

RESOLUTION NO. 23-181

A RESOLUTION OF THE CITY OF PANAMA CITY BEACH, FLORIDA, APPROVING AN AGREEMENT WITH ROGAR MANAGEMENT & CONSULTING OF FLORIDA, LLC, RELATING TO THE CONSTRUCTION OF THE COLONY CLUB DRAINAGE SWALE PROJECT IN AN AMOUNT NOT TO EXCEED \$618,450.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PANAMA CITY BEACH, FLORIDA THAT:

1. The appropriate officers of the City are authorized to execute and deliver on behalf of the City that certain Agreement between the City and Rogar Management & Consulting of Florida, LLC, relating to the construction for the Colony Club Drainage Swale in an amount of Five Hundred Eighty-Nine Thousand Dollars (\$589,000.00), in substantially the form **attached** as Exhibit A and presented to the Council today, with such changes, insertions or omissions as may be approved by the City Manager and who execution shall be conclusive evidence of such approval.
2. The City Manager is authorized to execute and deliver on behalf of the City change orders for unforeseen conditions related to this Project, in a cumulative amount that does not exceed Twenty-Nine Thousand, Four Hundred Fifty Dollars (\$29,450.00) provided that the Public Works Director certifies that the change order does not result in a fundamental change to the scope of the project or the standard of materials used for such, the Finance Director confirms the contingency amount set forth herein is not exceeded, and the City Attorney has reviewed the form of the change order.


THIS RESOLUTION shall be effective immediately upon passage.

PASSED in regular session this 25th day of May, 2023.

CITY OF PANAMA CITY BEACH

By: 
Mark Sheldon, Mayor

ATTEST:


Lynne Fasone, City Clerk



Dewberry Engineers Inc. | 850 522.0644
203 Aberdeen Parkway | 850 522.1011 fax
Panama City, FL 32405 | www.dewberry.com

May 1, 2023

City of Panama City Beach
Attn: Ms. Kathy Younce
Interim Public Works Director
110 South Arnold Road
Panama City Beach, FL 32413

RE: **50089305**/ Colony Club Drainage Swale

Dear Ms. Younce

Dewberry Engineers Inc. has reviewed the bid documents opened on 27 April 2023 for Colony Club Drainage Swale project. **Rogar Management & Consulting of FL, LLC** was the lowest bidder at **\$589,000.00**. A review of the bid tabulation sheets determined that **Rogar Management & Consulting of FL, LLC** bid included all required bid documentation. Dewberry recommends that the Colony Club Drainage Swale project be awarded to **Rogar Management & Consulting of FL, LLC**.

If you have any questions, please do not hesitate to contact me at 850.571.1182.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Morgan Hurst', with a long horizontal flourish extending to the right.

Morgan Hurst, PE
Senior Project Manager

Enclosures: Bid Tabulations

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SECTION 00050

AGREEMENT

THIS AGREEMENT is made this 25th day of May, 2023 by and between THE CITY OF PANAMA CITY BEACH, FLORIDA, (hereinafter called "OWNER") and Rogar Management & Consulting of Florida, LLC, doing business as a corporation (an individual), or (a partnership), or (a corporation), having a business address of 12011 SW 129th CT Unit #5 Miami FL 33186 (hereinafter called "CONTRACTOR"), for the performance of the Work (as that terms is defined below) in connection with the construction of **Colony Club Drainage Swale Project** ("Project"), to be located at Panama City Beach, Florida, in accordance with the Drawings and Specifications prepared by **Dewberry, Inc.** the Engineer of Record (hereinafter called "Engineer") and all other Contract Documents hereafter specified.

OWNER and CONTRACTOR, for the consideration herein set forth, agree as follows:

1. The CONTRACTOR shall furnish, at its sole expense, all supervision, labor, equipment, tools, material, and supplies to properly and efficiently perform all of the work required under the Contract Documents and shall be solely responsible for the payment of all taxes, permits and license fees, labor fringe benefits, insurance and bond premiums, and all other expenses and costs required to complete such work in accordance with this Agreement (collectively the "Work"). CONTRACTOR'S employees and personnel shall be qualified and experienced to perform the portions of the Work to which they have been assigned. In performing the Work hereunder, CONTRACTOR shall be an independent contractor, maintaining control over and having sole responsibility for CONTRACTOR'S employees and other

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personnel. Neither CONTRACTOR, nor any of CONTRACTOR'S sub-contractors or sub-subcontractors, if any, nor any of their respective employees or personnel, shall be deemed servants, employees, or agents of OWNER.

2. The CONTRACTOR will commence the Work required by the Contract Documents within ten (10) calendar days after the date of the NOTICE TO PROCEED to be issued by OWNER in writing within thirty (30) calendar days from the date of this Agreement and will achieve Substantial Completion of the Work within 120 days of the required commencement date, except to the extent the period for Substantial Completion is extended pursuant to the terms of the Contract Documents ("Contract Time"). Final Completion of the Work shall be achieved by CONTRACTOR within the time period set forth in Section 15.2 of Section 00100, General Conditions.
3. The CONTRACTOR agrees to pay the OWNER, as liquidated damages, the sum of \$1,600 for each calendar day that expires after the Contract Time for Substantial Completion as more fully set forth in Section 15 of the General Conditions.
4. The CONTRACTOR agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the sum of \$ 589,000.00 as shown in the BID SCHEDULE, included within the Bid Proposal Form, as said amount may be hereafter adjusted pursuant to the terms of the Contract Documents ("Contract Price").
5. The term "Contract Documents" means and includes the following documents, all of which are incorporated into this Agreement by this reference:

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Section 00010 ADVERTISEMENT FOR BIDS

Section 00020 INFORMATION FOR BIDDERS

Section 00030 BID PROPOSAL FORM

Section 00040 BID BOND

Section 00050 AGREEMENT

Section 00060 PERFORMANCE BOND

Section 00070 PAYMENT BOND

Section 00080 NOTICE OF AWARD

Section 00090 NOTICE TO PROCEED

Section 00095 STATEMENT UNDER SECTION 287.087, FLORIDA
STATUTES, ON PREFERENCE TO BUSINESSES
WITH DRUG-FREE WORKPLACE PROGRAMS

Section 00096 TRENCH SAFETY ACT CERTIFICATE OF
COMPLIANCE

Section 00097 PUBLIC ENTITY CRIMES STATEMENT

Section 00099 CERTIFICATE OF INSURANCE

Section 00100 GENERAL CONDITIONS

Section 00800 SUPPLEMENTAL CONDITIONS

Section 00801 SUBMISSION OF WORK SCHEDULE

Section 00802 PREVENTION, CONTROL AND ABATEMENT OF
EROSION AND WATER POLLUTION

Section 00803 CONTRACTOR QUALITY CONTROL

Section 00805 CONTRACT CLAIMS AND CHANGES

Section 00807 PROJECT REPRESENTATIVE

Section 00808 SALES TAX EXEMPTION

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DRAWINGS prepared by Dewberry, Inc.

numbered Cover Sheet through D1 and dated February 2023 .

SPECIFICATIONS prepared or issued by Dewberry, Inc.

dated February 2023 .

ADDENDA

No. 1, dated April 6, 2023

No. 2, dated April 21, 2023

No. , dated , 20

No. , dated , 20

The Contract Documents also includes any written amendments to any of the above signed by the party to be bound by such amendment. The Contract Documents are sometimes referred to herein as the "Agreement."

6. The OWNER will pay the Contract Price to the CONTRACTOR in the manner and at such times as set forth in Contract Documents.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
8. This Agreement shall be governed by the laws of the State of Florida.
9. All notices required or made pursuant to this Agreement shall be in writing and, unless otherwise required by the express terms of this Agreement, may be given either (i) by mailing same by United States mail with proper postage affixed thereto, certified, return receipt requested, or (ii) by sending same by

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Federal Express, Express Mail, Airborne, Emery, Purolator or other expedited mail or package delivery, or (iii) by hand delivery to the appropriate address as herein provided. Notices to OWNER required hereunder shall be directed to the following address:

If to Owner:

City of Panama City Beach

17007 Panama City Beach Parkway

Panama City Beach, FL 32413
ATTENTION: _____
Drew Whitman City Manager
Fax No.: _____
(850) 233-5108

If to Contractor:

Rogar Management & Consulting of Florida, LLC

12011 SW 129th CT Unit #5

Miami FL, 33186

ATTENTION: _____
Javier Rodriguez
Fax No.: _____

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this Section.

10. CONTRACTOR recognizes that OWNER is exempt from sales tax and may wish to generate sales tax savings for the Project. Accordingly, to the extent directed by and without additional charge to OWNER, CONTRACTOR shall comply with and fully implement the sales tax savings program as more fully described in the Sales Tax Exemption Addendum. If required by OWNER, the Sales Tax Exemption Addendum shall be made a part of the Contract Documents, the form of which is set forth in Section 00808.

11. The failure of OWNER to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a continuing waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

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12. Each of the parties hereto agrees and represents that the Agreement comprises the full and entire agreement between the parties affecting the Work contemplated, and no other agreement or understanding of any nature concerning the same has been entered into or will be recognized, and that all negotiations, acts, work performed, or payments made prior to the execution hereof shall be deemed merged in, integrated and superseded by this Agreement.
13. Should any provision of the Agreement be determined by a court with jurisdiction to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.
14. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural. The term "including" is not limiting, and the terms "hereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, unless stated otherwise. Additionally, the parties hereto acknowledge that they have carefully reviewed this Agreement and have been advised by counsel of their choosing with respect thereto, and that they understand its contents and agree that this Agreement shall not be construed more strongly against any party hereto, regardless of who is responsible for its preparation.
15. For this Project, OWNER has designated a Project Representative to assist OWNER with respect to the administration of this Agreement. The Project Representative to be utilized by OWNER for this Project, shall be Dewberry, Morgan Hurst, P.E., Senior Project Manager.
16. CONTRACTOR acknowledges and agrees that no interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work

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from any cause whatever, including those for which the OWNER, PROJECT REPRESENTATIVE, or ENGINEER may be responsible, in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from OWNER. CONTRACTOR expressly acknowledges and agrees that it shall receive no damages for delay. CONTRACTOR's sole remedy, if any, against OWNER will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned "No Damage For Delay" provision. This section shall expressly apply to claims for early completion, as well as to claims based on late completion. Notwithstanding the foregoing, if the Work is delayed due to the fault or neglect of OWNER or anyone for whom OWNER is liable, and such delays have a cumulative total of more than 90 calendar days, CONTRACTOR may make a claim for its actual and direct delay damages accruing after said 90 calendar days as provided in Section 00805 Supplemental Conditions, Contract Claims and Changes. Except as expressly set forth in this section, in no event shall OWNER be liable to CONTRACTOR whether in contract, warranty, tort (including negligence or strict liability) or otherwise for any acceleration, soft costs, lost profits, special, indirect, incidental, or consequential damages of any kind or nature whatsoever.

17. INSURANCE - BASIC COVERAGES REQUIRED

The CONTRACTOR shall at its expense procure and maintain in force during the Term the insurance on policies and with insurers acceptable to the City as required by the City's Insurance Requirements attached hereto as Exhibit "A." These insurance requirements shall not limit the liability of the CONTRACTOR. The insurance coverages and limits required of CONTRACTOR under this Agreement are designed to meet the minimum requirements of OWNER and the OWNER does not represent these types or amounts of insurance to be sufficient or adequate to protect the CONTRACTOR'S interests or liabilities. CONTRACTOR alone shall be responsible to the sufficiency of its own insurance program.

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Within thirty (30) days of the date of the Award, and thereafter upon the written request of the City, Bidder shall furnish to the City such certificates of coverage and certified copies of policies pursuant to the City's Insurance Requirements. In order to satisfy this provision, the documentation required by this part must be sent to the following address: Attn: Lori Philput, Risk Manager, 17007 Panama City Beach Parkway, Panama City Beach, FL 32413. The CONTRACTOR and the CONTRACTOR'S subcontractors and sub-subcontractors shall be solely responsible for all of their property, including but not limited to any materials, temporary facilities, equipment and vehicles, and for obtaining adequate and appropriate insurance covering any damage or loss to such property. The CONTRACTOR and the CONTRACTOR'S sub-contractors and sub-subcontractors expressly waive any claim against OWNER arising out of or relating to any damage or loss of such property, even if such damage or loss is due to the fault or neglect of the OWNER or anyone for whom the OWNER is responsible. The CONTRACTOR is obligated to include, or cause to be included, provisions similar to this paragraph in all of the CONTRACTOR'S subcontracts and its subcontractors' contracts with their sub-subcontractors.

The CONTRACTOR'S deductibles/self-insured retentions shall be disclosed to OWNER and are subject to OWNER'S approval. They may be reduced or eliminated at the option of OWNER. The CONTRACTOR is responsible for the amount of any deductible or self-insured retention. Any deductible or retention applicable to any claim or loss shall be the responsibility of CONTRACTOR and shall not be greater than \$25,000, unless otherwise agreed to, in writing, by OWNER.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies each of which shall be deemed an original on the date first written above.

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(SEAL)

OWNER:

CITY OF PANAMA CITY BEACH,
FLORIDA

ATTEST:

BY: _____

City Clerk

NAME: Drew Whitman
(Please type)

TITLE: City Manager

City Attorney (as to form only)

CONTRACTOR:

ATTEST:

BY: _____

NAME: Javier Rodriguez
(Please Type)

NAME _____
(Please Type)

ADDRESS: 12011 SW 129th CT Unit #5
Miami FL, 33186

[END OF SECTION 00050]

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SECTION 00060

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto:

City of Panama City Beach

(Name of Owner)

17007 Panama City Beach Parkway

(Address of Owner)

hereinafter called OWNER in the total aggregate penal sum of _____
_____ Dollars (\$_____) in lawful money of the United States, for payment
of which, we bind ourselves, our heirs, personal representatives, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that if the Principal performs its duties,
all the undertakings, covenants, terms, and conditions of that certain Contract between
the Principal and the OWNER, dated the _____ day of _____,
20__, a copy of which is hereto attached and made a part hereof for the construction of:

COLONY CLUB DRAINAGE SWALE PROJECT

"PROJECT NAME(s)"

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during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the SURETY and during the guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that it is expressly agreed that the BOND shall be amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Price more than twenty percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment", wherever used in this BOND, and whether referring to this BOND, or the CONTRACT DOCUMENTS, shall include any alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the PRINCIPAL shall abridge the rights of OWNER hereunder. The OWNER is the only beneficiary hereunder.

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IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20____.

Principal

(Principal) Secretary

(SEAL)

BY _____

(Address)

Witness as to Principal

(Address)

(Surety)

ATTEST:

Witness to Surety

BY _____
Attorney-In-Fact

(Address)

(Address)

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NOTE: Date of BOND must not be prior to date of Contract.

Contractor's Surety shall use this form along with their personal documentation.

If CONTRACTOR is partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

[END OF SECTION 00060]

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SECTION 00070

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal and
(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto:

City of Panama City Beach
(Name of Owner)

17007 Panama City Beach Parkway, Panama City Beach, Florida 32413
(Address of Owner)

hereinafter called OWNER, and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the Contract and to their successors and assigns in the total aggregate penal sum of _____ Dollars (\$_____) in lawful money of the United States, for the payment of which, we bind ourselves, our heirs, personal representatives, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

PAYMENT BOND

00070-1

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THE CONDITION OF THIS OBLIGATION is such that if the PRINCIPAL properly makes payment to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials or supplies, used directly or indirectly by the Principal in the prosecution of the WORK provided for under that certain contract between the Principal and the OWNER, dated the ____ day of _____, 20__, a copy of which is hereto attached and made a part hereof for the construction of :

COLONY CLUB DRAINAGE SWALE PROJECT

“PROJECT NAME(s)”

and any authorized extensions or modification thereof, including all amounts due for materials, lubricants, fuel, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and for all labor cost incurred in such WORK including that by a SUBCONTRACTOR or SUPPLIER of any tier, and to any construction lien holder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, that said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to WORK to be performed thereunder or SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, every suit instituted upon the BOND shall be brought in a court of competent jurisdiction for the county or circuit in which the Contract was to be performed. Owner shall not be joined as a party in any such suit. The notice and time limits of Section 255.05, Florida Statutes, are incorporated herein.

PROVIDED, FURTHER, that it is expressly agreed that this BOND shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract Price more than twenty percent so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in this BOND and whether referring to this BOND, or the CONTRACT DOCUMENTS shall include any change, alteration, addition, extension, or modification of any character whatsoever.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the rights of the OWNER hereunder.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

PCB23-32 ITB COLONY CLUB DRAINAGE SWALE

WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this the ___ day of _____, 20_.

Principal

(Principal) Secretary

(SEAL)

BY _____

(Address)

Witness as to Principal

(Address)

(Surety)

ATTEST:

Witness as to Surety

BY _____

Attorney-In-Fact

(Address)

(Address)

PCB23-32 ITB COLONY CLUB DRAINAGE SWALE

NOTE: Date of BOND must not be prior to date of Contract.

If CONTRACTOR is partnership, all partners should execute BOND. Contractor's Surety shall use this form along with their personal documentation.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

[END OF SECTION 00070]

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SECTION 00080

NOTICE OF AWARD

TO: Rogar Management & Consulting of Florida, LLC
12011 SW 129th CT Unit #5
Miami FL, 33186

PROJECT DESCRIPTION:

COLONY CLUB DRAINAGE SWALE PROJECT

The City of Panama City Beach ("City") has considered the BID submitted by you for the above-described Project in response to its Advertisement for Bids dated _____, 20__, and associated Information for Bidders.

You are hereby notified that your Bid in the amount of \$ 589,000.00 has been accepted by the City. Provided, however, nothing in this Notice or your delivery to the City of the Agreement executed by you (with the required Bonds and Certificates of Insurance) shall in any manner or way be deemed to create any contract between you and the City. No such contract shall be created unless and until the City signs the Agreement.

You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Payment Bond, and Certificates of Insurance within ten (10) calendar days from the date of this Notice.

If you fail to execute said Agreement, together with the required Certificates of Insurance and Bonds, within ten (10) calendar days from the date of this Notice, City will be entitled to consider all your rights arising out of City's acceptance of your BID as abandoned and as a forfeiture of your Bid Deposit. The City will be entitled to all other rights and remedies as may be available to it at law.

You must return an acknowledged copy of this Notice of Award to the City, with the executed Agreement and required Certificates of Insurance and Bonds, within the above noted ten (10) calendar day period.

Dated this 25th day of May, 2023.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.]

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CITY OF PANAMA CITY BEACH
Owner

By _____

Name: Drew Whitman

Title City Manager

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged

By _____

This the _____ day of _____, 20____.

Name _____

Title _____

[END OF SECTION 00080]

