



August 31, 2023

Khalid Resheidat
City Manager
City of New Smyrna Beach
210 Sams Ave.
New Smyrna Beach, FL. 32168

Email: kresheidat@cityofnsb.com

Subject: Aqua Golf Septic to Sewer

Dear Mr. Resheidat:

In accordance with your request, we are pleased to offer the enclosed scope of services and fee estimate for design, permitting, funding, and public outreach for the Aqua Golf Septic to Sewer project. This project was identified as a high priority project in the City's septic to sewer (S2S) analysis in terms of pollutant reduction potential and cost effectiveness. It entails converting approximately 120 single family homes from septic to a centralized sanitary sewer collection system.

Our firm has designed numerous septic to sewer retrofit projects and understands the complexity of this type of construction and the necessary design elements. The scope of services includes allowances for survey and geotechnical subconsultant services. A new lift station will be necessary, and an easement may be required if the new lift station cannot be sited within existing public right of way. The City has requested funding assistances in hopes of applying for grants and other funding opportunities. This effort has been included in this proposal as well as associated efforts with public outreach.

We appreciate the opportunity to continue to be of service. If you have any questions or require additional information, please do not hesitate to contact our office.

Sincerely,
MEAD & HUNT, Inc.

A blue ink signature of Brad Blais.

Brad Blais, P.E.
Vice President/Market Leader

A blue ink signature of Cassandra Cissell.

Cassandra "Casey" Cissell, P.E.
Project Manager

Attachment: Exhibit 1
ECS – Scope of Services
Southeastern Surveying – Scope of Services

**CITY OF NEW SMYRNA BEACH
SCOPE OF SERVICES
FOR
AQUA GOLF SEPTIC TO SEWER**

This Task Order is in conformance with the Agreement for Continuing Professional Engineering Services, RFQ 12-17-ENG dated July 31, 2017, between the City of New Smyrna Beach (OWNER) and Mead & Hunt, Inc. (MEAD & HUNT) and is referred to herein as the Contract.

GENERAL

The City of New Smyrna Beach commissioned a septic to sewer planning report which ranked 15 areas currently on septic systems within the City limits. Mead & Hunt completed this study, and the Aqua Golf subdivision was ranked highest in terms of pollutant reduction potential and cost effectiveness. The City has chosen to proceed with the design, permitting, public outreach, and preparation of applications for construction funding assistance.

The Aqua Golf subdivision is located east of Turnbull Creek between Fairgreen Ave. and Wayne Ave. The proposed project is depicted in Exhibit 1 (attached). This project entails the design of approximately 6,500 LF of 8" gravity main, 1,200 LF of 6" forcemain, 22 manholes, and one (1) lift station. An easement may be required if the lift station cannot be sited on public right of way. Through construction of this project, 138 parcels will have centralized sewer available, and homeowner septic tanks can be abandoned.

SCOPE OF SERVICES

After receipt of authorization to proceed, MEAD & HUNT will provide the following services:

PHASE 1 – PROJECT MANAGEMENT

Project Coordination

MEAD & HUNT's Project Manager (PM) will monitor and manage the project budget, schedule, and scope throughout the estimated 17-month project duration. The PM will manage the development of project work and subconsultant efforts.

Project Kick-Off Meeting

MEAD & HUNT will coordinate and conduct one (1) in-person project kick-off meeting with the project team and OWNER staff to review project goals, scope of work, team member roles, lines of communication, project schedule and administrative processes. Following the meeting, MEAD & HUNT will prepare a written summary of the project meeting and distribute it to the attendees.

Quality Assurance / Quality Control

MEAD & HUNT will implement, and the PM will monitor, a quality assurance and control process, which includes independent technical review of project technical work products before their submission to the OWNER.

Deliverables – Project Management

- Kick-Off Meeting Agenda and Summary

PHASE 2 – DATA COLLECTION AND SITE RECONNAISSANCE

Survey Coordination

MEAD & HUNT will obtain the services of a licensed surveyor to conduct a site survey. The surveyor costs will be billed in the Subconsultants and Reimbursable section. MEAD & HUNT coordination of the survey efforts and administration of the subconsultants contract are included herein.

Geotechnical Coordination

MEAD & HUNT will obtain the services of a geotechnical subconsultant. The geotechnical costs will be billed in the Subconsultants and Reimbursable section. MEAD & HUNT coordination of the geotechnical efforts and administration of the subconsultants contract are included herein.

Subsurface Underground Engineering (SUE)

MEAD & HUNT will submit for a dig ticket with Sunshine 811 to determine the existing utility owners in the area of the proposed improvements. MEAD & HUNT will utilize in house staff to perform SUE in areas requiring additional information for design purposes.

Utility Coordination

MEAD & HUNT will coordinate with existing utilities along the project route by submission of 60% electronic construction drawings to all utility companies identified by the Sunshine 811 Design Ticket and request markups of existing facilities and resolution of any estimated conflicts with the proposed improvements. MEAD & HUNT will discuss the potential conflicts with the utility company representatives to coordinate the relocation needs as needed. MEAD & HUNT will add information to the construction drawings based on the received utility markups and planned relocations.

Site Reconnaissance

MEAD & HUNT will conduct up to three (3) site visits to verify existing conditions and collect photographic and other data collection needed for the design.

PHASE 3 – PRELIMINARY DESIGN

Preliminary Design Report

MEAD & HUNT will prepare a draft Preliminary Design Report (PDR). The PDR will include the following: project understanding and goals, Aqua Golf existing conditions, flow calculations, proposed lift station site layout, pump station design, 30% level engineer's opinion of probable construction cost (EOPCC), and confirmation of project permitting requirements.

A draft PDR will be submitted to the OWNER for review and comment. It is assumed the OWNER will conduct their review in a two-week period. At the end of the Owner's review period, MEAD & HUNT will schedule and attend a draft PDR review meeting.

Deliverables – Preliminary Design

- Draft Preliminary Design Report (electronic PDF format)
- Preliminary Design Review Meeting Summary (electronic PDF format)
- Final Preliminary Design Report (electronic PDF format)

PHASE 4 – PROJECT DESIGN

Task 1 – 60% Design Development

Based on the OWNER's Preliminary Design Phase review comments, MEAD & HUNT will prepare 60% design level drawings and specifications. The OWNER's standard front-end contract documents will be used and coordinated with MEAD & HUNT's technical specifications.

The 60% submittal package will be submitted to the OWNER for review and comment. The submittal will include the items shown in the deliverable section below. It is assumed the OWNER will conduct their review in a two-week period. At the end of the OWNER's review period, MEAD & HUNT will schedule and attend a 60% design review meeting to review the OWNER's comments on the design drawings and specifications.

Deliverables – 60% Design

- 60% Design Drawings (electronic PDF format)
- 60% Specifications (electronic PDF format)
- 60% EOPCC (electronic PDF format)
- 60% Design Review Meeting Summary (electronic PDF format)

Task 2 – 90% Design Development

Based on the OWNER's 60% review comments, MEAD & HUNT will prepare revised design drawings and specifications to 90% design level completion. MEAD & HUNT will prepare an updated EOPCC based upon the 90% submittal documents.

The 90% submittal package will be prepared and submitted to the OWNER and permitting agencies for review and comment. The submittal will include the items shown in the deliverable section below. It is assumed the OWNER will conduct their review in a two-week period. At the end of the OWNER's review period, MEAD & HUNT will schedule and attend a 90% design review meeting to review the OWNER's comments on the design drawings and specifications.

Deliverables – 90% Design

- 90% Design Drawings (electronic PDF format)
- 90% Specifications (electronic PDF format)
- 90% EOPCC (electronic PDF format)
- 90% Design Review Meeting Summary (electronic PDF format)

Task 3 – 100% Design Development

Based on the OWNER's 90% review comments, MEAD & HUNT will prepare revised design drawings and specifications to 100% completion. MEAD & HUNT will prepare an updated EOPCC based upon the 100% submittal documents.

The 100% submittal package will be submitted to the OWNER. The submittal will include the items shown in the deliverable section below.

Deliverables – 100% Design

- 100% Design Drawings (electronic PDF format)
- 100% Specifications (electronic PDF format)
- 100% EOPCC (electronic PDF format)

PHASE 5 – PERMITTING ASSISTANCE

MEAD & HUNT shall prepare and submit permit applications for the project as detailed below. All permit fees will be paid by MEAD & HUNT. Certifications of Completion (COC) with respective permitting agencies are not included in this phase.

Environmental Resources Permit

MEAD & HUNT will attend up to one (1) pre-application meeting with FDEP to discuss permitting requirements. MEAD & HUNT will prepare an agenda and meeting summary. After the pre-application meeting, necessary revisions to the design recommendations will be reviewed with the OWNER and incorporated into the design documents.

MEAD & HUNT will prepare and submit the permit application in accordance with the permit requirements. Permit applications will be submitted after the 90% design has been reviewed and accepted by the OWNER.

MEAD & HUNT will respond to up to one (1) request for additional information (RAI) as part of the permit application process.

FDEP Wastewater Collection System Permit

MEAD & HUNT will attend up to one (1) virtual pre-application meeting with FDEP to discuss permitting requirements. After the pre-application meeting, necessary revisions to the design recommendations will be reviewed with the OWNER and incorporated into the design documents.

MEAD & HUNT will prepare and submit the permit application in accordance with the permit requirements. Permit applications will be submitted after the 90% design has been reviewed and accepted by the OWNER.

MEAD & HUNT will respond to up to one (1) Request for Additional Information (RAI) as part of the permit application process.

County Right-of-Way Use Permit

MEAD & HUNT will prepare and submit the permit application in accordance with the permit requirements. Permit applications will be submitted after the 90% design has been reviewed and accepted by the OWNER.

MEAD & HUNT will respond to up to three (3) Requests for Additional Information (RAIs) as part of the permit application process.

Deliverables – Permitting

- Final Environmental Resource Permit application
- Final FDEP Wastewater Collection System Permit application
- Final City Right-of-Way Permit application
- Final County Right-of-Way Permit application

PHASE 6 – FUNDING ASSISTANCE

MEAD & HUNT will provide funding assistance to the OWNER to develop the most cost-effective funding for the project. Assistance will consist of searching for funding for which the project is eligible, developing a schedule for applying for funding, applying for the funding, and providing compliance assistance for the funding selected. This assistance includes:

Funding Request to the Cognizant Agency

A request for inclusion or similar document may be required to evaluate the project. MEAD & HUNT shall prepare this document. Submittal of this document does not guarantee funding.

Funding Application Package

MEAD & HUNT will complete a funding application package. The application package generally consists of an application form and a series of attachments. The completed application package will be submitted to the funding agency.

Submission of the completed application does not always guarantee approval. It may be based on timely submittal and availability of the agency's funds.

PHASE 7 – PUBLIC OUTREACH

The OWNER will be responsible for organizing, advertising, and hosting public meetings. MEAD & HUNT will prepare the meeting agenda and moderate meetings, excluding Commission meetings. For the purposes of this proposal, we estimate the following;

- Two (2) neighborhood outreach meetings,
 - Two (2) hours for each meeting with attendance by two (2) MEAD & HUNT staff
 - Two (2) hours preparation per meeting
 - Post meeting documentation for each meeting.

PHASE 8 – SUBCONSULTANTS AND REIMBURSABLES

Items under this phase include out-of-pocket direct job expenses such as subconsultants, reproductions, postage, etc. It is assumed permit application fees will be paid by MEAD & HUNT and are included in this phase. Items included in this phase will be billed at actual cost.

Geotechnical – Soil borings and geotechnical evaluation will be performed by ECS Florida, LLC. The scope of work included in of their proposal is included herein.

Land Surveying – Certified design survey will be performed by Southeastern Surveying and Mapping. The scope of work included is detailed in their proposal and attached herein.

PHASE 9 – CONTINGENCY

If additional services are identified as needed or required during the duration of the project, MEAD & HUNT will utilize contingency funds. Contingency funds will be billed at time and expense. Additional work will be billed per the agreed upon contract hourly rates.

EXCLUSIONS

This scope of services excludes all items not specifically described herein, including but not limited to:

- Easement Acquisition
- Bidding Assistance
- Construction Phase Services
- Special Studies
- Laboratory Services
- Value Engineering
- Redesign per Owner or Contractor
- Investigations
- Environmental
- Professional Services Acquisition Assistance
- Completed Project Assessment
- Site Security
- Fire Protection
- Zoning Modifications

SCHEDULE

Mead & Hunt estimates the work included in this task order will be completed in accordance with the following schedule:

Phase/Task	Duration to Complete (calendar days)	Commencing Upon
<i>Phase 1 – Project Management</i>	<i>500 days</i>	<i>Receipt of notice to proceed</i>
<i>Kick-off Coordination</i>	<i>15 days</i>	<i>Receipt of notice to proceed</i>
<i>Phase 2 – Data Collection and Site Reconnaissance</i>	<i>106 days</i>	<i>Kick-off Meeting</i>
<i>Phase 3 – Preliminary Design</i>	<i>121 days</i>	<i>Kick-Off Meeting (concurrent with Phase 2)</i>
<i>Phase 4 – Project Design</i>		
<i>Task 1 – 60% Design</i>	<i>143 days</i>	<i>OWNER approval of Final PDR and receipt of survey</i>
<i>Task 2 – 90% Design</i>	<i>86 days</i>	<i>Receipt of OWNER's 60% design comments</i>
<i>Task 3 – 100% Design</i>	<i>50 days</i>	<i>Receipt of OWNER's 90% design comments</i>

<i>Phase 5 – Permitting Assistance</i>	<i>99 days</i>	<i>OWNER approval of 90% deliverable (concurrent with other phases)</i>
<i>Phase 6 – Funding Assistance</i>	<i>345 days</i>	<i>Receipt of notice to proceed (concurrent with other phases)</i>
<i>Phase 7 – Public Outreach</i>	<i>84 days</i>	<i>OWNER approval of 100% deliverable</i>

COMPENSATION

The not-to-exceed cost for this Scope of Services, including Contingency Funds, is \$281,022.

The above fee is based on the following breakdown:

Phase/Task	Fee/Cost	Basis
<i>Phase 1 – Project Management</i>	<i>\$15,430</i>	<i>Lump Sum</i>
<i>Phase 2– Data Collection and Site Reconnaissance</i>	<i>\$8,084</i>	<i>Lump Sum</i>
<i>Phase 3 – Preliminary Design</i>	<i>\$22,013</i>	<i>Lump Sum</i>
<i>Phase 4 – Project Design</i>		
<i>Task 1 – 60% Design</i>	<i>\$69,753</i>	<i>Lump Sum</i>
<i>Task 2 – 90% Design</i>	<i>\$37,665</i>	<i>Lump Sum</i>
<i>Task 3 – 100% Design</i>	<i>\$19,888</i>	<i>Lump Sum</i>
<i>Phase 5 – Permitting Assistance</i>	<i>\$15,060</i>	<i>Lump Sum</i>
<i>Phase 6 – Funding Assistance</i>	<i>\$4,722</i>	<i>Lump Sum</i>
<i>Phase 7 – Public Outreach</i>	<i>\$3,960</i>	<i>Lump Sum</i>
<i>Subtotal</i>	<i>\$196,575</i>	
<i>Phase 8 – Subconsultants/Reimbursables</i>		
<i>Survey Allowance</i>	<i>\$57,289</i>	<i>Actual Cost</i>
<i>Geotech Allowance</i>	<i>\$6,000</i>	<i>Actual Cost</i>
<i>Permit Allowance</i>	<i>\$1,000</i>	<i>Actual Cost</i>
<i>Printing/Reproduction/Postage</i>	<i>\$500</i>	<i>Actual Cost</i>
<i>Phase 9 – Contingency at 10%</i>	<i>\$19,658</i>	<i>Time & Expense</i>
<i>TOTAL</i>	<i>\$281,022</i>	

AUTHORIZATION:

The scope of services and compensation stated in this proposal are valid for a period of thirty (30) days from date of submission. If authorization to proceed is not received during this period, this proposal may be withdrawn or modified by MEAD & HUNT.

Accepted by: CITY OF NEW SMYRNA BEACH

Approved by: MEAD & HUNT, INC.

By: _____

By:  _____

Name: _____

Name: Brad T. Blais

Title: _____

Title: Vice President/Market Leader

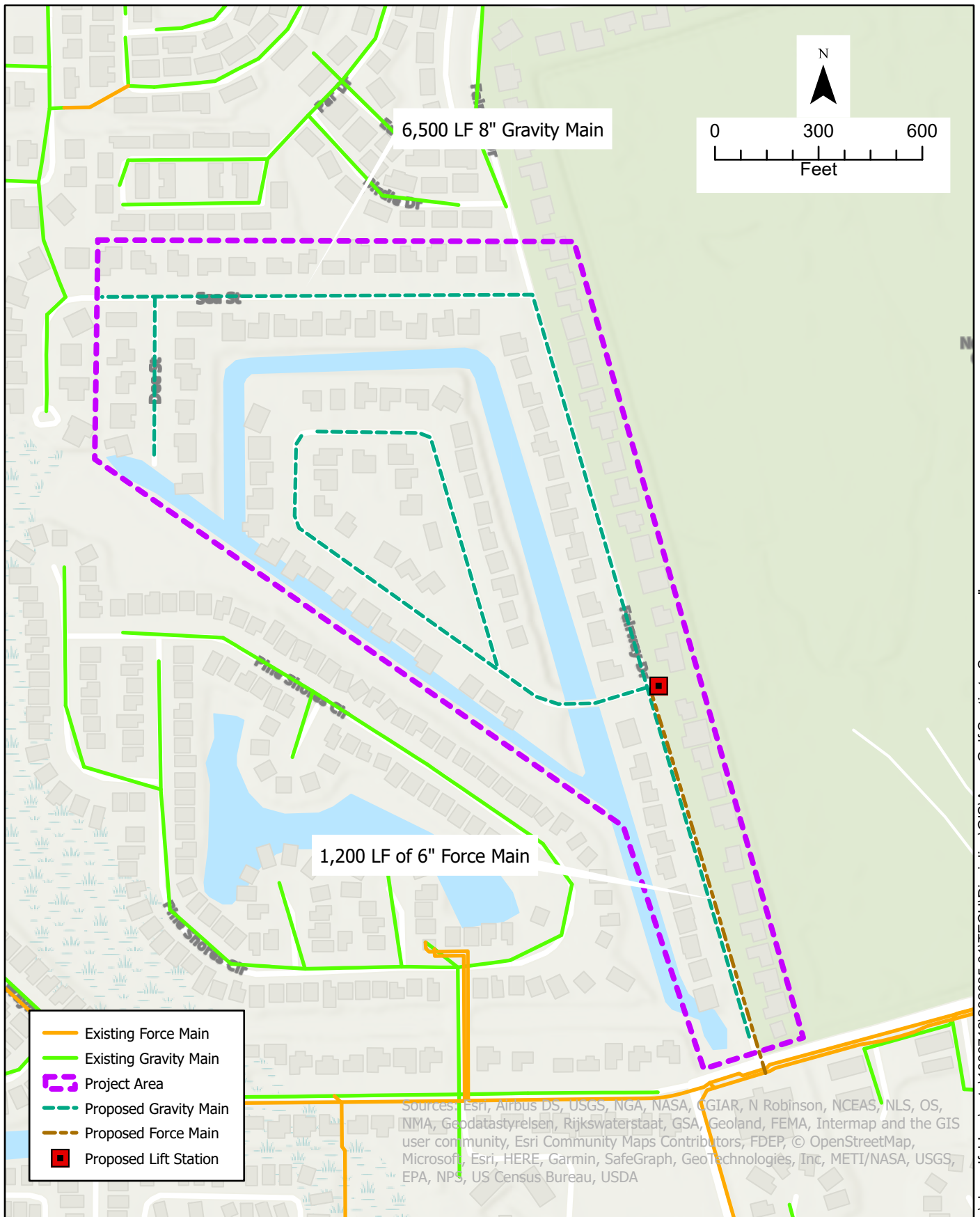
*The above person is authorized to sign for Owner
and bind the Owner to the terms hereof.*

Date: _____

Date: August 31, 2023

PURSUANT TO FLORIDA STATUTE SECTION 558.0035, AN
INDIVIDUAL EMPLOYEE OR AGENT OF MEAD & HUNT INC. MAY NOT
BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.

**IF THE CONTRACTOR (MEAD & HUNT INC.) HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC
RECORDS RELATING TO THIS CONTRACT (PROPOSAL), CONTACT THE CUSTODIAN OF PUBLIC
RECORDS AT CITY HALL, CITY OF NEW SMYRNA BEACH, 210 SAMS AVENUE, NEW SMYRNA
BEACH, FL 32168, City Clerk, Kelly McQuillen, (386) 410-2600, kmcquillen@cityofnsb.com**



"\\corp.meadhunt.com\\shared\\folders\\entp\\1000712\\232085.01\\TECH\\Discipline\\GIS\\Aqua Golf Septic to Sewer.aprx"

Mead & Hunt

These documents shall not be used for any purpose or project for which it is not intended. Mead & Hunt shall be indemnified by the client and held harmless from all claims, damages, liabilities, losses, and expenses, including attorneys' fees and costs, arising out of such misuse or reuse of the documents. Any other use or reuse by owner or by others will be at owner's sole risk and without liability or legal exposure to Mead & Hunt. In addition, unauthorized reproduction of these documents, in part or as a whole, is prohibited.

**Aqua Golf
Septic to Sewer**

Exhibit 1



ECS FLORIDA, LLC

Geotechnical • Construction Materials • Environmental • Facilities

"Setting the Standard for Service"



ECS Florida, LLC

Proposal for Geotechnical Exploration and Engineering Services

Aqua Golf Septic to Sewer

Aqua Golf Subdivision
Fairway Drive
New Smyrna Beach, Florida

ECS Proposal Number 56-1934

August 28, 2023 - Revised

August 28, 2023 - Revised

Ms. Casey Cissell, P.E.
Project Manager, Water/Wastewater
Mead & Hunt
4404 Eastport Parkway
Port Orange, Florida 32127

ECS Proposal No. 56-1934

Reference: Proposal for Geotechnical Exploration and Engineering Services
Aqua Golf Septic to Sewer
Aqua Golf Subdivision
Fairway Drive
New Smyrna Beach, Florida

Dear Ms. Cissell:

ECS Florida, LLC (ECS) is pleased to submit this proposal to provide subsurface exploration and geotechnical engineering services for the above-referenced project. This proposal contains our project understanding, the proposed scope of services, fee estimate, schedule of work, and authorization requirements.

PROJECT UNDERSTANDING

Based on your email correspondence, and the provided Aqua Golf Septic to Sewer Exhibit 1, we understand that proposed utility improvements at the Aqua Golf Subdivision in New Smyrna Beach, Florida, will include the following;

- 6,500 LF of 8" Gravity Main, to be constructed via open cut varying in depth from 4 to 13 ft deep;
- 1,200 LF of 6" Force Main, to be constructed approximately 3 to 5 ft deep; and
- 1 lift station near the intersection of Aqua Court and Fairway Drive, with a wet-well depth of approximately 19 ft.

SCOPE OF SERVICES

The objective of the geotechnical exploration is to provide site and subsurface information to evaluate the subsurface conditions at the site for the proposed construction. The following field services are proposed; **boring locations will be agreed upon with Mead and Hunt in advance of the fieldwork:**



Location	Number of Borings	Depth of Borings Below Ground Surface, feet
6,500 LF 8" Gravity Main & 1,200 LF 6" Force Main	12 Auger Borings (Every 500 feet)	8 to 15 (approx. 10-ft average, mechanical drilling)
Lift Station	1 SPT*	25

Notes:

*Standard Penetration Test (SPT)

We will attempt to locate existing underground utilities at the site using the Sunshine 811 system. However, private utilities not registered with this system, will not be identified and may require private utility location services. At the time of this proposal we have assumed that the proposed utility lines will be within public right-of-way. We will locate the borings using our hand-held Global Positioning System (GPS) receivers.

Laboratory classification and index property tests will be performed as necessary on selected soil samples obtained from the exploration.

A geotechnical engineer, licensed in the State of Florida, will direct the geotechnical exploration and provide an engineering evaluation of the site and subsurface conditions with respect to the planned construction and imposed loading conditions. The results of the exploration and engineering evaluation will then be documented in a report containing the following:

1. A brief discussion of our understanding of the planned construction and imposed loading conditions.
2. A presentation of the field and laboratory test procedures used, and the data obtained.
3. A presentation of the existing on-site conditions, such as topography, surface vegetation, etc. as they relate to the planned construction.
4. A presentation of the encountered subsurface conditions, including subsurface profiles and measured groundwater levels, estimated seasonal high groundwater levels, and estimated geotechnical engineering properties (as necessary).
5. A geotechnical engineering evaluation of the site and subsurface conditions with respect to the planned construction.
6. Recommendations for pipeline support.
7. Recommendations for design and construction of the proposed lift station.
8. Recommendations for the required site preparation and earthwork construction including compaction recommendations for structural and non-structural areas.

PROPOSAL ASSUMPTIONS

ECS has made the following assumptions in developing this proposal:

- 2 full business days are needed for utility mark-up prior to the start of drilling operations.

- Drilling operations will last approximately 3-4 business days.
- Client will provide the right of access to the property.

COST OF SERVICES

ECS will provide the proposed geotechnical base scope of services for a lump sum fee of **\$6,000**; note that to mitigate trip hazards, this fee includes use of borehole grouting or sand backfill within the project residential areas. If additional services are required because of unexpected field conditions encountered in our field exploration program, or because of a request for additional services, they would be invoiced in accordance with our current Fee Schedule. Before modifying or expanding the extent of our exploration program, you would be informed of our intentions for both your review and authorization.

SCHEDULE

We are prepared to mobilize to the site within two to three weeks after authorization to proceed. The laboratory testing can be completed in one week after completion of the drilling services. The written report containing final recommendations will be submitted within two weeks after completion of all field testing.

UTILITY CLERANCE

We will contact Sunshine 811 to locate underground utilities at the site; however, our experience indicates that Sunshine 811 will not locate utilities beyond the point of distribution (meters or gauge points) on private property. We will coordinate the location of our exploration in order to avoid any underground utilities indicated by the Sunshine 811 locating system. However, we will not be responsible for any private utilities not pointed out to us by the respective land owner(s) or client prior to drilling activities. If private utilities are a concern, we can provide a private utility line locator to reduce your liability. Please read the following section on private utility locator services and if desired, indicate your request for their services on the attached Proposal Acceptance sheet.

Contracting a private utility locator service is not a guarantee that all utilities within a work site will be identified, but a service that is offered to lower the risk of the owner/client. ECS and our clients have had past success in avoiding utility conflicts by augmenting the Sunshine 811 services with a private utility locator service. Private utility locator services can identify utility alignments that incorporate significant iron content in the conduit materials. However, private utilities possessing the higher likelihood of not being easily identifiable, beyond the point of distribution, include all utilities not containing significant ferrous (iron) content (examples would include but not be limited to most sanitary sewer alignments, copper or PVC water lines, fiber optic lines without tracer ribbons, copper electric lines with no surface exposure, drainage tiles/pipes, and irrigation lines).

Where a private locator service identifies a potential risk that is not traceable through conventional methods, ECS will notify the client immediately and work to resolve the issue. Additional costs related to the resolution of these potential utility conflicts will be invoiced out per our unit rates, as identified in this proposal, or as negotiated and approved at the time of the occurrence.

SITE REPAIR

Upon completion of the subsurface exploration procedures, we will backfill each of the excavations with the excavated soil and mound the excess spoil back up over the test location. In pavement areas, we will patch the asphalt surface with a cold mix asphalt patch. Typically, we will not provide site repair beyond what is outlined above unless specifically contracted.

Please note that some disturbance to off-pavement/gravel covered the surface areas, including the possible cutting of trees, running over of brush and understory in wooded areas might occur. We will attempt to minimize such disturbance; however, we have not budgeted for site repair of the site including filling of tire ruts, seeding of lawn areas, or the planting of trees. If necessary, additional site restoration can be provided at an additional cost.

CLOSING

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. Your acceptance of this proposal may be indicated by signing and returning the enclosed Proposal Acceptance Form. Our work will be done in accordance with the attached Terms and Conditions which is made a part of this proposal.

Thank you for the opportunity to submit this proposal to provide services and serve as your consultant. We look forward to working with you on this project, and to hopefully serve as your consultant in the future. If you have any questions, or if we can be of any additional service, please contact us at (904) 880.0960.

Respectfully submitted,

ECS FLORIDA, LLC

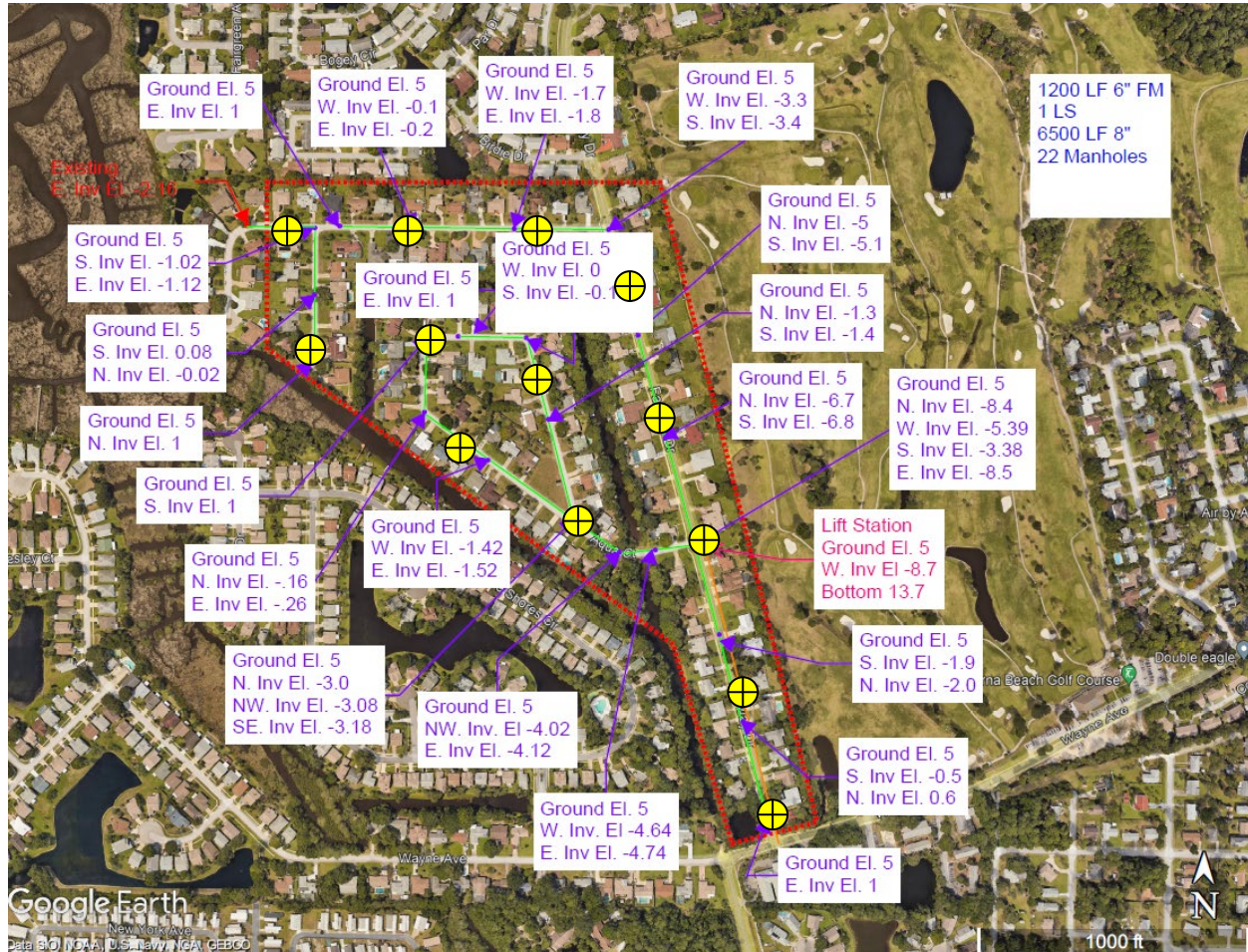


Idi Kola
Geotechnical Project Manager



Maximilian Kemnitz, P.E.
Senior Geotechnical Project Manager

Attachments: Figure 1. Proposed Boring Location Diagram
Proposal Acceptance Form
ECS Terms and Conditions of Service



⊕ Approximate proposed boring location

Figure 1. Proposed Boring Location Diagram

PROPOSAL ACCEPTANCE FORM
ECS FLORIDA, LLC

Project Name: Aqua Golf Septic to Sewer
Location: Aqua Golf Subdivision, New Smyrna Beach, Florida
Estimate: \$6,000
Private Utility Locator: \$1,500 per day ☐ YES ☐ NO

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are authorizing ECS to proceed, providing ECS permission to enter the site, and making this proposal the agreement between ECS and Client. Your signature also indicates you have read this document and the Terms and Conditions of Service in their entirety and agree to pay for services as above set forth.

CLIENT AND BILLING INFORMATION

Name of Client: _____
 Contact Person: _____
 Telephone No.: _____
 E-mail: _____

	<u>Responsible for Payment</u>	<u>Approval of Invoice (if different)</u>
Contact Name:	_____	_____
Company Name:	_____	_____
Address:	_____	_____
Address:	_____	_____
City, State, Zip:	_____	_____
Telephone No.:	_____	_____
Fax No:	_____	_____
E-mail Address:	_____	_____

The reports are normally e-mailed directly to client. If you require copies to others, please provide their names, e-mail addresses and fax numbers below.

Name	E-mail Address	Phone Number	Fax Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: _____

Client Signature: x _____ Date: _____

ECS FLORIDA, LLC

TERMS AND CONDITIONS OF SERVICE

The professional services ("Services") to be provided by ECS Florida, LLC ("ECS") pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing and shall form the Agreement between ECS and CLIENT.

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Services on the Project and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

2.0 SCOPE OF SERVICES - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S, agents, contractors and consultants ("Contractors"). CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guarantee of any nature whatsoever.

3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable laws or regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.0 CLIENT DISCLOSURES

4.1 Where the Services requires ECS to penetrate a surface, CLIENT shall furnish and/or shall direct CLIENT'S or CLIENT'S Contractors to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees or fee schedule to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S Contractors, including such information that becomes incorporated into ECS documents.

6.0 CONCEALED RISKS - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. CLIENT agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' additional services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the site for the performance of Services. CLIENT hereby grants ECS and its agents, subcontractors and/or subconsultants ("Subconsultants"), the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS and its Subconsultants harmless from any claims

arising from allegedstions that ECS trespassed or lacked authority to access the Site.

7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment will cause damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' Subconsultant's request for utility marking services made in accordance with local industry standards.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the first issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing by-products in accordance with applicable laws and regulations.

10.0 ENVIRONMENTAL RISKS

10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this Agreement to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely

affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with its Project for which the Documents of Service are provided until the completion of the Project.
- 11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT and its Contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3 Without ECS' prior written consent, CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or its Subconsultants. CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or Damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its Contractors from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, fall protection, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any of CLIENT'S Contractors or any of their subcontractors.
- 13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete work being installed by CLIENT'S Contractors. If CLIENT elects to retain ECS on a part-time or on-call basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risk that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing in exchange for CLIENT'S receipt of an immediate cost savings. Unless the CLIENT can show that ECS' errors or omissions are contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part-time or on-call basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all Damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from work that was monitored or tested by ECS on a part-time or on-call basis.

- 14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the professional fees section of the Proposal. Any estimate of professional fees stated shall not be considered as a not-to-exceed or lump sum

amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

- 15.2 CLIENT agrees that all professional fees and other unit rates may be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the scope of Services, professional fees, and time schedule.
- 15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this Agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the professional Fees. Invoices are due and payable upon receipt.
- 15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice date. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT's client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1 CLIENT and CLIENT'S Contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to client-furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

- 17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain workers compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1 **CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.**

18.1.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

18.1.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$50,000, or the total fee for the services rendered, whichever is greater.

- 18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.
- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this Agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

- 19.1 Subject to Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but

- only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)
- 19.2 To the fullest extent permitted by law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ("Damages") caused in whole or in part by the acts, errors, or omissions of the CLIENT or CLIENT's employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.
- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**
- 19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**
- 19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**
- 20.0 CONSEQUENTIAL DAMAGES**
- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.
- 21.0 SOURCES OF RECOVERY**
- 21.1 All claims for damages related to the Services provided under this Agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity in any lawsuit brought under this Agreement.
- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.
- 21.3 **PURSUANT TO FLA. STAT. SECTIONS 558.002 AND 558.0035, CLIENT AGREES THAT AN INDIVIDUAL EMPLOYEE OR AGENT OF ECS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE FOR ACTS OR OMISSIONS ARISING OUT OF THE SERVICES.**
- 22.0 THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the Agreement. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.
- 23.0 DISPUTE RESOLUTION**
- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen calendar (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.
- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.
- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.
- 24.0 CURING A BREACH**
- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.
- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 25.0 TERMINATION**
- 25.1 CLIENT or ECS may terminate this Agreement for breach, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.
- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.
- 26.0 TIME BAR TO LEGAL ACTION** - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this Agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.
- 27.0 ASSIGNMENT** - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.
- 28.0 SEVERABILITY** - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.
- 29.0 SURVIVAL** - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the Agreement.
- 30.0 TITLES: ENTIRE AGREEMENT**
- 30.1 The titles used herein are for general reference only and are not part of the Terms.
- 30.2 These Terms together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS ("Agreement"). CLIENT acknowledges that all prior understandings and negotiations are superseded by this Agreement.
- 30.3 CLIENT and ECS agree that subsequent modifications to the Agreement shall not be binding unless made in writing and signed by authorized representatives of both parties.
- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.
- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT's acceptance of this Proposal and these Terms and their agreement to be fully bound to them. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.



August 31, 2023

VIA EMAIL: Cassandra.Cissell@meadhunt.com

Ms. Cassandra Cissell, PE ENV SP | **Project Manager**
Water/Wastewater
Mead & Hunt, Inc.
4401 Eastport Parkway
Port Orange, Florida 32127
Direct: 386-414-5062

RE: NSB Aqua Golf Septic to Sewer
Near the Intersection of Fairway Drive and Wayne Ave, New Smyrna Beach, Florida 32168
Section 13, Township 17 South, Range 33 East, Volusia County, Florida

Dear Ms. Cissell,

We are pleased to submit our revised proposal for Surveying Services and Utility Services on the above referenced project.

TASK I – Topographic Survey

Provide a Topographic Survey in accordance with Chapter 5J-17 F.A.C. to include the following:

1. Locate all improvements and utilities, as evidenced by above ground features or if designated and marked by the Utility Owners or their designated representative or a contracted service at the original time of field visit.
2. Obtain spot elevations on natural ground and existing improvements suitable for interpolation of one-foot contours to be shown on the final drawing.
3. Establish a minimum of **seven (7)** site benchmarks.
4. Topographic coverage will be limited to the area outlined in **purple** on the attached **Exhibit “B”**, as provided by Mead & Hunt, Inc. on August 25, 2023.
5. SSMC will incorporate Mead & Hunt Survey requirements for a new gravity sewer system, attached as **Exhibit “C”**.

TASK I – DELIVERABLE

The final product will be **three (3)** certified prints, and an electronic file for your use.

TASK II – Subsurface Utility Designation

1. Horizontally locate and field mark (paint & flags) all public subsurface utility mains found excluding service lines, gravity sewer lines and irrigation found within the limits outlined in **purple** on the attached **Exhibit “B”**, as provided by Mead & Hunt, Inc. on August 25, 2023.

TASK II – DELIVERABLE

The final product will be a field drafted plan sheet or utility designation field sketch(s) of the project area reflecting all pertinent data for your use.

ADDITIONAL SERVICES

Any service not explicitly provided for in the above scope will be billed as additional services and will be performed at our then current hourly rates as provided for in **Exhibit “A”**.

INFORMATION PROVIDED BY CLIENT

SSMC shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives.

DELIVERY

All documents will be sent to the client or the client's representative(s) via **USPS**. If overnight shipping is requested or required by the client or the client's representative(s), then said charges would appear as a separate item on our invoice unless we are provided with the client's overnight carrier account number for shipping.

PROJECT TIMELINE

We anticipate the completion of the above-described work within **thirty-five (35) business days** after receipt of written notice to proceed.

Utility Terms and Conditions

Mead & Hunt, Inc. agrees to abide by Sunshine 811, Florida State Statutes Chapter 556.106 and all applicable laws, and regulations that pertain to the services provided.

Mead & Hunt, Inc. **MUST** provide Southeastern Surveying and Mapping Corporation (SSMC) with all plans and records for this site prior to the commencement of field efforts **AND** review plans with SSMC technician. SSMC will rely on the accuracy of such plans and records and will notify Mead & Hunt, Inc. if there are any patently or reasonably identifiable defects in the documents prior to performing services. Mead & Hunt, Inc.'s representative will be responsible for reviewing plans with SSMC technician and indicating what utility structures are expected to be encountered and where.

SSMC shall review the site conditions with the use of a Ground Penetrating Radar (GPR) in the presence of Mead & Hunt, Inc. Authorized Representative based upon the plans and records provided.

Mead & Hunt, Inc. is aware that due to the inherent uncertain nature of subsurface utilities, including but not limited to deficient or misrepresentation of prints, SSMC cannot guarantee that all subsurface utility lines will be accounted for. SSMC will ensure that all reasonable efforts are made to identify the location of said underground utilities and provide the best available information within the project area with the use of Ground Penetrating Radar and Electronic Line Locating Equipment, as needed. Additional research will only be conducted by SSMC if requested in writing by Mead & Hunt, Inc.

In accordance with the Underground Facility Damage Prevention and Safety Act, the Design Engineer shall perform sufficient Utility Coordination with the Utility providers in this location to affirm the information from SSMC's efforts and confirm that no other subsurface utility is possibly undetected by these efforts.

SSMC will certify that the surface designation is within two (2) feet of the true underground position of the utility relative to the mark as shown on the surface in accordance with the plans provided and the reasonable efforts conducted to locate the utilities as outlined above.

SSMC shall not be held liable for any latent or unreasonably discoverable utilities in the project area. Furthermore, in the event of a claim regarding the services provided in the proposal, SSMC shall have liability for reasonable and necessary defense costs to the extent caused by SSMC's negligence.

EXPENSES AND FEES

Our fee for this project will be as follows:

TASK I – Topographic Survey:	\$ 45,531.00
TASK II – Subsurface Utility Designation:	\$ 11,758.00
Total:	\$ 57,289.00

Payment Terms:

Payment is expected within thirty (30) days from the date of the invoice.

Payment Options:

SSMC is committed to ensuring our clients have access to various payment options. These options include cash, paper checks, ACH transfers, wire transfers, and credit cards. Credit card payments are subject to a vendor administrative fee of 3.5% of the invoice total.

We look forward to the opportunity to work with you on this project.

Sincerely,



Steven M. Fensterer
Project Manager

SMF:kjc

If the above scope, period of service and project fees meets with your approval, please forward the service Work Order along with the client Prime Agreement as per the Master Services Agreement dated 07/25/2022 to Southeastern Surveying and Mapping Corporation (SSMC) as notice to proceed along with the notice of commencement.
Fees and times stated in this agreement are valid for six months from the date of the proposal.

ACCEPTED BY:

/			
Principal / or Corporate Officer	TITLE	Printed Name	Date

EXHIBIT "A"

HOURLY RATES

Professional Surveyor & Mapper	\$162.00/per hour
Project Manager (Survey)	\$162.00/per hour
Project Manager (SUE)	\$162.00/per hour
Senior Technician (Survey)	\$122.00/per hour
Senior Technician (SUE)	\$122.00/per hour
CAD Technician	\$108.00/per hour
2 Person Survey Field Crew	\$163.00/per hour
3 Person Survey Field Crew	\$214.00/per hour
4 Person Survey Field Crew	\$265.00/per hour
2 Person SUE Field Crew	\$198.00/per hour
3 Person SUE Field Crew	\$276.00/per hour

EXHIBIT "B" – PROJECT LIMITS





Exhibit "C"

Mead & Hunt – Survey / CAD Requirements

SCOPE OF WORK:

Prepare specific purpose survey to establish the apparent right-of-way lines (if route survey) and property lines (if site survey) and locate all improvements including elevations within the apparent right-of-way or property lines, and 10' beyond the apparent right-of-way/property lines, unless otherwise indicated.

The survey will include a minimum of three (3) state plane coordinates (NAVD 88 Vertical, NAD 83 Horizontal) to establish reference points. The survey drawing file (.dwg) shall be delivered in the appropriate coordinate system. Establish apparent right-of way lines utilizing existing survey monumentation. (Show found I.P. or monuments, etc. on drawings). Show at least 50' of each intersecting side street right-of-way with improvements.

Indicate a survey baseline with stations on drawings including location and direction of baseline related to state plane reference points. Baseline to be coordinated with Mead & Hunt prior to beginning field work. Survey baselines shall be center of right-of-way, center of roadway, right-of-way, etc. When survey alignment is along an FDOT roadway use the established FDOT stationing convention. Surveys adjacent to coastal areas shall include the Coastal Construction Control Line.

Additional information required: All visible above ground fixed improvements to include, but not limited to, pavement, edge of pavement or curb (size & type), parking lots, sidewalks, concrete pads, utility poles, communication boxes, manholes, utility valve boxes, hydrants, storm drainage structures, shorelines, ditches (top, bottom and centerline), walls, fences, trees with type and size (per local code), shrubs, buildings/structures, driveways (and type - concrete, asphalt, dirt, gravel, shell, etc.), signs, mailboxes, water meters/boxes, sewer cleanouts, etc.

For route surveys: Show lot/block and parcel numbers and subdivision names with plat book and page number when applicable. Show approximate lot/property lines based on best available information (i.e., property corners and/or plats). Show addresses of properties along route. Indicate business with name and type of business. Indicate if vacant or undeveloped.

Show topographic cross section elevations at fifty (50) foot stations to 10' outside of right-of way and more frequently at any sudden change of grade. The topographical information shall be sufficient to generate a surface in Civil 3D. Typically, additional spot elevations shall be shown at street intersections (P.C., P.T., mid-radius) and at driveways. Cross section shall show centerline and edge of pavement elevations, sidewalk elevations and tops and bottoms of any swales or ditches.

Show elevations of sanitary sewer and storm drainage structures. Indicate top and invert or flow line elevations of all pipes at structure. Show pipe sizes, type of material, and direction of flow. Pipes shall be drawn at correct elevation within the survey drawing file (.dwg), and include callouts for pipe size, material, etc. every 200' along alignment. Provide invert of next upstream/downstream structure that falls outside survey limit (top slab, bottom, inverts, surrounding grade). Show existing surface water/stormwater water levels at time of survey.

Coordinate locating additional buried utility facilities with the appropriate entity to establish location of underground telephone, tv, electric, gas, sanitary sewer, storm drainage, potable water, reclaimed water, etc. and indicate on plans. The survey firm shall request a Design Ticket with Sunshine 811 and the ticket information shall be provided to Mead & Hunt.

Specific surveys performed for proposed new gravity sewer project require footprint of structure front and floor slab elevations. Surveys performed for new/replacement water or reclaimed water mains require location of existing meters/service boxes and elevation of top of valve nuts.

Specific surveys performed for Lift Station retrofits/replacements require the surveyor to verify the existing wet well dimensions.

DELIVERABLES:

Survey shall be certified to Mead & Hunt, Inc. and the project client/owner.

- Surveyor shall use Civil 3D template provided by Mead & Hunt to create survey deliverable file.
- Electronic Copy – Surveyor shall deliver drawing file (.dwg). File(s) shall be in Civil 3D 2018 or later format. E-transmit function shall be used to compile electronic files for transmittal.
- Electronic Copy Signed & Sealed – A noneditable electronic version pdf with an image of the seal and electronic signature in accordance with F.A.C. 5J-17.062.

The surveyor shall deliver one (1) contiguous Civil 3D file delivered in “model space” and a Surface file. Any use of these files as an XREF or formatting of sheet templates in “paper space” shall be for surveyors use only and will not affect the “base” files delivered to Mead & Hunt. Survey deliverables are to be created in Civil 3D. Points are to be native Civil 3D points.

The final “base” file shall have all layers turned “on” and thawed” so that all available information is displayed by default. Any construction lines, survey points, etc. and their associated layers that are not directly required by Mead & Hunt shall be removed from the drawing prior to delivery.

Multi-part or amended surveys shall use continuing point number series, to avoid conflicts or duplicate point numbers with other portions of the survey when they are combined into one working file.

Layering shall be in accordance with the Mead & Hunt survey template. If additional layers are created, a descriptive layering scheme shall be used that accurately describes the entities contained in the layer. Duplicate or numbered layers are not acceptable.

Entities shall be on their correct layer. Example: Sewer entities on “sewer” layer associated sewer text on “sewer text” layer. **All entities in the drawing shall be “color and line type by layer”.**

Text size shall be no larger than 10-point font (except street names, title block, etc.). Other text sizes in the drawing shall be relative to the plotted scale. Scale shall be per Mead & Hunt.

Surveyor shall deliver revised files as needed per Mead & Hunt’s review and comment.

GENERAL:

All survey work shall be performed in accordance with Standards of Practice for Professional Surveyors and Mappers, Chapter 5J-17, F.A.C. pursuant to Section 472.027, Florida Statutes.

GENERAL TERMS AND CONDITIONS

These standard terms and conditions ("STCS") are incorporated by reference into the foregoing proposal, along with any future modifications or amendments (the "Agreement") between Southeastern Surveying and Mapping Corporation ("SSMC") and its Client ("You" or "Your") for the performance of surveying services ("Services"). These STCS are fully binding upon you just as if they were fully outlined in the body of the proposal letter and shall supersede any term or provision elsewhere in the agreement in conflict with these STCS.

SCOPE OF SERVICES

For the fee outlined in the Agreement, you agree that SSMC shall only be obligated to render the Services expressly described in the Agreement. Unless the Agreement explicitly requires, in no event does SSMC have any obligation or responsibility for:

- a. The correctness and completeness of any document which was prepared by another entity.
- b. The correctness and completeness of any drawing prepared by SSMC, unless it was duly signed and sealed by a registered professional on SSMC's behalf.
- c. Favorable or timely comment or action by any governmental entity on the submission of any construction documents, land use or feasibility studies, appeals, petitions for exceptions or waivers, or other requests or documents of any nature whatsoever.
- d. Taking into account off-site circumstances other than those clearly visible and actually known to SSMC from on-site work.
- e. The actual location (or characteristics) of any portion of a utility that is not entirely visible from the surface.
- f. Site safety or construction quality, means, methods, or sequences.
- g. The correctness of any geotechnical services performed by others, whether or not performed as SSMC's subcontractor.

Should shop drawing review be incorporated into the Services, SSMC shall pass on the shop drawings with reasonable promptness. Checking and approval of shop drawings will be general, for conformance with the design concept of the project to which this Agreement relates ("Project") and compliance with the information given in the construction documents, and will not include quantities, detailed dimensions, nor adjustments of dimensions to actual field conditions. Approval shall not be construed as permitting any departure from contract requirements, nor as relieving the Contractor of the sole and final responsibility for any error in details, dimensions, or otherwise, that may exist. **SSMC does not provide legal, accounting, or insurance services.**

YOUR ORAL DECISIONS

You, or any of your directors, officers, partners, members, managers, employees or agents having apparent authority from you, may orally: (a) make decisions relating to Services or the Agreement; (b) request a change in the scope of Services under the Agreement; or (c) request SSMC to render additional services under the Agreement, subject to our right to require you to submit the request in writing before your decision or request shall be considered to have been effectively made. You may, at any time, limit the authority of any or all persons to act orally on your behalf under this Paragraph, by giving SSMC seven (7) days advance written notice.

STANDARD OF CARE

The standard of care for all professional services performed by SSMC under this Agreement shall be the skill and care used by members of SSMC's profession practicing under similar circumstances at the same time and in the same locality.

PAYMENT

SSMC may submit invoices at any time to you for Services and reimbursable expenses incurred. Invoices are payable within 30 days of the invoice date. Invoices may be based either upon our estimate of the proportion of the total services completed at the time of billing for lump sum or fixed fee services, or in the case of hourly services, upon rendering of the Services. If any invoice is not paid within 30 days of the invoice date, SSMC shall have the right either to suspend the performance of our Services until all invoices more than 30 days past due are fully paid or to terminate the agreement and to initiate proceedings to recover amounts owed by you. Additionally, SSMC shall have the right to withhold from you the possession or use of any drawings or documents prepared by SSMC for you under this or any other agreement with you until all delinquent invoices are paid in full. You shall not offset payments of our invoices by any amounts due or claimed to be due for any reason.

If you do not give SSMC written notice disputing an invoice within 20 days of the invoice date, the invoice shall conclusively be deemed correct. All payments made by you should specify the invoice numbers being paid. If SSMC receives payments that do not specify the invoices being paid, you agree that SSMC may apply payments in our sole discretion. Time is of the essence of your payment obligations, and your failure to make full and timely payment shall be deemed a material breach.

PROPRIETARY RIGHTS

The drawings, specifications and other documents prepared by SSMC under this Agreement are instruments of SSMC's service for use solely for the Project and, unless otherwise provided, SSMC shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright and rights to any SSMC trademarks. You shall be permitted to retain copies, including reproducible copies of SSMC's instruments of service for information and reference for the Project. SSMC's drawings, specifications, or other documents shall not be used by you or others on other projects for any reason or for completion of this Project by other professionals unless you enter into a written agreement with SSMC allowing for such use. Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication inconsistent with our reserved rights.

TERMINATION

Either party may terminate the Agreement if the other party materially breaches the Agreement. You shall immediately pay SSMC for our services rendered and expenses incurred through the termination date, including fees and expenses that SSMC incur as a result of the termination.

ASSIGNMENT

Neither party shall assign or transfer any rights, interests or claims arising under this Agreement without the written consent of the other. This Agreement shall not confer any benefit or right upon any person or entity other than you, SSMC, and its officers, employees, agents, and subcontractors. SSMC's officers, employees, agents, and subcontractors shall have and shall be entitled to the protections afforded SSMC under this Agreement.

GOVERNING LAW

This Agreement shall be interpreted under and governed by the laws of the State of Florida. The parties agree that the courts of Orange County, Florida, and the US District Court of the Middle District of Florida (Orlando Division) shall have exclusive jurisdiction over any controversy. The parties consent to the jurisdiction of the Courts and waive any objection either party might otherwise be entitled to assert regarding jurisdiction. The parties irrevocably waive all right to trial by jury in any action, proceeding, or counterclaim arising out of or related to this Agreement.

SEVERABILITY

If any part, term, or provision of this agreement is held to be illegal or unenforceable, the validity and enforceability of the remaining parts, terms, and provisions of this agreement shall not be affected, and each party's rights shall be construed and enforced as if the agreement did not contain the illegal or unenforceable part, term, or provision.

LIMITATIONS ON LIABILITY

SSMC's liability for any loss, property damage or bodily injury of or to you caused in whole or in part by SSMC in the performance of this Agreement, or in the performance of any supplementary services in any way related to this Agreement, shall be limited in the aggregate to the amount of fees that you have paid to SSMC for the Services. The parties intend that the preceding limitation on liability shall apply to all claims, whether sounding in tort, in contract, in warranty or otherwise. You release, waive, and shall not seek contribution from, or indemnification by, SSMC for any claims of any nature made against you by any other person who may suffer any loss, property damage or bodily injury in any manner associated with SSMC's services, or SSMC's officers, employees, agents and subcontractors under this Agreement, or any supplementary services in any way related to this Agreement. SSMC shall not be liable to you, in any event or for any amount, for delays, or consequential, special or incidental damages; or punitive or exemplary damages.

PAYMENT OF ATTORNEY'S FEES

The losing party shall pay the winning party's reasonable attorney's fees and expenses for the prosecution or defense of any cause of action, claim or demand arising under this Agreement in any court or in arbitration.

INDEMNIFICATION

You agree to indemnify and hold SSMC harmless from and against any and all liability, loss, damages, claims, and demands for loss, damages, property damages or bodily injury, arising out of work undertaken on the Project by you, or your contractor, subcontractor or other independent company or consultant employed by you to work on the Project, or their respective partners, members, managers, directors, officers, employees, agents or assigns; or arising out of any other operation, no matter by whom performed, for and on behalf of you, or such contractor, subcontractor or other independent company or consultant, whether or not due in part to errors or omissions by us in the performance of this Agreement, or in the performance of any supplementary service in any way related to this Agreement, provided that you are not required to indemnify and hold SSMC harmless under this Paragraph in the event of SSMC's sole negligence.

INSURANCE

SSMC represents that it carries and will continue carry General Liability in the amount of \$1M per each occurrence and \$2M per general aggregate, Worker's Compensation in the amount of \$1M, Automobile Liability in the amount of \$1M, Professional Liability also known as Errors and Omissions in the amount of \$5M per occurrence and general aggregate, and Umbrella Coverage in the amount of \$5M. General Liability, Automobile Liability and Worker's Compensation are primary and non-contributory with Umbrella following form. Certificates of Insurance shall be provided upon request, listing your Company as the certificate holder for a period of one (1) year. SSMC and Client shall waive subrogation against one another.

COMPLETE AGREEMENT

This Agreement contains the entire agreement between the parties concerning the matters covered herein. No prior representations, statements, or inducements made by either SSMC, you, or the respective agents of either, that is not contained in the Agreement shall enlarge, modify, alter, or otherwise vary the written terms of the Agreement unless they are made in writing and made a part of the Agreement by attachment, incorporated by reference in the Agreement or signed or initialed on behalf of both parties.