REGULAR CITY COUNCIL MEETING
May 03, 2023 at 6:30 PM
City Council Chambers, 16 Colomba Rd.
DeBary, Florida 32713

AGENDA

CALL TO ORDER
  Invocation
  Flag Salute

ROLL CALL

PUBLIC PARTICIPATION: For any items NOT ON THE AGENDA, citizen comments are limited to three (3) minutes per speaker. For items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

APPROVAL OF MINUTES
  1. Regular City Council Meeting April 5, 2023
  2. Special City Council Meeting April 19, 2023

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA

PRESENTATIONS
  Steve Cockerham, Neel-Schaffer - DeBary Town Center Transportation and Infrastructure Plan for the Department of Economic Opportunity (DEO) Grant Feasibility Study

CONSENT AGENDA
  3. City Manager is requesting City Council approve the First Amendment to the Facility Use Agreement between Gateway Center for the Arts Inc. (GCA) and the City of DeBary.
  4. Finance Director is requesting City Council approve the renewal of the FDOT contract number ASH35.
  5. City Manager is recommending City Council approve a proposal from GREGORI CONSTRUCTION, INC. for an Urgent Remedial Stormwater Project to address subsidence within the City rights of way at Glen Abbey Lane and Knightsbridge Place in the Glen Abbey subdivision.

PUBLIC HEARINGS
  6. Staff is requesting the City Council approve the first reading of Ordinance No.04-2023, amending the Land Development Code (LDC) to define self-storage facilities and warehouses, and provide development standards for self-storage facilities and mini-warehouses fronting the Gateway Corridor.
GROWTH MANAGEMENT AND DEVELOPMENT

7. The Applicant, KBC Development, Inc., would like to extend their Preliminary Plat and Construction Plan Development Order for the KBC Mixed project.

NEW BUSINESS

8. The Parks and Recreation Department is requesting the City Council award RFP 05-2023 Town Hall ADA Restroom Renovations to Boulevard Contractors.

9. City Manager is requesting City Council approve the Purchase and Sales Agreement (PSA) to purchase approximately 24.21 acres located on Palm Road & Gardenia Avenue from N.O.W. Matters More Foundation, Inc. (NOW).

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

A. Mayor and Council Members
B. City Manager
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP

Special City Council Meeting May 17, 2023, 6:30 p.m.

ADJOURN

If any person decides to appeal any decision made by the City Council with respect to any matter considered at this meeting or hearing he/she will need a record of the proceedings, and for such purpose he/she 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 (FS 286.0105).

Individuals with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk at least three (3) working days in advance of the meeting date and time at (386) 668-2040.
MINUTES

CALL TO ORDER: Mayor Chasez called the meeting to order at 6:30 p.m.

ROLL CALL: Mayor Chasez, Vice-Mayor Butlien, and Council Members Pappalardo, Sell and Stevenson are present.

Others present: Carmen Rosamonda, City Manager; Kurt Ardaman, City Attorney; Steven Bapp, Growth Management Director; Elizabeth Bauer, Finance Director; Eric Frankton, Information Technology Director; Kevin Hare, Construction Engineer; Richard Villasenor, City Engineer; Annette Hatch, City Clerk, and Wesley Grissom, Sr. Accountant.

PUBLIC PARTICIPATION: For any items NOT ON THE AGENDA, citizen comments are limited to three (3) minutes per speaker. For items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

Howard Gates addressed Council and indicated he was also speaking for Mark Albrecht and Brenda Albrecht.

APPROVAL OF MINUTES: Motion by Vice-Mayor Butlien to approve the minutes from the Regular City Council Meeting March 1, 2023, the Special City Council Meeting March 15, 2023, and the City Council Workshop March 29, 2023. Seconded by Council Member Pappalardo. Motion passed unanimously.

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA: Mayor Chasez requested that Agenda Item No. 12 be moved to the first Item under New Business and Council concurred.

PRESENTATIONS:

Water Conservation Month Proclamation. Jim Cannon, Intergovernmental Coordinator, St. Johns Water Management District, accepted the proclamation and informed Council that this year’s water conservation focus was on the importance of fixing water leaks around homes and businesses.

Zach Chalifour, CPA., James Moore & Co., P.L., Annual Comprehensive Financial Report for Fiscal Year Ended September 30, 2023. Mr. Chalifour reviewed the City’s audit results and stated the City’s budget rating was favorable.
CONSENT AGENDA:

The Finance Director is requesting City Council approve the addendum to the agreement with the Volusia County Property Appraiser for the utilization of the uniform method of collection of non-ad valorem assessments.

The Finance Director is requesting City Council approve the Federally Funded Sub-award and Grant Agreement for DR – 4673 – Hurricane Ian.

The City Manager requests City Council approval of the First Amendment to the Residential Lease for Ronald E. Muse located at 542 South Shell Road, DeBary, Florida.

Motion by Vice-Mayor Butlien to approve the Consent Agenda. Seconded by Council Member Pappalardo. Motion passed unanimously.

NEW BUSINESS:

This item was originally Item No. 12 on the Agenda.

Staff is requesting City Council discuss and decide whether to assume project management, in-house design, permitting and construction of the Spring to Spring Trail, Phase 3C segment that will run along Donald E. Smith Boulevard.

City Manager reviewed the history of the project and presented Council with construction options.

Joan Flowers, Peggie Houghton, Tyler Sawyer, Wendy Smith, Diane Reeley, and Joan Sandler addressed Council. Jeanne SanFanandre addressed Council and also read letters from Bill and Ginger Moore, and Phil Jenkins.

The Mayor noted that she and Council also received letters of support from Patricia Northey and Maggie Ardito of the River-to-Sea Loop.

Motion by Vice-Mayor Butlien to approve the trail project to be on the west side of Donald E. Smith Boulevard subject to receipt of a letter of intent by the Westridge HOA by Friday, April 14, 2023, and determination by the City Manager that the City will receive the easement in a timely manner thereafter, failing which the City will proceed with Option 1 as presented. Seconded by Council Member Pappalardo. Motion passed unanimously.

City Manager is requesting City Council approve an Electric Service Proposal from DUKE ENERGY for Underground Commercial Power Service to the Woodbound Lake Outfall System Improvements, Stormwater Pump Station.

Staff reviewed a current aerial photograph depicting the tree coverage that would need to be cleared in order to install overhead lines. The cost to bury the line would be $64,810.11, which would be funded with ARPA funds.
No one addressed Council.

Motion by Council Member Pappalardo to approve the Electric Service Proposal from Duke Energy. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

The Finance Director is requesting the Mayor and City Council approve Resolution No. 2023-02 to amend the Fiscal Year 2022-2023 budget.

City Attorney read the Resolution into the record.

Staff reviewed the resolution and amendment.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve Resolution No. 2023-02. Seconded by Council Member Stevenson. Motion passed unanimously.

The City Manager requests City Council approve the Assignment and Assumption, and the Seventh Amendment to the Purchase and Sale Agreement between Mosaic Development, LLC, Mosaic at DeBary, LLC, and the City of DeBary.

City Manager discussed the establishment of Mosaic DeBary, LLC., the amendments and the changes in project phasing.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the Assignment and Assumption, and the Seventh Amendment to the Purchase and Sale Agreement. Seconded by Council Member Stevenson. Motion passed unanimously.

The City Manager requests City Council approve the first reading of Ordinance No. 03-2023, Development Agreement with Mosaic at DeBary, LLC, for the DeBary Main Street Project.

City Attorney read the Ordinance into the record.

City Manager reviewed the components of the assignment and assumption, the amendments to the DeBary Main Street Master Plan and Muse Property, and project phasing.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the first reading of Ordinance No. 03-2023. Seconded by Council Member Pappalardo. Motion passed unanimously.
COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications
   A. Mayor and Council Members
   B. City Manager
   C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP: Special City Council Meeting April 15, 2023, 6:30 p.m.

ADJOURN: The meeting was adjourned at 8:48 p.m.

APPROVED:
CITY COUNCIL
CITY OF DEBARY, FLORIDA

___________________________________
Karen Chasez, Mayor

___________________________________
Annette Hatch, CMC, City Clerk
MINUTES

CALL TO ORDER: Mayor Chasez called the meeting to order at 6:30 p.m.

ROLL CALL: Mayor Chasez, Vice-Mayor Butlien, and Council Members Pappalardo, Sell and Stevenson are present.

Others present: Carmen Rosamonda, City Manager; Giffin Chumley, City Attorney; Kevin Hare, Construction Engineer; Jason Schaitz, Parks & Recreation Director; Shari Simmans, Economic Development & Government Affairs Director; Richard Villasenor, City Engineer; Annette Hatch, City Clerk, and David Rodriguez, Information Technology Technician.

PUBLIC PARTICIPATION: For any items ON THE AGENDA, citizen comments are limited to five (5) minutes per speaker. Speakers will be called when the item is introduced for discussion.

DELETIONS OR AMENDMENTS TO THE AGENDA (City Charter Sec. 4.11): None.

PRESENTATION: Legislative Update - Shari Simmans, Economic Development & Government Affairs Director, highlighted the current bills staff is monitoring.

CONSENT AGENDA:

The Parks and Recreation Department is requesting Council approve the attached Playground Mulch Piggyback Agreement.

The Parks and Recreation Department is requesting Council approve the grant application submitted by DeBary Elementary. The school is requesting a matching grant of $500 from the City of DeBary towards their upcoming 5th Grade Celebration.

City Manager is requesting City Council approve Change Order No. 1, and Final Payment according to the Piggyback Agreement with MASCI GENERAL CONTRACTOR, INC. for the 2022 Street Resurfacing Project.

Motion by Vice-Mayor Butlien to approve the Consent Agenda. Seconded by Council Member Pappalardo. Motion passed unanimously.

NEW BUSINESS:

City Manager is requesting City Council approve the second reading of Ordinance No. 03-2023, Development Agreement with Mosaic at DeBary, LLC for the DeBary Main Street Project.
City Attorney read the Ordinance into the record.

City Manager briefly reviewed the TOD area, DeBary Main Street concept and the Mosaic development.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the second reading of Ordinance No. 03-2023. Seconded by Council Member Pappalardo. Motion passed unanimously.

Staff is requesting City Council approve the City of DeBary Resiliency and Vulnerability Assessment proposal from Stanley Consultants, Inc. in the amount of $250,000.00.

Staff explained the purpose of the assessment and indicated cost reimbursement would be from the Department of Energy (DOE).

No one addressed Council.

Motion by Council Member Pappalardo to approve the Resiliency and Vulnerability Assessment proposal. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

COUNCIL MEMBER REPORTS / COMMUNICATIONS:
Member Reports/ Communications
A. Mayor and Council Members
B. City Manager: City Manager requested and received Council consensus to accept applications to establish an historic preservation committee.
C. City Attorney

DATE OF UPCOMING MEETING / WORKSHOP: Regular City Council Meeting May 3, 2023, 6:30 p.m.

ADJOURN: The meeting was adjourned at 7:14 p.m.

APPROVED:

CITY COUNCIL
CITY OF DEBARY, FLORIDA

___________________________________
Karen Chazez, Mayor

_______________________________
Annette Hatch, CMC, City Clerk
# City Council Meeting
## City of DeBary
### AGENDA ITEM

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**REQUEST**

City Manager is requesting City Council approve the First Amendment to Facility Use Agreement between Gateway Center for the Arts Inc. (GCA) and the City of DeBary.

**PURPOSE**

The purpose is to revise the Facility Use Agreement to comply with 2006 ECHO requirements.

**CONSIDERATIONS**

- On May 18, 2022, the City Council and Gateway Center for the Arts, Inc. agreed to transition ownership of the Gateway building to the City of DeBary. The City has accepted ownership and is now operating the building.

- The City and Gateway Center for the Arts, Inc. entered into a Facility Use Agreement leasing the facilities for a term of 5 years with 5 one-year renewals. This timeframe conflicts with 2006 ECHO standards. Gateway Center for the Arts, Inc., received their ECHO funding to construct the building in 2006.

- In Volusia County’s 2006 ECHO Guidebook states the grant recipient needs to maintain ownership or have a lease to use the facility for the length of the grant agreement/restrictive covenants, which in case of Gateway, was 40 years (2006-2046).

- 2006 Guidebook states, “**Unrestricted Ownership/Undisturbed Use of Facility.**” Documentation of the ownership or lease of the facility and property shall provide for undisturbed use. Length of the lease shall be consistent with requirements set in Tab 1-1.5, page 19. Leases shall not be cancelable without cause.” Tab 1-1.5, page 19 referenced above says, “that the period of time for the restricted covenant (i.e., lease length) on new facilities is 40-years. “

- To comply with ECHO regulations, it is necessary for the City and Gateway to amend the Facility Use Agreement to meet the 2046-time requirement.
• The impact of this amendment is minimal. If GCA goes out of business, it is perceived that the City or another non-profit organization will continue art services in Debary.

• Pursuant to our agreement, GCA will be coming to City Council in September 2023 for their annual report.

COST/FUNDING

There is no cost for this amendment.

RECOMMENDATION

It is recommended that the City Council approve the First Amendment to Facility Use Agreement between Gateway Center for the Arts Inc. (GCA) and the City of DeBary.

IMPLEMENTATION

Immediately upon Approval.

ATTACHMENTS

First Amendment to Facility Use Agreement
Facility Use Agreement
First Amendment to Facility Use Agreement
Gateway Center for the Arts, Inc. and the City of DeBary

THIS AMENDMENT NO. 1 to the Facility Use Agreement (hereinafter “Use Agreement”) entered into by and between the City of DeBary and the Gateway Center for the Arts, Inc. on May 9, 2022, which Agreement was attached as Exhibit 2 to and made a part of the Contingent Agreement Between the City of DeBary and Gateway Center for the Arts, Inc., also executed on May 9, 2022, is hereby entered into by and between the City of DeBary, a municipal corporation of the state of Florida, with its principal office located at 16 Colomba Road, DeBary, Florida 32713 (the “City”), and the Gateway Center for the Arts, Inc., a Florida not-for-profit corporation whose principal address is 880 N. Highway 17-92, DeBary, FL 32713 (“Gateway”) (collectively the “Parties” and individually “Party”).

RECITALS

WHEREAS, the Parties entered into a Contingent Agreement between City of DeBary and Gateway Center for the Arts, Inc. (“Contingent Agreement”), pursuant to which, the Parties agreed to terminate the City’s sublease of the Gateway Center Facility, located at 880 US-17, DeBary, FL 32713 (“Facility”), subject to certain terms and conditions;

WHEREAS, assuming the conditions of the Contingent Agreement were met, the Parties were to enter into and become subject to the terms and conditions of the new Facility Use Agreement (“Use Agreement”) attached to such Contingent Agreement as Exhibit 2;

WHEREAS, the Use Agreement initially provided for an initial contract term of 5 years with five (5) additional one-year renewals conditioned upon the mutual consent of the Parties and the Parties’ compliance with the renewal terms set forth therein;

WHEREAS, Gateway’s Agreement with ECHO for grant funds requires that Gateway enter into a facility use agreement for the length of the term required by the ECHO grant program;

WHEREAS, the current Use Agreement provides only for a maximum term of 10 years;

WHEREAS, in order to comply with the terms of the ECHO grant agreement, the Use Agreement must be for a term until 2046 as required by the ECHO grant agreement (“ECHO Agreement”) entered into by and between the County of Volusia and the Gateway Center for the Arts; and

WHEREAS, the Parties intend to amend the Use Agreement to conform the term of the Use Agreement to the term required by the ECHO Agreement.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and other specific consideration set forth in this Amendment No. 1, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree to amend the Use Agreement as follows:
1. The Parties agree that the foregoing recitals are true, correct, and material to this Amendment No. 1.

2. The Parties agree to amend the Use Agreement by substituting the following paragraph in lieu of paragraph 2, including any subparagraphs thereof, of the Use Agreement:

   "This Agreement shall commence upon the date of execution of this Agreement by the parties and continue until its expiration on the 26th day of September 2046 unless sooner terminated pursuant to the provisions of the lease executed and entered into by and between the Florida Board of Trustees of the Internal Improvement Fund of the State of Florida and the City of DeBary, dated September 27, 1995 ("Prime Lease") or this Agreement. As a condition of continuing this Use Agreement for the term specified herein, GCA shall, on an annual basis, furnish to the City: (a) a financial report covering GCA's complete revenues and expenditures during the prior fiscal year and (b) a statement relative to the goals set for the coming year and how such goals are proposed to be accomplished. Regardless of the foregoing, this Agreement may be terminated by the City if GCA fails to abide by the provisions of this Agreement or the requirements of the Prime Lease, including any amendments thereto."

3. This Amendment No. 1, including any exhibits, sets forth the entire modification to the Agreement with respect to the matters contained herein, unless the Agreement is otherwise further duly amended or modified as provided for in the Agreement.

4. This Amendment No. 1 is incorporated by reference into the Agreement as if fully set forth therein. Except as provided herein, all other terms and conditions of the Agreement will remain unchanged and in full force and effect and are hereby ratified and reaffirmed by the parties hereto. If any conflict or inconsistency between the provisions set forth in this Amendment No. 1 and the Agreement arises, this Amendment No. 1 will govern and control to the extent of such conflict.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, the Parties have made and executed this Amendment No. 1 to the Facility Use Agreement between the City of DeBary and the Gateway Center for the Arts on the respective dates under each signature.

GATEWAY CENTER FOR THE ARTS, INC.

GCA Board President
Gateway Center for the Arts, Inc.

Witness
Gateway Center for the Arts, Inc.

Date:
CITY OF DEBARY
CITY COUNCIL

Mayor
City of DeBary
Facility Use Agreement
Gateway Center for the Arts, Inc. and the City of DeBary

WHEREAS, the City of DeBary ("City") is agreeable to allowing the Gateway Center for the Arts, Inc. ("GCA") use of said facilities on park property owned or leased by the City; and

WHEREAS, it is desirable that the respective duties and responsibilities of the parties be set forth in a written agreement (the "Agreement" or the "Contract"); and

WHEREAS, both parties hereto agree that the services and instruction rendered by GCA and the land provided by the City are for the good and betterment of the community and in the best interest of the public;

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

WITNESSETH:

1. For and in consideration of the covenants herein contained, the City hereby agrees to the use of the Gateway Center facility located at 880 US-17, DeBary, FL 32713 ("Facility") by GCA for events and programs as described herein, and, in order for any such use to be granted, GCA must supply the City with any Facility use requests by the dates outlined in this agreement. Any changes to program and event dates must be submitted to the City a minimum of two weeks in advance to confirm date, time, availability, and location of needs. Failure to timely submit schedules or schedule changes outlines in this agreement may result in the facility not being available for GCA’s use. The right of use granted hereunder is in the nature of a license revocable by the City at any time pursuant to the terms of this Agreement and confers no estate, tenancy, lease, or other similar rights in connection with the Facility upon GCA or any other entity.

2. This Agreement is for a term of five-years with five (5) additional one-year renewals conditioned upon the mutual consent of the parties and the parties’ compliance with the renewal terms set forth herein. The term of this Agreement is for the five-year period commencing upon execution of this Agreement, and will be subject to renewal by exchange of written notice between the parties as set forth herein. Notwithstanding the preceding, either party may cancel this Agreement at will and in its sole discretion at no penalty to either party upon thirty (30) days written notice to the other party. If this Agreement is renewed after the initial five-year term, such renewal term will commence September 1st of each subsequent year and be expressly conditioned upon the following terms:

A. That both parties are willing to renew the Agreement.
B. That GCA must make a request for renewal in writing to the City in August of each year. As a condition of any such renewal, GCA must provide financials and an annual report for the previous four quarters to the City.

C. GCA shall furnish to the City the following information:

(1) A financial report covering the prior period of the Agreement, indicating the complete revenues and expenditures of the GCA during such term.

(2) A statement relative to the goals set for the coming year and how they are proposed to be accomplished.

3. GCA agrees to and will at all times indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, agents, and employees from and against all liability, claims, demands, damages, and costs of every kind and nature, including attorney’s fees at trial or appellate levels and all court costs arising out of GCA’s use or occupation of the Facility or property upon which Facility is located, including any injury to or death of the GCA’s employees, agents, invitees, guests, members, and youth players, and damage to any and all property, including loss of use thereof, resulting from or in connection with activities or use of the above facilities by GCA, its agents, servants, employees, volunteers, members, guests, invitees and youth players or resulting from the negligence, intentional torts, and criminal actions of GCA, its agents, servants, employees, volunteers, members, guests, invitees and youth players or participants. GCA and the City acknowledge and agree that GCA is solely responsible for the reasonable supervision, control, protection and safety of the GCA’s agents, servants, employees, volunteers, members, guests, invitees and youth players or participants. GCA shall, upon request from the City, defend and satisfy any and all suits arising from the GCA’s use of the Premises. This paragraph and all indemnification and hold harmless provisions of this Agreement will survive the termination and expiration of this Agreement. Further, the City expressly retains all rights, benefits, and immunities of sovereign immunity in accordance with § 768.28, Florida Statutes. Regardless of anything set forth in any section or part of this Agreement to the contrary, nothing in this Agreement may be deemed as a waiver of sovereign immunity or the limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the City for damages, regardless of the number or nature of claims in tort, equity, or contract, may not exceed the dollar amount set by the legislature for tort. Nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against the City, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

4. GCA agrees to duly turn over ownership of all building equipment, furnishings, fixtures, and appliances essential to the operation of the building, including, but not limited to, theatre lighting, electronics, sound and projection equipment, tables, chairs, refrigerators, and other similar equipment, furnishings, and fixtures to the City, and the City will be responsible for maintaining, repairing, and replacing these items.

EXHIBIT 2
GCA will maintain ownership of equipment and electronics that are used for its business and program operations such as computers, art supplies, theatre supplies and props, crafts and homemade jewelry, art displays, and other consumables. GCA will be solely responsible for maintenance, replacement, and repair of these items.

5. The City agrees to:

A. Perform Facility Repair and Maintenance with regard to the interior and exterior of the Gateway Center facility and property in accordance with the standards deemed appropriate by the City. Such duties include, but are not limited to, mowing, landscaping, repairs, and facility maintenance. Any other requests or instructions regarding facility repair and maintenance must be submitted in writing by GCA and approved by the City.

B. Facility Repair and Maintenance is further defined to include repair and maintenance of the following items located at the Gateway Center facility or city-owned property upon which such facility is located:
   1. AC Service, Repairs, and Replacement
   2. Electrical
   3. Plumbing
   4. Sewer and Lift Station
   5. Fire Suppression System and Extinguishers
   6. Alarm System
   7. Drywall Repair
   8. Structural and Mechanical
   9. Interior and Exterior Lighting
   10. Irrigation Repair and Maintenance
   11. Well Maintenance and Repair
   12. Pest Control
   13. Preventative maintenance and daily cosmetic concerns such as painting, patching, etc.
   14. Maintenance and repair of floors, including hard wood floors and stage.
   15. Parking Lot and Sidewalks
   16. Roof and Gutters

C. Cause daily general cleaning of the facility to be performed, regardless of whether such is performed by a contractor, agent, or the personnel of the City itself. This does not include cleaning up after or putting away supplies and equipment used in connection with GCA programs and events, for which GCA shall remain responsible.

D. Provide or otherwise keep extra tools on-site at all times for minor facility repairs.

E. Assume payment of all utilities. The City reserves the right to issue guidelines to GCA and others concerning utility usage.

EXHIBIT 2
F. Provide trash receptacles and trash collection (dumpster and solid waste collection services).

G. The City will responsible for coordinating and cleaning up after all private rentals by entities other than GCA as well as any City events or programs.

6. GCA agrees that it will:

A. Coordinate art services programs, activities, and events and provide all staff or volunteers essential for operating or otherwise conducting such programs, events, or activities based on the standards set forth in this agreement.

B. Timely provide to the City for pre-approval, a copy of schedules for desired space needs (by predetermined due dates in this agreement).

C. Clean all appliances as needed and as otherwise may be desired by the City following conduct of a GCA activity, program, or event.

D. Maintain organization and cleanliness before, during, and after all GCA programs and events to include, but not be limited to: removing trash, cleaning and sanitizing touchable surfaces, cleaning the floors, and putting away equipment is proper storage areas.

E. Install supplies (provided by the City) for restroom facilities, including toilet paper, soap, paper towels, disinfectants, and other cleaning implements, and keep facilities clean during GCA and GCA sponsored programs and events as a backup function when City maintenance is unavailable.

F. Provide concession services in accordance with specifications established by the State Sanitary Code.

G. Provide all equipment and supplies required in connection with said activities, e.g., theatre equipment, props, art supplies, event supplies, camp supplies, etc.

H. Not add any structural materials or make any physical improvements to the facility without the consent of the City. GCA will obtain the prior written approval of the City before GCA may make or authorize physical improvements or structural additions to any part of the facility. Unapproved structural changes or physical improvements to the facilities will, upon the request of the City, require GCA to restore or otherwise cause to be restored the facilities back to their original condition at GCA’s expense.

I. Report damage, vandalism, problems, and safety hazards to the City immediately.

J. Provide one individual to act as the GCA representative and liaison between the GCA and the City.
K. Maintain control of participants, visitors, and spectators, and ask rule violators to leave the facility or contact appropriate law enforcement agency as necessary. GCA agrees to have a GCA official at the facility during the conduct of all GCA or GCA sponsored or hosted programs, activities, and events. The City will assist with co-sponsored events and will be solely responsible for the City’s own participants and invitees for City sponsored or hosted events and functions.

L. Provide the City with a complete list (including names, phone numbers, and emails) of all GCA Employees and Board Members. GCA will provide a written statement listing the total number of registered program participants that are City residents and non-residents.

M. Provide the City with a copy of the GCA regulations, charter, policies, procedures, guidelines, and organizational chart.

N. Report all accidents or injuries to employees, spectators, visitors and participants occurring on facility property within 48 hours, by both telephone and a follow up written report.

O. Provide the City with details of registration information and events (dates, times, locations, costs, etc.).

P. The City will issue any necessary codes/combinations/ and or keys to be used by the GCA employees and board members. These items are not to be duplicated or shared outside of the GCA needs.

Q. Operate concession facilities during non-GCA related activities and/or special events. If the GCA cannot operate concessions during these pre-determined dates, the City reserves the right to operate and/or assign this service to outside vendors.

R. Give the City two weeks’ notice on any schedule changes or additions. Schedule changes or additions can be accommodated only if space is available.

S. Set GCA operating hours at the facility where GCA staff or volunteers will be on site and give these hours to the City. Any changes to building and GCA operating hours must be given to the City with two weeks’ advance notice.

T. Communicate building information and rental pricing and provide tours of the facility during set operating hours to those interested in renting the facility for events, functions, and other activities. GCA shall further refer any entities interested in booking or reserving the facility to the City to make any such arrangements.

U. Open the facility during operating hours and lock and secure the facility daily upon closing. Any facility damage, vandalism, or stolen goods that occur due to negligence of the GCA securing the facility will be the responsibility of the GCA to remedy at their own expense.
7. GCA will have the use of the above referenced facility as set forth in this Agreement. The facility will be scheduled for programming by school calendar year. GCA shall submit to the City, for City approval, a proposed schedule of programs, activities, and events for each subsequent school year by May 31st of each year.

Upon receipt and approval of GCA’s annual schedule request, the City will, provided that it notes no basis for objection or modification of such request, book the facility for the proposed programs, activities, and events through a live calendar in which GCA will have access to. Any new GCA calendar bookings throughout the year can be taken first serve alongside rentals and City programs or events.

If GCA desires to change its approved schedule of activities submitted to the City, GCA shall request in writing such change from the City Parks and Recreation Director. Any such changes to program and event dates must be submitted to the City a minimum of two weeks in advance to confirm date, time, availability, and location of needs. The City Parks and Recreation Director, in his or her sole discretion, will have the right to grant or deny GCA’s request for a schedule change. GCA shall release use of the facilities at times when they are not scheduled or when they are required for use by the City for purposes of maintenance or use by others.

8. GCA must provide art and cultural services year round. Failure to provide programs, activities, and events on a year-round basis to meet the needs of the community may result in termination of this Agreement. Programs include, but are not limited to, art and theatre classes, art and theatre camps, art galleries, theatre productions, and other stage entertainment. Programs, activities, and events provided shall be outlined in GCA’s annual report to the City each year.

9. Scheduling of all facilities is at the sole discretion of the City. GCA acknowledges and agrees that there may be times when the City will need to utilize the facilities or otherwise deny GCA’s use of the facilities on its scheduled day(s), whether due to an emergency or any other important event that may occur, which as determined by the City in its sole discretion, requires the City to deny GCA’s use of the facilities. If the City denies GCA’s use of the facilities on one or more approved scheduled days, the GCA shall relinquish use of the facilities immediately upon receiving notice thereof from the City. Throughout the year, no other entity may use GCA’s equipment or fixtures without GCA’s express permission.

10. The City reserves the right to coordinate any programs or events in the building or on the property at any time for the City’s programs, events, or for emergency use as stated above. The City should plan and book City programs and events only after the proposed GCA event calendar is submitted to the City by May 31st each year.

11. The City will be responsible for managing the building calendar and booking all private facility rentals such as weddings, receptions, parties, meetings, etc. All private rental fees will be set by the City, and all private rental revenue will go to the City. If GCA gets an
inquiry for a private rental, GCA should direct all such inquiries to the City’s Parks and Recreation Department for booking based upon availability as scheduled around previously scheduled programs, activities, and events. Any contractual agreements for private rentals currently in place with GCA prior to this agreement may stay in place with GCA until those agreements end. Any such rental dates must be included in the GCA calendar of events submitted to the City in order to guarantee that space and capacity will be available.

12. GCA at its own cost and expense shall keep in force during the term of this Agreement; insurance from an insurance company licensed in the State of Florida and rated “A”, Class “X” or better by A.M. Best. The required insurance shall be evidenced by a certificate of insurance, which must be submitted to and approved by the City prior to the effective date of this Agreement.

The City of DeBary must be listed as an additional named insured under the Comprehensive General Liability Insurance policy, and the City must be provided with a thirty-day (30) notice in the event of cancellation, non-renewal or adverse change to the policy.

GCA shall provide Comprehensive General Liability Insurance with a minimum limit of $1,000,000.00 per occurrence, combined single limit. Such policy may not allow the policy limits to be reduced by defense and claim expenses. Such insurance must be issued on an occurrence basis and include coverage for GCA’s operations, independent contractors, subcontractors and “broad form” property damage coverages protecting itself, its employees, agents, contractors, or subsidiaries, and their employees or agents for claims for damages caused by bodily injury, property damage, or personal or advertising injury, and products liability/completed operations, including what is commonly known as groups A, B, and C. Such policies must include coverage for claims by any person as a result of actions directly or indirectly related to the employment of such person or entity by GCA or by any of its subcontractors arising from operations conducted under this Agreement. Public liability coverage must include either blanket contractual insurance or a designated contract contractual liability coverage endorsement, indicating expressly GCA’s Agreement to indemnify, defend and hold harmless the City as provided in the Agreement. The commercial general liability policy must provide coverage to the City when it is required to be named as an additional insured either by endorsement or pursuant to a blanket additional insured endorsement, for those sources of liability that would be covered by the latest edition of the standard Commercial General Liability Coverage Form (ISO Form CG 00 01), as filed for use in the State of Florida by the Insurance Services Office, without the attachment of any endorsements excluding or limiting coverage for Bodily Injury, Property Damage, Products/Completed Operations, Independent Contractors, Property of the City in GCA’s Care, Custody or Control or Property of City on which operations are being conducted. When the City is added as additional insured by endorsement, ISO Endorsements CG 20 10 and CG 20 37 or their equivalent must be used and must provide such additional insured status that is at least as broad as ISO form CG 20 10 11 85. GCA shall require any subcontractors performing work or providing services in connection with this Agreement to add the City to their Commercial General Liability policy as an additional insured by ISO Endorsement CG 20 38. The commercial general

EXHIBIT 2
liability policy must provide a waiver of subrogation in favor of the City and any other party required by this Agreement to be named as an additional insured.

Failure to comply with this requirement will render this Agreement void at the election of the City except that all indemnification and hold harmless provisions and provisions pertaining to the City’s sovereign immunity protections shall survive.

13. Any vendors or other contractors operating on property or within the facility that are not GCA staff or volunteers must have and maintain $1,000,000 in general liability insurance with the City listed as an additional named insured. Such vendors or other contractors must also execute a contractual agreement with the City, in a form prescribed by the City, describing the services or activities that such vendors or contractors will be providing or otherwise engaged in on the City’s property and agreeing to indemnify, defend, and hold the City harmless from any and all liability arising from their activities on City-owned property. Copies of such contractual agreements and proof of insurance must be kept current by GCA and provided to the City upon request. Failure to comply with this paragraph will result in non-compliant vendors or contractors being barred from City property, including the facility.

14. Any paid contracted instructors hired by GCA must have a signed W9 and waiver holding GCA and the City harmless while conducting any classes, programs, or events on City property or within the facility. Copies of the W9 and waivers must be kept current by GCA and provided to the City upon request.

15. If GCA operates a concession facility or in any way distributes or sells food, beverages, candy or foodstuffs of any description, GCA agrees to fully indemnify, defend, and hold harmless the City (in accordance with paragraph 3 herein) from and against any claim, damages, or costs arising from or in connection with the provision of such foodstuffs.

16. This Agreement may not be assigned or transferred in any manner by GCA or the City and any such assignment or transfer is expressly prohibited.

17. This Agreement is binding upon the parties hereto and their successors and assigns.

18. Any previously existing oral or written agreements are terminated as of the effective date of this Agreement and will be deemed to be hereafter null and void and of no further force and effect whatsoever.

19. No modifications, amendments, or alterations in the terms or conditions contained in this Agreement will be effective unless contained in a written document executed by the parties.

20. This Agreement is governed by and must be interpreted in accordance with the laws of the state of Florida. Any and all legal action arising out of this Agreement will, if in state court, have its exclusive venue in a court of appropriate and proper jurisdiction located in Volusia County, Florida, or if in federal court, the Middle District of Florida, Orlando Division.

EXHIBIT 2
21. If any terms or provisions of this Agreement, or the application thereof to any person or circumstance is, to any extent, be held invalid or unenforceable, then the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those to which it is held invalid or unenforceable, will not be affected, and every other term and provision of this Agreement will be deemed valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this 9th day of May, 2022.

Date: 5/9/22

BY:  
GCA Board President
Gateway Center for the Arts, Inc.

Date: 5/18/2022

BY:  
Mayor
City of DeBary

Date: 5/9/22

Witness
Gateway Center for the Arts, Inc.

Print Name: Saundra H. Gray

EXHIBIT 2
REQUEST

Finance Director is requesting City Council to approve the renewal of FDOT contract number ASH35.

PURPOSE

The renewal is needed at this time to continue contract ASH35 for three years for the period June 8, 2023 to June 7, 2026.

CONSIDERATIONS

On May 6, 2020, City Council passed Resolution 2020-08 which authorized the City of DeBary to maintain certain State Road rights-of-way and be compensated by FDOT for this work. The original ASH35 agreement was for 3 years with an option to renew for an additional three years. The areas covered by the agreement are Seminole County line to Saxon Blvd. and the I-4 at Dirksen Dr. interchange.

COST/FUNDING

FDOT pays the City $8,756 per quarter, equating to $35,024 per year, which amounts to $105,072 over the three-year term.

RECOMMENDATION

It is recommended that the City Council approve the renewal of FDOT contract number ASH35.

IMPLEMENTATION

Contract will be effective June 8, 2023 to June 7, 2026.

ATTACHMENTS

Contract Renewal agreement for ASH35
Original Contract ASH35 with Resolution 2020-08
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

CONTRACT RENEWAL

Contract No.: ASH35
Financial Project No(s.): 403391-2-78-02
County(ies): Volusia

Renewal: (1st, 2nd, etc.) 1st & Final

This Agreement made and entered into this _____ day of ____________, 2020, by and between the State of Florida Department of Transportation, hereinafter called "Department", and City of Debary hereinafter called "Contractor".

WITNESSETH:

WHEREAS, the Department and the Contractor heretofore on this 8th day of June ________________, 2020 entered into an Agreement whereby the Department retained the Contractor to perform routine maintenance activities in locations as described in Exhibits B & C in the original Agreement; and

WHEREAS, said Agreement has a renewal option which provides for a renewal if mutually agreed to by both parties and subject to the same terms and conditions of the original Agreement;

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the mutual benefits to flow each to the other, the parties agree to a renewal of said original Agreement for a period beginning the 8th day of June, 2023 and ending the 7th day of June, 2028 at a cost of $35,024.00.

All terms and conditions of said original Agreement shall remain in force and effect for this renewal.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month, and year set forth above.

The City of Debary
Name of Contractor

Contractor Name and Title

BY: ____________________________
Authorized Signature

N/A (SEAL)
Name of Surety

__________________________
City

__________________________
State

By: N/A
Florida Licensed Insurance Agent or Attorney-In-Fact (Signature)

By: N/A
By: N/A
Florida Licensed Insurance Agent
Date
By: N/A

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

BY: ____________________________
District Secretary or Designee (Signature)
Title: District Maintenance Engineer

Legal: ____________________________

Fiscal: __________
Approval as to Availability of Funds
FLORIDA DEPARTMENT OF TRANSPORTATION
HIGHWAY MAINTENANCE MEMORANDUM OF AGREEMENT

CONTRACT NO.: ASH35
FINANCIAL PROJECT NO.:403391-2-78-02

This AGREEMENT, entered this ___ day of June ____, 2020, by and between the Florida Department of Transportation, a component agency of the State of Florida, hereinafter called the DEPARTMENT and the City of DeBary, a municipal corporation duly enacted under the laws of the State of Florida, hereinafter called the LOCAL GOVERNMENT.

RECITALS

WHEREAS, as part of the continual updating of the State of Florida Highway System, the DEPARTMENT, for the purpose of safety and functionality, has constructed roadway, roadside areas, and medians on that part of the State Highway system within the limits of the LOCAL GOVERNMENT or adjacent to;

WHEREAS, the LOCAL GOVERNMENT acknowledges that there is mutual benefit in effectively maintaining these areas and the LOCAL GOVERNMENT is of the opinion that said roadway, roadside areas and median strips shall be attractively maintained;

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party;

WHEREAS, the LOCAL GOVERNMENT, by Resolution ____________ dated the _6th_ day of May ____, 2020 attached hereto as EXHIBIT"A", which by reference hereto shall become a part hereof, desires to enter into this Agreement and authorizes its officers to do so.

NOW THEREFORE, for and in consideration of mutual benefits to flow each to each other, the parties covenant and agree as follows:

PROVISIONS

1) The LOCAL GOVERNMENT shall be responsible for routine maintenance activities of all roadway features within the DEPARTMENT’s right of way having limits described in EXHIBIT “B”, or subsequent amended limits mutually agreed upon in writing by both parties. For the purpose of this Agreement, the maintenance activities to be performed by the LOCAL GOVERNMENT are defined in EXHIBIT “C”, or as defined by amended definitions agreed upon in writing by both parties.

2) The LOCAL GOVERNMENT shall perform the maintenance activities as described in EXHIBIT “C” in accordance with DEPARTMENT publications:

   a) Maintenance Rating Program (MRP) Handbook, latest edition, which by reference hereto shall become a part hereof. The activities shall be performed in a manner that results in a minimum MRP score of 80.

3) The LOCAL GOVERNMENT shall be responsible for monitoring maintenance operations and the maintenance of traffic ("MOT") throughout the term of the Agreement in accordance with the latest edition of FDOT Standard Specifications, Section 102. The LOCAL GOVERNMENT is responsible for the development of a MOT plan and making any changes to that plan as necessary. The MOT plan shall be in accordance with the latest version of FDOT Standard Plans, Index 102-600 series.

4) The DEPARTMENT may, at its discretion, perform periodic inspections of any or all locations. If it is determined that any of the roadway features defined in EXHIBIT "C" are not being maintained as required by this Agreement, the DEPARTMENT will issue a notice of such deficiency to the LOCAL GOVERNMENT's point of contact by email or certified mail. The LOCAL GOVERNMENT shall have thirty (30) days to correct the deficiency (ies) and to notify the DEPARTMENT by email or certified mail, that the deficiency (ies) has been corrected. If said deficiency or deficiencies are not corrected within this time period the DEPARTMENT may at its option, proceed as follows:

   a) Maintain the roadway features declared deficient with the DEPARTMENT or DEPARTMENT Contractor's material, equipment and personnel. The actual cost for such work will be deducted from payment to the LOCAL GOVERNMENT; or
   b) Terminate this Agreement in accordance with the provisions of this Agreement.

5) In the event of a Governor Declared Emergency, a natural disaster or significant occurrence (hurricane, tornado, vehicle accident, hazardous waste spills, etc.) the LOCAL GOVERNMENT and the DEPARTMENT will cooperate and coordinate the use of their respective resources to provide for clean up, removal, and disposal of debris or other substances from the DEPARTMENT's right of way described in EXHIBIT "B" or any amended limits mutually agreed upon in writing by both parties hereto. The DEPARTMENT will not deduct any payment to the LOCAL GOVERNMENT, costs for impairment of performance of any activity or part thereof defined in EXHIBIT "C", as a result of such event and the redirection of LOCAL GOVERNMENT forces towards fulfillment of the responsibility under this article. This paragraph shall not be interpreted to reduce the LOCAL GOVERNMENT's right to compensation or reimbursement from any other sources (i.e.: FEMA) for the debris removal or other activities of the LOCAL GOVERNMENT subsequent to a natural disaster or accident.

6) During the term of this Agreement, the DEPARTMENT may from time to time engage in transportation projects on the roads covered by this Agreement. Some of these projects may involve the DEPARTMENT's construction contractor temporarily assuming maintenance responsibility for the limits of the project. In that event, the DEPARTMENT will notify the LOCAL GOVERNMENT of the limits of the project and the time frame for that project. During that time and for those limits, the LOCAL GOVERNMENT may be released from its obligation to perform maintenance on those roads and the compensation to be paid under this Agreement may be reduced for the duration of the construction project. The reduction in compensation shall be based on the formula used to initially compute the amount of compensation under this Agreement. The LOCAL GOVERNMENT will be notified of the amount of the reduction as part of the aforementioned notice.
TERM

1) After this Agreement has been executed by the parties, the DEPARTMENT will issue a Notice to Proceed to the LOCAL GOVERNMENT which may be sent by electronic mail at the DEPARTMENT’s discretion. The term of this Agreement commences on the effective date of the Notice to Proceed and will continue for a period of three (3) years from the effective date on the Notice to Proceed. This Agreement may be renewed for a period that may not exceed one three (3) year term.

2) A renewal may be made at the discretion of the DEPARTMENT and will be subject to the same terms and conditions set forth in this Agreement. A renewal shall be contingent upon satisfactory performance evaluations by the DEPARTMENT and subject to the availability of funds. Renewals must be mutually agreed upon by both parties and in writing and must be executed prior to the expiration date of its preceding term.

3) In the event this Agreement extends beyond the DEPARTMENT’s current Fiscal year that begins July 1 of each year and ends June 30 of each succeeding year, the LOCAL GOVERNMENT and the DEPARTMENT mutually agree that the State of Florida’s performance and obligation to pay under this contract is contingent upon and annual appropriation by the Legislature. In addition, Section 339.135(6)(a), Florida Statutes, is incorporated by reference, and is set forth herein below as follows:

F.S. “339.135(6)(a)” - The Department, during any Fiscal Year, shall not expend money, incur any liability, or enter into any Contract which, by its terms, involves any 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 under 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 any other binding commitment of funds. Nothing herein shall prevent the making of Contracts for periods exceeding one (1) year, but any Contract so made shall be executory only for the value of 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 having a term for a period of more than one year.

COMPENSATION

1) The DEPARTMENT agrees to pay the LOCAL GOVERNMENT, following a Notice to Proceed, compensation for the cost of maintenance as described in the Provisions Section of this Agreement. The payment will be for the amount of $8,756.00 per quarter, equating to $35,024.00 per year for the duration of the term.

2) Payment shall be made only after receipt of goods and services as provided in Section 215.422, Florida Statutes. Detailed quarterly invoices and any associated documents, including Maintenance Management Systems (MMS) breakdown of all activities, shall be submitted to the DEPARTMENT’s Project Administrator: Christophor Engel. Delivery shall be effective upon receipt of a proper quarterly invoice and any required associated documents.

a) Upon receipt, the DEPARTMENT has seven (7) working days to inspect and approve the goods and services, unless otherwise specified herein. The DEPARTMENT has twenty (20) days to

CONTRACT NO.: ASH35
FINANCIAL PROJECT NO.: 403391-2-78-02
deliver a request for payment (voucher) to the Department of Finance. The twenty (20) days are measured from the latter of the date the invoice is received, at the location stated herein, or the goods and services are received, inspected and approved.

b) Any penalty for delay in payment shall be in accordance with Section 215.422, Florida Statutes. Section 215.422(5), Florida Statutes, provides that all purchasing Agreements between a State agency and a vendor, applicable to this section, shall include a statement of the vendor’s rights and the State’s responsibilities under this section. The vendor’s rights shall include being provided with the name and telephone number of the Vendor Ombudsman within the Department of Financial Services.

c) If payment is not available within forty (40) days, a separate interest penalty as established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the LOCAL GOVERNMENT. Interest penalties of less than one ($1.00) dollar shall not be enforced unless the LOCAL GOVERNMENT requests payment. Invoices, which have been returned to the LOCAL GOVERNMENT because of LOCAL GOVERNMENT preparation errors, will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is received by the DEPARTMENT.

d) A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from the DEPARTMENT. The Vendor Ombudsman may be contacted at (850) 413-5516 or by calling the Department of Financial Services Consumer Hotline, 1-800-342-2762.

3) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

4) Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request of the DEPARTMENT at all times during the period of this Agreement and for three (3) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the LOCAL GOVERNMENT’s general accounting records and project records, together with supporting documents and records of the LOCAL GOVERNMENT, all subcontractors performing work, and all other records of the LOCAL GOVERNMENT and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.

**CONDITIONS FOR TERMINATION**

1) This Agreement or any part thereof is subject to termination at the discretion of the DEPARTMENT under any of the following conditions:

   a) In the event the Legislature fails to make an annual appropriation to pay for the LOCAL GOVERNMENT’s services to be performed hereunder.

   b) The LOCAL GOVERNMENT has not complied with the provisions of this Agreement as described herein, or has demonstrated a pattern of repeated non-compliance.

   c) The DEPARTMENT determines that the Agreement is no longer feasible.

2) Either party may terminate this Agreement in writing with thirty (30) days’ notice.

**CONTRACT NO.:** ASH35  **FINANCIAL PROJECT NO.:** 403391-2-78-02
NOTICES AND POINTS OF CONTACT

All correspondence regarding this Agreement shall be directed to the following points of contact:

a) For the DEPARTMENT:

Title: Field Operations Manager  
Name: Christopher Engels  
Address: 1650 North Kepler Rd DeLand, FL 32724  
Telephone: 386-740-3420  
Email: christopher.engels@dot.state.fl.us

b) For the LOCAL GOVERNMENT:

Title: Public Works Director  
Name: Alan Williamson  
Address: 16 Colomba Rd. DeBary, FL 32763  
Telephone: 386-668-2040  
Email: awilliamson@debary.org

ADDITIONAL PROVISIONS AND LEGAL REQUIREMENTS

1) LEGAL REQUIREMENTS. This Agreement is executed and entered into in the State of Florida and will be construed, performed, and enforced in all respects in strict conformity with local, state, and federal laws, rules, and regulations.

a) If any term or provision of the Agreement is found to be illegal or unenforceable, the remainder of the Agreement will remain in full force and effect and such term or provision will be deemed stricken.

b) The LOCAL GOVERNMENT shall 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 LOCAL GOVERNMENT in conjunction with this Agreement. Failure by the LOCAL GOVERNMENT to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the DEPARTMENT.

c) The LOCAL GOVERNMENT and the DEPARTMENT agree that the LOCAL GOVERNMENT, its employees, contractors, subcontractors, consultants, and sub consultants are not agents of the DEPARTMENT as a result of this Agreement.

d) The LOCAL GOVERNMENT shall not cause any liens or encumbrances to attach to any portion of the DEPARTMENT’s right-of-way.

e) Nothing herein shall be construed as a waiver of either party’s sovereign immunity.

2) PUBLIC ENTITY CRIME. The LOCAL GOVERNMENT affirms that it is aware of the provisions of Section 287.133(2)(a), Florida Statutes. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or
consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list. The LOCAL GOVERNMENT agrees that it shall not violate Section 287.133(2)(a), Florida Statutes, and further acknowledges and agrees that any conviction during the term of this Agreement may result in the termination of this Agreement.

3) UNAUTHORIZED ALIENS. The DEPARTMENT will consider the employment of unauthorized aliens, by any contractor or subcontractor, as described by Section 274A(e) of the Immigration and Nationalization Act, cause for termination of this Agreement.

4) NON-DISCRIMINATION. The LOCAL GOVERNMENT will not discriminate against any employee employed in the performance of this Agreement, or against any applicant for employment because of age, ethnicity, race, religious belief, disability, national origin, or sex. The LOCAL GOVERNMENT shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. The LOCAL GOVERNMENT shall insert similar provisions in all contracts and subcontracts for services by this Agreement.

5) DISCRIMINATORY VENDOR LIST. The LOCAL GOVERNMENT affirms that it is aware of the provisions of Section 287.134(2)(a), Florida Statutes. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity. The LOCAL GOVERNMENT further agrees that it shall not violate Section 287.134(2)(a), Florida Statutes, and acknowledges and agrees that placement on the list during the term of this Agreement may result in the termination of this Agreement.

6) ATTORNEY FEES. Each Party shall bear its own attorney’s fees and costs.

7) TRAVEL. There shall be no reimbursement for travel expenses under this Agreement.

8) PRESERVATION OF REMEDIES. No delay or omission to exercise any right, power, or remedy accruing to either Party upon breach or default by either Party under this Agreement, will impair any such right, power or remedy of either party; nor will such delay or omission be construed as a waiver of any breach or default or any similar breach or default.

9) MODIFICATION. This Agreement may not be modified unless done so in a writing executed by both Parties to this Agreement.

10) NON-ASSIGNMENT. The LOCAL GOVERNMENT may not assign, sublicense, or otherwise transfer its rights, duties, or obligations under this Agreement without the prior written consent of the DEPARTMENT. Any assignment, sublicense, or transfer occurring without the required prior written approval of the DEPARTMENT will be null and void. The DEPARTMENT will at all times be entitled to assign or transfer its rights, duties, or obligations under this Agreement to another governmental entity in the State of Florida, upon giving prior written notice to the LOCAL GOVERNMENT. In the event
that the DEPARTMENT approves transfer of the LOCAL GOVERNMENT’s obligations, the LOCAL GOVERNMENT remains responsible for all work performed and all expenses incurred in connection with this Agreement.

11) The LOCAL GOVERNMENT agrees to include the following indemnification in all contracts with contractors, subcontractors, consultants, and subconsultants, who perform work in connection with this Agreement:

"The contractor / subcontractor / consultant / subconsultant shall indemnify, defend, save and hold harmless the State of Florida, Department of Transportation and all of its officers, agents or employees from all suits, actions, claims, demands, liability of any nature whatsoever arising out of, because of, or due to any negligent act or occurrence of omission or commission of the contractor / subcontractor / consultant / subconsultant, its officers, agents or employees."

12) BINDING AGREEMENT. This Agreement is binding upon and inures 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 in this Agreement.

13) INTERPRETATION. No term or provision of this Agreement shall be interpreted for or against any party because that party or that party’s legal representative drafted the provision.

14) ENTIRE AGREEMENT. This Agreement, together with the attached exhibits and documents made a part by reference, embodies the entire agreement of the Parties. There are no provisions, terms, conditions, or obligations other than those contained in this Agreement. This Agreement supersedes all previous communication, representation, or agreement, either verbal or written, between the Parties. No amendment will be effective unless reduced to writing and signed by an authorized officer of the LOCAL GOVERNMENT and the authorized officer of the DEPARTMENT or his/her delegate.

15) DUPLICATE ORIGINALS. This Agreement may be executed in duplicate originals.

16) E-VERIFY – the LOCAL GOVERNMENT shall:
   a) utilize the U.S. Department of Homeland Security’s E-Verify system to verify the employment eligibility of all new employees hired by the LOCAL GOVERNMENT during the term of the contract; and
   b) 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.

The remainder of this page is intentionally left blank
17) The Parties agree to comply with s.20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with s.20.055(5), Florida Statutes.

EXECUTION

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

LOCAL GOVERNMENT:

By: 

Signed

Printed Name & Title

Attest:

Signed

Printed Name & Title

Legal Approval: __________________________

DEPARTMENT:

By: 

Signed

Loreen Boba, P.E., Director of Transportation Development

Signed

Alan Hyman, P.E., Director of Transportation Operations

Attest: 

Signed

Norma Mejias

Printed Name & Title

Legal Approval: 

Signed

Norma Mejias, Administrative Assistant

Printed Name & Title
RESOLUTION 2020-08

A RESOLUTION AUTHORIZING THE CITY OF DEBARY AND FLORIDA DEPARTMENT OF TRANSPORTATION TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF DEBARY, AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR THE MAINTENANCE OF STATE ROAD RIGHTS-OF-WAY BY THE CITY; SETTING FORTH AN EFFECTIVE DATE.

IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEBARY, FLORIDA AS FOLLOWS:

SECTION 1. That the City of DeBary and Florida Department of Transportation are hereby authorized to execute that "Memorandum of Agreement – Highway Maintenance" between the CITY and the FLORIDA DEPARTMENT OF TRANSPORTATION, and mutually agreed upon renewals, a copy of which is attached hereto and incorporated herein by reference.

SECTION 2. That this Resolution shall take effect immediately upon its adoption.

ADOPTED BY The City Council of the City of DeBary, Florida this 60th day of May, 2020.

CITY COUNCIL
CITY OF DEBARY, FLORIDA

Karen Chazez, Mayor

ATTEST:

Annette Hatch, City Clerk
**EXHIBIT B**

**PROJECT LIMITS:**

<table>
<thead>
<tr>
<th>SECTION</th>
<th>S.R.</th>
<th>LOCATION</th>
<th>LENGTH</th>
</tr>
</thead>
<tbody>
<tr>
<td>74040</td>
<td>15/600</td>
<td>From Barwick Rd. to Saxon Bl. (MP 0.477 to MP 5.277)</td>
<td>4.800</td>
</tr>
<tr>
<td>79040101</td>
<td>15/600</td>
<td>From Seminole County line to Barwick Rd. (MP 0.000 to MP 0.411)</td>
<td>0.441</td>
</tr>
<tr>
<td>79110004</td>
<td>400</td>
<td>I-4 @ Dirksen Dr Interchange Off Ramp from WB I-4 to Dirksen Dr.</td>
<td></td>
</tr>
<tr>
<td>79110005</td>
<td>400</td>
<td>I-4 @ Dirksen Dr Interchange On Ramp from Dirksen Dr. to WB I-4.</td>
<td></td>
</tr>
</tbody>
</table>

**CONTRACT NO.: ASH35**  **FINANCIAL PROJECT NO.: 403391-2-78-02**
EXHIBIT C

MAINTENANCE ACTIVITIES:
(Maintenance Activities to be included and part of this Agreement will be checked in the INC column)

<table>
<thead>
<tr>
<th>INC</th>
<th>ACTIVITY</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>☒</td>
<td>433</td>
<td>Sodding: Cutting and placing sod in areas along the roadside associated with reworking non-paved shoulders, slopes, ditches, median islands, utility strips and repairing washouts.</td>
</tr>
<tr>
<td>☐</td>
<td>435</td>
<td>Seeding, Fertilizing and Mulching: Seeding, fertilizing, and mulching of the roadside.</td>
</tr>
<tr>
<td>☐</td>
<td>436</td>
<td>Reworking Non-Paved Shoulders, Front Slopes, and Roadside Ditches (Mechanical): Reworking non-paved shoulders, front slopes, roadside ditches and turnouts either by the addition of suitable material and reshaping, or by cutting down built-up areas.</td>
</tr>
<tr>
<td>☐</td>
<td>451</td>
<td>Clean Drainage Structures: Cleaning storm drains, French drains, manholes, side drains, cross drains, inlets, piped outfalls, box culverts, and other miscellaneous drain structures.</td>
</tr>
<tr>
<td>☐</td>
<td>459</td>
<td>Concrete Sidewalk Repair: Repair or replacement of existing sections of concrete sidewalk.</td>
</tr>
<tr>
<td>☐</td>
<td>461</td>
<td>Roadside Ditches - Clean and Reshape: Cleaning and reshaping of ditches other than outfalls.</td>
</tr>
<tr>
<td>☒</td>
<td>471</td>
<td>Large Machine Mowing: Mowing of roadside areas with large mowers where conditions accommodate the efficient use of 7 foot and larger mowers, alone or in combination.</td>
</tr>
<tr>
<td>☒</td>
<td>482</td>
<td>Slope Mowing: Grass, brush, and weed cutting along slopes too steep to safely mow or are inaccessible for conventional mowing tractors.</td>
</tr>
<tr>
<td>☐</td>
<td>485</td>
<td>Small Machine Mowing: Mowing the roadside with small hand or riding mowers have a cutting width of 40 inches or less.</td>
</tr>
<tr>
<td>☐</td>
<td>487</td>
<td>Manual Weed Control: Brush, weed, and grass cutting 100 mm (4&quot;) or less in diameter performed with hand tools.</td>
</tr>
<tr>
<td>☒</td>
<td>490</td>
<td>Fertilizing: Fertilizing to provide required nutrients to establish and maintain an acceptable roadside turf.</td>
</tr>
<tr>
<td>☒</td>
<td>492</td>
<td>Tree Trimming &amp; Removal: The trimming of the height and sides of trees and removal of undesirable trees (over 4 inches in diameter or trimming that cannot be done under Activity 487 Weed Control - Manual). To include the chipping and/or removal of all debris from work site.</td>
</tr>
<tr>
<td>☒</td>
<td>493</td>
<td>Landscaped Area Maintenance: All efforts required for proper maintenance of landscaped areas, including litter removal, mowing, edging, fertilizing, weeding, mulching, etc.</td>
</tr>
<tr>
<td>☒</td>
<td>494</td>
<td>Chemical Grass and Weed Control: The application (handgun, basal or cut stump) of herbicides to slopes, ditches, fence, guardrail, barrier wall, reinforced earthen walls, sidewalks, bridges, curb and gutter, obstructions, shoulders, and other areas not assessable to mowers. Not to include chemical applications within landscape or mitigation areas.</td>
</tr>
</tbody>
</table>
Storm Water Management: To maintain, to the maximum extent practicable, all surface/storm water management systems to a functioning state as designed and in compliance with the permit conditions and/or applicable rules and regulations.

Fence Repair: To provide highway safety and deter unauthorized and unrestrained access to highway facilities.

Roadside Litter Removal: Cleaning roadways and roadsides of debris, such as cans, bottles, paper, Adopt-A-Highway litter. Includes the hauling and disposal of litter. Does not include wayside parks, rest areas and service plaza barrels.

Road Sweeping (Manual): To remove debris from the roadway where mechanical means are not feasible before a drainage or safety problem is created or before it becomes unsightly.

Road Sweeping (mechanical): Machine sweeping of roadway to protect the facility from excessive accumulation of debris.

Edging & Sweeping: Removal of vegetation and debris from the curb, gutter and sidewalk.
FLORIDA DEPARTMENT OF TRANSPORTATION
FUNDS APPROVAL
ASH35
3/27/2020

**CONTRACT INFORMATION**

<table>
<thead>
<tr>
<th>Contract</th>
<th>ASH35</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract Type</td>
<td>AK - PROJ PARTICIPATION (PROJ PART)</td>
</tr>
<tr>
<td>Method of Procurement</td>
<td>G - GOVERMENTAL AGENCY (287.057,F.S.)</td>
</tr>
<tr>
<td>Vendor Name</td>
<td>DEBARY CITY OF</td>
</tr>
<tr>
<td>Vendor ID</td>
<td>F593217634003</td>
</tr>
<tr>
<td>Beginning Date of This Agreement</td>
<td>05/16/2020</td>
</tr>
<tr>
<td>Ending Date of This Agreement</td>
<td>05/15/2023</td>
</tr>
<tr>
<td>Contract Total/Budgetary Ceiling</td>
<td>ct = $105,072.00</td>
</tr>
<tr>
<td>Description</td>
<td>MOA with the City of Debary</td>
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</tbody>
</table>

**FUNDS APPROVAL INFORMATION**

Funds Approved/Reviewed for Robin M. Naitove, CPA, Comptroller on 3/27/2020

<table>
<thead>
<tr>
<th>Action</th>
<th>Original</th>
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</thead>
<tbody>
<tr>
<td>Reviewed or Approved</td>
<td>APPROVED</td>
</tr>
<tr>
<td>Organization Code</td>
<td>55054030511</td>
</tr>
<tr>
<td>Expansion Option</td>
<td>A1</td>
</tr>
<tr>
<td>Object Code</td>
<td>242059</td>
</tr>
<tr>
<td>Amount</td>
<td>$105,072.00</td>
</tr>
<tr>
<td>Financial Project</td>
<td>40339127802</td>
</tr>
<tr>
<td>Work Activity (FCT)</td>
<td>400</td>
</tr>
<tr>
<td>CFDA</td>
<td></td>
</tr>
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<td>Fiscal Year</td>
<td>2020</td>
</tr>
<tr>
<td>Budget Entity</td>
<td>55150200</td>
</tr>
<tr>
<td>Category/Category Year</td>
<td>088712/20</td>
</tr>
<tr>
<td>Amendment ID</td>
<td>O001</td>
</tr>
<tr>
<td>Sequence</td>
<td>00</td>
</tr>
<tr>
<td>User Assigned ID</td>
<td></td>
</tr>
<tr>
<td>Enc Line (6s)/Status</td>
<td>0001/04</td>
</tr>
</tbody>
</table>

Total Amount: $105,072.00
City of DeBary Code:

Sec. 10.03. - Adoption of resolutions.

Every proposed resolution shall be introduced in writing and in the form required for final adoption. No resolution shall contain more than one subject which shall be clearly expressed in its title. The clause which shall be used for all resolutions approved by the Council shall be:

"IT IS HEREBY RESOLVED BY THE CITY OF DEBARY AS FOLLOWS..."

A resolution may be introduced by the Mayor or any member of the Council at any regular or special meeting of the Council.

A resolution shall, upon its final passage, be recorded in a book kept for that purpose and shall be signed by the Mayor and the City Clerk. A copy of the resolution shall be available in the City Hall.

(Ord. No. 15-96, § 1, 8-7-96; Ord. No. 19-01, § 1, Exh. A, 11-6-01)
City Council Meeting
City of DeBary
AGENDA ITEM

Subject: Proposal from Gregori Construction, Inc. for Urgent Remedial Stormwater Project - Glen Abbey Lane and Knightsbridge Place

From: Carmen Rosamonda, City Manager

Meeting Hearing Date May 3, 2023

Attachments:
( ) Ordinance
( ) Resolution
(x) Supporting Documents/ Contracts
( ) Other

REQUEST

City Manager is recommending City Council to approve a proposal from GREGORI CONSTRUCTION, INC. for an Urgent Remedial Stormwater Project to address subsidence within the City rights of way at Glen Abbey Lane and Knightsbridge Place in the Glen Abbey subdivision.

PURPOSE

The purpose of this proposal is to repair sections of existing stormwater pipes that are cracked and allow seepage into the pipe, causing subsidence within the right of way near 404 Glen Abbey Lane and 204 Knightsbridge Place. Urgency is required to restore a collapsed section of the sidewalk on Glen Abbey Lane and a collapsed section of the roadway pavement of Knightsbridge Place.

CONSIDERATIONS

The Glen Abbey subdivision was constructed more than thirty years ago. The original stormwater system of Glen Abbey is aged and beginning to fail throughout parts of the subdivision. This remedial stormwater project consists of excavation to expose the defective sections of the stormwater piping and seal the cracked pipe with concrete. Restoration of the concrete sidewalk and asphalt pavement is deemed to be urgent to maintain safe travel for pedestrians and vehicles.

Due to the urgent nature of the conditions, it is necessary that standard procurement procedures be waived to expedite restoration of the sidewalk and roadway pavement. GREGORI CONSTRUCTION, INC. is currently under contract with DeBary for the West Highbanks Road widening and was requested to submit a proposal for the remedial project based on the attached Request for Proposal developed by the City Engineer and KHARE Construction Services, LLC.

COST/FUNDING

GREGORI CONSTRUCTION, INC. proposed a cost of $31,280.00 for the requested scope of work.

Funding for the URGENT REMEDIAL STORMWATER PROJECT shall be from the Stormwater Fund.
RECOMMENDATION

It is recommended that the City Council: Approve a proposal from GREGORI CONSTRUCTION, INC. in the amount of $31,280.00 for the URGENT REMEDIAL STORMWATER PROJECT for Glen Abbey Lane and Knightsbridge Place.

IMPLEMENTATION

GREGORI CONSTRUCTION, INC has committed to beginning the proposed work within two weeks following approval of the proposal.

ATTACHMENTS

GCI Proposal for URGENT REMEDIAL STORMWATER PROJECT – Knightsbridge Place
Picture – Subsidence at 204 Knightsbridge Place
Picture – Subsidence at 404 Glen Abbey Lane
NOTES

<table>
<thead>
<tr>
<th>PAY ITEM</th>
<th>DESCRIPTION</th>
<th>UNIT</th>
<th>NUMERIC UNIT</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>110-1-1</td>
<td>Cleaning &amp; Grinding</td>
<td>1</td>
<td></td>
<td>$150.00</td>
</tr>
<tr>
<td>107-1</td>
<td>Maintenance of Traffic</td>
<td>1</td>
<td></td>
<td>$2,825.00</td>
</tr>
<tr>
<td>101-1</td>
<td>Mobilization/De-mobilization</td>
<td>1</td>
<td></td>
<td>$2,825.00</td>
</tr>
<tr>
<td>110-2</td>
<td>No. 04 unit</td>
<td></td>
<td></td>
<td>$4,150.00</td>
</tr>
<tr>
<td>110-3</td>
<td>Removal and Disposal of Asphalt Pavement and Concrete Sidewalk</td>
<td>1</td>
<td></td>
<td>$2,010.00</td>
</tr>
<tr>
<td>120-3</td>
<td>Import Fill Material - Place To Restore Subgrade Material</td>
<td>1</td>
<td></td>
<td>$2,010.00</td>
</tr>
<tr>
<td>330-1</td>
<td>Hot Mix Asphalt - 1 1/2 inches thick</td>
<td>15</td>
<td></td>
<td>$93,000.00</td>
</tr>
<tr>
<td>200-1</td>
<td>Crushed Concrete Base Material - 8 inch thick</td>
<td>75</td>
<td></td>
<td>$15,750.00</td>
</tr>
<tr>
<td>322-1</td>
<td>Concrete Sidewalk - 5 1/2 ft, 4 inches thick</td>
<td>10</td>
<td></td>
<td>$22,050.00</td>
</tr>
<tr>
<td>400-1</td>
<td>Pipe Repair - Felts, Paper and Concrete Cap (2 Locations)</td>
<td>1</td>
<td></td>
<td>$2,000.00</td>
</tr>
<tr>
<td>222-2</td>
<td>Sidewalk - 4 inches thick</td>
<td>43</td>
<td></td>
<td>$22,242.00</td>
</tr>
<tr>
<td>320-2</td>
<td>Steel Plate - 25 cm</td>
<td>2</td>
<td></td>
<td>$20,002.00</td>
</tr>
<tr>
<td>520-2</td>
<td>Concrete Repair - 1 3/8 inch thick</td>
<td>15</td>
<td></td>
<td>$35,000.00</td>
</tr>
<tr>
<td>15-1</td>
<td>Performance Trench Sod</td>
<td>1</td>
<td></td>
<td>$5,280.00</td>
</tr>
<tr>
<td>320-2</td>
<td>Sidewalk - 4 inches thick</td>
<td>57</td>
<td></td>
<td>$29,822.00</td>
</tr>
</tbody>
</table>

TOTAL | | | | $174,320.00 |

1. Mobilization - Existing Irrigation Components shall be protected and or replaced. Payment is included under Excavation.

2. Remove Existing Sidewalk to meet line.

3. Trench Paper for Pipe Repair - Minimum 3 layers of 30 lb felt paper required over cracked area of existing RCP.

4. Concrete for Repair shall be a minimum 6 inches thick for the full top half of the existing 18" RCP.

City of Dearborn - Request for Proposal

Knightbridge Place - Urgent Remedial Stormwater Project
City Council Meeting  
City of DeBary  
AGENDA ITEM

<table>
<thead>
<tr>
<th>Subject:</th>
<th>Ordinance # 04-2023</th>
<th>Attachments:</th>
</tr>
</thead>
<tbody>
<tr>
<td>From:</td>
<td>Steven E. Bapp, AICP</td>
<td>(X) Ordinance</td>
</tr>
<tr>
<td></td>
<td></td>
<td>( ) Resolution</td>
</tr>
<tr>
<td></td>
<td></td>
<td>( ) Supporting Documents/ Contracts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>( ) Other</td>
</tr>
<tr>
<td>Meeting Hearing Date</td>
<td>May 3, 2023</td>
<td></td>
</tr>
</tbody>
</table>

REQUEST

Staff is requesting the City Council approve the first reading of Ordinance # 04-2023, amending the Land Development Code (LDC) to define self-storage facilities and warehouses and provide development standards for self-storage facilities and miniwarehouses fronting the Gateway Corridor.

PURPOSE

To clarify the definition of self-storage facilities; to require mixed use as part of new self-storage facilities; and to provide developmental standards for the Gateway Corridor.

CONSIDERATIONS

Background:

The LDC does not define the term “self-storage facilities”, although defines the term “miniwarehouses”. Self-storage facilities are referenced in certain Planned Unit Development (PUD) development agreements (DA), although not defined in the LDC. Furthermore, the LDC allows “warehouses” as a permitted special exception in the B-5 classification, and a permitted principal use in the I-1 classification. Clarifying the definition of self-storage facilities will update the LDC to reflect the intended purpose.

The Gateway Corridors (U.S. Highway 17-92, Highbanks Road, Enterprise Road, Saxon Boulevard, Dirksen Drive, and I-4 frontage roads) (See Attached Map) provide the first impressions of the City to visitors. Therefore, there are enhanced design standards to improve the Gateway appearance, provide uniform design standards, coordinate the appearance of developments and enhance property values.

In recent years, developers have submitted inquiries to City Staff for self-storage facilities. The potential proliferation of this use threatens the City’s desire to enhance the appearance of the Gateway Corridors. The majority of the vacant commercial property in the City is located on a Gateway Corridor (see attached Vacant Commercial Property map).
Proposed Amendments:

SECTION 2 ADOPTION. Chapter 1, Section 1-3 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

Section 1-3. – Definitions and rules of construction

Self-storage facilities and Miniwarehouse shall mean an enclosed storage area containing individually rented or owned compartments or stalls for storage only, and a commercial use as an accessory use where required by this Code.

Warehouses shall mean an enclosed storage area for the purpose of temporarily receiving and/or storing of goods for delivery to the ultimate customer at remote locations.

SECTION 3 ADOPTION. Chapter 3, Article III, Division 3 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

Section 3-102. – B-4 General Commercial Classification (c) Permitted special exceptions.

Self-storage facilities and Miniwarehouses (refer to section 3-134(4)).

Section 3-103. – B-5 Heavy Commercial Classification.

(b) Permitted principal uses and structures

Miniwarehouses which meet the requirements of section 3-134(4) Self-storage facilities and Miniwarehouses

Section 3-107. – I-1 Light Industrial Classification.

(b) Permitted principal uses and structures.

Self-storage facilities and Miniwarehouses.

SECTION 4 ADOPTION. Chapter 3, Article III, Division 4 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

Section 3-129. – Off-street parking and loading.

(5) Off-street parking spaces.

<table>
<thead>
<tr>
<th>Use</th>
<th>Number of Parking Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mini-warehouses</td>
<td>1 for every 10 storage cubicles or units</td>
</tr>
<tr>
<td>Self-storage facilities and miniwarehouses</td>
<td>1 for every 10 storage cubicles or units.</td>
</tr>
</tbody>
</table>
Section 3-134. – Special exceptions.

(4) Self-storage facilities and Miniwarehouses. Self-storage facilities and Miniwarehouses shall be designed and operated according to the following standards:

b. There shall be a minimum of 30 feet between self-storage facilities and miniwarehouse buildings for driveway, parking and fire lane purposes.

c. When located within a commercial zoning classification, PUD, RPUD, BPUD, or MPUD, the use shall be designed pursuant to Section 5-128, when applicable.

SECTION 5 ADOPTION.

Chapter 5, Article V of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

Section 5-128. – Supplemental Site and Building Standards

(1) Self-Storage Facilities and Miniwarehouses

Self-storage facilities, if allowed, shall be designed to meet the intent to create a pedestrian-friendly urban environment. Self-storage facilities shall be designed and constructed in accordance with the following requirements (Figure 5-32):

a. Self-storage facilities are only allowed as part of a mixed-use development with retail, restaurants or office uses on the ground floor.

b. Access to the individual storage units shall not be visible from the street and may only be provided from interior spaces.

c. There shall be no outdoor storage allowed.

d. Loading docks shall be located inside the building.

e. Privacy fences or walls are not allowed around the property unless they are required by Code.

Figure 5-32: Urban Self-Storage Facilities
Sects. 5-128, 5-129. – Reserved.

SECTION 6 ADOPTION

Chapter 5, Article VI of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

***

Section 5-131 (b)(3) Additional regulations are applicable to permitted and prohibited uses within the TOD Overlay District as specified in the following Comprehensive Land Use Table. Please note that residential uses are prohibited on the ground floor within the entire TOD Main Street Area. See Mixed-use requirements in section 5-131(b)(2) above.

<table>
<thead>
<tr>
<th>P (Permitted)</th>
<th>— (Prohibited)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>U.S. Hwy 17-92</td>
</tr>
<tr>
<td><strong>Commercial Uses</strong></td>
<td></td>
</tr>
<tr>
<td>Personal Storage/Mini-Warehouse</td>
<td>—</td>
</tr>
<tr>
<td>Self-storage facilities and miniwarehouses</td>
<td>—</td>
</tr>
</tbody>
</table>
Comprehensive Plan Review:

Amendments to the LDC are required to be consistent with the City’s adopted Comprehensive Plan (Plan), as per F.S. 163.3202. Therefore, this amendment has been reviewed to ensure compliance with the Plan.

Economic Development

Policy 3.204 states the City will provide for high quality mixed uses in appropriate locations to support economic development in commercial and industrial locations. A stand-alone self-storage facility does little to support economic development. The facilities consume larger parcels of property, while requiring the greatest average square-footage per worker as illustrated in the following chart.

<table>
<thead>
<tr>
<th>Principal building activity</th>
<th>Average square feet per worker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convenience stores (with or without gas station)</td>
<td>963</td>
</tr>
<tr>
<td>Grocery store/food market</td>
<td>1,218</td>
</tr>
<tr>
<td>Fast food</td>
<td>414</td>
</tr>
<tr>
<td>Restaurant/cafeteria</td>
<td>461</td>
</tr>
<tr>
<td>Other food service</td>
<td>956</td>
</tr>
<tr>
<td>Health care office (outpatient, diagnostic)</td>
<td>566</td>
</tr>
<tr>
<td>Clinic or other outpatient</td>
<td>581</td>
</tr>
<tr>
<td>Retail store</td>
<td>1,632</td>
</tr>
<tr>
<td>Other retail</td>
<td>1,408</td>
</tr>
<tr>
<td>Strip shopping center</td>
<td>938</td>
</tr>
<tr>
<td>Administrative/professional office</td>
<td>483</td>
</tr>
<tr>
<td>Bank/other financial</td>
<td>518</td>
</tr>
<tr>
<td>Medical (non-diagnostic)</td>
<td>523</td>
</tr>
<tr>
<td>Other office</td>
<td>621</td>
</tr>
<tr>
<td>Self-storage units</td>
<td>6,342</td>
</tr>
</tbody>
</table>

Also, adding a mixed-use element to a self-storage facility will provide commercial retail spaces, that are in high demand on the 17-92 corridor. Instead of having a sole-purpose facility, that consumes much-needed commercial property, a proposed site would also fill the gap for retail space availability on the corridor. Sites can be designed that may have office or retail facilities on the first floor or front façade of the self-storage facility. These facilities have been designed in other cities in Florida, including DeLand, Orlando, and Jacksonville, illustrated in the following concept sketch.
Future Land Use

Policy 5.502(a) states the LDC shall contain provisions addressing compatibility of adjacent land uses. The Gateway Corridor standards were adopted to enhance the appearance of the corridors. Adding a commercial element to self-storage facilities will make the facilities more compatible with other mixed-use, commercial and residential areas.

COST/FUNDING

None

RECOMMENDATION

It is recommended the City Council approve the first reading of Ordinance # 04-2023, proposed amendment to the LDC to define self-storage facilities and warehouses and provide development standards for self-storage facilities and miniwarehouses fronting the Gateway Corridor.

IMPLEMENTATION

If the Council approved the first reading of the ordinance, Staff will advertise the public hearing of the second reading in the Orlando Sentinel.

ATTACHMENTS

- Proposed Ordinance # 04-2023
- City of DeBary Vacant Commercial Property
- City of DeBary Gateway Corridor Map
ORDINANCE NO. 04-2023

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, AMENDING THE CITY’S LAND DEVELOPMENT CODE TO PROVIDE DEFINITIONS AND ZONING AND LAND DEVELOPMENT STANDARDS PERTAINING TO SELF-STORAGE FACILITIES, MINI-WAREHOUSES, AND WAREHOUSES; AND PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of DeBary’s land development code has not specifically addressed land development regulations and standards for “self-storage facilities” or how such facilities should be treated in relation to similar facilities such as “warehouses” and “miniwarehouses;” and

WHEREAS, the City of DeBary, in further developing its form-based zoning code desires to provide for zoning and land development standards specific to self-storage facilities and further clarification of standards for warehouses and mini-warehouses.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF DEBARY AS FOLLOWS:

SECTION 1. RECITALS. The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. ADOPTION. Chapter 1, Section 1-3 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; and provisions not included are not being amended):

Section 1-3. – Definitions and rules of construction

***

(c) Words and terms defined. The following words and phrases, as used in this Code, shall have the following meanings:

***

Self-storage facilities and Miniwarehouse shall mean an enclosed storage area containing individually rented or owned compartments or stalls for storage only, and a commercial use as an accessory use where required by this Code.

***

Warehouses shall mean an enclosed storage area for the purpose of temporarily receiving and/or storing of goods for delivery to the ultimate customer at remote locations.
Section 3-102. – B-4 General Commercial Classification

***

(c) Permitted special exceptions. Additional regulations/requirements governing permitted special exceptions are located in section 3-134.

***

Self-storage facilities and Miniwarehouses (refer to section 3-134(4)).

***

Section 3-103. – B-5 Heavy Commercial Classification.

(b) Permitted principal uses and structures. In the B-5 Heavy Commercial Classification, no premises shall be used except for the following uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Also, reference Article II, Overlay Districts, for any additional applicable regulations.

***

Miniwarehouses which meet the requirements of section 3-134(4). Self-storage facilities and Miniwarehouses

***

Section 3-107. – I-1 Light Industrial Classification.

(b) Permitted principal uses and structures. In the I-1 Light Industrial Classification, no premises shall be used except for the following industrial uses and their customary accessory uses or structures unless a use is found to be substantially similar in nature by the City Manager. Permitted and special exception uses must also be consistent with the uses permitted by the property's future land use designation on the City's adopted Future Land Use Map. Also, reference Article, II Overlay Districts, for any additional applicable regulations.

***

Self-storage facilities and Miniwarehouses.

***

SECTION 3 ADOPTION. Chapter 3, Article III, Division 4 of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; and provisions not included are not being amended):

Section 3-129. – Off-street parking and loading.
Where required by this Code, every use or structure shall have an adequate number of off-street parking and loading spaces for the use of occupants, employees, visitors, customers, patrons or suppliers. Except as noted in this section, division 4, article II of chapter 4 shall apply to the design and construction of all required off-street parking and loading areas.

***

(5) Off-street parking spaces. The number of off-street parking spaces shall be determined from the following table. Numbers for any use not specifically mentioned shall be the same as for the use most similar to the one sought. Fractional spaces shall be rounded up to the closest whole number. In houses of worship or other places of assembly where occupants sit on seats without dividing arms, each 18 linear inches of such seat shall be counted as one seat.

The minimum and maximum number of parking spaces required for any use not specifically mentioned, shall be determined by the Planning Administrator or his or her designee based upon data from the Transportation Engineers Parking Generation Manual, from publications and data from the American Planning Association or the Urban Land Institute, from studies using ITE recommended methodology and other professionally acceptable sources.

<table>
<thead>
<tr>
<th>Use</th>
<th>Number of Parking Spaces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amusement centers (arcades, skating rinks, miniature golf and similar uses)</td>
<td>1 per each 250 sq. ft. of area within enclosed buildings, plus 1 space for 3 persons the outdoor facilities are designed for, at maximum capacity</td>
</tr>
<tr>
<td>Automotive, boat, motorcycle, mobile home and recreational vehicle sales</td>
<td>1 per 500 sq. ft. of GFA*; 1 per each employee on the largest shift; 2 per service bay</td>
</tr>
<tr>
<td>Automobile service stations with retail sale, Types A and B</td>
<td>1 space per gas pump, plus 3.6 spaces per 1,000 sq. ft. GFA, plus 2 for each grease rack or other working bay, if applicable</td>
</tr>
<tr>
<td>Automobile service stations, Types A and B</td>
<td>1 for each gas pump, plus 2 for each grease rack or working bay</td>
</tr>
<tr>
<td>Ball park or stadium (other than Little League)</td>
<td>1 for each 3 seats, or 1 for each 300 sq. ft. of floor area, whichever is greater</td>
</tr>
<tr>
<td>Banks and similar financial institutions</td>
<td>1 per 275 sq. ft. of GFA* plus 4 reservoir spaces per drive through window and drive thru ATM</td>
</tr>
<tr>
<td>Service</td>
<td>Spaces per Use Details</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Barbershops, beauty salons and cosmetic treatments</td>
<td>2 per station or chair for a barber shop and 1 space per 250 sq. ft. of GFA for beauty salons</td>
</tr>
<tr>
<td>Baseball/softball</td>
<td>38 spaces per field</td>
</tr>
<tr>
<td>Basketball court</td>
<td>5 spaces per court</td>
</tr>
<tr>
<td>Bed and breakfast homestay</td>
<td>1 for each guest room plus 2 per dwelling unit</td>
</tr>
<tr>
<td>Boat ramp</td>
<td>30 spaces per ramp, 15 spaces per boat lane</td>
</tr>
<tr>
<td>Bowling alleys</td>
<td>3 for each alley, plus spaces required for other uses such as consumption of food and beverages or other recreational uses, plus 1 space per employee on the largest shift</td>
</tr>
<tr>
<td>Commercial uses not listed</td>
<td>1 per 275 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Community center or recreation center</td>
<td>1 space per 200 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Concession building</td>
<td>1 space per concessionaire or employee</td>
</tr>
<tr>
<td>Day care center</td>
<td>1 per 10 children served, plus 1 space per employee on the largest shift, plus a pickup and drop-off area equal to 1 space per 25 children served</td>
</tr>
<tr>
<td>Duplex and multifamily dwelling</td>
<td>2 per dwelling unit with 2 or more bedroom units; 1.5 per each one bedroom unit; add guest parking at 1 space per 5 units</td>
</tr>
<tr>
<td>Equipped playground</td>
<td>10 spaces per site</td>
</tr>
<tr>
<td>Fishing pier</td>
<td>1 space per 50 lineal feet</td>
</tr>
<tr>
<td>Furniture and flooring store</td>
<td>1 per 1,000 sq. ft. of GFA*</td>
</tr>
<tr>
<td>General, nonmedical, offices</td>
<td>1 per 250 sq. ft. of GFA* or one parking space for each 220 sq. ft. of gross floor space excluding areas of common public use and circulation. In computing the latter requirement the exclusion is to be used for public stairs, elevators, lobbies, arcades and atriums but not for common restrooms, mechanical areas or hallways beyond 20 feet from the lobby area</td>
</tr>
<tr>
<td>Use</td>
<td>Parking Requirement</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Golf or country clubs</td>
<td>3 spaces per golf hole, 1 for each 3 seats, or 1 for each 200 sq. ft. of GFA*, whichever is greater</td>
</tr>
<tr>
<td>Group homes</td>
<td>1 for each 5 persons plus 1 for each employee on the largest shift</td>
</tr>
<tr>
<td>Handball/racquetball court</td>
<td>2 spaces per court</td>
</tr>
<tr>
<td>Hardware store, home improvement stores</td>
<td>1 per 350 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Health club, Fitness Club/Gym</td>
<td>6 spaces, per 1,000 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Hospital</td>
<td>1 for each employee on the largest shift, plus ½ for each bed, and ½ for each staff doctor</td>
</tr>
<tr>
<td>House of worship, auditoriums, funeral homes and other places of assembly not listed</td>
<td>1 space for each 4 seats in the principal place of assembly or 1 space for every 50 sq. ft. of seating area where there are no fixed seats</td>
</tr>
<tr>
<td>Industrial uses</td>
<td>1 space for each bay, plus 1 space for each 1,000 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Library, art gallery</td>
<td>1 space for each 300 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Manufacturing industries</td>
<td>1 for each employee on the largest shift</td>
</tr>
<tr>
<td>Marinas</td>
<td>for each boat slip, plus 8 boat-trailer spaces for each boat launching ramp</td>
</tr>
<tr>
<td>Medical offices, dental offices, clinics and laboratories</td>
<td>1 per 225 sq. ft. of GFA*</td>
</tr>
<tr>
<td>Mini warehouses</td>
<td>1 for every 10 storage cubicles or units</td>
</tr>
<tr>
<td>Mixed use projects, Village Center Overlay by special exception</td>
<td>Shared parking is permitted when data is provided demonstrating a shared parking model based on professionally accepted sources and where generators have non-concurrent parking demand timeframes</td>
</tr>
<tr>
<td>Mobile home dwellings</td>
<td>2 per dwelling unit</td>
</tr>
<tr>
<td>Mobile home parks</td>
<td>2 per dwelling unit, plus any additional spaces reasonably required for accessory buildings or structures</td>
</tr>
<tr>
<td>Use</td>
<td>Spaces Required</td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Motels or hotels</td>
<td></td>
</tr>
<tr>
<td>1 for each unit, plus 1 for each 5 employees, in addition to spaces required for accessory uses</td>
<td></td>
</tr>
<tr>
<td>Motor vehicle repair</td>
<td></td>
</tr>
<tr>
<td>1 per 350 sq. ft. of GFA* and 2 spaces per service bay</td>
<td></td>
</tr>
<tr>
<td>Multipurpose court</td>
<td></td>
</tr>
<tr>
<td>5 spaces per court</td>
<td></td>
</tr>
<tr>
<td>Multipurpose field</td>
<td></td>
</tr>
<tr>
<td>8 spaces per acre</td>
<td></td>
</tr>
<tr>
<td>Municipal, county, state, federal and community buildings</td>
<td></td>
</tr>
<tr>
<td>4 spaces for each 1,000 sq. ft. of GFA*</td>
<td></td>
</tr>
<tr>
<td>Nursing homes, convalescent facilities and assisted living facilities</td>
<td></td>
</tr>
<tr>
<td>1 for each 4 beds, and 1 for each employee and/or visiting doctor on the largest shift</td>
<td></td>
</tr>
<tr>
<td>Open &quot;free play&quot; area</td>
<td></td>
</tr>
<tr>
<td>8 spaces per acre</td>
<td></td>
</tr>
<tr>
<td>Picnic area</td>
<td></td>
</tr>
<tr>
<td>1 space per table</td>
<td></td>
</tr>
<tr>
<td>Pool halls and billiard parlors</td>
<td></td>
</tr>
<tr>
<td>2 for each pool or billiard table</td>
<td></td>
</tr>
<tr>
<td>Primitive camping</td>
<td></td>
</tr>
<tr>
<td>1 space per site</td>
<td></td>
</tr>
<tr>
<td>Professional office</td>
<td></td>
</tr>
<tr>
<td>1 space per 250 sq. ft. of GFA*</td>
<td></td>
</tr>
<tr>
<td>Restaurants, Types A and B, nightclubs or bars</td>
<td></td>
</tr>
<tr>
<td>1 per 4 seats or 1 for each 200 sq. ft. of GFA* for take-outs, plus 1 space for each employee on the largest shift</td>
<td></td>
</tr>
<tr>
<td>Restaurants (fast food)</td>
<td></td>
</tr>
<tr>
<td>6 reservoir spaces per service lane with a minimum of 3 spaces behind the order station or menu, plus 10 spaces per 1,000 GFA*</td>
<td></td>
</tr>
<tr>
<td>Retail sales and service establishments</td>
<td></td>
</tr>
<tr>
<td>1 per 275 sq. ft. of GFA*</td>
<td></td>
</tr>
<tr>
<td>Senior housing</td>
<td></td>
</tr>
<tr>
<td>1.25 spaces per unit plus 1 guest space per every five units</td>
<td></td>
</tr>
<tr>
<td>Schools: private elementary schools</td>
<td></td>
</tr>
<tr>
<td>1 for each faculty member, plus 1 for each employee</td>
<td></td>
</tr>
<tr>
<td>Schools: private high school</td>
<td></td>
</tr>
<tr>
<td>1 for each faculty member, plus 1 for each employee, plus 1 space for each 10 students</td>
<td></td>
</tr>
<tr>
<td>Use/Structure</td>
<td>Requirement</td>
</tr>
<tr>
<td>---------------------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Schools: colleges or other institutions of higher learning, trade/vocational</td>
<td>1 for each staff member and employee, plus 1 for each 3 students</td>
</tr>
<tr>
<td>Self-storage facilities and miniwarehouses</td>
<td>1 for every 10 storage cubicles or units.</td>
</tr>
<tr>
<td>Shopping centers</td>
<td>4 spaces for each 1,000 sq. ft. of GFA* Garden center area shall be included</td>
</tr>
<tr>
<td>Shuffleboard court</td>
<td>2 spaces per court</td>
</tr>
<tr>
<td>Single-family dwellings</td>
<td>2 per dwelling unit</td>
</tr>
<tr>
<td>Swimming pool (50m)</td>
<td>1 per 200 sq. ft. of pool surface area, plus 1 space for each 200 sq. ft. of building area in accessory structures in excess of 1,000 sq. ft.</td>
</tr>
<tr>
<td>Tennis court</td>
<td>2 spaces per court</td>
</tr>
<tr>
<td>Theaters</td>
<td>1 for each 4 seats, plus 1 for each employee</td>
</tr>
<tr>
<td>Veterinary clinic</td>
<td>1 space per 275 sq. ft. GFA*</td>
</tr>
<tr>
<td>Volleyball</td>
<td>6 spaces per court</td>
</tr>
<tr>
<td>Warehousing (commercial and industrial)</td>
<td>1 for each employee, plus 1 for each 1,500 sq. ft. of storage</td>
</tr>
</tbody>
</table>

***

Section 3-134. – Special exceptions.

The following uses or structures are permitted as special exceptions only when listed as permitted special exceptions in Chapter 3, Article II, Overlay Districts, and Chapter 3, Article III, Division 3, Zoning Classifications:

***

4. **Self-storage facilities and Miniwarehouses.** Self-storage facilities and miniwarehouses shall be designed and operated according to the following standards:

---

Page 7 of 23
a. No garage sales shall be conducted on the premises. No servicing or repair of motor vehicles, watercraft, trailers, lawn mowers and other similar equipment shall be conducted on the premises.

b. There shall be a minimum of 30 feet between self-storage facilities and miniwarehouse buildings for driveway, parking and fire lane purposes.

c. When located within a commercial zoning classification, PUD, RPUD, BPUD, or MPUD, the use shall be designed pursuant to Section 5-128, when applicable.

SECTION 4. ADOPTION.

Chapter 5, Article V of the City of DeBary Land Development Code is hereby amended to include new § 5-128 as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not included are not being amended):

Section 5-128. – Supplemental Site and Building Standards

(1) Self-Storage Facilities and Miniwarehouses

Self-storage facilities, if allowed, shall be designed to meet the intent to create a pedestrian-friendly urban environment. Self-storage facilities shall be designed and constructed in accordance with the following requirements (Figure 5-32):

a. Self-storage facilities are only allowed as part of a mixed-use development with retail, restaurants or office uses on the ground floor.

b. Access to the individual storage units only be provided from interior spaces.

c. There shall be no outdoor storage allowed.
**SECTION 5. ADOPTION**

Chapter 5, Article VI of the City of DeBary Land Development Code is hereby amended as follows (words that are stricken out are deletions; words that are underlined are additions; provisions not being included are not being amended):

Section 5-131. – Land use and building density.

(b) *Compatible Land Uses.* Each of the properties within the TOD Overlay District maintains their current zoning designations until such time as they are developed or redeveloped. Then an administrative rezoning to PUD will be processed by the city. To further the intent and purpose of the TOD Overlay District, certain specific and incompatible uses shall be prohibited.

(3) Additional regulations are applicable to permitted and prohibited uses within the TOD Overlay District as specified in the following Comprehensive Land Use Table. Please note that residential uses are prohibited on the ground floor within the entire TOD Main Street Area. See Mixed-use requirements in section 5-131(b)(2) above.

<table>
<thead>
<tr>
<th>P (Permitted)</th>
<th>— (Prohibited)</th>
</tr>
</thead>
<tbody>
<tr>
<td>U.S. Hwy 17-92</td>
<td>TOD Core</td>
</tr>
</tbody>
</table>

---

Figure 5-32: Urban Self-Storage Facilities
<table>
<thead>
<tr>
<th>Residential Uses</th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Assisted/Congregate Living</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Condominium Residential</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Prohibited at ground-floor within TOD Main Street Area</td>
</tr>
<tr>
<td>Duplex Residential</td>
<td></td>
<td></td>
<td>P</td>
<td>Prohibited within TOD Main Street Area</td>
</tr>
<tr>
<td>Group Residential</td>
<td></td>
<td>P</td>
<td>P</td>
<td>Prohibited at ground-floor within TOD Main Street Area</td>
</tr>
<tr>
<td>Class A Home Occupation</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>In accordance with Chapter 3, Article III, Division 4, Section 3-127 of the City of DeBary Land Development Code Prohibited at ground-floor within TOD Main Street Area</td>
</tr>
<tr>
<td>Mobile Home Residential</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Multifamily Residential          | P | P | P | Apartments allowed above retail/office uses  
See Mixed-Use requirements in section 5-131(b)(2) above                                             |
| Single-Family Residential        |   |   | P | Prohibited within TOD Main Street Area                                                              |
| Townhouse Residential            | P | P | P | Prohibited within TOD Main Street Area                                                               |

<p>|</p>
<table>
<thead>
<tr>
<th>Commercial Uses</th>
<th>P</th>
<th>P</th>
<th>P</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Art Gallery</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Includes art, dance, music, culinary, martial arts</td>
</tr>
<tr>
<td>Arts Centers (Galleries, Schools &amp; Workshops)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Auction House</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Automobile Body Shops</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>No outside storage of vehicles All work areas are to be within enclosed building</td>
</tr>
<tr>
<td>Automobile Driving Schools</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Automobile Service Station</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Automotive Detail/Washing</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>Not allowed within 100 feet of corner The use must meet all applicable design requirements in this document</td>
</tr>
<tr>
<td>Automotive or Vehicular Sales</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>Includes auto, motorcycle, boat and personal watercraft</td>
</tr>
<tr>
<td>Automotive Rentals</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>No outside storage of vehicles</td>
</tr>
<tr>
<td>Automotive Repair Services</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>No outside storage of vehicles All work areas are to be within enclosed building</td>
</tr>
<tr>
<td>Business Type</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Notes</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-------</td>
</tr>
<tr>
<td>Bakery/Confectioners/Deli</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>May include on site preparation of goods. Outside service is permitted.</td>
</tr>
<tr>
<td>Back Office Operation Center</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Retail-oriented Bars, Pubs, Microbreweries, and Lounges</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Bars and Pubs limited to 5,000 gross square feet unless accessory to a restaurant of space as primary use. Micro-breweries limited to 10,000 gross square feet and must have retail provision. Outside service is permitted.</td>
</tr>
<tr>
<td>Bed &amp; Breakfast</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Bicycle Sales and Rentals</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Book and Stationery Stores</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Bowling Alleys</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Building Material Sales and Storage</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Call Center</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Campus Employment</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Customer Service Centers</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Permit Required</td>
<td>Property</td>
<td>Planning</td>
<td></td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-----------------</td>
<td>----------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Catering Services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Limited to 5,000 gross square feet</td>
<td>May include on site preparation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Civic Clubs</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td></td>
<td>i.e., American Legion, Moose Lodge, Masonic Lodge, etc.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Coin-Operated Amusements</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Non-gambling related uses not greater than 2,500 gross square feet ** Permitted as accessory to restaurant or bar</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial Parking Garage</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td></td>
<td>With City approved Architectural facades that match the &quot;Architecture and Elements of Style&quot; described in this document</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Communication Towers</td>
<td>—</td>
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<td>—</td>
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</tr>
<tr>
<td>Consumer Repair Services</td>
<td>—</td>
<td>—</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Contractor's Shop, Storage And Equipment Yard</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Convenience Store Without Fuel Dispensers</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Convenience Stores With Fuel Dispensers</td>
<td>—</td>
<td>—</td>
<td>—</td>
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</tr>
<tr>
<td>Business Type</td>
<td>Requirement 1</td>
<td>Requirement 2</td>
<td>Requirement 3</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>---------------</td>
<td>---------------</td>
<td>---------------</td>
<td></td>
</tr>
<tr>
<td>Dental Laboratories</td>
<td>–</td>
<td>–</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Employment Agencies</td>
<td>–</td>
<td>P</td>
<td>P</td>
<td>Excluding Day Labor Agencies</td>
</tr>
<tr>
<td>Exercise Gym and Health Spas</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Drive-through windows only permitted outside of Main Street area</td>
</tr>
<tr>
<td>Financial Services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Funeral Homes With Crematory As An Accessory Use</td>
<td>–</td>
<td>–</td>
<td>–</td>
<td></td>
</tr>
<tr>
<td>Funeral Services</td>
<td>–</td>
<td>–</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>General Retail Sales</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Maximum size of 2,000 gross square feet</td>
</tr>
<tr>
<td>General Retail Sales (Convenience)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>No fueling stations</td>
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<tr>
<td>Hardware Stores</td>
<td>–</td>
<td>P</td>
<td>P**</td>
<td>No outside storage or display ** Limited to 5,000 gross square feet</td>
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<tr>
<td>Hotel-Motel</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Activity</td>
<td>Required Space</td>
<td>Additional Requirements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>----------------</td>
<td>------------------------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Indoor Amusements/Arcade</strong></td>
<td>—</td>
<td>Only as accessory to restaurants or bars, pubs or lounges</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Kennels</strong></td>
<td>—</td>
<td>A kennel use must be conducted entirely within an enclosed structure</td>
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<td></td>
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<tr>
<td><strong>Liquor/Wine Sales</strong></td>
<td>P</td>
<td>Limited to 2,500 gross square feet Outside service is permitted</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Off-Site Accessory Parking</strong></td>
<td>—</td>
<td>Accessory to primary use off-site businesses</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Office (General)</strong></td>
<td>P</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Office (Professional)</strong></td>
<td>P</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Pawn Shop Services</strong></td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personal Care Services</strong></td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personal Laundry Services</strong></td>
<td>—</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personal Dry Cleaning Services</strong></td>
<td>P</td>
<td>Drop-off/pick-up only</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personal Care Services</strong> (Hair/Beauty Salons/Spas)</td>
<td>P</td>
<td>No bulk laundry or cleaning plant, no diaper services or linen supply services allowed in TOD Overlay District ** Drop-off/pick-up only</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service</td>
<td>PDO</td>
<td>PDO</td>
<td>PMA</td>
<td>Notes</td>
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<td>------------------------------------</td>
<td>-----</td>
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</tr>
<tr>
<td>Personal Storage/Mini-Warehouse</td>
<td></td>
<td></td>
<td></td>
<td>No outdoor storage</td>
</tr>
<tr>
<td>Pest Exterminators</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pet Grooming Services</td>
<td></td>
<td></td>
<td>P</td>
<td>Maximum size of 2,000 gross square feet</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>All services within enclosed structure</td>
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<tr>
<td>Pharmacies</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Drive-through windows only permitted along U.S. Hwy 17-92</td>
</tr>
<tr>
<td>Plant Nursery (Retail)</td>
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<td></td>
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<td></td>
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<tr>
<td>Plant Nursery (Wholesale/Retail)</td>
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</tr>
<tr>
<td>Printing And Publishing</td>
<td></td>
<td>P</td>
<td>P</td>
<td>Limited to 2,000 gross square feet within TOD Core, otherwise not greater than 5,000 gross square feet</td>
</tr>
<tr>
<td>Radio And Television Broadcasting Stations</td>
<td></td>
<td>P</td>
<td>P</td>
<td>Limited to 5,000 gross square feet</td>
</tr>
<tr>
<td>Restaurant (Bakery/Deli)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Maximum size of 5,000 gross square feet</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Outside service is permitted</td>
</tr>
<tr>
<td>Establishment</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Details</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Restaurant (Catering)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Maximum size of 5,000 gross square feet, Outside service is permitted</td>
</tr>
<tr>
<td>Restaurant (Fast Food)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Drive-through windows not permitted within 2,000 linear feet from any other similar drive-through window use, Outside service is permitted</td>
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<tr>
<td>Restaurant (General)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Drive-through windows not permitted within 2,000 feet from any other similar drive-through window use, Drive-through window prohibited within Main Street area, Outside service is permitted</td>
</tr>
<tr>
<td>Retail Repair Services</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Repair services for personal clothing, jewelry or electronics</td>
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<tr>
<td>Rug Cleaning Establishments</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
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<tr>
<td>Scrap And Salvage</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td></td>
</tr>
<tr>
<td>Self-storage facilities and miniwarehouses</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>No self-storage facilities</td>
</tr>
<tr>
<td>Special Event Entertainment</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Special events permit required</td>
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<tr>
<td>Theaters (Movie And Live)</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td>Theatres less than 5 screens</td>
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<tr>
<td>Civic Uses</td>
<td></td>
<td></td>
<td>P</td>
<td></td>
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<tr>
<td>-----------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Veterinary Services</td>
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<td></td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>College and University Facilities</td>
<td>P</td>
<td></td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>College and University Satellite Facilities</td>
<td>P</td>
<td>P</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Center/Recreation</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Common Open Space</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Convention Center</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Day Care Services</td>
<td></td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
<tr>
<td>Government Postal Facilities</td>
<td>P</td>
<td>P</td>
<td>P</td>
<td></td>
</tr>
</tbody>
</table>

A veterinary services use must be conducted entirely within an enclosed structure.

No outdoor kennels or runs.

Limited to 5,000 gross square feet.
<table>
<thead>
<tr>
<th></th>
<th>P</th>
<th>P</th>
<th>P</th>
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<tbody>
<tr>
<td>Hospital Services (General)</td>
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<td></td>
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<tr>
<td>Museums</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Parks and Plazas</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Private Primary Educational</td>
<td></td>
<td></td>
<td>P</td>
</tr>
<tr>
<td>Facilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Private Secondary Educational</td>
<td></td>
<td></td>
<td>P</td>
</tr>
<tr>
<td>Facilities</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Primary Educational</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Facilities</td>
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<tr>
<td>Public Secondary Educational</td>
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<tr>
<td>Facilities</td>
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<tr>
<td>Public Safety Services</td>
<td>P</td>
<td>P</td>
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<tr>
<td>Police, Fire, Ambulance, EMS</td>
<td></td>
<td></td>
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<tr>
<td>Religious Assembly (Churches)</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Technical/Trade Schools</td>
<td></td>
<td></td>
<td>P</td>
</tr>
<tr>
<td>Light Industrial Uses</td>
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<td></td>
<td></td>
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<tr>
<td>---------------------------------------</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Telecommunication Tower</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Transportation Terminal</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Urgent Care Services</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td><strong>Bakeries</strong></td>
<td></td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Bottling and distribution plants</td>
<td></td>
<td></td>
<td>S</td>
</tr>
<tr>
<td>Convenience stores without gasoline pumps</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sale (retail or wholesale) of products or parts manufactured or assembled on the premises</td>
<td></td>
<td></td>
<td>S</td>
</tr>
<tr>
<td>Employment agencies offering day labor services and</td>
<td></td>
<td></td>
<td>S</td>
</tr>
<tr>
<td>Activity</td>
<td>Flex-space</td>
<td>Industrial vocational training school</td>
<td>Laundries and linen services</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------</td>
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<td>---------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>Essential utility services</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Flex-space</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Industrial vocational training school</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Laundries and linen services</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Machinery and machine shops</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Micro-breweries</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
<tr>
<td>Limited to 10,000 gross square feet and must have retail provision</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Printing, publishing and engraving</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Publicly owned parks and recreational areas</td>
<td>P</td>
<td>P</td>
<td>P</td>
</tr>
</tbody>
</table>
Restaurants, Types A and B, when contained within the principal industrial structure

| Restaurants, Types A and B, when contained within the principal industrial structure | — | — | S |

Sign and paint shop

| Sign and paint shop | — | — | S |

Testing of materials, equipment and products

| Testing of materials, equipment and products | — | — | S |

SECTION 6. Codification. Sections 2 through 5 of this Ordinance are to be incorporated into the City of DeBary Land Development Code. Any section, paragraph number, letter and/or any heading may be changed or modified as necessary to effectuate the foregoing, and lists of defined terms may be set in alphabetical order where appropriate where such does not alter the construction or meaning of this ordinance. Grammatical, typographical and similar or like errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this ordinance and the code may be freely made.

SECTION 7. Conflicts. This Ordinance shall control over any ordinances or parts of ordinances in conflict herewith.

SECTION 8. Severability. The provisions of this Ordinance are declared to be separable and if any section, paragraph, sentence or word of this Ordinance or the application thereto any person or circumstance is held invalid, that invalidity shall not affect other sections or words or applications of this Ordinance. If any part of this Ordinance is found to be preempted or otherwise superseded, the remainder shall nevertheless be given full force and effect to the extent permitted by the severance of such preempted or superseded part.
SECTION 9. **Effective Date.** This Ordinance shall take effect immediately upon the second reading and final adoption of this Ordinance.

First reading and public hearing was held on the ______ day of __________________, 2023

Second reading, public hearing and adoption was held on the___ day of _____________, 2023

CITY OF DEBARY

CITY COUNCIL

__________________________
Karen Chazez, Mayor

ATTEST:

__________________
Annette Hatch, City Clerk
REQUEST

The Applicant, KBC Development, Inc., would like to extend their Preliminary Plat and Construction Plan Development Order for the KBC Mixed project.

PURPOSE

On March 21, 2023, the applicant submitted their application within the 90-day expiration window and is therefore eligible to request that City Council extend their Development Order again for a period of 360 days.

CONSIDERATIONS

On June 17, 2020, a Preliminary Plat and Construction Plan Development Order was issued for the KBC Mixed project. The project site is located on the southwest corner of U.S. Highway 17-92 and DeBary Plantation Boulevard. The project consists of 55 townhouse units and up to 129,000 square feet of commercial development.

Section 4-25 of the Land Development Code (LDC) determines a Development Order shall remain valid for a period of 360 days from the date of issuance. Section 4-25 further provides that the period of 90 days before and 90 days after the expiration of this Development Order, the developer may request an extension from the City Council. The code does not limit the number of extensions the City Council may grant for a project.

The Development Order was granted during the State’s COVID-19 declaration of emergency, in which the 360-day expiration period was tolled until the declaration was lifted on June 26, 2021. The applicant timely claimed the additional tolling extension, pushing the expiration date back another six months, making the expiration date April 3, 2023. As the applicant submitted the request with the required 90-day +/- window, they have complied with the LDC. Please see the below chart:
COST/FUNDING
N/A

RECOMMENDATION
Staff recommends the City Council approve the extension request for the KBC Mixed Preliminary Plat and Construction Plan Development Order for an additional 360 days.

IMPLEMENTATION
The applicant would need to begin moving forward with the project and meeting the conditions described on the Development Order.

ATTACHMENTS
- Preliminary Plat and Construction Plans
- Landscape Plans
- Development Order
- KBC Tolling Chart

<table>
<thead>
<tr>
<th>Relevant Statute</th>
<th>Tolls permits under State of Emergency (SOE) until SOE expires plus 6 months from tolling</th>
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</thead>
<tbody>
<tr>
<td>FS 252.363 (1)(a)(b)</td>
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</table>

<table>
<thead>
<tr>
<th>Executive Order (COVID-19)</th>
<th>Duration in Days</th>
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<tbody>
<tr>
<td>2020-52</td>
<td>60</td>
</tr>
<tr>
<td>2020-114</td>
<td>60</td>
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<tr>
<td>2020-166</td>
<td>60</td>
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<tr>
<td>2020-213</td>
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<tr>
<td>2020-276</td>
<td>60</td>
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<tr>
<td>2020-316</td>
<td>60</td>
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<tr>
<td>2021-45</td>
<td>60</td>
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<tr>
<td>2021-94</td>
<td>60</td>
</tr>
<tr>
<td>Total</td>
<td>480</td>
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<tr>
<td>&quot;Plus 6 Months&quot;</td>
<td>180</td>
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<tr>
<td>Total COVID Toll Days</td>
<td>660</td>
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<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Expires</th>
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</thead>
<tbody>
<tr>
<td>DO Granted</td>
<td>June 17 2020</td>
<td>June 12 2021</td>
</tr>
<tr>
<td>SOE Tolling added</td>
<td>June 12 2021</td>
<td>April 3 2023</td>
</tr>
<tr>
<td>DeBary +/- 90 day rule</td>
<td>January 3 2023</td>
<td>July 2 2023</td>
</tr>
</tbody>
</table>

COST/FUNDING
N/A

RECOMMENDATION
Staff recommends the City Council approve the extension request for the KBC Mixed Preliminary Plat and Construction Plan Development Order for an additional 360 days.

IMPLEMENTATION
The applicant would need to begin moving forward with the project and meeting the conditions described on the Development Order.

ATTACHMENTS
- Preliminary Plat and Construction Plans
- Landscape Plans
- Development Order
- KBC Tolling Chart
DEBARY COMMERCIAL 17 AC.
OVERALL DEVELOPMENT PLAN

CITY OF DEBARY – VOLUSIA COUNTY, FL

SUBMITTED OCTOBER, 2018

OWNER: KBC DEVELOPMENT INC.
4570 ORANGE BLVD
SANFORD, FL 32771
(407) 585-2510

CONTACT: CHRIS TYREE
EMAIL: CTYREE@KBCGRT.COM

CIVIL ENGINEER:
ZEV COHEN & ASSOC., INC.
350 INTERCHANGE BOULEVARD
ORMOND BEACH, FL 32174
(386) 877-2442
(386) 877-2505 (TAX)
CONTACT: JUSTIN BARTON P.E.
e-mail: JBARTON@zevcohen.com

SURVEYOR:
SCOTT'S SURVEYING SERVICES, INC.
B.B. SH HFF 17-92, SUITE B-A
DEBARY, FL
386-666-7332

CONTACT: SCOTT BECHM
EMAIL: CSBECHM@YAHOO.COM

GEOTECHNICAL ENGINEER:
UNIVERSAL ENGINEERING & SCIENCES, INC.
911 BEVERLY RD SUITE B
SOUTH DAYTONA, FL 32119
(386) 736-1105
(386) 790-4087 (TAX)
CONTACT: BRANK FOX, P.E.
e-mail: bpfox@universalengineers.com

VICINITY MAP/ADJOINING PROPERTY OWNERS
SCALE: 1" = 2000'  

SOILS MAP
SCALE: 1" = 200’

THE SITE LIES WITHIN THE FOLLOWING VOLUSIA COUNTY SOIL CLASSIFICATIONS:

1. FLATH 
2. FLATM 
3. ANDERSON SLOPE
4. SLOPER
5. SLOPEM
6. CREEK FILL SLOPE

DRAINAGE ZONING
SCALE: 1" = 200’

SITE DATA:

SITE ADDRESS:
217 SOUTH BEACH CLUB DRIVE, DEBARY FL 32713
31-06-20-13-00-0020
98.10
MEASURE USE
VACANT
PROPOSED USE
WATERWAYS AREA
13.37 ACRES (100%)
ASSUME FIRE (DEVELOPMENT TRACTS)

POSSIBLE WATER PROVIDER:
CITY OF DEBARY

SANITARY SEWER PROVIDER:
CITY OF DEBARY

CIVIL SHEET INDEX:

OFP1 COVER SHEET
OFP2 TRACT LAYOUT PLAN
OFP3-OFP4 CONCEPTUAL SITE LAYOUT
OFP5 LANDSCAPE PLAN

CONSERVATION LAND USE MAP
SCALE: 1" = 200’
**DEBARY COMMERCIAL 17 ACRES**

**PRELIMINARY PLAT CONSTRUCTION NOTES**

---

**WARNING:**

- **RECLAIMED WATER**
  - **DO NOT DRINK**
  - **DO NOT SWIM**

---

**Randall Hudak, P.E., No. 65053**

**City of Debary, Volusia County, Florida**

---

**Know what’s below. Call before you dig.**

---

**Digitally signed by Randy Hudak**

**DN: CN=Randy Hudak, OU=A01410D00000171609E622000001C05, O=Zev Cohen and Associates inc, C=US**

**Date: 2020.06.12 08:54:26-04'00'**
4. NO GRADE CHANGES ARE TO BE MADE WITHIN THE BARRICADES WITHOUT PRIOR APPROVAL OF THE COUNTY.

3. NOT VALID WITHOUT SEAL

2. RANDY M. HUDAK, P.E., NO. 65053

Date: 2020.06.12 08:54:45-04'00'

Digitally signed by Randy Hudak
DN: CN=Randy Hudak, OU=A01410D00000171609E622000001C05,
O=Zev Cohen and Associates inc, C=US

BARRICADES PLACED AT TREE DRIPLINE

- PARKING VEHICLES WITHIN DRIP-LINE
- FOOT OR VEHICULAR TRAFFIC DRIP-LINE
- SMOTHERING OF TREES BY STOCKPILING CONSTRUCTION OR EXCAVATION MATERIALS WITHIN SKINNING AND BRUISING OF BARK
- UNNECESSARY CUTTING, BREAKING, OR SKINNING OF ROOTS

EXCAVATION, OR HARDSCAPE MUST BE DONE WITHIN BARRICADES, BARRICADES SHALL BE MOVED BACK TO A LIMIT TO CONSTRUCTION MATERIAL, MACHINERY, CHEMICALS, OR TEMPORARY SOIL DEPOSITS. WHEN PAVING, SCHEDULED TO REMAIN. NOTHING SHALL BE PLACED INSIDE OF PROTECTIVE BARRICADES, INCLUDING BUT NOT

SHALL BE A MINIMUM CLEAR DISTANCE AS DETERMINED BY THE DRIP LINE AND SHALL FULLY ENCLOSE ALL TREES ERECT TEMPORARY WOODEN BARRICADES AS SHOWN ON THIS SHEET. BEFORE COMMENCEMENT OF ANY SITE CLEARING OR GRADING. FENCE TO BE 4' HIGH MINIMUM WITH 2 X 4 POSTS AND 2-2X4 RAILS AT 2' AND 4' ABOVE SCALE: N.T.S.

PER MB. 51, PGS 32 AND 33
<table>
<thead>
<tr>
<th>CURVE</th>
<th>LENGTH</th>
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<th>DELTA</th>
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<tr>
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<td>5789.58</td>
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<td>S03°36'23&quot;W</td>
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<td>5783.58</td>
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**Notes:**
- PER MB. 51, PGS 32 AND 33
- XREF'S: 16070_BAS.DWG
- DRAFTED BY: TNL
- CHECKED BY: RMH
- DRAWING FILE: 06-16070-GSS
- SHEET: OF
- XREF'S: 16070SURV.DWG

**Design Credits:**
- DESIGNED BY: RMH/AC
- PROJECT NO: ZC 16070
- XREF'S:

---

**Topography:**
- LOT 1
- LOT 2
- LOT 3
- LOT 4
- LOT 5

**Stormwater:**
- TRACT A
- TRACT B
- TRACT C

**Other:**
- 300 INTERCHANGE BLVD., STE. C
- ORMOND BEACH, FL  32174
- WWW.ZEVCOHEN.COM

---

**Submittals / Revisions:**
- RANDY M. HUDAK, P.E., NO.65053
- CITY OF DEBARY
- VOLUISIA COUNTY, FLORIDA

---

**Digital Signatures:**
- Digitally signed by Randy Hudak
- DN: CN=Randy Hudak, 
  OU=A01410D00000171609E622000001C05, 
  O=Zev Cohen and Associates inc, C=US
- Date: 2020.06.12 08:55:05-04'00'
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<td>302.83</td>
<td>5783.58</td>
<td>3°00'00&quot; S00°51'23&quot;W</td>
</tr>
</tbody>
</table>

\[ \text{PER MB. 51, PGS 32 AND 33} \]
NORTH DRIVEWAY PLAN & PROFILE

SAN-14 MANHOLE TO SAN-12 MANHOLE PLAN & PROFILE
ALL IRRIGATION PIPING SHALL BE HAND DUG WITHIN THE DRIP LINE OF EXISTING TREES.

Mainline (Typ.)

Valve Number | Valve Size | Valve Flow |
--- | --- | --- |
# | # | #
**IRRIGATION SCHEDULE**

<table>
<thead>
<tr>
<th>SYMBOL</th>
<th>NO.</th>
<th>FN</th>
<th>SQFT</th>
<th>SQYD</th>
<th>IRRI.</th>
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<tr>
<td>Rain Bird RD-12-NP with Hunter 5&quot; strip spray</td>
<td>1</td>
<td>5</td>
<td>30'</td>
<td>90-210</td>
<td>210-270</td>
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<tr>
<td>Rain Bird RD-12-NP with Hunter 5&quot; strip spray</td>
<td>2</td>
<td>10</td>
<td>30'</td>
<td>90-210</td>
<td>210-270</td>
</tr>
<tr>
<td>Rain Bird RD-12-NP</td>
<td>3</td>
<td>10</td>
<td>30'</td>
<td>90</td>
<td>Adj</td>
</tr>
<tr>
<td>Rain Bird RD-12-NP</td>
<td>4</td>
<td>10</td>
<td>12'</td>
<td>180</td>
<td>Adj</td>
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<tr>
<td>Rain Bird RD-12-NP</td>
<td>5</td>
<td>10</td>
<td>12'</td>
<td>180</td>
<td>Adj</td>
</tr>
</tbody>
</table>

**IRRIGATION NOTES**

1. The Irrigation Schedule shown above is based on the average gallons per day (GPD) and is subject to change based on weather conditions and plant needs.
2. All irrigation systems shall be installed in accordance with the approved design plans and specifications.
3. All irrigation heads shall be installed at a height of 12" above the ground surface.
4. All irrigation lines shall be run in accordance with the approved plans and specifications.
5. All irrigation scheduling shall be done according to the approved schedule.
6. All irrigation systems shall be tested before the final inspection and acceptance.

**WATERING SCHEDULE**

- **Zone A:** Watering Day: Sunday, Tuesday, Thursday
  - Start Time: 6:00 AM
  - End Time: 10:00 AM
- **Zone B:** Watering Day: Monday, Wednesday, Friday
  - Start Time: 6:00 AM
  - End Time: 10:00 AM
- **Zone C:** Watering Day: Saturday
  - Start Time: 6:00 AM
  - End Time: 10:00 AM

**IRRIGATION CONTRACTOR SHALL BE RESPONSIBLE FOR THEIR OWN PAY OFF**
June 17, 2020

Pattie Sholar
Project Manager
KBC Development, Inc
1590 Bobby Lee Pt.
Sanford, FL 32771

Re: Development Order for Case #19-01-PPR-KBCMixed

Dear Patti Sholar:

This is letter is to issue the Preliminary Plat and Construction Plan Final Development Order for the KBC Mixed Use project, Case #19-01-PPR-KBCMixed. This final development order authorizes commencement of construction after a required pre-construction meeting, in accordance with the approved construction plans dated January 16, 2019.

On November 5, 2019 the City of DeBary Development Review Committee conditionally approved the Preliminary Plat and Construction Plans, Case # 10-01-PPR-KBC-Mixed, providing for the conditions of approval and acceptable revisions. The applicant has since met the conditions of approval and the final development order is being issued. Prior to the commencement of construction, the following conditions must be met.

1) Please submit a certified Engineers Opinion of Cost for the project, to be verified by the City Engineer prior to setting up the pre-construction meeting.

2) Please submit payment, by check or money order, to the pre-construction meeting using the following formula to establish the development permit and inspection fee (2.0% of the first $125,000 of improvements; 1.0% of over $125,000 up to $500,000; 0.5% over $500,000).

3) A pre-construction meeting with the City of DeBary must be held prior to the commencement of construction.
   a. Applicant must bring payment for inspection fee to the meeting.
   b. Applicant must bring a tentative construction schedule to the meeting.
   c. Applicant should bring the FDEP NOI to the meeting if available or be able to provide an update on the status.
4) In accordance with Section 122-59 county ordinances, you must enter into a utility service agreement (USA) for sewer service before county staff may endorse the FDEP water and wastewater permit applications if applicable.

5) Coordinate with the Volusia County Water and Utility Services Group (Scott Mays, Utility Engineer) to provide for impact fees and two (2) sets of signed and sealed construction plans.

6) The applicant shall have erosion and sediment control procedures and equipment in place as well as any proposed tree protection barricades prior to commencement of construction. Please contact Steve Wood, 386-601-0213 for approval prior to any on-site clearing and/or grading. A NPDES Erosion and Sediment Inspection will be performed by the City.

7) The applicant shall execute a Road Maintenance Agreement prior to the commencement of construction.

8) Approved School Concurrency with the Volusia County School Board.

9) Provide a copy of the SJRWMD "Construction Commencement Notice" form (Form No. 40C-4.900(3)).

PLEASE NOTE: a pre-construction meeting will not be held without meeting the above requirements. Any site work, grading, fill dirt, or clearing of land prior to the required permits, development orders, or pre-construction meeting will result violations of City Ordinance and be met with all applicable fines and/or penalties under local and state law.

The Building Permit Application process is initiated by submitting the completed application and appropriate plans. The Building Permit Application must be accompanied by the approved version of the site plan, and any approved addendum sheets. Copies of the approved version of the plan, signed and sealed have been provided to the City and are available upon request. A copy of the final plan and development order will be provided to the City of DeBary Building Department.

The valid period of this Development Order is 360 days from the date of this letter. If construction has not commenced or is not continuing in good faith to conclusion during this valid period, this Development Order shall expire, unless extended by the DeBary City Council. No construction may commence or continue if this Development Order has expired.
During the period of 90 days before and 90 days after the expiration of this Development Order, the developer may request an extension from the City Council.

All plans and construction must be in substantial compliance with this Development Order. Deviations from the approved plans may require submittal of amended plans for review and approval by staff.

No final inspections will be performed by staff until the developer's engineer has certified that all construction has been completed in accordance with this Development Order and the approved plans. That certification must be submitted to the City before the final inspections will be scheduled. Please note additional inspection fees for inspection of site work i.e. stormwater pond may be required.

Please feel free to call me at 386-601-0238 if you have any questions or concerns.

Sincerely,

Carmen Rosamonda
City Manager
City of DeBary

Cc: Randy Hudak
Zev Cohen & Associates, Inc
300 Interchange Blvd., Suite C
Ormond Beach, FL 32174
386-677-2482
Relevant Statute

Tolls permits under State of Emergency (SOE) until SOE expires plus 6 months from tolling

FS 252.363 (1)(a)(b)

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<th>Executive Order (COVID-19)</th>
<th>Duration in Days</th>
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<td>2020-166</td>
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<td>2020-213</td>
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<td>2020-276</td>
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<tr>
<td>2020-316</td>
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</tr>
<tr>
<td>2021-45</td>
<td>60</td>
</tr>
<tr>
<td>2021-94</td>
<td>60</td>
</tr>
<tr>
<td><strong>Total</strong></td>
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<tr>
<td>&quot;Plus 6 Months&quot;</td>
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<td><strong>Total COVID Toll Days</strong></td>
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### KBC Tolling

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<td>DO Granted</td>
<td>June 17 2020</td>
<td>June 12 2021</td>
</tr>
<tr>
<td>SOE Tolling added</td>
<td>June 12 2021</td>
<td>April 3 2023</td>
</tr>
<tr>
<td>DeBary +/- 90 day rule</td>
<td>January 3 2023</td>
<td>July 2 2023</td>
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City Council Meeting
City of DeBary
AGENDA ITEM

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<tr>
<th>Subject:</th>
<th>RFP 05-2023 Town Hall ADA Restroom Renovation</th>
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<tr>
<td>From:</td>
<td>Jason Schaitz Parks and Recreation Director</td>
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<tr>
<td>Meeting Hearing Date</td>
<td>05/3/2023</td>
</tr>
<tr>
<td>Attachments:</td>
<td>( ) Ordinance</td>
</tr>
<tr>
<td></td>
<td>( ) Resolution</td>
</tr>
<tr>
<td></td>
<td>(X) Supporting Documents/ Contracts</td>
</tr>
<tr>
<td></td>
<td>( ) Other</td>
</tr>
</tbody>
</table>

REQUEST

The Parks and Recreation Department is requesting the City Council award RFP 05-2023 Town Hall ADA Restroom Renovations to Boulevard Contractors.

PURPOSE

The request for award is needed at this time to ensure we meet the project timeline. This project has a maximum 90 day timeline and will begin the week of August 7th 2023.

CONSIDERATIONS

The RFP was advertised in the Daytona Beach News Journal the week of March 19th. The RFP documents were available at that time on the City of DeBary website and Vendorlink. A mandatory Pre-Bid meeting was held on April 5th in which six contractors were represented. Five sealed bids were submitted to the City by the April 19th deadline. The lowest responsive bidder was Boulevard Contractors with a bid of $172,584. We recommend adding an additional 7% contingency for a total of $184,664.

Boulevard contractors have done work for the City prior to include the City Hall upstairs renovation and have experience with many other municipalities. Staff reviewed the RFP and vetted Boulevard Contractors the week following the submittal and recommend moving forward. This is a CDBG project and will be partially grant funded.

COST/FUNDING

The cost of the total project was approved in the FY 22/23 budget for the amount of $132,000. The remaining $52,664 will be funded in the FY 22/23 through franchise fees. $62,225 will be reimbursed through the CDGB grant.

RECOMMENDATION

It is recommended the Council award RFP 05-2023 Town Hall ADA Restroom Renovation to Boulevard Contractors for the amount of $184,664 to move forward with the project.
IMPLEMENTATION

Upon approval, a Letter of Award will be issued to Boulevard Contractors. From there, we will set up a pre-construction meeting with the contractor and Volusia County (CDBG). Work will begin the week of August 7th, immediately following the Summer Camp program which takes place in Town Hall.

ATTACHMENTS

Attachment A: Boulevard Contractors RFP 05-2023 Bid Submission
Attachment B: Boulevard Contractors RFP 05-2023 Agreement
Attachment C: RFP 05-2023 Bid Tabulation Sheet
Attachment D: Town Hall ADA Restroom Renovation Plans
The City of DeBary, FL
16 Colomba Road
DeBary, FL 32713

Gentlemen:

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Proposal, as principal or principals, is or are named herein and that no other person than herein mentioned has any interest in the Proposal of the Contract to which the work pertains; that this Proposal is made without connection or arrangement with any other person, company, or parties making a bid or proposal and that the Proposal is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that it has examined the site of the work and that from personal knowledge and experience, or that it has made sufficient test holes and/or other subsurface investigations to fully satisfy itself that such site is a correct and suitable one for this work and it assumes full responsibility therefore; that it has examined the Drawings and Specifications for the work and from its own experience or from professional advice that the Drawings and Specifications are sufficient for the work to be done and it has examined the other Contractual Documents relating thereto, including the Advertisement for Bids, Instructions to Bidders, Proposal, Bid Security or Bid Bond, Contract, separate Performance and Payment Bonds, General and Special Conditions, Technical Specifications, Drawings and has read all addenda prior to the opening of bids, and that it has satisfied itself fully, relative to all matters and conditions with respect to the work to which this Proposal pertains.

The Bidder proposes and agrees, if this Proposal is accepted, to contract with the City of DeBary, Florida in the form of the contract specified, to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the work specified in the Proposal and the Contract, and called for by the Drawings and Specifications and in the manner specified.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the work as stated in the Contract Form.

The Bidder further agrees that the deductions for liquidated damages, as stated in the Contract Form, constitute fixed, agreed, and liquidated damages to reimburse the City for additional costs to the City resulting from the work not being completed within the time limit stated in the Contract Form.
The Bidder further agrees to execute a Contract and, if required, furnish satisfactory separate one hundred percent (100%) Performance and Payment Bonds therefore, within ten (10) consecutive calendar days after written notice being given by the City of the award of the Contract, and the undersigned agrees that in case of failure on its part to execute the said Contract and the Contract Bond within the ten (10) consecutive calendar days after the award of the Contract, the cashier's check or Bid Bond accompanying its bid and the money payable thereon shall be paid to the City of DeBary, Florida as liquidation of damages sustained by the City; otherwise; the check accompanying the Proposal shall be returned to the undersigned after the Contract is signed and the Contract Bond is filed.

The Bidder further agrees to comply with the Disadvantages, small and Women owned Business Enterprises Program goal of 10% as established by the City Council (City of DeBary, Code of Ordinances, Sec. 2-184). In the event such goals are not achieved, the Contractor shall provide evidence of good faith effort to achieve such goals. If such goals are not achieved and if it is deemed that a good faith effort for compliance has not been shown to the satisfaction of the City of DeBary, the Contractor shall be considered in on-compliance with this policy. If the Contractor fails to come into compliance or fails to show a good faith effort to come into compliance within thirty (30) days, the City Manager may impose appropriate penalties upon the vendor including prohibiting the vendor from submitting future bids to the City for a period of one (1) year.

The undersigned agrees to accept in full compensation therefore the total of the lump sum prices and extended unit prices items named in the following schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the quantities actually constructed as determined by the applicable measurement and payment portion of the technical specifications.

The undersigned hereby declare that Boulevard Contractors Corp. has examined the plans and specifications with related documents and the site of the proposed work and being familiar with all of the conditions surrounding the construction of:

TOWN HALL ADA RESTROOMS
BID No. 05-2023

for which bids were advertised to be received until Wednesday, April 19, 2023 at 10 a.m. and further declare Boulevard Contractors Corp. will furnish all labor, materials and supplies and to construct the project in accordance with the Contract Documents, within the time set forth therein, and at the price stated below. The price is to cover all expenses incurred in performing the work required under the Contract Documents, of which this proposal is a part.
Work shall be completed as specified in its entirety for the total amount of:

$ 172,584.00

(Use Numbers)

$ One Hundred Seventy Two Thousand Five Hundred Eight Four Dollars and Zero Cents

(Use Words)

At the following unit prices: See Bid Form Sheets

I certify that work shall be completed as specified in its entirety within NINETY DAYS (90 ) calendar days of Notice to Proceed.

The City reserves the right to reject any or all proposals, to waive informalities, and to accept all or any part of any proposal as they may deem to be of the best interest of the City. Acknowledgement is hereby made of the following Addenda received since issuance of Plans and Specifications:

Addendum No. 1 Dated: 4/12/23 Addendum No. _____ Dated: ______
Addendum No. _____ Dated: ______ Addendum No. _____ Dated: ______
Addendum No. _____ Dated: ______ Addendum No. _____ Dated: ______

Attached hereto is a cashier's check on the Bank of N/A or Bid Bond for the sum of N/A dollars ($____ N/A), made payable to the City of DeBary, Florida.

Boulevard Contractors Corp. L.S.

(Name of Bidder) (Affix Seal)

Javed Patel L.S.

(Signature of Officer)

President L.S.

(Title of Officer)
Federal Employer Identification Number 26-3136702

Address: 5840 Red Bug Lake Rd Suite 690

City: Winter Springs State: FL Zip: 32708

Phone: (407) 717-3800 Fax: (N/A)

The full names and residences of persons and firms interested in the foregoing bid, as principals, are as follows:

Javed Patel - President

________________________________________

Name of the executive who will give personal attention to the work:

Amanda Merrill - Director of Operations

________________________________________

Attach list of subcontractors as required by Article 7 of Instruction to Bidders.

-- END OF PROPOSAL --
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<th>ITEM #</th>
<th>DESCRIPTION OF WORK</th>
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TOTALS: 172,584.00
LIST OF MAJOR SUBCONTRACTORS

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<tr>
<th>Name</th>
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<th>Services to be Supplied</th>
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<tbody>
<tr>
<td>TNT Concrete</td>
<td>1650 Lake Harney Rd, Geneva, FL 32732</td>
<td>Masonry and Concrete</td>
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<tr>
<td>Aegis Tile Solutions</td>
<td>1170 Tree Swallow Road Suite 228, Winter Springs, FL 32708</td>
<td>Tile and Carpet</td>
</tr>
<tr>
<td>Kehle Plumbing</td>
<td>P.O. Box 353511, Palm Coast FL 32135</td>
<td>Plumbing</td>
</tr>
<tr>
<td>IMS Roofing</td>
<td>2815 Glendora Ave, Orlando, FL 32812</td>
<td>Roofing</td>
</tr>
<tr>
<td>Steve Harper Painting</td>
<td>880 Airport Road Suite 104, Ormond Beach, FL 32174</td>
<td>Painting</td>
</tr>
<tr>
<td>Spartan Industries</td>
<td>1535 Rambling Oaks Lane, Deland, FL 32720</td>
<td>Demo</td>
</tr>
<tr>
<td>Commercial Specialties</td>
<td>329 Parkridge Ave, Unit 6, Orange Park, FL 32065</td>
<td>Toilet Partitions and Accessories</td>
</tr>
</tbody>
</table>
# EVIDENCE OF EXPERIENCE AND FINANCIAL STATUS

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Owner’s Name &amp; Address</th>
<th>Value of Project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ground up construction of 14,000 sq ft. Medical Facility</td>
<td>Dr. Sajid Arain - 2800 Sollers Point Road Dundalk, MD 21224</td>
<td>$4,444,178.00</td>
</tr>
<tr>
<td>Renovations to men and women’s bathhouse and lifeguard station</td>
<td>State of Maryland - 21843 National Pike, Boonsboro, MD 21713</td>
<td>$1,029,896.00</td>
</tr>
<tr>
<td>Ground up Library Addition</td>
<td>Howie in the Hills - 112 W Central Ave, Howey in the Hills FL 34737</td>
<td>$1,548,526.00</td>
</tr>
<tr>
<td>Construction of retail space</td>
<td>Acontra, Inc. - Bethesda, MD</td>
<td>$739,000.00</td>
</tr>
<tr>
<td>Major renovations of classrooms, meeting rooms, prayer hall and bathrooms</td>
<td>ISB - 6631 Johnnycake Road, Baltimore MD</td>
<td>$1,425,011.00</td>
</tr>
<tr>
<td>Cafeteria Renovations</td>
<td>Washington Suburban Sanitary Commission - Burtonsville, MD</td>
<td>$489,699.00</td>
</tr>
<tr>
<td>Tenant Fit Out - 7 Eleven</td>
<td>Baltimore, MD</td>
<td>$222,884.00</td>
</tr>
<tr>
<td>Rehabilitation of an existing building</td>
<td>City of Sanford - Sanford, FL</td>
<td>$234,906.00</td>
</tr>
<tr>
<td>Renovations to 2nd floor of City Hall building</td>
<td>City of Debary - 16 Colomba Road DeBary, FL 32713</td>
<td>$125,957.09</td>
</tr>
<tr>
<td>Renovations to Admin Building &amp; Restrooms</td>
<td>Department of Public Safety - 7930 Brock Bridge Road, Jessup, MD 20794</td>
<td>$128,008.93</td>
</tr>
<tr>
<td>Student Dorm Renovations</td>
<td>University Maryland, College Park, MD</td>
<td>$274,885.00</td>
</tr>
<tr>
<td>Renovations to two existing Fire Stations</td>
<td>City of Sanford - Sanford, FL</td>
<td>$233,188.00</td>
</tr>
<tr>
<td>Construction of 162 suites</td>
<td>Springhill Suites - 6110 Greenleigh Ave. White Marsh, MD</td>
<td>$1,871,870.00</td>
</tr>
<tr>
<td>Tenant Fit Out for newly constructed Amazon Warehouse</td>
<td>Trammell Crow - Perryville, MD</td>
<td>$618,504.00</td>
</tr>
</tbody>
</table>
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
CONSTRUCTION INDUSTRY LICENSING BOARD

LICENSE NUMBER: GC-1525441
EXPIRATION DATE: AUGUST 31, 2024

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Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Patel, Javed

Boulevard Contractors Corp.
5050 Mill Run Circle, Suite 1005
Owings Mills, MD 21117

The general contractor herein is certified under the provisions of Chapter 489, Florida Statutes.

Melanie S. Griffin, Secretary

Ron DeSantis, Governor
STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

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STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

LICENSE NUMBER: CGC1525441
THE GENERAL CONTRACTOR HEREIN IS CERTIFIED UNDER THE PROVISIONS OF CHAPTER 489, FLORIDA STATUTES

PATEL, JAVED
BOULEVARD CONTRACTORS CORP.
10451 MILL RUN CIRCLE SUITE 1005
OWINGS MILLS MD 21117

ISSUED: 06/07/2022

Always verify licenses online at MyFloridaLicense.com
Do not alter this document in any form.
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CERTIFICATE OF LIABILITY INSURANCE

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

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

PRODUCER
National Insurance Agency, Inc.
7120 Minstrel Way
Suite 205
Columbia, MD 21045-5292

CONTACT
K. Gill
PHONE (410) 715-5900
FAX (410) 715-5959
EMAIL Address: Info@National-Ins.com

INSURED

10451 Mill Run Circle
Suite 1005
Owings Mills, MD 21117

INsURED

Boulevard Contractors, Corp

INsURED

Hansen Insurance Co.

INsURED

Progressive Casualty Insurance Co

INsURED

Evanston Insurance Company

INsURED

Chesapeake Employers Insurance Co.

INsURED

Scottsdale Insurance Co

INsURED

Crum & Forster Specialty Insurance Company

INsURED

CERTIFICATE NUMBER: CL2311316889

COVERAGEs

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

INSR. LIMIT

TYPE OF INSURANCE

INSDR. SUMMT

WVD

POLICY NUMBER

POLICY EFF (MM/DD/YYYY)

POLICY EXP (MM/DD/YYYY)

LIMITS

A

COMMERCIAL GENERAL LIABILITY

CLAIMS-MADE

OCCUR

001392480

02/08/2023

02/08/2024

EACH OCCURRENCE

$1,000,000

INJURY OR SICKNESS PREMISES (Ex occurrence)

$100,000

MED EXP (Any one person)

$5,000

PERSONAL & ADV INJURY

$1,000,000

GENERAL AGGREGATE

$2,000,000

PRODUCTS, COM/PÐP AGG

$2,000,000

Per Project Aggregate

$5,000,000

B

AUTOMOBILE LIABILITY

ANY AUTO

OWNED

AUTOs

Hired

Autos only

SCHEDULED

Non-owned

AUTOS

02666757-7

02/09/2023

02/09/2024

COMP/COMP/AGG

$1,000,000

BODILY INJURY (Per person)

$5,000

BODILY INJURY (Per accident)

$5,000

PROPERTY DAMAGE

$5,000

C

UMBRELLA LIABILITY

EXCESS LIABILITY

CLAIMS-MADE

02/06/2023

02/06/2024

EACH OCCURRENCE

$5,000,000

AGGREGATE

$5,000,000

D

WORKERS COMPENSATION

AND EMPLOYERS' LIABILITY

ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?

Y/N

4477805 / WC384437700

05/04/2023

05/04/2024

E.L. EACH ACCIDENT

$1,000,000

E.L. DISEASE - EA EMPLOYEE

$1,000,000

E.L. DISEASE - POLICY LIMIT

$1,000,000

E

INLAND MARINE COVERAGE THEFT INCL

80% COIN-OUTL. CASH VALUE

CPS77117538

02/06/2023

02/06/204

Misc Property-Tools

$10,000

Installation Floater Deductible

$40,000-Occur.

$1,000

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

Coverages are provided as per policy specifics. Certificate issued as evidence of insurance per policy terms, conditions and exclusions. General Contractor. Additional Insured-Owners, Lessees or Contractors-Scheduled Person or Organization: Where required by written contract or written agreement CG2010. Additional Insured-Owners, Lessees or Contractors-Scheduled Person or Organizations-Completed Operations: Where required by written contract or written agreement CG2037; Waiver of Transfer of Rights or Recovery Against Others to Us CG2404; Primary And Non-Contributory Endorsement AP5031US.

CERTIFICATE HOLDER

City of DeBary
16 Colomba Road
DeBary, FL 32713

CANCELLATION

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

AUTHORIZED REPRESENTATIVE

Kirandep Gill

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Request for Taxpayer Identification Number and Certification

Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

Boulevard Contractors Corp.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC
☐ C Corporation ☑ S Corporation ☐ Partnership ☐ Trust/estate

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership)

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _______

Exemption from FATCA reporting code (if any) _______

(Appplies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions.

10451 Mill Run Circle, Suite 1005

Owings Mills, MD 21117

6 City, state, and ZIP code

7 List account number(s) here (optional)

Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see What Name and Number To Give the Requester for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person □

Date 12/13/2022

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.
CONTRACT FOR TOWN HALL ADA RESTROOMS

This Contract for Town Hall ADA Restrooms (the "Contract") is entered into on this 5th day of May, 2023 by and between the City of DeBary, a Florida municipal corporation whose address is 16 Colomba Road, DeBary, FL 32713 (the "CITY") and Boulevard Contractors whose address is 5840 Red Bug Lake Road Suite 690, Winter Springs, FL 32708 (the "CONTRACTOR").

WHEREAS, the CITY procured Town Hall ADA Restrooms pursuant to that certain Request for Proposals # 05-23 (hereinafter the "RFP"); and

WHEREAS, CITY selected CONTRACTOR to perform and CONTRACTOR desires to perform those services set forth in the RFP under the terms and conditions of this Contract.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, upon the terms and conditions hereinafter set forth, it is agreed by and between the parties hereto as follows:

ARTICLE 1 – SCOPE OF SERVICES & GENERAL TERMS

1.1 As an independent contractor, CONTRACTOR shall perform those services for CITY as described in the RFP, which is incorporated herein by this reference and made a part of this Contract. All such work shall be completed within 90 days of contract execution, unless the CITY grants an extension in its sole discretion.

1.2 The CITY shall have the right to perform reviews at any time of all designated areas for services identified within the RFP and/or this Contract. Further, the CITY shall have the right to conduct a cumulative review of the CONTRACTOR’s work at any time to assure sufficient quality of work.

1.3 The CITY shall have the right to determine the frequency, schedule, and times of CONTRACTOR’S services, which may be altered at any time during the duration of the Contract in the CITY’s discretion.

1.4 The CITY may, at any time and for any reason, direct the CONTRACTOR to suspend work (in whole or in part) under this Contract. Such direction shall be in writing, and shall specify the period during which services shall be stopped. The CONTRACTOR shall resume work under this Contract upon the date specified, or upon such other date as the CITY may thereafter specify in writing. The suspension or delay of work, whether caused or not caused by the actions or inactions of the CITY, shall not give rise to any claim by the CONTRACTOR against the CITY.

1.5 The CITY, without invalidating the Contract, may order extra work or make changes in the work, the Contract sum being adjusted accordingly. All such work will be executed under the conditions of the original Contract except that any extension of time caused thereby will be adjusted at the time of ordering.
such change. All such changes must be agreed to and recorded as a “Contract Change Order” or some other written form in the CITY’s discretion. The City Manager or designee shall have authority to make minor changes in work not involving extra cost and not inconsistent with the purpose of the work but otherwise, except in an emergency endangering life or property, no extra work or substantial change may be made unless covered by a “Contract Change Order” or similar executed writing. No claim for an addition to the Contract sum will be valid unless so provided in writing. Before becoming effective, all Change Orders and similar instruments must be signed by all parties indicated. If the CONTRACTOR claims that any changes in the work or any instructions by means of drawings or otherwise invoice extra cost, he/she shall give the City Manager or designee written notice thereof within a reasonable time after receipt of such instructions or of notice of such changes and, in any event, before proceeding to carry out such instructions or to put such changes into effect, except in case of emergency endangering life or property. In all cases the CONTRACTOR shall keep a correct account of the extra cost in such form as the City Manager or designee may direct and shall present such account supported by receipts to the City Manager or designee. The CITY shall be entitled to reject any claim for extra cost concerning which the foregoing procedure is not followed.

1.6 The CITY reserves the right to contract with any person or firm other than the CONTRACTOR for any or all extra work. The CONTRACTOR’s attention is called to the fact that he/she/it shall be entitled to no claim for damages for anticipated profits on any portion of work or extra work for which the CITY may contract with another party.

1.7 In the event of a conflict between a term of this Contract and the RFP, this Contract shall control to the extent of the conflict.

1.8 The City Manager, the City Manager’s designee, and the Debary City Council shall have the authority to exercise any right or authority granted to the CITY under this Contract.

ARTICLE 2—PRICE AND PAYMENT

2.1 The CITY shall pay the CONTRACTOR for services actually rendered based on the prices set forth in the CONTRACTOR’S proposal, the amount being $172,584.00, and/or any other price schedule agreed to by the parties (the “Price Schedule”). The CONTRACTOR will bill the CITY only for completed work, and only once a month.

2.2 Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed, approved, and paid by the appropriate department of the CITY on a monthly basis provided that services have been rendered satisfactorily and in conformity with this Contract. All invoices shall indicate the area(s) where the work was performed and any supporting documentation as the CITY may require in its discretion. Deficiencies in the services performed, as determined by the CITY in its sole discretion, may result in the withholding of payment until such deficiencies are corrected to the CITY’S satisfaction.

2.3 If at any time there is evidence of any lien or claim for which the CITY might become liable and which is chargeable to the CONTRACTOR, the CITY shall have the right to retain out of any payment then due or thereafter to become due, an amount sufficient for complete indemnification against such lien or claim. If the CITY has already paid to the CONTRACTOR all sums due under this contract or the balance remaining unpaid is insufficient to protect the CITY, the CONTRACTOR and his Surety shall be liable to the CITY for any loss so sustained.

2.4 The CONTRACTOR shall be paid ninety five percent (95%) of the proportional amount of the Contract Price with each progress payment, (such payments to be in proportion to the percentage completion of the Project). The value of each Application for Payment shall be equal to the total value of the Work performed to date in accordance with the Contract Documents, less an amount retained, and less payments previously made and amounts withheld in accordance with the Contract Documents. The balance constituting the retainage of the Contract Price shall be paid 30 days following job completion. Retainage under the Contract Documents is held.
by CITY as collateral security to assure completion of the Work. In no event shall any interest be due and payable to CONTRACTOR on any of the sums retained by CITY pursuant to any of the terms or provisions of any of the Contract Documents.

**ARTICLE 3 - TERMINATION**

3.1 In the event of a breach by either party of this Contract, the non-breaching party may terminate the Contract upon fifteen (15) days written notice and opportunity to cure to the other party, or such longer period as may be reasonably necessary given the nature of the breach.

3.2 The CITY may terminate this Contract for convenience upon 30 days’ written notice to the CONTRACTOR.

3.3 In the event of termination by either party, the CITY shall forthwith pay the CONTRACTOR in full for all work previously authorized and actually performed to the CITY’s satisfaction prior to the notice of termination. This payment shall be the sole financial obligation or responsibility of the CITY for compensation hereunder in the event of termination by either party in accordance with the provisions of this article. Final payment may be made contingent upon the CONTRACTOR delivering to the CITY a complete release of all liens and documentation evidencing that all sums due third parties arising out of this Contract, including subcontractors, materials, and supplies, have been paid in full.

3.4 The obligations of the CITY under this Contract are subject to the availability of funds lawfully appropriated for its purpose by the City Council of the City of Debary. Notwithstanding any other provision of the RFP or this Contract to the contrary, the CITY’s performance of obligations under this Contract for each and every fiscal year beyond the fiscal year when this Contract is executed shall be subject to discretionary annual appropriation by the CITY’s City Council of funds therefore. When funds are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal period, this Contract shall be deemed terminated on the last day of the fiscal period for which appropriations were made, without further cost, penalty or obligation to the CITY.

**ARTICLE 4 – PERSONNEL/EQUIPMENT**

4.1 The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the CITY.

4.2 All of the services required by this Contract shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such services.

4.3 Personnel employed either directly or indirectly by the CONTRACTOR that are deemed to be incompetent, inept, or unfit to perform the work for any reason in the opinion of the CITY shall be promptly removed from the work under this Contract. Failure of the CONTRACTOR to remove such personnel may result in the termination of this Contract by the CITY.

**ARTICLE 5 - SUBCONTRACTING**

5.1 The CONTRACTOR shall not subcontract this Contract or any part thereof or any interest therein without consent in writing of the CITY and the CONTRACTOR’s Surety. The CITY reserves the right to accept the CONTRACTOR’s use of a subcontractor or to reject the selection of a particular subcontractor, and to review any subcontractor in order to make a determination as to the capability of the subcontractor to perform properly under this Contract.
5.2 If a subcontractor fails to perform, as required by this Contract, and it is necessary to replace the subcontractor to complete the work in a timely fashion, the CONTRACTOR shall promptly do so, subject to acceptance of the new subcontractor by the CITY. Nothing in this Contract creates any obligation on the part of the CITY to pay directly to any Subcontractor any monies due to such Subcontractor, or claims of a Subcontractor for amounts owed by the CONTRACTOR to the Subcontractor for any work, services, or materials provided pursuant to this Contract.

ARTICLE 6 - FEDERAL AND STATE TAX

6.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The CONTRACTOR shall not be exempt from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall the CONTRACTOR be authorized to use the CITY's Tax Exemption Number in securing such materials.

6.2 The CONTRACTOR shall be responsible for payment of its own FICA and Social Security benefits with respect to this Contract.

ARTICLE 7 – PROTECTION OF PROPERTY & CLEANUP

7.1 The CONTRACTOR shall be responsible for ensuring that no work performed by the CONTRACTOR under this Contract or by any of its employees, agents, or subcontractors causes any damage to personal or real property, whether publicly or privately owned, in the vicinity of the work. The CONTRACTOR shall be responsible for repairing or causing to be repaired any and all such damage to personal or real property caused by work performed under this Contract.

7.2 The CONTRACTOR shall take, use, provide, and maintain all necessary precautions, safeguards, and protection to prevent accidents, or injury to persons or property on, about, or adjacent to the site of the work. Should the situation arise that physical security or structures are needed the CONTRACTOR will provide such at its expense. The CONTRACTOR shall post warning signs as necessary with respect to any hazards created by the work being done under this Contract.

7.3 The CONTRACTOR shall anticipate and educate itself regarding all underground obstructions such as water lines, gas lines, sewer lines, utility lines, and any other public or private facility, concrete, or debris. In all cases where existing utility lines or other facilities may be interfered with or impacted by the work, the CONTRACTOR shall provide notice to the owner(s) of such utilities/facilities and shall take measures to ensure that no unauthorized interference with the utilities/facilities occurs. The CITY shall not be responsible for extra payment related to the removal, replacement, repair or possible increased cost caused by underground obstructions. The location of existing structures and utilities provided in the plans are approximate only. Any damage to existing structures to remain or work of any kind, shall be repaired or restored promptly by and at the expense of the CONTRACTOR.

7.4 The CONTRACTOR shall at all times protect all trees, plants, curbs, sidewalks, irrigation components, and structures not requiring removal to accomplish the work, whether or not they are shown on the plans. The CONTRACTOR must contact the CITY to obtain tree removal permits for the removal of any tree.

7.5 In matters of restoration, all materials, construction and workmanship shall be subject to approval by the CITY. No changes in size, shape, configuration, location, materials or construction shall be made without prior written authorization from the CITY. Any demolition debris and other debris shall be hauled offsite and properly disposed of by the CONTRACTOR and shall reflect the prices as stated in the bid schedule, unless otherwise authorized by the CITY.

7.6 No interruption of ingress and/or egress to private property shall be made unless the CONTRACTOR has made prior arrangements acceptable to the owner of the affected property.
7.7 The CONTRACTOR shall provide all traffic control devices utilized during construction and meet the requirements set forth in the Florida State Department of Transportation “Manual on Traffic Control and Safe Practices for Street and Highway Construction, Maintenance, and Utility Operations” and any other applicable regulation or law.

7.8 Upon completion or termination of the work the CONTRACTOR shall, as directed by the CITY, remove from the vicinity of the work all equipment and temporary structures, waste materials and rubbish resulting from his operations, leaving the premises in a neat and presentable condition. All debris generated by the CONTRACTOR will be removed before leaving the area. All areas will be raked to remove smaller debris. All surrounding sidewalks, parking lots and roadways will be cleared of any dust or debris generated by the CONTRACTOR. In the event of his/her failure to do so, the CITY at the expense of the CONTRACTOR may do the same, and his/her Surety shall be responsible therefore.

ARTICLE 8 – INSURANCE & PERFORMANCE BOND

1 Prior to commencement of its Work and as a prior condition to commencing Work, the CONTRACTOR shall furnish to CITY, policies of insurance and appropriate certificates evidencing that the below described insurance is in force and fully paid. All insurance policies and certificates provided for hereunder shall become a part of this Contract and the policies and insurance company issuing same must be acceptable to CITY. The CONTRACTOR shall purchase and maintain insurance of the following types of coverage and limits of liability:

1.1 Commercial General Liability (CGL) with limits of insurance not less than $1,000,000 each occurrence and $2,000,000 annual aggregate.

1.1.1 If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

1.1.2 CGL coverage shall be written on ISO Occurrence Form CG 00 01 1093 or a substitute form providing equivalent coverage and must cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury.

1.1.3 CITY, Owner, and all other parties required by the CITY and/or by the Owner Contract, must be included as additional insureds on the CGL, and the endorsement used must provide a scope of coverage equivalent to or broader than the ISO CG 20 10 and 2037 forms. This insurance for the additional insureds must be as broad as the coverage provided for the named insured CONTRACTOR. It shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. Insurance must be primary and non-contributory.

1.1.4 CONTRACTOR shall maintain CGL coverage for itself and all additional insureds for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured through the longer of the applicable statute of limitations or repose period for construction defects and products liability claim in the state where the Work is performed after completion of the Work.

1.2 Automobile Liability

1.2.1 Business Auto Liability with limits of at least $1,000,000 each accident.

1.2.2 Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

1.2.3 CITY, Owner and all other parties required of the CITY must be included as additional insureds on the auto policy.

1.3 Commercial Umbrella

1.3.1 Umbrella limits must be at least $1,000,000.
1.3.2 Umbrella coverage must include as insureds all entities that are additional insureds on the CGL.

1.3.3 Umbrella coverage for such additional insureds shall apply as primary before any other insurance or self-insurance, including any deductible, maintained by, or provided to the additional insured other than the CGL. Auto Liability and Employers Liability coverages maintained by the CONTRACTOR.

1.4 Workers' Compensation and Employers Liability

1.4.1 Employers Liability Insurance limits of at least $500,000 each accident for bodily injury by accident and $500,000 each employee for injury by disease.

1.4.2 Where applicable, U.S. Longshore and Harborworkers Compensation Act Endorsement shall be attached to the policy.

1.4.3 Where applicable, the Maritime Coverage Endorsement shall be attached to the policy.

1.5 Builder's Risk Insurance

1.5.1 The CITY and/or Owner may pay for and/or maintain a Builder's Risk Insurance policy insuring the Work against damages and loss by fire, storm, theft, and other such causes from which the CONTRACTOR shall receive his pro-rata share in the event of a loss. However, the CITY assumes no responsibility for any loss excluded from Builder's Risk Insurance, or for payment of any deductibles regardless of whether the CITY or Owner paid for or provided the Builder's Risk Insurance. If the Owner or CITY has not purchased insurance satisfactory to CONTRACTOR, CONTRACTOR may, as its sole option and expense, purchase and maintain a policy insuring its Work against damages and loss by fire, storm, theft and other such causes to protect the interest of the CONTRACTOR.

2 Certificates of Insurance acceptable to the CITY must be filed with the CITY prior to commencement of the CONTRACTOR's Work. Attached to each Certificate of Insurance shall be a copy of the Additional Insured Endorsement that is part of the CONTRACTOR's Commercial General Liability Policy. CITY's receipt of CONTRACTOR's proof of insurance as required above at the beginning of the Project, and at any other time that the insurance required by the Contract Documents is required to be in place, is an express condition precedent to CONTRACTOR's right to commence work and CONTRACTOR's right to payment at any time.

3 Coverages, whether written on an occurrence or claims-made basis, must be maintained without interruption from date of commencement of the CONTRACTOR's Work until date of final payment and termination of any coverage required to be maintained after final payment to the CONTRACTOR. For coverages written on an occurrence basis, the CONTRACTOR must maintain a retroactive date prior to or equal to the effective date of this Contract. The CONTRACTOR must purchase a Supplemental Extended Reporting Period ("SERP") with a minimum reporting period of not less than three (3) years in the event that a policy is canceled, not renewed, switched to occurrence form, or any other event that requires the purchase of a SERP to cover a gap in insurance for claims that may arise under or related to this Contract. The CONTRACTOR's purchase of the SERP does not relieve the CONTRACTOR from its obligation to provide replacement coverage. In addition, the CONTRACTOR must inform the CITY of any contractual obligations that might alter its professional liability coverage under the Contract.

4 These certificates and the insurance policies required by this paragraph shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the CITY. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment. If CONTRACTOR receives notice that any of its insurance carriers intend to cancel, non-renew, or materially change any of the policies required to be maintained by the Contract for any reason, it must immediately give written notice of the same to CITY. Furthermore, if CONTRACTOR cancels, non-renews, or materially changes any of the policies required to be maintained by the Contract for any reason, it must give written notice to CITY thirty (30) days in advance of such changes becoming effective. The use of "Leased Employees" or a Professional Employer Organization to administer Workers' Compensation shall expressly constitute a material change. CONTRACTOR's failure at any time to
have insurance coverage of the types and amounts listed herein is a material breach of contract and
a default justifying termination of this Contract.

5 Waiver of Subrogation. CONTRACTOR waives all rights against CITY, and OWNER and their
agents, officers, directors and employees for recovery of damages to the extent these damages are
covered by CONTRACTOR's commercial general liability, commercial umbrella liability, business
auto liability or Workers' Compensation and employer's liability insurance maintained per
requirements stated above.

6 It is expressly agreed and understood by and between CONTRACTOR and CITY that all insurance,
whether issued on a primary or excess basis, afforded the additional insureds shall be primary
insurance to any other insurance available to CITY and that any other insurance carried by CITY
shall be excess of all other insurance carried by the CONTRACTOR and shall not contribute with
the CONTRACTOR's insurance. CONTRACTOR further agrees to provide endorsements on its
insurance policies that shall state the foregoing; however, CONTRACTOR's failure to provide such
endorsement shall not affect CONTRACTOR's agreement hereunder.

7 Bonds are required as defined in Exhibit "A" of this Contract. If required, bonds must be for the
total amount of this Contract. We require the bonding company to have an A.M. Best Financial
Strength Rating of A- or better, a Financial Size of V or greater, and listed in the Department of
the Treasury's Listing of Certified Companies. Bonds will only be accepted on the forms
attached hereto and incorporated herein as Exhibit "F". The cost to supply the bonds is included
in the Contract Amount.

8. This section survives termination, expiration, and/or completion of this Agreement.

ARTICLE 9 - INDEMNIFICATION, HOLD HARMLESS, AND SOVEREIGN IMMUNITY

9.1 CONTRACTOR shall, at its own expense, indemnify, defend, and hold harmless the CITY,
including its elected and non-elected officials, employees, agents, and volunteers, from and against all
claims of every kind and nature (including losses incurred or suffered in consequence either of bodily injury
to a person or damage to property), damages, losses, and expenses, including, but not limited to, attorney's
fees and costs, arising out of or resulting from the performance of this Contract, provided that the claim,
damage, loss, or expense is caused by any act or omission of the CONTRACTOR, or anyone directly or
indirectly employed by the CONTRACTOR, except that the CONTRACTOR will not be required to
indemnify, defend, or hold harmless the CITY if such claim, damage, loss, and expense is the result of the
sole negligence of the CITY, or of anyone employed by the CITY, or anyone for whose acts the CITY may
be liable.

9.2 To the extent that CONTRACTOR does not have worker's compensation insurance coverage,
CONTRACTOR hereby warrants and represents that CONTRACTOR is not required to have such coverage
under Florida law or any other law. Failure to carry worker's compensation insurance where required by
law shall constitute a material breach of this Agreement. CONTRACTOR's indemnification and hold
harmless obligations under subsection (a) of this section expressly include but are not limited to any and all
claims by any injured employee of CONTRACTOR, regardless of the merits of such claim. None of
CONTRACTOR's employees, agents, officers, representatives, or subcontractors shall be considered
employees of the CITY for purposes of worker's compensation or for any other purpose.

9.3 The CITY expressly retains all rights, benefits, and immunities of sovereign immunity in
accordance with § 768.28, Florida Statutes. Regardless of anything set forth in any section, paragraph, or
portion of this Agreement to the contrary, nothing in this Contract may be deemed as a waiver of immunity
or the CITY's limits of liability beyond any statutorily limited waiver of immunity or limits of liability that
may have been or may be adopted by the Florida Legislature, and the cap on the amount and liability of the
CITY for damages, regardless of the number or nature of claims in tort, contract, or equity, may not exceed
the dollar amount set by the legislature for tort. Nothing in this Contract may inure to the benefit of any
third party for the purpose of allowing any claim against the CITY, which claim would otherwise be barred
under the doctrine of sovereign immunity or by operation of law.

Page 7 of 14
9.3 This section survives termination, expiration, and/or completion of this Agreement.

ARTICLE 10 – VENUE & LIQUIDATED DAMAGES

10.1 This Contract shall be governed by and interpreted in accordance with the laws of the State of Florida. Venue shall be in a state or county court of proper jurisdiction in Volusia County, Florida, or, if in federal court, the Florida Middle District, Orlando Division.

10.2 If the work embraced by this Contract is not completed on or before the date set for completion or any extension thereof, the actual damages for the delay will be impossible to determine and in lieu thereof, the CONTRACTOR shall pay to the CITY fixed, agreed and liquidated damages in the amount of Five-Hundred Dollars ($500) per day for each calendar day of delay until the work is satisfactorily completed, unless the CITY waives such in writing.

ARTICLE 11 – PUBLIC RECORDS

11.1 PUBLIC RECORDS LAW. Pursuant to section 119.0701(2)(a), Florida Statutes, the CITY is required to provide the CONTRACTOR with this statement and establish the following requirements as contractual obligations pursuant to the Agreement:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (386) 601-0225, EFRANKTON@DEBARY.ORG, OR BY MAIL, CITY IT/RECORDS MANAGER, ATTN: ERIC FRANKTON, 16 COLOMBA ROAD, DEBARY, FLORIDA 32713.

By entering into the Agreement, CONTRACTOR acknowledges and agrees that any records maintained, generated, received, or kept in connection with, or related to the performance of services provided under, this Agreement are public records subject to the public records disclosure requirements of § 119.07(1), Florida Statutes, and Article I, section 24 of the Florida Constitution. Pursuant to § 119.0701, Florida Statutes, any CONTRACTOR entering into a contract for services with the CITY is required to:

A. Keep and maintain public records required by the CITY to perform the services and work provided pursuant to this Agreement.

B. Upon request from the CITY’s custodian of public records, provide the CITY 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, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion or termination of the Agreement if the Agreement does not transfer the records to the CITY.

D. Upon completion or termination of the Agreement, transfer, at no cost, to the CITY all public records in the possession of the CONTRACTOR or keep and maintain public records required by
the CITY to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion or termination of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion or termination of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records as set forth in the applicable retention schedule for State and Local Government Agencies, which schedule is published and maintained by the Florida Department of State, Division of Library and Information Services. All records stored electronically must be provided to the CITY, upon request from the CITY’s custodian of public records, in a format that is compatible with the information technology systems of the CITY.

Requests to inspect or copy public records relating to the Agreement must be made directly to the CITY. If CONTRACTOR receives any such request, CONTRACTOR shall instruct the requestor to contact the CITY. If the CITY does not possess the records requested, the CITY shall immediately notify the CONTRACTOR of such request, and the CONTRACTOR must provide the records to the CITY or otherwise allow the records to be inspected or copied within a reasonable time.

CONTRACTOR acknowledges that failure to provide the public records to the CITY within a reasonable time may be subject to penalties under § 119.10, Florida Statutes. CONTRACTOR further agrees not to release any records that are statutorily confidential or otherwise exempt from disclosure without first receiving prior written authorization from the CITY. CONTRACTOR shall indemnify, defend, and hold the CITY harmless from and against any and all claims, damage awards, penalties, sanctions, and causes of action arising from the CONTRACTOR’s failure to comply with the public records disclosure requirements of section 119.07(1), Florida Statutes, or by the CONTRACTOR’s failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorney’s fees and costs arising therefrom. CONTRACTOR authorizes the CITY to seek declaratory, injunctive, or other appropriate relief against the CONTRACTOR from a Circuit Court in Volusia County on an expedited basis to enforce the requirements of this section.

ARTICLE 12 - INDEPENDENT CONTRACTOR RELATIONSHIP

12.1 The CONTRACTOR is, and shall be, in the performance of all work services and activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR’S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR’S relationship and the relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY.

12.2 The CONTRACTOR does not have the power or authority to bind the CITY to any promise, agreement or representation made to or with a third party.

ARTICLE 13 - ACCESS AND AUDITS

13.1 The CONTRACTOR shall maintain adequate records documenting all charges, expenses, and costs incurred in performing the work under this Contract for at least three (3) years after completion of this Contract or for the appropriate time as required by the applicable records retention schedule as promulgated by the Florida Department of State, Division of Library Services. The CITY or its duly authorized representatives shall have access to such books, records, and documents for the purpose of inspection, audit, excerpts and transcription during normal business hours, at the CITY's expense, upon five (5) days written notice.
ARTICLE 14 - NONDISCRIMINATION

14.1 The CONTRACTOR, for itself, its delegates, successors-in-interest, and its assigns, and as a part of the consideration hereof, does hereby covenant and agree that, 1) in the furnishing of services to the CITY under this Contract, no person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in regard to this Contract on the grounds of such person's race, color, creed, national origin, disability, marital status, religion or sex; and 2) the CONTRACTOR shall comply with all existing requirements concerning discrimination imposed by any and all applicable local, state, and federal rules, regulations, or guidelines, and as such rules, regulations, or guidelines may be from time to time amended. In the event of a breach of any of the nondiscrimination covenants described in this subsection, the CITY shall have the right to terminate this Contract effective immediately.

14.2 CONTRACTOR shall not unlawfully discriminate against any person in the provision of deliverables or services pursuant to this Agreement. CONTRACTOR agrees it shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing all services and deliverables pursuant to the ADA, including Titles I, II and III of the ADA (regarding nondiscrimination on the basis of disability) as applicable, and all applicable regulations, guidelines, and standards promulgated by the federal government and its various departments and agencies pursuant to the ADA. If the CITY, in its sole discretion, determines that the CONTRACTOR has violated or otherwise failed to comply with the ADA in the CONTRACTOR’s provision of services, programs, or deliverables pursuant to this Agreement, the CITY shall provide written notice of such non-compliance to the CONTRACTOR, and the CONTRACTOR shall immediately remedy such violation and bring itself or its services, programs, or deliverables, as applicable, into compliance with the ADA at no additional cost or expense to the CITY. For the purposes of determining ADA compliance with any web-based, digital, or internet services or deliverables provided to the CITY, CONTRACTOR agrees that any such services and deliverables must comply with the Web Content Accessibility Guidelines (WCAG) 2.0 AA, as published by the Web Accessibility Initiative of the World Wide Web Consortium. To the extent permitted by law, CONTRACTOR further agrees to indemnify, defend, and hold harmless CITY against and from any claims, sanctions, or penalties, including attorney’s fees and costs, assessed against the CITY as a result of the CONTRACTOR’s failure to comply with the ADA or the requirements of this paragraph.

ARTICLE 15 - COMPLIANCE WITH LAWS

15.1 The CONTRACTOR and its employees shall promptly observe, comply with, and execute the provisions of any and all present and future federal, state, and local laws, rules, regulations, requirements, ordinances, and orders which may pertain or apply to work performed under this Contract, or to the wages paid by the CONTRACTOR to its employees. The CONTRACTOR shall also require, by contract, that all subcontractors shall comply with the provisions of this Article.

15.2 It shall be the CONTRACTOR’s responsibility to implement all construction methods, best management practices, and erosion control methods that avoid water pollution as required by the State of Florida Department of Environmental Protection, City of DeBary, and/or Volusia County. Any violation of the City of DeBary Regulations, Volusia County Regulations, Florida Department of Environmental Protection Regulations or any other regulatory agency regulations by CONTRACTOR’s subcontractors shall be the sole responsibility of the CONTRACTOR. The CONTRACTOR shall provide all necessary measures to prevent any materials whatsoever from entering the waterway except for those materials which are shown on the plans as completed structures. The CONTRACTOR shall provide MSDS sheets to the City Manager or his/her designee on all applicable materials before applying those materials. The CONTRACTOR shall secure the necessary education, certifications, licenses and permits required by state and local agencies to operate and manage a construction site. The CONTRACTOR shall abide by all rules and regulations set forth and required by any applicable MS4 NPDES Permit.
ARTICLE 16 – MISCELLANEOUS

16.1 Assignment and Delegation. The CITY and the CONTRACTOR bind themselves and their partners, successors, executors, administrators, and assigns, to the other party of this Contract in respect to all duties, rights, responsibilities, obligations, provisions, conditions, and covenants of this Agreement; except that the CONTRACTOR shall not assign, transfer, or delegate its rights or duties, or both of these things, in this Contract without the prior written consent of the CITY. The CITY has the absolute right to withhold such consent at its convenience, and, furthermore, if the CONTRACTOR attempts to assign, transfer, or delegate its rights or duties in violation of these provisions without the CITY’s consent, then the CITY may terminate this Agreement immediately as a breach of Contract by the CONTRACTOR and a failure by the CONTRACTOR to substantially perform its obligations hereunder, and any such assignment shall be null, void, and of no legal effect. The CITY shall have the right to assign its rights (or any part of them) or to delegate its duties and obligations (or any part of them) to another entity that shall be bound by all applicable terms and conditions as provided in this Contract.

16.2 Severability. If any terms or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract shall not be affected, and every other term and provision of this Contract shall continue to be valid and enforceable to the extent permitted by law.

16.3 Non-waiver. Any failure by either party to require strict compliance with any provision of this Contract shall not be construed as a waiver of such provision, and such party may subsequently require strict compliance at any time, notwithstanding any prior failure to do so. Nothing contained in this Contract shall be considered or deemed a waiver of the CITY’s sovereign immunity.

16.4 Rights and Remedies Cumulative. The rights and remedies of the parties provided for under this Contract are in addition to any other rights and remedies provided by law.

16.5 Waiver of Consequential Damages. In no event shall the CITY be liable for any indirect, incidental, special or consequential damages or delay damages, including loss of profits, loss of revenue, or loss of use, or cost of cover incurred by CONTRACTOR or any third parties arising out of this Contract and/or concerning the performance of services under this Contract.

16.6 Immunity from Construction Liens. CONTRACTOR acknowledges and agrees that the CITY is a Florida municipality, and as such, the CITY’s public property and the work site(s) involved are not subject to construction liens pursuant to Chapter 713, Florida Statutes. CONTRACTOR and its sub-contractors shall not file or record claims of lien or any other liens against any project or property owned by the CITY. CONTRACTOR hereby agrees to indemnify, defend and hold the CITY harmless from all liens filed by CONTRACTOR and/or its sub-contractors and all others claiming a lien related to this Contract against any project, work or property owned by the CITY.

16.7 Entire Agreement. Respecting the subject matter hereof, this Contract contains the entire agreement of the parties and their representatives and agents, and supersedes all prior negotiations, agreements, understandings, representations, and promises, whether oral or written, related to matters covered by this Contract.

16.8 Contact Information. Each party’s address for purposes of written notice under this Contract shall be the address provided in the introduction paragraph of this Contract, except that either party may change its address upon notice of such to the other party.

16.9 Contract Non-exclusive. This Contract is non-exclusive, and CITY shall have the right to enter into contracts with other parties to perform the same or similar services, or any other services.
16.10 Licenses. The CONTRACTOR shall, during the life of this Agreement, procure and keep in full
force, effect, and good standing all necessary licenses, registrations, certificates, permits, and other
authorizations as are required by local, state, or federal law, in order for the CONTRACTOR to render its
Services or Work as described herein. This shall include a notice to commence work letter by the CITY
and the applicable fee, if required. Any subcontractor hired by the CONTRACTOR must submit proof of
relevant licensure to the CITY. The CONTRACTOR shall require all subconsultants and subcontractors to
comply by contract with the provisions of this subsection.

16.11 Headings. The headings of the articles, paragraphs, and provisions of this Contract are for the
purpose of convenience only, and shall not be deemed to expand, limit, modify, or contribute to the meaning
of the provisions contained in such articles, paragraphs, and provisions.

16.12 Timeliness. The CITY and the CONTRACTOR acknowledge and understand that time is of the
essence in this Contract, and work performed hereunder shall be performed in as expeditious a manner as
may be in accord with the nature of such work.

16.13 Warranty. Neither the final certificate or acceptance of the work, or occupancy by the CITY shall
constitute an acceptance of work not done in accordance with this Contract or relieve the CONTRACTOR
of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The
CONTRACTOR shall promptly remedy any defects in the work and pay for any damage to other work
resulting therefrom that shall appear within a period of twelve (12) months from the date of final acceptance
of the work, unless a longer period is agreed to by the parties. The CITY shall give notice of observed
defects with reasonable promptness.

16.14 Scrutinized Companies.

(i) Generally. Pursuant to § 287.135, Florida Statutes, a company is ineligible to and may not,
bid on, submit a proposal for, or enter into or renew a contract with a local governmental unit for
goods or services of any amount if, at the time of bidding on, submitting a proposal for, or entering
into or renewing such contract, the company is on the Scrutinized Companies that Boycott Israel
List, created pursuant to § 215.4725, Florida Statutes, or is engaged in a boycott of Israel; or one
million dollars ($1,000,000) or more if, at the time of bidding on, submitting a proposal for, or
entering into or renewing such contract, the company is:

a. On the Scrutinized Companies with Activities in the Sudan List or the Scrutinized
Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant
to § 215.473, Florida Statutes; or

b. Engaged in business operations in Cuba or Syria. A violation of this subsection
constitutes grounds for the CITY to reject any bid or proposal submission and
immediately terminate any resulting contract or agreement relating to same.

(ii) Contract or renewal of contract for goods or services of one million dollars ($1,000,000)
or greater. CONTRACTOR expressly agrees that, pursuant to § 287.515, Florida Statutes, the
CITY has the exclusive right, at CITY’s option, to immediately terminate any contract for goods
or services of one million dollars ($1,000,000) or more that is renewed or entered into on or after
July 1, 2018, if CONTRACTOR: submits a false certification or representation as required under
§ 287.134(5), Florida Statutes; is currently or has been subsequently placed on the Scrutinized
Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran
Petroleum Energy Sector List; or is currently or has been determined to be engaged in business
operations in Cuba or Syria.
(iii) **Contract or renewal of contract for goods or services of any amount.** CONTRACTOR expressly agrees that, pursuant to § 287.135, Florida Statutes, the CITY has the exclusive right, at CITY's option, to immediately terminate any contract for goods or services of any amount that is renewed or entered into on or after July 1, 2018, if the CONTRACTOR is found to have been placed on the Scrutinized Companies that Boycott Israel list, or is engaged in a boycott of Israel.

(iv) **False Certification.** If CONTRACTOR submits a false certification as may be required under § 287.135, Florida Statutes, then the CITY has all remedies afforded by law, including but not limited to, the filing of a civil action as authorized in § 287.135(5), Florida Statutes, which expressly authorizes the payment of certain penalties, all reasonable attorneys' fees and costs incurred by the CITY, and all costs for investigations that led to the finding of false certification.

16.15 **Survival.** Termination, expiration, or completion of this Agreement will not affect any rights of either party under this contract arising out of any event or occurrence prior to termination, expiration, or completion, and provisions contemplating the ongoing obligations of the parties subsequent to this Agreement will survive any such termination, expiration, or completion, including, but not limited to, (i) any covenants or warranties set forth herein, (ii) any provisions pertaining to governing law or venue for legal disputes, (iii) any obligation of either party to indemnify, defend, and hold harmless the other for acts or omissions performed in connection with this Agreement, (iv) or an obligation to pay any amount which became due and payable under the terms and conditions of this Agreement prior to expiration, completion, or termination.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK – SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, the CITY and CONTRACTOR have made and executed this Contract as of the date last executed by the parties (the “Effective Date”).

CITY COUNCIL OF THE

City of DeBary, Florida

Carmen Rosamonda, City Manager

Contractor Name

Signature

Print Name / Title

Date

CONTRACTOR

Javed patel

4/26/23
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Request

City Manager is requesting City Council approve the Purchase and Sales Agreement (PSA) to purchase approximately 24.21 acres located on Palm Road & Gardenia Avenue from N.O.W. Matters More Foundation, Inc. (NOW).

Purpose

The purpose of this purchase is to preserve this property which serves as a critical part of our stormwater infrastructure and the important groundwater nutrient filtering to DeBary Bayou and Lake Monroe.

Considerations

- This property which borders Palm Road and Gardenia Ave has a zoning designation of Commercial B9, which was established decades ago as part of an antiquated commercial office vision tied to I-4 Dirksen Interchange.

- On November 16, 2022, the City Council denied zoning change to DR Horton who desired to build approximately 120 homes on the property. The residents voiced their concerns on the impact to their neighborhood regarding wetlands, potential flooding, volume of home construction and any future business related development.

- DTC, LLC (The Junction) has been in pursuit of a 2-acre property exchange at the eastern corner of Ft. Florida Road and Highway 17-92 for more than 4 years. DTC has been attempting to mitigate $390,000 to satisfy SJRWMD requirements. Unfortunately, deals in Brevard and Lake Counties were unsuccessful.
The purpose of this 2-acre exchange is to improve traffic flow and safety at The Junction. Currently, Junction residents and visitors must make a U-turn if they are exiting southbound on Highway 17-92. This 2-acre exchange will link the Junction to the Ft. Florida Road intersection. In 2020, FDOT designed and built the traffic light at Ft. Florida Road for a four-way intersection in anticipation of this exchange.

Needing to purchase $390,000 of conservation land to meet SJRWMD requirements, in January 2023, DTC approached the City Manager regarding the possibility of investing & exchanging a portion of Alexander Island. The City Manager declined the offer since the City was on the verge of purchasing Alexander Island on February 1, 2023.

The City Manager suggested the Palm Road property as an alternative. Steve Costa and his representative approached NOW and SJRWMD to see if a purchase of the property and conservation easement exchange were possible for that property. Steve Costs and his representative received positive feedback that indeed this property is doable. Working with DTC and SJRWMD, the City issued a Purchase and Sales Agreement to NOW, combining the DTC and SJRWMD contingencies. NOW signed the Purchase and Sales Agreement.

One of the contingencies of the purchase and sales agreement (Section 7) requires DTC to contribute the $390,000 towards the purchase price of the Palm Road property. Rather than this investment being made in other counties and/or cities, it will now be made into the City of DeBary.

The 2-acre property exchange is a contingency for the deal involving DTC and a grocery store. An Exchange Agreement between the City and DTC is needed to establish an outparcel owned by DTC, City road and trail boundaries and timing of construction. This portion of the trail will link the Highway 17/92 to the State trail running through Gemini Springs. The Exchange Agreement is a contingency to the purchase and sales agreement (Section 7) and will be considered separately by City Council.

SJRWMD has agreed to release the conservation easement on the 2 acres at Ft. Florida Rd/Highway 17/92 intersection in exchange for imposing a conservation easement on the approximately 20 acres of the Palm Road property, which does not include the future FDOT retention pond. SJRWMD’s draft conservation easement is in the agenda packet. SJRWMD’s approval of the Conservation easement is a contingency of the purchase and sale agreement (Section 7) and subject to SJRWMD Board approval.

FDOT is currently engineering a retention pond on approximately 4 acres of the northernmost part of the property. Draft engineered plans are included in the agenda packet. This retention pond will serve the future I-4 expansion and/or Dirksen Interchange improvements.
• The purchase price for this property is $975,000. With DTC’s share, the City’s short-term net cost is approximately $585,000. Long-term, FDOT will need to purchase the approximate 4 acres from the City, reducing the City’s net cost further.

• The closing conditions/contingencies must be met by December 15, 2023.

COST/FUNDING

The purchase price is $975,000 which will be paid for by ARPA Funds. Reimbursement by DTC will be deposited in the City’s ARPA Fund ($390,000). Short-term net cost to the City is $585,000. Long-term, FDOT will purchase the land for the planned retention pond which will further reduce our next cost.

RECOMMENDATION

It is recommended that the City Council approve the Purchase and Sales Agreement to purchase approximately 24.21 acres from N.O.W. Matters More Foundation, Inc.

IMPLEMENTATION

Purchase and Sales Agreement will be in effect immediately.

ATTACHMENTS

Purchase and Sales Agreement (N.O.W. Matters More Foundation, Inc.)
Draft SJRWMD Conservation Easement
Palm Road Property Survey and Wetland Delineation Maps
Palm Road Property Drainage Map
FDOT Draft Engineering Plans – Dirksen Interchange
ARGUMENT FOR SALE AND PURCHASE

THIS AGREEMENT FOR SALE AND PURCHASE ("Agreement") is made and entered into as of the Effective Date of this Agreement (as hereinafter defined), by and between the CITY OF DEBARY, a Florida municipal corporation ("Purchaser"), and THE N.O.W. MATTERS MORE FOUNDATION, INC., a Florida not-for-profit corporation ("Seller").

WITNESSETH:

WHEREAS, Seller is the fee simple owner of the real property more particularly described on Exhibit "A" attached hereto and any other real property in which Seller has any interest that abuts or is proximate to the real property described on Exhibit "A" including all and singular the rights and appurtenances pertaining to the property including without limitation, any and all improvements and fixtures situated thereon, all air or air space rights, all subsurface rights, all riparian rights, title and interest of Seller in and to adjacent roads, rights-of-way, alleys, drainage facilities, easements, utility facilities, impact fee credits, concurrency rights, development rights, sewer or water reservations or tap-in rights, studies, reports, plans and any and all similar development rights incident or related to the Property in any respect (the "Property"); and

WHEREAS, Seller desires to sell the Property to Purchaser, and Purchaser desires to purchase the Property from Seller, upon and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and ten dollars and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties do hereby covenant and agree as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. AGREEMENT TO BUY AND SELL. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the Property in the manner and upon the terms and conditions set forth in this Agreement.

3. EARNEST MONEY.

A. Within five (5) business days after the Effective Date, Purchaser shall deliver to Fishback Law Firm (the "Escrow Agent") with notice to Seller an earnest money deposit in the amount of Twenty Thousand and No/100 Dollars ($20,000.00) (the "Earnest Money Deposit"), which Earnest Money Deposit shall be in the form of a federal wire transfer or cashier's check issued by a bank whose deposits are federally insured.
B. The Earnest Money Deposit shall be held in escrow by the Escrow Agent and invested in a non-interest-bearing account, and held and disbursed in accordance with the terms and provisions of this Agreement.

D. The Earnest Money Deposit shall become non-refundable to Purchaser following expiration of the Inspection Period, except by reason of an uncured Seller default hereunder or pursuant to any other provision in this Agreement explicitly requiring the return of the Earnest Money Deposit.

4. **PURCHASE PRICE.** The purchase price to be paid by Purchaser to Seller for the Property shall be Nine Hundred Seventy-Five Thousand and 00/100 Dollars ($975,000.00) (the “Purchase Price”). The Purchase Price shall be paid by Purchaser to Seller at the Closing by federal wire transfer of funds, subject to appropriate credits, adjustments and prorations as may be provided herein.

5. **INSPECTION PERIOD.**

A. Purchaser shall have thirty (30) days after the Effective Date (the "Inspection Period"), to determine, in Purchaser's sole and absolute discretion, that the Property is suitable and satisfactory for Purchaser's Intended Use. Purchaser shall have the unconditional and absolute right to terminate this Agreement for any reason whatsoever during the Inspection Period. In order to terminate the Agreement, Purchaser must provide the Seller with written notice so stating no later than the expiration of the Inspection Period. If the Purchaser elects to terminate the Agreement during the Inspection Period, then Escrow Agent shall return the Earnest Money Deposit to Purchaser, and thereafter the parties shall have no further duties, obligations or responsibilities hereunder, except for those specified herein to survive termination of this Agreement.

B. From the Effective Date through Closing, Purchaser shall have the right of going upon the Real Property with its agents and engineers as needed to inspect, examine and otherwise undertake those actions which Purchaser, in its discretion and at its sole cost and expense, deems necessary or desirable to determine the suitability of the Property for Purchaser's intended uses; including without limitation, the right to perform soil tests, borings, percolation tests, compaction tests, environmental tests, surveys and tests to obtain any other information relating to the surface, subsurface and topographic conditions of the Property. Purchaser shall promptly restore any physical damage caused to the Property by the aforesaid inspections, tests and other activities, and Purchaser shall indemnify and hold Seller harmless from and against any suits, claims, damages, costs, expenses and liabilities asserted against or incurred by Seller as a result of the exercise by Purchaser of its rights under this Section 5.B. The foregoing repair, indemnity and defense obligations do not apply to (a) any loss, liability cost or expense to the extent arising from or related to the acts or omissions of Seller, or its agents or consultants, (b) any diminution in value in the Property arising from or relating to matters discovered by Purchaser during its investigation of the Property, (c) any latent defects in the Property discovered by Purchaser, or (d) the release or spread of any Hazardous Substances (hereinafter defined) which are discovered (but not
deposited) on or under the Property by Purchaser. The provisions of this Section 5.B shall survive the Closing or earlier termination of this Agreement until the later of: (i) expiration of all applicable statutes of limitations; (ii) and the final resolution of any claims, litigation and appeals that may have been made or filed.

C. Seller agrees to deliver or otherwise make available to Purchaser, within five (5) days after the Effective Date, copies in Seller’s possession, if any, of title insurance policies, title insurance commitments, surveys, environmental reports, permits, applications, remedial action plans, contamination assessment reports, notices and orders and determinations relating to any contamination or assessment or cleanup or monitoring of the Property, subdivision plans, development plans, technical data, studies, site plans, utility capacity information, soils reports, surveys, hydrological reports, zoning confirmations, concurrency information, and any other documentation pertaining to the Property which will facilitate Purchaser’s investigation of the Property during the Inspection Period.

6. **SURVEY AND TITLE MATTERS.**

   A. Within sixty (60) days after the Effective Date, Purchaser may, at Purchaser’s expense, obtain a survey of the Property ("Survey") in a form and substance acceptable to Purchaser and sufficient to delete the standard survey exception from the Title Policy, certified to Purchaser and the Title Company (as hereinafter defined).

   B. Within fifteen (15) days after the Effective Date, Purchaser shall obtain, at Purchaser’s expense, a current title insurance commitment for the Property ("Title Commitment") issued by Fishback Law Firm, as agent for Stewart Title Guaranty Company, or such other title insurance company acceptable to Purchaser ("Title Company"), and copies of all exceptions referred to therein. The Title Commitment shall obligate the Title Company to issue an Owners title insurance policy in favor of Purchaser for the amount of the Purchase Price (the "Title Policy"). The Title Policy shall insure Purchaser’s fee simple title to the Property, subject only to the Permitted Exceptions, as hereinafter defined.

   C. Within fifteen (15) days after the receipt of each of the Title Commitment and Survey, Purchaser shall provide Seller with notice of any matters set forth in the Title Commitment or Survey (as applicable) which are unacceptable to Purchaser ("Title Defects"). Any matters set forth in the Title Commitment or Survey to which Purchaser does not timely object shall be referred to collectively herein as the "Permitted Exceptions".

   D. Within five (5) days after receipt of notice from Purchaser, Seller shall notify Purchaser whether Seller will attempt to cure such Title Defects. In the event Seller fails to notify Purchaser of its intent to cure the Title Defects within said five (5) day period, Seller shall be deemed to have refused to cure the Title Defects. If Seller elects to attempt to cure such Title Defects, Seller shall have sixty (60) days in which to use its best efforts to cure such Title Defects to the satisfaction of the Purchaser and the
Title Company; provided, however, Seller shall not be obligated to bring suit or expend funds to cure any Title Defects. In the event Seller refuses or fails to cure any Title Defect as set forth hereinabove, then Purchaser, at its option, by providing Seller with written notice within five (5) days after the expiration of the applicable period as described above, may (i) terminate this Agreement, and no party hereto shall have any further rights, obligations or liability hereunder except as expressly provided otherwise whereupon all Earnest Money Deposit shall be returned to Purchaser; or (ii) accept title to the Property subject to such Title Defect without reduction of the Purchase Price and proceed to Closing.

7. **CONDITIONS TO CLOSING.**

A. Purchaser's obligation to purchase the Property shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (the “Closing Conditions”):

1. Approval of Purchaser’s City Council of this Agreement.

2. Approval of the St Johns River Water Management District of the Property as a replacement mitigation area and conservation easement over the Property.

3. Approval of Purchaser’s City Council of an Agreement for Exchange of Real Property (the “Exchange Agreement”) between Purchaser and Debary Town Center, LLC (“DTC”)

4. Payment by DTC of Three Hundred Ninety Thousand and no/100 Dollars ($390,000.00) which will be utilized by Purchaser for the purchase of the Property.

5. The material representations and warranties of Seller contained in this Agreement shall be true and correct as of the Closing Date.

6. Seller shall have performed and complied with all material covenants and agreements contained herein which are to be performed and complied with by Seller at or prior to Closing.

B. In the event any of the foregoing Closing Conditions are not satisfied to the Purchaser’s reasonable satisfaction prior to the Closing Date, then Purchaser shall provide Seller with written notice thereof, and Purchaser shall have the right, but not obligation, to terminate this Agreement whereupon Escrow Agent shall pay the Purchaser the Earnest Money Deposit within five (5) days of the termination.

C. Seller’s obligation to sell the Property shall be expressly conditioned upon the fulfillment of each of the following conditions precedent (the “Closing Conditions”):

1. Purchaser’s City Council approving this Agreement.
2. The material representations and warranties of Purchaser contained in this Agreement shall be true and correct as of the Closing Date.

3. Purchaser shall have performed and complied with all material covenants and agreements contained herein which are to be performed and complied with by Seller at or prior to Closing.

D. In the event any of the foregoing Closing Conditions are not satisfied to the Seller's reasonable satisfaction prior to the Closing Date, then Seller shall provide Purchaser with written notice thereof, and Seller shall have the right, but not obligation, to terminate this Agreement whereupon Escrow Agent shall pay the Purchaser the Earnest Money Deposit within five (5) days of the termination.

8. **CLOSING.**

A. **Closing Date.** The Property shall be closed no later than ten (10) days after the Satisfaction of the Closing Conditions, but in any event no later than December 15, 2023 (the “Closing” or “Closing Date”) at the offices Fishback Law Firm., 1947 Lee Road, Winter Park, Florida 32789, or the parties may, at their election, effectuate the closing by mail. Purchaser may elect to close earlier on not less than ten (10) days written notice.

B. **Conveyance of Real Property.** At Closing, Seller shall execute and deliver to Purchaser a Warranty Deed ("Deed") conveying fee simple record title to the Property to Purchaser, free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances whatsoever, excepting only the Permitted Exceptions. In the event any mortgage, monetary lien or other monetary encumbrance (not created by the actions or inactions of Purchaser) encumbers the Property and is not paid and satisfied by Seller, such mortgage, monetary lien or monetary encumbrance, at Purchaser's election, shall be satisfied and paid with the proceeds of the Purchase Price. Seller and Purchaser agree that such documents, resolutions, certificates of good standing and certificates of authority as may be necessary to carry out the terms of this Agreement shall be executed and/or delivered by such parties at the time of Closing, including, without limitation, an owner's affidavit in form sufficient to enable the Title Company to delete all standard title exceptions other than survey exceptions from the Title Policy, a certificate duly executed by Seller certifying that Seller is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), which certificate shall include Seller's taxpayer identification number and address, and an assignment from Seller to Purchaser assigning all of Seller's right, title and interest in and to the development approvals, permits, entitlements and other rights benefitting the Property.

C. **Prorating of Taxes and Assessments.** All real property ad valorem taxes and general assessments applicable to the Property shall be prorated as of the Closing Date between Seller and Purchaser, said proration to be based upon the most recently available tax or general assessment rate and valuation with respect to the Property at
the November discounted amount. There shall not be any reprorations after Closing. All past due real estate taxes, and special assessments which have been levied or certified prior to Closing shall be paid in full by Seller.

D. Closing Costs and Expenses. Seller shall, at the Closing, pay the cost to record any corrective documents or any documents necessary to confirm Seller’s authority to convey the Property to Purchaser. Purchaser shall pay cost of documentary stamps to be affixed to the Deed and the the cost of recording the Deed, the cost of the Survey and the cost of the owner’s title insurance policy and related costs. Each party shall pay its own attorneys’ fees and costs.

9. WARRANTIES AND REPRESENTATIONS OF SELLER.

A. To induce Purchaser to enter into this Agreement, Seller hereby makes the following representations and warranties:

1. Seller is the owner of the Property, and, at Closing the Property will be free and clear of all liens, special assessments, easements, reservations, restrictions and encumbrances other than ad valorem real property taxes, and the Permitted Exceptions.

2. To Seller’s knowledge, there is no governmental or quasi-governmental agency requiring the correction of any condition with respect to the Property, or any part thereof, by reason of a violation of any regulation, statute, law, or otherwise or with respect to any pending or contemplated condemnation action with respect to the Property, including, without limitation, any environmental or contamination matter affecting the Property.

3. There is no pending or, to Seller’s knowledge, contemplated change in any regulation or private restriction applicable to the Property, or any pending or threatened judicial administrative action, or of any action pending or threatened by adjacent land owners or other persons, any of which would result in any material change in the condition of the Property, or any part thereof, or in any way prevent, limit or impede residential construction.

4. Except for debts, liabilities and obligations for which provision is herein made for proration or other adjustment at Closing, there will be no debts, liabilities or obligations of Seller with respect to the Property for which Purchaser will be responsible after the conveyance and Closing.

5. The execution and delivery of this Agreement, the consummation of the transaction herein contemplated, and the compliance with the terms of this Agreement will not conflict with, or with or without notice or the passage of time, or both, result in a breach of, any of the terms or provisions, of or constitute a default under, any indenture, mortgage, loan agreement, or instrument to which Seller is a party or by
which Seller or the Property is bound, any applicable regulation, or any judgment, order, or decree of any court having jurisdiction over Seller or the Property.

6. There are no attachments, executions, assignments for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened against Seller or, to the best of Seller’s knowledge, the Property.

7. Seller will have at Closing the full right, power, and authority to sell and convey the Property to Purchaser as provided in this Agreement and to carry out Seller’s obligations hereunder. All requisite corporate actions necessary to authorize Seller to enter into this Agreement and to perform his obligations hereunder have been taken.

8. At the Closing, Purchaser will have no duty to collect withholding taxes for Seller pursuant to the Foreign Investment in Real Property Tax Act of 1980, as amended.

9. Seller shall not enter into any agreements or leases during the term of this Agreement, affecting the Property, without the prior written consent of Purchaser.

10. To the best of Seller’s knowledge, no fact or condition exists which would result in the termination of the current access between the Property and any presently existing highways and roads adjoining or situated on the Property.

The covenants and agreements contained in this Section 9 shall survive the Closing.

10. **WARRANTIES AND REPRESENTATIONS OF PURCHASER.**

A. To induce Seller to enter into this Agreement, Purchaser hereby makes the following representations and warranties:

1. Purchaser has the full right, power and authority to enter into and deliver this Agreement and to consummate the purchase of the Property in accordance herewith and to perform all covenants and agreements of Purchaser hereunder.

2 The execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by Purchaser of any provision of any agreement or other instrument to which Purchaser is a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against Purchaser.

The covenants and agreements contained in this Section 10 shall survive the Closing.
11. **ENVIRONMENTAL MATTERS/HAZARDOUS SUBSTANCES.**

   A. **Definition of Hazardous Substances.** "Hazardous Substances" shall mean and include all hazardous or toxic substances, wastes or materials, and all pollutants and contaminants, including but not limited to petroleum based substances and those elements or compounds which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency ("EPA") and the list of toxic pollutants designated by Congress or the EPA or defined by any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability (including strict liability) or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or any time hereinafter in effect.

   B. **Clean-up.** If Purchaser’s environmental inspections of the Property reveal the existence of any Hazardous Substance on, in, at, about or under the Property, then Seller may at Seller’s sole and absolute option elect, at Seller’s sole expense, to complete the clean-up of the same prior to Closing and in accordance with all applicable governmental standards or Purchaser may terminate this Agreement prior to expiration of the Inspection Period. If Seller elects to complete the clean-up and such clean-up is not completed, and written certification thereof by all applicable governmental authorities is not received by Purchaser, prior to Closing, then Purchaser may: (1) terminate this Agreement, whereupon Escrow Agent shall return the Earnest Money Deposit to Purchaser; (2) accept the condition of the Property notwithstanding such incomplete clean-up and proceed to Closing without any reduction in the Purchase Price or further obligation on the part of Seller to complete such clean-up; or (3) extend the Closing Date until such time that Seller has completed the clean-up. Consistent with section 5.C of this Agreement, within five (5) days after the Effective Date, Seller shall provide Purchaser with all studies, contamination assessments, reports, remedial action plans, monitoring orders and contracts, closure orders, other orders and notices relating to any contamination, cleanup, and related matters.

12. **DEFAULTS.**

   A. In the event Seller breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the covenants, agreements or obligations of a material nature to be performed by Seller under the terms and provisions of this Agreement, Purchaser, in Purchaser's sole discretion, shall be entitled to: (i) terminate the Agreement and receive an immediate return of the Earnest Money Deposit; or (ii) enforce specific performance of this Agreement against Seller; or (iii) maintain an action for damages.

   B. In the event Purchaser breaches any warranty or representation contained in this Agreement or fails to comply with or perform any of the covenants, agreements or obligations of a material nature to be performed by Purchaser under the terms and provisions of this Agreement, Seller's sole and exclusive remedy for any such default shall be to receive the Earnest Money Deposit as full liquidated damages, whereupon this Agreement and all rights and obligations created hereby shall automatically
terminate and be null and void and of no further force or effect whatsoever. Purchaser and Seller acknowledge that it would be difficult or impossible to ascertain the actual damages suffered by Seller as a result of any default by Purchaser and agree that such liquidated damages are a reasonable estimate of such damages. Seller further acknowledges and agrees that Purchaser was materially induced to enter into this Agreement in reliance upon Seller's agreement to accept such Earnest Money Deposit as Seller's sole and exclusive remedy and that Purchaser would not have entered into this Agreement but for Seller's agreement to so limit Seller's remedies.

C. Notwithstanding subsections A. and B. above, from and after the Closing, each party shall have the right to pursue its actual (but not consequential or punitive) damages against the other party for: (i) a breach of any covenant or agreement contained herein that is performable after or that survives the Closing or termination of this Agreement (including, but not limited to any indemnification and hold harmless obligations), and (ii) any breach of any representation or warranty in this Agreement that survives Closing. This subsection shall not apply to any obligation of Purchaser to purchase the Property.

13. **ASSIGNMENT.** The Purchaser may assign this Agreement; provided, however, Purchaser, as assignor, remains liable for assignee's failure to honor Purchaser's obligations under this Agreement. Assignment shall not be made to an entity for commercial use.

14. **POSSESSION OF PROPERTY.** Seller shall deliver to Purchaser full and exclusive possession of the Property on the Closing Date.

15. **CONDEMNATION.** In the event the Property or any material portion or portions thereof shall be taken or condemned or be the subject to a bona fide threat of condemnation by any governmental authority or other entity (other than Purchaser) prior to the Closing Date, Purchaser shall have the option of (i) terminating this Agreement by giving written notice thereof to Seller whereupon the Earnest Money Deposit shall be immediately returned to Purchaser, and this Agreement shall terminate except as expressly provided otherwise, (ii) requiring Seller to convey the portions of the Property remaining after the taking or condemnation based on a reduced price calculated pro-rata on the acreage lost as a result of the taking or condemnation, and Seller shall retain all of the right, title and interest of Seller in and to any award made or to be made by reason of such taking or condemnation, or (iii) requiring Seller to convey the entirety of the Property to Purchaser for the full Purchase Price if the taking or condemnation has not yet occurred, pursuant to the terms and provisions hereof, and to transfer and assign to Purchaser at the Closing all of the Seller's right, title and interest in and to any award made or to be made by reason of such taking or condemnation. Seller and Purchaser further agree that Purchaser shall have the right to participate in all negotiations with any such governmental authority relating to the Property or to the compensation to be paid for any portion or portions thereof condemned by such governmental authority or other entity.
16. **REAL ESTATE COMMISSION.** Purchaser and Seller hereby represent and warrant to each other that neither has engaged or dealt with any agent, broker or finder in regard to this Agreement other than Frederick Bertel with Florida Homes Realty and Mortgage (FHRM Commercial) who was retained by and is being paid by the Seller per listing agreement dated 12/2/2019, which Seller agrees is hereby extended through Closing under this Agreement and is incorporated herein. Buyer shall have no responsibility for the commission.

17. **NOTICES.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are actually received, whether same are personally delivered, transmitted electronically or sent by United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or sent by Federal Express or other overnight delivery service from which a receipt may be obtained evidencing the date and time delivery was made, and addressed as follows:

To Seller at the following address:

The N.O.W. Matters More Foundation, Inc.
541 N. Palmetto Ave
Sanford, FL 32771
Email: trinityp@nowmattersmore.org
thedopedoctor@gmail.com

To Purchaser at the following address:

City of DeBary
Attn: Carmen Rosamonda, City Manager
16 Colomba Road
DeBary, Florida 32713
Telephone: 386-668-2040
Email: crosamonda@debary.org

With a copy to:

Fishback Law Firm
Attn: A. Kurt Ardaman, Esquire
1947 Lee Road
Winter Park, Florida 32789
Telephone: 407 262-8400
E-mail: ardaman@fishbacklaw.com

Escrow Agent:

Fishback Law Firm
Attn: A. Kurt Ardaman, Esquire
1947 Lee Road
Winter Park, Florida 32789
Telephone: 407 262-8400
E-mail: ardaman@fishbacklaw.com
or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

18. **GENERAL PROVISIONS.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral and otherwise, between the parties not embodied herein shall be of any force or effect. No amendment to this Agreement shall be binding upon any of the parties hereto unless such amendment is in writing and executed by Seller and Purchaser. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or federal banking holiday, such time for performance shall be extended to the next day that is not a Saturday, Sunday or federal banking holiday. Facsimile copies or PDF copies sent by email of the Agreement and any amendments hereto and any signatures thereon shall be considered for all purposes as originals. This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. Seller and Purchaser do hereby covenant and agree that such documents as may be legally necessary or otherwise customarily appropriate to carry out the terms of this Agreement shall be executed and delivered by each party at the Closing. This Agreement shall be interpreted under the laws of the State of Florida.

19. **SURVIVAL OF PROVISIONS.** Except as otherwise specified herein to the contrary, the covenants, representations and warranties set forth in this Agreement shall survive the Closing or any earlier termination of this Agreement.

20. **SEVERABILITY.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstances shall, for any reason and to the extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

21. **RECORDING OF AGREEMENT.** Neither this Agreement nor a record or a memorandum thereof may be recorded in the Public Records of any county in the State of Florida.

22. **ATTORNEYS' FEES AND VENUE.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising here from, the prevailing party shall be entitled to recover from the non-prevailing party, the prevailing party's reasonable costs, fees and expenses, including, but not
limited to, witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal. Proper venue for any litigation regarding this Agreement shall be in Volusia County, Florida.

23. **TIME FOR ACCEPTANCE.** Seller shall execute and deliver this Agreement to Purchaser and Purchaser shall submit the same for approval to the Purchaser’s City Council. The Agreement shall remain a valid and binding offer provided the same is approved by the Purchaser’s City Council and then executed by the Mayor or other authorized representative of the Purchaser on or before June 15, 2023.

24. **EFFECTIVE DATE.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the date Purchaser’s City Council approves this Agreement and the Agreement is thereafter signed by an authorized representative of the Purchaser.

25. **EXECUTION AND COUNTERPARTS.** To facilitate execution, the parties hereto agree that this Agreement may be executed and electronically mailed to the other party and that the executed telecopy shall be binding and enforceable as an original. This Agreement may be executed in as many counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

26. **FURTHER ACTS AND RELATIONSHIP.** In addition to the acts and deeds recited herein and contemplated and performed, executed, and/or delivered by Seller and Purchaser, Seller and Purchaser agree to perform, execute, and/or deliver or cause to be performed, executed, and/or delivered at the Closing or after the Closing any and all such further acts, deeds, and assurances as may be reasonably necessary to consummate the transactions contemplated hereby. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership, joint venture or any other relationship between Seller and Purchaser.

27. **RADON GAS.** Pursuant to the provisions of Section 404.058(8), Florida Statutes, Seller hereby notifies Purchaser as follows with respect to the Property: "RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT."
28. **WAIVER OF JURY TRIAL.** Both parties hereby waive trial by jury in any action, proceeding, claim or counter claim brought by either party or any matters arising out of or in any way in connection with this Agreement.

29. **HANDLING OF ESCROW.** Escrow Agent agrees to perform its duties as required by this Agreement. At the time of Closing, the Escrow Agent shall pay over to the Seller the Earnest Money Deposit held by the Escrow Agent under this Agreement, as provided in Paragraph 3 hereof. In the event of a dispute as to the payment of the Earnest Money Deposit or if the Escrow Agent is in doubt as to its duties or liabilities under the provisions of this Agreement, the Escrow Agent shall continue to hold the Earnest Money Deposit until the parties mutually agree as to the distribution thereof or until a judgment of a court of competent jurisdiction determines the rights of the parties thereto. Alternatively, the Escrow Agent may interplead the Earnest Money Deposit into the Registry of the Circuit Court of Volusia County, Florida, without further liability or responsibility on the Escrow Agent’s part. In the event of any suit between the Purchaser and Seller wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent or in the event of any suit in which the Escrow Agent interpleads the subject matter of this escrow, the Escrow Agent shall be entitled to recover its costs in connection therewith, including reasonable attorneys’ fees and costs incurred in all trial, appellate and bankruptcy court proceedings, said fees and costs to be charged and assessed as court costs in favor of the prevailing party, All parties agree that the Escrow Agent shall not be liable to any party or person whomsoever for misdelivery to Purchaser or Seller of monies subject to this escrow, unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent. The Seller and the Purchaser agree that the status of the Purchaser’s legal counsel as the Escrow Agent under this Agreement does not disqualify such law firm from representing the Purchaser in connection with this transaction in any dispute that may arise between the Purchaser and the Seller concerning this transaction, including any dispute or controversy with respect to the Earnest Money Deposit. This Section 29 survives termination of this Agreement and the Closing.

30. **1031 EXCHANGE.** The parties acknowledge that either party hereto may desire to exchange other property of like kind and qualifying use within the meaning of Section 1031 of the Internal Revenue Code and the Regulations promulgated thereunder, for fee title in the Property. Each party hereby reserves the right to assign its rights, but not its obligations, under this Agreement to a qualified intermediary as provided in IRC Reg. 1.1031(k)-1(g)(4) at any time on or before the Closing. Each party shall reasonably cooperate with the other party in effectuating such exchange; provided, any such like kind exchange shall not delay such Closing or cause the party not a party to the exchange to incur any expenses relating thereto nor take title to any other property.

[Signatures on following pages]
IN WITNESS WHEREOF, Purchaser and Seller have caused this Agreement to be executed as of the dates set forth below.

**SELLER:**

THE N.O.W. MATTERS MORE FOUNDATION, INC., a Florida not-for-profit corporation

By: ______________________

________________________

(Print Name)

Its: ______________________

Date:  ______________________

**PURCHASER:**

CITY OF DEBARY
a Florida municipal corporation

By: ______________________

________________________

(Print Name)

Its: ______________________

Date:  ______________________
ESCROW ACKNOWLEDGMENT

The Escrow Agent hereby acknowledges receipt of the Twenty Thousand and 00/100 Dollars ($20,000.00) Earnest Money Deposit. The undersigned agrees to hold said Earnest Money Deposit and disburse it in accordance with the terms of the foregoing Agreement.

FISHBACK LAW FIRM

By: __________________________
   Paul "JJ" Johnson
   Partner
EXHIBIT "A"

PARCEL 1

THAT PART OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

BEGIN AT A CONCRETE MONUMENT MARKING THE NORTHWEST CORNER OF LOT 43, BLOCK A, PLANTATION ESTATES UNIT 5, ACCORDING TO MAP IN MAP BOOK 11, PAGE 239, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THEN CEASE SOUTH 72°39’ EAST ALONG THE NORTHERLY BOUNDARY OF SAID BLOCK A, A DISTANCE OF 511.58 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF STATE ROAD 400; THEN CEASE NORTH 14°32’ WEST ALONG SAID RIGHT-OF-WAY A DISTANCE OF 400 FEET; THEN CEASE ALONG SAID CURVE A DISTANCE OF 613.53 FEET TO A POINT OF TANGENCY; THEN CEASE ALONG SAID RIGHT-OF-WAY LINE NORTH 73°36’ WEST A DISTANCE OF 787.13 FEET TO THE EASTERLY LINE OF PALM ROAD AS NOW LAID OUT; THEN CEASE SOUTH 17°21’ WEST ALONG SAID EASTERLY LINE OF PALM ROAD, A DISTANCE OF 624.52 FEET TO THE POINT OF BEGINNING.

PARCEL 2

THAT PART OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, AS FOLLOWS:

FROM THE NORTHWEST CORNER OF LOT 43, BLOCK A, PLANTATION ESTATES UNIT 5, ACCORDING TO A MAP IN MAP BOOK 11, PAGE 239, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THEN CEASE NORTH 12°32’45” EAST, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM ROAD, 624.50 FEET TO THE POINT OF BEGINNING; THEN CEASE ALONG SAID EASTERLY RIGHT-OF-WAY LINE, 188.67 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF GARDENIA AVENUE AS SHOWN ON THE PLAT OF PLANTATION ESTATES UNIT 25, ACCORDING TO A MAP IN MAP BOOK 23, PAGE 91, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THEN CEASE NORTH 84°27’15” EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 1830.17 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE HIGHWAY NO. 4; THEN CEASE THE FOLLOWING COURSES AND DISTANCES ALONG SAID WESTERLY RIGHT-OF-WAY LINE: SOUTH 15°37’15” WEST, 582.21 FEET; SOUTH-WESTERLY ALONG A CURVE, NON-TANGENT, CONCAVE NORTH-WESTERLY, HAVING A RADIUS OF 2784.79 FEET, A CENTRAL ANGLE OF 3°7’25”, AN ARC DISTANCE OF 184.22 FEET AND A CHORD Bearing OF SOUTH 282°40’8” WEST; SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 610.00 FEET, A CENTRAL ANGLE OF 16°36’27”, AN ARC DISTANCE OF 176.81 FEET AND A CHORD Bearing OF SOUTH 38°16’05” WEST; SOUTHWESTERLY ALONG A CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 350.00 FEET, A CENTRAL ANGLE OF 31°51’39”, AN ARC DISTANCE OF 184.52 FEET AND A CHORD Bearing OF SOUTH 62°30’08” WEST; SOUTH 73°22’15” WEST, 155.49 FEET; THEN CEASE ALONG SAID WESTERLY RIGHT-OF-WAY LINE, NORTH 77°27’15” WEST, 810.98 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LANDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND SITUATED IN SECTION 35, TOWNSHIP 18 SOUTH, RANGE 30 EAST AND SECTION 2, TOWNSHIP 19 SOUTH, RANGE 30 EAST IN VOLUSIA COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF LOT 43, BLOCK A, PLANTATION ESTATES UNIT 5, ACCORDING TO A MAP IN MAP BOOK 11, PAGE 239, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA; THEN CEASE ALONG THE EASTERLY RIGHT-OF-WAY LINE OF PALM ROAD, RUN NORTH 13°15’20” EAST A DISTANCE OF 613.23 FEET TO THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF GARDENIA AVENUE PER THE PLAT OF PLANTATION ESTATES UNIT 25 AS RECORDED IN MAP BOOK 23, PAGE 91, OF SAID PUBLIC RECORDS, CEASE THE CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 610.00 FEET AND A CENTRAL ANGLE OF 16°36’27”; AND A CHORD DISTANCE OF 176.19 FEET THAT BEARS SOUTH 33°27’56” WEST; THEN CEASE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 176.81 FEET; AND A CENTRAL ANGLE OF 315’39”, AND A CHORD DISTANCE OF 182.13 FEET THAT BEARS SOUTH 57°41’53” WEST; THEN CEASE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 194.62 FEET; (9) TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT CONCAVE NORTHWESTERLY HAVING A RADIUS OF 350.00 FEET AND A CENTRAL ANGLE OF 315’39”; AND A CHORD DISTANCE OF 255.98 FEET WHICH BEARS SOUTH 20°7’35” WEST; THEN CEASE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE AN ARC LENGTH OF 617.49 FEET; (7) THEN CEASE ALONG SAID SOUTHWESTERLY LINE OF BLOCK A RUN NORTH 7°44’40” WEST A DISTANCE OF 508.00 FEET RETURNING TO THE POINT OF BEGINNING.
PERPETUAL CONSERVATION EASEMENT

THIS INDENTURE, made and entered into this ___ day of ___________, 2023, by and between the CITY OF DEBARY, FLORIDA, a Florida municipal corporate, whose mailing address is 16 Colomba Road, Volusia County, Florida 32713 (the City), (hereinafter referred to as the Grantor) and the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373 of the Florida Statutes, whose address is Post Office Box 1429, Palatka, Florida 32178-1429 (hereinafter referred to as the Grantee).

W I T N E S S E T H:

WHEREAS the Grantor is the owner in fee simple of certain real property lying and being situated in Volusia County, Florida, more specifically described in Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the Property); and,

WHEREAS, the City wishes to grant a Perpetual Conservation Easement in favor of the District; and

WHEREAS, the Grantor and the Grantee mutually recognize the natural, scenic and special character of the Property and have the common purpose of conserving the natural value and character of the Property by conveyance to the Grantee of a Perpetual Conservation Easement (hereinafter referred to as the Easement) on, over and across the Property, which shall conserve the ecological and hydrological integrity of the Property, conserve and protect the animal and plant populations on the Property, and prohibit certain further development activity on the Property.

NOW, THEREFORE, the Grantor, in consideration of TEN AND NO/100 DOLLARS and other good and valuable consideration in hand paid by the Grantee to the Grantor, the receipt and sufficiency of which is hereby acknowledged, hereby voluntarily grants, and conveys to the Grantee and its successors and assigns forever this Easement pursuant to Section 704.06, Florida Statutes, on, over, upon, and across the Property of the nature, character, and extent hereinafter set forth.

I. PURPOSE OF THE EASEMENT.

The purpose of this Easement is to foster, preserve and protect, in perpetuity, the ecological, biological and hydrological integrity of the Property, including the Property's natural features, water resource benefits, cultural attributes, wildlife and plant life features, and recreational values, and to prevent any development or other use of the Property that interferes with the accomplishment of these purposes. It is also the purpose of this Easement to reserve to the Grantor public recreational uses of the Property similar to those in a Florida State Park that
are consistent with the conservation purposes of this Easement and subject to the limitations contained herein.

II. PROHIBITIONS AND RESTRICTIONS ON USE.

Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited; provided, however, that uses expressly authorized under Section III or the Management Plan approved by the Grantee (the Management Plan is described in Section VII herein), are not prohibited:

1. Uses. Except as may be expressly allowed in the Management Plan or under Section III herein, no commercial, residential, agricultural, or industrial activity shall be undertaken or allowed on the Property, nor shall any right of passage across or upon the Property be allowed or granted if that right of passage is used in conjunction with said activities.

2. Roads. Except as may be expressly allowed under Section III herein, no additional roads or paving of existing roads is allowed.

3. Waters. No topographical or hydrological modifications or activities detrimental to water quality or quantity shall be allowed, except that Grantor may, subject to applicable permitting requirements, conduct activities as provided for in Section III herein. Commercial water wells, including wells for a public utility, shall not be allowed on the Property.

4. Drainage and Wildlife. There shall be no activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation.

5. Revenues Produced from the Property. Revenues produced from any use of the Property must be dedicated to the program for management of the Property and/or for the construction or maintenance of resource-based recreational activities and amenities on the Property.

6. Construction and Fences. Except as may be expressly allowed under this Easement or the Management Plan, there shall be no construction of, or the placing of, buildings, mobile homes, utilities, infrastructure, roads, or other structures on, under, or above the ground. The construction and maintenance of fences permitted under this Easement shall not substantially impede the movement of wildlife (Wildlife Friendly) onto, upon, or across the Property.

7. Dumping. There shall be no dumping or placing of trash, solid or liquid waste (including sludge material and biowaste), or hazardous materials, wastes or substances, toxic waste or substances, pollutants or contaminants, or unsightly or offensive materials, including but not limited to those as defined by the Federal Solid Waste Disposal Act (SWDA), the Federal Clean Air Act (CAA), the Federal Clean Water Act (CWA), the Federal Resource Conservation and Recovery Act of 1976 (RCRA), the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), the Federal Emergency Planning and Community Right-To-Know Act (EPCRA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA), Chapters 161, 253, 373, 376, and 403, Florida Statutes, and the rules and regulations of the (i) United States Environmental Protection Agency, (ii) the Florida Department of Environmental Protection, and the St. Johns River Water Management
District, now or at any time hereafter in effect, or any Florida Statute defining hazardous materials, wastes or substances, toxic wastes or substances, pollutants, or contaminants (hereinafter collectively referred to as Contaminants) on the Property.

8. **Animal Feeding Operations.** There shall be no animal feeding areas for bovine, swine, poultry, or other animals on the Property.

9. **Invasive Exotic Species.** Grantor shall not plant, nor take any action to intentionally encourage the spread of, Invasive Exotic Species on the Property, and shall use best efforts to control the spread of any Invasive Exotic Species on the Property. Invasive Exotic Species shall mean those invasive exotic plants described in Category I or Category II of the Florida Exotic Pest Plant Council's (or its successor's) list of Invasive Species, as it is periodically updated.

10. **Pesticides, Herbicides and Fertilizer.** Pesticides, herbicides, and fertilizer must be applied in accordance with manufacturer's label instructions, and such use shall be included in the Management Plan described in Section VII below. All such applications shall further be subject to any applicable permitting requirements and shall be in accordance with Best Management Practices (BMPs), described in Section V below.

11. **Mining, Excavation, Filling and Dredging.** Except as otherwise allowed in the Management Plan or under Section III of this Easement, there shall be no mining, drilling, excavation, filling or dredging on the Property. Under no circumstance shall there be any exploration for or extraction of oil or gas (including all petroleum or hydrocarbons), sand, loam, peat, gravel, phosphate, rock, soil, or other surface or subsurface material for commercial purposes.

12. **Commercial Signs or Billboards.** Except for signs identifying the Property or the allowed activities thereon, including a park entrance sign, or regulatory signs such as “No Hunting” and “No Trespassing”, there shall be no commercial signs or billboards, temporary or permanent, constructed, placed, or maintained upon the Property.

13. **Historical, Archaeological and Cultural Resources.** There shall be no acts or uses of the Property inconsistent with the Management Procedures for Archaeological and Historical Sites and Properties on State-Owned or Controlled Properties", as may be revised from time to time

14. **Sale and Subdivision.** There shall be no direct or indirect subdivision of the Property. Also, Grantor shall not transfer or convey title to the Property without the prior written consent of Grantee, pursuant to Paragraph III.2 below.

### III. RIGHTS RESERVED TO GRANTOR.

Grantor reserves unto their selves, their successors and assigns, all rights accruing from ownership of the Property that are not inconsistent with the purposes of this Easement. Grantor’ reserved rights include the right to engage in or permit or invite others to engage in all uses of the Property that: (a) are not expressly prohibited herein; (b) are expressly provided for in the Management Plan, and (c) follow BMPs, as described in Section V.16 herein, and (d) include the following reserved rights:

1. **Fee Simple Title.** Grantor has, and shall be deemed hereby to have retained, the underlying fee simple title absolute in the Property. Further Grantor retains and reserves all
rights of, in, and to the Property not expressly prohibited to Grantor in this Easement or expressly conveyed to Grantee in this Easement.

2. **Sale or Lease of Property.** Grantor shall have the right to sell or lease the Property provided that prior written consent is received from Grantee, which consent shall not be unreasonably withheld. Grantor shall provide to Grantee within 30 days of any sale or conveyance of any interest in the Property a copy of the fully executed and recorded instrument of conveyance.

3. **Resource-Based Recreation.** Grantor reserves the right to allow the public to use the Property for resource-based recreational activities, provided such use is provided for in the Property's Land Management Plan. Resource-based recreational activities include, but are not limited to, hiking, non-vehicular trails, bicycling, birding, and environmental education.

4. **Structures, Roads, Recreational Trails, Boardwalks, Wells and Surfaces.**
   a. **Structures and Facilities.** Grantor reserves the right to construct structures and facilities on the Property to carry out the public use purpose in a manner similar to a State Park. To do so, Grantor reserves the right to construct structures and facilities, including ancillary utilities, (Structures) that are compatible with resource-based public recreational uses. The Structures must be located as indicated in the Management Plan. The Structures may include boardwalks, support utilities, restrooms, shelters, pavilions, and parking areas. Grantor may, subject to applicable permitting requirements, install wells for the structures and activities allowed under this Easement.

   b. **Roads, Trails, and Fire Breaks.** Grantor may maintain the existing roads on the Property, as identified in the Easement Documentation Report, and may construct new roads to access structures and amenities provided for in the approved Management Plan. Fire breaks may be constructed as necessary to provide protection to visitors, structures, and natural resources. Care will be given to ensure these fire breaks are not utilized as roads for vehicular traffic and that the breaks are not above and beyond the recommendation of the Florida Forest Service or Volusia County Fire Department. Any new roads shall use a practicable direct route that does not otherwise violate the terms of this Easement. Road construction may include ancillary ditches, culverts, stormwater retention and crossings, provided that there is no detrimental alteration of hydrology. All such construction and maintenance shall be subject to applicable permitting processes, shall be included in the Management Plan, and shall be in accordance with applicable BMP’s.

   c. **Impervious Surfaces.** The areas identified in Paragraph 4.a. and 4.b. above are the only areas of impervious surface that may be improved in the future except as otherwise authorized in the Management Plan or specifically approved in writing by the Grantee.

5. **Silviculture.**
   a. **Wetlands.** Wetlands are those areas depicted as Wetlands in the Easement Documentation Report (Wetlands). In emergency situations that pose an imminent threat to the resource and/or public safety, Grantor is authorized to preemptively cut trees and vegetation in the Wetlands, such as in defensive measure for wildfires. Grantor must provide Grantee at least three days advance notice before preemptively cutting trees or vegetation in the Wetlands in defensive measure against infestation or disease. Subject to applicable permitting requirements, Wetland road crossings associated with timber extractions are authorized, provided BMP's are
b. **Disaster Harvesting.** Salvage harvesting following natural disasters, including but not limited to insect infestations, floods, drought, storms, plant disease, or wildfires, shall be allowed in all areas of the Property in accordance with applicable BMPs. Following such natural disasters, all site preparation and re-establishment activities shall be conducted according to BMPs. However, Grantor is not required to re-establish areas following natural disasters.

6. **Non-native or Nuisance Animals.** Grantor reserves the right to undertake actions to control nuisance or non-native animals, provided these actions are conducted in compliance with applicable federal, state, and local laws.

7. **Access.** Grantor retains the right to control and limit all access to the Property subject to the Grantee’s right of access as herein granted.

8. **Restoration and Enhancement.** Grantor shall retain the right to engage in activities on the Property designed to enhance or restore the natural communities on the Property, provided Grantee is notified in writing prior to the commencement of such activities, and provided such activities are properly permitted by the appropriate authority and are described in the Management Plan.

9. **Quiet Use and Enjoyment.** Grantor retains all rights and use of the Property not otherwise prohibited by the express terms of this Easement, including all rights of possession and of quiet use and enjoyment.

10. **Vendor Agreements.** Grantor is authorized to engage the services of a third party vendor(s) to perform various activities on behalf of Grantor that are related to the public use of the Property, including but not limited to guided trail rides/hikes and the sale of food or goods.

IV. GRANTEE’S AFFIRMATIVE RIGHTS.

Subject to the rights and interests of Grantor herein reserved, Grantor gives, grants, and conveys the following affirmative rights to Grantee:

1. Grantee shall have visual and physical access to the Property for the purposes of:
   a. inspection, monitoring, and enforcement of the terms and conditions of this Easement, including, but not limited to, the prohibitions and restrictions on use set forth in Section II, supra.; and
   b. scientific investigation and to monitor water resources on the Property, including the right to install wells and monitoring equipment.
   c. Grantee shall furnish Grantor with reasonable advance notice of any physical access to or inspection of the Property.
   d. As provided in Section V below, Grantee shall have the right to enforce, by proceedings at law or in equity, compliance with this Easement, including, but not limited to, the right to require restoration by Grantor of the Property to the pre-violation condition.

2. Grantor acknowledges and agrees that all development rights that are now or hereafter allocated to, implied, reserved, or inherent in the Property, except as may be specifically reserved to the Grantor in this Easement, are hereby irrevocably transferred to the
Grantee. Neither the Property nor any portion thereof may be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements, under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been transferred by this Easement shall be transferred to any other land pursuant to a transferable development rights scheme or cluster development arrangement or otherwise. Nor shall any development rights or density credits be transferred onto the Property from other property.

V. GENERAL PROVISIONS.

1. Grantee’s Remedies. In the event that Grantee becomes aware of a violation of the terms of this Easement, Grantee shall give notice to Grantor in accordance with the Notice provisions of this Section (Notice of Violation). Failure by Grantor to initiate curative action within fifteen (15) days of receipt of the Notice of Violation and to discontinue, abate, or cure the violation within thirty (30) days after receipt of the Notice of Violation, or a longer period of time if provided for in the Notice of Violation, shall entitle Grantee to bring an action at law or in equity before a court of competent jurisdiction to: (i) enforce the terms of this Easement; (ii) require the restoration of the Property to the condition that existed prior to such activity; (iii) recover liquidated damages in lieu of restoration of harvested sod or timber in the event Grantor harvests or causes to be harvested sod or timber in violation of this Easement, Grantor stipulates to liquidated damages for such violation in an amount equal to four hundred percent (400%) of the then fair market value of the harvested sod or timber; provided, however, nothing herein shall be construed to alter or waive Grantee’s right to seek restoration of any portions of the Property altered in violation of this Easement; enjoin such noncompliance by a temporary or permanent injunction in a court of competent jurisdiction; (v) seek a mandatory injunction in a court of competent jurisdiction to compel Grantor to take such corrective action as required to remedy the violation; and (vi) recover any damages arising from noncompliance with this Easement.

Damages arising from noncompliance with this Easement, when recovered, may be applied by Grantee, in its sole discretion, to corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire; provided, however, that Grantee shall provide notice to Grantor of the violation and Grantee’s actions to prevent or mitigate said damage at the earliest feasible time.

Grantee does not waive or forfeit the right to take such action as may be necessary to ensure compliance with this Easement by any prior failure to act and Grantor hereby waives any defense of laches with respect to any delay by Grantee in acting to enforce any restriction or exercise any rights under this Easement.

Nothing herein shall be construed to entitle Grantee to institute any enforcement proceedings against Grantor for any changes to the Property or plant or animal life thereon due to causes beyond Grantor’s control, such as, without limitation, changes caused by fire, flood, storm, earthquake, major plant, or animal disease, acts of God, or the unauthorized wrongful acts of third persons. In the event of violations of this Easement caused by wrongful acts of unauthorized persons, if Grantee requests, Grantor agrees to assign such right of action to Grantee, to join in any suit and/or to appoint Grantee as attorney-in-fact of Grantor for the
purposes of pursuing an action against such third person.

2. **Recordation.** Grantee shall record this Easement in the Official Records of Volusia County, Florida, and provide the Grantor with a copy of the Easement with recording information affixed thereto within thirty (30) days of the recording date of the Easement. Grantee may re-record this Easement at any time Grantee may so require to preserve its rights. Grantee shall pay all recording costs necessary to record this Easement in the public records.

3. **Taxes and Assessments.** Grantor agrees to pay when due any real estate taxes or other assessments levied on the Property. Upon request of Grantee, Grantor shall furnish to Grantee timely proof of such payment. In the event that Grantor fails to pay any tax or assessment on the Property when due, Grantee, subject to the notice and cure provision of this Easement and in Grantee's absolute discretion, may pay such tax or assessment. Notwithstanding the foregoing provisions, Grantor shall have the right to contest in good faith by all appropriate proceedings the amount, applicability, or validity of any such taxes or assessments, and in connection with and during the pendency of such contest, the Grantor my refrain from paying such taxes or assessments.

4. **Transfers by Grantor.** Grantor agrees that Grantee's written approval is necessary prior to the transfer of any fee simple interest in the Property. Grantor agrees to notify Grantee of the names and addresses of any party to whom any interest in the Property is to be transferred at least sixty (60) days prior to the date of such transfer, and to incorporate by specific reference to this Easement's Public Records recording information the terms of this Easement in any deed or other legal instrument by which Grantor transfers any interest in the Property, including, without limitation, a leasehold or other possessory interest. The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit their enforceability in any way.

5. **Modification.** The terms and conditions of this Easement may be modified only by mutual agreement, in writing, between the Grantor and the Grantee, or their respective successors or assigns and shall be recorded in the Public Records of Volusia County, Florida.

6. **Attorneys' Fees and Costs.** In any dispute between Grantor and Grantee arising out of this Easement which results in the filing of a lawsuit, each party in such action shall bear its own attorney fees and costs (including fees and costs of appeal) incurred by such party in regard to this dispute.

7. **Successors and Assigns.** The terms Grantor and Grantee as used herein shall include, without limitation, the successors and assigns of Grantor and Grantee. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon and inure to the benefit of such Grantor and Grantee and shall continue as a servitude running in perpetuity with the Property.

8. **Notices.** Any notice, demand, consent, or communication that either party is required to give to the other hereunder shall be in writing and either served personally by hand-delivery, next-day courier delivery, or by registered or certified mail, postage prepaid, addressed as follows:

   To City: City of Debary
   16 Colomba Road
   Debary, FL 32713
or to such other address as any of the above parties shall from time to time designate by written notice, delivered pursuant to the terms of this paragraph. All such notices delivered hereunder shall be effective upon delivery or within five (5) days from the date of mailing if sent by registered or certified mail.

9. **Good Faith Covenant.** Each party hereto agrees that it shall act in good faith and deal fairly with the other party in performing its obligations and enforcing its rights as set forth in this Easement. Each party affirmatively commits to fulfill its obligations under this Easement honestly and with diligence and integrity. Each party further agrees to avoid impairing the other's performance, and each shall cooperate with the other party to fulfill its obligations timely and efficiently.

10. **Mediation.** From time to time, the terms and conditions of this Easement will require Grantor and Grantee to reach agreement on certain plans and courses of action described and contemplated herein. Grantor and Grantee agree to attempt to reach agreement on such plans and courses of action in good faith. In the event that, after a reasonable effort, Grantor and Grantee fail to reach agreement on a plan or course of action required to be undertaken pursuant to this Easement, then in that event, Grantor and Grantee may submit such issue to mediation. Mediation shall be held at a time and place mutually agreeable to Grantor and Grantee provided, however, in no event shall the mediation be scheduled later than ninety (90) days after notice provided by one party to the other requesting mediation on the issue in dispute. The mediation shall be held before a mediator who is mutually acceptable to both Grantor and Grantee and having expertise in the subject matter in dispute. This mediation provision is intended to apply to good faith disputes regarding mutual decisions to be reached by Grantor and Grantee under the terms and conditions of this Easement. In no event shall this mediation provision supplant or impede election of the remedies set forth in Paragraph V.1. herein.

11. **Construction of Document.** As used herein shall is always mandatory. This Easement was jointly prepared by the parties upon the review and advice of their respective legal counsel. It is the intent of the parties that, in construing the intent of the parties hereto, there shall be no presumption in favor of either party by virtue of which party is primarily responsible for drafting this Easement.

12. **Sovereign Immunity and Regulatory Authority.** Nothing in this Easement shall be construed to constitute a waiver of the Grantor or Grantee’s sovereign immunity over and above the waiver of sovereign immunity set forth in section 768.28, Florida Statutes, or waiver of any other statutory or common law immunity, including the recreational use immunity of the Grantee.
set forth in section 373.1395, Florida Statutes. Nothing herein shall be construed to restrict or abrogate the lawful regulatory jurisdiction or authority of Grantor or Grantee or relieve Grantor from the responsibility of obtaining all necessary permits or other regulatory authorizations from Grantee or other governmental agencies asserting jurisdiction over Grantor’s activities.

13. **Condemnation.** If the Property, or any portion thereof, is condemned under the power of eminent domain, or determined necessary for public utility purposes, Grantee and Grantor shall be entitled to compensation in accordance with applicable law to the extent and in the proportion that the rights of each party are affected by any such act of condemnation.

14. **Environmental Warranty and Indemnification.** Grantor shall not take any action to cause the Property to fail to be in compliance with applicable Environmental Laws. Moreover, subject to the limits of liability provided by Section 768.28, Florida Statutes, Grantor hereby indemnifies and agrees to save, defend and hold harmless, to the extent allowed by law, Grantee from and against any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs and other liabilities (whether legal or equitable in nature including, without limitations, attorney's fees and costs) claimed or asserted by or on behalf of any person or governmental authority arising from or connected with the release or threatened release by Grantor of any Hazardous Materials on, at, beneath, or from the Property, or arising from or connected with a violation by Grantor (or Grantor’s agents, employees, invitees or guests) of Environmental Laws. Provided, however, in the event that Grantee is named or joined as a party in a suit or proceeding alleging a violation of Environmental Laws (or a violation by Grantor’s agents, employees, invitees or guests), Grantee shall give Grantor timely notice of such suit or proceeding. Upon receipt of such notice, Grantor shall tender a defense of Grantee in such action or proceeding. Grantee shall have the right to reasonably approve Grantor’s selection of counsel for such defense. So long as Grantor tenders and maintains such defense on behalf of Grantee, the indemnity provisions of this Paragraph shall not extend to attorney's fees and costs incurred or paid by Grantee in defense of such suit or proceeding if such fees and costs are independent of the defense tendered by Grantor.

The term Environmental Law shall mean all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements regulating or imposing standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right to know, hazard communication, noise, radioactive materials, resource protection, subdivision, inland wetlands and water courses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect, including, but not limited to, as amended, the Federal Solid Waste Disposal Act (SWDA”), the Federal Clean Air Act (CAA), the Federal Clean Water Act (CWA), the Federal Resource Conservation and Recovery Act of 1976 (RCRA”), the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), the Federal Emergency Planning and Community Right-To-Know Act (EPCRA), the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Toxic Substances Control Act (TSCA”), Chapters 161, 253, 373, 376, and 403, Florida Statutes, and the rules and regulations of the (i) United States Environmental Protection Agency, (ii) the Florida Department of Environmental Protection, and (iii) the St. Johns River Water Management District, now or at any time hereafter in effect.

The term Hazardous Materials shall mean any petroleum, petroleum products, fuel oil,
waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials, and any other element, compound, mixture, solution, or substance which may pose a present or potential hazard to human health or the environment. The term Hazardous Materials shall not include pesticides, herbicides, and fertilizer applied in accordance with (i) label instructions, (ii) any applicable permitting process, and (iii) any applicable BMPs.

15. General Indemnification. To the extent allowed by law, Grantor shall indemnify and hold harmless the Grantee, their employees, agents and assigns for any and all liabilities, claims, demands, losses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs and reasonable attorney's fees and attorney's fees on appeal) to which Grantee may be subject or incur relating to the Property, which may arise from Grantor’s or their agent's contractor's, or invitee's negligent acts or omissions or Grantor’s breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations by Grantor or their agents, contractors, or invitees of any federal, state or local laws, including all Environmental Laws, all subject to the limits of liability provided by Florida Statute 768.28.

16. Best Management Practices. As used in this Easement, the term Best Management Practices shall be deemed to be those BMPs that are or may be established for permissible uses of the Property by the Florida Department of Agriculture and Consumer Services (DACS), University of Florida Institute of Food and Agricultural Sciences (IFAS), Natural Resources Conservation Service (NRCS), the local soil and water conservation district, or in the absence of the foregoing, those BMPs then utilized as the prevailing practices for such use.

VI. EASEMENT DOCUMENTATION REPORT.

Grantor and Grantee acknowledge and agree that an Easement Documentation Report (the Report) of the Property was prepared prior to closing and attached hereto as Exhibit B. Grantor and Grantee acknowledge and agree that the Report is based upon the best available data, but the limits depicted have not been fully verified. In the event a controversy arises with respect to the nature and extent of the physical, ecological, or biological condition of the Property, the parties may utilize the Report and any other relevant documents, surveys, photographs, field inspections, or other information to assist in the resolution of the controversy. The Report shall serve, however, as the principal base line for the biological, ecological, and physical condition of the Property on the date of this Easement.

VII. MANAGEMENT PLAN AND ANNUAL REPORT.

Grantor shall manage the Property in accordance with the Management Plan until such time as the Management Plan is revised by Grantor. The Management Plan, and any revision thereto, shall describe Grantor’s uses, operations and improvements upon the Property as reserved or allowed to Grantor by this Easement. The Management Plan shall set forth Grantor’s plans for the Property's development in a manner similar to a State Park; silvicultural operations; public recreation (including appropriate limitation on the number of persons and vehicles utilizing the Property); use of pesticides, herbicides, and fertilizers; wildlife management; construction,
including, but not limited to, structures, roads, and trails; restoration plans; and other land use activities upon the Property. The Management Plan shall specify that these activities are to be conducted upon the Property in accordance with the applicable BMPs and this Easement.

The Management Plan shall be subject to revision by amendment submitted by Grantor to Grantee pursuant to Paragraph V.8. herein. Proposed amendments shall be submitted for Grantee's review and approval no more frequently than semi-annually, but no less frequently than every ten (10) years. Grantee shall have up to sixty (60) days to review the Management Plan amendment and submit comments to Grantor or approve the amended Plan. If Grantee does not respond to Grantor within sixty days, the amendment shall be deemed to have been approved by Grantee. The Management Plan and each amendment shall be consistent with the purposes and provisions of this Easement.

Each year, on or before the anniversary date of the date of recording of this Easement, or such other date that is mutually agreed upon in writing by Grantor and Grantee, Grantor shall prepare and furnish to Grantee an annual report that includes: (i) a statement documenting Grantor’s compliance with the Management Plan and the Easement for the preceding year; (ii) Grantor’s activities upon and use of the Property during the preceding year; and (iii) Grantor’s proposed activities upon and use of the Property during the current/upcoming year.

VIII. DUTY OF CARE.

Grantor and Grantee recognize and acknowledge the natural, scenic, aesthetic, ecological and hydrological character of the Property and have the common purpose and intent of the conservation and preservation of the Property in perpetuity. Accordingly, Grantor hereby acknowledge a continuing duty of care to Grantee imposed by this Easement upon Grantor to carry out the intent and purpose of this Easement with regard to Grantor’s ownership and occupancy of the Property.

[Signatures on following pages]
IN WITNESS WHEREOF, the parties hereto have duly executed this Easement, to become effective as of the day and year first above written.

GRANTOR

ATTEST:

_________________________
Carmen Roasmonda
City Manager

Date:_____________________

CITY OF DEBARY

By________________________
Karen Chasez, Mayor

Date:_____________________

Approved by City Counsel
as to form and legality
By_______________________
GRANTEE

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT, a public body existing under Chapter 373, Florida Statutes

By: ______________________________
    Michael A. Register, P.E.
    Executive Director

ATTEST:

By: ______________________________
    Mary Ellen Winkler, Esq.
    General Counsel

For use and reliance only by St. Johns River Water Management District, Legal Form and Content Approved:

By: ______________________________
    Karen Ferguson, Esq.
    Office of General Counsel

STATE OF FLORIDA
COUNTY OF PUTNAM

I HEREBY CERTIFY that the foregoing instrument was acknowledged before me by means of □ physical presence or □ online notarization, this _____ day of ____________, 2022, by Michael A. Register, P.E., as Executive Director of the St. Johns River Water Management District, on behalf of the District, who is personally known to me, and who did not take an oath.

NOTARY PUBLIC, State of Florida
My Commission Expires:_____________
My Commission No.:_____________
EXHIBIT A
Property Description

NEED METES AND BOUNDS LEGAL DESCRIPTION AND SKETCH TO BE ADDED
EXHIBIT B

EDR

Maps of community types, existing roads, trails and structures, and entry points to be created jointly with City of Debary and SJRWMD
New Retention Pond

Proposed Park-n-Ride

Palm Rd

Interchange Layout
Dirksen Dr