



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## New Business - Development and Environmental Services Group

J.1.

7/19/2022

**Subject:**

Approval, Re: Donation and Capital Contribution Reimbursement Agreement For Fire Station 49 with The Viera Company

**Fiscal Impact:**

\$2,635,867.11

**Dept/Office:**

Planning and Development and Public Safety Group

**Requested Action:**

It is requested that the Board of County Commissioners accept and authorize the Chair to execute the attached, Donation and Capital Contribution Reimbursement Agreement, for Fire Station 49, between The Viera Company and Brevard County.

**Summary Explanation and Background:**

The attached agreement satisfies Condition 101 of the Viera Amended and Restated Development Order, of the Development of Regional Impact, which obligates the Developer to construct and equip a third fire station on a 2-acre site. The agreement stipulates the developer will bear the cost of the construction of the fire station along with the cost for the fire apparatus and equipment. Upon completion of construction, The Viera Company will transfer the ownership of the land, building, and equipment to Brevard County.

The agreement specifies Brevard County will reimburse The Viera Company through Fire/Rescue impact fee credits in the amount of the appraised value of the property and the cost of the fire apparatus/equipment. The appraised value of the property is \$1,198,000.00, and the cost of the fire apparatus/equipment is \$1,437,867.11 for a total cost of \$2,635,867.11. (Please note, the cost of the fire station has yet to be determined and is not included in this fiscal impact.)

The Viera Company has fulfilled the requirements for Fire Stations 47 and 48. In addition, The Viera Company agrees that the cost of the mini-pumper (\$200,000.00) will be applied toward the funding of the "Alternative Apparatus". Both Brevard County Fire Rescue and the County Attorney's Office have reviewed the agreement.

**Clerk to the Board Instructions:**

Please return signed document to Planning and Development



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July 20, 2022

**MEMORANDUM**

**TO:** Tad Calkins, Planning and Development Director

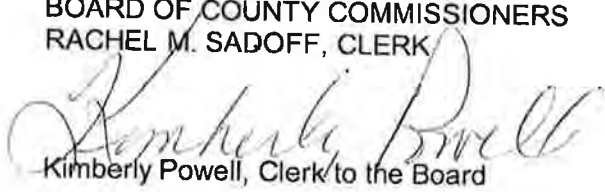
**RE:** Item J.1., Donation and Capital Contribution Reimbursement Agreement For Fire Rescue Station 49 with The Viera Company

The Board of County Commissioners, in regular session on July 19, 2022, executed and accepted the Donation and Capital Contribution Reimbursement Agreement for Fire Station 49, with The Viera Company. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS  
RACHEL M. SADOFF, CLERK

  
Kimberly Powell, Clerk to the Board

Encl. (1)

/ns

cc: Public Safety  
Fire Rescue  
Emergency Management  
Finance  
Budget

DONATION AND CAPITAL CONTRIBUTION REIMBURSEMENT AGREEMENT FOR  
FIRE STATION 49

THIS DONATION AND CAPITAL CONTRIBUTION REIMBURSEMENT AGREEMENT FOR FIRE STATION 49 (hereinafter referred to as the “**Agreement**”) is made and entered into by and between THE VIERA COMPANY, a Florida corporation (hereinafter referred to as “**TVC**”), and BREVARD COUNTY, Florida, a political subdivision of the State of Florida (hereinafter referred to as the “**County**”).

R E C I T A L S:

A. TVC is the developer of that certain master-planned community located in Brevard County, Florida, known as the Viera development of regional impact (hereinafter referred to as the “**Viera DRI**”).

B. The County issued that certain Amended and Restated Development Order for the Viera DRI dated December 15, 2009 under Brevard County Resolution 09-272, which was last amended and restated pursuant to that certain Amended and Restated Development Order adopted on August 20, 2019 under Brevard County Resolution 19-134 (hereinafter referred to as the “**Current Development Order**”).

C. Under prior development orders adopted by the County for the Viera DRI, TVC previously donated the following sites, together with fire station improvements constructed thereon, to the County:

- (1) One (1) site for a fire station in that part of the Viera DRI known as “Viera East”, together with improvements constructed thereon known as “Fire Station



47", pursuant to that certain Donation and Capital Contribution Reimbursement Agreement between TVC and the County dated as of June 9, 1999 (hereinafter referred to as the "**Fire Station 47 Reimbursement Agreement**"); and

- (2) One (1) site for a fire station in that part of the Viera DRI known as "Central Viera", together with improvements constructed thereon known as "Fire Station 48", pursuant to that certain Donation and Capital Contribution Reimbursement Agreement for Fire Station 48 between TVC and the County dated as of March 19, 2010 (hereinafter referred to as the "**Fire Station 48 Reimbursement Agreement**").

D. Pursuant to Amendment #10 to the Central Viera PUD adopted by the County under Resolution No. Z-11520 on November 5, 2009, TVC funded the County's acquisition of a so-called "mini-pumper" 2-door fire truck suitable for operating within alleys comprising a part of the compact road network located in the "Town Center PUD District" (hereinafter referred to as "**Mini-Pumper Truck #1**") and, in connection therewith, TVC and the County entered into that certain Donation and Capital Contribution Front-Ending Reimbursement Agreement for Required Mini-Pumper dated as of December 3, 2013 (hereinafter referred to as the "**Mini-Pumper #1 Reimbursement Agreement**"). Under the Mini-Pumper #1 Reimbursement Agreement, TVC provided \$186,500.00 (referred to therein as the "Reimbursement Amount") to fund the acquisition of Mini-Pumper Truck #1, which "Reimbursement Amount" was consolidated thereunder with the amounts to be reimbursed to TVC under the Fire Station 47

Reimbursement Agreement and the Fire Station 48 Reimbursement Agreement and described thereunder as the “Cumulative Reimbursable Amount Due”.

E. The County has fully reimbursed TVC for all costs and expenses incurred in connection with Fire Station 47 in accordance with the Fire Station 47 Reimbursement Agreement; however the County continues to reimburse TVC for amounts contributed in connection with Fire Station 48 and Mini-Pumper Truck #1 pursuant to the Fire Station 48 Reimbursement Agreement and the Mini-Pumper #1 Reimbursement Agreement (hereafter collectively referred to as the “**Active Reimbursement Agreements**”).

F. Under Condition 101 of the Current Development Order (hereinafter referred to as “**Condition 101**”), TVC is required to build and equip a third fire station on a 2 acre site in that part of the Viera DRI known as “West Viera – Village 2” (hereinafter referred to as “**Fire Station 49**”); and, upon completion, convey Fire Station 49, together with its associated vehicles and equipment, to the County. Condition 101 further requires that TVC fund the County’s acquisition of a second Mini-Pumper Truck (up to a maximum of \$200,000.00) in advance of the issuance of the first building permit for an “alley unit” within West Viera – Village 2 (hereinafter referred to as “**Mini-Pumper Truck #2**”). A copy of Condition 101 of the Current Development Order is attached hereto and made a part hereof as Exhibit “A”.

G. Condition 101 further provides that TVC is entitled to receive fire/rescue and emergency medical services impact fee credits for (i) the fair market value of the land as determined by an MAI appraiser acceptable to TVC and Brevard County comprising the third fire station site, (ii) TVC’s cost of designing, permitting and constructing Fire Station 49 and

related site improvements and (iii) costs incurred by TVC in connection with acquiring the equipment and vehicles for Fire Station 49 including, but not limited to, Mini-Pumper Truck #2, which credits shall apply against funds arising from the “F/R Impact Fee” and the “EMS Impact Fee” (as such terms are defined below) collected by the County on all development served by Fire Station 49.

H. At the request of the County and in lieu of TVC funding Mini-Pumper Truck #2 as provided in Condition 101, the County and TVC agree that (i) TVC shall pay \$200,000.00 to the County to be applied toward funding the County’s acquisition of the “Alternative Apparatus” (as defined herein) and (ii) upon such funding, TVC shall be entitled to receive fire, rescue and emergency services impact fee credits in the amount of such payment; as expressly provided in this Agreement.

I. The redemption and reimbursement of TVC’s applicable impact fee credits associated with Fire Station 49 and the Alternative Apparatus shall occur in the same manner and under substantially similar terms and conditions as set forth in the Fire Station 47 Reimbursement Agreement.

J. Brevard County currently assesses a fire/rescue facilities impact fee (herein referred to as the “**F/R Impact Fee**”) and an emergency medical services facilities impact fee (herein referred to as the “**EMS Impact Fee**”) pursuant to Chapter 62 of the Code of Ordinances of Brevard County, Florida. The F/R Impact Fee and the EMS Impact Fee are each collected within geographically distinct impact fee districts established by the County. Each district for the F/R Impact Fee has a corresponding district for the EMS Impact Fee having the same

boundaries. F/R Impact Fees and EMS Impact Fees collected by the County within each district are deposited in an F/R Impact Fee trust fund and an EMS Impact Fee trust fund established by the County for such district.

K. The County has determined that although the primary response area for Station 49 is located entirely within F/R Impact Fee – District 1 and EMS Impact Fee – District 1 (as shown in attached “Exhibit B”), the benefit to future development in those districts is limited to the primary response area and that a rational nexus demonstrating benefit to future development for the large areas of those districts that are located outside of the primary response area cannot reasonably be established. The County has also determined that a rational nexus demonstrating benefit to substantially all of the future development likely to occur in F/R Impact Fee - District 3 and EMS Impact Fee – District 3 can be demonstrated (hereafter collectively referred to as the “**Benefitted F/R-EMS Districts**”). For those reasons, reimbursements to TVC for expenses associated with the development of Station 49 as shall be drawn from the following Impact Fee Trust Funds and subject to the identified geographical limitation (hereafter collectively referred to as the “**Applicable F/R-EMS Trust Funds**”): (i) from F/R Impact Fee – District 1, all fire/rescue impact fees collected from development within the Viera DRI and that portion of the primary response area of Station 49 that is outside the Viera DRI as it may be amended from time to time; (ii) from F/R Impact Fee – District 3, all fire/rescue impact fees collected from development within the entirety of District 3; (iii) from EMS Impact Fee – District 1, all emergency medical services impact fees collected from development within the Viera DRI and that portion of the primary response area of Station 49 that is outside the Viera DRI the primary

response area of Station 49 as it may be amended from time to time; and (iv) from EMS Impact Fee – District 3, all emergency medical services impact fees collected from development within the entirety of District 3. The term “**Available Impact Fee Funds**” as used herein shall mean all impact fees hereafter collected by the County and deposited in the Applicable F/R-EMS Trust Funds over and above the collective balance of such trust funds necessary to satisfy the “Cumulative Reimbursement Amount Due” under the Active Reimbursement Agreements in full, less the County’s cost to collect such impact fees and administer the applicable trust funds as hereafter provided.

L. The Brevard County Fire Rescue Department (hereinafter referred to as the “**BCFR**”) and TVC have cooperated to select a ±2.00 acre parcel located near the intersection of Pineda Boulevard and Stadium Parkway as the site of Fire Station 49, which parcel is depicted and legally described on Exhibit “C”, attached hereto and made a part hereof (hereinafter referred to as the “**FS 49 Site**”).

M. Pursuant to Condition 101, Fire Station 49 shall be constructed and equipped in a manner mutually agreeable to the County and TVC and consistent with Fire Station 48. Not later than concurrently herewith, TVC shall enter into that certain “Standard Form of Agreement between Owner and Design-Builder” attached hereto as Exhibit “D” and made a part hereof (hereinafter referred to as the “**FS 49 Construction Contract**”), which construction contract shall be by and between TVC, as “Owner”, and W+J Construction Corp., as “Design-Builder” (hereinafter referred to as the “**Contractor**”). The FS 49 Construction Contract has been reviewed and approved by the County and the BCFR.

N. The FS 49 Construction Contract is a "design-build" contract which contemplates the Contractor's and TVC's agreement on the preparation of construction plans and specifications and the "Contract Sum" (as defined therein), subsequent to the full execution of the FS 49 Construction Contract and this Agreement, which agreement shall be memorialized by the Contractor and TVC completing and entering into the "Design-Build Amendment" attached to the FS 49 Construction Contract as Exhibit "A". Upon the County's approval of the "contract sum" and the construction plans and specifications for Fire Station 49, this Agreement shall be amended to memorialize the County's approval thereof as provided in paragraph 7 below.

O. TVC and the County desire to enter into this Agreement (i) to memorialize the terms and conditions applicable to the construction of Fire Station 49 and its conveyance to the County, (ii) to provide for the reimbursement of TVC's costs and expenses of designing, building and equipping Fire Station 49 in the same manner and under substantially similar terms and conditions as set forth in the Fire Station 47 Reimbursement Agreement and (iii) to set forth the understandings and agreements between TVC and the County with respect to the acquisition of the equipment and vehicles to be included as part of Fire Station 49 and the County's acceptance of up to a \$200,000.00 reimbursement from TVC for the Alternative Apparatus in lieu of TVC's partially funding the County's acquisition of Mini-Pumper Truck #2 .

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. RECITALS. The recitals set forth hereinabove are true and correct in all respects and are incorporated herein by reference as fully as if set forth herein verbatim.

2. WAIVER OF APPLICABLE COUNTY FEES. It is understood and agreed between the parties that, except for the County's sanitary sewer connection fee, the County shall waive any and all permit fees, inspections fees and other fees and charges related to the construction of Fire Station 49, including but not limited to the following fees and charges: building permit fees and charges, site plan submittal and review fees, clearing and landscaping plan review fee, sanitary sewer application and plan review fees, fire plan review and inspection fees, and capacity reservation fees and impact fees, if any. The preceding sentence only applies to the waiver of applicable fees by the County and no provision thereof shall be interpreted or construed as waiving any permit or inspection required by the County and/or fees imposed by another governmental entity in connection with the construction of Fire Station 49.

3. CONFIRMATION OF NO NEW BENEFITED DISTRICTS. The County represents to TVC that the Benefitted F/R-EMS Districts described in Recital K above are (i) the only F/R Impact Fee and EMS Impact Fee districts which are contemplated to benefit from Fire Station 49 and the services it will generally provide to the public, and (ii) each subject to the Active Reimbursement Agreements.

4. COLLECTION, RETENTION AND DISTRIBUTION OF VIERA DRI F/R AND EMS IMPACT FEES. The County affirms its obligation to collect, deposit and hold all the F/R Impact Fees and all the EMS Impact Fees derived from development within the Benefitted F/R-EMS Districts in their respective impact fee trust funds and not to disburse the

same (excluding amounts to compensate the County for collecting such impact fees and administering the applicable fund), except for the purpose of reimbursing TVC pursuant to the Active Reimbursement Agreements and this Agreement until such time as TVC is fully reimbursed for the amounts due TVC under the Active Reimbursement Agreements and this Agreement.

5. CONSTRUCTION AND CONVEYANCE OF FIRE STATION 49.

TVC shall commence and complete construction of Fire Station 49 on the FS 49 Site in accordance with the FS 49 Construction Contract. TVC shall be responsible for paying all amounts due the Contractor under the FS 49 Construction Contract in a timely manner.

(a) Inspection of Completed Fire Station. Upon the Contractor's application for final payment under the FS 49 Construction Contract and notice thereunder that Fire Station 49 is ready for final inspection and acceptance, TVC and the County will jointly inspect the "Work" (as defined in the FS 49 Construction Contract) for compliance with the FS 49 Construction Contract and the "FS 49 Plans" (as defined herein). Within ten (10) business days after such joint inspection, the County will notify TVC, in writing, of any deficiencies it observed in such "Work" and TVC will communicate such deficiencies to the Contractor and, pursuant to the FS 49 Construction Contract, set the time period within which the Contractor shall correct all deficiencies. TVC agrees that TVC shall not make final payment to the Contractor under the FS 49 Construction Contract until the Contractor has resolved the County's noted deficiencies in the "Work" to the reasonable satisfaction of the County.



(b) Conveyance of Fire Station 49 to the County. Upon completing construction of Fire Station 49 and the resolution of all construction deficiencies noted by the County pursuant to subparagraph 5(a) above, TVC shall convey the FS 49 Site, together with all improvements constructed thereon (such real property and improvements are hereinafter referred to as the “**Real Property**”), to the County; and the County agrees to accept the conveyance of the Real Property from TVC, subject to and strictly in accordance with the terms and conditions hereinafter set forth. For purposes of such conveyance, the County and TVC acknowledge and agree, based on that certain Appraisal prepared by Callaway & Price, Inc., dated February 16, 2022, that the “as-is” fee simple market value of the FS 49 Site is One Million One Hundred Ninety-Eight Thousand Dollars (\$1,198,000.00) (herein referred to as the “**FS 49 Site Appraised Value**”).

(c) Closing Date and Place of Closing. The conveyance of the Real Property to the County shall occur within ten (10) days after the latter of (i) the date of “Substantial Completion” (as defined in the Construction Contract) of Fire Station 49, and (ii) the date on which any and all construction deficiencies noted by the County pursuant to subparagraph 5(a) above have been resolved to the County’s reasonable satisfaction; or, alternatively, on such date and at such time as the parties may mutually agree upon. The closing shall be held in Brevard County, Florida at the office of the “Issuing Agent” (as defined below).

(d) Conveyance of Title and Closing Documents. At the closing, TVC shall execute and deliver to the County a special warranty deed conveying fee simple title to the Real Property to the County, subject only to the matters affecting title set forth in Exhibit “E”,

attached hereto and made a part hereof, and such other matters as are expressly provided in this Agreement. The special warranty deed shall be in form and content substantially as set forth in Exhibit "F", attached hereto and made a part hereof. As provided in attached Exhibit "F", the special warranty deed shall include a restrictive covenant restricting the use of the Property to use as a fire station and associated uses for emergency services. At the closing, TVC shall also execute and deliver to the County the following instruments:

- (1) a construction lien and possession affidavit in form and content substantially as set forth in Exhibit "G", attached hereto and made a part hereof;
- (2) a non-foreign affidavit and certificate in form and content substantially as set forth in Exhibit "H", attached hereto and made a part hereof;
- (3) two (2) duplicate original closing statements;
- (4) an assignment to the County of any and all warranty rights and remedies held by TVC by, under or through the FS 49 Construction Contract, with copies of all written warranties in the possession of TVC to be delivered to the County at the closing;
- (5) a project manual that shall include without limitation a complete set of "as-built" construction drawings for Fire Station 49, operations and maintenance manuals, a list of subcontractors (which shall include their name, address, phone and fax numbers, contact person and designated portion of the "Work"), and a final boundary survey of the FS 49 Site showing the location of all improvements constructed pursuant to the FS 49 Construction Contract;

(6) a title insurance commitment issued by the law firm of Dean Mead as agent for Fidelity National Title Insurance Company (herein referred to as the “**Issuing Agent**”), whereby the title insurance company agrees to issue to the County, upon the recording of the special warranty deed attached as Exhibit “F”, a fee owners title insurance policy of title insurance in the insured amount of the FS 49 Site Appraised Value subject only to the Permitted Exceptions, the so-called “standard exceptions” contained on the inside jacket cover of the standard form of commitment and such other matters as expressly provided in this Agreement.

(7) such additional closing documents as may be reasonably required by the County to complete the conveyance of the Real Property to the County.

Simultaneously therewith, the County shall execute and deliver to TVC two (2) duplicate original closing statements and such additional closing documents as may be reasonably required by TVC to complete the conveyance of the Real Property to the County. At the closing, TVC and the County also shall execute and deliver to each other such other documents and instruments as requested by the Issuing Agent or are required under this Agreement.

(d) Closing and Other Expenses. The cost of state documentary stamps which are required to be affixed to the special warranty deed conveying the Real Property, the cost of the final boundary survey, the cost of the title insurance commitment and policy issued pursuant hereto and the cost of recording the special warranty deed shall be paid by TVC. Each party shall pay its own attorneys’ fees incurred in connection with the negotiation, preparation, execution and closing of this Agreement. The foregoing expenses incurred by TVC, together with all other fees, costs and expenses incurred by TVC in connection with the closing, with the

exception of the enforcement of this Agreement, shall be included as part of the "Total Contribution Amount" (as defined herein).

(e) Proration of Real Property Taxes. Real property taxes on the Real Property shall be prorated based on the Real Property's tax for the year in which the closing occurs, with due allowance made for the maximum allowable discount and applicable exemptions, if any, allowed for said year. If the closing occurs at a date when the applicable year's millage is not fixed, but such year's assessed valuation is available, taxes will be prorated based upon such assessment and the prior year's millage. If the applicable year's assessed valuation is not available, then real estate tax will be prorated based on the prior year's real estate tax bill or the prior year's millage applied to the FS 49 Site Appraised Value. The prorated taxes shall be placed in escrow with the county tax collector in accordance with the requirements of section 196.295, Florida Statutes. Any tax proration based on an estimate shall be subsequently re-adjusted upon receipt of the actual tax bill, and a statement to this effect shall be included in the settlement statement executed by the parties at the closing. If additional monies are due from TVC as a result of such re-proration, TVC shall promptly pay the amount due.

6. NO CONSTRUCTION WARRANTY BY TVC. The County understands and agrees that TVC shall not make or undertake any warranty of any kind or nature with respect to any of the improvements constructed pursuant to the FS 49 Construction Contract or with respect to the equipment and vehicles acquired by the County for Fire Station 49 (and to the extent a warranty of any kind or nature whatsoever is implied hereunder, TVC hereby disclaims the same), it being understood and agreed that the County shall look solely to the Contractor with

respect to construction matters and the applicable equipment and vehicle vendor or manufacturer for any and all warranty work or in connection with any defect of any type or nature whatsoever. Notwithstanding the preceding sentence, TVC agrees to cooperate with the County in its communications with the Contractor and in resolving any dispute or miscommunications, provided TVC shall not be obligated to incur any cost, expense, obligation or liability in connection therewith.

7. AMENDMENT OF THIS AGREEMENT ACKNOWLEDGING APPROVAL OF THE FULLY EXECUTED FS 49 CONSTRUCTION CONTRACT, THE CONSTRUCTION PLANS AND THE CONTRACT SUM. The FS 49 Construction Contract is a “design-build” agreement which will be subsequently amended by the Contractor and TVC by completing and executing the “Design-Build Amendment” attached to the FS 49 Construction Contract as Exhibit “A”, thereby finalizing the agreed upon Contract Sum to construct Fire Station 49, the permissible adjustments to the Contract Sum (including those portions of the “Work” subject to price increases during construction) and the final construction plans and specifications for the “Work”. Upon execution of the “Design-Build Amendment” by the Contractor and TVC, TVC shall submit the fully executed FS 49 Construction Contract, the Contract Sum and the final construction plans and specifications to the County for its review and approval. Upon issuance of the County’s approval thereof, this Agreement shall be amended to modify Exhibit “D” attached hereto to include the fully executed FS 49 Construction Contract, together with the fully executed “Design-Build Amendment” attached thereto as Exhibit “A”, and to memorialize the County’s approval of the fully executed FS 49 Construction Contract, the

Contract Sum and the construction plans and specifications for Fire Station 49. The Fire Station 49 construction plans and specifications approved by the County are herein referred to as the “**FS 49 Plans**”.

8. VEHICLES AND EQUIPMENT FOR FIRE STATION 49. The County shall directly purchase all vehicles and equipment required to equip Fire Station 49 at its cost and expense; provided, however, that TVC shall reimburse the County for the specific vehicles and equipment identified on Exhibit “I”, attached hereto and made a part hereof (hereinafter referred to as the “**Reimbursable V&E Items**”), as hereafter provided in this paragraph 8. TVC shall reimburse the County for each Reimbursable V&E Item based on the County’s actual cost up to, but not exceeding, the “Budgeted Amount” for such item indicated on attached Exhibit “I”, which maximum reimbursement amount for each Reimbursable V&E Item is hereinafter referred to as the “**Maximum Reimbursement Amount**” for such item. The County acknowledges and agrees that it shall be responsible for that portion of the cost of each Reimbursable V&E Item which exceeds the applicable Maximum Reimbursement Amount.

(a) The Reimbursement Process. Until such time as all Reimbursable V&E Items are acquired, the County shall provide TVC with an application for reimbursement (hereafter referred to as a “**County Reimbursement Application**”), from time to time, as the Reimbursable V&E Items are acquired, accompanied by such documentation as reasonably necessary to verify the actual cost of each Reimbursement V&E Item. The County Reimbursement Application shall indicate the amount paid to or due the County’s applicable vendor for each V&E Item included therein together with the amount of reimbursement

requested from TVC for such item, which shall not exceed the applicable Maximum Reimbursement Amount. Within thirty (30) days after receipt of a County Reimbursement Application and accompanying documentation, and any additional documentation required by TVC pursuant to subparagraph 13(a) below, TVC shall reimburse the County for each Reimbursable V&E Item included therein up to, but not exceeding, the Maximum Reimbursement Amount for the applicable item. The amounts paid by TVC to the County pursuant to this paragraph 8 are collectively referred to as the “**V&E Expenses**”.

9. DIRECT ASSISTANCE BY THE BCFR. The County agrees that notwithstanding any provision of the Current Development Order, the BCFR shall provide all consumable furnishings, medical gear and supplies necessary or required for Fire Station 49 and all consumable medical gear and supplies required for the “Engine Package” and the “Rescue Package” described in attached Exhibit “I” and for the Alternative Apparatus. Such consumable furnishings, gear and supplies shall not be Reimbursable V&E Items or eligible for reimbursement under the “Alternative Apparatus Reimbursement” (as defined herein), and shall be provided by the BCFR at no cost or expense to TVC.

10. ADDITIONAL VEHICLES AND EQUIPMENT FOR FIRE STATION 49. Notwithstanding any other provision of this Agreement, to the extent that the County determines that Fire Station 49 requires any additional vehicles or equipment which are not included on attached Exhibit “I”, such additional vehicles and equipment shall be provided by the County at the County’s sole cost and expense.

11. ALTERNATIVE APPARATUS PAYMENT IN LIEU OF FUNDING MINI-PUMPER TRUCK #2. Condition 101 provides that TVC shall fund the County's acquisition of Mini-Pumper Truck #2 in an amount not to exceed \$200,000.00. The County, however, has determined that in lieu of funding Mini-Pumper Truck #2, TVC's payment of up to \$200,000 towards the County's purchase of the alternative full-size fire suppression apparatus described in Exhibit "J" attached hereto and made a part hereof (herein referred to as the "**Alternative Apparatus**") will provide a greater public safety benefit to the County and the Viera DRI. Therefore, in lieu of TVC funding the County's acquisition of Mini-Pumper Truck #2 up to the amount of \$200,000, the County and TVC agree that TVC shall pay to the County the maximum amount of \$200,000.00 to be applied by the County toward its acquisition of the Alternative Apparatus (herein referred to as the "**Alternative Apparatus Reimbursement**"), which Alternative Apparatus shall be stationed within the Viera DRI. At such time as the County acquires the Alternative Apparatus, the County shall apply to TVC for reimbursement of the cost of the Alternative Apparatus (hereinafter referred to as the "**Alternative Apparatus Reimbursement Application**"), accompanied by such documentation as reasonably necessary to verify the actual cost of the Alternative Apparatus. In no event, however, shall the reimbursement requested for the Alternative Apparatus exceed \$200,000.00. Within thirty (30) days after TVC's receipt of the Alternative Apparatus Reimbursement Application and accompanying documentation, and any additional documentation required by TVC pursuant to subparagraph 13(a) below, TVC shall reimburse the County for the Alternative Apparatus up to, but not exceeding, the Alternative Apparatus Reimbursement.



12. TVC'S APPLICATION FOR REIMBURSEMENT. Not later than thirty (30) days prior to closing the conveyance of Fire Station 49 to the County pursuant to paragraph 5 above, TVC shall provide the County with TVC's application for reimbursement of (i) the FS 49 Appraised Value, (ii) all costs and expenses TVC then incurred in connection with designing, permitting and constructing Fire Station 49, (iii) the V&E Expenses then incurred by TVC in connection with funding the County's acquisition of the Reimbursable V&E Items and (iv) the Alternative Apparatus Reimbursement to the extent then paid by TVC (hereinafter referred to as the "**Preliminary TVC Reimbursement Application**"). The sum of the FS 49 Appraised Value and all costs and expenses incurred by TVC to design, permit and construct Fire Station 49 is hereafter referred to as the "**Reimbursement Amount for Land and Building**". The Preliminary TVC Reimbursement Application shall be accompanied by such documentation as reasonably necessary to verify the reimbursement amounts requested by TVC. The sum of the Reimbursement Amount for Land and Building plus the V&E Expenses and the Alternative Apparatus Reimbursement set forth in the Preliminary TVC Reimbursement Application is herein referred to as the "**FS 49 Total Contribution Amount**". Thereafter, upon written notice to the County, TVC shall be entitled to from time to time supplement the Preliminary TVC Reimbursement Application and increase the FS 49 Total Contribution Amount to the extent there are any eligible increases in the Reimbursement Amount for Land and Building, additional V&E Expenses or additional expenditures to fund the Alternative Apparatus Reimbursement that were not included in the Preliminary TVC Reimbursement Application delivered to the County prior to closing the conveyance of Fire Station 49. Any such supplement to the Preliminary TVC

Reimbursement Application increasing the FS 49 Total Contribution Amount shall include such documentation as reasonably necessary to verify the amount of such increase.

13. QUARTERLY REIMBURSEMENT OF THE FS 49 TOTAL CONTRIBUTION AMOUNT AFTER CLOSING.

(a) Quarterly Payments of Available Impact Fee Funds to TVC after Reimbursement for Fire Station 48 and Mini-Pumper Truck #1. Since the Applicable F/R-EMS Trust Funds referenced in this Agreement with respect to Fire Station 49 are also impact fee trust funds subject to the Active Reimbursement Agreements, "Available Impact Fee Funds" (as defined in the Active Reimbursement Agreements) shall continue to be disbursed to TVC as provided in the Active Reimbursement Agreements until the "Cumulative Reimbursable Amount Due" (as defined in the Mini-Pumper #1 Reimbursement Agreement) pertaining to Fire Station 48 and Mini-Pumper Truck #1 are paid in full. Thereafter, not later than forty-five (45) days after the last day of each calendar year quarter (that is, March 31, June 30, September 30, December 31) following the date the "Cumulative Reimbursable Amount Due" for Fire Station 48 and Mini-Pumper Truck #1 is paid in full, the County shall distribute to TVC all Available Impact Fee Funds (as defined in this Agreement) collected and deposited during the preceding calendar year quarter (or partial quarter immediately following full payment of the "Cumulative Reimbursable Amount Due") in the Applicable F/R-EMS Trust Funds which were formerly subject to the Active Reimbursement Agreements, until such time as the FS 49 Total Contribution Amount (as the same may be increased from time to time by supplements submitted by TVC pursuant to paragraph 12 above) is paid in full with respect to the Reimbursement

Amount for Land and Building, the V & E Expenses and the Alternative Apparatus Reimbursement.

(b) Verification of Expenses. In the event the County determines that any expense included in the Preliminary TVC Reimbursement Application submitted by TVC, or any supplement thereto submitted pursuant to paragraph 12 above, cannot be reasonably verified based on the documentation provided by TVC, the County shall notify TVC in writing within ten (10) days of the County's determination thereof and advise TVC of the required documentation to verify such expense. TVC shall have thirty (30) days from the date of its receipt of the County's notice that an expense cannot be verified within which to provide the County with the requested additional documentation to verify the applicable expense. Likewise, in the event TVC determines that any expense covered by a County Reimbursement Application submitted in connection with the Reimbursable V&E Items pursuant to subparagraph 8(a) above or an Alternative Apparatus Reimbursement Application pursuant to paragraph 11 above cannot be reasonably verified based on the documentation provided by the County, TVC shall notify the County in writing within ten (10) days of TVC's determination thereof and advise the County of the required documentation to verify such expense. The County shall have thirty (30) days from the date of its receipt of TVC's notice that an expense cannot be verified within which to provide TVC with the requested additional documentation to verify the applicable expense.

14. STATUS OF CONDITION 101. The County and TVC acknowledge and agree that upon (i) the construction and completion of Fire Station 49 in accordance with the FS 49 Construction Contract and the FS 49 Plans; (ii) the conveyance of the Real Property to the

County, including without limitation all building improvements thereon, at the closing pursuant to this Agreement, (iii) TVC's reimbursement of the County for the V&E Expenses up to the Maximum Reimbursement Amount for each V&E Item and (iv) TVC's reimbursement of the County for the Alternative Apparatus up to the maximum amount of the Alternative Apparatus Reimbursement; TVC's obligations under and pursuant to Condition 101 shall be satisfied in full. Without limiting the foregoing, the County further acknowledges and agrees that substituting the acquisition of the Alternative Apparatus in lieu of acquiring Mini-Pumper Truck #2 will provide a greater public safety benefit to the County and the Viera DRI; and TVC's funding of the Alternative Apparatus Reimbursement as provided herein in lieu of funding Mini-Pumper Truck #2 shall fully satisfy TVC's obligation to fund the acquisition of Mini-Pumper Truck #2 up to the maximum amount of \$200,000.00 under Condition 101.

15. MISCELLANEOUS PROVISIONS.

(a) Notices. Any notices or other communications which may be required or desired to be given under the terms of this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified mail, return receipt requested, postage prepaid, addressed to the respective party at the addresses set forth below:

To the County:

Brevard County, Florida  
Brevard County Government Operations Center  
2725 Judge Fran Jamieson Parkway  
Building C  
Viera, Florida 32940  
Attn: Frank Abbate, County Manager  
Christine Sheverak, Interim County Attorney

To TVC:

The Viera Company  
7380 Murrell Road, Suite 201  
Viera, Florida 32940  
Attn: Todd J. Pokrywa, President

With a copy to:

The Viera Company  
7380 Murrell Road, Suite 201  
Viera, Florida 32940  
Attn: General Counsel

Any notice so given, delivered or made by mail shall be deemed to have been duly given, delivered or made on the date the same is deposited in the United States mail in the manner specified hereinabove. Any notice which is not given, delivered or made by United States mail in the manner specified above shall be deemed to have been duly given, delivered or made upon actual receipt of the same by the party to whom the same is to be given, delivered or made. Either party may change the address to which notices are to be sent to such party by written notice to the other party specifying such change of address.

(a) Nonrecording. Neither party may record this Agreement in the public records of Brevard County, Florida, or any other public records

(b) Attorneys' Fees. In the event of any litigation arising out of this Agreement, each party shall bear its own attorneys' fees and costs.

(c) Venue; Waiver of Jury Trial. The venue of any litigation arising out of this Agreement shall be Brevard County, Florida. **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COUNTY AND TVC EACH HEREBY KNOWINGLY, WILLINGLY, AND UNCONDITIONALLY AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL IN CONNECTION WITH ANY LAWSUIT, CLAIM, OR**

**OTHER ACTION RELATING TO THIS AGREEMENT, AND THAT ANY TRIAL ARISING FROM SUCH MATTERS SHALL BE HEARD BY A JUDGE AT A BENCH TRIAL, RATHER THAN A JURY, DUE TO THE COMPLEXITY OF THE NATURE OF THE MATTERS EVIDENCED BY THIS AGREEMENT.**

(d) Effective Date. As used herein, the term “Effective Date” shall mean the date on which the last one of TVC and the County have signed this Agreement.

(e) Time. Time is of the essence of this Agreement. Any reference herein to time periods of less than six (6) days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day.

(f) Exhibits. The exhibits attached hereto and referred to herein are by such attachment and reference made a part of this Agreement for all purposes.

(g) Paragraph Headings. The paragraph headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Agreement; the paragraph headings shall be ignored in construing and interpreting this Agreement.

(h) Singular and Plural Usages. Whenever used herein, the singular number includes the plural, the plural the singular, and the use of any gender includes all genders.

(i) Construction of Agreement. The fact that one of the parties to this Agreement may be deemed to have drafted or structured any provision of this Agreement shall

not be considered in construing or interpreting any particular provision of this Agreement, either in favor of or against such party.

(j) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(k) Successors and Assigns. The terms and provisions of this Agreement shall bind, and inure to the benefit of, the parties hereto and the respective successors and permitted assigns. The rights of the County under this Agreement may not be assigned without the prior written consent of TVC, which consent may be withheld in TVC's sole and complete discretion.

(l) Entire Agreement. This Agreement (and all exhibits hereto) constitutes the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements, whether written or oral. No covenants, agreements, terms, provisions, undertakings, statements, representations or warranties, whether written or oral, made or executed by any party hereto or any employee or agent thereof, shall be binding upon any party hereto unless specifically set forth in this Agreement.

(m) Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement, or the application thereof, to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of

this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the maximum extent possible.

(n) Modification and Waiver. This Agreement may not be changed, amended or modified in any respect whatsoever, nor may any covenant, agreement, condition, requirement, provision, warranty or obligation contained herein be waived, except in writing signed by both parties.

(o) Governing Law. This Agreement and the interpretation and enforcement thereof shall be governed by and construed in accordance with the laws of the State of Florida.

(p) Books and Records. In the performance of this Agreement, TVC shall keep books, records, and accounts of all activities related to this Agreement. All books, accounts and financial records shall be kept and maintained in compliance with TVC's standard accounting and bookkeeping procedures. Books, records, and accounts related to this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by TVC for a period of three (3) years after the performance or sooner termination of this Agreement. All records, books, and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, chapter 119, Florida Statutes. Without limiting the generality of the immediately preceding sentence, TVC and the County agree that all records or documents created by TVC or provided to TVC by the County in connection with the activities or services provided under the



terms of this Agreement are public records, and TVC agrees to comply with any request for such public records or documents made in accordance with section 119.07, Florida Statutes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date shown above the signature of each.

TVC

Executed by TVC on  
July 5, 2022.

THE VIERA COMPANY,  
a Florida corporation

By: [Signature]  
Todd J. Pokrywa, President

WITNESSES:

Charlene R. Spangler  
Cheryl W. Ditor

As to TVC

COUNTY

Executed by the County on  
\_\_\_\_\_, 2022.

BOARD OF COUNTY COMMISSIONERS  
OF BREVARD COUNTY, FLORIDA

By: [Signature]  
Name: KRISTINE ZONKA  
Title: Chair

[Signature] Sor  
Clerk to the Board of County Commissioners

As approved by the Board on 7/19/, 2022

Reviewed for legal form and content:

\_\_\_\_\_, Asst. County  
Attorney

### EXHIBITS LIST

"A"	Condition 101 of the Current Development Order
"B"	Map of Benefitted F/R-EMS Districts
"C"	Sketch and Legal Description of FS 49 Site
"D"	Copy of the FS 49 Construction Contract
"E"	Permitted Exceptions to Title
"F"	Special Warranty Deed for Fire Station 49
"G"	Construction Lien and Possession Affidavit
"H"	Non-Foreign Affidavit and Certificate
"I"	The Reimbursable V&E Items - Description of Vehicles and Equipment
"J"	The Alternative Apparatus (Description)

EXHIBIT "A"

CONDITION 101 OF THE CURRENT DEVELOPMENT ORDER

EXHIBIT A - CONDITION 101 OF THE CURRENT DEVELOPMENT ORDER

- (f) Improvements to area roadways should be encourage to incorporate bicycle and pedestrian facilities that are internal to the DRI.

100. The Developer shall coordinate with Brevard County and the TMA to ensure the provision of park and ride spaces within the DRI. Currently, the Developer has constructed one (1) park and ride facility within the DRI providing 56 unassigned vehicle parking spaces, which park and ride facility shall be managed and maintained by or through the TMA. Upon buildout of the DRI, the Developer shall have provided not less than a total of three hundred (300) unassigned vehicle parking spaces within the DRI for use in connection with facilitating transit, ridesharing car and van pooling and other demand management programs to reduce automobile usage. Such unassigned parking spaces may be shared with parking for commercial land uses. The park and ride spaces shall be proximate to public transit.

**FIRE, SHERIFF**

101. Police, fire and EMS service will be provided by Brevard County. The Developer has built, equipped and provided to the County two fire stations within the Project and known as Station 47 and Station 48 and has received or is receiving reimbursement and impact fee credits for each pursuant to agreements with the County. The Developer shall build and equip a third fire station on a 2 acre site to be conceptually located at the time of Sketch Plan Approval for Village 2. This finalized site location shall be determined in consultation between Brevard County and the Developer. This finalized site shall be conveyed to Brevard County at completion of construction and issuance of Certificate of Occupancy. For this site dedicated as provided above, the Developer shall be entitled to Impact Fee Credits for all development served by the facilities, even if the areas served are located outside of the DRI. Credit shall be given to the extent of the fair market value of any land contributed, as determined by an MAI appraiser acceptable to the

Developer and Brevard County, and for all equipment provided or funded by the Developer. Such credits shall be reimbursed in the same manner and under substantially similar terms and conditions as set forth in the Donation and Capital Contribution Front-Ending Reimbursement Agreement dated June 9, 1999 between Developer and Brevard County for Fire Station 47. The final fire station shall be located within Village 2 at a location mutually agreeable to the County and the Developer and constructed and equipped in a manner mutually agreeable to the County and the Developer consistent with Fire Station 48. The Developer shall pay for two "mini-pumper" fire trucks up to \$200,000 each. [completed as to one] Payment for the second truck shall be made at the time of issuance of the first building permit for an alley unit in Village 2. The Developer shall be entitled to impact fee credits for the payments.

102. Upon the request of the Brevard County Sheriff's Department, the Developer shall designate one site for lease by the Brevard County Sheriff's Department within the Town Center and Village 2. The Town Center site shall be located at the time of approval of the final Site Plan for the Town Center. A second site shall be conceptually located at the time of Sketch Plan Approval for Village 2 and the finalized site shall be specifically located at the time of final Site Plan Approval for Village 2. Each site shall be available for lease, at market rates, at time of the issuance of a Certificate of Occupancy from Brevard County.

#### **RECREATION**

103. In addition to the Viera Wilderness Park, the Developer shall provide no less than 370 acres of parks within the DRI west of Interstate 95. To date, the Developer has provided 161.7 acres of parks west of Interstate 95. The Developer shall provide sites at locations mutually agreeable to the County and Developer. Impact fee credits shall be governed by applicable state law and Brevard County Ordinance.

EXHIBIT "B"

MAP OF BENEFITTED F/R-EMS DISTRICTS

# EXHIBIT B - MAP OF BENEFITTED F/R-EMS DISTRICTS

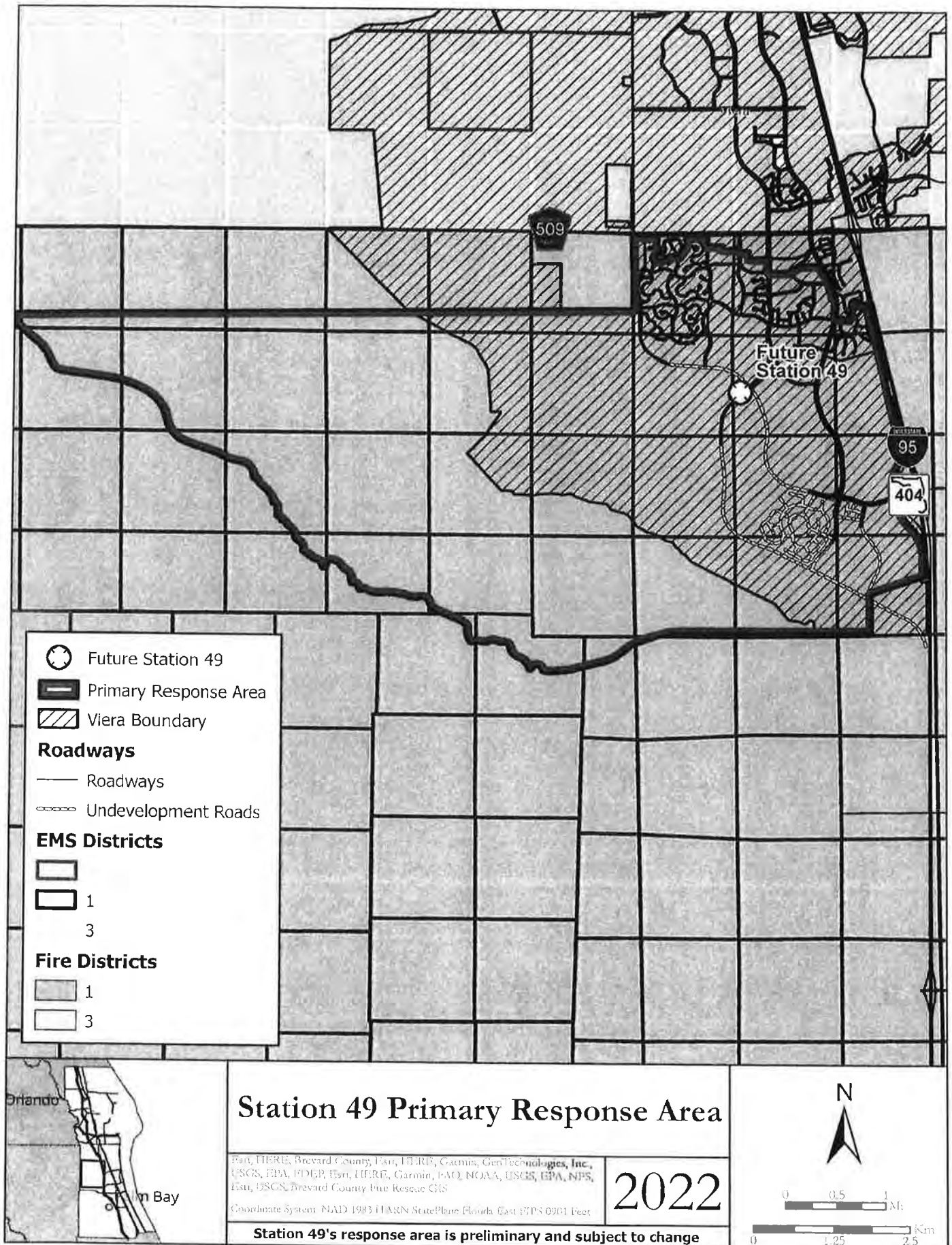


EXHIBIT "C"

SKETCH AND LEGAL DESCRIPTION OF FS 49 SITE



# EXHIBIT "C" - Sketch and Legal Description of FS 49 Site

## THIS IS NOT A BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE

### DESCRIPTION OF FIRE STATION

A PARCEL OF LAND LOCATED IN SECTION 25, TOWNSHIP 26, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF STADIUM PARKWAY EXTENSION-SEGMENT E, ACCORDING TO THE PLAT THEREOF AS RECORDED IN ROAD PLAT BOOK \_\_, PAGE \_\_, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND RUN SOUTHWEST ALONG THE WESTERLY LINE OF SAID STADIUM PARKWAY EXTENSION-SEGMENT E THE FOLLOWING FOUR (4) COURSES AND DISTANCES: (1) THENCE S45°45'27"W, A DISTANCE OF 150.13 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE RIGHT; (2) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE WEST AND HAVING A RADIUS OF 25.03 FEET, A CENTRAL ANGLE OF 91°45'18", A CHORD BEARING OF S02°19'36"W AND A CHORD LENGTH OF 35.90 FEET), A DISTANCE OF 40.04 FEET TO THE END OF SAID CURVE; (3) THENCE S45°19'45"W, A DISTANCE OF 1155.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; (4) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1775.00 FEET, A CENTRAL ANGLE OF 57°36'43", A CHORD BEARING OF S47°36'52"W AND A CHORD LENGTH OF 33.97 FEET), A DISTANCE OF 33.97 FEET A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 57°36'43", A CHORD BEARING OF S39°07'40"E AND A CHORD LENGTH OF 34.61 FEET), A DISTANCE OF 34.61 FEET TO THE END OF SAID CURVE; THENCE N45°19'19"W, A DISTANCE OF 495.27 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREBY DESCRIBED; THENCE CONTINUE N45°19'19"W, A DISTANCE OF 112.46 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHWEST, AND HAVING A RADIUS OF 1100.00 FEET, A CENTRAL ANGLE OF 5°17'12", A CHORD BEARING OF N47°57'54"W, AND A CHORD LENGTH OF 101.46 FEET), A DISTANCE OF 101.46 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHEAST, AND HAVING A RADIUS OF 25.03 FEET, A CENTRAL ANGLE OF 19°45'20", A CHORD BEARING OF N40°43'55"W, AND A CHORD LENGTH OF 5.53 FEET), A DISTANCE OF 5.53 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE NORTHEAST; THENCE N35°34'05"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 234.61 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHWEST, AND HAVING A RADIUS OF 1065.00 FEET, A CENTRAL ANGLE OF 4°56'26", A CHORD BEARING OF N33°05'55"E, AND A CHORD LENGTH OF 91.81 FEET), A DISTANCE OF 91.81 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE SOUTHEAST; THENCE S45°19'19"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 304.73 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST, AND HAVING A RADIUS OF 750.00 FEET, A CENTRAL ANGLE OF 3°57'57", A CHORD BEARING OF S46°39'40"W, AND A CHORD LENGTH OF 51.90 FEET), A DISTANCE OF 51.90 FEET TO THE END OF SAID CURVE; THENCE S44°42'41"W, A DISTANCE OF 240.74 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH, AND HAVING A RADIUS OF 25.03 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD BEARING OF S95°40'41"W, AND A CHORD LENGTH OF 35.36 FEET), A DISTANCE OF 35.36 FEET TO THE POINT OF BEGINNING, CONTAINING 2.10 ACRES MORE OR LESS.

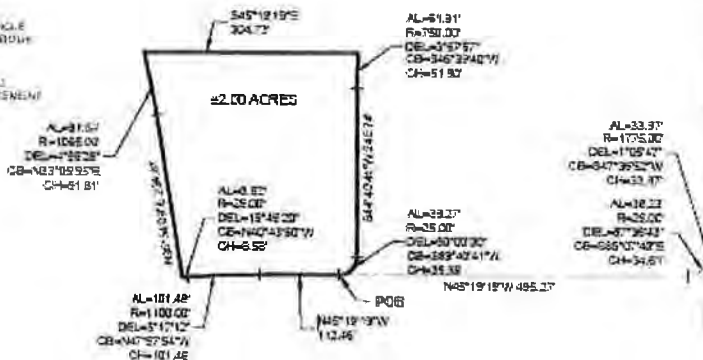
POC  
NW CORNER STADIUM  
PARKWAY  
EXTENSION-SEGMENT E  
RPS PO

AL=40.04'  
R=25.03'  
DEL=91°45'18"  
CB=S02°19'36"W  
CH=35.90'

WESTERLY LINE  
RPS PO

### ABBREVIATIONS

AL - ARC LENGTH  
CB - CHORD BEARING  
CH - CHORD LENGTH  
DEL - DELTA (CENTRAL ANGLE)  
R - RADIUS  
RPS - POINT OF BEGINNING  
POB - POINT OF BEGINNING  
R - RADIUS  
RPS - POINT OF BEGINNING  
RPS - POINT OF BEGINNING  
RPS - POINT OF BEGINNING



### VIERA FIRE STATION



**B.S.E. CONSULTANTS, INC.**  
CONSULTING - ENGINEERING - LAND SURVEYING  
512 SOUTH HUNTER CITY BOULEVARD, SUITE 4 MELBOURNE, FL 32901  
PHONE (321) 255-0474 FAX (321) 255-1155  
CERTIFICATE OF SURVEY AUTHORIZATION, REC.  
CERTIFICATE OF LAND SURVEYING BUSINESS AUTHORIZATION 150004089

DATE 9/24/21  
DESIGNED/DRAWN: HAN/LEH/WFV  
DRAWING# 11600\_105\_001  
PROJECT# 11600  
SHEET 1 OF 1

PROJECT: 11600\_105\_001\_001.dwg September 27, 2021 11:15:26 AM: JH

EXHIBIT "D"

COPY OF THE FS 49 CONSTRUCTION CONTRACT

# AIA® Document A141® - 2014

## Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the «      » day of        in the year 2022  
(In words, indicate day, month and year.)

**BETWEEN the Owner:**

(Name, legal status, address and other information)

«The Viera Company »« »  
«7380 Murrell Road, Suite 201 »  
«Viera, FL 32940 »  
« »

**and the Design-Builder:**

(Name, legal status, address and other information)

«W+J Construction Corp. »« »  
«1005 Viera Blvd, Suite 202 »  
«Rockledge, FL 32955 »  
« »

**for the following Project:**

(Name, location and detailed description)

«Viera Fire Station No. 49»  
«Address TBD »  
«Located in SW Quadrant of Pineda Blvd/Lake Andrew Drive »

The Owner and Design-Builder agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)*

#### § 1.1.1 The Owner's program for the Project:

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

The design program shall be developed by consultations between the Design-Builder, the Owner and the Brevard County Fire Rescue Department in conformance with the Owner's Criteria based on existing Fire Station #48. The design program shall optimize construction efficiency and economy with occupancy scheduled not later than 12-31-23.

« »

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

See Preliminary Elevation and Floor Plan based on Fire Station #48 attached as Exhibit 1 (Owner's design requirements).

« »

§ 1.1.3 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

See Sketch, Legal Description and Contours of Site attached as Exhibit 2; and Site Improvements by Owner attached as Exhibit 3.

« »

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

*(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)*

N/A

« »

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

*(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)*

N/A

« »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Provide total for Owner's budget, and if known, a line item breakdown of costs.)*

Unknown at time of execution.

« »

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design phase milestone dates: Final Construction Plans -- \_\_\_\_\_, 2022.

« »

- .2 Submission of Design-Builder's Proposal (with Stipulated Sum subject to price increase for "Risk Items" identified pursuant to the Rider attached to this Agreement): \_\_\_\_\_, 2022.

« »

- .3 Phased completion dates: To be determined.

« »

.4 Substantial Completion date: \_\_\_\_\_

« »

.5 Other milestone dates:

«None»

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

(List name, legal status, address and other information.)

.1 Architect

«Architects RZK, Inc.  
600 Florida Avenue, Suite 101  
Cocoa, FL 32922»

.2 Consultants

«Mechanical, Electrical, Plumbing and Structural Engineer (Engineer)

TLC Engineering Solutions  
7370 Cabot Ct. Suite 103  
Melbourne, FL 32940  
»

.3 Contractors

«N/A »

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

«None»

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

« Michael L. Arnold, P.E., Vice President of Land Development »

« Mary Ellen McKibben, Director Land Development »

« »

« »  
« »  
« »

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

*(List name, address and other information.)*

«None »

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

*(List discipline, scope of work, and, if known, identify by name and address.)*

« Hassan Kamal, P.E., B.S.E Consultants, Inc., 312 South Harbor City Boulevard, Suite 4, Melbourne, FL 32901 – Owner's consulting engineer and surveyor. »

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

*(List name, address and other information.)*

« »  
« »  
« »  
« »  
« »  
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

### § 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

[ « » ] Arbitration pursuant to Section 14.4

[ « X » ] Litigation in a court of competent jurisdiction

[ « » ] Other: *(Specify)*

« »

### § 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement, including without limitation the Rider attached to the Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder; and Brevard County as a third-party beneficiary of the Contract as provided in the Rider attached to this Agreement.

§ 1.4.3 **The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors. The Owner’s portion of the Work is limited to the Site Improvements described on attached Exhibit 3. All other portions of the Work shall be the responsibility of the Design-Builder.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.



## ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

### § 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

« The Work prior to the Design-Build Amendment shall consist of (i) formulating the design program by consulting with the Owner and representatives of the Brevard County Fire Rescue Department, (ii) preparing the final construction drawings and specifications for the Project consistent with the Owner's Criteria and (iii) preparing the Design-Builder's Proposal and presenting it to the Owner (which proposal shall include the final construction drawings and Contract Sum for completing the Work). The Preliminary Elevation and Floor Plan attached to this Agreement as Exhibit 1 shall be considered the "Preliminary Plan" under this Agreement and the Owner's execution of this Agreement shall be deemed the Owner's written authorization to prepare the Design-Builder's Proposal pursuant to Section 4.4.1 (as revised). The Design-Builder shall be compensated for such work by payment of a fixed fee in the amount of \$107,491.00; payable to Design-Builder as provided in Section 2.1.4.1. Notwithstanding any contrary provisions of this Agreement, the foregoing fixed-fee represents the total compensation payable to the Design-Builder for all portions of the Work performed prior to the Design-Build Amendment; and such fixed fee is intended to compensate the Design-Builder and the Design-Builder's Architect, Consultants and Contractors engaged by the Design-Builder in performing such Work. Other than paying such fixed fee and the associated reimbursable expenses to the Design-Builder, the Owner shall not be responsible for any additional payments or other compensation due or payable to the Design-Builder's Architect, Consultants and Contractors for that portion of the Work performed prior to the execution of the Design-Build Amendment. »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

«N/A »

Individual or Position

Rate

### § 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and include expenses, directly related to the Project, incurred by the Design-Builder as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of «zero » percent ( «0.00 » %) of the expenses incurred.

### § 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice as each payment milestone pertaining to the Design-Builder's Proposal is achieved. Such pre-Design-Build Amendment payment milestones and the schedule for achieving same, are described on attached Exhibit 4. Amounts unpaid «thirty » (

«30 » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.  
(Insert rate of monthly or annual interest agreed upon.)

(legal rate then prevailing)

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

## § 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

## ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

### § 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### § 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period (including the cumulative percentage of the Work completed through the report date);
- .2 Project schedule status including confirmation whether or not the Work is on schedule, if not, a revised Project schedule and the projected portion of the Work to be completed in the next succeeding month;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of increases in the Contract Sum due to price increases of "Risk Items" as defined in the Rider attached to this Agreement, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports: N/A

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

### § 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 The Design-Builder shall also indemnify and hold harmless the Owner against claims for construction liens by the Architect, any Consultant, any Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and by others for services, labor, materials or equipment; and against any assertion of security interests by suppliers of goods or materials; subject to the Owner's timely

payment of all progress payments and the final payment in accordance with the terms and conditions of the Contract.

**§ 3.1.14.4 Survival**

Sections 3.1.12, 3.1.13 and 3.1.14 and all subsections thereof shall survive the completion of the Work and the expiration or sooner termination of the Contract and remain in full force and effect thereafter.

**§ 3.1.15 Contingent Assignment of Agreements**

- § 3.1.15.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement. Provided, however, that in no event shall the Owner's assumption of the Design-Builder's rights and obligations under any assigned agreement operate to waive or release the Design-Builder from any of its obligations to the Owner under the Contract except to the extent otherwise agreed by the Owner in writing.

**§ 3.1.15.2** Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 3.1.15.3** Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity.

**§ 3.1.16 Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

**ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT**

**§ 4.1 General**

**§ 4.1.1** Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

**§ 4.1.2** The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 4.2 Evaluation of the Owner's Criteria**

**§ 4.2.1** The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

**§ 4.2.2** After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;

- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
(List additional information, if any, to be included in the Design-Builder's written report.)

«Probable "Risk Items" which may be subject to price increases and affect the Contract Sum as described in the Rider attached to this Agreement. »

#### § 4.2.3 N/A.

#### § 4.3 Preliminary Design

§ 4.3.1 The Preliminary Elevation and Floor Plan attached to this Agreement as Exhibit 1 comprise the Owner's design requirements for the Project, which elevation and floor plans shall be deemed to be the Preliminary Design.

§ 4.3.2 Upon the full execution of this Agreement, the Design-Builder shall be authorized to proceed to develop the Design-Builder's Proposal.

#### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's and Design-Builder's execution of this Agreement, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 The Construction Documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, which shall be based on the "stipulated sum" compensation method, subject to adjustment based on possible cost increases of certain designated "Risk Items" in accordance with the Rider attached to this Agreement;
- .3 The "Risk Items" and associated cost thresholds which may require an adjustment of the Contract Sum if the Design-Builder's cost for any such item increases above the applicable threshold as evidenced by receipted invoices or invoices with check vouchers attached as more particularly described in the Rider attached to this Agreement.
- .4 The proposed date the Design-Builder shall achieve Substantial Completion;
- .5 An enumeration of any qualifications and exclusions, if applicable;
- .6 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .7 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement. The Owner shall either agree to the Design-Builder's Proposal, agree to the Design-Build Proposal subject to specific revisions requested by the Owner and/or Brevard County or reject the Design-Builder Proposal. If the Owner rejects the Design-Builder Proposal or the Owner and the Design-Builder fail to agree on the Design-Builder Proposal within sixty (60) days after its initial submittal, this Agreement shall terminate upon written notice of such termination from either party to the other, except and excluding those sections pertaining to Work performed by the Design-Builder prior to submittal of the Design-Builder Proposal, which sections shall survive such termination including, without limitation, Article 2 of this Agreement pertaining to payment of the Design-Builder for Work performed prior to execution of the Design-Build Amendment. Provided, however, that if the Design-Builder Proposal is not agreeable to the Owner and this Agreement is terminated as provided in the preceding sentence, the Owner shall not be responsible for any amount or sum payable to the Design-Builder, the Architect, Consultant or any Contractor other than the fixed-fee and the reimbursable expenses payable to the Design-Builder under Sections 2.1.1 and 2.1.3.1, respectively, of this Agreement. Any contrary provision of the Design-Build Documents notwithstanding, so long as the Owner has paid the fixed-fee and the reimbursable expenses payable to the Design-Builder under Sections 2.1.1 and 2.1.3.1, respectively, of this Agreement, upon the termination of this Agreement pursuant to this Section 4.4.3, the Owner and Brevard County shall each receive and retain the irrevocable non-exclusive license to use the Instruments of Service, including without limitation the Construction Documents, to construct, maintain, alter or add to the Project as expressly provided in Section 12.3.1.



§ 4.4.4 The Construction Documents shall include final construction drawings and specifications and establish the quality levels of materials and systems required. The Construction Documents shall include a site plan, building plans, sections and elevations and plans for structural, mechanical, electrical and plumbing systems; all of which shall be consistent with the Design-Build Documents. The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

## **ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT**

### **§ 5.1 N/A**

### **§ 5.2 Construction**

§ 5.2.1 **Commencement.** Construction shall not commence prior to execution of the Design-Build Amendment.

### **§ 5.2.2 DELETED**

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 5.3 Labor and Materials**

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

### **§ 5.5 Permits, Fees, Notices and Compliance with Laws**

§ 5.5.1 The Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for

in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 10 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### § 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

#### § 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.



§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

#### § 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

#### § 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

#### § 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### § 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### § 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

#### § 5.13 Construction by Owner or by Separate Contractors

##### § 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual

agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

#### § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

#### § 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### § 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or

substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## ARTICLE 7 OWNER'S RESPONSIBILITIES

### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder

may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

**§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

**§ 7.9 Owner's Right to Carry Out the Work**

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

**ARTICLE 8 TIME**

**§ 8.1 Progress and Completion**

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

**§ 8.2 Delays and Extensions of Time**

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by industry wide strikes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. The foregoing sentence providing for the recovery of damages for the Design-Builder's delay shall in no manner affect Owner's right to terminate this Agreement in accordance with this Agreement for uncured delay and, Owner's exercise of its right of termination in such event, shall not release the Design-Builder from the obligation to pay damages incurred by the Owner.

**ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

**§ 9.1 Contract Sum**

The Contract Sum is stated in the Design-Build Amendment.

**§ 9.2 Schedule of Values**

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form



and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Applications for Payment shall contain a certification by the Design-Builder that all due and payable bills with respect to the Work included in the Application for Payment have either been paid to date or shall be paid from the proceeds of the applicable Application for Payment.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

### **§ 9.4 Certificates for Payment**

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

#### § 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.



#### **§ 9.7 Failure of Payment**

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents. Whether the Design-Builder is without fault with respect to any Certificate of Payment withheld by the Owner shall be determined by the Architect, and the Design-Builder shall have the right to stop the Work pursuant to this Section 9.7 only if the Architect determines that the Design-Builder is without fault. Otherwise, notwithstanding the Design-Builder's disputing the Owner's determination to withhold a Certificate of Payment in whole or in part, the Design-Builder shall nevertheless expeditiously and diligently continue to prosecute the Work. Notwithstanding any contrary provision of this Agreement, the Owner shall not be deemed to be in breach of this Agreement by reason of the withholding of any payment where the Design-Builder is at fault or the Work for which payment is being withheld has been rejected by the Owner or by any governmental authority or fails to conform to the Design-Build Documents.

#### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. Notwithstanding any other provision of this Agreement, in no event shall the date of Substantial Completion be certified by the Owner prior to the date on which Brevard County issues a Certificate of Occupancy for the Project.

**§ 9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

**§ 9.8.3** Upon receipt of the Design-Builder's list, the Owner and Brevard County shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's/Brevard County's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner and Brevard County to determine Substantial Completion.

**§ 9.8.4** Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

**§ 9.8.5** When the Work or designated portion thereof is substantially complete, as determined by the Owner and Brevard County, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Notwithstanding any provision hereof to the contrary, the issuance of a Certificate of Occupancy by Brevard County for the Project shall be a condition precedent to the Owner's issuance of a Certificate of Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Design-Builder shall obtain, deliver and assign to the Owner's designee (Brevard County) all warranties required by the Design-Build Documents bearing the date of Substantial Completion or some later date as may be agreed to by the Design-Builder and stating the duration of the warranty. The type and duration of such warranties shall be in accordance with the Design-Build Documents.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate.

**§ 9.9 Partial Occupancy or Use**

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

**§ 9.10 Final Completion and Final Payment**

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Brevard County will promptly make such inspection and, within fifteen (15) days thereafter, prepare a list of all remaining items of the Work to be completed, corrected or repaired and fix the time within which the Design-Builder shall complete, correct or repair the items on such list. Upon the completion, correction or repair of such items and the Owner and Brevard County then finding the Work complete and acceptable under the Design-Build Documents and the Contract fully performed as evidenced in writing, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor the retainage applicable to the Work shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner and Brevard County against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances become known after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees or promptly transfer such lien to other security in accordance with the Florida Statutes, as applicable.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted

by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

§ 9.10.6 Notwithstanding any contrary provision hereof, as a condition precedent to receiving any payment due the Design-Builder under the Contract, including all progress payments and final payment, the Design-Builder shall provide the Owner with such lien waivers, releases of lien and lien affidavits as the Owner may reasonably require in connection with each of Design-Builder's Applications for Payment pursuant to the requirements of Chapter 713, Florida Statutes, including but not limited to, a release of lien from the Design-Builder, the Architect, Consultants, Contractors and others providing services, labor, materials or equipment under the Design-Builder for that portion of the Work covered by the applicable payment request and a Progress Payment Affidavit and Final Payment Affidavit by the Design-Builder, as applicable, complying with the requirements of Chapter 713, Florida Statutes. Payment by the Owner in accordance with an Application for Payment shall not constitute approval or acceptance of that portion of the Work covered by such Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### § 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the

Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 10 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### § 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents and all applicable governmental laws and regulations regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles or fails to comply with applicable governmental laws and regulations regarding the storage and use of such materials or substances, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

#### § 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

### ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

#### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

#### § 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

#### § 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner or Brevard County to do so unless the Owner has given the Design-Builder a written acceptance of such condition prior to Substantial Completion or Brevard County has given such written acceptance after Substantial Completion. The Owner or Brevard County shall give such notice promptly after discovery of the condition. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period

for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations under the Contract other than specifically to correct the Work.

#### **§ 11.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

#### **§ 11.4 Survival**

This Article 11 and all sections and subsections thereof shall survive the completion of the Work and the expiration or sooner termination of the Contract and remain in full force and effect thereafter.

### **ARTICLE 12 COPYRIGHTS AND LICENSES**

**§ 12.1** Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

**§ 12.2** The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

**§ 12.3** Upon execution of the Agreement, the Design-Builder grants to the Owner and Brevard County a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner and Brevard County to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

**§ 12.3.1** The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also grant to the Owner and Brevard County, in the event (1) this Agreement is terminated for any reason other than the default of the Owner (including, but not limited to, termination by the Owner pursuant to Section 13.1.5), or (2) the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, a limited, irrevocable and non-exclusive royalty free license to use and reproduce all Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) has paid the fixed-fee and the reimbursable expenses payable to the Design-Builder under Sections 2.1.1 and 2.1.3 for work performed prior to execution of the Design-Build Amendment, and (2) the Owner or Brevard County, as applicable, each provide the Architect, Consultant or Contractor with its written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such claims or causes of action arise from the indemnitor's alteration or wrongful use of the Instruments of Service. The license granted under this section permits the Owner and Brevard County to authorize their respective consultants and separate contractors to reproduce and use applicable portions of the Instruments of Service solely and exclusively in connection with constructing, using, maintaining, altering and/or adding to the Project.



§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service in a manner other than as authorized under this Agreement, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such claims and causes of action arise from the Owner's alteration or wrongful use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 The terms and provisions of this Article 12 and all subsections thereof shall survive the termination of this Agreement and continue in full force and effect thereafter.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment**

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed in accordance with the requirements of the Design-Build Documents prior to notice of such suspension. Excluding suspensions of the Project by the Owner due to the fault of the Design-Builder, when the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work and the Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause. Without limiting the preceding sentence, the Owner may terminate this Agreement if the Owner rejects the Design-Builder Proposal pursuant to Section 4.4.3.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

### **§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment**

#### **§ 13.2.1 Termination by the Design-Builder**

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

## § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Design-Builder's Proposal by the date required by this Agreement;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of breaching a material provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

## § 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.



§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

### ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

#### § 14.1 Claims

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Notwithstanding any provision of this Section to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Design-Build Documents and is not visible or apparent upon conducting a reasonable inspection of the Work, until discovered by the Owner.

#### § 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, except as provided in Section 14.2.2.1 and in the Rider attached to this Agreement, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by written notice to the other party within 60 days after the claimant first recognizes the condition giving rise to the Claim. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim, including incurring any increase or decrease in the Contract Sum due to a price increase for a "Risk Item" as described in the Rider attached to this Agreement. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 **Claims for Additional Time**

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 **Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 **Initial Decision**

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 **Procedure**

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution as provided in Section 1.3.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision as provided in Section 1.3.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

#### § 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution in accordance with Section 1.3.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings in accordance with Section 1.3 but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration N/A. Notwithstanding any contrary provisions of the Contract, if any Claim, dispute, breach or default should arise under or in connection with the Design-Build Documents, arbitration shall not be a condition precedent to the right of either party to seek such recourse as may be available to it under the Contract or the laws of the State of Florida, it being the intention of the parties that arbitration shall only be required between the parties when they both consent to arbitration of any Claim which may arise. In the event of litigation arising, either directly or indirectly, out of the Contract, the prevailing party shall be entitled to recover all reasonable costs and expenses of such litigation or arbitration, including reasonable attorneys' fees and costs, mediators fees and costs and other legal costs and expenses, whether incurred at or before mediation or trial or in any appellate or bankruptcy proceedings. IN THE EVENT OF ANY LITIGATION ARISING FROM THIS AGREEMENT OR ANY OF THE OTHER DESIGN-BUILD DOCUMENTS, OR THAT PERTAINS TO THE SUBJECT MATTER OF THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, MISREPRESENTATION, VIOLATIONS OF STATUTES, CODES, RULES, OTHER TORTUOUS CONDUCT OR CLAIMS OF ANY NATURE OR DESCRIPTION, THE PARTIES HEREBY AGREE TO WAIVE TRIAL BY JURY FOR ANY SUCH LITIGATION INCLUDING CLAIMS AND COUNTERCLAIMS. Exclusive venue for any litigation or mediation arising or any of the Design-Build Documents shall be in Brevard County, Florida.

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Design-Builder acknowledges and expressly agrees that the Owner may elect to assign the Contract in whole or in part to Brevard County. In addition, the Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall promptly execute all consents reasonably required to facilitate such assignments, as applicable.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to Brevard County or a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### § 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### § 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### § 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice

to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

#### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

#### § 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

#### § 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

### ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following: « »
- .6 Other:  
Exhibit 1 attached to this Agreement – Preliminary Elevation and Floor Plan  
Exhibit 2 attached to this Agreement – Sketch, Legal Description and Contours of Site  
Exhibit 3 attached to this Agreement – Site Improvements by Owner  
Exhibit 4 attached to this Agreement – Pre-Design-Build Amendment Payment Milestones  
«The Rider attached to this Agreement »

This Agreement entered into as of the day and year first written above.

THE VIERA COMPANY

W+J CONSTRUCTION CORP.

**OWNER** (Signature)

«Todd J. Pokrywa, President »« »  
(Printed name and title)

**DESIGN-BUILDER** (Signature)

«Erik Costin, Vice President »« »  
(Printed name and title)

W  
+  
J  
C  
O  
R  
P.

**RIDER TO STANDARD FORM OF AGREEMENT**  
**BETWEEN**  
**OWNER AND DESIGN-BUILDER**

THIS RIDER is attached to and incorporated by this reference into that certain Standard Form of Agreement between Owner and Design-Builder, AIA Document A141 - 2014 (the "**Agreement**") made and entered into by and between W+J CONSTRUCTION CORP., a Florida corporation (the "**Design-Builder**") and THE VIERA COMPANY, a Florida corporation (the "**Owner**"), dated as of June \_\_, 2022, for the purpose of modifying the Agreement as hereafter expressly provided. All capitalized terms used in this Rider shall have the same meaning herein as in the Agreement, unless otherwise provided below.

1. **Limited Adjustment of the Contract Sum for Risk Items.** The Design-Builder's Proposal shall be delivered to Owner in accordance with Section 4.4 of the Agreement and, without limiting the foregoing, shall include the proposed Contract Sum which shall only be subject to adjustment subsequent to execution of the Design-Build Amendment as hereafter provided. As part of the Contract Sum provided in the Design-Builder's Proposal, the Design-Builder shall include and describe those specific portions of the Work, materials, fixtures and equipment which the Design-Builder anticipates will be subject to extraordinary price fluctuations after the execution of the Design-Build Amendment (collectively the "**Risk Items**"), which price instability shall justify an increase or decrease in the Contract Sum as hereafter provided. The Design-Builder's Proposal shall also include the then current price of each Risk Item upon which the Contract Sum was calculated (the "**Base Price**"). After execution of the Design-Build Amendment, if the price or cost actually incurred by the Design-Builder for any Risk Item which is incorporated into the Work either increases or decreases with respect to the applicable Base Price, then the Contract Sum shall be adjusted to reflect such increase or decrease for the subject Risk Item (the "**Risk Item Adjustment**"); provided, however, that the Contract Sum shall be subject to a maximum adjustment for an increase above the Base Price for any applicable Risk Item up to, but not exceeding, an amount equal to ten percent (10.00%) of the Base Price for such Risk Item. By way of example and not limitation, if the Base Price of Risk Item X is \$10,000 and the Design-Builder's actual price paid for Risk Item X at the time it is acquired is \$12,000, the applicable Risk Item Adjustment (and the resultant increase in the Contract Sum) is limited to \$1,000.

(a) **Processing a Risk Item Adjustment.** If a Risk Item Adjustment becomes necessary with respect to any Risk Item, the Design-Builder shall make a Claim for an increase or decrease in the Contract Sum due to the applicable Risk Item Adjustment by providing prior written notice of such adjustment to the Owner pursuant to Section 14.1.5 of the Agreement, which notice shall include data supporting the requested adjustment. Upon the Owner's receipt and approval of such notice, the Owner and the Design-Builder shall promptly execute a Change Order adjusting the Contract Sum in accordance with the applicable Risk Item Adjustment. Thereafter, as part of the Application for Payment including such Change Order, the Design-Builder shall submit a receipted invoice or an invoice with a check voucher attached, and any other evidence reasonably requested by the Owner, to verify the Risk Item Adjustment which was the subject of the Change Order. To the extent that a Risk Item Adjustment is the subject of a Change Order, the applicable Application for Payment shall be prepared based on the Contract Sum recalculated to include the reported Risk Item Adjustment. Each Application for Payment including a Risk Item Adjustment and containing an adjusted Contract Sum as a result thereof shall be prepared by Design-Builder in such form and supported by such data to substantiate its accuracy as the Owner may require. With respect to each Claim by the Design-Builder for an adjustment in the Contract

Sum due to a Risk Item Adjustment, the Owner shall respond to such Claim within five (5) business days in accordance with Section 14.2.2.2 of the Agreement.

(b) Incorporation of the Risk Items and Base Price into the Design-Build

Amendment. Upon submittal of the Risk Items and the applicable Base Price for each Risk Item set forth in the Design-Builder's Proposal and the acceptance and approval of the Design-Builder's Proposal, the approved Risk Items and applicable Base Price shall be attached to, and made a part of, the Design-Build Amendment as Exhibit "A1".

2. Brevard County as a Third-Party Beneficiary of the Contract; Assignment of the Contract to Brevard County. Brevard County shall be a third party beneficiary under the Contract. Without limiting the generality of the preceding sentence: (i) all warranties under the Contract made or accruing to the benefit of the "Owner" thereunder shall also be deemed to have been made to and shall accrue to the benefit of Brevard County and shall be enforceable by Brevard County as if it were the "Owner" under the Contract; (ii) all indemnification obligations of the Design-Builder under the Contract to the Owner shall also be in favor of and benefit Brevard County and shall be enforceable by Brevard County as if it were the "Owner" under the Contract; and (iii) Brevard County shall be legally entitled and have the right, but not the obligation, to enforce all of the Design-Builder's obligations, agreements and covenants under the Contract as if it were the "Owner" under the Contract. In the event Brevard County initiates any Claim under the Contract or commences any legal proceeding or action to enforce its rights as a third party beneficiary or any obligation, agreement or covenant of the Design-Builder under the Contract, each party to such action shall be responsible for paying its own costs and expenses of such action, including its attorneys' fees and costs, notwithstanding which party shall be the predominantly prevailing party in such proceeding or action. This provision shall survive the expiration or termination of the Contract. The Design-Builder acknowledges and understands that the Owner intends to assign all of its rights and remedies under this Agreement (including, but not limited to, all warranties issued to the Owner by the Design-Builder, Architect, Consultants, Contractors, and suppliers in connection with the Contract and/or the Design-Build Documents, the Work and all services, equipment, materials and labor incorporated therein) to Brevard County upon the substantial completion of the Work and the Design-Builder's receipt of the final payment. The Design-Builder hereby consents to and approves such assignment to Brevard County and acknowledges and agrees that Brevard County shall be entitled to enforce such rights, remedies and warranties under the Contract in the same manner and to the same extent as the Owner.

3. Limited Site Improvements Performed by Owner. Pursuant to Section 1.1.3 and Section 5.13 of the Agreement, the Owner shall perform the limited work described in Exhibit 3 attached to the Agreement. The Owner shall complete such limited work prior to the Design-Builder's commencement of work at the Site. The Owner's work shall be limited to those items specifically described on Exhibit 3 and all other portions of the Work shall be the sole and exclusive responsibility of the Design-Builder.

4. Effect of Rider. To the extent the terms and provisions of this Rider conflict with any terms or provisions of the Agreement or with any other Design-Build Document, the terms and provisions of this Rider shall govern and control.

(Intentionally left blank - signatures appear of the following page)



OWNER:

THE VIERA COMPANY, a Florida  
corporation

By: \_\_\_\_\_  
Todd J. Pokrywa, President

DESIGN-BUILDER:

W+J CONSTRUCTION CORP., a  
Florida corporation

By: \_\_\_\_\_

#### JOINDER BY THE ARCHITECT AND THE ENGINEER

Section 12.1 of the Agreement provides that the drawings, specifications and other documents prepared by the Architect and the Engineer and furnished to the Owner are Instruments of Service. Sections 12.3 and 12.4 of the Agreement provide that the Design-Builder is obligated to obtain limited irrevocable non-exclusive licenses allowing the Owner and the County to use such Instruments of Service as expressly provided therein. The Architect and the Engineer identified in Section 1.1.8 of the Agreement hereby join in the Agreement for the limited purposes of acknowledging and confirming that the Architect and the Engineer have granted such limited irrevocable non-exclusive licenses in accordance with Sections 12.3 and 12.4 of the Agreement and that the Owner and the County are authorized to use the Instruments of Service prepared by the Architect and the Engineer in accordance with such sections; provided, however, that the Owner shall comply with all obligations of the Owner under the Agreement, including the prompt payment of all sums when due thereunder.

ARCHITECTS RZK, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_

TLC ENGINEERING SOLUTIONS

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**DRAFT** AIA® Document A141™ - 2014  
**Exhibit A**

**Design-Build Amendment**

This Amendment is incorporated into the accompanying AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder dated the «    » day of «          » in the year «2022» (the "Agreement")  
(In words, indicate day, month and year.)

**for the following PROJECT:**  
(Name and location or address)

«Viera Fire Station #49»  
«  »

**THE OWNER:**  
(Name, legal status and address)

«The Viera Company »«  »  
«7380 Murrell Road, Suite 201  
Viera, FL 32940  »

**THE DESIGN-BUILDER:**  
(Name, legal status and address)

«W+J Construction Corp. »«  »  
«1005 Viera Blvd., Suite 202  
Rockledge, FL 32955  »

The Owner and Design-Builder hereby amend the Agreement as follows.

**TABLE OF ARTICLES**

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

**ARTICLE A.1 CONTRACT SUM**

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

[ ☒ ] Stipulated Sum, in accordance with Section A.1.2 below

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[ « » ] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[ « » ] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

**§ A.1.2 Stipulated Sum**

§ A.1.2.1 The Stipulated Sum shall be « \_\_\_\_\_ » (\$ « \_\_\_\_\_ »), subject to authorized adjustments as provided in the Design-Build Documents, including "Risk Item Adjustments" as provided that certain Rider attached to the Agreement. The specific "Risk Items" which justify a Risk Item Adjustment of the Stipulated Sum due to a price increase or price decrease incurred by the Design-Builder are specifically identified in Exhibit A1 attached to this Design-Build Amendment.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)*

« »

**§ A.1.2.3 Unit prices, if any:**

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ A.1.3 Cost of the Work Plus Design-Builder's Fee N/A**

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)*

« »

**§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price N/A**

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)*

« »

**§ A.1.4.3 Guaranteed Maximum Price N/A**

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed « \_\_\_\_\_ » (\$ « \_\_\_\_\_ »), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

*(Insert specific provisions if the Design-Builder is to participate in any savings.)*

« »

**§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price**

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

*(Provide information below or reference an attachment.)*

« »

**§ A.1.4.3.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)*

« »

**§ A.1.4.3.4** Unit Prices, if any:

*(Identify item, state the unit price, and state any applicable quantity limitations.)*

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

**§ A.1.4.3.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

**§ A.1.5 Payments**

**§ A.1.5.1 Progress Payments**

**§ A.1.5.1.1** Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

**§ A.1.5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

**§ A.1.5.1.3** Provided that an Application for Payment is received not later than the «25th » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the «10th » day of the «following » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than «fifteen » ( «15 » ) days after the Owner receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

**§ A.1.5.1.4** N/A With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

**§ A.1.5.1.5** With each Application for Payment where the Contract Sum is based upon a Stipulated Sum, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by

such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

#### § A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «ten » percent ( «10.00 » %) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «ten » percent ( «10.00 » %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to Ninety Percent (90%) of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.
3. Adjust amounts payable to the Design-Builder for "Risk Item Adjustments" approved by the Owner and included in the applicable Application for Payment; which adjustments shall be calculated in accordance with the Rider attached to the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)*N/A

« »

#### § A.1.5.3 Progress Payments—Cost of the Work Plus a Fee N/A

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of « » percent ( « » %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of « » percent ( « » %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

**§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price N/A**

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of « » percent ( « » %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « » percent ( « » %) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on

agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

#### § A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

### ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than « » ( « » ) days from the date of this Amendment, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

« Substantial Completion of the Work shall not occur later than \_\_\_\_\_ »

Portion of Work	Substantial Completion Date
N/A	N/A

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)*

«N/A »

### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The Specifications:

*(Either list the specifications here or refer to an exhibit attached to this Amendment.)*

« »

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The Drawings:

*(Either list the drawings here or refer to an exhibit attached to this Amendment.)*

« »

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any: N/A

*(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)*

**Title**

**Date**

**Pages**

*Other identifying information:*

« »

**§ A.3.1.5 Allowances and Contingencies:**

*(Identify any agreed upon allowances and contingencies, including a statement of their basis.)*

**.1 Allowances**

« »

**.2 Contingencies**

« »

**§ A.3.1.6 Design-Builder's assumptions and clarifications:**

« »

**§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:**

« »

**§ A.3.1.8** To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

« »

**ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS**

**§ A.4.1** The Design-Builder's key personnel are identified below:

*(Identify name, title and contact information.)*

**.1 Superintendent**

« »

**.2 Project Manager**

« »

**.3 Others**

« »

**§ A.4.2** The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:  
*(List name, discipline, address and other information.)*



**ARTICLE A.5 COST OF THE WORK N/A****§ A.5.1 Cost To Be Reimbursed as Part of the Contract N/A****§ A.5.1.1 Labor Costs N/A**

**§ A.5.1.1.1** Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ A.5.1.1.2** With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

*(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

**§ A.5.1.1.3** Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ A.5.1.1.4** Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

**§ A.5.1.1.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

**§ A.5.1.2 Contract Costs. N/A** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

**§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction N/A**

**§ A.5.1.3.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ A.5.1.3.2** Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items N/A**

**§ A.5.1.4.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

**§ A.5.1.4.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

**§ A.5.1.5 Miscellaneous Costs N/A**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ A.5.1.6 Other Costs and Emergencies N/A**

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

**§ A.5.1.7 Related Party Transactions N/A**

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

**§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract N/A**

The Cost of the Work shall not include the items listed below:

1. Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
2. Expenses of the Design-Builder's principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Section A.5.1;
4. The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
5. Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Section A.5.1; and
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

**§ A.5.3 Discounts, Rebates, and Refunds N/A**

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

**§ A.5.4 Other Agreements N/A**

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior

consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

**§ A.5.4.3** The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

**§ A.5.5 Accounting Records**N/A

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

**§ A.5.6 Relationship of the Parties**

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

THE VIERA COMPANY

W+J CONSTRUCTION CORP.

OWNER (Signature)

DESIGN-BUILDER (Signature)

«Todd J. Pokrywa, President »« »

« »« »

(Printed name and title)

(Printed name and title)

**DRAFT AIA® Document A141™ – 2014**  
**Exhibit B**

**Insurance and Bonds**

for the following PROJECT:  
(Name and location or address)

«Viera Fire Station #49»  
« »

THE OWNER:  
(Name, legal status and address)

«The Viera Company »« »  
«7380 Murrell Road, Suite 201  
Viera, FL 32940 »

THE DESIGN-BUILDER:  
(Name, legal status and address)

«W+J Construction Corp. »« »  
«1005 Viera Blvd., Suite 202  
Rockledge, FL 32955 »

**THE AGREEMENT**

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the «\_\_\_\_» day of «\_\_\_\_» in the year «2022». (In words, indicate day, month and year.)

**TABLE OF ARTICLES**

- B.1 GENERAL**
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS**
- B.3 OWNER'S INSURANCE**
- B.4 SPECIAL TERMS AND CONDITIONS**

**ARTICLE B.1 GENERAL**

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

**ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS**

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

ADDITIONS AND DELETIONS:  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

*(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

« »

§ B.2.1.1 Commercial General Liability (CGL) insurance policy written on Insurance Services Office (ISO) Form CG 00 01 10 04 or later edition with policy limits of not less than «Two Million Dollars » (\$«2,000,000.00 ») for each occurrence and «Two Million Dollars » (\$«2,000,000.00 ») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury; advertising injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement, including, but not limited to, coverage for insured contracts, including tort liability of another assumed by the Design-Builder. The following exclusions or limitation are not allowed:
  - a. Classification or similar endorsement that restricts coverage for any aspect of the Work called for in the Agreement;
  - b. Liability to third parties for injuries to employees;
  - c. Explosion, collapse and underground hazards; and
  - d. Third-party actions over claims.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than «One Million Dollars » (\$«1,000,000.00 ») per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage. Such insurance policy shall include contractual liability coverage, including, but not limited to, tort liability of another assumed by the Design-Builder. If the Work includes the delivering, hauling or transportation of goods, the Design-Builder will comply with the Motor Carrier Act of 1980 required limits of financial responsibility and the Design-Builder's insurance policy shall include the Motor Carrier Act endorsement MCS-90. If the Work includes hauling hazardous materials, policy shall include Pollution Liability – Broadened Coverage for Covered Autos endorsement ISO CA 99 48 or its equivalent) or such coverage may be provided under an Environmental Liability policy.

§ B.2.1.3 Umbrella/Excess Liability insurance written on an occurrence form with limits of not less than \$5,000,000 per occurrence and in the annual aggregate, excess of, and on terms not more restrictive than underlying CGL, Commercial Automobile Liability, and Employers Liability insurance, and meeting the above stated requirements for such coverages.

§ B.2.1.4 Workers' Compensation insurance as prescribed by the law(s) of the jurisdiction(s) in which the Work is performed at statutory limits. Should Owner lease or borrow any of the Design-Builder's employees to perform Work under this Agreement or if any of the Design-Builder's employees will at any time be working under Owner's direction and/or control, then such insurance policy shall include ISO Alternate Employer endorsement WC 00 03 01 A or an endorsement providing equivalent coverage, including Owner as an alternate employer with respect to Work performed by the Design-Builder's employees under this Agreement. The Design-Builder shall ensure that if any of the Work will involve equipment operators furnished pursuant to equipment lease agreements, employees of independent contractors, sole proprietors or partners, such entities are covered by workers' compensation insurance.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

« Employers' Liability insurance with limits of at least One Million Dollars (\$1,000,000.00) for bodily injury by accident, each accident, and bodily injury by disease, each employee and policy limit. »

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «One Million Dollars » (\$«1,000,000.00 ») per claim and «Two Million Dollars » (\$«2,000,000.00 ») in the aggregate. Professional Liability/Errors & Omissions insurance shall be maintained for claims arising out of the Design-Builder's errors, omissions, rendering or failure to render the Work or provision of products under this Agreement with limits of not less than \$1,000,000 per claim and

\$2,000,000 in the annual aggregate. If applicable to the Work, such policy shall include, but not be limited to, coverage for the configuration or operation of computer or data networks. Such policy shall not contain pollution exclusions.

**§ B.2.1.7** If the Design-Builder's scope of work under this Agreement may involve handling, transporting, disposing, or performing work or operations with hazardous materials or other contaminants, waste or toxic materials, or any other materials that may result in damage or pollution to natural resources of the environment, Contractor's Pollution Liability (CPL) insurance shall be maintained in an amount not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including, but not limited to, coverage for sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants and include coverage for bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured or destroyed, natural resource damage, clean-up costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, all in connection with loss arising from the Design-Builder's scope of work under this Agreement. Coverage must remain in force for both on-site and off-site exposures and remain in place for a period of not less than 5 years after Substantial Completion and acceptance of the Work.

**§ B.2.1.7.1** The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than «Two Million Dollars » (\$ «2,000,000.00 » ) per claim and «Four Million Dollars » (\$ «4,000,000.00 » ) in the aggregate.

**§ B.2.1.8** The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. Upon the cancellation or expiration of any insurance required by this Article B.2, the Design-Builder shall put in place a replacement policy or policies providing the required coverages so that there is no interruption of the required coverages. All insurance required under this Article B.2. shall provide "occurrence" based coverages.

**§ B.2.1.9 Additional Insured Obligations.** The Owner and Brevard County shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement. All required CGL, CAL and Umbrella/Excess Liability policies shall include Owner, Indemnitees, and any other person or entity designated by Owner (Brevard County), as additional insureds on a primary and non-contributory basis over any insurance, deductibles, self-insured retentions and/or self-insurance maintained by the additional insureds for liability arising out of the Work. All such policies shall include severability of interests/separation of insureds provisions and shall not contain any cross-suit liability exclusions for suits brought between insureds. Such additional insured coverage under the CGL and Umbrella/Excess Liability insurance shall be provided using ISO CG 20 10 10 01 and CG 20 37 10 01 forms.

**§ B.2.1.10 Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; and (2) upon renewal or replacement of each required policy of insurance. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and Brevard County as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

**§ B.2.2 Performance Bond and Payment Bond N/A** – No payment or performance surety bonds required. The Design-Builder shall provide surety bonds as follows:  
(Specify type and penal sum of bonds.)



Type

Penal Sum (\$0.00)

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

#### ARTICLE B.3 OWNER'S INSURANCE

##### § B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

##### § B.3.2 Property Insurance

§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement.

§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written



notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

**§ B.3.2.4 Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

**§ B.3.2.5 DELETED.**

**§ B.3.2.6** Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

**§ B.3.2.7 Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ B.3.2.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

**§ B.3.2.9** The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

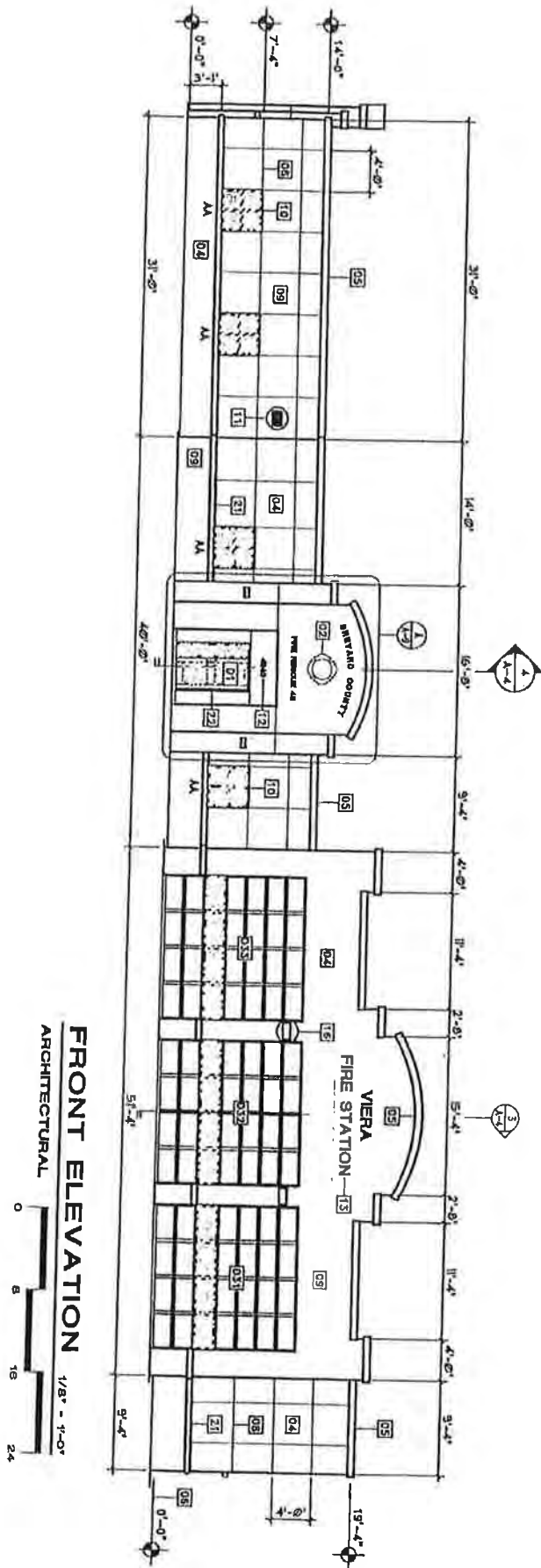
**§ B.3.2.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

« »

**EXHIBIT 1**  
Preliminary Elevation  
and Floor Plan  
(2 pages)





# EXHIBIT 2

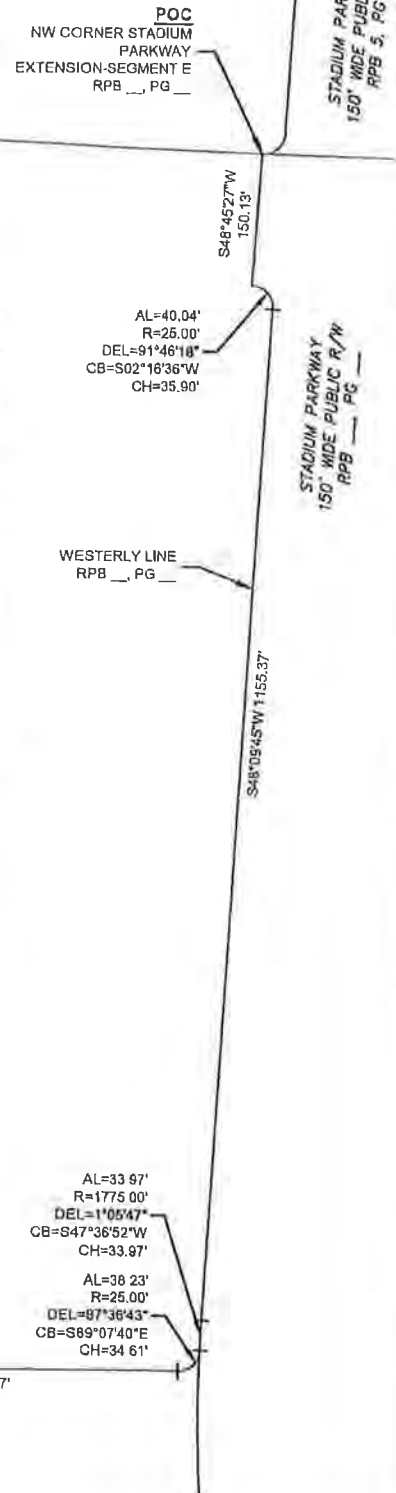
## SKETCH, LEGAL DESCRIPTION AND CONTOURS OF SITE

### THIS IS NOT A BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE

#### DESCRIPTION OF FIRE STATION

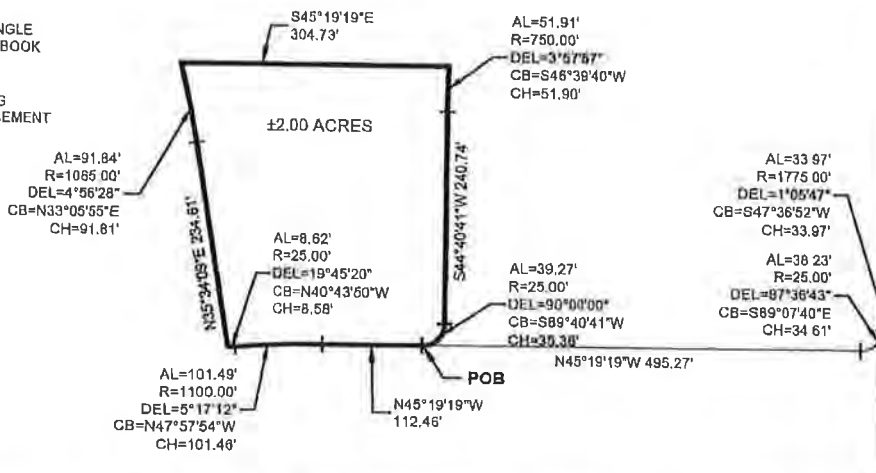
A PARCEL OF LAND LOCATED IN SECTION 20, TOWNSHIP 26, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHWEST CORNER OF STADIUM PARKWAY EXTENSION-SEGMENT E, ACCORDING TO THE PLAT THEREOF AS RECORDED IN ROAD PLAT BOOK \_\_, PAGE \_\_, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND RUN SOUTHWEST ALONG THE WESTERLY LINE OF SAID STADIUM PARKWAY EXTENSION-SEGMENT E THE FOLLOWING FOUR (4) COURSES AND DISTANCES: (1) THENCE S48°45'27"W, A DISTANCE OF 150.13 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE RIGHT; (2) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE WEST AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 91°46'18", A CHORD BEARING OF S02°16'36"W AND A CHORD LENGTH OF 35.90 FEET), A DISTANCE OF 40.04 FEET TO THE END OF SAID CURVE; (3) THENCE S48°09'45"W A DISTANCE OF 1155.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; (4) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1775.00 FEET, A CENTRAL ANGLE OF 01°05'47", A CHORD BEARING OF S47°36'52"W AND A CHORD LENGTH OF 33.97 FEET), A DISTANCE OF 33.97 FEET A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 87°36'43", A CHORD BEARING OF S89°07'40"E AND A CHORD LENGTH OF 34.61 FEET), A DISTANCE OF 38.23 FEET TO THE END OF SAID CURVE; THENCE N45°19'19"W, A DISTANCE OF 495.27 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE N45°19'19"W, A DISTANCE OF 112.46 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHWEST, AND HAVING A RADIUS OF 1100.00 FEET, A CENTRAL ANGLE OF 5°17'12", A CHORD BEARING OF N47°57'54"W, AND A CHORD LENGTH OF 101.46 FEET), A DISTANCE OF 101.49 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHEAST, AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 19°45'20", A CHORD BEARING OF N40°43'50"W, AND A CHORD LENGTH OF 8.58 FEET), A DISTANCE OF 8.62 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE NORTHEAST; THENCE N35°34'09"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 234.61 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHWEST, AND HAVING A RADIUS OF 1085.00 FEET, A CENTRAL ANGLE OF 4°56'28", A CHORD BEARING OF N33°05'55"E, AND A CHORD LENGTH OF 91.81 FEET), A DISTANCE OF 91.84 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE SOUTHEAST; THENCE S45°19'19"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 304.73 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST, AND HAVING A RADIUS OF 750.00 FEET, A CENTRAL ANGLE OF 3°57'57", A CHORD BEARING OF S46°38'40"W, AND A CHORD LENGTH OF 51.90 FEET), A DISTANCE OF 51.91 FEET TO THE END OF SAID CURVE; THENCE S44°40'41"W, A DISTANCE OF 240.74 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH, AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 90°00'00", A CHORD BEARING OF S89°40'41"W, AND A CHORD LENGTH OF 35.36 FEET), A DISTANCE OF 39.27 FEET TO THE POINT OF BEGINNING. CONTAINING 2.00 ACRES MORE OR LESS.



#### ABBREVIATIONS

AL	ARC LENGTH
CB	CHORD BEARING
CH	CHORD LENGTH
DEL	DELTA / CENTRAL ANGLE
OR/ORB	OFFICIAL RECORDS BOOK
PE	PLAT BOOK
PG(S)	PAGE(S)
POB	POINT OF BEGINNING
POC	POINT OF COMMENCEMENT
R	RADIUS
RPB	ROAD PLAT BOOK
R/W	RIGHT-OF-WAY



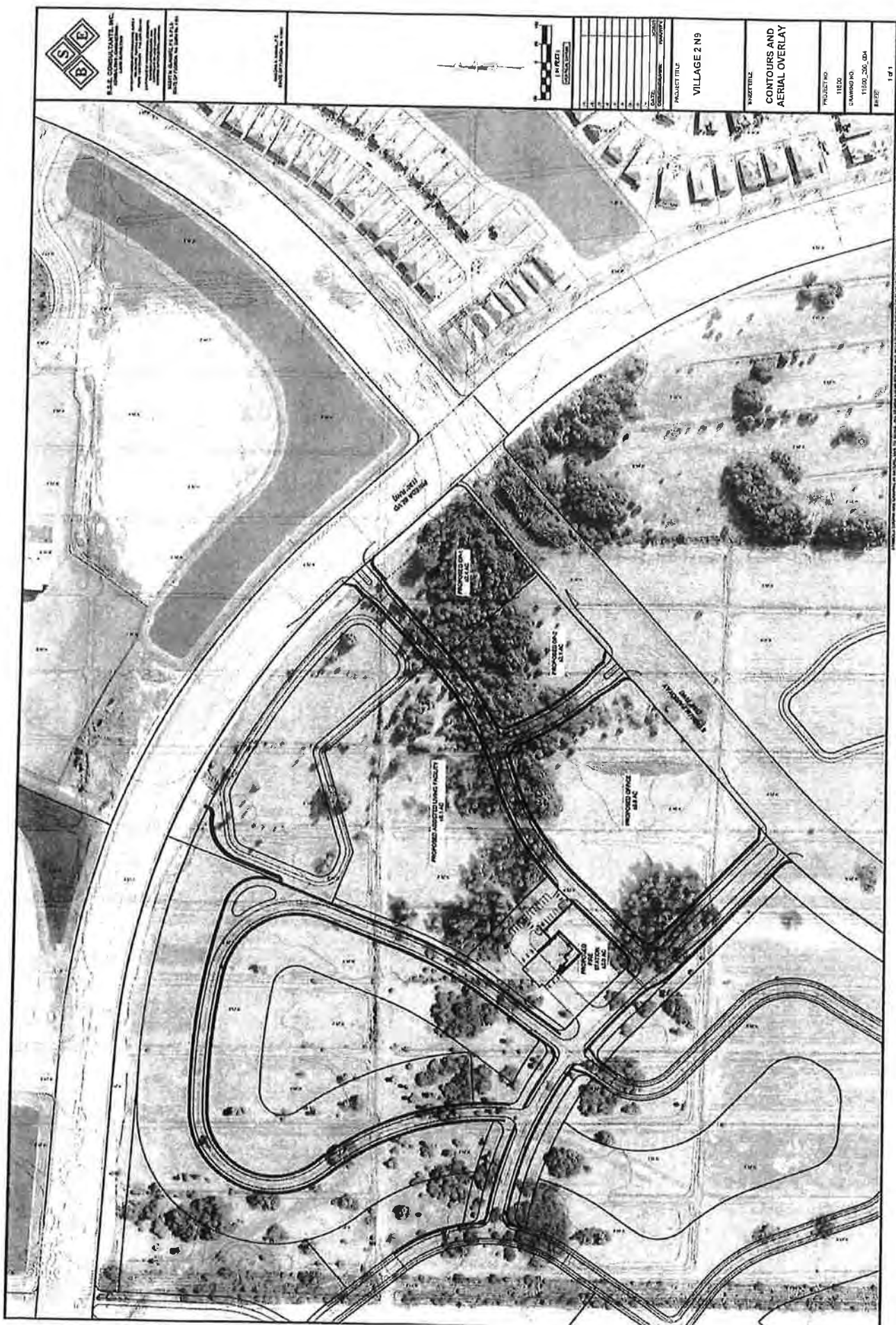
#### VIERA FIRE STATION

#### B.S.E. CONSULTANTS, INC.

CONSULTING - ENGINEERING - LAND SURVEYING  
312 SOUTH HARBOR CITY BOULEVARD, SUITE 4 MELBOURNE, FL 32901  
PHONE: (321) 725-2674 FAX: (321) 723-1159  
CERTIFICATE OF BUSINESS AUTHORIZATION: 4903  
CERTIFICATE OF LAND SURVEYING BUSINESS AUTHORIZATION: LB0004905

DATE: 9/24/21  
DESIGN/DRAWN: HAK/LEH/WFV  
DRAWING# 11600\_100\_001  
PROJECT# 11600  
SHEET 1 OF 1





### EXHIBIT 3

#### SITE IMPROVEMENTS BY THE OWNER

The Design-Builder's Scope of Work under the Contract excludes the following site improvements which shall be performed by the Owner:

1. The Site shall be cleared and filled.
2. The Owner shall provide Geotechnical Testing Reports confirming the Site was adequately cleared and prepared prior to receiving fill material.
3. The Site's building pad area plus a 10' perimeter around the building area will be filled to 6" below finished floor elevation.
4. The Site's parking lot and driveway areas shall be filled and rough graded to 10" below pavement elevation.
5. Areas between the Site's parking lot and property lines will be filled and transitioned to the adjacent property grade.
6. The Owner shall provide Compaction Testing for filled areas verifying compaction to 95% of maximum density.
7. The Owner shall install silt fence at the Site's perimeter, which silt fencing shall be maintained and/or replaced by the Design-Builder as necessary.
8. The Owner shall stub a 6" gravity Sanitary Sewer Service into the Site at the adjacent R/W (location TBD during detailed site design phase).
9. The Owner shall stub potable water service into the Site (size of service proposed to be 1", but TBD during detailed site design phase).
10. The Owner shall stub a fire protection water line into the Site or install an onsite fire hydrant (specific fire protection requirements and applicable location and size of installations TBD during detailed site design phase).
11. The Owner shall stub a reuse water service line into the Site.

NOTE 1: All other site work and improvements are included in the Design-Builder's Scope of Work, including but not limited to the following items:

1. Curb cuts and driveway aprons to and from adjacent R/Ws
2. Sidewalks, curb ramps and driveway connections within adjacent R/Ws

NOTE 2: Owner's work shall include the design and permitting of civil horizontal site improvements to within five (5) feet of the building and include potable water, fire protection water, sanitary sewer, reuse water and storm drainage improvements and landscaping. The Design-Builder, however, shall cooperate with Owner's design efforts by providing the demand criteria for the building based on the approved building design and current regulatory requirements during the site design phase, including size of service for potable water, fire protection water, sanitary sewer, re-use water and storm drainage and the location of utility stub-outs into the Site. The Design-Builder shall also coordinate the location of building ingress/egress, floor drains, grease trap/oil-water separator locations, storm water drainage connections and pads for exterior storage facilities with Owner's Site Engineer to facilitate the site plan design and permitting.



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**AIA Document A141-2014**

**Viera Fire Station No. 49**

**Exhibit 4**  
**Pre-Design-Build Amendment Payment Milestones**

Steps 1- 3 (Assessment, Kickoff and Design Development) = 30% of design fee at 35 days after an NTP.

Step 4 (Construction Documents to 75%) = 50% of design fee at 70 days after an NTP.

Step 4 – 6 (Completion of CD's, Bid Phase and Presentation of Design-Builder's Proposal) = 20% or remainder of design fees at 115 days after an NTP.

EXHIBIT "E"

PERMITTED EXCEPTIONS TO TITLE



EXHIBIT "E"

PERMITTED EXCEPTIONS TO TITLE

(All references to recording information pertain to the Public Records of Brevard County, Florida)

1. Notice of Agreement between The Viera Company and the Florida Department of Community Affairs recorded January 17, 1991 in Official Records Book 3104 page 1881.
2. Agreement Covering Water Service between The Viera Company and the City of Cocoa, Florida dated August 26, 1988, as amended by that certain Amendment #1 To Agreement To Provide Water Service dated June 13, 1989, as further amended by that certain Second Amendment to Agreement dated May 27, 1994 as recorded in Official Records Book 3404 page 0932, and re-recorded in Official Records Book 3407 page 3452, together with that certain Third Amendment to Agreement recorded August 16, 2017 in Official Records Book 7962 page 1632, that certain Fourth Amendment to Agreement recorded August 16, 2007 in Official Records Book 7962 page 1655 and that certain Fifth Amendment dated as of October 27, 2021, recorded in Official Records Book 9326, Page 1646.
3. Declaration of Covenants, Conditions, Easement, Reservations and Restrictions for Central Viera Community, which contains provisions for (i) an easement on the land; (ii) a private charge or assessments, as recorded in Official Records Book 3409 page 0624, as modified by the First Amendment recorded in Official Records Book 3813 page 3867, the Second Amendment recorded in Official Records Book 3882 page 2349, the Third Amendment recorded in Official Records Book 4065 page 2855, Amendment Number Four recorded in Official Records Book 4209 page 2335, the Fourth (sic) Amendment recorded in Official Records Book 4297 page 0372, Amendment Number Five recorded in Official Records Book 4303 page 0571, the Sixth Amendment recorded in Official Records Book 4718 page 1926, (number sequence skips "seventh" amendment), the Eighth Amendment recorded in Official Records Book 5103 page 0627, the Ninth Amendment recorded in Official Records Book 5333 page 1015, the Tenth Amendment recorded in Official Records Book 5369 page 4776, the Eleventh Amendment recorded in Official Records Book 5806 page 8129 and the Twelfth Amendment recorded in Official Records Book 6279 page 1612, and Thirteenth Amendment recorded in Official Records Book 6359 page 1905, and Supplemental Declaration and Fourteenth Amendment recorded in Official Records Book 6871 page 630, Fifteenth Amendment recorded in Official Records Book 7828 page 1083, Sixteenth Amendment recorded in Official Records Book 8114 page 2777, Seventeenth Amendment recorded in Official Records Book 8130 page 63, Eighteenth Amendment recorded in Official Records Book 8242 page 2738, Second Supplemental Declaration and Nineteenth Amendment recorded in Official Records Book 8904 page 1165, Twentieth Amendment recorded in Official Records Book 8931 page 435, all of the Public Records of Brevard County, Florida.
4. Notice of Creation and Establishment of the Viera Stewardship District recorded August 10, 2006 in Official Records Book 5683 page 2029, amended by the certain Notice of Boundary Amendment for the Viera Stewardship District recorded in Official Records Book 6081 page 1341 and in Official Records Book 6081 page 1354.
5. Disclosure of Public Financing and Maintenance of Improvements to Real Property Undertaken by the Viera Stewardship District recorded May 20, 2013 in Official Records Book 6879 page 1970.
6. Viera Stewardship District Notice of Special Assessments/Governmental Lien of Record recorded July 2, 2020 in Official Records Book 8784 page 1579.

7. Viera Stewardship District notice of imposition of Series 2021 special assessments recorded on November 22, 2021 in official records book 9334, page 1389.
8. (Grocery Store Right of First Offer) Right of First Offer Agreement between Publix Super Markets, Inc. and The Viera Company, granting right of first offer on land proposed for grocery store use, dated as of June 10, 2013, recorded in Official Records Book 6897, Page 187.
9. Amended and Restated Development Order Viera Development of Regional Impact, as approved by that certain Resolution 19-134 adopted by the Brevard County Board of County Commissioners on August 20, 2019 and as evidenced by Notice of Modification of a Development Order recorded September 23, 2019 in Official Records Book 8545, page 418, Public Records of Brevard County, Florida.
10. Zoning, restrictions, reservations, prohibitions and other requirements imposed by governmental authorities.
11. Taxes and assessments for the year of closing and subsequent years.
12. Instruments recorded in the public records pursuant to the Agreement to which this Exhibit "E" is attached.

EXHIBIT "F"

SPECIAL WARRANTY DEED FOR FIRE STATION 49

This Instrument Prepared By:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax Parcel Identification No.:

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made the \_\_\_\_ day of \_\_\_\_\_, 2022, by THE VIERA COMPANY, a Florida corporation, having its principal place of business at 7380 Murrell Road, Suite 201, Viera, Florida 32940 (hereinafter referred to as "GRANTOR"), to BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, whose post office address is Brevard County Government Operations Center, 2725 Judge Fran Jamieson Parkway, Building C, Viera, Florida 32940 (hereinafter referred to as "GRANTEE").

(Wherever used herein the terms "GRANTOR" and "GRANTEE" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations and political subdivisions of the State of Florida.)

W I T N E S S E T H:

That GRANTOR, for and in consideration of the sum of Ten Dollars (\$10.00) and other valuable considerations, the receipt whereof is hereby acknowledged, by these presents does hereby grant, bargain, sell, alien, remise, release, convey and confirm unto GRANTEE, all that certain land situate in Brevard County, Florida described in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property").

TOGETHER with all of the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND GRANTOR hereby covenants with GRANTEE that GRANTOR is lawfully seized of the Property in fee simple; that the GRANTOR has good right and lawful authority to sell and convey the Property; and that GRANTOR hereby warrants the title to the Property and will defend the same against the lawful claims of all persons claiming by, through or under GRANTOR. This conveyance is subject to those matters set forth in Exhibit "B", attached hereto and made a part hereof.

### RESTRICTIVE COVENANTS

GRANTOR owns and holds the fee simple title to certain real property adjacent or in proximity to the Property. Accordingly, GRANTOR has, and will continue to have, a substantial interest in the manner of development and use of the Property and all portions thereof as well as the kind, character, design and configuration of improvements to be constructed from time to time upon any portion of the Property. By acceptance of this conveyance, GRANTEE, for itself, its assigns and successors in interest and/or title, agrees:

1. The Property shall be utilized, developed and improved only in accordance with the following.

(a) The Property shall be utilized only for fire station, emergency services and related purposes, together with related parking and landscaping as required by Brevard County, Florida or other applicable governmental authorities (provided, however, that commencing twenty (20) years after the date of this special warranty deed GRANTEE may utilize, develop and improve the property for other public purposes subject to the prior written approval of GRANTOR, which approval shall not be unreasonably withheld or delayed; provided further, however, that GRANTOR'S failure to approve another proposed public purpose shall not be deemed unreasonably withheld if the new proposed public purpose is reasonably considered by GRANTOR as a nuisance or as a use which will adversely affect the tranquility, appearance or property values of the surrounding community).

(b) GRANTEE, at its sole cost and expense, shall keep the buildings, land and landscaping, grounds and parking areas constructed or from time to time existing thereon in a well-maintained, safe, good, clean and attractive condition at all times.

(c) No part of any improvements shall be constructed or placed on any portion of the Property within twenty-five feet (25') of any property line.

(d) Except during the term of any emergency declared by GRANTEE, no maintenance vehicles, recreational vehicles, buses or other county vehicles (other than passenger vehicles and utility pick-up trucks) may be parked on any portion of the Property other than those that are necessary or customary for the use of the fire station in the manner in which the fire station is intended to be used. No overnight parking of campers, mobile homes, boats or trailers shall be permitted upon any portion of the Property.

(e) All loading, storage, refuse and garbage facilities shall be located in an enclosed building, structure or other improvement, or shall be otherwise screened from view

from public roads or adjacent or contiguous properties by means of a screening wall of material compatible with that of the buildings served by such facilities.

(f) All utility lines and facilities located or installed within the boundaries of the Property shall be located and installed underground or concealed under or within a building or other on-site improvements; provided, however, that the following restrictions shall not be deemed to prohibit the following:

(1) Temporary electric power lines and telephone service poles and water lines which are incident to the construction of permanent improvements, provided the same are removed immediately following completion of construction of such permanent improvements;

(2) Above-ground electric transformers, meters and similar apparatus, provided the same are properly screened by vegetative screening; and

(3) Permanent outdoor safety light poles complying with all applicable ordinances and government rules and regulations.

(g) No billboards or advertising signs shall be erected or placed upon any portion of the Property without the prior written approval of GRANTOR, which approval shall not be unreasonably withheld, and no flashing or moving signs shall be permitted on any portion of the Property. Only discrete identification signs or symbols relating the permitted uses described in subparagraph 1(a) hereinabove shall be permitted upon any portion of the Property.

(h) No antennae for transmission or reception of radio or television signals, or any other form of electrical magnetic radiation, shall be erected, used or maintained on any portion of the Property outside of any building, whether attached to any improvement or otherwise, unless such antennae is necessary or customary for the use of the fire station in the manner in which the fire station is intended to be used. The foregoing restriction shall not apply to any temporary, portable antennae utilized for telecasting activities or events then transpiring or occurring on the Property.

(i) Except during the construction of improvements, no materials, supplies or equipment shall be stored on any portion of the Property except inside of a building or structure, or behind a landscaped visual barrier. Stored materials, supplies and equipment shall, at all times, be screened from adjacent or neighboring properties and from public rights-of-way adjacent or contiguous to the boundaries of the Property.

2. No construction, installation or alteration (prior, during or subsequent to the initial construction) of any improvements, fixtures or attachments to the Property shall commence unless and until the site plan and the architectural style, construction means, methods and materials and the exterior design (including points of ingress and egress) of the improvements proposed to be constructed, installed or altered on the Property have been approved by GRANTOR, which approval shall not be unreasonably withheld or delayed. The standard of

reasonableness shall be based upon the consistency and compatibility of the site plan and the architectural style, construction means, methods and materials and the exterior design with the existing fire station and the plans for the surrounding development. The appropriate portions of the plans, where required by law or as herein specified, shall be prepared, signed and sealed by a registered professional architect, landscape architect or engineer licensed to practice in the State of Florida. GRANTOR's approval of any improvements on the Property in letter form executed by a duly authorized officer of GRANTOR shall be binding upon GRANTOR.

The restrictive covenants set forth hereinabove are intended to constitute covenants running with the Property, and each part thereof, in all respects binding upon GRANTEE and all assigns and successors in interest and/or title of GRANTEE with respect to the Property and each part thereof. The restrictive covenants shall be binding and in full force and effect for a period of twenty (20) years from the day of recordation of this instrument in the Public Records of Brevard County, Florida, after which time said restrictive covenants shall be automatically extended for two twenty (20) year periods unless sooner terminated by written instrument executed by GRANTOR. GRANTOR shall have the right, but not the duty, to enforce the above-mentioned restrictive covenants by actions or proceedings at law and/or in equity against any person or entity violating, or attempting to violate, any of the above-mentioned restrictive covenants, the permissible actions or proceedings to include, but not be limited to, actions for mandatory injunctive relief, prohibitory injunctive relief and/or damages. In connection with any action or proceeding brought by GRANTOR to enforce any of the above-mentioned restrictive covenants, GRANTOR shall be entitled to recover all costs incurred in connection therewith, including reasonable attorneys' fees at or before the trial level and in any appellate proceeding. The right to enforce the restrictive covenants set forth hereinabove shall be limited to GRANTOR and any persons or entities to which such right of enforcement is specifically granted by written instrument recorded in the Public Records of Brevard County, Florida. A successor in title of GRANTOR shall not, by virtue of such status alone, have the right to enforce the restrictive covenants set forth hereinabove unless the instrument or instruments by which title is conveyed to such successor in title specifically assigns such right to enforce said restrictive covenants.

IN WITNESS WHEREOF, GRANTOR has caused these presents to be executed in its name, and its corporate seal to be hereto affixed, by its proper officer thereunto duly authorized, on the day and year first above written.

Signed, sealed and delivered  
in the presence of:

GRANTOR:

THE VIERA COMPANY

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA     ]  
  ]  
COUNTY OF BREVARD    ]

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_ of THE VIERA COMPANY, who is personally known to me and who did not take an oath.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public State of Florida  
Commission Number: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT "G"

CONSTRUCTION LIEN AND POSSESSION AFFIDAVIT

STATE OF FLORIDA

COUNTY OF BREVARD

BEFORE ME, the undersigned authority, duly authorized and qualified in the state and county aforesaid to administer oaths and take acknowledgments, this day personally appeared \_\_\_\_\_, being by me first duly sworn, deposes and says:

1. The facts and matters contained and recited in this Affidavit are based upon personal knowledge of Affiant.

2. Affiant is a \_\_\_\_\_ of THE VIERA COMPANY, a Florida corporation (hereinafter referred to as the "Corporation").

3. The Corporation is the fee simple owner of the real property described in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property") and the Corporation's possession thereof has been peaceable and undisturbed.

4. There are no persons or entities in actual or constructive possession of any part of the Property except the Corporation.

5. There are no unpaid bills or claims for labor or services performed, or materials furnished or delivered, at the instance or request of the Corporation during the ninety (90) days immediately preceding the Effective Date of this Affidavit for alterations to, repair work on, new construction on or improvement of the Property which could serve as the basis for assertion or enforcement of a lien (whether statutory or common law) against the Property.

6. Except for the instruments executed and delivered by the Corporation for the purpose of transferring title to the Property to Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), the Corporation will not execute, deliver or record any instrument or document adversely affecting the title to the Property during the period from and after the Effective Date of this Affidavit to and including the moment of recording of the instrument transferring title to the Property from the Corporation to the County.

7. Affiant understands that this Affidavit will be relied upon by the County in acquiring the Property from the Corporation. Affiant also understands that this Affidavit will be relied upon by Chicago Title Insurance Company in issuing its policy or policies of title insurance, wherein certain exceptions may be deleted in reliance upon by Chicago Title



Insurance company in issuing its policy or policies of title insurance, wherein certain exceptions may be deleted in reliance upon the facts and matters contained and recited in the foregoing Affidavit.

8 The "Effective Date" of this Affidavit is \_\_\_\_\_, 2022.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_, Affiant

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, who is personally known to me.

Print Name: \_\_\_\_\_  
Notary Public: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

JOINDER

THE VIERA COMPANY, a Florida corporation, joins in the execution of this instrument for the purpose of adopting all representations of fact made in the foregoing Affidavit. It is understood that this Affidavit will be relied upon by Chicago Title Insurance Company in issuing its policy or policies of title insurance, wherein certain exceptions may be deleted in reliance upon the facts and matters contained and recited in the foregoing Affidavit.

Date: \_\_\_\_\_

THE VIERA COMPANY, a Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

EXHIBIT "H"

NON-FOREIGN AFFIDAVIT AND CERTIFICATE

STATE OF FLORIDA        ]  
                                      ]  
COUNTY OF BREVARD    ]

I HEREBY CERTIFY that on this day, before me, and officer duly qualified and authorized in the state and county aforesaid to administer oaths and take acknowledgments, personally appeared \_\_\_\_\_, being by me first duly sworn, deposes and says:

1. The facts and matters contained and recited in this Affidavit are based upon personal knowledge of Affiant.

2. Affiant is a \_\_\_\_\_ of THE VIERA COMPANY, a Florida corporation (hereinafter referred to as the "Transferor").

3. On \_\_\_\_\_, 2022 (hereinafter referred to as the "Effective Date"), the Transferor conveyed or will convey the real property described in Exhibit "A", attached hereto and made a part hereof (hereinafter referred to as the "Property"), to Brevard County, Florida, a political subdivision of the State of Florida (hereinafter referred to as "Transferee").

4. As of the Effective Date, the Transferor is not a "foreign person", as that term is defined in the Internal Revenue Code and the regulations promulgated pursuant thereto.

5. As of the Effective Date, the Transferor is not a "disregarded entity" for purposes of the Internal Revenue Code and the regulations promulgated pursuant thereto.

6. The Transferor's United States employer identification number is 59-2345693.

7. The Transferor's office address is 7380 Murrell Road, Suite 201, Melbourne, Florida 32940.

8. Affiant understands that Section 1445 of the Internal Revenue Code provides, in part, that a transferee of a United States real property interest must withhold tax if the transferor is a "foreign person" as therein defined. A disregarded entity may not certify that it is the transferor of a U.S. real property interest, as the disregarded entity is not the transferor for U.S. tax purposes. Rather, the owner of a disregarded entity is the transferor for U.S. tax purposes. This Affidavit is given to inform the Transferee that withholding of tax is not required

in connection with the transfer of the Property by the Transferor to the Transferee. Affiant understands that this Affidavit will be relied upon by the closing agent and by the Transferee to assure compliance with Section 1445 of the Internal Revenue Code in connection with closing of the transfer and conveyance of the Property by the Transferor to the Transferee. Affiant further understands that this Affidavit may be disclosed to the Internal Revenue Service by the Transferee of the Closing Agent and that any false statement contained herein could be punished by fine, imprisonment or both.

9. Affiant has examined this Affidavit and, under penalty of perjury, declares that it is true, correct and complete.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_, Affiant

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, who is personally known to me.

Print Name: \_\_\_\_\_  
Notary Public: \_\_\_\_\_  
Commission No.: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

RECEIPT

The Transferee of the Property hereby acknowledges receipt of a duplicate original of this Affidavit. The Transferee has been advised that the Transferee must retain this Affidavit until the end of the fifth year following the taxable year in which the transfer takes place.

Date: \_\_\_\_\_

BREVARD COUNTY, FLORIDA, a  
political subdivision of the State of Florida

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

EXHIBIT "I"

THE REIMBURSABLE V&E ITEMS - DESCRIPTION OF VEHICLES AND EQUIPMENT

## Exhibit I

<b>Non-Consumable Station Equipment</b>	<b>Quantity</b>	<b>Est. 2023 total</b>	<b>(Budgeted Amount)</b>
500 Gallon Fuel Convault	1	\$ 34,530.17	
Ice Machine	1	\$ 3,399.00	
Station Generator	1	\$ 73,202.10	
Station Alerting DCR	1	\$ 36,243.53	
Radio System Install 800	1	\$ 16,998.09	
Radio System VHF	1	\$ 3,555.56	
Plymovent Exhaust Removal	1	\$ 83,993.57	
Station Computers	2	\$ 2,333.98	
<b>Total For Station</b>		<b>\$ 254,256.00</b>	
<b>Non-Consumable Engine Equipment</b>			
Apparatus	1	\$ 649,930.00	
Engine Equipment Package	1	\$ 23,667.62	
800mhz Mobile Mount Radio	1	\$ 5,047.00	
800 mhz Portable Radios	3	\$ 12,257.00	
SCBA Breathing Systems	4	\$ 30,321.58	
SCBA Spare Bottles	4	\$ 3,161.48	
Thermal Imaging Camera	1	\$ 5,723.56	
Lucas CPR Device	1	\$ 16,833.51	
Extrication Spreader	1	\$ 11,696.42	
Extrication Ram 30"	1	\$ 10,597.33	
Extrication Cutter	1	\$ 10,442.44	
LifePak 15 Cardiac Monitor	1	\$ 32,939.40	
EPCR Computer	1	\$ 4,016.57	
Engine Mobile Data Terminal	1	\$ 4,016.57	
VHF Radio Install	1	\$ 3,553.50	
<b>Total For Engine</b>		<b>\$ 824,203.98</b>	
<b>Non-Consumable Rescue Equipment</b>			
Rescue Unit	1	\$ 238,445.00	
800mhz Dual Mount Radio	1	\$ 5,304.50	
UHF Mounted Radio	1	\$ 954.81	
800mhz Portable Radios	2	\$ 8,240.00	
SCBA Breathing System	2	\$ 15,139.04	
SCBA Spare Bottles	2	\$ 1,580.74	
LifePak 15 Cardiac Monitor	1	\$ 32,908.50	
Mobile Data Terminal	1	\$ 4,016.57	
EPCR Laptop Computer	1	\$ 4,016.57	
Portable Ultrasound System	1	\$ 5,304.50	
Stryker Stretcher W/Powerload	1	\$ 43,496.90	
<b>Total For Rescue</b>		<b>\$ 359,407.13</b>	
<b>Total Reimbursement</b>		<b>\$ 1,437,867.11</b>	

EXHIBIT "J"

DESCRIPTION OF ALTERNATIVE APPARATUS

## Description of Alternate Apparatus

### Exhibit J

Fire suppression apparatus are classified by type and function as defined by the National Fire Protection Association (NFPA). This ensures continuity of capability and equipment packages. Fire apparatus are typed as Type 1 through Type 7 with the least number having the largest capacity. The standard fire suppression apparatus that Brevard County Fire Rescue (BCFR) utilizes is a Type 1 Fire Engine. An alternative fire apparatus that BCFR would purchase as a part of this agreement will also meet the typing standards of the NFPA and be rated as a Fire Engine but be categorized other than a Type 1. The Alternative Apparatus would fall into one of the categories between Type 2 and Type 6 allowing BCFR to be responsive to the fire suppression needs of the community and department.



THE VIERA COMPANY

7380 Murrell Road, Suite 201 | Viera, Florida 32940  
P: 321.242.1200 | F: 321.253.1800 | [VIERA.com](http://VIERA.com)

July 5, 2022

Jeffrey Ball, AICP  
Brevard County Planning and Zoning Manager  
Building A, Room 114  
2725 Judge Fran Jamieson Way  
Viera, FL 32940

Re: Brevard County - Donation and Capital Contribution Front-Ending Reimbursement Agreement for Fire Station 49.

Dear Mr. Ball:

For consideration by the Brevard County Board of County Commissioners, enclosed please find the original Donation and Capital Contribution Front-Ending Reimbursement Agreement for Fire Station 49 which has been executed on behalf of The Viera Company.

Upon approval by the Board, kindly return the fully executed document to Todd Pokrywa's attention at the letterhead address.

Should you have any questions or require additional information, please let us know at your convenience.

Sincerely,

Charlene Spangler  
Executive Assistant to  
Todd J. Pokrywa, President  
The Viera Company

/crs

Enclosure

C: Todd J. Pokrywa  
Jay A. Decator, Esq.



AN APPRAISAL OF  
**THE 2.00 ACRES OF VACANT COMMERCIAL LAND  
LOCATED AT  
THE SOUTHWEST QUADRANT OF  
PINEDA BOULEVARD AND STADIUM PARKWAY,  
VIERA, FLORIDA 32940**

FILE # 21-82891

PREPARED FOR  
BREVARD COUNTY  
WORK ORDER 2017-3988-A-013

AS OF  
FEBRUARY 2, 2022

BY  
CURTIS L. PHILLIPS, MAI  
CALLAWAY & PRICE, INC.



# Callaway & Price, Inc.

Real Estate Appraisers & Consultants

Licensed Real Estate Brokers

[www.callawayandprice.com](http://www.callawayandprice.com)

Please respond to Space Coast office  
E-Mail: [c.phillips@callawayandprice.com](mailto:c.phillips@callawayandprice.com)

## SOUTH FLORIDA

1410 Park Lane South  
Suite 1

Jupiter, FL 33458

Phone (561) 686-0333

Fax (561) 686-3705

Michael R. Slade, MAI, SRA, CRE  
Cert Gen RZ116  
[m.slade@callawayandprice.com](mailto:m.slade@callawayandprice.com)

Stephen D. Shaw, MAI, AI-GRS  
Cert Gen RZ1192  
[s.shaw@callawayandprice.com](mailto:s.shaw@callawayandprice.com)

Robert A. Callaway, MRICS  
Cert Gen RZ2461  
[r.callaway@callawayandprice.com](mailto:r.callaway@callawayandprice.com)

## TREASURE COAST

1803 South 25<sup>th</sup> Street  
Suite 1

Fort Pierce, FL 34947

Phone (772) 464-8607

Fax (772) 461-0809

Stuart  
Phone (772) 287-3330  
Fax (772) 461-0809

Stephen G. Neill, Jr., MAI  
Cert Gen RZ2480  
[s.neill@callawayandprice.com](mailto:s.neill@callawayandprice.com)

## SPACE COAST

1120 Palmetto Avenue  
Suite 1

Melbourne, FL 32901

Phone (321) 726-0970

Fax (561) 686-3705

Curtis L. Phillips, MAI  
Cert Gen RZ2085  
[c.phillips@callawayandprice.com](mailto:c.phillips@callawayandprice.com)

## CENTRAL FLORIDA

2816 E. Robinson Street  
Orlando, FL 32803

Phone (321) 726-0970

Fax (561) 686-3705

Curtis L. Phillips, MAI  
Cert Gen RZ2085  
[c.phillips@callawayandprice.com](mailto:c.phillips@callawayandprice.com)

February 16, 2022

Tammy Thomas-Wood  
Support Services Manager  
Brevard County Public Works Department  
2725 Judge Fran Jamieson Way,  
Building A, Room 201  
Viera, Florida 32940

Dear Tammy Thomas-Wood:

We have made an investigation and analysis of the 2.00 acres of vacant land at the southwest quadrant of Pineda Boulevard and Stadium Parkway in Viera, Florida 32940. The Subject will be further described within the following Appraisal Report. The purpose of this investigation and analysis was to provide our opinion of the As Is Market Value of the Fee Simple Estate of the Subject Property as of February 2, 2022. The date of value is the date of the formal inspection.

The Subject is currently part of Property Appraiser's Tax Account 2620413. This parcel contains 82.43 acres of raw land. The Subject is planned to be subdivided from this parcel and will contain 2.00 acres upon subdivision, according to the client. The Subject is proposed to be developed with a fire station (Brevard County Fire Station 49 - Viera). According to Mary Ellen McKibben, Director of Land Development with The Viera Company, the Subject will be located within a commercial subdivision known as Village Center and spine roads and other infrastructure such as water/sewer lines will be constructed by The Viera Company and brought to the Subject. The plans for this commercial subdivision are still in design, and construction of the infrastructure is estimated to be completed by February 2023. As such, this appraisal is subject to the hypothetical condition that the Subject is subdivided with 2.00 acres and infrastructure for the commercial subdivision such as access roads and water/sewer lines are at the Subject site according to the proposed design as of the date of value.

Tammy Thomas-Wood  
Support Services Manager  
Brevard County Public Works Department  
February 16, 2022  
Page Two

The intended user of this appraisal is our client, Brevard County. The intended use is to provide an opinion of market value to assist the client in possible acquisition. The scope of work performed is specific to the needs of the intended user and the intended use. No other use or users is intended, and the scope of work may not be appropriate for other uses. A detailed scope of work description can be found in the body of this report.

Based upon the scope of the assignment, our investigation and analysis of the information contained within this report, as well as our general knowledge of real estate valuation procedures and market conditions, it is our opinion that:

**THE AS IS MARKET VALUE  
OF THE FEE SIMPLE ESTATE  
OF THE SUBJECT PROPERTY  
AS OF FEBRUARY 2, 2022, UNDER  
THE HYPOTHETICAL CONDITION:**

**\$1,198,000**

A description of the property appraised, together with an explanation of the valuation procedures utilized, is contained in the body of the attached report. For your convenience, an Executive Summary follows this letter. Your attention is directed to the Limiting Conditions and underlying assumptions upon which the value conclusions are contingent.

Respectfully submitted,

CALLAWAY & PRICE, INC.



Curtis L. Phillips, MAI  
Cert Gen RZ2085



Ryan M. Powell  
Cert Gen RZ3684

CLP/RMP/w:/jobs2022/21-82891



## *Executive Summary*

### **EXECUTIVE SUMMARY**

PROPERTY TYPE	: Vacant Commercial Land
LOCATION	: The Subject has not yet been assigned a street address. It is located at the southwest quadrant of Pineda Boulevard and Stadium Parkway in Viera, Florida 32940.
OWNER OF RECORD	: A Duda & Sons, Inc
DATE OF VALUATION	: February 2, 2022
DATE OF REPORT	: February 16, 2022
PURPOSE OF APPRAISAL	: The purpose of this investigation and analysis was to estimate the As Is Market Value of the Fee Simple Estate of the Subject Property as of the appraisal dates in an Appraisal Report as defined by Uniform Standards of Professional Appraisal Practice (USPAP).
LAND	: 2.00 acres (87,120 SF) – See legal description in Addendum.
IMPROVEMENTS	: None
ZONING	: PUD, Planned Unit Development, by Brevard County
LAND USE PLAN	: DRI3, Development of Regional Impact (Viera), by Brevard County
HIGHEST AND BEST USE	
AS VACANT	: Commercial development
VALUE INDICATIONS	
THE AS IS MARKET VALUE OF THE FEE SIMPLE ESTATE OF THE SUBJECT PROPERTY AS OF FEBRUARY 2, 2022 UNDER THE HYPOTHETICAL CONDITION	: \$1,198,000



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Qualifications:	
Curtis L. Phillips, MAI	
Ryan M. Powell	



**CERTIFICATION**

We certify that, to the best of our knowledge and belief:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved.
4. We have not performed services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
5. We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
6. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
7. Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
8. The analyses, opinions, and conclusion were developed, and this report was prepared, in conformity with the Uniform Standards of Professional Appraisal Practice (USPAP) and The Interagency Appraisal and Evaluation Guidelines, December 10, 2010.
9. The Subject site does not yet have independent access and is set back from a road that is currently under construction. An inspection of the Subject site was not physically possible.
10. No one provided significant real property appraisal assistance to the persons signing this certification.
11. The use of this report is subject to the requirements of the State of Florida relating to review by the Florida Real Estate Appraisal Board.



## ***Certification***

12. This appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan.
13. The reported analyses, opinions and conclusions were developed, and this report was prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
14. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
15. As of the date of this report, Curtis L. Phillips, MAI has completed the continuing education program for Designated Members of the Appraisal Institute.

Curtis L. Phillips, MAI  
Cert Gen RZ2085

Ryan M. Powell  
Cert Gen RZ3684

CLP/RMP/w:/jobs2022/21-82891





## *General Assumptions & Limiting Conditions*

### **GENERAL ASSUMPTIONS**

1. Unless otherwise stated, the value appearing in this appraisal represents the opinion of the Market Value or the Value Defined AS OF THE DATE SPECIFIED. Market Value of real estate is affected by national and local economic conditions and consequently will vary with future changes in such conditions.
2. The value opinion in this appraisal report is gross, without consideration given to any encumbrance, restriction or question of title, unless specifically defined.
3. It is assumed that the title to the premises is good; that the legal description is correct; that the improvements are entirely and correctly located on the property described and that there are no encroachments on this property, but no investigation or survey has been made.
4. No responsibility is assumed for matters legal in nature, nor is any opinion of title rendered. No right to expert testimony is included, unless other arrangements have been completed. In the performance of our investigation and analysis leading to the conclusions reached herein, the statements of others were relied on. No liability is assumed for the correctness of these statements; and, in any event, the appraiser's total liability for this report is limited to the actual fee charged.
5. No rights to expert witness testimony, pre-trial or other conferences, depositions, or related services are included with this appraisal. If as a result of this appraisal process Callaway and Price, Inc., or any of its principals, its appraisal consultants or experts are requested or required to provide any litigation services, such shall be subject to the provisions of the engagement letter or, if not specified therein, subject to the reasonable availability of Callaway and Price, Inc. and/or said principals or appraisers at the time and shall further be subject to the party or parties requesting or requiring such services paying the then applicable professional fees and expenses of Callaway and Price, Inc. either in accordance with the engagement letter or arrangements at the time, as the case may be.
6. Any material error in any of the data relied upon herein could have an impact on the conclusions reported. We reserve the right to amend conclusions reported if made aware of such error. Accordingly, the client-addressee should carefully review all assumptions, data, relevant calculations, and conclusion within 30 days of delivery of this report and should immediately notify us of any questions or errors.
7. The market value reported herein assumes that all taxes and assessments have been paid and assumes a fee simple interest unless otherwise reported. The body of the report will define the interest appraised if it differs.



### ***General Assumptions & Limiting Conditions***

8. Neither all nor any part of the contents of this report (especially any conclusions, the identity of the appraiser or the firm with which they are connected, or any reference to the Appraisal Institute or any of its designations) shall be disseminated to the public through advertising media, public relations media, news media, sales media or any other public means of communication without our prior written consent and approval.
9. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures which would render it more or less valuable. The appraiser assumes no responsibility for such conditions or the engineering which might be required to discover these factors.
10. Our opinion of value was based on the assumption of competent marketing and management regarding the property. If there is no competent marketing and management, then the market value opinion herein may not apply.
11. The forecasted projections contained herein are based upon current market conditions, anticipated short-term supply and demand factors, and continued stable economy. These forecasts are, therefore, subject to change with future conditions. The appraisers cannot be held responsible for unforeseen events that may alter market conditions subsequent to the effective date of this appraisal.
12. The global outbreak of a "novel coronavirus" known as COVID-19 was officially declared a pandemic by the World Health Organization (WHO). The pandemic and subsequent shutdown of the economy has had a negative effect on the national and local economy. The reader is cautioned and reminded that the data presented in this appraisal report is considered the most relevant as of the date of value, however in some cases occurred before this outbreak. Some segments of the market have been negatively impacted by the pandemic. The retail and tourism markets were negatively impacted during the early stages of the shutdown due to the loss of business activity. Florida recently moved into Phase 3 of reopening of the economy and retail activity appears to be picking up. Nonetheless, some negative impacts have occurred including business closures, rent abatements and vacancies. Given the unknown future impact that COVID-19 might have on the real estate market if the pandemic persists, we recommend that our client keep the valuation of this property under frequent review. Further, as such, less certainty and a higher degree of caution should be attached to our valuation than would normally be the case.



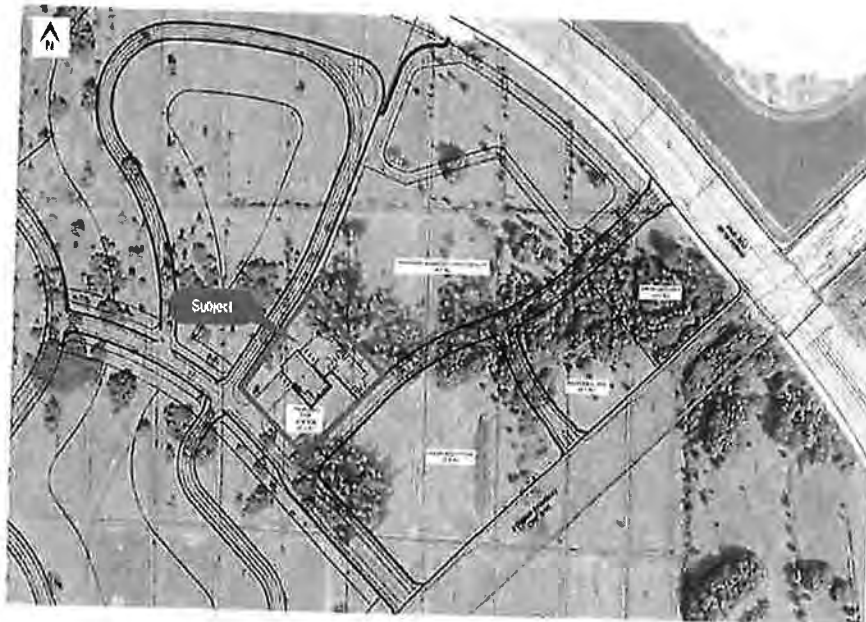
## ***General Assumptions & Limiting Conditions***

### **LIMITING CONDITIONS**

1. This appraisal is subject to the hypothetical condition that the Subject is subdivided with 2.00 acres and infrastructure for the commercial subdivision such as roads and water/sewer lines are at the Subject site according to the proposed design as of the date of value.
2. No extraordinary assumptions are part of this appraisal assignment.
3. As stated in this report, the existence of hazardous substances, including without limitation stachybotrys chartarum (mold), asbestos, polychlorinated biphenyls, petroleum leakage, or agricultural chemicals, which may or may not be present on the property, or other environmental conditions, was not called to the attention of, nor did the appraisers become aware of such during their inspection. The appraisers have no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraisers, however, are not qualified to test for such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect the value of the property, the value estimated is predicated on the assumption that there is no such proximity thereto that would cause a loss in value. We are unaware of very wet conditions that may have existed for days or weeks which are required to grow mold. No responsibility is assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.
4. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. The appraisers have not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since the appraisers have no direct evidence relating to this issue, possible noncompliance with the requirements of ADA in estimating the value of the property has not been considered.



**SUBJECT PHOTOS**



**SUBJECT AERIAL IN PROPOSED COMMERCIAL SUBDIVISION**



**SUBJECT AERIAL IN PROPOSED COMMERCIAL SUBDIVISION (CLOSE-UP)**



***Subject Photos***



**SUBJECT AERIAL AND APPROXIMATE LOCATION ON CURRENT PARENT TRACT**



**STREET VIEW LOOKING WEST AT CURRENT TERMINUS OF PINEDA BOULEVARD JUST WEST OF LAKE ANDREW DRIVE**



***Subject Photos***



**STREET VIEW LOOKING SOUTHWEST AT CURRENT TERMINUS OF STADIUM  
PARKWAY JUST SOUTH OF CUDDINGTON DRIVE**





## *Definition of the Appraisal Problem*

### **DEFINITION OF THE APPRAISAL PROBLEM**

#### Purpose, Date of Value, and Interest Appraised

The purpose of this investigation and analysis was to provide our opinion of the As Is Market Value of the Fee Simple Estate of the Subject Property as of February 2, 2022. The date of value is the date of the formal inspection.

#### Intended Use and User of Appraisal

The intended user of this appraisal is our client, Brevard County. The intended use is to provide an opinion of market value to assist the client in possible acquisition. The scope of work performed is specific to the needs of the intended user and the intended use. No other use or users is intended, and the scope of work may not be appropriate for other uses.

#### Legal Description

The legal description is lengthy and in the Addendum. It is provided by the client and was prepared by B.S.E. Consultants, Inc. on September 24, 2021.

#### Market Value

"As defined in the Agencies' appraisal regulations, the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. Buyer and seller are typically motivated;
- b. Both parties are well informed or well advised, and acting in what they consider their own best interests;
- b. A reasonable time is allowed for exposure in the open market;
- d. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

Source: *The Interagency Appraisal and Evaluation Guidelines, Federal Register, Volume 75, No. 237, December 10, 2010, Pgs. 61-62.*



## ***Definition of the Appraisal Problem***

### Fee Simple Estate

The Dictionary of Real Estate Appraisal, Sixth Edition 2015, by the Appraisal Institute, defines Fee Simple Estate on page 90 as follows:

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

### Hypothetical Condition

The Dictionary of Real Estate Appraisal, Sixth Edition 2015, by the Appraisal Institute, defines Hypothetical Conditions on page 113 as follows:

1. "A condition that is presumed to be true when it is known to be false."
2. "A condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results but is used for the purpose of analysis."

"Hypothetical conditions are contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis."

### Exposure Time

The Dictionary of Real Estate Appraisal, Sixth Edition 2015, by the Appraisal Institute, defines Exposure Time on page 83 as follows:

1. "The time a property remains on the market."
2. "The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal. Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market."

There is a requirement under Standard Two to report exposure time according to the latest USPAP publication. "Exposure Time" is different for various types of property under different market conditions.

We have reviewed the exposure time on the sales contained in the Sales Comparison Approach in this appraisal. Based on that data and the current market, it is our opinion that the Subject Property would have had an exposure time of approximately six to 12 months. Marketing time occurs after the date of value, but it also would be six to 12 months.





### **SCOPE OF WORK**

According to the 15th Edition of The Appraisal of Real Estate, page 75, "In the valuation process, the identification of the assignment elements leads directly into the determination of the scope of work of an assignment, i.e., the type and extent of research needed to solve an appraisal problem. Professional valuation standards place the responsibility for determining the appropriate scope of work in an appraisal assignment squarely on the shoulders of the appraiser. The scope of work for an assignment is acceptable if it leads to credible assignment results, is consistent with the expectations of parties who are regularly intended users for similar assignments and is consistent with what the actions of an appraiser's peers would be in the same or a similar assignment.

The first step in the appraisal process involved defining the appraisal problem which included the purpose and date of value, determining the interest being appraised, intended use and user of the appraisal, and identifying the real estate (legal description). This step also determined if the appraisal were subject to any extraordinary assumptions or hypothetical conditions. Please reference Limiting Condition 1 for the hypothetical condition that is part of this appraisal assignment. No extraordinary assumptions are part of this appraisal.

The next step involved the inspection of the Subject Property. The date of value is the date of the formal inspection. The inspection allowed us to understand the physical components of the Subject Property. In addition to the inspection of the Subject Property, we also began the data-collection process and, subsequently, an analysis of the factors that affect the market value of the Subject Property, including a market area analysis, neighborhood analysis, and property data analysis. We gathered and reviewed information from public records, Costar, LoopNet, Crexi, broker websites/marketing information, MLS, Mapwise, the appropriate zoning department, The Viera Company and information provided by the client.

The third step in the process was to determine the Highest and Best Use of the Subject Property as vacant. Through the Highest and Best Use analysis, we determined the issues that have an effect on the final opinion of value. To determine the Highest and Best Use, we relied on information obtained from the data-collection process.

The fourth step was the application of the Sales Comparison Approach to value. The Sales Comparison Approach is the most applicable valuation technique for vacant land. It has as its premise a comparison of the Subject Property with others of similar design, utility, and use that have sold in the recent past. To indicate a value for the Subject Property, adjustments are made to the comparables for differences from the Subject. This approach is most applicable for the Subject and most relied upon by market participants. Sales of similar sites were compared to the Subject. This is the only approach used so no reconciliation is necessary.

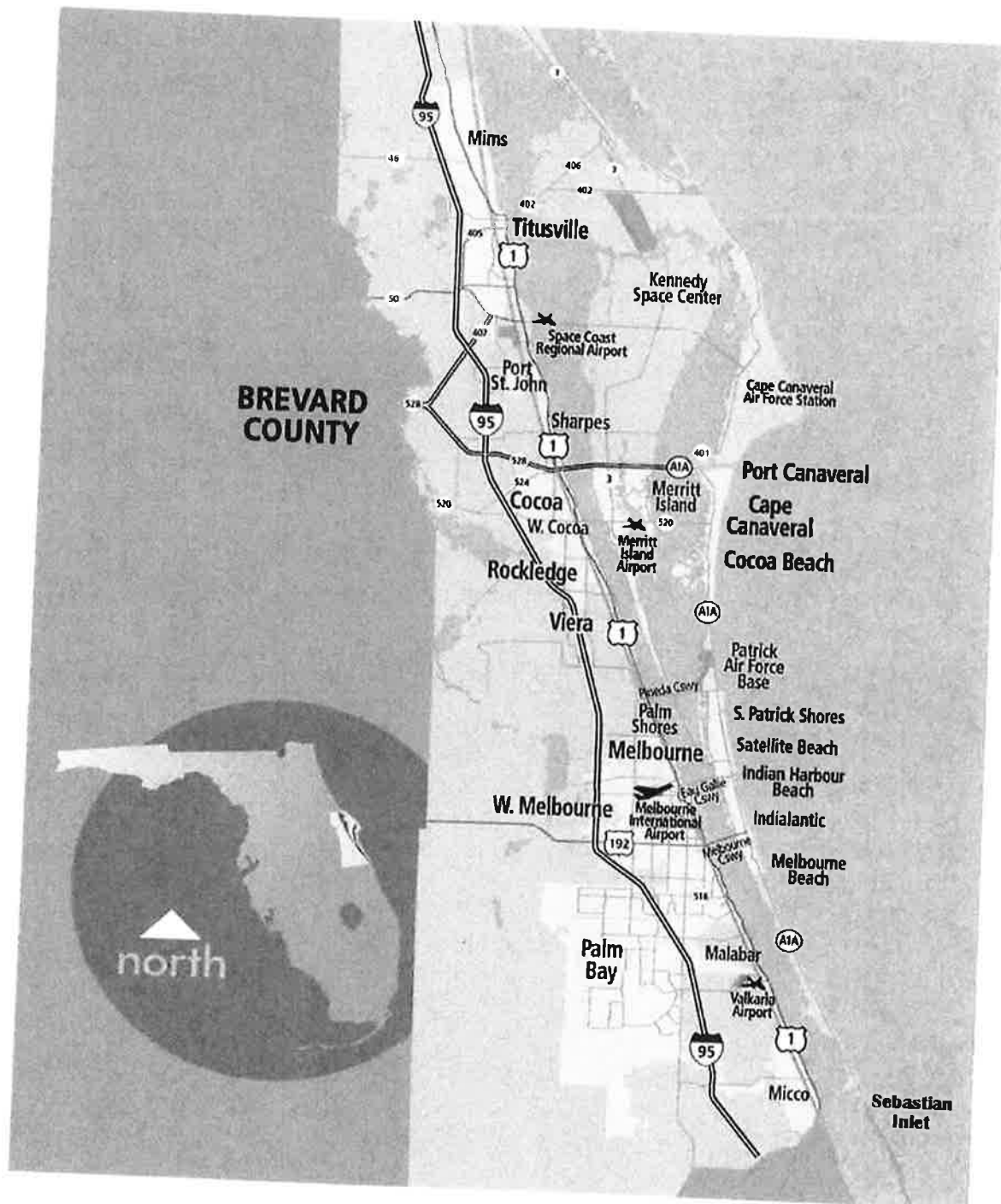


### Market Participant Interviews

We spoke with Mary Ellen McKibben with The Viera Company who verified Subject information. During our research we spoke with several buyers/sellers, and brokers/agents involved in the development and sale/purchase of commercial properties in the local market. The following is a summary of the persons interviewed and the relevant factors discussed. We spoke with local brokers including Jewel McDonald of JM Real Estate, Brian Lightle and Rob Beckner of Lightle Beckner Robinson, Inc., Kirk Von Stein and Alan King, Donna Ellis, and Mel Howard of National Realty of Brevard, and Colette Wood of CBRE. Many market participants feel that the market had been in a growth phase prior to the Covid-19 pandemic. Market activity slowed during the pandemic, but market activity has increased with the release of the vaccine. The participants we talked with continue to have long term positive outlooks for the Subject market as it has resumed its pattern of growth.



**BREVARD COUNTY AREA DATA**





Location and Geography

Brevard County, known as the "Space Coast" of Florida, extends 72 miles north to south along Florida's Atlantic coast and inland up to 20 miles east to west to the St. Johns River. This is more Atlantic Ocean frontage than any other county in the State of Florida. Elevation varies from six feet above sea level in Merritt Island to 26 feet above sea level in Cocoa, and from 23 feet above sea level in Melbourne to 14 feet above sea level in Titusville. Brevard County has an area of 1,557 square miles, which includes 1,018 square miles of land area and 538 square miles of water area. The county seat is the City of Titusville.

Brevard County is divided into three distinct economic areas as a result of its geography and length, referred to as North, Central, and South Brevard. The county is further divided by the Indian River and Banana River intracoastal Waterways which separate the mainland from the beachside communities.

The northern Brevard County consists of the City of Titusville, Scottsmeer, Mims, and Port St. John. The beachside area of northern Brevard County contains the Kennedy Space Center, Cape Canaveral Air Force Station, and the Canaveral National Seashore. Due to these governmental uses, there is no commercial or residential development in the northern beachside areas. This area is considered to be the least developed and the slowest growing area of the county.

The central region consists of the cities of Cocoa and Rockledge and the unincorporated Merritt Island area. Beachside cities include Cape Canaveral and Cocoa Beach. The beachside area in central Brevard County is the largest tourist draw in the county due to its location along the ocean, Port Canaveral, and its proximity to Orlando's theme park area.

The south Brevard County area is the largest and the fastest growing area of the county. This area includes the cities of Melbourne, West Melbourne, Palm Bay, Malabar, Grant/Valkaria, and the unincorporated Suntree/Viera area. The south beachside area includes the Towns of Melbourne Beach and Indian Lake and the cities of Satellite Beach and Indian Harbour Beach. The southern beachside areas are mainly developed with flagship hotels such as Double Tree, Hilton, Crowne Plaza and Radisson. Several high-rise condominiums are also located along the beach.

The barrier island area ranges in width from three miles at its widest to less than 300-feet at its narrowest point in the south beach area. Brevard County has two inlets from the Intracoastal Waterway to the Atlantic Ocean. These inlets are Port Canaveral in the northern portion of the county and Sebastian Inlet at the Brevard/Indian River County line in the southern portion of the county.

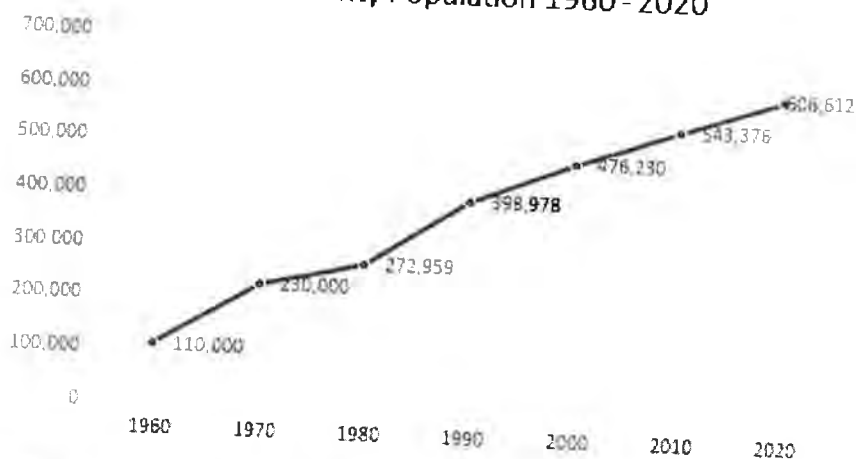


## ***Brevard County Area Data***

### **Population**

Brevard County is the tenth most populous county in Florida with a 2020 population estimate of 606,612 residents, per the U.S. Census Bureau. The 2020 population of Brevard County increased by 11.64% from the 2010 population. The Florida Office of Economic and Demographic Research projects that the Brevard County population will be 627,552 by 2025. Below is a chart which illustrates the history of population growth in Brevard County.

**Brevard County Population 1960 - 2020**



Brevard County has experienced steady growth since the 1960's. It saw a 106% population growth from 1960 to 1969 at the start of the space age. The next large population boom came from 1980 to 1990 with a 46% increase. The population from 1990 to 2000 grew by 19%, and the population from 2000 to 2010 grew by 14%.

The most populous cities in Brevard County include Palm Bay, Melbourne and Titusville. Palm Bay had a 2020 population of 119,760. Melbourne had a 2020 population of 84,678. Titusville had a 2020 population of 48,789.

### **Demographics**

The racial composition of Brevard County's population is 83.2% White, 10.8% Black or African American, 0.5% American Indian and Alaska Native, 2.6% Asian, 0.1% Native Hawaiian and Other Pacific Islander, 2.8% Two or More Races, 10.9% Hispanic or Latino and White along, not Hispanic or Latino 73.8%. 8.5% of the population was foreign born from 2015 to 2019.

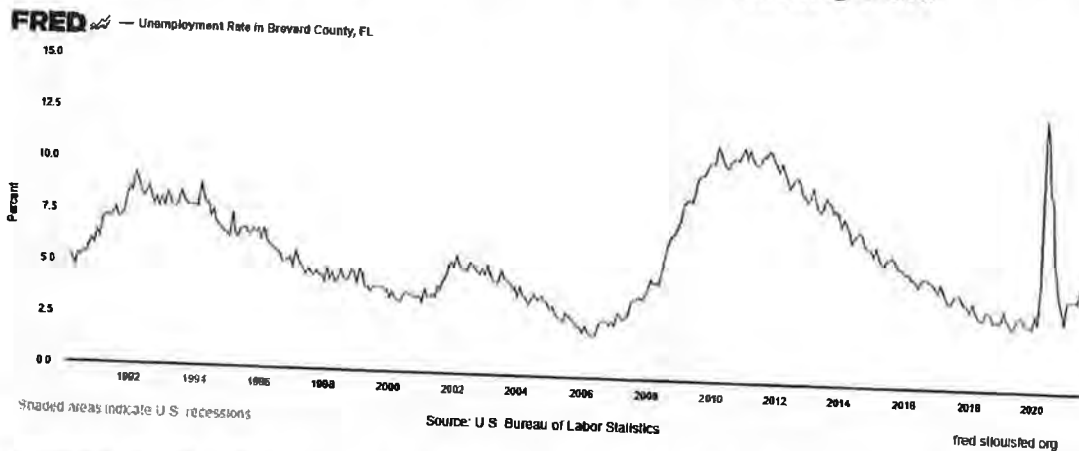
The median household income from 2015-2019 for Brevard County is \$56,775 which is slightly more than the median of Florida which is \$55,660. 9.4% of persons in Brevard county are living in poverty which is slightly lower than the Florida average of 12.7%.



## Brevard County Area Data

### Employment

The private sector continues to help offset the retirement of the space shuttle fleet at NASA. According to the Bureau of Labor Statistics, the unemployment rate in Brevard County was as low as 2.7% in December 2019 which is down from 11.8% during January 2010. Job growth has been strong in Brevard County, but the arise of the Covid-19 outbreak recently increased unemployment. However, the unemployment rate has continued to recovery, due to local job growth. The current unemployment rate in Brevard County as of October 2021 is 3.7%. Due to the Covid-19 pandemic, the April 2020 spiked to 12.9%, but it has since improved. Brevard County's historical unemployment rate is shown in the following chart.



According to the February 2017 report by the state's Department of Economic Opportunity, the number of people working in Brevard County rose to 254,211, a nearly 11,000 increase from a year earlier. The area's labor force also jumped to 267,459 in that period. That's close to 10,500 more people in the local labor pool than were in it last year. The number of people not working was 13,258, slightly fewer than were unemployed a year ago. The biggest job sector increases over the year in Brevard came in Construction (2,900/8.7%), Manufacturing (1,600/7.4%), Education and health (1,800/5.2%), Leisure and hospitality (1,100/4.2%) and Service producing (5,200/3%). According to the Bureau of Labor Statistics, Brevard County recently ranked second for the fastest job growth in the United States. Brevard County's job growth was detailed in a Wall Street Journal Article in February 2017. The Milken Institute ranks the Palm Bay-Melbourne-Titusville Metropolitan Statistical Area (MSA) as #2 on the 2021 Best Performing Cities Index (BPCI) emphasizing jobs, wages, innovation, and high-tech growth. Propelled by strong wage and job growth, the Palm Bay-Melbourne-Titusville Metropolitan Statistical Area (MSA) rose eight ranks from 2020's index, which placed the region at #10.

The major private sector employers in Brevard County include Harris Corporation, Health First, United Space Alliance, Wuesthoff Health System and Northrop Grumman. Other employers include Space X, Cape Canaveral Air Force Station, Patrick Air Force Base, Lockheed Martin, Rockwell Collins, DRS Technologies, Embraer





## Brevard County Area Data

and Intersil. Brevard County is known for its high-tech workforce. According to The Brookings Institution, Brevard County has the largest share of science, technology, engineering and math-related jobs in Florida. The private sector helped absorb several high-tech jobs after the reduction of NASA's operations. United Launch Alliance and Space X have been actively launching rockets from Cape Canaveral. There were 30 rocket launches in Brevard County during 2020. These launches are for communication satellites and supplies to the International Space Station. Several major employers are expanding in the area. Per the Florida Office of Economic and Demographic Research, the breakdown of employment by industry and average annual wage per industry in Brevard County for 2018 is shown below. It is compared to Florida averages.

### Average Annual Employment, % of All Industries, 2018 preliminary

All Industries	Brevard County
Natural Resource & Mining	0.1%
Construction	0.5%
Manufacturing	11.8%
Trade, Transportation and Utilities	17.0%
Information	1.2%
Financial Activities	3.7%
Professional & Business Services	14.0%
Education & Health Services	16.7%
Leisure and Hospitality	12.4%
Other Services	3.0%
Government	13.0%

### Employment by Industry

Florida
8,700,271
0.8%
6.2%
4.3%
20.4%
1.8%
6.6%
15.7%
14.8%
14.1%
3.2%
12.2%

### Average Annual Wage 2018 preliminary

All Industries
Natural Resource & Mining
Construction
Manufacturing
Trade, Transportation and Utilities
Information
Financial Activities
Professional & Business Services
Education & Health Services
Leisure and Hospitality
Other Services
Government

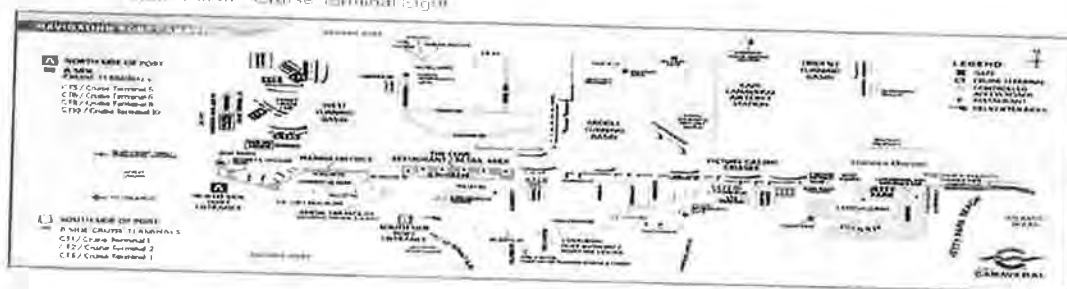
Brevard County	Florida
\$49,687	\$50,090
\$37,384	\$34,683
\$47,130	\$51,295
\$49,548	\$61,735
\$37,430	\$44,787
\$62,130	\$81,162
\$55,487	\$75,339
\$57,789	\$60,905
\$48,997	\$50,751
\$19,972	\$25,882
\$33,227	\$36,404
\$53,359	\$64,532

## Tourism

Brevard County historically has been a popular tourism site with points of interest including Port Canaveral, Kennedy Space Center (KSC), Brevard Zoo, Space Coast Stadium, Ron Jon Surf Shop, Cocoa Beach Pier and the beaches. Approximately 1.5 million tourists visit Brevard County each year and spend more than \$360 million. One of the main drivers of the tourism industry is Port Canaveral. It is a cruise, cargo, and naval port in northern Brevard County. The port's close proximity and central location to South Florida and Orlando makes it the second busiest cruise port in the world. Port Canaveral has been named the "Best North American Homeport" in the 2015's Cruise Critic U.S. Editors' Picks Awards. Port Canaveral was expanding prior to the 2020 Pandemic. Below is a list of recent and ongoing expansion projects at the Port.

### Recent/current developments include:

- \$110 Million New Cruise Terminal One
- \$150 Million New Cruise Terminal Three
- \$18 Million Renovation - Cruise Terminal Five
- \$35 Million Renovation - Cruise Terminal Ten
- \$2 Million Renovation - Cruise Terminal Eight





## ***Brevard County Area Data***

The tourism industry in Brevard County had been strong prior to the Pandemic. According to the Space Coast Office of Tourism, Brevard County collected \$12.82 million during 2016 from its 5% Tourist Development Tax on hotels and other short-term rentals. That figure is up 13.6% from the \$11.29 million collected during 2015. As a result, several new hotel projects have been constructed recently.

### **Transportation**

Interstate 95 provides rapid access through the western portions of the county, as it runs west of the mainland areas of Titusville, Cocoa, Rockledge, Melbourne and Palm Bay. There are 13 interchanges in the county from SR 46 at the north end, to Malabar Road at the south end. These traffic arteries represent the county's major east-west links.

U.S. Highway 1 generally runs west of and parallels the Indian River. It provides access through the eastern portions of the mainland areas of Titusville, Cocoa, Rockledge, Melbourne, and Palm Bay. Highway A1A runs west of and generally parallels the Atlantic Ocean. This road provides access through all the beachside communities in south and central Brevard.

Other north/south thoroughfares with significant traffic counts in the central and south Brevard areas include Wickham Road, Babcock Street, Minton Road (turns into Wickham north of New Haven Ave), South Patrick Drive and Courtenay Parkway. Starting at the northern portion of the county, east/west highways that provide access to Orlando include SR 46, SR 50, SR 528-toll, SR 520 and U.S. Highway 192.

There are six causeways that link the barrier island with the mainland. These include (from north to south) State Road 405 (Nasa Causeway) in the north area of the county, State Roads 528 (Bennett Causeway) and 520 (Merritt Island Causeway) in the central portion, and State Roads 404 (Pineda Causeway), 518 (Eau Gallie Causeway) and U.S. Highway 192 (Melbourne Causeway) in the south area. SR 405 to the north serves as an entrance to the Kennedy Space Center, and there is no access to the beaches from this causeway road.

The St. John's Heritage Parkway was recently completed in several areas and provides improved travel for southwestern Brevard County in Palm Bay and Melbourne. The first phase was opened January 2015. The second phase opened during fourth quarter 2017. The parkway recently added two new interchanges with I-95. One is located at Micco Road, and the other is located at Ellis Road.

Brevard County is served by the Orlando Melbourne International Airport, which is located in the central portion of the City of Melbourne. It covers 2,800 acres and has three asphalt runways. The airport provides commercial passenger and cargo service, as well as general aviation. The airport currently provides only limited services by Allegiant Air American Eagle, Delta, Elite Airways, and TUI Airways. The limited service by major carriers is attributable to a greater availability of flights and generally lower fares offered by the Orlando International Airport. However, the





## ***Brevard County Area Data***

Orlando Melbourne International Airport is building a new \$72 million terminal that is planned to open during March 2022. It expects 150,000 more passengers with the completion of the new terminal. The expansion will be 86,000 square feet and include new gates, restaurants and shops and welcome center. The new terminal is mostly to support the opening of international, transatlantic flights via TUI Airways. The expansion will add to the airport's \$3 billion annual economic impact to the Space Coast.

### **Health Services**

Brevard County is served by several hospitals including from the Jess Parrish Memorial Hospital in Titusville, the Wuesthoff General Hospital in Rockledge and Melbourne, Holmes Regional Medical Center in Melbourne, Health First Palm Bay Hospital and Health First Viera Hospital.

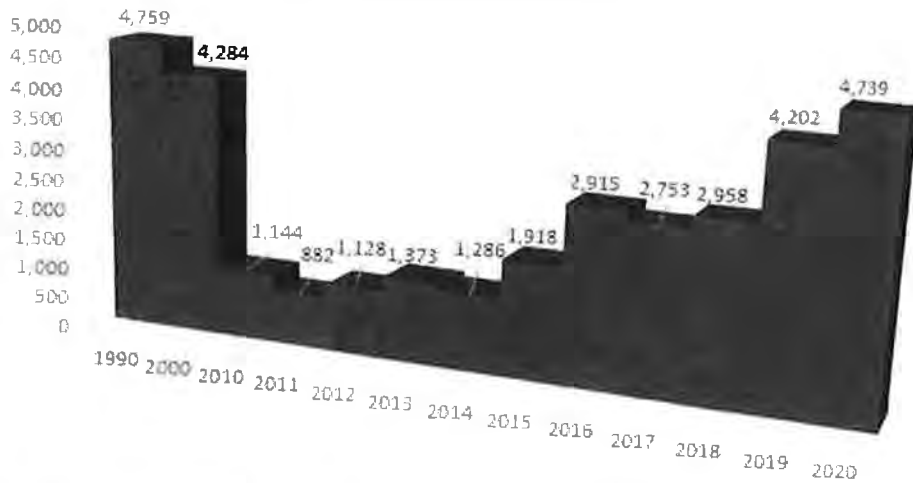
### **Education**

Brevard County has several public elementary schools, middle schools and high schools that serve the population. Several private schools and charters schools are also located in the area. According to *Florida Department of Education, 2017*, Brevard Schools ranked among the top districts in Florida and received an A grade. Higher education includes the Florida Institute of Technology (FIT), Eastern Florida State College and a University of Central Florida Satellite Campus. Florida Institute of Technology has its campus in Melbourne and has a total enrollment of 6,631 students. Eastern Florida State College has four campuses in Titusville, Cocoa, Melbourne, and Palm Bay. It has a total enrollment of 15,593 students.

### **Brevard County Housing Market**

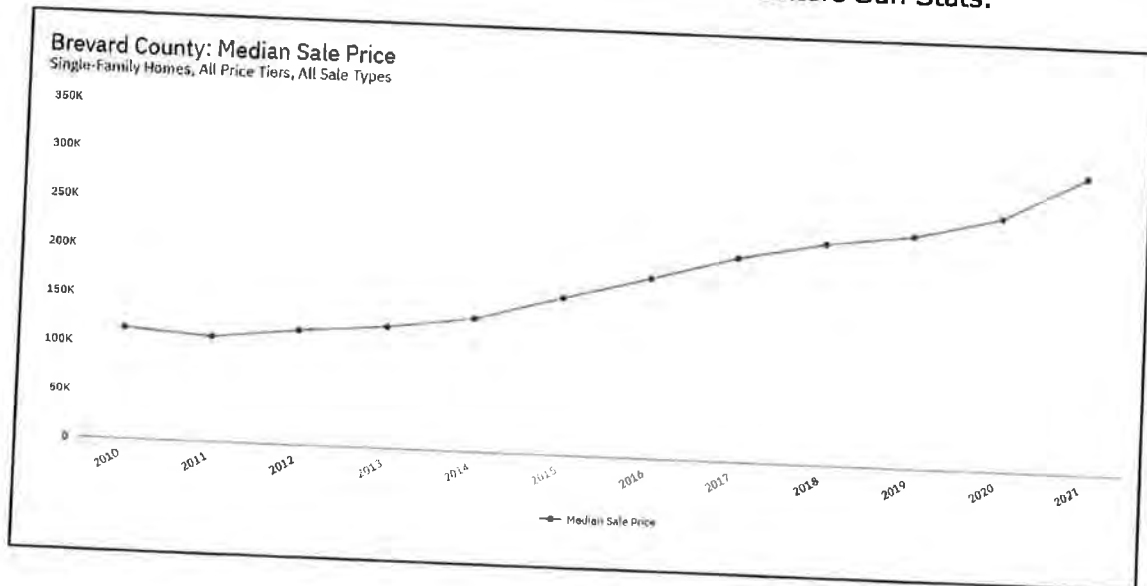
According to the U.S. Census Bureau, Brevard County had 282,833 housing units as of 2019. Persons per household were 2.51. Owner-occupied housing unit rate from 2015-2019 was 74.3%. The following chart shows historical trend in housing permits in Brevard County. Data was provided by the U.S. Census Bureau.

**Brevard County Housing Permits Issued**



As can be seen, construction activity was low during the recession, but it has improved recently. 2,915 housing permits were issued during 2016 and 2,753 were issued during 2017, 2,958 were issued during 2018, 4,202 building permits were issued during 2019, and 4,739 building permits were issued during 2020 as compared to the low of 882 during 2011. Building permits issued for housing in Brevard County increased 42% from 2018 to 2019 and 13% from 2019 to 2020.

The median sale price of single-family homes from 2010 to 2021 is shown in the following chart. This data was compiled using Florida Realtors Sun Stats.





### ***Brevard County Area Data***

The median sale price for median single-family homes in Brevard County has been improving. The following chart illustrates the following data.

Year	Median Sale Price	% Change Y/Y
2021	\$305,000	17.1%
2020	\$260,368	9.0%
2019	\$238,875	4.8%
2018	\$228,000	8.6%
2017	\$210,000	13.2%
2016	\$185,500	14.5%
2015	\$162,000	18.2%
2014	\$137,000	9.6%
2013	\$125,000	6.2%
2012	\$117,750	9.0%
2011	\$108,000	-5.7%
2010	\$114,480	-8.4%

### **Conclusion**

Brevard County has recently seen robust job growth. According to the Bureau of Labor Statistics, Brevard County recently ranked second for the fastest job growth in the United States. Major employers are expanding in the area. The population has seen steady growth. New construction in the residential and commercial markets is occurring. The median sale price for single family homes has improved each year since 2011. Long term outlooks for the tourism industry remains strong, despite the recent pandemic. Port Canaveral has expanded recently, and the Orlando Melbourne International Airport is also expanding. The area has adequate infrastructure for the population. Shopping, schools, hospitals, recreation, and employment opportunities are available. Overall, the area has recovered from the recession and is currently in a growth phase. The local and national economies recently struggled, due to the outbreak of Covid-19, but Brevard County's unemployment rate has recovered in 2021 and has normalized to pre-pandemic levels.





### Neighborhood Characteristics

The neighborhood is comprised of portions of Viera, Suntree, North Melbourne and Palm Shores. As of the 2010 census, Viera East had a population of 10,757 while Viera West had a population of 6,641. Melbourne had a 2019 population of 83,029 which is an 8.9% increase from the 2010 population. The Town of Palm Shores had a population of 1,226 during 2019 which is a 483.81% increase from the population during 1990 which was 210. The development of Viera, which first began in 1990, has positively affected this area. The Viera Company, a subsidiary of Duda and Sons, has donated and sold several parcels of their former Cocoa Ranch near Interstate 95. As a result, the area has turned into a mix of land uses, including a variety of housing types, offices, medical and industrial parks, shopping centers and recreational facilities. Donations and new development are still ongoing. Due to this new development, the area has become one of the more affluent locations in Brevard County. The neighborhood is approximately 80% built out. Uses are comprised of 60% residential, 20% commercial, 10% industrial and 10% institutional.

### Major Neighborhood Arteries

The major north-south thoroughfares through the Subject neighborhood are U.S. Highway 1, Interstate 95 (I-95), Stadium Parkway and Murrell Road. U.S. Highway 1 is a four-lane divided highway, which provides north/south access along the eastern boundary along the Indian River. This roadway was the first north/south arterial within the Subject neighborhood and thus is where a majority of the early development occurred. The neighborhood has two interchanges with Interstate 95. These interchanges are the Pineda Causeway (SR 404) and Wickham Road. A future interchange is also planned at Viera Boulevard and is currently under construction. Stadium Parkway is located west of Interstate 95 and turns into Fiske Boulevard north of Interstate 95. It intersects with Wickham Road to the south and contains entrances to residential subdivisions and commercial uses. Murrell Road is a similar roadway and is located east of Interstate 95. Lake Andrew Drive is located west of Interstate 95 and intersects with Wickham Road in Viera. It provides access to The Avenue at Viera, a major shopping destination, north of Wickham Road and residential subdivisions south of Wickham Road. It was recently extended south to connect with the Pineda Causeway extension west of Interstate 95 where a Costco just opened in December 2021. Lake Andrew Drive was also recently extended north to connect with Viera Boulevard. Stadium Parkway is currently in the process of completing connection with Pineda Boulevard (Pineda Causeway extension), and is planned to be extended further south of Pineda Boulevard.

The major east/west thoroughfares in the neighborhood are Wickham Road, which also runs north/south, Viera Boulevard and Pineda Causeway. Wickham Road is an asphalt-paved four lane divided highway connecting I-95 with southern portions of the City of Melbourne. Along this roadway are many of the neighborhood commercial shopping centers and entrances to the town of Suntree. Viera Boulevard connects U.S. Highway 1 and travels over Interstate 95 and connects with Stadium Parkway. An interchange was recently completed at the intersection of Viera Boulevard and I-



## ***Neighborhood Data***

95. Pineda Causeway is a four-lane arterial connecting I-95 with SR A-1-A. It was extended in 2011 to have an interchange with Interstate 95. It is planned to wrap around the western extents of Viera and connect with Wickham Road via Pineda Boulevard. Construction of this extension is currently underway.

Pineda Causeway is one of only three causeway roads in south Brevard County that span the Indian and Banana Rivers. This is the nearest causeway. Eau Gallie Causeway (S.R. 518) is approximately seven miles to the south, and the Merritt Island Causeway (S.R. 520) 12 miles to the north.

### Neighborhood Development

The commercial and residential markets are both in a growth phase. New construction is occurring in both sectors.

The neighborhood comprises three MLS sections known as MLS 216 - Viera/Suntree N. of Wickham, MLS 217 Viera West of I-95, and MLS 218 - Suntree S. of Wickham. From February 2021 to February 2022, the median sale price for single family homes in these sections ranged from \$370,000 to \$563,750. This is a change from 15% to 21% from the prior year. The residential market has been in a growth phase as new residential construction is occurring. Values have increased but are overall stabilizing more recently.

Office development is located along Wickham Road, Murrell Road, U.S. Highway 1, Spyglass Hill Road, and Suntree Boulevard. A number of new buildings were added to the stretch of Wickham Road during the "boom years". These include Spyglass Office Park, Bedford Drive, Space Coast Credit Union Offices, and Suntree Office Complex.

Tricon Development of Brevard built an 80,000 square foot Class A office building known as Riverview Tower at the corner of Suntree Boulevard and U.S. Highway 1. The property was built in 2016 and has the first floor as retail and the remaining four floors as office. The property was delivered in Fourth Quarter 2016 and has achieved a stabilized occupancy since completion of construction. Asking rental rates are \$18.75 to \$25.00 per square foot NNN.

The first phase of the Viera Heath Park by Health First has been completed. Phase One included a two-story 75,000-square foot Pro Health & Fitness Center and a medical office building to offer diagnostic, wellness and therapeutic services. Also, the Viera Hospital opened early 2011. This hospital includes 100 all-private hospital bedrooms and an emergency room. The Viera Hospital is owned and operated by Health First and the location is just west of I-95 on Wickham Road. This hospital anchors the medical users for Viera West.





## Neighborhood Data

Suntree Internal Medicine purchased 24 acres in December 2012 for \$2,000,000 to build Suntree Viera Professional Park. The 'Medical City' campus site was completed in late 2015. This project was developed by the Hardoon family. There are five main phases in Brevard Medical City. Phase One is completed and is a 31,000-square foot building which is the new home for Suntree Internal Medicine. The second section of Phase One is a 15,000-square foot diagnostic center equipped with MRI facilities. Phase Two is the office condominium buildings. The office condominiums total 46,000 square feet. Units range in size from 1,985 to 12,500 square feet. Three buildings are 12,500 square feet with one containing 8,000 square feet. Vanilla shell space is selling from \$177 to \$207 per square foot. Several units have already sold. Future phases are planned for a 90-bed HUD-financed assisted living facility and age restricted apartments. A strip retail project known as The Pineda Landings was developed next to the medical campus during 2015. The project is anchored by The Fresh Market. A 0.89-acre outparcel to this retail project sold for \$895,000, or \$23.09 per square foot, during January 2016. A Zaxby's was built on it after the sale. A 0.91-acre outparcel to this project sold for \$825,000, or \$20.81 per square foot, during March 2017. A dentist office was built on this site after the sale. A 0.93-acre outparcel within this project sold for \$900,000, or \$22.22 per square foot, during June 2018. A Starbucks was constructed on this site after the sale. Two of the outparcels of this project on Wickham Road remain undeveloped. However, only one outparcel remains unsold. The newest outparcel sale was 1.08 acres and sold for \$950,000 (\$20.19/SF) during September 2021. The buyer is Vystar Credit Union.



The neighborhood is also home to several big box retailers including Target, Walmart, Hobby Lobby, Pier 1 Imports, and Ross who opened locations from 2002 to 2004 at the northwest and southwest quadrant of Wickham Road and Interstate 95. Wickham Road is the main retail destination for the neighborhood. The Boardwalk at Suntree along Wickham Road opened in November 2006 with a Crispers Restaurant, Martini Bar, Sushi Restaurant, and an Italian Restaurant. The space also features a large two-story Regions Bank building. Wickham Road is densely developed with medium and high-intensive commercial uses that include fast-food and dine-in restaurants, gas/convenience stores, department store and grocery-anchored strip centers, discount retailers, offices, apartment projects, and business and professional service establishments. ALDI began to occupy a portion of the existing shopping center on Wickham Road known as Promenade Shoppes of Suntree during 2021. A new Wawa was developed in 2016 at the northeast corner of Pineda Causeway and Wickham Road by Mathew's Development. The site was purchased as vacant land in 2015 for \$1,230,000 and contained 2.99 gross acres. Wickham Road is one of the most heavily traveled roads in the south county area. A majority of growth along Wickham Road



## ***Neighborhood Data***

occurred in the previous 10 years, due largely to the emerging Town of Viera located at the I-95 interchange. Space Coast Association of Realtors built a new office location at the northeast corner of Wickham Road and Pineda Plaza Way on a 3.04-acre site that they purchased for \$7.93 per square foot during March 2017. A 14.23-acre parcel sold to two different buyers from one seller at the southwest corner of Wickham Road and Constellation Drive during June 2015 and December 2015 for a combined sale price of \$2,725,000, or \$4.40 per square foot. The property was developed in 2016 with a Dollar Tree and Goodwill retail project and a Race Trac gas station at the hard corner. New retail construction is still occurring along North Wickham Road. The Shoppes at Baytree was completed in 2018 near the corner of North Wickham Road and Baytree Drive. It contains 24,200 square feet of strip retail. The owner was able to prelease 60% of the space and the project is now stabilized. The vacant space has been listed for lease for \$26.00 to \$28.00 per square foot NNN.

The Avenue at Viera is located in West Viera and opened in 2004. It is an open-air mall that contains over 100 shops/restaurants and a multiplex movie theater. It is occupied by several nationally known restaurant chains and department stores. Several outparcels are still being developed with national tenants along Lake Andrews Drive, including a Total Wine, Mattress Firm and Chipotle which were built in 2013. A Home Goods and TJ Max were opened in 2014. A Buffalo Wild Wings was built along this roadway in late 2015 and an Outback was built in 2016 along this roadway. Lake Andrews Drive in between Wickham Road and Judge Fran Jamieson Way is now virtually fully built out with several national retailers. Most of this new build-out occurred from 2014 to 2017. The newer users on this stretch of roadway are A Culver's restaurant, Aspen Dental anchored strip center, and 7-11 gas station which were all recently completed in 2019. Walk-On's Sports Bistreaux opened during 2021 and is located on Napolo Drive behind the Outback. An ACE Hardware is currently under construction at the northeast corner of Stadium Parkway and Porada Drive. The owner purchased the 1.60-acre site for \$1,100,000 (\$15.75/SF) during December 2020. The ACE Hardware is projected to open during June 2022. A new Costco opened just west of I-95 on Pineda Causeway during December 2021. New development is projected to continue to fill in the southern sections of Viera West.

Other new retail construction in West Viera includes the Publix at the corner of Viera Boulevard and Stadium Parkway which opened in 2012. A Chase Bank and McDonald's have followed the construction of the Publix, and more recently a Starbucks was built in 2020 next to the Chase Bank. The new interchange has encouraged new development on both the east side and west side of Viera Boulevard. A new CubeSmart self-storage facility, Mister Car Wash, Goodwill, and Texas Roadhouse were built from 2019 to 2020 east of I-95 at Viera Boulevard And Star Rush Drive. A Cumberland Farms is planned at the northwest corner of this same intersection. West of I-95 on Viera Boulevard, A Chick-fil-A was built during 2020, and a Wawa is planned at the southeast corner of Stadium Parkway and Viera Boulevard. This new development is shown on the following maps.





**Viera Master Plan Map**





## Neighborhood Data



The new Viera Boulevard interchange has also spawned the development of Borrows West which is a 115-acre commercial, residential, and retail project planned at the southwest corner of the Viera Boulevard and I-95 interchange. The project is envisioned to be an "urban streetscape" and bring economic growth to the area through development options such as corporate office park, campus, medical and professional office buildings, waterfront dining venues, retail, entertainment venues, hotel, and multi-family opportunities. The Viera Company extended Lake Andrew Drive north to connect with Viera Boulevard to accommodate this new development. Porada Drive was also added and connects Stadium Parkway and Lake Andrew Drive. Borrows West will serve as the entryway and neighborhood hub of Viera's future "Village 3," which is a 1,942-acre area beyond today's western terminus of Viera Boulevard at Duda Cocoa Ranch. Village 3 construction is not planned to begin for 15 years or longer. Current and projected population and development statistics for Viera are shown in the following exhibit.





## ***Neighborhood Data***

### **Residents:**

- Current: 27,000+
- Projected Upon Completion: 70,000+

### **Homes:**

- Current: 12,000+
- Projected Upon Completion: 31,000+

### **Commercial Space – mixed use, office and retail:**

- Current: 3+ M sq. ft.
- Projected Upon Completion: 7+ M sq. ft.

### **Employed/Jobs:**

- Current: 10,000+
- Projected Upon Completion: 25,000+

### **Businesses:**

- Current: 725+
- Projected Upon Completion: 1,000+

Other new development includes a 111-bed assisted living facility on 5.03 acres at the corner of Lake Andrew Drive and Porada Drive. This site was purchased in August 2020 and the project is currently under construction. This is just north of a 128-bed ALF project that was completed in 2021 along Veterans Way. A 17.31-acre site at Lake Andrew Drive and Willet Place was purchased during November 2020 for the development of 350 apartment units. A 5.89-acre site, just north of the Lexus dealership on the west side of I-95, was purchased during February 2020 for the development of a new Island Lincoln-Mercury dealership. A 1.60-acre site at the northeast corner of Porada Drive and Stadium Parkway was purchased in December 2020 for the development of an ACE Hardware. A 1.21-acre site at the northwest corner of Stadium Parkway and Veterans Way was purchased in May 2020 for the development of a car wash.

The commercial development has coincided with new residential development as well. The Venue at Viera is the Town of Viera's first affordable Senior Housing Community. It is currently under construction and is planned to contain 145 units. The site was purchased for \$2,175,000 (\$15,000/unit) during May 2020. The Pearl at Viera will contain 298 apartment units. It is currently under construction. This site was purchased for \$4,470,000 (\$15,000/unit) during January 2019. Centre Pointe Apartments was completed on Lake Andrews Drive across from the Avenue in 2019. The project contains 272 new apartment units. The 10.40-acre site sold for \$3,672,000 (\$13,500/unit) during October 2017. A similar sized apartment project known as Marisol Viera was completed in 2016 next to Centre Pointe. It contains 13.29 acres and was developed with 282 apartment units in 2016 after the land was purchased for \$2,679,000, or \$9,500 per unit, in March 2015. A new apartment project is also under construction east of I-95 on Wickham in Suntree. A 30.29-acre



## ***Neighborhood Data***

site was purchased for \$5,000,000 in March 2018. The buyer is currently developing the site with a 450-unit apartment project. The sale price equals \$11,111 per unit. Several new single-family subdivisions are also being developed in the neighborhood.

Other uses in the neighborhood include the Space Coast Stadium, the county's administration complex, The Harry T. and Harriette V. Moore Justice Center, the Brevard Zoo, and several golf courses. Major League Baseball's Washington Nationals recently vacated Space Coast Stadium and MLB spring training games will no longer be played there. However, the stadium has been renovated into a center for amateur baseball and softball by the U.S. Specialty Sports Association. USSSA broke ground on the renovations during spring 2017 and spent \$22 million on complex upgrades and Brevard County spent \$10 million. As part of the deal, USSSA has guaranteed 75,000 nights a year of hotel room rentals in Brevard tied to its events, a figure that will rise to 100,000 nights a year after three years. USSSA's guaranteed 100,000 room nights a year would generate \$500,000 a year in added tourist tax revenue based on an average room rate of \$100 per night. An example of new hotel development near the Space Coast Stadium is the development of the new Fairfield Inn & Suites by Marriott across from the Avenue Viera on Lake Andrews Drive. The 3.66-acre site was developed with a four-story 66,896 square-foot hotel in 2018.

The neighborhood also boasts several "A" rated schools by the School Board of Brevard County and the State of Florida. These schools include Ralph M. Williams, Jr. Elementary School which opened in 1999, Manatee Elementary School which opened in 2003 and Viera High School which opened in 2006. The Brevard County School Board is headquartered in Viera west of I-95.

Development becomes older and established along Wickham Road near Post Road. Eastern Florida State University and Wickham Park are located at the south end of the neighborhood. Eastern Florida State (EFS) is located at the intersection of Wickham Road and Post Road and was built in 1971. EFS Melbourne is one of four campuses for the college that encompasses 100 acres along Parkway Drive. The college has an enrollment of 25,000 students. Wickham Park is a 390-acre county park that offers lake swimming, fishing, camping, disc golf, and a newly constructed community center. The Brevard County Zoo is located just on the east side of I-95 just south of Wickham Road and features over 400 animals, representing 120 species. The Publix shopping center across the street from the college was built in 2000. A Home Depot just south of the Pineda Causeway was built in 2006.

Some pockets of industrial development exist along U.S. Highway 1 and the Florida East Coast Railway along with portions of Viera Boulevard. TerraCom built a 25,000 square foot data center along Holiday Springs Boulevard in 2013. They expanded and built an additional 41,212 square foot office building in 2015 along an additional lot with frontage along Viera Boulevard. The remaining areas of Viera Boulevard Commerce Park is raw land and undeveloped. However, 45.04 gross acres with this project successfully had its zoning and future land use changed from Planned



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### ***Neighborhood Data***

Industrial Park and Industrial to residential. The buyer purchased this site for \$1,150,000 in April 2015. The site has been developed with single family homes.

#### **Conclusion**

The neighborhood is an established area in close proximity to commercial services, major employers, schools, shopping, major highways, and recreation areas. The median income per household is above average for the county. The neighborhood is a desirable location in the county due to the new age of construction and quality of entertainment/shopping as well as its centralized location and good access to I-95. The Town of Viera will continue to positively affect the neighborhood and will remain a high-growth area that has the ability to attract national tenants and residents. The neighborhood is currently in a growth phase. The ultimate performance of the Subject neighborhood and its developmental uses will be dependent upon the continued growth of the national and local economies.



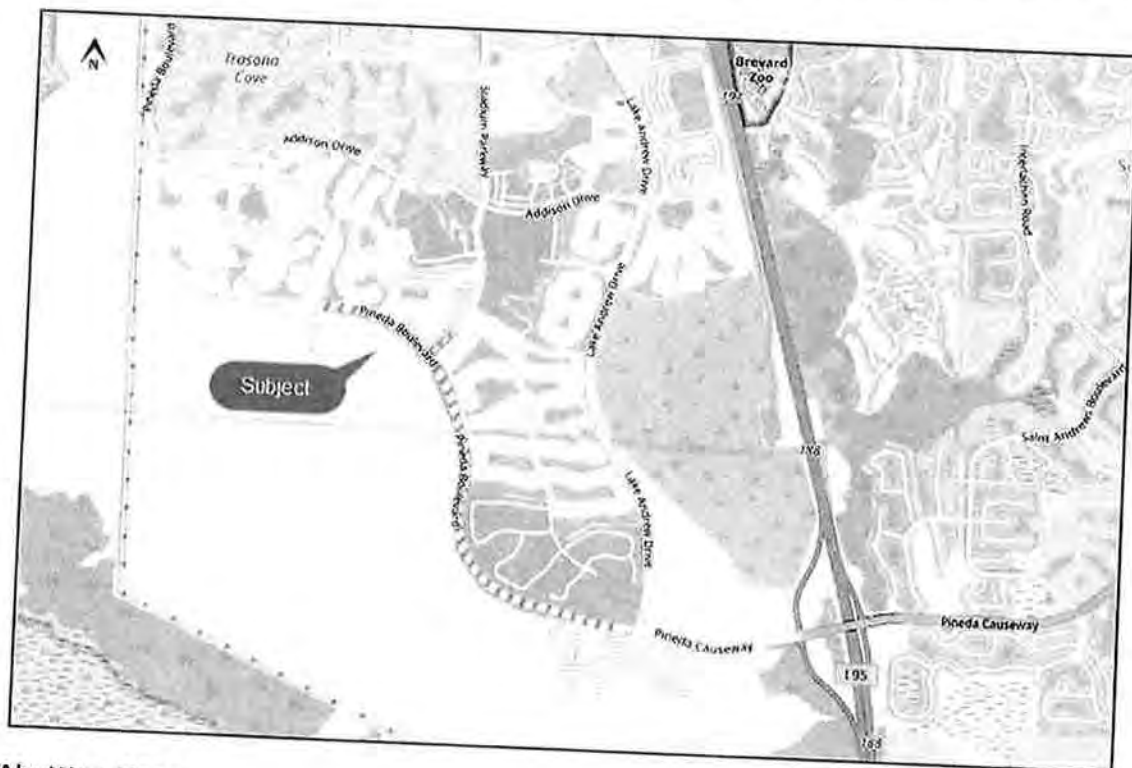


## Property Data

### PROPERTY DATA

#### Location

The Subject does not have a street address. It is currently landlocked with no developed road access (see hypothetical condition via Limiting Condition 1). It is currently part of tax account 2620413 and will be subdivided from this 82.43-acre parcel into a 2.00-acre parcel. The Subject will be located within a commercial subdivision known as Village Center at the southwest quadrant of Pineda Boulevard and Stadium Parkway in Viera, FL 32940, within Unincorporated Brevard County. Stadium Parkway is planned to be extended south of Pineda Boulevard. The Subject will be located at the corner of access roads within the Village Center which will connect with nearby Pineda Boulevard and Stadium Parkway. The Village Center is planned to be developed with an assisted living facility, office and two retail outparcels.



#### Abutting Uses

North	-	Single-Family Residential/Viera Elementary School
South	-	Vacant Land
East	-	Vacant Land/Single-Family Residential
West	-	Vacant Land



### Zoning

The Subject is PUD, Planned Unit Development, by Brevard County. It is within the DRI3, Development of Regional Impact for Viera, and is to be developed in accordance with the Development Order for the Viera Development of Regional Impact issued by Brevard County, Florida on November 13, 1990, and last amended and restated by Resolution 19-134 adopted by Brevard County on August 20, 2019, as described in that certain Notice of the Modification of a Development Order recorded on September 23, 2019 in Official Records Book 8545, Page 418, of the Public Records of Brevard County, Florida.

According to Mary Ellen McKibben, Director of Land Development with The Viera Company, the Subject can currently be used for any PUD use such as office, retail, light industrial, hotel, ALF and any other use approved in the PUD zoning. The Subject is planned for a fire station for Brevard County.

*Source: Brevard County Zoning and Mary Ellen McKibben.*

### Land-Use Plan

The Subject is in an area designated as DRI3, Development of Regional Impact (Viera), by the Comprehensive Land-Use Plan for Brevard County. The land-use plan and the zoning are consistent.

### Easements and Deed Restrictions

We have not been provided a title search for the Subject Property. Based upon our inspection of the property records, no adverse deed restrictions or easements were noted. The Subject will have access to off-site stormwater retention within the common area of Village Center, according to Mary Ellen McKibben. This common area retention will be developed by The Viera Company.

### Site Size, Shape and Access

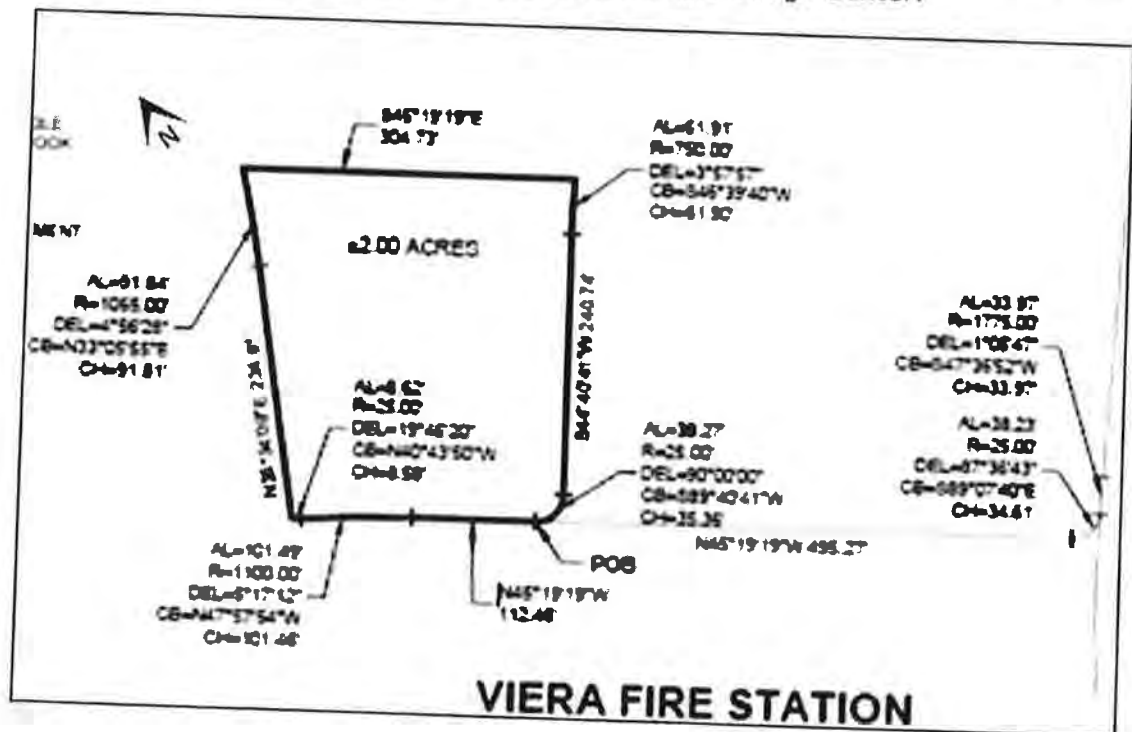
According to the survey/legal description provided by the client that was prepared by B.S.E. Consultants, Inc. on September 24, 2021 (see addendum), the Subject contains 2.00 acres (87,120 square feet). It is rectangular in shape.

The Subject will have frontage along three spine roads within the proposed commercial subdivision known as the Village Center. It will have a double corner location on these access roads, and according to Mary Ellen McKibben, the Subject's corner location has been identified as a potential signal location, when warranted, in the transportation network plan that is part of the Village 2 sketch plan approved by Brevard County. Projected traffic counts along these spine roads are unknown, but they will most likely be inferior to main frontage roads such as Stadium Parkway and Pineda Boulevard. It appears the Subject will have two total access points. One will be granted along its eastern boundary, and the second will be provided along its



## Property Data

southern boundary. According to Mary Ellen McKibben, The Viera Company will construct all infrastructure within the Village Center including access roads that will connect with Pineda Boulevard and Stadium Parkway. This infrastructure is planned to be completed by February 2023. The Subject's site size, shape and access are adequate for a variety of commercial development scenarios. The Subject is illustrated on the following survey and proposed site plan which shows spine roads, common area retention and planned uses within the Village Center.









## Property Data

### Flood Hazard Zone

The Subject Property lies within Flood Zone "X", according to the Flood Insurance Rate Map (Panel Number 12009C0505G, dated March 17, 2014) prepared for the National Flood Insurance Program of the U.S. Department of Housing and Urban Development (HUD). Flood Zone "X" indicates an area that is determined to be outside of a special flood hazard zone. The Subject is shown on the following flood map.



### Assessed Value and Taxes

Tax Account	Acres	Assessed Value	Assessed Value/SF	Taxes
2620413	82.43	\$308,610	\$0.09	\$330.66

The Subject is not currently subdivided and does not have its own tax account. It is currently part of tax account 2620413 which is being assessed as an 82.43-acre agricultural parcel. Additionally, the Subject is planned to be owned by Brevard County for a fire station and will be exempt from taxes. Taxes are due and payable March 1<sup>st</sup> of the year with a maximum discount of 4% for early payment in November. Assessed value is not representative of market value as it is based on mass appraisal technique.



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## ***Property Data***

### Property History

A title search was not provided by the client, nor did our office perform one. The Subject is currently under the ownership of A Duda & Sons, Inc. No sales of the Subject have occurred over the prior three years. The Subject is not listed for sale or under contract. Brevard County is planning to develop the Subject with a fire station.



**HIGHEST AND BEST USE**

The Dictionary of Real Estate Appraisal, Sixth Edition 2015, by the Appraisal Institute defines Highest and Best Use on page 109 as follows:

1. "The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity."
2. "The use of an asset that maximizes its potential and that is possible, legally permissible, and financially feasible. The highest and best use may be for continuation of an asset's existing use or for some alternative use. This is determined by the use that a market participant would have in mind for the asset when formulating the price that it would be willing to bid. (IVS)"
3. "The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future. (Uniform Appraisal Standards for Federal Land Acquisitions)."

To estimate the Highest and Best Use of the Subject, we have considered those uses which are legally permissible, physically possible, financially feasible, and maximally productive. Consideration was given to individual features of the land such as size, shape, location, access to roadways, and the availability of utilities. Consideration was also given to the surrounding land uses and the demand for property in the current real estate market.

**Conclusion – As Vacant**

It is our opinion that the Highest and Best Use, as vacant, of the Subject Property is for commercial development.

**Legally Permissible**

The Subject's zoning and future land use designations are consistent and permit commercial development such as office, retail, light industrial, hotel, assisted living facility. Commercial development is legally permissible.

**Physically Possible**

The Subject contains 2.00 acres and is level and clear of vegetation. It is currently agricultural pastureland. It is at the approximate grade of surrounding roadways and uses. The Subject is like nearby land that is already vertically developed. Its size and shape could accommodate commercial development. The Subject is currently landlocked. Please reference Limiting Condition 1. This appraisal is subject to the hypothetical condition that the Subject is subdivided with 2.00 acres and infrastructure for the commercial



### ***Highest and Best Use***

subdivision such as access roads and water/sewer lines are at the Subject site according to the proposed design as of the date of value. Commercial development is physically possible.

#### **Financially Feasible**

As previously noted in the Neighborhood Data section of this report, market conditions are good for both commercial and residential properties. The population has increased, and the unemployment rate has decreased. The overall economy is good, and this has positively affected the real estate market. The Subject is in a centralized and populated area. Rents and vacancy have improved in recent years, and net absorption has remained overall positive. New commercial and residential construction is occurring in the Subject market.

The Subject is in the high-growth/affluent area of Viera near other commercial development. It has a central location in a populated area and will be located within a commercial subdivision known as the Village Center. The nearby residential base has been expanding and will continue to demand commercial services. The Viera Company will bring all infrastructure to the site (Limiting Condition 1). The Subject will be like Viera Bouleyard Commercial Center III at the southeast quadrant of Viera Boulevard and Stadium Parkway which has infrastructure in place and is seeing commercial development occur. Commercial development is financially feasible.

#### **Maximally Productive**

The maximally productive use of the Subject Property is for commercial development.



### **LAND VALUE ANALYSIS**

According to the 15th Edition of The Appraisal of Real Estate on page 35, developing an opinion of land value can be considered a separate step in the valuation model or an essential technique for applying certain approaches to value, depending on the defined appraisal problem and on the highest and best use analysis. The relationship between highest and best use and land value may indicate whether an existing use is the highest and best use of the land.

An appraiser can use several techniques to obtain an indication of land value:

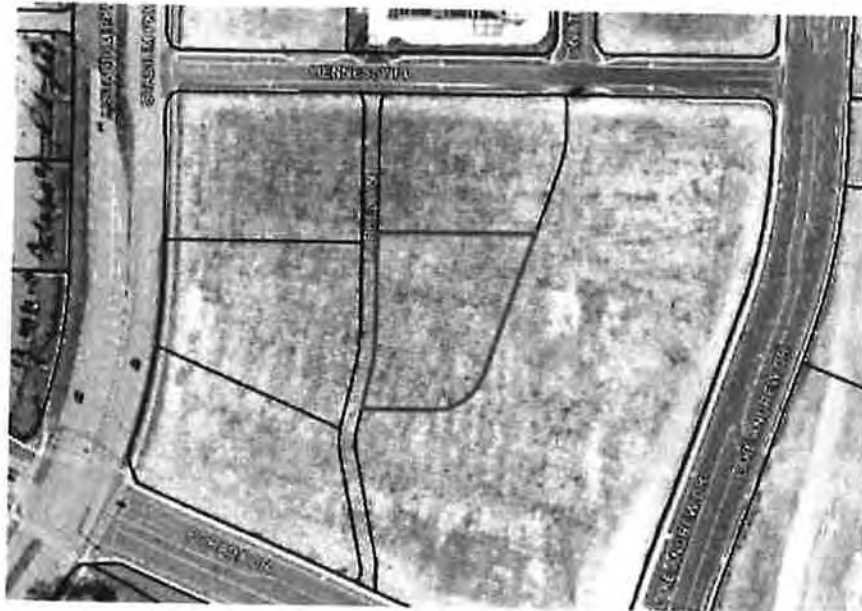
- Sales Comparison
- Extraction
- Allocation
- Subdivision Development
- Land Residual
- Ground Rent Capitalization

The most common way to develop an opinion of land value is by sales comparison. When few sales are available, however, or when the value indications produced through sales comparison need additional support, procedures like extraction or allocation may be applied. In the case of the Subject Property, the only approach used was the sales comparison approach.

To arrive at the As Is Market Value of the Fee Simple Estate of the Subject Property utilizing this approach to value, it was necessary to analyze sales of similar type projects. The sales analyzed are the best available for comparison. We placed an emphasis on sales in Viera that share similar secondary/access road frontage. Sites that have frontage along busier roadways such as Stadium Parkway a higher value indication. The comparable sales indicated a non-adjusted range from \$12.16 to \$13.91 per square foot and occurred from September 2021 to May 2020. The non-adjusted mean of the sales is \$12.99 per square foot. Details of each sale along with a location map are located on the following pages. A sales chart and discussion of factors requiring adjustment follow.



**Land Sale No. 1**



**Property Identification**

<b>Record ID</b>	1860
<b>Property Name</b>	Island Animal Hospital
<b>Address</b>	Lorkey Lane, Viera, Brevard County, Florida 32940
<b>Location</b>	East side of Lorkey Lane, one parcel south of Hennessy Place
<b>Tax ID</b>	3025779
<b>Legal</b>	Lengthy in file
<b>Twn-Rg-Sec</b>	25-36-33

**Sale Data**

<b>Grantor</b>	The Viera Company
<b>Grantee</b>	Birkbeck Coris, LLC
<b>Sale Date</b>	September 30, 2021
<b>Deed Book/Page</b>	9278/2368
<b>Property Rights</b>	Fee Simple
<b>Conditions of Sale</b>	Arm's Length
<b>Financing</b>	Cash to seller
<b>Sale History</b>	None in prior three years
<b>Verification</b>	Confirmed by Ryan Powell
<b>Sale Price</b>	\$685,000
<b>Cash Equivalent</b>	\$685,000





## ***Land Value Analysis***

### **Land Data**

<b>Zoning</b>	Zoning = PUD / FLU = DRI3
<b>Topography</b>	Level and Clear with no wetlands
<b>Utilities</b>	All available
<b>Shape</b>	Irregular
<b>Taxing Authority</b>	Brevard County (Viera)
<b>Assessed Value</b>	N/A
<b>Taxes</b>	N/A

### **Land Size Information**

<b>Gross Land Size</b>	1.220 Acres or 53,143 SF
<b>Front Footage</b>	Lorkey Lane;

### **Indicators**

<b>Sale Price/Gross Acre</b>	\$561,475
<b>Sale Price/Gross SF</b>	\$12.89

### **Remarks**

This is the sale of a 1.22-acre pad-ready lot within Viera Boulevard Commercial Center III within Borrows West. This site is located on Lorkey Lane which is a spine road within the commercial subdivision that connects with Hennessy Place and Porada Drive. It is not a heavily traveled commercial roadway. This commercial subdivision is located at the northeast corner of Stadium Parkway and Porada Drive, just south of Viera Boulevard and west of Lake Andrew Drive, near the I-95/Viera Boulevard interchange. The buyer is a veterinarian (Island Animal Hospital) who plans to build a new location at this site. They are permitted up to 7,600 SF of office development.





## Land Value Analysis

### Land Sale No. 2



#### Property Identification

**Record ID**

1847

**Property Name**

Venezia Wine Veranda

**Address**

Hennessy Place, Viera, Brevard County, Florida 32940  
South side of Hennessy Place in between Stadium  
Parkway and Lake Andrew Drive

**Location**

Part of 3020634 (to be subdivided)  
Lot 1, Block B, Viera Boulevard Commercial Center III,  
Plat Bk 69, Pg 44  
25-36-33

**Tax ID**

**Legal**

**Twn-Rg-Sec**

#### Sale Data

**Grantor**

The Viera Company

**Grantee**

RNK Viera, Inc

**Sale Date**

May 05, 2021

**Deed Book/Page**

9112/502

**Property Rights**

Fee Simple

**Conditions of Sale**

Arm's Length

**Financing**

Cash to seller

**Sale History**

None in prior three years

**Verification**

Confirmed by Ryan Powell

**Sale Price**

\$800,000

**Cash Equivalent**

\$800,000



## ***Land Value Analysis***

### **Land Data**

<b>Zoning</b>	PUD/DRI3
<b>Topography</b>	Level and clear
<b>Utilities</b>	All
<b>Shape</b>	Rectangular
<b>Taxing Authority</b>	Brevard County (Viera)
<b>Assessed Value</b>	N/A
<b>Taxes</b>	N/A

### **Land Size Information**

<b>Gross Land Size</b>	1.320 Acres or 57,499 SF
<b>Front Footage</b>	Hennessy Place; Lorkey Lane (to be constructed);

### **Indicators**

<b>Sale Price/Gross Acre</b>	\$606,061
<b>Sale Price/Gross SF</b>	\$13.91

### **Remarks**

This parcel was purchased for the development of a wine bar known as Venezia Wine Veranda. It is located on the south side of Hennessy Place across the street from the new Chick-fil-A and proposed Wawa. Lorkey Lane is an easement spine road that will connect Porada Drive and Hennessy Place and be located on the western boundary of this site. Hennessy Place is not a busy roadway and lacks traffic counts, but this site does have a corner location within the subdivision and is across the street from Chick-fil-A and a proposed Wawa.



**Land Sale No. 3**



**Property Identification**

<b>Record ID</b>	1844
<b>Property Name</b>	Walk-On's Sports Bistreaux
<b>Address</b>	8550 Napolo Drive, Viera, Brevard County, Florida 32940
<b>Location</b>	North side of Napolo Dr one parcel east of Lake Andrew Dr
<b>Tax ID</b>	3021783
<b>Legal</b>	Lengthy in file
<b>TwN-Rg-Sec</b>	26-36-09

**Sale Data**

<b>Grantor</b>	The Viera Company
<b>Grantee</b>	Renegade Diversified, Inc.
<b>Sale Date</b>	May 15, 2020
<b>Deed Book/Page</b>	8744/2335
<b>Property Rights</b>	Fee Simple
<b>Conditions of Sale</b>	Arm's Length
<b>Financing</b>	Cash to seller
<b>Sale History</b>	None in prior three years
<b>Verification</b>	Confirmed by Ryan Powell
<b>Sale Price</b>	\$1,424,500
<b>Cash Equivalent</b>	\$1,424,500



## ***Land Value Analysis***

### **Land Data**

<b>Zoning</b>	PUD/DRI3
<b>Topography</b>	Clear/Level/No wetlands
<b>Utilities</b>	All
<b>Shape</b>	Irregular
<b>Taxing Authority</b>	Brevard County (Viera)
<b>Assessed Value</b>	\$514,870
<b>Taxes</b>	\$6,833.94

### **Land Size Information**

<b>Gross Land Size</b>	2.690 Acres or 117,176 SF
<b>Front Footage</b>	Napolo Dr;

### **Indicators**

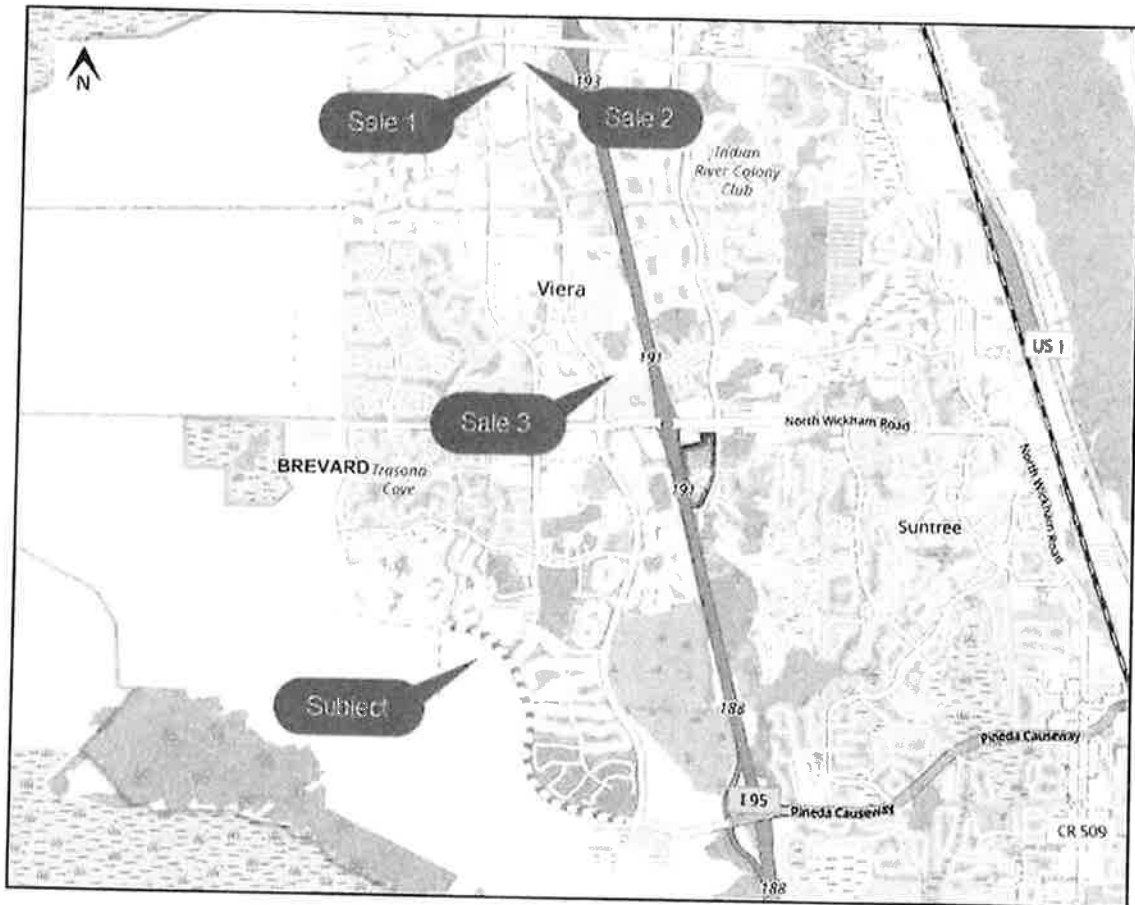
<b>Sale Price/Gross Acre</b>	\$529,554
<b>Sale Price/Gross SF</b>	\$12.16

### **Remarks**

This property was purchased for the development of a Sports Bar. Development began immediately after purchase and the restaurant opened in first quarter 2021. Napolo Drive lacks good commercial traffic counts like other commercial roadways in Viera. This is an interior site.



Vacant Land Sales Map





## Land Value Analysis

### Adjustment Chart

<b>Land Value Analysis</b> <b>Fire Station 49 - Viera</b> <b>SWQ Pineda Blvd &amp; Stadium Pkwy, Viera</b> <b>Callaway &amp; Price, Inc. Job # 21-82891</b> <b>Adjustment Chart</b>				
SALE #	Subject	1	2	3
C & P ID NO.		1860	1847	1844
ORB/PAGE		9278/2368	9112/502	8744/2335
SALE PRICE		\$685,000	\$800,000	\$1,424,500
PRICE/NET SF		\$12.89	\$13.91	\$12.16
PROPERTY RIGHTS		Fee Simple	Fee Simple	Fee Simple
ADJUSTMENT		-	-	-
FINANCING TERMS		Typical	Typical	Typical
ADJUSTMENT		-	-	-
CONDITIONS OF SALE		Arm's Length	Arm's Length	Arm's Length
ADJUSTMENT		-	-	-
ADJ. SALE PRICE		\$685,000	\$800,000	\$1,424,500
ADJ. PRICE/NET SF		\$12.89	\$13.91	\$12.16
DATE OF SALE		30-Sep-21	05-May-21	15-May-20
DATE OF VALUE	02-Feb-22			
TIME INTERVAL		0.34	0.75	1.72
MKT. COND. ADJ.		0.00%	0.00%	6.00%
ADJ. PRICE/NET SF		\$12.89	\$13.91	\$12.89
LOCATION	SWQ Pineda Blvd & Stadium Pkwy, Viera	Lorkey Ln, Viera	Hennessy Pl, Viera	8550 Napolo Dr, Viera
		0%	0%	0%
GROSS SIZE - ACRES	2.00	1.22	1.32	2.69
NET SIZE - ACRES	2.00	1.22	1.32	2.69
NET SIZE - SQ. FT.	87,120	53,143	57,499	117,176
		0%	0%	0%
SHAPE	Rectangular	Rectangular	Rectangular	Irregular
		0%	0%	0%
ACCESS / VISIBILITY	Corner / Non-Main Road	Interior / Non-Main Road	Corner / Non-Min Road	Interior / Non-Main Road
		5%	0%	5%
ZONING/FLU	PUD/DRI3	PUD/DRI3	PUD/DRI3	PUD/DRI3
		0%	0%	0%
UTILITIES	All	All	All	All
		0%	0%	0%
TOPOGRAPHY	Level/Clear	Level/Clear	Level/Clear	Level/Clear
		0%	0%	0%
TOTAL ADJUSTMENT		5%	0%	5%
ADJ. PRICE /NET SF		\$13.53	\$13.91	\$13.53



Discussion of Adjustments

We analyzed the Subject Property based on price per square foot of land area basis, as this is the most recognized unit of comparison in this market. All of the comparables were considered with regard to property rights appraised, financing, conditions of sale, time or market conditions, location, site size, shape, access/visibility, zoning, utilities and topography.

Property Rights Conveyed

The sales were transferred on a Fee Simple Estate basis. We are also unaware of any adverse deed restrictions or any other property rights limitations which would have affected the sales. Therefore, no adjustments are required for this factor.

Terms of Financing (Cash Equivalency)

The transaction price of one property may differ from that of a similar property due to atypical financing arrangements. In a case where favorable financing is established, a cash equivalency adjustment is often necessary. However, all of the sales analyzed herein involved either market terms or cash to Grantor. Therefore, no adjustments were made, nor any cash equivalency performed.

Conditions of Sale

Adjustments for conditions of sale usually reflect the motivations of the buyer and seller at the time of conveyance. Within the confirmation process, detailed attention was made to ensure the conditions of each sale. All sales were arm's length transactions, so no adjustment is required.

Time or Changes in Market Conditions

Market conditions generally change over time and may be caused by inflation, deflation, fluctuations in supply and demand, or other factors. The sales occurred from September 2021 to May 2020. Sale 3 is the oldest sale and occurred during inferior market conditions. Sale 3 is adjusted upward 6% for inferior market conditions. All other sales occurred during similar market conditions and require no adjustment.

Location

The sales are all located in the immediate area of the Subject in the Viera market. All sales have a similar location as the Subject and not adjusted.

Site Size

The Subject contains 2.00 acre of site area. The gross site size and net site size are the same for the Subject and all sales. The sales bracket the size of the Subject and



## ***Land Value Analysis***

range from 1.22 to 2.69 acres. Due to economies of scale, smaller sites typically display a higher unit indication while larger sites typically show a lower unit indication. The sales are all similar to the Subject in terms of size and not adjusted.

### **Access/Visibility**

The Subject will not have main road frontage. It will have frontage and access from secondary less traveled spine roads within a commercial subdivision. However, the Subject has a corner location on these spine roads and potential for a future signal at this corner. No sales have main road frontage and are similar to the Subject in this regard.

Sale 2 has a corner location within a commercial subdivision, similar to the Subject, and is across the street from the entrance to a Chick-fil-A and proposed Wawa. Sale 2 is not adjusted. However, Sales 1 and 3 are interior sites on spine roads that are not heavily traveled within commercial subdivisions. Sales 1 and 3 are adjusted upward 5% for this interior feature.

### **Zoning/Future Land Use (FLU)**

The Subject and all sales have the same zoning and future land use designations and were purchased and entitled for commercial development. No adjustment is warranted.

### **Utilities**

The Subject and all sales have all utilities available and are similar in this regard. No adjustment is required for this feature.

### **Topography**

The Subject and all sales are level, clear of vegetation and have no wetlands on site. As such, no adjustment is required to the sales for this factor.





## ***Land Value Analysis***

### Conclusion – Sales Comparison Approach

As can be seen on the comparable sales chart displayed earlier, the adjusted range of the sales is from \$13.53 to \$13.91 per square foot. The adjusted mean of the sales is \$13.66 per square foot, and the adjusted median is \$13.53 per square foot. After adjustments, the sales show a tight range of value for the Subject. Most weight is placed slightly above the adjusted mean and median indications of the sales.

Based on the previously analyzed data, it is our opinion that the As Is Market Value of the Fee Simple Estate of the Subject Property as of February 2, 2022 is best represented by \$13.75 per square foot. This is calculated as follows:

$$\begin{array}{rclcl} \$13.75/\text{SF} & & & & \\ \text{Rounded,} & \times & 87,120 \text{ SF} & = & \$1,197,900 \\ & & & & \mathbf{\$1,198,000} \end{array}$$

# **ADDENDA**



**BOARD OF COUNTY COMMISSIONERS**

January 18, 2022

Curtis L. Phillips, MAI, Principal

Callaway and Price, Inc.

1120 Palmetto Avenue

Melbourne, FL 32901

Via email: [c.phillips@callawayandprice.com](mailto:c.phillips@callawayandprice.com)

**Public Works Department**

2725 Judge Fran Jamieson Way

Building A, Room 201

Viera, Florida 32940

**321-617-7202**

RE: Notice to Proceed for Work Order 2017-3988-A-013 Fire Station 49 Site (Pineda Cswy & Stadium Pkwy) on behalf of the Fire Rescue Department

Dear Mr. Phillips,

This is your Notice to Proceed with appraisal services for the above referenced parcel per the email quote from January 7, 2022 and in accordance with Contract No. 3988.

**Your lump sum fee for this service shall not exceed \$3,000.00 with 45 days' delivery.**

Please reference the Work Order number on all invoices and correspondence. No other work is authorized under this Work Order unless directed in writing from this office. This Work Order is issued from the Appraisal Services Agreement contract no. 3988 effective June 21, 2018.

Procurement Approval

Funding: Fire and Rescue 1360/284900/5610001 IO#517604

**Thomas-Wood,**

**Tammy**

Digitally signed by Thomas-Wood, Tammy

DN: cn=Thomas-Wood, Tammy,

email=Tammy.Thomas-

Wood@brevardfl.gov

Date: 2022.01.18 12:53:14 -05'00'

Tammy Thomas-Wood, Support Services Manager

Amounts up to \$5,000

Cc: Lucy Hamelers, Land Acquisition Supervisor  
Debbie Cruz, Special Projects Coordinator  
Fire Rescue



## Brevard County Property Appraiser

Titusville • Viera • Melbourne • Palm Bay

Phone: (321) 264-6700

<https://www.bcpao.us>

### PROPERTY DETAILS

Account 2620413  
Owners A DUDA & SONS INC  
Mailing Address PO BOX 620257 OVIEDO FL 32762  
Site Address Not Assigned  
Parcel ID 26-36-20-00-2  
Property Use 6100 - GRAZING LAND - SOIL CAPABILITY CLASS II -  
VACANT  
Exemptions NONE  
Taxing District 4200 - UNINCORP DISTRICT 4  
Total Acres 82.43  
Subdivision --  
Site Code 0001 - NO OTHER CODE APPL.  
Plat Book/Page 0000/0000  
Land Description PART OF THE E 1/4 OF SEC 20 LYING S OF ORB  
8016 PG 1492 EXC ORB 9270 PG 248, RP 5 PG 46  
ALL WITHIN THE CENTRAL VIERA COMMUNITY  
DEVELOPMENT DISTRICT

### VALUE SUMMARY

Category	2021	2020	2019
Market Value	\$308,610	\$308,610	\$308,610
Agricultural Land Value	\$25,720	\$25,720	\$25,720
Assessed Value Non-School	\$25,720	\$25,720	\$25,720
Assessed Value School	\$25,720	\$25,720	\$25,720
Homestead Exemption	\$0	\$0	\$0
Additional Homestead	\$0	\$0	\$0
Other Exemptions	\$0	\$0	\$0
Taxable Value Non-School	\$25,720	\$25,720	\$25,720
Taxable Value School	\$25,720	\$25,720	\$25,720

### SALES/TRANSFERS

Date	Price	Type	Instrument
No Data Found			

No Data Found

# EXHIBIT "C" - Sketch and Legal Description of FS 49 Site

## THIS IS NOT A BOUNDARY SURVEY, NOR IS IT INTENDED TO BE USED AS ONE

### DESCRIPTION OF FIRE STATION

A PARCEL OF LAND LOCATED IN SECTION 20, TOWNSHIP 26, RANGE 36 EAST, BREVARD COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS

COMMENCE AT THE NORTHWEST CORNER OF STADIUM PARKWAY EXTENSION-SEGMENT E, ACCORDING TO THE PLAT THEREOF AS RECORDED IN ROAD PLAT BOOK \_\_, PAGE \_\_, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA AND RUN SOUTHWEST ALONG THE WESTERLY LINE OF SAID STADIUM PARKWAY EXTENSION-SEGMENT E THE FOLLOWING FOUR (4) COURSES AND DISTANCES: (1) THENCE S45°15'27"W, A DISTANCE OF 150.15 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE RIGHT; (2) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE WEST AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 31°45'18", A CHORD BEARING OF 302°16'36"W AND A CHORD LENGTH OF 35.50 FEET); A DISTANCE OF 40.04 FEET TO THE END OF SAID CURVE; (3) THENCE S45°09'45"W A DISTANCE OF 1155.37 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; (4) THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 1775.00 FEET, A CENTRAL ANGLE OF 21°05'47", A CHORD BEARING OF 247°35'53"W AND A CHORD LENGTH OF 33.57 FEET); A DISTANCE OF 33.57 FEET A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 37°36'43", A CHORD BEARING OF 229°07'40"E AND A CHORD LENGTH OF 34.51 FEET); A DISTANCE OF 35.23 FEET TO THE END OF SAID CURVE; THENCE N45°19'19"W, A DISTANCE OF 495.27 FEET TO THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE CONTINUE N45°19'19"W, A DISTANCE OF 112.45 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHWEST, AND HAVING A RADIUS OF 1100.00 FEET, A CENTRAL ANGLE OF 51°17'12", A CHORD BEARING OF N47°57'54"W, AND A CHORD LENGTH OF 101.46 FEET); A DISTANCE OF 101.49 FEET TO A POINT OF REVERSE CURVATURE; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHEAST, AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 19°45'20", A CHORD BEARING OF N40°43'50"W, AND A CHORD LENGTH OF 5.53 FEET); A DISTANCE OF 5.62 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE NORTHEAST; THENCE N35°34'09"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 234.51 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTHWEST, AND HAVING A RADIUS OF 1065.00 FEET, A CENTRAL ANGLE OF 4°56'25", A CHORD BEARING OF N33°05'55"E, AND A CHORD LENGTH OF 51.51 FEET); A DISTANCE OF 51.54 FEET TO AN INTERSECTION WITH A NON-TANGENT LINE TO THE SOUTHEAST; THENCE S45°19'19"E ALONG SAID NON-TANGENT LINE, A DISTANCE OF 304.73 FEET TO A NON-TANGENT INTERSECTION WITH A CURVE TO THE LEFT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE SOUTHEAST, AND HAVING A RADIUS OF 750.00 FEET, A CENTRAL ANGLE OF 1°57'57", A CHORD BEARING OF S45°39'40"W, AND A CHORD LENGTH OF 51.50 FEET); A DISTANCE OF 51.51 FEET TO THE END OF SAID CURVE; THENCE S44°42'41"W, A DISTANCE OF 240.74 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE ALONG THE ARC OF SAID CURVE, (SAID CURVE BEING CURVED CONCAVE TO THE NORTH, AND HAVING A RADIUS OF 25.00 FEET, A CENTRAL ANGLE OF 30°00'00", A CHORD BEARING OF S59°42'41"W, AND A CHORD LENGTH OF 35.35 FEET); A DISTANCE OF 35.27 FEET TO THE POINT OF BEGINNING, CONTAINING 2.00 ACRES MORE OR LESS.

POB  
NORTH CORNER STADIUM  
PARKWAY  
EXTENSION-SEGMENT E  
RPS \_\_ PO

R=25.00  
CB=N41°08'18"  
CB=302°16'36"W  
CL=35.50

WESTERLY LINE  
RPS \_\_ PO

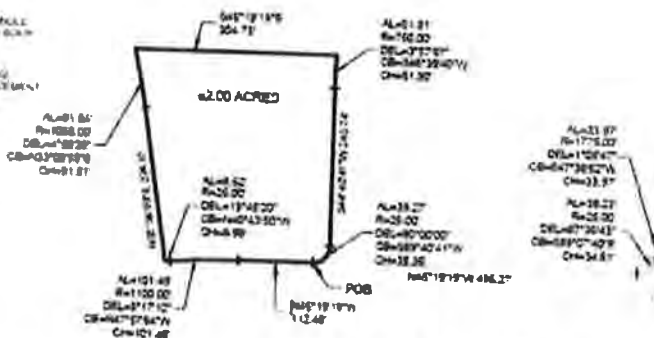
S45°19'19"E  
495.27

### ABBREVIATIONS

- AL ARC LENGTH
- CB CHORD BEARING
- CL CHORD LENGTH
- CA CENTRAL ANGLE
- CR CURVED CONCAVE
- PL PLAT BOOK
- PG PAGE
- POB POINT OF BEGINNING
- POC POINT OF COMMENCEMENT
- R RADIUS
- RPS ROAD PLAT BOOK
- W WESTERLY LINE



( IN FEET )



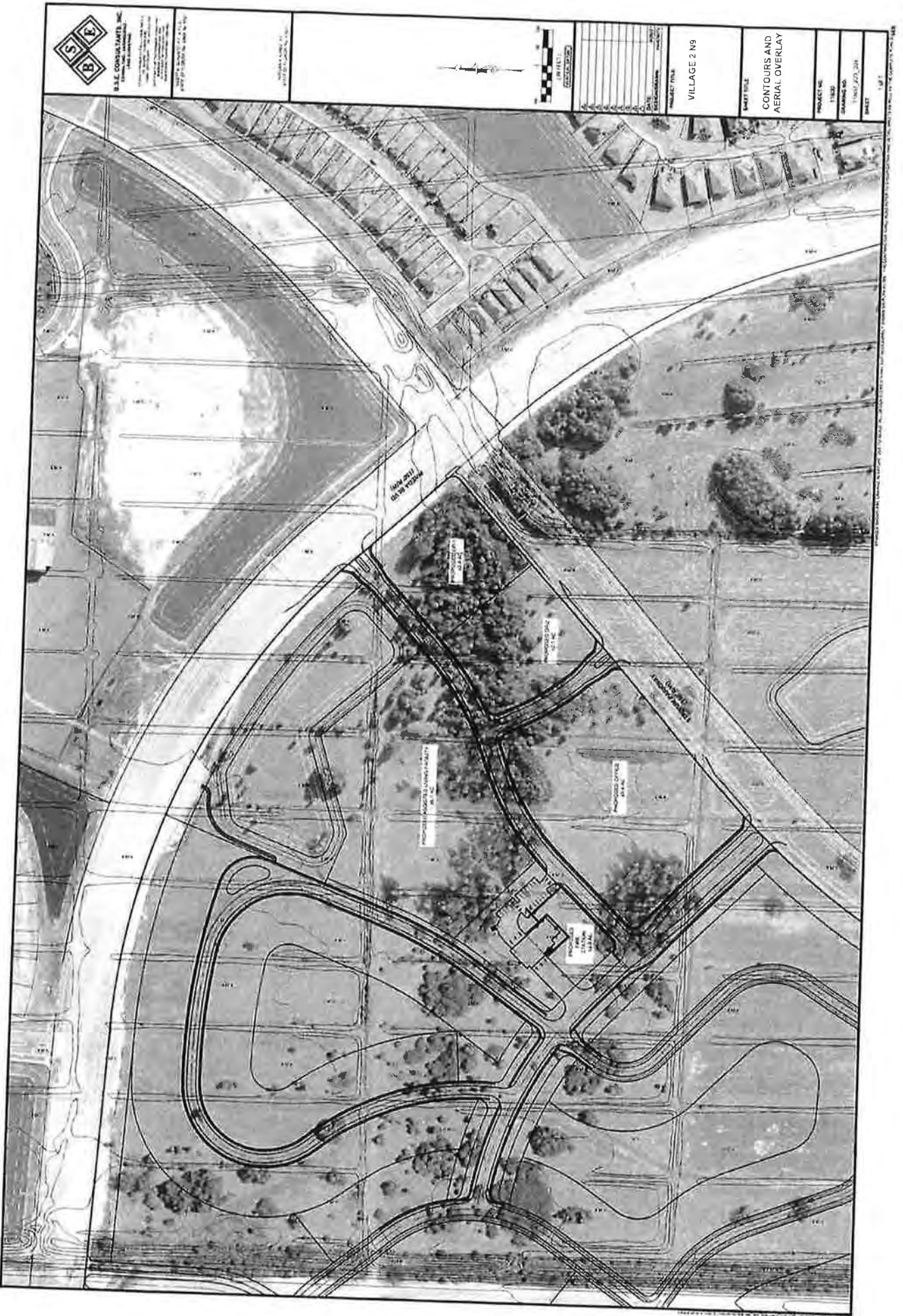
### VIERA FIRE STATION



**B.S.E. CONSULTANTS, INC.**  
CONSULTING - ENGINEERING - LAND SURVEYING  
112 SOUTH HERRICK CIRCLE, SUITE 400, PALM BEACH, FL 33480  
PHONE: (561) 835-4747 FAX: (561) 835-4748  
CERTIFICATE OF BUSINESS REGISTRATION: 9888  
CERTIFICATE OF LAND SURVEYING: 9888

DATE: 9/24/01  
DESIGN/DRAWN: HANLEY/WFV  
DRAWING: 11600\_100\_001  
PROJECT: 11600  
SHEET: 1 OF 1

18 SEP 2002 1:00 PM C:\p11600\Drawings\11600\_100\_001.dwg User: hlv 27 2:27 11.15.26 AM, 14



# QUALIFICATIONS



## ***Qualifications-Curtis L. Phillips, MAI***

### Professional Designations\Licenses\Certifications

Member, Appraisal Institute, MAI Designation #11762 - July 2001  
Cert Gen RZ2085  
Florida Licensed Real Estate Broker #BK0587137

### Professional Experience

Principal, Callaway & Price, Inc. - since January 2002  
Appraisal Consultant, Callaway & Price, Inc. - since January 1994  
Associate Appraiser, Boutin, Brown & Butler Real Estate Services - 1992 to 1993  
Researcher, Callaway & Price, Inc. - May 1990 to August 1990

### Qualified As An Expert Witness

Brevard County, Florida & Special Master	Sarasota County, Florida
Indian River County, Florida	Glades County, Florida
Broward County, Florida	Hendry County, Florida
Federal Aviation Adm., Washington, DC	Putnam County, Florida
Federal Court, Orange County	Osceola County, Florida & Special Master
Polk County, Florida	

### Education

Bachelor of Science Degree in Real Estate, Florida State University  
Associates of Arts Degree, 1990, Brevard Community College

### Appraisal Institute:

Standards of Professional Practice, Part A, August 1993  
Standards of Professional Practice, Part B, August 1993  
Standards of Professional Practice, Part C, November 1998  
Single-Family Construction, August 1994  
Real Estate Evaluations in the Appraisal Industry May 1995  
Advanced Sales Comparison and Cost Approach, June 1995  
Advanced Income Analysis, August 1995  
Highest and Best Use & Market Analysis, October 1995  
Report Writing & Valuation Analysis, April 1996  
Advanced Applications (Case Studies), April 1997  
State of Florida Core Law, November 2008  
Environmental Hazards/Appraising Wetlands, October 2000  
State of Florida Law Update, October 2000  
Appraising Conservation Easements & Less than Fee Interest, October 2000  
Analyzing Commercial Leases, March 2002  
Litigation Appraisal, June 2002  
Attacking & Defending an Appraisal in Litigation, March 2003  
Subdivision Analysis November 2003





Education - Continued

Real Estate Finance Value and Investment Performance, September 2006  
Appraising the Tough Ones, September 2006  
Appraisal Consulting, September 2006  
Real Estate Finance, Value & Investments September 2006  
Business Practice and Ethics, November 2006  
Florida Appraisal Laws and Regulations, November 2006  
IFREC 14 hr CE for Real Estate September 2007  
Reviewing Residential Appraisals November 2007  
Leadership Development and Advisory Council Appraisal Institute April 2008/2009  
Identify & Prevent Real Estate Fraud September 2008  
Supervisor Trainee Roles and Rules October 2008  
Quality Assurance in Residential Appraisals October 2008  
Florida State Law for Real Estate Appraisers October 2008  
National USPAP Course November 2008  
MLS Brokers Ethics Seminar December 2008, 2015, 2018  
Leadership Development and Advisory Council Appraisal Institute 2009 & 2010  
Florida Law July 2010  
USPAP Update Course July 2010  
Supervisor Trainee Roles & Rules July 2010  
Condemnation Appraising: Principles & Applications October 2010  
Central Florida Valuation June 2011  
Appraisal Overview February 2011  
Fundamentals of Separating Real, Personal Property & Intangible Business Assets Feb. 2012  
Central Florida Real Estate Forum June 2012 & 2013  
Florida Law & USPAP Update July 2012  
Candidate for Designation Advisor October 2012  
Central Florida Real Estate Forum September 2013 , 2015, 2017 & 2018  
The Appraiser as an Expert Witness December 2013  
Florida Law 2014, 2016, 2018  
7-Hour National USPAP Update September 2014, 2016 , 2018  
20-Hour Appraisal Review B – FDOT 2016 & 2018  
Business Practices & Ethics November 2016 & 2018

Geographic Experience

Throughout Florida; Alabama; Tennessee

Appraising\Consulting Expertise

Acreage/Agricultural  
Bowling Alleys  
Commercial Buildings  
Eminent Domain  
Environmentally Sensitive Lands  
Feasibility Studies  
Foreclosures  
Hotels  
Industrial  
Low Income Housing Projects

Marinas  
Office Buildings  
Residences  
Retail Buildings  
Service Stations  
Shopping Centers  
Utility Plants  
Vacant Land/Ranches  
Warehouses  
Citrus/Sugarcane



Litigation Appraisal Assignment - Trials

Nanzi vs. Nanzi  
Florida Community Bank vs. Keenan  
PNC V Turtlemound Pointe, LLC  
RBC V The Villages  
General Development Utilities-vs-Port St. Lucie  
Suncoast Parkway  
Western Beltway, Osceola and Orange Counties  
State Road 60, Indian River County Right-of-Way  
State Road 5, Brevard County Right-of-Way  
State Road 5, Brevard County Right-of-Way  
State Road 600, Osceola County Right-of-Way  
State Road 20, Putnam County  
State Road 80, Hendry/Glades County  
State Road 542, Polk County  
State Road 45A Venice By-Pass, Sarasota County  
State Road 70, St. Lucie County  
Orange County- Various  
St. Lucie County - Various  
Brevard County-Variou  
Indian River County - Various  
Martin County-Variou

Organizations and Affiliations

Appraisal Institute, East Florida Chapter, Regional Representative 2019  
Appraisal Institute, East Florida Chapter, Vice-President 2019  
Appraisal Institute, East Florida Chapter, President 2013  
Appraisal Institute, East Florida Chapter, Vice-President 2012  
Appraisal Institute, East Florida Chapter, Treasurer 2011  
Appraisal Institute, East Florida Chapter, Secretary & Regional Representative 2010  
Appraisal Institute, East Florida Chapter, Board of Directors 2008-2010  
Appraisal Institute, East Florida Chapter, Leadership Advisor and Development Council  
Appraisal Institute, National Chapter, Member  
Florida State University, Real Estate Society, Member  
Brevard County Seminole Boosters  
Melbourne/Palm Bay Chamber of Commerce Member  
Melbourne/Palm Bay Chamber of Commerce Ambassador, 1998-1999  
West Melbourne Business Association  
Co-Chairman Right-of-Way Adornment  
West Melbourne Business Association, 2000 President



*Qualifications-Curtis L. Phillips, MAI*



Ron DeSantis, Governor

Halsey Beshears, Secretary



**STATE OF FLORIDA  
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THE CERTIFIED GENERAL APPRAISER HEREIN IS CERTIFIED UNDER THE  
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**PHILLIPS, CURTIS L**

1120 PALMETTO AVE SUITE 1  
MELBOURNE FL 32901

**LICENSE NUMBER: RZ2085**

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## ***Qualifications-Ryan M. Powell***

### Professional Designations\Licenses\Certifications

Cert Gen RZ3684

### Professional Experience

Residential Trainee, Sigurd Hersloff, Inc, July 2010 to January 2011  
Appraisal Researcher, Callaway & Price, Inc., February 2011 to May 2011  
Staff Appraiser, Callaway & Price, Inc., May 2011 to Present

### Education

Bachelor of Science Degree in Real Estate, Florida State University  
Real Estate, Spring 2009  
Real Estate Appraisal, Fall 2009  
Real Estate Feasibility Analysis, Fall 2009  
Legal Environment of Real Estate, Fall 2009  
Real Estate Finance, Spring 2010  
Real Estate Market Analysis, Spring 2010

Bachelor of Science Degree in Finance, Florida State University  
Financial Management of the Firm, Summer 2008  
Financial Markets and Institutions, Fall 2008  
Analysis of Financial Statements, Spring 2009  
Risk Management Insurance, Spring 2009  
Problems in Financial Management, Summer 2009  
Commercial Bank Administration, Fall 2009  
Investments, Spring 2010

### IFREC School of Real Estate

Florida Supervisor/Trainee Roles and Relationships, June 2010  
2010 National USPAP Update Equivalent, June 2010

### McKissock

Florida Appraisal Laws and Rules, November 2012

### Steve Williamson's Real Estate Education

2012/2013 National USPAP Update Equivalent, October 2012  
Sales Comparison and Income Approach, October 2012  
2016/2017 National USPAP Update Equivalent, September 2016  
Florida Law and Rules Update, September 2016  
Better Safe Than Sorry, September 2016  
FHA Property Analysis, September 2016  
Florida Law and Rules Update, June 2018  
2018/2019 National USPAP Update Equivalent, June 2018  
Cool Tools: Digging Your Data, June 2018  
Appraisal Workfile Compliances, June 2018



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## ***Qualifications-Ryan M. Powell***

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### Geographic Experience

Alachua County  
Brevard County  
Citrus County  
Duval County  
Flagler County  
Hernando County  
Hillsborough County  
Indian River County  
Lee County  
Marion County Osceola County

Volusia County  
Seminole County  
Sarasota County  
Saint Lucie County  
Putnam County  
Polk County  
Pinellas County  
Palm Beach County  
Orange County  
Martin County

### Appraising\Consulting Experience

Single Family Homes  
Vacant Residential Land  
Finished Subdivision Bulk Lots  
Vacant Multifamily Land  
Apartments  
Mobile Home/RV Park  
Bed and Breakfast  
Vacant Commercial Land  
Office Buildings  
Office Condominiums  
Medical Offices  
Anchored Shopping Centers  
Strip Retail  
Free Standing Retail  
Restaurants

Eminent Domain  
Landscape Nursery  
Citrus Groves  
Vacant Agricultural Land  
Vacant Industrial Land  
Gas Stations  
Automobile Dealerships  
Auto Body Shops  
Marinas  
Self-Storage  
Multi-Tenant Flex Warehouses  
Free Standing Warehouses  
Ground Leases  
Net Lease Properties



Ron DeSantis, Governor

Halsey Beshears, Secretary



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