



Public Services & Facilities Committee

9:00 a.m., Thursday, January 11, 2024

1207 Palm Boulevard

City Hall Council Chambers

Public Comment:

All citizens who wish to speak during the meeting must email their first and last name, address and topic to Nicole DeNeane, City Clerk, at nicoled@iop.net no later than **3:00 p.m. the day before the meeting**. Citizens may also provide written public comment here:

<https://www.iop.net/public-comment-form>

Agenda

1. **Call to order** and acknowledgment that the press and the public have been duly notified of the meeting in accordance with the Freedom of Information Act.
2. **Election of Chair and Vice Chair**
3. **Citizens' Comments** – All comments have a time limit of three (3) minutes.
4. **Approval of previous meeting's minutes** – September 21, 2024 [Pgs. 2-3]
5. **Old Business**
Discussion of parking reconfiguration layout options for the Intracoastal side of marina parking lot [Pgs. 4]
6. **New Business**
 - a. Discussion of temporary license agreement between the City and Islander 71 for temporary use of portion of the employee lot for construction staging [Pgs. 5-15]
 - b. Discussion and consideration of change order proposal from The Bastion Group in the amount of \$494,236 for pipe remaining part of open channel at 41st Avenue ditch [Pgs. 16-17]
 - c. Discussion of policy initiatives and projects for the committee to pursue in 2024
7. **Miscellaneous Business**
Next meeting date:
8. **Adjournment**



Public Services & Facilities Committee Meeting
1:00pm, Thursday, September 21, 2023
1207 Palm Boulevard, Isle of Palms, SC and
broadcasted live on YouTube: <https://www.youtube.com/user/cityofisleofpalms>

MINUTES

1. Call to Order

Present: Council members Miars, Streetman, and Popson (via phone)

Staff Present: Administrator Fragoso, Director Kerr

2. Approval of Previous Meeting's Minutes – August 8, 2023

Council Member Popson made a motion to approve the minutes of the August 8, 2023 meeting. Council Member Miars seconded the motion. The motion passed unanimously.

3. Citizen's Comments -- none

4. Old Business

5. New Business

A. Presentations of respondents to Request for Qualifications RFQ 2023-01 Design-Builder for the modification and repairs of City Hall

Representatives from Trident Construction, McMillan Pazan Smith, & Seamon Whiteside, and Hill Construction & Coast Architects presented their qualifications for the design build team for City Hall modifications and repairs. Both teams shared prior projects and professional expertise. Each team gave estimates for the length of the due diligence period as well as the design process. Representatives from each team said those periods would depend on their assessment of the building and the extent of the repairs and modifications needed.

Committee members will assess each team with evaluation criteria provided to them and will give that to staff. Staff will compile the results and bring them before the City Council at the October workshop.

Council Member Miars expressed concern that what needs to be done to City Hall may be more extensive than what is currently being considered. Administrator Fragoso and Director Kerr agreed that the assessment will be key in determining if the building needs more than modifications and repairs. Administrator Fragoso said the process they intend to pursue with City Hall is the same one they followed with the rehabilitation of the Public Safety Building.

These presentations will be posted on the City's website with the agenda for this meeting, and will be discussed with the full Council before any decisions are made.

B. Consideration of change order proposal from Thomas & Hutton in the amount of \$42,000 for construction phase services for the 30th Avenue and Forest Trail Outfall projects

Director Kerr referenced a letter from Thomas & Hutton detailing the reasons the change order and extension of services are needed for this project, including:

- Delay due to material supply chain issues,
- Delay for Dominion temporary pole and overhead line relocation at 30th Avenue
- Delay resulting from post-bidding field changes to utility relocation design and addition of pre- and post-construction sewer video at the request of IOPWSC,
- Review and coordination of material substitution (check valves),
- Numerous meetings with Contractor's supplier (CP&P) to discuss design and manufacturing of precast structure resulting in delay of production and delivery,
- Delay of construction through peak summer season with intent to restart construction following the Labor Day Holiday.

MOTION: Council Member Streetman made a motion to recommend to City Council the approval of a change order in the amount of \$42,000 for construction phase services for the 30th Avenue and Forest Trail Outfall projects. Council Member Miars seconded the motion. The motion passed unanimously.

6. Miscellaneous Business

The next meeting of the Public Services & Facilities Committee will be Tuesday, October 10, 2023 at 1:00pm.

7. Adjournment

Council Member Miars made a motion to adjourn and Council Member Streetman seconded the motion. The meeting was adjourned at 2:21pm.

Respectfully submitted,
Nicole DeNeane
City Clerk

RECIPROCAL LICENSE AGREEMENT

This RECIPROCAL LICENSE AGREEMENT (this “**License Agreement**”), made as of the 8th day of January, 2024 (the “**Effective Date**”), is made by and between the CITY OF ISLE OF PALMS, a political subdivisions of the State of South Carolina (“**City**”), having its principal office at c/o City Administrator, 1207 Palm Boulevard, Isle of Palms, SC 29451, Email: desireef@iop.net, and MARKER116, LLC, a South Carolina limited liability company (“**Restaurant**”), having an address at 27 26th Avenue, Isle of Palms, SC 29451, Email: []].

Recitals

WHEREAS, City is the fee owner of the real property and improvements more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Property**”).

WHEREAS, Restaurant leases a portion of a parking lot located on the Property (the “**Leased Premises**”) from City for the parking of cars by its employees and invitees pursuant to that certain Parking Lease and Agreement by and between Marina Joint Ventures, Incorporated, a South Carolina corporation, as landlord, and Restaurant, as tenant, dated September 30, 2020, as amended by that certain First Amendment to Parking and Lease Agreement dated October 28, 2020, as amended by that certain Second Amendment to Parking and Lease Agreement dated March 5, 2021, and as amended and memorialized by that certain Memorandum of Understanding dated April 22, 2022, as assigned to City, as successor landlord, by that certain Assignment of Parking Lease and Agreement dated December 14, 2022 (the “**Parking Lease**”).

WHEREAS, the parties desire by this License Agreement to provide for the temporary licensing by Restaurant to City of the right to use and occupy a portion of the Leased Premises more particularly shown and depicted on Exhibit B attached hereto and made a part hereof (the “**City License Area**”) for the City Permitted Use (as hereinafter defined) and to provide for the temporary licensing by City to Restaurant of the right to use and occupy a portion of the Property more particularly shown and depicted on Exhibit B attached hereto and made a part hereof (the “**Restaurant License Area**”) for the Restaurant Permitted Use (as hereinafter defined).

Agreement

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Licenses.

(a) **License to City.** Restaurant hereby grants to City, and City hereby accepts, a license (the “**City License**”) to use and occupy the City License Area for the purposes hereafter provided for the License Period (as defined in Section 2). Restaurant and its employees, agents, contractors and invitees are, except as otherwise specifically provided in this License Agreement, authorized to use (for their intended purpose) all other areas in and about the Leased Premises in accordance with the Parking Lease. The parties do not intend to create a lease or any other interest in any real property or improvements within the Leased Premises for the benefit of City through this License Agreement, and the parties only intend to create a license that is revocable at will by either party as provided herein. City has inspected the City License Area and agrees to accept the City License Area “AS-

IS”, “WHERE-IS” and “WITH ALL FAULTS” as of the Effective Date. RESTAURANT DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LICENSE AGREEMENT, THE CITY LICENSE AREA, OR THE LEASED PREMISES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) **License to Restaurant.** City hereby grants to Restaurant, and Restaurant hereby accepts, a license (the “**Restaurant License**”) to use and occupy the Restaurant License Area for the purposes hereafter provided for the License Period (as defined in Section 2). City and its employees, agents, and invitees are, except as otherwise specifically provided in this License Agreement or the Parking Lease, authorized to use all other areas in and about the Property. The parties do not intend to create a lease or any other interest in any real property or improvements within the Leased Premises for the benefit of Restaurant through this License Agreement, and the parties only intend to create a license that is revocable at will by either party as provided herein. Restaurant has inspected the Restaurant License Area and agrees to accept the Restaurant License Area “AS-IS”, “WHERE-IS” and “WITH ALL FAULTS” as of the Effective Date. CITY DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LICENSE AGREEMENT, THE RESTAURANT LICENSE AREA, OR THE PROPERTY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

2. License Period. The “**License Period**” shall commence on the Effective Date, and subject to sooner termination or extension as hereafter provided, shall expire at 11:59 p.m. ET on March 8, 2024. Notwithstanding the foregoing, (a) this License Agreement shall be revocable by either party at any time during the License Period in the event this License Agreement is terminated by such party following the occurrence of an uncured event of default as provided in Section 10; and (b) nothing contained herein shall preclude or prevent the License Period from being extended upon mutual written consent of the parties, such consent to be given or withheld in the sole and absolute discretion of each party. As used in this License Agreement, the term “**Expiration Date**” shall mean and refer to the date on which the License Period expires or is earlier terminated in accordance with this License Agreement.

3. Use of License Areas. The City License Area shall be used for the sole purpose of allowing for the parking and storage of vehicles, equipment and materials associated with the construction of a public dock and a drainage outfall on and adjacent to the Property. City and its employees, agents, contractors and invitees and for no other purpose (the “**City Permitted Use**”), except as may be agreed upon by Restaurant in writing in its sole and absolute discretion. The Restaurant License Area shall be used for the sole purpose of allowing for the parking of cars by Restaurant and its employees, agents, contractors and invitees and for no other purpose (the “**Restaurant Permitted Use**”), except as may be agreed upon by City in writing in its sole and absolute discretion.

4. Compliance with Laws and Regulations. City and Restaurant shall each promptly comply with all present and future applicable laws and regulations of all state, federal, municipal, and local governments, departments, commissions and boards and any direction of any public officer pursuant to law (collectively, “**Laws**”) having jurisdiction which shall impose any

obligation or duty upon City or Restaurant with respect to the City License Area or the Restaurant License Area, as applicable.

5. Access. City and its employees, agents, contractors and invitees shall have the right of access to and use of the City License Area twenty-four (24) hours per day, seven (7) days per week, and Restaurant and its employees, agents, contractors and invitees shall have the right of access to and use of the Restaurant License Area twenty-four (24) hours per day, seven (7) days per week.

6. Repairs. Throughout the License Period:

(a) City shall (i) take good care of the City License Area, (ii) be responsible for the cost to repair any damage to the City License Area other than damage from the elements, fire, or other casualty to the City License Area, or from the negligence or intentional misconduct of Restaurant, or its agents or employees, and (iii) make all necessary structural and other repairs to the City License Area; and

(b) Restaurant shall (i) take good care of the Restaurant License Area, (ii) be responsible for the cost to repair any damage to the Restaurant License Area other than damage from the elements, fire, or other casualty to the Restaurant License Area, or from the negligence or intentional misconduct of City, or its agents or employees, and (iii) make all necessary structural and other repairs to the Restaurant License Area

The repair obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement.

7. Damage and Destruction. Except as otherwise provided in Section 6 above, neither City nor Restaurant shall have any responsibility to the other or their respective agents, contractors, tenants, or other invitees in the event of any damage to or theft or loss of any equipment or property of the other party and the party incurring such damage, theft, or loss shall look to its own insurance coverage (and to any self-insured portion of the damage, theft, or loss), if any, for recovery in the event of any such damage, theft, or loss.

8. Alteration; Restoration. Except for alterations, installations, additions, or improvements made in accordance with the City Permitted Use, City may not make any alterations, installations, additions, or improvements in or to the City License Area without the prior written consent of Restaurant, which consent may be withheld or conditioned in Restaurant's sole and absolute discretion. Restaurant may not make any alterations, installations, additions, or improvements in or to the Restaurant License Area without the prior written consent of City, which consent may be withheld or conditioned in City's sole and absolute discretion.

9. Assignment or Sublicensing. The City License granted hereby is personal to City and shall not be assigned, nor shall City sublicense or otherwise permit or suffer the occupancy of the City License Area by any third party without the prior written consent of Restaurant, which consent may be withheld in Restaurant's sole and absolute discretion. The Restaurant License granted hereby is personal to Restaurant and shall not be assigned, nor shall Restaurant sublicense or otherwise permit or suffer the occupancy of the Restaurant License Area by any third party

without the prior written consent of City, which consent may be withheld in city's sole and absolute discretion.

10. Default. If either party defaults in the performance of any of its obligations hereunder, and such default continues for more than thirty (30) days after receipt of written notice from the non-defaulting party, the non-defaulting party shall have the right to terminate this License Agreement and pursue any other remedies available at law or in equity, except as limited in Section 11 hereof.

11. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LICENSE AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS. City and Restaurant agree that none of their respective directors, officers, employees, shareholders, or any of their (or any of those parties') respective agents shall have any personal obligation hereunder and that City and Restaurant shall not seek to assert any claim or enforce any of their rights hereunder against any of such parties.

12. Notices.

(a) Any notice, demand, request, or other communication hereunder shall be in writing. Communications may be delivered and shall be deemed to have been given by the delivering party and received by the receiving party: (i) when delivered by hand; (ii) one day after deposit with a nationally recognized overnight courier or delivery service if sent priority overnight delivery; (iii) on the third day after the date mailed by certified or registered mail (in each case, return receipt requested and postage prepaid); or (iv) on the date sent with confirmation of transmission by electronic mail, if such contact information has been given to the other party, if sent during normal business hours of the recipient, and if also transmitted by one of the other means permitted hereunder.

(b) Any notice, demand, request, or other communication by Restaurant to City shall be addressed to City at its address stated in the preamble hereto, Attention: City Administrator, unless otherwise directed in writing by City by notice similarly given.

(c) Any notice, demand, request, or other communication by City to Restaurant shall be addressed to Restaurant at its address stated in the preamble hereto, Attention: [PERSON NAME], unless otherwise directed in writing by Restaurant by notice similarly given.

(d) Rejection or other refusal to accept, or the inability to deliver because of a changed address of which no notice was given, shall be deemed to be receipt of the notice, demand, request, or communication sent.

13. Surrender. On the Expiration Date or sooner termination of the License Period:

(a) City shall: (i) vacate and surrender full and complete possession of the City License Area to Restaurant, vacant and broom clean, in its "as-is" condition and state of repair, subject only to Section 8 hereof, reasonable wear and tear, damage by the elements,

fire, or other casualty (unless such damage is caused by the negligence or wrongful act of City, its employees or agents), and damage caused by the negligence or wrongful act of Restaurant, its employees or agents; (ii) remove all equipment and other personal property and furnishings from the City License Area which are owned or leased by City; and (iii) turn over the City License Area in its substantially similar condition as on the Effective Date (reasonable wear and tear excepted).

(b) Restaurant shall: (i) vacate and surrender full and complete possession of the Restaurant License Area to City, vacant and broom clean, in its “as-is” condition and state of repair, subject only to Section 8 hereof, reasonable wear and tear, damage by the elements, fire, or other casualty (unless such damage is caused by the negligence or wrongful act of Restaurant, its employees or agents), and damage caused by the negligence or wrongful act of City, its employees or agents; (ii) remove all equipment and other personal property and furnishings from the Restaurant License Area which are owned or leased by Restaurant; and (iii) turn over the Restaurant License Area in its substantially similar condition as on the Effective Date (reasonable wear and tear excepted)

The surrender obligations outlined herein shall survive any cancellation, expiration, or termination, for any reason, of this License Agreement

14. Warranties. EXCEPT AS SET FORTH IN THIS LICENSE AGREEMENT, THE PARTIES DO NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LICENSE AGREEMENT, THE RESTAURAN LICENSE AREA, THE CITY LICENSE AREA, OR THE REAL OR PERSONAL PROPERTY OR PROPERTY INTERESTS, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Force Majeure.

(a) The term “**Force Majeure Event**” means any of the following events: (i) acts of God; (ii) floods, fires, earthquakes, explosions, or other natural disasters; (iii) war, invasions, hostilities (whether war is declared or not), terrorist threats or acts, riots or other civil unrest; (iv) governmental authority, proclamations, orders, laws, actions, or requests; (v) embargoes or blockades; (vi) epidemics, pandemics, or other national or regional public health emergencies; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortages of supplies, adequate power, or transportation facilities; and (ix) other similar events beyond the reasonable control of the parties.

(b) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this License Agreement, for any failure or delay in fulfilling or performing any obligation under this License Agreement, when and to the extent such failure or delay is caused by a Force Majeure Event. The failure or inability of either party to perform its obligations in this License Agreement due to a Force Majeure Event shall be excused for the duration of the Force Majeure Event and extended for a period equivalent to the period of such delay, but not in excess of ninety (90) days in the aggregate; provided, however, nothing contained in this Section 15 shall excuse either

party from paying in a timely fashion any payments due under the terms of this License Agreement.

(c) Either party (the “**Noticing Party**”) shall give the other party notice within ten (10) days of the commencement of the Force Majeure Event, explaining the nature or cause of the delay and stating the period of time the delay is expected to continue. The Noticing Party shall use reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Noticing Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

16. Temporary Waiver of Rent under Parking Lease. In consideration of Restaurant’s agreement to enter into this License Agreement, and the mutual covenants, terms, and conditions set forth herein, City hereby covenants and agrees that all base rent, additional rent and other amounts due and payable by Restaurant to City under the Parking Lease shall be waived for the full duration of the License Period. Following the expiration or earlier termination of the License Period, City and Restaurant acknowledge and agree that all base rent, additional rent and other amounts thereafter owing to City under the Parking Lease shall be due and payable by Restaurant in accordance with the Parking Lease.

17. Miscellaneous.

(a) **Counterparts.** This License Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

(b) **Governing Law.** This License Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

(c) **Section Headings.** The section titles herein are for convenience only and do not define, limit, or construe the contents of such sections.

(d) **Attachment and Exhibits.** All attachments and exhibits to this License Agreement are hereby made a part hereof as if fully set out herein.

(e) **Severability.** If any provision or provisions in this License Agreement is/are found to be in violation of any law or otherwise unenforceable, all other provisions remain unaffected in full force and effect.

(f) **Binding Effect.** This License Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns and shall not be modified except by an express written agreement signed by a duly authorized representative of both parties.

(g) **Time of the Essence.** Time shall be of the essence of each provision of this License Agreement in which time is a factor.

*****Remainder of Page Intentionally Left Blank*****

[Signatures on the Following Page]

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement to be effective as of the Effective Date.

CITY:

CITY OF ISLE OF PALMS,
a political subdivisions of the State of South Carolina

By: _____
Name: _____
Its: _____

RESTAURANT:

MARKER116, LLC,
a South Carolina limited liability company

By: _____
Name: _____
Its: _____

EXHIBIT A

Legal Description of the Property

ALL that certain piece, parcel or tract of land, with the buildings and improvements thereon, situate, lying and being in the City of Isle of Palms, Charleston County, South Carolina, being shown and designated as "Tract 1", containing 5.55 acres, on a plat made by E. M. Seabrook, Jr., Inc., Civil Engineer and Land Surveyor, dated January 5, 1977, and duly recorded at the Charleston County R.M.C. Office on April 27, 1977, in Plat Book AH, at Page 100; said property having such actual size, shape, dimensions, buttings and boundings, more or less, as appear on said plat, reference to which is hereby craved for a more full and complete description thereof.

SUBJECT to all applicable easements and restrictions of record.

BEING the same property conveyed to the Grantor herein by deed of The Beach Co., a South Carolina Corporation, dated April 11, 1988, and recorded at the Charleston County R.M.C. Office on April 11, 1988, in Book V173, at Page 248.

T.M.S. Nos. 571-08-00-007 and 571-08-00-167

EXHIBIT B
Depiction of License Areas





CITY LICENSE AREA

RESTARAUNT LICENSE AREA

50

8

5710700168

5710700167

6

5710700166

5710800007

5710800006

5710800007

41ST AV



Thursday, December 21, 2023

Hillary Aton
Thomas and Hutton

Re: **IOP Phase 3 Drainage Improvements – Potential Change Order**

Hillary,

This is the proposed scope for potential change order from our review and associated pricing. This is based on drawings titled "Draft Revision" sent on 12/5/23.

In change depicts piping in the area that was open channel in contract documents. Stationing on contract documents is 0+50 to 2+28.45 (addition of 178.45'). This consists of 3 runs of 48" pipe, a new box (DI #10) and a 12" pipe run from JB #17 to DI#10. This change would also include backfilling above pipe and topping area with 10" of GABC. The changes above are what was contemplated in this change order.

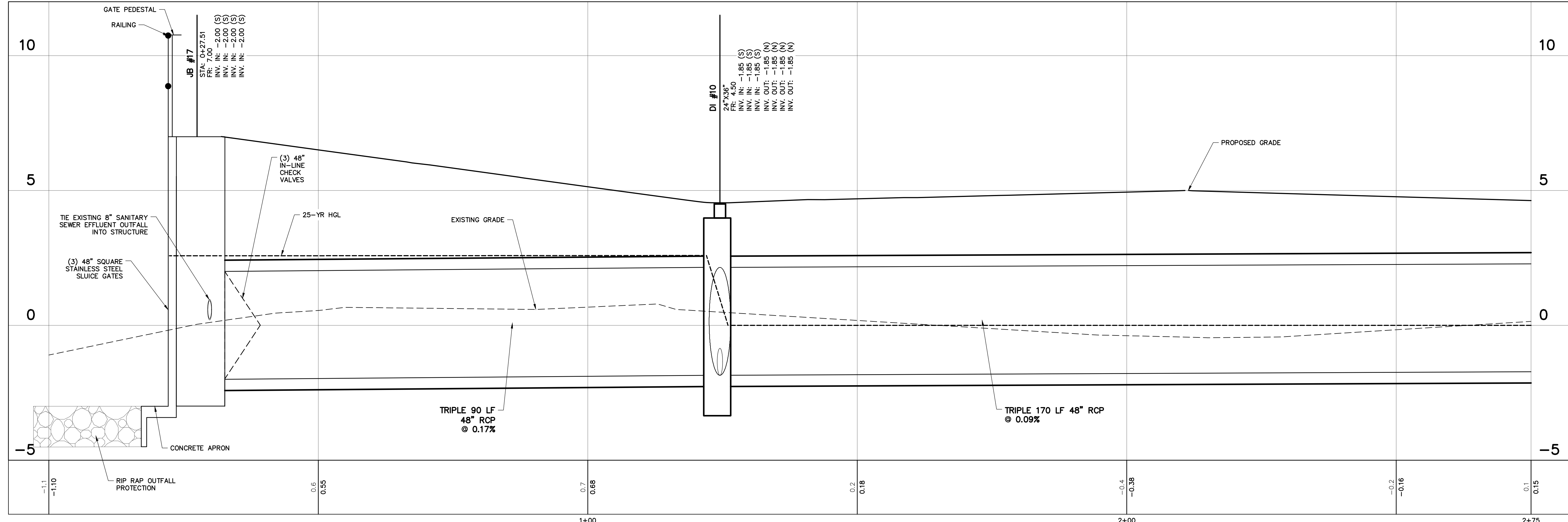
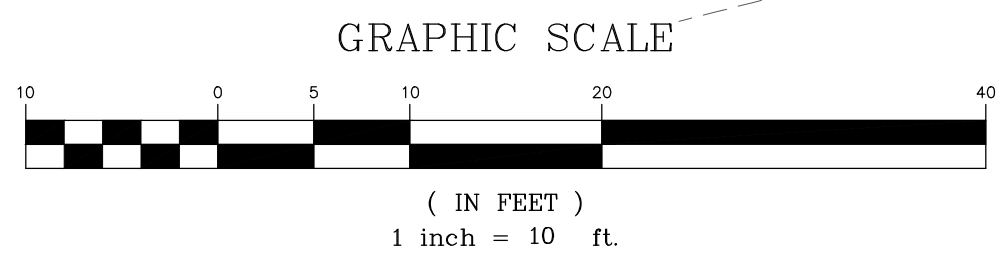
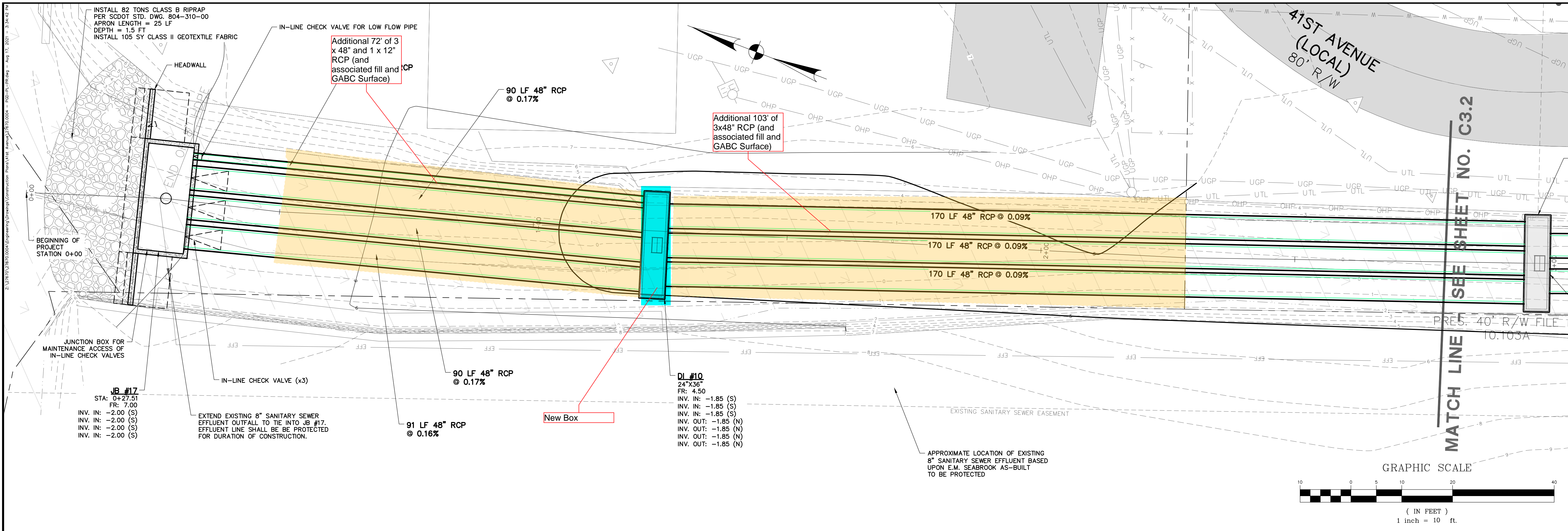
Included in the pricing is all labor materials and equipment for the changes listed above as well as all management, bonding, and reporting required on the original contract.

Our total price for the additional scope of work above is **\$494,236.00** (Four-Hundred and Ninety-Four Thousand Two-Hundred and Thirty Six Dollars and Zero Cents).

Thank you for the opportunity for The Bastion Group to be of service to you. If you should have any questions while reviewing this Change Order, please feel free to contact me.

Thank you,

Keane Steele, PE



41ST AVENUE OUTFALL
 STATIONS: 0+00 - 2+75
 SCALE: HORIZ: 1" = 10'
 VERT: 1" = 2'

E:\31676\27670.000\Engineering\Construction\Phase 3\11 - 41st Ave - 314.dwg - Aug 17, 2021 - 3:34:42 PM
 E:\31676\27670.000\Engineering\Construction\Phase 3\11 - 41st Ave - 314.dwg - Aug 17, 2021 - 3:34:42 PM

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NO.	REVISIONS	BY	DATE

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 Savannah, GA 31405 • 912.234.5300
 www.thomasandhutton.com

CITY OF ISLE OF PALMS
 ISLE OF PALMS, CHARLESTON COUNTY, SOUTH CAROLINA
PHASE 3 DRAINAGE IMPROVEMENTS
PLAN & PROFILE

JOB NO:	J-27670.0004
DATE:	10/09/19
DRAWN:	HEA
DESIGNED:	HEA
REVIEWED:	RPK
APPROVED:	RPK
SCALE:	AS NOTED

C3.1