



CITY COUNCIL MEETING

April 03, 2024 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 March 6, 2024
- [2.](#) City Council Workshop March 20, 2024
- [3.](#) Special City Council Meeting March 20, 2024

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA

PRESENTATIONS

Sid Vihlen, Jr., Volusia Growth Management Commission (VGMC) Update

Proclamation: Water Conservation Month, James Cannon, Intergovernmental Coordinator/Government Affairs, St. Johns Water Management District

PUBLIC HEARINGS

- [4.](#) Staff is requesting the City Council approve the second reading of Ordinance No. 06-2024, adopting Appendix 1- Live Local Act to the City's Land Development Code, establishing definitions, procedures, regulations, and criteria for the review and approval of Mixed Use Residential Developments pursuant to Florida's Live Local Act.

NEW BUSINESS

- [5.](#) City Manager is requesting City Council approve a proposal from Dale Beasley Construction, Inc., for Stormwater Construction Services for the 670 Bernasek Drive Drainage Improvement Project.
- [6.](#) Staff requests City Council approve two wetland mitigation options for meeting St. Johns River Water Management District (SJRWMD) permit requirements as follow: Approve the use of recently acquired wetlands properties as local wetland mitigation and the alternate option to purchase the needed 0.20 credits from TM-ECON Mitigation Bank in the amount of \$24,000.

7. City Manager is requesting City Council approve the Fort Florida Road Bridge and Spillway Improvement Agreement between Florida Power & Light Company (FPL) and the City of DeBary.

COUNCIL MEMBER REPORTS / COMMUNICATIONS

Member Reports/ Communications

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

DATE OF UPCOMING MEETING / WORKSHOP

City Council Workshop April 19, 2024, 5:30 p.m.

Special City Council Meeting April 19, 2024, 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.



CITY COUNCIL MEETING

March 06, 2024 at 6:30 PM

City Council Chambers, 16 Colomba Rd.

DeBary, Florida 32713

MINUTES

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

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

Others present: Carmen Rosamonda, City Manager; Kurt Ardaman, City Attorney; Steven Bapp, Growth Management Director; Elizabeth Bauer, Finance Director; Eric Frankton, Information Technology Director; Annette Hatch, City Clerk; Kasey Hewitt, Communications Manager; and, Jason Schaitz, Parks & Recreation Director.

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.

No one addressed Council.

APPROVAL OF MINUTES: Motion by Vice Mayor Butlien to approve the minutes from the Regular City Council Meeting February 7, 2024, the City Council Workshop February 21, 2024, and the Special City Council Meeting February 21, 2024. Seconded by Council Member Pappalardo. Motion passed unanimously.

ADDITIONS, DELETIONS OR AMENDMENTS TO THE AGENDA: None.

PRESENTATIONS: Citizen's Academy 2024: Kasey Hewitt, Communications Manager, outlined the schedule for the upcoming Citizen's Academy.

CONSENT AGENDA:

The Parks and Recreation Department is requesting City Council approve the agreement with the Volusia County School Board for bus transportation for the City's summer camp program.

The Parks and Recreation Department is requesting City 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.

The Parks and Recreation Department is requesting City Council approve the grant application submitted by the St. John's River to Sea Loop Alliance. The group is requesting a matching grant of \$500 from the City of DeBary towards their upcoming Family Fun Ride and Trail Celebration.

Staff is requesting City Council approve the "City of DeBary Information Technology & Cybersecurity Policies."

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

Mayor Chasez left the meeting at 6:36 p.m.

PUBLIC HEARINGS:

The Parks and Recreation Department is requesting City Council approve the second reading of Ordinance No. 04-2024, prohibiting smoking and vaping in City parks and facilities.

City Attorney read the Ordinance into the record.

Staff briefly reviewed the Ordinance.

No one addressed Council.

Motion by Council Member Pappalardo to approve the second reading of Ordinance No. 04-2024. Seconded by Council Member Sell. Motion passed unanimously.

The Parks and Recreation Department is requesting City Council approve the second reading of Ordinance No. 05-2024, providing for trespass warning procedures and an appeal process.

City Attorney read the Ordinance into the record.

Staff briefly reviewed the Ordinance.

No one addressed Council.

Mayor Chasez returned to the meeting at 6:39 p.m.

Motion by Council Member Pappalardo to approve the second reading of Ordinance No. 05-2024. Seconded by Council Member Sell. Motion passed unanimously.

Staff is requesting City Council approve the first reading of Ordinance No.06-2024, adopting Appendix 1- Live Local Act to the City's Land Development Code, establishing definitions, procedures, regulations, and criteria for the review and approval of Mixed Use Residential Developments Pursuant to Florida's Live Local Act.

City Attorney read the Ordinance into the record.

Staff described the definitions, eligibility criteria, approval and audit process. City Manager noted that the current market rate of apartment rental is considered the affordable housing rate threshold. He added that the County's Property Appraiser will receive the City's audit findings and make the final determination of tax exemption.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the first reading of Ordinance No. 06-2024. Seconded by Council Member Sell. Motion passed unanimously.

NEW BUSINESS:

The Finance Director is requesting City Council approve Resolution No. 2024-02, to amend the fiscal year 2023-2024 budget.

City Attorney read the Resolution into the record.

Staff stated the amendments were based on the 2023 audit and Council discussion, and reviewed the funds amended.

No one addressed Council.

Motion by Council Member Pappalardo to approve Resolution No. 2024-02. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

The Applicant, Stanley Martin Homes, LLC, is seeking Final Plat approval for Springwalk at The Junction, Phase 2, which consists of 64 lots for single-family dwelling units.

Staff noted the location of the project and provided a timeline of the project review process.

Mark Thompson, representing the applicant, and Scott Bussen, Landsea Homes, addressed Council.

Motion by Council Member Pappalardo to approve the final plat for Springwalk at the Junction Phase 2. Seconded by Vice-Mayor Butlien. Motion passed unanimously.

Staff is requesting City Council approve Resolution No. 2024-03, an accompanying Resolution to the recent approved Supplement 2 of the Joint Partnership Agreement (JPA) with FDOT as amended to match the low construction bid amount.

City Attorney read the Resolution into the record.

City Manager stated that the Resolution was an FDOT requirement for the amendment to the JPA, which was previously approved by Council.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve Resolution No. 2024-03. Seconded by Council Member Pappalardo. Motion passed unanimously.

City Manager is requesting City Council approve the Cost-Share Agreement between the St. Johns River Water Management District and the City of DeBary.

City Manager gave a history of the spillway and discussed the damage caused during previous hurricanes. The spillway is not running at capacity due to the size of the passage and damage to the underside. The City has received a grant for construction and is also partnering with Florida Power and Light for construction costs.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the Cost Share Agreement between St. Johns River Water Management District and the City of DeBary. Seconded by Council Member Pappalardo. Motion passed unanimously.

COUNCIL MEMBER REPORTS / COMMUNICATIONS:

Board/Committee Appointments - Historic Preservation Advisory Board Appointment: Motion by Vice-Mayor Butlien to approve the appointment of Dianne Fossitt to the Historic Preservation Advisory Board. Seconded by Council Member Sell. Motion passed unanimously.

Member Reports/ Communications

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

DATE OF UPCOMING MEETING / WORKSHOP: City Council Workshop March 20, 2024, 5:30 p.m., and Special City Council Meeting March 20, 2024, 6:30 p.m.

ADJOURN: The meeting was adjourned at 8:13 p.m.

APPROVED:

**CITY COUNCIL
CITY OF DEBARY, FLORIDA**

Karen Chasez, Mayor

Annette Hatch, CMC, City Clerk



CITY COUNCIL WORKSHOP

March 20, 2024 at 5:30 PM

City Council Chambers, 16 Colomba Rd.

DeBary, Florida 32713

MINUTES

CALL TO ORDER: Mayor Chasez called the meeting to order at 5:30 p.m.

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

Others present: Carmen Rosamonda, City Manager; Steven Bapp, Growth Management Director; Joseph Barker, Sr. Planner; Kayla Burney, Planning Technician; Annette Hatch, City Clerk; Eric Frankton, Information Technology Director; Merylene Thomas, Sr. Planner; and, Richard Villasenor, City Engineer.

PRESENTATIONS: Staff reviewed and answered Council's questions from the previous workshop. Updates to non-conforming lots, assisted living facilities, and updated requirements for communication towers were reviewed. In addition, requirements for accessory dwelling units, including square footage, occupancy, setbacks, and parking were also discussed.

PUBLIC PARTICIPATION: No one addressed Council.

COUNCIL DISCUSSION: City Council questioned staff and discussed the presentation.

ADJOURN: The meeting was adjourned at 6:06 p.m.

APPROVED:

**CITY COUNCIL
CITY OF DEBARY, FLORIDA**

Karen Chasez, Mayor

Annette Hatch, CMC, City Clerk



SPECIAL CITY COUNCIL MEETING

March 20, 2024 at 6:30 PM

City Council Chambers, 16 Colomba Rd.

DeBary, Florida 32713

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; Steven Bapp, Growth Management Director; Joseph Barker, Sr. Planner; Kayla Burney, Planning Technician; Eric Frankton, Information Technology Director; Annette Hatch, City Clerk; Shari Simmans, Communications, Economic Development & Government Affairs Director; Merylene Thomas, Sr. Planner; and, Richard Villasenor, City Engineer.

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): The Mayor requested and received Council consensus to hear the Rivington Final Plat agenda item prior to the Swallows PUD Ordinance.

PRESENTATIONS: Legislative Update: Shari Simmans, Communications, Economic Development & Government Affairs Director, briefed Council on the bills that passed or failed and the effect on the City.

NEW BUSINESS:

This item was previously the second item on the agenda.

The Applicant, HR Rivington, LLC, is seeking Final Plat approval for Rivington, Phase 4, which consists of 202 lots for townhomes.

Staff reviewed the property location and timeline of the project, including its review process.

No one addressed Council.

Motion by Vice-Mayor Butlien to approve the final plat for Rivington, Phase 4. Seconded by Council Member Pappalardo. Motion passed unanimously.

PUBLIC HEARINGS:

This item was previously the first item on the agenda.

Staff is requesting the City Council approve the first reading of Ordinance No. 07-2024, amending the Swallows Planned Unit Development (PUD) to add certain permitted uses to the development agreement (DA) and development standards therein. (Quasi-Judicial)

City Attorney read the Ordinance into the record.

Mayor outlined the order of business for quasi-judicial items.

City Clerk swore in all those who wished to speak.

Council Members had no ex-parte communications to disclose.

Staff reviewed the history of the planned unit development which included the platting, the original plan, the changes made, and review process for the current project.

Mark Watts, Cobb Cole, attorney for the applicant, addressed Council. He discussed the overall footprint of the property and changes made to address the citizen comments received during the community meeting.

William Taylor, Karen Ritter, Jill Taufer, and John Beverly addressed Council.

Mr. Watts re-addressed Council to answer additional questions.

Motion by Council Member Stevenson to approve the first reading of Ordinance No. 07-2024, amending the Swallows Planned Unit Development to add certain permitted uses to the development agreement, removing the multi-family aspect, as well as removing the RV and boat storage. Seconded by Council Member Sell. Motion passed 4-0 (Council Member Sell; nay).

COUNCIL MEMBER REPORTS / COMMUNICATIONS:

Member Reports/ Communications

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

DATE OF UPCOMING MEETING / WORKSHOP: Regular City Council Meeting April 3, 2024.

ADJOURN: The meeting was adjourned at 8:26 p.m.

APPROVED:

**CITY COUNCIL
CITY OF DEBARY, FLORIDA**

Karen Chasez, Mayor

Annette Hatch, CMC, City Clerk



**City Council Meeting
City of DeBary
AGENDA ITEM**

<p>Subject: Ordinance # 06-2024</p> <p>From: Steven E. Bapp, AICP Growth Management Director</p> <p>Meeting Hearing Date April 3, 2024</p>	<p>Attachments: <input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other</p>
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REQUEST

Staff is requesting the City Council approve the second reading of Ordinance # 06-2024, adopting Appendix 1- Live Local Act to the City’s Land Development Code, establishing definitions, procedures, regulations, and criteria for the review and approval of Mixed Use Residential Developments Pursuant to Florida’s Live Local Act.

PURPOSE

To outline the definitions, criteria and processes for Affordable Housing developments in the City, pursuant to the provisions of Florida Statutes 166.04151(7), Chapter 2023-17, Laws of Florida, the “Live Local Act”, involving Mixed-Use Residential Developments (MURD) that combine residential and non-residential components, and a mix of affordable housing and units that do not qualify as affordable housing. The appendix accomplishes the City’s objectives to safeguard public welfare, promote affordable housing, establish zoning regulations for MURDs, and ensure compliance through audit review and monitoring. Additionally, the appendix also establishes architectural and site design requirements aligned with the City Comprehensive Plan's objectives.

CONSIDERATIONS

Background:

Effective, July 1, 2023 the Florida Legislature amended State Statutes to enact a Live Local Act in order to promote the construction of affordable housing. There are some facets of the Act that are positive including simplified and expedited approval of inclusionary housing rules that can make sure affordable housing is included in certain housing or mixed use projects. However, the Act raises concerns due to its lack of defined terms and its ability to preempt local zoning laws under specific conditions.

In particular, the Act overrides local zoning regulations for any multifamily or mixed-use residential project, if that project includes a minimum of 40% of the units as affordable housing. In that case:

1. “A municipality must authorize multi-family and mixed-use residential as allowable uses in any area zoned for commercial, industrial or mixed use if at least 40% of the residential units are, for a period of 30 years, affordable as defined in S. 420.004. A municipality may not require a zoning or land use

change, special exception, conditional use or comprehensive plan amendment for the building height, zoning and densities authorized under this section.

2. “A municipality may not restrict the density authorized by this section below the highest density on any land in the municipality where residential development is allowed.”
3. “A municipality may not restrict the height below the highest currently allowed height for a commercial or residential development located within 1 mile of the proposed development or 3 stories, whichever is higher.”
4. “A proposed development must be administratively approved if the development satisfies the municipality’s land development regulations for multi-family developments in areas zoned for such with the exceptions of densities and height.”
5. “A municipality must consider reduced parking requirements for a proposed development authorized under this subsection to the greatest extent possible if the development is located within one-half mile of a major transit stop and the major transit stop is accessible from the development.”

The absence of clear definitions for terms in the Act could spark legal disputes between developers and the City regarding their interpretation. Thus, the City must take proactive measures to define these terms according to its understanding. As it presently stands, the Act's existing provisions have the potential to yield disproportionate development in pursuit of affordability objectives, lacking standards to guarantee long-term affordability of units for at least 30 years. The City must still prioritize ensuring a secure built environment, promoting systematic progress in affordable multifamily housing through MURDs, validating relevant land development regulations, and establishing standards for architecture, dwelling unit size, parking, and site development. These efforts aim to foster meaningful and sustainable growth avoiding strain on our infrastructure and guarantees adequate living standards for all residents. Additionally, there's no established process for auditing, ensuring compliance or penalties for non-compliance.

The addition of an Appendix would offer comprehensive administrative procedures, criteria, and pertinent regulations, supplementing those already outlined in the City's Land Development Code. The City aims to address current concerns effectively and ensure the efficient and seamless processing of applications utilizing the provisions of the Act.

The City Council approved the first reading of this ordinance on March 6, 2024.

PROPOSED APPENDIX:

Appendix 1 – Live Local Act

1. Purpose

Outlines criteria and processes for Affordable Housing developments in the City according to the "Live Local Act," focusing on public welfare, affordable housing advancement, zoning regulations, dwelling unit requirements, administrative processes, and architectural design standards.

2. Applicability

Defines where Mixed-Use Residential Developments (MURD) are permitted and prohibited within designated zoning districts in the city, emphasizing adherence to regulations specified in the appendix.

3. Definitions

Provides definitions for terms relevant to the Live Local Act and City of Debarry Land Development Code to ensure clarity during implementation.

4. Live Local Act Eligibility Criteria

Details requirements for developments to qualify under the Live Local Act, including affordability criteria, residential and commercial use ratios, necessity for a blend of both affordable units and those that do not qualify as affordable housing and adherence to approval procedures.

5. Process for Approval

Outlines the application process, including submission requirements, sufficiency review procedures, and timelines for review and approval.

6. Affordability Commitment

Specifies the requirement that at least 40% of residential units in a MURD must remain affordable for a minimum of 30 years.

7. Administrative Review

Describes the administrative review process for development permit applications, including timeframes, fees, duration of approval and comprehensive MURD regulations.

8. Audit Authority

Establishes the City's authority to conduct audits on developments applying under the Live Local Act to verify compliance with affordability criteria.

9. Record Requirements and Retention

Lists records required for determining compliance and eligibility for property tax exemptions under the Live Local Act, along with retention periods.

10. Auditor Provisions and Costs

Specifies procedures and costs associated with audits conducted to verify compliance with the Live Local Act.

11. Audit Procedures

Outlines the process for conducting audits, including notification, review, and issuance of audit findings.

12. Audit Protest

Defines procedures for filing protests regarding audit findings and the subsequent review process.

13. Non-Compliance

Details consequences for non-compliance with the Live Local Act, including enforcement measures and potential fines.

This summary provides a structured overview of each section within the appendix, highlighting key points and objectives. Appendix 1- Live Local Act is attached to the Ordinance 06-2024 as Exhibit A.

COST/FUNDING

None.

RECOMMENDATION

It is recommended the City Council: approve the second reading of Ordinance # 06-2024, proposed inclusion of Appendix 1 - Live Local Act to the City's Land Development Code, establishing definitions, procedures, regulations, and criteria for the review and approval of Mixed Use Residential Developments Pursuant to Florida's Live Local Act.

IMPLEMENTATION

Upon approval of the first reading, staff will schedule the adoption hearing of the ordinance.

ATTACHMENTS

- Ordinance # 06-2024
- LDC Appendix 1 – Live Local Act

ORDINANCE 06-2024

AN ORDINANCE OF THE CITY OF DEBARY, FLORIDA, ADOPTING APPENDIX 1 TO THE CITY'S LAND DEVELOPMENT CODE, ESTABLISHING PROCEDURES, REGULATIONS, AND CRITERIA FOR THE REVIEW AND APPROVAL OF MIXED-USE RESIDENTIAL DEVELOPMENTS PURSUANT TO FLORIDA'S LIVE LOCAL ACT; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE.

Recitals

WHEREAS, in March of 2023, Florida enacted Senate Bill 102, also known as the "Live Local Act" (the "Act"), which was implemented as a statewide workforce housing strategy, designed to increase the availability of affordable housing opportunities for Florida's workforce, who desire to live within the communities they serve ; and

WHEREAS, the Act requires that local governmental authorities (including the City) must administratively approve affordable multifamily residential land uses (including mixed-use projects) in areas that are zoned for commercial, industrial, or mixed use, if the project includes at least 40 percent (65 percent for mixed use) of its residential units as affordable housing for at least 30 years; and

WHEREAS, such proposed land uses are to be approved, regardless of provisions establishing allowable densities, height, and land use, provided that the proposed uses meet applicable land development regulations, including those provisions that apply to setbacks and parking requirements ; and

WHEREAS, while the Act contains such requirements for mixed-use residential developments ("MURDs"), it does not prescribe an administrative approval process or provide for regulations or standards with regard to the integration of multifamily residential uses within areas zoned for commercial, industrial, or mixed use development; and

WHEREAS, the City has developed procedures and regulations for the development, review, and approval of MURDs and wishes to adopt same pursuant to this ordinance in assisting the City to carry out its statutory obligations pursuant to the Live Local Act.

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

SECTION 1. Recitals. The City Council finds that the above recitals are true and correct and constitute the legislative findings of the City of DeBary, Florida.

SECTION 2. Amendment. The City hereby adopts Appendix 1 – Live Local Act as part of its Land Development Code, which Appendix 1 is attached hereto and incorporated herein as **Exhibit A.**

Section 3. **Codification.** Upon adoption, Section 2 of this Ordinance is to be codified as Appendix 1 to the City’s Land Development Code.

Section 4. **Conflicts.** To the extent this ordinance conflicts with any previously adopted ordinances, rules, or regulations of the City, this ordinance shall govern and control to the extent of any such conflict.

Section 5. **Severability.** If any portion of this Ordinance is determined by a court of competent jurisdiction to be invalid, unconstitutional, unenforceable or void, the remaining portions not invalidated will continue in full force and effect.

Section 6. **Effective Date.** This Ordinance shall take effect immediately upon its adoption.

First reading and public hearing occurred on _____.

Second reading and public hearing occurred on _____.

ADOPTED BY the City Council of the City of DeBary, Florida this ____ day of _____, 2024.

CITY COUNCIL

CITY OF DEBARY, FLORIDA

BY: _____

KAREN CHASEZ, MAYOR

ATTEST:

BY: _____

_____, City Clerk

Attachments:

Exhibit A – Appendix 1 – Live Local Act

1 **Appendix 1 – Live Local Act**

2 **1. Purpose of the Appendix**

3 The purpose of this Appendix is to outline the criteria and processes for Affordable Housing
4 developments in the City, pursuant to the provisions of Florida Statutes 166.04151(7), as created
5 by Chapter 2023-17, Laws of Florida, the “Live Local Act” (the "Act"), which Mixed-Use
6 Residential Developments (MURD) involves a combination of residential and non-residential
7 components, and a combination of dwelling units that qualify as affordable housing and units
8 that do not qualify as affordable housing, to accomplish the following purposes. Unless
9 otherwise specified, all land development applications must adhere to the relevant procedures.

- 10 a) Safeguard and advance the public health, safety, and overall welfare of the
11 residents of the City;
- 12 b) Facilitate the systematic advancement of affordable multifamily housing
13 in the City pursuant to the Act;
- 14 c) Affirm that Mixed-Use Residential Developments (MURDs) proposed
15 under the Act necessitate a mixed-use residential configuration;
- 16 d) Define the specific zoning districts within the City where this Appendix is
17 applicable, and delineate the authorization and administrative approval
18 procedures for MURDs in accordance with the Act;
- 19 e) Validate the land development regulations pertinent to proposed MURDs,
20 and acknowledge the statutory mandates regarding density, height, land use
21 and parking;
- 22 f) Confirm minimum dwelling unit square footage in order to ensure the
23 provision of adequate living conditions;
- 24 g) Provide a minimum non-residential use floor area for MURDs to provide a
25 meaningful mixed-use development and to reduce vehicle trips and vehicle
26 miles traveled;
- 27 h) Confirm the maximum intensity (floor area ratio) for MURDs applies to
28 all square footage within the development;
- 29 i) Institute an administrative approval process for MUMDs, encompassing
30 provisions for the review and appeal of administrative decisions; and
- 31 j) Enhance the prevailing development criteria by introducing specific
32 requirements tailored to the architectural design of buildings and projects
33 within Mixed-Use Residential Developments (MURDs). This aims to integrate
34 a fundamental level of architectural design alongside site design features that
35 encompass secure and convenient vehicular use areas, pedestrian pathways,
36 streetscape elements, and overall site development in alignment with the goals,
37 policies, and objectives outlined in the City Comprehensive Plan.

38 k) Consistent with Section 166.04151(7), Florida Statutes, which expires
39 October 1, 2033, this Division 14 also expires and becomes null and void on
40 October 1,2033, unless otherwise extended by the Florida Legislature.

41 **2. Applicability**

- 42 a) Mixed-Use Residential Developments (MURD) are prohibited in all or any portion of
43 land zoned as a Planned Unit Development that which does not already permit MURD.
- 44 b) Mixed-Use Residential Developments (MURD) in accordance with Florida Statute
45 166.04151 are permissible only within the following designated zoning districts in the city:
- 46 B-2 - neighborhood Commercial classification
 - 47 B-4 - general commercial classification
 - 48 B-5 - Heavy Commercial classification
 - 49 B-6 - Highway interchange commercial classification
 - 50 I-1 - Light Industrial Classification
- 51 c) In the event of a conflict between the regulations set for the herein and those set forth in
52 the commercial or industrial zoning district in which the MURD is proposed to be located,
53 the regulations set forth in this Appendix shall control to the extent of such conflict. To the
54 extent the land development regulations applicable to multifamily development in
55 multifamily residential zoning districts, the multifamily units in MURD shall follow the most
56 restrictive regulations.

57 **3. Definitions**

58 Within this subsection, the following definitions are supplied to clarify terms not explicitly
59 defined in Florida statutes, ensuring alignment with the City of Debarry Land Development Code
60 during implementation.

61 *Administrative approval*, as used in F.S. 166.04151, shall mean approved by administrative
62 official after input from the Development Review Committee in accordance with this Code and
63 Comprehensive Plan.

64 *Affordable housing* shall mean housing with monthly rent or monthly mortgage payments
65 including taxes, insurance and utilities do not exceed 30% of that amount which represent the
66 percentage of the median adjusted gross annual income for the households. FS. 420.0004(3)

67 *Commercial* as used in F.S. 166.04151(7), any use involving in part or in whole the sale of
68 merchandise, materials or services, excluding properties that are used for medical or institutional
69 purposes such as hospitals and clinics, and general offices.

70 *Dwelling, multifamily*, shall mean a building containing four or more dwelling units, attached by
71 a common wall, with the number of families in residence not exceeding the number of dwelling
72 units provided. The term includes apartments and condominiums and does not include duplexes,
73 triplexes, or townhomes,

74 *Height within one (1) mile*, as used in F.S. 166.04151, shall mean one (1) mile as can be traveled
75 by human beings along the public streets of the City within the normal permitted lanes of travel

76 from the center point of the proposed development site and shall not mean a straight line distance
77 as a bird might be able to travel.

78 *Mixed-use residential* as used in F.S. 166.04151(7)(a) and (f), shall mean a residential use
79 combined with a permitted B-2 or B-4 use as set forth in this Code with no more than 65% of the
80 total square footage of the structure for residential purposes. A mixed use residential building
81 located within the B-2 zoning classification shall only permit B-2 uses, as set forth in Chapter 4
82 of the City Code, to be located on the ground floor of each building. A mixed-use residential
83 building located within the B-4, B-5, B-6, B-7, or I-1 zoning classifications shall only permit B-4
84 commercial retail uses as set forth in Chapter 4 of the City Code, excluding drive-through uses or
85 facilities to be located on ground floor.

86 *Rent* shall mean the periodic payments due the landlord from the tenant for occupancy under a
87 rental agreement and any other payments due the landlord from the tenant as may be designated
88 as rent in a written rental agreement, as defined by F.S. 83.43

89 *Urban sprawl* shall mean a development pattern characterized by low density, automobile-
90 dependent development with either a single use or multiple uses that are not functionally related,
91 requiring the extension of public facilities and services in an inefficient manner, and failing to
92 provide a clear separation between urban and rural uses.

93 **4. Live Local Act Eligibility Criteria**

- 94 a) Meet affordability criteria -Minimum 40% of multifamily residential dwelling units
95 shall remain affordable, as defined in Sec 420.0004(3), F.S., for a period of at least 30
96 years by recording restrictive covenant on the property to that effect;
- 97 b) The MURD shall have a maximum of 65% of total square footage as Residential uses
98 and meets criteria in F.S.166.04151(7)
- 99 c) The MURD shall have at least 35% commercial uses.
- 100 d) Fulfill all approval process requirements specified in this Appendix.
- 101 e) Adhere to recording and legal requirements
- 102 f) The MURD shall incorporate a blend of dwelling units, encompassing both affordable
103 housing units and those that do not qualify as affordable housing, in accordance with
104 established guidelines.

105 **5. Process for Approval**

106 Approval for qualifying developments in eligible zoning districts involves several steps. The
107 process requires the submission of a development permit application along with a fee. If the
108 application is not submitted by the property owner, a purchase contract or agreement (with
109 financial details blacked out) must be provided, specifying effective dates and due diligence
110 periods. The application, using a city-provided form, includes site development plans, an
111 affidavit for income qualification commitment, and details on monitoring and inspection for the
112 entire 30-year operation, including acknowledgment of auditing requirements for tenant
113 eligibility within designated affordable housing units as per the Live Local Act. Non-compliance
114 penalties are outlined below in Sec 13 of this Appendix.

115 Upon application, the city conducts a sufficiency review per Chapter 3 of the City Code, either
116 confirming completeness or specifying additional requirements. The applicant then provides the
117 necessary items, initiating another sufficiency review until a complete application is submitted.
118 A purchase contract must be active during these review periods. If any due diligence or contract
119 matter expires within this timeframe, the city will not proceed with the sufficiency or application
120 review.

121 **a) Minimum Requirements.**

122 The minimum requirements for certification of compliance with the Live Local Act are
123 as follows:

124 **1) Site Development Plan** which includes the following:

- 125 a. Statement of ownership of the proposed development, and the names,
126 addresses and telephone numbers of the developer and any project engineers,
127 architects or planners.
- 128 b. Scale, date, and north arrow.
- 129 c. Legal Description of the property.
- 130 d. Site Data Table including gross square footage of the site and project, total
131 impervious coverage and principal setbacks.
- 132 e. Dimensioned location, density, size, height, impervious surface ratio and
133 use of all proposed structures.
- 134 f. Project units, number of affordable units per area median income, and
135 affordability period.
- 136 g. Label uses of adjacent parcels.
- 137 h. Location, dimension and method of buffering from adjacent uses.
- 138 i. Location and method of screening of refuse stations, storage areas and off-
139 street parking and loading areas.
- 140 j. Method of stormwater retention.
- 141 k. Location, size and total amount of greenspace.
- 142 l. Tree table with tree retention and applicable mitigation.
- 143 m. The location, width, pavement type, right-of-way name and other related
144 appurtenances of all public rights-of-way adjoining, traversing or
145 proximate to the site.
- 146 n. Location and dimensions of proposed project ingress/egress, parking and
147 service areas, including typical parking space dimensions.
- 148 o. Vehicle Use Area buffering adjacent to rights of way.
- 149 p. Proposed means of vehicular and pedestrian access from the site(s) within
150 the development to adjacent streets and/or alleys, showing all existing and
151 proposed curb cuts and sidewalks.
- 152 q. Building Elevations (4-sided) for each proposed building.
- 153 r. A transportation study.

- 154 s. Comply with all Concurrency requirements outlined in Chapter 3 of the City
155 Code.
- 156 t. Any other information required under the specific site plan districts
157 pertaining to this article or which may be required, when commensurate
158 with the intent and purpose of this Code, by city reviewing staff.
- 159 u. A statement indicating the petitioners' commitment to comply with all
160 additional regulations of this land development code, applicable to the
161 project that is not mentioned in this Appendix.
- 162 v. Compliance with all land development regulations applicable to the zoning
163 district in which the project is proposed, except only as otherwise
164 preempted by the Live Local Act with respect to height.

165 **2) Project Narrative.** Application shall contain a narrative which demonstrates compliance
166 with section 166.04151(7)(a)- (g), Florida Statutes.

167 **3) Agent Authorization.** An affidavit with the property owner's notarized authorization.

168 **4) Affidavit of Commitment and Restrictive Covenants.** As a prerequisite for approval
169 and prior to seeking or obtaining any site or building permits for the project, the applicant
170 (and the property owner, if different from the applicant) must execute and record in the
171 public records of Volusia County, Florida, an Affidavit of Commitment and
172 Restrictive Covenants. Such Affidavit of Commitment and Restrictive Covenants
173 shall:

- 174 a. have terms acceptable to the city,
- 175 b. run with and be binding upon the land for no less than thirty (30) years
176 from the issuance of a certificate of occupancy for the last principal
177 structure of the project
- 178 c. be enforceable by the city;
- 179 d. detail the affordable housing and project conditions and restrictions
180 required by this section, the Live Local Act and on the approval of the
181 project;
- 182 e. provide for monitoring, and compliance requirements; and
- 183 f. provide for the city's enforcement remedies. Mortgage holders will be
184 required to execute and record a subordination of their lien interest to
185 such Affidavit of Commitment and Restrictive Covenants prior to or
186 simultaneously with the recording of the Affidavit of Commitment and
187 Restrictive Covenants. The city will provide the monitoring and
188 compliance forms upon submittal of the application, deemed complete
189 and sufficient.
- 190 g. An affidavit affirming a 30-year commitment to offering affordable housing,
191 including a monetary limit on all rent charges and associated fees for
192 occupants of units classified as affordable. The rents and fees for such units
193 shall not surpass 30% of the gross revenue of all occupants.

194 h. An affidavit confirming agreement and acceptance of the annual audit
195 requirements by a certified public accounting firm, verifying compliance
196 with income and total rental fee criteria. Acknowledge and understand that
197 any violations of these commitments shall be subject to the provisions
198 outlined in Section 13 of this Appendix.

199 **6. Affordability Commitment**

200 Pursuant to the Act, at least 40% of the residential units within a proposed MURD must be
201 'affordable' as defined in F.S.420.0004 and must remain affordable for a period of at least 30
202 years.

203 **7. Administrative review**

204 The administrative review of the development permit application shall be conducted pursuant to
205 the provisions in Chapter 3 of the City Code, Administration and Procedures, including any
206 requirements for public notifications and Development Review Committee (DRC) reviews.

- 207 a) *Time frame for Review and Issuance of Approval:* Upon receipt of a complete
208 application, the city will complete its review and provide a response sixty (60) days
209 from receipt of such materials as required by this subsection.
- 210 b) *Fee:* Shall be per the established fee schedule for each type of development permit application.
- 211 c) *Duration of Approval:* An approval received through this process shall be effective
212 for three (3) months from the date of approval. The application process and
213 certification of compliance with the live local act shall begin again if a building permit
214 has not been issued by the city within six (6) months of an approval under this
215 section.
- 216 d) *Equivalent Treatment of all Dwelling Unit Requirements:* As a prerequisite for approval
217 and prior to seeking or obtaining any site or building permits for the project, the project
218 must affirm and ensure that all affordable dwelling units and market-rate dwelling units
219 will be situated within the same structure. Furthermore, all common areas and amenities
220 are required to be accessible and available to all residents, regardless of whether they
221 reside in affordable or market-rate dwelling units. Access to the mandated affordable
222 dwelling units must be facilitated through the same principal entrance(s) utilized by all
223 other dwelling units within the development. Additionally, the sizes and number of
224 bedrooms in the affordable dwelling units should be proportionate to the square footage
225 and number of bedrooms in the market-rate dwelling units. For instance, if 25 percent of
226 the market-rate dwelling units feature two bedrooms, then 25 percent of the affordable
227 dwelling units must also include two bedrooms.
- 228 e) *MURD regulations:*
- 229 1) The non-residential use must have a certificate of occupancy before or
230 simultaneously when the residential use is given a Certificate of Occupancy.

- 231 2) Maximum Floor Area- The floor area of the development within an MURD
232 including floor area of both residential and non-residential uses shall be limited to
233 Maximum FAR of the underlying zoning district.
- 234 3) Density- 32 Du/acre based on highest allowed density per the City's
235 Comprehensive Plan.
- 236 4) Building height- Highest currently allowed for Commercial or Residential
237 development located within one (1) mile of the proposed development or three (3)
238 stories, whichever is higher.
- 239 5) First floor of each MURD building must be concrete
- 240 6) Minimum multifamily and condominium unit size:
- 241 Studio/efficiency must be larger than 600 sq. ft.
- 242 One bedroom must be larger than 750 sq. ft.;
- 243 Two bedrooms must be larger than 1,000 sq. ft.;
- 244 Three or more bedrooms must be larger than 1,350 sq. ft.
- 245 7) Setbacks: Minimum required yards
- 246 Front - 25'
- 247 Rear - 25'
- 248 Side - 15'
- 249 8) Amenity areas exclusively serving the residential uses shall be calculated towards
250 residential square footage. Amenities required within multi-family developments
251 include:
- 252 a. Each residential unit must be equipped with an in-unit washer/dryer and an
253 independent balcony. All balconies must offer a minimum of fifty-four (54)
254 square feet of clear, unobstructed space, with a depth of at least six (6) feet.
255 Balconies may be covered and screened but must not be fully enclosed. False,
256 Faux, Juliet/Juliette, Balconette, and similar ornamental or standing type
257 balconies are not considered valid balconies and are prohibited where a balcony is
258 specified in this Section.
- 259 b. Provision of a pool with accompanying restrooms.
- 260 c. Gymnasium.
- 261 d. Allocation of park space/open space, meeting a minimum requirement of 25%.
262 Plazas, paver driveways marked as joint vehicular and pedestrian ways,
263 sidewalks, covered arcades, gazebos, and other hardscaped areas may contribute
264 to fulfilling the minimum pen/greens space requirement. Parking islands or any
265 parking area cannot be considered as open green space.
- 266 e. Enhancement of landscaping to include a minimum ten (10) foot wide planting
267 area for building foundation landscaping, featuring a minimum of two (2)
268 understory trees and five (5) shrubs for every forty (40) feet of façade length.
269 The remaining planting area shall be landscaped with ground cover or other

270 landscape treatment. A minimum ten (10) foot wide landscape strip is
271 mandatory where four (4) or more rows of parking spaces abut: one canopy
272 tree, one understory tree, and three shrubs must be planted for every one
273 hundred (100) feet in length.

274 f. Doggy runs (if pets are allowed).

275 g. Internal concierge trash service.

276 h. Minimum eight (8) foot wide sidewalks,

277 i. Flex office space,

278 9) Parking requirements shall be per Chapter 7 of the City Code or Chapter 5 of the
279 City Code, if under corridor or nodes overlay. Parking areas shall be designed to
280 minimize visual impact on lower-density residential zones. A 5% reduction in
281 parking requirement shall be granted during the review process if these conditions
282 are met:

283 a. Development is located within one-half mile of a passenger rail or intercity bus
284 station or transit hub where two or more transit routes converge (major transit
285 stop) and must have continuous public sidewalk from the development to these
286 transit stops or facilities. Enhancements to pathways could include incorporating
287 canopy trees, distinctive pavement, identify way finding, directional signage,
288 transit infrastructure and shaded rest areas furnished with appropriate street
289 furniture.

290 b. The development provides onsite and offsite safe and comfortable walking
291 infrastructure, bicycle facilities and pedestrian oriented design elements for its
292 residents and users.

293 c. minimum of one (1) electric vehicle charging station must be provided for a
294 development requiring more than fifty (50) parking spaces. The charging
295 station shall serve two (2) parking spaces.

296 10) Refer to Chapter 5 of the City Code for form based codes regulations if the property
297 is under the corridor /node overlay districts. Any properties that is not under the
298 corridor or node overlay shall follow the additional architectural standards given in
299 this Appendix.

300 11) Architectural Standards:

301
302 a. Incorporate enhanced architectural standards into the building design to alleviate
303 large building mass and extended walls. Architectural features must be visible on
304 all sides facing the public right-of-way, with a balanced distribution of elements
305 at the base, middle, and top to maintain a pedestrian scale. Ensure the building
306 mass aligns proportionally with the site, streets, open space, and surrounding
307 developments.

308 b. Include a minimum of three architectural elements on each facade fronting a
309 right-of-way and two elements on other facades. Architectural elements
310 encompass portico, balconies, columns, awnings, canopies, and
311 recessed/projected access.

- 312 c. Integrate ornamental and structural building articulation, incorporating projections
313 and recesses with a minimum depth of twenty-four (24) inches.
- 314 d. Utilize varied roof lines and forms, along with stepped or decorative parapets,
315 cornices, eaves, and belt courses in the building design.
- 316 e. Ensure building facades consist of a minimum of thirty (30) percent fenestration
317 elements (windows, doors, and openings). Windows and doors should include
318 surrounds, casing, or headers.
- 319 f. Maintain consistency in building materials and finishes across all facades. Utilize
320 high-quality materials such as brick, stone, vertical board, or batten siding. Stucco
321 finish is acceptable for a maximum of forty (40) percent of the building facades,
322 and EIFS shall not be used as the primary material. Prohibited materials include
323 unfinished concrete or block, corrugated fiberglass or metal, and sheet portion
324 siding.
- 325 g. Ensure uniformity in light fixtures throughout the development that complement
326 the building architecture. Opt for decorative light fixtures with concealed light
327 sources, and light poles should have fluted bases. Encourage the use of
328 illuminated bollards instead of poles in exclusively pedestrian areas.
- 329 h. Prohibit accessory structures that are not designed or incorporated as part of the
330 principal building or listed amenities in this Section, in accordance with the Land
331 Development Code.
- 332 i. All rooftop mechanical equipment shall be screened from public view by a
333 parapet wall or similar solid barrier as approved by the city staff.
- 334 j. Signs must comply with the regulations outlined in Chapter 11 of the City Code.

335 12) Building and use transition and compatibility

- 336 a. Transitional Buffers: green buffer zones shall be provided to soften the
337 transition between lower and higher-density areas.
- 338 b. Landscape Buffer and screening: additional landscape buffer and screening
339 requirements shall be per Chapter 8 of the City Code to create visual barrier
340 and enhance privacy. Additionally, supplemental fences / walls can be
341 provided to achieve screening transition.
- 342 c. Architectural Standards: higher-density buildings to align with the visual
343 character of lower-density neighborhoods.

344 **8. Audit Authority for Developments Applying under the Live Local Act.**

345 Under Florida Statutes § 200.065, the City has the authority to impose Ad Valorem tax on the
346 valuation of property within the City jurisdiction. Pursuant to the Live Local Act (ACT), Section
347 196.1978 3(d)1 and 196.1978 3(d)2, apartments are eligible for property tax exceptions for units
348 meeting the affordable criteria established in the Act. These exemptions are based upon specific
349 business transactions, which are subject to the audit authority of the City.

350 Pursuant to Chapter 196.1978, F.S., the affordable criteria are established by the Florida Housing
351 Finance Corporation who publishes an Annual Income and Rent Limits report for each
352 Metropolitan Service Area (MSA). Each MSA annual report establishes a Median Income for the
353 MSA, income ranges for each percentage category based upon the number of persons in the
354 household, and rent ranges and limits by the number of bedrooms in the unit.

355 All records maintained by the apartment owner and provided in the annual audit are confidential
356 records pursuant to Chapter 119, F.S. All of the provisions within this Section of the Land
357 Development Code must be agreed to in the Master Development Agreement prior to the
358 issuance and approval of the Development Order. No Development Order shall be approved by
359 the City Manager unless these provisions are agreed to in the Master Development Agreement.

360 **9. Record Requirements and Retention.**

361 Pursuant to the Annual Income and Rent Limits report published by the Florida Housing Finance
362 Corporation and the criteria established in the Act, the following are the records required to
363 determine compliance and eligibility of the property tax exemption:

364 a) **Number of Persons in Household Affidavit.** The apartment owner, at the beginning of
365 the lease and every annual renewal of the lease, shall obtain an affidavit from the tenant
366 or lease confirming the number of persons in the household. This affidavit shall be
367 maintained for a period of 3 years.

368
369 b) **Certified Copy of the Previous Year's IRS Tax Returns.** The apartment owner, on an
370 annual basis, shall obtain a certified copy of the all income earners in the household. The
371 apartment owner shall confidentially maintain these certified copy of the returns for at
372 least 3 years.

373
374 c) **Floor Plan of Qualifying Unit with Corresponding Unit Number.** The apartment
375 owner shall maintain a floor plan of the leased unit to verify the number of bedrooms for
376 the qualified unit.

377
378 d) **Certified Copy of Lease Agreement.** The apartment owner shall maintain the lease
379 agreement for the qualified unit which clearly identifies the tenant or lease and the rental
380 amount and all rental considerations to occupy the said qualified unit.

381 **10. Auditor Provisions and Costs.**

382 The City shall contract with a Certified Public Accountant to conduct an audit to verify the
383 compliance and tax exemption qualification for the Act. The cost of the audit shall be paid for by
384 the apartment owner at the conclusion of the audit and issuance of the Audit Findings Report.

385 **11. Audit Procedures.**

386 a) **Audit Notification, Pre-Audit Meeting and Preparation.**

387 Every January, the City shall issue a "Notice of Intent to Audit Books and Records" to
388 the apartment owner. This Notice shall be sent by certified letter or hand delivered. The
389 Notice of Intent to Audit Books and Records will provide up to 60 days for the apartment
390 owner to prepare for the audit, gather the required documents for review and establish the
391 timeline to conduct the audit.

392

393 It is required the apartment owner, contract CPA and a representative of the City conduct
394 a pre-audit meeting to coordinate the audit, such as ensuring understanding of the audit
395 procedures, understanding of the record requirements and retention, location of the audit
396 to be conducted, etc. The apartment owner shall provide in writing which units, by unit
397 number, that qualify for the tax exemption under the Act. The apartment owner may
398 provide a 60-day waiver to expedite the audit.

399 **b) Audit Review.**

400 On the agreed timeline dates, the apartment owner shall provide a work space on-site for
401 the audit to be conducted. The records shall be provided to the contracted CPA for the
402 units that qualify for the tax exemption under the Act.

403
404 The contract auditor shall be diligent and conduct the review in the most efficient and
405 effective manner. Any missing records, the contract auditor shall issue in writing a
406 request for such missing records or documentation. The apartment owner shall provide
407 those records within 3 business days of the request or communicate in writing that those
408 records are not available.

409 **c) Notice of Proposed audit.**

410 Upon completion of the audit, the contract auditor, in conjunction with the City, shall
411 issue a “Notice of Proposed Audit Findings.” This Notice will provide the audit
412 preliminary conclusions of which units qualify or do not qualify under the Act. This
413 Notice will also provide protest and appeal rights and the opportunity for the apartment
414 owner to provide any further documentation to justify the qualification of units.

415
416 The Audit Report shall itemize each unit included in the audit. Under each unit, the audit
417 shall describe the unit number and the number of bedrooms, income verified for the
418 household, and the verified lease amount. If the lease amount changes during the audit
419 period, the auditor shall average the lease amount for the entire year. The auditor shall
420 attach, as an appendix to the audit, all documents justifying the audit conclusions for each
421 unit.

422
423 The Notice of Proposed Audit Findings shall provide a period of 60 calendar days for the
424 apartment owner to provide documentation or to file a protest of the audit. If within 60
425 days, no action has been taken by the apartment owner, the audit findings will become
426 final. If within 60 days the apartment owner does provide additional records or
427 documentation, the contract auditor shall review such records and adjust the proposed
428 audit findings accordingly. If apartment owner disagrees with the audit findings, they
429 must file a protest within 60 days of the Notice of Proposed Audit Findings.

430
431 Once the audit becomes final, the contract auditor, in conjunction with the City shall
432 issue the “Notice of Final Audit Findings.” If no protest has been filed, the Notice of

433 Final Audit Findings, along with the records and analysis of the audit report, shall be
434 delivered to the Property Appraiser.

435
436 The Property Appraiser shall make a determination of the findings and make the proper
437 property tax assessment to the apartment owner for the corresponding tax year.

438 **12. Audit Protest**

439 The apartment owner shall, within 60 days of the receipt of the Notice of Proposed Audit
440 Findings may file a written protest to the City Manager. The written protest shall state the
441 audit issues the apartment owner believes that affect the accuracy of the audit findings.
442 Within 30 days of receipt of the written protest, the City Manager shall issue a “Notice of
443 Decision (NOD).” If the apartment owner still disagrees with the NOD, they may file a legal
444 action as they deem appropriate.

445 **13. Non Compliance**

446 If the development does not comply with the Act for 30 years, then the City will consider
447 affordable housing units non-conforming uses and be subject to regulations below.

448
449 a) In the event that a property loses its qualification for affordability due to a violation of the
450 restrictive covenant, the city may enforce additional design regulations, landscaping
451 requirements, and enhanced amenities to ensure compatibility with surrounding uses.

452
453 b) Should construction on the affordable housing not commence within one year of the
454 issuance of the building permit, the property will be subject to entitlements permitted under
455 its zoning without the advantages provided by the preemptive provisions of F.S.166.04151.

456
457 c) Breaches of the 30-year commitments will incur fines of no less than \$5,000.00 per day for
458 each violation identified in the annual audit. The fine will apply for each day the annual audit
459 is not received by the city after March 1st of each year. The agreement includes an affidavit
460 confirming that such fines will constitute a lien on the property if not settled within 60 days
461 of the city's receipt of the audit by March 1st of each year. Furthermore, there is an
462 agreement to reimburse the city for any legal expenses incurred in enforcing these provisions.



**City Council Meeting
City of DeBary
AGENDA ITEM**

Subject: 670 Bernasek Drive Drainage Improvement Project	Attachments: <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other
From: City Manager, Carmen Rosamonda	
Meeting Hearing Date April 3, 2024	

REQUEST

City Manager is requesting City Council to approve a proposal from Dale Beasley Construction, Inc., for Stormwater Construction Services for the 670 Bernasek Drive Drainage Improvement Project.

PURPOSE

The purpose of the project is to improve the existing drainage system of Bernasek Drive to prevent severe erosion caused by stormwater runoff from the City’s right of way.

CONSIDERATIONS

The eastern end of Bernasek Drive in the Summerhaven subdivision includes a 20’-0 drainage easement between the residences at 670 Bernasek Drive and 665 Bernasek Drive. As originally constructed, the majority of stormwater runoff from the right of way of Bernasek Drive is directed toward this drainage easement with a grassed swale that conveys the runoff to an FDOT retention area along Interstate 4. The drainage easement is dedicated to the City of DeBary for maintenance of the stormwater system.

Hurricane Ian with approximately 15” of rain caused severe erosion of the grassed swale within the drainage easement. The erosion also caused damage to the septic system and drain field of the residence at 670 Bernasek Drive. The residents at 670 Bernasek Drive, Mr. and Mrs. Joslyn, have expressed their concerns to the City for reoccurrence of the erosion and have requested the City to improve the drainage system to prevent further damage from severe rain events.

City Engineer Richard Villasenor, P.E. and Staff developed construction plans and specifications for the drainage improvements to address the erosion at 670 Bernasek Drive. Kevin Hare of KHARE Construction Services, Inc. prepared proposal documents and request pricing for the project from Dale Beasley Construction Inc. under its Piggyback Agreement with the City of DeBary.

Dale Beasley Construction, Inc. is under a Continuing Contract with the City of Winter Garden, Florida for Stormwater Construction Services. The City of Winter Garden Continuing Contract is suitable for a Work Authorization by the City of DeBary under the January 13, 2022 Piggyback Agreement with Dale Beasley Construction, Inc. Staff has negotiated with Dale Beasley Construction, Inc. to develop the proposal for the 670 Bernasek Drive project that is before City Council today. Pricing for the project as received from Dale Beasley Construction, Inc. is \$42,625.18.

Dale Beasley Construction, Inc. has confirmed that the project will require approximately 60 days for the manufacture and delivery of the concrete structures and approximately 20 calendar days to complete the project after mobilization.

KHARE Construction Services, LLC, Task Order 0324-02 is attached for City Council approval. The purpose of Task Order 0324-02 is to establish a budget for Construction Management and Inspection Services for the 670 Bernasek Drive project. The proposed budget amount is not to exceed \$6,380.00. All Work is invoiced on an hourly basis at the direction of the City Manager. Construction management and inspection of the project is required to administer the Construction Contract and recommend payment to the Contractor.

COST/FUNDING

Funding for the project is budgeted from the Stormwater Fund Reserves.

RECOMMENDATION

It is recommended that the City Council: accept the proposal from Dale Beasley Construction, Inc. in the amount of \$42,625.18 and approve a Work Authorization for construction of the 670 Bernasek Drive Drainage Improvements project. Recommendation to include a Contingency Budget of 10% or \$4,262.52 to be included for the total budgeted amount of \$46,887.70.

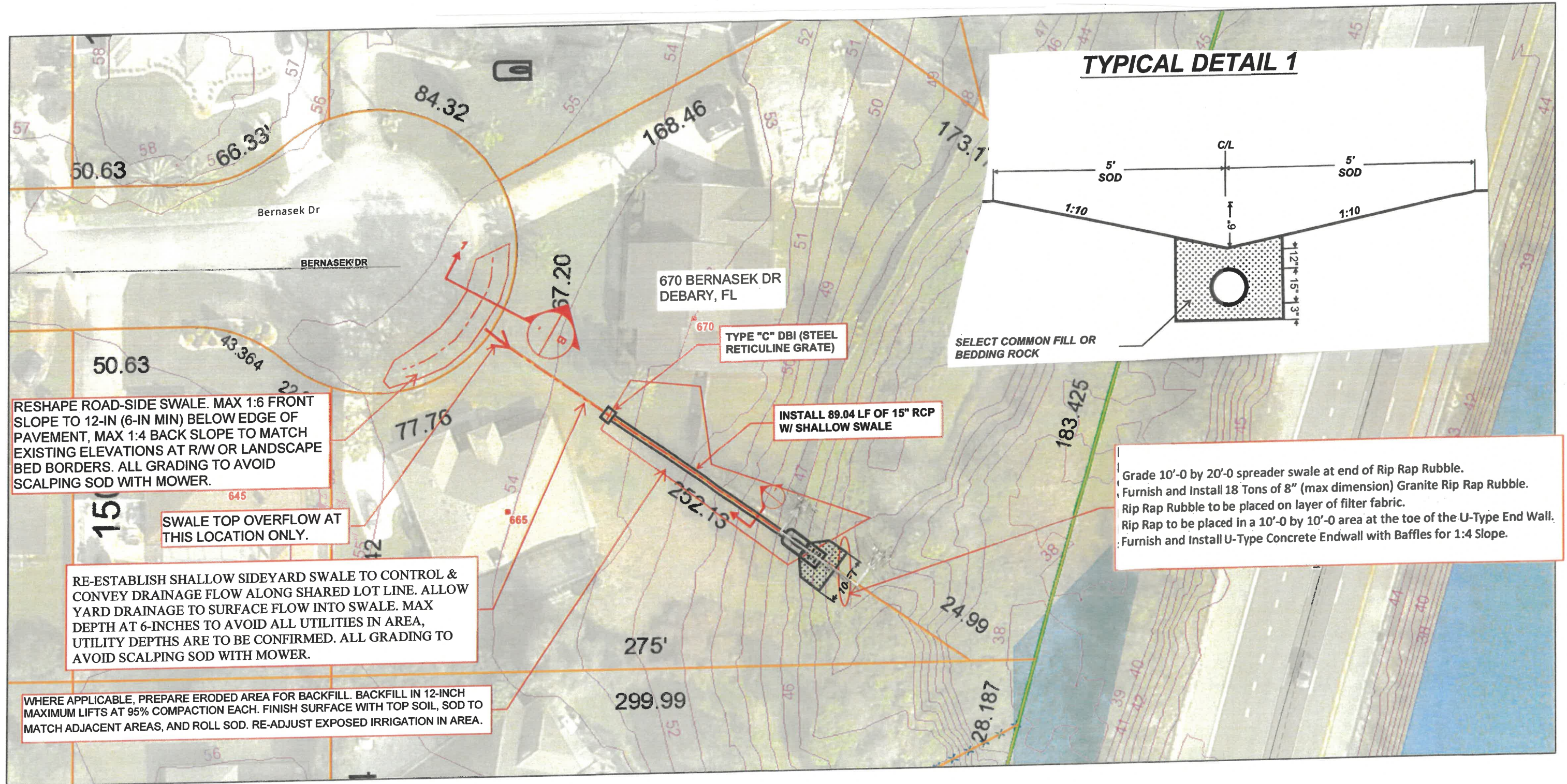
It is recommended that the City Council: approve Work Order No. 0324-02 to KHARE Construction Services, LLC for Construction Management and Inspections Services as related to the 670 Bernasek Drive Drainage Improvement Project for the amount of \$6,380.00.

IMPLEMENTATION

The project will require approximately 60 days to manufacture and deliver the materials and 20 calendar days for the construction of the project.

ATTACHMENTS

Site Location Map
Construction Plan
Dale Beasley Construction, Inc. – January 26, 2024 Proposal
KHARE Memorandum – March 20, 2024 – Scope of Services
Work Order 0324-02 - KHARE

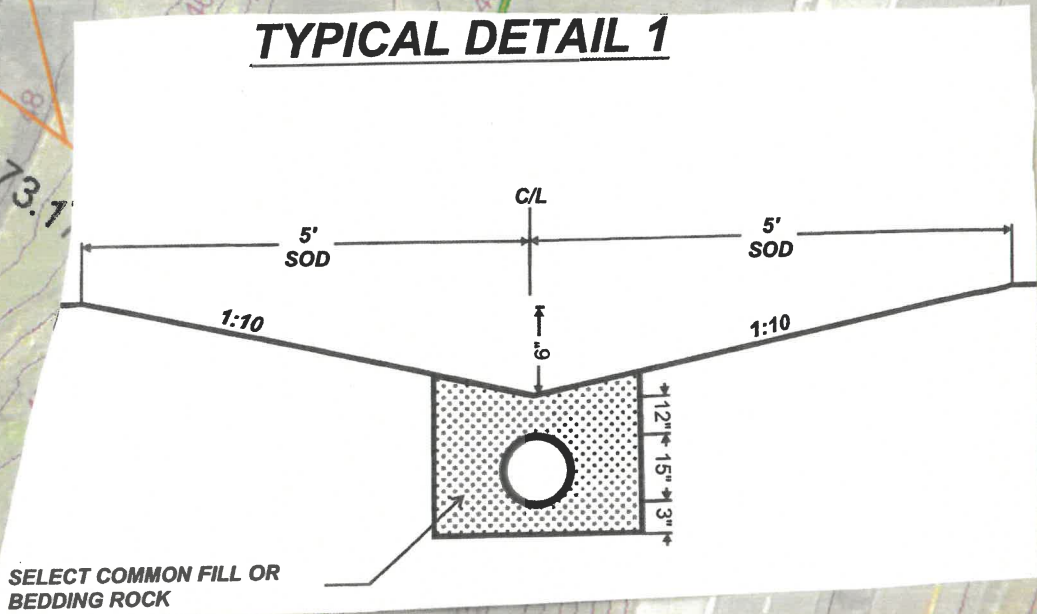


RESHAPE ROAD-SIDE SWALE. MAX 1:6 FRONT SLOPE TO 12-IN (6-IN MIN) BELOW EDGE OF PAVEMENT, MAX 1:4 BACK SLOPE TO MATCH EXISTING ELEVATIONS AT R/W OR LANDSCAPE BED BORDERS. ALL GRADING TO AVOID SCALPING SOD WITH MOWER.

SWALE TOP OVERFLOW AT THIS LOCATION ONLY.

RE-ESTABLISH SHALLOW SIDEYARD SWALE TO CONTROL & CONVEY DRAINAGE FLOW ALONG SHARED LOT LINE. ALLOW YARD DRAINAGE TO SURFACE FLOW INTO SWALE. MAX DEPTH AT 6-INCHES TO AVOID ALL UTILITIES IN AREA, UTILITY DEPTHS ARE TO BE CONFIRMED. ALL GRADING TO AVOID SCALPING SOD WITH MOWER.

WHERE APPLICABLE, PREPARE ERODED AREA FOR BACKFILL. BACKFILL IN 12-INCH MAXIMUM LIFTS AT 95% COMPACTION EACH. FINISH SURFACE WITH TOP SOIL, SOD TO MATCH ADJACENT AREAS, AND ROLL SOD. RE-ADJUST EXPOSED IRRIGATION IN AREA.



Grade 10'-0 by 20'-0 spreader swale at end of Rip Rap Rubble.
 Furnish and Install 18 Tons of 8" (max dimension) Granite Rip Rap Rubble.
 Rip Rap Rubble to be placed on layer of filter fabric.
 Rip Rap to be placed in a 10'-0 by 10'-0 area at the toe of the U-Type End Wall.
 Furnish and Install U-Type Concrete Endwall with Baffles for 1:4 Slope.

670 Bernasek Drive



City of DeBary Florida



PROJECT LOCATION
670 BERNASEK DRIVE



PROJECT MEMORANDUM

DATE: March 20, 2024

TO: Carmen Rosamonda, City Manager

FROM: Kevin Hare, Construction Services Manager

SUBJECT: 670 Bernasek Drive Drainage Improvement Project
Proposal for Construction Management Services
KHARE Construction Services, LLC - Work Order No. 0324-02

Carmen,

As you requested, KHARE Construction Services, LLC proposes to provide Construction Management Services to the City of DeBary for the 670 Bernasek Drive Drainage Improvement Project according to the Scope of Services below;

Pre-Construction Phase Services

- Correspond with Contractor to confirm pricing and work schedule.
- Prepare Agenda Item and attachments and upload to MuniCode Meetings.
- Attend City Council meeting and present recommendation of approval to City Council.
- Communications with Contractor to initiate project.
- Review submittals for construction materials and approve for construction.
- Preliminary meetings with residents of adjacent properties for notification.
- Provide information for City website for public notice of construction.

Pre-Construction Phase Services – 12 hours.

Construction Phase Services

- Work with Contractor to identify acceptable location to store materials and equipment.
- Notify residents in person about work planned and the limits of construction.
- Monitor mobilization and utility coordination as needed.
- Monitor construction operations for compliance and document.
- Inspection of installation of stormwater structures and pipe.
- Monitor restoration and coordinate with residents and Contractor.
- Coordination of resident issues related to construction.
- Monitor and inspect work in progress for recommendation of payment.
- Administer Final Acceptance and Payment Application by Contractor.
- Meet with Public Works Department for Maintenance Acceptance.

Construction Phase Services – 43 hours

Work Order 0324-02 is attached for your approval in the amount of \$6,380.00 for a total of fifty-five (55) billable hours for Construction Management Services by KHARE Construction Services, LLC, for the 670 Bernasek Drive Drainage Improvement Project.

End of Memorandum

**Exhibit B
WORK ORDER
FOR
MASTER AGREEMENT FOR PUBLIC WORK PROJECTS
CONSTRUCTION INSPECTION SERVICES
CONSTRUCTION COSTS LESS THAN \$2,000,000**

WORK ORDER NO.: KHARE – 0324-02

PROJECT: **670 Bernasek Drive Drainage Improvement Project
Construction Management and Inspection Services**

CITY: City of DeBary, Florida

COUNTY: Volusia County

CONSTRUCTION MANAGER: KHARE Construction Services, LLC.

CONSULTANT'S ADDRESS: 1457 Mt. Laurel Drive
Winter Springs, Florida 32708

Execution of the Work Order by CITY shall serve as authorization for the CONSTRUCTION MANAGER to provide for the above project, professional services as set out in the Scope of Services attached as Exhibit "A," to that certain Agreement of January 20, 2021 between the CITY and the CONSTRUCTION MANAGER and further delineated in the specifications, conditions and requirements stated in the following listed documents which are attached hereto and made a part hereof.

ATTACHMENTS:

- TIME SHEETS
- TASK ORDER
- SCOPE OF SERVICES

The CONSULTANT shall provide said services pursuant to this Work Order, its attachments and the above-referenced Agreement which is incorporated herein by reference as if it had been set out in its entirety. Whenever the Work Order conflicts with said Agreement, the Agreement shall prevail.

TIME FOR COMPLETION: The work authorized by this Work Order shall be commenced and completed as directed by the City Manager.

METHOD OF COMPENSATION:

(a) This Work Order is issued on a:

- FIXED FEE BASIS
- TIME BASIS METHOD WITH A NOT-TO-EXCEED AMOUNT
- TIME BASIS METHOD WITH A LIMITATION OF FUNDS AMOUNT

(b) If the compensation is based on a "Fixed. Fee Basis, then the CONSTRUCTION MANAGER shall perform all work required by this Work Order for the sum of _____ DOLLARS (\$)). In no event shall the CONSTRUCTION MANAGER be paid more than the Fixed Fee Amount.

(c) If the compensation is based on a "Time- Basis Method" with a Not-to-Exceed Amount, then the CONSULTANT shall perform all work required by this Work Order for a sum not to exceeds **Six Thousand Three Hundred Eighty Dollars and No Cents (\$6,380.00)**. The CONSTRUCTION MANAGEMENT AND INSPECTION compensation shall be based on the actual work required by this Work Order as directed by the City Manager.

(d) If the compensation is based on a "Time Basis Method" with a Limitation of Funds Amount, then the CONSULTANT is not authorized to exceed the limitation of Funds amount of _____ DOLLARS (\$)) without prior written approval of the CITY. Such approval, if given by the CITY, shall indicate a new Limitation of Funds amount. The CONSTRUCTION MANAGER shall advise the CITY whenever the CONSTRUCTION MANAGER has incurred expenses on this Work Order that equals or exceeds eighty percent (80%) of the Limitation of Funds amount. The City shall compensate the CONSTRUCTION MANAGER for the actual work performed under this Work Order.

Payment to the CONSTRUCTION MANAGER shall be made by the CITY in strict accordance with the payment terms of the above-referenced Agreement.

It is expressly understood by the CONSTRUCTION MANAGER that this Work Order, until executed by the CITY, does not authorize the performance of any services by the CONSTRUCTION MANAGER and that the CITY, prior to its execution of the Work Order, reserves the right to authorize a party other than the CONSTRUCTION MANAGER to perform the services called for under this Work Order if it is determined that to do so is in the best interest of the CITY.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order for the purposes stated herein.

KHARE Construction Services, LLC

By: _____

Kevin J Hare, President

Date: _____

CITY OF DEBARY, FLORIDA

By: _____

Date: _____

DALE BEASLEY CONSTRUCTION

111 E CENTRAL AVE, SUITE A
HOWIE IN THE HILLS, FL 34737

Phone 407-616-8769

670 BERNASEK DR

Proposal For:	Date	Job No.
CITY OF DEBARY	1/26/2024	
Engineer	Plan Date	Revision

ITEM	MISC ITEMS	# OF UNITS	UNIT TYPE	UNIT PRICE	TOTAL
1	1 MOBILIZATION	1	LS	1,569.09	\$1,569.09
2	3 GENERAL CONDITIONS	1	LS	1,569.09	\$1,569.09
3	N/A SURVEY & CONSTRUCTION LAYOUT	1	LS	2,976.00	\$2,976.00
4	14 MOT 10 BARRICADE @ 2.95 PER DAY	4	DY	29.50	\$118.00
5	516 STAKED SILT FENCE (NOT CUT IN)	350	LF	2.50	\$875.00
6	N/A CLEARING & GRUBBING	1	LS	3,291.06	\$3,291.06
7	521 GRADING - SWALES & OUTFALL	600	SY	3.50	\$2,100.00
8	71 TYPE C INLET	1	EA	4,485.80	\$4,485.80
9	N/A U-TYPE ENDWALL	1	LS	5,042.60	\$5,042.60
10	17 15" RCP	90	LF	75.29	\$6,776.06
11	N/A RIP RAP RUBBLE & BEDDING STONE	1	LS	7,373.48	\$7,373.48
12	509 SOD - BAHIA	95	SY	7.00	\$665.00
13	507 SOD - ST AUGUSTINE	500	SY	5.00	\$2,500.00
14	502 HAUL-OFF STRIPPINGS	72	CY	22.00	\$1,584.00
15	N/A IRRIGATION REPAIR	1	LS	1,700.00	\$1,700.00
SUB-TOTAL					\$42,625.18
TOTAL					\$42,625.18

NOTES

SITWORK

- 1) Construction staking inclusive of contract items only.
- 2) No handling or removal of Hazardous waste or substandard soil (MUCK) removal included unless specified.
- 3) No allowance has been made for the relocation of endangered plants or animals.
- 4) Construction Testing by others to be coordinated with Dale Beasley Construction.
- 5) No concrete flatwork included
- 6) Removal of large pine near outfall not included

UTILITIES/ STORM SEWER

- 1) Relocation conflicting utilities by others, if required (power poles, conduits, etc.)
- 2) Meters and boxes by others.
- 3) No Dewatering Included
- 4) No Laser Profiling of storm included or anticipated

ADMINISTRATION

- 1) This proposal is valid for 30 days from bid date.
- 2) Proposal inclusive of line items only.
- 3) No permits included, If required they can be obtained and charged by change order

APPROVED

DATE



**City Council Meeting
City of DeBary
AGENDA ITEM**

<p>Subject: Wetland Impact Mitigation for Ft. Florida Road Reconstruction from Barwick Road to railroad at SunRail.</p> <p>From: Richard Villaseñor; City Engineer</p> <p>Meeting Hearing Date April 03, 2024</p>	<p>Attachments: <input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other</p>
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REQUEST

Staff requests Council approve two wetland mitigation options for meeting St. Johns River Water Management District (SJRWMD) permit requirements as follow: Approve the use of recently acquired wetlands properties as local wetland mitigation and the alternate option to purchase the needed 0.20 credits from TM-ECON Mitigation Bank in the amount of \$24,000.

PURPOSE

To meet St. Johns River Water Management District permitting requirements for issuance of the construction approval.

CONSIDERATIONS

1. There may exist an opportunity to use recent wetland property acquisitions as local mitigation. This option is pending confirmation, process identification, and timing acceptability by the SJRWMD.
2. The standard process for wetland mitigation is offsite purchase of needed credits at a State approved mitigation bank.
3. Mitigation banks have set pricing which cannot be adjusted for purposes of a competitive procurement process (RFP). In consideration of the cost amount below the RFP threshold and the nature of fixed costs, the Quote process is most applicable.
4. Quotes from the available mitigation banks are:
 - a. TM-ECON (recommended by project environmental consultant); \$24,000;
 - b. Farmton Mitigation Bank; \$24,000;
 - c. Colbert Cameron Mitigation Bank; \$24,000;
5. Selection of either mitigation bank will be acceptable for meeting the permit requirements.

COST/FUNDING

Cost to use City wetland properties: Estimated \$30,000 (anticipated environmental assessments, boundary survey, legal exhibits, and conservation easement), but will then also benefit any other City

project that requires mitigation and as listed. This expense will come from the City's Ft. Florida Road Reconstruction budget.

OR

Cost of \$24,000 payable to TM-ECON Mitigation Bank for 0.20 credits from the City's Ft. Florida Road Reconstruction budget.

This cost will be allocated to Fund 312 – Ft. Florida Road Improvement Fund, which was approved in the FY 2023-24 budget.

RECOMMENDATION

It is recommended that the City Council:

- Approve the use of City owned wetland property(ies) for use as local mitigation which includes an expense of \$30,000 for the environmental, legal, and survey efforts to gain SJRWMD approval.

Or,

- Approve payment of \$24,000 to TM-ECON Mitigation Bank for project wetland impacts.

IMPLEMENTATION

If no construction delays are presented by using City wetland properties as confirmed by SJRWMD, the necessary steps will commence to permit that process and not purchase the Mitigation Bank credits.

If delays to construction are unavoidable by using City wetland properties, then purchase of the mitigation bank credits will be finalized for releasing the construction permit.

ATTACHMENTS

Mitigation Credit Quote – TM Econ Mitigation Bank
Exhibit – Margarita Road Properties Zoning and Wetlands Maps

TM-ECON Mitigation Bank

P.O. Box 620456
Orlando, FL 32862-0456

February 14, 2024

Ms. Jennifer Rosinski
Breedlove Dennis & Associates
jrosinski@bda-inc.com

RE: Credit Price Quote for Fort Florida Road project (SJRWMD 187941-3)

Dear Jenn:

TM Econ Mitigation Bank Phase 1-3 UMAM (SJRWMD Permit# 4-095-84310-7) is pleased to provide State UMAM Freshwater Credits for \$120,000 per credit for a total purchase price of **\$24,000** for **0.20** State UMAM credits.

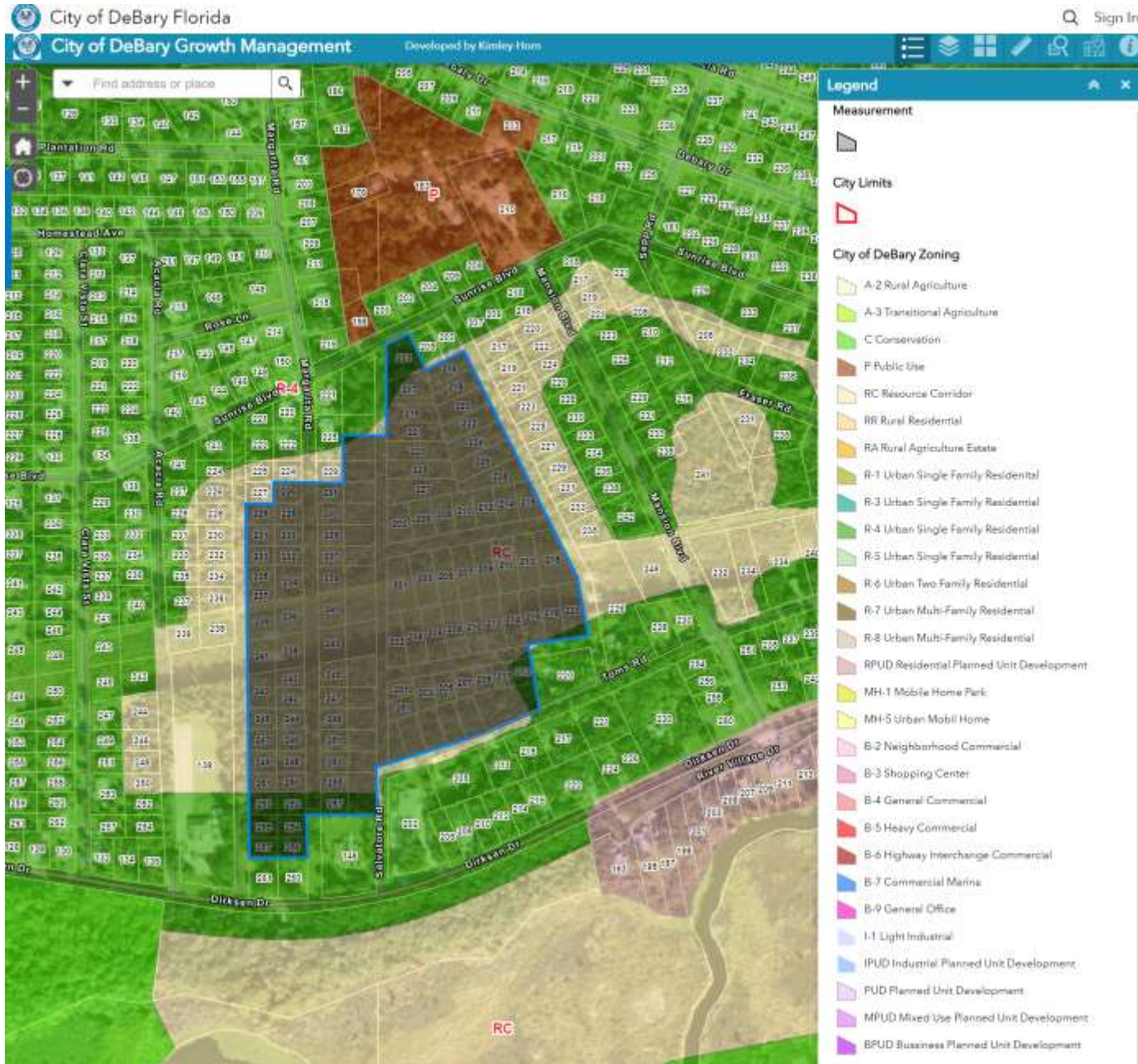
Please feel free to contact me directly with any questions at 352.874.7370 or kae@ecocreditmarketing.com.

Sincerely,



Kae Hovater,
Authorized Agent for
TM-Econ Mitigation Bank

DeBARY ZONING MAP & COUNTY WETLANDS MAP



Volusia County Property Appraiser



3/14/2023, 5:43:10 PM

Parcel	National Wetlands Inventory (USFWS)	Lake
Address	Estuarine and Marine Deepwater	Other
Streets	Estuarine and Marine Wetland	Riverine
Parcel Text	Freshwater Emergent Wetland	County Boundary
Flood Risk Zones	Freshwater Forested/Shrub Wetland	
AE	Freshwater Pond	

1:2,257

0 0.02 0.04 0.08 mi

0 0.03 0.07 0.15 km

Map Contributors: Seminole County GIS, Volusia County Property Appraiser, FDEP, OpenStreetMap, Microsoft, Esri, HERE, DeLorme, Swireid, GeoInformation Systems, Inc., METI/NASA, URS/OLPA, NPS, US Census Bureau, USDA

AcGIS Web Applet



City Council Meeting City of DeBary AGENDA ITEM

Subject: Ft. Florida Road Bridge and Spillway Improvement Agreement	Attachments: <input type="checkbox"/> Ordinance
From: Carmen Rosamonda, City Manager	<input type="checkbox"/> Resolution
Meeting Hearing Date April 3, 2024	<input checked="" type="checkbox"/> Supporting Documents/ Contracts <input type="checkbox"/> Other

REQUEST

City Manager is requesting City Council approval of the Fort Florida Road Bridge and Spillway Improvement Agreement between Florida Power & Light Company (FPL) and the City of DeBary.

PURPOSE

The purpose of this agreement is to build a new bridge upsizing the Spillway underneath to accommodate emergency situations and prevent unnecessary flooding.

CONSIDERATIONS

- In 2019, this Council was faced with renewing the Riverbend Overall Development Plan (ODP). It was learned that the Spillway size was not compatible with the size and capability of the FPL Reservoir gates and posed a possible flooding threat.
- The FPL Reservoir is an above ground structure of approximately 1100 acres of industrial wastewater known as Lake Konomac. During rain events, FPL safely manages the lake level by releasing water out of their gates on the west side of the lake into a spillway leading to the St. Johns River. This is permitted through the Florida Department of Environmental Protection (FDEP) who administers the National Pollutant Discharge Elimination System (NPDES) program.
- FPL records reveal a typical water release of approximately 400-500 cubic feet per second during emergency events. However, their Spillway gates can release up to 2200 cubic feet per second of water. The Spillway under the bridge and out the river holds up to 400 cubic feet per second.
- With potential homes being built west of Lake Konomac and adjacent to the Spillway, it became necessary to upsize the bridge and Spillway for public safety in case of devastating emergency, which may include, but not limited to a 500-year rain event, compromise in the berm, etc.
- In addition, the bridge, built by Volusia County in 1989, was being damaged by each emergency release of water out of Lake Konomac. Damage was realized to the bridge slopes protecting the foundations during Hurricanes Ian and Nicole.

- The City Manager and City Attorney have been working with FPL for nearly 4 years negotiating responsibility, reconstruction and funding, much of which was very contentious. FDEP has not renewed FPL's NPDES permit, waiting for this agreement and solution.
- After FPL failed to negotiate and secure a Legislative appropriation in the 2022 Session, Staff sought and received a Legislative appropriation of \$1 million in the 2023 Legislative session. City Council approved the Cost-Share Agreement with SJRWMD last month securing the \$1 million funding.
- This agreement between the City and FPL requires funding of \$500,000 each to be deposited in an escrow account held by Fishback Law Firm. The City will be responsible for engineering the project and constructing the bridge. Engineering is expected to be completed by February 2025 and construction be completed by June 30, 2026.
- Total project cost is estimated at \$2 million.

COST/FUNDING

The City's cost for this project is \$500,000, which is included in the approved FY 2023-24 budget.

RECOMMENDATION

It is recommended that the City Council approve of the Fort Florida Road Bridge and Spillway Improvement Agreement.

IMPLEMENTATION

The City will be initiating a RFP for engineering services as soon as possible.

ATTACHMENTS

Fort Florida Road Bridge and Spillway Improvement Agreement
Cost-Share Agreement with SJRWMD

AGREEMENT

between

CITY OF DEBARY, FLORIDA

and

FLORIDA POWER & LIGHT COMPANY

regarding

**FORT FLORIDA ROAD BRIDGE AND SPILLWAY
IMPROVEMENTS**

Approved by the City of DeBary
City Council

_____, 2024

Approved by the Florida Power &
Light Company

March 21st _____, 2024

AGREEMENT
between
CITY OF DEBARY, FLORIDA
and
FLORIDA POWER & LIGHT COMPANY
regarding
FORT FLORIDA ROAD BRIDGE AND SPILLWAY IMPROVEMENTS

THIS AGREEMENT (“Agreement”) is made and entered into by and between the **City of DeBary, Florida**, a municipal corporation created and existing under the laws of the State of Florida whose principal address is 16 Colomba Rd, DeBary, FL 32713 (the “City”), and the **Florida Power & Light Company**, a Florida Corporation whose principal address is 700 Universe Blvd, Juno Beach, FL 33408 (“FP&L”). The City and FP&L each may be referred to herein as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, the City has the governmental, corporate, and proprietary authority pursuant to Section 166.021, Florida Statutes, to enter into contractual agreements with private entities for a valid municipal purpose; and

WHEREAS, FP&L owns and operates the Sanford Power Plant, a 2,232 MW power plant whose principal address is 288 Barwick Road, DeBary, FL 32713 and which is located entirely within the jurisdictional boundaries of the City of DeBary; and

WHEREAS, the Sanford Power Plant uses water drawn from Lake Konomac, an 1,100 acre recirculating cooling water impoundment located on the Sanford Power Plant property; and

WHEREAS, Lake Konomac relies on an emergency cooling pond spillway, which consists of Outfall D-006, culverts under Fort Florida Road, and an approximately one-quarter mile long drainage canal and improvements that allow the conveyance and discharge into the St.

Johns River of stormwater and effluent from Lake Konomac, which is further described in Section 2b as collectively the “Spillway” ; and

WHEREAS, Fort Florida Road is a dedicated public right-of-way owned and maintained by the City which runs generally along the westerly perimeter of Lake Konomac; and

WHEREAS, the Spillway crosses under Fort Florida Road approximately 150 feet downstream from the weir located within Outfall D-006; and

WHEREAS, in order to ensure the safety of persons using Fort Florida Road, the City wishes to build a new Bridge, as further described in Section 2a, and that portion of the Spillway required to support the Bridge to allow stormwater and effluent flow up to 1,600 cubic feet per second and implement certain drainage improvements in the locations as described and specified in sections 2 and 5 below and on the attached **Exhibit “A”** (the foregoing is collectively referred to as the “Bridge Construction and Drainage Improvements”); and

WHEREAS, the material specifications and estimated construction costs of the Bridge Construction and Drainage Improvements are set forth on the attached **Exhibit “B”** (in this Agreement referred to as the “Construction Specifications and Estimated Costs”); and

WHEREAS, the City and FP&L are seeking an appropriation to fund the cost of the Bridge Construction and Drainage Improvements; and

WHEREAS, the City and FP&L desire to complete all surveying, geotechnical, design, engineering, and permitting work within six (6) months of executing this Agreement; and

WHEREAS, the City and FP&L desire to have the City enter into a construction contract for the Bridge Construction and Drainage Improvements within three (3) months of completing all surveying, geotechnical, design, engineering, and permitting work; and

WHEREAS, the surveying, geotechnical, design, engineering, permitting, construction, and completion of the Bridge Construction and Drainage Improvements collectively constitute the “Project,” which the Parties estimate will cost approximately \$2,000,000.00; and

WHEREAS, FP&L intends to contribute up to a maximum of \$500,000 toward the completion of the Project, regardless of the final estimate or cost of the Project; and

WHEREAS, the City and FP&L desire to have the entirety of the Project completed within twelve (12) months of entering into the construction contract, if practicable; and

WHEREAS, all aspects of the Project will be carried out by the City in accordance with the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and form a material part of this Agreement upon which the Parties have relied.

2. **Definitions.** The following terms as used herein shall have the following meanings ascribed to them unless specifically stated otherwise.

- a. *“Bridge”* means the structure supporting Fort Florida Road where the Spillway crosses under Fort Florida Road. The term does not include any portion of the *“Spillway”* as defined herein. The term may be used to refer to the bridge as it exists currently or the bridge to be built pursuant to the terms of this Agreement.
- b. *“Spillway”* means that area and the improvements described in the following sentence that support and are intended to support the flow of water from Surface Water Discharge D-006 to the St. John’s River, along the route more particularly described on the attached **Exhibit “A”**. The term includes all areas, equipment, improvements, and infrastructure that is required or, in fact does, accommodate Surface Water Discharge D-006 stormwater and effluent flow to the St. John’s River along the route shown on **Exhibit “A”**.
- c. *“Surface Water Discharge D-006”* means the mechanical gates and weirs used to release water from Lake Konomac into the Spillway.

3. Effectiveness Contingent on Funding. This Agreement shall not become effective unless and until the St. Johns River Water Management District or other state agency (“State”) appropriates the amount of \$1,000,000.00 or more to be applied toward the cost of carrying out the Project (“Appropriation”). If the State does not appropriate \$1,000,000.00 or more to this Project, this Agreement shall expire and neither Party shall be bound by this Agreement unless the Parties agree in writing to extend the term of this Agreement. If an appropriation of less than \$1,000,000.00 is obtained, the Parties may mutually agree in writing to waive this condition.

4. Disbursement and Disposition of Funds. The Project shall be paid for using the funds received from the State and from the City and FP&L. FP&L and the City shall each place their portion of funds for the Project into escrow (the “Escrow Account”) with the Fishback Dominick law firm pursuant to provisions of that certain Escrow Agreement in the form attached hereto as **Exhibit “C”** which the Parties shall execute and deliver to one another and the Escrow Agent upon the Effective Date. The City shall pay the invoices for the Project from the funds in the Escrow Account if the Appropriation has been deposited into the Escrow Account or ½ from the funds in the Escrow Account and ½ through the State Appropriation Contract defined in Section 6.2 below. Funds held in the Escrow Account shall be disbursed from the Escrow Account in accordance with this Agreement and Escrow Agreement.

5. Scope of the Project. Without limiting the extent and particulars, the Project includes construction and installation of a Triple 10’ x 7’ Concrete Box Culvert bridge and replacement roadway to span the Spillway to support the passage of motor vehicles along Fort Florida Road, and which will accommodate stormwater and effluent discharges from Lake Konomac, through the City’s right-of-way at the Spillway crossing under Fort Florida Road, and

into the existing drainage canal located to the west of the City's right-of-way as graphically depicted on the Conceptual Improvement Plans attached hereto as **Exhibit "A."** The Project and Spillway modifications shall be consistent with the intent and requirements of this Agreement such that the purposes for the Project and the Spillway shall be achieved.

6. City Project Obligations. The City shall provide the following associated with the Project:

6.1. The City waives all City permitting fees, right of way utilization fees, and all other review and permitting fees for and in any way related to the Project.

6.2. The City shall enter into a fiscal year 2023/2024 appropriation contract ("State Appropriation Contract") with the State for receipt of the allocated funds for the Project. The State may oversee the Project, and, as required by the terms of the contract with the State, the City shall coordinate with the State to ensure compliance with State oversight.

6.3. Design Services, Engineering Work, and Construction Management Services. The City shall be the lead for design, engineering, permitting, and construction of the Project. The City shall carry out all surveying, geotechnical, design, engineering, and permitting for the Project (collectively the "Design and Permitting Services"). Without limiting the scope of engineering, such includes any and all civil and structural and hydraulic engineering for the Project. Without limiting the scope of permitting, this permitting includes obtaining any and all necessary governmental permits and approvals (collectively "Permits") for the Project. The City shall submit design plans, technical specifications, and calculations to FP&L for peer-review at submittal milestones 30%, 60%, 90%, and Final bid deliverables. FP&L shall provide feedback and comments to the

City within twenty (20) days of FP&L's receipt of the 30%, 60%, 90%, and Final bid deliverables. Surveying services includes, without limitation, topographic surveying, surveying of existing utilities, and any related surveying and surveying consultation work for the Project.

7. FP&L Obligations and Funding. FP&L shall perform all work and maintenance necessary to provide and maintain proper water flow through the Spillway and a connection between the upstream and downstream portions of the culverts and the rest of the Spillway. This includes the structural and non-structural work and maintenance of the Bridge and Spillway that are only to accommodate water discharge from Lake Konomac ("FP&L Project"). Structural and non-structural work and maintenance related only to traffic, both vehicular and pedestrian, are to be performed by the City. FP&L shall be responsible for the FP&L Project at FP&L's sole cost and expense and no portion of the \$2,000,000 or other monies dedicated or allocated to the Project shall be used therefore. FP&L shall tailor all work related to the FP&L Project to allow, facilitate, and be consistent with the Project. FP&L's Project will be completed as necessary to ensure proper Spillway function.

8. Duty to Coordinate. FP&L shall coordinate with the City on all matters relating to the Project, FP&L Project, and Overall Project and FP&L shall not unreasonably delay or withhold approval on matters relating to the Project and Overall Project.

9. Mutual Project Obligations. On or before 30 days of the City entering into the State Appropriation Contract, the City and FP&L shall each pay to the Escrow Agent \$500,000.00.

10. Geotechnical, Surveying, Engineering, and Construction Contractor Selection Process. The City shall select the consultants and contractors for all work related to the Project. The City may self-perform surveying, design, and construction documents in accordance with SAI

Engineering recommendations. The City shall prepare and process a request for proposals for each aspect of the Project that is required by law to be competitively bid in accordance with the City's responsibilities described in this Agreement. The City shall review each bid and present to FP&L the City's selection and proposed contract for of the work for the Project which is required to be bid. Within fifteen (15) calendar days of the City's submission to FP&L of each proposed contract, FP&L either shall approve such contract or proposal or provide specific suggested revisions that would make the contract or proposal acceptable to FP&L, failing which, the submitted contract or proposal will be deemed as being approved by FP&L. If any revisions proposed by FP&L are not acceptable to the City, the City shall advise FP&L, and FP&L shall either approve the contract or proposal without the suggested revision(s) or be solely responsible for any additional costs related to FP&L's proposed revision(s) that are not acceptable to the City. City shall complete the preparation, advertising, processing, bidding, and selection requirements of this Section.

11. Permitting (SJRWMD). The City will prepare application documentation for the Project to the St. John's River Water Management District ("SJRWMD") and/or the Florida Department of Environmental Protection ("FDEP"). The City will apply for necessary and/or appropriate permits to achieve the work for the Project and FP&L shall apply to the relevant agencies for the work for the FP&L Project and copy the City with each application, submittal, correspondence, and responses from the agencies. The City and FP&L shall each promptly prepare, submit, and process documentation required for the respective projects.

Timeframes described in this Agreement are contingent on SJRWMD and/or FDEP permit approvals, and timeline benchmarks will be adjusted accordingly. Submittal to SJRWMD and/or FDEP for permit approvals will toll the time provided in this Agreement for performance until such permit or permits are approved.

12. Cost Sharing. The total cost for the Project is estimated to be approximately \$2,000,000.00 (“Project Cost”) as set forth on the Conceptual Improvement Plans attached hereto as **Exhibit “A”** to this Agreement. FP&L’s portion of the Project cost shall, at no point, exceed \$500,000. Before commencement of the permitting and construction portion of the Project, an updated cost estimate for the engineering and construction portion of the Project will be prepared for review by the City and FP&L for their respective opportunity to evaluate and potentially “value engineer” the Project. If the cost estimate for the Project, including the costs for the design, engineering, permitting, and construction exceeds \$2,000,000.00, then prior to commencement of the permitting and/or construction of the Project, the City, at its sole discretion, may decide whether or not to proceed with the Project. If the City elects to proceed with the Project, the City shall incur all additional costs above the \$2,000,000 required to complete the project. Specifically, the City shall incur all costs over the Appropriation plus the \$500,000 from the City and the \$500,000 from FP&L.

Once permitting and construction of the Project commences neither Party shall have the right to recover any portion of its \$500,000.00 payment placed in the Escrow Account unless both Parties agree in writing.

For the work contemplated by this Agreement, the City shall pay each invoice as provided in Section 4. When each invoice is received, the City and FP&L shall deliver to the other an itemization and documentation for the time, fees, and costs incurred for the Project (“Documentation”). Within ten (10) days of receipt of Documentation, the City and FP&L shall notify the other, in writing, of any objection, questions, or concerns with the Documentation. Within twenty (20) days following receipt of written notice of objection, the Party receiving such notice shall correct any error in the documentation and provide satisfactory and supplemental

materials or explanations to the objecting Party. Within thirty (30) days of receiving the monthly itemization and documentation, the Escrow Agent and the State if the Appropriation has not been deposited into the Escrow Account, shall disburse the amount required to the City. The City reserves the right to reduce the scope of work and re-solicit the Project to lower the cost of the Project.

If, upon completion of the Project, the fees, costs, and expenses related to the Project are less than the remaining funds held in the Escrow Account, the remaining funds shall be disbursed proportionally to the percentage contributed by each Party to the Parties within ninety (90) days of completion of the Project. If the City elects not to proceed with the Project at any time, the remaining funds in the Escrow Account shall be disbursed in a similar manner.

13. Construction of Project. The Parties shall have the Project, FP&L Project, and Overall Project constructed in a good and workmanlike manner in accordance with all applicable laws, rules, and regulations and pursuant to those plans and specifications acceptable to the City and FP&L. Unless provided otherwise by the State Appropriation Contract, the Project and FP&L Project will commence within thirty (30) days after the City enters into the appropriation contract with the State and all funds required to be deposited into the Escrow Account have been so deposited.

14. Inspections. With advance notice from the inspecting Party, FP&L may inspect the bridge construction prior to and during the duration of the Project and the City may inspect the FP&L Project construction at any time. No inspections shall interfere with the construction of the bridge or the day-to-day activities of the City's personnel, including the City's or contractors and subcontractors nor with FP&L's Project or operations. No construction shall interfere with FP&L's ability to discharge water during hurricane season. Should FP&L discharge or release of water

prior to completion of the Project cause any damage to the Project, FP&L shall indemnify and hold harmless the City for the cost to repair such damage.

15. Other Conditions. As a condition of FP&L and the City using their respective political capital in obtaining funding from the State for the Project, the Parties agree to the following terms and conditions effective upon the City's receipt of at least \$2,000,000.00 for the Project:

15.1. Non-Interference with Future Permitting. The City shall not interfere with or object to any NPDES or ERP permit or exemption currently held by FP&L or any NPDES or ERP permit or exemption application filed by FP&L with respect to the rate of release from Lake Konomac authorized by said permits provided such is less than or equal to 1,600 cubic feet per second and the Overall Project is completed as agreed by the Parties. Further, the City's agreement to not interfere or object is limited to permit conditions related to rate of release and is contingent on FP&L maintaining the Spillway at approximately the same release capacity and in approximately the same configuration. The City retains the right to object to any permit, exemption, or application that seeks to alter or modify the Spillway. The City also retains the right to object to any permit or application condition unrelated to rate of flow and/or water quality.

15.2. Easements. Contingent upon FP&L granting the City an easement to perform construction on the upstream property that FP&L holds in fee simple, the City shall grant a perpetual drainage easement in FP&L's favor through the City's right-of-way for drainage purposes. Such easement shall limit the maximum rate of flow to 1,600 cubic feet per second. The easement shall be granted at the time FP&L grants the City an

easement to perform construction and upon the Escrow Agent's receipt of the \$500,000.00 deposit from FP&L. A draft of the easement to be issued is attached as **Exhibit "D"**.

15.3. Notice of Construction. The City shall consult with FP&L dam safety personnel at least 24 hours prior to any construction or maintenance of the Bridge.

15.4. Rate of Future Release. FP&L shall limit all releases to less than 1,600 cubic feet per second as measured in the narrowest point of culverts or as otherwise required by hydraulic engineering standards.

15.5. Notice of Release. FP&L is obligated to provide DEP notice of any release from, off, and into the Spillway within 48 hours after the release. FP&L shall provide a courtesy copy to the City of such notice. From the date of this Agreement, FP&L shall keep a log of all releases from, of, and into the Spillway and provide a copy of the log to the City upon the City's request.

15.6 Hold Harmless. FP&L shall indemnify and hold harmless the City for any and all damages arising from or related to any release in excess of 1,600 cubic feet per second including but not limited to damage to properties located downstream and to the west of the Fort Florida Road Bridge. This Section 15.6 survives completion of the Project and expiration of this Agreement.

15.7. Upstream/Downstream Improvements. If 1) the Project impacts the upstream or downstream portions of FP&L's spillway or canal in such a way that requires modification of such upstream or downstream portions to accommodate the Project or 2) any government agency requires changes and/or upgrades to upstream or downstream portions of the Spillway and canal as a result of the Project, then all changes, upgrades, and modifications to the upstream or downstream portion of the Spillway or canal would be

FP&L's responsibility, at FP&L's sole cost, and such cost shall not be included in either the estimated or actual cost of the Project. Further, FP&L shall make improvements to the portion of the Spillway lying to the east of the Bridge and on FP&L's property necessary to ensure releases of 1,600 cubic feet per second shall not damage the Bridge.

15.8 Maintenance of Bridge. The City shall be responsible for the general maintenance and upkeep of the bridge; however, FP&L shall be responsible for any damage to or erosion of the culverts or bridge caused by either FP&L or by any discharge or release from Lake Konomac at FP&L's sole cost.

16. Easement to City. In exchange for the easement from the City referenced in Section 15.2 herein, FP&L shall grant a perpetual construction easement in the City's favor through the upstream portion of the Spillway that FP&L owns. The easement in the City's favor shall grant the City the right to enter FP&L's upstream portion of the Spillway for the purposes of constructing, maintaining, and repairing the Bridge and all other work associated with the Project. Further, FP&L does not object to the City obtaining any easement, grant, right, or permission from the underlying fee simple owner for construction within the downstream portion of the Spillway or to the City performing construction within the Spillway, provided the City does not interfere with FP&L's rights within such downstream portion of the Spillway.

17. Miscellaneous.

17.1. Validity. The City and FP&L each represent, warrant, and covenant to and with the other its respective authority and power under Florida law to enter into this Agreement, acknowledges the validity and enforceability of this Agreement, and waive any future right of defense based on claim of illegality, invalidity or unenforceability of

any nature. Also, the City and FP&L each hereby represent, warrant, and covenant to and with the other that this Agreement has been validly approved by its respective governing body, and that this Agreement constitutes a legal, valid, and binding contract enforceable against the respective Party in accordance with its terms (assuming the due authorization, execution, and delivery by the other Party).

17.2 Indemnification / Sovereign Immunity. Each Party shall indemnify, defend, and hold harmless the other Party from any third-party claims, actions, liabilities, losses, expenses, damages, fees, costs, or fines, including costs and attorney's fees at trial and appeal, (for personal injury or property damage) to the extent arising from the indemnifying Party's own acts or omissions. Regardless of the foregoing, each Party expressly retains all rights, benefits, and immunities of the doctrine of sovereign immunity, including any limited waiver of sovereign immunity as set forth in Section 768.28, Florida Statutes, and nothing in this Agreement may be interpreted or construed as requiring either Party to waive any defense of sovereign immunity or one Party to indemnify or otherwise insure the other Party for the other Party's own negligence in contravention of Section 768.28(19), Florida Statutes. Furthermore, nothing in this Agreement may inure to the benefit of any third party for the purpose of allowing any claim against either of the Parties, which claim would otherwise be barred under the doctrine of sovereign immunity or by operation of law. This section will survive the expiration and termination of this Agreement.

17.3 Ambiguities. Both Parties have been allowed equal input regarding the terms and wording of this Agreement and have had the benefit of consultation with their

respective legal counsel prior to its execution, and therefore, no language in this Agreement may be construed for or against either Party based on who drafted such.

17.4 Headings. The headings or captions of sections or subsections used in this Agreement are merely for the convenience of the Parties for reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Agreement.

17.5. Severability. If any term of this Agreement is to any extent illegal, otherwise invalid, or incapable of being enforced, such term will be excluded to the extent of such invalidity or unenforceability; and all other terms will remain in full force and effect. To the extent permitted and possible, the invalid or unenforceable term will be deemed replaced by a term that is valid and enforceable and comes closest to expressing the intention of such invalid or unenforceable term.

17.6. Governing Law; Venue; Attorney's Fees and Costs.

a. This Agreement is governed by and will be construed in accordance with laws of the State of Florida.

b. Venue for and jurisdiction over any action arising out of or related to this Agreement will be, if in state court, in the Circuit Court for the Seventh Judicial Circuit in Volusia County, Florida, or, if in federal court, in the Middle District of Florida, Orlando Division.

c. If a Party deems it necessary to take legal action to enforce any provisions of this Agreement, each Party shall bear its own attorney's fees and costs at both the trial and appellate levels.

17.7 Entire Agreement. This Agreement, together with any exhibits, constitutes the entire Agreement between the Parties regarding the subject matter of this Agreement. Any prior oral or written agreements or understandings of any kind between the Parties relating to the subject matter of this Agreement are null and void and of no further effect.

17.8. Amendments. This Agreement may be amended only by express written instrument approved by FP&L and the City Council of the City, and executed by the authorized officers of each Party.

17.9 No Waiver of Regulatory Jurisdictions. Neither this Agreement, nor any provision thereof, may be construed as a waiver of any regulatory jurisdiction of the City that exists on the Effective Date or at any other time thereafter and nothing relieves the City or FP&L from compliance with all laws, rules, and regulations of all governmental agencies with jurisdiction.

17.10 Assignment. Neither Party may sell, assign or transfer this Agreement or any interest it may have under it, without prior written approval of the other Party. All covenants, terms, conditions, and provisions of this Agreement are binding upon the Parties hereto and shall extend to and be binding upon the successors and assigns of the Parties, if such occurs.

17.11 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the City and FP&L and no rights or cause of action will accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party to this Agreement.

17.12. Notices. Any notice required to be given or otherwise given by one Party to the other Party must be in writing and will be deemed delivered when given by hand

delivery; three (3) days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail; and addressed as follows:

If to the City: Carmen Rosamonda
City Manager, City of DeBary
100 East 1st Street
Sanford, Florida 32771

With a required copy to: A. Kurt Ardaman, Esquire
Fishback Dominick
1947 Lee Road
Winter Park, FL 32789

If to FP&L:

Benjamin Pynes
Power Generation Regional Plant Manager
288 Barwick Road, DeBary, FL 32713
benjamin.pynes@fpl.com

With a copy to:
Peter Cocotos, Esq.
Law Department
Florida Power & Light
700 Universe Blvd
Juno Beach, FL 33408

In all cases, notices will be deemed delivered to a Party only upon delivery of copies to the persons indicated above in the same manner as for the Party being notified. Either Party may change its designated official or address for receipt of notice by giving notice of such change to the other Party in the manner provided in this section.

18. Insurance Requirements.

Each Party shall maintain adequate insurance coverage to protect its own interests

and obligations under this Agreement. The City shall maintain third-party insurance and FP&L shall ensure full self-insurance coverage protects its own interests and obligations.

19. Conflict of Interest.

(a) Neither Party shall engage in any action that would create a conflict of interest in the performance of its obligations pursuant to this Agreement with the other Party or that would violate or cause third parties to violate the provisions of Part III, Chapter 112, Florida Statutes (2020), as this statute may be amended from time to time, relating to ethics in government.

(b) Each Party hereby certifies that none of its officers, agents, or employees have any material interest (as defined in Section 112.312(15), Florida Statutes (2022), as this statute may be amended from time to time, as over 5%) either directly or indirectly, in the business of the other Party to be conducted here, and that no such person will have any such interest at any time during the term of this Agreement.

(c) Each Party has the continuing duty to report to the other Party any information that indicates a possible violation of this Section 19. Conflict of Interest.

20. Dispute Resolution. Disputes pursuant to this Agreement are governed by Chapter 164, Florida Statutes. If any dispute cannot be resolved under Chapter 164, Florida Statutes, it may be filed as a civil action in the Circuit Court of the Seventh Judicial Circuit of Florida, in and for Volusia County, Florida, which is the sole venue for any such civil action.

21. Public Records Law.

(a) City and FP&L acknowledge each other's obligations under Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes (2022), as this statute may be amended from time to time, to release public records to members of the public upon request. CITY and FP&L acknowledge each other is required to comply with Article 1, Section 24, Florida

Constitution and Chapter 119, Florida Statutes (2022), as this statute may be amended from time to time, in the handling of the materials created under this Agreement and that this statute controls over the terms of this Agreement.

(b) Failure to comply with this Section will be deemed a material breach of this Agreement, for which the non-breaching party may terminate this Agreement upon written notice to the breaching Party.

(c) 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 386-601-0225, EFrankton@DeBary.org, 16 Colomba Road, DeBary, Florida 32713.

(d) Each contractor or subcontractor subject to this Agreement shall comply with the following requirements:

- (i) Keep and maintain public records required by the City to perform the service.
- (ii) Upon request from the City's custodian of public records, provide the public agency 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 this chapter or as otherwise provided by law.
- (iii) 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 contract

term and following completion of the contract if the contractor does not transfer the records to the City.

- (iv) Upon completion of the contract, transfer, at no cost, to the City all public records in 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 of the contract, 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 of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

The City and FP&L shall comply with the Public Records Law requirements.

22. Effective Date. This Agreement will become effective after approval by the governing boards of each Party or person with authority on the date of execution by FP&L and the date of execution by the City, whichever date of execution is later ("Effective Date").

[Balance of this page intentionally blank; signature page continues on Page 21.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated below.

ATTEST:

Beverly Calderon

FLORIDA POWER & LIGHT
COMPANY

By: *Ben Pines*

Date: *3/21/24*

CITY OF DEBARY, FLORIDA

By: _____
Karen Chasez, Mayor

Date: _____

ATTEST:

Annette Hatch, CMC, City Clerk

EXHIBIT "A"
1 OF 6

CONCEPTUAL IMPROVEMENT PLANS FOR THE FORT FLORIDA ROAD BRIDGE REPLACEMENT

TRIPLE 10' x 7' CONCRETE BOX CULVERTS

INDEX OF PLANS

SHEET	SHEET DESCRIPTION
1	COVER SHEET
2	AERIAL MAP FOR KONOMAC CREEK
3	TOPOGRAPHIC MAP FOR KONOMAC CREEK
4	SITE PLAN FOR THE BRIDGE REPLACEMENT
5	TYPICAL SECTIONS FOR THE BRIDGE REPLACEMENT
6	HYDRAULIC CALCULATIONS FOR THE BRIDGE REPLACEMENT

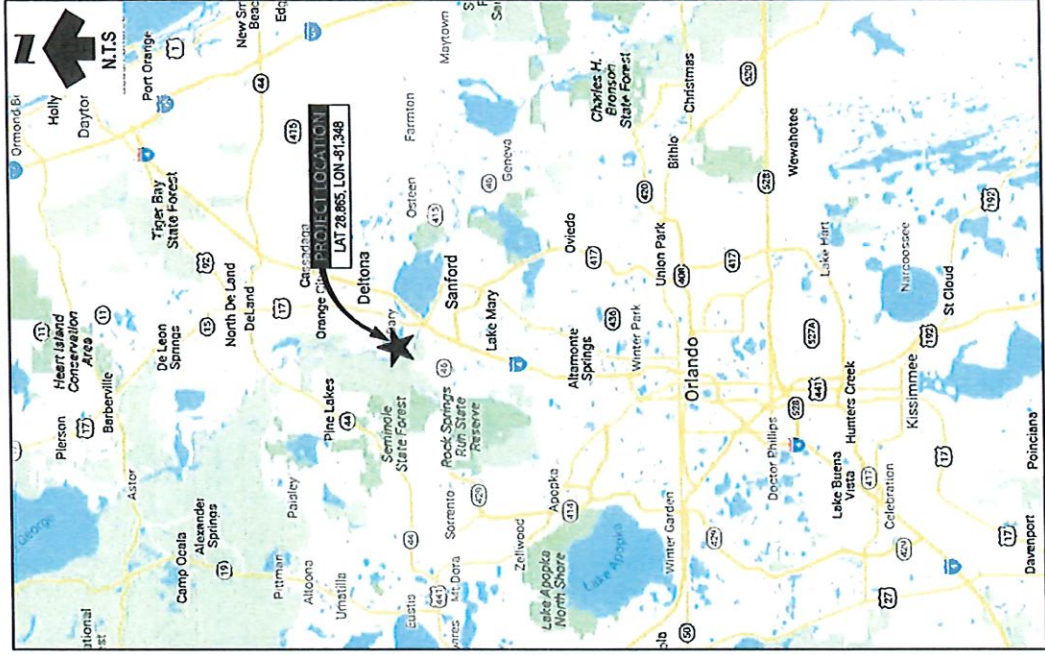
REVISIONS / SUBMITTAL SUMMARY

BY	DATE	DESCRIPTION
GAT	12/19/19	DRAFT SUBMITTAL

NOTES

- GOVERNING SPECIFICATIONS: FLORIDA DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION) AND SUPPLEMENTS THERETO IF NOTED IN THE SUPPLEMENTAL SPECIFICATIONS FOR THIS PROJECT.
- ATTENTION IS DIRECTED TO THE FACT THAT THESE PLANS MAY HAVE BEEN CHANGED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
 - 11" X 17" DRAWINGS - TO SCALE
- INFORMATION SHOWN WITHIN THESE PLANS IS REFERENCED TO THE NAVD88 VERTICAL DATUM.
- DATUM SHIFT FOR THIS PROJECT (SEE PROJECT LOCATION SUMMARY THIS SHEET) WILL BE APPLIED AS A CONSTANT VALUE FOR CONVERTING ELEVATIONS BETWEEN THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88) AND THE NATIONAL GEODETIC VERTICAL DATUM OF 1929 (NGVD29).
 - NAVD88 + 1.060' = NGVD29
 - NGVD29 - 1.060' = NAVD88

VICINITY MAP



CITY OF DEBARY
16 COLOMBA ROAD
DEBARY, FLORIDA 32713
PHONE: 386-668-2040

KAREN CHASEZ.....MAYOR
STEPHEN BACON.....COUNCIL SEAT 1
ERIKA BENFIELD.....COUNCIL SEAT 2, VICE MAYOR
PATRICIA STEVENSON.....COUNCIL SEAT 3
PHYLLIS BUTLIEN.....COUNCIL SEAT 4

CARMEN ROSAMONDA.....CITY MANAGER
ALAN WILLIAMSON.....PUBLIC WORKS DIRECTOR

ENGINEER



State of Florida
Board of Professional Engineers
Certificate of Authorization No. 27770

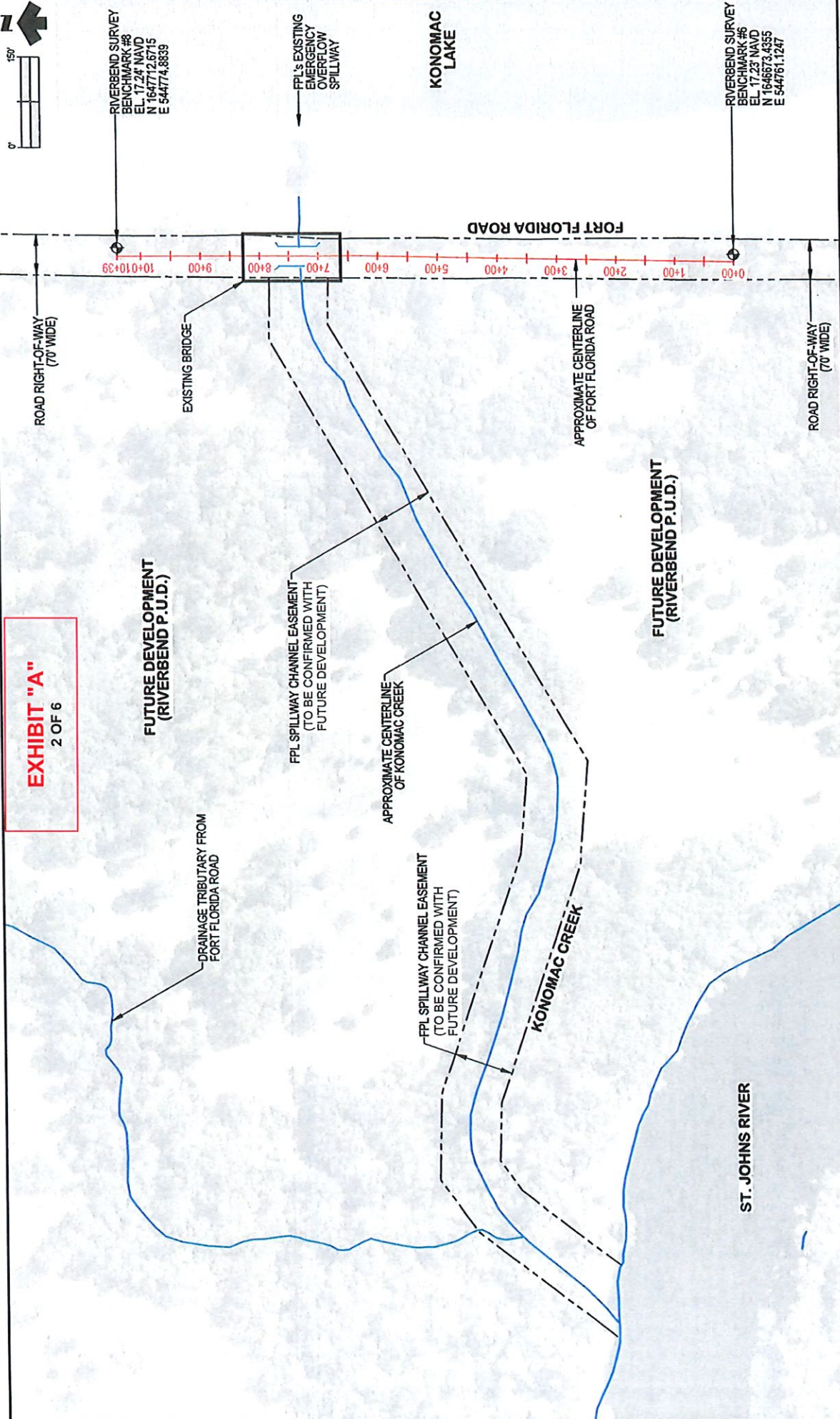


310 WEST STATE ROAD 434, SUITE 309
WINTER SPRINGS, FLORIDA 32708
PHONE: 407-992-9160
FAX: 407-358-5155

PRELIMINARY

GREGORY A. TEAGUE
FLORIDA P.E. NUMBER 47663

THIS ITEM HAS BEEN ELECTRONICALLY SIGNED AND SEALED BY GREGORY A. TEAGUE, P.E. ON xxxxx xx, 2019 USING A DIGITAL SIGNATURE. PRINTED COPIES OF THIS DOCUMENT ARE NOT CONSIDERED SIGNED AND SEALED AND THE SIGNATURE MUST BE VERIFIED ON ANY ELECTRONIC COPIES.



REVISIONS		ENGINEER OF RECORD		CONCEPTUAL IMPROVEMENT PLANS FOR THE		SHEET NO.
NO.	DATE	DESCRIPTION	DATE	DESCRIPTION	NO.	
			DECEMBER 19, 2019	FORT FLORIDA ROAD BRIDGE REPLACEMENT		2
			PRELIMINARY	AERIAL MAP FOR KONOMAC CREEK		
				City of DeBary 16 COLOMBA ROAD DEBARY, FL 32713 CARMEN ROSAMONDA PHONE: 386-668-2040		
				Pegasus Engineering 301 WEST STATE ROAD 434, SUITE 309 WINTER SPRINGS, FLORIDA 32708 CERTIFICATE OF AUTHORIZATION NO. 27770		

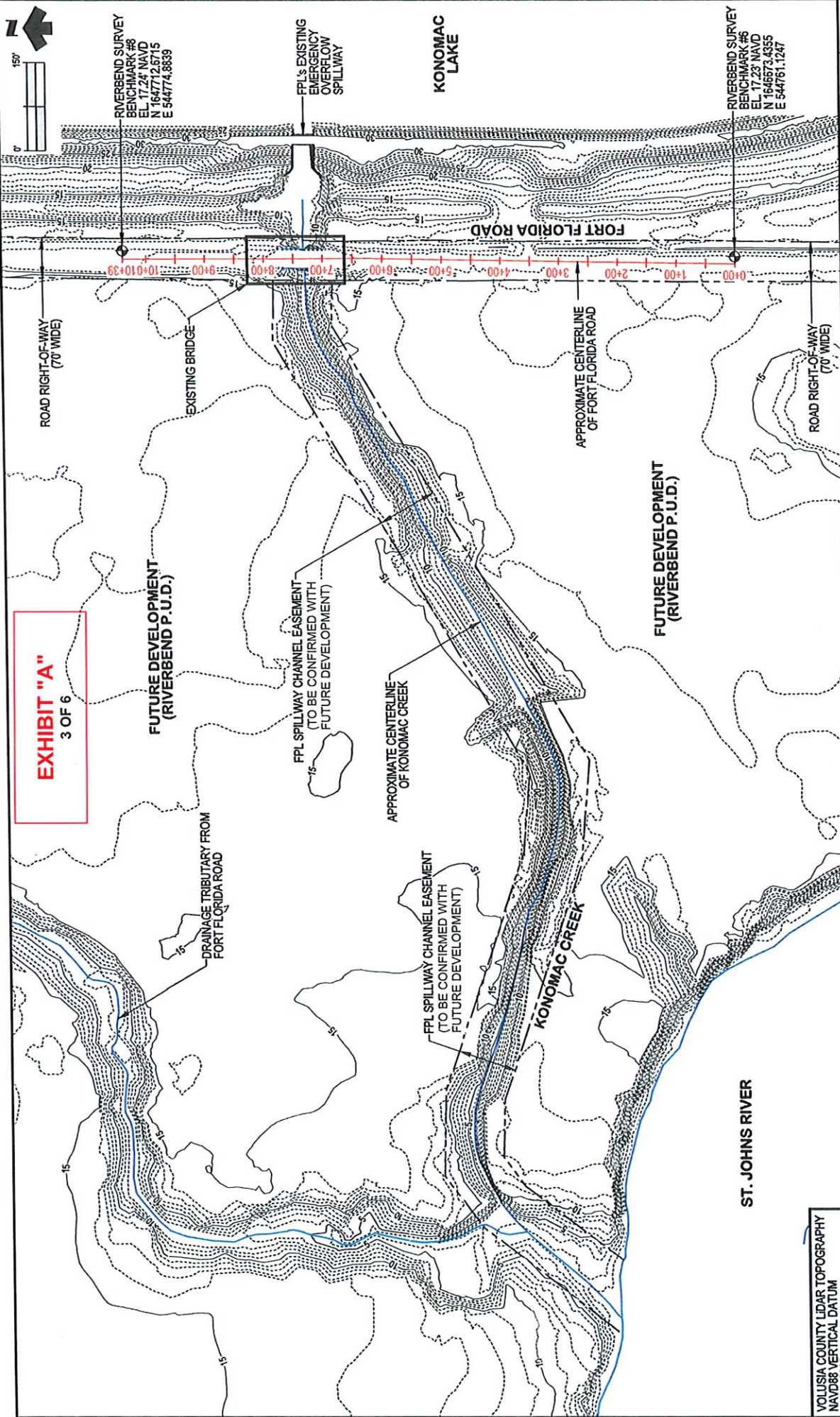


EXHIBIT "A"
3 OF 6

VOLUSIA COUNTY LIDAR TOPOGRAPHY
NAVD88 VERTICAL DATUM
APRIL 2006

REVISIONS		DESCRIPTION	SHEET NO.
NO.	DATE		
			3

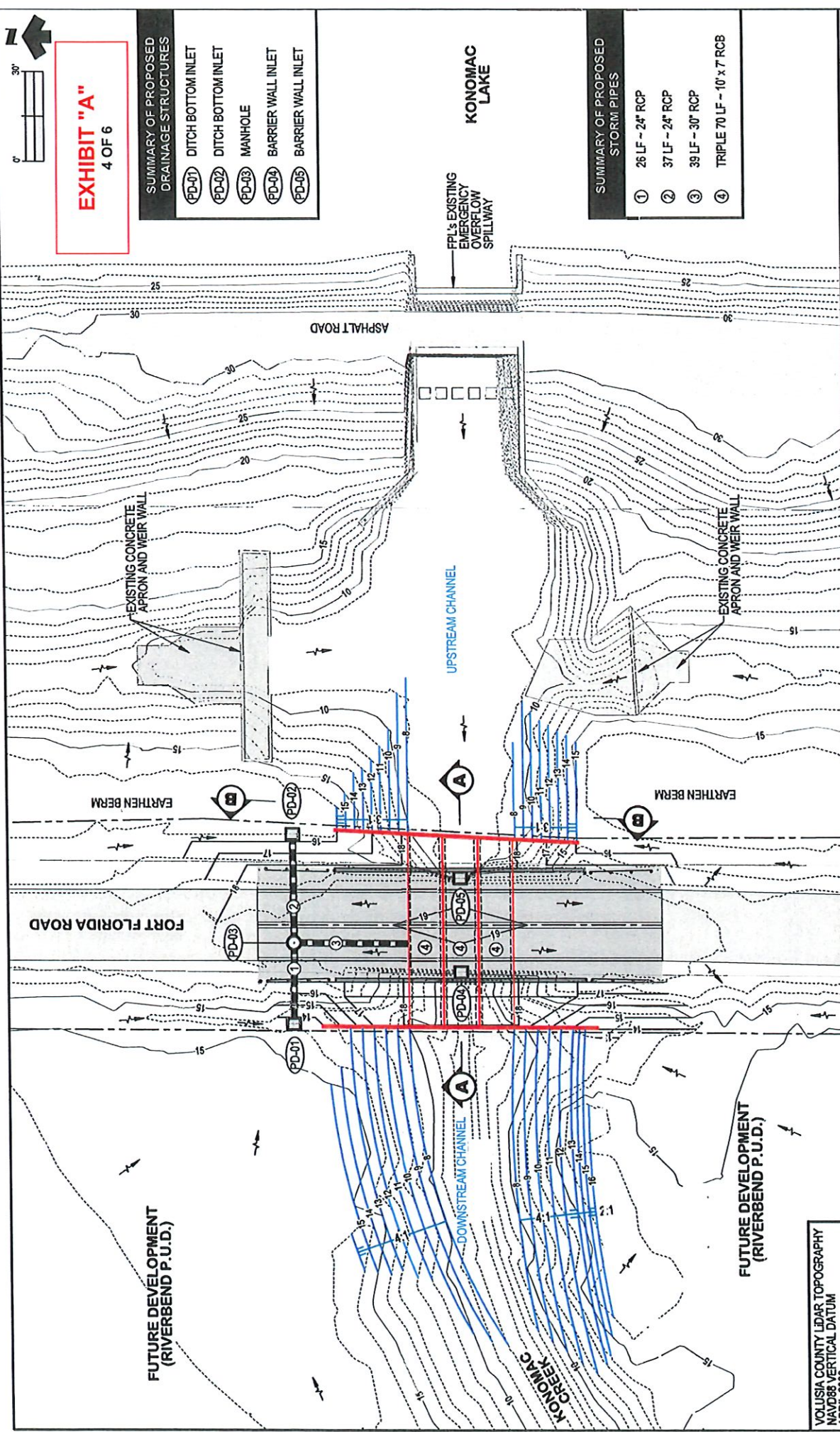
City of DeBary 16 COLOMBA ROAD DEBARY, FL 32713 CARMEN ROSAMONDA PHONE: 385-688-2040		CONCEPTUAL IMPROVEMENT PLANS FOR THE FORT FLORIDA ROAD BRIDGE REPLACEMENT
Pegasus ENGINEERING 301 WEST STATE ROAD 434, SUITE 305 WINTER SPRINGS, FLORIDA 32708 CERTIFICATE OF AUTHORIZATION NO. 47653		TOPOGRAPHIC MAP FOR KONOMAC CREEK



EXHIBIT "A"
4 OF 6

- SUMMARY OF PROPOSED DRAINAGE STRUCTURES**
- (PD-01) DITCH BOTTOM INLET
 - (PD-02) DITCH BOTTOM INLET
 - (PD-03) MANHOLE
 - (PD-04) BARRIER WALL INLET
 - (PD-05) BARRIER WALL INLET

- SUMMARY OF PROPOSED STORM PIPES**
- ① 26 LF ~ 24" RCP
 - ② 37 LF ~ 24" RCP
 - ③ 39 LF ~ 30" RCP
 - ④ TRIPLE 70 LF ~ 10" x 7' RCB



VOLUSIA COUNTY LIDAR TOPOGRAPHY
NAVD83 VERTICAL DATUM
APRIL 2006

NO.	DATE	DESCRIPTION

ENGINEER OF RECORD
DECEMBER 19, 2019
PRELIMINARY
GREGORY A. TEAGUE, P.E.
FLORIDA REGISTRATION NO. 47663

Pegasus
ENGINEERING
301 WEST STATE ROAD 424, SUITE 309
WINTER SPRINGS, FLORIDA 32708
CERTIFICATE OF AUTHORIZATION NO. 27770

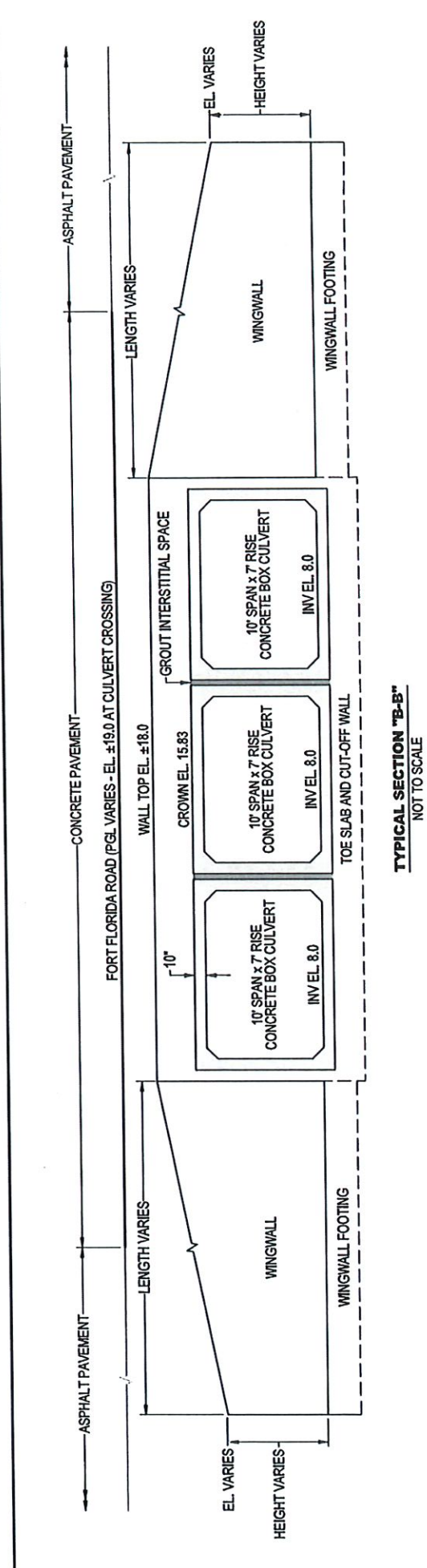
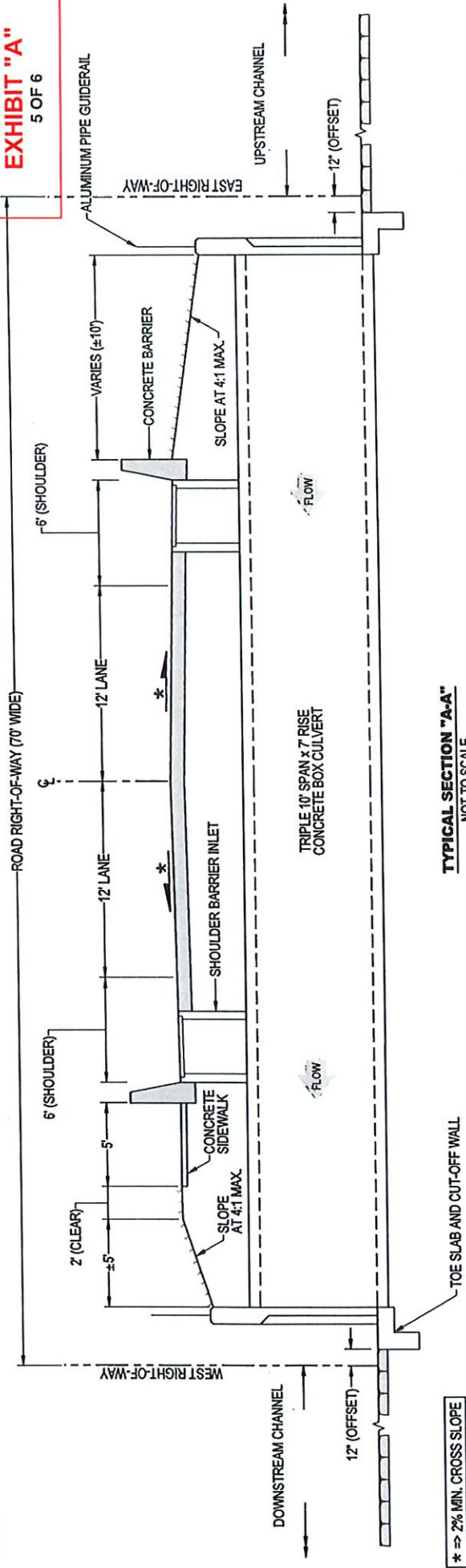
City of DeBary
16 COLOMBA ROAD
DEBARY, FL 32713
CARMEN ROSAMONDA
PHONE: 386-668-2040

CONCEPTUAL IMPROVEMENT PLANS FOR THE
FORT FLORIDA ROAD BRIDGE REPLACEMENT

SHEET NO. **4**

SITE PLAN FOR THE
BRIDGE REPLACEMENT

EXHIBIT "A"
5 OF 6



REVISIONS		ENGINEER OF RECORD	CONCEPTUAL IMPROVEMENT PLANS FOR THE FORT FLORIDA ROAD BRIDGE REPLACEMENT	
NO.	DATE	DESCRIPTION	SHEET NO.	
			5	
		DECEMBER 19, 2019	TYPICAL SECTIONS FOR THE BRIDGE REPLACEMENT	
		PROJECT: FORT FLORIDA ROAD BRIDGE REPLACEMENT		
		GREGORY A. TEAGUE, P.E.	CITY OF DEBARY CARMEN ROSAMONDA 16 COLOMBA ROAD DEBARY, FL 32713 PHONE: 386-688-2040	
		FLORIDA REGISTRATION NO. 47663		
			PEGASUS ENGINEERING 301 WEST STATE ROAD 434, SUITE 309 WINTER SPRINGS, FLORIDA 32789 CERTIFICATE OF AUTHORIZATION NO. 47663	



HY-8 CULVERT HYDRAULIC ANALYSIS PROGRAM

EXHIBIT "A"
6 OF 6

INPUT DATA - CULVERT

Site Data - Three 7x10 RCB

Site Data Option: Culvert Invert Data

Inlet Station: 0.00 ft

Inlet Elevation: 8.00 ft

Outlet Station: 70.00 ft

Outlet Elevation: 8.00 ft

Number of Barrels: 3

UPSTREAM INVERT

CULVERT LENGTH

DOWNSTREAM INVERT

THREE CULVERTS IN PARALLEL

Culvert Data Summary - Three 7x10 RCB

Barrel Shape: Concrete Box

Barrel Span: 10.00 ft

Barrel Rise: 7.00 ft

Barrel Material: Concrete

Embedment: 0.00 in

Barrel Manning's n: 0.0120

Culvert Type: Straight

Inlet Configuration: Square Edge (90°) Headwall

Inlet Depression: None

CULVERT CROSS SECTION GEOMETRY

OUTPUT DATA - CULVERT

Total Discharge (cfs)	Culvert Discharge (cfs)	Headwater Elevation (ft)	Inlet Control Depth (ft)	Outlet Control Depth (ft)	Flow Type	Normal Depth (ft)	Critical Depth (ft)	Outlet Depth (ft)	Tailwater Depth (ft)	Outlet Velocity (ft/s)	Tailwater Velocity (ft/s)
0.00	0.00	8.00	0.000	0.000	0-NF	0.000	0.000	0.000	0.000	0.000	0.000
220.00	220.00	10.06	2.058	2.068	7-H2	-1.000	1.186	1.417	1.417	5.178	4.533
440.00	440.00	11.26	3.235	3.254	7-H2	-1.000	1.883	2.113	2.113	6.942	5.231
660.00	660.00	12.26	4.211	4.257	7-H2	-1.000	2.468	2.659	2.659	8.275	6.537
880.00	880.00	13.15	5.072	5.146	7-H2	-1.000	2.990	3.123	3.123	9.393	7.156
1100.00	1100.00	13.97	5.870	5.960	7-H2	-1.000	3.469	3.533	3.533	10.378	7.968
1320.00	1320.00	14.73	6.635	6.724	7-H2	-1.000	3.918	3.974	3.974	11.231	8.105
1540.00	1540.00	15.46	7.365	7.461	7-H2	-1.000	4.342	4.342	4.342	11.924	8.488
1760.00	1760.00	16.17	8.074	8.154	7-H2	-1.000	4.746	4.746	4.746	12.502	8.831
1980.00	1980.00	16.86	8.761	8.819	7-JH2	-1.000	5.133	5.133	4.850	12.857	9.141
2200.00	2200.00	17.56	9.460	9.460	7-JH2	-1.000	5.507	5.507	5.139	13.216	9.426

MAXIMUM ALLOWABLE HEADWATER = EL. 16-FT. NAVD (APPROXIMATE ROAD OVERTOPPING ELEVATION)

MAXIMUM ALLOWABLE DISCHARGE FROM KONOMAC LAKE

ENGINEER OF RECORD

DECEMBER 19, 2019

PRELIMINARY

GREGORY A. TEAGUE, P.E.

FLORIDA REGISTRATION NO. 47683

REVISIONS

DESCRIPTION

NO.

DATE

INPUT DATA - CHANNEL

Tailwater Channel Data - Fort Florida Road

Tailwater Channel Option: Trapezoidal Channel

Bottom Width: 30.00 ft

Side Slope (H:V): 3.00 (-:1)

Channel Slope: 0.0010

Channel Manning's n: 0.0120

Channel Invert Elevation: 8.00 ft

ASSUMED CHANNEL CROSS SECTION GEOMETRY

DOWNSTREAM IMPROVEMENTS ASSUMED CONCRETE LINED CHANNEL

OUTPUT DATA - CHANNEL

Flow (cfs)	Water Surface Elev (ft)	Depth (ft)	Velocity (ft/s)	Shear (psf)	Froude Number
0.00	8.00	0.00	0.00	0.00	0.00
220.00	9.42	1.42	4.53	0.09	0.71
440.00	10.11	2.11	5.73	0.13	0.75
660.00	10.66	2.66	6.54	0.17	0.78
880.00	11.12	3.12	7.16	0.19	0.79
1100.00	11.53	3.53	7.67	0.22	0.81
1320.00	11.90	3.90	8.11	0.24	0.82
1540.00	12.25	4.25	8.49	0.26	0.83
1760.00	12.56	4.56	8.83	0.28	0.83
1980.00	12.86	4.86	9.14	0.30	0.84
2200.00	13.14	5.14	9.43	0.32	0.85

MAXIMUM ALLOWABLE CHANNEL VELOCITY = 10 FT/S

MAXIMUM ALLOWABLE STAGE = EL. 14-FT. NAVD (1-FOOT OF FREEBOARD IS REQUIRED BELOW THE CHANNEL TOP OF BANK)

MAXIMUM PERMITTED DISCHARGE FROM KONOMAC LAKE = 2,200 CFS



301 WEST STATE ROAD 434, SUITE 309
WINTER SPRINGS, FLORIDA 32708
CERTIFICATE OF AUTHORIZATION NO. 47770

City of DeBary

16 COLOMBA ROAD
DEBARY, FL 32713

CARMEN ROSAMONDA
PHONE: 386-688-2040

CONCEPTUAL IMPROVEMENT PLANS FOR THE
FORT FLORIDA ROAD BRIDGE REPLACEMENT

HYDRAULIC CALCULATIONS FOR THE
BRIDGE REPLACEMENT

SHEET NO.

6

ENGINEER'S ESTIMATE OF CONCEPTUAL PROJECT COSTS

**Fort Florida Road Bridge Replacement
Triple 10' x 7' Concrete Box Culverts**

EXHIBIT "B"
1 OF 2



Item No.	Item Description	Item Qty.	Qty. Unit	Unit Price	Extended Amount
GENERAL CATEGORY					
1	Mobilization	1	LS	10.0%	\$46,504
2	Bonds and insurance	1	LS	2.0%	\$9,301
3	Maintenance of traffic and traffic control	1	LS	7.5%	\$34,878
4	Dewatering and flow diversion	1	LS	\$50,000.00	\$50,000
5	Prevention, control and abatement of erosion and water pollution	1	LS	\$10,000.00	\$10,000
6	Clearing and grubbing	1	LS	15.0%	\$69,756
7	Construction layout and as-builts	1	LS	\$7,500.00	\$7,500
Sub Total					\$227,939
CONSTRUCTION CATEGORY - ROAD IMPROVEMENTS					
1	Embankment, excavation and grading	1	LS	\$10,000.00	\$10,000
2	Recycled Concrete Road Base (6")	225	SY	\$30.00	\$6,750
3	Type B Stabilization (12")	560	SY	\$10.00	\$5,600
4	Superpave asphalt concrete (Traffic C) (1.5")	25	TN	\$250.00	\$6,250
5	Reinforced concrete pavement (8")	335	SY	\$250.00	\$83,750
6	Concrete barrier wall	170	LF	\$250.00	\$42,500
7	Concrete sidewalk (5-foot wide)	45	SY	\$50.00	\$2,250
8	Guardrail (roadway)	100	LF	\$75.00	\$7,500
9	Guardrail (bridge anchorage assembly)	4	EA	\$5,000.00	\$20,000
10	Guardrail (end anchorage assembly)	4	EA	\$5,000.00	\$20,000
11	Pavement markings (thermoplastic)	1	LS	\$2,500.00	\$2,500
12	Sod (Bahia)	1,000	SY	\$3.50	\$3,500
Sub Total					\$210,600
CONSTRUCTION CATEGORY - DRAINAGE IMPROVEMENTS					
1	Shoulder inlet (barrier wall)	2	EA	\$7,500.00	\$15,000
2	Ditch bottom inlet (Type "D")	2	EA	\$5,000.00	\$10,000
3	Concrete manhole (Type "P-8")	1	EA	\$5,000.00	\$5,000
4	Connect proposed storm pipe to proposed box culvert	1	LS	\$1,000.00	\$1,000
5	Concrete pipe culvert (24" RCP, Class III)	63	LF	\$130.00	\$8,190
6	Concrete pipe culvert (30" RCP, Class III)	39	LF	\$150.00	\$5,850
7	Concrete box culvert (10' x 7')	210	LF	\$500.00	\$105,000
8	Class IV concrete (concrete headwalls)	18	CY	\$1,800.00	\$32,400
9	Class IV concrete (concrete wingwalls)	35	CY	\$1,800.00	\$63,000
10	Aluminum pipe guiderail	180	LF	\$50.00	\$9,000
Sub Total					\$254,440
SUMMARY OF CONCEPTUAL PROJECT COSTS					



Total =>	\$692,979
Contingency allowance for preliminary design (20%) =>	\$138,596
Grand Total =>	\$831,575

EXHIBIT "B"

2 OF 2

index	Quarter of quarter	Seasonal Adj	indexAdj	indexName	indexNonAdj
1.92261743	2019 Q4	NHCCI		NHCCI	1.923

2019 Estimate: \$ 831,575.00
 Index: 1.923
 2019 Estimate (Adjusted): \$ 1,599,118.73 (Actual Contractor costs and unforeseen contingencies are not included)

NHCCI ComponentContribution



National Highway Construction Cost Index (NHCCI)

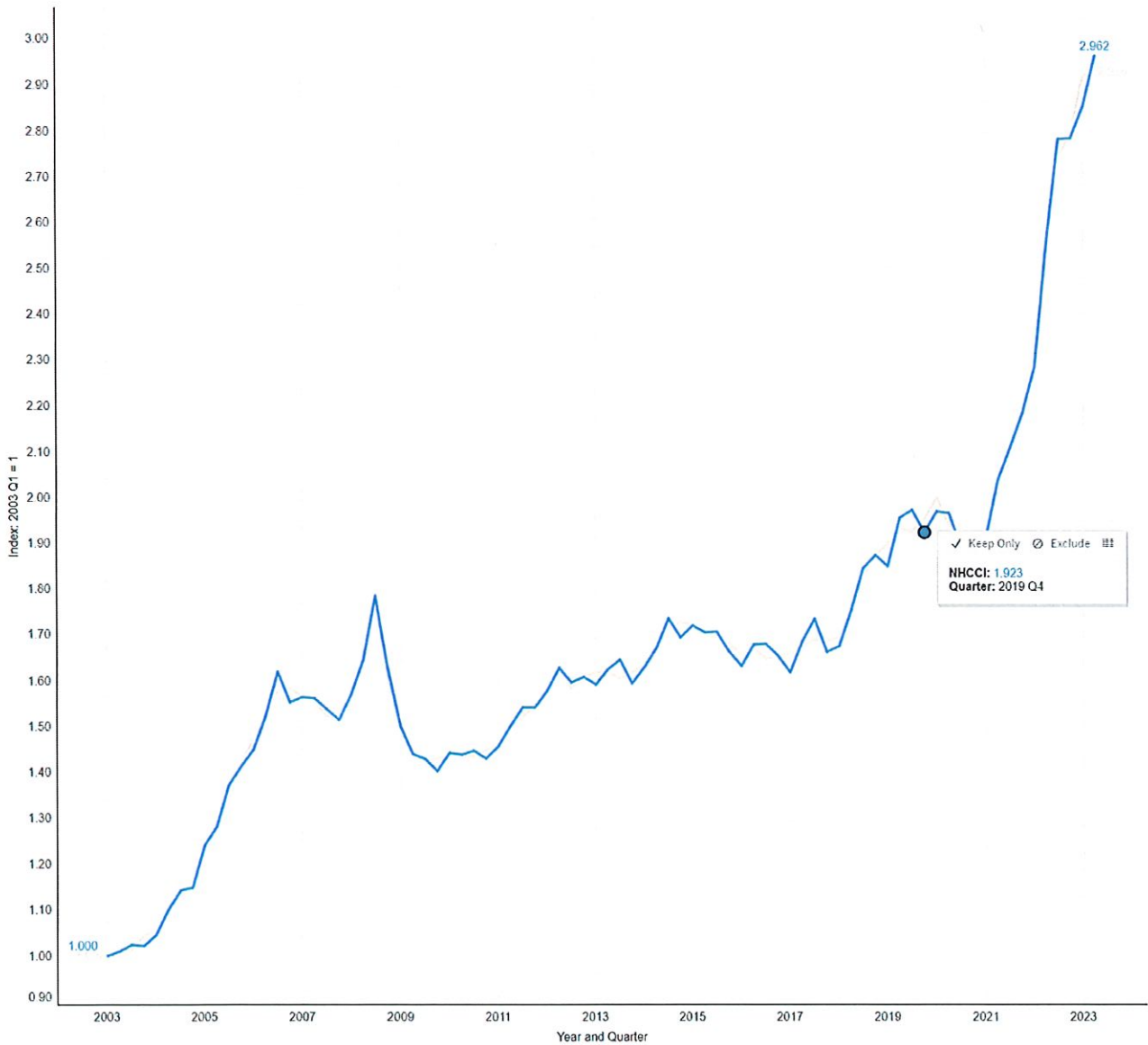
U.S. Department of Transportation
 Federal Highway Administration

Select Year and Quarter:

2003 Q1 2023 Q2

Select Series:

NHCCI
 Seasonally Adjusted NHCCI



2023 Q2 Index is preliminary.
 2022 Q4 and 2023 Q1 indexes are revised

EXHIBIT "C"

1 OF 3

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (hereinafter "Agreement") is entered into this ____ day of _____, 2024 by and between CITY OF DEBARY, a Florida municipal corporation, with a mailing address of 16 Colomba Road, DeBary, Florida 32713 (hereinafter the "City"), FLORIDA POWER & LIGHT COMPANY, with a mailing address of 288 Barwick Road, DeBary, Florida 32713 (hereinafter "FP&L"), and Fishback Dominick LLP, with a mailing address of 1947 Lee Road, Winter Park, Florida 32789 (hereinafter "Escrow Agent").

WHEREAS, the City and FP&L entered into that certain Agreement regarding the Fort Florida Road Bridge and Spillway Improvements on _____ (the "Spillway Agreement"); and

WHEREAS, the Spillway Agreement provides for the payment and disbursement to the Escrow Agent of the costs for the project defined in the Spillway Agreement as the Bridge Construction and Drainage Improvements ("Project") as well as the potential appropriation of funds received from the St. Johns River Water Management District or other state agency; and

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, FP&L, and the Escrow Agent agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein as material provisions of this Agreement.

2. **Escrow.** Within thirty (30) days of execution of the Spillway Agreement, the City and FP&L are each to pay to the Escrow Agent the amount of \$500,000.00 (hereinafter the "Escrow Funds") via federal wire, which Escrow Funds shall be held in escrow by the Escrow Agent in a non-interest bearing account.

3. **Disbursement.** The Escrow Funds shall be used to pay invoices for costs relating to the Project as required by the Spillway Agreement. The Escrow Funds shall be disbursed in accordance with the terms of the Spillway Agreement.

4. **Escrow Agent.** The Escrow Agent may act upon any instrument or other writing believed by it to be genuine and to be signed or presented by the proper person and shall not be liable in connection with the performance by it of its duties pursuant to the provisions of this Agreement, except for its own willful default or gross negligence. The Escrow Agent shall be under no obligation to institute or defend any action, suit or legal proceeding in connection herewith or to take any other action likely to involve it in expense unless it has been first indemnified to its satisfaction.

The Escrow Agent shall have no duty or responsibility to do anything other than as is specifically provided for in this Agreement and shall have no duty to take notice and shall not be charged with knowledge or notice of the existence of any agreement, understanding or other arrangement or of

EXHIBIT "C"

2 OF 3

any facts not set forth in this Agreement or in any properly written, signed and delivered notices or demands to it as herein provided, and the City and FP&L agree that the Escrow Agent may rely solely on such notices and demands and in acting in accordance therewith. In the event of the receipt by the Escrow Agent of any notice or demand not provided for in or in compliance with this Agreement or of any inconsistent or conflicting notices or demands, the City and FP&L agree that the Escrow Agent may take no action whatsoever unless both the City and FP&L agree to such action.

The City and FP&L acknowledge that Fishback Dominick LLP also serves as counsel to the City. In the event of any dispute, conflict or lawsuit involving any Escrow Funds or this Agreement or the transaction or obligations or rights under this Agreement, the Escrow Agent may interplead the disputed funds or documents with the Clerk of the Circuit Court. The City and FP&L each indemnify and hold harmless Fishback Dominick from all losses, damages, claims, disputes, lawsuits, interests, and other adverse matters arising from this Agreement not caused by Fishback Dominick. The provisions of this Section shall survive termination of this Agreement.

5. **Notices.** Any notice, request, instruction or other document required or permitted to be given hereunder shall be deemed to have been given when deposited in a United States mail collection box to be delivered by certified mail, return receipt requested, postage prepaid, as follows:

To City:	City of DeBary Attention: Carmen Rosamonda, City Manager 16 Colomba Road DeBary, Florida 32713 Email: crosamonda@debary.org
With a copy to:	Fishback Dominick LLP Attention: Kurt Ardaman, Esquire 1947 Lee Road Winter Park, Florida 32789
To FP&L:	Benjamin Pynes Power Generation Regional Plant Manager 288 Barwick Road, DeBary, FL 32713 Email: benjamin.pynes@fpl.com
With a copy to:	Peter Cocotos, Esq. Law Department Florida Power & Light 700 Universe Blvd Juno Beach, FL 33408
To Escrow Agent:	Fishback Dominick LLP

EXHIBIT "C"
3 OF 3

Attention: Kurt Ardaman, Esquire
1947 Lee Road
Winter Park, Florida 32789
E-mail: ardaman@fishbacklaw.com

or such other address as any party may designate by written notice delivered to the other parties.

7. **Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue shall be proper in Volusia County, Florida.

8. **Parties; Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the respective personal representatives, heirs, successors and assigns of the parties. This Agreement may be executed in one or more counterparts. Signed counterparts delivered by facsimile or electronic mail shall constitute originals.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year indicated below.

CITY OF DEBARY, FLORIDA

By: _____
Karen Chasez, Mayor
Date: _____

ATTEST:

Annette Hatch, CMC, City Clerk

**FLORIDA POWER & LIGHT
COMPANY**

By: _____
Print Name: _____
Date: _____

This Instrument Prepared by and Return to:

City of DeBary
Attention: City Clerk
16 Colomba Road
DeBary, Florida 32713

FLOWAGE EASEMENT

THIS FLOWAGE EASEMENT (this "Easement") is made and entered into this _____ day of _____, 2024, by **CITY OF DEBARY**, a Florida municipal corporation, with a mailing address of 16 Colomba Road, DeBary, Florida 32713 ("Grantor"), in favor of and to **FLORIDA POWER & LIGHT COMPANY**, a Florida corporation, with a mailing address of 288 Barwick Road, DeBary, Florida 32713 ("Grantee").

WITNESSETH, Grantor in consideration of the sum of \$10.00 and other valuable consideration, the receipt of which is hereby acknowledged, does hereby give and grant to Grantee, its affiliates, licensees, agents, successors and assigns, a perpetual easement for the purposes of stormwater discharge, flowage, and water discharge from Lake Konomac, to flow through the culverts located, or to be located, within that portion of Grantor's Fort Florida Road right-of-way located in Volusia County, Florida, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Easement Area") limited to a maximum rate of flow of 1,600 cubic feet per second; together with the right of access to and from the Easement Area; the right at all times to install, improve, construct, use, operate, inspect, repair, maintain, remove and relocate connections between the Grantor's culverts to the spillway on the upstream and downstream sides of such culverts; the right at all times to use, operate, inspect, repair, and maintain, and, upon Grantee's receipt of written approval from Grantor, which will not be unreasonably withheld, conditioned, or delayed, to install, construct, and improve the Grantor's culverts; and the right and obligation to keep clear the flow area from any debris that impedes, limits or stops the flow of water through the culverts; with all rights and privileges necessary or convenient for the full enjoyment or the use of the Easement Area for the herein described purposes. Grantee shall be responsible for the costs associated with the connection between the culverts and the spillway. Grantor shall be responsible for the costs associated with the maintenance of the culverts; provided however, Grantee, at its cost, shall have the right, but not the obligation, to maintain the culverts as set forth above.

Notwithstanding the foregoing, under no circumstances shall Grantee's exercise of its rights under this Easement in any way damage, compromise, undermine, or otherwise adversely affect the structural integrity or operation and function of the bridge and the Fort Florida Road travel lanes above the bridge, and Grantee, at Grantee's sole cost, shall be responsible for any adverse impact on the bridge and/or travel lanes caused by Grantee's activities performed under this Easement, whereupon Grantee shall promptly repair and correct such adverse impact.

Grantor is the owner of the fee simple title to the Easement Area and/or has the right and authority to grant and convey this Easement to Grantee.

This Easement and the rights and obligations contained herein shall be deemed to run with the title to the land referred to herein hereby inuring to the benefit of and binding the parties hereto, as their interest may appear, and their respective successors and assigns.

EXHIBIT "D"
2 OF 4

WITNESS WHEREOF, the parties hereto have executed this Easement as of the day and year first above written.

WITNESSES

GRANTOR:

CITY OF DEBARY, a Florida municipal corporation

(Signature)

By: Karen Chasez, Mayor

(Print Name)
Post Office Address: _____

(Signature)

(Print Name)
Post Office Address: _____

ACKNOWLEDGEMENT

STATE OF FLORIDA
COUNTY OF VOLUSIA

THE FOREGOING INSTRUMENT was sworn to (or affirmed) and subscribed before me by means of physical presence or online notarization this _____ day of _____, 2024 by Karen Chasez, as Mayor of the City of DeBary, on behalf of the City.

Personally Known _____ OR Produced Identification _____
Type of Identification: _____

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Witnesses for Grantee:

Grantee:

Florida Power & Light Company,
a Florida corporation

Signature: _____

By: _____

Print Name: _____

Print Name: _____

Post Office Address: _____

Title: _____

Signature: _____

Print Name: _____

Post Office Address: _____

ACKNOWLEDGMENT

STATE OF FLORIDA)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2024 by _____, as _____ of Florida Power & Light Company, a Florida corporation, on behalf of the corporation.

[NOTARIAL SEAL]

Notary: _____
Print Name: _____
Notary Public, State of Florida
My commission expires: _____

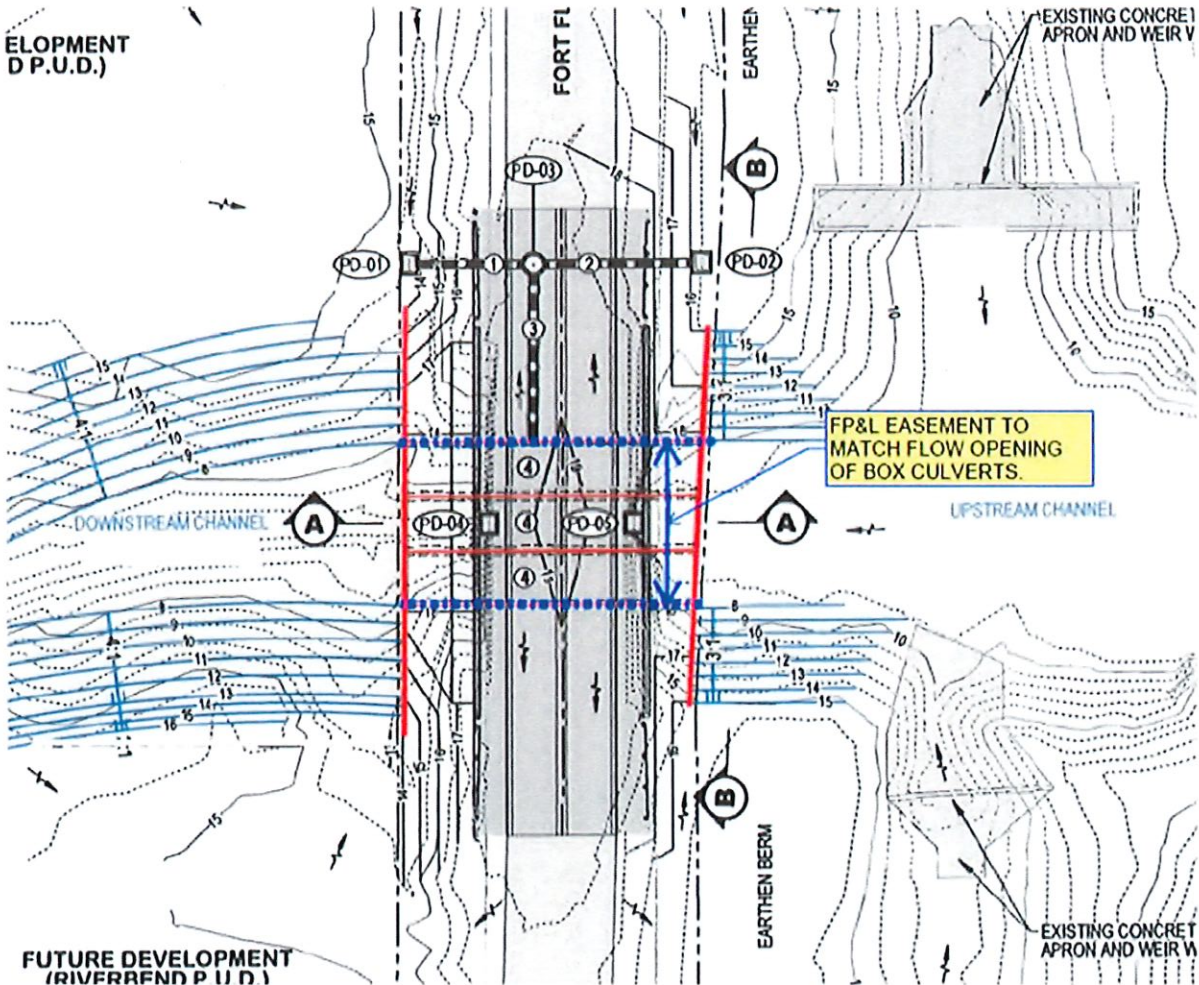
Personally Known **OR** Produced Identification
Type of Identification Produced _____

EXHIBIT "D"

4 OF 4

PLACEHOLDER EXHIBIT A – TEMPORARY SKETCH OF EASEMENT

NOTE: The following sketch is a placeholder. The sketch will serve as a placeholder until the City obtains a finalized Exhibit A from its experts. The following sketch is not the exhibit that will be attached to the executed Easement, which will be executed upon both the completion of the finalized Exhibit and the deposit of \$500,000.00 into escrow.



**COST-SHARE AGREEMENT
BETWEEN THE
ST. JOHNS RIVER WATER MANAGEMENT DISTRICT
AND CITY OF DEBARY**

THIS AGREEMENT (“Agreement”) is entered into by and between the GOVERNING BOARD of the ST. JOHNS RIVER WATER MANAGEMENT DISTRICT (the “District”), whose address is 4049 Reid Street, Palatka, Florida 32177, and the CITY OF DEBARY (“Recipient”), whose address is 16 Colomba Road, DeBary, Florida 32173. All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

The waters of the state of Florida are among its basic resources, and it has been declared to be the policy of the Legislature to promote the conservation, development, and proper utilization of surface and ground water. Pursuant to chapter 373, Fla. Stat., the District is responsible for the management of the water resources within its geographical area.

Through Specific Appropriation 1690B in Senate Bill 2500 (2023), the Legislature appropriated one million dollars (\$1,000,000) from the General Revenue Fund of the State of Florida for Water Quality Improvements.

Section 373.501(2), Fla. Stat. provides a process through which funds appropriated by the Legislature may be disbursed to water management districts upon receipt by the Secretary of the Department of Environmental Protection (Department).

Pursuant to section 373.501(2), Fla. Stat. and Specific Appropriate 1690B in Senate Bill 2500 (2023), the Secretary of the Department released one million dollars (\$1,000,000) for implementation of the DeBary Stormwater Infrastructure Collapse in Volusia Blue and Gemini Springshed.

The District has determined that providing pass-through funding of the \$1,000,000 appropriated by the Legislature (“cost-share”) to Recipient for the purposes provided for herein will benefit the water resources and one or more of the District’s missions and initiatives.

At its September 12, 2023, meeting, the Governing Board approved resolution 2023-10 for pass-through funding to implement the legislative appropriation. The parties have agreed to fund the following project through this cost-share agreement and in accordance with the Statement of Work, Attachment A (hereafter the “Project”):

DeBary Lake Konomac Spillway Reconstruction

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A — Statement of Work, (3) application documents, incorporated herein and (4) all other attachments, if any. The parties hereby agree to the following terms and conditions.

1. **TERM; WITHDRAWAL OF OFFER**

The term of this Agreement is from the date upon which the last party has dated and executed the Agreement (“Effective Date”) until September 30, 2026 (“Completion Date”). Recipient shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions. Any request for an extension of time beyond the Completion Date must be made before June 30, 2026. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof (e.g., delivery of a final report, will remain in full force and effect after the Completion Date as necessary to effect performance).

- (a) This Agreement constitutes an offer until authorized, signed and returned to the District by Recipient. This offer terminates 90 days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the District’s Project Manager, stating the reason(s) therefor. Request for extension of time after the 90 days will be denied. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.
- (b) If the construction project, which is eligible for District reimbursement, does not begin before June 30, 2025, the cost-share agreement will be subject to termination and the funds subject to reallocation.

- 2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The District’s Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the District will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the District arising from or by reason of this Agreement.

- 3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the District does not assert an ownership interest in any of the deliverables under this Agreement.

4. **AMOUNT AND SOURCE OF COST-SHARE FUNDING**

- (a) **Cost-share Funding Amount.** For satisfactory completion of the Project, the District shall reimburse Recipient an amount not to exceed \$1,000,000.
- (b) The Cost-share Funding Amount is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the District’s Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.
- (c) “Construction Cost” is defined to include actual costs of constructing Project facilities, including construction management. Land acquisition, engineering design, permitting, and solicitation costs are excluded. Construction Cost does not include any costs incurred prior to the Effective Date, unless expressly authorized by the Statement of Work. Costs that are excluded will not be credited toward Recipient’s cost-share.
- (d) Work performed or expenses incurred after the Completion Date are not eligible for Cost-share reimbursement.

(e) The anticipated source of the project Cost-share Funding Amount is:

Not to Exceed Amount	Source
\$0.00	District sources
\$1,000,000	State sources
\$0.00	Federal sources

5. PAYMENT OF INVOICES

- (a) Recipient shall submit itemized invoices as per the Statement of Work, Attachment A, for reimbursable expenses by one of the following two methods: (1) by email to acctpay@sjrwmd.com (preferred) or (2) by mail to the St. Johns River Water Management District, Finance Director, 4049 Reid Street, Palatka, Florida 32177-2571. The invoices shall be submitted in detail sufficient for proper pre-audit and post-audit review. Invoices shall include a copy of contractor and supplier invoices to Recipient and proof of payment. Recipient shall be reimbursed for the amount of Cost-share funding specified in paragraph 4 (a). The District shall not withhold any retainage from this reimbursement. District reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.
- (b) **End of District Fiscal Year Reporting.** The District’s fiscal year ends on September 30. Irrespective of the invoicing frequency, the District is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice for Work completed as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice for Work completed as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.
- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the District’s fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of ten percent of the invoice. This penalty may be waived by the District, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten days prior to the due date and state the basis for the delay.**
- (d) All invoices shall include the following information: (1) District contract number; (2) Recipient’s name, address, and authorization to directly deposit payment into Recipient’s account (if Recipient has not yet provided the District with a completed Direct Deposit Authorization form); (3) Recipient’s invoice number and date of invoice; (4) District Project Manager; (5) Recipient’s Project Manager; (6) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work); and as required by, “CONTRACT PAYMENT REQUIREMENTS FOR STATE FUNDED COST REIMBURSEMENT CONTRACTS,” Attachment D hereto; and (7) Progress Report (if required). Invoices that do not correspond with this paragraph shall be returned without action within 20 business days of receipt,

stating the basis for rejection. Payments shall be made within 45 days of receipt of an approved invoice.

- (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by Recipient and are only compensable when specifically approved by the District as an authorized District traveler. In such instance, travel expenses must be submitted on District or State of Florida travel forms and shall be paid pursuant to District Administrative Directive 391.
 - (f) **Payments withheld.** The District may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the District from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
 - (g) **Annual budgetary limitation.** For multi-fiscal year agreements, the District must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment A, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the District's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the District to receive this request is August 1 of the then-current fiscal year. The District may in its sole discretion prepare a District Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).
6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers, employees, and agents. Recipient accepts all risks arising from construction or operation of the Project. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the state of Florida, nor as a waiver of sovereign immunity of the state of Florida beyond the waiver provided for in §768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations. If monies provided through the Florida Department of Environmental Protection ("FDEP") funds will be used to fund all or a portion of the Agreement, additional FDEP insurance requirements applicable to the Recipient are included in the insurance attachment, Attachment F, to the Agreement.
7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) ad valorem tax revenues appropriated by the District's Governing Board; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the District's Governing Board for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the District shall so notify Recipient and this Agreement shall be deemed terminated for convenience five days after receipt of such notice, or within such additional time as the District may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. PROJECT MANAGEMENT

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three business days' prior written notice to the other party. Written notice of change of address shall be provided within five business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; or (4) email. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one business day after having been deposited with the courier. Notices via e-mail are deemed delivered on the date transmitted and received.

<p>DISTRICT Mark Brandenburg, Project Manager St. Johns River Water Management District 2501 South Binion Road Apopka, Florida 32703 Phone: 407-659-4806 Email: MBrandenburg@sjrwmd.com</p>	<p>RECIPIENT Carmen Rosamonda, Project Manager City of DeBary 16 Colomba Road DeBary, Florida 32713 Phone: 352-801-1819 Email: crosamonda@debary.org</p>
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- (b) The District's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating District policies and decisions regarding all matters pertinent to performance of the Project. The District's Project Manager may issue a District Supplemental Instruction (DSI) form, Attachment C, to authorize minor adjustments to the Project that are consistent with the purpose of the Project. Both parties must sign the DSI. A DSI may not be used to change the District cost-share or percentage, quantity, quality, or the Completion Date of the Project, or to change or modify the Agreement.

9. PROGRESS REPORTS AND PERFORMANCE MONITORING.

- (a) **Progress Reports.** Recipient shall provide to the District quarterly Project update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Recipient shall use the District's Project Progress Report form, Attachment B. Recipient shall submit the Project Progress Reports to the District's Project Manager and District's Budget Director within 15 days after the closing date of each calendar quarter (March 31, June 30, September 30, and December 31).
- (b) **Performance Monitoring.** For as long as the Project is operational, the District shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the District any data that is requested pertaining to performance of the Project.

- 10. **WAIVER.** The delay or failure by the District to exercise or enforce any of its rights under this Contract shall not constitute or be deemed a waiver of the District's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

11. FAILURE TO COMPLETE PROJECT

- (a) Should Recipient fail to complete the Project, Recipient shall refund to the District all of the funds provided to Recipient pursuant to this Agreement. However, the District, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the District may excuse Recipient from the obligation to return funds provided hereunder. If the Project has not been completed within 30 days after the Completion Date, Recipient shall provide the District with notice regarding its intention as

to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the time for Project completion or the scope of the Project. Failure to complete the Project within 90 days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.

- (b) In the event the Project constitutes a portion of the total functional project, this paragraph shall apply in the event the total functional project is not completed. In such event, the 90-day timeframe provided herein shall commence upon the date scheduled for completion of the total functional project at the time of execution of this Agreement, unless extended by mutual agreement of the parties. Paragraphs (a) above and this paragraph shall survive the termination or expiration of this Agreement.

12. **TERMINATION.** If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the District may provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have 30 days following receipt of the notice to cure the breach. If Recipient fails to cure the breach within the 30-day period, the District shall issue a Termination for Default Notice terminating this Agreement without further notice. In such event, Recipient shall refund to the District all funds provided to Recipient pursuant to this Agreement within 30 days of such termination. The District may also terminate this Agreement upon ten days' written notice in the event of any material misrepresentations in the Project Proposal.

Delay or failure by the District to enforce any right, remedy or deadline hereunder shall not impair, or be deemed a waiver of, any such right, remedy or deadline, or impair the District's rights or remedies for any subsequent breach or continued breach of this Agreement.

ADDITIONAL PROVISIONS

13. **ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the District's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the District and any of Recipient's contractors or subcontractors.

14. **AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS**

- (a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the District, and copies of all invoices and supporting documentation for at least five years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the District shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.
- (b) **Repayment of Funds.** District funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the District finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein, including but not limited to construction materials not used in the Project; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the District for the same purpose; (4) Recipient has been advanced or paid unobligated funds; (5) Recipient has been paid funds in

excess of the amount Recipient is entitled to receive under the Agreement; and/or (6) Recipient has received more than 100% contributions through cumulative public agency cost-share funding.

15. **CIVIL RIGHTS.** Pursuant to chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
16. **COOPERATION WITH THE INSPECTOR GENERAL, PURSUANT TO §20.055(5) FLA. STAT.** Recipient and any subcontractors understand and will comply with their duty, pursuant to §20.055(5), Fla. Stat., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.
17. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the District's Project Manager no later than ten business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the District's Office of General Counsel, which shall issue a written decision within ten business days of receipt. This determination shall constitute final action of the District and shall then be subject to judicial review upon completion of the Project.
18. **DIVERSITY OPPORTUNITIES.** The District is committed to the opportunity for diversity in the performance of all cost-sharing agreements and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The District will assist Recipient by sharing information on W/MBEs.
19. **FLORIDA SINGLE AUDIT ACT**
 - (a) **Applicability.** The Florida Single Audit Act (FSAA), §215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in §215.97(1)(q), Fla. Stat., awarded by the District through a project or program that is funded, in whole or in part, through state financial assistance to the District. In the event Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such Recipient, Recipient must have a state single or project-specific audit for such fiscal year in accordance with §215.97, Fla. Stat.; applicable rules of the Department of Financial Services; and chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, Recipient shall consider all sources of state financial assistance, including state financial assistance received from the District, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. Recipient is solely responsible for complying with the FSAA.

If Recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of §215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with §215.97, Fla. Stat., the cost of the audit must be paid from the non-state entity's resources (i.e., Recipient's resources obtained from other than State entities).
 - (b) **Program Information.** This Agreement involves the disbursement of state funding by the Florida Department of Environmental Protection (FDEP). Funding is provided under the State of Florida, Water Management District – Land Acquisition and Improvement, in the amount of \$1,000,000. The Florida Catalog of State Financial Assistance (CSFA) number for this program is CSFA No. 37.022.

- (c) **Additional Information.** For information regarding the state program under the above CSFA number, Recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa/catalog.aspx> for assistance. The following websites may be accessed for additional information: Legislature's Website at <http://www.leg.state.fl.us/>, State of Florida's website at <http://myflorida.com>, District of Financial Services' website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.
- (d) **Allowable Costs.** Recipient may only charge allowable costs to this Agreement, as otherwise provided herein. Any balance of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be returned to the District.
- (e) **Audit Requirements.** Recipient shall ensure that the audit complies with the requirements of §215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by §215.97(2), Fla. Stat., and chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Statement of Work.
- (f) **Financial Reporting.** Recipient shall provide the District with a copy of any reports, management letters, or other information required to be submitted in accordance with chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable, no more than 20 days after its preparation. Recipient shall indicate the date the reporting package was delivered to Recipient in correspondence accompanying the reporting package. This information shall be directed to: St. Johns River Water Management District, Finance Director, Office of Financial Services, 4049 Reid Street, Palatka, FL 32177. A copy of the report shall also be provided to the Auditor General's Office at the following address: State of Florida Auditor General, Room 401, Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.
- (g) **Monitoring.** In addition to reviews of audits conducted in accordance with §215.97, Fla. Stat., as revised, monitoring procedures may include, but not be limited to, on-site visits by District staff, limited scope audits, and/or other procedures. Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the District. In the event the District determines that a limited scope audit of Recipient is appropriate, Recipient agrees to comply with any additional instructions provided by the District to Recipient regarding such audit. Recipient agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the District's Inspector General or the state Chief Financial Officer or Auditor General.
- (h) **Examination of Records.** In addition to the District's audit rights otherwise provided for herein, Recipient shall permit the District or its designated agent, the state awarding agency, the Department of Financial Services, the state's Chief Financial Officer and the state's Auditor General to examine Recipient's financial and non-financial records to the extent necessary to monitor Recipient's use of state financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations, which may include onsite visits and limited scope audits.
- (i) **Records Retention.** Notwithstanding any other provision of this Agreement to the contrary, Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five years from the date the audit report is issued, and shall allow the District, or its designee, state Chief Financial Officer, or Auditor General access to such records upon request. Recipient shall ensure that audit working papers are made available for such access for a period of three years from the date the audit report is issued, unless extended in writing by the District.

20. **GOVERNING LAW, VENUE, ATTORNEY’S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, “shall” is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state legal proceeding is Putnam County and federal legal proceedings shall be in Orange County; (2) each party shall bear its own attorney’s fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and waive the right to jury trial.
21. **INDEPENDENCE OF PARTIES.** The parties are independent entities and do not serve as agents or representatives of one another. This Agreement does not create a joint venture relationship between the parties. Recipient is not a contractor of the District. The District is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health care, and tax laws pertaining to Recipient, its officers, agents, and employees.
22. **CONFLICTING INTEREST IN RECIPIENT.** Recipient certifies that no officer, agent, or employee of the District has any material interest, as defined in §112.312, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
23. **NON-LOBBYING.** Pursuant to §216.347, Fla. Stat., as amended, Recipient agrees that funds received from the District under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
24. **PERMITS.** Recipient shall comply with all applicable federal, state, and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.
25. **PUBLIC ENTITY CRIME.** 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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 §287.017, Fla. Stat., for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
26. **SCRUTINIZED COMPANIES.**
- (a) Recipient certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to § 287.135, Fla. Stat., the District may terminate this Agreement at its sole option if the Recipient is found to have submitted a false certification; or if the Recipient is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
 - (b) If this Agreement is for more than one million dollars, the Recipient certifies that it is also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors list, or engaged with business operations in Cuba or Syria as identified in §

287.135, Fla. Stat. Pursuant to § 287.135, Fla. Stat., the District may immediately terminate this Agreement at its sole option if the Recipient is found to have submitted a false certification; or if the Recipient is placed on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Terrorism Sectors List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or is engaged with business operations in Cuba or Syria during the term of the Agreement.

(c) As provided in § 287.135(8), Fla. Stat., if federal law ceases to authorize these contracting prohibitions, then they shall become inoperative.

27. **PUBLIC RECORDS.** Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the District's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other materials related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.

28. **ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the District harmless from loss to the extent allowed by Florida law.

IN WITNESS WHEREOF, the St. Johns River Water Management District has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, or duly authorized designee, and Recipient has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

ST. JOHNS RIVER WATER
MANAGEMENT DISTRICT

CITY OF DEBARY

By: _____
Mary Ellen Winkler, J.D., Assistant Executive Director

By: *Karen Chasez*
Karen Chasez, Mayor
Typed Name and Title

Date: _____

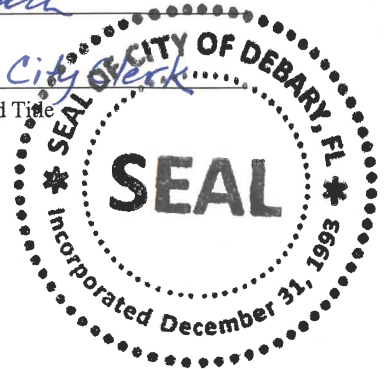
Date: March 6, 2024

Attest: *Annette Hatch*
Annette Hatch, City Clerk
Typed Name and Title

Kendall Matott
Kendall Matott, J.M., SJRWMD QC Reviewer

Attachments:

- Attachment A — Statement of Work
- Attachment B — Project Progress Report Form
- Attachment C — District Supplemental Instructions Form
- Attachment D — Contract Payment Requirements for State-Funded Cost Reimbursement Contracts
- Attachment E — FDEP Revenue Agreement
- Attachment F — Insurance Requirements



**ATTACHMENT A —STATEMENT OF WORK
DEBARY LAKE KONOMAC SPILLWAY RECONSTRUCTION**

I. INTRODUCTION/BACKGROUND

On September 12, 2023, the St. Johns River Water Management District's (District) Governing Board approved resolution 2023-10 to implement the below legislative appropriation project.

The City of DeBary (Recipient) has been awarded funding for their DeBary Lake Konomac Spillway Reconstruction (Project) for the not to exceed amount as set forth in paragraph 4(a) of the Agreement. The Recipient is located in Volusia County.

II. OBJECTIVES

The objective of this contract is to provide funding that will enable the Recipient to repair and prevent further damage of critical stormwater, sidewalk, roads, and other right-of-way infrastructure, reduce nutrient loading to the St. Johns River within the Gemini Springs Basin Management Action Plan area, and reduce residential flooding.

III. SCOPE OF WORK

The project includes design and reconstruction of the Fort Florida Road Bridge and Lake Konomac Spillway, which includes upsizing the spillway under the bridge to reach the capacity needed to prevent flooding and prevent bridge structural failure due to erosion.

IV. PROJECT ADMINISTRATION AND DELIVERABLES

The Recipient shall be responsible for the following:

- Complete and obtain final project design, construction plans, and specifications;
- Obtain all required permits, including right of access to the project sites, related to project construction and subsequent operation and maintenance of the completed work;
- Assure compliance with all permits and permit conditions;
- Provide procurement for project construction;
- Perform supervision and inspection of construction;
- Perform construction contract administration;
- Assure compliance with cost accounting practices and procedures required for reimbursement of cost-share funds expended.

The Recipient shall provide the following to the District's Project Manager:

- Timely invoices for actual Construction Costs in accordance with this Agreement to enable proper review by the District's Project Manager prior to payment authorization. Deliverables to be submitted with invoices include (as applicable):
 - Interim progress status summaries including inspections, meeting minutes and field notes and dated color photographs of the construction completed to include on-going work that represents the time-period being invoiced;
 - Final invoice submittals for completed construction including inspections and dated color photographs of the construction site prior to, during and immediately following completion of the construction task;
 - Construction plans, specifications, and contract documents for the site work must be made available upon request;

- Written verification that the record drawings and any required final inspection reports for the project are received;
- Quarterly progress reports identifying project progress to date, key milestones reached, overall project schedule versus time for project completion, an updated spend-down plan, key issues to be resolved, project construction photos with dates. Quarterly reports shall also be emailed to the District’s Budget Director at hnbarber@sjrwmd.com.
- The Recipient shall submit a final project report within 15 days of final completion and acceptance detailing the Project’s accomplishments and any issues resolved during the course of the work.
- Certification of construction completion by a Professional Engineer registered in the state of Florida.

The Recipient shall ensure the tasks in the Task Identification section below are completed.

V. TASK IDENTIFICATION AND TIME FRAMES

The expiration date of this cost-share agreement is September 30, 2026. The projected schedule is as follows:

Task Description	Anticipated Start Date	Anticipated Completion Date
Design and Engineering	January 1, 2024	February 28, 2025
Construction	March 1, 2025	June 30, 2026

VI. BUDGET/COST SCHEDULE

For satisfactory completion of the Project, the District shall reimburse the Cost-share Funding Amount as set forth in paragraph 4(a) of the Agreement.

Recipient shall invoice the District quarterly with appropriate documentation. The District’s Project Manager shall provide an invoice template that will be used. Invoices shall include a copy of the contractor’s invoices submitted to the Recipient, proof of payment by Recipient, and other required supporting documentation for reimbursement up to match amount. For in-house expenses, Recipient shall provide copies of all receipts for materials and a system report showing documentation of staff time or other proof of staff time expenses for the Project. The final invoice shall be submitted with the final project report. If the total actual cost of this project is less than originally estimated, the District’s cost-share amount shall be reduced accordingly. Recipient may invoice more frequently submitting all required documentation and include general status information. Recipient may invoice the District for construction-related costs after October 1, 2023, costs incurred prior to October 1, 2023, will not be eligible for reimbursement.

**ATTACHMENT B
PROJECT PROGRESS REPORT**

St. Johns River Water Management
District
Project Progress Report

Contract #: 39255

Date: _____

Report Number: _____

Contract/Project Identification

Project Name:	DeBary Lake Konomac Spillway Reconstruction		
Recipient:	City of DeBary		
SJRWMD Contract Number:	39255	SJRWMD Project Manager:	Mark Brandenburg
		Recipient's Project Manager:	Carmen Rosamonda

Construction Schedule

Construction Start Date:	
Construction Completion Date:	
Contract Expiration Date:	

Reporting Period

Beginning Date:	
Ending Date:	

Cost-share Budget

Total Cost-share Budget:		Cost-share Amount Expended This Period:	
Cost-share Amount Expended To-date:		Percent Cost-share Budget Expended:	

Spend-Down Plan

Fiscal Year 1

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Fiscal Year 2

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Project Readiness and Schedule Tracking

Project Phase	% Complete Shown in Application	% Complete Currently	Start Date Shown in Application	Completion Date Shown in Application	Current Start Date	Current Completion Date	Notes: Explain anticipated deviations from schedule
Planning							
Design							
Permitting							
Bidding & Award							

SOW Construction Tasks/Milestones/Deliverables

Task Number	Tasks/Milestones/Deliverables	Total Construction % Complete	Start Date Shown in SOW	Completion Date Shown in SOW	Current Start Date	Current Completion Date
1						

Project update including problems, issues, and solutions. Explain in detail.

Include digital photographs of work accomplished during reporting period. Attach an additional page of notes if necessary to explain reasons for lateness or unusual events or circumstances.

ATTACHMENT C — DISTRICT’S SUPPLEMENTAL INSTRUCTIONS (sample)

DISTRICT SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO: Carmen Rosamonda, Project Manager
City of DeBary
16 Colomba Road
DeBary, Florida 32713

FROM: Mark Brandenburg, Project Manager

CONTRACT NUMBER: 39255

CONTRACT TITLE: DeBary Lake Konomac Spillway Reconstruction

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor adjustments to the work as consistent with the Contract Documents and return to the District’s Project Manager.

1. RECIPIENT’S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS:

Recipient’s approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(Recipient agrees to implement the Supplemental Instructions as requested but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
Mark Brandenburg, District Project Manager

Acknowledged: _____ Date: _____
Breanna Pierce, District Procurement Specialist

c: Contract file
Financial Services

**ATTACHMENT D – CONTRACT PAYMENT REQUIREMENTS
FOR STATE-FUNDED COST REIMBURSEMENT CONTRACTS**

Invoices for state-funded cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed, indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation shall clearly reflect the dates of service. Only expenditures for categories in the approved contract budget will be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements by cost category:

Salaries: Submit a payroll register or similar documentation showing gross salary charges, fringe benefits, other deductions, and net pay. If an individual is paid by the hour, a document reflecting the hours worked times the rate of pay is acceptable.

Fringe Benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage, rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with §112.061, Fla. Stat., which includes submission of the claim on the approved State of Florida (State) or District travel voucher.

Other direct costs: Reimbursement is based upon paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, F.A.C., regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in §273.02, Fla. Stat., for subsequent transfer to the State.

In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units, times the rate being charged. The rates must be reasonable.

Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The “Reference Guide for State Expenditures” prepared by the Florida Department of Financial Services can be found at this web address: <https://www.myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf>.

ATTACHMENT E – FDEP REVENUE AGREEMENT
(Starts on the following page.)

ATTACHMENT F — INSURANCE REQUIREMENTS

Including Florida Department of Environmental Protection Insurance Requirements

Recipient shall acquire and maintain, and ensure that any sub-recipients, contractors, and subcontractors, similarly acquire and maintain, until completion of the Work the insurance coverage listed below, which constitutes primary coverage. Recipient shall not commence the Work until the District receives and approves Certificates of Insurance documenting Recipient's required coverage. Recipient's General Liability policy shall include Endorsement CG 20101185, or equivalent, naming the St. Johns River Water Management District ("District") as Additional Insured. All required policies shall include: (1) endorsement that waives any right of subrogation against the District for any policy of insurance provided under this requirement or under any state or federal worker's compensation or employer's liability act; (2) endorsement to give the District no less than thirty (30) days written notice (with the exception of non-payment of premium which requires a 10-calendar-day notice) in the event of cancellation or material change. Certificates of Insurance must be accompanied by copies of the requested endorsements. In addition, Recipient's General Liability insurance and Automobile Liability insurance shall include the State of Florida, the Florida Department of Environmental Protection, and the State of Florida Board of Trustees of the Internal Improvement Trust Fund, as Additional Insureds for the entire length of the Agreement. If the Recipient is self-funded for any category of insurance, then the Recipient shall provide documentation that warrants and represents that it is self-funded for said insurance, appropriate and allowable under Florida law, and that such self-insurance offers protection applicable to the Recipient's officers, employees, servants and agents while acting within the scope of their employment with the Recipient for the entire length of the Agreement.

Any deductibles or self-insured retentions above \$100,000 must be declared to and approved by the District. Approval will not be unreasonably withheld. Recipient is responsible for any deductible or self-insured retention. All insurance policies shall be with insurers licensed or eligible to do business in the State of Florida and having an A.M. Best rating of A-V or greater. If any work proceeds over or adjacent to water, the Recipient shall secure and maintain, as applicable, any other type of required insurance, including but not limited to, Jones Act, Longshoreman's and Harbormaster's, or the inclusion of any applicable rider to worker's compensation insurance, and any necessary watercraft insurance, with limits not less than \$300,000 each. District receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (a) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers compensation, if applicable, in not less than the minimum limits required by Florida law. Such policies shall cover all employees engaged in any contract Work. If Recipient claims an exemption from workers' compensation coverage, Recipient must provide a copy of the Certificate of Exemption from the Florida Division of Workers' Compensation for all officers or members of an LLC claiming exemption who will be participating in the Work. In addition, Recipient must provide a completed District "Affidavit (Non-Construction)" for non-construction contracts. Recipient is solely responsible for compliance with any Federal workers' compensation laws such as Jones Act and USL&H Act, including any benefits available to any workers performing work on this project. In case any class of employees engaged in hazardous work under this Agreement is not protected under Worker's Compensation statutes, the Recipient shall provide, and cause each sub-recipient, contractor, or subcontractor, to provide, adequate insurance satisfactory to the District and the Florida Department of Environmental Protection, for the protection of its employees not otherwise protected.
- (b) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability not less than \$1,000,000/\$2,000,000, for personal injury, bodily injury, and property damage. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent

contractors, and (4) property in the care, control, or custody of the Contractor. Extensions shall be added, or exclusions deleted to provide the necessary coverage.

(c) **Automobile Liability.** Minimum limits of liability shall be as follows:

1. \$300,000 — Automobile Liability Combined Single Limit for Company-Owned Vehicles, if applicable
2. \$300,000 — Hired and Non-owned Automobile Liability Coverage