



**Agenda**  
**City Council**

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Monday, December 4, 2017

7:00 PM

Council Chambers

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**MEMORANDUM TO:**

The Honorable Mayor and  
Members of the City Council  
City of Jacksonville Beach, Florida

Council Members:

The following Agenda of Business has been prepared for consideration and action at the Regular Meeting of the City Council.

**CALL TO ORDER**

**OPENING CEREMONIES: INVOCATION, FOLLOWED BY SALUTE TO THE FLAG**

**ROLL CALL**

**APPROVAL OF MINUTES**

- a. 17-202 City Council Briefing Held November 20, 2017
- b. 17-203 Regular City Council Meeting Held November 20, 2017

**ANNOUNCEMENTS**

**COURTESY OF THE FLOOR TO VISITORS**

**MAYOR AND CITY COUNCIL**

**CITY CLERK**

**CITY MANAGER**

- a. 17-205 Appointment of a Fifth Member to Serve on the General Employees' Retirement System Board of Trustees
- b. 17-206 Appointment for One Alternate Member to the Board of Adjustment

- c. 17-207 Purchase a 2018 Rosenbauer Commander Rescue Pumper from the State Sheriff's Contract at a Cost of \$398,744 to Replace Our Current Squad 13, a 2001 Freightliner Commercial Pumper
- d. 17-208 Approve a Contract with Garland/DBS Inc. for Water Intrusion Repairs at the Community Services Center Facility Located at 850 6th Avenue South
- e. 17-209 Approve the Dedication to the City and Acceptance for Maintenance of the Public Infrastructure Improvements Constructed in Conjunction with the New Worship Facilities for the *Church of Our Savior*

### RESOLUTIONS

- a. 17-211 RESOLUTION NO. 1997-2017  
  
A RESOLUTION AUTHORIZING THE CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION DETAILING OWNERSHIP OF, AND RESPONSIBILITIES FOR THE COST, CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF, THE NEW BRIDGES AND ROADWAY APPROACHES AT 15TH AND 18TH AVENUES NORTH IN JACKSONVILLE BEACH, FLORIDA, AS PART OF THE DEPARTMENT'S STATE ROAD A1A DRAINAGE IMPROVEMENTS PROJECT, WITH FINANCIAL PROJECT NUMBER 436077-1-52-01.
- b. 17-213 Authorize the Utility Work by Highway Contractor Agreement with the FDOT to Relocate City Water & Sewer Utilities Infrastructure at 15th and 18th Avenues North, as Part of the FDOT A1A Drainage Project.

### ORDINANCES

- 17-212 ORDINANCE NO. 2017-8099 (First Reading)  
  
AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

### ADJOURNMENT

### NOTICE

*In accordance with Section 286.0105, Florida Statutes, any person desirous of appealing any decision reached at this meeting may need a record of the proceedings. 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 public is encouraged to speak on issues on this Agenda that concern them. Anyone who wishes to speak should submit the request to the City Clerk or to the recording secretary prior to the beginning of the meeting. These forms are available at the entrance of the City Council Chambers for your convenience.*

*In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (904) 247-6299, extension 10, no later than one business day before the meeting.*

**Minutes of City Council Briefing**  
**Monday, November 20, 2017 – 6:00 P.M.**  
**City Council Chambers Conference Room, 1<sup>st</sup> Floor**  
**11 North 3<sup>rd</sup> Street, Jacksonville Beach, FL**

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The Council Briefing began at 6:00 P.M.

The following City Council Members were in attendance:

Mayor William C. Latham

Lee Buck  
Keith Doherty  
Christine Hoffman  
Bruce Thomason (*absent*)  
Jeanell Wilson  
Phil Vogelsang

Also present were City Manager George Forbes, Director of Public Works Ty Edwards, Police Chief Pat Dooley, and City Department Directors.

**Purpose of Briefing**

The purpose of the briefing was to update the Council Members on projects including, but not limited to, emergency repairs, dogs on the beach, barrier at 1<sup>st</sup> Street and 16<sup>th</sup> Avenue North, the Donna Run, City and Florida Municipal Power Agency Resolution and Agreements regarding Vero Beach, and wireless tower update.

**City Manager**

Mr. Forbes informed the Council of items which would be on upcoming Council agendas.

- There are two upcoming Board appointments to be made. One is for a member on the General Employee Pension Board, and the other is for the Second Alternate position on the Board of Adjustment.
- Request to approve an expenditure of approximately \$120,000 to repair the Community Center.
- Approve an emergency purchase to repair a broken water main.
- Review an upcoming presentation from the owners of Johnson Gallery regarding additional parking.
- Approve miscellaneous street, sidewalk and curb repairs in Constitution Cove.

**City and Florida Municipal Power Agency Resolution and Agreement regarding Vero Beach**

Mr. Forbes explained the technology in the power energy industry is changing and suggests the City purchase 10 megawatts of Solar Energy to better prepare the City for the changes in the future.

Mr. Forbes explained the City of Vero Beach wants to sell their electric utility to Florida Power and Light (FP&L). In order to sell their utility to FP&L, they must receive a waiver by FMPA All Requirements Members. In addition, FMPA All Requirements must agree to take Vero Beach's allocation of 51 megawatts in three power projects since these were funded projects through municipal bonds and cannot be sold to an IOU.

This action would require votes from the members. Mr. Forbes suggested the City approve this action and be the last member to vote on the agreement.

#### Small Wireless Facilities updates

Mr. Forbes stated a new bill was passed at the 2016 legislative session regarding the installation of small wireless facilities on public right-of-way. These small wireless facilities can be up to 28 cubic feet in size. Mr. Forbes explained we are working with Mr. Tom Cloud, through a firm in Orlando, with previous experience with this type of ordinance. We also plan to establish zoning regulations for the installation of the small wireless facilities.

#### Dogs on the beach

Mr. Forbes mentioned the possibility of changing the time dogs are allowed on the beach. A brief discussion ensued. A pilot program was suggested and would be brought up for further discussion at a later date. The program recommended is allowing dogs on the beach at any time during Eastern Standard time and only from 5:00 P.M. to 9:00 A.M. during daylight saving time.

#### Barrier at 1<sup>st</sup> Street and 16<sup>th</sup> Avenue North

Mr. Forbes stated a Council Member is requesting the City Council consider removing the current barrier at 1<sup>st</sup> Street and 16<sup>th</sup> Avenue North. Mr. Forbes suggested sending a letter to the surrounding neighborhood, informing the residents of the issue and inform them of the date of the Council meeting the issue would be discussed to obtain their feedback.

#### FDOT agreements

Mr. Forbes stated agreements with FDOT regarding the A1A drainage project and the rebuilding of the bridges at 18<sup>th</sup> and 15<sup>th</sup> Avenues North would be presented at the next Council meeting. Director of Public Works, Mr. Ty Edwards, has made multiple attempts to address concerns regarding the bridge agreements with FDOT. Mr. Forbes suggests Council approve the agreements even though our concerns were not fully met.

#### Donna Run

Ms. Amanda Napolitano spoke on behalf of Ms. Donna Deegan in regards to the possibility of changing the start and finish line for the 2019 Donna Run to include Seawalk Pavilion and Latham Plaza. Mr. Forbes suggested due to the lack of space and the strain on public safety; the Special Events Committee denied the request and recommended the Donna Run seek other options.

The briefing adjourned at 7:00 P.M.

Submitted by: Jodilynn Byrd  
Administrative Assistant, City Clerk's Office

Approved: \_\_\_\_\_

William C. Latham, MAYOR

Date: \_\_\_\_\_

Draft

**Minutes of Regular City Council Meeting  
held Monday, November 20, 2017, at 7:00 P.M.  
in the Council Chambers, 11 North 3<sup>rd</sup> Street,  
Jacksonville Beach, Florida**



**OPENING CEREMONIES**

A moment of silence was held in memory of Mrs. Patricia Borno, followed by the salute to the flag.

**CALL TO ORDER**

Mayor Latham called the meeting to order at 7:05 P.M.

**ROLL CALL**

Mayor: William C. Latham

Council Members: Lee Buck Keith Doherty Christine Hoffman  
Bruce Thomason (*absent*) Phil Vogelsang Jeanell Wilson

Also present were City Manager George Forbes, Planning and Development Director Bill Mann, Chief Financial Officer Karen Nelson, City Clerk Laurie Scott, Director of Beaches Energy Allen Putnam, Director of Parks and Recreation Jason Phitides, and Staff Assistant Mandy Murnane.

**APPROVAL OF MINUTES**

It was moved by Ms. Wilson, seconded by Ms. Hoffman, and passed unanimously, to approve the following minutes:

- Regular City Council Meeting held November 6, 2017

**ANNOUNCEMENTS**

**COURTESY OF THE FLOOR TO VISITORS**

- Kurtis Loftus, 348 Aquatic Drive, Atlantic Beach, spoke regarding the upcoming event, Deck the Chairs.

**MAYOR AND CITY COUNCIL**

**(a) Item #17-194 - Presentation of Resolution of Esteem to Terry DeLoach**

Mayor Latham recognized Terry DeLoach for his dedicated service to the City while serving on the Planning Commission from June 20, 1994, until June 26, 2017.

**(b) Item #17-195 - Employee of the Quarter Presentation - Phil Brown**

Mayor Latham presented Phil Brown of Public Works with the Outstanding Employee Award for the third quarter of 2017.

**CITY CLERK**

**CITY MANAGER**

- (a) **Item #17-196 - Accept the monthly financial reports for the month of October 2017**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to accept the financial reports for the month of October 2017, as submitted by the Chief Financial Officer.

**Discussion:** Chief Financial Officer, Karen Nelson, clarified Ms. Hoffman's concern regarding the electrical variance as Capital Expenditures relating to the Guana sub-station.

**Roll call vote:** Ayes – Buck, Doherty, Hoffman, Vogelsang, Wilson, and Mayor Latham.  
The motion passed unanimously.

- (b) **Item #17-197 - Authorize the City to Renew the Agreement with Other Water Utilities to Continue the Assessment of Groundwater Resource Sustainability in Northeast Florida**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to authorize the City Manager to execute the Memorandum of Agreement between the City of Jacksonville Beach and other Northeast Florida water utilities to assess groundwater resource sustainability as described in the memorandum from the Public Works Director dated November 8, 2017.

**Discussion:** Mr. Forbes explained that we are currently in a group with other regional cities evaluating the long-term sustainability of groundwater resources to make sure we have enough for the future. The proposed agreement is for three (3) years and would expire on September 30, 2020. This collaborative effort has been crucial in communicating the concerns of the utilities for using the best science available and developing more accurate groundwater models.

One of the main concerns is the minimum flow levels for the lakes and making sure the levels do not have a negative impact on our area. It is anticipated that stricter limits for water withdrawals would be set in the future.

Mr. Forbes said the JEA administered the contract and costs are estimated \$1.5 million over three years, Jacksonville Beach's share is 1.62% or \$24,282 or \$8,094 per year.

**Roll call vote:** Ayes – Doherty, Hoffman, Vogelsang, Wilson, Buck, and Mayor Latham  
The motion passed unanimously.

**(c) Item #17-198 - Approve the Purchase of One Single Drum Overhead Cable Puller, One Underground Cable Puller, and One Three Wheel Turret Trailer from Sole Source Provider Sherman + Reilly**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to approve the purchase of one (1) PT-3000 Single Drum Overhead Cable Puller, one (1) DDHXA-75 Underground Cable Puller, and one (1) TRT-384/60 Three Wheel Turret Trailer from sole source provider Sherman + Reilly, as described in a memo from Allen Putnam, Director of Beaches Energy Services dated November 8, 2017.

**Discussion:** Mr. Forbes stated the cable pullers are necessary to pull the cable through underground conduit or overhead poles while the trailer holds the cable. Beaches Energy Services uses various pieces of specialized equipment to install and maintain its electrical infrastructure. In spite of high usage, proper care and maintenance have allowed this equipment to last in the range of twenty to forty-three years.

Director of Beaches Energy, Allen Putnam, explained the reason the equipment cannot be purchased anywhere else is the safety feature provided with the control of the tension.

Mr. Putnam answered Mr. Doherty's and Ms. Wilson's maintenance inquiries by explaining there is a five-year warranty through Sherman + Reilly but the regular maintenance on the equipment is completed in the City garage. There is no annual fee for the equipment with Sherman + Reilly.

**Roll call vote:** Ayes – Hoffman, Vogelsang, Wilson, Buck, Doherty, and Mayor Latham.  
The motion passed unanimously.

**(d) Item #17-199 - Award Bid No. 1617-19 Golf Course Pump Station Replacement to the Lowest Responsive Bidder, Pro Pump and Controls, Inc.**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to award Bid No. 1617-19 Golf Course Pump Station Replacement to the lowest responsive bidder, Pro Pump and Controls, Inc., in the amount of \$161,212, as described in the memorandum from the Parks and Recreation Director dated November 9, 2017.

**Discussion:** Mr. Forbes said the 16-year-old pump station located on the Golf Course is used for irrigation throughout the course, as well as the ball fields at Wingate Park, the Central Stormwater Basin park area, the O&M Building, Police Department, both cemeteries, South Beach Park, and the medians along Jacksonville Drive and South Beach Parkway. The station pumps between 400,000 to 500,000 gallons of reuse water per day, depending on the season.

Mr. Vogelsang asked if the pumps would be used to water the greens and if the budget included the price for putting in a well. Mr. Forbes responded no, but it would be used to water the fairways, and the golf budget does include the construction of a well.

Jason Phitides, Director of Parks and Recreation, explained they have been looking for a more cost-effective way to water the greens, and they have not ruled out the idea of using the reuse water. The well pump is included in the budget.

Mr. Vogelsang stated he would like to err on the side of caution with the water used on the green by using well water instead of reuse water.

Mr. Phitides answered Mr. Doherty's question about the timeline by stating the start date would be mid-January, with the pump taking about twelve weeks to complete. He added the construction of the pump would not be affected by the construction of the golf course.

Mr. Buck expressed his concern over the water used on the greens and encouraged the filtration of harmful ingredients.

**Roll call vote:** Ayes - Vogelsang, Wilson, Buck, Doherty, Hoffman,  
and Mayor Latham.  
The motion passed unanimously.

## **RESOLUTIONS:**

### **Item # 17-200 - RESOLUTION NO. 1996-2017**

Mayor Latham requested that the City Clerk read Resolution No. 1996-2017, by title only, whereupon Ms. Scott read the following:

**“A RESOLUTION PROVIDING FOR THE SALE OF SURPLUS PROPERTY ONLINE.”**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Resolution 1996-2017, a resolution providing for the sale of surplus property online.

**Discussion:** Mr. Forbes explained that about every six months, the City accumulates vehicles and equipment that are no longer useful to the City, and the City Council must declare the items surplus to authorize their sale at public auction. The Property and Procurement Division plans to advertise the auction on the City's website and in the Beaches Leader.

**Roll call vote:** Ayes - Wilson, Buck, Doherty, Hoffman, Vogelsang,  
and Mayor Latham.  
The motion passed unanimously.

**ORDINANCES:**

**Item #17-191 - ORDINANCE NO. 2017-8098 (Second Reading) (Public Hearing)**

Mayor Latham addressed the Council regarding his concern for the zoning criteria for pharmacies. He explained the intent of Ordinance Number 2017-8098 was not to ban the dispensing of medicinal marijuana, but rather to redefine what zoning would be most appropriate for Jacksonville Beach.

Mayor Latham proposed dropping the ordinance, going to a six-month moratorium extension to allow for the Mayor, City Manager, and our lobbyist to work with the state legislature to get the ability to zone this only in C-2 zoning districts. In C-2, it would keep the dispensaries in a commercial zone and away from residential areas. If we were to do that, it would alleviate most of the Council's concerns as there would be a less exposed residential market.

Ms. Wilson and Mr. Buck agreed that there had been a lot of misinformation on the subject. The independent, free-standing pharmacies could be problematic outside of the C-2 zone.

Mr. Doherty said he would not support a six-month moratorium and it was their civic duty to support the voters.

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to put a moratorium for six months from today on this and rediscuss after the legislative session has ended.

Mr. Forbes made a point of order that the original moratorium was done by ordinance. Based on the motion, it would direct the city attorney to bring back the ordinance or whatever action is necessary.

Mr. Vogelsang requested to include six months from today, not the date in the future.

**Modified Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to modify the motion to include to direct the city attorney to draw up an ordinance or documents necessary for a six-month moratorium.

**Voice Vote:** Ayes – Buck, Wilson, Hoffman, Vogelsang, and Mayor Latham  
Nays – Doherty  
The motion passed 5-1.

Mayor Latham opened the Public Hearing at 8:05 P.M.

**Speakers:**

The following individuals addressed the Council in support of the agenda item:

- Jim Overby, 21 Burling Way, Jacksonville Beach, FL

The following individuals addressed the Council in opposition to the agenda item:

- Danny Hanson, 422 17<sup>th</sup> Avenue North, Jacksonville Beach, FL
- Shandy Thompson, 522 3<sup>rd</sup> Avenue South, Jacksonville Beach, FL
- Jon McGowan, 5 North 17<sup>th</sup> Avenue, #401, Jacksonville Beach, FL
- Marc Ressler, 176 Crossroad Lakes Drive, Ponte Vedra Beach, FL
- Gary Stein, 7035 Belt Lane Loop, Wesley Chapel, FL
- Brett Puffenburger, 871 11 Ballard Street, Altamonte, FL
- Trey Thompson, 522 3<sup>rd</sup> Avenue South, Jacksonville Beach, FL
- Carrie McClain, 415 4<sup>th</sup> Avenue North, Jacksonville Beach, FL
- Kylan Knight, 415 4<sup>th</sup> Avenue North, Jacksonville Beach, FL
- Ashley Peebles, 811 2<sup>nd</sup> Street South, Jacksonville Beach, FL
- Jesse Dasher, 114 Winter Ridge Drive, Winter Haven, FL
- Emily Phillips, 6229 Chapel Pines Boulevard, Wesley Chapel, FL
- Barbara McClain, 210 11<sup>th</sup> Avenue North, #1015, Jacksonville Beach, FL
- Patricia Freitag, 5536 Paradise Drive, New Port Richey, FL
- William Phillips, 7117 Southwest Arche Road, Gainesville, FL
- Christina Suskin, 840 Bert Road, #A202, Jacksonville, FL
- Jonathan Carr, 11584 Alexis Forest Drive, Jacksonville, FL
- Grace Parker, 3890 Summer Grove Ways, Jacksonville, FL
- Jean Lijoi, 103 Dolphin Boulevard, Ponte Vedra Beach, FL
- Peter Booras, 2897 Canyon Falls Dr, Jacksonville, FL
- Steve Morone, 5526 Gable Lane, Jacksonville, FL
- Danny McClain, 210 11<sup>th</sup> Avenue North, Jacksonville Beach, FL
- Scott Zabbek, 3601 Fountain Mist Drive, Tampa, FL
- Trey and Mary Phillips, 934 10<sup>th</sup> Street North, Jacksonville Beach, FL

The following individuals did not wish to address the Council, but opposed the agenda item:

- Marie Bingham, 38 Coral Way, Jacksonville Beach, FL

Mayor Latham closed the Public Hearing at 9:30 P.M.

Mayor Latham requested that the City Clerk read Ordinance No. 2017-8098, by title only, whereupon Ms. Scott read the following:

**“AN ORDINANCE OF THE CITY OF JACKSONVILLE BEACH, FLORIDA AMENDING ARTICLE VIII. SUPPLEMENTAL STANDARDS, DIVISION 2, CREATING A NEW SECTION 34-408 MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES PROHIBITED FOR THE INCORPORATED AREA OF THE CITY, AS AUTHORIZED BY CHAPTER 163.3202 AND 381.986, FLORIDA STATUTES, ADDING DEFINITIONS FOR "MEDICAL MARIJUANA TREATMENT CENTER" AND "MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITY" TO ARTICLE IV, DEFINITIONS LAND DEVELOPMENT CODE OF THE CITY; AND PROVIDING FOR CODIFICATION, MORATORIUM CONTINGENCY; SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE.”**

**Motion:** It was moved by Ms. Wilson and seconded by Ms. Hoffman, to adopt Ordinance No. 2017-8098, amending the Land Development Code by adding new definitions to Section 34-41, and adding a new Section 34-408 Prohibiting Medical Marijuana Treatment Center Dispensing Facilities from locating within the City of Jacksonville Beach.

**Discussion:** Mayor Latham stated he would be voting against the original ordinance to ban medical marijuana dispensaries and continue to support the secondary motion to have the City Attorney move forward with drafting a moratorium.

**Roll Call Vote:** Ayes – Buck

Nays – Doherty, Hoffman, Vogelsang, Wilson, and Mayor Latham.  
The motion failed 1-5.

**Motion:** It was moved by Ms. Wilson and seconded by Mr. Buck, to direct our City Attorney to enact in a moratorium for six months from this date so that we can study the issue and get more definition as to what we want to do in the City (*as far as*) for dispensaries only.

Ms. Hoffman asked where the City would stand if the preceding vote were tied.

Mr. Forbes stated as of right now, we allow pharmacies, but medical marijuana treatment facilities are not a permitted use so the City Attorney would need to prepare an Ordinance to allow medical marijuana dispensaries as a permitted use in Commercial Zones.

Mr. Buck said he supports medical marijuana and is in favor of the moratorium.

Mr. Vogelsang, Mr. Doherty, and Ms. Hoffman stated their support to move forward with drafting enabling legislation and that they would not be voting in favor of the moratorium.

Mr. Forbes said the City Council has already voted on, and approved a six-month moratorium and given the number of Council Members who are opposed, a motion to reconsider the six-month ban needs to be made, and, if approved, the Council would have another opportunity to discuss and revote.

No Vote

**Motion to Reconsider:** It was moved by Ms. Hoffman and seconded by Mr. Vogelsang, to reconsider the previous vote on the six-month moratorium.

**Roll Call Vote:** Ayes – Doherty, Hoffman, Vogelsang, and Buck  
Nays – Wilson and Mayor Latham  
The motion carried 4-2.

Mr. Vogelsang clarified they voted on a motion to reconsider and start over so there would be no motions on the table.

**Motion:** It was moved by Ms. Wilson, and seconded by Mr. Buck, to authorize the City Attorney to draw a six-month moratorium for dispensaries starting for another six months as of today.

**Roll Call Vote:** Ayes – Wilson, Buck, and Mayor Latham  
Nays – Hoffman, Vogelsang, and Doherty  
The motion failed 3-3.

Mr. Forbes clarified that he would bring back more than one option for the City Council to consider, to include (a) continuing the moratorium, and (b) enabling legislation.

**ADJOURNMENT:**

There being no further business, the meeting adjourned at 10:00 P.M.

Submitted by: Laurie Scott  
City Clerk

Approval:

\_\_\_\_\_  
William C. Latham, MAYOR

Date: \_\_\_\_\_

City of

November 22, 2017

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

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[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**MEMORANDUM**

**TO:** The Honorable Mayor and  
Members of the City Council

**FROM:** Duston Scott, Pension Plan Administrator

**SUBJECT:** *Appointment of Fifth Member to the General Employees'  
Pension Board*

**ACTION REQUESTED:**

Appointment of a fifth member to serve on the General Employees' Retirement System Board of Trustees, respectively, is requested.

**BACKGROUND:**

Pursuant to the Jacksonville Beach Code of Ordinances Section 2-162.24 (b) Board of Trustees, the General Employees' Board consists of (5) members:

- (1) Two (2) members of the City Council, selected by the City Council.
- (2) **A fifth member selected by the other four (4) members and appointed, as a ministerial act, by the city council.**
- (3) Two (2) members of the General Employees' Retirement System, to be elected by the members of the General Employees' Retirement System.

At their November 14, 2017, Quarterly Pension Board meeting, the General Employees' Retirement System Board of Trustees voted unanimously to reappoint Brandon Maresma to serve as the fifth member. Mr. Maresma was originally appointed in November 2009.

Mr. Maresma has indicated he would be willing to serve another two-year term.

**RECOMMENDATION:**

Reappoint Brandon Maresma to serve as a trustee as the fifth member on the General Employees' Retirement System Board, for a two-year term to expire December 31, 2019.



City of  
Jacksonville Beach  
City Hall  
11 North Third Street  
Jacksonville Beach  
FL 32250  
Phone: 904.247.6299  
Fax: 904.247.6256  
[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)  
[cityclerk@jaxbchfl.net](mailto:cityclerk@jaxbchfl.net)

**MEMORANDUM**

**DATE:** November 22, 2017  
**TO:** The Honorable Mayor and  
Members of the City Council  
**FROM:** Laurie Scott, City Clerk  
**RE:** Appointment to Board of Adjustment

**ACTION REQUESTED:**

Appointment for one Alternate Member to the Board of Adjustment.

**BACKGROUND:**

The term of Mr. Chase Sams, 2<sup>nd</sup> Alternate on the Board of Adjustment, will expire on December 31<sup>st</sup>, 2017. Mr. Sams was contacted and has declined reappointment due to his business commitments.

The following applicants were interviewed by one or more City Council members with City staff in attendance. They selected the Board of Adjustment as their first or second choice and wish to be considered for appointment:

*Gary Cater*                      *William Dopf*  
*Lucas Snyder*                 *Jon Scott Walker*

**RECOMMENDATION:**

Nominate Lucas Snyder for appointment to the Board of Adjustment for a two-year term expiring on December 31<sup>st</sup>, 2019.

/LS  
Attachments



**Board of Adjustment Applicant Listing**

<b><u>Applicant</u></b>		<b><u>Choice Ranking</u></b>	<b><u>Term Expiration</u></b>	<b><u>Recommended</u></b>	<b><u>Interview Date</u></b>
Walker	Jon Scott	1		Y	1/18/2017
Cater	Gary	1		Y	1/18/2017
Dopf	William	1		Y	7/18/2016
Snyder	Lucas	2		Y	5/4/2016

City of Jacksonville Beach  
Office of the City Clerk  
11 North 3<sup>rd</sup> Street  
Jacksonville Beach, Florida 32250



Phone: (904) 247-6299 ext 10  
FAX: (904) 247-6258  
E-mail: cityclerk@jaxbcfl.net

**RECEIVED**  
JUN 28 2016  
City Clerk

**Application for Appointment to City Boards**

**Personal Information** (Please print or type)

Name: Gary Cater Home Phone: 850 386 2919  
 Home Address: 3500 Ocean Dr S  
 E-Mail Address: gcater1@comcast.net Call Phone: 850 322 4215  
 Occupation: Physician Business Phone: \_\_\_\_\_  
 Business Name: \_\_\_\_\_  
 Business Address: \_\_\_\_\_

**Eligibility - Please Circle**

Are you a resident of the City?	<input checked="" type="radio"/> Yes	<input type="radio"/> No	If yes, length of time: <u>4 1/2 yrs</u>
Are you a registered voter?	<input checked="" type="radio"/> Yes	<input type="radio"/> No	If yes, what County: <u>Duval</u>
Do you own property in the City?	<input checked="" type="radio"/> Yes	<input type="radio"/> No	If yes, address: <u>3500 Ocean Dr S</u>
Do you hold a public office?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, Office name: _____
Are you employed by the City?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, position: _____
Are you currently serving on a Board?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, Board Name: _____
Have you been convicted of a felony?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, provide date: _____
Have your civil rights been restored?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, provide date: _____
Have you filed bankruptcy?	<input type="radio"/> Yes	<input checked="" type="radio"/> No	If yes, provide date: _____

**Potential Conflict of Interest:** Have you ever been engaged in the management/ownership of any business enterprise that has a financial interest with the City of Jacksonville Beach? Yes  No

If yes, please provide details: \_\_\_\_\_

**City Boards** (Please indicate your preferences by ranking - denote your Primary choice with a "1", Secondary choice with a "2".

<u>2</u> Board of Adjustment	Planning Commission
<u>1</u> Community Redevelopment Agency	Pension Trustee

Please list the type of City meetings you have attended: \_\_\_\_\_

**Qualifications** (Briefly describe specific expertise, abilities, or qualifications)

Education: \_\_\_\_\_  
Pacific Union College  
Medical School UMS Kansas City, MO  
Residency - Shands UF Jacksonville  
Fellowship Childrens Mercy Hosp. Kansas City, MO  
MBA - UCF



Application for Appointment to City Boards

Received  
 11/27/2016  
 Jacksonville Beach City Clerk

Personal Information (Please print or type)

Name: WILLIAM DOPF Home Phone: \_\_\_\_\_  
 Home Address: 92 29<sup>th</sup> Ave South Jacksonville Beach, FL  
 E-Mail Address: wldopf@gmail.com Cell Phone: 904-208-1135  
 Occupation: Market development rep. Business Phone: \_\_\_\_\_  
 Business Name: Pro Solutions LLC  
 Business Address: 92 29<sup>th</sup> Ave S. Jacksonville Beach

Eligibility - Please Circle

Are you a resident of the City?  Yes  No If yes, length of time: \_\_\_\_\_  
 Are you a registered voter?  Yes  No If yes, what County: \_\_\_\_\_  
 Do you own property in the City?  Yes  No If yes, address: \_\_\_\_\_  
 Do you hold a public office?  Yes  No If yes, Office name: \_\_\_\_\_  
 Are you employed by the City?  Yes  No If yes, position: \_\_\_\_\_  
 Are you currently serving on a Board?  Yes  No If yes, Board Name: \_\_\_\_\_  
 Have you been convicted of a felony?  Yes  No If yes, provide date: \_\_\_\_\_  
 Have your civil rights been restored?  Yes  No If yes, provide date: \_\_\_\_\_  
 Have you filed bankruptcy?  Yes  No If yes, provide date: \_\_\_\_\_

Potential Conflict of Interest: Have you ever been engaged in the management/ownership of any business enterprise that has a financial interest with the City of Jacksonville Beach? Yes  No

If yes, please provide details: \_\_\_\_\_

City Boards Please indicate your preferences by ranking - denote your Primary choice with a "1", Secondary choice with a "2".

1	Board of Adjustment	2	Planning Commission
	Community Redevelopment Agency		Pension Trustee

Please list the type of City meetings you have attended: BOARD VARIANCE, CITY COUNCIL  
meetings

Qualifications (Briefly describe specific expertise, abilities, or qualifications) 30 years of business  
management experience with a fortune 500 company. 25  
years living in Jacksonville & Jacksonville Beach. Served on a  
variety of trade association & non profit boards

Education: B.S. Biological Science - Colorado State University  
MBA - Marketing & Finance - Colorado State University

**William B Dopf**

92 29<sup>th</sup> Avenue South  
Jacksonville Beach, Florida  
32250  
904 208 1135  
[wbdopf@gmail.com](mailto:wbdopf@gmail.com)  
[resinink@gmail.com](mailto:resinink@gmail.com)

**Career Objective**

To utilize highly effective marketing, operations and management skills developed over a long corporate industrial and private consulting career. To help organizations grow in a strategic and sustainable way.

**2005-PRESENT****RESINSOLUTIONS LLC****PRESIDENT**

Formed a consultant practice working with former clients in the industrial chemical business. Successfully guided their manufacturing and procurement groups toward in-depth understanding of strategic issues with respect to their sourcing decisions. Significant realignment of suppliers and an enhanced approach to long term strategic procurement was achieved. Savings were in the 7-figure range. Current activities are in support of Respol Resinas S.A., Leiria, Portugal and Forchem Oy, Rauma, Finland.

**1980-2005****MEADWESTVACO CORPORATION**

A fortune 500 paper, packaging and chemicals business

**2000-2005****Vice President Chemical Division**

General Manager of worldwide pine chemical business. Managed two separate tall oil refinery sites and associated derivative production facilities including product development, sales, purchasing, research and customer service for a \$200+ million business employing 400 professional and plant personnel. Along with management team, developed business into the premier supplier in the industry. By utilizing a well publicized strategy we drove quality, innovation, and response to new industry standards. The group became one of Meadwestvaco's highest ROI business units.

**1996-2000****General Manager-Oleochemicals Department**

P&L responsibility for Department sales and operations worldwide. Managed sales, product development, and manufacturing for \$120 million business including multiple sites employing 200 professional and plant employees. Increased department profitability 80% by focusing on proper pricing strategies and cost control.

**1993-1996****General Manager-Europe**

Created plan for European expansion including organization of a Swiss subsidiary to minimize tax impact on all European operations.

Developed marketing strategy and spearheaded sales to penetrate new markets and geography. We were able to build a base of business to justify installation of a new manufacturing facility.

Supervised engineering of manufacturing facilities, and submitted phase II engineering work on time and within budget.

**1990-1993****Marketing Manager**

Successfully developed and implemented aggressive plans for expanding technology to multiple continents.

Built a field sales force and customer service group that achieved a 400% increase in sales. Supervised sales, customer service and commercial development of 130 products for three different segments of the printing ink industry.  
Achieved dominant position in major markets of 65% and 35%, from 25% and 5%, respectively.

**1987-1990 Sales Manager**  
Directed sales force which consistently achieved the highest level of sales dollars and profitability within the Chemical Division.

**1985-1987 Ink Industry Manager**  
Hired a direct field sales force to replace reps and distributors. Successfully implemented plan to access new markets. Transitioned newly acquired business into the parent sales system while converting the entire customer base to new manufacturing location. Growth of the business exceeded 100%.

**1980-1985 Technical Sales Representative**  
Traveled North America for three different departments within the Westvaco Chemical Division. Covered a variety of territories and product lines with increasing levels of responsibility.

### **Education**

Colorado State University  
MBA Marketing and Finance 1979  
B.S. Bioscience 1976  
Marquette University, College of Engineering 1972-73  
Awarded U.S. Naval Reserve Officer Training Scholarship

### **Professional Development Programs**

Harvard University *The Program On Negotiating For Senior Executives*  
University of Virginia The Darden School *Leadership*  
U of Pennsylvania Wharton School *Commercial Development and Corporate Venturing*

Westvaco Corp *Marketing Professional Development Program*  
*The Westvaco Supervisor*  
*Managing Organizational Objectives*  
*Empowered Leadership Program*

Forum *Managing a Strategically Aligned Sales Force*

### **Professional Associations**

Pine Chemicals Association  
Member of Board of Directors – Chairman

National Association of Printing Ink Manufacturers  
T.A.M. Board Member, General Board Member

Community in Schools South Carolina Chapter  
Board Member



*Interviewed 5/14/16*



**Application for Appointment to City Boards**

**Personal Information** (Please print or type)

Name: Lucas N. Snyder \_\_\_\_\_ Home Phone: 407-529-4084 \_\_\_\_\_  
 Home Address: 414 10<sup>th</sup> ST S Jacksonville Beach, FL. 32250 \_\_\_\_\_  
 E-Mail Address: lucas.snyder2@gmail.com \_\_\_\_\_ FAX: \_\_\_\_\_  
 Business: \_\_\_\_\_ Business Phone: \_\_\_\_\_  
 Business Address: \_\_\_\_\_

**Eligibility**

Are you a resident of the City?  Yes  No If yes, length of time: 6 years \_\_\_\_\_  
 Are you a registered voter?  Yes  No If yes, what County: Duval \_\_\_\_\_  
 Do you own property in the City?  Yes  No If yes, address: 414 10<sup>th</sup> St S, 1821 Tanglewood Rd. \_\_\_\_\_  
 Do you hold a public office? Yes  No If yes, Office name: \_\_\_\_\_  
 Are you employed by the City? Yes  No If yes, position: \_\_\_\_\_  
 Are you currently serving on a Board? Yes  No If yes, Board Name: \_\_\_\_\_  
 Have you been convicted of a felony? Yes  No If yes, provide date: \_\_\_\_\_  
 Have your civil rights been restored? Yes  No If yes, provide date: \_\_\_\_\_  
 Have you filed bankruptcy? Yes  No If yes, provide date: \_\_\_\_\_

**Potential Conflict of Interest:** Have you ever been engaged in the management/ownership of any business enterprise that has a financial interest with the City of Jacksonville Beach? Yes  No   
 If yes, please provide details: \_\_\_\_\_

**City Boards** (Please indicate your preferences by ranking - denote your first choice with a "1", second choice with a "2", etc.)

2	Board of Adjustment	3	Planning Commission
1	Community Redevelopment Agency		Pension Trustee

**Please list City meetings you have attended:** City Council: Oct 13, 2015, Feb 15, 2016, March 7<sup>th</sup>  
 Board of Adjustments: July 21, 2015, November 3, 2015, \_\_\_\_\_

**Qualifications** (Briefly describe specific expertise, abilities or qualifications)

Involvement in multiple community service events/locations including The Carver Center, Boys and Girls Club of Jacksonville Beach, ARC Surf Camps for underprivileged youth, Donner Park in Atlantic Beach, \_\_\_\_\_

Education: University of North Florida, 12/2007  
 Bachelor of Science, Communications/Public Relations \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Summary

Extensive knowledge of administration procedures, management of other workers and conflict resolution. Excels in creative problem solving through focused communication and leadership. Dedicated and goal oriented for the purpose of seeing vision become a reality.

## Education

**Bachelor of Science : Communications/ Public Relations, 2007**

**University of North Florida - Jacksonville, FL, USA**

Cumulative GPA 3.2

**UNF Senior Service Award Winner**

## Experience

### League Coordinator

August 2007 to Current

**i9 Sports/ Jacksonville** - Jacksonville, FL

Responsibilities included overseeing the development and operation of all youth sports programs, execution of local marketing plans establishing community relationships, sourcing of volunteers, staffing of sports officials, managing daily inquiries, maintaining website, ensuring the highest level of customer satisfaction.

The program consists of 2,000 + annual participants and generates annual revenue of \$500,000 +.

2006 and 2007 Franchise of the Year

2008 and 2009 MVP Club Award Winner

2015 Highest Customer Satisfaction Award Winner

### Dean of Students

August 2010 to Current

**Beaches Chapel School** - Jacksonville, FL

Responsibilities include establishing policies and procedures through collaborative input that deal directly with student behavior, conducting training of faculty/staff in regards to appropriate classroom decorum, reviews and revises disciplinary aspects of the student handbook, maintains detailed records and student behavior profiles, assists in developing strategic plans to improve student behavior.

School consists of 200+ students

F.L.O.C.S Accredited School

### College Basketball Official

October 2010 to Current

**Women's College Basketball Official** - Southeast United States

Responsibilities include managing all aspects of a basketball game, working closely with fellow referees to foster a team atmosphere dealing strategically within conflict resolution, an advanced ability to manage people in a highly stressful situation, making decisions in a quick and decisive manner, subjecting yourself to immediate evaluation of the decisions that you make.

### Assistant Director

August 2004 to August 2006

**Osprey Productions- University of North Florida** - Jacksonville, FL

Responsibilities included overseeing a student programming board which was directly tasked with planning large scale concerts, homecoming, movie nights and other weekly events. Administrative responsibilities included managing finances, soliciting community partners and graphic design of promotional materials.

Annual budget \$2.5 million

Serving 17,000+ students

## Organizational Involvement

Children's Miracle Network, Girls Inc of Jacksonville, Life Rolls on Foundation and Christian Surfers United States

## References

References are available upon request

City of Jacksonville Beach  
 Office of the City Clerk  
 11 North 3<sup>rd</sup> Street  
 Jacksonville Beach, Florida 32250



RECEIVED

DEC - 2 2015

City Clerk

Phone: (904) 247-6299 ext 10  
 FAX: (904) 247-6256  
 E-mail: cityclerk@jaxbchfl.net

Application for Appointment to City Boards

Personal Information (Please print or type)

Name: Jon Scott Walker Home Phone: 904-553-2426  
 Home Address: 2902 Madrid Street Jacksonville Beach, FL 32250  
 E-Mail Address: JonWalkerOD@me.com Cell Phone: 904-553-2426  
 Occupation: Optometrist Business Phone: 904-363-8282  
 Business Name: Dr. Ted Brink & Associates  
 Business Address: 10300-238 Southside Blvd. Jacksonville, FFL 32256

Eligibility – Please Circle

Are you a resident of the City? Yes No If yes, length of time: 8+ years  
 Are you a registered voter? Yes No If yes, what County: Duval  
 Do you own property in the City? Yes No If yes, address: See Above Home  
 Do you hold a public office? Yes No If yes, Office name: \_\_\_\_\_  
 Are you employed by the City? Yes No If yes, position: \_\_\_\_\_  
 Are you currently serving on a Board? Yes No If yes, Board Name: \_\_\_\_\_  
 Have you been convicted of a felony? Yes No If yes, provide date: \_\_\_\_\_  
 Have your civil rights been restored? Yes No If yes, provide date: \_\_\_\_\_  
 Have you filed bankruptcy? Yes No If yes, provide date: \_\_\_\_\_

Potential Conflict of Interest: Have you ever been engaged in the management/ownership of any business enterprise that has a financial interest with the City of Jacksonville Beach? Yes No

If yes, please provide details:

City Boards (Please indicate your preferences by ranking - denote your Primary choice with a "1", Secondary choice with a "2".)

	Board of Adjustment		1	Planning Commission
2	Community Redevelopment Agency			Pension Trustee

Please list the type of City meetings you have attended: Various including Variance Meetings

Qualifications (Briefly describe specific expertise, abilities, or qualifications) Homeowner and Business Owner in Jacksonville Beach.

Education: See Attached CV

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\* During interview, Mr. Walker asked that preferences be changed to BOA-1, PC-2.

Curriculum Vitae of Jon Scott Walker, O.D., M.S., F.A.A.O.  
2902 Madrid Street  
Jacksonville Beach, Florida 32250  
(904) 553-2426

**EDUCATION:** New England College of Optometry March 1984 Graduate  
Boston, Massachusetts Doctor of Optometry

Southern Illinois University August 1980 Graduate  
Carbondale, Illinois Master of Science  
Major: Physiology-Specialization in Computer Science

Oral Roberts University May 1978 Graduate  
Tulsa, Oklahoma Bachelor of Science  
Major: Biology  
Minor: Chemistry

**EXPERIENCE:** **Dr. Ted Brink and Associates** September 2000 to Present  
10300-238 Southside Blvd.  
Jacksonville, Florida 32256  
Board Certified Optometric Physician and Senior Partner of a multi-office (10) Optometric practice.

**Vistakon/Johnson & Johnson Vision Care, Inc.** November 2002 to Present  
7596 Centurion Parkway  
Jacksonville, Florida 32256  
Clinical Investigator, Consultant and Speaker for The Vision Care Institute, Research & Development and Professional Affairs.

**Aicon Laboratories, Inc.** January 2011 to Present  
6201 South Freeway  
Fort Worth, Texas 76134-2099  
Clinical Investigator, Consultant and Speaker for Research & Development and Professional Affairs.

**Bausch+Lomb** January 2013 to Present  
1400 N Goodman Street  
Rochester, NY 14607  
Clinical Investigator for Research & Development.

**Aerie Pharmaceutical** May 2016 to Present  
135 Route 202/206 Suite 15  
Bedminster, New Jersey 07921  
Clinical Investigator for Research & Development.

**Energeyes** June 2014 to March 2015  
Nashville, TN  
Board Member for the Association of Corporate-Affiliated Optometrists.

**Ciba Vision Corporation** February 2010 to January 2012  
11460 Johns Creek Parkway  
Duluth, Georgia 30097  
Clinical Investigator for a Contact Lens Manufacturer.

**Midwestern University College of Optometry**  
19379 N 59th Avenue  
Glendale, Arizona 85308

August 2011 to Present

Adjunct Faculty for an Optometry School.

**Florida Eye Research Center**  
11512 Lake Mead Avenue, Suite 534  
Jacksonville, Florida 32256

April 2010 to Present

Co-owner with Rajesh Shetty, MD of a clinical research center.

**Schott Management Group**  
441 Carlisle Drive, First Floor  
Herndon, Virginia 20170

August 2010 to January 2012

Speaker for a Continuing Education Provider.

**Vistakon Pharmaceuticals, LLC**  
7500 Centurion Parkway, Suite 100  
Jacksonville, Florida 32256

February 2009 to March 2010

Consultant and Speaker for an Ocular Pharmaceutical Manufacturer.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
7596 Centurion Parkway  
Jacksonville, Florida 32256

August 1997 to October 2000

January 1999 to October 2000: Group Leader of Consultation/ Professional Affairs.

June 1998 to December 1998: Group Leader of Consultation/ Customer Quality.

August 1997 to June 1998: Research Optometrist on the Design Platform of Research and Development.

**Optos**  
199 Forest Street  
Marlborough, Massachusetts 01752

November 2006 to Present

Consultant and speaker for a medical equipment manufacturer.

**LasikPlus**  
8705 Perimeter Park Blvd.  
Suite 10  
Jacksonville, Florida 32216

October 2004 to April 2005

Board Certified Optometric Physician with a multi-office refractive surgery center.

**Northwest Eye Center**  
1135 South Washington Avenue  
Detroit Lakes, Minnesota 56501

April 1988-August 1997

Group Optometric and Ophthalmology practice in northwestern Minnesota.

**St. Mary's Regional Health Center**  
1028 South Washington Avenue  
Detroit Lakes, Minnesota 56501

September 1984-August 1997

Staff optometrist at a community hospital.

**Northwest Eye Center** November 1993-May 1995  
Mahnomon County & Village Clinic  
410 Third Street West  
Mahnomon, Minnesota 56557

Part-time Optometric practice in a multi-specialty clinic.

**Minnesota State Board of Optometry** June 1991-December 1997  
2700 University Ave. West, Suite 103  
St. Paul, Minnesota 55114

Board Vice-President and Chair of the Disciplinary Committee.

**Fergus Falls Community College** November 1989-June 1990  
1414 College Way  
Fergus Falls, Minnesota

Part-time instructor in the Science department.

**Dakota Clinic, Ltd.** September 1984-April 1988  
125 East Frazee Street  
Detroit Lakes, Minnesota 56501

**Dakota Medical Center** September 1984-April 1988  
1702 South University Drive  
Fargo, North Dakota 58108

Primary care optometrist within a network of multi-specialty clinics.

**Minnesota Department of Health** June 1985-August 1991  
Diabetic Control Steering Committee  
Minnesota Department of Health Building  
212 Delaware Avenue  
Minneapolis, Minnesota

Clinical research committee organized to study diabetic retinopathy in the state of Minnesota. Research was funded by the Center for Disease Control.

RESEARCH: **Barnes-Hind** September 1984  
Sunnyvale, California

Clinical investigator for the Hydrocurve bifocal contact lens.

**Syntex** May 1987  
Phoenix, Arizona

Clinical investigator for the Aztech contact lens.

**Sola/Barnes-Hind** August 1987  
Sunnyvale, California

Clinical investigator for the Saturn II Plus (SoftPerm) contact lens.

**Sola/Barnes-Hind**  
Sunnyvale, California

September 1987

Clinical investigator for the Saturn II contact lens and related solutions.

**Sola/Barnes-Hind**  
Sunnyvale, California

August 1988

Clinical investigator for the Polycon HdK, a Group 4 material and a new lens solution.

**CibaVision Corporation**  
Atlanta, Georgia

May 1989

Clinical investigator for the Spectrum bifocal soft contact lens.

**CibaVision Corporation**  
Atlanta, Georgia

January 1990

Clinical investigator for the Softwear Saline.

**CibaVision Corporation**  
Atlanta, Georgia

December 1990

Clinical investigator for a new contact lens solution system.

**Ocular Sciences Corporation**  
San Francisco, California

June 1992

Clinical investigator for a new contact lens material and design.

**CibaVision Corporation**  
Atlanta, Georgia

June 1993

Clinical investigator for a new contact lens solution system.

**CibaVision Corporation**  
Atlanta, Georgia

August 1996

Clinical investigator for the SEE3 (Focus Night & Day) soft contact lens.

**Vistakon/Johnson & Johnson Vision Products, Inc.**  
Jacksonville, Florida

May 2000

Named on 2 patents associated with the ACUVUE Bifocal, 1-Day ACUVUE, ACUVUE Toric and the ACUVUE2 contact lenses.

**Vistakon/Johnson & Johnson Vision Products, Inc.**  
Jacksonville, Florida

November 2002

Clinical Investigator for validation of new manufacturing lines for the ACUVUE contact lens.

**Vistakon/Johnson & Johnson Vision Products, Inc.**  
Jacksonville, Florida

December 2002

Clinical Investigator for a new Bifocal Emulator.

<b>Vistakon/Johnson &amp; Johnson Vision Products, Inc.</b> Jacksonville, Florida	April 2003
Clinical Investigator for ACUVUE Brand BIFOCAL vs. B&L SofLens Multifocal fit with Modified Monovision.	
<b>Foresight Regulatory Strategies</b> Boston, Massachusetts	July 2003
Clinical Investigator for a multi-center evaluation of the galyfilcon A (ACUVUE ADVANCE) contact lens.	
<b>Vistakon/Johnson &amp; Johnson Vision Products, Inc.</b> Jacksonville, Florida	March 2004
Clinical Investigator for Evaluation of Several Field Optimized Contact Lens Designs.	
<b>Vistakon/Johnson &amp; Johnson Vision Products, Inc.</b> Jacksonville, Florida	June 2004
Clinical Investigator for Evaluation of ACUVUE 2 Manufacturing Change.	
<b>Visioncare Research</b> Surry, England	July 2004
Clinical Investigator for an Evaluation of Four Toric Contact Lenses.	
<b>VisionCare Research</b> Surrey, England	January 2005
Multi-Center Evaluation of Soft Lenses in Daily Wear.	
<b>Vistakon/Johnson &amp; Johnson Vision Products, Inc.</b> Jacksonville, Florida	February 2005
Clinical Investigator for the Evaluation of the Frequency 55 Multifocal Versus The Soflens Multifocal	
<b>I3 Research</b> Chicago, Illinois	August 2005
Clinical Investigator for an Extended Wear Contact Lens	
<b>VisionCare Research</b> Surrey, United Kingdom	January 2006
Clinical Investigator for an Evaluation of 1-Day Contact Lenses	
<b>Vistakon/Johnson &amp; Johnson Vision Care, Inc.</b> Jacksonville, Florida	February 2007
Clinical Investigator for a new Multi-focal Contact Lens	
<b>Vistakon/Johnson &amp; Johnson Vision Care, Inc.</b> Jacksonville, Florida	April 2007
Clinical Investigator for a new Multi-focal Contact Lens	

**Vistakon/Johnson & Johnson Vision Care, Inc.** July 2007  
Jacksonville, Florida

Clinical Investigator for the "Evaluation of the Alpha "A" Lens Design

**Vistakon/Johnson & Johnson Vision Care, Inc.** September 2007  
Jacksonville, Florida

Clinical Investigator of a System 8 Lens Design

**Vistakon/Johnson & Johnson Vision Care, Inc.** October 2007  
Jacksonville, Florida

Clinical Investigator of a System 8 Lens Design Across a Range of ADD Powers  
**Vistakon/Johnson & Johnson Vision Care, Inc.** October 2007  
Jacksonville, Florida

Clinical Investigator of a Multi-focal Lens Design Across a Range of ADD Powers

**Vistakon/Johnson & Johnson Vision Care, Inc.** December 2007  
Jacksonville, Florida

Clinical Investigator of a Multi-focal Lens Design Across a Range of ADD Powers

**Vistakon/Johnson & Johnson Vision Care, Inc.** January 2008  
Jacksonville, Florida

Clinical Investigator of a Multi-focal Lens Fitting Process

**Visioncare Research** January 2008  
Surrey, United Kingdom

Clinical Investigator for a Multi-Center Evaluation of Three Silicone Hydrogel Toric Contact Lenses.

**Foresight Regulatory Strategies** February 2008  
Boston, Massachusetts

Clinical Investigator for a Multi-Center Evaluation of Toric Contact Lenses

**Vistakon/Johnson & Johnson Vision Care, Inc.** April 2008  
Jacksonville, Florida

Clinical Investigator of an Alpha Emmetrope Feasibility Study

**Vistakon/Johnson & Johnson Vision Care, Inc.** July 2008  
Jacksonville, Florida

Clinical Investigator for an Evaluation of a Vistakon Multifocal Lens

**Vistakon/Johnson & Johnson Vision Care, Inc.** December 2008  
Jacksonville, Florida

Clinical Investigator for a Pilot Study of Alpha Lenses in Mid and High Add Subjects

**Vistakon/Johnson & Johnson Vision Care, Inc.** April 2009  
Jacksonville, Florida

Clinical Investigator for the Evaluation of Lens Handling of New 1-Day ACUVUE Prototype 229 on Neophyte

**Vistakon/Johnson & Johnson Vision Care, Inc.** April 2009  
Jacksonville, Florida

Clinical Investigator for the New 1-Day ACUVUE Prototype Versus 1-Day ACUVUE Lenses: Dispensing Evaluation

**Vistakon/Johnson & Johnson Vision Care, Inc.** July 2009  
Jacksonville, Florida

Clinical Investigator for the Dispensing Evaluation of Lens Comfort of SSV New Designs.

**Visioncare Research** August 2009  
Surrey, United Kingdom

Clinical Investigator for a Multi-Center Evaluation of Two Silicone Hydrogel Frequent Replacement Contact Lenses

**Vistakon/Johnson & Johnson Vision Care, Inc.** September 2009  
Jacksonville, Florida

Clinical Investigator for the Dispensing Evaluation of a Prototype ACUVUE 1-Day Astigmatism Lens with PVP Additive

**Ciba Vision Corporation** October 2009  
Atlanta, Georgia

Clinical Comparison of Two Silicone Hydrogel Toric Lenses in the U.S.

**Vistakon/Johnson & Johnson Vision Care, Inc.** October 2009  
Jacksonville, Florida

Pilot Evaluation of a Novel Multifocal Contact Lens System

**Vistakon/Johnson & Johnson Vision Care, Inc.** November 2009  
Jacksonville, Florida

Clinical Investigator for the Dispensing Evaluation of Two Prototype ACUVUE 1-Day Moist for Astigmatism Lens

**Vistakon/Johnson & Johnson Vision Care, Inc.** November 2009  
Jacksonville, Florida

Clinical Investigator for the Quantitative Evaluation of a New 1-Day ACUVUE Cosmetic Design Lens

**Vistakon/Johnson & Johnson Vision Care, Inc.** November 2009  
Jacksonville, Florida

Principle Investigator of a Focus Group Evaluation of Soft Contact Lenses Designed to Enhance the Appearance of the Eye

**Ciba Vision Corporation**  
Atlanta, Georgia

December 2009

Clinical Investigator of a Revised Clear Care Lens Case Study.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

January 2010

Clinical Investigator of a Dispensing Evaluation of New Daily Disposable Toric Soft Contact Lens.

**Visioncare Research**  
Surrey, United Kingdom

January 2010

Clinical Investigator for a Multi-Center Evaluation of Two Daily Disposable Contact Lenses and a Monthly Replacement Contact Lens.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

January 2010

Clinical Investigator of a Non-Dispensing Study To Check Equivalence of Fit Between 1-Day ACUVUE for Astigmatism and 1-Day ACUVUE MOIST for Astigmatism.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

February 2010

Clinical Investigator of a Dispensing Evaluation of a New Galyfilcon A Prototype and Air Optix Aqua Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

February 2010

Clinical Investigator of a Dispensing Evaluation of a New Galyfilcon A Prototype RDL122 Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

March 2010

Clinical Investigator of a Dispensing Evaluation of the N-Lens in a Myopic Population.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

March 2010

Clinical Investigator of a Dispensing Evaluation of a New Daily Disposable Toric Soft Contact Lens in an Expanded Power Range.

**CooperVision**  
Fairport, New York

March 2010

Clinical Investigator of a Clinical Evaluation of the Biofinity Multifocal Compared to the ACUVUE OASYS for Presbyopia Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

June 2010

Clinical Investigator of an Initial Feasibility of the Center Distance and Center Near N-Lens.

**CooperVision**  
Fairport, New York

July 2010

Clinical Investigator of a Clinical Evaluation of the Biofinity Multifocal Compared to the AIR OPTIX Multifocal Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

July 2010

Clinical Investigator of a Dispensing Evaluation of 1-Day ACUVUE DEFINE with Lacreon for Light Eyes Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

September 2010

Clinical Investigator of an Evaluation of Novel Multifocal Designs in Hyperopic and Myopic Presbyopes.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

September 2010

Clinical Investigator of a Dispensing Study to Test New Manufacturing Process for 1-Day ACUVUE Moist for Astigmatism.

**Visioncare Research**  
Surrey, United Kingdom

September 2010

Clinical Investigator for a Multi-Center 2-Week Evaluation of Three Silicone Hydrogel Contact Lenses.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

September 2010

Clinical Investigator of a Dispensing Study of Senofilicon A Plus Lenses Made with Different Processes-3GT Blend Front & Back Plastic Molds.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

December 2010

Clinical Investigator of an Evaluation of a Monthly Replacement Soft Toric Contact Lens.

**Alcon Pharmaceutical**  
Fort Worth, Texas

January 2011

Clinical Investigator of an Evaluation of FID 112903 as a Rewetting Drop.

**Visioncare Research**  
Surrey, United Kingdom

August 2011

Clinical Investigator for a Multi-Center of the Air Optix Multifocal Soft Contact Lenses.

**Ciba Vision Corporation**  
Atlanta, Georgia

August 2011

Clinical Investigator for a Cosmetic Validation (US): COBALT vs. FreshLook ColorBlends Among Habitual Wearers of FreshLooks.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

October 2011

Clinical Investigator of an Evaluation of a Novel Daily Disposable Multifocal Contact Lens Designs in Myopes.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

November 2011

Clinical Investigator of an Evaluation of a Novel Daily Disposable Multifocal Contact Lens Designs in Hyperopes.

**Foresight Regulatory Strategies**  
Boston, Massachusetts

July 2012

Clinical Investigator for an Evaluation of 1-Day ACUVUE TruEye (narafilecon A) Brand Contact Lenses in Current 1-Day ACUVUE TruEye (narafilecon B) Contact Lenses Wearers.

**Bausch + Lomb.**  
Rochester, New York

March 2013

Clinical Investigator of a Study to Evaluate the Product Performance of a New Silicone Hydrogel Contact Lens.

**Vistakon/Johnson & Johnson Vision Care, Inc.**  
Jacksonville, Florida

April 2013

Clinical Investigator of an Evaluation of a Novel Daily Disposable Multifocal Contact Lens Designs in High Myopes and Hyperopes.

**Alcon**  
Fort Worth, Texas

June 2013

Clinical Investigator of an Evaluation of Lid Wiper Epitheliopathy with and without Daily Disposable Contact Lenses.

**Alcon**  
Fort Worth, Texas

June 2014

Clinical Investigator for Capture of Previously Recorded Data of FID 112903 as a Rewetting Drop.

**Alcon**  
Fort Worth, Texas

December 2014

Clinical Investigator for Evaluation of Surface Performance of a Daily Wear Silicone Hydrogel Water Gradient Sphere Contact Lens.

**Bausch + Lomb.**  
Rochester, New York

May 2015

Clinical Investigator of a Study to Evaluate the Safety and Effectiveness of a Silicone Hydrogel Soft Contact Lens When Worn on a 7-Day Extended Wear Basis.

**Alcon**  
Fort Worth, Texas

July 2015

Clinical Investigator for Comparison of Two Marketed Silicone Hydrogel Lenses.

Alcon  
Fort Worth, Texas

March 2016

Clinical Investigator for Initial Performance of a Modified Daily Disposable Contact Lens.

Aerie Pharmaceutical  
Bedminster, NJ

May 2016

Clinical Investigator for 3-month Study Assessing the Safety and Ocular Hypotensive Efficacy of PG324 Compared to AR-13324 and Lantanoprost in Subjects With Elevated Intraocular Pressure.

Alcon  
Fort Worth, Texas

September 2016

Clinical Investigator for Dailies Total1 Multi-focal Clinical Assessment in Challenging Patients.

Alcon  
Fort Worth, Texas

November 2016

Clinical Investigator for Initial Performance of a Daily Disposable Contact Lens Featuring Molded Marks.

PUBLICATIONS: Walker, J.S. (1980). Quantitative computer analysis of human and boar sperm motility. Master's Thesis. Southern Illinois University at Carbondale. pp. 122.

Winet, H. Walker, J.S., & Freund, M. (1981). Statistical comparison of traditional and precise Sperm motility evaluations. Abstract. Journal of Andrology: January/February. pp. 32.

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- Visual Enhancement Lens and Associated Methods. Patent Number: 7717556. March 18, 2010.

**TELEVISION CREDITS:**

Pearle Vision's "I Have Seen" National Television and Print Media Spokesperson. (2007).

- MUSIC CREDITS:** "To Know Your Heart-Live Worship". 1999. Warehouse Studio Production. Electric Guitar.
- "Strength For The Journey". 2001. MorningStar Music. Electric Guitar.
- "SCC-Live". 2002. GreaterWorks Productions. Baritone Saxophone.
- "SCC-Live". 2003. GreaterWorks Productions. Electric and Acoustic Guitar.
- "Been To The River". 2007. Bayou & Me Music. Executive Producer and Songwriter.
- 2008 Grindie Award Winner Best Spiritual CD-"Been To The River"
- "Rain Down". 2009. Bayou & Me Music. Co-songwriter. Highest Ranking 10 on Christian Radio.

2009 Rhythm of Gospel Nominations:

- Praise & Worship Album of the Year-"Been To The River"
- Praise & Worship Song of the Year-"Rain Down"

2009 Just Plain Folks Music Awards Nominations

- Contemporary Christian Album of the Year-"Been To The River"
- Contemporary Christian Song of the Year-"You Are King"

ORGANIZATIONS: American Optometric Society-Founding Member  
American/Minnesota/Florida Optometric Association  
1988 Minnesota Optometrist of the Year  
Fellow-American Academy of Optometry  
Fellow-International Association of Contact Lens Educators  
Member of AllDocs  
Board Member-Energieyes, The Association of Corporate-Affiliated Optometrists  
National Board of Examiners in Optometry-Supervising Clinical Examiner  
President-South Beach Village Homeowner's Association  
Beta Sigma Kappa Optometric Honor Society  
Florida and Minnesota Optometry Licensure  
Member of ASCAP  
Member of SAG  
Worship Musician-Electric and Acoustic Guitar; Soprano, Alto, Tenor and Baritone Saxophone



City of  
Jacksonville Beach  
Fire Department  
325 2<sup>nd</sup> Avenue South  
Jacksonville Beach  
FL 32250  
Phone: 904.247.6201  
Fax: 904.247.6155

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**MEMORANDUM**

TO: George D. Forbes, City Manager  
FROM: David L. Whitmill, Fire Chief  
SUBJECT: Replacement of Fire Apparatus  
DATE: November 29, 2017

**ACTION REQUESTED**

Purchase a 2018 Rosenbauer Commander Rescue Pumper from the State Sheriff's Contract at a cost of \$398,744 to replace our current Squad 13, a 2001 Freightliner Commercial Pumper.

**BACKGROUND**

Squad 13 is a 2001 Central States/Freightliner Commercial Chassis Pumper that has been in front-line service for 16 years. It has over 91,000 miles on it and is beginning to need extensive repairs. The truck is budgeted for replacement in the 2018 budget. It is more cost effective to sell the current truck due to its overall condition and its limited seating capacity. Proceeds from its sale will be approximately \$18,000.

A Fire Department Apparatus Committee was selected to review apparatus on the State Sheriff's Contract that would meet our response needs and our service requirements. The committee reviewed proposals from Pierce, E-One, and Rosenbauer for similar pumper specifications.

After extensive research on both the apparatus and its service requirements after the purchase, I recommend the purchase of a 2018 Rosenbauer Commander Rescue Pumper. This apparatus has a 1,250 GPM pump, 500 gallon water tank and a full complement of hose and ground ladders.

Comparative prices are as follows:

Pierce Manufacturing	\$413,624.00
E-One	\$411,367.71
2018 Rosenbauer Commander Rescue Pumper	\$398,744.00



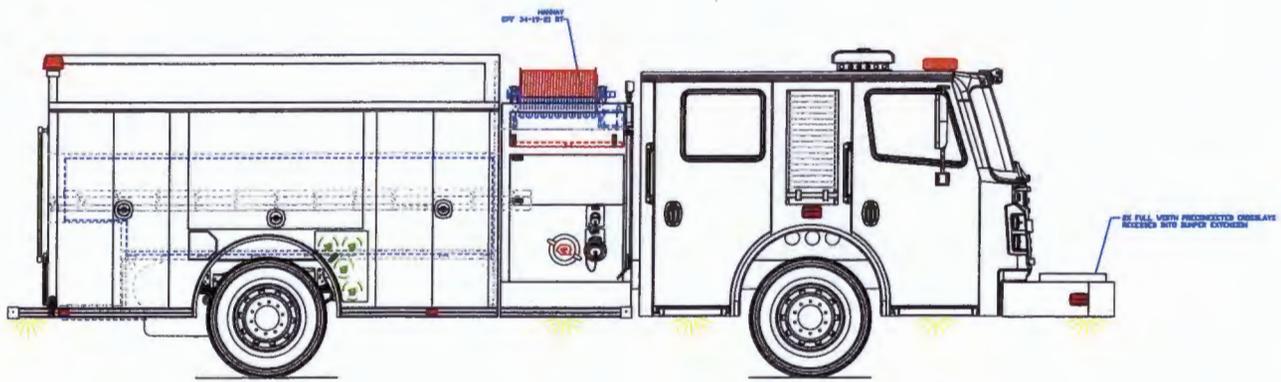
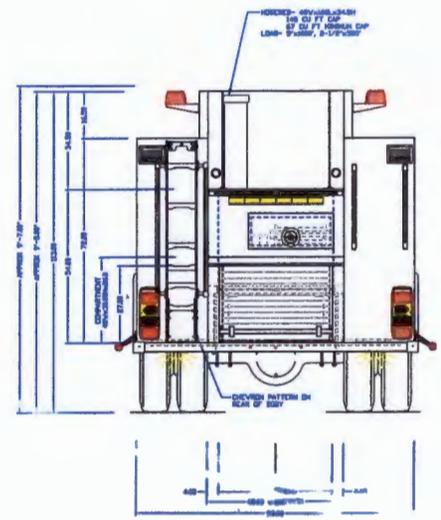
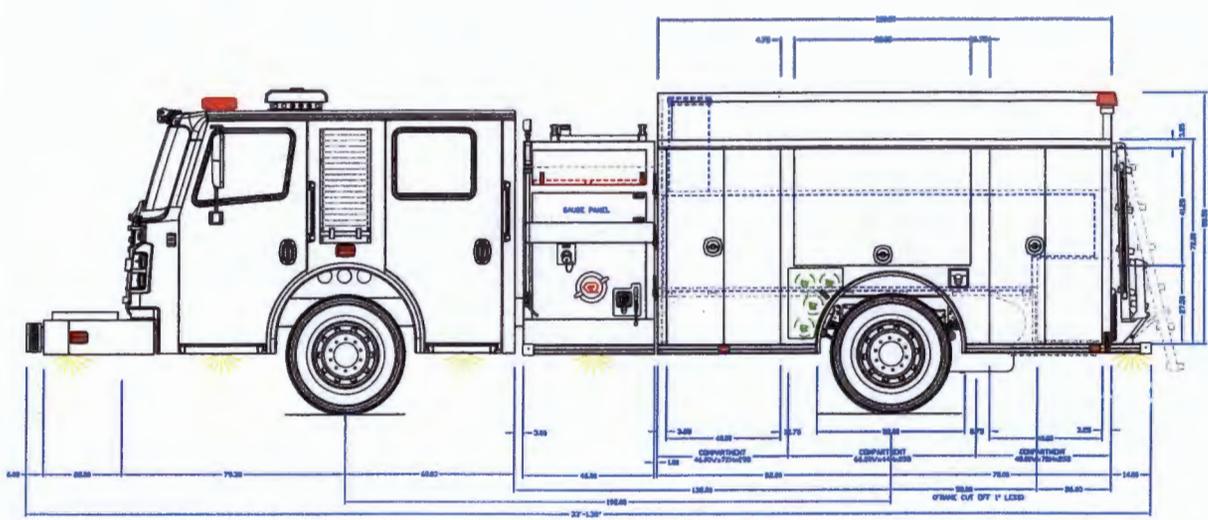
The Rosenbauer Pumper will be purchased through the Florida Sheriff's Association-Fire Rescue Vehicles Bid (#FSA16-VEF12.0, with upgrades to meet the requirements of the Jacksonville Beach Fire Department). Rosenbauer is a worldwide manufacturer that has a service facility in Ocala, Florida as well as several contracts with mobile service technicians. The pumper will be built in South Dakota; build time will be 10-12 months.

\$375,000 is included in the budget for the replacement of Squad 13. The balance remaining after the proceeds from the sale of Squad 13 will come from the Fire Apparatus Reserve in the General Capital Projects Fund and will be included in the mid-year or year-end budget adjustment. Squad 13 will not be sold until the replacement truck arrives.

**RECOMMENDATION**

Approve the purchase of a 2018 Rosenbauer Commander Rescue Pumper from the State Sheriff's Contract as outlined in the memo by Chief David Whitmill dated November 29, 2017.

- NOTES:
1. OVERALL HEIGHT IS IN LOADED CONDITION. UNLOADED HEIGHTS MAY BE 4" ABOVE HEIGHTS SHOWN.
  2. DO NOT SCALE DRAWING.
  3. ALL DIMENSIONS ARE APPROXIMATE AND SUBJECT TO ENGINEERING CHANGES.
  4. DRAWING MAY OR MAY NOT SHOW ALL ITEMS AS DESCRIBED IN THE WRITTEN DETAIL SPECIFICATIONS.
  5. INCLUSION OF AN ITEM ON THE DRAWING DOES NOT CONSTITUTE INCLUSION OF THAT ITEM WITH THE FINAL DELIVERED UNIT.
  6. THE EFFECTIVE DOOR OPENINGS WILL BE APPROX. 2" LESS THAN THE NOTED COMPARTMENT OPENING FOR ROLL UP DOORS AND UP TO APPROX. 4" LESS FOR HINGED DOORS



APPROVED BY:

CHASSIS:	ROSENBAUER 6000
PUMP:	WATEROUS 1250 GPM
TANK:	POLY/500
PANEL MATL:	LINE X
COMP INTERIOR:	DA SANDED
MAXIMUM HEIGHT:	NONE
MAXIMUM LENGTH:	NONE
BODY WIDTH:	98"

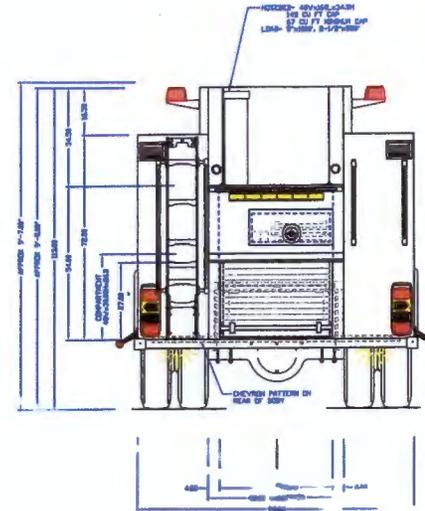
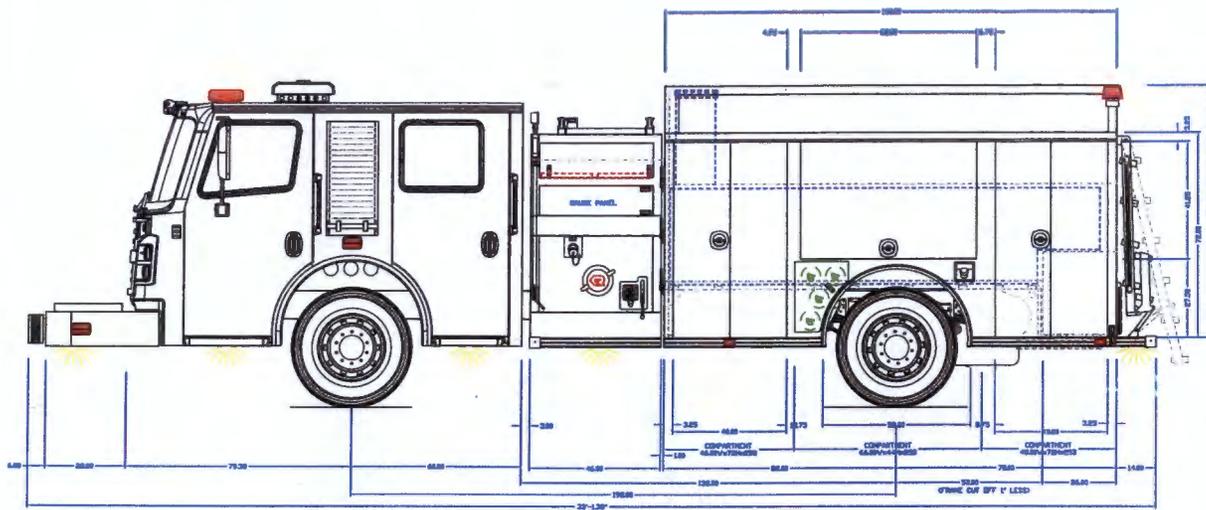
REVISED: VLN] DATE: 07-10-17  
 REVISED: VLN] DATE: 05-20-17  
 DRAWN: VLN] DATE: 05-01-17

PROPRIETARY AND CONFIDENTIAL  
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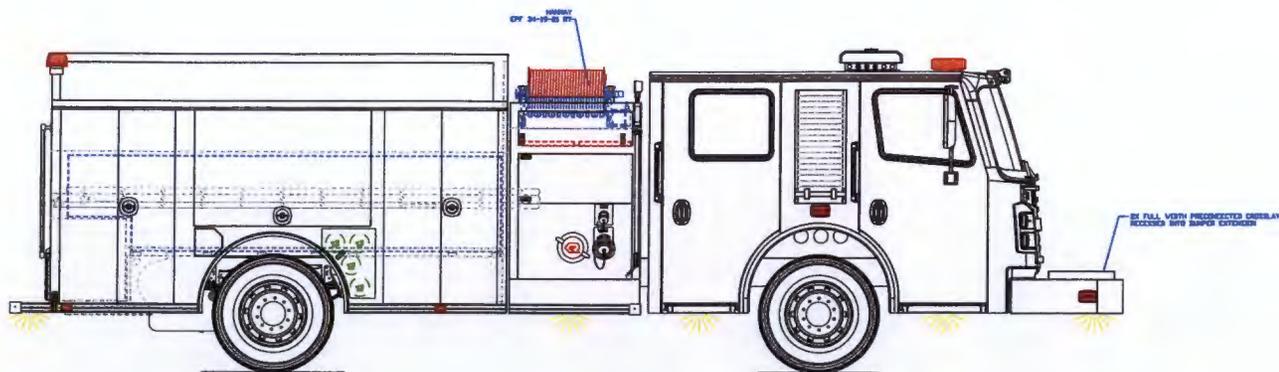
# JACKSONVILLE BEACH F.D., FL



ROSENBAUER FX 1/8"  
 JACKSONVILLE BEACH, FL -



- NOTES:
1. OVERALL HEIGHT IS IN LOADED CONDITION. UNLOADED HEIGHTS MAY BE 4" ABOVE HEIGHTS SHOWN.
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  6. THE EFFECTIVE DOOR OPENINGS WILL BE APPROX. 2" LESS THAN THE NOTED COMPARTMENT OPENING FOR ROLL UP DOORS AND UP TO APPROX. 4" LESS FOR HINGED DOORS



APPROVED BY:

CHASSIS:	ROSENBAUER 5000
PUMP:	WATEROUS 1250 GPM
TANK:	POLY/500
PANEL MATL:	LINE X
COMP INTERIOR:	DA SANDED
MAXIMUM HEIGHT	NONE
MAXIMUM LENGTH	NONE
BODY WIDTH	98"

REVISED WLK DATE 07-10-17  
 REVISED WLK DATE 05-26-17  
 DRAWN WLK DATE 05-21-17

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# JACKSONVILLE BEACH F.D., FL



ROSENBAUER FX 1/8"  
 jacksonville beach, fl

City of

Jacksonville Beach

1460 Shetter Ave

Jacksonville Beach

FL 32250

Phone: 904.247.6226

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

## MEMORANDUM

TO: George D. Forbes, City Manager  
FROM: Luis F. Flores, Property and Procurement Officer  
DATE: November 27, 2017  
SUBJECT: Contract for Water Intrusion Repairs at the Community Services Center

### **ACTION REQUESTED**

Approve a contract with Garland/DBS, Inc. for water intrusion repairs at the Community Services Center facility located at 850 6<sup>th</sup> Avenue South.

### **BACKGROUND**

The Community Services Center is a City-owned facility located at 850 6<sup>th</sup> Avenue South in Jacksonville Beach. The facility was constructed in 1983 using Community Development Block Grant (CDBG) funds. The property is leased by non-profit organizations providing assistance to low and moderate income citizens. Currently, BEAM and the Sulzbacher Center have leases on the property. The property consists of five buildings surrounding an exterior covered (gazebo) structure in the center courtyard.

Exterior building repairs are necessary to address water intrusion issues throughout the facility. Stucco cracks and delamination are prevalent on all perimeter and parapet walls. The existing exterior wood canopy is poorly attached to the structure and the exterior finished grade is higher than the metal window frames, allowing moisture to enter at floor level.

Staff obtained quotes for the repairs from Garland/Design Build Solutions, Inc. under the Master Intergovernmental Cooperative Purchasing Agreement, available through U.S. Communities. This is a competitively bid contract for roofing supplies and services, waterproofing and related products and services. This agreement affords Garland the ability to obtain pricing from local market competition. All U.S. Communities contracts have been competitively solicited by a lead public agency in accordance with public purchasing rules and regulations.



Memo to George D. Forbes  
Community Services Center Repairs  
November 27, 2017

2

The proposed repairs will restore the stucco finish, provide a new metal parapet cap, address flashings concerns and replace all compromised sealants and backer rod around exterior windows. Soil and landscaping will also be graded away from exterior windows, where the finished grade is higher than the window frames, to eliminate water intrusion at slab level. The exterior wood canopy in the courtyard attached to the building will be demolished and a new pre-engineered, detached metal walkway cover structure will be installed.

The pricing for this contract is established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA # 14-5903). The estimated cost for Garland and their contractors to address stucco, window, landscape and canopy issues throughout the facility is \$158,412. A contingency allowance of \$15,000 is requested for unforeseen/additional stucco or lath window repairs. Funding for the project will be split between the Leased Facilities Fund and the General Capital Projects Fund, and included in the mid-year budget modification.

Budget Summary:

Garland/DBS Inc: Proposal including new metal canopy	\$146,707
R&D Landscaping & Irrigation: Exterior grading and modifications	\$5,005
BBG Contracting Group: Metal coping replacement	<u>\$6,700</u>
Sub Total	\$158,412
Contingency allowance	<u>\$15,000</u>
Total Project Costs	<b><u>\$173,412</u></b>
General Capital Projects Fund	\$111,706
Leased Facilities Fund Reserves	\$61,706

**RECOMMENDATION:**

Approve the contract with Garland/DBS, Inc. for water intrusion repairs at the Community Services Center facility as described in a memo from Luis F. Flores, Property and Procurement Officer, dated November 27, 2017.



Garland/DBS, Inc.  
3800 East 91<sup>st</sup> Street  
Cleveland, OH 44105  
Phone: (800) 762-8225  
Fax: (216) 883-2055



## WATERPROOFING MATERIAL AND SERVICES PROPOSAL

Community Center Exterior Improvements  
City of Jacksonville Beach  
850 6th Ave S  
Jacksonville Beach, FL 32250

Date Submitted: 10/23/2017

Proposal #: 25-FL-171086

MICPA # 14-5903

Florida General Contractor License #: CGC1517248

Purchase orders to be made out to: Garland/DBS, Inc.

**Please Note:** The following proposal is being provided according to the pricing established under the Master Intergovernmental Cooperative Purchasing Agreement (MICPA) available through U.S. Communities. This proposal should be viewed as the maximum price an agency will be charged under the agreement. Garland/DBS, Inc. administered a competitive bid process for the project with the hopes of providing a lower market adjusted price whenever possible.

### Scope of Work:

#### References/Qualifications:

1. Tree trimming to be the responsibility of the Owner and not part of this scope of work. Some of the trees will likely need to be pruned in advance of this scope of work.
2. Owner will be responsible for disconnecting/re-connecting any electrical fixtures through the course of this work; Lights/electrical infrastructure on existing canopy will need to be removed.

#### Stucco Repairs and Restoration:

1. Stucco Repair Products, refer to and follow standard BASF installation details for the following stucco repair and restoration products:
  - a. MasterProtect AWB 660 – fluid applied air and water barrier used in conjunction with Jumbotex felt paper
  - b. PermaLath 1000 – for lath replacement
  - c. Replacement stucco to be fibered stucco as manufactured by BASF
  - d. Sheathing – Densglass and treated plywood for corner details
2. Stucco Finish to achieve – in areas of repair and replacement, all replacement stucco finishes to match existing exposed shell finish in texture. Contractor to match existing finish as much as reasonably possible prior to applying the final finish coats.

3. Majority of exterior corner stucco details (where wall interfaces with shingles and soffit) will require complete restoration; poor/failed lath completely replaced along with a new stucco finish. From core sampling, it appears the vast majority of the stucco assembly in the field is in fair to good condition, however, we can anticipate isolated areas of lath-stucco replacement or just stucco replacement. The following allowance to be provided in the base bid proposal:
  - a. Completely replace poor/failed stucco and lath; include an allowance of 750 sqft in base bid proposal. If actual amount is below/above the base bid allowance, unit cost credits/charges to be applied.
  - b. Completely replace poor/failed stucco (stucco only in the event the lath is in fair to good condition); include an allowance of 250 sqft in base bid proposal. If actual amount is below/above the base bid allowance, unit cost credits/charges to be applied.
4. Standard Repairs to be included in base bid proposal; stucco cracks up to ¼" to be routed out and repaired per stucco specification, imperfections and small repairs to soffit details
5. Control Joint - Install horizontal control joint detail where stucco assembly interfaces with the brick assembly, approx. 230 lineal feet. This will be done with backer rod and Tuff Stuff MS sealant.
6. Interfaces with Brick on the West side of building above where the damaged lentil detail exist, approx. 20 lnft. The shift in the brick work has damaged the stucco at this specific location, so we will include repairing this details as part of the base bid proposal. Contractor to match brick and mortar as best as reasonably possible.
7. Remove and discard existing metal coping infrastructure. Provide for a longterm 60 mil ice and water barrier (peel and stick) over parapet wall details in preparation for roof contractor to then install the new metal coping, approx. 516 lineal feet.
8. Following all stucco repairs and all repairs have been approved by Owner; Clean and prepare all surfaces, apply two coats Tuff Coat, an emulsified elastomeric weatherproofing coating system, per mfg specifications. Color to be approved by owner.
9. Failed Steel Lintel Replacement - Provide replacement of the failed steel lintel on the West side of the building where the entry/exit doorway exist. Also, include the repair and minor tuck-pointing of the brick details that is required to repair and restore these conditions. Detail to be approved by Owner in advance.
10. Stucco contractor to work with metal coping installer (presumably BBG, the roof contractor) to prepare 4 locations where coping ends terminate at stucco wall. Detail to be approved by Owner in advance.
11. Flashing to Canopy Detail – a new free standing canopy will be installed as part of this project. That is the canopy will not be attached to the building however will abut up to the building within in 2". Stucco contractor will need to provide a flashing detail to 'kick' the water away from wall and onto canopy where the canopy will interface with the perimeter of the facility, approximately 80 lineal feet. The specific detail is to be approved by Owner in advance of work.

12. Rake (not ridge) Counterflashing Details (shingle to stucco) – install an aluminum, factor paint finish, through stucco counterflashing detail on all roof sections with the exception one run (East Side) that was completed previously, approximately 340 total lineal feet. To accomplish this, the existing metal flashing running up the inside perimeter of parapet wall details will need to be cut down to an approximate 6”-8” above shingles, then the correct counterflashing detail installed. Detail to be approved by Owner in advance.
13. Demolition of Gutters/Downspouts will be included in the ‘Stucco Repairs and Restoration’ Scope of Work on bid proposal sheet. Installation of new gutters/downspout will be included in ‘3. Shingle Details & Gutter Downspout Modifications’ base line item proposal below.
14. Window and Miscellaneous Sealants, Unit Costs:
  - a. ‘Wet Seal’ Selected Windows – remove existing sealants, clean/prepare, install new sealant detail around perimeter of window. Provide a Lineal Foot Unit Cost.
  - b. Window Frame to Exterior Sidewalk/Concrete Detail – remove existing sealants, clean/prepare, install new sealant detail (install backer rod or tape where that will be needed). Provide a Lineal Foot Unit Cost.
15. Provide repair where holes will be left in concrete walkway from the bench removal in the demolition scope of work.
16. Provide One Year Watertight Contractor Warranty and Ten Year Materials Warranty from the Manufacturer.

Shingle Details and Gutter/Downspout Modifications:

1. Shingle to parapet wall metal flashing detail at the ridge (or high point of shingles), approx. 250 lft – the metal is oxidizing excessively in isolated areas here. The repair scope as follows; prepare surfaces with red oxide primer (rust inhibitor), install heavy at rate of 10 LF per 11 oz tube of GarlaFlex, a high rubber content asphalt sealant.
2. Install kick-out flashings in locations at eight (9) locations; where shingles terminate at wall and gutter. Kick-out flashings to be .040 aluminum kynar finish (color selected by Owner).
3. Replace existing gutter/downspout system with new 5'X6' .032 gutters and downspouts, kynar finish (color selected by Owner). Also, provide new concrete splash blocks at 8 locations.
4. Tie-in two downspouts, on East Side, to underground pvc piping. Contractor to provide for and install 8” diameter pvc below grade drain infrastructure and run that infrastructure approx. 70 LF. Terminate below grade drain infrastructure above grade where slope of ground changes near sidewalk on North side of property.

Demolition Scope of Work as Follows:

1. Remove existing wood canopy infrastructure and dispose of properly.
2. Remove existing bench seating infrastructure and dispose of properly.

### Stucco Repairs and Restoration

\* Proposal pricing based on Line Item Pricing under MICPA, 23.171

<b>Base Bid Total Maximum Price of Line Items under the MICPA:</b>	\$	83,170
<b>Proposal Price Based Upon Market Experience:</b>	\$	83,170

**Garland/DBS Price Based Upon Local Market Competition:Stucco Repairs**

<b>Kyrstal Companies DBA Krystal Klean</b>	\$	83,170
Fields General Contracting, Inc.	\$	95,865
KBT Construction	\$	99,159

**Unit Prices Stucco Repair/Restoration:**

**Line #3-a: Replace poor/failed stucco, lath and sheathing:**

Below 750 sqft allowance provided in base bid proposal, Deduct	\$	17.10	per Sq. Ft.
Over 750 sqft allowance provided in base bid proposal, Add	\$	22.80	per Sq. Ft.

**Line #3-b: Replace poor/failed stucco and lath (maintain existing sheathing):**

Below 250 sqft allowance provided in base bid proposal, Deduct	\$	14.82	per Sq. Ft.
Over 250 sqft allowance provided in base bid proposal, Add	\$	19.38	per Sq. Ft.

**Line #14 – a: 'Wet Seal' Selected Windows** \$ 5.70 per Ln. Ft.

**Line #14 – b: Window Frame to Exterior Sidewalk/Concrete** \$ 10.26 per Ln. Ft.

### Shingle and Gutter/Downspout Modifications & Demolition

\* Proposal pricing based on Line Item Pricing under MICPA, 23.171

<b>Base Bid Total Maximum Price of Line Items under the MICPA:</b>	\$	15,105
<b>Proposal Price Based Upon Market Experience:</b>	\$	15,105

**Price Based Upon Local Market Competition:Shingle & Gutter/Downspout/Demo**

<b>VQ Companies</b>	\$	15,105
Kyrstal Companies DBA Krystal Klean	\$	16,357
Fields General Contracting, Inc.	\$	19,095

### New Canopy

\* Proposal pricing based on Line Item Pricing under MICPA, 23.171

<b>Base Bid Total Maximum Price of Line Items under the MICPA:</b>	\$	48,432
<b>Proposal Price Based Upon Market Experience:</b>	\$	48,432

**Garland/DBS Price Based Upon Local Market Competition:New Canopy**

<b>Mobile Specialties Inc.</b>	\$	48,432
KBT Construction	\$	62,700
Krystal Companies DBA Krystal Klean		Did Not Bid
Fields General Contracting, Inc.		Did Not Bid

**Summary**

Stucco Repairs and Restoration:	\$	83,170	Krystal Klean
Shingle and Gutter/Downspout Modifications & Demolition	\$	15,105	VQ
Installation of New Canopy Infrastructure	\$	<u>48,432</u>	Mobile Specialit
<b><u>Total Contract Award:</u></b>	<b>\$</b>	<b>146,707</b>	

Potential issues that could arise during the construction phase of the project will be addressed via unit pricing for additional work beyond the scope of the specifications. Proposal pricing valid through 12/31/2017.

**Clarifications/Exclusions:**

1. Sales and use taxes are excluded. Please issue a Tax Exempt Certificate.
2. Permits are included.
3. Bonds are included.
4. Plumbing, Mechanical, Electrical work is excluded.
5. Any work not exclusively described in the above proposal scope of work is excluded.

If you have any questions regarding this proposal, please do not hesitate to call me at my number listed below.

Respectfully Submitted,

*Steve Rojek*

Steve Rojek  
Garland/DBS, Inc.  
(216) 430-3613



R&D Landscape & Irrigation, Inc.  
P.O. Box 24271 Jacksonville, FL 32241  
Ph (904) 737-9733 Fx (904) 737-2240  
rndlandscape.com

PROP #L23500

**R & D LANDSCAPE & IRRIGATION, INC.  
LANDSCAPE PROPOSAL  
FOR CITY OF JACKSONVILLE BEACH  
BEAM BUILDING**

**GENERAL PROVISIONS**

1. This proposal is for landscape services.
2. R & D Landscape and Irrigation will provide the labor and materials.
3. Prices on proposal are good for 15 days due to increasing material cost, after 15 days please call to confirm price.

**SERVICES CONTRACTOR WILL PERFORM**

**OPTION A:**

1. We propose at the east back of the building to have the plants removed from the A/C Units on the Southeast corner to extend to the A/C Units on the Northeast Corner of the building. Mulch, regrade the beds and install French drains to divert the water away from the building. Cost-\$2,495.00
2. We propose to install in these areas 5 yards of 1 inch Brown River Rock. Cost-\$1250.00
3. Connect 2 gutter downspouts in same area to solid 4" drain pipe an emit at sidewalk on northside of property. Cost-\$875.00

**COMPENSATION**

**OPTION A:**

The above described services shall be performed for Payment of Four Thousand Six Hundred Twenty dollars (\$4,620.00) will be due upon completion of work.

**SERVICES CONTRACTOR WILL PERFORM**

**OPTION B:**

4. At the southwest corner of the building to the left of the sidewalk, we propose to remove the existing turf and mulch in front of the window, regrade area to promote drainage away from the building. Removal and Prep. Cost-\$135.00
5. Install ¼ yard of Brown River Rock to the bed in front of the window. Cost-\$60.00
6. Install ½ pallet of Bahia sod to the re-graded area. Cost-\$190.00



R&D Landscape & Irrigation, Inc.  
P.O. Box 24271 Jacksonville, FL. 32241  
Ph (904) 737-9733 Fx (904) 737-2240  
rndlandscape.com

PROP #L23500

**COMPENSATION  
OPTION B:**

The above described services shall be performed for Payment of Three Hundred Eighty-Five dollars (\$385.00) will be due upon completion of work.

**NOTE:**

**(Plants in option A are to be removed and transplanted by the tenants per their request.)**

**ACCEPTANCE OF PROPOSAL**

R & D Landscape & Irrigation Inc.

City of Jacksonville Beach  
Attn: Luis Flores

By: \_\_\_\_\_  
Wayne Womack  
Sales Manager  
November 7, 2017

By: \_\_\_\_\_  
\_\_\_\_\_, 2017

November 9, 2017

**TO:** George Forbes, City Manager

**FROM:** Ty Edwards, Public Works

**SUBJECT:** Dedication to the City and Acceptance for Maintenance of Public Infrastructure Improvements Constructed in Conjunction with Development of the *Church of Our Savior* Property

City of

Jacksonville Beach

City Hall

11 North Third Street

Jacksonville Beach

FL 32250

[P] 904.247.6268

[P] 904.247.6276

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

---

**ACTION REQUESTED:**

Approve the dedication to the City and acceptance for maintenance of the public infrastructure improvements constructed in conjunction with the new worship facilities for the *Church of Our Savior*.

**BACKGROUND:**

The initial development plan for the new worship facilities for the *Church of Our Savior*, at its property along Beach Boulevard near Hopson Road, required:

- A new 6-inch water main and one fire hydrant from the City water distribution system on Beach Boulevard and
- A sanitary sewer manhole and service to connect to the City sanitary sewer collection system.

At the request of the City, the water main was upsized to 8-inch and extended to the west through the church property to the City's Sewage Pump Station property on Hopson Road. This change enhanced the City's planning to construct a water main loop to improve water pressure and flow for fire suppression on Hopson Road. On July 17, 2017, the Council approved a cost share reimbursement of \$25,725.00 for the additional cost of the upsized and lengthened water main.

Construction of the 8-inch water main and the sewer manhole / service is complete. The *Church of Our Savior* granted the City a Perpetual Utilities Easement through its property for the water main.

Public Works staff inspected and accepted the water and sewer infrastructure that was constructed. The water main was tested and the Florida Department of Environmental Protection cleared the water main for service and it is in operation. The engineer certified the water main work based on testing results and as-built drawings and certified the work's value. The contractor provided a one-year warranty bond.



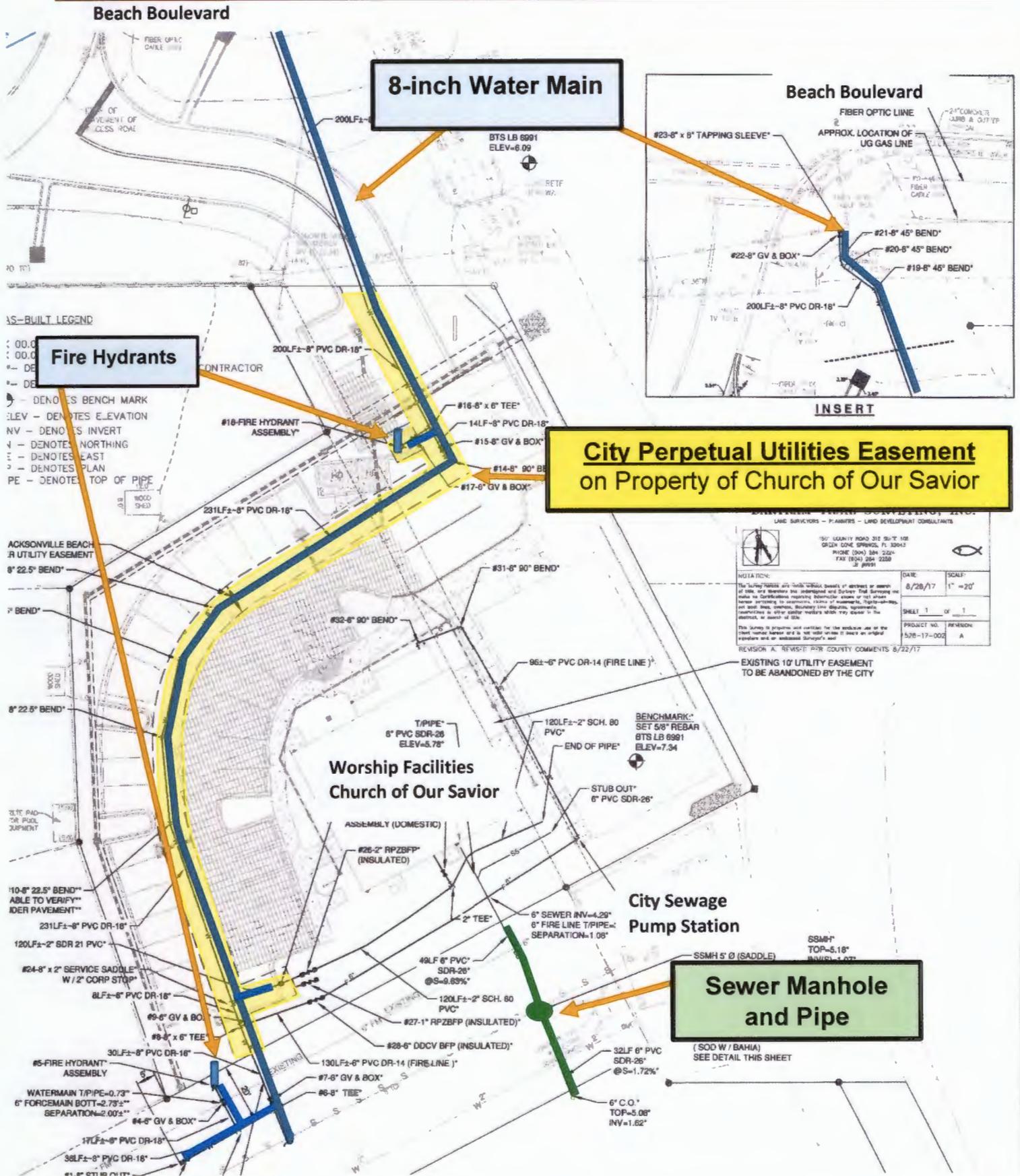
<b>Summary of Public Infrastructure Dedicated to the City for Maintenance</b>	<b>Estimated Value</b>
Potable Water Distribution System consisting of: <ul style="list-style-type: none"> <li>- 515 LF of 8-inch diameter PVC water main</li> <li>- Three (3) gate valves w/ boxes</li> <li>- Two (2) fire hydrant assemblies &amp; connections</li> <li>- One (1) potable water service connection</li> <li>- One (1) fire protection service connection</li> <li>- Various fittings and appurtenances</li> </ul>	\$52,825.00
Sanitary Sewer Collection System consisting of: <ul style="list-style-type: none"> <li>- One (1) sanitary sewer manhole</li> <li>- 81 LF of 6-inch diameter PVC pipe</li> </ul>	\$8,000.00
<b>Total</b>	<b>\$60,825.00</b>

**RECOMMENDATION:**

Approve the dedication to the City and acceptance for maintenance of the public infrastructure improvements constructed in conjunction with the development of the *Church of Our Savior* property along Beach Boulevard as described in the memorandum from the Public Works Director dated November 9, 2017.

# Overview

## Water & Sewer Infrastructure Dedicated to the City by Church of Our Savior





## Church of Our Savior

2092 Beach Blvd, Jacksonville Beach, FL 32250  
Office (904) 821-8558  
mail@church-savior.com www.church-savior.com

The Reverend David Ball, Pastor

October 23<sup>rd</sup>, 2017

Public Works Department  
11 North 3<sup>rd</sup> Street  
City of Jacksonville, Beach FL  
32250

To whom it may concern:

Church of Our Savior Anglican, Inc. hereby requests that the City of Jacksonville Beach accept responsibility for the maintenance of public infrastructure and water distribution system improvements constructed in conjunction with the new worship facilities for the Church of Our Savior.

Sincerely,

A handwritten signature in blue ink, appearing to read "w. white".

William C. White  
Senior Warden  
Church of Our Savior



10175 Fortune Parkway  
Suite 403  
Jacksonville  
Florida 32256  
Tel: 904.519.7770  
Fax: 904.519.7776  
jnevin@GoodsonNevin.Com

October 31, 2017

Mr. Marty Martirone, PE and Mr. Robin Smith, PE  
City of Jacksonville Beach – Dept. of Public Works  
1460-A Shetter Ave.  
Jacksonville Beach, FL 32250

**Re: Church of Our Savior  
Engineer's Certification and Schedule of Values for Water and Sewer  
GNA # 114126P**

Dear Marty and Robin:

We hereby request approval by your department for a Warranty Bond in the amount of \$52,825.00 for the potable water system / main extension from Beach Blvd through the Church of Our Savior property ending within the City of Jacksonville Beach (City) pump station access parcel. The water main extension is to be conveyed to the City for maintenance. The water main has been reviewed with "passing" pressure tests, Bacteriological tests, and as-builts for substantial compliance and has been cleared by the City and the Florida Dept. of Environmental Protection for potable use. The gravity sewer services have been installed for both the church sanctuary parcel (north parcel) as well as a service stub for the south lot. The as-builts and all clearance documents are on file with the City's Dept. of Public Works for both water and sewer.

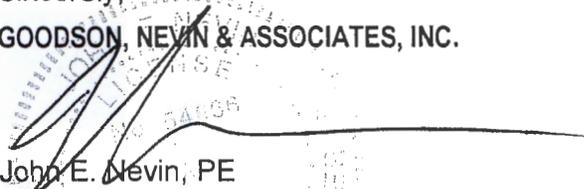
To the best of my knowledge and belief, the attached Schedule of Values (SV) is an adequate basic representation of the improvements conveyed to the City. The attached SV of the improvements for the City's acceptance is based on the project schedule of values for construction as provided by Davie Underground, Inc. for the water portion and an estimation of values for sewer by GNA. Refer to the attached worksheet for a detailed breakdown of these values.

Work Items: Potable Water Main Extension Cost: \$52,825.00  
Gravity sewer services Cost: \$8,000.00

Should you have any questions, please do not hesitate to contact myself or Ed Goodson.

Sincerely,

**GOODSON, NEVIN & ASSOCIATES, INC.**



John E. Nevin, PE  
Principal

JEN/elg  
Attachments: as noted

## ESTIMATED VALUE OF IMPROVEMENTS FOR ACCEPTANCE

PROJECT: CHURCH OF OUR SAVIOR  
LOCATION: JACKSONVILLE BEACH, FL  
CONTRACTOR: DAVIE UNDERGROUND

<u>ITEM</u>	<u>UNITS</u>	<u>QTY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
LOCATE 8" MAIN	1	EA	500	500.00
8" TAPPING Slv & Valve	1	EA	4800	4800.00
8" "B" CROSSING	1	EA	4000	4000.00
SEED & MULCH W/I R/W	1	LS	750	750.00
8" PVC	515	LF	45	23175.00
8" 45D	1	EA	450	450.00
8" 22.5D	6	EA	400	2400.00
8"X6" TEE	2	EA	500	1000.00
8" GV&BOX	3	EA	1500	4500.00
8" 90D	1	EA	350	350.00
8"X2" SERVICE LAT.CORP.	1	EA	800	800.00
8" TEE	1	EA	550	550.00
8" PLUG	1	EA	550	550.00
FIRE HYDRANT ASSEMB.	2	EA	4500	9000.00
Sewer Manhole	1	EA	5,000.00	5000.00
Gravity sewer services	2	EA	1500	3000.00
				0.00
				<u>0.00</u>
<b>TOTAL</b>				<b>\$ 60,825.00</b>

November 27, 2017

**TO:** George Forbes, City Manager

**FROM:** Ty Edwards, Public Works

**SUBJECT:** Adopt Resolution No. 1997-2017 Authorizing the Construction and Maintenance Agreement with the Florida Department of Transportation (FDOT) Detailing Responsibilities for the New Bridges and Roadway Approaches at 15<sup>th</sup> and 18<sup>th</sup> Avenues North, as part of the FDOT A1A Drainage Project

Authorize the Utility Work by Highway Contractor Agreement with the FDOT to Relocate by Replacing City Water & Sewer Utilities Infrastructure at 15<sup>th</sup> and 18<sup>th</sup> Avenues North, as part of the FDOT A1A Drainage Project

---

**ACTION REQUESTED:**

1. Adopt Resolution 1997-2017, authorizing the Mayor and City Manager to execute the Construction and Maintenance Agreement with FDOT detailing ownership of, and responsibilities for the cost, construction, operation, maintenance and repair of, the new bridges and roadway approaches at 15th and 18th Avenues North, as part of the FDOT A1A Drainage Improvements Project.
2. Authorize the Mayor and City Manager to execute with FDOT the Utility Work by Highway Contractor Agreement (at FDOT expense) to relocate by replacing City water and sewer utilities infrastructure at 15<sup>th</sup> and 18<sup>th</sup> Avenues North, as part of the FDOT A1A Drainage Project.

**BACKGROUND:**

The FDOT has scheduled the bid award for its A1A Drainage Improvements Project (Financial Project No. 4360771) in early December. This project will construct major drainage channel improvements for the FDOT Drainage (channel) Easement. This project starts east of the Kings Road Bridge in Neptune Beach to 400 feet south of 15th Avenue N. in Jacksonville Beach. Along the FDOT Drainage Easement, the design widens the three (3) road crossings to improve stormwater flow at 15th and 18th Avenues N., and Seagate Avenue by spanning new channel bulkheads with new bridges, correcting the historical and ongoing roadway-related drainage constrictions.

In June, Council approved perpetual easements at the locations of the new bridges. These easements were necessary to memorialize and create an uninterrupted FDOT Drainage Easement for construction of the new channel bulkheads and new bridges at the channel's intersection with the three (3) roads. At that time, Council also approved temporary construction easements adjacent

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to the bridge sites for necessary transition improvements for the existing roadways.

Prior to bid award, the FDOT requires the City execution of this FDOT-standard Construction and Maintenance Agreement. The agreement specifies ownership of and responsibilities for the cost, construction, operation, maintenance and repair of, the new bridges and roadway approaches at 15th and 18th Avenues North. These bridges will be constructed as part of the FDOT A1A Drainage Improvements Project. A summary of the key provisions follows:

- The FDOT is responsible to design and construct the bridges and roadway approaches at its expense.

The City is responsible to operate, maintain and repair the bridges and the roadway approaches at its expense and to the satisfaction of the FDOT.

- The FDOT will own the bridges since they are located within the FDOT Drainage Easement. *(This is a standard FDOT practice.)*

The City will own the roadway approaches since they are located outside the FDOT Drainage Easement.

- The FDOT insisted on language that authorizes the FDOT to require the City to remove improvements in the FDOT Drainage Easement if the FDOT determines:
  - “The Improvement is not maintained in accordance with Governmental Law,
  - Removal is required by applicable Governmental Law,
  - The Agency (*City*) breaches a material provision (as determined by the Department) of this Agreement, or,
  - Removal of the improvement is necessitated by the Department in the conduct of its business.”

**NOTE:** *The City staff pushed hard on FDOT staff to have this language revised, but to no avail. The FDOT staff raised this issue to the District 2 Secretary-level.*

- The term of this Agreement is for a period of one (1) year and shall automatically renew for successive and continuing like one (1) year terms unless terminated by the FDOT.

There will be a separate construction and maintenance agreement in the near future for Seagate Avenue that will be a three-party agreement between the FDOT, the City of Neptune Beach, and the City of Jacksonville Beach.

Also, before bid award the FDOT requires the City execution of the FDOT-standard Utility Work by Highway Contractor Agreement (At FDOT Expense).

- This agreement authorizes the FDOT to utilize FDOT contractors to design and construct, at its expense, the relocation of City water and sewer utilities infrastructure as part of the FDOT A1A Drainage Improvements Project.
- This Agreement is a FDOT standard form document, which is amended for this particular project in the Appendix titled “Changes to Form Document.”

**RECOMMENDATION:**

1. Adopt Resolution 1997-2017, authorizing the Mayor and City Manager to execute with the Florida Department of Transportation, the Construction and Maintenance Agreement detailing ownership of, and responsibilities for the maintenance and repair of the new bridges and roadway approaches at 15th and 18th Avenues North.
2. Authorize the Mayor and City Manager to execute with the Florida Department of Transportation the Utility Work by Highway Contractor Agreement to relocate City water and sewer utilities infrastructure at 15th and 18th Avenues North, as part of the Department’s State Road A1A Drainage Improvements Project, with Financial Project Number 436077-1-56-01.

Introduced by: \_\_\_\_\_  
Adopted: \_\_\_\_\_

**RESOLUTION NO. 1997-2017**

**A RESOLUTION AUTHORIZING THE CONSTRUCTION AND MAINTENANCE AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION DETAILING OWNERSHIP OF, AND REPSONSIBILITIES FOR THE COST, CONSTRUCTION, OPERATION, MAINTENANCE AND REPAIR OF, THE NEW BRIDGES AND ROADWAY APPROACHES AT 15<sup>TH</sup> AND 18<sup>TH</sup> AVENUES NORTH IN JACKSONVILLE BEACH, FLORIDA, AS PART OF THE DEPARTMENT'S STATE ROAD A1A DRAINAGE IMPROVEMENTS PROJECT, with Financial Project Number 436077-1-52-01.**

**WHEREAS**, the State of Florida Department of Transportation, hereinafter referred to as the ("FDOT"), is to construct the State Road A1A Drainage Improvements Project in Duval County, Florida, having FDOT Financial Project Number 436077-1, hereinafter referred to as the ("PROJECT"), and

**WHEREAS**, a portion of the PROJECT, including channel improvements in the FDOT Drainage Easement, and new bridges and roadway approaches at the crossings of 15<sup>th</sup> and 18<sup>th</sup> Avenues North over the FDOT Drainage Easement, is to be constructed within the limits of the City of Jacksonville Beach, hereinafter referred to as the ("CITY"), and

**WHEREAS**, the FDOT requires the CITY to enter into an FDOT-standard Construction and Maintenance Agreement, hereinafter referred to as the ("AGREEMENT"),

**WHEREAS**, the AGREEMENT specifies ownership of, and responsibilities for the cost, construction operation, maintenance and repair of, the new bridges and roadway approaches at the crossings of 15<sup>th</sup> and 18<sup>th</sup> Avenues North over the FDOT Drainage Easement, and

**WHEREAS**, said AGREEMENT is in the best interest of the CITY, and

**WHEREAS**, in order for the FDOT to proceed with this PROJECT, it is necessary for the CITY to execute the AGREEMENT.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA, THAT:**

**SECTION 1.** The above recitals are true and correct and incorporated herein.

**SECTION 2.** The Mayor and City Manager of the CITY are hereby authorized to execute the AGREEMENT.

**SECTION 3.** The executed AGREEMENT, along with a certified copy of this Resolution, shall be delivered forthwith to the FDOT.

**SECTION 4.** This Resolution shall become effective immediately upon its adoption.

**AUTHENTICATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
William C. Latham, MAYOR

\_\_\_\_\_  
Laurie Scott, CITY CLERK

## CONSTRUCTION & MAINTENANCE AGREEMENT

**THIS CONSTRUCTION & MAINTENANCE AGREEMENT** ("Agreement") is made and entered into by and between the State of Florida Department of Transportation ("Department") and the City of Jacksonville Beach, Florida ("Agency").

### -RECITALS-

1. The Department is the fee simple owner of State Road A1A ("SR A1A") for which certain drainage improvements will be constructed via Financial Project Number 436077-1-52-01 ("Project"); and
2. The Department currently owns a drainage easement (areas highlighted in gold), which is not continuous and uninterrupted in places, that commences at 13<sup>th</sup> Avenue North and extends approximately 1000 feet west of Penman Road draining the SR A1A stormwater and eventually flowing westerly into Hopkins Creek (collectively referred to as the "Department Property"), as more particularly shown in **Exhibit "A" (Composites A-2 and A-3)**; and
3. In conjunction with the Project, the Department has separately acquired perpetual easements (areas highlighted in blue) in order to memorialize and create an uninterrupted drainage facility as well as to correct the historical and ongoing roadway-related drainage issues (the areas highlighted in gold and blue are collectively referred to as "Drainage Easement"), as more particularly described in the right-of-way maps, as shown in **Exhibit "A" (Composites A-2 and A-3)**;
4. Portions of the Drainage Easement flow through an existing pipe crossing that runs under the Agency's roadway located at 18th Avenue North ("18 North") as well as an existing pipe crossing that runs under the Agency's roadway located at 15th Avenue North ("15 North"), (these locations are collectively referred to as the "Agency's Property"), all of which is more particularly shown in **Exhibit "A" (Composites A-1 through A-3)**; and
5. The Department also acquired temporary construction easements on, within, or adjacent to the Agency's Property in order to expand the pipe crossings and construct bridges at 18 North and 15 North, respectively, as well as to construct various other roadway features on the Agency's Property, which will better facilitate the SR A1A drainage, the 18 North drainage, and the 15 North drainage, more particularly shown in **Exhibit "A" (Composites A-2 and A-3)** (marked in red); and
6. For purposes of this Agreement, the temporary construction easements and any improvements constructed therein are considered as part of the Agency's Property; and
7. The term "Improvement" means and shall refer to the construction of Bridge No. 720843 on 18 North and Bridge No. 720813 on 15 North, including without limitation, the following: bridge approaches, roadway drainage systems, Agency utilities, pipe, roadway pavement, signs and pavement markings, sidewalks, and pedestrian crossings, as more particularly shown in **Exhibit "B" (Composites B-1 and B-2)** (marked in green); and
8. Portions of the Improvement will be located solely within the Agency's Property ("Off-System Improvements"), while portions of the Improvement will be located within the Drainage Easement ("On-System Improvements"); and
9. In order to construct the Improvement, it will be necessary for the Department to temporarily close access to 18 North and 15 North, respectively, and re-route vehicular traffic (collectively referred to as the "Detour Property") throughout the duration of the construction of the Improvement, as more particularly shown in **Exhibit "C" (Composites C-1 through C-6)**; and
10. The Agency has requested that the Improvement be constructed and the Department is amenable to this request pursuant to the terms and conditions of this Agreement; and
11. The Department shall fund construction of the Improvement, which is wholly contingent upon appropriation of funds to the Department; and

12. The Department shall construct the Improvement; and
13. A date for the commencement of construction of the Improvement has not been established; and
14. For purposes of this Agreement, the definition of Improvement shall include and incorporate the term Detour Property, as defined in Recital 9 above; and
15. During the period of construction of the Improvement, the Department shall be responsible for the operation, maintenance and repair of the Detour Property; and
16. Upon completion of the construction, the Agency shall own, operate, maintain, and repair the Off-System Improvements at its sole cost and expense; and
17. Upon completion of the construction, the Agency shall operate, maintain, and repair the On-System Improvements at its sole cost and expense; and
18. By Resolution \_\_\_\_\_ dated \_\_\_\_\_, the Agency authorized its representative(s) to execute and enter this Agreement on behalf of the Agency, see **EXHIBIT "D"**.

**NOW THEREFORE**, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the above recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound, acknowledge and agree as follows:

**1. RECITALS AND EXHIBITS**

The above recitals and attached exhibits are specifically incorporated by reference and made part of this Agreement.

**2. EFFECTIVE DATE**

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement.

**3. ACCESS**

This Agreement authorizes the Department to access the Agency's Property, and the Detour Property for the limited purpose of performing this Agreement.

**4. E-VERIFY**

The Agency (A) 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 Agency during the term of the contract; and (B) shall expressly require any subcontractors performing work or providing services pursuant to the state 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 contract term

**5. TERM**

The initial term of this Agreement shall be for a period of one (1) year, commencing on the Effective Date. Thereafter, this Agreement shall automatically renew for successive and continuing like one (1) year terms unless terminated by the Department. Before terminating this Agreement, the Department agrees to give 60 days' advance written notice to the Agency and will give the Agency an opportunity to be heard before terminating the Agreement.

**6. COMPLIANCE**

The Agency shall perform the Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures, guidelines, standards, specifications and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, Water Management District with requisite jurisdiction, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

## **7. PERMITS**

In the performance of the Agreement, the Agency may be required to obtain one or more Department permits, if applicable, which may include copies of the Agreement as an exhibit. Notwithstanding the inclusion or incorporation of the Agreement as part of any such Department permits, the Agreement shall remain separate and apart from such permits and shall not be merged into the same absent the prior written express consent of the Department. Should any term or provision of the Agreement conflict with any term, provision or requirement of any Department permit, the terms and provisions of the Agreement shall control unless specifically noted otherwise in any such Department permit. For purposes of this Agreement, the term "permit" shall also include the Department's Construction Agreement, which may be required for permanent improvements installed within the Department's right-of-way.

## **8. PROJECT MANAGEMENT**

A. The Department shall manage the Project for the design and construction of the Improvement and perform such activities as the Department deems necessary and appropriate to complete the Project for the Improvement, including, without limitation, seeking and obtaining approval and participation by one or more federal agencies, design of the Improvement, acquisition of right-of-way, construction of the Improvement, and any other activities to facilitate satisfactory completion of the Improvement. The Department shall commence construction of the Improvement at its convenience after the appropriation of sufficient funds.

B. The Department shall manage the performance, operation, maintenance, and repair of the Detour Property during the construction period.

C. Prior to commencement of construction and at their sole cost and expense, the Agency shall ensure that the Agency's Property is free and clear of any and all encroachments that may impede or in any way interfere with the Department's construction of the Improvement.

## **9. OPERATION, MAINTENANCE & REPAIR (OFF-SYSTEM IMPROVEMENTS)**

A. Upon completion of the construction, the Agency shall own, operate, maintain, and repair the Off-System Improvements and resume operation, maintenance, and repair of the Detour Property, at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement including applicable Governmental Law. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the Agency.

B. The Agency agrees that it will be solely responsible for the operation, maintenance, and repair of the Improvement. Should the Agency fail to operate, maintain, and repair the Off-System Improvements in accordance with the terms and provisions of this Agreement and applicable Governmental Law, and the Department be required to perform such operation, maintenance, or repair pursuant to the *Inspection of Federal-Aid Projects Under Local, Jurisdiction, Topic No. 850-065-001*, under the authority of *Title 23, Section 116, U.S. Code*, the Agency agrees that it shall be fully responsible to the Department for repayment of any funds expended by the Department for the operation, maintenance, or repair of the Off-System Improvements. If the Department claims that the Agency fails to comply with the terms of this provision, it shall give written notice to the Agency of the specific failure and the Agency shall have an opportunity to cure the claimed deficiency within (60) days of such notice or such other time. The Department shall invoice the Agency for any operation, maintenance, or repair expenses charged to the Department, and the Agency shall pay such invoices in accordance with the Payment section of this Agreement. Nothing in this Agreement shall relieve the Agency of its financial obligations to the Department should this occur.

C. If at any time in the sole determination of the Department, the integrity or safety of the Off-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the Agency with written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

## **10. OPERATION, MAINTENANCE & REPAIR (ON-SYSTEM IMPROVEMENTS)**

A. Upon completion of the construction, the Agency shall operate, maintain and repair the On-System Improvements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in

accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the Department to maintain or repair the Improvement, said obligations to remain the sole responsibility of the Agency.

B. If the Department determines that the Agency is not maintaining and repairing the On-System Improvements in accordance with the terms and provisions of this Agreement, the Department shall deliver written notification of such to the Agency. The Agency shall have sixty (60) days from the date of the Department's written notice, or such other time as the Department and the Agency mutually agree in writing, to correct the deficiency and provide the Department with written notice of the same.

C. If the deficiency is not corrected timely, or if the Department determines that the deficiency remains after receipt of the Agency's written notice indicating that the deficiency has been corrected, the Department, within its discretion, may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete correction of the deficiency; (2) require the Agency to remove the On-System Improvements and restore the Department Property pursuant to the "Removal" section of this Agreement; or (3) correct the deficiency at the Agency's sole cost and expense. Should the Department elect to correct the deficiency, the Department shall provide the Agency with an invoice for the costs incurred by the Department to correct the deficiency and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

D. If at any time in the sole determination of the Department, the integrity or safety of the On-System Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the Department may perform such maintenance and repairs it deems appropriate under the circumstances. The Department shall provide the Agency with advance written notice of the emergency maintenance and repairs performed by the Department and an invoice for the same. The Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

#### **11. IMPROVEMENTS & MODIFICATIONS**

A. The Department may require the Agency to improve or modify the Improvement if the Department determines: (1) improvements or modifications are required by applicable Governmental Law; or (2) improvements or modifications are necessitated by the Department in the conduct of its business.

B. Required improvements and modifications shall be subject to the terms and provisions of this Agreement, specifically including, without limitation, the "Operation, Maintenance & Repair" section hereof.

C. Improvements and modifications shall be constructed and completed by the Agency within sixty (60) days of the date of the Department's written notice requiring improvements or modifications, or other such time as granted by the Department.

#### **12. WARRANTIES**

After completion of construction of the Improvement and upon the Agency's written request, the Department shall transfer all transferable warranties concerning construction of the Improvement to the Agency. The assignment shall be evidenced by a separate written agreement signed by the parties and shall be subject to applicable Governmental Law and the construction agreement entered between the Department and its contractor.

#### **13. UTILITIES**

The Agency shall be responsible for locating, removing and relocating utilities, both aerial and underground, if required for the Agency to perform this Agreement. The Agency shall ensure all utility locations are accurately documented on the construction Plans and Specifications, including the final as-built plans. All utility conflicts shall be resolved by the Agency directly with the applicable utility.

#### **14. MAINTENANCE OF TRAFFIC**

A. The Agency shall be responsible for the maintenance of traffic ("MOT") at all times during its performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of the Agreement by reference: (1) Section 102 of the Department's Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; and (3) the Department's Roadway Design Standards Index 600 Series.

B. If the Agency fails to perform MOT as required herein, the Department, within its discretion, may elect to perform MOT at the Agency's sole cost and expense. Should the Department perform MOT, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

#### **15. REMOVAL**

A. The Department may require the Agency to remove the Improvement and restore the Drainage Easement to such condition as required by the Department if the Department determines: (1) the Improvement is not maintained in accordance with Governmental Law; (2) removal of the Improvement is required by applicable Governmental Law; (3) the Agency breaches a material provision (as determined by the Department) of this Agreement, or (4) removal of the Improvement is necessitated by the Department in the conduct of its business. Removal and restoration shall be completed by the Agency within sixty (60) days of the date of the Department's written notice requiring removal of the Improvement, or such other time as the Department and the Agency mutually agree in writing.

B. Removal and restoration shall be completed by the Agency in accordance with all applicable Governmental Law.

C. Should the Agency fail to complete the removal and restoration work as required herein, the Department may: (1) provide the Agency with written authorization granting such additional time as the Department deems appropriate to complete removal and restoration; or (2) complete the removal and restoration at the Agency's sole cost and expense. Should the Department elect to complete the removal and restoration, the Department shall provide the Agency with an invoice for the costs incurred by the Department and the Agency shall pay the invoice in accordance with the "Payment" section of this Agreement.

#### **16. PERMISSIVE USE**

This Agreement creates a permissive use only and neither the granting of permission to use the Drainage Easement or the Improvement on or within the Drainage Easement shall operate to create or vest any property right to or in the Agency. The Agency shall not acquire any right, title, interest or estate in the Drainage Easement by virtue of the execution, operation, effect or performance of this Agreement.

#### **17. EMINENT DOMAIN AND DAMAGES**

Under no circumstances shall the Department's exercise of any right provided in this Agreement create any right, title, interest or estate entitling the Agency to full and just compensation from the Department either through inverse condemnation or eminent domain laws or any similar laws regarding the taking of property for public purposes. The Agency forever waives and relinquishes all legal rights and monetary claims which it has, or which may arise in the future, for compensation or damages, including, without limitation, special damages, severance damages, removal costs, and loss of business profits resulting in any manner from the Department's exercise of any right provided in this Agreement. This waiver and relinquishment specifically includes all damages flowing from adjacent properties owned, leased or otherwise controlled by the Agency, as a result of the Department's exercise of any right provided in this Agreement.

#### **18. PAYMENT**

All Department invoices submitted to the Agency for payment pursuant to the terms and provisions of this Agreement are due and payable within thirty (30) days of the date of the invoice ("Due Date") and in the case of an emergency and unanticipated repairs within 90 days of the date of the invoice ("Due Date"). Any portion of an invoice not received by the Department by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Florida Statutes, until paid in full.

#### **19. INDEMNIFICATION**

A. The Agency shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by, arising out of or related to the Agency's performance, or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all civil and criminal environmental liability arising, directly or indirectly under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The Agency's

duty to defend, indemnify and hold the Department harmless specifically does not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The Agency shall notify the Department in writing immediately upon becoming aware of any Liabilities. The Agency's obligation to defend, indemnify and hold the Department harmless from any Liabilities, or at the Department's option to participate and associate with the Department in the defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the Department's written notice of claim for indemnification to the Agency. The Agency's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

**20. SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving either party's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the Department's limits of liability set forth in sections 376.305 and 337.27(4), Fla. Stat. (2017).

**21. NOTICE**

All notices, communications and determinations between the parties and those required to be given under this Agreement, including, without limitation, any change to the notification address set forth below, shall be in writing and shall be sufficient if mailed by registered or certified mail to the parties at the following addresses:

Department: Florida Department of Transportation  
Attention: Jacksonville Maintenance Engineer  
838 Ellis Road  
Jacksonville, Florida 32205

- and -

Florida Department of Transportation  
Attention: Chief Counsel District Two  
1109 South Marion Avenue, Mail Station 2009  
Lake City FL 32025

Agency: Jacksonville Beach Public Works Department  
Attention: Public Works Director  
1460-A Shetter Avenue  
Jacksonville Beach, Florida 32250

- and -

City Attorney for the City of Jacksonville Beach  
c/o City Manager  
11 North Third Street  
Jacksonville Beach, Florida 32250

Agency agrees that if it fails to notify Department by certified mail of any changes to its notification address, Agency shall have waived any defense based on Department's failure to notify Agency.

**22. GOVERNING LAW**

This Agreement shall be governed in all respect by the laws of the State of Florida.

**23. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of the Agreement.

**24. VENUE AND JURISDICTION**

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The Agency and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

**25. JURY TRIAL**

The parties waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing therefrom.

**26. ASSIGNMENT**

The Agency shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or his/her designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. Nothing herein shall prevent the Agency from delegating its duties hereunder, but such delegation shall not release the Agency from its obligation to perform the Agreement.

**27. THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

**28. VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

**29. ENTIRE AGREEMENT**

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby.

**30. EXECUTION OF DOCUMENTS**

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

**31. SUFFICIENCY OF CONSIDERATION**

By their signature below, the parties acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

**32. WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

**33. INTERPRETATION**

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

**34. CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

**35. SEVERANCE**

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

**36. COMPUTATION OF TIME**

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

**37. MODIFICATION OF AGREEMENT**

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

**38. ANNUAL APPROPRIATION / FUNDING**

Pursuant to §339.135(6)(a), Florida Statutes, the Department's obligation to fund construction of the Improvement is contingent upon annual appropriation by the Florida Legislature. This Agreement may be terminated by the Department without liability to the Agency if sufficient funds are not appropriated to the Department. The provisions of §339.135(6)(a), Florida Statutes, are set forth herein verbatim and made part of this Agreement, to wit:

"The department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The department shall require a statement from the comptroller of the department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

**39. PUBLIC RECORDS**

Agency, or any persons or entities acquiring title to all or any portion of the real property which is the subject of this Agreement, shall:

A. Contact the Department's Custodian of Public Records at (386) 758-3727; D2 [prcustodian@dot.state.fl.us](mailto:prcustodian@dot.state.fl.us); and Public Records Custodian, 1109 South Marion Avenue, MS 2009, Lake City, Florida 32025, if Agency has any questions regarding the application of Chapter 119, Florida Statutes, and Agency's duty to provide public records relating to this Agreement.

B. Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.

C. Upon request from the Department's custodian of public records, provide the Department with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Fla. Stat., or as otherwise provided by law.

D. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.

E. Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Agency, as the case may be, or keep and maintain public records required by the Department to perform this Agreement. If Agency transfer all public records to the public agency upon completion of this Agreement, Agency shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Agency keep and maintain public records upon completion of this Agreement, Agency shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

F. Failure by Agency to act in accordance with the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. Agency shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of Agency and shall promptly provide the Department a copy of Agency's response to each such request.

***SIGNATURES ON FOLLOWING PAGE***

***INTENTIONALLY LEFT BLANK***

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties execute this Agreement, consisting of twenty-two (22) pages.

**Florida Department of Transportation**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Office of the General Counsel  
Florida Department of Transportation

**City of Jacksonville Beach**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Legal Counsel for Agency

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Legal Review:**

By: \_\_\_\_\_  
Legal Counsel for Agency

**EXHIBIT "A"**  
**Composite A-1**  
 Highlighted areas are within the City of Jacksonville Beach's jurisdiction.

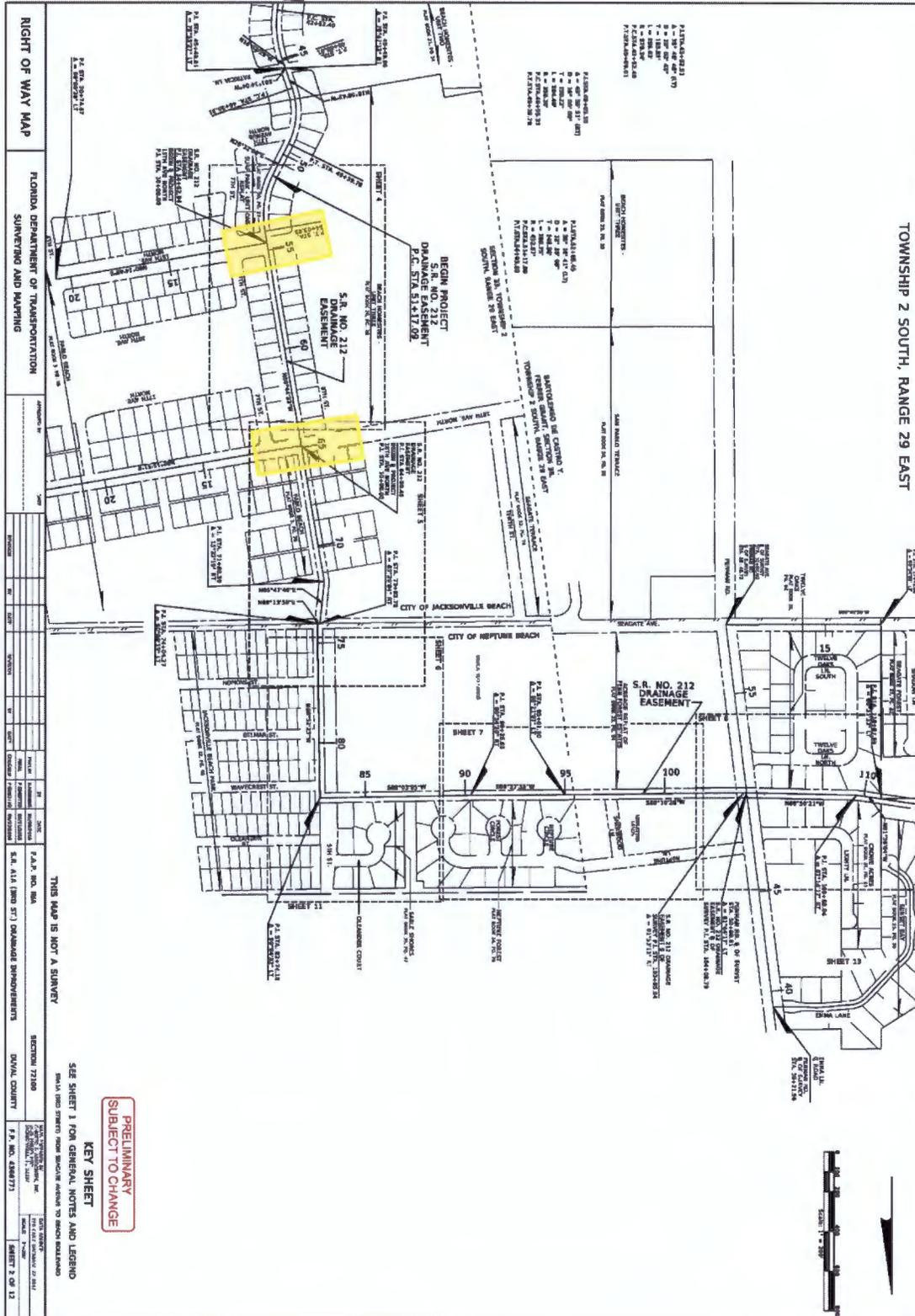
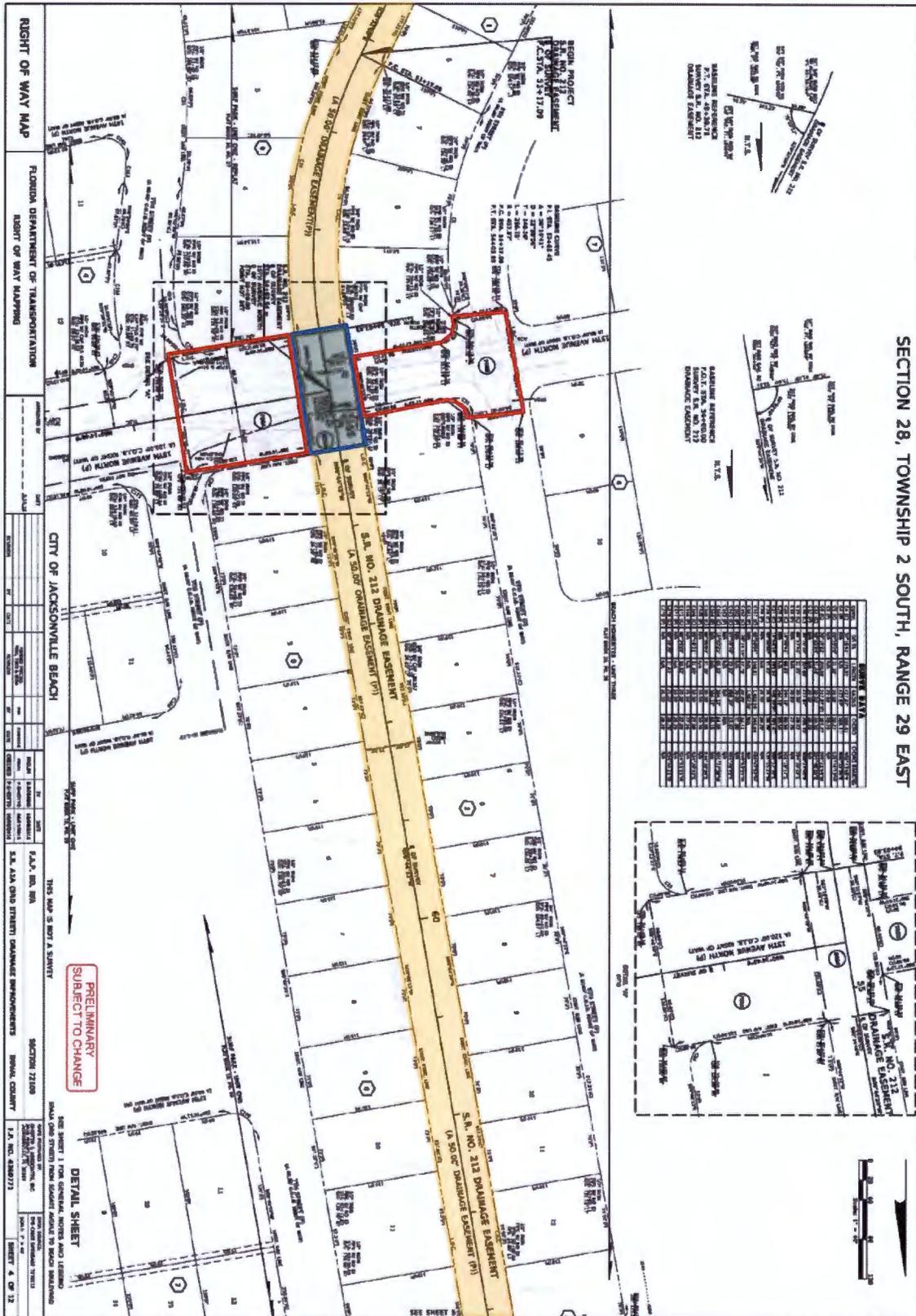
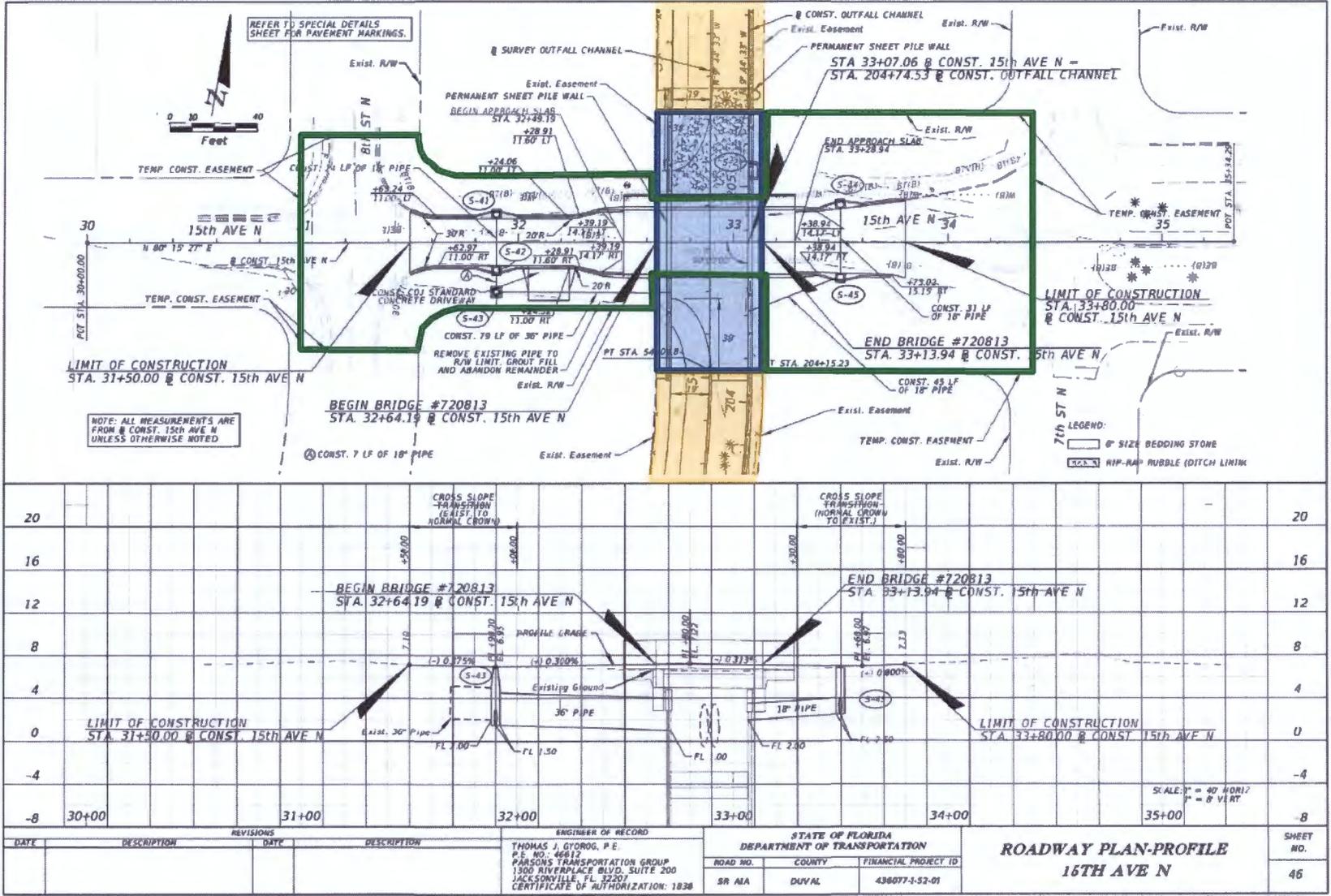


EXHIBIT "A" Cont'd  
 Composite A-2





**EXHIBIT "B"**  
 Composite B-1



DATE	DESCRIPTION	REVISIONS	DATE	DESCRIPTION

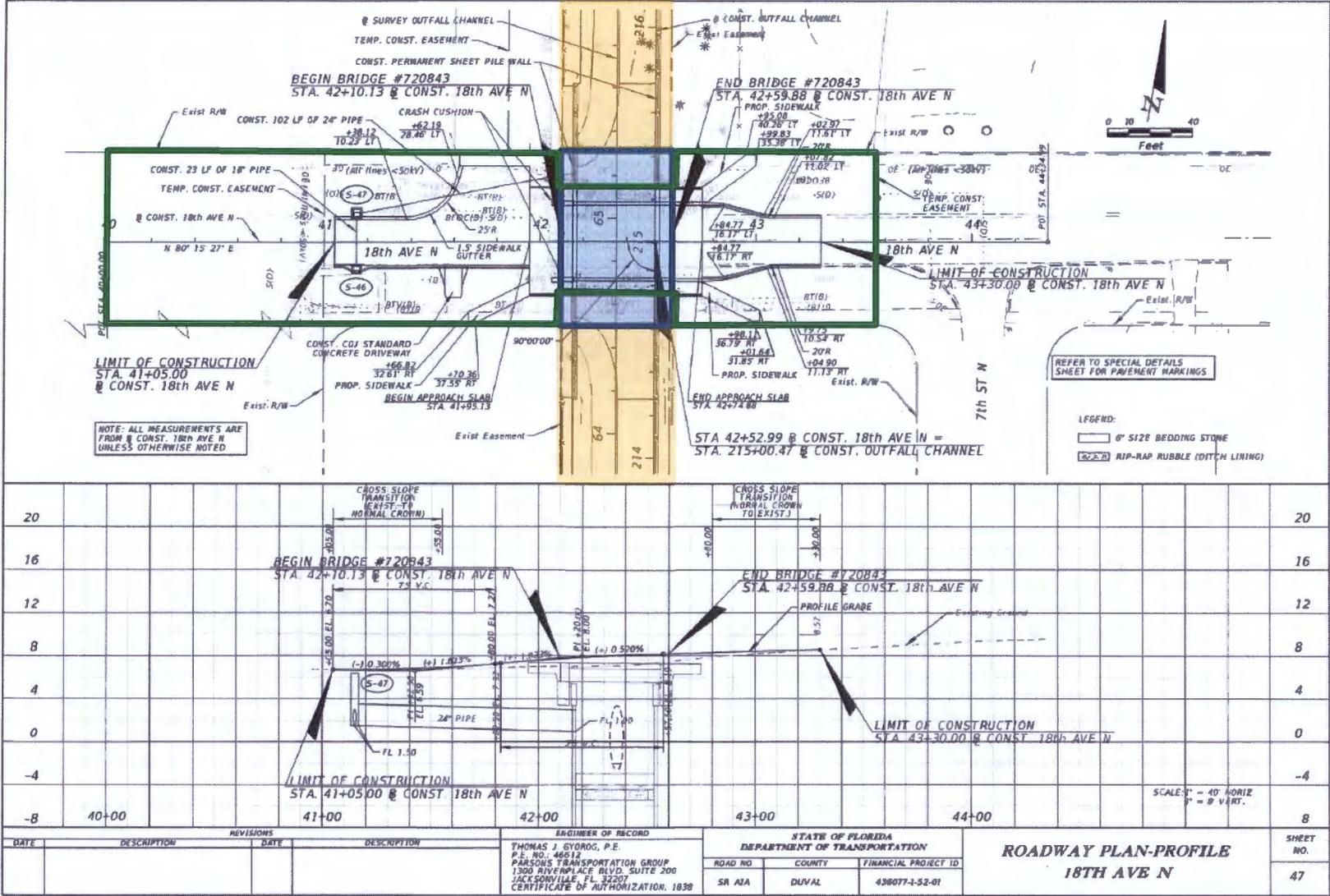
ENGINEER OF RECORD		STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION	
THOMAS J. GYOROG, P.E. P.E. NO. 46612 PARSONS TRANSPORTATION GROUP 1300 RIVERPLACE BLVD, SUITE 200 JACKSONVILLE, FL 32207 CERTIFICATE OF AUTHORIZATION: 1828		ROAD NO.	COUNTY
		SR A1A	DUVAL
		FINANCIAL PROJECT ID	436077-1-52-01

ROADWAY PLAN-PROFILE			SHEET NO.
15TH AVE N			46

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 161818-23-004, F.A.C.

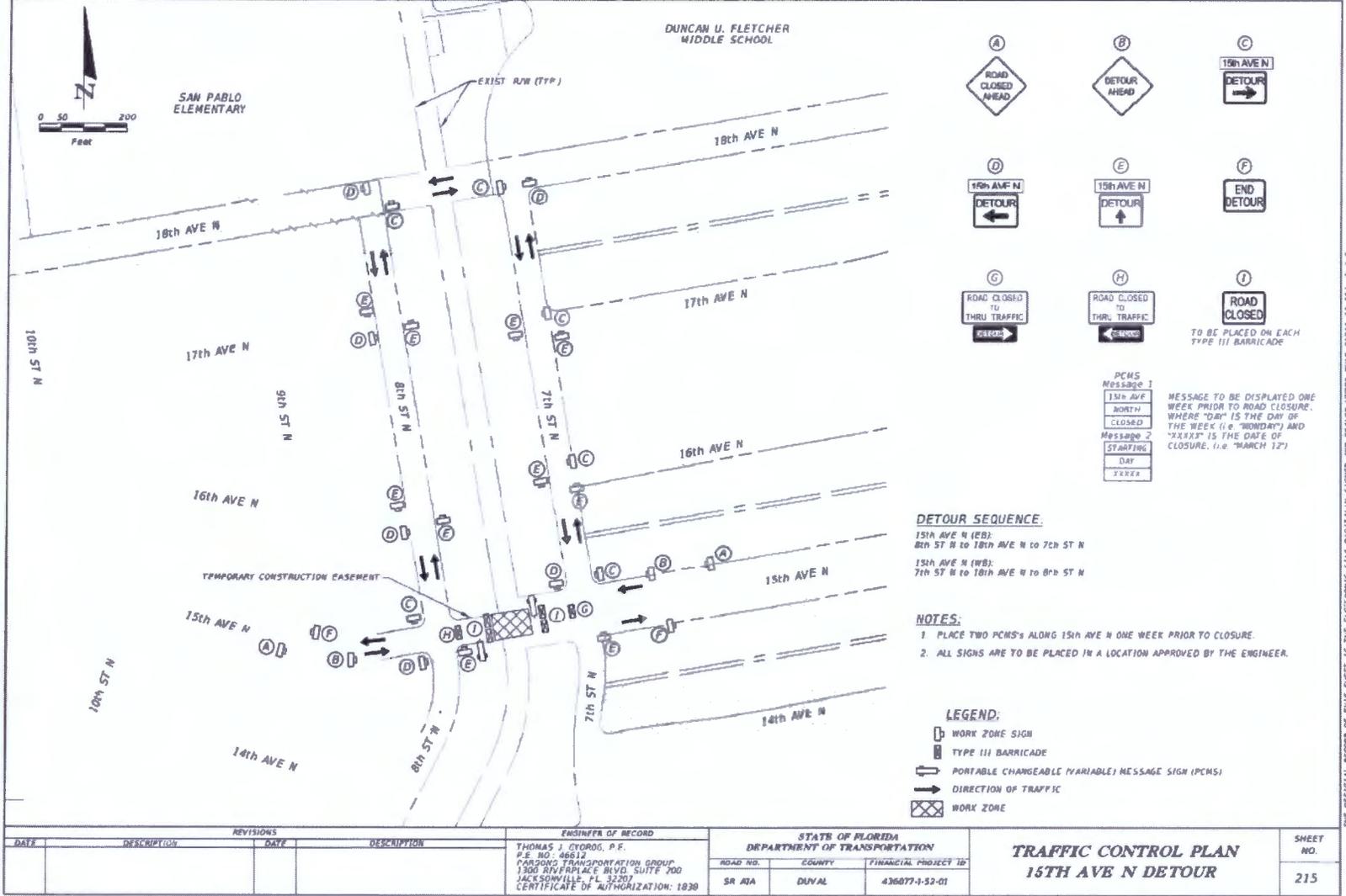
**EXHIBIT "B" Cont'd**  
**Composite B-2**



REVISIONS		ENGINEER OF RECORD		STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			ROADWAY PLAN-PROFILE 18TH AVE N	SHEET NO. 47
DATE	DESCRIPTION	DATE	DESCRIPTION	ROAD NO.	COUNTY	FINANCIAL PROJECT ID		
				SR A1A	DUVAL	436077-1-52-01		

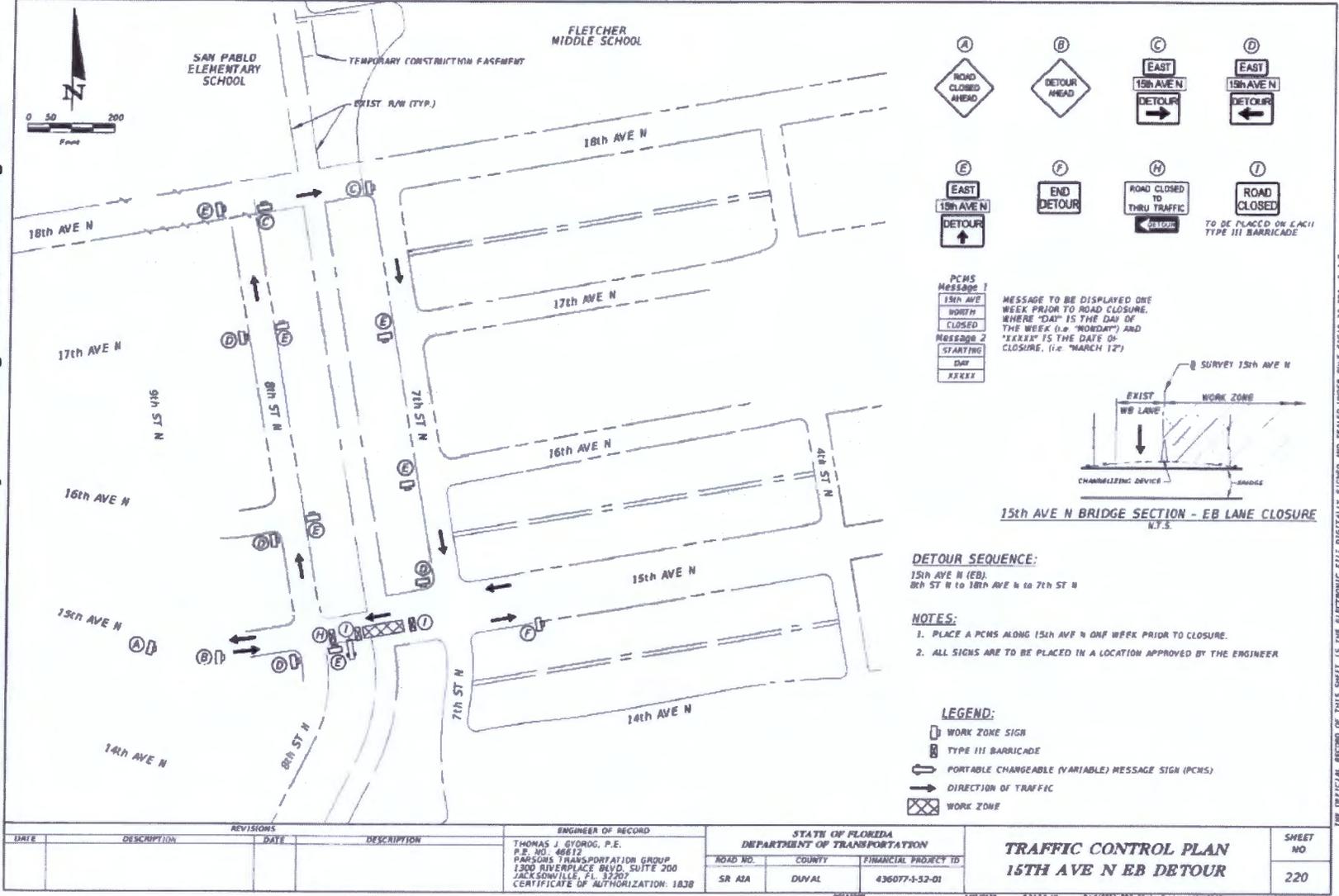
THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER RULE 18105-23.004, F.A.C.

**EXHIBIT "C"**  
**Composite C-1**  
**NOTE: Traffic Control Plans could be subject to change close to or during construction.**



**EXHIBIT "C" Cont'd**  
**Composite C-2**

**NOTE: Traffic Control Plans could be subject to change close to or during construction.**



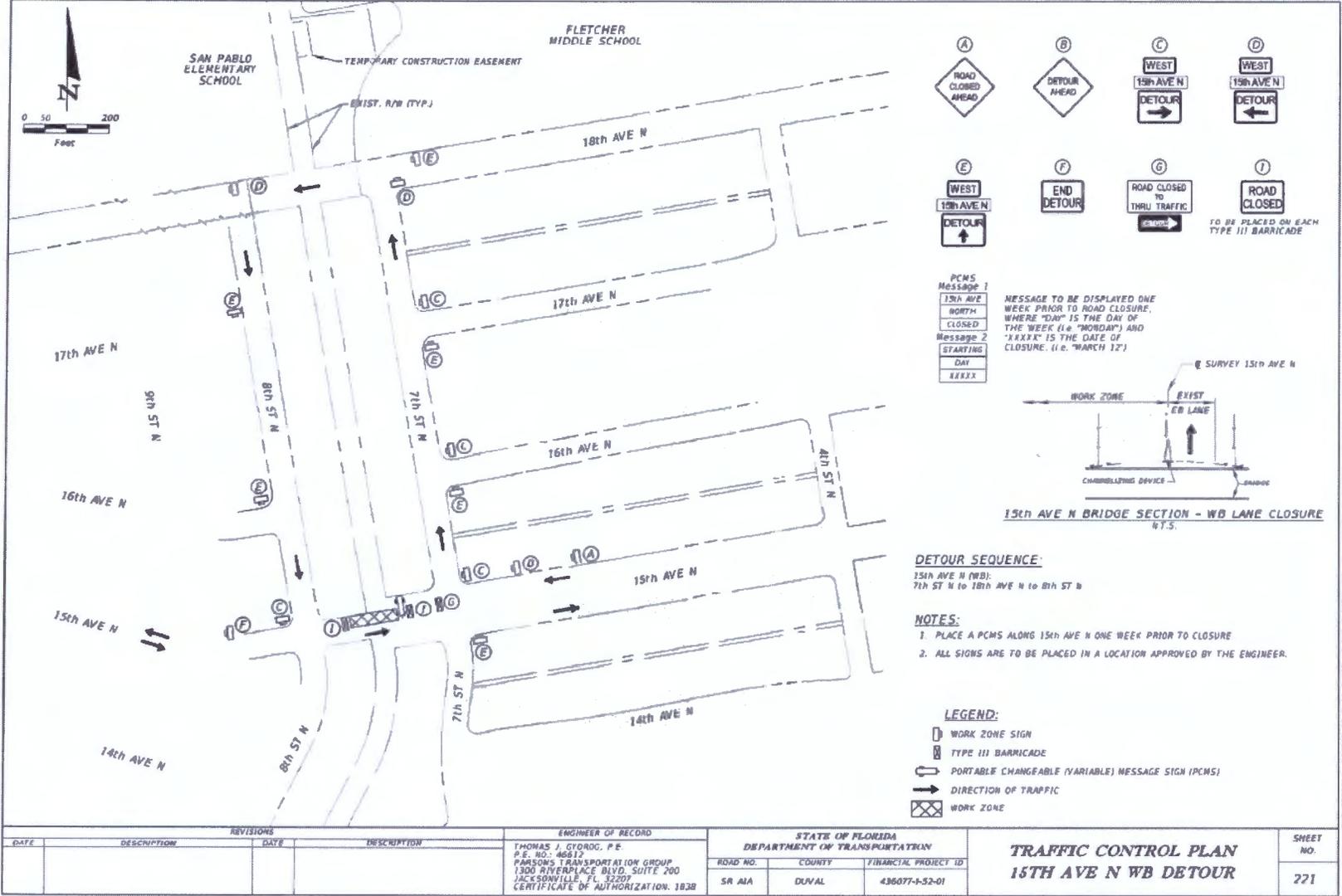
REVISIONS		DESCRIPTION		ENGINEER OF RECORD	STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			TRAFFIC CONTROL PLAN 15TH AVE N EB DETOUR	SHEET NO 220
DATE	DESCRIPTION	DATE	DESCRIPTION	THOMAS J. GYOROG, P.E. P.E. NO. 48612 PARSONS TRANSPORTATION GROUP 1300 RIVERPLACE BLVD, SUITE 200 JACKSONVILLE, FL 32207 CERTIFICATE OF AUTHORIZATION: 183B	ROAD NO.	COUNTY	FINANCIAL PROJECT ID		
					SR A1A	DUVAL	436077-1-52-01		

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE PURSUANT TO FDACS RULE 11C-1.04, F.S.

Financial Project Id. No. 436077-1-52-01  
 Federal Id. No. 4913-013-P  
 Project Description A1A Beaches Drainage Improvements  
 On/Off System Department Construct Agency Maintain

**EXHIBIT "C" Cont'd  
 Composite C-3**

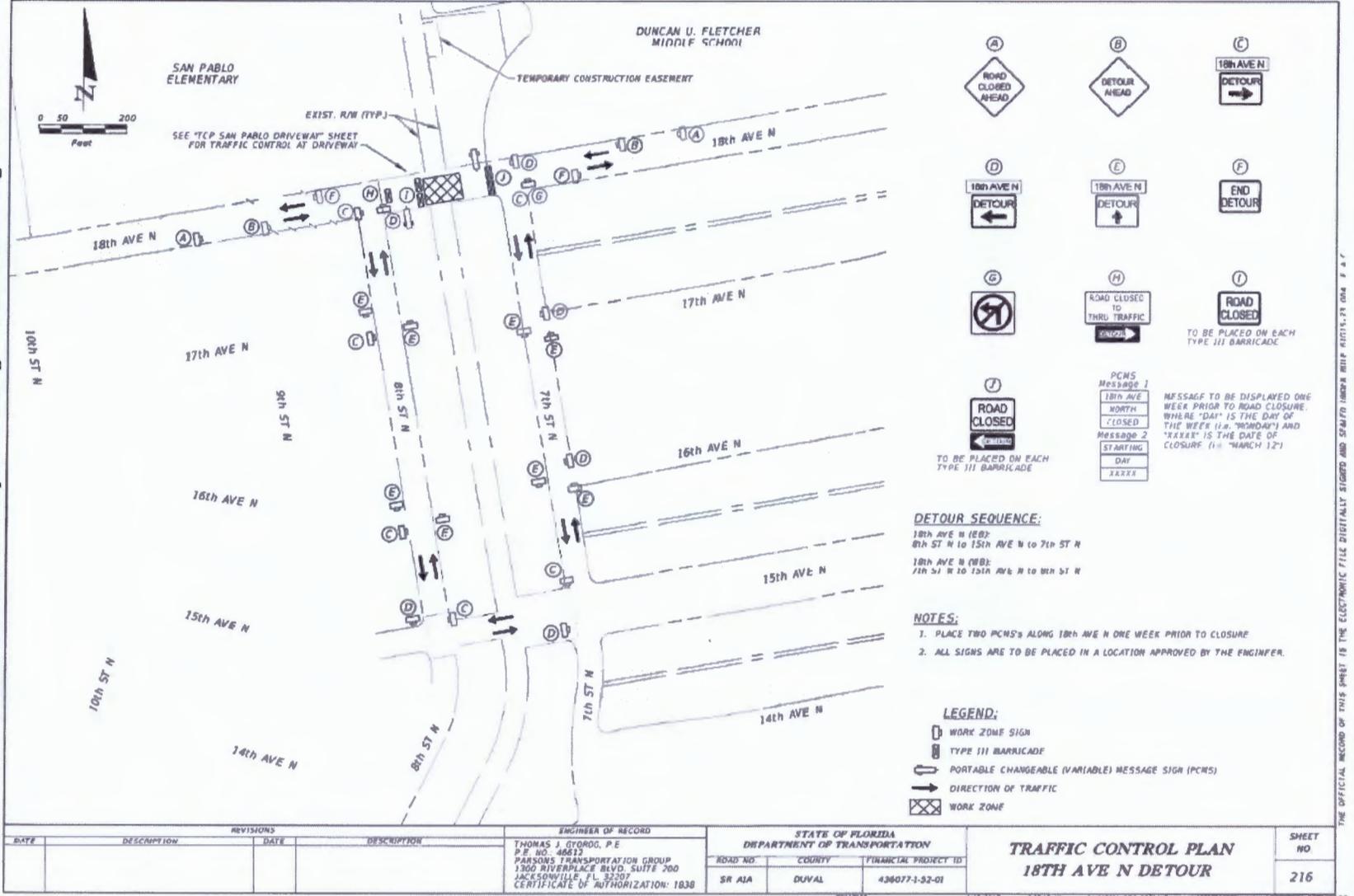
**NOTE: Traffic Control Plans could be subject to change close to or during construction.**



THIS OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE MAINTAINED AT THE PROJECT SITE AND SHALL SUPERSEDE ANY OTHER COPY.

**EXHIBIT "C" Cont'd  
Composite C-4**

**NOTE: Traffic Control Plans could subject to change close to or during construction.**



**LEGEND:**

- WORK ZONE SIGN
- TYPE III BARRICADE
- PORTABLE CHANGEABLE (VARIABLE) MESSAGE SIGN (PCMS)
- DIRECTION OF TRAFFIC
- WORK ZONE

**DETOUR SEQUENCE:**

18th AVE N (WB):  
8th ST N to 15th AVE N to 7th ST N

18th AVE N (NB):  
7th ST N to 15th AVE N to 8th ST N

**NOTES:**

- PLACE TWO PCMS ALONG 18th AVE N ONE WEEK PRIOR TO CLOSURE
- ALL SIGNS ARE TO BE PLACED IN A LOCATION APPROVED BY THE ENGINEER.

**PCMS MESSAGE 1**

18th AVE N
NORTH
CLOSED

MESSAGE TO BE DISPLAYED ONE WEEK PRIOR TO ROAD CLOSURE. WHERE "DAY" IS THE DAY OF THE WEEK (1= MONDAY) AND "XXXX" IS THE DATE OF CLOSURE (1= "MARCH 12")

**PCMS MESSAGE 2**

STARTING
DAY
XXXX

TO BE PLACED ON EACH TYPE III BARRICADE

TO BE PLACED ON EACH TYPE III BARRICADE

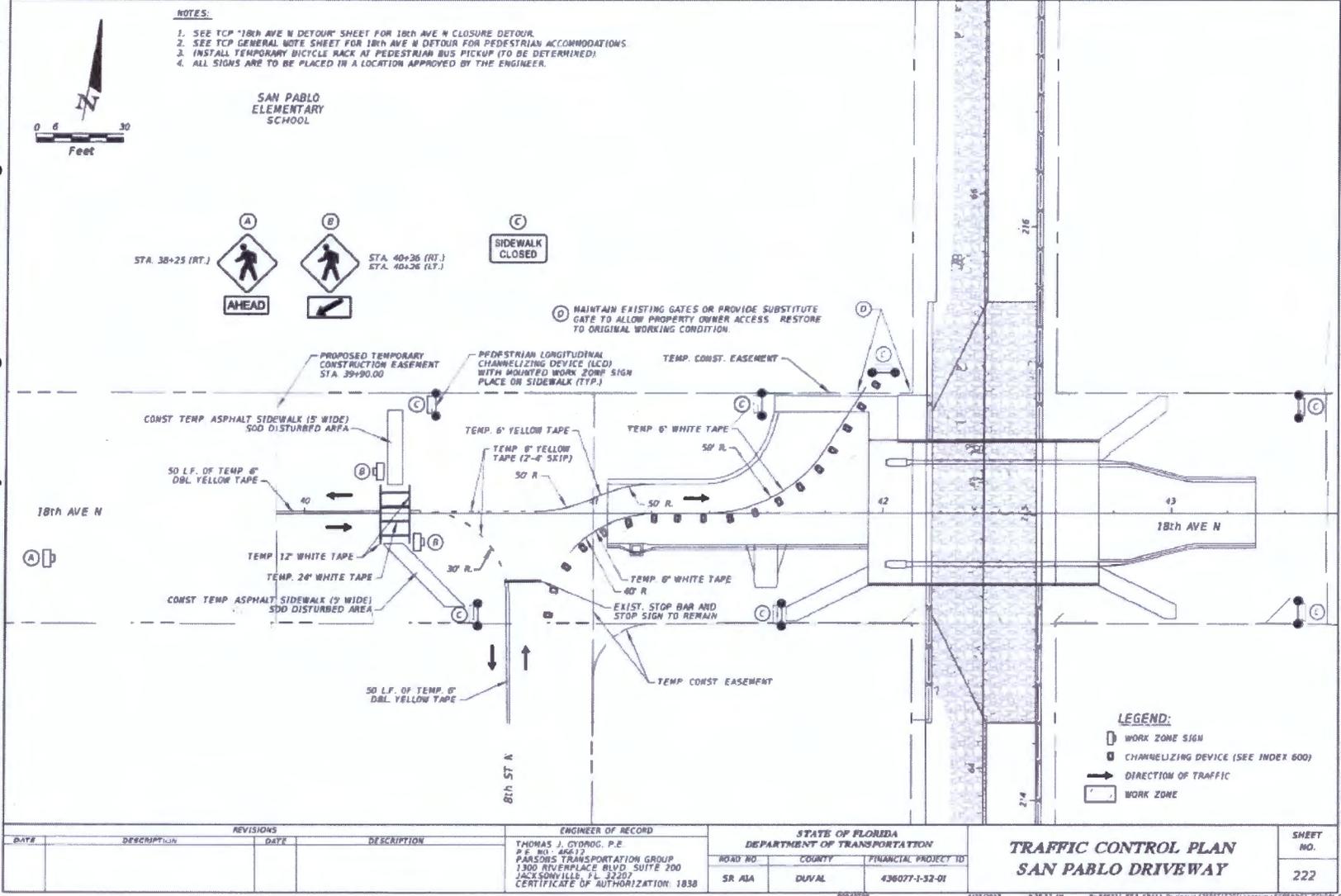
TO BE PLACED ON EACH TYPE III BARRICADE

DATE		REVISIONS		DESCRIPTION		ENGINEER OF RECORD		STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION			TRAFFIC CONTROL PLAN		SHEET NO.
						THOMAS J. GYOROG, P.E. P.E. NO. 48613 PARSONS TRANSPORTATION GROUP 1300 RIVERPLACE BLVD, SUITE 200 JACKSONVILLE, FL 32207 CERTIFICATE OF AUTHORIZATION: 1838		ROAD NO.	COUNTY	FINANCIAL PROJECT ID	18TH AVE N DETOUR		216
								SR A1A	DUVAL	436077-1-52-01			

THE OFFICIAL RECORD OF THIS SHEET IS THE ELECTRONIC FILE DIGITALLY SIGNED AND SEALED UNDER THE RULES OF THE BOARD OF PROFESSIONAL ENGINEERS AND SURVEYORS OF THE STATE OF FLORIDA.

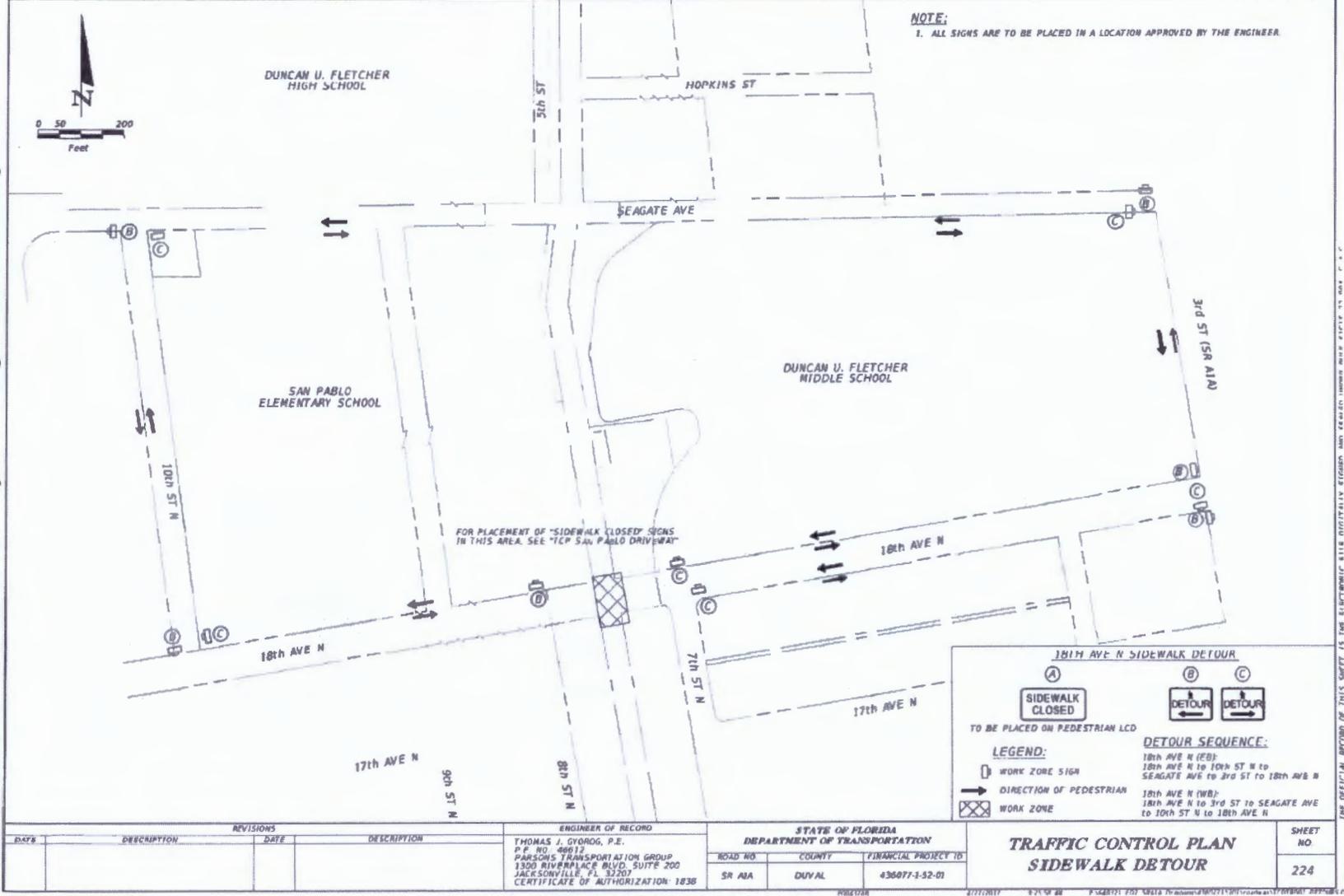
**EXHIBIT "C" Cont'd**  
**Composite C-5**

**NOTE: Traffic Control Plans could be subject to change close to or during construction.**



TOP OFFICIAL REFERENCE FOR THIS SHEET IS THE CITY/STATE OF FLORIDA'S STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION, 2011 EDITION, SECTION 600.01, 600.02, 600.03, 600.04, 600.05, 600.06, 600.07, 600.08, 600.09, 600.10, 600.11, 600.12, 600.13, 600.14, 600.15, 600.16, 600.17, 600.18, 600.19, 600.20, 600.21, 600.22, 600.23, 600.24, 600.25, 600.26, 600.27, 600.28, 600.29, 600.30, 600.31, 600.32, 600.33, 600.34, 600.35, 600.36, 600.37, 600.38, 600.39, 600.40, 600.41, 600.42, 600.43, 600.44, 600.45, 600.46, 600.47, 600.48, 600.49, 600.50, 600.51, 600.52, 600.53, 600.54, 600.55, 600.56, 600.57, 600.58, 600.59, 600.60, 600.61, 600.62, 600.63, 600.64, 600.65, 600.66, 600.67, 600.68, 600.69, 600.70, 600.71, 600.72, 600.73, 600.74, 600.75, 600.76, 600.77, 600.78, 600.79, 600.80, 600.81, 600.82, 600.83, 600.84, 600.85, 600.86, 600.87, 600.88, 600.89, 600.90, 600.91, 600.92, 600.93, 600.94, 600.95, 600.96, 600.97, 600.98, 600.99, 600.100.

**EXHIBIT "C" Cont'd**  
**Composite C-6**  
**NOTE: Traffic Control Plans could be subject to change close to or during construction.**



Financial Project Id. No. 436077-1-52-01  
Federal Id. No. 4913-013-P  
Project Description A1A Beaches Drainage Improvements  
On/Off System Department Construct Agency Maintain

**EXHIBIT "D"**  
**RESOLUTION**

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(AT FDOT EXPENSE)

Form No. 710-010-21  
UTILITIES  
11/14

<b>Financial Project ID: 436077-1-56-01</b>	<b>Federal Project ID: 4913-014-P</b>
<b>County: Duval</b>	<b>State Road No.: A1A</b>
<b>District Document No: 1</b>	
<b>Utility Agency/Owner (UAO): City of Jacksonville Beach</b>	

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, year of \_\_\_\_\_, by and between the **STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION**, hereinafter referred to as the "FDOT", and **City of Jacksonville Beach**, hereinafter referred to as the "UAO";

**WITNESSETH:**

**WHEREAS**, the **FDOT**, is constructing, reconstructing, or otherwise changing a portion of a public road or publicly owned rail corridor, said project being identified as 436077-1-56-01, State Road No.: A1A, hereinafter referred to as the "Project"; and

**WHEREAS**, the **UAO** owns or desires to install certain utility facilities which are located within the limits of the Project hereinafter referred to as the "Facilities" (said term shall be deemed to include utility facilities as the same may be relocated, adjusted, installed, or placed out of service pursuant to this Agreement); and

**WHEREAS**, the Project requires the location (vertically and/or horizontally), protection, relocation, adjustment or removal of the Facilities, or some combination thereof, hereinafter referred to as "Utility Work"; and

**WHEREAS**, the **FDOT** and the **UAO** desire to enter into a joint agreement pursuant to Section 337.403(1)(b), Florida Statutes for the Utility Work to be accomplished by the **FDOT's** contractor as part of the construction of the Project; and

**WHEREAS**, the **FDOT**, pursuant to the terms and conditions hereof, will bear certain costs associated with the Utility Work;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained herein, the **FDOT** and the **UAO** hereby agree as follows:

**1. Design of Utility Work**

- a. **UAO** shall prepare a final engineering design, plans, technical special provisions, and a cost estimate for the Utility Work (hereinafter referred to as the Plans Package) on or before \_\_\_\_\_, year of \_\_\_\_\_.
- b. The Plans Package shall be in the same format as the **FDOT's** contract documents for the Project and shall be suitable for reproduction.
- c. Unless otherwise specifically directed in writing, the Plans Package shall include any and all activities and work effort required to perform the Utility Work, including, but not limited to, all clearing and grubbing, survey work, and shall include a traffic control plan.
- d. The Plans Package shall be prepared in compliance with the **FDOT's** Utility Accommodation Manual and the **FDOT's** Plans Preparation Manual in effect at the time the Plans Package is prepared, and the **FDOT's** contract documents for the Project. If the **FDOT's** Plans Preparation Manual is updated and conflicts with the **FDOT's** Utility Accommodation Manual, the Utility Accommodation Manual shall apply where such conflicts exist.
- e. The technical special provisions which are a part of the Plans Package shall be prepared in accordance with the **FDOT's** guidelines on preparation of technical special provisions and shall not duplicate or change the general contracting provisions of the **FDOT's** Standard Specifications for Road and Bridge Construction and any Supplemental Specifications, Special Provisions, or Developmental

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION  
**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT**  
(AT FDOT EXPENSE)

Form No. 710-010-21  
UTILITIES  
11/14

Specifications of the FDOT for the Project.

- f. **UAO** shall provide a copy of the proposed Plans Package to the **FDOT**, and to such other right of way users as designated by the **FDOT**, for review at the following stages: \_\_\_\_\_. Prior to submission of the proposed Plans Package for review at these stages, the **UAO** shall send the **FDOT** a work progress schedule explaining how the **UAO** will meet the **FDOT's** production schedule. The work progress schedule shall include the review stages, as well as other milestones necessary to complete the Plans Package within the time specified in Subparagraph a. above.
- g. In the event that the **FDOT** finds any deficiencies in the Plans Package during the reviews performed pursuant to Subparagraph f. above, the **FDOT** will notify the **UAO** in writing of the deficiencies and the **UAO** will correct the deficiencies and return corrected documents within the time stated in the notice. The **FDOT's** review and approval of the documents shall not relieve the **UAO** from responsibility for subsequently discovered errors or omissions.
- h. The **FDOT** shall furnish the **UAO** such information from the **FDOT's** files as requested by the **UAO**; however, the **UAO** shall at all time be and remain solely responsible for proper preparation of the Plans Package and for verifying all information necessary to properly prepare the Plans Package, including survey information as to the location (both vertical and horizontal) of the Facilities. The providing of information by the **FDOT** shall not relieve the **UAO** of this obligation nor transfer any of that responsibility to the **FDOT**.
- i. The Facilities and the Utility Work will include all utility facilities of the **UAO** which are located within the limits of the Project, except as generally summarized as follows: N/A. These exceptions shall be handled by separate arrangement.
- j. The **UAO** shall fully cooperate with all other right of way users in the preparation of the Plans Package. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the **FDOT**.
- k. Upon completion of the Utility Work, the Facilities, shall be deemed to be located on the public road or publicly owned rail corridor under and pursuant to the Utility Permit N/A.  
*(Note: It is the intent of this line to allow either attachment of or separate reference to the permit).*
- l. The cost of any design work performed pursuant to this paragraph 1 shall be reimbursed by a separate agreement.
- m. As part of the final submittal of the Plans Package, the **UAO** shall also submit an estimate of the amount of the cost of the Utility Work that should be paid for by the **UAO**, hereinafter referred to as the **UAO** Participating Amount. The determination of that amount shall be based on the credit required for any increase in the value of the new Facility and for any salvage derived from the old Facility. These credits shall be determined as follows:
- (1) Increase in value credit.
    - (a) Expired Service Life. If an entirely new Facility is constructed and the old Facility retired, credit for the normally-expected service life of the old Facility applies.
    - (b) Upgrading. A percentage of the total cost of the Relocation Work, based on the extent of the betterment obtained from the new Facilities will be applied.
  - (2) Salvage Value. The **FDOT** shall receive fair salvage value credit for any salvage which will become available to the **UAO** as a result of the Utility Work.

The submittal shall show the calculation of the **UAO** Participating Amount in detail for each of the credits required above. The **FDOT** shall review the calculations and advise the **UAO** of

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any objections. In the event that the parties cannot come to an agreement as to the **UAO** Participating Amount, the **FDOT's** determination of the amount shall prevail.

**2. Performance of Utility Work**

- a. The **FDOT** shall incorporate the Plans Package into its contract for construction of the Project.
- b. The **FDOT** shall procure a contract for construction of the Project in accordance with the **FDOT's** requirements.
- c. The **UAO** shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package except for the following activities:  
  
\_\_\_\_\_ and will furnish the **FDOT** with daily diary records showing approved quantities and amounts for weekly, monthly, and final estimates in accordance with the format required by the **FDOT**.
- d. Except for the inspection, testing, monitoring and reporting to be performed by the **UAO** in accordance with Subparagraph 2. c., the **FDOT** will perform all contract administration for its construction contract.
- e. The **UAO** shall fully cooperate with the **FDOT** and the **FDOT's** contractor in all matters relating to the performance of the Utility Work.
- f. The **FDOT's** engineer has full authority over the Project and the **UAO** shall be responsible for coordinating and cooperating with the **FDOT's** engineer. In so doing, the **UAO** shall make such adjustments and changes in the Plans Package as the **FDOT's** engineer shall determine are necessary for the prosecution of the Project.
- g. The **UAO** shall not make any changes to the Plans Package after the date on which the **FDOT's** contract documents are mailed to Tallahassee for advertisement of the Project unless those changes fall within the categories of changes which are allowed by supplemental agreement to the **FDOT's** contract pursuant to Section 337.11, Florida Statutes. All changes, regardless of the nature of the change or the timing of the change, shall be subject to the prior approval of the **FDOT**.

**3. Cost of Utility Work**

- a. Except as otherwise provided herein, the **FDOT** shall be responsible for all costs of the Utility Work and all costs associated with any adjustments or changes to the Utility Work determined by the **FDOT's** engineer to be necessary, including, but not limited to the cost of changing the Plans Package and the increase in the cost of performing the Utility Work, unless the adjustments or changes are necessitated by an error or omission of the **UAO**. The **FDOT** shall not be responsible for the cost of delays caused by such adjustments or changes to the extent they are attributable to the **UAO** pursuant to Subparagraph 4.a.
- b. At such time as the **FDOT** prepares its official estimate, the **FDOT** shall notify the **UAO** of the **UAO** Participating Amount, determined in accordance with Subparagraph 1.m. hereof.
- c. At least \_\_\_\_\_ (\_\_\_\_\_) days prior to the date on which the **FDOT** advertises the Project for bids, the **UAO** will pay to the **FDOT** the **UAO** Participating Amount.
- d. If the **UAO's** percentage contribution to the portion of the bid of the contractor selected by the **FDOT** which is for performance of the Utility Work (calculated by dividing the **UAO's** Participating Amount by the amount of the **FDOT's** official estimate) exceeds the amount of the deposit made pursuant to Subparagraph c. above, then the **UAO** shall, within fourteen (14) calendar days from notification from the **FDOT**, or prior to posting of the accepted bid, whichever is earlier, pay an additional amount to

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the **FDOT** to bring the total amount paid to the total percentage contribution of the **UAO**. If said portion of the bid is less than the amount on deposit, the excess deposit shall be returned to the **UAO** in accordance with Section 215.422, Florida Statutes.

- e. The **FDOT** may use the funds paid by the **UAO** for payment of the cost of the Utility Work.
- f. Payment of the funds pursuant to this paragraph will be made (choose one):
  - directly to the **FDOT** for deposit into the State Transportation Trust Fund.
  - as provided in the attached Three Party Escrow Agreement between the **UAO**, the **FDOT**, and the State of Florida, Department of Financial Services, Division of Treasury. Deposits of less than \$100,000.00 must be pre-approved by the Department of Financial Services and **FDOT** Comptroller's Office prior to execution of this agreement.
- g. Upon final payment to the contractor, the **FDOT** intends to have its final and complete billing of all costs incurred in connection with the Utility Work within three hundred sixty (360) days. All cost records and accounts shall be subject to audit by a representative of the **UAO** within three (3) years after final close out of the Project.

#### 4. Claims Against UAO

- a. The **UAO** shall be responsible for all costs incurred as a result of any delay to the **FDOT** or its contractors caused by errors or omissions in the Plans Package (including inaccurate location of the Facilities) or by failure of the **UAO** to properly perform its obligations under this Agreement in a timely manner.
- b. In the event the **FDOT's** contractor provides a notice of intent to make a claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the notice of intent and the **UAO** will thereafter keep and maintain daily field reports and all other records relating to the intended claim.
- c. In the event the **FDOT's** contractor makes any claim against the **FDOT** relating to the Utility Work, the **FDOT** will notify the **UAO** of the claim and the **UAO** will cooperate with the **FDOT** in analyzing and resolving the claim within a reasonable time. Any resolution of any portion of the claim directly between the **UAO** and the **FDOT's** contractor shall be in writing, shall be subject to written **FDOT** concurrence and shall specify the extent to which it resolves the claim against the **FDOT**.

#### 5. Out of Service Facilities

No Facilities shall be placed out of service unless specifically identified as such in the Plans Package. The following terms and conditions shall apply to Facilities placed Out-of-Service:

- a. The **UAO** acknowledges its present and continuing ownership of and responsibility for out of service Facilities.
- b. The **FDOT** agrees to allow the **UAO** to leave the Facilities within the right of way subject to the continuing satisfactory performance of the conditions of this Agreement by **UAO**. In the event of a breach of this Agreement by **UAO**, the Facilities shall be removed upon demand from the **FDOT** in accordance with the provisions of Subparagraph e. below.
- c. The **UAO** shall take such steps to secure the Facilities and otherwise make the Facilities safe in accordance with any and all applicable local, state or federal laws and regulations and in accordance with the legal duty of the **UAO** to use due care in its dealings with others. The **UAO** shall be solely responsible for gathering all information necessary to meet these obligations.

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- d. The **UAO** shall keep and preserve all records relating to the Facilities, including, but not limited to, records of the location, nature of, and steps taken to safely secure the Facilities and shall promptly respond to information requests of the **FDOT** or other permittees using or seeking use of the right of way.
  
- e. The **UAO** shall remove the Facilities at the request of the **FDOT** in the event that the **FDOT** determines that removal is necessary for **FDOT** use of the right of way or in the event that the **FDOT** determines that use of the right of way is needed for other active utilities that cannot be otherwise accommodated in the right of way. In the event that the out of service Facilities would have qualified for reimbursement only under Section 337.403(1)(a), Florida Statutes, removal shall be at the sole cost and expense of the **UAO** and without any right of the **UAO** to object or make any claim of any nature whatsoever with regard thereto. In the event that the out of service Facilities would have qualified for reimbursement for other reasons, removal of the out of service Facilities shall be reimbursed by the **FDOT** as though it had not been placed out of service. Removal shall be completed within the time specified in the **FDOT's** notice to remove. In the event that the **UAO** fails to perform the removal properly within the specified time, the **FDOT** may proceed to perform the removal at the **UAO's** expense pursuant to the provisions of Sections 337.403 and 337.404, Florida Statutes.
  
- f. Except as otherwise provided in Subparagraph e. above, the **UAO** agrees that the Facilities shall forever remain the legal and financial responsibility of the **UAO**. The **UAO** shall reimburse the **FDOT** for any and all costs of any nature whatsoever resulting from the presence of the Facilities within the right of way. Said costs shall include, but shall not be limited to, charges or expenses which may result from the future need to remove the Facilities or from the presence of any hazardous substance or material in or discharging from the Facilities. Nothing in this paragraph shall be interpreted to require the **UAO** to indemnify the **FDOT** for the **FDOT's** own negligence; however, it is the intent that all other costs and expenses of any nature be the responsibility of the **UAO**.

**6. Default**

- a. In the event that the **UAO** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in this Agreement, the **FDOT** may exercise one or more of the following options, provided that at no time shall the **FDOT** be entitled to receive double recovery of damages:
  - (1) Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT**.
  - (2) Pursue a claim for damages suffered by the **FDOT**.
  - (3) If the Utility Work is reimbursable under this Agreement, withhold reimbursement payments until the breach is cured. The right to withhold shall be limited to actual claim payments made by **FDOT** to third parties.
  - (4) If the Utility Work is reimbursable under this Agreement, offset any damages suffered by the **FDOT** or the public against payments due under this Agreement for the same Project. The right to offset shall be limited to actual claim payments made by **FDOT** to third parties.
  - (5) Suspend the issuance of further permits to the **UAO** for the placement of Facilities on **FDOT** property if the breach is material and has not been cured within sixty (60) days from written notice thereof from **FDOT** until such time as the breach is cured.
  - (6) Pursue any other remedies legally available.

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- (7) Perform any work with its own forces or through contractors and seek repayment for the cost thereof under Section 337.403(3), Florida Statutes.
- b. In the event that the **FDOT** breaches any provision of this Agreement, then in addition to any other remedies which are otherwise provided for in the Agreement, the **UAO** may exercise one or more of the following options:
  - (1) Terminate this Agreement if the breach is material and has not been cured within sixty (60) days from written notice thereof from the **UAO**.
  - (2) If the breach is a failure to pay an invoice for Utility Work which is reimbursable under this Agreement, pursue any statutory remedies that the **UAO** may have for failure to pay invoices.
  - (3) Pursue any other remedies legally available.
- c. Termination of this Agreement shall not relieve either party from any obligations it has pursuant to other agreements between the parties nor from any statutory obligations that either party may have with regard to the subject matter hereof.

**7. Force Majeure**

Neither the **UAO** nor the **FDOT** shall be liable to the other for any failure to perform under this Agreement to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**8. Indemnification**

**FOR GOVERNMENT-OWNED UTILITIES,**

To the extent provided by law, the **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

When the **FDOT** receives a notice of claim for damages that may have been caused by the **UAO** in the performance of services required under this Agreement, the **FDOT** will immediately forward the claim to the **UAO**. The **UAO** and the **FDOT** will evaluate the claim and report their findings to each other within fourteen (14) working days and will jointly discuss options in defending the claim. After reviewing the claim, the **FDOT** will determine whether to require the participation of the **UAO** in the defense of the claim or to require the **UAO** to defend the **FDOT** in such claim as described in this section. The **FDOT's** failure to notify the **UAO** of a claim shall not release the **UAO** from any of the requirements of this section. The **FDOT** and the **UAO** will pay their own costs for the evaluation, settlement negotiations, and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs.

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**FOR NON-GOVERNMENT-OWNED UTILITIES,**

The **UAO** shall indemnify, defend, and hold harmless the **FDOT** and all of its officers, agents, and employees from any claim, loss, damage, cost, charge, or expense arising out of any acts, action, error, neglect, or omission by the **UAO**, its agents, employees, or contractors during the performance of the Agreement, whether direct or indirect, and whether to any person or property to which **FDOT** or said parties may be subject, except that neither the **UAO**, its agents, employees, or contractors will be liable under this section for damages arising out of the injury or damage to persons or property directly caused by or resulting from the negligence of the **FDOT** or any of its officers, agents, or employees during the performance of this Agreement.

The **UAO's** obligation to indemnify, defend, and pay for the defense or at the **FDOT's** option, to participate and associate with the **FDOT** in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within fourteen (14) days of receipt by the **UAO** of the **FDOT's** notice of claim for indemnification to the **UAO**. The notice of claim for indemnification shall be served by certified mail. The **UAO's** obligation to defend and indemnify within fourteen (14) days of such notice shall not be excused because of the **UAO's** inability to evaluate liability or because the **UAO** evaluates liability and determines the **UAO** is not liable or determines the **FDOT** is solely negligent. Only a final adjudication or judgment finding the **FDOT** solely negligent shall excuse performance of this provision by the **UAO**. The **UAO** shall pay all costs and fees related to this obligation and its enforcement by the **FDOT**. The **FDOT's** delay in notifying the **UAO** of a claim shall not release **UAO** of the above duty to defend.

**9. Miscellaneous**

- a. Time is of essence in the performance of all obligations under this Agreement.
- b. The Facilities shall at all times remain the property of and be properly protected and maintained by the **UAO** in accordance with the current Utility Accommodation Manual in effect at the time the Plans Package is prepared and the current utility permit for the Facilities; provided, however, that the **UAO** shall not be obligated to protect or maintain any of the Facilities to the extent the **FDOT's** contractor has that obligation as part of the Utility Work pursuant to the **FDOT's** specifications.
- c. The **FDOT** may unilaterally cancel this Agreement for refusal by the **UAO** to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **UAO** in conjunction with this Agreement.
- d. This Agreement constitutes the complete and final expression of the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, or negotiations with respect thereto, except that the parties understand and agree that the **FDOT** has manuals and written policies and procedures which may be applicable at the time of the Project and the relocation of the Facilities.
- e. This Agreement shall be governed by the laws of the State of Florida. Any provision hereof found to be unlawful or unenforceable shall be severable and shall not affect the validity of the remaining portions hereof.
- f. All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, or express mail and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. The **UAO** shall have a continuing obligation to notify each District of the **FDOT** of the appropriate persons for notices to be sent pursuant to this Agreement. Unless otherwise notified in writing, notices shall be sent to the following addresses:

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If to the **UAO**:  
William T. Edwards (Public Works Director - City of Jacksonville  
Beach)  
\_\_\_\_\_  
1460-A Shetter Ave.  
\_\_\_\_\_  
Jacksonville Beach, FL 32250  
\_\_\_\_\_

If to the **FDOT**:  
John P. McCarthy  
\_\_\_\_\_  
FDOT / D2 Utilities Administrator  
\_\_\_\_\_  
1109 South Marion Ave., Lake City, FL 32025  
\_\_\_\_\_

**10. Certification**

This document is a printout of an **FDOT** form maintained in an electronic format and all revisions thereto by the **UAO** in the form of additions, deletions, or substitutions are reflected only in an Appendix entitled Changes To Form Document and no change is made in the text of the document itself. Hand notations on affected portions of this document may refer to changes reflected in the above-named Appendix but are for reference purposes only and do not change the terms of the document. By signing this document, the **UAO** hereby represents that no change has been made to the text of this document except through the terms of the appendix entitled Changes To Form Document."

You **MUST** signify by selecting or checking which of the following applies:

- No changes have been made to this Form Document and no Appendix entitled "Changes to Form Document" is attached.
- No changes have been made to this Form Document, but changes are included on the attached Appendix entitled "Changes to Form Document."

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement effective the day and year first written.

**UTILITY: City of Jacksonville Beach**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: **William T. Edwards**)

(Typed Title: **Public Works Director - City of Jacksonville Beach**)  
\_\_\_\_\_

**Recommend Approval by the District Utility Office**

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_



**UTILITY WORK BY HIGHWAY CONTRACTOR AGREEMENT  
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**APPENDIX: “CHANGES TO FORM DOCUMENT”**

The following changes are hereby made to the Utility Work By Highway Contractor Agreement (At FDOT Expense) between the Florida Department of Transportation (the “FDOT”) and City of Jacksonville Beach the (“UAO”) dated the \_\_\_\_\_ day of \_\_\_\_\_, 2017, for the project identified as FPN # 436077-1-56-01 :

Item 1.a. is hereby DELETED and replaced with the following:

**FDOT’s Design Consultant** shall prepare a final engineering design, plans, technical special provisions, and a cost estimate for the Utility Work (hereinafter referred to as the Plans Package). UAO shall have the right to review and approve the final engineering design, plans, and technical provisions of the utility work (referred to as Plans Package).

Item 1.f. is hereby DELETED.

Item 1.g. is hereby DELETED.

Item 1.h. is hereby DELETED and replaced with the following:

The UAO shall furnish the **FDOT’s Design Consultant** such information from the UAOs files as requested by the **FDOT’s Design Consultant** including, but not limited to, the type, size and location of the UAOs facilities.

Item 1.j. is hereby DELETED and replaced with the following:

The UAO shall fully cooperate with all other right of way users. Any conflicts that cannot be resolved through cooperation shall be resolved in the manner determined by the FDOT.

Item 1.l. is hereby DELETED and replaced with the following:

The cost of any design work performed pursuant to this paragraph 1 shall be paid by **FDOT** under a separate agreement with the **FDOT Design Consultant**.

Item 1.m. is hereby DELETED.

Item 2.c. is hereby DELETED and replaced with the following:

The FDOT shall perform all engineering inspection, testing, and monitoring of the Utility Work to insure that it is properly performed in accordance with the Plans Package except for the following activities: N/A;  
and will complete the FDOT daily diary records showing approved quantities and amounts for, weekly, monthly, and final estimates in accordance with the format required by the FDOT.

Item 2.d. is hereby DELETED and replaced with the following:

The FDOT will perform all contract administration for its construction contract.

Item 2.f. the second sentence is hereby DELETED.

Item 3.b. is hereby DELETED.

Item 3.c. is hereby DELETED.

Item 3.d. is hereby DELETED.

Item 3.e. is hereby DELETED.

Item 3.f. is hereby DELETED.

Item 3.g. is hereby DELETED.

Item 4.a. is hereby DELETED and replaced with the following:

The UAO shall be responsible for all costs incurred as a result of any delay to the FDOT or its contractors caused by failure of the UAO to properly perform its obligations under this agreement in a timely manner.

Item 4 b. is hereby DELETED.

Additional Signatures Added:

CITY OF JACKSONVILLE BEACH

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: William C. Latham)

(Typed Title: Mayor – City of Jacksonville Beach)

BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Typed Name: George D. Forbes)

(Typed Title: City Manager – City of Jacksonville Beach)

ATTEST BY: (Signature) \_\_\_\_\_

DATE: \_\_\_\_\_

(Printed Name: \_\_\_\_\_)

(Printed Title: \_\_\_\_\_)



City of  
Jacksonville Beach  
City Hall  
11 North Third Street  
Jacksonville Beach  
FL 32250  
Phone: 904.247.6268  
Fax: 904.247.6276

November 27, 2017

TO: George Forbes, City Manager  
FROM: Ty Edwards, Public Works  
RE: Ordinance No. 2017-8099, Amending Article IV, Chapter 28 of the City Code of Ordinances: Streets, Sidewalks and Other Public Places – Communications Rights-of-Way by Revising and Adding Certain Sections Pertaining to Small Wireless Facilities in the Public Rights-of-Way

[www.jacksonvillebeach.org](http://www.jacksonvillebeach.org)

**ACTION REQUESTED**

Adopt Ordinance No. 2017-8099, amending Article IV of Chapter 28 of the City Code of Ordinances pertaining to small wireless facilities in public rights-of-way.

**BACKGROUND**

In June 2017, the state legislature passed a bill (HB 687) amending Florida Statutes Chapter 337.401 by creating regulations called the "Advanced Wireless Infrastructure Deployment Act." The new law specifically regulates the placing of new utility poles in the City's rights-of-way to support small wireless facilities and micro wireless facilities. This law became effective on July 1, 2017.

The following are some of the key points of the state law, which:

- Preempts local government control of the placement of "small" or "micro" wireless antennas and equipment;
- Bars local governments from prohibiting the placement of "small" or "micro" wireless facilities on or next to existing cellphone towers and utility poles within municipally owned rights-of-way;
- Requires a local government to approve or deny an application for a permit to collocate small wireless facilities on very streamlined "shot-clock" times. If the local government misses any of the "shot-clock" times, then the permit is automatically approved.



- Provides for a fee not to exceed \$150 annually per utility pole (or wireless support structure) on which wireless facilities are installed in the rights-of-way;
- Local governments are also prohibited from imposing minimum distances between small wireless equipment;
- This “micro” equipment/infrastructure can be as large as six cubic feet in volume (for instance, 2 feet by 3 feet). All other wireless equipment associated with the facility cumulatively can be as large as 28 cubic feet in volume (the approximate size of a small refrigerator);
- The height of a small wireless facility is restricted to no more than 10 feet above the existing utility pole. Unless waived by the local government, the height for a new pole is limited to the tallest existing utility pole located in the right of way;
- If there is no utility pole within 500 feet of the proposed location, then the new utility pole (or wireless support structure) can be no taller than 50 feet;
- An applicant seeking to collocate small wireless facilities can file a consolidated application and receive a single permit for the collection of no more than 30 small wireless facilities;
- Allows for some minimum design standards and for the wireless communications provider and the local government to negotiate those design standards;
- The local government may negotiate for 30-days with the applicant on the applicant’s chosen locations for wireless facilities.
- Exempts the following from the requirements of this new state law:
  - The Florida Department of Transportation, and
  - Municipal electric utilities (*such as Beaches Energy Services*).

While the City supports this new technology, the far-reaching implications of this bill required prompt but thorough review.

The primary objective of the City Code update is to manage the growth of wireless communications facilities within the city limits in the best interests of the public in safety, health and prudent land use (including the limited resource of rights-of-way), and in a manner that is not inconsistent with the new state law.

- In August, the City Attorney coordinated services for the City with Attorney Thomas Cloud of Orlando, FL, a preeminent subject matter expert in Florida on this new state law. We quickly began working with Mr. Cloud on a proposed amendment to the City Code.
- In September / October, we responded to the impacts of Hurricane Irma, which delayed work on the amendment.
- In November, we divided the proposed amendment into two parts for adoption:
  - The first part recommends adopting Ordinance 2017-8099, which proposes amending Article IV of Chapter 28 of the Code of Ordinances, titled “Communications Facilities Rights-of-Way Ordinance.” This part is the subject of this council memorandum.
  - The second part recommends adopting an Ordinance, which proposes amending portions of the Land Development Code. This part is first to be considered by the Planning Commission and then brought to Council for consideration.

#### **HIGHLIGHTS OF PROPOSED CITY ORDINANCE No. 2017-8099**

- Sec.28-70. -Short title: Revised to read “Jacksonville Beach Communications Facilities Rights-of-Way Ordinance”.
- Sec. 28-71. – Intent and purpose: Revised to be consistent with the new state law.
- Sec. 28-72. – Definitions: Added new, and updated existing, definitions to be consistent with the new state law.
- Sec. 28-73. - Registration: A communications services provider is required to register with the City prior to submitting an application for permit for small wireless facilities. This includes providing required liability insurance (with the City as additional insured), construction bond and surety account as detailed in Sections 28-81, 28-83 and 28-84, respectively.
- Sec. 28-74 – Notice of transfer, sale, or assignment of assets: No change.
- Sec. 28-75. – Placement or maintenance of communications facilities: The communication service provider requesting to collocate or install in rights-of-way shall certify that an appropriate inquiry with other providers has been made to determine if existing communication facilities are available through a joint-use agreement with the owner provider.

- Sec. 28-76. – Wireless facilities: *(This is a new section. All existing sections hereafter renumbered.)*
  - Telecommunications towers and antennae are subject to the City's zoning and land use regulations including the most current version of Sections 34-409 and 34-410 of the City's Land Development Code.
  - Reinforces that the Beaches Energy Services is exempt, as a municipal electric utility, such that its utility poles are not subject to the requirements of the new state law.
  - The following "shot-clock" timeline for an application for permit to place new utility poles in the public rights-of-way in support of collocation, is as follows:

- 14-days prior to application: A pre-application conference is required between the applicant and the City.

The goal of this meeting is for the City and potential applicant to communicate and develop agreement on consensus locations for new poles for wireless facilities – private property, public property or, as a last resort, public right-of-way. It is also a time for the City to communicate its application process and land development requirements for communications facilities.

- 14-days after receipt of application: City shall notify applicant by email whether and or not the application is complete. If not complete, City shall also identify what information is missing.

Failure by the City to notify the applicant within 14 days shall result in the application being deemed complete.

- 30-days after receipt of an incomplete notification: Applicant must complete the application within 30-days.

Failure to resubmit the completed application within 30 days shall result in the application being deemed incomplete and the City may deny application.

- 60-days after receipt of a complete application: Once an application is deemed complete, then City has 60-days (from initial receipt) to either approve or deny the application by email. If denied, then City must identify the deficiencies of the completed application.

Failure by the City to approve or deny the application within 60 days shall result in approval of the application. (This time may be extended by mutual agreement.)

- 30-days after denial: Applicant has 30-days after City denial to cure the deficiencies of the completed application and resubmit the application to the City. (All subsequent reviews are limited to the deficiencies cited in the denial.)

Failure by the applicant to resubmit the cured completed application shall result in a final denial.

- Sec. 28-77. – Suspension of permits: No change.
- Sec. 28-78. – Involuntary termination of registration: No change.
- Sec. 28-79. – Fees applicable to those not subject to communications services tax: *(This is a new section. All existing sections hereafter renumbered.)* Reserves the right to the City to require fees from entities that are not communications providers, which are applying for permits to install communications facilities in public rights-of-way.
- Sec 28-80. – Existing communication facilities in public rights-of-way: No change.
- Sec 28-81. – Insurance: No change.
- Sec. 28-82. – Indemnification: No change.
- Sec. 28-83. – Construction bond: No change.
- Sec. 28-84. – Security account: No change.
- Sec. 28-85. – Enforcement remedies: No change.
- Sec. 28-86. – Abandonment: No change.
- Sec. 28-87. – Force Majeure: No change.
- Sec. 28-88. – Reservation of rights and remedies. No change.

## **RECOMMENDATION**

Adopt Ordinance Number 2017-8099, amending Article IV of Chapter 28 of the City Code of Ordinances regulating small wireless facilities in the public rights-of-

way as explained in the memorandum from the Public Works Director dated November 27, 2017.

Introduced by \_\_\_\_\_  
1st Reading \_\_\_\_\_  
2nd Reading \_\_\_\_\_

**ORDINANCE NO. 2017-8099**

**AN ORDINANCE AMENDING CHAPTER 28 OF THE CODE OF ORDINANCES OF THE CITY OF JACKSONVILLE BEACH, FLORIDA; ADOPTING REGULATIONS RELATED TO WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT WITH THIS ORDINANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF JACKSONVILLE BEACH, FLORIDA:**

**SECTION 1. AMENDMENTS TO CHAPTER 28, CODE OF ORDINANCES.**

That Chapter 28, Article IV, Communications Rights-of-Way, of the Code of Ordinances of the City of Jacksonville Beach, Florida, is hereby amended to read as follows:

**ARTICLE IV. - COMMUNICATIONS RIGHTS-OF-WAY**

**Sec. 28-70. - Short title.**

This article shall be known and may be cited as the ~~city~~ Jacksonville Beach ~~Communications~~ Facilities ~~Rights-of-Way~~ Ordinance.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-71. - Intent and purpose.**

(a) The City hereby makes and declares the following findings and declares its legislative intent as follows:

- (1) The public rights-of-way within the City of Jacksonville Beach are a unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the City.

- (2) The demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand.
- (3) The placement of telecommunications equipment and facilities in the public rights-of-way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its public rights-of-way.
- (4) The public rights-of-way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.
- (5) The use and occupancy of the public rights-of-way by providers of communications services must be subject to regulation, which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers of cable, telecommunications, and other services in the public interest.
- (6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is a regulation of general and permanent nature and enforceable as local law.
- (7) Section 337.401, Florida Statutes, addresses the authority of municipalities to regulate the placement and maintenance of communication facilities, and other utilities, in the public rights-of-way.
- (8) In 2017, Florida passed Chapter 2017-136, Laws of Florida, which among other things, amends § 337.401, Florida Statutes, to create the new Subsection (7) known as the Advanced Wireless Infrastructure Deployment Act ("Wireless Deployment Act"), effective July 1, 2017, to address municipalities' regulation of access to the public rights-of-way for wireless communications facilities and wireless support structures.
- (9) The Wireless Deployment Act provides that municipalities may require a registration process in accordance with § 337.401(3), Florida Statutes, may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties and further provides that, for any applications filed before the effective date of ordinances implementing this subsection, an authority may apply current ordinances relating to the placement of communications facilities in the rights-of-way related to registration, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties.

- (10) The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a “municipal electric utility” such that the City utility poles are not subject to the Wireless Deployment Act’s “Collocation” requirements as stated in § 337.401(7)(l), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida.
- (11) The communication industry is in a constant state of emerging technology that includes the infrastructure required to support the increased demand and capacity to receive and to transmit increased data and voice communications.
- (12) A new network of wireless communications infrastructure has emerged comprised of a series of small individual antenna (“Small Cells”), or nodes (“Distributed Antenna Systems” or “DAS”), and wireless backhaul networks that are linked to a larger hub site.
- (13) The City has received requests to place new utility poles, wireless communications facilities, and wireless support structures within the public rights-of-way.
- (14) The current City Code contains requirements for registration, insurance, permitting, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipality liability or municipal warranties that address sufficiently the placement or maintenance within the public rights-of-way for wireline and wireless communications facilities or wireless support structures, but needs to be updated to incorporate state law changes since the adoption of the original ordinance in 2001.
- (15) The City finds that, to promote the public health, safety and general welfare, it is necessary to:
- i. Provide for the placement or maintenance of Communications Facilities in the public rights-of-way within the City limits,
  - ii. Adopt and administer reasonable rules, regulations and general conditions not inconsistent with applicable state and federal law,
  - iii. Manage the placement and maintenance of Communications Facilities in the public rights-of-way by all communications services providers,
  - iv. Minimize disruption to the public rights-of-way, and
  - v. Require the restoration of the public rights-of-way to original condition.
- (16) It is the intent of the City to require that the placement or maintenance of any wireline or wireless communications facility or wireless support structure in the public rights-of-way must have an effective registration which satisfies the requirements set forth herein for such registration, to the

extent not inconsistent with applicable federal and state laws and regulations.

(17) It is also the City's intent to exercise the City's retained authority to regulate and manage the City's roads and rights-of-way in exercising its police power over communications services providers' placement and maintenance of facilities in the public rights-of-way in a nondiscriminatory and competitively neutral manner.

(b) This Article IV of City Code Chapter 28 shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a communications system or facilities, as such terms are defined herein, in the public rights-of-way, unless otherwise exempt by operation of applicable state or federal law. Notwithstanding the above, this Article IV of City Code Chapter 28 shall not apply whatsoever to a City owned or controlled communications system.

~~It is the intent and purpose of the city to promote the public health, safety, and general welfare by: providing for the placement or maintenance of communications facilities in the public rights-of-way within the city; adopting and administering reasonable rules, regulations, and policies not inconsistent with federal and state laws including F.S. § 337.401, (2000), as amended, the city's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state laws; establishing reasonable rules, regulations, and policies necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications service companies and providers; and minimizing disruption to the public rights-of-way.~~

~~(Ord. No. 2001-7813, 6-4-01)~~

## **Sec. 28-72. - Definitions.**

For purposes of this article, the following terms, phrases, words, and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Chapter 202, Florida Statutes, or Chapter 337, Florida Statutes, and, if not defined therein, be construed to mean the common and ordinary meaning.

*Abandonment* shall mean the permanent cessation of all uses of a communications facility; provided however, that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the

conduit continues to be used, shall not be abandonment of a facility in public rights-of-way.

Affiliate means each person, directly or indirectly, controlling, controlled by, or under common control with a communications services provider that is registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than 15 percent in such Communications Services Provider.

Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services or other communications services.

The City shall mean the City of Jacksonville Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida.

City Code means the Code of Ordinances of the City of Jacksonville Beach, Florida.

City Manager shall mean the City Manager of the City of Jacksonville Beach or the manager's designated representative.

City Utility Pole means a utility pole owned by the City in the right-of-way, but excludes City utility poles that are used to support the City's owned or operated electric transmission, distribution and lighting facilities.

Collocate or Collocation means to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way, nor does it include interconnection of communications facilities or the sale or purchase of capacity (whether bundled or unbundled).

Communications facility or facility or system shall mean any permanent or temporary plant, equipment, and property including, but not limited to cables, wires, conduits, ducts, fiber optics, poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained, or to be placed or maintained, in the public rights-of-way of the city and used, or capable of being used, to transmit, convey, route, receive, distribute, provide, or offer communications services.

Communications services shall include, without limitations, the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by and through electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission, conveyance, open video system, or cable service. ~~mean the transmission, conveyance, or routing of voice, data, audio, video, or any other information and signals to a point, between points, or among points by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such communication, transmission, or conveyance. Notwithstanding the foregoing, for purposes of this section "cable service," as defined in~~

~~F.S. § 202.11(2), (2000), as amended, is not included in the definition of "communications services," and cable service providers shall be subject to ordinances of the city.~~

~~Communications services *company and provider* shall refer to any person making available or providing communications services, as defined herein, or a wireless infrastructure provider. mean any person, including a county or state, providing communications services through the placement or maintenance of a communications facility in public rights-of-way. "Communications services company and provider" shall also include any person, including a county or state, that places or maintains a communications facility in public rights-of-way, but does not provide communications services.~~

~~Communications facility or facility or system shall mean any permanent or temporary plant, equipment, and property including, but not limited to cables, wires, conduits, ducts, fiber optics, poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained, or to be placed or maintained, in the public rights-of-way of the city and used, or capable of being used, to transmit, convey, route, receive, distribute, provide, or offer communications services.~~

Communications Facilities Development Permit means the permit required under Section 28-75 and/or Section 28-76, City Code, prior to commencement of any placement or maintenance of Facilities in the public rights-of-way.

FCC shall mean the Federal Communications Commission.

*In public rights-of-way or in the public rights-of-way* shall mean in, on, through, over, under, or across the public rights-of-way.

Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements, as amended, now in effect or subsequently enacted or issued including, but not limited to, the Communications Act of 1934, 47 U.S.C 151 et seq. as amended, all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto, Section 337.401 Florida Statutes, as amended, and all state statutes and regulations issued by state agencies pursuant thereto.

*Ordinance* shall mean this ordinance.

Pass-Through Facilities means the Facilities for a communication system that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

Pass-Through Provider means any Person, municipality or county that places or maintains a communications system or communications facilities in the public rights-of-way but who does not provide communications services, including for example a company that places "dark fiber" or conduit in the public rights-of-way and leases or otherwise provides those facilities to another company that does provide communications services to an end user. This definition of "pass-through provider" is intended to include any person that places or maintains "pass-through facilities" in the public rights-of-way.

but does not provide communications services to an end user within the corporate limits of the City.

*Person* shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization, or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations.

*Place or maintain or placement or maintenance or placing or maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate, or relocate. A communications services company or provider that owns or exercises physical control over communications facilities in public rights-of-way, shall be considered as "placing or maintaining" the facilities. A person providing communication service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not placing or maintaining facilities in the public rights-of-way.

*Public rights-of-way* shall mean a dedicated public right-of-way, highway, roadway, street, bridge, tunnel, or alley for which the city has authority, jurisdiction, control, and may lawfully grant access pursuant to applicable law and includes the surface, the air space above the surface, and the area below the surface. Public rights-of-way shall not include private property. Public rights-of-way shall not include any real or personal property of the city, except as described herein and shall not include the city's buildings, fixtures, poles, conduits, facilities, structures, appurtenances, or improvements regardless of whether they are situated within or without the public rights-of-way. Public rights-of-way shall not include existing and future private easements, private rights-of-way, leases, contracts, or agreements between the city and any other party or entity.

*Public Service Commission or PSC* means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

*Registrant* shall mean a communications services company and provider registered with the city in accordance with the provisions of this section.

*Registration or register* shall mean the process described in this section whereby a communications services company and provider performs certain duties and provides certain information to the city.

*-Utility Pole* means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless the City grants a waiver for the pole. The term does not include a utility pole owned by the City, nor does it include any other utility pole exempt from such term pursuant to § 337.401, Florida Statutes.

*Wireless Support Structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to

support or capable of supporting wireless facilities. The term does not include a utility pole.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-73. - Registration.**

- (a) A communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city ~~of~~ shall first register with the city in accordance with this article. Subject to the terms and conditions prescribed in this section, as amended, a registrant may place and maintain communications facilities in public rights-of-way.
- (b) The act of registration shall not convey any title, equitable or legal, to the registrant in the city's public rights-of-way. Registration under this article embodies only the placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes, or regulations apply to the placement or maintenance in the public rights-of-way of facilities, which are not communications facilities. Registration does not excuse a communications services company or provider from obtaining appropriate and required access or pole attachment agreements before locating communication facilities on the city's facilities or another person's facilities. Registration does not excuse a communications services company or provider from complying with all applicable city ordinances, codes, or regulations including this section.
- (c) Each communications services company or provider that desires to place or maintain a communications facility in public rights-of-way in the city shall file a registration with the city, which shall include the following information:
  - (1) Name of the applicant;
  - (2) Name, address, and telephone number of the applicant's primary contact person in connection with the registration, and the name, address, and telephone number of the person to contact in case of an emergency;
  - (3) Registrations submitted prior to ~~October 4,~~ December 18, 2017, shall state if the applicant provides local service, toll service, or both;
  - (4) Evidence of the insurance coverage required under this section and acknowledgment that applicant has received and reviewed a copy of this section; however, the acknowledgment of the receipt of this section shall not be deemed an agreement;
  - (5) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be;
  - (6) For registrations submitted on or after December 18, 2017, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida

Department of Revenue to engage in the business of providing communications services in the State of Florida; and

- (57) The applicant's certificate of authorization or license number to provide communications services issued by the state public service commission, the Federal Communications Commission, or other federal or state authority, if any, having jurisdiction; ~~and~~
- (68) For an applicant that does not provide a state public service commission certificate of authorization number, if the applicant is a corporation, proof of authority to conduct business in the state. A certificate number from, or filing with, the Florida Department of State will be acceptable;
- (9) For an applicant that is a pass-through provider, in lieu of paragraphs (5), (6), (7) and (8) above, the applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida.
- (d) The city shall review the information submitted by the applicant. ~~Such review shall be conducted by the city manager or the city manager's designee~~ The city manager or the city manager's designee shall conduct such review. If the applicant submits information in accordance with this article, the registration shall be effective and the city shall notify the applicant in writing of the effectiveness of the registration. If the city determines that the information has not been submitted in accordance with this article, the city shall notify the applicant in writing of the non-effectiveness of the registration, and reasons for the non-effectiveness. The city shall notify an applicant within thirty (30) calendar days after receipt of the registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration.
- (e) A registrant may cancel a registration upon written notice to the city stating that registrant will no longer place or maintain any communications facilities in public rights-of-way within the city and registrant will no longer require permits to perform work in public rights-of-way. A registrant shall not cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (f) Registration does not establish a right or provide authority to place and maintain or establish priority for the future placement or maintenance of a communications facility in public rights-of-way within the city, but shall establish for the registrant, a right to apply for a permit from the city. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any new or existing city laws, as well as any new or existing federal or state laws, rules, and regulations which may be enacted or which have been enacted.
- (g) A registrant shall renew its registration with the city by the first day of April of even numbered years in accordance with the registration requirements in this section, except that a registrant that initially registers during the even numbered year when renewal would be due or the odd numbered year immediately preceding such even numbered year shall not be required to renew until the next even numbered year.

Within thirty (30) calendar days of any change in the information required herein, a registrant shall provide updated information to the city. If the information in the then-existing registration has not changed, the renewal may provide that no information has changed. Failure to renew a Registration may result in the city restricting the issuance of additional permits until the communications services company or provider has complied with the registration requirements of this article.

- (h) In accordance with applicable city ordinances, codes, regulations, or policies a permit shall be required of a communications services company or provider that desires to place or maintain a communications facility in public rights-of-way. An acceptable and approved registration shall be a condition precedent to requesting and obtaining a permit. Notwithstanding an acceptable and approved registration, permitting requirements shall always apply. A permit may be obtained by a Registrant having an acceptable and approved registration if all permitting requirements are met.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-74. - Notice of transfer, sale, or assignment of assets.**

If a registrant transfers, sells, or assigns the assets located in public rights-of-way or incident to a transfer, sale, or assignment of the registrant's assets the transferee, the buyer, or the assignee shall be fully obligated to comply with the terms of this section. Written notice of any such transfer, sale, or assignment shall be provided by such registrant to the city within twenty (20) calendar days after the effective date of the transfer, sale, or assignment. If the transferee, buyer, or assignee is a current registrant then the transferee, buyer, or assignee may not be required to re-register. If the transferee, buyer, or assignee is not a current registrant, then the transferee, buyer, or assignee shall register as provided herein within thirty (30) calendar days of the transfer, sale, or assignment. If permit applications are pending in the registrant's name the transferee, buyer, or assignee shall notify the city that the transferee, buyer, or assignee is the new applicant.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-75. - Placement or maintenance of communications facilities.**

As a condition of allowing the placement or maintenance of a communications system or any communications facility in the public rights-of-way, and under additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Article IV, these rules, regulations and general conditions shall apply to all communications services providers, including those that are pass-through providers irrespective of whether they place and maintain only conduit, dark fiber or pass-through facilities.

- (a) A registrant shall, at all times, comply with and abide by all applicable provisions of federal and state laws, regulations, rules and the city ordinances, codes, regulations, and policies in placing and maintaining a communications facility in public rights-of-way.
- (b) ~~A~~Neither a registrant nor a communications service provider shall ~~not~~ commence to place or maintain a communications facility in public rights-of-way until all applicable permits, if any, have been issued by the city and other appropriate authorities. Registrant acknowledges and accepts, that as a condition of granting any permits, the city may impose reasonable rules, regulations, and policies governing the location, placement, and maintenance of a communications facility in public rights-of-way. The communications services provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the public rights-of-way in the event of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City manager or his designee, showing the placement or relocation of a communications facility undertaken in connection with the emergency.
- (c) As part of the permit application to place a new or replace or maintain an existing communications facility in public rights-of-way, the registrant shall provide not less than the following:
  - (1) A description of the location of the proposed facilities including a narrative description and a scaled pictorial drawing of the facilities to be installed, where the facilities are to be located, and the size of facilities to be located in public rights-of-way; and
  - (2) A description of the construction methods or techniques which will be used to install the facilities; and
  - (3) A maintenance plan for disruption of traffic; and
  - (4) A statement concerning the ability of the public rights-of-way to accommodate the proposed facility; and
  - (5) An estimate of the cost of the restoration to the public rights-of-way; and
  - (6) A timetable for project construction and each phase thereof, and the areas within the city which will be affected; and
  - (7) Such additional information as the city finds necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application.
- (d) To the extent not otherwise prohibited by federal or state laws, the city shall have the power to prohibit or limit the placement of new or additional communications facilities within particular areas of all public rights-of-way.
- (e) All communications facilities shall be placed and maintained so as not to interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin the public rights-of-way. The use of trenchless technology, joint trenching, and co-locating of facilities in existing conduit

in the public rights-of-way is encouraged and shall be employed when feasible. The city manager or the city manager's designee may promulgate rules, regulations, and policies concerning the placement and maintenance of a communications facility in public rights-of-way consistent with this article and other applicable federal and state laws.

- (f) All safety practices required by applicable municipal, state, and federal laws or accepted industry practices and standards, shall be used during the placement or maintenance of communications facilities in public rights-of-way.
- (g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, the registrant shall at the registrant's expense, restore the public rights-of-way to the original condition, or superior to the original condition, which existed before such placement or maintenance. If the registrant fails to complete the restoration within thirty (30) calendar days, following the completion of such placement or maintenance, the city may perform the restoration and charge the total costs of the restoration to the registrant in accordance with ~~F.S. § 337.402, Florida (2000), as Statutes as~~ amended. For twelve (12) calendar months following the original completion date of the work, the Registrant shall guarantee the restoration work and shall correct, at the Registrant's expense, any restoration work, which does not satisfy the requirements of the city.
- (h) Removal or relocation, at the direction of the city of a registrant's existing communications facility in public rights-of-way, shall be governed by the provisions of ~~F.S. § 337.403 and § 337.404, Florida Statutes (2000),~~ as amended.
- (i) An approved permit from the city shall constitute authorization to undertake only certain activities in public rights-of-way in accordance with this article, and the permit does not create a property right or grant authority to impinge upon the rights of others who have an interest in the public rights-of-way.
- (j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law.
- (k) In connection with excavation in the public rights-of-way, a registrant shall where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in ~~F.S. Ch. 556, Florida Statutes(2000),~~ as amended.
- (l) A registrant shall use and exercise due caution, care, and skill in performing work in the public rights-of-way and shall take all reasonable and necessary steps to safeguard the entire work area and the general public.
- (m) Upon request of the city, and as notified by the city of the other work, construction, installation, or repairs, a registrant may be required to coordinate all placement and all maintenance activities with any other work, construction, installation, or repairs which may be occurring, or scheduled to occur, in public rights-of-way. A registrant may be required to alter an installation and maintenance schedule to minimize disruptions and disturbance in the public rights-of-way.
- (n) A registrant shall not place or maintain communications facilities, which interfere with, displace, damage, or destroy other facilities including, but not limited to, sewer mains,

gas mains, water mains, electric facilities, stormwater drains, pipes, cables, conduits, and all other facilities occupying the public rights-of-way.

- (o) The city makes no expressed or implied warranties or representations regarding the fitness, suitability, or availability of the city public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred, or services provided by registrant shall be at registrant's exclusive risk. Nothing in this article shall affect the city authority to add, increase, vacate, or abandon public rights-of-way, and the city makes no expressed or implied warranties or representations regarding the availability of any added, increased, vacated, or abandoned public rights-of-way for communications facilities.
- (p) The city shall have the right and authority to make any inspections, at any time, of communications facilities placed or maintained in public rights-of-way as the city determines necessary to ensure compliance with this article.
- (q) A permit application to place a new or maintain an existing communications facility in public rights-of-way shall include plan and profile drawings, which show the actual location of the facilities in the public rights-of-way. If the drawings require revision based upon actual installation, the registrant shall promptly provide the revised as-built drawings to the city. The drawings shall be in a hard copy format and an electronic format specified by the city. All such drawings, data and information shall be provided at no cost to the city.
- (r) The city reserves, without limitation, the exclusive right to place, maintain, and permit to be placed or maintained, all sewer, gas, water, electric, stormwater drainage, communications, all other types of facilities, cables, or conduits and to do, and to permit to be done, any underground and overhead installations or improvements which may be deemed necessary or proper by the city in public rights-of-way that may be occupied by a registrant. The city further reserves, without limitation, the exclusive right to alter, change, or cause to be altered or changed the grading, installation, relocation, or width of the public rights-of-way within the limits of the city and within said limits as the limits may, from time to time, be altered.
- (s) A registrant shall, upon request of any person holding a permit issued by the city, temporarily adjust any communications facilities to allow for work authorized by other permits. The expense of such temporary adjustments of facilities shall be paid by the person requesting the adjustment and the registrant shall have the right to request such payment of expense in advance. If the city requests temporary or permanent adjustments of a registrant's existing or proposed facilities to allow for work to be done by the city, its contractors, or its agents, however, all expenses and costs related to the adjustments of the registrant's temporary or permanent facilities, shall be the responsibility of and shall be paid by the registrant. The registrant shall be given not less than fifteen (15) calendar days advance written notice to arrange for such temporary or permanent adjustments.
- (t) Any communications facilities placed in the public rights-of-way by the communications services provider without first having obtained the required communications facilities development permits shall be removed within thirty (30)

days of written notice by the City to remove the same and in default of compliance with such notice, such facilities may be removed by order of the City manager or his designee and the cost of removal shall be borne and paid by the communications services provider upon demand.

(u) The placement or maintenance of all communications facilities shall be underground unless otherwise approved in writing and in compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Communications facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City manager or his designee. All communications facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") minimum depth of cover for and shall have a minimum of two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City manager or his designee, Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City manager or his designee. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

(v) The placement or maintenance of facilities aboveground, including new utility poles and aerial wires, is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28. Attachment to any pole or other aboveground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any utility pole or other above-ground structure shall not be considered a vested interest of the communications services provider and such Utility Poles or structures, if owned by the communications services provider, shall be removed or modified by the communications services provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The communications services provider shall, at such time as the electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications facilities underground without cost to the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the right-of-way of communications facilities and appurtenances.

(w) The placing of any new utility pole or other aboveground structure to support communications facilities is subject to written approval and to compliance with the most current version of the provisions of Article IV, City Code Chapter 28 and shall be done under the supervision of the City manager or his designee. No such utility pole or other aboveground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other communications facilities are aboveground and such facilities are moved, either voluntarily or at the direction of the City, to a new

utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City. New utility poles installed by wireless infrastructure providers shall also be subject to and may avail themselves of the requirements and process set forth in § 28-76 hereof. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

(x) A communications services provider, in an effort to minimize the adverse impact on the useful life of the public rights-of-way, shall, whenever possible, enter into joint use agreements with the City and other parties who have registered with, or who are expressly authorized by, the City to use its public rights-of-way; provided that the terms of such agreements are satisfactory to the communications services provider. Nothing herein contained shall mandate that the communications services provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional underground conduit in the public rights-of-way, a communications services provider is required to certify in writing to the City manager or his designee that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the public rights-of-way as to the availability of existing or planned conduit that the particular communications services provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The communications services provider shall not be permitted to perform any placement or maintenance of facilities in those segments of the public rights-of-way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, an agency of the City or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the communications services provider's system or network. Under such circumstances the communications services provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a communications facilities development permit from the City. The City retains the final decision on vertical depth and/or height location and horizontal location within the rights-of-way of communications facilities and appurtenances.

~~(t) Wireless facilities which are an appurtenance of a communication facility, which are located within public rights-of-way, and which lie within or adjacent to a zoning district where a communication facility is a permitted use pursuant to chapter 34 of the Code of Ordinances, shall be subject to not less than the following criteria:~~

- ~~(1) Structures installed to serve as a mounting device for antennae, except those structures owned by the city, are expressly prohibited from being placed in the public rights-of-way;~~
- ~~(2) Wireless facilities shall comply with any applicable federal communications commission emissions standards;~~
- ~~(3) The design, construction, and installation of wireless facilities shall comply with all applicable building codes;~~
- ~~(4) No signs shall be allowed on wireless facilities except warning and informational signs approved, in advance, by the city;~~
- ~~(5) All equipment within the public rights-of-way which are used in conjunction with a wireless facility shall comply with all applicable municipal rules, regulations, policies, and ordinances.~~

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-76. –Wireless facilities.**

- (a) Generally. The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City's zoning and land use regulations, including those set forth in the most current version of §§ 34-409 and 34-410 in the City's Land Development Code, which is a part of the City Code. Where placement of a wireless antenna in the public rights-of-way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:
  - (1) Not extend more than 10 feet above the highest point of the vertical structure;
  - (2) Not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;
  - (3) Comply with any applicable Federal Communications Commission Emissions Standards;
  - (4) Comply with any applicable local building codes in terms of design, construction and installation; and
  - (5) Not contain any commercial advertising thereon.
- (b) Small Wireless Facilities in Public Rights-of-Way. The City is exempt under 47 U.S.C. § 224 from federal pole attachment requirements, and finds that it is a "municipal electric utility" such that the City utility poles are not subject to the Wireless Deployment Act's "Collocation" requirements as stated in § 337.401(7)(l), Florida Statutes, currently set forth in Chapter 2017-136, Laws of Florida. Unless and until the City adopts an ordinance regulating pole attachments, the City reserves the right

to approve or deny individual requests for pole attachments to City utility poles within its sole discretion.

(c) Placement of Utility Poles in the Public Rights-of-Way in Support of Collocation of Small Wireless Facilities. A wireless infrastructure provider may apply to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City, and the application must contain an attestation that the applicant cannot find a leasable site for the utility pole on private property within the City. The City shall accept and process the application in accordance with the procedure set forth below and any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way. Applicants seeking permission to install new utility poles within public rights-of-way shall comply with the registration, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 28.

(1) Filing, Review, and Processing of Applications. The City shall accept applications for permits and shall process and issue permits for the placement of utility poles in the public rights-of-way in support of collocation of small wireless facilities subject to the following requirements:

- a. Prior to filing any such application, the applicant shall notify the City and schedule a pre-application conference for the purpose of notifying and disclosing all information relevant to the City's assessment of any application to be filed hereunder. No such application may be filed until the pre-application meeting has been scheduled and conducted. The pre-application meeting shall be scheduled and held at least fourteen (14) days prior to the filing of any such application.
- b. The applicant shall as a part of its application provide information necessary to demonstrate the applicant's compliance with § 337.401(7), Florida Statutes, the applicable provisions of Chapter 28 and other applicable provisions of the City Code for the placement of a new utility pole in the locations identified in the application, and shall bear the burden of demonstrating compliance therewith.
- c. Within fourteen (14) days after receiving an application, the City must determine and notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the City must specifically identify the missing information. An application is deemed complete if the City fails to provide notification to the applicant within fourteen (14) days. If the applicant fails to complete the application within thirty (30) days after receiving a notice from the City that the application is deemed incomplete, then the City may deny the application.

- d. The City shall process all applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.
  - e. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.
  - f. The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable provisions of § 337.401(7), Florida Statutes, this Chapter 28, and other applicable provisions of the City Code.
  - g. If the application is denied, the City shall specify in writing the basis for denial, including the specific statutory or code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application.
  - h. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. Failure by the applicant to resubmit the Application timely shall result in a final denial of the application. The City shall approve or deny a timely filed revised application within 30 days after receipt or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.
- (2) The City may deny a proposed new utility pole in the public rights-of-way if the proposed new utility pole violates or fails to comply with one or more of the following:
- a. Violates or fails to comply with any provision of § 337.401(7), Florida Statutes.
  - b. Violates or fails to comply with any provision of Chapter 28, City Code, as amended from time to time.
  - c. Violates or fails to comply with any provision of §§ 34-409 and 34-410 in the City's Land Development Code.
  - d. Violates or fails to comply with any provision related to historic preservation set forth in the City Code, as amended from time to time.
  - e. Materially interferes with the safe operation of traffic control equipment.
  - f. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - g. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

**Sec. 28-767. - Suspension of permits.**

The city shall have the exclusive authority to suspend or revoke a permit for any work in the public rights-of-way for due cause and for one or more of the following reasons:

- (a) Violation of permit conditions including any conditions set forth in the permit, this section, or other applicable city ordinances, codes, policies, rules or regulations governing placement or maintenance of communications facilities in public rights-of-way; and
- (b) Misrepresentation or fraud by registrant in a registration or permit application to the city; and
- (c) Failure to properly renew a registration or ineffectiveness of a registration; and
- (d) Failure to relocate or remove facilities as required by the city. The city manager or the city manager's designee, may provide a notice and the opportunity for a registrant to cure any violation or failure described herein.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-778. - Involuntary termination of registration.**

- (a) The city may terminate a registration for due cause, reason, and for one or more of the following:
  - (1) Federal or state authority suspends, denies, or revokes a registrant's certification or license to provide communication services; or
  - (2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents a danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of notice; or
  - (3) The registrant ceases to use all of the communications facilities in public rights-of-way or has not complied with the requirements of this section.
- (b) Prior to termination, the registrant shall be notified by the city manager or the city manager's designee, by a written notice, which sets forth all pertinent matters to the proposed termination action and describing the intended action of the city. The registrant shall have thirty (30) calendar days after the date of such notice to eliminate the reasons for the termination. In the event the registrant has not eliminated the reasons for the notice of termination at the end of the thirty (30) calendar day period, the termination shall be final.
- (c) In the event of termination, a former registrant shall: (a) notify the city of any anticipated assumption by another Registrant of ownership of the terminated registrant's communications facilities in public rights-of-way; and (b) provide the city with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a terminated registrant fails to comply with this section, the city may exercise any remedies or rights it has at law or in equity including, but not limited to,

taking possession of the facilities when another person has not assumed ownership or physical control of the facilities or requiring the registrant, within ninety (90) calendar days of the termination or such period as may be agreed to by the registrant, to remove part or all of the facilities from the public rights-of-way and restore the public rights-of-way to the original condition. All expenses incurred by the city or its agents to remove part or all of the facilities and to restore the public rights-of-way to the original condition shall be paid by the registrant.

- (d) A terminated registrant shall take all steps necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the city.
- (e) In the event of termination of a registration, this section does not authorize the city to remove or cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is also registered with and holds a valid permit issued by the city.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-79. – Fees applicable to those not subject to communications services tax.**

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining communications facilities in the public rights-of-way, the City expressly reserves the right to require the payment of consideration or regulatory fees by persons using or occupying the public rights-of-way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

- (a) Dealer. Except as provided in 28-75(x), a communications services provider who meets the definition of dealer as set forth in state statute and who has registered in accordance with Section 28-73 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining communications facilities in the public rights-of-way, nor is a dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the public rights-of-way for the provision of communication services.
- (b) Pass-through Provider and Pass-through Facilities. A communications services provider who meets the definition of Pass-through Provider as set forth in this Chapter 28 and who is not subject to the City's Local Communications Services Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes shall pay the City the maximum annual amount allowed under § 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each

separate pole or tower installed or maintained by a pass-through provider for purposes of supporting antennas for other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under § 337.401, Florida Statutes, whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2017. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities in the public rights-of-way.

(c) Other Persons. All other persons, except governmental entities, are required to pay the City, as consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, an amount based on and in accordance with Section 28-79(b), City Code.

(d) Government. A governmental entity is not required to pay the City consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, unless such facilities are being used by such governmental entity or a communications services provider, including resellers, to offer or provide communication services other than for such governmental entity's internal non-commercial use, in which event the governmental entity, where not subject to the City's Local Communications Services Tax imposed pursuant to §§ 202.19 and 202.20, Florida Statutes is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Facilities placed therein after December 18, 2017, an amount based on and in accordance with § 28-79(b), City Code, or such other amount or rate of compensation as mutually agreed to in writing by the governmental entity and the City.

**Sec. 28-7880. - Existing communication facilities in public rights-of-way.**

A communications services company or provider with an existing communications facility in the public rights-of-way of the city shall have ninety (90) calendar days from the effective date of this section to comply with the terms of this section including, but not limited to registration, or shall be in violation of this section.

(Ord. No. 2001-7813, 6-4-01)

**Sec. 28-7981. - Insurance.**

- (a) A registrant shall provide, pay for, and maintain satisfactory to the city, not less than the types and coverage limits of insurance described herein. All insurance shall be from and issued by responsible companies duly authorized to conduct business in the state and having a rating acceptable to the city. All liability policies shall provide that the city is an additional insured as to the activities under this section. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained annually with the city. Thirty (30) calendar days advance written notice by certified mail or facsimile, as determined by the city, must be given to the city of any cancellation, intent of cancellation, intent not to renew, or reduction in the types of policies or coverage limits. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the city.
- (b) The types of coverage and limits of coverage of insurance required shall not be less than the following:
  - (1) Worker's Compensation and Employer's Liability Insurance.  
Worker's Compensation-Florida Statutory Requirements.  
Employer's Liability.  
\$1,000,000 limit each accident  
\$1,000,000 limit each employee
  - (2) Comprehensive General Liability.  
Bodily Injury and Property Damage.  
\$2,000,000 combined single limit each occurrence.
  - (3) Automobile Liability.  
Bodily Injury and Property Damage.  
\$2,000,000 combined single limit each accident.

(Ord. No. 2001-7813, 6-4-01)

**Sec. 28-802. - Indemnification.**

- (a) A registrant shall, at the registrant's cost and expense indemnify, hold harmless, and defend the city its officials, boards, members, agents, contractors, and employees against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, costs, and expenses incurred by the city arising out of the placement or maintenance of communications systems or facilities in public rights-of-way, regardless of whether the act or omission is authorized, allowed, or

prohibited by this section provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the gross negligence, wanton acts, or willful acts of the city. This provision includes, but is not limited to, the city's reasonable attorneys' fees incurred in defending against any such claim, suit, or proceedings. The city agrees to notify a registrant in writing, within a reasonable period of time, of any issue the city determines may require indemnification. Nothing in this section shall prohibit the city from participating in the defense of any litigation by its own counsel and at its own expense. Nothing contained in this section shall be construed or interpreted: (a) as denying to any person or entity a remedy or defense available to such person or entity under the laws of the state; or (b) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, (2000), as amended.

- (b) The indemnification requirements shall survive and shall be in effect after a termination or cancellation of a registration.

~~(Ord. No. 2001-7813, 6-4-01)~~

### **Sec. 28-813. - Construction bond.**

- (a) Prior to issuing a permit, when the work authorized by a permit will require restoration of public rights-of-way, the city shall require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security account as provided herein. The construction bond shall be issued by a surety having a Triple A Rating or equivalent acceptable to the city; shall be subject to the approval of the city manager or the city manager's designee; and shall provide that: "For twelve (12) calendar months after issuance of the bond, the bond shall not be canceled, or allowed to lapse until sixty (60) calendar days after receipt of written notice by the city, by certified mail, return receipt requested, from the issuer of the bond of the issuer's intent to cancel or to not renew the bond."
- (b) The rights reserved by the city with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the city may have under this section, under other ordinances, at law, or at equity.
- (c) The rights reserved by the city under this section are in addition to all other rights of the city, whether reserved in this section, or authorized by law and no action, proceeding, or exercise of a right with respect to the construction bond shall affect any other rights of the city.

~~(Ord. No. 2001-7813, 6-4-01)~~

### **Sec. 28-824. - Security account.**

At or prior to the time a registrant receives the initial permit to place or maintain a communications facility in public rights-of-way after the effective date of this section, the registrant shall, at the sole discretion of the city, be required to file with the city, for the

city approval, an annual bond, cash deposit, or irrevocable letter of credit in the sum of \$100,000 having as a surety a company qualified to do business in the state, and shall be referred to as the "security account." The security account shall be maintained from such time through the: (a) transfer, sale, assignment, or removal of all communications facilities in the public rights-of-way; or (b) twelve (12) calendar months after the termination or cancellation of any registration. The security account shall be conditioned upon the full and faithful performance by the registrant of all requirements, duties, and obligations imposed upon registrant by the provisions of this section and other ordinances, as amended. The security account shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform the duties and obligations imposed upon the registrant by the provisions of this section, there shall be recoverable, jointly and severally from the principal and surety of the security account, any damages or loss suffered by the city as a result, including the full amount of any compensation, indemnification, cost of removal, relocation, or abandonment of any facilities of the registrant in public rights-of-way, including a reasonable allowance for attorneys' fees, up to the full amount of the security account. The city shall not pay registrants interest on any monies held by the city in a registrant's security account.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-835. - Enforcement remedies.**

- (a) A registrant's failure to comply with provisions of this section shall constitute a violation of this Ordinance and shall subject the registrant to the code enforcement provisions and procedures as provided in ~~F.S.~~ Ch. 162, [Florida Statutes \(2000\)](#) and ~~F.S.~~ § 166.0415, [Florida Statutes \(2000\)](#), as amended. In addition, violation of this section may be punishable as provided in ~~F.S.~~ § 162.22, [Florida Statutes](#), as amended and as provided in the city ordinances.
- (b) Failure of the city to enforce any requirements of this section shall not constitute a waiver of the city right to enforce the violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-846. - Abandonment.**

- (a) Upon anticipated abandonment or the abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the city within thirty (30) calendar days of the anticipated abandonment or the abandonment.
- (b) The city may, at its sole discretion, direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's expense if the city determines that the presence of the abandoned facility interferes with the public health, safety, or welfare which shall include, but shall not be limited to, a determination that such facility: (a) compromises safety at any time for any public

rights-of-way user or during construction or maintenance in public rights-of-way; (b) interferes with or prevents another person from locating facilities in the area of public rights-of-way; or (c) creates a maintenance condition which is disruptive to the intended use of the public rights-of-way.

- (c) In the event the city does not direct the removal of the abandoned facility, the registrant by notice of abandonment to the city, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the city or by another person.
- (d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the city within a time period as required by the city, the city, or its agents, may perform such removal and charge the entire cost of the removal to the registrant.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-857. - Force majeure.**

In the event a registrant's performance of or compliance with any of the provisions of this section is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result provided, however, that such registrant has used all available means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires, natural disasters, acts of public enemies, riots, civil disturbances, sabotage, strikes, and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control and therefore, not within this section shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, misfeasance, malfeasance, and nonfeasance by any of registrant's directors, officers, employees, contractors, or agents.

~~(Ord. No. 2001-7813, 6-4-01)~~

**Sec. 28-868. - Reservation of rights and remedies.**

- (a) The city reserves the right to amend this section, from time to time, as it shall find necessary.
- (b) This section shall be applicable to all communications facilities placed in public rights-of-way on or after the effective date of this section and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date of this section, to the full extent permitted by federal and state laws.
- (c) The adoption of this section is not intended to affect or amend any rights or defenses of the city or a communications services company or provider under any existing franchises, licenses, or other agreements with a communications services company or provider.

(d) Nothing in the section shall affect the remedies the city or the registrant have available under applicable federal and state laws.”

~~(Ord. No. 2001-7813, 6-4-01)~~

**SECTION 2. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence paragraph or section of this Code shall be declared unconstitutional by the valid judgement or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 3. CONFLICTING ORDINANCES.** All ordinances or parts of ordinances in conflict with this ordinance are, to the extent that the same may conflict, hereby repealed.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall take effect upon its adoption in accordance with applicable law.

AUTHENTICATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, A.D., 2017.

\_\_\_\_\_  
**William C, Latham, MAYOR**

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**Laurie Scott, CITY CLERK**