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Town of Melbourne Beach

PUBLIC NOTICE

AGENDA

SPECIAL TOWN COMMISSION MEETING WEDNESDAY JANUARY 4, 2023 @ 6:00 pm COMMUNITY CENTER – 509 OCEAN AVENUE

Commission Members:

Mayor Wyatt Hoover
Vice Mayor Joyce Barton
Commissioner Sherri Quarrie
Commissioner Corey Runte
Commissioner Marivi Walker

Staff Members:

Manager Elizabeth Mascaro
Town Clerk Amber Brown

PURSUANT TO SECTION 286.0105, FLORIDA STATUTES, THE TOWN HEREBY ADVISES THE PUBLIC THAT: In order to appeal any decision made at this meeting, you will need a verbatim transcript of the proceedings. It will be your responsibility to ensure such a record is made. Such person must provide a method for recording the proceedings verbatim as the Town does not do so.

In accordance with the Americans with Disability Act and Section 286.26, Florida Statutes, persons needing special accommodations for this meeting shall, at least 5 days prior to the meeting, contact the Office of the Town Clerk at (321) 724-5860 or Florida Relay System at 711.

I. Call to Order

II. Roll Call

III. Pledge of Allegiance and Moment of Silence

IV. Public Comment

After being acknowledged by the Mayor, members of the public should state their name and address for the record. The Commission encourages citizens to prepare their comments in advance. Each individual will have three (3) minutes to address the Commission on any topic(s) related to Town business, not on the Agenda. Please remember to sign the sign-in sheet provided if you will be speaking at the meeting.

V. Old Business

- A. Consideration of cost to repair the collapsing stormwater pipe on Cherry and Rosewood
- B. Appointment of Vice Mayor and appointment of the Voting Delegate for the Space Coast League of Cities
- C. Consideration to engage Bowman Consulting to prepare site plans for Ocean Avenue
- D. Consider Town representation of Jim Simmons for any further legal action regarding the Election Challenge

VI. New Business

- A. Consideration of proposal to replace existing gate opening system

VII. Adjournment

Town Commission Meeting

Section: Old Business
Meeting Date: December 21, 2022
From: Elizabeth Mascaro, Town Manager
Subject: Cherry & Rosewood Storm Pipe Collapse

Background Information:

During the November 16, 2022 Town Commission meeting, Public Works Director Davis make the Commission aware of a potential storm pipe collapse on Cherry and Rosewood.

Director Davis has been monitoring the depression in the roadway for several months. The depression has sunk considerably since Hurricane Ian and Hurricane Nicole moved through our area during the end of October and early November. Director Davis was able to have Brewer Paving go down into the pipe to examine the damages.

Attached is an estimate to repairs the stormwater damages.

Brewer has indicated this as a change order for the construction on Cherry and Redwood, since the damage is on Cherry.

Recommendation:

Consider the cost to repairs the collapsing stormwater pipe on Cherry and Rosewood

Attachments:

Brewer Paving & Development cost estimate for repairs.



3190 Grissom Parkway, Cocoa, FL 32926 Phone: 321.636.4645 Fax: 321.636.4648
DBA & FDOT Certified Contractor - CUC# 1224133

December 1, 2022

ATTENTION: Scott Glaubitz/Elizabeth Mascaro

Company **BSE/Town of Melbourne Beach**

Project **Cherry Drive & Rosewood**

Request for Change Order: **PRELIMINARY PRICING TO REPAIR EXISTING PIPE AND ROADWAY******

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>U/M</u>	<u>PRICE</u>	<u>TOTAL</u>
	Mobilization	1	LS	\$ 20,000.00	\$ 20,000.00
	Removal of existing storm pipe plus haul off	75	LF	\$ 85.00	\$ 6,375.00
	Remove and haul off existing asphalt.	250	SY	\$ 55.00	\$ 13,750.00
	Install of new 30" RCP	75	LF	\$ 325.00	\$ 24,375.00
	Bypass pump and 3-4 plugs	1	LS	\$ 15,000.00	\$ 15,000.00
	New base rock install 10"	250	SY	\$ 84.00	\$ 21,000.00
	Paving	250	SY	\$ 105.00	\$ 26,250.00
	Tack	250	SY	\$ 3.00	\$ 750.00
	Testing	1	LS	\$ 4,000.00	\$ 4,000.00
	MOT	1	LS	\$ 7,500.00	\$ 7,500.00

Total: \$ 139,000.00

This request for change order covers the additional work that the Town of Melbourne Beach asked Brewer Paving & Development to price. This is preliminary pricing and figures on the ability to close the road and no utility conflicts. No removal or install of curbs included.

If you have any questions regarding this estimate, please contact our office at your convenience.

Respectfully Submitted,
Brewer Paving & Development, LLC

Shane Brewer

Town Commission Meeting

Section: New Business
Meeting Date: December 21, 2022
From: Elizabeth Mascaro, Town Manager
Subject: Voting for Vice Mayor
Voting for League of Cities Delegate

Background Information:

When the Commission is seated for the first time after an election and/or for the new Fiscal Year, the Commission will vote for one Commissioner to be designated as Vice Mayor.

The Commission will also vote for one Commissioner to be the representative of Melbourne Beach to the Space Coast League of Cities, Inc.

Recommendation: Vote for a Vice Mayor

Vote for representation to the Space Coast League of Cities

Attachments: FY2023 Appointment of League Voting Delegate form



SPACE COAST LEAGUE OF CITIES, INC.

A Florida Not-for Profit Corporation

CAPE CANAVERAL
COCOA
COCOA BEACH
GRANT-VALKARIA

INDIALANTIC
INDIAN HARBOUR BEACH
MALABAR
MELBOURNE

MELBOURNE BEACH
MELBOURNE VILLAGE
PALM BAY
PALM SHORES

ROCKLEDGE
SATELLITE BEACH
TITUSVILLE
WEST MELBOURNE

"CITIES OF BREVARD WORKING TOGETHER"

2023 Appointment of League Voting Delegate/Director

The Bylaws of the Space Coast League of Cities require the following:

- Every December, the governing body of each member municipality must appoint a Voting Delegate/Director and Alternate to the League.
Eligibility: Only the member municipality's elected officials, manager, attorney, clerk, and department heads are eligible to be a Voting Delegate/Director and Alternate. Any Voting Delegate/Director or Alternate who ceases to hold such a position ceases at the same time to be a Voting Delegate/Director or Alternate.
Functions: The person appointed as Voting Delegate serves as both the member municipality's Voting Delegate at membership meetings and its representative to the Board of Directors. The Voting Delegate and the Director is the same person. The sole function of the Alternate for the Voting Delegate/Director is to vote in the absence of the Voting Delegate/Director.
- Following the appointment, the names of the Voting Delegate/Director and the Alternate must be promptly certified in writing to the Executive Director.
- Because dues for member municipalities are based on population, each member municipality must also certify its current population figures when it certifies its Voting Delegation/Director and Alternate.

Accordingly, please provide and certify the information requested below and return this form promptly to the League Executive Director at the email address: execsec@scloc.org.

Municipality: [Click here to enter text.](#) **Current Population:** [Click here to enter text.](#)

Voting Delegate/Director: [Click here to enter text.](#)

Email address: [Click here to enter text.](#) **Telephone Number:** [Click here to enter text.](#)

Alternate Voting Delegate/Director: [Click here to enter text.](#)

Email address: [Click here to enter text.](#) **Telephone Number:** [Click here to enter text.](#)

I hereby certify that the above named persons were duly appointed by our governing body and the foregoing information is correct: Municipality Clerk's signature: [Click here to enter text.](#) Date: [Click here to enter text.](#)

Town Commission Meeting

Section: New Business
Meeting Date: December 21, 2022
From: Elizabeth Mascaro, Town Manager
Subject: Agreement for Services from Bowman Consulting

Background Information:

During the November 2022 Town Commission meeting, the Commission asked me to contact Bowman Consulting to obtain a conceptual site plan for Ocean Avenue, as part of the enhancements for sustainability, traffic calming, stormwater management and visual improvements to Ocean Avenue. Robert Bitgood and I met with Kyle Shasteen and Zachary Komninos on November 21st to walk Ocean Avenue and discuss the vision for the streetscape.

I have received an Agreement for Professional Services, if the Commission wishes to engage Bowman Consulting in preparing two conceptual site plans, which includes reviewing zoning, city maps, Land Development Code, as-built data, ensuring compliance with FDOT standards and attending up to two Town Commission meetings for \$10,525.00.

The cost includes 3 sets of comments and conceptual site plan revisions during the task. Additional changes to be billed on a time and expense basis.

Recommendation: Review the Agreement for Professional Service and consider engaging Bowman Consulting to prepare two conceptual site plans for Ocean Avenue.

Attachments: Agreement for Professional Services (2 pages)

Bowman Terms and Conditions (7 pages)

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement is hereby made and entered into this 12th day of December, 2022, by and between BOWMAN CONSULTING GROUP, LTD. (hereinafter referred to as "CONSULTANT"), and **Town of Melbourne Beach** (hereinafter referred to as "CLIENT").

Town of Melbourne Beach
Elizabeth Mascaro, Town Manager
507 Ocean Ave.
Melbourne Beach, FL 32951
321-724-5860

Email: TownManager@melbournebeachfl.org

Project: Ocean Avenue Streetscape Project located at Ocean Avenue, Melbourne Beach, FL

Scope of Services: CONSULTANT agrees to provide the following Professional Services as requested by the CLIENT, in accordance with the attached General Contract Provisions. (If additional pages are necessary, they are identified as Attachment A.)

On November 21st, 2022, Kyle Shasteen and Zachary Komninos met with Elizabeth Mascaro and Robert Bitgood of the Town of Melbourne Beach to review the scope of the proposed Ocean Avenue Streetscape Project. The project consists of revising parking and adding landscape medians to the core downtown area to enhance the pedestrian experience. The work will impact approximately 2100 feet of Ocean Avenue from Sunset Blvd to Pine Street (Phase 1). For now, the Pine Street to A1A (Phase 2) segment will be left out of the project scope. The project is intended to be constructed in two (2) phases to help reduce the impact to the public and parking, however this conceptual design will only be for Phase 1 only.

Task 01 – Phase 1 Conceptual Site Plan

The CONSULTANT agrees to:

- Review City Maps and Land Development Codes to determine the applicable street requirements with respect to zoning and future use;
- Coordinate with Town staff to obtain existing as-built data;
- Conceptual site plans will meet FDOT and applicable roadway design standards;
- Prepare two (2) conceptual site plan options based upon gathered information and client request;
- Attend up to two (2) Town Commission meetings, as requested by staff.

Note: This task does not include landscaping design or renderings.

Fee: \$10,525.00 Lump Sum

Bowman anticipates three (3) sets of comments from Client and conceptual site plan revisions during this task. (Additional changes to be billed on a Time and Expense basis.)

Ocean Avenue Street Scape
Elizabeth Mascaro
12/12/2022

Summary: This Agreement is accepted on the date last signed below and is subject to the terms and conditions stated above, the attached General Contract Provisions and any provisions set forth herein. Cancellation of any task by CLIENT prior to completion shall be subject to payment for time and expenses incurred up to point of cancellation.

If CLIENT concurs with the above Scope of Services and fees, please sign below and return one copy to Bowman Consulting Group, Ltd., P.O. Box 245, Herndon, Virginia 20172-0245.

Agreed To and Accepted By:

Bowman Consulting Group, Ltd.

By:  _____

Name Erik Juliano

Title Branch Manager

Date 12/12/2022

Town of Melbourne Beach

By: _____

Name Elizabeth Mascaro

Title Town Manager

Date _____

Bowman

TERMS AND CONDITIONS

These Terms and Conditions are incorporated by reference into the Proposal and its exhibits (the "Proposal") from Bowman Consulting Group, Ltd. ("BCG") to **Town of Melbourne Beach** ("Client") for performance of services described in the Proposal and associated with the project described in the Proposal (the "Project"), and in any subsequent approved Change Order related to the Project. These Terms and Conditions, the accepted Proposal, and any Change Orders or other amendments thereto, shall constitute a final, complete, and binding agreement (the "Agreement") between BCG and Client, and supersede any previous agreement or understanding.

1. Scope of Services. BCG will provide the services expressly described in and limited by the Proposal (the "Scope"). If in BCG's professional judgment the Scope must be expanded or revised, BCG will forward a change order agreement to Client that describes the revision to the Scope (the "Change Order") and the adjusted fee associated therewith.

2. Standard of Care. The standard of care for all services performed by BCG for Client shall be the care and skill ordinarily used by members of the applicable profession practicing under similar circumstances at the same time and locality of the Project. Client shall not rely upon the correctness or completeness of any design or document prepared by BCG unless such design or document has been properly signed and sealed by a licensed professional on behalf of BCG.

3. Payment Terms. BCG will invoice Client monthly or more frequently based on a percentage of the work completed for lump sum tasks, number of units completed for unit tasks, and actual hours spent for hourly tasks. Invoices are due and payable in full upon receipt without offset of any kind or for any reason. BCG shall have the discretion to apply payments made by Client to an invoice or retainer account of Client in accordance with its business practices. Client agrees to pay a finance charge of one and one-half percent (1.5%) per month from the invoice date on any unpaid balance not received by BCG within thirty (30) days of the invoice date. Payment of invoices is subject to the following further terms and conditions:

(a) If any invoice is not paid in full within forty-five (45) days of the invoice date, and Client has not timely and in good faith disputed the invoice as provided below, BCG shall have the right at its election by giving notice to Client to either: (i) suspend the performance of further services under this Agreement and, at its sole discretion, suspend the performance of further services on other projects which are being performed by BCG on behalf of Client or any related Client entities, until all invoices are paid in full and BCG has received a retainer in such amount as BCG deems appropriate to be held as described below; or (ii) deem Client to be in material breach of this Agreement and proceed pursuant to Section 17 below. Client agrees to pay any and all charges, costs or fees incurred in collection of unpaid invoices, including reasonable attorneys' fees and costs. Following BCG's election above, BCG shall bear no liability to Client or any other person or entity for any loss, liability or damage resulting from any resulting delay, and any schedule for the performance of services hereunder prepared previously shall be deemed void with any future schedule for the performance of services requiring the approval of both Client and BCG.

(b) If Client disputes any submitted invoice, Client shall give written notice to BCG within thirty (30) days of the invoice date detailing the dispute. If no written notice of a dispute is provided to BCG

within that time period, the invoice shall then be conclusively deemed good and correct. If part of an invoice is disputed, Client shall remain liable to timely pay the undisputed portion of the invoice in accordance with the terms of this Agreement. Client and BCG shall promptly negotiate in good faith to resolve any disputed portion of an invoice.

4. Retainer and Other Payments. BCG reserves the right to require that Client make a payment to be held by BCG as an advance against future billings (the "Retainer"). The Retainer is not intended as the regular source of payment for invoices issued to Client under this Agreement or otherwise, and the parties intend that the Retainer be applied to the final invoice for the services described in the Agreement, or against any other unpaid amounts owed to BCG should Client (or any affiliate of Client) fail to timely pay invoices due BCG. The Retainer account may consist in part of payments applied by BCG pursuant to the authority granted it under Paragraph 3 above. If the Retainer is applied during the course of the Agreement, Client agrees to promptly replenish the Retainer upon request of BCG. Upon the conclusion of this Agreement, or its earlier termination, BCG shall (a) apply the Retainer to any unpaid amount owed BCG by Client (or its affiliates), and (b) return any unapplied portion to Client. The Retainer shall not be required to be held in a separate account nor shall it bear interest, and the Retainer may include other amounts paid to BCG by Client with respect to the Project or other projects.

5. Client Duties and Responsibilities. Client shall inform BCG of any special criteria or requirements related to the Project or Scope, and shall timely and at its cost furnish any and all information in its possession relating to the Project, including reports, plans, drawings, surveys, deeds, topographical information and/or title reports. BCG shall bear no responsibility for errors, omissions, inaccuracy or incompleteness in third-party information or additional costs arising out of its reliance upon such third-party information supplied by Client. Client warrants and represents that: (a) Client has obtained the full and unconditioned prior written consent from any third-party for BCG to use such third-party information; (b) such consent shall be provided to BCG upon request; and (c) such consent shall be in a form that, in BCG's reasonable discretion, does not violate any applicable law, regulation, or code of ethics. If the Scope requires a current title report, Client shall timely and at its cost provide such title report to BCG. If the Scope includes preparation of plats to be recorded in the land records of the Project jurisdiction, Client shall timely prepare, submit, and record necessary deeds and pay all recording fees associated with deeds and plats. All off-site easements are the responsibility of Client. Client shall indemnify and hold harmless BCG from and against any and all claims, demands, losses, costs, and liabilities, including without limitation reasonable attorney fees and expenses incurred by BCG and arising out of (a) Client's breach of this Agreement or (b) an action by Client or a third-party with respect to any matter not included in the Scope or that is excluded from the responsibility of BCG pursuant to this Agreement.

6. Insurance. BCG and its employees are protected by workman's compensation, commercial general liability, automobile liability, and professional liability insurance policies. Upon request of Client, BCG shall provide a certificate of insurance to Client evidencing such coverage and shall attempt to include Client as an additional insured on those coverages that permit additional insured status. Client acknowledges it has been offered the opportunity to review the current limits of such coverage and finds them satisfactory, and further agrees that in no event shall BCG's liability to Client or any party claiming through Client be greater than the limits of such insurance. From time to time BCG may, without notice to Client, amend the carriers, conditions, exclusions, deductibles or limits of any such insurance; provided that prior to any decrease in any insurance limit becoming effective BCG shall give notice thereof to Client.

7. Potential Liability of BCG. The following provisions shall operate with respect to any potential liability of BCG arising under the Agreement:

(a) Client may not assert that there is a breach, defect, error, omission or negligence in the services performed by BCG that Client believes creates liability on the part of BCG unless Client gave written notice to BCG not later than the first to occur of (i) the beginning of any corrective work, or (ii) thirty (30) days after Client had knowledge of the existence of the breach, defect, error, omission or negligence. BCG shall have the opportunity to participate in decisions regarding the corrective work, and Client shall ensure that corrective action is taken at the lowest reasonable expense under the circumstances.

(b) Notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of BCG and BCG's officers, directors, partners, employees, agents, and consultants to Client and anyone claiming through Client, shall not in any manner whatsoever exceed the direct losses incurred by Client (to the extent of and in proportion to BCG's comparative degree of fault) that resulted from the error, omission or negligent act of BCG in the performance of services under this Agreement.

(c) To the fullest extent permitted by law, BCG and BCG's officers, directors, partners, employees, agents, and sub-consultants shall not be liable to Client or anyone claiming through Client for any special, incidental, indirect, or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or this Agreement, regardless of whether such damages are alleged to be caused by the negligence, professional errors or omissions, strict liability, breach of contract, or breach of express or implied warranty.

(d) Client agrees that BCG's shareholders, principals, partners, members, agents, directors, officers and/or employees shall have no personal liability whatsoever arising out of or in connection with this Agreement or the performance of services hereunder.

8. Certificate of Merit. In addition to the requirement of notice under section 7(a) above, Client shall make no claim (whether directly or in the form of a third-party claim) against BCG unless Client shall have first provided BCG with a written certification executed by an independent professional licensed in the state in which the Project is located and licensed in the profession to which the claim relates. Such certificate shall: (a) contain the name and license number of the certifier; (b) specify each and every act or omission which the certifier contends constitutes a violation of the standard of care expected of a professional performing professional services under similar circumstances; (c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation; and (d) be provided to BCG thirty (30) days prior to the presentation of and as a precondition to any such claim, or the institution of any mediation, arbitration, judicial or other dispute resolution proceeding.

9. Conflict Resolution and Applicable Law. Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, that cannot be resolved by the parties and for which the amount in controversy is less than One Hundred Thousand Dollars (\$100,000.00) shall be settled by arbitration administered in Fairfax County, Virginia by the American Arbitration Association in accordance with its Commercial Arbitration Rules and Expedited Procedures, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the parties. For any other dispute, controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties agree to first submit such dispute, controversy or claim to non-binding mediation, with each party to bear its own costs of such mediation and to equally share the costs of any mediator. If such mediation does not successfully resolve all issues, then the parties agree that the state and federal courts located in Virginia

shall have jurisdiction and venue over such dispute. This Agreement shall be governed and interpreted in accordance with the laws of the state in which the Project is located, without giving effect to conflicts of laws principles thereof.

10. Ownership of Documents and Other Rights of BCG.

(a) All reports, plans, specifications, computer files, field data, notes, and other documents and instruments prepared by BCG as instruments of service ("Work Product") shall remain the property of BCG up until such time as all monies due to BCG have been paid in full, at which time (i) Client may take possession of the Work Product, and (ii) BCG shall be deemed to have granted Client a fully paid, non-exclusive license to use the same solely for the Project. Subject to such license BCG shall retain all common law, statutory, and other reserved rights, including the copyright to all Work Product. If Client or a party acting on Client's behalf modifies any part of the Work Product or reuses them on a different project, Client agrees to indemnify and hold BCG harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising therefrom. Client acknowledges that if BCG provides Client with Work Product in an electronic or digital format ("Electronic Data"), Client is responsible for cross checking the Electronic Data with the applicable paper document for full conformance and consistency between such paper document and the Electronic Data.

(b) BCG reserves the right to include photographs and descriptions of the Project in its promotional, marketing, and professional materials. Client grants its consent to BCG for BCG to install reasonable signage at the Project equivalent to that which is or could be installed by other vendors to the Project.

11. Modification. From time to time BCG may either in writing or by electronic mail submit a Change Order to Client and Client shall be deemed to have approved such Change Order if: (a) Client signs the Change Order; (b) Client signifies its consent to the Change Order by electronic mail; or (c) a representative of Client with actual or apparent authority to approve the Change Order orally approves it and BCG subsequently confirms such approval in writing or by email and begins work associated therewith without receiving written or electronic mail objection thereto. Except for Change Orders authorized by Client as provided immediately above, this Agreement may be amended, modified, or supplemented only in writing signed by all parties hereto. Any signature required or permitted hereunder may be either by hand or by electronic signature.

12. Exclusions from Scope. By way of illustration and not limitation, unless specifically included in the Scope, BCG has no obligation or responsibility for: (a) favorable or timely comment or action by any governmental entity; (b) taking into account off-site conditions or circumstances that are not clearly visible or reasonably ascertainable by the performance of on-site services; (c) the accurate location or characteristics of any subsurface utility or feature that is not clearly and entirely visible from the surface; or (d) structural design (including, but not limited, to structural design of retaining wall(s) or of special drainage structure(s)).

13. Limits of Scope.

(a) Early Bid Documents. Client agrees that if it requests submission of Work Product documents to contractors for bid purposes either prior to full completion thereof by BCG or prior to final governmental approval, the potential exists for additional design and construction costs arising

from required subsequent revisions and additions to BCG design documents so as to conform to those of other design disciplines and/or governmental agencies, and any such costs shall be Client's responsibility.

(b) Estimates. Any cost, timing or quantity estimates provided as a part of the Scope are estimates only and reflect BCG's judgment as a design professional familiar with the construction industry, but expressly do not represent a guarantee of quantities or construction costs. Client agrees that BCG has no control over contractors as to cost, timing, or quantity matters, and further agrees that if Client desires greater accuracy as to construction costs it should engage an independent cost estimator.

(c) Construction Means and Methods. Client agrees that BCG does not control and is not responsible for construction means, methods, techniques, sequences, or procedures, or for any safety precautions in connection with the Project or for the acts or omissions of any contractor, subcontractor, or any other person or entity performing work for the Project.

(d) Shop Drawing Review. If specifically included in the Scope, BCG shall review and check the contractor's shop drawings, product data, and samples, but only for the limited purpose of checking for general conformance with the intent of such contract documents. Client acknowledges that such review is not for the purpose of determining or substantiating the accuracy and completeness of other details, such as dimensions or quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the contractor. BCG's review shall not constitute approval of safety precautions, construction means, methods, techniques, schedules, sequences or procedures, or of structural features.

(e) Plan and Permit Processing. If the Scope includes preparation of plans and/or plats for review and approval by public agencies, submission and processing of such plans and plats in a manner consistent with a normal course of business is included within the Scope. If Client requests BCG to either expedite the plan review process by attending meetings, hand carrying plans and documents from agency to agency, or performing similar services, or to prepare and process permit applications of any type, then, unless specifically included in the Scope, those services will be performed by BCG as hourly rate services under Section 14 below.

(f) Building Plan Coordination. If the Scope includes preparation of site plans, site grading plans, subdivision plans, or similar plans that involve coordination with building plans (including architectural, mechanical, structural, or plumbing plans) to be prepared by others, Client shall provide such building plans to BCG by such date and in such state as BCG reasonably deems necessary to timely perform its services. If Client fails to so provide building plans to BCG, BCG may make reasonable assumptions regarding building characteristics in order to timely perform its services and any later revisions to BCG plans required to properly coordinate them with building plans will require a Change Order, subject to an additional fee.

14. Fees by Hourly Rate Schedule. If Client requests BCG to perform services not included in the Proposal or an approved Change Order (including, without limitation, attending meetings and conferences on an as-needed basis with public agencies), Client shall compensate BCG for such services in accordance with the Hourly Rate Schedule attached to and made a part of the Agreement. Expert witness testimony or participation at legal discussions, hearings or depositions, including necessary preparation time, will be charged at 150% of the quoted rates. If the Project extends beyond the calendar year in which the Proposal

is dated, BCG may, by giving notice to Client, revise its Hourly Rate Schedule once each calendar year, but no sooner than twelve (12) months after the date of the Proposal.

15. Covenants Benefiting Third-Parties. BCG and Client acknowledge that from time to time third-parties may request BCG to execute documents which benefit that third-party. These documents may include certifications, consent of assignment, and/or waiver of certain of BCG's rights under this Agreement ("Requested Covenant"). Client acknowledges that execution of Requested Covenants is beyond the Scope, is at BCG's discretion, and, if BCG decides to so execute a Requested Covenant, the language, terms, and conditions of such Requested Covenant must be acceptable to BCG, at BCG's discretion.

16. Assignment. This Agreement may not be assigned by one party without the express written consent of the other party. Notwithstanding the foregoing, BCG may employ consultants, sub-consultants, or subcontractors as it deems necessary to perform the services described in the scope. Also, BCG may assign its right to receive payments under this Agreement.

17. Termination. Either party may terminate the provision of further services by BCG under this Agreement for convenience with thirty (30) days advance notice to the other party. In addition, following a material breach by the other party, the non-breaching party may terminate the provision of further services by BCG under this Agreement by giving ten (10) days prior notice and an opportunity to cure to the reasonable satisfaction of the non-breaching party. Client acknowledges that its failure to timely pay undisputed invoices is a material breach and that full payment of all undisputed invoices is required to cure such breach. Following any termination of services: (a) Client shall immediately pay BCG for all services performed through the termination date, including reasonable costs of transitioning the Project to a new design professional designated by Client, if applicable; (b) BCG shall have the right to withhold from Client the use or possession of Work Product prepared by BCG for Client under this or any other agreement with Client, until all outstanding invoices are paid in full; (c) if the termination by BCG resulted from a material breach by Client, BCG shall have the right to withdraw any Work Product or other documents filed with any governmental agency by BCG in its name on behalf of Client; and (d) if Client selects a new design professional then, as a condition of transferring any files or documents, Client and Client's new design professional shall execute BCG's standard Electronic File Transfer Agreement or such other similar agreement as the parties shall in good faith negotiate.

18. Miscellaneous. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the other provisions of this Agreement shall remain in full force and effect. The failure of a party to enforce any provision hereof shall not affect its right at a later time to enforce same. A waiver by a party of any condition or breach hereunder must be in writing to be effective and, unless that writing provides otherwise, shall waive only one instance of that condition or breach. This Agreement is solely for the benefit of the parties hereto and, to the extent provided herein, their respective affiliates, directors, officers, employees, agents and representatives, and no provision of this Agreement shall be to confer upon third-parties any remedy, claim, liability, reimbursement, cause of action, or other right. The headings in this Agreement are for convenience and identification purposes only, are not an integral part of this Agreement, and are not to be considered in the interpretation of any part hereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. References in this Agreement to any gender shall include references to all genders. Unless the context otherwise requires, references in the singular include references in the plural and vice versa. The words "include," "including," or "includes" shall be deemed to be followed by the phrase "without limitation." The individual who signs this Agreement warrants that he has the authority to sign as, or on behalf of, Client, and to bind Client to all of the terms and conditions of this Agreement. To the extent that they are

Ocean Avenue Street Scape
Elizabeth Mascaro
12/12/2022

inconsistent or contradictory, the terms of the Proposal or an authorized Change Order shall supersede these Terms and Conditions.

19. Notices. Any notice, request, instruction, or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been deemed delivered: (a) on the day sent if delivered personally or by courier service during regular business hours (i.e., prior to 5:00 p.m. on weekdays that are not Federal holidays); (b) on the business day after the day sent if sent by overnight delivery service; or (c) two business days after the day sent if sent by certified mail or delivered by two-day delivery service.

If to Client, notice shall be addressed to the individual signing this Agreement at the address noted on the Proposal.

If to BCG, notice shall be sent to the address set forth in the proposal, with a copy sent to:

Bowman Consulting Group, Ltd.
12355 Sunrise Valley Drive, Suite 520
Reston, Virginia 20191
Attn: Robert A. Hickey

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

Town Commission Meeting

Section: New Business
Meeting Date: December 21, 2022
From: Elizabeth Mascaro, Town Manager
Subject: Dennington Election Challenge

Background Information:

Jim Simmons was named in the Election Challenge filed by Alison Dennington.

Ms. Dennington represent that Jim Simmons was a member of the Town's "Board of Appeals". Jim Simmons sit on the Board of Adjustments. The Town has no Board of Appeals.

Mr. Simmons has files a motion to be dismiss him from the complaint.

Mr. Simmons is requesting representation from the Town pursuant to Town Code 10-2, Legal Defense; Commissioners, Officers and Employees.

10-2 (a) (1) "Agent" shall include and be limited to members of town boards and individuals approved by the Town Manager to act as volunteers in the service of the Town and so acting.

Recommendation: Consider Town representation of Jim Simmons in any further legal action regarding the Election Challenge filed by Alison Dennington per Town Code 10-2.

Attachments: Jim Simmons request for dismissal

Town Code 10-2.

Re: Dennington v. Town of Melbourne Beach, et al., Case No. 05-2022-CA-053294 (18th Cir, Ct, 2022)

James D. (Jim) Simmons Response to above listed Case No. Case No. 05-2022-CA-053294 (18th Cir, Ct, 2022)

Dear Judge Jacobus, Honorable Mayor, Town Manager, Town Clerk and Town Attorney:

I am not an attorney, and I currently don't serve on the Town Commission of Melbourne Beach. I have been served with a subpoena and complaint in the above referenced case, Case No. 05-2022-CA-053294 (Alison Dennington v. Town of Melbourne Beach, FL et al).

In reading this lawsuit, it is impossible to determine exactly what I have been accused of, but it is worded as if I am a Town official [i.e., a member of the "Board of Appeal" (sic)] and that, as such, I attended an "illegal meeting" relative to the Town's recent certification of candidates and/or municipal election. I have no idea what it is that I am alleged to have done, and given the length and confusing wording of the lawsuit complaint, I am making the following requests:

To the Honorable Judge Jacobus:

- 1) Please dismiss this complaint. The Plaintiff is reportedly an Arkansas attorney, and as a result, the complaint should be in better form and clear.
- 2) It is completely unclear what it is I have done or what I could have done about her election complaint. The prayer for relief makes no specific requests for relief that involve me. I request that I be dismissed as a party to this lawsuit, and that the dismissal of me as a party be with prejudice.
- 3) Lastly, it is completely unclear how I am in anyway involved in this case. Therefore, I generally am either without knowledge to each of the allegations or deny them.

To the Town Commission, Town Manager, Town Clerk, and Town Attorney:

Because this lawsuit appears to include me because of my membership in the Town's "Board of Appeal" (sic) (i.e., making me a Town "agent" as listed in the statute above), I believe that this clearly entitles me to representation by the Town. Therefore:

- a) I hereby request that this item be included on the next Town Commission agenda and that the Town Commission direct the Town Attorney (or other appropriate attorney) to represent me in the defense of this case. Most likely, I will not be in attendance at the meeting.
- b) Regardless of my request in a), I request that the Town should immediately file whatever is necessary for my defense in court.

In support of my request, it appears that I am being sued because I am a Town official of some sort. I refer the Town to Section 111.07, Florida Statutes, which provides:

Defense of civil actions against public officers, employees, or agents) states (bold/underlining added for emphasis) -

"Any agency of the state, or any county, municipality, or political subdivision of the state, is authorized to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief

COPY-ORIGINAL WAS FILED

FILED IN FILE
CLERK OF CIR. CT.
MELBOURNE, FL
2022 DEC - 1 A 11:20
RACHEL M. SADOFF

personally against the officer, employee, or agent for an act or omission under color of state law, custom, or usage, wherein it is alleged that such officer, employee, or agent has deprived another person of rights secured under the Federal Constitution or laws. Legal representation of an officer, employee, or agent of a state agency may be provided by the Department of Legal Affairs. However, any attorney's fees paid from public funds for any officer, employee, or agent who is found to be personally liable by virtue of acting outside the scope of his or her employment, or was acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the state, county, municipality, or political subdivision in a civil action against such officer, employee, or agent. If any agency of the state or any county, municipality, or political subdivision of the state is authorized pursuant to this section to provide an attorney to defend a civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents and fails to provide such attorney, such agency, county, municipality, or political subdivision shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fees."

I also refer you to Section 10-2 of the Town Code, which provides that it is the policy of the Town to provide this defense.

I thank each of you for your consideration. Please note that I am also filing this notice with the Clerk of the Court to be placed in the court file.

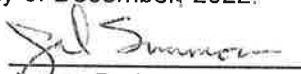
I anxiously await your response.

Sincerely,



James D. Simmons
409 Avenue B
Melbourne Beach, FL 32951-2214
(Home) 321-984-8357
(Cell) 321-506-2321

Certificate of Service - A copy of this pleading was mailed by the U.S. Mail to Alison Dennison at 413 Surf Road, Melbourne Beach, FL 32951 on the 1st day of December, 2022.


James D. Simmons

§ 10-2. LEGAL DEFENSE; COMMISSIONERS, OFFICERS, AND EMPLOYEES.

(a) As used in this section, unless the context utilized clearly states to the contrary, the following terms are defined as follows:

- (1) "Agent" shall include and be limited to members of town boards and individuals approved by the Town Manager to act as volunteers in the service of the town and so acting.
- (2) "Civil action" includes but shall not be limited to actions sounding tort and civil rights lawsuits.
- (3) "Civil rights lawsuit" shall include but not be limited to actions prosecuted pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.
- (4) "Officer" shall include the Mayor, any Town Commissioner, the Town Manager, the Town Clerk, the Town Attorney, or any charter officer.

(b) It is the policy of the town to provide an attorney to defend any civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of the town's officers, employees, or agents for an act or omission arising out of and in the scope of his or her employment or function, unless, in the case of a tort action, the officer, employee, or agent acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Defense of such civil action includes, but is not limited to, any civil rights lawsuit seeking relief personally against the officer, employee, or agent for an act or omission under color of state law, custom, or usage, wherein it is alleged that such officer, employee, or agent has deprived another person of rights secured under the Federal Constitution or laws.

(c) Legal representation of an officer, employee, or agent of the town shall be provided by the town at town expense. However, any attorney's fees paid from public funds for any officer, employee, or agent who is found to be personally liable by virtue of acting outside the scope of his or her employment, or as acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property, may be recovered by the town in a civil action against such officer, employee, or agent. If the town is asked to appoint legal counsel for said officer, employee, or agent, the officer, employee, or agent shall not be entitled to his or her choice of legal counsel. If the town fails to provide an attorney, upon request of a past or present municipal officer, employee, or agent, to defend a civil action arising from a complaint for damages or injury suffered as a result of any act or omission of action of any of its officers, employees, or agents, the town shall reimburse any such defendant who prevails in the action for court costs and reasonable attorney's fees.

(Ord. 2001-02, passed 11-28-01)

§§ 10-3. – 10-99. RESERVED.

Town Commission Agenda Item

Section: New Business

Meeting Date: January 4, 2023

Subject: Gate opener for compound PD/Public Works

Submitted By: Public Works Director Tom Davis

Background Information: we installed an automatic gate opener system for the secure area between the Police Dept. and Public Works. This area serve as storage for PW and the PD. Additionally the secure area is a safeguard for when the police transport a prisoner to the PD.

The system is failing to operate preventing us from maintaining the area as a secure area. As you know the system was lowest bid when purchased which may have resulted in lower quality equipment.

I have done extensive research into the higher quality and highly rated systems. Viking L3 is rated high and also adding a stainless steel chain system is best for high salt air settings.

Of the various companies contacted by me one company responded and examined the existing equipment. Automatic Access Systems was that company. I requested that their quote be for a commercial quality product that survives well in the beach side atmosphere.

Automatic Access Systems proposal is an attachment to this request.

Recommendation: Proceed with the removal of the existing gate opening system and replace it as proposed in the attached proposal.

Attachments: Proposal from Automatic Access Systems.

Automatic Access Systems

200 Ring Avenue NE, Suite 106

Palm Bay, Florida 32907

Phone: 321-727-0700

Fax: 321-951-0001

Email: AutomaticAccessFla@gmail.com

Web: www.facebook.com/AutoGateSpecialists

December 1, 2022

Melbourne Beach Public Works
507 Ocean Avenue
Melbourne Beach, Florida 32951

Re: Slide gate operator system

To whom it may concern:

The following is the information you requested in reference to the proposed installation of a slide gate operator system at the gated entry of your facility. Automatic Access Systems proposes to supply all labor and materials required to complete the following described installation.

Scope of work:


Install slide gate operator system. Install desired accessories to provide access. Test all devices for proper system operation. Provide customer with system demonstration after completion of installation.

Materials to be installed:

- 2 Viking L3 commercial grade slide gate operator with factory installed battery backup system
- 1 Multi Code radio control receiver
- 10 Multi Code single button visor transmitter
- 1 Coaxial antenna kit
- 1 LiftMaster 250 code wireless keypad
- 2 Northstar traffic loop detector
- 2 Reversing edge 4' with clip
- 2 Wireless reversing edge kit
- 1 Omron photoelectric sensor with reflector and sensor cover
- 30' #40 stainless steel roller chain
- 2 Ditek line voltage surge protector

Note: All moving gates are potentially dangerous. Pedestrian and vehicular traffic must never be combined. The automated operation supplied by this equipment precludes pedestrian use. If pedestrian use is required, a separate pedestrian gate must be provided.

Customer initials

Salesperson initials 

Provided by others:

120VAC power to system power supply mounting locations.
All conduit for wiring required to complete installation with pull string installed.
Two automotive slide gates (one double drive set) in serviceable condition.
All existing accessories to be utilized with new equipment in serviceable condition.

Warranty:

The warranty period provided to the customer for all parts and labor is 365 days from the date of installation. This warranty does not extend to systems or components that show evidence of damage caused by vandalism, acts of God (e.g., lightning, flood), abuse, or unauthorized or improper service. Warranty service will be provided during normal working hours, Monday through Friday, 8:00AM to 4:30PM. Manufacturer's warranties are not included in this statement. Equipment warranty and specification information can be viewed at www.vikingaccess.com.

Terms and conditions:

In order for Automatic Access Systems to begin your installation we must set up the financing. The following are the terms for payment expected:

Initial payment: 50% deposit
Completion: Balance due
Change orders: 100% upon acceptance

If payment is not received in full within thirty days of completion, an additional 1.5% per month penalty will be added to your invoice. All materials remain the property of Automatic Access Systems until final payment is received. Right of access and removal is hereby granted to Automatic Access Systems in the event of non-payment. In the event of non-payment, warranty service will be refused. All engineering, building permit, and inspection fees will be invoiced upon completion of installation at face value. Where collection is required, debtor will pay all collection, attorney, court costs, and interest.

If service is required for your system during the warranty period, Automatic Access Systems will provide all labor and materials required to complete repair of your system. The customer will be responsible for any shipping or handling charges associated with warranty parts shipment. If your equipment warranty extends beyond the labor warranty provided by Automatic Access Systems the customer will be responsible for any labor expenses incurred which will be billed at the current company service rates.

In the event of any unforeseen circumstance which cause Automatic Access Systems costs of the job to increase, such as, and not limited to unforeseen structural obstacles, scheduling errors by the owner or builder, or damage to system components by persons other than Automatic Access Systems employees, the additional charges will be billed to the customer and become due upon completion of the project.

Customer initials _____

Salesperson initials JKW

By signing this document, you are in agreement with the prices, specifications, and conditions of this contract. This proposal is not binding unless signed and initialed by an authorized Automatic Access Systems representative and the debtor.

Payments:

The cost to complete this project is \$9,795.00 not including sales tax. A deposit of fifty percent of the total job cost is due upon acceptance of proposal. Balance due upon completion of installation. Where collection is required, debtor will pay all collection, attorney, court costs and interest.

Acceptance:

The previously listed prices, specifications, and conditions are satisfactory and hereby accepted. You are authorized to proceed with the work as specified. Payments will be made as outlined above.

Signature _____

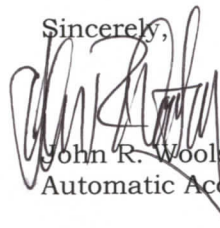
Printed Name _____

Date _____

This proposal may be withdrawn by Automatic Access Systems if not accepted within 30 days.

This is the conclusion of my proposal. If you have any questions regarding this proposal or any other subject, please feel free to call anytime. I look forward to hearing your response. Thank you for this opportunity,

Sincerely,



John R. Woolsey
Automatic Access Systems

Customer initials _____

Salesperson initials  _____