



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

MAY 2, 2023

AGENDA

ALL CITIZENS DESIRING TO ADDRESS THE PORT ORANGE CITY COUNCIL DURING PUBLIC PARTICIPATION SHOULD COMPLETE THE FORM WHICH IS LOCATED ON THE STANDS OUTSIDE THE COUNCIL CHAMBERS. AFTER COMPLETING THE FORM, PRESENT IT TO THE CITY CLERK.

A. OPENING

1. Invocation by Pastor Stephen Johnson of New Life Church
2. Pledge of Allegiance
3. Roll Call

B. RECOGNITION AND PROCLAMATIONS

4. Port Orange University Certificates
5. Professional Municipal Clerks Week Proclamation

C. CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only
7. Agenda Approval
8. Approval of Minutes
 - a. April 18, 2023
9. Bid Awards and Contract Items
 - a. Approval of Ratification for Tomoka Construction Emergency Repairs for Dunlawton Ave Reclaim Main Break February 2023
10. Approval of a Declaration of Restrictive Covenants of the Port Orange Field Operations Facility property
11. Approval of Volusia County Justice Assistance Grant (JAG) Agency Funding Allocation

D. PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

E. COUNCIL COMMENTS

12. Comments/Concerns from Council Members

F. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Environmental Advisory Board Report

G. PUBLIC HEARING

14. First Reading - Ordinance No. 2023-03 – Fourth Amendment to the Master Development Agreement for the Riverwood Planned Unit Development / Case No. PRZA-23-0001

H. ADDITIONAL ITEMS

15. City Attorney
16. City Manager

I. COUNCIL COMMITTEE REPORTS

17. City Council Committee Reports
a. River to Sea TPO - Vice Mayor Reed Foley

J. ADJOURNMENT

NOTICES – PURSUANT TO SECTION 286.0105 OF THE FLORIDA STATUTES, IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE CITY COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT THIS PUBLIC MEETING OR HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED. THE CITY DOES NOT PREPARE OR PROVIDE SUCH A RECORD.



FOR SPECIAL ACCOMMODATIONS, PLEASE NOTIFY THE CITY CLERK'S OFFICE (PHONE: 386-506-5563) AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE.



HELP FOR THE HEARING IMPAIRED IS AVAILABLE THROUGH THE ASSISTIVE LISTENING SYSTEM RECEIVERS CAN BE OBTAINED FROM THE CITY CLERKS' OFFICE.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA), IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT THE CITY CLERK FOR THE CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129, TELEPHONE NUMBER 386-506-5563, CITYCLERK@PORT-ORANGE.ORG, AS FAR IN ADVANCE AS POSSIBLE, BUT PREFERABLY WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE MEETING OR HEARING DATE. IF YOU ARE HEARING OR VOICE IMPAIRED, CONTACT THE RELAY OPERATOR AT 7-1-1 or 1-800-955-8771.

UPON REQUEST BY A QUALIFIED INDIVIDUAL WITH A DISABILITY, THIS DOCUMENT WILL BE MADE AVAILABLE IN AN ALTERNATE FORMAT. IF YOU NEED TO REQUEST THIS DOCUMENT IN AN ALTERNATE FORMAT, PLEASE CONTACT THE CITY CLERK WHOSE CONTACT INFORMATION IS PROVIDED ABOVE.

Regular City Council Meeting

5/2/2023

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ANY INVOCATION THAT IS OFFERED BEFORE THE OFFICIAL START OF THE CITY COUNCIL MEETING SHALL BE THE VOLUNTARY OFFERING OF A PRIVATE PERSON, TO AND FOR THE BENEFIT OF THE CITY COUNCIL. THE VIEWS OR BELIEFS EXPRESSED BY THE INVOCATION SPEAKER HAVE NOT BEEN PREVIOUSLY REVIEWED OR APPROVED BY THE CITY COUNCIL OR THE CITY STAFF, AND THE CITY IS NOT ALLOWED BY LAW TO ENDORSE THE RELIGIOUS BELIEFS OR VIEWS OF THIS, OR ANY OTHER SPEAKER. PERSONS IN ATTENDANCE AT THE CITY COUNCIL MEETING ARE INVITED TO STAND DURING THE OPENING INVOCATION AND PLEDGE OF ALLEGIANCE. HOWEVER, SUCH INVITATION SHALL NOT BE CONSTRUED AS A DEMAND, ORDER, OR ANY OTHER TYPE OF COMMAND. NO PERSON IN ATTENDANCE AT THE MEETING SHALL BE REQUIRED TO PARTICIPATE IN ANY OPENING INVOCATION THAT IS OFFERED. A PERSON MAY EXIT THE CITY COUNCIL CHAMBERS AND RETURN UPON COMPLETION OF THE OPENING INVOCATION IF A PERSON DOES NOT WISH TO PARTICIPATE IN OR WITNESS THE OPENING INVOCATION.

REGULAR CITY COUNCIL MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
APRIL 18, 2023

THE REGULAR CITY COUNCIL MEETING of the City of Port Orange was called to order by Mayor Donald O. Burnette at 6:30 p.m.

Invocation by Pastor Ken Sharp of High Point Pentecostal Church

Pledge of Allegiance

Roll Call	Present:	Councilman Tracy Grubbs Councilman Drew Bastian Councilman Scott Stiltner Vice Mayor Reed Foley Mayor Don Burnette
	Also Present:	City Manager, Wayne Clark City Attorney, Matt Jones Assistant City Clerk, Tracee Cody

RECOGNITION AND PROCLAMATIONS

4. Water Conservation Month

Mayor Don Burnette read the proclamation for Water Conservation Month and presented it to James Cannon, Government Affairs Representative for the St. Johns River Water Management District.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

Robert Reinhegan, resident, commented on Item #9 and doesn't believe the City should use all of the funds to raise houses. He would like the City to re-write their proposal to allow flexibility to buy properties as well as raise houses.

6. Agenda Approval

Vice Mayor Reed Foley asked to pull Item #12 and Councilman Scott Stiltner asked to pull Item #9 for further discussion.

Motion to approve the agenda as amended was made by Vice Mayor Reed Foley and seconded by Councilman Tracy Grubbs. Motion

carried unanimously by voice vote.

7. Approval of Minutes
 - a. April 4, 2023 - City Council Regular Meeting
8. Resolution No. 23-14 - Establishing a Canvassing Board
9. Resolution No. 23-15 - Hazard Mitigation Grant Program (HMGP) Application to Request Funds to Elevate 25 Homes
10. Resolution No. 23-16 - Approval of State of Florida Department of Environmental Protection Grant Agreement in the amount of \$750,000
11. Approval of Task Authorization No. 18 for Zev Cohen and Associates for engineer estimates and specific concept plans for the 2024 Parks Bond Referendum
12. Approval of Memorandum of Understanding (MOU), Article 28, with the International Union of Police Associations (IUPA)

Motion to approve the Consent Agenda Items #7, #8, #10, and #11 was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

Item #9 - Resolution No. 23-15 - Hazard Mitigation Grant Program Application to Request Funds to Elevate 25 homes.

Motion to approve Item #9 was made by Councilman Scott Stiltner and seconded by Vice Mayor Reed Foley.

Councilman Stiltner asked Wayne Clark, City Manager, to differentiate this program from other programs. Mr. Clark explained this FEMA program is designed to elevate homes but there is another program to purchase properties which will come later.

Motion carried unanimously by roll call vote.

Item #12 - Approval of Memorandum of Understanding (MOU), Article 28, with the International Union of Police Associations (IUPA)

Motion to approve Item #12 was made by Councilman Scott Stiltner and seconded by Councilman Drew Bastian.

All Council members commented that this is necessary and hope it gets more applicants interested and they fully support the item. Vice Mayor Foley also mentioned that by approving this Memorandum of Understanding it would probably completely eliminate the possibility of going to roll back when the City does it's millage rates later

this year. However, he believes this is absolutely money well spent.

Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

There were none.

COUNCIL COMMENTS

13. Comments/Concerns from Council Members

Vice Mayor Reed Foley commented about a resident concerned with their increased water bill and suggested other Council members get information from Mr. Clark to be prepared to answer resident questions.

Councilman Tracy Grubbs reminded residents about the Earth Day Celebration this Saturday, April 22, at Riverwalk Park.

Mayor Burnette commented on the Parks & Rec Bond. Mayor Burnette also introduced Atlantic High School students from the Academy of Law and Government and announced they will do a mock Council meeting on May 3 for Student Government Day.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

14. Citizen Advisory Committee for TPO

Bobby Ball, CAC member, provided details from their recent meeting. It was noted that the meetings are now being held at the airport.

15. Parks & Recreation Advisory Board Report

Mark Bowling, Chairman of the Parks & Recreation Advisory Board, provided details from their meetings. They fully support a Parks & Recreation Bond be considered to fund parks projects.

16. Update on the REC Center from Parks & Recreation Department

Susan Lovallo, Parks & Recreation Director, announced that the grand opening of the REC Center is Saturday, April 29 from 10 am-1 pm. Teresa Wiggins, Recreation Manager, provided a detailed itinerary for the day. Ms. Wiggins also provided details on the operating hours and membership information.

17. Parks & Recreation Board Appointment

Motion to re-appoint James Richard, Jr. was made by Councilman Scott Stiltner and seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

Councilman Scott Stiltner stressed that the Parks & Recreation Department can use help with volunteering and will need ideas as the Bond Referendum moves forward.

18. Town Center CRA Board Appointment

This vacancy became available due to Ray Donadio's business no longer being in the Town Center CRA district.

Motion to nominate Anthony Pinizzotto to the Town Center CRA Board was made by Councilman Scott Stiltner and seconded by Councilman Drew Bastian.

Anthony Pinizzotto, a resident for 20 years and business owner, introduced himself and thanked Council for the opportunity to serve. Council thanked Mr. Pinizzotto for his willingness to serve the City.

Motion carried unanimously by roll call vote.

19. Eastport CRA Board Appointment

Motion to nominate Christopher Donadio to the Eastport CRA Board was made by Councilman Scott Stiltner and seconded by Vice Mayor Reed Foley.

Christopher Donadio, Account Manager at Precision Dynamics Corporation (PDC), introduced himself. Council thanked Mr. Donadio for his willingness to serve the City.

Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

20. City Attorney

There was nothing further.

21. City Manager

Mr. Clark asked Jonathan McKinney, Assistant City Manager/Finance Director, to provide a brief update on items for the Council Workshop for Tuesday, April 25.

COUNCIL COMMITTEE REPORTS

22. City Council Committee Reports

a. Port Orange/South Daytona Chamber of Commerce - Mayor Don Burnette

Mayor Burnette relayed that the monthly meeting between the Mayor & Manager is being held Friday, April 21 and the Tasteful Affair event is Thursday, April 27.

b. Appointment to Council Committees - ArtHaus & First Step Shelter

Motion to appoint Vice Mayor Reed Foley as the Council liaison to the ArtHaus Board was made by Councilman Drew Bastian and seconded by Councilman Scott Stiltner. Motion carried unanimously by voice vote.

Motion to appoint Mayor Don Burnette to the First Step Shelter Board was made by Councilman Scott Stiltner and seconded by Vice Mayor Reed Foley. Motion carried unanimously by voice vote.

ADJOURNMENT – 7:21 p.m.

Attest:

Mayor Donald O. Burnette

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/2/2023

SUBJECT: (C9a) Approval of Ratification for Tomoka Construction Emergency Repairs for Dunlawton Ave Reclaim Main Break February 2023

DEPARTMENT: Engineering

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve ratification for Tomoka Construction emergency repairs to Dunlawton Ave caused by a reclaimed water main break in the amount of \$132,782.

SUMMARY: The Engineering Department and the Public Utilities Department are requesting Council ratification of Tomoka Construction's emergency repairs to Dunlawton Avenue. A reclaimed water main break led to damage in two areas of the road. The total cost for the repairs is \$132,782.

On February 6, 2023, a 4" reclaimed water main break occurred at the intersection of Dunlawton Ave (SR 421) and Interstate 95. The reclaimed water main crossed under the off-ramp of northbound I-95 at the traffic signal on Dunlawton Ave.

Water from the broken pipe initially caused a section of asphalt in the far westbound lane of Dunlawton to heave. On February 7, Tomoka Construction was contacted to take over the emergency maintenance of traffic (MOT) that had been set up by the Florida Department of Transportation (FDOT) contractor and to make repairs to the damaged asphalt on Dunlawton. Tomoka Construction contacted P & S Paving to perform the asphalt repairs. The repair was completed and the lane on Dunlawton Avenue reopened on February 7.

On February 16, a depression formed on the off-ramp of northbound I-95 in the location of the original leak. Once again, Tomoka Construction was contacted to come set up Maintenance of Traffic (MOT) and to determine what caused the depression. Once the cause of the depression was identified and removed, the hole was backfilled, and the roadway section was reconstructed.

The final cost of both emergency repairs was \$132,782. Work has been completed and City Council ratification is now required.

PRESENTER: Junos Reed

ATTACHMENTS:

1.	Department Justification Memo - Tomoka Construction - Emergency Dunlawton REV 4.18.23	Department Justification Memo - Tomoka Construction - Emergency Dunlawton REV 4.18.23.docx
2.	Manual Check Req to Finance - 1st inv	Manual Check Req to Finance - 1st inv.pdf
3.	Manual Check Req to Finance - 2nd Inv	Manual Check Req to Finance - 2nd Inv.pdf
4.	Tomoka Construction COI All 03.01.2024	Tomoka Construction COI All 03.01.2024.pdf

Julia Wiggins	Created/Initiated - 4/5/2023
Richard Colby	Approved - 4/5/2023
Junos Reed	Approved - 4/6/2023
John McKinney	Approved - 4/11/2023
Matthew Jones	Approved - 4/24/2023
Wayne Clark	Approved - 4/26/2023
Tracee Cody	Final Approval - 4/27/2023



City of Port Orange Engineering Department

TO: Wayne Clark, City Manager

THRU: Julia Wiggins, Engineering Business Manager

FROM: Junos Reed P.E., City Engineer

DATE: April 4, 2023

SUBJECT: Ratification - Tomoka Construction Emergency Dunlawton Repairs from a Reclaimed Main Break

REQUEST:

The Engineering Department and the Public Utilities Department are requesting Council ratification for Tomoka Construction's emergency repairs to Dunlawton Ave caused by a reclaimed water main break in the amount of \$132,782.

PURPOSE:

The purpose of this request is ratification of the emergency repairs to Dunlawton Ave caused by a reclaimed water main break.

CONSIDERATION:

On February 6, 2023, a 4" reclaimed water main break occurred at the intersection of Dunlawton Ave (SR 421) and Interstate 95. The reclaimed water main crossed under the off ramp of north bound I-95 at the traffic signal on with Dunlawton Ave.

On Tuesday February 7th, Tomoka Construction was contacted to take over the emergency maintenance of traffic (MOT) that had been set up by the Florida Department of Transportation (FDOT) contractor and to make repairs to the damaged asphalt on Dunlawton. Tomoka Construction contacted P & S Paving to perform the asphalt repairs. Water from the broken pipe caused a section of asphalt in the far west bound lane of Dunlawton to heave.

A meeting was held between FDOT, City of Port Orange, Tomoka Construction, and P & S Paving to inspect the damage and come up with a plan to make repairs to the damaged asphalt to get the road fully open. The repair was complete, and the lane reopened on Tuesday February 7th.

The morning of February 16th, a depression formed on the off ramp of north bound I-95 in the location of the original leak. Once again, Tomoka Construction was contacted to

come set up Maintenance of Traffic (MOT) and to determine what caused the depression. Once the cause of the depression was identified and removed, the hole was backfilled, and the roadway section was reconstructed.

FUNDING:

Project: EUR000

Fund: 403

Name: Water and Sewer R&R

Cost Center: Water and Sewer

Program: Water/Sewer Distribution

Spend Category: Water – Capital

Current Budget: \$540,138

Project No EUR000

Actual Cost \$132,782.00

Cost for repairs that occurred on February 7th \$57,835

Cost for repairs made on February 16th \$74,947

RECOMMENDATION:

The Engineering Department and the Public Utilities Department recommends Council ratification approval for Tomoka Constructions emergency repairs to Dunlawton Ave caused by a reclaimed water main break in the amount of \$132,782.

ANTICIPATED SCHEDULE:

- a) Placed on ClivicClerk April 4, 2023
- b) All repairs have been completed as of February 17, 2023
- c) Council Ratification May 2, 2023

ATTACHMENTS:

- a.) Payment Request for Repair #1
- b.) Payment Request for Repair #2
- c.) Certificate of Insurance

CITY OF PORT ORANGE
PUBLIC WORKS & UTILITIES DEPARTMENT
MANUAL PAY REQUEST
REQUISITION REQUEST

Date: February 17, 2023

Ship to: Utility Admin

Vendor: Tomoka Construction Services
S-000364

Req Type: SERVICE
Req Number: _____

EMERGENCY

Contract Number _____

Workday Expense Account

Fund ID: 403
Fund Name: Water and Sewer R&R
Cost Center: Water and Sewer
Program: WS Distribution
Spend Category: Water - Capital
Additional Tags: None
Project No: EUR000
Location: Field Operations
Amount: \$57,835.00

Workday Expense Account

Fund ID: _____
Fund Name: _____
Cost Center: _____
Program: _____
Spend Category: _____
Project No: _____
Location: _____
Amount: _____

Quantity	Item Description	UOM	Unit Cost	Extended Cost
	EMERGENCY			\$ 57,835.00
	Professional Services relating to the			
	Reclaim Water break located on the			
	Dunlawton / I95 North exit ramp			
	Work Performed on 2/7/2023			
Total:				\$ 57,834.99

Memo to Vendors: Payment for emergency services due to reclaim water break

Pending emg contract and council ratification

Internal Memo: Necessary for the emergency repairs to the reclaim water main

This invoice is for the first repair, a second repair is in process and
the emg. Contract is in process

Vendor	**LIST UNDER INTERNAL MEMO **	Total Amount

Business Manager

Dept Director

City Manager

Tomoka Construction Services, Inc.
40 Holly Street, Ormond Beach 32174

Project: Dunlawton Ave Emergency Repair

Scope of Work:

2/15/2023

Work Performed 02/07/2023

LABOR

Quantity	Units	Description	\$/unit	Cost of labor
10	HR	Supervisor w/ Truck	\$ 175.00	\$ 1,750.00
10	HR	Foreman w/ Truck	\$ 125.00	\$ 1,250.00
Labor Subtotal				
Labor Burden Percentage				
Labor Total				\$ 3,000.00

MATERIAL

Quantity	Units	Description	\$/unit	Cost of Material
Material subtotal				\$ -
Material Sales Tax 6.50%				
Material Total				

EQUIPMENT / SUBCONTRACTORS / UNIT COSTS

Quantity	Units	Description	\$/unit	Cost of E/S/U
1	EA	Port-O-Let	\$ 402.70	\$ 402.70
1	LS	Roadsafe Traffic	\$ 6,720.85	\$ 6,720.85
1	LS	P&S Paving	\$ 40,000.00	\$ 40,000.00
1	LS	Better Baricades	\$ 3,650.00	\$ 3,650.00

Approved By: 
 Division Manager
 City of Port Orange
 Public Works & Utilities Department

APPROVED FOR PAYMENT

 Date: 2-17-23

Equipment & Sub Total \$ 50,773.55

Labor Total \$ 3,000.00

Material total

Equip./Sub/ Unit Total \$ 50,773.55

Subtotal \$ 53,773.55

Allowable OH&P 8% \$ 4,061.88

GRAND TOTAL (no pennies) \$ 57,835



PAYMENT APPLICATION FORM

TO: Tomoka Construction Services, Inc.
P O Box 11017
Daytona Beach FL 32120-1017

APPLICATION No.: 01
 JOB NAME: Dunlawton EMR RPR

CONTRACTOR: P & S PAVING, INC.
 (Address:) 3701 OLSON DRIVE
DAYTONA BEACH, FL 32124

FDOT Number: N/A
 Purchase Order No: N/A
 P & S Paving No.: 23.011

Payment in the amount shown is due for work performed during the period of February 7, 2023, through February 4, 2023, as detailed in the attached Schedule of Payments. The present status of the Account for this Contract is:

AMENDMENTS TO CONTRACT			PAYMENT DUE THIS APPLICATION	
CHANGE ORDER			ORIGINAL CONTRACT SUM	\$ 40,000.00
APPROVAL DATE	ADDITION	DEDUCTION	NET REVISIONS	\$ -
			CONTRACT SUM TO DATE	\$ 40,000.00
			TOTAL COMPLETE TO DATE	\$ 40,000.00
			Less: Retainage @ 0 %	\$ -
			EARNED LESS RETAINAGE	\$ 40,000.00
			PAYMENT FOR STORED MATERIALS	\$ -
			TOTAL LESS RETAINAGE	\$ -
TOTAL REVISIONS	\$ -	\$ -	LESS PREVIOUS PAYMENTS MADE	\$ -

NET REVISIONS: \$ \$ - AMOUNT DUE THIS APPLICATION \$ 40,000.00

The undersigned certifies that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents and/or any Amendments thereto, that all amounts due Subcontractors and Suppliers for Work, for which previous Applications for Payment were issued and payment has been received from Tomoka Construction Services, Inc., has been paid by him; and the current payment shown here is now due.

CONTRACTOR: P & S PAVING, INC.
 BY: Joe Murray

SIGNED: J Murray
 DATE: February 15, 2023

RECOMMENDED FOR ACCEPTANCE AND PAYMENT:

DATE: _____ ENGINEER: _____

2/10/2023

Date

RoadSafe Traffic Systems, Inc.

Accepted By

Signature

Date

Print Name

Title

Company

Better Barricades, Inc.

1725 Tionia Rd., New Smyrna Beach, FL 32168-9290
Ph. (386) 427-4971 FAX (386) 427-8285
Women Business Enterprise

TOMOKA CONSTRUCTION SERVICES
P.O BOX 730936

ORMOND BEACH FL 32173-0936

TOM100

INVOICE #: 23000056

INVOICE DATE: 2/8/2023

OUR JOB NO: 23030.1

JOB: PORT ORANGE EMERGENCY-SF

ATTN:

Quantity	Unit	Description	Unit Price	Extended Price
1.00	LS	EMERGENCY NIGHT MOBILIZATION - MINIMUM PAINT	1,650.00	1,650.00
1.00	LS	MINIMUM THERMOPLASTIC MOBILIZATION - AFTER 14 DAY CURE TIME	2,000.00	2,000.00

SUB TOTAL: 3,650.00

SALES TAX: 0.00

RETAINAGE: 0.00

TOTAL DUE: 3,650.00

TERMS: 10TH of Month from Date of Invoice
Please pay from this Invoice

APPLICATION FOR PAYMENT CONTINUATION FORM

CONTRACTOR'S APPLICATION FOR PAYMENT - SHEET 1 OF 1

Project Name:

Dunlawton EMR RPR

FDOT Number:

N/A

Purchase Order No:

N/A

P & S Paving No.:

23.011

SUBCONTRACTOR: P & S PAVING, INC.

COVERING PERIOD 02.07.23

THRU 02.07.23

APPLICATION NO.: 01 DATE: 02.07.23

DATE: 02.07.23

[illegible]

2235 Dunn Avenue
Daytona Beach, FL 32114

QUOTATION

Quote Date	Quote ID
2/10/2023	FLTOMOKAPORT
Payment Terms	Net 30 Days

Valid Through: 3/12/2023

TOMOKA CONSTRUCTION SERVICES, INC.

KYLE HALL
40 HOLLY STREET
ORMOND BEACH, FL 32174-2935

Phone: 386-274-3120

Fax: 386-274-3170

Email: tomokaconstruct@bellsouth.net

Job Location:

TAYLOR RD & DUNLAWTON AVE
PORT ORANGE

Quote Created By: Teri Foskolos

Estimated Days: 1

Item Description	Price	UOM	Qty/Day	Days	Total Qty.	Total
4 men 4 Trucks *	\$260.00	Per Hour	12	1	12	\$3,120.00
Arrow Board *	\$25.00	Per Day	1	1	1	\$25.00
Traffic Cone 36 in Sleeved *	\$0.75	Per Day	62	1	62	\$46.50
Flagman Labor *	\$60.00	Per Hour	12	1	12	\$720.00
Single Lane Closure - Night *	\$700.00	Per Day	2	1	2	\$1,400.00
MOT Plan Design *	\$195.00	Per Each	5	1	5	\$975.00
Sign - Medium *	\$1.15	Per Day	21	1	21	\$24.15

Note: The * indicates taxable items.

Emergency price is based on One weeknight Mon-Fri including lane closures set-up & breakdown.

Not Included: post-mounting work zone signs, special legend signs, police.

* Road/ LANE closure & flagging on weekend days may incur additional charges.

* Requirements of the final approved MOT plan/ permit may impact our quote.

* Quantities are estimated upon information provided.

* Equipment or services exceeding the stated quantities will be the responsibility of the Gen. Contractor.

* Signs are standard legend only.

* Gen. Contractor is responsible for damage to equipment due to negligence.

* RoadSafe Traffic Systems will not take on the responsibility of project work zone Traffic Control Supervisor unless a specific agreement is executed in writing.

EQUIPMENT	\$95.65
ONE TIME CHARGES	\$0.00
LABOR	\$6,215.00
SUBTOTAL	\$6,310.65
SALES TAX (6.5%)	\$410.20
QUOTE TOTAL	\$6,720.85

United
SITE SERVICES
INVOICE

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IF YOU HAVE QUESTIONS ON YOUR INVOICE CALL 1.800.TOILETS OR EMAIL BILLPAY@UNITEDSITESERVICES.COM

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Please detach this coupon and include with your payment in the enclosed envelope.
See Reverse for Terms & Conditions, which are part of this Agreement
where in is referred to as "Company"

Customer ID:	ACT-00159160	Subject To Tax:	Exempt From Tax:	Subtotal:	\$378.08
Invoice Number:	INV-01418095	\$378.08	\$0.00	Tax:	\$24.62
Order Number:	O-658114			Total:	\$402.70
				Remaining Balance:	\$402.70

Amount Paid:

Please
Remit to: **United Site Services**
PO Box 660475
Dallas, TX 75266-0475

☐

Check this box if you would like to pay by credit card, change
your address, or decline damage waver and you have
completed necessary form(s) on reverse.



00000000INV-0141809500000402701



INVOICE

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United Site Services of Florida, LLC

Customer Number: ACT-00159160

Customer Name: TOMOKA CONSTRUCTION SERVICES

PO Number:

Order No: O-658114

Invoice No: INV-01418095

Invoice Date: 2023-02-07

Terms: Due Upon Receipt

Bill To:

TOMOKA CONSTRUCTION SERVICES

Kimberly Vickers

PO BOX 730936

ORMOND BEACH FL, 32173

Ship TOMOKA CONSTRUCTION SERVICES

To: Kyle Hall

195 and Dunlawton ave

PORT ORANGE FL, 32129

Site Name: i95 and Dunlawton ave

Item	Unit Qty	Unit Price	Duration	Recurring Amount	One-Time Charges	Total Charges	Taxable
Std Rest	1	\$40.00	02/07/23-03/06/23	\$40.00	\$0.00	\$40.00	Y
1 Svc 1 Day Wk	1	\$99.00	02/07/23-03/06/23	\$99.00	\$0.00	\$99.00	Y
Hand Sani Refill	1	\$35.00	02/07/23-03/06/23	\$35.00	\$0.00	\$35.00	Y
Std Rest Subtotal						\$174.00	
Subtotal Excluding Tax						\$174.00	
Tax						\$11.32	
Subtotal						\$185.32	

Other One-Time Charges

Item	Recurring Amount	One-Time Charges	Total Charges	Taxable
Pickup and Delivery Taxable	\$0.00	\$170.00	\$170.00	Y
Fuel & Inflation Surcharge Taxable	\$0.00	\$16.85	\$16.85	Y
Subtotal Excluding Tax			\$186.85	
Tax			\$12.17	
Subtotal			\$199.02	

Other Recurring Charges

Item	Recurring Amount	One-Time Charges	Total Charges	Taxable
Fuel & Inflation Surcharge Taxable	\$17.23	\$0.00	\$17.23	Y
Sub-Total Excluding Tax			\$17.23	
Tax			\$1.13	
Grand Total			\$18.36	



INVOICE

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Invoice Totals	Total Charges
Subtotal for All Locations Before Tax	\$378.08
Tax	\$24.62
Total	\$402.70

Invoice Balance	Total Charges
Total Payment Applied	\$0.00
Total Credit Memo Applied	\$0.00
Invoice Balance	\$402.70

Paying your invoices at USS is easy! With consolidated charges and online bill pay, our invoices are now designed to make it easier to do business with us. To learn more about the charges on your invoices at UnitedSiteServices.com/ExplanationOfCharges.

Engineering

Ship to: Utility Admin

Req Type: SERVICE
Req Number: _____

Contract Number

Workday Expense Account

Fund ID:

Fund Name:

Cost Center:

Program:

Spend Category:

Project No:

Location:

Amount:

Amount: \$65,000.00

Total: \$ 74,947.00

Pending emg contract and council ratification

Emg Contract in process, will require CC ratificaiton

This is for the 2nd repair


Business Manager

Dept Director

City Manager



City of Port Orange
1395 Dunlawton Ave
Port Orange, FL. 32129

Invoice

March 7, 2023

Invoice #3996

Project: I95 & Dunlawton Ave Off Ramp -
Port Orange

Scope of Work: Emergency Repair At The Above Project -
Breakdown Attached

Total Due: \$ 74,947.00

I certify that all of the work and materials supplied, as shown above, represents the actual value of the accomplishment under the contract. All sub-contractors, workers, and materials have been paid through the period covered by the previous request.

A blue ink signature of Garry K. White, consisting of a stylized 'G' and 'K'.

Garry K. White, President
CUC1224170

APPROVED FOR PAYMENT
A blue ink signature of Garry K. White, consisting of a stylized 'G' and 'K'.
Date: 4/3/2023

Tomoka Construction Services, Inc.
40 Holly Street, Ormond Beach 32174

Project: Dunlawton Ave Emergency Repair #2

Scope of Work:

3/7/2023

Work Performed 02/16/2023

LABOR

<u>Quantity</u>	<u>Units</u>	<u>Description</u>	<u>\$/unit</u>	<u>Cost of labor</u>
11	HR	Supervisor w/ Truck	\$ 175.00	\$ 1,925.00
4.5	HR	Foreman w/ Truck	\$ 125.00	\$ 562.50
15	HR	Labor	\$ 30.00	\$ 450.00
				\$ -
		Labor Subtotal		\$ 2,937.50
		Labor Burden Percentage		\$ -
		Labor Total		\$ 2,937.50

MATERIAL

<u>Quantity</u>	<u>Units</u>	<u>Description</u>	<u>\$/unit</u>	<u>Cost of Material</u>
15	CY	Fill Dirt	\$ 7.00	\$ 105.00
				\$ -
		Material subtotal		\$ -
		Material Sales Tax 6.50%		\$ 6.83
		Material Total		\$ 111.83

EQUIPMENT / SUBCONTRACTORS / UNIT COSTS

<u>Quantity</u>	<u>Units</u>	<u>Description</u>	<u>\$/unit</u>	<u>Cost of E/S/U</u>
5.5	HR	308 Track Hoe	\$ 115.00	\$ 632.50
3	HR	Dump Truck	\$ 90.00	\$ 270.00
4.5	HR	Dump Truck w/ Trailer	\$ 125.00	\$ 562.50
1	EA	Port-O-Let	\$ 430.61	\$ 430.61
1	LS	Roadsafe Traffic MOT	\$ 6,018.80	\$ 6,018.80
1	LS	P&S Paving	\$ 55,000.00	\$ 55,000.00
1	LS	Better Barricades	\$ 3,650.00	\$ 3,650.00

Equipment & Sub Total \$ 66,564.41

Labor Total \$ 2,937.50

Material total \$ 111.83

Equip./Sub/ Unit Total \$ 66,564.41

Subtotal \$ 69,613.74

Allowable OH&P 8% \$ 5,333.55

GRAND TOTAL (no pennies) **\$ 74,947**



Time & Material Authorization

Job Name: I-95 Off Ramp Asphalt Repair

Contractor: City of Port Orange

Date: 2-16-23

Scope of Work: Remove damaged asphalt. Repair broken
2" water main. Backfill and compact failure area.
Re pave damaged area.

Equipment

308 Backhoe
Truck #115
Standby
308 Backhoe
Truck #115 w/trailer

Hours

3
3
2.5
4.5

Labor

Buddy
Ray
Derron
Tony

Hours

11
4.5
7.5
7.5

Material

Fill Dirt

Amount

15 cy

Mobilization: _____

Tomoka Construction Svcs

Date

Contractor Signature

40 Holly Street ▲ Ormond Beach, Florida 32174-2935 ▲ Tel: 386.274.3120 ▲ Fax: 386.274.3170

PAYMENT APPLICATION FORM

copy

TO: Tomoka Construction Services, Inc.
P O Box 11017
Daytona Beach FL 32120-1017

APPLICATION No.: 01
 JOB NAME: Dunlawton EMR RPR
 2

CONTRACTOR: P & S PAVING, INC.
 (Address:) 3701 OLSON DRIVE
DAYTONA BEACH, FL 32124

FDOT Number: N/A
 Purchase Order No: N/A
 P & S Paving No.: 23.014

Payment in the amount shown is due for work performed during the period of February 16, 2023, through February 16, 2023, as detailed in the attached Schedule of Payments. The present status of the Account for this Contract is:

AMENDMENTS TO CONTRACT			PAYMENT DUE THIS APPLICATION	
CHANGE ORDER			ORIGINAL CONTRACT SUM	\$ 52,000.00
APPROVAL DATE	ADDITION	DEDUCTION	NET REVISIONS	\$ 3,000.00
	3000		CONTRACT SUM TO DATE	\$ 55,000.00
			TOTAL COMPLETE TO DATE	\$ 55,000.00
			Less: Retainage @ 0 %	\$ -
			EARNED LESS RETAINAGE	\$ 55,000.00
			PAYMENT FOR STORED MATERIALS	\$ -
			TOTAL LESS RETAINAGE	\$ -
TOTAL REVISIONS	\$ 3,000.00	\$ -	LESS PREVIOUS PAYMENTS MADE	\$ -
NET REVISIONS: \$			AMOUNT DUE THIS APPLICATION	\$ 55,000.00

The undersigned certifies that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents and/or any Amendments thereto, that all amounts due Subcontractors and Suppliers for Work, for which previous Applications for Payment were issued and payment has been received from Tomoka Construction Services, Inc., has been paid by him; and the current payment shown here is now due.

CONTRACTOR: P & S PAVING, INC.
 BY: Joe Murray

SIGNED: [Signature]
 DATE: Feb. 21, 2023

RECOMMENDED FOR ACCEPTANCE AND PAYMENT:

DATE: 02/21/23

ENGINEER: [Signature]

CONTRACTOR'S APPLICATION FOR PAYMENT - SHEET 1 OF 1

Project Name:
Dunlawton EMIR RPR

FDOT Number:	N/A
Purchase Order No:	N/A
P & S Paving No.:	23.014

SUBCONTRACTOR: P & S PAVING, INC.

COVERING PERIOD 02.16.23
THRU 02.16.23

APPLICATION NO.: 01 DATE: 02.16.23

ITEM		CONTRACT QUANTITY	UNIT	UNIT PRICE	EXTENSION	QUANTITY INSTALLED & COMPLETE		DOLLAR AMOUNT			
NO.	DESCRIPTION					PREVIOUS	THIS PERIOD	TOTAL TO DATE	PREVIOUS	THIS PERIOD	TOTAL TO DATE
10	6" Type SP 12.5 Black Base Repair	1.00	LS	\$ 52,000.00	\$ 52,000.00		1.00	1.00	\$ -	\$ 52,000.00	\$ 52,000.00
20	Unforseen Conditions CO#01	1.00	LS	\$ 3,000.00	\$ 3,000.00		1.00	1.00	\$ -	\$ 3,000.00	\$ 3,000.00
									\$ -	\$ -	\$ -
									\$ -	\$ -	\$ -
									\$ -	\$ -	\$ -
					\$ 55,000.00						
		TOTALS							\$ -	\$ 55,000.00	\$ 55,000.00

Page

#2
Emergency
Repair

United
SITE SERVICES
INVOICE

Copy

Page 1 of 3

United Site Services of Florida, LLC

Customer Number: ACT-00159160

Customer Name: TOMOKA CONSTRUCTION SERVICES

PO Number:

Order No: O-666000

Invoice No: INV-01440996

Invoice Date: 2023-02-17

Terms: Due Upon Receipt

Bill To:
TOMOKA CONSTRUCTION SERVICES
Kimberly Vickers
PO BOX 730936
ORMOND BEACH FL, 32173

Ship TOMOKA CONSTRUCTION SERVICES
To: Kimberly Vickers
INTERSECTION OF I-95 AND DUNLAWTON AVE
PORT ORANGE FL, 32129

Site Name: PORT ORGANGE EMERG REPAIR							
Item	Unit Qty	Unit Price	Duration	Recurring Amount	One-Time Charges	Total Charges	Taxable
Std Rest	1	\$40.00	02/17/23-03/16/23	\$40.00	\$0.00	\$40.00	Y
1 Svc 1 Day Wk	1	\$122.86	02/17/23-03/16/23	\$122.86	\$0.00	\$122.86	Y
Hand Sani Refill	1	\$35.00	02/17/23-03/16/23	\$35.00	\$0.00	\$35.00	Y
Std Rest Subtotal						\$197.86	
Subtotal Excluding Tax						\$197.86	
Tax						\$12.86	
Subtotal						\$210.72	

Other One-Time Charges				
Item	Recurring Amount	One-Time Charges	Total Charges	Taxable
Pickup and Delivery Taxable	\$0.00	\$170.00	\$170.00	Y
Fuel & Inflation Surcharge Taxable	\$0.00	\$16.85	\$16.85	Y
Subtotal Excluding Tax			\$186.85	
Tax			\$12.17	
Subtotal			\$199.02	

Other Recurring Charges				
Item	Recurring Amount	One-Time Charges	Total Charges	Taxable
Fuel & Inflation Surcharge Taxable	\$19.59	\$0.00	\$19.59	Y
Sub-Total Excluding Tax			\$19.59	
Tax			\$1.28	
Grand Total			\$20.87	



INVOICE

Page 2 of 3

Invoice Totals	Total Charges
Subtotal for All Locations Before Tax	\$404.30
Tax	\$26.31
Total	\$430.61

Invoice Balance	Total Charges
Total Payment Applied	\$0.00
Total Credit Memo Applied	\$0.00
Invoice Balance	\$430.61

Paying your invoices at USS is easy! With consolidated charges and online bill pay, our invoices are now designed to make it easier to do business with us. To learn more about the charges on your invoices at UnitedSiteServices.com/ExplanationOfCharges.



INVOICE

Page 3 of 3

IF YOU HAVE QUESTIONS ON YOUR INVOICE CALL 1.800.TOILETS OR EMAIL BILLPAY@UNITEDSITESERVICES.COM

Easy, Safe & Clean  **1.800.TOILETS**  **UnitedSiteServices.com**

Pay Your Invoices Online at www.UnitedSiteServices.com/BillPay

Please detach this coupon and include with your payment in the enclosed envelope.
See Reverse for Terms & Conditions, which are part of this Agreement
where in is referred to as "Company"

Customer ID:	ACT-00159160	Subject To Tax:	Exempt From Tax:	Subtotal:	\$404.30
Invoice Number:	INV-01440996	\$404.30	\$0.00	Tax:	\$26.31
Order Number:	O-666000			Total:	\$430.61
				Remaining Balance:	\$430.61

Amount Paid:

Please
Remit to:

United Site Services
PO Box 660475
Dallas, TX 75266-0475

☐

Check this box if you would like to pay by credit card, change
your address, or decline damage waver and you have
completed necessary form(s) on reverse.



00000000INV-0144099600000430619

Better Barricades, Inc.

1725 Tionia Rd., New Smyrna Beach, FL 32168-9290

Ph. (386) 427-4971 FAX (386) 427-8285

Women Business Enterprise

copy

TOMOKA CONSTRUCTION SERVICES
P.O BOX 730936

ORMOND BEACH FL 32173-0936

TOM100

INVOICE #: 23000068

INVOICE DATE: 2/23/2023

OUR JOB NO: 23030.1

JOB: PORT ORANGE EMERGENCY-SF

ATTN:

Quantity	Unit	Description	Unit Price	Extended Price
1.00	LS	EMERGENCY NIGHT MOBILIZATION - MINIMUM PAINT	1,650.00	1,650.00
1.00	LS	MINIMUM THERMOPLASTIC MOBILIZATION - AFTER 14 DAY CURE TIME	2,000.00	2,000.00

SUB TOTAL: 3,650.00

SALES TAX: 0.00

RETAINAGE: 0.00

TOTAL DUE: 3,650.00

TERMS: 10TH of Month from Date of Invoice
Please pay from this Invoice



5011 Teays Valley Rd 2nd Floor
Scott Depot, WV 25560

CM

INVOICE

Invoice Date	Invoice No.
2/23/2023	RT427774

Terms : Net 30 Days

TOMOKA CONSTRUCTION SERVICES, INC.
Kim Babcock
40 HOLLY STREET
ORMOND BEACH, FL 32174-2935

Job ID: 331738
i-95 work
Port Orange, FL

Customer	Customer Job No.	Customer P.O. No.	Period Covered			Foreman Name / Phone#	
28878		city of port orange emergency	2/11/2023 - 2/16/2023			KYLE HALL 386-274-3120	
Date	Description	From - To	Qty	Days	Units	Price	Total
----- RENTALS -----							
02/16/23	Arrow Board *	02/16 02/16	2	1	2	\$25.00	\$50.00
02/16/23	Traffic Cone 36 in Sleeved *	02/16 02/16	82	1	82	\$0.75	\$61.50
02/16/23	Sign - Medium - Merge Left *	02/16 02/16	1	1	1	\$1.15	\$1.15
02/16/23	Sign - Medium - Right Lane Closed Ahead *	02/16 02/16	4	1	4	\$1.15	\$4.60
02/16/23	Sign - Medium - Road Work Ahead *	02/16 02/16	4	1	4	\$1.15	\$4.60
02/16/23	Sign - Medium - Speeding Fines Double When Workers Present *	02/16 02/16	4	1	4	\$1.15	\$4.60
----- LABOR -----							
02/16/23	4 men 4 Trucks *	02/16 02/16	9.25	1	9.25	\$260.00	\$2,405.00
02/16/23	Flagman Labor *	02/16 02/16	17	1	17	\$60.00	\$1,020.00
02/16/23	Single Lane Closure - Night *	02/16 02/16	3	1	3	\$700.00	\$2,100.00

Note: The * indicates taxable items.

Thank you for your business!

EQUIPMENT RENTAL TOTAL	\$126.45
SALES/ONE-TIME CHARGES	\$0.00
LABOR TOTAL	\$5,525.00
SALES TAX (6.5%)	\$367.35
TOTAL CHARGES	\$6,018.80
PLEASE PAY THIS AMOUNT	\$6,018.80
*** Job Complete ***	

Invoice errors must be reported within 30 days otherwise credit will not be issued. All past due accounts shall bear interest at a rate of 2% per month (24% Annual Percentage Rate).

Page 1



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/23/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Captive Insurance Consulting 600 Cleveland Street, Suite #238 Clearwater FL 33755	CONTACT NAME: Susie Lones PHONE (A/C, No, Ext): 7277268285 E-MAIL ADDRESS: slones@captiveinsconsulting.com FAX (A/C, No): 727-270-8996
INSURED Tomoka Construction Services, Inc. PO Box 730936 Ormond Beach FL 32173	INSURER(S) AFFORDING COVERAGE INSURER A: Zurich American Insurance INSURER B: Starstone Specialty Insurance INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1129446137**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:	Y	Y	GLO508485402	3/1/2023	3/1/2024	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☒ ANY AUTO ☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY	Y	Y	BAP508485502	3/1/2023	3/1/2024	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ PIP \$ 10,000
B	☐ UMBRELLA LIAB ☒ OCCUR ☒ EXCESS LIAB ☐ CLAIMS-MADE DED RETENTION \$			87595L230ALI	3/1/2023	3/1/2024	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y / N ☐	Y	WC508485302	3/1/2023	3/1/2024	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

The City of Port Orange is included as additional insured as respects General Liability and Automobile Liability as required by written contract. Waiver of Subrogation in favor of the additional insured is applicable as respects General Liability, Automobile Liability and Worker's Compensation as required by written contract.

CERTIFICATE HOLDER**CANCELLATION**

City of Port Orange
1000 City Center Circle
Port Orange FL 32119

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: TOMOKA CONSTRUCTION SERVICES, INC.

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

ANY PERSON OR ORGANIZATION TO WHOM OR WHICH YOU ARE REQUIRED TO PROVIDE ADDITIONAL INSURED STATUS OR ADDITIONAL INSURED STATUS ON A PRIMARY, NON-CONTRIBUTORY BASIS, IN A WRITTEN CONTRACT OR WRITTEN AGREEMENT EXECUTED PRIOR TO LOSS, EXCEPT WHERE SUCH CONTRACT OR AGREEMENT IS PROHIBITED BY LAW

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: TOMOKA CONSTRUCTION SERVICES, INC.

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.



Coverage Extension Endorsement – Florida

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. BAP5084855-02

Effective Date: 03/01/2023

This endorsement modifies insurance provided under the:

Business Auto Coverage Form
Motor Carrier Coverage Form

A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law:
 - (1) Any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including
 - (2) Those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you,provided the "accident" arises out of operations governed by such contract or agreement.

This applies only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

C. Driver Safety Program Liability and Physical Damage Coverage

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in driver safety program events. This includes events such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph 2. in the **Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph 2.b. in the **Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in driver safety program events. This includes events such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

D. Lease or Loan Gap Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Lease Or Loan Gap Coverage

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
 - (1) Overdue lease or loan payments at the time of the "loss";
 - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - (3) Security deposits not returned by the lessor;
 - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
 - (5) Carry-over balances from previous leases or loans.

E. Towing and Labor

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

F. Extended Glass Coverage

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

G. Hired Auto Physical Damage – Increased Loss of Use Expenses

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

H. Personal Effects Coverage

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

Personal Effects Coverage

- a. We will pay up to \$750 for "loss" to personal effects which are:
- (1) Personal property owned by an "insured"; and
 - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
- (1) The reasonable cost to replace; or
 - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
- (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
 - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
 - (3) Paintings, statuary and other works of art.
 - (4) Contraband or property in the course of illegal transportation or trade.
 - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

I. Tapes, Records and Discs Coverage

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:

We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- (a) Are the property of an "insured"; and
- (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

J. Airbag Coverage

The Exclusion in Paragraph B.3.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

K. Two or More Deductibles

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

L. Physical Damage – Comprehensive Coverage – Deductible

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

Regardless of the number of covered "autos" damaged or stolen, the maximum deductible that will be applied to Comprehensive Coverage for all "loss" from any one cause is \$5,000 or the deductible shown in the Declarations, whichever is greater.

M. Temporary Substitute Autos – Physical Damage

1. The following is added to **Section I – Covered Autos**:

Temporary Substitute Autos – Physical Damage

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
 2. Repair;
 3. Servicing;
 4. "Loss"; or
 5. Destruction.
2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

Temporary Substitute Autos – Physical Damage

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

N. Amended Duties In The Event Of Accident, Claim, Suit Or Loss

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a. (1) In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to:
 - (a) You (if you are an individual);
 - (b) A partner (if you are a partnership);
 - (c) A member (if you are a limited liability company); or
 - (d) An executive officer or insurance manager (if you are a corporation).

The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

(2) Include, as soon as practicable:

- (a) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (b) The "insured's" name and address; and
- (c) To the extent possible, the names and addresses of any injured persons and witnesses.

(3) If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

O. Waiver of Transfer Of Rights Of Recovery Against Others To Us

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

P. Employee Hired Autos – Physical Damage

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

Q. Unintentional Failure to Disclose Hazards

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

R. Hired Auto – World Wide Coverage

Paragraph **7.a.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

S. Bodily Injury Redefined

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

T. Expected Or Intended Injury

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Autos Liability Coverage** is replaced by the following:

Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

U. Physical Damage – Additional Temporary Transportation Expense Coverage

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

V. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

W. Return of Stolen Automobile

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Additional Insured – Automatic – Owners, Lessees Or Contractors

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Policy No. GLO5084854-02

Effective Date: 03/01/2023

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or

b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

(1) Your ongoing operations, with respect to Paragraph 1.a. above; or

(2) "Your work", with respect to Paragraph 1.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

(a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or

b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

in the performance of:

- (a) Your ongoing operations, with respect to Paragraph 2.a. above; or
- (b) "Your work" and included in the "products-completed operations hazard", with respect to Paragraph 2.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 2., insurance afforded to such additional insured:

- (i) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
 - (ii) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.
3. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:
- a. Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
 - b. With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 3., insurance afforded to such additional insured:

- (a) Only applies to the extent permitted by law;
 - (b) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
 - (c) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.
4. If neither Paragraph 1. nor Paragraph 2. above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:
- a. Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
 - b. With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 4., insurance afforded to such additional insured:

- (1) Only applies to the extent permitted by law;
- (2) Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3) Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

- B.** Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- C.** Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

- D.** Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

Primary and Noncontributory insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

- E.** This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F.** Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

Additional Insured – Automatic – Owners, Lessees Or Contractors Limit

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
2. Available under the applicable Limits of Insurance shown in the Declarations,
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Waiver Of Subrogation (Blanket) Endorsement

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l Prem.	Return Prem.
GLO5084854-02	03/01/2023	03/01/2024		84357000	\$ INCL	\$

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us Condition**:

If you are required by a written contract or agreement, which is executed before a loss, to waive your rights of recovery from others, we agree to waive our rights of recovery. This waiver of rights shall not be construed to be a waiver with respect to any other operations in which the insured has no contractual interest.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective **03-01-23** Policy No. **WC 5084853-02**

Insured **TOMOKA CONSTRUCTION SERVICES, INC.**

Endorsement No.

Premium \$ **INCL.**

Insurance Company **ZURICH AMERICAN INSURANCE COMPANY**

Countersigned By _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/2/2023

SUBJECT: (C10) Approval of a Declaration of Restrictive Covenants of the Port Orange Field Operations Facility property

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve the Declaration of Restrictive Covenants for the Port Orange Field Operations Facility and authorize the Mayor and City Clerk to sign all necessary documents.

SUMMARY: The attached Declaration of Restrictive Covenants has been prepared by the City Attorney's Office and is required as part of the site plan for the Port Orange Field Operations Facility, located at 4505 Clyde Morris Boulevard. The Staff Development Review Committee (SDRC) has reviewed and approved the site plan for compliance with the LDC. The site plan for the Port Orange Field Operations Facility includes a +/- 11,400-square-foot office building, a +/- 16,675-square-foot warehouse, and associated site improvements, such as landscaping, stormwater, and parking. The development site for the facility consists of three separate, individual parcels owned by the City of Port Orange. According to the City's Land Development Code (LDC), when a development project is proposed and the development site consists of multiple parcels, a document must be executed to unify the parcels for the purpose of development.

Typically, a Unity of Title Agreement is used to unify the parcels for the purpose of development and to comply with the requirement in the LDC. The Unity of Title Agreement is an agreement between the property owner and the city that establishes the development of multiple parcels to be treated as one development. However, since the parcels involved with this development project are owned by the City, a Declaration of Restrictive Covenants in lieu of a Unity of Title Agreement has been prepared.

The placement of buildings, parking lot, and stormwater pond are located on the three individual parcels that comprise the property where the Port Orange Field Operations Facility will be located. The attached document has been prepared to bind the three city-owned parcels for the single development of the Port Orange Field Operations Facility.

PRESENTER: Penelope Cruz, Junos Reed

ATTACHMENTS:

1.	Declaration of Restrictive Covenants in lieu of Unity of Title	Declaration of Restrictive Covenants in lieu of Unity of Title.pdf
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Penelope Cruz	Created/Initiated - 3/22/2023
Tim Burman	Approved - 4/13/2023
Junos Reed	Approved - 4/20/2023
Shannon Balmer	Approved - 4/24/2023
Wayne Clark	Approved - 4/24/2023
Tracee Cody	Final Approval - 4/26/2023

Document Prepared by:

Shannon K. Balmer, Asst. City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

Declaration of Restrictive Covenants

(in Lieu of Unity of Title)

KNOW ALL MEN BY THESE PRESENT that the undersigned, **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, having as its principal place of business and mailing address: 1000 City Center Circle, Port Orange, Florida 32129, (hereinafter referred to as "City") hereby makes, declares, and imposes on the land herein described, this **Declaration of Restrictive Covenants** ("Declaration"), and the covenants running with the title to the land contained herein, which shall be binding on the City, all heirs, grantees, successors, assigns, personal representatives, and all others presently or in the future claiming any interest in the Property, as described below.

WITNESSETH:

WHEREAS, the City holds fee simple title to two or more parcels of real property located within the municipal boundaries of the City of Port Orange, Volusia County, Florida, and are situated within the same zoning district. The parcels of land are identified in the tax records of Volusia County by parcel numbers as follows:

Parcel No. 6306-00-00-0060

Parcel No. 6306-00-00-0062

Parcel No. 6306-00-00-0064

The parcels listed above are more particularly described on the **Exhibit "A"** attached hereto and incorporated herein by reference. Said parcels are collectively referred to hereafter as the "Property" which is the subject of this agreement; and,

WHEREAS, the City hereby agrees to make this Declaration in order to assure that the Property will be used, developed, and remain as a single, integrated parcel, for the purpose of guaranteeing and preserving the utilization and development of the Property in compliance with all zoning and land use regulations of the City of Port Orange, Florida in effect at that time of the making of this Declaration including variances heretofore granted with respect thereto; and

WHEREAS, the terms of this Declaration shall not serve to impair the rights of interest holders of encumbrances, existing easements, restrictive covenants, or the rights to further encumber the Property by the future owners.

NOW, THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner hereby declares as follows:

Declaration of Restrictive Covenant
(in Lieu of Unity of Title)
Rev. SKB 2-8-2023
Project No. 22-80000008
CA7920

1. Recitals. The above recitals and findings set forth preamble of this Declaration are true and correct and are hereby adopted by reference and incorporated herein as if fully set forth in this Section.
2. Declaration of Covenants and Restrictions. The City hereby agrees and declares that (i) for the purpose of this Declaration, the Property shall be considered as one plot and parcel of land, and (ii) so long as this instrument shall remain in effect, any and all conveyances or transfers of all or any portion of the Property by the Owner, its heirs, grantees, successors, assigns, or personal representatives shall be subject to the terms and restrictions of this Declaration as if any such heir, grantee, successor, assign, or personal representative were a party hereto or a signatory hereof.
3. Duration. This Declaration shall constitute a covenant and restriction running with the land and title to the Property for thirty (30) years from the date of recording of this Declaration in the public records of Volusia County, Florida, unless earlier revoked by a majority vote of the City Council of the City of Port Orange and a release in writing recorded in the Public Records, Volusia County, Florida, or by order of a court of competent jurisdiction.
4. Covenant Running with the Land. This Declaration, shall run with the land and be binding upon the heirs, grantees, successors, personal representatives and assigns, and upon all owners, future owners, and others presently or in the future having any interest in the Property.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the City has caused this *Declaration of Restrictive Covenants* to be duly executed as of the day and year first above written.

WITNESSES AS TO BOTH:

Printed Name: _____

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

By: _____
Donald O. Burnette, Mayor

Printed Name: _____

Attest: _____
Robin L. Fenwick, MMC, City Clerk

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Declaration of Restrictive Covenants* was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023, by Donald O. Burnette, as Mayor, and Robin L. Fenwick, as City Clerk both who executed the foregoing instrument on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who: [] are personally known to me, or [] have provided the following identification _____.

Notary Public, State of Florida at Large
Printed Name, Commission, and Term Expiration Date:

Declaration of Restrictive Covenant
(in Lieu of Unity of Title)
Rev. SKB 2-8-2023
Project No. 22-80000008
CA7920

EXHIBIT "A"

Legal Descriptions of Parcels

Parcel No. 6306-00-00-0060:

A portion of Section 6, Township 16, Range 33, City of Port Orange, Volusia County, Florida being more particularly described as:

The South 1/2 of the Southeast 1/4 of the Southeast 1/4 excluding the West 10 acres and excluding 50 feet in the right-of-way.

AND

Parcel No. 6306-00-00-0062:

A portion of Section 6, Township 16 South, Range 33 East, City of Port Orange, Volusia County, Florida, being more particularly described as follows:

Commence at the Southeast corner of said Section 6, thence run S89°19'34"W along the South line of the Southeast ¼ of said Section 6, a distance of 1064.39 feet to the Point of Beginning; thence continue S89°19'34"W along said South line, 234.37 feet to the Easterly right of way line of Brunner Road, a 60 foot right of way per Official Records Book 2764, Page 1153, of the Public Records of Volusia County, Florida; thence N01°01'40"E along said Easterly right of way line, 658.91 feet to the North line of the South ½ of the Southeast ¼ of the Southeast ¼ of said Section 6; thence N89°29'41"E along said North line 613.62 feet; thence S00°58'02"W, 464.00 feet; thence S89°29'41"W, 150.00 feet; thence S49°55'40"W, 304.78 feet to the Point of Beginning. Containing 8.095 acres, more or less.

AND

Exhibit A continued on next page.

EXHIBIT "A" CONT.

Parcel No. 6306-00-00-0064:

PARCEL B

THE WESTERLY 631.5 FEET OF THE EASTERLY 1290 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 7, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, AS LIES NORTHERLY AND EASTERLY OF THE PROPOSED LOCATION OF CLYDE MORRIS BOULEVARD (A 100 FOOT PROPOSED RIGHT-OF-WAY); BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 7, RUN S89°19'34"W ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 7, A DISTANCE OF 658.50 FEET TO THE EAST LINE OF THE WESTERLY 631.5 FEET OF THE EASTERLY 1290 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 7 AND TO THE POINT OF BEGINNING; THENCE S00°17'47"W ALONG SAID EAST LINE, 855.74 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF CLYDE MORRIS BOULEVARD, A 100 FOOT RIGHT OF WAY; THENCE N41°09'54"W ALONG SAID NORTHERLY RIGHT OF WAY LINE, 953.63 FEET TO THE WEST LINE OF THE EASTERLY 1290 FEET OF THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SAID SECTION 7; THENCE N00°17'47"E ALONG SAID WEST LINE, 130.40 FEET TO THE NORTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 7; THENCE N89°19'34"E ALONG SAID NORTH LINE, 631.50 FEET TO THE POINT OF BEGINNING.

ALSO:

PARCEL A

THE WEST 10 ACRES OF THE SOUTH ONE HALF OF THE SOUTHEAST ONE QUARTER OF THE SOUTHEAST ONE QUARTER, EXCLUDING THE WEST 30 FEET IN ROADWAY, ALL IN SECTION 6, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA; BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 6, RUN S89°19'34"W ALONG THE SOUTH LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 6, A DISTANCE OF 664.39 FEET TO THE EAST LINE OF THE WEST 10 ACRES OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 6 AND TO THE POINT OF BEGINNING; THENCE S89°19'34"W ALONG SAID SOUTH LINE, 634.37 FEET TO THE EASTERLY RIGHT OF WAY LINE OF BRUNNER ROAD, A 60 FOOT RIGHT OF WAY PER DEED RECORDED IN OFFICIAL RECORDS BOOK 2764, PAGE 1153 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE N01°01'40"E ALONG SAID EASTERLY RIGHT OF WAY LINE, 658.91 FEET TO THE NORTH LINE OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION 6; THENCE N89°29'41"E ALONG SAID NORTH LINE, 633.63 FEET TO THE EAST LINE OF SAID WEST 10 ACRES; THENCE S00°58'02"W ALONG SAID EAST LINE, 657.03 FEET TO THE POINT OF BEGINNING.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/2/2023

SUBJECT: (C11) Approval of Volusia County Justice Assistance Grant (JAG) Agency Funding Allocation

DEPARTMENT: Police Services

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the FY 2021/22 re-allocation of the Justice Assistance Grant (JAG) Agency funding from The House Next Door's Success by Design Program to SMA Healthcare, Inc. for an Adult Drug Court Program and authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY: Volusia County is eligible to receive funding from the FY 2021/22 share of the Edward Byrne Memorial Justice Assistance Grant (JAG) County-wide funds that were released by the Florida Department of Law Enforcement (FDLE) in July 2022. In order to submit nonprofit agencies' applications for this funding, the County must receive approval from 51% of cities located within Volusia County.

The JAG program focuses on providing funding to several municipalities to improve the criminal justice system through one or more purpose areas. This includes but is not limited to programs focused on law enforcement, prosecution/court, prevention/education, drug treatment, and enforcement programs. Grant regulations require approval of the funding distribution by the majority of all local governments within the county.

In August 2022, the City provided support for the programs recommended by the County (SMA Healthcare, Inc and the House Next Door.)

However, on April 20, 2023, the County notified Staff that the House Next Door requested to withdraw their application. As a program requirement, the County must receive approval from 51% of cities located within Volusia County in order to reallocate funding. The County of Volusia is recommending funds in the amount of \$34,105 be reallocated from The House Next Door's Success by Design program to SMA Healthcare, Inc. for an Adult Drug Court program. The total funding allocation to SMA Healthcare, Inc. totals \$139,627.

A letter certifying our city approves of the recommended reallocation of funds to SMA Healthcare, Inc. is required. In previous years, Port Orange provided support for this program. No financial or other commitments are required from Port Orange.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	51 Letters_Port Orange updated recipient	51 Letters_Port Orange updated recipient.pdf
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Robin Fenwick	Created/Initiated - 4/24/2023
Manuel Marino	Approved - 4/25/2023
Matthew Jones	Approved - 4/26/2023
Wayne Clark	Approved - 4/26/2023
Tracee Cody	Final Approval - 4/27/2023



CITY OF PORT ORANGE

1000 City Center Circle
Port Orange, Florida 32129
Legal Dept. Telephone No. (386) 506-5525
Legal Dept. Fax No. (386) 506-5530

May 2, 2023

Mr. Cody Menacof
Bureau Chief
Office of Criminal Justice Grants
Florida Department of Law Enforcement
PO BOX 1489
Tallahassee, FL 32302

Dear Mr. Menacof:

In compliance with State of Florida Rule 11D-9, F.A.C., the City of Port Orange approves the distribution of \$139,627 of Federal Fiscal Year 2021/22 Edward Byrne Memorial Justice Assistance Grant (JAG) County- wide program for the following projects within Volusia County.

Sub-award Recipient	Contractor & Title of Project	Project Purpose	Amount
County of Volusia	SMA Healthcare, Inc. - Adult Drug Court Program	Behavioral Health	\$139,627
	Total		\$139,627

CITY OF PORT ORANGE

By: _____

Donald O. Burnette, Mayor

Date: _____

ATTEST:

By: _____

Robin L. Fenwick, MMC, City Clerk

Date: _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/2/2023

SUBJECT: (F13) Environmental Advisory Board Report

DEPARTMENT: City Clerk

GOAL:

RECOMMENDED MOTION:

SUMMARY:

PRESENTER:

ATTACHMENTS:

Tracee Cody

Created/Initiated - 4/17/2023



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 5/2/2023

SUBJECT: (G14) First Reading - Ordinance No. 2023-03 – Fourth Amendment to the Master Development Agreement for the Riverwood Planned Unit Development / Case No. PRZA-23-0001

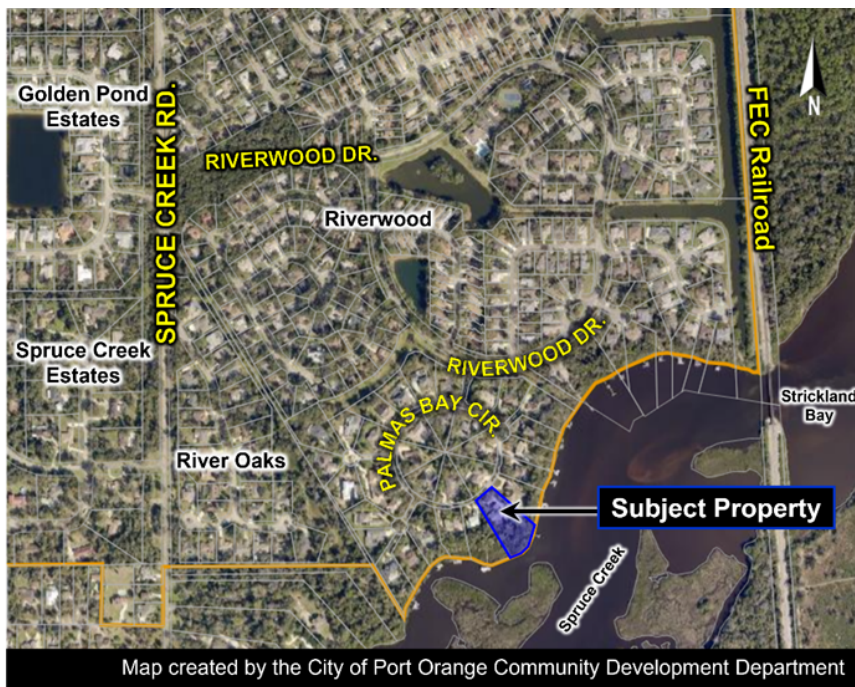
DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Ordinance No. 2023-03, approving the Fourth Amendment to the Master Development Agreement for the Riverwood Planned Unit Development.

SUMMARY: PLANNING COMMISSION ACTION (3/23/23): Recommended Denial (5-1)

The applicant is requesting the 4th Amendment to the Riverwood Master Development Agreement (MDA) to address a current Code Enforcement case regarding the construction of an elevated accessory structure (to be referred to as the “structure”) without a building permit where a portion of the structure is in a 50-foot buffer adjacent to Spruce Creek. The subject property is zoned Planned Unit Development (PUD) and is part of the Riverwood PUD.



According to the Riverwood MDA, all lots in the PUD that abut Spruce Creek are required to have a 50-foot buffer along the rear property line that abuts the creek/marsh where no vegetation shall be removed or disturbed except for the construction of an elevated walkway to access the creek from the rear of the lot. Typically, elevated walkways within this subdivision are built with wood posts, framing, and deck boards and used by lot owners to access the creek. The walkways are typically four (4) feet wide and are elevated anywhere from slightly above the ground to four (4) feet above the ground.

In March 2022, Code Enforcement was contacted regarding the construction of a structure within the buffer at 6315 Palmas Bay Circle (subject property). In May 2022, the property owners submitted an after-the-fact building permit to permit the structure. The building permit submitted was for a 252-square-foot structure, elevated six (6) feet above grade. The structure included a wood deck platform with a ± 100 square-foot enclosed space with electric, along with a small second-level observation deck. However, during the review of the building permit, it was determined that a portion of the structure was within the buffer, and the permit could not be approved.

Staff met with the property owners to review the building permit comments and options the property owners had to come into compliance with the Riverwood MDA, Land Development Code (LDC), and Florida Building Code (FBC). The property owners were provided with the following options: 1) Remove the structure and rebuild it outside the buffer; 2) Remove the portions of the structure within the buffer and permit the portion of the structure outside the buffer; or 3) Request an amendment to the Riverwood MDA and an amendment to the Palmas Bay Club subdivision plat to revise a plat note to allow the portion of the structure to remain within the buffer.

According to the applicant, the property owners are requesting approval of the MDA amendment to allow the structure to remain in its current location based on the following:

- The structure is located approximately six (6) feet above the base flood elevation (BFE) at an elevation of 12.4 feet. According to the LDC, any structure within the buffer area on the subject lot is to have a minimum elevation of 7.0 feet or one (1) foot above BFE (6 feet).
- Only ± 89 square feet of the 252-square-foot structure is located within the buffer. Therefore, 35% of the overall structure is in the buffer.
- The structure meets all required building setbacks for the subject lot.
- The structure only encroaches ± 89 square feet into the 11,020 square feet of 50-foot buffer area on the subject lot, which is less than 1% (0.81%) of the overall area of the buffer.
- The ground under the structure was not disturbed beyond previous conditions as part of constructing the structure, and it was built consistent with construction methods that allowed for an elevated walkway within the buffer, allowed by the MDA.
- The structure does not create any adverse environmental impacts and was built in a portion of the rear yard that has historically been manicured, and there was no vegetation removed or damaged in the buffer as part of the build.



There are no specific criteria to be used as a basis for a staff recommendation for the requested MDA Amendment. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure, and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.). Staff compared the subject request to similar regulations in the City's Land Development Code (LDC) and the Riverwood MDA and minimal encroachment into the buffer (± 89 square feet into the 11,020 square feet of 50-foot buffer area).

Based on the portion of the structure located within the 50-foot Environmental Buffer being less than 1% of the overall buffer area (11,020 square feet), staff is recommending approval of the 4th Amendment to the Master Development Agreement

for the Riverwood Planned Unit Development, subject to the area of impact for any structure, except a typical wooden walkway, within the buffer area on the subject lot, is limited to 90 square feet.

The staff report is attached for more details.

PRESENTER: Penelope Cruz, Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2023-03 with exhibit	Ordinance No. 2023-03 with exhibit.pdf
2.	Fourth Amendment to Riverwood PUD Agreement	Fourth Amendment.pdf
3.	STAFF REPORT	STAFF REPORT.pdf

Penelope Cruz	Created/Initiated - 3/24/2023
Tim Burman	Approved - 3/29/2023
Shannon Balmer	Approved - 4/24/2023
Wayne Clark	Approved - 4/26/2023
Tracee Cody	Final Approval - 4/27/2023

ORDINANCE NO. 2023-03

AN ORDINANCE OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, APPROVING THE FOURTH
AMENDMENT TO RIVERWOOD PUD (PLANNED UNIT
DEVELOPMENT) AGREEMENT; PROVIDING FOR THE
REPEAL OF CONFLICTING ORDINANCES; PROVIDING
FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE
DATE.

WHEREAS, the City and Developer desire to enter into the Fourth Amendment to the Riverwood PUD (Planned Unit Development) Agreement (“MDA”); (hereinafter referred to as the “Fourth Amendment”); and

WHEREAS, the Owner submitted a request to the Planning Commission to approve the Fourth Amendment; and

WHEREAS, a public hearing was held following public notice as prescribed by ordinance; and

WHEREAS, the Planning Commission has by majority vote recommended denial of the proposed Fourth Amendment; and

WHEREAS, the City Council has approved by a majority vote of the members present the Fourth Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council of the City of Port Orange does hereby approve the Fourth Amendment (attached hereto as **Exhibit “1”**).

Section 2. The Mayor and City Clerk are hereby authorized to execute said Fourth Amendment.

Section 3. All ordinances or parts of ordinances in conflict with the provisions of

this ordinance are hereby repealed to the extent of such conflict.

Section 4. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are declared severable.

Section 5. This ordinance shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2023

Passed and adopted on second and final reading on the day of _____,
2023

Reviewed and Approved: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT "1"

Document Prepared By:

Robert A. Merrell III, Esquire
Cobb Cole
149 S. Ridgewood Ave. Suite 700
Daytona Beach, FL 32114

Return Recorded Document To:

City of Port Orange Records Clerk
1000 City Center Circle
Port Orange, FL 32129

FOURTH AMENDMENT TO RIVERWOOD PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT

THIS FOURTH AMENDMENT TO RIVERWOOD PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT ("Fourth Amendment") is made and entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida (the "City"), and **ANDREW AND SHRAVANTI HALPERN**, as individuals ("Owner").

WHEREAS, RIVERWOOD REAL ESTATE PARTNERS, LTD., a Florida Partnership and THE CHARLES WAYNE COMPANY, a Florida Partnership ("Original Developer") and THE CITY OF PORT ORANGE, a Florida Municipal Corporation ("City"), entered into a Development Agreement dated May 12, 1982, and recorded in Official Records Book 2357, page 1421, Public Records of Volusia County, Florida, which Development Agreement pertains to certain property as fully described therein, as amended by that certain First Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 2722, page 0777, Public Records of Volusia County, Florida (First Amendment), that certain Second Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1801, Public Records of Volusia County, Florida (Second Amendment), and that certain Third Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1085, Public Records of Volusia County, Florida (Third Amendment); and

WHEREAS, Owner is the real property owner for a portion of the Property subject to the original Planned Unit Development, described as Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, pages 145 and 146, Public Records of Volusia County, Florida, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference ("Owners' Property"); and

WHEREAS, Owner proposes to amend the Agreement as set forth herein in order to clarify the required setbacks for Owners' Property; and

WHEREAS, the City is willing to grant Owner's request, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

Section H. of the Agreement is amended as follows: [additions shown in UNDERLINE, deletions shown in ~~STRIKETHROUGH~~]

Section H. Lot Areas and Buffers.

There will be no minimum square footage requirement for lots, except that single family lots will be no less than 1/5 acre and estate lots will be no less than 1/2 acre.

There will be a fifty (50) foot environmental buffer between structures in the PUD and the highest part of the Spruce Creek embankment, except that for Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, page 146, Public Records of Volusia County, Florida a ±90-square-foot portion of one 350 square-foot elevated accessory structure may be located no closer than 40 feet from edge of water of the Spruce Creek; where the embankment top cannot be easily determined, said buffer shall begin at the marsh, saw grass, other salt water growth, Or the high water mark, whichever is highest.

Environmental buffer is defined as an area in which no flora shall be removed or disturbed except for elevated walkway construction.

NO OTHER MODIFICATIONS

Except as otherwise expressly provided for herein, the Agreement shall continue in full force and effect.

[Remainder of Page Intentionally Left Blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have set their hands, this ____ day of _____, 2023.

Signed, sealed and delivered in the presence of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

By: _____
Donald O. Burnette, Mayor

Print Name of Witness 1

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Witness 2

Date: _____

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by Donald O. Burnette, Mayor, and Robin L. Fenwick, , City Clerk, both of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

ANDREW AND SHRAVANTI HALPERN,
as individuals

Witness 1

Andrew Halpern

Print Name of Witness 1

Shravanti Halpern

Witness 2

Date: _____

Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Andrew Halpern, referred to in this agreement as “Owner.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public

Commission No. _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Shravanti Halpern, referred to in this agreement as “Owner.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public

Commission No. _____

Approved as to legal form:

By: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT A

Legal Description of the Owners' Property

Lot 8, Palmas Bay Club Subdivision, (Riverwood Phase III), according to the map or plat thereof, as recorded in Plat Book 39, Pages 145 and 146, Public Records of Volusia County, Florida.

Document Prepared By:

Robert A. Merrell III, Esquire
Cobb Cole
149 S. Ridgewood Ave. Suite 700
Daytona Beach, FL 32114

Return Recorded Document To:

City of Port Orange Records Clerk
1000 City Center Circle
Port Orange, FL 32129

**FOURTH AMENDMENT TO RIVERWOOD
PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT**

THIS FOURTH AMENDMENT TO RIVERWOOD PUD (PLANNED UNIT DEVELOPMENT) AGREEMENT ("Fourth Amendment") is made and entered into by and between the **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation located in Volusia County, Florida (the "City"), and **ANDREW AND SHRAVANTI HALPERN**, as individuals ("Owner").

WHEREAS, RIVERWOOD REAL ESTATE PARTNERS, LTD., a Florida Partnership and THE CHARLES WAYNE COMPANY, a Florida Partnership ("Original Developer") and THE CITY OF PORT ORANGE, a Florida Municipal Corporation ("City"), entered into a Development Agreement dated May 12, 1982, and recorded in Official Records Book 2357, page 1421, Public Records of Volusia County, Florida, which Development Agreement pertains to certain property as fully described therein, as amended by that certain First Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 2722, page 0777, Public Records of Volusia County, Florida (First Amendment), that certain Second Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1801, Public Records of Volusia County, Florida (Second Amendment), and that certain Third Amendment to Riverwood PUD (Planned Unit Development) Agreement, recorded in Official Records Book 3754, page 1085, Public Records of Volusia County, Florida (Third Amendment); and

WHEREAS, Owner is the real property owner for a portion of the Property subject to the original Planned Unit Development, described as Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, pages 145 and 146, Public Records of Volusia County, Florida, more particularly described in **Exhibit "A"**, attached hereto and made a part hereof by reference ("Owners' Property"); and

WHEREAS, Owner proposes to amend the Agreement as set forth herein in order to clarify the required setbacks for Owners' Property; and

WHEREAS, the City is willing to grant Owner's request, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

Section H. of the Agreement is amended as follows: [additions shown in UNDERLINE, deletions shown in ~~STRIKETHROUGH~~]

Section H. Lot Areas and Buffers.

There will be no minimum square footage requirement for lots, except that single family lots will be no less than 1/5 acre and estate lots will be no less than 1/2 acre.

There will be a fifty (50) foot environmental buffer between structures in the PUD and the highest part of the Spruce Creek embankment, except that for Lot 8 of the Palmas Bay Club Subdivision, according to the map thereof recorded in Map Book 39, page 146, Public Records of Volusia County, Florida a ±90-square-foot portion of one 350 square-foot elevated accessory structure may be located no closer than 40 feet from edge of water of the Spruce Creek; where the embankment top cannot be easily determined, said buffer shall begin at the marsh, saw grass, other salt water growth, Or the high water mark, whichever is highest.

Environmental buffer is defined as an area in which no flora shall be removed or disturbed except for elevated walkway construction.

NO OTHER MODIFICATIONS

Except as otherwise expressly provided for herein, the Agreement shall continue in full force and effect.

[Remainder of Page Intentionally Left Blank. Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have set their hands, this ____ day of _____, 2023.

Signed, sealed and delivered in the presence of:

**THE CITY OF PORT ORANGE,
FLORIDA, a Florida municipal
corporation**

Witness 1

By: _____
Donald O. Burnette, Mayor

Print Name of Witness 1

Attest: _____
Robin L. Fenwick, MMC, City Clerk

Witness 2

Date: _____

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this _____ day of _____, 2023 by Donald O. Burnette, Mayor, and Robin L. Fenwick, , City Clerk, both of the City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of:

ANDREW AND SHRAVANTI HALPERN,
as individuals

Witness 1

Andrew Halpern

Print Name of Witness 1

Shravanti Halpern

Witness 2

Date: _____

Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Andrew Halpern, referred to in this agreement as “Owner.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public

Commission No. _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Shravanti Halpern, referred to in this agreement as “Owner.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public

Commission No. _____

Approved as to legal form:

By: _____
Shannon K. Balmer, Assistant City Attorney

EXHIBIT A

Legal Description of the Owners' Property

Lot 8, Palmas Bay Club Subdivision, (Riverwood Phase III), according to the map or plat thereof, as recorded in Plat Book 39, Pages 145 and 146, Public Records of Volusia County, Florida.



STAFF REPORT

4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development Case No. PRZA-23-0001

REQUEST:	Amend the Master Development Agreement (MDA) for the Riverwood Planned Unit Development (PUD) to allow a portion of an elevated accessory structure within a 50-foot environmental buffer.
LOCATION:	6315 Palmas Bay Circle (Figure 1)
APPLICANT:	Jessica Gow, Esq., Cobb Cole
PROPERTY OWNER:	Andrew and Shravanti Halpern
STAFF CONTACT:	Penelope Cruz, Planning Manager (386) 506-5671
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Denial (5-1, 1 absent) March 23, 2023
CITY COUNCIL:	May 2, 2023

REQUEST

The subject property is zoned Planned Unit Development (PUD) and is part of the Riverwood PUD. The Riverwood PUD was approved in 1982 and established a 149-acre residential subdivision adjacent to Spruce Creek. The proposed 4th Amendment to the Riverwood Master Development Agreement (MDA) is being requested by the applicant to address a current Code Enforcement case regarding the construction of an elevated accessory structure (to be referred to as the “structure”) without a building permit where a portion of the structure is in a 50-foot Environmental Buffer (buffer).

Figure 1. Location Map of Subject Lot



BACKGROUND

According to the Riverwood MDA, all lots in the PUD that abut Spruce Creek are required to have a 50-foot Environmental Buffer (to be referred to as the “buffer”) along the rear property line that abuts the creek/marsh where no vegetation shall be removed or disturbed except for the construction of an elevated walkway to access the creek from the rear of the lot. Typically, elevated walkways within this subdivision are built with wood posts, framing, and deck boards, and used for lot owners to access the creek. The walkways are typically four (4) feet wide and are elevated anywhere from slightly above the ground to four (4) feet above the ground.

In March 2022, Code Enforcement was contacted regarding the construction of a structure within the buffer at 6315 Palmas Bay Circle (subject property) and the over-trimming and removal of mangroves adjacent to the lot. In May 2022, the property owners submitted an after-the-fact building permit to permit the structure. The building permit submitted was for a 252-square-foot structure, elevated six (6) feet above grade. The structure included a wood deck platform with a ± 100 square-foot enclosed space with electric, along with a small second-level observation deck. However, during the review of the building permit, it was determined that a portion of the structure was within the buffer and the permit could not be approved.



Pictures taken of the elevated accessory structure by Code Enforcement in March 2022

In July 2022, a meeting was held with the property owners and City staff to review the building permit comments and options the property owners had to come into compliance

with the Riverwood MDA, Land Development Code (LDC), and Florida Building Code (FBC). The following options were discussed:

- 1) Remove the structure and rebuild it on the lot outside the buffer.
- 2) Remove the portions of the structure within the buffer and permit the portion of the structure outside the buffer.
- 3) Request an amendment to the Riverwood MDA and an amendment to the Palmas Bay Club subdivision plat to revise a plat note to allow the portion of the structure to remain within the buffer

The over-trimming and removal of the mangroves adjacent to this lot is under the jurisdiction of the Florida Department of Environmental Protection (FDEP) and not part of the requested MDA Amendment. The property owners were cited by FDEP for over-trimming and removal of mangroves and coordinated with FDEP on replanting measures and paid a \$5,500.00 fine to FDEP. According to the property owners and a representative from FEDP, replanting activities were completed before March 2023. FDEP will require a report with photos from the property owners every 6 months and FDEP will inspect the replanting as needed over the next five years before they close the case.



Pictures of FDEP Accepted Mangrove Replanting in March 2023

According to the updated survey provided by the applicant for the subject lot in early 2023 and aerial photographs from the Volusia County Property Appraiser's website, the following encroachment and impacts to the buffer have been determined:

- The overall footprint of the structure is 252 square-feet.
- The area of the structure located in the buffer is roughly ± 89 square feet of the 252 square-foot structure or 35% of the structure encroaches into the buffer.
- The area of the structure located outside the 50-foot buffer is roughly ± 163 square feet of the 252 square-foot structure or 65% of the structure is located outside the buffer.
- The area of the lot covered with the buffer is approximately 11,020 square feet and the portion of the structure that encroaches into the buffer is ± 89 square feet, which is less than 1% (0.81%) of the overall buffer area on the subject lot.

The graphic below shows the subject lot, the 50-foot Environmental Buffer on the subject lot, 252 square-foot structure, and the portions of the structure located within and outside the buffer. The graphic was created using the survey provided by the applicant for the

subject lot in early 2023 and aerial photographs from the Volusia County Property Appraiser's website.

According to the applicant, the property owners' preference is for the structure to remain in its current location since only a small portion of the structure is within the buffer. The portion of the structure (163 square feet) located outside the buffer is allowed per the Riverwood MDA and does not require the proposed amendment to remain. The request to amend the Riverwood MDA and Palmas Bay Plat is only to allow for the encroachment of ± 89 square feet of the structure into the buffer which is 0.81% of the overall buffer area on the subject lot.



PROPOSED AMENDMENT

The applicant is requesting to amend the Riverwood MDA to allow the subject lot to be allowed a ± 90 square-foot portion (rounded number used for the MDA Amendment) of one 252-square-foot elevated accessory structure within the 50-foot environmental buffer, no closer than 40 feet from the edge of the water of Spruce Creek.

According to the applicant, the portion of the structure (± 89 square feet) constructed in the buffer is elevated six (6) feet above the ground and does not result in an impact on the area within the buffer, the mangroves adjacent to the lot, or the creek. In addition, the applicant states that the structure is generally built like an elevated walkway with posts and wood deck boards with space for stormwater runoff and elevated off the ground as allowed by the Riverwood MDA within the buffer.

The applicant also states that the structure does not create any adverse environmental impacts and was built in a portion of the rear yard that has historically been manicured and there was no vegetation removed or damaged in the buffer as part of the build. As part of the application, the applicant provided pictures of the rear yard in 2017, before the purchase of the subject lot by the current property owners, taken from the Zillow real estate website that shows the buffer area on the subject lot has consisted of a manicured yard and mature trees for at least +6 years. According to the applicant, the property owners purchased the lot in February 2017 and were not aware of the buffer on their lot since the buffer area resembled the rest of their yard in appearance along with neighboring properties, or that a portion of the rear yard was not buildable. The impact of the mangroves was not related to or caused by the construction of the structure.



Photos from Zillow.com from 2017 before the current property owners purchased the subject lot showing a manicured rear yard

There are no specific criteria to be used as a base for staff recommendation for the requested MDA Amendment. Staff recommendations on zoning matters are generally based on consideration of compatibility with adjacent uses, availability of adequate infrastructure, and consistency with adopted plans (such as Comprehensive Plan, City Vision, budget, etc.). Staff compared the subject request to similar regulations in the City's Land Development Code (LDC).

An environmental protection measure within the LDC is the Flood-Plain Conservation zone (F-C Zoning District) which is typically applied to certain portions of properties along major water bodies in the city. Although the F-C Zoning District is not on the subject

property, the purpose and intent of the F-C Zoning District are worth referencing because it is similar to the 50-foot Environmental Buffer requirement in the Riverwood MDA. The F-C Zoning District is intended to protect persons and private property from the hazards of floodwater inundation and protect the community from costs that are incurred when urban development occurs in a flood plain, and conserve important natural and historic resources for ecological purposes and the enjoyment and education of future residents. According to the LDC, the F-C Zoning District allows structures, such as elevated paths, docks, and other outdoor recreation facilities provided the first-floor level is elevated at or above the flood hazard elevation and no filler material is used to achieve the finished floor elevation.

In the early 1990s, a requirement was added to the LDC that requires a 50-foot conservation easement landward of the top of the creek bank on newly created lots along Spruce Creek. The purpose of this easement is to provide for the preservation of existing native vegetation or, the planting of native vegetation if the disturbance of native vegetation has occurred in the past, and development within the easement area is limited to water-dependent uses such as docks and piers. Since the subject lot was platted in 1982 an easement is not on the subject lot, only the buffer restriction in the MDA. However, the buffer restriction in the MDA and the 50-foot conservation easement requirement are very similar in protecting the areas adjacent to Spruce Creek.

The applicant's request to allow the small portion of a built structure (± 89 square feet of the 252 square-foot structure) within the buffer is different than originally planned in the 1982 Riverwood MDA. However, the applicant states that the structure was designed in a manner generally consistent with an elevated walkway which is allowed by the MDA in the buffer. In addition, the applicant states that there are similar provisions in the LDC that would allow for certain types of elevated structures that are designed to minimize impacts on natural communities and adjacent properties to be constructed within the area adjacent to Spruce Creek. As stated above by the applicant, the structure does not create any adverse environmental impacts and was built in a portion of the rear yard that has historically been manicured and there was no vegetation removed or damaged in the buffer as part of the build.

According to the applicant, the property owners now understand that a building permit was necessary to construct the structure and these building restrictions would have been addressed during the permitting of the structure; and the structure could have been permitted if it had been located outside the buffer. However, since the structure has been built and design plans have been prepared and submitted to the City for review, the property owners are requesting approval of the MDA amendment to allow it to remain in its current location based on the following:

- The structure is located approximately six (6) feet above the base flood elevation (BFE) at an elevation of 12.4 feet. According to the LDC, any structure within the buffer area on the subject lot is to have a minimum elevation of 7.0 feet or one (1) foot above BFE (6 feet).
- Only ± 89 square feet of the 252-square-foot structure is located within the buffer. Therefore only 35% of the overall structure is in the buffer
- The structure meets all required building setbacks for the subject lot.

- The structure only encroaches ±89 square feet into the 11,020 square feet of 50-foot Environmental Buffer area on the subject lot, which is less than 1% (0.81%) of the overall area of the buffer.
- The ground under the structure was not disturbed beyond previous conditions as part of constructing the structure and it was built consistent with construction methods that allowed for an elevated walkway within the buffer, allowed by the MDA.

The proposed amendment has been reviewed and approved by the Staff Development Review Committee (Community Development, Public Utilities, Public Works, Police, Fire, and City Attorney's Office).

CONSISTENCY WITH COMPREHENSIVE PLAN

The original MDA was found to be consistent with the City's Comprehensive Plan and City's Future Land Use (FLU) Map when it was approved in 1982. The proposed 4th MDA Amendment does not change the FLU designation for the property, does not increase the number of allowed residential units, and is consistent with the general intent of the Comprehensive Plan and provisions in place to minimize impacts to natural communities and adjacent properties.

PUBLIC NOTICE

The property was posted by Staff on January 30, 2023, according to the City Council public notice policy adopted in 2014, notifying the adjacent properties of the proposed rezoning. As of the time this agenda item was prepared, there has been two phone calls on the proposed amendment.

RECOMMENDATION

Based on the portion of the structure located within the 50-foot Environmental Buffer being less than 1% of the overall buffer area (11,020 square feet), staff is recommending approval of the 4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development, subject to the following:

1. The area of impact for any structure, except a typical wooden walkway, within the buffer area on the subject lot, is limited to 90 square-feet; and
2. Review and approval by the City Attorney's Office for legal form and content.

NEXT STEPS

If the proposed 4th Amendment is approved, the property owners are still required to amend a plat note on the Palmas Bay Club subdivision plat and submit the necessary documents to receive approval of the building permit for the structure to resolve the ongoing Code Enforcement case.

ATTACHMENT

- Exhibit 1: 4th Amendment to the Master Development Agreement for the Riverwood Planned Unit Development (*See Ordinance Exhibit*)
- Exhibit 2: Application Request Letter and Support Materials
- Exhibit 3: Pictures taken by Code Enforcement March 2022

Scott W. Cichon
Robert A. Merrell III
John P. Ferguson
Mark A. Watts
Heather Bond Vargas
Michael J. Woods
Raymond L. Schumann
Kathleen L. Crotty
Michael O. Sznapstajler
Matthew S. Welch
Robert E. Doan
William A. Rice
Douglas J. Collins
Sara E. Glover
Holly W. Zitzka
Jessica L. Gow
Nika K. Hosseini
Sydney V. Cichon
Brandon T. Byers
Baylee D. Bunyard
Anne M. Kehrli
James P. Love III



Daytona Beach • DeLand

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Daytona Beach, Florida 32114
(386) 255-8171
CobbCole.com

OF COUNSEL
Larry D. Marsh
Frederick B. Karl, Jr.

RETIRED
Thomas S. Hart

William M. Cobb
(1881-1939)
Thomas T. Cobb
(1916-2004)
W. Warren Cole, Jr.
(1926-2008)

January 9, 2023

VIA Mail

City of Port Orange
Attn: Penelope Cruz
Planning Manager
1000 City Center Cir.
Port Orange, FL 32129

Re: 4th Amendment to Riverwood PUD – Halpern Property

Dear Penny:

As you know, we represent the Halpern's in relation to a request for an amendment to the existing PUD for the Riverwood project to allow for a revised setback for an elevated accessory structure within their lot. The original PUD set forth a fifty (50) foot environmental buffer between structures in the PUD and the highest part of the Spruce Creek embankment, but allows for uses that do not disturb the existing flora. The original approved PUD provides an exception to the setback for elevated walkways, which allow for flora to continue growing without an overt impact. The accessory structure that was installed within the property is elevated, and does not result in an impact to the natural area within the environmental buffer. The structure allows for use and enjoyment of the property by the current owner, without creating adverse environmental impacts that the original PUD was intended to prevent.

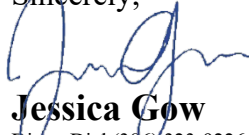
In support of this request, enclosed please find the following PUD application packet:

- PUD Application;
- Application Fee Check in the amount of \$6,500.00;
- Executed Authorization of Owner;
- Deed;
- Draft Fourth Amendment to Riverwood PUD Agreement.

City of Port Orange
Page 2 of 2

If you have any questions regarding this matter, please don't hesitate to contact me. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jessica Gow', is positioned above the printed name.

Jessica Gow

Direct Dial (386) 323-9226

Email Jessica.Gow@CobbCole.com

Fax (386) 323-9207

JLG/tmn
Enclosures



CITY OF PORT ORANGE

PUBLIC HEARING APPLICATION

Case No.

Date Application Received

Department of Community Development
1000 City Center Circle
Port Orange, Florida 32129

Telephone: (386) 506-5674
Fax: (386) 506-5699
Website: www.port-orange.org

Instructions: A pre-application conference must be held with Department Staff prior to filing an application for any of the items listed below. Please type all information (excluding signature lines). Application must be filled out accurately and completely in order to be accepted for processing. Do not leave any items blank.

NOTE TO APPLICANT: If you would like assistance in completing this form, please call or stop by the Department of Community Development, (386) 506-5674. Our offices are located on the second floor of City Hall, 1000 City Center Circle. Office hours are Monday through Friday 8:00 a.m. to 4:00 p.m.

Please Select Appropriate Application Type: PUD / PCD Amendment

(Public Notice sign for Rezoning, Future Land Use, and PUD/PCD applications will be installed by staff within 10 days of receiving the application.)

Name of Proposed Development: Fourth Amendment to Riverwood PUD Agreement

Property Address/Location: 6315 Palmas Bay Cir. Port Orange FL 32127

Short Parcel ID Number(s): 633806000080 **Current Zoning Classification:** (select one of the following) PUD

Proposed Zoning Classification: (select one of the following) PUD

Existing Use:

Current FLU Designation: Rural Transition (0-2 units/acre)

Proposed FLU Designation: Rural Transition (0-2 units/acre)

Property Size: 1.10 +/- acres

Description of Proposed Development:

Property Owner: Andrew Halpern

Authorized Agent's Name: Jessica Gow, Esq./ Cobb Cole

Address: 149 S. Ridgewood Ave. Suite 700

City, State, Zip: Daytona Beach, FL 32114

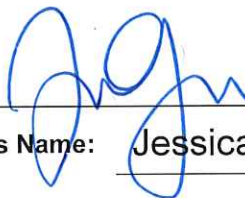
Email: Jessica.Gow@cobbcole.com **Phone:** 386-323-9226

(Property owner(s) are required to sign Owner Affidavit of Authorization, page 3 of this application, if applicable.)

Engineer's Name: _____ Company: _____
Address: _____
City, State, Zip: _____
Email: _____ Phone: _____

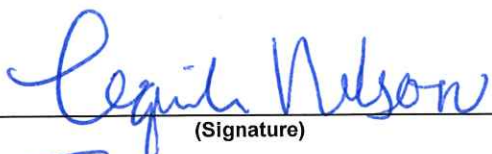
LEGAL ADVERTISING FEES: Processing and review fees do not cover the cost of any required legal advertising. Advertising fees will be billed separately through the City Clerk's office. If you have any questions regarding advertising fees, please contact the Deputy City Clerk at (386) 506-5566.

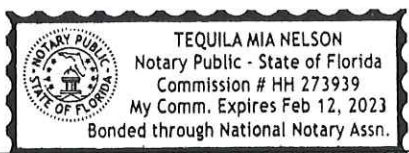
Applicant's Name: Jessica Gow, Esq. OBO Andrew Halpern
Address: 149 S. Ridgewood Ave. Suite 700
City, State, Zip: Daytona Beach FL 32114
Email: Jessica.Gow@cobbcole.com Phone: 386-323-9226
Applicant is: ☐ Owner ☐ Developer ☐ Contract Purchaser ☒ Agent

Applicant's Signature:  Date: 119123
Please Type Above Signatory's Name: Jessica Gow

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 119123 by Jessica Gow, who is personally known to me or who has produced _____ as identification and who did (did not) take an oath.
(Date) (Name of Person(s) Acknowledging) (Type of Identification)

 Notary Public, Commission No. HH273939
(Signature)
Tequila Mia Nelson
(Name of Notary typed, printed or stamped)



Note: The following owner affidavit of authorization is only required when the Applicant is not the Property Owner.

OWNER AFFIDAVIT OF AUTHORIZATION

Andrew C. Halpern hereby authorizes Cobb Cole,
(Property Owner's Name) (Applicant's Name)

and its agents, to make application for PUD / PCD Amendment to
(Type of Application requested)
the City of Port Orange for property described on the attached application form.

Property Owner's Signature: Andrew C. Halpern

Please type first and last name of Signatory: Andrew C. Halpern

Date: 12/6/2022

STATE OF FLORIDA
COUNTY OF VOLUSIA

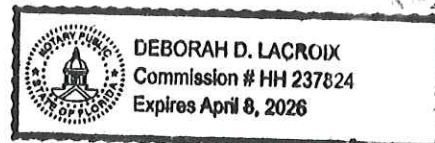
The foregoing instrument was acknowledged before me by means of ☒ physical presence or [] online
notarization on this 12/6/22 by Andrew C. Halpern, who is personally
(Date) (Name of Person(s) Acknowledging)

known to me or who has produced FLDL H416-003-68-292-0 as identification and who
(Type of Identification)

did (did not) take an oath.

Deborah D. Lacroix Notary Public, Commission No. _____
(Signature)

(Name of Notary typed, printed or stamped)



Andrew Halpern <ahalpern1@gmail.com>

4/15/2021 6:46 PM

Re: RWP ARC approval

To Kim Rosen <kimr@cliftonmanagement.com>

Thank you Kim.

Andrew Halpern

On Apr 15, 2021, at 6:42 PM, Kim Rosen <kimr@cliftonmanagement.com> wrote:

Hello,

Your ARC request to install a treehouse/playhouse has been approved by both Palmas Bay and Riverwood Plantation ARC committees. Color of treehouse/playhouse: natural wood. The approval is filed in your resident file should you need a copy.

Best regards,
Kim

ARCHITECTURAL SUBMITTAL

YOU MUST HAVE ASSOCIATION APPROVAL BEFORE APPLYING FOR CITY PERMITS

633806000080

OWNER ANDREW HALPERN LOT# 6315 PHONE# 315-225-6090

EMAIL AHALPERN1@GMAIL.COM

ADDRESS 6315 PALMAS BAY CIRCLE

TYPE OF SUBMITTAL (Please Check)

New Home Review ()

Addition ()

TREEHOUSE / PLAYHOUSE
IN BACK YARD

Modification ()

Fence ()

Tree Removal ()

Other ☒

Information Required For New Home or Addition- Must submit samples of colors for all material

One set of clean, concise, drafted to scale architectural plans of proposed building and or addition showing floor and all elevations. Include all necessary details to convey design and construction intent (typical wall sections, window treatments, roof venting, roof overhang, etc).

One set of plot plans indicating all setback dimensions from building and appurtenant structures, and location of proposed building and/or addition.

Specifications of materials to be used in construction:

- Exterior color: Roof SHINGLE Walls WOOD
Windows 3 Trim N/A Garage Doors N/A
Fence N/A Other _____
- Exterior Materials and Surface Treatments: Walls _____
Roof _____ Trim _____ Garage Door _____

Explanations to Clarify Any Of Above

PLAYHOUSE, FREESTANDING & WRAPPED AROUND
A TREE IN THE BACKYARD, location = middle
of distant backyard.

Date Received 4-1-2021

Committee Review Date 4-12-20 (PBC)

OWNER NOTIFICATION

Your request to the Architectural Review Committee is: APPROVED ☒ DENIED () for the following reasons:

Use of 'natural' wood colors agreed to with homeowner

RWP: BMW 4.13.2021

Other APC Building PBC HOA 4-12-

RWP: Leatherman 4/13/2021

Other 4/13/2021

RWP: Bernie Mullins 4/13/2021 Homeowner notified on:

4-15-2021 BY [Signature] emailed attache

Describe work to be performed:

Exterior Painting must include actual paint sample(s), brand, color code, and color name. All areas to be painted, walls, trim, garage door, front door, shutters, etc. must have a labeled color sample (including white).

~~COLOR WILL MATCH HOUSE COLOR (EXTERIOR)~~

color will be natural wood
see 1st page.

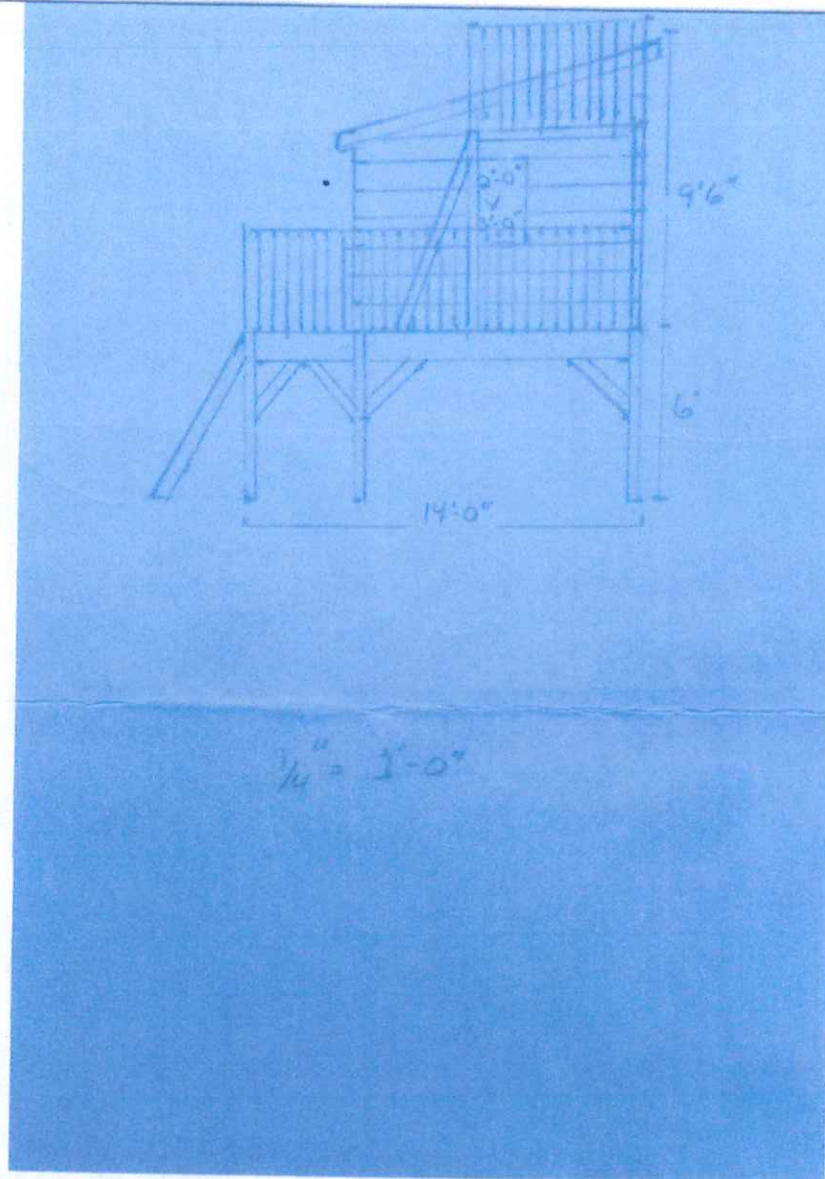
Sketches attached if applicable.

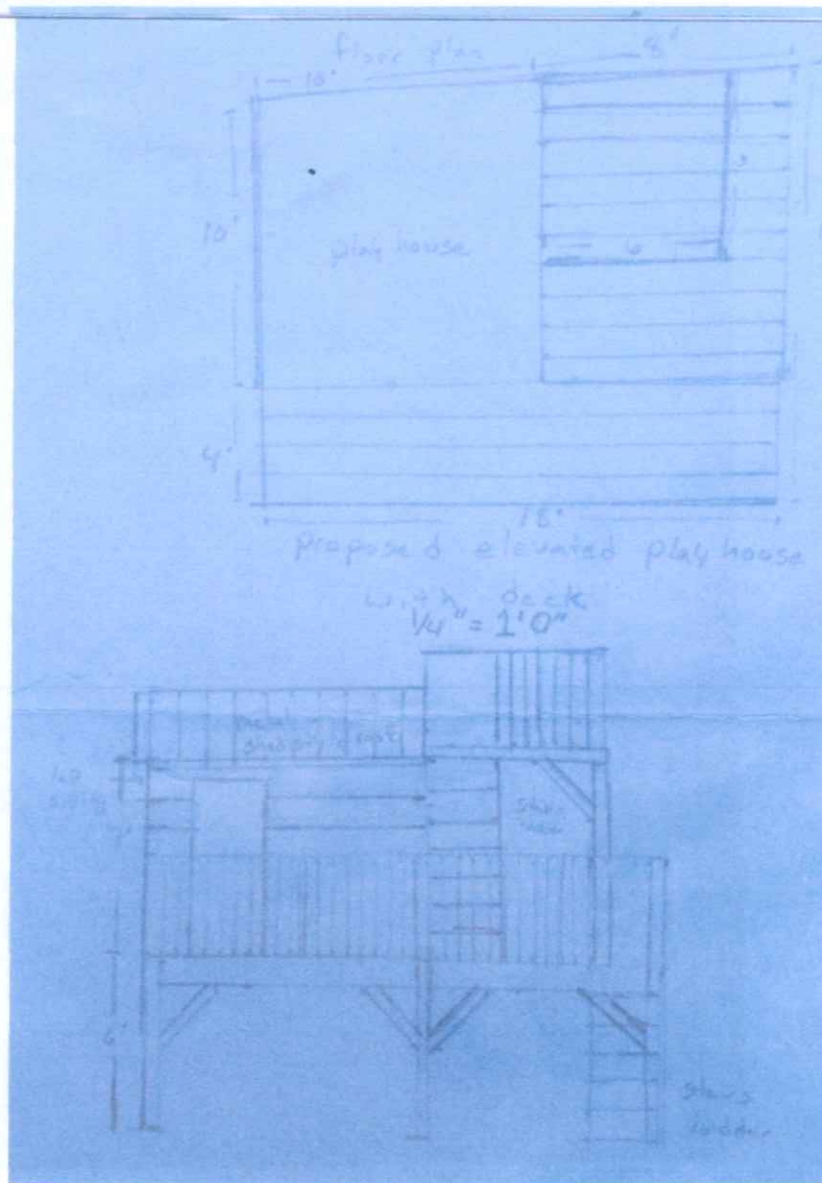
YOU MUST OBTAIN ALL NECESSARY CITY/COUNTY PERMITS, GOOD FOR 90 DAYS

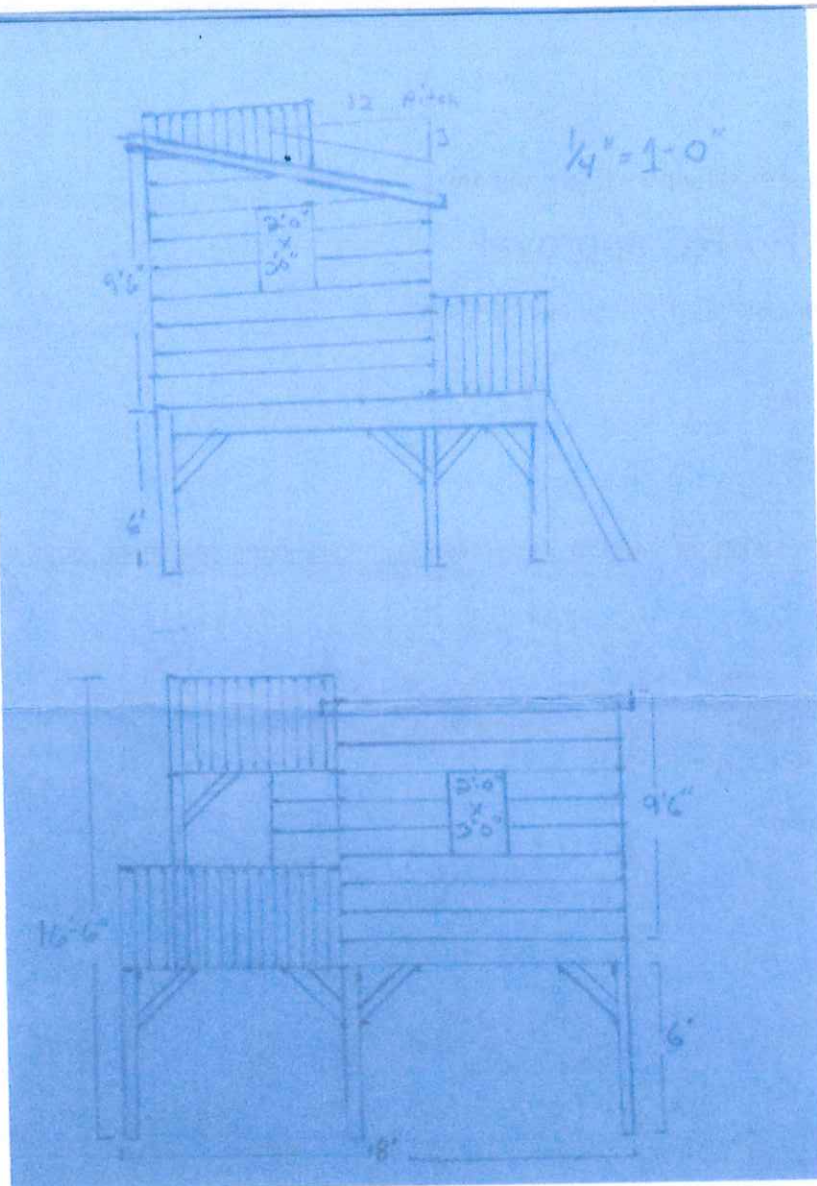
By my signature below, I agree, as owner of the above referenced property, to make only the modifications which have been approved by this document.


PROPERTY OWNER

3/30/21
DATE







Boundary
Survey

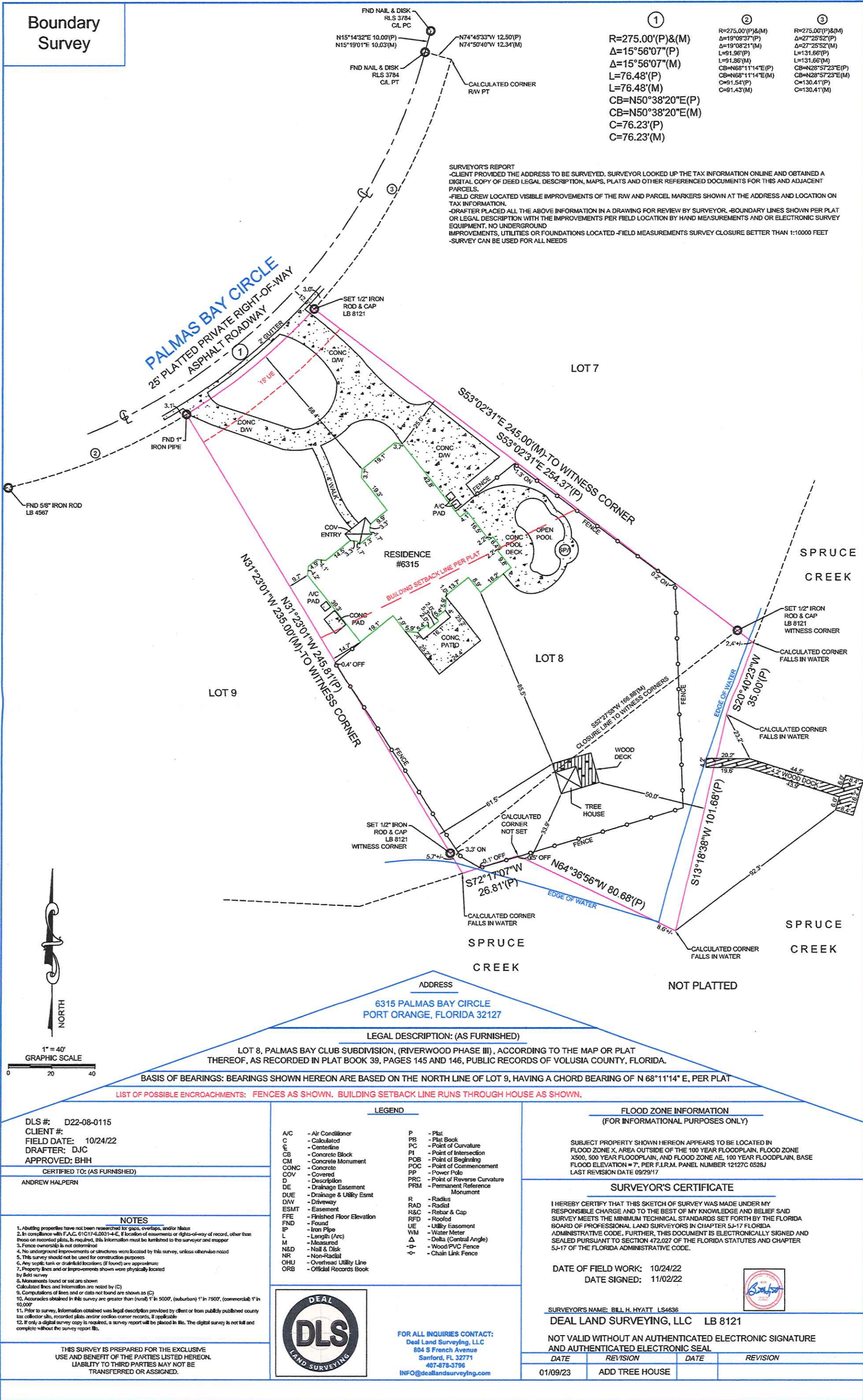






EXHIBIT 3

Pictures taken of the elevated accessory structure by Code Enforcement in March 2022





