



MAYOR AND COUNCIL OF THE TOWN OF WINDERMERE

**Mayor Jim O'Brien
Council Members
Andy Williams
Tony Davit
Mandy David
Tom Stroup
Brandi Haines**

Agenda

Agenda

**March 12, 2024
6:00 PM**

**WINDERMERE TOWN HALL
520 MAIN STREET
WINDERMERE, FL 34786**

PLEASE TURN OFF ALL CELL PHONES AND PAGERS

PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.26: Person with disabilities needing assistance to participate in any such proceedings should contact the Office of the Clerk at least 48 hours beforehand at (407) 876-2563.

Pursuant to Resolution No. 2005-12 adopted on December 13, 2005, the following Civility Code shall govern all proceedings before the Town of Windermere Town Council:

1. All electronic devices, including cell phones and pagers, shall be either turned off or otherwise silenced.
2. Prolonged conversation shall be conducted outside Council meeting hall.
3. Whistling, heckling, gesturing, loud conversations, or other disruptive behavior is prohibited.
4. Only those individuals who have signed the speaker list and/or/who have been recognized by the Mayor (or Chair) may address comments to the Council.
5. Comments at public hearings shall be limited to the subject being considered by the Council
6. Comments at Open Forums shall be directed to Town issues.
7. All public comments shall avoid personal attacks and abusive language
8. No person attending a Town Council meeting is to harass, annoy, or otherwise disturb any other person in the room.

Any member of the public whose behavior is disruptive and violates the Town of Windermere Civility Code is subject to removal from the Town Council meeting by an officer and such other actions as may be appropriate. PLEASE NOTE: IN ACCORDANCE WITH F.S. 286.0105: Any person who desires to appeal any decision at this meeting will need a record of this proceeding. For this, such person may need to ensure that a verbatim record of such proceeding is made which includes the

AGENDA

- THE MEETING IS CALLED TO ORDER BY THE MAYOR
- FLAG SALUTE
- INVOCATION

1. OPEN FORUM / PUBLIC COMMENT (3-Minute Limit)

2. SPECIAL PRESENTATION / PROCLAMATIONS / AWARDS

a. McDimit & Davis FY 22/23 Audit Presentation (Attachments)

b. Presentation: State of the Lakes, Amy Giannotti, Aquastem Consulting (Attachments)

3. TIMED ITEMS & PUBLIC HEARINGS

4. OLD BUSINESS

a. Minutes

i. Town Council Meeting Minutes February 13, 2024 (Attachments- Staff Recommends Approval)

5. NEW BUSINESS

a. Swearing Mayor and Councilmembers.

i. Mayor James O'Brien (Attachment)

ii. Councilmember Loren "Andy" Williams (Attachment)

iii. Councilmember Brandi Haines (Attachment)

b. Consent Items

i. Z24-02 - Down Park Lane Minor Replat - JRH RE Investments, LLC and Stonebridge Homes, Inc. - Replat 10908 and 10988 Down Park Lane to Create Three (3) Lots (Attachments- Staff Recommends this Approval)

ii. Z24-05 – 10910 Bayshore Drive – Adair Dillaha – Variance to Allow a Covered Porch that Results in a Maximum Floor Area Ratio of 42%, which Exceeds the Allowed Total Maximum 38% Floor Area Ratio -

(Attachment-Development Review Recommended Approval (Vote 4-1)

iii.Z25-06 – 212 W 1st Avenue – Ryka, LLC – Variance to Allow a Dock with Side Setbacks Less than 16 feet to Allow Side Setbacks of 10.0 feet on the East Side and 10.8 Feet on the West Side. = Development Review Board Recommended Approval with Condition that No More than Six (6) Inches of Roof Overhang May Extend Past the Edge of the Dock in the South and West Sides (Vote 5-0)

c. Resolutions/ Ordinances for approval/ first reading.

i. RESOLUTION NO. 2024-01: Form 6 Litigation (Attached-Board Option)

A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF WINDERMERE, FLORIDA, AUTHORIZING THE TOWN'S PARTICIPATION IN LITIGATION SEEKING A DECLARATION THAT THE PROVISIONS OF SUBSECTION 112.144(1)(d) OF THE FLORIDA STATUTES THAT REQUIRE MUNICIPAL ELECTED OFFICIALS TO FILE FORM 6 FINANCIAL DISCLOSURE FORM IS UNCONSTITUTIONAL AND INVALID; PROVIDING AN EFFECTIVE DATE.

ii. Resolution 2024-02: Revising Town's Purchasing Policies (Attachments-Staff Recommends Approval)

A resolution of the Town Council for the Town of Windermere, Florida adopting revisions to the Town's Purchasing Policies and Procedures.

d. Appointments

e. Contracts and Agreements

i. 6th Avenue and Butler Street Drainage-Phase II Subrecipient Agreement 4337-449-A (Attachment-Staff Recommends Approval)

f. Financial

g. Other Items for Consideration

h. Quotes for temp restrooms at Town Hall Square

6. MAYOR & COUNCIL LIASON REPORT

a. Mayor O'Brien

b. Councilman Williams

c. Councilman Haines

d. Councilman David

e. Councilman Davit

e. Councilman Stroup

7. STAFF REPORTS

a. Town Manager Robert Smith

b. Town Attorney Heather Ramos

c. Police Chief Dave Ogden

d. Public Works Director Tonya Elliott-Moore

e. Clerk Dorothy Burkhalter

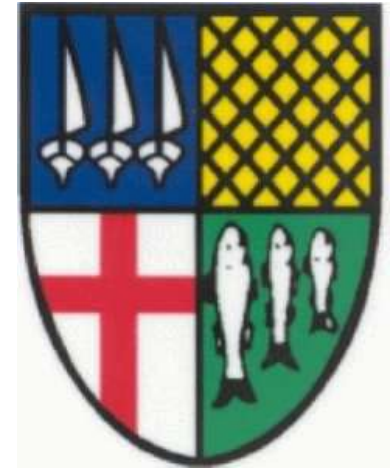
8. PROJECT NOTES/OTHER ITEMS

a. Other Items for Consideration

b. Attachments

9. ADJOURN

- Reports**
- Other Items**



Town of Windermere

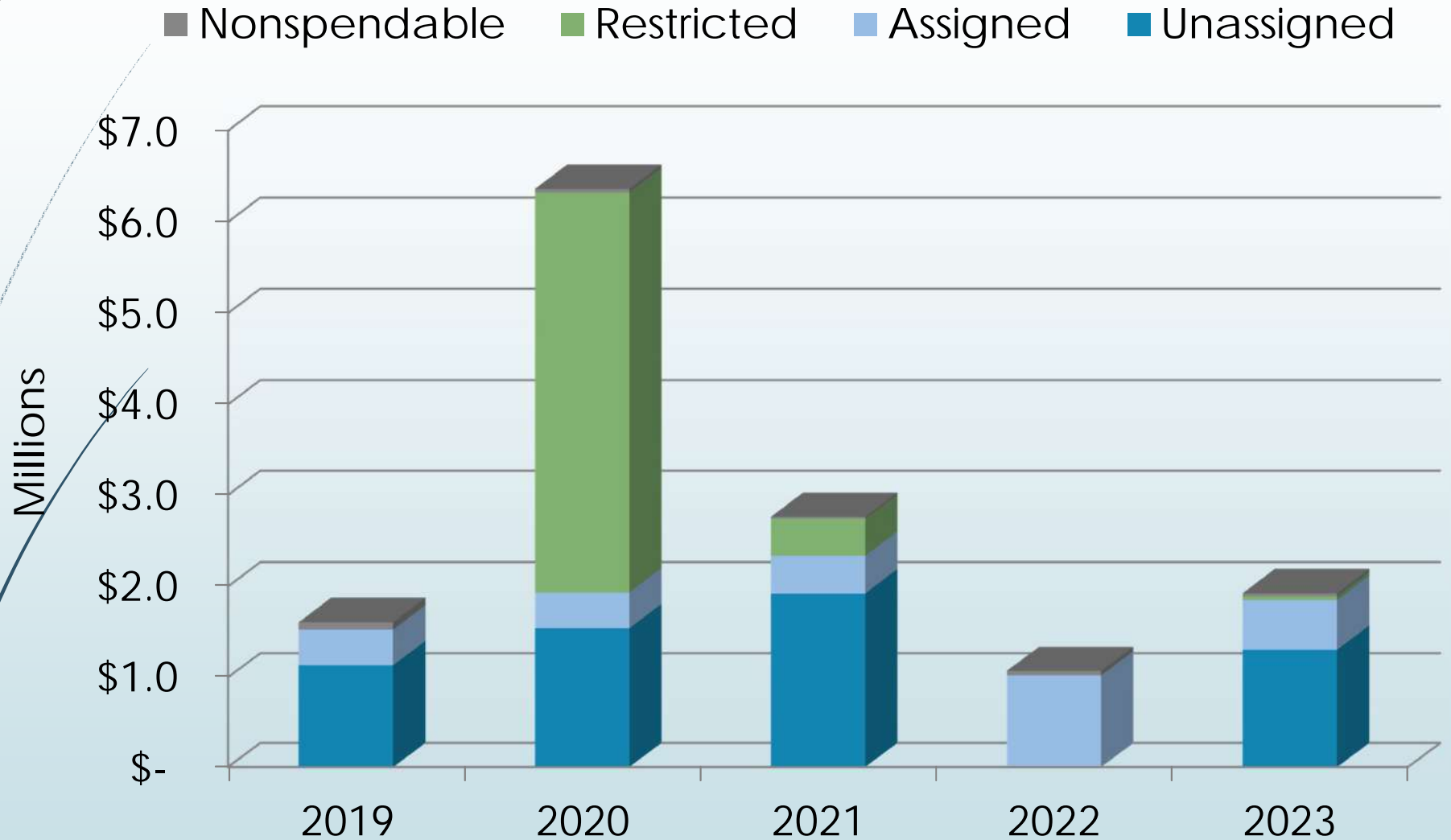
2023 Financial Statement Audit



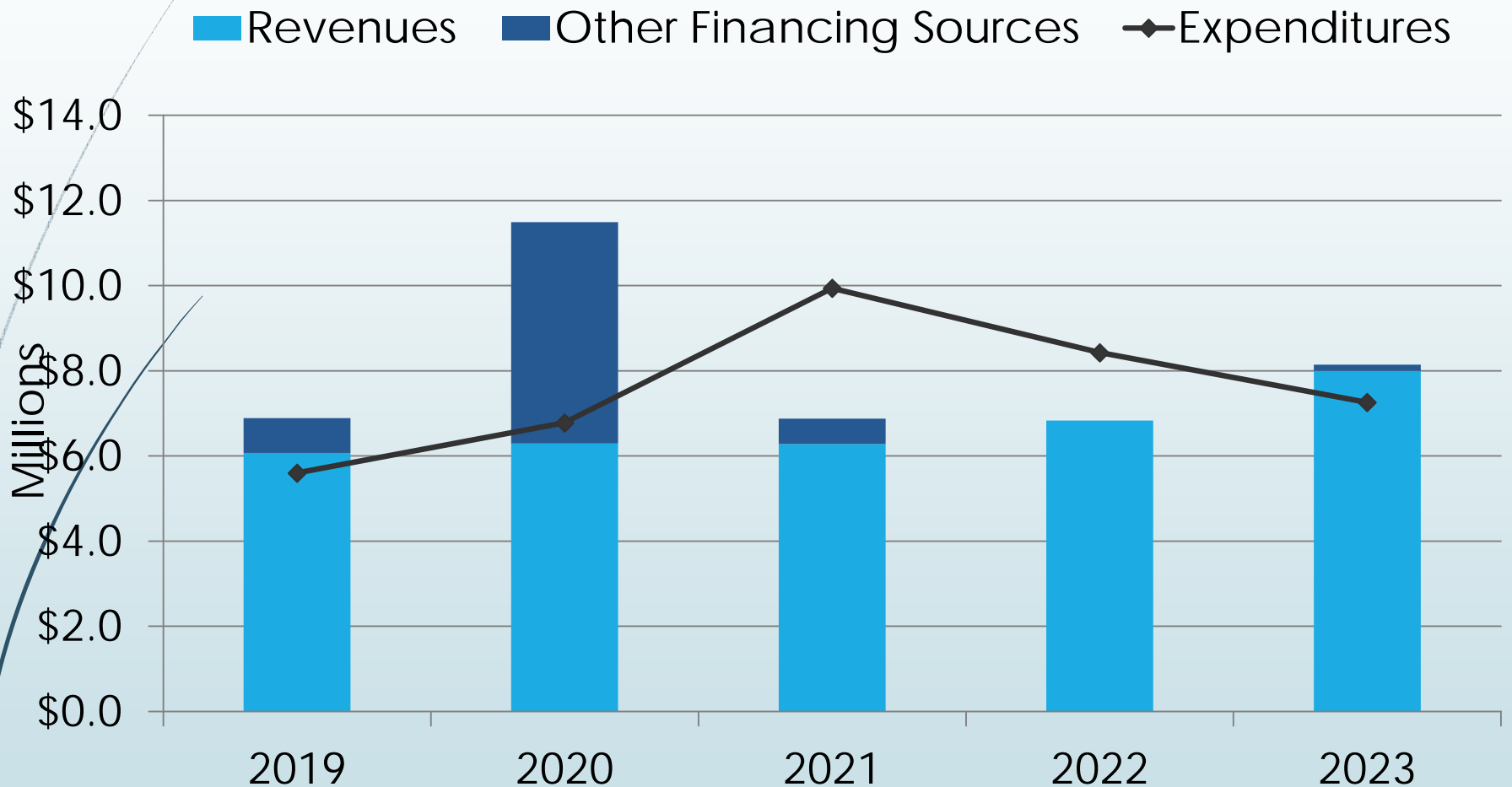
HIGHLIGHTS

- Audit Opinion – unmodified
- General Fund balance increased \$850,000 to \$1.9m.
- Unearned revenue of \$1.5m ARPA funding not yet spent.
 - ARPA funds to be obligated by 12/31/24
- \$494k payments on existing debt
- New accounting standard, recognizing a software subscription asset and liability (\$144,000 asset and liability recognized)

Fund Balance- General Fund



General Fund Revenues and Expenditures over Time



Audit Reports

- Town is in compliance with all requirements of Auditor General, including financial condition monitoring.
- Management comments
 - Controls over the preparation of financial statements (same as previous years)
 - Purchasing policy- review thresholds for quotes and bids
 - Investments- due to staff turnover, annual required training was not documented as completed
- Separate letter to the board
 - Summarizes audit procedures and significant audit items

Honorable Mayor and Town Council
Town of Windermere, Florida

We have audited the financial statements of the *Town of Windermere* as of and for the year ended September 30, 2023, and have issued our report thereon dated February 19, 2024. Professional standards require that we advise you of the following matters relating to our audit.

Our Responsibility in Relation to the Financial Statement Audit

As communicated in our engagement letter dated August 13, 2023, our responsibility, as described by professional standards, is to form and express an opinion(s) about whether the financial statements that have been prepared by management with your oversight are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit of the financial statements does not relieve you or management of your respective responsibilities.

Our responsibility, as prescribed by professional standards, is to plan and perform our audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free of material misstatement. An audit of financial statements includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control over financial reporting. Accordingly, as part of our audit, we considered the internal control of the *Town of Windermere* solely for the purpose of determining our audit procedures and not to provide any assurance concerning such internal control.

We are also responsible for communicating significant matters related to the audit that are, in our professional judgment, relevant to your responsibilities in overseeing the financial reporting process. However, we are not required to design procedures for the purpose of identifying other matters to communicate to you.

We have provided our findings regarding significant control deficiencies over financial reporting and material noncompliance, and other matters noted during our audit in a separate letter to you dated February 19, 2024.

Planned Scope and Timing of the Audit

We conducted our audit consistent with the planned scope and timing we previously communicated to you.

Compliance with All Ethics Requirements Regarding Independence

The engagement team, others in our firm, as appropriate, our firm, and our network firms have complied with all relevant ethical requirements regarding independence.

Significant Risks

A significant risk is an identified and assessed risk of material misstatement, that in the auditor's professional judgment, requires special audit consideration. We have focused on the following significant risks during our audit procedures:

- Management override of internal controls is the risk that management could circumvent established internal control procedures. We performed audit procedures to test this risk, including unpredictability testing, and no matters were identified as a result of our testing.
- Improper revenue recognition is the risk that revenue is recognized in a period it is not earned. We performed audit procedures to test collectability and revenue recognition policies. No matters were identified as a result of testing.

There were no management comments related to these risks.

Qualitative Aspects of the Entity's Significant Accounting Practices

Significant Accounting Policies

Management has the responsibility to select and use appropriate accounting policies. A summary of the significant accounting policies adopted by the Town of Windermere is included in Note 1 to the financial statements. As described in Note 1 to the financial statements, during the year, the Town adopted Governmental Accounting Standards Board (GASB) Statement No. 96, *Subscription Based Information Technology Arrangements*. There was no change to beginning balances. No matters have come to our attention that would require us, under professional standards, to inform you about (1) the methods used to account for significant unusual transactions and (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Significant Accounting Estimates

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's current judgments. Those judgments are normally based on knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ markedly from management's current judgments.

The most sensitive accounting estimates affecting the financial statements are:

Management's estimation for the allowance for depreciation is based on the estimated useful lives of the capital assets. We evaluated the key factors and assumptions used to develop the reasonableness of the useful lives as well as the depreciation methods and determined that it is reasonable in relation to the basic financial statements taken as a whole and in relation to the applicable opinion units.

Financial Statement Disclosures

Certain financial statement disclosures involve significant judgment and are particularly sensitive because of their significance to financial statement users. The most sensitive disclosures affecting Town of Windermere's financial statements relate to litigation and contingencies as described in Note 12.

Significant Unusual Transactions

For purposes of this communication, professional standards require us to communicate to you significant unusual transactions identified during our audit. There were no significant unusual transactions identified as a result of our audit procedures.

Identified or Suspected Fraud

We have not identified or obtained information that indicates that fraud may have occurred.

Significant Difficulties Encountered During the Audit

We encountered no significant difficulties in dealing with management relating to the performance of the audit.

Uncorrected and Corrected Misstatements

For purposes of this communication, professional standards also require us to accumulate all known and likely misstatements identified during the audit, other than those that we believe are trivial, and communicate them to the appropriate level of management. Further, professional standards require us to also communicate the effect of uncorrected misstatements related to prior periods on the relevant classes of transactions, account balances or disclosures, and the financial statements as a whole and each applicable opinion unit. Management has corrected all identified misstatements. Uncorrected misstatements or matters underlying those uncorrected misstatements could potentially cause future-period financial statements to be materially misstated, even though the uncorrected misstatements are immaterial to the financial statements currently under audit.

In addition, professional standards require us to communicate to you all material, corrected misstatements that were brought to the attention of management as a result of our audit procedures. The following material misstatements that we identified as a result of our audit procedures were brought to the attention of, and corrected by, management:

- Recognize current year ARPA revenue \$51,225
- To record transfer to stormwater fund for ARPA funds spent \$37,642
- To correct posting of retirement withholdings \$15,965
- To accrue receivable for road damage \$65,039
- To record restricted fund balance \$40,307
- To accrue additional accounts payable \$20,412
- To record subscription expenditures and proceeds for implementation of GASB 96 \$144,254

Disagreements with Management

For purposes of this letter, professional standards define a disagreement with management as a matter, whether or not resolved to our satisfaction, concerning a financial accounting, reporting, or auditing matter, which could be significant to the Town of Windermere's financial statements or the auditor's report. No such disagreements arose during the course of the audit.

Representations Requested from Management

We have requested certain written representations from management, which are included in the attached letter dated February 19, 2024.

Management's Consultations with Other Accountants

In some cases, management may decide to consult with other accountants about auditing and accounting matters. Management informed us that, and to our knowledge, there were no consultations with other accountants regarding auditing and accounting matters.

Other Significant Matters, Findings, or Issues

In the normal course of our professional association with Town of Windermere, we generally discuss a variety of matters, including the application of accounting principles and auditing standards, significant events or transactions that occurred during the year, operating and regulatory conditions affecting the entity, and operational plans and strategies that may affect the risks of material misstatement. None of the matters discussed resulted in a condition to our retention as Town of Windermere's auditors.

This report is intended solely for the use of management, the Town Council, and the Auditor General of the State of Florida and is not intended to be and should not be used by anyone other than these specified parties.

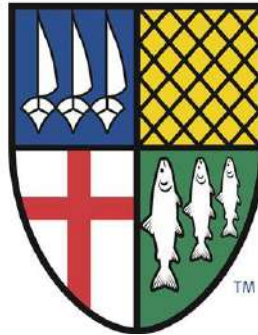
McDiernit Davis

Orlando, Florida
February 19, 2024

Annual Financial Report

September 30, 2023

THE TOWN OF Windermere



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Elected Officials

Mayor Jim O'Brien

Town Council Members: Loren Williams
Mandy David
Tony Davit
Tom Stroup
Molly Rose

Town Officials

Town Manager Robert Smith

Town Attorney Tom Wilkes

Town Clerk Dorothy Burkhalter

Financial Section

This section contains the following subsections:

- Independent Auditor's Report
- Management's Discussion and Analysis
- Basic Financial Statements

INDEPENDENT AUDITOR'S REPORT

Honorable Mayor and Town Council
Town of Windermere, Florida

Report on the Audit of the Financial Statements

Opinions

We have audited the financial statements of the governmental activities, and each major fund of the *Town of Windermere, Florida*, as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the *Town of Windermere's* basic financial statements as listed in the table of contents.

In our opinion, the accompanying financial statements present fairly, in all material respects, the respective financial position of the governmental activities, and each major fund, of the *Town of Windermere*, as of September 30, 2023, and the respective changes in financial position thereof and the respective budgetary comparison for the General Fund and the Stormwater Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Basis for Opinions

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS) and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the *Town of Windermere*, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Responsibilities of Management for the Financial Statements

The *Town of Windermere's* management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the *Town of Windermere's* ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

Auditor's Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of *Town of Windermere's* internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.

- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the *Town of Windermere's* ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control–related matters that we identified during the audit.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis on page 3 through 7 be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Management is responsible for the other information included in the annual report. The other information comprises the introductory section, but does not include the financial statements and auditor's report thereon. Our opinions on the financial statements do not cover the other information, and we do not express an opinion or any form of assurance thereon. In connection with our audit of the financial statements, our responsibility is to read the other information and consider whether a material inconsistency exists between the other information and the financial statements, or the other information otherwise appears to be materially misstated. If, based on the work performed, we conclude that an uncorrected material misstatement of the other information exists, we are required to describe it in our report.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated February 19, 2024 on our consideration of *Town of Windermere's* internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering *Town of Windermere's* internal control over financial reporting and compliance.

McDiarmid Davis

Orlando, Florida
February 19, 2024

As management of the Town of Windermere, Florida (the Town) we offer readers of the Town's financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended September 30, 2023.

Financial Highlights

- The assets of the Town exceeded its liabilities at the close of the most recent fiscal year by \$11,185,943 (net position). Of this amount, \$1,531,190 (unrestricted net position) may be used to meet the Town's ongoing obligations to citizens and creditors.
- The Town's total net position increased by \$831,556.
- As of the close of the current fiscal year, the Town's governmental funds reported combined ending fund balances of \$1,743,471, an increase of \$865,093 in comparison with the prior year. Unassigned fund balance for the general fund was \$1,308,136 or 18% of total general fund expenditures.

Overview of the Financial Statements

This discussion and analysis are intended to serve as an introduction to the Town's basic financial statements. The Town's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the financial statements. This report also contains other supplementary information in addition to the basic financial statements themselves.

Government-Wide Financial Statements

The government-wide financial statements are designed to provide readers with a broad overview of the Town's finances, in a manner similar to a private-sector business.

The statement of net position presents information on all of the Town's assets and liabilities, with the difference between the two reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the Town is improving or deteriorating.

The statement of activities presents information showing how the Town's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., uncollected taxes and earned but unused vacation leave).

Since the Town has no business-type activities such as water and sewer systems, the government-wide financial statements include only governmental activities. The governmental activities of the Town include general government, public safety, physical environment and culture and recreation.

The government-wide financial statements can be found on pages 8-9 of this report.

Fund Financial Statements

A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The Town, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. The Town has two governmental funds - the General Fund and the Stormwater Special Revenue Fund.

Governmental Funds

Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the Town's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between governmental funds and governmental activities.

The Town adopts an annual appropriated budget for the General Fund and Stormwater Fund. A budgetary comparison statement has been provided for the General Fund and Stormwater Special Revenue Fund on pages 13-14 to demonstrate compliance with this budget.

The basic governmental fund financial statements can be found on pages 10 - 14 of this report.

Government-Wide Financial Analysis

Statement of Net Position

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. In the case of the Town, assets exceeded liabilities by \$11,185,943 at the close of the most recent fiscal year. The following table reflects the condensed Statement of Net Position for the current year. For more detail see the Statement of Net Position on page 8.

Net Position as of September 30:

	Governmental Activities 2023	Governmental Activities 2022
Assets:		
Current and other assets	\$ 3,640,490	\$ 2,827,896
Capital assets, net of depreciation	14,541,486	14,922,693
Total assets	18,181,976	17,750,589
Liabilities:		
Long-term liabilities	5,048,189	5,391,961
Other liabilities	1,947,844	2,004,241
Total liabilities	6,996,033	7,396,202
Net Position:		
Net investment in capital assets	9,614,446	9,620,411
Restricted for public safety	40,307	-
Unrestricted	1,531,190	733,976
Total net position	\$ 11,185,943	\$ 10,354,387

The largest portion of the Town's net position reflects its investment in capital assets (e.g., land, buildings, improvements, infrastructure, and equipment) less any related debt used to acquire those assets that is still outstanding. The Town uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending.

The balance of unrestricted net position, \$1,531,190, may be used to meet the Town's ongoing obligations to citizens and creditors.

Statement of Activities

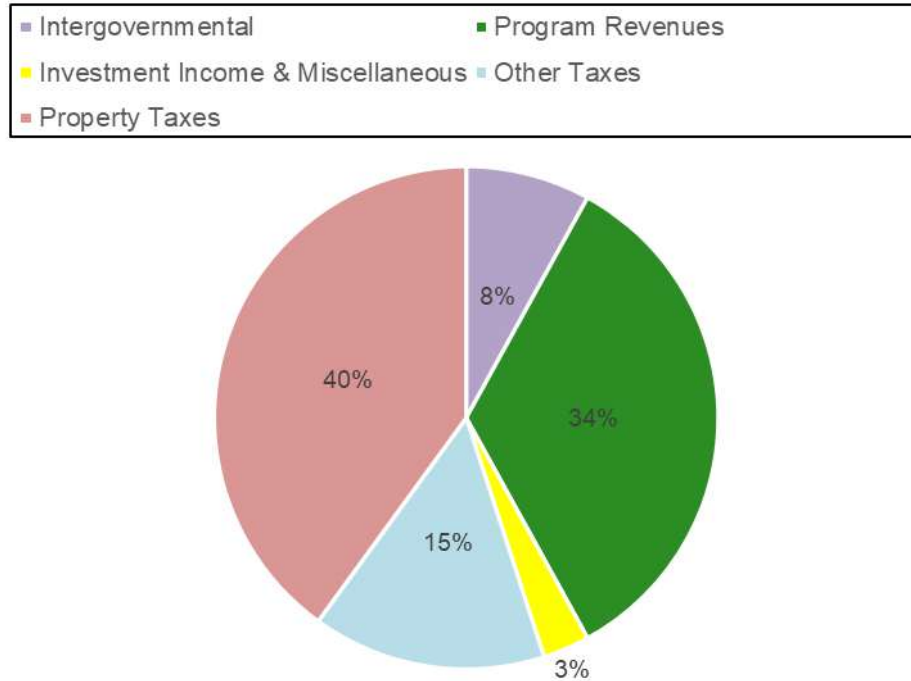
The following table reflects the condensed Statement of Activities for the current year. For more detailed information see the Statement of Activities on page 9.

Governmental activities increased the Town's net position by \$831,556. Key elements of this increase are as follows:

Changes in Net Position

	Governmental Activities 2023	Governmental Activities 2022
Revenues:		
Program Revenues:		
Charges for services	\$ 2,283,624	\$ 1,988,905
Operating grants and contributions	632,255	291,410
Capital grants and contributions	10,000	17,277
Total program revenues	2,925,879	2,297,592
General Revenues:		
Property taxes	3,167,818	2,943,000
Franchise and utility taxes	1,245,680	1,150,981
Intergovernmental	767,274	709,845
Investment income and miscellaneous	249,213	81,772
Total revenues	8,355,864	7,183,190
Expenses:		
General government	2,256,397	1,891,548
Public safety	2,452,709	2,319,808
Physical environment	2,522,763	2,009,097
Culture and recreation	178,147	186,169
Interest on long-term debt	114,292	128,310
Total expenses	7,524,308	6,534,932
Change in net position	831,556	648,258
Net position, beginning	10,354,387	9,706,129
Net position, ending	\$ 11,185,943	\$ 10,354,387

Revenues by Source - Governmental Activities



Financial Analysis of the Government's Funds

As noted earlier, the Town used fund accounting to ensure and demonstrate compliance with finance-related requirements.

Governmental Funds

The focus of the Town's governmental funds is to provide information on near-term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the Town's financing requirements. In particular, unassigned fund balance may serve as a useful measure of a Town's net resources available for spending at the end of the fiscal year.

As of September 30, 2023, the Town governmental funds reported combined ending fund balances of \$1,743,471.

The general fund is the chief operating fund of the Town. At September 30, 2023, the total fund balance of the general fund was \$1,927,724 and the unassigned fund balance of the general fund was \$1,308,136. The fund balance of the general fund increased by \$855,654.

General Fund Budgetary Highlights

During the year, there was a need for a budget amendment in the general fund primarily to reallocate appropriations between departments. Actual revenues were \$1,383,527 less than budget primarily due to grant revenues not recognized and expenditures for the year ended September 30, 2023 were \$2,901,870 less budgeted amounts primarily due to grant expenditures not incurred. Total general fund balance increased by \$855,654.

Capital Asset and Debt Administration

Capital Assets

The Town's investment in capital assets for its governmental activities as of September 30, 2023 amounts to \$14,541,486, net of accumulated depreciation. This investment in capital assets includes land, buildings, improvements, equipment and machinery, infrastructure, and intangibles.

Town of Windermere Capital Assets (Net of Depreciation)

	Governmental Activities 2023	Governmental Activities 2022
Land	\$ 510,317	\$ 510,317
Buildings	6,269,987	5,987,610
Improvements other than buildings	502,696	516,972
Equipment and machinery	468,669	453,598
Infrastructure	5,052,690	5,587,033
Intangibles	164,114	68,091
Construction in progress	1,573,013	1,799,072
Total	\$ 14,541,486	\$ 14,922,693

Additional information on the Town's capital assets can be found in Note 6 of this report.

Long-Term Debt

At the end of the current fiscal year, the Town had total debt outstanding of \$4,927,040. This debt includes notes payable related to equipment and construction of the new town administrative facility and subscription liabilities. Additional information on long-term debt can be found in Note 10 of this report.

	Governmental Activities 2023	Governmental Activities 2022
Revenue notes payable	\$ 4,639,000	\$ 5,488,500
Promissory notes payable	168,982	308,622
Subscription liabilities	119,058	-
	\$ 4,927,040	\$ 5,797,122

Next Year's Budget and Rates

During the current fiscal year, the unassigned fund balance in the General fund increased to \$1,308,136. Assigned fund balance of \$88,041 was appropriated for spending in the 2024 budget.

Requests for Information

This financial report is designed to provide a general overview of the Town's finances for all those with an interest in the Town's finances. Questions concerning any of the information should be addressed to the office of the Finance Director, Town of Windermere, 614 Main Street, Windermere, FL 34786.

Basic Financial Statements

Town of Windermere, Florida
Statement of Net Position
September 30, 2023

	Governmental Activities
Assets:	
Cash	\$ 3,496,623
Receivables	108,529
Prepays	35,338
Capital assets not being depreciated	2,083,330
Capital assets being depreciated, net	12,458,156
Total assets	18,181,976
Liabilities:	
Accounts payable	131,357
Accrued liabilities	111,331
Accrued interest payable	50,825
Unearned revenues	1,491,866
Customer deposits	162,465
Noncurrent Liabilities:	
Due within one year	545,131
Due in more than one year	4,503,058
Total liabilities	6,996,033
Net Position:	
Net investment in capital assets	9,614,446
Restricted for:	
Building permits	40,307
Unrestricted	1,531,190
Total net position	\$ 11,185,943

Town of Windermere, Florida
Statement of Activities
Year Ended September 30, 2023

<u>Functions/Programs</u>	<u>Expenses</u>	<u>Program Revenues</u>			<u>Net (Expense) Revenue and Changes in Net Position</u>
		<u>Charges for Services</u>	<u>Operating Grants and Contributions</u>	<u>Capital Grants and Contributions</u>	<u>Governmental Activities</u>
Primary Government					
Governmental Activities:					
General government	\$ 2,256,397	\$ 593,022	\$ 51,225	\$ -	\$ (1,612,150)
Public safety	2,452,709	908,216	-	10,000	(1,534,493)
Physical environment	2,522,763	748,021	581,030	-	(1,193,712)
Culture and recreation	178,147	34,365	-	-	(143,782)
Interest on long-term debt	114,292	-	-	-	(114,292)
Total governmental activities	\$ 7,524,308	\$ 2,283,624	\$ 632,255	\$ 10,000	(4,598,429)
		General Revenues:			
		Property taxes			3,167,818
		Franchise and utility taxes			1,245,680
		Intergovernmental			767,274
		Investment income and miscellaneous			249,213
		Total general revenues			5,429,985
		Change in net position			831,556
		Net position, beginning			10,354,387
		Net position, ending			\$ 11,185,943

Balance Sheet
Governmental Funds
 September 30, 2023

	<u>General</u>	<u>Stormwater Special Revenue</u>	<u>Total Governmental Funds</u>
Assets			
Cash	\$ 3,445,846	\$ 50,777	\$ 3,496,623
Receivables	108,529	-	108,529
Due from other funds	229,853	-	229,853
Prepays	35,338	-	35,338
Total assets	<u>\$ 3,819,566</u>	<u>\$ 50,777</u>	<u>\$ 3,870,343</u>
Liabilities			
Accounts payable	127,858	3,499	131,357
Accrued liabilities	109,653	1,678	111,331
Due to other funds	-	229,853	229,853
Customer deposits	162,465	-	162,465
Unearned revenue	1,491,866	-	1,491,866
Total liabilities	<u>1,891,842</u>	<u>235,030</u>	<u>2,126,872</u>
Fund Balances			
Nonspendable	35,338	-	35,338
Restricted	40,307	-	40,307
Assigned	543,943	-	543,943
Unassigned	1,308,136	(184,253)	1,123,883
Total fund balances	<u>1,927,724</u>	<u>(184,253)</u>	<u>1,743,471</u>
Total liabilities and fund balances	<u>\$ 3,819,566</u>	<u>\$ 50,777</u>	

Amounts reported for governmental activities in the Statement of Net Position are different because:

Capital assets used in governmental activities are not financial resources and therefore are not reported in the funds.	14,541,486
Long-term liabilities, including notes payable, are not due and payable in the current period and therefore are not reported in the funds.	
Accrued interest payable	(50,825)
Notes payable	(4,807,982)
Subscription arrangements	(119,058)
Compensated absences	(121,149)
Net position of governmental activities	<u>\$ 11,185,943</u>

Statement of Revenues, Expenditures and Changes in Fund Balance**Governmental Funds**

Year Ended September 30, 2023

	<u>General</u>	<u>Stormwater Special Revenue</u>	<u>Total Governmental Funds</u>
Revenues:			
Taxes:			
Property	\$ 3,167,818	\$ -	\$ 3,167,818
Franchise and utility	1,245,680	-	1,245,680
Licenses and permits	360,595	-	360,595
Intergovernmental revenues	1,409,529	-	1,409,529
Charges for services	1,556,160	346,780	1,902,940
Fines and forfeitures	20,089	-	20,089
Investment income	43,449	2,090	45,539
Miscellaneous	203,674	-	203,674
Total revenues	<u>8,006,994</u>	<u>348,870</u>	<u>8,355,864</u>
Expenditures:			
Current:			
General government	2,109,930	-	2,109,930
Public safety	2,540,046	-	2,540,046
Physical environment	1,854,100	363,913	2,218,013
Culture and recreation	129,350	-	129,350
Debt Service:			
Principal	508,196	11,300	519,496
Interest and other charges	116,330	1,860	118,190
Total expenditures	<u>7,257,952</u>	<u>377,073</u>	<u>7,635,025</u>
Excess (Deficit) of revenues over expenditures	749,042	(28,203)	720,839
Other Financing Sources (Uses):			
Subscription agreements	144,254	-	144,254
Transfers in	-	37,642	37,642
Transfers out	(37,642)	-	(37,642)
Total other financing sources (uses)	<u>106,612</u>	<u>37,642</u>	<u>144,254</u>
Net change in fund balances	855,654	9,439	865,093
Fund balance, beginning of year	1,072,070	(193,692)	878,378
Fund balance, end of year	<u>\$ 1,927,724</u>	<u>\$ (184,253)</u>	<u>\$ 1,743,471</u>

**Reconciliation of the Statement of Revenues, Expenditures and Changes in Fund Balance
of Governmental Funds to the Statement of Activities**

Year Ended September 30, 2023

Amounts reported for Governmental Activities in the Statement of Activities are different because:

Net change in fund balances - total governmental funds: \$ 865,093

Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation expense. This is the amount by which depreciation exceeded capital outlay in the current period.

Capital outlay	\$ 597,940	
Current year depreciation	(979,147)	(381,207)

The issuance of long-term debt provides current financial resources to governmental funds, while the repayment of the principal of long-term debt consumes the current financial resources of governmental funds.

Debt repayments		519,496
Subscription liabilities		(144,254)

Interest on long-term debt is not accrued in governmental funds, but rather is recognized as an expenditure when paid. 3,898

Some expenses reported in the statement of activities do not require the use of current financial resources and, therefore, are not reported as expenditures in governmental funds. (31,470)

Change in Net Position of Governmental Activities \$ 831,556

Town of Windermere, Florida
Statement of Revenues, Expenditures and Changes in Fund Balance
Budget and Actual - General Fund
Year Ended September 30, 2023

	Budgeted Amounts		Actual Amounts	Variance with Final Budget - Positive (Negative)
	Original	Final		
Revenues:				
Taxes:				
Property	\$ 3,115,509	\$ 3,115,509	\$ 3,167,818	\$ 52,309
Franchise and utility	1,142,250	1,142,250	1,245,680	103,430
Licenses and permits	309,500	309,500	360,595	51,095
Intergovernmental revenues	3,079,510	3,079,510	1,409,529	(1,669,981)
Charges for services	1,608,750	1,608,750	1,556,160	(52,590)
Fines and forfeitures	25,000	25,000	20,089	(4,911)
Investment income	10,002	10,002	43,449	33,447
Miscellaneous	100,000	100,000	203,674	103,674
Total revenues	9,390,521	9,390,521	8,006,994	(1,383,527)
Expenditures:				
Current:				
General government:				
Finance & administrative	1,346,327	1,506,598	1,441,579	65,019
Other	552,615	699,619	668,351	31,268
Total general government	1,898,942	2,206,217	2,109,930	96,287
Public safety	2,924,418	3,089,288	3,020,318	68,970
Physical environment:				
Streets & buildings	4,761,457	4,251,670	1,519,887	2,731,783
Solid waste	342,393	342,393	340,197	2,196
Total physical environment	5,103,850	4,594,063	1,860,084	2,733,979
Culture and recreation	126,000	126,000	123,366	2,634
Total expenditures	10,053,210	10,015,568	7,113,698	2,901,870
Excess of revenues over expenditures	(662,689)	(625,047)	893,296	1,518,343
Other Financing Sources (uses):				
Transfers out	-	(37,642)	(37,642)	-
Total other financing sources (uses)	-	(37,642)	(37,642)	-
Net change in fund balances	(662,689)	(662,689)	855,654	1,518,343
Fund balance, beginning	1,072,070	1,072,070	1,072,070	-
Fund balance, ending	\$ 409,381	\$ 409,381	\$ 1,927,724	\$ 1,518,343

Town of Windermere, Florida
Stormwater Special Revenue Fund
Statement of Revenues, Expenditures and Changes in Fund Balance - Budget and Actual
Year Ended September 30, 2023

	Budgeted Amounts		Actual Amounts	Variance with Final Budget - Positive (Negative)
	Original	Final		
Revenues:				
Charges for services	\$ 358,002	\$ 349,353	\$ 346,780	\$ (2,573)
Investment income	-	-	2,090	2,090
Total revenues	358,002	349,353	348,870	(483)
Expenditures:				
Current:				
Physical environment	358,002	386,995	377,073	9,922
Total expenditures	358,002	386,995	377,073	9,922
Excess (deficit) of revenues over expenditures	-	(37,642)	(28,203)	9,439
Other financing sources (uses):				
Transfers in	-	37,642	37,642	-
Total other financing sources	-	37,642	37,642	-
Net change in fund balances	-	-	9,439	9,439
Fund balance, beginning of year	(193,692)	(193,692)	(193,692)	-
Fund balance, end of year	\$ (193,692)	\$ (193,692)	\$ (184,253)	\$ 9,439

Notes to Financial Statements

NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Entity

The Town was created by the laws of Florida 59-1614. The Town operates under a Mayor-Council form of government and provides the following services as authorized by its charter: public safety, streets and roads, sanitation, culture and recreation, and general administrative services. The accompanying financial statements include all those separately administered departments and funds for which the Town has financial accountability. There are no potential component units or related organizations of the Town.

Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the Statement of Net Position and the Statement of Activities) report information on all of the non-fiduciary activities of the Town. Since the Town has no business-type activities, only governmental activities are reported on the government-wide financial statements.

The statement of activities demonstrates the degree to which the direct expenses of a given function or segment is offset by program revenues. *Direct expenses* are those that are clearly identifiable with a specific function or segment. *Program revenues* include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment and 2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as *general revenues*.

The Town has no fiduciary funds, which would be excluded from the government-wide financial statements.

Measurement Focus, Basis of Accounting and Financial Statement Presentation

The government-wide financial statements are reported using the *economic resources measurement focus* and the *accrual basis of accounting*. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenues as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the *current financial resources measurement focus* and the *modified accrual basis of accounting*. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be *available* when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Town considers revenues to be available if they are collected within 60 days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences, are recorded only when payment is due.

Property taxes, franchise taxes, licenses and interest associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenue of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the Town.

The Town reports the following major governmental funds:

General Fund is the Town's primary operating fund. It accounts for all financial resources of the Town, except those required to be accounted for in another fund.

Stormwater Special Revenue Fund accounts for stormwater management operations and related capital improvements.

Amounts reported as program revenues include charges to customers or applicants for goods, services, or privileges provided, as well as fines. Internally dedicated resources are reported as general revenues rather than as program revenues. Likewise, general revenues include all taxes.

NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Assets, Liabilities and Net Position or Equity

Deposits and Investments

The Town's cash and cash equivalents are considered to be cash on hand, demand deposits, and short term investments with original maturities of three months or less from the date of acquisition.

Investments of the Town are reported at fair value and are categorized within the fair value hierarchy established in accordance with GASB Statement No. 72, *Fair Value Measurement and Application*. The Town's investments consist of investments authorized per the Town's investment policies adopted in accordance with Section 218.415, Florida Statutes.

Receivables

Receivables are stated net of estimated allowances for uncollectible amounts, which are determined based on past collection experience and current economic conditions.

Prepaid Items

Certain payments to vendors reflect costs applicable to future accounting periods and are recorded as prepaid items in both the government-wide and fund financial statements. These are recorded as expenditures when consumed rather than when purchased.

Capital Assets

Capital assets, which include property, plant equipment and infrastructure assets (e.g., roads, sidewalks, and similar items), are reported in the applicable governmental activities' column in the government-wide financial statements. Infrastructure assets acquired prior to October 1, 2003 have not been recorded since Governmental Accounting Standards Board (GASB) No. 34 does not require a Town the size of Windermere to retroactively record infrastructure. Capital assets are defined by the Town as assets with an initial, individual cost of more than \$750 and an estimated useful life in excess of one year. Such assets are recorded at historical cost or estimated historical cost if purchased or constructed.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend assets lives are not capitalized.

Major outlays for capital assets and improvements are capitalized as projects are constructed.

Depreciation on all capital assets is calculated using the straight-line method over the following useful lives:

<u>Assets</u>	<u>Years</u>
Buildings	50 years
Improvements	10 - 30 years
Infrastructure	20 years
Equipment & machinery	5 - 15 years
Intangible assets	5 years

Contributions

Contributions in the form of cash and capital assets to the governmental activities of the Town are recognized on the Statement of Activities as revenues in the period they are received. Contributions of capital assets are recognized at the acquisition value at the date of donation. All contributions are reported on the Statement of Activities as program revenues, with operating contributions reported separately from capital contributions.

NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Restricted Assets

Assets are reported as restricted in the government-wide statement of net position when constraints are placed on net position use. The constraints are either: (1) externally imposed by creditors, grantors, contributors, or laws or regulations of other governments; or (2) imposed by law or through constitutional provisions or enabling legislation.

Compensated Absences

Town employees may accumulate vacation and sick leave with certain limitations as to the number of hours of accumulation. Employees are paid 100% of their accumulated vacation when they terminate for any reason. Additionally, employees with more than 10 years of service are paid 50% of their sick time upon termination. Since the Town's policy is to pay both vacation and sick pay when employees separate from service, all vacation and 50% of sick pay for eligible employees is accrued when incurred in the government-wide financial statements. A liability for these amounts is reported in the governmental funds only if they have matured, for example, as a result of employee resignations and retirements. For governmental activities, compensated absences are generally liquidated by the General fund.

Deferred Outflows/Inflows of Resources

In addition to assets, the statement of financial position will sometimes report a separate section for deferred outflows of resources. This separate financial statement element, *deferred outflows of resources*, represents a consumption of net position that applies to a future period(s) and so will *not* be recognized as an outflow of resources (expense/expenditure) until then. The Town does not have any item that qualifies for reporting in this category for the year ended September 30, 2023.

In addition to liabilities, the statement of financial position will sometimes report a separate section for deferred inflows of resources. This separate financial statement element, *deferred inflows of resources*, represents an acquisition of net position that applies to a future period(s) and so will *not* be recognized as an inflow of resources (revenue) until that time. The Town does not have any item that qualifies for reporting in this category for the year ended September 30, 2023.

Net Position Flow Assumptions

Sometimes the Town will fund outlays for a particular purpose from both restricted and unrestricted resources. In order to calculate the amounts to report as restricted - net position and unrestricted - net position in the government-wide financial statements, a flow assumption must be made about the order in which the resources are considered to be applied. It is the Town's policy to consider restricted - net position to have been depleted before unrestricted - net position is applied.

Fund Balance Flow Assumptions

Sometimes the Town will fund outlays for a particular purpose from both restricted and unrestricted resources (total of committed, assigned, and unassigned fund balance). In order to calculate the amounts to report as restricted, committed, assigned, and unassigned fund balance in the governmental fund financial statements a flow assumption must be made about the order in which the resources are considered to be applied. It is the Town's policy to consider restricted fund balance to have been depleted before using any of the components of unrestricted fund balance. Further, when the components of unrestricted fund balance can be used for the same purpose, committed fund balance is depleted first, followed by assigned fund balance. Unassigned fund balance is applied last.

Fund Balance Policies

Fund balance of governmental funds is reported in various categories based on the nature of any limitations requiring the use of resources for specific purposes. The Town itself can establish limitations on the use of resources through either a commitment (committed fund balance) or an assignment (assigned fund balance).

The committed fund balance classification includes amounts that can be used only for the specific purposes determined by a formal action of the town's highest level of decision-making authority. The Council is the highest level of decision-making authority for the town that can, by adoption of a resolution prior to the end of the fiscal year, commit fund balance. Once adopted, the limitation imposed by the resolution remains in place until a similar action is taken (the adoption of another resolution) to remove or revise the limitation.

NOTE 1 SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Amounts in the assigned fund balance classification are intended to be used by the town for specific purposes but do not meet the criteria to be classified as committed. The council has maintained authority to assign fund balance. The council may also assign fund balance as it does when appropriating fund balance to cover a gap between estimated revenue and appropriations in the subsequent year's appropriated budget. Unlike commitments, assignments generally only exist temporarily. In other words, an additional action does not normally have to be taken for the removal of an assignment. Conversely, as discussed above, an additional action is essential to either remove or revise a commitment.

Use of Estimates

The preparation of financial statements, in accordance with GAAP, requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amount of revenue and expenses during the reporting period. Actual results could differ from those estimates.

New Accounting Standards

In fiscal year 2023, the Town implemented Government Accounting Standards Board (GASB) Statement No. 96, *Subscription Based Information Technology Arrangements*. There were no changes to beginning fund balance as a result of implementation.

NOTE 2 RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS

Explanation of Certain Differences Between the Governmental Fund Balance Sheet and the Government-Wide Statement of Net Position

The governmental fund balance sheet includes reconciliation between fund balances - total governmental funds and net position of governmental activities as reported in the government-wide statement of net position.

Explanation of Certain Differences Between the Governmental Fund Statement of Revenues, Expenditures, and Changes in Fund Balances and the Government-Wide Statement of Activities

The governmental fund statement of revenues, expenditures, and changes in fund balance includes a reconciliation between net change in fund balances - total governmental funds and changes in net position of governmental activities as reported in the government-wide statement of activities.

NOTE 3 STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

Budgetary Information

The Town follows these procedures set forth below in establishing the budgetary data reflected in the financial statements:

1. At least 90 days prior to the beginning of each budget year, the Town Manager shall submit to the Town Council a budget.
2. Public hearings are conducted to obtain taxpayer comments.
3. The Budget shall be finally adopted no later than the last day of the last month of the fiscal year.
4. Formal budgetary accounting is employed as a management control for the General Fund and Stormwater Fund. Annual operating budgets are adopted each fiscal year through passage of an annual budget resolution and amended as required for the General Fund and Stormwater Fund. Budgeted amounts presented in the accompanying financial statements have been adjusted for legally authorized revisions.
5. The Town Manager may transfer part or all of any unencumbered appropriation balance among programs within a department and upon written request by the Town Manager, the Town Council may by resolution transfer part or all of any unencumbered appropriation balance from one department to another.
6. All unexpended budget appropriations lapse at the end of each fiscal year.
7. The Town does not utilize an encumbrance system of accounting.

NOTE 3 STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY (CONTINUED)

The General Fund budget is prepared on a budgetary basis, whereby the Town includes a portion of the prior year's fund balance represented by unappropriated liquid assets remaining in the fund as budgeted revenue in the succeeding year. The results of operations on a GAAP basis do not recognize the fund balance allocation as revenue as it represents prior periods' excess of revenues over expenditures. Also, the Town does not budget for capital outlay expenditures and other financing sources related to the acquisition of assets through capital leases or other debt.

In fiscal year 2023, the following adjustments were necessary to convert General Fund expenditures on a GAAP basis to the budgetary basis:

	<u>Expenditures</u>	<u>Other Financing Sources (Uses)</u>
GAAP basis	\$ 7,257,952	\$ 106,612
Nonbudgeted subscription agreements	(144,254)	(144,254)
Budgetary basis	<u>\$ 7,113,698</u>	<u>\$ (37,642)</u>

Appropriations in Excess of Estimated Revenues and Funds Available

For the year ended September 30, 2023, appropriations in the Stormwater Special Revenue Fund were in excess of anticipated revenue and prior years' fund balance due to a beginning fund balance deficit.

NOTE 4 CASH AND INVESTMENTS

Deposits

At year-end, the carrying amount of the Town's deposits was \$3,496,623 and the bank balance was \$3,693,641. All bank deposits were fully covered by federal depository insurance or by collateral held in banks that are members of the State of Florida's Collateral Pool as specified under Florida law.

Investments

The Town's investment policies are governed by State Statutes and Town ordinances. Town ordinance allows investments in any financial institution that is a qualified public depository of the State of Florida as identified by the State Treasurer, in accordance with Chapter 280 of the Florida Statutes. Authorized investments are:

1. The State Board of Administration Local Government Investment Pool (LGIP);
2. Repurchase Agreements collateralized by U.S. Government Securities;
3. Interest bearing savings accounts, money market accounts and certificates of deposits at banks certified as a Qualified Public Depository by the State of Florida;
4. The Florida Municipal Investment Trust, administered by the Florida League of Cities, Inc.;
5. Direct obligations of the U.S. Government and its agencies;
6. Fixed interest mutual funds.

The Town follows GASB No. 31, *Accounting and Financial Reporting for Certain Investments and for External Investment Pools*, which requires the adjustments of the carrying values of investments to fair value to be presented as a component of investment income. Investments are presented at fair value, which is based on available market values. Per GASB No. 72, *Fair Value Measurement and Application*, The Town categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; level 3 inputs are significant unobservable inputs. As of September 30, 2023, the town has no investments as defined by GASB 72.

NOTE 4 CASH AND INVESTMENTS (CONTINUED)

The Town's investment policy limits credit risk by restricting authorized investments to those described above. These policies also control concentration of credit risk by setting limits on the maximum percentage that certain investments may comprise in the portfolio. Since the Town has no investments at September 30, 2023, it has no exposure to credit risk, concentration of credit risk, custodial credit risk, or interest rate risk. However, all deposits are potentially subject to custodial credit risk. The Town's investment policy requires that bank deposits be secured as provided by Chapter 280, Florida Statutes. This law requires local governments to deposit funds only in financial institutions designated as qualified public depositories by the Chief Financial Officer of the State of Florida, and creates the Public Deposits Trust Fund, a multiple financial institution pool with the ability to assess its member financial institutions for collateral shortfalls if a default or insolvency has occurred. At September 30, 2023, all the Town's bank deposits were in qualified public depositories.

NOTE 5 PROPERTY TAXES

Property taxes attach as an enforceable lien on property as of January 1. Taxes are levied on October 1 and payable by March 31. Orange County Government, Florida (the County) bills and collects property taxes. Collections of the property taxes by the County and remittance of them to the Town are accounted for in the General fund. Town property tax revenues are recognized when levied to the extent that they result in current receivables.

The Town is permitted by the Municipal Finance Law of the State to levy taxes up to \$10 per \$1,000 of assessed valuation for general governmental services other than the payment of principal and interest on long-term debt and in unlimited amounts for the payment of principal and interest on long-term debt. The combined tax rate to finance general governmental services for the year ended September 30, 2023 was \$3.7425 per \$1,000 which means the Town has a tax margin of \$6.2575 per \$1,000 and could raise up to \$5,407,670 (before discount) additional per year from the present assessed valuation of \$864,190,216 before the limit is reached.

NOTE 7 INTERFUND RECEIVABLES AND PAYABLES

At September 30, 2023, the Stormwater Special Revenue Fund owed the General Fund \$229,853 mainly due to the time lag between the dates that interfund goods and services are provided or reimbursable expenditures occur, transactions are recorded in the accounting system, and payments between funds are made.

NOTE 8 RETIREMENT PLAN

The Town adopted the Town of Windermere Employee Retirement Plan effective October 1, 2001. The plan is a money purchase defined contribution plan which was established and can be amended by the Town Council. The plan covers all full time employees. The Town is required to contribute 19% of eligible employee compensation for sworn police officers, and 10% for remaining employees each year. Employees may not make contributions to the plan. At September 30, 2023, there were 24 active participants. Total contributions made by the Town during the year ended September 30, 2023 amounted to \$228,114.

The Town adopted the Town of Windermere Deferred Compensation Plan effective March 20, 2002. The plan is a deferred compensation defined contribution plan which was established and can be amended by the Town Council. The plan covers all full time employees who may elect to make contributions. The Town does not match employee contributions or otherwise contribute to the plan. At September 30, 2023, the plan had 16 active participants.

NOTE 9 OTHER POST-EMPLOYMENT BENEFITS

Pursuant to Resolution 2010-15, the Town has elected not to make continuation of group health insurance through the Town's current provider available to retirees and eligible dependents.

NOTE 10 LONG-TERM DEBT

A summary of long-term debt activity for the year ended September 30, 2023 follows:

	Beginning Balance	Additions	Deductions	Ending Balance	Due Within One Year
Promissory notes payable- Private Placement	\$ 228,282	\$ -	\$ (59,300)	\$ 168,982	\$ 61,138
Revenue notes payable- Private Placement	5,074,000	-	(435,000)	4,639,000	449,000
Subscription liabilities	-	144,254	(25,196)	119,058	22,878
Compensated absences	89,679	117,863	(86,393)	121,149	12,115
	<u>\$ 5,391,961</u>	<u>\$ 262,117</u>	<u>\$ (605,889)</u>	<u>\$ 5,048,189</u>	<u>\$ 545,131</u>

NOTE 10 LONG-TERM DEBT (CONTINUED)

Notes Payable

Notes payable outstanding at September 30, 2023, are as follows:

	<u>Sale Date</u>	<u>Original Borrowing</u>	<u>Outstanding 9/30/2023</u>	<u>Final Maturity</u>	<u>Interest Rates to Maturity</u>
<u>Note Payable:</u>					
Communication services tax refunding					
Note, Series 2014	11/14/2014	\$ 1,856,500	\$ 224,000	10/1/2024	3.54%
CIRN Note, Series 2019	12/20/2019	5,200,000	4,415,000	10/1/2039	2.13%
<u>Promissory Notes:</u>					
Promissory Note 802856-6	3/2/2017	74,940	32,733	3/2/2027	3.05%
Promissory Note 802856-7	12/13/2016	148,493	64,838	12/13/2026	3.05%
Promissory Note 802856-13	11/1/2018	82,000	17,540	11/1/2023	3.62%
Promissory Note 802856-14	11/25/2019	39,634	16,711	11/25/2024	3.65%
Promissory Note 802856-16	12/10/2020	35,495	21,806	12/10/2025	2.40%
Promissory Note 802856-17	4/23/2021	25,000	15,354	4/23/2026	2.40%

The Town has pledged future communication services tax revenues to repay the Communication Services Tax Refunding Revenue Note, Series 2014. Proceeds from the original note, issued in 2004, provided financing for various Town capital projects. The note is payable solely from the communication services tax revenues. To the extent that communication services tax revenues are insufficient to pay principal and interest on the note, the Town will, in each year while the note is outstanding, budget and appropriate sufficient non-ad valorem revenues to make payments of the principal of and interest on the note as it becomes due. Total communication services tax revenues pledged for the year was \$433,974. In the event of default, all principal and interest of the Note will become immediately due and payable.

The promissory notes payable were issued to fund the purchase of various capital equipment. Each of the notes are secured by the underlying equipment and are not general obligations of the Town. In the event of default, the Lender may declare the entire amount immediately due and payable without notice to the Town. The Lender may also exercise the right to take possession of the collateral with or without a court order.

NOTE 10 LONG-TERM DEBT (CONTINUED)

Debt service requirements of notes payable are as follows:

<u>Note Payable:</u>	<u>Maximum Annual Debt Service</u>	<u>Fiscal Year Principal & Interest Paid</u>	<u>Principal and Interest Remaining</u>	<u>Payment Schedule</u>
Communication services tax refunding Note, Series 2014	\$ 229,597	\$ 218,360	\$ 229,597	Bi-annual
CIRN Note, Series 2019	327,714	327,714	5,259,069	Annual
<u>Promissory Notes:</u>				
Promissory Note 802856-6	8,828	8,828	35,309	Annual
Promissory Note 802856-7	17,492	17,492	69,938	Annual
Promissory Note 802856-9	6,976	6,976	-	Annual
Promissory Note 802856-10	4,499	4,499	-	Annual
Promissory Note 802856-11	4,499	4,499	-	Annual
Promissory Note 802856-12	7,609	7,609	-	Annual
Promissory Note 802856-13	18,224	18,224	18,175	Annual
Promissory Note 802856-14	8,817	8,817	17,633	Annual
Promissory Note 802856-16	7,626	7,626	22,877	Annual
Promissory Note 802856-17	5,366	5,366	16,098	Annual

Annual debt service requirements to maturity are as follows:

<u>Year Ending September 30,</u>	<u>Governmental Activities</u>	
	<u>Principal</u>	<u>Interest</u>
2024	\$ 510,138	\$ 103,629
2025	279,910	91,240
2026	267,448	84,880
2027	270,486	78,868
2028	245,000	72,846
2029 - 2033	1,310,000	282,813
2034 - 2038	1,455,000	136,426
2039 - 2040	470,000	10,012
	<u>\$ 4,807,982</u>	<u>\$ 860,714</u>

NOTE 10 LONG-TERM DEBT (CONTINUED)

Subscription Based Information Technology Arrangements

During the year, the Town entered into a six year subscription contract for police software. Total subscription assets under the arrangements are \$144,254, and total accumulated amortization was \$24,042.

Annual debt service requirements to maturity are as follows:

<u>Year Ending September 30,</u>	<u>Subscription liability</u>	
	<u>Principal</u>	<u>Interest</u>
2024	\$ 22,878	\$ 2,381
2025	23,336	1,924
2026	23,802	1,457
2027	24,278	981
2028	24,764	495
	<u>\$ 119,058</u>	<u>\$ 7,238</u>

NOTE 11 RISK MANAGEMENT

The Town is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; job-related illnesses or injuries to employees; and natural disasters. Risk of loss from the above is transferred by the Town to various commercial insurers through the purchase of insurance.

There has been no significant reduction in insurance coverage from the previous year. There have been no settlements in excess of insurance coverage in any of the prior three fiscal years.

NOTE 12 LITIGATION CONTINGENCIES, AND COMMITMENTS

Litigation

During the ordinary course of its operations, the Town is a party to various claims, legal actions, and complaints. In addition, although the outcome of these lawsuits is not presently determinable, in the opinion of the Town's management and legal counsel, these matters are not anticipated to have a material financial impact on the Town.

NOTE 13 FUND BALANCES

At September 30, 2023, the Town's governmental fund balances were classified as follows:

Fund Balances:	General	Stormwater Special Revenue	Total
Nonspendable:			
Prepaid expenses	\$ 35,338	\$ -	\$ 35,338
Spendable:			
Restricted	40,307	-	40,307
Assigned to:			
Parks & recreation	115,331	-	115,331
Capital improvements	100,000	-	100,000
Other	240,571	-	240,571
Subsequent years expenditures	88,041	-	88,041
Unassigned:			
Unassigned	1,308,136	(184,253)	1,123,883
Total Fund Balances	\$ 1,927,724	\$ (184,253)	\$ 1,743,471

Other Reports

**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN
AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE
WITH GOVERNMENT AUDITING STANDARDS**

Honorable Mayor and Town Council
Town of Windermere, Florida

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities and each major fund, of the *Town of Windermere* as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the *Town of Windermere's* basic financial statements, and have issued our report thereon dated February 19, 2024.

Report on Internal Control over Financial Reporting

In planning and performing our audit of the financial statements, we considered the *Town of Windermere's* internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the *Town of Windermere's* internal control. Accordingly, we do not express an opinion on the effectiveness of the *Town of Windermere's* internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified. We did identify certain deficiencies in internal control, described in the accompanying Appendix A that we consider to be significant deficiencies.

Report on Compliance and Other Matters

As part of obtaining reasonable assurance about whether the *Town of Windermere's* financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Town of Windermere's Response to Findings

Government Auditing Standards requires the auditor to perform limited procedures on the *Town of Windermere's* response to the findings identified in our audit. The *Town of Windermere's* response was not subjected to the other auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on the response.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

McDiarmid Davis

Orlando, Florida
February 19, 2024



934 North Magnolia Avenue, Suite 100
Orlando, Florida 32803
407-843-5406
www.mcdermittdavis.com

**INDEPENDENT ACCOUNTANT'S REPORT ON COMPLIANCE WITH
THE REQUIREMENTS OF SECTION 218.415, FLORIDA STATUTES**

Honorable Mayor and Town Council
Town of Windermere, Florida

We have examined Town of Windermere's (the "Town") compliance with the requirements of Section 218.415, Florida Statutes, during the year ended September 30, 2023. Management is responsible for the Town's compliance with those requirements. Our responsibility is to express an opinion on the Town's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence about the Town's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Town's compliance with specified requirements.

In our opinion, Town of Windermere complied, in all material respects, with the aforementioned requirements for the year ended September 30, 2023, except for the noncompliance disclosed in management letter comment ML23-2 on page 30.

McDermitt Davis

Orlando, Florida
February 19, 2024



MANAGEMENT LETTER

Honorable Mayor and Town Council
Town of Windermere, Florida

Report on the Financial Statements

We have audited the financial statements of the Town of Windermere, Florida, as of and for the fiscal year ended September 30, 2023, and have issued our report thereon dated February 19, 2024.

Auditor’s Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Chapter 10.550, Rules of the Florida Auditor General.

Other Reporting Requirements

We have issued our Independent Auditor’s Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of the Financial Statements Performed in Accordance with *Government Auditing Standards* and Independent Accountant’s Report on an examination conducted in accordance with *AICPA Professional Standards*, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in those reports, which are dated February 19, 2024, should be considered in conjunction with this management letter.

Prior Audit Findings

Section 10.554(1)(i).1., Rules of the Auditor General, require that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report. Management has decided to acknowledge and accept the finding which was repeated in the prior two annual financial reports:

Tabulation of Uncorrected Audit Findings		
FY 2023 Finding #	FY 2022 Finding #	FY 2021 Finding #
ML 23-01	ML 22-01	ML 21-01

Official Title and Legal Authority

Section 10.554(1)(i).4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. This information has been disclosed in the notes to the financial statements.

Financial Condition and Management

Sections 10.554(1)(i).5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the Town of Windermere has met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the Town of Windermere, Florida did not meet any of the conditions described in Section 218.503(1), Florida Statutes.

Pursuant to Sections 10.554(1)(i).5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures for the Town of Windermere. It is management’s responsibility to monitor the Town of Windermere, Florida’s financial condition, and our financial condition assessment was based in part on representations made by management and the review of financial information provided by same.

Section 10.554(1)(i).2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we have one such recommendation.

ML 23-3 Purchasing Policy

During our audit, we noted that quotes were not obtained for certain purchases when required by policy. We recommend reviewing the purchasing policy, and updating purchasing thresholds where quotes are required. We also recommend that all purchasing documentation is reviewed to ensure quotes are obtained prior to purchase when required by policy.

Additional Matters

Section 10.554(1)(i)3., Rules of the Auditor General, requires us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but which warrants the attention of those charged with governance. In connection with our audit, we did note one finding of noncompliance.

ML 23-2 Investment Policy

During our audit, we noted that due to staff turnover in the finance department, the required continuing education courses were not taken by the designated individual as required by the Town's investment policy and Florida Statutes. We recommend the Town implement procedures to ensure the proper continuing education courses are taken and documented each year as required by Florida Statutes.

Purpose of this Letter

Our management letter is intended solely for the information and use of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, the Florida Auditor General, Federal and other granting agencies, the Town Council, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.

McDiarmid Davis

Orlando, Florida
February 19, 2024

23-01 - INTERNAL CONTROLS OVER THE PREPARATION OF FINANCIAL STATEMENTS

Criteria

AUC 265, *Communicating Internal Control Related Matters Identified in an Audit*, requires auditors to evaluate whether or not the Town has the necessary expertise to draft the financial statements, including footnote disclosures, without the assistance of auditors.

Condition

During the course of our audit, we determined that the Town does not have the necessary expertise to draft the financial statements without our assistance.

Cause

Due to the small size of the Town, none of the staff is qualified to prepare the financial statements.

Effect

Errors in financial reporting could go undetected by management.

Recommendation

We recommend continued training of existing staff to improve financial reporting.

THE TOWN OF
Windermere

**MAYOR
JIM O'BRIEN**



**TOWN MANAGER
ROBERT SMITH**

**CLERK
DOROTHY BURKHALTER**

**614 MAIN STREET, WINDERMERE, FL 34786
407-876-2563**

February 15, 2024

RE: Comments and Recommendations from Auditor FY22-23
Mayor and Council,

For FY 22-23, the auditors had one finding relative to internal controls. The Following is my response to that finding:

22-01 INTERNAL CONTROLS OVER THE PREPARATION OF FINANCIAL STATEMENTS:

Finding: AUC 265 *Communicating Internal Control Related Matters Identified in an Audit*, requires auditors to evaluate whether or not the Town has the necessary expertise to draft financial statements, including footnote disclosures, without the assistance of auditors.

Recommendation: "We recommend continued training of existing staff to improve financial reporting."

Response: Management acknowledges and accepts this deficiency due to the size and limited resources of the Town. We will continue to develop and train staff in improving financial reporting capabilities.

Regards,


Robert Smith
Town Manager

Town of Windermere

State of the Lakes Update

March 2024

Amy L. Giannotti, MS, CLM
Environmental Scientist | Certified Lake Manager



Town of Windermere Lake Management

- Introduction
- Sites Under Town's Management
- Recent Restoration Projects
- Challenges & Goals
- Outreach & Engagement
- Community Involvement



Lakes Management Consultant –

Amy L. Giannotti,
MS, CLM



- Environmental Scientist & Certified Lake Manager
- 20+ years of experience managing Florida's water resources
- Prior experience includes resource management & regulatory responsibilities for state & local government
- Founder/Owner of AquaSTEM Consulting
- Bachelor of Science – Biology – Marietta College, Marietta OH
- Master of Science – Environmental Sciences – University of Virginia
- Provides technical consulting services for lake, shoreline, pond, & wetland management for municipalities, HOAs, waterfront residents, etc., as well as educational outreach & community engagement



Overview of Lakes & Shorelines within Windermere:



Lakes:

- Lake Butler & Wauseon Bay
- Lake Bessie
- Lake Down
- Lake Crescent

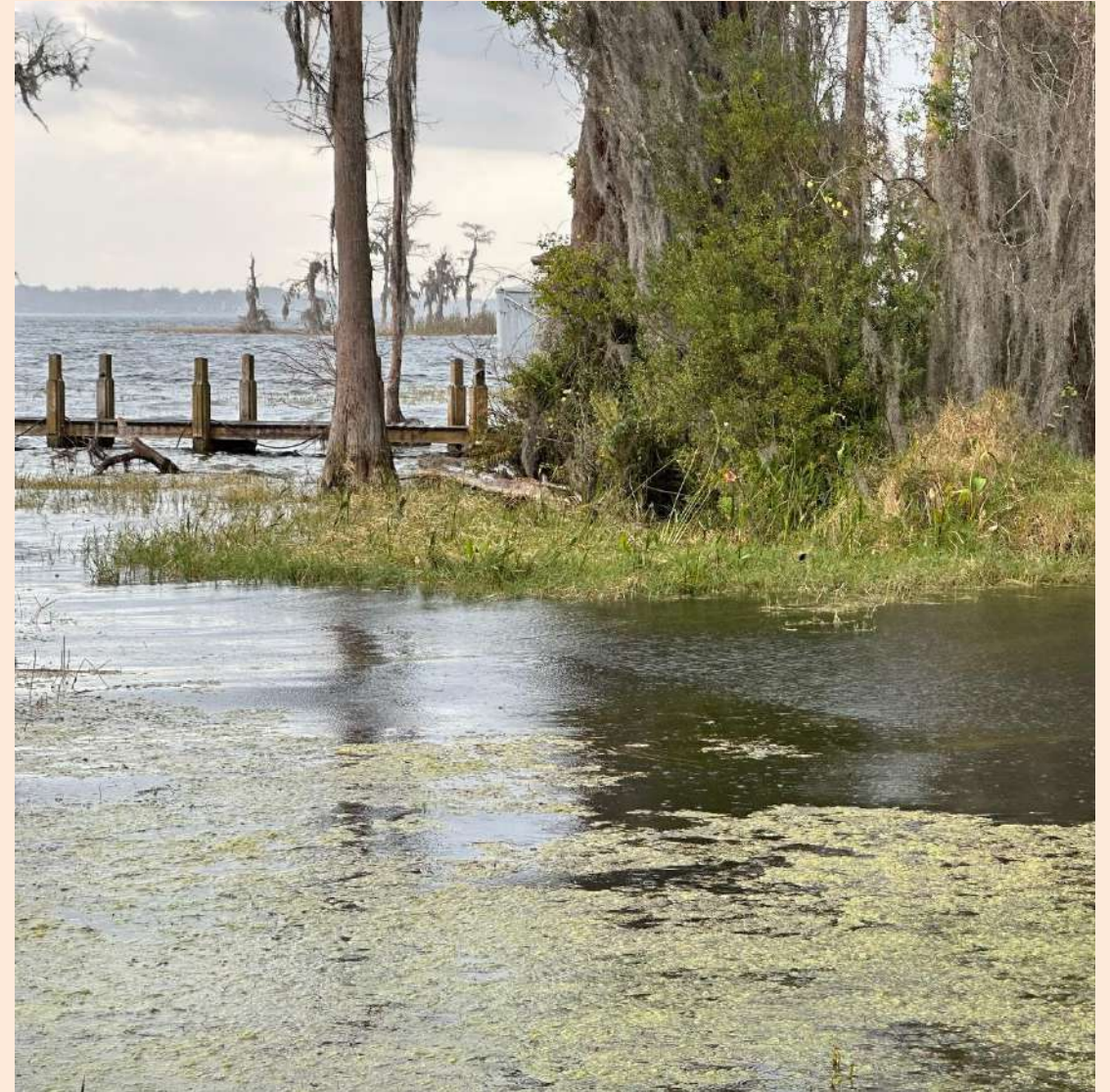
Lake Bessie

Before
Dec. 2022

After
Feb. 2024

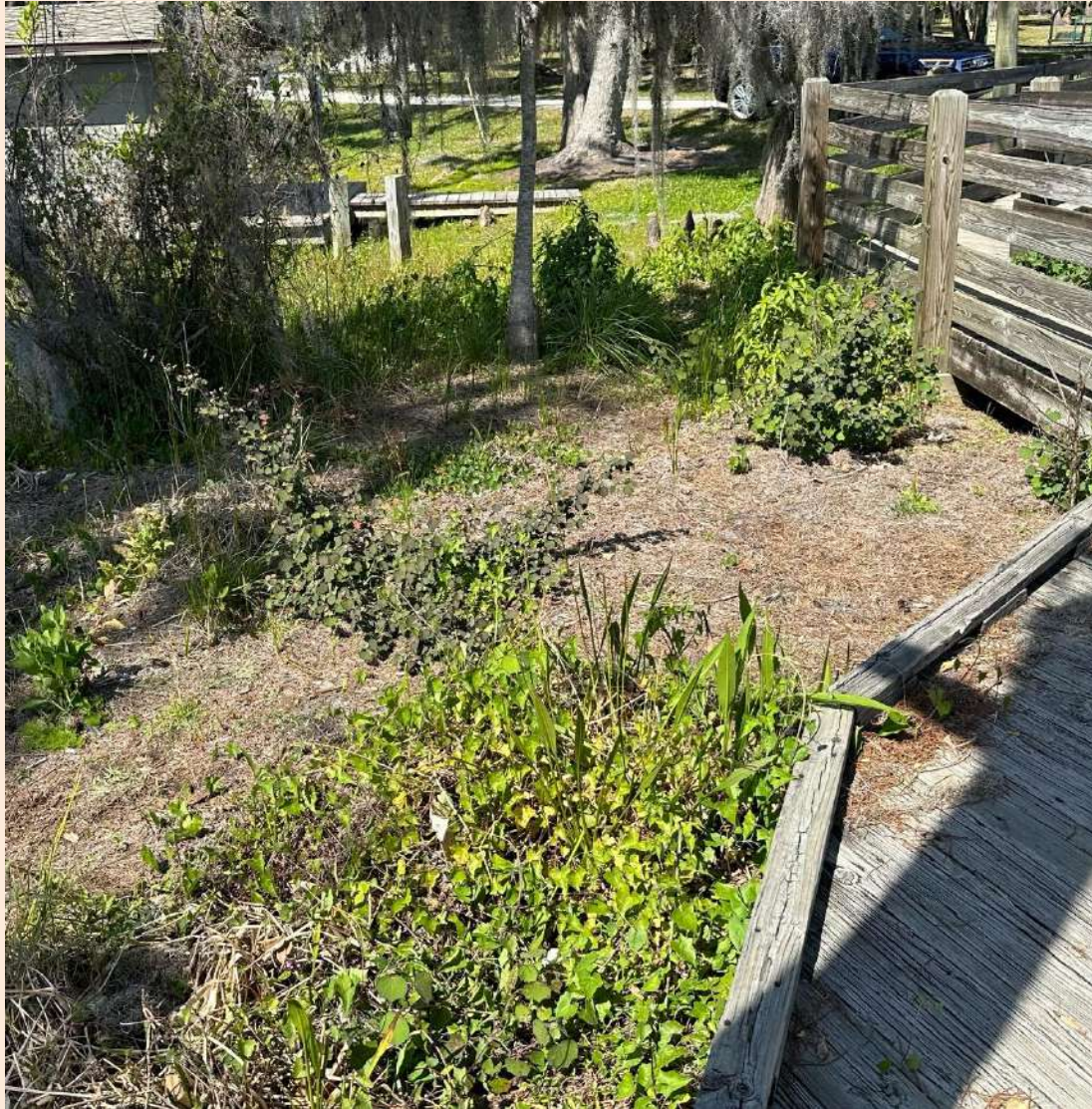


Lake Butler/Palmer Park



Before Feb. 2023

Lake Butler/Palmer Park



After Feb. 2024

Lake Down/East 3rd Ave



Before Aug. 2022



After Feb. 2024

Cooperation & Collaboration = Teamwork

- Management of permitted invasive aquatic plants by Orange County Environmental Protection Division under the Florida Fish and Wildlife Commission's Invasive Plant Management Workplan
- Coordinate with FWC, EPD, OCSO Marine Patrol, WadeTrim, etc.
- Public Works staff are observant, responsive, knowledgeable, and communicative
- Aquatic Weed Control is doing an excellent job with routine maintenance and restoration of waterfront habitats
- Regular inspections show progress with expansion of native aquatic plants



Challenges & Goals

- Still dealing with hurricane damage from Fall 2022.
- Planned additions of public signage can be improved to protect water quality & habitat
 - Emphasis on Best Management Practices to include tips, like:
 - Keep grass clippings contained in yard away from water or bagged with yard waste
 - Pet waste should be collected, bagged, & placed in trash
 - Vehicles should be washed on lawn or at a car wash; not on pavement to prevent runoff
 - Watershed diagrams & illustrations highlighting where stormwater runoff goes
 - Promoting native aquatic plants & vegetated shorelines for habitat for fish & wildlife



- Watershed & Lake Cleanups
- Take Over the Trails Day
- Social Media Updates
- *The Gazette*



Public Involvement – How Can Residents Help?

- Community Lake Cleanup – WATCH FOR 2024 DATES!
- Incorporate Best Management Practices (BMPs):
 - Reduce nutrient pollution from fertilizers
 - Collect & dispose of grass clippings, landscape debris, with yard waste
 - Pet waste should be bagged & placed in garbage
 - Secure sediment on site & reduce runoff
 - Household hazardous waste
 - Etc.
- Read and share educational articles
- Like, follow, & share environmental content shared on Windermere’s social media platforms
- If you see something, say something...let’s help each other!



TOWN OF WINDERMERE

Town Council Meeting Minutes

February 13, 2024

CALL TO ORDER:

Present were Mayor Jim O'Brien, Town Council Members Tom Stroup, Andy Williams, Mandy David, Tony Davit, and Brandi Haines. Town Manager Robert Smith, Public Works Director Elliott-Moore, Attorney Tom Wilkes, Deputy Chief Jayson Bonk, and Town Clerk Dorothy Burkhalter were also present.

Mayor O'Brien called the meeting to order at 6:05 pm and stated that a quorum was present. He then led everyone in the Pledge of Allegiance.

1. OPEN FORUM/PUBLIC COMMENT (3 Minute Limit)

There were no public speakers.

2. SPECIAL PRESENTATION/PROCLAMATIONS/AWARDS:

a. Stormwater Management Master Plan Presentation

Mayor O'Brien introduced this item. He then turned the floor over to Mr. Mike Galura. Mr. Galura gave a presentation regarding the Stormwater Management Master Plan. He commented on Goals and Objectives, Short- and Long-term projects, Data Collection, Capital Improvement Plan, Capital Improvement funding sources, and Public Forums and Outreach. Member Davit questioned if the program would include the GIS database. Mr. Galura stated "yes". He then commented on the program. Member Haines questioned the year that the costs are based on. Mr. Gauras explained that the cost is based on current costs. Some discussion followed regarding budget, cost shares and project timings. Member Davit made a motion to accept the findings of the study. Member Williams seconded the motion. Roll call vote was as follows: Stroup – aye, Williams – aye, David – aye, Davit – aye, and Haines – aye. Motion carried 5-0.

3. TIMED ITEMS & PUBLIC HEARING

4. OLD BUSINESS

5. NEW BUSINESS

a. Minutes

i. January 23, 2024 - Town Council Meeting Minutes

Member Williams made a motion to approve the minutes as submitted. Member Davit seconded the motion. Roll call vote was as follows: Haines – aye, Davit – aye, David – aye, Williams – aye, and Stroup – aye. Motion carried 5-0.

b. Consent Agenda

c. Resolutions/Ordinances for Approval/First Reading

d. (Left Blank)

e. Contracts/Agreements

f. Financial

TOWN OF WINDERMERE

Town Council Meeting Minutes

February 13, 2024

i. Approval of Purchase of ATV for WPD- Tractor Supply \$10,912.98

Mayor O'Brien introduced this item. He then turned the floor over to Deputy Chief Bonk. Deputy Chief Bonk explained that a \$10,000.00 grant was received for the purchase of an ATV. He further explained that the ATV will be used for special events. Deputy Chief Bonk stated that the ATV is all wheel drive with a wench. After minimal discussion was made, Member Davit made a motion to approve the ATV purchase. Member David seconded the motion. Roll call vote was as follows: Stroup – aye, Williams – aye, David – aye, Davit – aye, and Haines – aye. Motion carried 5-0.

6. MAYOR & COUNCIL LIAISON REPORTS:

There were no reports.

7. STAFF REPORTS:

a. TOWN MANAGER ROBERT SMITH – Manager Smith reported on upcoming meetings, Walk to Windermere (Elementary School), and the upcoming Awards Program.

b. TOWN ATTORNEY TOM WILKES – Attorney Wilkes commented on Form 6 and a lawsuit that has been filed against the State citing right to privacy and 1st Amendments violations. He explained that if the any municipalities would like to be involved there is a Resolution and \$10,000.00 that would be needed to join in. After some discussion was made, consensus of the Council was to draft the Resolution for the next Town Council meeting.

c. DEPUTY CHIEF JAYSON BONK – Deputy Chief Bonk commented on some burglaries that led to an arrest, the return of Chief Ogden, and having the night shift report the pole number of lights that are out.

d. PUBLIC WORKS DIRECTOR TONYA ELLIOTT-MOORE – Director Elliott-Moore reported on Palmer Park playground equipment, and back o full staff. Mayor O'Brien commented on streetlights that are out. Director Elliott-Moore stated a work order has been submitted.

e. TOWN CLERK DOROTHY BURKHALTER – Clerk Burkhalter had no report.

8. ADJOURN:

Mayor O'Brien adjourned the meeting at 6:46pm.

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Jim O'Brien, Mayor

OATH OF OFFICE

March 12, 2024

I, **Brandi Haines**, solemnly swear or affirm that I will support the Constitution of the United States and will obey the laws of the State of Florida; that I will, in all respects, observe the provisions of the Charter and Ordinance of the Town of Windermere and will faithfully discharge the duties of Council Member.

Term: Two-year 2024 - 2026

Brandi Haines

Administer of Oath

Sworn and subscribed before me this 12th day of March 2024

Notary Public

OATH OF OFFICE

March 12, 2024

I, **Loren “Andy” Williams**, solemnly swear or affirm that I will support the Constitution of the United States and will obey the laws of the State of Florida; that I will, in all respects, observe the provisions of the Charter and Ordinance of the Town of Windermere and will faithfully discharge the duties of Council Member.

Term: Two-year 2024 - 2026

Loren “Andy” Williams

Administer of Oath

Sworn and subscribed before me this 12th day of March 2024

Notary Public

OATH OF OFFICE

March 12, 2024

I, **James O'Brien**, solemnly swear or affirm that I will support the Constitution of the United States and will obey the laws of the State of Florida; that I will, in all respects, observe the provisions of the Charter and Ordinance of the Town of Windermere and will faithfully discharge the duties of Mayor.

Term: Two-year 2024 – 2026

James O'Brien

Administer of Oath

Sworn and subscribed before me this 12th day of March 2024

Notary Public

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

Town Council March 12, 2024

Case No.: Z24-02

Property Owner/Applicant: JRH RE Investments, LLC/James R. Heistand
Stonebridge Homes, Inc./J. Todd South

Representative: William R. Hockensmith, P.E., Florida Engineering Group, Inc.
Michel S. Scala, Esq., The Law Offices of Michel Scala, PLLC

Requested Action: Minor Replat of 10908 Down Park Lane (Parcel ID 05-23-28-4400-00-114) and 10988 Down Park Lane (Parcel ID 05-23-28-4400-00-120) to Create Three (3) Lots

Property Address: 10908 and 10988 Down Park Lane, Windermere, FL 34786

Legal Description: THAT PART OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN S00°05'05"W ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, 264.00 FEET TO THE NORTH LINE OF AFORESAID LAKE DOWN ESTATES REPLAT; THENCE RUN S89°52'18"E ALONG SAID NORTH LINE, 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°52'18"E ALONG SAID NORTH LINE, 304.69 FEET; THENCE RUN S29°32'01"E, 346.54 FEET; THENCE RUN S63°27'32"E, 606.53 FEET TO A POINT ON THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N81°07'34"W ALONG SAID NORTH LINE, 1650.57 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAGUIRE ROAD; THENCE RUN N08°39'24"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 317.40 FEET TO THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES REPLAT; THENCE RUN N88°52'53"E ALONG SAID NORTH LINE, 109.23 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN INSTRUMENT DOCUMENT #20220184463, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID BOUNDARIES OF SAID LANDS, S01°07'16"E, 90.00 FEET; N88°52'44"E, 125.00 FEET; S66°07'16"E, 250.00 FEET; S43°39'42"E, 130.00 FEET; N46°30'20"E, 87.69 FEET; N13°14'51"W, 231.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 8.728 ACRES MORE OR LESS.

Future Land Use/Zoning: Residential/Residential

Existing Use: Vacant

Surrounding Future Land Use/Zoning

North: Residential/Residential

East: Lake

South: Residential/Residential

West: Residential/Residential

CASE SUMMARY:

Michel Scala, Esq., and William Hockensmith, P.E., on behalf of JRH RE Investments, LLC/James R. Heistand, owner of 10988 Down Park Lane, and Stonebridge Homes, Inc./J. Todd South, owner of 10908 Down Park Lane, submitted a request for approval of a minor replat of these two (2) lakefront parcels to create three (3) lakefront parcels pursuant to Division 12.03.00 – Procedure for Obtaining a Minor Replat of the Town of Windermere Land Development Code and Section 177, Part 1, Florida Statutes. A map showing the location of the proposed replat (blue shaded area) is provided below:

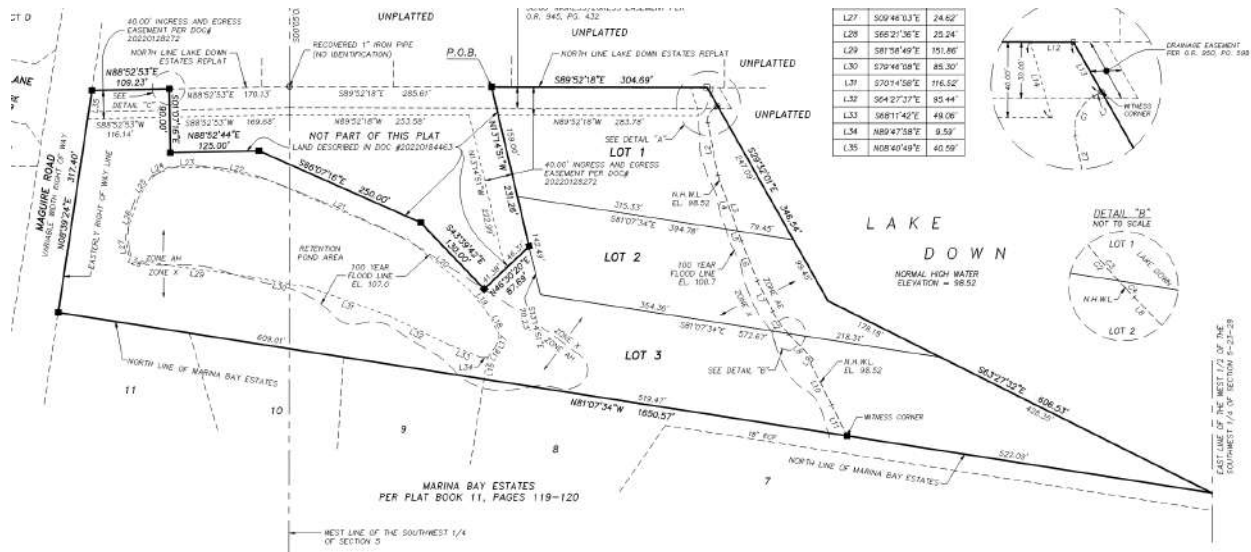


Source: Orange County Property Appraiser, February 28, 2024

Prior to this request for a minor replat, on November 11, 2021, the Town Manager administratively approved a minor lot split under Section 3.02.02(4), LDC, for the property located at 10988 Down Park Lane, which at the time included the property shown as “Not Included” in the map above. The approved minor lot split created two (2) lots that are now shown in the map above as 10988 Down Park Lane and the “Not Included” parcel. The property at 10908 Down Park Lane already existed at the time of the minor lot split in 2021.

Now, the owners of 10988 Down Park Lane and 10908 Down Park Lane have applied to the Town to replat the two (2) properties and recombine them to create three (3) properties.

Please see the image below of the three (3) lots (Lot 1, Lot 2, Lot 3) created by the proposed minor replat:



With the split of the existing two (2) lots and recombination into the proposed three (3) lots, the size of each of the new three (3) lots is as follows:

- Proposed Lot 1: 1.2 acres (landward of NHWE) / 159 foot lot width
- Proposed Lot 2: 1.0 acre (landward of NHWE) / 142 foot lot width
- Proposed Lot 3: 4.8 acres (landward of NHWE) / 130 foot lot width (measured at potential house location)

All three (3) proposed lots meet the Town’s minimum lot size of one (1) acre with a minimum lot width of 130 feet for a waterfront lot.

The proposed three (3) lots and the “Not Included” lot are accessed by an existing private ingress/egress easement (Down Park Lane). This ingress/egress easement is not part of the Town’s maintained system of roads and will remain a private road with the approval of this minor replat and will continue to provide ingress/egress to these proposed three (3) lots and other lots that have access under the existing recorded private ingress/egress easement.

The stormwater for each of the proposed three (3) lots will be retained on site at each lot consistent with the Town’s stormwater retention requirements. The proposed three (3) lots have access to Orange County Utilities potable water system and potentially the wastewater system.

The proposed minor replat is compliant with the Town’s comprehensive plan, land development code, and Section 177, Part I, Florida Statutes.

The applicant provided the following supporting information for the proposed minor replat:

1. Final Plat of the Minor Replat (To be Signed by Town After Approval)
2. Boundary Survey
3. Joinder and Consent Agreement
4. Plat Certificate
5. Title Opinion
6. Draft Declaration of Easements, Covenants, and Restrictions (Information Only – Not for Town Approval)
7. Existing Ingress/Egress Easement (OR Book 945, Page 932, Public Records of Orange County, Florida)

If the Town Council approves this proposed minor replat, then the Final Plat will be signed by the Town, and the applicant will have the Final Plat recorded with the Orange County Comptroller and provide a copy of the recorded Final Plat to the Town.

DOWN PARK LANE

SHEET 1 OF 2

A REPLAT OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA LAYING IN SECTIONS 5 AND 6, TOWNSHIP 23 SOUTH, RANGE 28 EAST TOWN OF WINDERMERE, ORANGE COUNTY, FLORIDA

PLAT BOOK PAGE
DOWN PARK LANE
DEDICATION

KNOW ALL MEN BY THESE PRESENTS, STONEBRIDGE HOME, INC. A FLORIDA CORPORATION BEING THE OWNER IN FEE SIMPLE OF THE LANDS DESCRIBED IN THE FOREGOING CAPTION TO THIS PLAT, HEREBY DEDICATES SAID LANDS AND PLAT FOR THE RIGHTS, USES AND PURPOSES HEREIN EXPRESSED, INCLUDING AS SET FORTH IN THE PLAT NOTES.

IN WITNESS WHEREOF, THE UNDERSIGNED STONEBRIDGE HOMES, INC., A FLORIDA CORPORATION HAVE CAUSED THESE PRESENTS TO BE EXECUTED AND ACKNOWLEDGED ON THIS _____ DAY OF _____, 2024

STONEBRIDGE HOMES, INC. SIGNED AND SEALED IN THE PRESENCE OF:
A FLORIDA CORPORATION

By: _____
TODD J. SOUTH, VICE PRESIDENT SIGNATURE
PRINT NAME: _____

STATE OF FLORIDA
COUNTY OF ORANGE
SIGNATURE
PRINT NAME: _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF _____ PHYSICAL PRESENCE OR _____ ONLINE NOTARIZATION, THIS _____ DAY OF _____, 2023 BY TODD J. SOUTH, AS VICE PRESIDENT OF STONEBRIDGE HOMES, INC., A FLORIDA CORPORATION, WHO IS PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ AS IDENTIFICATION. THE INDIVIDUAL AND VICE PRESIDENT DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGE THE EXECUTION THEREOF TO BE THEIR FREE ACT AND DEED AS SUCH VICE PRESIDENT THEREUNTO DULY AUTHORIZED, AND THE SAID CONVEYANCE IS THE ACT AND DEED OF SAID CORPORATION.

IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND AND SEAL ON THE ABOVE DATE.

Notary Public
Print Name: _____
Commission No. _____
My Commission Expires: _____

IN WITNESS WHEREOF, THE UNDERSIGNED JRH RE INVESTMENTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY HAVE CAUSED THESE PRESENTS TO BE EXECUTED AND ACKNOWLEDGED ON THIS _____ DAY OF _____, 2024

JRH RE INVESTMENTS, LLC. SIGNED AND SEALED IN THE PRESENCE OF:
A FLORIDA LIMITED LIABILITY COMPANY

By: _____
JAMES R. HEISTAND, MANAGER SIGNATURE
PRINT NAME: _____

STATE OF FLORIDA
COUNTY OF ORANGE
SIGNATURE
PRINT NAME: _____

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY MEANS OF _____ PHYSICAL PRESENCE OR _____ ONLINE NOTARIZATION, THIS _____ DAY OF _____, 2023 BY JAMES R. HEISTAND, AS MANAGER OF JRH RE INVESTMENTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY, WHO IS PERSONALLY KNOWN TO ME OR HAS PRODUCED _____ AS IDENTIFICATION. THE INDIVIDUAL AND MANAGER DESCRIBED IN AND WHO EXECUTED THE FOREGOING DEDICATION AND ACKNOWLEDGE THE EXECUTION THEREOF TO BE THEIR FREE ACT AND DEED AS SUCH MANAGER THEREUNTO DULY AUTHORIZED, AND THE SAID CONVEYANCE IS THE ACT AND DEED OF SAID LIMITED LIABILITY COMPANY.

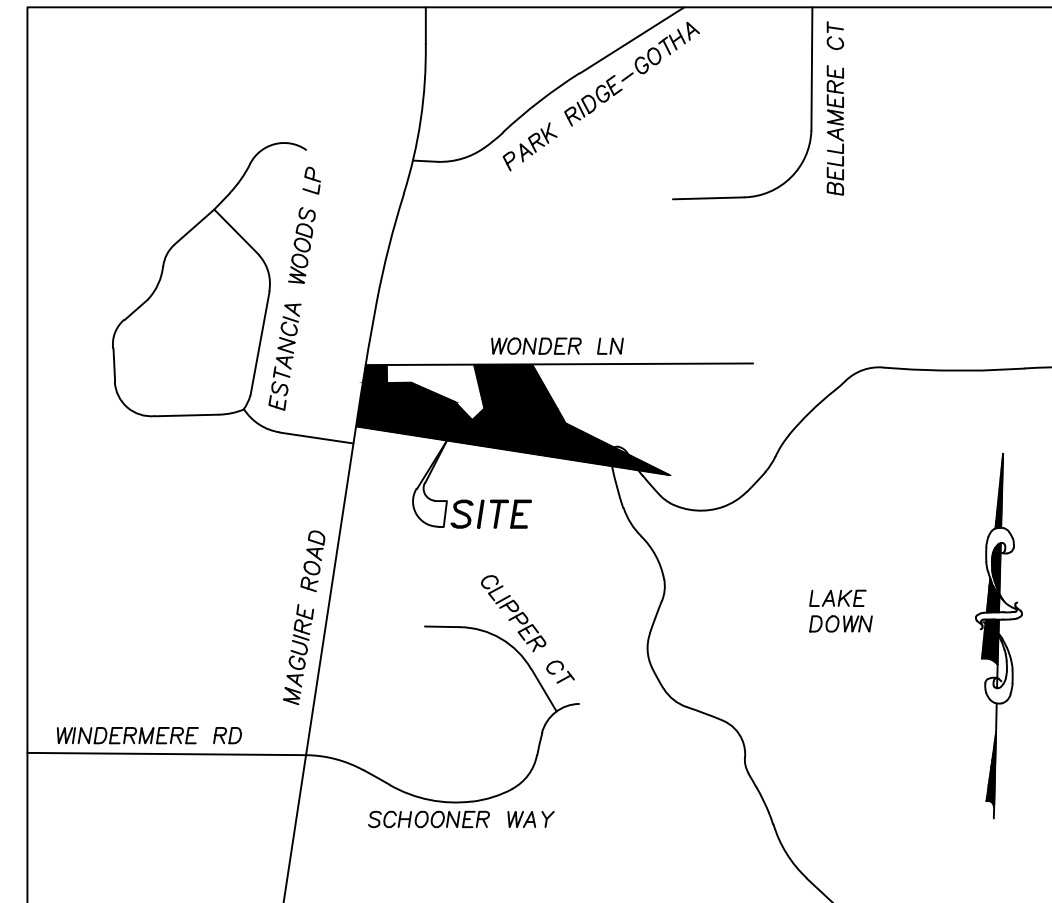
IN WITNESS WHEREOF, I HAVE HERETO SET MY HAND AND SEAL ON THE ABOVE DATE.

Notary Public
Print Name: _____
Commission No. _____
My Commission Expires: _____

CERTIFICATE OF COUNTY COMPTROLLER
I HEREBY CERTIFY THAT THE FOREGOING PLAT WAS RECORDED IN THE ORANGE COUNTY OFFICIAL RECORDS ON _____, 2024, AS DOC. NO. _____
COUNTY COMPTROLLER IN AND FOR ORANGE COUNTY, FLORIDA

By: _____

LOCATION MAP
NOT TO SCALE



DESCRIPTION:

THAT PART OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN 500'05"05"W ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, 264.00 FEET TO THE NORTH LINE OF AFORESAID LAKE DOWN ESTATES REPLAT; THENCE RUN S89°52'18"E ALONG SAID NORTH LINE, 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°52'18"E ALONG SAID NORTH LINE, 304.69 FEET; THENCE RUN S29°32'01"E, 346.54 FEET; THENCE RUN S63°27'32"E, 606.53 FEET TO A POINT ON THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N81°07'34"W ALONG SAID NORTH LINE, 1650.57 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAGUIRE ROAD; THENCE RUN N08°39'24"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 317.40 FEET TO THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES REPLAT; THENCE RUN N88°52'53"E ALONG SAID NORTH LINE, 109.23 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN INSTRUMENT DOCUMENT #20220184463, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID BOUNDARIES OF SAID LANDS, S01°07'16"E, 90.00 FEET; N88°52'44"E, 125.00 FEET; S66°07'16"E, 250.00 FEET; S43°39'42"E, 130.00 FEET; N46°30'20"E, 87.69 FEET; N13°14'51"W, 231.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 8.728 ACRES MORE OR LESS.

PLAT NOTES:

- 1. BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST AS BEING 500'05"05"W (ASSUMED).
- 2. ALL PLATTED UTILITY EASEMENTS SHALL PROVIDE THAT SUCH EASEMENTS SHALL ALSO BE EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES, PROVIDED, HOWEVER, NO SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION OF CABLE TELEVISION SERVICES SHALL INTERFERE WITH THE FACILITIES AND SERVICES OF AN ELECTRIC, TELEPHONE, GAS, OR OTHER PUBLIC UTILITY. IN THE EVENT A CABLE TELEVISION COMPANY DAMAGES THE FACILITIES OF A PUBLIC UTILITY, IT SHALL BE SOLELY RESPONSIBLE FOR THE DAMAGES. SUCH CONSTRUCTION, INSTALLATION, MAINTENANCE, AND OPERATION SHALL COMPLY WITH THE NATIONAL ELECTRICAL SAFETY CODE, AS ADOPTED BY THE FLORIDA PUBLIC SERVICE COMMISSION.
- 3. THE NORMAL HIGH WATER LINE ELEVATION FOR LAKE DOWN IS 98.52 (NAVD88) AS SPECIFIED BY ORANGE COUNTY, PUBLIC WORKS STORMWATER MANAGEMENT DIVISION. THE STATE OF FLORIDA MAY HAVE CLAIM OF TITLE TO THOSE LANDS LYING WITHIN THE WATERS OF LAKE DOWN LYING BELOW THE ORDINARY HIGH WATER LINE (OHWL), OHWL HAS NOT BEEN DETERMINED.
- 4. THE ELEVATIONS SHOWN HEREON ARE BASED ON NATIONAL GEODETIC SURVEY DATUM PER BENCH MARK NUMBER N 627, ELEVATION = 104.88 (NAVD88), BEING A STAINLESS STEEL ROD IN LOGO CAP STAMPED "N 627 2005", 45 FEET SOUTH OF CANAL AND 2 FEET WEST OF GUARDRAIL.
- 5. THE PLAT IS SUBJECT TO THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS AS PROVIDED IN INSTRUMENT DOCUMENT# 20220128272, AS RECORDED IN ORANGE COUNTY, FLORIDA.

SHEET INDEX

- SHEET 1 - LEGAL DESCRIPTION, DEDICATION, SURVEYOR'S NOTES AND LEGEND
- SHEET 2 - BOUNDARY INFORMATION AND LOT GEOMETRY

LEGEND

CCR#	CERTIFIED CORNER RECORD
DOC#	INSTRUMENT DOCUMENT #
LB	LICENSED BUSINESS
N.H.W.L.	NORMAL HIGH WATER LINE
EL.	ELEVATION
O.R.	OFFICIAL RECORDS BOOK
P.O.C.	POINT OF COMMENCEMENT
P.O.B.	POINT OF BEGINNING
P.G.	PAGE
P.B.	PLAT BOOK
PRM	PERMANENT REFERENCE MONUMENT

- DENOTES SET PERMANENT REFERENCE MONUMENT, A 4"x4" CONCRETE MONUMENT "PRM LB 7274", UNLESS NOTED OTHERWISE.
- DENOTES RECOVERED 4"x4" CONCRETE MONUMENT (NO IDENTIFICATION)
- DENOTES RECOVERED 1" IRON PIPE (NO IDENTIFICATION)
- DENOTES SET NAIL AND DISK "PRM LB 7274"

NOTICE: THIS PLAT AS RECORDED IN ITS GRAPHIC FORM, IS THE OFFICIAL DEPICTION OF THE SUBDIVIDED LANDS DESCRIBED HEREIN AND WILL IN NO CIRCUMSTANCES BE SUPPLANTED IN AUTHORITY BY ANY OTHER GRAPHIC OR DIGITAL FORM OF THE PLAT. THERE MAY BE ADDITIONAL RESTRICTIONS THAT ARE NOT RECORDED ON THIS PLAT THAT MAY BE FOUND IN THE PUBLIC RECORDS OF THIS COUNTY.



301 N. TUBB STREET
OAKLAND, FL 34760
Phone No. 407.905.8877
Fax No. 407.905.8875

CERTIFICATE OF REVIEW BY TOWN SURVEYOR
THIS PLAT HAS BEEN REVIEWED FOR CONFORMITY WITH CHAPTER 177, FLORIDA STATUTES.
TOWN SURVEYOR _____ LS# _____ DATE _____

QUALIFICATION STATEMENT OF SURVEYOR AND MAPPER
KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, BEING A PROFESSIONAL SURVEYOR AND MAPPER CERTIFIES THAT I HAVE PREPARED THE FOREGOING PLAT AND IT WAS MADE UNDER MY DIRECTION AND SUPERVISION AND THAT THE PLAT COMPLIES WITH ALL OF THE SURVEY REQUIREMENTS OF CHAPTER 177, PART 1, FLORIDA STATUTES; AND THAT SAID LAND IS LOCATED IN, ORANGE COUNTY, FLORIDA.
Dated: _____ Signed _____
BISHMAN SURVEYING AND MAPPING, INC. ARON D. BISHMAN, P.S.M.
301 N. TUBB STREET, SUITE 106 Florida Registration No. 5668
OAKLAND, FLORIDA 34760 Licensed Business No. 7274

CERTIFICATE OF APPROVAL BY ZONING DIRECTOR
EXAMINED AND APPROVED:
ZONING DIRECTOR _____ DATE _____

CERTIFICATE OF APPROVAL BY TOWN ENGINEER
EXAMINED AND APPROVED:
TOWN ENGINEER _____ DATE _____

CERTIFICATE OF APPROVAL BY THE WINDERMERE TOWN COUNCIL
THIS IS TO CERTIFY, THAT ON _____, 2024, THE FOREGOING PLAT WAS APPROVED BY THE TOWN OF WINDERMERE TOWN COUNCIL, FLORIDA.
TOWN OF WINDERMERE _____
ATTEST: _____ TOWN CLERK

DOWN PARK LANE

A REPLAT OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED
IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA
LAYING IN SECTIONS 5 AND 6, TOWNSHIP 23 SOUTH, RANGE 28 EAST
TOWN OF WINDERMERE, ORANGE COUNTY, FLORIDA

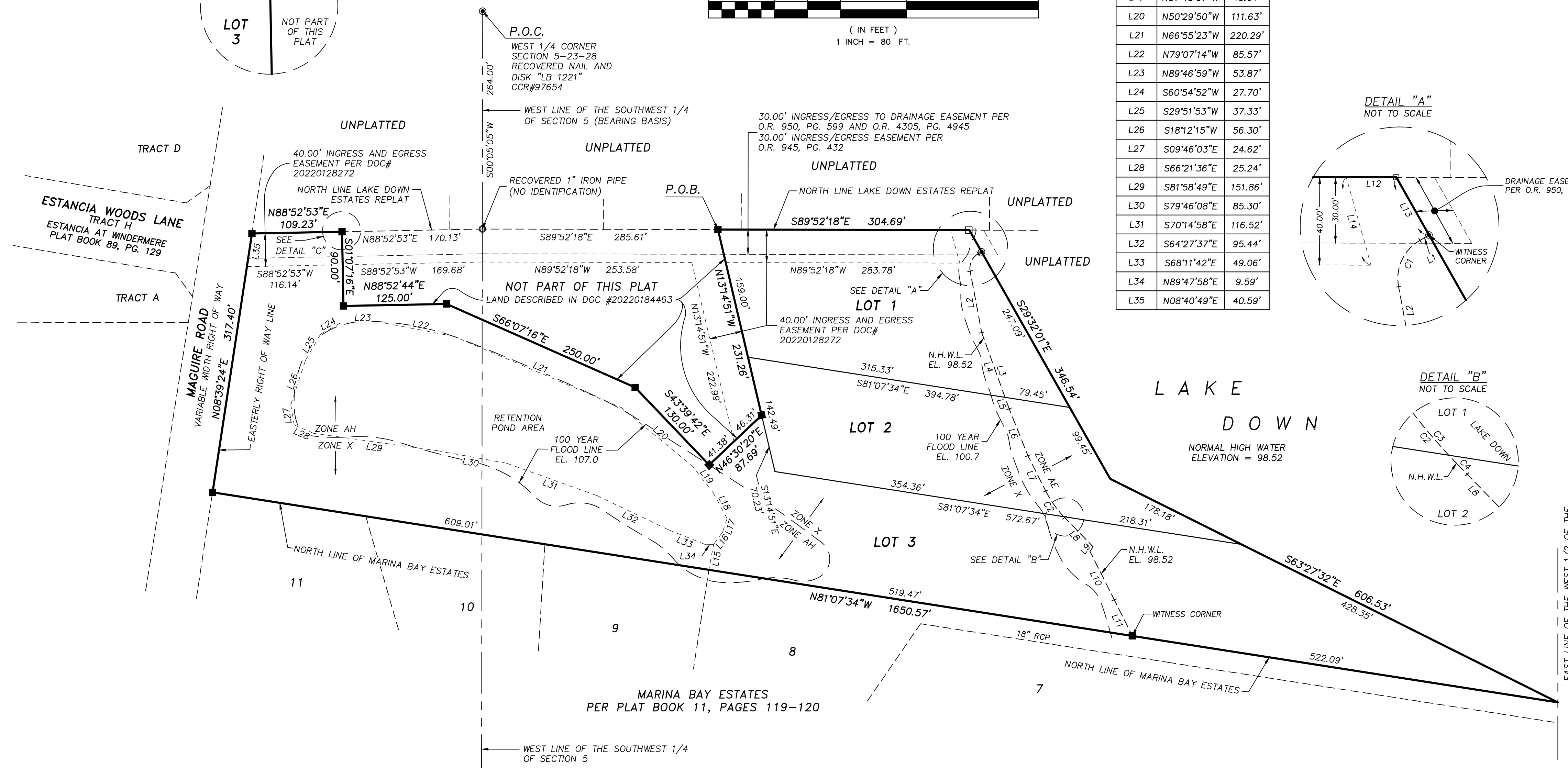
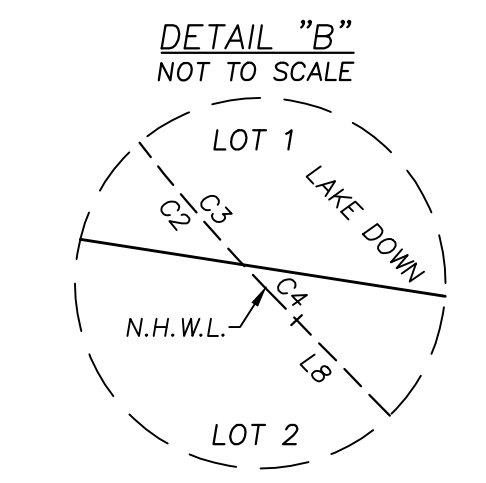
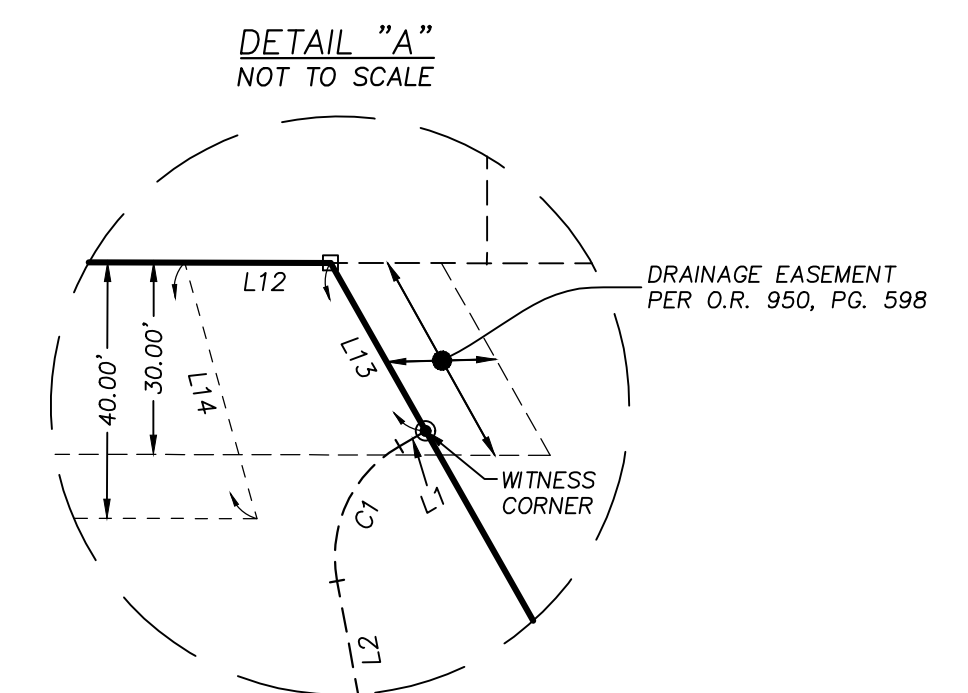
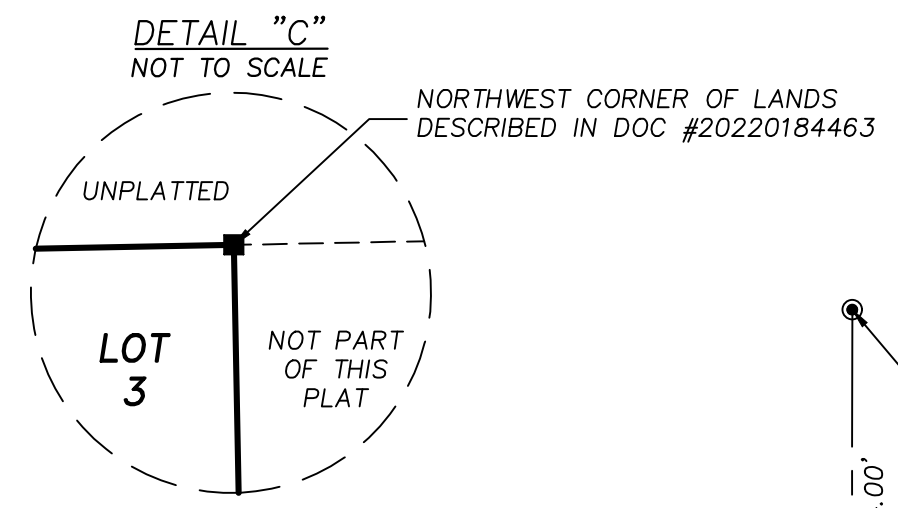
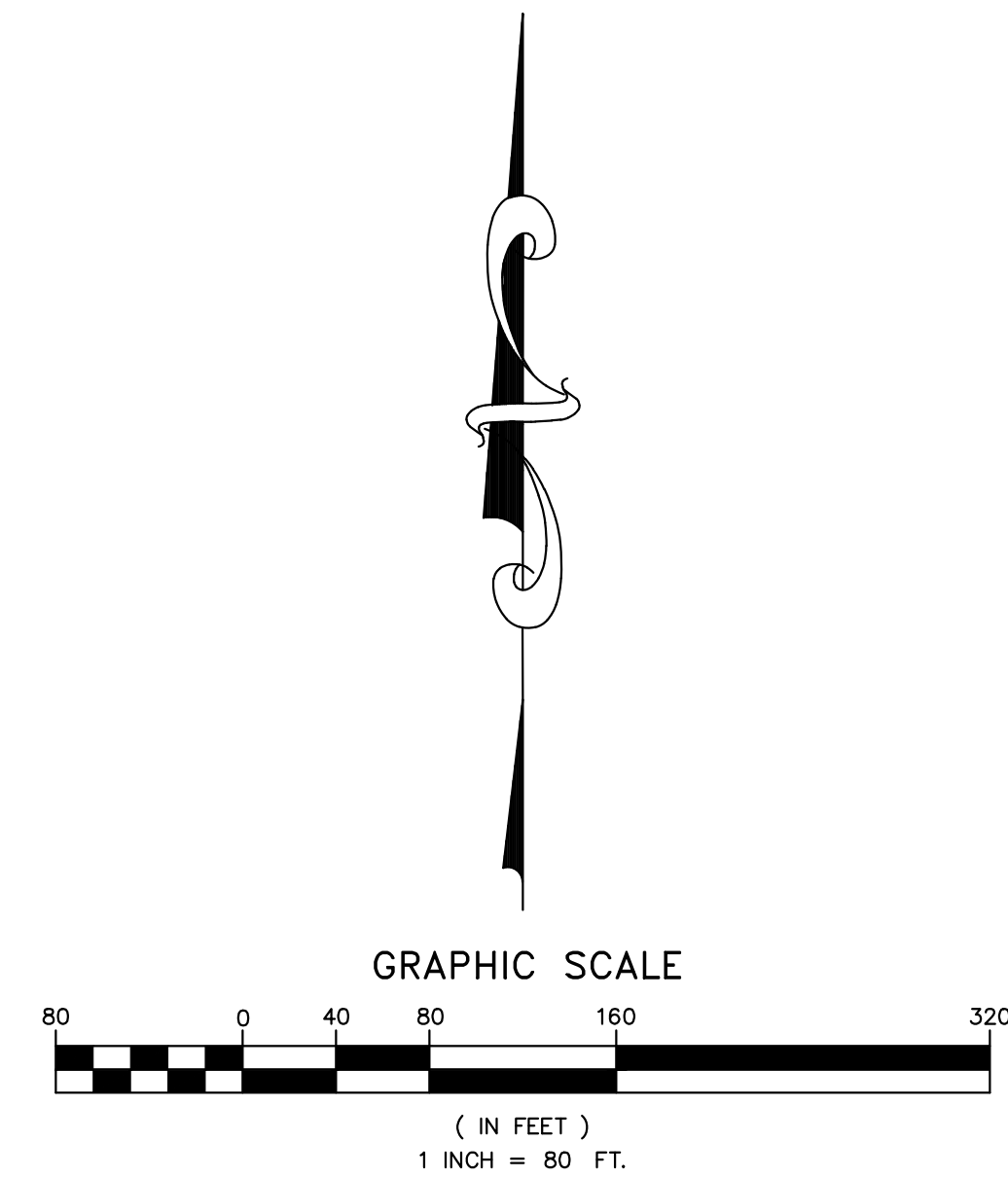
SHEET 2 OF 2

PLAT BOOK

PAGE

LINE #	DIRECTION	LENGTH
L1	S60°15'38"W	4.76'
L2	S10°37'46"E	75.75'
L3	S19°48'41"E	98.27'
L4	S19°48'41"E	83.51'
L5	S19°48'41"E	14.76'
L6	S21°47'00"E	61.22'
L7	S26°42'58"E	47.92'
L8	S44°15'00"E	49.49'
L9	S35°00'18"W	6.72'
L10	S26°40'23"E	65.69'
L11	S26°30'50"E	48.95'
L12	S89°52'18"E	22.77'
L13	S29°32'01"E	30.22'
L14	S15°43'52"E	41.58'
L15	N10°29'13"E	31.05'
L16	N35°40'15"E	18.77'
L17	N18°17'54"E	17.37'
L18	N28°31'07"W	35.50'
L19	N37°48'07"W	40.64'
L20	N50°29'50"W	111.63'
L21	N66°55'23"W	220.29'
L22	N79°07'14"W	85.57'
L23	N89°46'59"W	53.87'
L24	S60°54'52"W	27.70'
L25	S29°51'53"W	37.33'
L26	S18°12'15"W	56.30'
L27	S09°46'03"E	24.62'
L28	S66°21'36"E	25.24'
L29	S81°58'49"E	151.86'
L30	S79°46'08"E	85.30'
L31	S70°14'58"E	116.52'
L32	S64°27'37"E	95.44'
L33	S68°11'42"E	49.06'
L34	N89°47'58"E	9.59'
L35	N08°40'49"E	40.59'

CURVE #	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	70°53'24"	20.00'	24.75'	S24°48'56"W	23.20'
C2	17°32'02"	130.00'	39.78'	S35°28'59"E	39.63'
C3	16°51'48"	130.00'	38.26'	S35°08'52"E	38.12'
C4	0°40'14"	130.00'	1.52'	S43°54'53"E	1.52'



BISHMAN
Surveying & Mapping, Inc.
CERTIFICATE OF AUTHORIZATION
LB 7274

301 N. TUBB STREET
OAKLAND, FL 34760
Phone No. 407.905.8877
Fax No. 407.905.8875

EAST LINE OF THE WEST 1/2 OF THE
SOUTHWEST 1/4 OF SECTION 5-23-28

BOUNDARY SURVEY

SURVEYOR NOTES:

1. NOT VALID WITHOUT THE ORIGINAL SIGNATURE AND SEAL, OR DIGITAL SIGNATURE AND SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER. PRINTED COPIES OF A DIGITAL SIGNED AND SEALED SURVEY ARE NOT VALID.
2. BEARINGS SHOWN HEREON ARE BASED ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST AS BEING S00°05'05"W (ASSUMED).
3. THE NORMAL HIGH WATER LINE ELEVATION FOR LAKE DOWN IS 98.52 (NAVD88) AS SPECIFIED BY ORANGE COUNTY, PUBLIC WORKS STORMWATER MANAGEMENT DIVISION. THE STATE OF FLORIDA MAY HAVE CLAIM OF TITLE TO THOSE LANDS LYING WITHIN THE WATERS OF LAKE DOWN LYING BELOW THE ORDINARY HIGH WATER LINE (OHWL), OHWL HAS NOT BEEN DETERMINED.
4. LANDS SHOWN HEREON WERE NOT ABSTRACTED FOR RIGHTS OF WAY, EASEMENTS, OWNERSHIP, OR OTHER INSTRUMENTS OF RECORD, BY THIS FIRM.
5. UNDERGROUND IMPROVEMENTS AND INSTALLATIONS HAVE NOT BEEN LOCATED.
6. THE LANDS SHOWN HEREON LIE PARTIALLY WITHIN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOOD) WITH PORTIONS LYING WITHIN ZONE AE, (SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD EVENT, WITH A BASE FLOOD ELEVATION OF 100.7) AND PORTIONS LYING WITHIN ZONE AH (FLOOD DEPTHS OF 1 TO 3 FEET, WITH A BASE FLOOD ELEVATION OF 107.0) AS SHOWN HEREON, ACCORDING TO "FIRM" MAP NO. 12095C0220H, COMMUNITY NO. 120381, DATED SEPTEMBER 24, 2021.
7. THE ELEVATIONS SHOWN HEREON ARE BASED ON NATIONAL GEODETIC SURVEY DATUM PER BENCH MARK NUMBER N 627, ELEVATION = 104.88 (NAVD 1988), BEING A STAINLESS STEEL ROD IN LOGO CAP STAMPED "N 627 2005", 45 FEET SOUTH OF CANAL AND 2 FEET WEST OF GUARDRAIL.
8. THIS SURVEY WAS PERFORMED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE SET FORTH IN RULE 5J-17.052 ADOPTED BY THE FLORIDA BOARD OF SURVEYORS AND MAPPERS, PURSUANT TO FLORIDA STATUTES 472.027.

DESCRIPTION: (TITLE DESCRIPTION)

PARCEL 1:

A TRACT OF LAND BEING A PORTION OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "Q", PAGE 154 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE SOUTH 00°05'05" WEST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 263.77 FEET TO A POINT ON THE NORTH LINE OF SAID LAKE DOWN ESTATES; THENCE SOUTH 88°52'53" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 170.13 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 01°07'16" EAST, A DISTANCE OF 90.00 FEET; THENCE NORTH 88°52'44" EAST, A DISTANCE OF 125.00 FEET; THENCE SOUTH 66°07'16" EAST, A DISTANCE OF 250.00 FEET; THENCE SOUTH 43°39'42" EAST, A DISTANCE OF 130.00 FEET; THENCE NORTH 46°30'20" EAST, A DISTANCE OF 87.69 FEET; THENCE SOUTH 85°25'44" EAST, A DISTANCE OF 398.08 FEET; THENCE SOUTH 29°32'01" EAST, A DISTANCE OF 52.14 FEET; THENCE SOUTH 63°27'32" EAST, A DISTANCE OF 595.87 FEET TO A POINT ON THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE DEPARTING SAID EAST LINE, RUN NORTH 81°07'34" WEST, ALONG A LINE BEING AN EXTENSION OF THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE NORTH 81°07'34" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 1650.57 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MAGUIRE ROAD; THENCE NORTH 08°39'24" EAST, ALONG SAID EASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 266.64 FEET; THENCE DEPARTING SAID EASTERLY LINE, RUN NORTH 88°52'53" EAST, A DISTANCE OF 109.23 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND BEING A PORTION OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "Q", PAGE 154 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE SOUTH 00°05'05" WEST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 263.77 FEET TO A POINT ON THE NORTH LINE OF SAID LAKE DOWN ESTATES; THENCE SOUTH 89°52'18" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°52'18" EAST, A DISTANCE OF 304.69 FEET; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 29°32'01" EAST, A DISTANCE OF 294.40 FEET; THENCE NORTH 85°25'44" WEST, A DISTANCE OF 398.08 FEET; THENCE NORTH 13°14'51" WEST, A DISTANCE OF 231.26 FEET TO THE POINT OF BEGINNING.

DESCRIPTION: (AS WRITTEN BY SURVEYOR)

THAT PART OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN S00°05'05"W ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, 264.00 FEET TO THE NORTH LINE OF AFORESAID LAKE DOWN ESTATES REPLAT; THENCE RUN S89°52'18"E ALONG SAID NORTH LINE, 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°52'18"E ALONG SAID NORTH LINE, 304.69 FEET; THENCE RUN S29°32'01"E, 346.54 FEET; THENCE RUN S63°27'32"E, 606.53 FEET TO A POINT ON THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N81°07'34"W ALONG SAID NORTH LINE, 1650.57 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAGUIRE ROAD; THENCE RUN N08°39'24"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 317.40 FEET TO THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES REPLAT; THENCE RUN N88°52'53"E ALONG SAID NORTH LINE, 109.23 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN INSTRUMENT DOCUMENT #20220184463, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID BOUNDARIES OF SAID LANDS, S01°07'16"E, 90.00 FEET; N88°52'44"E, 125.00 FEET; S66°07'16"E, 250.00 FEET; S43°39'42"E, 130.00 FEET; N46°30'20"E, 87.69 FEET; N13°14'51"W, 231.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 8.728 ACRES MORE OR LESS.

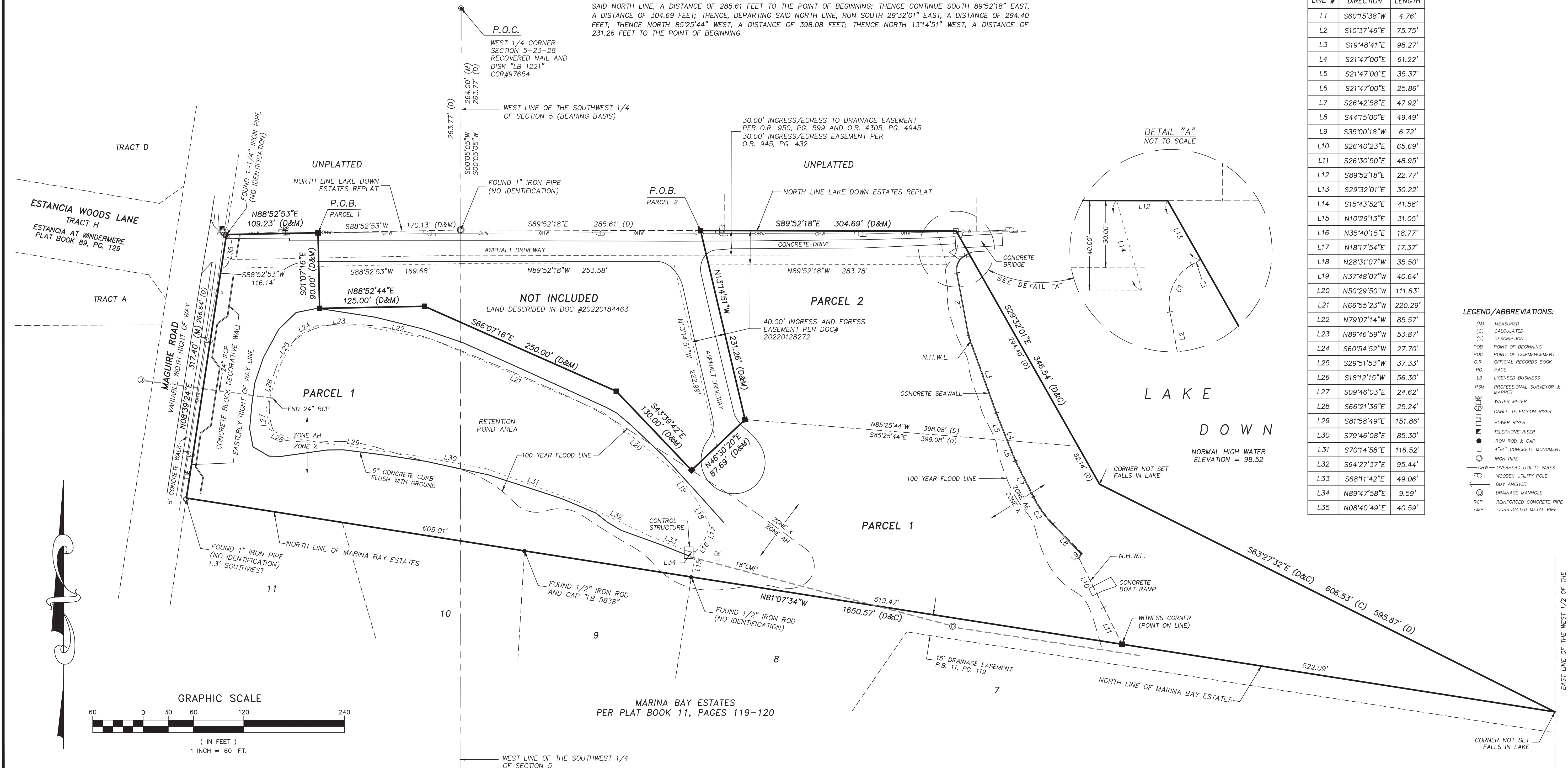
CURVE TABLE					
CURVE #	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	7°05'32.4"	20.00'	24.75'	S24°48'56"W	23.20'
C2	0°40'14"	130.00'	1.52'	S43°54'53"E	1.52'

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	S60°15'38"W	4.76'
L2	S10°37'46"E	75.75'
L3	S19°48'41"E	98.27'
L4	S21°47'00"E	61.22'
L5	S21°47'00"E	35.37'
L6	S21°47'00"E	25.86'
L7	S26°42'58"E	47.92'
L8	S44°15'00"E	49.49'
L9	S35°00'18"W	6.72'
L10	S26°40'23"E	65.69'
L11	S26°30'50"E	48.95'
L12	S89°52'18"E	22.77'
L13	S29°32'01"E	30.22'
L14	S15°43'52"E	41.58'
L15	N10°29'13"E	31.05'
L16	N35°40'15"E	18.77'
L17	N18°17'54"E	17.37'
L18	N28°31'07"W	35.50'
L19	N37°48'07"W	40.64'
L20	N50°29'50"W	111.63'
L21	N66°55'23"W	220.29'
L22	N79°07'14"W	85.57'
L23	N89°46'59"W	53.87'
L24	S60°54'52"W	27.70'
L25	S29°51'53"W	37.33'
L26	S18°12'15"W	56.30'
L27	S09°46'03"E	24.62'
L28	S66°21'36"E	25.24'
L29	S81°58'49"E	151.86'
L30	S79°46'08"E	85.30'
L31	S70°14'58"E	116.52'
L32	S64°27'37"E	95.44'
L33	S68°11'42"E	49.06'
L34	N89°47'58"E	9.59'
L35	N08°40'49"E	40.59'

DETAIL "A"
NOT TO SCALE

LEGEND/ABBREVIATIONS:

- (M) MEASURED
- (C) CALCULATED
- (D) DESCRIPTION
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- O.R. OFFICIAL RECORDS BOOK
- P.L. PAGE
- LB LICENSED BUSINESS
- PSM PROFESSIONAL SURVEYOR & MAPPER
- WM WATER METER
- CMR CABLE TELEVISION RISER
- PR POWER RISER
- TRR TELEPHONE RISER
- IRI IRON ROD & CAP
- CM 4"x4" CONCRETE MONUMENT
- IP IRON PIPE
- OHW OVERHEAD UTILITY WIRES
- WUP WOODEN UTILITY POLE
- GA GUY ANCHOR
- DM DRAINAGE MANHOLE
- RCR REINFORCED CONCRETE PIPE
- CMP CORRUGATED METAL PIPE



SHEET 1 OF 1
 SECTION 5
 TOWNSHIP 23 SOUTH
 RANGE 28 EAST

BISHMAN
 Surveying & Mapping, Inc.
 CERTIFICATE OF AUTHORIZATION LB 7274
 301 N. TUBB STREET, SUITE 106, OAKLAND, FLORIDA 34760
 Phone No. 407.905.8877

REVISIONS:
 JOB NUMBER: 23093.000
 SURVEY DATE: 9/28/2023
 FIELD BY: T.CONARD
 FIELD BOOK: 2305
 PAGES: 33
 FIELD FILE: 23093TC.MJF
 DRAWING FILE: 23093-Bndy.DWG
 2/07/2024 - REVISED PER TOWN COMMENTS

FLORIDA REGISTRATION NO. 5668
 ARON D. BISHMAN, P.S.M.

Prepared by and return to:
Michel S. Scala, Esq.
The Law Offices of Michel Scala, PLLC
1010 Vineland Road
Winter Garden, FL 34787

File Number:

PROJECT: DOWN PARK LANE
PLAT BOOK _____ PAGE NUMBER _____

**JOINDER AND CONSENT TO THE PLAT
AND THE DEDICATIONS AND RESERVATIONS SHOWN THEREON**

The undersigned hereby certifies that it is the holder of a Mortgage and Security Agreement, recorded on April 06, 2022, as Official Records Document No.: 20220223008,

Public Records of Orange County, Florida, upon the described property attached here to as "Exhibit A" and that the undersigned hereby joins in and consents to the attached referenced plat and the dedications of the lands and reservations described therein by the owner thereof, and agrees that its mortgage, lien, or other encumbrance, as it has been, and as it may be modified, amended, and assigned from time to time, shall be subordinated to the above dedications and reservations. This joinder is being executed in accordance with and as required by Section 177.081(2), Florida Statutes, and is intended to serve as a separate instrument pursuant to such section.

Signed, sealed, and delivered in the presence of:

[Signature]
Signature of Witness
Brian A. Carlson
Printed Name of Witness

[Signature]
Signature of Witness
Terry Winn
Printed Name of Witness

Winter Park National Bank, A Florida banking corporation

By: [Signature]
Printed Name: DAVID R. NOTHEROW
Title: CEO

STATE OF Florida
COUNTY OF Orange

On the 1 day of February, 2008, before me, the undersigned, a Notary Public in and for said State, by means of physical presence or online notarization, personally appeared David R. Noterow, a CEO of WINTER PARK NATIONAL BANK., a Florida banking corporation, on behalf of the company. Such person is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(SEAL)



[Signature]
Notary Public
Terry Winn
Printed Name

My Commission Expires _____

EXHIBIT A

THAT PART OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN S00°05'05"W ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, 264.00 FEET TO THE NORTH LINE OF AFORESAID LAKE DOWN ESTATES REPLAT; THENCE RUN S89°52'18"E ALONG SAID NORTH LINE, 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°52'18"E ALONG SAID NORTH LINE, 304.69 FEET; THENCE RUN S29°32'01"E, 346.54 FEET; THENCE RUN S63°27'32"E, 606.53 FEET TO A POINT ON THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N81°07'34"W ALONG SAID NORTH LINE, 1650.57 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAGUIRE ROAD; THENCE RUN N08°39'24"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 317.40 FEET TO THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES REPLAT; THENCE RUN N88°52'53"E ALONG SAID NORTH LINE, 109.23 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN INSTRUMENT DOCUMENT #20220184463, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID BOUNDARIES OF SAID LANDS, S01°07'16"E, 90.00 FEET; N88°52'44"E, 125.00 FEET; S66°07'16"E, 250.00 FEET; S43°39'42"E, 130.00 FEET; N46°30'20"E, 87.69 FEET; N13°14'51"W, 231.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 8.728 ACRES MORE OR LESS.

PLAT PROPERTY INFORMATION REPORT

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY Revision 2

South Milhausen, P.A.
J. Todd South, Esquire
1000 LEGION PLACE
SUITE 1200
ORLANDO, FL 32801

Attention: Scott South

Re: ORT # 23126022

This is to certify that we have searched the public records of Orange County, Florida, through February 5, 2024 @ 5:00 p.m. to the extent the same are maintained in the Office of the Clerk of the Circuit Court, on the property described in the caption of the proposed plat of:

Down Park Lane

and more particularly described in attached legal description and that said search reveals record title to said lands to be vested in JRH RE Investments, LLC, a Florida limited liability company and Stonebridge Homes, Inc., a Florida corporation, by virtue of Warranty Deeds recorded in O.R. Book 20210396835 and 20220003007.

Our search reveals the following encumbrances and/or exceptions to title which are not satisfied or released of record:

1. Riparian and littoral rights.
2. Rights of the United States of America and/or the State of Florida to any portion of the Property which has been created by artificial means or has accreted to any such portion as so created.
3. Any portion of the Property lying waterward of the ordinary highwater mark of Lake Down, and lands accreted thereto.
4. All matters contained on the Plat of Lake Down Estates Replat, as recorded in Plat Book Q, Page 154, Public Records of Orange County, Florida.
5. Easements for ingress and egress and drainage purposes as set forth in instrument recorded in O.R. Book 945, Page 432, and in O.R. Book 4305, Page 4945, Public Records of Orange County, Florida.
6. Drainage Easements recorded in O.R. Book 950, Page 598, and O.R. Book 950, Page 599, Public Records of Orange County, Florida.
7. Covenants, conditions, easements and Restrictions contained in Declaration of Easements, Covenants and Restrictions for Lakeview Park recorded in O.R. Instrument No. 20220128272, Public Records of Orange County, Florida.

Note: Taxes for the year 2024 became a lien on the land January 1st although not due or payable until November 1st of said year.

Taxes for the year 2023 in the amount of \$28,871.90 are PAID. Tax ID Number 05-23-28-4400-00-114.

Taxes for the year 2023 in the amount of \$22,623.94 are PAID. Tax ID Number 05-23-28-4400-00-120.

This report is not title insurance. Pursuant to s. 627.7843, Florida Statutes, the maximum liability of the issuer of this property information report for errors or omissions in this property information report is limited to the amount paid for this property information report, and is further limited to the person(s) expressly identified by name in the property information report as the recipient(s) of the property information report.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

151 Southhall Lane Suite #250 Maitland FL 32751

Phone: 407-647-1915 Fax:

Debra A. M. 
Authorized Signatory

EXHIBIT A

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THE LAW OFFICES OF MICHEL SCALA, PLLC

1010 VINELAND ROAD

WINTER GARDEN, FL 34787

(321) 303-4539

MICHEL@ATTORNEYMICHELSCALA.COM

February 9, 2024

Town of Windermere
614 Main Street, Building 200
Windermere, Florida 34786

Delivered via E-mail

**Re: Proposed Plat of Lakeview Park
Opinion of Title**

To Whom It May Concern:

This title opinion is given in connection with the submission of the above proposed plat and also in accordance with Florida Statute §177.041(2) regarding the following described real property located in Orange County, Florida:

THAT PART OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE RUN S00°05'05"W ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, 264.00 FEET TO THE NORTH LINE OF AFORESAID LAKE DOWN ESTATES REPLAT; THENCE RUN S89°52'18"E ALONG SAID NORTH LINE, 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S89°52'18"E ALONG SAID NORTH LINE, 304.69 FEET; THENCE RUN S29°32'01"E, 346.54 FEET; THENCE RUN S63°27'32"E, 606.53 FEET TO A POINT ON THE NORTH LINE OF MARINA BAY ESTATES, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 11, PAGE 119, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN N81°07'34"W ALONG SAID NORTH LINE, 1650.57 FEET TO THE EASTERLY RIGHT OF WAY LINE OF MAGUIRE ROAD; THENCE RUN N08°39'24"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 317.40 FEET TO THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES REPLAT; THENCE RUN N88°52'53"E ALONG SAID NORTH LINE, 109.23 FEET TO THE NORTHWEST CORNER OF LANDS DESCRIBED IN INSTRUMENT DOCUMENT #20220184463, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN THE FOLLOWING SIX (6) COURSES ALONG SAID BOUNDARIES OF SAID LANDS, S01°07'16"E, 90.00 FEET; N88°52'44"E, 125.00 FEET; S66°07'16"E, 250.00 FEET; S43°39'42"E, 130.00 FEET; N46°30'20"E, 87.69 FEET; N13°14'51"W, 231.26 FEET TO THE POINT OF BEGINNING.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 8.728 ACRES MORE OR LESS.

Our Opinion of Title is based solely upon our review of the Plat Property Information Report, certified through November 28, 2023, Old Republic National Title Insurance Company No.: 23126022. Based solely upon the foregoing and subject to any error or omission contained in the owner's title insurance policy constituting our base title for examination purposes, I find title vested in the following:

1. JRH RE Investments, LLC, a Florida limited liability company, by virtue of Warranty Deed recorded as Document No. 20210396835, of the Public Records of Orange County, Florida.
2. Stonebridge Homes, Inc, a Florida corporation, by virtue of Warranty Deed recorded as Document No. 20220003007, of the Public Records of Orange County, Florida.

Title to the property is subject to the following general matters:

3. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
4. Easements or claims of easements not shown by the public records.
5. Taxes for 2024 and thereafter.
6. Rights of the United States of America and/or the State of Florida to any portion of the Property which has been created by artificial means or has accreted to any such portion as so created.
7. Any portion of the Property lying waterward of the ordinary highwater mark of Lake Down, and lands accreted thereto.
8. All matters contained on the Plat of Lake Down Estates Replat, as recorded in Plat Book Q, Page 154, Public Records of Orange County, Florida.
9. Easements for ingress and egress and drainage purposes as set forth in instrument recorded in O.R. Book 945, Page 432, and in O.R. Book 4305, Page 4945, Public Records of Orange County, Florida.
10. Drainage Easements recorded in O.R. Book 950, Page 598, and O.R. Book 950, Page 599, Public Record of Orange County, Florida

11. Covenants, conditions, easements, and restrictions contained in Declaration of Easements, Covenants, and Restrictions for Lakeview Park recorded in O.R. Instrument No.: 20220128272, Public Records of Orange County, Florida.
12. Mortgage from Stonebridge Homes, Inc, to Winter Park National Bank, dated April 1, 2022, in Document No.: 20220223008, Public Records of Orange County, Florida

As of the date of this closing the following items remain encumbrances and liens upon the property:

13. General or special taxes and assessments required to be paid for the year(s) 2024
14. Riparian and littoral rights are not insured
15. Rights of lessee under unrecorded leases.

A tax search of the subject property reveals that the 2023 taxes have been paid. A name search for JRH Re Investments, LLC, and Stonebridge Homes, Inc., has been conducted with Florida's Division of Corporations for certified judgments, bankruptcies, liens, any matter which would constitute a lien against the subject property in the Public Records of Orange County, Florida. The search revealed no matters against that name that would constitute a lien or encumbrance upon the above-described property.

Copies of the documents referenced herein are attached for your ease of reference. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

MICHEL S. SCALA, ESQ.

MSS/

Enclosures

cc: JRH RE INVESTMENTS, LLC; STONEBRIDGE HOMES, INC

Prepared by and return to:
Michel S. Scala, Esq.
The Law Offices of Michel Scala, PLLC
1010 Vineland Road
Winter Garden, FL 34787

File Number:

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS
FOR LAKEVIEW PARK**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS OF LAKEVIEW PARK (hereinafter referred to as the “Declaration”) is made this ____ day of _____, ____ by **JRH RE INVESTMENTS, LLC**, a Delaware limited liability company qualified to do business in the State of Florida, with the principal mailing address of 800 N. Magnolia Avenue, Suite 1625, Orlando, FL 32803 (hereinafter referred to as the “Declarant”); **STONEBRIDGE HOMES, INC.**, a Florida corporation, with the principal mailing address of 505 Main Street, Windermere, FL 34786 (hereinafter referred to as “Owner”); and, **DANIELITO RUEDA AND ROSALIE RUEDA**, with the principal mailing address of 1310 Estancia Woods Loop, Windermere, FL 34786. All of the foregoing are hereinafter jointly referred to as the “Owners”.

W I T N E S S E T H

WHEREAS, Declarant is the Owner of that certain real property in Orange County, Florida, more particularly described as follows:

See, **Exhibit A** attached hereto and by this reference made a part hereof; and,

WHEREAS, Stonebridge Homes, Inc., is the Owner of that certain real property in Orange County, Florida, more particularly described as follows:

See, **Exhibit B** attached hereto and by this reference made a part hereof; and,

WHEREAS, Danielito Rueda and Rosalie Rueda is the Owner of that certain real property in Orange County, Florida, more particularly described as follows:

See, **Exhibit C** attached hereto and by this reference made a part hereof; and,

WHEREAS, the foregoing Exhibits A-C, are hereinafter referred to as the “Properties”.

WHEREAS, the Properties is subject to the Easements, Covenants, and Restrictions, of that certain Declaration of Easements, Covenants, and Restrictions for Lakeview Park, recorded on February 24, 2022, under Document No.: 20220128272, Public Records of Orange County, Florida (hereinafter referred to as the “Declaration”); and,

WHEREAS, Owners, being the owners of not less than One Hundred (100%) percent of the lots in Lakeview Park, desires to come forward and amend the Declaration pursuant to the provisions set forth in Article IX, Section 9.11 thereof; and,

WHEREAS, this amendment has been requested by Declarant and Stonebridge Homes, Inc., predicated upon a lot split approval from the Town of Windermere, pursuant to Case No. _____ as reflected in the approvals attached hereto as **Exhibit D** and by this reference made a part hereof. Declarant and Stonebridge Homes, Inc., reconfigured their respective lots to provide for a third lakefront lot. Declarant’s approximate lot split is .827 Acres and Stonebridge Homes, Inc., approximate lot split is .49 Acres. (hereinafter, collectively referred to as “Lot 2”).

WHEREAS, Consequently, as a result of the lot split, the proportional shares for the Maintenance of Common Improvements, pursuant to Article III, Section 3.1, of the certain Declaration must be re-allocated.

NOW, THEREFORE, in consideration of the premises and provisions hereof, and other good and valuable consideration, receipt, and sufficiency of which is hereby acknowledged, Owners hereby declares that the Declaration shall be amended as follows:

1. Article I, Section 1.4, “Lot”, is hereby deleted in its entirety and the following is inserted in its place:
 - 1.6 “**Lot**” shall mean and refer to any of (i) Parcel 1 - Lot 1, (ii) Lot 1, (iii) Lot 2, and (iv) Lot 3. Each of the Lots is more particularly described in **Exhibit** ___ attached hereto and by this reference made a part hereof. Declarant and Lot 1 Owner obtained administrative lot split approval from the Town of Windermere pursuant to Case No. _____ as reflected in the approvals attached hereto as **Exhibit** ___ and by this reference made a part hereof.

2. Article 1, Section 1.6, “Owner”, is hereby deleted in its entirety and the following is inserted in its place:

1.7 “Owner” shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any Lot which is a part of the Property (but excluding those having such interest merely as security for the performance of an obligation).

3. Section 3.1 is hereby deleted in its entirety and the following is inserted in its place:

3.1 Declarant shall be responsible for the maintenance and repair of the Common Improvements. The reasonable costs of all maintenance and repair of the Common Improvements (collectively, the “Maintenance Costs”) shall be shared proportionately by the Owners as follows: (i) the Owner of Parcel 1 – Lot 1 shall be responsible for twenty percent (20%) of the Maintenance Costs, (ii) the Owner of Lot 1 shall be responsible for twenty two and one-half percent (22.5%) of the Maintenance Costs, (iii) the Owner of Lot 2 shall be responsible for twenty two and one-half percent (22.5%) of the Maintenance Costs, and (iv) the Owner of Lot 3 shall be responsible for thirty five percent (35%) of the Maintenance Costs. Upon the performance of any maintenance or repairs of the Common Improvements, Declarant shall notify the other Owners in writing of their shares of the reasonable costs of any such maintenance and repair (a “Maintenance Assessment”), and the other Owners shall pay their respective Maintenance Assessments to Declarant within thirty (30) days after receipt of such notice.

EXHIBIT A

10988 DOWN PARK LANE, WINDERMERE, FL 34786

LEGAL DESCRIPTION

A tract being a portion of Lake Down Estates Replat, according to the plat thereof as recorded in Plat Book "Q", Page 154 of the Public Records of Orange County, Florida, being more particularly described as follows:

Commencing at the West 1/4 corner of Section 5, Township 23 South, Range 28 East, Orange County, Florida; thence along the West line of the Southwest 1/4 of said Section 5, S 00°06'02" W, a distance of 263.81 feet to a point on the North line of said Lake Down Estates; thence along said North line S 88°55'26" W, along said North line a distance of 170.13 feet to a point on said North line, said point being the Point of Beginning; thence departing the aforesaid North line of Lake Down Estates Replat, S 01°07'16" E, 90.12 feet; thence N 88°52'44" E, 125.00 feet; thence S 66°07'16" E, 250.00 feet; thence S 43°39'42" E, 130.00 feet; thence N 46°30'20" E, a distance of 87.69 feet; thence S 85°25'44" E, 398.00 feet; thence S 29°32'03" E, 52.71 feet; thence S 63°21'15" E, 601.23 feet to a point on the East line of the West 1/2 of the Southwest 1/4 of Section 5, Township 23 South, Range 28 East, Orange County, Florida. Said point also being the Northeast corner of Marina Bay Estates, as recorded in Plat Book [11, Page 119](#), of the Public Records of Orange County, Florida; thence departing said East line of the West 1/2 of the Southwest 1/4 of Section 5, N 81°07'44" W, 1645.42 feet to a point on the West Right-of-Way line of County Road 439, also known as Maguire Road, said point also being the Northwest corner of Marina Bay Estates; thence departing said North line of Marina Bay Estates and with along said Easterly Right-of-Way line of County Road 43, also known as Maguire Road, N 08°37'39" E , 317.56 feet; thence departing said Easterly Right-of-Way line N 88°55'26" E, 109.31 feet to the Point of Beginning.

EXHIBIT B

LEGAL DESCRIPTION

10908 DOWN PARK LANE, WINDERMERE, FL 34786

A TRACT OF LAND BEING A PORTION OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "Q", PAGE 154 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE SOUTH 00°05'05" WEST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 263.77 FEET TO A POINT ON THE NORTH LINE OF SAID LAKE DOWN ESTATES; THENCE SOUTH 89°52'18" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 285.61 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 89°52'18" EAST, A DISTANCE OF 304.69 FEET; THENCE, DEPARTING SAID NORTH LINE, RUN SOUTH 29°32'01" EAST, A DISTANCE OF 294.40 FEET; THENCE NORTH 85°25'44" WEST, A DISTANCE OF 398.08 FEET; THENCE NORTH 13°14'51" WEST, A DISTANCE OF 231.26 FEET TO THE POINT OF BEGINNING.

SAID PARCEL 2 BEING ALSO DESCRIBED AS:

FROM THE WEST ¼ CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; RUN THENCE S 00°06'02" W ALONG THE WEST LINE OF SAID SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, A DISTANCE OF 264.00 FEET TO A POINT ON THE NORTH BOUNDARY LINE OF LAKE DOWN ESTATES REPLAT AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; RUN THENCE S 89°47'32" E ALONG SAID NORTH BOUNDARY LINE, 285.60 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE S 89°47'32" E ALONG THE AFORESAID NORTH BOUNDARY LINE, 303.40 FEET; RUN THENCE S 29°47'32" E, 294.40 FEET; RUN THENCE N 85°26'02" W, 398.08 FEET; RUN THENCE N 13°13'23" W, 231.02 FEET TO THE POINT OF BEGINNING.

EXHIBIT C

LEGAL DESCRIPTION

10948 DOWN PARK LANE, WINDERMERE, FL 34786

A TRACT OF LAND BEING A PORTION OF LAKE DOWN ESTATES REPLAT, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK "Q", PAGE 154 OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE WEST 1/4 CORNER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA; THENCE SOUTH 00°05'05" WEST, ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 5, A DISTANCE OF 263.77 FEET TO A POINT ON THE NORTH LINE OF SAID LAKE DOWN ESTATES AND THE POINT OF BEGINNING; THENCE SOUTH 89°52'18" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 285.61 FEET; THENCE DEPARTING SAID NORTH LINE, RUN SOUTH 13°14'51" EAST A DISTANCE OF 231.26 FEET; THENCE SOUTH 46°30'20" WEST, A DISTANCE OF 87.69 FEET; THENCE NORTH 43°39'42" WEST, A DISTANCE OF 130.00 FEET; THENCE NORTH 66°07'16" WEST, A DISTANCE OF 250.00 FEET; THENCE SOUTH 88°52'44" WEST, A DISTANCE OF 125.00 FEET; THENCE NORTH 01°07'16" WEST, A DISTANCE OF 90.00 FEET TO A POINT ON THE AFORESAID NORTH LINE OF LAKE DOWN ESTATES; THENCE NORTH 88°52'53" EAST, ALONG SAID NORTH LINE, A DISTANCE OF 170.13 FEET TO THE POINT OF BEGINNING.

EXHIBIT D

LOT SPLIT APPROVAL PACKAGE

TOWN OF WINDERMERE LOT SPLIT APPROVAL TO BE INSERTED HERE

Signature Pages to Follow

IN WITNESS WHEREOF the Declarant has caused this Declaration to be made and executed as of the day and year first above written.

EXECUTED as of the date first above written

Signed, Sealed, and delivered in the presence of the following witnesses:

Signature of Witness

JRH RE INVESTMENTS, LLC, a Delaware limited liability company

Printed Name of Witness

By: _____
Printed Name: _____
Title: _____

Signature of Witness

Printed Name of Witness

State of Florida
County of Orange

On the ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, by means of physical presence or online notarization, personally appeared _____, a _____ of **JRH RE INVESTMENTS, LLC**, a Delaware limited liability company, on behalf of the company. Such person is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(SEAL)

Notary Public
Printed Name: _____
My Commission Expires: _____

IN WITNESS WHEREOF the Owner has caused this Declaration to be made and executed as of the day and year first above written.

Signed, Sealed, and delivered in the presence of the following witnesses:

Signature of Witness

STONEBRIDGE HOMES, a Florida corporation

By: _____

Printed Name of Witness

Printed Name: _____

Title: _____

Signature of Witness

Printed Name of Witness

State of Florida
County of Orange

On the ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, by means of physical presence or online notarization, personally appeared _____, a _____ of **Stonebridge Homes, Inc.**, a Florida Corporation, on behalf of the company. Such person is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(SEAL)

Notary Public

Printed Name: _____

My Commission Expires: _____

IN WITNESS WHEREOF the Owner has caused this Declaration to be made and executed as of the day and year first above written.

Signed, Sealed, and delivered in the presence of the following witnesses:

Signature of Witness

ROSALIE RUEDA

Printed Name of Witness

DANIELITO RUEDA

Signature of Witness

Printed Name of Witness

State of Florida
County of Orange

On the ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, by means of physical presence or online notarization, personally appeared _____, a _____ of **DANIELITO RUEDA OR ROSALIE RUEDA (CIRCLE ONE)**, a _____. Such person is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

(SEAL)

Notary Public

Printed Name: _____

My Commission Expires: _____

B A S E M E N T

THIS INDENTURE made this 13 day of September, 1961, between DAVID C. WEEKS and BARBARA J. WEEKS, his wife, parties of the first part, hereinafter sometimes referred to as the grantors, and DONALD L. WEEKS, JR. and HELEN C. WEEKS, his wife, parties of the second part, hereinafter sometimes referred to as the grantees, WITNESSETH:

WHEREAS, grantors are the owners of the land in Orange County, Florida, described as:

That part of LAKE DOWN ESTATES REPLAT as recorded in Plat Book Q, page 154, Public Records of Orange County, Florida, which is described as follows:

From the West 1/4 section corner of Section 5, Township 23 South, Range 28 East run South 00 degrees 06 minutes 02 seconds West along the Westerly boundary of the Southwest 1/4 of said Section 5 a distance of 264 feet to a point on the North boundary of the aforesaid LAKE DOWN ESTATES REPLAT, said point being the point of beginning; thence run South 89 degrees 47 minutes 32 seconds East along said North boundary a distance of 589.00 feet; thence South 29 degrees 47 minutes 32 seconds East 350.00 feet; thence South 63 degrees 21 minutes 15 seconds East 596.49 feet to a point on the East boundary of the West 1/2 of the Southwest 1/4 of the aforesaid Section 5; thence North 81 degrees 04 minutes 32 seconds West 1651.38 feet to a point on the Easterly right of way line of the Windermere-Gotha highway as indicated on the aforesaid LAKE DOWN ESTATES REPLAT; thence North 8 degrees 59 minutes 28 seconds East along said Easterly right of way line a distance of 322.20 feet to the North boundary of said LAKE DOWN ESTATES REPLAT; thence along said North boundary South 89 degrees 47 minutes 32 seconds East 285.00 feet to the point of beginning;

and,

WHEREAS, the grantees are the owners of the land in Orange County, Florida, described as:

That part of LAKE DOWN ESTATES REPLAT as recorded in Plat Book Q, page 154, Public Records of Orange County, Florida, which is described as follows:

STEED, STEED & URBAN
ATTORNEYS AT LAW
1004 METCALF BUILDING
ORLANDO, FLORIDA

ORANGE COUNTY

STATE OF FLORIDA
DOCUMENTARY STAMP TAX
SEP 14 1961
COMPTROLLER
P.B. 150103
020

From the West 1/4 section corner of Section 5, Township 23 South, Range 28 East run South 00 degrees 06 minutes 02 seconds West along the Westerly boundary of the Southwest 1/4 of said Section 5 a distance of 264 feet to a point on the North boundary of the aforesaid LAKE DOWN ESTATES REPLAT; thence South 89 degrees 47 minutes 32 seconds East along said North boundary a distance of 589.00 feet for the point of beginning; thence run South 89 degrees 47 minutes 32 seconds East along said North boundary of LAKE DOWN ESTATES REPLAT a distance of 702.55 feet to a point on the East boundary of the West 1/2 of the Southwest 1/4 of the aforesaid Section 5; thence South 00 degrees 27 minutes 07 seconds East along said East boundary of the West 1/2 of the Southwest 1/4 a distance of 568.74 feet; thence North 63 degrees 21 minutes 15 seconds West 596.49 feet; thence North 29 degrees 47 minutes 32 seconds West 350.00 feet to the point of beginning;

and,

WHEREAS, grantors desire to convey to grantees a perpetual easement over a part of the grantors' above described land to provide a means of ingress and egress to and from the grantees' above described land;

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations paid by the grantees to the grantors, the grantors do hereby grant, bargain, sell and convey unto the grantees and their heirs and assigns forever:

A perpetual easement 30 feet in width for ingress and egress over that part of LAKE DOWN ESTATES REPLAT, as recorded in Plat Book Q, page 154, Public Records of Orange County, Florida, which is described as follows: From the West 1/4 section corner of Section 5, Township 23 South, Range 28 East run South 00 degrees 06 minutes 02 seconds West along the Westerly boundary of the Southwest 1/4 of said Section 5 a distance of 264 feet to a point on the North boundary of the aforesaid LAKE DOWN ESTATES REPLAT, said point being the point of beginning; thence run South 89 degrees 47 minutes 32 seconds East along said North boundary a distance of 589.00 feet; thence South 29 degrees 47 minutes 32 seconds East 34.64 feet; thence North 89 degrees 47 minutes 32 seconds West 895.96 feet to a point on the Easterly right of way line of the Windermere-Gotha highway as indicated on the aforesaid LAKE DOWN ESTATES REPLAT; thence

North 08 degrees 59 minutes 28 seconds
East 30.36 feet to the North boundary of
the aforesaid LAKE DOWN ESTATES REPLAT;
thence South 89 degrees 47 minutes 32
seconds East 285.00 feet to the point of
beginning.

The easement hereby granted shall be
appurtenant to and shall run with the land
and shall be for a private roadway and not
for a public roadway.

TO HAVE AND TO HOLD the said easement unto the
grantees, their heirs and assigns forever.

IN WITNESS WHEREOF, the parties hereto have here-
unto set their hands and seals the day and year first above
written.

David C. Weeks (SEAL)
David C. Weeks

Barbara J. Weeks (SEAL)
Barbara J. Weeks

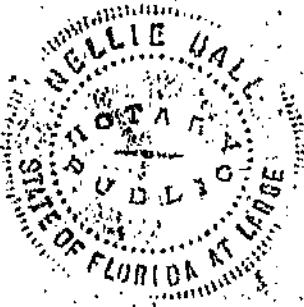
Signed, sealed and delivered
in the presence of:

Theta Rupert
Nellie Hall

STATE OF FLORIDA)
COUNTY OF ORANGE)

I HEREBY CERTIFY that on this day, before me, the
undersigned officer duly authorized in the state and county
aforesaid to take acknowledgments, personally appeared DAVID
C. WEEKS and BARBARA J. WEEKS, his wife, to me known to be the
persons described in and who executed the foregoing instrument
and they acknowledged before me that they executed the same.

WITNESS my hand and official seal in the county and
state last aforesaid this 3 day of September, 1961.



Nellie Hall
Notary Public, State of Florida

My commission expires: Oct. 9, 1964

RECORDED & RECORD VERIFIED
Clerk of
Circuit Court, Orange Co., Fla.

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

Development Review Board February 20, 2024

Town Council March 12, 2024

Case No.: Z24-05

Property Owner/Applicant: Adair Dillaha

Representative: Property Owner

Requested Action: Variance to allow for a covered porch addition resulting in a Floor Area Ratio (FAR) greater than 38% of the lot area landward of the Normal High-Water Elevation (NHWE).

Property Address: 10910 Bayshore Dr.

Legal Description: LAKE DOWN ESTATES REPLAT Q/154 BEG 5 FT S OF NE COR OF LOT 11 OF LAKE DOWN EST M/22 RUN S 164 FT M/L TO WATERS EDGE OF LAKE DOWN TH RET TO POB & RUN S 85 DEG E 100 FT S 164 FT M/L TO LAKE TH WLY ALONG LAKE 100 FT M/L TO PREVIOUSLY DESC PT ON LAKE

Future Land Use/Zoning: Residential/Residential

Existing Use: Residential (Single Family)

Surrounding Future Land Use/Zoning

North: Residential/Residential
East: Residential/Residential
South: Lake
West: Residential/Residential

CASE SUMMARY:

Adair Dillaha, owner of 10910 Bayshore Dr., submitted a request for approval of a variance pursuant to Division 10.02.00 of the Town of Windermere Land Development Code. The purpose of the variance request is to allow the Floor Area Ratio (FAR) to exceed the Town’s maximum of 38% of the lot area landward of the Normal High-Water Elevation (NHWE) to construct a covered porch addition. The proposed covered porch addition will result in a FAR of 42% of the lot area landward of the NHWE.



*Picture of Existing Single-Family Residence at 10910 Bayshore Dr., View from Rear, Looking North
(Source: Orange County Property Appraiser, January 2023)*

The proposed covered porch addition is compliant with the maximum allowed Impervious Surface Ratio (ISR). There is no proposed increase to ISR on the site resulting from the addition of the proposed covered porch addition since the proposed covered porch addition will be constructed over the existing pool deck. There is also no proposed increase to height since the proposed covered porch addition will be lower than the overall height of the existing single-family residence. The existing single-family residence is non-compliant with the Town’s minimum required side setbacks; however, the proposed covered porch addition will not encroach into any minimum required setback. The Town’s minimum required side setback for the subject property is 12.5 feet. The proposed covered porch addition will be located 13.83’ (13’-10”) from the East side property line at its nearest dimension.

The only variance required and requested is to increase the FAR above the Town’s maximum 38% of the lot area landward of the NHWE. The Town’s FAR maximum of 38% is based on gross floor area, which includes “the area contained within garages, carports, screened or roofed porches and balconies”. The Town’s definition of floor area is as follows:

Sec. 6.01.04. - Height and floor area limitations.

Floor area means the sum of the gross horizontal areas of the several floors of a building or buildings measured from the exterior surface of the walls. Basement areas or other below grade floor areas shall be excluded from the calculation of floor area when more than one-half of that basement or floor height is below the average elevation at the front setback (as described in the term "building height" in this section). The area of stairways, elevators, multi-story rooms or atriums shall be counted on each floor level and included in the calculation of floor area. The area contained within garages, carports, screened or roofed porches and balconies shall be

included in the calculation of floor area. The floor area of a single-family building shall further include the area of atriums and volume ceiling spaces on each floor when the interior floor to ceiling height of such rooms exceeds 17½ feet.

The existing single-family residence has a current gross floor area of approximately 7,230 square feet (FAR 40%). The proposed covered porch addition will remove approximately 177 square feet of existing covered porch and will add approximately 429 square feet of new covered porch. The resulting net floor area increase is approximately 252 square feet and the resulting FAR is 42%.

The proposed covered porch addition will result in a FAR of 42% of the lot area landward of the NHWE, which is greater than 38%.

Division 10.02.00 of the LDC empowers the Development Review Board to review and make recommendations for approval, approval with conditions or denial to the Town Council on variance requests.

Division 10.02.00 of the LDC requires the Town Council to consider the recommendation of the Development Review Board and to take final action to either approve or deny the variance request.

CASE ANALYSIS:

Section 10.02.02 of the LDC provides the specific standards by which the Development Review Board and Town Council are to review to consider the approval or denial of a variance application. In addition, this Section requires a positive finding, based on substantial competent evidence, for each of the standards. These standards are summarized as follows:

1. The need for the variance arises out of the physical surroundings, shape, topographical condition or other physical or environmental conditions that are unique to the subject property. Variances should be granted for conditions peculiar to the property and not the result of actions of the property owner;
2. There are practical or economic difficulties in carrying out the strict letter of the regulation;
3. The variance request is not based exclusively upon a desire to reduce the cost of developing the site;
4. The proposed variance will not substantially increase congestion surrounding public streets, the danger of fire or other hazard to the public;
5. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site;
6. The effect of the proposed variance is in harmony with the general intent of this Land Development Code and the specific intent of the relevant subject areas of this Land Development Code; and
7. The variance will not encourage further requests for changes where such a land use

would not be deemed appropriate.

It is also important to note that this Section also provides specific standards that are not to be considered in the review of a variance application. These standards are:

1. That the implementation of these regulations would impose an economic hardship on the cost of the building or redevelopment project;
2. That these regulations impose a hardship by decreasing the maximum density of a property in terms of the number of units, square footage of buildings, etc.; and
3. That other adjacent lands, structures or buildings not in conformance with these regulations provide a rationale for a lessening of their application in this specific case.

Section 10.02.02(c) of the LDC allows the imposition of conditions and restrictions as may be necessary to allow a positive finding to be made on any of the variance standards to minimize the negative effect of the variance. The conditions and restrictions should further the interest of the LDC.

The applicant submitted a variance request letter, survey, site plan, floor plans, and elevation plans in support of the variance request. Please see the information provided with the agenda item for the applicant's submittal.

PUBLIC NOTICE:

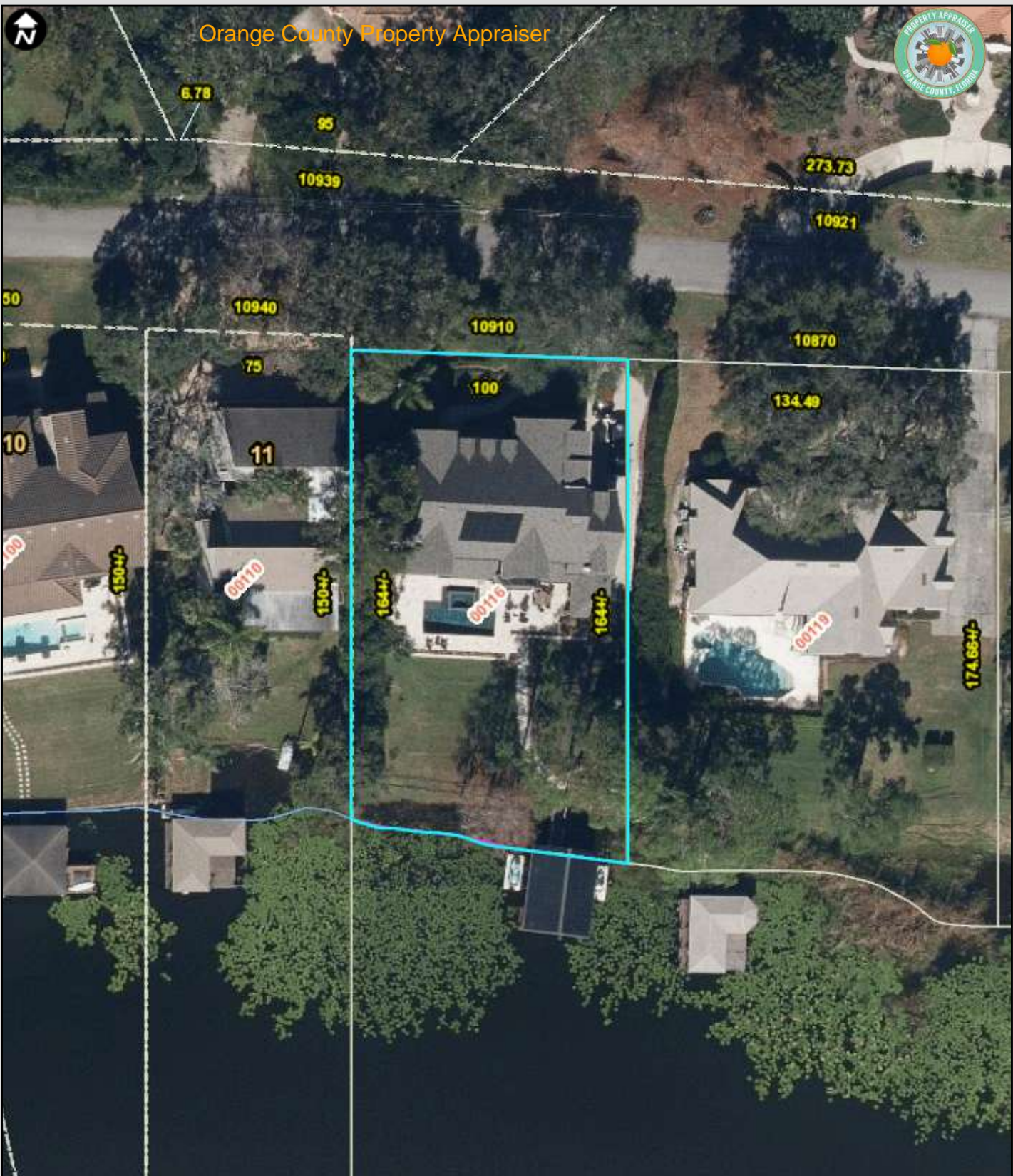
As of February 28, 2024, three (3) responses were received in support, and none were received in opposition.

DEVELOPMENT REVIEW BOARD RECOMMENDATION:

At the February 20, 2024, Development Review Board (DRB) meeting, the DRB reviewed the proposed variance and based on information in the staff report and testimony provided at the DRB meeting, the DRB recommended approval of the proposed variance with no conditions.

The vote of the DRB was 4-1 to recommend approval of the variance.

OCA Web Map		Major Roads	Proposed Road	Residential	Commercial/Industrial/Vacant Land	Parks	6	Lot Number
Florida Turnpike	Public Roads	Brick Road		Agriculture	Agricultural Curtilage	Lakes and Rivers	06060	Parcel Number
Interstate 4	Gated Roads	Block Line		Commercial/Institutional	Hydro	Building	3106	Parcel Address
Toll Road	Road Under Construction	Lot Line		Governmental/Institutional/Misc	Waste Land	E	Block Number	111.9
								Parcel Dimension



Created: 2/13/2024 14:17 Aerial 2023, undefined This map is for reference only and is not a survey

Date: January 26, 2024

Dorothy Burkhalter, Town Clerk
Town of Windermere
Windermere, FL 34786
407.876.2563

Dear Ms. Burkhalter,

I am the owner of the property at 10910 Bayshore Drive.

In 2018, we completed a new swimming pool and deck in our backyard that was permitted and approved. Since that time, my wife's Lupus condition has become more and more problematic. Lupus is a condition that makes her very sensitive to sunlight. Any over exposure to the sun leads to severe Lupus flare ups including painful rashes. Repeated exposure to the sun could worsen her condition and lead to a more deadly form of this disease. As a result, she is unable to enjoy the outdoor area we have created. With a new grandson that loves the water, she is unable to be outside with the friends and family who enjoy the pool area.

As a result, I have contracted with an engineer to design a covered area adjacent to the swimming pool. This area is ideally suited to address the issue I described and it will be a beautiful addition to the back of our home. In this process, I learned that the addition would exceed the maximum FAR for the Town of Windermere's zoning. This letter is to formally request that the Town allow for this addition to the property. I have included the engineering drawings for the addition and a recent survey for your reference.

Thank you for your time and consideration!

Respectfully,



Adair Dillaha
10910 Bayshore Drive
Windermere, FL 34786
407.719.4786

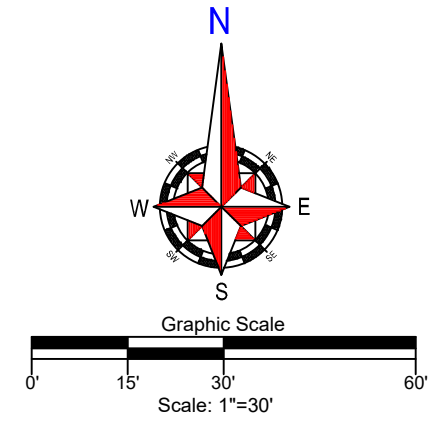
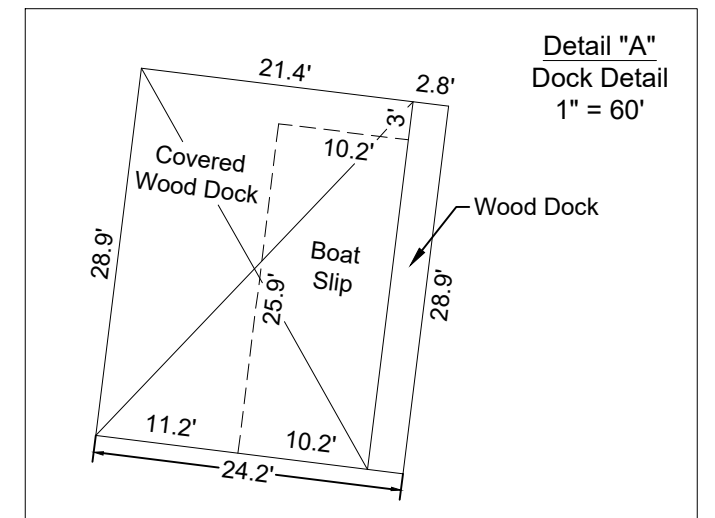
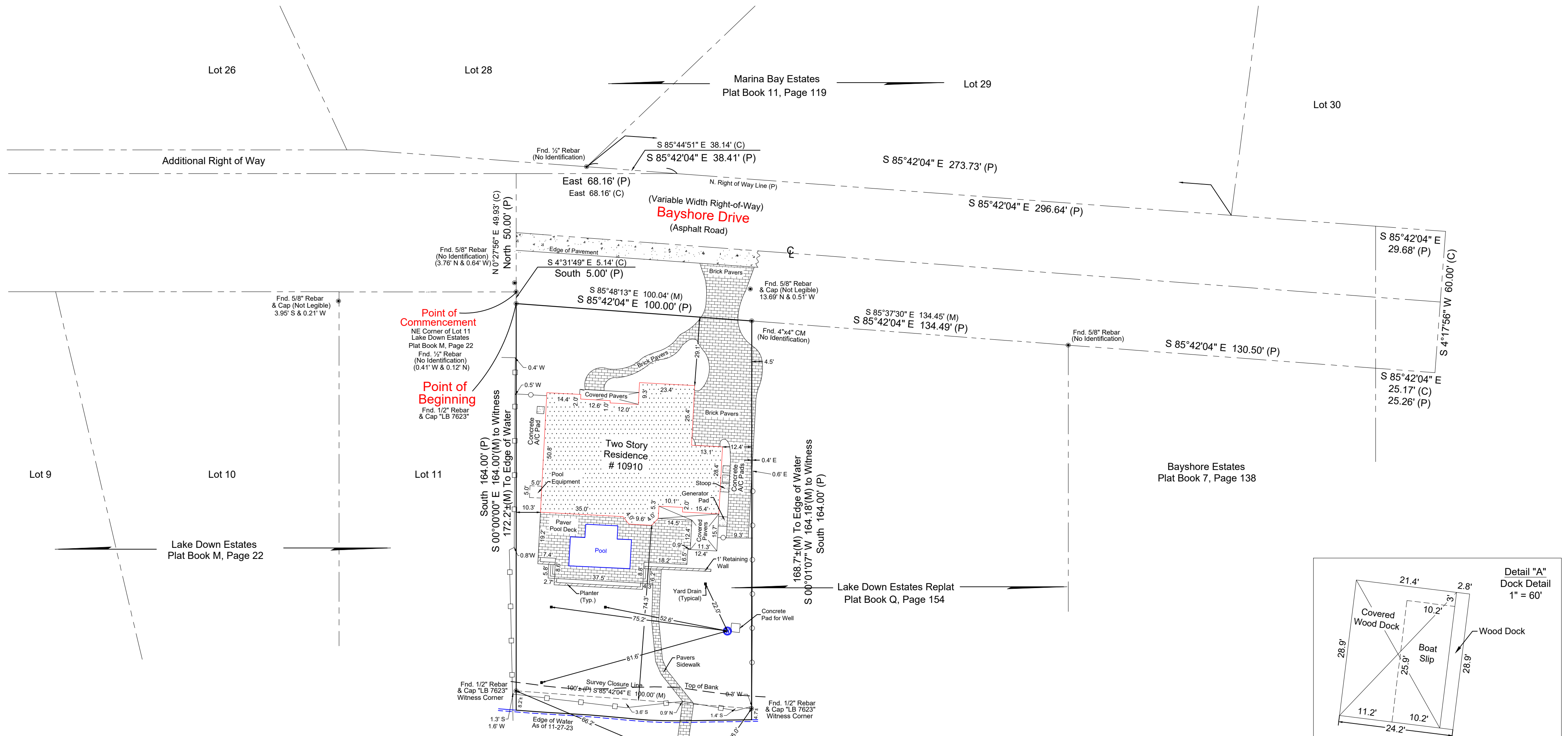
Boundary Survey

Legal Description:


THAT PART OF LAKE DOWN ESTATES REPLAT, AS RECORDED IN PLAT BOOK Q, PAGE 154, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, LYING IN SOUTHWEST QUARTER OF SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 23 SOUTH, RANGE 28 EAST, WHICH IS DESCRIBED AS FOLLOWS:
 FROM THE NORTHEAST CORNER OF LOT 11, LAKE DOWN ESTATES, AS RECORDED IN PLAT BOOK M, PAGE 22, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN SOUTH 5.00 FEET FOR THE POINT OF BEGINNING; THENCE RUN SOUTH ALONG SAID EASTERLY BOUNDARY OF LOT 11, A DISTANCE OF 164 FEET, MORE OR LESS TO THE WATERS OF LAKE DOWN; THENCE RETURN TO POINT OF BEGINNING AND RUN SOUTH 85 DEGREES 42 MINUTES 4 SECONDS EAST 100.00 FEET; THENCE RUN SOUTH 164 FEET, MORE OR LESS TO THE WATER'S EDGE OF LAKE DOWN; THENCE WESTERLY ALONG SAID WATER'S EDGE OF LAKE DOWN 100 FEET, MORE OR LESS, TO THE PREVIOUSLY DESCRIBED POINT ON THE WATER'S EDGE OF LAKE DOWN.

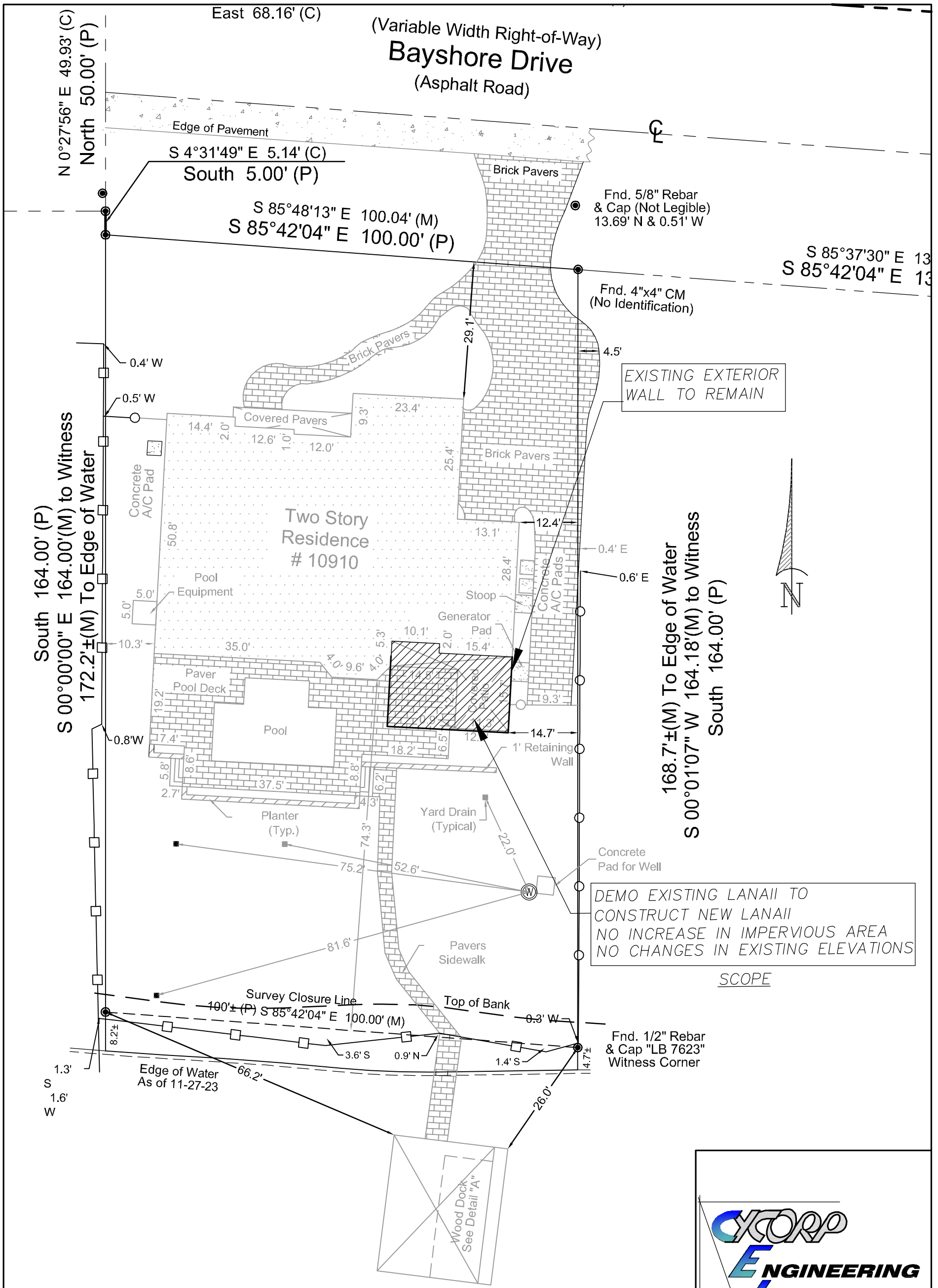
Flood Disclaimer:
 BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONE X, AE. THIS PROPERTY WAS FOUND IN TOWN OF WINDERMERE, COMMUNITY NUMBER 120381, DATED 9/25/2009.

CERTIFIED TO:
 ADAIR DILLAHA



LAKE DOWN

Field Date: 08/07/17	Date Completed: 08/10/17	Notes:	
Drawn By: GLG	File Number: IS-39801	>Survey is Based upon the Legal Description Supplied by Client. >Abutting Properties Deeds have NOT been Researched for Gaps, Overlaps and/or Hints. >Subject to any Easements and/or Restrictions of Record. >Bearing Basis shown hereon, is Assumed and Based upon the Line Denoted with an "SB". >Building Ties are NOT to be used to reconstruct Property Lines. >Fence Ownership is NOT determined. >Roof Overhangs, Underground Utilities and/or Footers have NOT been located UNLESS otherwise noted. >Septic Tanks and/or Drainfield locations are approximate and MUST be verified by appropriate Utility Location Companies. >Use of This Survey for Purposes other than Intended, Without Written Verification, Will be at the User's Sole Risk and Without Liability to the Surveyor. Nothing Hereon shall be Constituted to give ANY Rights or Benefits to Anyone Other than those Certified. >Flood Zone Determination Shown Hereon is Given as a Courtesy, and is Subject to Final Approval by F.E.M.A. This Determination may be affected by Flood Factors and/or other information NEITHER known by NCR given to this Surveying Company at the time of this Endeavor. Ireland & Associates Surveying Inc. and the signing surveyor assume NO Liability for the Accuracy of this Determination.	
Legend: C - Calculated CB - Contouring CM - Concrete Monument Conc. - Concrete D - Description DE - Drainage Easement Easmt. - Easement F.E.M.A. - Federal Emergency Management Agency FFE - Finished Floor Elevation Fnd. - Found IP - Iron Pipe L - Length (Arc) M - Measured N&D - Nail & Disk NR - Non-Radial ORB - Official Records Book P - Plat P.B. - Plat Book WF - Wood Fence		PC - Point of Curvature Pg. - Page PI - Point of Intersection P.O.B. - Point of Beginning P.O.L. - Point on Line PP - Power Pole PRM - Permanent Reference Monument PT - Point of Tangency Rad. - Radial R&C - Rebar & Cap Rec. - Recovered Rft. - Roofed Set. - Set S&C - Set Rebar & Cap "LB 7623" Typ. - Typical UE - Utility Easement WM - Water Meter Δ - Delta (Central Angle) -O- - Chain Link Fence	
Revisions Update Survey - 11/27/23 - AWW		I hereby Certify that this Boundary Survey of the above Described Property is True and Correct to the Best of my Knowledge and Belief as recently Surveyed under my Direction on the Date Shown. Based on Information furnished to Me as Noted and Conforms to the Standard of Practice for Land Surveying in the State of Florida in accordance with Chapter 53-17.052 Florida Administrative Codes, Pursuant to Section 479.027 Florida Statutes.  Patrick K. Ireland, P.S. 66637, LB 7623 This Survey is intended for the use of Said Certified Parties. This Survey NOT VALID UNLESS signed and Embossed with Surveyor's Seal. Ireland & Associates Surveying, Inc. 800 Currency Circle Suite 1020 Lake Mary, Florida 32746 www.Irelandsurveying.com Office-407.678.3366 Fax-407.320.8165	



EXISTING EXTERIOR WALL TO REMAIN

DEMO EXISTING LANAI TO CONSTRUCT NEW LANAI
NO INCREASE IN IMPERVIOUS AREA
NO CHANGES IN EXISTING ELEVATIONS

SCOPE

SITE PLAN

CYTOP ENGINEERING INC.
CA 30526
CIVIL ENGINEERS
LAND PLANNERS

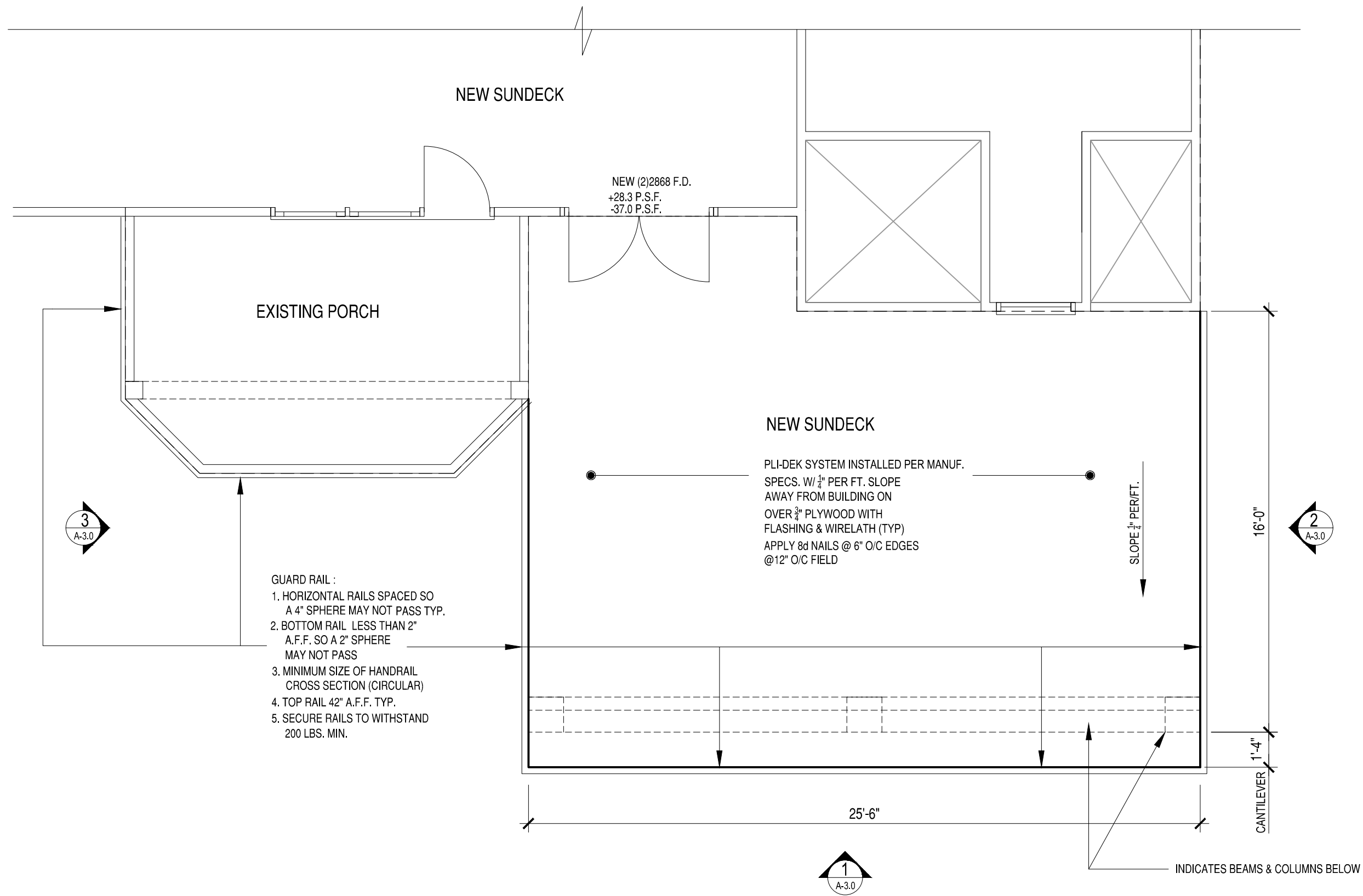
[Signature]
KIM FISCHER, P.E. #56942 1/12/2024
1614 White Dove Drive
Winter Springs, Florida 32708
Tel: (407) 405-7819

CLIENT	
ER CONTRACTORS	10910 BAYSHRE DR ORANGE COUNTY

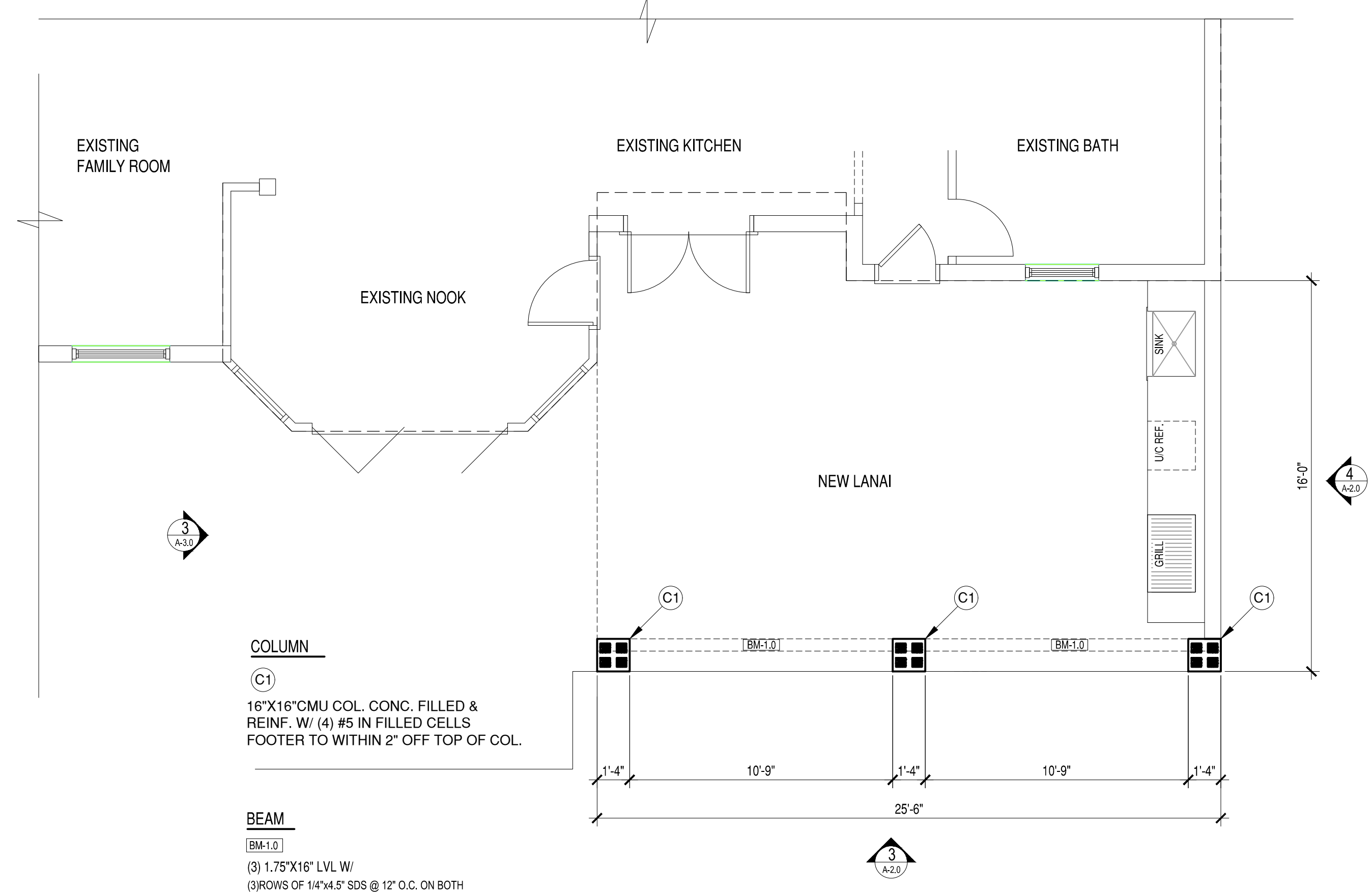
KAD PROVISIONAL - Last Modified on 10-16-2022
 These Drawings are not to be used in any way without written permission from KAD Design, Inc.

6900 Townstreet Lakes Blvd, Suite 400 Orlando Florida 32827 Tel: 407-344-4122 Fax: 407-344-1322 Email: karin.kadesigns@gmail.com

KAD Designs Inc.
 6900 Townstreet Lakes Blvd, Suite 400 Orlando Florida 32827 Tel: 407-344-4122 Fax: 407-344-1322 Email: karin.kadesigns@gmail.com

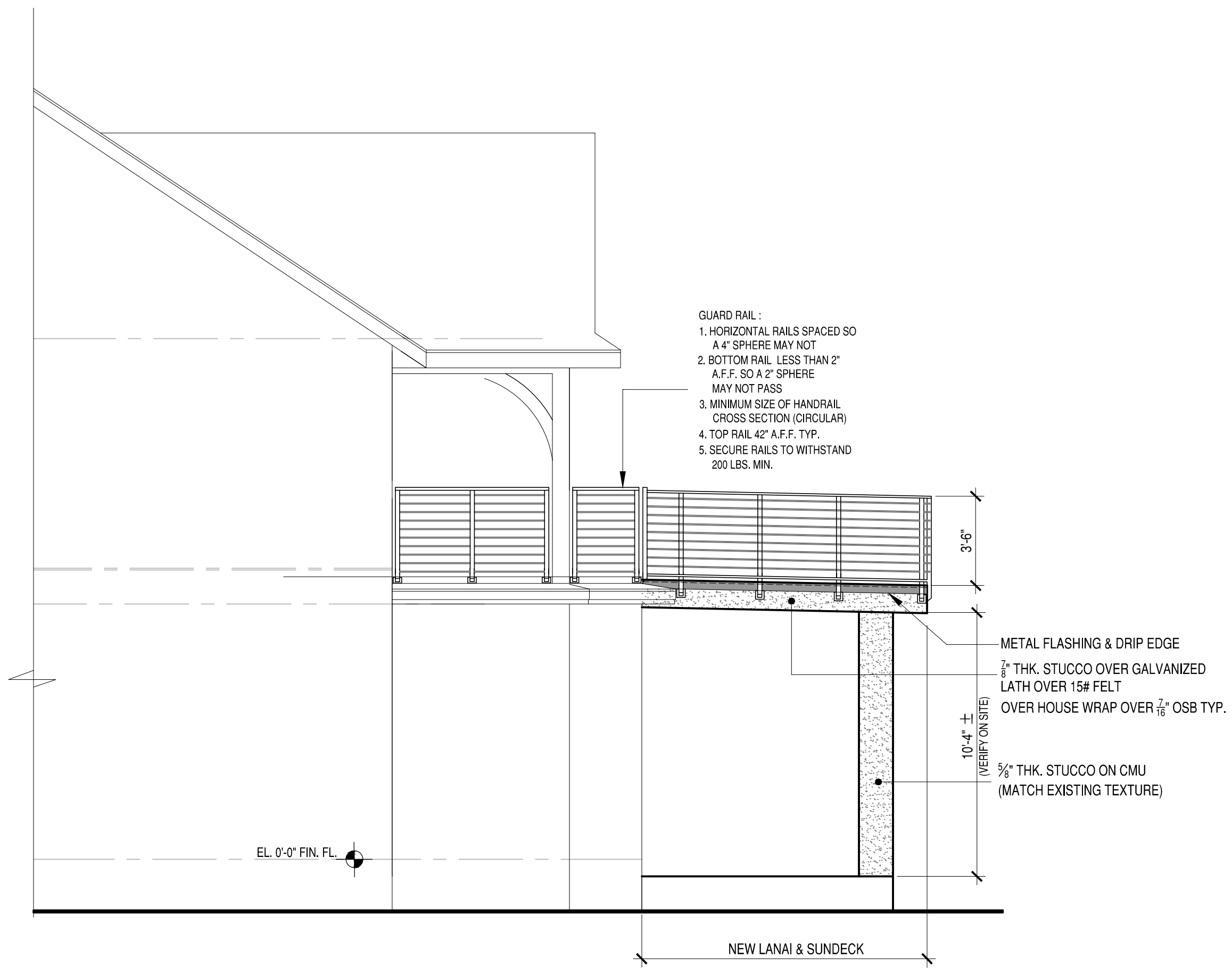


2nd. FLOOR PLAN
 SCALE 1/4" = 1'-0"

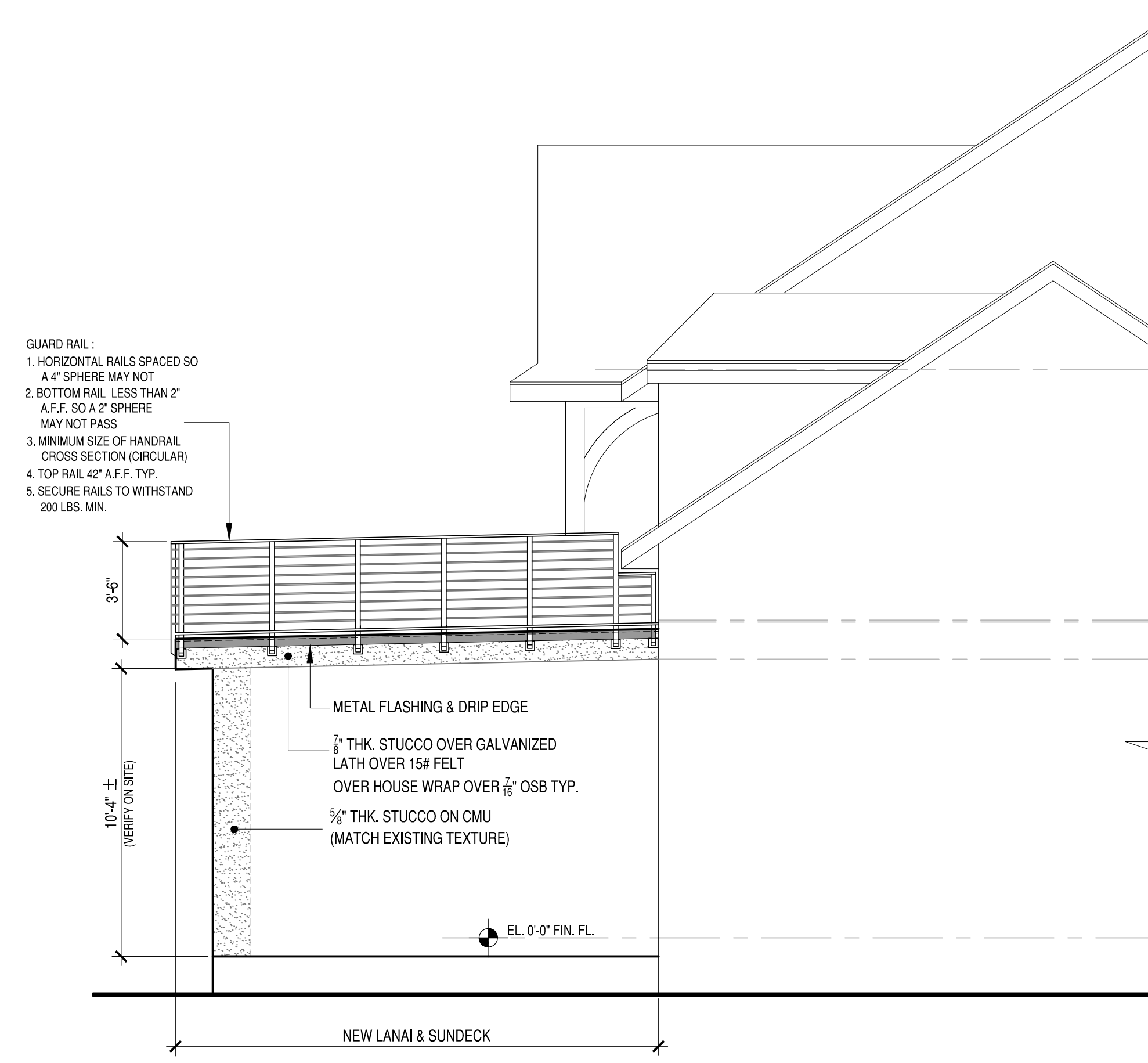


1st. FLOOR PLAN
 SCALE 1/4" = 1'-0"

REVISIONS	
ISSUES	
PROJECT:	S.F.R. LANAI & SUNDECK ADDITION
ADDRESS:	10910 Baysshore Drive Windermere, FL 34786
SHEET TITLE:	NEW FLOOR PLANS
OWNER:	T.S. CHEHAL P.E. 624 Executive Park Court Suite 1024-C Apopka, FL 32773 TEL: (407) 521-5557 FAX: (407) 521-5434
INFORMATIONAL COPY ONLY, UNLESS EMBOSSED WITH PROFESSIONAL ENGINEERS SEAL	APPROVED BY:
DATE: 08-21-2023	PER: 04/01/18
SCALE: AS SHOWN	DRAWN BY: JFC
CHECKED BY: RC	DATE: 07-25-2023
PROJECT NO:	KAD 3622
SHEET NO:	A-2.1



RIGHT SIDE ELEVATION 3
 SCALE 1/4" = 1'-0" A-2.0



LEFT SIDE ELEVATION 4
 SCALE 1/4" = 1'-0" A-2.0



REAR ELEVATION 3
 SCALE 1/4" = 1'-0" A-2.0

KAD PRODUCTIONS Last Modified on 10-16-2022
 These drawings must not be used in any way without written permission from KAD Design, Inc.

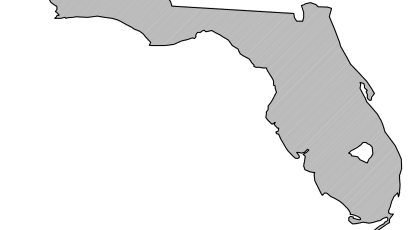
PROJECT:
**S.F.R.
 LANAI & SUNDECK ADDITION**
 ADDRESS: 10910 Bayshore Drive
 Wintermere, FL 34786

SHEET TITLE:
EXTERIOR ELEVATIONS

CODE COMPLIANCE:
 THIS STRUCTURE HAS BEEN DESIGNED TO MEET OR EXCEED THE
 MINIMUM REQUIREMENTS OF THE FLORIDA BUILDING CODE (FBC) AS
 THE LATEST EDITION IS IN EFFECT. ALL ELEVATIONS ARE IN
 FEET AND INCHES. UNLESS OTHERWISE NOTED, ALL DIMENSIONS
 ARE TO FACE UNLESS OTHERWISE SPECIFIED.
 3. WIND LOADS: ESTIMATED WIND SPEED FOR EXTERIOR BUILDINGS IS 140
 HEIGHT ADJUSTMENT COEFFICIENT IS 1.40

OWNER:
T.S. CHEHAL P.E.
 624 Executive Park Court Suite 1024-C
 Apopka, FL 32703
 TEL: (407) 521-5557
 FAX: (407) 521-5434

INFORMATIONAL COPY ONLY. UNLESS
 EMBOSSED WITH PROFESSIONAL
 ENGINEER'S SEAL
 APPROVED BY:



DATE: 08-21-2023
 PERIOD: 04/18

SCALE: AS SHOWN
 DRAWN BY: JFC
 CHECKED BY: RC
 DATE: 07-25-2023
 PROJECT NO:

KAD 3622
 SHEET NO:
A-2.0



Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103



Mayor
JIM O'BRIEN

Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

January 31, 2024

HEDAYAT ARMAN PEREZ SANDRA EDNA
10921 BAYSHORE DR
WINDERMERE, FL 34786

RE: Public Notice of Variance Public Hearing for 10910 Bayshore Dr. - Z24-05

Adair Dillaha, owner of 10910 Bayshore Dr. submitted a request for approval of a variance pursuant to Division 10.02.00 of the Town of Windermere Land Development Code. The purpose of the variance request is to allow for a covered porch addition to the home that will result in the total gross floor area of the home to exceed the maximum 38% of the lot area requirement. The resulting gross floor area with the addition of the covered porch is approximately 41.9% of the lot area.

Enclosed is additional information regarding this request.

Pursuant to the Town of Windermere Code of Ordinances, you as a surrounding property owner are entitled to comment on this matter. If you wish to comment, this form must be received by the Town of Windermere use of the enclosed stamped envelope to Wade Trim, Inc. or by email to tow@wadetrim.com by **February 16, 2024**.

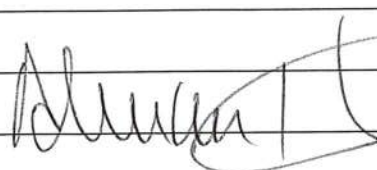
This matter will be presented to the Development Review Board on **Tuesday, February 20, 2024, at 6:30 p.m.** Their recommendation will be heard by the Town Council on **Tuesday, March 12, 2024, at 6:00 p.m.** You may attend the meetings at Town Hall, located at 520 Main Street. All meetings are open to the public and you are welcome to participate. Feel free to contact me if you have any questions.

Sincerely,
Brad Cornelius, AICP, Town Planner
Wade Trim, Inc.
813.882.4373
tow@wadetrim.com
Encl.

RECOMMEND – Z24-05 (10910 Bayshore Drive)

APPROVAL: DISAPPROVAL

COMMENTS: _____

SIGNATURE:  DATE: 2-6-24

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

January 31, 2024

PAHLOW G LARRY
10940 BAYSHORE DR
WINDERMERE, FL 34786

RE: Public Notice of Variance Public Hearing for 10910 Bayshore Dr. - Z24-05

Adair Dillaha, owner of 10910 Bayshore Dr. submitted a request for approval of a variance pursuant to Division 10.02.00 of the Town of Windermere Land Development Code. The purpose of the variance request is to allow for a covered porch addition to the home that will result in the total gross floor area of the home to exceed the maximum 38% of the lot area requirement. The resulting gross floor area with the addition of the covered porch is approximately 41.9% of the lot area.

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Sincerely,
Brad Cornelius, AICP, Town Planner
Wade Trim, Inc.
813.882.4373
tow@wadetrim.com
Encl.

RECOMMEND – Z24-05 (10910 Bayshore Drive)

APPROVAL: X DISAPPROVAL _____

COMMENTS: _____

SIGNATURE: Brad Cornelius

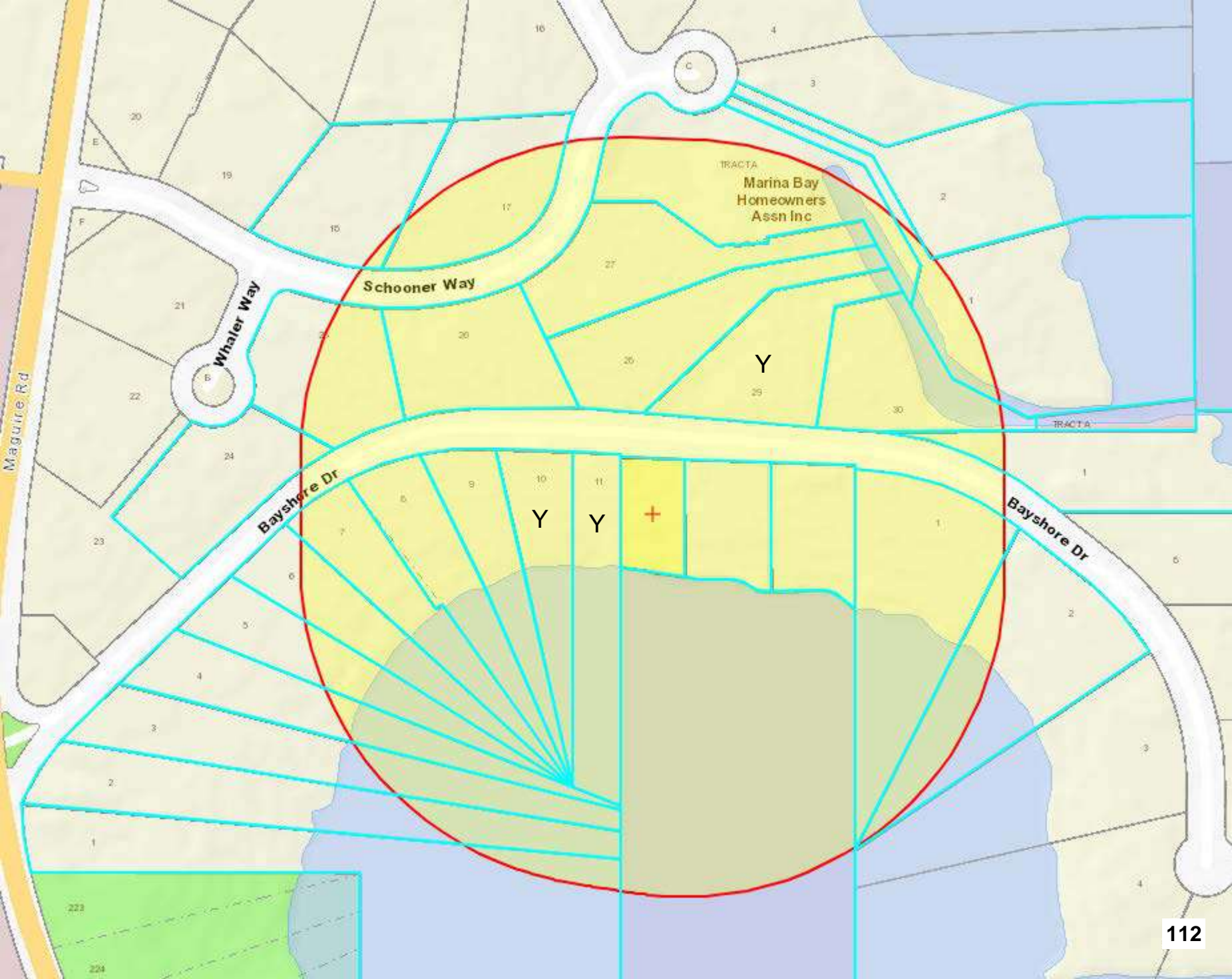
DATE: Feb. 7, 2024

RECOMMEND - Z24-05 (10910 Bayshore Drive)

APPROVAL: DISAPPROVAL

COMMENTS: _____

SIGNATURE: Sanjay Khatri DATE: 2/15/2024



Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

Development Review Board February 20, 2024

Town Council March 12, 2024

Case No.: Z24-06

Property Owner/Applicant: Ryka, LLC / Eric and Rhonda Powell

Representative: Sheila Cichra, Streamline Permitting, Inc.

Requested Action: Variance to allow for a reduced residential boat dock setback from the required 16 feet from the side property lines projected/extended into the water to 10.8 feet from the West side property line projected/extended into the water and 10.0 feet from the East side property line projected/extended into the water.

Property Address: 212 W. 1st Avenue

Legal Description: PLAT OF WINDERMERE G/36 LOT 427 (LESS ELY 80 FT OF NLY 130 FT INCLUDING THAT PORTION OF SAID VAC ST TO N) & N 25 FT OF LOT 426 (LESS W 25 FT) & VAC ST ON N & LAND IN LAKE DESC AS FROM SW COR LOT 469 RUN NE 245 FT S 51 DEG E 81 FT FOR POB RUN S 17 DEG E 100 FT TO N ST LINE 1ST AVE TH N 72 DEG E 65 FT TH N 51 DEG W 106.12 FT TO POB (LESS BEG SWLY COR LOT 427 RUN N 72 DEG E 25 FT S 17 DEG E 25 FT N 72 DEG E 142.5 FT N 17 DEG W 95 FT S 72 DEG W 80 FT S 83 DEG W 30.55 FT S 72 DEG W 57.48 FT S 17 DEG E 75.6 FT TO POB)

Future Land Use/Zoning: Residential/Residential

Existing Use: Residential (Single Family)

Surrounding Future Land Use/Zoning

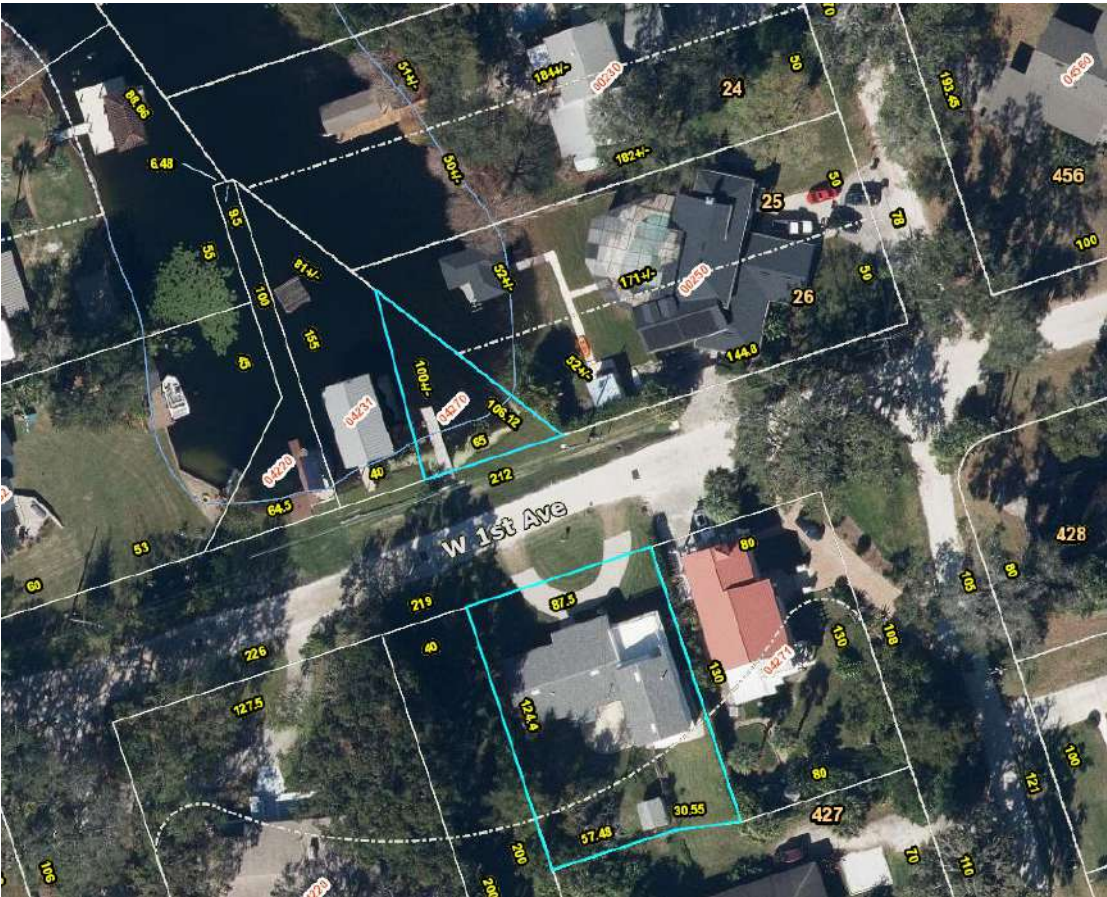
North: Lake
East: Residential/Residential
South: Residential/Residential
West: Residential/Residential

CASE SUMMARY:

Ryka, LLC, owner of 212 W. 1st Ave., submitted a request for approval of a variance pursuant to Division 10.02.00 of the Town of Windermere Land Development Code. The purpose of the variance request is to allow for a reduced residential boat dock setback from the required 16 feet from the side property lines projected/extended into the water to 10.8 feet from the West side property line projected/extended into the water and 10.0 feet from the East side property line projected/extended into the water.

Orange County Environmental Protection Division (EPD) issued related permit #BD-23-10-136 for the subject boat dock at 10.0 feet from the West side property line projected/extended into the water and 10.0 feet from the East side property line projected/extended into the water.

The existing boat dock, which sits at 6 feet from the West side property line projected/extended into the water, will be completely removed prior to construction of the subject boat dock.



*Aerial View of Existing Single-Family Residence and Boat Dock at 212 W. 1st Ave.
(Source: Orange County Property Appraiser)*

Division 10.02.00 of the LDC empowers the Development Review Board to review and make recommendations for approval, approval with conditions or denial to the Town Council on variance requests.

Division 10.02.00 of the LDC requires the Town Council to consider the recommendation of the Development Review Board and to take final action to either approve or deny the variance request.

CASE ANALYSIS:

Section 10.02.02 of the LDC provides the specific standards by which the Development Review Board and Town Council are to review to consider the approval or denial of a variance application. In addition, this Section requires a positive finding, based on substantial competent evidence, for each of the standards. These standards are summarized as follows:

1. The need for the variance arises out of the physical surroundings, shape, topographical condition or other physical or environmental conditions that are unique to the subject property. Variances should be granted for conditions peculiar to the property and not the result of actions of the property owner;
2. There are practical or economic difficulties in carrying out the strict letter of the regulation;
3. The variance request is not based exclusively upon a desire to reduce the cost of developing the site;
4. The proposed variance will not substantially increase congestion surrounding public streets, the danger of fire or other hazard to the public;
5. The proposed variance will not substantially diminish property values in, nor alter the essential character of, the area surrounding the site;
6. The effect of the proposed variance is in harmony with the general intent of this Land Development Code and the specific intent of the relevant subject areas of this Land Development Code; and
7. The variance will not encourage further requests for changes where such a land use would not be deemed appropriate.

It is also important to note that this Section also provides specific standards that are not to be considered in the review of a variance application. These standards are:

1. That the implementation of these regulations would impose an economic hardship on the cost of the building or redevelopment project;
2. That these regulations impose a hardship by decreasing the maximum density of a property in terms of the number of units, square footage of buildings, etc.; and

- That other adjacent lands, structures or buildings not in conformance with these regulations provide a rationale for a lessening of their application in this specific case.

Section 10.02.02(c) of the LDC allows the imposition of conditions and restrictions as may be necessary to allow a positive finding to be made on any of the variance standards to minimize the negative effect of the variance. The conditions and restrictions should further the interest of the LDC.

The applicant submitted a variance request letter, survey, site plan, and other materials in support of the variance request. Please see the information provided with the agenda item for the applicant's submittal.

PUBLIC NOTICE:

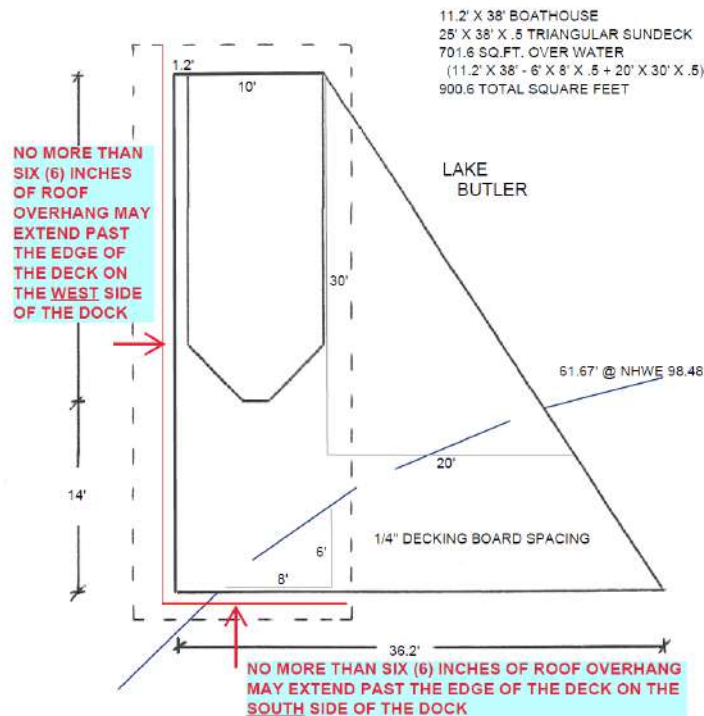
As of February 28, 2024, two (2) responses were received in support, and no (0) responses were received in opposition.

DEVELOPMENT REVIEW BOARD RECOMMENDATION:

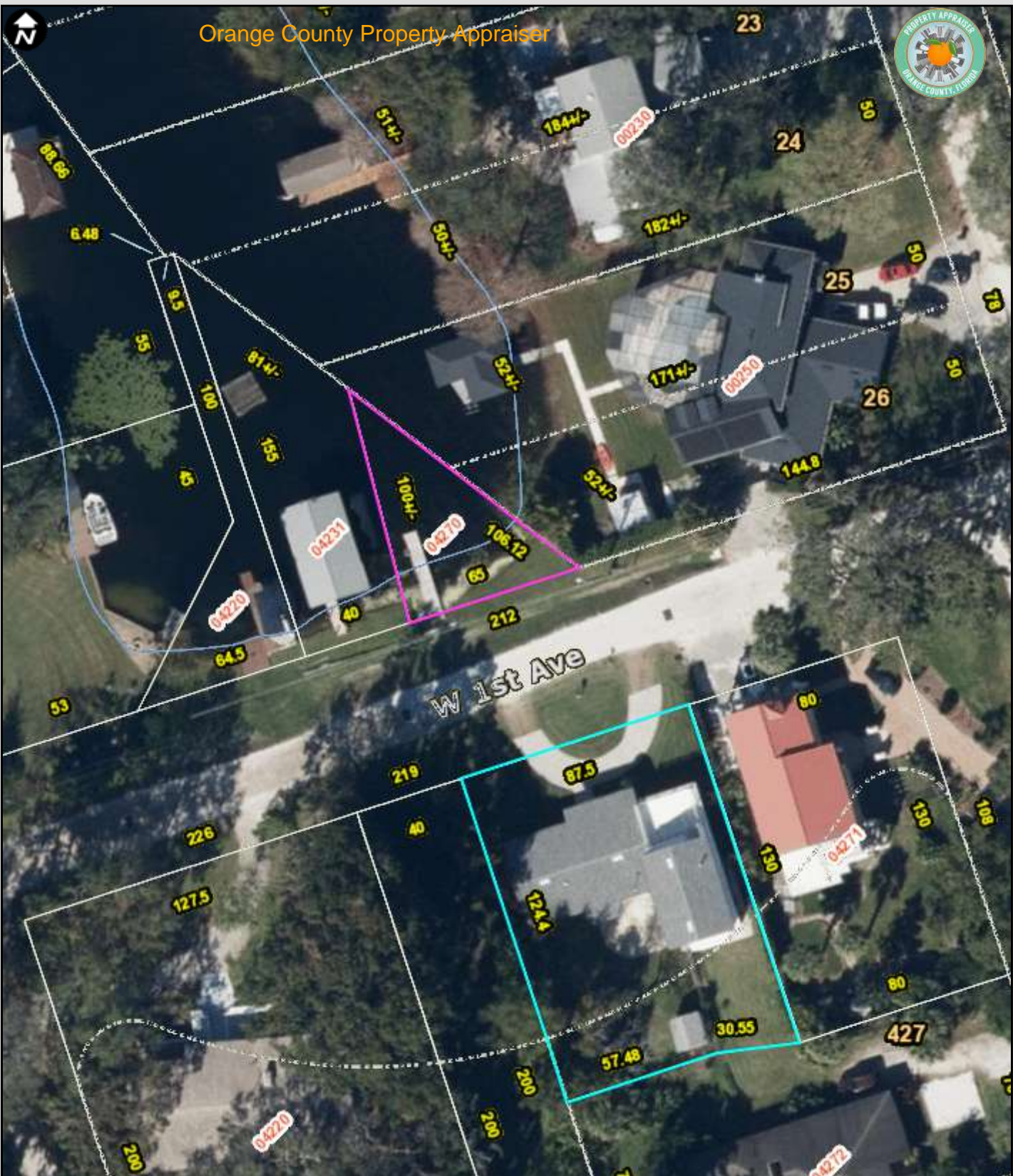
At the February 20, 2024, Development Review Board (DRB) meeting, the DRB reviewed the proposed variance and based on information in the staff report and testimony provided at the DRB meeting, the DRB recommended approval of the proposed variance with the following single condition:

- No more than six (6) inches of roof overhang may extend past the edge of the deck on the South and West sides of the dock as shown in the exhibit below.

The vote of the DRB was unanimous to recommend approval of the variance with this single condition.



OCA Web Map		Major Roads	Proposed Road	Residential	Commercial/Industrial/Vacant Land	Parks	6	Lot Number
Florida Turnpike	Public Roads	Brick Road		Agriculture	Agricultural Curtilage	Lakes and Rivers	06060	Parcel Number
Interstate 4	Gated Roads	Block Line		Commercial/Institutional	Hydro	Building	3106	Parcel Address
Toll Road	Road Under Construction	Lot Line		Governmental/Institutional/Misc	Waste Land	E	Block Number	111.9
								Parcel Dimension



Created: 10/7/2023 12:56 Aerial 2023, undefined

This map is for reference only and is not a survey



Date: January 28, 2024
To: Town of Windermere
From: Sheila Cichra, Streamline Permitting, Inc.
Re: Side setback variance request for 212 West 1st Avenue

The attached application package is a variance request to allow a boat dock to be constructed with a 10.8' side setback on the West and a 10' side setback on the East in lieu of the required 16' side setbacks.

The County and State have both issued permits with 10' side setbacks.

The adjacent property owners have signed letters of no objection and both of the adjacent property owners have obtained their own side setback variances.

All the adjacent docks in this little cove have reduced side setbacks.

The existing dock, which will be removed, only has a 6' side setback, so the current non-compliance will be reduced.

Due to the shallow depth, this is the only way that this property owner can have a functional boat slip, without prop scouring.

Thank you for your consideration.

A handwritten signature in blue ink, appearing to read "Sheila Cichra".

Boundary & Topographic Survey

Legal Description:

LOT 427: THE NORTH 25 FEET OF LOT 426, LESS THE WEST 25 FEET THEREOF MEASURED AT RIGHT ANGLES TO THE LOT LINES, AND ALL LAND FRONTING LOT 427 WHICH LIES BETWEEN THE EAST AND WEST SIDE LINES OF LOT 427 EXTENDED IN THE NORTHWESTERLY DIRECTION TO INTERSECT A STRAIGHT LINE CONNECTING THE SOUTH STREET LINES OF FIRST AVENUE FRONTING LOTS 428, 435 AND LOTS 417, 421, ALL ACCORDING TO THE PLAT OF WINDERMERE, AS RECORDED IN PLAT BOOK "G", PAGES 36 THROUGH 39, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA;

LESS AND EXCEPT: FROM THE SOUTHEAST CORNER OF SAID LOT 427, REPLAT OF WINDERMERE, AS RECORDED IN PLAT BOOK "G", PAGES 36 THROUGH 39, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, (SAID CORNER BEING LOCATED AT THE INTERSECTION OF THE COMMON LOT LINE OF LOTS 426 AND 427 OF SAID PLAT AND FOREST STREET) RUN THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT 427 A DISTANCE OF 70 FEET FOR A POINT OF BEGINNING, THENCE RUN NORTHERLY ALONG SAID EASTERLY LINE AND ALONG A NORTHERLY EXTENSION THEREOF A DISTANCE OF 130 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF FIRST AVENUE, AS IT NOW EXISTS, RUN THENCE WESTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE OF FIRST AVENUE A DISTANCE OF 80 FEET, THENCE RUN SOUTHERLY, PARALLEL TO SAID NORTHERLY EXTENSION OF THE EASTERLY LINE OF SAID LOT 427, A DISTANCE OF 130 FEET TO A POINT 70 FEET NORTHERLY OF THE SOUTHERLY LINE OF SAID LOT 427, THENCE RUN EASTERLY A DISTANCE OF 80 FEET TO THE POINT OF BEGINNING.

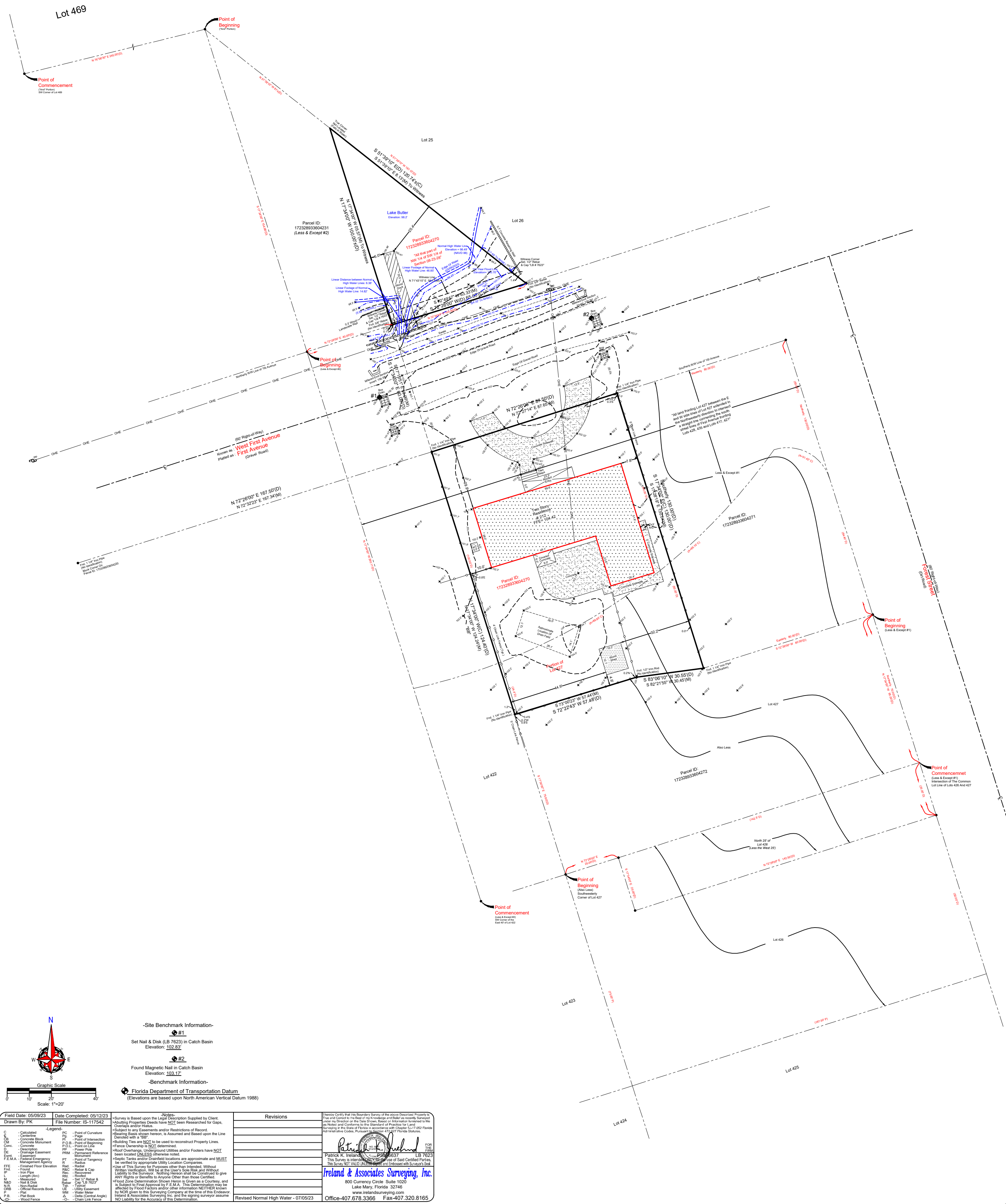
AND
ALL THAT PART OF NORTHWEST 1/4 OF SOUTHWEST 1/4 SECTION 6, TOWNSHIP 23 SOUTH, RANGE 26 EAST, ORANGE COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: FROM THE SOUTHWEST CORNER OF LOT 469 AS SHOWN ON PLAT OF WINDERMERE, AS RECORDED IN PLAT BOOK "G", PAGES 36 THROUGH 39, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, RUN NORTH 76 DEGREES 8 MINUTES 30 SECONDS EAST ALONG THE SOUTH BOUNDARY OF SAID LOT 469, EXTENDED IN TO LAKE BUTLER 245 FEET TO POINT OF BEGINNING, THENCE SOUTH 17 DEGREES 34 MINUTES EAST 154.98 FEET TO NORTH STREET LINE OF FIRST AVENUE, THENCE NORTH 72 DEGREES 26 MINUTES EAST ALONG THE NORTH STREET LINE OF FIRST AVENUE 105 FEET, THENCE NORTH 51 DEGREES 39 MINUTES 10 SECONDS WEST 187.12 FEET TO POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING:
BEGINNING AT THE SOUTHWEST CORNER OF THE EAST 40 FEET OF LOT 422, PLAT OF WINDERMERE, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK "G", PAGES 36 THROUGH 39, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, MEASURED AT RIGHT ANGLES FROM THE EASTERLY SIDE LINE OF SAID LOT, RUN THENCE NORTH 17 DEGREES 34 MINUTES WEST 260 FEET MORE OR LESS TO INTERSECT A STRAIGHT LINE RUNNING SOUTH 72 DEGREES 26 MINUTES WEST FROM THE SOUTHWEST CORNER OF LOT 456 FOR A POINT OF BEGINNING, RUN THENCE NORTH 72 DEGREES 26 MINUTES EAST ALONG SAID STRAIGHT LINE 40 FEET TO A POINT; RUN THENCE NORTH 17 DEGREES 34 MINUTES WEST 100 FEET TO A POINT IN LAKE BUTLER, RUN THENCE NORTH 51 DEGREES 39 MINUTES 10 SECONDS WEST 81 FEET MORE OR LESS TO A POINT IN LAKE BUTLER SITUATED NORTH 17 DEGREES 34 MINUTES WEST FROM THE POINT OF BEGINNING, RUN THENCE SOUTH 17 DEGREES 34 MINUTES EAST 150 FEET MORE OR LESS TO THE POINT OF BEGINNING.

ALSO LESS
BEGIN AT THE SOUTHWEST CORNER OF LOT 427, PLAT OF WINDERMERE, AS RECORDED IN PLAT BOOK "G", PAGES 36 THROUGH 39, INCLUSIVE, OF THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; RUN THENCE NORTH 72 DEGREES 26 MINUTES 00 SECONDS EAST, ALONG THE SOUTHERLY LINE OF SAID LOT 427, A DISTANCE OF 25.0 FEET, THENCE SOUTH 17 DEGREES 34 MINUTES 00 SECONDS EAST 25.0 FEET, THENCE NORTH 72 DEGREES 26 MINUTES 00 SECONDS EAST, PARALLEL TO SAID SOUTHERLY LINE, 142.50 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF FOREST STREET, THENCE NORTH 17 DEGREES 34 MINUTES 00 SECONDS WEST, ALONG SAID RIGHT-OF-WAY LINE, 95.0 FEET, THENCE SOUTH 72 DEGREES 26 MINUTES 00 SECONDS WEST 80.0 FEET, THENCE SOUTH 83 DEGREES 06 MINUTES 10 SECONDS WEST 30.55 FEET TO THE CORNER OF A CHAIN LINK FENCE, THENCE SOUTH 72 DEGREES 22 MINUTES 43 SECONDS WEST, ALONG SAID FENCE, 57.48 FEET TO THE WESTERLY LINE OF SAID LOT 427, THENCE SOUTH 17 DEGREES 34 MINUTES 00 SECONDS EAST 75.80 FEET TO THE POINT OF BEGINNING.

FLOOD DISCLAIMER: BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONES X & AE. THIS PROPERTY WAS FOUND IN ORANGE COUNTY, COMMUNITY NUMBER 120381, DATED 09/25/2009.

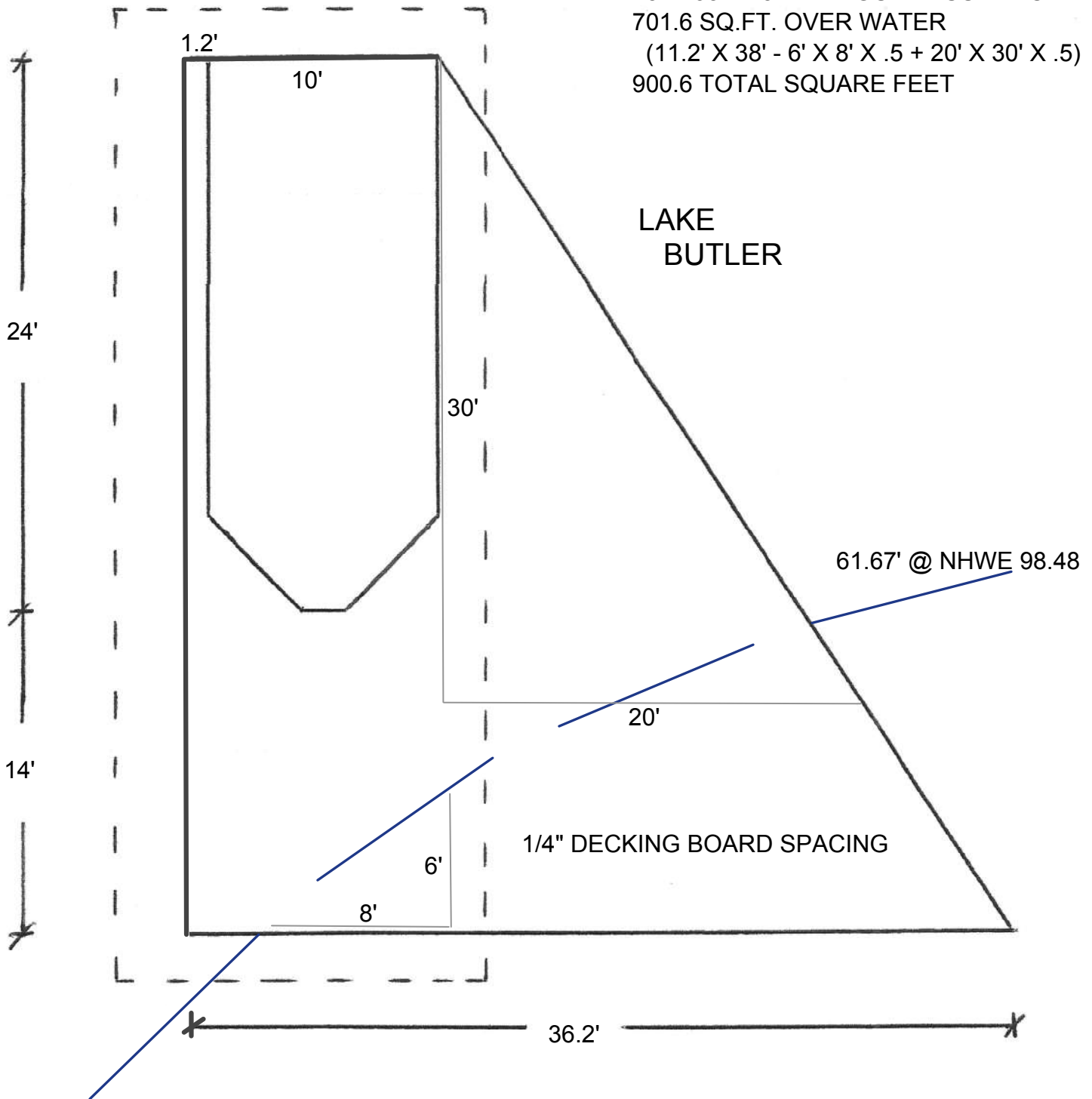
CERTIFIED TO: RYKA BUILDERS



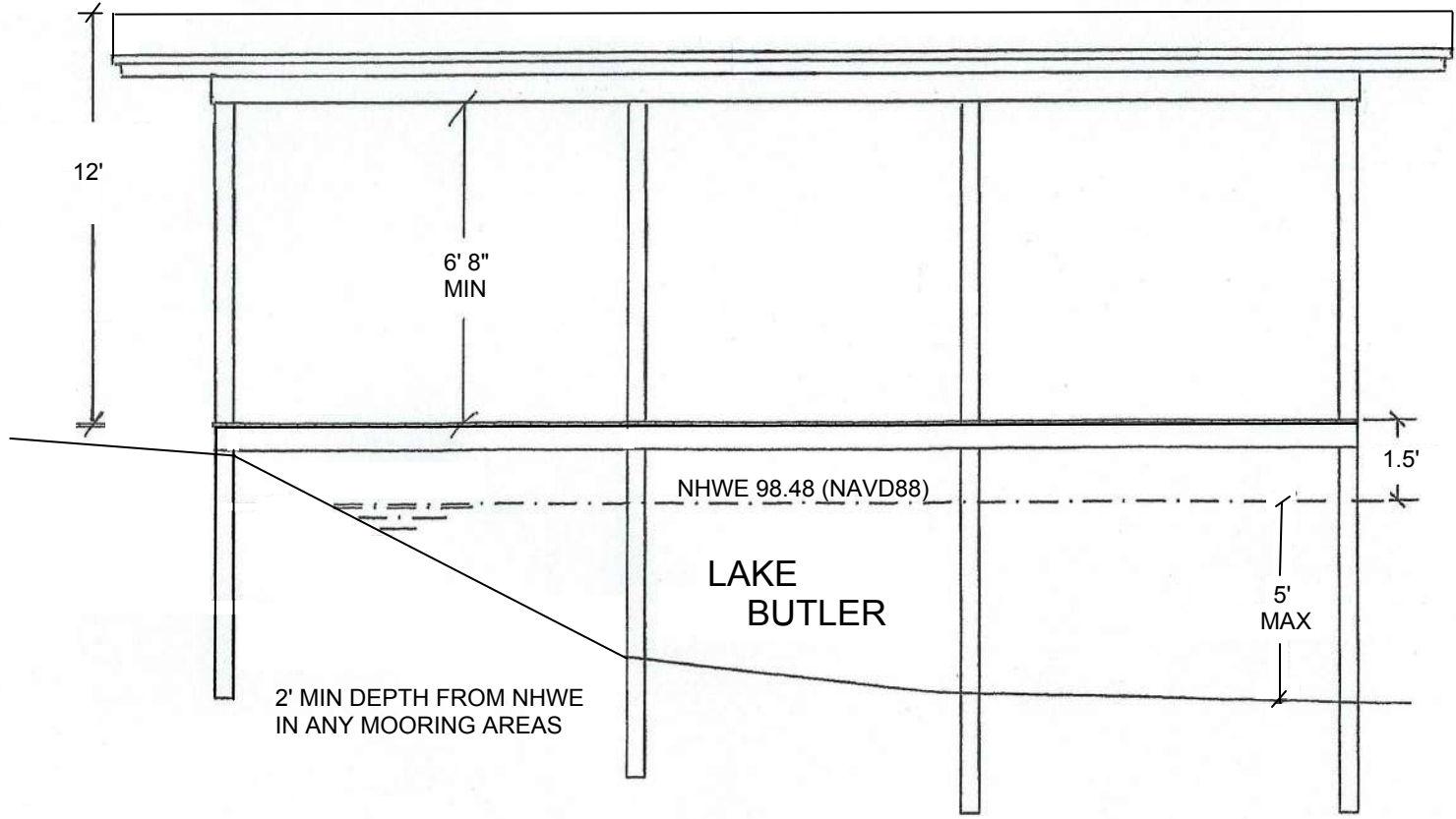
Field Date: 05/09/23	Date Completed: 05/12/23	Notes:
Drawn By: PK <td>File Number: S-17242 <td>Survey is based upon the Legal Description Supplied by Client. Existing Property Lines have been RESEARCHED FOR CLARITY, OVERLAP AND/OR INCONSISTENCY. All bearings and distances are assumed to be based upon the line of record. Bearings shall show hereon, is Assumed and based upon the line of record. All bearings and distances are assumed to be based upon the line of record. All bearings and distances are assumed to be based upon the line of record.</td> </td>	File Number: S-17242 <td>Survey is based upon the Legal Description Supplied by Client. Existing Property Lines have been RESEARCHED FOR CLARITY, OVERLAP AND/OR INCONSISTENCY. All bearings and distances are assumed to be based upon the line of record. Bearings shall show hereon, is Assumed and based upon the line of record. All bearings and distances are assumed to be based upon the line of record. All bearings and distances are assumed to be based upon the line of record.</td>	Survey is based upon the Legal Description Supplied by Client. Existing Property Lines have been RESEARCHED FOR CLARITY, OVERLAP AND/OR INCONSISTENCY. All bearings and distances are assumed to be based upon the line of record. Bearings shall show hereon, is Assumed and based upon the line of record. All bearings and distances are assumed to be based upon the line of record. All bearings and distances are assumed to be based upon the line of record.
<ul style="list-style-type: none"> C - Contour CL - Contour Line CM - Contour Monument CP - Contour Point CS - Contour Station CSA - Contour Station Area CSB - Contour Station Boundary CSM - Contour Station Monument CSN - Contour Station Nail CSO - Contour Station Offset CSR - Contour Station Reference CSU - Contour Station Utility CSV - Contour Station Vertical CSW - Contour Station Water CSX - Contour Station X CSY - Contour Station Y CSZ - Contour Station Z 	<ul style="list-style-type: none"> PC - Point of Commencement PI - Point of Intersection POB - Point of Beginning POI - Point of Interest POJ - Point of Junction POK - Point of Knowledge POL - Point of Location POM - Point of Monument PON - Point of Notice POO - Point of Observation POP - Point of Possession POQ - Point of Possibility POR - Point of Record POS - Point of Survey POT - Point of Title POU - Point of Utility POV - Point of Vertical POW - Point of Water POX - Point of X POY - Point of Y POZ - Point of Z 	<ul style="list-style-type: none"> Revisions 1. Initial Survey 2. Final Survey 3. Final Survey 4. Final Survey 5. Final Survey 6. Final Survey 7. Final Survey 8. Final Survey 9. Final Survey 10. Final Survey 11. Final Survey 12. Final Survey 13. Final Survey 14. Final Survey 15. Final Survey 16. Final Survey 17. Final Survey 18. Final Survey 19. Final Survey 20. Final Survey

**POWELL BOAT DOCK PLAN VIEW
212 WEST 1ST AVENUE
WINDERMERE, FL 34786**

11.2' X 38' BOATHOUSE
25' X 38' X .5 TRIANGULAR SUNDECK
701.6 SQ.FT. OVER WATER
(11.2' X 38' - 6' X 8' X .5 + 20' X 30' X .5)
900.6 TOTAL SQUARE FEET



POWELL BOAT DOCK ELEVATION
212 WEST 1ST AVENUE
WINDERMERE, FL 34786



2' MIN DEPTH FROM NHWE
IN ANY MOORING AREAS

NHWE 98.48 (NAVD88)

LAKE
BUTLER

5'
MAX

PILINGS WRAPPED WITH HDPE FROM 1' ABOVE THE NHWE TO 1' BELOW LAKE BOTTOM

**AFFECTED ADJACENT PROPERTY OWNER
LETTER OF NO OBJECTION
TO BOAT DOCK SIDE-SETBACK WAIVER REQUEST**

I, Anthony Pearce, a legal property owner of property located at 78 Forest St, Windermere, FL 34786
(Adjacent Property Owner Name) *(Address)*

have reviewed the dock construction plans dated 9/23/23, for the property located at
212 West 1st Ave, Windermere, FL 34786 and have no objections, subject to the dock NOT exceeding 35 feet in length.

The dock construction plans include a side setback waiver request of 10' feet, in lieu of the minimum setback distance required by Code.



[Handwritten Signature]

(Signature - Adjacent Affected Property Owner)

10-14-2023
(Date)

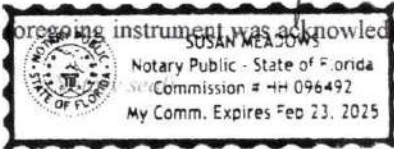
Anthony Pearce

(Print Name - Adjacent Affected Property Owner)

ACKNOWLEDGEMENT:

STATE OF FLORIDA
 COUNTY OF Orange

The foregoing instrument was acknowledged before me this 14th day of October, 2023, by Susan Meadows
 NAME OF NOTARY



[Handwritten Signature]
(Signature of Notary Public - State of Florida)

Personally Known OR Produced Identification

Type of Identification Produced F.O.L.

**AFFECTED ADJACENT PROPERTY OWNER
LETTER OF NO OBJECTION
TO BOAT DOCK SIDE-SETBACK WAIVER REQUEST**

I, Jeff Szukalski, a legal property owner of property located at 219 W 2nd Avenue,
(Adjacent Property Owner Name) (Address)

have reviewed the dock construction plans dated 1/15/24, for the property located at
212 West 1st Avenue, and have no objections.

The dock construction plans include a side setback waiver request of 10.8' feet, in lieu of the minimum setback distance required by Code.



Jeff Szukalski
(Signature - Adjacent Affected Property Owner)

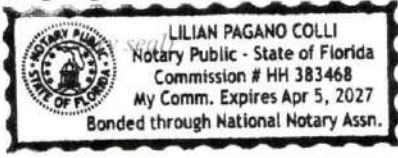
1-22-2024
(Date)

Jeff Szukalski
(Print Name - Adjacent Affected Property Owner)

ACKNOWLEDGEMENT:

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 22 day of January, 2024, by Lilian P. Colli



Lilian P. Colli
(Signature of Notary Public - State of Florida)

NAME OF NOTARY

Personally Known _____ OR Produced Identification ✓

Type of Identification Produced DL# S 242-430-78-149-0



Environmental Protection Division

DOCK CONSTRUCTION PERMIT

Permit No.: BD-23-10-136

Date Issued: December 13, 2023

Date Expires: December 13, 2024

A Permit Authorizing:

The construction of a dock not to exceed the measurements identified on the Environmental Protection Division (EPD) stamp on the plans dated as received by EPD on October 9, 2023.

EPD has evaluated the proposed activity and has made a finding that the request is consistent with Orange County Code, Chapter 15, Article IX, Construction of Dock Ordinance of Orange County and is subject to the permit conditions provided on the following pages:

Activity Location:

212 W. 1st Avenue, Windermere, FL 34786

Parcel ID No.: 17-23-28-9336-04-270

Lake Name: Butler

Orange County Commission District: 1

Permittee(s) / Authorized Entity:

Eric and Rhonda Powell

c/o Sheila Cichra

Streamline Permitting, Inc.

Email: sheilacichra@gmail.com

Orange County Environmental Protection Division
3165 McCrory Place, Suite 200
Orlando, Florida 32803
407-836-1400/ Fax: 407-836-1499
www.OCEPD.org

As the permit holder, you are responsible for ensuring that all the conditions are met. If you are using a contractor to perform the activities authorized within the permit you are both responsible for meeting the conditions of your permit. If you fail to meet any of the conditions, you and/or your contractor may be subject to formal enforcement which may include administrative penalties.

Approval of this permit is subject to the following conditions:

General Conditions for Dock Construction Permits:

1. This permit shall become final and effective upon expiration of the 15-calendar day appeal period following the date of issuance unless an appeal has been filed within this timeframe. For permits that required approval by the Board of County Commissioners (BCC), the permit shall become final and effective upon expiration of the 30-calendar day period following the date of rendition of the BCC's decision approving the permit, unless a petition for writ of certiorari or other legal challenge has been filed within this timeframe. Any appeal shall stay on the effective date of this permit until all appeals are resolved.
2. The operational phase of this permit is effective upon the completion of construction and continues in perpetuity.
3. Construction activities shall be completed in accordance with the approved site plans included with this permit. Construction shall not exceed the measurements identified on the stamp on the plans. The permitted work must be completed within one year of the date of issuance of the permit. Requests for permit extension must be submitted to the EPD prior to the expiration date.
4. The dock must be constructed within an access corridor pursuant to Chapter 15, Article VII, Section 15-255(1). No access corridor is allowed through any conservation area and/or easement.
5. The structure and its use shall not significantly impede navigability in the waterbody.
6. There shall be no dredging or filling associated with construction of the structure(s) authorized herein, other than that required for installation of structural pilings.
7. Dock structures will be maintained in a functional condition and will be repaired or removed if they become dilapidated to such an extent that they are no longer functional.
8. The dock must be constructed to meander around native trees to minimize impacts to natural resources. If any trees are removed (dead or alive), EPD must be notified immediately, and a restoration plan must be submitted to EPD for approval. At a minimum, the plan must consist of native wetland plants on 2-foot centers and native wetland trees on 10-foot centers. The ratio will be at least 4:1 ratio for any trees that are removed.
9. If any fallen trees are located within the proposed dock location, they may be cut in place and left within the wetland/conservation area. If trees must be removed, only hand removal is permitted; no heavy equipment or machinery may be utilized. Debris must be removed without displacing soil.
10. Any existing dock shall be completely removed before construction of the new dock can begin. Appropriate erosion and sediment control measures shall be installed around the work area and shall remain in place until all sediments have settled out of the water column. Pilings associated with the existing dock shall be cut at the substrate line or jetted out. All removed materials shall be disposed of at an appropriate offsite location. If the new dock is to be constructed in a different location along the shoreline, the previously cleared access corridor shall be allowed to naturally revegetate for one

year. Should the area not be re-established with appropriate native aquatic or wetland vegetation, invasive species removal and replanting may be required.

11. Unless expressly authorized by this permit and approved site plans, no floating platform structure has been approved with the issuance of this permit. If, at any time, any addition to the terminal platform (including, but not limited to, a floating platform) is proposed, the permittee(s) or future owners of the property may be required to apply for, and obtain, a new Dock Construction Permit.
12. All excess lumber, scrap wood, trash, garbage, and similar materials shall be removed from the project area immediately.
13. The permit holder and/or designated agent must submit a notice of completion to EPD within 30 days of completion of the construction or repair of the permitted structure so that a compliance check may be performed by EPD staff. The permittee(s) must provide as-built drawings on a final survey, signed, and sealed by an appropriate professional licensed by the State of Florida, with the notice of completion. The signed and sealed as-built survey shall consist of an aerial view and a side view of the dock as well as any other information required to demonstrate compliance with the permit. The following items must be included on the survey:
 - a. North arrow;
 - b. Name of water body;
 - c. Reference point;
 - d. Setback distance from all portions of the boat dock;
 - e. The Normal High Water Elevation (NHWE);
 - f. Floor elevation (measured from the NHWE);
 - g. Roof elevation (measured from the top of the floor to the top of the roof);
 - h. Length of the dock below the NHWE;
 - i. Access walkway width;
 - j. Conservation easements, wetlands, buffers, berm and swale/drainage easements;
 - k. Floor elevation of the dock through wetlands;
 - l. Complete dimensions of the terminal platform; and
 - m. Elevation of the lake bottom at the waterward end of the terminal platform.
14. Upon completion of construction, the permittee(s) shall provide EPD with photographs of the dock to wetlandpermitting@ocfl.net from the following locations:
 - a. From the shoreline or backyard looking out towards the lake and dock;
 - b. View of the terminal platform from access walkway;
 - c. The end of the terminal platform looking back towards the shoreline;
 - d. View from each property corner looking towards the dock;
 - e. View of the access walkway with a tape measure in frame to show the height of the top of the access walkway deck over wetlands (if applicable); and,
 - f. View of the water depth at the waterward end of the terminal platform with a tape measure in frame that is flush with the top of the deck so a dimension is clearly visible.
15. At least 48-hours prior to commencement of activity authorized by this permit, the permittee(s) shall submit to EPD at wetlandpermitting@ocfl.net, a Construction Notice indicating the actual start date and expected completion date.
16. The permittee(s) shall notify EPD, in writing, within 30 days of any sale, conveyance, or other transfer of ownership or control of the real property subject to this permit. The permittee(s) shall remain liable for all permit conditions and corrective actions that may be required as a result of any permit violations which occur prior to the transfer of the permit by Orange County to a subsequent

owner. If applicable, no permit shall be transferred unless and until adequate financial assurance has been provided and approved by Orange County.

17. A copy of this permit, along with EPD stamped and approved drawings should be taken to the Orange County Zoning Division (OCZD) at 201 South Rosalind Avenue to obtain a building permit. For further information, please contact the OCZD at (407) 836-5525. After approval by OCZD, the certified site plans will need to be reviewed by the Orange County Building Safety Division (OCBSD) to obtain a building permit. For further information, please contact the OCBSD at (407) 836-5550.
18. If the property is within the Town of Windermere, a copy of this permit, along with EPD stamped and approved drawings should be taken to the Town of Windermere at 614 Main Street to obtain a building permit. For further information, please contact the Town of Windermere at 407-876-2563.
19. Some lakes experience a wide fluctuation of water levels. There may be times during the year that the dock authorized herein may not be usable to access the water.
20. Subject to the terms and conditions herein, the permittee(s) is hereby authorized to perform or cause to be performed, the impacts shown on the application and approved drawings, plans, and other documents attached hereto or on file with EPD. The permittee(s) binds itself and its successors to comply with the provisions and conditions of this permit. If EPD determines at any time that activities are not in accordance with the conditions of the permit, work shall cease, and the permit may be revoked immediately by the Environmental Protection Officer. Notice of the revocation shall be provided to the permit holder promptly thereafter.
21. Prior to construction, the permittee(s) shall clearly designate the limits of construction on-site. The permittee(s) shall advise the contractor that any work outside the limits of construction, including clearing, may be a violation of this permit.
22. The projected property lines, as identified on the stamped permit drawings, should be field staked by a professional land surveyor prior to the start of construction to be sure that the dock is constructed in the permitted location. Utilizing an adjacent boat dock or fence line is not sufficient for accurate placement of the dock and may result in the placement of the dock in the wrong location. It is extremely important to build the dock in the approved location. Upon completion of construction, if an unauthorized encroachment into the required minimum setback occurs, you may be required to relocate the dock.
23. The permittee(s) shall require the contractor to maintain a copy of this permit, complete with all approved drawings, plans, conditions, attachments, exhibits, and modifications in good condition at the construction site. The permittee(s) shall require the contractor to review the permit prior to commencement of the activity authorized by this permit. The complete permit shall be available upon request by Orange County staff.
24. Issuance of this permit does not warrant in any way that the permittee(s) has riparian or property rights to construct any structure permitted herein and any such construction is done at the sole risk of the permittee(s). In the event that any part of the structure(s) permitted herein is determined by a final adjudication issued by a court of competent jurisdiction to encroach on or interfere with adjacent property owner's riparian or other property rights, the permittee(s) agrees to either obtain written consent or to remove the offending structure or encroachment within 60 days from the date of the adjudication. Failure to comply shall constitute a material breach of this permit and shall be grounds for its immediate revocation.
25. This permit does not release the permittee(s) from complying with all other federal, state, and local laws, ordinances, rules and regulations. Specifically, this permit does not eliminate the necessity to

obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee(s) or create in the permittee(s) any property right, or any interest in real property, nor does it authorize any entrance upon or activities upon property which is not owned or controlled by the permittee(s), or convey any rights or privileges other than those specified in the permit and Chapter 15, Article IX of the Orange County Code. If these permit conditions conflict with those of any other regulatory agency the permittee(s) shall comply with the most stringent conditions. The permittee(s) shall immediately notify EPD of any conflict between the conditions of this permit and any other permit or approval.

26. The permittee(s) is hereby advised that Section 253.77, Florida Statutes (FS), states that a person may not commence any excavation, construction, or other activity involving the use of sovereignty or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement or other form of consent authorizing the proposed use. Therefore, the permittee(s) is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
27. Should any other regulatory agency require changes to the permitted activities, the permittee(s) shall provide written notification to EPD of the change prior to implementation so that a determination can be made whether a permit modification is required.
28. EPD shall have final construction plan approval to ensure that no modification has been made during the construction plan process.
29. The permittee(s) shall immediately notify EPD in writing of any previously submitted information that is later discovered to be inaccurate.
30. EPD staff, with proper identification, shall have permission to enter the site at any reasonable time to ensure conformity with the plans and specifications approved by the permit.
31. The permittee(s) shall hold and save the County harmless from all damages, claims or liabilities, which may arise by reason of the activities authorized by the permit.
32. All costs, including attorney's fees, incurred by the County in enforcing the terms and conditions of this permit shall be required to be paid by the permittee(s).
33. The permittee(s) agrees that any dispute arising from matters relating to this permit shall be governed by the laws of Florida and initiated only in Orange County.
34. Turbidity and sediments shall be controlled to prevent violations of water quality pursuant to Rules 62-302.500, 62-302.530(70) and 62-4.242 Florida Administrative Code. Best Management Practices, as specified in the Florida Stormwater, Erosion, and Sedimentation Control Inspector's Manual, shall be installed, and maintained at all locations where the possibility of transferring suspended solids into wetlands and/or surface waters may occur due to the permitted activity. If site-specific conditions require additional measures, then the permittee(s) shall implement them as necessary to prevent adverse impacts to wetlands and/or surface waters.
35. Pursuant to Section 125.022 FS, issuance of this permit by the County does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the County for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law.

36. Pursuant to Section 125.022 FS, the applicant shall obtain all other applicable state or federal permits before commencement of the activity authorized herein.

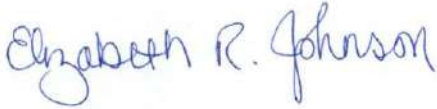
If you should have any questions concerning this permit, please contact Caroline Dragiev at 407-836-1448 or Caroline.Dragiev@ocfl.net.

Project Manager:



Caroline Dragiev, Senior Environmental Specialist

Authorized for the Orange County Environmental Protection Division by:



for

Renée H. Parker, LEP, Environmental Protection Officer

CD/~~KK~~/ERJ/RHP: gfdjr

Enclosure(s): Construction Notice
 Approved Plans

c: Eric Powell, ExcelEric1@yahoo.com
Florida Department of Environmental Protection, DEP_CD@dep.state.fl.us
Brad Cornelius, Town of Windermere, bcornelius@wadetrim.com
Tim Hull, EPD, Tim.Hull@ocfl.net



Construction Notice

- BEGINNING OF CONSTRUCTION
- COMPLETION OF CONSTRUCTION

Mail to: Orange County Environmental Protection Division
3165 McCrory Place, Suite 200
Orlando, FL 32803
Or Fax to: 407-836-1499
Or E-Mail to: WetlandPermitting@ocfl.net

Permit Number and Name: BD-23-10-136, 212 WEST 1ST AVE. - Powell

Permit Type: BOAT DOCK

Approximate Starting Date: _____

Approximate Completion Date: _____

Remarks or any additional information:

I certify I am the permittee / Authorized Entity of the above permit issued by the Orange County Environmental Protection Division and in accordance with the terms of such permit will begin or have completed the actual construction of the work described in the permit.

Signature of Permittee: _____

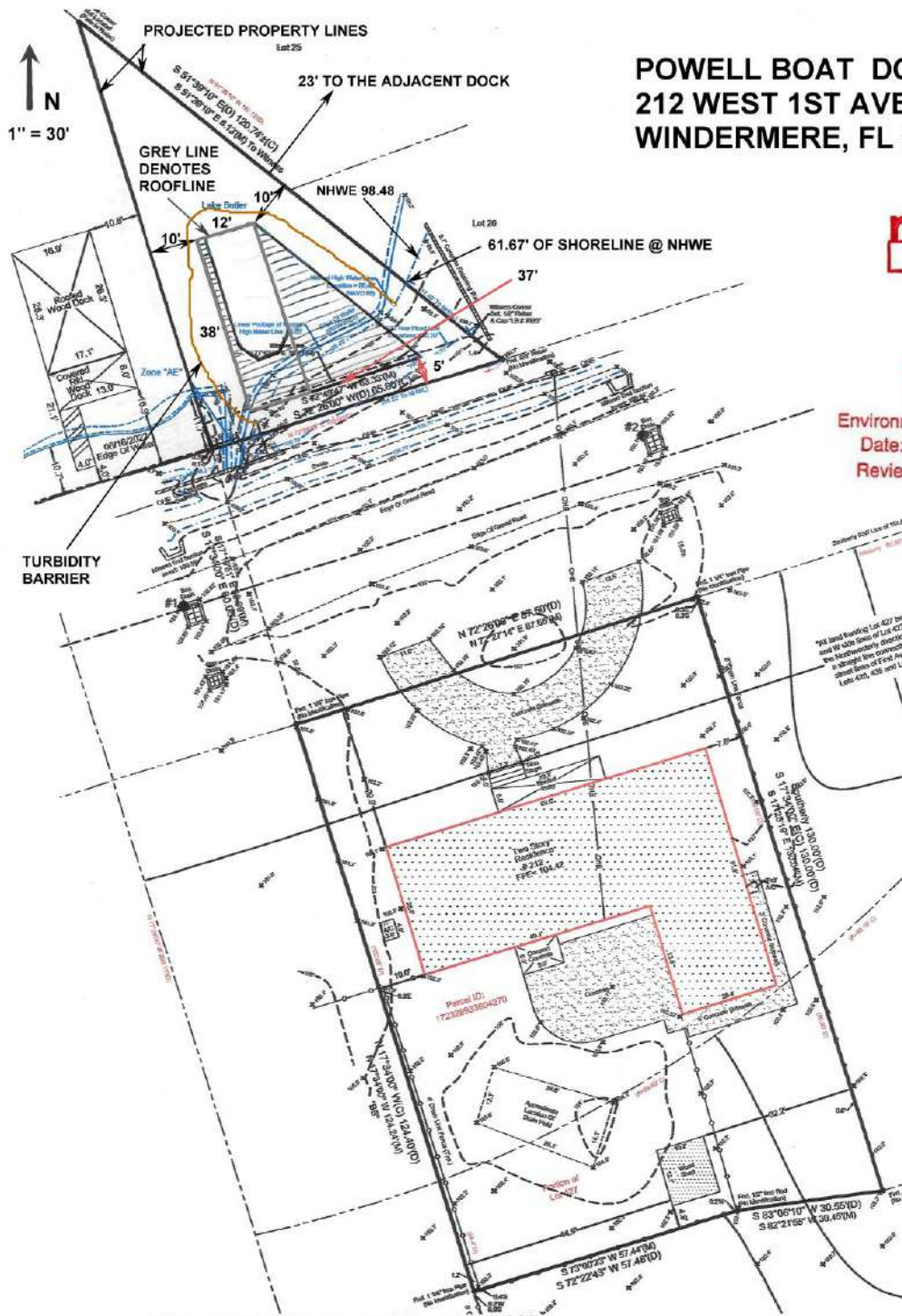
Printed name of Permittee: _____

Date: _____

**POWELL BOAT DOCK SITE PLAN
212 WEST 1ST AVENUE
WINDERMERE, FL 34786**

received
10/9/2023

Approved By The
Orange County
Environmental Protection Division
Date: 11/28/2023
Reviewer: C. Dragiev
BD-23-10-136

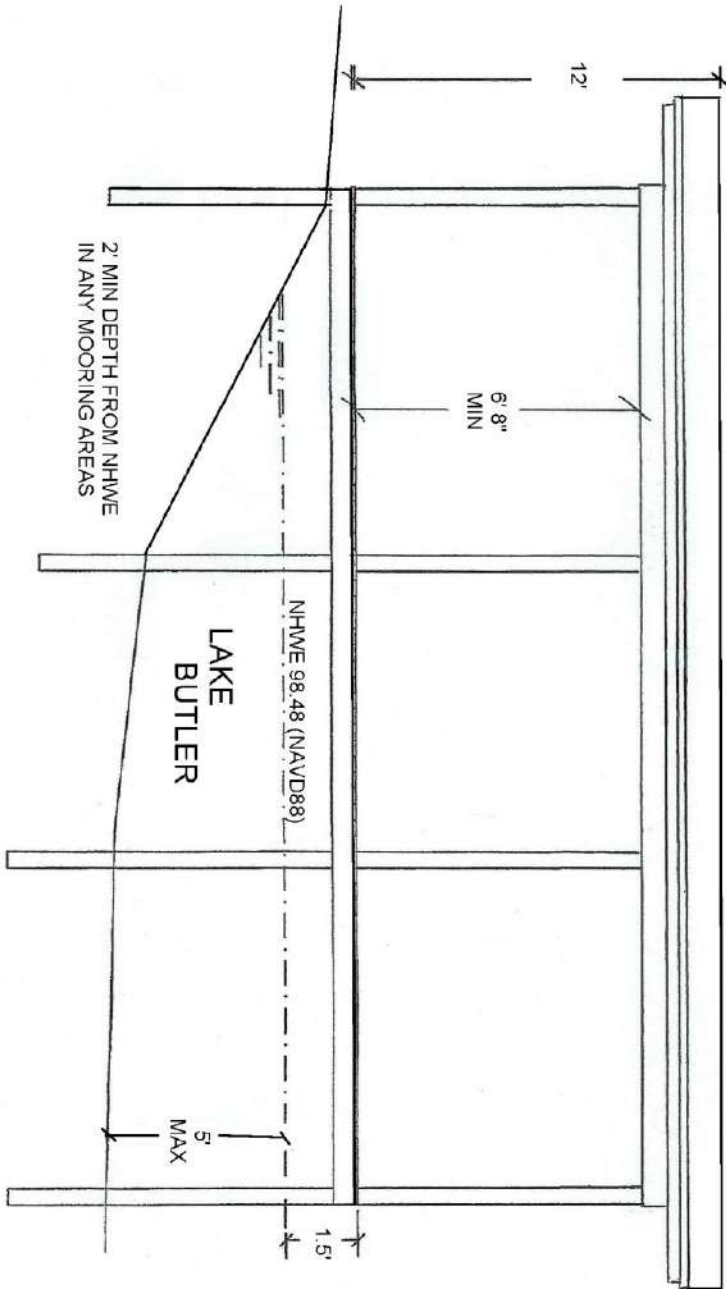


- Minimum Side Setbacks (L) 10ft & (R) 10ft
- Maximum Terminal Platform Size 740sqft
- Maximum Water Depth at Terminal Platform 5 feet
- Maximum Roof Height Above Floor 15 feet
- Minimum Floor Height Above the NHWE 1 foot
- Minimum Floor Height Above Wetlands 3 feet
- Maximum Width of Walkway 5 feet

In addition to public regulations which Orange County enforces, be advised that there may be other private restrictions or approval requirements that will affect your ability to complete this project. Please review your deed restrictions and/or consult with your Homeowners Association or Architectural Review Board.

**POWELL BOAT DOCK ELEVATION
212 WEST 1ST AVENUE
WINDERMERE, FL 34786**

received
10/9/2023



PILINGS WRAPPED WITH HDPE FROM 1' ABOVE THE NHWE TO 1' BELOW LAKE BOTTOM


Approved By The
Orange County
Environmental Protection Division
Date: 11/28/2023
Reviewer: C. Dragle
BD-23-10-136

Minimum Side Seabecks (1) 10ft & 10ft
Maximum Terminal Platform Size 240sqft
Maximum Water Depth at Terminal Platform 5 feet
Maximum Roof Height Above Floor 13 feet
Minimum Floor Height Above the NHWE 1 foot
Minimum Floor Height Above Wetlands 3 feet
Maximum Width of Walkway 5 feet

In addition to public regulations which Orange County enforces, be advised that there may be other private restrictions or approval requirements that will affect your ability to complete this project. Please review your deed restrictions and/or consult with your Homeowners Association or Architectural Review Board.

AGENT AUTHORIZATION FORM

I/WE, (PRINT PROPERTY OWNER NAME) Ryka LLC, AS THE OWNER(S) OF THE REAL PROPERTY DESCRIBED AS FOLLOWS, 212 West 1st Avenue, DO HEREBY AUTHORIZE TO ACT AS MY/OUR AGENT (PRINT AGENT'S NAME), Sheila Cichra, TO EXECUTE ANY PETITIONS OR OTHER DOCUMENTS NECESSARY TO AFFECT THE APPLICATION APPROVAL REQUESTED AND MORE SPECIFICALLY DESCRIBED AS FOLLOWS, Boat Dock Permit, AND TO APPEAR ON MY/OUR BEHALF BEFORE ANY ADMINISTRATIVE OR LEGISLATIVE BODY IN THE COUNTY CONSIDERING THIS APPLICATION AND TO ACT IN ALL RESPECTS AS OUR AGENT IN MATTERS PERTAINING TO THE APPLICATION.

Date: 12/20/23  Signature of Property Owner Eric Powell Print Name Property Owner

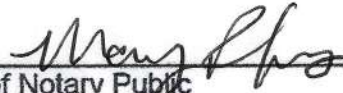
Date: _____ Signature of Property Owner _____ Print Name Property Owner

STATE OF FLORIDA :
 COUNTY OF Orange :

I certify that the foregoing instrument was acknowledged before me this 20th day of December, 2023 by Eric Powell. He/she is personally known to me or has produced _____ as identification and did/did not take an oath.

Witness my hand and official seal in the county and state stated above on the 20th day of December, in the year 2023.




 Signature of Notary Public
 Notary Public for the State of Florida

My Commission Expires: _____

Legal Description(s) or Parcel Identification Number(s) are required:
PARCEL ID #: <u>17-23-28-9336-04-270</u>
LEGAL DESCRIPTION:
PLAT OF WINDERMERE G/36 LOT 427 (LESS ELY 80 FT OF NLY 130 FT INCLUDING THAT PORTION OF SAID VAC ST TO N) & N 25 FT OF LOT 426 (LESS W 25 FT) & VAC ST ON N & LAND IN LAKE DESC AS FROM SW COR LOT 469 RUN NE 245 FT S 51 DEG E 81 FT FOR POB RUN S 17 DEG E 100 FT TO N ST LINE 1ST AVE TH N 72 DEG E 65 FT TH N 51 DEG W 106.12 FT TO POB (LESS BEG SWLY COR LOT 427 RUN N 72 DEG E 25 FT S 17 DEG E 25 FT N 72 DEG E 142.5 FT N 17 DEG W 95 FT S 72 DEG W 80 FT S 83 DEG W 30.55 FT S 72 DEG W 57.48 FT S 17 DEG E 75.6 FT TO POB)



Florida Department of Environmental Protection

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

Central District Office
3319 Maguire Blvd., Suite 232
Orlando, Florida 32803
DEP_CD@floridadep.gov

November 13, 2023

Eric Powell
212 W. 1st Avenue
Windermere, FL 34786-8500
ExcelEric1@yahoo.com

File No.: 440849-001-EG, Orange County

Dear: Mr. Powell,

On October 7, 2023, we received your notice of intent to use a General Permit (GP), pursuant to Rule 62-330.427, Florida Administrative Code, F.A.C., to construct a new 931 square foot boathouse and deck in Butler Chain of Lakes, a Class III Florida waterbody, and Outstanding Florida Water. The project is located at 212 W. 1st Avenue, Windermere, FL 34786-8500, Section 8, Township 23 South, Range 28 East, Orange County.

Your intent to use a general permit has been reviewed by Department staff for three types of authorizations: (1) regulatory authorization, (2) proprietary authorization (related to state-owned submerged lands), and (3) federal authorization. The authority for review and the outcomes of the reviews are listed below. Please read each section carefully.

Your project qualifies for all three authorizations. However, this letter does not relieve you from the responsibility of obtaining other federal, state, or local authorizations that may be required for the activity.

If you change the project from what you submitted, the authorization(s) granted may no longer be valid at the time of commencement of the project. Please contact us prior to beginning your project if you wish to make any changes.

1. Regulatory Review – Approved

Based on the forms, drawings, and documents revised with your notice, it appears that the project meets the requirements for the General Permit under Rule 62-330.427, F.A.C. Any activities performed under a general permit are subject to general conditions required in Rule 62-330.405, F.A.C. (attached), and the specific conditions of Rule 62-330.427, F.A.C. (attached). Any deviations from these conditions may subject the permittee to enforcement action and possible penalties.

Please be advised that the construction phase of the GP must be completed within five years from the date the notice to use the GP was received by the Department. If you wish to continue this GP beyond the expiration date, you must notify the Department at least 30 days before its expiration.

Authority for review- Part IV of Chapter 373, F.S., Title 62, F.A.C. and in accordance with the operating agreements executed between the Department and the water management districts, as referenced in Chapter 62-113, F.A.C.

2. Proprietary Review – Granted

The Department acts as staff to the Board of Trustees of the Internal Improvement Trust Fund (Board of Trustees) and issues certain authorizations for the use of sovereign submerged lands. The Department has the authority to review activities on sovereign submerged lands under Chapter 253 of the Florida Statutes (F.S.) and 258, F.S. if located within an aquatic preserve, and Chapters 18-20 and 18-21 of the Florida Administrative Code.

The activity may be located on sovereign submerged lands owned by the Board of Trustees. The activity is not exempt from the need to obtain the applicable proprietary authorization. As staff to the Board of Trustees, the Department has reviewed the activity described above, and has determined that the activity qualifies for a letter of consent under Section 253.77, Florida Statutes, to construct and use the activity on the specified sovereign submerged lands, as long as the work performed is located within the boundaries as described herein and is consistent with the terms and conditions herein.

During the term of this Letter of Consent you shall maintain satisfactory evidence of sufficient upland interest as required by paragraph 18-21.004(3)(b), Florida Administrative Code. If such interest is terminated or the Board of Trustees determines that such interest did not exist on the date of issuance of this Letter of Consent, this Letter of Consent may be terminated by the Board of Trustees at its sole option. If the Board of Trustees terminates this Letter of Consent, you agree not to assert a claim or defense against the Board of Trustees arising out of this Letter of Consent.

Please be advised that any use of sovereign submerged lands without specific prior authorization from the Board of Trustees will be considered a violation of Chapter 253, Florida Statutes and may subject the affected upland riparian property owners to legal action as well as potential fines for the prior unauthorized use of sovereign land.

Authority for review - Chapter 253 F.S., and Chapter 18-21, F.A.C., and Section 62-330.075, F.A.C. as required.

3. Federal Review- SPGP Not Applicable

Your proposed activity as outlined in your application and attached drawings **does not qualify** for Federal authorization pursuant to the State Programmatic General Permit VI-R1, and a **SEPARATE permit** or authorization **will not be required** from the U.S. Army Corps of

Engineers. The activity, as proposed, does not involve discharge of dredged or fill material into the waters of the United States and therefore, a **SEPARATE PERMIT** or authorization pursuant to the State 404 Program, as described in Chapter 62-331, F.A.C. **will not be required.**

Authority for review - an agreement with the USACOE entitled "Coordination Agreement Between the U. S. Army Corps of Engineers (Jacksonville District) and the Florida Department of Environmental Protection (or Duly Authorized Designee), State Programmatic General Permit", Section 10 of the Rivers and Harbor Act of 1899, and Section 404 of the Clean Water Act.

Additional Information

Please retain this general permit. The activities may be inspected by authorized state personnel in the future to ensure compliance with appropriate statutes and administrative codes. If the activities are not in compliance, you may be subject to penalties under Chapter 373, F.S., and Chapter 18-14, F.A.C.

NOTICE OF RIGHTS

This action is final and effective on the date filed with the Clerk of the Department unless a petition for an administrative hearing is timely filed under Sections 120.569 and 120.57, F.S., before the deadline for filing a petition. On the filing of a timely and sufficient petition, this action will not be final and effective until further order of the Department. Because the administrative hearing process is designed to formulate final agency action, the hearing process may result in a modification of the agency action or even denial of the application.

Petition for Administrative Hearing

A person whose substantial interests are affected by the Department's action may petition for an administrative proceeding (hearing) under Sections 120.569 and 120.57, F.S. Pursuant to Rules 28-106.201 and 28-106.301, F.A.C., a petition for an administrative hearing must contain the following information:

- (a) The name and address of each agency affected and each agency's file or identification number, if known;
- (b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- (c) A statement of when and how the petitioner received notice of the agency decision;
- (d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

- (e) A concise statement of the ultimate facts alleged, including the specific facts that the petitioner contends warrant reversal or modification of the agency's proposed action;
- (f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- (g) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received by the Clerk) in the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us. Also, a copy of the petition shall be mailed to the applicant at the address indicated above at the time of filing.

Time Period for Filing a Petition

In accordance with Rule 62-110.106(3), F.A.C., petitions for an administrative hearing by the applicant and persons entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of receipt of this written notice. Petitions filed by any persons other than the applicant, and other than those entitled to written notice under Section 120.60(3), F.S., must be filed within 21 days of publication of the notice or within 21 days of receipt of the written notice, whichever occurs first. You cannot justifiably rely on the finality of this decision unless notice of this decision and the right of substantially affected persons to challenge this decision has been duly published or otherwise provided to all persons substantially affected by the decision. While you are not required to publish notice of this action, you may elect to do so pursuant Rule 62-110.106(10)(a).

The failure to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under Sections 120.569 and 120.57, F.S., or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with Rule 28-106.205, F.A.C. If you do not publish notice of this action, this waiver will not apply to persons who have not received written notice of this action.

Extension of Time

Under Rule 62-110.106(4), F.A.C., a person whose substantial interests are affected by the Department's action may also request an extension of time to file a petition for an administrative hearing. The Department may, for good cause shown, grant the request for an extension of time. Requests for extension of time must be filed with the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, or via electronic correspondence at Agency_Clerk@dep.state.fl.us, before the deadline for filing a petition for an administrative hearing. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

Mediation

Mediation is not available in this proceeding.

FLAWAC Review

The applicant, or any party within the meaning of Section 373.114(1)(a) or 373.4275, F.S., may also seek appellate review of this order before the Land and Water Adjudicatory Commission under Section 373.114(1) or 373.4275, F.S. Requests for review before the Land and Water Adjudicatory Commission must be filed with the Secretary of the Commission and served on the Department within 20 days from the date when this order is filed with the Clerk of the Department.

Judicial Review

Once this decision becomes final, any party to this action has the right to seek judicial review pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Florida Rules of Appellate Procedure 9.110 and 9.190 with the Clerk of the Department in the Office of General Counsel (Station #35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000) and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice must be filed within 30 days from the date this action is filed with the Clerk of the Department.

EXECUTION AND CLERKING

Executed in Orlando, Florida.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Teayann Duclos
Environmental Manager
Permitting and Waste Cleanup Program

Enclosures:

62-330.427, F.A.C.
General Conditions for All General Permits, Ch. 62-330.405, F.A.C.
Special Consent Conditions
General Conditions for Authorizations for Activities on State-Owned Submerged Lands
Project drawings, 3 pages

62-330.427 General Permit for Docks, Piers and Associated Structures.

(1) A general permit is granted to any person to construct, extend, or remove a dock or pier and associated structures as described below:

(a) A private, single-family pier or dock with up to two boat lifts that, together with all existing structures on the shoreline of the property, does not exceed a total area of 2,000 square feet over surface waters. Such a structure:

1. Shall not accommodate the mooring of more than two vessels, either in the water or on a boat lift. Solely for purposes of this general permit, up to two personal watercraft as defined in section 327.02(33), F.S., may be moored in lieu of either or both allowable vessels of another type.

These limits shall not apply to the mooring, storage or other use of the dock or pier by:

a. Non-motor-powered vessels less than 16 feet in length that are stored on or under the dock or pier, or within an authorized mooring area; or

b. Personal watercraft, dinghies or similar small vessels that are stowed out of the water, upon a larger parent vessel that is moored at the dock in compliance with this general permit.

2. Shall be located such that all areas used for vessel mooring and navigational access already provide a minimum depth of two feet below the mean low water level for tidal waters, or two feet below the expected average low water depth for non-tidal waters as determined based on best available information for the water body at the project location; and

3. May include a roof over the vessel mooring areas, boat lifts, and terminal platform, or any portions thereof, subject to the applicable provisions of chapters 253 and 258, F.S., and the rules adopted thereunder. Portions of such roofs that overhang beyond the edge of decked portions of the pier or dock shall be included in the calculation of the total square footage of over-water structure allowed under paragraph (1)(a), above.

(b) A public fishing pier that does not exceed a total area of 2,000 square feet provided the structure is designed and built to discourage boat mooring by elevating the fishing pier to a minimum height of five feet above mean high water or ordinary high water, surrounding the pier with handrails, and installing and maintaining signs that state "No Boat Mooring Allowed."

(2) This general permit shall be subject to the following specific conditions:

(a) Construction or extension of the boat lift, boat mooring location, or terminal platform, shall not occur over submerged grassbeds, coral communities or wetlands. However, the access walkway portion of the pier may traverse these resources provided it is elevated a minimum of five feet above mean high water or ordinary high water, contains handrails that are maintained in such a manner as to prevent use of the access walkways for boat mooring or access, and does not exceed a width of six feet, or a width of four feet in Aquatic Preserves;

(b) There shall be no structures enclosed by walls, screens, or doors on any side;

(c) The dock or pier will not facilitate vessel rentals, charters, or serve any other commercial purpose;

(d) There shall be no fish cleaning facilities, boat repair facilities or equipment, or fueling facilities on the structures authorized by this general permit. In addition, no overboard discharges of trash, human or animal waste, or fuel shall occur from any structures authorized by this general permit;

(e) This general permit shall not authorize the construction or extension of more than one dock or pier per parcel of land or individual lot. For the purposes of this general permit, multi-family living complexes shall be treated as one parcel of property regardless of the legal division of ownership or control of the associated property; and

(f) Notwithstanding any other provisions of this general permit, the design, construction and operation of the dock or pier and associated vessels shall not conflict with any manatee protection plan approved and adopted under section 379.2431(2)(t), F.S.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.418, 403.805(1) FS. Law Implemented 373.118(1), 373.406(5), 373.413, 373.4131, 373.414(9), 373.416, 373.418, 373.426, 403.814(1) FS. History—New 10-3-95, Formerly 62-341.427, Amended 10-1-13, 6-1-18.

62-330.405 General Conditions for All General Permits

The following general permit conditions are binding upon the permittee and are enforceable under chapter 373, F.S. These conditions do not apply to the general permit for stormwater management systems under section 403.814(12), F.S.

(1) The general permit is valid only for the specific activity indicated. Any deviation from the specified activity and the conditions for undertaking that activity shall constitute a violation of the permit and may subject the permittee to enforcement action and revocation of the permit under chapter 373, F.S.

(2) The general permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any construction, alteration, operation, maintenance, removal or abandonment authorized by this permit; and it does not authorize any violation of any other applicable federal, state, local, or special district laws (including, but not limited to, those governing the “take” of listed species).

(3) The general permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the general permit.

(4) The general permit does not relieve the permittee from liability and penalties when the permitted activity causes harm or injury to: human health or welfare; animal, plant or aquatic life; or property. It does not allow the permittee to cause pollution that violates state water quality standards.

(5) Section 253.77, F.S., provides that a person may not commence any excavation, construction, or other activity involving the use of state-owned or other lands of the state, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required consent, lease, easement, or other form of authorization authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on state-owned lands.

(6) The authorization to conduct activities under a general permit may be modified, suspended or revoked in accordance with chapter 120, F.S., and section 373.429, F.S.

(7) The general permit is not transferable to a new third party. To be used by a different permittee, a new notice to use a general permit must be submitted in accordance with rule 62-330.402, F.A.C. Activities constructed in accordance with the terms and conditions of a general permit are automatically authorized to be operated and maintained by the permittee and subsequent owners in accordance with subsection 62-330.340(1), F.A.C. Any person holding the general permit, persons working under the general permit, and owners of land while work is conducted under the general permit shall remain liable for any corrective actions that may be required as a result of any permit violations prior to sale, conveyance, or other transfer of ownership or control of the permitted project, activity, or the real property at which the permitted project or activity is located.

(8) Upon reasonable notice to the permittee, Agency staff with proper identification shall have permission to enter, inspect, sample and test the permitted system to ensure conformity with the plans and specifications approved by the general permit.

(9) The permittee shall maintain any permitted project or activity in accordance with the plans submitted to the Agency and authorized in the general permit.

(10) A permittee’s right to conduct a specific activity under the general permit is authorized

for a duration of five years.

(11) Activities shall be conducted in a manner that does not cause or contribute to violations of state water quality standards. Performance-based erosion and sediment control best management practices shall be implemented and maintained immediately prior to, during, and after construction as needed to stabilize all disturbed areas, including other measures specified in the permit to prevent adverse impacts to the water resources and adjacent lands. Erosion and sediment control measures shall be installed and maintained in accordance with the *State of Florida Erosion and Sediment Control Designer and Reviewer Manual (Florida Department of Environmental Protection and Florida Department of Transportation, June 2007)*, available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-04227>, and the *Florida Stormwater Erosion and Sedimentation Control Inspector's Manual (Florida Department of Environmental Protection, Nonpoint Source Management Section, Tallahassee, Florida, July 2008)*, available at http://publicfiles.dep.state.fl.us/DEAR/Stormwater_Training_Docs/erosion-inspectors-manual.pdf.

(12) Unless otherwise specified in the general permit, temporary vehicular access within wetlands during construction shall be performed using vehicles generating minimum ground pressure to minimize rutting and other environmental impacts. Within forested wetlands, the permittee shall choose alignments that minimize the destruction of mature wetland trees to the greatest extent practicable. When needed to prevent rutting or soil compaction, access vehicles shall be operated on wooden, composite, metal, or other non-earthen construction mats. In all cases, access in wetlands shall comply with the following:

(a) Access within forested wetlands shall not include the cutting or clearing of any native wetland tree having a diameter four inches or greater at breast height;

(b) The maximum width of the construction access area shall be limited to 15 feet;

(c) All mats shall be removed as soon as practicable after equipment has completed passage through, or work has been completed, at any location along the alignment of the project, but in no case longer than seven days after equipment has completed work or passage through that location; and

(d) Areas disturbed for access shall be restored to natural grades immediately after the maintenance or repair is completed.

(13) Barges or other work vessels used to conduct in-water activities shall be operated in a manner that prevents unauthorized dredging, water quality violations, and damage to submerged aquatic communities.

(14) The construction, alteration, or use of the authorized project shall not adversely impede navigation or create a navigational hazard in the water body.

(15) Except where specifically authorized in the general permit, activities must not:

(a) Impound or obstruct existing water flow, cause adverse impacts to existing surface water storage and conveyance capabilities, or otherwise cause adverse water quantity or flooding impacts to receiving water and adjacent lands; or

(b) Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to section 373.042, F.S., or a Works of the District established pursuant to section 373.086, F.S.

(16) If prehistoric or historic artifacts, such as pottery or ceramics, projectile points, stone tools, dugout canoes, metal implements, historic building materials, or any other physical remains that could be associated with Native American, early European, or American settlement are encountered at any time within the project site area, the permitted project shall cease all activities

involving subsurface disturbance in the vicinity of the discovery. The permittee or other designee shall contact the Florida Department of State, Division of Historical Resources, Compliance Review Section (DHR), at (850)245-6333, as well as the appropriate permitting agency office. Project activities shall not resume without verbal or written authorization from the Division of Historical Resources. If unmarked human remains are encountered, all work shall stop immediately and the proper authorities notified in accordance with section 872.05, F.S.

(17) The activity must be capable, based on generally accepted engineering and scientific principles, of being performed and of functioning as proposed, and must comply with any applicable District special basin and geographic area criteria.

(18) The permittee shall comply with the following when performing work within waters accessible to federally- or state-listed aquatic species, such as manatees, marine turtles, smalltooth sawfish, and Gulf sturgeon:

(a) All vessels associated with the project shall operate at “Idle Speed/No Wake” at all times while in the work area and where the draft of the vessels provides less than a four-foot clearance from the bottom. All vessels will follow routes of deep water whenever possible.

(b) All deployed siltation or turbidity barriers shall be properly secured, monitored, and maintained to prevent entanglement or entrapment of listed species.

(c) All in-water activities, including vessel operation, must be shut down if a listed species comes within 50 feet of the work area. Activities shall not resume until the animal(s) has moved beyond a 50-foot radius of the in-water work, or until 30 minutes elapses since the last sighting within 50 feet. Animals must not be herded away or harassed into leaving. All onsite project personnel are responsible for observing water-related activities for the presence of listed species.

(d) Any listed species that is killed or injured by work associated with activities performed shall be reported immediately to the Florida Fish and Wildlife Conservation Commission (FWC) Hotline at 1(888)404-3922 and ImperiledSpecies@myFWC.com.

(e) Whenever there is a spill or frac-out of drilling fluid into waters accessible to the above species during a directional drilling operation, the FWC shall be notified at ImperiledSpecies@myfwc.com with details of the event within 24 hours following detection of the spill or frac-out.

(19) The permittee shall hold and save the Agency harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any activity authorized by the general permit.

(20) The permittee shall immediately notify the Agency in writing of any submitted information that is discovered to be inaccurate.

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.406(5), 373.4131, 373.414(9), 373.4145, 373.418, 403.805(1) FS. Law Implemented 373.044, 373.118(1), 373.129, 373.136, 373.406(5), 373.413, 373.4131, 373.414(9), 373.4145, 373.416, 373.422, 373.423, 373.429, 403.814(1) FS. History—New 10-3-95, Amended 10-1-07, Formerly 62-341.215, Amended 10-1-13, 6-1-18.

Special Consent Conditions

1. The applicant agrees to indemnify, defend and hold harmless the Board of Trustees and the State of Florida from all claims, actions, lawsuits and demands in any form arising out of the authorization to use sovereignty submerged lands or the applicant's use and construction of structures on sovereignty submerged lands. This duty to indemnify and hold harmless will include any and all liabilities that are associated with the structure or activity including special assessments or taxes that are now or in the future assessed against the structure or activity during the period of the authorization.
2. Failure by the Board of Trustees to enforce any violation of a provision of the authorization or waiver by the Board of Trustees of any provision of the authorization will not invalidate the provision not enforced or waived, nor will the failure to enforce or a waiver prevent the Board of Trustees from enforcing the unenforced or waived provision in the event of a violation of that provision.
3. Applicant binds itself and its successors and assigns to abide by the provisions and conditions set forth in the authorization. If the applicant or its successors or assigns fails or refuses to comply with the provisions and conditions of the authorization, the authorization may be terminated by the Board of Trustees after written notice to the applicant or its successors or assigns. Upon receipt of such notice, the applicant or its successors or assigns will have thirty (30) days in which to correct the violations. Failure to correct the violations within this period will result in the automatic revocation of this authorization.
4. All costs incurred by the Board of Trustees in enforcing the terms and conditions of the authorization will be paid by the applicant. Any notice required by law will be made by certified mail at the address shown on page one of the authorization. The applicant will notify the Board of Trustees in writing of any change of address at least ten days before the change becomes effective.
5. This authorization does not allow any activity prohibited in a conservation easement or restrictive covenant that prohibits the activity.

General Conditions for Authorizations for Activities on State-Owned Submerged Lands:

All authorizations granted by rule or in writing under rule 18-21.005, F.A.C., except those for geophysical testing, shall be subject to the general conditions as set forth in paragraphs (a) through (j) below. The general conditions shall be part of all authorizations under this chapter, shall be binding upon the grantee, and shall be enforceable under chapter 253 or 258, part II, F.S.

(a) Authorizations are valid only for the specified activity or use. Any unauthorized deviation from the specified activity or use and the conditions for undertaking that activity or use shall constitute a violation. Violation of the authorization shall result in suspension or revocation of the grantee's use of the sovereignty submerged land unless cured to the satisfaction of the Board.

(b) Authorizations convey no title to sovereignty submerged land or water column, nor do they constitute recognition or acknowledgment of any other person's title to such land or water.

(c) Authorizations may be modified, suspended or revoked in accordance with their terms or the remedies provided in sections 253.04 and 258.46, F.S., or chapter 18-14, F.A.C.

(d) Structures or activities shall be constructed and used to avoid or minimize adverse impacts to sovereignty submerged lands and resources.

(e) Construction, use, or operation of the structure or activity shall not adversely affect any species which is endangered, threatened or of special concern, as listed in rules 68A-27.003, 68A-27.004 and 68A-27.005, F.A.C.

(f) Structures or activities shall not unreasonably interfere with riparian rights. When a court of competent jurisdiction determines that riparian rights have been unlawfully affected, the structure or activity shall be modified in accordance with the court's decision.

(g) Structures or activities shall not create a navigational hazard.

(h) Activities shall not interfere with the public easement for traditional uses of the sandy beaches provided in section 161.141, F.S.

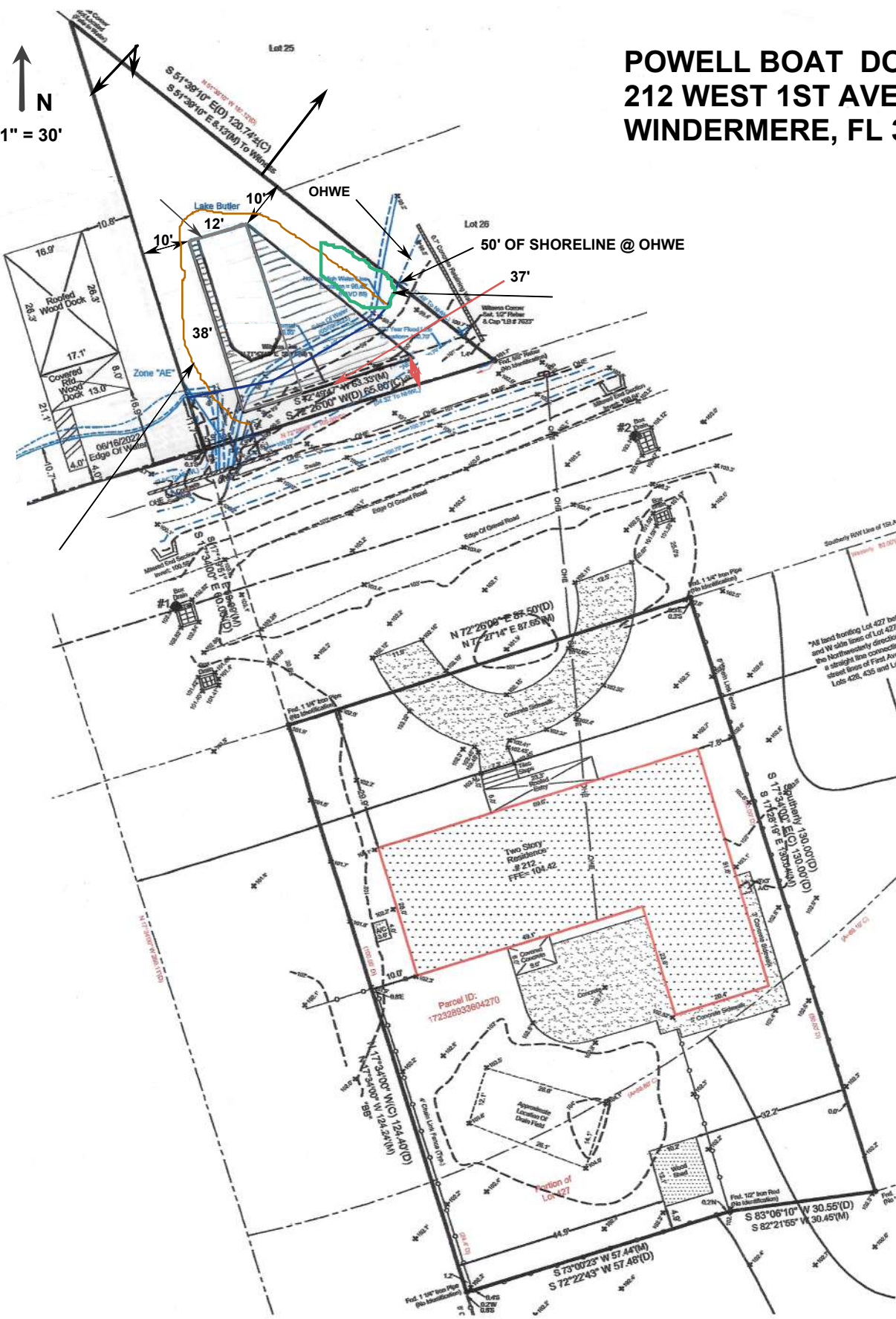
(i) Structures shall be maintained in a functional condition and shall be repaired or removed if they become dilapidated to such an extent that they are no longer functional. This shall not be construed to prohibit the repair or replacement subject to the provisions of rule 18-21.005, F.A.C., within one year, of a structure damaged in a discrete event such as a storm, flood, accident, or fire.

(j) Structures or activities shall be constructed, operated, and maintained solely for water dependent purposes, or for non-water dependent activities authorized under paragraph 18-21.004(1)(g), F.A.C., or any other applicable law.

Rulemaking Authority 253.03(7), 253.73 FS. Law Implemented 253.001, 253.03, 253.141, 253.0347, 253.665, 253.71, 253.68, 253.72, 253.74, 253.75, 253.77 FS. History—New 3-27-82, Amended 8-1-83, Formerly 16Q-21.04, 16Q-21.004, Amended 12-25-86, 1-25-87, 3-15-90, 8-18-92, 10-15-98, 12-11-01, 10-29-03, 12-16-03, 3-8-04, 10-27-05, 4-14-08, 9-1-09, 3-21-19.

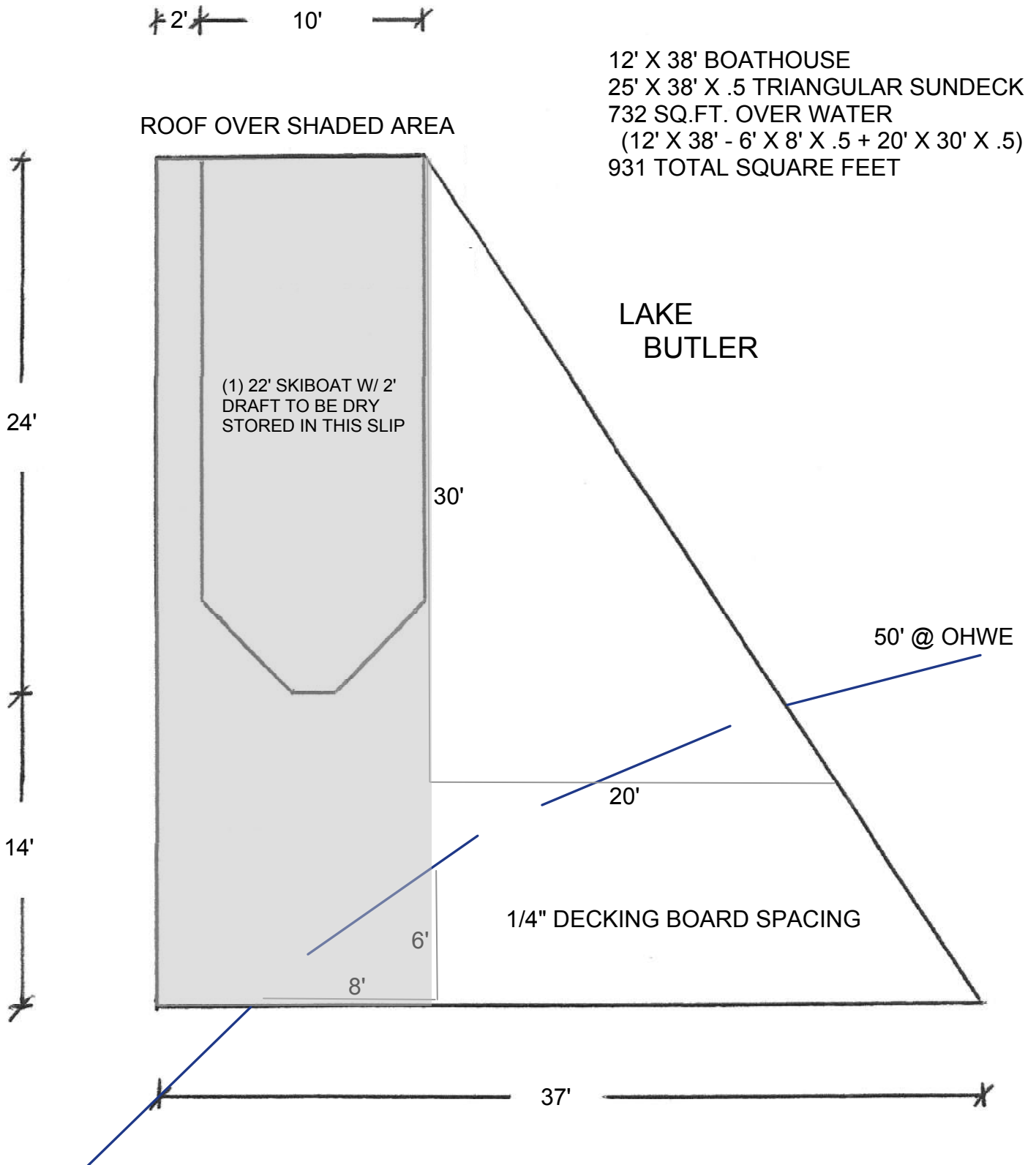
POWELL BOAT DOCK SITE PLAN 212 WEST 1ST AVENUE WINDERMERE, FL 34786

↑ N
1" = 30'

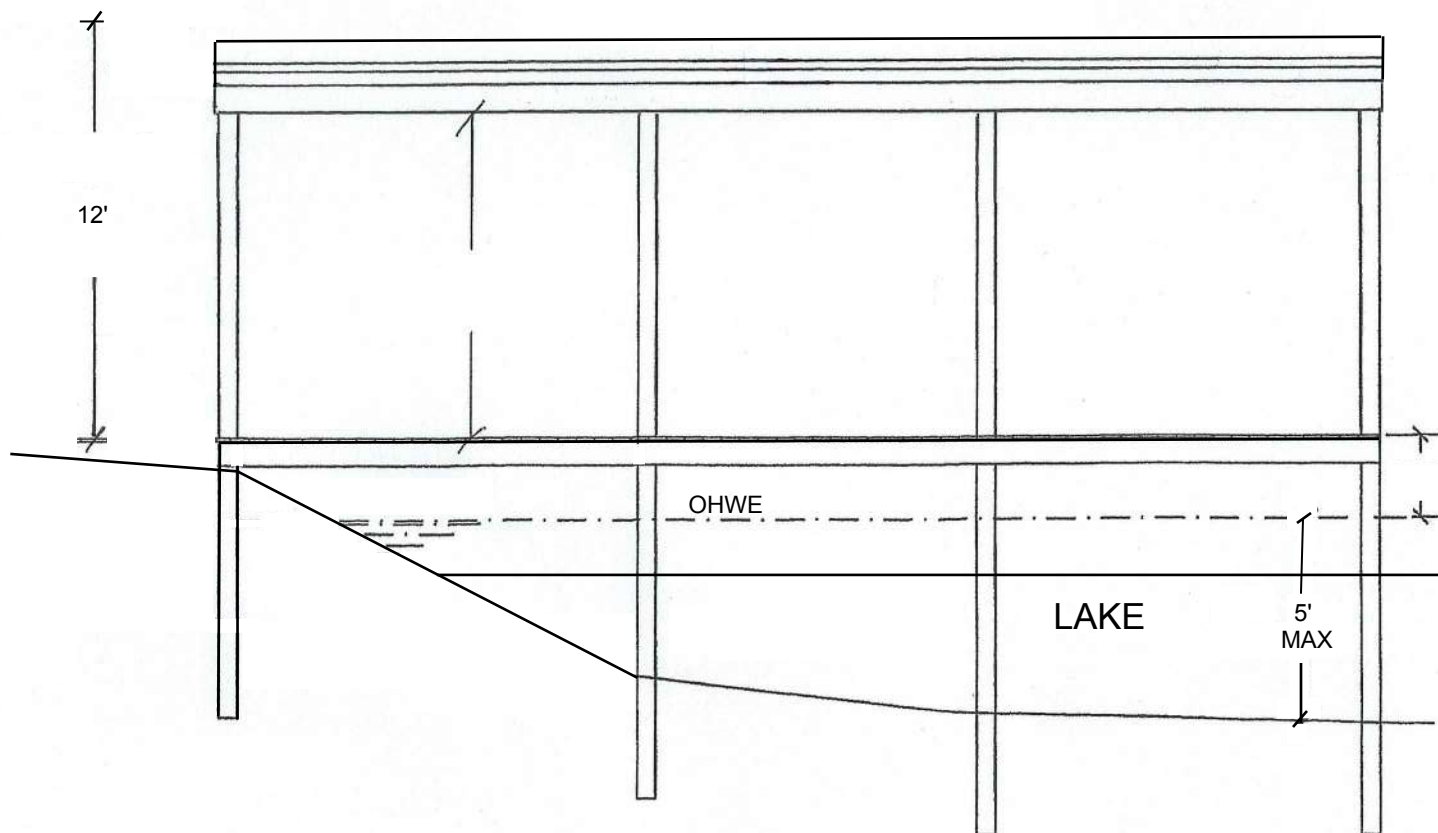


*All land bordering Lot 427 bet
the Northwest corner of Lot 427
and W side lines of Lot 427
is a straight line connecting
street lines of First Ave
Lots 428, 435 and L2

**POWELL BOAT DOCK PLAN VIEW
212 WEST 1ST AVENUE
WINDERMERE, FL 34786**



POWELL BOAT DOCK ELEVATION
212 WEST 1ST AVENUE
WINDERMERE, FL 34786



RECOMMEND - Z24-06 (212 W. 1st Avenue)

APPROVAL: DISAPPROVAL

COMMENTS: _____

SIGNATURE: A. Lane DATE: 2/13/24

78 FOREST ST
WINDERMERE 34786

Town of Windermere

614 Main Street Windermere, FL 34786
Office: (407) 876-2563 Fax: (407) 876-0103

Mayor
JIM O'BRIEN



Town Manager
ROBERT SMITH

Clerk
DOROTHY BURKHALTER

January 31, 2024

DE-VIVAR LIAM ROMO LOPEZ-ABAD SARA
110 FOREST ST
WINDERMERE, FL 34786

RE: Public Notice of Variance Public Hearing for 212 W. 1st Avenue - Z24-06

Eric and Rhonda Powell, owners of 212 W. 1st Ave. submitted a request for approval of a variance pursuant to Division 10. of the Town of Windermere Land Development Code. The purpose of the variance request is to allow for a reduction of setback requirement of 16' from the side property lines extended into the water for residential boat docks to a 10.8' setback on the east side property line extended into the water and a 10' setback to the west side property line extended into the water.

Enclosed is additional information regarding this request.

Pursuant to the Town of Windermere Code of Ordinances, you as a surrounding property owner are entitled to comment on this matter. If you wish to comment, this form must be received by the Town of Windermere use of the enclosed stamped envelope to Wade Trim, Inc. or by email to tow@wadetrim.com by February 16, 2024.

This matter will be presented to the Development Review Board on Tuesday, February 20, 2024, at 6:30 p.m. The recommendation will be heard by the Town Council on Tuesday, March 12, 2024, at 6:00 p.m. You may attend the meeting at Town Hall, located at 520 Main Street. All meetings are open to the public and you are welcome to participate. Feel free to contact me if you have any questions.

Sincerely,
Brad Cornelius, AICP, Town Planner
Wade Trim, Inc.
813.882.4373
tow@wadetrim.com
Encl.

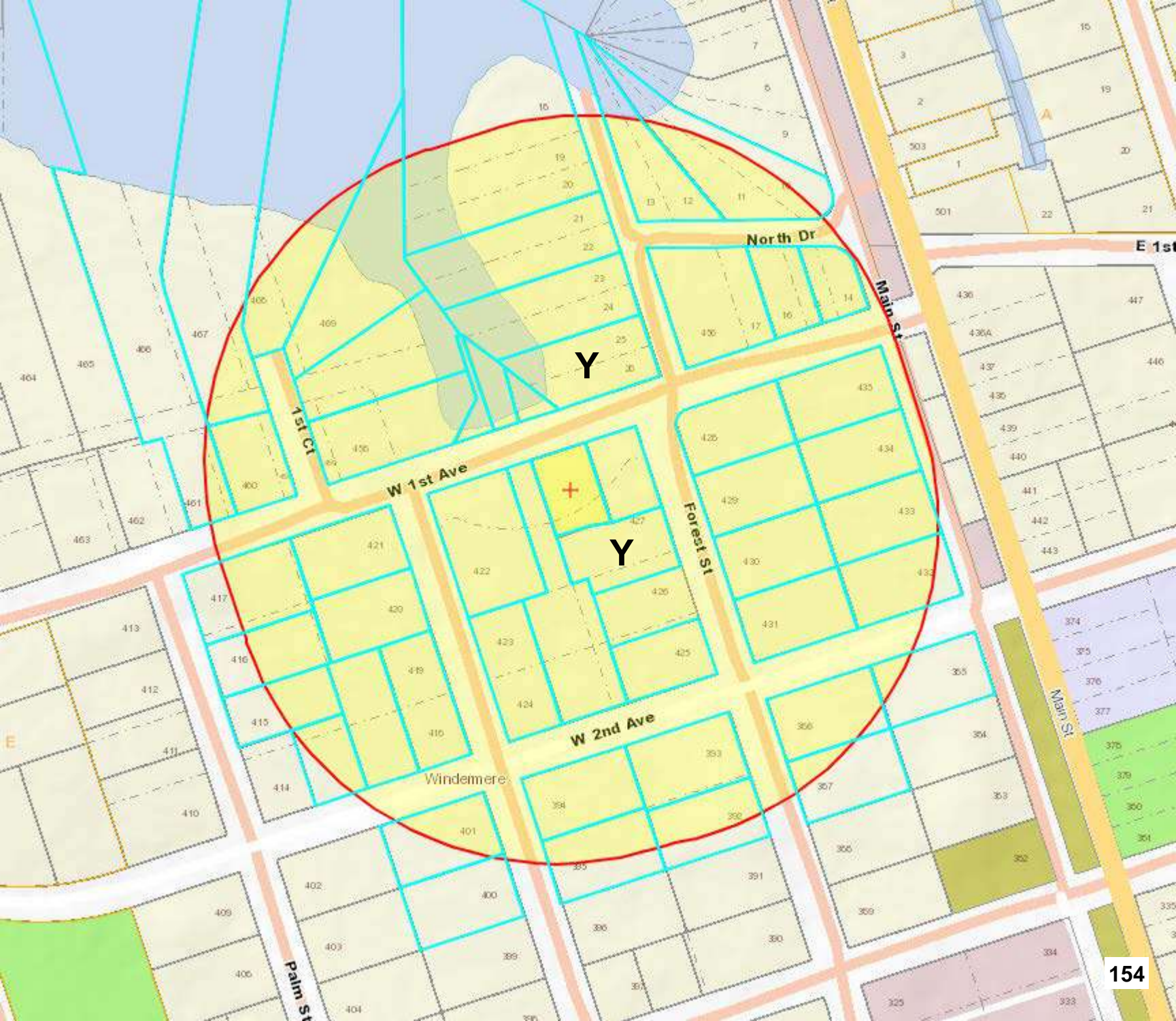
RECOMMEND - Z24-06 (212 W. 1st Avenue)

APPROVAL: X DISAPPROVAL _____

COMMENTS: _____

SIGNATURE: [Signature] DATE: 2/14/24

Sara Lopez M. I.



MEMORANDUM

TO: Town Council, Town of Windermere
FROM: Heather Ramos, GrayRobinson, P.A.
DATE: March 6, 2024
SUBJECT: Form 6 Litigation

In February 2024, two lawsuits were filed by Weiss Serota Helfman Cole + Bierman, PL (the “Firm”) on behalf of 26 municipalities and 74 municipal elected officials, challenging the Form 6 requirements as now applied to municipal elected officials. One lawsuit was filed in Federal Court in Miami (based on Form 6 being compelled, content-based, non-commercial speech in violation of the First Amendment to the US Constitution), and one lawsuit was filed in State Circuit Court in Leon County (based on Form 6 being an infringement on the right to privacy under the Florida Constitution).

After the lawsuits were filed, other municipalities expressed interest in joining. The Firm has told us that it will file the appropriate paperwork to add additional plaintiffs.

The Town of Windermere may elect to join the lawsuits as a plaintiff. For the Town to join, the Town Council needs to approve Resolution 2024-01. If the Town joins as a plaintiff, each Town Council member may also be individually named by completing and signing a form. Note that Resolution 2024-01 contains conflict of interest language whereby the Town agrees to waive any conflict of interest in the event the Firm represents another client for matters with respect to or involving the Town. If the Town elects to join the lawsuit, the cost will be \$10,000.00 to the Town to be paid to the Firm.

Alternatively, if the Town does not elect to join the lawsuit as a named plaintiff, individual Town Council members can elect to join the lawsuit for a cost of \$2,000.00 to be paid to the Firm by the individual Town Council member. In that case, the Town Council member must fill out the “stand-alone elected official” form.

The form of the Resolution and all other forms have been prepared by the Firm and are included with this memorandum.

RESOLUTION NO. 2024-01

A RESOLUTION OF THE TOWN COUNCIL FOR THE TOWN OF WINDERMERE, FLORIDA, AUTHORIZING THE TOWN'S PARTICIPATION IN LITIGATION SEEKING A DECLARATION THAT THE PROVISIONS OF SUBSECTION 112.144(1)(d) OF THE FLORIDA STATUTES THAT REQUIRES MUNICIPAL ELECTED OFFICIALS TO FILE FORM 6 FINANCIAL DISCLOSURE FORMS IS UNCONSTITUTIONAL AND INVALID; PROVIDING AN EFFECTIVE DATE.

WHEREAS, since 1976, Article II, Section 8 of the Florida Constitution has required that all elected State constitutional officers file a full and public disclosure of their financial interests, which is done through a state-adopted form ("Form 6") that requires, among other things, the disclosure of the specific amounts of an official's net worth, income and asset values.

WHEREAS, historically, municipal elected officials have been required to make a limited financial disclosure that is done through a different state-adopted form ("Form 1") that requires, among other things, the disclosure of information related to sources of income, real property, intangible personal property liabilities and interests in specified businesses, but does not include the specific amounts of an official's net worth, income and asset values.

WHEREAS, the Mayor and all current elected members of the Town of Windermere (the "Town Elected Officials") were elected by the voters of the Town (or the members of the Town Council) subject to and in reliance upon Florida law that required them to annually file Form 1 (not Form 6) financial disclosures forms.

WHEREAS, although the State Legislature has the power in the Florida Constitution to require that additional public officers file a full and public disclosure of their financial interests, it must do so consistent with other constitutional limitations.

WHEREAS, in 1980, the voters of Florida amended the Florida Constitution by adopting Article 1, Section 23, the "Right to Privacy," which states that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein."

WHEREAS, because the right of privacy is a fundamental right within Florida's constitution, the Florida Supreme Court has consistently required that any law intruding on the right is presumptively unconstitutional and must be justified by a "compelling state interest" which the law serves or protects through the "least restrictive means."

WHEREAS, the First Amendment to the United States Constitution, and Article 1, Section 4 of the Florida Constitution, protects the freedom of speech, which includes the right to choose what to say and what not to say, any impairment of which must be justified by a "compelling state interest" which the law serves or protects through the "least restrictive means."

WHEREAS, during the 2023 legislative session, Senate Bill 774 was passed and codified as Chapter 2023-09, Laws of Florida, amending Section 112.3144 of the Florida Statutes to change the financial disclosure requirements and now require that all elected municipal mayors and elected members of the governing board file a Form 6 financial disclosure, which is substantially more burdensome and personally intrusive than the Form 1.

WHEREAS, the imposition of the Form 6 disclosure requirements at the municipal level (a) represents an unwarranted intrusion into the privacy rights of municipal elected officials, most of which receive little or no compensation for their service, (b) unnecessarily risks the safety of such officials (making them targets of, among other things, burglary, identity theft and extortion), and (c) will deter many otherwise qualified and interested citizens from running for office.

WHEREAS, in fact, over 100 municipal elected officials resigned from office prior to December 31, 2023, as a result of the new disclosure requirements, disrupting the ability of some local governments to operate for lack of a quorum.

WHEREAS, the imposition of the intrusive Form 6 disclosure requirements at the municipal level is not the least restrictive means of serving the governmental interests of preventing abuse of the public trust, as demonstrated by, among other things, the lack of such requirements at the municipal level in other states and at the federal level (even the President of the United States and members of the U.S. Congress are not required to make such extensive disclosures).

WHEREAS, requiring that unpaid (or low paid) municipal elected officials disclose their precise net worth, income and assets does not serve (let alone constitute the least restrictive means of serving) any compelling interest – Form 1 disclosures constitutes sufficient transparency to inform the public of potential conflicts.

WHEREAS, the imposition of new financial disclosure requirements upon municipal elected officials who were elected without such requirements violates due process, is fundamentally unfair and violates fundamental constitutional rights.

WHEREAS, a group of municipalities and municipal elected officials filed two lawsuits, one in State Court and one in Federal Court, on February 15, 2024, seeking a declaration that the provisions of Section 112.3144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 financial disclosure forms are unconstitutional and invalid and should be enjoined (the “Lawsuits”).

WHEREAS, the Town of Windermere believes it is in the best interest of the citizens and residents of the Town to participate in the Lawsuits and urges other municipalities and their elected officials to also participate as plaintiffs.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF WINDERMERE, FLORIDA AS FOLLOWS:

Section 1: The foregoing “WHEREAS” clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2: The Town of Windermere hereby authorizes the participation of the Town, and individual Members of the Town Council who choose to participate as plaintiffs, in the Lawsuits.

Section 3: Weiss Serota Helfman Cole + Bierman, PL (the “Firm”) is hereby retained to represent the Town in the Lawsuits. The Firm will charge the Town a flat fee, inclusive of attorneys’ fees and costs, of \$10,000 to represent the Town and the individual elected officials who choose to participate as plaintiffs, for the Lawsuits in the trial court. The Town and elected officials recognize that such flat fee may be less than the actual attorneys’ fees and costs incurred, and that if the Town and elected officials prevail in the Lawsuits, the Firm may apply with the Court for its actual reasonable attorneys’ and costs from the defendants. The filing of any appeals will be authorized by separate resolution under the terms thereof. The Town and its elected officials also acknowledge that the Firm will be representing other local governments and officials in this lawsuit and waives any conflicts related to such representation. The Town further acknowledges that, from time to time, the Firm may be called upon by clients to represent them as to requests for various approvals and as to other matters with respect to or involving the Town. The Town hereby waives any potential conflict of interest in the Firm’s representation of those clients arising from its representation of the Town in the Lawsuit.

Section 4: The Town of Windermere invites and urges other local governments and elected officials to join the Town as plaintiffs in the Lawsuit and to coordinate their efforts with the Town.

Section 5: Town Officials are hereby authorized to do all things necessary and expedient to carry out the aims of this Resolution.

Section 6: This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12th day of March, 2024.

TOWN OF WINDERMERE, FLORIDA

By: Town Council

By: _____
Jim O’Brien, Mayor

ATTEST:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

Request and Agreement to Serve As Named Plaintiff

On _____, 2024, the [City/Town/Village] of _____ approved Resolution No. _____ (the "Resolution"), authorizing the participation of the [City/Town/Village] of _____, and any of its elected officials who choose to participate, in two lawsuits seeking declarations that the provisions of Section 112.144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 Financial Disclosure Forms is unconstitutional and invalid (the "Lawsuits"). I hereby request and agree to serve as a named plaintiff in the Lawsuits, pursuant to the terms of the Resolution, including the section related to conflicts of interest, and for the law firm of Weiss Serota Helfman Cole + Bierman PL to represent me in the Lawsuits.

Signature: _____

Name: _____

Position: _____

Municipality: _____

Date: _____

Request and Agreement to Serve As Named Plaintiff in Form 6 Litigation

_____ and the law firm of Weiss Serota Helfman Cole + Bierman PL (the "Firm"), hereby agree:

1. The Firm is authorized to include me as a named plaintiff in the soon to be filed lawsuits seeking declaratory, injunctive and other appropriate relief challenging the provisions of Section 112.3144(1)(d), Florida Statutes, that require municipal elected officials to file Form 6 financial disclosure forms, based upon any appropriate legal theories (the "Litigation"), even though the municipality that I serve has decided not to participate in the Litigation.
2. The Firm is hereby retained to represent me in the Litigation and will charge me, and I agree to pay, a flat fee, inclusive of attorneys' fees and costs, of \$2,000 to represent me for the litigation in the trial courts.
3. I recognize and acknowledge that such flat fee may be less than the actual attorneys' fees and costs incurred, and that if the plaintiffs prevail in the Litigation, the Firm may apply with the Court for its actual reasonable attorneys' and costs from the defendants.
4. The filing of any appeals will be authorized by separate agreement under the terms thereof.
5. I acknowledge that the Firm will be representing other local governments and officials in the Litigation and waive any conflicts related to such representation.

Signature: _____

Name: _____

Position: _____

Municipality: _____

Address: _____

Email: _____

Date: _____

MEMORANDUM

TO: Town Council, Town of Windermere
FROM: Heather Ramos, GrayRobinson, P.A.
DATE: March 6, 2024
SUBJECT: Revisions to the Town of Windermere Purchasing Policies and Procedures

Included with Resolution 2024-02 as Attachment A is a proposed revised version of the Town's Purchasing Policies and Procedures. Also included with this memorandum is a redline version of the Purchasing Policies which shows the revisions made to the version adopted by the Town Council in 2015.

The proposed substantive revisions made to the policy for the Town Council's review and consideration are summarized as follows:

- Modifications to comply with the statutory requirements in Section 287.055, Fla. Stat. pertaining to the Consultants' Competitive Negotiation Act (the "CCNA"). The CCNA applies to professional services including architecture, professional engineering, landscape architecture, or registered surveying and mapping when the basic construction cost of which is estimated by the Town to exceed \$325,000.00 or for a planning or study activity when the fee for professional services exceeds \$35,000.00.
- With respect to an emergency, provides authority of the Town Manager to enter into a contract in excess of \$10,000.00 (previously \$2,500.00) but not to exceed \$50,000.00 without bidding with the provision that it will be brought to the attention of the Town Council at their next regularly scheduled meeting for "after-the-fact" approval.
- Revises threshold amounts for purchasing documentation requirements.
- Provides authority of the Town Manager to approve change orders which do not cause the total purchase price to exceed \$10,000.00 (previously \$2,500.00).
- Requires all Town solicitations for the procurement of commodities or contractual services include the following language: Vendor is hereby notified that Section 287.05701, Fla. Stat., provides that the Town may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.
- Specifies that the piggyback procedure cannot be used for design or construction contracts originally procured with the CCNA process if the contract amounts exceed the thresholds in Section 287.055, Fla. Stat.
- Provides contract term limitations for continuing contracts for CCNA projects.

RESOLUTION 2024-02
of the
Town Council
for the
Town of Windermere, Florida
adopting revisions to the
Town's Purchasing Policies and Procedures

Whereas, on December 10, 2013, the Town Council adopted the Town of Windermere Purchasing Policies and Procedures to maximize the purchasing power and value of the Town's funds and to ensure that the Town's purchasing process is conducted in an ethical, fair, and open manner and in accordance with Florida law.

Whereas, on March 24, 2015, the Town Council revised the Town of Windermere Purchasing Policies and Procedures.

Whereas, the Town Council had determined it necessary to adopt updates to the Purchasing Policies and Procedures to comply with Florida law and best practices of the Town.

Now Therefore, Be It Resolved by the Town Council of the Town of Windermere, Florida, that the version of the Town of Windermere Purchasing Policies and Procedures attached hereto as **Attachment A** is hereby adopted as the official policy of the Town of Windermere. Previous versions of the Purchasing Policies and Procedures are hereby repealed.

Resolved this 12th day of March, 2024.

TOWN OF WINDERMERE, FLORIDA

By: Town Council

By: _____
Jim O'Brien, Mayor

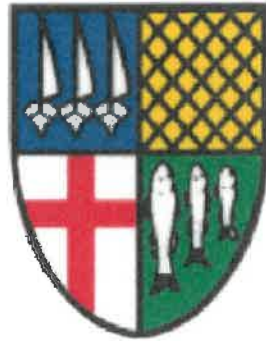
Attest:

Dorothy Burkhalter, MMC, FCRM
Town Clerk

ATTACHMENT A

**TOWN OF WINDERMERE
PURCHASING POLICIES AND PROCEDURES
Revised 3/12/2024**

TOWN OF WINDERMERE



PURCHASING POLICIES AND PROCEDURES

ADOPTED: ~~12/10/13~~ 12/10/13

REVISED: 3/24/2015

REVISED: ~~03/24/2015~~ 3/12/2024

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TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 1
Title: INTRODUCTION		
Effective Date: 12/10/13	Amended:	

The Town of Windermere has identified the Town Manager and Finance Department as the departments responsible for coordinating the Town’s central purchasing efforts. The Town’s policy is to promote efficiency, economy, and fair and open competition in an effort to reduce the appearance or opportunity for favoritism or impropriety, and to inspire public confidence that purchase orders and contracts are awarded equitably and economically. It is essential for effective and ethical procurement that there be a system of uniform procedures, utilized by all personnel, that establishes basic guidelines and procedures which regulate procurement activities, contract management, and the resulting distribution of funds. The foremost objective of centralized purchasing is to abide by, uphold, and affect adherence to the Purchasing Policies and Procedures instituted by the Town of Windermere and to guard against the misuse or misinterpretation of the same.

The focus of this manual is to provide the Town of Windermere Departments and any Board or Committee with a guide for following the policies established by the Town of Windermere and the laws established in the Florida Statutes.

This manual may be amended when required by changes in law. Minor procedural changes, i.e. flow of documents, may be changed by the Town Manager. Major Amendments require the approval of Town Council by Resolution.

Finally, this manual is adopted by the Town of Windermere pursuant to its home-rule powers under the Constitution and laws of the State of Florida and the Town’s charter. In the event any provision of this manual conflicts with state law, whether facially or as applied to a particular situation, state law shall govern to the extent of the conflict.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 2
Title: CODE OF ETHICS AND CONDUCT		
Effective Date: 12/10/13	Amended:	

The Town Manager and Finance Department believes in the dignity of their offices and the real worth of the service rendered by their governmental agency and strives to maintain high standards of ethics and conduct.

Public purchasing officials are required to maintain complete independence and impartiality in dealings with vendors, both in fact and in appearance, in order to preserve the integrity of the competitive process and to ensure there is public confidence that purchase orders and contracts are awarded equitably and economically.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 3
Title: GENERAL PURCHASING POLICIES		
Effective Date: 12/10/13	Amended: <u>3/12/2024</u>	

- I. The Town of Windermere has identified the Finance Department as the Department responsible for coordinating the Town’s centralized purchasing efforts.
- II. It is the intent of the Town of Windermere to provide all vendors, (with the exception of those on the State Department of General Services convicted vendor list) with a fair and impartial opportunity in which to compete for the Town’s business.
- III. Goods and services offered to the Town based upon State Contract prices for the current fiscal year are considered to be competitively bid and to have satisfied the requirements of the competitive bidding process.
- IV. It is the policy of the Town of Windermere that the specifications for goods and services shall be open and competitive.
- V. Local preferences are permitted when allowed by law as follows:
 - ~~a. Town Staff shall not award a local preference on purchases made on items within their purchasing authority unless authorized by the Town Manager.~~
 - ~~b. The Town of Windermere may award a 2% local preference to the lowest responsible resident bidder on the purchase of items the Town Manager approves having a unit cost of \$2,500 or less.~~
 - ~~c. Any use of local preference for items over \$2,500 must be approved by the Town Council.~~
- VI. Goods and services produced in the United States will be given preference when all other aspects in the bid selection process are equal.
- VII. It will be the policy of the Town of Windermere to consolidate for purchase and bidding, all goods and services of a similar nature.
- VIII. It is the policy of the Town of Windermere to award a bid based upon the total or aggregate items bid, when possible, rather than to segregate items out for individual awards.
- IX. The Town of Windermere may reject all or portions of any bid when it is deemed in the best interest of the Town.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 4
Title: DEFINITIONS		
Effective Date: 12/10/13	Amended: 3/12/2024	

AGREEMENT - See Contract

COUNCIL: The Town of Windermere Council, Windermere, Florida

CHANGE ORDER - A monetary or non-monetary change to an original contract price or other contract conditions.

COMPETITIVE SEALED BID - See Competitive Sealed Proposal

COMPETITIVE SEALED PROPOSAL - Refers to the receipt of two or more sealed bids or proposals submitted by responsive and responsible bidders or proposers.

CONTINUING CONTRACT - A "continuing contract" is a contract for professional or construction services entered into in accordance with all the procedures of Florida Statute 287.055 in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, or for study activities if the fee for professional services for each individual study under the contract does not exceed \$500,000. Firms providing services under continuing contracts shall not be required to bid against one another

CONTRACT - A mutually binding legal relationship obligating the seller to furnish the supplies and/or services (including construction) and the Purchasing Entity to pay for them. It includes all types of commitments that obligate the Town of Windermere to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts may include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. The words "Contract" and "Agreement" may be used interchangeably.

CONTRACTOR - A person who contracts to sell commodities or contractual services to an agency.

CONTRACTUAL SERVICES - The rendering by a contractor of their time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research

and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. "Contractual service" does not include any contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of any facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to Chapter 255 of the Florida Statutes.

INVITATION TO BID - A written solicitation for competitive sealed bids with the title, date, and hour of the public bid opening designated and specifically defining the commodity, group of commodities, or services for which bids are sought. It includes instructions prescribing all conditions for bidding and shall be distributed to all prospective bidders simultaneously. The invitation to bid is used when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.

INVOICE - Shall mean a formal billing submitted by a vendor showing the amount due and terms of payment for materials and/or services rendered. Invoices must be itemized in sufficient detail to permit proper audit by the auditing body or department.

LOCAL BIDDER - Shall mean a bidder whose business office is located within Orange County.

MAY - Denotes the permissive. However, the words "no person may..." means that no person is required, authorized, or permitted to do the act described.

PROPOSAL - Shall mean a written notice by a vendor setting forth the terms under which a vendor will furnish supplies or services.

EMERGENCY - Shall mean the need for the procurement of goods or services arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting public buildings, public property or the life, health, safety or property of inhabitants of a political subdivision are involved.

PURCHASE ORDER - A formal notice to a vendor to furnish the supplies or services described in detail thereon.

PURCHASING - The act of obtaining supplies, equipment or services necessary to carry out a particular function.

TOWN MANAGER - The person responsible for the organization's procurement program. The Town Manager is given the responsibility and authority to act for the Town in certain areas.

RENEWAL - Contracting with the same contractor for an additional contract period after the initial contract period, only if pursuant to contract terms specifically providing for such renewal.

REQUEST FOR PROPOSALS - A written solicitation for competitive sealed proposals with the title, date and hour of the public opening designated. The request for proposals is used when the agency is incapable of specifically defining the scope of work for which the commodity, group of commodities, or contractual service is required and when the agency is requesting that a qualified vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document. A request for proposals includes, but is not limited to, general information, applicable laws and rules, functional or general specifications, statement of work, proposal instructions, licensure, and evaluation criteria. Requests for proposals shall state the relative importance of price and any other evaluation criteria such as licensure.

REQUEST FOR QUALIFICATIONS - This procurement approach differs from the traditional request for proposals approach that it places greater emphasis on the actual qualifications and licensure of the potential contractor--his or her track record--rather than how well the potential contractor responds to ~~detailed project specifications and requirements~~. pricing. Requests for Qualifications for design or construction project must follow Florida Statute 287.055, may only request qualifications, and cannot request pricing information until the most qualified firm is selected. A Request for Qualifications should be used for all Continuing Contracts.

REQUESTING DEPARTMENT - The department originating the purchase request.

REQUISITION - A written request to the Finance Department for one or more items or services necessary to carry out operational functions for the requesting Department for \$1,000.00 or less.

RESIDENT BIDDER - An individual whose primary residence is within Windermere, Florida; a partnership whose principals are all residents of Windermere, Florida; or a Florida Corporation, partnership, or other business entity whose principal place of business is within Windermere, Florida, or which maintains a ~~full-time~~full-time business office open to the public within Windermere, Florida.

RESPONSIBLE BIDDER - A person who has the capability and qualifications in all respects to perform fully the contract requirements and has the integrity and reliability that will assure good faith performance as well as current all applicable licensing information.

SHALL - Denotes the imperative.

SOLE SOURCE - Shall mean the only source of service or product relative to kind and availability.

SPECIFICATIONS - A written description of needed supplies, equipment or services setting forth in a clear and concise manner the characteristics of the items and/or services to be purchased and the circumstances under which the purchase will be made.

VENDOR - A supplier of goods or services.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 5
Title: DUTIES AND RESPONSIBILITIES – GENERAL		
Effective Date: 12/10/13	Amended:	

- I. The Finance Department has the sole authority for issuing Purchase Orders and Requisitions to Town Departments for completion.

- II. Purchase Orders will be required for all purchases in unit or in total above \$1,000 unless the procurement of goods or services is governed by a written contract. Requisitions or Purchasing Cards will be used for purchases not exceeding \$1,000. Emergency purchases in excess of \$1,000 must be approved by the Town Manager in order to procure goods or services prior to obtaining a Purchase Order. However, this provision does not exempt any employee from those limits established in sections of these established policies relative to (i) approval to purchase (ii) levels of authority, and (iii) exceptions and exclusions.

- III. The Town Manager is the sole authority responsible for issuing and setting spending limits on Purchasing Cards issued to designated Town Employees, in accordance with the provisions established by the Town's Purchasing Card Agreement.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 5.1
Title: DUTIES AND RESPONSIBILITIES - THE FINANCE DEPARTMENT		
Effective Date: 12/10/13	Amended: 3/12/2024	

- I. The Finance Department shall be responsible for developing and administering the purchasing program for those departments in Town government under the direct control of the Town Manager and the Town of Windermere Council.
- II. The Finance Department shall cooperate with Town Departments in procurement of supplies and equipment and shall maintain adequate records necessary to create an audit trail for purchasing transactions.
- III. The Finance Department will verify when a low bidder proposes that the item is in fact a comparable item equal to the specifications of the proposed bid.
- IV. The Finance Department will assist the requesting Department in soliciting quotes where formal bidding is not required.
- V. The Finance Department shall issue a Purchase Order number to the selected vendor, after first determining that unencumbered budget funds are available for the proposed expenditure.
- VI. The Finance Department will coordinate with the Town Manager Administrative Assistant to maintain an inventory of commonly used supplies where practical and will initiate distribution to the Town's various departments upon receipt of a valid Supply Request Form.
- VII. The Finance Department will strive to take advantage of discounts offered by vendors for early and prompt payments of invoices.
- VIII. The ~~Finance Department~~[Town Clerk](#) shall maintain bid documents. Original bid documents shall not be attached as exhibits to subsequent or resulting contracts, leases or agreements. Such exhibits shall be official copies of the original bid documents.
- IX. The Finance Department or Town Manager Designee will formally post on the Town of Windermere Website the award information for each bid when the bidding process is completed.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 5.2
Title: DUTIES AND RESPONSIBILITIES – REQUESTING DEPARTMENT		
Effective Date: 12/10/13	Amended:	

- I. Departments, Boards, and Committees are responsible for following the purchasing policies and procedures adopted by the Town of Windermere.
- II. Department Head and/or Chairman shall be responsible for determining that sufficient budget funds are available for all expenditures.
- III. Department Head and/or Chairman shall monitor the Purchasing Card Purchases of their employees or volunteers.
- IV. Those employees issued purchasing cards shall maintain the purchasing card in their possession at all times. It is the responsibility of the employee to report lost or stolen cards immediately to the Department Head and the Finance Department. During business hours if the employee is unable to reach the Finance Department, notification may be made directly to the Town Manager. After business hours, contact the Department Head to report a lost or stolen purchasing card. The Department Head is responsible for notifying the Town Manager.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 6
Title: VENDOR POLICIES		
Effective Date: 12/10/13	Amended:	

I. FULL AND OPEN COMPETITION

It is the intent of the Town of Windermere to provide all vendors, with the exception of those on the State Department of Management Services Convicted Vendor List, with a fair and impartial opportunity in which to compete for the Town's business.

II. PUBLIC ENTITY CRIME: Denial and Revocation of Rights

In accordance with section 287.133, Florida Statutes, any entity listed on the State Department of Management Services Convicted Vendor List shall be denied the right to conduct business or render any type of service for any Town Department to the extent required by the debarment, suspension, or other determination of ineligibility by the State.

III. QUALIFICATIONS FOR CONSTRUCTION CONTRACTING

Contractors must meet the requirements of subsection 489.113(2), Florida Statutes: No person who is not certified or registered as required by the statute shall be permitted to act as a contractor for the Town. However, a person who is not certified or registered may perform construction work under the supervision of a person who is certified or registered, provided that the work is within the scope of the supervisor's license and provided that the person being supervised is not engaged in construction work which would require a license as a contractor under any of the categories listed in subsections 489.105(3)(d)-(o), Florida Statutes. Additional qualifications may be included in a request for bids or proposals.

IV. BIDDERS VENDOR LIST

The Town of Windermere will broadcast all bids, including but not limited to, Requests for Proposals, Requests for Qualifications and Invitation to Bid on the Town of Windermere Website.

V. REINSTATEMENT AS ELIGIBLE VENDOR

Vendors that have been disqualified from consideration as an eligible vendor may be reinstated upon written request and approval of the Town Manager; however, debarred or suspended firms shall not be reinstated during the period of a debarment or suspension.

VI. LOCAL PREFERENCE

The use of a local preference is allowable only as permitted by Town policies as approved by the Town Manager or Town Council.

VII. LITIGATION AND ARBITRATION

The Town staff shall not issue any Purchase Orders or contracts to any vendors currently involved in litigation or arbitration with the Town of Windermere until such time as a satisfactory resolution is reached with such vendors; however, the Council may, in its sole discretion, award Purchase Orders or contracts to such vendors.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 7
Title: PURCHASING REQUEST AUTHORIZATION LEVELS		
Effective Date: 12/10/13	Amended: 03/24/2015; <u>3/12/2024</u>	

I. REQUEST TO PURCHASE

The purchasing authorization levels identify who can request the purchase of goods/services and when a particular purchase must be brought before the Town of Windermere Town Council for approval or award of bid. All Requisitions and Purchase Orders along with proper back-up documentation will be forwarded to the Finance Department for review.

Each individual representing a level of purchasing authority must have on file with the Finance Department a completed Purchasing Level Signature Authorization Form. It is the responsibility of the department/division to ensure each person who has purchasing signature authority has completed the above listed item.

II. REQUESTING AUTHORIZATION LEVELS:

A. Level A - \$0 to, but not exceeding \$1,000 (Requisition)

On the Requisition the "Authorized by" signature line must be signed by the Department Head and/or Chairperson of Committee or Board.

B. Level B – Over \$1,000 but not exceeding \$2,499 (Purchase Order)

On the Purchase Order the top portion "By" signature line must be signed by the Department Head and/or Chairperson of Committee or Board and the Town Manager. Procurement shall require informal solicitation. Council action is not required.

C. Level C – Over \$2,499 but not exceeding \$9,999

On the Purchase Order the top portion "By" signature line must be signed by the Department Head and/or Chairperson of Committee or Board and the Town Manager ~~and must be approved by the~~ Town ~~Council~~ Council action is not required. Competitive Solicitation is required.

D. Level D – Over \$10,000

On the Purchase Order the top portion “By” line must be signed by the Department Head and /or Chairperson of Committee or Board and the Town Manager then sent to the Town of Windermere Town Council for approval. Competitive formal request for proposal procedures apply. The Town Council must award the bid at a regularly scheduled Town of Windermere Town Council meeting. The requesting Department shall pay particular attention to contract/services agreements, which have the potential to exceed the \$10,000 limit over the life of the contract.

III. EMERGENCY EXCEPTION

In an emergency as determined by the Town Manager and the Town Council, authorization to contract in excess of \$~~2,500~~ ~~\$10,000.00~~ 10,000 without bidding is granted to the Town Manager with the provision that it will be brought to the attention of the Town Council at their next regularly scheduled meeting for “after-the-fact” approval. This authority will be capped at \$50,000; any requirements above that level will require a special meeting of the Town Council to be called.

IV. AUTHORIZATION TO PURCHASE

The “Authorized By” line at the bottom of the Purchase Order will be signed by either the Town Manager or the Mayor of the Town of Windermere

The “Certification of Goods” line at the bottom of the Purchase Order can be signed by any person in the department that has verified the goods have been received. The Date field should reflect the date the goods and services are received (do not list the date the signature is taking place).

Any Purchase Orders or Requisitions that are sent to the Finance Department with improper signatures or without proper back-up documentation will be returned to the requesting department/division to be corrected.

To ensure proper accountability of all items being purchased no one person should be signing more than one line on any Purchase Order. Two signatures shall be required.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 8
Title: PURCHASING DOCUMENTATION REQUIREMENTS		
Effective Date: 12/10/13	Amended: <u>3/12/2024</u>	

- I. Level A - \$0 to, but not exceeding \$1,000 (Requisition)
No quotes are required for purchases of \$1,000 or below. Informal solicitation is suggested.
- II. Level B – Over \$1,000 but not exceeding ~~\$2,499~~5,000 (Purchase Order)
Three written quotations are required. Town Council approval is not required.
- III. Level C – Over ~~-\$2,500~~5,000 - \$9,999 (Purchase Order)
Three Written quotations are required. Town Council approval is required.
- IV. Level D- Over \$10,000 (Purchase Order)
Formal Request for Proposals from the source of supply is required. Town Council approval is required.

If three quotes are not obtainable due to lack of vendor interest/response please state that on the Purchase Order before turning it into the Finance Department.

If an "on call" contractor is being utilized three quotes will not be required; unless the Town has a contract with more than one "on call" contractors for the same type of work then a quote will be required from all "on call" contractors for that specific type of work.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 9
Title: PURCHASE ORDER PROCESS		
Effective Date: 12/10/13	Amended: <u>3/12/2024</u>	

- I. Purchase Order is required for the procurement of goods/services over \$1,000.00 unless the procurement of goods or services is governed by a written contract or is listed as an exempt item under Exemptions and Exclusions.
 - A. To initiate the purchasing process; complete a Purchase Order Form with the following information:
 1. Department and/or Committee or Board requesting materials.
 2. Vendor name and address.
 3. Fund/account number.
 4. Total amount of order.
 5. Department and/or Committee or Board purchasing authority signature.
 6. Quantity, unit size, catalog or part number, description, unit cost, and total cost of items.
 7. Total of all items.
 8. Remarks if needed - this is for further breakdowns in fund/budget/line item numbers and any special "ship to" or "bill to" information.

- II. The Purchase Order is completed by the requesting Department and or Committee or Board and is submitted to the Finance Department. The Finance Department will review the Purchase Order and if required, place on the agenda for the Town Council approval.

- III. The Town Manager shall have approval authority for Purchase Orders not exceeding ~~\$2,499~~10,000. If the amount exceeds ~~\$2,500~~10,000 the Purchase Order will be placed on the agenda for the Town Council to approve. The Finance Department will contact the requesting Department and or Committee or Board if the Purchase Order is denied. The Finance Department will encumber the Purchase Order when it is received by their office no matter the amount of the Purchase Order.

IV. Distribution of Purchase Orders after they are approved by the Town Manager or the Town Council will be processed as follows:

- A. Purchase Orders approved by the Town Manager between \$1,001 and ~~\$2,499~~10,000 will be sent to the Finance Department. The requesting Department and/or Committee or Board will order the goods/services. The requesting Department and/or Committee or Board and the Finance Department will not process any invoices or payments against the Purchase Order until the Purchase Order is relinquished.
- B. Purchase Orders approved by the Town Council ~~exceeding \$2,500~~ will be returned to the Finance Department for processing. The Finance Department will return the appropriate copies of the Purchase Order back to the requesting Department. The requesting Department will order the goods/services. The requesting Department and the Finance Department will not process any invoices or payments against the Purchase Order until the Purchase Order is relinquished.

V. Unauthorized Purchases

Except as herein provided, it shall be a violation of the Town of Windermere policy for any officer, employee or agent of the Town of Windermere to order the purchase of any materials, supplies, equipment, professional or contractual services or to make any contract within the purview of this Policy other than through the Town Manager, or designee. Any Purchase Order or contract made contrary to the provisions herein shall not be approved, and the Town Council shall not be bound thereby. Purchases, orders, or contracts that are subdivided to circumvent the Purchasing Policy shall be considered Unauthorized Purchases.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 10
Title: REQUISITION POLICY PROCESS		
Effective Date: 12/10/13	Amended:	

- I. A Requisition is required for the procurement of goods/services under \$1,000, unless procurement of goods/services is governed by a written contract or is listed as an exempt item under exemptions and exclusions.
- II. A Requisition to purchase goods/services must be signed by the appropriate authority level. Complete a Requisition Form with the following information:
 - A. Department, Board, or Committee requesting materials.
 - B. Vendor name and address.
 - C. Fund/account number.
 - D. Total amount of order.
 - E. Department, Board, or Committee purchasing authority signature.
 - F. Quantity, unit size, catalog or part number, description, unit cost, and total cost of items.
 - G. Total of all items.
 - H. Remarks if needed - this is for further breakdowns in fund/budget/line item numbers and any special "ship to" or "bill to" information.

III. Unauthorized Purchases

Except as herein provided, it shall be a violation of the Town of Windermere policy for any officer, employee or agent of the Town of Windermere to order the purchase of any materials, supplies, equipment, professional or contractual services or to make any contract within the purview of this Policy other than through the Town Manager, or designee. Any Purchase Order or contract made contrary to the provisions herein shall not be approved, and the Town Council shall not be bound thereby. Purchases, orders, or contracts that are subdivided to circumvent the Purchasing Policy shall be considered Unauthorized Purchases.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 11
Title: CHANGE ORDER PROCEDURES		
Effective Date: 12/10/13	Amended: 3/12/2024	

I. Change Orders

In the course of business, it may be necessary to make changes to a Purchase Order. This is accomplished by a Change Order. A user may request a Change Order to any issued Purchase Order for review by the Finance Department. Change Order procedures shall not be used to avoid ANY standard purchasing procedures.

A Change Order is required for an increase or a decrease no matter the amount, for any Purchase Order. A Change Order will be needed to correct errors, omissions or discrepancies, cover acceptable cost over-runs or to incorporate requirements to expand or reduce the scope of goods or services ordered. A written Change Order is required when a project has changes to the scope of work, exceeds the number of days for substantial completion or has a change in contract price. When a Contract Change Order has been approved by the Town Council, the approval must be attached to a Purchase Order Change Order and submitted to the Finance Department for the Town Manager's approval. When a Contract Change Order has been approved by the Town Council, the resulting Purchase Order Change Order may be given final approval by the Town Manager. Any Change Orders to Purchase Orders must be submitted in writing to the Finance Department.

If a Change Order reduces the amount of the Purchase Order (regardless of the reduction amount) without changing the scope of the project the Town Manager may give final approval.

II. Change Order Procedures

- A. Any Change Order to Purchase Orders must be submitted in writing to the Finance Department.
- B. The Department Head will be required to sign the Change Order form and send it to the Finance Department for review.
- C. The Finance Department will review, sign, and then forward the Change Order Form to the Town Manager for signature.

- D. The Town Manager shall have the authority to approve any Change Order that does not cause the total purchase price (original Purchase Order plus all Change Orders) to exceed \$~~2,499~~10,000. If the total purchase price exceeds \$~~2,500~~10,000, the Change Order must be approved by the Town Council.
- E. If the Change Order must be approved by the Town Council, an agenda item will be prepared by the Town Manager for the next available Town Council meeting.
- F. Once the Change Order Form is approved, the Finance Department will distribute the fully executed Change Order to the requesting department. The requesting department will be responsible for submitting the Change Order to the vendor and to the Finance Department.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 12
Title: LEVELS OF AUTHORITY – RISK MANAGEMENT REQUIREMENTS		
Effective Date: 12/10/13	Amended:	

Risk Management Requirements / Hold Harmless Agreement

The Contractor/Vendor is required to purchase and maintain minimum limits of \$1,000,000 per occurrence for all liability, which includes general liability and, if applicable, automobile liability. Other coverage may be required where applicable.

The Contractor/Vendor must agree to hold the Town of Windermere harmless against all claims for bodily injury, sickness, disease, death or personal injury or damage to property or loss of use resulting there from, arising out of the agreement, unless such claims are a result of the Town's sole negligence.

The Contractor/Vendor shall purchase and maintain workers' compensation insurance for all workers' compensation obligations imposed by state law with at least \$100,000 each accident and \$100,000 each employee/\$500,000 policy limit for disease. Even if the Contractor/Vendor is not required by state law to secure workers' compensation insurance, the Contractor/Vendor shall purchase and maintain workers' compensation insurance in order to perform work or provide services to the Town of Windermere, Florida. (This is the standard requirement however; the Finance Department can perform a special review as needed on a case-by-case basis for the contractor/vendor.)

The Contractor/Vendor shall also purchase any other coverage required by law for the benefit of employees.

Required insurance shall be documented in Certificates of Insurance and shall be provided to the Town representative requesting the service.

The Contractor/Vendor shall be required to stipulate that he/she agrees to the Hold Harmless Agreement, and to abide by all insurance requirements.

The Town Council may lower the amount of coverage required on contracts for less than \$10,000 that do not involve high risk. The Town Manager shall have approval authority to lower the amount of coverage for Purchase Orders not exceeding \$2,499.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13
Title: COMPETITIVE BIDDING		
Effective Date: 12/10/13	Amended: 3/12/2024	

- I. The Requesting Department, Committee, or Board in conjunction with the Finance Department will formulate specifications using guidelines depicted later in the Writing Specifications Section.
- II. In an effort to ensure open and fair competition, the Requesting Department, Committee, or Board may solicit comments from local vendors to insure specifications, as written, do not preclude any given vendor from bidding.
- III. The Requesting Department, Committee, or Board shall attach a written proposal approval request for bids, requests for proposals, and requests for qualifications and forward specifications to the Town Manager for approval. The Town Manager will forward the bid package to the Finance Department for review and to make any necessary comments. The Town Manager will review for approval. Upon receipt of a completed and signed approval form, the Clerk Department will formally advertise the bid.
- IV. The Clerk Department shall determine the date, time and location for submitting bids, as well as the date, time, and location of the Public Bid Opening.
- V. The Clerk Department will advertise the request for bids required by application of applicable state and/or federal law or Town Charter, Ordinance or these policies as follows:
 - A. For goods and services other than capital improvements, at least once on the Town website and on Demandstar permitting at least two weeks for the vendor(s) to respond.
 - B. For capital improvements:
 1. The Town shall comply with the requirements of subsection 255.0525(2), Florida Statutes. If the statute is amended after enactment of these policies, the Town will comply with the amended statute.
 2. Unless the statute is amended, the Town will advertise as follows:

- a. For construction projects estimated to cost over \$200,000, the project shall be publicly advertised at least once in a newspaper of general circulation in Orange County, Demandstar, and the Town Website at least 21 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
 - b. For construction projects projected to cost more than \$500,000.00, it shall be publicly advertised at least once in a newspaper of general circulation in Orange County, Demandstar, and the Town Website at least 30 days prior to the established bid opening and at least 5 days prior to any scheduled pre-bid conference.
 - c. Exception. The advertising may be waived by the Town Manager in the event of an emergency, which includes an immediate danger to the public health or safety, an immediate danger of loss of public or private property, or an interruption in delivery of an essential governmental service.
- VI. All bids will be opened in public and read aloud by the ~~Clerks~~Clerk Department. The Requesting Department will attend the bid opening and will review the submitted bids to ascertain the most responsive and responsible bid that provides the best value to the Town.
- VII. Unless otherwise instructed, the Finance Department with the concurrence of the Requesting Department or Selection Committee, will recommend the award of bid to the Town Manager in writing with adequate justification.
- VIII. The Finance Department will determine if adequate budgeted appropriations are available for the purchase. The Finance Department will submit to the Town Manager for placement of the item on the agenda for approval by the Town Council if amounts exceed ~~\$2,500~~10,000.
- IX. The cancellation of an Invitation for Bids usually involves a loss of time, effort, and money spent by the Town and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest; e.g., (1) where there is no longer a requirement for the supplies or services; or (2) where amendments to the invitation would be of such a magnitude that a new invitation is desirable; or (3) where the Town Council or Town Manager has determined it appropriate.

The notice of cancellation shall identify the invitation for bids by number and short title or subject matter_{7.2}.
- X. Cooperative purchase agreements involve arrangements between two or more governmental entities to share contracts for the purchase of commodities or services

under the same contract. This is accomplished by including in their respective bid documents language notifying bidders that any response to the invitation for bid constitutes a bid made under the same terms and conditions for the same price to other governmental agencies.

XI. All Town solicitations for the procurement of commodities or contractual services shall include the following provision: Vendor is hereby notified that Section 287.05701, Fla. Stat., provides that the Town may not request documentation of or consider a vendor's social, political, or ideological interests when determining if the vendor is a responsible vendor.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.1
Title: COMPETITIVE BIDDING – WHEN REQUIRED		
Effective Date: 12/10/13	Amended:	

Competitive bidding shall be required only if a state or federal statute or grant requires the Town to utilize formal bidding; or if required by Town Charter or ordinance or these policies; or if the Town Council or Town Manager directs that competitive bidding be used.

Competitive bidding procedures shall not be required unless the Town Manager or Town Council directs their use for the purchase of:

- I. Books, periodicals, software, printed materials, artwork, photographs, film, film strips, video tapes, disk or tape recordings or similar material where such materials are purchased directly from the producer or publisher, the owner of the copyright, an exclusive agent with the State, a governmental agency, or a recognized educational institute;
- II. All heavy equipment repairs may be exempted from the competitive bidding requirements. The affected Department Head or designee shall solicit and evaluate quotations and make a recommendation for award. The Finance Department shall review the quotations and provide a recommendation to the Town Manager for awarding the bid. Should a purchase exceed \$10,000, the Town Manager shall agenda the item for ratification by the Town Council at a regularly scheduled Town Meeting;
- III. Commodities or services from established State of Florida, PRIDE, SNAPS, SPURS, RESPECT, government pricing, Federal General Services Administration contracts and other contracts competitively bid by government entities;
- IV. The purchase, lease, or rental of real property, except to the extent required by State law, Abstracts of titles for real property, Title insurance for real property;
- V. Supplies, professional and contractual services from a single source upon certification by the Town Manager stating the conditions and circumstances requiring the purchase. This certification shall set forth the purpose, need and justification that the item or service is the only one that will produce the desired results;
- VI. Public utility services;

- VII. Supplies or equipment where compatibility of equipment, standardization of products or services, accessories or replacement parts permits only one reasonable source of supply;
- VIII. Grants (direct payment);
- IX. Advertisements, Postage, Legal Services, Expert Witnesses, Court Reporter services;
- X. Dues and memberships in trade or professional organizations, Fees and costs of job- related seminars, training, and travel;
- XI. Artists, music ensembles, (bands) and other entertainment providers;
- XII. Emergency purchases;
- XIII. Other commodities or services, as determined by the Town Manager.
- XIV. Any other good or service to be purchased by the Town if no state or federal law, the Town Charter or Town ordinances or these policies require formal bidding. However, the Town may choose to use formal bidding for any purchase.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.2
Title: COMPETITIVE BIDDING – PIGGYBACK		
Effective Date: 12/10/13	Amended: 3/12/2024	

I. PIGGYBACK

The method of providing additional purchasing options is common practice in the public purchasing community and offers significant benefits. The additional purchasing option may provide favorable pricing and reduce the costs associated with preparing specifications and issuing invitations to bid. "Piggyback" is a procedure of procuring goods or services without formal bid procedures via utilizing other public entity's award of an Invitation to Bid or Request for Proposal. As provided for in the Charter, in the purchase of items which require use of a formal bidding process, the Town may piggyback the contracts of any other public entity including the state, counties, cities or any other public entity which has gone through a formal bidding process. The piggybacked bid should not have been awarded more than one (1) year prior to piggyback. The Town shall be cautious when piggybacking another entity's bid. The award will be in accordance with all the terms and conditions, prices, time frames, and other criteria as included in the Invitation to Bid. Changes to terms and conditions, etc., are not allowed. It is recommended that the user Department contact the user Department of the other entity to determine that the item is exactly what is needed by the Town and additionally, to determine if they would recommend piggybacking of the award.

However, design or construction contracts originally procured using the qualification-based selection process in Florida Statute 287.055 cannot be piggybacked by the Town if the contract amounts exceed the thresholds in Florida Statute 287.055. The thresholds for architects and engineers are \$325,000 construction cost or \$35,000 planning study, and for construction services the threshold is \$300,000, but for construction services only the threshold is adjusted by the percentage change in the Engineering News-Record's Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin (currently about \$425,000).

A. The following is required to be part of the procurement package:

1. A full copy of the Invitation to Bid
2. Vendor's price sheet
3. Vendor's signature
4. Allowance for piggybacking by other entity
5. Notification of award
6. Date of Purchase Order or contract and expiration date.

- B. Quotation from vendor, offering to honor the same prices under the same terms and conditions as indicated in the Invitation to Bid is also required. Only purchases can be piggybacked; sale or trade-ins must be sold separately. Should the piggybacked bid have a line item(s) for trade-in of used equipment, the line item(s) cannot be piggybacked.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.3
Title: COMPETITIVE BIDDING - SOLE SOURCE		
Effective Date: 12/10/13	Amended:	

I. Sole Source/Non-Competitive Negotiations

Non-competitive negotiations may be used as a procurement method for purchases of supplies or services available from only one source; or sole brand or when it is recommended by the Department Head of the using department or the Finance Department that competitive bidding is not feasible or not advantageous to the Town and approved by the Town Manager and Town Council. The Town Council must make a determination that services and/or goods are available only from a sole source. The cost of goods or services must not exceed \$50,000.00 or such amount as is set by the Town Council in an ordinance. Sole Source means the only existing source of the items that meet the needs of the using department as determined by a reasonably thorough analysis of the marketplace. Sole Source purchasing of goods and services requires a written finding that only one qualified source is available; and also requires a written statement that a search for alternative source was made; and a justification of why the only source is acceptable to fit the needs of the using department. A request for a proprietary item does not justify sole source procurement if there is more than one potential bidder for the item.

A. The Finance Department may negotiate with a sole source supplier under the following circumstances:

1. The needed supply or service is available from only one source/brand.
2. The supply or service is wanted for experimental trial or testing.
3. Additional supplies or services are needed to complete an ongoing task.
4. A supply or service is purchased from, or a sale is made to, another unit of government.
5. The item is a component or replacement part for which there is no commercial distributor.
6. Compatibility is the overriding consideration.
7. The item is a used item, which is subject to immediate sale.

8. The item has a cost of less than \$50,000.

B. Procedures

1. In processing requisitions for sole source/sole brand items, the Finance Department conducts negotiations as to price, delivery, terms, and conditions.
2. The Finance Department, in cooperation with the using department, prepares a recommendation for award.
3. The Town Council approves use of a sole source.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.4
Title: Unique Purchasing Opportunities		
Effective Date: 12/10/13	Amended:	

I. Unique Purchases:

Where the Town Council determines by resolution that a unique purchasing opportunity is available to the Town, it may authorize any single purchase or contract without the necessity of bidding.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.5
Title: COMPETITIVE BIDDING - TIE BIDS		
Effective Date: 12/13/10	Amended:	

I. TIE BIDS

If all bids received are for the same total amount or unit price, quality and service being equal, the contract or purchase shall be awarded to a local responsible bidder. For tie bids among local bidders, or among non-local bidders over ten thousand dollars (\$10,000.00) the Town Manager shall determine which bid shall be recommended to the Town Council for approval at a regularly scheduled Town Council meeting.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.6
Title: COMPETITIVE BIDDING – BID PROTEST		
Effective Date: 12/10/13	Amended:	

I. BID PROTEST PROCEDURES

- A. Any bidder opposed to an intended decision on any bid award must file with the Finance Department of the Town of Windermere a written Notice of Intent to file a protest, within seventy-two (72) hours (excluding Saturdays, Sundays, and legal holidays), after the posting of the bid tabulation. The initial notice of protest shall clearly state the facts and law upon which the protest is being based. Failure to state the basis of the protest shall be just cause for the protest to be rejected according to the bid protest procedure.
- B. Following the filing of the Protest Notice, the bidder must submit a formal, written bid protest within five (5) Town of Windermere workdays.
- C. The formal written protest shall contain the following:
 - 1. Town of Windermere’s bid number and description as advertised.
 - 2. Name and address of company or person filing the protest.
 - 3. A clear statement as to the grounds of protest (applicable statutes, ordinances, laws, etc.)
 - 4. Specifically request the relief to which the protestant deems itself entitled.
- D. The Finance Department will review the bid protest, evaluate the facts and attempt to resolve the bid protest in a manner that attempts to address the interests of all parties.
- E. In the event the protest cannot be resolved by mutual agreement, the Finance Department will present the protest to the Town Manager with a recommendation for resolution of the protest. The bid protester will be notified in writing of the final findings.
- F. All bid solicitations (information to bidders) shall contain the following statement:

“Any bidder affected adversely by an intended decision with respect to the award of any bid, shall file with the Finance Department for the Town of Windermere, a written notice of intent to file a protest not later than seventy-two (72) hours (excluding Saturdays, Sundays, and legal holidays), after the posting of the bid tabulation. “

Protest procedures may be obtained in the Finance Department.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.7
Title: CONTRACTING FOR PROFESSIONAL SERVICES		
Effective Date: 12/10/13	Amended: <u>3/12/2024</u>	

- I. The purpose of this section establishes compliance with Chapter 287.055, Florida Statutes, known as the “Consultant’s Negotiation Act.”

Section 287.055, Florida Statutes, applies to the acquisition of professional architectural, engineering, landscape architecture, or surveying and mapping services.

- II. Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice must be processed through the procedure outlined in Section 287.055, Florida Statutes, which requires:
 - A. When it is projected that a project's construction will exceed the statutory category 5 threshold amount (\$325,000 as of ~~2013~~2024) or when it is projected that cost of a planning or study of activity will exceed the statutory category 2 (\$35,000 as of ~~2013~~2024) threshold amount, the Town must:
 1. ~~Publically~~Publicly announce each occasion when a project or study will exceed the amounts at a public meeting and on the Town’s website and by any other means the Town uses to provide notice to persons or firms intending to work for the Town.
 2. Encourage firms that desire to provide professional services to the Town to submit annually statements of qualifications, which may be considered for such project.
 3. Before considering any firm or individual design to provide professional services to the Town, that person or firm must be certified as qualified pursuant to law and the regulations of the Town. In making this decision, the Town should consider the capabilities, adequacy of personnel and experience of the firm or individual.
 4. The Town Manager shall appoint a selection committee as provided for in these policies to evaluate the professional services, including

capability, adequacy of personnel, past record experience and any other factors determined by the Town to be applicable to its particular requirements for a specific project. The Town must endeavor to meet statutory requirements for minority business enterprise procurement rules.

5. For each proposed project or study, the Town Manager and selection committee shall evaluate current statements of qualifications and performance data on file with the Town and the submittals of any other firms regarding a proposed project or study. In evaluating, the selection committee may require:
 - a. Discussions with the firm.
 - b. Public presentations by the firm.
 6. No fewer than three firms must be evaluated regarding their qualifications by the Town Manager and selection committee along with their approach to the project and ability to furnish the required services. The Town Manager shall submit a recommendation of no fewer than three firms deemed to be the most highly qualified to perform the required services to the Town Council for approval.
 7. The Town Manager shall negotiate a contract with the most qualified firm for professional services at compensation, which the Town determines as fair and reasonable.
 8. If the Town Manager is unable to negotiate a contract with the firm considered to be the most qualified at a price that the Town Council has determined to be fair, competitive and reasonable, negotiations with that firm must be formally terminated and negotiations with the second most qualified firm shall occur. If there is a failure of the second firm, then the Town Manager shall undertake negotiations with the third most qualified firm.
 9. If the Town Manager is unable to negotiate a contract with any of the three, the Town Manager shall select additional firms in order of competence and qualification and continue negotiations.
- B. If a project does not meet the threshold monetary requirement for this type of procedure, the Town may use other procedures to seek services. However, if in using another procurement process, the majority of the compensations proposed by firms are in excess of the appropriate threshold amounts, the Town must reject all of the proposals and re-initiate procurement pursuant to this policy.

C. The RFQ process should be used for the procurement of any Continuing Contract services to be performed by professional designers or

construction contractors. Continuing contracts cannot be used for any project that exceeds the thresholds in Florida Statute 287.055, which are stated above in the definition of Continuing Contract. Continuing Contracts should not exceed a term of 3 years and have no more than two 1 year extension options.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 13.8
Title: SELECTION COMMITTEE POLICIES AND PROCEDURES		
Effective Date: 12/10/13	Amended:	

I. PROPOSAL EVALUATION COMMITTEE (SELECTION COMMITTEE)

- A. Submittals resulting from a Request for Proposals (RFP), Request for Qualifications (RFQ) or an Invitation to Bid (ITB) could be evaluated by a Selection Committee. The Selection Committee will be used to review the technical aspects of proposal submittals for compliance with specifications and make recommendations on awards. A Selection Committee can be used to review bids as needed.
- B. The Selection Committee generally consists of three (3) or five (5) members representing a cross-section of employees and/or residents of the Town of Windermere with knowledge of the commodities or services sought. Selection Committee members shall be recommended by the requesting Director and submitted to the Town Manager for review. The Finance Department or designee shall serve in an advisory capacity to the Selection Committee and must be present at all proceedings.
- C. No person shall serve on a Selection Committee if he/she has a conflict of interest with respect to any proposer being evaluated. The following activities shall be deemed to be a conflict of interest and shall preclude a person from serving on the Committee.
 - 1. Current employment or past employment with the proposer within one (1) year prior to the evaluation.
 - 2. Serving as a current consultant or past consultant for or with the proposer being evaluated within one (1) year prior to the evaluation.
 - 3. Having an ownership interest (stocks or assets) in the proposer being evaluated at the time of the evaluation (excluding mutual funds).
 - 4. Having a family member (spouse, child, sibling, parent, in-law) with an ownership interest in the proposer being evaluated at the time of the evaluation.
 - 5. Serving as an officer and/or director for the proposer at the time of evaluation.

6. Being a party to any current or past litigation / lawsuit with or against the proposer being evaluated.
 7. Any other activity, interest, or relationship that could possibly be viewed as a conflict of interest or that is in conflict with section 112.313, Florida Statutes (Code of Ethics) must be disclosed in writing to the Finance Department prior to service on a Selection Committee. The Finance Department shall make the determination as to whether or not a conflict exists.
- D. Reasonable public notice shall be given before any Selection Committee meeting. All notices shall be posted in clear public view by the Finance Department and can also be included in the RFP, RFQ and/or ITB solicitation. The notice shall be posted at least one day before the meeting date. Such notice shall include:
1. Name and/or purpose of Selection Committee.
 2. Time and place of meeting.
 3. ADA requirements notification information.
- E. The Selection Committee shall comply with the Florida Government in the Sunshine Law in section 286.011 of the Florida Statutes, the Florida Public Records Law in chapter 119 of the Florida Statutes, and the Town's ordinances and policies governing public meetings.
- F. The minutes of any open public meetings shall be made available for public view. The original minutes shall be filed with the solicitation package in the [Clerk's Clerk](#) Department.

II. SELECTION COMMITTEE PROCESS

- A. The requesting Department Head shall serve as chair to the Selection Committee and will coordinate all scheduling with the Clerk and Finance Department. It is the responsibility of the Clerk Department to ensure proper public notice is issued for the meeting(s).
- B. Selection Committee members shall refrain from any conversations with each other for the duration of the process except during properly noticed Committee meetings.
- C. Selection Committee members must attend all scheduled meetings including any oral presentations by bidders/proposers.
- D. Selection Committee members must evaluate bid/proposal submittals based upon the written response to the scope of work and other pertinent information required by the terms of the proposal only. Selection Committee members must refrain from inclusion of any assumptions gained prior to or outside the

evaluation process. Information entered into the record must be relevant fact based information.

- E. The Finance Department may be responsible for conducting reference checks of bidders / proposers if requested from the Selection Committee.
- F. The Clerk Department is responsible for ensuring written minutes are prepared and attendance is recorded for all meetings.
- G. Each Selection Committee member is responsible for completing their individual scoring sheets. The Selection Committee can, with a consensus, produce one final scoring sheet. However, all individual scoring sheets must also become part of the official bid / proposal file. If one final scoring sheet is produced, all Selection Committee members must sign the sheet to indicate agreement.
- H. The Selection Committee may also produce an evaluation summary at the Chairman's discretion. A summary may be necessary in order to provide a brief description of the project and/or basis for recommendation to the Town of Windermere Council.
- I. All scoring sheets and evaluation summaries must be provided to the Clerk Department for the official bid/proposal file and for agenda item preparation.
- J. If the Selection Committee desires product demonstrations or oral presentations, the Clerk Department shall coordinate the times and location. Only the bidders/proposers that are being considered for award should be asked to participate in the demonstration (unless the procurement is an RFP and the demonstration is a requirement of the solicitation). A representative from the Finance Department shall be present at all demonstrations.
- K. Any products left in the custody of the Town for further testing or review shall be the responsibility of the Clerk Department. Once the testing or review has been completed, the Clerk Department shall notify the bidder or proposer that the product is ready to be returned.
- L. Once an award has been made the original bid / proposal file will be sent to the Clerk Department for official record keeping.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 14
Title: REAL PROPERTY POLICY AND PROCEDURES		
Effective Date: 12/10/13	Amended:	

I. PURPOSE:

The purpose of this section is to identify proper policies and procedures relating to real property.

- A. All real property, which is purchased by the Town should normally be purchased at fair market value. This may require either an evaluation by a realtor or an appraiser as determined by the Town Council. The Town Council must approve any purchase of real property by the Town.
- B. The Town must comply with the Public Records law if it obtains an appraisal or written evaluation of the value of the property. Appraisals are exempt from disclosure until an option contract is executed or, if no option contract is executed, until 30 days before a contract for purchase is considered for approval by the Council. If no contract is to be considered by the Council, the exemption from disclosure ends 30 days after negotiations end.
- C. The Town may purchase property through a negotiation process approved by the Town Council as long as the Town complies with the requirements of the Florida Statutes.
- D. The Town may also seek to take real property by eminent domain.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 15
Title: PURCHASING CARD PROCESS		
Effective Date: 12/10/13	Amended:	

I. GENERAL:

The Town of Windermere Purchasing Card Program is designed to improve efficiency in processing low dollar purchases from any vendor that accepts the Town of Windermere's credit card.

This program will allow the cardholder to purchase approved commodities and services directly from vendors. Each purchasing card is issued in the cardholder's name and the Town of Windermere, Florida. The Finance Department will be responsible for the overall management of this program.

II. ISSUANCE:

The Department will recommend to whom the cards should be issued. The Town Manager will approve or disapprove the recommendations. The Finance Department will issue purchasing cards upon approval based upon the purchasing authority of each individual or work group, and in accordance with provisions established in the Town of Windermere's Purchasing Card Agreement.

III. TRANSACTION DOLLAR LIMIT:

The single per transaction dollar limit shall not exceed \$1,000.00. Departments with the approval of the Town Manager selected to participate in the program shall specify:

- A. Authorizations tied to budget limits
- B. Restrictions on the types of vendors with which the card may be used
- C. Any additional controls available
- D. Purchasing cards may be used to purchase commodities and a limited number of services. Cash advances are strictly prohibited.

IV. TAX EXEMPT NUMBER:

All Purchasing Card purchases are exempt from all state and local use tax. The Town of Windermere's Tax Exempt I.D. Number is to be given to all vendors to avoid payment of state and local use tax. The use of the Town's Tax Exempt I.D. Number for personal use is strictly prohibited. Any employee caught using the Town's Tax Exempt I.D. Number for personal use will receive disciplinary action to include, but not limited to, immediate termination of employment. Additionally, section 212.085, Florida Statutes, states that in addition to being liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, such person shall be liable for fine and punishment as provided by law for a conviction of a felony of the third degree, as provided in sections 775.082, 775.083, or 775.084, Florida Statutes.

V. RECEIPT OF GOODS:

To insure prompt and proper payment of receipts/invoices, the following procedure should be strictly adhered to, noting that timeliness and completeness are of utmost importance to the success of the process. Once a cardholder has submitted for processing transactions, all receipts and invoices should be attached to the Purchasing Card Expenditure Report Form. The appropriate department and account number indicating where the purchase is to be expended should be included on the Purchasing Card Expenditure Report Form. After receipts/invoices have been reconciled and attached to the Purchasing Card Expenditure Report Form, the cardholder must obtain the appropriate authorization on his/her report before forwarding to the Finance Department. Submission of all properly authorized documentation is due to the Finance Department no longer than five days after the department has received the monthly statement.

VI. INTEREST AND PENALTY:

Cardholders must send their Purchasing Card Expenditure Report Form and invoices to the Finance Department within five days after the department has received the monthly statement. If any interest is acquired due to late submission of the monthly payment to the Finance Department the violating department will be charged the interest payment.

VII. DISPUTED CHARGES AND ASSISTANCE:

In the event of a disputed charge, in which the cardholder is unable to resolve the disputed purchase with the vendor, the cardholder should promptly complete a Purchasing Card Dispute Form and notify his/her supervisor. The completed dispute form should then be forwarded to the Town Manager, who will forward the form to the Financial Institution and copy the Finance Department.

VIII. RETURNS:

In the event there are returns, the cardholder must check the subsequent invoice (statements) for the credit and attach the credit slip when processing for payment. If

the credit slip was not obtained, attach other documentation (i.e. memo) explaining the return.

IX. LOST OR STOLEN CARDS:

Each card holder is to report their lost or stolen purchasing card to the Finance Department immediately. If not reported immediately, the Town of Windermere may be liable for the fraudulent charges and, if liable, the cardholder's budget will be charged.

X. INAPPROPRIATE PURCHASES:

Neither the bank nor the merchant bears any responsibility for inappropriate purchases. If a purchase was made by the cardholder, the merchant will be paid and the department budget charged, unless the department returns the merchandise and the merchant agrees to take it back and issue a credit. Individual cardholders may be subject to disciplinary action up to and including termination if illegal and/or inappropriate purchases occur.

XI. PROHIBITED PURCHASES:

- A. Cash Advances
- B. Alcohol, tobacco products, or prescription drugs
- C. Meals and food (Only in accordance with policies adopted by the Town Council)
- D. Recreation or Entertainment
- E. Gas and oil products, except in conjunction with Town business travel in a Town vehicle
- F. Vehicle repair, other than a Town vehicle
- G. Capital Outlay
- H. Telephone Calls
- I. Travel expenses unless an authorization to travel request is approved
- J. Items for non-Town or personal use
- K. Items not budgeted or items that would cause the budget to be over expended
- L. Other items specifically prohibited by the Town of Windermere Town Council or a Department in writing

XII. CARDHOLDER PERFORMANCE:

A cardholder's responsible supervisor shall review their purchases, as they are responsible for the cardholder meeting all the requirements specified for the use of their purchasing card. The completion of the review will be documented by signing and dating by the cardholder and the supervisor on the Purchasing Card Expenditure Report Form.

XIII. CANCELLATION OF CARDS:

Whenever the employment of a cardholder is ended, the cardholder's supervisor is responsible for returning the card to the Finance Department for cancellation.

IXV. RECORD KEEPING:

Each Cardholder shall match their receipts to the purchasing card report and forward to their supervisor for their review. Purchasing cards will not be issued to employees designated as being in probation status with the exception of Senior Staff or Department Heads. All other exceptions require approval by the Town Manager.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 16
Title: STANDARDIZATION OF EQUIPMENT		
Effective Date: 12/10/13	Amended:	

I. Purpose

The purpose of standardization of equipment and supplies is to capitalize on purchasing economies and or other benefits such as maintenance efficiency, spare parts consolidation and interchangeability, etc., when the same type of equipment and supplies are purchased consistently. Examples could be radio equipment, telephone equipment, etc. for interchangeability, cross use, and maintenance.

II. Procedure

To obtain approval for standardization of supplies or equipment, the requesting department head must submit a memorandum to the Finance Department requesting the standardization and must include convincing justification. Justification could be based on issues such as, but not limited to, purchase economies, safety considerations, training, and/or maintenance economies. The Finance Department will either reject or concur with the request. If rejected, the normal procurement process will be followed. If the Finance Department concurs, he/she will submit a written request to the Town Manager for approval. If not approved, the normal procurement process will be followed. If approved, future purchases for the approved equipment or supplies will be purchased in accordance with the adopted standard specification. The standard specification(s) shall be used to obtain quotes or bids as appropriate.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 17
Title: LEASES, CONTRACTS AND AGREEMENTS		
Effective Date: 12/10/13	Amended:	

- I. All contracts, leases, and agreements shall be reviewed by the Town Manager. In determining the value of the contract, all proposed renewal clauses must be considered. The Town Manager will consult with the Town Attorney as appropriate prior to sending the contract, leases, or agreements to the Town Council for approval.
- II. Recurring Basis: Shall be those goods or services that are provided to the Town of Windermere on a continuing or repeat basis. One time purchase of goods by the Town of Windermere or the provision of services to the Town of Windermere on a one-time basis shall not be recurring.
- III. The authority to enter into contracts, leases, or agreements for the purchase of goods and services shall be presented to the Town of Windermere Town Council at a regularly scheduled Town Council Meeting for approval.
- IV. Exception: In an emergency as determined by the Town Manager and the Town Council of the Town of Windermere, authorization to contract in excess of \$2,500 is granted to the Town Manager with the provision that it will be brought to the attention of the Town Council at their next regularly scheduled meeting for "after-the-fact" approval. This authority will be capped at \$50,000; any requirements above that level will require that a special meeting of the Town Council be called.
- V. All original contracts will be forwarded to the Clerk Department. The Clerk Department is the designated Official Record Custodian of all Town contracts, leases and agreements.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 18
Title: WRITING SPECIFICATIONS – INVITATION TO BID		
Effective Date: 12/10/13	Amended:	

- I. Invitations for bids must describe the requirements of the Town of Windermere clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished to prospective bidders for the purpose of bidding. It is the duty of the Finance Department to assist Departments in writing specifications and the Finance Department is ultimately responsible for approving the specifications before going to bid.

- II. Specifications should contain the following elements:
 - A. Physical, chemical or electrical description of the item to be purchased.

 - B. Dimensions, tolerance and performance expected of the item shall be mentioned in the specifications although careful attention should be given to the need or justification for performance characteristics. For example, the specific wheelbase of a vehicle within 6 inches may be irrelevant and unduly eliminate a vendor without sufficient reason.

 - C. Reference to a sample, if any, furnished by local government or the vendor is a good technique to eliminate confusion. Be careful to avoid identifying a specific brand or manufacturer.

- III. Bid price is to include net delivered price or no separate charges for delivery or other hidden cost. This provision has a tendency to make bids from local vendors more competitive compared to out of state vendors.

- IV. Specifications must clearly identify the quantity or estimated quantity to be furnished by the vendor.

- V. Time and place of delivery should be included in specifications if possible. If the vendor cannot deliver within a specified time period, specifications should be written which allow the Town of Windermere to cancel the bid and select the next lowest vendor.

- VI. If alternative bids are to be considered, all details must be included in the specifications.

- VII. Official bid sheet and sample contract documents are to be included in the bid package.
- VIII. If Trade-in(s) is involved, the appropriate information must be included in the bid package.
- X. All contractors bidding on road projects are required to be pre-qualified with the Florida Department of Transportation as a pre-requisite to bid on Town road projects.
- XI. Performance bonds will not be required on projects of \$100,000 or less if the Town of Windermere is to pay the contractor in full upon completion of the project. If a payment schedule is involved, a Payment and Performance Bond will be required.
- XII. On projects of less than \$100,000 requiring Payment and Performance Bonds, will so state in the specifications under a section/provision entitled "Payment and Performance Bond". These bonds will be maintained and currency validated by the owning Department. Awardees will provide all applicable certifications/licensing requirements during the bid process.
- XIII. All Invitations for bids and requests for proposals should include the following solicitation provisions:
 - I. Qualified or conditional bids will not be accepted.
 - II. The Town of Windermere reserves the right to accept or reject any and all bids in whole or in part, to waive informalities in the bidding documents, to obtain new bids, or to postpone the bid opening pursuant to the Council's purchasing policies.
 - III. Bids shall be valid for a period of ninety (90) days after the date of the bid opening.
 - IV. A statement informing proposed vendors that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, and may not transact business with the Town of Windermere for a period of 36 months following the date of being placed on the convicted vendor list.
 - V. The number, duration and condition of any intended renewal periods.
 - VI. If predictable, an estimated time for bid award.

- VII. The basis for award.
- VIII. Procedures to award when tie bids are received.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 19
Title: RFP OR RFI PROCEDURES		
Effective Date: 12/10/13	Amended:	

I. Purpose

Because price differentials may only be a minor consideration compared to the quality of the professional's work, professional services are exempted from the Town of Windermere's competitive bidding policy. Instead, professional services will be acquired through competitive negotiations, or such other procedure as approved by the Town Council.

II. Definitions

A professional service is assistance obtained in support of the Town of Windermere operations from an independent contractor in a professional field.

III. Use of this Procedure.

This procedure should be used if the Town is obtaining the professional service for:

- A. A project which exceeds the statutory amounts under Section 287.055, Florida Statutes, for architecture, professional engineering, landscape architecture, or a registered land surveying services.
- B. Any other professional service the Town Manager or the Town Council determines should use this procedure.

IV. Procedure for Request for Proposal Services.

- A. To initiate a request for professional services, a memo defining the scope of work must be prepared by the requestor and submitted to the Town Manager.
- B. The Town Manager will approve or deny the pursuit of professional services.

- C. Upon approval, the requesting Department shall submit to the Finance Department a complete RFP describing the services required, bonds, contracts, pre-proposal conference, etc., in an electronic format.

- D. The Finance Department will review the contents of the RFP document submitted and complete the specifications by adding items such as the day, date, time and place for the RFP opening as well as the Town of Windermere insurance requirements and any other forms or notices required by the Town of Windermere or Florida Statutes. The Finance Department will also post the RFP on the Town of Windermere's Website.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 20
Title: PURCHASE OVER \$10,000 FOR RFP		
Effective Date: 12/10/13	Amended:	

I. Purpose

The purpose of this RFP is for the procurement of all products and services, not previously covered, where the requirement cannot be defined in sufficient detail for an Invitation to Bid (ITB).

II. Procedure

- A. This procedure is a formal sealed proposal process. Departments requiring this procedure shall submit to the Finance Department a complete set of specifications detailing the products or services required, pre-bid conference, contract, and bonds if appropriate.
- B. The Clerk Department will review the contents of the ITB document submitted and complete the specifications by adding items such as the day, date, time and place for the RFP openings as well as the Town of Windermere insurance requirements and any other forms or notices required by the Town of Windermere or Florida Statutes. The Clerk Department will also prepare an "RFP" advertisement to be published in a newspaper of general circulation one time with a submittal due date not less than thirty (30) days from the first advertisement. The Clerk Department will also post and transmit on Demand Star to the appropriate registered vendors from the "Bidders List" and notify them of the RFP.
- C. When proposals are received at the specified time, date and place, the RFP opening will be held.
- D. Proposals will be opened and read aloud by the Clerk Department.
- E. After the RFP opening has been completed, the Finance Department and the requesting Department (plus any others at their discretion) shall select a vendor for recommendation based on the predetermined criteria.
- F. The bids will be officially tabulated by the Clerk Department indicating the recommended vendor. The tabulation will be submitted to the requesting Department for confirmation signature. The tabulation will then be approved by

signature of the Town Manager and submitted to the Town Council for final approval.

- G. After the Town Council has approved the vendor selection, the tabulation will be returned to the Clerk Department. A copy of the tabulation will be sent to the Department and to all bidders, denoting the selection of the successful vendor.
- H. If a contract is involved, it shall be reviewed by the Finance Department, and then submitted for consideration to the Town Manager. All contracts must then be approved and executed by the Town of Windermere Town Council.
- I. The requesting Department shall then prepare a request and submit it to the Finance Department to issue a Purchase Order number, noting the RFP number and vendor on the request.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 21
Title: PURCHASE OVER \$10,000 FOR RFQ		
Effective Date: 12/10/13	Amended:	

I. Purpose:

The purpose of this method of obtaining goods and services is intended for those situations where:

- A. Goods and services are expected to be required from time to time throughout the course of the year or other specific time frame (e.g. grant period);
- B. The Town is unable to accurately define ahead of time the specific quantities of goods and services expected;
- C. The Town is unable to compile detail specifications or detail specifications are not appropriate; and (c) the Town is unable to compile detail specifications or detail specifications are not appropriate; and
- D. The services are not a professional service as defined in Section 3, herein.

II. Objective

The objective of this method shall be to establish a list of pre-qualified vendors for the duration of the expected requirement that will be solicited for competitive quotations from time to time as the need for requirements arise.

III. Types of Services

The services for which this procedure is intended shall include but not be limited to the following:

- A. Medical Services - medicine, psychiatry, dental, hospital and other health fields;
- B. Clerk/Finance - bond counsel, rating and underwriting, financial advisor, and investment services;
- C. Appraisal Services - real and personal property appraiser;

- D. Consultants - planning, management, or scientific advisors; and
- E. Construction Contractor services - General, Builder, or Residential.

IV. NOTE:

Although this section is designed for the services listed above, specific projects or other circumstances may dictate an alternative approach for these services such as an Invitation to Bid (ITB) or RFP. Therefore, the Finance Department may at their discretion, follow the ITB or RFP procedure as outlined elsewhere within this Section for the above services when warranted.

V. Procedure

- A. Divisions/Departments requiring this process shall submit to the Finance Department general specifications describing the goods or services required, the duration of the expected requirement, the vendor qualification criteria, bonds, contracts, and pre-proposal conference, etc. The Finance Department will review the contents of the RFQ document submitted and complete the specifications by adding items such as the day, date, time and place for qualification proposal openings as well as the Town of Windermere insurance requirements and any other forms or notices required by the Town of Windermere or Florida Statutes.
- B. The Clerk Department will prepare an RFQ advertisement to be published in a newspaper of general circulation once per week for two consecutive weeks with the due date not less than thirty (30) days following the first advertisement. When the advertisements have been scheduled, the Finance Department will post and transmit on Demand Star to the appropriate registered vendors from the "Bidders List" for the goods or services required. All appropriate vendors, in good standing, will be notified of the RFQ.
- C. At the specified time, date and place, the RFQ proposals will be opened and read aloud by the [ClerksClerk](#) Department.
- D. After the proposal opening has been completed, the Town Manager shall convene an ad hoc evaluation committee consisting of the Town Manager, the requesting Department, Town member designated by the Town Manager, and any other members at the discretion of the Committee or the Town Manager. The Committee shall review and evaluate all qualification proposals to determine qualified vendors in accordance with the specifications.

- E. A tabulation of qualified vendors will be compiled by the Finance Department. A copy of the tabulation will be signed by the Department and Town Manager. The tabulation will then be sent to the Town Council for final approval.
- F. The Finance Department will then send copies of the tabulation to the requesting Department and to all proposers.
- G. If a formal contract is involved, it will be reviewed by the Finance Department, and then submitted for consideration to the Town Manager. The contract shall then be reviewed by the Town Attorney prior to presentation to the Town Council. All contracts must then be approved and executed by the Town Council,
- H. As the need arises for the goods or services, the requesting Department shall prepare a Requisition or Purchase Order and submit it to the Finance Department.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 22
Title: REQUEST FOR INFORMATION (RFI)		
Effective Date: 12/10/13	Amended:	Page Number: 1 of 1

Request for Information (RFI)

An (RFI), while not a procurement category, is an important tool used to increase knowledge about products or services and their availability and capability and is a formal method of gathering information about a commodity or service. It should be used when the requestor for the commodity or service is not knowledgeable regarding the current "state-of-the-art" in the area under consideration.

The Finance Department will issue a RFI based on the requesting Department:

- (1) Providing a description of the commodity, service, or a narrative of the end goal that is desired by the Department;
- (2) Providing any recommended specifications that may be available; and
- (3) Identifying possible vendors.

Issuing the RFI

- (1) The Finance Department will advertise the RFI for at least two consecutive Sundays in a local newspaper;
- (2) Advertisement may also be made in professional or trade publications as determined by the Town Manager; and
- (3) Mail or Email a copy of the RFI to all known applicable vendors.

The RFI responses will be due and opened not less than thirty (30) days after the first public advertisement. If advertising in a professional or trade publication then the due date and opening shall be not less than thirty (30) days after the publication officially is circulated.

A response or lack there of to an RFI does not qualify or disqualify a vendor nor give future leverage to a vendor.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 23
Title: EXCEPTIONS AND EXCLUSIONS		
Effective Date: 12/10/13	Amended:	Page Number: 1 of 1

There are certain expenditures for which the processing of a Purchase Order/Requisition is unnecessary. The following should be made without Purchase Orders or Requisitions:

- I. Employee expenses such as conference expense, mileage and other reimbursable expenses
- II. Utility, telephone bills, or other monthly re-occurring bills
- III. Insurance premiums
- IV. Interdepartmental billing such as worker's compensation premiums and other insurance premiums
- V. In the event of a declared emergency by the Windermere Town Council, purchasing procedures are waived during the period of the emergency as specified by the Town Council,
- VI. Bulk Fuel
- VII. Legal Advertising
- VIII. Contracts for professional services, as defined by F.S. 287, any encumbering shall be on the basis of the contract.
- IX. Service contracts with a fixed monthly or annual amount will be encumbered on the basis of the contract.
- X. Contracts for a unit price with a specified time frame shall be encumbered bases on a quantity or dollar value estimated by the requesting Department with the Town Manager and, if necessary, The Town Council for approval.
- XI. Commodities and services that are procured from vendors holding state or federal contracts are exempt from the competitive bidding process.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 24
Title: AUDITING COMPLIANCE		
Effective Date: 12/10/13	Amended:	Page Number: 1 of 1

- I. An invoice submitted to the Finance Department for payment shall qualify for payment when the following conditions are met:
 - A. The invoice is accompanied by the Purchase Order, acknowledging the receipt of goods or services, or the Requisition that is signed by the individual with appropriate level of authority that coincides with the monetary amount of the goods or services.

In the event of a partial shipment, a photocopy of the Purchase Order or Requisition indicating the item(s) received may be forwarded to the Finance Department as long as it has been signed and dated by the proper purchasing authority.
 - B. The appropriate original documentation has been received by the Finance Department, as described under the Leases, Contracts and Agreements section of this document.
- II. An invoice submitted to the Finance Department, without a Purchase Order or Requisition must be covered under Exemptions and Exclusions within the Purchasing Procedures and Policies Manual.
- III. All invoices and supporting documentation may, at any time, be subject to internal audit review, thus delaying payment until completion of this procedure.
- IV. A Change Order will be processed to correct a discrepancy between the monetary amount on the invoice and the monetary amount of the processed Purchase Order, if the amount is larger than the approved Purchase Order, see Change Order Procedures, for amount and processing instructions.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 25
Title: FLORIDA PROMPT PAYMENT ACT		
Effective Date: 12/10/13	Amended: <u>3/12/2024</u>	Page Number: 1 of 2

The Florida Prompt Payment Act was passed by the legislature in Special Session, to ~~insure~~ensure that vendors who provide goods and services will receive payment for these goods and services on a timely basis. Invoices that remain unpaid after forty-five (45) days for goods or services and twenty-five (25) business days or as otherwise stated in 218.735, Fla. Stat. for construction services after are subject to an interest penalty payment at the rate of one percent (1%) per month that is accrued on unpaid balances, to vendors from the Town of Windermere. With respect to each past due payment, interest would cease to accrue after interest on the payment has accrued for twelve (12) months.

- I. An invoice must contain the same type of information necessary to initiate a Purchase Order/Requisition such as:
 - A. Name of Vendor
 - B. Address of Vendor
 - C. Date
 - D. Purchase Order or Requisition Number
 - E. Description
 - F. Quantity
 - G. Unit Price
 - H. Total Price
 - I. Contract or Proposal Number
 - J. Line-Item Account Numbers
 - K. Remarks, etc.

- II. Partial payments are to be handled in the manner as described in Section 24, Auditing Compliance, and Section 9, Purchase Order process.

- III. Each invoice received by the Department shall be marked as having been received (date stamped) on the date it is first received or delivered to the respective department.

- IV. The time at which payment is due under the Florida Prompt Payment Act is forty-five (45) days from:
 - A. The date a proper invoice is received by the Department.

- B. In those instances where a proper invoice is not received by the Department:
 - i. On which the rental or lease period begins
 - ii. On the date where the Town Council of the Town of Windermere and the vendor agree in a contract which provide dates relative to payment periods.

- V. In any case where an improper invoice is submitted by a vendor, the Department will notify the vendor within ten (10) days. The Department must notify the vendor that the invoice is improper, specify the reason or reasons, and indicate what corrective action is needed to make the invoice proper.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 26
Title: VENDOR DISPUTE RESOLUTION PROCEDURE		
Effective Date: 12/10/13	Amended:	Page Number: 1 of 1

- I. In the event a dispute occurs between a vendor and a Department, the following procedures shall apply:
 - A. The vendor shall submit a written statement via certified mail no later than forty-five (45) days from the time when the invoice was submitted to the Town of Windermere specifying the nature of the dispute regarding payment of the invoice. A copy shall be submitted to the Town Manager and the Finance Department.
 - B. Within five (5) days of the receipt of the written statement submitted by the vendor, the appropriate Department Manager shall investigate the dispute and submit a decision to the Town Manager's Office.
 - C. Within five (5) days of the receipt of the written decision, the Town Manager will review the dispute and will recommend a decision on the matter to the Department Manager. The Town Manager and the Department Manager will review the dispute and shall make a final decision on the matter. The Department Manager will notify the vendor in writing, via certified mail and within five days of the date of the final decision.

- II. In the event a dispute occurs between a Department and a vendor, the following procedures shall apply:
 - A. In the event a Department has a dispute with an invoice submitted by a vendor, the appropriate Department Manager will submit a written statement, via certified mail, no later than thirty (30) days of the receipt of the improper invoice, to the vendor specifying the reasons for the dispute. A copy shall be submitted to the Town Manager and the ~~Clerk's~~Clerk Department.
 - B. The vendor shall within fifteen (15) days of receipt of the written statement submit a written response indicating their agreement or disagreement with the statement.
 - C. Within ten (10) days of receipt of the written response from the vendor, the Town Manager will review the dispute and will recommend a decision on the matter to the Department Manager. The Town Manager and the Department Head will review the dispute and shall make a final decision on the matter.

The Department Head will notify the vendor in writing, via certified mail and within five (5) days of the date of the final decision.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 27
Title: TAX EXEMPT STATUS GRANTED TO CONTRACTOR		
Effective Date: 12/10/13	Amended:	Page Number: 1 of 1

TAX EXEMPT STATUS GRANTED TO CONTRACTOR

The Town of Windermere is exempt from payment of sales tax. As such, it is exempt from the payment of sales tax for the performance of work under construction contracts when it is determined to be in the best interest of the Town. Tax agreements, if applicable, will be identified in the bid documents.

TOWN OF WINDERMERE PURCHASING POLICIES AND PROCEDURES		SECTION NO: 28
Title: Grants		
Effective Date: 12/10/13	Amended: 3/12/2024	Page Number: 1 of 1

GRANTS

Expenditures from funds other than General Fund tax dollars may require special processing because of specific legal terms and conditions placed by the funding agency [and as required by federal law](#). Grants often have certain purchasing requirements that are different or additional to the Town of Windermere Purchasing Policies and require special purchasing procedures. It is the responsibility of the using department to identify and to transmit to the Finance Department any special purchasing requirements or provisions and ensure that the requirements are followed.

Summary report:	
Litera Compare for Word 11.4.0.111 Document comparison done on 3/6/2024 11:29:56 AM	
Style name: Default Style	
Intelligent Table Comparison: Active	
Original DMS: iw://fsdms.gray-robinson.law/ACTIVE/52987859/1	
Modified DMS: iw://fsdms.gray-robinson.law/ACTIVE/52987859/2	
Changes:	
Add	62
Delete	53
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	115



**TOWN OF WINDERMERE
EXECUTIVE SUMMARY**

SUBJECT: Approval of 6th Avenue and Butler Street, Drainage - Phase II Subrecipient Agreement 4337-449-A with FDEM

REQUESTED ACTION: Approval

Work Session (Report Only) **DATE OF MEETING:** March 12, 2024
 Regular Meeting Special Meeting

CONTRACT: N/A Vendor/Entity: _____
Effective Date: _____ Termination Date: _____
Managing Division / Dept: Public Works

BUDGET IMPACT: _____
 Annual **FUNDING SOURCE:** _____
 Capital **EXPENDITURE ACCOUNT:** _____
 N/A

HISTORY/FACTS/ISSUES:

The Town was awarded a grant from the Florida Division of Emergency Management (FDEM) under project number 4337-449-A for much needed drainage improvements for the Butler Basin area. Residents are anxious for this project to begin and the Town was waiting for the arrival of the grant agreement.

The town attorney will assist staff and our engineering team with ensuring the required State and Federal components are in the procurement documents and vendor contracts for this project.

Staff recommends approval so that the next steps of bidding out the project and construction can be start to take shape and a schedule prepared.

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU
FISCAL OPERATIONS UNIT
HMGP

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	Town of Windermere
PROJECT #:	4337-449-A
PROJECT TITLE:	Town of Windermere, 6th Avenue and Butler Street, Drainage - Phase II
CONTRACT #:	H1043
MODIFICATION #:	N/A

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Robert Smith Town Manager 614 Main Street Windermere, Florida 34786

Enclosed is your copy of the proposed contract/modification between **Town of Windermere** and the Florida Division of Emergency Management (FDEM).

COMPLETE	
<input type="checkbox"/>	This form is required to be included with all Reviews, Approvals, and Submittals
<input type="checkbox"/>	Reviewed and Approved
<input type="checkbox"/>	Signed & Dated Electronic Copy by Official Representative
<input type="checkbox"/>	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
<input checked="" type="checkbox"/>	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) - completed, signed, and dated
	<input type="checkbox"/> N/A for Modifications or State Funded Agreements
<input checked="" type="checkbox"/>	Attachment K – Certification Regarding Lobbying - completed, signed, and dated
	<input type="checkbox"/> N/A for Modifications or State Funded Agreements
<input checked="" type="checkbox"/>	Attachment L – Contracts with Non-Profit Organizations - completed, signed, and dated
<input type="checkbox"/>	Electronic Submittal to the Grant Specialist

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 328-3122 or email me at Rashida.Francis@em.myflorida.com.

Agreement Number: H1043
Project Number: 4337-449-A

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.1 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.1, “pass-through entity” means “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Sub-Recipient” means “an entity, usually but not limited to non-Federal entities that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.1, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.332:

Sub-Recipient’s name:	<u>Town of Windermere</u>
Sub-Recipient’s unique entity identifier (UEI/FEIN):	<u>PD6EQR8T3RR5 / 59-6020338</u>
Federal Award Identification Number (FAIN):	<u>FEMA-DR-4337-FL</u>
Federal Award Date:	<u>November 13, 2023</u>
Subaward Period of Performance Start and End Date:	<u>Upon execution through February 28, 2026</u>
Amount of Federal Funds Obligated by this Agreement:	<u>\$367,923.00</u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u>\$386,319.00</u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	<u>\$386,319.00</u>
Federal award project description (see FFATA):	<u>Drainage - Phase II</u>
Name of Federal awarding agency:	<u>Federal Emergency Management Agency</u>
Name of pass-through entity:	<u>FL Division of Emergency Management</u>
Contact information for the pass-through entity:	<u>Rashida.Francis@em.myflorida.com</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.039 Hazard Mitigation Grant Program</u>
Whether the award is R&D:	<u>N/A</u>
Indirect cost rate for the Federal award:	<u>N/A</u>

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and Town of Windermere, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302(a) provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Rashida Francis
Project Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Blvd
Tallahassee, Florida 32399
Telephone: 850-328-3122
Email: Rashida.Francis@em.myflorida.com

The Division's Alternate Grant Manager for this Agreement is:

Kathleen Marshall
Community Program Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4503
Email: Kathleen.Marshall@em.myflorida.com

1. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Robert Smith
Town Manager
614 Main Street
Windermere, Florida 34786
Telephone: 407-876-2563
Email: rsmith@town.windermere.fl.us

2. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on February 28, 2026, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.1, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$367,923.00**.

d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.1 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.329, that the Division and the Sub-Recipient "relate financial data to performance goals and objectives of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (See 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in

the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b), Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.

i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

- j. As defined by 2 C.F.R. §200.1, the term "improper payment" means or includes:
 - i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

- ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right

of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.332(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.334, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.335, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.336, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

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: (850) 815-7671 Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.1, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.1, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as "an independent certified public accountant licensed under chapter 473." The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient's fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13) MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of

sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division;

c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,

d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

- i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
- ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
- iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
- iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty (30) calendar day's prior written notice.
- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.
- d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. Part 200 (entitled "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards").

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall "maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall "maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders." In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

e. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall "maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts."

f. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement "in a manner providing full and open competition." Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;

vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;

viii. Engage in any arbitrary action during the procurement process; or,

ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

g. "Except in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(c), shall not use a geographic preference when procuring commodities or services under this Agreement.

h. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(a), Florida Statutes.

i. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(2) as well as section 287.057(1)(b), Florida Statutes.

j. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

k. If the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall review its competitive solicitation and subsequent contract to be awarded for compliance with the procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. If the Sub-Recipient publishes a competitive solicitation or executes a contract that is not in compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 or the requirements of Appendix II to 2 C.F.R. Part 200, then the Sub-Recipient is on notice that the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; or,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

l. FEMA has developed helpful resources for subgrant recipients related to compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. These resources are generally available at <https://www.fema.gov/procurement-disaster-assistance-team>.

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions
 - xii. Attachment K – Certification Regarding Lobbying
 - xiii. Attachment L – Florida Accountability Contract Tracking System
 - xiv. Attachment M – Foreign Country of Concern Affidavit

(20) PAYMENTS

- a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.
- b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.
- c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief

Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the

construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals or affiliates:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or disqualified from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

h. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

i. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

j. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act

("INA"). The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

k. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

l. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-

Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26) EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements 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, sexual orientation, gender identity, or national origin.

iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

iv. 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 notice in conspicuous places available to employees and applicants for employment.

v. 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.

vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vii. 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 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.

viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may

by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, 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. 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 which 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.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30) SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. 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, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (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).

ii. 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.

iii. This certification is a material representation of fact relied upon by the Division. 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 Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

iv. 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.

(31) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

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.

If this subgrant agreement amount is \$100,000 or more, the Sub-Recipient, and subcontractors as applicable, shall sign Attachment K – Certification Regarding Lobbying.

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. 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;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: TOWN OF WINDERMERE

By: _____

Name and Title: _____

Date: _____

FEID#: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Kevin Guthrie, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: **Federal Emergency Management Agency: Hazard Mitigation Grant**

Catalog of Federal Domestic Assistance title and number: **97.039**

Award amount: **\$367,923.00**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 C.F.R. Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage of 6th Avenue and Butler Street in Windermere, Orange County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-449-A**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, Town of Windermere, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes drainage improvements within the residential roadway area of Butler Street and West 7th Avenue. The project is located on Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park in Windermere, Florida 34786.

The HMGP Phase II proposal is to upgrade the existing roadway and drainage system by grading the existing dirt road and installing an enhanced stormwater system. The proposed stormwater system includes improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales shall be installed with plastic erosion matting. Additionally, runoff storage shall be increased utilizing a new rain garden and retention areas. The improved stormwater system includes the addition of seven ditch bottom inlets, seven gutter inlets, and three new manholes. One existing drainage structure shall be modified for the project. The project includes stormwater piping and a mitered end section for each pipe size. Installation of approximately 117 linear feet (LF) of 15-inch round pipe, 714 linear feet (LF) of 18-inch round pipe, and 66 linear feet (LF) of 24-inch round pipe is proposed. The rain garden shall be 0.14 acres and planted as part of the retention areas located at the East side of Fernwood Park. An outfall weir, and associated improvements, is proposed to regulate flow into Lake Butler from the rain garden and retention area. As part of the stormwater improvement in the area the existing dirt roadway shall be graded to accommodate the mitigation solution. The proposal includes approximately 1,325 linear feet of roadway improvements; this includes the removal of 6 inches of existing material as well as furnishing and installing 6 inches of shell base for pavers material to connect to the overall grading system. Outside the roadway, grading work ties the site back to existing conditions. The project includes returning driveways that were damaged during construction to an operational condition. The project shall mitigate nuisance flooding that currently persists during rainfall events, protecting residences that have experienced repetitive flooding on roads and structural damages.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Location	Boundary	Coordinates
1)	Orange County, Windermere, Florida 34786	North	(28.49380, -81.53700)
		South	(28.49199, -81.53655)
		West	(28.49220, -81.53750)
		East	(28.49320, -81.53440)

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the installation to improve the drainage and provide flood protection.

The project shall be implemented in accordance with sealed engineering designs and construction plans previously presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The Sub-Recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by the professional of record. The Sub-Recipient shall complete the project in accordance with all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county official, or other approving official, as applicable.

The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) Copy of permits(s), notice of commencement.
 - b) Local Building Official Inspection Report and Final Approval.
 - c) Signed and Sealed As-built project plans (drawings) by the Professional of Record, electronic submittal (via email).
 - d) Letter of Completion:
 1. Affirming that the project was completed in conformance with the approved project drawings, specifications and scope; and
 2. Certifying Compliance with all applicable codes.
 - e) Letter or documentation stating if human remains or intact archaeological features or deposits were discovered during project activities.
 - f) Copies of the Secretary of Interior Qualified Archaeologist monitoring final reports.
 - g) Verification of compliance with the Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP) number 48-106171-P.
 - h) Copy of the floodplain permit or notification of No Permit Required (NPR) from the local floodplain administrator obtained prior to work beginning.
 - i) Verification of compliance with any required floodplain permits.
 - j) Documentation showing the source and location of the anticipated fill material to be used for project activities provided to the Division prior to project commencement.
 - k) Verification letter or documentation showing project activities occurred within the existing right-of-way.
 - l) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills,

invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of drainage improvements to Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park located in Windermere, Florida, 34786 to include improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales are to be installed with plastic erosion matting.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.

- 2) The Sub-Recipient shall submit a signed and sealed final copy of the completed project's As-built drawings and all necessary supporting documentation and provide a summary of all contract scope of work changes, if any.
- 3) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 4) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 5) All installations shall be done in strict compliance with the Florida Building Code or any local codes and ordinances. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 6) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

- 1) Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) re-evaluation before starting project work.
- 3) The Sub-Recipient shall monitor ground disturbing activities during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.

If human remains or intact archaeological features or deposits (e.g., arrowheads, pottery glass, metal, etc.) are uncovered, work in the vicinity of the discovery shall stop immediately and all reasonable measures to avoid or minimize harm to the finds shall be taken. The Sub-Recipient shall ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries.

The Sub-Recipient's contractor shall provide immediate notice of such discoveries to the Sub-Recipient. The Sub-Recipient shall notify the Florida Division of Historic Resources, the Division's State Mitigation Environmental Lead and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA and the Division have completed consultation with the State Historic Preservation Officer (SHPO), Tribes, and other consulting parties as necessary.

In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately, and the proper authorities notified in accordance with **Florida Statutes, Section 872.05**.

- 4) A qualified professional archeologist shall be present to monitor all ground-disturbing activities that take place in the project area. The monitor shall forward a monitoring report to the Division, FEMA, and the Florida Division of Historical Resources, at the conclusion of the project for review. In addition, if any cultural resource deposits are discovered, the monitor shall be empowered to direct construction activities to other areas to enable recovery and recordation of the deposits before project activities

resume in the area. The resultant report(s) of such discoveries shall be forwarded to the Division, FEMA, and the Florida Division of Historical Resources for review. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

- 5) The Sub-Recipient shall provide a full-time on-site Secretary of Interior (SOI) Qualified Archaeologist to monitor all construction activities. The archaeological monitor shall have full stop authority if anything of archaeological or historic concern is encountered. The archaeological monitor shall be on site during all construction activities for the course of the entire project and a final report shall be submitted to the Division, Florida SHPO, and FEMA upon completion of the drainage work.
- 6) Project activities shall occur within the existing right of way.
- 7) Prior to project commencement, the Sub-Recipient must identify the source and location of fill material and provide this information to the Division and FEMA. If the borrow pit is privately owned, or is located on previously undisturbed land, or if the fill is obtained by the horizontal expansion of a pre-existing borrow pit, FEMA consultation with the SHPO shall be required. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 8) The Sub-Recipient must obtain floodplain permit from the local floodplain administrator before work begins. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 9) The Sub-Recipient must comply with the conditions of the Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP), # 48-106171-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 10) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must "obtain prior written approval for any budget revision which would result in a need for additional funds" [44 CFR 13(c)], from the Division and FEMA.
- 4) Project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for closeout.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of the new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 8) If the Sub-Recipient is not the current title holder of the affected properties, the Sub-Recipient shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not

pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.

- 9) Special Conditions required on implementation of project:
- a) **EO 11988 CONDITION:** The sub-recipient must obtain floodplain permit from the local floodplain administrator before work begins. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout. **Source of Condition:** Executive Order 11988 **Monitoring Required: No**
 - b) **CZMA CONDITION:** The sub-recipient must comply with the conditions of the SWFWMD ERP, #48-106171-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance will be required at project closeout. **Source of Condition:** Coastal Zone Management Act (CZMA) **Monitoring Required: No**
 - c) **NHPA:** It is the request of this office that a qualified professional archeologist be present to monitor all ground-disturbing activities that take place in the above referenced project area. The monitor should forward a monitoring report to this office at the conclusion of the project for review. In addition, we request that if any cultural resource deposits are discovered, the monitor should be empowered to direct construction activities to other areas to enable recovery and recordation of the deposits before project activities resume in the area. The resultant report(s) of such discoveries should be forwarded to this office for review. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately, and the proper authorities notified in accordance with Section 872.05, Florida Statutes. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - d) **NHPA:** Prior to project commencement, the sub-recipient must identify the source and location of fill material and provide this information to FDEM and FEMA. If the borrow pit is privately owned, or is located on previously undisturbed land, or if the fill is obtained by the horizontal expansion of a pre-existing borrow pit, FEMA consultation with the State Historic Preservation Officer will be required. Failure to comply with this condition may jeopardize FEMA funding, verification of compliance will be required at project closeout. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - e) **NHPA:** If human remains or intact archaeological features or deposits (e.g., arrowheads, pottery, glass, metal, etc.) are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The sub-recipient will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The sub-recipient's contractor will provide immediate notice of such discoveries to the sub-recipient. The sub-recipient shall contact the Florida Division of Historic Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with the SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities; all work shall stop immediately, and the proper authorities notified in accordance with Florida Statutes, Section 872.05. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - f) **NHPA CONDITION:** The sub-recipient will provide a full-time on-site SOI Qualified Archaeologist to monitor all construction activities. The archaeological monitor will have full stop authority if anything of archaeological or historic concern is encountered. The archaeological monitor will be on site during all construction activities for the course of the entire project and a final report will be submitted to the Florida SHPO and FEMA upon completion of the drainage work. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
- 10) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to

another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

This is FEMA project number **4337-449-R**, and shall be reported under **4337-449-A**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on November 13, 2023; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **February 28, 2026**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

Phase II-

State Contracting:	3 Months
Construction Plan/Technical Specifications:	2 Months
Bidding / Local Procurement:	2 Months
Construction / Installation:	12 Months
Local Inspections / Compliance:	3 Months
State Final Inspections / Compliance:	3 Months
Closeout Compliance:	2 Months
Total Period of Performance:	27 Months

BUDGET

Line Item Budget*

Phase II	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$316,174.00	\$237,130.50	\$79,043.50
Labor:	\$174,390.00	\$130,792.50	\$43,597.50
Fees:	\$0.00	\$0.00	\$0.00
Initial Agreement Amount:	\$490,564.00	\$367,923.00	\$122,641.00
***Contingency Funds:	\$24,528.00	\$18,396.00	\$6,132.00
Project Total:	\$515,092.00	\$386,319.00	\$128,773.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$24,528.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

Funding Summary Totals

Federal Share:	\$386,319.00	(75.00%)
Non-Federal Share:	\$128,773.00	(25.00%)
Total Project Cost:	\$515,092.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 C.F.R. 7, 9, 18, 25, and 206. Reference (Title 44, up to date as of August 18, 2023, and last amended January 9, 2023.), and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Program and Policy Guide, 2023;
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 C.F.R. §206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must "obtain prior written approval for any budget revision which result in a need for additional funds" (2 C.F.R. § 200.308);
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA ninety (90) calendar days prior to the project expiration date. Reference, HMA Program and Policy Guide, 2023, G.3. Award Extensions, paragraph 3.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes

- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes
- (14) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 C.F.R., Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-

recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualified handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to section 112.313 and section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Chapter 87 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 5 U.S.C. 7323 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 50, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/governmenta/grant/sfha_conditions.shtml

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 C.F.R. Section 101-19.6 for general type buildings and Appendix A to 24 C.F.R., Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C.), Executive Order 11593, 36 C.F.R., Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (54 U.S.C. 3125) by:

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R., Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the “**Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)**” which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C., and implementing regulations in 36 C.F.R., Part 800.
- (4) When any of the Sub-recipient’s projects funded under this Agreement may affect a historic property, as defined in 36 C.F.R., Part 800.16 (l)(1), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior’s Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO’s opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.
- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be

eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.

- (m) It will comply with applicable provisions of the following laws and policies prohibiting discrimination:
 - (1) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin (including limited English proficiency).
 - (2) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on disability.
 - (3) Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination based on sex in education programs or activities.
 - (4) Age Discrimination Act of 1975, which prohibits discrimination based on age.
 - (5) U.S. Department of Homeland Security regulation 6 C.F.R. Part 19, which prohibits discrimination based on religion in social service programs.

- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;

- (o) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4541-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

- (p) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

- (q) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;

- (r) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;

- (s) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;

- (t) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C. 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and

Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

- (u) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7675;
- (v) It will comply with the Clean Water Act of 1977, as amended, 33 U.S.C. 1251-1388
- (w) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (x) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701-4772;
- (y) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 54 U.S.C.;
- (z) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (aa) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 54 U.S.C. 3125
- (bb) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (cc) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j-27, regarding the protection of underground water sources;
- (dd) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (ee) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ff) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (gg) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3501-3510;
- (hh) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-14674; and
- (ii) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-668.
- (jj) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.

- (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
- (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
- (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
- (6) Leave the demolished site clean, level and free of debris.
- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857), Section 508 of the Clean Water Act (33 U.S.C. 1251-1388), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 C.F.R., Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

**REQUEST FOR ADVANCE OR REIMBURSEMENT
OF HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: Town of Windermere

REMIT ADDRESS: 614 Main Street

CITY: Windermere STATE: Florida ZIP CODE: 34786

PROJECT TYPE: Drainage - Phase II PROJECT #: 4337-449-A

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H1043

BUDGET: _____ FEDERAL SHARE: _____ LOCAL: _____

ADVANCED RECEIVED: N/A AMOUNT: _____ SETTLED? _____

Invoice Period: _____ through _____ Payment No: _____

Total of Previous Payments to Date: _____ (Federal)
 Total of Previous SRMC to Date: _____ (SRMC Federal)
 Total Federal to Date: _____ (Total Federal Paid)

Eligible Amount 100% (Current Request)	Obligated Federal Amount 75%	Obligated Local Non-Federal 25%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME: _____ TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL \$ _____	DIVISION DIRECTOR _____
APPROVED SRMC TOTAL: \$ _____	
APPROVED FOR PAYMENT \$ _____	DATE _____

**Attachment D (cont.)
SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MITIGATION ASSISTANCE PROGRAM**

SUB-RECIPIENT: Town of Windermere PAYMENT #: _____
 PROJECT TYPE: Drainage - Phase II PROJECT #: 4337-449-A
 PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H1043

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
<i>This payment represents</i> <u> </u> % <i>completion of the project.</i>				TOTAL	

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)
³ Date of delivery of articles, completion of work or performance services. (per document)
⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: Town of Windermere

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.</p>

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for ninety (90) days. Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

**Attachment F
QUARTERLY REPORT FORM**

Instructions: Complete and submit this form to State Project Manager within 15-days after each quarter:

SUB-RECIPIENT: Town of Windermere **PROJECT #:** 4337-449-A
PROJECT TYPE: Drainage - Phase II **CONTRACT #:** H1043
PROGRAM: Hazard Mitigation Grant Program **QUARTER ENDING:** _____

Advance Payment Information:
 Advance Received N/A Amount: \$ _____ Advance Settled? Yes No

Financial Amount to Date:
Sub-Recipient Total Project Expenditures to date (federal & local): \$ _____

Target Dates (State Agreement):
 Contract Execution Date: _____ Contract Expiration Date: _____
 Date Deliverables Submitted: _____ Closeout Requested Date: _____

Describe **Milestones** achieved during this quarter:

Project Proceeding on **Schedule**? Yes No (If No, Describe under **Issues** below)

Percentage of Milestones completed to Date: _____%

Describe Activities - Milestones completed this quarter only:

Schedule of the Milestones-Activities:

<u>Milestone</u>	<u>Dates</u> (estimated)
<u>State Contracting</u>	
<u>Closeout Compliance</u>	
<u>Estimated Project Completion Date:</u>	

Issues or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: Cost Unchanged Under Budget Over Budget

Cost / Financial **Comments:**

NOTE: Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, extensions. Contact the Division as soon as these conditions are known, otherwise you could be non-compliant with your sub-grant award.

Sub-Recipient Contract Representative (POC): _____

Signature: _____ Phone: _____

~ To be completed by Florida Division of Emergency Management Project Manager ~

Project Manager Statement: No Action Required, OR

Action Required: _____

PM Percentage of Activates competed per PM Review QR Milestones Spreadsheet: _____%
 Date Reviewed: _____ Reviewer: _____ Project Manager

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.327).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

Town of Windermere
Sub-Recipient's Name

H1043
DEM Contract Number

4337-449-A
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-449-A
FUNDING AGENCY: Federal Emergency Management Agency
AWARD AMOUNT: \$ 367,923.00
OBLIGATION/ACTION DATE: November 13, 2023
SUBAWARD DATE (if applicable): _____
UEID/SAM#: PD6EQR8T3RR5

*If your company or organization does not have a UEID/SAM number, you will need to obtain one from <https://sam.gov/content/entity-registration>The process to request a UEID/SAM number takes about ten minutes and is free of charge.

BUSINESS NAME: _____
 DBA NAME (IF APPLICABLE): _____
 PRINCIPAL PLACE OF BUSINESS ADDRESS: _____
 ADDRESS LINE 1: _____
 ADDRESS LINE 2: _____
 ADDRESS LINE 3: _____
 CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY UEID/SAM# (if applicable): _____
 CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes drainage improvements within the residential roadway area of Butler Street and West 7th Avenue. The project is located on Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park in Windermere, Florida 34786.

The HMGP Phase II proposal is to upgrade the existing roadway and drainage system by grading the existing dirt road and installing an enhanced stormwater system. The proposed stormwater system includes improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales shall be installed with plastic erosion matting. Additionally, runoff storage shall be increased utilizing a new rain garden and retention areas. The improved stormwater system includes the addition of seven ditch bottom inlets, seven gutter inlets, and three new manholes. One existing drainage structure shall be modified for the project. The project includes stormwater piping and a mitered end section for each pipe size. Installation of approximately 117 linear feet (LF) of 15-inch round pipe, 714 linear feet (LF) of 18-inch round pipe, and 66 linear feet (LF) of 24-inch round pipe is proposed. The rain garden shall be 0.14 acres and planted as part of the retention areas located at the East side of Fernwood Park. An outfall weir, and associated improvements, is proposed to regulate flow into Lake Butler from the rain garden and retention area. As part of the stormwater improvement in the area the existing dirt roadway shall be graded to accommodate the mitigation solution. The proposal includes approximately 1,325 linear feet of roadway improvements; this includes the removal of 6 inches of existing material as well as furnishing and installing 6 inches of shell base for pavers material to connect to the overall grading system. Outside the roadway, grading work ties the site back to existing conditions. The project includes returning driveways that were damaged during construction to an operational condition. The project shall mitigate nuisance flooding that currently persists during rainfall events, protecting residences that have experienced repetitive flooding on roads and structural damages.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Location	Boundary	Coordinates
1)		North	(28.49380, -81.53700)

	Orange County, Windermere, Florida 34786	South	(28.49199, -81.53655)
		West	(28.49220, -81.53750)
		East	(28.49320, -81.53440)

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____
 ADDRESS LINE 2: _____
 ADDRESS LINE 3: _____
 CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 C.F.R. 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?
 Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?
 Yes No

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission Information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) Information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 C.F.R. Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The following is a list of sample provisions from Appendix II to 2 C.F.R. Part 200 that may be required:¹

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity
Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. 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. Part 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 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 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."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or

¹ For example, the Davis-Bacon Act is not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program or Hazard Mitigation Grant Program; however, sub-recipient may include the provision in its subcontracts.

repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, 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 (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, 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. 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 which 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.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 C.F.R. § 401.2 (a) and the recipient or Sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or Sub-recipient must comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award 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 awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must 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 must 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 non-Federal award.

(J) See 2 C.F.R. § 200.323 Procurement of recovered materials.

(K) See 2 C.F.R. §200.216 Prohibition on certain telecommunication and video surveillance services or equipment.

(L) See 2 C.F.R. §200.322 Domestic preferences for procurements
(Appendix II to Part 200, Revised Eff. 11/12/2020).

FEMA created the 2019 PDAT Contract Provisions Template to assist non-Federal entities. It is available at https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf.

Please note that the sub-recipient alone is responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. § 200.327 and 2 C.F.R. Part 200, Appendix II.

Attachment K

Certification Regarding Lobbying

Check the appropriate box:

- This Certification Regarding Lobbying is required because the Contract, Grant, Loan, or Cooperative Agreement will exceed \$100,000 pursuant to 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- This Certification is not required because the Contract, Grant, Loan, or Cooperative Agreement will be less than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Sub-Recipient or subcontractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Sub-Recipient/subcontractor's Authorized Official

Name and Title of Sub-Recipient/subcontractor's Authorized Official

Date

Attachment L

Florida Accountability Contract Tracking System (FACTS) Requirements for Non-profit Organizations Under Section 216.1366, Florida Statutes Instructions and Worksheet

CONTRACT DOCUMENTATION REQUIREMENTS

Section 216.1366, F.S., amended in 2023, establishes new documentation requirements for any contract for services executed, amended, or extended on or after July 1, 2023, with non-profit organizations as defined in s. 215.97 (2)(m), F.S. The contract must require the contractor to provide documentation that indicates the amount of state funds:

- Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of the contractor.
- Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor. The documentation must indicate the amounts and recipients of the remuneration.

Such information must be included in the contract tracking system maintained pursuant to s. 215.985 F.S. and must be posted on the contractor's website if the contractor maintains a website.

• As used in this subsection, the term:

- o "Officer" means a Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO), or any other position performing an equivalent function.
- o "Remuneration" means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan, or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
- o "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program. The term does not include funds used for the state Medicaid program.

Note: This "Instructions and Worksheet" is meant to explain the requirements of the Section 216.1366, F.S., amended in 2023, and give clarity to the attached form distributed to recipients and sub-recipients for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

NON-PROFIT ORGANIZATION REMUNERATION INFORMATION

1. Is your business or organization a non-profit organization as defined in s. 215.97 (2)(m), F.S.?

Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Will state funds be used as remuneration to any member of the board of directors or an officer in your business or organization?

Yes No

If the answer to Question 2 is "Yes," provide the information required in the "Total Compensation Paid to Non-Profit Personnel Using State Funds" form below. A separate form should be completed for each member of the board of directors or officer being compensated using state funds. If the answer to Question 2 is "No", move to the signature block below to complete the certification and submittal process.

Total Compensation Paid to Non-Profit Personnel Using State Funds

Name:		
Title:		
Agency Agreement/Contract #		
Total Contract Amount		
Contract Term:		
Line Item Budget Category	Total Amount Paid	Amount Paid from State Funds
Salaries		
Fringe Benefits		
Bonuses		
Accrued Paid Time Off		
Severance Payments		
Retirement Contributions		
In-Kind Payments		
Incentive Payments		
Reimbursements/Allowances		
Moving Expenses		
Transportation Costs		
Telephone Services		
Medical Services Costs		
Housing Costs		
Meals		
CERTIFICATION: I certify that the amounts listed above are true and accurate and in accordance with the approved budget.		
Name:		
Signature:		
Title:		
Date:		

ATTACHMENT M

**FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT**

Section 287.138, Florida Statutes, prohibits a Florida “Governmental entity”² from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual’s personal identifying information if that entity is associated with a “Foreign Country of Concern.”³ Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a “controlling interest,”⁴ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Respondent, I hereby attest that the company identified above in the section entitled “Respondent Vendor Name” is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

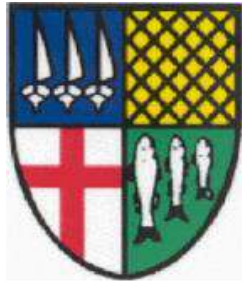
I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Respondent Vendor Name: _____
Vendor FEIN: _____
Vendor’s Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____
Email Address: _____
Certified By: _____
AUTHORIZED SIGNATURE
Print Name and Title: _____
Date: _____

² As defined in Section 287.138 (1)(d), Florida Statutes.

³ As defined in Section 287.138 (1)(c), Florida Statutes.

⁴ As defined in Section 287.138 (1)(a), Florida Statutes.



**TOWN OF WINDERMERE
EXECUTIVE SUMMARY**

SUBJECT: Approval of 6th Avenue and Butler Street, Drainage - Phase II Subrecipient Agreement 4337-449-A with FDEM

REQUESTED ACTION: Approval

Work Session (Report Only)

Regular Meeting

DATE OF MEETING: March 12, 2024

Special Meeting

CONTRACT: N/A

Effective Date: _____

Managing Division / Dept: _____

Vendor/Entity: _____

Termination Date: _____

Public Works

BUDGET IMPACT: _____

Annual

Capital

N/A

FUNDING SOURCE: _____

EXPENDITURE ACCOUNT: _____

HISTORY/FACTS/ISSUES:

The Town was awarded a grant from the Florida Division of Emergency Management (FDEM) under project number 4337-449-A for much needed drainage improvements for the Butler Basin area. Residents are anxious for this project to begin and the Town was waiting for the arrival of the grant agreement.

The town attorney will assist staff and our engineering team with ensuring the required State and Federal components are in the procurement documents and vendor contracts for this project.

Staff recommends approval so that the next steps of bidding out the project and construction can be start to take shape and a schedule prepared.

SUB-RECIPIENT AGREEMENT CHECKLIST
DIVISION OF EMERGENCY MANAGEMENT
MITIGATION BUREAU
FISCAL OPERATIONS UNIT
HMGP

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	Town of Windermere
PROJECT #:	4337-449-A
PROJECT TITLE:	Town of Windermere, 6th Avenue and Butler Street, Drainage - Phase II
CONTRACT #:	H1043
MODIFICATION #:	N/A

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Robert Smith Town Manager 614 Main Street Windermere, Florida 34786

Enclosed is your copy of the proposed contract/modification between **Town of Windermere** and the Florida Division of Emergency Management (FDEM).

COMPLETE	
<input type="checkbox"/>	This form is required to be included with all Reviews, Approvals, and Submittals
<input type="checkbox"/>	Reviewed and Approved
<input type="checkbox"/>	Signed & Dated Electronic Copy by Official Representative
<input type="checkbox"/>	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
<input checked="" type="checkbox"/>	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) - completed, signed, and dated <input type="checkbox"/> N/A for Modifications or State Funded Agreements
<input checked="" type="checkbox"/>	Attachment K – Certification Regarding Lobbying - completed, signed, and dated <input type="checkbox"/> N/A for Modifications or State Funded Agreements
<input checked="" type="checkbox"/>	Attachment L – Contracts with Non-Profit Organizations - completed, signed, and dated
<input type="checkbox"/>	Electronic Submittal to the Grant Specialist

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 328-3122 or email me at Rashida.Francis@em.myflorida.com.

Agreement Number: H1043
Project Number: 4337-449-A

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.1 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.1, “pass-through entity” means “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Sub-Recipient” means “an entity, usually but not limited to non-Federal entities that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.1, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.332:

Sub-Recipient’s name:	<u>Town of Windermere</u>
Sub-Recipient’s unique entity identifier (UEI/FEIN):	<u>PD6EQR8T3RR5 / 59-6020338</u>
Federal Award Identification Number (FAIN):	<u>FEMA-DR-4337-FL</u>
Federal Award Date:	<u>November 13, 2023</u>
Subaward Period of Performance Start and End Date:	<u>Upon execution through February 28, 2026</u>
Amount of Federal Funds Obligated by this Agreement:	<u>\$367,923.00</u>
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	<u>\$386,319.00</u>
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	<u>\$386,319.00</u>
Federal award project description (see FFATA):	<u>Drainage - Phase II</u>
Name of Federal awarding agency:	<u>Federal Emergency Management Agency</u>
Name of pass-through entity:	<u>FL Division of Emergency Management</u>
Contact information for the pass-through entity:	<u>Rashida.Francis@em.myflorida.com</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>97.039 Hazard Mitigation Grant Program</u>
Whether the award is R&D:	<u>N/A</u>
Indirect cost rate for the Federal award:	<u>N/A</u>

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and Town of Windermere, (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302(a) provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Rashida Francis
Project Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Blvd
Tallahassee, Florida 32399
Telephone: 850-328-3122
Email: Rashida.Francis@em.myflorida.com

The Division's Alternate Grant Manager for this Agreement is:

Kathleen Marshall
Community Program Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4503
Email: Kathleen.Marshall@em.myflorida.com

1. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Robert Smith
Town Manager
614 Main Street
Windermere, Florida 34786
Telephone: 407-876-2563
Email: rsmith@town.windermere.fl.us

2. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on February 28, 2026, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.1, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$367,923.00**.

d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.1 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.329, that the Division and the Sub-Recipient "relate financial data to performance goals and objectives of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (See 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in

the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,
- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b), Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,
- ii. Participation of the individual in the travel is necessary to the Federal award.

i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

j. As defined by 2 C.F.R. §200.1, the term "improper payment" means or includes:
i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right

of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.332(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.334, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.335, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.336, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

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: (850) 815-7671 Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.1, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.1, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13) MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of

sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

- a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division;
- c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,
- d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:

- i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
- ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
- iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
- iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty (30) calendar day's prior written notice.
- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.
- d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. Part 200 (entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”).

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall “maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

e. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall “maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.”

f. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement “in a manner providing full and open competition.” Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;

vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;

viii. Engage in any arbitrary action during the procurement process; or,

ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

g. "Except in those cases where applicable Federal statutes expressly mandate or encourage" otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(c), shall not use a geographic preference when procuring commodities or services under this Agreement.

h. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(a), Florida Statutes.

i. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(2) as well as section 287.057(1)(b), Florida Statutes.

j. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 ("Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms").

k. If the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall review its competitive solicitation and subsequent contract to be awarded for compliance with the procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. If the Sub-Recipient publishes a competitive solicitation or executes a contract that is not in compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 or the requirements of Appendix II to 2 C.F.R. Part 200, then the Sub-Recipient is on notice that the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; or,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

l. FEMA has developed helpful resources for subgrant recipients related to compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. These resources are generally available at <https://www.fema.gov/procurement-disaster-assistance-team>.

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions
 - xii. Attachment K – Certification Regarding Lobbying
 - xiii. Attachment L – Florida Accountability Contract Tracking System
 - xiv. Attachment M – Foreign Country of Concern Affidavit

(20) PAYMENTS

- a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.
- b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.
- c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief

Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

b. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the

construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals or affiliates:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or disqualified from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed “Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion” (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.

h. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

i. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

j. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act

("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

k. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

l. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits "any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency."

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-

Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26) EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements 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, sexual orientation, gender identity, or national origin.

iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

iv. 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 notice in conspicuous places available to employees and applicants for employment.

v. 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.

vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vii. 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 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.

viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) 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.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may

by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, 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. 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 which 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.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30) SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. 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, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (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).

ii. 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.

iii. This certification is a material representation of fact relied upon by the Division. 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 Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

iv. 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.

(31) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

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.

If this subgrant agreement amount is \$100,000 or more, the Sub-Recipient, and subcontractors as applicable, shall sign Attachment K – Certification Regarding Lobbying.

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- iii. 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;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: TOWN OF WINDERMERE

By: _____

Name and Title: _____

Date: _____

FEID#: _____

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Kevin Guthrie, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: **Federal Emergency Management Agency: Hazard Mitigation Grant**
Catalog of Federal Domestic Assistance title and number: **97.039**
Award amount: **\$367,923.00**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 C.F.R. Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage of 6th Avenue and Butler Street in Windermere, Orange County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-449-A**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, Town of Windermere, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes drainage improvements within the residential roadway area of Butler Street and West 7th Avenue. The project is located on Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park in Windermere, Florida 34786.

The HMGP Phase II proposal is to upgrade the existing roadway and drainage system by grading the existing dirt road and installing an enhanced stormwater system. The proposed stormwater system includes improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales shall be installed with plastic erosion matting. Additionally, runoff storage shall be increased utilizing a new rain garden and retention areas. The improved stormwater system includes the addition of seven ditch bottom inlets, seven gutter inlets, and three new manholes. One existing drainage structure shall be modified for the project. The project includes stormwater piping and a mitered end section for each pipe size. Installation of approximately 117 linear feet (LF) of 15-inch round pipe, 714 linear feet (LF) of 18-inch round pipe, and 66 linear feet (LF) of 24-inch round pipe is proposed. The rain garden shall be 0.14 acres and planted as part of the retention areas located at the East side of Fernwood Park. An outfall weir, and associated improvements, is proposed to regulate flow into Lake Butler from the rain garden and retention area. As part of the stormwater improvement in the area the existing dirt roadway shall be graded to accommodate the mitigation solution. The proposal includes approximately 1,325 linear feet of roadway improvements; this includes the removal of 6 inches of existing material as well as furnishing and installing 6 inches of shell base for pavers material to connect to the overall grading system. Outside the roadway, grading work ties the site back to existing conditions. The project includes returning driveways that were damaged during construction to an operational condition. The project shall mitigate nuisance flooding that currently persists during rainfall events, protecting residences that have experienced repetitive flooding on roads and structural damages.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Location	Boundary	Coordinates
1)	Orange County, Windermere, Florida 34786	North	(28.49380, -81.53700)
		South	(28.49199, -81.53655)
		West	(28.49220, -81.53750)
		East	(28.49320, -81.53440)

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the installation to improve the drainage and provide flood protection.

The project shall be implemented in accordance with sealed engineering designs and construction plans previously presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The Sub-Recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by the professional of record. The Sub-Recipient shall complete the project in accordance with all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county official, or other approving official, as applicable.

The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) Copy of permits(s), notice of commencement.
 - b) Local Building Official Inspection Report and Final Approval.
 - c) Signed and Sealed As-built project plans (drawings) by the Professional of Record, electronic submittal (via email).
 - d) Letter of Completion:
 1. Affirming that the project was completed in conformance with the approved project drawings, specifications and scope; and
 2. Certifying Compliance with all applicable codes.
 - e) Letter or documentation stating if human remains or intact archaeological features or deposits were discovered during project activities.
 - f) Copies of the Secretary of Interior Qualified Archaeologist monitoring final reports.
 - g) Verification of compliance with the Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP) number 48-106171-P.
 - h) Copy of the floodplain permit or notification of No Permit Required (NPR) from the local floodplain administrator obtained prior to work beginning.
 - i) Verification of compliance with any required floodplain permits.
 - j) Documentation showing the source and location of the anticipated fill material to be used for project activities provided to the Division prior to project commencement.
 - k) Verification letter or documentation showing project activities occurred within the existing right-of-way.
 - l) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills,

invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of drainage improvements to Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park located in Windermere, Florida, 34786 to include improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales are to be installed with plastic erosion matting.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.

- 2) The Sub-Recipient shall submit a signed and sealed final copy of the completed project's As-built drawings and all necessary supporting documentation and provide a summary of all contract scope of work changes, if any.
- 3) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 4) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 5) All installations shall be done in strict compliance with the Florida Building Code or any local codes and ordinances. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 6) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

- 1) Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding.
- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) re-evaluation before starting project work.
- 3) The Sub-Recipient shall monitor ground disturbing activities during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.

If human remains or intact archaeological features or deposits (e.g., arrowheads, pottery glass, metal, etc.) are uncovered, work in the vicinity of the discovery shall stop immediately and all reasonable measures to avoid or minimize harm to the finds shall be taken. The Sub-Recipient shall ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries.

The Sub-Recipient's contractor shall provide immediate notice of such discoveries to the Sub-Recipient. The Sub-Recipient shall notify the Florida Division of Historic Resources, the Division's State Mitigation Environmental Lead and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA and the Division have completed consultation with the State Historic Preservation Officer (SHPO), Tribes, and other consulting parties as necessary.

In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately, and the proper authorities notified in accordance with **Florida Statutes, Section 872.05**.

- 4) A qualified professional archeologist shall be present to monitor all ground-disturbing activities that take place in the project area. The monitor shall forward a monitoring report to the Division, FEMA, and the Florida Division of Historical Resources, at the conclusion of the project for review. In addition, if any cultural resource deposits are discovered, the monitor shall be empowered to direct construction activities to other areas to enable recovery and recordation of the deposits before project activities

resume in the area. The resultant report(s) of such discoveries shall be forwarded to the Division, FEMA, and the Florida Division of Historical Resources for review. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with Section 872.05, Florida Statutes.

- 5) The Sub-Recipient shall provide a full-time on-site Secretary of Interior (SOI) Qualified Archaeologist to monitor all construction activities. The archaeological monitor shall have full stop authority if anything of archaeological or historic concern is encountered. The archaeological monitor shall be on site during all construction activities for the course of the entire project and a final report shall be submitted to the Division, Florida SHPO, and FEMA upon completion of the drainage work.
- 6) Project activities shall occur within the existing right of way.
- 7) Prior to project commencement, the Sub-Recipient must identify the source and location of fill material and provide this information to the Division and FEMA. If the borrow pit is privately owned, or is located on previously undisturbed land, or if the fill is obtained by the horizontal expansion of a pre-existing borrow pit, FEMA consultation with the SHPO shall be required. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 8) The Sub-Recipient must obtain floodplain permit from the local floodplain administrator before work begins. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 9) The Sub-Recipient must comply with the conditions of the Southwest Florida Water Management District (SWFWMD) Environmental Resource Permit (ERP), # 48-106171-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 10) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.
- 4) Project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for closeout.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of the new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 8) If the Sub-Recipient is not the current title holder of the affected properties, the Sub-Recipient shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not

pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.

- 9) Special Conditions required on implementation of project:
- a) **EO 11988 CONDITION:** The sub-recipient must obtain floodplain permit from the local floodplain administrator before work begins. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout. **Source of Condition:** Executive Order 11988 **Monitoring Required: No**
 - b) **CZMA CONDITION:** The sub-recipient must comply with the conditions of the SWFWMD ERP, #48-106171-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance will be required at project closeout. **Source of Condition:** Coastal Zone Management Act (CZMA) **Monitoring Required: No**
 - c) **NHPA:** It is the request of this office that a qualified professional archeologist be present to monitor all ground-disturbing activities that take place in the above referenced project area. The monitor should forward a monitoring report to this office at the conclusion of the project for review. In addition, we request that if any cultural resource deposits are discovered, the monitor should be empowered to direct construction activities to other areas to enable recovery and recordation of the deposits before project activities resume in the area. The resultant report(s) of such discoveries should be forwarded to this office for review. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately, and the proper authorities notified in accordance with Section 872.05, Florida Statutes. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - d) **NHPA:** Prior to project commencement, the sub-recipient must identify the source and location of fill material and provide this information to FDEM and FEMA. If the borrow pit is privately owned, or is located on previously undisturbed land, or if the fill is obtained by the horizontal expansion of a pre-existing borrow pit, FEMA consultation with the State Historic Preservation Officer will be required. Failure to comply with this condition may jeopardize FEMA funding, verification of compliance will be required at project closeout. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - e) **NHPA:** If human remains or intact archaeological features or deposits (e.g., arrowheads, pottery, glass, metal, etc.) are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The sub-recipient will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The sub-recipient's contractor will provide immediate notice of such discoveries to the sub-recipient. The sub-recipient shall contact the Florida Division of Historic Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with the SHPO, Tribes, and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities; all work shall stop immediately, and the proper authorities notified in accordance with Florida Statutes, Section 872.05. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
 - f) **NHPA CONDITION:** The sub-recipient will provide a full-time on-site SOI Qualified Archaeologist to monitor all construction activities. The archaeological monitor will have full stop authority if anything of archaeological or historic concern is encountered. The archaeological monitor will be on site during all construction activities for the course of the entire project and a final report will be submitted to the Florida SHPO and FEMA upon completion of the drainage work. **Source of condition:** National Historic Preservation Act (NHPA) **Monitoring Required: No**
- 10) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to

another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

This is FEMA project number **4337-449-R, and shall be reported under 4337-449-A.** It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on November 13, 2023; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **February 28, 2026.**

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient’s program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

Phase II-

State Contracting:	3 Months
Construction Plan/Technical Specifications:	2 Months
Bidding / Local Procurement:	2 Months
Construction / Installation:	12 Months
Local Inspections / Compliance:	3 Months
State Final Inspections / Compliance:	3 Months
<u>Closeout Compliance:</u>	<u>2 Months</u>
Total Period of Performance:	27 Months

BUDGET

Line Item Budget*

Phase II	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$316,174.00	\$237,130.50	\$79,043.50
Labor:	\$174,390.00	\$130,792.50	\$43,597.50
Fees:	\$0.00	\$0.00	\$0.00
Initial Agreement Amount:	\$490,564.00	\$367,923.00	\$122,641.00
***Contingency Funds:	\$24,528.00	\$18,396.00	\$6,132.00
Project Total:	\$515,092.00	\$386,319.00	\$128,773.00

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

**** This project has an estimated \$24,528.00 in contingency funds. Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.*

Project Management costs are included for this project in the amount of \$0.00

Funding Summary Totals

Federal Share:	\$386,319.00	(75.00%)
Non-Federal Share:	\$128,773.00	(25.00%)
Total Project Cost:	\$515,092.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 C.F.R. 7, 9, 18, 25, and 206. Reference (Title 44, up to date as of August 18, 2023, and last amended January 9, 2023.), and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Program and Policy Guide, 2023;
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 C.F.R. §206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must “obtain prior written approval for any budget revision which result in a need for additional funds” (2 C.F.R. § 200.308);
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA ninety (90) calendar days prior to the project expiration date. Reference, HMA Program and Policy Guide, 2023, G.3. Award Extensions, paragraph 3.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes

- (8) Section 216.181(6), Florida Statutes
- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes
- (14) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 C.F.R., Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-

recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
 - (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to section 112.313 and section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Chapter 87 which outlaws and prescribes penalties for “kickbacks” of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 5 U.S.C. 7323 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 50, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase “Federal financial assistance” includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the “Uniform Federal Accessibility Standards,” (AS) which is Appendix A to 41 C.F.R. Section 101-19.6 for general type buildings and Appendix A to 24 C.F.R., Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C.), Executive Order 11593, 36 C.F.R., Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (54 U.S.C. 3125) by:

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R., Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the “**Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)**” which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C., and implementing regulations in 36 C.F.R., Part 800.
- (4) When any of the Sub-recipient’s projects funded under this Agreement may affect a historic property, as defined in 36 C.F.R., Part 800.16 (I)(1), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior’s Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO’s opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be

eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may be eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with applicable provisions of the following laws and policies prohibiting discrimination:
 - (1) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin (including limited English proficiency).
 - (2) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on disability.
 - (3) Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination based on sex in education programs or activities.
 - (4) Age Discrimination Act of 1975, which prohibits discrimination based on age.
 - (5) U.S. Department of Homeland Security regulation 6 C.F.R. Part 19, which prohibits discrimination based on religion in social service programs.
- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (o) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4541-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (p) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (q) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (r) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (s) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (t) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and

Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

- (u) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7675;
- (v) It will comply with the Clean Water Act of 1977, as amended, 33 U.S.C. 1251-1388
- (w) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (x) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701-4772;
- (y) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 54 U.S.C.;
- (z) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (aa) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 54 U.S.C. 3125
- (bb) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (cc) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j-27, regarding the protection of underground water sources;
- (dd) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (ee) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ff) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (gg) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3501-3510;
- (hh) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-14674; and
- (ii) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-668.
- (jj) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.

- (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
- (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
- (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
- (6) Leave the demolished site clean, level and free of debris.
- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857), Section 508 of the Clean Water Act (33 U.S.C. 1251-1388), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 C.F.R., Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

**REQUEST FOR ADVANCE OR REIMBURSEMENT
OF HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: Town of Windermere

REMIT ADDRESS: 614 Main Street

CITY: Windermere STATE: Florida ZIP CODE: 34786

PROJECT TYPE: Drainage - Phase II PROJECT #: 4337-449-A

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H1043

BUDGET: _____ FEDERAL SHARE: _____ LOCAL: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ through _____ Payment No: _____

Total of Previous Payments to Date: _____ (Federal)
 Total of Previous SRMC to Date: _____ (SRMC Federal)
 Total Federal to Date: _____ (Total Federal Paid)

Eligible Amount 100% (Current Request)	Obligated Federal Amount 75%	Obligated Local Non-Federal 25%	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME: _____ TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL \$ _____	
APPROVED SRMC TOTAL: \$ _____	_____ DIVISION DIRECTOR
APPROVED FOR PAYMENT \$ _____	_____ DATE

Attachment D (cont.)
SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE HAZARD MITIGATION ASSISTANCE PROGRAM

SUB-RECIPIENT: Town of Windermere PAYMENT #: _____
 PROJECT TYPE: Drainage - Phase II PROJECT #: 4337-449-A
 PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H1043

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
<i>This payment represents</i> <i>% completion of the project.</i>				TOTAL	

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: Town of Windermere

If you are requesting an advance, indicate same by checking the box below.

<p><input type="checkbox"/> ADVANCE REQUESTED</p> <p>Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.</p>

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for ninety (90) days. Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

**Attachment F
QUARTERLY REPORT FORM**

Instructions: Complete and submit this form to State Project Manager within 15-days after each quarter:

SUB-RECIPIENT: Town of Windermere **PROJECT #:** 4337-449-A
PROJECT TYPE: Drainage - Phase II **CONTRACT #:** H1043
PROGRAM: Hazard Mitigation Grant Program **QUARTER ENDING:** _____

Advance Payment Information:

Advance Received N/A Amount: \$ _____ Advance Settled? Yes No

Financial Amount to Date:

Sub-Recipient Total Project Expenditures to date (federal & local): \$ _____

Target Dates (State Agreement):

Contract Execution Date: _____ Contract Expiration Date: _____
 Date Deliverables Submitted: _____ Closeout Requested Date: _____

Describe **Milestones** achieved during this quarter:

Project Proceeding on **Schedule**? Yes No (If No, Describe under **Issues** below)

Percentage of Milestones completed to Date: _____%

Describe Activities - Milestones completed this quarter only:

Schedule of the Milestones-Activities:

<u>Milestone</u>	<u>Dates</u> (estimated)
<u>State Contracting</u>	
<u>Closeout Compliance</u>	
<i>Estimated Project Completion Date:</i>	

Issues or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: Cost Unchanged Under Budget Over Budget

Cost / Financial **Comments:**

NOTE: Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, extensions. Contact the Division as soon as these conditions are known, otherwise you could be non-compliant with your sub-grant award.

Sub-Recipient Contract Representative (POC): _____

Signature: _____ Phone: _____

~ To be completed by Florida Division of Emergency Management Project Manager ~

Project Manager Statement: No Action Required, OR

Action Required: _____

PM Percentage of Activates competed per PM Review QR Milestones Spreadsheet: _____%

Date Reviewed: _____ Reviewer: _____ Project Manager

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.327).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

**Certification Regarding
Debarment, Suspension, Ineligibility
And Voluntary Exclusion**

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

Town of Windermere

Sub-Recipient's Name

H1043

DEM Contract Number

4337-449-A

FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

PURPOSE: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management (“FDEM” or “Division”) must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

Note: This “Instructions and Worksheet” is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM’s issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-449-A
FUNDING AGENCY: Federal Emergency Management Agency
AWARD AMOUNT: \$ 367,923.00
OBLIGATION/ACTION DATE: November 13, 2023
SUBAWARD DATE (if applicable): _____

UEID/SAM#: PD6EQR8T3RR5

*If your company or organization does not have a UEID/SAM number, you will need to obtain one from <https://sam.gov/content/entity-registration>The process to request a UEID/SAM number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY UEID/SAM# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes drainage improvements within the residential roadway area of Butler Street and West 7th Avenue. The project is located on Butler Street from West 6th Avenue to West 7th Avenue, on West 7th Avenue from Butler Street to Main Street, and includes Fernwood Park in Windermere, Florida 34786.

The HMGP Phase II proposal is to upgrade the existing roadway and drainage system by grading the existing dirt road and installing an enhanced stormwater system. The proposed stormwater system includes improving the drainage collection and conveyance with roadside swales, concrete gutters, and a stormwater piping system. Sodded roadside swales shall be installed with plastic erosion matting. Additionally, runoff storage shall be increased utilizing a new rain garden and retention areas. The improved stormwater system includes the addition of seven ditch bottom inlets, seven gutter inlets, and three new manholes. One existing drainage structure shall be modified for the project. The project includes stormwater piping and a mitered end section for each pipe size. Installation of approximately 117 linear feet (LF) of 15-inch round pipe, 714 linear feet (LF) of 18-inch round pipe, and 66 linear feet (LF) of 24-inch round pipe is proposed. The rain garden shall be 0.14 acres and planted as part of the retention areas located at the East side of Fernwood Park. An outfall weir, and associated improvements, is proposed to regulate flow into Lake Butler from the rain garden and retention area. As part of the stormwater improvement in the area the existing dirt roadway shall be graded to accommodate the mitigation solution. The proposal includes approximately 1,325 linear feet of roadway improvements; this includes the removal of 6 inches of existing material as well as furnishing and installing 6 inches of shell base for pavers material to connect to the overall grading system. Outside the roadway, grading work ties the site back to existing conditions. The project includes returning driveways that were damaged during construction to an operational condition. The project shall mitigate nuisance flooding that currently persists during rainfall events, protecting residences that have experienced repetitive flooding on roads and structural damages.

The project shall be constructed to provide protection against a 100-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Location	Boundary	Coordinates
1)		North	(28.49380, -81.53700)

	Orange County, Windermere, Florida 34786	South	(28.49199, -81.53655)
		West	(28.49220, -81.53750)
		East	(28.49320, -81.53440)

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____
ADDRESS LINE 2: _____
ADDRESS LINE 3: _____
CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

**Providing the Zip+4 ensures that the correct Congressional District is reported.

EXECUTIVE COMPENSATION INFORMATION:

1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 C.F.R. 170.320; , (b) \$25,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?
Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) Section 6104 of the Internal Revenue Code of 1986?
Yes No

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "No" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization. For purposes of this request, the following terms apply as defined in 2 C.F.R. Ch. 1 Part 170 Appendix A:

“Executive” is defined as “officers, managing partners, or other employees in management positions”.

“Total Compensation” is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J
Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The following is a list of sample provisions from Appendix II to 2 C.F.R. Part 200 that may be required:¹

**Appendix II to Part 200—Contract Provisions for Non-Federal Entity
Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. 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. Part 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 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 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.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or

¹ For example, the Davis-Bacon Act is not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program or Hazard Mitigation Grant Program; however, sub-recipient may include the provision in its subcontracts.

repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, 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 (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, 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. 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 which 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.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2 (a) and the recipient or Sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Sub-recipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award 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 awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must 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 must 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 non-Federal award.

(J) See 2 C.F.R. § 200.323 Procurement of recovered materials.

(K) See 2 C.F.R. §200.216 Prohibition on certain telecommunication and video surveillance services or equipment.

(L) See 2 C.F.R. §200.322 Domestic preferences for procurements

(Appendix II to Part 200, Revised Eff. 11/12/2020).

FEMA created the 2019 PDAT Contract Provisions Template to assist non-Federal entities. It is *available* at https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf.

Please note that the sub-recipient alone is responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. § 200.327 and 2 C.F.R. Part 200, Appendix II.

Attachment K

Certification Regarding Lobbying

Check the appropriate box:

- This Certification Regarding Lobbying is required because the Contract, Grant, Loan, or Cooperative Agreement will exceed \$100,000 pursuant to 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- This Certification is not required because the Contract, Grant, Loan, or Cooperative Agreement will be less than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Sub-Recipient or subcontractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Sub-Recipient/subcontractor's Authorized Official

Name and Title of Sub-Recipient/subcontractor's Authorized Official

Date

Attachment L

Florida Accountability Contract Tracking System (FACTS) Requirements for Non-profit Organizations Under Section 216.1366, Florida Statutes Instructions and Worksheet

CONTRACT DOCUMENTATION REQUIREMENTS

Section 216.1366, F.S., amended in 2023, establishes new documentation requirements for any contract for services executed, amended, or extended on or after July 1, 2023, with non-profit organizations as defined in s. 215.97 (2)(m), F.S. The contract must require the contractor to provide documentation that indicates the amount of state funds:

- Allocated to be used during the full term of the contract for remuneration to any member of the board of directors or an officer of the contractor.
- Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor. The documentation must indicate the amounts and recipients of the remuneration.

Such information must be included in the contract tracking system maintained pursuant to s. 215.985 F.S. and must be posted on the contractor's website if the contractor maintains a website.

- As used in this subsection, the term:
 - o "Officer" means a Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO), or any other position performing an equivalent function.
 - o "Remuneration" means all compensation earned by or awarded to personnel, whether paid or accrued, regardless of contingency, including bonuses, accrued paid time off, severance payments, incentive payments, contributions to a retirement plan, or in-kind payments, reimbursements, or allowances for moving expenses, vehicles and other transportation, telephone services, medical services, housing, and meals.
 - o "State funds" means funds paid from the General Revenue Fund or any state trust fund, funds allocated by the Federal Government and distributed by the state, or funds appropriated by the state for distribution through any grant program. The term does not include funds used for the state Medicaid program.

Note: This "Instructions and Worksheet" is meant to explain the requirements of the Section 216.1366, F.S., amended in 2023, and give clarity to the attached form distributed to recipients and sub-recipients for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

NON-PROFIT ORGANIZATION REMUNERATION INFORMATION

1. Is your business or organization a non-profit organization as defined in s. 215.97 (2)(m), F.S.?
Yes No

If the answer to Question 1 is "Yes," continue to Question 2. If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

2. Will state funds be used as remuneration to any member of the board of directors or an officer in your business or organization?
Yes No

If the answer to Question 2 is "Yes," provide the information required in the "Total Compensation Paid to Non-Profit Personnel Using State Funds" form below. A separate form should be completed for each member of the board of directors or officer being compensated using state funds. If the answer to Question 2 is "No", move to the signature block below to complete the certification and submittal process.

Total Compensation Paid to Non-Profit Personnel Using State Funds

Name:		
Title:		
Agency Agreement/Contract #		
Total Contract Amount		
Contract Term:		
Line Item Budget Category	Total Amount Paid	Amount Paid from State Funds
Salaries		
Fringe Benefits		
Bonuses		
Accrued Paid Time Off		
Severance Payments		
Retirement Contributions		
In-Kind Payments		
Incentive Payments		
Reimbursements/Allowances		
Moving Expenses		
Transportation Costs		
Telephone Services		
Medical Services Costs		
Housing Costs		
Meals		
CERTIFICATION: I certify that the amounts listed above are true and accurate and in accordance with the approved budget.		
Name:		
Signature:		
Title:		
Date:		

ATTACHMENT M

**FOREIGN COUNTRY OF CONCERN AFFIDAVIT –
PERSONAL IDENTIFYING INFORMATION CONTRACT**

Section 287.138, Florida Statutes, prohibits a Florida “Governmental entity”² from entering into or extending contracts with any other entity whereby such a contract, or extension thereof, could grant the other entity access to an individual’s personal identifying information if that entity is associated with a “Foreign Country of Concern.”³ Specifically, section 287.138(2), Florida Statutes, prohibits such contracts with any entity that is owned by the government of a Foreign Country of Concern, any entity in which the government of a Foreign Country of Concern has a “controlling interest,”⁴ and any entity organized under the laws of or which has its principal place of business in a Foreign Country of Concern.

As the person authorized to sign on behalf of Respondent, I hereby attest that the company identified above in the section entitled “Respondent Vendor Name” is not an entity owned by the government of a Foreign Country of Concern, no government of a Foreign Country of Concern has a controlling interest in the entity, and the entity has not been organized under the laws of or has its principal place of business in a Foreign Country of Concern.

I understand that pursuant to section 287.138, Florida Statutes, I am submitting this affidavit under penalty of perjury.

Respondent Vendor Name: _____
Vendor FEIN: _____
Vendor’s Authorized Representative Name and Title: _____
Address: _____
City: _____ State: _____ Zip: _____
Phone Number: _____
Email Address: _____
Certified By: _____ AUTHORIZED SIGNATURE
Print Name and Title: _____
Date: _____

² As defined in Section 287.138 (1)(d), Florida Statutes.

³ As defined in Section 287.138 (1)(c), Florida Statutes.

⁴ As defined in Section 287.138 (1)(a), Florida Statutes.

Orange County Pottys Inc
 PO Box 1
 Ocoee, FL 34761
 ocpottys@gmail.com



Estimate

ADDRESS

Lillien
 Town of Windermere

SHIP TO

Lillien
 Town of Windermere

ESTIMATE # 1651

DATE 02/27/2024

EXPIRATION DATE 04/27/2024

	DESCRIPTION	QTY	RATE	AMOUNT
3 Stall ADA Restroom Trailer	A \$500 non refundable deposit is required to reserve the trailer. Remaining balance is due 15 days prior to delivery. Power and water needed within 100 feet. If power and water is not available additional charges will apply to supply. Standard water hose thread needed for water supply. Once the trailer is unloaded from the tow vehicle, there is a fee for relocation. Customer is responsible for covering wires, hoses, and trip hazards. This quote does not include any emergency services regarding clogged toilets, etc. *** This quote is per 28 days, including once a week pumping and restocking*** Inside cleaning option is listed below.	1	3,390.00	3,390.00
Damage Deposit	Refundable if no damage beyond normal wear and tear at the end of the service	1	500.00	500.00
Restroom Trailer Cleaning Fee	OPTIONAL - \$125.00 per inside cleaning service	4	125.00	500.00

520 Main St Windermere 34786 - Town Hall

*** Per 28 days***

Open to the public - Restrooms for the park and will stay open all the time

SUBTOTAL	4,390.00
TAX	0.00
TOTAL	\$4,390.00

Accepted By

Accepted Date

