



**Meeting Agenda**  
**Thursday, February 6, 2025**

**7:00 PM**

**REGULAR MEETING**

**Cocoa Beach Country Club**  
**5000 Tom Warriner Blvd.**  
**Cocoa Beach, 32931**

**WELCOME**

**Meeting re-broadcasts on:** Spectrum - Channel 499 and [www.cityofcocoabeach.com](http://www.cityofcocoabeach.com).  
**Meeting Video Archives:** [www.cityofcocoabeach.com](http://www.cityofcocoabeach.com)

**Packets:** Packets are on the City's website ([www.cityofcocoabeach.com](http://www.cityofcocoabeach.com)) and at Commission meetings

**Rules of Order:** Robert's Rules of Order and the Florida Sunshine Law govern the conduct of our meeting

**Speaking Courtesy Rules:**

- The Commission accepts relevant comments.
- A time limit of three minutes is imposed on each speaker. If speaking for a group, the Commission may grant an additional three minutes
- Please direct comments and questions through the Mayor
- Complete speaker cards are required for each of the items you wish to address. Submit the card to the City Clerk prior to the introduction of the item. Speaker Cards are available in the rear of the Commission Room and in the City Clerk's office prior to the meeting. The purpose of the card is to obtain the spelling of your name, contact information if follow-up is needed, and provide for efficient meeting administration
- Upon being recognized by the Mayor, please approach the dais, state your name and address, and speak into the microphone

**Approval Of Order Of Business:**

Note: Members of the public, Commission and Staff may remove items from the Consent Agendas, if they wish to discuss them. Requests for removal need to be made known to the City Commission under the Approval of the Order of Business, at the beginning of the meeting

**Appealing a Decision:**

Any person desiring to appeal any decision made by the City Commission, with respect to any matter considered at such meeting or hearing, will need a record of the proceedings and for such purposes must ensure that a verbatim record and transcript of the proceeding is made in a form acceptable for official court proceedings, which record includes the testimony and evidence upon which the appeal is to be based. It shall be the responsibility of the person desiring to appeal any decision to prepare a verbatim record and transcript at his/her own expense as the City does not provide one

**American with Disabilities Act:**

ATTN: PERSONS WITH DISABILITIES. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations to participate in this proceeding shall, at least forty-eight (48) hours prior to the meeting, contact the Office of the City Clerk at (321) 868-3286; Florida Relay Service (800) 955-8771 (TDD); or (800) 955-8770 (Voice) or 711.

THANK YOU for participating in your Cocoa Beach City Government.

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A. MEETING CALLED TO ORDER

1. Pledge of Allegiance
2. Greg LeSieur, Pastor, Christ Lutheran Church
3. Roll Call

B. APPROVAL OF THE AGENDA

(Note: Members of the public, Commission and Staff may remove items from the Consent Agendas if they wish to discuss them. Requests for removal need to be made known to the City Commission under the Approval of the Order of Business, at the beginning of the meeting.)

C. PUBLIC COMMENTS

Comments will be heard on items that do not appear on the agenda of this meeting. Citizens will limit their comments to three (3) minutes. Per Commission Procedures, the City Commission will not take any action or discuss items brought up under the "Public Comment" section of the agenda. The City Commission may schedule such items as regular agenda items and act upon them in the future.

D. STAFF REPORTS AND ANNOUNCEMENTS

E. CITY ATTORNEY REPORTS AND ANNOUNCEMENTS

F. CITY COMMISSION REPORTS AND ANNOUNCEMENTS

G. COMMUNITY REDEVELOPMENT AGENCY (CRA)

**City Commission will temporarily recess, and then convene as the Cocoa Beach Downtown Community Redevelopment Agency for the following**

**item(s):**

1. Request approval to renew Cocoa Beach Mainstreet Lease Agreement  
Staff Representative: Devan Taly, Director of Grants & Special Projects

**Commission will reconvene for the remaining items.**

**H. UNFINISHED BUSINESS**

1. Adopt Resolution 2025-01, A Resolution of the City Commission of the City of Cocoa Beach, Florida; providing legislative findings; amending Resolution No. 2023-06, a Master Resolution for Fees, by the removal of vacation rental fees and finds and false advertising fines from that resolution and placing those vacation rental fees and fines and false advertising fines into separate matrices incorporated into this resolution; and providing for severability and an effective date.  
Staff Representative: Wayne Carragino, City Manager  
Recommendation: Adopt

**I. NEW BUSINESS**

1. Adopt Resolution 2025-02, A Resolution of the City of Cocoa Beach, Florida, to charge an annual fee for renting a community garden bed in the City of Cocoa Beach Community Garden, and providing for an effective date.  
Staff Representative: Scott Maxim, Project Manager  
Recommendation: Adopt
2. Approve the proposal from 8-Koi in the amount of \$65,951.00 to perform the design of two ADA dune crossovers located at Flagler Lane and South 7th Street. 8-Koi is a continuing engineering services consultant with the City.  
This is a budgeted item.  
Staff Representative: Brad Kalsow, Water Rec Director, Morgan Zuhlke, Stormwater Manager  
Recommendation: Approve

**J. GENERAL PUBLIC COMMENT**

(Only if not accommodated in the 30-minute Public Comment period earlier)

**K. ADJOURNMENT**

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made and entered into this \_\_\_ day of \_\_\_\_\_ 2025 ("Effective Date") by and between the CITY OF COCOA BEACH, Florida, as Lessor (hereinafter the "CITY OF COCOA BEACH"), and the COCOA BEACH MAINSTREET a Florida not for profit corporation, through its Convention & Visitors Bureau (hereinafter the "Lessee") upon the following terms and conditions:

1. **Leased Office Space.** The CRA and The City of Cocoa Beach agree to lease to Lessee certain office space located in the CRA's garage located at 25 S. Orlando Ave., Cocoa Beach, Florida 32931 (hereinafter referred to as the "Office Space") for the purpose of operating a tourist information center. Lessee may purchase up to three (3) parking permits at the downtown business rate for employees of the tourist information center during the term of the lease.
2. **Condition of the Office Space.** Lessee accepts the Office Space in "AS IS" condition and shall maintain the Office Space in good condition during the term of this Lease. Lessee agrees to notify the City of Cocoa Beach immediately in the event of damage to the Office Space, which may create a hazard to the public. Lessee may enter the premises prior to the commencement of the Lease Term for the purpose of furnishing and improving the Office Space.
3. **Term.** This Lease shall be for a term of \_\_\_ (12) months beginning on February 19, 2025, and ending on February 19, 2026.
4. **Rent.** Lessee shall pay the CRA and The City of Cocoa Beach \$5.00 per month during the term of the Lease, payable on the first day of each month.
5. **Signage.** Lessee may provide signage for the Office Space and surrounding fixtures. All signage must be approved by the CRA and/or The City of Cocoa Beach prior to printing. All artwork and murals must be approved by the CRA and/or The City of Cocoa Beach prior to its commission. Approved signage may be located throughout the CRA's garage on windows, a-frames along adjacent sidewalks, (if permitted by City zoning), in stairwells, elevators, and in bathrooms. Lessee may provide for a visitor information center sign for overheard display within the garage and may hang a small information box outside the Office Space, all subject to prior CRA and/or The City of Cocoa Beach approval.
6. **Insurance.** Lessee must maintain insurance which will fully protect the Lessee, the CRA, and the City of Cocoa Beach from any and all claims under any Workers Compensation Act or Employers Liability Laws, and from any and all other claims of whatsoever kind or nature to the damage or property, or for personal injury, including death, made by anyone whomsoever, that may arise under this Lease, either by Lessee or by anyone directly or indirectly engaged or employed by either of them. The amount of insurance required by this Lease must not be less than:
  - (a) Workers' Compensation with Employers' Liability with a limit of \$500,000.00 each accident, \$500,000.00 each employee, \$500,000.00 policy limit for disease;
  - (b) Commercial General Liability (COL) insurance with a limit of not less than \$500,000.00 each occurrence. If such COL insurance contains a general aggregate limit, it shall apply separately to this Lease in the amount of \$500,000.00. COL insurance shall be written on an occurrence form and include bodily injury and property damage liability for premises, operations, personal injury, and advertising injury.

- (c) Commercial Automobile Liability Insurance with a limit of not less than \$300,000.00 each accident for bodily injury and property damage liability. Such insurance shall cover liability arising out of any auto (including owned, hired and non-owned autos) and such policy shall be endorsed to provide contractual liability coverage.

The CRA and the City of Cocoa Beach shall be specifically included as additional insureds and loss payees on all policies except Workers' Compensation. In the event the insurance coverage expires prior to the termination of the Lease, a renewal certificate must be issued 30 days prior to the expiration date. The policy must provide a 30-day notification clause in the event of cancellation or modification to the policy. All certificates of insurance must be on file with and approved by the CRA before commencement of the Lease. The insurance coverages procured by Lessee as required herein will be considered as primary insurance over and above any other insurance, or self-insurance, available to Lessee, and any other insurance, or self-insurance available to Lessee will be considered secondary to, or in excess of, the insurance coverage(s) procured by Lessee as required herein.

6. **Indemnification.** Lessee must indemnify and hold the CRA and the City of Cocoa Beach harmless against and from any and all claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses, including attorney's fees and court costs, incurred by the CRA, the City of Cocoa Beach, or its agents, officers, or employees, arising directly or indirectly from Lessee's performance or nonperformance under this Lease or by any person on Lessee's behalf, including but not limited to those claims, losses, penalties, interest, demands, judgments, costs, damages, or expenses arising out of any accident, casualty, or other occurrence causing injury to any person or property. This includes persons employed or utilized by Lessee. Lessee acknowledges that Lessee has received consideration for this indemnification. Lessee's obligation will not be limited by, or in any way to, any insurance coverage or by any provision in or exclusion or omission from any policy of insurance, whether such insurance is in connection with this Lease. Such indemnification is in addition to any and all other legal remedies available to the CRA and the City of Cocoa Beach and not considered to be the CRA's or the City of Cocoa Beach's exclusive remedy.

In the event that any claim in writing is asserted by a third party which may entitle the CRA or the City of Cocoa Beach to indemnification, the CRA must give notice thereof to Lessee, which notice must be accompanied by a copy of statement of the claim. Following the notice, Lessee

has the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If Lessee does not timely defend, contest, or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event the CRA or the City of Cocoa Beach decides to participate in the proceeding or defense, the CRA and/or the City of Cocoa Beach will have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days' notice to Lessee, to make any reasonable compromise or settlement thereof.

In connection with any claim as aforesaid, the parties hereto must cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise, or settlement of such claim. The indemnification provisions of this paragraph will survive the termination of this Lease.

7. **Sovereign Immunity.** Nothing in this Lease extends, or will be construed to extend, the CRA's or the City of Cocoa Beach's liability beyond that provided in section 768.28, Florida Statutes. Nothing in this Lease is a consent, or will be construed as consent, by the CRA or the City of Cocoa Beach to be sued by third parties in any matter arising out of this Lease.

8. **Public Records Compliance.** Lessee agrees that, to the extent that it may "act on behalf of the CRA or the City of Cocoa Beach within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Lease, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Lessee does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Lessee or keep and maintain public records required by the public agency to perform the service. If the Lessee transfers all public records to the public agency upon completion of the contract, the Lessee shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Lessee keeps and maintains public records upon completion of the contract, the Lessee shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the CRA's or City of Cocoa Beach's custodian of public records, in a format that is compatible with the information technology systems of the City of Cocoa Beach.

(e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **IF THE LESSEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LESSEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY HALL  
1600 Minutemen Cswy.  
P.O. BOX 322430  
COCOA BEACH, FL 32932-2430.  
321-868-3286,  
[CITYCLERK@CITYOFCOCOABEACH.COM](mailto:CITYCLERK@CITYOFCOCOABEACH.COM)**

9. **Public Records Compliance Indemnification.** Lessee agrees to indemnify and hold the CRA and the City of Cocoa Beach harmless against any and all claims, damage awards, and causes of action arising from the Lessee's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Lessee's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Lessee authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Lessee in Brevard Circuit Court on an expedited basis to enforce the requirements of this section.

10. **E-Verify Compliance.** Lessee affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Lessee is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance

with such statute and that Lessee is otherwise in compliance with Sections 448.09 and 448.095, Fla. Statutes.

12. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Lease and the parties' actions under this Lease shall be governed by and construed under the laws of the State of Florida. As a material condition of this Lease, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Brevard County, Florida for any actions, suits or proceedings arising out of or relating to this Lease.

13. **No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

"Coercion" means:

1. Using or threatening to use physical force against any person;
2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;
4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
5. Causing or threatening to cause financial harm to any person;
6. Enticing or luring any person by fraud or deceit; or
7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.

**IN WITNESS WHEREOF**, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Under penalties of perjury, and pursuant to Sec. 92.525, Fla. Stat., Contractor declares that Contractor has read the foregoing Section 13 above and that the facts stated in it are true.

**Cocoa Beach MainStreet:**

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

**Title:** \_\_\_\_\_

**The City of Cocoa Beach:**

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



## **City of Cocoa Beach City Commission Agenda Item Summary**

**DEPARTMENT MAKING  
REQUEST/NAME:**

City Manager /  
Wayne Carragino, City Manager

**MEETING DATE**

February 6, 2025

**REQUESTED MOTION/ACTION**

Adopt Resolution 2025-01, A Resolution of the City Commission of the City of Cocoa Beach, Florida; providing legislative findings; amending Resolution No. 2023-06, a Master Resolution for Fees, by the removal of vacation rental fees and finds and false advertising fines from that resolution and placing those vacation rental fees and fines and false advertising fines into separate matrices incorporated into this resolution; and providing for severability and an effective date.

Staff Representative: Wayne Carragino, City Manager

Recommendation: Adopt

**IS THIS ITEM BUDGETED (IF APPLICABLE)?**

n/a

**BACKGROUND:**

Short Term Rental

## RESOLUTION NO. 2025-01

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCOA BEACH, FLORIDA; PROVIDING LEGISLATIVE FINDINGS; AMENDING RESOLUTION NO. 2023-06, A MASTER RESOLUTION FOR FEES, BY THE REMOVAL OF VACATION RENTAL FEES AND FINES AND FALSE ADVERTISING FINES FROM THAT RESOLUTION AND PLACING THOSE VACATION RENTAL FEES AND FINES AND FALSE ADVERTISING FINES INTO SEPARATE MATRICES INCORPORATED INTO THIS RESOLUTION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the City of Cocoa Beach (hereinafter “City”) enacts this Resolution through its home rule powers in the interest of the health, peace, safety, and general welfare of the citizens of and visitors to the City; and

**WHEREAS**, the City currently regulates vacation rentals located in the RS-1 single family residential zoning district (hereinafter “RS-1 District”) for the reasons set forth in Sec. 26.5-1 of the Code of Ordinances of the City; and

**WHEREAS**, the costs to regulated vacation rentals in the RS-1 District continue to increase and the current vacation rental fees are artificially low at this point and do not come close to covering the actual costs to the City of such regulation; and

**WHEREAS**, taxpayers of the City of Cocoa Beach should not be burdened with the costs of regulation of vacation rentals; and

**WHEREAS**, the revised vacation rental fees set forth in Exhibit “A” hereto reasonably approximate the actual costs to the City of the regulation of vacation fees; and

**WHEREAS**, the City finds it appropriate to modify the civil penalties for violation of the false advertisement ordinance (Chapter 13.1 of the City Code of Ordinances); and

**WHEREAS**, the city commission hereby makes a legislative determination that violations of the portions of the City’s vacation rental ordinance relating to violations of maximum occupancy and/or violations of operating without a vacation rental registration to be irreparable and irreversible in nature in that the harm to the citizens of Cocoa Beach and the harm to the reputation and good name of the City of Cocoa Beach caused by such violations cannot be undone; and

**WHEREAS**, the city commission hereby makes a legislative determination that violations of the City’s false advertising ordinance to be irreparable and irreversible in nature in that the harm to the citizens of Cocoa Beach and the harm to the reputation and good name of the City of Cocoa Beach caused by such violations cannot be undone.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of Cocoa Beach, Florida, as follows:

**SECTION ONE:** The above recitals are true and correct and by this reference are hereby incorporated herein and made an integral part hereof as though fully set forth herein.

**SECTION TWO:** The vacation rental fees and fines and false advertising fines (a/k/a civil penalties for misleading advertisements) are hereby removed from Resolution No. 2023-06 and

such fees and fines shall be as set forth in the attached Exhibits “A” (vacation rental fees and fines) and “B” (false advertisement fines).

**SECTION THREE:** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**SECTION FOUR:** The fees and fines schedules attached as Exhibits “A” and “B”, shall be posted on the City’s website and shall be made available in the Development Services Office and the City Manager’s Office.

**SECTION FIVE:** Effective Date: This resolution shall become in full force and effect upon adoption.

Upon Motion by Commissioner \_\_\_\_\_ and Seconded by Commissioner \_\_\_\_\_, this Resolution was duly adopted at a Regular Meeting of the City Commission of the City of Cocoa Beach, Florida, held on the 6th day of February, 2025.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Absent or Abstaining: \_\_\_\_\_

\_\_\_\_\_  
Keith Capizzi  
Mayor-Commissioner

ATTEST:

\_\_\_\_\_  
Karin Grooms, City Clerk

## Exhibit A

| Cost                                        | Per                                | Vacation Rentals                                                                                                                         |
|---------------------------------------------|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <del>\$525.00</del><br><u>\$2500.00</u>     | Each                               | Vacation Rental Application & Registration Fee                                                                                           |
| <del>\$325.00</del><br><u>\$1500.00</u>     | Each                               | Annual Renewal Vacation Rental Registration Fee                                                                                          |
| \$35.00                                     | Each                               | Business Tax Receipt (BTR)                                                                                                               |
| <del>\$95.00</del><br><u>\$175.00</u>       | Each                               | Annual Safety (Fire) Inspection Fee                                                                                                      |
| <del>\$85.00</del><br><u>\$175.00</u>       | Each                               | Annual Building Department Inspection Fee                                                                                                |
| <del>\$50.00</del><br><u>\$250.00</u>       | Each                               | No Show or Re-Inspection fee for initial and/or Annual Inspection Fee                                                                    |
| \$525.00                                    | Each                               | Change of Ownership Vacation Rental Application & Registration Fee                                                                       |
| \$250.00                                    | Each                               | Modification of existing vacation rental registration: (change in number of bedrooms or parking or change in location of parking spaces) |
| \$250.00                                    | Each                               | Permanent Transfer of Responsible Party Fee (Site Manager)                                                                               |
| <del>\$50.00</del><br><u>\$250.00</u>       | Each                               | Temporary Transfer of Responsible Party Fee, each occurrence (max 30 days in a 12-month period)                                          |
| <del>\$250</del><br><u>\$1500.00</u>        | Each                               | Late Fee for Annual Registration                                                                                                         |
| \$500.00                                    | Day (First Day)                    | Penalty for Operating without Registration                                                                                               |
| <del>\$250.00</del><br><u>\$500 per day</u> | Second Day                         | Penalty for Operating without Registration                                                                                               |
| <u>\$1000 per day</u>                       | <u>Third &amp; subsequent days</u> | <u>Penalty for Operating without Registration per day beginning third day and beyond</u>                                                 |
| \$500 per day                               | First day                          | Operating at over occupancy greater than permitted – <u>first offense/first day</u>                                                      |
| <u>\$1000 per day</u>                       | <u>Second and subsequent days</u>  | <u>Operating at over occupancy greater than permitted – second and subsequent offenses/per day</u>                                       |
| <del>\$250.00</del><br><u>\$500 per day</u> | <u>Each offense</u>                | Parking not in compliance with the approved parking plan (Billed to Owner)                                                               |

## **Exhibit “B”**

### **Chapter 13.1 of the Cocoa Beach City Code provides in pertinent part:**

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#### **Sec. 13.1-4. Specific misleading advertisements prohibited; punishments.**

- (a) It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public, or any portion thereof, any misleading advertisement with a rational nexus to the City of Cocoa Beach. Such making or dissemination of misleading advertising with a rational nexus to the City of Cocoa Beach shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.
- (b) Every day a violation of this section continues shall constitute a separate offense which shall be separately punished. Every discrete misleading advertisement shall constitute a separate offense which shall be separately punished.
- (c) Every first violation of this section shall be deemed a civil infraction which may be punished in accordance with the provisions of section 30-22 of this Code. For purposes of the civil infraction, the civil penalty shall be as set forth in a Resolution of the city commission.
- (d) Persons found to have committed repetitive misleading advertising activity, and the owners of the vacation rentals that are the subject of such repetitive misleading advertising activity, shall each be fined in an amount computed by the Special Magistrate based on criteria as set forth in a Resolution adopted by the city commission. If a management company or individual registered the vacation rental under the city's Vacation Rental Ordinance, such management company or individual, for the purposes of enforcing this ordinance, shall be subject to a rebuttable presumption to have been the person to have committed repetitive misleading advertising activity. Notices of violations under this article shall be sent to the management company, individual and owner of a vacation rental, and they shall then have a duty to monitor future advertisements of the vacation rental to prevent repetitive misleading advertising activity. The determination of whether a repetitive misleading advertising activity has taken place shall be made in a quasi-judicial hearing before the Special Magistrate of the City of Cocoa Beach.
- (e) In addition, any violation of this section is deemed a public nuisance, and shall be subject to abatement by the city, and any person who is found in violation of this section shall be subject to injunctive relief in a court of competent jurisdiction to enjoin the violation, as well as any other relief permitted by law, and such relief shall be cumulative.

#### **Sec. 13.1-5. Presumption.**

There shall be a rebuttable presumption that the person(s) named in or obtaining the benefits, or calculated to obtain the benefits, of any misleading advertisement, or any rental, or prospective rental of any lodging establishment or other dwelling about which there is a misleading advertisement, including, but not limited to the owner(s) and the individual or management company handling such lodging establishment or other dwelling, are responsible for such misleading advertisement, have committed the violation prohibited herein, and are subject to the punishment provided herein.

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- The civil infraction for a first violation shall be \$250.00.

- The civil infraction for a second violation shall be \$500.
- Subsequent violations shall each be punished by a civil infraction of \$1000.00 each.

Civil infractions shall be assessed against those persons/entities as described in the above quoted ordinance provision.

## **City of Cocoa Beach City Commission Agenda Item Summary**

**DEPARTMENT MAKING  
REQUEST/NAME:**

City Manager /  
Scott Maxim, Project Manager

**MEETING DATE**

February 6, 2025

**REQUESTED MOTION/ACTION**

Adopt Resolution 2025-02, A Resolution of the City of Cocoa Beach, Florida, to charge an annual fee for renting a community garden bed in the City of Cocoa Beach Community Garden, and providing for an effective date.

Staff Representative: Scott Maxim, Project Manager

Recommendation: Adopt

**IS THIS ITEM BUDGETED (IF APPLICABLE)?**

**BACKGROUND:**

The community gardeners agreed that \$60 was a fair fee. This will provide a source of funding that we can put back into the community garden in the form of tools, materials, and improvements.

**RESOLUTION NO. 2025-02**

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCOA BEACH, FLORIDA, ADOPTING COMMUNITY GARDEN BED FEES AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City of Cocoa Beach, Florida, owns and operates a Community Garden Bed and charges an annual fee for the privilege of using a raised garden bed in said Community Garden(s) (hereinafter the "Community Garden Bed Fee"); and

**WHEREAS**, the purpose of this Resolution is to set Community Garden Bed Fees; and

**WHEREAS**, the Community Garden Bed Fees set forth herein are deemed reasonable and are necessary to contribute toward the operation, maintenance, and improvement of the Community Garden(s), and all Community Garden Bed Fees shall be used for the benefit of the Community Garden Bed.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of Cocoa Beach, Florida, that:

**SECTION 1.** Adoption of Community Garden Bed Fees.

The City Commission of the City of Cocoa Beach, Florida, hereby adopts an annual fee for the privilege of using a raised garden bed in the City of Cocoa Beach Community Garden(s) as follows:

- (a) An annual fee will be charged to rent one of the 4'x8' garden beds
- (b) The annual fee is hereby established at sixty dollars and zero cents (\$60.00)

**SECTION 2.** Effective Date.

This Resolution and the adopted fees shall take effect on July 1<sup>st</sup>, 2025.

Upon Motion by Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_, this Resolution was duly adopted at a Regular Meeting of the City Commission of the City of Cocoa Beach, Florida, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

Ayes: \_\_\_\_\_  
Nays: \_\_\_\_\_  
Absent or Abstaining: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Karin Grooms,  
City Clerk, MPA, CMC

\_\_\_\_\_  
Keith Capizzi,  
Mayor-Commissioner

## **City of Cocoa Beach City Commission Agenda Item Summary**

**DEPARTMENT MAKING  
REQUEST/NAME:**

Public Works /  
Morgan Zuhlke, Stormwater Manager  
Brad Kalsow, Director of Water Reclamation

**MEETING DATE**

February 6, 2025

**REQUESTED MOTION/ACTION**

Approve the proposal from 8-Koi in the amount of \$65,951.00 to perform the design of two ADA dune crossovers located at Flagler Lane and South 7th Street. 8-Koi is a continuing engineering services consultant with the City. This is a budgeted item.

Staff Representative: Brad Kalsow, Water Rec Director, Morgan Zuhlke, Stormwater Manager

Recommendation: Approve

**IS THIS ITEM BUDGETED (IF APPLICABLE)?**

This is a budgeted item.

**BACKGROUND:**

The Flagler Ln and South 7th Street dune crossovers are in need of replacement. It is budgeted this fiscal year to design and permit the two dune crossovers. Both locations will be designed as ADA dune crossovers.

**CITY OF COCOA BEACH  
CONTINUING ENGINEERING SERVICES (RFQ CB23-003)**

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**Exhibit D**

**TASK ORDER FOR PROFESSIONAL SERVICES**

Sample Task Order is shown on next page. This form is to be used for work authorized under this contract.

**TASK ORDER #** \_\_\_\_\_ **CONTRACTOR** 8-koi, Inc.

**Description Of Services & Rates (use additional pages as necessary)**

See attached Fee Proposal for Description of work and Fee Breakdown for Rates.

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**LUMP SUM PRICE**      \$ 65,951.00

**WORK AUTHORIZED:**

**ACCEPTED:**

**City:** \_\_\_\_\_  
Contract Administrator

**Contractor:** \_\_\_\_\_  
Contract Administrator

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

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

**WORK COMPLETED:**

\_\_\_\_\_  
City's Contract Administrator

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

Distribution:      City; original to Contract Administrator  
Contractor; copy



# Cape Design Engineering Co.

2725 Center Place  
Melbourne, FL 32940

Phone: 321.799.2970 | Fax: 321.799.0375 | [www.cdeco.com](http://www.cdeco.com)

**CDE LETTER: 25-E-001.02**

**28 January 2025**

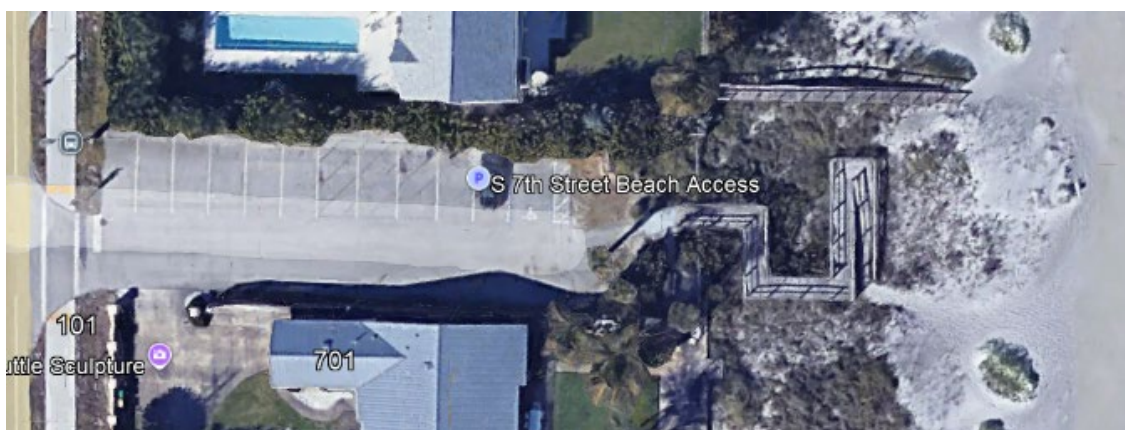
**TO:** City of Cocoa Beach  
Morgan Zuhlke, E.I.  
1600 Minutemen Causeway  
Cocoa Beach, FL 32931

**SUBJECT:** ADA Dune Crossover Replacement (South 7th Street & Flagler Lane)

Morgan,

Thank you for considering Cape Design Engineering Co. ("CDE"), a wholly owned subsidiary of 8-koi. Cape Design Engineering Co. (CDE) is pleased to submit this fee proposal for the above subject solicitation (ADA Dune Crossover Replacement (South 7th Street & Flagler Lane)). The fee is based on the email received on 1/2/2025 and the site walkdown on 1/2/2025. Our effort consists of engineering service support for Environmental Permitting, Structural, & Civil. The total proposed fee for this project is **\$65,951.00.**

## **Project Site South 7<sup>th</sup> Street**



## **Project Site Flagler Lane**



### **Scope of Work:**

#### **1. Environmental**

- a. Prepare and submit one FDEP CCCL permit application (Form 73-100) with the proposed 2 ADA ramp dune walkovers design drawings.
- b. Review Project drawings for consistency with CCCL Rule and Statute.
- c. Coordinate with design team and the CITY's professionals, including but not limited to the Project team surveyor, civil engineer, and structural engineer to address questions and provide guidance for plans and drawings required for the formal CCCL application.
- d. Prepare the required Sediment Quality Assurance/Quality Control Plan and proposed Project Description to be used within the issued permit.
- e. FDEP has 90 days to review and issue a permit after receipt of a complete application.
  - i. For each walkover/ADA access ramp, the CITY or the CITY's professionals will provide the following FDEP required information:
    1. Documentation of City ownership for the Project sites;
    2. A letter from the CITY indicating that the proposed activity, as submitted to the FDEP, does not contravene local setback requirements or zoning codes;
- f. Within 14 days from the date of CCCL permit application submittal, contact with FDEP staff to identify the permit file number, identify staff concerns and questions and any required additional information.
- g. If required, we will meet (one time) with FDEP staff in Tallahassee to assist with agency review of the application.
- h. Prior to 30 days following CCCL application submittal, will confer with Design Team and the CITY's professionals to obtain revised or additional information or clarification to complete the FDEP application.
- i. Will attend meetings or prepare additional information not included in this Agreement when requested by the Design Team, the CITY, or CITY's Professionals, (Estimated @ 8 hrs. (\$135.00/Hr.)). Will provide a written summary of any meetings attended.

## **2. Coastal Construction Control Line (CCCL)/FDEP Survey**

- a. Provide services for the design of two replacement beach crossovers to be compliant with ADA, FDEP and FWC standards.
  - i. Will complete pre-design surveys (Signed & Sealed (S&S)) of each site. Surveys will include the following items:
    1. Horizontal and vertical shots of the top of the deck on the crossovers at all angle breaks
    2. Topographic data of 50-foot-wide path centered on the crossovers, where accessible, without disturbing protected plant species
    3. Edge of dune vegetation within survey area
    4. Mean High Water Line (MHWL) of the Atlantic Ocean at the site of the crossover
    5. Coastal Construction Control Line
      - a. All horizontal coordinates, bearings, and distances referenced to the control provided upon the most recently recorded Map of Record for the CCCL in the county where the subject property is located
      - b. The recording date, book, and page of the Map of Record of the CCCL as recorded in the county public records where the subject property resides
      - c. The horizontal location of the CCCL for full width of subject property with the full stamping of the 2 nearest R monuments
    6. Location of property in relation to bordering roads and streets
    7. Property boundaries and right-of-ways
      - a. The CITY, or CITY's Professionals shall provide legal descriptions of the properties prior to the start of survey.
    8. Legal description of the property.
    9. Contour lines corresponding to elevation 0.00 (NSVD'88 datum) and seasonal high-water line.
  - b. The survey will tie into published NGS monuments and set two benchmarks at each site. Elevations will be referenced to NAVD88 datum and horizontal datum will be NAD83 Florida State Plane Coordinates East Zone 901.

## **3. Structural/Civil**

- a. Provide one (1) investigative site visit for the two (2) identified locations.
- b. Provide survey review for FDEP/FWC permit requirements.
- c. Provide engineering services for FDEP/FWC Permit application Signed & Sealed construction plans for ADA dune crossover beach access ramps South 7th Street & Flagler Lane locations.
  - i. Civil requirements are for minor improvements and Silt fence installation areas.

- ii. If asphalt/concrete, drainage requirements, signage relocation, Palm Tree removal, ect... are required due to ADA ramp design and dune min clearance requirements these services will be provided for the ADA Crossovers.
- d. Provide FDEP/FWC responses during the permit process.
- e. Conference with the CITY's professionals on decking, top rail, and attachment materials preferred for the 2 ADA ramp dune crossovers.
- f. Provide engineering services for CITY's Permit application Signed & Sealed construction plans for ADA dune crossover beach access ramps for the South 7th Street & Flagler Lane locations.
- g. Will attend meetings or prepare additional information not included in this Agreement when requested by the Subconsultants, FDEP/FWC, the CITY, or CITY's Professionals, (Estimated @ 8 hrs. (\$219.98/Hr.)). Will provide a written summary of any meetings attended.

**4. Bid/Permit/Award (CCS)**

- a. CDE will prepare the RFP scope of work and assist in preparing the bid documents.
  - i. The City will provide CDE their standard format for the RFP for CDE to incorporate the RFP Scope of Work Into.
  - ii. The City will post and advertise the RFP.
- b. CDE will respond to contractors/bidders RFI's.
  - i. Issue revised documents required by addenda if required.
- c. CDE will review and evaluate bidder submittals and qualifications.
- d. Provide a conformed set of documents incorporating all building department and bidder RFI's.
- e. Will attend meetings or prepare additional information not included in this Agreement when requested by the CITY, or CITY's Professionals, (Estimated @ 2 hrs. (\$219.98/Hr.)). Will attend additional meetings above the included 2 hours upon the City's Request at (\$219.98/Hr.)

**5. Construction Administration (CCS)**

- a. CDE will respond to the awarded contractor RFI questions, review shop drawings, and attend a pre-construction meeting.
- b. CDE will perform three (3) site inspections per site during construction to make observations, issue reports, and generate a final punch list.
  - i. First Visit will be to verify pile depth requirements.
  - ii. Second Visit to inspect the structural framing and attachments.
  - iii. The third visit will be for final inspection and create a punch list if required.
- c. Construction is estimated to be a maximum of six (6) weeks from NTP.

**6. Schedule**

- a. Upon authorization, CDE will immediately commence the work as described above including coordination with subconsultants and CITY's professionals for the required exhibits/survey. CDE will update subconsultants and the CITY's professionals via email and phone regarding the progress of the work.



Changes to the scope or design concept from the client after contract award will require a re-submission of cost for the additional services.

**Fee Schedule:** Services will be invoiced monthly based on the percentage of work completed.

|                                                                  |                     |
|------------------------------------------------------------------|---------------------|
| 1. Coastal Construction Control Line (CCCL)/FDEP Survey.         | \$ 13,514.00        |
| 2. Environmental Services                                        | \$ 13,057.00        |
| 3. FDEP/FWC Permit Set Drawings                                  | \$ 16,035.00        |
| 4. FDEP/FWC Permit Application Fee and Processing                | \$ 1,155.00         |
| 5. City Of Cocoa Beach Permit Set Drawings                       | \$ 11,654.00        |
| 6. <del>City Of Cocoa Beach Application Fee and Processing</del> | \$ 0.00             |
| 7. Construction Continuing Services                              | \$ 10,536.00        |
| <b>Total</b>                                                     | <b>\$ 65,951.00</b> |

**Clarifications and Assumptions:**

1. Fee includes during Design, 8 hours Environmental Consultant and 8 hours Engineering Project Manager of meeting time between Subconsultants, FDEP/FWC, the CITY, or CITY's Professionals. If meetings exceed the estimated hours, this will be considered additional services and will be billed at the below master agreement for continuing service rates.
  - a. Environmental - \$135.00/Hr.
  - b. Engineering PM - \$219.98/Hr.
2. CDE will provide all application fees, publishing fees, surveys and testing reports required by the FDEP. Additional surveys, studies or analyses may be required. These surveys, studies, or analyses are beyond the scope of this work but may be provided by CDE or others under separate authorization.
3. Fee includes FDEP/FWC Permit Fee's and processing.
4. Fee includes City of Cocoa Beach Permit Fee's and processing.
5. Fee includes during CCS, 2 hours Engineering Project Manager of meeting time between the CITY, or CITY's Professionals. If meetings exceed the estimated hours, this will be considered additional services and will be billed at the below master agreement for continuing service rates.
  - a. Engineering PM - \$219.98/Hr.
6. All pricing and fee is based on both ADA Dune Crossovers, (South 7th Street & Flagler Lane), will have the official construction RFP advertised, awarded, and built concurrently.
  - a. If South 7th Street & Flagler Lane ramps are advertised, awarded, and built separately the CCS Fee total will have to be renegotiated.

**Deliverables:**

- Coastal Construction Control Line (CCCL)/FDEP Survey PDF S&S and CAD.
- FDEP/FWC Permit Drawings and Application
- City of Cocoa Beach Drawings and Permit Application.
- CCS Reports/Inspections
  - Pile Setting Inspection
  - Framing Inspection
  - Final Inspection & Report



2725 Center Pl, Melbourne, FL 32940  
321.799.2970

This fee proposal is valid for 30 days. CDE will mobilize once a purchase order has been received indicating a notice to proceed and work toward a schedule mutually agreed upon.

We look forward to working with you. If you have any further questions, please feel free to contact us.

Sincerely,

Matthew E. Charmbury, Director of Engineering

By signing below, Clients grants CDE Authority to Proceed (ATP) as proposed:

Client Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

CDE Authorized Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

25-E-001 - City of Cocoa Beach - Dune ADA Ramps

SUMMARY SHEET

DIRECT LABOR - COSTS:

| Classification                           | M-H | % Total | \$ Total |                      |          |
|------------------------------------------|-----|---------|----------|----------------------|----------|
| PHASE I - Enviromental Support           | 36  | 14.46%  | \$5,746  |                      |          |
| PHASE II - Strutural Design For FDEP/FWC | 112 | 44.98%  | \$16,035 |                      |          |
| PHASE III - Strutural Design To CCB      | 37  | 14.86%  | \$5,302  |                      |          |
| PHASE IV - Const. Continuing Services    | 64  | 25.70%  | \$10,536 |                      |          |
|                                          | 0   | 0.00%   | \$0      | Basic Services       | \$16,383 |
|                                          | 0   | 0.00%   | \$0      | Construction Support | \$10,536 |
|                                          |     |         |          | Additional Services  | \$10,700 |
| Total                                    | 249 | 100%    | \$37,619 | Total Direct Labor   | \$37,619 |

CONSULTANT COSTS:

|                                           |  |             |
|-------------------------------------------|--|-------------|
| ARDEA Enviramental Consultance            |  | \$6,330.00  |
| Land & Sea Survey (FDEP & FWC Compliant)  |  | \$11,700.00 |
| Civil Support If Needed                   |  | \$5,500.00  |
| FDEP Permit Fees \$500.00 x 2             |  | \$1,000.00  |
| <del>CCB Permitit Fees \$750.00 x 2</del> |  |             |
| Subtotal Consultant Cost                  |  | \$24,530.00 |
| G & A @ 5.00%                             |  | \$1,226.50  |
| Subtotal                                  |  | \$25,756.50 |
| Profit 10.00%                             |  | \$2,575.65  |
| Subtotal Consultant Cost                  |  | \$28,332.15 |

Total Proposed Fee

\$65,951

Assumptions:

- 1. Drawings will be prepared using ACAD
- 2. Refer to Service Contract for additional information.

| 25-E-001 - City of Cocoa Beach - Dune ADA Ramps |                                        |                                    |                                       |                                |                                      |                                 |             |
|-------------------------------------------------|----------------------------------------|------------------------------------|---------------------------------------|--------------------------------|--------------------------------------|---------------------------------|-------------|
| Manhours/Base Rate                              |                                        |                                    |                                       |                                |                                      |                                 |             |
|                                                 | Engineering<br>Principal I<br>\$211.75 | Project<br>Manager III<br>\$219.98 | Structural<br>Engineer II<br>\$155.03 | CAD<br>Designer II<br>\$121.00 | Project<br>Coordinator II<br>\$70.90 | Cost<br>Estimator I<br>\$103.38 |             |
| PHASE I - Enviromental Support                  |                                        |                                    |                                       |                                |                                      |                                 |             |
| Survey Review                                   |                                        | 4                                  |                                       |                                |                                      |                                 | 4           |
| Field Investigation/Survey's                    |                                        | 2                                  | 4                                     | 4                              |                                      |                                 | 10          |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| PC                                              |                                        |                                    |                                       |                                | 2                                    |                                 | 2           |
| Basic Engineering & Design                      |                                        | 8                                  | 2                                     | 8                              | 2                                    |                                 | 20          |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Subtotal of Hours for PHASE I - Enviromenta     |                                        | 14.0                               | 6.0                                   | 12.0                           | 4.0                                  |                                 | 36.0        |
| Subtotal Base Rate                              |                                        | \$3,079.72                         | \$930.18                              | \$1,452.00                     | \$283.60                             |                                 | \$5,745.50  |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| PHASE II - Strutural Design For FDEP/FWC        |                                        |                                    |                                       |                                |                                      |                                 |             |
| Permitting                                      |                                        | 4                                  |                                       | 4                              | 4                                    |                                 | 12          |
| Meetings                                        |                                        | 4                                  |                                       | 4                              |                                      |                                 | 8           |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Basic Engineering & Design                      |                                        | 16                                 | 12                                    | 62                             | 2                                    |                                 | 92          |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Subtotal of Hours for PHASE II - Strutural De   |                                        | 24.0                               | 12.0                                  | 70.0                           | 6.0                                  |                                 | 112.0       |
| Subtotal Base Rate                              |                                        | \$5,279.52                         | \$1,860.36                            | \$8,470.00                     | \$425.40                             |                                 | \$16,035.28 |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| PHASE III - Strutural Design To CCB             |                                        |                                    |                                       |                                |                                      |                                 |             |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Permitting                                      |                                        | 2                                  |                                       |                                | 4                                    |                                 | 6           |
| Meetings                                        |                                        | 4                                  |                                       | 2                              |                                      |                                 | 6           |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Basic Engineering & Design                      |                                        | 4                                  | 4                                     | 15                             | 2                                    |                                 | 25          |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |
| Subtotal of Hours for PHASE III - Strutural De  |                                        | 10.0                               | 4.0                                   | 17.0                           | 6.0                                  |                                 | 37.0        |
| Subtotal Base Rate                              |                                        | \$2,199.80                         | \$620.12                              | \$2,057.00                     | \$425.40                             |                                 | \$5,302.32  |
|                                                 |                                        |                                    |                                       |                                |                                      |                                 |             |

|                                              |  |             |            |             |            |          |             |
|----------------------------------------------|--|-------------|------------|-------------|------------|----------|-------------|
| PHASE IV - Const. Continuing Services        |  |             |            |             |            |          |             |
| RFP Creation/Bid Package                     |  |             |            |             |            | 8        | 8           |
| Bid Selection                                |  | 8           |            |             |            |          | 8           |
| City Meetings                                |  | 2           |            |             |            | 1        | 3           |
| RFI's                                        |  |             | 2          |             |            |          | 2           |
| Submittal                                    |  | 2           | 2          |             |            |          | 4           |
| Inspection-Pole Setting/Report               |  | 2           | 8          |             |            |          | 10          |
| Inspection-Framing/Report                    |  | 2           | 8          |             |            |          | 10          |
| Inspection-Final/Report                      |  | 2           | 8          |             |            |          | 10          |
| PC                                           |  |             |            |             | 1          |          | 1           |
| Record Drawing                               |  | 2           | 2          | 4           |            |          | 8           |
| Basic Engineering & Design                   |  |             |            |             |            |          |             |
|                                              |  |             |            |             |            |          |             |
| Subtotal of Hours for PHASE IV - Const. Cont |  | 20.0        | 30.0       | 4.0         | 1.0        | 9.0      | 64.0        |
| Subtotal Base Rate                           |  | \$4,399.60  | \$4,650.90 | \$484.00    | \$70.90    | \$930.42 | \$10,535.82 |
|                                              |  |             |            |             |            |          |             |
| Total Manhours                               |  | 68.0        | 52.0       | 103.0       | 17.0       | 9.0      | 249.0       |
| Total Base Rate                              |  | \$14,958.64 | \$8,061.56 | \$12,463.00 | \$1,205.30 | \$930.42 | \$37,618.92 |



**General Terms and Conditions**  
**Professional Services Agreement Between Cape Design Engineering, Co. (CDE) and the Client**

These General Terms and Conditions, in combination with those documents incorporating them by reference, constitute the entire agreement (the Agreement) between CDE and the Client to perform the described services and all subsequent, mutually agreed change orders. This Agreement supersedes all prior proposals or negotiations between the parties with respect to the Project. These terms and conditions will also apply to any contract or purchase order document issued by the Client for future services, whether or not it is expressly incorporated. In the event of any conflict between these terms and conditions and the provisions of any purchase order or other document, these terms and conditions shall control unless the conflicting document expressly supersedes specific provisions herein.

1. **Qualifications.** Client has been provided information concerning CDE's qualifications and has had a full opportunity to investigate and confirm those qualifications. Client agrees CDE is qualified to provide the services required for the Project.
2. **Standard of Care.** CDE shall exercise the reasonable standard of care to comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during CDE's services. In the event of changes in such codes, regulations, or interpretations during the course of the Project that were not and could not have been reasonably anticipated by CDE and which results in a substantive change to delivered documents, CDE shall not be held responsible for the resulting additional costs, fees, or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes.
3. **Client Deliverables.** The Client shall provide full information about the objectives, schedule, constraints, and existing conditions of the Project, and shall establish a budget with reasonable contingencies that meets the Project requirements. Any costs incurred due to late delivery of data, false information, or incomplete information or by subsequent changes of the information shall be borne by Client. The Client shall furnish for the benefit of the Project all legal, accounting and insurance counseling services required.
4. **Representations and Warranties.** The Client acknowledges that the requirements of federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations. CDE will use reasonable professional efforts and judgment to correctly interpret and apply such requirements. CDE, however, cannot and does not warrant or guarantee that the work will comply with the interpretation of such requirements by others. CDE warrants that it will perform the engineering services in a good and workmanlike fashion and in accordance with the standards of care and diligence normally practiced by recognized engineering firms in performing engineering services of a similar nature for similar projects that at the time the engineering services are performed.

CDE makes no warranties relating to the staffing, performance or costs of operation or practical implementation, nor makes any other warranties expressed or implied. All implied warranties, including but not limited to warranties of merchantability and fitness for a particular purpose, are expressly disclaimed and waived, it being acknowledged and agreed that the only warranties afforded hereunder are those set forth in the Agreement. CDE shall have no liability for errors or inaccuracies in the engineering documentation attributable to the use and/or reliance upon data, design criteria, drawings, specifications, reports, or other information furnished by Client and CDE

does not warrant such process, or the design associated therewith.

5. **Limitation of Liability/Consequential Damages:** To the fullest extent permitted by law, Client agrees that the total liability, in the aggregate, of CDE and subconsultants, to the Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of, resulting from or in any way relating to CDE's services, this Agreement or any Addenda, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall be limited to the lesser of (i) \$50,000.00; or (ii) the total amount of compensation received by CDE under this Agreement. In no event shall CDE be liable to the Client or to any third-party for incidental damages, consequential damages, or loss of profits. As long as there are no specific mandatory laws to the contrary, in no case whatsoever, shall Client be entitled to contractual or tort claims for damages resulting from, but not limited to, loss of production, loss of use, loss of orders, loss of profit and other direct or indirect or consequential damages, and any other act giving rise to liability.
6. **Title to Engineering Documentation/Intellectual Property Right:** The engineering documentation prepared by CDE which is supplied to Client in accordance with this Agreement shall become the property of Client upon receipt and payment in full for services rendered. CDE reserves all intellectual property rights in the engineering documentation and information provided to Client in particular copyright, right of inventions and confidential know-how (IP Rights). Client shall not disclose such documents and information received from CDE without CDE's prior written consent.
7. **Invoices and Payments:** CDE will submit invoices to the Client based in accordance with the payment conditions agreed upon in the Agreement. All invoices are due upon receipt. Client understands and agrees that it shall be fully responsible for the timely payment of all invoices regardless of whether Client may be entitled to reimbursement from a third-party. The Client agrees that CDE may withhold written reports and other work product pending full payment of all charges accrued. CDE may stop all work and withdraw from the Project if any invoice remains unpaid. A 15%/month finance charge may be applied to unpaid balances. In the event of termination, suspension or abandonment of the Project, the Client shall remain liable for all charges accrued.
8. **Changes:** Supplementary services or change requests by Client regarding the scope of engineering services will be invoiced separately based on the standard hourly rate for engineering change order services.
9. **Delivery and Taking Over of Engineering Services:** Delivery shall be regarded as completed on the date of receipt of the engineering documentation specified in the Agreement. The time schedule in accordance with this Agreement is preconditioned on the due fulfilment of all contractual obligations by Client. In case the Client does not fulfill its payment obligations or any other contractual obligations in time, the time schedule will be adjusted accordingly. Client shall notify CDE of any claims regarding the engineering documentation within thirty (30) days from the date of receipt of the engineering documentation, otherwise delivery of the engineering documentation and respectively, the engineering services shall be regarded as fully accepted by Client. In the case of non- conformity of the engineering documentation with the documents to be provided under this Agreement, CDE has the right to take remedial steps within a reasonable timeframe to be agreed upon between CDE and the Client. In no case shall Client be entitled to a price reduction in case of non-conformity.

10. **Confidentiality:** The parties shall treat all information and documentation exchanged under this Agreement except for the engineering documentation as confidential and make it known or accessible to third parties only to the extent necessary for the performance of this Agreement. This obligation remains in force for 3 years from the date of signature of this Agreement even when the present contract has been cancelled or withdrawn.
11. **Relationship of the Parties:** It is understood and agreed that in performing services related to the Project, CDE is acting as an independent contractor and not as an employee or agent of Client.
12. **Entire Agreement; Amendment:** This Agreement is the entire agreement of the parties concerning the Project and supersedes all prior agreements, representations, and understandings concerning the Project. This Agreement may be amended, modified, or supplemented only by a writing executed by both Parties.
13. **Law and Venue:** This Agreement shall be construed and governed by Florida law without reference to conflict of laws principles. Venue for any litigation arising out of or related to the Assignment or this Agreement shall be litigated exclusively in a court of competent jurisdiction to the exclusion of the courts of any other state or jurisdiction.
14. **Attorney Fees:** In any litigation arising out of or related to this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs, including any attorney's fees and costs incurred on appeal.
15. **Force Majeure:** Either party shall be excused for failures and delays in performance of its obligations under this Agreement because of any cause beyond its control and without the fault of such party for any act of God, war, pandemic, endemic, riot, insurrection, terrorism, hurricane, flood, or lightning strike. This provision shall not, however, release such party from using its best efforts to avoid or remove such cause and such party shall continue performance under this Agreement with the utmost dispatch whenever such causes are removed. Upon claiming any such excuse or delay for non-performance, such party shall give prompt written notice thereof to the other party, provided that failure to give such notice shall not in any way limit the operation of this provision. The parties acknowledge and agree that the provisions of this Section 15 shall not excuse any delay in performance, or any payment obligation contemplated by the Agreement, except to the extent that any precondition(s) to such payment obligation are delayed as a result of an event described herein.
16. **Waiver:** Waiver of any agreement or obligation set forth in this Agreement by either party shall not prevent that party from later insisting on full performance of such agreement or obligation and no course of dealing, partial exercise or any delay or failure on the part of any party in exercising any right, power, privilege, or remedy under this Agreement shall impair or restrict any such right, power, privilege, or remedy or be construed as a waiver therefor.
17. **Severability.** If any one or more of the provisions of this Agreement is adjudged to any extent invalid, unenforceable, or contrary to law by a court of competent jurisdiction, each, and all of the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.



2725 Center Pl, Melbourne, FL 32940  
321.799.2970

18. **Miscellaneous.** The parties agree that this is a valid and binding contract effective as of the date of the last of the parties to sign below.
19. **Pursuant to Florida Statute 558.0035, an individual employee or agent of Cape Design Engineering Company may not be held individually liable for negligence.**