



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

NOVEMBER 7, 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 John Mazza of Family Worship Center
2. Pledge of Allegiance
3. Roll Call

B. RECOGNITION AND PROCLAMATIONS

4. Lung Cancer Awareness Month
5. Veterans Day

C. CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only
7. Agenda Approval
8. Approval of Minutes
 - a. October 17, 2023 - Regular City Council Meeting
9. Bid Awards and Contract Items
 - a. Approval of Shoppes at Summer Trees Amended and Restated Proportionate Fair-Share Agreement for the Shoppes at Summer Trees Site Plan (Case No. SPIN-23-0009)
10. Resolution No. 23-54- Approval of Grant Agreement for \$92,000 from Florida Inland Navigation District for Phase I Design of the Day Dock at Riverwalk Park
11. Resolution No. 23-55 - Acceptance of Deed of Dedication for Public Purposes - South Side of 662 Herbert Street

12. Resolution No. 23-56 - Termination of the City's Agreement with Florida PACE Funding Agency (FPFA)
13. Resolution No. 23-57 - Accepting \$74,479 for 2023-2024 Victims of Crime Act (VOCA) Grant
14. Resolution No. 23-58 - Accepting the grant award from the U.S. Department of Justice FY 23 Patrick Leahy Bulletproof Vest Partnership Project in the amount of \$18,125
15. Resolution No. 23-63 - Master Lease Purchase Agreement for Public Safety Equipment with TD Equipment Finance, Inc.
16. City Attorney's Report on Special Legal Counsel for FY2024

D. PUBLIC PARTICIPATION (Agenda)

17. Cops for Christmas - Officer Wayne Jean

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

F. COUNCIL COMMENTS

18. Comments/Concerns from Council Members

G. PUBLIC HEARING

19. Appeal of Planning Commission Denial of Variances for 917 Boyte Street

H. ADDITIONAL ITEMS

20. City Attorney
21. City Manager

I. COUNCIL COMMITTEE REPORTS

22. 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



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

Regular City Council Meeting

11/7/2023

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PREFERABLY WITHIN 2 WORKING DAYS OF YOUR
RECEIPT OF THIS NOTICE OR 5 DAYS PRIOR TO THE
MEETING OR HEARING DATE.

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.

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
OCTOBER 17, 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 Chaplain Carlos Hidalgo of Advent Health Mission and Ministry

Pledge of Allegiance

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

RECOGNITION AND PROCLAMATIONS

4. Manufacturing Month

Mayor Don Burnette read the proclamation for Manufacturing Month and presented it to representatives of the Volusia Manufacturers Association.

5. Florida City Government Week

Mayor Don Burnette read the proclamation for Florida City Government Week.

CONSENT AGENDA

6. Public Comments on Consent Agenda Items Only

There were none.

7. Agenda Approval

There were no changes requested by Council.

Motion to approve the agenda as presented was made by Councilman Scott Stiltner and seconded by Vice Mayor Reed Foley. Motion carried unanimously by voice vote.

8. Approval of Minutes
 - a. October 3, 2023 - Regular City Council Meeting
9. Bid Awards and Contract Items
 - a. Approval of Task Authorization No. 8 with Pegasus Engineering, LLC for Grant Application Development for the FEMA Flood Mitigation Assistance (FMA) Application for the Elevation of 6 Flood-Prone Homes
 - b. Approval of Task Authorization No. 9 with Pegasus Engineering, LLC for grant application development for the FEMA Flood Mitigation Assistance (FMA) Application for the Acquisition and Demolition of 1 Flood-Prone Home
 - c. Approval of Task Authorization No. 10 with Pegasus Engineering, LLC for Miscellaneous Grant Support Services
 - d. Approval of Task Authorization No. 5 to Dredging and Marine Consultants for the Design of a Day Dock at Riverwalk Park
 - e. Approval of a Six (6) Month Extension Request for Aaron's Backflow Services Inc.
10. Approval and Ratification of the International Union of Police Associations (IUPA) 2024-2026 Collective Bargaining Agreement
11. Approval and Ratification of the International Association of Fire Fighters (IAFF) 2024-2025 Collective Bargaining Agreement
12. Resolution No. 23-52 - FEMA Flood Mitigation Assistance (FMA) Application to Request Funds to Elevate 6 Homes
13. Resolution No. 23-53 - FEMA Flood Mitigation Assistance (FMA) Application to Request Funds to Acquire and Demolish 1 Home

Motion to approve the Consent Agenda as presented was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

PUBLIC PARTICIPATION (Agenda)

14. The Sweetwater Coalition & The Spruce Creek RiverWorks re: I-95 Pioneer Trail Interchange

Lori Sandman provided a presentation on behalf of The Sweetwater Coalition and The Spruce Creek RiverWorks about their concerns on the proposed plan for the Pioneer Trail/I-95 Interchange location.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Robert Reinhausen, resident, commented in regards to the interchange presentation and encouraged Council to establish a Basin Management Action Plan (BMAP).

15. Comments/Concerns from Council Members

All members of Council commented about the Interchange presentation and expressed their opinions on the project, including the round-about, the process for getting a BMAP, and Mayor Don Burnette pointed out that it is a state project.

Vice Mayor Reed Foley spoke to Mr. Reinhagen and wished he would have accepted his nomination to be on the bicycle committee for the River to Sea TPO. He thanked staff for getting the International Union Police Association (IUPA) and International Association of Fire Fighters (IAFF) contracts finalized. He also talked about having staff develop a Parks & Rec app and, with a consensus from Council, putting it on a future agenda. City Manager, Wayne Clark, spoke briefly about a possible app and informed Council that staff will provide more detailed information, with costs and pros and cons, at a future meeting.

Councilman Scott Stiltner spoke about the passing of Jim "Pops" Richard, who volunteered at the City of Port Orange for over two decades, and extended his condolences to anyone who knew him.

Councilman Tracy Grubbs warned residents about potential fraudulent information going around dealing with PACE programs.

Mayor Don Burnette and Council all wore pink in support of Breast Cancer Awareness Month.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

16. Citizen Advisory Committee for TPO

Bobby Ball, member of CAC for TPO, provided an update from their recent meeting. Councilman Scott Stiltner requested further updates on County projects outside the scope of the interchange.

17. Planning Commission Appointment

Motion to nominate Maria Mills-Benat, Mark Bowling, and Scott Stegar to the Planning Commission was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner. Motion carried unanimously by roll call vote.

Councilman Scott Stiltner thanked former Planning Commissioners John Junco and Newton White for serving on the board.

18. Second Reading Ordinance No. 2023-15 - Implementing the State's Statutory Mandate to Prepare Business Impact Estimates Pursuant to Section 166.041, Florida Statutes

Mayor Don Burnette read Ordinance No. 2023-15.

ORDINANCE NO. 2023-15

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, CREATING SECTION 2-4 TO IMPLEMENT THE STATE'S STATUTORY MANDATE TO PREPARE BUSINESS IMPACT ESTIMATES PRIOR TO ADOPTION OF PROPOSED ORDINANCES PURSUANT TO SECTION 166.041(4), FLORIDA STATUTES; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SCRIVNERS ERRORS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2023-15 was made by Vice Mayor Reed Foley and seconded by Councilman Scott Stiltner.

Mayor Don Burnette and Councilman Scott Stiltner both commented that they aren't fond of the requirement to provide a Business Impact Estimate when elected officials of municipalities might want to pass zoning changes that positively impact residents and might negatively impact a business in a minor way. However, this is state-mandate and will be followed accordingly.

Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

19. City Attorney

City Attorney, Matt Jones, clarified that zoning is technically exempt from the Business Impact Estimates guidelines.

20. City Manager

There was nothing further.

COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports

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

Mayor Don Burnette provided details from their recent meeting.

b. First Step Shelter - Mayor Donald Burnette

Mayor Don Burnette provided an update on events and statistics.

ADJOURNMENT – 7:21 p.m.

Mayor Donald O. Burnette

Attest:

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C9a) Approval of Shoppes at Summer Trees Amended and Restated Proportionate Fair-Share Agreement for the Shoppes at Summer Trees Site Plan (Case No. SPIN-23-0009)

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve the Shoppes at Summer Trees Amended and Restated Proportionate Fair-Share Agreement for the Shoppes at Summer Trees Site Plan - Case No. SPIN-23-0009, subject to review and approval by Volusia County; authorize the City Manager to accept modifications requested by the County; and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Shoppes at Summer Trees development is proposed to be located at 5500 S. Williamson Boulevard (see location map below). In Fall 2022, the City, County, and Developer for the project entered into a Proportionate Fair Share Agreement for the project based on the site being developed with a 20,260 square foot grocery store, a 7,770 square foot multi-tenant building, and a 3,900 square foot fast food restaurant. However, after the original Proportionate Fair Share Agreement was approved, the developer revised the site plan in Fall 2023 to increase the size of the grocery store and multi-tenant building and remove the fast-food restaurant. Therefore, the traffic study was updated to account for the anticipated traffic based on the changes to the project.

The proposed Amended and Restated Proportionate Fair-Share Agreement has been prepared in conjunction with the revised site plan for the development, which includes a 22,317-square-foot grocery store and a 12,000-square-foot multi-tenant building on +/- 5.8 acres, along with associated on-site and off-site improvements. The Transportation Impact Analysis (TIA) completed by LTG Engineering & Planning, Inc. anticipates impacts on Williamson Boulevard, Taylor Road, and the intersection of Williamson Boulevard and Taylor Road upon completion. The TIA was prepared according to the City of Port Orange's adopted guidelines and was reviewed and approved by the City and Volusia County staff.



Based on the TIA prepared, the developer must make a \$713,057.78 fair-share mitigation payment for the total 199 PM peak-hour trips per day generated by the development. The Proportionate Fair-Share Agreement documents the number of vested trips being used by the proposed development and mitigates the impact of the new traffic generated from the development. The fair-share mitigation payment includes a payment to Volusia County and the City of Port Orange: 1) payment of \$595,738.78 to Volusia County for impacts to Williamson Boulevard and Taylor Road. 2) payment of \$117,319.00 towards the design, permitting, and construction associated with improvements to the North Summer Trees Road and Williamson Boulevard intersection to add a second left-turn lane for eastbound North Summer Trees Road to improve traffic flow, reduce delays for turning vehicles, and improve intersection safety; instead of payment to the City of Port Orange Summer Trees Road project for impacts on the intersection of Williamson Boulevard and Taylor Road. The Proportionate Fair-Share Agreement has been executed by the property owner and is attached for review. Due to the impact of the project involving both the City of Port Orange and Volusia County, the agreement must be approved by the County and the City. Once the City approves, the agreement and supporting documents will be forwarded to the County for review and final approval. It is anticipated to go before the Volusia County Council in December 2023 or early 2024.

The subject property is currently zoned PC-A (Planned Community-Agricultural) - Workplace Zoning District, which allows for the proposed uses. The site plan for the proposed project has been reviewed at the staff level and may be approved once all Land Development Code requirements have been met and the required fair-share mitigation payments have been received.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	PFSA for Shoppes at Summer Trees with exhibits	PFSA for Shoppes at Summer Trees with exhibits.pdf
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Tim Burman	Created/Initiated - 10/17/2023
Tim Burman	Approved - 10/17/2023
John McKinney	Approved - 10/18/2023
Shannon Balmer	Approved - 10/23/2023
Wayne Clark	Approved - 10/23/2023
Tracee Cody	Final Approval - 10/24/2023

**SHOPPES AT SUMMER TREES
AMENDED AND RESTATED PROPORTIONATE FAIR SHARE AGREEMENT**

THIS AGREEMENT is entered into by and between the following entities: **FL P52, LLC**, a Florida limited liability company whose mailing address is 259 Bill France Blvd Daytona Beach, FL 32114, ("Owner"); **City of Port Orange, Florida**, a Chartered Florida Municipality located in Volusia County, Florida, 1000 City Center Circle, Port Orange, Florida 32129 ("City"); and the **County of Volusia**, a political subdivision of the State of Florida ("County"), mailing address: 123 West Indiana Avenue, DeLand, FL 32720.

WHEREAS, the City, County, and VeeCor Property Management, LLC (a predecessor representative to the Owner) ("VeeCor") entered into a *Proportionate Fair Share Agreement* on November 17, 2022, recorded in Official Records Book 8343, Page 1234, of the Public Records of Volusia County, Florida ("Original Agreement"), with respect to the proposed development of a 20,260 square foot grocery store, a 7,770 square foot multi-tenant building, and a 3,900 square foot fast food restaurant with drive-through known as Shoppes at Summer Trees ("Original Project"); and

WHEREAS, VeeCor never funded the Original Agreement and, subsequently, made significant design modifications that required the Shoppes at Summer Trees project to be resubmitted for site plan review and approval; and

WHEREAS, the transportation impact analysis performed on behalf of VeeCor on June 29, 2022 ("Transportation Impact Analysis" or "TIA") that provided the required analysis for the Original Project is no longer valid due to the significant design modifications proposed in the current Shoppes at Summer Trees project; and

WHEREAS, this *Shoppes at Summer Trees Amended and Restated Proportionate Fair Share Agreement* ("Restated Agreement") shall be an amendment to and restatement of, and shall supersede and replace the Original Agreement; and

WHEREAS, Owner intends to develop five and eight-tenths (± 5.8) acres of land generally located on the west side of Williamson Boulevard, south of North Summer Trees Road in Port Orange, Florida, otherwise identified as Parcel Identification Numbers 6318-00-00-0023 (the "Property") as shown in **Exhibit A**; and

WHEREAS, the Property has undergone site plan review by the City of Port Orange to authorize the construction of a 22,317 square foot grocery store and a 12,000 square foot multi-tenant building known as Shoppes at Summer Trees ("Project"); and

WHEREAS, LTG Engineering & Planning Inc., in a written analysis dated September 19, 2023, calculated a proportionate fair share for the total buildout of the Project and offsite traffic improvements based upon a maximum buildout of a 22,317 square foot grocery store and a 12,000 square foot multi-tenant building; and

WHEREAS, the Transportation Impact Analysis ("TIA") established a buildout year of 2025 and if the proportionate fair-share amount is not paid prior to December 31, 2025, then the TIA must be updated and the proportionate fair-share amount recalculated based on conditions at that time; and

WHEREAS, the results of the TIA indicate that insufficient roadway capacity exists in the vicinity of the Property without the anticipated traffic impacts of the Project; and

WHEREAS, Florida Statutes § 163.3180(5)(h) (2021) authorizes payment of proportionate fair-share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances, but specifically exempts backlogged failures from the requirement for proportionate fair share payment; and

WHEREAS, through the TIA, certain traffic impacts were identified in the area of the development ("Impact Area"), and payment for such site-related improvements are set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, the Owner, City, and County do hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. Roadway Improvements. Owner shall take or shall cause to be taken the following actions to address roadway improvements identified by the City and County as a result of the impacts by the Project ("Roadway Improvements") in order to satisfy concurrency requirements consistent with Chapters 4 and 21 of the City's Land Development Code and Section 72 of the County's Land Development Code:

(a) Proportionate Fair Share. For purposes of this Agreement, the amount of \$764,383.78 referred to herein as "Proportionate Fair Share" as calculated in **Exhibits B and C**, attached hereto and made a part hereof by reference. The Proportionate Fair Share shall be paid as follows: 1) \$595,738.78 shall be paid to the County, as set forth in Exhibit B, and 2) except as otherwise contemplated in Subsection (b), hereinbelow, \$168,645.00 shall be paid to the City, as set forth in Exhibit C, prior to the issuance of a final site plan approval letter by the City of Port Orange. Once payment is made, the Owner agrees to waive the right to request a return of the Proportionate Fair Share payment. Nothing contained herein shall be deemed to waive the requirements for site plan approval or an issuance of a concurrency certificate under the City of Port Orange's Land Development Code. If Owner does not pay the Proportionate Fair Share within one year of the date of the execution of this Agreement by all parties hereto, then the Proportionate Fair

Share shall be revised based on the applicable Florida Department of Transportation published inflationary rate. If the proportionate fair-share amount is not paid prior to December 31, 2025, which is the buildout date identified in the TIA, then the TIA must be updated and the proportionate fair-share amount recalculated based on conditions at that time. The parties agree that construction of the Roadway Improvements shall be constructed as determined by the City and County, as applicable. Nothing herein is intended to alter, reduce or otherwise waive Owner's right to receive impact fee or capacity credits in connection with the Proportionate Fair Share to the extent that Owner would be entitled to receive such credits. Subsequent to payments received by the City and County, Owner shall be entitled to County thoroughfare road impact fee credits against the payment of the Proportionate Fair Share to the County. County impact fee credits issued as detailed in Exhibit D. For purposes of road impact fee credits against the payment of the Proportionate Fair Share to the City, Owner specifically waives Owner's right to claim any and all City road impact fee credits, except as such credits may be due pursuant to Section 11, Article II, Chapter 21 of the Land Development Code, City of Port Orange, Florida.

(b) Construction of Improvements. If applicable, the Owner may agree to construct, or to have constructed, a portion or all of the Roadway Improvements, referenced in Exhibit C, as full or partial payment towards the City's Proportionate Fair Share contribution, in accordance with Chapters 4 and 21 of the City's Land Development Code. Construction of the Roadway Improvements will commence and be complete to meet concurrency requirements or mitigate transportation deficiencies within the Project area, in accordance with Chapters 4 and 21 of the City's Land Development Code, prior to the issuance of the first Certificate of Occupancy. All planning, permitting, and construction will be subject to review and approval by the City of Port Orange, County of Volusia, and, if applicable, the Florida Department of Transportation and will comply with the standards and requirements established by the appropriate governmental entities. The Owner will have no responsibility for maintenance or upkeep of the Roadway Improvements.

If the City chooses to accept the construction of all or a portion of the Roadway Improvements as full or partial payment toward the City's Proportionate Fair Share contribution, then, unless otherwise stated herein, completion of the construction of all or a portion of the Roadway Improvements will be accepted as full or partial payment for the City's Proportionate Fair Share contribution. The value of the fully constructed Roadway Improvements applied toward the City's Proportionate Fair Share contribution is based on the actual costs of the constructed Roadway Improvements. Once Roadway Improvements offered as full or partial payment toward the City's Proportionate Fair-Share are complete, the Owner shall provide actual costs of said improvements, certified, sealed, and signed by the engineer of record for the Project. If actual costs are less than the estimated costs of constructing said improvements previously provided to the City for consideration toward the City's total Proportionate Fair Share, then Owner shall pay the outstanding balance of the estimate provided in

addition to the monies owed to the City's total Proportionate Fair Share. Any additional monies owed and certification of actual costs shall be provided prior to the first Certificate of Occupancy.

(c) County's Application of Proportionate Share. The parties intend that the County will apply the Proportionate Fair Share for the purpose of installing improvements in the Impact Area. Owner acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Fair Share to making any specific public roadway infrastructure improvements.

(d) City's Application of Proportionate Share. The parties intend that the City will apply the Proportionate Fair Share for the purpose of installing improvements in the Impact Area. Owner acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Fair Share to making any specific public roadway infrastructure improvements.

3. Owner Acknowledgement/Waiver. Owner acknowledges that the payment of the Proportionate Fair Share does not release the Owner from payment of any other development or building related fees including impact fees, or such other fees as may be prescribed by law.
4. Timing. The parties agree that construction of the Roadway Improvements shall be constructed as determined by the County of Volusia or the City of Port Orange, whichever jurisdiction shall govern said improvements.
5. Effective Date. The effective date this Agreement shall be the last date upon which the County executes this Agreement.
6. Binding Nature of this Agreement. This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
7. Venue. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Volusia County, State of Florida.
8. Recordation. This Agreement will be recorded in the Public Records of Volusia County, Florida, at Owner's expense.
9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

Signed, sealed and delivered in the presence of:

COUNTY OF VOLUSIA, a political subdivision of the State of Florida

Witness 1

Jeffrey S. Brower, County Chair

Print Name of Witness 1

Attest

Witness 2

By: _____

Print Name of Witness 2

George Recktenwald, County Manager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2023 by Jeffrey S. Brower, County Chair of the County of Volusia, Florida, a political subdivision of the State of Florida, on behalf of the County. They are personally known to me and did not take an oath.

Notary Public _____

Printed Name: _____

Commission No. _____

Approved as to form by:

Thomas R. (Russ) Brown, III, Sr. Asst Cnty Atty

Date: _____

Signed, sealed and delivered in the presence of: **CITY OF PORT ORANGE
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By: _____
Donald O. Burnette, Mayor

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

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023 by Donald O. Burnette and Robin L. Fenwick, Mayor and City Clerk, respectively, 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

Printed Name:

Commission No. _____

Approved as to form by:

Shannon K. Balmer, Assistant City Attorney

WITNESSES:

Printed Name: _____

Printed Name: _____

OWNER:

FL P52, LLC, a Florida limited liability company

By: AAC FL Holdings, LLC, its Manager

By: _____
L.C. Basile, Executrix of the Estate of Anthony Coraci,
its Authorized Member

Date: _____, 2023

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged by means of [] physical presence or [] online notarization before me this__day of__2023,by *L.C. Basile, Executrix of the Estate of Anthony Coraci*, Authorized Member of AAC FL Holdings, LLC, as Manager for FL P52, LLC, its who is ___ personally known to me OR _____ produced _____ as identification.

Notary Public, State of Florida at Large
Printed, typed or stamped name, commission and expiration of commission term

EXHIBIT "A"

A portion of Section 18, Township 16 South, Range 33 East, Volusia County, Florida, being more particularly described as follows:

Commence at the North 1/4 corner of Section 19, Township 16 South, Range 33 East, said point also being the Point of Beginning, thence run North 87°37'12" West, a distance of 241.87 feet, along the North line of said Section 19, said North line also being the North line of Lot 1, Westport Square P.C.D. Phase II as recorded in Map Book 55, Page 49 of the Public Records of Volusia County, Florida, to a point lying on the Easterly right of way line of Summer Trees Road; thence run Northeasterly along the Easterly right-of-way line of said Summer Trees Road to the South right-of-way line of Williamson Boulevard; thence run Southeasterly along the South right-of-way line of said Williamson Boulevard to the North line of the Westport Square P.C.D. Phase I, according to the map or plat thereof, as recorded in Map Book 45, page(s) 9 and 10 of the Public Records of Volusia County, Florida; thence run Westerly along said North lines of the Westport P.C.D. Phases I and II to the Point of Beginning.

Exhibit B

County Application for Impact Fee Credit

Exhibit B

Proportionate Fair Share Calculation for Volusia County

SEGMENTS			Volusia County Cost per Mile Model ¹	Estimated Length (mile)	Improvement	Base Improvement Costs	Additional Costs ²	Total Estimated Improvement Cost ³	Project Volume (a)	Unimproved Lane Group Capacity (b)	Improved Lane Capacity (c)	Project Share (d)=a/(c-b)	Proportionate Share
Location	From	To											
Taylor Rd.	Crane Lakes Blvd.	Summer Trees Rd.	-	0.74	Widen 2 to 4 lanes, urban	-	-	\$10,522,000.00	25	1,540	3,410	1.34%	\$140,668.45
Taylor Branch Rd.	Dunlawton Ave.	Clyde Morris Blvd.	-	0.53	Widen 2 to 4 lanes, urban	-	-	\$8,300,000.00	9	1,270	3,410	0.42%	\$34,906.54
Williamson Blvd.	Town West Blvd.	Willow Run Blvd.	\$7,083,000.00	0.85	Widen 2 to 4 lanes, rural	\$6,020,550.00	\$10,000,000.00	\$16,020,550.00	21	1,540	3,410	1.12%	\$179,909.92
	Willow Run Blvd.	Madeline Ave.	\$7,083,000.00	0.81	Widen 2 to 4 lanes, rural	\$5,737,230.00	\$0.00	\$5,737,230.00	19	1,540	3,410	1.02%	\$58,292.71
	Madeline Ave.	Beville Rd.	-	1.70	Widen 2 to 4 lanes, rural	-	-	\$10,522,000.00	17	1,540	3,410	0.91%	\$95,654.55
Segment PS Subtotal:													\$509,432.17
Turn Lane Extensions			FDOT Cost per 300 ft. ⁴	Improvement	Additional Costs ²	Total Estimated Improvement Cost ³	Lane Length Deficiency Due to Project Trips ⁵		Proportionate Share (c)=((b)/300)*(a)				
Taylor Rd. at Williamson Blvd.			\$205,980.08	Extend westbound right-turn lane by 75 ft due to project trips	\$0.00	\$257,475.10	75		\$64,368.78				
			\$210,603.13	Extend northbound left-turn lane by 25 ft due to project trips	\$0.00	\$263,253.91	25		\$21,937.83				
Turn Lane Extension PS Subtotal:										\$86,306.61			
Volusia County PS Grand Total:													\$595,738.78

¹ Cost obtained from FDOT Long Range Estimates (LRE) for improvement identified, unless otherwise stated.

² Additional costs pertain to site specific modifications associated with the improvement (examples include traffic signal updates, right-of-way, bridge modifications, etc.).

³ Includes Design & CEI Cost (25%).

⁴ Turn lanes are measured in feet and unit cost is based on 300 feet unless otherwise stated.

⁵ From TIA - Table 15.

	Critical
	Near Critical
	Critical Vested
	Near Critical Vested

Exhibit C

City Proportionate Share Calculation



Development Exhibit C
Concurrency and Fair-Share Agreement
Transportation Improvement ("TI")

Development Data:

Development Name	Shoppes at Summer Trees
Site Address	5500 S. Williamson Blvd.
City Case No.	SPIN-23-0009
Zoning District	PC-A (Planned Commercial Agriculture)
TIA Report Date	September 20, 2023
TIA Prepared by	George A. Galen, P.E.
Name of Firm	LTG Engineering & Planning, Inc.
Est. Date of Impact	2025

Land Owner:

Corporate Entity	FL P52 LLC
Contact Person	Lara Coraci Basile
Mailing Address	51 Deforest Ave.; Summit, NJ; 07901

Real Property

Total Acreage	+/- 5.83 acres
Parcel Number(s)	6318-00-00-0023
Legal Description	Legible real property legal description and sketch attached as EXHIBIT A

Exhibit C – Proportionate Fair Share Calculation for the City of Port Orange

Traffic Impact Analysis

Development Name:	Shoppes at Summer Trees
City Case No.:	SPIN-23-0009
TIA Report Date:	September 20, 2023
TIA Prepared by (Firm):	LTG Engineering & Planning, Inc.
Estimated Date of Impact:	2025

Contribution Calculations: Adjusted September 20, 2023

Impacted Intersections/Road Segments per Transportation Master Concurrency Plan	TI Stage I Reservation Deposit Estimated Cost	TI Stage II Project Cost	TI Stage III Actual Cost	DT/CI Ratio ^[3]	% of Cost	Contribution Without Multiplier ^[4]	Contribution with Multiplier* ^[4]
Summer Trees Road Extension [1] OR Book 7486 Page 1855	N/A	N/A	\$3,152,938.60	32/860	5.35%	\$117,319	\$117,319
*Financial Guarantee Multiplier	1.1	1.1	1.0				
Total Fair-Share Contribution [2]						[2] Port Orange FSP- \$117,319	

Fair Share Projects Dunlawton/Taylor at I-95(PRVCF ORB 5709/4728), Dunlawton/Clyde Morris (PRVCF ORB 5709/4732, and Town West/Williamson (PVRCF 5709/4736) are completed or fully funded.

[1] City Project Participant - *Eligible for City trans. impact fee credits*

[2] Per Chapter 4, Section 4 of the LDC, approval to a development project is subject to mitigating adverse impacts to the intersection of Williamson Blvd. and Taylor Rd. per the TIA. The impacts resulting from this project will be mitigated by the developer contributing to the design, permitting, and constructing of the extension to the N. Summer Trees Rd. eastbound left-turn lane onto Williamson Blvd. and a mitigation payment to the Volusia County Taylor Rd. widening project (N. Summer Trees Rd. to Spruce Creek Blvd.). Any remaining FS balance will go toward the Summer Trees Road Extension Project.

[3] Per the approved TIA, 46 trips impacted the Summer Trees Road Extension but there were only 32 remaining trips to sell.

[4] Rounded up to nearest whole dollar.

Planning Review: _____ Date _____

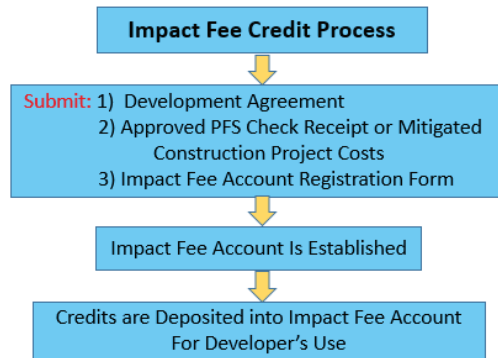
Finance Review: _____ Date _____

Exhibit D

Volusia County Impact Fee Credit Instructions

IMPACT FEE CREDITS

The following steps are required to be able to obtain impact fee credits for PFS payment or construction mitigation improvement:



1. Establish an Impact Fee Credit Account:

- After the PFS payment is made or constructed improvements are complete, contact Engineering & Construction to establish an impact fee credit account and obtain credits. Contact: Storm Kazmierczak (skazmierczak@volusia.org, (386) 736-5967 x12294). Please allow 5-7 business days.
 - *For Impact Fee Credits related to PFS Payments, please submit the following supporting documentation to Engineering and Construction:*
 - Copy of the project's recorded development agreement
 - Copy of your PFS check and receipt.
 - Completed Volusia County Impact Fee Account Registration form** attached. Registration forms require original signatures. Copies or PDF's will not be accepted.
 - .
 - *For Impact fee credits related to Constructed Improvements, please submit the following to Engineering & Construction:*
 - Copy of the project's recorded development agreement.
 - Actual costs incurred such as executed construction contracts or contractor invoices. Engineers' estimates are not accepted. An itemized tabulation delineating eligible costs is required when contracts or invoices include ineligible items. Note: Eligible costs include design, permitting, right-of-way (if applicable), and construction & CEI.
 - Completed Volusia County Impact Fee Account Registration form**, attached. Registration forms require original signatures. Copies or PDF's will not be accepted.

***Note: Your Transportation Impact Fee Credit Account is like a bank account. The "List of Person(s) authorized to sign for this account", on the form, will be the people authorized to make withdrawals from your Transportation Impact Fee Credit Account.*

2. Allow Staff to Process Information and Make Deposit:

- The submittal will be reviewed by county engineering staff and additional information may be requested of the applicant.
- Engineering & Construction will deliver the original executed Registration Form to County Growth and Resource Management (GRM). Contact: Beth Branton (bbranton@volusia.org, (386) 736-5924, ext. 12097).
- GRM will not accept executed forms from anyone other than Engineering & Construction.
- GRM will establish the Transportation Impact Fee Credit Account and send the applicant an email with instructions on how to pay County Transportation Impact Fees with credits, or if desired, transfer your credits. Please be aware that the county auditor completes audits of transportation impact fee credit files.

For questions regarding the following, please call:

- **Impact Fee Credit Registration** - Storm Kazmierczak at (386) 736-5967, ext. 12294, skazmierczak@volusia.org
- **Impact Fees or Impact Fee Credit Account balance** - Beth Branton at (386) 736-5924, ext. 12097, bbranton@volusia.org.
- **PFS Agreements**, please contact Russ Brown at [386-736-5950](tel:386-736-5950) x12947, rbrown@volusia.org
- **PFS payments**, please contact Kristen Vieira at 386-736-5968, ext. 12177, kvieira@volusia.org
- **PFS calculations**, please contact Melissa Winsett at 386-736-5968, ext. 12322, mwinsett@volusia.org

Approved by (signature) _____ Tadd Kasbeer, P.E., County Engineer _____ Date _____



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C10) Resolution No. 23-54- Approval of Grant Agreement for \$92,000 from Florida Inland Navigation District for Phase I Design of the Day Dock at Riverwalk Park

DEPARTMENT: Community Development

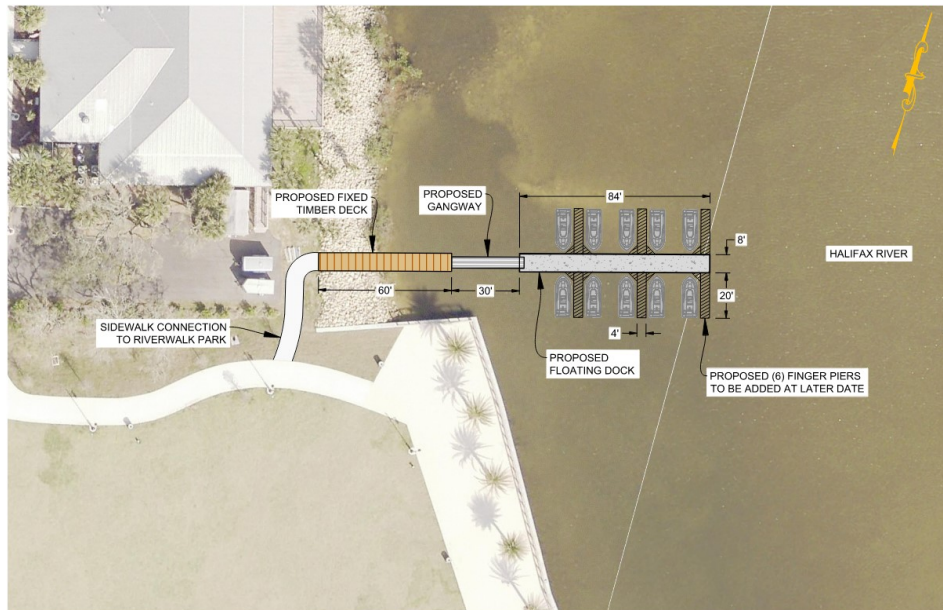
GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-54 Grant agreement between the City of Port Orange and Florida Inland Navigation District for \$92,000 for Phase I Design of the Day Dock at Riverwalk Park.

SUMMARY: On March 21, 2023, Council approved Resolution No. 23-13 authorizing the application for assistance under the Florida Inland Navigation District (FIND) Waterways Assistance Program to fund 50% of the design and permitting costs for the Riverwalk Park Day Dock. On September 21, 2023, FIND announced the award of \$92,000 to the City (see attached award notice). Staff is requesting the Council approve the award in the amount of \$92,000 to be used for the design and permitting of the day dock. The required match for this grant was previously approved in the FY24-29 Capital Improvement Program.

Design and permitting is for a dock along the shoreline for the mooring of up to ten (10) vessels with the potential to add more slips as demand increases. The design will include a survey of a significant area of the waterways to identify a navigational access channel to the day dock facility and will evaluate any dredging requirements to meet a minimum depth of -5 ft Mean Low Water. The day docks will be available for daytime-only mooring of boats.

Staff anticipates design to begin in November 2023 and will be applying for a separate FIND grant in Spring 2024 for funding to construct the day dock. In future years, staff also plans to apply for FIND grants for design, permitting, and construction funds for other waterway improvement projects in the Riverwalk and Down Under areas of the Port Orange Town Center CRA, such as a boardwalk along the north side of the Dunlawton Bridge from Halifax Drive to the west end of Causeway Park and a day dock for boats and future water taxi service in the Down Under area (Exhibit A).



Proposed concept of day dock at Riverwalk Park

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Resolution No. 23-54	Resolution 23-54 .pdf
2.	Find Grant Award Agreement	Find Grant Award Agreement.pdf
3.	2023 WAP CAP Final Grant Awards	2023 WAP CAP Final Grant Awards.pdf
4.	Day dock concept exhibit	Day dock concept exhibit.pdf
5.	Exhibit A - Location Map of Day Dock and Future FIND Projects	Exhibit A - Location Map of Day Dock and Future FIND Projects.pdf

Margaret Tomlinson
 Tim Burman
 John McKinney
 Shannon Balmer
 Wayne Clark
 Tracee Cody

Created/Initiated - 10/6/2023
 Approved - 10/6/2023
 Approved - 10/17/2023
 Approved - 10/25/2023
 Approved - 10/25/2023
 Final Approval - 10/26/2023

RESOLUTION NO. 23-54

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING THE GRANT AGREEMENT FROM THE FLORIDA INLAND NAVIGATION DISTRICT IN THE AMOUNT OF \$92,000 FOR PHASE I DESIGN OF THE DAY DOCK AT RIVERWALK PARK; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AGREEMENTS OR CONTRACTS; TO BUDGET AND APPROPRIATE THE SAME AMOUNT IN FUND (317) SETTING FORTH REVENUES AND EXPENDITURES AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Florida Inland Navigation District provides financial assistance under the Waterway Assistance Program to local government projects associated with the Atlantic Intracoastal Waterway; and

WHEREAS, the City Council of the City of Port Orange is proposing Phase I Design of the Day Dock at Riverwalk Park; and

WHEREAS, the Florida Inland Navigation District approved the grant in the amount of \$92,000 for the Phase I Design of the Day Dock at Riverwalk Park; and

WHEREAS, The City Council desires to budget for this grant funding in Fund 317 and appropriate to Project QIO205 Riverwalk Day Docks; and

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

Section 1. The City Council of the City of Port Orange hereby approves the Grant Agreement for grant funds from the Florida Inland Navigation District in the amount of \$92,000 for Phase I Design of the Day Dock at Riverwalk Park.

Section 2. The City has committed to the required match contribution that was previously approved in the FY24-29 Capital Improvement Program.

Section 3. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

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

(RESO. NO. 23-54)

FLORIDA INLAND NAVIGATION DISTRICT



September 28, 2023

COMMISSIONERS

T. SPENCER CROWLEY, III
CHAIR
MIAMI-DADE COUNTY

FRANK GERNERT
VICE-CHAIR
BROWARD COUNTY

STEPHEN W. BOEHNING
TREASURER
INDIAN RIVER COUNTY

BUDDY DAVENPORT
SECRETARY
VOLUSIA COUNTY

J. CARL BLOW
ST. JOHNS COUNTY

DONALD J. CUOZZO
MARTIN COUNTY

Vacant
ST. LUCIE COUNTY

CHARLES C. ISIMINGER
PALM BEACH COUNTY

MICHAEL O'STEEN
DUVAL COUNTY

JERRY H. SANSOM
BREVARD COUNTY

RANDY STAPLEFORD
FLAGLER COUNTY

LYNN A. WILLIAMS
NASSAU COUNTY

Mr. Shailesh Patel, Consultant to City of Port Orange
City of Port Orange, Dredging & Marine Consultants
4643 S Clyde Morris Blvd Unit 302
Port Orange, FL 32129

RE: Day Dock at Riverwalk Park Phase I
Project # VO-PO-23-142

Dear Mr. Patel:

Enclosed for signature is the original project agreement for your approved Waterways Assistance Program project for fiscal year 2023-2024. Once executed, please return the original to me for execution by the District. When returning the agreement, you **MUST include an executed Exhibit C, Matching Funds Form.** DO NOT SEPARATE THE ATTACHMENTS FROM THE AGREEMENT. Incomplete agreements will not be executed.

I will return the fully executed original agreement to you for your files. Please be sure to refer to the listed project number in all future correspondence and communication regarding this project. Should you have any questions please contact me.

Sincerely,

Chris Kelley
Deputy Director

MARK T. CROSLY
EXECUTIVE DIRECTOR

JANET ZIMMERMAN
ASSISTANT EXECUTIVE
DIRECTOR

ADMINISTRATIVE OFFICE ON THE
1314 MARCINSKI ROAD, JUPITER, FLORIDA

Margaret:

1) Please note that I have not signed Exhibit C as the info needs to be filled on source of funding.

2) Please let me know once contract on Page 8 is signed + info on Exhibit C is filled, then I will sign + mail to FID.

Thanks
Shailesh

**FLORIDA INLAND NAVIGATION DISTRICT
PROJECT AGREEMENT**

PROJECT NO. VO-PO-23-142

This PROJECT AGREEMENT ("AGREEMENT") made and entered into this _____ day of _____, 20____ by and between the Florida Inland Navigation District (hereinafter the "DISTRICT"), and the City of Port Orange, (hereinafter the "PROJECT SPONSOR").

In consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **PROJECT** - Subject to the provisions of this AGREEMENT and Rule 66B-2 of the Florida Administrative Code (a current copy of which is attached as Exhibit "B"), the DISTRICT has approved assistance funding to the PROJECT SPONSOR in furtherance of an approved project ("PROJECT") consisting of the Day Dock at Riverwalk Park Phase I. Said PROJECT is more specifically described in the PROJECT SPONSOR'S Waterways Assistance Application, which is on file at the DISTRICT's headquarters.

Any modifications to the PROJECT'S scope of work shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

2. **TERM** - The PROJECT SPONSOR shall not commence work on the PROJECT prior to the execution of this AGREEMENT unless specifically authorized by the DISTRICT Board and **shall complete the PROJECT and submit all required payment reimbursement information on or before September 30, 2025 ("PROJECT PERIOD")**, unless the PROJECT PERIOD has been extended with the prior written approval of the DISTRICT. Any request for an extension of the PROJECT PERIOD shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than 60 days prior to the original expiration date of the PROJECT PERIOD. This request will then be considered by the DISTRICT Board, whose decision shall be final. In no event other than a declared state of emergency that affects the project completion shall the PROJECT be extended beyond September 30, 2026. The PROJECT SPONSOR acknowledges this is the only provision to carry over the DISTRICT assistance funding under this AGREEMENT beyond September 30, 2025, and that any extension of funding beyond this date shall be at the sole discretion of the DISTRICT.

3. **ASSISTANCE AMOUNT** - The DISTRICT shall contribute ("ASSISTANCE AMOUNT") no more than fifty percent (50%) ("MATCHING PERCENTAGE") of the PROJECT SPONSOR'S eligible out-of-pocket costs for completion of this PROJECT ("PROJECT AMOUNT"). Payment of funds by the DISTRICT to the PROJECT SPONSOR (the "ASSISTANCE AMOUNT") will be on a reimbursement basis only, and only for those authorized out of pocket costs as shown in Exhibit A, Project Cost Estimate ("PROJECT COSTS") and meeting the requirements of Section 5 below and shall not, in any event, exceed \$ 92,000.00.

Any modifications to the PROJECT's Cost Estimate (Exhibit A) shall require written advance notice and justification from the PROJECT SPONSOR and the prior written approval of the DISTRICT.

4. **MATCHING FUNDS** - The PROJECT SPONSOR warrants and represents that it has the PROJECT SPONSOR Match Amount (the PROJECT AMOUNT less the ASSISTANCE AMOUNT) available for the completion of the PROJECT and shall, prior to the execution of this AGREEMENT, have provided the DISTRICT with suitable evidence of the availability of such funds using the DISTRICT's Form #95-01 (Exhibit C, Matching Funds Certification) and, upon request, providing the DISTRICT with access to applicable books and records, financial statements, and bank statements.

5. **PROJECT COSTS** - To be eligible for reimbursement under this AGREEMENT, PROJECT COSTS must be necessary and reasonable for the effective and efficient accomplishment of the PROJECT and must be directly allocable thereto. PROJECT COSTS are generally described in Exhibit B, Chapter 66B-2, F.A.C.. PROJECT COSTS must be incurred, and work performed within the PROJECT PERIOD, with the exception of pre-AGREEMENT costs, if any, consistent with Section 6 below, which are also eligible for reimbursement by the DISTRICT.

If the PROJECT SPONSOR receives additional funding for the PROJECT COSTS from another source that was not identified in the original application and that changes the AGREEMENT MATCHING PERCENTAGE, the PROJECT SPONSOR shall proportionately reimburse the DISTRICT's program funds equal to the MATCHING PERCENTAGE in this AGREEMENT. The PROJECT SPONSOR shall promptly notify the DISTRICT of any project payments it receives from a source other than the DISTRICT.

6. **PRE-AGREEMENT COSTS** - The DISTRICT and the PROJECT SPONSOR fully understand and agree that there shall be no reimbursement of funds by the DISTRICT for any

obligation or expenditure made prior to the execution of this AGREEMENT unless previously delineated in Exhibit A, consistent with Exhibit B, and previously approved by the DISTRICT Board during the grant review process.

7. **REIMBURSEMENT PROCEDURES** - PROJECT COSTS shall be reported to the DISTRICT and summarized on the Payment Reimbursement Request Form (Form #90-14) attached as Exhibit D. Supporting documentation including bills and canceled payment vouchers for expenditures shall be provided to the DISTRICT by the PROJECT SPONSOR or LIAISON AGENT with any payment request. All records in support of the PROJECT COSTS included in payment requests shall be subject to review and approval by the DISTRICT or by an auditor selected by the DISTRICT. Audit expenses shall be borne by the PROJECT SPONSOR.

Project funds may be released in installments, at the discretion of the DISTRICT, upon submittal of a payment request by the PROJECT SPONSOR or LIAISON AGENT. The DISTRICT shall retain ten percent (10%) of each installment payment until the completion of the PROJECT.

The following costs, if authorized in the attached Exhibit B, shall be reimbursed only upon completion of the PROJECT to the reasonable satisfaction of the DISTRICT and in accordance with Exhibit B: personnel, equipment, project management, administration, inspection, and design, permitting, planning, engineering, and/or surveying costs. Assuming the PROJECT SPONSOR has otherwise fully complied with the requirements of this AGREEMENT, reimbursement for a PROJECT approved as Phase I project will be made only upon commencement of construction of the PROJECT for which the Phase I planning, designing, engineering and/or permitting were directed, which may or may not involve further DISTRICT funding. Procedures set forth below with respect to reimbursement by the DISTRICT are subject to this requirement of commencement of construction.

The DISTRICT shall have the right to withhold any payment hereunder, either in whole or part, for non-compliance with the terms of this AGREEMENT.

8. **FINAL REIMBURSEMENT** - The PROJECT SPONSOR, upon completion of the PROJECT, shall submit to the DISTRICT a request for final reimbursement of the ASSISTANCE AMOUNT less any prior installment payments. The payment amounts previously retained by the DISTRICT shall be paid upon (1) receipt of the Final Audit report of expenses incurred on the PROJECT by the DISTRICT, (2) full completion of the PROJECT to the reasonable satisfaction of the DISTRICT, (3) submission of Project Completion Certification Form No. 90-13 (Exhibit E), (4) submission of a photograph of the PROJECT showing the sign required by Section 18, and (5) a Final

Project Report as described in Exhibit G, Assistance Project Schedule. As part of the documentation accompanying the request for final reimbursement, PROJECT SPONSOR shall provide proof of payment of all contractors, material suppliers, engineers, architects, and surveyors with whom PROJECT SPONSOR has directly contracted (each a "DIRECT PROVIDER") to provide services or materials for the PROJECT. The final reimbursement amount shall be adjusted as necessary such that neither the total ASSISTANCE AMOUNT nor the MATCHING PERCENTAGE is exceeded. Unless otherwise determined by the DISTRICT, the final reimbursement check shall be presented by a DISTRICT representative to the PROJECT SPONSOR during a public commission meeting or public dedication ceremony for the PROJECT.

9. **RECORDS RETENTION** - The PROJECT SPONSOR shall retain all records supporting the PROJECT COSTS for three (3) years after the end of the fiscal year in which the Final Payment is released by the DISTRICT, except that such records shall be retained by the PROJECT SPONSOR until final resolution of matters resulting from any litigation, claim, or special audit that starts prior to the expiration of the three-year retention period.

10. **DEFAULT AND REMEDIES** – In the event of a breach of any of the terms of this AGREEMENT by the PROJECT SPONSOR, the DISTRICT shall provide written notice to the PROJECT SPONSOR, which shall have sixty (60) days in which to cure the breach. If the PROJECT SPONSOR fails to cure the breach within the cure period, the DISTRICT shall have the right, but not the obligation, to demand that the PROJECT SPONSOR immediately refund the ASSISTANCE AMOUNT to the extent paid. PROJECT SPONSOR shall refund to the DISTRICT the full amount of the ASSISTANCE AMOUNT paid to PROJECT SPONSOR, whereupon this AGREEMENT, and all further rights thereunder, shall be terminated. If the DISTRICT does not demand reimbursement as aforesaid, the DISTRICT may exercise any and all other remedies available at law or in equity. With respect to the PROJECT SPONSOR's obligations under Sections 15, 17, and 20, PROJECT SPONSOR acknowledges that breach by the PROJECT SPONSOR of one or more of its obligations under said sections might cause the DISTRICT to suffer irreparable harm, namely harm for which damages would be an inadequate remedy. PROJECT SPONSOR further acknowledges that the DISTRICT might suffer irreparable harm due to delay if, as a condition to obtaining an injunction, restraining order, or other equitable remedy with respect to such a breach, the DISTRICT was required to demonstrate that it would suffer irreparable harm. The parties therefore intend that if the PROJECT SPONSOR breaches one or more of its obligations under Sections 15, 17, or 20, the DISTRICT, in addition to such other remedies which may be available, shall have the right to seek specific

performance and injunctive relief, and for purposes of determining whether to grant an equitable remedy any court will assume that the breach would cause the DISTRICT irreparable harm. The provisions of this section shall survive completion of the PROJECT.

11. **DISTRICT PROJECT MANAGER** - The Executive Director, or his designee, is hereby designated as the DISTRICT's Project Manager for the purpose of this AGREEMENT and shall be responsible for monitoring performance of its terms and conditions and for approving all reimbursement requests prior to payment.

12. **PROJECT SPONSOR'S LIAISON AGENT** - The PROJECT SPONSOR shall appoint a LIAISON AGENT, whose name and title shall be submitted to the DISTRICT upon execution of this AGREEMENT, to act on behalf of the PROJECT SPONSOR relative to the provisions of this AGREEMENT.

13. **STATUS REPORTS** - The PROJECT SPONSOR or LIAISON AGENT shall submit to the DISTRICT project status reports during the PROJECT term. These Quarterly Reports are to be on Form #95-02 (Exhibit F, Assistance Program Project Quarterly Status Report). Project design drawings, engineering drawings, and a copy of the Project bid award construction item cost list will be submitted as available. Photographs shall be submitted when appropriate to reflect the work accomplished. NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit G, Assistance Project Schedule, may result in revocation of this AGREEMENT.

14. **LAWS** - The PROJECT SPONSOR agrees to obtain and to abide by all federal, state, and local permits and proprietary authorizations, and all applicable laws and regulations in the development of the PROJECT. The PROJECT SPONSOR agrees that all PROJECT facilities shall be designed and constructed in compliance with applicable state and federal statutory requirements for accessibility by handicapped persons, as well as all other federal, state and local laws, rules, and requirements.

15. **NON-DISCRIMINATION** - The PROJECT SPONSOR agrees that when completed, the PROJECT shall be readily accessible, on a non-exclusive basis, to the general public of DISTRICT member counties without regard to age, sex, race, physical handicap, or other condition, and without regard to residency of the user in another political subdivision.

16. **PARKING FACILITIES** - Adequate parking shall be made available by the PROJECT SPONSOR to accommodate vehicles for the number of persons for which the PROJECT is being developed.

17. **SITE DEDICATION** – FOR LAND-BASED DEVELOPMENT PROJECTS

The PROJECT SPONSOR also agrees that the PROJECT site shall be dedicated for the public use for which the PROJECT was intended for a minimum period of thirty-five (35) years from the completion of the PROJECT, such dedication to be in the form of a deed, lease, management AGREEMENT or other legally binding document. Any change in such dedication shall require the prior approval of the DISTRICT. The PROJECT SPONSOR shall record evidence of such dedication within the Public Records of the County in which the PROJECT is located.

18. **ACKNOWLEDGMENT** – For construction projects, the PROJECT SPONSOR shall erect a permanent sign, approved by the DISTRICT, in a prominent location such as the PROJECT entrance of the completed PROJECT, which shall indicate that the DISTRICT contributed funds for the PROJECT. The wording of the sign required by this section shall be approved by the DISTRICT's staff before construction and installation of said sign. This sign shall contain the DISTRICT logo (Exhibit H) unless otherwise stipulated by the DISTRICT. In the event that the PROJECT SPONSOR erects a temporary construction sign, it shall also indicate the DISTRICT's participation. For all other types of projects, the PROJECT SPONSOR shall acknowledge the DISTRICT where feasible, in concurrence with the DISTRICT staff's recommendations.

19. **PROJECT MAINTENANCE** - When and as applicable, the PROJECT SPONSOR agrees to operate, maintain, and manage the PROJECT for the life of the PROJECT improvements and will pay all expenses required for such purposes. The PROJECT improvements shall be maintained in accordance with the standards of maintenance for other local facilities owned and operated by the PROJECT SPONSOR, and in accordance with applicable health standards. PROJECT facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The PROJECT SPONSOR warrants and represents that it has full legal authority and financial ability to operate and maintain said PROJECT facilities and improvements.

20. **FEES** – Any fees charged for this PROJECT shall be reasonable and the same for the general public of all member counties. The PROJECT SPONSOR must demonstrate that a minimum of fifty percent (50%) of the PROJECT fees will be utilized for project maintenance and improvements throughout the anticipated useful life of a development project or the design life of other project types, as applicable.

21. **SOVEREIGN IMMUNITY** - Each party hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors, and agents. However, nothing

contained herein shall constitute a waiver by either party of its sovereign immunity under Section 768.28, Florida Statutes. The PROJECT SPONSOR acknowledges that the DISTRICT, its employees, commissioners, and agents are solely providing funding assistance for the PROJECT and are not involved in the design, construction, operation, or maintenance of the PROJECT.

22. **INSPECTIONS** - The DISTRICT reserves the right, upon reasonable request, to inspect said PROJECT and any and all records related thereto at any time.

23. **RIGHTS AND DUTIES** - The rights and duties arising under this AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall, unless the context clearly requires otherwise, survive completion of the PROJECT. The PROJECT SPONSOR may not assign this AGREEMENT nor any interest hereunder without the express prior written consent of the DISTRICT.

24. **WAIVERS** - Waiver of a breach of any provisions of this AGREEMENT shall not be deemed a waiver of any other breach of the same or different provision.

25. **NOTICE** - Any notice required to be given pursuant to the terms and provisions of this AGREEMENT shall be in writing, postage paid, and shall be sent by certified mail, return receipt requested, to the DISTRICT or PROJECT SPONSOR at the addresses below. The notice shall be effective on the date indicated on the return receipt.

To the DISTRICT at:

Florida Inland Navigation District
1314 Marcinski Road
Jupiter, Florida 33477-9498

To the PROJECT SPONSOR at:

City of Port Orange
Attention: Consultant to City of Port Orange, Dredging & Marine Consultants
4643 S Clyde Morris Blvd Unit 302
Port Orange, FL 32129

26. **NO JOINT VENTURE** - The DISTRICT's role with respect to the PROJECT is that of a funding assistance authority only and the DISTRICT is not, and shall not be considered to be, an agent, partner, or joint venturer with the PROJECT SPONSOR.

27. **GOVERNING LAW** - The validity, interpretation, and performance of this AGREEMENT shall be controlled and construed according to the laws of the State of Florida.

28. **TRANSFERENCE** - It is the intent of the DISTRICT to issue this funding assistance to the PROJECT SPONSOR who has made application for this assistance. In the event the PROJECT SPONSOR transfers ownership or management of the PROJECT to a party or parties not now a part of this AGREEMENT, other than another governmental entity that agrees to assume, in writing, PROJECT SPONSOR'S obligation hereunder, the DISTRICT retains the right to full reimbursement from the PROJECT SPONSOR to the full extent of the funding assistance provided by the DISTRICT including, but not limited to, any costs and reasonable attorney's fees (regardless of whether litigation ensues) incurred by the DISTRICT in collecting said reimbursement.

29. **ENTIRE UNDERSTANDING** - This AGREEMENT, including any exhibits made a part hereof, embodies the entire AGREEMENT and understanding of the parties and supersedes all prior oral and written communications between them. The terms hereof may be modified only by a written amendment signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day, month and year aforesaid.

FLORIDA INLAND NAVIGATION DISTRICT

By: _____
Executive Director

Date: _____

City of Port Orange

By: _____
Donald O. Burnette
Title: Mayor

Date: _____

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

Exhibit A
PROJECT COST ESTIMATE

WATERWAY ASSISTANCE PROGRAM FY 2023

(See Rule Section 66B-2.005 & 2.008 for eligibility and funding ratios).

Project Title:	Day Dock at Riverwalk Park Design and Permitting, Phase 1
Applicant:	City of Port Orange

Project Elements <i>(Please list the MAJOR project elements and provide general costs for each one. For Phase I Projects, please list the major elements and products expected)</i>	Total Estimated Cost	Applicant's Cost (To the nearest \$50)	FIND Cost (To the nearest \$50)
Engineering Design and Permitting	184,000.00	92,000.00	92,000.00

**TOTALS =	\$ 184,000.00	\$ 92,000.00	\$ 92,000.00
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Exhibit B 2023

**CHAPTER 66B-2
WATERWAYS ASSISTANCE PROGRAM**

66B-2.001	Purpose
66B-2.002	Forms
66B-2.003	Definitions
66B-2.004	Policy
66B-2.005	Funds Allocation
66B-2.006	Application Process
66B-2.0061	Emergency Applications
66B-2.008	Project Eligibility
66B-2.009	Project Administration
66B-2.011	Reimbursement
66B-2.012	Accountability
66B-2.013	Acknowledgement
66B-2.014	Small-Scale Spoil Island Restoration and Enhancement Projects
66B-2.015	Small-Scale Derelict Vessel Removal Projects
66B-2.016	Waterways Cleanup Events

66B-2.001 Purpose.

Recognizing the importance and benefits of inland navigation channels and waterways, as well as noting problems associated with the construction, continued maintenance and use of these waterways, the Florida Legislature created Section 374.976, F.S. This law authorizes and empowers each inland navigation district to undertake programs intended to alleviate the problems associated with its waterways. The purpose of this rule is to set forth the District's policy and procedures for the implementation of an assistance program under Section 374.976, F.S., for local governments, member counties and navigation related districts within the District. This program will be known hereafter as the Florida Inland Navigation District's Waterways Assistance Program.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.001.

66B-2.002 Forms.

All forms for the administration of this program are available from the District office located at 1314 Marcinski Road, Jupiter, Florida 33477.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.002.

66B-2.003 Definitions.

The basic terms utilized in this rule are defined as follows:

- (1) "APPLICANT" means an eligible governmental agency submitting an application through this program.
- (2) "APPLICATION" means a project proposal with the required documentation.
- (3) "AUTHORIZED SUBMISSION PERIOD" means the established period for submitting applications to the District.
- (4) "BEACH RENOURISHMENT" means the placement of sand on a beach for the nourishment, renourishment or restoration of a beach.
- (5) "BOARD" means the Board of Commissioners of the Florida Inland Navigation District.
- (6) "DISTRICT" means the Florida Inland Navigation District (FIND).
- (7) "ELIGIBLE GOVERNMENTAL AGENCY" means member counties, local governments and navigation related districts within the taxing boundaries of the District.
- (8) "ENVIRONMENTAL PERMITS" means those permits, proprietary authorizations, exemptions, or general permits for construction below mean high water line of a navigable waterway required and issued by or on behalf of the U.S. Army Corps of Engineers, the Florida Department of Environmental Protection, and the South Florida or the St. Johns River Water Management Districts or their successors.
- (9) "EXECUTIVE DIRECTOR" means the Executive Director of the Florida Inland Navigation District.

- (10) "LIAISON AGENT" means the contact person officially designated to act on behalf of the applicant or the project sponsor.
- (11) "LOCAL GOVERNMENTS" means municipalities, cities, or consolidated county governments, which are located within the member counties.
- (12) "MARITIME MANAGEMENT PLAN" means a written plan containing a systematic arrangement of elements specifically formulated to identify, evaluate and promote the benefits of eligible waterway accessibility and enjoyment, with consideration and respect to the physical, environmental and economic parameters of the planning area.
- (13) "MATCHING FUNDS" means those funds provided by the local sponsor to the project.
- (14) "MEMBER COUNTY" means a county located within the taxing boundaries of the District which includes Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade Counties.
- (15) "NAVIGATION RELATED DISTRICTS" means port authorities, inlet districts or any other agency having legally authorized navigation related duties in waterways of the District.
- (16) "PRE-AGREEMENT COSTS" means project costs approved by the District Board which have occurred prior to the execution of the project agreement.
- (17) "PROGRAM" means the Florida Inland Navigation District Waterways Assistance Program.
- (18) "PROGRAM FUNDS" means financial assistance awarded by the Board to a project for release to the project sponsor pursuant to the terms of the project agreement.
- (19) "PROJECT" means a planned undertaking consisting of eligible program facilities, improvements or expenses for the use and benefit of the general public.
- (20) "PROJECT AGREEMENT" means an executed contract between the District and a project sponsor setting forth mutual obligations regarding an approved project.
- (21) "PROJECT MAINTENANCE" means any usual action, activity, expense, replacement, adjustment or repair taken to retain a project or grant item in a serviceable, operational or normal condition, or the routine efforts and expenses necessary to restore it to serviceable or normal condition, including the routine recurring work required to keep the project or grant item in such condition that it may be continuously used at its original or designed capacity and efficiency for its intended purpose.
- (22) "PROJECT MANAGER" means the District employee who is responsible for monitoring the performance of the Project and compliance with the project agreement.
- (23) "PROJECT PERIOD" means the approved time during which costs may be incurred and charged to the funded project.
- (24) "PROJECT SPONSOR" means an eligible governmental agency receiving program funds pursuant to an approved application.
- (25) "PUBLIC BUILDING" means a building or facility on government owned property that is owned or operated by a governmental entity, or operated by a third party operator. The building or facility must provide waterway related information, public meeting space, or educational services and be open to members of the public on a continual basis without discrimination.
- (26) "PUBLIC MARINA" means a harbor complex used primarily for recreational boat mooring or storage, the services of which are open to the general public on a first come, first served basis without any qualifying requirements such as club membership, stock ownership, or differential in price.
- (27) "PUBLICLY OWNED COMMERCIAL OR INDUSTRIAL WATERWAY ACCESS" means any publicly owned area specifically designed to be used for staging, launching, or off-loading by commercial or industrial waterway users on a first come, first served, short-term basis, to gain entry to or from the District's waterways to serve the infrastructure needs of the District's waterway users.
- (28) "WATERWAYS" means the Atlantic Intracoastal Waterway, the Okeechobee Waterway, the Barge Canal in Brevard County west of the Port Canaveral Locks, those portions of the Dania Cut-Off Canal and the Hillsboro Canal east of the water control structures, all navigable natural rivers, bays, creeks or lagoons intersected by said waterways and all navigable natural creeks, rivers, bays or lagoons entering or extending from said waterways.
- (29) "WATERWAY RELATED ENVIRONMENTAL EDUCATION" means an interdisciplinary holistic process by which the learner: develops an awareness of the natural and manmade environments of waterways; develops knowledge about how the environment of the waterways works; acquires knowledge about the technological, social, cultural, political, and economic relationships occurring in waterway related environmental issues; and, becomes motivated to apply action strategies to maintain balance between quality of life and quality of the environment of waterways.

Amended 5-17-98, 3-21-01, 3-20-03, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 3-7-11, 3-25-21.

66B-2.004 Policy.

The following constitutes the policy of the District regarding the administration of the program:

(1) Financial Assistance Eligibility: Financial assistance, support and cooperation may be provided to eligible governmental agencies for approved projects as follows:

(a) Member counties may be provided financial assistance, support or cooperation in planning, acquisition, development, construction, reconstruction, extension, improvement, operation or the maintenance of public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, maritime management plans, and boating safety projects directly related to the waterways.

(b) Eligible local governments may also be provided financial assistance, support and cooperation in planning and carrying out public navigation, local and regional anchorage management, beach renourishment, public recreation, inlet management, environmental education, and boating safety projects directly related to the waterways.

(c) Navigation related districts may be provided with financial assistance to pay part of the costs of the planning and acquisition of dredge material management sites if the Board finds that the site is required for the long-range maintenance of the Atlantic Intracoastal Waterway channel. All such sites must meet the development and operational criteria established by the District through a long-range dredge material management plan for that county. Navigation related districts may also be provided with assistance for waterway related access projects, environmental mitigation projects associated with waterway improvement related activities, and inlet management projects if the Board finds that the project benefits public navigation in the Atlantic Intracoastal Waterway. All navigation related districts shall contribute at least equal matching funds to any District financial assistance provided. Seaports may also be furnished assistance and support in planning and carrying out environmental mitigation projects. All seaport projects shall benefit publicly maintained channels and harbors. Each seaport shall contribute matching funds for funded projects.

(d) Eligible projects shall include the acquisition and development of public boat ramps and launching facilities, including those in man-made, navigable waterways contiguous to "waterways" as defined in Rule 66B-2.003, F.A.C.

(2) Notification: The District will notify by direct mail, email and/or advertised public notice all eligible governmental agencies of the program and the upcoming authorized submission period.

(3) Project Approval: Approval of projects by the District shall be in accordance with these rules.

(4) Project Accessibility: Facilities or programs funded in whole or in part by program funds shall be made available to the general public of all of the member counties on a non-exclusive basis without regard to race, color, religion, age, sex or similar condition. Additionally, facilities funded in whole or in part by program funds, shall not require a paid membership for the general public of all of the member counties as a condition to use the facilities. User or entrance fees may be charged for the use of facilities funded in whole or in part by program funds, however such fees shall be reasonable and shall be the same for the general public of all of the member counties.

(5) Waterway Impacts: All development projects must be designed so as not to impact navigation along the District's waterways through the placement of structures, attendant uses, or the necessity of a boating speed zone for safety purposes. Before applying for boating speed zone designation in District waterways because of a project funded by this program, the sponsor shall first receive approval from the Board. The Board will use the criteria found in Section 327.46(1), F.S., in determining whether to approve the proposed boating speed zone.

(6) Project Maintenance: The project sponsor shall be responsible for the operation, maintenance, and management of the project for the anticipated life of the project and shall be responsible for all expenses required for such purposes. The project shall be maintained in accordance with the standards of maintenance for other similar local facilities and in accordance with applicable health standards. Project facilities and improvements shall be kept reasonably safe and in reasonable repair to prevent undue deterioration and to encourage public use. The project sponsor shall have full legal authority and financial ability to operate and maintain the project facilities.

(7) Education Facilities and Programs: Waterways related environmental education facilities and programs sponsored by the District shall occur at specially designated environmental education facilities located adjacent and contiguous to the waterways. It is the District's intent to consolidate its environmental education efforts in the least number of facilities within an area that will adequately serve the education needs of that area of the District.

(8) Public Information Availability: Public information produced with assistance from this program shall not be copyrighted and

shall be provided free of cost, except for the cost of reproduction, to the public.

(9) Third-Party Project Operators: Projects that are being operated by a third party shall have sufficient oversight by the eligible project sponsor as determined by the Board. Such oversight, at a minimum, will include a project liaison that is a staff member of the eligible project sponsor, and oversight of the operating hours and admission fees of the facility by the eligible project sponsor through a legal agreement. All third party projects shall be open to the public in accordance with this rule.

(10) Non-compliance: The District shall terminate a project agreement and demand return of program funds disbursed to the project sponsor for non-compliance with any of the terms of the project agreement or this rule, if such non-compliance calls into question the ability of the applicant to complete the project. Failure of a project sponsor to comply with the provisions of this rule or the project agreement shall result in the District declaring the project sponsor ineligible for further participation in the program until such time as compliance has been met to the satisfaction of the District.

(11) Fees: Any public project eligible for District program funds that charges a fee or will charge a fee must create and maintain an enterprise fund for the public project that shall plan for and retain at all times sufficient funds for the on-going maintenance of the facility during its project life. Accounting records of the previous five years of the public project's enterprise fund will be submitted as part of any subsequent assistance program application to the District.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (2) FS. History—New 12-17-90, Amended 2-3-94, 2-6-97, Formerly 16T-2.004, Amended 5-18-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-1-09, 2-22-10, 3-7-11, 3-7-12, 1-27-14, 2-17-15.

66B-2.005 Funds Allocation.

The Board will allocate funding for this program based upon the District's overall goals, management policies, fiscal responsibilities and operational needs for the upcoming year. Funding allocations to navigation related districts, member counties and local governments shall be based upon the proportional share of the District's ad valorem tax collections from each county. If funds are determined to be available for the program, the District will notify potential eligible governmental agencies of the availability of program funding. Applications will be reviewed by the Board utilizing District Forms No. 91-25 and 91-25 (A) through (F) Waterways Assistance Program Application and Evaluation Worksheet (effective date 1/2014), hereby incorporated by reference and available at: <http://www.flrules.org/Gateway/reference.asp?No=Ref-03568>, and available from the District office or by download from the District's webpage at: www.aicw.org.

(1) Funding Assistance Availability: In as much as the District has other fiscal responsibilities and operational needs, financial assistance to eligible government agencies shall not exceed an amount equal to eighty (80) percent of the proportional share of the District's ad valorem tax collections from each county in which such agencies are located. The District may make an exception to this funding limitation, if funds are determined to be available based upon the District's overall goals, management policies, fiscal responsibilities and operational needs, or in counties that are recovering from a state of emergency declared under Chapter 252, F.S.

(2) Project Funding Ratio: All financial assistance and support to eligible governmental agencies shall require, at a minimum, equal matching funds from the project sponsor, with the exception of public navigation projects that meet the provisions of subsection 66B-2.005(6), F.A.C., land acquisition projects in accordance with subsection 66B-2.005(7), and Rule 66B-2.008, F.A.C., small-scale spoil island restoration and enhancement projects that meet the provisions of Rule 66B-2.014, F.A.C., derelict vessel projects consistent with Rule 66B-2.0015, F.A.C., and Waterway Cleanup Projects approved under Rule 66B-2.0016, F.A.C., and projects approved in counties recovering from a state of emergency. Applicant's in-house costs are limited pursuant to paragraph 66B-2.008(1)(c), F.A.C. All financial assistance to seaports shall require equal matching funds. The District shall contribute no more than fifty percent (50%) of the local share of the cost of an inlet management or beach renourishment project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project.

(3) Pre-agreement Expenses: The project sponsor shall not commence work on an approved project element prior to the execution of the project agreement unless authorized by the Board during the review and funding approval process. Board authorization of pre-agreement expenses will be given for the commencement of work prior to the execution of a project agreement if the Board determines that there is a benefit to the District, its waterways or its constituents. All project costs must be incurred and work performed within the project period as stipulated in the project agreement unless pre-agreement costs are approved by the Board. Pre-agreement expenses will be approved if they are consistent with the provisions of Rule 66B-2.008, F.A.C., and occur within the fiscal year of the grant application submission (October 1st to September 30th). Pre-agreement expenses, except for projects approved by the Board as multi-year projects, will be limited to fifty (50) percent of the project's total cost and if the expenses are eligible project expenses in accordance with this rule. Only one-half (1/2) or less of the approved pre-agreement

expenses will be eligible for reimbursement funding from the District, except for projects approved by the Board as multi-year projects. The Board shall consider a waiver of the limitation on pre-agreement expenses for Small-Scale Derelict Vessel grants and land acquisition projects when the applicant demonstrates a direct need and benefit and the project is in accordance with the applicable provisions of Chapter 66B-2, F.A.C.

(4) Multi-Year Funding: The construction phase of projects that are large scale, involve multiple phases, have a construction time line of one year or longer, or are requesting a significant amount of assistance funding in relation to the total assistance available for the county where the project is located, will be reviewed and approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. The determination by the Board to provide assistance funding on a multi-year basis can be made at any time during the application review process. All approved multi-year projects are limited to a maximum of two (2) additional funding requests.

(5) Inlet Management and Beach Renourishment: Projects and project elements in the categories of inlet management and beach renourishment shall be subject to the following provisions. The District shall contribute no more than fifty percent of the local share of the cost of the project. The District shall not contribute funding to both the state and local shares of an inlet management or beach renourishment project. Funding for the construction phase of an inlet management or beach renourishment project may be approved by the District Board for a multiple year period subject to budgeting and allocation pursuant to the provisions of Chapter 200, F.S. Additionally the following provisions shall be met for inlet management or beach renourishment projects:

(a) Inlet Management: Inlet management projects shall benefit public navigation within the District and shall be consistent with Department of Environmental Protection approved inlet management plans and the statewide beach management plan pursuant to Section 161.161, F.S. Prior to funding any inlet management project, the Board shall make a finding that the project is a benefit to public navigation in the District. Inlet management projects that are determined to be consistent with Department of Environmental Protection approved inlet management plans are declared to be a benefit to public navigation.

(b) Beach Renourishment: All projects in this category shall be consistent with the statewide beach management plan. Beach renourishment projects shall only include those beaches that have been adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project. Prior to funding any beach renourishment project, the Board shall make a finding that the beaches to be nourished have been adversely impacted by navigation inlets, navigation structures, navigation dredging or a navigation project. The determination of beach areas that are adversely impacted by navigation for the purposes of this program shall be made by Department of Environmental Protection approved inlet management plans. If state funding is not provided for a beach project, public access with adequate parking must be available in accordance with Chapter 161, F.S.

(6) Public Navigation: Projects or project elements in the category of public navigation that will qualify for up to seventy-five percent (75%) program funds must be within the Intracoastal Right-of-Way (ROW), or provide public navigation channel access to two or more publicly accessible launching, mooring or docking facilities. In addition, the following shall apply:

(a) Navigation channel dredging: The project sponsor must demonstrate that the source of channel sedimentation has been identified and is in the process of, or has been controlled, or that the frequency and amount of shoaling is such that dredging will provide an improvement to the channel that will last for twenty (20) years or more and therefore is more cost effective than identifying and correcting the cause of shoaling, or that the cost of identifying the source of channel sedimentation exceeds the cost of the dredging project.

(b) Navigation channel lighting and markers must be located on primary or secondary public navigation channels. Navigation projects or project elements that have one facility open to the public will qualify for up to fifty percent (50%) program funding. Dredging that is associated or ancillary to another use (such as a boat ramp, marina or pier) will be prioritized according to the associated use.

(7) Land Acquisition: Land acquisition projects shall qualify for a maximum of fifty (50) percent funding. All pre-agreement expenses for land acquisition must be completed within one-year of the date of application for funding. Except for acquisition of publicly owned spoil disposal site, all funded land acquisition projects must construct the required boating access facility within 7 years of completion of the land acquisition, or the District may require the applicant to refund the program funding. Immediately upon acquiring title to the land, the applicant shall record a declaration of covenants in favor of the District stating that if the required boating access facility is not constructed within 7 years and dedicated for the public use as a boating access facility in perpetuity after completion of construction, the District shall require the applicant to refund the program funding.

(8) Seaport Funding Eligibility: Financial assistance to seaports may exceed the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the county in which such seaport is located if the seaport can

demonstrate that a regional benefit occurs from the port's activities. Financial assistance to a seaport project that demonstrates a regional benefit shall not exceed an amount equal to (i) the proportional share of the District's ad valorem tax collections as set forth in subsection 66B-2.005(1), F.A.C., from the counties where the benefit is demonstrated less (ii) funding allocated in the same fiscal year to all other local government projects funded in those counties.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1), (3) FS. History—New 12-17-90, Amended 6-24-93, 9-5-96, 2-6-97, Formerly 16T-2.005, Amended 5-17-98, 8-26-99, 3-21-01, 7-30-02, 3-3-04, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 4-1-09, 3-7-11, 3-7-12, 4-10-13, 1-27-14, 5-15-16, 3-25-21.

66B-2.006 Application Process.

(1) Application Period: With the exception of eligible Disaster Relief Projects, eligible Small-Scale Spoil Island Restoration and Enhancement Projects eligible Small-Scale Derelict Vessel Applications and Waterway Cleanup Events, all applications for assistance through this program will be submitted during the authorized submission period that shall be established by vote of the Board at a scheduled meeting.

(2) Application Forms: Florida Inland Navigation District Waterways Assistance Program Project Application FIND Form Number 90-22 (effective date 4-24-06) and the Waterway Assistance Program Application and Evaluation Worksheet No. 91-25 and 91-25 (A) through (F) (effective date 1/2014) are hereby incorporated by reference and available from the District office. With the exception of projects eligible under the Small-Scale Spoil Island Restoration and Enhancement program, the Small-Scale Derelict Vessel program, and eligible Waterway Cleanup Events, all applications for financial assistance and support through this program from member counties and local governments shall be made on Form Number FIND 90-22 and the Waterway Assistance Program Project Application and Evaluation Worksheet No. 91-25 and 91-25 (A) through (F) and shall include a detailed cost estimate submitted on FIND Form No. 90-25, Florida Inland Navigation District Assistance Program Project Cost Estimate, (effective date 4-24-06), hereby incorporated by reference and available from the District office. In addition, all applicants shall submit a complete and detailed Project Timeline (FIND FORM No. 96-10) (effective date 4-15-07).

(3) Sponsor Resolution: The project sponsor shall approve the submission of an application by official resolution from its governing board or commission. Said resolution shall be made on FIND Form No. 90-21, Resolution for Assistance Under the Florida Inland Navigation District Waterways Assistance Program (effective date 10-14-92), hereby incorporated by reference and available from the District office.

(4) Attorney's Certification: If the application is for a project that is a land based development project the applicant shall submit an Attorney's Certification of Title, FIND Form Number 94-26 (effective date 5-25-00), hereby incorporated by reference and available from the District office.

(5) Maps and Geographic Information: All applicants shall be required to submit, at minimum, the following geographic information: A County location map, a project location map, a project boundary map, and a clear and detailed site development map for land development projects.

(6) Application Review: Applicants shall obtain the local FIND Commissioner's initials on Form No. 90-26 prior to submitting the application to the District office. It is the applicant's responsibility to make timely arrangements for the local FIND Commissioner's review. In the absence of extenuating circumstances outside of the applicant's control as determined by the Board of Commissioners, an application shall not be considered complete if it does not include the local FIND commissioner's initials on Form No. 90-26. Upon receipt in the District office, staff will review the applications for completeness of the informational requirements identified in the Application Checklist, FIND Form Number 90-26 (effective date 7-30-02), and for compliance with the eligibility requirements of this rule. When an application is determined by staff to be incomplete or ineligible, staff will immediately inform the applicant by mail. The applicant will then have until the date established by the Board in the application package to bring the application into compliance. If the applicant fails to provide a complete application in compliance with these rules, the application will not be considered for funding. In order to have a complete application, the applicant shall not only submit the forms required under Rule 66B-2.006, F.A.C., and any other information requirements identified in the Application Checklist (FIND Form Number 90-26), but such forms and other submitted information must be completely filled out, executed as applicable, and also establish compliance with Chapter 66B-2, F.A.C.

(7) Interlocal Agreements: Applications that the Board determines will directly benefit the maintenance of the Atlantic Intracoastal Waterway channel as documented by the District's long range dredged material management plans, will directly benefit the maintenance of the Okeechobee Waterway channel as documented by the District's long range dredged material management

plan, will directly benefit the maintenance or improvement of District property, right-of-way or navigation interests, or have multiple funding partners including the Corps of Engineers as the project manager can qualify for project assistance through an interlocal agreement pursuant to Chapter 163 or Section 374.984(6)(a), F.S. District staff will identify these applications and present them to the Board for their determination as to funding. Interlocal agreement projects shall comply with all other provisions of this rule, except for pre-agreement expenses, permitting and property control requirements.

(8) Application Presentations: Applications determined to be complete and in compliance with this rule will be forwarded to the Board for review and then scheduled for presentation to the Board at a scheduled meeting of the Board. Applicants can decline to make a presentation to the Board by submitting a written request.

(9) Application Evaluation and Rating Score: Following the presentations, the Board will review the applications and evaluate them using the Waterways Assistance Program Application and Evaluation Worksheets No. 91-25 (A) through (F) for Waterways Assistance Program applications. The total points awarded to each application by the Commissioners will be averaged to determine an application's final rating score. The final rating score for each application must equal or exceed 35 points for the application to be considered for funding assistance. Reconsideration of any application with a final rating score of less than 35 points will only occur if the majority of the Commissioners evaluating the project rated the project equal to or exceeding 35 points and two-thirds of the Commissioners vote for reconsideration of the application. Only Applicants that are eligible under Rule 66B-2.0061, F.A.C., "Disaster Relief Applications," shall complete FIND Form No. 91-25F Emergency Re-Construction (effective date 4-24-06, 1/2014).

(10) Funding Determination: The Board will hold a funding allocation meeting at which time the Board will determine the allocation of funds, if any, to each project and the projects will be ranked by overall average score to facilitate final funding decisions by the Board. Allocations will be based in part upon the cumulative score of the applications as calculated from the Project Evaluation and Rating Form. Allocations will also be based upon the specific needs of the individual counties.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Amended 9-2-92, 6-24-93, 4-12-95, Formerly 16T-2.006, Amended 5-25-00, 3-21-01, 7-30-02, 3-20-03, 4-21-05, 4-24-06, 4-15-07, 3-25-08, 3-7-11, 1-27-14.

66B-2.0061 Disaster Relief Applications.

Disaster Relief applications may be submitted to the District and considered by the Board at any time during the year to provide assistance to an eligible applicant for the removal of navigation obstructions and repair or replacement of waterway facilities damaged by a declared natural disaster. Applicants for Disaster Relief shall use the same forms listed in subsection 66B-2.006(2), F.A.C. The District shall consider these applications in accordance with these rules.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 6-24-93, Amended 2-6-97, Formerly 16T-2.0061, Amended 4-24-06, 3-25-21.

66B-2.008 Project Eligibility.

(1) Eligible Projects: Financial assistance and support through this program shall be used to plan or carry out public navigation and anchorage management, public recreation, environmental education, boating safety, acquisition and development of spoil sites and publicly owned commercial/industrial waterway access directly related to the waterways, acquisition and development of public boat ramps, launching facilities and boat docking and mooring facilities, inlet management, maritime management planning, environmental mitigation and beach renourishment.

(a) Program funds may be used for projects such as acquisition, planning, development, construction, reconstruction, extension, or improvement, of the following types of projects for public use on land and water. These project types will be arranged into a priority list each year by vote of the Board. The priority list will be distributed to applicants with the project application.

1. Public navigation channel dredging,
2. Public navigation aids and markers,
3. Inlet management projects that are a benefit to public navigation in the District,
4. Public shoreline stabilization directly benefiting the District's waterway channels,
5. Acquisition and development of publicly owned spoil disposal site and public commercial/industrial waterway access,
6. Waterway signs and buoys for safety, regulation or information,
7. Acquisition, dredging, shoreline stabilization and development of public boat ramps and launching facilities,
8. Acquisition, dredging, shoreline stabilization and development of public boat docking and mooring facilities,

9. Derelict Vessel Removal,
10. Waterways related environmental education programs and facilities,
11. Public fishing and viewing piers,
12. Public waterfront parks and boardwalks and associated improvements,
13. Maritime Management Planning,
14. Waterways boating safety programs and equipment,
15. Beach renourishment on beaches adversely impacted by navigation inlets, navigation structures, navigation dredging, or a navigation project; and,
16. Environmental restoration, enhancement or mitigation projects; and,
17. Other waterway related projects. Waterway projects that do not meet specific criteria in subsection 66B-2.005(5) or (6) or subparagraphs 66B-2.008(1)(a)1.-16., F.A.C., but are located on eligible waterways shall be considered for funding under the priority listing of "other waterway related project" and eligible for 25% funding.

(b) Ineligible Projects or Project Elements. Project costs ineligible for program funding or matching funds will include: contingencies, miscellaneous, reoccurring personnel related costs, irrigation equipment, ball-courts, park and playground equipment, and any extraneous recreational amenities not directly related to the waterway such as the following:

1. Landscaping that does not provide shoreline stabilization or aquatic habitat,
2. Restrooms for non-waterway users,
3. Roadways providing access to non-waterway users,
4. Parking areas for non-waterway users,
5. Utilities for non-waterway related facilities,
6. Lighting for non-waterway related facilities,
7. Project maintenance and maintenance equipment,
8. Picnic shelters and furniture for non-waterway related facilities,
9. Vehicles to transport vessels; and,
10. Operational items such as fuel, oil, etc.
11. Office space that is not incidental and necessary to the operation of the main eligible public building; and,
12. Conceptual project planning, including: public surveys, opinion polls, public meetings, organizational conferences; and,
13. Inlet maintenance.

(c) Project Elements with Eligibility Limits: Subject to approval by the Board of an itemized expense list:

1. The following project costs will be eligible for program funding or as matching funding if they are performed by an independent contractor:
 - a. Project management, administration and inspection,
 - b. Design, permitting, planning, engineering or surveying costs for completed construction project,
 - c. Restoration of sites disturbed during the construction of an approved project,
 - d. Equipment costs.

Before reimbursement is made by the District on any of the costs listed in subparagraph 1., above, a construction contract for the project, approved and executed by the project sponsor and project contractor must be submitted to the District.

2. Marine fire-fighting, Marine law enforcement and other vessels are eligible for a maximum of \$100,000 in initial District funding. All future replacement and maintenance costs of the vessel and related equipment will be the responsibility of the applicant.

3. Waterway related environmental education facility funding will be limited to those project elements directly related to the District's waterways.

(d) Phasing of Projects: Applications for eligible waterway projects may be submitted as a phased project where Phase I will include the design, engineering and permitting elements and Phase II will include the construction of the project. A description and cost estimate of the Phase II work shall be submitted along with the Phase I application for Board review.

(2) Property Control: The site of a new proposed land-based development project, with the exception of those projects requesting Small-Scale Spoil Island Restoration and Enhancement funding, shall be dedicated for the public use for which the project was intended for a minimum period of 35 years after project completion. Such dedication shall be in the form of a deed, lease, management agreement or other legally binding document and shall be recorded in the public property records of the county in which the property is located. This property control requirement also applies to a project site owned by another governmental

entity. The governmental entity that owns the project site may be joined as a co-applicant to meet this property control requirement. Existing land based development projects that are being repaired, replaced or modified must demonstrate that the project site has been dedicated for public use for at least 25 years with at least 10 years remaining on the dedication document. Property shall also be deemed dedicated for public use if:

(a) The property has been designated for the use for which the project is intended (even though there may have been no formal dedication) in a plat or map recorded prior to 1940, or

(b) The project sponsor demonstrates that it has had exclusive control over the property for the public use for which the project is intended for a period of at least 30 years prior to submission of the application, or

(c) There is no ongoing litigation challenging the designated use of the property as shown on the plat or map, nor has there been any judicial determination contrary to the use by the public for the use shown on the plat or map.

(3) Permits: The project sponsor is responsible for obtaining and abiding by any and all federal, state and local permits, laws, proprietary authorizations and regulations in the development and operation of the project. Applicants for construction projects that include elements that require state or federal environmental permits or proprietary authorizations will demonstrate that all required environmental permitting and authorizations will be completed by the third Monday in September. This demonstration will be by submission of the required environmental permit(s) and authorizations, or by submission of a letter from the agency(s) stating that a permit or authorization is not required. Failure to timely submit the required environmental permits and authorizations or letters stating such permits or authorizations are not required shall result in the application not being considered for funding.

(4) Public Marina Qualifications: All public marina projects funded through this program shall include sewage pumpout facilities for vessels, unless the applicant can demonstrate that inclusion of such a facility is physically, operationally or economically impracticable. All public marina projects funded through this program shall have at least ten percent (10%) of their slips or mooring areas available for transient vessels. Public marina dockage rates shall be within market comparison of the dockage rates of other area marinas. The public marina will be required to establish and maintain an accounting of the funds for the facility and shall plan for and retain at all times sufficient funds for the on-going maintenance of the facility during its project life.

(5) The District may assist eligible local governments with efforts to prepare and implement a comprehensive maritime management plan. The plan shall be utilized by the eligible government to promote and maximize the public benefit and enjoyment of eligible waterways, while identifying and prioritizing the waterway access needs of the community. The plan should not duplicate any existing or ongoing efforts for the same waterway or water shed, nor shall the District participate in any effort that does not address the basic maritime needs of the community.

(a) Existing plans may be updated at reasonable intervals or amended to include waterway areas previously not included in the original effort. Public, government, environmental, industry and other pertinent interest groups shall be solicited and included for input in the planning process.

(b) The plan shall be utilized as a tool to provide a minimum 5-year planning analysis and forecast for the maritime needs of the community, and shall include, at minimum, the following:

1. Public boat ramp and ramp parking inventory and analysis.
2. Public mooring and docking facility analysis, including day docks and transient slips.
3. Commercial and working waterfront identification and needs analysis.
4. The identification, location, condition and analysis of existing and potential navigation channels.
5. An inventory and assessment of accessible public shorelines.
6. Public Waterway transportation needs.
7. Environmental conditions that affect boat facility siting, a current resource inventory survey, and restoration opportunities.
8. Economic conditions affecting the boating community and boating facilities.
9. Acknowledgment and coordination with existing data and information, including an emphasis on the Intracoastal Waterway.

(c) Projects requested for assistance program funding shall be consistent with the applicant's maritime management plan. The applicant should utilize the plan to assist in prioritizing waterway improvement projects.

(6) All eligible environmental restoration, enhancement or mitigation projects as well as the environmental restoration, enhancement or mitigation components of other types of projects shall be required to pursue and assign any available mitigation credits to the District for that share of the project funded through the District's Assistance Program. All eligible environmental restoration, enhancement or mitigation projects shall provide public access where possible.

(7) Final Decisions: The Board will make all final decisions on the eligibility of a Project or specific project costs.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1)-(3) FS. History—New 12-17-90, Amended 9-2-92, 6-24-93, 2-3-94, 4-12-95, 9-5-96, 2-6-97, Formerly 16T-2.008, Amended 5-17-98, 3-31-99, 5-25-00, 3-21-01, 7-30-02, 3-20-03, 3-3-04, 4-15-07, 3-25-08, 4-1-09, 2-22-10, 3-7-11, 3-7-12, 1-27-14, 2-17-15, 2-21-16, 3-25-21, 3-9-23.

66B-2.009 Project Administration.

The District will appoint a project manager who shall be responsible for monitoring the project and the project agreement. The project manager shall also be responsible for approving all reimbursement requests. The project sponsor shall appoint a liaison agent, who will be a member of the eligible applicant's staff, to act on its behalf in carrying out the terms of the project agreement. Administration of the project will be as follows:

(1) Project Agreement: For each funded project, the District and the project sponsor will enter into a project agreement. The project agreement shall be executed and returned by the project sponsor within six (6) months of the approval of the project funding and prior to the release of program funds, setting forth the mutual obligations of the parties concerning the project. The project agreement shall incorporate the applicable policies and procedures of the program as outlined in this rule. Project agreements will be for a two-year period with the possibility for one, one-year extension. Any request for a one-year extension of funding shall require submittal by the PROJECT SPONSOR of a request for extension to the DISTRICT no later than July of fiscal year two of the approved project. This request will then be considered by the DISTRICT Board, whose decision shall be final. In review of these requests, the Board will take into consideration the current status and progress of the project and the ability of the applicant to complete the project within one additional year.

(2) Matching Funds: The project sponsor shall clearly identify and enumerate the amount and source of the matching funds it will be using to match the program funds supplied by the District for an approved project. The project sponsor shall provide suitable evidence that it has the matching funds available at the time the project agreement is executed.

(3) Agreement Modification: All proposed changes to the project agreement must be submitted to the District in writing by the project sponsor accompanied by a statement of justification for the proposed changes. All project agreement amendments shall be approved by the District Board, except that the Executive Director may approve a minor project agreement amendment for a project within a county with the local District commissioner's concurrence. A minor project amendment shall not change the approved project's category, result in a reallocation of more than 35% of the approved funding of the project among project elements, nor allow for a greater than 35% change in the project scale or scope of work. Project agreement amendments will not include a change to the approved project's location or a change in the approved project's purpose or project type. Agreed changes shall be evidenced by a formal amendment to the project agreement and shall be in compliance with these rules.

(4) Project Reporting: The liaison agent will submit quarterly reports to the project manager summarizing the work accomplished since the last report, problems encountered, percentage of project completion and other appropriate information. These reports shall continue throughout the length of the project period until completion of the project. The report shall be submitted on Form 95-02, "Assistance Program Project Quarterly Status Report," dated 7-30-02, hereby incorporated by reference and available at the District office. A Final Project Report shall be submitted at the completion of the project and shall at minimum include: project summary, photo of completed project, final cost, project benefits to the waterway and location address.

(5) Reimbursement Requests: The liaison agent may submit periodic reimbursement requests during the project period in accordance with Rule 66B-2.011, F.A.C. The project manager will approve or disapprove all reimbursement requests. The final payment of program funds will be made upon certified completion of the project by the District.

(6) Project Inspection: Upon reasonable request, the project manager shall have the right to inspect the project and any and all records relating to the project.

(7) Project Completion: The project shall be completed within three (3) years of the date of the beginning of the District's first fiscal year for which the project was approved. If the completion of a project is impacted by a declared state of emergency and the Board waives this rule section, the extension of time granted shall not exceed one additional three (3) year period.

(8) Project Completion Requirements: Upon completion of the project, the liaison agent shall provide the following to the project manager:

(a) A Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02), hereby incorporated by reference and available from the District office, which certifies that the project was completed in accordance with the project agreement and the final project plans.

(b) A final reimbursement request accompanied by all required billing statements and vouchers.

(c) Photograph(s) showing the installation of the sign required by Rule 66B-2.013, F.A.C.

(d) Photograph(s) of the completed project clearly showing the program improvements.

(9) Project Completion Review: The project manager will review the project completion package and will authorize or reject the final reimbursement payment which will include all retained funds from previous requests.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.009, Amended 3-21-01, 7-30-02, 3-7-11, 1-27-14, 3-25-21.

66B-2.011 Reimbursement.

The District shall release program funds in accordance with the terms and conditions set forth in the project agreement. This release of program funds shall be on a reimbursement only basis. The District shall reimburse the project sponsor for project costs expended on the project in accordance with the project agreement. Project funds to be reimbursed will require the submission of a Reimbursement Request Form and required supporting documents, FIND Form No. 90-14 (effective date 7-30-02) hereby incorporated by reference and available from the District office.

(1) Authorized Expenditures: Project funds shall not be spent except as consistent with the project agreement cost estimate that was approved by the Board, which shall be an attachment to the project agreement. This cost estimate will establish the maximum funding assistance provided by the District and the percentage of funding provided by each party to the project. The District will pay the lesser of:

(a) The percentage total of project funding that the Board has agreed to fund, or

(b) The maximum application funding assistance amount.

(2) Phase I Reimbursement: In accordance with these rules, reimbursement cannot be made on a Phase I application until a construction contract is executed by the applicant for the construction phase of the project. If the Phase I project is completed but a construction contract is not executed by the three (3) year project deadline, then the District shall only allow one (1) year from the Phase I project deadline to enter into the required construction contract before the Phase I funding is cancelled.

(3) Reimbursement Requests: All project costs shall be reported to the District and summarized on the Reimbursement Request Form. All requests for reimbursement shall include supporting documentation such as billing statements for work performed and cancelled payment vouchers for expenditures made.

(4) Retainage: The District shall retain ten percent (10%) of all reimbursement payments until final certification of completion of the project. The District shall withhold any reimbursement payment, either in whole or part, for non-compliance with the terms of this agreement.

(5) Check Presentations: A District representative shall present the final reimbursement check to the project sponsor during a public commission meeting or public dedication ceremony for the project facility.

(6) Recovery of Additional Project Funding: If the project sponsor receives additional funding for the project costs from another source that was not identified in the original application and that changes the agreement cost-share percentage, the project sponsor shall proportionately reimburse the District's program funds equal to the cost-share percentage in the approved project agreement. The project sponsor shall promptly notify the District of any project payments it receives from a source other than the District.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Amended 6-24-93, Formerly 16T-2.011, Amended 3-31-99, 7-30-02, 3-7-11.

66B-2.012 Accountability.

The following procedures shall govern the accountability of program funds:

(1) Accounting: Each project sponsor is responsible for maintaining an accounting system which meets generally accepted accounting principles and for maintaining such financial records as necessary to properly account for all program funds.

(2) Quarterly Reports: The project sponsor shall submit quarterly project status reports to FIND in accordance with subsection 66B-2.009(4), F.A.C.

(3) Completion Certification: All required final completion certification documents and materials as outlined in subsection 66B-2.009(8), F.A.C., of this rule shall be submitted to the District prior to final reimbursement of program funds.

(4) Auditing: All project records including project costs shall be available for review by the District or by an auditor selected by the District for 3 years after completion of the project. Any such audit expenses incurred shall be borne entirely by the project sponsor.

(5) Project Records: The project sponsor shall retain all records supporting project costs for three years after either the completion of the project or the final reimbursement payment, whichever is later, except that should any litigation, claim, or special audit arise before the expiration of the three year period, the project sponsor shall retain all records until the final resolution of such matters.

(6) Repayment: If it is found by any State, County, FIND, or independent audit that program funds have not been used in accordance with this rule and applicable laws, the project sponsor shall repay the misused program funds to the District.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.012, Amended 7-30-02.

66B-2.013 Acknowledgement.

The project sponsor shall erect a permanent sign, approved by the District, at the entrance to the project site which indicates the District's participation in the project. This sign shall contain the FIND logo. In the event that the project sponsor erects a temporary construction sign, this sign shall also recognize the District's participation. If the final product of the project is a report, study or other publication, the District's sponsorship of that publication shall be prominently indicated at the beginning of the publication. If the project results in an educational display, the District's logo and a statement of the District's participation in the project shall be contained in the display.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Formerly 16T-2.013, Amended 2-22-10.

66B-2.014 Small-Scale Spoil Island Restoration and Enhancement Projects.

Proposals shall be accepted for the restoration or enhancement of spoil islands and natural islands within the District's waterways for recreational, navigational, educational, and environmental purposes. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – A Request for Proposals procedure will be used to request proposals for consideration. Proposals shall follow the format described in FIND Document #03-02, Call for Proposals – Small-Scale Spoil Island Restoration and Enhancement Program (effective date 7-30-02), hereby incorporated by reference and available from the District office. Proposals may be submitted to the District and considered by the Board at any time during the year.

(2) Matching Funds: Small-scale spoil island restoration and enhancement may qualify for up to ninety percent (90%) program funds. The applicant's ten percent (10%) matching funds may include in-kind contribution pursuant to paragraph 66B-2.014(4)(b), F.A.C.

(3) Eligibility: All proposals must meet the following eligibility criteria to be considered for funding:

(a) Management Plan Compliance: Projects shall be in compliance with the provisions of any Spoil Island Management Plans or other management plans that govern the Project site.

(b) Property Control: The Project Sponsor must have written property rights on the Project site to construct and maintain the Project for a minimum of five years. Such property rights can be in the form of a lease, interlocal agreement, use agreement or other legal form approved by the District. The applicant shall include a map clearly delineating the location of all proposed work included in the application.

(4) Funds Allocation: Funds shall be allocated pursuant to Rule 66B-2.005, F.A.C., subject to the exceptions identified in this rule, and with the following additions:

(a) The District shall fund a maximum of up to \$7,500 per project, not to exceed \$22,500 per County, per fiscal year.

(b) The Project Sponsor may contribute in-kind construction labor; such in-kind construction labor costs will not be counted by the District as exceeding \$10.00 per hour. No administrative costs can be incorporated into the Project as Project costs.

(c) The funding provided by the District shall only be allocated for specific Project expenses such as construction materials, plant materials, herbicides, etc. The funding provided by the District shall not be allocated for parties, food or beverages.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 7-30-02, Amended 4-24-06, 3-7-11, 3-25-21.

66B-2.015 Small-Scale Derelict Vessel Removal Projects.

Proposals shall be accepted for financial assistance for the removal of derelict vessels within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure – Applications shall be submitted on a completed FIND Form No. 05-01 (Small-Scale Derelict

Vessel Removal Program) (effective date 4-24-06), and FIND Form No. 01-06 (Small-Scale Derelict Vessel Removal Program – Project Cost Estimate), (effective date 4-24-06), hereby incorporated by reference and available from the District office. Applications may be submitted to the District and considered by the Board at any time during the year.

(2) The District shall only fund applicants that have identified derelict vessels to be removed and have a current bid for removal for such vessels, or have completed the removal of such vessels within the 6 months preceding the application, subject to eligibility under these program rules.

(3) The program must be sponsored by an eligible government agency or not-for-profit organization.

(4) District funding shall be limited to \$75,000.00 per county, per year, provided on a reimbursement basis only. The limitation on pre-agreement expenses may be waived by the Board in accordance with subsection 66B-2.005(3), F.A.C.

(5) The eligible applicant must provide the remaining matching funds for project completion. In no case shall the District's cost-share contribution exceed 75% of the total project costs. In-house project management or administration costs are not eligible costs or matching costs.

(6) The derelict vessel must be located in the District's Waterways, as defined in Rule 66B-2.003, F.A.C. The applicant shall include a map clearly delineating the location of all vessels included in the application.

(7) The District shall be recognized when possible in all written, audio or video advertising and promotions as a participating sponsor of the program.

(8) The funding provided by the District shall only be allocated for removal of derelict vessels. The District is providing program reimbursement funds only and shall be held harmless with regards to the activities initiated by the applicant.

(9) The applicant shall be responsible for all maintenance, management, disposal and operating expenses associated with the program.

(10) Funds derived from the sale of any derelict vessels or vessel parts removed through this grant program must be reinvested into the applicant's derelict vessel removal program.

(11) The District Board shall make all final decisions concerning the provision of funding for this program.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 4-24-06, Amended 4-15-07, 3-25-08, 3-7-11, 1-27-14, 3-25-21, 3-9-23.

66B-2.016 Waterways Cleanup Events.

Proposals shall be accepted for financial assistance for the organized removal of refuse within the District's waterways. The applicable provisions of this rule apply to these applications with the following additions or exceptions:

(1) Application Procedure: Prior to the event, a request for funding shall be submitted to the District by means of a cover letter detailing the occurrence of the cleanup, contact information, a map of the cleanup locations and the general parameters of the event. In addition, the Applicant will submit a detailed budget clearly delineating the expenditure of all District funds, as well as the overall general budget of the event. Proposals may be submitted to the District and considered by the Board at any time during the year.

(2) Availability: The District shall fund a maximum of one clean-up program per waterway, per year within a county, with exception to the provisions of subsections (8) through (10), below.

(3) Applicant Eligibility: The clean-up program must be sponsored by a government agency or a registered not-for-profit corporation.

(4) Funding: District funding shall be limited to \$5,000 per waterway, per county, except for the provisions of subsections (8) through (10), below.

(5) The District shall be recognized in all written, online, audio or video advertising and promotions as a participating sponsor of the clean-up program.

(6) Funding Eligibility: The funding provided by the District shall only be allocated to reimburse the applicant for out of pocket expenditures related to specific cleanup program expenses such as trash bags, trash collection, haul and landfill fees, gloves, advertising, T-shirts, and related expenses. The funding provided by the District shall not be allocated for parties, meetings, food or beverages.

(7) The District Board shall make all final decisions concerning the provision of funding for a clean-up program. In addition to the requirements stated above, a cleanup program implementing all of the following additional incentives will qualify for up to additional \$5,000 in clean up funds.

(8) The clean-up program budget must provide equal or greater matching funds for all Navigation District funding.

(9) The applicant shall tally and report the composition and location of the waterway-related debris, with the goal to show definitive progress in the amount of refuse collected, a reduction in the overall debris in the waterway, or an increase in the number of additional waterway areas included in the clean up.

(10) For each additional \$1,000 in Navigation District funding, the applicant shall coordinate a minimum of one waterway collection point or clean up area, or an applicant can conduct an additional waterway cleanup program for the waterway areas.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 3-7-11.

EXHIBIT C

FLORIDA INLAND NAVIGATION DISTRICT

ASSISTANCE PROGRAM

Matching Funds Certification

Sponsor: _____

Project Title: _____ Project #: _____

Source of Matching Funds: _____

Amount of Matching Funds: _____

I hereby certify that the above referenced project Sponsor, as of October 01, 2022, has the required matching funds for the accomplishment of the referenced project in accordance with the Waterways Assistance Program Project Agreement between the Florida Inland Navigation District and the Sponsor, dated _____.*

Project Liaison Name: _____

Project Liaison Signature: _____

Date: _____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT D

FLORIDA INLAND NAVIGATION DISTRICT ASSISTANCE PROGRAM PAYMENT REIMBURSEMENT REQUEST FORM

PROJECT NAME: _____ PROJECT #: _____

PROJECT SPONSOR: _____ BILLING #: _____

Amount of Assistance	A.	_____
Less Previous Total Disbursements	B.	_____
and Less Previous Total Retainage		
Held Balance Available	=	_____

Funds Requested This Disbursement

Funds Requested	C.	_____
Less Retainage (-10% unless final)	D.	_____
Check Amount	=	_____

Amount of Assistance		_____
Less Total Prior and Current		
Payments Including all retainage		
held (B+C)	=	_____
= Balance Remaining		

SCHEDULE OF EXPENDITURES

Expense Description (Should correspond to Cost Estimate Sheet Categories in Exhibit "A")	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost
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EXHIBIT D (CONTINUED)

SCHEDULE OF EXPENDITURES

Expense Description (Should correspond to Cost Estimate Sheet Categories in Exhibit "A")	Vendor Name	Check No. and Date	Total Cost	Applicant Cost	FIND Cost
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Certification for Reimbursement: I certify that the above expenses were necessary and reasonable for the accomplishment of the approved project and that these expenses are in accordance with Exhibit "A" of the Project Agreement. *

Project Liaison

Date

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT E

FLORIDA INLAND NAVIGATION DISTRICT ASSISTANCE PROGRAM

Project Completion Certification

Sponsor: _____

Project Title: _____ Project #: _____

I hereby certify that the above referenced project was completed in accordance with the Assistance Program Project Agreement between the Florida Inland Navigation District and _____, dated _____, 20____, and that all funds were expended in accordance with Exhibit "A" and Paragraph 1 of the Project Agreement. *

Project Liaison Name: _____

Project Liaison Signature: _____

Date: _____

*S. 837.06 Florida Statutes, False official statements. - Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 F.S.

EXHIBIT F

**ASSISTANCE PROGRAM PROJECT
QUARTERLY STATUS REPORT**

PROJECT NO. _____

PROJECT TITLE: _____

PROJECT SPONSOR: _____

REPORT PERIOD

Oct 1-D ____ ; -Mar ____ ; -June ____ ; Ju -Sep ____
Report Due: (Dec 30) (March 3) (June 30) (Sep 3)

WORK ACCOMPLISHED:

PROBLEMS ENCOUNTERED:

PERCENTAGE COMPLETION:

OTHER NOTABLE ITEMS:

EXHIBIT G

ASSISTANCE PROJECT SCHEDULE

OCTOBER 20 3-	Project Agreement Executed, Project Initiates.	
DECEMBER 30, 20 3	First Quarterly Report Due. -	Use Quarterly Status Report Form Exhibit F http://www.aicw.org/assistance_programs/waterway_assistance_programs/index.php
MARCH 3 , 20 4-	Second Quarterly Report Due.	
JUNE 30, 2024-	Third Quarterly Report Due.	
SEPTEMBER 3 , 2024 -	Fourth Quarterly Report Due.	
DECEMBER 30, 2024-	Fifth Quarterly Report Due.	
MARCH 3 20 5-	Sixth Quarterly Report Due.	
JUNE 30, 20 5-	Seventh Quarterly Report Due.	

NOTE: If the project will not be completed and all close out paperwork submitted by September 30th , a request for a 1-year extension of the completion date of the project should be submitted with the June 2025 quarterly report.

SEPTEMBER 1-30, 20 5- loseout paperwork
Closeout paperwork consists of :

1. Project Completion Certificate, FIND Form No. 90-13 (effective date 7-30-02), which certifies that the project was completed in accordance with the project agreement and the final project plans.
2. A final reimbursement request accompanied by all required supporting documentation including bills and canceled payment vouchers for expenditures.
3. Photograph(s) showing the installation of the sign required by Rule 66B-2.013, F.A.C.
4. Photograph(s) of the completed project clearly showing the program improvements. (jpg or tif format)
5. A Final Project Report (1-2 pages) that shall at minimum include: project name and address, project summary, final cost, and project benefits to the waterway.

SEPTEMBER 30, 20 5 - End of Grant. All work must be complete closeout paperwork submitted.

October 20 5- finish processing closeout paperwork, perform project inspection and submit final reimbursement check check presentation sponsor.

NOTE: ANY MODIFICATIONS to the PROJECT shall require advance notice and prior written approval of the District. The appropriate timing for modifications to the project cost estimate, Exhibit A, would be after receipt of bids.

***NON-COMPLIANCE by the PROJECT SPONSOR with the reporting schedule in Exhibit G may result in revocation of this agreement pursuant to Section 13 of the project agreement.**

EXHIBIT H

http://www.aicw.org/studies_and_information/bids_files_plans_logos/logos.php#revize_document_center_rz617



2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
CAP					
	Bureau of Land Management	Jupiter Inlet Lighthouse ONA Shoreline Stabilization Part 1 Upland	\$6,000,000	\$3,000,000	\$3,000,000
			\$6,000,000	\$3,000,000	\$3,000,000
Nassau					
	City of Fernandina Beach	Fernandina Marina 2023 Dredging	\$800,000	\$400,000	\$326,000
		TOTAL	\$800,000	\$400,000	\$326,000
Duval					
	City of Jacksonville	Downtown Dredging Phase I	\$500,000	\$250,000	\$250,000
	City of Jacksonville	Sisters Creek Transient Facilities Phase I	\$700,000	\$350,000	\$350,000
	City of Jacksonville	St. Johns Marina Boardwalk	\$1,200,000	\$600,000	\$600,000
	City of Jacksonville	Oak Harbor Boat Ramp Bulkhead Phase II	\$1,600,000	\$800,000	\$800,000
		TOTAL	\$4,000,000	\$2,000,000	\$2,000,000
St. Johns					
	St. Johns County	Genovar Land Acquisition	\$17,000,000	\$2,000,000	\$1,055,500
		TOTAL	\$17,000,000	\$2,000,000	\$1,055,500
Flagler					
	Flagler County	Marine LE Search and Rescue Vessel	\$79,137	\$38,568	\$38,568
	City of Palm Coast	Waterfront Park Phase IIC	\$1,048,529	\$360,000	\$286,032
		TOTAL	\$1,127,666	\$398,568	\$324,600
Volusia					
	City of Daytona Beach	City Island Shoreline Enhancement Phase I	\$196,000	\$98,000	\$98,000
	City of New Smyrna Beach	North Causeway Boat Ramp Dock & Amenity Phase II	\$1,120,000	\$560,000	\$560,000
	City of Port Orange	Day Dock at Riverwalk Park Phase I	\$184,000	\$92,000	\$92,000
		TOTAL	\$1,316,000	\$658,000	\$750,000

2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
Brevard					
	City of Cocoa	Cocoa Waterfront Public Docking and Breakwater Phase I	\$168,000	\$84,000	\$84,000
	City of Cocoa Beach	Cocoa Beach Police Vessel 2023	\$100,000	\$50,000	\$50,000
	City of Cocoa Beach	Public Channel Marker Replacement FY 2024	\$56,120	\$28,060	\$28,060
	City of Melbourne	Front Street Boat Ramp Dock Replacement Phase I	\$120,000	\$60,000	\$60,000
	City of Palm Bay	Castaways Point Park South Fishing Pier	\$200,000	\$100,000	\$100,000
TOTAL			\$644,120	\$322,060	\$322,060
Indian River					
	City of Sebastian	North County Marine Law Enforcement Facility Dock	\$100,000	\$50,000	\$50,000
	City of Sebastian	Working Waterfront Extension Phase I	\$240,000	\$120,000	\$120,000
	Indian River County	IRC Sheriff's Office Vessel	\$200,000	\$100,000	\$100,000
	Indian River County	Environmental Learning Center Dock Replacement Part 2	\$100,000	\$50,000	\$50,000
TOTAL			\$640,000	\$320,000	\$320,000
St. Lucie					
	City of Port St. Lucie	Port District Preserve Upland Trails	\$800,000	\$400,000	\$400,000
	St. Lucie County	Underwater Search and Recovery Team ROV	\$110,160	\$55,080	\$55,080
TOTAL			\$910,160	\$455,080	\$455,080
Martin					
	Martin County	Martin County 96th Street Artificial Reef Bulkhead	\$1,000,000	\$400,000	\$400,000
TOTAL			\$1,000,000	\$400,000	\$400,000
Palm Beach					
	City of Boca Raton	Spanish River Dock Rehabilitation	\$200,000	\$100,000	\$100,000
	City of Boynton Beach	Boynton Beach Fire and Police Dock and Lift Phase II	\$125,915	\$62,958	\$0
	City of West Palm Beach	Brian Chappell Park Pier Replacement	\$425,000	\$212,500	\$0
	Palm Beach County	Bert Winters Park Redevelopment Phase IIB	\$1,600,000	\$800,000	\$800,000
TOTAL			\$2,350,915	\$1,175,458	\$900,000

2023-2024 ASSISTANCE PROGRAM APPLICATIONS BY COUNTY

COUNTY	PROJECT SPONSOR	PROJECT TITLE	Total Cost	Assistance Requested	Amount Awarded
Broward					
	City of Fort Lauderdale	Cooley's Landing Marina Renovation	\$3,000,000	\$1,500,000	\$1,500,000
	City of Fort Lauderdale	Fort Lauderdale Police Dept Outboard Motor Replacement (Boat #14)	\$90,190	\$45,095	\$45,095
	City of Lighthouse Point	Lighthouse Point Vessel/Hull Replacement	\$161,083	\$75,000	\$75,000
	City of Oakland Park	Hawkins Boat Ramp Phase I	\$400,000	\$200,000	\$61,517
	City of Wilton Manors	Wilton Manors Vessel (Barge)	\$150,000	\$75,000	\$75,000
TOTAL			\$3,801,273	\$1,895,095	\$1,756,612
Miami-Dade					
	City of Miami	Miami Derelict Vessel Removal	\$104,000	\$52,000	\$52,000
	City of Miami	Miami Police Marine Vessel	\$400,155	\$100,000	\$100,000
	City of Miami	Miami Marine Stadium Mooring Field Phase I	\$290,100	\$145,050	\$145,050
	City of Miami	Morningside Park Phase II Part 1	\$9,405,340	\$4,352,670	\$4,352,670
	City of Miami	Virginia Key Boat Ramp and Trailer Parking Phase II	\$2,922,400	\$1,261,200	\$1,261,200
	City of Miami Beach	Marine Patrol Dock Improvements Phase I	\$187,800	\$93,900	\$93,900
	Indian Creek Village	ICV Marine Patrol Boat Engine Replacements	\$60,000	\$30,000	\$30,000
	Miami Shores Village	Miami Shores Village Bayfront Park Phase I	\$250,000	\$125,000	\$125,000
	Miami-Dade County	Bill Bird Marina Boat Ramp Restroom Phase I	\$321,248	\$112,430	\$112,430
	Miami-Dade County	Chapman Field Park Kayak Launch Dock Replacement Phase I	\$120,000	\$60,000	\$60,000
	Miami-Dade County	Pelican Harbor Marina Boat Ramp Restroom Phase I	\$205,000	\$102,500	\$102,500
TOTAL			\$14,162,043	\$6,382,750	\$6,434,750
OVERALL WAP TOTALS			\$47,752,177	\$16,407,011	\$15,044,602
OVERALL CAP TOTALS			\$6,000,000	\$3,000,000	\$3,000,000
total requests				\$19,407,011	\$18,044,602

Yellow highlighted = award is less than requested



Dredging & Marine Consultants
DMC
 ENGINEERS • SCIENTISTS
 4643 S. Clyde Morris Blvd
 Unit 302
 Port Orange, FL 32129
 Phone: (386) 304-6505
 Fax: (386) 304-6506
www.dmc.es.com

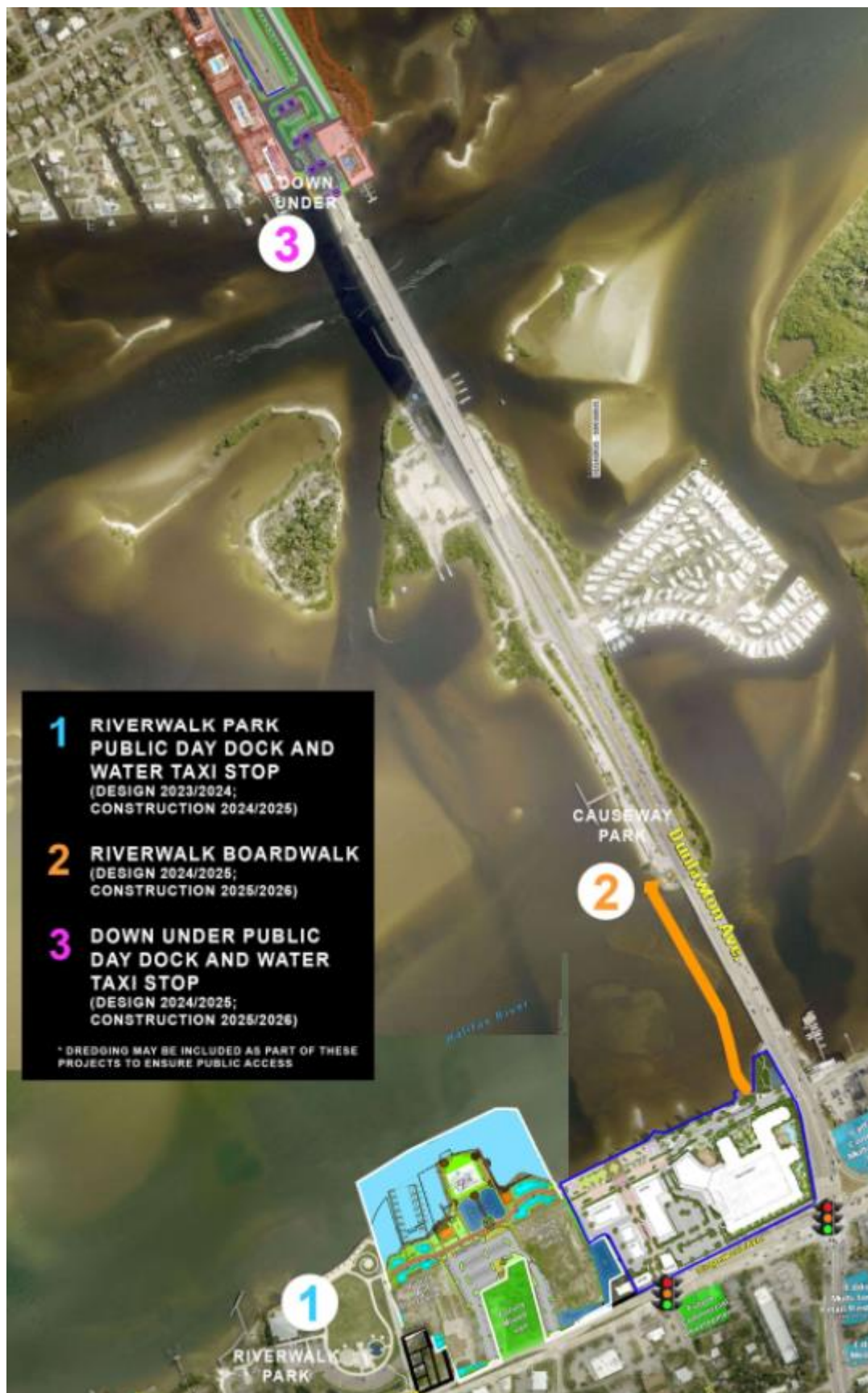
PROJECT NAME:
**DAY DOCK AT RIVERWALK PARK
 DESIGN AND PERMITTING, PH. 1**

APPLICANT:
CITY OF PORT ORANGE

DRAWING:
SITE DEVELOPMENT MAP

DMC JOB NO. -

DRAWN -	CAD	C3D	DRAWING NO.
CHECKED -	SCALE AS SHOWN		-
APPROVED -	DATE 03-24-2023		-





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C11) Resolution No. 23-55 - Acceptance of Deed of Dedication for Public Purposes - South Side of 662 Herbert Street

DEPARTMENT: Community Development

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Resolution No. 23-55 accepting the Deed of Dedication for right-of-way along the south side of Herbert Street, adjacent to 662 Herbert Street.

SUMMARY: As part of a Minor Subdivision application at 662 Herbert Street (subject property), the property owner is required by the Land Development Code (LDC) to dedicate 10 feet of right-of-way ($\pm$ 1,908 square feet) along the south side of Herbert Street prior to subdividing the property into two lots.

The right-of-way dedication pertains to the area along the north side of the property adjacent to Herbert Street. According to the LDC, the ultimate right-of-way width for the section of Herbert Street between Jackson Street and Sixth Street is 60 feet. Currently, the width of the Herbert Street right-of-way adjacent to the subject property is 40 feet; therefore, an additional 20 feet is needed. The property owner is dedicating the required 10 feet of right-of-way on the south side of Herbert Street. If the property on the north side of Herbert Street is ever redeveloped, the remaining 10 feet will be required to be dedicated to the City. The additional right-of-way is required by the LDC for future roadway improvements to Herbert Street, which could include pedestrian improvements along this segment of Herbert Street.



PRESENTER: Tim Burman, Penelope Cruz

ATTACHMENTS:

1.	Resolution 23-55 with exhibit	Resolution 23-55 with exhibit.pdf
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Gwen Perney
Tim Burman
Shannon Balmer
Wayne Clark
Tracee Cody

Created/Initiated - 10/5/2023
Approved - 10/6/2023
Approved - 10/24/2023
Approved - 10/24/2023
Final Approval - 10/24/2023

RESOLUTION NO. 23-55

A RESOLUTION OF THE CITY OF PORT ORANGE,
VOLUSIA COUNTY, FLORIDA, ACCEPTING A DEED OF
DEDICATION CONVEYING APPROXIMATELY TEN (10)
FEET OF ADDITIONAL RIGHT-OF-WAY FOR PUBLIC USE;
PROVIDING FOR CONFLICTING RESOLUTIONS;
PROVIDING FOR SEVERABILITY; AND PROVIDING FOR
AN EFFECTIVE DATE.

WHEREAS, Leslie Ann Meadows, Elliot Meadows, James Meadows Jr.,
Geraldine M. Meadows, and Irelyne Meadows are willing to convey to the City of Port
Orange, Florida certain real property for the purpose of right-of way improvements; and

WHEREAS, Leslie Ann Meadows, Elliot Meadows, James Meadows Jr.,
Geraldine M. Meadows, and Irelyne Meadows have executed and presented to the City
of Port Orange, Florida, a Deed of Dedication, attached hereto as **EXHIBIT “1”**,
incorporated herein and made a part hereof by reference; and

WHEREAS, said deed conveys lands necessary for future roadway
improvements to the Herbert Street right-of-way; and

WHEREAS, it is in the best interest of the City to accept the Deed of Dedication
for purposes stated herein; and

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

Section 1. The above Recitals are incorporated by reference into the body of
this Resolution.

Section 2. The City Council of the City of Port Orange, Florida hereby accepts
the Deed of Dedication, attached hereto.

Section 3. The City Council of the City of Port Orange, Florida has determined that the acquisition of the aforesaid property is for a public purpose.

Section 4. All resolutions or parts of resolutions in conflict with the provisions of this resolutions are hereby repealed to the extent of such conflict.

Section 5. If any provision of this resolution or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this resolutions which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared severable.

Section 6. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on this _____ day of _____ 2023

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

EXHIBIT "A"

Prepared by:
Shannon K. Balmer,
Assistant City Attorney
City of Port Orange
1000 City Center Circle
Port Orange, Florida 32129

A portion of Parcel No. 6304-06-00-0090

Deed of Dedication (Right-of-Way)

This Deed of Dedication, is made and executed this _____ day of _____, 2023, between **Leslie Ann Meadows**, whose Post Office Address is 662 Herbert St, Port Orange, FL 32129, and **Elliot Meadows**, whose Post Office Address is 590 Lake Winnemissett Dr, Deland, FL 32724, and **James Meadows Jr. and Geraldine M. Meadows**, husband and wife, whose Post Office Address is 752 Tarrytown Trl, Port Orange, FL 32127, and **Irelyne Meadows**, a single woman, whose Post Office Address is 1026 Gary Blvd, South Daytona, FL 32119, whose mailing address is 3817 s. Nova Rd. Ste. 104-163, Port Orange, FL 32127 hereinafter referred to as, "Dedicator;" and **CITY OF PORT ORANGE, FLORIDA, a Florida municipal corporation**, of the County of Volusia in the State of Florida, post office address: Attn: City Manager, 1000 City Center Circle, Port Orange, FL 32129-4144, "City."

WITNESSETH:

That the said Dedicator, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to said Dedicator, in hand paid by the City, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, release, remise, and quit-claim unto the City, its successors and assigns forever, for the purposes of a right-of-way for a public road and appurtenances, all that certain land lying and being in the County of Volusia, State of Florida, being more particularly described as follows:

SEE ATTACHED EXHIBIT "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose recited above, and such other public purposes deemed desirable by City.

AND the said Dedicator hereby covenants with City that the Dedicator is lawfully seized of said land in fee simple; that the Dedicator has good right and lawful authority to dedicate and convey said land; that the Dedicator does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances.

IN WITNESS WHEREOF, the said Dedicator has caused this *Deed of Dedication* to be executed on its behalf the day and year first above written.

**Signed, sealed and delivered
in the presence of:**

Printed Name: _____

Printed Name: _____

Dedicator:

By: _____

Leslie Ann Meadows

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023 by **Leslie Ann Meadows**, who [] is personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal

**Signed, sealed and delivered
in the presence of:**

Dedicator:

By: _____

Elliot Meadows

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023 by **Elliot Meadows**, who [] is personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal

**Signed, sealed and delivered
in the presence of:**
(Witnesses as to Both)

Dedicator:

By: _____
James Meadows Jr.

Printed Name: _____

Printed Name: _____

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023 by **James Meadows Jr.** who [] is personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal

**Signed, sealed and delivered
in the presence of:**

Dedicator:

By: _____

Geraldine M. Meadows

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023 by **Geraldine M. Meadows**, who [] is personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal

**Signed, sealed and delivered
in the presence of:**

Dedicator:

By: _____

Irelyne Meadows

Printed Name: _____

Date: _____

Printed Name: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

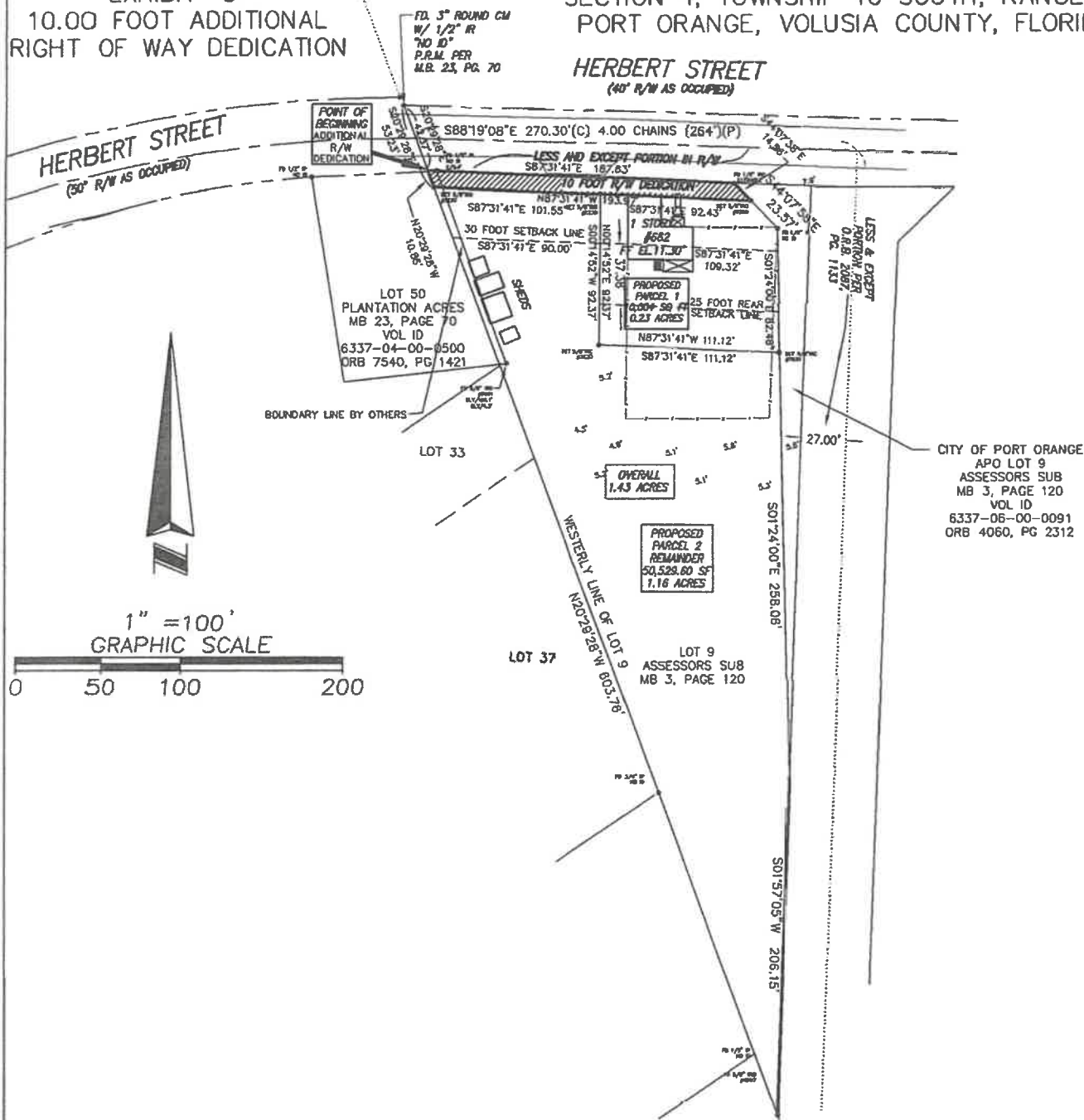
The foregoing *Deed of Dedication* was sworn to and acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2023 by **Irelyne Meadows**, who [] is personally known to me, or [] have produced _____ as identification.

Notary Public, State of Florida at Large
Commission Number, Date of Commission, Expiration, and Seal

EXHIBIT "D"
10.00 FOOT ADDITIONAL
RIGHT OF WAY DEDICATION

SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33
PORT ORANGE, VOLUSIA COUNTY, FLORIDA

HERBERT STREET
(40' R/W AS OCCUPIED)



DESCRIPTION; NEW 10.00 FOOT ADDITIONAL RIGHT OF WAY DEDICATION

A PORTION OF THOSE LANDS RECORDED IN OFFICIAL RECORDS BOOK 7367, PAGE 4881, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LYING IN AND BEING A PORTION OF LOT 9, ASSESSORS PLAT OF LOTS 3 AND 4, OF SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33 EAST, ACCORDING TO THE MAP OR PLAT THEREOF, AS RECORDED IN PLATBOOK 3, PAGE 120, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA LESS AND EXCEPT THE EAST 27 FEET AS CONVEYED BY OR BOOK 2087, PAGE 1133 LESS AND EXCEPT THAT PORTION CONVEYED TO THE CITY OF PORT ORANGE BY OR BOOK 4060, PAGE 2312, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY LINE OF HERBERT STREET (A 40.00 FOOT RIGHT OF WAY) AND THE WESTERLY LINE OF SAID LOT 9; THENCE RUN S87°31'41"E ALONG THE SOUTHERLY RIGHT OF WAY LINE OF SAID HERBERT STREET, A DISTANCE OF 187.63 FEET; THENCE RUN S44°07'58"E, A DISTANCE OF 14.56 FEET TO A POINT ON THE NEW ADDITIONAL 10.00 FOOT RIGHT OF WAY LINE; THENCE RUN N87°31'41"W, ALONG SAID NEW ADDITIONAL 10.00 FOOT RIGHT OF WAY LINE, A DISTANCE OF 193.97 FEET TO A POINT ON THE WEST LINE OF THOSE LANDS RECORDED IN SAID OFFICIAL RECORDS BOOK 7376, PAGE 4881; THENCE RUN N20°29'28"W, ALONG SAID WEST LINE, A DISTANCE OF 10.86 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1,908 SQUARE FEET AND / OR 0.04 ACRES

APPROVED
CERTIFICATE
SHEET NO. 16 OF 2

EFIRD SURVEYING GROUP, INC.

475 S. BLUE LAKE AVENUE
DELAND, FLORIDA 32724
PHONE: (386) 740-4144 FAX: (386) 740-4155
WEBSITE: www.efirdsurveying.com
e-mail: larry@efirdsurveying.com

Certificate Of Authorization Licensed Business Number 7230

BOUNDARY SURVEY

Survey Date: J/21/2023 Drawing Number: 22-0488 Scale: 1"=100'
Drawn By: LE JR

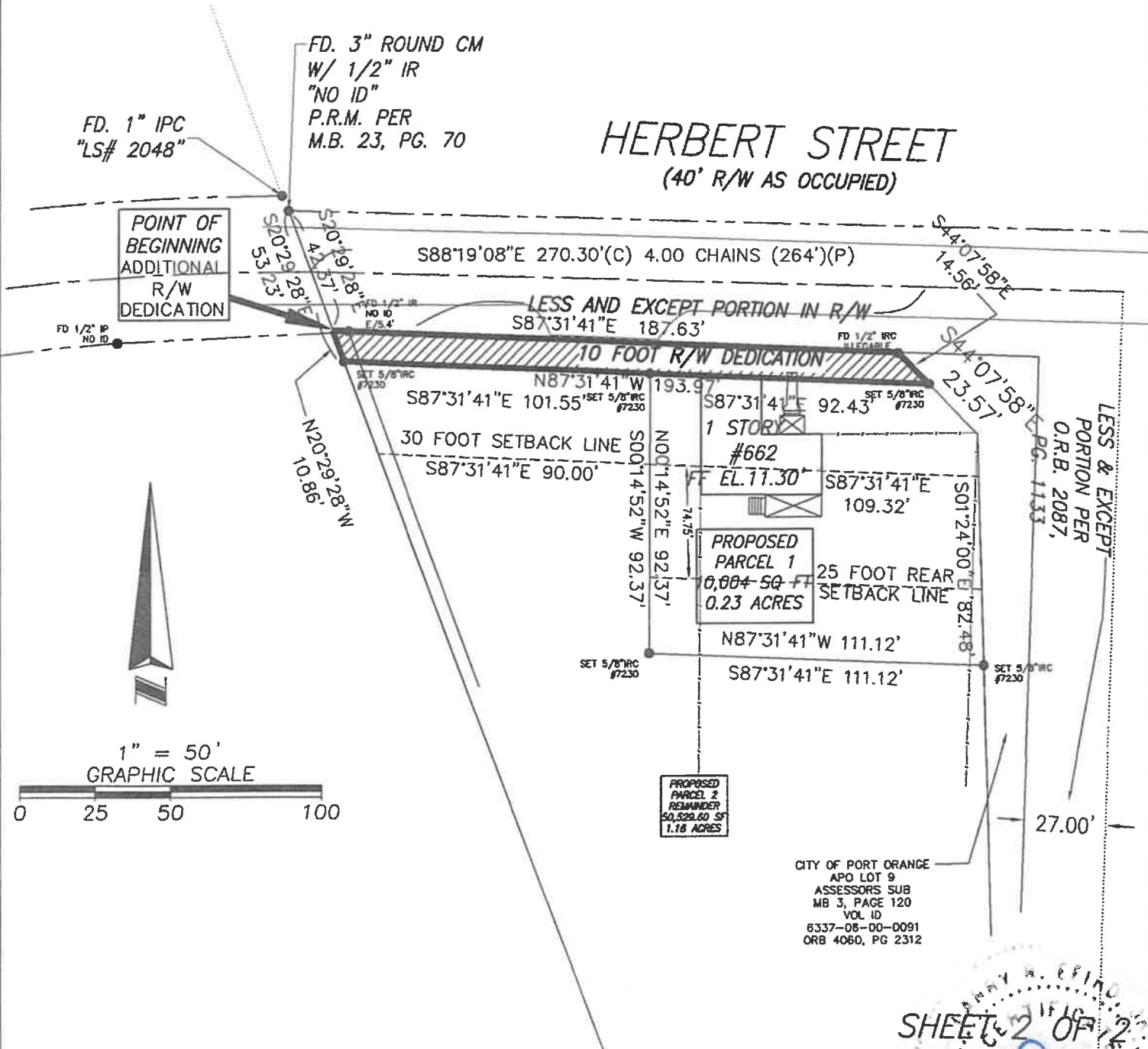
ELLIOT AND JAMES MEADOWS

I HEREBY CERTIFY THIS SURVEY DRAWING TO BE
CORRECT TO THE BEST OF MY KNOWLEDGE AND
BELIEF, AND COMPLIES IN FORM WITH THE
STANDARDS OF PRACTICE AS SET FORTH BY THE
FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND
MAPPERS IN CHAPTER 47-17, F.A.C. PURSUANT TO
SECTION 472.001, FLORIDA STATUTES.

LARRY R. EFIRD JR.
Professional Surveyor & Mapper No. 6823

EXHIBIT "D"
10.00 FOOT ADDITIONAL
RIGHT OF WAY DEDICATION

SECTION 4, TOWNSHIP 16 SOUTH, RANGE 33
PORT ORANGE, VOLUSIA COUNTY, FLORIDA



EFIRD SURVEYING GROUP, INC.

475 S. BLUE LAKE AVENUE
DELAND, FLORIDA 32724
PHONE: (386) 740-4144 FAX (386) 740-4155
WEBSITE: www.efirdsurveying.com
e-mail: larry@efirdsurveying.com
Certificate Of Authorization Licensed Business Number 7230

BOUNDARY SURVEY

Survey Date: 3/21/2023 Drawing Number: 22-0488 Scale: 1"=50'
For: ELLIOT AND JAMES MEADOWS

I HEREBY CERTIFY THIS SURVEY DRAWING TO BE
CORRECT, TO THE BEST OF MY KNOWLEDGE AND
BELIEF, AND I AM A LICENSED SURVEYOR
STANDARDS OF PRACTICE AS SET FORTH BY THE
FLORIDA BOARD OF PROFESSIONAL SURVEYING AND
MAPPING IN CHAPTER 17, F.A.C. PURSUANT TO
SECTION 472.01, FLORIDA STATUTES.

LARRY R. EFIRD JR.
Professional Surveyor & Mapper No. 0862



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C12) Resolution No. 23-56 - Termination of the City's Agreement with Florida PACE Funding Agency (FPFA)

DEPARTMENT: Council

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve Resolution No. 23-56.

SUMMARY: In May 2020, Council approved Resolution No. 20-21 expressing the City's Support and Intention to Create a Property Assessed Clean Energy (PACE) Program and approved agreements with the Florida Green Finance Authority, Florida PACE Funding Agency ("FPFA"), Florida Resiliency and Energy District, and the Green Corridor PACE District, authorizing these agencies as the third-party administrators for the PACE Program within the City of Port Orange. The program was intended to provide property owners with another avenue to finance energy-efficient and hardening improvements through a non ad-valorem special assessment on their tax bill.

On October 3, 2023, Volusia County Tax Collector Will Roberts presented information to Council regarding his concerns surrounding the terms and conditions of certain agreements between some Volusia County homeowners and FPFA. Council provided direction to move forward with terminating the City's Agreement with FPFA.

PRESENTER: Donald Burnette

ATTACHMENTS:

1.	Resolution No. 23-56	Resolution No. 23-56.pdf
2.	Florida PACE Funding Agency (FPFA) Agreement	Florida PACE Funding Agency (FPFA) Agreement.pdf

Robin Fenwick
Robin Fenwick
Shannon Balmer
Wayne Clark
Tracee Cody

Created/Initiated - 10/20/2023
Approved - 10/20/2023
Approved - 10/25/2023
Approved - 10/25/2023
Final Approval - 10/26/2023

RESOLUTION NO. 23-56

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RESCINDING FLORIDA PACE FUNDING AGENCY'S (FPFA) AUTHORITY TO OPERATE ITS PACE PROGRAM WITHIN THE CORPORATE LIMITS OF THE CITY OF PORT ORANGE, FLORIDA, AS PREVIOUSLY AUTHORIZED BY RESOLUTION NO. 20-21; AUTHORIZING THE CITY MANAGER TO ISSUE AND EXECUTE ALL NECESSARY DOCUMENTS TO IMPLEMENT THE INTENT OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution No. 20-21, the City Council of the City of Port Orange ("City") authorized the availability of a Property Assessed Clean Energy (PACE) Program within the corporate limits of the City through the subsequent execution of interlocal agreements with other local governments as defined in Section 163.08(2)(a), in accordance with Section 163.08, Florida Statutes and as set forth in said Resolution;

WHEREAS, as authorized by City's Resolution No. 20-21, the City entered into a Non-Exclusive Interlocal Subscription Agreement, dated May 19, 2020, between the City and FPFA and recorded in the Official Records Book 7856, Page 1040, of the Volusia County Public Records ("Agreement"), relating to the funding and financing of qualifying Improvements by the FPFA within the corporate limits of the City of Port Orange pursuant to a PACE program;

WHEREAS, the City Council desires to rescind the FPFA's authorization provided by the City's Resolution 20-21 to operate and provide funding and financing of qualifying improvements pursuant to a PACE program within the corporate limits of the City of Port Orange;

WHEREAS, the Agreement provides that termination of the Agreement may occur with 30 days' written notice.

WHEREAS, pursuant to the terms of the Agreement, at the end of the 30-day period the Agreement shall be automatically terminated and FPFA will not accept any new applications for properties within the corporate limits of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF PORT ORANGE, FLORIDA, AS FOLLOWS:

SECTION 1. The recitals above are true and correct and form a part of this Resolution.

SECTION 2. FPFA's authorization provided by the City's Resolution No. 20-21 to operate and provide funding and financing of qualifying improvements pursuant to a PACE program within the corporate limits of the City of Port Orange is hereby rescinded.

SECTION 3. In accordance with Section 3.03 (B) of the Agreement, the City shall issue a 30 days' written Notice of Termination of the Agreement to FPFA. Pursuant to the Agreement, upon termination, FPFA will not accept any new applications for properties within the corporate limits of the City.

SECTION 4. The City Manager, is hereby authorized to execute all necessary documents to implement the intent of this Resolution, including but not limited to, issuing and executing a Notice of Termination of the Agreement to FPFA.

SECTION 5. Except as otherwise amended herein, City's Resolution No. 20-21 remains in full force and effect.

SECTION 6. This Resolution No. 23-56 shall become effective immediately upon its passage and adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

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

**NON-EXCLUSIVE INTERLOCAL SUBSCRIPTION AGREEMENT
RELATING TO THE FUNDING AND FINANCING
OF QUALIFYING IMPROVEMENTS BY THE
FLORIDA PACE FUNDING AGENCY**

THIS NON-EXCLUSIVE INTERLOCAL SUBSCRIPTION AGREEMENT is made and entered into as of May 19, 2020 (this "Subscription Agreement"), by and between the City of Port Orange, Florida (the "Subscriber"), and the Florida PACE Funding Agency, a separate legal entity and public body and unit of local government, established pursuant to Section 163.01(7), Florida Statutes, (the "Agency"), by and through their respective governing bodies. The purpose of the Subscription Agreement is to secure, in an efficient and uniform manner, for the Property Owners (as hereinafter defined) within the jurisdiction and boundaries of the Subscriber the privileges, benefits, powers and terms provided for herein and by law, and particularly by Section 163.08, Florida Statutes, as amended (the "Supplemental Act"), relating to the voluntary determination by affected property owners to obtain and finance certain improvements to property for energy efficiency, renewable energy or wind resistance.

WITNESSETH:

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration each to the other, receipt of which is hereby acknowledged by each party, the Subscriber and the Agency hereby agree, stipulate and covenant as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings as defined unless the context requires otherwise:

"Board of Directors" means the governing body of the Agency.

"Agency Charter Agreement" or **"Charter"** means, unless the context otherwise requires, the separate interlocal agreement which created and established the Agency, including any amendments and supplements hereto executed and delivered in accordance with the terms thereof.

"Financing Agreement" means the agreement authorized hereunder and by the Act (specifically including section 163.08(4) thereof) between the Agency and a Property Owner providing for the funding to finance Qualifying Improvements and the imposition of a non-ad valorem Special Assessment against the Property Owner's assessed property.

"Financing Documents" shall mean the resolution or resolutions duly adopted by the Agency, as well as any indenture of trust, trust agreement, interlocal agreement or other instrument relating to the issuance or security of any bond or Obligations of the Agency and any

agreement between the Agency and the Subscriber, pursuant to which the Subscriber and Property Owners obtain access to funds provided by the Agency.

"Obligations" shall mean any lawful obligation committed to by the Agency or pursuant to an interlocal agreement with another governmental body or agency and/or warrants issued for services rendered or administrative expenses.

"Program" means the program operated by the Agency to provide financing for Qualifying Improvements undertaken within the jurisdiction of the Subscriber. Unless determined otherwise by the Subscriber, the Agency's Program will be non-exclusive; and, the Subscriber may embrace or authorize any similar program under the Act as the Subscriber sees fit and in the interest of the public.

"Property Owner" means, collectively, all of the record owners of real property subject to a Financing Agreement.

"Qualifying Improvements" means those improvements for energy efficiency, renewable energy, or wind resistance described in the Supplemental Act authorized to be affixed and/or installed by the record owner of an affected property. The term does not include similar improvements underwritten or financed by local, state or federal programs including, but not limited to State Housing Initiatives Partnership or SHIP Program, which are not secured by a special or non-ad valorem assessment.

"Special Assessments" means the non-ad valorem assessments authorized by the Supplemental Act and levied by the Agency on property owned by participating property owner who has entered into a Financing Agreement with the Agency to fund the costs of Qualifying Improvements.

SECTION 1.02 CONSTRUCTION.

(A) Words importing the singular number shall include the plural in each case and vice versa, and words importing persons shall include firms and corporations. The terms "herein," "hereunder," "hereby," "hereto," "hereof," and any similar terms, shall refer to this Subscription Agreement; the term "heretofore" shall mean before the date this Subscription Agreement is executed; and the term "hereafter" shall mean after the date this Subscription Agreement is executed.

(B) Each recital, covenant, agreement, representation and warranty made by a party herein shall be deemed to have been material and to have been relied on by the other party to this Subscription Agreement. Both parties have independently reviewed this Subscription Agreement with their own counsel and covenant that the provisions hereof shall not be construed for or against either the Subscriber or the Agency by reason of authorship.

SECTION 1.03. SECTION HEADINGS. Any headings preceding the texts of the several Articles and Sections of this Subscription Agreement and any table of contents or marginal notes appended to copies hereof shall be solely for convenience of reference and shall neither constitute a part of this Subscription Agreement nor affect its meaning, construction or effect.

SECTION 1.04. FINDINGS. It is hereby ascertained, determined and declared that:

(A) The State has declared it the public policy of the State to develop energy management programs aimed at promoting energy conservation and wind resistance or 'hardening' programs achieving hurricane and wind damage mitigation.

(B) The State Legislature has determined there is a compelling state interest in enabling property owners to voluntarily finance Qualifying Improvements with local government assistance. The actions authorized by the Supplemental Act, including the financing of Qualifying Improvements through the execution of Financing Agreements and the related imposition of a Special Assessment, are reasonable and are necessary for the prosperity and welfare of the State, the Subscriber and its property owners and inhabitants.

(C) The Agency has secured a binding final judgment, binding and only advantageous to the Agency, which has statewide effect. Such judgment carefully relieves the Subscriber from cost and liability associated with implementation of the Agency's Program.

(D) The Agency has provided evidence to the Subscriber that: (1) the Agency's Program has assembled, at the Agency's sole cost and expense, open public governance and oversight, staffing in the form of qualified third-party administration, active funding provider servicing oversight, dedicated Program counsel, and an independent institutional trustee, (2) that the Agency is immediately ready to commence origination of Special Assessments for Qualifying Improvements, and (3) that the Agency presently has large scale funding in place and available under an executed bond purchase agreement and trust indenture.

(E) The availability of the non-exclusive Program offered by the Agency (without cost to, assumption of liability by or demand upon the credit of the Subscriber) and the voluntary participation in the Program by Property Owners will provide an alternative financing option to finance and repay the costs to provide and install Qualifying Improvements.

(F) This Agreement provides an alternative, supplemental and non-exclusive means to achieve, *inter alia*, immediate and careful local economic development, commerce and job creation, as well as the compelling State interests and public purposes described in the Supplemental Act.

(G) The Subscriber on May 19, 2020 adopted Resolution No. 20-~~20~~²¹, by reference incorporated herein as if fully set forth in this Agreement, and setting the terms for the City of Port Orange to participate in the Agency for the Agency financing of qualifying improvements in accordance with Section 163.08, Florida Statutes.

ARTICLE II SUBSCRIPTION

SECTION 2.01. AUTHORITY.

(A) The execution hereof has been duly authorized by the resolution of the governing bodies of each party hereto.

(B) The Agency by this Subscription Agreement is hereby authorized to act to provide its services, and conduct its affairs, within the boundaries of the Subscriber's jurisdiction.

(C) The execution of this Subscription Agreement evidences the express authority and concurrent transfer of all necessary powers to the Agency, and the covenant to reasonably cooperate by the Subscriber, so that the Agency may facilitate, administer, implement and provide Qualifying Improvements, facilitate Financing Agreements and non-ad valorem assessments only on properties subjected to same by the record owners thereof, develop markets, structures and procedures to finance same, and to take any actions associated therewith or necessarily resulting there from, as contemplated by the Supplemental Act as the same may be amended from time to time.

(D) By resolution of the governing bodies of each of the parties and as implemented pursuant by this Subscription Agreement, all power and authority available to the Agency under its Charter and general law, including without limitation, Chapters 163, 189 and 197, Florida Statutes, shall be deemed to be authorized and may be implemented by the Agency within the boundaries of the Subscriber.

(E) This Subscription Agreement may be amended only by written amendment hereto.

SECTION 2.02. CREATION OF STATE, COUNTY OR MUNICIPAL DEBTS PROHIBITED. The Agency shall not be empowered or authorized in any manner to create a debt as against the State, county, or any municipality, and may not pledge the full faith and credit of the State, any county, or any municipality. All revenue bonds or debt obligations of the Agency shall contain on the face thereof a statement to the effect that the State, county or any municipality shall not be obligated to pay the same or the interest and that they are only payable from Agency revenues or the portion thereof for which they are issued and that neither the full faith and credit nor the taxing power of the State or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of revenue or refunding bonds under the provisions of law, the Charter Agreement, or this Subscription Agreement shall not directly or indirectly or contingently obligate the State, or any county or municipality to levy or to pledge any form of ad valorem taxation whatever therefore or to make any appropriation for their payment.

SECTION 2.03. ADOPTION OF RATES, FEES AND CHARGES.

(A) The Board of Directors may adopt from time to time by resolution such rates, fees or other charges for the provision of the services of the Agency to be paid by the record owner of any property, pursuant to a Financing Agreement described in the Supplemental Act.

(B) Such rates, fees and charges shall be adopted and revised so as to provide moneys, which, with other funds available for such purposes, shall be at least sufficient at all times to pay the expenses of administering, managing, and providing for the services and administration of the activities of the Agency, to pay costs and expenses provided for by law or the Charter Agreement and the Financing Documents, and to pay the principal and interest on the Obligations as the same shall become due and reserves therefore, and to provide for necessary administration and reasonable margin of safety over and above the total amount of such payments. Notwithstanding any other provision in the Charter Agreement or this Subscription Agreement, such rates, fees and charges shall always be sufficient to comply fully with any covenants contained in the Financing Documents.

(C) Such rates, fees and charges may vary from jurisdiction to jurisdiction, but shall be just and equitable and uniform at the time of imposition for the record owners in the same class of or within each subscribing local governmental jurisdiction electing to enter into any Financing Agreement described in the Supplemental Act and may be based upon or computed upon any factor (including, by way of example and not limitation, competitive or market conditions, distinguishing between residential and non-residential properties or uses, distinguishing between variable costs of administrative services over time) or combination of factors affecting the demand or cost of the services furnished or provided to administer the services and affairs of the Agency as may be determined by the Board of Directors from time to time.

(D) Notwithstanding anything in this Subscription Agreement to the contrary, the Agency may establish a general fund and/or performance assurance account into which moneys may be deposited from an annual surcharge upon the Special Assessments imposed, pledged to or collected by the Agency. Any moneys deposited to such general fund account from such a surcharge shall be considered legally available for any lawful purpose approved by the Board of Directors. Moneys in such general fund and/or performance assurance account may be used to pay for or reimburse initial costs and expenses advanced or associated with start-up costs, feasibility studies, economic analysis, financial advisory services, program development or implementation costs or enhancements, public education, energy audits, administration, quality control, vendor procurement, and any other purpose associated with the purpose or mission of the Agency approved by the Board of Directors.

SECTION 2.04. FINANCING AGREEMENTS.

(A) The Agency shall prepare and provide to each participating property owner the form of the Financing Agreement which complies with the Supplemental Act and is in accordance with the Financing Documents as designated by the Board of Directors from time to time.

(B) The Agency, not the Subscriber, shall be solely responsible for all matters associated with origination, funding, financing, collection and administration of each of the Agency's authorized non-ad valorem assessments.

SECTION 2.05. IMPOSITION OF SPECIAL ASSESSMENTS PURSUANT TO FINANCING AGREEMENTS.

(A) Upon execution by the record owners and the Agency, the Financing Agreement or a summary or memorandum thereof shall be recorded by the Agency within five (5) days of execution as required by Section 163.08(8), Florida Statutes. The recorded Financing Agreement, or summary or memorandum thereof, provides constructive notice that the non-ad valorem assessment to be levied on the subject property constitutes a lien of equal dignity to ad valorem taxes and assessments from the date of recordation.

(B) In a reasonably cooperative and uniform manner the Agency is authorized to and shall provide a digital copy to the property appraiser or tax collector of the recorded Financing Agreement or summary thereof, the most recent property identification number and annual amount of the non-ad valorem assessment along with such other efficient and reasonable information necessary for the tax collector to collect such amounts on behalf of the Agency pursuant to Sections 197.3632 and 163.08, Florida Statutes, as a non-ad valorem assessment.

SECTION 2.06. COLLECTION OF SPECIAL ASSESSMENTS.

(A) The Agency shall be solely responsible for professionally coordinating all interface with the tax collector or property appraiser, and minimize to the greatest extent reasonably possible the time, effort and attention of these public officials to accomplish the public purposes and direction of the Supplemental Act subscribed to by the Subscriber. Subscriber hereby respectfully requests and encourages the tax collector or property appraiser to only impose, charge, or deduct the minimum amount allowed by general law for the collection or handling of the Special Assessments which are the subject of this Subscription Agreement.

(B) To advance Program acceptance and to minimize Program participation costs, and because each Property Owner is voluntarily undertaking to achieve and underwrite the unique and compelling State interests described in the Supplemental Act, the Subscriber urges either the waiver of such fees by the tax collector and property appraiser or a flat five dollar (\$5) fee per year per tax parcel for such purposes which shall be paid by the Agency via deduction, by the institutional trustee required by the Financing Documents, or as otherwise reasonably agreed to by the Agency and these parties.

SECTION 2.07. PLEDGE OF PROCEEDS FROM NON AD VALOREM ASSESSMENTS.

(A) The Agency will take such actions as are necessary for the lawful levy of the Special Assessments against all lands and properties specially benefitted by the acquisition, construction and financing of Qualifying Improvements. If any assessment made with respect to any property shall be either in whole or in part annulled, vacated or set aside by the judgment of any court, or if the Agency or Subscriber shall be satisfied that any such assessment is so irregular or defective

that the same cannot be enforced or collected, the Agency is authorized to take all necessary steps to cause a new assessment to be made for the whole or any part of any Qualifying Improvements or against any property specially benefitted by such improvement, to the extent and in the manner provided by law.

(B) Pursuant to the Financing Documents and this Subscription Agreement, the Agency shall irrevocably pledge and, to the fullest extent permitted by law, pledge and assign any and all revenues derived from Special Assessments to the repayment of any debt obligation issued by the Agency pursuant to the Financing Documents.

(C) The Subscriber shall not incur or ever be requested to authorize any obligations secured by Special Assessments associated with Qualifying Improvements imposed by the Agency.

(D) Each series of Financing Documents shall be secured forthwith equally and ratably by a pledge of and lien upon the Special Assessments. The obligations of the Agency under and pursuant to the Financing Documents shall not be or constitute general obligations or an indebtedness of the Subscriber as "bonds" within the meaning of the Constitution of Florida, but shall be payable from and secured solely by a lien upon and pledge of the Special Assessments as provided herein. Neither the Agency nor any holder of any debt obligation issued by the Agency pursuant to the Financing Documents shall ever have the right to compel the exercise of the ad valorem taxing power of the Subscriber or taxation in any form of property therein to pay any amount due under any Financing Documents or any Special Assessment. The Financing Documents shall not constitute a lien upon any property of or in the Subscriber except as to the respective Special Assessments in the manner provided herein and by law.

SECTION 2.08. CARBON OR SIMILAR CREDITS. The form of Financing Agreement in each instance shall provide for the transfer of any carbon or similar mitigation credits derived from Qualifying Improvements to the Agency, with such revenues therefrom, if any ever materialize, to be used by the Agency to underwrite generally its operation, mission and purpose. By execution hereof any such interest in mitigation credits shall be assigned by the Subscriber to the Agency without any future action by the parties. Provided, however, the Subscriber shall upon request from time to time execute and deliver all such documents as may be reasonably required to further evidence the assignment and transfer of such interests to the Agency. Such credits expressly exclude investment tax credits available under the Internal Revenue Code or monetary rebates available to the Property Owner.

ARTICLE III GENERAL PROVISIONS

SECTION 3.01. INTERLOCAL AGREEMENT PROVISIONS. This Subscription Agreement constitutes a joint exercise of power, privilege or authority by and between the Subscriber and the Agency and shall be deemed to be an "interlocal agreement" within the meaning of the Florida Interlocal Cooperation Act of 1969, as amended. This Subscription

Agreement shall be filed by the Agency with the Clerk of the Circuit Court of the county in which the Subscriber is located.

SECTION 3.02. DISCLOSURE.

(A) The Agency has provided a copy of (1) the Supplemental Act, (2) the Agency's Charter Agreement, (3) the Final Judgment in *Fla. PACE Funding Agency v. State*, No. 2011-CA-1824 (Fla. 2d Cir. Ct. 2011), and (4) other relevant disclosure information and background materials to the Subscriber prior to execution hereof. Subscriber, through its own staff and advisors, has independently reviewed and considered the foregoing and other relevant information of its choosing.

(B) The objective of the Agency's mission is to offer a uniform, standardized and scalable approach that provides efficiencies and economies of scale intended to attract voluntary financing of Qualifying Improvements and stimulate a substantial and meaningful flow of private sector economic activity and new job creation. In doing so, each subscribing local government by entering into a subscription agreement of this nature authorizes the availability of the Agency's uniform program to property owners in the subscribing jurisdiction. Accordingly, the Agency has engaged, and may engage in the future, various advisors, consultants, attorneys or other professionals or firms with recognized expertise necessary to accomplish the Agency's mission.

(C) Each of the various advisors, consultants, attorneys or other professionals engaged by the Agency has been, and shall in the future be, disclosed to the Subscriber. The Subscriber and Agency recognize, consider and acknowledge the fact or possibility that one or more of the various professionals or firms may serve as the advisor to the Agency in its mission, and to the Subscriber or another client in providing other similar professional services, outside of the provision, funding and financing of Qualifying Improvements. Such circumstance is acceptable and will not be construed as a conflict, be objected to unreasonably, nor be used as the basis for its disqualification of such professionals or firms from any continued or future representation of either party hereto which can otherwise be resolved by a reasonable waiver.

SECTION 3.03. TERM OF AGREEMENT; DURATION OF AGREEMENT; EXCLUSIVITY.

(A) This Subscription Agreement shall commence as of the date first above written, and shall remain in effect until terminated as herein provided. Either party (the "non-breaching party") may terminate this Subscription Agreement by providing the other party (the "breaching party") 10 days prior written notice ("Termination Notice") in the event the breaching party breaches this Subscription Agreement and such breach is not cured to the reasonable satisfaction of the non-breaching party within a reasonable period of time following notice of such breach. Beginning on the date the Agency receives from, or gives to, the Subscriber a Termination Notice ("Termination Date"), the Agency shall not approve any new applications affecting property within the legal boundaries of the Subscriber. Provided, however either party may unilaterally terminate this Agreement prior to any Financing Agreements being executed or, if earlier, the

issuance of any Obligations of the Agency secured by pledged revenues derived from within the jurisdiction or boundaries of the Subscriber.

(B) Termination of this Agreement may occur with 30 days' written notice, and at the end of the 30-day period, this Agreement shall be automatically terminated and the Authority will not accept any new applications. Any projects related to applications received before the end of the 30-day period shall be permitted to be completed.

(C) In the event of any termination hereunder, and so long as the Agency has Obligations outstanding which are secured by pledged revenues derived from Financing Agreements relating to any properties within the jurisdiction or boundaries of the Subscriber, or the Agency has projects for Qualified Improvements underway therein, the applicable provisions, authority and responsibility under this Agreement reasonably necessary to carry out the remaining aspects of the Program and responsibilities of Agency then underway, shall remain in effect and survive such termination until such time as those obligations and all associated remaining Program responsibilities are fulfilled (including, but not limited to the collection of assessments in due course).

SECTION 3.04. AMENDMENTS AND WAIVERS.

(A) Except as otherwise provided herein, no amendment, supplement, modification or waiver of this Subscription Agreement shall be binding unless executed in writing by the Subscriber and Agency.

(B) To the extent the Agency has no outstanding bonds, Obligations or other evidence of indebtedness, this Subscription Agreement may be amended or modified or provisions hereto waived upon the written consent of all parties hereto.

(C) To the extent the Agency has outstanding bonds, Obligations or other evidence of indebtedness arising from Financing Agreements relating to properties within the jurisdiction or boundaries of the Subscriber, this Subscription Agreement may not be amended or modified in any way that is materially adverse to holders of such bonds, Obligations or other evidence of indebtedness without the consent in writing of the holders of at least two-thirds (2/3) or more in principal amount of such bonds, Obligations or other evidence of indebtedness (exclusive of any warrants issued by the Agency) then outstanding, or any insurer duly authorized to provide such consent on behalf of such holders.

SECTION 3.05. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered (or confirmed electronic facsimile transmission) or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

Subscriber: **City of Port Orange**
Attention: City Manager
 1000 City Center Circle
 Port Orange, Florida 32129
 (386) 506-5501
mjohansson@port-orange.org

Copy to: **City of Port Orange**
Attention: City Attorney
 1000 City Center Circle
 Port Orange, Florida 32129
 (386) 506-5525
mjones@port-orange.org

Agency: **Mike Moran**
Executive Director
Florida PACE Funding Agency
 c/o Southern Sky Energy
 4411 Bee Ridge Rd., #134
 Sarasota, Florida 34233

With a copy to: **Program Counsel for the Florida PACE Funding Agency**
P.O. Box 14043
Tallahassee, Florida 32317-4043

(B) Any of the parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or confirmed electronic facsimile transmission) or three days after the date mailed.

SECTION 3.06. QUALITY CONTROL AND COMMUNICATION. For quality control purposes the Agency and Subscriber desire, and the Agency covenants to develop, implement and employ policies, systems and procedures which are within industry standards; with such standards being reasonably expected to change and evolve over time. An ongoing positive and informal line of communication between staff and agents for the parties is encouraged. At any time, notwithstanding lack of default or lack of material breach hereunder, the Subscriber is encouraged to objectively and specifically communicate to the Agency in writing as provided for herein any concerns, suggestions or disapproval with performance, policies, systems or procedures being employed by the Agency. The Agency through its administrator, Executive Director, or a duly authorized designee, will promptly respond in writing to all such communications (reasonably within fifteen (15) days of receipt of any such written communication, but sooner if necessary) and follow-up accordingly; and, also promptly

communicate any such response, follow-up, and all related communication to the Board of Directors for review.

SECTION 3.07. IMMUNITY; LIMITED LIABILITY.

(A) All of the privileges and immunities from liability and exemptions from laws, ordinances and rules which apply to the activity of officials, officers, agents or employees of the parties shall apply to the officials, officers, agents or employees thereof when performing their respective functions and duties under the provisions of this Subscription Agreement.

(B) The Subscriber and Agency are and shall be subject to Sections 768.28 and 163.01(9)(c), Florida Statutes, and any other provisions of Florida law governing sovereign immunity. Pursuant to Section 163.01(5)(o), Florida Statutes, and this covenant of the parties hereto, the local governments who are either or both the incorporators or members of the Agency shall not be held jointly liable for the torts of the officers or employees of the Agency, or any other tort attributable to the Agency, and that the Agency alone shall be liable for any torts attributable to it or for torts of its officers, employees or agents, and then only to the extent of the waiver of sovereign immunity or limitation of liability as specified in Section 768.28, Florida Statutes. The Subscriber and Agency acknowledge and agree that the Agency shall have all of the privileges and immunities from liability and exemptions from laws, ordinances, rules and common law which apply to the municipalities and counties of the State. Nothing in this Subscription Agreement is intended to inure to the benefit of any third-party for the purpose of allowing any claim, which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

(C) Neither the Subscriber, nor the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency shall in any manner be obligated to pay any debts, obligations or liabilities arising as a result of any actions of the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency, except to the extent otherwise mutually and expressly agreed upon, and neither the Agency, the Board of Directors or any other agents, employees, officers or officials of the Agency have any authority or power to otherwise obligate either the Subscriber, the local governments who are either or both the incorporators or members of the Agency, nor any subsequently subscribing or participating local government in the affairs of the Agency in any manner.

SECTION 3.08. BINDING EFFECT. This Subscription Agreement shall be binding upon the parties, their respective successors and assigns and shall inure to the benefit of the parties, their respective successors and assigns.

SECTION 3.09. SEVERABILITY In the event any provision of this Subscription Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 3.10. EXECUTION IN COUNTERPARTS. This Subscription Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

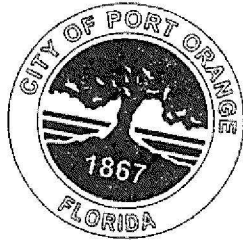
SECTION 3.11. APPLICABLE LAW. The exclusive venue of any legal or equitable action that arises out of or relates to this Subscription Agreement shall be the appropriate state court in Volusia County. In any such action, Florida law shall apply and the parties waive any right to jury trial.

SECTION 3.12. ENTIRE AGREEMENT. This Subscription Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no warranties, representations or other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have caused this Subscription Agreement to be duly executed and entered into as of the date first above written.

(SEAL)



THE CITY OF PORT ORANGE

By: _____

Donald O. Burnette, Mayor

Attest:

A handwritten signature in dark ink, appearing to read "Robin L. Fenwick", written over a horizontal line.

Robin L. Fenwick, MMC, City Clerk

Approved as to form:

A handwritten signature in dark ink, appearing to read "Shannon K. Balmer", written over a horizontal line.

Shannon K. Balmer, Assistant City Attorney

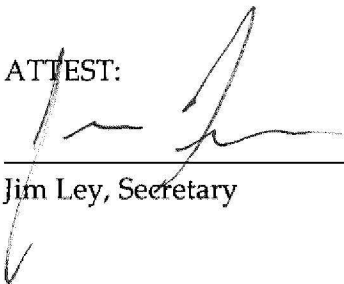
IN WITNESS WHEREOF, the undersigned have caused this Subscription Agreement to be duly executed and entered into as of the date first above written.

THE FLORIDA PACE FUNDING AGENCY

(SEAL)

By: 
Michael A. Moran, Executive Director

ATTEST:


Jim Ley, Secretary



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C13) Resolution No. 23-57 - Accepting \$74,479 for 2023-2024 Victims of Crime Act (VOCA) Grant

DEPARTMENT: Police Services

GOAL: 1 - Public Safety

RECOMMENDED MOTION: Move to approve Resolution No. 23-57 ratifying and accepting grant funds from the State of Florida Office of the Attorney General in the amount of \$74,479 for the Victims of Crime Act (VOCA) Grant program and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: The Police Department was awarded \$74,479 from the Victims of Crime Act (VOCA) Grant program. The 2023-2024 funding cycle will continue to assist victims of crime. The Grant Fund FY 2023-2024 Adopted Budget will be amended to reflect the \$74,479 from VOCA. Due to a reduction in the amount of funding the State of Florida received from the U.S. Department of Justice, Office for Victims of Crime, this award amount is \$20,643 less than the award our agency received for the 2022-2023 grant cycle. There is no required match.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 23-57	Resolution No. 23-57.pdf
2.	Match Waiver 2023-2024	Match Waiver 2023-2024.pdf

Manuel Marino
Manuel Marino
John McKinney
Matthew Jones
Wayne Clark
Tracee Cody

Created/Initiated - 10/11/2023
Approved - 10/11/2023
Approved - 10/17/2023
Approved - 10/23/2023
Approved - 10/23/2023
Final Approval - 10/24/2023

RESOLUTION NO. 23-57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; RATIFYING THE APPLICATION FOR AND AUTHORIZING THE MAYOR AND CITY CLERK TO APPROVE THE ACCEPTANCE OF GRANT FUNDS FROM THE STATE OF FLORIDA IN THE AMOUNT OF \$74,479.00 FOR THE VICTIMS OF CRIME ACT (VOCA) GRANT PROGRAM; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AGREEMENTS OR CONTRACTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Port Orange Police Department has been awarded \$74,479.00 from the State of Florida Department of Legal Affairs Office of the Attorney General to assist victims of crime; and

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

Section 1. The Mayor and City Clerk of the City of Port Orange hereby ratify the application for and authorize acceptance of the grant funds from the State of Florida award of the Victims of Crime Act grant in the amount of \$74,479.00.

Section 2. The Mayor and City Clerk are hereby authorized to execute all documents between the City of Port Orange and the State of Florida necessary to implement this Resolution.

Section 3. Matching funds have been waived for this grant award.

Section 4. This resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the day of

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



ASHLEY MOODY
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Division of Victim Services
Advocacy and Grants Management

PL-01 The Capitol
Tallahassee, FL 32399-1050
Phone (850) 414-3300 Fax (850) 487-0168
<http://www.myfloridalegal.com>

October 2023

Victims of Crime Act (VOCA) 2023-2024

VOCA FIX Act Match Waiver

In accordance with the VOCA Fix Act, effective July 22, 2021, and the United States Department of Justice, Office for Victims of Crime revised Match Waiver process, the Office of the Attorney General waives the match requirement for all 2023-2024 VOCA Assistance grants funded with FFY 2019 V2-GX-0047 and FFY 2020 V2-GX-0052. The time period for these awards is October 1, 2023, through September 30, 2024.

These considerations are being made due to the continued challenges service providers are experiencing in their ability to meet the match requirement due to financial constraints and unique circumstances experienced during the pandemic.



OAG Authorizing Official
Associate Deputy Attorney General

Joseph Spataro
Print Name

10/03/2023
Date



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C14) Resolution No. 23-58 - Accepting the grant award from the U.S. Department of Justice FY 23 Patrick Leahy Bulletproof Vest Partnership Project in the amount of \$18,125

DEPARTMENT: Police Services

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No 23-58, accepting the grant award from U.S. Department of Justice FY23 Patrick Leahy Bulletproof Vest Partnership in the amount of \$18,125 and authorize Mayor and City Clerk to execute all necessary documents.

SUMMARY: The U.S. Department of Justice has approved the City's grant application for the FY23 Patrick Leahy Bulletproof Vest Partnership Project, awarding \$18,125 to fund 50% of the costs to purchase 25 bulletproof vests for the Police Department. The cost share for this project is an equal amount of \$18,125 that has been budgeted as part of the FY24 budget for the Police Department. The total cost to purchase 25 vests is \$36,250.00.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No 23-58	Resolution No 23-58 .pdf
2.	FY 2023 PO Award	FY 2023 PO Award.pdf
3.	FY 2023 BVP Awards	FY 2023 BVP Awards.pdf

Manuel Marino	Created/Initiated - 10/11/2023
Manuel Marino	Approved - 10/11/2023
John McKinney	Approved - 10/17/2023
Matthew Jones	Approved - 10/23/2023
Wayne Clark	Approved - 10/23/2023
Tracee Cody	Final Approval - 10/24/2023

RESOLUTION NO.23-58

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, ACCEPTING FINANCIAL GRANT ASSISTANCE FROM THE U.S. DEPARTMENT OF JUSTICE PATRICK LEAHY BULLETPROOF VEST PARTNERSHIP; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AGREEMENTS AND CONTRACTS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Port Orange Police Department applied for a U.S. Department of Justice Patrick Leahy Bulletproof Vest Partnership (BPV) 2023 Grant for the purchase of bulletproof vests; and

WHEREAS, the U.S. Department of Justice 2023 Patrick Leahy Bulletproof Vest Partnership (BVP) approved the grant application in the amount of \$18,125.00 to fund 50% of the cost of the bulletproof vests.

WHEREAS, the City Council of the City of Port Orange desires to accept the financial grant assistance from the U.S. Department of Justice BVP.

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

Section 1. The City Council of the City of Port Orange hereby accepts the U.S. DOJ 2022 Patrick Leahy Bulletproof Vest Partnership Grant in the amount of \$18,125.00.

Section 2. The Mayor and the City Clerk of the City of Port Orange are hereby authorized to execute agreements or contracts necessary to implement this Resolution.

Section 3. This Resolution shall become effective immediately upon adoption.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Adopted on the _____ day of _____, 2023

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

APPLICATION DETAILS

APPLICATION PROFILE

Participant	PORT ORANGE CITY
Fiscal Year	2023
Number of Agencies Applied	0
Total Number of Officers for Application	96
Number of Officers on Approved Applications	96

APPLICATION PROFILE

Fiscal Year		2023
Vest Replacement Cycle ⓘ		5
Number of Officers		96
Number of Emergency Replacement or Needs ⓘ	Number of Stolen or Damaged	0

**Number
of Officer
Turnover** 25

APPLICATION DETAILS

NIJ#	Quantity	Unit Price	Extended Cost	Tax Shipping and Handling	Total Cost
BA- 3A00S- MR02	25	\$1,450.00	\$36,250.00	\$0.00	\$36,250.00
Grand Totals	25		\$36,250.00	\$0.00	\$36,250.00

AWARD SUMMARY FOR FY2023 REGULAR FUND

Funds Type	Eligible Amount	Award	Date Approved	Status
Regular Fund	\$36,250.00	\$18,125.00	10/02/23	Approved by BVP
Grand	\$36,250.00	\$18,125.00		

Funds Type	Eligible Amount	Award	Date Approved	Status
Totals:				

RETURN

FL	MONROE COUNTY	\$31,432.50
FL	NAPLES CITY	\$8,500.00
FL	NASSAU COUNTY	\$9,590.00
FL	NEW PORT RICHEY CITY	\$9,980.00
FL	NEW SMYRNA BEACH CITY	\$4,235.00
FL	NORTH MIAMI BEACH CITY	\$13,254.15
FL	NORTH PALM BEACH VILLAGE	\$2,550.00
FL	NORTH PORT CITY	\$36,897.00
FL	OCALA CITY	\$30,297.12
FL	OCEAN RIDGE TOWN	\$545.78
FL	OKEECHOBEE COUNTY	\$18,650.50
FL	ORANGE CITY	\$7,790.00
FL	ORMOND BEACH CITY	\$17,869.01
FL	PALATKA CITY	\$4,411.26
FL	PALM BEACH GARDENS CITY	\$28,155.73
FL	PALM BEACH TOWN	\$15,462.00
FL	PALM SPRINGS VILLAGE	\$10,803.00
FL	PALMETTO CITY	\$2,400.00
FL	PANAMA CITY	\$13,440.00
FL	PANAMA CITY BEACH CITY	\$9,936.00
FL	PENSACOLA CITY	\$19,680.00
FL	PINECREST VILLAGE	\$1,890.54
FL	PINELLAS PARK CITY	\$18,687.50
FL	PLANT CITY	\$7,600.50
FL	PONCE INLET TOWN	\$2,138.40
FL	PORT ORANGE CITY	\$18,125.00
FL	PUNTA GORDA CITY	\$5,000.00
FL	PUTNAM COUNTY	\$27,865.35
FL	PEMBROKE PARK CITY	\$1,275.00
FL	RIVIERA BEACH CITY	\$10,876.50
FL	ROCKLEDGE CITY	\$4,035.00
FL	SARASOTA CITY	\$29,741.80
FL	SATELLITE BEACH CITY	\$1,096.47
FL	SEBASTIAN CITY	\$6,872.00
FL	SEBRING CITY	\$4,530.00
FL	SEMINOLE TRIBE OF FLORIDA	\$22,143.65
FL	SEWALLS POINT TOWN	\$1,216.50
FL	SPRINGFIELD CITY	\$2,550.00
FL	ST AUGUSTINE CITY	\$11,050.00
FL	ST CLOUD CITY	\$23,404.08
FL	STUART CITY	\$3,612.50
FL	SUNRISE CITY	\$28,160.50
FL	SWEETWATER CITY	\$980.00
FL	TARPON SPRINGS CITY	\$3,129.81
FL	TAVARES CITY	\$2,826.00
FL	TEMPLE TERRACE CITY	\$4,875.00
FL	TITUSVILLE CITY	\$12,150.00
FL	UMATILLA CITY	\$3,760.00
FL	VENICE CITY	\$6,925.10



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C15) Resolution No. 23-63 - Master Lease Purchase Agreement for Public Safety Equipment with TD Equipment Finance, Inc.

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 23-63 and authorize the Mayor and staff to execute all master lease agreement documents with TD Equipment Finance, Inc.

SUMMARY: Staff submitted a request to quote with the assistance of Southeastern Investment Securities, LLC on Friday, September 29, 2023 to several qualified financial institutions to finance a fire pumper truck approved as part of the Fiscal Year 2024 budget.

The City received three quotes in accordance with our Debt Issuance policy. Staff and Southeastern Investment Securities, LLC have reviewed all of the proposals and recommend awarding it to TD Equipment Finance, Inc. with a 10-year rate of 4.72% for the fire pumper truck per the attached terms for an amount not to exceed \$1,089,332.

The Master Lease Agreement with TD Equipment Finance, Inc. was initially used in January to purchase public safety equipment including a fire pumper truck and an ambulance. This amendment is being used for the replacement of another aging fire pumper vehicle. By using the existing master lease, this amendment allows the City to utilize tax-exempt financing for the purchase of vehicles rather than outright purchases.

The equipment purchased under the Master Lease Agreement will be owned and insured by the City during the term of the Master Lease Agreement, subject to the interests of the selected financial institution.

The proposals received from the other three financial institutions are available upon request.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Resolution No. 23-63 - Lease Purchase	Resolution No. 23-63 - Lease Purchase
----	---------------------------------------	---------------------------------------

	#3 mjrev10.27.23	#3 mjrev10.27.23.pdf
2.	Lease Purchase #3 Schedule of Property No 3 (Fire Truck) MJrev10.27.23	Lease Purchase #3 Schedule of Property No 3 (Fire Truck) MJrev10.27.23.pdf
3.	PO 2023 Capital Lease Quotes memo 10.25.23	PO 2023 Capital Lease Quotes memo 10.25.23.pdf
4.	PO 2023 Lease TD PTS 10.25.23	PO 2023 Lease TD PTS 10.25.23.pdf

John McKinney	Created/Initiated - 10/25/2023
John McKinney	Approved - 10/25/2023
Matthew Jones	Approved - 10/27/2023
Wayne Clark	Approved - 10/27/2023
Tracee Cody	Final Approval - 10/27/2023

RESOLUTION NO. 23-63

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AUTHORIZING A LEASE PURCHASE AGREEMENT; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Port Orange, Florida (the “City”) has previously entered into a Master Lease Purchase Agreement, dated January 31, 2023 (the “Master Lease Purchase Agreement”), with TD Equipment Finance, Inc. (the “Finance Company”); and

WHEREAS, the City desires to finance the lease purchase of a fire truck (the “Equipment”) and the Finance Company has provided a term sheet setting forth the terms on which the Finance Company will provide such financing under the Master Lease Purchase Agreement;

NOW, THEREFOR, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, FLORIDA, that:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This resolution is enacted pursuant to the provisions of Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. AUTHORIZING LEASE PURCHASE. Schedule No. 3 to the Master Lease Purchase Agreement in substantially the form submitted to this body and the lease purchase of the Equipment described therein are hereby approved and authorized. Such Schedule No. 3 together with the Master Lease Purchase Agreement will constitute the lease purchase agreement for the Equipment. The proper officers of the City are authorized and directed to execute and deliver such Schedule No. 3 and any and all papers, instruments, opinions, certificate and other documents and to do and cause to be done any and all other acts and things necessary or proper implement this resolution and the lease purchase of said equipment.

SECTION 3. REPEAL OF INCONSISTENT PROVISIONS. All resolutions or parts thereof in conflict with this Resolution are hereby repealed to the extent of such conflict.

SECTION 4. SEVERABILITY. In the event that any portion or section of this Resolution is determined to be invalid, illegal or unconstitutional by a court of competent jurisdiction, such decision shall in no manner affect the remaining portions or sections of this Resolution, which shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE. This Resolution shall take effect immediately upon its final passage and adoption.

[Signature page to Resolution Relating to Lease Purchase Schedule No. 3]

(SEAL)

Donald O. Burnette, Mayor

ATTEST:

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

ADOPTED on the _____ day of November, 2023.

Reviewed and Approved: _____
Mathew J. Jones, City Attorney

EXHIBIT: FORM OF SCHEDULE NO. 3

EXHIBIT "A"

SCHEDULE OF PROPERTY NO. 3

Re: Master Lease Purchase Agreement, dated January 31, 2023, and amended as of November __, 2023, between TD EQUIPMENT FINANCE, INC., as Lessor, and CITY OF PORT ORANGE, FLORIDA, as Lessee

1. *Defined Terms.* All terms used herein have the meanings ascribed to them in the above-referenced Master Lease Purchase Agreement (the "*Agreement*").

2. *Equipment.* For purposes of the Lease created hereby, the following items of Equipment are hereby included under this Schedule together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto as provided in the Agreement.

QUANTITY	DESCRIPTION	SERIAL NO.	MODEL NO.	LOCATION
1	Fire Truck		Pierce Enforcer PUP Pumper	

3. *Payment Schedule.*

(a) *Rental Payments; Commencement Date.* The Rental Payments shall be in such amounts and payable on such Rental Payment Dates as set forth in the Rental Payment Schedule attached to this Schedule as *Exhibit A* and incorporated herein by this reference, subject to adjustment upon the occurrence of certain events as provided in Section 8.05 of the Agreement. Lessee's obligation to pay Rental Payments under the Lease created hereby shall commence on the date on which the Acquisition Amount is advanced to the Lessee for the purpose of acquiring the Equipment (such date being herein referred to as the "*Commencement Date*").

(b) *Prepayment Price Schedule.* The Prepayment Price on each Rental Payment Date shall be the amount set forth for such Rental Payment Date in the "Prepayment Price" column of the Rental Payment Schedule attached to this Schedule. The Prepayment Price is in addition to all Rental Payments then due under this Schedule (including the Rental Payment shown on the same line in the Rental Payment Schedule).

EXHIBIT "A"

4. *Representations, Warranties and Covenants.* Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the Commencement Date. Lessee further represents and warrants that (a) no Event of Default has occurred and is continuing under any Lease currently in effect; (b) no Event of Non-appropriation under any Lease currently in effect is threatened; (c) no Lease has been terminated as the result of the occurrence of an Event of Default or an Event of Non-appropriation; (d) the governing body of Lessee has authorized the execution and delivery of the Agreement and the Leases pursuant to Resolution No. 23-63, approved on November 7, 2023; (e) the Equipment listed in this Schedule is essential to the functions of Lessee or to the services Lessee provides its citizens; (f) Lessee has an immediate need for, and expects to make immediate use of, substantially all such Equipment, which will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of its authority; and (g) Lessee expects and anticipates adequate funds to be available for all future payments or rent due after the current budgetary period.

5. *The Lease.* The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.

6. *Acquisition Amount.* The Acquisition Amount for the Equipment listed in this Schedule is \$1,083,332.00. The Acquisition Amount shall be advanced to the Lessee, which shall hold such amount in escrow in a bank account designated in writing by the Lessee for the purpose of administering such amount pursuant to the Lease to acquire the Equipment. The Lessee shall provide written notice promptly to Lessor of each disbursement of the Acquisition Amount by the Lessee to payees or reimbursements to the Lessee from the Funding Amount for Equipment costs and closing costs related to the Lease.

7. *Acquisition Period.* The Advance Period applicable to this Schedule shall end on November __, 2025. If at the end of the Advance Period the aggregate amount of advances is less than the Acquisition Amount, the Lessor shall provide Lessee with a revised Payment Schedule.

8. *Lease Term.* The Lease Term shall consist of the Original Term and 9 consecutive Renewal Terms, with the final Renewal Term ending on November __, 2033, subject to earlier termination pursuant to the Agreement.

9. *Contract Rate; Taxable Rate.* The Default Rate for this Schedule is plus 5% per annum, or the maximum amount permitted by law, whichever is less. The Taxable Rate for this Schedule shall be the rate necessary to provide Lessor with the same after-tax yield as it would have received absent the determination of taxability.

10. *Registration.* Any Equipment that is a motor vehicle is to be registered and titled in the name of Lessee as registered owner. Lessee shall be responsible for the correct titling of all Equipment leased hereunder. Lessee will cause copies of the Certificates of Title to be delivered to Lessor for retention in Lessor's files throughout the Lease Term of the Lease created hereby.

EXHIBIT "A"

[Signature page to Schedule No. 3]

Dated: November __, 2023

LESSOR:
TD EQUIPMENT FINANCE, INC..

LESSEE:
CITY OF PORT ORANGE, FLORIDA

By: _____
Name: Alison L. Sauter _____
Title: Senior Manager _____

By: _____
Name: Donald O. Burnette
Title: Mayor

EXHIBIT "A"

RENTAL PAYMENT SCHEDULE

10/19/2023 4:29:18 PM Page 1

City of Port Orange

Compound Period : Annual

Nominal Annual Rate : 4.720 %

CASH FLOW DATA

Event	Date	Amount	Number	Period	End Date
1 Loan	11/20/2023	1,083,332.00	1		
2 Payment	11/20/2024	138,395.13	10	Annual	11/20/2033

AMORTIZATION SCHEDULE - Normal Amortization

Date	Payment	Interest	Principal	Balance
Loan 11/20/2023				1,083,332.00
2023 Totals	0.00	0.00	0.00	
1 11/20/2024	138,395.13	51,133.27	87,261.86	996,070.14
2024 Totals	138,395.13	51,133.27	87,261.86	
2 11/20/2025	138,395.13	47,014.51	91,380.62	904,689.52
2025 Totals	138,395.13	47,014.51	91,380.62	
3 11/20/2026	138,395.13	42,701.35	95,693.78	808,995.74
2026 Totals	138,395.13	42,701.35	95,693.78	
4 11/20/2027	138,395.13	38,184.60	100,210.53	708,785.21
2027 Totals	138,395.13	38,184.60	100,210.53	
5 11/20/2028	138,395.13	33,454.66	104,940.47	603,844.74
2028 Totals	138,395.13	33,454.66	104,940.47	
6 11/20/2029	138,395.13	28,501.47	109,893.66	493,951.08
2029 Totals	138,395.13	28,501.47	109,893.66	
7 11/20/2030	138,395.13	23,314.49	115,080.64	378,870.44
2030 Totals	138,395.13	23,314.49	115,080.64	
8 11/20/2031	138,395.13	17,882.68	120,512.45	258,357.99
2031 Totals	138,395.13	17,882.68	120,512.45	
9 11/20/2032	138,395.13	12,194.50	126,200.63	132,157.36
2032 Totals	138,395.13	12,194.50	126,200.63	
10 11/20/2033	138,395.13	6,237.77	132,157.36	0.00
2033 Totals	138,395.13	6,237.77	132,157.36	
Grand Totals	1,383,951.30	300,619.30	1,083,332.00	

MEMORANDUM

TO: John McKinney, Finance Director

CC: Wayne Clark, City Manager
Matt Jones, City Attorney
Peter Dame, Akerman LLP

FROM: Richard T. Wagner, President Southeastern Investment Securities, LLC
(Financial Advisor to Port Orange (“City”))

RE: Capital Lease Request for financing Quotes

DATE: October 25, 2023

At your request we solicited verbal quotes from financial institutions for a First Responder Pumper Truck (Pierce Enforcer PUC Pumper Fire Truck in an amount not exceeding \$1,100,000 with a lease term of 10 years).

Quotes were received from three banks. Based upon the quotes received, we recommend an award to the low and best quotes in the aggregate amount of \$1,089,332 to **TD Equipment Finance, Inc. (“TDEF”)**, a division of TD Bank, N.A. at a locked in not to exceed interest rate of **4.72%** for the ten-year lease term. This not to exceed interest rate is for option B under the **TDEF** Proposal allowing the leases to be prepaid at any time in whole subject to a prepayment penalty of 1% of the outstanding principal balance of the lease.

Further, together with staff, we recommend the adoption of an Authorizing Resolution under the City’s Master Lease prepared by the City’s Bond Counsel, Akerman LLP, permitting the issuance and award of this to **TDEF** at the City Council meeting in November, 2023..

Thank you.

\$1,142,824 Port Orange Capital Leases

Summary of Quotes

LENDER	JP MORGAN	TRUIST	TD BANK	SIGNATURE BANK	US BANK
Fixed Interest Rate (Ambulance)	4.65%	4.01%	A) 3.56% B) 3.59%	4.134%	4.69%
Fixed Interest Rate (Fire Truck)	4.59%	No bid	A) 3.45% B) 3.49%	4.139%	4.73%
Prepayments	Make Whole	No penalty	A) Greater of 101% or Yield Maintenance B) 101%	101%	103%

From:

Maggie Morris
Vice President – Regional Manager
1101 Dunlawton Ave,
Port Orange, FL 32127
(240 938 1653)
Margaret.Morris@td.com

Equipment
financing
that works.



Turn to TD Equipment Finance for solutions that fit your needs.

Count on the professionals at TD Equipment Finance to deliver the creative financing solutions you need, along with the highly personal service you demand.

Financing Proposal For:

Southeastern Investment Securities, LLC
Attention: Richard T. (Toby) Wagner
On behalf of:
City of Port Orange, FL
1000 City Center Circle
Port Orange, FL 32129-4144

10/20/2023

Dear Toby,

TD Equipment Finance, Inc. ("TDEF") is pleased to present the following Proposal for your consideration. The structure of the transaction is outlined in the attached Proposal Exhibit which also sets forth certain terms and conditions. PLEASE NOTE THIS PROPOSAL IS SUBJECT TO CREDIT REVIEW AND UNDERWRITING IN ACCORDANCE WITH TDEF'S INTERNAL CREDIT POLICY. NOTHING IN THIS PROPOSAL SHALL BE CONSTRUED AS A COMMITMENT TO LEND. TDEF looks forward to doing business with you and hopes you find the attached Proposal acceptable. If so, please sign and date the enclosed signature page and return it to us by November 7, 2023.

Sincerely,

Maggie Morris

TD Equipment Finance, Inc.

Proposal Exhibit

Lessor:	TD Equipment Finance, Inc., its successors and assigns
Lessee:	City of Port Orange, FL, a state or a political subdivision thereof.
Equipment:	First Responder Vehicle (Pierce Enforcer PUC Pumper Fire Truck)
Maximum Purchase Price:	\$1,083,332.00
Commencement Date:	Subject to the terms and conditions of the Lease, the Lease shall commence upon the earlier of (a) Lessee's acceptance of the Equipment and (b) Lessor's deposit of the Purchase Price for the Lease in an escrow fund or similar fund as provided in the Lease, but in no event later than 11/20/2023 Lease Term: 120 months Payment Amount: See amortization schedule attached hereto and made a part hereof
Rental Payments:	Payments Due: Annual
Prepayment:	The Lease may be prepaid at any time in whole, but not in part, subject to a prepayment premium based on 1% of the then- outstanding principal balance of the Lease.
Tax-exempt Interest Rate:	4.72%
Indexing:	The Tax Exempt Interest Rate quoted above based on Lessor's cost of funds and will be held until 11/20/2023. If the Commencement Date does not occur by 10/20/2023, the interest rate will be adjusted to reflect any change in Lessor's cost of funds. The interest rate and rental payments under the Lease will be fixed for the term of the Lease.
Structure:	The Lease will constitute a "state or local bond" with the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended (the "Code"). Lessee's obligations under the Lease will be subject to annual appropriation of funds by Lessee's governing body. Lessee shall use all reasonable and lawful means available to secure appropriations for each fiscal year during the term of the Lease sufficient to pay all Rental Payments coming due therein Lessor shall lease the Equipment to Lessee without representation or warranty on an AS IS BASIS. The Lease will be a "triple net lease" under which Lessee will be responsible for all expenses relating to the Equipment including, but not limited to, maintenance, insurance coverage (in an amount and in a form acceptable to Lessor), and all taxes (e.g. sales, use and personal property). Lessee shall bear all risk of loss, damage and liability to the Equipment. At the end of the Lease term, upon payment of all amounts payable thereunder, Lessee may purchase the Equipment for \$1.00.
Escrow Funding:	The proceeds of the Lease will be deposited in an escrow account acceptable to Lessor, and disbursements made therefrom upon request by Lessee, pursuant to an escrow agreement in form and substance satisfactory to Lessor.

Collateral Security:	To the extent permitted by applicable law, Lessee's obligations under the Lease will be secured by a first priority security interest on the Equipment and, if applicable, the escrow fund. Titles to the Equipment, if any, shall list Lessee as the owner and Lessor as lienholder.
Tax Status:	The Lease will not be a qualified tax exempt obligation under Section 265 (b)(3) of the Code. The interest portion of the rental payments under the Lease will be excludable from the gross income of Lessor for federal income taxation purposes. Upon a determination that the interest component of the rental payments under the Lease is includable in gross income of Lessor for federal income tax purposes, the interest rate on the Lease will increase to a rate sufficient to restore Lessor to its after-tax yield from and after the date such interest became includable in Lessor's gross income, and taking into account all penalties, fines, interest and additions to tax.
Legal Opinions:	Lessee's counsel shall deliver an opinion to Lessor at closing in form and substance satisfactory to Lessor which shall address, among other things, Lessee's authority to enter in to Lease and the enforceability of the Lease. Lessee will also provide an opinion of nationally recognized bond counsel with respect to the tax-exempt status of the interest payable under the Lease.
Costs & Expenses:	NONE
Documentation:	The documentation for the Lease will contain covenants, representations and warranties usual and customary for transactions of this type and others appropriate to the transaction. All documentation to be executed in connection herewith shall be in satisfactory form and substance to Lessor. Lessor shall verify the Equipment specifications including, but not limited to, model number, number of units, installation costs, year of manufacturing and maintenance contracts; and approve the final Equipment configuration, and acceptance of the financing.

LESSOR'S PROPOSAL/FINANCIAL INFORMATION:

This Proposal is subject to final credit review and approval, and not, nor should it be construed as, a commitment by Lessor or any affiliate to enter into the proposed Lease transaction. In order to complete its credit due diligence, Lessee shall furnish Lessor with the following:

- Three years most current audited annual financial statements, and shall be furnished annually thereafter, if not otherwise published on Lessee's website
- Copy of meeting minutes
- Copy of budget
- Statement of essential use
- Other supporting data as may be requested

AUTHORIZATION: Lessee acknowledges and agrees that Lessor may furnish all Lessee-presented information, financials, analysis, and related credit and review materials to its employees, counsel and agents, as well as its participants and/or assigns. Lessee authorizes Lessor to contact TD Bank, N.A. and other references of Lessee, and to order any and all credit checks and investigative reports, all as Lessor deems necessary in connection with the evaluation of the transaction.

GENERAL:

TD Equipment Finance, Inc. complies with Section 326 of the USA Patriot Act. This Act mandates that we verify certain information about Lessee while processing any Lease request.

EXPIRATION:

This Lease Proposal shall expire, if not accepted by a qualified official by 5:00 pm, on November 7, 2023.

APPROVED AND ACCEPTED:

By: _____

Print Name:

Title:

Date:



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (C16) City Attorney's Report on Special Legal Counsel for FY2024

DEPARTMENT: City Attorney

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: No motion necessary. Report only.

SUMMARY: The City Council has authorized the City Attorney to engage special legal counsel when the circumstances of a particular case or matter warrant. The attached report lists the firms engaged by the City Attorney to represent the City of Port Orange on an ad hoc basis as determined by the City Attorney for FY 2024.

PRESENTER: Matthew Jones

ATTACHMENTS:

1.	CA Special Counsel Report FY24	CA Special Counsel Report FY24.pdf
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Matthew Jones

Created/Initiated - 10/23/2023

Matthew Jones

Approved - 10/25/2023

Wayne Clark

Final Approval - 10/25/2023

CITY ATTORNEY SPECIAL LEGAL COUNSEL SERVICES – FY 2024

Allen Norton & Blue, P.A. / Ford & Harrison, LLP

Personnel, labor and employment law involving labor contract negotiations, grievances and arbitrations, Fair Labor Standards, policy reviews and other similar matters.

Kinsey Vincent & Pyle, P.L.

Construction bond and contract litigation, complex construction contracting matters, American Institute of Architect Contract Licensing, and other litigation or prosecutorial matters.

Lewis Longman & Walker, P.A.

Pension Law for fire, police, general employees and other administrative and state regulatory matters.

Dean Ringers Morgan & Lawton, P.A. / Walker Revels & Greninger, PLLC

Civil litigation defense, policy development, personal injury, workers compensation, law enforcement liability and other general litigation coverage.

Scott E. Simpson, P.A.

Real property, escrow and litigation services.

Bryant Miller Olive, P.A.

Impact fee, special assessments and other fee ordinance implementation or amendments; and public private partnerships.

Gray Robinson, P.A.

Communications related services including development reviews, lease preparation and negotiations, and regulatory implementation and amendments.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/7/2023

SUBJECT: (G19) Appeal of Planning Commission Denial of Variances for 917 Boyte Street

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the variances requested for 917 Boyte Street.

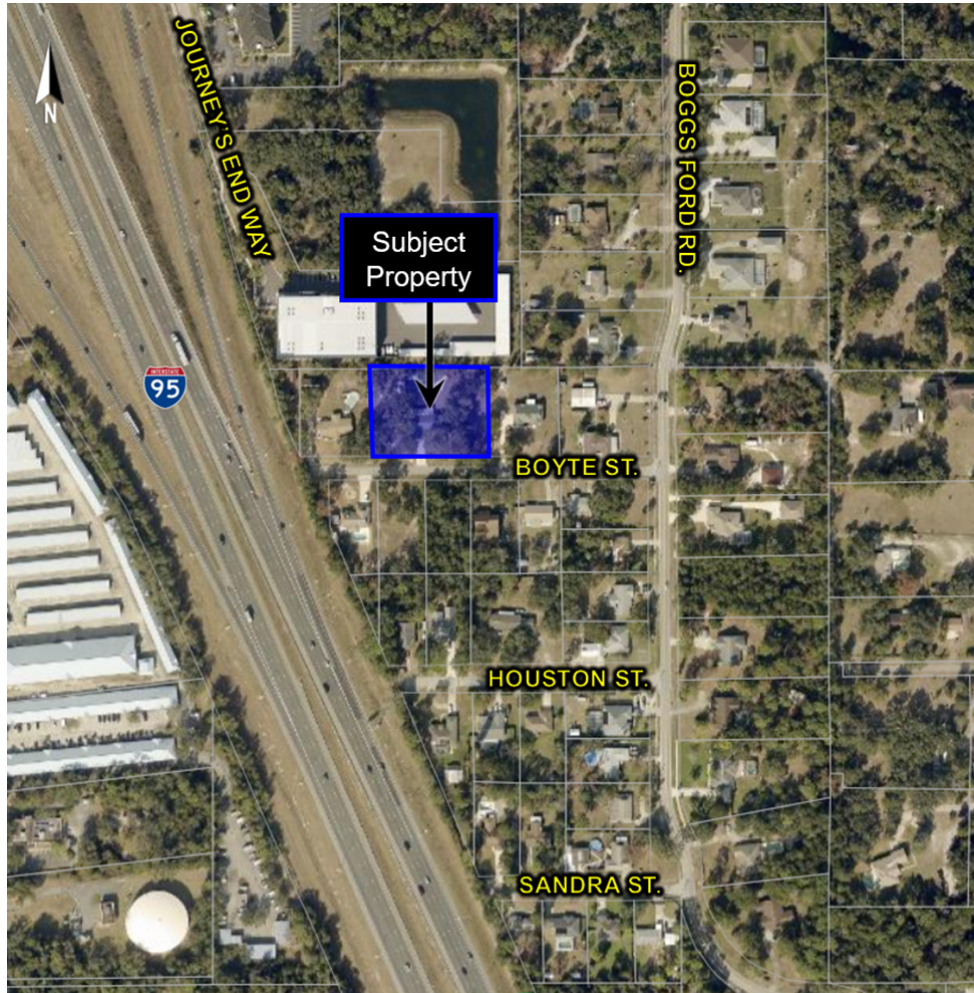
SUMMARY: Based on the findings in the attached staff report, staff recommended approval of the variances requested by the property owners/applicants (Dexter and Linda Copp) to allow their property at 917 Boyte Street to be subdivided into two lots and for a new single-family home to be constructed on the new lot. At the September Planning Commission meeting, the Planning Commission denied (6-1) the variances requested.

According to Chapter 19, Section 1(f) of the Land Development Code (LDC), the Council's decision to reverse or uphold the Planning Commission's decision **shall be based on the facts of the case presented during the September Planning Commission meeting, the review criteria established for variance requests, and the Planning Commission's decision on the requested variances. No new evidence may be presented, heard, or discussed. Any new information must be presented as part of a new variance request.** The applicants requested the following variances from the LDC:

- a. Reduce the lot area requirement for proposed Lot 1 from 1 acre to 0.78 acres (34,000 square feet) and proposed Lot 2 from 1 acre to 0.39 acres (17,000 square feet) - Chapter 17, Section 27 of LDC.
- b. Reduce the lot width requirement for proposed Lot 2 from 150 feet to 85 feet- Chapter 17, Section 27 of LDC.
- c. Reduce the east side building setback for proposed Lot 1 from 25 feet to 16 feet - Chapter 17, Section 27 of LDC; and
- d. Reduce side building setbacks from 25 to 15 feet for proposed Lot 2 - Chapter 17, Section 27 of LDC.

Attached is the appeal request from the applicants, minutes from the September Planning Commission Meeting, the September Planning Commission staff report, and

the information provided by the applicant as part of their variance application.



PRESENTER: Tim Burman, Penelope Cruz

ATTACHMENTS:

1.	Staff Report - 917 Boyte Street Variance	Staff Report - 917 Boyte Street Variance.pdf
2.	Objection Letters	Objection Letters.pdf
3.	9-28-2023 Planning Commission Meeting Minutes	9-28-2023 Planning Commission Meeting Minutes.doc
4.	Applicant Appeal Request	Applicant Appeal Request.pdf

Gwen Perney
Tim Burman
Shannon Balmer
Wayne Clark
Tracee Cody

Created/Initiated - 10/6/2023
Approved - 10/6/2023
Approved - 10/25/2023
Approved - 10/25/2023
Final Approval - 10/26/2023



STAFF REPORT

VARIANCE/ CHAPTER 17, SECTION 27 OF THE
LAND DEVELOPMENT CODE
CASE NO. VARC-23-0007

REQUEST: Variances from the Land Development Code (LDC) to allow 1) a lot size less than 1 acre, 2) a lot width less than 150 feet, and 3) a side building setback less than 25 feet for a parcel zoned Agriculture (A).

LOCATION: 917 Boyte Street

APPLICANTS/PROPERTY OWNERS: Dexter and Linda Copp

STAFF RECOMMENDATION: Approval

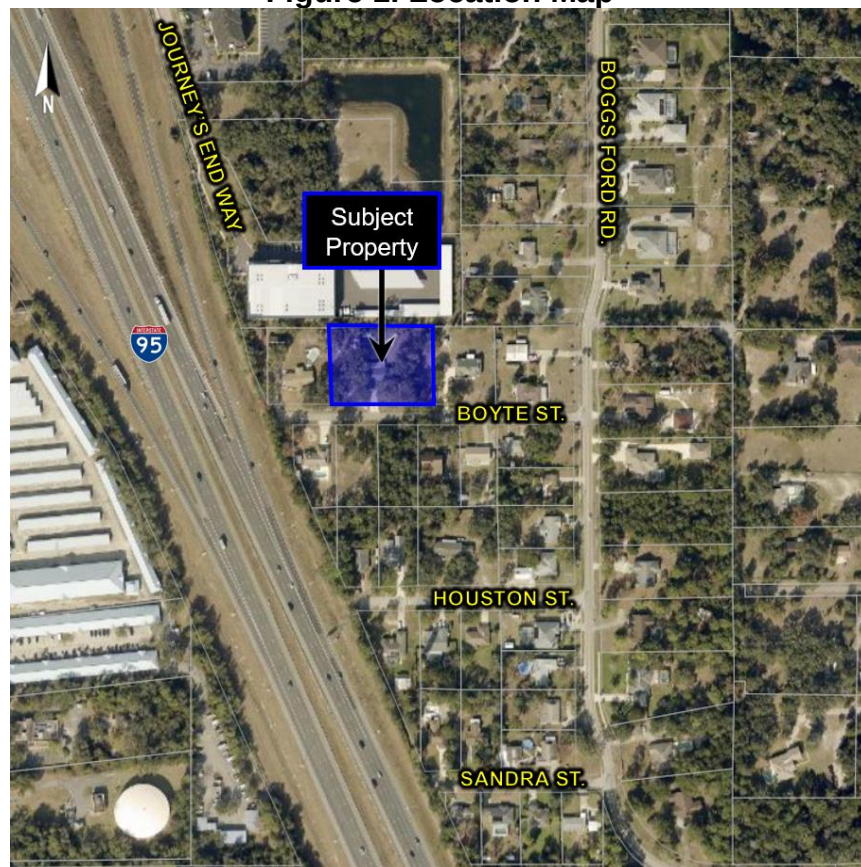
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

PLANNING COMMISSION DATE: September 28, 2023

DISCUSSION:

The applicants and property owners, Dexter and Linda Copp are requesting variances from the dimensional requirements in the Land Development Code (LDC) for their property located at 917 Boyte Street. The subject property is currently zoned Agriculture (A) and is located on the north side of Boyte Street, west of Boggs Ford Road (Figure 1 – Location Map).

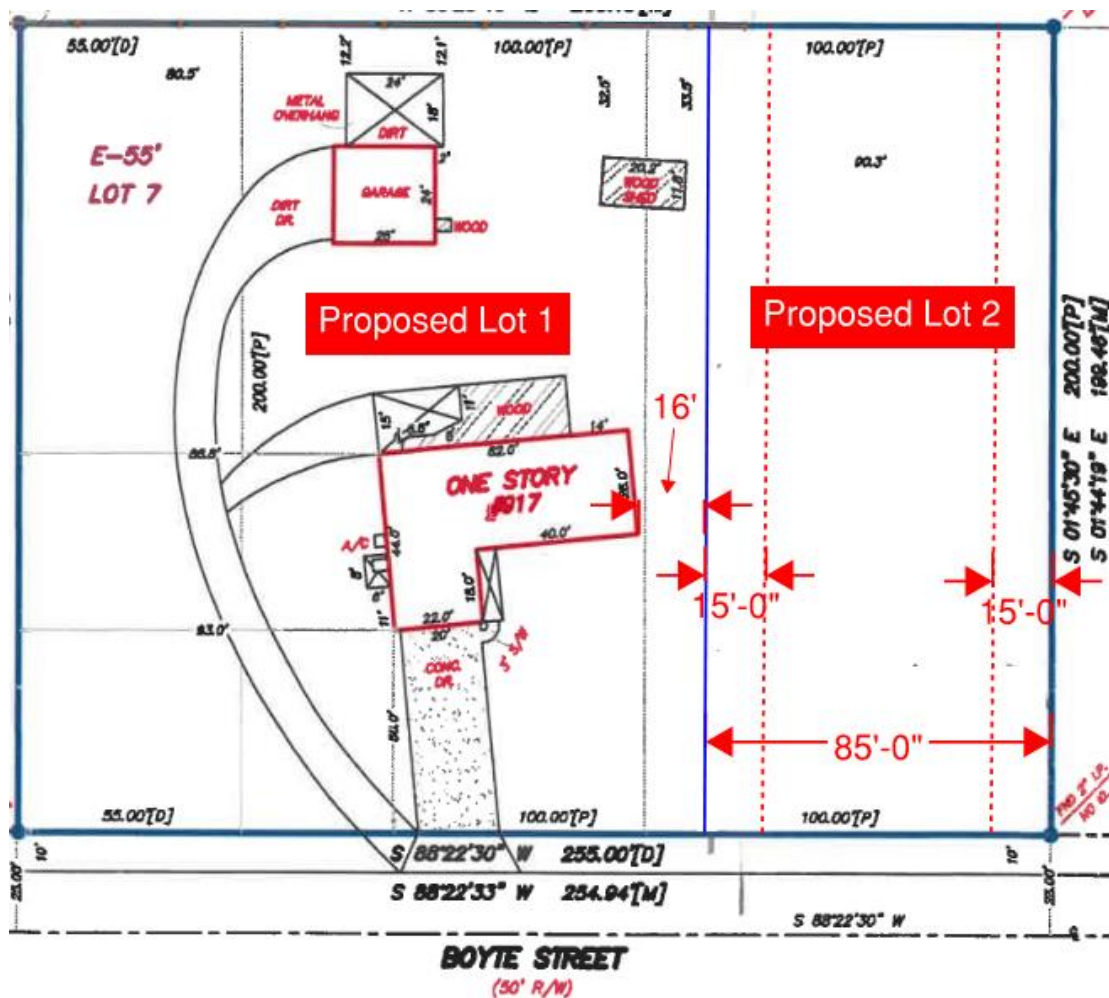
Figure 1. Location Map



According to the applicants, the requested variances are to subdivide a portion of the subject property to create a new lot and build a new single-family house on the new lot (Exhibit 1 – Letter of Request) for their daughter and her family. The applicants are requesting the following variances from the dimensional requirements for the “A” zoning district to subdivide the subject property into two lots:

- **Lot 1.** The area for Lot 1 is proposed to be 0.78 acres (34,000 square feet) in lieu of the 1 acre (43,560 square feet) required by the LDC. The side building setback on the east side of Lot 1 is requested to be reduced to 16 feet instead of 25 feet. The existing house would remain.
- **Lot 2.** The area for Lot 2 is proposed to be 0.39 acres (17,000 square feet) in lieu of the 1 acre (43,560 square feet) required, and the width of Lot 2 is proposed to be 85 feet in width in lieu of the 150 feet required. The applicants propose constructing a single-family house on Lot 2 with a 15-foot side building setback in lieu of the 25 feet required by the LDC.

Figure 2. Proposed Lots 1 and 2 and Requested Variances



The variances requested are the following:

1. Reduce the lot area requirement for proposed Lot 1 from 1 acre to 0.78 acres (34,000 square feet) and proposed Lot 2 from 1 acre to 0.39 acres (17,000 square feet) - Chapter 17, Section 27 of LDC.
2. Reduce the lot width requirement for proposed Lot 2 from 150 feet to 85 feet- Chapter 17, Section 27 of LDC.
3. Reduce the east side building setback for proposed Lot 1 from 25 feet to 16 feet - Chapter 17, Section 27 of LDC; and
4. Reduce side building setbacks from 25 feet to 15 feet for proposed Lot 2 - Chapter 17, Section 27 of LDC.

The subject property is in the Mac John Subdivision. The Mac John Subdivision was platted in 1964, and all the lots in the subdivision are currently zoned Agricultural (A). In 1964, the lots in the subdivision were platted at 100' x 200' or 20,000 square feet. Therefore, the platted lots in the subdivision are smaller than the current lot area (43,560 square feet) and lot width (150-foot) requirements for the "A" zoning district (Figure 3 – Lot Acreage Map – See Page 4). Over time, some property owners have combined or split and recombined some lots within the subdivision, but overall, the majority of the lots in the Mac John Subdivision developed with a single-family are less than a half-acre and have a lot width less than 150 feet (Table 1).

Table 1. Lot Acreage in the Mac John Subdivision

Acreage	1 acre or more	0.75 acres to 1 acre	0.50 acres to 0.75 acres	0.50 acres or less
Number of Lots	1	2	3	26

The subject property is the largest lot within the Mac John Subdivision and currently consists of two previously platted lots: Lot 5, Lot 6, and a portion of Lot 7. The LDC allows combined lots to be divided based on previously platted lot lines without having to go through the minor subdivision process. The applicants could potentially split the previously platted 100' X 200' easterly Lot 5 from the current Lots 6 and 7; however, a variance would still be required for the existing house as it would only be approximately two feet from the side property line and the LDC requires a 25-foot setback.

The most compatible city zoning district for the lots in this subdivision, based on lot area and lot width and existing Future Land Use (*Rural Transition 0 to 2 units per acre*), would be the City's R-20SF (Single-family Residential) zoning district, which requires a minimum lot area of 20,000 square feet and a minimum lot width of 100 feet. Based on historic zoning maps, the lots in the Mac John Subdivision have been zoned "A" since the early 1960s. The current "A" zoning district is generally considered a holding zoning district until a property owner requests the property be rezoned for development. However, rezoning of this subdivision has not been requested to date as it would require all lot owners to agree to the rezoning. In addition, the applicants cannot request only the subject property be rezoned to R-20SF as that would be considered a spot

zone among properties zoned "A." In order to rezone to R-20SF, it would require a coordination effort with all of the property owners in the Mac John subdivision.

Figure 3. Lot Acreage Map



If the Mac John subdivision had been rezoned R-20SF, which is the most compatible zoning district for the lot sizes within the subdivision, only a side yard setback variance would be necessary.

Table 2. Lot Dimensional Requirement Comparison

	Minimum Lot Size	Minimum Lot Width	Side Setback	Front Setback	Rear Setback
"A Zoning District	43,560 SF (1 acre)	150 feet	25 feet	50 feet	40 feet
R-20SF Zoning District	20,000 SF (0.46 acres)	100 feet	10 feet	30 feet	25 feet
Mac John Subdivision Plat (1964)	20,000 SF (0.46 acres)	100 feet	25 feet	50 feet	40 feet
Proposed Lot 1 - Existing House	34,000 SF (0.78 acres)	170 feet	16 feet & 88 feet	50 feet	40 feet
Proposed Lot 2 - Vacant Lot	17,000 SF (0.39 acres)	85 feet	15 feet & 10 feet	50 feet	40 feet

REVIEW OF VARIANCE CRITERIA:

Chapter 19, Section 1, LDC, lists the review criteria that are used to determine whether the variances requested should be granted. These criteria, accompanied by staff analysis, are as follows:

- a) *Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which do not apply to other lands, structures, or buildings in the same zoning district.*

According to the applicants, the unique circumstance for the subject property is that the prior property owner constructed the existing home on the subject property in a manner that prevents Lot 5 from being split off. If the existing house was constructed further to the west, about 23 feet, then Lot 5 could be split from the subject parcel using the previously platted lot lines without the need for variances.

All the lots in the Mac John Subdivision were platted in 1964 and are smaller in size than the current dimensional requirements for the current zoning for this subdivision. The subject property consists of two and a half previously platted lots.

- b) *The special conditions and circumstances are not a result of the actions of the applicant.*

The special conditions and circumstances are not result of the actions of the applicants. The subdivision was platted in 1964, and the existing house was constructed in 1989. The applicants purchased the property as it is currently configured in 2016.

- c) *Literal interpretation and enforcement of the development code regulations would deprive the applicant of rights commonly enjoyed by other properties in the same*

zoning district under the terms of the development code and would work an unnecessary and undue hardship on the applicant.

Literal interpretation of the LDC would not deprive the applicants of rights commonly enjoyed by other properties within the same zoning district. As part of the development approval process, all new subdivisions are required to comply with the current development requirements of the LDC or obtain a variance from the requirements in the LDC.

According to the applicants, the variances are necessary for their proposed lot configuration to accommodate the existing house on Lot #1 and to construct a new home on Lot #2 for their daughter and her family. The subject property is the largest lot within the subdivision and currently consists of two previously platted lots: Lot 5, Lot 6, and a portion of Lot 7. The LDC allows combined lots to be divided based on previously platted lot lines without having to go through the minor subdivision process. The applicants could potentially split the previously platted 100' X 200' easterly Lot 5 from the current Lots 6 and 7; however, a variance would still be required for the existing house as it would only be approximately two feet from the side property line and the LDC requires a 25-foot setback. The applicants could also demolish the existing home and then subdivide the property along the existing platted lot lines and construct a new home on Lot 5, a new home on Lot 6, and a portion of Lot 7.

Figure 4. Subject Property with Previously Platted Lot Lines and Proposed Lot Line



- d) *The variances, if granted, are the minimum variances necessary to make possible the reasonable use of the land, building, or structure.*

Staff has worked with the applicants to reduce the overall number of necessary variances and minimize the requested variances. The applicants stated that the proposed lot configuration and setbacks provide adequate lot sizes and setbacks to meet the intent of the LDC for separation between buildings to minimize the visual appearance of the structures from adjacent properties, for air movement, and room for maintenance and repairs while maintaining the overall character of the subdivision. According to the applicants, the requested variances are the minimum variances needed to provide the required lot size to maintain their existing single-family home and provide a lot to construct a new single-family home for their daughter and her family. The applicants have indicated that they will be able to meet all other dimensional requirements for the "A" zoning district (i.e. front and rear setbacks, building coverage, open space, living area, driveway size, building height, etc.).

According to the applicants, the proposed 85-foot lot width (Lot 2) allows the existing house to have sufficient side setbacks from the proposed property line. The applicants also state that the requested side yard setbacks are consistent with the R-20SF zoning district, the most compatible city zoning district for the lots in this subdivision, and the separation distance between homes would generally be consistent with other houses built in the Mac John Subdivision.

- e) *Granting the variances requested will not confer on the applicant any special privilege that is denied by the development code to other lands, buildings, or structures in the same zoning district.*

All lots that are subdivided must meet the requirements of the current zoning district in the LDC or secure variances from said requirements. A majority of the lots within the Mac John Subdivision do not meet the current dimensional requirements for lot width, lot size, and, in some cases, side building setbacks. Additionally, the applicants have the option to subdivide the property on the previously platted lot line, but doing so would create a non-conformity with the side setback of the existing house. According to the applicants, the requested variances allow for their property to be subdivided in a manner generally consistent with the majority of the lots in the subdivision.

- f) *The granting of the variances will be in harmony with the general intent and purpose of this code and will not be injurious to the surrounding properties or detrimental to the public welfare.*

The intent of the minimum lot size requirement is to provide for consistent and uniform character of an area. The Mac John Subdivision was platted in 1964 with 20,000 square foot lots, which is smaller than the current "A" zoning district requires. Although some property owners have combined or split and recombined some lots within the subdivision, overall, the majority of the currently developed properties are less than a half-acre and have a lot width of less than 150 feet.

The intent of the building setback requirements in the LDC is to provide adequate separation between buildings to minimize the visual appearance of the structures from adjacent properties, ensure adequate separation between structures for air movement, and provide room on the subject property for maintenance and necessary repairs. A majority of the lots within the subdivision do not meet the current A zoning district dimensional requirements for lot width, lot size, and, in some cases, side building setbacks. According to the applicants, the proposed variances will provide adequate lot sizes and setbacks to meet the intent of the LDC while maintaining the overall character of the subdivision.

- g) *The variances represent a reasonable disposition of a claim brought under the Bert J. Harris Private Property Rights Protection Act, chapter 95-181, Laws of Florida, that a development order of the city has unreasonably burdened the applicant's property, based upon the recommendations of the special master appointed in accordance with the act, or the order of a court as described in the act.*

The variances requested are not based on a claim brought under the Bert J. Harris Private Property Rights Protection Act.

PUBLIC NOTICE:

Public Notices regarding the variance were mailed and the property was posted on the site on September 13, 2023, per the LDC. As of September 22, 2023, staff has received one letter of opposition (Exhibit 2). No other inquiries from the public or letters were received.

RECOMMENDATION:

Based on the findings of this report, staff recommends approval of the variances request for property located at 917 Boyte Street to:

1. Reduce the lot area requirement for proposed Lot 1 from 1 acre to 0.78 acres (34,000 square feet) and proposed Lot 2 from 1 acre to 0.39 acres (17,000 square feet);
2. Reduce the lot width requirement for proposed Lot 2 from 150 feet to 85 feet;
3. Reduce the east side building setback for proposed Lot 1 from 25 feet to 16 feet; and
4. Reduce the building setbacks from 25 feet to 15 feet proposed Lot 2.

ATTACHMENT:

1. Exhibit 1. Letter from Applicant
2. Exhibit 2. Letter from Adjacent Property Owner

Exhibit 1

RECEIVED

AUG 18 2023

CITY OF PORT ORANGE
BUILDING DEPT

Port Orange Planning and Zoning

We are writing to request another buildable lot at our property located at 917 Boyte Street. We are requesting an 80'x200' variance, currently the property is 255'x200' (1.17 acres, homesteaded for the last 8 years).

We'd like to gift this to our daughter and her husband to build a home next door to us. This would not only give us some security as we get older, having her close to look out for us (or just one of us, should one of us pass away) but also improve the neighborhood and increase property values of our neighbors.

We understand that the current zoning is for a 20,000 sq ft lot; but the existing home is right at the 100-foot mark. This is why we are asking for this variance of 80' with a set-back of 15' from the east property line (our current neighbor) and a 10' set-back from the west property line (our home). Front set-back remains 50' and rear set-back remains 40' per current zoning. This would allow a 55' wide house built by Paytas Homes.

Thank you for your kind consideration.

Sincerely,

  
Dexter and Linda Copp

EXHIBIT 2

To The Port Orange Planning Commission

IN RESPONSE OF .

Case# VARC-23-0007

I willie Jason Wofford owner of 925 Boyte st, Port Orange Fl 32127, house adjacent to the parcel NO 6320-01-00-0050 which is in this public hearing petition respond to that with a **NO IN AGREEMENT**. I cannot assist to the meeting due to work, my work is traveling out of state and cant not be back by the time of this meeting.

Mrs. Dexter who is the petitioner of this change has mentioned before to us and everyone in the street his intentions of renting his property and no staying on it. He is a realtor with multiple houses been rented, and land in New Smyrna and other cities that he can develop.

After the last new construction done in this street, the street and our house sewer system has had problems which makes us believe that it is at capacity already on this street. This is one of the streets lefts in the city with some land/green areas in which we don't have houses on top of each other. I ask you to drive around and check, we do not need to add another house to be rented, we are a quiet family-oriented street, and we are at capacity. Also, this area is considered grandfather land. The street as well was built on when it was a country area so doesn't have the modern updated capabilities for that many houses around. We have a hotel been built behind us, we do not need more construction.

I moved to this street because it was quite and because the privacy that gives you no having houses on top of you, because the green areas left and space, and Mrs. Dexter has mentioned to everyone here and to us, very clearly his wished and intentions of having his property as rental property and moving out. We do not need in this area more rental properties and the disruption of the peace and nice green area street. This street doesn't have proper sidewalks, updated sewer systems, updated good electricity post or maintenance in general. He has asked us about, and we have been very clear in our opposition to this as it is in opposition all houses on the street if you ask them.

Please Help us to protect the integrity of this street.

Willie Jason Wofford
256-412-9250
925 boyte st,
Port orange Fl 32127



Sep 19 of 2023

To The Port Orange Planning Commission

Who to it May concern.

IN RESPONSE OF

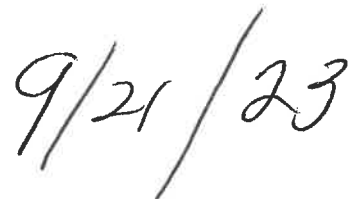
Case# VARC-23-0007

I DIANNE DUNLAP the owner of the house 909 boyte st, Port Orange FL, can't assist to the meeting for health reasons. I'm the house IMMEDIATELY AFFECTED in the case of a new construction which is adjacent to the parcel NO 6320-01-00-0050 which is in this public hearing petition responding to that with a NO IN AGREEMENT.

My reasons are stated above:

1. I DO NOT NEED OR WANT a house on top on my house losing my privacy and tranquility.
2. Mrs. Dexter, the petitioner, has tried multiple times to do the same and I, and the street residents had told them and express their disagreement AND OPOSITION TO IT.
3. The public services are no updated and will be affected if another house is added, this is a quiet street that doesn't have lighting at night or updated amenities to sustain another house.
4. The land is too narrow if it is split, my land and house will be affected directly, (impacted in a negative way).
5. Mrs. Dexter have been very clear in his wished of moving out and having rental properties here. He is a realtor and have done this before. He possesses other properties and land; we don't need people coming in and out.
6. I request that also the opinion from people on this street is taken in consideration, we are 6 houses only, this is a grandfather land, and we do no agreed with this change.
7. I ask you please to NO ALLOW THIS. Come and drive here and see it for yourself, we don't even have lighting around.

Sincerely,



909 Boyte st,
Port Orange fl 32127
owner

September 20, 2023

Port Orange Community Development Department
1000 City Center Circle
Port Orange, FL 32129

Case No. VARC-23-0007

Dear Community Development Members:

I am writing to express my husband's and my strong opposition to the request for a variance (Case No. VARC-23-0007) to subdivide the property located at 917 Boyte Street (Parcel No. 6320-01-00-0050) into two lots. We believe that this variance would have a negative impact on our small neighborhood and should not be approved.

There are several reasons why we are opposed to this variance. First, the proposed subdivision does not align with the existing zoning regulations and would set a precedent for future variances. It is important to uphold the integrity of our zoning laws and maintain the character of our neighborhood.

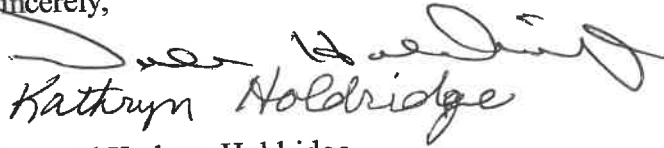
Second, my husband, Dale Holdridge, is one of the original residents on Boyte Street. He and his family moved to this area so that they would not have to "touch" their neighbor's house and have plenty of room to promote "country living" within the Agriculture zoning district. Although the property located at 917 Boyte Street is quite roomy, there is not enough vacant property between the existing house and the property located at 909 Boyte Street to allow a house to be built without overcrowding the neighbor.

Finally, the requested variance could have environmental implications. It may disrupt natural habitats, increase stormwater runoff, and contribute to urban heat island effects. Port Orange is well-known for being designated a Tree City USA by the National Arbor Day Foundation, one of a few cities in Florida holding that distinction. Port Orange is close to losing that distinction by allowing so many trees to be cleared from area properties. By granting this variance, Dexter and Linda Copp will be able to build on this small tract of land and clear more trees. The loss of these trees will contribute to urban heat island effects. These environmental concerns should be carefully considered before any decisions are made.

We urge you to carefully review the details of this variance request and consider the potential impacts on our neighborhood. We believe that denying this variance is in the best interest of our neighborhood and its residents.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dale and Kathryn Holdridge". The signature is written in dark ink and is positioned above the printed name.

Dale and Kathryn Holdridge
904 Boyte Street
Port Orange, FL 32127

September 2023

Sharon McKelvey
910 Boyte Street
Port Orange, Fla.

To: Port Orange Planning Commission

I am writing to oppose the request for a variance of the property located at 917 Boyte Street Port Orange FL. Boyte Street property has always been a large lot neighborhood. This has been the appeal for those who have homes here. If the property is divided, setbacks changed, and a house constructed I feel it would be overcrowded and look out of place. I cannot be present at the public hearing. Thank you for your consideration.

Sharon McKelvey

Perney, Gwen

From: Dawn Oggier <nationalradonlady@gmail.com>
Sent: Thursday, September 28, 2023 8:56 AM
To: Perney, Gwen
Cc: Cruz, Penelope
Subject: [EXT] Re: 917 Boyte St. Variance
Attachments: image001.png

Got it. Thank you.

It appears that the LDC has already formulated a decision based on variances that existed prior to the land being grandfathered in. I don't see where a variance is present that reduces the minimum setback requirement for structures under 25ft on other properties in the subdivision. A minimum 25ft set back of structures from a property line is consistent with the majority of the state of Florida. It would be prudent for the neighborhood and the LDC not to waive this setback requirement as it could open up liability of case law for future variance requests.

This lot has old oak trees that would need to be removed to build a home. With tree removal, you reduce valuable history and more importantly habitats, tranquility and comfort for both animals and residents alike. My mom is disabled and is battling terminal cancer. Her home is adjacent to proposed LOT 2. She should be entitled to the same privacy and tranquility that exists for her neighbors on Boyte street. The street has lost so much already with storage units built behind their property and a new hotel going in.

Please consider the residents on Boyte street and the integrity of the neighborhood over the financial prowess of the real estate applicant. Their intentions are not honest as documented in the application for variance. Their intent is to build an investment home that can be used as an Air BNB or rental and rent out their current home. The intention has been clearly communicated to neighbors and non-residents. Mr. Dexter spoke to me about buying the property, but the amount he wanted for the land that was non-buildable did not make sense. Here is why. If I purchased the land and wanted to apply for the same variance they are applying for, it could not have been procured without their cooperation and consent. Thereby, denying the same rights and opportunities of a variance to any person other than the applicant. I encourage the LDC to consider the equitable distribution of rights and liability to community, residents and wildlife prior to making a final decision.

Respectfully,
Dawn Oggier

Licensed Radon Measurement and Mitigation Specialist:

Florida Certified Radon Measurement Specialist (R2717)

Florida Certified Radon Mitigation Specialist (R2539)

NRPP Certified Analytical Measurement Provider (110622 RT)

NRPP Certified Mitigation Provider (111301 RMT)

REGULAR PLANNING COMMISSION MEETING MINUTES
COUNCIL CHAMBERS – CITY HALL
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA
SEPTEMBER 28, 2023

THE REGULAR PLANNING COMMISSION MEETING of the City of Port Orange was called to order by Chairman Lance Green at 5:30 p.m.

Pledge of Allegiance

Roll Call

Present:

Bo Bofamy
Thomas Jordan
John Junco
Newton White
Stan Schmidt
Maria Mills-Benat, Vice Chair
Lance Green, Chairman

Also Present:

Shannon Balmer, Assistant City Attorney
Tracee Cody, Deputy City Clerk
Meghan Meyer, Administrative Assistant

DISCUSSION/ACTION

3. Consideration of Minutes - August 24, 2023

Motion to approve the meeting minutes of August 24, 2023 was made by Vice Chair Maria Mills-Benat and seconded by Commissioner Newton White. Motion carried unanimously by roll call vote.

4. APPLICATION: Variance/ Chapter 17, Section 27 of the Land Development Code
CASE NO.: VARC-23-0007
APPLICANT: Dexter and Linda Copp
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to allow 1) a lot size less than 1 acre, 2) a lot width less than 150 feet, and 3) a side building setback less than 25 feet for a property located at 917 Boyte Street in the Agriculture (A) zoning district.

Motion to approve Case No. VARC-23-0007 was made by Commissioner Thomas Jordan and seconded by Commissioner John Junco.

Gwen Perney, Planner, explained staff received opposition letters late in the day and provided copies to the Commissioners. Ms. Perney provided further details of the request and answered questions from the Commissioners.

Applicant, Dexter Copp, spoke to the Commissioners about his reasoning for the request to allow his daughter to have a home on their property and provided pictures of the neighboring lots. Megan Kaczynski, the Applicant's daughter, mentioned that she has been shopping around for builders and that having a narrowing structure is what she can afford.

The Commissioners expressed concerns regarding property value for neighbors and long-term effects.

Dale Holdridge, neighbor, expressed his opposition to the request. He stated that the neighborhood has a country/agricultural style and did not want it to change to a smaller sideline.

Chairman Lance Green called for a recess at 6:02 p.m. for Commissioners to review the opposition letters they received. The Planning Commission reconvened at 6:06 p.m.

Commissioner John Junco asked Ms. Perney if the City has any Ordinance or rules regarding Airbnb's and she explained there is not an Ordinance and any house can be a short term rental.

Commissioner Bo Bofamy does not feel this request would disrupt the neighborhood; however majority of the Commissioners are concerned with non-conforming lots and stated it would be a disruption to the neighborhood.

*Motion failed 6-1 with Commissioners
Thomas Jordan, John Junco, Newton
White, Stan Schmidt, Vice Chair Maria
Mills-Benat, and Chairman Lance Green
voting no.*

5. APPLICATION: Variance / Chapter 17, Section 27 and Chapter 13,
Section 3(d)(1)(c) of the Land Development Code
CASE NO.: VARC-23-0009
APPLICANT: Robert T. Braun, Trustee, Fraternal Order of Eagles Port Orange Aerie
4089
STAFF CONTACT: Gwen Perney, Planner (386) 506-5673

A request for variances from the Land Development Code to reduce the rear building setback from 10' to 2.5' and landscape buffer along a right-of-way from 10' to 2.5'.

Motion to approve Case No. VARC-23-

0009 was made by Vice Chair Maria Mills-Benat and seconded by Commissioner Thomas Jordan.

Ms. Perney provided further details of the request and answered questions from the Commissioners.

Applicant, Robert Braun with the Eagles, mentioned to the commissioners that he has been a trustee for the Eagles Lodge for the last 15 years. The fundraisers and big events get overflowed to the back and when it rains the events get delayed because they need coverage.

Lisa McCarthy, property owner behind the Eagles, expressed that she is not in favor of this request due to noise, increased amount of traffic, and an increase to the feral cat situation.

Tim Burman, Community Development Director, explained if the variance was approved, the applicant would have to follow guidelines for drainage and water flow.

Basil Jaisingh, owner of 5160 Ridgewood Ave. apartment complex, asked the Commissioners if his tenants would be blocked from access and they confirmed tenants will not be blocked.

Motion carried unanimously by roll call vote.

OTHER BUSINESS

6. Commissioner Comments

Commissioner John Junco and Chairman Lance Green commented about former Commissioners that have passed recently.

7. Staff Comments

Penelope Cruz, Planning Manager, introduced employee Suzette Cameron, Senior Planner.

PUBLIC COMMENTS

There were none.

ADJOURNMENT - 6:46 p.m.

Chairman Lance Green

[EXT] Re: Planning Commission Meeting 9/28/23 - 5:30PM



Dexter Copp <dexter@dextercopp.com>

To Perney, Gwen

Cc Cruz, Penelope



Reply

Reply All

Forward



Thu 10/5/2023 10:30 /

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.



image001.png

17 KB

Hello

We are wanting to proceed with going to City Counsel on this variance

Let me know where to go ahead and pay the \$100 fee

Thank you

On Fri, Sep 22, 2023 at 6:27 PM Perney, Gwen <gperney@port-orange.org> wrote:

Below is the link to the Planning Commission Agenda for September 28, 2023.

You will be able to view the agenda and staff report for your item.

Please let me know if you have any issues accessing the documents or if you have any questions. (To see Agenda with links to staff reports select Meeting Overview on the left.)

Planning Commission Agenda and Packet: <https://portorange.fl.portal.civicclerk.com/event/1971/overview>

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