



REGULAR CITY COUNCIL MEETING

6:30 PM – COUNCIL CHAMBERS – CITY HALL

NOVEMBER 19, 2024

AGENDA

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

A. OPENING

1. Invocation by Father Edgar Serrano of the Basilica of Saint Paul
2. Pledge of Allegiance
3. Roll Call

B. PROCLAMATIONS AND RECOGNITION

4. Certificates of Recognition - Councilman Tracy Grubbs

C. CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only
6. Agenda Approval
7. Approval of Minutes
 - a. November 6, 2024 - Regular Council Meeting
8. Bid Awards and Contract Items
 - a. Request to Waive Formal Bidding Requirements for Water Treatment Facility Lime Disposal and Award a Contract to 4C Sod Farm, Inc.
 - b. Approval of the Economic Incentive Agreement for Florida Volusia Trust LLC (65 Dunlawton Avenue) - Chapter 20 Targeted Business Program
 - c. Approval of the Economic Incentive Agreement for Mueta Business LLC (59 Dunlawton Avenue) - Chapter 20 Targeted Business Program
9. Resolution No. 24-46 - Budget Amendment - FY2023 - 2024 Final Year End True-Up
10. Resolution No. 24-47 - Capital Encumbrance and Project Balance Roll forward Budget Amendment for Fiscal Year 2024-2025

11. Resolution No. 24-48 - Accepting the grant award from the U.S. Department of Justice FY24 Patrick Leahy Bulletproof Vest Partnership Project in the amount of \$29,233.97.
12. Resolution No. 24-49 - Florida Green Finance Authority's Incorporation of Supplemental Statutory Requirements Pursuant to SB 770 for Florida's PACE Act
13. Resolution No. 24-50 - Master Lease Purchase Agreement for Public Safety and Public Works Equipment with Truist Commercial Equity, Inc.
14. Resolution No. 24-51 - Approval of Grant Agreement for \$750,000 from Florida Inland Navigation District (FIND) for construction of the South Causeway Boat Ramp and Floating Docks Improvements
15. Approval of an Amendment to the Administrative Code
16. Approval of the Purchase of Real Property from Bristol Port Orange Partners, LLC and Acceptance and Approval of Assignments of Purchase and Sale Agreements from Bristol Port Orange Partners, LLC to the City for Purchase of Real Property Parcels adjacent to the City and CRA-Owned Parcels in the Riverwalk Area
 - a. Assignment of the Contract to Purchase 113 Herbert Street from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #1)
 - b. Assignment of the Contract to Purchase 3855 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #2)
 - c. Assignment of the Contract to Purchase 3921 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #3)
 - d. Contract to Purchase 3925 Ridgewood Avenue (Purchase #1)

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

E. COUNCIL COMMENTS

17. Comments/Concerns from Council Members

F. SPECIAL REPORTS

18. Capital Financing Discussion

G. BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

19. Citizen Advisory Committee for TPO
20. Planning Commission Board Appointments

H. PUBLIC HEARING

21. Second Reading - Ordinance No. 2024-19 - Second Amendment to the Riveryard Master Development Agreement (Case No. PRZA-24-0006)

22. Second Reading - Ordinance No. 2024-23 - Amending Code of Ordinances Chapter 6, Article 1 - Alcoholic Beverages

23. Second Reading - Ordinance No. 2024-24 - Amending Information Technology Policies for City Boards and Commissions

I. REGULAR AGENDA

24. ArtHaus Request to Paint Murals on the Eight Columns and Embankment Walls for the Dunlawton Avenue Bridge Located in the Down Under Area

J. ADDITIONAL ITEMS

25. City Attorney

26. City Manager

K. COUNCIL COMMITTEE REPORTS

27. City Council Committee Reports

a. Proposal for Advisory Board - Councilman Tracy Grubbs

b. Arthaus - Councilman Tracy Grubbs

c. Roundtable of Elected Officials - Mayor Don Burnette

d. First Step Shelter - Mayor Don Burnette

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

f. Volusia Flagler TPO - Councilman Jonathan Foley

28. Mayor's Farewell Message

L. ADJOURNMENT

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



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



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

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

Regular City Council Meeting

11/19/2024

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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
NOVEMBER 6, 2024

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 Father Karl Bergin of Catholic Church of the Epiphany

Pledge of Allegiance

Roll Call	Present:	Councilman Drew Bastian Vice Mayor Scott Stiltner Mayor Donald Burnette Councilman Tracy Grubbs Councilman Jonathan Foley
	Also Present:	City Manager Wayne Clark City Attorney Matthew Jones Deputy City Clerk Amanda Bonin

4. Storm Update

Wayne Clark, City Manager, provided an update on storm recovery.

CITY COUNCIL & TOWN CENTER CRA JOINT SPECIAL MEETING

Council recessed to hold a Joint Special Meeting with the Town Center CRA, minutes of which are under separate cover.

CONSENT AGENDA

5. Public Comments on Consent Agenda Items Only

There were none.

6. Agenda Approval

Motion to approve was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by voice vote.

7. Approval of Minutes

a. Special Council Meeting - 10/7/2024

b. Regular City Council Meeting - 10/15/2024

8. Bid Awards and Contract Items

- a. Approval of Task Authorization No. 18 with Kimley-Horn & Associates, Inc. relating to a Nutrient Loading Analysis required for compliance with the City's Municipal Separate Storm Sewer Systems (MS4 Permit)
9. Resolution No. 24-45 - Reimbursement Resolution for Public Safety and Public Works Equipment
10. City Attorney's Report on Special Legal Counsel for FY2025

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

PUBLIC PARTICIPATION (Agenda)

11. Cops for Christmas Program - Officer Wayne Jean

Officer Wayne Jean of the Port Orange Police Department gave a presentation of the City's upcoming Cops for Christmas Program which began in June.

Vice Mayor Scott Stiltner suggested putting together a promotional video to advertise this program year after year. He also asked how the City could help. Council members applauded Officer Wayne Jean and the team's efforts and expressed their appreciation.

PUBLIC PARTICIPATION (Non-Agenda – 20 minutes)

Jake Johansson, County Councilmember, expressed his appreciation to City Council and the City Manager.

Kristin Johansson, Board of Directors for the Port Orange/South Daytona Chamber of Commerce, stated the Chamber's leadership class will be commencing this Friday, November 8, 2024, and thanked the City for their support. She invited the Council members and City management to attend graduation. Mrs. Johansson also provided dates for upcoming Chamber events.

Robert Reinhausen, a citizen, brought up the development of Aldi on Williamson Blvd. and asked where the stormwater is going to go with only two small retention ponds on site. Mr. Reinhausen also asked for staff to provide presentations to Council on specifics regarding development and the effects on stormwater.

Several citizens spoke regarding their concerns about drainage, stormwater/retention ponds, the alleged berm failure, lift station 19, hazard mitigation, flooding, and uplifting of the community,

Chuck Helman, resident, spoke regarding the hoarder who is slowing moving back onto a vacant parcel in Sugar Forest subdivision.

12. Comments/Concerns from Council Members

Following public comments and concerns regarding flooding and the City's efforts, Councilman Drew Bastian mentioned there is a plan, but it's a slow process. The City is working with the State to request funding for different projects. In the meantime the City is prioritizing maintenance issues, and he asked for the communities' patience.

Councilman Jonathan Foley apologized for not having something written as to why he was absent at the last Council meeting. Councilman Foley asked City Manager Wayne Clark for a timeline of mitigation efforts regarding the Cambridge repairs. Mr. Clark provided an update as requested. Councilman Foley also mentioned how his home flooded and stated he may not want to hear about why the flooding happened but knows that he needed to hear it and thanked Mr. Clark for his honesty.

Councilman Foley asked Mr. Clark about pump station 19. Mr. Clark mentioned there is a sewer liftstation number 19 and provided a brief explanation. Councilman Foley thanked City staff as they have worked extremely hard leading up to the storm, during and after.

Vice Mayor Scott Stiltner talked about the Cambridge Basin. He discussed flooding in the area in 2004, as well as times prior to that which led to the Cambridge Basin project. This particular project looked at the historical data for the City and surrounding area. Vice Mayor Stiltner discussed the pattern of the storms and how the rain impacts have dramatically increased in recent years but prior to today, were very low. Vice Mayor Stiltner also explained the process is very slow as there are several governmental agencies that are included in this process and went on to compliment City Engineer Junos Reed.

Additionally, Vice Mayor Stiltner discussed the Beacon Woods area. He mentioned that it was built prior to when the minimum stormwater standards were set in place. He also touched on the Nova canal system, how it functions and that this undertaking will take time and cooperation with other agencies. Lastly, he talked about ground water, stated stormwater management projects are underway and mentioned the Volusia Basket Brigade is running and stated if anyone who knows anyone in need or wants to donate, this is a great opportunity.

Councilman Tracy Grubbs apologized for his absence at the last Council meeting due to a recent injury. He suggested a standard operating procedure (SOP) change dealing with sidewalks in an effort to provide safety and allow citizens to utilize the sidewalks following a hurricane/natural disaster. Councilman Grubbs asked if the SOP could be modified so the sidewalks can be cleared near schools. Mr. Clark explained that in an emergency, the City pushes the debris out of the street to keep roads open for emergency and safety vehicles and will look at possible modifications.

Councilman Grubbs brought up water being pushed into residents' homes from people

driving by and creating a wake. He asked residents to not drive on flooded roads. He also thanked City staff for all of their efforts before, during and after the storm. Councilman Grubbs spoke about the history of water and when the stormwater code was implemented after 54% of our community was built. Councilman Grubbs asked the community to give City staff time and understanding as the current City's staff is proactive and was not in place when these issues started. Staff is uncovering issues and working towards making corrections. Lastly, Councilman Grubbs discussed development and Port Orange's growth and suggested a stormwater advisory board. Mayor Don Burnette stated this would need to be put on an agenda as an item so notice is provided to the public and Council has a chance to look into it.

Mayor Don Burnette suggested an emergency order be drawn up to address the temporary use of a camper for living and to ensure its tight enough so that it's not abused. Mr. Clark advised a recent state law addresses when a resident can live in a camper in their yard after a storm and what requirements need to be met.

BOARD APPOINTMENTS, INTERVIEWS, AND REPORTS

13. Environmental Advisory Board Report

There was none.

PUBLIC HEARING

14. Second Reading - Ordinance No. 2024-18 - First Amendment to the Angler's Cove PUD Master Development Agreement (Case No. PRZA-24-0007)

Matt Jones, City Attorney, read Ordinance No. 2024-18.

ORDINANCE NO. 2024-18

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE ANGLER'S COVE PLANNED UNIT DEVELOPMENT MASTER DEVELOPMENT AGREEMENT TO ESTABLISH A MODIFIED DEFINITION OF A SCREEN ENCLOSURE FOR LOT 4 OF THE ANGLER'S COVE SUBDIVISION; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY OF; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-18 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Jonathan Foley. Motion carried unanimously by roll call vote.

15. Second Reading - Ordinance No. 2024-20 - Land Development Code (LDC) Amendment/Chapter 20 - Relating to Eligibility for Economic Development Incentives

Matt Jones, City Attorney, read Ordinance No. 2024-20 into the record.

ORDINANCE NO. 2024-20

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA AMENDING THE LAND DEVELOPMENT CODE CHAPTER 20 RELATING TO ELIGIBILITY FOR ECONOMIC DEVELOPMENT INCENTIVES AND UPDATING LANGUAGE RELATED TO IMPACT FEES; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance 2024-20 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Johnathan Foley. Motion carried unanimously by roll call vote.

REGULAR AGENDA

16. Second Reading - Ordinance No. 2024-21 - Amendment to Chapter 54, Article V, Police Pension Fund of the Code of Ordinances

Matt Jones, City Attorney, read Ordinance No. 2024-21.

ORDINANCE NO. 2024-21

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 54, ARTICLE V, POLICE PENSION FUND, AMENDING SECTION 54-130, BENEFIT LEVEL, AMENDING SUPPLEMENTAL BENEFIT AND COST OF LIVING ADJUSTMENT ELIGIBILITY FOR CERTAIN MEMBERS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-21 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

17. Second Reading - Ordinance No. 2024-22 - Amendment to Chapter 54, Article IV, Fire & Rescue Pension Fund of the Code of Ordinances

Matt Jones, City Attorney, read Ord No. 2024-22 into the record.

ORDINANCE NO. 2024-22

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 54, ARTICLE IV, FIRE AND RESCUE PENSION FUND, AMENDING SECTION 54-77, DEFINITIONS, AMENDING THE DEFINITION OF SALARY; AMENDING SECTION 54-82, RETIREMENT BENEFIT AMOUNTS AND ELIGIBILITY, AMENDING THE NORMAL RETIREMENT DATE FOR CERTAIN MEMBERS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

Motion to adopt Ordinance No. 2024-22 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Johnathan Foley. Motion carried unanimously by roll call vote.

18. First Reading - Ordinance No. 2024-24 - Amending Information Technology Policies for City Boards and Commissions

Matt Jones, City Attorney read Ordinance No. 2024-24 into the record.

ORDINANCE 2024-24

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, ARTICLE III, BOARDS AND COMMISSIONS, DIVISION 1, ELECTRONIC INFORMATION SYSTEMS; AMENDING TERMINOLOGY TO BE CONSISTENT WITH RECENTLY ADOPTED INFORMATION TECHNOLOGY AND CYBERSECURITY POLICIES, EXPANDING APPLICABILITY, ADDING ADDITIONAL PROHIBITED USES, ADDRESSING SECURITY AND LICENSING ISSUES, AMENDING THE PUBLIC RECORDS REQUIREMENTS, ESTABLISHING A NEW SECTION 2-58 ADDING USE REQUIREMENTS, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, PROVIDING FOR SCRIVENER'S ERRORS AND PROVIDING AN EFFECTIVE DATE

Motion to adopt Ordinance No. 2024-24 was made by Vice Mayor Scott Stiltner and Seconded by Councilman Drew Bastian. Motion carried unanimously by roll call vote.

ADDITIONAL ITEMS

19. City Attorney

There was nothing further.

20. City Manager

There was nothing further.

COUNCIL COMMITTEE REPORTS

21. City Council Committee Reports

a. River to Sea TPO - Councilman Jonathan Foley

Jonathan Foley provided an update and mentioned there will be a name change from River to Sea TPO to Volusia Flagler TPO.

ADJOURNMENT

9:01 p.m.

Attest:

Mayor Donald O. Burnette

Robin Fenwick, MMC
City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C8a) Request to Waive Formal Bidding Requirements for Water Treatment Facility Lime Disposal and Award a Contract to 4C Sod Farm, Inc.

DEPARTMENT: Public Utilities

GOAL: 1 - Public Safety 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the waiver of formal bidding requirements for lime disposal at the Water Treatment Facility and award a contract to 4C Sod Farm, Inc. and authorize Mayor and City Clerk to sign all necessary documents.

SUMMARY: As part of the water treatment process, lime is fed at the Water Treatment Plant to soften water. Once complete, the spent lime is then ready for disposal. In the past, the spent lime was taken by a local vendor where it was utilized in road base. Last year, the vendor notified the city that they will no longer be taking our lime due to losing the leased site they used for lime storage. The vendor was unable to secure another leased site and decided to terminate the contract with the city.

The city solicited bids for lime disposal in April 2024, but canceled the solicitation in May after receiving zero bids. The city has been stockpiling the spent lime on city owned property off Shunz Road. Space is limited and a permanent disposal option is needed. Other local water treatment facilities are struggling with securing lime disposal vendors, and some have resorted to hauling liquid lime. Staff has looked at the option and the resulting cost to haul liquid lime as opposed to dewatered lime is far more costly.

City staff contacted the Volusia County Landfill and was quoted \$165.00 per ton for the city to dump the spent lime onsite. Staff also talked to a local sod farm, 4C Sod Farm, Inc., and they are willing to take the spent lime at a cost of \$85.00 per ton. Staff believes this price is fair and requests approval to move forward with a contract with 4C Sod Farm, Inc.

PRESENTER: Steve Parnell

ATTACHMENTS:

1.	4C Sod Farm, Inc. Standard Contract for Services	4C Sod Farm, Inc. Standard Contract for Services.pdf
2.	Lime Sludge Disposal- Bid Spec Revised 8-30-2021	Lime Sludge Disposal- Bid Spec Revised 8-30-2021.docx

3.	Lime Sludge Disposal- Alternate Bid Spec	Lime Sludge Disposal- Alternate Bid Spec.docx
4.	ITB 21-24 Bid Tabulation FINAL (12.3.2021)	ITB 21-24 Bid Tabulation FINAL (12.3.2021).pdf
5.	Bid Request Form Lime Sludge disposal 1-10-2024	Bid Request Form Lime Sludge disposal 1-10-2024.pdf
6.	ITB #24-10 Lime Sludge Disposal	ITB #24-10 Lime Sludge Disposal.docx
7.	Email - Drewry SITE DEVELOPMENT	Email - Drewry SITE DEVELOPMENT.pdf
8.	Justification Memo - 4C Sod Farm-edit_	Justification Memo - 4C Sod Farm-edit_.docx
9.	quote	quote.jpg

Kelly Klausky	Created/Initiated - 10/28/2024
Chris Wall	Approved - 10/28/2024
Steve Parnell	Approved - 10/28/2024
John McKinney	Approved - 10/29/2024
Matthew Jones	Approved - 11/6/2024
Wayne Clark	Final Approval - 11/13/2024



CITY OF PORT ORANGE STANDARD CONTRACT FOR SERVICES

This Standard Contract for Services ("Contract") is entered into this ____ day of _____, 2024, by and between the **CITY OF PORT ORANGE**, a Florida municipal corporation, whose principal address is 1000 City Center Circle, Port Orange, Florida 32129 (the "City"), and **4C SOD FARM, INC.** ("Contractor"), a Florida corporation whose principal address is 210 Floratam Trail, New Smyrna Beach, Florida 32168. The City and Contractor are collectively referred to herein as the "Parties."

1. Provision of Services

- (a) The Contractor hereby agrees to provide the Garnsey Water Treatment Plant located at 4400 Wellfield Road, lime sludge disposal services, and as more specifically described in Contractor's Estimate dated August 27, 2024, attached hereto as Exhibit "1," all of which are made a part hereof by reference and shall constitute the formal written Contract between the City and the Contractor. Except however, the City reserves the right to utilize varying amounts of expended lime sludge material for city purposes, at City's sole discretion.

- (b) The time, manner and place for performance of such services shall be:

Term: The initial term of this Contract shall become effective on the last date the Contract is signed by the City and shall continue for a period of three (3) years ("Term").

Renewals: This Contract may be automatically renewed for two (2) additional one-year periods, unless either party provides at least ninety (90) days prior written notice to the other Party of their intent not to renew, upon budget appropriation, and unless otherwise terminated as provided herein.

Manner and Place: The work shall be performed in accordance with and in a manner as required by all current federal, state, county, fire, building and land development codes, laws, ordinances and regulations, and with applicable permits and licenses per the City Code of Ordinances. Contractor shall not deliver goods or services without a written purchase order, signed by an authorized agent of the City of Port Orange.

Time and Essence: Contractor acknowledges that time is of the essence for this Contract.

Authorization for Services: This Contract standing alone does not authorize the purchase of any goods or services or require the City to place any orders for goods or service. Authorization for the purchase of goods or services from Contractor under this Contract shall be upon issuance of a written Purchase Order issued and executed by the City. The City reserves the right to contract with other parties for the goods and services contemplated by this Contract, as determined in the City's sole and absolute discretion.

2. City Obligations. In return for the services identified above, the City agrees to compensate the Contractor at the pricing set forth Exhibit "1," in an amount not to exceed the appropriated budget. All payments shall be governed

by the Local Government Prompt Payment Act as set forth in Sections 218.70 through 218.79, Florida Statutes, as amended.

3. Contract Administration. The Public Utilities Director, Steve Parnell, shall perform contract administration of this Contract. The City may change the contract administrator, from time to time and at any time, upon written notice to Contractor. For notice provisions, see the paragraph below entitled "Notice."

4. Liens. Contractor acknowledges that Contractor shall not be entitled to lien the City or other public property.

5. Termination for Convenience of the City

(a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall determine that such termination is in the best interest of the City.

(b) Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the Contractor, and specifically setting forth the effective date of termination.

(c) Upon receipt of such Notice, the Contractor shall:

- (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice;
- (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice;
- (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice;
- (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Port Orange; and
- (v) use best efforts to mitigate any damages which may be sustained by the Contractor as a consequence of termination under this clause.

(d) After complying with the provisions of subparagraph (c), above, the Contractor shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director.

(e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(f) In the event that the parties cannot agree on the whole amount to be paid to the Contractor by reason of termination under this clause, the Finance Director shall pay the Contractor the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause:

- (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of:
 - (1) the cost of work performed or supplies delivered;

- (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above;
 - (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable.
- (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated.

(g) In the event that the Contractor is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the Contractor may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

6. Termination for Convenience for Subcontractors. In accordance with the termination for the convenience of the City provision of this contract, the Contractor shall include similar provisions in any subcontract, and shall specifically include a requirement that subcontractors make all reasonable efforts to mitigate damages which may be suffered. Failure to include such provisions shall bar the Contractor from any recovery from the City whatsoever of loss or damage sustained by a subcontractor as a consequence of termination for convenience.

7. Termination for Default. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the contractor, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the bidder as stipulated in City Code 2-276 Suspension and Disbarment.

8. Examination of Records

(a) The Contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the Contractor involving transactions related to this Contract.

(b) The Contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.

(c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

9. Public Records Compliance. Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records, provide the City with a copy of the requested record or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of the Contract if the Contractor does not transfer the records to the City.

(d) Upon completion of the Contract, Contractor shall transfer to the City, at no cost, all public records in possession of the Contractor and destroy any duplicate public records that are exempt from public records disclosure requirements. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If Contractor does not comply with a public records request, the City shall deem the non-compliance a breach of this Contract, and the Contractor may be subject to penalties under Section 119.0701, Florida Statutes.

CONTRACTOR QUESTIONS RELATING TO CONTRACTOR'S DUTIES TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT MUST BE FORWARDED TO THE OFFICE OF THE CITY CLERK, CITY HALL, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA 32129; TELEPHONE: (386) 506-5563; E-MAIL: CITYCLERK@PORT-ORANGE.ORG.

10. Termination for Non-Appropriation of Funds

(a) If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

(b) The City agrees that should it terminate in accordance with this Section, it shall not obtain services which are substantially equal to or similar to those for which this contract was entered into. This provision shall survive any termination of the Contract.

11. Insurance. Contractor shall maintain insurance, as required herein, during the life of this Contract. Contractor shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the Contractor shall be primary and non-contributory. All insurance coverages of the Contractor shall not seek contribution from any other insurance or self-insurance available to the City. For workers' compensation coverage, the Contractor's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation. The City shall not accept Workers' Compensation Exemptions. Contractor may use leased employees if the Contractor ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any Contractor using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572.

Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Contractor shall not commence work under this Contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, nonrenewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages.

The City reserves the right to increase insurance coverage as determined for higher risk contracts.

Should at any time the Contractor or subcontractors not maintain the insurance coverages required herein, the City may terminate the Contract or at its sole discretion shall be authorized to purchase such coverages and charge the Contractor for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the Contract.

Standard Insurance Requirements									
	Insurance	Standards	Additional Requirements						
☒	Workers' Compensation The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any contractor using an employee leasing company shall complete the Leased Employee Affidavit Form Exhibit.	<table><tr><td><u>Contract Amount</u></td><td><u>Limits</u></td></tr><tr><td>Up to \$10 million</td><td>Statutory/\$500,000</td></tr><tr><td>\$10 - \$20 million</td><td>Statutory/\$1,000,000</td></tr></table> Contracts over \$20 million To Be Determined by the City.	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	☐ If Contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' Coverage required. ☐ If vessels involved, Jones Act coverage with limits of \$500,000 required.
<u>Contract Amount</u>	<u>Limits</u>								
Up to \$10 million	Statutory/\$500,000								
\$10 - \$20 million	Statutory/\$1,000,000								
☒	Comprehensive General Liability (including Completed Operations and Contractual Liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage \$1,000,000 occurrence \$1,000,000 aggregate	☐ When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the Contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.						
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles.	<u>Limits:</u> Auto Liability Body Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate							

Additional Insurance Requirements			
☐	Property Insurance Builders Risk. <u>Additional Coverage:</u>	Limits: Buildings - Completed value of Contract. "All Risk" coverage on latest ISO for or its equivalent. Permission granted to occupy. Owner named as insured AIMA	If Agreement requires handling or installation of Owner's equipment, coverage should be furnished on "All Risk" form, including transit and Owner shall be named.
☐	Professional Liability	Limits: Coverage - \$1,000,000	
☐	Installation Floater (IT)	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Contractor Pollution Liability	Limits: Coverage - \$1,000,000	
☐	Errors and Omissions	Limits: Coverage - \$1,000,000	
☐	Umbrella Policy	Limits: Coverage - \$ <u>To be determined.</u>	
☐	Payment and Performance Bond Required	Limits: Coverage - Equal to amount of Contract.	
☐	City Manager waives Payment and Performance Bond for work under \$200,000.00.		
☐	Unless otherwise required by law, City Manager waives Insurance.		

12. A Contract for the purchase of supplies shall be governed by the City of Port Orange Code of Ordinances, as amended, and such supplies shall be deemed "goods," as defined therein.

13. Assignability of Contract. Neither this contract, nor any part hereof, may be assigned by the Contractor to any other party without the express written approval of the City Council.

14. Modifications or Changes to this Contract

(a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract.

(b) If any change under this clause causes an increase or decrease in Contractor's cost of, or time required for the performance of the work hereunder, Contractor shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the Contractor, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change.

(c) Contractor need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes.

(d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

15. Sovereign Immunity. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature

for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

16. Warranties. Contractor warrants that (1) the supplies to be provided to the City pursuant to this Contract are fit and sufficient for the purpose intended; (2) the supplies are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship, and (3) the supplies sold to the City pursuant to this Contract conform to the standards required by this Contract.

Contractor further warrants that Contractor has title to the supplies provided, and that the supplies are free and clear of all liens encumbrances, and security interests. All warranties made in this Contract, together with service warranties and guarantees, shall run to the City and its successors and assigns.

17. Additional Warranties. Contractor further expressly warrants that materials and workmanship are warranted from defect for a one-year period. This is a minimum acceptable warranty.

18. Inspection

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and their products) shall be subject to inspection and test by the City, to the extent practicable at all times and places including the place of manufacturer, and in any event prior to acceptance.

(b) In the event any supplies or lots of supplies are defective in material or workmanship, or otherwise not in conformity with the requirements of this Contract, the City shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Finance Director, corrected in place by and at the expense of Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed or promptly to replace or correct such supplies or lots of supplies, the City may either (i) by contract or otherwise replace or correct such supplies and charge Contractor the cost for such replacement or correction; or (ii) may terminate this Contract for default as provided in the clause of this Contract entitled "Termination for Default." Unless Contractor corrects or replaces such supplies within the delivery schedule, the Finance Director may require the delivery of such supplies at a reduction in price, which is equitable under the circumstances. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this Contract. Failure to inspect and accept or reject supplies shall neither relieve Contractor from responsibility for such supplies as are not in accordance with the Contract requirements nor impose liability on the City therefor.

(c) The inspection and test by the City of any supplies or lots thereof does not relieve Contractor from any responsibility regarding defects or other failures to meet the Contract requirements, which may be discovered prior to acceptance. Except as otherwise provided in this Contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

19. Liability for Loss or Damage.

(a) Contractor shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of Contractor, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by

Contractor, his/its agents, servants and employees. Contractor shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between Contractor's work and any injury, loss, damage, death or property damage, Contractor expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by Contractor hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by Contractor as long as the claims made could be causally connected to Contractor as reasonable determined by City.

20. Non-discrimination. During the performance of this Contract, Contractor agrees as follows:

(a) Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Contractor agrees and fully supports and complies with the Americans with Disabilities Act of 1990.

(b) Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that Contractor is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. Contractor shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

23. E-Verify. Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Contractor during the term of this Contract and shall expressly require any sub-contractors performing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the sub-contractor during the term of this Contract.

24. Disputes. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to Contractor, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk, Robin L. Fenwick, CMC. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

25. Force Majeure. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

26. Controlling Law. **THIS AGREEMENT CONTAINS IMPORTANT MATTERS AFFECTING LEGAL RIGHTS AND IS ACCEPTED AND ENTERED INTO IN FLORIDA AND ANY QUESTION REGARDING ITS VALIDITY,**

CONSTRUCTION, ENFORCEMENT, OR PERFORMANCE SHALL BE GOVERNED BY FLORIDA LAW. ANY LEGAL PROCEEDING ARISING FROM OR IN ANY WAY REGARDING THE AGREEMENT SHALL HAVE ITS VENUE LOCATED EXCLUSIVELY IN THE CIRCUIT COURT OF VOLUSIA COUNTY, FLORIDA, AND THE PARTIES HEREBY EXPRESSLY CONSENT AND SUBMIT THEMSELVES TO THE PERSONAL JURISDICTION AND VENUE OF THE COURT.

27. *Additional Provisions.* This Contract includes all additional provisions as may have been outlined in written quotes and purchase orders and any attachments or exhibits to this Contract whether delivered herewith or subsequently approved as a part hereof. In the event of a conflict between any attachments or exhibits to this Contract, and this Contract, the language of this Contract shall control.

28. *Integration.* This Contract and the documents incorporated herein by reference shall constitute the whole agreement between the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Contract shall supersede all previous communications, representations, or agreements, written or verbal, between the parties hereto.

29. *Notice.* For purposes of this agreement, notices shall be sent as follows:

City:	City of Port Orange Attention: City Manager 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5501
Copy to:	City of Port Orange Attention: Steve Parnell, Public Utilities Director 1000 City Center Circle Port Orange, Florida 32129 (386) 506-5592
Contractor:	4C Sod Farm, Inc. Attention: Cory Carbajal, President 210 Floratam Trail New Smyrna Beach, Florida 32168 (386) 527-3091 – Telephone 4csodfarm@gmail.com – E-Mail

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

30. *Contract Construction*

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 delivery by facsimile or e-mail of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered. No contract shall be formed between Contractor and the City until the City signs this Agreement.

31. Authority to Sign. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

Remainder of Page Intentionally Left Blank

4C SOD FARM, INC.

Witnesses:

By: _____

Cory Carbajal, President

If this Contract is signed by an individual not identified as an Officer of the Entity in the records of the Florida Department of State, Division of Corporations, please provide written authorization for that individual to enter into contracts on behalf of the Entity.

Printed Name: _____

Date: _____

Printed Name: _____

At this time the City does not accept electronic/digital signatures. A wet signature is required for this document.

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

Date: _____

ATTEST:

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

Date: _____

EXHIBIT “1”

Contractor's Quote and Scope of Services

Consisting of 3 Pages

4C Sod Farm Inc.
210 Floratam Tr. New Smyrna Beach, FL 32168
(386) 527-3091

ESTIMATE

08/27/2024

BILL TO

TERMS: **NET 45**

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

QUANTITY

DESCRIPTION

UNIT PRICE

1 Ton

Lime Sludge Drop Off

\$85.00

*ESTIMATE VALID THRU 12/31/2024



CITY OF PORT ORANGE

GARNSEY WATER PLANT - 4400 WELLFIELD RD.
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

Technical Specification City of Port Orange Dewatered Lime Sludge Disposal

1. General:

1.1 Scope of Work

The City of Port Orange Public Utilities Department is seeking bids to receive and dispose of expended lime sludge from the Garnsey Water Treatment Plant located at 4400 Wellfield Rd. Port Orange, Florida 32129. The sludge is a waste product of the lime softening process, averaging 17-34 Tons per Day, seven days per week with an anticipated annual average of 9000 Tons. This Specification covers the service necessary by the contractor (hereinafter referred to as "Contractor") for the receipt of processed lime sludge for the City of Port Orange. In order to maintain operational reliability of the water treatment plant, daily removal of processed Lime Sludge is required. The City of Port Orange will have personnel deliver lime sludge and the Contractor shall be responsible for a location for receiving and material disposal

A. Execution

1. The Contractor shall coordinate with the Water Plant Operators for daily delivery of lime sludge loads, up to three per day. Water Plant operation is continuous and loads will be delivered 365 days per year.
2. All deliveries shall be performed between the hours of 9am – 5pm, seven days a week. Access to the facility will be pre-determined with Contractor
3. Contractor will be completely and entirely responsible to dispose of expended lime sludge at a fully permitted and licensed disposal site(s). Alternate disposal arrangements may be approved by the City on a case-by-case basis, including reuse/recycling option(s)
4. The successful Bidder will be required to perform the work as a prime Contractor. The Contractor shall not subcontract any portion of the work without the prior written approval of the City of Port Orange. No assignment of the Contract will be allowed.

1.2 Proposal Submittals

1. Unit price per ton per delivered Load. Price submittal based on daily deliveries for a contract term of three years w/ two (1) year optional renewals. Delivery times to be determined agreement of host and Water Plant Staff.

1.3 After Award Submittals

1. Contractor to meet with City and discuss scheduled deliveries for contract term.
2. Contactor to allow Garnsey Water Plant staff to do a site visit of delivery area. Contractor will discuss any concerns with site conditions or working environments. City will address these concerns if applicable.

1.4 Term of Agreement

1. The initial term of this Agreement shall be for a period of **three (3) years**, beginning the date the Contract is fully executed by all parties, and will be automatically renewed for two additional **one (1) year** periods unless either party provides at least ninety (90) days prior written notice to the other party of their intent not to renew the Agreement.

*****END OF SPECIFICATION*****



CITY OF PORT ORANGE

GARNSEY WATER PLANT - 4400 WELLFIELD RD.
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

Technical Specification City of Port Orange Dewatered Lime Sludge Disposal

1. General:

1.1 Scope of Work

The City of Port Orange Public Utilities Department is seeking bids to receive and dispose of expended lime sludge from the Garnsey Water Treatment Plant located at 4400 Wellfield Rd. Port Orange, Florida 32129. The sludge is a waste product of the lime softening process, averaging 17-34 Tons per Day, seven days per week with an anticipated annual average of 9000 Tons. This Specification covers the service necessary by the contractor (hereinafter referred to as "Contractor") for the receipt of processed lime sludge for the City of Port Orange. In order to maintain operational reliability of the water treatment plant, daily removal of processed Lime Sludge is required. The City of Port Orange will have personnel deliver lime sludge and the Contractor shall be responsible for a location for receiving and material disposal

A. Execution

1. The Contractor shall coordinate with the Water Plant Operators for daily delivery of lime sludge loads, up to three per day. Water Plant operation is continuous and loads will be delivered 365 days per year.
2. All deliveries shall be performed between the hours of 9am – 5pm, seven days a week. Access to the facility will be pre-determined with Contractor
3. Contractor will be completely and entirely responsible to dispose of expended lime sludge at a fully permitted and licensed disposal site(s). Alternate disposal arrangements may be approved by the City on a case-by-case basis, including reuse/recycling option(s)
4. The successful Bidder will be required to perform the work as a prime Contractor. The Contractor shall not subcontract any portion of the work without the prior written approval of the City of Port Orange. No assignment of the Contract will be allowed.

1.2 Proposal Submittals

1. Unit price per ton per delivered Load. Price submittal based on daily deliveries for a contract term of three years w/ two (1) year optional renewals. Delivery times to be determined agreement of host and Water Plant Staff.

1.3 After Award Submittals

1. Contractor to meet with City and discuss scheduled deliveries for contract term.
2. Contactor to allow Garnsey Water Plant staff to do a site visit of delivery area. Contractor will discuss any concerns with site conditions or working environments. City will address these concerns if applicable.

1.4 Term of Agreement

1. The initial term of this Agreement shall be for a period of **three (3) years**, beginning the date the Contract is fully executed by all parties, and will be automatically renewed for two additional **one (1) year** periods unless either party provides at least ninety (90) days prior written notice to the other party of their intent not to renew the Agreement.

*****END OF SPECIFICATION*****



CITY OF PORT ORANGE

GARNSEY WATER PLANT - 4400 WELLFIELD RD.
PORT ORANGE, FLORIDA 32129
TELEPHONE 386-506-5500
FAX 386-756-5290
www.Port-Orange.org

Technical Specification City of Port Orange Dewatered Lime Sludge Disposal (alternate)

1. General:

1.1 Scope of Work

The City of Port Orange Public Utilities Department is seeking bids to deliver and dispose of expended lime sludge from the Garnsey Water Treatment Plant located at 4400 Wellfield Rd. Port Orange, Florida 32129. The sludge is a waste product of the lime softening process, averaging 17-34 Tons per Day, seven days per week with an anticipated annual average of 9000 Tons. This Specification covers the service necessary by the contractor (hereinafter referred to as "Contractor") for the pick up of processed lime sludge for the City of Port Orange. In order to maintain operational reliability of the water treatment plant, daily retrieval of processed Lime Sludge is required. The City of Port Orange will have personnel fill Contractor's delivery vehicles and the Contractor shall be responsible for retrieving and material disposal

A. Execution

1. The Contractor shall coordinate with the Water Plant Operators for daily pick-up of lime sludge loads, up to three per day. Water Plant operation is continuous and loads will be picked up 365 days per year.
2. All pick-ups shall be performed between the hours of 7am – 7pm, seven days a week. Access to the facility will be pre-determined with Contractor
3. Contractor will be completely and entirely responsible to dispose of expended lime sludge at a fully permitted and licensed disposal site(s). Alternate disposal arrangements may be approved by the City on a case-by-case basis, including reuse/recycling option(s)
4. The successful Bidder will be required to perform the work as a prime Contractor. The Contractor shall not subcontract any portion of the work without the prior written approval of the City of Port Orange. No assignment of the Contract will be allowed.

1.2 Proposal Submittals

1. Unit price per ton per hauled Load. Price submittal based on daily retrievals for a contract term of three years w/ two (1) year optional renewals. Pick up times to be determined agreement of host and Water Plant Staff.

1.3 After Award Submittals

1. Contractor to meet with City and discuss scheduled deliveries for contract term.
2. Garnsey Water Plant to allow Contractor to do a site visit of dewatering and staging areas. Contractor will discuss any concerns with site conditions or working environments. City will address these concerns if applicable.

1.4 Term of Agreement

1. The initial term of this Agreement shall be for a period of **three (3) years**, beginning the date the Contract is fully executed by all parties, and will be automatically renewed for two additional **one (1) year** periods unless either party provides at least ninety (90) days prior written notice to the other party of their intent not to renew the Agreement.

*****END OF SPECIFICATION*****



**ITB 21-24 GARNSEY WATER PLANT DEWATERED LIME SLUDGE DISPOSAL
BID TABULATION
OPENING DATE/TIME November 15 , 2021 @ 2:30PM**

DREWRY SITE DEVELOPMENT, LLC RESPONSIVE					
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, ITEM A SPECIFICATIONS					
ITEM #	DESCRIPTION	Estimated QTY	UNIT	UNIT COST	TOTAL COST
A	Delivery of lime sludge by City to the Contractor	9,000 per year	TON	\$6.25	\$56,250.00
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, ITEM B SPECIFICATIONS					
ITEM #	DESCRIPTION	Estimated QTY	UNIT	UNIT COST	TOTAL COST
B	Contractor Pick Up of lime sludge from the City	9,000 per year	TON	NO BID	\$

CRUSH SUPPLY, LLC NON-RESPONSIVE					
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, ITEM A SPECIFICATIONS					
ITEM #	DESCRIPTION	Estimated QTY	UNIT	UNIT COST	TOTAL COST
A	Delivery of lime sludge by City to the Contractor	9,000 per year	TON	\$0.00	\$0.00
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, ITEM B SPECIFICATIONS					
ITEM #	DESCRIPTION	Estimated QTY	UNIT	UNIT COST	TOTAL COST
B	Contractor Pick Up of lime sludge from the City	9,000 per year	TON	NO BID	\$

DISCLAIMER: THIS BID TABULATION INDICATES ONLY THE BIDS AS RECEIVED. ALL BIDS ARE SUBJECT TO VERIFICATION FOR ACCURACY, AND FOR SPECIFICATION AND CONTRACT COMPLIANCE. NO CONCLUSIONS ABOUT CONTRACT AWARDS SHOULD BE DRAWN FROM THESE PRELIMINARY TABULATIONS.



SOLICITATION REQUEST FORM (ITB, RFP, RFSQ, ITN)

(# will be assigned by Purchasing Division)

Assigned Purchasing Lead: _____

Section 1: Solicitation Name, Scope, Type

Project name: **Lime sludge disposal**

General scope of project: **Receive and dispose of expended lime sludge from the Garnsey Water Treatment Plant**

Type of project: ☒ **ITB** ☐ **RFP** ☐ **RFSQ** *Design/Professional Services (engineering, architect, surveying, landscape)* ☐ **ITN**

☐ **Capital** ☒ **Non-Capital**

Section 2: Solicitation Information

Requested by: **Steve Parnell**

Department: **Public Utilities Department**

Special Legal Ad: ☐ Y or ☐ N *Per 180.24FS, see below *Section 9: Solicitation FAQ*

Estimated amount: **765,000**

Bid Bond: ☐ Y or ☐ N

Grant funded: ☐ Y or ☒ N *(If yes, list date & requirements)* **Deadline Date:** _____

Type / Special Requirements: _____

Fund Account: **Water/Sewer - Water Production - WTP/WRF Treatment Plant R&R**

Project#: _____

City Project Manager: **Steve Parnell**

Contract Administrator: _____

Project Inspector: **Chris Wall/ Christina Potts**

Blueprint provided by: **N/A**

Engineer of Record: **N/A**

Section 3: List of Evaluation Committee Members (RFP/RFSQ/ITN) (Minimum 3)

Committee Member 1: _____

Committee Member 2: _____

Committee Member 3: _____

Committee Member 4: _____

Committee Member 5: _____

Section 4: Suggested Solicitation Dates

All dates are subject to scheduling and availability

Release date urgency:	☒ High ☐ Medium ☐ Low	Suggested Date:
Pre-Solicitation Conference Requested:	☐ Y or ☒ N	
Pre-Solicitation Conference date:	TBD	Site Visit: ☐ Y or ☒ N Mandatory: ☐ Y or ☒ N
Due date/opening:	TBD	
Delivery/Completion:	TBD	
Award to Council:	Note: funding source must be listed on the agenda summary	

Section 5: Creating Details/Specifications/Scope of Work

☒ Project Manager ☐ Project Engineer/Architect ☐ Other _____ ☐ Assistance from Purchasing*

*The department provides the specifications/scope of work to Purchasing in **Word** format. Purchasing reviews the specifications/scope of work, incorporates them into the draft of the solicitation and distributes and advertises it. If the Project Manager, Engineer or Architect prepares the specifications/scope of work, the department must review and approve them and ensure Purchasing receives a **Word** copy for incorporation into the solicitation draft.

Section 6: Contract Type, Term, Completion Time

**** Discuss with Legal Dept. prior to releasing the solicitation to ensure the appropriate contract is placed in the solicitation document ****

Contract Type: ☒ Standard services ☐ EJCDC (Engineers Joint Contract Document Committee) ☐ AIA (American Institute of Architects)
(Supplies/Services) (Site/Structures & Design Build) (Building construction)

Contract Term:	365		
Renewal Options:	2		
(Days) Substantial Completion:		(Days) Final Completion:	

P&P Bond: ☐ Y or ☐ N *Payment and Performance Bonds are required for construction projects on public property

* If the project engineer is responsible for contract administration and project inspection services, ascertain that the contract with the engineer provides for that service. If not, the Engineer's Contract needs to be approved by the City Manager.

Section 7: Suggested Bidder's List (include email address of potential bidder)

Bidder:	Shellys Environmental (407) 889-8042
Bidder:	ProLime- Al Rodgers (586)-615-7819, email@prolime.net
Bidder:	P&S Paving (386) 258-7911
Bidder:	Prestige Ab Redimix of Daytona, Brent Hardie (469) 469-5883
Bidder:	Samsula Landfill (386) 423-6769
Bidder:	T Wayne Hill Trucking Inc, (863) 519-6677
Bidder:	Baker Transport Services, (863) 667-2123 webmaster@thekag.com

Section 8: Director's Approval

☐ Approved ☐ Rejected Date: _____
Director's Name
X _____
Director's Signature

Section 9: Solicitation FAQ

Who fills out the Solicitation Request Form?

Sections 1-7 are to be completed by the Project Manager/Director.

When do I use this form?

When purchases exceed \$25,000 and do not fall under the exclusions listed in City Ordinance Code Sec 2-267. Ex: (Sole source, piggyback, utilities, travel, postage, registration fees, etc.)

How do I submit this form?

After Director/Department Head signs approval of Solicitation Request Form, the department sends an email to purchdiv@port-orange.org to request a Bid Kick-Off Meeting. The draft Solicitation Request Form must be attached to this email. Purchasing will contact the department within 10 days of receipt of the email to setup the Bid Kick-Off Meeting. The Solicitation Request Form will be reviewed in detail during the Bid Kick-Off Meeting. If edits to the form are needed, the department makes the edits and submits the completed form to CivicClerk in the Bid Requests section of Contract Management. The department will also include with the request the Scope of Work/Specifications for the solicitation.

How early should I plan for an ITB/RFP/RFSQ/ITN?

Departments should allow for at least 90 days from *receipt of bid specifications* to *opening* (120 days for council award date). An additional 30-60 days should be allowed for RFPs, RFSQs, and ITNs.

Advertising:

Florida Statutes mandate that Capital Projects with a projected cost of under \$200,000 shall be publicly advertised for a minimum of ten (10) days; over \$200,000 Twenty-one (21) days and over \$500,000 a minimum of thirty (30) days prior to bids being opened.

Per 180.24FS, public utility projects require additional advertising: two (2) consecutive ads or postings in three (3) conspicuous places around city hall, one (1) of which shall be the door of city hall. 180.07FS Examples: solicitations for jails, airports, hospitals, golf courses, reservoirs, pump stations, pipelines, & water/reclaim/sewage systems.

Distribution/Release:

The City is currently using Demand Star www.demandstar.com for releasing solicitation documents/addenda on the internet and the Daytona Beach News Journal to release the legal advertisement. Solicitation documents are also posted on the Purchasing Division's web page.

Specifications:

Document specifications should be sent to the assigned Purchasing Representative in WORD file format.

One envelope solicitation process:

One envelope shall be submitted. The envelope contains required forms, technical and price information. The envelopes from all timely bidders will be opened and read aloud at the time of the solicitation opening.

CCNA:

The City of Port Orange is also governed by Florida Statutes 287.055 the Consultants Competitive Negotiations Act, as the method of selecting architects, engineers, land surveyors and landscape architects.

Design-Build:

The City has written and enacted a set of Design-Build Policies and Procedures which sets forth very specific requirements the City must use for a design-build type of bid or contract. This was done to comply with Florida Statutes, Chapter 287.055 as amended; Consultants Competitive Negotiation Act. Public announcement/advertisement shall be made:

- If planning or study activity for professional services exceeds \$35K
- If basic construction costs estimated by the agency exceeds \$325K

Grants:

Grant Money Bids and Projects also have their own set of governing laws and regulations which require the City's compliance. The compliance with these laws is strictly the Project Manager's responsibility. The Project Manager must familiarize himself/herself with each and every grant to ensure that the City not only complies with those rules but fulfills every requirement that those grants contain so as not to forfeit the money that they bring.

Bonds:

When bid bond/deposits are required they are advertised in the public notices inviting bids. Normally, if a bid bond/deposit is required, it is in the amount of five (5%) percent of the bid amount. Payment and Performance Bonds are required for construction projects on public property in the amount equal to one hundred percent (100%) of the total contract amount.

Payment and Performance Bonds must also be recorded in the Office of the Clerk of the Circuit Court, Volusia County, Florida. Required bonds are included in the Invitation to Bid notice which will appear in a locally distributed newspaper.

Public Entity Crimes Form:

Every acquisition with Federal funds equal to or greater than \$10,000.00 and all formal solicitations must have a signed, notarized Public Entity Crimes Form.

Drug Free Tie Bid Form:

The Drug Free Tie Bid Preference Form is in accordance with Section 287.087, Florida Statutes and became law in January 1991. It takes precedence in determining tiebreaker in the event of tie bids.

CITY OF PORT ORANGE, FLORIDA

INVITATION TO BID ITB #24-10 LIME SLUDGE DISPOSAL



City of Port Orange
Purchasing Division
Prepared by: Jill Poolman, CPPO, CPPB, FCCM
Release Date:

Bid Due Date & Time: Insert date @ 2:30 PM

City of Port Orange, Florida
1000 City Center Circle, Port Orange, FL 32129
(386) 506-5718
purchdiv@port-orange.org ; www.port-orange.org



Legal Notice to Bidders

ITB #24-10

Lime Sludge Disposal

Notice is hereby given that the City of Port Orange is soliciting bids for ITB#24-10 Lime Sludge Disposal. Bids will be accepted in the City Clerk's office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until **2:30 PM Eastern Standard Time (EST) on INSERT DATE, 2024** which may be amended by addendum issued by the City. All untimely bids will not be considered and will be returned to the bidder unopened. All bids will be evaluated to ensure they contain all required forms in order to deem the bidder responsive or non-responsive. **Bids will be opened and read aloud at 2:30 PM EST in Council Chambers.**

There will be a non-mandatory pre-bid conference for the project at **10:00 AM EST on INSERT DATE, 2024** at City Hall, Council Chambers (1st floor), 1000 City Center Circle, Port Orange, FL 32129. All attendees to the pre-bid conference must sign in. The representative of each bidder shall be an authorized employee of the bidder and **MUST** sign in accordingly. Bidders are urged to obtain bid documents and familiarize themselves with the documents prior to the Pre-Bid Conference.

A Bid Guarantee in the form of a Bid Bond executed by the bidder and an acceptable surety or a certified check or bank draft payable to the City of Port Orange, Florida in an amount equal to five percent (5%) of the proposed bid must be submitted with each bid. If awarded, the Bidder must also be able to obtain a payment and performance bond equal to one hundred percent (100%) of project value from a surety company licensed in Florida and must submit proof of their present bonding capacity with their submitted bid package in the form of a current (not older than 3 months) letter from bidder's bonding agent. Bidder's failure to include the bonding capacity letter with bid package may result in rejection of bidder's submittal.

DESCRIPTION: The City's water softening process produces a waste product called lime sludge. This lime sludge must be removed from the Water Treatment Plant and disposed of. The City is seeking firms qualified to either pick up and haul away the lime sludge or accept it via City-owned trucks. Disposal site must be a fully permitted and licensed disposal facility.

Bidders must be a commercial entity licensed to do business in the State of Florida and perform the services identified herein. Bidders must be properly registered and licensed to provide the services identified in the scope of work by all applicable state and local agencies.

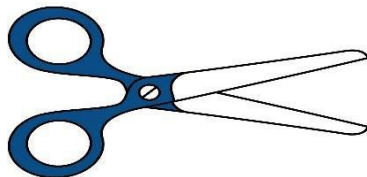
All bids are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all bids will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida 32129 and at www.municode.com.

Copies of the bid documents, requirements, scope of service and all other pertinent information necessary to submit a complete package may be obtained electronically from the City of Port Orange Purchasing web page at www.port-orange.org/bids.aspx and DemandStar via their website at www.demandstar.com.

All questions shall be directed **in writing** to Jill Poolman @ jpoolman@port-orange.org and purchdiv@port-orange.org and reference "Questions on ITB #24-10 Lime Sludge Disposal" in the subject line. Last day for questions will be **INSERT DATE** by 5:00 PM EST.

The Cone of Silence begins with the issuance of the solicitation document and continues until City Council meets to make a final decision on an award. During this time bidders, suppliers, contractors and sub-contractors are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City agents, or elected officials. Any bidder who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation. While the Cone of Silence is in effect, all communications from potential bidders, suppliers, contractors and sub-contractors must be directed to the Purchasing Division @ purchdiv@port-orange.org.

Cut along the outer border and affix this label to the outside of your sealed bid envelope/package to identify it as a "Sealed Bid". Be sure to include the name of the company submitting the bid where requested.



SEALED BID – DO NOT OPEN

SEALED BID NO.: ITB #24-10

BID TITLE: LIME SLUDGE DISPOSAL

DUE DATE/TIME: **INSERT DATE** AT 2:30 PM EST

SUBMITTED BY: _____
(Name of Company)

BIDDER'S ADDRESS: _____

DELIVER TO: CITY OF PORT ORANGE CITY CLERK'S OFFICE
ATTN: JILL POOLMAN, CPPO, CPPB, FCCM
PURCHASING DIVISION
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129

DATE/TIME RECEIVED: _____
(To be stamped by Clerk's Office)

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SECTION 1 – PURPOSE AND OVERVIEW

The City's water softening process produces a waste product called lime sludge. This lime sludge must be removed from the Water Treatment Plant daily and disposed of. The City produces an average of 25-41 tons of lime sludge per day, seven days per week with an anticipated annual average of 12,000 tons. The City is seeking firms qualified to either pick up and haul away the lime sludge or accept it via City-owned trucks. Disposal site must be a fully permitted and licensed disposal facility.

It is the intent and purpose of the City of Port Orange (City) that this Invitation to Bid promotes competitive selection. It shall be the Bidder's responsibility to advise the Purchasing Division of any language, requirements, etc. or any combination thereof that inadvertently restricts or limits the requirements stated in this ITB to a single source.

SECTION 2 – INSTRUCTIONS TO BIDDERS

Bidders desiring to provide services, as described herein shall submit sealed bids, including one (1) original and one (1) digital (flash drive) version in PDF format, in conformance with the detailed submittal instructions.

TIMELINE (Eastern Standard Time):

The City reserves the right to alter dates as needed.

DESCRIPTION	DATE
Date of Distribution	Date, 2024
Non-mandatory pre-bid conference	Date, 2024
Deadline for Questions	Date, 2024
Addendum Posting (If needed)	Date, 2024
Bids Due	Date, 2024
City Council Meeting for Approval of Recommendation of Award	To Be Determined

Bids must be delivered in a sealed envelope/package and delivered to:

City of Port Orange City Clerk's Office
Attn: Jill Poolman, Purchasing Manager
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129

Sealed bids must be delivered no later than the date and time listed in the Timeline above. All times referenced are local time. Bids shall be sealed and bidders shall clearly indicate on the outside of their bid the following:

- Invitation to Bid (ITB) Number and Title
- Date of Opening
- Name of Bidder
- Address of Bidder

Due to the timing of mail service, the City cautions bidders to ensure actual delivery of bids to the City prior to the deadline set for receiving bids. Carrier and hand deliveries of bids will be accepted in the City Clerk's Office, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129 until the date and time referenced in the Timeline above or as amended by addendum issued by the City. Bids received after the established deadline shall not be considered.

Bidders are cautioned that they are responsible for delivery to the specific location cited above. Therefore, if your bid, proposal, statement or quotation is delivered by an express mail carrier or by any other means, it is your responsibility to ensure delivery to the above address. The City will not be responsible for deliveries made to any place other than the specified address.

Offers by telephone or email shall not be accepted. Also, bidders are instructed NOT to fax their bid package. **Faxed bids will be rejected as non-responsive regardless of where or when the fax is received.**

All bids will be opened publicly and the names of all bidders shall be read aloud. All conferences and meetings regarding this ITB are recorded electronically (audio only). The City of Port Orange reserves the right to reject any or all bids or parts of bids if it is in the best interest of the City.

PRE-BID CONFERENCE

There will be a non-mandatory pre-bid conference on the date and time referenced in the Timeline above at City Hall, Council Chambers (1st Floor), 1000 City Center Circle, Port Orange, Florida 32129. All attendees to the non-mandatory pre-bid conference MUST sign in. The representative of each bidder shall be an authorized employee of the bidder and must sign in accordingly.

QUESTIONS

All questions shall reference "ITB #24-10 Lime Sludge Disposal" in the subject line. All questions concerning this ITB shall be submitted in writing no later than the date and time referenced in the Timeline above to:

Jill Poolman, Purchasing Manager
1000 City Center Circle
Port Orange, FL 32129
jpoolman@port-orange.org
purchdiv@port-orange.org

ADDENDA

The City will issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the bid due date. Bidders should not rely on any representations, statements or explanations other than those made in this ITB or in any addendum to this ITB. Where there appears to be a conflict between the ITB and any addenda issued, the last addendum issued will prevail. The bidder should verify prior to submitting a bid that all addenda have been received. Bidders should acknowledge the correct number of addenda received as part of their bids. All addenda will be published on the City Purchasing web page at www.port-orange.org/bids.aspx and the DemandStar website at www.demandstar.com.

The City of Port Orange reserves the right to consider the omission of an acknowledgment of addendum as cause for rejection of the ITB submittal.

This provision exists solely for the convenience and administrative efficiency of the City of Port Orange. No bidder or other third party gains any rights by virtue of this provision or the application thereof, nor shall any bidder or third party have any standing to sue or cause of action arising therefrom.

CLARIFICATIONS

It is the bidder's responsibility to become familiar with and fully informed regarding the terms, conditions and specifications of this ITB. Lack of understanding and/or misinterpretation of any portions of this ITB shall not be cause for withdrawal of your bid after opening or for subsequent protest of award.

MINIMUM QUALIFICATIONS

Bidders shall be licensed to do business in the State of Florida. Submit Sunbiz report showing your company registered as "Active".

Bidders must provide a minimum of three (3) verifiable references (using Form 7.8) from similar scopes of work as identified in this ITB. Failure to provide verifiable references may cause the bidder to be deemed non-responsive. The City of Port Orange is not to be used as a reference.

NO LOBBYING

All bidders are hereby placed on notice that the City of Port Orange Council, City Employees/Staff, nor Members of the Evaluation Committee (with the exception of the City of Port Orange Purchasing Division personnel designated to receive requests for interpretations or corrections) are not to be lobbied, directly or indirectly either individually or collectively, regarding this ITB. During the entire procurement process, all bidders and their subcontractors,

sub-consultants, or agents are hereby placed on notice that they are not to contact any persons listed above for such purposes as holding meetings of introduction, dinners, etc. if they intend to submit or have submitted Bids for this project. Any bidder contacting individuals mentioned herein in violation of this warning may automatically be disqualified from further consideration for this ITB.

SCHEDULE OF UNIT PRICING

Schedule of Unit Pricing is to be completed as directed and without modification and returned as part of the ITB submittal prior to the ITB deadline for submission. Failure to fill out the Schedule of Unit Pricing as directed and without modification may negatively affect the evaluation of your bid.

EXCEPTIONS TO SPECIFICATIONS

If taking exception to any portion of the ITB specifications, the bidder must indicate those exceptions as stated on the Bidder's Acknowledgement Form (7.2).

BID SUBMISSION AND WITHDRAWAL

Unless otherwise specified, bidder shall use the forms supplied by the Purchasing Division. Bids, once opened, become the property of the City, cannot be withdrawn, and will not be returned to the bidders. Upon opening, bids become subject to public disclosure in accordance with Chapter 119, Florida Statutes.

CORRECTION OF BIDS

Correction of inadvertently erroneous bids shall be permitted up to the time of ITB opening. Bidders shall not be allowed to modify their bids after the opening time and date.

WITHDRAWAL OF BIDS

NO bid shall be withdrawn for a period of one-hundred-twenty (120) days subsequent to the bid opening without the consent of the City of Port Orange. Negligence on the part of the bidder in preparing their bid confers no right of withdrawal or modification after the bid has been opened at the appointed time and place by the City of Port Orange. Any such withdrawn bid shall not be resubmitted.

OPENING OF BIDS

Bids will be received until the date and time stated in this ITB and will be publicly opened and read at the place, time and date stated. The City bears no responsibility for the premature opening of a bid not properly addressed and identified.

LITIGATION HISTORY

The City will consider a bidder's litigation history information in its review and determination of responsibility. All bidders are required to disclose to the City all "material" cases filed, pending, or resolved during the last five (5) years prior to the solicitation response due date, whether such cases were brought by or against the bidder, any parent or subsidiary of the bidder, or any predecessor organization. If the bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a bidder's litigation history is an issue of responsibility, the failure to provide litigation history as required in the Evaluation Criteria may result in a recommendation of non-responsive by the Purchasing Manager.

DEBARMENT HISTORY

The City will consider a bidder's debarment history information in its review and determination of responsibility. All bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the bidder, any parent or subsidiary of the bidder, or any predecessor organization. If the bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a bidder's debarment history is an issue of responsibility, the failure to provide debarment history as required on the Certification Regarding Debarment, Suspension and Other Responsibility (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.

REJECTION OF BIDS

The City reserves the right to reject any and/or all bids when such rejection is in the best interest of the City.

BIDS MAY BE REJECTED AND/OR BIDDER(S) DISQUALIFIED FOR THE FOLLOWING REASONS:

- (a) Failure to update the information on file including address, product, service or business descriptions.
- (b) Failure to perform according to contract provisions.
- (c) Conviction in a court of law of any criminal offense in connection with the conducting of business.
- (d) Evidence of a violation of any federal or state antitrust law based on the submission of bids or proposals, or the awarding of contracts.
- (e) Evidence that the bidder has attempted to give a City employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the City's purchasing activity.
- (f) Other reasons deemed appropriate by the City.

OWNERSHIP OF DOCUMENTS

All documents resulting from this solicitation will become the sole property of the City of Port Orange. The bidder must meet all requirements for retaining public records and transfer, at no cost, to the City all public records in the possession of the Bidder upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

AMERICANS WITH DISABILITIES ACT (ADA)

If you need special services provided under the Americans with Disabilities Act, contact the ADA Coordinator in our Human Resources office at 386-506-5560 at least 48 hours before the scheduled event.

REQUIRED DOCUMENTS FOR AWARDED BIDDER

The awarded bidder shall return all the required post-award documents within 10 days after the issuance of the Notice of Intent to Award in order to execute the contract.

SECTION 3 – SCOPE OF WORK/SPECIFICATIONS

SCOPE OF WORK:

The Garnsey Water Treatment Plant's lime softening process produces an average of 25-41 tons per day of lime sludge that must be removed from the Water Treatment Plant and disposed of at a fully permitted and licensed disposal site. Removal occurs seven days per week with an anticipated annual average of 12,000 tons. This Invitation to Bid includes two options for the lime sludge removal. Details of both options (A&B) are outlined below.

Term of Agreement

The initial term of the Contract shall be for a period of three (3) years, beginning the date the Contract is fully executed by all parties, and will automatically renew for two (2) additional one-year periods unless either party provides at least ninety (90) days prior written notice to the other party of their intent not to renew the Contract.

Option A

This specification covers the service necessary for the Contractor to pick-up and remove processed lime sludge at the Garnsey Water Treatment Plant located at 4400 Wellfield Rd., Port Orange, FL, 32129. The lime sludge would be delivered to the disposal site by the Contractor. In order to maintain operational reliability of the water treatment plant, daily retrieval of processed lime sludge is required. The City of Port Orange will have personnel fill Contractor's delivery vehicles and the Contractor shall be responsible for material disposal.

Execution

1. The Contractor shall coordinate with the Water Plant Operators for daily pick-up of lime sludge loads, up to three per day. Water Plant operation is continuous and loads will be picked up 365 days per year.
2. All pick-ups shall be performed between the hours of 7AM – 7PM, seven days a week. Access to the facility will be pre-determined with Contractor. Pick-up times to be determined by agreement of Contractor and Water Plant Staff.

3. Contractor will be completely and entirely responsible to dispose of expended lime sludge at a fully permitted and licensed disposal site. Alternate disposal arrangements may be approved by the City on a case-by-case basis, including reuse/recycling option(s).
4. The successful Contractor will be required to perform the work as a prime Contractor. The Contractor shall not subcontract any portion of the work without the prior written approval of the City of Port Orange. No assignment of the Contract will be allowed.

Schedule of Unit Pricing (Attachment 1)

Bidder shall provide the unit price per ton per hauled load. Price submitted shall be based on daily retrievals and be firm for the initial contract term of three (3) years.

Post Award

1. Contractor to meet with City to discuss scheduled deliveries for contract term.
2. The City encourages the awarded Contractor to do a site visit of its dewatering and staging areas at a date and time to be pre-scheduled with Water Plant staff. Contractor may discuss any concerns with site conditions or working environments at the time of the site visit. The City will address these concerns with the Contractor if needed.

Option B

This specification covers the service necessary for the Contractor to receive and dispose of processed lime sludge from the Garnsey Water Treatment Plant. The lime sludge would be delivered to the disposal site by City staff in City owned trucks. In order to maintain operational reliability of the water treatment plant, daily removal of processed lime sludge is required. The City of Port Orange will have personnel deliver the lime sludge to the Contractor's fully permitted and licensed disposal site.

Execution

1. The Contractor shall coordinate with the Water Plant Operators for daily delivery of lime sludge loads, up to three per day. Water Plant operation is continuous and loads will be delivered 365 days per year.
2. All deliveries shall be performed between the hours of 9AM – 5PM, seven days a week. Access to the facility will be pre-determined with Contractor. Delivery times to be determined by agreement of Contractor and Water Plant Staff.
3. Contractor will be completely and entirely responsible to dispose of expended lime sludge at a fully permitted and licensed disposal site. Alternate disposal arrangements may be approved by the City on a case-by-case basis, including reuse/recycling option(s).
4. The successful Bidder will be required to perform the work as a prime Contractor. The Contractor shall not subcontract any portion of the work without the prior written approval of the City of Port Orange. No assignment of the Contract will be allowed.

Schedule of Unit Pricing (Attachment 1)

Bidder shall provide the unit price per ton per delivered load. Price submittal based on daily deliveries must remain firm for the initial contract term of three (3) years.

Post Award

1. Contractor to meet with City to discuss scheduled deliveries for contract term.
2. Contractor to allow Garnsey Water Plant staff to do a site visit of delivery area. City will discuss any concerns with site conditions or working environments with Contractor. Contractor will address these concerns if requested.

*****END OF SPECIFICATION*****

SECTION 4 – STANDARD PURCHASE DEFINITIONS

The City will use the following definitions in instructions to Bidders, terms and conditions, special provisions, technical specifications and any other solicitation documents.

1. **Addendum** is a formal written document, released prior to the public opening that modifies any aspect of a Solicitation. Plural: Addenda
2. **Alternate Bid** means multiple bids with substantive variations from the same Bidder in response to a Solicitation.
3. **Amendment** is a formal written agreement, signed by both parties, that modifies an existing contractual agreement.
4. **Appropriate, Appropriated, or Appropriation** means the adoption by the City Council of the City of a budget for a fiscal year that includes payments to be made under the Contract during the respective fiscal year.
5. **Best Value** means the highest overall value to the City based on factors that include, but are not limited to, price, quality, design, and workmanship.
6. **Bid** is a complete, properly signed response to an Invitation to Bid, which if accepted, would bind the Bidder to perform the resultant Contract.
7. **Bid Guaranty (Bid Bond)** guarantees that the Bidder (a) will not withdraw the bid within the period specified for acceptance, and (b) will execute a Contract and furnish required bonds and any necessary insurance within the time specified in the Solicitation, unless a longer time is allowed by the City. The guarantee will be returned to the Bidder upon execution of a Contract
8. **Bidder or Proposer** is a person, firm, or entity that submits a Response to a Solicitation. Any Bidder/Proposer may be represented by an agent after submitting evidence demonstrating the agent's authority. The agent cannot certify as to his own agency status.
9. **City** means the City of Port Orange.
10. **Competitive Negotiation** means a method for acquiring goods, services, and construction for public use in which discussions or negotiations may be conducted with responsible offerers who submit Responses through a Request for Proposals, Request for Statements of Qualifications, or Invitation to Negotiate.
11. **Competitive (Formal) Solicitation** is the process of requesting and receiving two or more sealed bids, proposals, statements of qualifications or replies submitted by responsive Bidders/Proposers in accordance with the terms of a competitive process, regardless of the method of procurement.
12. **Competitive Range** means the responsive submissions that meet the evaluation criteria and are considered to be reasonably susceptible of award.
13. **Construction** means the process of building, repairing, improving, and alterations, conversion or extension of building, parks, utilities, streets or other improvements or alterations to real property.
14. **Contract** is a written agreement or purchase order issued for the purchase of goods or services.
15. **Contractor** means the person, firm or entity selling goods or services to the City under a Contract.
16. **Deliverables** means the goods, products, materials, and/or services to be provided to the City by a Bidder.
17. **Due Date** means the date and time specified for receipt of Responses to a Solicitation.
18. **End User** is a person, program, agency, or other eligible user who uses a contract to purchase a commodity or contractual service.
19. **Evaluation Committee/Team** is a temporary group of City personnel who are responsible for the evaluation of proposals, statements of qualifications or replies as part of a Request for Proposals (RFP), Request for Submission of Qualifications (RFSQ), or Invitation to Negotiate (ITN), or competitive grant process.
20. **Evaluator** is a member of the evaluation committee/team.
21. **Goods** are supplies, materials, or equipment.
22. **Intent to Award** is a document, published on DemandStar, that informs the public and respondents of the City's decision to award a contract pursuant to a previously issued competitive solicitation.
23. **Invitation to Bid (ITB) or Bid** means a formal request to prospective Bidders requesting pricing for a specified Good or Service which has been advertised for bid in a newspaper.
24. **Invitation to Negotiate (ITN)** means a formal request to prospective proposers requesting proposed specifications and pricing of a product and/or service which has been advertised for replies in a newspaper.
25. **Issues** means points, matters, or concerns to be addressed during negotiations.
26. **Lead Negotiator** is the negotiator responsible for leading and facilitating the formal negotiation discussions and selecting other required negotiation team members. Is often the "driver of change" and seeks alternatives/options.

27. **Lowest Responsible Bid** means the responsive bid meeting all requirements of the specifications, terms, and conditions of the Invitation to Bid resulting in the lowest cost to the City in a total cost concept or based solely on price, taking into consideration the financial and practical ability of the Bidder to perform the Contract, past performance of the Bidder, and compliance with all City ordinances concerning the purchasing process.
28. **Lowest Responsible Bidder** means the Bidder submitting lowest responsible bid.
29. **Negotiation Team** is a temporary group of City personnel who are responsible for negotiations as part of an Invitation to Negotiate (ITN).
30. **Negotiator** is a member of the negotiation team.
31. **Non-Professional Services** are services performed that are not of a professional nature such as lawn care, security, janitorial, etc.
32. **Offer** means a complete signed Response submitted to the City in response to a Solicitation including, but not limited to, a bid submitted in response to an Invitation to Bid, a Proposal submitted in response to a Request for Proposal, a Quote submitted in response to a Request for Quotation, a Statement of Qualifications and interest submitted in response to a Request for Statements of Qualifications, or a Reply submitted in response to an Invitation to Negotiate.
33. **DemandStar** is the official online repository for all City competitive solicitations.
34. **Outlier** is a bid, offer, or proposal which is determined by the Purchasing Director or Manager to be significantly dissimilar to or inconsistent with, competing bids or offers.
35. **Pre-Bid/Proposal/Statement/Reply Conference** means a meeting conducted by the Purchasing Office, held in order to allow Bidders/Proposers to ask questions about the proposed Contract and particularly the Contract specifications with the City department requesting the goods/services.
36. **Price Analysis** is an evaluation of the total cost of a contract in order to determine if the price is reasonable.
37. **Procurement (Process)** is a term used in the governmental sector for the combined functions of acquiring (purchasing) needed goods and/or services, receiving and inspection, inventory management, contract administration, and disposal/surplus.
38. **Professional Services** means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employ mentor practice.
39. **Protest** is a formalized process by which respondents have an opportunity to challenge a procurement practice or contract award.
40. **Proposal** is a complete, properly signed Response to a Request for Proposal, based on performance that is offered rather than on that of price alone, which if accepted, would bind the Proposer to perform the resultant Contract.
41. **Purchase Order** is an order placed by the Purchasing Division for the purchase of Goods or Services written on the City's standard Purchase Order form and which, when accepted by the Bidder, becomes a contract. The Purchase Order is the Bidder's authority to deliver and invoice the City for Goods or Services specified, and the City's commitment to accept the Goods or Services for an agreed upon price.
42. **Request for Proposal (RFP)** means a formal request to prospective proposers requesting qualifications of the proposer and pricing for a specified Good or Service which has been advertised for Proposal in a newspaper.
43. **Request for Statement of Qualifications (RFSQ)** means a formal request to prospective proposers requesting statements of qualifications pursuant to Florida Statute 287.055 "Consultant's Competitive Negotiation Act" which has been advertised for Statement in a newspaper.
44. **Respondent** means an entity that has (or will, i.e. "prospective respondents") submitted a response to a competitive solicitation conducted to create a contractual relationship for the provision of commodities or services.
45. **Response/Submission** means all materials submitted to the City by a respondent as part of a solicitation. A response may be called a bid, proposal, statement of qualifications, or a reply, depending on the type of competitive solicitation being issued.
46. **Responsible (Bidder)** is a Bidder who has the capability in all respects to fully perform the contract requirements and the integrity and reliability that will assure good faith performance.
47. **Responsive (Bidder)** is a Bidder that has submitted a bid, proposal, statement of qualifications, or reply that conforms in all material respects to the solicitation.
48. **Scope** means the extent of the area or subject matter that something deals with or to which it is relevant.

49. **Scope of Work** means a description of the work activities, deliverables, and/or timeline that a Bidder must execute in terms of delivering specific commodities or in performance of contractual services.
50. **Services** include all work or labor performed for the City on an independent contractor basis other than construction.
51. **Solicitation** means a formal request, as applicable, for prospective Bidders/Proposers to submit responses to an Invitation to Bid, Request for Proposal, Request for Qualifications, Invitation to Negotiate, or a Request for Quotation.
52. **Solicitation Document** means a document, or collection of documents, either paper or electronic, that contains all information required to conduct a competitive procurement project according to § 287.057, Florida Statutes.
53. **Stakeholder** means an individual, who is not likely to become a supplier, who has an interest in the commodities/contractual services needed.
54. **Subcontractor** means a person, firm or entity providing goods or services to a Bidder/Proposer to be used in the performance of the Bidder/Proposer's obligations under the Contract.
55. **Subject Matter Expert** means a person who has working or expert knowledge about a particular topic or field.
56. **Unbalanced Bid** means a bid that is based on prices which are significantly less than cost for some bid items and significantly more than cost for others.

SECTION 5 – GENERAL TERMS AND CONDITIONS

These instructions are standard for all contracts for commodities or services issued through the City of Port Orange Purchasing Division. General Requirements apply to all advertised Solicitations; however, **these may be superseded, in whole or in part, by the SPECIAL PROVISIONS/INSTRUCTIONS OR OTHER DATA CONTAINED HEREIN.**

1. ACCEPTANCE BY CITY

The City shall have a reasonable time (but not less than 30 days) after receipt to inspect the goods and services tendered by the bidder. The City at its option may reject all or any portion of such goods or services which do not, in City's sole discretion, comply in every respect with all terms and conditions of the contract. The City may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If the City elects to accept nonconforming goods and services, the City, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate the City for the nonconformity. Any acceptance by the City, even if non-conditional, shall not be deemed a waiver or settlement of any defect in such goods and services. The material delivered as a result of this solicitation shall remain the property of the seller until a physical inspection and actual usage of the item(s) is made and thereafter deemed acceptable to the satisfaction of the City, in compliance with the terms and specifications contained herein. In the event that the item(s) supplied to the City is/are found to be defective, or does/do not conform to specifications, the City reserves the right to cancel the order upon written notice to the seller and return the item(s) to the seller at the seller's expense.

2. ADDENDA

When specifications are revised, the City of Port Orange Purchasing Division will issue an addendum addressing the nature of the change. Bidders should acknowledge all addenda by circling the number of addenda received on the "Bidder's Acknowledgment Form" and include it in the returned response package. Failure to acknowledge the correct number of addenda issued may result in rejection of the response. It is the responsibility of the bidder to ensure all addenda have been received prior to submitting a bid. All addenda shall be posted by the City on DemandStar at www.demandstar.com and the City of Port Orange Purchasing web page at <https://www.port-orange.org/bids.aspx>. The City shall issue responses to inquiries and any other corrections or amendments it deems necessary in written addenda issued prior to the solicitation response due date. Bidders should not rely on any representations, statements or explanations other than those made in this solicitation or in any addendum to the solicitation. Where there appears to be a conflict between the solicitation and any addenda issued, the last addendum issued shall prevail.

3. ADDITIONAL GOODS

Products, materials and goods not specifically identified in this bid request may be added to any resultant contract upon mutual consent of the contracting parties. The City reserves the right to add or delete products

or materials of similar nature, within the family of products of "ITB Item(s)" and their commodity codes, to those items requested in this bid.

4. **ANTI-COLLUSION STATEMENT**

By submitting a response to a formal solicitation, the bidder affirms that this response is without previous understanding, agreement, or connection with any person, business, or corporation submitting a response for the same materials, supplies, or equipment, and that the response is in all respects fair, and without collusion or fraud. Additionally, bidder agrees to abide by all conditions of this solicitation and certifies that he/she is authorized to sign the response for the bidding company/firm. In submitting a response to the City of Port Orange, the bidder offers and agrees that if the response is accepted, the bidder shall convey, sell, assign or transfer to the City of Port Orange all rights, title and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Port Orange. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the bidder.

5. **APPLICABLE LAWS**

In connection with the furnishing of supplies or performance of work under the contract, the bidder agrees to comply with the Fair Labor Standards Act, Equal Opportunity Employment Act, and all other applicable federal and state laws, regulations and executive orders to the extent that the same may be applicable.

6. **ASSIGNMENT**

The successful bidder shall not sell, assign, transfer or convey this contract in whole or in part, without the prior written consent of the City of Port Orange. Any such assignment or transfer shall not release the bidder from all contractual obligations.

7. **AUTHORITY TO CONDUCT BUSINESS IN FLORIDA**

A Florida corporation or partnership is required to provide evidence with its response that it is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A foreign (out-of-state) corporation or partnership is required to provide evidence with its response that it is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager.

A joint venture is required to provide evidence with its response that it, or at least one of the joint venture partners, is authorized to transact business in Florida and is in good standing with the Florida Department of State. If not with its response, such evidence must be submitted to the City no later than five (5) business days from request of the Purchasing Manager. However, the joint venture is required to provide evidence prior to contract execution that the joint venture is authorized to transact business in Florida and provide the City with a copy of the joint venture Agreement. A joint venture is also required to provide with its response a Statement of Authority indicating that the individual submitting the joint venture's proposal has the legal authority to bind the joint venture. If not with its response, such evidence must be submitted to the City no later than five (5) business days from the request of the Purchasing Manager.

8. **AWARDS**

Recommendation for award will be considered by the City of Port Orange City Council at the earliest possible regular meeting subsequent to the evaluation process. This ITB is issued in accordance with and shall be governed by the provisions of the City's Purchasing Manual. The City of Port Orange City Council reserves the right to make award(s) by individual sections, groups, all or none, or a combination thereof, with one or more bidders; to reject any and all proposals, or to waive any informality or technicality in proposals received as deemed to be in the best interest of the City. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, proposal or quote for purchase of services and goods by the City of Port Orange.

9. **AWARD AND EXECUTION OF CONTRACT**

When a bid received has been determined to be satisfactory, a contract will be awarded, or Purchase Order issued to the lowest responsive and responsible Bidder within the time designated in the contract documents. The bidder(s) to whom the award is made shall execute the contract(s) and return it, together with the properly executed bonds and insurance certificates to the City within the time specified.

10. **BID RETURNS**

Bidders shall return all completed responses to the City of Port Orange at the address set forth in Section 2 of this document on the date and at the time specified. Late submissions will not be accepted and shall be returned to bidders unopened.

11. **BID PROTEST**

Any person who is adversely affected by the City's decision or intended decision shall file with the City Purchasing Manager a notice of protest in writing within 72 hours after the posting of the notice of decision or intended decision. With respect to a protest of the terms, conditions, and specifications contained in a solicitation, including any provisions governing the methods for ranking bids, proposals, statements, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in writing within 72 hours after the posting of the solicitation. Saturdays, Sundays, and state holidays shall be excluded in the computation of the 72-hour time established herein. The formal written protest shall be filed with the Purchasing Manager in writing within ten (10) days after the date the notice of protest is filed. The formal written protest shall state with particularity the facts and law upon which the protest is based. Failure to file a notice of protest or failure to file a formal written protest shall constitute a waiver of proceedings. Upon receipt of the formal written protest that has been timely filed, the City shall stop the solicitation or contract award process until the subject of the protest is resolved by final City action. However, the City may continue the solicitation or award process, provided the City Manager sets forth in writing particular facts and circumstances which require the continuance of the solicitation or contract award process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare. The City shall provide an opportunity to resolve the protest by mutual agreement between the parties. The policy this City has established is as follows:

- a. As soon as possible after receipt, the Purchasing Manager shall provide written bid protest to City Manager, City Attorney, Department Head involved, and Supervisor directly involved in the acquisition.
- b. Purchasing Manager shall schedule within seven (7) business days, excluding weekends and holidays, a meeting with the above-mentioned individuals or designee and protestor. The intent of the meeting is to provide a review and/or solution prior to going before Council. After reviewing all relevant information, the City Manager shall render a decision.
- c. If the protestor disagrees, he/she may appeal to the City Council at a formal council meeting. After reviewing the evidence, the City Council will issue their decision. The City Council's decision is final; however, the protestor can appeal the decision to the Circuit Court in Volusia County, Florida within thirty (30) days of the City Council's final decision. Decisions at all levels shall be in writing to the protestor.

12. **BID TABULATION**

Bidders who wish to receive a copy of the bid tabulation may obtain it via DemandStar at www.demandstar.com or on the City Purchasing web page at www.port-orange.org/bids.aspx.

13. **BIDDER'S PRODUCT OR SERVICES**

The bidder's product (if applicable) delivered to the City shall be free of all liens, claims or encumbrances, and the bidder warrants that it has a clear title to the product being delivered.

- a. If the bidder is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.
- b. The bidder shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the bidder.
- c. In furnishing the service or product to the City, the bidder shall comply with all federal, state, county laws, and city rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, proposal or quote.

14. **BONDS**

If this solicitation requires submission of bid guarantee and payment and performance bonds, there will be a separate section explaining those requirements. When the Purchasing Manager deems it necessary, bid bonds/deposits shall be prescribed and are advertised in the public notices inviting bids. Responses submitted without the required bid bond or certified check shall be deemed non-responsive. Normally, if a bid bond/deposit is requested, it is in the amount of five percent (5%) of the bid amount.

Payment and Performance Bonds requested for construction projects shall be in an amount equal to one hundred percent (100%) of the total contract amount which will be recorded by the City, at the contractor's sole cost and expense, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirements of Florida law. The City will bill the cost of recording to the contractor. Unsuccessful respondents are entitled to the return of their bid bond. A successful respondent shall forfeit any surety required by the Purchasing Manager upon failure of the respondent to enter into a contract within the time specified after the award of bid.

15. **CERTIFICATE OF INSURANCE**

Upon issuance of a notice of intent to award, the selected bidder will be required to submit a Certificate of Insurance showing proof of adequate coverage for professional general liability, errors and omissions and workers' compensation as identified under the insurance requirements of this solicitation and listing the City of Port Orange as Additional Insured prior to execution of the contract.

16. **CHANGE ORDERS**

No oral statement of any person shall modify or otherwise change, or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the supplier/contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the bidder receives an executed Purchase Order for the requested change.

17. **CHANGE ORDER REQUEST NOTIFICATION**

The awarded bidder is responsible for giving the City of Port Orange, prior to the contract expiration date, at least forty-five (45) calendar days of advance notice for any anticipated changes in price greater than \$25,000, and any changes in time and/or scope of the awarded contract. The bidder shall not continue to provide services past the contract expiration date unless approved by a written Change Order Notice from the City.

18. **CLEAN UP**

Upon completion of the delivery of materials, the bidder shall restore any/all public and private property which may have been damaged during delivery. Restoration is meant to include removal of any spillage or restoring damage to the edge of pavement, sidewalks, driveways, landscaped areas, etc. Bidder shall make repairs consistent with or better than what existed prior to delivery. This shall be understood to include the use of sod or seed and mulch to replace (if necessary) existing grass that has been damaged. If sod is used it shall match the sod present on the effected property. Bidder shall make all repairs and restorations at his/her expense.

19. **CONDUCT OF BIDDERS**

All bidders or individuals acting on behalf of a bidder are hereby prohibited from lobbying or otherwise attempting to persuade or influence any member of the Evaluation Committee, City Council members, or City staff at any time during the course of the solicitation process. The solicitation process shall end upon issuance of the written staff recommendation (Notice of Intent to Award) for selection of a bidder. All bidders or individuals acting on behalf of a bidder are further prohibited from contacting or otherwise attempting to communicate with any member of the staff, Evaluation Committee or City Council members regarding the pending solicitation or its outcome until after the issuance of the written recommendation of the most qualified Bidder. Until such recommendation is issued in writing, any questions regarding the pending solicitation shall be submitted to the Purchasing Division. Failure to comply with this procedure shall result in rejection/disqualification of said submittal without exception. Contact with staff, City Council members or the Evaluation Committee during a public meeting shall not be considered a violation of this requirement.

20. **CONE OF SILENCE**

The Cone of Silence is designed to protect the integrity of the procurement process by shielding it from undue influences prior to the execution of the award. The Cone of Silence is defined as the period beginning with the

issuance of the solicitation document and continues through the execution of the award document. During this time bidders, service providers and the like are prohibited from all communications regarding the solicitation with City staff, City consultants, City legal counsel, City Agents, or elected officials. Any bidder who initiates any discussions or attempts to influence a member or members of the aforementioned shall be disqualified from continued participation in the procurement process with regard to that particular solicitation.

Exceptions to the Cone of Silence:

- Written communication directed to the Procurement Officer;
- All communications occurring at Pre-Proposal Conferences;
- Oral presentations before publicly noticed committee meetings;
- Procurement of goods and services for Emergency situations; and
- Contractors already on contract with the City to perform services for the City are allowed discussions necessary for the completion of an existing contract.

21. **CONFLICT OF INTEREST**

For purposes of determining any possible conflict of interest, all bidders must disclose if any City of Port Orange employee is also an owner, corporate officer, or employee of bidder's business. No official or employee of the City who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Scope of Work covered by the contract shall voluntarily acquire any personal interest, directly or indirectly, in the contract or proposed contract.

22. **CONFLICT OF INSTRUCTIONS**

If a conflict exists between the General Terms and Conditions and instructions contained herein, and the Special Terms and Conditions and instructions contained herein, the Special Terms and Conditions shall govern.

23. **CONTRACT OBLIGATION**

Except as otherwise stated herein, the City of Port Orange City Council shall approve the contract if greater than \$25,000.00 annually. The Mayor or other person authorized by the Mayor must sign the contract before it becomes binding on the City of Port Orange or the bidder. Department heads are NOT authorized to sign contracts for the City of Port Orange. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

24. **CONTRACT RENEWALS**

Renewals may be made ONLY by written agreement between the City of Port Orange and the bidder. Any price escalations are limited to those stated by the bidder on the original response.

25. **COPYRIGHT AND PATENT RIGHTS**

Bidder warrants that there has been no violation of copyrights or patent rights in manufacturing, producing and/or selling the item(s) ordered or shipped as a result of this response, and successful bidder agrees to hold the City harmless from any and all liability, loss or expense by any such violation.

26. **COST INCURRED BY BIDDER**

All expenses, including costs for required bonds, involved with the preparation and submission of Responses to the City, or any work performed in connection therewith shall be borne by the bidder. No payment shall be made for any response received, nor for any other effort required of or made by the bidder prior to commencement of work as defined by the contract approved by the City Council.

27. **DAMAGE**

Any damage to driveways, irrigation systems, sidewalks, pavement, or landscaping will be evaluated by the City's representative and the bidder. If the bidder is found to be at fault, all repairs, restitution, or reimbursements to the City must be completed within one week of discovery.

28. **DEBARMENT HISTORY**

The City will consider a bidder's debarment history information in its review and determination of responsibility. All bidders are required to disclose to the City all cases of debarment filed, pending, or resolved by the City or other public entity during the last five (5) years prior to the solicitation response due date, whether such actions were brought by or against the bidder, any parent or subsidiary of the bidder, or any predecessor organization. If the bidder is a joint venture, the information provided should encompass the joint venture (if it is not newly formed for purposes of responding to the solicitation) and each of the entities forming the joint venture. Although the review of a bidder's debarment history is an issue of responsibility, the failure to provide debarment history as required on the Certification Regarding Debarment, Suspension and Other Responsibility (contained herein) may result in a recommendation of non-responsive by the Purchasing Manager.

29. **DEFAULT PROVISIONS**

In the event of default by the bidder, the City reserves the right to procure the item(s) bid from other sources and hold the bidder responsible for excess costs incurred as a result. If a bidder defaults on a City contract, the City Council may elect to refrain from doing business with the bidder for a period of 36 months from the date of default.

30. **DELIVERY OF GOODS/SERVICES**

All materials are to be delivered F.O.B.; City of Port Orange designated facility. Delivery dates pertaining to this invitation must be clearly stated in the bid form where required and include weekends and holidays. Failure to comply with this requirement may be a cause for disqualification of bid. Unless otherwise specified, delivery at the earliest date is required. The bidder shall clearly state in the response the time required for delivery upon receipt of contract or purchase order. Proposed delivery time must be specific and such phrases "as required," "as soon as possible" or "prompt" may result in disqualification of the bid. Delivery time will be a factor for any orders placed as a result of this response. The City reserves the right to cancel such order(s) or any part thereof, without obligation, if delivery is not made within the time(s) specified herein and hold the Bidder in default. Upon approval of a contract, the bidder is obligated to deliver the goods to the destination specified in the solicitation or the purchase order and bears the risk of loss until delivery. If this solicitation or purchase order does not contain delivery instructions, bidder shall request instructions in writing from the Purchasing Manager. If the delivery instructions contained in the solicitation allocate delivery costs and risks in a manner contrary to this section, the provisions of this competitive solicitation shall prevail. When delivery is not met as provided for in the contract, the Purchasing Division reserves the right to make the purchase on the open market, with any cost in excess of the contract price paid by the bidder, in addition to any other damages, direct or consequential, incurred by the City as a result thereof. In addition, failure of the bidder to meet the contract delivery dates will be cause for removal of the bidder from the City's list of eligible bidders/proposers as determined by the Purchasing Division.

31. **DETERMINATION OF LOWEST AND BEST RESPONSIBLE BIDDER**

In determining the lowest and best responsible bidder, in addition to price, there will be considered the following:

- a. The ability, capacity and skill of the bidder to perform the contract.
- b. Whether the bidder can perform the contract within the time specified, without delay or interference.
- c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder.
- d. The quality of performance of previous contracts.
- e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract.
- f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service.
- g. The quality, availability and adaptability of the supplies or contractual services to the particular use required.
- h. The ability of the bidder to provide further maintenance and service for the use of the subject of the contract.
- i. The number and scope of conditions attached to the bid.
- j. Such other factors as appear to the city council to be pertinent to the bid or the contract under all of the circumstances involved.

32. **DISCLOSURE OF CONFLICTS**

The award is subject to the provisions of Chapter 112.313, Florida Statutes. All bidders must disclose with their response the name of any officer, director, or agent who is also an employee of the City. Further, all bidders must disclose the name of any employee who owns, directly or indirectly, an interest in the bidder's firm or any of its branches. The bidder shall not compensate, in any manner, directly or indirectly, any officer, agent, or employee of the City for any act or service that he/she may do, or perform for, or on behalf of any officer, agent or employee of the bidder. No officer, agent, or employee of the City shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made by anyone for, or on behalf of the City. The bidder shall have no interest and shall not acquire any interest that shall conflict in any manner or degree with the performance of the services required under the solicitation.

33. **DISQUALIFICATION OF BIDDER**

The Purchasing Manager shall maintain a current listing of qualified bidders. The Purchasing Manager may, from time to time, remove any bidder's name from the list of qualified bidders. Normally the removal of a bidder from the bidder list is done after nonresponse from that bidder for three (3) consecutive solicitations. Such action may also arise out of breach of contract, default, or irregular business practice, based on the Finance Director and City Attorney's recommendation. Any or all responses may be rejected if the City believes that collusion exists among the bidders. Responses in which the prices are obviously unbalanced may be rejected. If multiple responses are submitted by a bidder and after the responses are opened one of the responses is withdrawn, the result will be that all of the responses submitted by that bidder will be withdrawn; however, nothing herein prohibits a bidder from submitting multiple responses for different products or services.

34. **EVALUATION**

Evaluation shall be used as a determinant as to which response items or services are the most efficient and/or most economical for the City. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All responses are subject to tabulation by the City of Port Orange Purchasing Division and recommendation to the governing body. Compliance with all solicitation requirements, delivery and needs of the using department are considerations in evaluating responses. Pricing is NOT the only criteria for making a recommendation. The City of Port Orange Purchasing Division reserves the right to contact any bidder/proposer, at any time, to clarify, verify or request information with regard to any response.

35. **EXCEPTIONS TO SPECIFICATIONS**

For purposes of evaluation, the bidder must indicate any exception to the specifications, terms, and/or conditions, no matter how minor. This includes any agreement or contract forms supplied by the bidder that are required to be signed by the City. If exceptions are not stated by the bidder, in his bid, it will be understood that the item(s)/services fully comply with the specifications, terms and/or conditions stated by the City. Exceptions are to be listed by the bidder on an attachment included with the bid. The City will not determine exceptions based on a review of any attached sales or manufacturer's literature.

36. **E-VERIFY**

Bidders shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the bidder during the term of contract and shall expressly require any subcontractor performing services pursuant to the contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of contract.

37. **FACILITIES**

The City reserves the right to inspect the bidder's facilities at any time.

38. **FAILURE TO RESPOND**

If the bidder elects not to bid, please return the enclosed "No Submittal Response Form" by the bid due date and state the reason(s) for not bidding. Failure to respond, either by submitting a bid, or by submitting a "No Submittal Response Form", three (3) times, shall result in the bidder's name being removed from the City's mailing list.

39. **FINANCIAL STABILITY**

Bidders shall be prepared to supply a financial statement upon request, preferably a certified audit of the last available fiscal year. A third party prepared financial statement and the latest Dunn & Bradstreet report will be accepted in lieu thereof.

40. **FORCE MAJEURE**

Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of force majeure. Force majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

41. **FOREIGN COUNTRIES OF CONCERN**

A governmental entity may not knowingly enter into a contract with an entity which would give access to an individual's personal identifying information if: a) the entity is owned by the government of a foreign country of concern to include the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the

Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern; b) the government of a foreign country of concern has a controlling interest in the entity; or c) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

42. **GOVERNING FORMS**

In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, the City's interpretation shall govern.

43. **GOVERNING LAW**

Bidders shall comply with all applicable federal, state and local laws and regulations. All responses are solicited and shall be made pursuant to the Code of Ordinances, City of Port Orange, Chapter 2, Article VI, Division 2, Section 2-263, and all responses will be evaluated in accordance with the provisions thereof. Code of Ordinances, City of Port Orange is on file in the Office of the City Clerk, City Hall, 1000 City Center Circle, Port Orange, Florida and at www.municode.com. The City of Port Orange is also governed by the Consultants' Competitive Negotiation Act, Section 287.055, Florida Statutes, as the method of selecting architects, engineers and land surveyors. The City has utilized the procedures in the Act for Professional counselors, environmentalists, planners, general contractors, computer systems, designers, telecommunications consultants, maintenance technicians, financial services and other professional services. Every acquisition equal to or greater than \$35,000.00 must have a signed, notarized "Public Entity Crimes Form" to comply with Section 287.133(3)(a), Florida Statutes. Also required is the "Drug- Free Preference Form" to comply with Section 287.087, Florida Statutes. Each form is included in the Solicitation.

44. **GRANT FUNDING**

Any contract entered into by the City that is to be paid from grant funds shall be limited to payment from the grant funding and the bidder understands that the City has not set aside any City funds for the payment of obligations under a grant contract. If grant funding should become unavailable at any time for the continuation of services paid for by the grant, and further funding cannot be obtained for the contract, then the sole recourse of the provider shall be to terminate any further services under the contract and the contract shall be null and void.

45. **HIPAA COMPLIANCE**

The bidder agrees to comply with the Standards for Privacy of Individually Identifiable Health Information of the Health Insurance Portability and Accountability Act of 1996, PL 104-191, 45 CFR Parts 160-164, as amended, referred to as "HIPAA," to the extent that the bidder uses, discloses or has access to protected health information as defined by HIPAA.

46. **IDENTICAL TIE BIDS**

If there are tie bids, meaning everything except the information relating to the submitting firm is the same, the following methods shall be used in the order below to break the tie:

- The bidder that has a Business Tax Receipt (BTR) within Port Orange City limits (confirmed through Sunbiz).
- The commodity was manufactured in the State of Florida.
- Florida business as confirmed thru SunBiz.org.
- If one has or had a contract with the City and performance is or was satisfactory. If performance of a tie bidder who has or had a contract with the City and performance is or was not satisfactory, the other tie-bidder is awarded.
- Drug free workplace policy in place.

47. **INDEMNIFICATION/HOLD HARMLESS**

(a) Bidder shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of bidder, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the contract by the bidder, his/its agents, servants and employees. Bidder shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury.

(b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between bidder's work and any injury, loss, damage, death or property damage, bidder

expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by bidder hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by bidder as long as the claims made could be causally connected to bidder as reasonable determined by the City.

48. **INDEPENDENT CONTRACTOR**

It is expressly understood and agreed by both parties hereto that the City is contracting with the successful bidder as an independent contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the successful bidder under this contract and that the successful bidder has no authority to bind the City. The bidder represents itself to be an independent contractor offering such services to the public and shall not represent himself or his employees to be an employee of the City. Therefore, the bidder shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, worker's compensation, employee insurance, minimum wage requirements, overtime, etc., and agrees to indemnify, save, and hold the City, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney's fees); and damage of any kind related to such matters. The bidder shall further understand that the City cannot save and hold harmless and or indemnify the bidder and/or the bidder's employees against any liability incurred or arising as a result of any activity of the bidder or any activity of the bidder's employees performed in connection with the contract.

49. **INSPECTIONS AND TESTING**

City of Port Orange reserves the right to inspect any item(s) or service location for compliance with specifications and requirements and needs of the using department. If a bidder cannot furnish a sample of a response item, where applicable, for review, or fails to satisfactorily show an ability to perform, the City can reject the response as inadequate and non-responsive.

50. **INSURANCE CANCELLATION**

No change or cancellation in insurance shall be made without thirty (30) days of written notice by the bidder to the City. Insurance coverage required in these specifications shall be in force throughout the contract term. Should any awardee fail to maintain or to provide acceptable evidence of current insurance within five (5) days after receipt of written notice at any time during the contract term, the City shall have the right to consider the contract breached which shall justify the termination thereof.

51. **INSURANCE REQUIREMENTS**

Bidder shall maintain insurance, as required herein, during the life of this contract. Bidder shall provide to the City, a certificate of insurance endorsing the City of Port Orange as an additional named insured. All insurance coverages of the bidder shall be primary and non- contributory. All insurance coverages of the bidder shall not seek contribution from any other insurance or self- insurance available to the City. For workers' compensation coverage, the bidder's insurance certificate shall include the insurer's waiver of subrogation in lieu of endorsing the City as an additional insured for workers' compensation.

IMPORTANT: The City does not accept Workers' Compensation Exemptions. Bidder may use leased employees if the bidder ensures that all workers who access the jobsite are employees covered by the employee leasing company, and no non-employees are permitted to access the jobsite. Any bidder using a leased employee shall complete the City's Leased Employee Affidavit Form Exhibit. Policies for Workers' Compensation may be issued by companies authorized as a group self-insurer by F.S. 440.572. Policies other than Workers' Compensation shall be issued by insurers licensed and/or duly authorized under Florida Law to do business in the State of Florida and all insuring companies are required to have a minimum rating of "A-" in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. Bidder shall not commence work under this contract until the City has received a certificate or certificates of insurance with endorsement evidencing the required insurance. Insurer shall provide the City written notice of cancellation, non-renewal or any other changes in coverage no later than thirty (30) days prior to the effective date of the change and shall provide notice to the City no later than 10 days after non-payment. The Certificates of Insurance and required insurance policies shall contain provisions that thirty (30) days of prior written notice shall be given to the City of any cancellation, intent not to renew, or reduction in the policies or coverages. Bidder shall require and ensure each of its subcontractors to maintain, until the completion of the subcontractor's work, insurance of the types and to the limits set forth herein. All

insurance coverages shall be primary and non-contributory. All insurance coverages of the subcontractors shall not seek contribution from any other insurance or self-insurance available to the City. The bidder is responsible for ensuring that its subcontractors maintain the required coverage. Failure of the bidder to ensure the subcontractors maintain the required coverage, shall not relieve the bidder of any contractual responsibility, obligation or liability. The City reserves the right to increase the insurance coverage requirement as determined for higher risk contracts. The acceptance by the City of any Certificate of Insurance does not constitute approval or agreement by the City that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate of Insurance is in compliance with and does not waive the insurance required by this. Should at any time the bidder or subcontractors not maintain the insurance coverages required herein, the City may terminate the contract or at its sole discretion shall be authorized to purchase such coverages and charge the bidder for such coverages purchased. The City shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the City to purchase such insurance coverages shall in no way be construed to be a waiver of any of its rights under the contract.

Standard Insurance Requirements									
Required	Insurance	Standards	Additional Requirements						
☒	<u>Workers' Compensation</u> The Contractor shall maintain coverage for its employees with statutory workers' compensation limits, and no less than the limits indicated in the Schedule of Limits for Employers' Liability. Said coverage shall include a waiver of subrogation in favor of the City. The City will not accept elective exemptions. Any Contractor using an employee leasing Company shall complete the Leased Employee Affidavit Exhibit Form.	<table border="0"> <tr> <td><u>Contract Amount</u></td> <td><u>Limits</u></td> </tr> <tr> <td>Up to \$10 million</td> <td>Statutory/\$500,000</td> </tr> <tr> <td>\$10 - \$20 million</td> <td>Statutory/\$1,000,000</td> </tr> </table> Contracts over \$20 million to be determined by the City	<u>Contract Amount</u>	<u>Limits</u>	Up to \$10 million	Statutory/\$500,000	\$10 - \$20 million	Statutory/\$1,000,000	- If contract requires work on or about navigable waters, Longshoreman's and Harbor Workers' coverage required. - If vessels involved, Jones Act coverage with limits of \$500,000 required
<u>Contract Amount</u>	<u>Limits</u>								
Up to \$10 million	Statutory/\$500,000								
\$10 - \$20 million	Statutory/\$1,000,000								
☒	Comprehensive General Liability (including completed operations and contractual liability)	<u>Limits:</u> Combined Single Limit Bodily Injury and Property damage: \$1,000,000 each occurrence \$1,000,000 aggregate	When work is on or under Railroad rights of way or properties, the Contractor shall take out and maintain during the life of the contract, Railroad protective liability and property damage insurance in amounts as requested by the Railroad.						
☒	Comprehensive Business, Automobile Liability to include all owned, hired and non-owned automobiles	<u>Limits:</u> Auto Liability Bodily Injury and Property Damage: \$1,000,000 each occurrence \$1,000,000 aggregate							
Additional Insurance Requirements									
☐	Property Insurance Builders Risk <u>Additional Coverage:</u>	<u>Limits:</u> Buildings – completed value of contract “All Risk” coverage on latest ISO for or its equivalent. Permission grated to occupy. Owner named as insured AIMA	If agreement required handling or installation of Owner's equipment, coverage should be furnished on “All Risk” form, including transit and Owner shall be named.						
☐	Installation Floater (IT)	<u>Limits:</u> Coverage – To Be Determined							
☐	Contractor Pollution Liability	<u>Limits:</u> Coverage - \$1,000,000							
☐	Professional Liability/Errors and Omissions	<u>Limits:</u> Coverage - \$1,000,000							
☐	Umbrella Policy	<u>Limits:</u> Coverage – To Be Determined							
☐	Payment and Performance Bond required	<u>Limits:</u> Coverage – equal to amount of contract							
City Manager waives Payment and Performance Bond for work under \$200,000 unless otherwise requested by the Department Head.									
Unless otherwise required by law, City Manager waives insurance for FOB goods only purchases.									

52. **INVOICES AND PAYMENTS**

All invoices shall be sent to: City of Port Orange, Accounts Payable, P.O. Box 291759, Port Orange, Florida, 32129 or email to apbilling@port-orange.org. In accordance with Florida Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City will attempt to pay within fewer days if contractor offers a payment discount. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. If the awarded firm would like to receive payment via ACH, this can be accommodated after the contract is fully executed.

53. **IRREVOCABILITY OF RESPONSES**

Each bidder agrees that responses shall remain open until the contract effective date not to exceed 90 days after the award selection, shall not be subject to revocation or withdrawal, and shall be subject to the City Council's acceptance of a contract with the bidder.

54. **LATE SUBMISSIONS, LATE MODIFICATIONS AND LATE WITHDRAWALS**

Responses received after the response due date and time are late and shall not be considered. Modifications received after the response due date are also late and shall not be considered. Letters of withdrawal received after the response due date are late and shall not be considered. Letters of withdraw received after contract award shall be deemed a breach of contract, subject to penalties as set forth in the contract and solicitation.

55. **LEGAL REQUIREMENTS**

Applicable provision of all federal, state, county and local laws, and all ordinances, rules, and regulations shall govern development, submittal and evaluation of all responses received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a response to a solicitation hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

56. **LICENSES, PERMITS AND TAXES**

The bidder shall comply with all rules, regulations, laws and permitting requirements of the City, Volusia County, the State of Florida, and the United States Government now in force or hereafter to be adopted. The bidder shall abide by all ordinances and laws pertaining to his/her operations and shall secure, at his/her expense, all licenses and permits necessary for construction and operation.

57. **LITERATURE (if applicable):**

If no brand, model or make is specified, bidders shall submit descriptive literature and technical data, fully detailing all features, designs, construction, appointments, finishes and the like not covered in the specifications, necessary to fully describe the equipment, material, and/or services bidder proposes to furnish.

58. **LOCAL PREFERENCE**

The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>. A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation.

59. **MAINTENANCE**

If maintenance is required for equipment purchased as a result of this solicitation, it is preferred that such maintenance be available to the City of Port Orange by a manufacturer-authorized maintenance facility. Costs for this service shall be shown on the Schedule of Unit Pricing form for this solicitation. If the City of Port Orange opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and shall be priced accordingly.

60. **NAME BRANDS**

Specifications may reference name brands and model numbers. It is not the intent of the City of Port Orange to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof

of such stature rests with the bidder, unless otherwise specified by the City. The City of Port Orange shall act as sole judge in determining equality and acceptability of products offered.

61. **NON-DISCRIMINATION**

There shall be no discrimination as to race, color, religion, gender, age, marital status, national origin, ancestry, and physical or mental disability in the operations conducted under this contract. Included as applicable activities by the contractor under this section are the solicitation for or purchase of goods or services, or the subcontracting of work in performance of this contract.

62. **NON-EXCLUSIVITY OF CONTRACT**

The selected bidder understands and agrees that any resulting contractual relationship is non-exclusive, and the City of Port Orange reserves the right to seek similar or identical services elsewhere if deemed in the best interest of the City of Port Orange.

63. **NON-PERFORMANCE**

Failure to meet the expected quality of workmanship, schedule, or other criteria agreed upon, shall be considered a default. In case of default, the City may procure the required services from other sources and hold the contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.

64. **NOTICE TO CONTRACTOR**

The employment of unauthorized aliens by any contractor is considered a violation of Section 274A (e) of the Immigration and Nationality Act. If the contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the contract.

65. **OPTIONAL CONTRACT USAGE**

As provided in Section 287.042(16), Florida Statutes, State of Florida agencies may purchase from a contract resulting from this solicitation, provided the Department of Management Services, Division of Purchasing, has certified its use to be cost effective and in the best interest of the State. Contractor(s) may sell such commodities or services certified by the Division to State of Florida agencies at the contractor's option.

66. **OTHER AGENCIES**

- (a) All bidders awarded contracts from this bid may, upon mutual agreement, permit any municipality or other governmental agency to participate in the contract under the same prices, terms, and conditions, if agreed to by both parties.
- (b) It is understood that at no time will any city, municipality, or other agency be obligated for placing an order for any other city, municipality, or agency; nor will any city, municipality, or agency be obligated for any bills incurred by any other city, municipality, or agency. Further, it is understood that each agency will issue its own purchase order to the awarded bidder(s).

67. **PATENTS/COPYRIGHTS**

The successful bidder agrees to indemnify and hold the City harmless from any claim involving patent infringement or copyrights on goods supplied.

68. **PRE-BID CONFERENCE**

The Purchasing Manager shall determine if a pre-bid conference is required and provide the date, time and location in the solicitation legal advertisement and solicitation specifications. The conference shall normally be held in the Council Chambers, located on the first floor of City Hall, 1000 City Center Circle, Port Orange, Florida. A site visit may be included and shall immediately follow. Only bidders attending a mandatory pre-bid conference will be eligible to submit a response. The representative of each bidder shall be an authorized employee of the bidder and shall sign in accordingly.

69. **PREPARATION OF RESPONSES**

In preparing responses, the Schedule of Unit Pricing form, the Bid Bond form (when a Bid Bond is required as bid security), Certificate as to Corporate Principal, Public Entity Crimes Statement, Anti- Collusion Statement, and Drug Free Preference Statement must be properly executed in ink. The prescribed Schedule of Unit Prices shall be typewritten or written in ink, or electronically imputed in the blank spaces for each item, with the amounts extended if a unit price bid, and all amounts totaled. The sum of the total bid as calculated from the individual items, Schedule of Unit Prices, shall equal the Total Price. Except as provided below, bids containing substitutions or combinations of alternates will not be considered unless such substitutions or combinations are specifically authorized by the solicitation. The bidder shall sign his/her name and give his/her business address in the spaces provided therefore. If the submittal is made as a partnership, it shall be signed by all

partners; if made by a corporation, it shall be signed in the name of the corporation by one of the officers thereof and shall have affixed the seal of the corporation.

70. **POSTPONEMENT/CANCELLATION/WAIVER OF IRREGULARITIES**

The City may, at its sole and absolute discretion, reject any and all, or parts of responses; re- advertise the solicitation for new responses; postpone or cancel, at any time, the solicitation process; or waive any irregularities in the solicitation or in the responses received as a result of the solicitation, or to accept that response which best serves the interest of the City.

71. **PRICING**

Responses may not be withdrawn before the expiration of one-hundred-twenty (120) days. Prices shall be firm, with no escalator clauses unless specified by the City. Responses may be withdrawn after one-hundred-twenty (120) days only upon written notification to the City. Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Schedule of Unit Pricing form. Prices shall be all inclusive: no price changes, additions, or subsequent qualifications will be honored during the course of the contract. All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, the bidder shall indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails. In the event of any discrepancy between the written amounts and the numerals, the written amounts shall govern and will be considered as the price bid. When submitting bids/proposals based on a lump sum basis, bidders shall be required to submit a price for each line item listed on the Schedule of Unit Pricing in order to be considered for award.

72. **PRODUCTS/ESTIMATES**

Items included on the bid form represent the needs of various departments within the City. This is in no way to be construed as the entire or complete list of products to be purchased from the resulting contract. There is no anticipated dollar volume for this contract and estimated quantities provided on the Schedule of Unit Pricing are for bidding purposes only and are not guaranteed. Items shall be ordered on an as needed, when needed basis. Exact quantities or estimated quantities cannot be predetermined.

73. **PROPRIETARY INFORMATION**

Upon receipt by the City, responses to solicitations, become public records subject to the provisions Florida's state policy on public records, Section 119, Florida Statutes. If you believe that any portion of your response is exempt, you should clearly identify the specific documents for which confidentiality is claimed and provide specific legal authority of the asserted exemption. Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from Section 119.07, Florida Statutes, and Article I, 24(a), Florida Constitution.

74. **PROTECTION**

Precaution shall be exercised at all times for the protection of persons, (including employees) and property. All existing structures, utilities, services, roads, trees, shrubbery, etc. shall be protected against damage or interrupted service at all times by the contractor during the term of contract, and the contractor shall be held responsible for any damage to the property occurring by reason of his/her operation on the property.

75. **PUBLIC ENTITY CRIMES**

In accordance Section 287.133 (2)(a), Florida Statutes: A person or affiliate who has been placed on the convicted bidder list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 Months from the date of being placed on the convicted Bidder list.

76. **PUBLIC RECORDS COMPLIANCE**

Contractor shall comply with public records laws as set forth in Section 119, Florida Statutes, and shall specifically:

- a. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
- b. Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- d. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-506-5563, cityclerk@port-orange.org, CITY OF PORT ORANGE, 1000 CITY CENTER CIRCLE, PORT ORANGE, FLORIDA, 32129.

The failure of contractor to comply with a public records request shall constitute a material breach of the contract.

77. **PUBLIC RECORDS/PUBLIC MEETINGS EXEMPTION STATEMENT**

Section 119.071(1)(c), Florida Statutes: **Any financial statement that an agency requires a prospective bidder to submit in order to prequalify for bidding or for responding to a proposal for a road or any other public works project is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. On June 2, 2011, Governor Scott signed HB 7223 into law.** This new legislation amends Florida's Public Records and Sunshine Laws, by expanding "exemptions" applicable to bids, proposals and replies to sealed competitive solicitations, and closes evaluation meetings from the public in certain instances. First, Section 119.071, Florida Statutes was amended to provide that sealed bids, proposals, or replies received by a Florida public agency shall remain exempt from disclosure until an intended decision is announced or until 30 days from the opening, whichever is earlier. This means that bidders will not be able to procure a copy of their competitors' bids until an intended decision is reached or 30 days has elapsed since the time of the bid opening. The prior version of the law provided for a 10-day exemption. Next, Section 286.0113, Florida Statutes was amended to provide that meetings of persons appointed to evaluate bids or proposals and negotiate contracts shall be closed in certain circumstances. Specifically, portions of such meetings may now be closed to the public during oral presentations made by a bidder, or where a bidder answers questions. In other words, neither bidders, nor the public will be permitted to sit in on meetings, unless this exemption is waived by the City Council, wherein their competitors are making presentations or discussing their bid or proposal with the committee members. The portions of these meetings must still be recorded and are subject to disclosure at the time of an intended award decision or within 30 days of the bid or proposal opening, whichever is earlier. Portions of the meetings that do not involve presentations, questions and answers, or negotiation strategy or negotiation sessions are still open to the public and competing bidders, but the new law limits public attendance to portions of such meetings.

78. **PURCHASE ORDER AND DELIVERY**

The successful bidder shall not deliver products or provide services without a City of Port Orange purchase order, signed by an authorized agent of the City of Port Orange. The fastest, most reasonable delivery time shall be indicated by the bidder. Any special information concerning delivery should also be included, on a separate sheet, if necessary. All items shall be shipped F.O.B. INSIDE DELIVERY unless otherwise stated in the specifications. This shall be understood to include bringing merchandise to the appropriate room or place designated by the using department. Every tender or delivery of goods must fully comply with all provisions of these requirements and the specifications including time, delivery and quality. Nonconformance shall constitute a breach which shall be rectified prior to expiration of the time for performance. Failure to rectify within the performance period shall be considered cause to reject future deliveries and cancellation of the contract by City

of Port Orange without prejudice to other remedies provided by law. Where delivery times are critical, the City of Port Orange reserves the right to award accordingly.

79. **QUALITY**

All materials used for the manufacture or construction of any supplies, materials or equipment covered by this bid shall be new. The items bid must be new, the latest model, of the best quality and highest-grade workmanship unless otherwise specified in this bid by the City.

80. **QUESTIONS/INTERPRETATIONS**

Questions regarding interpretation of responses, solicitation results or solicitation awards shall be directed in writing to the Purchasing Division and referenced by the solicitation number no later than the last day for questions as specified in the solicitation documents. The City of Port Orange shall not be responsible for oral interpretations given by any City personnel or representative or others. The issuance of a written addendum is the only official method whereby interpretation, clarification or additional information can be given.

81. **RECORDS/AUDIT**

- (a) The contractor agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after final payment hereunder, have access to and the right to examine and copy any pertinent books, documents, papers and records of the contractor involving transactions related to this contract.
- (b) The contractor further agrees to include in any subcontract for more than \$10,000 entered into as a result of this contract, a provision to the effect that the subcontractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such contractor involved in transactions related to such subcontract, or this contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public.
- (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

82. **RECYCLED MATERIALS**

City of Port Orange encourages the use of products made of recycled materials.

83. **REJECTING OF RESPONSES/RE-BIDDING**

The City reserves the right to accept or reject any or all responses or parts of responses, to waive irregularities and technicalities, and to request re-bids. The City also reserves the right to award the contract on such items the City deems will best serve the interests of the City. The City further reserves the right to award the contract on a "split order" basis, or such combination as shall best serve the interests of the City unless otherwise specified. The City Council shall have the authority to reject any and all responses. If the lowest and best response exceeds the budgeted amount and the City Council does not make additional funds available, the Purchasing Division with the help of the department head shall have the authority to re-advertise the article or articles for bidding after making sufficient changes in the plans or specifications to bring the cost within the limit of the money available. (Code 1981, § 8-28.)

84. **REQUEST FOR ADDITIONAL INFORMATION**

Prior to the final solicitation selection, bidders may be required to submit additional information which the City may deem necessary to further evaluate the bidder's qualifications to perform under the terms of the solicitation and subsequent contract.

85. **REVIEW OF RESPONSES/SUBMISSIONS**

Each response will be reviewed to determine if the response is responsive to the submission requirements outlined in the solicitation. A responsive response is one which follows the requirements of the solicitation, includes all required documentation, is submitted in the format outlined in the solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may deem your response non-responsive.

86. **RIGHT OF WITHDRAWAL**

A bid, proposal, statement, or reply may not be withdrawn before the expiration of one-hundred-twenty (120) days from the response due date.

87. **RIGHTS TO SOLICITATION SUBMITTED MATERIAL**

All responses, inquiries, or correspondence relating to or in reference to a solicitation, and all reports, charts, and other documentation submitted by bidders shall become the property of the City when received.

88. **RULES, REGULATIONS AND LICENSING REQUIREMENT**

The bidder shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, including those applicable to conflict of interest and collusion. Bidders are presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

89. **SAMPLES**

Samples, when requested, must be furnished at, or before the bid opening, (unless otherwise specified), and will be delivered at no charge to the City. If not used and/or destroyed in testing, said sample(s) will, at the bidder's request, be returned within thirty (30) days after bid award at the bidder's expense. If requested by the City, samples and/or inspection of like items are to be made available in the central Florida area.

90. **SCRUTINIZED COMPANIES LIST**

The Contractor shall refrain from any of the prohibited business activities with the Governments of Sudan and Iran as described in section 215.473, Florida Statutes. Pursuant to section 287.135(5), Florida Statutes, the City may immediately terminate this Contract for cause if the Contractor is found to have submitted a false certification or if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or is engaged in business operations with Cuba or Syria during the term of the contract. The Contractor shall provide a completed Form 7.9 Scrutinized Company Certification, certifying the Contractor's compliance with this section, prior to the execution of this Agreement.

91. **SEPARATION AND DISTRIBUTION**

The solicitation has been designed for transmittal as a complete document to interested parties. It is recommended that it not be separated; however, it may be reproduced in its entirety as additional distribution might dictate.

92. **SEVERABILITY**

If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

93. **SIGNATURE REQUIRED**

All responses must show the company name and be signed by a company officer or employee who has the authority to bind the company or firm by their signature. UNSIGNED RESPONSES WILL BE REJECTED. All manual signatures must be original - no rubber stamp, photocopy, etc.

94. **SIGNED RESPONSE CONSIDERED AN OFFER**

The signed response is considered an offer on the part of the bidder, which offer shall be considered accepted upon approval by the City of Port Orange City Council (if required). The City of Port Orange will issue a purchase order or a letter of authorization to the successful bidder, as authorization for delivery of the items awarded subject to requirements of detailed specifications and those contained herein. In the event of default on the part of the bidder after such acceptance, the City may take such action as it deems appropriate including legal action for damages or specific performance.

95. **SILENCE OF SPECIFICATIONS**

The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid.

96. **SOCIAL, POLITICAL, OR IDEOLOGICAL INTERESTS**

Pursuant to Florida Statute 287.05701, the governing body of a county, municipality, special district, or any other political subdivision of the state may not request documentation of or consider a vendor's social, political,

or ideological interests when determining if the vendor is responsible. Furthermore, an awarding body may not give preference to a vendor based on the vendor's social, political, or ideological interests.

97. **SOLICITATION FORM COMPLETION, SUBMISSION AND RECEIPT OF RESPONSES**

Unless otherwise specified, bidders shall use the solicitation forms supplied by the Purchasing Division. Responses shall be typewritten or handwritten in ink and shall bear the original signature of the bidder's authorized representative. Responses containing erasures or corrections must be initialed by the bidder in ink. Responses shall be submitted by mail or hand delivery only. No response will be accepted by facsimile transmission, e-mail or other electronic delivery. Responses submitted by mail shall be addressed to: City Clerk, City of Port Orange, Attn: Purchasing Division, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses submitted by hand delivery shall be delivered to: City Clerk, Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida 32129. Responses will be accepted until 2:30 PM EST on the date indicated in the solicitation documents or as addenda issued by the City. One (1) sealed envelope or package shall be submitted. The sealed envelope/package must contain the required forms and price proposals, where applicable, and will be evaluated and deemed responsive or non-responsive. All late responses will be returned to the bidder and will not be opened. Bids (Envelope/Package) shall contain one (1) original and one (1) digital (CD or flash drive) version unless otherwise indicated in the legal advertisement and shall be mailed or delivered as set forth in the preceding paragraph in one (1) SEALED ENVELOPE/PACKAGE. The envelope/package shall be clearly marked on the outside to include the bid project name, bid number, name and address of the bidder.

98. **STATE LICENSING REQUIREMENTS**

All entities defined under Chapters 607, 608, 617 or 620, Florida Statutes, seeking to do business with the City shall be on file and in good standing with the State of Florida's Department of State. Prior to making an offer, the bidder shall have met the license, certification, and any other requirements of the state, county, city and/or other agency of authority with jurisdiction in such matters and should provide copies of documentation that evidence such qualifications with the response to the solicitation; and, that the bidder shall provide follow-up evidence that the bidder maintains such credentials throughout the period of the agreement. A copy of a current certificate of authority from the Secretary of State authorizing the bidder/responder to do business in the State of Florida, or other evidence of legal authority to do business in the state, county, city and/or any other agency of authority should be provided with your response to the solicitation. Information concerning certification with the Secretary of State may be obtained at <https://dos.myflorida.com/sunbiz/manage-business/certification/>. Contract documents shall be executed by the entity's duly authorized officer as evidenced by entity records.

99. **SUBCONTRACTING**

The awarded contractor will not sub-contract or enter into any subcontracting agreements pertaining to this contract, without obtaining written approval from the City of Port Orange.

100. **SUPPLEMENTAL MATERIALS**

Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements that the bidder wishes to include as a condition of the bid must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

101. **TAXES**

The City of Port Orange is exempt from all federal excise, state and local taxes unless otherwise stated in this document. A Tax Exemption Certificate will be furnished upon written request to the City of Port Orange Purchasing Division.

102. **TERM CONTRACTS**

Acceptance by the City of Port Orange of bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City. If the contract is intended to cover a specific time-period, the term will be given in the bid specifications.

103. **TERMINATION**

For Convenience: The City of Port Orange reserves the right to terminate the Contract or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Port Orange shall

determine that such termination is in the best interest of the City. Termination, in whole or in part, shall be effected by delivery of a Notice of Termination signed by the City Manager or his designee, postmarked or delivered to the Contractor at least thirty (30) days prior to the date of termination, and specifically setting forth the effective date of termination.

For Default: The City may terminate the Contract if the Contractor breaches any of the terms therein, including, but not limited to, warranties of the Contractor or if the Contractor becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which the City of Port Orange may have in law or equity. Default may be construed as, but is not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to the City's satisfaction and/or to meet all other obligations and requirements. The City may cancel the Contract at any time for breach of contractual obligations by providing the Contractor with a written notice of such cancellation. Should the City exercise its right to cancel the Contract for such reasons, the cancellation shall become effective on the date as specified in the notice of cancellation sent to the Contractor. In the event of default by the Contractor, the City reserves the right to procure the item(s) bid from other sources and holds the Contractor responsible for excess costs incurred as a result. City Council may elect to refrain from doing business with the Contractor as stipulated in City Code 2-276 Suspension and Disbarment.

For Non-Appropriation of Funds: If funds are not appropriated for any succeeding fiscal years subsequent to the one in which this Contract is entered into, for the purpose of this Contract, then the City may terminate this Contract upon thirty (30) days prior written notice to the Contractor. Should termination be accomplished in accordance with this Section, the City shall be liable only for payments due through the date of termination.

104. **TITLE TRANSFER**

Title and Risk of Loss of goods shall not pass to City of Port Orange until City of Port Orange actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 3:00 p.m., Monday through Friday. The contractor is advised to consult the using department for instructions. The place of delivery shall be specified in the bid specification and/or on the purchase order as a "Deliver To:" address.

105. **UNBALANCED BID**

A mathematically unbalanced bid is where a bidder places a high price on some items and a low price on other items in a unit price contract. A bid is materially unbalanced when there is reasonable doubt that acceptance of a mathematically unbalanced bid will result in the lowest overall cost to the City. Unbalanced bids will be rejected if the prices are deemed materially unbalanced.

106. **USE OF SOLICITATION FORMS**

The bidder shall complete the appropriate solicitation form(s) included in the solicitation. All blanks on the solicitation forms shall be completed. If a question or confirmation is not applicable, it should be answered with an "N/A." Supplemental information may be attached to the solicitation forms. Failure to fully complete the appropriate solicitation forms may result in disqualification of the response. If additional space for a response is required, attach an additional page to the page on which the question is stated. Clearly identify the number of the question to which the response is attached. Further, if additional solicitation form pages are needed, photocopy or replicate as appropriate, and attach such additional pages to the page on which the question or chart is stated. The signature of the Authorized Person or entity must be that of an officer, partner or a sole proprietor of the entity making the response. The original response, and each copy submitted shall contain an original signature on the Bidder's Acknowledgement Form contained in each solicitation.

107. **VARIANCES**

For purposes of response evaluation, bidders must indicate any variances, no matter how slight, contained in the response. No variations or exceptions by a bidder will be considered or deemed a part of the response submitted unless such variances or exceptions are listed in the response and referenced in the space provided on the response pages. If variances are not stated, or referenced as required, it will be assumed that the product or service complies with the City's terms, conditions and specifications. By receiving a response, the City does not necessarily accept any variances contained in the response. All variances submitted are subject to review and approval by the City. If any response contains material variances that, in the City's sole opinion, make that response conditional in nature, the City reserves the right to reject the response or part of the response that is declared, by the City, as conditional.

108. **WAIVER OF IRREGULARITIES**

The City of Port Orange reserves the right to waive and/or reject any non-substantial irregularity in responses received whenever such waiver or rejection is in the best interest of the City and/or it does not meet the minimum requirements set forth. All reasonably responsive responses will be considered. However, the City reserves the right to waive formalities or informalities in responses, to reject, with or without cause, any or all responses or portions of responses, or to interview or not interview individual bidders, and to accept any responses or portions of responses deemed to be in the best interest of the City. The City Council shall grant the City Manager to waive any and all non-substantial irregularities in any and all formal solicitations. (Code 1981, § 8-29; Ord. No. 2015-17, § 1, 5-19-2015)

109. **WARRANTIES**

Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the response. Bidders may not limit or exclude any implied warranties. The bidder warrants that products sold to the City shall conform to the standards established by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event product does not conform to OSHA Standards, where applicable, City of Port Orange may return the product for correction or replacement at the bidder's expense. If the bidder fails to make the appropriate correction within a reasonable time, City of Port Orange may correct at the bidder's expense.

SECTION 6 – SPECIAL REQUIREMENTS/INSTRUCTIONS

PERIOD OF OFFER VALIDITY:

Bids offered for this ITB must remain firm for a period of one-hundred-twenty (120) days from the ITB opening date.

AWARD RECOMMENDATION:

The City has performed an analysis of total cost per ton to transport and dispose of lime sludge using City owned trucks and City staff. It is the intent of the City to award a contract to the lowest responsive and responsible Bidder for either Option A or Option B, whichever is determined by the City to result in the lowest overall cost to the City and is in the City's best interest.

CONTRACT TERM:

The term of the contract shall be for an initial term of three (3) years, with an option to renew for two (2) additional one-year terms.

ELIGIBILITY OF BIDDER:

To be eligible to respond to this ITB, the bidders must demonstrate proof of prior experience working with the services described in this ITB. Please provide eligibility experience with your submittal by completing Form 7.7 Statement of Bidder's Qualifications in its entirety.

PROOF OF E-VERIFY REGISTRATION

Bidders must complete Form 7.11 *Contractor E-Verify Affidavit* and include proof of their E-Verify registration (My Company Profile from E-Verify website) with Form 7.11. Bidders who do not complete Form 7.11 and provide proof of their registration may be deemed non-responsive.

LICENSES AND PERMITS

Contractor is responsible for all applicable local and state licenses, permits and fees.

BID BOND:

A certified check or bank draft, payable to the City of Port Orange, FL or a satisfactory bid bond executed by the bidder and an acceptable surety in the amount equal to (5%) of the total amount of the bid shall be submitted with each bid. If submitting a bid bond in lieu of a certified check or bank draft, the original recorded bid bond must be included with bid submittal. If submitting a bid bond in lieu of a certified check or bank draft, bidders who do not include their original recorded bid bond with their submittal may be deemed non-responsive.

PAYMENT & PERFORMANCE BOND:

If awarded, the bidder must be able to obtain payment and performance bonds from a surety company licensed in Florida and must submit proof of their present bonding capacity with their bid submittal package in the form of a current (not older than 3 months) letter from bidder's bonding agent. Bidder's bonding capacity must be equal to or greater than 100% of the total amount bid. Bidders who do not include their present bonding capacity letter in their submittal package may be deemed non-responsive.

Upon award, the successful bidder will be required to furnish and pay for a Payment and Performance Bond equal to one hundred percent (100%) of the contract amount to be recorded by the City, with the Clerk of the Circuit Court, Volusia County, Florida. After recording, the City will furnish to the contractor the recording information for the bond to evidence that the contractor has met the requirement of Florida law. The City will bill the cost of recording to the contractor.

NOTICE:

The City reserves the right to consider cooperative contracts, federal, state municipal etc., in the evaluation process. If in the City's best interest, the City may utilize a cooperative contract in lieu of making an award.

SAFETY:

Contractor will comply with all applicable OSHA, State of Florida Safety Regulations and comply with all construction safety requirements of local authorities having jurisdiction. Contractor shall exercise all due caution to exclude the public from the work area and especially from contact with any hazardous materials.

REPAIR OF DAMAGES:

It is the responsibility of the contractor to repair any damages incurred in the area that are directly related to the project. When damages occur, the City of Port Orange Representative is to be notified and shall inspect the repairs upon completion.

[Remainder of page left intentionally blank]

SECTION 7 – REQUIRED FORMS

FORM 7.1 – BID SUBMITTAL CHECKLIST

- ___ Form 7.2 – Bidder’s Acknowledgement Form
- ___ Form 7.3 – Addendum and Change Order Procedure Acknowledgement
- ___ Form 7.4 – Drug Free Preference Statement
- ___ Form 7.5 – Public Entity Crimes Statement
- ___ Form 7.6 – Anti-Collusion Form
- ___ Form 7.7 – Statement of Bidder’s Qualifications
- ___ Form 7.8 – Professional References for Previous Experience
- ___ Form 7.9 – Scrutinized Companies Certification
- ___ Form 7.10 – Local Business Affidavit of Eligibility
- ___ Form 7.11 – E-Verify Affidavit
- ___ Form 7.12 – Debarment, Suspension and Other Responsibility Matters
- ___ Form 7.13 – Affidavit of Compliance with Section 287.138, Florida Statutes
- ___ Form 7.14 – No Submittal Response Form
- ___ Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying
- ___ (Attachment 1) – Schedule of Unit Pricing
- ___ Current Bonding Capacity Letter (as outlined in Section 6)
- ___ Copy of all currently held Licenses (Contractor, Sunbiz, etc.)
- ___ Original Recorded Bid Bond
- ___ Submission of one (1) original marked “ORIGINAL” and one (1) digital (flash drive) version in PDF format

BY: _____

Name of Business

Authorized Signature

Date

This document must be completed and returned with your Submittal

FORM 7.2 – BIDDER’S ACKNOWLEDGEMENT FORM

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specifications and any other documents accompanying or made a part of this invitation.

I hereby propose to furnish the goods or services specified in the ITB at the prices or rates as finally negotiated. I agree that my bid will remain firm for a period of up to one-hundred-twenty (120) days in order to allow the City of Port Orange adequate time to evaluate the proposed bid. Furthermore, I agree to abide by all conditions of the ITB.

I certify that all information contained in the bid is truthful to the best of my knowledge and belief. I further certify that I am duly authorized to submit this bid on behalf of the Bidder/Contractor as its act and deed and that the Bidder/Contractor is ready, willing and able to perform if awarded the contract.

I further certify that this bid is made without prior understanding, contract, connection, discussion or collusion with any person, firm or corporation submitting a bid for the same product or service; no officer, employee or agent of the City of Port orange City Council or of any other Bidder interested in said ITB; and that the undersigned executed this Bidder’s Acknowledgement with full knowledge and understanding of the matters therein contained and was duly authorized to do so.

I further certify that having read and examined the specifications and documents for the designated services and understanding the general conditions for the contract under which services will be performed, does hereby propose to furnish all labor, equipment and material to provide the services set forth in the ITB.

I hereby declare that the following listing states any clarifications, any and all variations from and exceptions to the requirements of the specifications and documents. The undersigned further declares that the “work” will be performed in strict accordance with such requirements and understands that any exceptions to the requirements of the specifications and documents may render the bid non-responsive.

NO EXCEPTIONS ALLOWED AFTER THE BID IS SUBMITTED:

Please check one: ☐ I take NO exceptions. ☐ Exceptions (list below; add additional pages if necessary):

Name of Business

Mailing Address

Authorized Signature

City, State & Zip Code

Printed Name and Title

Telephone Number

Federal Identification No.

E-mail Address

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.3 – ADDENDUM AND CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

ADDENDUM ACKNOWLEDGEMENT

I have carefully examined the Invitation to Bid (ITB), Instructions to Bidders, General and/or Special Conditions, Specification and any other documents accompanying or made a part of this ITB.

I acknowledge receipt and incorporation of the following addenda and the cost, if any, of such revisions has been included in the price of the bid proposal.

Addendum#_____ Date:_____ Addendum#_____ Date:_____

Addendum#_____ Date:_____ Addendum#_____ Date:_____

CHANGE ORDER PROCEDURE ACKNOWLEDGEMENT

If awarded the Contract for this Solicitation, I acknowledge that no oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the resulting contract. All change order requests shall be made in writing by the Contractor for review by the Contract Administrator for the City of Port Orange. No work shall be performed as set forth in the change order until the Contractor receives an executed Purchase Order for the requested change.

I acknowledge the above statements regarding Addendum Acknowledgement and Change Order Procedures:

Name of Business

Authorized Signature

Printed Name and Title

STATE OF:_____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this

_____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.4 – DRUG-FREE PREFERENCE STATEMENT

IDENTICAL TIE BIDS – Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids, proposals, statements or replies are equal with respect to price, quality and service are received by the City for procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied bidders have a drug-free workplace program.

In order to have a drug-free workplace program, a business shall:

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation and employee assistance programs and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under a bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under the bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance the law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by an employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of Section 287.087, Florida Statutes.

As an authorized representative of the firm, I certify that this firm complies fully with the above requirements.

Name of Business

Authorized Signature

Printed Name and Title

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.5 – SWORN STATEMENT ON PUBLIC ENTITY CRIMES

UNDER SECTION 287.133(3)(A), FLORIDA STATUTES

(To be signed in the presence of a notary public or other authorized to administer oaths.)

Before me, the undersigned Authority, personally appeared affiant _____, who, being by me first duly sworn, made the following statement:

1. The business address of _____ (name of Offeror or business) is _____.
2. My relationship to _____ (name of Offeror or business) is _____
_____ (relationship such as sole proprietor, partner, president, vice president.)
3. I understand that a public entity crime as defined in Section 287.133 of the Florida Statutes includes a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity in Florida or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any proposal or contract for goods or services to be provided to any public entity or such and agency or political subdivision and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation.
4. I understand that "convicted" or "conviction" is defined by the Florida Statutes to mean a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilt or nolo contendere.
5. I understand that "affiliate" is defined by the Florida Statutes to mean (1) a predecessor or successor of a person or a corporation convicted of a public entity crime, or (2) an entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime, or (3) those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate, or (4) a person or corporation who knowingly entered into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months.
6. Neither the Offeror or contractor, nor any officer, director, executive, partner, shareholder, employee, member or agent who is active in the management of the Offeror or contractor, nor any affiliate of the Offeror or contractor has been convicted of a public entity crime subsequent to July 1, 1989. **(Draw a line through paragraph 6 if paragraph 7 below applies.)**
7. There has been a conviction of a public entity crime by the Offeror or contractor, or an officer, director, executive, partner, shareholder, employee, member or agent of the Offeror or contractor who is active in the management of the Offeror or contractor or an affiliate of the Offeror or contractor. A determination has been made pursuant to Section 287.133(3) by order of the Division of Administrative Hearings that it is not in the public interest for the name of the convicted person or affiliate to appear on the convicted bidder list. The name of the convicted person or affiliate is: _____.
A copy of the order of the Division Administrative Hearing is attached. **(Draw a line through paragraph 7 if paragraph 6 above applies)**

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.6 – ANTI-COLLUSION FORM

ANTI-COLLUSION STATEMENT BID FORM:

By signing this form, the Bidder agrees that this bid is made without any other understanding, agreement or connection with any person, corporation or firm submitting a bid for the same purpose and that the bid is in all respects fair and without collusion or fraud.

SIGN in ink in the space provided below. Unsigned bids will be considered incomplete and will be disqualified and rejected.

IT IS AGREED BY THE UNDERSIGNED BIDDER THAT THE SIGNING AND DELIVERY OF THE BID REPRESENTS THE BIDDER'S ACCEPTANCE OF THE TERMS AND CONDITIONS OF THE FOREGOING SPECIFICATIONS, CONTRACT AND PROVISION, AND IF AWARDED, THIS CONTRACT WILL REPRESENT THE AGREEMENT BETWEEN THE BIDDERS AND THE CITY OF PORT ORANGE.

NAME OF FIRM: _____

SIGNED BY: _____
(MUST BE SIGNED BY A COMPANY OFFICER OR AUTHORIZED AGENT)

PRINTED SIGNATURE: _____

TITLE: _____

ADDRESS: _____

CITY, STATE AND ZIP CODE: _____

TELEPHONE: _____

F.E.I.N.: _____

NO bid may be withdrawn for a period of one-hundred-twenty (120) days subsequent to the submittal of the bids without the consent of the City of Port Orange.

This document must be completed and returned with your Submittal

FORM 7.7 – STATEMENT OF BIDDER'S QUALIFICATIONS

The undersigned warrants that he or she is duly authorized to complete this document, and hereby affirms that the information contained in Form 7.7 is complete, true and correct to the best of his or her knowledge and belief. If necessary, question may be answered on separate paper and attached with any additional information that may be pertinent.

- A. Name of Bidder: _____
- B. Permanent main office address: _____
- C. Date organized: _____
- D. If a corporation, where incorporated: _____
- E. How many years have you been engaged in the business under your present firm or trade name? _____
- F. Contracts on hand: (List these, showing amount of each contract and the approximate anticipated dates of completion.) **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- G. General character of work performed by your company: _____
- H. Have you ever failed to complete any work awarded to you? If so, where and why? _____
- I. Have you ever defaulted on a contract? If so, where and why? _____
- J. List your major equipment currently owned or leased: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- K. Background and experience of the principal members of your organization, including the officers: **USE SEPARATE SHEET & ATTACH TO SUBMITTAL**
- L. Credit currently available: \$ _____
- M. Give bank name, contact name and phone number: _____

Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the Owner? ☐ Yes ☐ No

The undersigned hereby authorizes and requests any person, firm or corporation to furnish any information requested by the Owner in verification of the recitals comprising the Statement of Bidder's Qualifications.

	_____ Name of Business
STATE OF: _____	_____ Authorized Signature
COUNTY OF: _____	_____ Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____
Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. The City reserves the right to check references and confirm information provided herein. **Please provide three (3) current and correct references from clients for similar services.**

(DO NOT include the City of Port Orange)

1. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
2. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____
3. Company Name: _____
Contact Person: _____
City, State: _____
Telephone Number: _____
Email Address: _____
Description of goods/services provided: _____
Contract Amount: _____
Start/End Date of Contract: _____

This document must be completed and returned with your Submittal.

FORM 7.8 – PROFESSIONAL REFERENCES FOR PREVIOUS EXPERIENCE (page 2)

**LISTING OF PREVIOUS EXPERIENCE
COMMERCIAL CLIENT LIST**

The Bidder proposes that they are qualified to perform the referenced work and has successfully done so on recent projects similar in nature and size. A minimum of three (3) projects must be listed below. The Owner reserves the right to check references and confirm information provided herein.

List clients to whom you currently provide or have in the past provided equal or similar services to those required under the City's contract as outlined in this bid package. A minimum of three (3) projects shall be listed below in order to bid on this contract. The Owner reserves the right to check references and confirm information provided herein.

1. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

2. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

3. Contact Name: _____

Phone: _____

Current Client: ☐ Yes ☐ No

Number of years of service provided: _____

Description of service: _____

This document must be completed and returned with your Submittal.

FORM 7.9 SCRUTINIZED COMPANIES CERTIFICATION

(To be signed in the presence of a notary public or other officer authorized to administer oaths.)

SCRUTINIZED COMPANIES CERTIFICATION PURSUANT TO SECTION 287.135, FLORIDA STATUTES

I, _____, on behalf

(Print Name and Title)

of _____ ("Company"), certify that _____

(Company Name)

(Company Name)

does not: 1. Participate in a boycott of Israel; and

2. Is not on the Scrutinized Companies with Boycott Israel List; and

3. Is not on the Scrutinized Companies with Activities in Sudan List; and

4. Is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; and

5. Has not engaged in business operations in Syria.

Submitting a false certification shall be deemed a material breach of contract. The City of Port Orange shall provide notice, in writing, to the Company of the City's determination concerning the false certification. The Company shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Company does not demonstrate that the City's determination of false certification was made in error, then the City shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute § 287.135.

Section 287.135, Florida Statutes prohibits the City from: 1) Contracting with companies for goods or services in any amount if at the time of bidding on, submitting a proposal for, or entering into or renewing a contract if the company is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, F.S. or is engaged in a boycott of Israel; and 2) Contracting with companies for goods or services over \$1,000,000.00 that are on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List, created pursuant to s. 215.473, or are engaged in business operations in Syria.

As the person authorized to sign on behalf of the Company, I hereby certify that the company identified above in the section entitled "Company Name" does not participate in any boycott of Israel, is not listed on the Scrutinized Companies that Boycott Israel List, is not listed on either the Scrutinized Companies with activities in the Iran Petroleum Energy Sector List and is not engaged in business operations in Syria. I understand that pursuant to Section 287.135, Florida Statutes, the submission of a false certification may subject the company to civil penalties, attorney's fees, and/or costs. I further understand that any contract with the City for goods or services may be terminated at the option of the City if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

COMPANY NAME

SIGNATURE

PRINT NAME

TITLE

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 7.10 – LOCAL BUSINESS AFFIDAVIT OF ELIGIBILITY

This declaration is executed under penalty of perjury of the laws to the United States and the State of Florida

THIS AFFIDAVIT IS SUBMITTED IN REFERENCE TO THE FOLLOWING SOLICITATION: ITB #24-10 LIME SLUDGE DISPOSAL

Project# (as applicable): ___N/A_____

Business Name: _____ Contact Person/Title: _____

Mailing Address: _____ City,State,Zip: _____

Phone Number: _____ Email address: _____

Physical Presence of Business: ☐Headquarters ☐Principal Place of Business

Within Legal Boundaries: ☐City of Port Orange ☐Volusia County ☐State of Florida

FEIN (Federal Employer Identification Number): _____

Business Structure: ☐Corporation ☐LLC ☐Partnership ☐Sole Proprietorship ☐Other (Specify): _____

****PLEASE ATTACH A VALID BUSINESS TAX RECEIPT OR OTHER SUCH DOCUMENTATION****

ATTESTATION – I understand that:

A local supplier or contractor is interpreted as a respondent to a solicitation, which as of the date of the solicitation opening, has a valid Business Tax Receipt (BTR) issued by the City of Port Orange to do business in the City of Port Orange which authorizes the supplier or contractor to provide the goods, services, or construction to be purchased and has a physical address located within the limits of Port Orange from which the supplier or contractor operates or performs business. A Post Office Box cannot be used to establish physical address. This local preference is only used as part of a tie breaker during a formal solicitation. The City uses Sunbiz to verify a supplier or contractor's business address. Sunbiz is a database on the Florida Department of State, Division of Corporations website and can be accessed using this link: <https://dos.myflorida.com/sunbiz/>.

Exemptions from Local Preference

Local preference is not permitted when (1) the purchase is funded, in whole or in part, by an entity prohibiting application of the preferences by grant agreement, contract or applicable federal, state or local law; or (2) emergency purchasing.

As an authorized representative of the Firm, I certify that this Firm complies fully with the above requirements.

Name of Business

STATE OF: _____

Authorized Signature

COUNTY OF: _____

Printed Name and Title

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by _____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document must be completed and returned with your Submittal

FORM 7.11 – E-VERIFY AFFIDAVIT



**CITY OF PORT ORANGE
CONTRACTOR E-VERIFY AFFIDAVIT
IN ACCORDANCE WITH SECTION 448.095, FLORIDA STATUTES**

Project Name: _____

Solicitation Number: _____

I, the undersigned hereby certify that _____ (insert contractor company name) does not employ, contract with or subcontract with an unauthorized alien, and is otherwise in full compliance with Section 448.095, Florida Statutes.

I acknowledge that it is my responsibility to ensure full compliance with Section 448.095, Florida Statutes. I am aware enrollment in the E-Verify system for employers can be done at www.e-verify.gov.

A true and correct copy of _____ (insert contractor company name) proof of registration in the E-Verify system is attached to this Affidavit.

By affixing my signature below, I hereby affirm that I am duly authorized to bind the company reference herein and I will comply with all applicable E-Verify requirements.

Print or Type Name, Title

Signature of Affiant

Federal Employer ID Number (FEIN)

E-Verify Number

STATE OF FLORIDA

COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

This document to be completed and returned with your Submittal

FORM 7.12 – CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY

Matter Primary Covered Transactions
(To be completed by Prime Contractor)

1. The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by and Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted for had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1. (b) of this certification;
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

Bid Number or Project Name

Name and Title of Authorized Representative

Signature

Date

This document must be completed and returned with your Submittal

FORM 7.13 – AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES

AFFIDAVIT OF COMPLIANCE WITH SECTION 287.138, FLORIDA STATUTES CONTRACTING WITH FOREIGN ENTITIES OF CONCERN

The undersigned (“Affiant”), on behalf of the entity listed below (“Entity”), hereby attests under penalty of perjury as follows:

1. Affiant is the _____ of _____
(Title) (Business Name)
which does business in the State of Florida, hereinafter called the “Entity”.
2. Entity is not owned by the government of a foreign country of concern, as defined in Section 287.138 (1) (c), Florida Statutes.
3. The government of a foreign country of concern does not have a controlling interest in Entity, as defined in Section 287.138 (1)(a), Florida Statutes.
4. Entity is not organized under the laws of, and does not have a principal place of business in, a foreign country of concern.
5. Entity is not owned or controlled by the government of a foreign country of concern.
6. For purposes of this affidavit, a foreign country of concern means the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, or the Syrian Arab Republic, including any agency of or any other entity of significant control of such foreign country of concern, as defined in Section 287.138(1)(c), Florida Statutes.

The undersigned is authorized to execute this affidavit on behalf of the Entity.

Date: _____, 20____ Signed: _____

Entity: _____ Name: _____

Title: _____

STATE OF: _____ COUNTY OF: _____

The foregoing instrument was acknowledged before me by means of ☐physical presence or ☐online notarization, this _____ day of _____, 2024, by _____ and who:

☐Is personally known to me; or ☐ has produced _____ as identification.

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

(seal)

My commission expires: _____

This document must be completed and returned with your Submittal

FORM 7.14 – NO BID RESPONSE FORM

If your company will not be submitting a proposal in response to this solicitation, please complete this form and return via e-mail prior to the solicitation due date established within to:

City of Port Orange
Purchasing Division
1000 City Center Circle
Port Orange, FL 32129
purchdiv@port-orange.org

This information will assist the Purchasing Division in the preparation of future solicitations.

Solicitation: ITB #24-10 Lime Sludge Disposal

Company Name: _____

Contact Person Name & Title: _____

Address: _____

Telephone: _____ Email Address: _____

Please check a reason for a “no response”.

☐ Specifications “too tight” or geared toward on brand or manufacturer (please explain below)

☐ Insufficient time to respond

☐ Specifications unclear (please explain below)

☐ We do not offer this product/service or an equivalent

☐ Our product schedule does not permit us to perform within stated timeline for the project

☐ Unable to meet specifications

☐ Unable to meet bond requirements

☐ Unable to hold prices firm throughout the term of the contract period

☐ Unable to meet insurance requirements

☐ Other: _____

Print Name: _____

Signature: _____

Date: _____

Additional Information:

If submitting this form, only this form needs to be returned. It is not necessary to return the entire solicitation package.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements

(Required for each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name & Title of Contractor's Authorized Official

Date: _____

(ATTACHMENT 1) – SCHEDULE OF UNIT PRICING

 (ATTACHMENT 1) SCHEDULE OF UNIT PRICING					
ITB #24-10					
LIME SLUDGE DISPOSAL					
Bidders must provide pricing for OPTION A and/or B per the specifications in Section 3 - SCOPE OF WORK/SPECIFICATIONS. If Bidder is not bidding on both OPTIONS A and B, Bidder must write 'No Bid' in the 'TOTAL COST' box on the line for the OPTION they are not bidding on. Leaving the item blank is not acceptable and may be cause to deem Bidder's bid as 'non-responsive'. Submitting a Unit and/or Total Cost of \$0.00 for either OPTION A or B will be interpreted as No Charge to the City for that					
BIDDERS MUST COMPLETE ALL FIELDS THAT ARE GREEN					
NAME OF BUSINESS:					
CONTACT PERSON:					
EMAIL ADDRESS:					
AUTHORIZED SIGNATURE:					
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, SCOPE OF WORK/SPECIFICATIONS - <u>OPTION A</u>					
OPTION	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT of MEASURE	UNIT COST	TOTAL COST
A	Contractor pick up of lime sludge from the City	12,000	TON		
ALL UNIT PRICING IN ACCORDANCE WITH SECTION 3, SCOPE OF WORK/SPECIFICATIONS - <u>OPTION B</u>					
OPTION	DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT of MEASURE	UNIT COST	TOTAL COST
B	City delivery of lime sludge to the Contractor	12,000	TON		
Completed (Attachment 1) Schedule of Unit Pricing MUST be included with Bid Submission					

BID BOND**BID BOND**

Bond No.:

KNOW ALL MEN BY THESE PRESENTS that _____, as Contractor, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____, (hereinafter called "PRINCIPAL"), and _____, as SURETY, duly authorized to conduct business in the State of Florida, whose principal place of business is located at _____, Tel.: _____ (hereinafter called "SURETY"), are held and firmly bound unto the City of Port Orange, Florida, as CITY, a Florida municipal corporation, whose address is City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32129, Tel: (386) 506-5501, (hereinafter called "OBLIGEE" or CITY", in the penal sum of _____ dollars and (____)/100 (\$____), lawful money of the United States, for the payment of which sum shall and truly be made, whereof PRINCIPAL and SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that, whereas the Principal has submitted the accompanying bid, dated _____, 20____, for:

Project Name/Bid No.:

Project Address:

Legal Description: See Attached

Description of Work:

NOW, THEREFORE,

A. If the Principal shall not withdraw said bid withing one hundred twenty (120) days after date of opening of the same, and shall within ten (10) days after the prescribed forms are presented to it for signature, enter into a written contract with the City in accordance with the bid as accepted, and give bonds with good and sufficient surety or sureties, as may be required, for the faithful performance and proper fulfillment of such contract, then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

B. In the event of the withdrawal of said bid within the period specified, or the failure to enter into such contract and give such bonds withing the time specified, if the principal shall pay the City the difference between the amount specified in said bid and the amount for which the City may procure the required work and supplies. If the latter amount be in excess of the former, then the above obligations then the above obligations shall be void and of no effect, otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the above parties have executed this instrument under their several seals, this _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Note: If the firm is a sole ownership or partnership including limited liability company, two (2) witnesses are required to attest the signature. If the firm is a corporation, then the corporate secretary shall attest and affix the corporate seal (Attach power of attorney to the original bid bond and financial statement of Surety Company).

PRINCIPAL:

Signature

Corporate Officer & Title

SURETY:

Attorney-in-Fact (signature)

Name & Title

Name of Local Resident Agent

City, State, Zip

Telephone:

A.M. Best No.: _____ NAIC No.: _____

STATE OF _____

COUNTY OF _____

Before me this day personally appeared _____ (affiant), who, being duly sworn, deposes and says that he/she is the Attorney-in-Fact for the _____ (corporate surety) and that this person has been authorized by _____ (corporate surety) to execute the foregoing bond on behalf of the Contractor named therein in favor of the City of Port Orange, Florida.

Signature of Affiant

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by _____ and who:

☐ Is personally known to me; or ☐ has produced _____ as identification.

Notary Public, State of _____

Printed, typed or stamped name, commission and expiration:

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

WITNESSESS:

ATTEST:

Signature

Corporate Secretary (Affix Corporate Seal)

END OF BID BOND

This document must be completed, recorded and returned with your Submittal

PAYMENT & PERFORMANCE BOND (for informational purposes only)

Bond No. _____

**COMBINATION PAYMENT AND PERFORMANCE BOND
FOR
PUBLIC CONSTRUCTION**

per Section 255.05, Florida Statutes
Guaranty for Construction of Public Improvements

BY THIS BOND, We, _____, as Principal, and _____, a corporation, as Surety, are bound to _____, a Florida municipal corporation, herein called "Owner" or sometimes referred to as "City," in the sum of _____ AND ____/100 DOLLARS (\$_____), for payment of which we bind ourselves, our heirs, personal representatives, successors, and assigns, jointly and severally.

THE CONDITION OF THIS BOND is that if Principal:

1. Performs the terms of that certain Standard Contract for Services, having an effective date of _____, entered into by and between the Principal and the City, for Police Department Duct/HVAC Mold Remediation, hereinafter referred to as the "Contract," being made a part of this bond by reference, at the times and in the manner prescribed in the Contract; and
2. Promptly makes payments to all claimants, as defined in Section 255.05(1), Florida Statutes, supplying Principal with labor, materials, or supplies, used directly or indirectly by Principal in the prosecution of the work provided for in the Contract (the "Work"); and
3. Pays Owner all losses, damages, delay damages (including contractually authorized liquidated damages), expenses, costs, and attorney's fees, including appellate proceedings, that Owner sustains because of a breach or material breach by Principal under the Contract documents; and
4. Performs the guarantee of all work and materials furnished under the Contract for the time specified in the Contract, then this bond is void; otherwise it remains in full force.

Notice of Nonpayment and Time Limitations

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Sections 255.05(2), (8) and (10), Florida Statutes.

Any changes in or under the contract documents and compliance or noncompliance with any formalities connected with the contract or the changes does not affect Surety's obligation under this bond.

IN WITNESS WHEREOF, this performance and payment bond is executed and shall be deemed an original, this____, day of_____, 20____.

Attest: _____

(Principal)

(As to Corporate Principal) Secretary By:_____

(Witness to Principal) (Corporate Seal)

(Surety)

(Witness to Surety)

By:_____ Name:_____ (Attorney-in-Fact)

(Corporate Seal)

NOTE: Date of BOND must not be prior to date of Contract. If Developer/Principal is Partnership, all partners should execute BOND. All BONDS signed by an agent must be accompanied by a certified copy of the authority to act.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

This affidavit must be completed and returned by the Awarded Bidder, upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange.

LEASED EMPLOYEE AFFIDAVIT

EXHIBIT CONTRACT # _____

☐ I hereby certify that I do not utilize an employee leasing company or employ leased employees. I further agree to notify the City in the event these circumstances change.

OR

☐ I affirm that an employee leasing company provides my workers' compensation coverage. I further understand that my contract with the employee leasing company limits my workers' compensation coverage to enrolled worksite employees only. My leasing arrangement does not cover un-enrolled worksite employees, independent contractors, uninsured sub-contractors or casual labor exposure.

I hereby certify that 100% of my workers are covered as worksite employees with the employee leasing company. I certify that I do not hire any casual or uninsured labor outside the employee leasing agreement. I agree to notify the City in the event that I have any workers not covered by the employee leasing workers' compensation policy. In the event that I have any workers not subject to the employee leasing arrangement, I agree to obtain a separate workers' compensation policy to cover these workers. I further agree to provide the City with a certificate of insurance providing proof of workers' compensation coverage prior to these workers entering any City jobsite.

I further agree to notify the City if my employee leasing arrangement terminates with the employee leasing company and I understand that I am required to furnish proof of replacement workers' compensation coverage prior to the termination of the employee leasing arrangement.

I certify that I have workers' compensation coverage for all of my workers through the employee leasing arrangement specified below:

Name of Employee Leasing Company: _____

Workers' Compensation Carrier: _____

A.M. Best Rating of Carrier: _____

Inception Date of Leasing Arrangement: _____

I further agree to notify the City in the event that I switch employee leasing companies. I recognize that I have an obligation to supply an updated workers' compensation certificate to the City that documents the change of carrier.

I hereby attest that the information provided in this affidavit is accurate. In addition, I certify that I have read and understand the above statements regarding my responsibility under the workers' compensation coverage.

Name of Contractor: _____

Signature of Owner/Officer: _____

Title: _____ Date: _____

This affidavit must be completed and returned by the Awarded Bidder, upon issuance of a Notice of Intent to Award by the Purchasing Division of the City of Port Orange. Please note, the City of Port Orange does not accept exemptions for Workers' Compensation coverage.

AFFIDAVIT REGARDING WORKERS' COMPENSATION

State of _____

County of _____

I, _____, being duly sworn according to law, deposes and says (it, he, she, they) have accepted the Workers' Compensation laws of the State of Florida, with its supplements and amendments and has insured (its, his, her, their) liability there under accordance with the terms of said Laws with the _____ Company, under the terms of Policy Number _____ for a period from _____, 20__ to _____, 20__.

WITNESS:

By: _____

Name: _____

CONTRACTOR:

Company: _____

By: _____

Name/Title: _____

Sworn to/Affirmed and subscribed before me this _____ day of _____, 20__, by _____, who is personally known to me or who produced _____ as identification.

NOTARY PUBLIC – STATE OF

Type or Print Name: _____

Commission No.: _____

Commission Expires: _____

(Seal)

CITY OF PORT ORANGE CONTRACT DOCUMENTS (for informational purposes only)

.pdf document will be added when whole document converted to .pdf



FORCE MAJEURE NOTICE

City of Port Orange

Attention: City Manager and Lynn Stevens- Public Works and Utilities Director

1000 City Center Circle

Port Orange, Florida 32129

Re: ITB 21-24 Garnsey Water Plant Dewatered Lime Sludge Disposal

To Whom It May Concern:

Drewry Site Development has received an unforeseen notice of termination of our leased facility located at 1189 Indian Lake in Daytona Beach. Our facility is no longer available for the disposal of Lime Sludge, as we are currently vacating the property.

We are writing to notify you that, following our best efforts to remain at 1189 Indian Lake Road, we have no choice but to invoke force majeure, pursuant to Section 22 of the Contract. This is necessary because termination of our lease has rendered it impossible for Drewry Site Development to perform its obligations under the Contract.

We would appreciate it if you would please confirm receipt of this notice.

Sincerely,

Hope Goeman

Managing Manager



400 Venture Dr., Ste F
South Daytona, FL 32119



www.DrewrySite.com



Office: 386-313-3220
Fax: 386-872-4788



City of Port Orange Public Utilities Department

TO: Wayne Clark, City Manager

FROM: Steve Parnell, Public Utilities Director
Christina Potts, Water Production Manager

DATE: October 28th, 2024

SUBJECT: Justification – Spent Lime Disposal – 4C Sod Farm, Inc.

REQUEST:

The Public Utilities Department requests approval for a Standard Service Contract with 4 C Sod Farm, Inc. to dispose spent lime.

PURPOSE:

The purpose of this request is to secure a reliable disposal site for spent lime from the Water Treatment Facility.

CONSIDERATION:

As part of the water treatment process, lime is fed at the Water Treatment Plant to soften water. Once complete, the spent lime is then ready for disposal. In the past the spent lime was taken by a local vendor where it was utilized in road base. On December 4th, 2023, the vendor notified the city that they will no longer taking our lime due to unforeseen circumstances.

The city solicited bids through the Purchasing Department in April of 2024. ITB #24-10 and officially cancelled on May 27th, 2024, after receiving zero bids. The city has been stockpiling the spent lime on Shunz Road. Space is limited and a permanent disposal option is needed. Other local water treatment facilities are struggling with securing lime disposal, and some have resorted to hauling liquid lime. Staff has looked at the option and the resulting cost to haul liquid lime as apposed to dewatered lime is far more costly.

City staff contacted Volusia County Landfill and was quoted \$165.00 per ton for the city to dump the spent lime onsite. Staff also talked to a local sod farm, 4C Sod Farm, Inc., and they are willing to take our spent lime at a cost of \$85.00 per ton. Staff feels this price is fair and wants to move forward with a contact with 4C Sod Farm Inc.

FUNDING:

401-8001-536-53402 Landfill Services

RECOMMENDATION:

The Public Utilities Department recommends approval for a Standard Service Contract with 4 C Sod Farm, Inc. to dispose spent lime.

ANTICIPATED SCHEDULE:

- a.) Anticipated Approval – November 19th, 2024
- b.) Anticipated Project Completion – N/A

ATTACHMENTS:

- a.) Quotation

/cjw

4C Sod Farm Inc.
210 Floratam Tr. New Smyrna Beach, FL 32168
(386) 527-3091

ESTIMATE	08/27/2024
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BILL TO	TERMS: NET 45
City of Port Orange 1000 City Center Circle Port Orange, FL 32129	

QUANTITY	DESCRIPTION	UNIT PRICE
1 Ton	Lime Sludge Drop Off	\$85.00

*ESTIMATE VALID THRU 12/31/2024



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

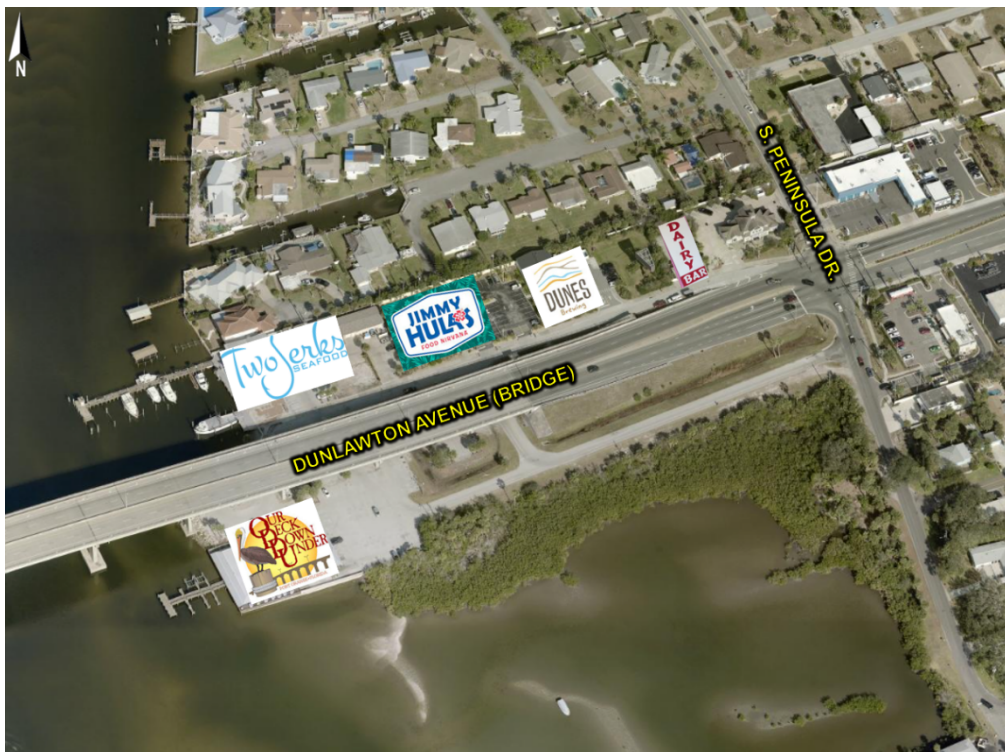
SUBJECT: (C8b) Approval of the Economic Incentive Agreement for Florida Volusia Trust LLC (65 Dunlawton Avenue) - Chapter 20 Targeted Business Program

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the Chapter 20 Targeted Business Program Economic Incentive Agreement for Florida Volusia Trust LLC. (65 Dunlawton Avenue) and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: Florida Volusia Trust LLC is requesting a refund/waiver of development fees through the City's Targeted Business Program related to the development of the Jimmy Hula's restaurant at 65 Dunlawton Avenue. This targeted business is located on the north side of the Dunlawton Avenue Bridge, west of Peninsula Boulevard, in the Down Under District of the Port Orange Town Center Community Redevelopment Area (CRA).



The Port Orange Town Center Community Redevelopment Area plan states that

incentives may be provided through the process described in the City's Land Development Code (LDC), Chapter 20- Economic Development Incentives. The purpose of the incentives identified in the LDC is to promote positive forms of new development and redevelopment; reward the creation and retention of value-added jobs; attract targeted businesses; revitalize the Port Orange Town Center and Eastport Business Center redevelopment areas; increase the nonresidential tax-base; and foster a diverse employment base within the city. The Targeted Business Program was created to provide assistance to business ventures to attract their operations within the city, enhance/expand their operations in the city, or relocate their operations to viable property within the city.

According to the applicant's letter of request, the development of Jimmy Hula's restaurant resulted in an investment of over \$2,400,000 in the city, specifically the Down Under District of the Port Orange Town Center Community Redevelopment Area (CRA), and has contributed to the goal of making the Down Under District a waterfront destination with restaurants, breweries, entertainment venues, areas for special events, parks, and public open space. Over the last several years, the restaurant has provided jobs for over 50 employees.



Due to the recent emphasis on redevelopment in the Riverwalk and Down Under areas over the last three years, the applicant has requested a refund or waiver of \$21,149.68 in site development and building permit review fees and plans to re-invest the money from the requested refund/waiver in other redevelopment projects within the Riverwalk and Down Under areas. The refund does not apply to impact fees, water and sewer development fees, and utility connection fees. The amount to be refunded is based on the actual fees paid to date associated with this business receiving its Certificate of Occupancy.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Chapter 20 Targeted Business Economic Incentive Agreement (Jimmy Hula's)	Chapter 20 Agreement Jimmy Hula's.pdf
2.	LDC_PortOrange_JH_2024	LDC_PortOrange_JH_2024.docx

Tim Burman

Created/Initiated - 6/28/2024

Tim Burman

Approved - 6/28/2024

Shannon Balmer

Approved - 11/13/2024

Wayne Clark

Final Approval - 11/14/2024

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (the "Agreement") is made and entered into this ____ day of _____, 2024, by and between the **CITY OF PORT ORANGE**, Florida, a chartered municipal corporation (the "City" or "Grantor"), whose address is 1000 City Center Circle, Port Orange, Florida 32129 and **FLORIDA VOLUSIA TRUST, LLC, A FLORIDA LIMITED LIABILITY COMPANY** WHOSE ADDRESS IS 116 S. PALMETTO AVENUE DAYTONA BEACH, FL 32114 (the "Grantee"), and collectively referred to as the Parties.

PROVISIONS:

WHEREAS, pursuant to the Land Development Code, Chapter 20, the City has established a Targeted Business Program ("TBP") to provide financial assistance to businesses; and

WHEREAS, the Grantee has applied for a grant to City of Port Orange, Port Orange, Florida; and

WHEREAS, Grantee has made improvements to an existing facility located at 65 Dunlawton Avenue, Port Orange, Florida ("Improved Site"); and

WHEREAS, the City Council has considered the following factors; the number of jobs, the number of value added jobs, average wage, type of business venture, how the business venture addresses the critical needs within the city, location of business venture, value of construction, significance of improvement, anticipated tax revenue, multiplier implications on the local economic health of the economy, availability of city funds and other factors related to the grant of financial assistance; and

WHEREAS, Grantee employs over 50 individuals thereby contributing to an increase in local earnings of economic impact; and

WHEREAS, Grantee by and through its investment in the Improved Site has contributed to the goal of making the Down Under District a waterfront destination with restaurants, breweries, entertainment venues, areas for special events, parks, and public open space; and

WHEREAS, the capital investment for this redeveloped facility at the Improved Site is estimated at Two Million Four Hundred and NO/100 Dollars (\$2,400,000.00) through equipment and improvements to the existing building, increasing the taxable valuation as a result of said property improvements; and

WHEREAS, the City Council has determined that the Grantee qualifies for the grant; and

WHEREAS, the City Council has recently examined the current financial factors relating to the City's budget preparation and indicating the health of the local economy; and

WHEREAS, the Targeted Business Program grant is expected to foster a diverse employment base within the City; and

WHEREAS, funding is available in the form of refunding current development and building permit fees already incurred by the Grantee for improvements to the current location; and

WHEREAS, the Parties desire to enter into this Agreement as more particularly set forth hereinafter.

NOW, THEREFORE, for good and valuable consideration, receipt hereof is hereby acknowledged, the Parties agree as follows:

1. Above Provisions: The foregoing premises are true and correct and are incorporated herein by reference.
2. Grant: Subject to the terms and conditions contained herein, the City hereby awards Grantee a Targeted Business Program grant in the form of refund of site development and building permit review fees in the amount of **Twenty-One Thousand One Hundred Forty-Nine and 68/100 Dollars (\$21,149.68)** previously incurred by the Grantee. Said grant shall not exceed a total amount of **Twenty-One Thousand One Hundred Forty-Nine and 68/100 Dollars (\$21,149.68)**.
3. Conditions: Dispersal of the grant shall be made for site development and building permit review fees in the amount of **Twenty-One Thousand One Hundred Forty-Nine and 68/100 Dollars (\$21,149.68)** previously incurred by the Grantee. The Grantee agrees to provide the City with receipts of the actual costs incurred. This grant shall not be considered a waiver of impact fees nor shall it be applied to impact fees due and owing by the Grantee.
4. Expiration: The city shall not distribute and is not required to distribute the grant if within 18 months of the date of execution of this Agreement the Grantee has not provided proof of payment for the current building permits. The City shall not be responsible for any costs associated with the Project or this Agreement or any other

costs if the grant expires. The City shall not be held responsible for the inability of the Grantee to obtain the building permits.

5. Audit: The City reserves the right to review, audit and account for any and all financial records pertaining to the creation of jobs as set forth in this Agreement and as required by the Targeted Business Program.

6. Public Records Compliance: Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

If Contractor does not comply with a public records request, the City shall enforce this contract provision.

7. Notice of Termination: Upon the City's determination that Grantee has breached any term of this Agreement, the City shall provide the Grantee written notice by certified mail of said breach, and provide, in the written notice, the corrective action that Grantee must take. If Grantee does not take the above-described corrective action within fifteen (15) days of Grantee's receipt of the written notice, this Agreement shall terminate without further notice. The corrective action must be acceptable to the City in order to avoid termination. The City shall provide Grantee a certified letter confirming termination of this Agreement. Within thirty (30) days of receipt of the termination letter, the City Manager may require the Grantee to submit a cashier's check to the City for the total amount of funds disbursed from the City's match under this Agreement.

8. Applicable Laws: The Grantee must comply with all applicable laws, ordinances and codes and Grantee shall, except where provided herein, secure and pay for all permits and be responsible for all other fees or charges associated with the performance of the Project or any other activities under this Agreement.

9. Notice: For purposes of this agreement, notices shall be sent as follows:

City: City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

Grantee: Florida Volusia Trust LLC
116 S Palmetto Ave
Daytona Beach, FL 32114

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

10. Entire Agreement: This Agreement incorporates the entire Agreement, including any attached Exhibits or Amendments, between the parties hereto and no statements, representations, or terms, not included within the written terms of this Agreement, can be considered a part of this Agreement.

11. No Waiver: This Agreement does not constitute a waiver of any applicable Codes or regulations nor does it constitute approval of the Project for development. All applicable Codes and regulations remain in force.

12. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any actions arising out of this Agreement shall be in Volusia County, Florida.

[Remainder of this page left blank intentionally]

IN WITNESS WHEREOF, the City and Grantee have executed this Agreement on the day and year first above written.

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

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

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2024, by Donald O. Burnette, Mayor and Robin L. Fenwick, City Clerk, both for the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida
Printed name, commission and expiration:

GRANTEE:

FLORIDA VOLUSIA TRUST LLC, A FLORIDA LIMITED
LIABILITY COMPANY

By: _____
Michael J. Benedict, Manager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX]
physical presence or [] online notarization this _____ day of _____,
2024, by Michael J. Benedict, as Manager of Florida Volusia Trust LLC, a Florida
limited liability company, and who:

[Notary: Please select one]

☐ is personally known to me; or
☐ has produced _____ as identification.

Notary Public, State of Florida

Printed name, commission and expiration:



November 4, 2024

Mr. Wayne Clark
City Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
REF: Chapter 20 – Economic Development Incentive – Land Development Code
Florida Volusia Trust LLC, dba Jimmy Hula's, 65 Dunlawton Ave

Dear Mr. Clark:
Florida Volusia Trust LLC invested over \$2,400,000 in the City of Port Orange in the Down Under District.

We have completed the construction of Jimmy Hula's at 65 Dunlawton Ave, with a total of 3,600 sq ft for the restaurant. The property has significantly enhanced the Down Under District and lead to a bigger tax base for the city. We have employed over 50 employees continuously since opening. These improvements have spurred a lot of interest and growth not only in the Down Under, but the adjacent Riverwalk District.

The LDC describes purpose and intent of the incentive program and outlines specific objectives which Florida Volusia Trust LLC has achieved as part of the overall redevelopment of the area. The direct accomplishments are outlined below:

- Promote positive forms of new development and redevelopment
- Reward the creation of new jobs
- Revitalize the Down under District
- Increase the non-residential tax-base

In redeveloping this property, through the provisions of the LDC, Florida Volusia Trust LLC is seeking the City's assistance in the form of a refund for the City development and building fees for the completed Jimmy Hula's project. This is greatly appreciated!

Sincerely,

Michael J. Benedict

Michael Benedict
CEO

CC: Tim Burman, Community Development Director



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

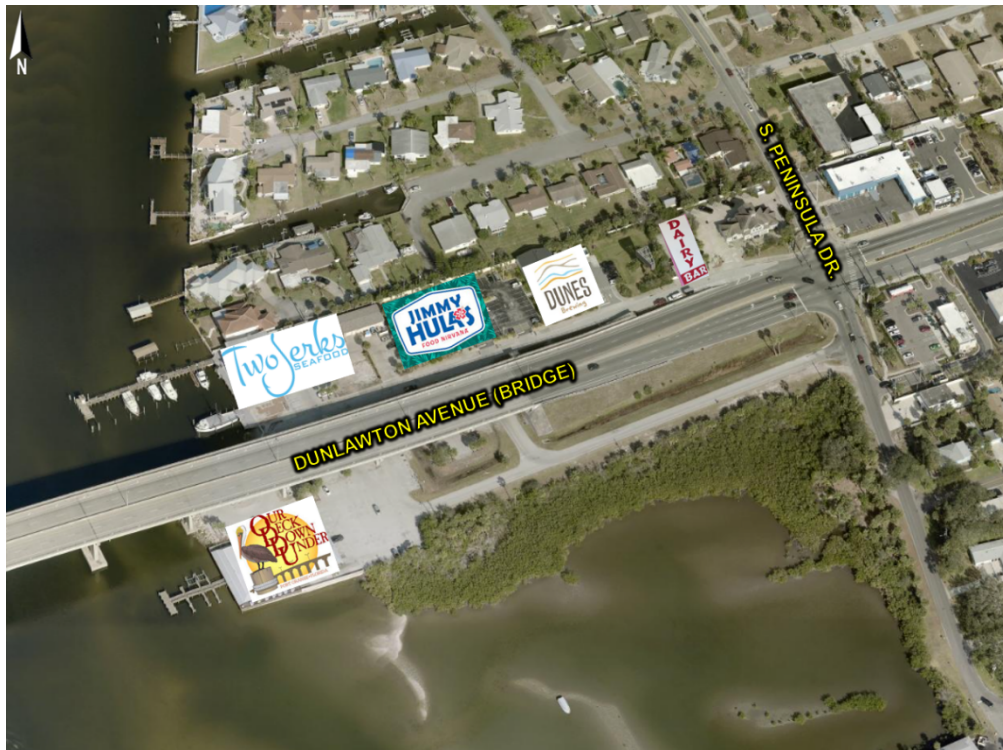
SUBJECT: (C8c) Approval of the Economic Incentive Agreement for Mueta Business LLC (59 Dunlawton Avenue) - Chapter 20 Targeted Business Program

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the Chapter 20 Targeted Business Economic Incentive Agreement for Mueta Business LLC (59 Dunlawton Avenue) and authorize the Mayor and City Clerk to execute all necessary documents.

SUMMARY: Mueta Business LLC is requesting a refund/waiver of development fees through the City's Targeted Business Program related to the development of Dunes Brewery at 59 Dunlawton Avenue, Unit 102, and a future restaurant at 59 Dunlawton Avenue, Unit 101. These two targeted businesses are located on the north side of the Dunlawton Avenue Bridge, west of Peninsula Boulevard, in the Down Under District of the Port Orange Town Center Community Redevelopment Area (CRA).



The Port Orange Town Center Community Redevelopment Area plan states that

incentives may be provided through the process described in the City's Land Development Code (LDC), Chapter 20- Economic Development Incentives. The purpose of the incentives identified in the LDC is to promote positive forms of new development and redevelopment; reward the creation and retention of value-added jobs; attract targeted businesses; revitalize the Port Orange Town Center and Eastport Business Center redevelopment areas; increase the nonresidential tax-base; and foster a diverse employment base within the city. The Targeted Business Program was created to provide assistance to business ventures to attract their operations within the city, enhance/expand their operations in the city, or relocate their operations to viable property within the city.

According to the applicant's letter of request, the development of the two businesses listed above will result in an investment of over \$1,700,000 in the city, specifically the Down Under District of the Port Orange Town Center Community Redevelopment Area (CRA) and will contribute to the goal of making the Down Under District a waterfront destination with restaurants, breweries, entertainment venues, areas for special events, parks, and public open space. Upon completing the restaurant build-out and the existing Dunes Brewery, these two businesses will have about 26 employees.



Due to the recent emphasis on redevelopment in the Riverwalk and Down Under areas over the last three years, the applicant has requested a refund or waiver of \$13,018.89 in building permit review fees and plans to re-invest the money from the requested refund/waiver in other redevelopment projects within the Riverwalk and Down Under areas. The refund/waiver may not be applied to impact fees, water and sewer development fees, and utility connection fees. The amount of assistance is based on actual fees paid to date and estimates (\$750.00) for the remaining building permits that must be submitted and work completed before a Certificate of Occupancy can be issued.

for the restaurant tenant at 59 Dunlawton Avenue, Unit 101.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Chapter 20 Targeted Business Economic Incentive Agreement for Dunes Brewery	Chapter 20 Targeted Business Economic Incentive Agreement for Dunes Brewery.pdf
2.	LDC_Dunes_2024	LDC_Dunes_2024.docx

Amanda Bonin
Tim Burman
Shannon Balmer
Wayne Clark

Created/Initiated - 11/5/2024

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (the "Agreement") is made and entered into this ____ day of _____, 2024, by and between the **CITY OF PORT ORANGE**, Florida, a chartered municipal corporation (the "City" or "Grantor"), whose address is 1000 City Center Circle, Port Orange, Florida 32129 and **MUETA BUSINESS, LLC**, A FLORIDA LIMITED LIABILITY COMPANY whose address is 116 S. Palmetto Avenue Daytona Beach, FL 32114, (the "Grantee"), and collectively referred to as the Parties.

PROVISIONS:

WHEREAS, pursuant to the Land Development Code, Chapter 20, the City has established a Targeted Business Program ("TBP") to provide financial assistance to businesses; and

WHEREAS, the Grantee has applied for a grant to City of Port Orange, Port Orange, Florida; and

WHEREAS, Grantee has made improvements to an existing facility located at 59 Dunlawton Avenue, Port Orange, Florida ("Improved Site"); and

WHEREAS, Grantee anticipates future expansion and improvements at the Improved Site; and

WHEREAS, the City Council has considered the following factors; the number of jobs, the number of value added jobs, average wage, type of business venture, how the business venture addresses the critical needs within the city, location of business venture, value of construction, significance of improvement, anticipated tax revenue, multiplier implications on the local economic health of the economy, availability of city funds and other factors related to the grant of financial assistance; and

WHEREAS, Grantee employs over 20 individuals thereby contributing to an increase in local earnings of economic impact; and

WHEREAS, Grantee by and through its investment in the Improved Site has contributed to the goal of making the Down Under District a waterfront destination with restaurants, breweries, entertainment venues, areas for special events, parks, and public open space; and

WHEREAS, the current capital investment for this redeveloped facility at the Improved Site is estimated at One Million Four Hundred and NO/100 Dollars (\$1,400,000.00) through equipment and improvements to the existing building, and an anticipated additional Three Hundred Thousand and NO/100 Dollars (\$300,000.00), in improvements for the new restaurant space, all of which contributes to increasing the taxable valuation as a result of said property improvements; and

WHEREAS, the City Council has determined that the Grantee qualifies for the grant; and

WHEREAS, the City Council has recently examined the current financial factors relating to the City's budget preparation and indicating the health of the local economy; and

WHEREAS, the Targeted Business Program grant is expected to foster a diverse employment base within the City; and

WHEREAS, funding is available in the form of refunding current building permit fees already incurred by the Grantee and future building permit fees for future expansion and improvements to the current location; and

WHEREAS, the Parties desire to enter into this Agreement as more particularly set forth hereinafter.

NOW, THEREFORE, for good and valuable consideration, receipt hereof is hereby acknowledged, the Parties agree as follows:

1. Above Provisions: The foregoing premises are true and correct and are incorporated herein by reference.
2. Grant: Subject to the terms and conditions contained herein, the City hereby awards Grantee a Targeted Business Program grant in the form of refund of development and building permit review fees in the amount of **Twelve Thousand Two Hundred Sixty-Eight and 89/100 Dollars (\$12,268.89)** previously incurred by the Grantee and waiver of future development and building permit review fees not to exceed **Seven Hundred Fifty and NO/100 Dollars (\$750.00)**, subject to the terms of this Agreement, upon issuance of the certificate of occupancy in accordance with the plans and/or permits approved for construction. Said grant shall not exceed a total amount of **Thirteen Thousand Eighteen and 89/100 Dollars (\$13,018.89)**.

3. Conditions: Dispersal of the grant shall be made for site development and building permit review in the amount of **Twelve Thousand Two Hundred Sixty-Eight and 89/100 Dollars (\$12,268.89)** previously incurred by the Grantee. The Grantee agrees to provide the City with receipts of the actual costs incurred. Upon Grantee's submittal of future building permit application for additional improvements to the Improved Site, the City agrees to waive the City of Port Orange site development and building permit review fees up to the amount of **Seven Hundred Fifty and NO/100 Dollars (\$750.00)**. This grant shall not be considered a waiver of impact fees, nor shall it be applied to impact fees due and owing by the Grantee.

4. Expiration: The city shall not distribute and is not required to distribute the grant if within 18 months of the date of execution of this Agreement the Grantee has not provided proof of payment for the current building permits and for the future improvements, apply and have issued the building permits. The City shall not be responsible for any costs associated with the Project or this Agreement or any other costs if the grant expires. The City shall not be held responsible for the inability of the Grantee to obtain the building permits.

5. Audit: The City reserves the right to review, audit and account for any and all financial records pertaining to the creation of jobs as set forth in this Agreement and as required by the Targeted Business Program.

6. Public Records Compliance: Contractor shall comply with public records laws as set forth in Chapter 119, Florida Statutes, and shall specifically:

(a) Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.

(b) Provide the public with access to public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed the cost provided in Section 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(d) Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.

If Contractor does not comply with a public records request, the City shall enforce this contract provision.

7. Notice of Termination: Upon the City's determination that Grantee has breached any term of this Agreement, the City shall provide the Grantee written notice by certified mail of said breach, and provide, in the written notice, the corrective action that Grantee must take. If Grantee does not take the above-described corrective action within fifteen (15) days of Grantee's receipt of the written notice, this Agreement shall terminate without further notice. The corrective action must be acceptable to the City in order to avoid termination. The City shall provide Grantee a certified letter confirming termination of this Agreement. Within thirty (30) days of receipt of the termination letter, the City Manager may require the Grantee to submit a cashier's check to the City for the total amount of funds disbursed from the City's match under this Agreement.

8. Applicable Laws: The Grantee must comply with all applicable laws, ordinances and codes and Grantee shall, except where provided herein, secure and pay for all permits and be responsible for all other fees or charges associated with the performance of the Project or any other activities under this Agreement.

9. Notice: For purposes of this agreement, notices shall be sent as follows:

City: City of Port Orange
Attention: City Manager
1000 City Center Circle
Port Orange, Florida 32129
(386) 506-5501

Grantee: Mueta Business LLC
118 S. Palmetto Avenue
DAYTONA BEACH, FL 32114

Any notice or other communication given under the Contract will be in writing and delivered by hand, sent by facsimile (provided acknowledgement of receipt thereof is delivered to the sender), sent by certified, registered mail, or sent by any nationally recognized overnight courier service to the addresses provided herein. The parties may, from time to time and at any time, change their respective addresses and each will have the right to specify as its address any other address by at least 10 days written notice to the other party.

10. Entire Agreement: This Agreement incorporates the entire Agreement, including any attached Exhibits or Amendments, between the parties hereto and no statements, representations, or terms, not included within the written terms of this Agreement, can be considered a part of this Agreement.

11. No Waiver: This Agreement does not constitute a waiver of any applicable Codes or regulations nor does it constitute approval of the Project for development. All applicable Codes and regulations remain in force.

12. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any actions arising out of this Agreement shall be in Volusia County, Florida.

[Remainder of this page left blank intentionally]

IN WITNESS WHEREOF, the City and Grantee have executed this Agreement on the day and year first above written.

CITY OF PORT ORANGE

By: _____
Donald O. Burnette, Mayor

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

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this _____ day of _____, 2024, by Donald O. Burnette, Mayor and Robin L. Fenwick, City Clerk, both for the City of Port Orange, a Florida municipal corporation, on behalf of the city, and who is personally known to me.

Notary Public, State of Florida
Printed name, commission and expiration:

**MUETA BUSINESS LLC, A FLORIDA LIMITED
LIABILITY COMPANY**

By: _____
Michael J. Benedict, Manager

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____, 2024, by Michael J. Benedict, Manager of Mueta Business, LLC, a Florida limited liability company, and who:

[Notary: Please select one]

- ☐ is personally known to me; or
☐ has produced _____ as identification.

Notary Public, State of Florida
Printed name, commission and expiration:



November 4, 2024

Mr. Wayne Clark
City Manager
City of Port Orange
1000 City Center Circle
Port Orange, FL 32129
REF: Chapter 20 – Economic Development Incentive – Land Development Code
Mueta Business LLC, dba Dunes Brewing at 59 Dunlawton Ave.

Dear Mr. Clark:

Mueta Business LLC invested over \$1,400,000 in the City of Port Orange in the Down Under District, and we will be investing an additional \$300,000+ in improvements, some in part for the construction of space for the new restaurant, slated to open in December of 2024 in the front portion of Dunes Brewing building at 59 Dunlawton Ave.

This will complete development of 59 Dunlawton of the Dunes Brewing project, now complete with a new restaurant. The improvements at 59 Dunlawton Ave have significantly enhanced the Down Under District and lead to a bigger tax base for the city. Since opening, Dunes Brewing has employed over 20 employees continuously since opening. When the restaurant opens December of 2024 it will add an additional 1,100 sq ft and another target business to the area along with the addition of 6 more employees. These improvements have spurred a lot of interest and growth not only in the Down Under, but the adjacent Riverwalk District.

The LDC describes purpose and intent of the incentive program and outlines specific objectives which Mueta Business LLC has achieved as part of the overall redevelopment of the area. The direct accomplishments are outlined below:

- Promote positive forms of new development and redevelopment
- Reward the creation of new jobs
- Revitalize the Down under District
- Create a place for locals and government to host meetings (Dunes)
- Increase the non-residential tax-base

In redeveloping this property, through the provisions of the LDC, Mueta Business LLC is seeking the City's assistance in the form of a refund of City building and development fees for the Dunes Brewing and restaurant project, along with a fee waiver not to exceed \$1,000 to cover the permit fees for the remaining building permits needed to complete the restaurant tenant space. This is greatly appreciated!

Sincerely,

Michael J. Benedict

Michael Benedict
CEO

CC: Tim Burman, Community Development Director



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C9) Resolution No. 24-46 - Budget Amendment - FY2023 - 2024 Final Year End True-Up

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-46.

SUMMARY: The year-end budget true-up is needed to amend the Fiscal Year 2023-2024 budget for those funds which vary from the originally adopted / amended budget. This closes out the Fiscal Year 2023-24 budget as part of the requirements of Florida Statutes.

The vast majority of the amendments are necessary for one of the following reasons:

- Accrual of revenues and expenses in the appropriate fiscal period of October 1, 2023 through September 30, 2024
- Variations between budgeted (estimated) and actual expenditures and revenues
- FY2023-2024 agenda items with fiscal impact that have been rolled into the FY2024-2025 budget, such as capital outlay and capital improvement projects.

Part of the normal course of operations at fiscal year-end is the accrual of revenues and expenses. The accruals are necessary for aligning revenues and expenses with the fiscal period to which they relate. It is also typical for some variances between actual and budgeted expenses and revenues to require budget adjustments. Furthermore, over the course of the fiscal year, various agenda items are approved by the Council that require amending the budget. This resolution formalizes the fiscal impact of those actions.

The requested changes amend the budgeted revenues and expenditures of Fiscal Year 2024 within the time allowed by Florida Statute.

The capital outlay and projects that will be completed in Fiscal Year 2024-2025 will be an amendment to the current year's budget by Resolution No. 24-47 that is also proposed for Council consideration as part of this agenda.

Staff requests the Council amend the Fiscal Year 2023-2024 budget by revising the

budget in total pursuant to itemization contained in Exhibit "A" of the Resolution.

PRESENTER: John McKinney

ATTACHMENTS:

1.	Resolution No 24-46 w exhibit	Resolution No 24-46 w exhibit.pdf
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John McKinney	Created/Initiated - 11/1/2024
John McKinney	Approved - 11/1/2024
Matthew Jones	Approved - 11/13/2024
Wayne Clark	Final Approval - 11/14/2024

RESOLUTION NO. 24-46

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, PERTAINING TO BUDGET ADJUSTMENTS FOR FISCAL YEAR 2023-24; PROVIDING APPROVAL FOR ADJUSTMENTS OF 2023-2024 BUDGET ADJUSTMENTS; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 20, 2023, the City of Port Orange, adopted Resolution 23-42 approving the City's total operating and capital budgets for Fiscal Year 2023-24; and

WHEREAS, the City of Port Orange adopted Resolution 23-61 on November 14, 2023; Resolution 23-68 on December 12, 2023; Resolution 24-12 on May 7, 2024; Resolution 24-23 on August 6, 2024; amending the total operating budget for Fiscal Year 2023-24; and

WHEREAS, in order to recognize unanticipated revenues and expenditures, it is necessary to make adjustments to the City's 2023-24 operating budget.

NOW, THEREFORE, BE IT RESOLVED 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. Approval of 2023-2024 Budget Adjustments. The City's 2023-24 Operating Budget is hereby adjusted as set forth in **Exhibit "A"** attached hereto. As applicable, the transfer of funds may be made from any legally acceptable source.

Section 3. The budget items adopted in the preceding section shall govern the expenditures relating to such items for the City during the ensuing fiscal year effective October 1, 2023, through September 30, 2024.

Section 4. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be affected by the City Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 5. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin Fenwick, MMC, City Clerk

Adopted on the _____ day of November 2024

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



Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2023-24

Tyler Fund	Description	Adopted Resolution 23-42	Resolution 23-61	Resolution 23-68	Resolution 24-12	Resolution 24-23	Resolution 24-46	Final Amended Budget
001	General Fund	\$ 58,759,279	\$ 5,312,517	\$ 673,013	\$ 4,393,377	-	\$ (672,147)	\$ 68,466,039
010	National Opioid Litigation	38,000	37,471	-	-	-	45,445	120,916
011	Recreation Scholarship	27,300	-	-	-	-	-	27,300
019	Federal Disaster Fund	982,525	127,117	188,430	-	-	-	1,298,072
102	Tax Increment - Eastport	539,320	-	-	-	-	80,893	620,213
103	Tax Increment - Town Center	430,919	-	-	-	-	-	430,919
106	Recreational Facilities	205,700	24,355	34,601	55,534	-	(24,272)	295,918
109	Building & Inspections	2,796,525	103,765	-	4,369	-	3,000,000	5,904,659
111	Police Impact Fee	-	-	-	-	-	26,857	26,857
112	Fire Impact Fee	35,000	451,293	-	-	-	-	486,293
113	Transportation Impact Fee	1,286,730	647,569	-	-	-	-	1,934,299
313	Recreation Impact Fee	27,000	-	-	-	-	204,364	231,364
120	Police Benefit Trust	4,900	-	-	-	-	-	4,900
121	Police Forfeiture	62,000	-	-	1,000	-	-	63,000
122	Police Education Trust	10,000	-	-	-	-	-	10,000
123	Federal Police Forfeiture	5,000	-	-	-	-	-	5,000
199	CDBG Special Revenue	375,895	-	-	(375,895)	-	-	-
199	Grant Special Revenue	91,243	236,376	-	334,451	-	-	662,070
214	Debt Services GO	904,369	-	-	-	-	28,287	932,656
217	Debt Services Eastport Tax Note	233,335	-	-	-	-	-	233,335
218	Debt Services Town Center Bonds	402,709	-	-	-	-	-	402,709
220	Debt Services Bonds	1,147,125	-	-	-	-	561	1,147,686
301	Capital Projects	3,204,563	4,405,547	600,000	1,947,674	-	(3,102,530)	7,055,254
301	Transportation Capital Projects	150,250	-	-	(150,250)	-	-	-
317	General Capital Replacement	18,884,610	14,787,002	788,430	1,596,788	-	(3,570,797)	32,486,033
401	Water/Sewer	39,321,045	21,001,737	-	200,269	1,150,000	(25,548,023)	36,125,028
402	Wetland Mitigation	57,305	-	-	-	-	350,000	407,305
403	Water/Sewer R&R	20,710,000	43,023,993	-	(9,242,696)	1,150,000	(35,969,811)	19,671,486
404	SRF Debt Service	784,846	-	-	-	-	-	784,846
405	Water Impact Fee	105,000	3,484,079	-	-	-	24,523	3,613,602
406	WasteWater Impact Fee	0	-	-	-	-	-	-
409	Forestry	496,932	634,000	79,016	-	-	(672,744)	537,204
410	Solid Waste	10,199,179	-	-	-	-	-	10,199,179
412	Stormwater Utility	7,658,762	3,900,403	-	62,652	-	(4,614,006)	7,007,811
413	Stormwater Capital	2,305,000	3,062,955	-	1,893,944	-	(5,216,212)	2,045,687
414	Drainage Bond Sinking	699,004	-	-	-	-	14,777	713,781
450	Golf Course Operating	2,742,530	103,400	-	-	-	-	2,845,930
501	Information Technology	4,396,934	25,728	-	1,543	-	(19,296)	4,404,909
503	Fleet Maintenance	1,430,575	64,673	-	310,001	-	-	1,805,249
504	Risk Management	2,493,995	-	-	222,933	-	-	2,716,928
505	Lease & Replacement	3,787,700	1,027,083	-	1,502,113	-	(1,615,997)	4,700,899
508	Loan Pool	50,000	-	-	-	-	-	50,000
Grand Total:		\$ 187,843,104	\$ 102,461,063	\$ 2,363,490	\$ 2,757,807	\$ 2,300,000	\$ (77,250,128)	\$ 220,475,336

Exhibit "A" DETAIL FOR RES. 24-46 YEAR END BUDGET ADJUSTMENT REQUEST

FUND	ACCOUNT DESCRIPTION	ADJUSTMENT REQUEST	DESCRIPTION
GENERAL FUND - 001			
	APPROPRIATED FUND BALANCE	(672,147)	APPROPRIATED FUND BALANCE
	REVENUES	(672,147)	
	CAPITAL OUTLAY - PARKS AND RECREATION	(79,660)	PK201 RE-SOD/RENOVATIONS SPORTS FIELD
	CAPITAL OUTLAY - PUBLIC WORKS	(147,032)	PW183 STANDBY POWER GENERATOR & PW232 WOOD BRIDGE R&R
	CAPITAL OUTLAY - FIRE	(70,456)	FR221 STATION BASED ALERTING SYSTEM & EQUIPMENT CAPITAL
	CAPITAL OUTLAY - BUILDING MAINTENANCE	(375,000)	BM224 CITY HALL ELEVATORS
	EXPENDITURES	(672,147)	
NATIONAL OPIOID LITIGATION SETTLEMENT - 010			
	OPIOID LITIGATION SETTLEMENT REVENUE	45,445	ADDITIONAL REVENUE RECEIVED
	REVENUES	45,445	
	CAPITAL OUTLAY - FIRE	45,445	LUCAS DEVICE
	EXPENDITURES	45,445	
EASTPORT CRA - 102			
	TAX INCREMENT FUND REVENUE	80,893	ADDITIONAL REVENUE RECEIVED
	REVENUES	80,893	
	CONTINGENCY RESERVE	80,893	CONTINGENCY RESERVE
	EXPENDITURES	80,893	
RECREATION FACILITY - 106			
	APPROPRIATED FUND BALANCE	(24,272)	APPROPRIATED FUND BALANCE
	REVENUES	(24,272)	
	CAPITAL OUTLAY - PARKS & RECREATION	(24,272)	PK152 YMCA REPAIRS
	EXPENDITURES	(24,272)	
COMMUNITY DEVELOPMENT BUILDING - 109			
	APPROPRIATED FUND BALANCE	3,000,000	APPROPRIATED FUND BALANCE
	REVENUES	3,000,000	
	TRANSFER OUT - FUND 317	3,000,000	PW161 CITY HALL REMODEL
	EXPENDITURES	3,000,000	

2006 GO BOND DEBT SERVICE - 214			
CURRENT AD VALOREM TAX	28,287	ADDITIONAL REVENUE RECEIVED	
REVENUES	28,287		
OTHER DEBT SERVICES COSTS	28,287	OTHER DEBT SERVICES COSTS	
EXPENDITURES	28,287		
2014 CAPITAL IMPROVEMENT BOND - 220			
INTERFUND TRANSFER REVENUE	561	ADDITIONAL REVENUE RECEIVED	
REVENUES	561		
OTHER DEBT SERVICES COSTS	561	OTHER DEBT SERVICES COSTS	
EXPENDITURES	561		
CAPITAL PROJECTS - 301			
APPROPRIATED FUND BALANCE	(3,102,530)	APPROPRIATED FUND BALANCE	
REVENUES	(3,102,530)		
REPAIR & MAINTENANCE - PUBLIC WORKS	(5,609)	PW152 STREET STRIPING	
REPAIR & MAINTENANCE - PUBLIC WORKS	(82,539)	PW232 ROAD RESURFACING & RECONSTRUCTION	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(151,688)	CD173 YORKTOWNE NORTH SEGMENT	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(278,487)	CD184 SIDEWALK BUNDLE	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(329,208)	CD205 CLYDE MORRIS TURN LANE BUNDLE	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(675,822)	CD215 DUNLAWTON/YORKTOWNE TURN LANE BUNDLE	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(423,200)	CD244 WILLIAMSON & WILLOW RUN SIDEWALKS	
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT	(21,241)	CD245 US1 EB DUNLAWTON TURN LANE	
CAPITAL OUTLAY/CIP - PUBLIC WORKS	(31,612)	PW224 OAK ST RAILROAD CROSSING	
CAPITAL OUTLAY/CIP - PUBLIC WORKS	(218,519)	PW211 CITY CENTER CIRCLE SIDEWALKS	
CAPITAL OUTLAY/CIP - PUBLIC WORKS	(740,306)	PW153 SIDEWALKS	
CAPITAL OUTLAY/CIP - PUBLIC WORKS	(144,300)	ANNUAL PAVING	
EXPENDITURES	(3,102,530)		
POLICE IMPACT FEES - 310			
PUBLIC SAFETY IMPACT FEES	26,857	ADDITIONAL REVENUE RECEIVED	
REVENUES	26,857		
CONTINGENCY RESERVE	26,857	CONTINGENCY RESERVE	
EXPENDITURES	26,857		
RECREATIONAL IMPACT FEES - 313			
CULTURE/REC IMPACT FEE	204,364	ADDITIONAL REVENUE RECEIVED	
REVENUES	204,364	CONTINGENCY RESERVE	
CONTINGENCY RESERVE	204,364		
EXPENDITURES	204,364		

GENERAL CAPITAL REPLACEMENT - 317
TRANSFER IN - FUND 109
APPROPRIATED FUND BALANCE

3,000,000
(6,570,797)

PW161 CITY HALL REMODEL
APPROPRIATED FUND BALANCE

REVENUES (3,570,797)

REPAIR & MAINTENANCE - BUILDING MAINTENANCE
CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE
CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE
CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE
CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT
CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT
CAPITAL OUTLAY/CIP - FIRE
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PARKS & RECREATION
CAPITAL OUTLAY/CIP - PUBLIC WORKS
CAPITAL OUTLAY/CIP - PUBLIC WORKS
CAPITAL OUTLAY/CIP - STORMWATER

(129,879) BM241 POLICE DEPARTMENT HVAC
(544,255) BM241 POLICE DEPARTMENT HVAC
(107,700) BM213 POLICE IMPOUND YARD
(621,189) BM222 PUBLIC WORKS REMODEL
(98,921) BM223 FIRE STATION 74 CEILING & HVAC
(255,126) CD206 DOWN UNDER REVITALIZATION
(134,904) CD221 SUNTRAIL ST JOHNS RIVER-TO-SEA
(35,017) CD241 HMGP HURRICANE NICOLE
(67,924) CD242 HMGP HURRICANE IAN
(28,560) FR231 BURN ROOM
(140,588) PK162 PLAYGROUND REPLACEMENT
(331,246) PK211 BALLFIELD LAMP REPLACEMENT
(848,970) PK221 PARKS OFFICE BUILDING
(318,674) PK223 FLOATING DOCKS S. CAUSEWAY PARK
(277,397) PK224 SPRUCE CREEK RD PARK CONCESSION RESTROOM
(692,685) PK241 MEMORIAL PARK BOARDWALK REPLACEMENT
(104,722) PK242 RIVERWALK DAY DOCKS
(336,773) PK243 CITY CENTER BALLFIELD REHAB
(105,933) PK244 AMPHITHEATER SEATING REPLACEMENT
(287,923) PK245 CITY CENTER RESTROOM & CONCESSION
(175,653) PW223 RESURFACING PARKING LOTS - CITY FACILITIES
3,000,000 PW161 CITY HALL REMODEL
(926,760) SW213 CITY CENTER IMPROVEMENTS

EXPENDITURES (3,570,797)

WATER AND SEWER - 401
TRANSFER IN - FUND 405
APPROPRIATED FUND BALANCE

24,523
(25,572,546)

TRANSFER IN - FUND 405
APPROPRIATED FUND BALANCE

REVENUES (25,548,023)

CAPITAL OUTLAY/CIP
CAPITAL OUTLAY - WASTEWATER
CAPITAL OUTLAY - WATER/SEWER DISTRIBUTION
CAPITAL OUTLAY - UTILITY ADMIN
TRANSFER OUT - FUND 403

(648,735) FN221 TYLER PROJECT
(183,750) BYPASS PUMPS AND ROOF FOR OPERATIONS CONTROL BUILDING #4
(20,250) PORTABLE AIR COMPRESSOR AND PIPELINE/LATERAL CAMERAS FOR CUE TRUCK
24,523 DEMO DEVON ST
(24,719,811) WATER & SEWER CIP PROJECTS

EXPENDITURES (25,548,023)

WATER AND SEWER R&R - 403			
DEBT PROCEEDS		(11,250,000)	DEBT PROCEEDS
TRANSFER IN - FUND 401		(24,719,811)	TRANSFER IN - FUND 401
	REVENUES	(35,969,811)	
WATER & SEWER ENGINEERING		(199,732)	PU001 ENGINEERING COST PARTICIPATION
WATER & SEWER ENGINEERING		(474,563)	PU002 TELEMETRY I&C WASTEWATER
WATER & SEWER ENGINEERING		(717,515)	PU003 WATER RECLAMATION FACILITY R&R
WATER & SEWER ENGINEERING		(427,967)	PU005 SEWER SYSTEM REHABILITATION
WATER & SEWER ENGINEERING		(4,384,570)	PU006 WATER SYSTEM REPLACEMENT
WATER & SEWER ENGINEERING		(881,185)	PU008 WRF REPLACE EXISTING LIFT STATIONS
WATER & SEWER ENGINEERING		(345,974)	PU012 UTILITIES MASTER PLAN
WATER & SEWER ENGINEERING		(5,036,809)	PU184 SEWER SYSTEM FORCE MAIN RIVER CROSSING
WATER & SEWER ENGINEERING		(1,149,426)	PU185 GENERATOR REPLACEMENT
WATER & SEWER ENGINEERING		(5,894,684)	PU205 FIELD OPERATIONS NEW FACILITY
WATER & SEWER ENGINEERING		(2,151,382)	PU211 WRF - FILTER REHABILITATION
WATER & SEWER ENGINEERING		(1,213,634)	PU212 WATER SYSTEM 16" MAIN RIVER CROSSING
WATER & SEWER ENGINEERING		(878,871)	PU222 OCEANS LIFT STATION REHAB
WATER & SEWER ENGINEERING		(880,818)	PU223 CHRISTIANCY LIFT STATION REHAB
WATER & SEWER ENGINEERING		(322,744)	PU224 STORAGE BARN FOR FORESTRY EQUIPMENT
WATER & SEWER ENGINEERING		(321,575)	PU233 LOWES/GATEWAY LIFT STATION REHAB
WATER & SEWER ENGINEERING		(1,069,895)	PU234 WILLIAMSON REGIONAL LIFT STATION REHAB
WATER & SEWER ENGINEERING		(652,479)	PU235 SUGAR FOREST LIFT STATION REHAB
WATER & SEWER ENGINEERING		(1,753,171)	PU237 EAST MASTER LIFT STATION
WATER & SEWER ENGINEERING		(687,895)	PU240 WRF EMERGENCY POWER UPGRADES
WATER & SEWER ENGINEERING		(480,000)	PU241 HALIFAX ESTATES LIFT STATION REHAB
WATER & SEWER ENGINEERING		(135,000)	PU242 PONCE INLET MASTER LIFT STATION
WATER & SEWER ENGINEERING		(525,000)	PU243 SOUTHERN PINES LIFT STATION REHAB
WATER & SEWER ENGINEERING		(768,750)	PU244 WATERS EDGE LIFT STATION
WATER & SEWER ENGINEERING		(768,750)	PU245 WATERS EDGE LIFT STATION #42
WATER & SEWER ENGINEERING		(359,925)	PU246 LEISURE CIR SEWER IMPROVEMENTS
WATER & SEWER ENGINEERING		(1,500,000)	PU247 RECLAIMED LAKE IMPROVEMENTS A&B
WATER & SEWER ENGINEERING		(1,875,000)	PU248 WRF UPGRADES
WATER & SEWER ENGINEERING		(112,500)	PU249 SOUTH PENINSULA FORCE MAIN UPGRADES
	EXPENDITURES	(35,969,811)	
WATER AND SEWER IMPACT FEES - 405			
APPROPRIATED FUND BALANCE		24,523	APPROPRIATED FUND BALANCE
	REVENUES	24,523	
TRANSFER OUT - FUND 401		24,523	DEMO DEVON ST
	EXPENDITURES	24,523	

STORMWATER UTILITY - 412			
TRANSFER IN - 416	350,000	TRANSFER IN - 416	
APPROPRIATED FUND BALANCE	(4,964,006)	APPROPRIATED FUND BALANCE	
REVENUES	(4,614,006)		
CAPITAL OUTLAY - STORMWATER	(7,500)	CUTTERS FOR ROOT REMOVAL	
CAPITAL OUTLAY - LAND	350,000	MADELYNE ST LAND PURCHASE	
TRANSFER OUT - 412	(4,956,506)	STORMWATER CIP PROJECTS	
EXPENDITURES	(4,614,006)		
STORMWATER UTILITY CAPITAL PROJECTS - 413			
FEDERAL GRANT REVENUE	(259,706)	FEMA GRANT	
TRANSFER IN - 412	(4,956,506)	TRANSFER IN - 412	
REVENUES	(5,216,212)		
CAPITAL OUTLAY/CIP - STORMWATER	(247,698)	SW173 STORMWATER MASTER PLAN	
CAPITAL OUTLAY/CIP - STORMWATER	(399,580)	SW181 DRAINAGE R&R	
CAPITAL OUTLAY/CIP - STORMWATER	(33,750)	SW211 SOUTHWINDS STORMWATER PUMP STATION	
CAPITAL OUTLAY/CIP - STORMWATER	(142,500)	SW212 WHITE PL & RIVERSIDE DRAINAGE IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(926,761)	SW213 CITY CENTER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(2,557,468)	SW221 JACKSON ST STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(180,000)	SW231 FREEMANVILLE DRAINAGE IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(56,250)	SW232 VIKING DR STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(259,705)	SW241 CAMBRIDGE CANAL PUMP STATION UPGRADES	
CAPITAL OUTLAY/CIP - STORMWATER	(300,000)	SW242 NOVA CANAL REGIONAL STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	(112,500)	SW243 PORTONA STORMWATER IMPROVEMENTS	
EXPENDITURES	(5,216,212)		
2005 STORMWATER UTILITY REVENUE BOND - 414			
INTEREST	14,777	ADDITIONAL REVENUE RECEIVED	
REVENUES	14,777		
CONTINGENCY RESERVE	14,777	CONTINGENCY RESERVE	
EXPENDITURES	14,777		
WETLAND MITIGATION CREDIT - 416			
INTEREST	21,430	ADDITIONAL REVENUE RECEIVED	
APPROPRIATED FUND BALANCE	328,570	APPROPRIATED FUND BALANCE	
REVENUES	350,000		
TRANSFER OUT - FUND 412	350,000	MADELYNE AVE FROM FUND 420	
EXPENDITURES	350,000		

FORESTRY MANAGEMENT - 420			
APPROPRIATED FUND BALANCE	(672,744)	APPROPRIATED FUND BALANCE	
REVENUES	(672,744)		
CAPITAL OUTLAY - LAND	(350,000)	MOVE TO WETLAND MITIGATION	
CAPITAL OUTLAY/CIP - WATER & SEWER ENGINEERING	(322,744)	PU224 STORAGE BARN FOR FORESTRY EQUIPMENT	
EXPENDITURES	(672,744)		
DATA PROCESSING - 501			
APPROPRIATED FUND BALANCE	(19,296)	APPROPRIATED FUND BALANCE	
REVENUES	(19,296)		
CAPITAL OUTLAY - INFORMATION TECHNOLOGY	(19,296)	IT151 MAINTAIN HARDWARE INFRASTRUCTURE	
EXPENDITURES	(19,296)		
LEASE & REPLACEMENT - 505			
DEBT PROCEEDS	(270,000)	DEBT PROCEEDS	
APPROPRIATED FUND BALANCE	(1,345,997)	APPROPRIATED FUND BALANCE	
REVENUES	(1,615,997)		
CAPITAL OUTLAY - STORMWATER	(108,353)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - COMMUNITY DEVELOPMENT	(35,601)	VEHICLES	
CAPITAL OUTLAY - FIRE	(6,538)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - POLICE	(536,539)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - BUILDING MAINTENANCE	(45,463)	VEHICLES	
CAPITAL OUTLAY - PUBLIC WORKS	(106,531)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - PARKS & RECREATION	(129,512)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - GOLF COURSE	(49,088)	VEHICLES AND EQUIPMENT CAPITAL	
CAPITAL OUTLAY - WATER PRODUCTION	(58,808)	VEHICLES	
CAPITAL OUTLAY - WASTEWATER	(451,088)	VEHICLES	
CAPITAL OUTLAY - WATER/SEWER DISTRIBUTION	(24,617)	VEHICLES	
CAPITAL OUTLAY - UTILITY LAB	(30,113)	VEHICLES	
CAPITAL OUTLAY - UTILITY ADMIN	(33,750)	VEHICLES	
EXPENDITURES	(1,615,997)		
	REVENUES		
	(77,250,128)		
	EXPENDITURES		
	(77,250,128)		
	VARIANCE		
	-		



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C10) Resolution No. 24-47 - Capital Encumbrance and Project Balance Roll forward Budget Amendment for Fiscal Year 2024-2025

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-47.

SUMMARY: This is the Capital Encumbrance and Project Balance Roll forward budget amendment from Fiscal Year 2024.

Staff requests the Council amend the Fiscal Year 2024-2025 budget by revising the budget in total pursuant to itemization contained in Exhibit "A" of the Resolution.

Highlights of the budget amendments include:

1. The capital encumbrances budget roll forward from fiscal year 2024 to 2025 for the following items that have not yet been received by the City or have ongoing payments:

- Greens Mower
- HVAC Chiller Rental for the Police Department through December 2024
- Miscellaneous Vehicles City Wide
- 12-Yard Dump Trucks (2)
- Utility Vehicle
- Police SUVs

2. The prior Year Project remaining budget roll forward from fiscal year 2024 to 2025 for some of the following construction projects that have not yet been completed:

- North Commonwealth water system replacement
- Public Utilities Operations Facility
- Jackson Street Stormwater Improvements

PRESENTER: John McKinney

ATTACHMENTS:

1.	Resolution No 24-47 w exhibit	Resolution No 24-47 w exhibit.pdf
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John McKinney	Created/Initiated - 11/1/2024
John McKinney	Approved - 11/1/2024
Matthew Jones	Approved - 11/13/2024
Wayne Clark	Final Approval - 11/14/2024

RESOLUTION NO. 24-47

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, PERTAINING TO BUDGET ADJUSTMENTS FOR FISCAL YEAR 2024-25; PROVIDING APPROVAL FOR ADJUSTMENTS OF 2024-2025 BUDGET ADJUSTMENTS; PROVIDING FOR SCRIVENER'S ERRORS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on September 18, 2024, the City of Port Orange, adopted Resolution 24-39 approving the City's total operating and capital budgets for Fiscal Year 2024-25; and

WHEREAS, in order to recognize unanticipated revenues and expenditures, it is necessary to make adjustments to the City's 2024-25 operating budget.

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

Section 1. Approval of 2024-2025 Budget Adjustments. The City's 2024-25 Operating Budget is hereby adjusted as set forth in **Exhibit "A"** attached hereto. As applicable, the transfer of funds may be made from any legally acceptable source.

Section 2. The budget items adopted in the preceding section shall govern the expenditures relating to such items for the City during the ensuing fiscal year effective October 1, 2024, through September 30, 2025.

Section 3. Supplemental appropriations, reductions of appropriations, emergency appropriations, and interdepartmental transfers of appropriations may be affected by the City

Council and the City Manager as deemed necessary in strict compliance with the procedures specified in Chapter 2, Article VI, Division 3, Code of Ordinances, City of Port Orange, Florida.

Section 4. Scrivener's Errors. Typographical errors and other matters of a similar nature that do not affect the intent of this Resolution, as determined by the City Clerk and City Attorney, may be corrected.

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin Fenwick, MMC, City Clerk

Adopted on the _____ day of November 2024

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



Exhibit "A"

AMENDED BUDGET FISCAL YEAR 2024-25

Fund	Description	Adopted Resolution 24-38	Resolution 24-47	Amended Budget
001	General Fund	\$ 61,190,570	4,061,756	\$ 65,252,326
010	National Opioid Litigation	44,687	83,445	128,132
011	Recreation Scholarship	22,450	-	22,450
019	Federal Disaster Fund	135,895	3,061,737	3,197,632
102	Tax Increment - Eastport	633,196	-	633,196
103	Tax Increment - Town Center	431,297	-	431,297
106	Recreational Facilities	246,700	32,363	279,063
109	Building & Inspections	2,649,016	-	2,649,016
111	Police Impact Fee	109,785	-	109,785
112	Fire Impact Fee	72,660	-	72,660
113	Transportation Impact Fee	273,530	-	273,530
313	Recreation Impact Fee	212,774	-	212,774
120	Police Benefit Trust	4,500	-	4,500
121	Police Forfeiture	70,000	-	70,000
122	Police Education Trust	10,000	-	10,000
123	Federal Police Forfeiture	15,000	-	15,000
199	Grant Special Revenue	5,134,124	-	5,134,124
214	Debt Services GO	901,838	-	901,838
217	Debt Services Eastport Tax Note	234,511	-	234,511
218	Debt Services Town Center Bonds	402,369	-	402,369
220	Debt Services Bonds	1,147,356	-	1,147,356
221	202X GO Bond Debt	30,000,000	-	30,000,000
301	Capital Projects	7,475,829	3,256,707	10,732,536
317	General Capital Replacement	5,827,865	8,761,063	14,588,928
321	Parks Bond Capital Projects	10,000,000	-	10,000,000
401	Water/Sewer	31,644,162	49,190,543	80,834,705
402	Wetland Mitigation	96,968	-	96,968
403	Water/Sewer R&R	5,450,000	48,053,563	53,503,563
404	SRF Debt Service	784,846	-	784,846
405	Water Impact Fee	679,627	-	679,627
406	WasteWater Impact Fee	0	-	-
409	Forestry	319,536	430,325	749,861
410	Solid Waste	10,708,138	-	10,708,138
412	Stormwater Utility	5,988,199	6,618,675	12,606,874
413	Stormwater Capital	9,252,488	6,954,949	16,207,437
414	Drainage Bond Sinking	699,004	-	699,004
450	Golf Course Operating	2,619,067	-	2,619,067
501	Information Technology	3,833,844	25,728	3,859,572
503	Fleet Maintenance	1,693,226	-	1,693,226
504	Risk Management	2,238,409	-	2,238,409
505	Lease & Replacement	2,466,256	2,154,663	4,620,919
Grand Total:		\$ 205,719,722	\$ 132,685,517	\$ 338,405,239

**Exhibit "A" DETAIL FOR RES. 24-47
ROLL FORWARD BUDGET ADJUSTMENT REQUEST**

FUND	ACCOUNT DESCRIPTION	ADJUSTMENT REQUEST	DESCRIPTION
GENERAL FUND - 001			
	APPROPRIATED FUND BALANCE	4,061,756	APPROPRIATED FUND BALANCE
	REVENUES	4,061,756	
	CONTRACTUAL SERVICES - COMMUNITY DEVELOPMENT	46,400	CORRECTION
	CAPITAL OUTLAY - PARKS AND RECREATION	106,213	PK201 RE-SOD/RENOVATIONS SPORTS FIELD
	CAPITAL OUTLAY - PUBLIC WORKS	196,042	PW183 STANDBY POWER GENERATOR & PW232 WOOD BRIDGE R&R
	CAPITAL OUTLAY - FIRE	93,941	FR221 STATION BASED ALERTING SYSTEM & EQUIPMENT CAPITAL
	CAPITAL OUTLAY - BUILDING MAINTENANCE	500,000	BM224 CITY HALL ELEVATORS
	CAPITAL OUTLAY - COMMUNITY DEVELOPMENT	3,165,560	BRISTOL LAND
	EXPENDITURES	4,061,756	
NATIONAL OPIOID LITIGATION SETTLEMENT - 010			
	OPIOID LITIGATION SETTLEMENT REVENUE	83,445	OPIOID LITIGATION SETTLEMENT REVENUE
	REVENUES	83,445	
	CAPITAL OUTLAY - FIRE	83,445	LUCAS DEVICE
	EXPENDITURES	83,445	
FEDERAL DISASTER - 019			
	FEDERAL GRANT REVENUE	3,061,737	FEMA GRANT
	REVENUES	3,061,737	
	CONTRACTUAL SERVICES	61,737	EM221 HURRICANE IAN
	CONTRACTUAL SERVICES	3,000,000	EM241 HURRICANE MILTON
	EXPENDITURES	3,061,737	
RECREATION FACILITY - 106			
	APPROPRIATED FUND BALANCE	32,363	APPROPRIATED FUND BALANCE
	REVENUES	32,363	
	CAPITAL OUTLAY - PARKS & RECREATION	32,363	PK152 YMCA REPAIRS
	EXPENDITURES	32,363	

CAPITAL PROJECTS - 301

APPROPRIATED FUND BALANCE

3,256,707

APPROPRIATED FUND BALANCE

REVENUES

3,256,707

REPAIR & MAINTENANCE - PUBLIC WORKS

7,479

PW152 STREET STRIPING

REPAIR & MAINTENANCE - PUBLIC WORKS

110,052

PW232 ROAD RESURFACING & RECONSTRUCTION

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

202,250

CD173 YORKTOWNE NORTH SEGMENT

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

371,316

CD184 SIDEWALK BUNDLE

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

438,944

CD205 CLYDE MORRIS TURN LANE BUNDLE

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

901,096

CD215 DUNLAWTON/YORKTOWNE TURN LANE BUNDLE

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

564,266

CD244 WILLIAMSON & WILLOW RUN SIDEWALKS

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

41,655

CD245 US1 EB DUNLAWTON TURN LANE

CAPITAL OUTLAY/CIP - PUBLIC WORKS

42,149

PW224 OAK ST RAILROAD CROSSING

CAPITAL OUTLAY/CIP - PUBLIC WORKS

291,359

PW211 CITY CENTER CIRCLE SIDEWALKS

CAPITAL OUTLAY/CIP - PUBLIC WORKS

93,741

PW153 SIDEWALKS

CAPITAL OUTLAY/CIP - PUBLIC WORKS

192,400

ANNUAL PAVING

EXPENDITURES

3,256,707

GENERAL CAPITAL REPLACEMENT - 317

APPROPRIATED FUND BALANCE

8,761,063

APPROPRIATED FUND BALANCE

REVENUES

8,761,063

REPAIR & MAINTENANCE - BUILDING MAINTENANCE

173,172

BM241 POLICE DEPARTMENT HVAC

CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE

725,674

BM241 POLICE DEPARTMENT HVAC

CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE

143,600

BM213 POLICE IMPOUND YARD

CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE

828,252

BM222 PUBLIC WORKS REMODEL

CAPITAL OUTLAY/CIP - BUILDING MAINTENANCE

131,894

BM223 FIRE STATION 74 CEILING & HVAC

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

340,168

CD206 DOWN UNDER REVITALIZATION

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

179,872

CD221 SUNTRAIL ST JOHNS RIVER-TO-SEA

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

46,689

CD241 HMGP HURRICANE NICOLE

CAPITAL OUTLAY/CIP - COMMUNITY DEVELOPMENT

90,565

CD242 HMGP HURRICANE IAN

CAPITAL OUTLAY/CIP - FIRE

38,080

FR231 BURN ROOM

CAPITAL OUTLAY/CIP - PARKS & RECREATION

187,451

PK162 PLAYGROUND REPLACEMENT

CAPITAL OUTLAY/CIP - PARKS & RECREATION

441,661

PK211 BALLFIELD LAMP REPLACEMENT

CAPITAL OUTLAY/CIP - PARKS & RECREATION

1,131,959

PK221 PARKS OFFICE BUILDING

CAPITAL OUTLAY/CIP - PARKS & RECREATION

424,899

PK223 FLOATING DOCKS S. CAUSEWAY PARK

CAPITAL OUTLAY/CIP - PARKS & RECREATION

369,862

PK224 SPRUCE CREEK RD PARK CONCESSION RESTROOM

CAPITAL OUTLAY/CIP - PARKS & RECREATION

923,580

PK241 MEMORIAL PARK BOARDWALK REPLACEMENT

CAPITAL OUTLAY/CIP - PARKS & RECREATION

139,629

PK242 RIVERWALK DAY DOCKS

CAPITAL OUTLAY/CIP - PARKS & RECREATION

449,030

PK243 CITY CENTER BALLFIELD REHAB

CAPITAL OUTLAY/CIP - PARKS & RECREATION

141,244

PK244 AMPHITHEATER SEATING REPLACEMENT

CAPITAL OUTLAY/CIP - PARKS & RECREATION

383,898

PK245 CITY CENTER RESTROOM & CONCESSION

CAPITAL OUTLAY/CIP - PUBLIC WORKS

234,204

PW223 RESURFACING PARKING LOTS - CITY FACILITIES

CAPITAL OUTLAY/CIP - STORMWATER

1,235,681

SW213 CITY CENTER IMPROVEMENTS

EXPENDITURES

8,761,063

WATER AND SEWER - 401			
APPROPRIATED FUND BALANCE	49,190,543	APPROPRIATED FUND BALANCE	
REVENUES	49,190,543		
CAPITAL OUTLAY/CIP	864,980	FN221 TYLER PROJECT	
CAPITAL OUTLAY - WASTEWATER	245,000	BYPASS PUMPS AND ROOF FOR OPERATIONS CONTROL BUILDING #4	
CAPITAL OUTLAY - WATER/SEWER DISTRIBUTION	27,000	PORTABLE AIR COMPRESSOR AND PIPELINE/LATERAL CAMERAS FOR CUE TRUCK	
TRANSFER OUT - FUND 403	48,053,563	WATER & SEWER CIP PROJECTS	
EXPENDITURES	49,190,543		
WATER AND SEWER R&R - 403			
TRANSFER IN - FUND 401	48,053,563	TRANSFER IN - FUND 401	
REVENUES	48,053,563		
WATER & SEWER ENGINEERING	266,309	PU001 ENGINEERING COST PARTICIPATION	
WATER & SEWER ENGINEERING	632,750	PU002 TELEMETRY I&C WASTEWATER	
WATER & SEWER ENGINEERING	956,687	PU003 WATER RECLAMATION FACILITY R&R	
WATER & SEWER ENGINEERING	570,622	PU005 SEWER SYSTEM REHABILITATION	
WATER & SEWER ENGINEERING	5,846,094	PU006 WATER SYSTEM REPLACEMENT	
WATER & SEWER ENGINEERING	1,174,913	PU008 WRF REPLACE EXISTING LIFT STATIONS	
WATER & SEWER ENGINEERING	461,299	PU012 UTILITIES MASTER PLAN	
WATER & SEWER ENGINEERING	6,715,745	PU184 SEWER SYSTEM FORCE MAIN RIVER CROSSING	
WATER & SEWER ENGINEERING	1,532,568	PU185 GENERATOR REPLACEMENT	
WATER & SEWER ENGINEERING	7,859,579	PU205 FIELD OPERATIONS NEW FACILITY	
WATER & SEWER ENGINEERING	2,868,509	PU211 WRF - FILTER REHABILITATION	
WATER & SEWER ENGINEERING	1,618,178	PU212 WATER SYSTEM 16" MAIN RIVER CROSSING	
WATER & SEWER ENGINEERING	1,171,828	PU222 OCEANS LIFT STATION REHAB	
WATER & SEWER ENGINEERING	1,174,424	PU223 CHRISTIANCY LIFT STATION REHAB	
WATER & SEWER ENGINEERING	430,325	PU224 STORAGE BARN FOR FORESTRY EQUIPMENT	
WATER & SEWER ENGINEERING	428,767	PU233 LOWES/GATEWAY LIFT STATION REHAB	
WATER & SEWER ENGINEERING	1,426,526	PU234 WILLIAMSON REGIONAL LIFT STATION REHAB	
WATER & SEWER ENGINEERING	869,971	PU235 SUGAR FOREST LIFT STATION REHAB	
WATER & SEWER ENGINEERING	2,337,561	PU237 EAST MASTER LIFT STATION	
WATER & SEWER ENGINEERING	917,193	PU240 WRF EMERGENCY POWER UPGRADES	
WATER & SEWER ENGINEERING	640,000	PU241 HALIFAX ESTATES LIFT STATION REHAB	
WATER & SEWER ENGINEERING	180,000	PU242 PONCE INLET MASTER LIFT STATION	
WATER & SEWER ENGINEERING	700,000	PU243 SOUTHERN PINES LIFT STATION REHAB	
WATER & SEWER ENGINEERING	1,025,000	PU244 WATERS EDGE LIFT STATION	
WATER & SEWER ENGINEERING	1,025,000	PU245 WATERS EDGE LIFT STATION #42	
WATER & SEWER ENGINEERING	479,900	PU246 LEISURE CIR SEWER IMPROVEMENTS	
WATER & SEWER ENGINEERING	2,000,000	PU247 RECLAIMED LAKE IMPROVEMENTS A&B	
WATER & SEWER ENGINEERING	2,500,000	PU248 WRF UPGRADES	
WATER & SEWER ENGINEERING	150,000	PU249 SOUTH PENINSULA FORCE MAIN UPGRADES	
WATER & SEWER ENGINEERING	93,815	WTP TRANSFER PUMP STATION MODIFICATION	
EXPENDITURES	48,053,563		
FORESTRY MANAGEMENT - 409			
APPROPRIATED FUND BALANCE	430,325	APPROPRIATED FUND BALANCE	
REVENUES	430,325		
CAPITAL OUTLAY/CIP - WATER & SEWER ENGINEERING	430,325	PU224 STORAGE BARN FOR FORESTRY EQUIPMENT	
EXPENDITURES	430,325		

STORMWATER UTILITY - 412			
APPROPRIATED FUND BALANCE	6,618,675	APPROPRIATED FUND BALANCE	
REVENUES	6,618,675		
CAPITAL OUTLAY - STORMWATER	10,000	CUTTERS FOR ROOT REMOVAL	
TRANSFER OUT - 412	6,608,675	STORMWATER CIP PROJECTS	
EXPENDITURES	6,618,675		
STORMWATER UTILITY CAPITAL PROJECTS - 413			
FEDERAL GRANT REVENUE	346,274	FEMA GRANT	
TRANSFER IN - 412	6,608,675	TRANSFER IN - 412	
REVENUES	6,954,949		
CAPITAL OUTLAY/CIP - STORMWATER	330,264	SW173 STORMWATER MASTER PLAN	
CAPITAL OUTLAY/CIP - STORMWATER	532,773	SW181 DRAINAGE R&R	
CAPITAL OUTLAY/CIP - STORMWATER	45,000	SW211 SOUTHWINDS STORMWATER PUMP STATION	
CAPITAL OUTLAY/CIP - STORMWATER	190,000	SW212 WHITE PL & RIVERSIDE DRAINAGE IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	1,235,681	SW213 CITY CENTER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	3,409,957	SW221 JACKSON ST STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	240,000	SW231 FREEMANVILLE DRAINAGE IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	75,000	SW232 VIKING DR STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	346,274	SW241 CAMBRIDGE CANAL PUMP STATION UPGRADES	
CAPITAL OUTLAY/CIP - STORMWATER	400,000	SW242 NOVA CANAL REGIONAL STORMWATER IMPROVEMENTS	
CAPITAL OUTLAY/CIP - STORMWATER	150,000	SW243 PORTONA STORMWATER IMPROVEMENTS	
EXPENDITURES	6,954,949		
DATA PROCESSING - 501			
APPROPRIATED FUND BALANCE	25,728	APPROPRIATED FUND BALANCE	
REVENUES	25,728		
CAPITAL OUTLAY - INFORMATION TECHNOLOGY	25,728	IT151 MAINTAIN HARDWARE INFRASTRUCTURE	
EXPENDITURES	25,728		

LEASE & REPLACEMENT - 505

DEBT PROCEEDS

360,000

MASTER LEASE

APPROPRIATED FUND BALANCE

1,794,663

APPROPRIATED FUND BALANCE

REVENUES

2,154,663

CAPITAL OUTLAY - STORMWATER

144,471

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - COMMUNITY DEVELOPMENT

47,468

VEHICLES

CAPITAL OUTLAY - FIRE

8,717

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - POLICE

715,385

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - BUILDING MAINTENANCE

60,617

VEHICLES

CAPITAL OUTLAY - PUBLIC WORKS

142,041

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - PARKS & RECREATION

172,682

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - GOLF COURSE

65,450

VEHICLES AND EQUIPMENT CAPITAL

CAPITAL OUTLAY - WATER PRODUCTION

78,410

VEHICLES

CAPITAL OUTLAY - WASTEWATER

601,450

VEHICLES

CAPITAL OUTLAY - WATER/SEWER DISTRIBUTION

32,822

VEHICLES

CAPITAL OUTLAY - UTILITY LAB

40,150

VEHICLES

CAPITAL OUTLAY - UTILITY ADMIN

45,000

VEHICLES

EXPENDITURES

2,154,663

REVENUES

132,685,517

EXPENDITURES

132,685,517

VARIANCE

-



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C11) Resolution No. 24-48 - Accepting the grant award from the U.S. Department of Justice FY24 Patrick Leahy Bulletproof Vest Partnership Project in the amount of \$29,233.97.

DEPARTMENT: Police Services

GOAL: 1 - Public Safety
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No 24-48.

SUMMARY: The U.S. Department of Justice has approved the City's grant application for the FY24 Patrick Leahy Bulletproof Vest Partnership Project, awarding \$29,233.97 to fund slightly less than half of the costs to purchase 37 bulletproof vests for the Police Department. The cost share for this project in the amount of \$29,966.03 has been budgeted as part of the FY25 budget for the Police Department. The total cost to purchase 37 vests is \$59,200.00.

PRESENTER: Manuel Marino

ATTACHMENTS:

1.	Resolution No. 24-48	Resolution No. 24-48.pdf
2.	FY24 Port Orange BVP Award	FY24 Port Orange BVP Award.pdf
3.	FY24 FLorida BVP Awards	FY24 FLorida BVP Awards.pdf

Manuel Marino
Manuel Marino
John McKinney
Matthew Jones
Wayne Clark

Created/Initiated - 10/28/2024
Approved - 10/28/2024
Approved - 10/29/2024
Approved - 11/6/2024
Final Approval - 11/13/2024

RESOLUTION NO.24-48

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) 2024 Grant for the purchase of bulletproof vests; and

WHEREAS, the U.S. Department of Justice 2024 Patrick Leahy Bulletproof Vest Partnership (BVP) approved the grant application in the amount of \$29,233.97 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 2024 Patrick Leahy Bulletproof Vest Partnership Grant in the amount of \$29,233.97.

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 _____, 2024

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

APPLICATION DETAILS

APPLICATION PROFILE

Participant	PORT ORANGE CITY
Fiscal Year	2024
Number of Agencies Applied	0
Total Number of Officers for Application	96
Number of Officers on Approved Applications	96

APPLICATION PROFILE

Fiscal Year	2024
Vest Replacement Cycle 	5
Number of Officers	96
Number of Emergency Replacement or Needs 	Number of Stolen or Damaged
	0

	Number of Officer Turnover	44
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APPLICATION DETAILS

NIJ#	Quantity	Unit Price	Extended Cost	Tax Shipping and Handling	Total Cost
HW- 2019- 01-SB	37	\$1,600.00	\$59,200.00	\$0.00	\$59,200.00
Grand Totals	37		\$59,200.00	\$0.00	\$59,200.00

AWARD SUMMARY FOR FY2024 REGULAR FUND

Funds Type	Eligible Amount	Award	Date Approved	Status
Regular Fund	\$59,200.00	\$29,233.97	09/26/24	Approved by BVP

Funds Type	Eligible Amount	Award	Date Approved	Status
Grand Totals:	\$59,200.00	\$29,233.97		

RETURN

CT	NAUGATUCK BOROUGH	\$15,604.62
CT	NEW BRITAIN CITY	\$19,752.68
CT	NEWINGTON TOWN	\$15,730.54
CT	NORWICH CITY	\$7,555.40
CT	ORANGE TOWN	\$2,172.80
CT	PLAINVILLE TOWN	\$1,481.44
CT	PLYMOUTH TOWN	\$4,113.50
CT	SEYMOUR TOWN	\$8,789.95
CT	SOUTH WINDSOR TOWN	\$2,725.87
CT	SOUTHBURY TOWN	\$1,447.88
CT	TRUMBULL TOWN	\$9,481.29
CT	VERNON TOWN	\$7,632.44
CT	WATERTOWN TOWN	\$6,399.08
CT	WEST HARTFORD TOWN	\$4,444.36
CT	WEST HAVEN CITY	\$18,666.28
CT	WESTPORT TOWN	\$4,839.41
CT	WETHERSFIELD TOWN	\$2,088.85
CT	WILTON TOWN	\$7,245.29
CT	WINCHESTER TOWN	\$3,456.72
CT	WINDHAM TOWN	\$3,057.72
	Totals for CT(47 Jurisdictions):	\$329,578.86
DE	BETHANY BEACH TOWN	\$2,933.28
DE	FENWICK ISLAND TOWN	\$2,554.03
DE	LAUREL TOWN	\$4,227.08
DE	MIDDLETOWN TOWN	\$4,212.26
DE	MILFORD CITY	\$10,199.79
DE	MILLSBORO TOWN	\$2,760.59
DE	NEW CASTLE CITY	\$1,057.76
DE	NEWARK CITY	\$11,252.22
DE	SEAFORD CITY	\$3,362.66
DE	WILMINGTON CITY	\$34,115.89
	Totals for DE(10 Jurisdictions):	\$76,675.56
FL	ALTAMONTE SPRINGS CITY	\$11,341.99
FL	APOPKA CITY	\$9,777.58
FL	ATLANTIC BEACH CITY	\$4,273.90
FL	ATLANTIS CITY	\$1,801.45
FL	AVENTURA CITY	\$8,888.71
FL	BAKER COUNTY	\$7,901.08
FL	BELLEAIR TOWN	\$1,619.72
FL	BOCA RATON CITY	\$84,442.70
FL	BRADENTON CITY	\$13,518.24
FL	CASSELBERRY CITY	\$5,881.36
FL	CHIEFLAND CITY	\$6,750.04
FL	CHIPLEY CITY	\$1,032.08
FL	CLERMONT CITY	\$23,332.85
FL	CLEWISTON CITY	\$3,222.16
FL	COCOA BEACH CITY	\$8,064.04
FL	COCOA CITY	\$13,262.45
FL	COCONUT CREEK CITY	\$25,496.23

FL	COLUMBIA COUNTY	\$7,057.46
FL	DADE CITY	\$2,859.20
FL	DAVENPORT CITY	\$1,301.83
FL	DAYTONA BEACH SHORES CITY	\$4,725.83
FL	DE FUNIAK SPRINGS CITY	\$6,479.03
FL	DELAND CITY	\$9,486.23
FL	DESOTO COUNTY	\$4,296.21
FL	EATONVILLE TOWN	\$7,506.02
FL	EDGEWATER CITY	\$5,252.74
FL	FELLSMERE CITY	\$641.59
FL	FERNANDINA BEACH CITY	\$9,218.11
FL	FLAGLER BEACH CITY	\$1,603.97
FL	FLORIDA CITY	\$4,365.84
FL	FORT MYERS CITY	\$17,431.74
FL	FRUITLAND PARK CITY	\$859.25
FL	FT PIERCE CITY	\$11,999.76
FL	GREEN COVE SPRINGS CITY	\$3,133.87
FL	GROVELAND CITY	\$10,296.32
FL	GULF STREAM TOWN	\$4,348.06
FL	GULFPORT CITY	\$1,718.49
FL	HAINES CITY	\$2,879.95
FL	HALLANDALE CITY	\$14,724.24
FL	HARDEE COUNTY	\$3,733.26
FL	HILLSBORO BEACH TOWN	\$6,672.46
FL	HOWEY IN THE HILLS TOWN	\$2,666.62
FL	INDIALANTIC CITY	\$629.54
FL	INDIAN HARBOUR BEACH CITY	\$2,700.89
FL	INDIAN SHORES TOWN	\$1,214.79
FL	JUNO BEACH TOWN	\$4,961.23
FL	JUPITER ISLAND TOWN	\$2,469.09
FL	JUPITER TOWN	\$11,315.37
FL	KISSIMMEE CITY	\$25,915.52
FL	LADY LAKE TOWN	\$4,320.90
FL	LAKE CITY	\$2,538.36
FL	LARGO CITY	\$16,888.54
FL	LEESBURG CITY	\$5,036.94
FL	LIGHTHOUSE POINT CITY	\$2,940.45
FL	LONGWOOD CITY	\$4,271.52
FL	MANALAPAN TOWN	\$3,111.05
FL	MARGATE CITY	\$10,583.71
FL	MARIANNA CITY	\$1,774.78
FL	MASCOTTE CITY	\$2,774.19
FL	MELBOURNE BEACH TOWN	\$1,244.78
FL	MELBOURNE CITY	\$5,777.67
FL	MIAMI SHORES CITY	\$2,133.29
FL	MICCOSUKEE TRIBE	\$4,098.69
FL	MOUNT DORA CITY	\$8,175.52
FL	NAPLES CITY	\$8,888.71
FL	NEW SMYRNA BEACH CITY	\$4,222.14

FL	NORTH BAY VILLAGE CITY	\$14,221.93
FL	NORTH MIAMI CITY	\$16,789.78
FL	NORTH PALM BEACH VILLAGE	\$3,436.97
FL	NORTH PORT CITY	\$10,666.45
FL	OAKLAND TOWN	\$2,175.96
FL	OCALA CITY	\$29,344.58
FL	OCEAN RIDGE TOWN	\$1,385.46
FL	OCOOEE CITY	\$32,147.49
FL	OKEECHOBEE COUNTY	\$19,876.14
FL	PALM BEACH GARDENS CITY	\$17,708.28
FL	PALM BEACH TOWN	\$10,100.78
FL	PALM SPRINGS VILLAGE	\$9,333.14
FL	PANAMA CITY	\$8,296.13
FL	PENSACOLA CITY	\$13,703.42
FL	PINECREST VILLAGE	\$4,667.91
FL	PINELLAS PARK CITY	\$12,888.63
FL	PLANT CITY	\$5,196.93
FL	PLANTATION CITY	\$24,843.93
FL	PONCE INLET TOWN	\$1,924.77
FL	PORT ORANGE CITY	\$29,233.97
FL	PUNTA GORDA CITY	\$4,938.17
FL	PUTNAM COUNTY	\$15,289.32
FL	RIVIERA BEACH CITY	\$4,348.66
FL	ROCKLEDGE CITY	\$10,791.88
FL	SANFORD CITY	\$18,221.85
FL	SARASOTA CITY	\$28,562.38
FL	SEBASTIAN CITY	\$12,100.99
FL	SEBRING CITY	\$2,609.83
FL	SEMINOLE TRIBE OF FLORIDA	\$15,847.58
FL	SUNRISE CITY	\$30,814.30
FL	TARPON SPRINGS CITY	\$8,390.14
FL	TAVARES CITY	\$2,992.54
FL	TEMPLE TERRACE CITY	\$5,333.23
FL	TEQUESTA VILLAGE	\$7,493.48
FL	TITUSVILLE CITY	\$11,110.89
FL	UMATILLA CITY	\$937.27
FL	VENICE CITY	\$6,509.03
FL	VERO BEACH CITY	\$5,563.98
FL	WAKULLA COUNTY	\$20,276.13
FL	WAUCHULA CITY	\$2,654.27
FL	WEST MELBOURNE CITY	\$4,940.64
FL	WILDWOOD CITY	\$3,555.49
FL	WILTON MANORS CITY	\$8,888.71
FL	WINTER HAVEN CITY	\$4,913.48
FL	WINTER PARK CITY	\$14,904.46
	Totals for FL(111 Jurisdictions):	\$1,033,783.68
GA	ACWORTH CITY	\$8,229.46
GA	ADAIRSVILLE CITY	\$1,155.54
GA	ALBANY CITY	\$21,483.51



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C12) Resolution No. 24-49 - Florida Green Finance Authority's Incorporation of Supplemental Statutory Requirements Pursuant to SB 770 for Florida's PACE Act

DEPARTMENT: City Attorney

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve Resolution No. 24-49.

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, 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.

Senate Bill 770, codified in Chapter 2024-273, Laws of Florida and effective July 1, 2024, provided several amendments to Florida's PACE Act in order to enhance certain protections for consumers entering into PACE contracts, ensure oversight for contractors that install improvements, and expand the universe of improvements this financing may be utilized to install. In addition, Section 9 provides, *"A current contract, agreement, authorization, or interlocal agreement between a county or municipality and a program administrator entered into before July 1, 2024, shall continue without additional action by the county or municipality. However, the program administrator must comply with this act, and any contract, agreement, authorization, or interlocal agreement must be amended to comply with this act."*

The Florida Green Finance Authority ("FGFA") is one of the program administrators for the Property Assessed Clean Energy ("PACE") program operating within the City pursuant to the Party Membership Agreement executed between the City and Florida Green Finance Authority in May 2020 and of record in Official Records Book 7856, Page 972, Public Records of Volusia County, Florida ("Party Membership Agreement"). In an effort to comply with existing agreement requirements and the new mandate in Section 9, the FGFA recorded a *Notice of Compliance and Addendum to Second Amended and Restated Interlocal Agreement Forming the Florida Green Finance Authority as Required by State Law* ("Notice of Compliance") on July 1, 2024, in the

Resolution No. 24-49 affirms and acknowledges FGFA's incorporation of the additional statutory requirements set forth in SB 770 to supplement FGFA'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. Once approved, the City will record Resolution No. 24-49 in the Public Records, Volusia County, Florida, as a supplement to the Party Membership Agreement.

PRESENTER: Matthew Jones

ATTACHMENTS:

1.	Resolution No. 24-49 w exhibit	Resolution No. 24-49 w exhibit.pdf
2.	Florida Green Finance Authority Acknowledgement for SB770	Florida Green Finance Authority Acknowledgement for SB770 .pdf

Amanda Bonin	Created/Initiated - 11/6/2024
Matthew Jones	Approved - 11/6/2024
John McKinney	Approved - 11/7/2024
Matthew Jones	Approved - 11/7/2024
Wayne Clark	Final Approval - 11/13/2024

RESOLUTION NO. 24-49

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, SUPPLEMENTING THE AUTHORITY OF FLORIDA GREEN FINANCE AUTHORITY (FGFA) 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 FGFA and recorded in the Official Records Book 7856, Page 972, 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, Senate Bill 770, codified at Chapter 2024-273, Laws of Florida and effective July 1, 2024 ("SB 770"), provides several amendments to Florida's PACE Act, requiring amendment to the Agreement to include additional statutory provisions; and

WHEREAS, FGFA has supplemented the Agreement for the purpose of statutory compliance as evidenced by the execution and recording of *NOTICE OF COMPLIANCE AND ADDENDUM TO SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FORMING THE FLORIDA GREEN FINANCE AUTHORITY AS REQUIRED BY STATE LAW*, of record by Instrument No. CFN 20240701800002, Public Records, Palm Beach County, Florida ("Notice and Addendum"); and

WHEREAS, the City Council desires to affirm and acknowledge the FGFA's incorporation of the supplemental requirements of Senate Bill 770 pursuant to the Notice and Addendum, referenced hereinabove.

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. The City hereby affirms and acknowledges FGFA's incorporation of the additional statutory requirements set forth in SB 770 to supplement FGFA'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, as evidenced by the execution and recording of *NOTICE OF COMPLIANCE AND ADDENDUM TO SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FORMING THE FLORIDA GREEN FINANCE AUTHORITY AS REQUIRED BY STATE LAW*, of record by Instrument No. CFN 20240701800002, Public Records, Palm Beach County, Florida, attached hereto as **Exhibit "A"**, and made a part hereof by this reference.

SECTION 3. The Mayor and City Clerk are hereby authorized to execute all necessary documents to implement the intent of this Resolution.

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

SECTION 6. This Resolution No. 24-49 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, Senior Assistant City Attorney

EXHIBIT "A"

Prepared by and after
recording return to:
Amity Barnard, Esq.
Davis & Associates, P.A.
701 Northpoint Parkway, Suite 205
West Palm Beach, FL 33407

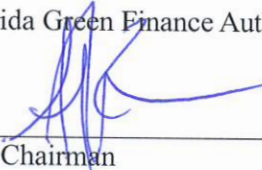
CFN 20240701800002
OR BK PG
RECORDED 7/1/2024 11:17 AM
Palm Beach County, Florida
Joseph Abruzzo, Clerk
Pgs: - ; (1pgs)

NOTICE OF COMPLIANCE AND ADDENDUM TO SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FORMING THE FLORIDA GREEN FINANCE AUTHORITY AS REQUIRED BY STATE LAW

Section 9 of Senate Bill 770, enacted as Chapter No. 2024-273, Laws of Florida, effective July 1, 2024, requires the Florida Green Finance Authority to amend any contract, agreement, authorization or interlocal agreement to comply with the new law. As required by state law, this notice shall attach to the Second Amended and Restated Interlocal Agreement Forming the Florida Green Finance Authority dated May 9, 2016 and originally recorded at Book 28757, Page 0813-0858 of the Official Records of Palm Beach County, Florida to confirm that all references to Section 163.08, Florida Statutes therein shall hereinafter also include newly enacted Sections 163.081 through 163.087, Florida Statutes. Effective July 1, 2024, the Florida Green Finance Authority's PACE Program shall comply with newly enacted Sections 163.081 through 163.087, Florida Statutes.



Florida Green Finance Authority

By:  for

Chairman

By: 

Amity Barnard, Assistant General Counsel



Acknowledgment and Agreement

Dear Florida Green Finance Authority,

This Acknowledgment and Agreement is to confirm that the City of Port Orange is in receipt of your correspondence dated September 5, 2024 regarding Senate Bill 770, codified at Chapter 2024-273, Laws of Florida, and effective July 1, 2024.

We hereby acknowledge and agree that the Florida Green Finance Authority has incorporated the requirements of Senate Bill 770 for the purpose of statutory compliance as evidenced by the execution and recording of *NOTICE OF COMPLIANCE AND ADDENDUM TO SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT FORMING THE FLORIDA GREEN FINANCE AUTHORITY AS REQUIRED BY STATE LAW*, of record by Instrument No. CFN 20240701800002, Public Records, Palm Beach County, Florida, and can continue to operate its PACE program within the City pursuant to Sections 163.08 and 163.081-087, Florida Statutes (Florida's amended PACE Act) without any further action.

City of Port Orange, a Florida municipal corporation

By: _____

Donald O. Burnette, Mayor

Date: _____

Attest: _____

Robin L. Fenwick, MMC City Clerk



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C13) Resolution No. 24-50 - Master Lease Purchase Agreement for Public Safety and Public Works Equipment with Truist Commercial Equity, Inc.

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-50 and authorize the Mayor and staff to execute all master lease agreement documents with Truist Commercial Equity, Inc.

SUMMARY: With the assistance of Southeastern Investment Securities, LLC, Staff submitted a request to quote to several qualified financial institutions to finance police interceptors, a fire engine, and Public Works vehicles and equipment approved as part of the Fiscal Year 2025 budget.

The City received three quotes in accordance with our Debt Issuance policy. Staff and Southeastern Investment Securities, LLC have reviewed all the proposals and recommend awarding it to Truist Commercial Equity, Inc. at an interest rate of 3.60% for the five-year lease term and 3.67% for the seven-year lease term, the attached terms for an amount not to exceed \$3,295,000.

The City first used a Master Lease Agreement in 2023 with TD Equipment Finance; however, this will be the first with Truist Commercial Equity, Inc. This Capital Lease will require a new master lease for the City to utilize tax-exempt financing for the purchase of vehicles rather than outright purchases.

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

PRESENTER: Linda Truitt

ATTACHMENTS:

1.	PO 2024 Capital Lease Quotes Recommendation	PO 2024 Capital Lease Quotes memo_bid tab 11.11.24 .pdf
2.	Truist Port Orange_Gov Fund_Tax-Exempt Term Sheet_\$2.385M Various Veh.Equipt final	Truist Port Orange_Gov Fund_Tax-Exempt Term Sheet_\$2.385M Various Veh.Equipt final.pdf

3.	Truist Port Orange_Gov Fund_Tax-Exempt Term Sheet_\$910M Police Intercept final	Truist Port Orange_Gov Fund_Tax-Exempt Term Sheet_\$910M Police Intercept final.pdf
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John McKinney

Created/Initiated - 11/1/2024

John McKinney

Approved - 11/12/2024

Matthew Jones

New -

Wayne Clark

MEMORANDUM

TO: John McKinney, Finance Director

CC: Wayne Clark, Matt Jones, Tim Bramwell

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

RE: Capital Leases Request for Financing Quotes

DATE: November 11, 2024

The City, through its Procurement office, solicited request for quotes from financial institutions for capital leases on First Responder Interceptors, Fire Engine, and Public Works Vehicles and Equipment (“Fire & Public Works Leases”) (Police Interceptors in an aggregate amount not exceeding \$910,000.00 with a lease term of five years and Fire & Public Works Leases in an aggregate amount not exceeding \$2,385,000 with a lease term of seven years).

Quotes were received from three financial institutions which were all conforming to the City’s Request for Quotes.

Based upon the quotes received, we recommend an award to the low and best quotes in the aggregate amount of \$ 3,295,000 to **Truist Commercial Equity, Inc. (“Truist”)**, a division affiliate of Truist Bank at a locked in not to exceed interest rate of 3.60% for the five year lease term and 3.67% for the seven year lease term. As noted on the bid tabulation attached herein, these rates were lower by 0.20% on the five year leases and 0.25% on the seven year leases than the next lowest quotes of each piece of equipment.

Further, together with staff, we recommend the adoption of an Authorizing Resolution and Master Lease prepared by the City’s Bond Counsel, Akerman LLP, permitting the issuance and award of the two leases to **Truist** at the City Council meeting of November 19, 2024.

Thank you.

\$3,295,000 Port Orange Capital Leases

Summary of Quotes

LENDER	Bank of America	TRUIST	TD BANK
Fixed Interest Rate (Police Interceptors)	3.8074%	3.60%	A) 4.04% B) 4.10%
Fixed Interest Rate Fire and Public Works Equipment/Vehicles	3.919%	3.67%	A) 4.08% B) 4.15%
Prepayments	Prepayable at par after first half of term	Make Whole	A) Greater of 101% or Yield Maintenance B) 101%
Other Considerations	Bank pays its legal counsel	City pays bank legal counsel not to exceed \$ 13,000.	Bank pays its legal counsel



City of Port Orange, FL

Term Sheet

November 8, 2024

Truist Bank (“Bank”), on behalf of itself and its designated affiliate (the “Lender”), is pleased to submit the following summary of terms and conditions for discussion purposes only. The term sheet is non-binding and does not represent a commitment to lend. The term sheet is intended only as an outline of certain material terms of the requested financing and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in any definitive documentation for the requested financing.

Borrower:	City of Port Orange, FL								
Lender:	Truist Commercial Equity, Inc.								
Facility/Purpose/Description:	BQ, Tax Exempt direct bank loan evidenced by an installment Purchase Agreement (the “Agreement”). Proceeds of the agreement will provide funding for the purchase of various vehicles and equipment as outlined in the RFP. Maturity: 7 years.								
Amount:	Up to \$2,385,000.								
Funding:	The Loan will be funded in a single advance on the closing date.								
Repayment:	Installment payments of principal and interest with interest payments commencing six months following closing, and with payment continuing semiannually thereafter until the final term of the Lease is reached.								
Interest Rate:	FIXED RATE <table><tr><td>Maturity Date</td><td>Tax-Exempt</td><td>Interest Rate</td></tr><tr><td>7 years</td><td>Tax-Exempt</td><td>3.67%</td></tr></table> Accrual basis: 30/360 The fixed interest rate for the Loan will be subject to increase in the event of a Determination of Taxability. **This rate is available through December 8, 2025. The Borrower understands that the market interest rates are subject to change. The Borrower also understands that in the event the Facility is funded during the Rate Lock Period, the Rate will become the effective interest rate for the Facility even if market interest rates are lower than the Rate at the			Maturity Date	Tax-Exempt	Interest Rate	7 years	Tax-Exempt	3.67%
Maturity Date	Tax-Exempt	Interest Rate							
7 years	Tax-Exempt	3.67%							

	time the Facility is funded.
Prepayment:	Pursuant to the Lease Purchase Agreement.
Security:	The City's obligation to make installment payments will be subject to annual appropriation. The City's obligation under the Agreement will be further secured by a security interest in the equipment being financed. The financing shall be secured by a contractual obligation of the City to make semi-annual payments of interest and annual payments of principal, all subject to annual appropriation.
Documentation:	All documentation shall appropriately structure the financing according to Federal and State statutes, subject to acceptable review by Lender and its counsel. The bond will not be presented for payment unless required by documentation.
Covenants:	Usual and customary covenants, reporting requirements, representations and warranties and events of default, for transactions of this type, including, without limitation, the following financial covenants and reporting requirements: • Annual Financial Statements within 270 days of fiscal year end. • Annual budget within 30 days of adoption. Events and Remedies of Default pursuant to the Master Lease Purchase Agreement.
Conditions Precedent and Other Terms:	1. <u>Borrower's Counsel Opinion</u>: An opinion of Borrower's counsel covering matters customary to transactions such as this and in all respects acceptable to the Bank, the Lender, and its counsel. 2. <u>Bond Counsel Opinion</u>: An approving opinion of bond counsel related to the Loan in form and substance satisfactory to the Lender, which shall include, without limitation, an opinion that the interest component is excludable from gross income for Federal income tax purposes and that the Loan is a qualified tax-exempt obligation in accordance with the Internal Revenue Code. 3. <u>Other Items</u>: The Bank and the Lender shall have received such other documents, instruments, approvals, or opinions as may be reasonably requested.
Lender's Legal Counsel	The Lender's legal counsel will be Michael Wiener at Holland & Knight. Estimated fees for the closing of the Loan will be \$6,500 and shall be paid by the Borrower, whether or not the Loan described herein is closed.
Governing Law & Jurisdiction:	State of FL
Municipal Advisor Disclosure:	The Bank is a regulated bank and makes direct purchase loans to Municipal Entities and Obligated Persons as defined under the Municipal Advisor Rule, and in this term sheet is solely providing information regarding the terms under which it would make such a purchase for its own account. The Bank is not recommending an action or providing any advice to the Borrower and is not acting as a municipal advisor or financial advisor. The Bank is not serving in a fiduciary capacity pursuant to Section 15B of the Securities

	Exchange Act of 1934 with respect to the information and material contained in this communication. The Bank is acting in its own interest. Before acting on the information or material contained herein, the Borrower should seek the advice of an IRMA and any other professional advisors which it deems appropriate for the Loan described herein, especially with respect to any legal, regulatory, tax or accounting treatment.
Patriot Act:	Pursuant to the requirements of the Patriot Act, the Bank and its affiliates are required to obtain, verify and record information that identifies loan obligors, which information includes the name, address, tax identification number and other information regarding obligors that will allow Lender to identify obligors in accordance with the Patriot Act, and Lender is hereby so authorized. This notice is given in accordance with the requirements of the Patriot Act and is effective for the Bank and its affiliates.
Expiration Date:	This Term Sheet shall expire on December 8, 2024 unless a formal commitment letter has been issued prior to such date.



City of Port Orange, FL

Term Sheet

November 8, 2024

Truist Bank (“Bank”), on behalf of itself and its designated affiliate (the “Lender”), is pleased to submit the following summary of terms and conditions for discussion purposes only. The term sheet is non-binding and does not represent a commitment to lend. The term sheet is intended only as an outline of certain material terms of the requested financing and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in any definitive documentation for the requested financing.

Borrower:	City of Port Orange, FL								
Lender:	Truist Commercial Equity, Inc.								
Facility/Purpose/Description:	BQ, Tax Exempt direct bank loan evidenced by an installment Purchase Agreement (the “Agreement”). Proceeds of the agreement will provide funding for the purchase of 13 Police Interceptors. Maturity: 5 years.								
Amount:	Up to \$910,000.								
Funding:	The Loan will be funded in a single advance on the closing date.								
Repayment:	Installment payments of principal and interest with interest payments commencing six months following closing, and with payment continuing semiannually thereafter until the final term of the Lease is reached.								
Interest Rate:	FIXED RATE <table><tr><td>Maturity Date</td><td>Tax-Exempt</td><td>Interest Rate</td></tr><tr><td>5 years</td><td>Tax-Exempt</td><td>3.60%</td></tr></table> Accrual basis: 30/360 The fixed interest rate for the Loan will be subject to increase in the event of a Determination of Taxability. **This rate is available through December 8, 2025. The Borrower understands that the market interest rates are subject to change. The Borrower also understands that in the event the Facility is funded during the Rate Lock Period, the Rate will become the effective interest rate for the Facility even if market interest rates are lower than the Rate at the			Maturity Date	Tax-Exempt	Interest Rate	5 years	Tax-Exempt	3.60%
Maturity Date	Tax-Exempt	Interest Rate							
5 years	Tax-Exempt	3.60%							

	time the Facility is funded.
Prepayment:	Pursuant to the Lease Purchase Agreement.
Security:	The City's obligation to make installment payments will be subject to annual appropriation. The City's obligation under the Agreement will be further secured by a security interest in the equipment being financed. The financing shall be secured by a contractual obligation of the City to make semi-annual payments of interest and annual payments of principal, all subject to annual appropriation.
Documentation:	All documentation shall appropriately structure the financing according to Federal and State statutes, subject to acceptable review by Lender and its counsel. The bond will not be presented for payment unless required by documentation.
Covenants:	Usual and customary covenants, reporting requirements, representations and warranties and events of default, for transactions of this type, including, without limitation, the following financial covenants and reporting requirements: • Annual Financial Statements within 270 days of fiscal year end. • Annual budget within 30 days of adoption. Events and Remedies of Default pursuant to the Master Lease Purchase Agreement.
Conditions Precedent and Other Terms:	1. <u>Borrower's Counsel Opinion</u>: An opinion of Borrower's counsel covering matters customary to transactions such as this and in all respects acceptable to the Bank, the Lender, and its counsel. 2. <u>Bond Counsel Opinion</u>: An approving opinion of bond counsel related to the Loan in form and substance satisfactory to the Lender, which shall include, without limitation, an opinion that the interest component is excludable from gross income for Federal income tax purposes and that the Loan is a qualified tax-exempt obligation in accordance with the Internal Revenue Code. 3. <u>Other Items</u>: The Bank and the Lender shall have received such other documents, instruments, approvals, or opinions as may be reasonably requested.
Lender's Legal Counsel	The Lender's legal counsel will be Michael Wiener at Holland & Knight. Estimated fees for the closing of the Loan will be \$6,500 and shall be paid by the Borrower, whether or not the Loan described herein is closed.
Governing Law & Jurisdiction:	State of FL
Municipal Advisor Disclosure:	The Bank is a regulated bank and makes direct purchase loans to Municipal Entities and Obligated Persons as defined under the Municipal Advisor Rule, and in this term sheet is solely providing information regarding the terms under which it would make such a purchase for its own account. The Bank is not recommending an action or providing any advice to the Borrower and is not acting as a municipal advisor or financial advisor. The Bank is not serving in a fiduciary capacity pursuant to Section 15B of the Securities

	Exchange Act of 1934 with respect to the information and material contained in this communication. The Bank is acting in its own interest. Before acting on the information or material contained herein, the Borrower should seek the advice of an IRMA and any other professional advisors which it deems appropriate for the Loan described herein, especially with respect to any legal, regulatory, tax or accounting treatment.
Patriot Act:	Pursuant to the requirements of the Patriot Act, the Bank and its affiliates are required to obtain, verify and record information that identifies loan obligors, which information includes the name, address, tax identification number and other information regarding obligors that will allow Lender to identify obligors in accordance with the Patriot Act, and Lender is hereby so authorized. This notice is given in accordance with the requirements of the Patriot Act and is effective for the Bank and its affiliates.
Expiration Date:	This Term Sheet shall expire on December 8, 2024 unless a formal commitment letter has been issued prior to such date.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C14) Resolution No. 24-51 - Approval of Grant Agreement for \$750,000 from Florida Inland Navigation District (FIND) for construction of the South Causeway Boat Ramp and Floating Docks Improvements

DEPARTMENT: Finance

GOAL: 3 - Quality of Life and
5 - Fiscal Sustainability

RECOMMENDED MOTION: Move to approve Resolution No. 24-51.

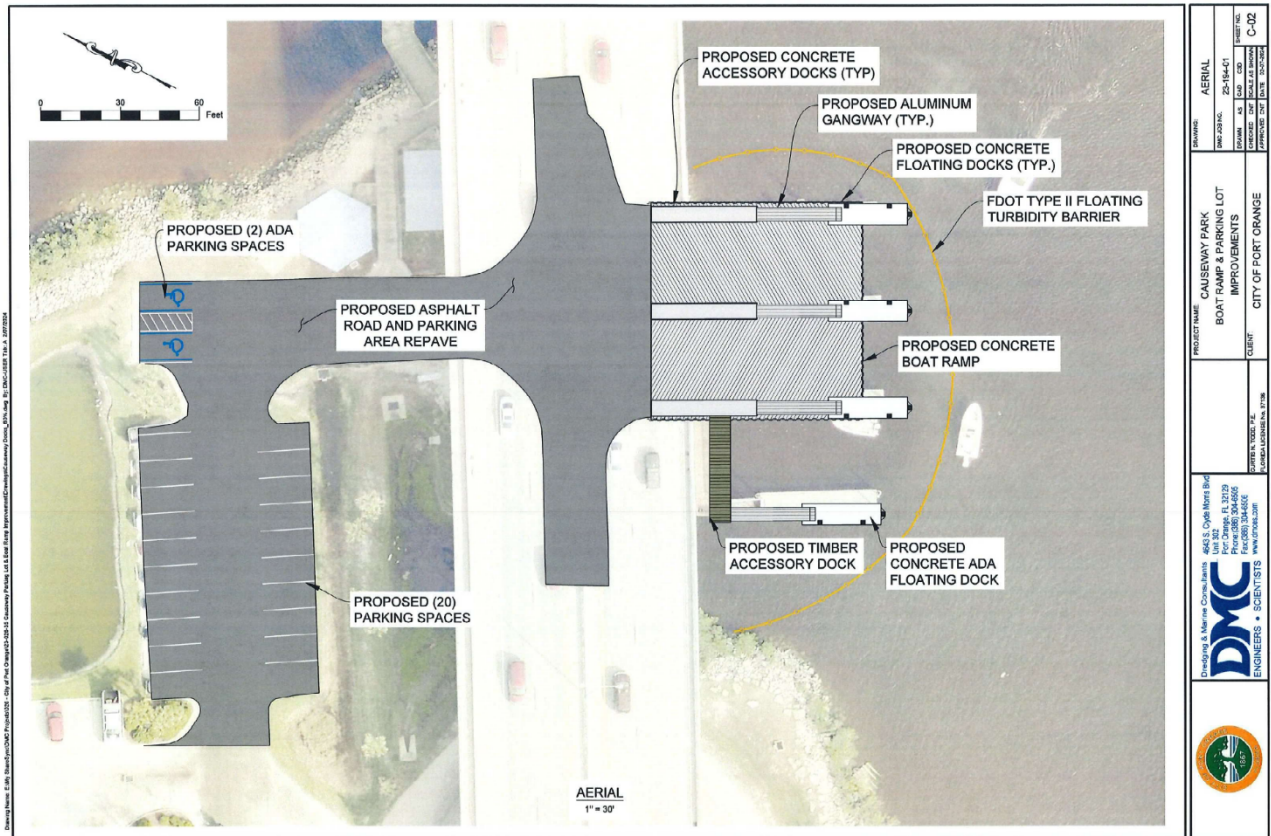
SUMMARY: The Council authorized staff to apply for a Florida Inland Navigation District (FIND) grant by Resolution No. 24-08 in the amount of \$750,000. FIND assists local municipalities with public waterway improvement projects, such as public navigation, public waterway access facilities, waterfront parks, environmental education, and boating safety projects, to be eligible for funding.

The city submitted the application with FIND, aimed at enhancing the infrastructure of the South Causeway Boat Ramp Park. The proposed improvements include various components intended to improve the functionality and safety of the facility.

These enhancements include the reconstruction of the south boat ramp, which includes the removal of sediment at the boat launch and adjustments to ramp slopes to ensure smoother access for boaters. Additionally, the existing fixed accessory wood docks will be replaced with a more versatile and resilient full floating system. Furthermore, the project encompasses upgrades to parking and drainage systems, which involve the reconstruction of the parking area to accommodate up to 22 vehicles, including two designated ADA-compliant parking spaces.

In adherence to the requirements set forth by the FIND grant, the city must contribute a 50% local match. The total estimated cost for the proposed improvements is projected to be \$1,500,000. Simultaneously, the city submitted a funding request of \$600,000 to Volusia ECHO for the match portion of the FIND grant which has been recommended for funding by the advisory committee and will go before the County Council on November 19. The remaining funds for this project have been budgeted as part of the Fiscal Year 2025 budget.

Construction is anticipated to begin in 2025.



PRESENTER: Junos Reed

ATTACHMENTS:

1.	Resolution No. 24-51	Resolution No. 24-51.pdf
2.	FIND Agreement	FIND Agreement.pdf
3.	Reso No 24-08	Reso No 24-08.pdf

John McKinney
Junos Reed
John McKinney
Matthew Jones
Wayne Clark
Tracee Cody

Created/Initiated - 10/23/2024
Approved - 10/24/2024
Approved - 10/29/2024
Approved - 11/5/2024
Approved - 11/13/2024
Final Approval - 11/13/2024

RESOLUTION NO. 24-51

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 \$750,000 FOR RECONSTRUCTION OF THE SOUTH BOAT RAMP AND FLOATING DOCK IMPROVEMENTS AT SOUTH CAUSEWAY PARK; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE ANY AGREEMENTS OR CONTRACTS; 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 reconstruction of the south boat ramp and floating dock improvements at South Causeway Park; and

WHEREAS, the City Council of the City of Port Orange applied for a Florida Inland Navigation District grant in the amount of \$750,000 for the reconstruction of the south boat ramp and floating dock improvements at South Causeway Park; and

WHEREAS, the Florida Inland Navigation District approved the grant in the amount of \$750,000 for the reconstruction of the south boat ramp and floating dock improvements at South Causeway Park; 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 \$750,000 for the reconstruction of the south boat ramp and floating dock improvements at South Causeway Park.

Section 2. The City has committed to the required match contribution that was previously approved in the Fiscal Year 2025 budget.

Section 3. The Mayor and City Clerk are hereby authorized to execute all applicable grant documents and agreements.

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, Senior Assistant City Attorney

**FLORIDA INLAND NAVIGATION DISTRICT
PROJECT AGREEMENT**

PROJECT NO. VO-PO-24-150E

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 Causeway Park South Boat Ramp Improvements. 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, 2026 ("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, 2027. The PROJECT SPONSOR acknowledges this is the only provision to carry over the DISTRICT assistance funding under this AGREEMENT beyond September 30, 2026, 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 \$750,000.00.

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 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** - The PROJECT SPONSOR also agrees that the PROJECT site shall be dedicated for the public use 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 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: Grants Manager, City Manager's Office
1000 City Center Circle
Port Orange, FL 32123

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: _____

Title: _____

Date: _____

Exhibit A
ATTACHMENT E-5

PROJECT COST ESTIMATE

WATERWAY ASSISTANCE PROGRAM FY 2024

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

Project Title:	Port Orange Causeway Park South Boat Ramp Improvements
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)
Mobilization/Demobilization	\$232,000.00	\$116,000.00	\$116,000.00
Construction and As-built Survey	\$ 20,000.00	\$ 10,000.00	\$ 10,000.00
Environmental Compliance	\$ 15,000.00	\$ 7,500.00	\$ 7,500.00
Demolition, Hauling and Disposal	\$ 80,000.00	\$ 40,000.00	\$ 40,000.00
Aluminum Gangways	\$100,000.00	\$ 50,000.00	\$ 50,000.00
Concrete Floating Dock	\$364,000.00	\$182,000.00	\$182,000.00
Fixed Concrete Dock	\$150,000.00	\$ 75,000.00	\$ 75,000.00
Sheet Pile	\$108,000.00	\$ 54,000.00	\$ 54,000.00
Concrete Boat Ramp	\$262,000.00	\$131,000.00	\$131,000.00
Asphalt Pavement & Striping	\$ 55,000.00	\$ 27,500.00	\$ 27,500.00
Limerock Base	\$ 98,000.00	\$ 49,000.00	\$ 49,000.00
Stabilization	\$ 16,000.00	\$ 8,000.00	\$ 8,000.00

**TOTALS =	\$1,500,000.00	\$ 750,000.00	\$ 750,000.00
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Exhibit B 2024
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-2.007	Application Form (Repealed)
66B-2.008	Project Eligibility
66B-2.009	Project Administration
66B-2.010	Project Agreement (Repealed)
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.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Amended 9-2-92, 2-6-97, Formerly 16T-2.003, 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 ongoing 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-2.007 Application Form.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Amended 6-24-93, 2-3-94, 4-12-95, Formerly 16T-2.007, Repealed 7-30-02.

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 \$125,000 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 ongoing 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, 3-11-24.

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-2.010 Project Agreement.

Rulemaking Authority 374.976(2) FS. Law Implemented 374.976(1) FS. History—New 12-17-90, Amended 9-5-96, Formerly 16T-2.010, Amended 3-21-01, Repealed 7-30-02.

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 \$10,000 per project, not to exceed \$30,000 per County, per fiscal year.

(b) The Project Sponsor may contribute in-kind construction labor; such in-kind construction labor costs will be valued at the Independent Sector estimated national value of each volunteer 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, trash removal and management, sign installation, 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, 3-11-24.

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 \$150,000.00 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, 3-11-24.

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, 2024, 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.

FIND Form No. 90-13

(Effective Date: 12-17-90, Revised 7-30-02)

EXHIBIT F

**ASSISTANCE PROGRAM PROJECT
QUARTERLY STATUS REPORT**

PROJECT NO. _____

PROJECT TITLE: _____

PROJECT SPONSOR: _____

REPORT PERIOD (Please place an " X " in front of the report period and complete the year in the table below.)

___ Oct-Dec 20___	___ Jan-Mar 20___	___ April-June 20___	___ July-Sept 20___
Report Due: (Dec 30)	(March 30)	(June 30)	(Sept 30)

WORK ACCOMPLISHED:

PROBLEMS ENCOUNTERED:

PERCENTAGE COMPLETION:

OTHER NOTABLE ITEMS:

EXHIBIT G ASSISTANCE PROJECT SCHEDULE

OCTOBER 2024-	Project Agreement Executed, Project Initiates.
DECEMBER 30, 2024-	First Quarterly Report Due. - Use Quarterly Status Report Form Exhibit F http://www.aicw.org/assistance_programs/waterway_assistance_programs/index.php
MARCH 30, 2025-	Second Quarterly Report Due.
JUNE 30, 2025-	Third Quarterly Report Due.
SEPTEMBER 30, 2025-	Fourth Quarterly Report Due.
DECEMBER 30, 2025-	Fifth Quarterly Report Due.
MARCH 30, 2026-	Sixth Quarterly Report Due.
JUNE 30, 2026-	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 2026 quarterly report.

SEPTEMBER 1-30, 2026- Work on Closeout 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, 2026 - End of Grant. All work must be complete closeout paperwork submitted.
October 2026- finish processing closeout paperwork, perform project inspection and submit final reimbursement check and coordinates check presentation with 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



Resolution No. 24-08

ATTACHMENT E-7

RESOLUTION FOR ASSISTANCE 2024

**UNDER THE FLORIDA INLAND NAVIGATION DISTRICT
WATERWAYS ASSISTANCE PROGRAM**

WHEREAS, THE CITY OF PORT ORANGE is interested in carrying out the following described project for the enjoyment of the citizenry of City of Port Orange, Volusia County and the State of Florida:

Project Title: Port Orange Causeway Park South Boat Ramp Improvements

Total Estimated Cost \$ 1,500,000.00

Brief Description of Project:

The City of Port Orange is seeking funding in the amount of \$750,000 for construction improvements to the existing southeast fixed boat launch ramp at Causeway Park, generally located at 93 Dunlawton Avenue, Port Orange, Florida, with a floating concrete dock arrangement which will match the corresponding dock on the northwest side of the park. Additionally, the parking facility and drainage will be renovated for 22 vehicles including 2 ADA compliant parking spaces. The boat launch ramp and dock were damaged by Hurricane Ian on September 25, 2022 & Hurricane Nicole on November 10, 2022.

AND, Florida Inland Navigation District financial assistance is required for the program mentioned above,

NOW THEREFORE, be it resolved by the City of Port Orange

(Name of Agency)

that the project described above be authorized,

AND, be it further resolved that said City of Port Orange

(Name of Agency)

make application to the Florida Inland Navigation District in the amount of 50 % of the

actual cost of the project in behalf of said City of Port Orange

(Name of Agency)

AND, be it further resolved by the City of Port Orange

(Name of Agency)

that it certifies to the following:

(1)

1. That it will accept the terms and conditions set forth in FIND Rule 66B-2 F.A.C. and which will be a part of the Project Agreement for any assistance awarded under the attached proposal.

2. That it is in complete accord with the attached proposal and that it will carry out the Program in the manner described in the proposal and any plans and specifications attached thereto unless prior approval for any change has been received from the District.

3. That it has the ability and intention to finance its share of the cost of the project and that the project will be operated and maintained at the expense of said _____

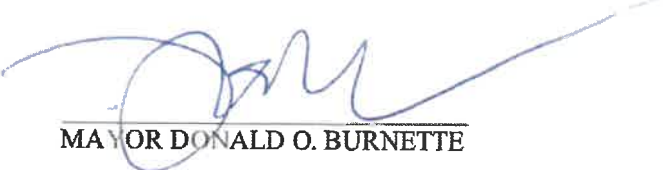
The City of Port Orange for public use.
(Name of Agency)

4. That it will not discriminate against any person on the basis of race, color or national origin in the use of any property or facility acquired or developed pursuant to this proposal, and shall comply with the terms and intent of the Title VI of the Civil Rights Act of 1964, P. L. 88-352 (1964) and design and construct all facilities to comply fully with statutes relating to accessibility by persons with disabilities as well as other federal, state and local laws, rules and requirements.

5. That it will maintain adequate financial records on the proposed project to substantiate claims for reimbursement.

6. That it will make available to FIND if requested, a post-audit of expenses incurred on the project prior to, or in conjunction with, request for the final 10% of the funding agreed to by FIND.

This is to certify that the foregoing is a true and correct copy of a resolution duly and
legally adopted by the City of Port Orange City Council at a legal meeting held on this
(Agency Governing Board)
2 day of April 2024.


MAYOR DONALD O. BURNETTE

ATTEST:


Robin L. Fenwick, MMC, City Clerk

Adopted on the 2 day of April 2024

Reviewed and Approved:


Shannon K. Balmer, Assistant City Attorney





CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C15) Approval of an Amendment to the Administrative Code

DEPARTMENT: City Manager

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to approve the Amendment to the Administrative Code as presented.

SUMMARY: City Charter Article IV. Administrative, Section 4.05 describes the Administrative Code. Adopted by City Council, the Administrative Code sets forth department organization, including a chart depicting the chain of command.

The current Administrative Code reflects a separation of department directors reporting to the City Manager and Assistant City Manager of Internal Services. The Assistant City Manager of Internal Services/Finance Director position has been vacated and will be filled as a Finance Director only.

The Assistant Manager of Community Services will continue to lead city functions that encompass community relations including the Clerk's Office, Code Enforcement, Legislative Affairs, Port Orange University, See Click Fix, and Communications. As the city approaches build-out, strong relationships with our residents and businesses will be critical to ensure we sustain the quality of our community and remain responsive to their needs.

All department directors will report directly to the City Manager with assistance from the Assistant City Manager on the day to day functions, as directed by the City Manager.

The current and proposed organizational charts are attached.

According to the Charter, approval of this amendment by the City Council requires adoption by a vote of four-fifths of the full council.

PRESENTER: Wayne Clark

ATTACHMENTS:

1.	Citywide Organizational Chart 2022	Citywide Organizational Chart 2022 ACM -
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	ACM - CC APPROVAL	CC APPROVAL.docx
2.	Citywide Organizational Chart 2024 update	Citywide Organizational Chart 2024 update.pdf

Robin Fenwick
Wayne Clark

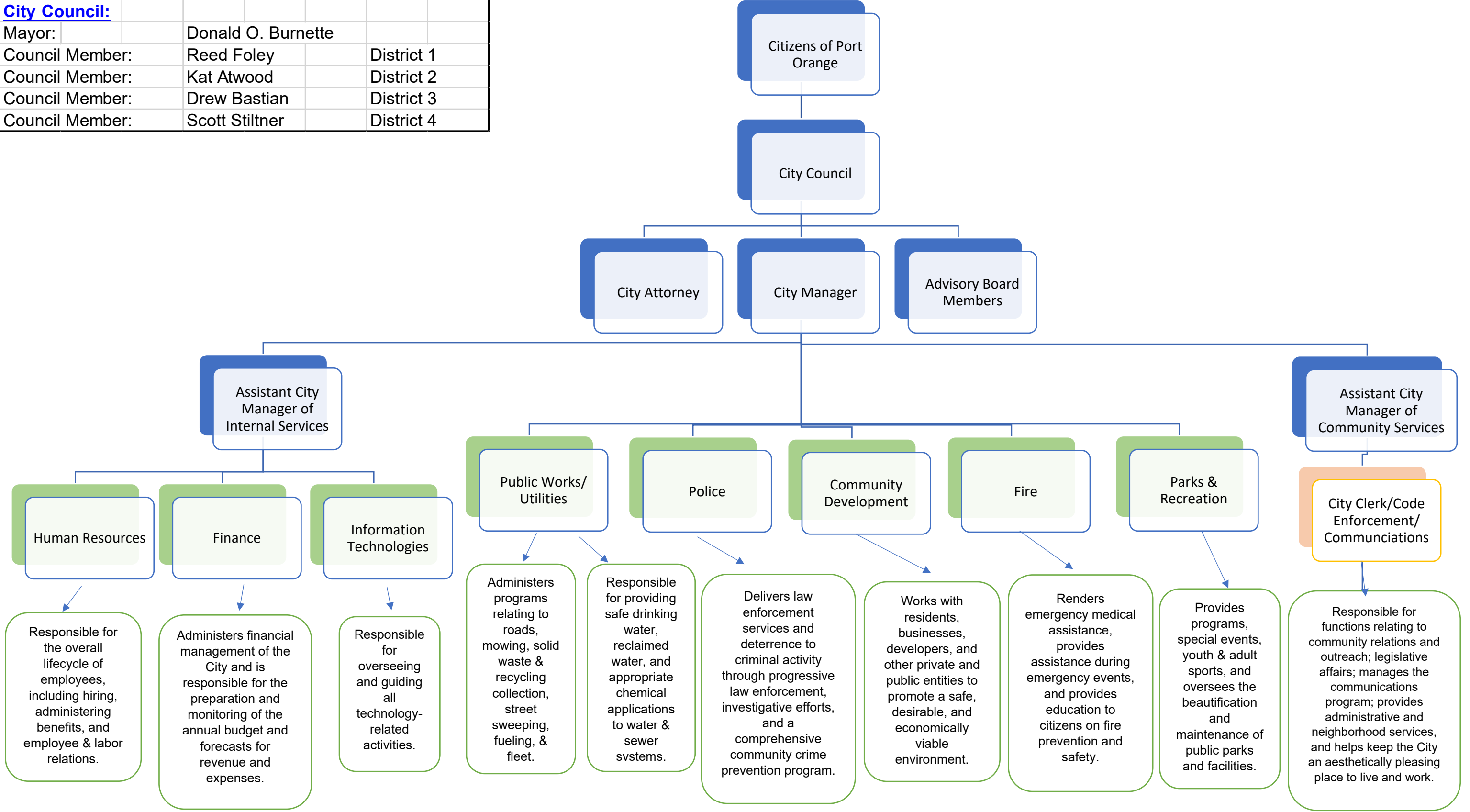
Created/Initiated - 11/13/2024
Final Approval - 11/14/2024

Proposed Administrative Code for the City of Port Orange, Florida

12/06/2022

City Council:

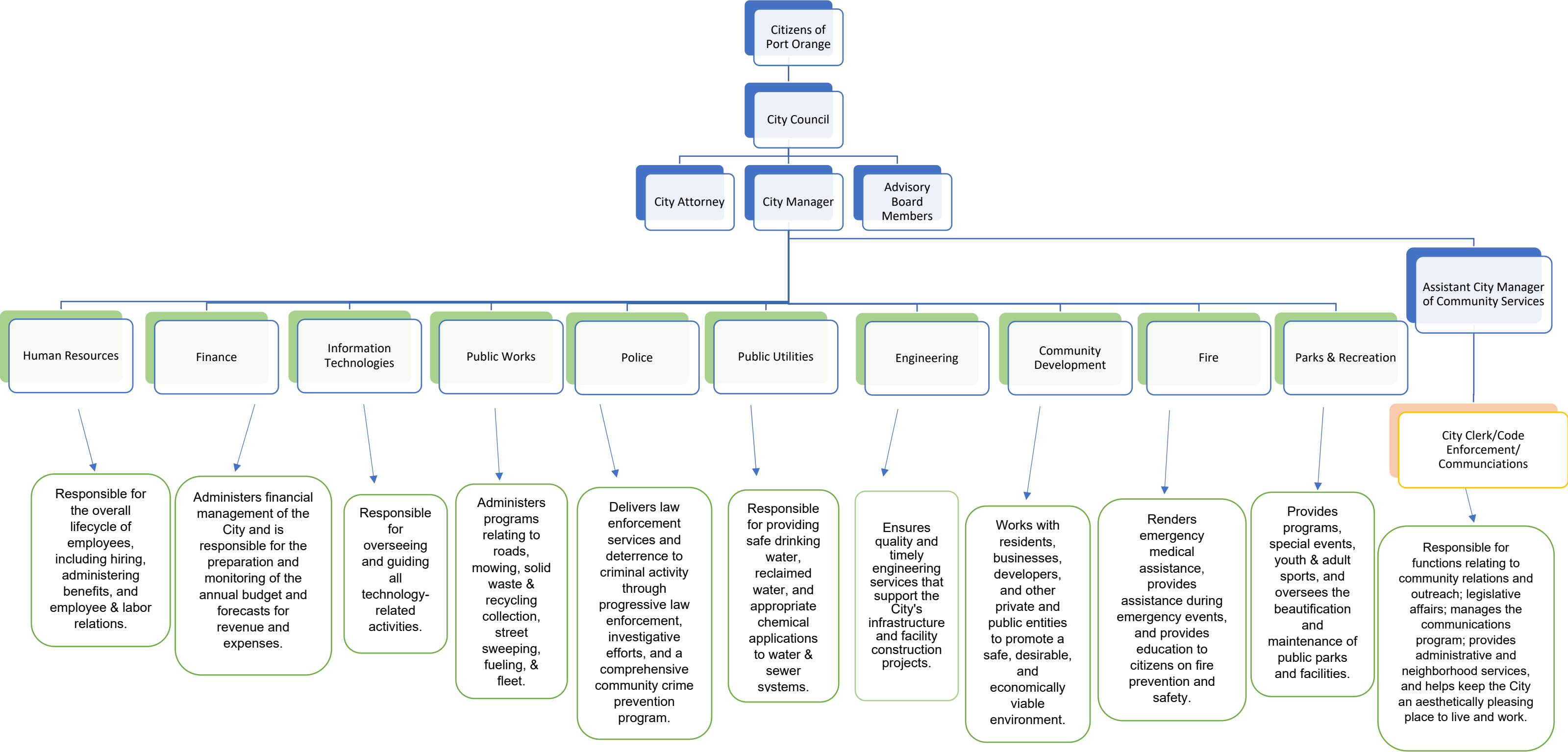
Mayor:	Donald O. Burnette		
Council Member:	Reed Foley	District 1	
Council Member:	Kat Atwood	District 2	
Council Member:	Drew Bastian	District 3	
Council Member:	Scott Stiltner	District 4	



The City Manager has adopted Administrative Policies and Procedures, as may be amended from time to time, establishing rules and procedures applicable to all City employees. Department Heads shall be responsible for establishing the policies and procedures specific to their respective departments which shall be subject to review and approval by the City Manager.

Proposed Administrative Code for the City of Port Orange, Florida

11/12/2024



The City Manager has adopted Administrative Policies and Procedures, as may be amended from time to time, establishing rules and procedures applicable to all City employees.

Department Heads shall be responsible for establishing the policies and procedures specific to their respective departments which shall be subject to review and approval by the City Manager.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C16) Approval of the Purchase of Real Property from Bristol Port Orange Partners, LLC and Acceptance and Approval of Assignments of Purchase and Sale Agreements from Bristol Port Orange Partners, LLC to the City for Purchase of Real Property Parcels adjacent to the City and CRA-Owned Parcels in the Riverwalk Area

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Motions to be handled in related items following.

SUMMARY: At the November 6 City Council/Port Orange Town Center CRA Joint Meeting, the City approved the Third Amendment to the Contract for Sale and Purchase of Real Property with Bristol Port Orange Partners, LLC., ("Third Amendment") which contemplates the City's purchase of the four outparcels currently under contract with or owned by Bristol. In furtherance of the matters agreed to in the Third Amendment, the City is requesting approval to purchase the four outparcels (shown as Outparcels 1–4 on Exhibit A) subject to the terms and conditions of the three contracts being assigned, and one contract with Bristol for the fourth outparcel subject to the purchase price previously paid by Bristol. It is anticipated that the City will hold these properties until Bristol closes on the City's property (Parcels A, B, and C as shown on Exhibit A), and then transfer the four outparcels back to Bristol simultaneously with Bristol's closing of the City's property.

In order for the City to purchase the three outparcels under contract with Bristol (shown as Outparcels 1-3 on Exhibit A), it is necessary for the City to accept the assignments and, thereby, accept the rights and obligations to purchase said outparcels pursuant to the terms and conditions of the contracts being assigned. For the fourth outparcel (shown as Outparcel 4 on Exhibit A), Bristol previously purchased this property in March 2023, and the City will be purchasing this outparcel directly from Bristol, pursuant to the terms and conditions of the contract. According to Bristol, their intent is to close on the City property before December 29, 2025, acquire the four parcels from the City, and begin developing their mixed-use project in 2026.

The combined purchase price for all four outparcels will be \$3,039,000 plus the 4% commission to Colliers, with a total expenditure of \$3,160,560 plus closing costs associated with the outparcel being purchased from Bristol. Because the combined purchase price is more than 15% above the initial appraisal, a second appraisal was required. The average of the appraised values of the outparcels is \$1,876,500. Section 2-274, Code of Ordinances, City of Port Orange Florida, states

that any purchase price over 15% of the appraised value must be approved by a super majority, which in the City's case is 4 out of 5 council members voting in the affirmative.

Pursuant to the terms and conditions of the Contract for Sale and Purchase of Real Property, as amended, Bristol has until December 29, 2025 to close on the City's property (Parcels A, B, and C). If Bristol does not timely close on the City's property, the City would then own the full 11 acres along the east side of Ridgewood Avenue, north of Dunlawton Avenue, along with Parcel B (1.4 acres) and Parcel C (0.86 acres), as shown on Exhibit A, creating a better opportunity for future redevelopment.

Historically, the City has been in pursuit of acquiring all of the properties south of Riverwalk Park in an effort to revitalize the Town Center CRA Riverwalk District. Over time, the City has made strides in property acquisitions to own the current block of property south of Herbert Street to Dunlawton Avenue. The last significant acquisition was in December 2017 when the City was able to acquire five properties that completed the existing configuration of the City property currently under contract with Bristol. The City recognizes the benefits of owning these four outparcels and the significant impact it will have on the future development of this area.

The acquisition of the four outparcels benefits both the City and Bristol by improving the configuration of the land for Bristol's development plans, as well as any other contemplated future redevelopment of said lands. The current configuration/shape of City Parcel A is not uniform and limits its development potential. In an effort to improve the development plans, Bristol pursued and successfully secured these outparcels for purchase. The addition of the four outparcels, along with the City's Parcel A, provides a more uniform and developable property that contemplates expanded opportunity for the development of a project that furthers the goals, policies, and objectives of the City and CRA.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Exhibit A - Outparcel Acquisition	Exhibit A - Outparcel Acquisition.pdf
2.	Exhibit B - List of Bristol Outparcels 11-1-2024	Copy of Bristol Outparcels 11-1-2024.xlsx

Robin Fenwick	Created/Initiated - 11/5/2024
Tim Burman	Approved - 11/5/2024
John McKinney	Approved - 11/5/2024
Shannon Balmer	Approved - 11/14/2024
Wayne Clark	Final Approval - 11/15/2024

(Exhibit A - Parcel Acquisition Graphic)



Bristol Riverwalk O

Address	Business or Use	Acres	Contract Price
113 Herbert Street	Duplex	0.22	\$789,000.00
3855 Ridgewood Avenue	Bob's Bike Shop	0.43	\$1,350,000.00
3921 Ridgewood Avenue	Port Orange Mower Shop	0.09	\$300,000.00
3925 Ridgewood Avenue	Warehouse	0.24	\$600,000.00
Total:		0.98	\$3,039,000.00
Total City Cost for Properties per 3rd PSA			

utparcels

Colliers Commission (4%)	Closing Date Per Contract	Date to Vacate Property Per Contact
\$31,560.00	June 16, 2025	June 16, 2025
\$54,000.00	December 2, 2024	February 28, 2025
\$12,000.00	By December 31, 2024	February 28, 2025
\$24,000.00	Bristol closed in 2023	Currently Vacant
\$121,560.00		
		\$3,160,560.00



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C16a) Assignment of the Contract to Purchase 113 Herbert Street from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #1)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the assignment from Bristol Port Orange Partners, LLC to the City of Port Orange of the contract to purchase, and the purchase of 113 Herbert Street; and authorize Mayor and City Clerk to execute all documents associated with the purchase thereof.

SUMMARY: This item is the Assignment from Bristol Port Orange Partners, LLC to the City of Port Orange of the contract to purchase 113 Herbert Street (Parcel #1 - duplex) (see Exhibit A). According to the contract, the City will purchase this parcel for \$820,560 (purchase price of \$789,000 + Colliers 4% Commission) on Monday, June 16, 2025, and any tenant within the duplex on this property will be required to vacate the property on or before Monday, June 16, 2025.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Exhibit A - Outparcel Acquisition	Exhibit A - Outparcel Acquisition.pdf
2.	113 Herbert St Contract - Fully Executed	113 Herbert St Contract - Fully Executed (002).pdf
3.	FINAL - Addendum for sale and purchase	FINAL - Addendum for sale and purchase.pdf

Robin Fenwick
Tim Burman
John McKinney
Shannon Balmer
Wayne Clark

Created/Initiated - 11/5/2024
Approved - 11/5/2024
Approved - 11/5/2024
Approved - 11/14/2024
Final Approval - 11/14/2024

(Exhibit A - Parcel Acquisition Graphic)



Contract For Sale and Purchase

Joan L. Sheridan, individually and as Trustee of the Joan L. Sheridan Revocable Trust, (collectively, "Seller"), whose address is 113 Herbert Street, Port Orange, FL, and Bristol Development Group, LLC, ("Buyer"), agree that Buyer shall buy and Seller shall sell the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract For Sale and Purchase ("Contract"):

1. PROPERTY DESCRIPTION:

- a. Street Address: 113 Herbert Street, Port Orange, FL 32129
- b. Property is located in: Volusia County, Florida. Full Parcel ID: 630311030050
- c. Legal Description (condensed): The East 105 feet of the West 260 feet of the South 100 feet, Block "C" Wilson's Map of Port Orange, as recorded in Map Book 1, Page 154 of the Public Records of Volusia County, Florida
together with all existing improvements unless specifically excluded by other terms of this Contract.
- d. Personal Property: None.

2. PURCHASE PRICE \$760,000

- (a) Initial deposit ("Initial Deposit") to be held in escrow in the amount of TWENTY THOUSAND and 00/100 Dollars (\$20,000) shall be made payable and delivered to "Escrow Agent" within four (4) days after Effective Date.
- (b) Upon expiration of the Inspection Period, so long as Seller is not in default, the Initial Deposit shall be released to Seller, free and clear, and Buyer shall provide a non-refundable additional deposit ("Additional Deposit") to be held in escrow in the amount of TWENTY FIVE THOUSAND and 00/100 Dollars (\$25,000.00) shall be made payable and delivered to Escrow Agent..
- (c) If the closing does not occur on the Closing Date, the Additional Deposit shall be released to Seller, free and clear, and Buyer shall provide a second non-refundable additional deposit ("2nd Additional Deposit") to be held in escrow in the amount of TWENTY FIVE THOUSAND and 00/100 Dollars (\$25,000.00) shall be made payable and delivered to Escrow Agent.

Escrow Agent: Matthew Welch, Esq., Cobb Cole Law Firm, 149 S. Ridgewood Avenue, Suite 700, Daytona Beach, FL 32115 Ph: (386) 255-8171.

Balance to close (not including Buyer's closing costs as adjusted by Paragraph 9 below, prepaids and prorations) by wire transfer or other COLLECTED funds: \$705,000, if the closing occurs on September 29, 2023. If the closing occurs after September 29, 2023 and before February 29, 2024, and the Additional Deposit and 2nd Additional Deposit have been provided, balance to close (not including Buyer's closing costs as adjusted by Paragraph 9 below, prepaids and prorations) by wire transfer or other COLLECTED funds: \$680,000.

3. TIME FOR ACCEPTANCE; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before , January 12, 2023, this offer shall be deemed withdrawn and the Earnest Money, if any, shall be returned to Buyer.
- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed this offer ("Effective Date").

4. CLOSING DATE:

Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk



parcels consisting of approximately 10 acres but no earlier than, September 29, 2023. ("Closing Date"), at the time established by the Closing Agent. Buyer shall provide seller ninety (90) days notice prior to closing. If Closing has not occurred by February 29, 2024, and so long as the Seller is not in default, Seller shall have the right to terminate the Agreement and retain the Initial Deposit, Additional Deposit, and 2nd Additional Deposit, free and clear.

5. CLOSING CONTINGENCIES:

- (a) Buyer's obligation to close is conditioned upon the occurrence of the requisite jurisdictional approvals regarding the land use, zoning, water management district, army corps or other approvals necessary in order for the property to be entitled for the Buyer's intended use as part of a mixed-use development incorporated into the 10 acres being purchased from Port Orange (this condition does not require approval for detailed approvals such as site grading permits, utility permits, building permits, etc.); and
- (b) Buyer's obligation to close is conditioned upon the finalization of a Master Development Agreement and Economic Incentive Agreement with the City of Port Orange for the entire development, including, but not limited to the adjacent 10 acres.
- (c) If extreme weather or other condition or event constituting "Force Majeure" causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or property insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or property insurance. If restoration of such utilities or services and availability of insurance has not occurred within 14 days after February 29, 2024, then either party may terminate this Contract by delivering written notice to the other party, Seller shall retain the Earnest Money, Additional Deposit and 2nd Additional Deposit, if any, thereby releasing Buyer and Seller from all further obligations under this Contract.

6. OCCUPANCY AND POSSESSION: Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of liens, tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, owner's manuals, and other written or electronic materials related to the property, to Buyer. Notwithstanding the date of Closing, Seller, and any other current tenants, Shall Be Allowed to Maintain Possession Of the Property and to live on the Property until February 29, 2024, rent free. If Seller elects to maintain possession after Closing, Buyer and Seller shall enter a "Post Closing Occupancy Agreement," in materially similar form to that attached as Exhibit "A" hereto, which is made a part of this Contract.

7. ASSIGNABILITY: Buyer may assign this Contract without the written consent of Seller to a special purpose entity to be formed for the purpose of acquiring and developing the Property (the "Development Entity.")

8. FINANCING: This Contract is NOT contingent on financing.

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER (to the extent listed costs are applicable):**

- Owner's Policy and Charges
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Municipal lien search



(b) COSTS TO BE PAID BY BUYER:

- Documentary stamp taxes and surtax on deed, if any
- Taxes and recording fees on notes and mortgages
- Loan expenses
- Recording fees for deed and financing statements
- Appraisal fees
- Buyer's inspections
- Survey (and elevation certification, if required)
- Buyer's attorneys' fees
- Lender's title policy and endorsements
- Other: broker's commission to Colliers

(c) TITLE EVIDENCE AND INSURANCE: Within 5 days of Effective Date, ("Title Evidence Deadline"), Buyer shall order a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance shall be obtained by Escrow Agent and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth above.

(d) SURVEY: During the Inspection Period Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date.

(e) N/A.

(f) SPECIAL ASSESSMENTS: At Closing, Seller shall pay: (I) the full amount of liens imposed by a public body that are certified, confirmed and ratified before Closing; and (II) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments, Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

10. DISCLOSURES:

(a) – (h) N/A.

(i) FIRPTA TAX WITHHOLDING: Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) SELLER DISCLOSURE: Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation. Property is being sold "As-Is."

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property in the condition existing as of Effective Date.

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

(a) PROPERTY INSPECTIONS AND RIGHT TO CANCEL: Buyer shall have ninety (90) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer due to title defects or examination of the survey, then Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract for title or survey defects, the Earnest Money paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement. If Buyer approves the Property and elects to proceed to Closing by notice to Seller within the Inspection Period, then the Initial Deposit shall become non-refundable except for a Seller default. If Buyer elects to terminate the Contract for any reason other than a defect in title or Seller default, the Initial Deposit shall be non-refundable even if the termination occurs during the Inspection Period.

(b) WALK-THROUGH INSPECTION/RE-INSPECTION: On the day prior to Closing Date, or on Closing

Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through inspection of the Property solely to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.

(c) **SELLER ASSISTANCE AND COOPERATION:** If Buyer's inspection of the Property identifies building permits, then Seller shall promptly cooperate in good faith with Buyer's efforts to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to seek the approvals necessary to develop the Property as intended by Buyer, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money, nor shall Seller be required to consent to any changes in entitlements to the Property that would become effective prior to the occurrence of Closing.

(d) N/A

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Initial Deposit, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for any deposit are received, or Agent has a good faith doubt as to entitlement to any deposits, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKERS: Buyer shall pay a real estate commission to Collier's pursuant to a separate agreement. Buyer and Seller represent that no commissions shall be due to any other broker arising out of this Contract. In the event Buyer or Seller retains the services of a broker after the Effective Date, the party retaining the Broker shall be exclusively liable for payment of any commissions or fees outside of closing and shall hold harmless, indemnify and defend the party that did not retain the broker against any and all claims by a broker for any fees or commissions claimed by the broker related to this Contract.

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Initial Deposit, Additional Deposit or 2nd Additional Deposit, within the time(s) specified, Seller may elect to recover and retain the Initial Deposit, Additional Deposit, and 2nd Additional Deposit for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Earnest Money are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract. In the event litigation is necessary to resolve a dispute arising out of this Contract, the Court shall determine a prevailing party and the prevailing party shall be entitled to an

award of reasonable costs, expenses and attorney's fees, including costs incurred for conducting the mediation and in any litigation at the trial and/or appellate level. This Paragraph 17 shall survive Closing or termination of this Contract.

18. STANDARDS: A. TITLE: (I) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters:

(a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum) and (g) any portion of the Land lying waterward of the mean high water line of the Halifax River, and lands accreted thereto; provided, that, none prevent use of Property for Buyer's intended purposes. If there exists at Closing any violation of items identified in (b) — (g) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall examine the Title Commitment and notify Seller in writing during the inspection period specifying defect(s), if any, that render title unmarketable. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (1)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than expiration of the inspection period. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. N/A.

D. LEASE INFORMATION: Seller represents that there are no lease hold interests encumbering the property.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Calendar days shall be used in computing time periods. Time is of the essence in this Contract. Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract, provided, however, if such Force Majeure continues to prevent performance under this Contract more than 14 days beyond Closing Date, then either party may terminate this Contract by delivering written notice to the other and the Earnest Money shall be refunded to Buyer, thereby releasing Buyer and Seller from all further obligations under this Contract.

H. COUNTERPARTS: Seller shall convey marketable title to the Real Property by statutory warranty

trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE: (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by this Contract, or Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed(s), bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, subject to **COLLECTION** of all closing funds, disburse at Closing the net sale proceeds to Seller.

J. N/A.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. N/A

M. N/A.

N. N/A.

O. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf" media). A facsimile or electronic (including "pdf" copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

P. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

Q. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

R. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

S. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Earnest Moneys, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been **COLLECTED** in Closing Agent's accounts.

T. N/A.

U. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

V. N/A.

W. N/A

X. BUYER WAIVER OF CLAIMS: To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.

19. ADDITIONAL TERMS: N/A.



20. Signatures.



Charles T. Carlisle – Principal – Buyer
Bristol Development Group, LLC

Date

1/10/23



Joan L. Sheridan – Individually, Seller

Date

1-16-23



Joan L. Sheridan – As Trustee – Seller
Joan L. Sheridan Revocable Trust

Date

1-16-23

[10959/24162/654910/1]

Page 1 of 9

Purchase and Sale Agreement — 113 Herbert St., Port Orange, FL 32129

Seller's Initials:

Buyer's Initials:



Addendum to Contract For Sale and Purchase

Joan L. Sheridan, individually and as Trustee of the Joan L. Sheridan Revocable Trust, (collectively, "Seller"), whose address is 113 Herbert Street, Port Orange, FL, and Bristol Development Group, LLC, ("Buyer"), agree that Buyer shall buy and Seller shall amend the terms and conditions of the Contract For Sale and Purchase ("Contract"), effective date January 18, 2023, by and between the parties, as follows via this "Addendum,":

WHEREAS, Buyer and Seller acknowledge that Buyer has previously released the Initial Deposit of \$20,000.00 required by Paragraph 2(a) of the Contract to Seller free and clear of any claims by the Buyer; and

WHEREAS, Buyer and Seller acknowledge that Buyer has deposited the Additional Deposit of \$25,000.00 required by Paragraph 2(b) of the Contract, made payable to the Escrow Agent and held in escrow; and

WHEREAS, Buyer and Seller seek to memorialize an agreement for future deposits, releases of deposits, and dates; and

WHEREAS, Buyer and Seller seek to clarify existing obligations contained in the Contract; and

WHEREAS, Buyer and Seller agree that Buyer will, within one business day of execution of this Addendum, authorize to Escrow Agent the release of the previously deposited "Additional Deposit," of \$25,000.00 to Seller free and clear of any claims by the Buyer; and

WHEREAS, Buyer and Seller agree to the following additional and amended terms to the Contract:

1. The Purchase Price is \$789,000.00. Application of all deposits and Earnest Money shall be applied to the total Purchase Price of \$789,000.00.
2. If closing does not occur by February 29th, 2024, Buyer shall provide and release a second non-refundable additional deposit ("2nd Additional Deposit") to Seller, free and clear, in the amount of TWENTY-FIVE THOUSAND and 00/100 Dollars (\$25,000.00) no later than March 5, 2024. The "2nd Additional Deposit" is non-refundable but applicable to Purchase Price.
3. If closing does not occur by June 30, 2024, Buyer shall provide and release a third non-refundable additional deposit ("3rd Additional Deposit") to Seller, free and clear, in the amount of TWENTY-FIVE THOUSAND and 00/100 Dollars (\$25,000.00), no later

Seller's Initials: 

Buyer's Initials: 

than July 5, 2024. The "3rd Additional Deposit" is non-refundable but applicable to Purchase Price.

4. If closing does not occur by September 30, 2024, Buyer shall provide a fourth non-refundable additional deposit (4th Additional Deposit") to Seller, free and clear, in the amount of TWENTY-FIVE THOUSAND and 00/100 Dollars (\$25,000.00) no later than October 7, 2024. The "4th Additional Deposit" is non-refundable but applicable to Purchase Price.

5. Subject to the terms of the original Contract, which shall remain in full force and effect except as specifically modified herein or unless necessary to give this Addendum meaning, other provisions of the Closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk parcels consisting of approximately 10 acres but no later than December 31st, 2024, at the time established by the Closing Agent. Notwithstanding the foregoing, if Buyer has not closed with the City of Port Orange by December 31, 2024 but is diligently pursuing financing for said closing, Buyer will have the option to extend closing to no later than February 28th, 2025. Buyer shall provide Seller ninety (90) days' notice in writing prior to closing, together with a fifth non-refundable additional deposit ("5th Additional Deposit") to Seller, free and clear, in the amount of FIFTY THOUSAND and 00/100 Dollars (\$50,000.00) no later than January 6, 2025. The "5th Additional Deposit" is non-refundable but applicable to Purchase Price. If Closing has not occurred by February 28th, 2025, and so long as the Seller is not in default, Seller shall have the right to terminate the Agreement and retain the Initial Deposit, Additional Deposit, 2nd Additional Deposit, 3rd Additional Deposit, 4th Additional Deposit, and 5th Additional Deposit, free and clear of any claims by the Buyer.

6. Buyer and Seller understand agree that the term "Earnest Money" as used in the Contract means those moneys held in escrow by the Escrow Agent prior to the Closing Date or date of termination of the Contract and Addendum. Any moneys that have been released to Seller, free and clear of the claims of the Buyer, are excluded from the definition of the term "Earnest Money" as used in this Contract and Addendum.

7. Paragraph 5(c) of the Contract is amended as follows:
(c) If extreme weather or other condition or event constituting "Force Majeure" as defined below causes disruption of utilities or other services essential for Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing. If restoration of such utilities or services has not occurred within 14 days after February 28, 2025, then either party may terminate this Contract and Addendum by delivering written notice to the other party. Seller shall retain the Earnest Money then-held in escrow, Initial Deposit, Additional Deposit, 2nd Additional Deposit, 3rd Additional Deposit, 4th Additional Deposit and 5th Additional Deposit, if any, thereby releasing Buyer and Seller from all further obligations under this Contract and Addendum.

Seller's Initials:

Buyer's Initials:

Handwritten signatures of the Seller and Buyer. The Seller's signature is a stylized 'J' followed by 'S'. The Buyer's signature is a stylized 'J' followed by 'S'.

"Force Majeure" means: hurricanes, earthquakes, floods, fires, explosions, and other natural disasters for which a state of emergency is declared in Volusia County, Florida, and which are not reasonably in the control of the parties, and cannot, in whole or in part, be overcome through the exercise of reasonable diligent effort of the nonperforming party. "Force Majeure" specifically excludes: unusual transportation delays; wars; insurrections; acts of terrorism; riots; labor shortages or strikes; governmental orders or acts or omissions, including delays in permitting and inspections; changes in laws, regulations, and building code; epidemic, pandemic or quarantine affecting Volusia County, Florida; or any of Act of God, regardless of the fault or control of either party.

8. Paragraph 6 of the Contract is removed and replaced as follows:

OCCUPANCY AND POSSESSION: The Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of liens, tenants, occupants and future tenancies. Notwithstanding the date of Closing, Seller, and any other occupants and tenants residing in the Property on the date of Closing, are permitted to maintain possession of the Property and to live on the Property for ninety (90) days after the Closing Date, commencing on the first full day after the Closing occurs, rent free. Buyer and Seller shall enter a "Post Closing Occupancy Agreement," in materially similar form to that attached as Exhibit "A" hereto, which is made a part of this Contract and Addendum.

9. Paragraph 12(a) of the Contract is amended as follows:

(a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** The Parties agree that the time to conduct relevant inspections under this Paragraph 12(a) and Paragraph 9 of the Contract has passed, that Buyer failed to provide notice of termination during the relevant Inspection Period, and that no further inspections or surveys shall be conducted, other than the final walk-through inspection/reinspection permitted pursuant to Paragraph 12(b) of this Contract. Buyer may not terminate this Contract and Addendum for title or survey defects. Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's AS IS Maintenance requirement.

10. Paragraph 12(c) of the Contract is amended as follows:

(c) **SELLER ASSISTANCE AND COOPERATION:** Buyer has had an opportunity to inspect the Property, pursuant to Paragraphs 9 and 12(a) of the Contract, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements. Seller is not obligated to take any action to resolve any defects discovered in title examination(s) or survey(s), if any, and not timely disclosed to Seller by Buyer.

11. Paragraph 15(a) of the Contract is amended as follows:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract or the Addendum, including payment of the Initial Deposit, Additional

Seller's Initials:

Buyer's Initials:



Deposit, 2nd Additional Deposit, 3rd Additional Deposit, 4th Additional Deposit, or 5th Additional Deposit, within the time specified, Seller may elect to retain any and all deposits actually made as agreed as liquidated damages, as consideration for execution of this Contract and Addendum and all extensions thereto, in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract and Addendum, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract and Addendum. In the event that this paragraph conflicts with any other paragraph contained in the Contract and Addendum, this paragraph shall control.

12. Paragraph 18(D) of the Contract is amended is follows:

D. LEASE INFORMATION: Seller represents that there is a leasehold interest encumbering the Property, which will be terminated as of the date of Closing, subject to Paragraph 6 of this Contract and Addendum. Seller is not aware of any other leasehold interests encumbering the Property.

13. Paragraph 18(a)(ii) of the Contract is amended as follows:

ii. TITLE EXAMINATION: Buyer has had an opportunity to inspect the Property, pursuant to Paragraphs 9 and 12(a) of the Contract, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements. Seller is not obligated to take any action to resolve any defects discovered in the title examination(s), if any, and not timely disclosed to Seller by Buyer. In the case of unresolved title defects, Seller shall convey, and Buyer shall accept, a Quit Claim Deed or Limited warranty Deed, in lieu of a General Warranty

14. Paragraph 18(B) of the Contract is amended as follows:

B. SURVEY: Buyer has had an opportunity to inspect the Property, pursuant to Paragraphs 9 and 12(a) of the Contract, accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements. Seller is not obligated to take any action to resolve any defects discovered in the survey(s), if any, and not timely disclosed to Seller by Buyer.

15. Paragraph 18(G) of the Contract is deleted and removed, because it is in conflict with Paragraph 5(c).

16. Paragraph 20 is added to the Contract as follows.

20. NOTICES. All notices required pursuant to this Contract and Addendum shall be provided in writing as follows:

TO BUYER: Bristol Development Group, LLC
C/O Robert Doan, Esq.
Cobb Cole

Page 4 of 5

Addendum to Contract for Purchase and Sale - 113 Herbert St., Port Orange, FL 32129

Seller's Initials: 

Buyer's Initials: 

231 North Woodland Blvd.
DeLand, FL 32720
Robert.doan@cobbcole.com

TO SELLER: Joan L. Sheridan
3704 Cardinal Blvd., Apt. 356
Daytona Beach Shores, FL
32118
Dingsyd2@bellsouth.net

Notices are deemed sent on the date of mailing, if mailed by certified mail, return receipt requested, to the addresses provided above.

21. Signatures



Charles T. Carlisle – Principal - Buyer
Bristol Development Group, LLC

12/11/23

Date



Joan L. Sheridan – Individually, Seller

12/11/23

Date



Joan L. Sheridan – As Trustee -Seller
Joan L. Sheridan Revocable Trust

12/11/23

Date

POST-CLOSING OCCUPANCY AGREEMENT

THIS POST-CLOSING OCCUPANCY AGREEMENT ("Agreement"), made and entered into this ____ day of _____, 2024, by and between Bristol Development Group, LLC (or its successor or assignee) (hereinafter referred to as "Buyer") and Joan L. Sheridan (hereinafter referred to as "Seller");

WITNESSETH:

WHEREAS, Buyer has entered into a Contract to purchase from Seller the following described property:

113 Herbert Street, Port Orange, FL 32129

WHEREAS, Seller has requested occupancy for herself, her lawful tenant(s) and other lawful occupant(s) (collectively the "Occupants") of the above described property (hereinafter referred to as "Subject Property") after the time of closing; and

WHEREAS, Buyer has agreed to allow such occupancy commencing _____, 202__ (date of closing) for up to ninety (90) days from _____ 202__ to _____, 20__, upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for and in consideration of the good and valuable considerations and the performance of same by Buyer and Seller; the parties hereto agree as follows:

1. Recitations. The above recitals are true and correct.
2. Occupancy. Occupants may occupy the Subject Property, for a period commencing _____, 202__ to _____, 202__. Only persons who were in possession of the Subject Property as of the date of closing may continue in possession of the Subject Property pursuant to this Post-Closing Occupancy Agreement. Seller shall provide a list of all Occupants in possession of the Subject Property to Buyer on the date of closing.
3. As-Is. Seller, having occupied the Subject Property prior to this Agreement, fully accepts the Property in As-Is condition and shall be responsible for any repairs or replacements, the completion of which is necessary for continued occupancy, that occur during the term of this Agreement including, but not limited to those that arise from normal wear and tear, up to \$500.00 in value. In the alternative, Seller may elect to vacate the Subject Property in lieu of making such repairs.

Repairs or replacements that are necessary for continued occupancy and are estimated to be in excess of \$500 shall not be made and this Post-Closing Occupancy Agreement shall terminate, and Buyer shall pay Seller \$500.00 in full and final consideration for the early termination. Seller will provide written notice to Buyer of the termination and all Occupants shall vacate the Subject Property within seven (7) days of delivery of the notice of termination.

Seller shall take reasonable precautions to protect and preserve the Subject Property during the term of this Agreement for the comfort and convenience

of the Occupants, and to protect Occupants, guests, invitees, licensees and trespassers against patent hazards.

Buyer expressly acknowledges and agrees that its intent is to redevelop the Subject Property, and that a precondition of the purchase of the Subject Property by the Buyer is the approval of plans to redevelop the Subject Property by relevant authorities. Preservation of the Subject Property is immaterial to Buyer. Therefore, Buyer releases and holds Seller harmless against any and all damages to, or defects in, the Subject Property that may be discovered upon Occupants vacating the Subject Property.

4. Substantial Impairment Damage to Subject Property. If the Subject Property is damaged or destroyed (a "Casualty") so that the enjoyment of the Subject Property is substantially impaired, this Post-Closing Occupancy Agreement shall be deemed terminated. Buyer releases and holds Seller harmless against liability for any and all Casualties regardless of fault.
5. Personal Property. Occupant(s) shall be solely responsible for all of Occupant(s)' personal property and possessions upon the Subject Property. Buyer shall have no obligation to insure such personal property or safeguard the same from any casualty whatsoever. Buyer is responsible for any insurance on the Subject Property from the date of closing, but Occupants are responsible for any insurance regarding personal property.
6. Prorations. All items to be prorated for taxes and other pro-ratable items described in the Contract for Sale and Purchase, shall be prorated as of the date of closing.
7. Utilities. Seller shall be responsible for all utility charges incurred during the post-closing occupancy, and all deposits incident thereto.
8. Rent. Seller has given Buyer due consideration in lieu of rent for the post-closing occupancy because the ability to occupy is part of the consideration for the transaction. Subject to paragraph 3 herein, Seller agrees to provide necessary maintenance, upkeep and repairs regarding the property during the post-closing occupancy period necessary as a result of Occupant(s)' continued use.
9. Hold-Harmless. Seller agrees to hold Buyer harmless from any claims or actions which arise as a result of their acts, the acts of their agents, or anyone else entering the Subject Property at Occupant(s)' request during Occupant(s)' occupancy.
10. Vacate. At the conclusion of Seller's post-closing occupancy, Occupant(s) will peacefully and quietly depart the premises. Seller agrees to vacate, and to require other Occupant(s) to vacate, the Subject Property on or before 11:59 p.m. on _____, 202__. In the event Occupant(s) fail to vacate as herein required, Seller agrees to pay all costs, including attorney's fees, incurred by Buyer in connection with any proceedings for possession, specific performance proceedings or other declaratory or enforcement proceedings.

In the event a tenant occupies the Subject Property under a written or oral lease between Seller and such tenant, and such tenant fails to timely vacate the Subject Property, then Buyer may, upon seven (7) days written notice, delivered as required by *Florida Statute* 83.56(4), sue for eviction under

Florida Statutes 83.59-83.625 as if Buyer were such tenant's landlord under part II of chapter 83 of the Florida Statutes. However, Buyer shall not be entitled to recovery of unpaid rent from such tenant or from Seller for any period during which such tenant refuses to surrender possession, nor shall Buyer be entitled to recover other damages, including, but not limited to, damages for waste.

In the event another Occupant occupies the Subject Property without an oral or written lease between Seller and such Occupant, and such Occupant fails to timely vacate the Subject Property, then Buyer may, upon seven (7) days advance notice, delivered as required by *Florida Statute* 83.56(4), sue for possession under *Florida Statutes* 82.01-82.101. However, Buyer shall not be entitled to recovery of reasonable rent from such Occupant or from Seller during any holdover period; nor shall Buyer be entitled to recover other damages, including, but not limited to, damages for waste.

11. Notices. All notices required pursuant to this Post-Closing Occupancy Agreement shall be provided in writing as follows:

TO BUYER: Bristol Development Group, LLC
C/O Robert Doan, Esq.
Cobb Cole
231 North Woodland Blvd.
DeLand, FL 32720
Robert.doan@cobbcole.com

TO SELLER: Joan L. Sheridan
C/O Michele Watson-Codling
501 Kielb Road
Bunnell, FL 32110
Dingsyd2@bellsouth.net

[Joan L. Sheridan](#)
[3704 Cardinal Blvd., Apt. 356](#)
[Daytona Beach Shores, FL 32118](#)

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals, the day and year first above written.

WITNESSES:

BUYER:

Witness Signature

By:_____

Witness Printed Name

Witness Signature

Witness Printed Name

SELLER:

Witness Signature

By:_____
Joan L. Sheridan

Witness Printed Name

Witness Signature

Witness Printed Name



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C16b) Assignment of the Contract to Purchase 3855 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #2)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the assignment from Bristol Port Orange Partners, LLC to the City of Port Orange of the contract to purchase, and the purchase of 3855 Ridgewood Avenue; and authorize Mayor and City Clerk to execute all documents associated with the purchase and post closing occupancy thereof.

SUMMARY: This item is the Assignment of the current contract to purchase 3855 Ridgewood Avenue (Parcel #3) from Bristol Port Orange Partners, LLC, to the City of Port Orange (see Exhibit A). According to the contract, the City will buy this parcel for \$1,404,000 (purchase price of \$1,350,000 + Colliers 4% Commission) on Monday, December 2, 2024, and the business (Bob's Bike Shop) will be required to vacate the property by Friday, February 28, 2025.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Exhibit A - Outparcel Acquisition	Exhibit A - Outparcel Acquisition.pdf
2.	Contract 3855 Ridgewood Port Orange - executed	Contract 3855 Ridgewood Port Orange - executed.pdf
3.	3855 Ridgewood - fully executed addendum 121123	3855 Ridgewood - fully executed addendum 121123.pdf

Robin Fenwick
Tim Burman
John McKinney
Shannon Balmer
Wayne Clark

Created/Initiated - 11/5/2024
Approved - 11/5/2024
Approved - 11/5/2024
Approved - 11/14/2024
Final Approval - 11/14/2024

(Exhibit A - Parcel Acquisition Graphic)



Contract For Sale And Purchase

JLS888, Inc., a Florida corporation, ("Seller"), and Bristol Development Group, LLC, ("Buyer"), agree that Buyer shall buy and Seller shall sell the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract For Sale And Purchase ("Contract"):

1. PROPERTY DESCRIPTION:

- a. Street Address: 3855 S. Ridgewood Avenue, Port Orange, FL 32129
- b. Property is located in: Volusia County, Florida. Full Parcel ID: 630311020060
- c. Legal Description (condensed): The West 190 feet of Lot 6, Block B, Wilson's Port Orange, according to the map or plat thereof recorded in Plat Book 1, Page 154, Public Records of Volusia County, Florida, except that portion thereof deeded to the State of Florida for highway purposes in Deed Book 218, Page 158, Public Records of Volusia County, Florida, together with all existing improvements unless specifically excluded by other terms of this Contract.
- d. Personal Property: None.

2. PURCHASE PRICE \$1,350,000

- (a) Initial deposit ("Deposit") to be held in escrow in the amount of TWENTY THOUSAND and 00/100 Dollars (\$20,000) shall be made payable and delivered to "Escrow Agent" within four (4) days after Effective Date.
- (b) Within four (4) days of the end of Inspection Period, an additional TWENTY THOUSAND and 00/100 Dollars (\$20,000) shall be made payable and delivered to "Escrow Agent"

The initial and second deposit shall be referred to as "Earnest Money."

Escrow Agent: Matthew Welch, Esq., Cobb Cole Law Firm, 149 S. Ridgewood Avenue, Suite 700, Daytona Beach, FL 32115 Ph: (386) 255-8171.

Balance to close (not including Buyer's closing costs as adjusted by Paragraph 9 below, prepaids and prorations) by wire transfer or other **COLLECTED** funds: \$1,310,000

3. TIME FOR ACCEPTANCE; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before January 31, 2023, this offer shall be deemed withdrawn and the Earnest Money, if any, shall be returned to Buyer.
- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed this offer ("Effective Date").

4. CLOSING DATE:

Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk parcels

Seller's Initials: 

Buyer's Initials: 

consisting of approximately 10 acres or February 29, 2024, whichever is later, ("Closing Date"), at the time established by the Closing Agent. Notwithstanding the foregoing, Buyer shall provide Seller the option to continue operating its existing business (a retail bike shop) through February 29, 2024, or 90 days following Closing, whichever is later, by execution at Closing of an agreement in materially similar form to that as attached Exhibit A hereto.

5. CLOSING CONTINGENCIES:

- (a) Buyer's obligation to close is conditioned upon the occurrence of the requisite jurisdictional approvals regarding the land use, zoning, water management district, army corps or other approvals necessary in order for the property to be entitled for the Buyer's intended use as part of a mixed-use development incorporated into the 10 acres being purchased from Port Orange (this condition does not require approval for detailed approvals such as site grading permits, utility permits, building permits, etc.); and
- (b) Buyer's obligation to close is conditioned upon the finalization of a Master Development Agreement and Economic Incentive Agreement with the City of Port Orange for the entire development, including, but not limited to the adjacent 10 acres.
- (c) If extreme weather or other condition or event constituting "Force Majeure" causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or property insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or property insurance.

6. OCCUPANCY AND POSSESSION: Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of liens, tenants, occupants and future tenancies, subject only to Paragraph 4. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, owner's manuals, and other written or electronic materials related to the property, to Buyer, subject only to Paragraph 4.

7. ASSIGNABILITY: Buyer may assign this Contract without the written consent of Seller to a special purpose entity to be formed for the purpose of acquiring and developing the Property (the "Development Entity.")

8. FINANCING: This Contract is NOT contingent on financing.

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; SPECIAL ASSESSMENTS:

(a) **COSTS TO BE PAID BY SELLER (to the extent listed costs are applicable):**

- Documentary stamp taxes and surtax on deed, if any (Buyer to contribute half)
- Owner's Policy and Charges (Buyer to contribute half)
- Recording and other fees needed to cure title (Buyer to contribute half)
- Seller's attorneys' fees
- Municipal lien search (Buyer to contribute half)

(b) **COSTS TO BE PAID BY BUYER:**

- Taxes and recording fees on notes and mortgages
- Loan expenses
- Recording fees for deed and financing statements
- Appraisal fees
- Buyer's Inspections
- Survey (and elevation certification, if required)

Seller's Initials: 

Buyer's Initials: 

- Buyer's attorneys' fees
- Lender's title policy and endorsements
- Other: broker's commission to Colliers
- Other: half of certain Seller's costs as designated above.

(c) **TITLE EVIDENCE AND INSURANCE:** Within 15 days of the Effective Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance shall be obtained by Escrow Agent and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth above.

(d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date.

(e) N/A.

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments, Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

10. DISCLOSURES:

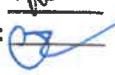
(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within 20 days after Effective Date, and Buyer shall be refunded the Earnest Money thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures

Seller's Initials: 

Buyer's Initials: 

(residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.

(e) N/A.

(f) N/A.

(g) N/A.

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation. Property is being sold "As-Is."

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn and shrubbery, in the condition existing as of Effective Date.

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

(a) PROPERTY INSPECTIONS AND RIGHT TO CANCEL: Buyer shall have ninety (90) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Earnest Money paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement. If Buyer approves the Property and elects to proceed to Closing by notice to Seller within the Inspection Period, then the Buyer shall make the additional Earnest Money Deposit as provided herein and all Earnest Money shall become non-refundable except for a Seller default or failure to satisfy all Closing Contingencies.

Seller's Initials: 

Buyer's Initials: 

(b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.

(c) **SELLER ASSISTANCE AND COOPERATION:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to seek the approvals necessary to develop the Property as intended by Buyer, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money, nor shall Seller be required to consent to any changes in entitlements to the Property that would become effective prior to the occurrence of Closing.

(d) N/A/

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Earnest Money, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Earnest Money are received, or Agent has a good faith doubt as to entitlement to the Earnest Money, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKERS: Buyer shall pay a real estate commission to Collier's pursuant to a separate agreement. Buyer and Seller represent that no commissions shall be due to any other broker arising out of this Contract. In the event Buyer or Seller retains the services of a broker after the Effective Date, the party retaining the Broker shall be exclusively liable for payment of any commissions or fees outside of closing and shall hold harmless, indemnify and defend the party that did not retain the broker against any and all claims by a broker for any fees or commissions claimed by the broker related to this Contract.

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Earnest Money, within the time(s) specified, Seller may elect to recover and retain the Earnest Money for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved

Seller's Initials: 

Buyer's Initials: 

from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Earnest Money without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Earnest Money are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract. In the event litigation is necessary to resolve a dispute arising out of this Contract, the Court shall determine a prevailing party and the prevailing party shall be entitled to an award of reasonable costs, expenses and attorney's fees, including costs incurred for conducting the mediation and in any litigation at the trial and/or appellate level. This Paragraph 17 shall survive Closing or termination of this Contract.

18. STANDARDS: A. TITLE: (i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of Instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for Buyer's intended purposes. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller

Seller's Initials: 

Buyer's Initials: 

cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller represents that there are no lease hold interests encumbering the property.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

Seller's Initials: 

Buyer's Initials: 

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE: (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by this Contract, or Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Earnest Money and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Earnest Money, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, before the Closing Date, all or any part of the Property are damaged or destroyed by any casualty, Buyer shall have the right, by giving notice to Seller within thirty (30) days after Seller gives written notice of the occurrence of such casualty to Buyer, to terminate this Agreement, in which event this Agreement shall terminate, and all Earnest Money, including interest thereon shall be refunded to Buyer. If, before the Closing Date, all or any part of the Property are damaged by any casualty or if Buyer has the right to terminate this Agreement pursuant to the preceding sentence, but Buyer does not exercise such right, then this Agreement shall remain in full force and effect and, at Closing, any insurance proceeds shall be assigned by Seller to Buyer. Seller shall give written notice to Buyer promptly after the occurrence of any damage to the improvements on the Real Property by any casualty. Buyer shall have a period of thirty (30) days after Seller has given the notice to Buyer required by this Paragraph 18(M) to evaluate the extent of the damage and make the determination as to whether to terminate this Agreement. If necessary, the

Seller's Initials: 

Buyer's Initials: 

Closing shall be postponed until Seller has given the notice to Buyer required by this Paragraph 18(M) and the period of thirty (30) days described in this Paragraph 18(M) has expired.

N. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

O. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

P. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

Q. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

R. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Earnest Moneys, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

S. LOAN COMMITMENT: "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.

T. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

U. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on

Seller's Initials: 

Buyer's Initials: 

the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

V. N/A

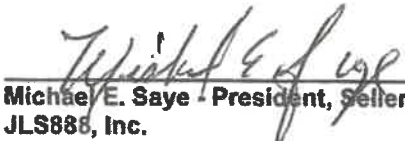
W. BUYER WAIVER OF CLAIMS: To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.

19. ADDITIONAL TERMS: N/A.

20. Signatures.


Charles T. Carlisle – Principal - Buyer
Bristol Development Group, LLC

11/31/23
Date


Michael E. Saye – President, Seller
JLS888, Inc.

12/31/2023
Date

Seller's Initials: MS

Buyer's Initials: CC

Addendum to Contract For Sale And Purchase

JLS888, Inc., a Florida corporation, ("Seller"), and Bristol Development Group, LLC, ("Buyer"), agree that Buyer shall buy and Seller shall amend the terms and conditions of the Contract For Sale And Purchase ("Contract") :

Paragraph 2 is modified by addition of subpart "c" as follows:

"(c) No later than February 29, 2024, Buyer shall instruct the Escrow Agent to release the \$40,000 Earnest Money to Seller, and Buyer shall deliver to Seller an additional \$10,000.00, for a total of \$50,000 which shall be non-refundable (except in the event of a Seller breach) but shall remain applicable to the Purchase Price at Closing."

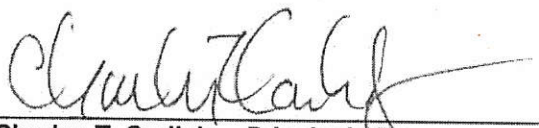
Paragraph 4 is modified and replaced in its entirety by the following:

"4. CLOSING DATE:

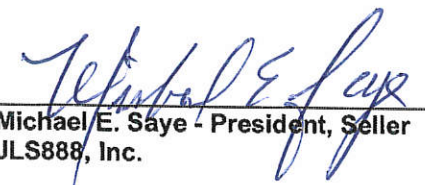
Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk parcels consisting of approximately 10 acres, but no later than December 31, 2024, ("Closing Date"), at the time established by the Closing Agent. Notwithstanding the foregoing, if Buyer has not closed with the City of Port Orange by December 31, 2024, but is diligently pursuing financing for said closing, Buyer shall have the option to extend closing to no later than February 28, 2025. Buyer shall provide Seller the option to continue operating its existing business (a retail bike shop) through February 28, 2025, or 90 days following Closing, whichever is later, by execution at Closing of an agreement in materially similar form to that as attached Exhibit A hereto."

All other provisions of the Contract shall remain in full force and effect except as must be reasonably modified to give meaning to the modifications above.

Signatures.


Charles T. Carlisle - Principal - Buyer
Bristol Development Group, LLC

12/5/23
Date


Michael E. Saye - President, Seller
JLS888, Inc.

12/5/23
Date



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C16c) Assignment of the Contract to Purchase 3921 Ridgewood Avenue from Bristol Port Orange Partners, LLC to the City of Port Orange (Assignment #3)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the assignment from Bristol Port Orange Partners, LLC Port Orange Partners, LLC to the City of Port Orange of the contract to purchase, and the purchase of 3921 Ridgewood Avenue; and authorize Mayor and City Clerk to execute all documents associated with closing and the post-closing occupancy thereof.

SUMMARY: This item is the Assignment of the current contract to purchase 3921 Ridgewood Avenue (Parcel #3) from Bristol Port Orange Partners, LLC to the City of Port Orange (see Exhibit A). According to the contract, the City will buy this parcel for \$312,000 (purchase price of \$300,000 + Colliers 4% Commission) on Monday, December 2, 2024, and the business (Port Orange Mower Shop) will be required to vacate the property by Friday, February 28, 2025.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Exhibit A - Outparcel Acquisition	Exhibit A - Outparcel Acquisition.pdf
2.	Contract 3921 Ridgewood Port Orange 2022-5-6	Contract 3921 Ridgewood Port Orange 2022-5-6.pdf
3.	3921 Ridgewood - fully executed addendum 120823	3921 Ridgewood - fully executed addendum 120823.pdf

Robin Fenwick
Tim Burman
John McKinney
Shannon Balmer
Wayne Clark

Created/Initiated - 11/5/2024
Approved - 11/5/2024
Approved - 11/5/2024
Approved - 11/14/2024
Final Approval - 11/14/2024

(Exhibit A - Parcel Acquisition Graphic)



Contract For Sale And Purchase

Ralph and Tammy Heotzler, a husband and wife, (collectively, "Seller"), and Bristol Development Group, LLC, ("Buyer"), agree that Buyer shall buy and Seller shall sell the following described Real Property and Personal Property (collectively "Property") pursuant to the terms and conditions of this Contract For Sale And Purchase ("Contract"):

1. PROPERTY DESCRIPTION:

- a. Street Address: 3921 Ridgewood Avenue, Port Orange, FL 32129
 - b. Property is located in: Volusia County, Florida. Full Parcel ID 630311020042
 - c. Legal Description (condensed): N 33.6 FT OF W 123 FT OF LOT 4 BLK B WILSONS PORT ORANGE PER OR 3882 PG 2148
- together with all existing improvements unless specifically excluded by other terms of this Contract.
- d. Personal Property: None.

2. PURCHASE PRICE \$300,000

- (a) Initial deposit ("Deposit") to be held in escrow in the amount of TEN THOUSAND and 00/100 Dollars (**\$10,000**) shall be made payable and delivered to "Escrow Agent" within four (4) days after Effective Date.
- (b) Within four (4) days of the end of Inspection Period, an additional TEN THOUSAND and 00/100 Dollars (\$10,000) shall be made payable and delivered to "Escrow Agent"

The initial and second deposit shall be referred to as "Earnest Money."

Escrow Agent: Matthew Welch, Esq., Cobb Cole Law Firm, 149 S. Ridgewood Avenue, Suite 700, Daytona Beach, FL 32115 Ph: (386) 255-8171.

Balance to close (not including Buyer's closing costs as adjusted by Paragraph 9 below, prepaids and prorations) by wire transfer or other **COLLECTED** funds: \$280,000

3. TIME FOR ACCEPTANCE; EFFECTIVE DATE:

- (a) If not signed by Buyer and Seller, and an executed copy delivered to all parties on or before May 10, 2022, this offer shall be deemed withdrawn and the Earnest Money, if any, shall be returned to Buyer.
- (b) The effective date of this Contract shall be the date when the last one of the Buyer and Seller has signed this offer ("Effective Date").

4. CLOSING DATE:

Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk parcels consisting of approximately 10 acres or March 31, 2023., ("Closing Date"), at the time established by the Closing Agent.

5. CLOSING CONTINGENCIES:

- (a) Buyer's obligation to close is conditioned upon the occurrence of the requisite jurisdictional approvals regarding the land use, zoning, water management district, army corps or other approvals necessary in order for the property to be entitled for the Buyer's intended use as part of a mixed-use development incorporated into the 10 acres being purchased from Port Orange (this condition does not require approval for detailed approvals such as site grading permits, utility permits, building permits, etc.); and
- (b) Buyer's obligation to close is conditioned upon the finalization of of a Master Development Agreement and Economic Incentive Agreement with the City of Port Orange for the entire development, including, but not limited to the adjacent 10 acres.
- (c) If extreme weather or other condition or event constituting "Force Majeure" causes: (i) disruption of utilities or other services essential for Closing or (ii) Hazard, Wind, Flood or property insurance, to become unavailable prior to Closing, Closing shall be extended a reasonable time up to 3 days after restoration of utilities and other services essential to Closing and availability of applicable Hazard, Wind, Flood or property insurance. If restoration of such utilities or services and availability of insurance has not occurred within 14 days after Closing Date, then either party may terminate this Contract by delivering written notice to the other party, and Buyer shall be refunded the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract.

6. OCCUPANCY AND POSSESSION: Seller shall, at Closing, deliver occupancy and possession of the Property to Buyer free of liens, tenants, occupants and future tenancies. Also, at Closing, Seller shall have removed all personal items and trash from the Property and shall deliver all keys, garage door openers, access devices and codes, owner's manuals, and other written or electronic materials related to the property, to Buyer.

7. ASSIGNABILITY: Buyer may assign this Contract without the written consent of Seller to a special purpose entity to be formed for the purpose of acquiring and developing the Property (the "Development Entity.")

8. FINANCING: This Contract is NOT contingent on financing.

9. CLOSING COSTS; TITLE INSURANCE; SURVEY; SPECIAL ASSESSMENTS:

(a) COSTS TO BE PAID BY SELLER (to the extent listed costs are applicable):

- Documentary stamp taxes and surtax on deed, if any
- Owner's Policy and Charges
- Recording and other fees needed to cure title
- Seller's attorneys' fees
- Municipal lien search

(b) COSTS TO BE PAID BY BUYER:

- Taxes and recording fees on notes and mortgages
- Loan expenses
- Recording fees for deed and financing statements
- Appraisal fees
- Buyer's Inspections
- Survey (and elevation certification, if required)
- Buyer's attorneys' fees
- Lender's title policy and endorsements
- Other: broker's commission to Colliers

(c) **TITLE EVIDENCE AND INSURANCE:** Within 15 days of the Effective Date ("Title Evidence Deadline"), a title insurance commitment issued by a Florida licensed title insurer, with legible copies of instruments listed as exceptions attached thereto ("Title Commitment") and, after Closing, an owner's policy of title insurance shall be obtained by Escrow Agent and delivered to Buyer. If Seller has an owner's policy of title insurance covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date. The owner's title policy premium, title search and closing services (collectively, "Owner's Policy and Charges") shall be paid, as set forth above.

(d) **SURVEY:** On or before Title Evidence Deadline, Buyer may, at Buyer's expense, have the Real Property surveyed and certified by a registered Florida surveyor ("Survey"). If Seller has a survey covering the Real Property, a copy shall be furnished to Buyer and Closing Agent within 15 days after Effective Date.

(e) **N/A.**

(f) **SPECIAL ASSESSMENTS:** At Closing, Seller shall pay: (i) the full amount of liens imposed by a public body that are certified, confirmed and ratified before Closing; and (ii) the amount of the public body's most recent estimate or assessment for an improvement which is substantially complete as of Effective Date, but that has not resulted in a lien being imposed on the Property before Closing. Buyer shall pay all other assessments. If special assessments may be paid in installments, Seller shall pay installments due prior to Closing and Buyer shall pay installments due after Closing. Installments prepaid or due for the year of Closing shall be prorated.

10. DISCLOSURES:

(a) **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it is accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department.

(b) **PERMITS DISCLOSURE:** Except as may have been disclosed by Seller to Buyer in a written disclosure, Seller does not know of any improvements made to the Property which were made without required permits or made pursuant to permits which have not been properly closed.

(c) **MOLD:** Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) **FLOOD ZONE; ELEVATION CERTIFICATION:** Buyer is advised to verify by elevation certificate which flood zone the Property is in, whether flood insurance is required by Buyer's lender, and what restrictions apply to improving the Property and rebuilding in the event of casualty. If Property is in a "Special Flood Hazard Area" or "Coastal Barrier Resources Act" designated area or otherwise protected area identified by the U.S. Fish and Wildlife Service under the Coastal Barrier Resources Act and the lowest floor elevation for the building(s) and /or flood insurance rating purposes is below minimum flood elevation or is ineligible for flood insurance coverage through the National Flood Insurance Program or private flood insurance as defined in 42 U.S.C. §4012a, Buyer may terminate this Contract by delivering written notice to Seller within 20 days after Effective Date, and Buyer shall be refunded the Earnest Money thereby releasing Buyer and Seller from all further obligations under this Contract, failing which Buyer accepts existing elevation of buildings and flood zone designation of Property. The National Flood Insurance Program may assess additional fees or adjust premiums for pre-Flood Insurance Rate Map (pre-FIRM) non-primary structures (residential structures in which the insured or spouse does not reside for at least 50% of the year) and an elevation certificate may be required for actuarial rating.

(e) **N/A.**

(f) **N/A.**

(g) **N/A.**

(h) **PROPERTY TAX DISCLOSURE SUMMARY:** BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

(i) **FIRPTA TAX WITHHOLDING:** Seller shall inform Buyer in writing if Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act ("FIRPTA"). Buyer and Seller shall comply with FIRPTA, which may require Seller to provide additional cash at Closing. If Seller is not a "foreign person", Seller can provide Buyer, at or prior to Closing, a certification of non-foreign status, under penalties of perjury, to inform Buyer and Closing Agent that no withholding is required. See STANDARD V for further information pertaining to FIRPTA. Buyer and Seller are advised to seek legal counsel and tax advice regarding their respective rights, obligations, reporting and withholding requirements pursuant to FIRPTA.

(j) **SELLER DISCLOSURE:** Seller knows of no facts materially affecting the value of the Real Property which are not readily observable and which have not been disclosed to Buyer. Except as provided for in the preceding sentence, Seller extends and intends no warranty and makes no representation of any type, either express or implied, as to the physical condition or history of the Property. Except as otherwise disclosed in writing Seller has received no written or verbal notice from any governmental entity or agency as to a currently uncorrected building, environmental or safety code violation. Property is being sold "As-Is."

11. PROPERTY MAINTENANCE: Except for ordinary wear and tear and Casualty Loss, Seller shall maintain the Property, including, but not limited to, lawn and shrubbery, in the condition existing as of Effective Date.

12. PROPERTY INSPECTION; RIGHT TO CANCEL:

(a) **PROPERTY INSPECTIONS AND RIGHT TO CANCEL:** *Buyer shall have ninety (90) days after Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire during the Inspection Period. If Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may terminate this Contract by delivering written notice of such election to Seller prior to expiration of Inspection Period. If Buyer timely terminates this Contract, the Earnest Money paid shall be returned to Buyer, thereupon, Buyer and Seller shall be released of all further obligations under this Contract; however, Buyer shall be responsible for prompt payment for such inspections, for repair of damage to, and restoration of, the Property resulting from such inspections, and shall provide Seller with paid receipts for all work done on the Property (the preceding provision shall survive termination of this Contract). Unless Buyer exercises the right to terminate granted herein, Buyer accepts the physical condition of the Property and any violation of governmental, building, environmental, and safety codes, restrictions, or requirements, but subject to Seller's continuing AS IS Maintenance Requirement. If Buyer approves the Property and elects to proceed to Closing by notice to Seller within the Inspection Period, then the Buyer shall make the additional Earnest Money Deposit as provided herein and all Earnest Money shall become non-refundable except for a Seller default or failure to satisfy all Closing Contingencies.*

(b) **WALK-THROUGH INSPECTION/RE-INSPECTION:** On the day prior to Closing Date, or on Closing Date prior to time of Closing, as specified by Buyer, Buyer or Buyer's representative may perform a walk-through inspection of the Property solely to confirm that all items of Personal Property are on the Property and to verify that Seller has maintained the Property as required by the AS IS Maintenance Requirement and has met all other contractual obligations.

(c) **SELLER ASSISTANCE AND COOPERATION:** If Buyer's inspection of the Property identifies open or needed building permits, then Seller shall promptly deliver to Buyer all plans, written documentation or other information in Seller's possession, knowledge, or control relating to improvements to the Property which are the subject of such open or needed Permits, and shall promptly cooperate in good faith with Buyer's

efforts to obtain estimates of repairs or other work necessary to resolve such Permit issues. Seller's obligation to cooperate shall include Seller's execution of necessary authorizations, consents, or other documents necessary for Buyer to seek the approvals necessary to develop the Property as intended by Buyer, but in fulfilling such obligation, Seller shall not be required to expend, or become obligated to expend, any money, nor shall Seller be required to consent to any changes in entitlements to the Property that would become effective prior to the occurrence of Closing.

(d) **N/A/**

13. ESCROW AGENT: Any Closing Agent or Escrow Agent (collectively "Agent") receiving the Earnest Money, other funds and other items is authorized, and agrees by acceptance of them, to deposit them promptly, hold same in escrow within the State of Florida and, subject to **COLLECTION**, disburse them in accordance with terms and conditions of this Contract. Failure of funds to become **COLLECTED** shall not excuse Buyer's performance. When conflicting demands for the Earnest Money are received, or Agent has a good faith doubt as to entitlement to the Earnest Money, Agent may take such actions permitted by this Paragraph 13, as Agent deems advisable. If in doubt as to Agent's duties or liabilities under this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties agree to its disbursement or until a final judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended and FREC rules to timely resolve escrow disputes through mediation, arbitration, interpleader or an escrow disbursement order.

Any proceeding between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any proceeding where Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred, to be paid pursuant to court order out of the escrowed funds or equivalent. Agent shall not be liable to any party or person for mis-delivery of any escrowed items, unless such mis-delivery is due to Agent's willful breach of this Contract or Agent's gross negligence. This Paragraph 13 shall survive Closing or termination of this Contract.

14. PROFESSIONAL ADVICE; BROKERS: Buyer shall pay a real estate commission to Collier's pursuant to a separate agreement. Buyer and Seller represent that no commissions shall be due to any other broker arising out of this Contract. In the event Buyer or Seller retains the services of a broker after the Effective Date, the party retaining the Broker shall be exclusively liable for payment of any commissions or fees outside of closing and shall hold harmless, indemnify and defend the party that did not retain the broker against any and all claims by a broker for any fees or commissions claimed by the broker related to this Contract.

15. DEFAULT:

(a) **BUYER DEFAULT:** If Buyer fails, neglects or refuses to perform Buyer's obligations under this Contract, including payment of the Earnest Money, within the time(s) specified, Seller may elect to recover and retain the Earnest Money for the account of Seller as agreed upon liquidated damages, consideration for execution of this Contract, and in full settlement of any claims, whereupon Buyer and Seller shall be relieved from all further obligations under this Contract, or Seller, at Seller's option, may, pursuant to Paragraph 16, proceed in equity to enforce Seller's rights under this Contract.

(b) **SELLER DEFAULT:** If for any reason other than failure of Seller to make Seller's title marketable after reasonable diligent effort, Seller fails, neglects or refuses to perform Seller's obligations under this Contract, Buyer may elect to receive return of Buyer's Earnest Money without thereby waiving any action for damages resulting from Seller's breach, and, pursuant to Paragraph 16, may seek to recover such damages or seek specific performance.

This Paragraph 15 shall survive Closing or termination of this Contract.

16. DISPUTE RESOLUTION: Unresolved controversies, claims and other matters in question between Buyer and Seller arising out of, or relating to, this Contract or its breach, enforcement or interpretation ("Dispute") will be settled as follows:

(a) Buyer and Seller will have 10 days after the date conflicting demands for the Earnest Money are made to attempt to resolve such Dispute, failing which, Buyer and Seller shall submit such Dispute to mediation under Paragraph 16(b).

(b) Buyer and Seller shall attempt to settle Disputes in an amicable manner through mediation pursuant to Florida Rules for Certified and Court-Appointed Mediators and Chapter 44, F.S., as amended (the "Mediation Rules"). The mediator must be certified or must have experience in the real estate industry. Injunctive relief may be sought without first complying with this Paragraph 16(b). Disputes not settled pursuant to this Paragraph 16 may be resolved by instituting action in the appropriate court having jurisdiction of the matter. This Paragraph 16 shall survive Closing or termination of this Contract.

17. ATTORNEY'S FEES; COSTS: The parties will split equally any mediation fee incurred in any mediation permitted by this Contract. In the event litigation is necessary to resolve a dispute arising out of this Contract, the Court shall determine a prevailing party and the prevailing party shall be entitled to an award of reasonable costs, expenses and attorney's fees, including costs incurred for conducting the mediation and in any litigation at the trial and/or appellate level. This Paragraph 17 shall survive Closing or termination of this Contract.

18. STANDARDS: A. TITLE: (i) TITLE EVIDENCE; RESTRICTIONS; EASEMENTS; LIMITATIONS: Within the time period provided in Paragraph 9(c), the Title Commitment, with legible copies of instruments listed as exceptions attached thereto, shall be issued and delivered to Buyer. The Title Commitment shall set forth those matters to be discharged by Seller at or before Closing and shall provide that, upon recording of the deed to Buyer, an owner's policy of title insurance in the amount of the Purchase Price, shall be issued to Buyer insuring Buyer's marketable title to the Real Property, subject only to the following matters: (a) comprehensive land use plans, zoning, and other land use restrictions, prohibitions and requirements imposed by governmental authority; (b) restrictions and matters appearing on the Plat or otherwise common to the subdivision; (c) outstanding oil, gas and mineral rights of record without right of entry; (d) unplatted public utility easements of record (located contiguous to real property lines and not more than 10 feet in width as to rear or front lines and 7 1/2 feet in width as to side lines); (e) taxes for year of Closing and subsequent years; and (f) assumed mortgages and purchase money mortgages, if any (if additional items, attach addendum); provided, that, none prevent use of Property for **Buyer's intended purposes**. If there exists at Closing any violation of items identified in (b) – (f) above, then the same shall be deemed a title defect. Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law.

(ii) **TITLE EXAMINATION:** Buyer shall have 5 days after receipt of Title Commitment to examine it and notify Seller in writing specifying defect(s), if any, that render title unmarketable. If Seller provides Title Commitment and it is delivered to Buyer less than 5 days prior to Closing Date, Buyer may extend Closing for up to 5 days after date of receipt to examine same in accordance with this STANDARD A. Seller shall have 30 days ("Cure Period") after receipt of Buyer's notice to take reasonable diligent efforts to remove defects. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted title as it then is. If Seller cures defects within Cure Period, Seller will deliver written notice to Buyer (with proof of cure acceptable to Buyer and Buyer's attorney) and the parties will close this Contract on Closing Date (or if Closing Date has passed, within 10 days after Buyer's receipt of Seller's notice). If Seller is unable to cure defects within Cure Period, then Buyer may, within 5 days after expiration of Cure Period, deliver written notice to Seller: (a) extending Cure Period for a specified period not to exceed 120 days within which Seller shall continue to use reasonable diligent effort to remove or cure the defects ("Extended Cure Period"); or (b) electing to accept title with existing defects and close this Contract on Closing Date (or if Closing Date has passed, within the earlier of 10 days after end of Extended Cure Period or Buyer's receipt of Seller's notice), or (c) electing to terminate this Contract and receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract. If after reasonable diligent effort, Seller is unable to timely cure defects, and Buyer does not waive the defects, this Contract shall terminate, and Buyer shall

receive a refund of the Earnest Money, thereby releasing Buyer and Seller from all further obligations under this Contract.

B. SURVEY: If Survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, easements, or lands of others, or violate any restrictions, covenants, or applicable governmental regulations described in STANDARD A (i)(a), (b) or (d) above, Buyer shall deliver written notice of such matters, together with a copy of Survey, to Seller within 5 days after Buyer's receipt of Survey, but no later than Closing. If Buyer timely delivers such notice and Survey to Seller, such matters identified in the notice and Survey shall constitute a title defect, subject to cure obligations of STANDARD A above. If Seller has delivered a prior survey, Seller shall, at Buyer's request, execute an affidavit of "no change" to the Real Property since the preparation of such prior survey, to the extent the affirmations therein are true and correct.

C. INGRESS AND EGRESS: Seller represents that there is ingress and egress to the Real Property and title to the Real Property is insurable in accordance with STANDARD A without exception for lack of legal right of access.

D. LEASE INFORMATION: Seller represents that there are no lease hold interests encumbering the property.

E. LIENS: Seller shall furnish to Buyer at Closing an affidavit attesting (i) to the absence of any financing statement, claims of lien or potential lienors known to Seller and (ii) that there have been no improvements or repairs to the Real Property for 90 days immediately preceding Closing Date. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth names of all such general contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a construction lien or a claim for damages have been paid or will be paid at Closing.

F. TIME: Calendar days shall be used in computing time periods. **Time is of the essence in this Contract.** Other than time for acceptance and Effective Date as set forth in Paragraph 3, any time periods provided for or dates specified in this Contract, whether preprinted, handwritten, typewritten or inserted herein, which shall end or occur on a Saturday, Sunday, or a national legal holiday (see 5 U.S.C. 6103) shall extend to 5:00 p.m. (where the Property is located) of the next business day.

G. FORCE MAJEURE: Buyer or Seller shall not be required to perform any obligation under this Contract or be liable to each other for damages so long as performance or non-performance of the obligation is delayed, caused or prevented by Force Majeure. "Force Majeure" means: hurricanes, earthquakes, floods, fire, acts of God, unusual transportation delays, wars, insurrections, and acts of terrorism, and any other cause not reasonably within control of Buyer or Seller, and which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome. All time periods, including Closing Date, will be extended for the period that the Force Majeure prevents performance under this Contract.

H. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters described in STANDARD A and those accepted by Buyer. Personal Property shall, at request of Buyer, be transferred by absolute bill of sale with warranty of title, subject only to such matters as may be provided for in this Contract.

I. CLOSING LOCATION; DOCUMENTS; AND PROCEDURE: (i) **LOCATION:** Closing will take place in the county where the Real Property is located at the office of the attorney or other closing agent ("Closing Agent") designated by this Contract, or Closing may be conducted by mail or electronic means.

(ii) **CLOSING DOCUMENTS:** Seller shall at or prior to Closing, execute and deliver, as applicable, deed, bill of sale, certificate(s) of title or other documents necessary to transfer title to the Property, construction lien affidavit(s), owner's possession and no lien affidavit(s), and assignment(s) of leases. Buyer shall furnish and pay for, as applicable the survey, flood elevation certification, and documents required by Buyer.

(iii) **PROCEDURE:** The deed shall be recorded upon **COLLECTION** of all closing funds. If the Title Commitment provides insurance against adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow closing procedure required by STANDARD J shall be waived, and Closing Agent shall, **subject to COLLECTION of all closing funds**, disburse at Closing the net sale proceeds to Seller.

J. ESCROW CLOSING PROCEDURE: If Title Commitment issued pursuant to Paragraph 9(c) does not provide for insurance against adverse matters as permitted under Section 627.7841, F.S., as amended, the following escrow and closing procedures shall apply: (1) all Closing proceeds shall be held in escrow by

the Closing Agent for a period of not more than 10 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 10 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, the Earnest Money and all Closing funds paid by Buyer shall, within 5 days after written demand by Buyer, be refunded to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and re-convey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund of the Earnest Money, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

K. PRORATIONS; CREDITS: The following recurring items will be made current (if applicable) and prorated as of the day prior to Closing Date, or date of occupancy if occupancy occurs before Closing Date: real estate taxes (including special benefit tax assessments imposed by a CDD), interest, bonds, association fees, insurance, rents and other expenses of Property. Buyer shall have option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased or decreased as may be required by prorations to be made through day prior to Closing. Advance rent and security deposits, if any, will be credited to Buyer. Escrow deposits held by Seller's mortgagee will be paid to Seller. Taxes shall be prorated based on current year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs on a date when current year's millage is not fixed but current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed upon between the parties, failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemptions. A tax proration based on an estimate shall, at either party's request, be readjusted upon receipt of current year's tax bill. This STANDARD K shall survive Closing.

L. ACCESS TO PROPERTY TO CONDUCT APPRAISALS, INSPECTIONS, AND WALK-THROUGH: Seller shall, upon reasonable notice, provide utilities service and access to Property for appraisals and inspections, including a walk-through (or follow-up walk-through if necessary) prior to Closing.

M. RISK OF LOSS: If, before the Closing Date, all or any part of the Property are damaged or destroyed by any casualty, Buyer shall have the right, by giving notice to Seller within thirty (30) days after Seller gives written notice of the occurrence of such casualty to Buyer, to terminate this Agreement, in which event this Agreement shall terminate, and all Earnest Money, including interest thereon shall be refunded to Buyer. If, before the Closing Date, all or any part of the Property are damaged by any casualty or if Buyer has the right to terminate this Agreement pursuant to the preceding sentence but Buyer does not exercise such right, then this Agreement shall remain in full force and effect and, at Closing, any insurance proceeds shall be assigned by Seller to Buyer. Seller shall give written notice to Buyer promptly after the occurrence of any damage to the improvements on the Real Property by any casualty. Buyer shall have a period of thirty (30) days after Seller has given the notice to Buyer required by this Paragraph 18(M) to evaluate the extent of the damage and make the determination as to whether to terminate this Agreement. If necessary, the Closing shall be postponed until Seller has given the notice to Buyer required by this Paragraph 18(M) and the period of thirty (30) days described in this Paragraph 18(M) has expired.

N. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; DELIVERY; COPIES; CONTRACT EXECUTION: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall be binding on, and inure to the benefit of, the parties and their respective heirs or successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker (including such broker's real estate licensee) representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic (including "pdf") media. A facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original. This Contract may be executed by use of electronic signatures, as determined by Florida's Electronic Signature Act and other applicable laws.

O. INTEGRATION; MODIFICATION: This Contract contains the full and complete understanding and agreement of Buyer and Seller with respect to the transaction contemplated by this Contract and no prior agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No

modification to or change in this Contract shall be valid or binding upon Buyer or Seller unless in writing and executed by the parties intended to be bound by it.

P. WAIVER: Failure of Buyer or Seller to insist on compliance with, or strict performance of, any provision of this Contract, or to take advantage of any right under this Contract, shall not constitute a waiver of other provisions or rights.

Q. RIDERS; ADDENDA; TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Riders, addenda, and typewritten or handwritten provisions shall control all printed provisions of this Contract in conflict with them.

R. COLLECTION or COLLECTED: "COLLECTION" or "COLLECTED" means any checks tendered or received, including Earnest Moneys, have become actually and finally collected and deposited in the account of Escrow Agent or Closing Agent. Closing and disbursement of funds and delivery of closing documents may be delayed by Closing Agent until such amounts have been COLLECTED in Closing Agent's accounts.

S. LOAN COMMITMENT: "Loan Commitment" means a statement by the lender setting forth the terms and conditions upon which the lender is willing to make a particular mortgage loan to a particular borrower. Neither a pre-approval letter nor a prequalification letter shall be deemed a Loan Commitment for purposes of this Contract.

T. APPLICABLE LAW AND VENUE: This Contract shall be construed in accordance with the laws of the State of Florida and venue for resolution of all disputes, whether by mediation, arbitration or litigation, shall lie in the county where the Real Property is located.

U. FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT ("FIRPTA"): If a seller of U.S. real property is a "foreign person" as defined by FIRPTA, Section 1445 of the Internal Revenue Code requires the buyer of the real property to withhold 10% of the amount realized by the seller on the transfer and remit the withheld amount to the Internal Revenue Service (IRS) unless an exemption to the required withholding applies or the seller has obtained a Withholding Certificate from the IRS authorizing a reduced amount of withholding. Due to the complexity and potential risks of FIRPTA, Buyer and Seller should seek legal and tax advice regarding compliance, particularly if an "exemption" is claimed on the sale of residential property for \$300,000 or less.

(i) No withholding is required under Section 1445 if the Seller is not a "foreign person," provided Buyer accepts proof of same from Seller, which may include Buyer's receipt of certification of non-foreign status from Seller, signed under penalties of perjury, stating that Seller is not a foreign person and containing Seller's name, U.S. taxpayer identification number and home address (or office address, in the case of an entity), as provided for in 26 CFR 1.1445-2(b). Otherwise, Buyer shall withhold 10% of the amount realized by Seller on the transfer and timely remit said funds to the IRS.

(ii) If Seller has received a Withholding Certificate from the IRS which provides for reduced or eliminated withholding in this transaction and provides same to Buyer by Closing, then Buyer shall withhold the reduced sum, if any required, and timely remit said funds to the IRS.

(iii) If prior to Closing Seller has submitted a completed application to the IRS for a Withholding Certificate and has provided to Buyer the notice required by 26 CFR 1.1445-1(c) (2)(i)(B) but no Withholding Certificate has been received as of Closing, Buyer shall, at Closing, withhold 10% of the amount realized by Seller on the transfer and, at Buyer's option, either (a) timely remit the withheld funds to the IRS or (b) place the funds in escrow, at Seller's expense, with an escrow agent selected by Buyer and pursuant to terms negotiated by the parties, to be subsequently disbursed in accordance with the Withholding Certificate issued by the IRS or remitted directly to the IRS if the Seller's application is rejected or upon terms set forth in the escrow agreement.

(iv) In the event the net proceeds due Seller are not sufficient to meet the withholding requirement(s) in this transaction, Seller shall deliver to Buyer, at Closing, the additional COLLECTED funds necessary to satisfy the applicable requirement and thereafter Buyer shall timely remit said funds to the IRS or escrow the funds for disbursement in accordance with the final determination of the IRS, as applicable.

(v) Upon remitting funds to the IRS pursuant to this STANDARD, Buyer shall provide Seller copies of IRS Forms 8288 and 8288-A, as filed.

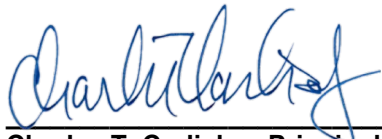
V. N/A

W. BUYER WAIVER OF CLAIMS: To the extent permitted by law, Buyer waives any claims against Seller and against any real estate licensee involved in the negotiation of this Contract for any damage or defects pertaining to the physical condition of the Property that may exist at Closing of this Contract and be subsequently discovered by the Buyer or anyone claiming by, through, under or against the Buyer. This

provision does not relieve Seller's obligation to comply with Paragraph 10(j). This Standard X shall survive Closing.

19. ADDITIONAL TERMS: N/A.

20. Signatures.



Charles T. Carlisle – Principal - Buyer
Bristol Development Group, LLC

5/6/22

Date

Ralph Heotzler - Seller

Date

Tammy Heotzler - Seller

Date

Addendum to Contract For Sale And Purchase

Ralph and Tammy Heotzler, a husband and wife, (collectively, "Seller"), and Bristol Development Group, LLC, ("Buyer"), agree to amend the terms and conditions of the Contract For Sale And Purchase ("Contract") between them in accordance with this "Addendum" as follows:

Paragraph 4 is modified and replaced in its entirety by the following:

"4. CLOSING DATE:

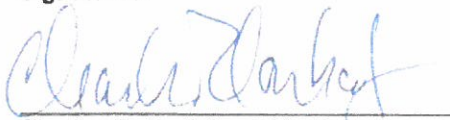
Unless modified by other provisions of this Contract, the closing of this transaction shall occur and the closing documents required to be furnished by each party pursuant to this Contract shall be delivered ("Closing") within 30 days following the closing with the City of Port Orange of the City's River Walk parcels consisting of approximately 10 acres, but not later than December 31, 2024, ("Closing Date"), at the time established by the Closing Agent. Notwithstanding the foregoing, if Buyer has not closed with the City of Port Orange by December 31, 2024 but is diligently pursuing financing for said closing, Buyer will have the option to extend closing to no later than February 28th, 2025. Regardless of Closing Date, Buyer shall provide Seller a minimum ninety (90) days' written notice prior to Closing. Upon giving of said 90-day notice, Buyer shall be deemed to have waived all contingencies in Paragraph 5 below. It is further agreed that in the event the 90-day notice is given after December 31, 2023, the tenant shall not be required to vacate the Property between April 1, 2024 and September 10, 2024 without Seller's written consent."

With respect to **"9. CLOSING COSTS; TITLE INSURANCE; SURVEY; SPECIAL ASSESSMENTS:"**

Buyer and Seller hereby agree by executing this Addendum, that in addition to paying Buyer's Closing Costs listed in 9.b., Buyer shall also pay Sellers' Closing Costs listed in 9.a., except that Buyer's contribution to Seller's Attorney's fees shall be the actual expense incurred directly related to the Contract, or \$3,500.00, whichever is less.

All other provisions of the Contract shall remain in full force and effect except as must be reasonably modified to give meaning to the modifications above.

Signatures.


Charles T. Carlisle – Principal - Buyer
Bristol Development Group, LLC

12/5/23
Date


Ralph Heotzler - Seller

12/8/23
Date


Tammy Heotzler - Seller

12/8/23
Date



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (C16d) Contract to Purchase 3925 Ridgewood Avenue (Purchase #1)

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve the contract to purchase 3925 Ridgewood Avenue and authorize Mayor and City Clerk to execute all documents associated with closing.

SUMMARY: The attached contract is for the City of Port Orange to purchase 3925 Ridgewood Avenue (Parcel #4) from Bristol Port Orange Partners, LLC (see Exhibit A). According to the contract, the city will buy this parcel for \$624,000 (purchase price of \$600,000 + Colliers 4% Commission) on Monday, December 2, 2024. This property is vacant, and there are no tenants.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Exhibit A - Outparcel Acquisition	Exhibit A - Outparcel Acquisition.pdf
2.	3925 Ridgewood- contract w exhibits	3925 Ridgewood-signed contract w exhibits.pdf

Robin Fenwick
Tim Burman
John McKinney
Shannon Balmer
Wayne Clark

Created/Initiated - 11/5/2024
Approved - 11/5/2024
Approved - 11/5/2024
Approved - 11/14/2024
Final Approval - 11/14/2024

(Exhibit A - Parcel Acquisition Graphic)





CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY

THIS CONTRACT FOR SALE AND PURCHASE OF REAL PROPERTY, hereinafter, the "Contract" is made and entered into this ____ day of _____, 2024, between: **Bristol Port Orange Partners, LLC**, a Florida limited liability company with a mailing address of 381 Mallory Station Road, Suite 204, Franklin, TN 37067 hereinafter referred to as "Seller"; and **CITY OF PORT ORANGE, FLORIDA**, a municipal corporation, with a mailing address: c/o City Manager, 1000 City Center Circle, Port Orange FL 32129-4144, hereinafter referred to as "Purchaser."

1. Seller agrees to sell and Purchaser agrees to purchase the following described real estate, with its appurtenances, located at 3925 Ridgewood Avenue, Port Orange, County of Volusia, State of Florida:

See **Exhibit "A"**, attached hereto and made a part hereof by reference.

Also being identified by Parcel Number: 6303-11-02-0041; the subject real estate being hereinafter referred to as the "Property".

General Description and Vicinity of Property: Property generally located on the east side of Ridgewood Avenue in the block north of Dunlawton Avenue.

Tangible Personal Property and Fixtures: Prior to date of closing, Seller shall remove all personal property, furnishings, appliances, fixtures, and miscellaneous debris; and shall secure all exterior openings of the structure. Upon completion of closing, any Tangible Personal Property and Fixtures, as defined herein, remaining on the Property shall be the property of the Purchaser and Seller shall have no further right of removal or demand thereof. Seller shall have no further obligations to Seller as it relates to the Tangible Personal Property and Fixtures and the removal or disposal thereof.

Conveyance by the Seller and purchase by the Purchaser of the above-described Property is subject to the Standards for Real Estate Transactions set forth on the form contract approved by The Florida Bar and The Florida Association of Realtors, Inc., attached hereto as **Exhibit "B."** In the event of a conflict between the terms of this Contract and the terms contained in **Exhibit "B,"** this Contract shall control.

2. Purchase Price and Method of Payment. The purchase price payable to Seller is as follows:

- (a) The Purchase Price for the Property is: Six Hundred Thousand and NO/100 Dollars (\$600,000.00); and
- (b) The total Purchase Price, which includes the Purchaser's good faith deposit of Zero No/100 Dollars (\$0.00), and less expenses as set forth in Section 9., herein below, and prorations as provided in Standard L of Exhibit "A", by check or wire payable to the order of Seller, to be delivered at the time of closing.
- (c) Upon execution of this Contract by the Mayor and the City Clerk, the Contract shall be forwarded to Matthew Welch, Esq. Cobb Cole Law Firm, One Daytona Boulevard, Suite 600, Daytona Beach, FL 32114 referred to as "Escrow Agent," for the closing of this transaction and to hold the proceeds to be delivered to Seller at the time of closing.

3. Title and Survey.

- (a) **Marketable Title.** Seller shall convey to Purchaser marketable title to the Property, determined in accordance with the Title Standards in **Exhibit "B"**.
- (b) **Title Insurance and Commitment.** Not later than Five (5) days after approval by City Council, Seller shall cause to be delivered to and receipted by the City Attorney's Office, on behalf of the Purchaser a title insurance commitment, in accordance with Standard "A" of **Exhibit "B"**, covering the Property, together with legible copies of all recorded documents referenced therein, along with a special assessment and real property tax search (the "Commitment"). Up to Five (5) days before closing, hereinafter, the "Examination Period", Purchaser, shall have the opportunity to review the Commitment for the purpose of determining marketability of title and title defects. If title is found defective within the Examination Period, as solely determined by the Purchaser, then Purchaser shall notify Seller in writing, specifying defects which render title unmarketable. Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Examination Period and neither party shall have any further obligations under this Contract. If Purchaser fails to notify Seller of title defects within the above referenced Examination Period, Purchaser shall be deemed to have accepted said title.

An Owner's ALTA policy, insuring Purchaser for the full amount of the purchase price against loss or damage by reason of defect in the title of Seller in the Property shall be delivered to Purchaser at the time of closing.

- (c) **Survey.** Purchaser, at Purchaser's expense, may have the Property surveyed and certified by a registered Florida Surveyor in accordance with Standard "C" of **Exhibit "B"**. However, upon Purchaser's request, Seller shall provide Purchaser with copies of any such surveys that Seller may have in their possession.

4. Taxes and assessments. Seller agrees to pay before delinquency all taxes, assessments and utility charges, if any, which may be due currently or may hereafter become due on the Property until and including the day of closing.

5. Risk of loss. Risk of loss or damage to the Property by fire or other casualty between the date of this Contract and closing shall be and is assumed by Seller.

6. Rental Agreements. Seller warrants that no other persons have any right to possession of the Property and the Seller shall not enter into any Lease or other instrument granting possessory rights subsequent to the execution of this Contract.

7. Deed. Seller agrees, upon full payment of the purchase price in the manner herein specified, to make, execute and deliver to Purchaser a good and sufficient warranty deed to the Property.

8. Closing. Closing shall take place in Volusia County, Florida at the office of the Escrow Agent on or before December 31, 2024, following the approval of this Contract for Sale and Purchase by the Port Orange City Council. The date of closing may be extended only upon mutual agreement of the parties. At the closing, Seller shall provide Purchaser with the deed to the Property and other documents in accordance with Standard J. Following the closing, Purchaser shall have the right to exclusive possession of the Property.

9. Closing Costs. Seller shall pay the following closing costs: Florida documentary tax stamps, recording fees of the deed, municipal lien search, and costs associated with instruments to cure title defects, if any. Costs of title insurance premium, document preparation, environmental audits, surveys, and other inspections shall be paid by the Purchaser.

10. Fees. Purchaser and Seller both acknowledge Seller has previously utilized the services of a Florida Real Estate Broker for the sale and purchase of the Property. As a pass-through fee to Purchaser, Purchaser agrees to reimburse Seller the costs associated with the services provided by the Florida Real Estate Broker pursuant to the separate brokerage agreement between Purchaser and Purchaser's Broker, which provides for a four percent (4%) commission based on the gross purchase price.

11. Environmental Audit. Up to Five (5) days before the date of closing, hereinafter referred to as the "Inspection Period", Purchaser shall have the right to conduct an environmental audit of the Property which audit shall be certified to Purchaser. In the event the environmental audit detects the presence of any hazardous materials, unique prehistoric or historic artifacts, relics, or structures of archaeological value, or of the remains of deceased persons interred therein on the Property, Purchaser, at its sole option, may elect to terminate this Contract prior to the expiration of the Inspection Period and neither party shall have any further obligations under this Contract. For purposes of this Contract, "hazardous materials" shall mean any hazardous or toxic substance, material or waste of any kind or any other substance which is regulated by any federal, state or local environmental laws, statutes, ordinances, rules, regulations, restrictions or orders relating to liability or standards of conduct. However, within Five

(5) days of Purchaser request, Seller shall provide Purchaser with copies of any such audits, surveys, and other inspections covering the property that Seller has possession of and the right to disclose to third parties prior to closing.

12. Purchaser's Intended Use of the Property. The restrictions, easements, leases, if any, and limitations of record shall not prevent the Purchaser from exercising its rights for its intended use of the Property including all lawful purposes consistent with the local zoning regulations and the elimination and prevention of the development or spread of slums and urban blight.

13. Default. Seller and Purchaser agree failure of performance shall be determined in accordance with the Standard S contained in Exhibit "A".

14. Other Offers to Purchase. Seller acknowledges there are no existing purchase contracts or options to purchase on said Property as of execution of this Contract to Sale and Purchase of Real Property.

15. Access to Property. Seller agrees to allow Purchaser and Purchaser's employees, consultants, agents and representatives access to the Property upon execution of this Contract by Seller and extending to the time of closing for the purpose of conducting surveys, environmental audits and inspections of the premises.

16. Effective Date. The Effective Date for this *Contract for Sale and Purchase of Real Property* shall be the date of approval by the City Council for the City of Port Orange, Florida; such approval shall be evidenced by the signing by all parties to this Contract.

17. Counterparts. This Contract 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 transmittal of an executed copy of this Contract shall be deemed valid as if an original signature was delivered.

This *Contract for Sale and Purchase of Real Property* is executed by the parties as of the respective dates shown below.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

WITNESSES:

CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY

SELLER:

BRISTOL PORT ORANGE PARTNERS, LLC

Andrea C. Sullivan
First Witness Signature Above, Printed Name Below:

Andrea C. Sullivan

By: Charles Carlisle
AUTHORIZED REPRESENTATIVE

Date: Nov 14, 2024

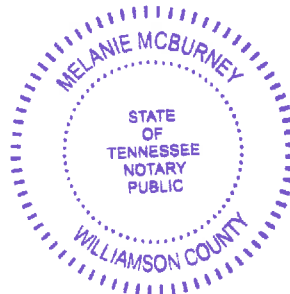
Elizabeth Gunderson
Second Witness Signature Above, Printed Name Below:

Elizabeth Gunderson

STATE OF Tennessee
COUNTY OF Williamson

The foregoing Contract was and acknowledged before me by means of ☒ physical presence or ☐ online notarization this 14 day of November, 2024, by Charles Carlisle, Authorized Representative, the Purchaser named in the foregoing Contract, who (Notary, please check as applicable): ☐ took an oath or ☒ did not take an oath; and who ☒ is personally known to me or ☐ has produced _____ as identification.

Melanie McBurney
Notary Public, State of Tennessee at Large
Printed Name, Commission Seal and Term Expiration Date



WITNESSES:

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

CONTRACT FOR SALE AND PURCHASE
OF REAL PROPERTY

PURCHASER:

CITY OF PORT ORANGE, FLORIDA
a chartered municipal corporation

By: _____
Donald O. Burnette, Mayor

Date: _____, 2024

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

(SEAL)

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing *Contract for Sale and Purchase of Real Property* was acknowledged before me by means of [XX] physical presence or [] online notarization this ____ day of _____, 2024, by Donald O. Burnette, as Mayor and Robin L. Fenwick, as the City Clerk, both of the City of Port Orange, Florida, who acknowledged that they are duly authorized to execute the foregoing Contract on behalf of the **CITY OF PORT ORANGE, FLORIDA**, a chartered municipal corporation, and who [] is personally known to me, or [] has produced _____ as identification.

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

Exhibit "A"

A portion of Lot 4, Block "B", WILSON'S PORT ORANGE, according to the map thereof recorded in Map Book 1, page 154, of the Public Records of Volusia County, Florida, and being more particularly described as follows:

As a point of reference, commence at the intersection of the Southerly right-of-way line of Herbert Street (a 40 foot right-of-way as occupied) with the Easterly right-of-way line of Ridgewood Avenue (a 100 foot right-of-way as occupied) thence South 25 degrees 16 minutes 00 seconds East along said Easterly right-of-way line of Ridgewood Avenue a distance of 413.60 feet to the point of beginning of the following described parcel; thence North 65 degrees 00 minutes 00 seconds East and parallel with the North line of Lot Four (4), Block "B", WILSON'S PORT ORANGE as recorded in Map Book 1, Page 154, Public Records of Volusia County, Florida, a distance of 123 feet to a point; thence South 70 degrees 34 minutes 27 seconds East a distance of 24.81 feet to a point; thence North 65 degrees 00 minutes 00 seconds East and parallel with said North line of Lot Four (4), Block "B", WILSON'S PORT ORANGE a distance of 93.63 feet to a point; thence South 24 degrees 42 minutes 32 seconds East a distance of 23.90 feet to a point in the South line of said Lot Four (4), Block "B", WILSON'S PORT ORANGE; thence South 65 degrees 00 minutes 00 seconds West along the South line of said Lot Four (4), Block "B", WILSON'S PORT ORANGE, a distance of 234.14 feet to a point in the Easterly right-of-way line of said Ridgewood Avenue; thence North 25 degrees 16 minutes 00 seconds West along said Easterly right-of-way line of Ridgewood Avenue a distance of 41.40 feet to the Point of Beginning, reserving a road easement over the Northerly 5 feet of the Westerly 130 feet thereof. LESS AND EXCEPT any portion thereof lying in Ridgewood Avenue.

AND

As a point of reference, commence at the intersection of the Southerly right-of-way line of Herbert Street (a 40 foot right-of-way as occupied) with the Easterly right-of-way line of Ridgewood Avenue (a 100 foot right-of-way as occupied); thence South 25 degrees 16 minutes 00 seconds East along said Easterly right-of-way line of Ridgewood Avenue a distance of 380 feet to a point in the North line of Lot Four (4), Block "B", WILSON'S PORT ORANGE, as recorded in Map Book 1, Page 154, Public Records of Volusia County, Florida; thence North 65 degrees 00 minutes 00 seconds East along said North line of Lot Four (4) Block "B", WILSON'S PORT ORANGE a distance of 123 feet to the Point of Beginning of the following described parcel; thence continue North 65 degrees 00 minutes 00 seconds East along said North line of Lot Four (4), Block "B", WILSON'S PORT ORANGE a distance of 111.87 feet to a point; thence South 24 degrees 42 minutes 32 seconds East a distance of 51.10 feet to a point; thence South 65 degrees 00 minutes 00 seconds West and parallel with said North line of Lot Four (4), Block "B", WILSON'S PORT ORANGE, a distance of 93.63 feet to a point; thence North 70 degrees 34 minutes 27 seconds West a distance of 24.81 feet to a point; thence North 25 degrees 16 minutes 00 seconds West and parallel with said Ridgewood Avenue right-of-way a distance of 33.60 feet to the Point of Beginning. LESS AND EXCEPT any portion thereof lying in Ridgewood Avenue.

Together with an easement for road purposes over the Southerly 10 feet of the Northerly 38.6 feet of the Westerly 130 feet lying East of Ridgewood Avenue (a 100 foot right-of-way) of Lot Four (4), Block "B", WILSON'S PORT ORANGE, as recorded in Map Book 1, page 154. Public Records of Volusia County, Florida.

EXHIBIT "B"

STANDARDS FOR REAL ESTATE TRANSACTIONS

126
127 **A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer, upon recording of the deed to Buyer, an
128 owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters contained in
129 Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable Title Standards adopted by
130 authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if title is found defective,
131 notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the defects, failing which
132 Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a reasonable period not to exceed 120
133 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall be returned to Buyer. If Buyer fails to
134 so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if title is found unmarketable, use diligent effort to correct defect(s) within
135 the time provided. If, after diligent effort, Seller is unable to timely correct the defects, Buyer shall either waive the defects, or receive a refund of deposit(s), thereby
136 releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title Commitment and it is delivered to Buyer less than 5 days prior
137 to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt to examine same in accordance with this Standard.

138 **B. PURCHASE MONEY MORTGAGE; SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a
139 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment
140 in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept
141 in good standing; shall forbid modifications of, or future advances under, prior mortgage(s); shall require Buyer to maintain policies of insurance containing a
142 standard mortgagee clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage
143 endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note
144 and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mort-
145 gages, mortgage notes and security agreements generally utilized by savings and loan institutions or state or national banks located in the county wherein the
146 Real Property is located. All Personal Property and leases being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement evi-
147 denced by recorded or filed financing statements or certificates of title. If a balloon mortgage, the final payment will exceed the periodic payments thereon.

148 **C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certified
149 by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on setback lines, ease-
150 ments, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the same shall constitute a title defect.

151 **D. WOOD DESTROYING ORGANISMS:** "Wood Destroying Organisms" (WDO) shall be deemed to include all wood destroying organisms required to be reported
152 under the Florida Structural Pest Control Act, as amended. Buyer, at Buyer's expense, may have the Property inspected by a Florida Certified Pest Control Operator
153 ("Operator") within 20 days after the Effective Date to determine if there is any visible active WDO infestation or visible damage from WDO infestation, excluding fences.
154 If either or both are found, Buyer may within said 20 days (1) have cost of treatment of active infestation estimated by the Operator; (2) have all damage inspected
155 and cost of repair estimated by an appropriately licensed contractor; and (3) report such cost(s) to Seller in writing. Seller shall cause the treatment and repair of all
156 WDO damage to be made and pay the costs thereof up to the amount provided in Paragraph XII(a). If estimated costs exceed that amount, Buyer shall have the
157 option of canceling this Contract by giving written notice to Seller within 20 days after the Effective Date, or Buyer may elect to proceed with the transaction and
158 receive a credit at Closing equal to the amount provided in Paragraph XII(a). If Buyer's lender requires an updated WDO report, then Buyer shall, at Buyer's expense,
159 have the opportunity to have the Property re-inspected for WDO infestation and have the cost of active infestation or new damage estimated and reported to Seller
160 in writing at least 10 days prior to Closing, and thereafter, Seller shall cause such treatment and repair to be made and pay the cost thereof; provided, Seller's total
161 obligation for treatment and repair costs required under both the first and second inspection shall not exceed the amount provided in Paragraph XII (a).

162 **E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended use as described
163 in Paragraph VII hereof and title to the Real Property is insurable in accordance with Standard A without exception for lack of legal right of access.

164 **F. LEASES:** Seller shall, at least 10 days before Closing, furnish to Buyer copies of all written leases and estoppel letters from each tenant specifying the nature
165 and duration of the tenant's occupancy, rental rates, advanced rent and security deposits paid by tenant. If Seller is unable to obtain such letter from each ten-
166 ant, the same information shall be furnished by Seller to Buyer within that time period in the form of a Seller's affidavit, and Buyer may thereafter contact ten-
167 ant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written
168 notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

169 **G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financing statement,
170 claims of lien or potential lienors known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days im-
171 mediately preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction
172 liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's lien affidavit setting forth the names of all such gen-
173 eral contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a
174 construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

175 **H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing
176 Agent") designated by the party paying for title insurance, or, if no title insurance, designated by Seller.

177 **I. TIME:** Calendar days shall be used in computing time periods except periods of less than six (6) days, in which event Saturdays, Sundays and state or nation-
178 al legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to 5:00 p.m. of the
179 next business day. Time is of the essence in this Contract.

180 **J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of leases,
181 tenant and mortgagee estoppel letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statements.

182 **K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained
183 from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed,
184 mortgagee title insurance commitment with related fees, and recording of purchase money mortgage to Seller, deed and financing statements shall be paid by
185 Buyer. Unless otherwise provided by law or rider to this Contract, charges for related closing services, title search, and closing fees (including preparation of
186 closing statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

187 **L. PRORATIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing.
188 Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be increased
189 or decreased as may be required by prorations to be made through day prior to Closing, or occupancy, if occupancy occurs before Closing. Advance rent and
190 security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current year's tax
191 with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date when the current year's millage is not
192 fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assessment is not
193 available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing, which improve-
194 ments were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and at an equitable assessment to be agreed
195 upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into account available exemp-
196 tions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

197 **M. (RESERVED - purposely left blank)**

198 **N. INSPECTION AND REPAIR:** Seller warrants that the ceiling, roof (including the fascia and soffits), and exterior and interior walls, and foundation of the Property
199 do not have any visible evidence of leaks, water damage, or structural damage and that dockage, seawalls, septic tank, pool, all appliances, mechanical items,
FAR/BAR-8 Rev. 9/07 © 2007 Florida Association of REALTORS® and The Florida Bar All Rights Reserved Page 3 of 4

STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

heating, cooling, electrical, plumbing systems, and machinery are in Working Condition. The foregoing warranty shall be limited to the items specified unless otherwise provided in an addendum. Buyer may inspect, or, at Buyer's expense, have a firm or individual specializing in home inspections and holding an occupational license for such purpose (if required), or by an appropriately licensed Florida contractor, make inspections of, those items within 20 days after the Effective Date. Buyer shall, prior to Buyer's occupancy but not more than 20 days after Effective Date, report in writing to Seller such items that do not meet the above standards as to defects. Unless Buyer timely reports such defects, Buyer shall be deemed to have waived Seller's warranties as to defects not reported. If repairs or replacements are required to comply with this Standard, Seller shall cause them to be made and shall pay up to the amount provided in Paragraph XII (b). Seller is not required to make repairs or replacements of a Cosmetic Condition unless caused by a defect Seller is responsible to repair or replace. If the cost for such repair or replacement exceeds the amount provided in Paragraph XII (b), Buyer or Seller may elect to pay such excess, failing which either party may cancel this Contract. If Seller is unable to correct the defects prior to Closing, the cost thereof shall be paid into escrow at Closing. For purposes of this Contract: (1) "Working Condition" means operating in the manner in which the item was designed to operate; (2) "Cosmetic Condition" means aesthetic imperfections that do not affect the Working Condition of the item, including, but not limited to: pitted marcite or other pool finishes; missing or torn screens; fogged windows; tears, worn spots, or discoloration of floor coverings, wallpaper, or window treatments; nail holes, scratches, dents, scrapes, chips or caulking in ceilings, walls, flooring, fixtures, or mirrors; and minor cracks in floors, tiles, windows, driveways, sidewalks, or pool decks; and (3) cracked roof tiles, curling or worn shingles, or limited roof life shall not be considered defects Seller must repair or replace, so long as there is no evidence of actual leaks or leakage or structural damage, but missing tiles will be Seller's responsibility to replace or repair.

O. RISK OF LOSS: If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which shall include the cost of pruning or removing damaged trees) does not exceed 1.5% of the Purchase Price, cost of restoration shall be an obligation of Seller and Closing shall proceed pursuant to the terms of this Contract and if restoration is not completed as of Closing, restoration costs will be escrowed at Closing. If the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with the 1.5% or receive a refund of deposit(s) thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to tree damage by casualty or other natural occurrence shall be the cost of pruning or removal.

P. CLOSING PROCEDURE: The deed shall be recorded upon clearance of funds. If the title agent insures adverse matters pursuant to Section 627.7841, F.S., as amended, the escrow and closing procedure required by this Standard shall be waived. Unless waived as set forth above the following closing procedures shall apply: (1) all closing proceeds shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2) if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of warranties contained in the deed or bill of sale.

Q. ESCROW: Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit them promptly, hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents a party and also acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent.

R. ATTORNEY'S FEES; COSTS: In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such litigation, which, for purposes of this Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

S. FAILURE OF PERFORMANCE: If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract; or Seller, at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) without thereby waiving any action for damages resulting from Seller's breach.

T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES: Neither this Contract nor any notice of it shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party. All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile or electronic (including "pdf") copy of this Contract and any signatures hereon shall be considered for all purposes as an original.

U. CONVEYANCE: Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as appropriate to the status of Seller, subject only to matters contained in Paragraph VII and those otherwise accepted by Buyer. Personal Property shall, at the request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

V. OTHER AGREEMENTS: No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No modification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

W. SELLER DISCLOSURE: There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or which have not been disclosed to Buyer.

X. PROPERTY MAINTENANCE; PROPERTY ACCESS; REPAIR STANDARDS; ASSIGNMENT OF CONTRACTS AND WARRANTIES: Seller shall maintain the Property, including, but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear and Casualty Loss excepted. Seller shall, upon reasonable notice, provide utilities service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that all items of Personal Property are on the Real Property and, subject to the foregoing, that all required repairs and replacements have been made, and that the Property has been maintained as required by this Standard. All repairs and replacements shall be completed in a good and workmanlike manner, in accordance with all requirements of law, and shall consist of materials or items of quality, value, capacity and performance comparable to, or better than, that existing as of the Effective Date. Seller will assign all assignable repair and treatment contracts and warranties to Buyer at Closing.

Y. 1031 EXCHANGE: If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, including the execution of documents; provided (1) the cooperating party shall incur no liability or expense related to the Exchange and (2) the Closing shall not be contingent upon, nor extended or delayed by, such Exchange.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (F18) Capital Financing Discussion

DEPARTMENT: Finance

GOAL: 5 - Fiscal Sustainability

RECOMMENDED MOTION: Informational Only

SUMMARY: Southeastern Investment Securities, LLC, Port Orange's Financial Advisor for debt related items, will present the necessary steps and process on how the City handles the issuance of different debt instruments.

Items for discussion:

1. Existing Debt Management Policy
2. Outstanding Indebtedness and debt roll-off
3. Refunding Opportunities
4. Unfunded Capital Needs and Funding Options
 - New Public Utilities Field Operations Facility
 - Wastewater Facility Upgrades
 - City Hall Renovations
 - Water Reclamation Facility East Master Lift Station Upgrades
 - Master Capital Leases (Vehicles and Equipment)
 - Parks Bond Capital Improvements
5. Current Municipal Market Conditions

PRESENTER: Linda Truitt

ATTACHMENTS:

1.	PO 2024 Capital Financing Presentation_jcm	PO 2024 Capital Financing Presentation_jcm.pdf
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John McKinney
John McKinney

Created/Initiated - 11/1/2024
Approved - 11/7/2024



CAPITAL FINANCING DISCUSSION

Prepared/Presented By:
SOUTHEASTERN INVESTMENT SECURITIES, LLC
ORLANDO, FLORIDA
FINANCIAL ADVISOR TO THE CITY

November 19, 2024

TABLE OF CONTENTS



- A. Materials Reviewed
- B. Existing Debt Management Policy
- C. Outstanding Debt and Debt Roll-off
- D. Future Capital Needs
- E. Current Market Conditions
- F. Next Steps



A. MATERIALS REVIEWED

Materials Reviewed

- Staff Input
- Existing Debt Management Policy
- Annual Financial Report
- Public Offering Documents
- Budget and Capital Plan
- Institutional Knowledge





B. EXISTING DEBT MANAGEMENT POLICY



Existing Debt Management Policy

- Existing policy was last revised November 9, 2022
- Factors Relevant to issuance of Debt
 - Urgency of capital requirements to be met and the economic cost delays (inflation and financial market conditions)
 - Determination of employing “pay as you acquire (pay go)” versus “pay as you use” approach
 - Financial condition of the City
 - Types, availability and stability of revenues pledged for the repayment of debt
- Types of Debt
 - Direct
 - Revenue
 - Conduit
 - Capital Leases





C. OUTSTANDING DEBT AND DEBT ROLLOFF

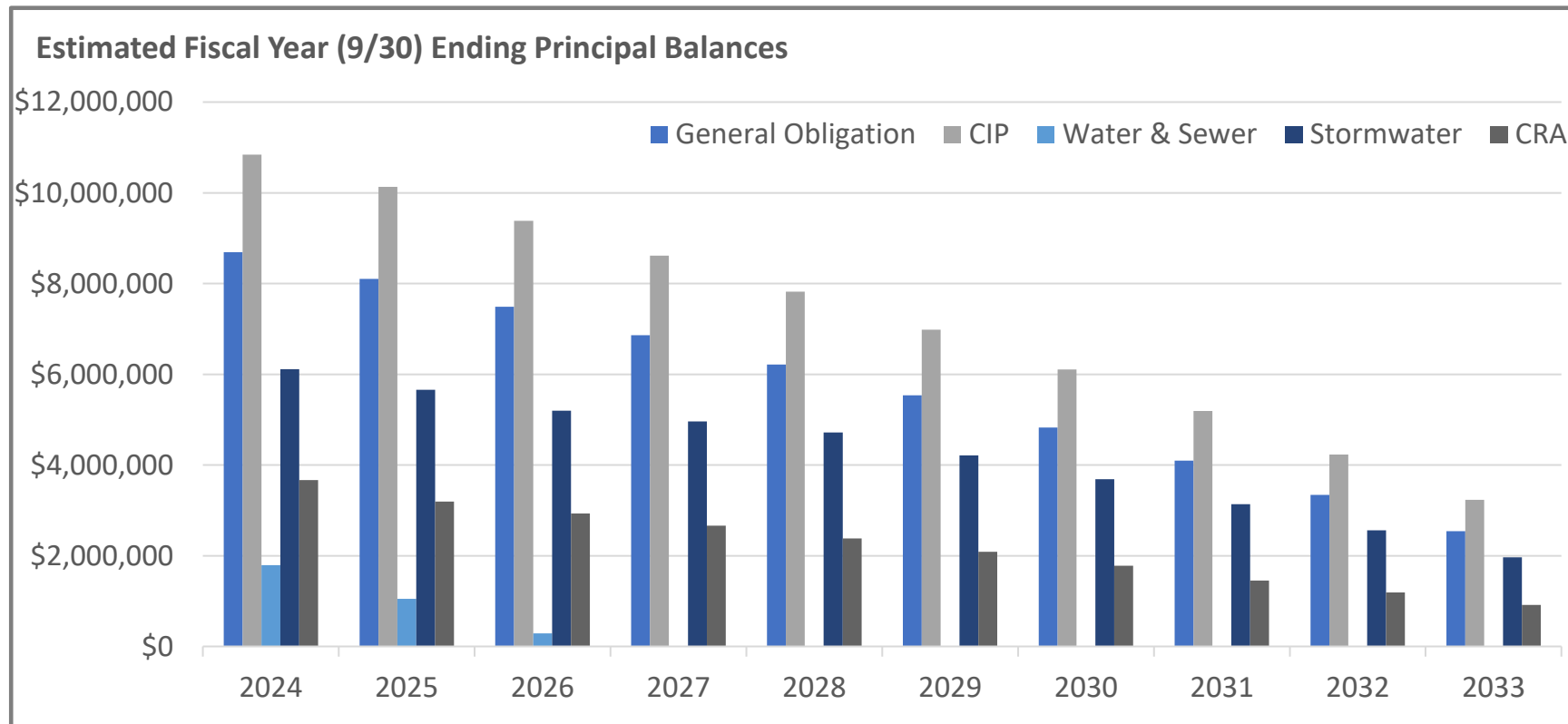
○ Outstanding Debt as of FYE 2024*



Type & Issue	Outstanding Principal	Maturity	Security	Underlying Ratings
General Obligation				
General Obligation Refunding Bonds, Series 2016	\$8,695,000	4/1/2036	GO / Ad Valorem	Aa2
Capital Improvement				
Capital Improvement Refunding Revenue Bonds, Series 2014	\$10,845,000	10/1/2035	PST, CST, and CB&A	Aa2
Water & Sewer				
SRF Loan #WWW72514S	\$944,839	8/15/2026	Utility Net Revenue	—
SRF Loan #DW6413030	<u>847,747</u>	9/15/2027	Utility Net Revenue	—
Subtotal	\$1,792,586			
Stormwater				
Stormwater Utility Revenue Bonds, Series 2005	\$4,965,000	10/1/2035	Stormwater Fees	Aa3
SRF Loan #SW725150	<u>1,146,856</u>	1/15/2027	Sub. Stormwater Fees	—
Subtotal	\$6,111,856			
CRA				
Eastport CRA Tax Increment Note, Series 2006	\$230,000	10/1/2024	TIF, CB&A	—
CRA for POTC Tax Increment Revenue Bonds, Series 2007	<u>3,440,000</u>	4/1/2036	TIF, CB&A	—
Subtotal	\$3,670,000			

*The outstanding debt, exclude the two current Capital Leases

○ Outstanding Debt Rolloff*



*The outstanding debt, exclude the two current Capital Leases



D. POTENTIAL FUTURE CAPITAL NEEDS

○ Current Capital Needs – Debt Issuance



Project	Amount	Issuance
1.Parks & Rec Capital Improvement GO	\$30 million	May 2025
2.Public Utilities Operations Facility*	\$16-20 million	May 2025
3.Cambridge Basin Stormwater Improvements	\$5-7 million	Early 2026
4.Wastewater Facility Upgrades	\$70 million	Early 2027
5.City Hall Improvements	TBD	TBD

*The final amount of the issuance will not be known until the bids are received in early December. This is an estimated not to exceed amount.



E. CURRENT MARKET CONDITIONS

[To Be Presented at Meeting]



F. NEXT STEPS



Next Steps



- Prioritize Unfunded Capital Needs
 - By Strategic Importance
 - By Fiscal Year needs

- Determine Capital Financing Funding Needs



Thank You



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (G20) Planning Commission Board Appointments

DEPARTMENT: City Clerk

GOAL: 6 - Organizational Excellence

RECOMMENDED MOTION: Move to appoint four applicants to serve on the Planning Commission.

SUMMARY: Stan Schmidt, Darrel "Bo" Bofamy, and Thomas Jordan currently serve on the Planning Commission and are up for re-appointment consideration. Mr. Schmidt, Mr. Bofamy and Mr. Jordan have all indicated they would like to continue serving on the Commission.

In addition to the re-appointments, there is a vacancy on the Commission.

Kayden Schaper and Daniel Mallegol, new applicants, would like to serve on the Planning Commission. Mr. Schaper and Mr. Mallegol's applications are attached for your consideration.

All appointments are for a two-year term. There are currently 4 total vacancies. No other applications have been received by the City Clerk.

PRESENTER: Robin Fenwick

ATTACHMENTS:

1.	Daniel Mallegol	Daniel Mallegol.pdf
2.	Kayden Schaper	Kayden Schaper.pdf

Tracee Cody
Robin Fenwick
Wayne Clark

Created/Initiated - 10/23/2024
Approved - 10/23/2024
Final Approval - 11/13/2024

Advisory Boards and Commissions Volunteer Application

08/21/2024 11:01 PM (EDT)

Advisory Boards and Commissions Volunteer Application

City of Port Orange

Purpose

Complete this form to apply to be a member of the Advisory Committee.

Eligibility

Residents who wish to serve on the Advisory Committee.

Prerequisites

Applicants must be residents of the municipality to apply for membership.

Required Documents

A cover letter and resume are recommended supporting documents to fill out this application.

Full Name	Daniel Mallegol
Address	200 Poinciana Avenue
City	Port Orange
State	FL
ZIP Code	32127
Phone Number	386-427-9450
Email Address	dmallego@cisco.com
Which boards would you like to serve on?	• Planning Commission • Councilmember • Parks and Recreation Advisory Board
Link to financial disclosure	
Are you a registered voter?	Yes
Can you regularly attend meetings?	Yes
Are you currently serving on a City Board?	No

Why do you desire to serve on this board?

I studied finance in college and have held various roles in management. My goal of becoming a board member comes from my desire to positively impact my city in a leadership role, and more importantly, I want to help make decisions that help provide superior service to all visitors and residents of Port Orange. I currently hold a leadership role where I have decision making responsibilities in my organization. I plan to bring this experience and build on it as a board member for the city of Port Orange.

Reference Information

i. **Full Name**

Stan Schmidt

Address

1515 Herbert Street

City

Port Orange

State

FL

ZIP Code

32127

Phone Number

386-405-3574

ii. **Full Name**

Mike Monaco

Address

3729 Old Weaver Trail

City

Creedmoor

State

NC

ZIP Code

27522

Phone Number

919-414-6508

iii. **Full Name**

Ray Viscaina

Address

2765 Lylewood Drive

City

Pleasanton

State

CA

ZIP Code

94588

Phone Number

925-980-9533

Work Experience

Experienced people manager of a global team.
Able to work with upset and disgruntled customers and individuals.
Strong organizational leader with presentation and speaking skills.
Experience with city infrastructure planning, right of ways, and city property planning.
Experience with planning buried and overhead infrastructure.
IT professional with 20 years in the industry.
Outstanding computer and soft skills.

Interests / Activities

Sailing
Fishing
Guitar playing
Disc Golf

Community Involvement

Port Orange Small business owner
Chamber of Commerce member
Past Member Elks lodge 1010

You may upload a resume to outline your educational, work and community service experiences.

Resume



Daniel Mallegol.pdf

Signature Agreement

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

By submitting this application, applicant attests that he/she has reviewed the Code of Ethics for Public Officers and Employees (Part III of Chapter 112, Florida Statutes), and that applicant does not hold any public position, employment or other relationship (i.e. dual office holding prohibition, conflicting employment or contractual relationship, etc.) that would prohibit or otherwise disqualify applicant from serving on the City board/commission for which the applicant now seeks to serve.

Note: If you are unsure whether a Code of Ethics issue exists or require assistance determining if a Code of Ethics issue is present, feel free to reach out to the City Attorney's Office prior to submitting your application at (386) 506-5525.

All statements and information provided in this application are true to the best of my knowledge. Please note that Florida has a broad public records law. Your entire application and the information & responses contained therein, including your name, address, email, and phone number, will become a public record upon submission of the

application to the City. In limited circumstances, certain public servants who are afforded protections pursuant to Ch. 119, F.S. may elect to have certain information exempted from public disclosure, upon written request.

Signature



Date

08/21/2024

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment. After clicking 'Submit' you will receive a Submission ID number that can be retained for future reference.

You will be updated by our staff, if necessary, as your submission is processed.

Have a great day!

Advisory Boards and Commissions Volunteer Application

06/17/2024 6:18 PM (EDT)

Advisory Boards and Commissions Volunteer Application

City of Port Orange

Purpose

Complete this form to apply to be a member of the Advisory Committee.

Eligibility

Residents who wish to serve on the Advisory Committee.

Prerequisites

Applicants must be residents of the municipality to apply for membership.

Required Documents

A cover letter and resume are recommended supporting documents to fill out this application.

Full Name	Kayden Schaper
Address	639 Powers Ave
City	Port Orange
State	Fl
ZIP Code	32129
Phone Number	386-262-5079
Email Address	kschaper@cbcbenchmark.com
Which boards would you like to serve on?	Planning Commission
Link to financial disclosure	
Are you a registered voter?	Yes
Can you regularly attend meetings?	Yes
Are you currently serving on a City Board?	No

Why do you desire to serve on this board?	As a local resident in Port Orange as well as my career in Commercial Real Estate, Id love to get involved with the city in a constructive fashion with content I enjoy and understand.
---	---

Reference Information

i. **Full Name**

Bob Rand

Address

136 Zaharias Circle

City

Daytona Beach

State

FL

ZIP Code

32124

Phone Number

386-295-9827

ii. **Full Name**

GG Galloway

Address

1305 Oak Forest Drive

City

Ormond Beach

State

FL

ZIP Code

32174

Phone Number

386-295-0839

iii. **Full Name**
Heidi Rand

Address
256 Spreading Oak Lane

City
Ormond Beach

State
FL

ZIP Code
32174

Phone Number
386-295-9100

Work Experience

State Certified General Contractor (CGC # 1533673)
Senior Commercial Real Estate Advisor (SL3395637)
Post Graduation from Embry Riddle in fall of 2017, I began working as a Project Manager/superintendent for various construction Companies until I was able to gain the experience to obtain my own license. For the past 2 year, I have been working with Coldwell Banker Commercial Benchmark as a Commercial real Estate Advisor and Property Manager.

Interests / Activities

I enjoy spending my free time playing golf, going fishing and spending time with family and friends.

Community Involvement

I am a member of various chambers and groups throughout the county.
Daytona Beach Chamber of Commerce (company membership)
Southeast Volusia Chamber of Commerce (Company membership)
Volusia County Young Professional Group
Volusia County Area Association of Responsible Developers (VCARD- Company membership)
Team Volusia

You may upload a resume to outline your educational, work and community service experiences.

Resume



Kayden Schaper Resume, 2024 PDF .pdf

Signature Agreement

I understand the responsibilities associated with being a board member, and I have adequate time to serve if appointed.

By submitting this application, applicant attests that he/she has reviewed the Code of Ethics for Public Officers and Employees (Part III of Chapter 112, Florida Statutes), and that applicant does not hold any public position, employment or other relationship (i.e. dual office holding prohibition, conflicting employment or contractual relationship, etc.) that would prohibit or otherwise disqualify applicant from serving on the City board/commission for which the applicant now seeks to serve.

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All statements and information provided in this application are true to the best of my knowledge. Please note that Florida has a broad public records law. Your entire application and the information & responses contained therein, including your name, address, email, and phone number, will become a public record upon submission of the application to the City. In limited circumstances, certain public servants who are afforded protections pursuant to Ch. 119, F.S. may elect to have certain information exempted from public disclosure, upon written request.

Signature

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Date

06/17/2024

Thank you for your interest in serving the City of Port Orange. Your completion of this application is necessary so that the members of the City Council can thoroughly review each application as part of their consideration for your appointment. After clicking 'Submit' you will receive a Submission ID number that can be retained for future reference.

You will be updated by our staff, if necessary, as your submission is processed.

Have a great day!



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (H21) Second Reading - Ordinance No. 2024-19 - Second Amendment to the Riveryard Master Development Agreement (Case No. PRZA-24-0006)

DEPARTMENT: Community Development

GOAL: 3 - Quality of Life; 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2024-19, approving the Second Amendment to the Riveryard Master Development Agreement, subject to review and approval by the City Attorney's Office for legal form and content.

SUMMARY: Planning Commission Action (9/26/24): Recommended Approval 4-0

In September 2023, the City Council and the Port Orange Town Center Community Redevelopment Agency approved the Riveryard Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Bristol Development Group's (Bristol) mixed-use project located at the northeast corner of Dunlawton Avenue and Ridgewood Avenue, along the Halifax River.



Over the last twelve months, Bristol has continued to make progress in critical areas, including preparing design plans (site plan, architectural drawings, and landscape plans), additional property acquisition, discussions with other permit agencies (Florida Department of Transportation (FDOT), St. John's River Water Management District (SJRWMD), Department of Environmental Protection (DEP), etc.), preparing Economic Incentive Agreements with the City, refinement of construction estimates, and developing a plan to activate the waterfront with interim uses such as a food truck court, coffee shop, and recreation and entertainment amenities.

According to Bristol, information collected over the last year as they continued to develop their project led to some minor adjustments having to be made to the MDA and CDP. Since these adjustments pertained to text listed in the MDA and/or CDP, an amendment to the MDA and CDP was required to make these minor adjustments.

The proposed amendment to the CDP does **not** change Bristol's overall mixed-use project as it will still include a waterfront park (performance pavilion, trails, swings/benches, etc.), riverfront bar/restaurant, ±30,000 square feet of commercial space, hotel (optional), multi-family building wrapped around a parking garage, festival street, public parking, private streets with on-street parking, associated infrastructure (water, sewer, lighting and drainage) improvements, and access from Dunlawton Avenue and Ridgewood Avenue via three private internal streets (Herbert Street, Halifax Drive, and Riveryard Drive).

The following modifications are proposed in the amendment to the Riveryard MDA and CDP

- The CDP has been revised to designate more area for commercial uses and public surface parking and less area for multi-family uses.
- The amendment removes the requirement that 200 public parking spaces are to be provided in a parking garage and 100 public parking spaces are to be provided in a surface lot or on-street. Text has been added to state that the 300 required public parking spaces can be provided in either surface parking lots, on-street, or parking garages. The amendment does not reduce the requirement in the current MDA that 300 public parking spaces are to be provided for commercial uses and waterfront park.
- The amendment revises the multi-family parking requirement from 1.3 to 1.25 spaces per residential unit. According to Bristol, the proposed parking ratio will provide sufficient parking for a multi-family complex based on the traffic typically generated by a multi-family development within a mixed-use project. The Institute of Transportation Engineers (ITE) Parking Generation Manual, 4th edition, indicates that the average parking ratio for a low/mid-rise apartment over a 24-hour period is between 1.10 and 1.37 spaces per residential unit. The proposed 1.25 parking spaces per residential unit is within the ITE-suggested range. The overall site exceeds the minimum parking by 135 spaces that are not restricted and available to be used by people visiting the multi-family development as well as the commercial uses.
- The amendment updates the list of allowed uses to ensure that the commercial portion of the project is developed with experiential uses by removing banks as a permitted use, allowing for ATM kiosks, and restricting office use to the 2nd floor and above. The amendment also establishes the permitted uses for the former ArtHaus property (3840 Ridgewood Avenue) to include uses allowed in the Ridgewood Development (RD) zoning district and Riverwalk Overlay District (ROD), which allows for general retail, office, and restaurant uses.
- The amendment allows for one drive-thru at the former Dave's Pest Control property (3641 Ridgewood Avenue) and one drive-thru at the former ArtHaus property (3840 Ridgewood Avenue). A drive-thru developed at either property will be required to comply with all development requirements in the LDC related to a drive-thru.

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- The amendment clarifies that future development of the former ArHaus property (3840 Ridgewood Avenue) located on the southwest corner of Herbert Street and Ridgewood Avenue is to be developed according to the dimensional criteria (setbacks, open space, building height, etc.) in the Land Development Code for the Ridgewood Development (RD) district and all site development requirements in the Land Development Code.
 - The amendment adds text that states if the Riverwalk Purchase & Sale Agreement between the City and Developer is not completed or is otherwise terminated, then the development rights granted according to MDA shall lapse, except that any vested development rights shall be permitted to remain in place according to the MDA, and associated amendments.

The Staff Report is attached for more information.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2024-19 with exhibits	Ordinance No. 2024-19 with exhibits .pdf
2.	2nd Amendment to Riveryard MDA	2nd Amendment to Riveryard MDA.pdf
3.	STAFF REPORT	STAFF REPORT.pdf
4.	Revised Business Impact Estimate - ORD 2024-19 - PRZA-24-0006	Revised Business Impact Estimate - ORD 2024-19 - PRZA-24-0006.pdf

Penelope Cruz

Created/Initiated - 11/5/2024

ORDINANCE NO. 2024-19

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, APPROVING THE SECOND AMENDMENT TO THE RIVERYARD MASTER DEVELOPMENT AGREEMENT AND CONCEPTUAL DEVELOPMENT PLAN FOR APPROXIMATELY +/-11 ACRES GENERALLY LOCATED AT THE NORTHEAST CORNER OF DUNLAWTON AVENUE AND RIDGEWOOD AVENUE, AND INCLUDING PROPERTIES LOCATED AT 3641 RIDGEWOOD AVENUE AND 3840 RIDGEWOOD AVENUE, CLARIFYING PERMITTED USES, REVISING THE LOCATION OF PUBLIC PARKING, REVISING THE MULTI-FAMILY PARKING RATIO, AND UPDATING THE CONCEPTUAL DEVELOPMENT PLAN LAYOUT; PROVIDING FOR CONFLICTING ORDINANCES, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City and Developer desire to enter into the Second Amendment to the Riveryard Master Development Agreement (“MDA”) and Conceptual Development Plan (“CDP”); (hereinafter referred to as the “Second Amendment”); and

WHEREAS, the Developer submitted a request to the Planning Commission to approve the Second Amendment; and

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

WHEREAS, the Planning Commission has considered and forwarded a recommendation to the City Council regarding the proposed Second Amendment; and

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

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

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

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

Section 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

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

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

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2024

Passed and adopted on second and final reading on the day of _____, 2024

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

EXHIBIT "1"

Document prepared by:

Jessica Gow, Esq.
Cobb Cole Law Firm
149 S. Ridgewood Ave., Ste. 700
Daytona Beach, FL 32114

Return recorded document to:

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

SECOND AMENDMENT TO RIVERYARD MASTER DEVELOPMENT AGREEMENT

The **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, and **PORT ORANGE TOWN CENTER COMMUNITY REDEVELOPMENT AGENCY**, a special purpose district unit of government organized under Chapter 163, Part III, the Law of Florida, both located in Volusia County, Florida, (collectively "City"), Joan L. Sheridan, Trustee of the Joan L. Sheridan Revocable Trust, JLS888, Inc., Ralph & Tammy Heotzler and Bristol Port Orange Partners, LLC, a Florida limited liability company (collectively "Owners") and **BRISTOL PORT ORANGE PARTNERS, LLC**, a Florida limited liability company in its capacity as the developer of the Property ("Developer"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

WHEREAS, the property subject to this Second Amendment is the property more particularly described in Exhibit "A" to the MDA, said property being under the sole ownership of City and Owners and under contract (the "Riverwalk Purchase & Sale Agreement") for purchase by Developer; and

WHEREAS, the City and Owners previously entered into the Riveryard Master Development Agreement, adopted September 5, 2023, and recorded in Official Records Book 8457, Page 2924, Public Records of Volusia County, Florida ("MDA"), as amended by that certain First Amendment to Riveryard Master Development Agreement, adopted August 21, 2024, and recorded in Official records Book 8499, Page 2425, Public Records of Volusia County, Florida (the "First Amendment"); and

WHEREAS, the Developer is the contract purchaser of the property owned by the City and, as such, requests the City to further amend the MDA to modify certain development criteria and clarify phasing requirements for public uses within the City Property; and

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

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

1. The recitals provided above are recognized as true and correct representations and are incorporated herein.

2. The Conceptual Development Plan referenced in Sections 2. And 3.C. of the MDA which incorporate and refer to the Conceptual Development Plan as Exhibit “B” is hereby amended and replaced in its entirety with the amended Conceptual Development Plan marked as **Exhibit “Amended CDP”**, attached hereto and made a part hereof by this reference. Any references to the CDP or to Exhibit “B” shall mean the Exhibit “Amended CDP” attached hereto, unless otherwise further amended.
3. The Riveryard Architectural Styles Exhibit included as Exhibit “D” of the MDA is hereby amended and replaced in its entirety with the amended Riveryard Architectural Styles Exhibit marked as **Exhibit “Amended Riveryard Architectural Styles Exhibit”**, attached hereto and made a part hereof by this reference. Any references to the Riveryard Architectural Styles Exhibit or to Exhibit “D” shall mean the Exhibit “Amended Riveryard Architectural Styles Exhibit” attached hereto, unless otherwise further amended.
4. **Section 3 (D) of the MDA, Lot Development Criteria, is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

D. LOT DEVELOPMENT CRITERIA. The following lot development criteria shall apply to the Property.

(1) Except as set forth in subsection (2), herein, ~~the~~ the following modified lot development criteria shall apply to commercial and multifamily development throughout the Property:

[remainder of subsection (1) is unchanged]

(2) The property located on the southwest corner of Herbert Street and Ridgewood Avenue (identified as Parcel 27 on Sheet C3 of the CDP and being Parcel No. 630311060021) shall be developed using the development dimensional criteria for the Ridgewood Development (RD) district.

5. **Section 5 of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

5. PERMITTED USES.

(a) ~~All uses permitted within the PC-R Mixed Use district shall be permitted, along with~~ The following uses are permitted within the Property:

Bike, kayak & other recreational equipment rentals
ATM kiosks

Professional and medical offices (2nd floor and above only)
Animal grooming or wellness
Game/recreation facilities
Health/exercise clubs
Brewery
Amphitheater
Multifamily dwellings and Townhomes
Food Truck Court/Parking – allowed in the area designated on the CDP as commercial, private roadway, and waterfront park.
Bars, lounges, and nightclubs
Hotel
Marina
Outdoor fruit and vegetable or craft market
Retail uses
Personal services
Restaurants
Public/civic facilities
Microbrewery
Craft food and beverage producer

Accessory and temporary uses are permitted within the site that are incidental to the principal uses outlined herein and are part of the scale or scope of everyday operations. Temporary uses, such as social programming, art displays, exercise classes, and similar activities targeted towards activation of the Property shall be permitted without the need for formal Special Event review by the City, so long as the event does not contemplate any of the following: (1) Affects the public roadway network and area(s) beyond the City of Port Orange; (2) Requires one or more public roadway closures; (3) Has hours of operation extending beyond 11:00 p.m.; or (4) Extends for a period over twenty-four hours.

In the areas illustrated on the CDP, temporary staging and parking shall be permitted as an interim use until redevelopment of the portion of the property used for such use.

The property identified as Parcels 19 and 20 on Sheet C3 of the CDP may include as part of the overall development one use with a drive thru.

The property located on the southwest corner of Herbert Street and Ridgewood Avenue (identified as Parcel 27 on Sheet C3 of the CDP) can be developed with the uses permitted in the Ridgewood Development (RD) district and not prohibited in Riverwalk Overlay District (ROD), as amended, except that as part of the overall development one use with a drive thru may be permitted.

[Subsections (b). through (e). remain unchanged]

6. **Section 6.D.(1)-(4) of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

D. PARKING. Parking shall be developed consistent with the LDC, except as modified herein.

(1) Multifamily development may include multi-level garages, one-car garages, two-car garages and surface parking and shall be developed at a minimum ratio of ~~1.3~~ 1.25 parking spaces per dwelling unit. Parking for multifamily residential uses may be provided through the use of tandem garage/parking spaces so long as the tandem spaces are assigned for the exclusive use of one residential unit.

(2) Commercial uses within the Property may be permitted at a ratio of 5 spaces per 1,000 square feet.

(3) No additional parking shall be required for Food Truck or Marina uses, as this use is intended to be supportive of other proposed uses and transitory in nature.

(4) Of the required parking provided for the Property, a minimum of ~~100 surface spaces and 200 garage spaces~~ 300 parking spaces will be set aside for use by the public, although such spaces shall count towards the minimum required parking standards for individual use types. ~~The Property shall be subject to the following modified standards for parking details:~~

[Remainder of Section Remains Unchanged]

7. **Section 12 of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

[Subsections A. through D. remain unchanged]

E. Furthermore, if the Riverwalk Purchase & Sale Agreement between the City and Developer is not completed or is otherwise terminated, then the development rights granted pursuant to this Agreement shall lapse except that any vested development rights shall be permitted to remain in place pursuant to the terms contained herein.

8. This Second Amendment shall be effective as of the date it is executed by all parties. The MDA, as previously enacted, shall remain in full force and effect except with the respect to those matters specifically amended by the First Amendment and this Second Amendment.
9. This Second Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The restrictions on use and development imposed by this Second Amendment shall be binding upon all successors in interest in the Property.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

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

Witness 1

Print Name of Witness 1

By: _____

Donald O. Burnette, Mayor

Attest:

Witness 2

Print Name of Witness 2

By: _____

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 _____, 2024 by Donald O. Burnette, Mayor, and Robin L. Fenwick, City Clerk, both of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of: **Port Orange Town Center Community
Redevelopment Agency (“CRA”)**

Witness 1

Print Name of Witness 1

By: _____
Name:

Date: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by _____ of _____. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: Joan L. Sheridan, Trustee of the Joan L. Sheridan Revocable Trust, (“Owner”)

Witness 1

Print Name of Witness 1

By: _____
Name:

Date: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Joan L. Sheridan, Trustee of the Joan L. Sheridan. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: JLS888, Inc., (“Owner”)

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By: _____
Name:

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 _____, 2024, by _____ of _____. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: Ralph & Tammy Heotzler ("Owner")

Witness 1

By: _____
Ralph Heetzler

Print Name of Witness 1

Date: _____

Witness 2

By: _____
Tammy Heetzler

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Ralph Heotzler and Tammy Heotzler. They are ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: **Bristol Port Orange Partners, LLC**
(“Developer”)

Witness 1

Print Name of Witness 1

By: _____

Name:

Witness 2

Print Name of Witness 2

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 _____, 2024, by _____ of Bristol Port Orange Partners, LLC, referred to in this agreement as “Developer.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Approved as to legal form:

By: _____
Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION:

A PORTION OF LOTS 1 THRU 9, INCLUDING RIPARIAN RIGHTS, BLOCK B, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LYING IN SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST.

TOGETHER WITH

LOTS 2 THRU 4, INCLUSIVE, AND INCLUDING RIPARIAN RIGHTS, DANIELS PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

THE EAST 55 FEET OF THE WEST 155 FEET OF THE SOUTHERLY 100 FEET, EXCLUDING PART IN STREET, BLOCK "C" WILSON'S PORT ORANGE, ACCORDING TO THE PLAT OR MAP THEREOF AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

THE EAST 105 FEET OF THE WEST 260 FEET OF THE SOUTH 100 FEET, BLOCK "C", WILSON'S MAP OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

A PORTION OF HERBERT STREET AND A PORTION OF HALIFAX DRIVE.

LESS AND EXCEPT

THE SOUTHERLY 60 FEET OF THE WESTERLY 140 FEET OF LOT 7, BLOCK B, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS THAT PORTION DEEDED FOR STREET, AND THE WEST 140 FEET OF THE NORTH 15 FEET OF LOT 7 AND THE WEST 140 FEET OF LOT 8, ALL IN BLOCK B, WILSON'S SUBDIVISION OF PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPT THAT PORTION THEREOF DEEDED TO THE STATE OF FLORIDA FOR WIDENING OF THE PUBLIC HIGHWAY LOCATED THEREON.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF DUNLAWTON AVENUE(PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 79180-2514(R/W VARIES))AND THE EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE(U.S. HIGHWAY 1)(PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-278(R/W VARIES)); THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N25°34'45"W, A DISTANCE OF 571.83 FEET TO THE SOUTH LINE OF LOT 7, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE N64°41'02"E, A DISTANCE OF 130.09 FEET TO THE EASTERLY LINE OF THE WESTERLY 140 FEET OF LOTS 7 AND 8, BLOCK B, SAID WILSON'S PORT ORANGE; THENCE ALONG SAID EASTERLY LINE N25°34'44"W, A DISTANCE OF 129.84 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HERBERT STREET (40' R/W); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE; S64°43'17"W, A DISTANCE OF 127.53 FEET; THENCE DEPART SAID SOUTHERLY RIGHT OF WAY LINE N25°16'43"W, A DISTANCE OF 40.93 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF HERBERT STREET AND THE EASTERLY RIGHT OF WAY OF RIDGEWOOD AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N64°50'16"E, A DISTANCE OF 81.32 FEET TO THE EASTERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 7289, PAGE 4214; THENCE ALONG SAID EASTERLY LINE N25°13'53"W, A DISTANCE OF 100.36 FEET TO THE SOUTHERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID SOUTHERLY LINE N64°49'06"E, A DISTANCE OF 178.01 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY LINE N25°23'46"W, A DISTANCE OF 79.78 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY LINE N64°50'19"E, A DISTANCE OF 280.63 FEET TO THE MEAN HIGH WATER LINE OF THE HALIFAX RIVER; THENCE ALONG SAID MEAN HIGH WATER LINE THE FOLLOWING 22 COURSES S10°33'07"E, A DISTANCE OF 19.09 FEET; THENCE S25°04'17"E, A DISTANCE OF 55.64 FEET; THENCE S22°19'30"E, A DISTANCE OF 49.64 FEET; THENCE S23°46'14"E, A DISTANCE OF 56.19 FEET; THENCE S23°27'26"E, A DISTANCE OF 61.77 FEET; THENCE S39°20'50"E, A DISTANCE OF 56.57 FEET; THENCE S29°14'40"E, A DISTANCE OF 60.48 FEET; THENCE S22°31'59"E, A DISTANCE OF 107.97 FEET; THENCE S39°16'58"E, A DISTANCE OF 6.36 FEET; THENCE S18°04'06"E, A DISTANCE OF 28.61 FEET; THENCE S10°07'08"E, A DISTANCE OF 57.62 FEET; THENCE S04°56'16"E, A DISTANCE OF 18.59 FEET; THENCE S23°08'01"E, A DISTANCE OF 20.17 FEET; THENCE S30°00'12"E, A DISTANCE OF 50.08 FEET; THENCE S16°58'21"E, A DISTANCE OF 58.92 FEET; THENCE S24°26'08"E, A DISTANCE OF 49.65 FEET; THENCE S25°03'28"E, A DISTANCE OF 91.95 FEET; THENCE S34°44'03"E, A DISTANCE OF 24.18 FEET; THENCE S64°28'24"E, A DISTANCE OF 62.07 FEET; THENCE N78°45'07"E, A DISTANCE OF 20.50 FEET; THENCE S58°53'05"E, A DISTANCE OF 16.68 FEET; THENCE N84°53'44"E, A DISTANCE OF 48.98 FEET; THENCE S83°12'10"E, A DISTANCE OF 35.23 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF AFORESAID DUNLAWTON AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S61°59'36"W, A DISTANCE OF 224.18 FEET TO THE WESTERLY RIGHT OF WAY LINE OF HALIFAX DRIVE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S26°00'43"E, A DISTANCE OF 34.57 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF AFORESAID DUNLAWTON AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S02°22'59"W, A DISTANCE OF 16.76 FEET; THENCE CONTINUE ALONG SAID LINE

S69°26'15"W, A DISTANCE OF 107.40 FEET; THENCE CONTINUE ALONG SAID LINE S81°44'19"W, A DISTANCE OF 335.17 FEET TO THE POINT OF BEGINNING.

CONTAINING 480,471 SQUARE FEET, OR 11.030 ACRES MORE OF LESS.

PARCEL 1

LOTS 5 AND 6, EXCEPT THE EAST 216 FEET AND EXCEPT THE STREET (US HIGHWAY #1), BLOCK 2, PORT ORANGE HAND TRACT, THE SAID EAST 216 FEET BEING MEASURED ON THE NORTH LINE OF LOT 5, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 2, PAGE 185, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

PARCEL 2

REFER TO A POINT IN THE ORIGINAL EAST LINE OF RIDGEWOOD AVENUE, (US HIGHWAY #1, STATE ROAD NO. 5, A 66 FOOT RIGHT-OF-WAY), SAID POINT BEING THE INTERSECTION OF THE NORTH LINE OF U.S. GOVERNMENT LOT TWO (2), OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, ALSO BEING THE NORTH LINE OF LOT ONE (1), MRS DANIEL'S ADDITION TO PORT ORANGE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 3, PAGE 29, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, WITH SAID ORIGINAL EAST RIGHT-OF-WAY; THENCE N89°14'45"E, FOR A DISTANCE OF 3.83 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY # 1 (STATE ROAD 5), NOW A 100 FOOT RIGHT-OF-WAY; THENCE S24°15'30"E ALONG THE EAST RIGHT-OF-WAY LINE NOW IN USE FOR A DISTANCE OF 150.42 FEET; THENCE DEPARTING AFORESAID RIGHT-OF-WAY N77°17'08"E, FOR A DISTANCE OF 338.08 FEET; THENCE N25°55'41"W FOR A DISTANCE OF 75.00 FEET TO THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 2; THENCE S89°14'45"W ALONG SAID SOUTH LINE FOR A DISTANCE OF 358.83 FEET TO THE POINT OF BEGINNING.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTH LINE OF GOVERNMENT LOT 2, SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND THE ORIGINAL EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE, THENCE N89°07'57"E, A DISTANCE OF 3.31 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY # 1(STATE ROAD 5) (PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-278 R/W VARIES)); THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N22°52'00"W, A DISTANCE OF 46.18 FEET TO THE NORTHERLY LINE OF LOT 5, H.P. HAND TRACT, AS RECORDED IN MAP BOOK 2, PAGE 185 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, ALSO BEING THE SOUTHERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID NORTHERLY LINE N75°10'06"E, A DISTANCE OF 287.02 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S25°16'47"E, A DISTANCE OF 123.07 FEET TO THE

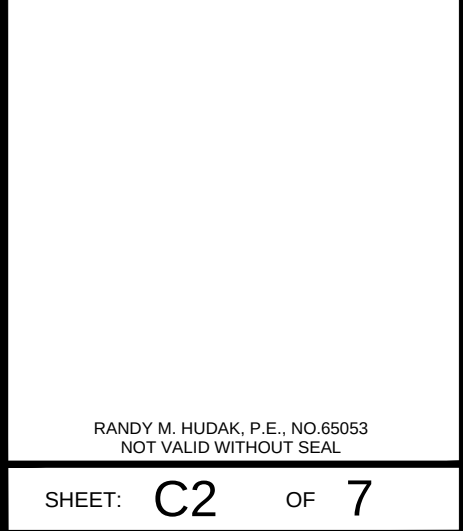
SAID NORTHERLY LINE OF GOVERNMENT LOT 2; ALSO BEING THE NORTHERLY LINE OF LOT 1, DANIELS' ADDITION TO PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29; THENCE ALONG SAID NORTHERLY LINE N89°12'09"E, A DISTANCE OF 45.83 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S25°24'56"E, A DISTANCE OF 74.27 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S77°29'15"W, A DISTANCE OF 340.70 FEET THE SAID EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE; THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N22°52'00"W, A DISTANCE OF 147.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 60796 SQUARE FEET, OR 1.396 ACRES MORE OR LESS.

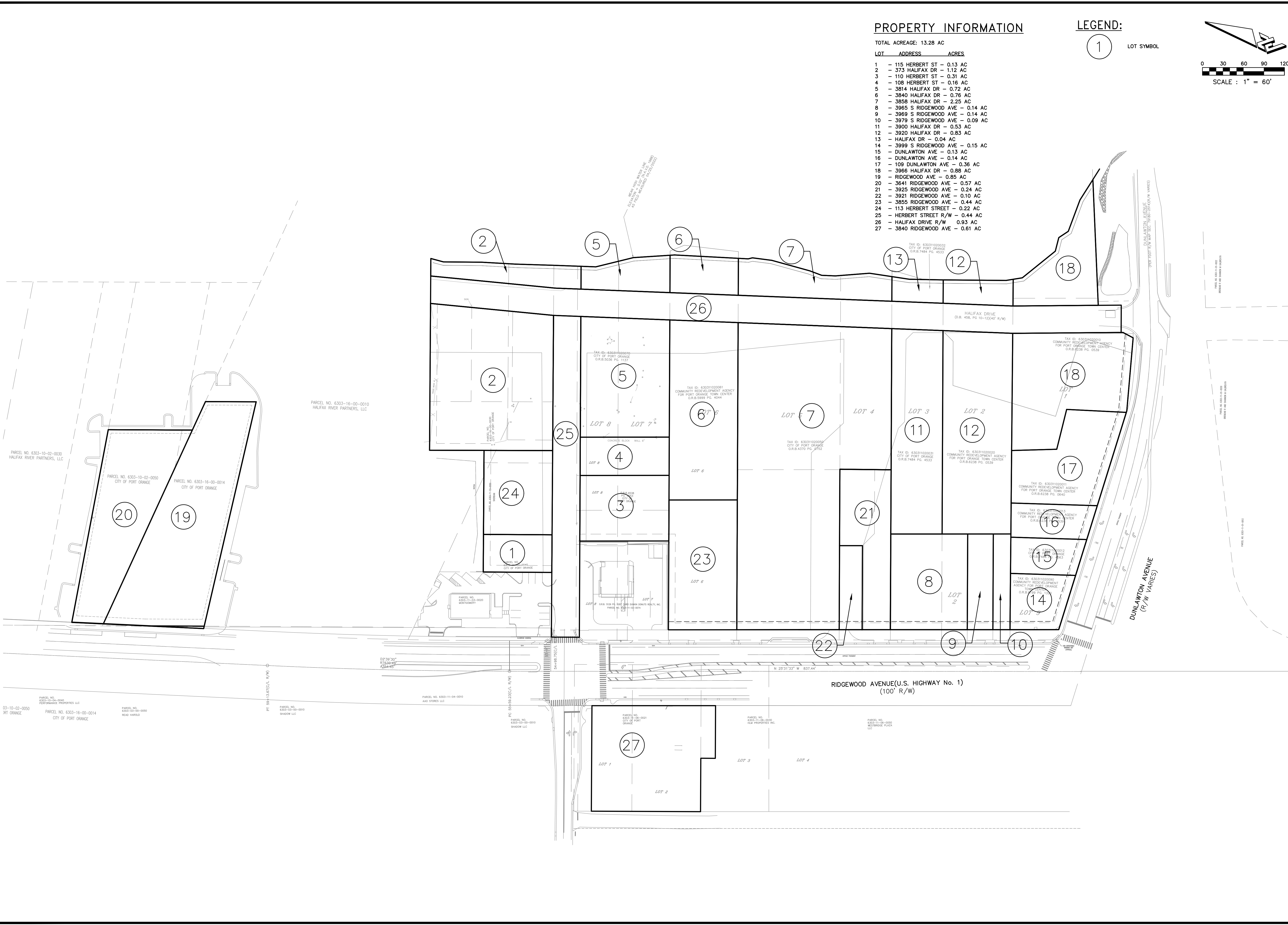
TOGETHER WITH

LOT 1 & 2, AND THE NORTHERLY 21.25 FEET OF THE EASTERLY 136.8 FEET OF LOT 3, BLOCK F, EXCLUDING RIGHT-OF-WAY, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

CITY OF PORT ORANGE



R:\21336-PORT ORANGE RIVER\PLAN\POD\03-21336-AEX-PUD.DWG - PRINTED: 9/19/2024 4:17 PM



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
ENVIRONMENTAL
PLANNING
TRANSPORTATION

NO.	DATE	BY	SUBMITTAL / REVISIONS
1	08-02-24	CM	REVISION
2	08-02-24	CM	REVISION
3	08-06-24	RMH/HR	REVISED PER CITY COMMENT'S DATED 08/02/24
4	08-12-24	RMH/HR	REVISED PER CITY COMMENT'S DATED 09/12/24

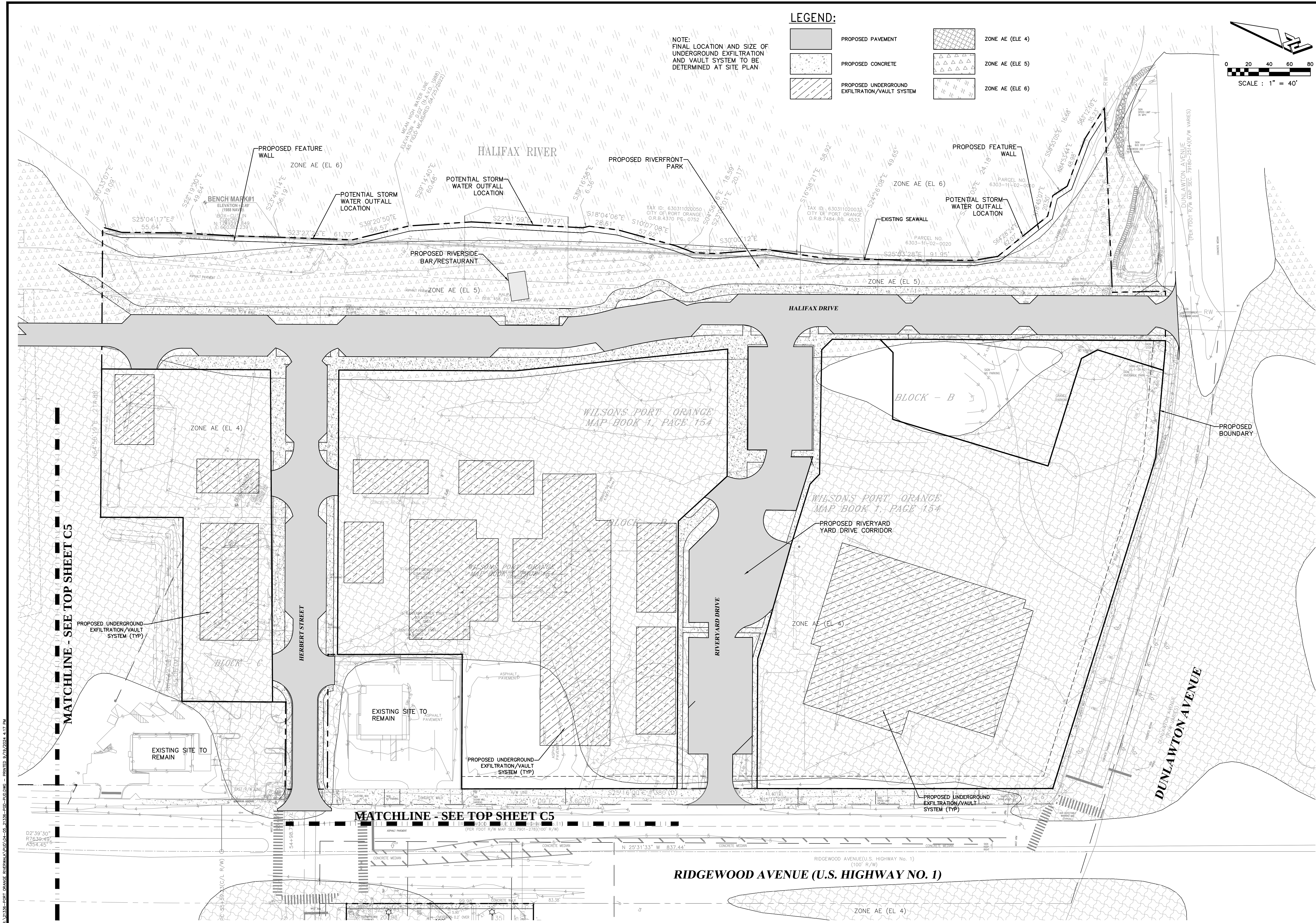
**RIVERYARD
EXHIBIT B
PC-R AREA EXHIBIT**

CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

PROJECT NO.: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH
DRAWING FILE: 03-21336-AEX-PUD
XREF'S: 21336_BAS_PUD.DWG
XREF'S: 21336_SURV.DWG

RANDY M. HUDAK, P.E., NO. 65093
NOT VALID WITHOUT SEAL
SHEET: **C3** OF **7**

R:\21336-PORT ORANGE RIVERMAY\POD\04-05-21336-PDR-AUD.DWG - PRINTED: 9/19/2024 4:17 PM





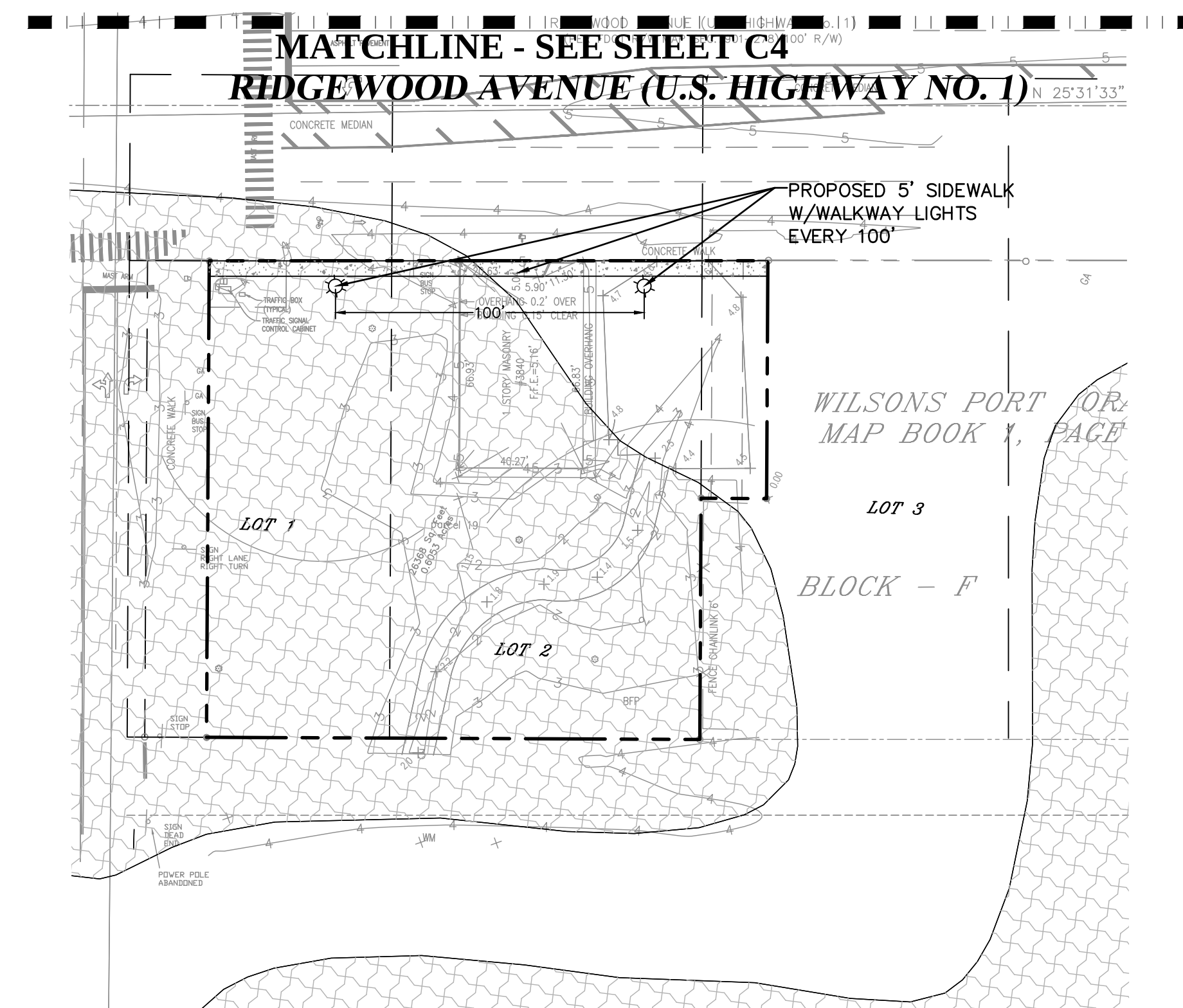
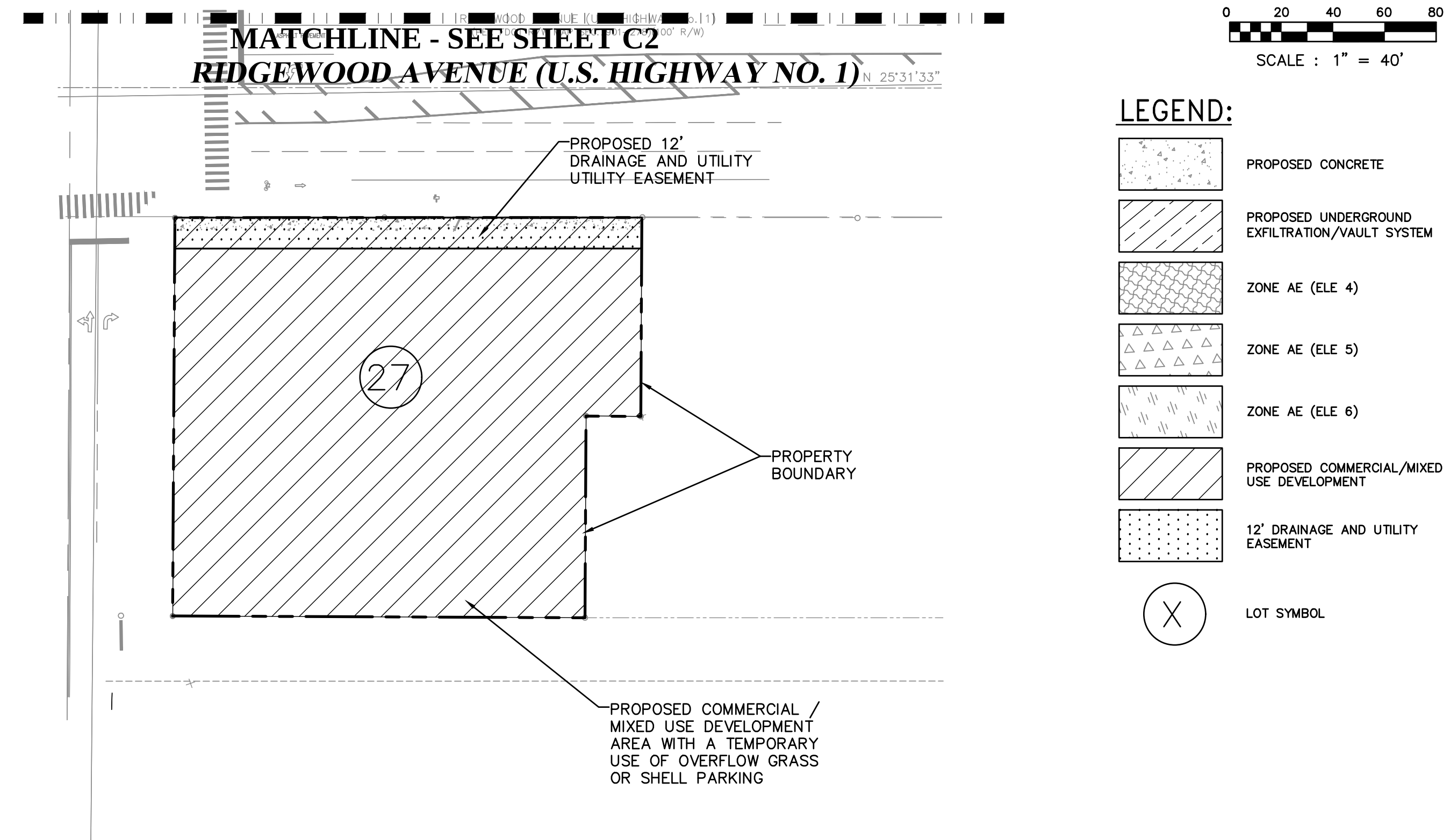
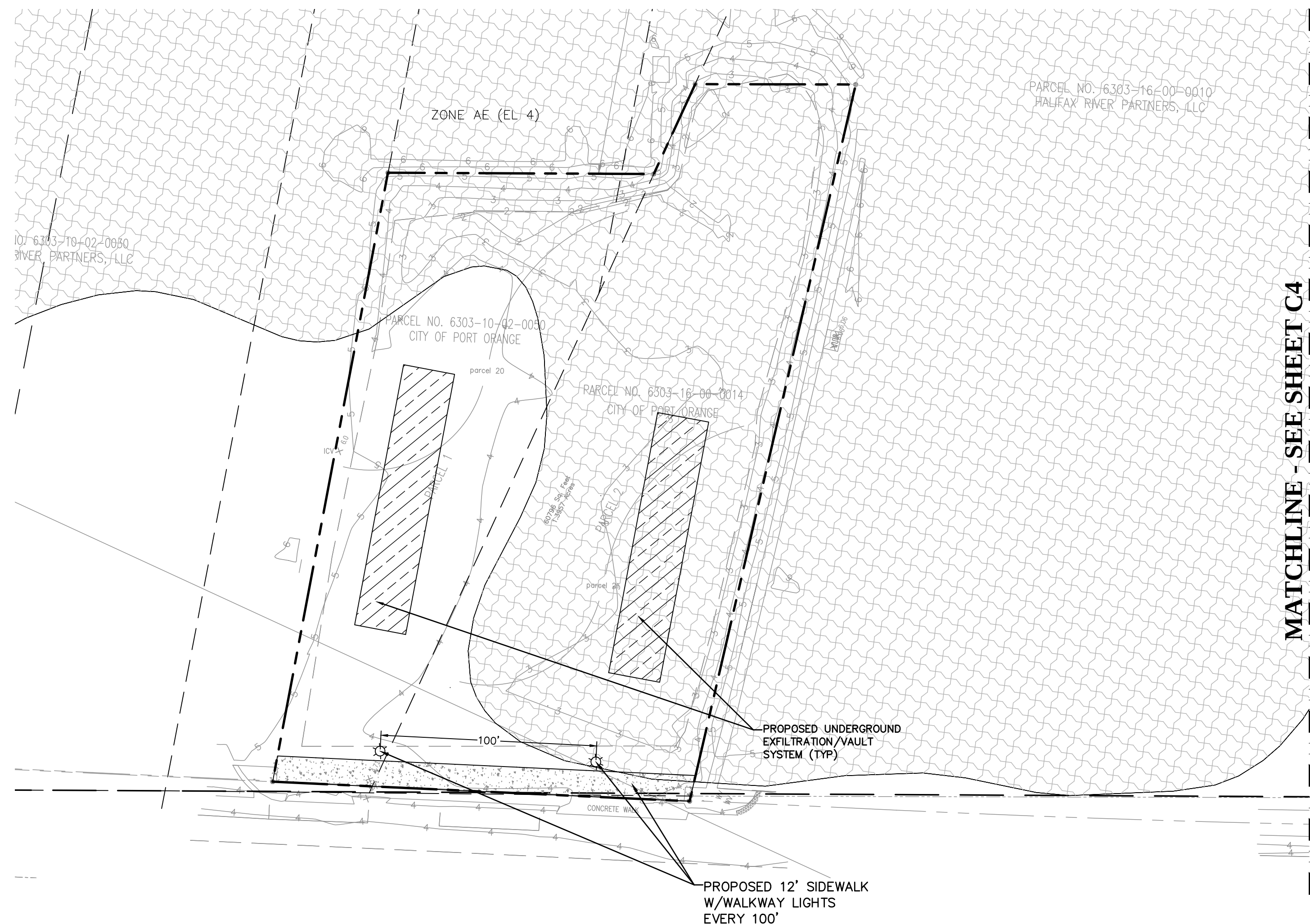
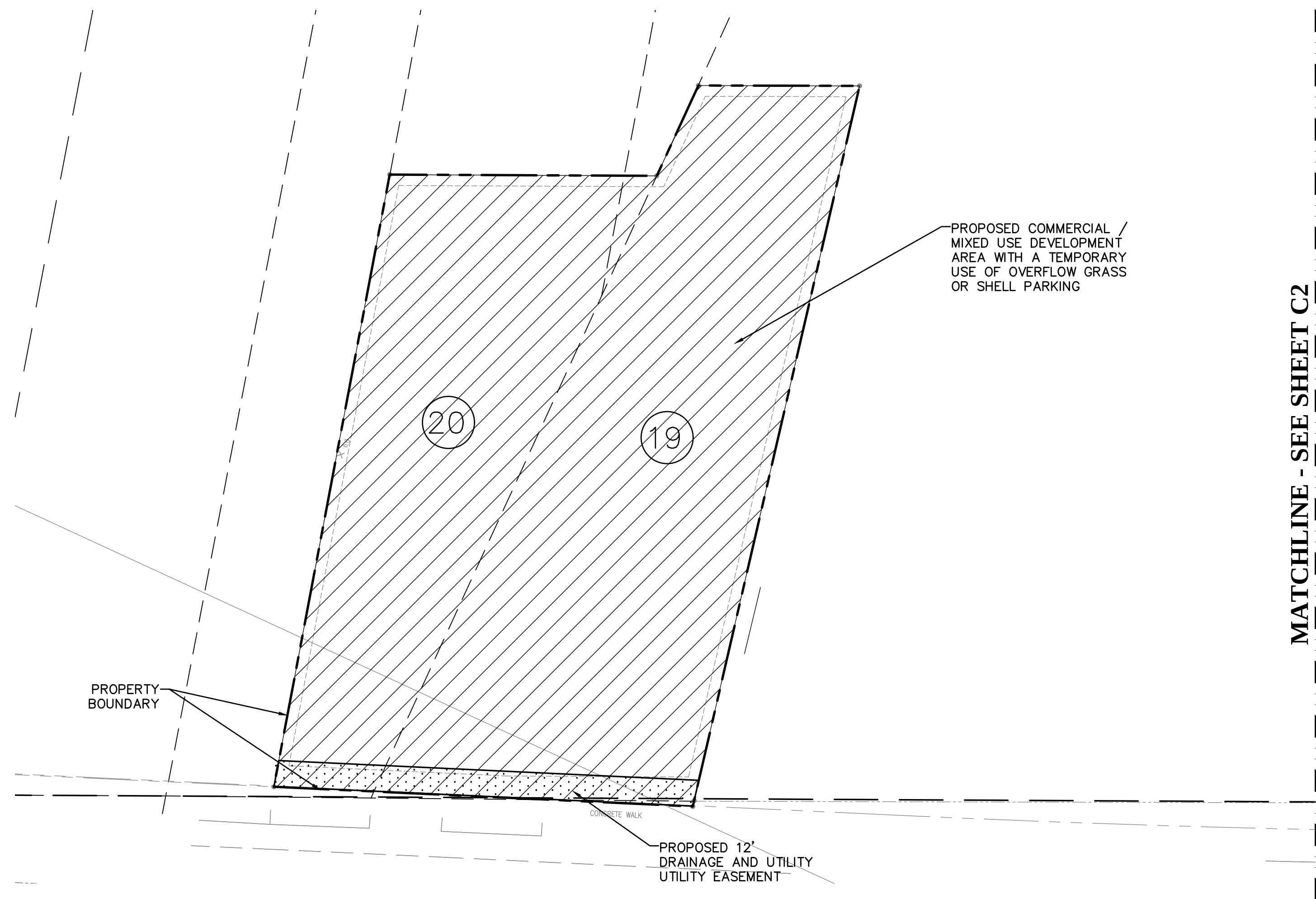
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ENVIRONMENTAL
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TRANSPORTATION

PROJECT NO.: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH
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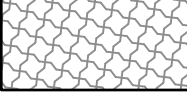
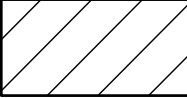
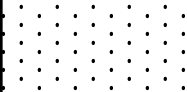
RANDY M. HUDAK, P.E., NO. 65093
NOT VALID WITHOUT SEAL

SHEET: **C4** OF **7**

CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

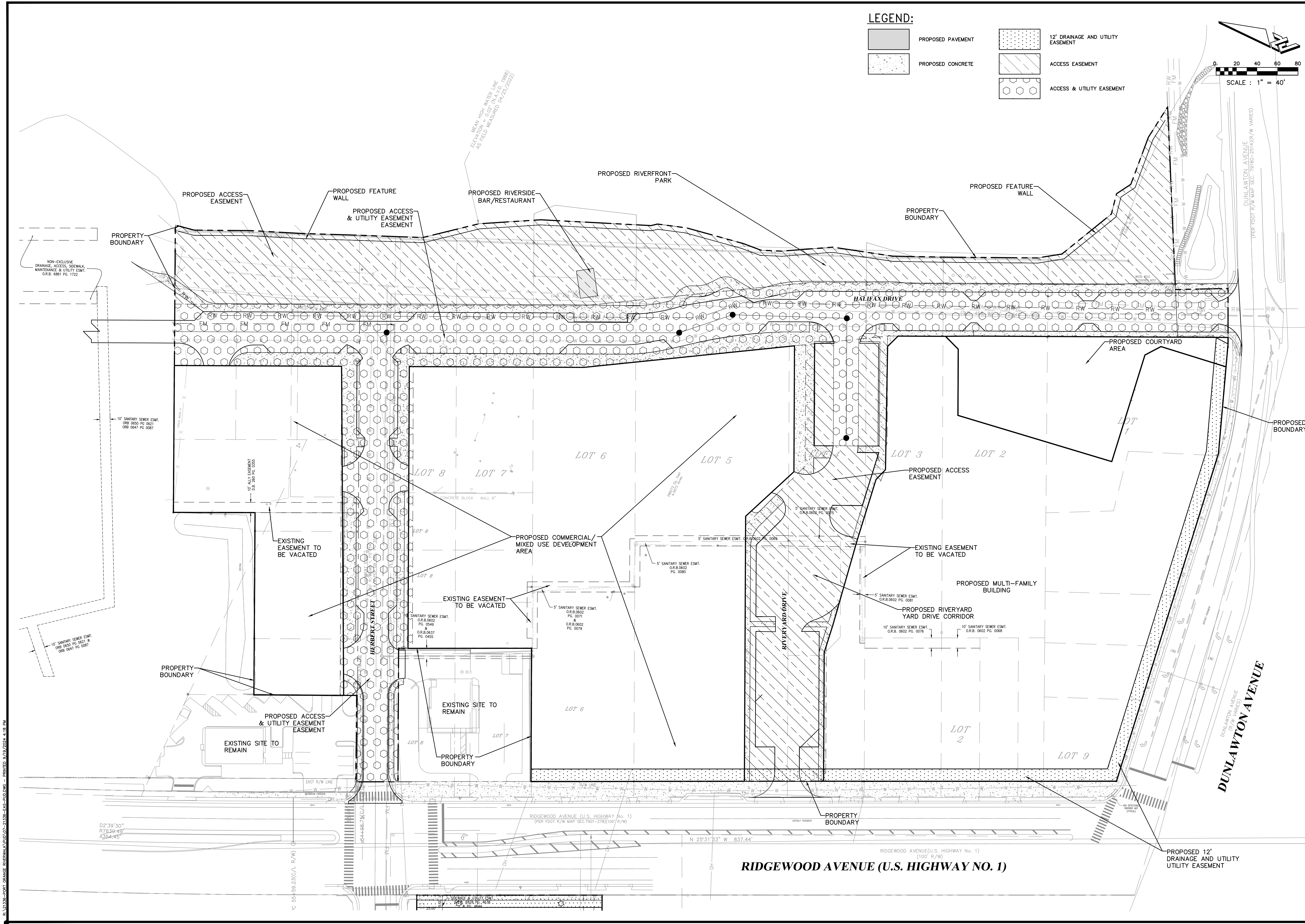


LEGEND:

	PROPOSED CONCRETE
	PROPOSED UNDERGROUND EXFILTRATION/VAULT SYSTEM
	ZONE AE (ELE 4)
	ZONE AE (ELE 5)
	ZONE AE (ELE 6)
	PROPOSED COMMERCIAL/MIXED USE
	12' DRAINAGE AND UTILITY EASEMENT
	LOT SYMBOL

[illegible]

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NO.	DATE	BY	REVISIONS
1	08-02-24	CM	SUBMITTAL
2	08-02-24	CM	REVISION
3	08-06-24	CM	REVISION
4	08-12-24	CM	REVISION

**RIVERYARD
EXHIBIT B
EASEMENT EXHIBIT**

PROJECT NO.: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH

DRAWING FILE: 07-21336-EAS-PUD
XREFS: 21336_BAS_PUD.DWG
XREFS: 21336_SURV.DWG

EXHIBIT D

Amended Riveryard Architectural Styles Exhibit

EXHIBIT "D"

RIVERWALK // APARTMENTS //

CONCEPTUAL DEVELOPMENT
PLAN PRESENTATION

RIVERWALK
CONCEPTUAL DEVELOPMENT
PLAN PRESENTATION

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development group

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Inspiration Images

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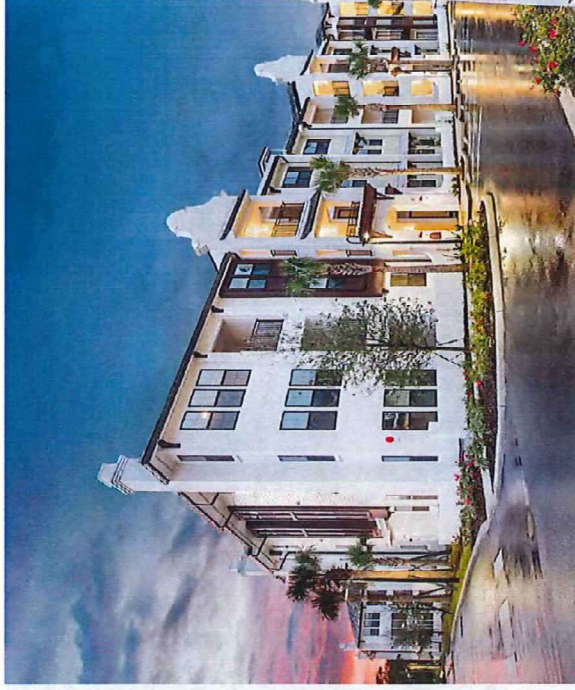
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PLAN PRESENTATION

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Classical



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PLAN PRESENTATION

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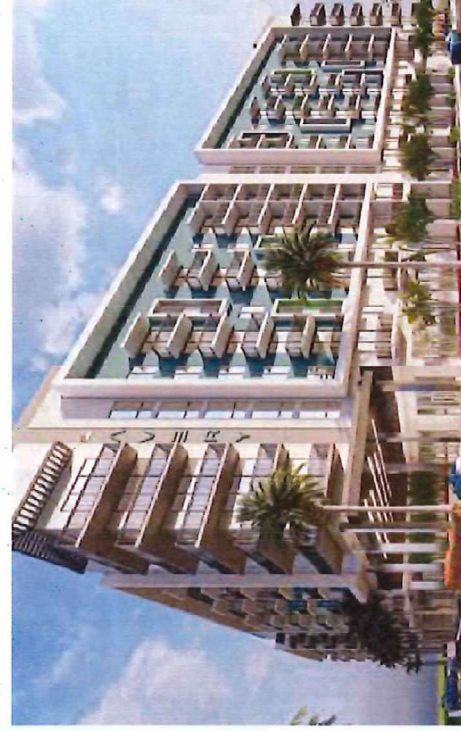
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Modern



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CONCEPTUAL DEVELOPMENT
PLAN PRESENTATION

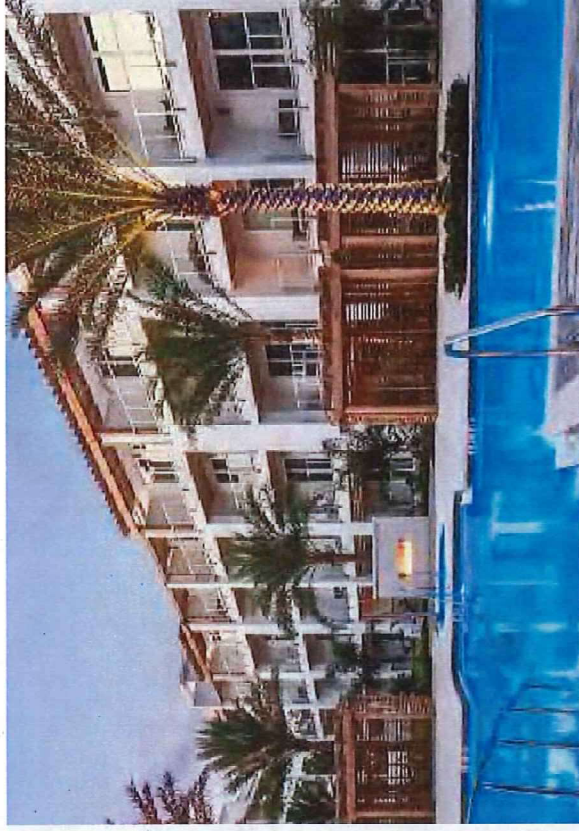
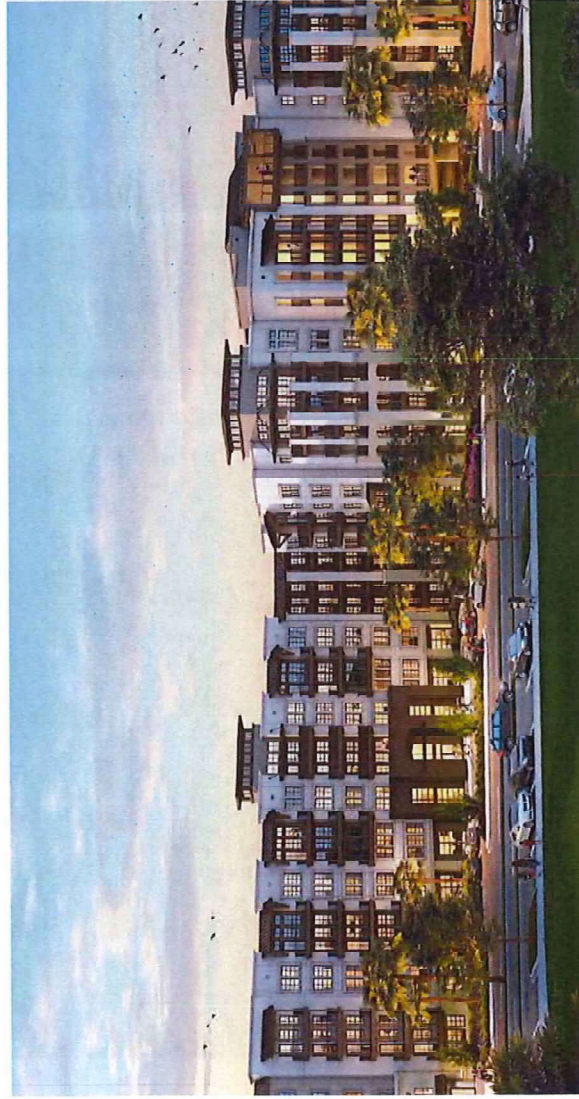
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Contemporary.....



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PLAN PRESENTATION

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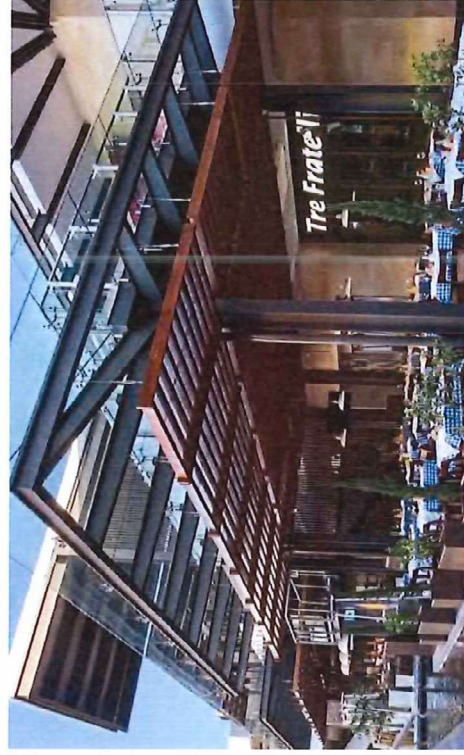
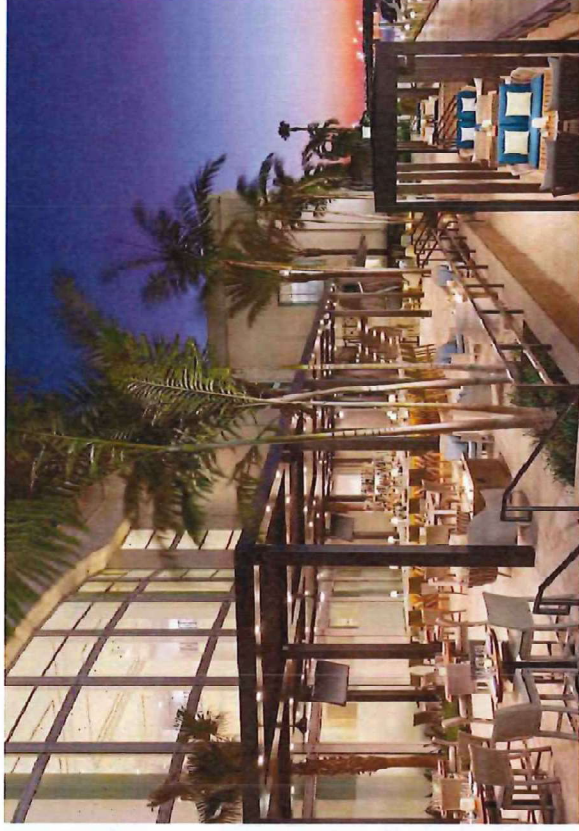
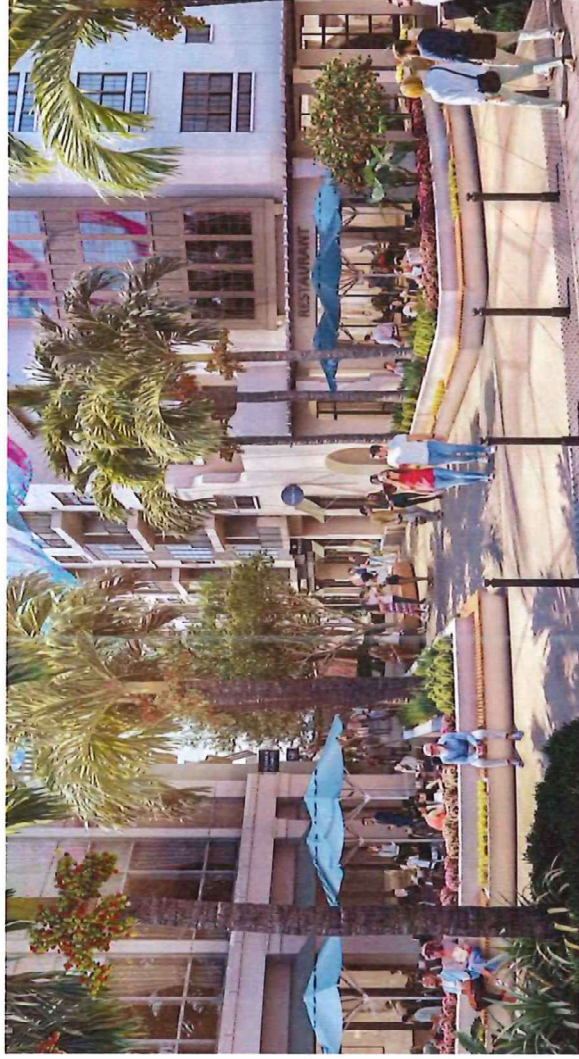
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Retail



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Mixed use / Retail



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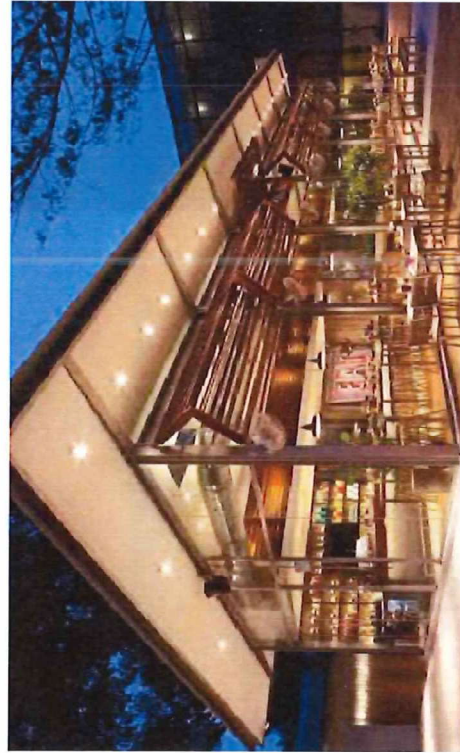
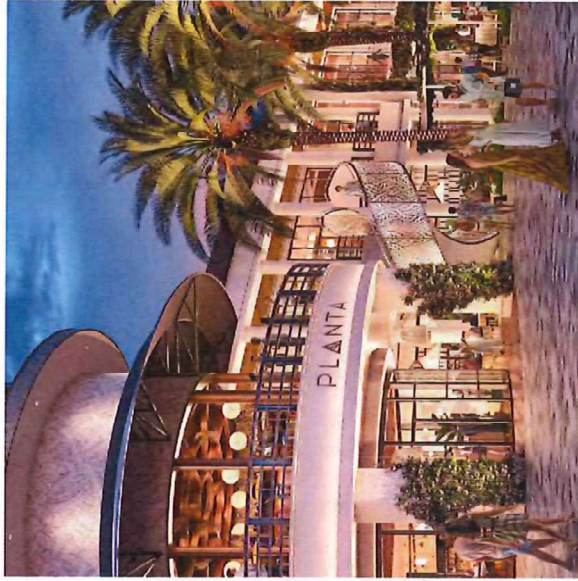
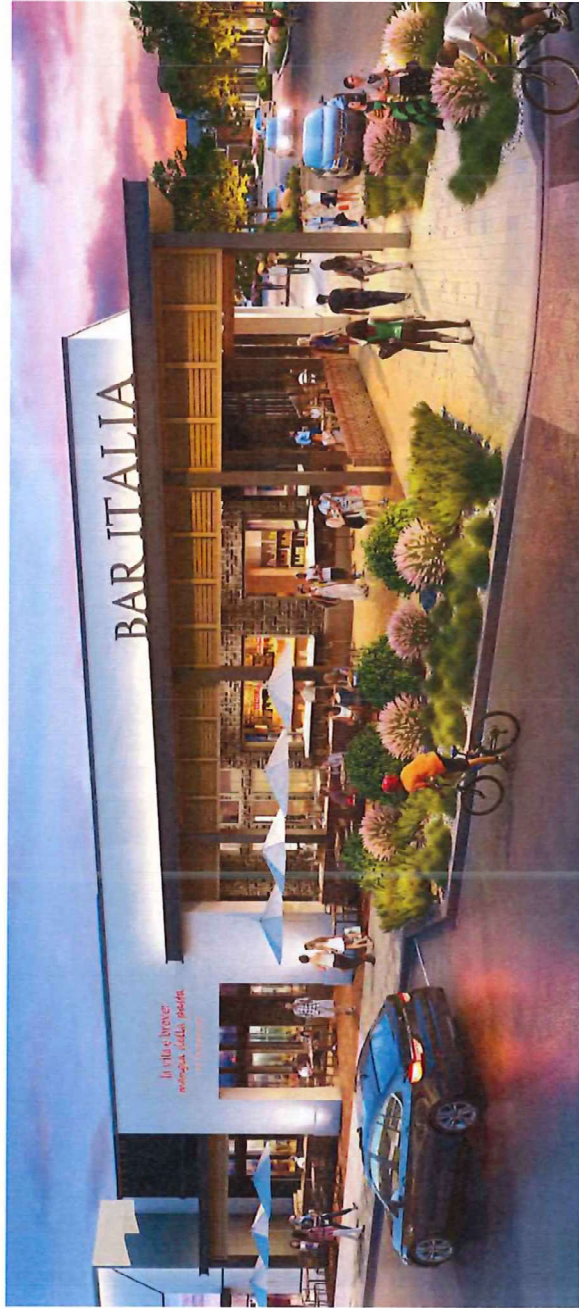
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Document prepared by:
Jessica Gow, Esq.
Cobb Cole Law Firm
149 S. Ridgewood Ave., Ste. 700
Daytona Beach, FL 32114

Return recorded document to:
City of Port Orange Records Clerk
1000 City Center Circle
Port Orange, FL 32129

SECOND AMENDMENT TO RIVERYARD MASTER DEVELOPMENT AGREEMENT

The **CITY OF PORT ORANGE, FLORIDA**, a Florida municipal corporation, and **PORT ORANGE TOWN CENTER COMMUNITY REDEVELOPMENT AGENCY**, a special purpose district unit of government organized under Chapter 163, Part III, the Law of Florida, both located in Volusia County, Florida, (collectively "City"), Joan L. Sheridan, Trustee of the Joan L. Sheridan Revocable Trust, JLS888, Inc., Ralph & Tammy Heotzler and Bristol Port Orange Partners, LLC, a Florida limited liability company (collectively "Owners") and **BRISTOL PORT ORANGE PARTNERS, LLC**, a Florida limited liability company in its capacity as the developer of the Property ("Developer"), hereby agree and covenant, and bind their heirs, successors, and assigns, as follows:

WHEREAS, the property subject to this Second Amendment is the property more particularly described in Exhibit "A" to the MDA, said property being under the sole ownership of City and Owners and under contract (the "Riverwalk Purchase & Sale Agreement") for purchase by Developer; and

WHEREAS, the City and Owners previously entered into the Riveryard Master Development Agreement, adopted September 5, 2023, and recorded in Official Records Book 8457, Page 2924, Public Records of Volusia County, Florida ("MDA"), as amended by that certain First Amendment to Riveryard Master Development Agreement, adopted August 21, 2024, and recorded in Official records Book 8499, Page 2425, Public Records of Volusia County, Florida (the "First Amendment"); and

WHEREAS, the Developer is the contract purchaser of the property owned by the City and, as such, requests the City to further amend the MDA to modify certain development criteria and clarify phasing requirements for public uses within the City Property; and

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

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

1. The recitals provided above are recognized as true and correct representations and are incorporated herein.

2. The Conceptual Development Plan referenced in Sections 2. And 3.C. of the MDA which incorporate and refer to the Conceptual Development Plan as Exhibit “B” is hereby amended and replaced in its entirety with the amended Conceptual Development Plan marked as **Exhibit “Amended CDP”**, attached hereto and made a part hereof by this reference. Any references to the CDP or to Exhibit “B” shall mean the Exhibit “Amended CDP” attached hereto, unless otherwise further amended.
3. The Riveryard Architectural Styles Exhibit included as Exhibit “D” of the MDA is hereby amended and replaced in its entirety with the amended Riveryard Architectural Styles Exhibit marked as **Exhibit “Amended Riveryard Architectural Styles Exhibit”**, attached hereto and made a part hereof by this reference. Any references to the Riveryard Architectural Styles Exhibit or to Exhibit “D” shall mean the Exhibit “Amended Riveryard Architectural Styles Exhibit” attached hereto, unless otherwise further amended.
4. **Section 3 (D) of the MDA, Lot Development Criteria, is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

D. LOT DEVELOPMENT CRITERIA. The following lot development criteria shall apply to the Property.

(1) Except as set forth in subsection (2), herein, ~~the~~ the following modified lot development criteria shall apply to commercial and multifamily development throughout the Property:

[remainder of subsection (1) is unchanged]

(2) The property located on the southwest corner of Herbert Street and Ridgewood Avenue (identified as Parcel 27 on Sheet C3 of the CDP and being Parcel No. 630311060021) shall be developed using the development dimensional criteria for the Ridgewood Development (RD) district.

5. **Section 5 of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

5. PERMITTED USES.

(a) ~~All uses permitted within the PC-R Mixed Use district shall be permitted, along with~~ The following uses are permitted within the Property:

Bike, kayak & other recreational equipment rentals
ATM kiosks

Professional and medical offices (2nd floor and above only)
Animal grooming or wellness
Game/recreation facilities
Health/exercise clubs
Brewery
Amphitheater
Multifamily dwellings and Townhomes
Food Truck Court/Parking – allowed in the area designated on the CDP as commercial, private roadway, and waterfront park.
Bars, lounges, and nightclubs
Hotel
Marina
Outdoor fruit and vegetable or craft market
Retail uses
Personal services
Restaurants
Public/civic facilities
Microbrewery
Craft food and beverage producer

Accessory and temporary uses are permitted within the site that are incidental to the principal uses outlined herein and are part of the scale or scope of everyday operations. Temporary uses, such as social programming, art displays, exercise classes, and similar activities targeted towards activation of the Property shall be permitted without the need for formal Special Event review by the City, so long as the event does not contemplate any of the following: (1) Affects the public roadway network and area(s) beyond the City of Port Orange; (2) Requires one or more public roadway closures; (3) Has hours of operation extending beyond 11:00 p.m.; or (4) Extends for a period over twenty-four hours.

In the areas illustrated on the CDP, temporary staging and parking shall be permitted as an interim use until redevelopment of the portion of the property used for such use.

The property identified as Parcels 19 and 20 on Sheet C3 of the CDP may include as part of the overall development one use with a drive thru.

The property located on the southwest corner of Herbert Street and Ridgewood Avenue (identified as Parcel 27 on Sheet C3 of the CDP) can be developed with the uses permitted in the Ridgewood Development (RD) district and not prohibited in Riverwalk Overlay District (ROD), as amended, except that as part of the overall development one use with a drive thru may be permitted.

[Subsections (b). through (e). remain unchanged]

6. **Section 6.D.(1)-(4) of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

D. PARKING. Parking shall be developed consistent with the LDC, except as modified herein.

(1) Multifamily development may include multi-level garages, one-car garages, two-car garages and surface parking and shall be developed at a minimum ratio of ~~1.3~~ 1.25 parking spaces per dwelling unit. Parking for multifamily residential uses may be provided through the use of tandem garage/parking spaces so long as the tandem spaces are assigned for the exclusive use of one residential unit.

(2) Commercial uses within the Property may be permitted at a ratio of 5 spaces per 1,000 square feet.

(3) No additional parking shall be required for Food Truck or Marina uses, as this use is intended to be supportive of other proposed uses and transitory in nature.

(4) Of the required parking provided for the Property, a minimum of ~~100 surface spaces and 200 garage spaces~~ 300 parking spaces will be set aside for use by the public, although such spaces shall count towards the minimum required parking standards for individual use types. ~~The Property shall be subject to the following modified standards for parking details:~~

[Remainder of Section Remains Unchanged]

7. **Section 12 of the MDA is amended in part to read as follows: [additions shown in UNDERLINE, deletions shown in STRIKETHROUGH]**

[Subsections A. through D. remain unchanged]

E. Furthermore, if the Riverwalk Purchase & Sale Agreement between the City and Developer is not completed or is otherwise terminated, then the development rights granted pursuant to this Agreement shall lapse except that any vested development rights shall be permitted to remain in place pursuant to the terms contained herein.

8. This Second Amendment shall be effective as of the date it is executed by all parties. The MDA, as previously enacted, shall remain in full force and effect except with the respect to those matters specifically amended by the First Amendment and this Second Amendment.
9. This Second Amendment shall be recorded in the Public Records of Volusia County, Florida, at the Developer's expense. The restrictions on use and development imposed by this Second Amendment shall be binding upon all successors in interest in the Property.

IN WITNESS WHEREOF, the parties hereto attached their hands and seals on the dates set forth below.

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

Witness 1

Print Name of Witness 1

By: _____

Donald O. Burnette, Mayor

Attest:

Witness 2

Print Name of Witness 2

By: _____

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 _____, 2024 by Donald O. Burnette, Mayor, and Robin L. Fenwick, City Clerk, both of The City of Port Orange, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public
Commission No: _____

Signed, sealed and delivered in the presence of: **Port Orange Town Center Community
Redevelopment Agency (“CRA”)**

Witness 1

Print Name of Witness 1

By: _____
Name:

Date: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2024, by _____ of _____. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: Joan L. Sheridan, Trustee of the Joan L. Sheridan Revocable Trust, (“Owner”)

Witness 1

Print Name of Witness 1

By: _____
Name:

Date: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Joan L. Sheridan, Trustee of the Joan L. Sheridan. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: JLS888, Inc., (“Owner”)

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

By: _____
Name:

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 _____, 2024, by _____ of _____. He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: Ralph & Tammy Heotzler ("Owner")

Witness 1

By: _____
Ralph Heetzler

Print Name of Witness 1

Date: _____

Witness 2

By: _____
Tammy Heetzler

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _____ day of _____, 2024, by Ralph Heotzler and Tammy Heotzler. They are ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Signed, sealed and delivered in the presence of: **Bristol Port Orange Partners, LLC**
(“Developer”)

Witness 1

Print Name of Witness 1

By: _____

Name:

Date: _____

Witness 2

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 2024, by _____ of Bristol Port Orange Partners, LLC, referred to in this agreement as “Developer.” He or she is ☐ personally known to me or ☐ produced as identification and did not take an oath.

Notary Public
Commission No. _____

Approved as to legal form:

By: _____
Shannon K. Balmer, Senior Assistant City Attorney

EXHIBIT A

LEGAL DESCRIPTION:

A PORTION OF LOTS 1 THRU 9, INCLUDING RIPARIAN RIGHTS, BLOCK B, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA. LYING IN SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST.

TOGETHER WITH

LOTS 2 THRU 4, INCLUSIVE, AND INCLUDING RIPARIAN RIGHTS, DANIELS PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

THE EAST 55 FEET OF THE WEST 155 FEET OF THE SOUTHERLY 100 FEET, EXCLUDING PART IN STREET, BLOCK "C" WILSON'S PORT ORANGE, ACCORDING TO THE PLAT OR MAP THEREOF AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

THE EAST 105 FEET OF THE WEST 260 FEET OF THE SOUTH 100 FEET, BLOCK "C", WILSON'S MAP OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

TOGETHER WITH

A PORTION OF HERBERT STREET AND A PORTION OF HALIFAX DRIVE.

LESS AND EXCEPT

THE SOUTHERLY 60 FEET OF THE WESTERLY 140 FEET OF LOT 7, BLOCK B, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS THAT PORTION DEEDED FOR STREET, AND THE WEST 140 FEET OF THE NORTH 15 FEET OF LOT 7 AND THE WEST 140 FEET OF LOT 8, ALL IN BLOCK B, WILSON'S SUBDIVISION OF PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPT THAT PORTION THEREOF DEEDED TO THE STATE OF FLORIDA FOR WIDENING OF THE PUBLIC HIGHWAY LOCATED THEREON.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF DUNLAWTON AVENUE(PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 79180-2514(R/W VARIES))AND THE EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE(U.S. HIGHWAY 1)(PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-278(R/W VARIES)); THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N25°34'45"W, A DISTANCE OF 571.83 FEET TO THE SOUTH LINE OF LOT 7, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THENCE ALONG SAID SOUTH LINE N64°41'02"E, A DISTANCE OF 130.09 FEET TO THE EASTERLY LINE OF THE WESTERLY 140 FEET OF LOTS 7 AND 8, BLOCK B, SAID WILSON'S PORT ORANGE; THENCE ALONG SAID EASTERLY LINE N25°34'44"W, A DISTANCE OF 129.84 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HERBERT STREET (40' R/W); THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE; S64°43'17"W, A DISTANCE OF 127.53 FEET; THENCE DEPART SAID SOUTHERLY RIGHT OF WAY LINE N25°16'43"W, A DISTANCE OF 40.93 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF HERBERT STREET AND THE EASTERLY RIGHT OF WAY OF RIDGEWOOD AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N64°50'16"E, A DISTANCE OF 81.32 FEET TO THE EASTERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 7289, PAGE 4214; THENCE ALONG SAID EASTERLY LINE N25°13'53"W, A DISTANCE OF 100.36 FEET TO THE SOUTHERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID SOUTHERLY LINE N64°49'06"E, A DISTANCE OF 178.01 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY LINE N25°23'46"W, A DISTANCE OF 79.78 FEET; THENCE CONTINUE ALONG SAID SOUTHERLY LINE N64°50'19"E, A DISTANCE OF 280.63 FEET TO THE MEAN HIGH WATER LINE OF THE HALIFAX RIVER; THENCE ALONG SAID MEAN HIGH WATER LINE THE FOLLOWING 22 COURSES S10°33'07"E, A DISTANCE OF 19.09 FEET; THENCE S25°04'17"E, A DISTANCE OF 55.64 FEET; THENCE S22°19'30"E, A DISTANCE OF 49.64 FEET; THENCE S23°46'14"E, A DISTANCE OF 56.19 FEET; THENCE S23°27'26"E, A DISTANCE OF 61.77 FEET; THENCE S39°20'50"E, A DISTANCE OF 56.57 FEET; THENCE S29°14'40"E, A DISTANCE OF 60.48 FEET; THENCE S22°31'59"E, A DISTANCE OF 107.97 FEET; THENCE S39°16'58"E, A DISTANCE OF 6.36 FEET; THENCE S18°04'06"E, A DISTANCE OF 28.61 FEET; THENCE S10°07'08"E, A DISTANCE OF 57.62 FEET; THENCE S04°56'16"E, A DISTANCE OF 18.59 FEET; THENCE S23°08'01"E, A DISTANCE OF 20.17 FEET; THENCE S30°00'12"E, A DISTANCE OF 50.08 FEET; THENCE S16°58'21"E, A DISTANCE OF 58.92 FEET; THENCE S24°26'08"E, A DISTANCE OF 49.65 FEET; THENCE S25°03'28"E, A DISTANCE OF 91.95 FEET; THENCE S34°44'03"E, A DISTANCE OF 24.18 FEET; THENCE S64°28'24"E, A DISTANCE OF 62.07 FEET; THENCE N78°45'07"E, A DISTANCE OF 20.50 FEET; THENCE S58°53'05"E, A DISTANCE OF 16.68 FEET; THENCE N84°53'44"E, A DISTANCE OF 48.98 FEET; THENCE S83°12'10"E, A DISTANCE OF 35.23 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF AFORESAID DUNLAWTON AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S61°59'36"W, A DISTANCE OF 224.18 FEET TO THE WESTERLY RIGHT OF WAY LINE OF HALIFAX DRIVE; THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S26°00'43"E, A DISTANCE OF 34.57 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF AFORESAID DUNLAWTON AVENUE; THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S02°22'59"W, A DISTANCE OF 16.76 FEET; THENCE CONTINUE ALONG SAID LINE

S69°26'15"W, A DISTANCE OF 107.40 FEET; THENCE CONTINUE ALONG SAID LINE S81°44'19"W, A DISTANCE OF 335.17 FEET TO THE POINT OF BEGINNING.

CONTAINING 480,471 SQUARE FEET, OR 11.030 ACRES MORE OR LESS.

PARCEL 1

LOTS 5 AND 6, EXCEPT THE EAST 216 FEET AND EXCEPT THE STREET (US HIGHWAY #1), BLOCK 2, PORT ORANGE HAND TRACT, THE SAID EAST 216 FEET BEING MEASURED ON THE NORTH LINE OF LOT 5, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 2, PAGE 185, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

PARCEL 2

REFER TO A POINT IN THE ORIGINAL EAST LINE OF RIDGEWOOD AVENUE, (US HIGHWAY #1, STATE ROAD NO. 5, A 66 FOOT RIGHT-OF-WAY), SAID POINT BEING THE INTERSECTION OF THE NORTH LINE OF U.S. GOVERNMENT LOT TWO (2), OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, ALSO BEING THE NORTH LINE OF LOT ONE (1), MRS DANIEL'S ADDITION TO PORT ORANGE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 3, PAGE 29, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, WITH SAID ORIGINAL EAST RIGHT-OF-WAY; THENCE N89°14'45"E, FOR A DISTANCE OF 3.83 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY # 1 (STATE ROAD 5), NOW A 100 FOOT RIGHT-OF-WAY; THENCE S24°15'30"E ALONG THE EAST RIGHT-OF-WAY LINE NOW IN USE FOR A DISTANCE OF 150.42 FEET; THENCE DEPARTING AFORESAID RIGHT-OF-WAY N77°17'08"E, FOR A DISTANCE OF 338.08 FEET; THENCE N25°55'41"W FOR A DISTANCE OF 75.00 FEET TO THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 2; THENCE S89°14'45"W ALONG SAID SOUTH LINE FOR A DISTANCE OF 358.83 FEET TO THE POINT OF BEGINNING.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTH LINE OF GOVERNMENT LOT 2, SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND THE ORIGINAL EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE, THENCE N89°07'57"E, A DISTANCE OF 3.31 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY # 1(STATE ROAD 5) (PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-278 R/W VARIES)); THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N22°52'00"W, A DISTANCE OF 46.18 FEET TO THE NORTHERLY LINE OF LOT 5, H.P. HAND TRACT, AS RECORDED IN MAP BOOK 2, PAGE 185 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, ALSO BEING THE SOUTHERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID NORTHERLY LINE N75°10'06"E, A DISTANCE OF 287.02 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S25°16'47"E, A DISTANCE OF 123.07 FEET TO THE

SAID NORTHERLY LINE OF GOVERNMENT LOT 2; ALSO BEING THE NORTHERLY LINE OF LOT 1, DANIELS' ADDITION TO PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29; THENCE ALONG SAID NORTHERLY LINE N89°12'09"E, A DISTANCE OF 45.83 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S25°24'56"E, A DISTANCE OF 74.27 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408; THENCE ALONG SAID BOUNDARY LINE S77°29'15"W, A DISTANCE OF 340.70 FEET THE SAID EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE; THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N22°52'00"W, A DISTANCE OF 147.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 60796 SQUARE FEET, OR 1.396 ACRES MORE OR LESS.

TOGETHER WITH

LOT 1 & 2, AND THE NORTHERLY 21.25 FEET OF THE EASTERLY 136.8 FEET OF LOT 3, BLOCK F, EXCLUDING RIGHT-OF-WAY, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

R:\21336-PORT ORANGE RIVERMAY\PROJECT\21336-COV-PL01.DWG - PRINTED: 9/19/2024 4:16 PM

LOT	PARCEL ID NO.	PARCEL ADDRESS	OWNER NAME/ADDRESS
1	6303-11-03-0040	115 HERBERT ST. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
2	6303-11-03-0030	373 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
3	6303-11-03-0072	110 HERBERT PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
4	6303-11-03-0071	108 HERBERT PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
5	6303-11-03-0070	3814 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
6	6303-11-03-0061	3840 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
7	6303-11-03-0050	3858 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
8	6303-11-03-0030	3965 S RIDGEWOOD AVE. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
9	6303-11-03-0022	3969 S RIDGEWOOD AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
10	6303-11-03-0014	3979 S RIDGEWOOD AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
11	6303-11-03-0031	3900 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
12	6303-11-03-0020	3920 HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
13	6303-11-03-0032	HALIFAX DR. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
14	6303-11-03-0090	3999 S RIDGEWOOD AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
15	6303-11-03-0012	DUNLAWTON AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
16	6303-11-03-0013	DUNLAWTON AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
17	6303-11-03-0011	109 DUNLAWTON AVE. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
18	6303-11-03-0010	3966 HALIFAX DR. PORT ORANGE, FL 32127	CITY OF PORT ORANGE 100 CITY CENTER CIR. PORT ORANGE, FL 32129
19	6303-16-00-0014	RIDGEWOOD AVE. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 3212
20	6303-10-02-0050	3641 RIDGEWOOD AVE. PORT ORANGE, FL 32129	CITY OF PORT ORANGE 1000 CITY CENTER CIR. PORT ORANGE, FL 32129
21	6303-11-02-0041	3925 RIDGEWOOD AVE. PORT ORANGE, FL 32129	BRISTOL PORT ORANGE PARTNERS, LLC 381 MALLORY STATION RD. STE. 204 FRANKLIN, TN 37067-B264
22	6303-11-02-0042	3921 RIDGEWOOD AVE. PORT ORANGE, FL 32129	RALPH & TAMMY HEITZLER 3921 RIDGEWOOD, AVE. PORT ORANGE, FL 3212
23	6303-11-02-0060	3855 RIDGEWOOD AVE. PORT ORANGE, FL 32129	JLS888, INC. 3855 RIDGEWOOD, AVE. PORT ORANGE, FL 32,29
24	6303-11-03-0050	113 HERBERT STREET PORT ORANGE, FL 32129	JOAN L. SHERIDAN TRUSTEE 113 HERBERT STREET PORT ORANGE, FL 32129
27	6303-11-06-0021	113 HERBERT STREET PORT ORANGE, FL 32129	ART HANS GALLERY 3840 RIDGEWOOD AVE PORT ORANGE, FL 32129

PROJECT DESCRIPTION:

THIS PROJECT INCLUDES THE DEVELOPMENT OF A MIXED USE TOWN CENTER AND PARK. COMPLIANCE WITH THE LAND DEVELOPMENT CODE MAY NECESSITATE MODIFICATION OF THE CONCEPTUAL PLAN.

SITE INFORMATION:

SITE ADDRESS:	SOUTH RIDGEWOOD AVE., PORT ORANGE, FL
PROJECT AREA:	13.28 AC
AREA OWNED/CONTROLLED BY BRISTOL	11.91 AC
R/W OWNED BY THE CITY OF PORT ORANGE	1.37 AC
EXISTING ZONING:	PC-R AND RD
PROPOSED ZONING:	PC-R AND RD
PROPOSED OPEN SPACE:	1.45 AC
MAXIMUM OVERALL RESIDENTIAL DENSITY:	A MAXIMUM DENSITY OF 460 UNITS (37 UNITS/ACRE).
MINIMUM BUILDING SETBACKS:	
DUNLAWTON AVE.:	12 FT
RIDGEWOOD AVE.:	12 FT
EXTERNAL TO MASTER DEVELOPMENT:	5 FT
INTERNAL:	SEAWALL 5 FT, HALIFAX DRIVE 5 FT, HERBERT ST, 5 FT, ALL OTHERS 0 FT
PARCEL 27:	PER RD ZONING DISTRICT
REQUIRED LANDSCAPE BUFFER(S):	10 FT - ALONG DUNLAWTON AVE. 10 FT - ALONG RIDGEWOOD AVE. 5 FT - ALL OTHER PERIMETERS
MINIMUM LIVING AREA/DWELLING UNIT:	500 SF
MINIMUM BUILDING LOT COVERAGE:	3,000 SF
MAXIMUM BUILDING HEIGHT:	105 FT, EXCLUDING ARCHITECTURAL EMBELLISHMENTS OR DESIGN ELEMENTS
PARCEL 27:	PER RD ZONING DISTRICT
MAXIMUM FENCE HEIGHT:	8 FT, (SUCH HEIGHT SHALL NOT INCLUDE THE PORTIONS OF A RETAINING WALL THAT IS LOCATED SUB-GRADE).
MINIMUM LOT WIDTH:	N/A
MINIMUM LOT DEPTH:	N/A
THE STRUCTURES WITHIN THE PD WILL BE DETERMINED BY THE ENGINEER OF RECORD. THE FINISHED FLOOR ELEVATION(FFE) SHALL BE MINIMUM ELEVATION OF 7.	
UTILITIES:	PROVIDED BY CITY OF PORT ORANGE

PARKING:

- MULTIFAMILY DEVELOPMENT: MINIMUM RATIO OF 1.25 PARKING SPACES PER DWELLING UNIT. PARKING FOR MULTIFAMILY RESIDENTIAL USES MAY BE PROVIDED THROUGH THE USE OF TANDEM GARAGE/PARKING SPACES SO LONG AS THE TANDEM SPACES ARE ASSIGNED FOR THE EXCLUSIVE USE OF ONE RESIDENTIAL UNIT.
- COMMERCIAL USES: A RATIO OF 5 SPACES PER 1,000 SQUARE FEET.
- HOTEL USES: A RATIO OF 1 SPACE PER GUEST ROOM AND 0.10 PER EMPLOYEE.
- NO ADDITIONAL PARKING SHALL BE REQUIRED FOR FOOD TRUCK OR MARINA USES.
- A MINIMUM OF 300 PARKING SPACES WILL BE SET ASIDE FOR USE BY THE PUBLIC, ALTHOUGH SUCH SPACES SHALL COUNT TOWARDS THE MINIMUM REQUIRED PARKING STANDARDS FOR INDIVIDUAL USE TYPES.
- PARKING PARKING DIMENSIONS. THE MINIMUM PARKING DIMENSIONS ON SITE SHALL BE AS FOLLOWS: 90 DEGREE SPACES MEASURING 9' X 18', PARALLEL SPACES MEASURING 8' X 20'. PARKING AREAS SHALL HAVE A MINIMUM DRIVE AISLE WIDTH OF 22'. COMPACT SPACES ARE ALLOWED UP TO 10% OF TOTAL REQUIRED SPACES AND SHALL BE A MINIMUM OF 8'-0" X 16'-0". ANGLED PARKING SPACES ARE ALLOWED EXCEPT ON HALIFAX DRIVE AND HERBERT STREET AND SHALL BE 45 DEGREE ANGLE, 9'-0" MIN. WIDTH FROM SIDE TO SIDE, 19'-1" MIN. DEPTH FROM CURB TO BACK OF SPACE, AND 12'-9" MIN. WIDTH AS MEASURED ALONG THE CURB FROM SPACE TO SPACE.
- GARAGE PARKING DIMENSIONS SHALL BE AS FOLLOWS:
PARKING SPACE: 9'-0" WIDE X 18'-0" DEEP
DRIVE AISLES: 24'-0" WIDE MINIMUM

DEVELOPER:

BRISTOL PORT ORANGE PARTNERS, LLC
381 MALLORY STATION RD, SUITE 204
FRANKLIN, TN 37064

PHONE NUMBER: 615-415-7326

FAX NUMBER

CONTACT PERSON: CHARLES CARLISLE

e-mail: carlisle@bristoldevelopment.com

CIVIL ENGINEER:

ZEV COHEN & ASSOCIATES, INC.
300 INTERCHANGE BLVD, SUITE C
ORMOND BEACH, FL 32174

PHONE NUMBER: (386) 677-2482

FAX NUMBER: (386) 677-2505

CONTACT: RANDY M. HUDAK, P.E.

e-mail: rhudak@zevcohen.com

SURVEYOR:

SLIGER & ASSOCIATES, INC.
3921 NOVA ROAD
PORT ORANGE, FL. 32127

PHONE NUMBER: (386) 761-5385

FAX NUMBER

CONTACT PERSON: JOE ZAPERT, P.L.S.

e-mail: jzapert@sligerassociates.com

LANDSCAPE ARCHITECT:

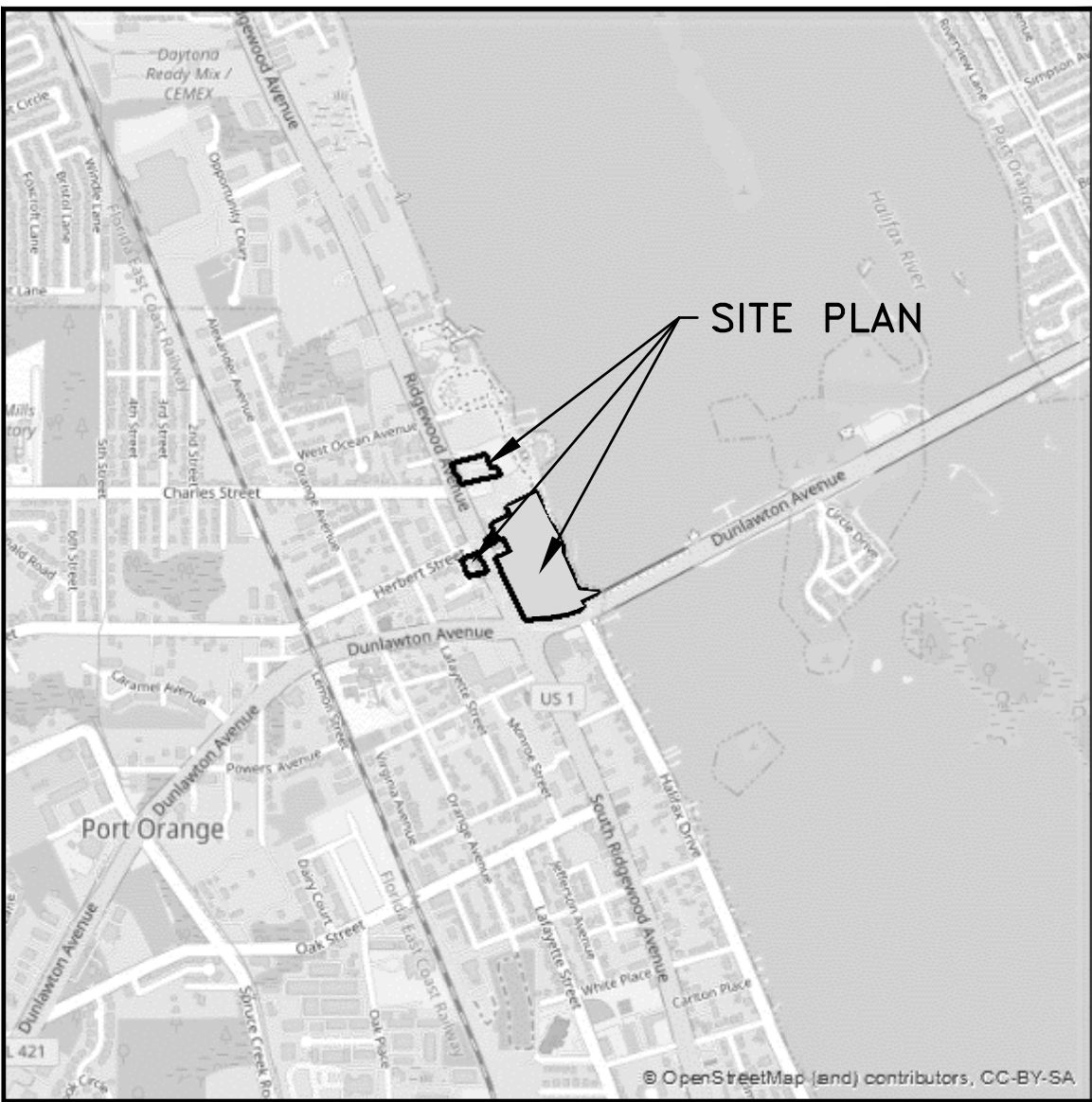
DIX-HITE
150 WEST JESSUP AVE.
LONGWOOD, FL 32750

PHONE NUMBER: : (407) 667-1777

FAX NUMBER

CONTACT PERSON: JAMIE WRIGHT PLA,

LEED-AP
e-mail: jwright@dixhite.com



VICINITY MAP

SCALE: 1" = 1500'



ZONING MAP

SCALE: 1" = 300'

CURRENT ZONING FOR THIS SITE IS: PC-R



SOILS MAP

SCALE: 1" = 300'

THE SITE LIES WITHIN THE FOLLOWING VOLUSIA COUNTY SOIL CLASSIFICATIONS:
0 - WATER, 8 - BASSINGER FINE SAND, DEPRESSIONAL, 12 - CANAVERAL SAND, 0 TO 5 PERCENT SLOPES, 15 - COCOA SAND, 0 TO 5 PERCENT SLOPE, 57 - SATELLITE SAND



FLOOD ZONE MAP

SCALE: 1" = 300'

THE PROPERTY LIES IN:
FLOOD ZONE AE PER FEMA MAPS 12127C038J EFF. 9/29-2017

SHEET INDEX:

- C1 COVER SHEET
- C2 CDP
- C3 PC-R AREA EXHIBIT
- C4 DRAINAGE EXHIBIT
- C6 UTILITY PLAN
- C7 EASEMENT EXHIBIT

LEGAL DESCRIPTION:

A PORTION OF LOTS 1 THRU 9, INCLUDING HERBARIAN RIGHTS, BLOCK B, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LING IN SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST, TOGETHER WITH LOTS 2 THRU 4, INCLUDING, AND INCLUDING HERBARIAN RIGHTS, DANIELS PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH THE EAST 55 FEET OF THE WEST 155 FEET OF THE SOUTHERLY 100 FEET, EXCLUDING PART IN STREET, BLOCK "C" WILSON'S PORT ORANGE, ACCORDING TO THE PLAT OR MAP THEREOF AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH THE EAST 105 FEET OF THE WEST 260 FEET OF THE SOUTH 100 FEET, BLOCK "C", WILSON'S MAP OF PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, TOGETHER WITH A PORTION OF HERBERT STREET AND A PORTION OF HALIFAX DRIVE, LESS AND EXCEPT THE SOUTHERLY 60 FEET OF THE WESTERLY 140 FEET OF LOT 7, BLOCK B, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, LESS THAT PORTION DEEDED FOR STREET, AND THE WEST 140 FEET OF THE NORTH 15 FEET OF LOT 7 AND THE WEST 140 FEET OF LOT 8, ALL IN BLOCK B, WILSON'S SUBDIVISION OF PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, EXCEPT THAT PORTION THEREOF DEEDED TO THE STATE OF FLORIDA FOR WIDENING OF THE PUBLIC HIGHWAY LOCATED THEREON, ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF DUNLAWTON AVENUE(KEP) FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 79180-25440(N/VARIES)AND THE EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE(US HIGHWAY 1)FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-2790(N/VARIES), THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N025°44'N, A DISTANCE OF 571.83 FEET TO THE SOUTHLIN LINE OF LOT 7, WILSON'S PORT ORANGE, AS RECORDED IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, THENCE ALONG SAID SOUTH LINE N64°41'02", A DISTANCE OF 130.09 FEET TO THE EASTERLY LINE OF THE WESTERLY 140 FEET OF LOTS 7 AND 8, BLOCK B, SAID WILSON'S PORT ORANGE, THENCE ALONG SAID EASTERLY LINE N025°44'N, A DISTANCE OF 129.84 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF HERBERT STREET (407 R/W), THENCE ALONG SAID SOUTHERLY RIGHT OF WAY LINE, S64°43'17"N, A DISTANCE OF 127.53 FEET, THENCE DEPART SAID SOUTHERLY RIGHT OF WAY LINE N025°44'N, A DISTANCE OF 40.93 FEET TO THE INTERSECTION OF THE NORTHERLY RIGHT OF WAY LINE OF HERBERT STREET AND THE EASTERLY RIGHT OF WAY OF RIDGEWOOD AVENUE, THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE N04°50'16", A DISTANCE OF 81.32 FEET TO THE EASTERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 7268, PAGE 4214, THENCE ALONG SAID EASTERLY LINE N025°35'57"N, A DISTANCE OF 100.36 FEET TO THE SOUTHERLY LINE OF THE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408, THENCE ALONG SAID SOUTHERLY LINE N04°40'07", A DISTANCE OF 178.01 FEET, THENCE CONTINUE ALONG SAID SOUTHERLY LINE N025°23'46"N, A DISTANCE OF 79.78 FEET, THENCE CONTINUE ALONG SAID SOUTHERLY LINE N04°50'16", A DISTANCE OF 280.63 FEET TO THE MEAN HIGH WATER LINE OF THE HALIFAX RIVER, THENCE CONTINUE ALONG SAID MEAN HIGH WATER LINE THE FOLLOWING 22 COURSES S10°33'07", A DISTANCE OF 19.09 FEET, THENCE S22°04'17", A DISTANCE OF 35.64 FEET, THENCE S22°19'30", A DISTANCE OF 49.64 FEET, THENCE S22°46'14", A DISTANCE OF 56.19 FEET, THENCE S22°27'26", A DISTANCE OF 61.77 FEET, THENCE S30°20'50", A DISTANCE OF 56.57 FEET, THENCE S01°14'40", A DISTANCE OF 60.48 FEET, THENCE S22°19'30", A DISTANCE OF 107.97 FEET, THENCE S01°16'50", A DISTANCE OF 63.36 FEET, THENCE S10°40'40", A DISTANCE OF 28.61 FEET, THENCE S10°17'06", A DISTANCE OF 57.62 FEET, THENCE S04°56'16", A DISTANCE OF 18.59 FEET, THENCE S22°08'07", A DISTANCE OF 20.17 FEET, THENCE S30°20'12", A DISTANCE OF 58.08 FEET, THENCE S01°16'50", A DISTANCE OF 58.82 FEET, THENCE S01°16'50", A DISTANCE OF 60.18 FEET, THENCE S04°40'40", A DISTANCE OF 24.18 FEET, THENCE S04°40'40", A DISTANCE OF 60.07 FEET, THENCE N07°46'07", A DISTANCE OF 20.50 FEET, THENCE S01°16'50", A DISTANCE OF 16.68 FEET, THENCE N01°16'50", A DISTANCE OF 48.88 FEET, THENCE S01°16'50", A DISTANCE OF 35.23 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF APRESAID DUNLAWTON AVENUE, THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S01°16'50'36"N, A DISTANCE OF 224.18 FEET TO THE WESTERLY RIGHT OF WAY LINE OF HALIFAX DRIVE, THENCE ALONG SAID WESTERLY RIGHT OF WAY LINE S01°16'50'36", A DISTANCE OF 34.57 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF APRESAID DUNLAWTON AVENUE, THENCE ALONG SAID NORTHERLY RIGHT OF WAY LINE S02°22'59"N, A DISTANCE OF 16.76 FEET, THENCE CONTINUE ALONG SAID LINE S01°16'50'36", A DISTANCE OF 107.40 FEET, THENCE CONTINUE ALONG SAID LINE S01°16'50'36", A DISTANCE OF 335.19 FEET TO THE POINT OF BEGINNING.

CONTAINING 480,471 SQUARE FEET, OR 11.030 ACRES MORE OR LESS.

PARCEL 1

LOTS 5 AND 6, EXCEPT THE EAST 216 FEET AND EXCEPT THE STREET (US HIGHWAY #1), BLOCK 2, PORT ORANGE HAND TRACT, THE SAID EAST 216 FEET BEING MEASURED ON THE NORTH LINE OF LOT 5, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 2, PAGE 185, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

PARCEL 2

REFER TO A POINT IN THE ORIGINAL EAST LINE OF RIDGEWOOD AVENUE, (US HIGHWAY #1, STATE ROAD NO. 5, A 66 FOOT RIGHT-OF-WAY), SAID POINT BEING THE INTERSECTION OF THE NORTH LINE OF U.S. GOVERNMENT LOT TWO (2), OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST, VOLUSIA COUNTY, FLORIDA, ALSO BEING THE NORTH LINE OF LOT ONE (1), MRS. DANIEL'S ADDITION TO PORT ORANGE, ACCORDING TO THE PLAT THEREOF AS RECORDED IN MAP BOOK 3, PAGE 29, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, WITH SAID ORIGINAL EAST RIGHT-OF-WAY, THENCE N01°14'45", FOR A DISTANCE OF 3.83 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #1 (STATE ROAD 5), NOW A 100 FOOT RIGHT-OF-WAY, THENCE S01°16'50", ALONG THE EAST RIGHT-OF-WAY LINE NOW IN USE, FOR A DISTANCE OF 150.42 FEET, THENCE DEPARTING APRESAID RIGHT-OF-WAY N07°17'06", FOR A DISTANCE OF 338.83 FEET, THENCE N02°55'47"N, FOR A DISTANCE OF 75.00 FEET TO THE NORTH LINE OF SAID U.S. GOVERNMENT LOT 2, THENCE S01°14'45"N ALONG SAID SOUTH LINE FOR A DISTANCE OF 328.83 FEET TO THE POINT OF BEGINNING.

ALL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTH LINE OF GOVERNMENT LOT 2, SECTION 3, TOWNSHIP 16 SOUTH, RANGE 33 EAST AND THE ORIGINAL EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE, THENCE N07°07'57", A DISTANCE OF 3.33 FEET TO THE POINT OF BEGINNING, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF U.S. HIGHWAY #1 (STATE ROAD 5) PER FLORIDA DEPARTMENT OF TRANSPORTATION RIGHT-OF-WAY MAP, SECTION 7901-2790 R/W (VARIES), THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE N225°07'07"N, A DISTANCE OF 46.18 FEET TO THE NORTHERLY LINE OF LOT 5, HAP. HAND TRACT, AS RECORDED IN MAP BOOK 2, PAGE 185 OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, ALSO BEING THE SOUTHERLY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408, THENCE ALONG SAID NORTHERLY LINE N07°07'57", A DISTANCE OF 287.02 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408, THENCE ALONG SAID BOUNDARY LINE S22°15'47", A DISTANCE OF 123.07 FEET TO THE SAID NORTHERLY LINE OF GOVERNMENT LOT 2, ALSO BEING THE NORTHERLY LINE OF LOT 1, DANIEL'S ADDITION TO PORT ORANGE, AS RECORDED IN MAP BOOK 3, PAGE 29, THENCE ALONG SAID NORTHERLY LINE N07°07'57", A DISTANCE OF 45.83 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408, THENCE ALONG SAID BOUNDARY LINE S22°14'56", A DISTANCE OF 74.27 FEET TO THE BOUNDARY LINE OF LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 5560, PAGE 408, THENCE ALONG SAID BOUNDARY LINE S77°29'15"N, A DISTANCE OF 340.70 FEET THE SAID EASTERLY RIGHT OF WAY LINE OF RIDGEWOOD AVENUE, THENCE ALONG THE SAID EASTERLY RIGHT OF WAY LINE N225°07'07"N, A DISTANCE OF 147.08 FEET TO THE POINT OF BEGINNING.

CONTAINING 60796 SQUARE FEET, OR 1.386 ACRES MORE OR LESS.

TOGETHER WITH

LOT 1 & 2, AND THE NORTHERLY 21.25 FEET OF THE EASTERLY 136.8 FEET OF LOT 3, BLOCK F, EXCLUDING RIGHT-OF-WAY, WILSON'S PORT ORANGE, AS PER MAP IN MAP BOOK 1, PAGE 154, OF THE PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA.

****NOTE: THE SCALE OF THESE PLANS MAY HAVE CHANGED DUE TO REPRODUCTION.****



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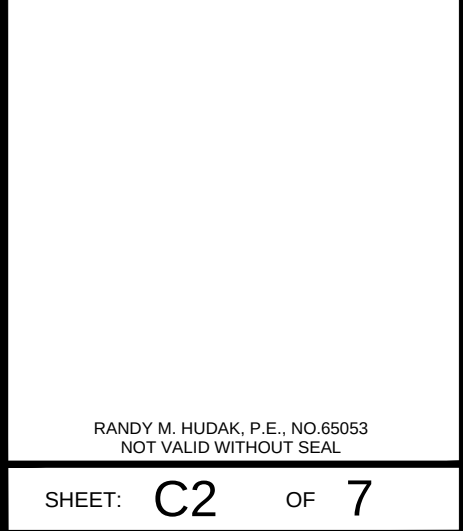
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1	08/02/24	RM/HT	SUBMITTAL
2	08/02/24	RM/HT	REVISION
3	08/06/24	RM/HT	REVISED PER CITY COMMENTS DATED 08/02/24
4	08/12/24	RM/HT	REVISED PER CITY COMMENTS DATED 09/12/24

RIVERYARD EXHIBIT B COVER SHEET

PROJECT NO.: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH

DRAWING FILE: 01-21336-COV-PUD

RANDY M. HUDAK, P.E., NO. 05053
NOT VALID WITHOUT SEAL
SHEET: C1 OF 7



PROPERTY INFORMATION

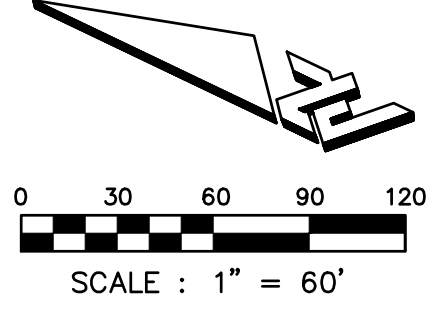
TOTAL ACREAGE: 13.28 AC

LOT	ADDRESS	ACRES
1	- 115 HERBERT ST -	0.13 AC
2	- 373 HALFAIX DR -	1.12 AC
3	- 110 HERBERT ST -	0.31 AC
4	- 108 HERBERT ST -	0.16 AC
5	- 3814 HALFAIX DR -	0.72 AC
6	- 3814 HALFAIX DR -	0.72 AC
7	- 3858 HALFAIX DR -	2.25 AC
8	- 3965 S RIDGEWOOD AVE -	0.14 AC
9	- 3969 S RIDGEWOOD AVE -	0.14 AC
10	- 3979 S RIDGEWOOD AVE -	0.09 AC
11	- 3800 HALFAIX DR -	0.53 AC
12	- 3800 HALFAIX DR -	0.53 AC
13	- HALFAIX DR -	0.04 AC
14	- 3999 S RIDGEWOOD AVE -	0.15 AC
15	- DUNLAWTON AVE -	0.13 AC
16	- DUNLAWTON AVE -	0.14 AC
17	- 106 HERBERT ST -	0.10 AC
18	- 3966 HALFAIX DR -	0.88 AC
19	- RIDGEWOOD AVE -	0.85 AC
20	- 3641 RIDGEWOOD AVE -	0.57 AC
21	- 3925 RIDGEWOOD AVE -	0.24 AC
22	- 3921 RIDGEWOOD AVE -	0.10 AC
23	- 3921 RIDGEWOOD AVE -	0.14 AC
24	- 113 HERBERT STREET -	0.22 AC
25	- HERBERT STREET R/W -	0.44 AC
26	- HALFAIX DRIVE R/W	0.93 AC
27	- 3840 RIDGEWOOD AVE -	0.61 AC

LEGEND:

C

LOT SYMBOL



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[illegible]

**RIVERYARD
EXHIBIT B
PC-R AREA EXHIBIT**

CITY OF PORT ORANGE
VOLUSIA COUNTY, FLORIDA

PROJECT NO: ZC 21336

DESIGNED BY: RH

DRAFTED BY: CM

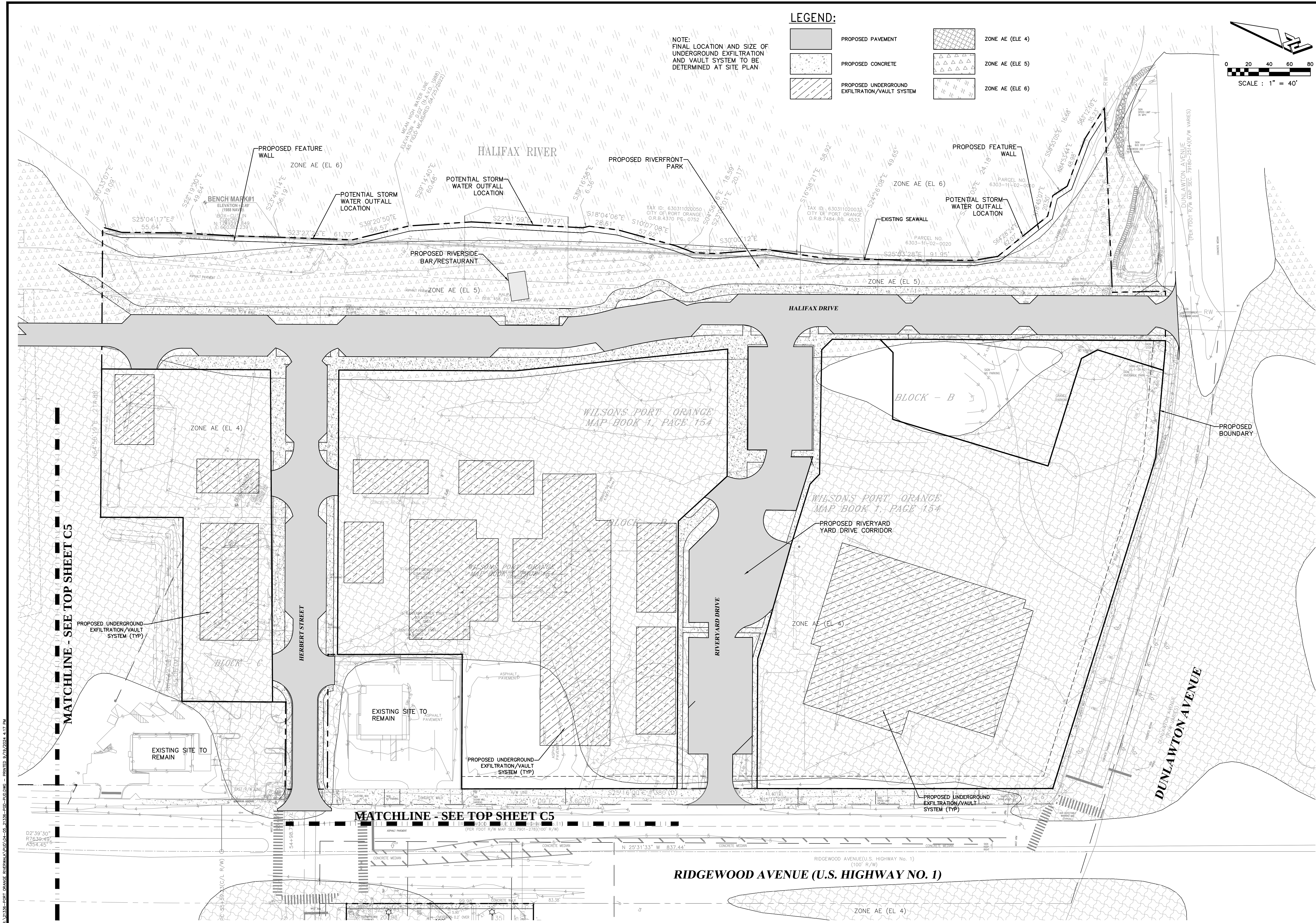
CHECKED BY: RH

DRAWING FILE: 03-21336-AEX-PUD
XREF'S: 21336_BAS_PUD.DWG
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RANDY M. HUDAK, P.E., NO.65053
NOT VALID WITHOUT SEAL

SHEET: C3 OF 7

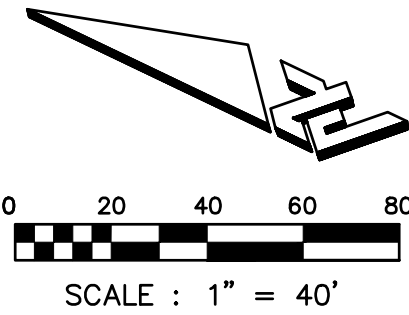
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LEGEND:

- PROPOSED PAVEMENT
- PROPOSED CONCRETE
- PROPOSED UNDERGROUND EXFILTRATION/VAULT SYSTEM
- ZONE AE (EL 4)
- ZONE AE (EL 5)
- ZONE AE (EL 6)

NOTE:
FINAL LOCATION AND SIZE OF
UNDERGROUND EXFILTRATION
AND VAULT SYSTEM TO BE
DETERMINED AT SITE PLAN



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ENVIRONMENTAL
PLANNING
TRANSPORTATION

NO.	DATE	BY	REVISIONS
1	08/02/24	RMH/CM	SUBMITTAL
2	08/02/24	RMH/CM	REDESIGN
3	08/06/24	RMH/HT	REVISED PER CITY COMMENTS DATED 08/02/24

RIVERYARD
EXHIBIT B
DRAINAGE EXHIBIT

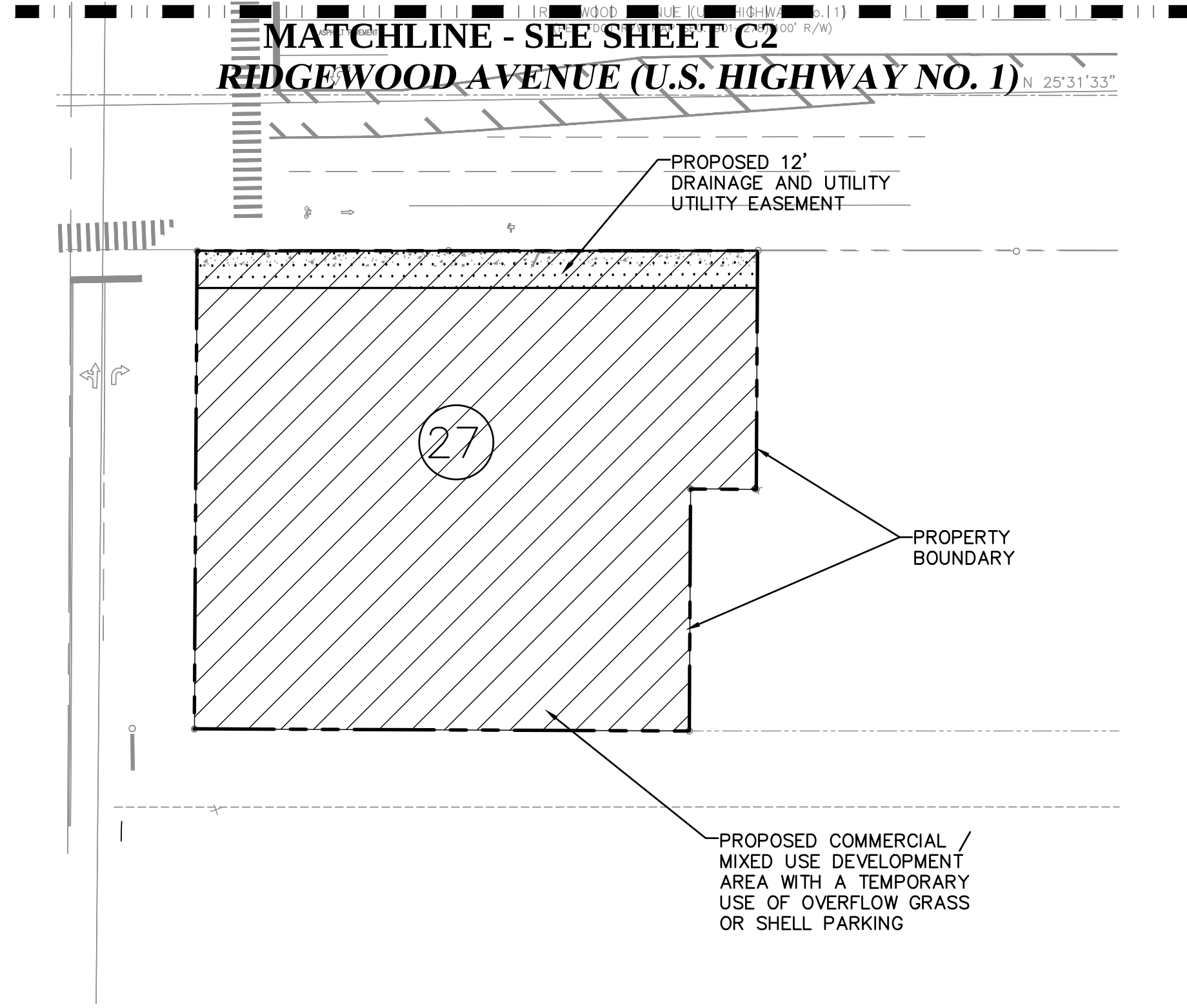
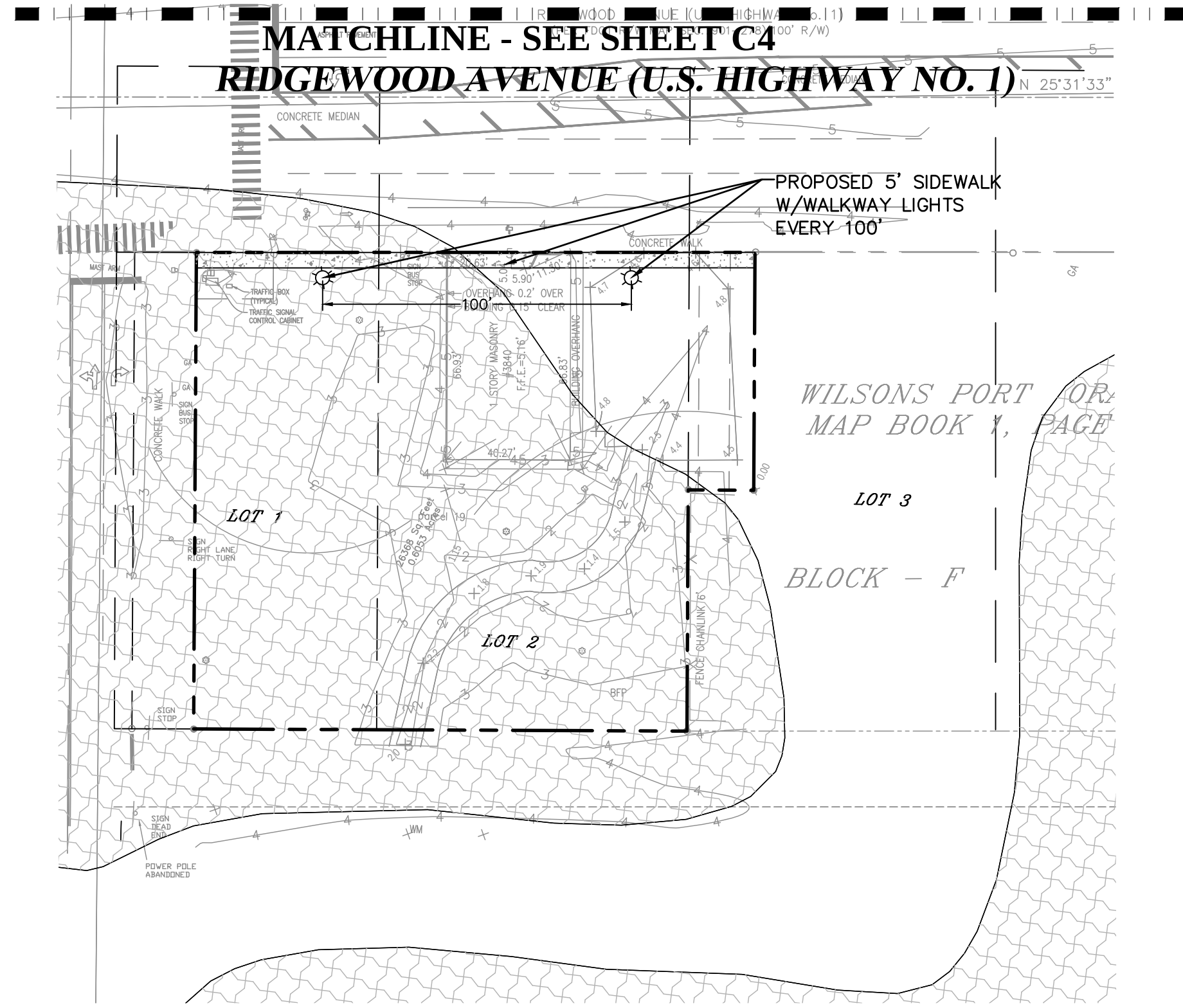
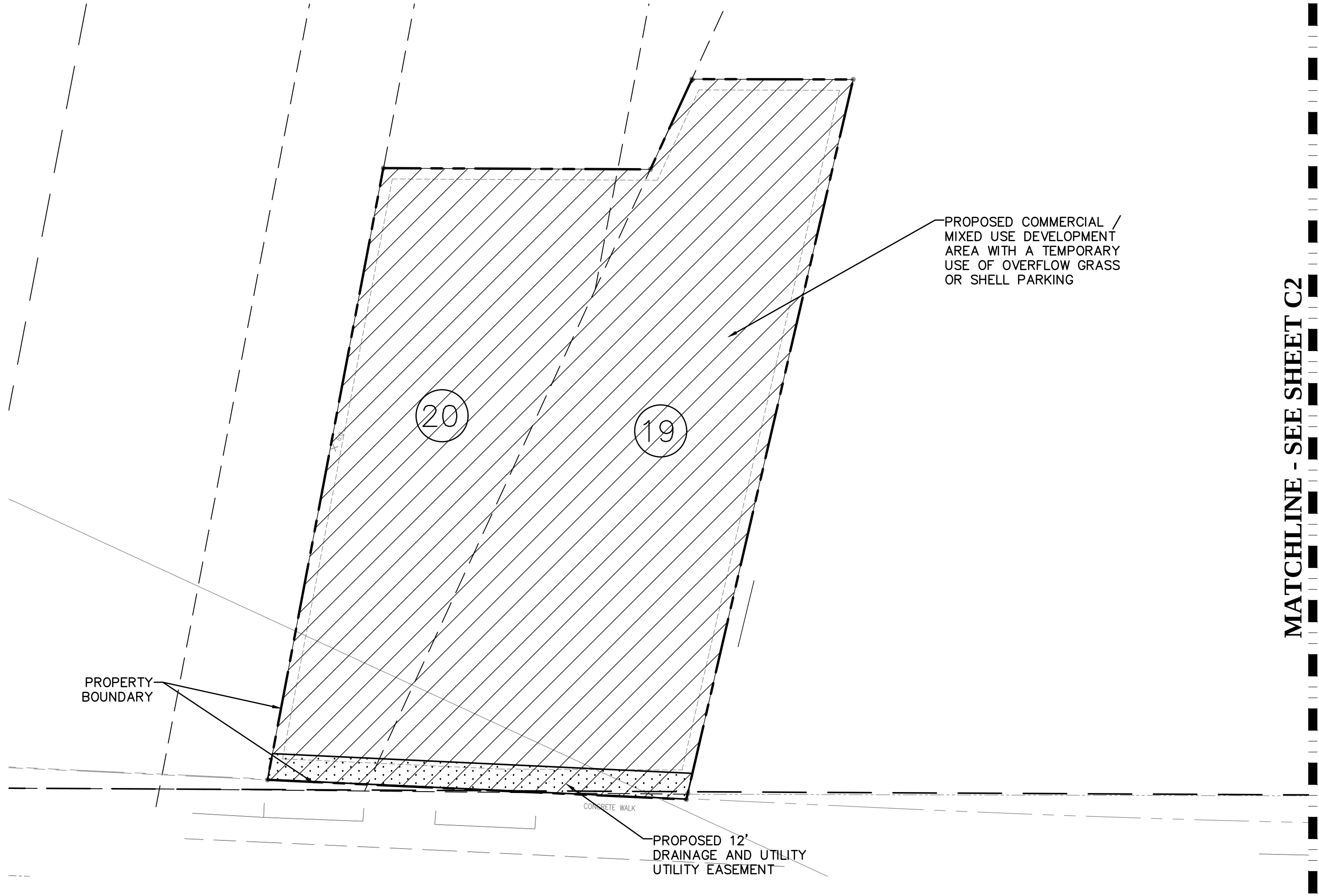
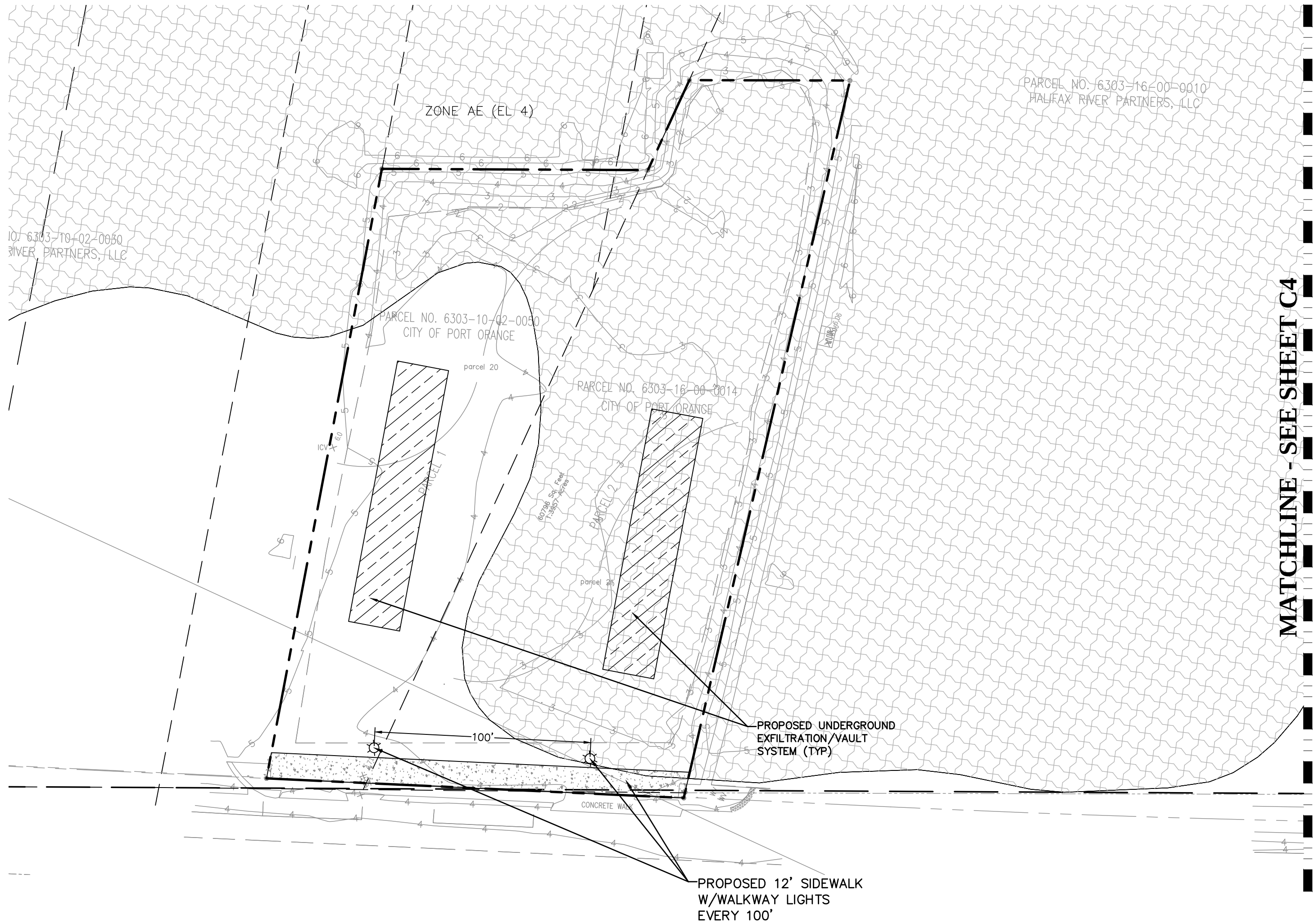
PROJECT NO.: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH

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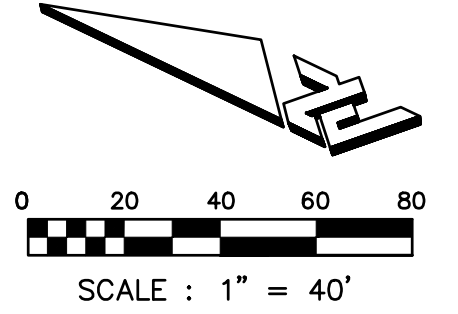
SHEET: C4 OF 7

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LEGEND:

- PROPOSED CONCRETE
- PROPOSED UNDERGROUND EXFILTRATION/VAULT SYSTEM
- ZONE AE (ELE 4)
- ZONE AE (ELE 5)
- ZONE AE (ELE 6)
- PROPOSED COMMERCIAL/MIXED USE DEVELOPMENT
- 12" DRAINAGE AND UTILITY EASEMENT
- LOT SYMBOL



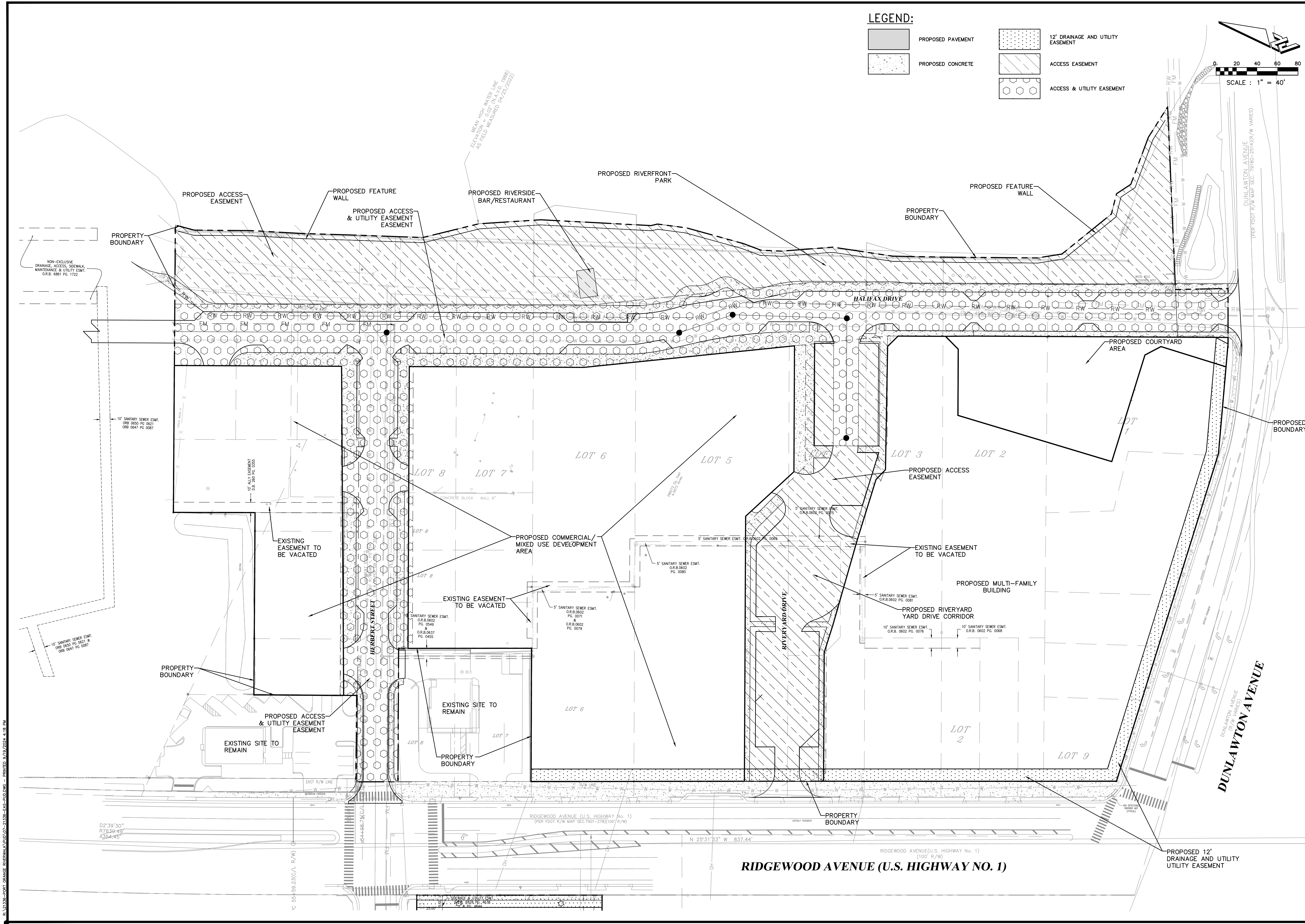
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NO.	DATE	BY	REVISIONS
1	08-02-24	RMH/CTR	SUBMITTAL
2	08-02-24	RMH/CTR	REVISION
3	08-06-24	RMH/CTR	REVISED PER CITY COMMENTS DATED 08/02/24
4	08-12-24	RMH/CTR	REVISED PER CITY COMMENTS DATED 09/12/24

PROJECT NO: ZC 21336
DESIGNED BY: RH
DRAFTED BY: CM
CHECKED BY: RH
DRAWING FILE: 04-05_21336-PGD-PUD
XREF'S: 21336_BAS_PUD.DWG
XREF'S: 21336_SURV.DWG

RANDY M. HUDAK, P.E., NO. 65093
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SHEET: C5 OF 7

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2	08-02-24	CM	REVISION
3	08-06-24	CM	REVISION
4	08-12-24	CM	REVISION

PROJECT NO.: ZC 21336
DESIGNED BY: RH
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XREFS: 21336_BAS_PUD.DWG
XREFS: 21336_SURV.DWG

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SHEET: **C7** OF **7**

**RIVERYARD
EXHIBIT B
EASEMENT EXHIBIT**

CITY OF PORT CRANE
VOLUSIA COUNTY, FLORIDA

EXHIBIT D

Amended Riveryard Architectural Styles Exhibit

EXHIBIT "D"

RIVERWALK // APARTMENTS //

CONCEPTUAL DEVELOPMENT
PLAN PRESENTATION

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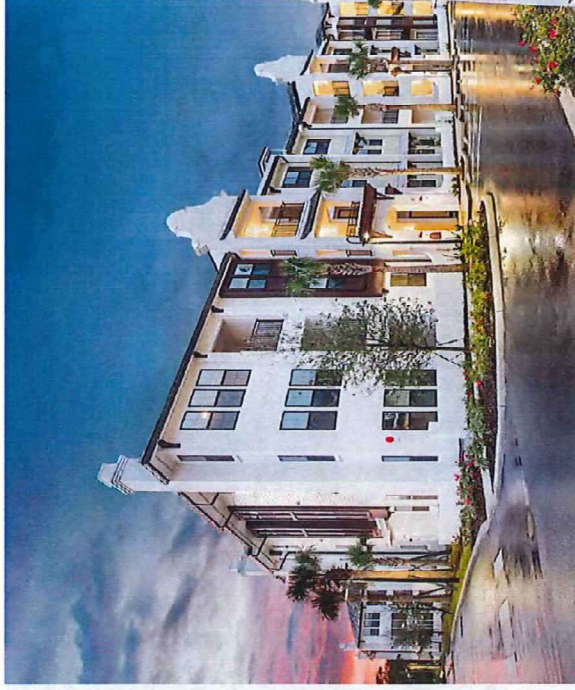
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Classical



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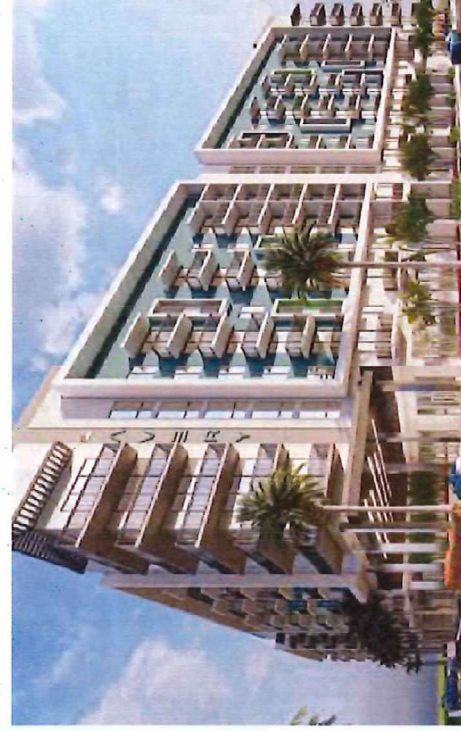
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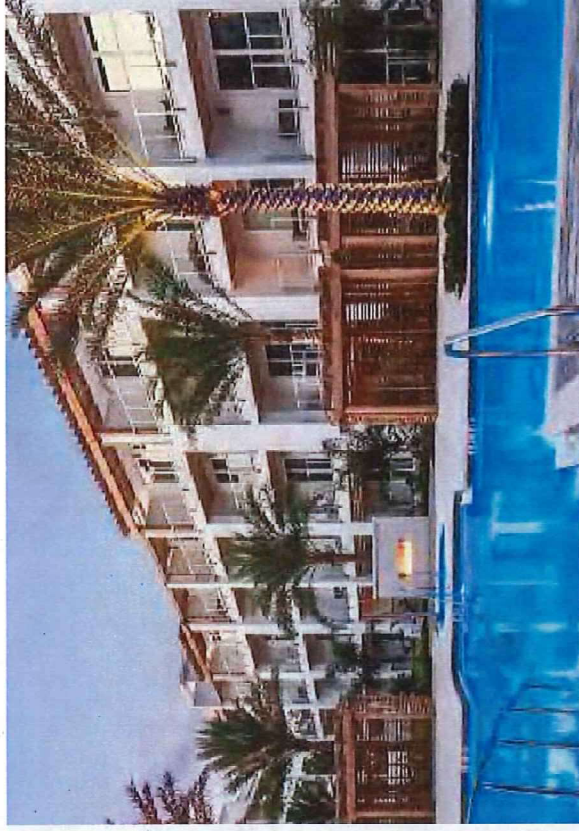
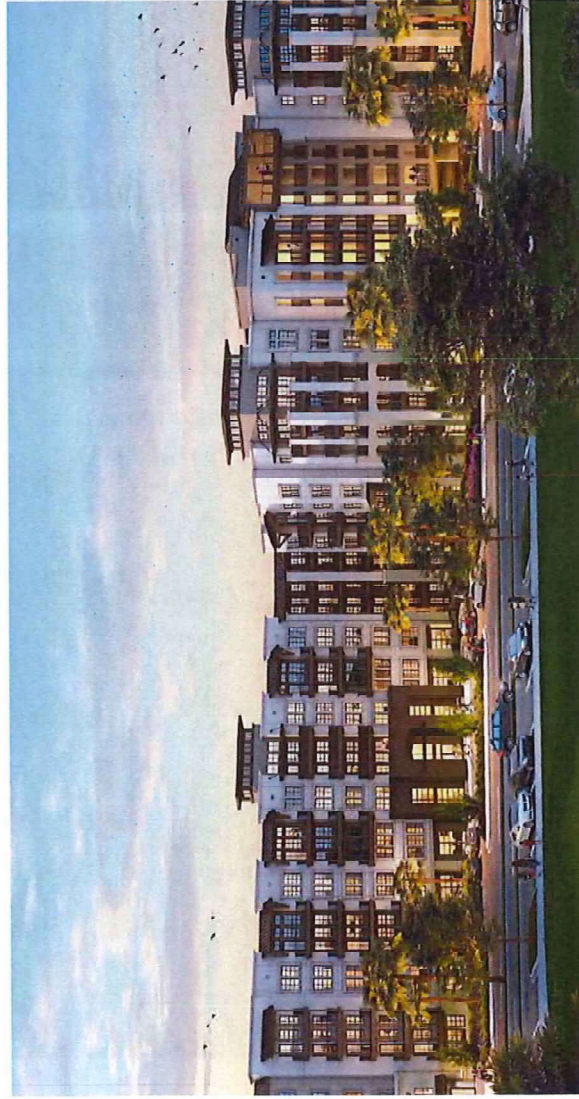
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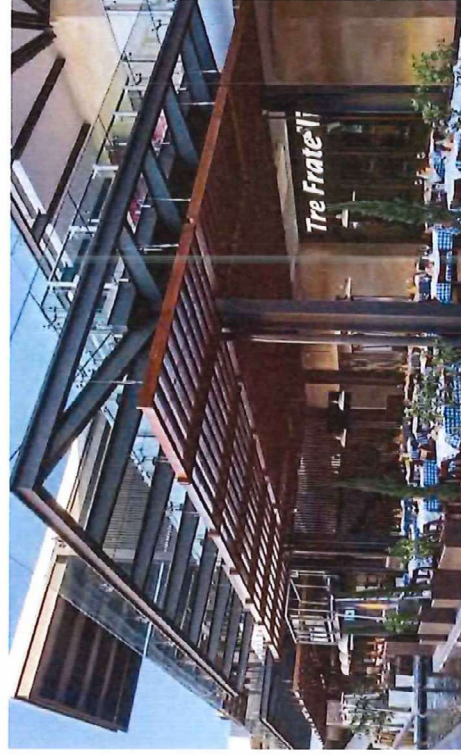
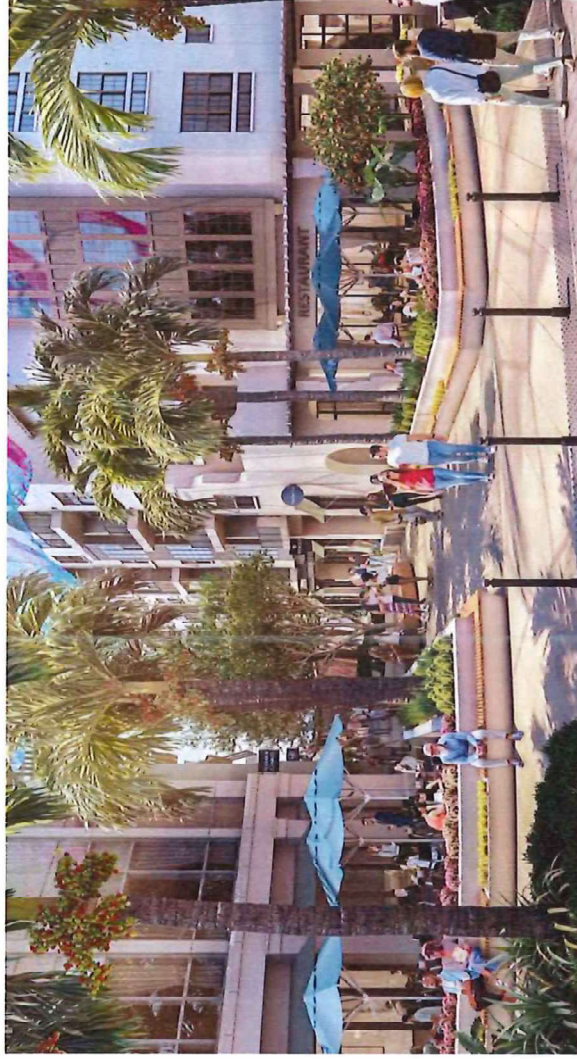
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Retail



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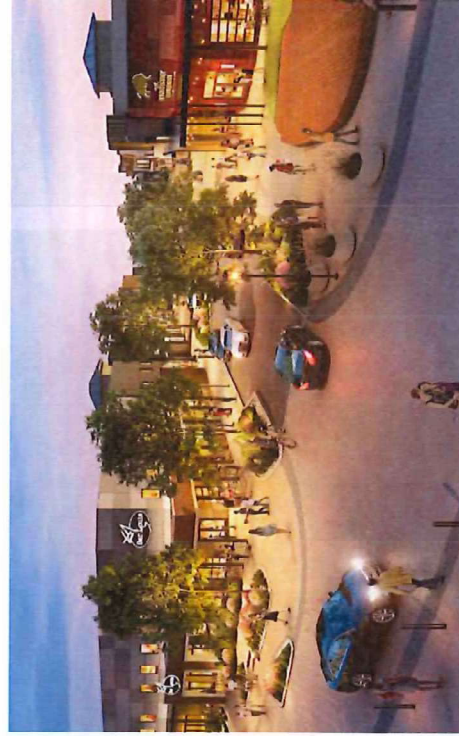
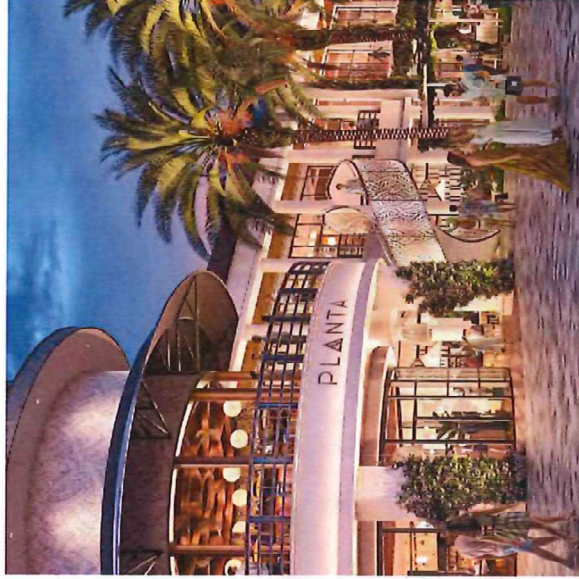
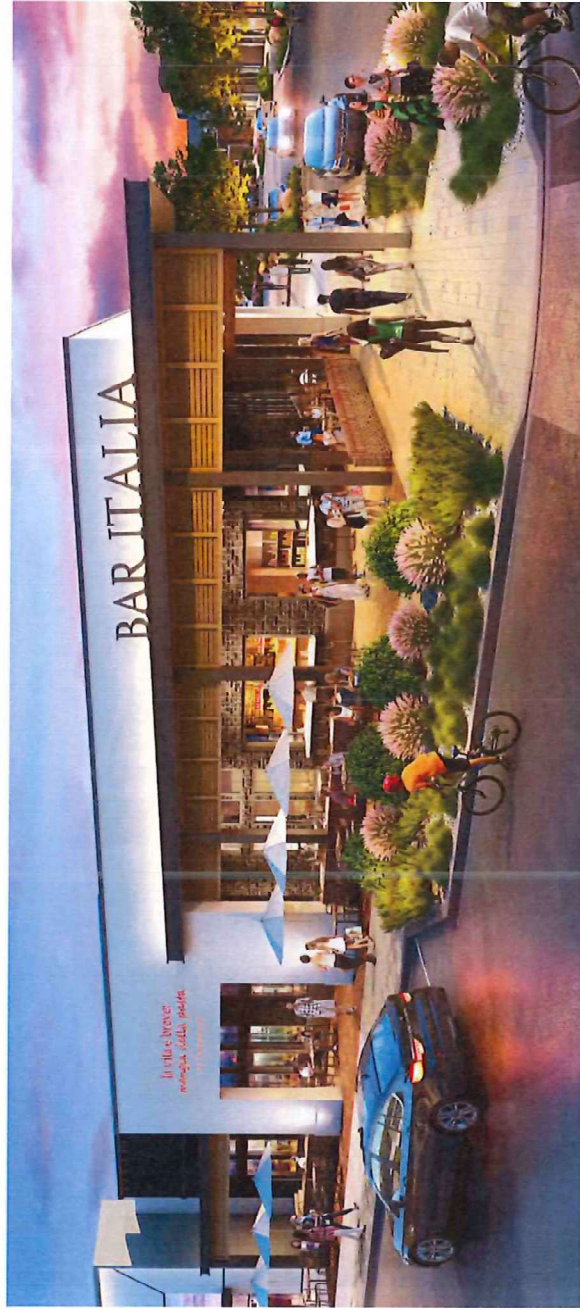
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STAFF REPORT

2nd Amendment to the Riveryard Master Development Agreement and Conceptual Development Plan Case No. PRZA-24-0006

REQUEST:	To approve the 2 nd Amendment to the Riveryard Master Development Agreement (MDA) and Conceptual Development Plan (CDP) to clarify some development parameters, such as a simplified list of permitted uses, revise the multi-family parking ratio, and update the CDP layout.
LOCATION:	Northeast corner of Dunlawton Avenue and Ridgewood Avenue, the former Dave's Pest Control property, and the former ArtHaus property (Figure 1)
APPLICANT:	Bristol Port Orange Partners, LLC
PROPERTY OWNERS:	City of Port Orange and Port Orange Town Center; Community Redevelopment Agency; Bristol Port Orange Partners, LLC; Joan Sheridan Trust; JLS888 INC; Ralph & Tammy Heotzler
STAFF CONTACT:	Tim Burman, Community Development Director
STAFF RECOMMENDATION:	Approval
PLANNING COMMISSION:	Recommended Approval 4-0 (September 26, 2024)
CITY COUNCIL:	October 15, 2024 (Continued to November 6, 2024)
PORT ORANGE TOWN CENTER CRA & CITY COUNCIL:	November 6, 2024

INTRODUCTION

In September 2023, the City Council and the Port Orange Town Center Community Redevelopment Agency approved the Riveryard Master Development Agreement (MDA) and Conceptual Development Plan (CDP) for the Bristol Development Group's (Bristol) transformative mixed-use project located at the northeast corner of Dunlawton Avenue and Ridgewood Avenue, along the Halifax River (see Figure 1 – Page 2).

Over the last twelve months, Bristol has continued to make progress in critical areas, including preparing design plans (site plan, architectural drawings, and landscape plans), additional property acquisition, discussions with other permit agencies (FDOT, SJRWMD, DEP, etc.), preparing Economic Incentive Agreements with the City, refinement of construction estimates, and developing a plan to activate the waterfront with interim uses such as a food truck court, coffee shop, and recreation and entertainment amenities.

According to Bristol, information collected over the last year as they continued to develop their project led to some minor adjustments having to be made to the MDA and CDP. Since these adjustments pertained to text listed in the MDA and/or CDP, an amendment to the MDA and CDP was required to make these minor adjustments. The proposed amendment to the CDP does **not** change Bristol's overall mixed-use project as it will still include a waterfront park (performance pavilion, trails, swings/benches, etc.), riverfront bar/restaurant, ±30,000 square feet of commercial space, hotel (optional), multi-family building wrapped around a parking garage, festival street, public parking, private streets with on-street parking, associated infrastructure (water, sewer,

lighting and drainage) improvements, and access from Dunlawton Avenue and Ridgewood Avenue via three private internal streets (Herbert Street, Halifax Drive, and Riveryard Drive).

Figure 1 – Location Map



DISCUSSION

The following minor adjustments and modifications are proposed to the amendment to the Riveryard MDA and CDP:

Site Layout

The revised CDP remains similar to the layout on the CDP approved in 2023. The revised CDP has more area set aside for commercial uses and public surface parking, less area for multi-family uses and parking (Table 1), and has shifted the intersection of Riveryard Drive and Ridgewood Avenue to the center of the development.

Table 1. Conceptual Development Plan Comparison

	2023 Plan (Acreage)	2024 Plan (Acreage)	Overall Change (Acreage)
Multifamily/Parking Garage/Courtyard	4.59	3.19	(1.40)
Commercial/Mixed-Use/Parking	2.59	3.77	1.18
Private R/W & On-Street Parking	2.38	2.53	0.15
Riverfront Park	1.45	1.52	0.07
Total Acreage	11.01	11.01	0.00

The modifications to the CDP do **not** change Bristol's overall mixed-use project as it will still include a waterfront park (performance pavilion, trails, swings/benches, etc.), riverfront bar/restaurant, ±30,000 square feet of commercial space, hotel (optional), multi-family building wrapped around a parking garage, festival street, public parking, private streets with on-street parking, associated infrastructure (water, sewer, and drainage) improvements, and access from Dunlawton Avenue and Ridgewood Avenue via three private internal streets (Herbert Street, Halifax Drive, and Riveryard Drive).

Figure 2. 2023 Conceptual Development Plan

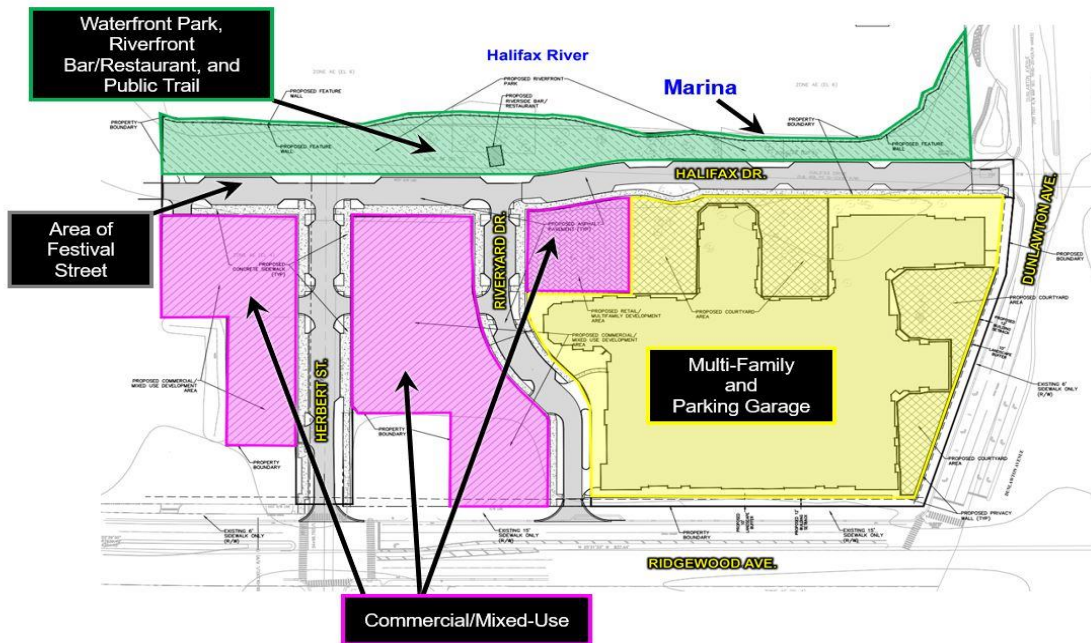
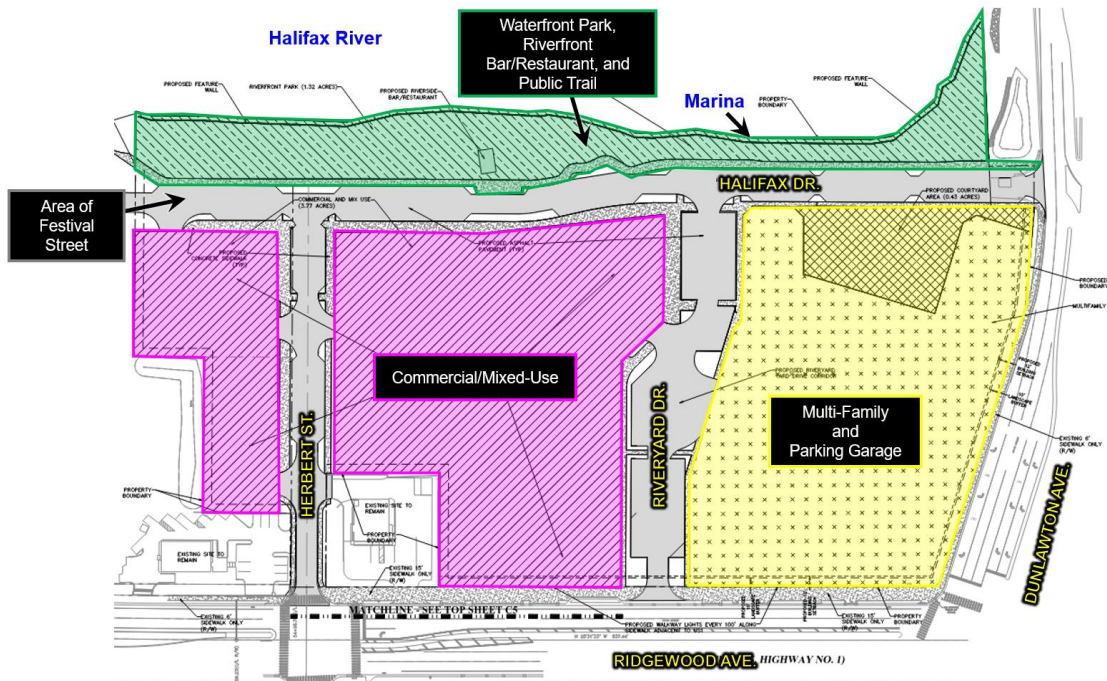


Figure 3. 2024 Conceptual Development Plan



Public Parking

The parking areas for the proposed development are shown on the CDP. According to the proposed amendment, the parking for the multi-family units will still be in a multi-level parking garage, and at least 300 parking spaces will be set aside for the public to access commercial uses, the waterfront park, and events on Festival Street. According to the MDA, the parking requirement for commercial uses is five spaces per 1,000 square feet. Providing 300 parking spaces for 30,000 square feet of commercial exceeds the required number of parking spaces by 150 spaces.

The current MDA states that public parking could also be provided in the lower parking garage levels, along with surface parking lots or on-street parking spaces. The proposed amendment does **not** reduce the number of public parking spaces the developer is required to provide, just that required public parking spaces will be provided in surface parking lots or on-street.

Multi-Family Parking Requirements

The current multi-family parking requirement in the MDA is 1.3 spaces per residential unit. The proposed amendment will revise the multi-family parking requirement from 1.3 to 1.25 spaces per residential unit.

According to Bristol, the proposed parking ratio will provide sufficient parking for a multi-family complex based on the traffic typically generated by a multi-family development within a mixed-use project. The Institute of Transportation Engineers (ITE) Parking Generation Manual, 4th edition, indicates that the average parking ratio for a low/mid-rise apartment over a 24-hour period is between 1.10 and 1.37 spaces per residential unit. The proposed 1.25 parking spaces per residential unit is within the ITE-suggested range. According to Bristol, the proposed parking ratio has been used in other mixed-use projects they have developed and provides sufficient parking for the multi-family complex.

While the number of 1-bedroom units has yet to be finalized, Bristol anticipates that 60% to 62% of the multi-family units will be 1-bedroom units and 38% to 40% will be 2- and 3-bedroom units. According to Bristol, in their other multi-family projects, the 1-bedroom units are rented to single residents with one vehicle, and the occupants of the 2- and 3-bedroom units typically have two cars. Therefore, having more 1-bedroom units compared to the 2- and 3-bedroom units results in the need for fewer parking spaces per unit.

According to Bristol, the modified parking requirement is consistent with the December 2022 parking study prepared by Walker Consultants. In 2023 when the 1.3 parking space per multi-family unit was approved, the percentage of 1-bedroom units was anticipated to be 55% of the total multi-family units. With the expected increase in the percentage of 1-bedroom units (5% to 7%) and Bristol's experience in multi-family development, the requested parking requirement of 1.25 spaces per multi-family unit will be sufficient.

The current MDA allows a maximum of 460 residential units to be developed within the Riveryard project area. However, according to Bristol, the anticipated number of residential units to be constructed will be around 275. If approved, the revised parking requirement would result in a slight decrease in the number of spaces to be provided compared to the current parking requirement in the MDA.

Table 2. Parking Requirement Comparison

	Number of Residential Units	Required Spaces at 1.3 Parking Spaces per Residential Unit	Required Spaces at 1.25 Parking Spaces per Residential Unit	Difference Between 1.3 and 1.25 Parking Spaces per Residential Unit
Maximum Number of Residential Units Allowed	460	598	575	(23)
Projected Residential Units Allowed	275	357	344	(13)

Permitted Uses

The list of allowed uses within the portion of the Riveryard project area located east of Ridgewood Avenue has been revised to ensure that the commercial portion of the project is developed with experiential uses. The current MDA allows banks and office uses to be developed as part of the ground floor commercial uses. The proposed amendment removes bank as a permitted use, allows for ATM kiosks, and restricts office uses to the 2nd floor and above. The following table shows the current and proposed list of allowed uses for the Riveryard project area.

2023 Permitted Uses	2024 Permitted Uses
1. Bike, kayak & other recreational equipment rentals 2. Banks 3. Office (permitted on any floor) 4. Animal grooming and wellness 5. Game/recreation facilities 6. Health/exercise clubs 7. Brewery 8. Amphitheater 9. Multifamily dwellings and Townhomes 10. Food Truck Court/Parking – allowed in the area designated on the CDP as commercial, private roadway, and waterfront park. 11. Bars, lounges, and nightclubs 12. Hotel 13. Marina 14. Outdoor fruit and vegetable or craft market 15. Retail uses 16. Personal services 17. Restaurants 18. Public/civic facilities 19. Microbrewery 20. Craft food and beverage producer	1. Bike, kayak & other recreational equipment rentals 2. <u>ATM kiosks</u> 3. <u>Professional and medical offices (2nd floor and above only)</u> 4. Animal grooming or wellness 5. Game/recreation facilities 6. Health/exercise clubs 7. Brewery 8. Amphitheater 9. Multifamily dwellings and Townhomes 10. Food Truck Court/Parking – allowed in the area designated on the CDP as commercial, private roadway, and waterfront park. 11. Bars, lounges, and nightclubs 12. Hotel 13. Marina (marina which allows for overnight stay for up to seven (7) days) 14. Outdoor fruit and vegetable or craft market 15. Retail uses 16. Personal services 17. Restaurants 18. Public/civic facilities 19. Microbrewery 20. Craft food and beverage producer

The proposed uses are consistent with the Planned Community-Riverwalk Future Land Use designation, which states, “the area shall be a mixed-use entertainment location,” “promote river-based activities and events to attract citizens,” and “develop a unique riverfront location based on a healthy mix of entertainment, retail, office, and housing uses.” The proposed uses provide entertainment and a usable riverfront for residents of Port Orange and tourists.

The proposed permitted uses for the former ArtHaus property (3840 Ridgewood Avenue) include uses allowed in the Ridgewood Development (RD) zoning district and Riverwalk Overlay District (ROD), which allows for general retail, office, and restaurant uses.

Drive-Thru

The properties that make up the Riveryard project area are located in the Riverwalk Overlay District (ROD), and according to the ROD, a drive-thru facility can only be permitted if approved by the City Council as part of an MDA. The proposed amendment allows for one drive-thru at the former Dave’s Pest Control property (3641 Ridgewood Avenue) and one drive-thru at the former ArtHaus property (3840 Ridgewood Avenue). A drive-thru developed at either property will be required to comply with all development requirements in the LDC related to a drive-thru.

Figure 4. Properties A Drive-Thru Facility Is Proposed To Be Permitted



Figure 5. Example of Drive-Thru Architecturally Incorporated into a Commercial Building



Future Development on the Arthaus Property

The proposed amendment clarifies that future development of the former Arthaus property (3840 Ridgewood Avenue) located on the southwest corner of Herbert Street and Ridgewood Avenue shall be developed according to the dimensional criteria (setbacks, open space, building height, etc.) in the Land Development Code for the Ridgewood Development (RD) district and all site development requirements in the Land Development Code. The allowed uses in the Ridgewood Development (RD) zoning district and Riverwalk Overlay District (ROD) include general retail, office, and restaurant use. According to the applicant, there are no plans to develop this property at this time.

Timeframe

The proposed 2nd Amendment adds text that states if the Riverwalk Purchase & Sale Agreement between the City and Developer is not completed or is otherwise terminated, then the development rights granted pursuant to this Agreement shall lapse, except that any vested development rights shall be permitted to remain in place according to the Riveryard MDA and CDP, and associated amendments.

CONSISTENCY WITH COMPREHENSIVE PLAN

The subject property is designated Planned Community-Riverwalk on the City's Future Land Use (FLU) Map. The Planned Community-Riverwalk land use standards and the policies within the Port Orange Town Center (POTC) CRA Plan are to guide the development of a walkable development along the Halifax River that includes commercial, office, residential, civic, and entertainment uses. In 2023, the original MDA and CDP were found to be consistent with the intent of the Goals, Objects, and Policies of the Comprehensive Plan and CRA Plan, and the proposed amendment does not change the overall development framework and remains consistent with these plans.

PUBLIC NOTICE

A Public Notice sign was posted on the site on August 22, 2024. As of September 20, 2024, staff has not received any phone calls regarding the proposed Amendment.

RECOMMENDATION

Staff recommends approval of the 2nd Amendment to the Riveryard Master Development Agreement (MDA) and Conceptual Development Plan (CDP), subject to review and approval by the City Attorney's Office for legal form and content.

ATTACHMENT

Exhibit 1: 2nd Amendment to the Riveryard Master Development Agreement and Conceptual Development Plan (see Ordinance Exhibit)



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance No. 2024-19 – Second Amendment to the Riveryard Master Development Agreement (Case No. PRZA-24-0006)

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):
A request by the applicant approve the 2nd Amendment to the Riveryard Master Development Agreement (MDA) and Conceptual Development Plan (CDP) to clarify some development parameters, such as a simplified list of permitted uses, revise the multi-family parking ratio, and update the CDP layout to support the redevelopment of the subject property within the POTC CRA.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur:
N/A
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A
- (c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:
N/A

4. Additional information the governing body deems useful² (if any):
This ordinance does not change the applicant's overall mixed-use project as it will still include a waterfront park (performance pavilion, trails, swings/benches, etc.), riverfront bar/restaurant, ±30,000 square feet of commercial space, hotel (optional), multi-family building wrapped around a parking garage, festival street, public parking, private streets with on-street parking, associated infrastructure (water, sewer, lighting and drainage) improvements, and access from Dunlawton Avenue and Ridgewood Avenue via three private internal streets (Herbert Street, Halifax Drive, and Riveryard Drive).

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (H22) Second Reading - Ordinance No. 2024-23 - Amending Code of Ordinances Chapter 6, Article 1 - Alcoholic Beverages

DEPARTMENT: Community Development

GOAL: 4 - Economic Development

RECOMMENDED MOTION: Move to approve Ordinance No. 2024-23 and authorize the Mayor and City Clerk to execute.

SUMMARY: The proposed amendment to the Code of Ordinances amends the list of properties/locations owned by the City of Port Orange where an individual can possess an open container of alcoholic beverage or consume any alcoholic beverage on the street, sidewalk, public property, or public building. Currently, the Code of Ordinance permits the consumption of any alcoholic beverage at the following city-owned locations:

1. The municipal golf course
2. The premises located at Riverside Pavilion
3. The Palmer College of Chiropractic, Florida campus located on City Center Parkway
4. Upon any public property in the city utilized for functions held by the city, Florida League of Cities, Volusia League of Cities, Volusia Council of Governments, or other governmental entities.
5. Any city-owned property expressly designated by the city council, by formal written authorization, as a place where alcohol may be consumed, subject to the terms and conditions set forth in said authorization and subject to strict compliance with federal, state, and local laws governing alcoholic beverages.

The proposed amendment further supports the City's redevelopment efforts within the Port Orange Town Center Community Redevelopment Area (CRA) by adding the city-owned concrete/paver walkway area located between the terminus of Ocean Avenue right-of-way at the Halifax River and the terminus of the concrete/paver walkway at Halifax Drive (Port Orange Riverwalk Open Container Area) to the list of city-owned areas where the consumption of alcoholic beverages is allowed, subject to strict compliance with federal, state and local laws governing alcoholic beverages. Allowing the consumption of alcoholic beverages on this city-owned walkway allows customers from current (Tiki Docks Restaurant) and future businesses (Bristol's Interim Use - Food Truck Court) to consume alcoholic beverages as they move from business to business.



The proposed amendment is based on reviewing other codes for cities in Florida and Georgia that allow open containers on a Riverwalk area, such as Tampa, Jacksonville, and Savannah. Staff found these cities generally had the following requirements for open containers: 1) alcohol must be in an approved to-go cup from a participating business, 2) limited to only one drink can be carried at a time, 3) alcohol must be purchased from one of the facilities adjacent to the Riverwalk, no one can bring their own alcohol, and 4) no drinking allowed in the designated open container area before 11 a.m. or after 12 p.m. (midnight). If approved, signage will be installed to identify the limits where an individual can consume an alcoholic beverage on the walkway, and trash receptacles are located along the walkway.

Over the last several years, staff has prepared amendments to support the City's redevelopment efforts to create commercial/entertainment destination areas within the Town Center Community Redevelopment Area (CRA). The amendments included adding uses such as "Brewery" and "Farmers Market," incentives for the redevelopment of targeted businesses, establishing site development standards for the redevelopment of infill commercial properties, alternative signage options, and establishing the Riverwalk and Down Under Entertainment Districts. Similar to the past amendments, the proposed amendment is intended to support existing businesses and attract new businesses that provide entertainment activities such as live music or performances.

PRESENTER: Tim Burman

ATTACHMENTS:

1.	Ordinance No. 2024-23	Ordinance No. 2024-23.pdf
2.	Revised Business Impact Estimate ORD 2024-23	Revised Business Impact Estimate ORD 2024-23.pdf

Penelope Cruz

Created/Initiated - 11/5/2024

ORDINANCE NO. 2024-23

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING CHAPTER 6, SECTION 6-3 RELATING TO THE LIST OF PROPERTIES EXEMPT FROM THE GENERAL PROHIBITION OF POSSESSION AND CONSUMPTION OF ALCOHOL ON PUBLIC PROPERTY OWNED OR CONTROLLED BY THE CITY OF PORT ORANGE AND ESTABLISHING CERTAIN PARAMETERS FOR THE CONSUMPTION THEREOF; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council wishes to encourage and support the redevelopment and activation efforts to create commercial/entertainment destination areas within the Port Orange Town Center Community Redevelopment Area (CRA); and

WHEREAS, the City Council recognizes the demand for alcoholic beverages associated with certain entertainment and sporting venues; and

WHEREAS, the City Council, in furtherance of said efforts, wishes to amend the list of properties/locations owned by the City of Port Orange that an individual can possess and consume an open container of an alcoholic beverage; and

WHEREAS, the City Council intends to establish certain parameters for the newly added property as it relates to the consumption of an alcoholic beverage in an open container; and

WHEREAS, for purposes of this Ordinance text with underlined (underlined) type shall constitute additions to the original text and text with strike-through (~~strike-through~~) type shall constitute deletions to the original text;

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

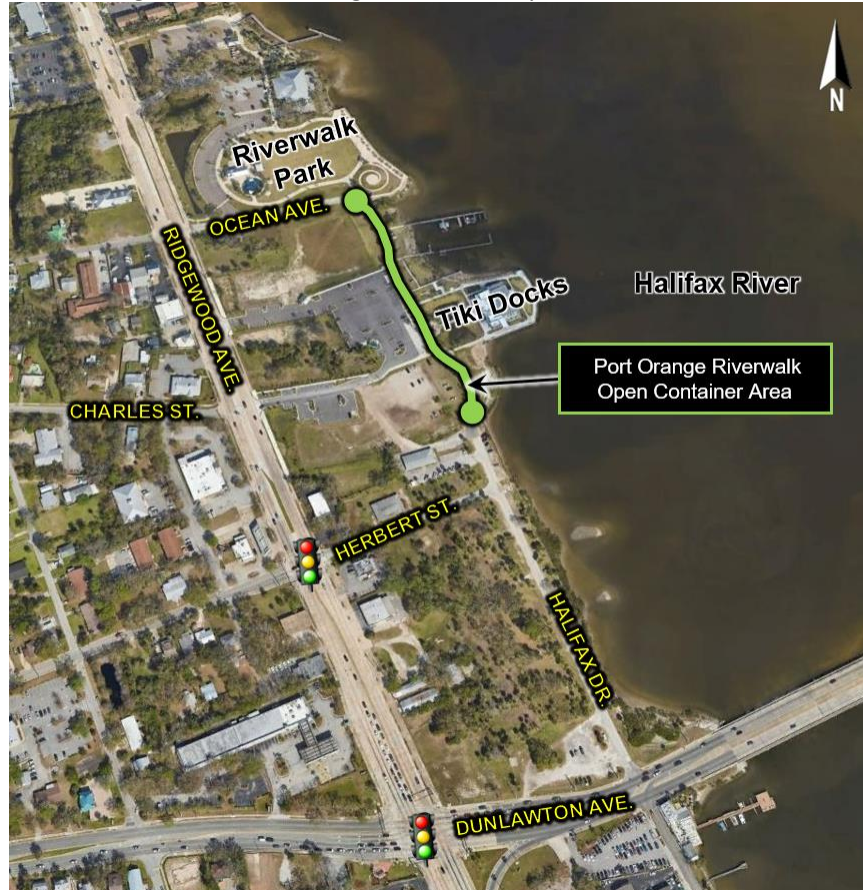
SECTION 1. The City Council of the City of Port Orange, Florida hereby amends Chapter 6, Article I, Section 6-3 of the Code of Ordinances to read as follows:

Sec. 6-3. Drinking in public.

- (a) *General prohibition.* It shall be unlawful for any person to possess any open container of alcoholic beverage or to consume any alcoholic beverage on the streets, sidewalks or thoroughfares, or on any public property, including, but not limited to, any public building, facility, park, playground, recreational facility, right-of-way, parking lot, and any other property owned or controlled by the City of Port Orange, unless expressly permitted in compliance with provisions of this section. This prohibition shall not apply to and no permit shall be required for possession or consumption of an alcoholic beverage at the following properties:
- (1) The municipal golf course;
 - (2) The premises located at Riverside Pavilion and legally described in a lease agreement between the city and an organization which is incorporated and active as a corporation not for profit pursuant to F.S. ch. 617;
 - (3) The Palmer College of Chiropractic, Florida campus located on City Center Parkway as described in that certain referenced lease agreement recorded in Official Records Book 4944 at Page 1791 of the Public Records of Volusia County, Florida;
 - (4) Upon any public property in the city utilized for functions held by the city, Florida League of Cities, Volusia League of Cities, Volusia Council of Governments or other governmental entities; ~~and~~
 - (5) Any city-owned property expressly designated by the city council, by formal written authorization, as a place where alcohol may be consumed, subject to the terms and conditions set forth in said authorization, and subject to strict compliance with federal, state and local laws governing alcoholic beverages; ~~and~~
 - (6) Port Orange Riverwalk Open Container Area. The city does hereby create an area comprised of the concrete and paver walkway located between the terminus of the Ocean Avenue right-of-way at the Halifax River and the terminus of the concrete and paver walkway at Halifax Drive, as shown in Figure 1 below, hereinafter designated as the Port Orange Riverwalk Open Container Area, subject to strict compliance with federal, state and local laws governing alcoholic beverages and the following limitations:
 - a. Possession of open containers of alcohol within the Port Orange Riverwalk Open Container Area is subject to the following:
 1. A person who legally obtains an alcoholic beverage from a licensed premises, licensed by the state for the sale of alcoholic beverages, pursuant to Florida Statutes, and said premises is located adjacent to the Port Orange Riverwalk Open Container Area, may possess and/or consume the alcoholic beverage within the Port Orange Riverwalk Open Container Area so long as the alcoholic beverage is in an Approved Container.
 2. No person may possess more than one open container of an alcoholic beverage in an Approved Container within the Port Orange Riverwalk Open Container Area.

3. Possession and consumption of alcoholic beverages within the Port Orange Riverwalk Open Container Area shall be between the hours of 11:00 a.m. and 12:00 a.m. (midnight), each day.
4. Except as provided in this subsection, possession of any open container containing an alcoholic beverage within the Port Orange Riverwalk Open Container Area shall be unlawful and punishable in accordance with the appropriate laws.

Figure 1 - Port Orange Riverwalk Open Container Area



(b) *Definitions.*

Approved Container means a cup that bears the logo of the licensed premises at which the alcoholic beverage was purchased, is no larger than 16 ounces, for use in the Port Orange Riverwalk Open Container Area.

[The remainder of the section is unchanged]

SECTION 2. The provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange, and the Sections of this Ordinance may be

renumbered or re-lettered to accomplish such intention. The Code codifier is granted liberal authority to codify the provisions of this Ordinance.

SECTION 3. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

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

SECTION 5. This ordinance shall become effective immediately upon final passage by the City Council.

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the day of _____, 2024

Passed and adopted on second and final reading on the day of _____, 2024

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



Business Impact Estimate

This form should be included in agenda packet for the item under which the proposed ordinance is to be considered, and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:

Ordinance No. 2024-23 - Amending Code of Ordinances Chapter 6, Article 1 - Alcoholic Beverages

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
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- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
 - a. Development orders, and development permits, as those terms are defined in s. 163.3164; and development agreements as authorized by the Florida Local Government Development Agreement Act under ss. 163.3220-163.3243;
 - b. Comprehensive plan amendments and land development regulation amendments initiated by an application by a private party other than the municipality;
 - c. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - d. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - e. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed amendment to the Code of Ordinances amends the list of properties/locations owned by the City of Port Orange where an individual can possess an open container of alcoholic beverage or consume any alcoholic beverage on the street, sidewalk, public property, or public building. The proposed amendment further supports the City's redevelopment efforts within the Port Orange Town Center Community Redevelopment Area (CRA) by adding the city-owned concrete/paver walkway (open container area) located between the Ocean Avenue right-of-way and termination of the walkway into Halifax Drive to the list of city-owned areas where the consumption of alcoholic beverages is allowed, subject to strict compliance with federal, state and local laws governing alcoholic beverages.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:
N/A

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:
N/A

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:
N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

N/A

4. Additional information the governing body deems useful² (if any):

Allowing the consumption of alcoholic beverages on this city-owned walkway allows customers from current (Tiki Docks Restaurant) and future businesses (Bristol's Interim Use - Food Truck Court) to consume alcoholic beverages as they move from business to business.

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (H23) Second Reading - Ordinance No. 2024-24 - Amending Information Technology Policies for City Boards and Commissions

DEPARTMENT: Information Technology

GOAL: 2 - Infrastructure

RECOMMENDED MOTION: Move to approve Ordinance No. 2024-24.

SUMMARY: On December 5, 2023, City Council formerly adopted the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) to safeguard its data, information technology, and information technology resources, ensuring availability, confidentiality, and integrity. The City has recently adopted Information Technology and Cybersecurity Policies that adhere to NIST CSF best practices. NIST CSF helps the City to better understand, manage and reduce its cybersecurity risk through tried and tested industry best practices. The core functions of NIST CSF is to concurrently and continuously form an operational culture that addresses the dynamic cybersecurity risk, rather than procedural or reactive measures alone.

The proposed ordinance amends the Code of Ordinances Chapter 2, Article III – Boards and Commissions, Division 1, Electronic Information Systems to implement terminology that is consistent with recently adopted Information Technology and Cybersecurity Policies. The amendments include the change of terminology from "Electronic Information Systems" to "Information Technology", additional prohibited uses of Information Technology, security and licensing issues and public records management.

PRESENTER: Jim Faulkner

ATTACHMENTS:

1.	Ordinance No. 2024-24 - IT Use and Security for Board and Commission Members	Ordinance No. 2024-24 - IT Use and Security for Board and Commission Members MJrev10.23.24.pdf
2.	Business Impact Estimate Form - Ord. 2024-24	Business Impact Estimate Form - Ord. 2024-24.pdf

Robin Fenwick

Created/Initiated - 11/1/2024

ORDINANCE 2024-24

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES, ARTICLE III, BOARDS AND COMMISSIONS, DIVISION 1, ELECTRONIC INFORMATION SYSTEMS; AMENDING TERMINOLOGY TO BE CONSISTENT WITH RECENTLY ADOPTED INFORMATION TECHNOLOGY AND CYBERSECURITY POLICIES, EXPANDING APPLICABILITY, ADDING ADDITIONAL PROHIBITED USES, ADDRESSING SECURITY AND LICENSING ISSUES, AMENDING THE PUBLIC RECORDS REQUIREMENTS, ESTABLISHING A NEW SECTION 2-58 ADDING USE REQUIREMENTS, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION, PROVIDING FOR SCRIVENER'S ERRORS AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council is dedicated to having a secure network; and

WHEREAS, City Council has determined that it is in the best interest of the public health, safety and welfare that this ordinance be adopted; and

WHEREAS, for purposes of this ordinance words with underlined (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

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

SECTION 1. The City Council of the City of Port Orange, Florida, hereby amends ARTICLE III. - BOARDS AND COMMISSIONS, DIVISION 1.- ELECTRONIC INFORMATION SYSTEM, Sections 2-51 through 2-65 of the City of Port Orange Code of Ordinances, to read as follows:

DIVISION 1. ~~ELECTRONIC INFORMATION~~ TECHNOLOGY USE SYSTEM

Sec. 2-51. Purpose.

The purpose of this division shall be to establish standards for the use and accessibility of the ~~electronic information technologies~~ systems provided by the city to agency, board, commissioners, and other members or volunteers appointed by the city council or management (collectively referred to herein as "members"). ~~Electronic Information Systems ("EIS")~~ Information Technology ("IT") shall mean any equipment or interconnected system or subsystem of equipment, used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the City. IT includes, without limitation, all computers, laptops, phones, cellular devices, software, internet access, and other electronic devices and systems provided by the City. ~~shall include all computers, phones, software, internet access, and other electronic devices and systems provided by the city. In order to ensure that the city and its members benefit from the use of these systems, the following standards are hereby established.~~ This division is also intended to provide standards and direction for the preservation of emails and text messages under the public records law.

Sec. 2-52. In general.

- (a) The use of ITEIS for city business has become critical to the daily operations of the city and its members, as well as the general public who wish to obtain information about local government issues, projects, and services. Governmental organizations are increasingly using ITEIS to increase efficiency and productivity, improve the quality of services, and provide open access to public records. It is the general policy of the city that ITEIS be used in a responsible, efficient, ethical, and legal manner to support the programs of the city. The city reserves the right to monitor and log all activity on any of its ITEIS including email, text messaging and internet use, with and without notice. Members and other users shall have no expectation of privacy or confidentiality when using city ITEIS.
- (b) ~~Although the city maintains firewalls and other security measures to block~~ Users of IT may be exposed to content that is offensive, indecent or objectionable, ~~content, members and other users of EIS may be unavoidably exposed to such content.~~ Members and other users shall access ITEIS including email, text, and internet services at their own risk. Members and other users shall individually block offensive, indecent or objectionable content and report such content for a system wide remedy. This division includes standards for authorized and restricted uses of city ITEIS and specifies remedial actions in the event a member is found in violation of this division.

Sec. 2-53. Scope of applicability.

~~This division applies to all members who conduct city business from any location during working and non-working hours.~~ This division applies to all information systems and information system components as well as members when using the City's IT.

Sec. 2-54. Prohibited activities.

- (a) The city council hereby prohibits members from using ITEIS for the purposes of engaging in the following activities:

- (1) Use that interferes with member responsibilities to the City;
 - (2) Viewing electronic materials that contain obscene, pornographic, or otherwise offensive content;
 - (3-2) Dissemination of sexually explicit, hate orientated, discriminatory, threatening or illegal images or information, including offensive jokes or cartoons;
 - (4-3) Accessing any web site that promotes discrimination based on race, religion, gender, age, marital status, national origin, or disability;
 - (5 4) Accessing gambling sites;
 - (6 5) Promoting or endorsing any outside business venture;
 - (7) Chat or messenger services not related to official City business;
 - (8) Playing video type games or using streaming services that interrupt City business;
 - (9) Engaging in unauthorized fund-raising efforts (any fund-raising effort utilizing the City's IT must be approved by City Council);
 - (10) Engaging in political activities in violation of the law including, without limitation, the Little Hatch Act (Section 104.31, Florida Statutes) and other election and ethics laws
 - (11-6) Downloading games, audio or video files that are illegal, pirated, or incompatible software;
 - (12-7) Distributing, sending, or forwarding chain letters that contain discriminatory or offensive content;
 - (13-8) Distributing, sending, or forwarding copies of any document, file, or application in violation of copyright laws;
 - (14) Accessing the electronic information of others without a bona fide business purpose;
 - (15-9) Transmitting confidential information without authorization or using an unsecured means of transmission;
 - (16-10) Engaging in conduct that is threatening, libelous, intemperate, abusive or insulting towards the city or its various members, users, boards, corporate organizations, employees, and citizens; and
 - (17-14) Any violation of local, state or federal law.
- (b) The above list of prohibitions is not an all-inclusive list of prohibited ITEIS usage. The city council prohibits a member's use of the ITEIS when a member engages in any action or failure to act which the member should have reasonably understood to be inappropriate and/or wrong, based on the requirements of the city's ordinances, rules, policies and procedures, or the laws of the federal, state and local jurisdictions.

Sec. 2-55. Non-city business uses.

- (a) Any usage of city ~~ITEIS~~ for non-city business purposes must conform to the following requirements:
- (1) Use shall not include any of the prohibited activities listed in section 2-54 including those that would reflect unfavorably on the City and its various organizations, employees, members and citizens.
 - (2) Use shall not otherwise impact the system bandwidth as determined by the IT ~~division manager~~Director that negatively impacts the ~~ITEIS~~ and other city technological systems and the normal flow of city operations.
 - (3) Use is scheduled so as not the infringe upon City business.

Sec. 2-56 Security and licensing issues.

The IT ~~division~~Department of the city shall advise all members of the security threats posed by use of ~~ITEIS~~. Security threats may be introduced to the city computing environment by sending or receiving information through the internet. The threat can be in the form of viruses (attached to documents or downloaded software) that are designed to corrupt databases and/or to directly attack the system by hackers with the intention of accessing sensitive information or disrupting the operations of the city. ~~A secure firewall~~Software and hardware will be administered by the IT ~~division~~Department to protect against the threat of outside intruders who attempt to gain unauthorized access to city systems and data.

All electronic or digital software, data files, and applications residing on the City's IT infrastructure are either owned by or licensed solely for the City's use. Unauthorized reproduction of such software, data files, or applications is prohibited.

Software and applications that are not owned or licensed by the City may contain computer "viruses", "malware" or "ransomware" which are capable of inflicting enormous damage upon the City's IT infrastructure. In addition, the City may face liability under copyright laws if users make or use unauthorized copies of copyright protected programs. As a result, users shall not install or use non-City owned or licensed software or applications on the City's IT infrastructure, except as specifically authorized by the City's IT Department in writing on a case-by-case basis. The IT Department shall be responsible for installing and configuring any and all software and applications which must be authorized. Exceptions may be required and permitted through written requests to the IT Director. No other software or applications may be installed, without written approval by the IT Director.

Each City-issued mobile device shall have Mobile Device Management (MDM) software installed by the IT Department which shall allow the IT Department to restrict unauthorized use and unauthorized applications.

Sec. 2-57. Public records management.

- (a) Each user of city ~~ITEIS~~ shall take responsibility for proper retention of and shall retain emails and text messages sent or received in ~~the furtherance of~~ connection with city business. All members have been provided a city email account and shall use the city email account when communicating about city business in order to ensure the proper retention of all public records in accordance with law. All City cell phones shall have text message archiving enabled prior to use of text messaging by a Member. The use of text messaging should be limited to messages that are transitory in nature and created primarily to communicate information of short-term value. Transitory messages are not intended to formalize or perpetuate knowledge and do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. All emails sent or received using a city provided email account are subject to public disclosure as required by law. In the event that unavoidable circumstances require an email or text message related to official city business be sent to or received from a personal email account or personal cell phone, the same shall be properly maintained and retained by the person subject to this policy who sent or received the communication. If the member wishes not to be responsible for the retention and potential production of said public record, the member may forward the communication to the board member's city-issued email account or to cityclerk@port-orange.org within seventy-two (72) hours of being sent or received to ensure ~~for~~ proper maintenance, retention, and production in accordance with law. Emails and text messages being preserved in this manner shall identify the sender, recipient(s), and contents of the message along with the date and time of transmission.
- (b) Members should avoid using City IT for personal communications and are encouraged to use **personal** email accounts or **personal** cell phones when communicating private, non-business-related information which the member does not wish to be made public. The City Clerk's Office will endeavor to omit personal (non-public) records when processing public records requests involving emails and text messages. HOWEVER, THE CITY SHALL NOT BE RESPONSIBLE FOR THE RELEASE OF ANY PRIVATE/PERSONAL COMMUNICATION THAT WAS SENT OR RECEIVED INCLUDING, WITHOUT LIMITATION, EMAILS AND TEXT MESSAGES. ~~Members are encouraged to use personal email accounts for personal communications. Personal emails are considered those emails sent or received from a private network which are completely personal to the individual in nature and have no relationship to city operations or official city business, and are not made in connection with the official business of any public body, officer, employee, or board member of the city or persons acting on the city's behalf. The city shall not be held liable for the public release of any email that the member has received or sent from a city provided email account.~~
- (c) All emails and text messages made or received in connection with the transaction of official City business, EVEN FROM PERSONAL EMAIL ACCOUNTS AND PERSONAL CELL PHONES, shall be subject to public disclosure. ~~Even emails and text messages from personal email accounts and personal cell phones made or received in connection with the transaction of official city business shall be subject to public disclosure as required by law. It shall be the responsibility of each person~~

subject to this division to retain any public record stored on a personal email account or personal cell phone in accordance with this division.

- (d) Upon the end of the member's service, a member's IT account will be inactivated. All public records that are not already stored within City IT infrastructure shall be provided to the records custodian to be maintained in accordance with applicable law. Each person subject to this policy shall coordinate with the records custodian on the proper handling and disposition of public records in their possession prior to any destruction or disposal of public records. ~~Once no longer serving on a city board, a volunteer's EIS account will be inactivated as part of the off-boarding process. All public records that are not already stored within city EIS shall be provided to the records custodian to be maintained in accordance with applicable law. Each person subject to this policy shall coordinate with the records custodian on the proper handling and disposition of public records in their possession prior to any destruction or disposal of public records.~~

Sec. 2-58. Additional Use Requirements

1. Members must promptly report the theft, loss, or unauthorized disclosure of City IT.
2. Members shall not share passwords for City IT.
3. Members must use extreme caution when opening e-mail attachments or clicking links.
4. Members must complete training courses as required by the IT Director or designee.

THE CITY OF PORT ORANGE RESERVES THE RIGHT TO EXAMINE ALL DATA STORED, VIEWED, OR TRANSMITTED ON ANY CITY IT TO ENSURE THAT ALL USERS ARE IN COMPLIANCE WITH THIS POLICY. USERS OF CITY IT SHALL HAVE NO PRIVACY RIGHTS IN ANY INFORMATION SENT, RECEIVED OR STORED WITH THE USE OF CITY IT INFRASTRUCTURE.

Sec. 2-598 Penalties.

The city council shall have the sole discretion and authority to enforce this division for any member violating any provision of this division by revoking the member's ~~ITEIS~~ access or by asking the member to resign or removing the member from an appointment to an agency, board or commission.

Secs. 2-~~6059~~—2-65. Reserved.

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared severable.

SECTION 4. The provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Port Orange and the sections of this ordinance may be renumbered or re-lettered to accomplish such intention. The code codifier is granted liberal authority to codify the provisions of the ordinance.

SECTION 5: Typographical errors and other matters of a similar nature that do not affect the intent of this Ordinance, as determined by the City Clerk and City Attorney, may be corrected.

SECTION 6. This Ordinance shall become effective immediately upon final passage by the City Council.

[REMAINDER OF PAGE LEFT BLANK]

MAYOR DONALD O. BURNETTE

ATTEST:

Robin L. Fenwick, MMC, City Clerk

Passed on first reading on the ___ day of _____, 2024.

Passed and adopted on second and final reading on the ___ day of _____, 2024.

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

[CA-8246]



Business Impact Estimate

This form should be included in the agenda packet for the item under which the proposed ordinance is to be considered and must be posted on the City's website by the time notice of the proposed ordinance is published.

Proposed ordinance's title/reference:
Ordinance No. 2024-24 – Amending Information Technology Policies for City Boards and Commissions

This Business Impact Estimate is provided in accordance with Section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the City is of the view that a business impact estimate is **not** required by state law¹ for the proposed ordinance, but the City is implementing the procedure required by statutory law to ensure that no inadvertent procedural issue could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant, or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The proposed ordinance relates to procurement; or
- ☐ The proposed ordinance is enacted to implement the following:
 - a. Part II of Chapter 163, *Florida Statutes*, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
 - b. Sections 190.005 and 190.046, *Florida Statutes*, regarding community development districts;
 - c. Section 553.73, *Florida Statutes*, relating to the *Florida Building Code*; or
 - d. Section 633.202, *Florida Statutes*, relating to the *Florida Fire Prevention Code*.

¹ See Section 166.041(4)(c), Florida Statutes.

In accordance with the provisions of controlling law, even notwithstanding the fact that, an exemption noted above may apply, the City hereby publishes the following information:

1. Summary of the proposed ordinance (must include statement of the public purpose, such as serving the public health, safety, morals, and welfare):

The proposed ordinance amends the Code of Ordinances Chapter 2, Article III – Boards and Commissions, Division 1, Electronic Information Systems to implement terminology that is consistent with recently adopted Information Technology and Cybersecurity Policies. The amendments include the change of terminology from "Electronic Information Systems" to "Information Technology", additional prohibited uses of Information Technology, security and licensing issues and public records management.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the City, if any:

(a) An estimate of direct compliance costs that businesses may reasonably incur:

None

(b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible:

No

(c) An estimate of the City's regulatory costs, including estimated revenues from any new charges or fees to cover such costs:

N/A

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

None

4. Additional information the governing body deems useful² (if any):

N/A

² You may wish to include in this section the methodology or data used to prepare the Business Impact Estimate. For example: City staff solicited comments from businesses in the City as to the potential impact of the proposed ordinance by contacting the local Chamber of Commerce, social media posting, direct mail or direct email, posting on City website, public workshop, etc. You may also wish to include efforts made to reduce the potential fiscal impact on businesses. You may also wish to state here that the proposed ordinance is a generally applicable ordinance that applies to all persons similarly situated (individuals as well as businesses) and, therefore, the proposed ordinance does not affect only businesses.



CITY COUNCIL AGENDA ITEM

COUNCIL MEETING DATE 11/19/2024

SUBJECT: (I24) ArtHaus Request to Paint Murals on the Eight Columns and Embankment Walls for the Dunlawton Avenue Bridge Located in the Down Under Area

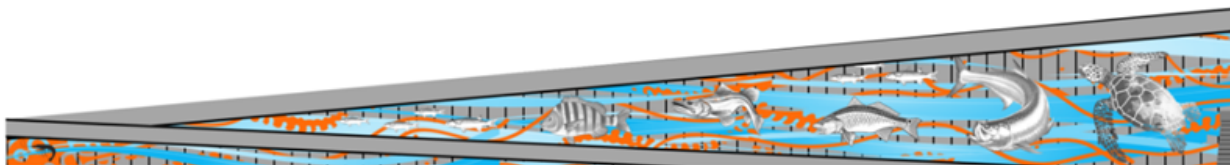
DEPARTMENT: Community Development

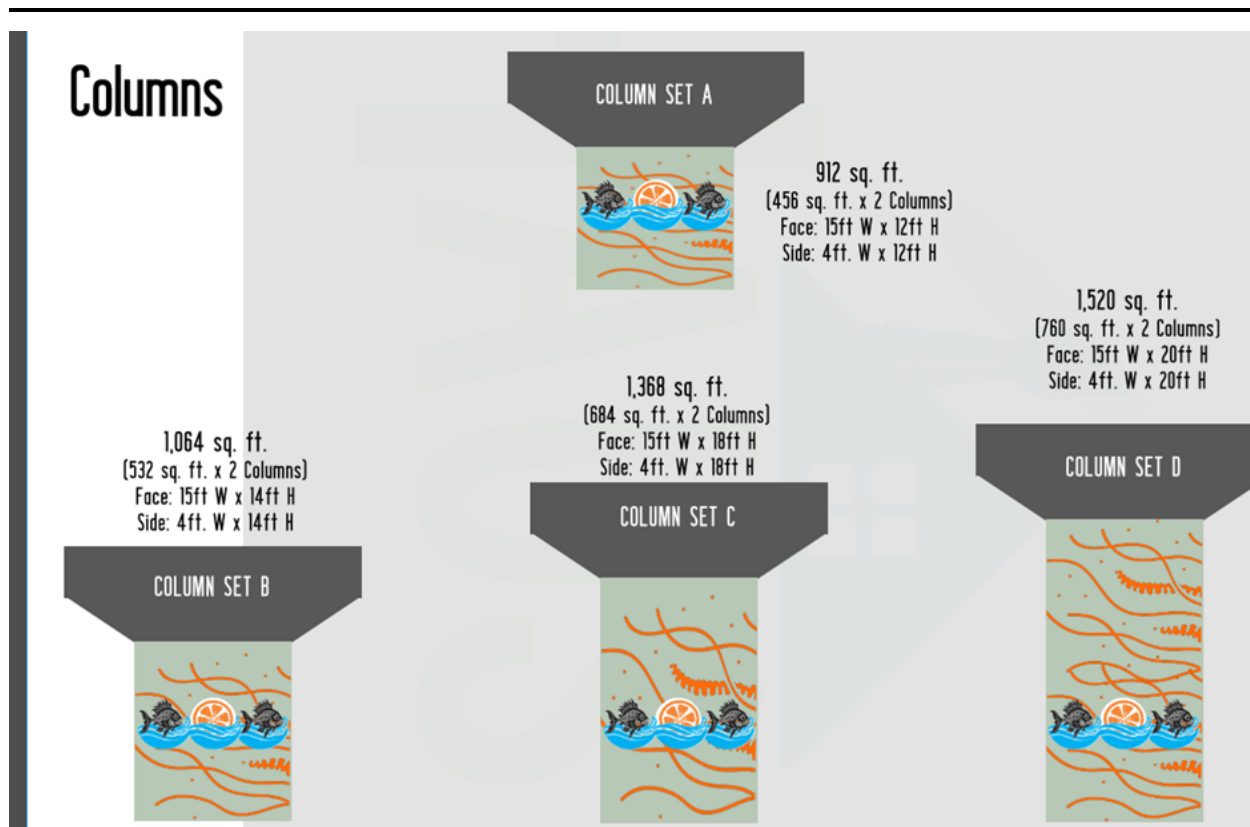
GOAL: 3 - Quality of Life

RECOMMENDED MOTION: Move to approve the request by ArtHaus to paint murals on the eight columns and Dunlawton Avenue Bridge embankment walls located in the Down Under Area, subject to the conditions recommended by staff and approval of the murals and location of the murals by FDOT.

SUMMARY: Cameron Vintson, ArtHaus Executive Director for ArtHaus, requests City Council approval to allow ArtHaus to paint murals on the Dunlawton Avenue Bridge columns and bridge embankment walls within the Down Under area, located on the east side of the bridge. According to ArtHaus, the proposed artwork will reflect local natural ocean life and a symbolic orange image. Below are the proposed graphics submitted by ArtHaus for the murals.

Side Wall / Walking Access





According to ArtHaus, they will recruit the artists, volunteers, and staff needed to complete the project. Through fundraising, ArtHaus will raise the necessary funds to purchase the materials (paint, brushes, cleaning solutions, etc.) and equipment (scaffolding, ladders, tarps, traffic control, signage, lighting) to complete the murals. ArtHaus has consulted with national mural artists to ensure the appropriate paint for the application on concrete and exposure to the sun, water, and salt air is used to prevent the mural from fading, chipping, and peeling and allow for the removal of graffiti or grime. Prior to working on the murals, ArtHaus will be responsible for having all participants sign a Release, Waiver of Liability, and Indemnity Agreement prepared by the City Attorney's Office in a substantially similar form to the document attached, and providing any insurance required by the City's Risk Manager.

If approved, ArtHaus anticipates work beginning in December 2024, and overall, the project is expected to take three years to complete. The initial phase (Column Set - A) will be painting the murals on two of the eight columns, and future phases to paint the remaining six columns and bridge embankment walls will be scheduled once sufficient funds have been raised to cover the cost of materials and equipment. Before starting any phase of the mural project, Arthaus must submit a Maintenance of Traffic (MOT) plan to the City for approval to ensure proper traffic maintenance and other safety measures are in place to allow ArtHaus volunteers and staff to paint the murals safely along with maintaining vehicle access to the parking lot and businesses in the Down Under area.

The theme of the proposed murals and locations in the Down Under area is consistent with the approved Down Under Master Plan. The Down Under Plan approved in 2023 recommended painting murals in the Down Under area.

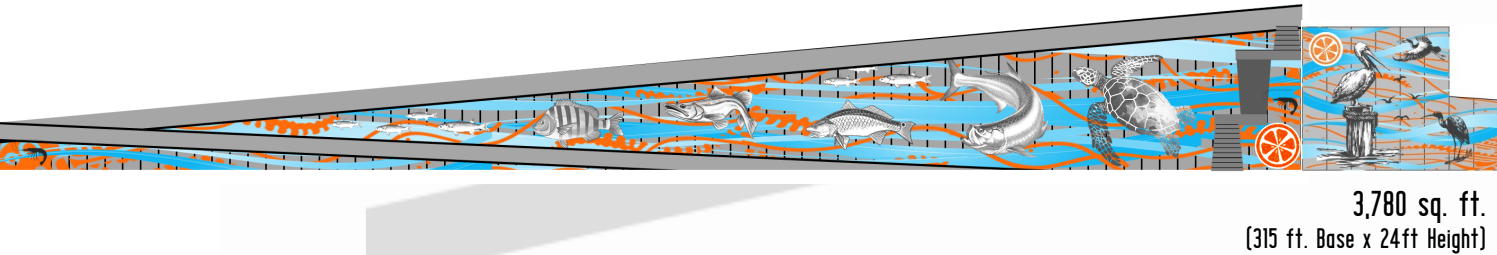
PRESENTER: Tim Burman

ATTACHMENTS:

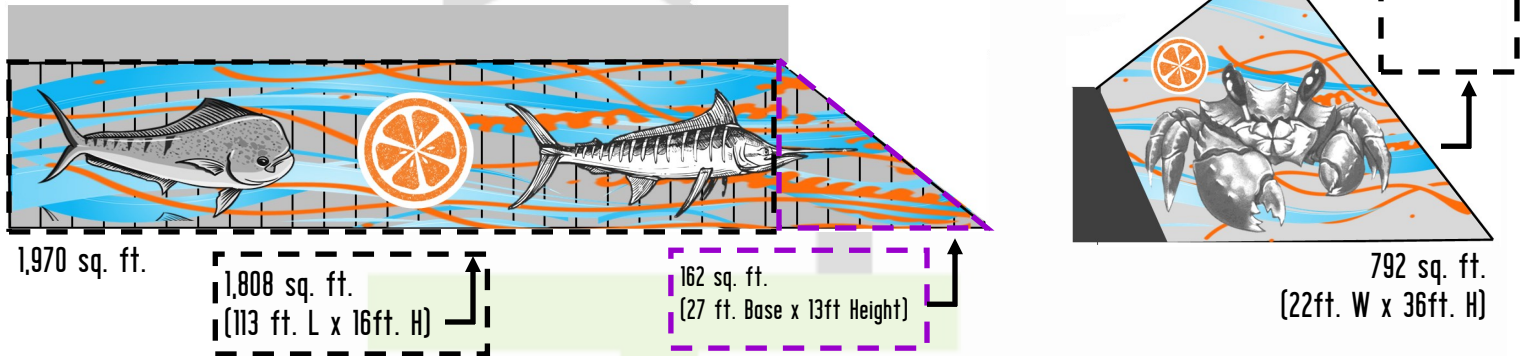
1.	Mural Artwork	Mural Artwork.pdf
2.	Down Under Bridge Mural Project Waiver	Down Under Bridge Mural Project Waiver.pdf

Tim Burman	Created/Initiated - 11/8/2024
Tim Burman	Approved - 11/11/2024
Shannon Balmer	Approved - 11/13/2024
Wayne Clark	Final Approval - 11/14/2024

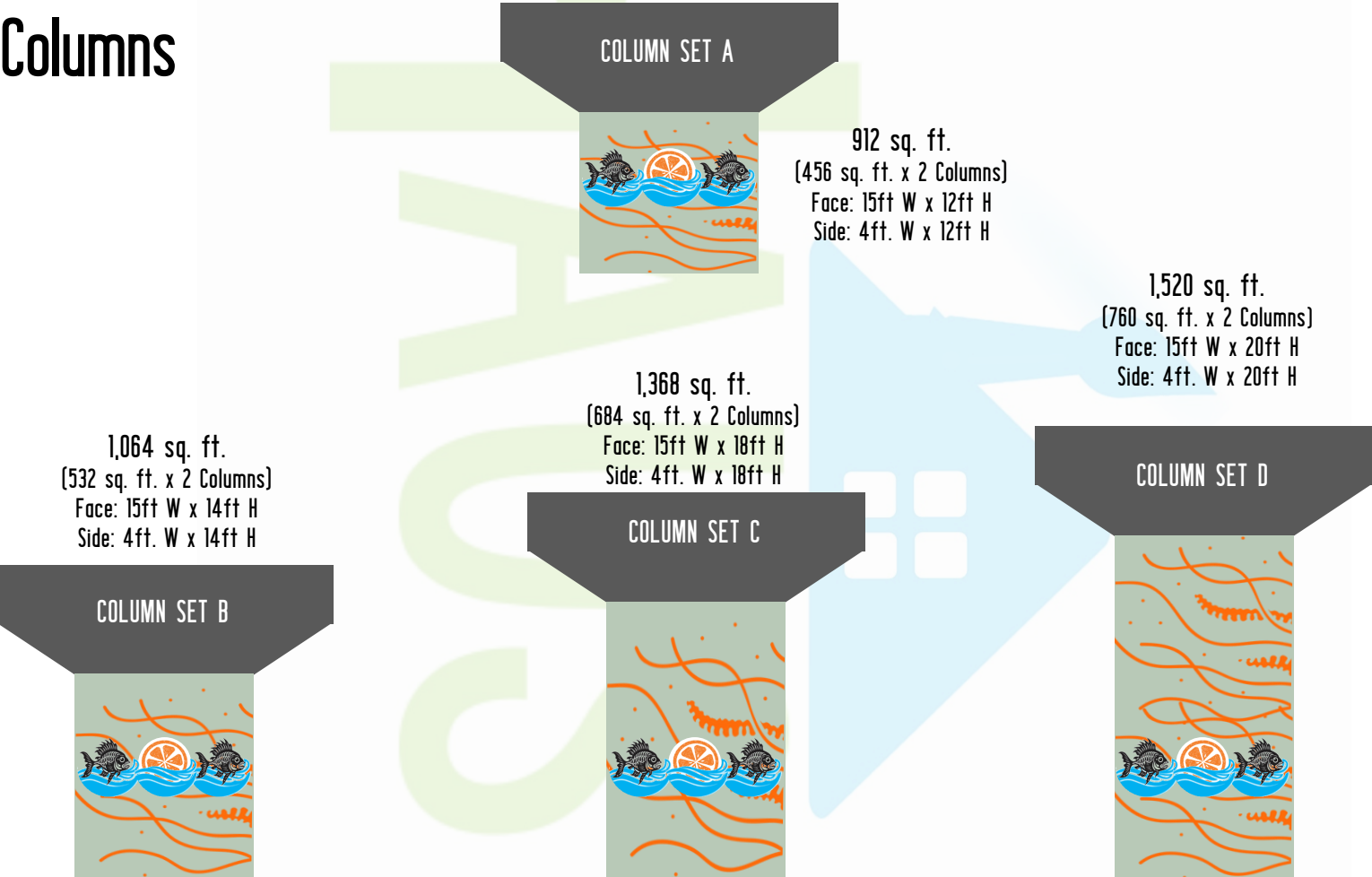
Side Wall / Walking Access



Bridge Support Wall [under]



Columns





CITY OF PORT ORANGE

COMMUNITY DEVELOPMENT
1000 CITY CENTER CIRCLE
PORT ORANGE, FLORIDA 32129
TELEPHONE (386) 506-5600

READ COMPLETELY AND CAREFULLY BEFORE SIGNING

CITY OF PORT ORANGE-ADULT PARTICIPANT-MURAL PAINTING RELEASE, WAIVER OF LIABILITY AND INDEMNITY AGREEMENT

ASSUMPTION OF THE RISK, INDEMNITY, RELEASE AND WAIVER OF LIABILITY: I, the undersigned PARTICIPANT_____, understand that there are risks associated with using, occupying and/or enjoying the City Right-of-Way (“ROW”) and/or traveling to or from, preparing for, and/or participating in mural painting of the Dunlawton Avenue Bridge over water and next to a roadway (“Activity”) taking place in and/or near the ROW. I understand that this Activity is actually organized, directed, controlled and presented solely by ArtHaus. I understand that this Activity is **not** for or on behalf of the City of Port Orange, its officers, employees, representatives, volunteers, successors, assigns, and agents (“Released Parties”) and not something the Released Parties would have undertaken or have undertaken. I understand that this Activity is something that the other participants and I are doing on our own accord. I also understand that the Released Parties are not liable to any participant of this event (including me) for any reason whatsoever.

I recognize that the Activity has inherent risks and that inherent risks mean those dangers or conditions, known or unknown, which are characteristic of, intrinsic to, or an integral part of the Activity and which are not eliminated even if the activity provider acts with due care and includes failure by the provider to warn me of an inherent risk or the risk that I or another participant (or participants) in the Activity may act in a negligent or intentional manner and contribute to the injury or death of me and/or loss (including theft) or damage to my property. As consideration for and as a condition of being allowed to participate and/or use, occupy or enjoy the ROW, I agree to take full responsibility for any and all risks that exist, whether open and obvious or otherwise, including the risk of death or injury or loss or damage to my property. I understand that there may be risks that the Released Parties and/or the activity provider cannot predict or foresee, and I also assume full responsibility for those risks. I understand and am willing

to assume any and all known and unknown risks on behalf of myself and my heirs, assigns, personal representatives and next of kin

As additional consideration for and as a condition of being allowed to participate and/or use, occupy or enjoy the ROW, I, for myself and on behalf of my heirs, assigns, personal representatives and next of kin, agree to release, waive, indemnify, and hold harmless, the Released Parties, from and against any and all liability, claims, actions, damages, costs, expenses, fees, attorney's fees and costs, interest, fines, penalties, damages, injuries (including death) and/or losses to person or property which I may sustain as a result of, arising out of, or in any way connected with traveling to or from, awaiting, or participating in the above described Activity and/or connected in any way to the use, occupation, and/or enjoyment of the ROW, whether suffered before, during or after the Activity. Further, I, for and on behalf of my heirs or representatives, forever release waive, discharge and covenant not to sue the Released Parties for any damage, loss, injury or death caused by their negligence, action or inaction, or other acts or omissions. Additionally, nothing contained in this Agreement shall be construed as a waiver of any immunity from or limitation of liability the Released Parties may have under the doctrine of sovereign immunity or Section 768.28 Florida Statutes.

ROW INSPECTION: As further consideration, I hereby agree to inspect and immediately advise the activity provider and other participants of any unsafe condition that I observe. I will refuse to participate in the Activity and/or use, occupy or enjoy the ROW until all unsafe conditions observed by me have been remedied.

RELEASED PARTIES' RESERVATION OF RIGHTS FOR MURAL PAINTING: The Released Parties have the absolute right, but not the obligation, to change, modify, destroy, remove, move, replace, repair, or restore the mural in part or in whole, in the Released Parties' sole discretion at any time without notice. I understand and agree that the Released Parties shall not be responsible for reimbursement, payments, or any other remuneration of any kind whatsoever.

GOVERNING LAW: I acknowledge and agree that this document shall be governed by the laws of the State of Florida, and any legal action relating to or arising out of this Agreement will be commenced in Volusia County, Florida.

BROAD APPLICATION/SEVERABILITY: I expressly agree this Agreement is intended to be as broad and inclusive as is permitted by the laws of Florida and that if any portion thereof is held invalid

or unenforceable, I agree that the balance shall, notwithstanding, continue in full legal force and effect.

CERTIFICATION: By signing below, I certify that I am over 18 years of age and have carefully read this document, understand its contents and am fully informed about the subject and related circumstances. I sign it knowingly, freely and voluntarily and I agree to abide the terms.

WITNESSES

PARTICIPANT

Signature

Signature

Print Name

Print name

Signature

Date:_____

Print name