINETY-SIX (196) CONTINUOUS CALENDAR DAYS** from the date of the Notice to Proceed. In executing this Agreement, CONSTRUCTION MANAGER affirms the time set for completion is reasonable.

Substantial Completion is dependent upon the CONSTRUCTION MANAGER not experiencing delays to the sequence of Work or production caused by CITY or those for whom CITY is responsible, including but not limited to Owner directed changes, architectural errors or omissions, and utility service providers (collectively, "Owner Delays"). In the event Owner Delays exceed eighteen (18) continuous calendar days, then CONSTRUCTION MANAGER shall be entitled to recover its extended General Conditions costs. CONSTRUCTION MANAGER, in addition, shall be entitled to a time extension day for day for each day of delay to the Work caused by Owner Delays.

Final Completion will be obtained at the point in time after the CITY makes the determination that the Project is completed and there is Acceptance by the CITY, and the CONSTRUCTION Manager has fulfilled all requirements of the Contract Documents.

13. **Termination for Default.** If, through any cause, the CONSTRUCTION MANAGER shall fail to fulfill in a timely and proper manner its obligations under this Agreement, other than for the instances listed below due to "Force Majeure" or other than for instances caused by CITY or CITY's design professionals, consultants or contractors, the CITY shall thereupon have the right to terminate this Agreement by providing a written notice (show cause notice) to the CONSTRUCTION MANAGER requiring a written response due within TEN (10) continuous calendar days from receipt of the written notice as to why the Agreement should not be terminated for default. The CITY's show-cause notice shall include an Agreement termination date at least SEVEN (7) continuous calendar days subsequent to the due date for the CONSTRUCTION MANAGER's response. Should the CONSTRUCTION MANAGER fail to respond to such show cause notice, or if the CITY determines that the reasons provided by the CONSTRUCTION MANAGER for failure of the CONSTRUCTION MANAGER to fulfill its contractual obligations do not justify continuation of the contractual relationship, the Agreement shall be considered to have been terminated for default on the date indicated in the show cause notice. Should the CITY determine that the CONSTRUCTION MANAGER provided adequate justification that a termination for default is not appropriate under the circumstances; the CITY shall have a unilateral option to either continue the Agreement according to the original contract provisions or to terminate the contract for convenience. In the event that the CITY terminates the contract for default, all finished or unfinished deliverable items under this contract prepared by the CONSTRUCTION MANAGER shall, at the option of the CITY, become CITY property, and the CONSTRUCTION MANAGER shall be paid just and equitable compensation for any conforming work completed on such materials.

In case of default by the CONSTRUCTION MANAGER, the CITY may procure the services from other sources and hold the CONSTRUCTION MANAGER responsible for any reasonably incurred excess cost occasioned thereby. The CITY reserves the right to require a performance

bond or other acceptable alternative performance guarantees from the successor CONSTRUCTION MANAGER without expense to the CITY.

Upon the CONSTRUCTION MANAGER filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the CONSTRUCTION MANAGER, the CITY may immediately terminate, for cause, this Agreement and all other existing agreements the CONSTRUCTION MANAGER has with the CITY, and debar the CONSTRUCTION MANAGER from doing future business with the CITY.

The CITY may terminate this Agreement for cause without penalty or further obligation at any time following Agreement execution, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the CITY is at any time while the Agreement or any extension thereof is in effect, an employee or agent of any other party to the Agreement in any capacity or consultant to any other party of the Agreement with respect to the subject matter of the Agreement. Additionally, the CITY may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the CITY from any other party to the Agreement.

The CONSTRUCTION MANAGER may terminate this Agreement for cause at any time ten (10) continuous calendar days after the CONSTRUCTION MANAGER has delivered a Notice of Default to the City and the City has failed to cure the material default. For purposes of this paragraph, it is a material default for the City to fail to make payment on time to the CONSTRUCTION MANAGER or to fail to provide information to the CONSTRUCTION MANAGER required by the CONSTRUCTION MANAGER to maintain the construction schedule.

14. **Force Majeure.** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, pandemic or other catastrophic natural event or act of God. Should there be such an occurrence that impacts the ability of either party to perform their responsibilities under this contract, the nonperforming party shall give immediate written notice to the other party to explain the cause and probable duration of any such nonperformance.

15. **Termination for Convenience.** The CITY may terminate this Agreement at any time without cause by providing the CONSTRUCTION MANAGER with FIFTEEN (15) continuous calendar days advance notice in writing. In the event of termination for convenience, all finished or unfinished deliverable items prepared by the CONSTRUCTION MANAGER under this Agreement shall, at the option of the CITY, become the CITY's property. If the Agreement is terminated for convenience by the CITY as provided herein, the CONSTRUCTION MANAGER shall be paid for services completed in accordance with the Contract Documents, less payment or compensation previously made. The CONSTRUCTION MANAGER shall not incur any additional expenses after receiving the written termination notice. In the event of a termination for convenience, the CITY shall be obligated to pay CONSTRUCTION MANAGER, in addition to all sums owed CONSTRUCTION MANAGER for conforming Work performed and materials supplied prior to the effective date of the termination, for all sums, losses and expenses

CONSTRUCTION MANAGER incurs as a result of CONSTRUCTION MANAGER having to terminate contracts with its subcontractors and suppliers for this Project.

16. Suspension by the City for Convenience.

- a. The CITY may, without cause, order the CONSTRUCTION MANAGER in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the CITY may determine.
- b. The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in 11.a. Adjustment of the Contract Sum shall include overhead and profit. No adjustment shall be made to the extent
 - i. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CONSTRUCTION MANAGER is solely responsible.

17. Changes in the Work. Changes in the Work may be accomplished after execution of this Agreement, and without invalidating this Agreement, by written Amendment or Change Order approved by the CITY's legislative body or City Manager prior to any work related to the Change Order being performed.

- a. **Change Orders.** A Change Order is a written instrument prepared by the CONSTRUCTION MANAGER and signed by the CITY and CONSTRUCTION MANAGER stating their agreement upon all of the following:
 - i. The change in the Work;
 - ii. The amount of the adjustment, if any, in the Contract Sum; and
 - iii. The extent of the adjustment, if any, in the Contract Time.

18. Guaranty of Faithful Performance and Payment. - A Public Construction Bond (Performance and Payment Bond), written by a Surety firm satisfactory to the City of Leesburg on the forms attached hereto which comply with Section 255.05(1), Florida Statutes, will be required of the successful Bidder to guarantee that he will deliver a complete project under his Contract in strict accordance with the Contract Documents and that he will, after receiving payment from the CITY, pay promptly all persons supplying him with labor or materials for the work.

The Public Construction Bond shall be for an amount not less than the GMP as agreed to and amended by both parties.

This bond shall be substantially in the form provided herein and written by a qualified Surety firm and through a reputable and responsible surety bond agency licensed to do business in the State of Florida and Lake County and meet the following requirements:

The Surety must be rated as "A" or better as to strength by Best's Insurance Guide, published by Alfred M. Best Company, Inc., 75 Fulton Street, New York, New York.

Bonding Limit - Any One Risk: The Bonding Limit of the Surety shall not exceed ten (10) percent of the policy-holders surplus (capital and surplus) as listed by the aforementioned Best's Insurance

Guide. The completed Bond shall be executed in four (4) counterparts and delivered to the City of Leesburg with the required Power-of-Attorney and executed contract.

19. **Payments.** All Application for Payments shall be submitted on an Application for Payment acceptable to and approved by the CITY.

a. **Progress Payments for Work.**

- i. Based upon Applications for Payment submitted to the CITY or CITY's Representative by the CONSTRUCTION MANAGER, the CITY shall make progress payments on account of the Contract Sum to the CONSTRUCTION MANAGER as provided below and elsewhere in the Contract Documents.
- ii. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.
- iii. Provided that (i) the Work described in the Application for Payment has been completed in accordance with the terms of the Contract Documents, and (ii) a complete and correct Application for Payment is received by the CITY, the CITY shall make payment of the amount properly due to the CONSTRUCTION MANAGER under the Contract Documents in accordance with Florida Statute 218.735 – *Timely payment for purchases of construction services*.
- iv. Each Application for Payment shall be based on the most recent schedule of values submitted by the CONSTRUCTION MANAGER in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the CONSTRUCTION MANAGER's Fee and General Conditions line items **totaling \$291,736.00** shall be shown as single separate lump sum line items. CONSTRUCTION MANAGER's Fixed Fee and General Conditions line items shall be paid monthly on a pro-rated basis based on the contractual scheduled duration of the Project. The construction schedule calls for 196 continuous calendar days to achieve Substantial Completion, the CONSTRUCTION MANAGER's Fee and General Conditions line items shall each be paid at the rate of **14% per month**, or monthly application for payment, over the course of the seven-month Project.
- v. Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the CONSTRUCTION MANAGER on account of that portion of the Work for which the CONSTRUCTION MANAGER has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.
- vi. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
 1. Work completed;

2. Stored Materials as approved by the CITY;
 3. CONSTRUCTION MANAGER's fee computed to match the percentage of work completed as represented on the Schedule of Values;
 4. CONSTRUCTION MANAGER's general conditions applicable to the period covered by the Application for Payment.
- vii. The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the CITY, if the Architect has evidence that such action is necessary to protect the CITY from loss due to actions or omissions of the CONSTRUCTION MANAGER or its subcontractors and suppliers. If the Architect is unable to certify payment in the amount of the Application, the Architect will promptly notify the CONSTRUCTION MANAGER and CITY in writing. If the CONSTRUCTION MANAGER and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect reasonably believes necessary under the circumstances to protect the CITY. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary based on evidence in the possession of Architect to reasonably protect the CITY from loss for which the CONSTRUCTION MANAGER is responsible, including loss resulting from acts and omissions because of:
1. defective Work not remedied after written notice is delivered by the CITY;
 2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the CITY is provided by the CONSTRUCTION MANAGER;
 3. failure of the CONSTRUCTION MANAGER, after receiving payment from the CITY, to make payments properly to Subcontractors or for labor, materials or equipment;
 4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
 5. damage to the CITY or a separate contractor;
 6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 7. repeated failure to carry out the Work in accordance with the Contract Documents.

- viii. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

20. **Retainage.** This Project is a construction project and is subject to withholding of Retainage in accordance with Florida Statute 255.078 Public Construction Retainage. Retainage

will be withheld at a rate of FIVE PERCENT (5%) on all Payment Applications for the duration of the Project.

Retainage shall not be withheld from progress payments for the CONSTRUCTION MANAGER's Fee or General Conditions.

21. Final Payment.

- a. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the CITY to the CONSTRUCTION MANAGER when:
 - i. the CONSTRUCTION MANAGER has fully performed the Contract except for the CONSTRUCTION MANAGER's responsibility to correct Work and to satisfy other requirements, if any, which extend beyond final payment;
 - ii. the CONSTRUCTION MANAGER has submitted a final accounting for the Cost of the Work and a final Application for Payment;
 - iii. a final Certificate for Payment has been issued by the Architect;
 - iv. the CONSTRUCTION MANAGER has delivered to the CITY a complete list of Subcontractors and Suppliers on the Project, including addresses and telephone numbers;
 - v. the CONSTRUCTION MANAGER has delivered to the CITY evidence reasonably acceptable to the CITY that the Work has passed all requisite governmental inspections including any Certificate of Occupancy or Certificate of Completion;
 - vi. the CONSTRUCTION MANAGER has delivered to the CITY an indexed, loose leaf binder or a CD in such format as required by the CITY containing all maintenance manuals, temporary and final certificates of completion or occupancy, as applicable, and warranty documents applicable to the Work;
 - vii. the CONSTRUCTION MANAGER has delivered all as-built documents required by the Contract Documents;
 - viii. the CONSTRUCTION MANAGER has delivered to the CITY a CONSTRUCTION MANAGER's final payment affidavit in statutory form;
 - ix. the CONSTRUCTION MANAGER has delivered to the CITY conditional final waivers and lien releases executed by the CONSTRUCTION MANAGER and all Subcontractors and Suppliers serving a Notice to CITY;
 - x. the CONSTRUCTION MANAGER has delivered to the CITY any and all other items required by the Contract Documents;
 - xi. the CONSTRUCTION MANAGER has delivered a Consent of Surety (if any) to release of final payment; and,
 - xii. the CONSTRUCTION MANAGER has completed all items on CITY's punch list.
- b. The CITY's Designated Representative shall review and report in writing on the CONSTRUCTION MANAGER's final accounting within 30 continuous calendar days after delivery of the final accounting to the Architect by the

CONSTRUCTION MANAGER. Based upon the GMP Schedule as the CITY's auditors report to be substantiated by the CONSTRUCTION MANAGER's final accounting, and provided the other conditions of 16.a. have been met, the Architect will, within seven (7) continuous calendar days after receipt of the written report of the CITY's Designated Representative, either issue to the CITY a final Certificate for Payment with a copy to the CONSTRUCTION MANAGER, or notify the CONSTRUCTION MANAGER and CITY in writing of the Architect's reasons for withholding a certificate as provided in the Contract Documents.

- c. If the CITY's audit of the final amount as substantiated by the CONSTRUCTION MANAGER's final accounting to be less than claimed by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall be entitled to request mediation of the disputed amount. A request for mediation shall be made by the CONSTRUCTION MANAGER within thirty (30) continuous calendar days after the CONSTRUCTION MANAGER's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the CITY's Designated Representative becoming binding on the CONSTRUCTION MANAGER. Pending a final resolution of the disputed amount, the CITY shall pay the CONSTRUCTION MANAGER the amount certified in the Architect's final Certificate for Payment in exchange for the close out documents required by this Agreement (excluding any final waiver or release from CONSTRUCTION MANAGER and its subcontractors and suppliers).
- d. The CITY's final payment to the CONSTRUCTION MANAGER shall be made no later than ten (10) business calendar days after the satisfaction of the conditions set forth in 16.a above.

22. **Discounts.** Cash discounts, trade discounts, rebates, refunds resulting from the CONSTRUCTION MANAGER's early payments to vendors shall accrue to the CONSTRUCTION MANAGER.

23. **Subcontracts and Other Agreements.**

- a. Work performed by Subcontractors shall be performed under subcontracts or by other appropriate written agreements with the CONSTRUCTION MANAGER. Each subcontract shall be awarded based on the CONSTRUCTION MANAGER's sole decision as to the subcontractor's capability to perform the work.
- b. CONSTRUCTION MANAGER may self-perform a portion of the Work when CONSTRUCTION MANAGER believes that it is in the best interest of CITY due to, for example, CONSTRUCTION MANAGER's ability to use its own available employees to perform the Work without interruption to the schedule and loss of time.

24. **Insurance Requirements.**

- a. Scope of Insurance - The CONSTRUCTION MANAGER shall procure and maintain at its own expense, the following minimum insurance coverage, unless otherwise specified in the Contract Documents.
 - i. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least A: VII.
 - ii. The CONSTRUCTION MANAGER shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.
 - iii. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.
 - iv. The required insurance shall not limit the liability of the CONSTRUCTION MANAGER. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONSTRUCTION MANAGER's interests or liabilities, but are merely required minimums.
 - v. All liability insurance, except professional liability, shall be written on an occurrence basis.
 - vi. The CONSTRUCTION MANAGER waives its right of subrogation recovery against the CITY to the extent permitted by its insurance policies.
 - vii. Insurance required of the CONSTRUCTION MANAGER, or any other insurance of the CONSTRUCTION MANAGER shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any covered claims which arise out of the Agreement.
- b. Certificate of Insurance - The CONSTRUCTION MANAGER shall provide evidence of required minimum insurance by providing the CITY an ACORD or other Certificate of Insurance in forms reasonably acceptable to the Risk Manager for the CITY, before any Work under the Agreement begins.
 - i. Except for workers' compensation and professional liability, the CONSTRUCTION MANAGER's insurance policies shall be endorsed to name the City of Leesburg as additional insured to the extent of the Agreement.
 - ii. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows: City of Leesburg, Attn: Purchasing Manager, P.O. Box 490630, Leesburg, Florida 34749-0630.
 - iii. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.
 - iv. The Certificate(s) of Insurance shall indicate that the CITY shall be notified at least thirty (30) calendar days in advance of cancellation.
- c. Comprehensive General Liability - The CONSTRUCTION MANAGER shall purchase and maintain Commercial General Liability coverage on forms no more restrictive than the latest editions of the Commercial General Liability policies of the Insurance Services Office (ISO). The Commercial General Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for bodily and personal injury and property damage liability for premises, operations, products and completed

operations*, independent CONSTRUCTION MANAGERS, Contractual liability covering the Agreement, broad form property damage coverage, and property damage resulting from explosion, collapse or underground exposures (x, c, u).

- i. For remodeling and construction projects, the CONSTRUCTION MANAGER shall purchase and maintain products and completed operations coverage for a minimum of three (3) years beyond the CITY's acceptance of the project.
- d. Business Automobile Liability - The CONSTRUCTION MANAGER shall purchase and maintain Business Automobile Liability coverage on forms no more restrictive than the latest editions of the Business Automobile Liability policies of the Insurance Services Office (ISO). The Business Automobile Liability policy shall provide minimum limits of \$1,000,000 per occurrence combined single limit that includes coverage for claims for bodily injury and property damage arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned and hired vehicles, and employee non-ownership use.
- e. Workers' Compensation - The CONSTRUCTION MANAGER shall purchase and maintain Workers' Compensation insurance for all workers' compensation obligations imposed by state law and with employer's liability limits of at least \$100,000 each accident and \$100,000 each employee with \$500,000 policy limit for disease.
- f. Builders Risk - Prior to the commencement of construction and as a condition precedent to CONSTRUCTION MANAGER actually commencing construction activities on site, CONSTRUCTION MANAGER shall be responsible for procuring an "all risk" Builder's Risk insurance policy covering the total value of the improvements under construction with a policy limit not less than the amount of the GMP. Any deductibles under such policy shall be paid by the CITY unless the loss was caused by the negligence or fault of CONSTRUCTION MANAGER or those for whom CONSTRUCTION MANAGER is responsible. The Builder's Risk Policy shall insure the interests of CITY, CONSTRUCTION MANAGER and all subcontractors and suppliers as their interests appear.

Once Substantial Complete is acknowledged by both the CITY and CONSTRUCTION MANAGER, use or occupancy of the Project by the CITY may be accomplished in accordance with this article when 1) the CITY secures Property and General Liability Insurance for the building/structure and 2) Provides confirmation from their broker or carrier that insurance has been secured and is effective.

- g. Premiums- The CITY shall pay CONSTRUCTION MANAGER's lump sum amount for the cost of all General Liability insurance. Builder's Risk and surety products covering CONSTRUCTION MANAGER or its Subcontractors and

suppliers and required hereunder are directly reimbursable. The GMP and any subsequent GMP Amendments shall include in the GMP the cost of all bonding and insurance coverage required by this Agreement or any subsequent modifications to this Agreement.

25. **Waiver of Lien.** Conditioned upon the CITY making payment first to CONSTRUCTION MANAGER for work performed and material and equipment supplied by a subcontractor or supplier, the CONSTRUCTION MANAGER agrees to make payment of all proper charges for labor and materials supplied and subject to the foregoing condition CONSTRUCTION MANAGER shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, or materials furnished for the project covered by this Agreement.

26. **Indemnification.** This Agreement is a “construction contract” as defined in and encompassed by the provision of Florida Statutes § 725.06, the following indemnification provision shall apply.

The CONSTRUCTION MANAGER shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney’s fees to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONSTRUCTION MANAGER and persons employed or utilized by the CONSTRUCTION MANAGER in the performance of this Agreement.

27. **Codes, Laws, and Regulations.** CONSTRUCTION MANAGER will comply with the permitted design requirements included in this Agreement as it may be modified by Amendment or Change Order.

28. **Permits, Licenses, and Fees.** CONSTRUCTION MANAGER will obtain and pay for all trade permits and licenses required by law that are associated with the CONSTRUCTION MANAGER'S performance of the Scope of Services. All trade permits and licenses required by law or requirements of the Request for Proposal will remain in force for the full duration of this Agreement and any extensions. The CITY will pay for the building permit and any and all impact fees, connection fees and other fees and costs related to the Work other than the trade permits which are the responsibility of the CONSTRUCTION MANAGER.

29. **Accounting Records.** The CONSTRUCTION MANAGER shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all Cost of the Work incurred. The CITY and the CITY’s auditors shall, during regular business hours and upon reasonable advance notice no less than two (2) business days in advance, be afforded access to, and shall be permitted to audit and copy, the CONSTRUCTION MANAGER’s records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda, subcontractor invoices, subcontractor payment applications and other data relating to this Contract.

CONSTRUCTION MANAGER’s evidence of Cost of the Work for reimbursements shall consist of actual copies of invoices, applications for payment and any other form of billing from its

subcontractors and suppliers. CONSTRUCTION MANAGER's General Liability Insurance, Fixed Fee amounts and General Conditions amounts are negotiated lump sum amounts and are not subject to audit.

30. **Public Records Retention.** CONSTRUCTION MANAGER shall keep and maintain public records that ordinarily and necessarily would be required by the CITY in order to perform the services being provided by CONSTRUCTION MANAGER herein. CONSTRUCTION MANAGER shall provide the public with access to public records on the same terms and conditions that the CITY would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. CONSTRUCTION MANAGER shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law. CONSTRUCTION MANAGER shall meet all requirements for retaining public records and transfer, at no cost, to the CITY all public records in possession of the CONSTRUCTION MANAGER upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the CITY by CONSTRUCTION MANAGER in a format that is compatible with the information technology systems of the CITY.

31. **Access to Records.** The services provided under this Agreement may be funded in part by a grant from a government agency other than the CITY. As a requirement of grant funding CONSTRUCTION MANAGER shall make records related to this project available for examination to any local, state or federal government agency, or department, during CONSTRUCTION MANAGER'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

32. **Contingent Fees Prohibited.** The CONSTRUCTION MANAGER warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the CONSTRUCTION MANAGER, to solicit or secure this Agreement 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 the CONSTRUCTION MANAGER any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

33. **Acceptance of Goods or Services.** The goods delivered as a result of an award from this solicitation shall remain the property of the CONSTRUCTION MANAGER, and services rendered under the Agreement will not be deemed complete, until a physical inspection and actual usage of the product(s) and/or service(s) is (are) accepted by the CITY and will be in compliance with the terms herein, fully in accord with the specifications and of the quality required by the Contract Documents.

Any goods and/or services purchased as a result of this Agreement may be tested and/or inspected for compliance with specifications. In the event that any aspect of the goods or services provided is found to be defective or does not conform to the specifications, the CITY reserves the right to

initiate corrective action on the part of the CONSTRUCTION MANAGER, to include return of any non-compliant goods to the CONSTRUCTION MANAGER at the CONSTRUCTION MANAGER's expense, requiring the CONSTRUCTION MANAGER to either provide a direct replacement for the item, or a full credit for the returned item. The CONSTRUCTION MANAGER shall not assess any additional charge(s) for any conforming action taken by the CITY under this clause. The CITY will not be responsible to pay for any product or service that does not conform to the contract specifications.

This project will be inspected by an authorized representative of the CITY. This inspection shall be performed to determine acceptance of work, appropriate invoicing, and warranty conditions.

34. **Ownership of Documents.** All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONSTRUCTION MANAGER specially and uniquely for this Project (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONSTRUCTION MANAGER shall in no way be liable or legally responsible to anyone for the CITY'S use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONSTRUCTION MANAGER.

35. **Independent Contractor.** The CONSTRUCTION MANAGER agrees that he or she is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONSTRUCTION MANAGER. CONSTRUCTION MANAGER will be responsible for paying his own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONSTRUCTION MANAGER shall be solely and primarily responsible for his and her acts during the performance of this Agreement.

36. **Assignment.** Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

37. **No Third-Party Beneficiaries.** This Agreement gives no rights or benefits to anyone other than the CONSTRUCTION MANAGER and the CITY.

38. **Jurisdiction.** The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

39. **Contact Person.** The primary contact person under this Agreement for each party is listed here. Contact person and information may be updated as needed by written, electronic mail is acceptable, communication to the other party. Notifying party shall receive confirmation the other party has received the change to the Contact Person.

CONSTRUCTION MANAGER Contact Information

Name/Title:
Address:
City, State & Zip:
Telephone:
Email Address:

CITY Contact Information

Name/Title: Travis Rima, Recreation
Address: 501 W. Meadow Street
City, State & Zip: Leesburg, Florida 34748
Telephone: (352)728-9786 x3214
Email Address: travis.rima@leesburgflorida.gov

40. **Approval of Personnel.** The CITY reserves the right to approve the contact person and the persons actually performing the services on behalf of CONSTRUCTION MANAGER pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONSTRUCTION MANAGER pursuant to this Agreement, CITY may require CONSTRUCTION MANAGER assign a different person or persons be designated to be the contact person or to perform the CONSTRUCTION MANAGER services hereunder.

41. **Disclosure of Conflict.** The CONSTRUCTION MANAGER has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONSTRUCTION MANAGER and his duties under this Agreement.

42. **Warranty.** CONSTRUCTION MANAGER warrants the Work against defects in materials or workmanship for a period of one year following Substantial Completion. CONSTRUCTION MANAGER shall, at no cost to CITY, repair or replace any defective or non-conforming Work when notified within the one-year warranty period. The CONSTRUCTION MANAGER's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the CONSTRUCTION MANAGER, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

The CONSTRUCTION MANAGER hereby acknowledges and agrees that all materials, except where recycled content is specifically requested, supplied by the CONSTRUCTION MANAGER in conjunction with this Agreement shall be new and in accordance with the requirements of the Contract Documents.

43. **Risk of Loss.** The CONSTRUCTION MANAGER assumes the risk of loss of damage to the CITY's property during possession of such property by the CONSTRUCTION MANAGER, and until delivery to, and payment for that property by the CITY. The

CONSTRUCTION MANAGER and the CITY shall immediately repair, replace or make good on the loss or damage without cost to the other party depending upon when the loss occurs and who bears the risk of loss, whether the loss or damage results from acts or omissions (negligent or not) of the CONSTRUCTION MANAGER, the CITY or a third party. The parties agree that the intent is for the Builder's Risk Policy to insure the improvements and the material on site during the construction phase until a Certificate of Occupancy is issued.

44. **Illegal Alien Labor** - CONSTRUCTION MANAGER shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONSTRUCTION MANAGER shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONSTRUCTION MANAGER that the subcontractor is in compliance with the terms stated within. The CONSTRUCTION MANAGER nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONSTRUCTION MANAGER agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONSTRUCTION MANAGER. Failure to meet this requirement may result in termination of the Agreement by the CITY.

45. **Employment Eligibility.** The CONSTRUCTION MANAGER is obligated to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than Twenty (20) continuous calendar days after the date of termination. If this contract is terminated for a violation of the statute by the CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER may not be awarded a public contract for a period of ONE (1) year after the date of termination.

46. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

47. **Authority to Obligate.** Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

[*Signature page follows.*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

EVERGREEN CONSTRUCTION MANAGEMENT, INC.

By: _____

Printed: _____

Title: _____

CITY OF LEESBURG, FLORIDA

John Christian, Mayor

ATTEST:

J. Andi Purvis, City Clerk

APPROVED AS TO FORM:

Fred A. Morrison, City Attorney

ATTACHMENT 'A'
SUPPLEMENTAL CONDITIONS – CONSTRUCTION

1. Definitions.

The following definitions shall apply. Whenever the following terms (or pronouns in place of them) are used in the Contract Documents, the intent and meaning of such terms shall be interpreted as follows:

- a. **City Project Representative:** There shall be authorized representative(s) of the CITY assigned to make all necessary inspections of the work performed by the CONSTRUCTION MANAGER and for such other purposes as outlined in the Contract Documents.
- b. **City Technical Representative:** There may be a designated Project Representative assigned by the CITY to inspect the technical aspects of the project. To insure the project is being constructed as designed.
- c. **Engineer of Record:** The Engineer of Record designated by the CITY following Contract Execution.
- d. **Engineer:** The design professional (engineer, architect, landscape architect or surveyor) designated by the CITY to serve as the design professional representing the CITY.
- e. **Notice to Proceed (NTP):** The official Notice from the CITY to the CONSTRUCTION MANAGER providing the date work may begin and the date the performance period begins. The NTP date will be mutually agreed to at or following the pre-construction meeting. CONSTRUCTION MANAGER shall sign the acknowledgement section of the NTP and return to the Purchasing Division. The NTP shall become a part of the Contract Documents.
- f. **Subcontractor:** Includes only those having a direct contract with the CONSTRUCTION MANAGER and it includes one who furnished material worked to a special design according to the plans or specifications of this work, but does not include one who merely furnishes material not so worked.
- g. **Work:** The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.
- h. **Manual(s):** Equipment documentation meant for the end user/consumer of the equipment. CONSTRUCTION MANAGER shall provide all Manuals to the CITY upon substantial completion. Retainage may not be released until the CITY has received all Manuals relevant to the equipment incorporated into the project.
- i. **Surety:** The corporate body which is bound with and for the CONSTRUCTION MANAGER which is primarily liable and which guarantees the faithful performance of the bid and/or agreement.
- j. **Plans, Drawings and/or Sketches:** Graphic representations of the work to be performed or reproductions thereof.
- k. **Specifications:** Broadly defined, the specifications include all data bound together herein or referenced on the plans, including, but not limited to, General Conditions, Technical Specifications, Special Conditions, Geotechnical Investigation,

Supplemental Conditions (if any), other detailed technical specifications, exhibits and all addenda.

- l. **Defective:** An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by CITY at Substantial Completion or CITY has taken beneficial use of completed portions.
- m. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONSTRUCTION MANAGER to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONSTRUCTION MANAGER to illustrate material or equipment for some portion of the Work.
- n. **Substantial Completion:** The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer as evidenced by Engineer's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.
- o. **Underground Facilities:** All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

2. INSPECTION OF WORK.

The Project Representative and his representatives shall, at all times, have access to the work whenever it is in preparation or progress and the CONSTRUCTION MANAGER shall provide proper facilities for such access and for inspection. The work will be conducted under the general direction of the Project Representative of the CITY and is subject to inspection by his appointed inspectors to insure compliance with the terms of the contract. No inspector is authorized to change any provisions of the specifications without written authorization of the CITY, nor shall the presence or absence of an inspector relieve the CONSTRUCTION MANAGER from any requirements of the contract.

If the specifications, the Project Representative's instructions, laws, ordinances or any public authority require any work to be specifically tested or approved, the CONSTRUCTION MANAGER shall give the CITY timely notice of its readiness for inspection, and if the inspection is by another authority than the Project Representative, of the date fixed for such inspection. Inspections by the Project Representative will be promptly made, and where practicable at the source of supply. If any work should be covered up without approval or consent of the CITY, it

shall, if required by the Project Representative, be uncovered for examination at the CONSTRUCTION MANAGER's expense.

Re-examination of questioned work may be ordered by the Project Representative and, if so ordered, the work shall be uncovered by the CONSTRUCTION MANAGER. If such work is found in accordance with the contract documents, the CITY will pay the cost of re-examination and replacement. If such work is found not in accordance with the contract documents, the CONSTRUCTION MANAGER shall pay such cost.

3. TESTS

The Project Representative will have the right to require all materials to be submitted to test prior to incorporation in the work. In some instances, it may be expedient to make these tests at the source of supply and for this reason it is requested that the CONSTRUCTION MANAGER furnish the source

before incorporating material in the work. This does not in any way obligate the Project Representative to perform tests for acceptance of material and does not relieve the CONSTRUCTION MANAGER of his responsibility to furnish satisfactory material. The CONSTRUCTION MANAGER shall furnish two copies of manufacturer's certificate of compliance with these specifications covering manufactured items incorporated in the work.

All field tests for compaction of earthwork and of material incorporated in the sub grade and base will be performed by technicians of a materials testing laboratory approved by the CITY. All tests performed by the laboratory to ascertain that the material, as placed, meets the required specification will be at the expense of the CONSTRUCTION MANAGER and should be included in the bid items as such.

4. TOOLS, PLANT AND EQUIPMENT

If any time before the commencement or during the progress of the work, tools, plant or equipment appears to the Project Representative to be insufficient, inefficient or inappropriate to secure the quality of work required, or the proper rate of progress, the Project Representative will notify the CITY of such conditions. The Engineer will provide written notification to the CONSTRUCTION MANAGER of CITY's quality and/or schedule concerns. The CONSTRUCTION MANAGER will respond in writing within five (5) business days of receiving the CITY's notice and will propose remedial actions to address the quality and/or schedule concerns.

5. COLLECTION AND DISPOSAL OF WASTE

The CONSTRUCTION MANAGER shall collect waste from construction areas and elsewhere; handle hazardous, dangerous, or unsanitary waste materials separately from other waste by containerizing properly; dispose of material in a lawful manner. The CONSTRUCTION MANAGER shall be responsible for the transportation and disposal costs of all waste construction materials.

6. BURNING OF DEBRIS

For any areas where the burning of debris is permitted, the CONSTRUCTION MANAGER will be required to request a permit therefore, from the fire authority having jurisdiction in the area in due advance time, and if such permission is granted he shall rigidly abide by all provisions and requirements of such permit. In no case will burning be permitted until the fire authorities have adequately checked the size of the pile to be burned, the weather conditions and any other factors which might affect the proper control of the burning operation.

7. MAINTENANCE OF TRAFFIC

Where construction is located in public right of ways, traveled streets and roads, the CONSTRUCTION MANAGER shall exercise extreme care in seeing that sufficient area is provided and kept open for police, fire, ambulance, mail and private vehicular traffic.

The CONSTRUCTION MANAGER shall ensure that each person supervising the selection, placement and maintenance of Traffic Control Devices in the FDOT Work Zone shall be certified by attending an FDOT approved MOT training course. A copy of these certifications shall be submitted to the CITY of Leesburg upon request.

8. PROTECTION AGAINST POLLUTION

The CONSTRUCTION MANAGER shall comply with all legal regulations pertaining to pollution as are applicable to the site and he shall take all measures necessary to assure that no pollution, temporary or permanent, occurs to any lakes or other water areas as a result of runoff from the areas within which he is working.

This shall include the installation of temporary construction turbidity screens or hay bales along the edge of existing wetlands prior to the start of construction. These areas shall be as shown on the plans.

CONSTRUCTION MANAGER shall maintain the fuel storage area in accordance with local, state and federal regulations. Refueling vehicles and refueling techniques shall also comply with all applicable regulations. Clean-up of the fuel storage area shall be as required by the regulations and in accordance with these regulations.

9. TEMPORARY FENCING AND BARRICADES

The CONSTRUCTION MANAGER shall at his cost erect barricades sufficient to prevent injury to persons or damage to property, including the CONSTRUCTION MANAGER's personal property and materials. The CITY shall not be held responsible for the loss, theft, or vandalism of the CONSTRUCTION MANAGER's equipment or other personal property, including construction materials and supplies. Fences shall be constructed to prevent entry of unauthorized persons; cover trenches and holes when not in use; erect barriers at sharp changes in plane more than four (4) feet high. Should construction operations temporarily obstruct road passage, the CONSTRUCTION MANAGER shall at his cost provide suitable flagmen to control vehicular

traffic on the road. Permits to use construction equipment on Florida Department of Transportation Right-of-Way shall be secured by the CONSTRUCTION MANAGER prior to actual beginning of work. The CONSTRUCTION MANAGER shall, at his cost, remove all temporary protection from the work site upon completion of the work.

10. WORKMANSHIP, MATERIALS, APPLIANCES, AND EMPLOYEES

All work will be done in a competent and workmanlike manner. All materials, equipment and supplies furnished by the CONSTRUCTION MANAGER for permanent incorporation in the work shall be new and of quality standards specified. Workmanship shall be first class and the finished product equal to the best-accepted standards of the trade for the category of work performed. It is the CITY's intent to obtain a high-quality job that will operate and function with least maintenance costs. The CONSTRUCTION MANAGER shall, if requested by CITY, furnish satisfactory evidence as to the kind and quality of materials.

Unless otherwise stipulated, the CONSTRUCTION MANAGER shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the work.

The CONSTRUCTION MANAGER shall, at all times, enforce strict discipline and good order among his employees and shall not employ on the work any unfit person or anyone not skilled in the work assigned to him.

Neither party shall employ or hire any employees of the other party without his consent.

11. GENERAL QUALITY AND STANDARDS

To facilitate rapid examination, detailed specifications concerning basic requirements for labor, materials, equipment and/or incidentals to be used on the project are included under the various divisions in as brief a form as is consistent with clarity. The primary concern of the detailed specifications is for standards of performance expected for the finished work.

When in the detailed specifications reference is made to a particular code or specification, the latest edition of said code or specification shall apply.

The interests of the CITY, the CONSTRUCTION MANAGER and others concerned with the work require the inclusion of certain general governing requirements and standards, as a precaution against contingency and to provide for the conditions under which the construction and the administration of the work will be carried out.

General requirements for the quality of the work, when not otherwise covered in more specific detail in the specifications, will be governed by acceptable standards of the trade.

These specifications consider the project as a whole and assume its completion under a general contract. Further, the scope of subcontracts and the quantities of materials and labor supplied to the CONSTRUCTION MANAGER by others are assumed to be matters governed by agreement

between the CONSTRUCTION MANAGER and his Subcontractors and suppliers and not by agreement between the CITY and any Subcontractor or suppliers.

Various sections of the construction specifications are intended to govern only the quality of work and/or materials incidental to the particular branch of work mentioned in the section title. Sections are not intended as itemizations of the work materials to be furnished or to limit or define the scope of any subcontract or agreement to furnish material and labor.

The furnishing of all items of material, labor, equipment and/or incidentals necessary to the completion of the work as a whole will be expected when such items are called for on the drawings by diagram, note or schedule, are listed in the specifications, or are reasonably inferred by either or a combination of both.

During the construction operations under this contract, the CITY may elect to contract other work for the project. The CONSTRUCTION MANAGER shall coordinate his operations with those of any other such CONSTRUCTION MANAGERS as well as any work of constructing or adjusting utilities by any other authorities, to the end that the least practical handicap to the work of all such CONSTRUCTION MANAGERS or authorities will result.

12. PROJECT COORDINATION

The CONSTRUCTION MANAGER shall coordinate construction operations that are dependent upon each other for proper installation, connection and operation. The CONSTRUCTION MANAGER shall make adequate provisions to accommodate items scheduled for later installation.

The CONSTRUCTION MANAGER shall inspect both the substrate and conditions under which the work is to be performed. The CONSTRUCTION MANAGER shall not proceed until unsatisfactory conditions have been corrected in an acceptable manner.

The CONSTRUCTION MANAGER shall inspect materials or equipment immediately upon delivery and again prior to installation. The CONSTRUCTION MANAGER shall reject damaged and defective items.

The CONSTRUCTION MANAGER shall supervise construction activities to ensure that no part of the construction is subject to deleterious exposure during the construction period. Where applicable, such exposures include, but are not limited to, the following: Unprotected storage, Improper shipping and handling, Theft, Vandalism.

13. COORDINATION WITH UTILITY COMPANIES

CONSTRUCTION MANAGER shall coordinate with all utility installations. CONSTRUCTION MANAGER shall notify the appropriate utility companies, in writing, adequately in advance of the time frame set aside for such utility installation. The utility companies referred to herein shall include, but not be limited to, Power, Gas, Telephone, and Cable Television. CONSTRUCTION

MANAGER shall coordinate the installation of “sleeves” for the utility companies as may be required.

CONSTRUCTION MANAGER shall supply the CITY with copies of all correspondence notifying the utility companies of his intended schedule of construction and the expected date for their respective utility installations. Written notices shall be sent to the utility companies at sixty (60) calendar days, thirty (30) calendar days and fourteen (14) calendar days prior to the time at which the utility installation should begin.

14. SUPERVISION

CONSTRUCTION MANAGER shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONSTRUCTION MANAGER shall be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONSTRUCTION MANAGER shall be responsible to see that the finished Work complies accurately with the Contract Documents.

If the CONSTRUCTION MANAGER, in the course of the work, finds any discrepancy between the drawings and the physical conditions of the locality, or any errors or omissions in the drawing or in layout as given by points and instructions, it shall be his duty to immediately inform the Project Representative, in writing, and the Project Representative will promptly verify the same. Any work done after such discovery, until authorized, will be done at the CONSTRUCTION MANAGERS' risk.

15. CONSTRUCTION SUPERINTENDENT

CONSTRUCTION MANAGER shall employ a Construction Superintendent who shall be present on-site or available throughout the duration of the project and shall remain associated with the project until completion unless otherwise requested to be replaced by the CITY. The superintendent shall be experienced in the work required and perform all coordination activities generally conducted by project superintendents including, but not limited to, subcontractor coordination, utility installations, inspections, testing, material deliveries, etc. The superintendent shall be present at the pre-construction meeting and shall remain on the project until completion. The owner reserves the right to request a resume of experience for the superintendent including, but not limited to, requesting references from recent projects. Substitution of superintendents after the start of the work shall be approved by the owner in advance. All communications given to the superintendent shall be as binding as if given to CONSTRUCTION MANAGER.

16. WAGE RATES/EQUAL EMPLOYMENT OPPORTUNITY

Wage rates for laborers, mechanics and apprentices shall not be less than those established by the Florida Department of Labor and Employment Security and/or the United States Department of Labor for this work, as may be attached hereto. The CONSTRUCTION MANAGER must insure

Equal Employment Opportunity as part of the awarded contract and also subcontracts awarded by the CONSTRUCTION MANAGER.

17. SUBCONTRACTS

The CONSTRUCTION MANAGER shall, as soon as practicable after signing the contract, notify the Project Representative in writing of any changes in the names of subcontractors proposed for the work as listed on the bid form. The CONSTRUCTION MANAGER shall not employ subcontractors, unless they are approved by the Project Representative.

The CONSTRUCTION MANAGER agrees that he is as fully responsible to the CITY for the acts and omissions of his subcontractors and of persons, either directly or indirectly, employed by them, as he is for the acts and omissions of persons directly employed by him.

Nothing contained in the contract documents shall create any contractual relation between any subcontractors and the CITY.

18. PRE-CONSTRUCTION MEETING

The CITY shall schedule a meeting after the Notice of Award. The Project Representative, Engineer, and CONSTRUCTION MANAGER shall attend this mandatory meeting. The following items shall be completed:

- a. Submission of list of Subcontractors, Schedule of Values and Progress Schedule.
- b. Designation of Personnel representing the parties in Contract, and the Engineer.
- c. Use of premises by CITY and the CONSTRUCTION MANAGER.
- d. Survey layout and scheduling.
- e. Security and housekeeping procedures.
- f. Requirements for start-up of equipment.
- g. Inspection and acceptance of equipment put into service during construction period.

At least ten (10) business days before submission of the first Application for Payment a conference attended by CONSTRUCTION MANAGER, Engineer and others as appropriate will be held to finalize the schedules submitted by CONSTRUCTION MANAGER. The finalized progress schedule will be acceptable to Engineer as providing an orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on Engineer responsibility for the progress or scheduling of the Work nor relieve CONSTRUCTION MANAGER from full responsibility thereto. The finalized schedule of Shop Drawing submissions will be acceptable to Engineer as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to Engineer as to form and substance.

19. ORDER OF COMPLETION

The CONSTRUCTION MANAGER shall submit at such times as may be requested by the Project Representative, schedules which shall show the order in which the CONSTRUCTION MANAGER proposes to carry on the work with dates on which the CONSTRUCTION

MANAGER will start the several parts of the work and estimated dates of completion of the several parts. The CITY retains the right to dictate to the CONSTRUCTION MANAGER the order of completion of the work.

20. MATERIALS AND EQUIPMENT SCHEDULES

As soon as practicable and after the date of award of contract and before any material or equipment is purchased, the CONSTRUCTION MANAGER will submit to the CITY for approval a complete list, in triplicate, of materials to be incorporated in the work and samples of each listed material. The list shall include catalog numbers, cuts, diagrams; drawings and such other descriptive data as may be required. No consideration will be given to partial lists submitted from time to time. Approval of materials will be based on manufacturers' published ratings. Any materials listed that are not in accordance with the specification requirements may be rejected.

When one or more manufacturer's items are specified, it shall be understood that the item(s) so specified are hereby approved as to suitability and no substitutions will be permitted unless followed by such qualifying phrases as equal "approval equal" or "as approved" in which case the approval of the CITY for items not specified shall be obtained before they may be used.

21. CONSTRUCTION MANAGER'S REQUESTS FOR INTERPRETATION (RFIs)

Should CONSTRUCTION MANAGER be unable to determine from the Contract Documents the exact material, process, or system to be installed; or when the elements of construction are required to occupy the same space (interference); or when an item of Work is described differently at more than one place in the Contract Documents; the CONSTRUCTION MANAGER shall request that the Architect/Engineer (AE), or CITY Representative, make an interpretation of the requirements of the Contract Documents to resolve such matters. CONSTRUCTION MANAGER shall comply with procedures specified herein to make Requests for Interpretation (RFIs).

- a. Submission of RFIs: RFIs shall be prepared and submitted on a form provided by the CITY.
 - i. Forms shall be completely filled in, and if prepared by hand, shall be fully legible after copying by xerographic process.
 - ii. Each RFI shall be given a discrete, consecutive number.
 - iii. Each page of the RFI and each attachments to the RFI shall bear the CITY's project name, project number, date, RFI number and a descriptive title.
 - iv. CONSTRUCTION MANAGER shall sign all RFIs attesting to good faith effort to determine from the Contract Documents the information requested for interpretation. Frivolous RFIs shall be subject to reimbursement from CONSTRUCTION MANAGER to CITY for fees charged by A/E, A/E consultants and other design professionals engaged by the CITY.
- b. Subcontractor-Initiated and Supplier-Initiated RFIs: RFIs from subcontractors and material suppliers shall be submitted through, be reviewed by and be attached to an RFI prepared, signed and submitted by CONSTRUCTION MANAGER. RFIs submitted directly by subcontractors or material suppliers will be returned unanswered to the CONSTRUCTION MANAGER.

- i. CONSTRUCTION MANAGER shall review all subcontractor- and supplier-initiated RFIs and take actions to resolve issues of coordination, sequencing and layout of the Work.
- c. RFIs submitted to request clarification of issues related to means, methods, techniques and sequences of construction or for establishing trade jurisdictions and scopes of subcontracts will be returned without interpretation. Such issues are solely the CONSTRUCTION MANAGER'S responsibility.
- d. CONSTRUCTION MANAGER shall be responsible for delays resulting from the necessity to resubmit an RFI due to insufficient or incorrect information presented in the RFI.
- e. Requested Information: CONSTRUCTION MANAGER shall carefully study the Contract Documents to ensure that information sufficient for interpretation of requirements of the Contract Documents is not included. RFIs that request interpretation of requirements clearly indicated in the Contract Documents will be returned without interpretation.
 - i. In all cases in which RFIs are issued to request clarification of issues related to means, methods, techniques and sequences of construction, for example, pipe and duct routing, clearances, specific locations of Work shown diagrammatically, apparent interferences and similar items, the CONSTRUCTION MANAGER shall furnish all information required for the A/E or CITY's Representative to analyze and/or understand the circumstances causing the RFI and prepare a clarification or direction as to how the CONSTRUCTION MANAGER shall proceed.
 - ii. If information included with this type RFI by the CONSTRUCTION MANAGER is insufficient, the RFI will be returned unanswered.
- b. Unacceptable Uses for RFIs: RFIs shall not be used to request the following:
 - i. Approval of submittals
 - ii. Approval of substitutions
 - iii. Changes that entail change in Contract Time and Contract Sum
 - iv. Different methods of performing Work than those indicated in the Contract Drawings and Specifications
- c. Disputed Requirements: In the event the CONSTRUCTION MANAGER believes that a clarification by the CITY's A/E, or Representative, results in additional cost or time, CONSTRUCTION MANAGER shall comply with the method for requesting a Change Order.
- d. RFI Log: CONSTRUCTION MANAGER shall prepare and maintain a log of RFIs, and at any time requested by the CITY's Representative, the CONSTRUCTION MANAGER shall furnish copies of the log showing all outstanding RFIs.
- e. Review Time: Architect/Engineer or CITY Representative (CITY) shall return RFIs to CONSTRUCTION MANAGER and within five (5) continuous calendar days of receipt. RFIs received after 12:00 noon shall be considered received on the next regular working day for the purpose of establishing the start of the five-calendar day response period.

22. SUBMITTAL REQUIREMENTS OF CONSTRUCTION MANAGER

After checking and verifying all field measurements and after complying with applicable procedures specified in the General Requirements, CONSTRUCTION MANAGER shall submit to Engineer for review in accordance with the accepted schedule of Shop Drawing submissions, or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified in the General Requirements) of all Shop Drawings, which will bear a stamp or specific written indication that CONSTRUCTION MANAGER has satisfied CONSTRUCTION MANAGER'S responsibilities under the Contract Documents with respect to the review of the submission. All submissions will be identified as Engineer may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable Engineer to review the information as required.

CONSTRUCTION MANAGER shall also submit to Engineer for review with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONSTRUCTION MANAGER has satisfied CONSTRUCTION MANAGER'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

Before submission of each Shop Drawing or sample CONSTRUCTION MANAGER shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

At the time of each submission, CONSTRUCTION MANAGER shall give Engineer specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Shop Drawing submitted to Engineer for review of each such variation.

Engineer will review with reasonable promptness Shop Drawings and samples, but Engineer's review will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review of a separate item as such will not indicate review of the assembly in which the item functions. CONSTRUCTION MANAGER shall make corrections required by Engineer, and shall return the required number of corrected copies of Shop Drawings and submit as required new samples for review. CONSTRUCTION MANAGER shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

Engineer's review of Shop Drawings or samples shall not relieve CONSTRUCTION MANAGER from responsibility for any variation from the requirements of the Contract Documents unless

CONSTRUCTION MANAGER has in writing called Engineer's attention to each such variation at the time of submission as required by this Article and Engineer has given written review each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample review; nor will any review by Engineer relieve CONSTRUCTION MANAGER from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions herein.

Where a Shop Drawing or sample is required by the Specifications, any related Work performed prior to Engineer's review of the pertinent submission will be the sole expense and responsibility of CONSTRUCTION MANAGER.

23. CHANGES IN THE WORK

Any Change in the Work will be documented in writing and approved by the CITY in writing. Changes that increase the cost of the work may need to be approved by CITY Commission depending on the dollar value of the increase change order. No work may be performed prior to the change being approved by CITY.

The Contract Price constitutes the total compensation payable to the CONSTRUCTION MANAGER for performing the work. All duties, responsibilities and obligations assigned to or undertaken by the CONSTRUCTION MANAGER shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order. Any claim for an increase in the Contract Price, shall be delivered in writing to the CITY and the Engineer within seven (7) business days of the occurrence of the event giving rise to the claim. Notice of the amount of the claim with supporting data shall be delivered within fifteen (15) business days of such occurrence unless the Engineer allows an additional period of time to ascertain accurate cost data. All claims for adjustments in the Contract Price shall be determined by the Engineer if the CITY and CONSTRUCTION MANAGER cannot otherwise agree on the amount involved. The Engineer(s) decision shall be final and binding. Any change in the Contract Price resulting from any such claim shall be incorporated in a Change Order.

The value of any work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

- a. where the work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved, or
- ii. by mutual acceptance of a lump sum, or
- b. on the basis of the cost of the work plus a CONSTRUCTION MANAGER's fee for overhead and profit.

24. DETAIL DRAWINGS AND INSTRUCTIONS

The CITY will furnish, with reasonable promptness, additional instructions by means of drawings or otherwise, necessary for the proper execution of the work. All such drawings and instructions

will be consistent with the contract documents, true developments thereof and reasonably inferable therefrom.

25. OWNERSHIP OF DRAWINGS

All drawings, specifications and copies thereof furnished by the CITY are the property of the CITY. They are not to be used on other work and, with the exception of the signed contract set, are to be returned to the CITY, at the request of the CITY upon the completion of the work.

26. SURVEYS, PERMITS AND REGULATIONS

The CITY will furnish horizontal and vertical control necessary to layout the work in an orderly and workmanlike manner.

Horizontal Control furnished by the CITY shall consist of adequately marked property corners or offset corners, with dimensions as shown on the drawings. Vertical Control will consist of benchmarks established within the immediate area of the work.

It shall be the responsibility of the CONSTRUCTION MANAGER to furnish all construction layout of the work, including, but not limited to, layout and elevations for the construction and final grade of the site.

The CONSTRUCTION MANAGER shall maintain and preserve all stakes and marks established by the CITY and should such stakes or marks be carelessly or willfully destroyed or damaged by the CONSTRUCTION MANAGER, said stakes or marks shall be replaced by the CITY at the expense of the CONSTRUCTION MANAGER.

The CONSTRUCTION MANAGER will set the horizontal and vertical control only at the beginning of the job as specified above. Interim staking during the job and all staking and layout work not furnished by the CITY as specified above shall be the responsibility of the CONSTRUCTION MANAGER.

The CITY will furnish all personnel and equipment and materials to make such surveys as are necessary to determine the quantities of work performed.

The CITY will furnish environmental permits unless otherwise specified. The CONSTRUCTION MANAGER shall obtain any and all required permits from all appropriate government agencies.

Work permits and licenses necessary for the prosecution of the work shall be secured and paid for by the CONSTRUCTION MANAGER and reimbursed at actual cost by the CITY. Easements for permanent structures or permanent changes in existing facilities will be secured and paid for by the CITY unless otherwise specified. The CONSTRUCTION MANAGER shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the work as drawn and specified. If the CONSTRUCTION MANAGER observes that the drawings and specifications are at variance therewith, he shall promptly notify the CITY in writing and any necessary changes shall be adjusted as provided in the contract for changes in the work. If the

CONSTRUCTION MANAGER performs work knowing it to be contrary to such laws, ordinances, rules and regulations and without such notice to the CITY, he shall bear all cost arising there from.

27. ROYALTIES AND PATENTS

There may be a design, device, material or process included in these plans and specifications which may be covered by letters, patent or copyright. Prior to use of any design, device, material or process, or its incorporation into the construction, the CONSTRUCTION MANAGER shall secure indemnity from his subcontractors or material suppliers that will protect and save harmless the CITY from all loss on account thereof.

The CONSTRUCTION MANAGER shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for all such loss when a particular process or the product of a particular manufacturer or manufacturers is specified, but if the CONSTRUCTION MANAGER has information that the process or article specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the CITY.

28. PROTECTION OF WORK AND PROPERTY

The CONSTRUCTION MANAGER shall continuously maintain adequate protection of all his work from damage and shall protect the CITY's property from injury or loss arising in connection with this contract. The CONSTRUCTION MANAGER shall at all times protect all public and privately-owned property, structures, utilities, and work of any kind against damage or interruption of service which may result from the operations of the CONSTRUCTION MANAGER. Damage or interruption to service resulting from failure to do so shall be repaired or restored by or at the expense of the CONSTRUCTION MANAGER except such as may be directly due to errors in the contract documents or caused by the agents or employees of the CITY.

29. DEDUCTIONS FOR UNCORRECTED WORK

If the Project Representative deems it inexpedient to correct work injured or done, not in accordance with the contract, an equitable deduction from the contract price will be made therefore.

30. DELAYS AND EXTENSION OF TIME

If the CONSTRUCTION MANAGER be delayed at any time, in the progress of the work by an act of neglect of the CITY or of his employees, or by any other CONSTRUCTION MANAGER employed by the CITY or by Changes ordered in the work or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the CONSTRUCTION MANAGER's control, or by delay authorized by the Project Representative, or by any cause which the Project Representative may decide to justify the delay, then the time of completion will be extended for any such reasonable time as the Project Representative may decide.

No such extension will be made for delay occurring more than seven (7) continuous calendar days before claim therefore is made in writing to the CITY. In the case of a continuing cause or delay, only one claim is necessary.

If no schedule or agreement stating the dates upon which drawings shall be furnished is made, then no claim for delay will be allowed on account of failure to furnish drawings until two weeks after demand for such drawings and not then unless such claims be reasonable.

31. CORRECTION OF WORK BEFORE FINAL PAYMENTS

The CONSTRUCTION MANAGER shall promptly remove from the premises all materials condemned by the Project Representative as failing to conform to the contract, whether incorporated in the work or not, and the CONSTRUCTION MANAGER shall promptly replace and re-execute his own work in accordance with the contract and without expense to the CITY and shall bear the expense of making good all work of other CONSTRUCTION MANAGERS destroyed or damaged by such removal or replacement.

If the CONSTRUCTION MANAGER does not correct such condemned work and material within a reasonable time fixed by written notice, the CITY may correct it at the expense of the CONSTRUCTION MANAGER. If the CONSTRUCTION MANAGER does not pay the expense of such correction within three (3) business days thereafter, the CITY may, upon three (3) business days written notice, deduct all the cost and expenses that should have been borne by the CONSTRUCTION MANAGER.

32. THE CITY'S RIGHT TO DO WORK

If the CONSTRUCTION MANAGER should neglect to prosecute the work properly or fail to perform any provision of this contract, the CITY after three (3) business days written notice to the CONSTRUCTION MANAGER, may, without prejudice to any other remedy he may have, make good such deficiencies at the CONSTRUCTION MANAGER's expense.

33. SUSPENSION OF WORK

The CITY may at any time suspend the work or any part thereof by giving five (5) business days advance notice to the CONSTRUCTION MANAGER in writing. The work shall be resumed by the CONSTRUCTION MANAGER within ten (10) business days after the date fixed in a written notice to resume work from the

CITY to the CONSTRUCTION MANAGER. The CITY will reimburse the CONSTRUCTION MANAGER for expense incurred by the CONSTRUCTION MANAGER in connection with the work under this contract as a result of such suspension unless the suspension was recommended to the CITY by the Project Representative to enforce the contract or for any violation of the contract.

34. REMOVAL OF EQUIPMENT

In the case of annulment of this contract before completion, from any cause whatever, the CONSTRUCTION MANAGER, if notified to do so by the CITY, shall promptly remove any part or all of his equipment and supplies from the property of the CITY, failing which, the CITY will have the right to remove such equipment and supplies at the expense of the CONSTRUCTION MANAGER.

35. USE OF COMPLETED PORTIONS

Use by CITY of any finished part of the Work, which has specifically been identified in the Contract Documents, or which CITY, Engineer and CONSTRUCTION MANAGER agree constitutes a separately functioning and useable part of the Work that can be used by CITY without significant interference with CONSTRUCTION MANAGER's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

- a. CITY at any time may request CONSTRUCTION MANAGER in writing to permit CITY to use any such part of the Work which CITY believes to be ready for its intended use and substantially complete. If CONSTRUCTION MANAGER agrees, CONSTRUCTION MANAGER will certify to CITY and Engineer that said part of the Work is substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. CONSTRUCTION MANAGER at any time may notify CITY and Engineer in writing that CONSTRUCTION MANAGER considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, CITY, CONSTRUCTION MANAGER and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify CITY and CONSTRUCTION MANAGER in writing giving the reasons therefore. If Engineer considers that part of the Work to be substantially complete, the provisions of Substantial Completion will apply with respect to certification of that part of the Work and the division of responsibility in respect thereof and access thereto.
- b. CITY may at any time request CONSTRUCTION MANAGER in writing to permit CITY to take over operation of any such part of the Work although it is not substantially complete. A copy of such request will be sent to Engineer and within a reasonable time thereafter CITY, CONSTRUCTION MANAGER and Engineer shall make an inspection of that part of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected thereon before final payment. If CONSTRUCTION MANAGER does not object in writing to CITY and Engineer that such part of the Work is not ready for separate operation by CITY, Engineer will finalize the list of items to be completed or corrected and will deliver such list to CITY and CONSTRUCTION MANAGER together, with a written recommendation as to the division of responsibilities pending final payment between CITY and CONSTRUCTION

MANAGER with respect to security, operation, safety, maintenance, utilities, insurance, warranties and guarantees for that part of the Work, which will become binding upon CITY and CONSTRUCTION MANAGER at the time when CITY takes over such operation (unless they shall have otherwise agreed in writing and so informed Engineer). During such operation and prior to Substantial Completion of such part of the Work, CITY shall allow CONSTRUCTION MANAGER reasonable access to complete or correct items on said list and to complete other related Work.

- c. If CITY finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with this Article; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected the changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be cancelled or lapse on account of any such partial use or occupancy.

36. PROMPT PAYMENT

The CITY will make payment in accordance with Florida Statute 218.735 – Timely payment for purchases of construction services. This project does require the CITY's agent, the design professional/Engineer of Record, to review and approve all Applications for Payment.

37. APPLICATION FOR PAYMENT

The CONSTRUCTION MANAGER shall submit to the CITY, at least twenty (20) business days before the date established for each progress payment (but not more often than once a month), an Application for Payment filled out and signed by CONSTRUCTION MANAGER covering the work completed as of the date of the Application. Upon review and approval by the CITY and Engineer (if applicable).

This Project is a construction project and is subject to withholding of Retainage in accordance with Florida Statute 255.078 Public Construction Retainage. Retainage will be withheld at a rate of FIVE PERCENT (5%) on all Payment Applications for the duration of the Project. Retainage shall not be withheld from progress payments for the CONSTRUCTION MANAGER's Fee or General Conditions.

CONSTRUCTION MANAGER shall, before any draw is issued, provide a sworn statement to CITY attesting that all services, materials and labor, furnished to the project to the date of the draw request have been paid for in full, or listing the amounts due for such services, materials and labor, and if any amounts are listed as being due, the CITY shall have the right to pay those amounts directly to the persons to whom they are due, with the balance of the draw amount to be paid to CONSTRUCTION MANAGER, and if the draw is insufficient to pay the amounts then due for services, materials and labor, the CITY shall pay those to whom such amounts are due on a pro rata basis until the draw is exhausted, and any remaining amounts due others shall be paid first out the next draw due.

The CITY shall not be required to issue progress payments pursuant to the draw schedule until the CITY has verified, by on-site inspection, that construction has in fact progressed to the stage at which a draw is required and that the work done and materials furnished are in compliance with the Contract Documents, and all applicable technical codes. The final draw due upon “completion” shall not be payable until the CITY, its Project Representative or Engineer of Record has determined the work has been completed in accordance with the Contract Documents and a Certificate of Completion has been issued by the CITY.

38. PAYMENTS WITHHELD

The CITY may withhold or, on account of subsequently discovered evidence, recover the whole or part of any payment to such an extent as may be necessary to protect the CITY from loss on account of—

- a. Defective work not remedied.
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the CONSTRUCTION MANAGER to make payments properly to subcontractors or for materials or labor.
- d. The Project Representative's opinion that the contract cannot be completed for the balance then unpaid.
- e. Damage to another CONSTRUCTION MANAGER.
- f. Failure to maintain adequate progress.
- vii. Damage to the building resulting from the negligence of the CONSTRUCTION MANAGER.

When the above grounds are removed, payment will be made for amounts withheld because of them.

39. FINAL PAYMENT APPLICATION

Administrative actions and submittals that must precede or coincide with submittal of the final payment Application for Payment include the following:

- a. Completion of Project closeout requirements.
- b. Completion of items specified for completion after Substantial Completion.
- c. Assurance that unsettled claims will be settled.
- d. Transmittal of required project construction records to CITY.
- e. Final Clean Up as outlined in these General Conditions

Upon written notice from CONSTRUCTION MANAGER that the entire Work or an agreed portion thereof is complete, Engineer will make a final inspection with CITY and CONSTRUCTION MANAGER and will notify CONSTRUCTION MANAGER in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONSTRUCTION MANAGER shall immediately take such measures as are necessary to remedy such deficiencies.

After CONSTRUCTION MANAGER has completed all such corrections to the satisfaction of Engineer and delivered all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, marked-up record documents and other documents--all as required by

the Contract Documents, and after Engineer has indicated that the Work is acceptable (subject to the provisions under Waiver of Claims), CONSTRUCTION MANAGER may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to CITY) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by CITY, CONSTRUCTION MANAGER may furnish receipts or releases in full; an affidavit of CONSTRUCTION MANAGER that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which CITY or CITY's property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor Supplier fails to furnish a release or receipt in full, CONSTRUCTION MANAGER may furnish a Bond or other collateral satisfactory to CITY to indemnify CITY against any Lien.

If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation-all as required by the Contract Documents, Engineer is satisfied that the Work has been completed and CONSTRUCTION MANAGER's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten (10) continuous calendar days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application to CITY for payment. Thereupon Engineer will give written notice to CITY and CONSTRUCTION MANAGER that the Work is acceptable subject to the provisions found under "Waiver of Claims". Otherwise, Engineer will return the Application to CONSTRUCTION MANAGER, indicating in writing the reasons for refusing to recommend final payment, in which case CONSTRUCTION MANAGER shall make the necessary corrections and resubmit the Application. Thirty (30) days after presentation to CITY of the Application and accompanying documentation, in appropriate form and substance, and with Engineer's recommendation and notice of acceptability, the amount recommended by Engineer will become due and will be paid by CITY to CONSTRUCTION MANAGER.

If, through no fault of CONSTRUCTION MANAGER, final completion of the Work is significantly delayed and if Engineer so confirms, CITY shall, upon receipt of CONSTRUCTION MANAGER's final Application for Payment and recommendation of Engineer, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by CITY for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONSTRUCTION MANAGER to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

40. CONSTRUCTION MANAGER'S CONTINUING OBLIGATION

CONSTRUCTION MANAGER's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by Engineer, nor the issuance of a certificate of Substantial Completion, nor any payment by CITY to CONSTRUCTION MANAGER under the Contract Documents, nor any use or occupancy of the Work or any part thereof by CITY, nor any act of acceptance by CITY nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by Engineer, nor any correction of defective Work by CITY will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONSTRUCTION MANAGER's obligation to perform the Work in accordance with the Contract Documents (except as provided under Waiver of Claims)

41. DAMAGES

Any claim for damage arising under a resulting Agreement shall be made in writing to the party liable within ten (10) business days after the first observance of such damage and not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.

42. EQUIPMENT STARTUP

Equipment startup shall be in accordance of the manufacturer's recommendations, and as required to demonstrate performance to the Engineer and CITY in accordance with the specifications. The CONSTRUCTION MANAGER shall provide 30-days notice to the Engineer and CITY of the date on which all equipment and systems will be ready for startup. The startup date shall be arranged as required by the CITY's operational schedule with consideration of the schedule needs of the Engineer and CONSTRUCTION MANAGER.

43. COMPLETION OF WORK

The CONSTRUCTION MANAGER shall be considered "substantially complete" when the equipment and systems have been used without failure for seven (7) continuous calendar days, and in the opinion of the CITY, its Project Representative or Engineer of Record, all work has been completed in general accordance with the plans and specifications and all test reports, inspections, etc. have been completed and delivered to the Engineer. Substantial completion shall also mean that degree of completion which allows the CITY to occupy and use the facilities. When the Engineer deems the work to be "substantially complete" he shall indicate this to the CITY in writing with copies to the CONSTRUCTION MANAGER. The date of contract completion shall be the same date at which the CONSTRUCTION MANAGER is considered substantially complete by the Engineer.

44. ACCEPTANCE OF FINISHED WORK

The CITY shall make final acceptance inspection of the Project covered by this Contract when the Project is completed and finished in all respects in accordance with the Contract Documents.

CONSTRUCTION MANAGER shall furnish to the Engineer or CITY Representative a complete set of As-Built drawings. These drawings shall be prepared by a licensed Surveyor in the State of Florida and shall be submitted to the Engineer within five (5) business days following the completion of the work.

45. FINAL CLEAN UP

The CONSTRUCTION MANAGER shall complete all cleaning operations before requesting final inspection.

The CONSTRUCTION MANAGER shall, as directed by the Project Representative, remove from the CITY's property and from all public and private property, at his own expense, all temporary structures, rubbish, and waste materials resulting from his operation.

The CONSTRUCTION MANAGER shall remove temporary protection and facilities installed for protection of the work during construction.

The CONSTRUCTION MANAGER shall comply with all regulations of authorities having jurisdiction and safety standards for cleaning. The CONSTRUCTION MANAGER shall not burn waste materials. The CONSTRUCTION MANAGER will not discharge volatile, harmful or dangerous materials into drainage systems. The CONSTRUCTION MANAGER will remove all waste materials from the site and dispose of in a lawful manner. Materials of value remaining after completion of associated work will become the owner's property. The CONSTRUCTION MANAGER will arrange for the disposition of these materials as directed by the CITY.

The CONSTRUCTION MANAGER shall rake the grounds that are neither paved nor planted to a smooth, even textured surface.

46. TREES

It shall be the responsibility of the CONSTRUCTION MANAGER to protect all trees within the limits of the work and as designated by the Project Representative.

47. GUARANTY

CONSTRUCTION MANAGER warrants and guarantees to CITY that all Work will be in accordance with the Contract Documents and will not be defective. Prompt notice of all defects shall be given to CONSTRUCTION MANAGER. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in the paragraph in this section labeled 'Inspections, Correction, Removal Of Defective Work'.

All equipment, materials and installation and workmanship furnished by the CONSTRUCTION MANAGER under the terms of the Contract, shall be guaranteed by the CONSTRUCTION MANAGER against defective workmanship, mechanical and physical defects, leakage, breakage and other damages and failure, under normal operation for a period of ONE (1) year or as otherwise specified in the Technical Specifications and after the date of acceptance thereof by the CITY, and

each item of equipment or materials and installation proving to be defective within the specified period of guaranty shall be replaced, without cost to the CITY, by the CONSTRUCTION MANAGER or by the Surety. The period of guaranty of such replacement shall be from and after the date of final acceptance of the Project by the CITY, provided however, that where any item or equipment or material comes with a manufacturer's warranty of ONE (1) year or longer, that warranty shall take precedence over the warranty of CONSTRUCTION MANAGER hereunder.

48. INDEMNITY

The CONSTRUCTION MANAGER agrees to make payment of all proper charges for labor required in the aforementioned work and defend, indemnify, and save harmless the CITY and Engineer or any of their officers, agents, or servants and each and every one of them against and from all claims, suits, and costs of every kind and description, including attorney's fees, and from all damages to which the CITY and Engineer or any of their officers, agents, or servants may be put by reason of injury to the persons or property of others resulting from the performance of CONSTRUCTION MANAGER's duties under the Contract, or through the negligence of the CONSTRUCTION MANAGER in the performance of its duties under this Contract, or through any act or omission on the part of the CONSTRUCTION MANAGER, his agents, employees, or servants or subcontractors.

Provided, however, if this Contract is deemed, by a court of competent jurisdiction, to be a construction contract for the purposes of Section 725.06, Florida Statutes, any obligation of the CONSTRUCTION MANAGER to defend, indemnify or hold harmless an CITY and Engineer shall be limited to an obligation to indemnify and hold harmless the CITY and Engineer, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSTRUCTION MANAGER and persons employed or utilized by the CONSTRUCTION MANAGER in the performance of this Contract.

49. ASSIGNMENT

Neither party to the contract shall assign the contract or sublet it as a whole without the written consent of the other, nor shall the CONSTRUCTION MANAGER assign any moneys due, or to become due to him hereunder, without the previous written consent of the Project Representative.

50. RIGHTS OF VARIOUS INTERESTS

Wherever work being done by the CITY's forces, or by the other CONSTRUCTION MANAGERS, is contiguous to work covered by this contract, the respective rights of the various interests involved will be established by the Project Representative, to secure the completion of the various portions of the work in general harmony.

51. SEPARATE CONTRACTS

The CITY reserves the right to let other contracts in connection with this work. The CONSTRUCTION MANAGER shall afford other CONSTRUCTION MANAGERS reasonable

opportunity for the introduction and storage of their materials and the execution of their work, and shall properly conduct and coordinate his work with theirs.

If any part of the CONSTRUCTION MANAGER's work depends, for proper execution or results upon the work of any other CONSTRUCTION MANAGER, the CONSTRUCTION MANAGER shall inspect and promptly report to the Project Representative any defects in such work that render it unsuitable for such proper execution and results. His failure to so inspect and report shall constitute an acceptance of the other CONSTRUCTION MANAGER's work as fit and proper for the reception of his work, except as to defects which may develop in the other CONSTRUCTION MANAGER's work after the execution of the work.

To insure the proper execution of his subsequent work, the CONSTRUCTION MANAGER shall measure work already in place and shall at once report to the Project Representative any discrepancy between the executed work and the drawings.

52. LANDS FOR WORK

The CITY will provide the lands upon which the work under this contract is to be done, except that the CONSTRUCTION MANAGER shall provide land required for the erection of temporary construction facilities and storage of his material, together with right of access to same.

53. ACCESS TO RECORDS

The CITY, the Florida Department of State, or any of their duly authorized representatives shall have access to any books, documents, papers or any other records prepared by the CONSTRUCTION MANAGER that are directly pertinent to the work produced under this Agreement for making audit, examination, excerpts and transcription. Such records will be maintained for five (5) years after the completion of the work and until claims or audit findings have been resolved which were initiated prior to the expiration of the five (5) year period.

54. EXECUTION, CORRELATION AND INTENT OF DOCUMENTS

The Agreement shall be signed in quadruplicate by the CITY and the CONSTRUCTION MANAGER. The Contract Documents comprise the entire agreement between CITY and CONSTRUCTION MANAGER concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by

implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of CITY, CONSTRUCTION MANAGER or Engineer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Engineer, or any of Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of these Supplemental Conditions. Clarifications and interpretations of the Contract Documents shall be issued by Engineer.

If, during the performance of the Work, CONSTRUCTION MANAGER finds a conflict, error or discrepancy in the Contract Documents, CONSTRUCTION MANAGER shall so report to Engineer in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from Engineer; however, CONSTRUCTION MANAGER shall not be liable to CITY or Engineer for failure to report any conflict, error or discrepancy in the Contract Documents unless CONSTRUCTION MANAGER had actual knowledge thereof or should reasonably have known thereof.

55. CONSTRUCTION MANAGER'S UNDERSTANDING

CONSTRUCTION MANAGER has visited the site, has called for utility locates and has familiarized itself with the local conditions under which the work is to be performed, both underground and above ground and both on and off premises and has correlated these observations with the requirements of the proposed contract documents; all as considered necessary or pertinent to the work, and any failure to thus make all such prior investigations and studies shall in no way act as a waiver of any of the terms of the contract. No verbal agreement or conversation with any officer, agent or employee of the CITY, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained

56. FAMILIARITY WITH LAWS

The CONSTRUCTION MANAGER is required to be familiar with all Federal, State and Local laws, ordinances, rules and regulations that in any manner affect the work. Ignorance on the part of the CONSTRUCTION MANAGER will in no way relieve him from responsibility.

57. SALES TAX

The CONSTRUCTION MANAGER is required to pay Florida sales and use taxes on all materials purchased for this project unless otherwise specified in the document. All Florida sales and use taxes will be included in the submitted bid price(s).

58. CLARIFICATIONS AND INTERPRETATIONS OF CONTRACT DOCUMENTS

It is the duty of the CONSTRUCTION MANAGER to notify the Engineer, in writing, in the event of any doubt or question as to the true meaning of any provision in the Contract Documents. The Engineer's decision thereon shall be final. Annotated dimensions on drawings shall govern and work not dimensioned shall be as clarified by the Engineer. Work not particularly shown or specified shall be the same as similar parts that are shown or specified. Materials or work described in words which have a well-known technical or trade meaning shall be deemed to refer to such recognized standard.

Engineer will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as Engineer may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONSTRUCTION MANAGER believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time then CONSTRUCTION MANAGER shall notify CITY in accordance with the Agreement.

Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work there under. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims in respect of changes in the Contract Price or Contract Time will be referred initially to Engineer in writing with a request for a formal decision in accordance with this paragraph, which Engineer will render writing within a reasonable time. Written notice of each such claim, dispute and other matters will be delivered by the claimant to Engineer and the other party to the Agreement promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to Engineer and the other party within sixty (60) continuous calendar days after such occurrence unless Engineer allows an additional period of time to ascertain more accurate data in support of the claim.

When functioning as interpreter and judge under this Article, Engineer will not show partiality to CITY or CONSTRUCTION MANAGER and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by Engineer pursuant this Article with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as permitted by the Agreement.) will be a condition precedent to any exercise by CITY or CONSTRUCTION MANAGER of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

59. LIMITATIONS ON ENGINEER'S RESPONSIBILITIES

Neither Engineer's authority to act nor any decision made by Engineer in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of Engineer to CONSTRUCTION MANAGER, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of Engineer as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to Engineer any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of this Article.

Engineer will not be responsible for CONSTRUCTION MANAGER's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and Engineer will not be responsible for CONSTRUCTION MANAGER's failure to perform or furnish the Work in accordance with the Contract Documents.

Engineer will not be responsible for the acts or omissions of CONSTRUCTION MANAGER or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

60. SAFETY AND PRECAUTION

CONSTRUCTION MANAGER shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONSTRUCTION MANAGER shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all employees on the Work and other persons and organizations who may be affected thereby;
- b. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and iii. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONSTRUCTION MANAGER shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONSTRUCTION MANAGER shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph caused, directly or in this Article directly, in whole or in part, by CONSTRUCTION MANAGER, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONSTRUCTION MANAGER (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONSTRUCTION MANAGER).

CONSTRUCTION MANAGER's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to CITY and CONSTRUCTION MANAGER that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

CONSTRUCTION MANAGER shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONSTRUCTION MANAGER's superintendent unless otherwise designated in writing by CONSTRUCTION MANAGER to CITY.

In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONSTRUCTION MANAGER, without special instruction or authorization from Engineer or CITY, is obligated to act to prevent threatened damage, injury or loss. CONSTRUCTION MANAGER shall give

Engineer prompt written notice that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If Engineer determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Directive Change or Change Order will be issued to document the consequences of the changes or variations.

61. RECORD DOCUMENTS

CONSTRUCTION MANAGER shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Written Amendments, reviewed Shop Drawings, Change Orders, Work Directive Changes, Field Orders and written interpretations and clarifications in good order and annotated to show all changes made during construction. These record documents together with all reviewed samples and a counterpart of all reviewed Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents or as-builts, samples and Shop Drawings will be delivered to Engineer for CITY. Upon delivery of such documents to Engineer, the CONSTRUCTION MANAGER shall provide a written certification, signed and dated, that all documents accurately and completely reflect all deviations from or changes in the original Contract Documents made during construction of the project.

Record documents shall be up-to-date and available for review by the resident project representative prior to each application for progress payment. Payment will not be made for construction of items not shown on the record documents.

These requirements also supplement those of Item 66. Not less than two percent (2%) of the contract price shall be retained until correct record drawings, specifications, addenda, modifications and shop drawings are delivered to and reviewed by the Engineer.

62. PHYSICAL CONDITIONS-UNDERGROUND FACILITIES

Shown or Indicated: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site are based on information and

data furnished to CITY or Engineer by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

- a. CITY and Engineer shall not be responsible for the accuracy or completeness of any such information or data; and
- b. CONSTRUCTION MANAGER shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

The word facility as used in this subsection titled "Utilities" includes any pipe conveying gases or liquids and appurtenances attached thereto; cables, conduits, wires, ducts and appurtenances; poles and appurtenances; any of which may be buried below grade or installed at or above grade level. A facility excludes irrigation pipes, service connections and traffic signal wiring. A service connection is a pipe (excluding irrigation pipes), cable, wire, duct or conduit that is intended to connect a facility with a user. The word Utility as used in this subsection titled "Utilities" refers to the entity having legal owner-ship of the facility, service connection, irrigation pipe, or traffic signal wiring.

The Engineer has endeavored to determine the existence of underground facilities at the site of the work from the records of the utilities with known facilities in the vicinity of the work. The position of these facilities as derived from such records is shown on the plans. Service connections, irrigation pipes, and traffic signal wiring may not be shown on the plans. The CONSTRUCTION MANAGER shall make his own investigations, including exploratory excavations and contact with Utilities, to determine the exact locations and type of existing facilities, service connections, irrigation pipes, and traffic signal wiring prior to commencing work in the area and shall be responsible for any damage thereto.

Damage, injury, or loss resulting in whole or in part from the CONSTRUCTION MANAGER's failure to locate and preserve a facility, service connection, irrigation pipe, or traffic signal wiring shall under no circumstances be deemed attributable to the fault of the Drawings or Specifications or to the acts or omissions of the CITY or Engineer or anyone employed by either of them or anyone for whose acts either of them may be liable.

With respect to underground facilities, no claim for a change in the contract price may be allowed unless the CONSTRUCTION MANAGER discovers an underground facility which is not indicated or referred to in the Contract Documents or which is in a position differing materially and significantly from that indicated or referred to in the Contract Documents. If such discovery is made, the CONSTRUCTION MANAGER shall promptly notify in writing the CITY, Engineer and the Utility. The CITY may make changes in the alignment and grade of the work.

At no additional cost to the CITY, the CONSTRUCTION MANAGER shall replace, remove, relocate, protect, or temporarily maintain a facility which is not in a position differing materially and significantly from that indicated or referred to in the Contract Documents. At no additional cost to the CITY, the CONSTRUCTION MANAGER shall adjust the top elevation of all valve

boxes and manholes to match the finish grade or pavement surface and shall replace, remove, relocate, protect, or temporarily maintain all service connections, irrigation pipes, and traffic signal wiring. The work on the facility, service connection, irrigation pipe or traffic signal wiring shall be done in a manner satisfactory to the Utility, it being understood that the Utility has the option of doing such work with his own forces, or permitting the work to be done by the CONSTRUCTION MANAGER.

63. PHYSICAL CONDITIONS

- a. Exploration and Reports: Reference is made in the Special Conditions to those reports of exploration and tests of subsurface conditions at the site that have been utilized by Engineer in preparation of the Contract Documents. Such reports are not guaranteed as to accuracy or completeness and are not part of the Contract Documents.
- b. Unforeseen Conditions: CONSTRUCTION MANAGER shall promptly notify CITY and Engineer in writing of any subsurface or latent physical conditions at the site or in an existing structure differing materially from those indicated or referred to in the Contract Documents. Engineer will promptly review those conditions and advise CITY in writing if further investigation or tests are necessary.

Promptly thereafter, CITY shall obtain the necessary additional investigations and tests and furnish copies to Engineer and CONSTRUCTION MANAGER. If Engineer finds that the results of such investigations or tests indicate that there are subsurface or latent physical conditions which differ materially from those intended in the Contract Documents, and which could not reasonably have been anticipated by CONSTRUCTION MANAGER, a Change Order shall be issued incorporating the necessary revisions.

64. REVIEW OF APPLICATION FOR PROGRESS PAYMENT

Engineer will, within ten (10) days after receipt of each Application for Payment, to either indicate in writing a recommendation of payment and present the Application to CITY, or return the Application to CONSTRUCTION MANAGER indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, CONSTRUCTION MANAGER may make the necessary corrections and resubmit the Application.

Ten (10) days after presentation of the Application for Payment with Engineer's recommendation, the amount recommended will become due and when due will be paid by CITY to CONSTRUCTION MANAGER.

Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to CITY, based on Engineer's on-site observations of the Work in progress as an experienced and qualified design professional and on Engineer's review of the Application for Payment and the accompanying data and schedules that the Work has progressed to the point indicated; that, to the best of Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and

classifications for Unit Price Work, and to any other qualifications stated in the recommendation); and that CONSTRUCTION MANAGER is entitled to payment of the amount recommended. However, by recommending any such payment Engineer will not thereby be deemed to have represented that exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents or that there may not be other matters or issues between the parties that might entitle CONSTRUCTION MANAGER to be paid additionally by CITY or CITY to withhold payment to CONSTRUCTION MANAGER.

Engineer's recommendation of final payment will constitute an additional representation by Engineer to CITY that the conditions precedent to CONSTRUCTION MANAGER's being entitled to final payment have been fulfilled.

Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make such representations to CITY. Engineer may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or test, nullify any such payment previously recommended; to such extent as may be necessary in Engineer's opinion to protect CITY from loss.

CITY may refuse to make payment of the full amount recommended by Engineer because claims have been made against CITY on account of CONSTRUCTION MANAGER's performance or furnishing of the Work or Liens have been filed in connection with the Work or there are other items entitling CITY to a set-off against the amount recommended, but CITY must give CONSTRUCTION MANAGER immediate written notice (with a copy to Engineer) stating the reasons for such action.

65. SUBSTANTIAL COMPLETION

When CONSTRUCTION MANAGER considers a portion of or the entire Work ready for its intended use, CONSTRUCTION MANAGER shall notify CITY and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by CONSTRUCTION MANAGER as incomplete) and request that Engineer issue a certificate of Substantial Completion. Within a reasonable time thereafter, CITY, CONSTRUCTION MANAGER and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify CONSTRUCTION MANAGER in writing giving the reasons therefore. If Engineer considers the Work substantially complete, Engineer will prepare and deliver to CITY a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. CITY shall have seven (7) days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will within fourteen (14) days after submission of the tentative certificate to CITY notify CONSTRUCTION MANAGER in writing, stating the reasons therefore. If, after consideration of CITY's objections, Engineer considers the Work substantially complete, Engineer will within said fourteen (14) days execute and deliver to CITY and CONSTRUCTION MANAGER a definitive certificate of

Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from CITY. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to CITY and CONSTRUCTION MANAGER a written recommendation as to division of responsibilities pending final payment between CITY and CONSTRUCTION MANAGER with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties. Unless CITY and CONSTRUCTION MANAGER agree otherwise in writing and so inform Engineer prior to Engineer's issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendations will be binding on CITY and CONSTRUCTION MANAGER until final payment.

CITY shall have the right to exclude CONSTRUCTION MANAGER from the Work after the date of Substantial Completion, but CITY shall allow CONSTRUCTION MANAGER reasonable access to complete or correct items on the tentative list.

66. INSPECTIONS, CORRECTION, REMOVAL OF DEFECTIVE WORK

Engineer and Engineer's representatives, other representatives of CITY, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONSTRUCTION MANAGER shall provide proper and safe conditions for such access.

CONSTRUCTION MANAGER shall give Engineer timely notice of readiness of the Work for all required inspections or tests.

If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) to specifically be inspected, tested or approved, CONSTRUCTION MANAGER shall assume full responsibility therefore, pay all costs in connection therewith and furnish Engineer the required certificates of inspection, testing or approval. CONSTRUCTION MANAGER shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with CITY's or Engineer's acceptance of a Supplier of materials or equipment proposed to be incorporated in the Work, or of materials or equipment submitted for approval prior to CONSTRUCTION MANAGER's purchase thereof for incorporation in the Work. The cost of all inspections, tests and approvals in addition to the above which are required by the Contract Documents shall be paid by CITY (unless otherwise specified).

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to CITY and CONSTRUCTION MANAGER (or by Engineer if so specified).

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of Engineer, it must, if requested by Engineer, be uncovered for observation. Such uncovering shall be at CONSTRUCTION MANAGER's expense unless CONSTRUCTION MANAGER has given Engineer timely notice of CONSTRUCTION MANAGER's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

Neither observations by Engineer nor inspections, tests or approvals by others shall relieve CONSTRUCTION MANAGER from CONSTRUCTION MANAGER's obligations to perform the Work in accordance with the Contract Documents.

If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at CONSTRUCTION MANAGER's expense.

If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, CONSTRUCTION MANAGER, at Engineer's request, shall uncover, expose or otherwise make available for observation, inspection or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONSTRUCTION MANAGER shall bear all direct, indirect and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, (including but not limited to fees and charges of engineers, architects, attorneys and other professionals), and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Special Conditions. If, however, such Work is not found to be defective, CONSTRUCTION MANAGER shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONSTRUCTION MANAGER may make a claim therefore as provided in Special Conditions.

If the Work is defective, or CONSTRUCTION MANAGER fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, CITY may order CONSTRUCTION MANAGER to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of CITY to stop the Work shall not give rise to any duty on the part of CITY to exercise this right for the benefit of CONSTRUCTION MANAGER or any other party.

If required by Engineer, CONSTRUCTION MANAGER shall promptly either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by Engineer, remove it from the site and replace it with non-defective Work. CONSTRUCTION MANAGER shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

67. ACCEPTANCE OF DEFECTIVE WORK; CORRECTION OF DEFECTIVE WORK BY THE CITY

If, instead of requiring correction or removal and replacement of defective Work, CITY (and, prior to Engineer's recommendation of final payment) prefers to accept it, CITY may do so. CONSTRUCTION MANAGER shall bear all direct, indirect and consequential costs attributable to CITY's evaluation of and determination to accept such defective Work (such costs to be

approved by Engineer as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals). If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONSTRUCTION MANAGER to CITY.

If CONSTRUCTION MANAGER fails within a reasonable time after written notice of Engineer to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by Engineer, or if CONSTRUCTION MANAGER fails to perform the Work in accordance with the Contract Documents, or if CONSTRUCTION MANAGER fails to comply with any other provision of the Contract Documents, CITY may, after seven (7) days written notice to CONSTRUCTION MANAGER, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph CITY shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, CITY may exclude CONSTRUCTION MANAGER from all or part of the site, take possession of all or part of the Work, and suspend CONSTRUCTION MANAGER's services related thereto, take possession of CONSTRUCTION MANAGER's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which CITY has paid CONSTRUCTION MANAGER but which are stored elsewhere. CONSTRUCTION MANAGER shall allow CITY, CITY's representatives, agents and employees such access to the site as may be necessary to enable CITY to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of CITY in exercising such rights and remedies will be charged against CONSTRUCTION MANAGER in an amount approved as to reasonableness by Engineer, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and CITY shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, CITY may make a claim. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court and arbitration costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONSTRUCTION MANAGER's defective Work. CONSTRUCTION MANAGER shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by CITY of CITY's rights and remedies hereunder.

68. ARBITRATION

Before bringing any action in any court of competent jurisdiction pertaining to any claim, dispute or other matter in question arising out of or relating to the Contract Documents or the breach thereof, in an amount less than \$25,000, except for claims which have been waived by the making and acceptance of final payment, the claimant/objector (Party A) shall first offer to arbitrate the question(s) with the other party to the contract (Party B) by notifying him in writing and setting forth in such notice the question(s) to be arbitrated.

Party B can select to arbitrate or not. If Party B agrees to arbitrate he shall so advise Party A in writing within ten (10) days after receipt of Party A's notice. Notice by Party B that he does not wish to arbitrate or failure of Party B to notify Party A within the ten-day period will give Party A the right to institute a court action.

If Party B agrees to arbitrate, the arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association except as modified herein. In such event, the agreement to arbitrate shall be specifically enforceable under the provisions of the Florida Arbitration Code, S682, Fla. Stat., as it may be from time to time amended. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

If Party B agrees to arbitrate, then Party A shall file its notice of demand for arbitration in writing with Party B and with the American Arbitration Association, and a copy shall be filed with the Engineer. Notice of demand for arbitration shall be served on the parties referred to herein no later than thirty (30) days from the date Party B agrees to arbitrate the issues in question.

Failure to serve the notice of demand for arbitration shall constitute a waiver and abandonment of the claims for which arbitration is sought. Notice of demand for arbitration shall in no event be made on any claim, dispute or other matter in questions which would be barred by the applicable statute of limitations.

If the dollar amount of the claim exceeds \$25,000, arbitration may only be utilized if both Party A and party B agree to arbitrate.

The CONSTRUCTION MANAGER shall carry on the Work and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

The Florida Rules of Civil Procedure pertaining to discovery shall apply to both parties during arbitration, and, at the CITY's sole option, any and all arbitration arising out of or relating to any of the Contract Documents or any breach thereof shall include by consolidation, joinder, or joint filing any additional person or entity not a party to this Agreement to the extent necessary for the final resolution of the matter in controversy.

At least one of the members of the arbitration panel must be an attorney licensed to practice law in the State of Florida.

The surety shall be bound by the arbitration award to the same extent as the CONSTRUCTION MANAGER is bound.

The arbitration panel shall submit a written opinion with findings of fact and conclusions of law stating the basis for the decision made, and including an award of arbitration that may be confirmed by a court of competent jurisdiction.

Unless CITY agrees to the contrary, the location of any and all arbitration proceedings shall be in Lake County, Florida.

Federal Contracting Provisions and Requirements

In the event the Contract is paid in whole or in part from any federal government agency or source, the following specific terms, regulations, and requirements governing the disbursement of these funds shall be specified in the contract. To the extent of any conflict, the following terms, regulations, and requirements shall take precedence.

Contractor is required to fully comply with all requirements outlined in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the FEMA Public Assistance Program and Policy Guide (PAPPG).

8.1 Equal Employment Opportunity

- a. Standard. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. §60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 112246 Relating to Equal Employment Opportunity*, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶.
- b. Key Definitions.
 1. Federally Assisted Construction Contract. The regulation at 41 C.F.R. §60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract loan, insurance, or guarantee under which the applicant itself participates in the construction work.
 2. Construction Work. The regulation at 41 C.F.R. §60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.
 3. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
 4. The regulation at 41 C.F.R. Part 60-1.4(b) requires the insertion of the following contract clause:

“During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising;

- layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting for the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
 - (3) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
 - (4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
 - (5) The Contractor will furnish all information and reports required by Executive 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
 - (6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
 - (7) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States."

8.2 Contract Work Hours and Safety Standards Act

- a. Applicability. This requirement applies to all FEMA grant and cooperative agreement programs.
- b. Where applicable (see 40 U.S.C. §3701), all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. Part 1. See 2 C.F.R. Part 200, Appendix II, ¶.
- c. Under 40 U.S.C. §3702, each contractor must be required to compute the wages of every

mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

- d. The requirements of 40 U.S.C. §3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- e. The regulation at 29 C.F.R. §5.5(b) provides the required contract clause concerning compliance with the Contract Work Hours and Safety Standards Act:

“Compliance with the Contract Work Hours and Safety Standards Act.

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The Federal Emergency Management Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through 94) of this section.

8.3 Rights to Inventions Made Under a Contract or Agreement

For any federally assisted contract, awarded to a small business firm or nonprofit organization as defined in 37 CFR 401.2 for the performance of experimental, developmental, or research work, the contractor, subcontractor, subrecipient agrees to all of the terms in 37 CFR 401.14(a) and regarding Patent Rights and The Allocation of Principal Rights.

8.4 Clean Air Act and the Federal Water Pollution Control Act

Contracts of amounts in excess of \$150,000 must contain a provision that requires the contractor to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Violations must be reported to the Federal Emergency Management Agency and the Regional Office of the Environmental Protection Agency. See 2 C.F.R. Part 200, Appendix II, ¶¶G.

- a. Clean Air Act.
 - 1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 - 2. The Contractor agrees to report each violation to the Town of Longboat Key and understands and agrees that the Town of Longboat Key will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental protection Agency Regional Office.
 - 3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.
- b. Federal Water Pollution Control Act.
 - 1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
 - 2. The Contractor agrees to report each violation to the Town of Longboat Key and understands and agrees that the Town of Longboat Key will, in turn, report each violation as required to assure notification to the State of Florida, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 - 3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal Emergency Management Agency.

8.5 Procurement of Recovered Materials

- a. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contracts must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act at 42 U.S.C. § 6962). See 2 C.F.R. Part 200, Appendix II, ¶¶J; 2 C.F.R. § 200.322; *PDAT Supplement*, Chapter V, ¶17.
- b. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Act at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the Environmental Protection Agency guidelines.

1. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired-
 - a) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - b) Meeting contract performance requirements; or
 - c) At a reasonable price.
2. Information about this requirement, along with the list of EPA-designate items, is available at the Environmental Protection Agency's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

8.6 Small and Minority Business Enterprise (MBE), Women Business Enterprises (WBE), and Labor Surplus Area Firms

- a. Among the many federal funding requirements, 2 CFR §200.321 (or 45 C.F.R. §75.330 for Health and Human Services funds) mandates that the Prime Contractor partakes in five "affirmative steps" designed to ensure that small and minority- owned, women-owned business enterprises, and labor surplus area firms have been, and for the duration of the project continue to be, afforded subcontracting opportunities. These affirmative steps are:
 1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 2. Assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
 3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
 4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
 5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration (SBA) and the Minority Business Development Agency of the Department of Commerce.
- b. In order to adequately document that the proposer has fulfilled this requirement, the proposer shall complete the provided "Affidavit of Compliance with 2 CFR §200.321 Requirements". The affidavit shall be notarized for this bid to be responsive.
- c. The proposer shall also attach to the affidavit documentation evidencing that affirmative steps 1 – 3 above were taken in the preparation and submission of this bid. Such evidence shall include:
 1. Copies of announcements/postings in newspapers, emails, web-postings, or other media for specific contracting/subcontracting opportunities that target small and minority businesses and women's business enterprises;
 2. Copies of announcements/postings of contracting/subcontracting opportunities in trade publications, minority, or women's media that target small and minority businesses and women's business enterprises.
 3. Documentation of sources used to identify potential small and minority businesses and

women's business enterprises. A suggestion would be searching through the SBA's Dynamic Small Business directory at the following internet address: <http://dsbs.sba.gov> to search for registered minority and small businesses.

8.7 Default and Remedy

If the Contractor materially defaults in its obligations under this contract and fails to cure the same within fifteen (15) days after the date the Contractor receives written notice of the default from the Town, then the Town shall have the right to:

- a. Immediately terminate this contract by delivering written notice to the Contractor, and
- b. Pursue any and all remedies available in law, equity, and under this contract.

Upon such termination, the Town shall pay the contractor the full amount due and owing for all work performed through the date of contract termination.

8.8 Termination for Cause

This contract may be terminated by the Town, in whole or in part, at any time, due to the failure of the Contractor to fulfill its obligations under this contract, subject to the cure period provided in (Default and Remedy), by delivering written notice to the Contractor. Upon receipt of such notice, the Contractor shall:

- a. Immediately discontinue all work and deliver to the Town all data, reports, summaries, and any and all such other information and materials of whatever type or nature as may have been accumulated by the contractor in performing the work under this contract, regardless of state of completion.
- b. Unless in dispute, claim, or other remedy, the contractor shall be paid for work completed to the date of termination.

8.9 Termination for Convenience

The Town, by written notice, may terminate this contract, in whole or in part, when it is in the Town's best interest. If this contract is terminated, the Town shall be liable only for goods or services delivered and accepted. The Town Notice of Termination shall provide the Contractor thirty (30) days prior notice before it becomes effective. **A termination for convenience may apply to individual delivery orders, purchase orders or to the contract in its entirety.**

8.10 Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

8.11 No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter

resulting from the contract.

8.12 Suspension and Debarment

- a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor or its principals (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935).
- b. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- c. This certification is a material representation of fact relied upon by the Town. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida, the Federal Government may pursue available remedies, including, but not limited to, suspension and/or debarment.
- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

By submission of a proposal, Proposer affirms that it is in compliance with the requirements of 2 C.F.R. Part 180 and that neither it, its principals, nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Respondent shall submit the Federal Debarment Certification Form demonstrating compliance.

8.13 Florida Convicted/Suspended/Discriminatory Complaints

By submission of a proposal, Proposer affirms that it is not currently listed in the Florida Department of Management Services Convicted/Suspended/Discriminatory Complaint Vendor List.

8.14 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Federal Contracting Provision

Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u).

An awarded Contract/Agreement is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1801 u) as amended. The Section 3 clause provides:

Every applicant, recipient, contracting party, contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following clause (referred to as a Section 3 clause):

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to the contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- C. The Contractor agrees send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the said labor organization or workers' representative of contractor's commitments under this Section 3 clause and will post copies of the notice in conspicuous places available to at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the sections 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part

135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

February 8, 2021

Mr. Cliff Kelsey
City of Leesburg
501 West Meadow Street,
Leesburg, Florida 34749

RE: **Leesburg Teen Center**
City of Leesburg, Florida

Cliff,

In accordance with our Pre-Construction Services Agreement dated 10 June 2020, Evergreen CM is pleased to present our GMP pricing for the Leesburg Teen Center project based upon the permit set of drawings digitally signed on December 10, 2020 and technical specifications dated December 4, 2020 as prepared by CHP, Inc. Included herein are our Clarifications and Qualifications, Pricing Summary Sheet, General Conditions Summary, Subcontractor Bid Tabulations, Preliminary Schedule, and Subcontractor Listing of firms that were solicited. Copies of the subcontractor quotations can be provided upon request.

Guaranteed Maximum Price

\$2,406,500

This price is based on completing the building addition in twenty-eight (28) weeks per the enclosed schedule. We have assumed a construction start in April 2021 and our pricing is good for ninety-(90) days.

Based upon the subcontractor pricing received, we anticipate achieving at least 50% of the work going to Lake County firms.

If you should have any questions regarding this proposal, please do not hesitate to contact the undersigned.

Sincerely,

A blue ink signature of Mark Starcher, consisting of a stylized 'M' and 'S'.

Mark Starcher
President

cc: Richard Charleson – Evergreen

Attachment 'C'

	B	C	D	E	F	G	J	K	N	O	S
1	BID BREAK OUT										
2	Leesburg Teen Center										
3	Architect:	CPH, Inc.	Job Location:	Leesburg, Florida	Tax Rate:				\$ 2,406,500	\$ -	
4	Estimate Number	20-31							Bid Tab Row	64	
5	Bid Tab		Description	Major Subcontractor From Tab	Contact	Phone	Data		Base + Options	Item #1	
6		Assign					\$/GSF	%	Project Total	Base Bid	
7	1		General Conditions				17.85	7.4%	\$ 178,332	\$ 178,332	Payment Type
9			General Requirements						\$ 58,900	\$ 58,900	LS
10	2		Materials Testing	Deatrick Engineering	Kara R	(407) 851-9776	0.54	0.2%	\$ 5,396	\$ 5,396	Reimb
11	3		Survey	Evergreen	Charleson	(352) 227-1460	0.39	0.2%	\$ 3,920	\$ 3,920	Reimb
12	4		Demolition	Evergreen	Charleson	(352) 227-1460	0.57	0.2%	\$ 5,700	\$ 5,700	Reimb
13	5		Concrete	Alex Cor Inc	Jack Adams	(352) 326-9566	12.77	5.3%	\$ 127,545	\$ 127,545	Reimb
15	6		Masonry	Alex Cor Inc	Jack Adams	(352) 326-9566	10.03	4.2%	\$ 100,175	\$ 100,175	Reimb
16	7		Metals	Dixie Southern Industrial	MC Curry	(863) 984-1900	14.22	5.9%	\$ 142,075	\$ 142,075	Reimb
17	8		Rough Carpentry	Evergreen	Charleson	(352) 227-1460	0.35	0.1%	\$ 3,480	\$ 3,480	Reimb
18	9		Finish Carpentry	Rainbow Cabinets	Estimator	(352) 236-4044	6.22	2.6%	\$ 62,150	\$ 62,150	Reimb
20	10		Stucco	Midstate Caulking	Amber	(407) 350-5968	5.24	2.2%	\$ 52,400	\$ 52,400	Reimb
21	11		Roofing	Eustis Roofing	Rod	(352) 343-4240	9.80	4.1%	\$ 97,900	\$ 97,900	Reimb
22	12		Caulking & Waterproofing	General Caulking	Eric Miller	(407) 365-4923	1.19	0.5%	\$ 11,920	\$ 11,920	Reimb
23	13		Doors, Frames & Hardware	Mills & Nebraska	Leo Cheung	(407) 298-5600	3.26	1.4%	\$ 32,607	\$ 32,607	Reimb
25	14		Glass & Glazing	Lake Glass & Mirror	Paul R	(352) 787-4700	9.24	3.8%	\$ 92,348	\$ 92,348	Reimb
27	15		Drywall	Center State Framing & GWB	Steve S	(863) 255-4108	12.49	5.2%	\$ 124,800	\$ 124,800	Reimb
28	16		Acoustical Ceilings	L&D Ceilings	Sean Alling	(352) 377-4112	6.49	2.7%	\$ 64,887	\$ 64,887	Reimb
29	17		Flooring	Great Lakes Carpet	Sean S	(407) 475-1144	6.81	2.8%	\$ 68,015	\$ 68,015	Reimb
30	18		Painting & Wallcoverings	Kelley Painting	Amanda K	(352) 267-7854	2.28	0.9%	\$ 22,800	\$ 22,800	Reimb
32	19		Specialties	Mardale Specialties	Michael C	(727) 772-8099	0.57	0.2%	\$ 5,727	\$ 5,727	Reimb
33	20		Toilet Room Accessories	Mardale Specialties	Michael C	(727) 772-8099	1.40	0.6%	\$ 13,998	\$ 13,998	Reimb
36	21		Signage	Signco Arch Signage	Therese	(386) 951-6399	1.20	0.5%	\$ 11,995	\$ 11,995	Reimb
38	22		Equipment	International Rest Distrib	Paul A	(407) 886-6691	1.31	0.5%	\$ 13,063	\$ 13,063	Reimb
39	23		Window Coverings	Raise & Shine Blinds	Estimator	(786) 999-2450	0.58	0.2%	\$ 5,834	\$ 5,834	Reimb
40	24		Metal Canopy Covers	Dittmer Arch Aluminum	David Q	(407) 699-1755	6.10	2.5%	\$ 60,900	\$ 60,900	Reimb
42	25		Fire Protection	Elite Fire Protection	Chris W	(352) 639-4119	2.15	0.9%	\$ 21,500	\$ 21,500	Reimb
43	26		Plumbing	Sherman Mechanical	Pat Comitz	(352) 547-5540	8.46	3.5%	\$ 84,550	\$ 84,550	Reimb
44	27		HVAC	Sherman Mechanical	Pat Comitz	(352) 547-5540	16.83	7.0%	\$ 168,146	\$ 168,146	Reimb
45	28		Electrical/Communications	Electrical Works	Estimator	(352) 460-0810	26.19	10.9%	\$ 261,650	\$ 261,650	Reimb
48	29		Earthwork	Paquette Company	Fay P	(352) 365-0006	20.10	8.3%	\$ 200,865	\$ 200,865	Reimb
49	30		Termite Treatment	Apex Pest Control	Linda H	(407) 924-8754	0.10	0.0%	\$ 950	\$ 950	Reimb
51	31		Site Amenities	Evergreen	Charleson	(352) 227-1460	0.21	0.1%	\$ 2,100	\$ 2,100	Reimb
52	32		Landscaping	The Yard Stop	Chris G	(352) 357-9964	1.77	0.7%	\$ 17,713	\$ 17,713	Reimb
53	33		Fencing & Gates	Evergreen	Charleson	(352) 227-1460	0.50	0.2%	\$ 5,000	\$ 5,000	Reimb
59	TOTALS						213.13	88%	\$ 2,129,340.08	\$ 2,129,340	
60							-	0.0%	\$ -	\$ -	
61	Subtotal:						213.13	88%	\$ 2,129,340	\$ 2,129,340	
62							-	0.0%	\$ -	\$ -	
63	GL						1.30%	2.77	\$ 27,681	\$ 27,681	LS
64	Builders Risk						0.12%	0.31	\$ 3,063	\$ 3,063	Reimb
65	Contingency						5.00%	10.81	\$ 108,004	\$ 108,004	
66	Contractor's Fee:						5.00%	11.35	\$ 113,404	\$ 113,404	LS
67											
68	Subtotal:						238.36	99.0%	\$ 2,381,493	\$ 2,381,493	
69	Bond						1.05%	2.50	\$ 25,007	\$ 25,007	Reimb
70	Total						240.87	100.0%	\$ 2,406,500	\$ 2,406,500	
71	Building Permit						0.0%	-	\$ -	\$ -	
72	Grand Total						240.87	100.0%	\$ 2,406,500	\$ 2,406,500	
73											
74	Total GSF = 9,991						COST / GSF		\$ 240.87		

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.1.

Meeting Date: March 8, 2021

From: Andi Purvis, (City Clerk)

Subject: Resolution of the City Commission of the City of Leesburg, Florida, accepting and approving a Warranty Deed from Speed Society, LLC, to the City of Leesburg, Florida, for property lying in the Official Plat of the City of Leesburg, Lake County, Florida; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the resolution accepting and approving the Warranty Deed from Speed Society, LLC, to the City of Leesburg.

Analysis:

The Warranty Deed dated October 30, 2020, and recorded February 12, 2021, Instrument #2021020180, in the Official Record Books of Lake County. Acceptance of the recorded deed requires City Commission approval.

Procurement Analysis:

N/A

Options:

1. Approve Resolution as presented; or
2. Other such alternative action as the Commission may deem appropriate.

Fiscal Impact:

None

Submission Date and Time: 3/3/2021 3:44:47 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA, ACCEPTING AND APPROVING A WARRANTY DEED FROM
SPEED SOCIETY, LLC, TO THE CITY OF LEESBURG, FLORIDA, FOR
PROPERTY LYING IN THE OFFICIAL PLAT OF THE CITY OF LEESBURG,
LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the City of Leesburg, Florida, does hereby accept from Speed Society, LLC, a Warranty Deed, dated October 30, 2020, and recorded on February 12, 2021, in Official Records Book 5642, Pages 1346 - 1347, Public Records of Lake County, Florida, conveying certain real property lying in the Official Plat of the City of Leesburg, Lake County, Florida, and more particularly described in said Warranty Deed, to the City of Leesburg.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

INSTRUMENT #2021020180
OR BK 5642 PG 1346 - 1347 (2 PGS)
DATE: 2/12/2021 10:28:13 AM
GARY J. COONEY, CLERK OF THE CIRCUIT COURT
AND COMPTROLLER, LAKE COUNTY, FLORIDA
RECORDING FEES \$18.50 DEED DOC \$0.70

Prepared by and return to:

Fred A. Morrison
McLin Burnsed P.A.
26736 US Highway 27
Leesburg, FL 34748
352-787-1241
File Number: CL4111

Parcel Identification No. 261924390005500401

[Space Above This Line For Recording Data]

Warranty Deed

(STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 30TH day of October, 2020 between Speed Society LLC, a Florida limited liability company whose post office address is 6361 Marlberry Drive, Orlando, FL 32819 of the County of Orange, State of Florida, grantor*, and The City of Leesburg, Florida, a Florida municipal corporation whose post office address is P.O. Box 490630, Leesburg, FL 34749-0630 of the County of Lake, State of Florida, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Lake County, Florida, to-wit:

The North 1/2 Lot 4, lying Southeasterly of the SCL Railroad right-of-way; in Block 55, of the OFFICIAL PLAT OF THE CITY OF LEESBURG, according to the map or plat thereof as recorded in Plat Book 2, Page 19, Public Records of Lake County, Florida.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Speed Society LLC, a Florida limited liability company

Keri McCarthy
Witness Name: Keri McCarthy

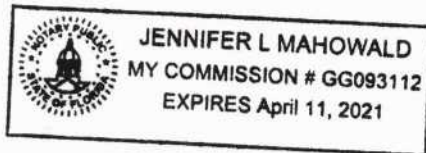
By: Craig C. Hudson
Craig C. Hudson, Manager

Branna Bayles
Witness Name: Branna Bayles

State of Florida
County of Lake

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 30th day of October, 2020 by Craig C. Hudson, Manager of Speed Society LLC, a Florida limited liability company, on behalf of the corporation. He/she ☐ is personally known to me or ☒ has produced a driver's license as identification.

[Notary Seal]



Jennifer L. Mahowald
Notary Public

Printed Name: Jennifer L. Mahowald

My Commission Expires: April 11, 2021

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.2.

Meeting Date: March 8, 2021

From: Al Minner, (City Manager)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Amendment to Amended and Restated Ground Lease between the City of Leesburg and the Venetian Gardens Site Holdings, LLC; and providing an effective date.

Staff Recommendation:

Approve Resolution granting a construction start until September 1, 2021 for Venetian Gardens Site Holdings, LLC.

Analysis:

Thad Boyd, the developer of the Ski Beach Restaurant, has requested an extension to his ground as he still anticipates a construction start for the proposed for early this summer, with a grand opening of Summer 2022.

Mr. Boyd points to (1) COVID, (2) Financing and, (3) a Partnership Issue that led to the delay. Mr. Boyd also stated that the Partnership Issue is now resolved, that permits are ready and design is complete; so getting restarted should be accomplished in the next few months.

Providing My Boyd with the lease extension is still the best option for the City, as Mr. Boyd is in the best position to get a facility opened the earliest. At this stage, should the City seek a new partnership these steps will need to be repeated – (1) Partnership RFP; (2) Lease Negotiations; (3) New Design; (4) restart permitting. These steps will take 18-24 months, putting a “re-start” of construction, sometime in 2023, with on opening in 2024. Hence, the best option, should the Commission still desire the concept, is offer the extension deal to Mr. Boyd.

Procurement Analysis:

N/A

Options:

1. Approve Resolution as presented; or
2. Other such alternative action as the Commission may deem appropriate.

Fiscal Impact:

None

Submission Date and Time:

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
AN AMENDMENT TO AMENDED AND RESTATED GROUND LEASE
BETWEEN THE CITY OF LEESBURG AND THE VENETIAN GARDENS SITE
HOLDINGS, LLC; AND PROVIDING AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an Amendment to Amended and Restated Ground Lease with Venetian Gardens Site Holdings, LLC (Roy T. Boyd, III), whose address is 1720 SE 16th Avenue, Building 200, Ocala, Florida 34470.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

**AMENDMENT TO AMENDED AND
RESTATED GROUND LEASE**

THIS AMENDMENT is entered into on the date shown below, between **THE CITY OF LEESBURG, FLORIDA**, as Landlord, and **VENETIAN GARDENS SITE HOLDINGS, LLC**, as Tenant,

WITNESSETH:

THAT the parties previously entered into an Amended and Restated Ground Lease (the “Lease”) which was effective as of July 24, 2018. Section 7.1 of the Lease required Tenant to commence construction of improvements on the leased site by a specified deadline. Due to delays from the COVID-19 pandemic and other factors beyond the control of the parties, it is now necessary to amend the Lease to specify a new deadline for commencement of construction, and the parties have entered into this Amendment for that purpose.

NOW THEREFORE, in consideration of the Lease, the mutual covenants and promises contained in this Amendment, the sum of \$10.00, and other good and valuable considerations, in hand paid and given by each party to the other, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree to amend the Lease as set forth below:

1. Section 7.1 of the Lease requires Tenant to commence construction of the Construction of the Restaurant within three hundred sixty-five (365) days of the Delivery Date and complete construction of the Restaurant and obtain a certificate of occupancy within two hundred seventy (270) days of commencement of construction. That deadline is hereby amended to require Tenant to commence construction of the Restaurant no later than September 1, 2021, and to complete construction of the Restaurant and obtain a certificate of occupancy for it within two hundred seventy (270) days of the date construction is commenced.

2. Except as specifically amended by this instrument, the Lease shall continue in full force and effect as initially executed between the parties.

3. This Amendment may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Amendment, when signed by a party, may be delivered by electronic mail or facsimile transmission with the same force and effect as if it were an executed and delivered original, manually-signed counterpart.

4. Nothing expressed or referred to in this Amendment is intended or will be construed to give any person or entity other than the actual, named parties hereto and their respective successors and assigns, any legal or equitable right, remedy or claim under or with respect to the Lease or this Amendment, or any provision hereof, it being the intention of the parties hereto that this Amendment and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Amendment and their respective successors and assigns, and that no third party beneficiaries are to be created either expressly or by implication.

5. The Effective Date of this Amendment shall be the date on which it receives final approval by the Leesburg City Commission, at a public meeting where a quorum is present, and this Amendment was duly placed on the agenda for consideration and disposition.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Amendment on the dates shown below.

THE CITY OF LEESBURG, FLORIDA

BY: _____
JOHN CHRISTIAN, Mayor

ATTEST: _____
ANDI PURVIS, City Clerk

DATE: March _____, 2021

APPROVED AS TO FORM AND CONTENT:

CITY ATTORNEY

VENETIAN GARDENS SITE
HOLDINGS, LLC

BY: _____
ROY T. BOYD, III, Manager

DATE: March _____, 2021

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 5.C.3.

Meeting Date: March 8, 2021

From: Cliff Kelsey, (Public Works Director)

Subject: Resolution of the City Commission of the City of Leesburg, Florida authorizing the Mayor and City Clerk to execute an Impact Fee Credit Agreement between the City of Leesburg and Bentley Ridge Holdings, LLC; and providing an effective date.

Staff Recommendation:

Staff recommends approval of an Impact Fee Credit Agreement between the City of Leesburg and Bentley Ridge Holdings, LLC.

Analysis:

Bentley Ridge Holdings, LLC is the second owner of a development on the corner of Newell Hill Road and Bentley Road. The original developer of the property did not construct an adequate lift station within the development. During a turnover inspection with the City on 09-11-2009 it was determined that the lift station was not up to City standards and was only 90% complete. The developer abandoned the development shortly thereafter and the construction contractor that installed the lift station repossessed the pumps and other various components. The abandoned lift station was purchased by the current owners of the property and it requires major work to be brought up to City standards and be placed in service.

Bentley Ridge Holdings, LLC, has a proposal from RCM Utilities to install new pumps, controls, fencing, concrete slab, driveway, and an emergency generator at the cost of \$190,250.00. The contractor will also complete the tie in of the new lift station to the force main and gravity mains in order to complete the system. Once the new lift station is complete and up to City standards, the existing City owned lift station will be demolished.

The new lift station will benefit the city by increasing the wastewater capacity of the area to accommodate current and future demand. Additionally, without the new lift station, the existing City owned lift station would need a \$450K-\$550K rebuild due to outdated equipment and inadequate capacity.

Procurement Analysis:

N/A

Options:

1. Approve Resolution as presented; or
2. Other such alternative action as the Commission may deem appropriate.

Fiscal Impact:

The total cost of the Infrastructure for which Developer is entitled to impact fee credits under this Agreement is anticipated to be \$190,250.00. The total impact fees due on the Development will be in the range of \$240,760.00 to \$289,912.00.

Submission Date and Time: 3/3/2021 3:48:33 PM

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COMMISSION OF THE CITY OF LEESBURG,
FLORIDA AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE
AN IMPACT FEE CREDIT AGREEMENT BETWEEN THE CITY OF
LEESBURG AND BENTLEY RIDGE HOLDINGS, LLC; AND PROVIDING AN
EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LEESBURG, FLORIDA:

THAT the Mayor and City Clerk are hereby authorized to execute an Impact Fee Credit Agreement with Bentley Ridge Holdings, LLC, whose address is 1227 Teagan Way, Leesburg, Florida 34748, for the construction of a lift station to support the provision of wastewater utility services to the Bentley Ridge Development.

THAT this resolution shall become effective immediately.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the 8th day of March 2021.

Mayor

ATTEST:

City Clerk

IMPACT FEE CREDIT AGREEMENT

THIS AGREEMENT made as of the 25 day of FEB, 2021, between **THE CITY OF LEESBURG, FLORIDA**, hereafter referred to as the "City," and **BENTLEY RIDGE HOLDINGS, LLC**, hereafter referred to as the "Developer,"

WITNESSETH:

THAT Developer is constructing a project on the real property described on Exhibit "A" attached (hereafter called the "Development"). Developer has constructed a lift station to support the provision of wastewater utility services to the Development (hereafter called the "Infrastructure"). The parties have entered into this Agreement to set forth the terms and conditions under which Developer will be entitled to credit against wastewater impact fees within the Development, as reimbursement for the cost of the Infrastructure.

NOW THEREFORE, for and in consideration of the construction of the Infrastructure, the provision of utility services to the Development by the City, and the mutual covenants and promises contained in this instrument, the parties do hereby agree as set forth below:

1. The City will be providing wastewater utility service to the Development, which necessitated the construction of a new lift station. The Developer agreed to construct this Infrastructure at its expense, if it received credit against wastewater impact fees paid within the Development. This Agreement is intended by the parties to set out the terms and conditions for the provision of those impact fee credits to Developer.

2. The total cost of the Infrastructure for which Developer is entitled to impact fee credits under this Agreement is anticipated to be \$190,250.00. During the term of this Agreement, any time a wastewater impact fee is due on a residence or other structure within the Development, Developer will receive a credit against the impact fee as provided herein. However, Developer shall not under any circumstances be entitled to any credits for new hookups to the Infrastructure from any customer located outside the area described on Exhibit "A."

3. The term of this Agreement shall be for a period of five (5) years from the date this Agreement is approved by the Leesburg City Commission (unless terminated earlier as provided below because total impact fee credits to Developer have reached the maximum amount specified). Developer shall be entitled to receive a 100% credit against any wastewater impact fees levied for a structure within the Development during the term of this Agreement, but shall not be entitled to credits against any impact fees not levied prior to the expiration of the term of this Agreement.

4. In no case shall Developer receive wastewater impact fee credits which exceed the total cost of the Infrastructure as set forth in paragraph 2 above, and at such time as the total of all impact fee credits to Developer hereunder equals that limit, this Agreement shall terminate and Developer shall not be entitled to any further impact fee credits hereunder, and shall pay all impact fees due on the Development subsequent to reaching the limit of credits permitted under this Agreement. It is anticipated that the total impact fees due on the Development will be in the range of \$240,760.00 to \$289,912.00 at the rates in effect as of the date of this Agreement, therefore

Developer will be obligated to pay impact fees over and above the amount of the credits granted in this Agreement.

5. This Agreement sets forth the entire understanding of the parties with regard to its subject matter. It supersedes and takes precedence over any and all prior negotiations, representations and agreements, oral or written, all of which are deemed to have merged into this Agreement and to have been extinguished except to the extent specifically set forth herein. This Agreement may not be amended orally, by implication, by course of conduct, or in any other manner whatsoever than by way of a written instrument signed by both parties hereto or their lawful successors. This Agreement shall be construed in accordance with the laws of Florida and venue for any action or proceeding arising out of this Agreement shall be in Lake County, Florida. This Agreement shall be binding on the parties hereto, as well as on their lawful successors and assigns. Each party represents for the benefit of the other that it has not entered into this Agreement in reliance on, or on the basis of, any promise, negotiation, representation, undertaking or agreement of the other party, oral or written, which is not specifically set forth within this Agreement. This Agreement shall not be binding on the City until it has received approval by a majority vote of the City Commission of the City of Leesburg at a public meeting, where a quorum was present, at which this Agreement was duly placed on the agenda for approval. In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (at trial, on appeal, or in any proceeding involving bankruptcy or insolvency) in addition to any other relief obtained.

6. If Developer becomes delinquent in payment of any amount due the City for any reason, during the term of this Agreement, the City may withhold any impact fee credits due Developer under this Agreement and offset them against the past due debt owed by Developer to the City, until such debt is paid in full, together with any interest or other additional charges incurred thereon. If Developer violates any provision of the City's codes and ordinances, its approved site plans or development plans, or the conditions of any permits or approvals issued to the Developer by the City, the City may withhold further impact fee credits due Developer hereunder until all such violations have been abated fully.

7. Developer understands and acknowledges that the City is the governmental body with land use and permitting authority over the Development, and that despite any provision of this Agreement to the contrary, Florida law does not permit the City to contract away its police powers. Thus, all aspects of the Development will need to meet all applicable codes and regulations, and are subject to all required public hearing processes which may lead to rejection of one or more parts of the Development. All elected and appointed boards of the City shall retain the right, after public hearing and input, to approve or reject any application for a permit or authorization for the Development, even after approval and execution of this Agreement, and no such rejection shall be considered a breach of this Agreement, nor shall it afford Developer any legal rights or remedies.

8. The City's obligation to grant wastewater impact fee credits to Developer under this Agreement is contingent on the completion by Developer of construction of the Infrastructure in accordance with applicable City and other standards, the plans and specifications for the Infrastructure (which must be approved in writing by the City prior to commencement of construction), and any other applicable codes and standards imposed by any level or agency of

government, and upon payment in full by Developer of the costs of such construction (including but not limited to design and engineering, materials, and labor), and upon acceptance of the Infrastructure by the City into its utility system for operation and maintenance as part of the overall City system. Nothing in this Agreement shall be construed to require the City to accept or approve the Infrastructure until it is in full compliance with the plans and specifications, and all applicable codes and standards.

9. This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute but one and the same instrument. This Agreement when signed by a party may be delivered by electronic mail or facsimile transmission with the same force and effect as if the same were an executed and delivered original, manually-signed counterpart.

10. Nothing expressed or referred to in this Agreement is intended or will be construed to give any person or entity other than the actual, named parties hereto and their respective successors and assigns, any legal or equitable right, remedy or claim under or with respect to this Agreement, or any provision hereof, it being the intention of the parties hereto that this Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their respective successors and assigns, and that no third party beneficiaries are to be created either expressly or by implication.

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to set their hands and seals to this Agreement.

THE CITY OF LEESBURG, FLORIDA

BY: _____
JOHN CHRISTIAN, Mayor

ATTEST: _____
ANDI PURVIS, City Clerk

APPROVED AS TO FORM AND CONTENT:

CITY ATTORNEY

BENTLEY RIDGE HOLDINGS, LLC

Angela Lantrip
Angela Lantrip
(Type or print name of witness)

Cheno Carver
Cheno Carver
(Type or print name of witness)

BY: [Signature]
~~LOGAN~~ LANTRIP, Manager
ROBERT

EXHIBIT "A"
LEGAL DESCRIPTION OF PROJECT

That part of Government Lot 5 in Section 24, Township 19 South, Range 24 East, in the City of Leesburg, Florida, bounded and described as follows: from the Southwest corner of the East ½ of Government Lot 6 in said Section 24, run South 89° 33' 30" East along the South line thereof 504.50 feet to a point hereby designated as Point "A"; run thence North 00° 23' 40" East 766.80 feet to the Southerly line of the former right-of-way of the Seaboard Coast Line Railroad; thence North 66° 37' 30" East along the Southerly line of said right-of-way 190.00 feet to a point hereby designated as Point "B"; return to the above designated Point "A" and run thence South 89° 33' 30" East along the South line of said Government Lots 6 and 5 a distance of 357.38 feet to the Point of Beginning of this description; from said Point of Beginning, continue South 89° 33' 30" East along the South line of said Government Lot 5 to a point that is 710.20 feet East of the Southwest corner thereof; thence North 01° 02' 40" East 1156.60 feet to the Southerly line of the former right-of-way of the Seaboard Coast Line Railroad; thence Southwesterly along the Southerly line of said right-of-way to the above designated Point "B"; thence Southeasterly in a straight line to the Point of Beginning; less any part thereof conveyed to the City of Leesburg by deed recorded in Official Records Book 954, page 731, Public Records of Lake County, Florida.

Also, that part of Government Lot 1 in Section 25, Township 19 South, Range 24 East, in the City of Leesburg, Florida, bounded and described as follows: from the Northwest corner of said Government Lot 1, run East along the North line thereof 100 feet; thence South parallel with the West line of said Government Lot 1 a distance of 32.40 feet; thence South 84° 08' 05" East 100 feet to the Point of Beginning of this description; from said Point of Beginning continue South 84° 08' 05" East to a point that is 720.20 feet East of the West line of said Government Lot 1; thence North parallel with the West line of said Government Lot 1 a distance of 91.89 feet to the North line of said Government Lot 1; thence West along said North line to a point that is North 00° 35' 10" East of the Point of Beginning; thence South 00° 35' 10" West to the Point of Beginning; LESS the East 10 feet thereof.

ALSO LESS: that part of Government Lot 5 in Section 24, Township 19 South, Range 24 East, and that part of Government Lot 1 in Section 25, Township 19 South, Range 24 East, all in the City of Leesburg, Florida; described as follows: Begin at a point on the South boundary of said Section 24 that is 710.20 feet South 89° 33' 30" East of the Southwest corner of said Government Lot 5, said point also being on the Westerly right-of-way line of Newell Hill Road; from said point, run thence North 01° 02' 40" East 214.71 feet along said right-of-way; departing said right-of-way, run North 88° 57' 20" West 371.67 feet; thence South 01° 02' 40" West 218.65 feet to a point on the North boundary of said Section 25; from said point, continue South 01° 02' 40" West 55.00 feet; thence South 84° 08' 05" East 373.71 feet to a point on the West boundary of Newell Hill Road; from said point, run thence North 00° 35' 10" East 90.32 feet along the West boundary of Newell Hill Road to the Point of Beginning.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.B.1.

Meeting Date: March 8, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, vacating 212.38 +/- feet of right of way and consisting of approximately 4,884 square feet, and generally located on the east side of Barrett Avenue, west of Lots 15, 16, and 17 of the Harlem Subdivision, of Leesburg, Florida; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the request to vacate a portion of the Barrett Street right of way, consisting of approximately 4,884 square feet.

Analysis:

The subject property is generally located on the east side of Barrett Avenue, and north of Ferguson Avenue, as shown on the attached map. The request is to vacate an area of right of way along the east side of Barrett Avenue, consisting of approximately 4,884 square feet. Barrett is a short dead end street and is not likely to need widening in the future. There are two structures on the property, which were constructed in 1949. These houses are existing non-conforming units which significantly predate the current zoning code and lie within the current right of way. The applicant is seeking this partial vacation in an amount sufficient to permit the existing structures to remain in place, increase the conformity of the structures, and create a safer neighborhood through private property ownership. The city of Leesburg will retain easements as needed for utility services. Staff finds no detriment to the public as a result of this request.

Procurement Analysis:

N/A

Options:

1. Approve the request to vacate a portion of the eastern side of Barrett Avenue; or
2. Other such action as the City Commission may deem appropriate.

Fiscal Impact:

No fiscal impact is anticipated as a result of this action.

Submission Date and Time: 3/3/2021 3:50:26 PM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, VACATING 212.38 +/- FEET OF RIGHT OF WAY AND CONSISTING OF APPROXIMATELY 4,884 SQUARE FEET, AND GENERALLY LOCATED ON THE EAST SIDE OF BARRETT AVENUE, WEST OF LOTS 15, 16, AND 17 OF THE HARLEM SUBDIVISION, OF LEESBURG, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA:

Section 1.

The City Commission of the City of Leesburg, Florida, finding that a right of way located on Barrett Street, as legally described below, is not needed for public purposes, therefore that portion of said right of way is hereby vacated and relinquished, except as reserved hereafter;

Legal Description

A 23 foot wide section of the easterly right of way of Barrett Avenue, consisting of a distance of 212.38 feet north to south, immediately west and adjacent to lots 15, 16 and 17 of the subdivision PLAT OF HARLEM, Leesburg, Lake County, Florida.

Section 2.

The provisions of Section 1 notwithstanding, this Ordinance shall not be construed to released, and the City Commission hereby reserves, any and all existing recorded easements for utilities in favor of the City of Leesburg in and to any portion of the property located in the vacated area.

Section 3.

This ordinance shall become effective immediately upon its passage and adoption according to law.

Section 4.

Minor discrepancies later found herein may be considered scrivener's errors and shall not be cause to nullify the intent or execution of this Ordinance.

PASSED AND ADOPTED by the City Commission of the City of Leesburg, Florida, at a regular meeting held the ____ day of _____ 2021.

THE CITY OF LEESBURG

Mayor

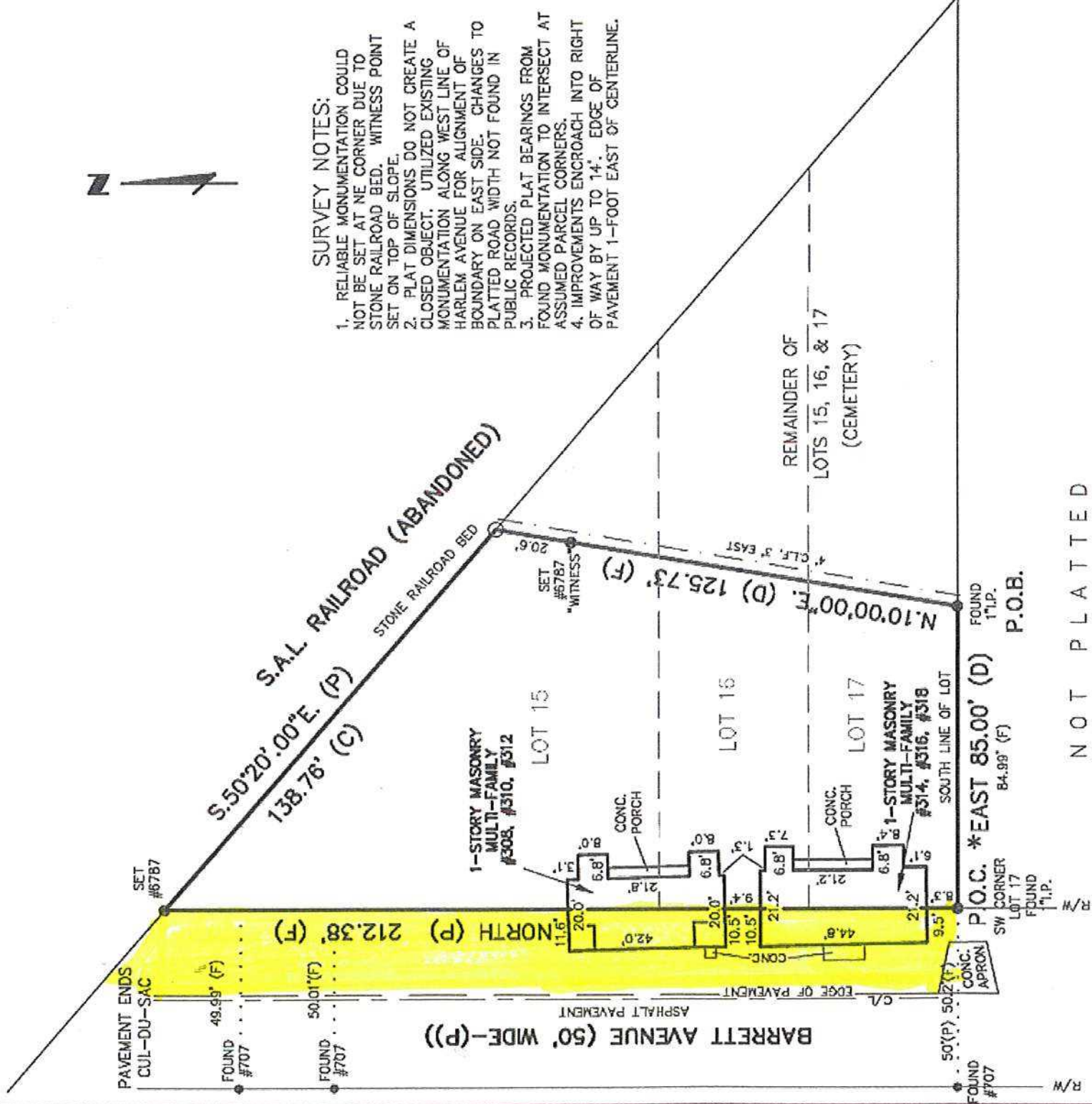
ATTEST:

City Clerk

**BOUNDARY CHRISTIAN WORSHIP CENTER
SURVEY**
907 COUNTY ROAD 468
LEESBURG, FLORIDA 34748

CERTIFIED TO:

NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
NO ONE OTHER THAN THE PARTY OR PARTIES NAMED ABOVE SHALL RELY ON THIS SURVEY.



ADDITIONS OR DELETIONS TO THIS SURVEY MAP OR SURVEY REPORT IS PROHIBITED.
THE SURVEY DEPICTED HERE IS NOT COVERED BY PROFESSIONAL LIABILITY INSURANCE.

DESCRIPTION:

ALL THAT PART OF LOTS 15, 16 AND 17 LYING WEST OF A LINE DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF SAID LOT 17, RUN EAST LONG THE SOUTH LINE OF SAID LOT 85 FT. TO POINT OF BEGINNING, THENCE NORTH 10 DEGREES EAST TO THE NORTH LINE OF SAID LOT 15, ALL OF SAID LOTS BEING A PART OF HARLEM COUNTY, FLORIDA, ACCORDING TO THE PLAT THEREOF AS FILLED IN THE OFFICE OF THE CLERK OF CIRCUIT COURT IN AND FOR LAKE

NOTE: SEE REVERSE SIDE FOR SURVEY REPORT.

SURVEY DATE: DECEMBER 22, 2010

C & A ENGINEERS & SURVEYORS

CERTIFICATE OF AUTHORIZATION LB7872

3106 E. FORT KING STREET OCALA, FLORIDA 34470

VOICE: 352.694.6566 FAX: 352.694.6567

www.CandAEngineers.com

SCALE: 1"=40'

F.B.: 296 PG.: 70

FILE: 110542

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.B.2.

Meeting Date: March 8, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, modifying the conditions of approval for a SPUD (Small Planned Unit Development) zoning on approximately 0.21 acres for property generally located south of West Main Street and east of south Moss Street, as legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the request to modify the conditions of the zoning on 1611 West Main Street under the existing SPUD zoning.

Analysis:

The project site is approximately 0.21 acres, and is generally located south of West Main Street and east of South Moss Street as shown on the attached maps. At this time, the property is vacant and undeveloped. The current zoning allows for light commercial and office uses; the request adds houses of worship uses, multi-family and live-work units. The current future land use is transitional, the surrounding land uses are residential and office uses. City of Leesburg utilities are available to this site. This request does not appear to create a detriment to the surrounding properties.

The Planning Commission held a public hearing on the application on January 21, 2021 and recommended approval by a vote of 5 to 0.

Procurement Analysis:

N/A

Options:

1. Approve the proposed amendment to the conditions of the existing SPUD (Small Planned Unit Development) zoning; or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

Should the property be developed, a small positive fiscal impact is expected in the form of ad valorem

taxes plus utility service charges.

Submission Date and Time: 3/3/2021 3:52:12 PM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 0.21 ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND EAST OF SOUTH MOSS STREET, AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

Based upon the petition of Timothy H. Sennett, P.O. Box 491308, Leesburg, Florida, petitioner of the property hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg, Florida, pursuant to the provisions of the Laws of Florida, the said property located in Lake County, Florida, is hereby rezoned from SPUD (Small Planned Unit Development) to SPUD (Small Planned Unit Development), to-wit:

(Legal Description)
(See Exhibit B)

Section 2.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the _____ day of _____, 2021.

THE CITY OF LEESBURG

Mayor

ATTEST:

City Clerk

SENNETT – 1611 W. MAIN STREET
SPUD (SMALL PLANNED UNIT DEVELOPMENT) AMENDMENT
PLANNED DEVELOPMENT CONDITIONS
January 21, 2020

These Planned Development Conditions for a SPUD (Small Planned Unit Development) District are granted by the City of Leesburg Planning Commission, Lake County, Florida to Tim Sennett, "Permittee" for the purposes and terms and conditions as set forth herein pursuant to authority contained in Chapter 25 "Zoning", Section 25-278 "Planned Development Process" of the City of Leesburg Code of Ordinances, as amended.

BACKGROUND: The "Permittee" has submitted an application requesting a SPUD (Small Planned Unit Development) zoning district to permit professional offices with accessory uses as permitted by these conditions on an approximately .21 +/- acre site within the City of Leesburg in accordance with their Planned Development application and supplemental information.

1. PERMISSION

Permission is hereby granted to Tim Sennett to operate, and maintain a SPUD (Small Planned Unit Development) development in and on real property in the City of Leesburg. The property is generally located on the southwest corner of W. Main Street and Moss Street. The property is more particularly described as shown in the attached legal description below.

2. LEGAL DESCRIPTION

See attached legal Exhibit B

3. LAND USES

The above-described property shall be used for SPUD (Small Planned Unit Development) uses as limited herein, and pursuant to City of Leesburg development codes and standards.

A. Uses

- 1) Uses shall be those listed as permitted uses in this document and shall occupy the approximate area as shown on the Conceptual Plan dated January 21, 2021,
- 2) Uses shall be those listed for the C-1 (Neighborhood Commercial) uses in the Land Development Code as a permitted use except as added or limited by this SPUD. Uses may be limited based on parking requirements. Other permitted uses shall include:
 - a. Houses of worship uses
 - b. multi-family uses
 - c. live-work units

B. Uses prohibited shall be as follows:

- 1) convenience store with or without gas pumps
- 2) recreation uses - indoor and outdoor

- 3) bars and lounges
- 4) clubs and lodges
- 5) package stores
- ~~6) places of worship~~
- ~~7) educational facilities~~
- 8) transient accommodations
- 9) crematoriums and funeral parlors
- 10) vehicle repair, service and sales
- 11) restaurants
- ~~12) multi-family residential~~
- 13) check cashing stores
- 14) thrift stores
- 15) tattoo parlors

C. Area

The Impervious surface coverage for this site shall not exceed eighty (80) percent of the gross site area.

D. Open Space

A minimum of twenty (20) percent of the site shall be developed as open space, including retention areas, buffer and landscaped areas. Parking areas and vehicle access areas shall not be considered in calculating open space.

4. SITE ACCESS

- A. Access to the property is currently from Moss Street. If additional access is requested, approval shall be subject to the City of Leesburg SPUD amendment and Site Plan Application review process.

5. DEVELOPMENT STANDARDS

- A. The minimum development standards shall be those required for the SPUD district except as amended by these conditions and as represented on the Conceptual Site Plan.
- B. All operations shall be carried on entirely within an enclosed structure, except as permitted under accessory uses of Section 25-284, City of Leesburg Code of Ordinances, as amended.
- C. No outdoor storage areas shall be permitted.
- D. Areas of property not occupied by structures or paving shall be grassed, landscaped and maintained in accordance with City of Leesburg Code of Ordinances, as amended.

6. PARKING

- A. The permittee shall have off-street parking spaces within the property per the conceptual site plan, pursuant to the City of Leesburg Code of Ordinances, as amended, which shall include the required number of handicapped parking spaces. In addition, available on street parking shall be permitted as required parking.

7. WETLANDS
- A. Wetlands shall comply with the following requirements. Prior to disturbance or development of any wetland area, the "Permittee" shall submit and receive approval from all affected governmental agencies to include, but not limited to, St. John's River Water Management District and the State of Florida Department of Environmental Regulation. Any notice of violation from any affected agency shall be cause for a cease and desist order on permits issued by the City of Leesburg until such time as the violation has been resolved with the appropriate agency(s).
8. DRAINAGE AND UTILITIES
- A. Prior to receiving Final Development Plan Approval, the "Permittee" shall submit, if applicable, a Master Site Drainage Plan and Utility Implementation Plan acceptable to the City of Leesburg. Prior to removal, renovation or demolition of any existing development on the site, the permittee shall provide:
- 1) A detailed site plan demonstrating no direct discharge of stormwater runoff generated by the development into any natural surface waters or onto adjacent properties.
 - 2) A detailed site plan indicating all provisions for electric, water, sewer, and natural gas in accordance with the site plan review process as required by the City of Leesburg Code of Ordinances.
9. TRANSPORTATION
- A. Permittee shall make all transportation improvements as required by Lake County, the MPO and the City of Leesburg. Construction of improvements shall be contingent upon plan approval by City of Leesburg staff during development review/permit application, if applicable.
- B. A transportation study waiver may be requested from the MPO exempting the project based on the previous use of the property and substantiation of minimum change in traffic impacts.
10. LANDSCAPING AND BUFFER REQUIREMENTS
- A. All landscaping and buffering shall be in accordance with regulations contained within the City of Leesburg Code of Ordinances and as represented on the Conceptual Site Plan including;
- 1) For each one hundred (100) linear feet, or fraction thereof, of boundary, the following plants shall be provided in accordance with the planting standards and requirements of the City of Leesburg Code of Ordinances, as amended.
 - a. Two (2) canopy trees
 - b. Two (2) ornamental trees
 - c. Thirty (30) shrubs
 - d. The remainder of the buffer area shall be landscaped with grass, groundcover, and/or other landscape treatment.
 - e. Existing vegetation in the required buffer shall be protected during construction.

11. MAINTENANCE

- A. With the exception of public utilities and sidewalks, maintenance of all site improvements, including but not limited to drives, internal sidewalks, landscaping and drainage shall be the responsibility of the owner.

12. DESIGN REQUIREMENTS

- A. Exterior building materials contribute significantly to the visual impact of a building on the community. They shall be well designed and integrated into a comprehensive design style for the project. The total exterior wall area of each building elevation shall be composed of one of the following:

- 1) At least thirty-five percent (35%) full-width brick or stone (not including window and door areas and related trim areas), with the balance being any type of lap siding and/or stucco.
- 2) At least thirty percent (30%) full-width brick or stone, with the balance being stucco and/or a “cementitious” lap siding. (A “cementitious” lap siding product is defined as a manufactured strip siding composed of cement-based materials rather than wood fiber-based or plastic-based materials. For example, Masonite or vinyl lap siding would not be allowed under this option.).
- 3) All textured stucco, provided there are unique design features such as recessed garages, tile or metal roofs, arched windows etc. in the elevations of the buildings or the buildings are all brick stucco. Unique design features shall be reviewed by the Community Development Director for compliance

B. Other Features

- 1) Other similar design variations meeting the intent of this section may be approved at the discretion of the Community Development Director.

13. DEVELOPMENT PHASING

- A. The proposed project may be constructed in phases in accordance with the Small Planned Unit Development Conditions and Conceptual Plan. Changes to the Development Plan, other than those conditions described in this agreement, shall be revised in accordance with the Planned Development review process.

14. MISCELLANEOUS CONDITIONS

- A. The uses of the proposed project shall only be those uses identified in the approved Planned Development Conditions. Any other proposed use must be specifically authorized in accordance with the Planned Development amendment process.
- B. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, or alter the land in any manner without first submitting the necessary plans and obtaining appropriate approvals in accordance with

the City of Leesburg Codes.

- C. Construction and operation of the proposed use(s) shall at all times comply with City and other governmental agencies rules and regulations.
- D. The transfer of ownership or lease of any or all of the property described in this SPUD Agreement shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to the Planned Unit Development established and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following the procedures as described in the City of Leesburg Land Development Code, as amended.
- E. These SPUD Conditions shall inure to the benefit of, and shall constitute a covenant running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition herein set out.

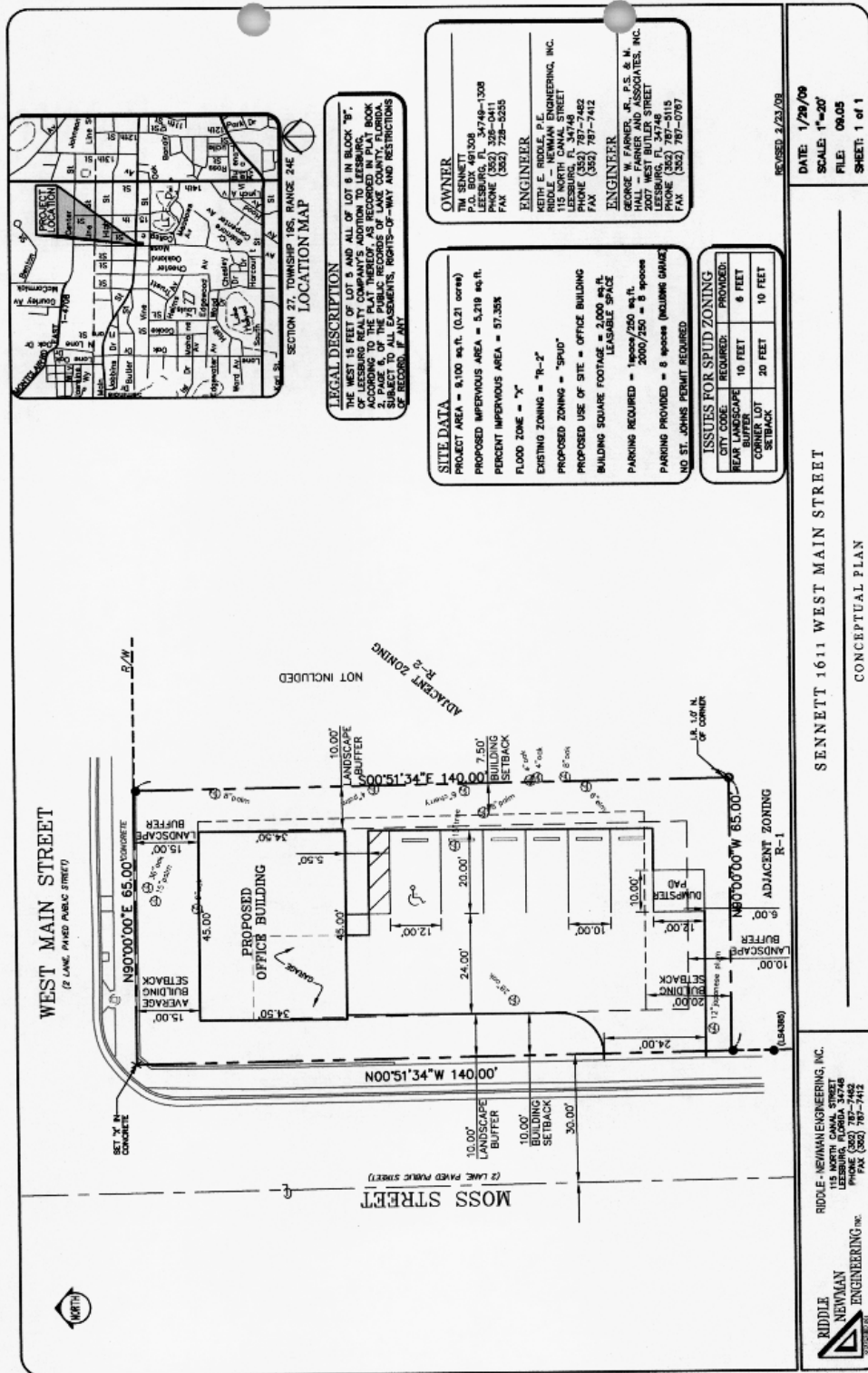
15. UTILITIES

As submitted, the proposed zoning change does not appear to result in demands on public facilities which would exceed the current capacity of some public facilities, such as, but not limited to roads, sewage, water supply, drainage, solid waste, parks and recreation, schools and emergency medical facilities. However, no final development order (site plan and building permits) shall be granted for a proposed development until there is a finding that all public facilities and services required for the development have sufficient capacity at or above the adopted level of service (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development.

- A. Utilities - Commitment of Capacity
There are no previous commitments of any existing or planned excess capacity.
- B. Ability to Provide Services
 - 1) The City intends to provide water, wastewater and reclaimed water services within its service area for the foreseeable future.

LEGAL DESCRIPTION**EXHIBIT B**

THE WEST 15 FEET OF LOT 5 AND ALL OF LOT 6 BLOCK "B", LEESBURG REALTY COMPANY'S ADDITION TO LEESBURG, ACCORDING TO THE MAP THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 6 OF THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.





**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

DATE: January 21, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 West Main Street
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-287

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request for the following reason(s):

1. The proposed Zoning designation of SPUD (Small Planned Unit Development) is compatible with the surrounding adjacent properties having zoning designations of R-1 (Low Density Residential) and R-2 (Medium Density Residential).
2. The Future Land Use designation of Transitional is compatible with surrounding adjacent properties having Transitional and Low Density Residential future land use designations.
3. The proposed request is consistent with the City's Growth Management Plan, Future Land Use Element, Goal I, Objective 1.6.

Action Requested:

1. Vote to approve this request to rezone the subject property from SPUD (Small Planned Unit Development) to SPUD (Small Planned Unit Development) and forward the recommendation to the City Commission for consideration.

**CITY OF LEESBURG PLANNING & ZONING DIVISION
STAFF SUMMARY**

DATE: January 21, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 W. Main SPUD
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: PUD-20-287

GENERAL LOCATION: The property is generally located at southeast corner of West Main Street and Moss Avenue.

FUTURE LAND USE DESIGNATION:
Transitional

SURROUNDING FUTURE LAND USE DESIGNATION:

North – Transitional
South – Low Density Residential
East – Transitional
West – Transitional

PROPOSED FUTURE LAND USE DESIGNATION:
N/A

EXISTING ZONING DESIGNATION:
SPUD (Small Planned Unit Development)

SURROUNDING ZONING DESIGNATIONS:
North – SPUD (Small Planned Unit Development); R-2 (Medium Density Residential)
South – R-1 (Low Density Residential)
East – R-2 (Medium Density Residential)
West – R-2 (Medium Density Residential)

PROPOSED ZONING DESIGNATION:
SPUD (Small Planned Unit Development)

EXISTING LAND USE:
Vacant

SURROUNDING LAND USE:
North – Office; Residential
South – Residential
East – Residential (vacant)
West – Residential

PROPOSED LAND USE: Offices

**CITY OF LEESBURG PLANNING & ZONING DIVISION
DEPARTMENTAL REVIEW SUMMARY**

DATE: January 6, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 West Main Street
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-287

THE FOLLOWING COMMENTS RECEIVED FROM EACH DEPARTMENT:

POLICE

No comments received as of 1/15/21

FIRE

No comments from Fire Department. Amanda Stevenson 1/15/21

ELECTRIC

Electric has no objections. At the time of the DRC, we will require utility easements to be granted to Leesburg. All electric has to be underground as well. Steve Davis 1/6/21

GAS

No comments received as of 1/15/21

GIS

No comments received as of 1/15/21

BUILDING

No comments received as of 1/15/21

PUBLIC WORKS

Public Works has no issue with this. Cliff Kelsey 1/7/21

ADDRESSING

No comments received as of 1/15/21

ECONOMIC DEVELOPMENT

No comments received as of 1/15/21

LAKE COUNTY PUBLIC WORKS

No comments received as of 1/15/21

LAKE COUNTY SCHOOLS

The applicant is proposing a professional office (non-residential) use. Nonresidential uses are not subject to school concurrency review. Helen LaValley 1/12/21

PUBLIC RESPONSES

Approval

No comments received as of 1/15/21

Disapproval

1 disapproval with no comments.

Notice of Appearance filed:

PUBLIC COMMENTS (APPROVAL)

PUBLIC COMMENTS (DISAPPROVAL)

PUBLIC COMMENTS (UNDECIDED)



DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Vice-Chairman Tim Sennett called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

Sabrina Mitchell swore in staff as well as anyone in the audience wishing to speak.

Commissioner Marshall called for the first case under new business be brought forward.

NEW BUSINESS

1. PUBLIC HEARING CASE # SPUD-20-287 – 1611 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 0.21 +/- ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND EAST OF SOUTH MOSS STREET AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (1611 W Main)

Mr. Miller stated the first two cases the zonings are word for word and both are Small Planned Unit Developments.

Dan Miller introduced case number #SPUD-20-287 – 1611 West Main Street – Small Planned Unit Development and case number #SPUD-20-288 – 1807 West Main Street – Small Planned Unit Development into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning, and changes.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, and one disapproval with no comment. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any Commissioners have questions for Staff.

Commissioner Sanders expressed concern regarding the Small Planned Unit Development.

Mr. Miller gave a brief explanation of the (SPUD) Small Planned Unit Development, zoning category, owner's use, City taxes and utility fees, different uses; not allowed under existing zoning, growth; widening of West Main Street, over decades; less attractive; residential use, much more attractive; office use, apply zoning category; allow some form of positive development for the area.

Commissioner Marshall stated any questions from the public, and then closed the discussion from the public.

Commissioner Marshall entertained a motion, and then the voting took place.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-287 – 1611 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Commissioner Marshall called for the second case under new business be brought forward.

2. PUBLIC HEARING CASE # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 0.43 +/- ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND WEST OF OAKLAND STREET, AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (1807 W Main)

Mr. Miller stated this the second of the two cases the zonings are word for word and both are Small Planned Unit Developments, but different locations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, or objections from the departments. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any discussion from the Commission.

Commissioner Marshall entertained a motion, and then the voting took place.

Vice-Chairman Sennett stated for the record the easement for utilities has already been done.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Vice-Chairman Sennett called for the third case under new business be brought forward.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

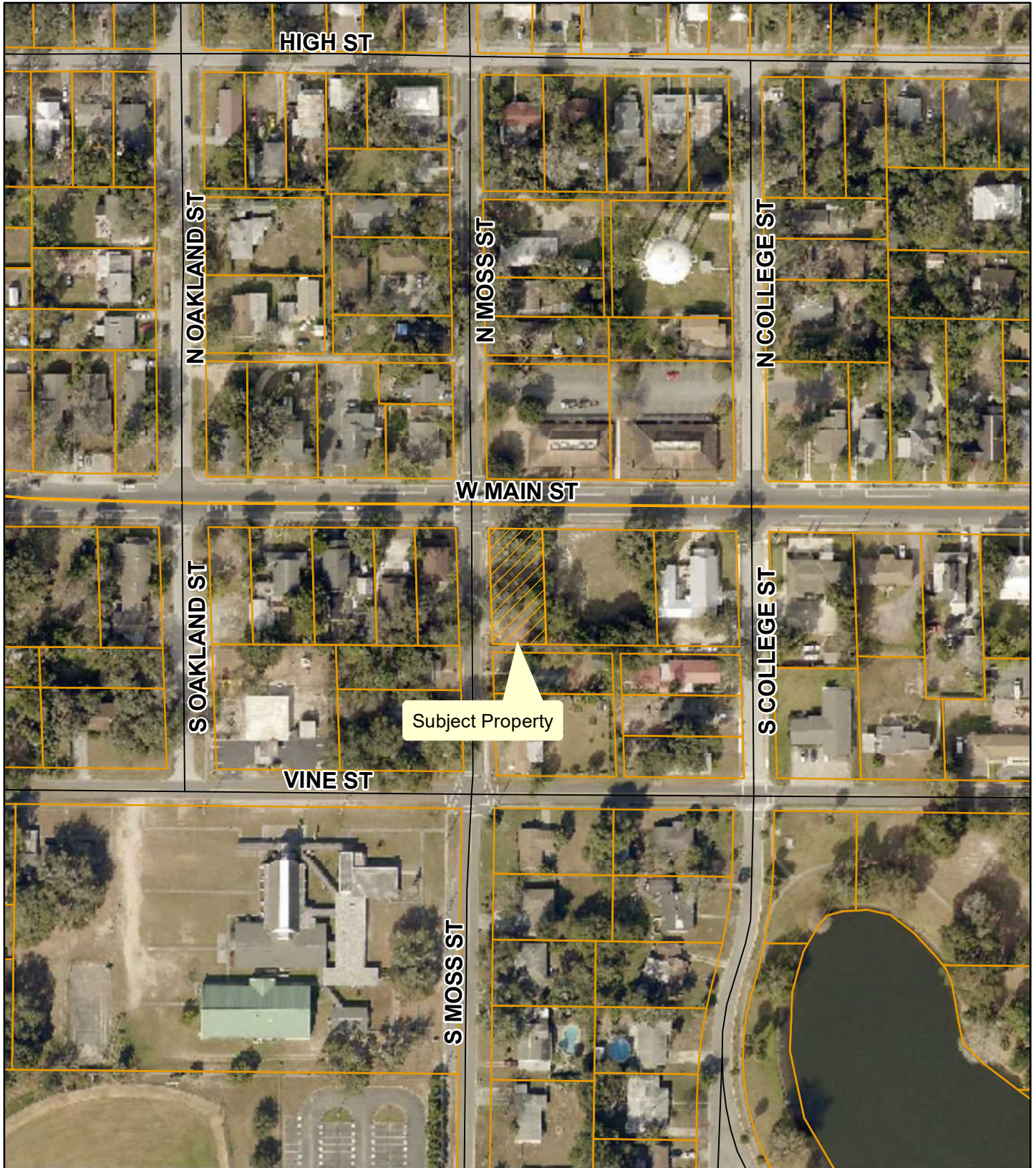
ADJOURNMENT

Approximately 5:35 p.m.

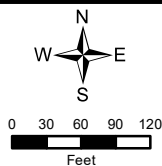
Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II

Aerial

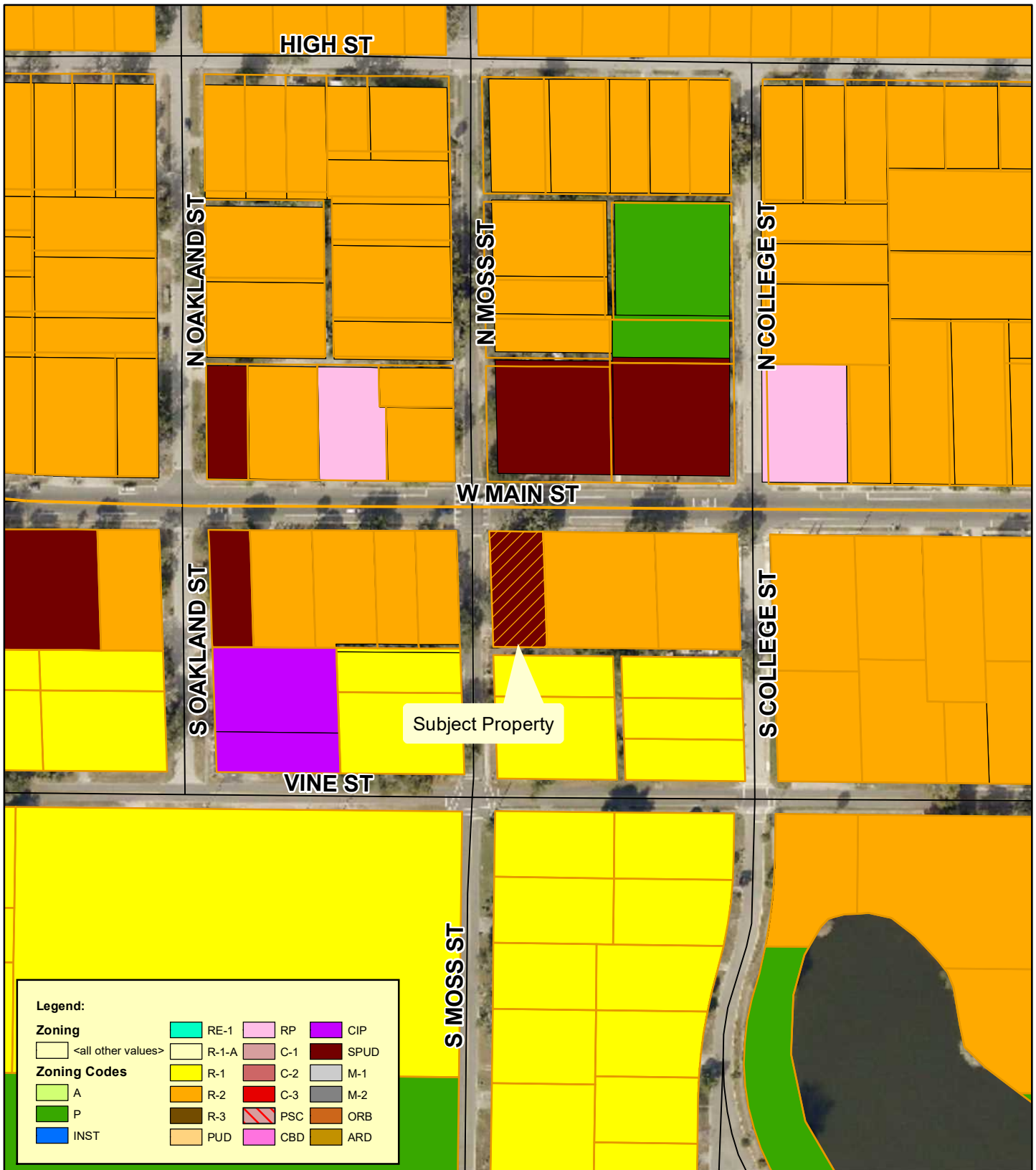


**Planning
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Division**

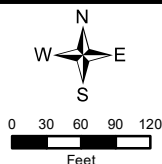


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Zoning

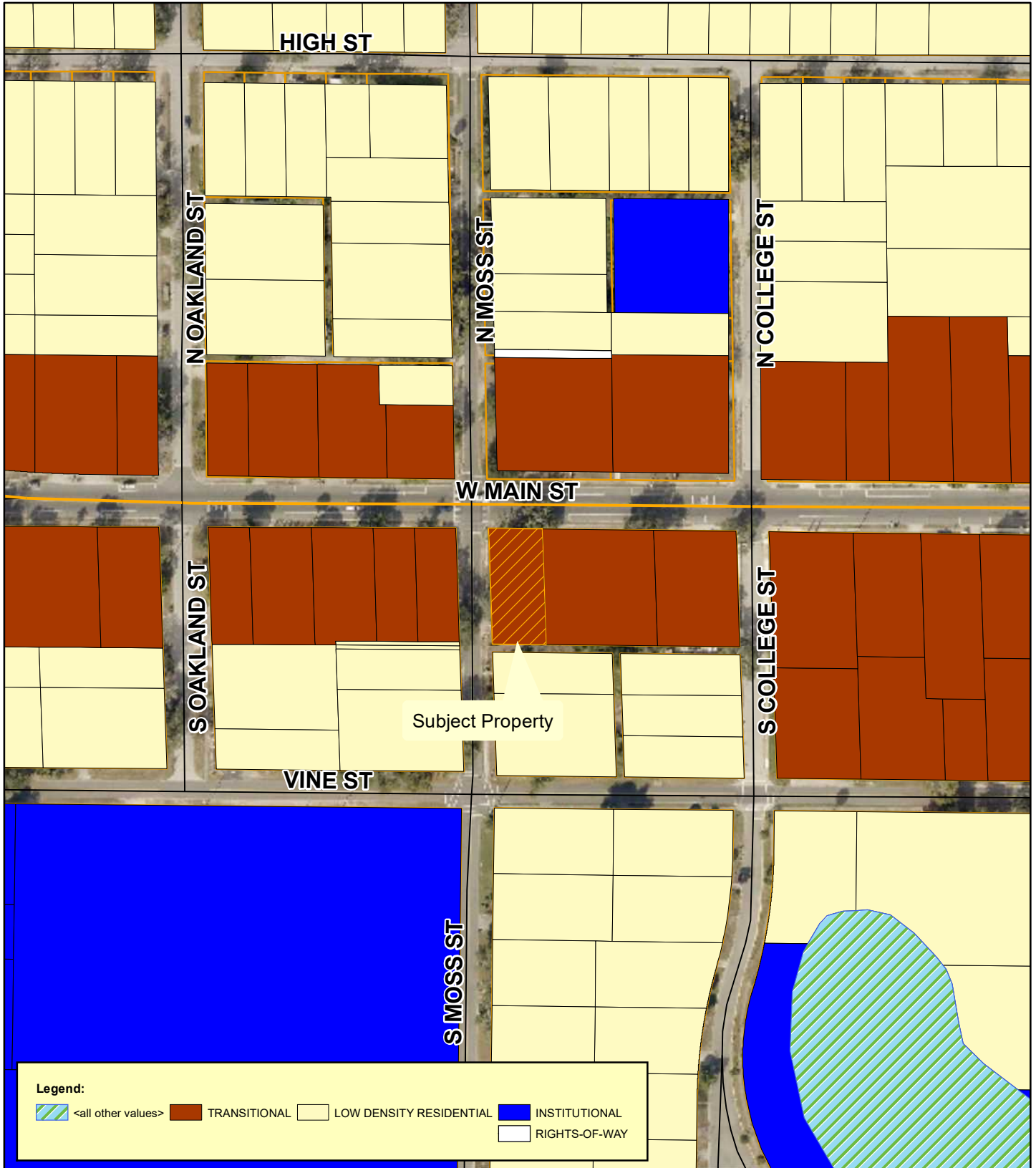


**Planning
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Division**

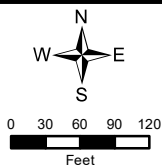


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Future Land Use

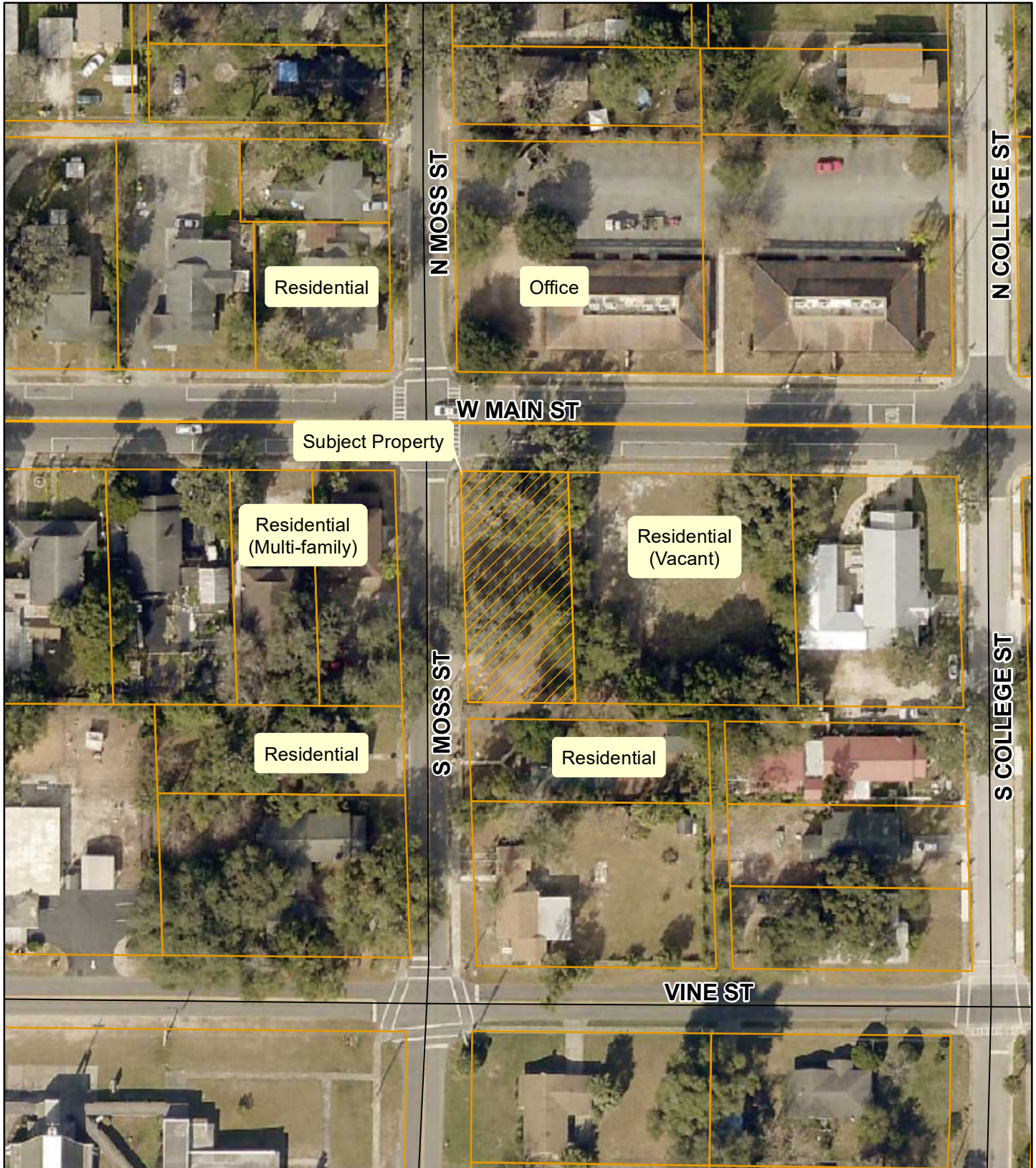


Planning & Zoning Division

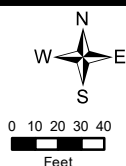


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Surrounding Land Uses

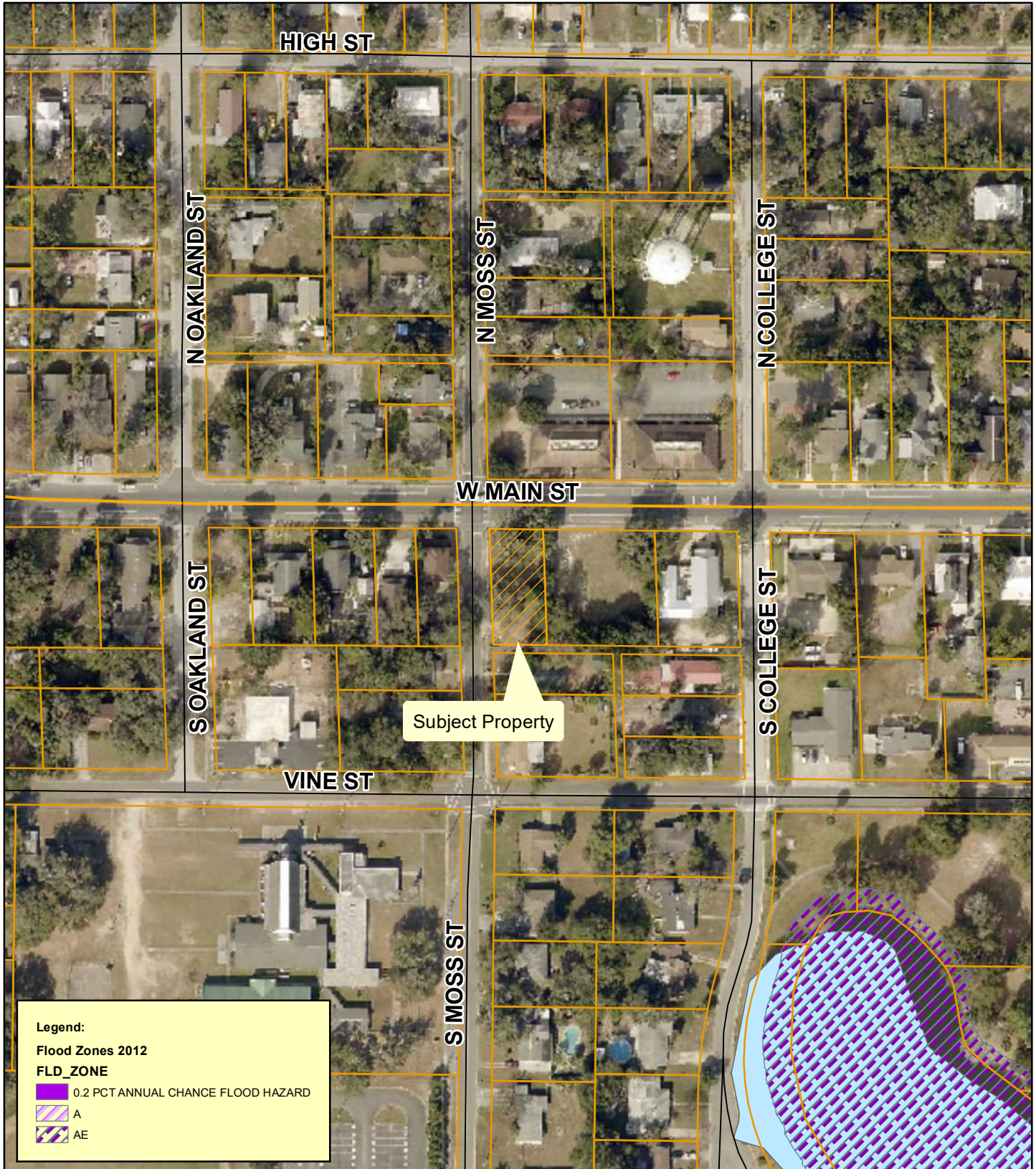


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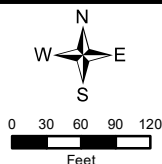


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Wetlands and Flood Zones

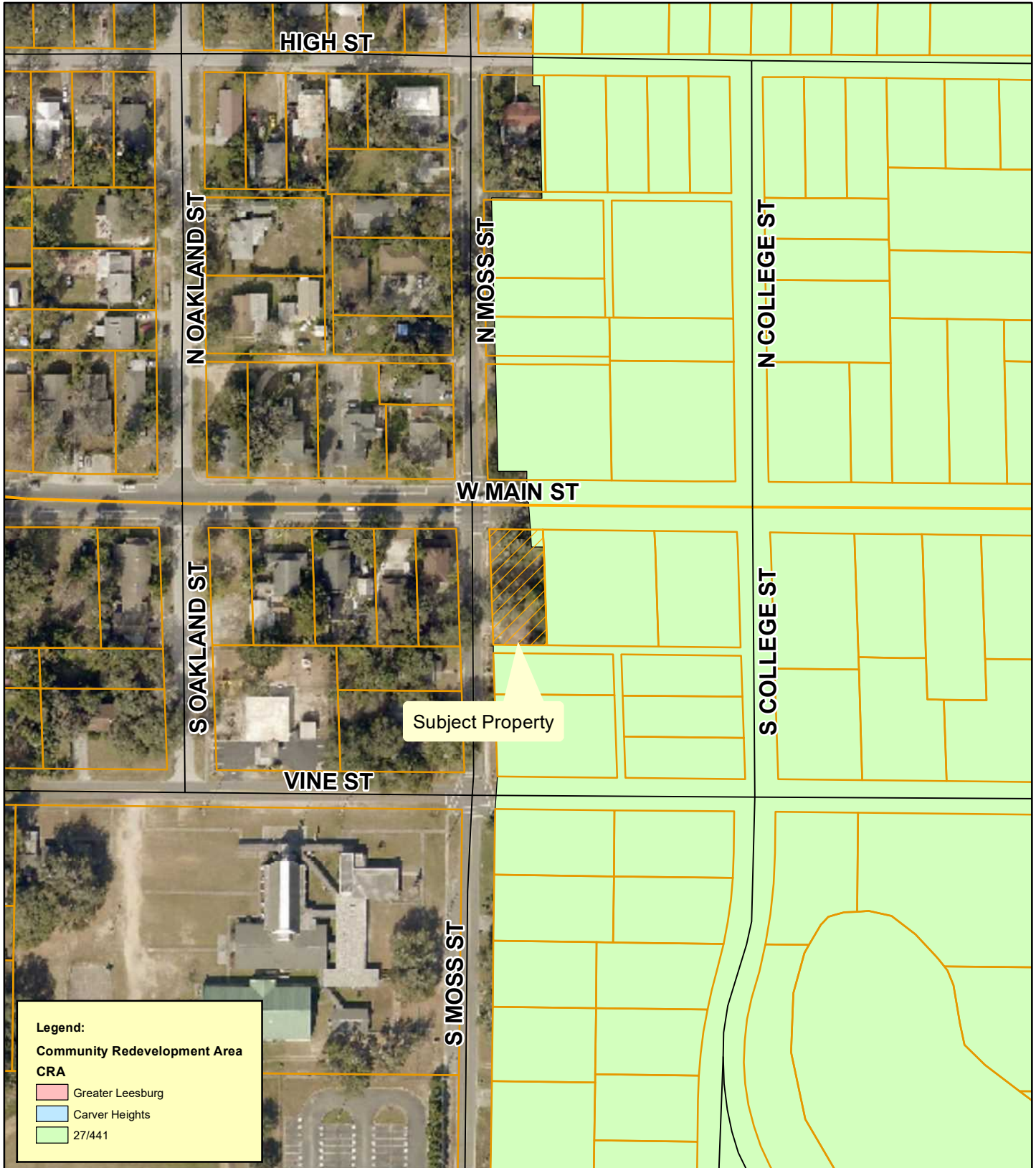


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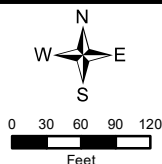


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Community Redevelopment Area

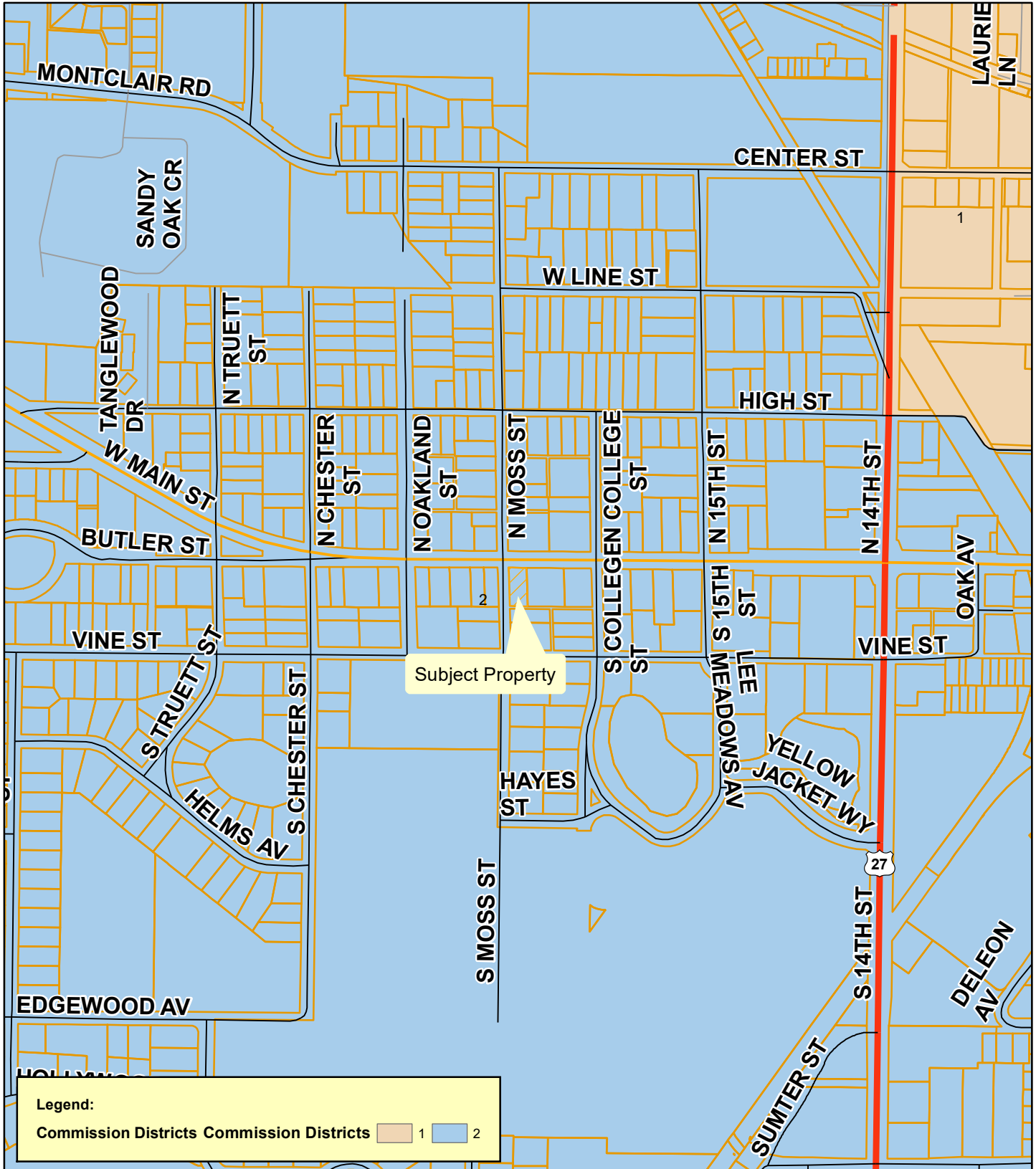


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Division**

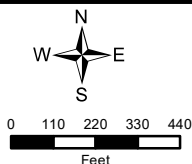


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Commission District



**Planning
& Zoning
Division**



SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020



Posting Public Notice sign, taken from West Main Street south into the property.



Close-up of Public Notice sign.



Picture taken from subject property looking west along Main Street.



Picture taken from subject property looking north across Main Street.



Picture taken from subject property looking east along Main Street.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.B.3.

Meeting Date: March 8, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, modifying the conditions of approval for a SPUD (Small Planned Unit Development) on approximately 0.43 acres, for property generally located south of West Main Street and west of Oakland Street, as legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the request to modify the SPUD (Small Planned Unit Development) conditions on the property at 1807 West Main Street.

Analysis:

The subject property is approximately 0.43 acres, and is generally located south of West Main Street and west of Oakland Street as shown on the attached maps. At this time, the property is vacant and undeveloped. The current zoning allows for light commercial and office uses; the request adds houses of worship uses, multi-family and live-work units. The current future land use is transitional, the surrounding land uses are residential and office uses. City of Leesburg utilities are available to this site. This request does not appear to create a detriment to the surrounding properties.

The Planning Commission held a public hearing on the application on January 21, 2021 and recommended approval by a vote of 5 to 0.

Procurement Analysis:

N/A

Options:

1. Approve the proposed rezoning to SPUD (Small Planned Unit Development); or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

A small positive fiscal impact in the form of ad valorem taxes and utility fees is anticipated as a result of this action.

Submission Date and Time: 3/3/2021 3:53:46 PM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 0.43 ACRES, FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND WEST OF OAKLAND STREET, AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

Based upon the petition of Timothy H. Sennett, P.O. Box 491308, Leesburg, Florida, petitioner of the property hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg Florida, pursuant to the provisions of the Laws of Florida, the said property located in Lake County, Florida, is hereby rezoned from SPUD (Small Planned Unit Development) to SPUD (Small Planned Unit Development), to-wit:

(Legal Description)
(See Exhibit B)

Section 2.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the _____ day of _____, 2021.

THE CITY OF LEESBURG

Mayor

ATTEST:

City Clerk

SENNETT – 1611 W. MAIN STREET
SPUD (SMALL PLANNED UNIT DEVELOPMENT) AMENDMENT
PLANNED DEVELOPMENT CONDITIONS
January 21, 2020

These Planned Development Conditions for a SPUD (Small Planned Unit Development) District are granted by the City of Leesburg Planning Commission, Lake County, Florida to Tim Sennett, "Permittee" for the purposes and terms and conditions as set forth herein pursuant to authority contained in Chapter 25 "Zoning", Section 25-278 "Planned Development Process" of the City of Leesburg Code of Ordinances, as amended.

BACKGROUND: The "Permittee" has submitted an application requesting a SPUD (Small Planned Unit Development) zoning district to permit professional offices with accessory uses as permitted by these conditions on an approximately .21 +/- acre site within the City of Leesburg in accordance with their Planned Development application and supplemental information.

1. PERMISSION

Permission is hereby granted to Tim Sennett to operate, and maintain a SPUD (Small Planned Unit Development) development in and on real property in the City of Leesburg. The property is generally located on the southwest corner of W. Main Street and Moss Street. The property is more particularly described as shown in the attached legal description below.

2. LEGAL DESCRIPTION

See attached legal Exhibit B

3. LAND USES

The above-described property shall be used for SPUD (Small Planned Unit Development) uses as limited herein, and pursuant to City of Leesburg development codes and standards.

A. Uses

- 1) Uses shall be those listed as permitted uses in this document and shall occupy the approximate area as shown on the Conceptual Plan dated January 21, 2021,
- 2) Uses shall be those listed for the C-1 (Neighborhood Commercial) uses in the Land Development Code as a permitted use except as added or limited by this SPUD. Uses may be limited based on parking requirements. Other permitted uses shall include:
 - a. Houses of worship uses
 - b. multi-family uses
 - c. live-work units

B. Uses prohibited shall be as follows:

- 1) convenience store with or without gas pumps
- 2) recreation uses - indoor and outdoor

- 3) bars and lounges
- 4) clubs and lodges
- 5) package stores
- ~~6) places of worship~~
- ~~7) educational facilities~~
- 8) transient accommodations
- 9) crematoriums and funeral parlors
- 10) vehicle repair, service and sales
- 11) restaurants
- ~~12) multi-family residential~~
- 13) check cashing stores
- 14) thrift stores
- 15) tattoo parlors

C. Area

The Impervious surface coverage for this site shall not exceed eighty (80) percent of the gross site area.

D. Open Space

A minimum of twenty (20) percent of the site shall be developed as open space, including retention areas, buffer and landscaped areas. Parking areas and vehicle access areas shall not be considered in calculating open space.

4. SITE ACCESS

- A. Access to the property is currently from Moss Street. If additional access is requested, approval shall be subject to the City of Leesburg SPUD amendment and Site Plan Application review process.

5. DEVELOPMENT STANDARDS

- A. The minimum development standards shall be those required for the SPUD district except as amended by these conditions and as represented on the Conceptual Site Plan.
- B. All operations shall be carried on entirely within an enclosed structure, except as permitted under accessory uses of Section 25-284, City of Leesburg Code of Ordinances, as amended.
- C. No outdoor storage areas shall be permitted.
- D. Areas of property not occupied by structures or paving shall be grassed, landscaped and maintained in accordance with City of Leesburg Code of Ordinances, as amended.

6. PARKING

- A. The permittee shall have off-street parking spaces within the property per the conceptual site plan, pursuant to the City of Leesburg Code of Ordinances, as amended, which shall include the required number of handicapped parking spaces. In addition, available on street parking shall be permitted as required parking.

7. WETLANDS

- A. Wetlands shall comply with the following requirements. Prior to disturbance or development of any wetland area, the "Permittee" shall submit and receive approval from all affected governmental agencies to include, but not limited to, St. John's River Water Management District and the State of Florida Department of Environmental Regulation. Any notice of violation from any affected agency shall be cause for a cease and desist order on permits issued by the City of Leesburg until such time as the violation has been resolved with the appropriate agency(s).

8. DRAINAGE AND UTILITIES

- A. Prior to receiving Final Development Plan Approval, the "Permittee" shall submit, if applicable, a Master Site Drainage Plan and Utility Implementation Plan acceptable to the City of Leesburg. Prior to removal, renovation or demolition of any existing development on the site, the permittee shall provide:
- 1) A detailed site plan demonstrating no direct discharge of stormwater runoff generated by the development into any natural surface waters or onto adjacent properties.
 - 2) A detailed site plan indicating all provisions for electric, water, sewer, and natural gas in accordance with the site plan review process as required by the City of Leesburg Code of Ordinances.

9. TRANSPORTATION

- A. Permittee shall make all transportation improvements as required by Lake County, the MPO and the City of Leesburg. Construction of improvements shall be contingent upon plan approval by City of Leesburg staff during development review/permit application, if applicable.
- B. A transportation study waiver may be requested from the MPO exempting the project based on the previous use of the property and substantiation of minimum change in traffic impacts.

10. LANDSCAPING AND BUFFER REQUIREMENTS

- A. All landscaping and buffering shall be in accordance with regulations contained within the City of Leesburg Code of Ordinances and as represented on the Conceptual Site Plan including;
- 1) For each one hundred (100) linear feet, or fraction thereof, of boundary, the following plants shall be provided in accordance with the planting standards and requirements of the City of Leesburg Code of Ordinances, as amended.
 - a. Two (2) canopy trees
 - b. Two (2) ornamental trees
 - c. Thirty (30) shrubs
 - d. The remainder of the buffer area shall be landscaped with grass, groundcover, and/or other landscape treatment.
 - e. Existing vegetation in the required buffer shall be protected during construction.

11. MAINTENANCE

- A. With the exception of public utilities and sidewalks, maintenance of all site improvements, including but not limited to drives, internal sidewalks, landscaping and drainage shall be the responsibility of the owner.

12. DESIGN REQUIREMENTS

- A. Exterior building materials contribute significantly to the visual impact of a building on the community. They shall be well designed and integrated into a comprehensive design style for the project. The total exterior wall area of each building elevation shall be composed of one of the following:

- 1) At least thirty-five percent (35%) full-width brick or stone (not including window and door areas and related trim areas), with the balance being any type of lap siding and/or stucco.
- 2) At least thirty percent (30%) full-width brick or stone, with the balance being stucco and/or a “cementitious” lap siding. (A “cementitious” lap siding product is defined as a manufactured strip siding composed of cement-based materials rather than wood fiber-based or plastic-based materials. For example, Masonite or vinyl lap siding would not be allowed under this option.).
- 3) All textured stucco, provided there are unique design features such as recessed garages, tile or metal roofs, arched windows etc. in the elevations of the buildings or the buildings are all brick stucco. Unique design features shall be reviewed by the Community Development Director for compliance

B. Other Features

- 1) Other similar design variations meeting the intent of this section may be approved at the discretion of the Community Development Director.

13. DEVELOPMENT PHASING

- A. The proposed project may be constructed in phases in accordance with the Small Planned Unit Development Conditions and Conceptual Plan. Changes to the Development Plan, other than those conditions described in this agreement, shall be revised in accordance with the Planned Development review process.

14. MISCELLANEOUS CONDITIONS

- A. The uses of the proposed project shall only be those uses identified in the approved Planned Development Conditions. Any other proposed use must be specifically authorized in accordance with the Planned Development amendment process.
- B. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, or alter the land in any manner without first submitting the necessary plans and obtaining appropriate approvals in accordance with

the City of Leesburg Codes.

- C. Construction and operation of the proposed use(s) shall at all times comply with City and other governmental agencies rules and regulations.
- D. The transfer of ownership or lease of any or all of the property described in this SPUD Agreement shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to the Planned Unit Development established and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following the procedures as described in the City of Leesburg Land Development Code, as amended.
- E. These SPUD Conditions shall inure to the benefit of, and shall constitute a covenant running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition herein set out.

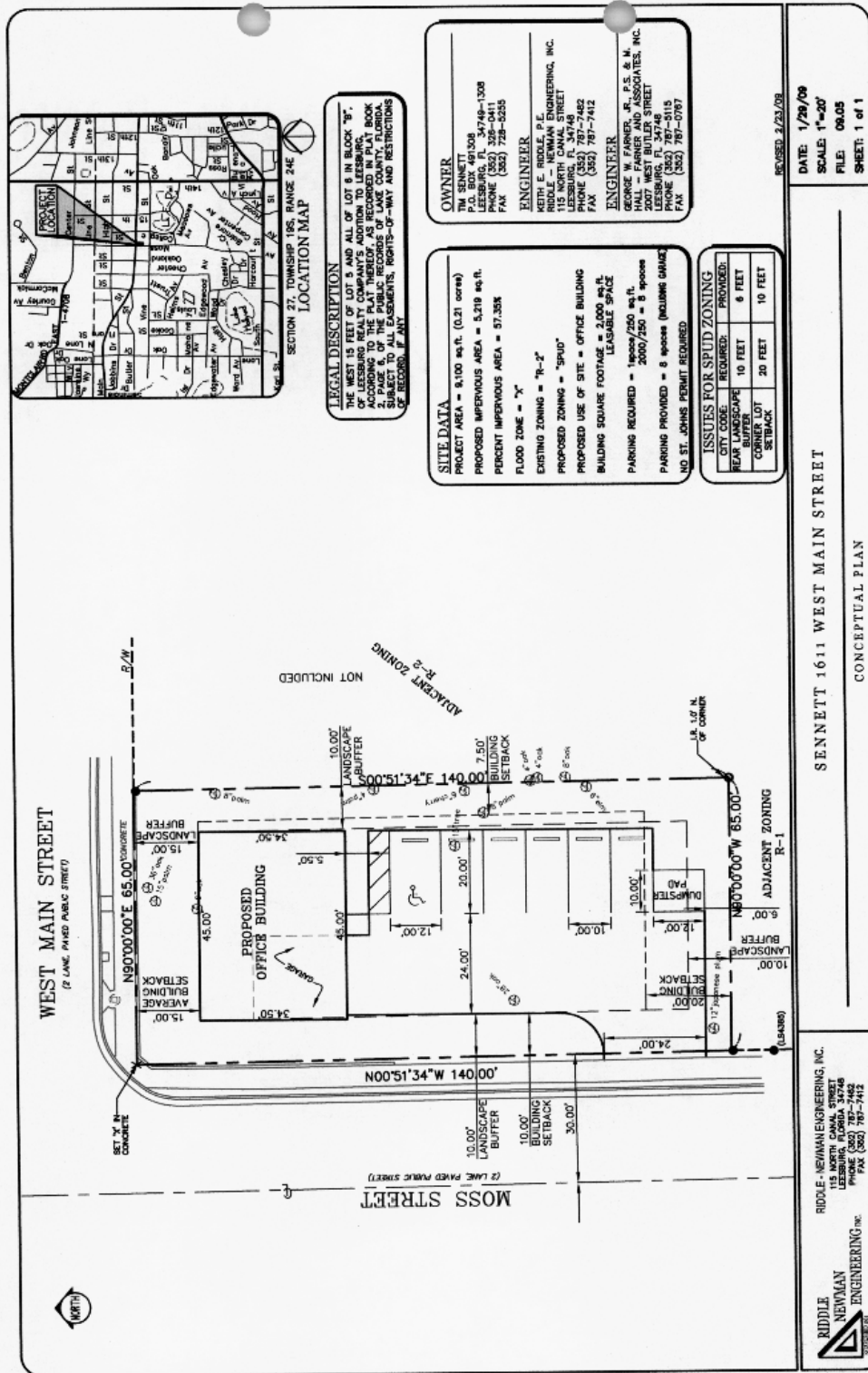
15. UTILITIES

As submitted, the proposed zoning change does not appear to result in demands on public facilities which would exceed the current capacity of some public facilities, such as, but not limited to roads, sewage, water supply, drainage, solid waste, parks and recreation, schools and emergency medical facilities. However, no final development order (site plan and building permits) shall be granted for a proposed development until there is a finding that all public facilities and services required for the development have sufficient capacity at or above the adopted level of service (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development.

- A. Utilities - Commitment of Capacity
There are no previous commitments of any existing or planned excess capacity.
- B. Ability to Provide Services
 - 1) The City intends to provide water, wastewater and reclaimed water services within its service area for the foreseeable future.

LEGAL DESCRIPTION**EXHIBIT B**

THE WEST 15 FEET OF LOT 5 AND ALL OF LOT 6 BLOCK "B", LEESBURG REALTY COMPANY'S ADDITION TO LEESBURG, ACCORDING TO THE MAP THEREOF AS RECORDED IN PLAT BOOK 2, PAGE 6 OF THE PUBLIC RECORDS OF LAKE COUNTY, FLORIDA.





**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

DATE: January 21, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 West Main Street
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-287

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request for the following reason(s):

1. The proposed Zoning designation of SPUD (Small Planned Unit Development) is compatible with the surrounding adjacent properties having zoning designations of R-1 (Low Density Residential) and R-2 (Medium Density Residential).
2. The Future Land Use designation of Transitional is compatible with surrounding adjacent properties having Transitional and Low Density Residential future land use designations.
3. The proposed request is consistent with the City's Growth Management Plan, Future Land Use Element, Goal I, Objective 1.6.

Action Requested:

1. Vote to approve this request to rezone the subject property from SPUD (Small Planned Unit Development) to SPUD (Small Planned Unit Development) and forward the recommendation to the City Commission for consideration.

**CITY OF LEESBURG PLANNING & ZONING DIVISION
STAFF SUMMARY**

DATE: January 21, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 W. Main SPUD
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: PUD-20-287

GENERAL LOCATION: The property is generally located at southeast corner of West Main Street and Moss Avenue.

FUTURE LAND USE DESIGNATION:
Transitional

SURROUNDING FUTURE LAND USE DESIGNATION:

North – Transitional
South – Low Density Residential
East – Transitional
West – Transitional

PROPOSED FUTURE LAND USE DESIGNATION:
N/A

EXISTING ZONING DESIGNATION:
SPUD (Small Planned Unit Development)

SURROUNDING ZONING DESIGNATIONS:
North – SPUD (Small Planned Unit Development); R-2 (Medium Density Residential)
South – R-1 (Low Density Residential)
East – R-2 (Medium Density Residential)
West – R-2 (Medium Density Residential)

PROPOSED ZONING DESIGNATION:
SPUD (Small Planned Unit Development)

EXISTING LAND USE:
Vacant

SURROUNDING LAND USE:
North – Office; Residential
South – Residential
East – Residential (vacant)
West – Residential

PROPOSED LAND USE: Offices

**CITY OF LEESBURG PLANNING & ZONING DIVISION
DEPARTMENTAL REVIEW SUMMARY**

DATE: January 6, 2021
OWNER: Timothy H. Sennett
PETITIONER: Timothy H. Sennett
PROJECT: 1611 West Main Street
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-287

THE FOLLOWING COMMENTS RECEIVED FROM EACH DEPARTMENT:

POLICE

No comments received as of 1/15/21

FIRE

No comments from Fire Department. Amanda Stevenson 1/15/21

ELECTRIC

Electric has no objections. At the time of the DRC, we will require utility easements to be granted to Leesburg. All electric has to be underground as well. Steve Davis 1/6/21

GAS

No comments received as of 1/15/21

GIS

No comments received as of 1/15/21

BUILDING

No comments received as of 1/15/21

PUBLIC WORKS

Public Works has no issue with this. Cliff Kelsey 1/7/21

ADDRESSING

No comments received as of 1/15/21

ECONOMIC DEVELOPMENT

No comments received as of 1/15/21

LAKE COUNTY PUBLIC WORKS

No comments received as of 1/15/21

LAKE COUNTY SCHOOLS

The applicant is proposing a professional office (non-residential) use. Nonresidential uses are not subject to school concurrency review. Helen LaValley 1/12/21

PUBLIC RESPONSES

Approval

No comments received as of 1/15/21

Disapproval

1 disapproval with no comments.

Notice of Appearance filed:

PUBLIC COMMENTS (APPROVAL)

PUBLIC COMMENTS (DISAPPROVAL)

PUBLIC COMMENTS (UNDECIDED)



DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Vice-Chairman Tim Sennett called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

Sabrina Mitchell swore in staff as well as anyone in the audience wishing to speak.

Commissioner Marshall called for the first case under new business be brought forward.

NEW BUSINESS

1. PUBLIC HEARING CASE # SPUD-20-287 – 1611 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 0.21 +/- ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND EAST OF SOUTH MOSS STREET AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (1611 W Main)

Mr. Miller stated the first two cases the zonings are word for word and both are Small Planned Unit Developments.

Dan Miller introduced case number #SPUD-20-287 – 1611 West Main Street – Small Planned Unit Development and case number #SPUD-20-288 – 1807 West Main Street – Small Planned Unit Development into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning, and changes.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, and one disapproval with no comment. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any Commissioners have questions for Staff.

Commissioner Sanders expressed concern regarding the Small Planned Unit Development.

Mr. Miller gave a brief explanation of the (SPUD) Small Planned Unit Development, zoning category, owner's use, City taxes and utility fees, different uses; not allowed under existing zoning, growth; widening of West Main Street, over decades; less attractive; residential use, much more attractive; office use, apply zoning category; allow some form of positive development for the area.

Commissioner Marshall stated any questions from the public, and then closed the discussion from the public.

Commissioner Marshall entertained a motion, and then the voting took place.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-287 – 1611 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Commissioner Marshall called for the second case under new business be brought forward.

2. PUBLIC HEARING CASE # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 0.43 +/- ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND WEST OF OAKLAND STREET, AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (1807 W Main)

Mr. Miller stated this the second of the two cases the zonings are word for word and both are Small Planned Unit Developments, but different locations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, or objections from the departments. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any discussion from the Commission.

Commissioner Marshall entertained a motion, and then the voting took place.

Vice-Chairman Sennett stated for the record the easement for utilities has already been done.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Vice-Chairman Sennett called for the third case under new business be brought forward.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

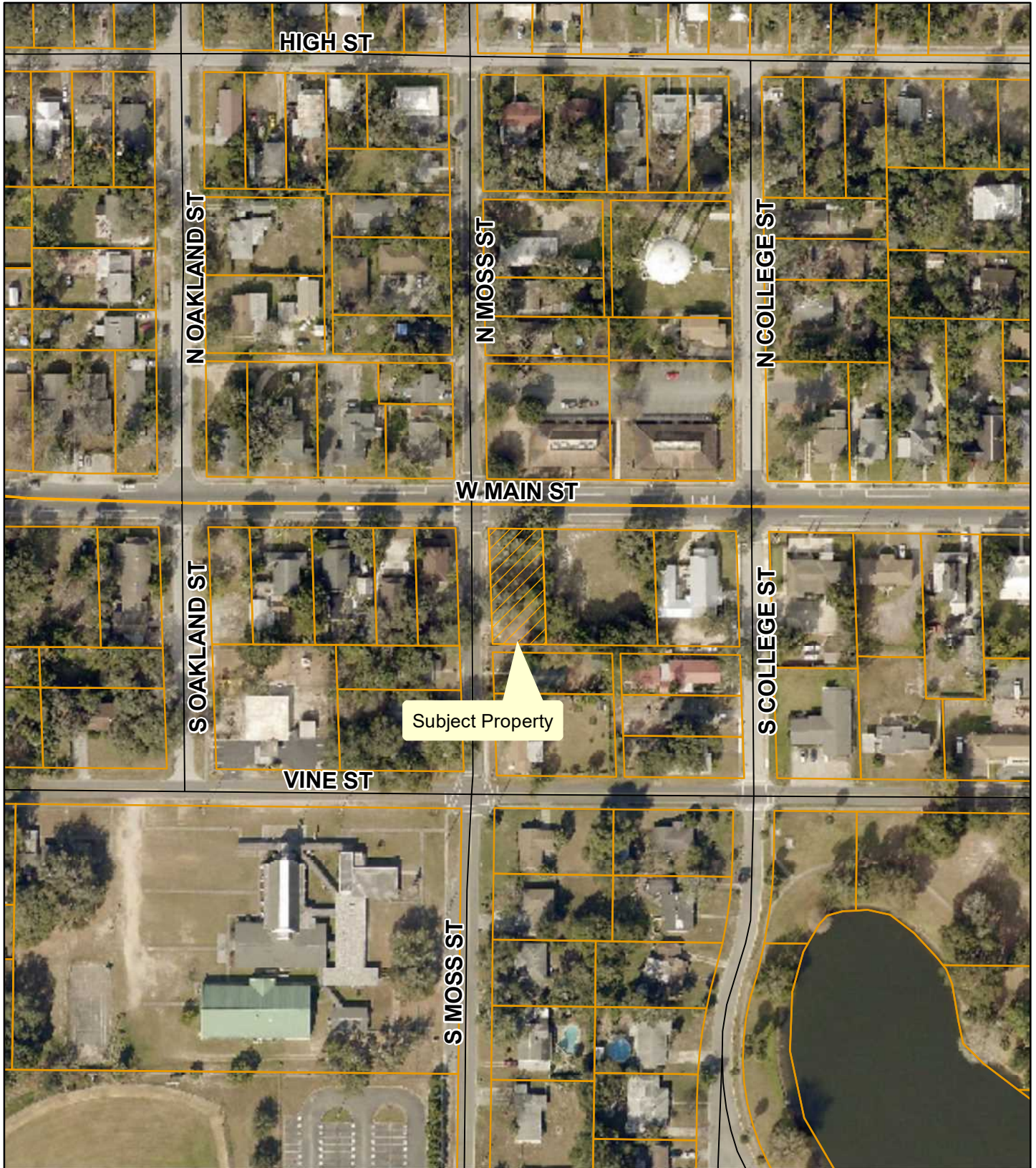
ADJOURNMENT

Approximately 5:35 p.m.

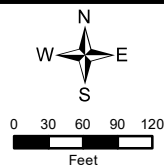
Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II

Aerial

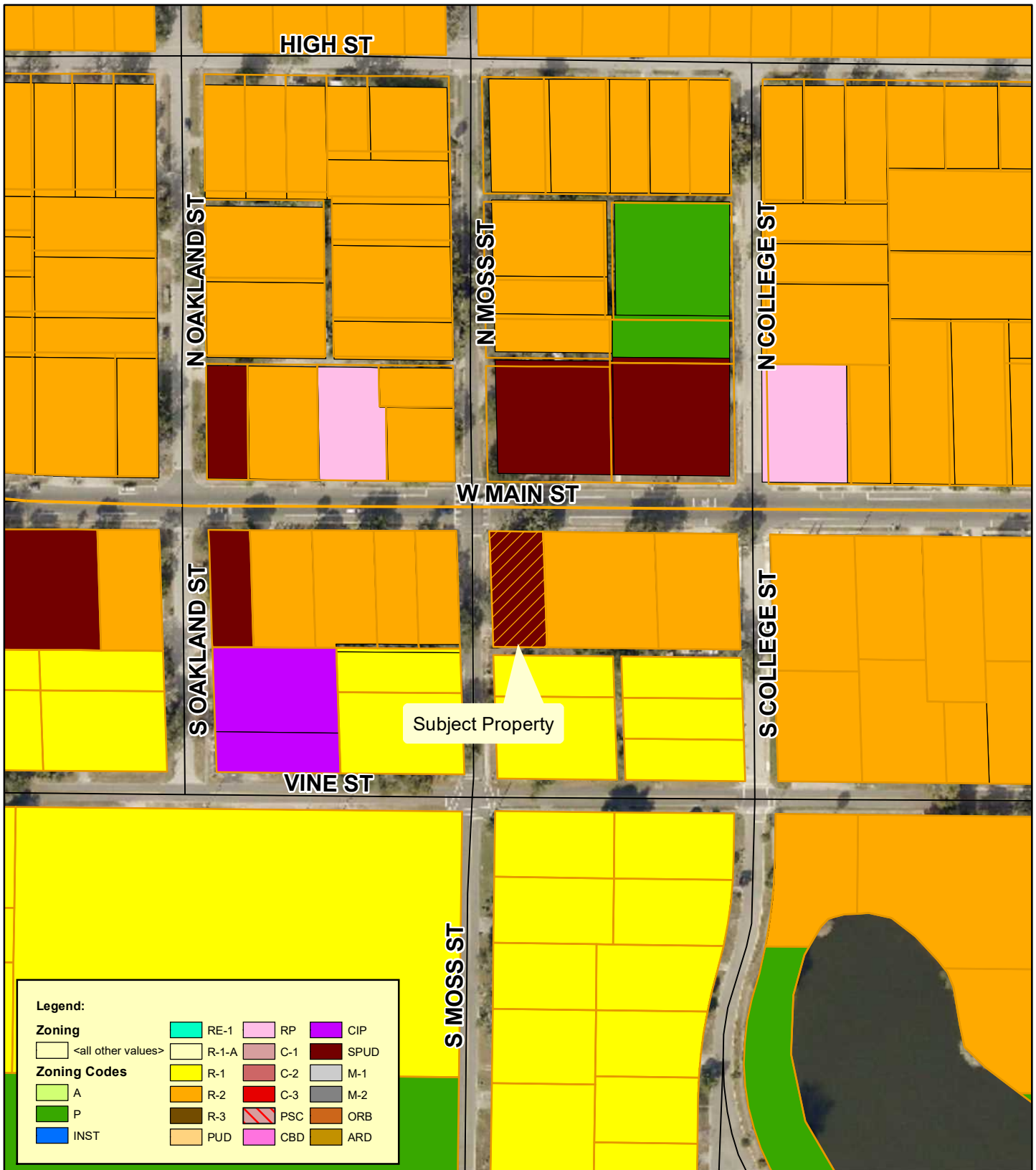


**Planning
& Zoning
Division**



SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

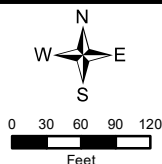
Zoning



Subject Property

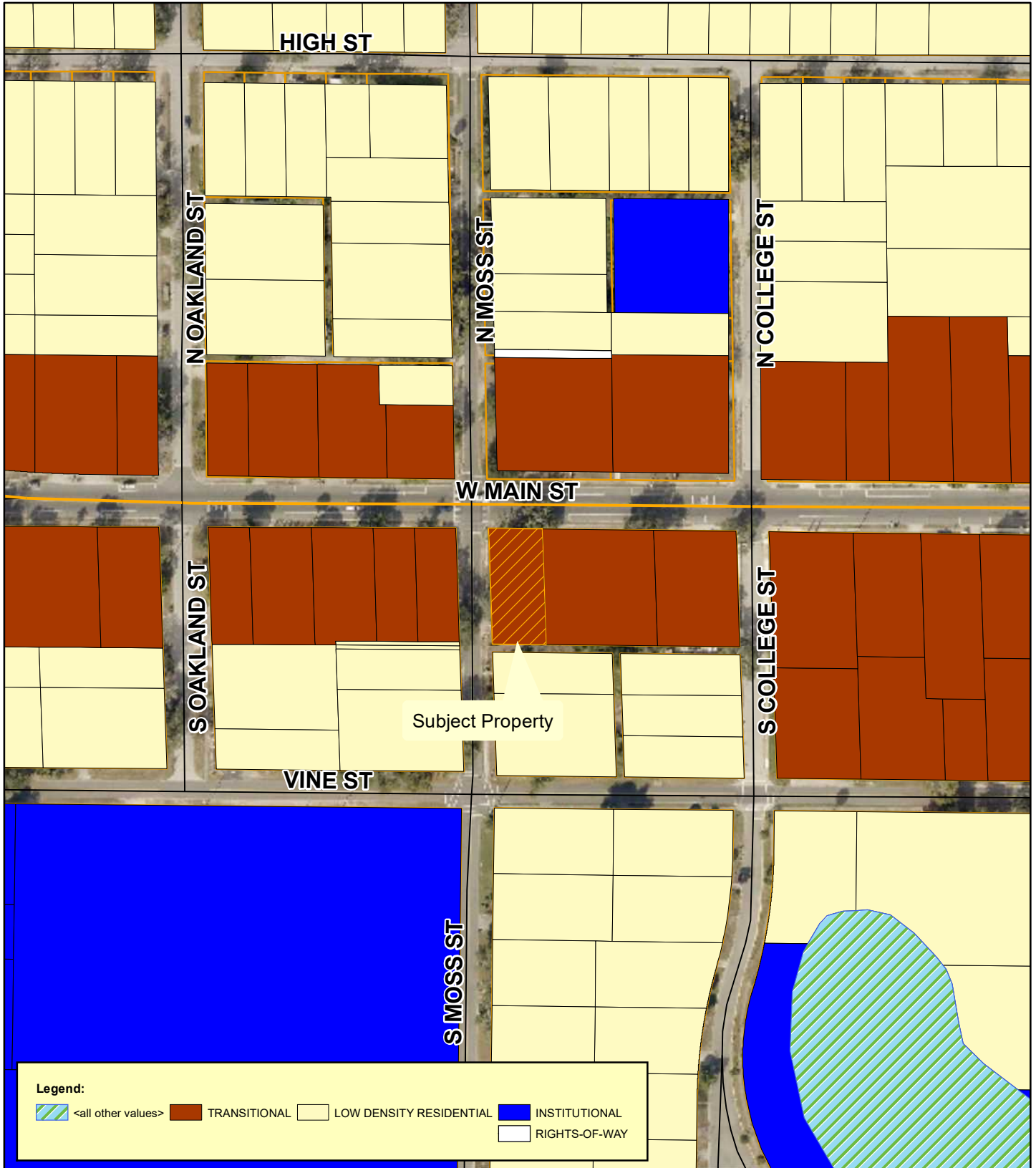


**Planning
& Zoning
Division**

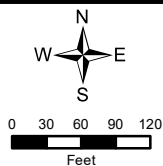


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Future Land Use

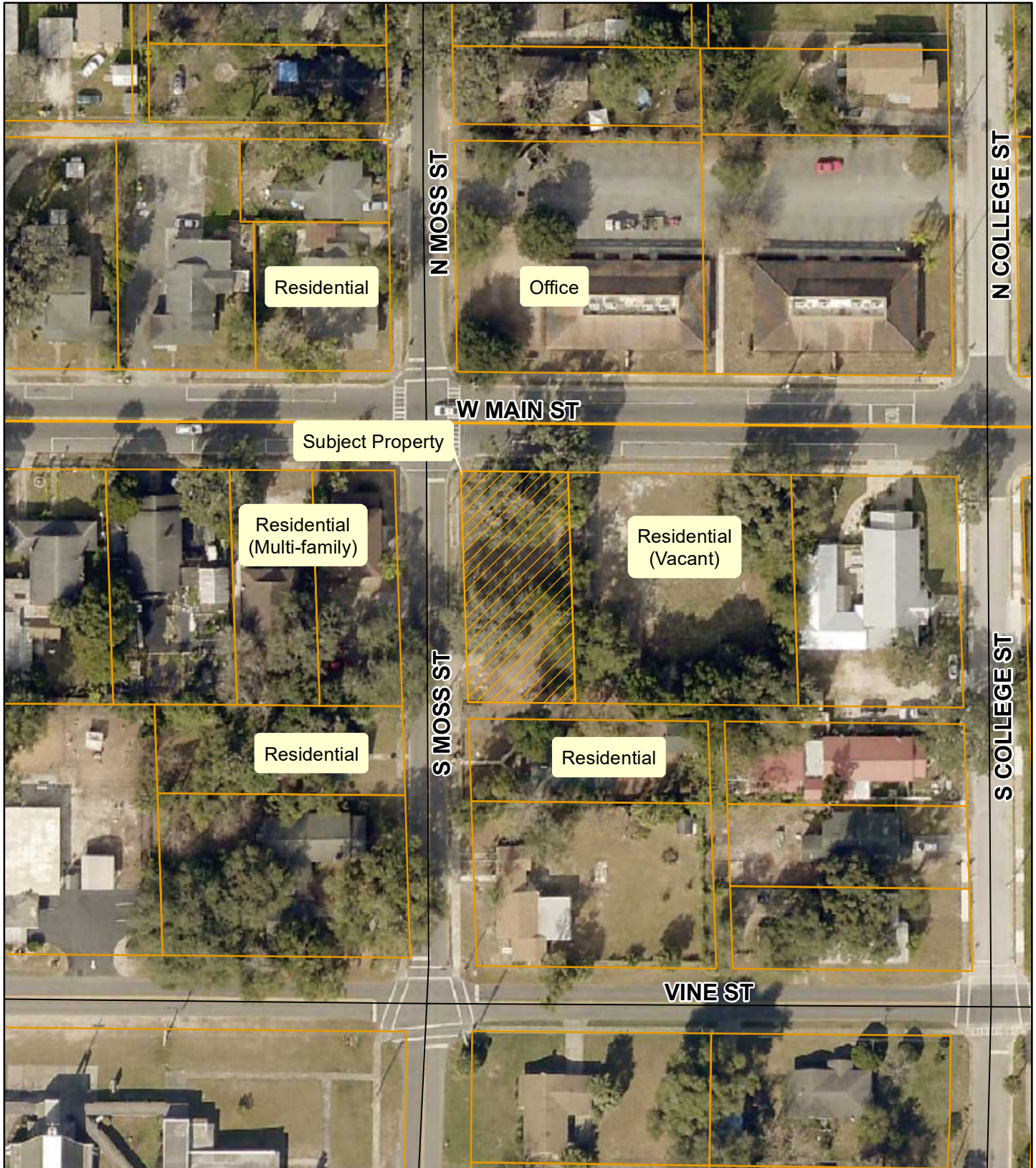


Planning & Zoning Division

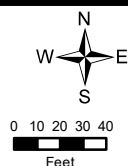


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Surrounding Land Uses

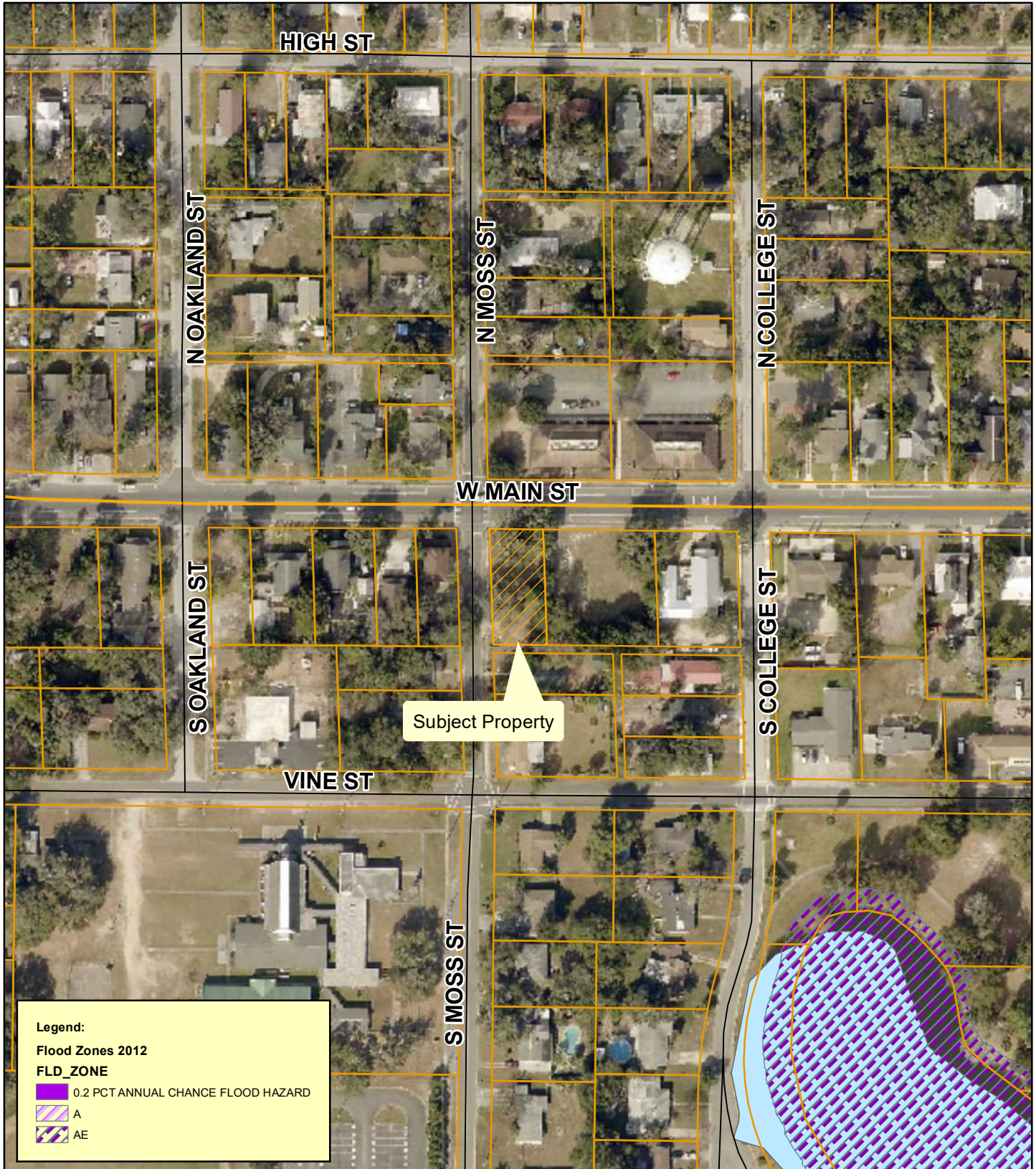


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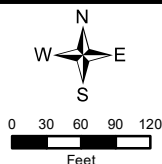


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Wetlands and Flood Zones

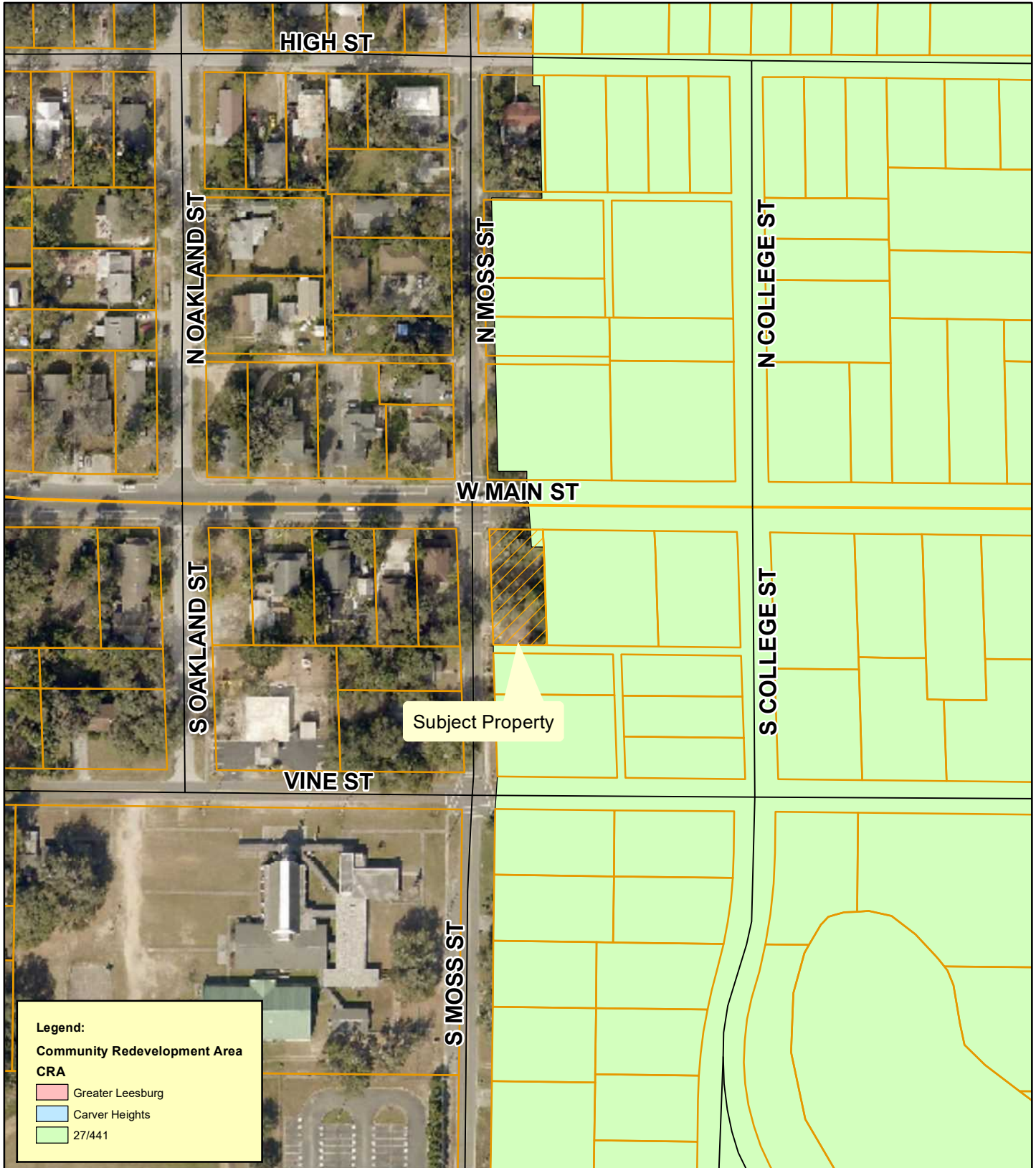


**Planning
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Division**

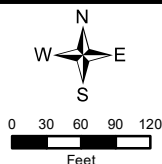


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Community Redevelopment Area

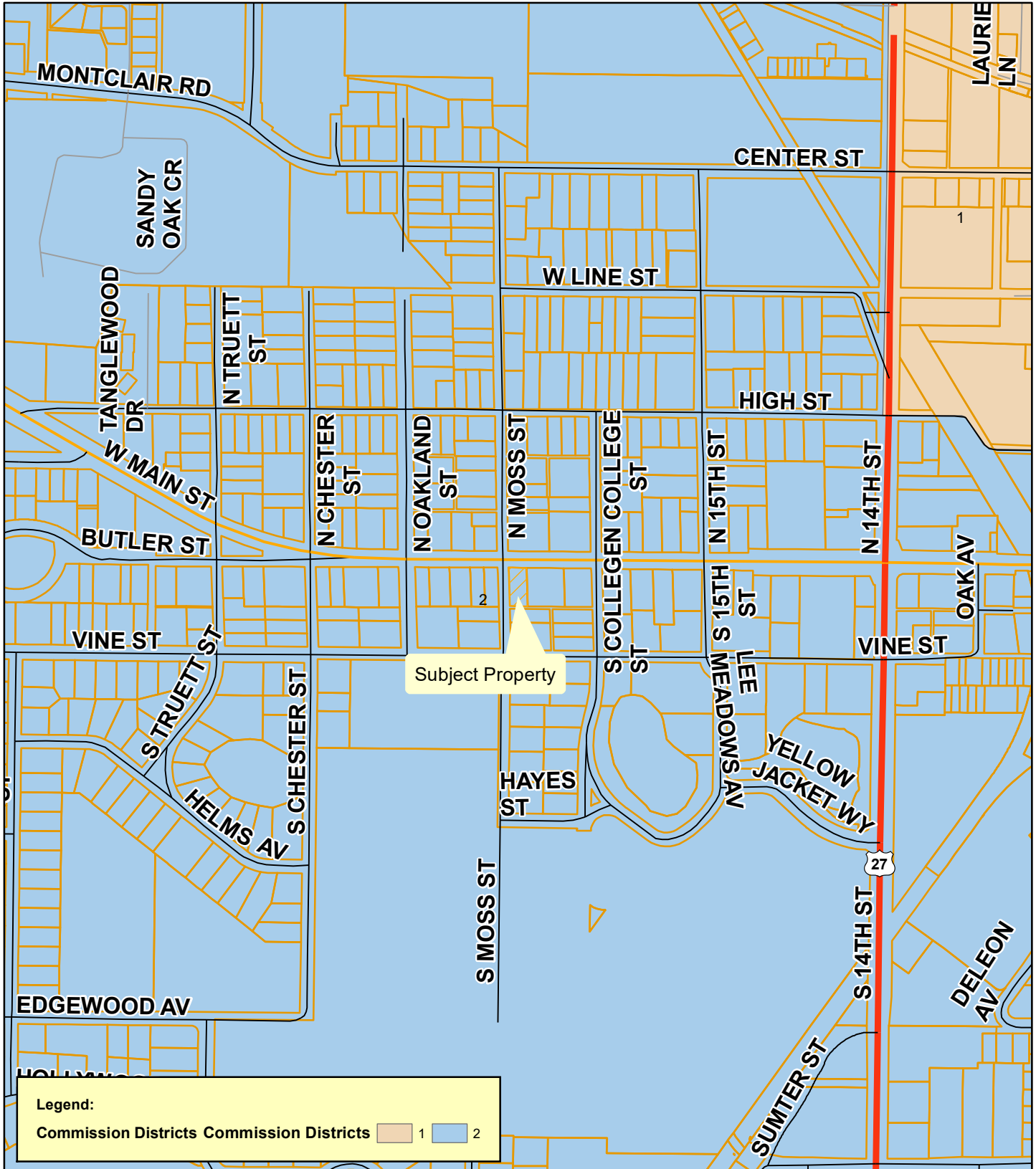


**Planning
& Zoning
Division**

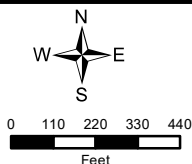


SPUD-20-287
1611 West Main Street
AK#: 1231876
Section 27, Township 19 South, Range 24 East
December 30, 2020

Commission District



**Planning
& Zoning
Division**



SPUD-20-287
 1611 West Main Street
 AK#: 1231876
 Section 27, Township 19 South, Range 24 East
 December 30, 2020



Public Notice posting on subject property from West Main Street looking south into the property.



Public Notice posting close-up of sign.



Looking west along West Main Street from the subject property.



Looking north from subject property across West Main Street.



Looking east from subject property along West Main Street.

City of Leesburg Lake Front City

Agenda Memorandum

Item No: 6.B.4.

Meeting Date: March 8, 2021

From: Dan Miller, (Planning and Zoning Manager)

Subject: An Ordinance of the City of Leesburg, Florida, rezoning approximately 0.28 acres from C-1 (Neighborhood Commercial) to SPUD (Small Planned Unit Development) to allow for a mechanic shop for a property generally located north of West Main Street and west of Lone Oak Drive as Legally described in Section 27, Township 19 South, Range 24 East, Lake County, Florida; and providing an effective date.

Staff Recommendation:

Staff recommends approval of the request to rezone to SPUD (Small Planned Unit Development) to allow a small mechanic shop on the subject property.

Analysis:

The subject property is approximately 0.28 acres, and is generally located north of West Main Street and west of Lone Oak Drive, as shown on the attached maps.

At this time, the property is developed with a single family home and large garage area. The current Future Land Use is General Commercial, and the zoning is C-1 (Neighborhood Commercial). The request is to allow a small engine (motorcycle) repair shop in the detached garage. The surrounding uses include Lone Oak Cemetery to the north, vacant commercial to the north and west and a church/school to the east. City of Leesburg utilities are available to this site. The SPUD conditions include provisions for noise, fence and planting buffers.

The Planning Commission held a public hearing on the application on January 21, 2021 and recommended approval by a vote of 6 to 0.

Procurement Analysis:

N/A

Options:

1. Approve the proposed rezoning to SPUD (Small Planned Unit Development); or
2. Other such action as the Commission may deem appropriate.

Fiscal Impact:

The fiscal impact from the action would be minimal, based on a slight increase in ad valorem taxes.

Submission Date and Time: 3/3/2021 3:55:13 PM

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, REZONING APPROXIMATELY 0.28 ACRES FROM C-1 (NEIGHBORHOOD COMMERCIAL) TO SPUD (SMALL PLANNED UNIT DEVELOPMENT) TO ALLOW FOR A MECHANIC SHOP FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET AND WEST OF LONE OAK DRIVE AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF LEESBURG, FLORIDA, that:

Section 1.

Based upon the petition of Rachel Smedley, 2319 Westside Drive, Leesburg, Florida, (Robert Gagne, agent) petitioner of the property hereinafter described, which petition has heretofore been approved by the City Commission of the City of Leesburg Florida, pursuant to the provisions of the Laws of Florida, the said property located in Lake County, Florida, is hereby rezoned from C-1 (Neighborhood Commercial) to City SPUD (Small Planned Unit Development), to-wit:

(Legal Description)
(See Exhibit B)

Section 2.

This ordinance shall become effective upon its passage and adoption, according to law.

PASSED AND ADOPTED at the regular meeting of the City Commission of the City of Leesburg, Florida, held on the _____ day of _____, 2021.

THE CITY OF LEESBURG

Mayor

ATTEST:

City Clerk

SMEDLEY GARAGE
(Rachel Smedley/Robert Gagne)
PLANNED DEVELOPMENT CONDITIONS
February 18, 2021

These Planned Development Conditions for a PUD (Planned Unit Development) District are granted by the City of Leesburg Planning Commission, Lake County, Florida to **Rachel Smedley, 2319 Westside Drive**, "Permittee" for the purposes, terms and conditions as set forth herein pursuant to authority contained in Chapter 25 "Zoning" Section 25-278 "Planned Development Process" of the City of Leesburg Code of Ordinances, as amended.

BACKGROUND

"Permittee" has submitted an application requesting an SPUD (Small 15Planned Unit Development) zoning district for an automobile dealership with sales, service and accessory uses on an approximately 0.28-acre site within the City of Leesburg in accordance with their Planned Development application and supplemental information. The project proposes a motorcycle repair shop at 2319 Westside Drive.

CONDITIONS

The following conditions shall apply to the development proposed herein. If any instance where the conditions of this document may conflict with the City of Leesburg Code of Ordinances, this document shall prevail as the determining requirement.

1. PERMISSION

Permission is hereby granted to Rachel Smedley to operate and maintain a SPUD (Small Planned Unit Development) in and on real property in the City of Leesburg. The property is generally located on the north side of West Main Street and west of Lone Oak Drive. The property is more particularly described as shown in the attached legal description below.

2. LEGAL DESCRIPTION

See attached legal Exhibit B

3. PERMITTED AND EXCLUDED USES

The above-described property shall be used for the uses as limited herein, pursuant to the requirements of this document and City of Leesburg development codes, requirements and standards, and as noted below.

A. Permitted Uses

- i. Single family residential use
- ii. Motorcycle service and repair conducted completely and wholly within the structure shown on the attached site plan.

B. Excluded Uses

- i. Any use not listed within the Permitted Uses section of this SPUD (Small Planned Unit Development) document.

C. Accessory Uses

- i. Accessory structures per City of Leesburg Code of Ordinances

4. SITE ACCESS & CIRCULATION

- A. Access to the property is currently available from Westside Drive. All access points shall be subject to the City of Leesburg requirements.

5. OPERATIONS, NOISE & PERMITS

- A. Hours of operation shall be limited to the time within the hours of 8 am -6 pm Monday through Saturday.
- B. All service and repair operations shall be carried on entirely within an enclosed, ventilated structure, except as permitted under accessory uses of Section 25-284, City of Leesburg Code of Ordinances, as amended.
- C. At no time shall the operations of this facility create noise, dust vibration in a manner that will disturb the adjoining properties.
- D. The use shall be subject to the requirements and conditions of Section 12-19 City of Leesburg "Nuisance Ordinance" All noise, dust, odors, oils, lubricants, emissions or other irritants and contaminants shall be contained at a level which does not disturb users of adjacent properties.
- E. Any notice of violation from The City of Leesburg shall be cause for a cease and desist order on use of the property until such time as the violation has been resolved with the appropriate agency(s).
- F. Applicant shall be required to apply for and receive all building permits as required by the City of Leesburg for this use prior to beginning operations.
- G. Prior to beginning operations, applicant shall provide proof of contract for pick up of all oils and grease materials as required by the City of Leesburg Code of Ordinances.

6. DEVELOPMENT STANDARDS

- A. The minimum development standards shall be those required for the C-1 (Neighborhood Commercial) district except as amended by these conditions.
- B. A minimum of twenty (20) percent of the site shall be developed as open space, including retention areas, buffer and landscaped areas. Parking areas and vehicle access areas shall not be considered in calculating open space.
- C. The Impervious surface coverage for this site shall not exceed eighty (80) percent of the gross site area.
- D. Outdoor storage areas for vehicles shall be completely screened from adjacent properties and streets through opaque fencing prior to business operation.
- E. All areas of the property shall be landscaped and maintained in accordance with City of Leesburg Code of Ordinances, as amended.

7. PARKING

- A. The permittee shall construct off-street parking spaces within the development per the conceptual site plan, pursuant to the City of Leesburg Code of Ordinances, as amended, which shall include the required number of handicapped parking spaces.
- B. Two parking spaces, to include one handicap space, shall be required.

8. UTILITIES

- A. Should alterations to the site be made, the "Permittee" shall submit, if applicable, a Master Site Drainage Plan and Utility Implementation Plan acceptable to the City of Leesburg. Prior to removal, renovation or demolition of any existing development on the site, the permittee shall provide:
- 1) A detailed site plan demonstrating no direct discharge of stormwater runoff

generated by the development into any natural surface waters or onto adjacent properties.

- 2) A detailed site plan indicating all provisions for electric, water, sewer, and natural gas in accordance with the site plan review process as required by the City of Leesburg Code of Ordinances.

9. FENCING, LANDSCAPE AND BUFFER REQUIREMENTS

- A. Prior to beginning operations, the applicant shall have constructed a permanent opaque wall or fence on the south and east side of the property as a visual and sound buffer. This wall or fence shall be no less than six feet in height and no greater than eight feet in height, with landscaping in accordance with the regulations contained within the City of Leesburg Code of Ordinances including;
 - 1) For each one hundred (100) linear feet, or fraction thereof, of boundary, the following plants shall be provided in accordance with the planting standards and requirements of the City of Leesburg Code of Ordinances, as amended.
 - a. Two (2) canopy trees (See code for palm tree usage)
 - b. Two (2) ornamental trees
 - c. Thirty (30) shrubs
 - d. The remainder of the buffer area shall be landscaped with grass, groundcover, and/or other landscape treatment.
- B. Variations to the landscape requirements of the code may be approved by the Planning & Zoning Manager as long as the intent of the SPUD and the Landscaping Code are maintained.

10. SIGNAGE

- A. All signage for the property shall be designed and constructed to comply with the standards and requirements of the sign regulations of the City of Leesburg Code of Ordinances, as amended.

11. MISCELLANEOUS CONDITIONS

- A. The uses of the proposed project shall only be those uses identified in the approved Planned Development Conditions. Any other proposed use must be specifically authorized in accordance with the Planned Development amendment process.
- B. No person, firm or corporation shall erect, construct, enlarge, alter, repair, remove, improve, move, convert, or demolish any building structure, sign (wall, pole or monument signs) or alter the land in any manner without first submitting the necessary plans and obtaining appropriate approvals in accordance with the City of Leesburg Codes.
- C. Construction and operation of the proposed use(s) shall at all times comply with City and other governmental agencies rules and regulations.
- D. The transfer of ownership or lease of any or all of the property described in this PUD Agreement shall include in the transfer or lease agreement, a provision that the purchaser or lessee is made good and aware of the conditions pertaining to the Planned Unit Development established and agrees to be bound by these conditions. The purchaser or lessee may request a change from the existing plans and conditions by following the procedures as described in the City of Leesburg Land Development Code, as amended.
- E. These PUD Conditions shall inure to the benefit of, and shall constitute a covenant

running with the land and the terms, conditions, and provisions hereof, and shall be binding upon the present owner and any successor, and shall be subject to each and every condition herein set out.

13. LEVELS OF SERVICE AND CAPACITY

A. Levels of Service

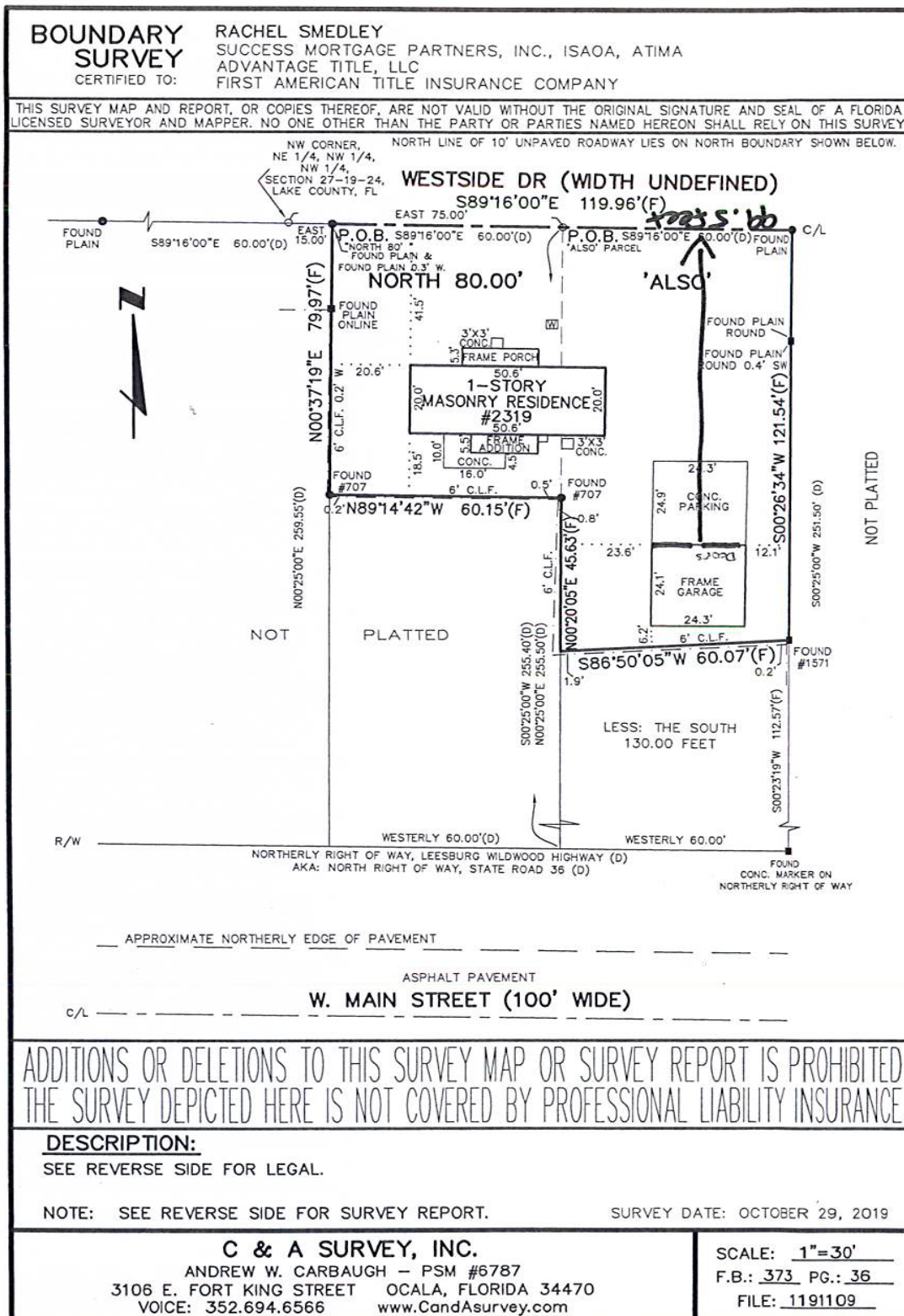
1. As submitted, the proposed zoning change does not appear to result in demands on public facilities which would exceed the current capacity of some public facilities, such as, but not limited to roads, sewage, water supply, drainage, and solid waste. However, no final development order (site plan and building permits) shall be granted for proposed development until there is a finding that all public facilities and services required for the development have sufficient capacity at or above the adopted level of service (LOS) to accommodate the impacts of the development, or that improvements necessary to bring facilities up to their adopted LOS will be in place concurrent with the impacts of the development.
2. Commitment of Capacity
 - i. There are no previous commitments of any existing or planned excess capacity.
3. Ability to Provide Services
 - i. The City intends to provide water, wastewater and reclaimed water services within its service area for the foreseeable future.

LEGAL DESCRIPTION

EXHIBIT B

BEG 15 FT E OF NW COR OF NE 1/4 OF NW 1/4 OF NW 1/4, RUN S
80 FT, E 60 FT, S TO A POINT 130 FT N OF N'LY R/W LINE OF SR
44, E 60 FT, N TO N LINE OF NW 1/4, W ALONG SAID N LINE 120
FT TO POB
ORB 5374 PG 467

EXHIBIT C





**CITY OF LEESBURG PLANNING & ZONING DIVISION
RECOMMENDATIONS**

DATE: February 18, 2021
OWNER: Rachel Smedley
PETITIONER: Rachel Smedley
PROJECT: Smedley Garage
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-294

THE PLANNING & ZONING DIVISION RECOMMENDS:

APPROVAL of the request for the following reason(s):

1. The proposed Zoning designation of SPUD (Small Planned Unit Development), as conditioned, is compatible with the surrounding adjacent properties having zoning designations of P (Public), SPUD (Small Planned Unit Development), and C-1 (Neighborhood Commercial).
2. The Future Land Use designation of General Commercial is compatible with surrounding adjacent properties having Institutional and General Commercial future land use designations.
3. The proposed request is consistent with the City's Growth Management Plan, Future Land Use Element, Goal I, Objective 1.6.

Action Requested:

1. Vote to approve this request to rezone the subject property from C-1 (Neighborhood Commercial) to SPUD (Small Planned Unit Development) and forward the recommendation to the City Commission for consideration.

**CITY OF LEESBURG PLANNING & ZONING DIVISION
STAFF SUMMARY**

DATE: February 18, 2021
OWNER: Rachel Smedley
PETITIONER: Rachel Smedley
PROJECT: Smedley Garage SPUD
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-294

GENERAL LOCATION: The property is generally located north of West Main Street and west of Lone Oak Drive.

FUTURE LAND USE DESIGNATION:
General Commercial

SURROUNDING FUTURE LAND USE DESIGNATION:

North – Institutional
South – General Commercial
East – General Commercial
West – General Commercial

PROPOSED FUTURE LAND USE DESIGNATION:
N/A

EXISTING ZONING DESIGNATION:
C-1 (Neighborhood Commercial)

SURROUNDING ZONING DESIGNATIONS:

North – P (Public)
South – SPUD (Small Planned Unit Development)
East – C-1 (Neighborhood Commercial); SPUD (Small Planned Unit Development)
West – C-1 (Neighborhood Commercial); SPUD (Small Planned Unit Development)

PROPOSED ZONING DESIGNATION:
SPUD (Small Planned Unit Development)

EXISTING LAND USE:
Single Family structure with an outbuilding

SURROUNDING LAND USE:
North – Cemetery
South – Commercial (vacant)
East – Church
West – Commercial (vacant)

PROPOSED LAND USE: Motorcycle repair shop

**CITY OF LEESBURG PLANNING & ZONING DIVISION
DEPARTMENTAL REVIEW SUMMARY**

DATE: January 6, 2021
OWNER: Rachel Smedley
PETITIONER: Rachel Smedley
PROJECT: Smedley Garage
REQUEST: SPUD (Small Planned Unit Development)
CASE NO.: SPUD-20-294

THE FOLLOWING COMMENTS RECEIVED FROM EACH DEPARTMENT:

POLICE

No comments received as of 1/15/21

FIRE

No comments from Fire Department. Amanda Stevenson 1/15/21

ELECTRIC

Electric has no issues or comments. Steve Davis 1/6/21

GAS

No comments received as of 1/15/21

GIS

No comments received as of 1/15/21

BUILDING

No comments received as of 1/15/21

PUBLIC WORKS

Public Works has no issues with this. Cliff Kelsey 1/7/21

ADDRESSING

No comments received as of 1/15/21

ECONOMIC DEVELOPMENT

No comments received as of 1/15/21

LAKE COUNTY PUBLIC WORKS

No comments received as of 1/15/21

LAKE COUNTY SCHOOLS

The applicant proposes to convert a single-family residence to a motor cycle garage. The motor cycle garage use is a nonresidential use and therefore not subject to school concurrency review. Helen LaValley 1/12/21

PUBLIC RESPONSES

Approval

1 approval

Disapproval

3 disapprovals 3 with comments

Notice of Appearance filed:

PUBLIC COMMENTS (APPROVAL)

PUBLIC COMMENTS (DISAPPROVAL)

Wilmer Pabon – In our church properties we have a private school running from 8 am to 4 pm. The institution gives classes from Elementary School to Middle School. The planned property to be rezoned would be right next to our tenants (Chosen Generation Christian Academy) which may cause interruption in the normal classes at the kids, additionally that in recess time the kids go out in our property that is directly beside the proposed shop. This may affect in the way that the products that may be used may have quimics and may expose the kids to gases that may affect their health.

Attached two pages with signatures from members of our congregation. Rosibel Nunez

Manuel Santos Jr. – We are Chosen Generation Christian Academy and we rent 2312 W. Main St. Bld. A-B. We are a Private School from 1st- 12th grade. The reason for our Disapproval is that we have children in the surrounding area and our school is in a growing status. We use all the surrounding area for our children to play and have recess. We understand that the projected shop can be an inconvenience to our school for all the unwanted traffic also the safety of our children is important.

Attached one page with signatures included with comments.

Roy Curet – I wish to object strongly to the request for the following Reasons: Noise, Disturbance, Overlooking, and loss of privacy, Nuisance.

1. Nancy Figueroa ~~Lucy Figueroa~~ 407-491-7451
2. Felix MALAVE ~~Felix~~ 352-408-6280
3. Emily Tirado ~~Emily~~ (352) 460-6030
4. Abigail Rosario ~~Abigail Rosario~~ 352-350-4337
5. Nancy Estrella ~~Nancy Estrella~~ 352-708-1680
6. Luis Troche ~~Luis~~ 787-519-0325
7. Ernesto Cardona ~~Ernesto Cardona~~ 563-8329354
8. Norma Muraviov ~~Norma Muraviov~~ 352-552-4458
9. Carmen Perez ~~Carmen Perez~~ 832-291-5321
10. Carolyn Camacho ~~Carolyn Camacho~~ 352-255-1635
11. Luis Camacho ~~Luis Camacho~~ 352-874-5875
12. Gabriella Camacho ~~Gabriella Camacho~~ 352-272-9315
13. Amado NUNEZ ~~Amado NUNEZ~~ 352-272-4154
14. Ivorio Padilla ~~Ivorio Padilla~~ 352-531-9991
15. Pablo S. Cordova ~~Pablo S. Cordova~~ 407-781-6598
16. Andres X. Feliciano ~~Andres X. Feliciano~~ 352-801-9821
17. Anthony Aubain ~~Anthony Aubain~~ 352-988-9963
18. Carlos Cruz ~~Carlos Cruz~~ 352-497-0380
19. Mayra L. Olivencia Acosta ~~Mayra L. Olivencia Acosta~~ 239-314-6047
20. Damaris Estrada ~~Damaris Estrada~~ 407-781-6029
21. Wilmer Pabon ~~Wilmer Pabon~~ 321-324-9287
22. Eric Ortiz ~~Eric Ortiz~~ 407-781-7962
23. Rosibel R. Nunez ~~Rosibel R. Nunez~~ 352-272-4150
24. Damaris Narvaez ~~Damaris Narvaez~~ (787) 662-1698
25. Ismael Montalvo ~~Ismael Montalvo~~ 407-592-1084
26. Elmelda Soto ~~Elmelda Soto~~ 352-459-3609



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27. Cecilio Gomez ~~Cecilio Gomez~~ 252 622 5355
28. Abigail C. Tirado ~~Abigail C. Tirado~~ 352-504-2516
29. Esaida Garcia ~~Esaida Garcia~~ (717)-454-7848
30. Ramón Hernandez ~~Ramón Hernandez~~ (717) -507-7062
31. GUILLERMO VALAREZO ~~Guillermo Valarezo~~ (929)-416-0276
32. Elizabeth Quintes ~~Elizabeth Quintes~~ (407) 458-3438
33. Jashira Acevedo ~~Jashira Acevedo~~ (407) 693-6125
34. Nicole Puente ~~Nicole Puente~~ (929) 426-0275
35. Carlos Marquez ~~Carlos Marquez~~ 352-408-7615
36. Rimary Rodriguez ~~Rimary Rodriguez~~ 352-470-2378
37. Michael Marquez ~~Michael Marquez~~ 352-631-1628
38. Sebastião Ponce De León ~~Sebastião Ponce De León~~ 407-744-8281
39. Tanya Del Valle ~~Tanya Del Valle~~ 352-406-4755
40. Chelsy Del Rio ~~Chelsy Del Rio~~ (352) 818-7572
41. Ingris Antunez ~~Ingris Antunez~~ (352) 460-3900
42. Rosy Valenzuela ~~Rosy Valenzuela~~ (352) 460-5251
43. Diana Hernandez ~~Diana Hernandez~~ (352) 408-7325
44. Rosalyn Valenzuela ~~Rosalyn Valenzuela~~ (352) 4603170
45. Wilfredo Del Rio ~~Wilfredo Del Rio~~ (352) 818-7629
46. Irvin Ayala Galvez ~~Irvin Ayala Galvez~~ (352) 255-0370
47. Genmis Torres ~~Genmis Torres~~ (973) 687-4124
48. Carla Torres ~~Carla Torres~~
49. Maribel Soto Montoya ~~Maribel Soto Montoya~~ (866) 290-5588
50. Annlys Pabon ~~Annlys Pabon~~
51. MARJAREE REYES ~~Marjaree Reyes~~ (352) 702-5835.
52. Rousse Sandi Quirel ~~Rousse Sandi Quirel~~ (352) 617-8034
53. Juan A. Ponce De León ~~Juan A. Ponce De León~~ (787) 900-6120



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1. Manuel Santos		407-521-3643
2. Maribel Perez		(407) 430-2240
3. Lismarie Colon		(352) 805-6795
4. Nodía Santos		(407) 501-9852



DRAFT SUMMARY MINUTES OF THE REGULAR MEETING
OF THE PLANNING COMMISSION
VENETIAN CENTER
THURSDAY, JANUARY 21ST, 2020 - 4:30 P.M.

The Planning Commission of the City of Leesburg held its regular meeting Thursday, January 21st, 2021, at Venetian Center.

Vice-Chairman Tim Sennett called the meeting to order at 4:30 p.m.

The following Commission members were present:

Tim Sennett – Vice-Chairman
Frazier Marshall
Michael Fitzpatrick
Alfred Haliday
Nathaniel Sanders
Ze'Shieca Carter

The following Commission members were absent:

Ted Bowersox
John O'Kelley
Chris Wood

City staff in attendance included Dan Miller, Planning & Zoning Manager, Dianne Pacewicz, Planner, Kandi Harper, Senior Planner, Sabrina Mitchell, Administrative Assistant II, and City Attorney Fred Morrison was also present.

The meeting opened with an invocation given by Vice-Chairman Sennett, followed by the Pledge of Allegiance to the Flag.

Dan Miller informed the audience of the rules of participation and the need to sign the speaker's registry. He also informed Commissioners and the audience that the City Commission meeting dates are tentatively scheduled.

**DRAFT SUMMARY MINUTES OF THE PLANNING COMMISSION MEETING
FOR THURSDAY, DECEMBER 17TH, 2020**

Commissioner Carter moved to APPROVE the draft minutes from the DECEMBER 17TH, 2020 meeting. Commissioner Fitzpatrick SECONDED the motion, which PASSED by a vote of 6- 0.

ELECTION OF CHAIR AND VICE-CHAIR

Commissioners had discussion on the election of a Chair and Vice-Chair for the Board.

Motion made for the election of Chair and Vice-Chair of the Board.

COMMISSIONER SENNETT made a MOTION to APPROVE to re-elect CHAIRMAN BOWERSOX as the CHAIR of the PLANNING COMMISSION – COMMISSIONER HALIDAY SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

COMMISSIONER FITZPATRICK made a MOTION to APPROVE COMMISSIONER SENNETT as the VICE-CHAIR of the PLANNING COMMISSION – COMMISSIONER HALIDAY SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

Vice-Chairman Sennett handed over the gavel due to a conflict of interest on the first two cases under new business.

Motion made to elect a Commissioner to introduce case# SPUD-20-287 and case# SPUD-20-288 under new business.

COMMISSIONER CARTER made a MOTION to APPROVE COMMISSIONER MARSHALL to introduce case# SPUD-20-287 and case# SPUD-20-288 under new business – COMMISSIONER FITZPATRICK SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

Sabrina Mitchell swore in staff as well as anyone in the audience wishing to speak.

Commissioner Marshall called for the first case under new business be brought forward.

NEW BUSINESS

**1. PUBLIC HEARING CASE # SPUD-20-287 – 1611 WEST MAIN STREET
– SMALL PLANNED UNIT DEVELOPMENT**

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 0.21 +/- ACRES

FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND EAST OF SOUTH MOSS STREET AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. (CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021) (1611 W Main)

Mr. Miller stated the first two cases the zonings are word for word and both are Small Planned Unit Developments.

Dan Miller introduced case number #SPUD-20-287 – 1611 West Main Street – Small Planned Unit Development and case number #SPUD-20-288 – 1807 West Main Street – Small Planned Unit Development into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning, and changes.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, and one disapproval with no comment. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any Commissioners have questions for Staff.

Commissioner Sanders expressed concern regarding the Small Planned Unit Development.

Mr. Miller gave a brief explanation of the (SPUD) Small Planned Unit Development, zoning category, owner's use, City taxes and utility fees, different uses; not allowed under existing zoning, growth; widening of West Main Street, over decades; less attractive; residential use, much more attractive; office use, apply zoning category; allow some form of positive development for the area.

Commissioner Marshall stated any questions from the public, and then closed the discussion from the public.

Commissioner Marshall entertained a motion, and then the voting took place.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-287 – 1611 WEST MAIN STREET – SMALL PLANNED UNIT

DEVELOPMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Commissioner Marshall called for the second case under new business be brought forward.

2. PUBLIC HEARING CASE # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, MODIFYING THE CONDITIONS OF APPROVAL FOR A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ON APPROXIMATELY 0.43 +/- ACRES FOR PROPERTY GENERALLY LOCATED SOUTH OF WEST MAIN STREET AND WEST OF OAKLAND STREET, AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (1807 W Main)

Mr. Miller stated this the second of the two cases the zonings are word for word and both are Small Planned Unit Developments, but different locations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, requests and went over the (SPUD) Small Planned Unit Development zoning.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Department Review Summary: This case was sent out to all the different departments for review, no substantive comments, or objections from the departments. Public responses no comments from the public.

Mr. Miller read the Staff Recommendations for the case into the record; Staff recommended approval.

Commissioner Marshall stated if any discussion from the Commission.

Commissioner Marshall entertained a motion, and then the voting took place.

Vice-Chairman Sennett stated for the record the easement for utilities has already been done.

Commissioner Sanders made a MOTION for APPROVAL of case # SPUD-20-288 – 1807 WEST MAIN STREET – SMALL PLANNED UNIT DEVELOPMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 5- 0.

Vice-Chairman Sennett called for the third case under new business be brought forward.

3. **PUBLIC HEARING CASE # SPUD-20-294 – SMEDLEY GARAGE – SMALL PLANNED UNIT DEVELOPMENT**

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, REZONING APPROXIMATELY 0.28 +/- ACRES FROM C-1 (NEIGHBORHOOD COMMERCIAL) TO SPUD (SMALL PLANNED UNIT DEVELOPMENT) TO ALLOW FOR MECHANIC SHOP FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET AND WEST OF LONE OAK DRIVE AS LEGALLY DESCRIBED IN SECTION 27, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, MARCH 8, 2021 AND SECOND READING ON MONDAY, MARCH 22, 2021)** (Smedley Garage)

Mr. Miller stated that the applicant has requested to hold this project until February Planning Commission meeting in order to meet with surrounding property owners.

Staff is requesting that the Commission vote to postpone this case to the next Planning Commission meeting on February 18.

Vice-Chairman Sennett stated if any discussion from the Commission.

Vice-Chairman Sennett entertained a motion, and then the voting took place

Commissioner Marshall made a MOTION to POSTPONE case # SPUD-20-294 – SMEDLEY GARAGE – SMALL PLANNED UNIT DEVELOPMENT to February Commission meeting Commissioner Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the fourth case under new business be brought forward.

4. **PUBLIC HEARING CASE #CPTA-20-178 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – COMPREHENSIVE PLAN TEXT AMENDMENT**

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE CITY OF LEESBURG COMPREHENSIVE PLAN TO ESTABLISH CRITERIA FOR DENSITY BONUS BASED ON CERTAIN CRITERIA, ESTABLISHING APPROPRIATE POLICIES TO ENSURE COMPATIBILITY; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE**

**TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY,
FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL
12, 2021** (Lee Street Village)

Mr. Miller stated we have two new cases and would like to speak about both cases together.

Dan Miller introduced case number #CPTA-20-178 – Historic Preservation District Density Bonus – Comprehensive Plan Text Amendment and case number #AMDT-20-279 – Historic Preservation District Density Bonus – Land Development Regulation Amendment Section 25 - 292 (25) into the record and entered the exhibits into the record with maps; Historic District, and photo exhibits, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the overall development, comprehensive plan text amendment; create a policy in the Future Land Use Element; allow the city to create a Density Bonus within Historic District, land development regulation; zoning code amendment; Chapter 25; create the process and procedures, Leesburg Historic District, went over Historic District area map; includes downtown Leesburg and some areas to south and west, proposing Ordinance, adopt; exhibit, proposed Comprehensive Plan Amendment Future Land Element Policy 1.1.8 and read Ordinance into the record, and went over Ordinance Section 25-292 (25), read into the record, and goes over requirements in code.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Commissioners and Mr. Miller discussed clarification on page 3 of 7 item 1 (underutilized property; someone has property in that area; rental property, unable to rent for a year; no utilities, Mr. Miller replied if they could collect one full acre of land; one contiguous area, single-family home; can't do that; collect enough land; one full acre, CRA, Mr. Miller replied most of the area falls under CRA, gives one carat, Historic District zoning; started/stopped; Mr. Miller gave a brief explanation of the Historic District, and stated if the program works here it could work in other areas; good ex: Mike and Pine St; Carver area; excellent area, start here; potentially expand or creates new programs; additional areas, any area that contains a concentration of underutilized area or slum; or abandoned properties; good carat; hoping very successful, move to other areas, change amount of land needed; based on area, need somewhere to start, beneficial/biggest hurdle; assistant living. Mr. Miller stated long term ownership time period; can't take care of property anymore; supports strength of downtown; housing supporting business downtown, consider assistant living; review procedure; intense review; public/staff, encouraged good positive development; potential to expand it.

Vice-Chairman Sennett stated any questions or comments from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Haliday made a MOTION for APPROVAL of case # CPTA-20-178 – HISTORIC PRESERVATION DISTRICT DENSITY – COMPREHENSIVE PLAN TEXT AMENDMENT Commissioner Fitzpatrick SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the fifth case under new business be brought forward.

5. PUBLIC HEARING CASE #AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT SECTION 25 – 292 (25)

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING CITY OF LEESBURG LAND DEVELOPMENT REGULATIONS BY ESTABLISHING CRITERIA FOR DENSITY BONUSES IN ARTICLE IV – SECTION 25-292 SUPPLEMENTAL DISTRICT REQUIREMENTS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING A SAVINGS CLAUSE; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # AMDT-20-279 – HISTORIC PRESERVATION DISTRICT DENSITY BONUS – LAND DEVELOPMENT REGULATION AMENDMENT SECTION 25 - 292 (25) Commissioner Haliday SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the sixth case under new business be brought forward.

6. PUBLIC HEARING CASE # SSCP-20-291 – LEE STREET VILLAGE – SMALL SCALE COMPREHENSIVE PLAN AMENDMENT

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN OF THE CITY OF LEESBURG, CHANGING THE FUTURE LAND USE DESIGNATION OF CERTAIN PROPERTY CONTAINING APPROXIMATELY 4.87 ACRES FROM INSTITUTIONAL TO LOW DENSITY RESIDENTIAL FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY

DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Mr. Miller stated the projects come in pairs, the final two projects are related.

Dan Miller introduced case number #SSCP-20-291 – Lee Street Village – Small Scale Comprehensive Plan Amendment and case number #SPUD-20-292 – Lee Street Village – Small Planned Unit Development Rezoning into the record and entered the exhibits into the record with maps and photo exhibits including aerial, zoning, future and surrounding land use, wetlands/flood zone maps, CRA maps, staff summary, departmental review summary, and staff recommendations.

Mr. Miller gave a background and explanation of the subject property, location current zoning, and requests.

Kandi Harper utilized a power point presentation to demonstrate the area of the proposed site for both cases.

Mr. Miller read the Staff Recommendations for both cases into the record; Staff recommended approval for both cases.

Vice-Chairman Sennett stated if any questions from Staff.

Greg Beliveau of LPG in Mt. Dora gave a brief presentation of the subject property, went through process of proposed LDR's; Historic Board; reviewed plans; approved, Staff reviewed, Staff; went through Southern building of Lee School; Phase 1; add 14 apartments, northern structure removed; construction of townhomes, Phase 1 & 2; renovation of Historic structure; Phase 1, interior walls; very thick; Historic classrooms; one apartment unit, 2 floors; apartments, basement; recreation areas, break rooms, Wi-Fi, outside retain look; windows replaced; modern look, elevators; removed, interior; renovated, wood floors; good shape, wood raptors, make sure meet code, Phase 2; access, driveways, parking; onsite recreational components, minimal parking; adjacent street, connectivity; proximity property; downtown, increase densities, downtown master plan; more opportunity, Villages; moving multi-family; downtown, mixed uses; encourage downtown growth, and look forward for your recommendations for approval, and people looking at units; no pre-sale allowed, and conceptual plan.

Commissioners and Mr. Miller discussed individually owned, elevations; outside owner's ready to move on this project; assisted living, same owners, not impressed with the outside, price range, Phase 1 individually owned, and parking spaces per unit.

Greg Beliveau gave a presentation to address comments from Commissioners regarding proposed development, townhouses; individually owned; intent, elevations same, architect working on elevations; tuned to Lee School, owner's time table; last year, behind schedule; move now, Phase 1 done; ASAP, walk through; Bldg. Dept, submit Bldg. Dept; during process, gentlemen wants to

move now, don't know price range; market rate; not over 200K to 230K; townhomes; or lower, Phase 1; apartments; all rentals, each unit; garage/driveway; two parking spaces, floor plan; garage; first floor and two floors above.

Mr. Miller went over the elevations in the (PUD); trying to show range. Dan Miller stated different ownership, previous owner sold to the gentlemen making application, different ownership; last year; trip to headquarters; seen results; done, and this is the best one we had in a long time.

Vice-Chairman Sennett stated any questions from the public, and then closed the discussion from the public.

Vice-Chairman Sennett entertained a motion, and then the voting took place.

Commissioner Fitzpatrick made a MOTION for APPROVAL of case # SSCP-20-291 – LEE STREET VILLAGE – SMALL SCALE COMPREHENSIVE PLAN AMENDMENT Commissioner Carter SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

Vice-Chairman Sennett called for the seventh case under new business be brought forward.

7. PUBLIC HEARING CASE # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING

AN ORDINANCE OF THE CITY OF LEESBURG, FLORIDA, AMENDING THE DEVELOPMENT CONDITIONS ON A SPUD (SMALL PLANNED UNIT DEVELOPMENT) ZONING ON APPROXIMATELY 4.87 ACRES TO ALLOW FOR RESIDENTIAL DEVELOPMENT FOR A PROPERTY GENERALLY LOCATED NORTH OF WEST MAIN STREET, WEST OF LEE STREET, SOUTH OF WEST LINE STREET AND EAST OF PERKINS STREET AS LEGALLY DESCRIBED IN SECTION 26, TOWNSHIP 19 SOUTH, RANGE 24 EAST, LAKE COUNTY, FLORIDA; AND PROVIDING AN EFFECTIVE DATE. **(CITY COMMISSION DATES ARE TENTATIVELY SCHEDULED FOR FIRST READING ON MONDAY, FEBRUARY 22, 2021 AND SECOND READING ON MONDAY, APRIL 12, 2021)** (Lee Street Village)

Dan Miller read into the record a request on page three under development standards to delete phrase (6h); maximum number of residential units on the property shall be 8 units per acre on the previous (SPUD) Small Planned Unit Development.

Motion made to request to delete phrase (6h) in the (SPUD) Small Planned Unit Development.

COMMISSIONER Carter made a MOTION to APPROVE deletion of (6h) in the (SPUD) SMALL PLANNED UNIT DEVELOPMENT for case# SPUD-20-292 COMMISSIONER Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6-0.

Fred Morrison, City Attorney stated the motion was to delete (6h) need to approve the entire case with the change made.

Commissioner Haliday made a MOTION for APPROVAL of case # SPUD-20-292 – LEE STREET VILLAGE – SMALL PLANNED UNIT DEVELOPMENT REZONING with the modifications of removing the clause previously stated Commissioner Sanders SECONDED the MOTION which CARRIED UNANIMOUSLY by a vote of 6- 0.

DISCUSSION

None.

ANNOUNCEMENTS

Motion made to adjourn meeting by Commissioner Marshall and seconded by Commissioner Carter.

ADJOURNMENT

Approximately 5:35 p.m.

Tim Sennett, Vice-Chairman

Sabrina Mitchell, Administrative Assistant II



Public Notice sign posting on subject property.



Public Notice sign posting close-up on subject property.



Looking west along Westside Drive from subject property.

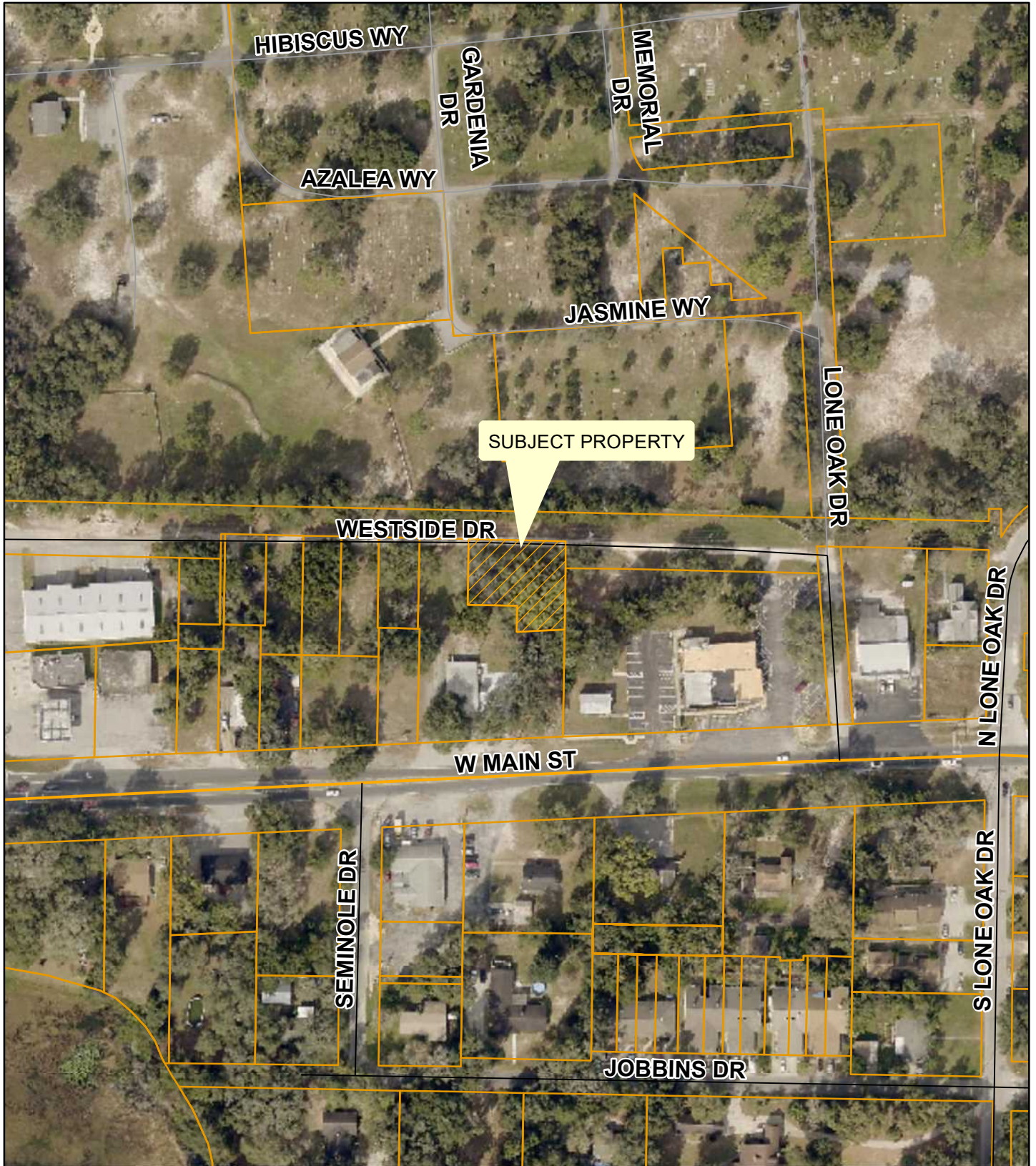


Looking north across Westside Drive from subject property.

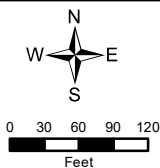


Looking east along Westside Drive from subject property.

Aerial

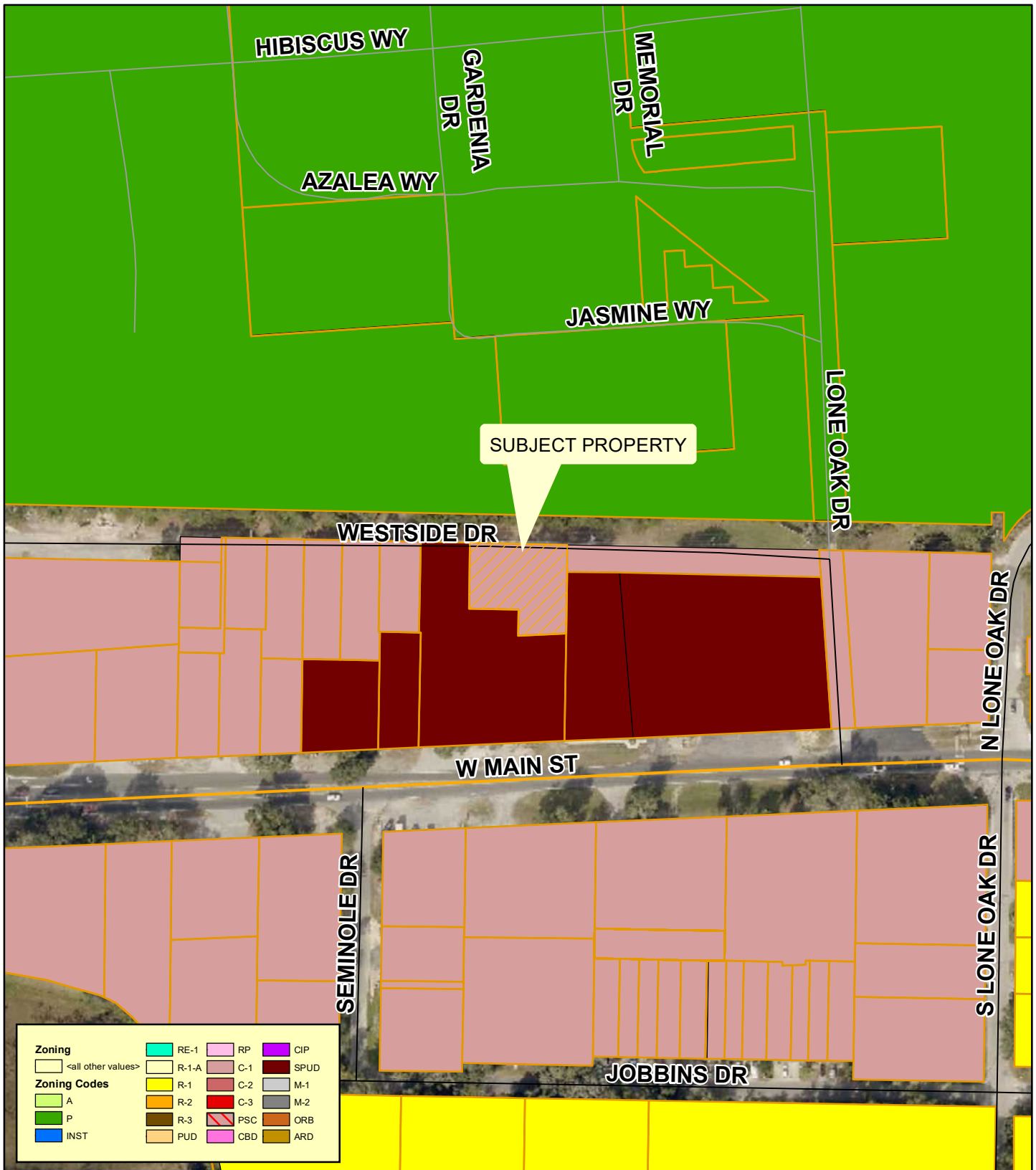


**Planning
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Division**

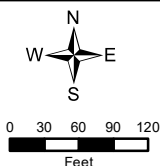


SPUD-20-294
2319 Westside Drive
AK#: 1291747
Section 27, Township 19 South, Range 24 East
December 31, 2020

Zoning

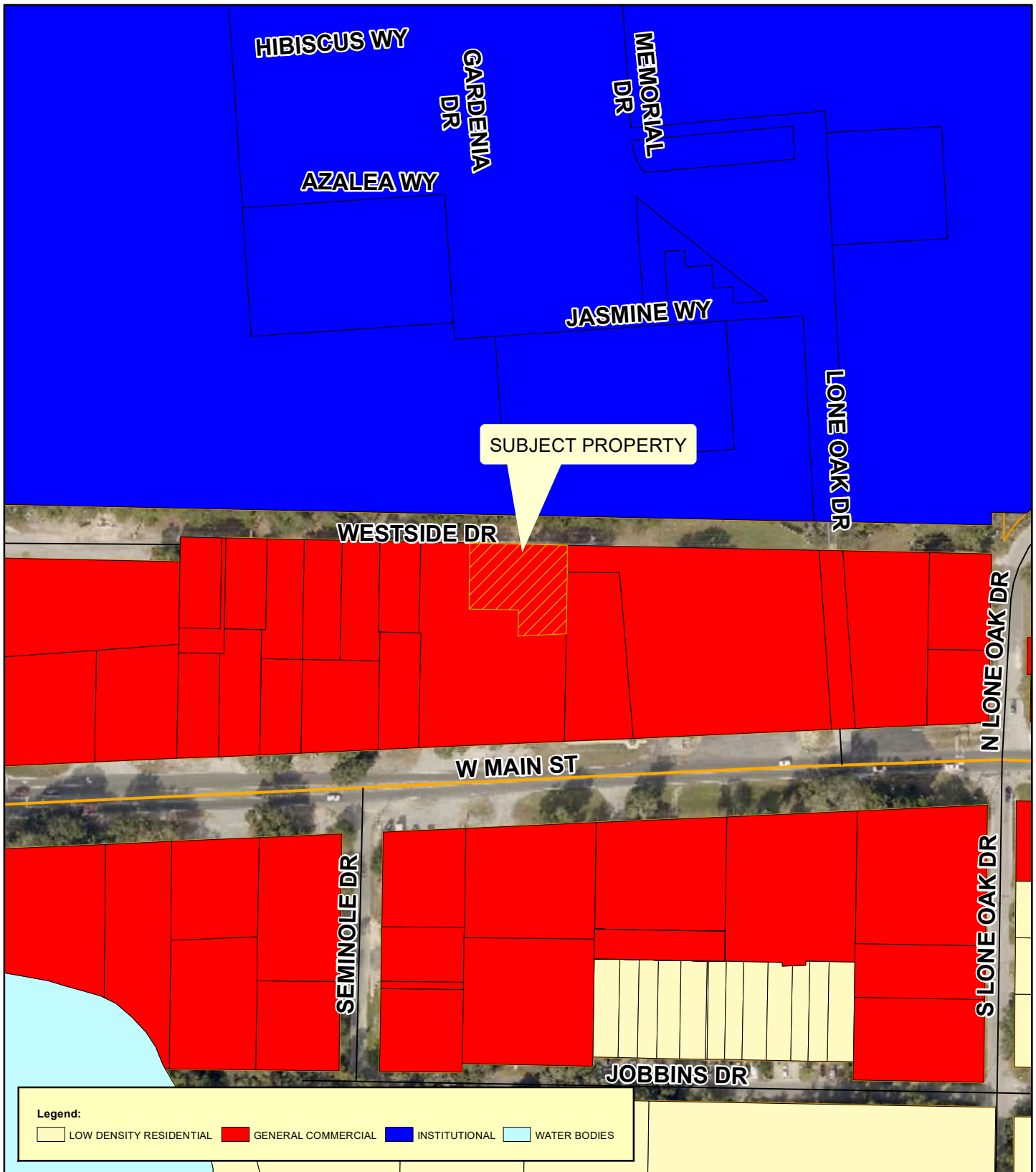


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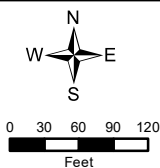


SPUD-20-294
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Future Land Use



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Surrounding Land Uses

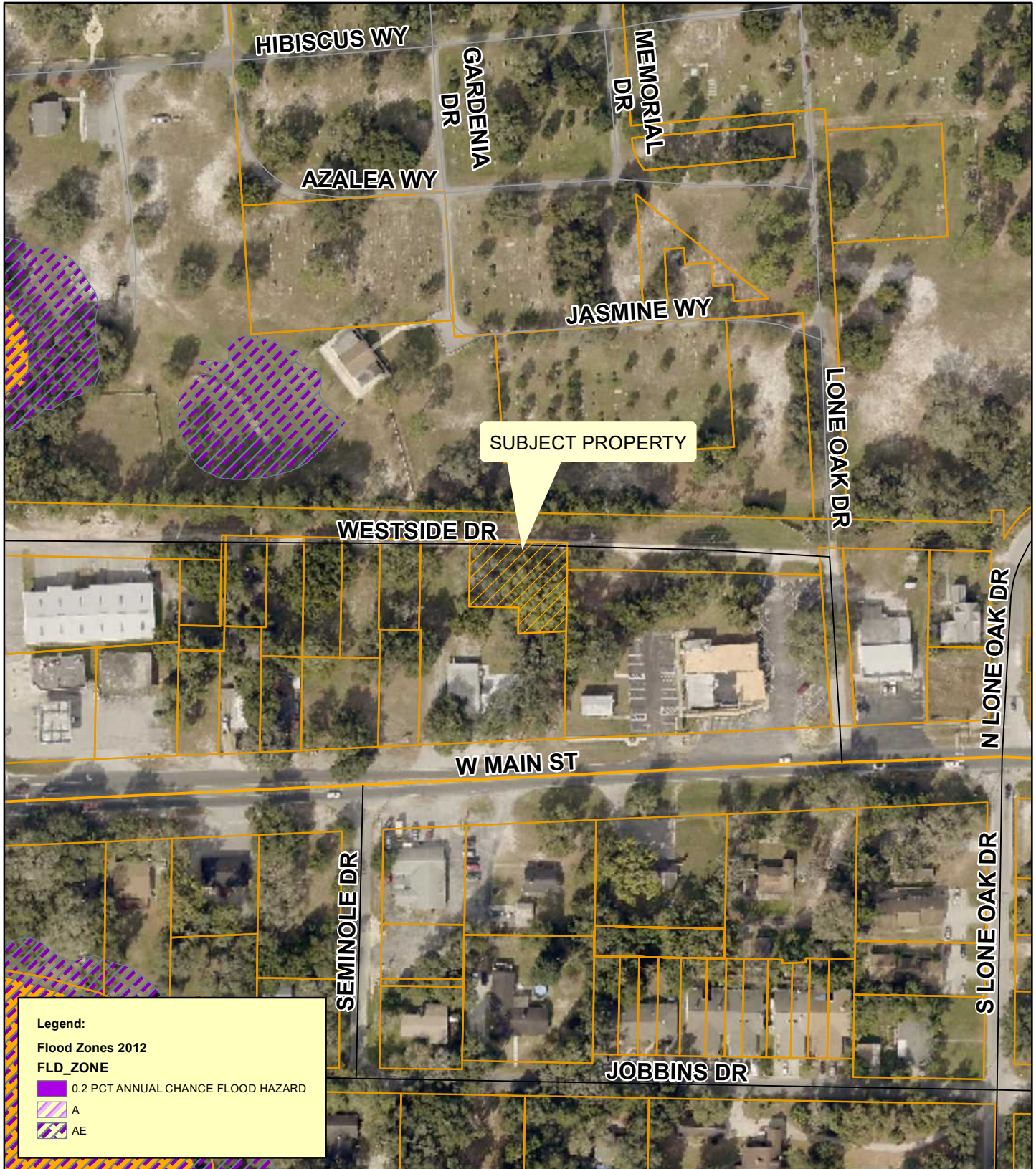


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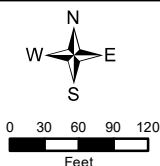


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Wetlands and Flood Zones

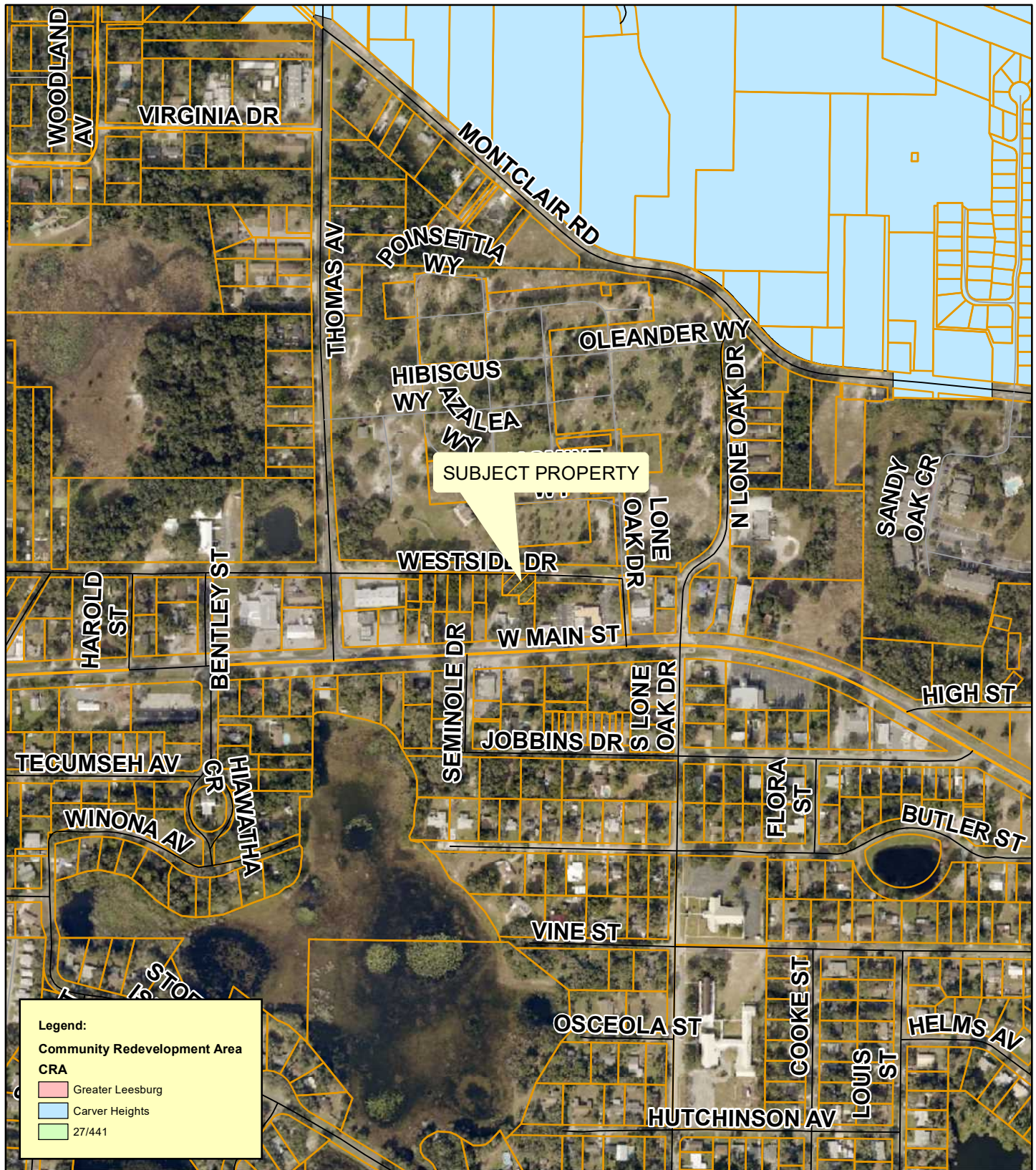


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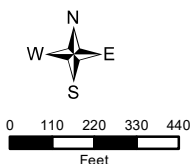


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Community Redevelopment Area

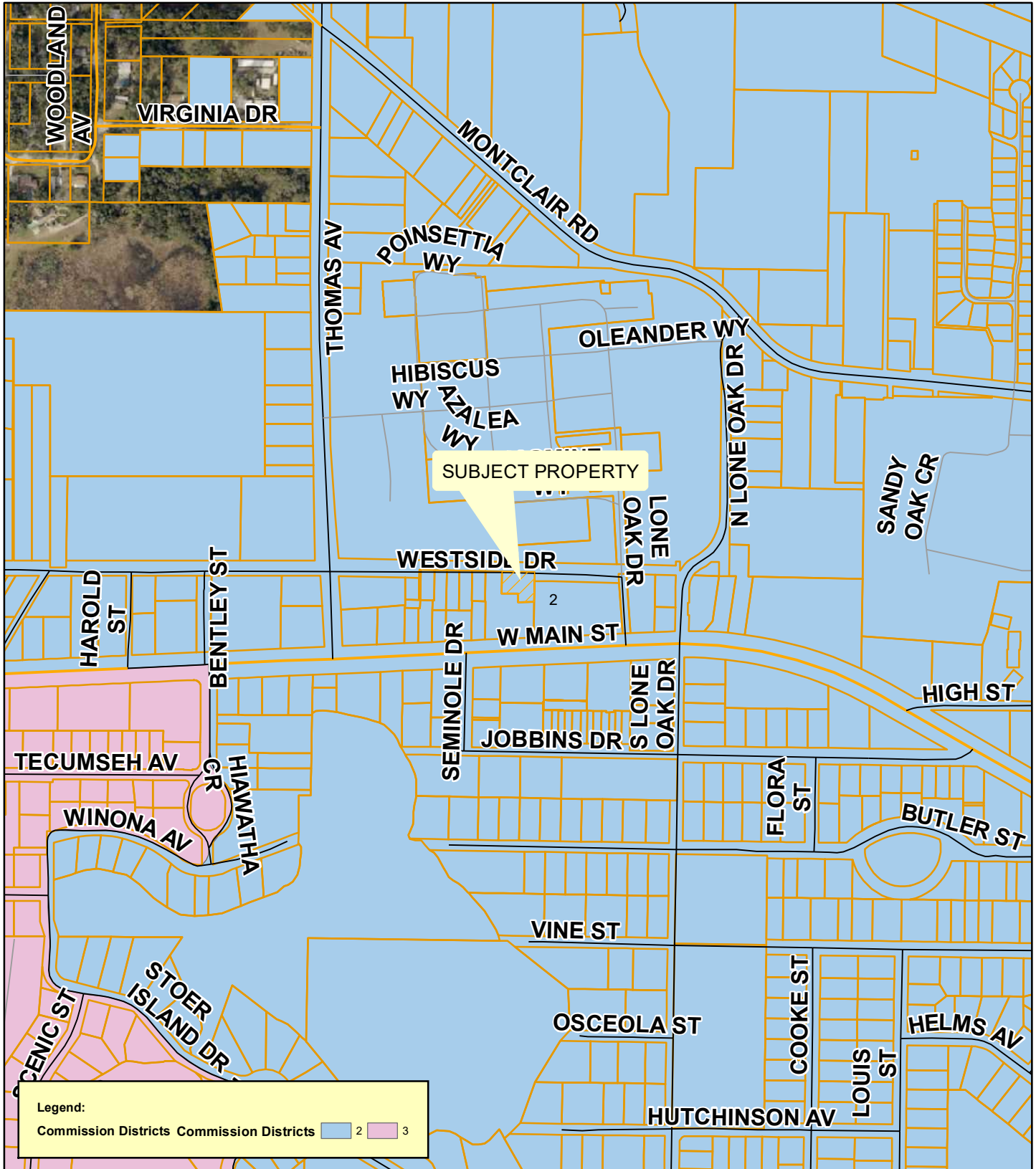


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Division**

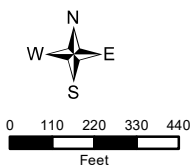


SPUD-20-294
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Commission Districts



**Planning
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