



TOWN COMMISSION MEETING AGENDA

February 28, 2023 at 6:30 PM

COMMISSION CHAMBERS - 202 E. MAIN STREET, DUNDEE, FL 33838

Phone: 863-438-8330 | www.TownofDundee.com

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

RECOGNITION OF SERGEANT AT ARMS

ORDINANCE #13-08, PUBLIC SPEAKING INSTRUCTIONS

ROLL CALL

DELEGATIONS-QUESTIONS & COMMENTS FROM THE FLOOR

(Each speaker shall be limited to three (3) minutes)

APPROVAL OF CONSENT AGENDA: CONSENT AGENDA FOR FEBRUARY 28, 2023

A. Minutes

1. October 11, 2022 Town Commission Meeting
2. October 20, 2022 Planning and Zoning Meeting
3. October 25, 2022 Town Commission Meeting
4. November 8, 2022 Town Commission Meeting
5. January 17, 2023 Planning and Zoning/Tree Board Joint Workshop

B. Agreements

1. Johnson Controls PSA Renewal

APPROVAL OF AGENDA

PROCLAMATIONS, RECOGNITIONS AND DESIGNATIONS

- 1.** RECOGNITION OF THE DR. MLK JR ESSAY WINNERS
- 2.** RECOGNITION OF BILLY IVEY

NEW BUSINESS

- 3.** PRESENTATION, YEAR IN REVIEW
- 4.** TOWN MANAGER EVALUATION, FY 2021 – 2022
- 5.** ORDINANCE 23-02, POTABLE WATER LEVEL OF SERVICE AMMENDMENT TRANSMITTAL
PUBLIC HEARING
- 6.** ORDINANCE 23-03, CAPITAL IMPROVEMENTS ELEMENT
- 7.** DISCUSSION AND ACTION, NANCY AVENUE BALL PARK
- 8.** DISCUSSION AND ACTION, SHINGLE SELECTION

REPORTS FROM OFFICERS

Polk County Sheriff's Office

Dundee Fire Department

Town Attorney

Town Manager

Commissioners

Mayor

ADJOURNMENT

PUBLIC NOTICE: Please be advised that if you desire to appeal from any decisions made as a result of the above hearing or meeting, you will need a record of the proceedings and in some cases, a verbatim record is required. You must make your own arrangements to produce this record. (Florida statute 286.0105)

If you are a person with disability who needs any accommodations in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the town clerk's office at 202 east main street, Dundee, Florida 33838 or phone (863) 438-8330 within 2 working days of your receipt of this meeting notification; if you are hearing or voice impaired, call 1-800-955-8771.



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

Item A.

AGENDA ITEM TITLE: APPROVAL OF THE COMMISSION CONSENT AGENDA

SUBJECT: The Town Commission will consider the items of the consent agenda as provided for by the Town Code Article IIA, Sec. 2-33(e). Items in the consent agenda are routine business or reports. All items in the consent agenda are approved in one motion. Any item in the consent agenda may be pulled by a member of the Town Commission for separate consideration.

STAFF ANALYSIS: The consent agenda for the meeting of February 28, 2023 contains the following:

- A. Minutes
 1. October 11, 2022 Town Commission Meeting
 2. October 20, 2022 Planning and Zoning Meeting
 3. October 25, 2022 Town Commission Meeting
 4. November 8, 2022 Town Commission Meeting
 5. January 17, 2023 Planning and Zoning/Tree Board Joint Workshop
- B. Agreements
 1. Johnson Controls PSA Renewal

STAFF RECOMMENDATION: Approval of the February 28, 2023 Consent Agenda

ATTACHMENTS: October 11, 2022 Town Commission Meeting
October 20, 2022 Planning and Zoning Meeting
October 25, 2022 Town Commission Meeting
November 8, 2022 Town Commission Meeting
January 17, 2023 Planning and Zoning/Tree Board Joint Workshop
Johnson Controls PSA Renewal



DUNDEE TOWN COMMISSION

LOCATION: DUNDEE TOWN HALL
202 MAIN STREET, DUNDEE, FLORIDA

TOWN COMMISSION MINUTES REPORT FOR OCTOBER 11, 2022

CALL TO ORDER: Mayor Pennant called the meeting to order at 6:30 PM.

PLEDGE OF ALLEGIANCE Mayor Pennant

INVOCATION Mayor Pennant

RECOGNITION OF SERGEANT AT ARMS: Sergeant Anderson

PUBLIC SPEAKING INSTRUCTIONS: Mayor Pennant.

ROLL CALL: Jenn Garcia

Town Commissioners Present:

Commissioner Goddard
Commissioner Richardson
Vice Mayor Quarles
Mayor Pennant

Town Commissioners Absent:

Commissioner Glenn

Town Manager Davis reported that Commissioner Glenn could not attend the meeting due to a death in the family.

MOTION TO EXCUSE Commissioner Glenn from the meeting October 11, 2022 Town Commission meeting, made by Commissioner Goddard. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

Town Staff Members Present:

Tandra Davis, Town Manager
Seth Claytor, Assistant Town Attorney
Jenn Garcia, Town Clerk
John Vice, Public Works Director
Eneida Padilla Nieves, Finance Director
Trevor Douthat, Utilities Supervisor
Melissa Glogowski, Executive Administrative Assistant
Tracy Mercer, Special Projects

DELEGATION QUESTIONS & COMMENTS FROM THE FLOOR

(Each speaker shall be limited to three (3) minutes)

Mayor Pennant opened the floor for comments from the public.

Dre Robinson, 612 MLK SW, Dundee, requested that the Town Commission consider allocating funding per Executive Order 10-4050 to the heart district. He requested that they be placed on the 10/25/2022 agenda to discuss this item in more detail.

Assistant Attorney Claytor explained that the Town and Town Attorney's Office reviewed and researched Executive Order 10-4050 (the "Order"). Attorney Claytor further explained that, according to the terms of the Order, the program(s), which are the subject of the Order, are federally funded and not applicable to the Town of Dundee.

Seeing no additional public come forth the floor was closed.

ITEM 01: APPROVAL OF CONSENT AGENDA: CONSENT AGENDA FOR OCTOBER 11, 2022

Town Manager reported the following changes to the consent agenda:

- The RDK Assets, Inc. 31-yard Freightliner ASL Truck was removed from the consent agenda and was added to the regular agenda.

A. Minutes for approval:

- Town Commission Budget Workshop Minutes 07/14/2022
- Town Commission Budget Workshop Minutes 07/19/2022
- Town Commission Meeting Minutes 07/26/2022
- Planning & Zoning Board Meeting Minutes 07/21/2022
- Town Commission Meeting Minutes 07/12/2022
- Town Commission Budget Workshop Minutes 07/26/2022

B. Committee Appointment

- Sheila Aguilar, Tree Board Reappointment for a 3-year term, ending November 2025

C. Agreements for approval:

- Applied Aquatic Lake Ruth 2022 Agreement
- Applied Aquatic Lake Marie 2022 Agreement
- Applied Aquatic Lake Menzie 2022 Agreement

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the consent agenda with changes for the meeting of October 11, 2022, made by Commissioner Goddard. Seconded by Vice Mayor Richardson. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

APPROVAL OF AGENDA: AGENDA FOR OCTOBER 11, 2022

Town Manager Davis reported the following changes:

- Item 04, Resolution 22-43, the attachments were updated.
- Item 06, Lincoln sidewalk Tucker Paving task order proposal was removed from the agenda.
- Item 10, Resolution 22-45, RDK Garbage truck emergency purchase was added

MOTION TO APPROVE the regular meeting agenda with changes for the meeting of October 11, 2022, made by Commissioner Goddard. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 02: RECOGNITION, ARCHIE SAPP- GOOD CITIZENSHIP AWARD

Commissioner Quarles presented Mr. Archie Sapp will a Good Citizen Award, thanking him for his contributions to the success of the Town Sanitation Department.

Mr. Sapp was appreciative of the award and committed to continuing to assist the Town.

ITEM 03: HISPANIC HERITAGE MONTH PROCLAMATION

Mayor Pennant presented the 2022 Hispanic Heritage Month Proclamation to the Town Finance Director, Eneida Padilla.

Mrs. Padilla was grateful to receive the proclamation on behalf of the Hispanic community in the Town of Dundee.

MOTION TO SUPPORT the Hispanic Heritage Month Proclamation made by Commissioner Goddard. Second by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 04: RESOLUTION 22-43, ALFORD RIDGE PARKS AND RECREATION REQUEST

Assistant Attorney Claytor read the legal title of Resolution 22-43.

RESOLUTION NO. 22-43

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, APPROVING WITH CONDITIONS THE REQUEST BY ABSOLUTE ENGINEERING, INC, ON BEHALF OF SLC IRA, LLC AND ABC IRA, LLC TO OBTAIN TOWN COMMISSION APPROVAL OF THE PARKS AND RECREATION REQUEST RELATED TO THE PROPOSED ALFORD RIDGE SUBDIVISION, ON APPROXIMATELY 48.29 +/- ACRES OF LAND, LOCATED ON THE EAST SIDE OF ALFORD ROAD, NORTH OF EDWARDS ROAD, SOUTH OF LAKE HATCHINEHA ROAD, WEST OF HL SMITH ROAD, WITHIN THE TOWN OF DUNDEE, FLORIDA, FURTHER DESCRIBED AS POLK COUNTY PROPERTY APPRAISER PARCEL IDENTIFICATION NUMBERS 272823-000000-034010, 272823-000000-034020, 272823-000000-034030, AND 272823-000000-032020.

Town Planner, Lorraine Peterson, gave the presentation.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-43 Alford Ridge Parks and Recreation Request made by Commissioner Goddard. Second by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 05: DISCUSSION & ACTION, RFP 22-05 BID AWARD FOR RFP 22-05, FOR THE DESIGN, CONSTRUCTION, & INSTALLATION OF A 350KW GENERATOR, INCLUDING DEMOLITION & REMOVAL OF EXISTING GENERATOR

Town Manager Davis gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO AWARD RFP 22-05 for the design, construction, and installation of a 350kw generator, including the demolition and removal of the existing generator to Mid-Florida Diesel and authorize the Town Manager to take any necessary further actions in order to move forward with the work therein made by Commissioner Goddard. Second by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 06: DISCUSSION & ACTION, LINCOLN AVENUE SIDEWALK PROJECT, PHASE I, TUCKER PAVING TASK ORDER- ITEM REMOVED FROM AGENDA

ITEM 07: DISCUSSION & ACTION, WATER AND WASTEWATER CAPITAL IMPROVEMENTS PLAN FOR 2022 – 2023 TO 2026 – 2027

Public Utilities Director Tracy Mercer gave a presentation of the updated five-year water and wastewater capital improvements plan.

There was discussion among the Commission, Town Manager Davis, and Ms. Mercer of the updated CIP.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the conceptual water facilities, water distribution infrastructure, and water plant miscellaneous CIP plans made by Commissioner Quarles. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 08: DISCUSSION AND ACTION: 2022 MEETING SCHEDULE FOR NOVEMBER AND DECEMBER

Town Manager Davis proposed the following Town Commission meeting schedule for November and December 2022:

- November 22, 2022
- December 27, 2022

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the proposed November and December 2022 Town Commission meeting schedule made by Commissioner Goddard. Second by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 09: DISCUSSION & ACTION, TREE REMOVAL SERVICE APPROVAL

Town Manager Davis gave the analysis.

The Damage Assessment that occurred after Hurricane Ian. The assessment revealed trees that were damaged by the storm that need to be removed due to utility conflicts and for the safety of the Town. The size of the trees are too large for Town Staff and Town equipment to handle.

Town Staff received 3 quotes for this service:

Vendor Name	Quoted Amount
Summeralls Environmental	\$10,200.00
Briggs Tree Service	\$15,200.00
Ground Zero Tree & Environment	\$17,750.00

Town Staff is recommending Summeralls Environmental for this project.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the Summeralls Environmental for tree removal at the quoted price of \$10,200 for the removal of damaged trees caused by Hurricane Ian made by Vice Mayor Richardson. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 10: RESOLUTION 22-45, RDK GARBAGE TRUCK EMERGENCY PURCHASE

Assistant Attorney Claytor read the legal title of Resolution 22-45.

RESOLUTION NO. 22-45

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA MEMORIALIZING A DECLARATION OF EMERGENCY AS TO THE LEASE AGREEMENT BETWEEN THE TOWN OF DUNDEE AND RDK ASSETS, INC. D/B/A RDK TRUCK SALES FOR THE THIRTEEN (13) MONTH LEASE OF A 2022 FREIGHTLINER ASL; MAKING A FINDING OF EMERGENCY UNDER STATE LAW AND SECTION 2-159(c)(2) OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE; AND CONFIRMING AND APPROVING THE TOWN MANAGER’S

ACTIONS IN ENTERING INTO SAID LEASE AGREEMENT WITH RDK ASSETS, INC. D/B/A RDK TRUCK SALES.

Town Manager Davis gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-45 for the emergency purchase of a garbage truck from RDK Assets, Inc. made by Commissioner Goddard. Second by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

REPORTS FROM OFFICERS

- **POLK COUNTY SHERIFFS OFFICE**

Sergeant Anderson said the crime numbers are still high from the car burglaries from unlocked cars a couple of months ago. Detective Weston did make arrests from those incidents, and they were not from the Town of Dundee. Turkey giveaway is coming up. The deputies are putting an emphasis on speeding, and they understand that it is an increased issue across all of Polk County.

- **FIRE DEPARTMENT**

Town Manager Davis gave a report from Chief Carbone. In the last week there was 1 fire, 21 medical, 1 hazardous condition, 1 service call, 6 good intent, and 7 false alarms.

- **TOWN ATTORNEY**

Assistant Attorney Claytor gave an update to the Ridge Church Winn Dixie Plaza access. He and Town Staff had a sit visit and met with the owner of the car wash. The Town's consulting engineer is currently working on a conceptual drawing. Another meeting with the property owner is necessary to further discuss requested and proposed easement across the parcel. A response from bond council and USDA is expected very soon. Although it is a timely process, progress is being made.

- **TOWN MANAGER**

- Introduced the Town's new Code Compliance Officer, Jorge Rodriguez.
- Ridge League Dinner will be Thursday, October 13th.
- Thoughts and prayers go to Commissioner Glenn with the death in his family.

- **COMMISSIONERS**

- **Commissioner Goddard**, thanked all in attendance, welcomed Sgt. Anderson back, complimented Ms. Peterson and Ms. Mercer on their presentations.
- **Commissioner Quarles**, thanked all in attendance and welcomed Sgt. Anderson back.
- **Vice Mayor Richardson**, thanked all in attendance, thanked staff for their hard work, thanked Ms. Peterson for her professionalism, thanked John Vice for his hard work, thanked Town Manager Davis for her hard work and commended her wisdom.

- **MAYOR**

Suggested to the Town Manager to have an appreciation luncheon for all of the staff as a small token of thanks for their hard work before, during and after Hurricane Ian. He explained that he was very hesitant to agree to the Town Sanitation Department, but he is relieved that he was convinced and is thankful for how well it is going.

ADJOURNMENT

Meeting adjourned at 8:48pm.

Respectfully Submitted,

Jenn Denson Garcia
Jenn Garcia, Town Clerk

APPROVAL DATE: _____

AYES: _____ NAYS: _____

DRAFT

DUNDEE PLANNING & ZONING BOARD

LOCATION: DUNDEE TOWN HALL
202 MAIN STREET, DUNDEE, FLORIDA



PLANNING & ZONING BOARD MEETING MINUTES for OCTOBER 20, 2022

CALL TO ORDER at 5:36pm by Chair Ron Hall

PLEDGE OF ALLEGIANCE: Chair Ron Hall

ROLL CALL: Jenn Garcia

MEMBERS PRESENT:

Ron Hall

Suzetta Henson

Jill Kitto

MEMBERS ABSENT:

Ray Hunt

MOTION TO EXCUSE Ray Hunt from the October 20, 2022 meeting of the Planning and Zoning Board made by Member Kitto and seconded by Member Henson. Passed Unanimously.

AYES: Hall, Henson, Kitto

NAYS: None

STAFF PRESENT:

Lorraine Peterson, Town Planner

Seth Claytor, Assistant Attorney

Jenn Garcia, Town Clerk

John Vice, Public Works Director

ITEM 01: DISCUSSION ITEMS

A. BONDING LANGUAGE AND SUBDIVISION PLATTING GUIDELINES RELATED TO THE SUBDIVISION APPROVAL PROCESS

Town Planner, Lorraine Peterson, gave the analysis.

Assistant Attorney Claytor explained that, in light of the spike in development activity within the corporate limits of the Town of Dundee and Polk County, it is necessary to review the bonding language and subdivision platting guidelines related to the Town's subdivision approval process. Town Staff has recognized that from an approval standpoint starting with the preliminary subdivision plan (PSP) there should be a more thorough review that will require, amongst others, a Chapter 177 title opinion or property informational report to identify any issues prior to review of an application for final plat approval. At final plat, it is recommended that a developer bond no more than 50% of the public improvements and dedicated improvements of and/or for the project and 50% of such improvements per phase.

Before moving on to the subsequent/next phase of the phased project, the dedicated improvements and public infrastructure must be constructed for the preceding phase.

The improvements must be constructed along with or concurrent with each phase of a phased project. This approach makes managing the requirements of each project successful.

After all the public infrastructure and dedicated improvements are completed, the Town shall require a maintenance guarantee. Town Staff and Town Consultants request a two (2) year plus 30-day maintenance guarantee. If there are any issues, a claim would be made against the maintenance guarantee and the 30-days allows time in the event an issue arises and claim must be made towards the expiration of the two (2) year period.

There was discussion among the board members, Assistant Town Attorney, and the Town Planner regarding item one.

Board Member Kitto inquired of the requirements for new development to lay all infrastructure lines underground or if they are still permitted to be above ground. She stated that this is the future and that it would benefit the Town to have these requirements.

Assistant Town Attorney Claytor responded that he would need to research this item.

Board Member Henson expressed concerns about communication of preparation during a hurricane or emergencies.

By consensus of the Board, the recommended bonding language and platting guidelines were approved and a draft of the requested code revisions was requested for approval.

Town Planner Peterson stated that the Fee-in-Lieu of information requested by Chair Hall will be brought back along with the language on parks.

REPORTS FROM OFFICERS:

Board Members:

Board Member Kitto:

Expressed concerns of the trucking company on US 27. This is still an open case, and it has proceeded too long.

ADJOURNMENT

Meeting adjourned at 6:57pm.

Respectfully Submitted,


Jenn Garcia, Town Clerk



DUNDEE TOWN COMMISSION

LOCATION: DUNDEE TOWN HALL
202 MAIN STREET, DUNDEE, FLORIDA

TOWN COMMISSION MINUTES REPORT FOR OCTOBER 25, 2022

CALL TO ORDER: Mayor Pennant called the meeting to order at 6:30 PM.

PLEDGE OF ALLEGIANCE: Mayor Pennant

INVOCATION: Commissioner Goddard

RECOGNITION OF SERGEANT AT ARMS: Deputy Williams

PUBLIC SPEAKING INSTRUCTIONS: Mayor Pennant

ROLL CALL: Melissa Glogowski

Town Commissioners Present:

Commissioner Goddard
Commissioner Richardson
Vice Mayor Quarles
Mayor Pennant

Town Commissioners Absent:

Commissioner Glenn

MOTION TO EXCUSE Commissioner Glenn from the October 25, 2022 Town Commission meeting made by Commissioner Goddard. Seconded by Vice Mayor Richardson. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

A moment of silence was observed for Town Manager Davis and her family at this difficult time.

Town Staff Members Present:

Jenn Garcia, Assistant Town Manager/Town Clerk
Seth Claytor, Assistant Town Attorney
John Vice, Public Works Director
Eneida Padilla Nieves, Finance Director
Trevor Douthat, Utilities Supervisor
Melissa Glogowski, Executive Administrative Assistant
Tracy Mercer, Special Projects

DELEGATION QUESTIONS & COMMENTS FROM THE FLOOR

(Each speaker shall be limited to three (3) minutes)

Mayor Pennant opened the floor for comments from the public.

Jill Kitto, 150 Kitto Lane, Dundee, expressed concern for the ongoing code case on the trucking company at Frederick and US 27. She felt this code case is taking too long considering it was opened in 2021 for no

business license. She encouraged the Town Commission to do their part to bring this violation to completion.

Assistant Attorney Claytor explained that the Town currently has two (2) open cases that are accumulating a \$250 per day fine for the cited violation(s). Attorney Claytor also informed the Town Commission that certain land use and zoning applications have been submitted to the Town of Dundee Development Services Department related to the subject real property. Attorney Claytor recommended the Town Commission not comment any further.

Dre Robinson, 612 Dr. MLK, Dundee, expressed appreciation of John Vice and the Public Works Department efficient response to the hurricane debris. He further expressed concerns for the sidewalk issue on Lincoln Avenue being cancelled and stated that Dundee needs to spend money on the Town parks.

Assistant Town Manager Garcia stated that the sidewalk project on Lincoln Avenue has been approved and will begin in the near future.

Jack Camp, Public Affairs Specialist with the US Small Business Administration, notified the Commission of SBA disaster loans that are available for those impacted by Hurricane Ian. He encouraged everyone to apply for a loan if they fit the criteria, the loans are available to everyone- not just businesses.

Mayor Pennant requested that Mr. Camp contact the Town Administration to provide additional information.

Seeing no further public come forward, the floor was closed.

ITEM 01: APPROVAL OF CONSENT AGENDA: CONSENT AGENDA FOR

- **Minutes for approval:**
 - Town Commission August 09, 2022 Meeting Minutes
- **Agreements:**
 - Richmond American Homes, Season at Hilltop Developers Agreement
 - Mid-Florida Diesel Construction Agreement, RFP 22-05
- **Board Appointments:**
 - Suzetta Henson Reappointment to Planning & Zoning Board

Assistant Town Manager Garcia reported the following changes to the October 25, 2022 consent agenda:

The Mid-Florida Diesel Construction Agreement for RFP 22-05 was added to 1B Agreements.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the consent agenda with changes for the meeting of October 25, 2022, made by Commissioner Goddard. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

APPROVAL OF AGENDA: AGENDA FOR OCTOBER 25, 2022

Assistant Town Manager Garcia reported the following changes to the October 25, 2022 agenda:

Item 03: Odyssey Emergency Service Agreement added Resolution 22-47.

MOTION TO APPROVE the regular meeting agenda with changes for the meeting of October 25, 2022, made by Commissioner Goddard. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 02: RESOLUTION 22-46, PROGRESSIVE WATER EMERGENCY SCOPE OF WORK

Assistant Attorney Claytor read the legal title of Resolution 22-46.

RESOLUTION NO. 22-46

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA MEMORIALIZING A DECLARATION OF EMERGENCY AS TO ENTERING INTO A SCOPE OF WORK WITH PROGRESSIVE WATER RESOURCES, A DIVISION OF RESPEC COMPANY, LLC TO PROVIDE SERVICES FOR THE TOWN RELATED TO THE DEVELOPMENT OF LAND USE TRANSITIONAL (LUT) PROGRAM, GROUNDWATER FLOW MODELING, AND WATER USE PERMIT MODIFICATION APPLICATION ASSISTANCE; MAKING A FINDING OF EMERGENCY UNDER STATE LAW AND SECTION 2-159(c)(2) OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE; CONFIRMING AND APPROVING THE EXPENDITURE OF \$47,500.00; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTIONS RELATED TO ENTERING INTO A SCOPE OF WORK WITH PROGRESSIVE WATER RESOURCES, A DIVISION OF RESPEC COMPANY, LLC TO PROVIDE SERVICES FOR THE TOWN WITH REGARD TO THE DEVELOPMENT OF LAND USE TRANSITIONAL (LUT) PROGRAM, GROUNDWATER FLOW MODELING, AND WATER USE PERMIT MODIFICATION APPLICATION ASSISTANCE RELATED TO PUBLIC WATER SUPPLY.

Assistant Town Manager Garcia gave the analysis.

Public Services Director, Tracy Mercer, gave a presentation on the need and scope of work of Progressive Water.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-46 for the emergency services of Progressive Water, made by Vice Mayor Richardson. Seconded by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 03: RESOLUTION 22-47, ODYSSEY MANUFACTURING COMPANY EMERGENCY AGREEMENT FOR WATER AND WASTEWATER TREATMENT

Assistant Attorney Claytor read the legal title of Resolution 22-47.

RESOLUTION NO. 22-47

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA MEMORIALIZING A DECLARATION OF EMERGENCY AS TO THE PURCHASE ULTRACHLOR 12.5 TRADE PERCENT SODIUM HYPOCHLORITE FOR THE TOWN OF DUNDEE WATER PLANT(S) AND WASTEWATER PLANT; MAKING A FINDING OF EMERGENCY UNDER STATE LAW AND SECTION 2-159(c)(2) OF THE CODE OF ORDINANCES OF THE TOWN OF DUNDEE; CONFIRMING AND APPROVING THE EXPENDITURE OF \$1.25 PER GALLON OF ULTRACHLOR 12.5 TRADE PERCENT SODIUM HYPOCHLORITE FROM ODYSSEY MANUFACTURING COMPANY, INC; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTION(S) RELATED TO ENTERING INTO AN AGREEMENT WITH ODYSSEY MANUFACTURING COMPANY, INC, FOR THE PURCHASE AND DELIVERY OF ULTRACHLOR 12.5 TRADE PERCENT SODIUM HYPOCHLORITE FOR THE TOWN OF DUNDEE WATER PLANT(S) AND WASTEWATER PLANT.

Assistant Town Manager Garcia gave the analysis.

Public Services Director, Tracy Mercer, gave a presentation on the need and services of Odyssey Manufacturing Company.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-47 for the emergency services of Odyssey Manufacturing Company made by Commissioner Quarles. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 04: DISCUSSION & ACTION, PUBLIC WORKS PURCHASE OF 72-INCH MOWERS FOR STREETS & STORMWATER

Assistant Town Manager Garcia gave the analysis. Staff recommended approval and authorization to purchase two (2) 72-inch zero turn mowers from Daves Power Equipment at a price not to exceed \$12,881.20 per mower.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the purchase of two 72-inch zero turn mowers from Daves Power Equipment at a price not to exceed \$12,881.20 per mower made by Commissioner Quarles. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 05: DISCUSSION & ACTION, HENDERSON PARK TRUNK-OR-TREAT SPECIAL EVENT TEMPORARY ROAD CLOSURE REQUEST

Assistant Town Manager Garcia gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE a temporary road closure of MLK Avenue on October 29th from 4:00 pm – 9:00pm on October 29, 2022 made by Commissioner Quarles. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

ITEM 06: DISCUSSION, WATER AND WASTEWATER CAPITAL IMPROVEMENTS PLAN FOR 2022/23 TO 2026-27

Assistant Town Manager Garcia gave the analysis.

Public Services Director, Tracy Mercy gave a presentation on the wastewater portion of the updated Capital Improvement Plan (CIP)

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO CONCEPTIONALLY APPROVE the updated Wastewater Master Plan and the Utility Maintenance Infrastructure, Machinery, and equipment made by Commissioner Quarles. Second by Commissioner Goddard. Passed Unanimously.

AYES: Goddard, Quarles, Richardson, Pennant

NAYES: None

REPORTS FROM OFFICERS

• **DUNEE FIRE DEPARTMENT**

Assistant Town Manager Garcia reported the following on behalf of Fire Chief Carbone:

- 1 Fire
- 3 Rescue and Emergencies
- 4 Hazardous Conditions
- 5 Service Calls
- 6 Good Intent Calls
- 7 False Alarms

• **ASSISTANT TOWN MANAGER**

- The PCSO Deserts with Deputies event will be from 5:30 – 7:30pm on October 26, 2022, at the Community Center.
- Library Halloween Carnival event is on October 28, 2022, from 5:00 – 7:00pm.
- Dundee Staff Appreciation lunch, as recommended by Mayor Pennant, will be on October 28, 2022, from 11:00am – 2:00pm at the Development Services Building.
- The funeral for Town Manager Davis's nephew, Audea Thames, will be on October 29, 2022.
- The Main Street Trick-or-Treat event will be on October 31, 2022, from 3:00 – 5:00pm.
- The 2022 – 2023 Budget Books were placed at seats of the Commission.

• **COMMISSIONERS**

- **Commissioner Goddard**
 - o Thanked all in attendance.
 - o Appreciated Ms. Mercer’s presentations.
 - o Thanked Town Staff and Consultants.
 - o Gave condolences to the family of Town Manager Davis.
- **Commissioner Quarles**
 - o Appreciated Ms. Mercer’s presentations.
 - o Thanked Staff and Consultants.
- **Vice Mayor Richardson**
 - o Appreciated Ms. Mercer’s informative presentations.
 - o Thanked Staff and Consultants.
- **MAYOR**
 - o Thanked all in attendance.
 - o Encouraged everyone to attend the Desert with Deputies event.

ADJOURNMENT

Meeting adjourned at 8:21pm.

Respectfully Submitted,

Jenn Denson-Garcia

 Jenn Garcia, Town Clerk

APPROVAL DATE: _____

AYES: _____ NAYS: _____

DRAFT



AMENDED TOWN COMMISSION MEETING MINUTES

November 08, 2022 at 6:30 PM

COMMISSION CHAMBERS - 202 E. MAIN STREET, DUNDEE, FL 33838

Phone: 863-438-8330 | www.TownofDundee.com

CALL TO ORDER- Mayor Pennant called the meeting to order at 6:57pm

PLEDGE OF ALLEGIANCE- Mayor Pennant

INVOCATION- Mayor Pennant

RECOGNITION OF SERGEANT AT ARMS- Sargent Anderson

ORDINANCE #13-08, PUBLIC SPEAKING INSTRUCTIONS- Mayor Pennant

ROLL CALL- Jenn Garcia

Town Commissioners Present:

Commissioner Glenn

Commissioner Goddard

Commissioner Richardson

Vice Mayor Quarles

Mayor Pennant

Town Commissioners Absent:

None

Town Staff Members Present:

Tandra Davis, Town Manager

Jenn Garcia, Assistant Town Manager/Town Clerk

Seth Claytor, Assistant Town Attorney

John Vice, Public Works Director

Eneida Padilla Nieves, Interim Finance Director

Trevor Douthat, Utilities Supervisor

Melissa Glogowski, Executive Administrative Assistant

Tracy Mercer, Special Projects

MAYOR PENNANT OPENED THE FLOOR FOR DELEGATION QUESTIONS AND COMMENTS

Archie Sapp, 703 North Adams Avenue, Dundee, requested striping on road from the Community Center to Frederick and stated that the Community Center roof needs attention.

Pam Blaker, representing Royal Oaks, 1012 Dundee Road, Dundee, requested clarity on the Fire Assessment Program Fees. After conducting comparisons, there seemed to be a discrepancy considering Royal Oaks seem to be much higher than the other mobile homes parks around them. They are requesting that Town Staff investigate the discrepancy.

Town Manager Davis requested that Ms. Blaker contact her this week for further investigation of the issue.

Seeing no further public come forth, the floor was closed.

APPROVAL OF CONSENT AGENDA

The consent agenda for the meeting of November 08, 2022 contained the following:

A. Agreements:

1. Data Works Plus Renewal

B. Board Resignations:

1. Joe Garrison Tree Board Resignation

C. Board Appointments:

1. Jeffery Gunter Planning & Zoning Board Application
2. Tracy Barnhill Tree Board Application
3. Drecextel Robinson Tree Board Application

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the consent agenda for the meeting of November 08, 2022, made by Commissioner Goddard. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

1. Approval of the Agenda for the November 08, 2022 Town Commission meeting.

Town Manager Davis reported the following changes to the agenda:

- Item 2, Budget Amendment, Resolution 22-48 was amended.
- Item 3, Concurrency Developers Agreement was amended.
- Item 4, Resolution 22-52, Shores of Lake Dell CSP was removed.
- Item 5, Resolution 22-50, Crystal Lake Preserve CSP was amended.
- Item 6, Resolution 22-49, Landings at Lake Mabel Loop was amended.

MOTION TO APPROVE the regular meeting agenda with changes for the meeting of November 08, 2022, made by Commissioner Glenn. Seconded by Commissioner Quarles. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant
NAYES: None

NEW BUSINESS

2. Resolution 22-48, FY 2021 – 2022 Budget Amendment

Assistant Attorney Claytor read the legal title of Resolution 22-48.

RESOLUTION 22-48

A RESOLUTION OF THE TOWN OF DUNDEE, POLK COUNTY, FLORIDA, AMENDING FINAL APPROPRIATION OF FUNDS FOR THE FISCAL YEAR 2021 – 2022 BUDGET; PROVIDING FOR AN EFFECTIVE DATE.

Town Manager Davis gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-48 for the FY 2021 – 2022 budget amendment. Motion made by Quarles, Seconded by Goddard. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant
NAYES: None

3. Discussion & Action, Concurrency Developers Agreement

Assistant Town Attorney Claytor gave the analysis.

Kevin Kitto, 150 Kitto Lane, asked if current developments in the queue are going to have water.

Assistant Attorney Claytor explained that the form Concurrency Developers Agreement is something that, at this time, the Town must provide to all developers, but the Agreement is not intended to hinder or delay any project.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE the form Concurrency Developers Agreement. Motion made by Quarles, Seconded by Goddard. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant
NAYES: None

5. Resolution 22-52, Shores of Lake Dell Subdivision Certified Subdivision Plan

Assistant Attorney Claytor read the legal title of Resolution 22-52.

RESOLUTION NO. 22-52

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, APPROVING THE CERTIFIED SUBDIVISION PLAN (CSP) WITH CERTAIN CONDITIONS FOR THE SHORES OF LAKE DELL SUBDIVISION; MAKING FINDINGS; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTION(S) RELATED TO ENTERING INTO A DEVELOPER'S AGREEMENT ON BEHALF OF THE TOWN OF DUNDEE WITH REGARD TO THE CONDITIONAL APPROVAL OF THE CSP FOR THE SHORES OF LAKE DELL; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Planner, Lorraine Peterson, gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-52 approving the Certified Subdivision Plan for the Shores of Lake Dell and approving construction prior to platting. Motion made by Glenn, Seconded by Richardson. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

6. Resolution 22-50, Crystal Lake Preserve Subdivision Certified Subdivision Plan

Assistant Town Attorney Claytor read the legal title of Resolution 22-50.

RESOLUTION NO. 22-50

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, APPROVING THE CERTIFIED SUBDIVISION PLAN (CSP) WITH CERTAIN CONDITIONS FOR THE CRYSTAL LAKE PRESERVE SUBDIVISION; MAKING FINDINGS; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTION(S) RELATED TO ENTERING INTO A DEVELOPER'S AGREEMENT ON BEHALF OF THE TOWN OF DUNDEE WITH REGARD TO THE CONDITIONAL APPROVAL OF THE CSP FOR THE CRYSTAL LAKE PRESERVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Planner, Lorraine Peterson, gave the analysis.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-50 approving the Certified Subdivision Plan for the Crystal Lake Preserve Subdivision and approving construction prior to platting. Motion made by Richardson, Seconded by Goddard. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

7. Resolution 22-49, Landings at Lake Mabel Loop Subdivision Certified Subdivision Plan

Assistant Attorney Claytor read the legal title of Resolution 22-49.

RESOLUTION NO. 22-49

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA, APPROVING THE CERTIFIED SUBDIVISION PLAN (CSP) WITH CERTAIN CONDITIONS FOR THE LANDINGS AT LAKE MABEL LOOP SUBDIVISION; MAKING FINDINGS; AND AUTHORIZING THE TOWN MANAGER TO TAKE ALL NECESSARY FURTHER ACTION(S) RELATED TO ENTERING INTO A DEVELOPER'S AGREEMENT ON BEHALF OF THE TOWN OF DUNDEE WITH REGARD TO THE CONDITIONAL APPROVAL OF THE CSP FOR THE LANDINGS AT LAKE MABEL LOOP; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

Town Planner, Lorraine Peterson, gave the analysis.

Attorney Leonard Johnson, Land Use Attorney representing the developer, 14552 Mt. Zion Road, Dade City, complimented the staff on their efforts in making this development successful.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Resolution 22-49 approving the Certified Subdivision Plan for the Crystal Lake Preserve Subdivision and approving construction prior to platting. Motion made by Goddard, Seconded by Richardson. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

8. Discussion and Action, CHA Consulting, Inc. Scope of Work for Population and Potable Water Demand Projections

Town Manager Davis gave the analysis.

Public Services Director, Tracy Mercer explained the need and use for this service.

Assistant Attorney Claytor confirmed with Town Staff that this request is a sole-source purchase as a result of the specialized nature of the service(s); and, Section 2-159 of the Town of Dundee Code of Ordinances, a sole-source purchase is an exception to the Town's procurement requirements.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE CHA Consulting, Inc. to complete the necessary study to satisfy the apprehensions and requirements of SWFWMD. Motion made by Quarles, Seconded by Richardson. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

9. Discussion & Action, Odyssey Manufacturing Company Chlorine Modifications to Hickory Walk Water Treatment Plant Dedicating a Pump to Each Water Source

Town Manager Davis gave the analysis.

Public Services Director, Tracy Mercer, explained the need and use of this service.

Mayor Pennant opened the floor for comments from the public; seeing no public come forth, the floor was closed.

MOTION TO APPROVE Odyssey Manufacturing Company to upgrade and modify the chlorination pumping system to include an additional chlorination pump and skid system to provide the accurate amount of chlorine to be distributed to both wells. Motion made by Glenn, Seconded by Richardson. Passed Unanimously.

AYES: Glenn, Goddard, Quarles, Richardson, Pennant

NAYES: None

10. Discussion & Action, Hubbard Construction Co. Notification of Claim

Town Manager Davis gave the analysis.

Mayor Pennant requested that staff investigate filing this as a claim with insurance.

It was the consensus of the commission for Town Staff to file a claim with the insurance company.

REPORTS FROM OFFICERS

PCSO Comments:

November 19, 2022, from 8:30 am – 10:30 am the PCSO Turkey Giveaway will be held at Church on The Hill.

Fire Department:

Updated numbers were given by Town Manager Davis on the calls to date at the fire department.

Assistant Town Attorney:

Give an update on the status of the Winn Dixie turn-in. The owner of the car wash business about the easement needs for the turn-in. They will be having a follow-up meeting with him soon and are hoping that the project will continue to move forward.

Town Manager Davis:

- Gave a report on Mr. and Mrs. Kitto's meeting with the Winter Haven Community Development Director. There are potential opportunities for the Town to partner with the organization to address the economic development opportunities of the Town.
- SBA Informational Meeting will be held on 11/14/2022 at 5:00 pm at the Community Center
- PCSO is looking for representatives for the County Citizen Advisory Committee.
- Dundee received a grant for the PRWC and SWFWMD from Heartland, and we received a grant match for \$2,799,058.
- Christmas movie night with Santa at the Depot December 17th.
- Winter Wonderland Tree Lighting, December 2nd.
- Winter Wonderland Parade, December 10th.
- Mayor Toy Drive is accepting donations until December 9th.
- Polk County Schools will be closing on Thursday because of the incoming storm. The Town will be following suit with the county and will determine if Town offices/departments will open or close based on the decision of Polk County.
- Sandbags are available on November 9th only from 7am – 5pm at the County Barn in Town.
- Town offices will be closed on Friday in observance of Veterans Day.

Commissioner Goddard:

Thanked all in attendance, appreciated the planning presentations and the efforts of Ms. Mercer with the grant, thanked the PCSO and Assistant Town Attorney. Congratulated Town Manager Davis on the article from FCMA.

Commissioner Quarles:

Congratulated Town Manager Davis and thanked all in attendance.

Commissioner Glenn:

Congratulated Town Manager Davis, thanked Ms. Mercer for the grant, appreciated the update on the Winn Dixie Plaza turn-in, looking forward to the completion of the depot, hopeful that the new code enforcement officer will be trained enough to begin making strides soon.

Vice Mayor Richardson:

Congratulated Town Manager Davis on the article, thanked Ms. Mercer for the successful grant, thanked Ms. Peterson for the Planning presentations, thanked PCSO, wished everyone a Happy Thanksgiving. Requested that the Town Commission consider increased trainings and conferences budget in the next fiscal year.

Mayor Pennant:

Thanked the commission and all in attendance. Encouraged everyone to stay safe during the pending storm. Reminded everyone that the next meeting will be December 13th.

ADJOURNMENT at 8:34 pm.

Respectfully Submitted,

Jenn Denson-Garcia
Jenn Garcia, Town Clerk

APPROVAL DATE: _____

AYES: _____ **NAYS:** _____



DUNDEE PLANNING & ZONING and TREE BOARD JOINT WORKSHOP
LOCATION: DUNDEE TOWN HALL
202 MAIN STREET, DUNDEE, FLORIDA

PLANNING & ZONING and TREE BOARD
JOINT WORKSHOP
MEETING MINUTES for
JANUARY 17, 2023

CALL TO ORDER at 5:34pm by Planning & Zoning Board Chair Ron Hall
ROLL CALL: Tandra Davis

MEMBERS PRESENT:

Ron Hall
 Suzetta Henson
 Jill Kitto
 Michelle Smith
 Sheila Aguilar
 Tracy Barnhill
 Jeffery Gunter

MEMBERS ABSENT:

Dre Robinson

STAFF PRESENT:

Seth Claytor, Assistant Town Attorney
 Tandra Davis, Town Manager
 John Vice, Public Works Director

ITEM 01: PRESENTATION BY ASSISTANT ATTORNEY, SETH CLAYTOR

Assistant Attorney Claytor explained that the presentation is intended to provide general information only. It was not intended to provide legal advice and/or guidance, only general legal concepts. During the presentation, questions are encouraged; however, specific questions arising out of official Town business and/or matters, should first be consulted with the Town Manager or Town Clerk.

FLORIDA SUNSHINE LAW

Assistant Attorney Claytor explained the Sunshine Law Requirements and Interpretations according to Section 286.0114 of the Florida Statutes.

PUBLIC RECORDS LAW

Assistant Attorney Claytor explained the Scope and Interpretation of the Public Records Law according to Chapter 119, FS.

PUBLIC ACCESS TO GOVERNMENT INFORMATION

Assistant Attorney Claytor explained how the public has access to government information and explained the record retention requirements.

QUASI-JUDICIAL ACTIONS

Assistant Attorney Claytor explained Quasi-Judicial proceedings and as they relate to the boards of the Town.

Presentation given at this joint workshop of the Planning & Zoning Board and Tree Board attached as part of the meeting minutes.

ADJOURNMENT

Meeting adjourned at 8:01 pm.

Respectfully Submitted,

Jenn Denson-Garcia
Jenn Garcia, Town Clerk

DRAFT



Town of Dundee



**Florida's Government in the Sunshine Law
Chapter 119, Florida Statutes
§286.011, Florida Statutes**

Presentation by:
Seth B. Claytor, LL.M, Esq.
Assistant Town Attorney
Town of Dundee
Boswell & Dunlap, LLP
(863) 533-7117

1

GENERAL INFORMATION

- This presentation is intended to provide general information ONLY.
- This presentation is not intended to provide legal advice and/or guidance, ONLY general legal concepts.
- During this presentation, there will be opportunities for general questions; however, if you have any specific questions arising out of official City business and/or matters, you should first consult with your department supervisor or the City Manager.
- **Government-in-the-Sunshine Manual**
 - This manual is prepared by the Florida Attorney General and published by the First Amendment Foundation.
 - This is a very useful resource in learning and/or understanding open-government in the State of Florida.

2

PRESENTATION

- (1) **Sunshine Law (§286.011, Florida Statutes)**
- (2) **Public Records Law (Ch. 119, Florida Statutes)**
- (3) **Electronic and Digital Media (*Do you know what you don't know*)**

Note: In interpreting the Sunshine Law, the Courts have looked to the provisions of the Public Records Law, Chapter 119, Florida Statutes, stating that as the policy behind Chapter 119, Florida Statutes, and the policy behind Section 286.011, Florida Statutes, are similar and should be read in *pari materia*. AGO 2004-32.

3

GENERAL HISTORY OF OPEN GOVERNMENT

- Florida's Government-in-the-Sunshine Law (hereafter the "Sunshine Law") was enacted in 1967.
 - Currently, the Sunshine Law regarding open government can be found in **Chapter 286** of the Florida Statutes.
 - **Chapter 286** of the Florida Statutes establishes a basic right of access to most meetings of boards, commissions and other governing bodies of state and local governmental agencies or authorities.

4

Sunshine Law Requirements

- (1) Meetings must be open to the public;**
- (2) Reasonable public notice of such meetings must be given; and**
- (3) Minutes of the public meeting must be promptly prepared and open to public inspection.**

5

Sunshine Law Requirements (Cont'd)

Take Note: Although not part of the Sunshine Law, Section 286.0114 of the Florida Statutes, requires, subject to limited exceptions, that public boards provide an opportunity for public comment prior to taking official action on a proposition. Boards are authorized to adopt rules or policies that provide time limits for speakers; procedures for allowing a representative of a group to speak, as opposed to all members of a large group; and procedures or forms for an individual to use to inform the board of a desire to be heard, to indicate his/her position and a representative; and designate a specified period of time for public comment.

6

Purpose of the Sunshine Law

- “Government must be accountable to the people. The Florida Constitution, which sets forth our rights as citizens of this great state, provides that the public has the right to know how government officials spend taxpayer dollars and make the decisions affecting their lives. The principle of open government is one that must guide everything done in government for its public.” – Former Attorney General Pam Bondi
- The Sunshine Law must be broadly construed to effect its remedial and protective purpose of protecting the public from *closed door politics*. Pinellas County School Bd. v. Suncam, Inc., 829 So. 2d 989 (Fla. 2d DCA 2002) (holding the public’s right under Sunshine Law is virtually unfettered).
- The Sunshine Law should be construed so as to *avoid all evasive devices* and that this can only be accomplished by embracing within the terms of Section 286.011 of the Florida Statutes the inquiry and discussion stages conducted by a committee or other authority appointed and established by a governmental agency which relates to a matter on which foreseeable action will be taken. Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974).

7

The Sunshine Law

- The *intent* of the Government in the Sunshine Law was to cover any gathering of some of the members of a public board where those members discussed some matters on which foreseeable official action will be taken by the Board. Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).
- **ALL governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted.** Sarasota Citizens For Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010).
- Recent Case:

Members of a city and zoning commission violated the Sunshine Law when they participated in discussions at meetings of a community improvement association which involved planning and zoning matters. City of Bradenton Beach v. Metz, No. 2017 CA 003581 (Fla. 12th Cir. Ct. 2019), amended appeal filed (Fla. 2d DCA 2019).

8

The Sunshine Law (Cont'd)

- Every thought, as well as every affirmative act, of a public official as it relates to and is within the scope of his official duties, is a matter of public concern; and it is the **entire decision-making process** that the Legislature intended to affect by the enactment of Section 286.011 of the Florida Statutes. . . . **Every step in the decision-making process**, including the decision itself, is a necessary preliminary to formal action. **It follows that each such step constitutes an “official act,” an indispensable requisite to “formal action,” within the meaning of the Sunshine Law.** Times Publishing Company v. Williams, 222 So. 2d 470 (Fla. 2d DCA 1969).
- The *Sunshine Law* applies to *ANY* gathering of two (2) or more members of an elected or appointed public collegial board when they meet to discuss any matter which will foreseeably come before that board for action. Advisory committees can be included even though their powers are limited to making recommendations. Staff committees can be subject to the Sunshine Law if delegated some “*decision-making authority*” (e.g., the authority to screen and rank proposals) **as opposed to “mere fact-finding or information-gathering.”**

9

Sunshine Law – General Rule

- **As a general rule**, if there is a question as to whether a meeting is subject to the Sunshine Law, it is advisable to comply with the requirements of the statute. See City of Miami Beach v. Berns, 245 So. 2d 38 (Fla. 1971) (**reasoning that, if a public official is unable to know whether by any convening of two or more officials he or she is violating the law, he or she should leave the meeting forthwith**); see also Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) (stating that the principle to be followed is simple: when in doubt, the members of any board, agency, authority or commission should follow the open-meeting policy of the State).

10

Sunshine Law – Interpretation(s)

• Advisory Groups/Advisory Committees:

- **Advisory groups** created pursuant to law or ordinance or otherwise established by public agencies are subject to the Sunshine Law **even though their recommendation(s) are NOT binding on the entities that created them.** AGO 2005-06.
- While **meetings of staff** are not ordinarily covered by the Sunshine Law, when a staff member ceases to function in a staff capacity and is appointed to a committee that is delegated the authority to make recommendations to a board or official, the staff member loses his or her identity as staff while working on the committee and the Sunshine Law applies to the committee. AGO 2005-06.
- A **community advisory committee** that is responsible for making recommendations to the City Commission on matters of concern to the residents of the City and **upon which the City Commission may foreseeably act must comply with the requirements of the Sunshine Law.** AGO 98-13.

11

Sunshine Law – Interpretation(s) (Cont'd)

• Advisory Groups/Advisory Committees:

- However, **citizen groups** that meet to express common concerns and develop issues to be presented for consideration to the community advisory committee are not subject to the Sunshine Law as they are not governmental boards or commission within the scope of the statute. AGO 98-13.
- There is no government by delegation exception to the Sunshine Law and a public board or commission may not avoid compliance with the law by delegating its responsibilities to another group. Spillis Candela & Partners, Inc., v. Centrust Savings Bank, 535 So. 2d 694 (Fla. 3d DCA 1988).
- “The law is quite clear. An ad hoc advisory board, even if its power is limited to making recommendations to a public agency and even if it possesses no authority to bind the agency in any way, is subject to the Sunshine Law.” Spillis Candela & Partners, Inc., v. Centrust Savings Bank, 535 So. 2d 694 (Fla. 3d DCA 1988). See Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) (**holding that such a board may be made up entirely of private citizens**).

12

Sunshine Law – Interpretation(s) (Cont’d)

• Meetings w/ Board and Non-Board Members:

- The Sunshine Law applies to “any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board.” Board of Public Instruction of Broward County v. Doran, 224 So. 2d 693 (Fla. 1969); Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260 (Fla. 1973).
- Meetings of **other boards** in which two (2) members of the city council participate and discuss matters which will be brought before the city council are subject to Section 286.011, Florida Statutes. AGO 83-70.
- Section 286.011, Florida Statutes, is applicable to any gathering where members of the Board or Commission deal with some matter upon which **foreseeable action** will be taken by the Board or Commission. See Hough v. Stembridge, 278 So. 2d 288 (Fla. 3d DCA 1973) (finding that a violation occurs when two or more public officials takes place which is violative of statute’s spirit, intent and purpose).

13

Sunshine Law – Interpretation(s) (Cont’d)

• Meetings w/ Board and Non-Board Members:

- If a **non-board member** and/or City Staff is being used as an intermediary between members of the City Commission, then same will be subject to the provisions of Section 286.011 of the Florida Statutes. AGO 89-39.
- If a **non-board member** and/or **City Staff** has, in fact, been appointed as an agent of and is being designedly used by a member or members of the City Commission as or for the purpose of “**liaison**” or “**intermediary**” to calculate and/or circulate among board members the thoughts of such member or members in order to circumvent the Sunshine Law, **then such conversations might well be found by the courts to be violative of the letter and spirit of the law**. AGO 81-42.
- Delegation of Authority:
 - A single member of a board who has been delegated the authority to negotiate the terms of a lease on behalf of the board is subject to the Sunshine Law and therefore cannot negotiate in secret. AGO 074-294.

14

Sunshine Law – Interpretation(s) (Cont'd)

- **Memoranda:**
 - It has been concluded that the use of memoranda among members of a board and/or commission to avoid a public meeting may be a violation of the Sunshine Law, **even though two (2) members of the board or commission are not physically present.**
 - **In such a situation**, if a memorandum reflecting the views of an individual board member is circulated among other board members with each indicating his or her approval or disapproval . . . the memorandum has the effect of becoming official action of the board in violation of the Government in the Sunshine Law. AGO 89-23.
- **Other – Volunteer Fire Department:** (AGO 2004-32)
 - Florida Courts have stated that it was the Legislature’s intent to extend application of the Sunshine Law so as to bind “every board or commission of the state, or of any county or political subdivision over which it has dominion and control; and the statute has been held applicable to **private** organizations when the private entity has been created by a public agency, when there has been a delegation of the public agency’s governmental functions, or when the private organization plays an integral part in the decision-making process of the public agency. See also AGO 83-95 (county accepted services of nongovernmental committee to recodify and amend county’s zoning laws, committee subject to Sunshine Laws).

15

Sunshine Law – Interpretation(s)

- **Exceptions:**
- **ALL governmental entities in Florida are subject to the requirements of the Sunshine Law unless specifically exempted.** Sarasota Citizens For Responsible Government v. City of Sarasota, 48 So. 3d 755, 762 (Fla. 2010).
 - It is not a violation of the Sunshine Law for a City Manager, who is the Chief Executive Officer of the City, to meet with individual members of the city council to discuss city business. AGO 75-210 (citing AGO 074-47).
 - A limited exception to the applicability of the Sunshine Law to advisory committees has been recognized for committees established for **fact-finding only**, that is, information gathering and reporting. See Cape Publications, Inc. v. City of Palm Bay, 473 So. 2d 222 (Fla. 5th DCA 1985); Bennett v. Warden, 333 So. 2d 97 (Fla. 2d DCA 1976). However, when a committee possesses the authority not only to conduct fact-finding **but also to make recommendations**, the committee is participating in the decision-making process and is, therefore, subject to Section 286.011, Florida Statutes.
 - The Sunshine Law would **generally not** be applicable to a meeting between a commissioner and a citizen when same discuss City matters when other members of the commission are not present (i.e., fact finding). AGO, informal (January 5, 1990).

16

Sunshine Law – Interpretation(s)

- **Exceptions (Continued):**
- **Section 286.011(8) – “Shade Meetings”**
 - Section 286.011(8) of the Florida Statutes provides a limited exception to the general openness requirement and makes litigation strategy or settlement meetings private when they are held between a board and its attorney and the board is a party before a court or administrative agency. Fla. Att’y Gen. Informal Op. November 26, 2014.
 - The statute limits the persons who may attend such a meeting, the subject of any such meeting, and the length of time the record of the meeting may be kept closed. Id.
 - As an exception to the broader provisions of the Sunshine Law, section 286.011(8), Florida Statutes, **should be read strictly or narrowly to accomplish the specific purpose of the exception.** The purpose of this exception is to put local governments and state agencies on an equal footing with the other parties in a lawsuit by allowing these governmental agencies to protect their theories of litigation strategy or settlement negotiations from the opposing party during the pendency of a lawsuit. Id.

17

Sunshine Law – Conclusion

CONSEQUENCES:

Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who ***knowingly violates*** the provisions of this section by attending a meeting not held in accordance with the provisions hereof is ***guilty of a misdemeanor of the second degree***, punishable as provided in s. 775.082 or s. 775.083. §286.011(3)(b), Fla. Stat. (2019).

ALWAYS REMEMBER THE GENERAL RULE!

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Public Records Law

- Since the late 1800s, Florida has had a public policy that records or documents created in the discharge of official duties belong to the public office – NOT the individual who created the record(s) – and therefore should be preserved.
- In 1909, the “Public Records Law” was created with the passage of **Chapter 119, FS**. Thereafter, in 1968, the right to access public records and meetings was guaranteed by **Fla. Const. art. 1, §24**.
- **What is a Public Record?**
 - It is the general policy of the State of Florida that all state, county and municipal records shall be open for personal inspection by any person at all times. §119.01, Fla. Stat. (2019).
 - “**Public records**” means **all** documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, **regardless of the physical form**, characteristics, or means of transmission, **made or received** pursuant to law or ordinance or in connection with the transaction of official business **by any agency**. §119.011(12), Fla. Stat. (2019).
 - The Florida Supreme Court construed this definition of “public records” and held that, for the purposes of § 119.011(1), F.S., a public record is “any material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.” Shevin v. Byron, Harless, Schaffner, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla.1980).

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Scope of Public Records Act

Florida’s Public Records Act, Ch. 119, Florida Statutes, provides **a right of access** to the records of state and local governments **as well as to records of private entities acting on their behalf**.

It is well settled that “the general purpose of the Florida Public Records Act is to open public records so that Florida’s citizens can discover the actions of their government.” §119.07, Fla. Stat. (2019); see also City of Riviera Beach v. Barfield, 642 So. 2d 1135, 1136 (Fla. 4th DCA 1994). The policy has been described as a “cornerstone of our political culture.” Bd. Of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120, 124 (Fla. 2016). **It is liberally construed in favor of open access to public records.** Id.

If there is any doubt as to whether a matter is a public record subject to disclosure, the doubt is to be resolved in favor of disclosure.” Morris Pub. Group, LLC v. Fla. Dept. of Educ., 133 So. 3d 957 (Fla. 1st DCA 2013).

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What is a Public Record?

- The Florida Supreme Court acknowledged that “[i]t is impossible to lay down a definition of general application that identifies all items subject to disclosure under the act.” Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc., 379 So.2d 633, 640 (Fla.1980). **All such materials are subject to disclosure UNLESS the Legislature has created an exemption.** Wait v. Florida Power & Light Co., 372 So. 2d 420 (Fla. 1979).
- A determination of whether a document is a public record **must be made on a case-by-case basis.**
- **ALL PUBLIC RECORDS, EVEN EXEMPT PUBLIC RECORDS,** must be retained in accordance with the retention schedules approved by the Department of State. §257.36(6), Fla. Stat. (2020).
- If there is any doubt as to whether a matter is a public record subject to disclosure, the doubt is to be resolved in favor of disclosure.” Morris Pub. Group, LLC v. Fla. Dept. of Educ., 133 So. 3d 957 (Fla. 1st DCA 2013).

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Who Makes a Public Record?

The applicability of Chapter 119 of the Florida Statutes to a particular officer, person, or entity depends on whether the individual or entity in question is an “**agency**” as defined in Section 119.011(2) of the Florida Statutes.

- “**Agency**” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. §119.011(2), Fla. Stat. (2019).
- **Records created by a private entity and maintained on a private database** become **PUBLIC RECORDS** when the documents are **RECEIVED** by an **AGENCY** in connection with the transaction of official business. National Collegiate Athletic Association v. Associated Press, 18 So. 3d 1201 (Fla. 1st DCA 2009), review denied, 37 So. 3d (Fla. 2010).
- The term “**received**” in public records law section defining term “public record” refers not only to a situation in which a public agent takes physical delivery of a document, **but also to one in which a public agent examines a document residing on a remote computer.** Id.
- A municipality or a municipal officer or department would come within the purview of the definition of “**agency**” in Section 119.011(2) of the Florida Statutes. Therefore, any documents or other material **made or received** pursuant to law or ordinance or in connection with the transaction of official, municipal business would constitute a public record. AGO 83-80.

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Interpretation

- A **private party cannot render public records exempt from disclosure merely by designating information it furnishes a governmental agency confidential**; the right to examine public records is a right belonging to the public, and it cannot be bargained away by a representative of the government. National Collegiate Athletic Ass'n v. Associated Press, 18 So.3d 1201 (Fla. 1st DCA 2009), *rehearing denied, review denied* 37 So.3d 848.
- Mere fact that city mayor's e-mail was **sent from her private e-mail account on her own personal computer was not the determining factor as to whether the e-mail was a public record**; the determining factor would be **whether the e-mail was prepared in connection with official agency business and intended to perpetuate, communicate, and formalize knowledge of some kind**. Butler v. City of Hallandale Beach, 68 So.3d 278 (Fla. 4th DCA 2011), *rehearing denied*.
- Telephone numbers in a school district's record of calls **made on school district telephones are public records even when the calls are personal and the employee reimburses the district for the calls**. AGO 99-74.

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ELECTRONIC RECORDS & MEDIA

“[A] computer lets you make more mistakes faster than any invention in human history – with the possible exceptions of handguns and tequila.”
Vince v. Rock County, 604 F.3d 391, 393 (7th Cir. 2010).

WHAT ARE THE BENEFITS TO THE TOWN?

- (1) Ability to receive and provide information in near real time and with increased frequency.
- (2) Ease of access to broad audiences.
- (3) Increased Citizen Participation (ICP).
- (4) Inexpensive.

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ELECTRONIC RECORDS & MEDIA

WHAT ARE THE PITFALLS TO THE CITY?

- (1) Compliance Issues with Sunshine Law and Public Records Law.
- (2) Increased communications = Increased Risk of Noncompliance.
- (3) Lack of Understanding of electronically stored information.
- (4) Use of Evasive Devices.
- (5) Greater potential for Misconduct/Mishandling/Destruction.
- (6) **1st AMENDMENT RIGHTS – That’s right baby!!!!**

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ELECTRONIC RECORDS & MEDIA

SOURCES OF ELECTRONIC PUBLIC RECORDS?

- (1) E-mails to and from Agency e-mail addresses.
- (2) Public Records on Social Media and Other web-based accounts.
- (3) Public Records on **public agency issued** cellular phones AND public agency issued electronic devices.
- (4) Public Records on **privately owned personal cellphones, personal devices, and personal social media and other web-based accounts of the public agency’s officers and EMPLOYEES.**

The United States Supreme Court reasoned that, for many, social media platforms are the **principal sources** for knowing current events, checking ads for employment, speaking and listening in **THE MODERN PUBLIC SQUARE**, and otherwise exploring the vast realms of human thought and knowledge. *Packingham v. North Carolina*, 137 U.S. 1730 (2017) (**reasoning social media as Modern Public Square**). [For purposes of 1st Amendment Protections, Social Media platforms constitute a Traditional Public Forum and receive the greatest degree of protection(s)].

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Digital Media Issues

- In 2003, the Florida Supreme Court recognized an emerging problem within the public records law realm--the use of publicly owned devices to conduct personal business, such as sending personal emails. In State v. City of Clearwater, 863 So. 2d 149, 151 (Fla. 2003), the Florida Supreme Court was presented with the question “whether personal emails are considered public records by virtue of their placement on a government-owned computer system.” Ten years after *City of Clearwater*, the First District addressed another modern challenge in the public records realm in Rhea v. District Board of Trustees of Santa Fe College, 109 So. 3d 851 (Fla. 1st DCA 2013); when the court explained that “[t]he physical format of the record is irrelevant; electronic communications, such as email, are covered just like communications on paper.”
- O’Boyle v. Town of Gulf Stream, 257 So. 3d 1036 (Fla. 4th DCA 2018):
 - Text Messages on Private Phones: A public employee or official's use of a private cellphone to conduct public business via text messaging can create a public record subject to disclosure... Chapter 119 requires that the governmental agency proceed *no differently than it would when responding to a request for written document*. The entity *must conduct a reasonable search which includes asking the employee and/or official to produce records stored on private accounts*.

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Digital Media Issues (Cont’d)

- A “**public record**,” subject to disclosure under public records law, is material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type. Braddy v. State, 219 So. 3d 803 (Fla. 2017).
- Concept of public record should be liberally construed. Weekly Planet, Inc. v. Hillsborough County Aviation Authority, 829 So.2d 970 (Fla. 2d DCA 2002).
- A city and its officers or departments constitute an “agency” within the scope of the Public Records Law. AGO 83-80.
- Agency’s official information stored on a computer is as much a “public record” as written documents in official files. Times Publishing Co. v. City of Clearwater, App. 2 Dist., 830 So.2d 844 (2002), review granted 841 So.2d 466, approved 863 So.2d 149.
- **All of the information in the computer**, not merely that which a particular program accesses, should be available for examination and copying in keeping with the public policy underlying the right-to-know statutes. Seigle v. Barry, App. 4 Dist., 422 So.2d 63 (1982), petition for review denied 431 So.2d 988.

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Digital Media Issues (Cont'd)

- Personal e-mails are **not** “made or received pursuant to law or ordinance or in connection with the transaction of official business” and, **therefore, do not fall within the definition of “public records” that are subject to disclosure by virtue of their placement on a government-owned computer system.** State v. City of Clearwater, 863 So.2d 149 (2003).
- Personal e-mails of city employees, which were **not created or received in connection with the official business of the city or in connection with the transaction of city’s official business,** did not qualify as “public records” subject to disclosure under public records statute. Times Publishing Co. v. City of Clearwater, App. 2 Dist., 830 So.2d 844 (2002), review granted 841 So.2d 466, approved 863 So.2d 149.
- Private or personal cellular telephone calls of five staff employees of House of Representatives, which calls were contained in billing records, were not “public records” subject to disclosure pursuant to newspapers’ request, **and therefore such information could be redacted,** where calls were not created or received in connection with the official business of the House of Representatives. Media General Operation, Inc. v. Feeney, 849 So.2d 3 (Fla. 1st DCA 2003), review denied 857 So.2d 196.
- **CAUTION IS REQUIRED – JUST BECAUSE IT IS PERSONAL DOESN’T MEAN ITS PERSONAL!**
- **QUESTION: HOW MANY PEOPLE IN ATTENDANCE TODAY HAVE RETAINED PUBLIC RECORDS STORED ON THEIR MOBILE ELECTRONIC DEVICES IN ACCORDANCE WITH THE GS-I RETENTION SCHEDULE?**

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Record Retention

- There is no single retention period that applies to electronic messages whether they are sent by e-mail, instant messaging, text messaging (SMS, Blackberry, etc.), multi-media messaging (MMS), chat messaging, social networking (Facebook, Twitter, etc.), voicemail messaging (voicemail in audio or voice-over-internet, or other format), **or any other current or future electronic messaging device....** **The retention of any particular electronic message will generally be the same as the retention for records in ANY OTHER FORMAT that document the same program function or activity.** GSI-SL, Electronic Communications (pg.13).
- City violated Public Records Law *by failing to maintain electronic communications [which were located on City Official’s private cellphone] in a manner that prevents their accidental destruction or deletion by individual City Officials.* SDE Media v. City of Doral and Daniel Espino, City Attorney, 25 F.L W. Supp 243a (Fla. 11th Cir. Ct. May 5, 2017).

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Age of Social Media

- What about Facebook?
 - The placement of material on a **City's Facebook page** would presumably be in furtherance of a municipal purpose and in connection with the transaction of official business and thus subject to the provisions of Chapter 119, Florida Statutes. **AGO 09-19. [Note: Presumption is a Public Record]**
 - In light of the public records implications, a city, **should it establish a Facebook page, may wish to post a warning** regarding the application and implications of the Public Records Law. Cf. §668.6076, Fla. Stat. (2020) (requiring any agency defined in s.119.011, Florida Statutes, or legislative entity operating a website and using electronic mail to post a statement in a conspicuous location).
 - **Section 257.36 of the Florida Statutes** provides that a public record may be destroyed or disposed of **ONLY** in accordance with retention schedules established by the Division of Library and Information Services of the Department of State.
 - To the extent that the information **on a Facebook Page** constitutes a public record, **the public records retention schedules established by law must be followed. Cf. AGO 89-39 (concluding that e-mail communications are public records and must be maintained by records custodian for public inspection and copying).**

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Age of Social Media (Cont'd)

- **1st Amendment Rights:**
 - **"Forum Analysis"** is applicable to **ALL social media** (based on fact specific inquiry) and **1st Amendment prohibition(s) are applicable to social media once the interactive platforms/features of an account are opened to the public at-large.** See Knight 1st Am. V. Trump, 928 F.3d 226 (2d. Cir. 2019) (**finding viewpoint discrimination by blocking parties from commenting on twitter posts if views differed or criticized President Trump**); see also Rojas v. City of Ocala, 315 F.Supp.3d 1256 (M.D. Fla. 2018) (finding violation of establishment clause by promoting prayer on Facebook).
 - **Unilateral Speech** (statement by government – no responses allowed) does **NOT** implicate the 1st Amendment --- **[Government Speech Doctrine]**
 - In Rojas v. City of Ocala, as a result of a City Officer's death while on-duty, the City's Police Department posted a letter on its Facebook Page inviting the community to attend a "Community Vigil Prayer" in the City's downtown square. **The Middle District Court of Florida held that the City organized and promoted a prayer vigil in violation of the Establishment Clause of the First Amendment.**

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Consequences

- **Section 119.12 of the Florida Statutes** authorizes an award of attorneys' fees and reasonable costs in civil actions to enforce the provisions of the Public Records Act.
- Even a **Successful Pro Se Litigant** may recover reasonable costs under Section 119.12, Florida Statutes.
- **Section 119.10(1)(b) of the Florida Statutes** states that a public officer who **knowingly** violates Section 119.07(1), Florida Statutes, is subject to suspension and removal or impeachment and commits a misdemeanor of the 1st Degree, punishable by criminal penalties (1-year in prison or \$1,000 fine – or both).
- **Section 119.10(1)(a) of the Florida Statutes** provides that a violation of any provision of Chapter 119, Florida Statutes, by a public officer is a non-criminal infraction, punishable by a fine not exceeding \$500.00.
- **Section 838.022(1)(b) of the Florida Statutes** provides that it is **unlawful for a public servant or public contractor**, to knowingly and intentionally obtain a benefit for any person or to cause unlawful harm to another, **by concealing, covering up, destroying, mutilating, or altering any official record or official document, except as authorized by law or contract, or causing another person to perform such act.**

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How to Avoid Public Records Lawsuits

- Public Records should only be disposed of in accordance with the retention schedules approved by the Division of Library and Information Services of the Florida Department of State.
 - <https://dos.myflorida.com/library-archives/records-management/general-records-schedules/>
- An Agency may pass more stringent policies for public records. See Tallahassee City Commission Policy 140, Public Records Retention & Disposition Policy (March 21, 2018).
- As related to Public Records, you should think “everything is a public record.”
- Understand the right of access to public records is virtually unfettered, except for statutory exemptions.
 - Know your designated Records Custodian.
 - Never ignore and/or fail to respond to a public records request.
 - Follow policy for handling a public records request.

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Miscellaneous Matters

- (1) Quasi-Judicial Matters
- (2) Security Plans
- (3) Personal Notes v. Public Record

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Quasi-Judicial Action(s)

The Sunshine Law would generally not be applicable to a meeting between a commissioner and a citizen when same discuss City matters when other members of the commission are not present (i.e., **fact finding**). AGO, informal (January 5, 1990).

As a result of Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991), *review denied*, 598 So. 2d 75 (Fla. 1992) (**finding that *ex parte* communications in quasi-judicial proceedings raise a presumption that contact prejudicial to decision-making process**):

The Legislature enacted Section 286.0115, Florida Statutes, relating to access to local public officials in quasi-judicial proceedings – adopting ordinance or resolution removing presumption of prejudice (**example available**).

NOTE: In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making board and/or commission of any state agency or authority (i.e., city council member). All decision(s) of the decision-making body in a quasi-judicial proceeding on local government land use matters **must be supported by substantial competent evidence in the record pertinent to the proceeding – irrespective of such communications.** 12A Fla. Jur 2d Counties, §185.

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PSA Renewal_Town of Dundee_2528353_January_2023_ - CPQ-362519

Planned Service Agreement



Johnson Controls Fire Protn LP
10500 University Center Dr, Suite 275
Tampa FL33612
US

Proposal Presented On:
02-10-2023

Elizabeth Fernandez
elizabeth.fernandez@jci.com
(813) 313-1653

Thank you for the courtesy and cooperation extended to me during my recent visit and subsequent discussions regarding your life safety service needs. Enclosed is a proposal for your review that will cover all your various needs including:

- Fire Alarm Inspections and Maintenance - to ensure that your system is operating at peak performance
- Sprinkler Inspections - making sure that should a fire occur; the sprinkler system will be ready to put out the flames
- Suppression - to periodically review the fire extinguishers so that employees can utilize a fully operational tool in the event of an emergency

Our Johnson Controls solutions will provide you with

- Potential insurance discounts
- Peace of Mind
- Reliable software and hardware
- Award winning support services
- Code compliance

I invite you to review the attachments enumerating some of the key benefits. I will be available to answer any of your questions regarding the solutions. I can be reached at (813) 313-1653 or via email at: elizabeth.fernandez@jci.com. Please contact me when you are ready to move forward so I can begin scheduling your inspections.

Sincerely,
Elizabeth Fernandez
Service Sales Fire Acct Rep II

SERVICE SOLUTION

Customer #: 2528353
Town of Dundee
Date: 10-Feb-23
Proposal #: CPQ-362519
Term: 1-Jan-23 to 31-Dec-27
External Contract #: 80792256 R02-AUG-2022
Subscription ERP #:

Billing Customer:
 Town of Dundee
 Po Box 1000

 DUNDEE, FL 33838-1000

Service Location:
 Dundee Municipal Complex
 202 E Main St,
 Dundee, FL 33838-4217

Johnson Controls Fire Protection LP
Sales Representative:
 Elizabeth Fernandez
 10500 University Center Dr, Suite 275
 Tampa FL 33612
 elizabeth.fernandez@jci.com
 (813) 313-1653

INVESTMENT SUMMARY

(Service Solution Valid for 30 Days)

SERVICE/PRODUCT DESCRIPTION	QUANTITY	FREQUENCY	INVESTMENT
SYSTEM-FA-SIMPLEX 4010			
SIMPLEX PROG 4010 SYSTEM			
Est. First Inspection: March			
Service Coverage : Normal Working Hours (M-F)			
Main Fire Alarm Panel	2	Annual	
Fire Alarm Battery Test (each)	4	Annual	
Annunciator	1	Annual	
Smoke Sensor Addressable	36	Annual	
Smoke Detector Conventional	1	Annual	
Heat Detector Non Restorable	4	Annual	
Duct Detector Conventional	2	Annual	
Pull Station	7	Annual	
Audio-Visual Unit Addressable	30	Annual	

FIRE ALARM ESSENTIAL SERVICE OFFER Total: \$1,723.90

Total Price with Sales Tax \$1,844.57

To the extent applicable, Johnson Controls has included an estimate for all state and local sales tax for this quote. The actual sales tax due will be calculated and billed upon issuance of an invoice, unless a valid exemption and/or resale certificate is received by Johnson Controls.

SERVICE SOLUTION

SUMMARY OF SERVICES

The summary of services is intended to cover the following locations:

Location	Address	City	State	Zip	Fire Alarm
Dundee Municipal Complex	202 E Main St,	Dundee	FL	33838-4217	\$1,723.90
Offering Total					\$1,723.90

FIRE ALARM ESSENTIAL SERVICE OFFER

SYSTEM-FA-SIMPLEX 4010

TEST AND INSPECTION:

Inspections and diagnostic tests for the accessible peripheral devices listed and currently connected to the facility fire alarm system. Tests will be scheduled in advance. Unless otherwise specified herein, batteries installed within wireless initiating and notification peripheral devices are not covered under this agreement. Replacement of such batteries will be at an additional cost.

DOCUMENTATION:

Accessible components and devices logged for:

- Location of each device tested, including system address or zone location
- Test results and applicable voltage readings
- any discrepancies found noted

Inspection documentation provided to Customer's representative. NOTE: Certain additional services may be required by the Authority Having Jurisdiction. AHJ or internal organizational requirements may be more restrictive than state/provincial requirements. Building owners and managers should make themselves aware of applicable codes and references in order to ensure that contracted services are in compliance with these requirements.

Smoke Detector Sensitivity Testing

SYSTEM-FA-SIMPLEX 4010

SENSITIVITY TESTING FOR CONVENTIONAL SMOKE DETECTORS:

Smoke detector sensitivity testing will be performed on smoke detectors. Testing will be performed using UL/ULC approved sensitivity testing equipment. Devices performing outside the listed sensitivity range will be re-cleaned and re-tested, and, if necessary, noted and recommended for replacement. NOTE: Certain types of analog smoke sensors automatically satisfy this testing requirement through sensitivity reports printed from the fire alarm panel. Ex cludes duct smoke detectors.

Customer Portal (Basic)

SYSTEM-FA-SIMPLEX 4010

Basic Customer Portal functionality will be provided.

SERVICE SOLUTION

SPECIAL PROVISIONS

A lift rental is not included in this proposal, if a lift is required for any testing or inspections and the customer cannot provide one a quote will be provided.

SERVICE SOLUTION

This Service Solution (the "Agreement") sets forth the Terms and Conditions for the provision of equipment and services to be provided by Johnson Controls Fire Protection LP ("Company") to **Town of Dundee** and is effective **1-Jan-23** (the "Effective Date") to **31-Dec-27** (the "Initial Term"). Customer agrees that initial inspections may be performed within 45 days from the Effective Date.

PAYMENT FREQUENCY: Annual In Advance

Initials

PAYMENT TERMS: *Due Upon Receipt*

For applicable taxes, please see Section 3 of the Terms & Conditions

PAYMENT AMOUNT: \$1,723.90 - **Proposal #:** CPQ-362519

PAYMENT SUMMARY:

Year	Term	PSA Charges
1	01/01/2023 - 12/31/2023	\$1,723.90
2	01/01/2024 - 12/31/2024	\$1,879.05
3	01/01/2025 - 12/31/2025	\$2,048.16
4	01/01/2026 - 12/31/2026	\$2,232.49
5	01/01/2027 - 12/31/2027	\$2,433.41

CUSTOMER ACCEPTANCE: In accepting this Agreement, Customer agrees to the Terms and Conditions on the following pages and any attachments or riders attached hereto that contain additional terms and conditions. It is understood that these terms and conditions shall prevail over any variation in terms and conditions on any purchase order or other document that Customer may issue. Any changes in the system requested by Customer after the execution of Agreement shall be paid for by Customer and such changes shall be authorized in writing.

ATTENTION IS DIRECTED TO THE LIMITATION OF LIABILITY, WARRANTY, INDEMNITY AND OTHER CONDITIONS CONTAINED IN THIS AGREEMENT.

SERVICE SOLUTION

Multi Year Contract Rider AGREEMENT

Acknowledgement of Multi-Year Term. Customer agrees that issuance of a Purchase Order does not amend any provision of the service agreement, including without limitation the duration/term of the service agreement. Customer agrees to issue Purchase Orders sufficient to satisfy its obligations under the multi-year service agreement. Should Customer fail to issue additional Purchase Orders, Company will still be permitted to invoice Customer for services performed, and Customer shall not dispute the validity of such invoices.

Customer Initials:

Unless otherwise agreed to by the parties, pricing is based upon the following billing and payment terms: Invoices will be delivered via email, payment is due upon receipt, and invoices are to be paid via ACH/EFT bank transfer. Johnson Controls ACH/EFT bank transfer details will be forth coming upon contractual agreement.

This offer shall be void if not accepted in writing within thirty (30) days from the date first set forth above.

To ensure that JCI is compliant with your company's billing requirements, please provide the following information:

PO is required to facilitate billing: NO: This signed contract satisfies requirement
 YES: Please reference this PO Number: _____

AR Invoices are accepted via e-mail: YES: E-mail address to be used: _____
 NO: Please submit invoices via mail
 NO: Please submit invoices via _____

SERVICE SOLUTION

Town of Dundee	Johnson Controls Fire Protection LP
Signature: _____	Authorized Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Phone #: _____	Phone #: (813) 313-1653
Fax #: _____	Fax #: _____
Email: _____	License #: _____ (if applicable)
Date: _____	Date: _____

TERMS AND CONDITIONS

1. Term. The Initial Term of this Agreement shall commence on the date of this Agreement and continue for the period indicated in this Agreement. At the conclusion of the Initial Term, this Agreement shall automatically extend for successive terms equal to the Initial Term (subject to Section 3) unless either party gives written notice to the other party at least thirty (30) days prior to the end of the then-current term (each a "Renewal Term").

2. Payment and Invoicing. Unless otherwise agreed by the parties in writing, fees for Services to be performed shall be paid annually in advance. Unless otherwise agreed to by the parties, amounts are due upon receipt of the invoice by Customer. Invoices shall be paid by Customer via electronic delivery via EFT/ACH. Invoicing disputes must be identified in writing within 21 days of the invoice date. Payments of any disputed amounts are due and payable upon resolution. Payment is a condition precedent to Company's obligation to perform Services under the Agreement. Work performed on a time and material basis shall be at the then-prevailing Company rate for material, labor, and related items, in effect at the time supplied under this Agreement. Customer acknowledges and agrees that timely payments of the full amounts listed on invoices is an essential term of this Agreement and Customer's failure to make payment in full when due is a material breach of this Agreement. Customer further acknowledges that if there is any amount outstanding on an invoice, it is material to Company and will give Company, without prejudice to any other right or remedy, the right to, without notice: (i) suspend, discontinue or terminate performing any Services and/or withhold further deliveries of equipment and other materials, terminate or suspend any unpaid software licenses, and/or suspend Company's obligations under or terminate this Agreement; and (ii) charge Customer interest on the amounts unpaid at a rate equal to the lesser of one and one half (1.5) percent per month or the maximum rate permitted under applicable law, until payment is made in full. Company's election to continue providing future services does not, in any way diminish Company's right to terminate or suspend services or exercise any or all rights or remedies under this Agreement. Company shall not be liable for any damages, claims, expenses, or liabilities arising from or relating to suspension of Services for non-payment. In the event that there are exigent circumstances requiring services or the Company otherwise performs Services at the premises following suspension, those services shall be governed by the terms of this Agreement unless a separate contract is executed. If Customer disputes any late payment notice or Company's efforts to collect payment, Customer shall immediately notify Company in writing and explain the basis of the dispute. Customer agrees to pay all of Company's reasonable collection costs, including legal fees and expenses.

3. Pricing. The pricing set forth in this Agreement is based on the number of devices and services to be performed as set forth in this Agreement. If the actual number of devices installed or services to be performed is greater than that set forth in this Agreement, the price will be increased accordingly. Company may increase prices upon notice to Customer to reflect increases in material and labor costs. All stated prices are exclusive of and Customer agrees to pay any taxes, fees, duties, tariffs, false alarm assessments, installation or alarm permits and levies or other similar charges imposed and/or enacted by a government, however designated or imposed, including but not limited to value-added and withholding taxes that are levied or based upon the amounts paid under this Agreement. Prices in any quotation or proposal from Company are subject to change upon notice sent to Customer at any time before the quotation or proposal has been accepted. Company will provide Customer with notice of any pricing adjustments applicable to any Renewal Term no later than 45 days prior to the commencement of that Renewal Term. Unless Customer terminates the Agreement at least thirty (30) days prior to the start of such Renewal Term, the adjusted price shall be the price for the Renewal Term. Prices for products covered by this Agreement may be adjusted by Company, upon notice to Customer at any time prior to shipment and regardless of Customer's acceptance of the Company's proposal or quotation, to reflect any increase in Company's cost of raw materials (e.g., steel, aluminum) inability to secure Products, changes or increases in law, labor, taxes, duties, tariffs or quotas, acts of government, any similar charges, or to cover any extra, unforeseen and unusual cost elements.

4. Code Compliance. Company does not undertake an obligation to inspect for compliance with laws or regulations unless specifically stated in this Agreement. Customer acknowledges that the Authority Having Jurisdiction (e.g. Fire Marshal) may establish additional requirements for compliance with local codes. Any additional services or equipment required will be provided at an additional cost to Customer.

5. Limitation of Liability; Limitations of Remedy. Customer understands that Company offers several levels of protection services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. **It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury. Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no**

guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or service in any respect, Company's liability for Services performed on-site at Customer's premises shall be limited to an aggregate amount equal to the Agreement price (as increased by the price for any additional work) or, where the time and material payment term is selected, Customer's time and material payments to Company. Where this Agreement covers multiple sites, liability shall be limited to the amount of the payments allocable to the site where the incident occurred. Company's liability with respect to Monitoring Services is set forth in Section 18 of this Agreement. Such sum shall be complete and exclusive. IN NO EVENT SHALL COMPANY BE LIABLE, FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY CUSTOMER OR ANY THIRD PARTY. To the maximum extent permitted by law, in no event shall Company and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyberattacks or failures or interruptions to network systems. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, Company's employees, agents, officers and directors.

6. Reciprocal Waiver of Claims (SAFETY Act). Certain of Company's systems and services have received Certification and/or Designation as Qualified Anti-Terrorism Technologies ("QATT") under the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002, 6 U.S.C. §§ 441-444 (the "SAFETY Act"). As required under 6 C.F.R. 25.5 (e), to the maximum extent permitted by law, Company and Customer hereby agree to waive their right to make any claims against the other for any losses, including business interruption losses, sustained by either party or their respective employees, resulting from an activity resulting from an "Act of Terrorism" as defined in 6 C.F.R. 25.2, when QATT have been deployed in defense against, response to, or recovery from such Act of Terrorism.

7. Indemnity. Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to this Agreement, including but not limited to the Services under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. **Customer's responsibility with respect to indemnification and defense of Company with respect to Monitoring Services is set forth in Section 18 of this Agreement.**

8. General Provisions. Customer has selected the service level desired after considering and balancing various levels of protection afforded and their related costs. All work to be performed by Company will be performed during normal working hours of normal working days (8:00 a.m. - 5:00 p.m., Monday through Friday, excluding Company holidays), as defined by Company, unless additional times are specifically described in this Agreement. All work performed unscheduled unless otherwise specified in this Agreement. Appointments scheduled for fourhour window. Additional charges may apply for special scheduling requests (e.g. working around equipment shutdowns, after hours work). Company will perform the services described in the Service Solution ("Services") for one or more system(s) or equipment as described in the Service Solution or the listed attachments ("Covered System(s)"). UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT, ANY INSPECTION (AND, IF SPECIFIED, TESTING) PROVIDED UNDER THIS AGREEMENT DOES NOT INCLUDE ANY MAINTENANCE, REPAIRS, ALTERATIONS, REPLACEMENT OF PARTS, OR ANY FIELD ADJUSTMENTS WHATSOEVER, NOR DOES IT INCLUDE THE CORRECTION OF ANY DEFICIENCIES IDENTIFIED BY COMPANY TO CUSTOMER. COMPANY SHALL NOT BE RESPONSIBLE FOR EQUIPMENT FAILURE OCCURRING WHILE COMPANY IS IN THE PROCESS OF FOLLOWING ITS INSPECTION TECHNIQUES, WHERE THE FAILURE ALSO RESULTS FROM THE AGE OR OBSOLESCENCE OF THE ITEM OR DUE TO NORMAL WEAR AND TEAR. THIS AGREEMENT

DOES NOT COVER SYSTEMS, EQUIPMENT, COMPONENTS OR PARTS THAT ARE BELOW GRADE, BEHIND WALLS OR OTHER OBSTRUCTIONS OR EXTERIOR TO THE BUILDING, ELECTRICAL WIRING, AND PIPING.

9. Customer Responsibilities. Customer shall regularly test the System(s) in accordance with applicable law and manufacturers' and Company's recommendations. Customer shall promptly notify Company of any malfunction in the Covered System(s) which comes to Customer's attention. This Agreement assumes any existing system(s) are in operational and maintainable condition as of the Agreement date. If, upon inspection, Company determines that repairs are recommended, repair charges will be submitted for approval by Customer's on-site representative prior to work. Should such repair work be declined, Company shall be relieved from any and all liability arising therefrom.

Customer further agrees to:

- provide Company clear access to Covered System(s) to be serviced including, if applicable, lift trucks or other equipment needed to reach inaccessible equipment;
- supply suitable electrical service, heat, heat tracing adequate water supply, and required system schematics and/or drawings;
- notify all required persons, including but not limited to authorities having jurisdiction, employees, and monitoring services, of scheduled testing and/or repair of systems;
- provide a safe work environment;
- in the event of an emergency or Covered System(s) failure, take reasonable precautions to protect against personal injury, death, and/or property damage and continue such measures until the Covered System(s) are operational; and
- comply with all laws, codes, and regulations pertaining to the equipment and/or Services provided under this Agreement.

Customer represents and warrants that it has the right to authorize the Services to be performed as set forth in this Agreement. Customer is solely responsible for the establishment, operation, maintenance, access, security and other aspects of its computer network ("Network") and shall supply Company secure Network access for providing its services. Products networked, connected to the internet, or otherwise connected to computers or other devices must be appropriately protected by Customer and/or end user against unauthorized access. Customer is responsible to take appropriate measures, including performing back-ups, to protect information, including without limit data, software, or files (collectively "Data") prior to receiving the service or products.

10. Repair Services. Where Customer expressly includes repair, replacement, and emergency response services in the Service Solution section of this Agreement, such Services apply only to the components or equipment of the Covered System(s). Customer agrees to promptly request repair services in the event the System becomes inoperable or otherwise requires repair. The Agreement price does not include repairs to the Covered System(s) recommended by Company as a result of an inspection, for which Company will submit independent pricing to Customer and as to which Company will not proceed until Customer authorizes such work and approves the pricing. Repair or replacement of non-maintainable parts of the Covered System(s) including, but not limited to, unit cabinets, insulating material, electrical wiring, structural supports, and all other non-moving parts, is not included under this Agreement.

11. System Equipment. The purchase of equipment or peripheral devices, (including but not limited to smoke detectors, passive infrared detectors, card readers, sprinkler system components, extinguishers and hoses) from Company shall be subject to the terms and conditions of this Agreement. If, in Company's sole judgment, any peripheral device or other system equipment, which is attached to the Covered System(s), whether provided by Company, Customer or a third party, interferes with the proper operation of the Covered System(s), Customer shall remove or replace such device or equipment promptly upon notice from Company. Failure of Customer to remove or replace the device shall constitute a material breach of this Agreement. If Customer adds any third party device or equipment to the Covered System(s), Company shall not be responsible for any damage to or failure of the Covered System(s) caused in whole or in part by such device or equipment.

12. Reports. Where inspection and/or test services are selected, such inspection and/or test shall be completed on Company's then current report form, which shall be given to Customer, and, where applicable, Company may submit a copy thereof to the local authority having jurisdiction. The report and recommendations by Company are only advisory in nature and are intended to assist Customer in reducing the risk of loss to property by indicating obvious defects or impairments noted to the system and equipment inspected and/or tested. They are not intended to imply that no other defects or hazards exist or that all aspects of the Covered System(s), equipment, and components are under control at the time of inspection. Final responsibility for the condition and operation of the Covered System(s) and equipment and components lies with Customer.

13. Availability and Cost of Steel, Plastics & Other Commodities. Company shall not be responsible for failure to provide services, deliver products, or otherwise perform work required by this Agreement due to lack of available steel products or products made from plastics or other commodities. In the event Company is unable, after reasonable commercial efforts, to acquire and provide steel products, or products made from plastics or other

commodities, if required to perform work required by this Agreement, Customer hereby agrees that Company may terminate the Agreement, or the relevant portion of the Agreement, at no additional cost and without penalty. Customer agrees to pay Company in full for all work performed up to the time of any such termination.

14. Confined Space. If access to confined space by Company is required for the performance of Services, Services shall be scheduled and performed in accordance with Company's then current hourly rate.

15. Hazardous Materials. Customer represents that, except to the extent that Company has been given written notice of the following hazards prior to the execution of this Agreement, to the best of Customer's knowledge there is no:

- Space in which work must be performed that, because of its construction, location, contents or work activity therein, accumulation of a hazardous gas, vapour, dust or fume or the creation of an oxygen-deficient atmosphere may occur,
- "permit confined space," as defined by OSHA for work Company performs in the United States;
- risk of infectious disease;
- need for air monitoring, respiratory protection, or other medical risk; or
- asbestos, asbestos-containing material, formaldehyde or other potentially toxic or otherwise hazardous material contained in or on the surface of the floors, walls, ceilings, insulation or other structural components of the area of any building where work is required to be performed under this Agreement.

All of the above are hereinafter referred to as "Hazardous Conditions."

Company shall have the right to rely on the representations listed above. If Hazardous Conditions are encountered by Company during the course of Company's work, the discovery of such materials shall constitute an event beyond Company's control, and Company shall have no obligation to further perform in the area where the Hazardous Conditions exist until the area has been made safe by Customer as certified in writing by an independent testing agency, and Customer shall pay disruption expenses and re-mobilization expenses as determined by Company. This Agreement does not provide for the cost of testing involving a discharge or release, capture, containment, transport, removal, or disposal (collectively, the "Discharge Services") of any hazardous waste materials, hazardous materials, firefighting materials including without limitation any firefighting foam encountered in and/or discharged from any of the Covered System(s) and/or during performance of the Services. Said materials shall at all times remain the responsibility and property of Customer. Customer shall be responsible for any Discharge Services associated with such materials, including all discharged firefighting foam in accordance with all applicable law. Company shall not be responsible for the testing, removal or disposal of such hazardous materials. Customer shall indemnify and hold Company harmless from and against any and all claims, demands and/or damages arising in whole or in part from the use of or any Discharge Services associated with any hazardous waste, hazardous materials, or firefighting materials including without limitation firefighting foam encountered or discharged during performance of the Services.

16. Covid-19 Vaccination. Company expressly disclaims any requirement, understanding or agreement, express or implied, included directly or incorporated by reference, in any Customer purchase order, solicitation, notice or otherwise, that any of Company's personnel be vaccinated against Covid-19 under any federal, state/provincial or local law, regulation or order applicable to government contracts or subcontracts, including, without limitation, Presidential Executive Order 14042 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors") and Federal Acquisition Regulation (FAR) 52.223-99 ("Ensuring Adequate COVID Safety Protocols for Federal Contractors"). Any such requirement shall only apply to Company's personnel if and only to the extent contained in a written agreement physically signed by an authorized officer of Company.

17. Other Services.

A. Remote Service. If Customer selects Remote Service, Company shall provide support for the Customer's system by way of education, remote assistance and triage that does not require programming changes to the Customer's panel. In addition, Remote Service does not include service to address physical damage to the system or a device; troubleshoot wiring issues; programming changes and/or relocating, remounting, reconnecting, or adding a device to the system. Customer understands and agrees that, while Remote Service provides for communication regarding Customer's fire alarm system to Company via the Internet, Remote Service does not constitute monitoring of the system, and Customer understands that Remote Service does not provide for Company to contact the fire department or other authorities in the event of a fire alarm. Customer understands that if it wishes to receive monitoring of its fire alarm system and notification of the fire department or other authorities in the event of a fire alarm, it must select monitoring services as a separate Service under this Agreement.

CUSTOMER FURTHER UNDERSTANDS AND AGREES THAT THE TERMS OF SECTION 18.F OF THIS AGREEMENT APPLY TO REMOTE SERVICE.

B. Connected Fire Sprinkler Services; Connected Fire Alarm Services. Connected Fire Sprinkler Services and Connected Fire Alarm Services each means a data-analytics and software platform that uses a cellular or network connection to gather equipment performance data about a Customer

Covered Equipment for Customer's sprinkler system or fire alarm system, as applicable, to assist JCI in advising Customer on such equipment's health, performance or potential malfunction. Connected Fire Sprinkler Services and Connected Fire Alarm Services are collectively, the Connected Equipment Services. If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services on any Covered Equipment, Customer agrees to allow Company to install diagnostic sensors and communication hardware ("Gateway Device") or Customer will supply a network connection suitable to enable communication with Customer's Covered Equipment in order for Company to deliver the connected services. For more information on whether your particular equipment includes Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, a subscription to such services and the cost, if any, of such subscription, please see your applicable order, quote, proposal or purchase documentation or talk to your JCI sales representative. For certain subscriptions, Customer will be able to access equipment information from a mobile or smart device using the service's mobile or web app. The Gateway Device will be used to access, store, and trend data for the purposes of providing Connected Fire Sprinkler Services. Company will not use Connected Fire Sprinkler Services or the Connected Fire Alarm Services to remotely operate or make changes to Customer's Equipment. If the connection is disconnected by Customer, and a technician needs to be dispatched to the Customer site, then the Customer will pay JCI at JCI's then-current standard applicable contract regular time and/or overtime rate for such services. **Company makes no warranty or guarantee relating to the Connected Fire Sprinkler Services or Connected Fire Alarm Services. Customer acknowledges that, while Connected Fire Alarm Services or Connected Sprinkler Services generally improve equipment performance and services, these services do not prevent all potential malfunction, insure against all loss or guarantee a certain level of performance and that JCI shall not be responsible for any injury, loss, or damage caused by any act or omission of JCI related to or arising from the proactive health notifications of the equipment under Connected Equipment Services. Customer understands that if it wishes to receive monitoring of its fire alarm system or sprinkler system and notification of the fire department or other authorities in the event of an alarm, it must select monitoring services as a separate Service under this Agreement. CUSTOMER FURTHER UNDERSTANDS AND AGREES SECTION 20 (SOFTWARE AND DIGITAL SERVICES) APPLY TO CONNECTED FIRE ALARM SERVICES AND CONNECTED SPRINKLER SERVICES.** In the event of a conflict between these terms and the Software Terms, the Software Terms will control.

C. Dashboards and Mobility Applications for Connected Fire Sprinkler Services and Connected Fire Alarm Services. If Customer has purchased Connected Fire Sprinkler Services and/or Connected Fire Alarm Services, Customer may utilize Company's Dashboard(s) and Mobility Application(s), as applicable, during the term of the Agreement, pursuant to the then applicable Terms of Use Agreement. Terms for the Dashboard are located at <https://www.johnsoncontrols.com/buildings/legal/digital/general/tos>.

18. Monitoring Services. If Customer has selected Monitoring Services, the following shall apply to such Services:

A. Alarm Monitoring Service. Customer agrees and acknowledges that Company's sole and only obligation under this Agreement shall be to provide alarm monitoring, notification, and/or Runner Services as set forth in this Agreement and to endeavor to notify the party(ies) identified by Customer on the Contact/Call List ("Contacts") and/or Local Emergency Dispatch Numbers for responding authorities. Upon receipt of an alarm signal, Company may, at our sole discretion, attempt to notify the Contacts to verify the signal is not false. If we fail to notify the Contacts or question the response we receive, we will attempt to notify the responding authority. In the event Company receives a supervisory signal or trouble signal, Company shall endeavor to promptly notify one of the Contacts. Company shall not be responsible for a Contact's or responding authority's refusal to acknowledge/respond to Company's notifications of receipt of an alarm signal, nor shall Company be required to make additional notifications because of such refusal. The Contacts are authorized to act on Customer's behalf and, if so designated on the Contact/Call List, are authorized to cancel an alarm prior to the notification of authorities. Customer understands that local laws, ordinances or policies may restrict Company's ability to provide the alarm monitoring and notification services described in this Agreement and/or necessitate modified or additional services and related charges to Customer. Customer understands that Company may employ a number of industry-recognized measures to help reduce occurrences of false alarm signal activations. These measures may include, but are not limited to, implementation of industry-recognized default settings; implementation of "partial clear time bypass" procedures at our alarm monitoring center and other similar measures at our sole discretion from time to time. **THESE MEASURES CAN RESULT IN NO ALARM SIGNAL BEING SENT FROM AN ALARM ZONE IN CUSTOMER'S PREMISES AFTER THE INITIAL ALARM ACTIVATION UNTIL THE ALARM SYSTEM IS MANUALLY RESET.** Upon receiving notification from Company that a fire or gas detection (e.g. carbon monoxide) signal has been received, the responding authority may forcibly enter the premises. Cellular radio unit test supervision, if provided under this Agreement, provides only the status of the cellular radio unit's current signaling ability at the time of the test communication based on certain programmed intervals and does not serve to detect the potential loss of radio service at the time of an actual emergency event. Company shall not be

responsible to provide monitoring services under this Agreement unless the communication link between Customer's premises and Company's Monitoring Center has been tested. **SUCH SERVICES ARE PROVIDED WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

B. Limitation of Liability; Limitations of Remedy. Customer understands that Company offers several levels of Monitoring Services and that the level described has been chosen by Customer after considering and balancing various levels of protection afforded and their related costs. **It is understood and agreed by Customer that Company is not an insurer and that insurance coverage shall be obtained by Customer and that amounts payable to Company hereunder are based upon the value of the Monitoring Services and the scope of liability set forth in this Agreement and are unrelated to the value of Customer's property and the property of others located on the premises. Customer agrees to look exclusively to Customer's insurer to recover for injuries or damage in the event of any loss or injury and that Customer releases and waives all right of recovery against Company arising by way of subrogation. Company makes no guaranty or warranty, including any implied warranty of merchantability or fitness for a particular purpose that equipment or Services supplied by Company will detect or avert occurrences or the consequences therefrom that the equipment or Service was designed to detect or avert. It is impractical and extremely difficult to fix the actual damages, if any, which may proximately result from failure on the part of Company to perform any of its monitoring obligations under this Agreement. Accordingly, Customer agrees that Company shall be exempt from liability for any loss, damage or injury arising directly or indirectly from occurrences, or the consequences therefrom, which the equipment or Service was designed to detect or avert. Should Company be found liable for any loss, damage or injury arising from a failure of the equipment or Service in any respect, Company's liability with respect to Monitoring Services shall be the lesser of the annual fee for Monitoring Services allocable to the site where the incident occurred or two thousand five hundred (\$2,500) dollars, as agreed upon damages and not as a penalty, as Customer's sole remedy. Such sum shall be complete and exclusive. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGE, LOSS, INJURY, OR ANY OTHER CLAIM ARISING FROM ANY SERVICING, ALTERATIONS, MODIFICATIONS, CHANGES, OR MOVEMENTS OF THE COVERED SYSTEM(S), AS HEREINAFTER DEFINED, OR ANY OF ITS COMPONENT PARTS BY THE CUSTOMER OR ANY THIRD PARTY. In no event shall JCI and its affiliates and their respective personnel, suppliers and vendors be liable to Customer or any third party under any cause of action or theory of liability, even if advised of the possibility of such damages, for any (a) special, incidental, consequential, punitive or indirect damages of any kind, including but not limited to damages; (b) loss of profits, revenues, data, customer opportunities, business, anticipated savings or goodwill; (c) business interruption; or (d) data loss or other losses arising from viruses, ransomware, cyber-attacks or failures or interruptions to network systems CUSTOMER OR ANY THIRD PARTY. COMPANY SHALL NOT BE LIABLE FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES ARISING FROM THE USE, LOSS OF THE USE, PERFORMANCE, OR FAILURE OF THE COVERED SYSTEM(S) TO PERFORM. The limitations of liability set forth in this Agreement shall inure to the benefit of all parents, subsidiaries and affiliates of Company, whether direct or indirect, and each of their employees, agents, officers and directors.**

C. Indemnity, Insurance. Customer agrees to indemnify, hold harmless and defend Company against any and all losses, damages, costs, including expert fees and costs, and expenses including reasonable defense costs, arising from any and all third-party claims for personal injury, death, property damage or economic loss, arising in any way from any act or omission of Customer or Company relating in any way to the Monitoring Services provided under this Agreement, whether such claims are based upon contract, warranty, tort (including but not limited to active or passive negligence), strict liability or otherwise. Company reserves the right to select counsel to represent it in any such action. Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

D. No modification. Modification to Sections 18 B or C may only be made by a written amendment to this Agreement signed by both parties specifically referencing Section 18 B and/or C, and no such amendment shall be effective unless approved by the manager of Company's Central Monitoring Center.

E. Customer's Duties. In addition to Customer's duty to indemnify, defend, and hold Company harmless pursuant to this Section 18:

i. Customer agrees to furnish the names and telephone numbers of all persons authorized to enter or remain on Customer's premises and/or that should be notified in the event of an alarm (the Contact/Call List) and Local Emergency Dispatch Numbers and provide all changes, revision and modifications to the above to Company in writing in a timely manner. Customer must ensure that all such persons are authorized and able to respond to such notification.

ii. Customer shall carefully and properly test and set the system immediately prior to the securing of the premises and carefully test the system in a manner prescribed by Company during the term of this Agreement. Customer agrees

that it is responsible for any losses or damages due to malfunction, miscommunication or failure of Customer's system to accurately handle, process or communicate data. If any defect in operation of the System develops, or in the event of a power failure, interruption of telephone service, or other interruption at Customer's premises of signal or data transmission through any media, Customer shall notify Company immediately. If space/interior protection (i.e. ultrasonic, microwave, infrared, etc.) is part of the System, Customer shall walk test the system in the manner recommended by Company.

iii. When any device or protection is used, including, but not limited to, space protection, which may be affected by turbulence of air, occupied airspace change or other disturbance, forced air heaters, air conditioners, horns, bells, animals and any other sources of air turbulence or movement which may interfere with the effectiveness of the System during closed periods while the alarm system is on, Customer shall notify Company

iv. Customer shall promptly reset the System after any activation.

v. Customer shall notify Company regarding any remodeling or other changes to the protected premises that may affect operation of the system.

vi. Customer shall cooperate with Company in the installation, operation and/or maintenance of the system and agrees to follow all instructions and procedures which may be prescribed for the operation of the system, the rendering of services and the provision of security for the premises.

vii. Customer shall pay all charges made by any telephone or communications provider company or other utility for installation, leasing, and service charges of telephone lines connecting Customer's premises to Company. Customer acknowledges that alarm signals from Customer's premises to Company are transmitted over Customer's telephone or other transmission service and that in the event the telephone or other transmission service is out of order, disconnected, placed on "vacation," or otherwise interrupted, signals from Customer's alarm system will not be received by Company, during any such interruption in telephone or other transmission service and the interruption will not be known to Company. Customer agrees that in the event the equipment or system continuously transmits signals reasonably determined by Company to be false and/or excessive in number, Customer shall be subject to the additional costs and fees incurred by Company in the receiving and/or responding to the excessive signals and/or Company may at its sole discretion terminate this Agreement with respect to Monitoring services upon notice to Customer.

F. Communication Facilities.

i. **Authorization.** Customer authorizes Company, on Customer's behalf, to request services, orders or equipment from a telephone company, wireless carrier or other company providing communication facilities, signal transmission services or facilities under this Agreement (referred to as "Communication Company"). Should any third-party service, equipment or facility be required to perform the Monitoring Services set forth in this Agreement, and should the same be terminated or become otherwise unavailable or impracticable to provide, Company may terminate Monitoring Services upon notice to Customer.

ii. **Digital Communicator.** Customer understands that a digital communicator (DACT), if installed under this Agreement, uses traditional telephone lines for sending signals which eliminate the need for a dedicated telephone line and the costs associated with such dedicated lines.

iii. **Derived Local Channel.** The Communication Company's services provided to Customer in connection with the Services may include Derived Local Channel service. Such service may be provided under the Communication Company's service marks or service names. These services include providing lines, signal paths, scanning and transmission. Customer agrees that the Communication Company's liability is limited to the same extent Company's liability is limited pursuant to this Section 18.

iv. **CUSTOMER UNDERSTANDS THAT COMPANY WILL NOT RECEIVE ALARM SIGNALS WHEN THE TELEPHONE LINE OR OTHER TRANSMISSION MODE IS NOT OPERATING OR HAS BEEN CUT, INTERFERED WITH OR IS OTHERWISE DAMAGED OR IF THE ALARM SYSTEM IS UNABLE TO ACQUIRE, TRANSMIT OR MAINTAIN AN ALARM SIGNAL OVER CUSTOMER'S TELEPHONE SERVICE FOR ANY REASON INCLUDING NETWORK OUTAGE OR OTHER NETWORK PROBLEMS SUCH AS CONGESTION OR DOWNTIME, ROUTING PROBLEMS, OR INSTABILITY OF SIGNAL QUALITY. CUSTOMER UNDERSTANDS THAT OTHER POTENTIAL CAUSES OF SUCH A FAILURE OVER CERTAIN TELEPHONE SERVICES (INCLUDING BUT NOT LIMITED TO SOME TYPES OF DSL, ADSL, VOIP, DIGITAL PHONE, INTERNET PROTOCOL BASED PHONE OR OTHER INTERNET INTERFACE-TYPE SERVICE OR RADIO SERVICE, INCLUDING CELLULAR OR PRIVATE RADIO, ETC. ("NON-TRADITIONAL TELEPHONE SERVICE")) INCLUDE BUT ARE NOT LIMITED TO: (1) LOSS OF NORMAL ELECTRIC POWER TO CUSTOMER'S PREMISES (THE BATTERY BACK-UP FOR THE ALARM PANEL DOES NOT POWER TELEPHONE SERVICE); AND (2) ELECTRONICS FAILURES SUCH AS A MODEM MALFUNCTION. CUSTOMER UNDERSTANDS THAT COMPANY WILL ONLY REVIEW**

THE INITIAL COMPATIBILITY OF CUSTOMER'S ALARM SYSTEM WITH NONTRADITIONAL TELEPHONE SERVICE AT THE TIME OF INITIAL CONNECTION TO COMPANY'S MONITORING CENTER AND THAT CHANGES IN CUSTOMER'S TELEPHONE SERVICE'S DATA FORMAT AFTER THE INITIAL REVIEW OF COMPATIBILITY COULD MAKE CUSTOMER'S TELEPHONE SERVICE UNABLE TO TRANSMIT ALARM

SIGNALS TO COMPANY'S MONITORING CENTERS. IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT IT IS COMPATIBLE, COMPANY WILL PERMIT CUSTOMER TO USE NON-TRADITIONAL TELEPHONE SERVICE AS THE SOLE METHOD OF TRANSMITTING ALARM SIGNALS, ALTHOUGH CUSTOMER UNDERSTANDS THAT COMPANY RECOMMENDS THE USE OF AN ADDITIONAL BACKUP METHOD OF COMMUNICATION TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER REGARDLESS OF THE TYPE OF TELEPHONE SERVICE USED. CUSTOMER ALSO UNDERSTANDS THAT IF COMPANY DETERMINES IN ITS SOLE DISCRETION THAT CUSTOMER'S NON-TRADITIONAL TELEPHONE SERVICE IS OR LATER BECOMES NON-COMPATIBLE, OR IF CUSTOMER CHANGES TO ANOTHER NON-TRADITIONAL TELEPHONE SERVICE THAT IS NOT COMPATIBLE, THEN COMPANY REQUIRES THAT CUSTOMER USE AN ALTERNATE METHOD OF COMMUNICATION ACCEPTABLE TO COMPANY AS THE PRIMARY METHOD TO CONNECT CUSTOMER'S ALARM SYSTEM TO THE MONITORING CENTER. CUSTOMER UNDERSTANDS THAT TRANSMISSION OF FIRE ALARM SIGNALS BY MEANS OTHER THAN A TRADITIONAL TELEPHONE LINE MAY NOT BE IN COMPLIANCE WITH FIRE ALARM STANDARDS OR SOME LOCAL FIRE CODES, AND THAT IT IS CUSTOMER'S OBLIGATION TO COMPLY WITH SUCH STANDARDS AND CODES. CUSTOMER ALSO UNDERSTANDS THAT IF THE ALARM SYSTEM HAS A LINE CUT FEATURE, IT MAY NOT BE ABLE TO DETECT IF A NON-TRADITIONAL TELEPHONE SERVICE LINE IS CUT OR INTERRUPTED, AND THAT COMPANY MAY NOT BE ABLE TO PROVIDE CERTAIN AUXILIARY MONITORING SERVICES THROUGH A NON-TRADITIONAL TELEPHONE LINE OR SERVICE. CUSTOMER FURTHER UNDERSTANDS THAT THE ALARM PANEL MAY BE UNABLE TO SEIZE THE PHONE LINE TO TRANSMIT AN ALARM SIGNAL IF ANOTHER CONNECTION IS OFF THE HOOK DUE TO IMPROPER CONNECTION OR OTHERWISE.

G. Verification; Runner Service. Some jurisdictions may require alarm verification by telephone or on-site verification ("Runner Service") before dispatching emergency services. In the event that a requirement of alarm verification becomes effective after the date of this Agreement, such services may be available at an additional charge. Company shall not be held liable for any delay or failure of dispatch of emergency services arising from such verification. Where Runner Service is indicated, such services may be provided by a third party.

COMPANY WILL NOT ARREST OR DETAIN ANY PERSON.

H. Personal Emergency Response Service. If Customer has selected Personal Emergency Response Services, Customer agrees that the very nature of Personal Emergency Response Services, irrespective of any delays, involves uncertainty, risk and possible serious injury, disability or death, for which Company should not under any circumstances be held responsible or liable; that the equipment furnished for Personal Emergency Response Services is not foolproof and may experience signal transmission failures or delays for any number of reasons, whether or not our fault or under Company's control; that the actual time required for medical emergency providers to arrive at the premises and/or to transport any person requiring medical attention is unpredictable and that many contributing factors, including but not limited to such things as telephone network operation, distance, weather, road and traffic conditions, alarm equipment function and human factors, both with responding authorities and with Company, may affect response

19. Limited Warranty. COMPANY WARRANTS THAT ITS WORKMANSHIP AND MATERIAL, EXCLUDING MONITORING SERVICES, FURNISHED UNDER THIS AGREEMENT WILL BE FREE FROM DEFECTS FOR A PERIOD OF NINETY (90) DAYS FROM THE DATE OF FURNISHING.

No warranty is provided for third-party products and equipment installed or furnished by Company. Such products and equipment are provided with the third party manufacturer's warranty to the extent available, and Company will transfer the benefits, together with all limitations, of that manufacturer's warranty to Customer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICES PERFORMED OR THE PRODUCTS, SYSTEMS OR EQUIPMENT, IF ANY, SUPPORTED HEREUNDER.

Company makes no and specifically disclaims all representations or warranties that the services, products, software or third party product or software will be secure from cyber threats, hacking or other similar malicious activity, or will detect the presence of, or eliminate, treat, or mitigate the spread transmission, or outbreak of any pathogen, disease, virus or other contagion, including but not limited to COVID 19.

20. Software and Digital Services. Use, implementation, and deployment of the software and hosted software products ("Software") offered under these terms shall be subject to, and governed by, Company's standard terms for such Software and Software related professional services in effect from time to time at <https://www.johnsoncontrols.com/techterms> (collectively, the "Software Terms"). Applicable Software Terms are incorporated herein by this reference. Other than the right to use the Software as set forth in the Software Terms, Company and its licensors reserve all right, title, and interest (including all intellectual property rights) in and to the Software and improvements to the Software. The Software that is licensed hereunder is licensed subject to the Software Terms and not sold. If there is a conflict between the other term

herein and the Software Terms, the Software Terms shall take precedence and govern with respect to rights and responsibilities relating to the Software, its implementation and deployment and any improvements thereto. Notwithstanding any other provisions of this Agreement and unless otherwise agreed to by the parties in writing, the following terms apply to Software that is provided to Customer on a subscription basis (i.e., a time limited license or use right), (each a "Software Subscription"): Each Software Subscription provided hereunder will commence on the date the initial credentials for the Software are made available (the "Subscription Start Date") and will continue in effect until the expiration of the subscription term noted herein. At the expiration of the Software Subscription, such Software Subscription will automatically renew for consecutive one (1) year terms (each a "Renewal Subscription Term"), unless either party provides the other party with a notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term. To the extent permitted by applicable law, Software Subscriptions purchases are non-cancelable and the sums paid nonrefundable. Fees for Software Subscriptions shall be paid annually in advance, invoiced on the Subscription Start Date and each subsequent anniversary thereof. Unless otherwise agreed by the parties in writing, the subscription fee for each Renewal Subscription Term will be priced at JCI's then applicable list price for that Software offering. Any use of Software that exceeds the scope, metrics or volume set forth in this Agreement will be subject to additional fees based on the date such excess use began.

21. Taxes, Fees, Fines, Licenses, and Permits. Customer agrees to pay all sales tax, use tax, property tax, utility tax and other taxes required in connection with the equipment and Services listed, including telephone company line charges, if any. Customer shall comply with all laws and regulations relating to the equipment and its use and shall promptly pay when due all sales, use, property, excise and other taxes and all permit, license and registration fees now or hereafter imposed by any government body or agency upon the equipment or its use. Company may, without notice, obtain any required permit, license or registration for Customer at Customer's expense and charge a fee for this service. If Customer fails to maintain any required licenses or permits, Company shall not be responsible for performing the services and may terminate the services without notice to Customer.

22. Outside Charges. Customer understands and accepts that Company specifically disclaims any responsibility for charges associated with the notification or dispatching of anyone, including but not limited to fire department, police department, paramedics, doctors, or any other emergency personnel, and if there are any charges incurred as a result of said notification or dispatch, said charges shall be the responsibility of Customer.

23. Insurance. Customer shall name Company, its officers, employees, agents, subcontractors, suppliers, and representatives as additional insureds on Customer's general liability and auto liability policies.

24. Waiver of Subrogation. Customer does hereby for itself and all other parties claiming under it release and discharge Company from and against all hazards covered by Customer's insurance, it being expressly agreed and understood that no insurance company or insurer will have any right of subrogation against Company.

25. Force Majeure, Exclusions. Company shall not be liable, nor in breach or default of its obligations under this Agreement, for delays, interruption, failure to render services, or any other failure by Company to perform an obligation under this Agreement, where such delay, interruption or failure is caused, in whole or in part, directly or indirectly, by a Force Majeure Event. A "Force Majeure Event" is a condition or event that is beyond the reasonable control of Company, whether foreseeable or unforeseeable, including, without limitation, acts of God, severe weather (including but not limited to hurricanes, tornados, severe snowstorms or severe rainstorms), wildfires, floods, earthquakes, seismic disturbances, or other natural disasters, acts or omissions of any governmental authority (including change of any applicable law or regulation), epidemics, pandemics, disease, viruses, quarantines, or other public health risks and/or responses thereto, condemnation, strikes, lock-outs, labor disputes, an increase of 5% or more in tariffs or other excise taxes for materials to be used on the project, fires, explosions or other casualties, thefts, vandalism, civil disturbances, insurrection, mob violence, riots, war or other armed conflict (or the serious threat of same), acts of terrorism, electrical power outages, interruptions or degradations in telecommunications, computer, network, or electronic communications systems, data breach, cyber-attacks, ransomware, unavailability or shortage of parts, materials, supplies, or transportation, or any other cause or casualty beyond the reasonable control of Company. If Company's performance of the work is delayed, impacted, or prevented by a Force Majeure Event or its continued effects, Company shall be excused from performance under the Agreement. Without limiting the generality of the foregoing, if Company is delayed in achieving one or more of the scheduled milestones set forth in the Agreement due to a Force Majeure Event, Company will be entitled to extend the relevant completion date by the amount of time that Company was delayed as a result of the Force Majeure Event, plus such additional time as may be reasonably necessary to overcome the effect of the delay. To the extent that the Force Majeure Event directly or indirectly increases Company's cost to perform the services, Customer is obligated to reimburse Company for such increased costs, including, without limitation, costs incurred by Company for additional labor, inventory storage, expedited shipping fees, trailer and equipment rental fees, subcontractor fees or other costs and expenses incurred by Company in connection with the Force Majeure Event.

26. Exclusions. This Agreement expressly excludes, without limitation, the provision of fire watches; reloading of, upgrading, and maintaining computer software; making repairs or replacements necessitated by reason of negligence or misuse of components or equipment or changes to Customer's premises; vandalism; power failure; current fluctuation; failure due to non-JCI installation; lightning, electrical storm, or other severe weather; water; accident; fire; acts of God; testing inspection and repair of duct detectors; beam detectors, and UV/IR equipment; provision of fire watches; clearing of ice blockage; draining of improperly pitched piping; batteries; recharging of chemical suppression systems; reloading of, upgrading, and maintaining computer software; corrosion (including but not limited to micro-bacterially induced corrosion ("MIC")); cartridges greater than 16 grams; gas valve installation; or any other cause external to the Covered System(s) and JCI shall not be required to provide Service while interruption of service due to such causes shall continue. This Agreement does not cover and specifically excludes system upgrades and the replacement of obsolete systems, equipment, components or parts. All such services may be provided by JCI at JCI's sole discretion at an additional charge. If Emergency Services are expressly included in the Service Solution, the Agreement price does not include travel expenses.

27. Delays. Company shall have no responsibility or liability to Customer or any other person for delays in the installation or repair of the System or the performance of our Services regardless of the reason, or for any resulting consequences.

28. Termination. Company may terminate this Agreement immediately at its sole discretion upon the occurrence of any Event of Default as hereinafter defined. Company may also terminate this Agreement at its sole discretion upon notice to Customer if Company's performance of its obligations under this Agreement becomes impracticable due to obsolescence of equipment at Customer's premises or unavailability of parts.

29. No Option to Solicit. Customer shall not, directly or indirectly, on its own behalf or on behalf of any other person, business, corporation or entity, solicit or employ any Company employee, or induce any Company employee to leave his or her employment with Company, for a period of two years after the termination of this Agreement.

30. Default. An Event of Default shall include (a) any full or partial termination of this Agreement by Customer before the expiration of the then-current Term, (b) failure of Customer to pay any amount when due and payable, (c) abuse of the System or the Equipment, (d) failure by Customer to observe, keep or perform any term of this Agreement; (e) dissolution, termination, discontinuance, insolvency or business failure of Customer. Upon the occurrence of an Event of Default, Company may pursue one or more of the following remedies, (i) discontinue furnishing Services, (ii) by written notice to Customer declare the balance of unpaid amounts due and to become due under this Agreement to be immediately due and payable, (iii) receive immediate possession of any equipment for which Customer has not paid, (iv) proceed at law or equity to enforce performance by Customer or recover damages for breach of this Agreement, and (v) recover all costs and expenses, including without limitation reasonable attorneys' fees, in connection with enforcing or attempting to enforce this Agreement.

31. One-Year Limitation on Actions; Choice of Law. For Customers located in the United

States, the laws of Wisconsin shall govern the validity, enforceability, and interpretation of this Agreement, without regard to conflicts of law. For Customers located in Canada, this agreement shall be governed by and be construed in accordance with the laws of Ontario. The parties agree that any disputes arising under this Agreement shall be determined exclusively by the Ontario courts and that no action or legal proceedings of any nature shall be filed or commenced in any other court pertaining to any dispute arising out of or in relation to this Agreement. The parties also hereby waive any objection to the exclusive jurisdiction of the Ontario courts, including any objection based on *forum non conveniens*. No claim or cause of action, whether known or unknown, shall be brought against Company more than one year after the claim first arose. Except as provided for herein, Company's claims must also be brought within one year. Claims for unpaid contract amounts are not subject to the one-year limitation.

32. Assignment. Customer may not assign this Agreement without Company's prior written consent. Company may assign this Agreement without obtaining Customer's consent.

33. Entire Agreement. The parties intend this Agreement, together with any attachments or Riders (collectively the "Agreement") to be the final, complete and exclusive expression of their Agreement and the terms and conditions thereof. This Agreement supersedes all prior representations, understandings or agreements between the parties, written or oral, and shall constitute the sole terms and conditions relating to the Services. No waiver, change, or modification of any terms or conditions of this Agreement shall be binding on Company unless made in writing and signed by an Authorized Representative of Company.

34. Headings. The headings in this Agreement are for convenience only.

35. Severability. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement will continue to be valid as to the other provisions and the remainder of the affected provision.

36. Electronic Media. Customer agrees that Company may scan, image or otherwise convert this Agreement into an electronic format of any nature

Customer agrees that a copy of this Agreement produced from such electronic format is legally equivalent to the original for any and all purposes, including litigation. Customer agrees that Company's receipt by fax of the Agreement signed by Customer legally binds Customer and such fax copy is legally equivalent to the original for any and all purposes, including litigation.

37. Legal Fees. Company shall be entitled to recover from Customer all reasonable legal fees incurred in connection with Company enforcing the terms and conditions of this Agreement.

38. Lien Legislation. Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall be subject to the lien legislation applicable to the location where the work will be performed, and, in the event of conflict, the applicable lien legislation shall prevail.

39. Privacy. A. **Company as Processor:** Where Company factually acts as Processor of Personal Data on behalf of Customer (as such terms are defined in the DPA) the terms at www.johnsoncontrols.com/dpa shall apply. B.

Company as Controller: Company will collect, process and transfer certain personal data of Customer and its personnel related to the business relationship between it and Customer (for example names, email addresses, telephone numbers) as controller and in accordance with Company's Privacy Notice at <https://www.johnsoncontrols.com/privacy>. Customer acknowledges Company's Privacy Notice and strictly to the extent consent is mandatorily required under applicable law, Customer consents to such collection, processing and transfer. To the extent consent to such collection, processing and transfer by Company is mandatorily required from Customer's personnel under applicable law, Customer warrants and represents that it has obtained such consent.

40. License Information (Security System Customers): AL Alabama Electronic Security Board of Licensure 7956 Vaughn Road, PMB 392, Montgomery, Alabama 36116 (334) 264-9388: AR Regulated by: Arkansas Board of Private Investigators and Private Security Agencies, #1 State Police Plaza Drive, Little Rock 72209 (501)618-8600: CA Alarm company operators are licensed and regulated by the Bureau of Security and Investigative Services, Department of Consumer Affairs, Sacramento, CA, 95814. Upon completion of the installation of the alarm system, the alarm company shall thoroughly instruct the purchaser in the proper use of the alarm system. Failure by the licensee, without legal excuse, to substantially commence work within 20 days from the approximate date specified in the agreement when the work will begin is a violation of the Alarm Company Act: NY Licensed by the N.Y.S. Department of the State: TX Texas Commission on Private Security, 5805 N. Lamar Blvd., Austin, TX 78752-4422, 512424-7710. License numbers available at www.johnsoncontrols.com or contact your local Johnson Controls office.



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: RECOGNITION OF THE DR. MLK JR ESSAY WINNERS

SUBJECT: Black History Recognition of Martin Luther King Jr. Essay Winners

STAFF ANALYSIS: In honor of Black History Month, Mayor Sam Pennant wanted to recognize the six (6) winners from the Dr. Martin Luther King Jr. Essay Contest which took place in January 2023. These students were recognized by Committed Citizens of Dundee (CCOD) for their outstanding essays.

Winners:

- Jayden Smith – 1st Place Elementary Division Winner
- Aniston Tarver -1st Place Middle School Division Winner
- Wil'naya Cohen – 2nd Place Middle School
- Bernice Henson – 1st Place High School Division Winner
- Kaprice Leonard – 2nd Place High School
- Kezia Foster – 3rd Place High School

FISCAL IMPACT: \$300.00 from the MLK Program/Parade Budgeted GL

STAFF RECOMMENDATION: At the pleasure of the Commission

ATTACHMENTS: None



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: RECOGNITION OF BILLY IVEY

SUBJECT: Presented by Chief Carbone

STAFF ANALYSIS: Billy Ivey is retiring after 52 years of service, and is being recognized by the Fire Department and the Town.

FISCAL IMPACT: None

STAFF RECOMMENDATION: None

ATTACHMENTS: None



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE:	DISCUSSION ITEM
SUBJECT:	The Town Commission will hear a presentation by the Town Manager as required by the Town Charter, Article IV, Section 4.04 (f).
STAFF ANALYSIS:	The Town Manager will provide the commission with a complete review of the Administrative activities of the Town that took place over the last fiscal year 2021-2022.
FISCAL IMPACT:	None
STAFF RECOMMENDATION:	None
ATTACHMENTS:	2021-2022 Year In Review PP



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

Item 4.

AGENDA ITEM TITLE:	TOWN MANAGER EVALUATION, FY 2021 – 2022
SUBJECT:	The Town Commission will conduct the annual performance review of the Town Manager according to the Town Manager Employment Agreement.
STAFF ANALYSIS:	<p>The Performance Evaluation scale is from 5 to 1, with the breakdown as follows:</p> <ul style="list-style-type: none">5 = Substantially Exceeds Commission’s Expectations4 = Generally Exceeds Commission’s Expectations3 = Meets Commission’s Expectations2 = Requires Improvement1 = Unsatisfactory Performance <p>Ms. Davis received an overall score of 4.63, generally exceeding the Commission’s expectations in her performance as the Town Manager for the 2021-2022 fiscal year.</p> <p>Attached are comments from the evaluation’s questions, regarding items that the Town Manager can take the greatest pride in and goals for the Town Manager in the upcoming year.</p>
FISCAL IMPACT:	At the will of the Town Commission.
STAFF RECOMMENDATION:	NONE
ATTACHMENTS:	2021 – 2022 Town Manager Evaluation Summary 2021 – 2022 Town Manager Evaluation Score Sheet

2021 – 2022 TOWN MANAGER EVALUATION COMMISSION COMMENTS/GOALS

- **Question #9:** During the past year what can the Town Manager take the greatest pride in? What do you feel are her strongest points and her finest accomplishments during this time?
- **Question #10:** What areas do you feel most needs improvement? Why? Do you have a constructive, positive ideas how the Town Manager can improve in these areas?
- **Question #11:** Do you have any goals for the Town Manager for the upcoming year?

Mayor Pennant:

#9: I always think this is a question for the Manager, but lets look at a few of her many accomplishments. First the hire of our hard working Special Projects rep who has secured over two million dollars in grants among other things such as working with the community to host the first Juneteenth celebration here in Dundee, the largest Christmas parade, water and waste water improvements, garbage services and I could go on and on

#10: Keep up the good work.

#11: I wouldn't want to add anything more to her plate at this time as I know she is preparing for our centennial celebrations for next year.

Commissioner Quarles:

#9: Submitted a balance budget that invests in the Town infrastructure and implementing the priorities of the Town Commission. The budget was balanced at last year's millage rate at 7.9000. The 7.9000 adopted rate will allow for cost efficiency in managing the needs of the Town and necessary infrastructure improvements and growth projections.

#10: No answer provided

#11: Continue to make the Town's sanitation department a success and continue Town road improvements.

Commissioner Goddard:

#9: The Town Manager can take the greatest pride in the renovation of the new Development Services building and the Depot as well as the progressive steps taken to beautify and keep the town safe. The purchase of sanitation trucks has helped to establish Dundee Sanitation Department. She has performed remarkably in coordinating events such as the 4th of July, Christmas tree lighting and the Christmas parade.

#10: It will be spectacular if the Town Manager can magnify the receipt of grants necessary for the Community Center and the Sheriff's Department.

#11: For the upcoming year I would like to see the extension of Race Road paved to connect with Lincoln Avenue in order to alleviate bottleneck at the corner of Scenic Highway and Race Road.

Commissioner Glenn:

#9: I think the Town Manager should take great pride in a job well done on the hard work and great communication that she and her staff completed during the hurricanes. They kept Dundee whole from an operational standpoint!

#10: Code Enforcement reaction time from time of complaint. Expanding the Town's beautification long term plan.

#11: Add to the calendar of events for the Town.

Start if not complete the children's splash pad that was budgeted for last year and postponed to this budget period.

Vice Mayor Richardson:

#9: Communication and engagement with CCOD & the community. Christmas Parade exceeded and excel expectations. Renovations of the park on MLK. Sidewalks on Lincoln Ave. Benches throughout the neighborhood.

#10: Continue to build relationships with the residents and communicate resources that are available to enhance a quality of life.

#11: Bring in more business and jobs along with infrastructure. Meeting the goals for the upcoming growth. Add additional money in the budget for commissioners training.

2023 Commissioners' Scores

Name:	Fiscal Management Management & Organization Management of Town Assets Intergovernmental Relations Program Development & Follow Through Community Relations Communication with Commission & Others Management Style								
Mayor Sam Pennant	5	5	5	5	5	5	5	5	5.00
Commissioner Steven Glenn	4	3	4	5	4	4	4	5	4.13
Commissioner Bert Goddard	5	5	5	5	5	5	5	5	5.00
Commissioner Willie Quarles	5	5	5	5	5	5	5	5	5.00
Vice Mayor Mary Richardson	4	4	4	4	4	4	4	4	4.00
Total Score:	23	22	23	24	23	23	23	24	Totals: 185
Average Score:	4.6	4.40	4.6	4.80	4.6	4.60	4.60	4.80	4.63



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: **ORDINANCE 23-02, POTABLE WATER LEVEL OF SERVICE AMMENDMENT TRANSMITTAL AND PUBLIC HEARING**

SUBJECT: The Level of Service quantifies the types and amounts of services customers receive. The established Level of Service helps the Town plan for future development by ensuring enough water will be available for the proposed development. The Town proposes to update the Level of Service for potable water to reflect current needs and requirements from the Central Florida Water Initiative (CFWI).

STAFF ANALYSIS: The Town Commission will consider approval of Ordinance 23-02

FISCAL IMPACT: None

STAFF RECOMMENDATION: Approval of the proposed amendment to the Potable Water Level of Service

ATTACHMENTS: Ordinance 23-02
Final Staff Report

ORDINANCE 23-02

AN ORDINANCE OF THE TOWN OF DUNDEE, FLORIDA, AMENDING THE 2030 COMPREHENSIVE PLAN OF THE TOWN OF DUNDEE, FLORIDA, AND THE TOWN OF DUNDEE LAND DEVELOPMENT CODE, RELATING TO LEVEL OF SERVICE FOR POTABLE WATER SUPPLY BY AMENDING THE POTABLE WATER SUPPLY LEVEL OF SERVICE FROM 140 GALLONS PER CAPITA PER DAY (GPCD) TO 115 GPCD; PROVIDING FOR TRANSMISSION TO THE FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY FOR REVIEW AND COMPLIANCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT AND FOR THE ADMINISTRATIVE CORRECTION OF SCRIVENER’S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Public Supply Water Use Permit for the Town of Dundee (the “Town WUP”), Water Use Permit No. 20-5893.013 allocates an average gross per capita daily water use rate of 148 gallons per day (GPD); and

WHEREAS, the Central Florida Water Initiative (the “CFWI”) requires a gross per capita daily water use rate no greater than 115 GPD; and

WHEREAS, the Town of Dundee has determined that its 2021 gross per capita daily water use rate was 107.9 GPD and its 5-year Annual Report Average per capita is 114.9 GPD; and

WHEREAS, as of December 31, 2023, the Town of Dundee is required to have a gross per capita daily water use rate of 115 GPD or otherwise satisfy the phase-in requirements set forth by the CFWI; and

WHEREAS, in order to maintain consistency with the requirements set forth by the CFWI, the current Town of Dundee level of service (LOS) for potable water supply should be amended from 140 gallons per capita per day (GPCD) to 115 GPCD; and

WHEREAS, Sections 163.3161 through 163.3215, Florida Statutes, the Community Planning Act, empowers and mandates the Town of Dundee, Florida to plan for future development and growth and to adopt and amend comprehensive plans, or elements or portions thereof, to guide the future growth and development of the Town; and

WHEREAS, pursuant to Section 163.3184, Florida Statutes, the Town Commission held public hearings on Ordinance No. 23-02 with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including support documents; and

WHEREAS, in exercise of its authority the Town Commission has determined it necessary to adopt amendments to the 2030 Comprehensive Plan of the Town of Dundee, Florida and the Land Development Code of the Town of Dundee, Florida, which are attached hereto as **Exhibit “A”** and by this reference made a part hereof, to ensure that the Comprehensive Plan and Land Development Code is in full compliance with the laws of the State of Florida; and

WHEREAS, in accordance with the procedures required by Sections 166.041 (3)(c)2, Florida Statutes, and other applicable law, the amendments contained within this Ordinance were considered by the Town’s Planning and Zoning Board, sitting as the Local Planning Agency (LPA) as designated by the Town, at a duly advertised public meeting on February 16, 2023, at which time interested parties and citizens had the opportunity to be heard and such amendments were recommended to the Town Commission for adoption; and

WHEREAS, in accordance with the Expedited State Review procedures required by Section 163.3184(3), the Town of Dundee transmitted the proposed amendment and supporting data and analysis to the applicable review agencies.

NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE TOWN OF DUNDEE, FLORIDA:

Section 1. The provisions set forth in the recitals to this Ordinance (whereas clauses) are hereby adopted by the Town Commission as the legislative findings and intent pertaining to this Ordinance.

Section 2. The 2030 Comprehensive Plan of the Town of Dundee, Florida, and the Land Development Code of the Town of Dundee relating to potable water supply level of service matters are hereby amended as shown in **Exhibit "A"**, which is attached hereto and made a part hereof by reference (amendments are shown in underline and deletions are shown in ~~striketrough~~).

Section 3. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the 2030 Comprehensive Plan of the Town of Dundee, Florida and the Land Development Code of the Town of Dundee, Florida; and that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish such intentions; and regardless of whether such inclusion in the 2030 Comprehensive Plan and/or the Land Development Code is accomplished, sections of this Ordinance may be renumbered or re-lettered and the correction of typographical and/or scrivener’s errors which do not affect the intent may be authorized by the Town Manager or his/her designee, without need of public hearing, by filing a corrected or recodified copy of same with the Town Clerk.

Section 4. If any provision of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such provision and such holding shall not affect the validity of any other provision, and to that end the provisions of this Ordinance are hereby declared severable.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 6. The effective date of these amendments, if the amendments are not timely challenged, shall be 31 days after the State Land Planning Agency notifies the local government that the plan amendment package is complete. If timely challenged, the amendments shall become effective on the date the State Land Planning Agency, or the Administration Commission enters a final order determining the adopted amendments to be in compliance. No development orders, development permits, or land uses dependent on these amendments may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Council, the amendments may nevertheless be made effective

by adoption of a resolution affirming the effective status, a copy of which resolution shall be sent to the State Land Planning Agency.

INTRODUCED AND PASSED on First Reading/transmittal public hearing this ____ day of _____, 2023.

PASSED AND DULY ADOPTED, on Second Reading/adoption public hearing with a quorum present and voting, by the Town Commission, this the _____ day of _____, 2023.

TOWN OF DUNDEE, FLORIDA

Mayor- Sam Pennant

ATTEST:

Town Clerk – Jenn Garcia

Approved as to form:

Town Attorney - Frederick J. Murphy, Jr.

**ORDINANCE 23-02
EXHIBIT "A"**

COMPREHENSIVE PLAN AMENDMENTS:

INFRASTRUCTURE ELEMENT

Policy 2.2.1: The Town establishes the following future level of service standards for potable water use, storage, and minimum pressure, effective January 1 of the respective years, in accordance with the Southern Water Use Caution Area, as enacted by the Southwest Florida Water Management District Board of Directors:

Potable Water Level of Service	140 <u>115</u> gpcd
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WATER SUPPLY SUB ELEMENT

Policy 1.1.1: The Town shall maintain water sources capable of supplying a minimum of one hundred ~~forty (140)~~ fifteen (115) gallons per person per day.

CONSERVATION ELEMENT

Policy 10.1: The Town shall continue to strive with all means available to comply with the conservation standards established by Southwest Florida Water Management District for its Southern Water Use Caution Area for per day per capita consumption and not exceed the Town's adopted Level of Service standard of ~~140~~ 115 gallons per day per capita. [40D-2, F.A.C.]

CAPITAL IMPROVEMENT ELEMENT

Policy 2.1: The following level of service standards, as established in other elements of the Comprehensive Plan and by the Polk County School Board are hereby adopted and shall be maintained for existing or previously permitted development and for new development or redevelopment in the Town or the Town's utility service areas:

SANITARY SEWER	
Flow Capacity	1.5 MGD
Average Daily Flow	105 gpcd average daily flow
Effluent quality	Meet or exceed EPA and DEP effluent standards
POTABLE WATER	
Flow Capacity:	

Average daily demand:	140 115 gpcd
Maximum daily demand:	1.5 times average daily demand
SOLID WASTE	
Level of Service:	8.0 lbs. per person per day
DRAINAGE	
Drainage	<p>The following shall be the level of service standards for stormwater facilities:</p> <ul style="list-style-type: none"> a. Drainage Structures: Ability to handle 25-year, 24 hour storm event b. Stormwater Facilities: 25-year, 24 hour storm event at top of bank or berm c. Storm sewers: Capacity to handle a 25-year storm event
RECREATION	
Level of Service:	4.5 acres per 1,000 population

UNIFIED LAND DEVELOPMENT CODE AMENDMENT

6.01.06. Levels of service.

Through the concurrency management system, Dundee shall maintain the following levels of service for public facilities:

Facility	Level of Service
Sanitary sewer	100 gallons per capita per day
Potable water	150 gallons per capita per day by 1993 140 gallons per capita per day by 1997 <u>115 gallons per capita per day</u>
Solid waste	3.47 pounds per person per day
Freeways	C
Principal arterial roads	C
Other roads	D
Recreation and open space	4.5 acres per 1,000 people
Drainage	25-year, 24-hour storm event for new development. Stormwater treatment and disposal facilities pursuant to section 17-25.025, F.A.C. Stormwater discharge pursuant to section 17-3.051, F.A.C.

All development which was not approved through a subdivision plat, site development plan, or the issuance of a building permit prior to the date of adoption of this code shall be subject to an adequacy determination through the concurrency management system. An adequacy determination shall also be required for existing development where any improvement, expansion, or other change is proposed which may result in a greater demand for those public facilities addressed in this section. The development director shall determine whether a proposed change in existing development requires an adequacy determination.



**TOWN OF DUNDEE
TOWN-INITIATED REQUEST FOR A COMPREHENSIVE PLAN TEXT AMENDMENT TO THE
POTABLE WATER LEVEL OF SERVICE**

TO: Town of Dundee, Town Commission
PREPARED BY: Central Florida Regional Planning Council
AGENDA DATE: February 28, 2023
REQUESTED ACTION: Proposed amendment to the potable water Level of Service Standard from 140 gpcd to 115 gpcd in the Dundee Comprehensive Plan and in the Unified Land Development Code.

BACKGROUND:

The Level of Service quantifies the types and amounts of services customers receive. The established Level of Service helps the Town plan for future development by ensuring enough water will be available for the proposed development. The Town proposes to update the Level of Service for potable water to reflect current needs and requirements from the Central Florida Water Initiative (CFWI).

Per Capita Rate

The current SWFWMD maximum Gross Per Capita rate is 150 by policy. The 130 amount was discussed by Southern Water Use Caution Area (SWUCA). SWUCA was designed in 1992 to address declines in aquifer levels due primarily to groundwater withdrawals. SWFWMD designates and establishes the protection and recovery of the water resources.

Central Florida Water Initiative (CFWI) requires 115 by 12/31/2023. The Town is currently at 107.8 (2021).

The SWFWMD requires:

- Permittees With a Five-Year Compliance Per Capita Rate No Greater Than 150 gpd as of 2009. (Water Use Permit Applicants Handbook Part B 2.3.7.2.2)

CFWI requires (Focus on Gross Per capita):

- Gross per capita daily water use rate of no greater than 115 gpd. (CFWI Supplemental Applicant's Handbook- CFWI-2.7.3)
- Phase-In Where a Gross Per Capita Daily Water Use Rate of 115 gpd is Exceeded as of December 31, 2023:

1. By July 1, 2024, the permittee shall submit to the district a plan that identifies conservation or water supply project(s) that will be developed and implemented to achieve the per capita goal of 115.
2. By December 31, 2033, the permittee shall achieve a per capita rate not greater than the midpoint between the five-year average Alternative Per Capita Water Use Rate calculated as of 2023 and their per capita goal.
3. By December 31, 2043, the permittee shall achieve an Alternative Per Capita Water Use Rate that is not greater than their per capita goal.
4. A permittee that does not achieve an Alternative Per Capita Water Use Rate that is less than or equal to 100 gpd when calculating using the Functional Population Per Capita method or 115 gpd when calculating the Gross Per Capita method set forth above by December 31, 2043, shall submit documentation upon request from the District that explains the reasons for not being able to meet the conservation goal or a variance has been granted from the Public Supply Annual Conservation Goal.

Town of Dundee Existing Water Use Permit 20-5893.013:

- Allocates an average per capita rate of 148 gpd (only extended original permit for 10 years)
- 2021 Gross Per Capita 107.9
- 5-Year Annual Report Average per capita 114.9 for Town

PROPOSED LANGUAGE – COMPREHENSIVE PLAN:

INFRASTRUCTURE ELEMENT

Policy 2.2.1: The Town establishes the following future level of service standards for potable water use, storage, and minimum pressure, effective January 1 of the respective years, in accordance with the Southern Water Use Caution Area, as enacted by the Southwest Florida Water Management District Board of Directors:

Potable Water Level of Service	140 <u>115</u> gpcd
--------------------------------	--------------------------------

WATER SUPPLY SUB ELEMENT

Policy 1.1.1: The Town shall maintain water sources capable of supplying a minimum of one hundred ~~forty (140)~~ one hundred fifteen (115) gallons per person per day.

CONSERVATION ELEMENT

Policy 10.1: The Town shall continue to strive with all means available to comply with the conservation standards established by Southwest Florida Water Management District for its Southern Water Use Caution Area for per day per capita consumption and not exceed the Town’s adopted Level of Service standard of ~~140~~ 115 gallons per day per capita. [40D-2, F.A.C.]

CAPITAL IMPROVEMENT ELEMENT

Policy 2.1: The following level of service standards, as established in other elements of the Comprehensive Plan and by the Polk County School Board are hereby adopted and shall be maintained for existing or previously permitted development and for new development or redevelopment in the Town or the Town's utility service areas:

SANITARY SEWER	
Flow Capacity	1.5 MGD
Average Daily Flow	105 gpcd average daily flow
Effluent quality	Meet or exceed EPA and DEP effluent standards
POTABLE WATER	
Flow Capacity:	
Average daily demand:	140 <u>115</u> gpcd
Maximum daily demand:	1.5 times average daily demand
SOLID WASTE	
Level of Service:	8.0 lbs. per person per day
DRAINAGE	
Drainage	<p>The following shall be the level of service standards for stormwater facilities:</p> <ul style="list-style-type: none"> a. Drainage Structures: Ability to handle 25-year, 24 hour storm event b. Stormwater Facilities: 25-year, 24 hour storm event at top of bank or berm c. Storm sewers: Capacity to handle a 25-year storm event
RECREATION	
Level of Service:	4.5 acres per 1,000 population

PROPOSED LANGUAGE – UNIFIED LAND DEVELOPMENT CODE**6.01.06. Levels of service.**

Through the concurrency management system, Dundee shall maintain the following levels of service for public facilities:

Facility	Level of Service
Sanitary sewer	100 gallons per capita per day
Potable water	150 gallons per capita per day by 1993 140 gallons per capita per day by 1997 115 gallons per capita per day
Solid waste	3.47 pounds per person per day
Freeways	C
Principal arterial roads	C
Other roads	D
Recreation and open space	4.5 acres per 1,000 people
Drainage	25-year, 24-hour storm event for new development. Stormwater treatment and disposal facilities pursuant to section 17-25.025, F.A.C. Stormwater discharge pursuant to section 17-3.051, F.A.C.

All development which was not approved through a subdivision plat, site development plan, or the issuance of a building permit prior to the date of adoption of this code shall be subject to an adequacy determination through the concurrency management system. An adequacy determination shall also be required for existing development where any improvement, expansion, or other change is proposed which may result in a greater demand for those public facilities addressed in this section. The development director shall determine whether a proposed change in existing development requires an adequacy determination.

PUBLIC HEARING:**MOTION OPTIONS:**

1. I move the Planning and Zoning Board recommend **approval** to the Town Commission of the amendment to Comprehensive Plan and the Unified Land Development Code related to the potable water Level of Service.
2. I move the Planning and Zoning Board recommend **approval with changes** to the Town Commission of the amendment to Comprehensive Plan and the Unified Land Development Code related to the potable water Level of Service.
3. I move **continuation of this item** until a date certain.



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: **ORDINANCE 23-03, CAPITAL IMPROVEMENTS ELEMENT**

SUBJECT: The Town Commission will consider approval of Ordinance 23-03 for CIE Amendments

STAFF ANALYSIS: The Florida Statutes mandates that local governments should update and adopt the Capital Improvement Element (CIE) after adoption of the Annual Budget.

The CIE must be reviewed on an annual basis and modified as necessary in accordance with Section 163.3187 or Section 163.3185, Florida Statutes, to maintain a financially feasible 5-Year schedule of capital improvements. CIE amendments require only a single public hearing before the governing board which shall be an adoption hearing.

FISCAL IMPACT: None

STAFF RECOMMENDATION: Approval of the proposed amendments to the CIE

ATTACHMENTS: Ordinance 23-03
Proposed language including CIP



**TOWN OF DUNDEE
COMPREHENSIVE PLAN AMENDMENT
STAFF REPORT**

TO: Town of Dundee Town Commission

PREPARED BY: Lorraine Peterson/ Central Florida Regional Planning Council

AGENDA DATE: February 28, 2023

REQUESTED ACTION: Consider approval of the 2022/2023 Annual Update to the Comprehensive Plan's Capital Improvement Element (CIE)

BACKGROUND:

The Florida Statutes mandates that local governments should update and adopt the Capital Improvement Element (CIE) (including the CIE 5-Year Schedule of Improvements) after adoption of the Annual Budget and CIE. This update includes fiscal years 2021/2022 through 2025/2026. The 5-year Schedule of Capital Improvements consists of items identified in the Capital Improvement Program portion of the Town's operating budget that implement specific objectives and policies contained in the Comprehensive Plan.

The CIE must be reviewed on an annual basis and modified as necessary in accordance with Section 163.3187 or Section 163.3185, Florida Statutes, in order to maintain a financially feasible 5-Year schedule of capital improvements. CIE amendments require only a single public hearing before the governing board which shall be an adoption hearing.

Adoption of the CIE is by ordinance. Exhibit "A" to the Ordinance contains the Capital Improvement Element Amendment and the updated 5-Year Capital Improvements Plan schedule of capital improvements.

PROPOSED AMENDMENTS:

The following amendments are proposed:

- Update the reference to the years for the Polk County School Board's Five-Year Facilities Work Program

- Updating the Capital Improvements Schedule to reflect the Fiscal Year 2022/23 through 2026/27 and the current project needs.

Policy 2.1 reflects the change in Level of Service from 140 gpcd to 115 gpcd as amended through Ordinance 23-03.

NEXT STEPS:

The item will be forwarded to the Town Commission with the Planning and Zoning Board’s recommendation for consideration. If the Town Commission votes to approve the amendment, the CFRPC will transmit this amendment on behalf of the Town to the Florida Department of Economic Opportunity.

PUBLIC HEARING

MOTION OPTIONS:

1. I move **approval of changes** for the proposed amendments to the Capital Improvements Element.
 2. I move **approval with changes** for the proposed amendments to the Capital Improvements Element.
 3. I move continuation of this item until a date certain.
-
-

Attachments:
Proposed Language including CIP
Ordinance 23-03

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ORDINANCE NO. 23-03

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF DUNDEE, FLORIDA AMENDING THE 2030 COMPREHENSIVE PLAN OF THE TOWN OF DUNDEE, FLORIDA, SAID AMENDMENT BEING KNOWN AS "AMENDMENT 23-03CIE"; SPECIFICALLY AMENDING THE ADOPTED CAPITAL IMPROVEMENTS ELEMENT AND UPDATING THE 5-YEAR CAPITAL IMPROVEMENTS PLAN; PROVIDING FOR CONFLICTS, SEVERABILITY, THE ADMINISTRATIVE CORRECTION OF SCRIVENER'S ERROS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Sections 163.3161 through 163.3215, Florida Statutes, the Local Government Comprehensive Planning and Land Development Regulation Act, empowers and mandates the Town of Dundee, Florida, to plan for future development and growth and to adopt and amend comprehensive plans, or elements or portions thereof, to guide the future growth and development of the County; and

WHEREAS, pursuant to Section 163.3184, Florida Statutes, the Town Commission held meetings and hearings on **Amendment 23-03CIE**, with due public notice having been provided, to obtain public comment, and considered all written and oral comments received during public hearings, including support documents; and

WHEREAS, in exercise of its authority the Town Commission has determined it necessary to adopt this **Amendment 23-03 CIE** to the 2030 Comprehensive Plan of the Town of Dundee, Florida, which amendment is marked as Exhibit "A" and is attached and made a part hereof, to ensure that the 2030 Comprehensive Plan of the Town of Dundee, Florida is in full compliance with the Laws of the State of Florida; to preserve and enhance present advantages; encourage the most appropriate use of land, water, and resources consistent with

ORDINANCE 23-03
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the public interest; and deal effectively with future problems that may result from the use and development of land within the Town of Dundee; and

WHEREAS, the Commission of the Town of Dundee, Florida, amends the 2030 Comprehensive Plan of the Town of Dundee, Florida in the following specific manner:

Updating the Capital Improvements Element, including the annual update of the 5-Year Capital Improvements Plan (CIP) as more specifically identified and set forth in Exhibit "A" which is attached hereto and incorporated by reference herein.

WHEREAS, in accordance with the procedures required by Sections 166.041(3)(c)2, Florida Statutes, and other applicable Florida law, the regulations contained within this Ordinance were considered by the Town's Planning and Zoning Board, sitting as the Local Planning Agency (LPA) as designated by the Town, at a duly advertised public meeting on February 16, 2023, at which time interested parties and citizens had the opportunity to be heard; and

WHEREAS, on February 16, 2023, after considering all the facts and testimony presented by the Town, interested and/or aggrieved parties, and citizens in attendance, the Town of Dundee Planning and Zoning Board voted to recommend approval of this **Amendment 23-03 CIE** to the 2030 Comprehensive Plan of the Town of Dundee, Florida, which amendment is marked as Exhibit "A" and is attached and made a part hereof.

NOW, THEREFORE BE IT ENACTED BY THE PEOPLE OF THE TOWN OF DUNDEE, FLORIDA:

Section 01. Amendment of Capital Improvements Element of the 2030 Comprehensive Plan of the Town of Dundee, Florida

The 2030 Comprehensive Plan of the Town of Dundee, Florida is hereby amended as set forth in Exhibit "A" attached hereto and

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incorporated herein by reference as follows:

Updating the Capital Improvements Element, including the annual update of the 5-Year Capital Improvements Plan (CIP).

Section 2. The 2030 Comprehensive Plan of the Town of Dundee is hereby amended to update the Capital Improvements Element, including the annual update of the 5-Year Capital Improvements Plan (CIP) as more specifically set forth in Exhibit "A" attached hereto and incorporated herein by reference.

Section 2. Pursuant to applicable Florida law, this Ordinance shall be effective on the effective date of the companion Town of Dundee 2030 Comprehensive Plan Amendment under Ordinance 23-02.

Section 3. All ordinances in conflict herewith are hereby repealed.

Section 4. If any provision or portion of this Ordinance is declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 5. A certified copy of this enacting Ordinance and certified copy of the 2030 Comprehensive Plan of the Town of Dundee, Florida shall be located in the Office of the Town Clerk of Dundee. The Town Clerk shall also make copies available to the public for a reasonable publication charge.

Section 6. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the 2030 Comprehensive Plan of the Town of Dundee, Florida; and that sections of this Ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "chapter", "section", "article", or such other appropriate word or phrase in order to accomplish

ORDINANCE 23-03
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such intentions; and regardless of whether such inclusion in the 2030 Comprehensive Plan of the Town of Dundee, Florida is accomplished, sections of this Ordinance may be renumbered or re-lettered and the correction of typographical and/or scrivener’s errors which do not affect the intent may be authorized by the Town Manager or his/her designee, without need of public hearing, by filing a corrected or recodified copy of same with the Town Clerk.

INTRODUCED AND PASSED on First Reading the _____ day of _____, 2023.

PASSED AND DULY ADOPTED, on Second Reading with a quorum present and voting, by the Town Commission of the Town of Dundee, Florida, this _____ day of _____, 2023.

TOWN OF DUNDEE, FLORIDA

MAYOR – Sam Pennant

ATTEST:

TOWN CLERK – Jenn Garcia

Approved as to form:

TOWN ATTORNEY – Frederick J. Murphy, Jr.

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EXHIBIT "A"

2023-2027 CIP (10-11-22)									
NO	Description	Funding Sources	Total 2022-2027 CIP	2022-2023 Budget	2023-2024 Budget	2024-2025 Budget	2025-2026 Budget	2026-2027 Budget	Comments
Water - Facilities									
1	WP #1 (Riner) Replace/Repairs to Structure; New Operations Building w/Electrical, Instrumentation & Controls, Restrooms, 250,000 gallon ground storage tank and design and engineering	Grant/SRF	\$ 950,000	\$ 950,000					Riner Water Plant was built in . Major upgrades are necessary to the building , electrical, chlorine tank and SCADA monitoring system. There are no bathrooms- for staff.
2	WP #1 - WH Water Supply Connection @ Water Plant #1 (Riner)	Impact Fees	\$ 458,000	\$ 458,000					WH Connection to RinerPlant Ground Storage Tank
3	WP #2 - Backup Alarm System (Hickory) & Upgrades	Revenues	\$ 25,000	\$ 25,000					WP has been off line - no back up alarms to alert staff
4	WP #2 - Chlorine Pump, Skid and Electronics for Well (Hickory)	Revenues	\$ 15,000	\$ 15,000					Separing 2 wells (600&1200) on same Chlorine Pump
5	PRWC Engineering & Design for Brackish Water Supply & Ground Storage Tank at Hickory Walk Water Plant	Impact Fees	\$ 500,000		\$ 500,000				Preliminary/final designs, permitting, evaluation of facility, blending, storage, pumping equipment, chemical, electrical and controls upgrades
6	WP #2 - PRWC Alternative Water Supply (Brackish), 1MG Ground Storage Tank (GST), Electrical w/Building, Instrumentation & Controls, Flow Meter Station, Above Ground Injection Station to be included as PRWC Plant Upgrades)	Impact Fees	\$ 5,269,000			\$ 3,000,000	\$ 2,269,000		PRWC Project Construction (750,000 Tank, High Service Pumps, Chlorine, Electrical Switch gear,VFD, Auto Transfer Switch, plant modifications, and generator)
7	WP #2 -Adding/Updates to Instrumentation & Controls and Programing Software	Revenues	\$ 40,000	\$ 40,000					Software and Licensing Renewal
8	WP#1 & WP#2 Ground Storage Tank Internal Corrosion Repairs and Internal Pipe Replacement	Revenues	\$ 780,000	\$ 780,000					After GST regulatory inspection, Town required to rehabilitate the internal piping, etc. of the storage tank due to excessive corrosion
9	PRWC Annual Capital Payments	Revenues	\$ 1,260,626	\$ 1,062	\$ 108,352	\$ 305,880	\$ 308,018	\$ 537,314	Assumes interest only WIFIA (2032) and line of credit (2027), FDEP debt start in 2025
10	WP #1 & WP #2 addition of Mixers to Ground Storage Tanks (WP#1 & WP#2)	Grant/SRF	\$ 350,000			\$ 175,000	\$ 175,000		Mixers to keep water mixing in the tank.
11	Hickory Walk Secondary Recirculation Pump- Filtration System TTHM	Impact Fees	\$ 350,000		\$ 175,000	\$ 175,000			Recommendation by UCF study
Total Water - Facilities			\$ 9,997,626	\$ 2,269,062	\$ 783,352	\$ 3,655,880	\$ 2,752,018	\$ 537,314	Sub-Total Facilities
Water Distribution - Infrastructure									
12	Water Line Replacement Town-Wide 2" (See List)	SRF - Debt	\$ 3,775,000	\$ 300,000	\$ 775,000	\$ 900,000	\$ 900,000	\$ 900,000	3" Streets/Alleys/Asbestos = 21,071 feet or 3.99 miles
13	Water Main Extensions (N. Scenic Highway from Mabel Loop to Stalnaker)	Impact Fees	\$ 850,000			\$ 350,000	\$ 500,000		7,192 linear feet
14	Water Line Looping (East of Lake Marie & NW of Dundee Ridge Middle School)	SRF - Debt	\$ 690,000	\$ 365,000	\$ 325,000				5,060 linear feet
15	Meter Change out to AMI Meters (Turn On/Off program, gated, dogs)	Revenues	\$ 175,000	\$ 35,000	\$ 35,000	\$ 35,000	\$ 35,000	\$ 35,000	Purchases about 87 meters each year
16	16 " Water Line (Mabel Loop Road)	Impact Fees	\$ 900,000				\$ 400,000	\$ 500,000	5,364 linear feet
Total Water - Infrastructure			\$ 6,390,000	\$ 700,000	\$ 1,135,000	\$ 1,285,000	\$ 1,835,000	\$ 1,435,000	Sub-Total - Infrastructure
Water Plant - Miscellaneous									
17	Update Water Master Plan	Revenues	\$ 80,000	\$ 80,000					Verify water system weaknesses, needs, expansions,
18	WP #1 and WP #2 Software and SCADA Systems Renewals/Adds/Upgrades	Revenues	\$ 85,000	\$ -	\$ 85,000				Renewals and upgrades of operating software

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19	Maintenance/Repair/Replace variable speed Pumps at Water Plant #1	SRF - Debt	\$ 300,000		\$ 150,000		\$ 150,000		Investment in assets with continued maintenance
20	Maintenance/Repair/Replace variable speed Pumps at Water Plant #2	SRF - Debt	\$ 400,000			\$ 200,000		\$ 200,000	Investment in assets with continued maintenance
21	Replace Aerator Trays @ WTP #1 & WTP #2	SRF - Debt	\$ 200,000	\$ -	\$ 100,000		\$ 100,000		Investment in assets with continued maintenance
22	Rehabilitate Wells # 3,4,6,7,8	SRF - Debt	\$ 300,000		\$ 100,000		\$ 100,000	\$ 100,000	Investment in assets with continued maintenance
23	WP #1 and WP #2 Water Tank Inspections (Every 3 Years)	Revenues	\$ 7,000		\$ -	\$ 7,000			WP#1/WP#2 ground storage tanks be inspected in 3 yr.
24	Transitional Wells/Modify Consumptive Use Permit (CUP)	Impact Fees	\$ 50,000	\$ 50,000					Accumulation of specified number gallon-modify
25	New Well for Transitional Water Suppy Management (DID1- new location)	Impact Fees	\$ 550,000			\$ 300,000	\$ 250,000		SFWM requested closure of Well 1 in two years.
26	2000 LF of Water Lines to Serve New Customers	Impact Fees	\$ 250,000	\$ 250,000					New Lines to serve new customers quickly
	Total Water - Miscellaneous		\$ 2,222,000	\$ 380,000	\$ 435,000	\$ 507,000	\$ 600,000	\$ 300,000	Sub-Total - Miscellaneous
	Total Water Projects (for Plants)		\$ 18,609,626	\$ 3,349,062	\$ 2,353,352	\$ 5,447,880	\$ 5,187,018	\$ 2,272,314	Total Water Projects (for Plants)
NO	Description	Funding Sources	Total 2022-2027 CIP	2022-2023 Budget	2023-2024 Budget	2024-2025 Budget	2025-2026 Budget	2026-2027 Budget	Comments
27	Update Wastewater Master Plan	Revenues	\$ 100,000	\$ 100,000					Identify system bottlenecks with modeling, flows, info
28	Storage Building	Revenues	\$ 35,000		\$ 35,000				Storage Area for various items.
29	Roof Over Chlorine Contact Chamber	Revenues	\$ 15,000	\$ 15,000					Shading installed overchambers to save chlorine evap
30	Instrumentation & Controls/New Scada Alarms Upgrades WWTP	Revenues	\$ 35,000	\$ 35,000					Addition of Scada monitoring system and alarms.
31	Headworks Expansion	Impact Fees	\$ 600,000		\$ -	\$ -	\$ 300,000	\$ 300,000	New growth expansion
32	Wastewater Filters Expansion	Impact Fees	\$ 500,000					\$ 500,000	New growth expansion
33	Expansion New Clarifier/Rebab Existing Tank for Backup	Impact Fees	\$ 800,000		\$ -	\$ -	\$ -	\$ 800,000	New growth expansion
34	Sludge Design & Improvements	Impact Fees	\$ 500,000		\$ -	\$ -	\$ -	\$ 500,000	New growth expansion
35	Wastewater Tank Coatings	Revenues	\$ 25,000	\$ 25,000					Investment in existing asset to increase Useful Life
36	Implement Pre-Treatment/Fats Oils & Grease Program (FOG) Study	Revenues	\$ 25,000	\$ 25,000					Implement a FOG program to fats remove from lines
	Total Wastewater - Infrastructure		\$ 2,635,000	\$ 200,000	\$ 35,000	\$ -	\$ 300,000	\$ 2,100,000	Sub-Total - Infrastructure
	Wastewater - Miscellaneous								
37	Septic Tank Elimination Project - Construction of New Sanitary Sewer Lines	Grant - SRF	\$ 2,600,000		\$ 800,000	\$ 500,000	\$ 800,000	\$ 500,000	Replacement of septic tanks with town sewer system
38	Asset Management Software Program (Water & Wastewater)	Revenues	\$ 60,000	\$ 60,000					HB 53 state law that requires completion of a 20-year needs analysis by WW service providers.
39	Waste/Cutter/Sludge Pumps (6" Pumps and 6" lines) for WW Tank Maintenance	Revenues	\$ 8,000	\$ 8,000					Pump that cuts and still pumps to take tankage offline
40	Larger Crane & Truck	Revenues	\$ 160,000		\$ 160,000				Larger crane to reach areas at WWTP
	Total Wastewater - Miscellaneous		\$ 2,828,000	\$ 68,000	\$ 960,000	\$ 500,000	\$ 800,000	\$ 500,000	Sub-Total - Miscellaneous
	Total Wastewater Projects (Dept)		\$ 5,463,000	\$ 268,000	\$ 995,000	\$ 500,000	\$ 1,100,000	\$ 2,600,000	Total

CAPITAL IMPROVEMENTS ELEMENT

*Adopted October 26, 2010
Update Adopted January 11, 2011
Update Adopted February 23, 2016
Update Adopted June 13, 2017
Update Adopted*

GOAL: **IT SHALL BE THE GOAL OF THE TOWN OF DUNDEE TO PROVIDE NECESSARY PUBLIC FACILITIES AND SERVICES FOR ALL EXISTING AND FUTURE DEVELOPMENT, AT ADOPTED LEVEL OF SERVICE STANDARDS, THROUGH A PROCESS THAT PERMITS DEVELOPMENT CONCURRENT WITH THE ABILITY OF THE TOWN TO PROVIDE SUCH FACILITIES AND SERVICES. [9J5-016(3)(A)]**

OBJECTIVE 1: **5-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS**

PROVIDE IMPROVEMENTS TO PUBLIC FACILITIES AND SERVICES AS INDICATED IN THE 5-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS TO CORRECT EXISTING DEFICIENCIES, REPLACE OBSOLETE OR WORN-OUT FACILITIES, AND ACCOMMODATE THE NEEDS OF DESIRED FUTURE GROWTH. [9J5.016(3)(B)1]

Policy 1.1: Include in the 5-Year Schedule of Capital Improvements all projects and equipment identified as needed in other elements of this Comprehensive Plan that are relatively high in cost (\$10,000 or greater) and necessary to maintain the adopted level of service standards or correct existing deficiencies.

Policy 1.2: Evaluate and rank proposed capital improvement projects in order of priority according to the following guidelines:

1. Whether the project is needed to: correct an existing level of service deficiency, protect the health and safety, serve developments for which development orders were issued prior to the adoption of the Comprehensive Plan, or fulfill a legal commitment of the town;
2. Whether the project is needed to: replace worn-out or obsolete facilities to maintain the adopted level of service standard,

improve operating efficiency, reduce costs, serve developed areas lacking full service, or promote in-fill development;

- 3. Whether the project is needed to accommodate new growth in accordance with the Future Land Use Map at the adopted level of service standard;
- 4. Whether the project represents a logical extension of facilities and services within the town's service area; and
- 5. Whether the project is financially feasible within revenue and budget constraints. [9J-5.016(3)(c)1]

Policy 1.3: Capital improvements projects included in the 5-Year Schedule of Capital Improvements shall be consistent with the goals, objectives, and policies of the appropriate elements of the Comprehensive Plan, including and especially the Public Education Facilities Element. [9J-5.016(3)(c)9]

Policy 1.4: Provide, or require others to provide, needed capital expenditures for the replacement or renewal of obsolete or worn-out capital facilities to maintain the adopted level of service standards. [9J-5.016(3)(c)3]

OBJECTIVE 2: CONCURRENCY AND CAPITAL IMPROVEMENTS

BASE LAND USE DECISIONS, INCLUDING DECISIONS REGARDING THE ISSUANCE OF DEVELOPMENT ORDERS AND PERMITS, ON THE DEVELOPMENT REQUIREMENTS INCLUDED IN THIS COMPREHENSIVE PLAN, THE LAND DEVELOPMENT REGULATIONS OF THE TOWN OF DUNDEE, AND THE AVAILABILITY OF PUBLIC FACILITIES AND SERVICES NECESSARY TO SUPPORT SUCH DEVELOPMENT AT THE ADOPTED LEVEL OF SERVICE STANDARDS.

Policy 2.1: The following level of service standards, as established in other elements of the Comprehensive Plan and by the Polk County School Board are hereby adopted and shall be maintained for existing or previously permitted development and for new development or redevelopment in the Town or the Town's utility service areas:

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SANITARY SEWER	
Flow Capacity	1.5 MGD
Average Daily Flow	105 gpcd average daily flow
Effluent quality	Meet or exceed EPA and DEP effluent standards
POTABLE WATER	
Flow Capacity:	
Average daily demand :	<u>115</u> gpcd
Maximum daily demand:	1.5 times average daily demand
SOLID WASTE	
Level of Service:	8.0 lbs. per person per day
DRAINAGE	
Drainage	<p>The following shall be the level of service standards for stormwater facilities:</p> <ul style="list-style-type: none"> a. Drainage Structures: Ability to handle 25-year, 24 hour storm event b. Stormwater Facilities: 25-year, 24 hour storm event at top of bank or berm c. Storm sewers: Capacity to handle a 25-year storm event
RECREATION	
Level of Service:	4.5 acres per 1,000 population

Roads:

- a. The Town of Dundee shall coordinate with the Polk Transportation Planning Organization (PTPO) and the Central Florida Regional Planning Council to adopt and apply multi-modal levels of service which shall be the minimum acceptable standards for State, County, and local roads within the Town Limits of Dundee. Said multi-modal LOS standards shall promote transit by lowering levels of service where transit is available. The Town hereby adopts multi-modal levels of service as set forth in the following tables.

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	Highway Minimum Standard	Highway Minimum Duration	Transit	Pedestrian	Bicycle
M1	LOS “D” peak direction	Average of two highest peak hours	60 minute headway	Sidewalk access to bus stop	Bike racks on buses
M2	LOS “E” peak direction	Average of two highest peak hours	30 minute headway	Sidewalk access to bus stop	Bike racks on buses Bike route/system

*Does not supersede SIS LOS Standard as set by Rule 14-94, F.A.C.

- b. For roadways outside the multi-modal service area, the Town hereby adopts the following peak season/peak hour standards as the minimum level of service (LOS) standard:

BASE HIGHWAY LEVEL OF SERVICE STANDARDS ⁽¹⁾	
Facility Type	Level of Service
Principal arterial roadways: SIS facilities Non-SIS facility	Subject to TE Policy 1.2 D
Minor arterial roadways	D
All other roadways	D
⁽¹⁾ LOS is measured for the peak hour/peak direction using the average of the two highest peak hours.	

[9J-5.007(3)(c)1]

- c. The minimum level-of-service standard for roadways on the Strategic Intermodal System (SIS) and the Florida Intrastate Highway System (FIHS), shall be in accordance with the Statewide Minimum Level of Service Standards for the State Highway System published in Rule 14-94, F.A.C., or any rule variance issued by the Florida Department of Transportation.

Public School Facilities:

Consistent with the Interlocal Agreement for Public School Facilities, the uniform, district wide level of service standards are established as a percent of permanent Florida Inventory of School Houses (FISH) capacity. The LOS standards are set as follows:

TIERED LEVEL OF SERVICE STANDARDS					
School Facility Type	Year	Year	Year	Year	Year
	2015-16 <u>2022-23</u>	2016-17 <u>2023-24</u>	2017-18 <u>2024-25</u>	2018-19 <u>2025-26</u>	2019-20 <u>2026-27</u>
Elementary	100%	100%	100%	100%	100%
Middle	100%	100%	100%	100%	100%
High School	100%	100%	100%	100%	100%

- a. Magnet and School of Choice:
One hundred percent (100%) of enrollment quota as established by the School Board or court ordered agreements and as adjusted by the School Board annually.
- b. Other:
K-8, 6th grade centers, 9th grade centers, 6-12 are at one hundred percent (100%) of permanent DOE FISH capacity
- c. Special Facilities:
Including alternative education or special programmatic facilities are designed to serve the specific population on a countywide basis or for temporary need and are not zoned to any specific area. Therefore, they are not available or used for concurrency determinations.
- d. Conversion Charter Schools:
The capacity is set during contract negotiations and the School Board has limited control over how many students the schools enroll.

Policy 2.2: The Town of Dundee adopts by reference the ~~2015-2016~~ 2022-2023 through ~~2019-2020~~ 2026-2027, Five-Year Facilities Work Program. The Work Program is approved annually by the School Board, and includes school capacity sufficient to meet anticipated student demands projected by the County and municipalities and based on the adopted level of service standards for public schools. The 5-year schedule of improvements ensures the level of service standards for

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public schools are achieved and maintained within the 5-year period. Annual updates to the schedule shall ensure levels of service standards are achieved and maintained within each year of subsequent 5-year schedule of capital improvements. Annual updates by the School Board will be adopted by reference as the City annually updates its CIE and CIP.

Policy 2.3: At the time a development permit is issued, adequate facility capacity is available or will be available when needed to serve the development. [9J-5.016(3)(c)6]

Policy 2.4: In order to ensure the Town meets levels of service standards, population projections will be updated yearly.

Policy 2.5: The Town of Dundee hereby adopts, by reference, the Polk County Transportation Planning Organization Transportation Improvement Plan, and the Florida Department of Transportation 5-Year Work Program, into the Town's Five-year Schedule of Capital Improvements.

Policy 2.6: The Town hereby incorporates its Ten-Year Water Supply Facilities Work Plan as a technical support document into this Element, as required following adoption of the Southwest Florida Water Management District (SWFWMD) Regional Water Supply Plan, adopted November 2015. The adopted Ten-Year Water Supply Facilities Work Plan and all future amendments thereto, represent an update to the Dundee Comprehensive Plan. In implementing this Policy, the Town shall annually assess the performance and effectiveness of its Ten-Year Water Supply Plan and update the status of project development and potential funding sources, consistent with the corresponding SWFWMD Regional Water Supply Plan and the policies of this Comprehensive Plan in order to maximize the use of existing facilities and provide for future needs.

Policy 2.7: The Town shall not allow exceptions for developments of de minimis impact.

OBJECTIVE 3: COST SHARING FOR NEW DEVELOPMENT

REQUIRE FUTURE DEVELOPMENT TO ASSUME A PROPORTIONATE SHARE OF THE COST OF PROVIDING PUBLIC FACILITIES AND SERVICES TO SUPPORT SUCH DEVELOPMENT AT THE ADOPTED LEVEL OF SERVICE STANDARDS. [9J-5.016(3)(B)4]

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Policy 3.1: Continue to implement an impact fee ordinance in order to assess new development a pro rata share of the costs required to provide public facilities and services to meet the adopted level of service standards. [9J-5.016(3)(c)8]

Policy 3.2: The Town shall include in land development regulations a program for land dedication, payment-in-lieu-of dedication, or other form of exaction as a requirement of subdivision or land development for the purpose of retaining easements for utility and traffic circulation systems, and for meeting all adopted level of service standards. -[9J-5.016(3)(c)8]

OBJECTIVE 4: MANAGEMENT OF FISCAL RESOURCES

MANAGE FISCAL RESOURCES TO ENSURE THAT THE PUBLIC FACILITY AND SERVICE IMPROVEMENT NEEDS CREATED BY PREVIOUSLY ISSUED DEVELOPMENT ORDERS AND FUTURE DEVELOPMENT DOES NOT EXCEED THE ABILITY OF THE TOWN TO FINANCE, CONSTRUCT, OR INSTALL SUCH IMPROVEMENTS. [9J-5.016(3)(B)5]

Policy 4.1: Update the Capital Improvements Element annually to reflect existing and projected capital needs in accordance with the adopted level of service standards, for the purpose of assessing the costs of those needs against projected revenues and expenditures.

Policy 4.2: Continue the on-going 5-year Capital Improvements Program and incorporate a capital budget as part of the annual town budget to ensure that funds are available for projected capital needs. [9J-5.016(3)(c)7]

Policy 4.3: Limit the maximum ratio of outstanding indebtedness for providing capital facilities and services to no greater than 15 percent of the property tax base. [9J-5.016(3)(c)2]



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: DISCUSSION AND ACTION, NANCY AVENUE BALL PARK

SUBJECT: Reopening of Nancy Avenue Ball Park located at 206 Lewis Lane, Dundee Florida

STAFF ANALYSIS: The Nancy Avenue Ball Park has been closed for years now. The Town was contacted by the Concepcion, Ortega, Mason and Glanton families who wanted to provide assistance in reopening this park. The park had multiple safety concerns that needed to be addressed before it could be re-opened to the public. With the help of these two families, the repairs to this park has been completed. The Town will still need to recover the tops of both dugouts, but they are safe at this time. We plan to add the re-roofing of the dugouts in the upcoming 2023-2024 FY Budget

FISCAL IMPACT: None

STAFF RECOMMENDATION: At the will of the commission, we request this park be reopened to the public.

ATTACHMENTS: None



TOWN COMMISSION MEETING

February 28, 2023 at 6:30 PM

AGENDA ITEM TITLE: DISCUSSION AND ACTION, SHINGLE SELECTION

SUBJECT: Shingles Selection for damaged buildings from Hurricane Ian

STAFF ANALYSIS: The Town Commission will choose the shingles for the following buildings:

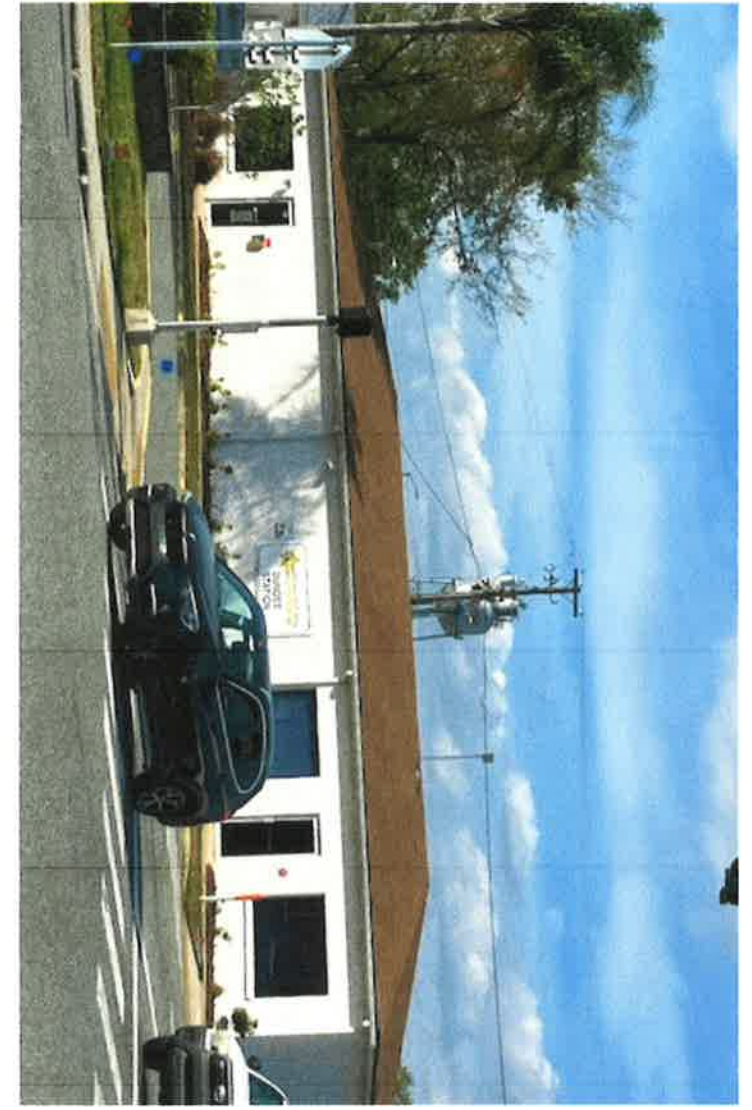
- 1. Fire Department
- 2. Sheriff's Substation
- 3. Community Center

FISCAL IMPACT: None

STAFF RECOMMENDATION: At the pleasure of the Commission

ATTACHMENTS: 1 photos of each building

2 swatches of shingles







Designer Shingles



Burnt Sienna



Resawn Shake



Sunrise Cedar



Mojave Tan





Silver Birch



Cobblestone Gray



Colonial Slate



Georgetown Gray



Weathered Wood



Driftwood



Pewter



Charcoal Black



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Item 8.