



# CITY COMMISSION REGULAR MEETING AGENDA

Thursday, June 27, 2024 at 5:30 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

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ALL MEETING ITEMS WILL BE CONTINUED UNTIL MEETING IS COMPLETE.

1. Call the meeting to order
2. Pledge of Allegiance followed by a moment of silence to honor our Veterans, members of the Armed Forces and First Responders
3. Proclamations and Awards
  - a. Neurodiversity Pride Day Proclamation
  - b. Proclamation Recognizing the Efforts of Carla Cline
4. Deletions and changes to the agenda
5. Consent Agenda
  - a. Approve the Minutes of the Regular Meeting 06/13/2024, Workshop Meetings of June 4, 2024 and June 13, 2024
  - b. Approve an Agreement with Townsend and Associates for the EPA Program
  - c. Flagler Beach Professional Firefighters IAFF Local #5270 Recognition-Acknowledgement Petition
6. Public comments regarding items not on the agenda

*Citizens are encouraged to speak. However, comments should be limited to three minutes. A thirty-minute allocation of time for public comment on items not on the agenda. Each speaker has up to three-minutes to address the Chair, and one opportunity to speak, no time can be allotted to another speaker.*
7. General Business
  - a. Resolution 2024-37, a Resolution by the City of Flagler Beach, Florida, awarding Bid No. FB-24-2105 to McMahan Construction in an amount not to exceed \$881,760; providing for conflict and an effective date.
  - b. Resolution 2024-36, a Resolution by the City of Flagler Beach, Florida, awarding the contract to SNG Pavement Marking Inc. for stop bars citywide; providing for conflict and providing an effective date.
  - c. Resolution 2024-38, a Resolution by the City of Flagler Beach, Florida approving Easement Agreements between the City of Flagler Beach and DCB Orchid to construct infrastructure within the City of Flagler Beach and utilize the associated property for the purposes of leasing the infrastructure, providing for conflict and effective date.
8. Public Hearings
9. Staff Reports
  - a. City Attorney:
  - b. City Manager:
  - c. City Clerk:

d. Staff Reports

**10. Commission Comments**

- a. Commission comments, including reports from meetings attended.
- b. Public comments regarding items not on the agenda. Citizens are encouraged to speak. However, comments should be limited to three minutes. *A thirty-minute allocation of time for public comment on items not on the agenda. Each speaker has up to three-minutes to address the Chair, and one opportunity to speak, no time can be allotted to another speaker.*

**11. Adjournment**

RECORD REQUIRED TO APPEAL: In accordance with Florida Statute 286.0105 if you should decide to appeal any decision the Commission makes about any matter at this meeting, you will need a record of the proceedings. You are responsible for providing this record. You may hire a court reporter to make a verbatim transcript. The City is not responsible for any mechanical failure of the recording equipment. In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at (386) 517-2000 ext 233 at least 72 hours prior to the meeting. The City Commission reserves the right to request that all written material be on file with the City Clerk when the agenda item is submitted.



## **Neurodiversity Pride Day Proclamation**

WHEREAS, Neurodiversity recognizes the diversity of human brains and minds and embraces neurological differences as natural variations of the human experience;

WHEREAS, neurodiversity includes conditions such as Autism Spectrum Disorder, Attention Deficit Hyperactivity Disorder, Dyslexia, and other neurological variations that are a natural part of human diversity; and

WHEREAS, it is estimated that approximately 15-20% of the population in the United States is neurodiverse, including over 5 million individuals with Autism Spectrum Disorder, over 6 million with Attention Deficit Hyperactivity Disorder, and countless others with Developmental Disabilities, Dyslexia, and other conditions; and

WHEREAS, individuals with neurodiverse conditions contribute significantly to our community through their unique perspectives, talents, and abilities, enriching our collective experience and fostering innovation and creativity; and

WHEREAS, Cedar Bridge Foundation is dedicated to advocating for and supporting individuals with special needs, promoting understanding, independence, and respect, and ensuring that neurodiverse individuals are provided with the resources and opportunities they need to thrive; and

WHEREAS, Neurodiversity Pride Day serves as a celebration of the strengths and contributions of neurodiverse individuals, a day to promote awareness, acceptance, and inclusion, and an opportunity to challenge stereotypes and misconceptions about neurological differences; and

WHEREAS, it is essential to recognize and honor the importance of inclusivity and diversity in our community, and to work towards creating a world where all individuals, regardless of their neurological differences, are empowered and valued;

NOW, THEREFORE, I, Mayor's Name, Mayor of Flagler Beach, do hereby proclaim June 16 as Neurodiversity Pride Day in Flagler Beach. I encourage all residents to join me in celebrating the contributions of neurodiverse individuals, promoting understanding and acceptance, and fostering an inclusive community where everyone can achieve their fullest potential.



# CITY COMMISSION REGULAR MEETING AGENDA

Thursday, June 13, 2024 at 5:30 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

**PRESENT:** Mayor Patti King, Chair Scott Spradley, Commissioners Rick Belhumeur, Eric Cooley and Jane Mealy, City Attorney D. Andrew Smith, III, City Manager Dale L. Martin and City Clerk Penny Overstreet.

1. **Call the meeting to order:** Chair Spradley called the meeting to order at 5:58 p.m.
2. **Pledge of Allegiance followed by a moment of silence to honor our Veterans, members of the Armed Forces and First Responders:** Commissioner Sherman led the pledge to the flag.
3. **Proclamations and Awards**
  - a. Proclamation Recognizing June 19th - 23rd as Flagler County Amateur Radio Week: Mayor King read the proclamation into the record. Antony Cinelli accepted the proclamation.
4. **Deletions and changes to the agenda:** There were no deletions or changes to the agenda.
5. **Public comments regarding items not on the agenda:** The following citizens came forward to give the concerns, opinions and suggestions: Darryl Reynolds, Robby Roberts and Mary Dioguardi.

*Citizens are encouraged to speak. However, comments should be limited to three minutes. A thirty-minute allocation of time for public comment on items not on the agenda. Each speaker has up to three-minutes to address the Chair, and one opportunity to speak, no time can be allotted to another speaker.*

6. **Consent Agenda**
  - a. Approve the Regular Meeting Minutes of May 23, 2024.
  - b. Approve an Agreement for the purpose of Sludge Hauling from Environmental Land Services.
  - c. Approve payment of an invoice in the amount of \$254,222.76 to Ferguson Waterworks for the material purchase for moving of the raw waterline as approved in the June 2, 2022 Wellsite Relocation Agreement.

Motion by Commissioner Mealy, seconded by Commissioner Sherman to approve the consent agenda. The motion carried unanimously.

7. **General Business**
  - a. Resolution 2024-30, a resolution by the City of Flagler Beach, Florida accepting the 2023 Fiscal Year Audit; providing for conflict and an effective date. Attorney Smith read the title of the resolution into the record. Webb Shepard, James Moore & Company, reviewed their Power Point presentation highlighting the 2023 FY Audit for the City and for the Community Redevelopment Agency. Public comment was open. The following citizens came forward to give their concerns, opinions and suggestions: Paul Mykytko. Public comment was closed. Motion by Commissioner Belhumeur, seconded by Commissioner Sherman, to approve 2024-30. The motion carried unanimously, after a roll call vote.
  - b. Approve a piggy-back purchase on a Government Contract with Ringpower Corporation for a generator for Well #16 in the amount of \$66,639. Public comment was opened. No comments were received. Public comment was closed. Motion by Commissioner Mealy, seconded by Commissioner Belhumeur

to approve a piggy-back purchase from Ring Power Corp. for the generator for the well system. The motion carried unanimously.

- c. Award Bid No. FB-24-2105 for Potable Water Well #16 to McMahan Construction Co., Inc. in an amount not to exceed \$881,760. Mr. Martin reviewed the item. A protest by another bidder was made on this item.
- d. Resolution 2024-31, a resolution by the City of Flagler Beach, Florida, approving a “piggy-back” on the agreement between the City of St. Augustine and Engineered Spray Solutions to install twenty (20) Sanitary Manhole Rings & Covers, providing for conflict and effective date. Attorney Smith read title of the resolution into the record. Public comment was opened. The following citizens came forward to express their concerns, opinions and suggestions: Rob Santori and Robby Roberts. Public comment was closed. Motion by Commissioner Belhumeur, seconded by Commissioner Sherman to approve Resolution 2024-31. The motion carried unanimously, after a roll call vote.
- e. Resolution 2024-32, a resolution by the City of Flagler Beach, Florida, approving the purchase of fifty (50) sets of sanitary manhole rings and covers, providing for conflict and effective date. Attorney Smith the read title of the resolution into the record. Public comment was opened. The following citizens came forward to give their concerns, suggestions and opinions: Richard Clemmons and Robby Roberts. Public comment was closed. Motion by Commissioner Mealy, seconded by Commissioner Belhumeur, to approve Resolution 2024-32. The motion carried unanimously, after a roll call vote.
- f. Resolution 2024-33, a resolution by the City of Flagler Beach, Florida, approving a piggy back on the agreement between the City of St. Augustine and Engineered Spray Solutions to install fifty (50) Sanitary Manhole Rings & Covers, providing for conflict and effective date. Attorney Smith read the title of the resolution into the record. Public comments were opened. The following citizens came forward to give their concerns, opinions and suggestions: Rob Santori. Public comment was closed. Motion by Commissioner Belhumeur, seconded by Commissioner Mealy, we approve Resolution 2024-33. The motion carried unanimously.
- g. Annual CRS Progress Report on Implementation of Credited Plan. The report was submitted to the Commission. No action was required.
- h. Resolution 2024-34, a resolution of the City of Flagler Beach, Florida, approving a Budget Amendment and expenditure to Rogers Environmental Inc., for the installation of 10,750 linear feet of sand fencing providing for conflict and effective date. Attorney Smith read the title of the resolution into the record. Public Comment was opened. No comments were received. Public comment was closed. Motion by Commissioner Mealy, seconded by Commissioner Cooley, to approve Resolution 2024-34. The motion carried unanimously, after a roll call vote.

## 8. Public Hearings

- a. Ordinance 2024-08, an ordinance of the City of Flagler Beach, Florida, amending Chapter 14 "Offences and Miscellaneous Provisions" of the Code of Ordinances to add Article VII "Juvenile Curfew" providing for conflict and an effective date hereof - first reading. Attorney Smith read the title of the ordinance into the record. Attorney Smith explained that the City is simply adopting the State Statutes. The Commission agreed this is a quality-of-life ordinance and is a safety issue for our community. The public hearing was opened. No comments were received. The public hearing was closed. Motion by Commissioner Sherman, seconded by Commissioner Mealy, to adopt Ordinance 2024-08. The motion carried unanimously, after a roll call vote.
- b. Ordinance 2024-09, an ordinance of the City Commission of the City of Flagler Beach, Florida, amending the Comprehensive Plan Future Land Use Map designation for 0.11+/- acres of certain real property located on North 6th Street with tax parcel I.D. number 12-12-31-4500-00020-0081 from Commercial to Single Family Residential; providing for conflict; providing an effective date hereof - first and final reading. Attorney Smith read title of the ordinance into the record, and noted typo in the 5<sup>th</sup> whereas

change from Edgewood to Flagler Beach. The public hearing was opened. No comments were received. The public hearing was closed. Motion by Commissioner Belhumeur, seconded by Commissioner Sherman, to approve Ordinance 2024-09. The motion carried unanimously, after a roll call vote.

- c. Ordinance 2024-10, an ordinance of the City Commission of the City of Flagler Beach, Florida amending the Official Zoning Map designation for 0.11+/- acres of certain real property located on North 6th Street with tax parcel ID number 12-12-31-4500-00020-0081 from General Commercial to Single Family Residential; providing for conflict; providing an effective date hereof - first reading. Attorney Smith read the title of the ordinance into the record. The public hearing was opened. No comments were received. The public hearing was closed. Motion by Commissioner Mealy, seconded by Commissioner Belhumeur to approve Ordinance 2024-10. The motion carried unanimously, after a roll call vote.

## 9. Staff Reports

- a. City Attorney: Spoke to the Commission about Form 6 litigation. He let them know if they had not filed their Form 6 yet, they are required to file a Form 1.
- b. City Manager: Thanked Ms. Monroy for her work on the TDC Grant. It is available electronically. The ACOE scheduled for their ground breaking ceremony on Monday, June 17 at 10 a.m. in Veterans Park. City is Working with Weeks Marine, the awarded bidder for the Beach Renourishment.
- c. Weekly Staff Reports: Thanked the Commission, City Manager and City Attorney for their support of Ordinance 2024-08.

## 10. Commission Comments

- a. Commission comments, including reports from meetings attended: Mayor King reported per the Governor's veto, the Museum lost its State funding for 2025. She reminded everyone to come to the beach clean-up. Commissioner Belhumeur thanked the County for providing sand for the beach access and a mobi matt. He reported since the Army Corps' contractor is starting on the south end of town, there will be no need for long term detours and they will not be using Veterans Park. Commissioner Sherman thanked Commissioner Mealy for planning the Memorial Day Ceremony. He was not pleased with the news from the County regarding a proposed beach tax. Commissioner Cooley felt the proposed the beach tax should be on the agenda for the next multi-municipality meeting and on the future Joint City County meeting. Commissioner Mealy reported on the Smokey Bear Summer Reading Challenge. She reported on how the Governor's Veto effected the funding for the Lambert Avenue Water Line Looping Project.
- b. Public comments regarding items not on the agenda. Citizens are encouraged to speak. However, comments should be limited to three minutes. The following citizens came forward to share their concerns, opinions and suggestions: Anthony Cinelli and Ralph Santori.

## 11. Adjournment: Motion by Commissioner Mealy to adjourn the meeting at 7:38 p.m.



# CITY COMMISSION WORKSHOP MEETING MINUTES

Thursday, June 13, 2024 at 5:30 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

## NOTES

1. **Call the meeting to order:** Chairman Spradley called the meeting to order at 5:30 p.m.
2. **Pledge of Allegiance followed by a moment of silence to honor our Veterans, members of the Armed Forces and First Responders:** Commissioner Sherman led the pledge to the flag.

Commissioner Cooley and his dog, Wednesday, distributed certificates of appreciation to Chief Doughney and City Manager Dale Martin for their assistance in prepping and planning with the promoters for the Hang 8 Event.

### 3. General Business

- a. Discussion and direction to staff regarding a maintenance and funding plan for the City's public dune walkovers.

Mr. Martin reviewed the goal regarding the walkovers that the Commission made at their Strategic Planning Session and wanted clarification on what would meet their expectations for this goal. Mr. Martin indicated there may be a need to set aside funds for the walkovers because the City cannot find insurance that FEMA will reimburse. Commissioner Cooley would like to determine how much money should be set aside. Commissioner Sherman wanted to set aside \$500,000 for walkovers for the next year. Mr. Martin reported 25% percent of the General Fund is put in reserves for emergencies. Commissioner Belhumeur suggested putting aside \$156,000 per year. Mayor King and Commissioners Mealy and Cooley agreed with Commissioner Belhumeur. Mr. Martin asked how this consensus satisfies the goal. There are adequate reserves available between now and October 1. He will add a line in the budget for reconstruction of the dune walkovers with designated rules for reconstruction, not routine maintenance.

**Public Comment:** Public Comment was opened. The following citizens came forward to share their concerns, opinions, questions, and suggestions: Darryl Reynolds and Joe Kovack. Public comment was closed.

4. **Adjournment:** The workshop adjourned at 5:58 and the Regular Meeting of the City Commission began.

Attest:

\_\_\_\_\_  
Scott Spradley, Chair

\_\_\_\_\_  
Penny Overstreet, City Clerk



# JOINT WORKSHOP MEETING BETWEEN THE CITY COMMISSION AND PLANNING & ARCHITECTURAL REVIEW BOARD MINUTES

Tuesday, June 04, 2024 at 5:30 PM

City Commission Chambers – 105 S. 2ND Street, Flagler Beach, FL 32136

**Present: Commission:** Mayor Patti King, Chairman Scott Spradley, Commissioners Rick Belhumeur, Eric Cooley, Jane Mealy and James Sherman

**Planning and Architectural Review Board:** Vice Chairman Marshall Shupe, Scott Chappuis, Paul Chestnut, Lisa Smith, Joann Soman, Brenda Wotherspoon

**Staff:** City Manager Dale Martin, City Engineer Bill Freeman, City Planner Lupita McClenning, City Clerk Penny Overstreet.

**ABSENT:** Planning and Architectural Review Board Chairman Joseph Pozzouli

1. **Call the meeting to order**
2. **Pledge of Allegiance followed by a moment of silence to honor our Veterans, members of the Armed Forces and First Responders:** Mayor King led the pledge to the flag.
3. **General Business**
  - a. **Discussion and review of the Land Development Regulations; Section 2.05.06.5 Permitted Exception to Height Regulations.**

Scott Spradley reviewed; the purpose of the meeting is limited to the ordinance regarding the 35ft height limit. They will not be entertaining comments regarding the hotel. The hotel has brought us here for discussion. There will be no action taken at this meeting. Mr. Martin explained the moratorium was put in place to raise public awareness regarding the exceptions to the 35-foot height limit.

Mayor King stated the 40% exception differential is too high. Mr. Shupe feels the 35 limit is a misnomer. He explained where the 35ft is half way between the gutter and the peak of the roof. This does not require an exception. Commissioner Belhumeur felt if the Charter and Land Development Code were followed, we would not be having this meeting. Lisa Smith felt for a commercial building the 40% is needed for elevator shafts stairwells, etc. Commissioner Cooley felt the citizens were let down. By voting on the 35ft height limit into the Charter, the electorate spoke clearly that they did not want the height to be 50 feet. He felt the Land Development Code's definitions have provided loop holes for future buildings. He felt the 40% is too much and not what the citizens wanted. Ms. Wotherspoon that it could be made simpler or to create a template that for example 45-foot cap.

Chairman Spradley there are practical reasons for the exceptions to be above 35-foot. Attorney Smith suggested the exception remains and add the following: no human occupancy except for emergency or maintenance of the infrastructure. That makes it simple, removes the confusion for interpretations. Attorney Smith suggested removing the percentage and just put a number of feet. And clean up language on habitat, no human occupancy.

Ms. Wotherspoon, feels doing away with a top floor goes against the trends around the world. She felt it was limiting ourselves and was not sure if everyone in the City wants to keep it at 35 feet. As the code currently reads, if one has a flat roof, one could use that roof for other activities. It is what you build on top of the 35 feet.

Mr. Martin explained that the definitions have morphed into ancillary structures. Commissioner Coorey was concern that any number would be cause for more definitions. The number of feet and the state building code requirements were discussed. Attorney Smith asked that the group keep this as informational meeting. He will draft something for both boards to review.

Mr. Torino stated the Par Board and the City Commission did their job in approving the hotel; the building met the Land Development Regulations. Discussion centered on the overlay district standards, definitions; definition of habitable vs. occupancy and tenant definition.

Attorney Smith asked Mr. Torino how he might fix the code. Mr. Torino felt comfortable with a setting limit; mechanical equipment should be centralized on the roof so it can be screened; changes to the LDC should be reflected in the charter to eliminate any confusion. Attorney Smith suggested wording for Roof Top Terrace. Mr. Torino agreed that it should be set back and to possibly give it a percentage of the roof top. Discussion continued and included specifications for rooftops, roof, walls, definition or occupiable space; requirements for developers and site line; what can be seen from the street to the rooftop; the special exception process and conditional use.

Public Comment was opened: The following people came forward to give their concerns, opinions and suggestions: Jeff Meyers. Mark Blythe, Bert Harris, Debbie Meyers, Randy Damayo, Ed Landsdowne, Paul Mykytka. Public Comment was closed.

Discussion went back to the Board and the Commission. Discussion continued and included understanding the moratorium; keeping small town character; updating the city to be more pedestrian friendly; the commercial tax base and the city to be more family friendly.

Chairman Spradley thank all present and summarized the following points from the meeting: 35 feet is good number, percentage measurement is not as good as a hard number, what number should that be, push walls on roof away from the edge, various uses for a rooftop.

Attorney Smith will come up with a draft and work with both bodies to come up with a compromise.

Mr. Martin felt the Workshop served its purpose and looks forward to working with everyone.

4. **Adjournment:** Motion for adjournment by Ms. Soman at 7:20 p.m.

Attest:

\_\_\_\_\_  
Scott Spradley, Chairman

\_\_\_\_\_  
Penny Overstreet, City Clerk



# FLAGLER BEACH CITY COMMISSION

**Meeting Date:** June 27, 2024  
**Issue:** Approve the renewal contract for the Employee Assistance Program (EAP) provided by Dr. Townsend and Associates.  
**From:** Liz Mathis, Human Resource Officer  
**Organization:** City of Flagler Beach

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**RECOMMENDATION:**  
Approve the renewal contract for the Employee Assistance Program (EAP) provided by Dr. Townsend and Associates effective 7/01/2024 to 6/30/2025 and approve the Mayor to sign any necessary documents.

**BACKGROUND:** The Employee Assistance Program provides each employee voluntary access to an Employee Assistance Professional for up to 3 visits per year. The program also provides the City with a vehicle for evaluating and/or assisting employees who may have issues that are contributing to a decline in job performance. Townsend and Associates also provides new police recruit evaluations. See attached renewal agreement from Dr. Townsend and Associates. The contract remains the same.

**BUDGETARY IMPACT:** The yearly contract remains the same and there has been no increase to the contract cost.

**LEGAL CONSIDERATIONS/SIGN-OFF:**

**PERSONNEL:**

**POLICY/REQUIREMENT FOR BOARD ACTION:**

**IMPLEMENTATION/COORDINATION:**

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Attachments



Vanessa Townsend, Psy.D.  
Licensed Psychologist

Steven P. Dingfelder, Ph.D.  
Licensed Psychologist

Michael Meehan, LCSW  
Licensed Clinical Social Worker

Melanie Nuskowski, Ph.D.  
Licensed Psychologist



Section 5, Item b.

Jane Echterling, Ph.D.  
Licensed Psychologist

Stuart Townsend, Psy.D.  
Licensed Psychologist

Ralph Wyman, LMHC  
Licensed Mental Health Counselor

Kelly Weidner, LMHC  
Licensed Mental Health Counselor

# Dr Townsend & Associates

## Comprehensive Counseling Services

### AGREEMENT

This Agreement is made and entered into this 1st day of July, 2024 between Dr. Townsend & Associates, P.A. and the City of Flagler Beach.

Whereas, the City of Flagler Beach wishes to provide an Employee Assistance Program (EAP) for all full-time employees or their family members. Whereas, Dr. Townsend & Associates wishes to provide this program for all full-time employees or their family members.

Now therefore, Dr. Townsend & Associates, P.A. and the City of Flagler Beach do hereby mutually agree to the following:

#### **Dr. Townsend & Associates:**

Will administer an EAP to the City of Flagler Beach full-time employees or their family members who have personal problems. These problems include, but are not limited to alcohol and drug misuse, marital problems, excessive stress, anxiety/panic disorder, depression, and parenting issues.

Will provide the following specific services on behalf of the City of Flagler Beach:

- A. Help in the implementation of the Employee Assistance Program (EAP) policy and procedure.
- B. Assist those employees or their family members who are self-referred, as well as those who are performance/supervisory referred. Referrals will be assisted in identifying their problem(s) and provision of three (3) free counseling visits per employee or family member.
- C. Assure reasonable measures of confidentiality regarding the treatment of the City of Flagler Beach employees via the EAP.
- D. Visit with the City of Flagler Beach Director of Human Resources on request, twice per year.
- E. Offer follow-up refresher training for supervisors once each year, on request from City of Flagler Beach.

9 ST. JOHNS MEDICAL PARK DRIVE, ST. AUGUSTINE, FL 32086 (904)797-2705  
[www.drtownsendandassociates.com](http://www.drtownsendandassociates.com)

Employee Assistance Program Contract (continued)

- F. Provide an appropriately qualified or licensed therapist to work in the diagnosis, evaluation, treatment, and if necessary, the referral of employees or their family member(s).
- G. Provide monthly reports and a summary annual report of the progress of the services provided to The City of Flagler Beach.

The City of Flagler Beach will:


- A. Assist Dr. Townsend & Assoc., P.A. in delivering the EAP services to its employees.
- B. Provide on at least a once a year basis a letter to employees and their families indicating the existence of and support for the EAP.
- C. Provide all materials, supplies and clerical staff for the preparation and distribution of pre-program and ongoing program publicity. Brochures, letters, training materials and stamps are but a few of the items covered in this paragraph.
- D. Provide an appropriate area for training as are part of this Contract. This is to include the provision of necessary audio/visual equipment.
- E. Assure each employee that this program will maintain his/her confidentiality.
- F. Provide agreed upon reimbursement to Provider.

COMPENSATION:

The services and assistance offered through this Contract will be provided to The City of Flagler Beach for a discounted fee of \$2,500.00 per calendar year. This Contract shall remain in force for a period of one year from July 1, 2024 to June 30, 2025. This contract may be canceled by either party with 60 days written notice.

The above is agreed to by:

\_\_\_\_\_  
City of Flagler Beach

  
\_\_\_\_\_  
Vanessa Townsend, Psy.D.  
Dr. Townsend & Associates, P.A.

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Date

Vanessa Townsend, Psy.D.  
Licensed Psychologist

Steven P. Dingfelder, Ph.D.  
Licensed Psychologist

Michael Meehan, LCSW  
Licensed Clinical Social Worker

Melanie Nuskowski, Ph.D.  
Licensed Psychologist



Section 5, Item b.

Stuart Townsend, Psy.D.  
Licensed Psychologist

Ralph Wyman, LMHC  
Licensed Mental Health Counselor

Jane Echterling, Ph.D.  
Licensed Psychologist

Kelly Weidner, LMHC  
Licensed Mental Health Counselor

# Dr Townsend & Associates

## Comprehensive Counseling Services

This Agreement, made and entered into this 1<sup>st</sup> day of July, 2024, between Dr. Townsend & Associates, P.A. hereinafter referred to as Associates and the City of Flagler Beach Police Department herein after referred to as FBPD.


Associates will provide new recruit evaluations consisting of a Personality Assessment Inventory (PAI), Inwald Personality Inventory -2 (IPI-2) and a face-to-face evaluative session with a licensed psychologist.

### COMPENSATION:

The service offered through this Agreement will be provided to the FBPD at a rate of \$300.00 per evaluation per Agreement period. This Agreement shall remain in force for a period of one year from July 1, 2024 through June 30, 2025.

The above is agreed to by:

6/19/24  
Date

  
\_\_\_\_\_  
Vanessa Townsend, Psy.D.  
Dr. Townsend & Associates, P.A.

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Flagler Beach



Vanessa Townsend, Psy.D.  
Licensed Psychologist

Steven P. Dingfelder, Ph.D.  
Licensed Psychologist

Michael Meehan, LCSW  
Licensed Clinical Social Worker

Melanie Nuskowski, Ph.D.  
Licensed Psychologist



Section 5, Item b.

Stuart Townsend, Psy.D.  
Licensed Psychologist

Ralph Wyman, LMHC  
Licensed Mental Health Counselor

Jane Echterling, Ph.D.  
Licensed Psychologist

Kelly Weidner, LMHC  
Licensed Mental Health Counselor

# Dr Townsend & Associates

## Comprehensive Counseling Services

This Agreement, made and entered into this 1<sup>st</sup> day of July, 2024, between Dr. Townsend & Associates, P.A. hereinafter referred to as Associates and the City of Flagler Beach Fire Department herein after referred to as FBFD.


Associates will provide new recruit evaluations consisting of a Personality Assessment Inventory (PAI), Inwald Personality Inventory -2 (IPI-2) and a face-to-face evaluative session with a licensed psychologist.

### COMPENSATION:

The service offered through this Agreement will be provided to the FBFD at a rate of \$350.00 per evaluation per Agreement period. This Agreement shall remain in force for a period of one year from July 1, 2024 through June 30, 2025.

The above is agreed to by:

6/17/24  
Date

  
Vanessa Townsend, Psy.D.  
Dr. Townsend & Associates, P.A.

\_\_\_\_\_  
Date

\_\_\_\_\_  
City of Flagler Beach



# STAFF REPORT

Regular Commission Meeting

June 27, 2024

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**To:** Elected Officials

**From:** Liz Mathis, Human Resources/Risk Manager

**Date:** June 27, 2024

**Item Name:** Flagler Beach Professional Firefighters IAFF Local #5270 Recognition-Acknowledgement Petition

**Background:** Please find attached paperwork requesting the City to recognize the Flagler Beach Professional Firefighters IAFF Local #5270 as the collective bargaining representative of the Full-time Firefighters, Full-time Driver Engineers and Full-time Lieutenants of the Flagler Beach Fire Department.

**Fiscal Impact:**

**Staff Recommendation:** Approve the Voluntary Recognition-Acknowledgement Petition paperwork.

**Attachments:**

Flagler Beach Professional Firefighters IAFF Local #5270 request for voluntary recognition  
Florida Public Employees Relations Commission Handbook outlining the process that will be followed

STATE OF FLORIDA  
PUBLIC EMPLOYEES RELATIONS COMMISSION  
4708 Capital Circle N.W., Suite 300  
Tallahassee, Florida 32303  
(850) 488-8641

Do Not Write In This Box  
CASE NUMBER

Section 5, Item c.

RA-

DATE FILED

RECOGNITION-ACKNOWLEDGEMENT PETITION

- ☐ Check box if petition seeks to add classifications to an existing bargaining unit represented by the petitioner ("opt-in"). Certification No. \_\_\_\_\_.

PART I - REQUEST FOR RECOGNITION

INSTRUCTIONS:

Part I is to be completed by the union which is requesting recognition by the public employer. This form is to be served on the employer representative indicated in item 5 below. If more space is required for any item, attach additional sheets, numbering items accordingly.

**\*The Commission utilizes e-service as the primary method of delivery for orders, correspondence, and notices. Parties are responsible for ensuring that their email address on file with the Commission is correct and current.**

The petitioner hereby requests recognition by the public employer as the exclusive bargaining agent for the employees in the classifications listed in item 6 below:

1. NAME OF PETITIONER: Flager Beach Professional Firefighters

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Zip Code

2. PETITIONER REPRESENTATIVE: Morgan Rainey

Title: President

Phone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Zip Code

3. PERC REGISTRATION NUMBER OF PETITIONER: OR-2020-009

Expiration of current registration: 06/29/2024



4. NAME OF EMPLOYER: City of Flagler Beach  
 Address: 105 S 2nd St, Flagler Beach, FL 32136

Zip Code

5. EMPLOYER REPRESENTATIVE: Liz Mathis  
 Title: Human Resource Director Phone No. 386-276-0410  
 Email Address: Lmathis@cityofflaglerbeach.com  
 Address: 105 S 2nd st, Flagler Beach, FL 32136

Zip Code

6. DESCRIPTION OF UNIT CLAIMED to be appropriate for the purpose of collective bargaining. (List individually all job classifications proposed for inclusion.)

INCLUDED:

Full-Time Fire Fighter  
 Full-Time Driver Engineer  
 Full-Time Fire Lieutenant

EXCLUDED:

Volunteers  
 Fire Chief  
 Deputy Chief  
 Part-Time Firefighters  
 Fire Marshall

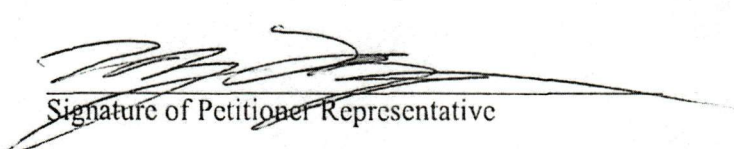
7. APPROXIMATE NUMBER OF EMPLOYEES in the unit claimed to be appropriate: 6

8. (a) Is this request supported by more than 50% of the employees in the proposed bargaining unit?  
☒ YES ☐ NO

(b) If answer to (a) is YES, describe the method by which the public employer may verify the majority status claimed by the organization.

Submission of official ballot.

9. DATE THIS REQUEST WAS MAILED OR DELIVERED to public employer: 6/17/24

  
 Signature of Petitioner Representative

---

## PART II - RECOGNITION-ACKNOWLEDGEMENT AND NOTICE TO EMPLOYEES

### INSTRUCTIONS:

If the public employer recognizes the petitioner/organization as the collective bargaining agent for the employees in the proposed unit, Part II is to be completed and submitted to the organization, attaching copies of the job descriptions, if any, for all classifications of employees to be included in the unit. The public employer should simultaneously serve copies of the executed form without job descriptions upon those employee organizations listed in 14, below.

10. Does the organization have the support of a majority of the employees in the proposed unit?  
☒ YES ☐ NO

11. TOTAL NUMBER OF EMPLOYEES IN THE UNIT proposed in item 6: 9

12. DESCRIPTION OF THE METHOD BY WHICH THE MAJORITY STATUS OF THE EMPLOYEE ORGANIZATION HAS BEEN VERIFIED:





18. (a) The public employer recognizes the employee organization named in item 1 as the collective bargaining representative of the employees in the unit described in item 6.
- (b) Attached hereto is documentary evidence of such recognition (e.g., formal resolution or official minutes reflecting the act of recognition).
- (c) The public employer has mailed copies of this executed form and attachments to the organizations listed in item 14.

19. DATE OF EXECUTION OF PART II: \_\_\_\_\_

\_\_\_\_\_  
Signature of Employer Representative

### PART III - PETITION

#### INSTRUCTIONS:

Upon receipt of Part II from the public employer, the employee organization shall execute Part III and file the fully executed Petition and a copy of the job descriptions for all classifications of employees to be included in the unit with the Commission.

20. NAME AND TITLE OF PERSON EXECUTING PART III, if different from Petitioner Representative in item 2 above:

NAME: \_\_\_\_\_

Title: \_\_\_\_\_ Phone No. \_\_\_\_\_

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
Zip Code

**I have read the above form and all attachments. The statements contained therein are true to the best of my knowledge and belief.**

21. DATE OF EXECUTION OF PART III: \_\_\_\_\_

\_\_\_\_\_  
Signature of Petitioner Representative

**FALSE STATEMENTS MAY RESULT IN FINE AND IMPRISONMENT  
PURSUANT TO CHAPTER 837, FLORIDA STATUTES**



FLAGLER BEACH PROFESSIONAL FIREFIGHTERS

November 18<sup>th</sup>, 2023

To whom it may concern:

The following information is the result of a vote taken from all the members of The International Association of Fire Fighters, Local Union #5270 Flagler Beach Professional Firefighters. The purpose of the vote was to provide evidence that at least 50% of our organization supports the decision to obtain recognition as a bargaining unit with our employer, the City of Flagler Beach. This vote included all (5) members, not including myself, the president.

Election Results for Request for Official Recognition as a Bargaining Unit:

Started at: November 13, 2023 at 9:11am

Finished at: November 15, 2023 at 8:29am

Time zone: Eastern Time (US & Canada)

5 of 5 ballots cast.

Option: Should our union proceed with requesting official recognition as a bargaining unit with the city of Flagler Beach?

\*\*\*\*\*  
\*\*\*\*\*

Yes: 5 votes 100.00%

No: 0 votes 0%

Yes wins with 100.00% of the vote.

Votes tallied: 5

President: 

Date: 11/18/2023

Morgan B. Rainey (Ms.)  
President  
IAFF Local #5270  
International Association of Fire Fighters  
Cell: (407) 451-4229



Florida Statutes requires I identify the exemption for information that is redacted in a public record. Below are sections from Chapter 119 Florida Statutes relating to exemptions for personnel information.

(4) AGENCY PERSONNEL INFORMATION.—

(a)1. The social security numbers of all current and former agency employees which are held by the employing agency are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. The social security numbers of current and former agency employees may be disclosed by the employing agency:

a. If disclosure of the social security number is expressly required by federal or state law or a court order.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

# A PRACTICAL HANDBOOK ON FLORIDA'S PUBLIC EMPLOYMENT COLLECTIVE BARGAINING LAW



PUBLIC EMPLOYEES RELATIONS COMMISSION

## FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION

Donna M. Poole, Chair  
James Bax, Commissioner  
Curt Kiser, Commissioner

Fourth Edition  
December, 2020



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## INTRODUCTION

The purpose of this handbook is to inform the public of important facts about collective bargaining for public employees in Florida. It is designed to provide the reader with a general understanding of this subject. It is not intended as a substitute for advice from an attorney or other qualified person on specific problems, and it does not represent the official policy of the Florida Public Employees Relations Commission (PERC). The law discussed is always subject to change. If you have questions not answered in this handbook, please write or call for further information:

Public Employees Relations Commission  
4708 Capital Circle, Northwest, Suite 300  
Tallahassee, Florida 32303-7256  
(850) 488-8641 (office)      (850) 488-9704 (fax)  
Office hours: 8:00 a.m. to 5:00 p.m., Monday through Friday (except legal holidays)

There are federal laws covering employers and employees that are not discussed in this handbook. For example, the National Labor Relations Act, which defines the rights of employees of private, nongovernmental employers to organize and bargain collectively, is not discussed. Also not considered are employment laws, such as Title VII of the Civil Rights Act of 1964, which prohibit employment discrimination.

There are some state laws regulating employers and employees that are not discussed in this handbook. PERC has no authority in the areas of workers' compensation, unemployment compensation, child labor, migrant labor, or farm labor. Laws on these subjects and the subject of employment discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status are not administered by PERC. Questions in these areas should be addressed to the particular government agency involved.

## **HISTORY OF PUBLIC EMPLOYMENT COLLECTIVE BARGAINING IN FLORIDA**

Prior to 1943, Florida had no general legislation regulating collective bargaining for public employees. In 1943, the Florida Legislature passed legislation to regulate the activities of union officials and certain aspects of labor-management relations. Among the rights created was the right of employees to organize themselves. The Declaration of Rights of the Florida Constitution was amended to protect workers from employment discrimination resulting from membership or non-membership in an employee organization.

In 1946, the Florida Supreme Court interpreted Florida laws as prohibiting public employees and their employee organizations from the right to bargain collectively, to picket, or to strike against the government, whether the government involved was the state, a county, or a city.

In 1959, the legislature passed a law prohibiting government employment of any person who participated in a strike or advocated the right to strike against the government at any level or who was a member of an organization of government employees knowing that the organization advocated the right to strike against the government.

In 1962, the Florida Supreme Court decided that the “right to work” section of the Florida Constitution (Article I, Section VI) gave employees the right to join or refrain from joining an employee organization without fear of losing their jobs. The court reasoned that an “agency shop” provision in a collective bargaining agreement, which required non-union employees to pay union initiation fees and monthly dues as a condition of employment, violated the “right to work” section of the Florida Constitution.

In 1968, Article I, Section VI of the Florida Constitution was rewritten. The new section, which is still in effect, states:

Right to work.—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

In 1969, the Florida Supreme Court upheld the new constitutional provision guaranteeing the right of public employees to bargain collectively. All employees in Florida, including those employed by the State of Florida or local governments, now have the right to bargain collectively.

In 1974, the Florida legislature created the Public Employees Relations Act (PERA), which regulates collective bargaining for public employees throughout the state. The law can be found in the Florida Statutes as Part II of Chapter 447. This law has two basic purposes: to encourage cooperation between government and its employees and to protect the public from the interruption of government services resulting from strikes by government employees.

## **ADMINISTRATION AND ENFORCEMENT**

### Public Employees Relations Commission

The Florida Legislature created PERC to serve as an independent, neutral quasi-judicial agency. PERC has a full-time Chair and two part-time Commissioners, each appointed for four years by the Governor and confirmed by the Florida Senate. A staff of approximately twenty-four individuals, including eight hearing officers, a Clerk, and a General Counsel, enables PERC to carry out its duties. PERC's rules are published in Chapter 60CC of the Florida Administrative Code. All PERC dispositive decisions are published on the Division of Administrative Hearings' (DOAH) website on the "Florida Agency Indexed Orders" page. PERC labor law decisions are also published in the Florida Public Employee Reporter. Samples of forms mentioned in this handbook are included in the appendix. Additional copies of these forms are available from the Clerk of the Commission and on PERC's website, <http://perc.myflorida.com>.

### Public Employees and Employers

PERC was created to assist in resolving disputes between public employees and public employers. There are well over 600,000 persons who work for the State of Florida and for the counties, municipalities, school boards, special taxing districts, and other units of government in Florida. The following are public employers in Florida:

- The Governor
- The Board of Trustees of each state university or college, community college, and the Florida School for the Deaf and Blind
- Municipalities (cities, towns, and villages).
- School boards
- Boards of county commissioners
- Sheriffs
- Other county constitutional officers (tax collectors, property appraisers, supervisors of elections, and clerks of circuit courts)
- Special districts

Any person employed by a public employer is a public employee, including all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, clerical employees, etc. However, the following persons are not considered to be public employees:

- Persons appointed by the Governor, elected officials, heads of agencies, and members of state boards and commissions
- Employees of the militia
- Negotiating representatives for public employers
- Managerial or confidential employees
- Employees of the Florida Legislature
- Inmates of state institutions
- Federal/State fruit and vegetable inspectors
- PERC employees
- Undergraduate students who work part-time for a state university

### Declaratory Statements

Any person can ask PERC for a declaratory statement on a question of rights and duties under a statute, rule, or order over which PERC has authority. Questions should be asked about any action a person proposes to take in the future, not about past or present disputes. A declaratory statement is not a means for determining whether the conduct of another is lawful. A person petitioning for a declaratory statement should explain his or her interest in the matter and give all details necessary for PERC to understand why an answer to the question presented would be helpful.

### Court Proceedings

Special court proceedings are sometimes used by PERC. PERC or a public employer whose employees may be affected by a strike may seek an injunction in circuit court. PERC can also seek a circuit court injunction when a person who brings an unfair labor practice charge needs temporary relief while the charge is pending. Circuit courts may issue injunctions against the solicitation of employees by employee organizations during working hours. Injunctions may also be issued against the distribution of an employee organization's literature during working hours where work is actually performed and against advocating support from students during classroom time for the activities of an employee organization.

If a person fails to obey a PERC order, PERC or any Florida resident who is substantially interested may seek an enforcement order from circuit court. PERC participates in appellate court cases only when there is, either a need to explain the policy reasons and legal principles involved in a PERC order, or when it can be of aid and assistance to the reviewing court.

## RIGHTS OF PUBLIC EMPLOYEES AND EMPLOYERS

### Rights of Public Employees

Public employees have the right to choose to participate in employee organizations for the purposes of collective bargaining or other activities which mutually benefit two or more employees. The following rights are some of those enjoyed by public employees:

- To form, join, and participate in employee organizations.
- To negotiate collectively about wages, hours, and terms and conditions of employment.
- To be represented in grievances.
- To act together to help or protect each other by legal means other than a strike.
- To refuse to take any action in support of an employee organization.

Following are some examples of protected activities. Employees may draft a petition complaining about their safety or working conditions and ask other employees to sign it. Employees may not be discharged for trying to organize a new employee organization. They may also file grievances under a collective bargaining agreement without being treated adversely for doing so. An employee may request union representation in an investigatory interview with the employer if he reasonably believes disciplinary action may result. Employees may speak freely in trying to convince fellow employees to stop supporting one employee organization and to support another instead.

Not all employee actions are protected. If an employee takes personal leave after the employer denies a request for leave, the employee may be suspended for insubordination even though the employee actively supports an employee organization. An employee must suffer the consequences of personal disputes with superiors if the disputes concern him alone and do not affect other employees. Mere griping is not protected when it is not an effort to seek a change for the better and when the person receiving the gripes has no power to change the problem situation. In general, an employee who takes action for his benefit alone, rather than for the benefit of fellow employees, is not protected. Activity on matters of concern to other employees is protected, however, even when the employee has not first cleared his action with his fellow employees. Finally, concerted activity loses its protection if it is unlawful or creates a threat of workplace disruption.

## Rights of Public Employers

Public employers are vested with rights necessary for the management of government, specifically including the following rights:

- To decide the purposes of government agencies.
- To set standards of services offered to the public.
- To exercise control over government operations.
- To direct employees.
- To discipline employees for proper cause.
- To relieve employees from duty for lack of work or other legitimate reasons.

The Commission has considered many cases involving management rights. For example, a public employer may change the two-semester school year to increase the number of grading periods and need not negotiate whether to make the change. An employer may also change the number of class periods in the school day unilaterally, without negotiations. The employer has the right to set minimum staffing levels as part of the right to set standards of services. However, in all these examples, an employer must negotiate over the effects or impact of these management decisions on the wages, hours, and terms and conditions of employment of affected employees, provided the union identifies such effects in its bargaining request. Additionally, an employer may terminate or otherwise discipline an employee for nondiscriminatory reasons.

## SELECTION OF A BARGAINING AGENT

### Registration

The first step in being selected as a bargaining agent for public employees is for an employee organization to register with PERC. The organization must fill out PERC Forms 1 and 2, which ask for the organization's name, address, affiliations, officers, dues, annual financial report, and other information. The form must be notarized and sent to PERC with a copy of the constitution and bylaws of the organization and any affiliated organizations, along with a fee. A registration license is valid for one year only. A renewal application must contain a detailed current annual financial report and should be filed fifteen days before expiration of the license. The Commission will review the registration license application and may refuse to grant or seek to revoke a registration license because of an important omission or a false statement. The registration materials are kept on file at PERC and are available to the public.

### Voluntary Recognition by Public Employer

A registered employee organization which has the support of a majority of a group of employees may ask the public employer to officially recognize the organization by executing Part I of PERC Form 3. If the public employer is satisfied that the unit of employees is appropriate for the purpose of collective bargaining, and that a majority of employees in the unit support the employee organization, it may voluntarily recognize the organization as the exclusive collective bargaining representative for all employees in the unit by executing Part II of PERC Form 3. The employee organization will then complete Part III of the form and submit it to PERC. PERC will certify the organization if it agrees that the proposed unit of employees is appropriate.

### Petition for Election

If the employer refuses to recognize the employee organization voluntarily, or if the organization does not request voluntary recognition, the organization may ask PERC to hold an election within the unit of employees by filing a representation-certification petition (PERC Form 4). Such a petition cannot be filed within one year of an election or of the effective date of the union's certification. If a collective bargaining agreement is in effect, a representation-certification petition can only be filed during the window period between 150 and 90 days prior to the expiration of the contract.



The organization must file PERC Form 4 with signed and dated original statements from thirty percent of the employees in the proposed unit showing that they want the organization to represent them in collective bargaining. "Signed" includes a signature using the symbol "X," provided the statement signed with an "X" is witnessed. The signatures may be challenged if they are believed to be invalid. They are not, however, available for inspection by the parties. PERC Form 4 also requires information about the petitioning employee organization and the bargaining unit the organization proposes to represent. The organization must send a copy of the petition, but not the signed statements of employees, to the employer. Any other employee organization may ask to take part in the election by sending PERC statements signed by ten percent of the employees showing they wish for the other organization to represent them.

If the employer, the employee organization, and PERC agree that the proposed unit of employees is appropriate for purposes of collective bargaining, PERC staff will assist the employer and the employee organization in working out the details so that an election can be held quickly to determine if a majority of employees desire to be represented by the employee organization. However, if the employer objects to the proposed grouping of employees, it may be necessary to hold a hearing to take evidence on which job positions should be included within the bargaining unit. The hearing is public and is scheduled by an appointed hearing officer. PERC will ensure that a court reporter is present at the hearing; however, the parties are responsible for ordering and paying for a copy of the transcript, should they desire one.

### Bargaining Unit

At the hearing, the hearing officer will take evidence on whether employees in the proposed unit share a community of interest, and whether any other employees have the same interests and also should be included in the unit. In making a recommendation to PERC on these questions, the hearing officer considers:

- How wages and other terms of employment are decided
- How salary and job classifications are decided
- The interdependence of jobs and the interchange of employees
- The desires of employees
- The history of collective bargaining with the employer

After the hearing, the hearing officer issues a recommended order to the Commission for a final decision. The public employer, employee organization, and all employees affected by the decision can file proposed orders or briefs with the hearing officer before the recommended order issues. After the recommended order is issued, exceptions or objections to the recommended order can be filed with a supporting brief. PERC reviews the recommended order in light of the exceptions and objections and

decides which job classifications are to be included in the bargaining unit. PERC cannot, however, consider exceptions to the hearing officer's findings of fact or evidentiary and procedural rulings without first reviewing a complete transcript of the evidentiary hearing. It is the responsibility of a party filing such exceptions to provide the Commission with a copy of the transcript.

In deciding which employees will be included in the bargaining unit, PERC considers not only the interests of the employees, but also the following:

- The efficiency of government
- The employer's interest in not having to negotiate with an unreasonable number of employee organizations
- The authority of the employer over matters of employment
- The organizational structure of the employer
- The possible conflict of interest between employees
- The likelihood that employees will continue in employment

#### Managerial, Confidential, Supervisory, and Professional Employees

Employees who have substantial independent authority for policy formation, personnel administration, budget preparation, or who assist in collective bargaining negotiations are excluded from a bargaining unit as managerial employees. Employees who aid or assist a managerial employee by working with confidential information concerning the employer's labor relations functions are excluded from a bargaining unit as confidential employees. Anyone that a party seeks to have designated as managerial or confidential must be given notice prior to the final determination as to their status. Employees with significant supervisory duties will be excluded from bargaining units containing employees they supervise, but still may be represented in a supervisory unit. Professional and nonprofessional employees may be included in the same unit only if each group votes for inclusion.

#### Election Procedures

PERC orders that an election be conducted in a bargaining unit upon determining that the petitioned-for classifications of employees are appropriate for the purpose of collective bargaining. PERC elections staff consults with all concerned parties in order to settle the details of the election. PERC sends a notice of election, which contains a description of the bargaining unit; the date, time, and place of the election; the specific date used to decide voter eligibility, and a sample ballot (PERC Form 11). The employer provides a list of all employees eligible to vote. All bargaining unit members are eligible to vote. The election is conducted by secret ballot, either by mail or on location in the presence of observers who represent each party participating in the

election. The eligibility of any voter may be challenged by an observer or the PERC elections agent. The votes are counted in public by the PERC elections agent and observers may be present. In order to be certified as the exclusive collective bargaining representative, an employee organization must receive a majority of votes cast.

### Challenges and Objections

After the election, a petition can be filed objecting to how the election was conducted or to actions which may have unfairly influenced the voting. For example, if the number of challenged ballots is enough to affect the results of the election, PERC will investigate the challenges to determine whether someone was an eligible voter. When one of the parties interfered in the conduct of a fair election, PERC can set aside the election and order a rerun election.

When an employee organization is voluntarily recognized by the employer or elected by a majority of employees in the bargaining unit, PERC certifies the organization as their exclusive bargaining agent. If the employee organization is not so selected, PERC dismisses the case, and there can be no election involving employees in that bargaining unit for at least one year.

### Amendment to Certification

After certification, there sometimes arises a need to amend the certification because of a change in the employee organization's name, a merger with another organization, or similar changes that do not fundamentally alter the organization. An amendment to a certification reflecting only a name change will be allowed if the organization's constitution and bylaws were followed. If the change is more than a change in name, PERC must decide whether a question concerning representation is raised. If so, a representation election is necessary before the amendment can be made. If the proposed amendment is more than a name change, but does not raise a question concerning representation (such as a merger), then the amendment will be allowed so long as the procedures used to bring about the change ensure that the change reflects the desires of affected employees. A certification may also be amended to reflect a successor employer of bargaining unit employees.

### Unit Clarification

It may also be necessary to resolve questions concerning the exact composition of an existing bargaining unit. PERC will clarify a unit by determining whether a particular job classification is in the unit when the job classification was created or changed after the original certification, if it was included in or omitted from the

bargaining unit inadvertently by PERC, or when the employer and employee organization agree that clarification is necessary. PERC Form 20 is used to initiate a unit clarification.

### Revocation of Certification

In a bargaining unit represented by a certified union, employees may ask PERC to revoke the certification if they become dissatisfied with their representative. To do so, they must file a petition to PERC (PERC Form 6) with signed and dated statements from thirty percent of the bargaining unit members stating that unit employees no longer desire to be represented by the union. A petition to revoke certification cannot be filed until at least a year after the original certification date. The purpose of this requirement is to provide the parties with an insulated period within which to try to negotiate an agreement. If a collective bargaining contract is in effect, a petition to revoke certification or a petition for certification of a new bargaining agent may only be filed during the window period between 150 and 90 days prior to the expiration of the contract.

A certified bargaining representative may inform PERC that it is no longer interested in continued representation of its bargaining unit by filing a motion to disclaim interest. If no collective bargaining agreement is in effect and if the certified bargaining representative has no outstanding debts related to election costs, PERC will revoke the bargaining agent's certification.

## COLLECTIVE BARGAINING

### Exclusivity

The collective bargaining process is based upon the democratic principle of majority rule. When the majority speaks by selecting a collective bargaining agent, they give the certified agent the exclusive right and power to represent all employees in the bargaining unit. This statutory right to act as the exclusive bargaining representative includes the right to negotiate a collective bargaining agreement and process grievances involving disputes over the meaning of the agreement. The collective bargaining agreement determines the wages, hours, and terms and conditions of employment of all bargaining unit members, regardless of whether they are also members of the union. Individual employees must negotiate with their employer through the certified agent, rather than on an individual basis. No employee organization other than the certified agent can deal with the employer with respect to bargaining unit members.

### Duty of Fair Representation in Negotiations

In collective bargaining negotiations, the certified employee organization has a duty to represent all members of the bargaining unit fairly. This duty of fair representation also extends to grievance processing. The certified union is required to give the same care and attention to all grievances filed by bargaining unit members, except that it does not have to process grievances for employees who are not union members.

### Dues Checkoff

Upon certification, an employee organization has the immediate right to have its dues deducted by the employer from the paychecks of employees who authorize such deductions. An employee can stop dues checkoff at any time by giving notice to the organization and the employer. The cost to the employer of dues deduction may be negotiated with the union.

### Collective Bargaining Negotiations

The purpose of collective bargaining is to provide a means for employees to participate, through their chosen representative, in the establishment of their own wages and employment conditions. This goal is reached primarily by means of a collective bargaining agreement. The employer and the organization must negotiate with each other to reach a contract. They must renegotiate the contract at least every three years.

The negotiating partners cannot be forced to compromise, but they must make a good faith attempt to agree.

### Ratification of the Bargaining Agreement

When the negotiating representatives have reached a written agreement, they sign the agreement and submit it to the public employer and the employees in the bargaining unit for ratification. Both sides must ratify the agreement before it can take effect. The employee organization has to inform all bargaining unit employees of what is contained in the proposed agreement. All unit employees are permitted to cast a vote in a secret ballot, regardless of whether they are union members. The votes are counted in public and a majority vote is required for ratification. If either the employees or the employer votes against ratification, the parties must commence further negotiations.

## CONTRACT NEGOTIATION DISPUTES

### Impasse

Despite good faith attempts to negotiate a collective bargaining agreement, sometimes the public employer and the union cannot agree. If both parties have sincerely negotiated for a reasonable time, either one may advise PERC that they have reached an impasse in their negotiations. PERC then requests the Federal Mediation and Conciliation Service to appoint a mediator to assist the parties in resolving the impasse.

### Mediation

A mediator has no authority to force the parties to reach an agreement. Rather, the mediator must use persuasion to help guide the parties toward agreement.

### Special Magistrate Proceedings

If mediation fails to resolve the dispute, or if either party chooses not to use mediation, the parties can request that PERC appoint a special magistrate unless the Governor is the employer. PERC maintains a list of special magistrates chosen because of their expertise, training, and neutrality. The parties can agree upon a special magistrate, or they can choose one by striking names off a panel. Each party submits a list of issues at impasse to the special magistrate for consideration.

The special magistrate has the power to issue subpoenas, hold hearings, make findings of fact, and recommend a settlement on each contract issue in dispute. The recommended decision on all issues is issued fifteen days after the last hearing is concluded.

### After Special Magistrate Proceedings

Upon issuance of the special magistrate's recommended decision, the parties are required to discuss the decision and accept or reject each recommended item within twenty days. Specific rejected items must be settled by vote of the public employer's legislative body (for example, a board of county commissioners or a school board) unless the parties reach agreement before the legislative body meets. Each negotiating party makes recommendations to the legislative body, a public hearing is held, and the legislative body then takes the action it thinks is in the best interest of all concerned on each issue before it.

After this legislative action, a proposed collective bargaining agreement is developed containing those issues agreed upon in negotiations and the disputed impasse items that were resolved by the public employer's legislative body. If this proposed agreement is ratified, the matter ends with a collective bargaining agreement. If not, the action taken on the disputed impasse issues is implemented and remains in effect for the rest of that fiscal year. On all other issues, the employer and employee organization are required to return to negotiations.



## **CONTRACT INTERPRETATION DISPUTES: GRIEVANCE PROCEDURES AND ARBITRATION**

Every collective bargaining agreement must contain a grievance procedure for the settlement of disputes involving the interpretation or application of the agreement. Most grievance procedures end in final and binding arbitration by a neutral person selected by the employer and the bargaining agent. The grievance procedure remains in effect after the contract expires. This ensures that a method will continue to exist for resolving problems that might come up before a new contract is finalized.

As previously mentioned, the certified bargaining agent has the exclusive right to represent bargaining unit members in the administration and enforcement of the collective bargaining agreement. Generally, no other employee organization may represent employees in the processing of a grievance.

### Duty of Fair Representation in the Grievance Procedure

Just as in negotiating the collective bargaining agreement, the certified bargaining agent must represent all bargaining unit members fairly in handling grievances. This duty of fair representation means that, when grievances are presented to the certified agent for processing, it must give the same degree of consideration to all grievances filed by bargaining unit members. The certified agent may not act arbitrarily, discriminatorily, or in bad faith in handling an employee's grievance.

This does not mean that a certified agent must take a grievance to arbitration if requested to do so by a bargaining unit employee. The certified agent may fairly represent an employee by declining to process a grievance if it determines that the grievance lacks merit. Also, the certified agent may settle a grievance before arbitration.

### Non-members of the Union

There is an exception to the duty to represent all members of the bargaining unit. The certified employee organization may refuse to represent a bargaining unit employee who is not a member of the organization. When a bargaining agent determines that it will not pursue a non-member's grievance because of the employee's non-member status, it must inform the employee that his or her non-member status is the reason for rejecting the grievance and that the employee may proceed on his or her own. If a certified agent declines to represent an employee with a grievance for this reason, the employee may pursue the grievance independently under the terms of the existing collective bargaining agreement. However, if the certified agent offers to represent an

employee despite his or her non-member status, the employee cannot bypass the bargaining agent.

### Other Procedures

When a union declines to pursue a grievance because the employee is not a member, then an employee can approach his or her employer personally or with a lawyer to present that grievance. The employer may adjust the grievance consistent with the terms of the existing collective bargaining agreement; however, the certified agent must be given an opportunity to attend any meeting called to resolve the grievance. A career service or civil service employee has the additional option of using the existing civil service appeal procedure instead of following the grievance procedure in the collective bargaining agreement. However, both procedures cannot be used; the employee must choose one or the other.

## UNFAIR LABOR PRACTICES

An unfair labor practice occurs when the statutory rights of public employees, public employers, and employee organizations are violated. Certain actions may not be taken by a public employer or an employee organization or their representatives; however, expressing an opinion is not an unfair labor practice as long as there is no threat or promise of benefits.

An employer may not threaten to reduce wages and benefits if an employee organization is selected by employees as their bargaining agent. Nor can an employer prohibit the distribution of literature during an organizational campaign, except during actual work time and in actual work areas. If employees have selected a certified bargaining agent, an employer may not change wages or other conditions of employment unilaterally, without negotiations.

Unions are also prohibited from committing unfair labor practices. For example, members of an employee organization may not remove literature posted by members of a rival employee organization on an all-purpose employees' bulletin board. Nor can an employee organization fail to be available for negotiations at reasonable times and places. During contract ratification, an employee organization cannot fail to give notice of the ratification vote to bargaining unit members just because they are not members of the organization. An employee organization may not strike, prepare for a strike, or establish a strike fund.

### Unfair Labor Practice Charges

Unfair labor practice charges may be filed by an employer, employee, or an employee organization on PERC Form 15 (charge against employer) or PERC Form 16 (charge against employee organization). The charge must state all the necessary facts in detail, and it must be filed with PERC and a copy served on the party charged with the violation. Sworn affidavits and documentary evidence supporting the charge must be filed with the charge, but it need not be provided to the party charged. Such supporting evidence will only be made available to the party charged if PERC finds the charge sufficient. In most cases, PERC cannot consider a violation that happened more than six months before the charge is filed or that does not sufficiently allege a prima facie violation of the appropriate unfair labor practice laws.

## Unfair Labor Practice Procedures

PERC's General Counsel reviews each charge upon filing, taking the facts stated as true (unless controverted by documentary evidence), to determine whether the facts would be sufficient to establish a violation of law. If it does not, the General Counsel will issue a summary dismissal identifying the deficiencies. A party receiving a summary dismissal may file an amended charge or an appeal with the Commission within twenty days of the dismissal. If a charge is found to be sufficient, PERC notifies everyone concerned. The party charged may then obtain copies of the sworn affidavits and documentary evidence supporting the charge, and must answer the charge in detail within twenty days. Once a charge is found sufficient it is assigned to a hearing officer to conduct an evidentiary hearing and issue a recommended order. The recommended order must be issued to PERC for a final decision within forty-five days of the hearing. Proposed orders and briefs may be filed with the hearing officer before he or she issues the recommended order. After the recommended order is issued, exceptions or objections can be filed with PERC before the final decision is rendered. The Commission cannot alter any of the hearing officer's factual findings without reviewing the entire record, including a transcript.

PERC reviews the recommended order, the record of the hearing, and all objections and briefs received from the parties, and then issues an order deciding whether an unfair labor practice was committed. If an unfair labor practice was not committed, PERC dismisses the charge. If an unfair labor practice is found, PERC orders the offending party to cease the practice. PERC also may order that any positive action necessary to remedy the unfair labor practice be taken, including reinstatement and payment of back pay.

## Unfair Labor Practice Remedies

PERC has the authority to order the party who violated the law to pay the attorney's fees of the party whose rights were violated. PERC will order that attorney's fees be paid when it dismisses a charge if there was no basis for making the charge in the first place or if the charging party continued to litigate the case after it became apparent that the charge lacked merit. If necessary, PERC can order a special proceeding to decide how much back pay is owed to an employee.

## Unfair Labor Practice Settlement

Sometimes the opposing sides in an unfair labor practice case can work out a settlement. The charge may then be withdrawn, or both sides can ask PERC to issue a consent order which states the specific details of their settlement agreement.

## STRIKES

The Florida Constitution states that public employees shall not have the right to strike. “Strike” is defined very broadly to include any concerted conduct that adversely affects the services of the public employer or overt preparation for such.

The ban against strikes is enforced in two ways. First, it is an unfair labor practice for an employee organization, or a member, officer, or representative to support a strike in any positive way. An employer, employee, or employee organization may use PERC Form 17 to file an unfair labor practice charge against a striking party. Second, PERC or a public employer whose employees may be affected by a strike may seek an injunction in circuit court. The court must issue the injunction if a strike is in progress or if there is a clear, real, and present danger that a strike is about to begin.

If an injunction is not promptly obeyed, violators can be held in contempt of court. Upon a finding of contempt, the court can fine an employee organization \$5,000 and can fine each officer or representative no less than \$50 and no more than \$100 for each day of the violation. An employee organization cannot directly or indirectly pay an individual employee’s fine.

Both PERC and the circuit courts can award damages caused by a striking employee organization to a public employer. The court can order that dues deductions be used to pay the damages. PERC can take the following actions against a striking employee organization:

- Order the organization to stop the strike
- Suspend or revoke the organization’s certification
- Revoke the organization’s right to dues deduction
- Fine the organization \$20,000 per day of the strike, or an amount equal to the cost of the strike, even if it is more than \$20,000 per day

The fine is paid to the employer for replacement of services lost. In deciding the amount of damages, PERC and the court consider anything the employer may have done to provoke the strike.

PERC can order an employer to terminate any employee who violates the ban on strikes or impose lesser penalties. A terminated employee who knowingly violated the law against strikes can work again as a public employee in Florida only if he or she is placed on probation for eighteen months at a salary not to exceed that received prior to the violation and not to be increased for one year.

Some strike situations have resulted in the payment of large fines. For example, in an alleged strike in 1975 affecting approximately 6,000 Broward County teachers, PERC secured an injunction and eventually approved a settlement with the two employee organizations involved. One employee organization paid a fine of \$40,000, lost the right of dues deduction for two months, and had its certification suspended until the fine was paid. The other employee organization paid a fine of \$3,500 and was ordered not to seek certification for one year after paying the fine.

On another occasion, approximately 170 Hollywood police officers failed to report for duty when scheduled for three days in September 1980 shortly after collective bargaining negotiations reached impasse. PERC obtained an injunction against the alleged strike and filed a proceeding to enforce strike penalties. Eventually PERC approved a settlement that required the employee organization to pay a fine of \$25,000 and required the police officers to work sixteen hours without pay for each shift for which they failed to report for duty, as well as to suffer a five percent reduction in pay for one year. The economic value of the settlement was approximately \$180,000. Fourteen officers who did not join in the settlement were found to have participated in an unlawful strike and were suspended for three months without pay.

In another similar situation, approximately 100 Hollywood fire fighters failed to report for duty when scheduled. Again, PERC obtained an injunction and initiated a proceeding to enforce strike penalties. The case was settled by requiring the employee organization to pay the city a fine of \$12,500 and by requiring the fire fighters to work twenty-four hours without pay for each shift for which they failed to report for duty, as well as to suffer a five percent reduction in pay for one year. The economic value of this settlement was approximately \$85,000.

## APPENDIX

### PERC FORMS AND INSTRUCTIONS

Form Number	Title or Description
<a href="#">PERC Form 1</a>	<u>Application for Registration</u> . An employee organization seeking to register uses this form to apply for a registration license.
<a href="#">PERC Form 2</a>	<u>Employee Organization Annual Financial Statement</u> . This report is filed annually by an employee organization to disclose its financial condition and operations for the preceding fiscal year. In some cases, an employee organization filing fiscal disclosure forms with the federal government files copies of those forms instead of this form.
<a href="#">PERC Form 3</a>	<u>Recognition-Acknowledgment Petition</u> . In order to be voluntarily recognized by a public employer, a registered employee organization that has the support of a majority of unit employees submits this form to the public employer after executing Part I. If the public employer is satisfied that the petitioning union has majority support and that the requested unit is appropriate, it voluntarily recognizes the employee organization as the exclusive bargaining representative of employees in the unit by executing Part II of the form. The employee organization then executes Part III and files the petition.
<a href="#">PERC Form 4</a>	<u>Representation-Certification Petition</u> . A registered employee organization files this petition to request that a secret ballot election be conducted to determine if a majority of employees desire the organization to be certified as the exclusive bargaining agent of employees in an appropriate unit.
PERC Form 5	<u>Notice to Employees (Representation-Certification Case)</u> . Upon the filing of a representation-certification petition, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the representation-certification petition and generally describes the rights of employees.
<a href="#">PERC Form 6</a>	<u>Petition to Revoke Certification</u> . An employee or group of employees files this petition if they seek a secret ballot election to revoke the certification of an employee organization.

- PERC Form 7      Notice to Employees (Revocation of Certification Case). Upon the filing of a petition to revoke certification, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the petition to revoke certification and generally describes the rights of employees.
- PERC Form 10      Notice to Employees (Managerial/Confidential Request). Upon the filing of a managerial or confidential request, the Commission will furnish the employer with this notice. The notice advises employees of the filing of the managerial/confidential request and generally describes the rights of employees, the legal effect of being designated as a managerial or confidential employee, and the opportunity for employees to participate in the proceeding.
- PERC Form 11      Notice of Election. When the Commission orders an election to be conducted or approves a consent election agreement, it furnishes the employer with this notice. This notice contains the following: (1) a description of the bargaining unit(s) involved; (2) the manner in which the election will be conducted (date, times and places); (3) the specific date used to determine voter eligibility; and (4) a sample ballot.
- Note: In the interest of clarity, a completed sample of this form is provided.
- PERC Form 12      Proof of Conduct of Election. This form is signed by election observers to certify that the election was conducted in a fair manner.
- PERC Form 13      Tally of Ballots. This form is used to tabulate the results of a collective bargaining election. After the ballots have been counted a copy of the form is furnished to each of the parties by the Commission.
- [PERC Form 14](#)      Notice of Negotiations. A Notice of Negotiations form is submitted by either a public employer or a certified bargaining agent any time after negotiations begin. Upon filing of the notice, the Commission advises the parties of the availability of a mediator in the area.
- [PERC Form 15](#)      Charge Against Employer. This form is filed by a public employee or employee organization to charge that a public employer has committed an unfair labor practice.
- [PERC Form 16](#)      Charge Against Union. This form is filed by a public employee, an employee organization, or a public employer to charge that an employee organization has committed an unfair labor practice.



<a href="#">PERC Form 17</a>	<u>Charge Alleging Unfair Labor Practice - Strike</u> . This form is used to charge that an employee organization or public employees have engaged in a strike.
PERC Form 18	<u>Computation of Back Pay</u> . After a Commission order directing the payment of back pay or after enforcement of such an order by a court, a petition to initiate back pay proceedings is filed if informal efforts to obtain satisfactory payment are unsuccessful.
<a href="#">PERC Form 19</a>	<u>Subpoena (Duces Tecum)</u> . This subpoena is a summons to appear and to bring certain documents to the hearing. It is a party's responsibility to complete and serve subpoenas. Once completed, the subpoena will be issued by the Clerk of the Commission or by a hearing officer.
<a href="#">PERC Form 19a</a>	<u>Subpoena (Ad Testificandum)</u> . This subpoena is a summons to appear and give oral testimony for use at a hearing. It is a party's responsibility to complete and serve subpoenas. Once completed, the subpoena will be issued by the Clerk of the Commission or by a hearing officer.
<a href="#">PERC Form 20</a>	<u>Unit Clarification or Modification Petition</u> . This form is filed by a public employer or employee organization to determine whether positions that have been either created or substantially changed after a bargaining unit was certified are appropriate for inclusion or exclusion. It may also be used to correct a mistake in a position's unit placement.
<a href="#">PERC Form 24</a>	<u>Agency Prehearing Statement</u> . This document is required to be filed at least twelve days before a career service hearing. The form asks the Agency to list any witnesses to be called at hearing, except rebuttal witnesses, and the relevant issues about which each witness is expected to testify.
<a href="#">PERC Form 25</a>	<u>Employee Prehearing Statement</u> . This document is required to be filed at least twelve days before a career service hearing. The form asks the Employee to list any witnesses to be called at hearing, except rebuttal witnesses, and the relevant issues about which each witness is expected to testify. The Employee is also asked to provide a brief statement explaining why the Commission should sustain his/her appeal and what relief is sought.

Individuals may request a copy of any of the above-described forms by contacting the Commission at (850) 488-8641 or emailing [prrequests@perc.myflorida.com](mailto:prrequests@perc.myflorida.com). Most of the forms are readily available for download on PERC's website at <http://perc.myflorida.com/forms/forms.aspx>.



# STAFF REPORT

Regular City Commission Meeting

June 27, 2024

**To:** Elected Officials

**From:** Dale L. Martin, City Manager

**Date:** June 21, 2024

**Item Name:** Resolution 2024-37, a Resolution by the City of Flagler Beach, Florida, awarding Bid No. FB-24-2105 to McMahan Construction in an amount not to exceed \$881,760; providing for conflict and an effective date.

**Background:** The City Commission awarded this bid at their June 11, 2024 meeting. After the meeting adjourned, the Clerk noted receipt of a letter appealing the bid award from another bidder DB Civil, LLC. Section 2-312 of the Code of Ordinance regulates the bid process and how appeals are to be considered.

After a review the appeal letter, the bid documents, the Code of Ordinance, the recommendation from the Consulting Engineer, and a discussion with the City Attorney, the City Manager stood by the previous recommendation to award to McMahan Construction. The petitioner was notified of the decision and the information that was utilized to reach the same. In light of the appeal and recommendation to award to McMahan a resolution is proposed to solidify this award.

Water and Sewer Infrastructure projects were included in the eligible criteria for funding under the American Rescue Plan Act (ARPA). The City engaged Mead & Hunt to design, permit, provide bidding assistance, construction services, and 120 hours of Inspection services. The bid package was posted to the City’s website and listed on Demand Star. The package was broadcast to 142 companies in the field of well construction. Two competitive bids were received and were within 0.2% of each other.

The City in past projects has worked with both bidders. McMahan Construction has constructed several of the City’s well’s the latest being Well 15. Staff recommends the Commission award the bid to McMahan based upon past experience with the contractor, the quality of work performed, and the level of communication between the contractor, engineer and staff exceeded expectations.

**Fiscal Impact:** The City received \$1,000,000 in ARPA funding for New Well Planning & Construction. The bid award amount is \$881,760, the associated generator \$66,639 and the Engineering fees are \$85,936. The project totals \$1,034,335. This amount is \$34, 355 more than the city received the ARPA funding. \$885,000 was included in the 2022/2023 FY Water Treatment Plant Budget (401-5331-606300) for the well construction, and the funds were encumbered. The bids came in 23% higher than projected likely due to increases in material and labor costs. Finance will look for monies in the treatment plant budget to cover the shortage and if necessary, submit a budget amendment at year end.

**Staff Recommendation:** Approve Resolution 2024-37.

**Attachments:** Resolution 2024-37, Recommendation of Award from the Consulting Engineer, Bid Tabulation, Notice of Intent to award, Legal Ad Affidavit, Section 2-312 of the Code, Letter of Appeal from DB Civil, Response letter from the City Manager.

RESOLUTION 2024-37

RESOLUTION 2024-37, A RESOLUTION OF THE CITY OF FLAGLER BEACH, FLORIDA, AWARDING BID NO. FB-24-2105 TO MCMAHAN CONSTRUCTION IN AN AMOUNT NOT TO EXCEED \$881,760; PROVIDING FOR CONFLICT AND AN EFFECTIVE DATE.

WHEREAS, the City of Flagler Beach operates and maintains a series of wells to provide for municipal water service; and,

WHEREAS, the City has been developing additional well sites to increase capacity, accommodate demand, and protect the aquifer water source; and,

WHEREAS, the City has drilled a well (designated Well #16) and is prepared to equip and connect that well to the City’s existing facilities; and,

WHEREAS, the City solicited bids through FB-24-2105 to equip and connect Well #16, receiving two bids from qualified contractors; and,

WHEREAS, following the initial award of the bid to McMahan Construction Company by the City Commission at its June 13 Regular Meeting (based upon the recommendation of consulting engineer Mr. David King, Mead & Hunt; Exhibit A), representatives of DB Civil Construction submitted a challenge to that award (see Exhibit B), as accorded in the City’s policies and procedures; and,

WHEREAS, the City Manager has reviewed and responded to the challenge, indicating that the challenge was rejected (see Exhibit C) due to irregularities within the original DB Civil Construction;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH, AS FOLLOWS:

SECTION 1. The City of Flagler Beach City Commission re-affirms the June 13, 2024 award for Bid No. FB-24-2105 to McMahan Construction in an amount not to exceed \$881,760.

SECTION 2. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3. This Resolution shall become effective immediately upon passage as provided by law.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF JUNE, 2024.

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

ATTEST:

\_\_\_\_\_  
Patti King, Mayor

\_\_\_\_\_  
Penny Overstreet, City Clerk



4475 US 1 S Ste 707  
St. Augustine, FL. 32086  
(386) 256-7460

City of Flagler Beach  
105 S. 2nd Street  
Flagler Beach, Florida 32136  
Attn: Penny Overstreet, City Clerk

June 13, 2024

Re: Notice of Bid Protest - FB-24-2105 for Potable Water Well #16

Please be advised that DB Civil Construction, LLC hereby submits a formal bid protest on the above referenced project in accordance with the Code or Ordinances for the City of Flagler Beach, Chapter 2, Article IX, Division 3, Sec. 2-13 Bid Challenge. Our protest is based on the following:

- DB Civil Construction was the lowest.
- DB Civil Construction meets all requirements as stated in the request for bid.
- DB Civil Construction was not properly notified of the intent to award. On June 13, 2024, we were sent a copy of the recommended award memo dated June 8, 2024.
- DB Civil Construction has successfully completed all previous city projects on time and met all contractual requirements.
- Per the wording in the engineers review it is obvious that city personnel made their preferences known to the engineer based on the comment 'City prefers to award the bid to McMahan Construction Company Inc.' this is a clear violation of the city's Competitive Bidding Ordinance.
- The engineers review states 'We have reviewed the two bidders' bid document packages and found them both substantially complete.'
- DB Civil Construction did not list any subcontractors and listed TBD. At the time of bid we had not chosen any subcontractors if any. We are aware that subcontractors, if used, must be acceptable to the city. This is a minor irregularity and per the city ordinance it can be waved.
- DB Civil Construction inadvertently missed signing the Certificate of Corporation form, however several other required forms were signed. This is a minor irregularity and per the city ordinance it can be waved.

In closing we respectfully request that the intent to award be revised to DB Civil Construction.

Regards,

Dalton Baylor  
President/Owner



# City of Flagler Beach

P.O. Box 70 • 105 South Second Street  
Flagler Beach, Florida 32136  
Phone (386) 517-2000

June 21, 2024

Mr. Dalton Baylor  
President, DB Civil Construction  
4475 US 1 S Ste 707  
St. Augustine FL 32086

Dear Mr. Baylor:

I have received and reviewed the June 13, 2024 correspondence from you indicating your formal protest for the City of Flagler Beach's award for Contract FB-24-2105 (Potable Water Well #16). The City Commission, at its June 13, 2024 City Commission Regular Meeting awarded Contract FB-24-2105 to McMahan Construction Company, Inc. in the amount of \$881,760.00. Your subsequent protest is in accordance with City of Flagler Beach Municipal Code Division 3 (Competitive Bidding), Section 2-311 (Invitation to bid and/or request for proposals) and Section 2-312 (Bid challenge).

***Although the proposal from DB Civil Construction was, as noted, lower than the proposal from McMahan Construction Company, Inc (\$879,835 v \$881,760), I have determined that the award to McMahan Construction Company, Inc. is in the best interest of the City of Flagler Beach.***

The City does have a recent experience of water well work with McMahan Construction Company, with that contractor completing work on City Well #15. Additionally, with such closeness of the two proposals, what may be otherwise considered as minor irregularities become magnified: as admitted in your bid protest, two such irregularities are noted. Although such irregularities, again, as noted in the protest, can be waived, it is at the City's sole discretion to "waive irregularities, reject any and all proposals, request the item to be rebid, or to negotiate separately with vendors" (Sec. 2-311 [14]). Again, given the \$1,925 difference between the two proposals (a difference of 0.002% of the awarded bid amount), the cited irregularities are substantial enough to not warrant waiving by the City of Flagler Beach.

The City Commission is scheduled to meet again on June 27, 2024, at 5:30 PM, at City Hall (105 S. 2<sup>nd</sup> Street, Flagler Beach). If interested, you have the opportunity to appeal my decision to the City Commission at that time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dale L. Martin".

Dale L. Martin  
City Manager

*Mr. Dale L. Martin, City Manager; dmartin@cityofflaglerbeach; mobile (904) 557-5047*



May 31, 2024,

Jim Ramer  
WTP Supervisor  
City of Flagler Beach  
105 South 2<sup>nd</sup> Street  
Flagler Beach, FL 32136

Email: [jramer@cityofflaglerbeach.com](mailto:jramer@cityofflaglerbeach.com)

**RE: POTABLE WATER WELL #16**  
**BID NO. FB-24-2105**

Dear Mr. Ramer,

The City received two (2) bids on the above referenced project on May 28, 2024. See attached bid tabulation. The project includes equipping the previously drilled well, improving the well site and access road, and constructing the connecting pipeline to existing facilities along with replacing/upsizing the existing raw water main from the Grand Landings Phase 5 development to Well #14. The work also includes the installation of a diesel generator that the City has pre-purchased.

We have reviewed the two bidders' bid document packages and found them both substantially complete. DB Civil did not name their proposed subcontractors and instead listed 'TBD' on Attachment N of the bid forms. DB Civil also did not fully complete Article 9 – Bid Submittal of the Invitation to Bid and Attachment A, Certificate of Corporation and Article 1 of the bid forms. Both contractors have active State of Florida Contractor's licenses in good standing with no active complaints. As the two bid amounts were within 0.2% of each other, the bid amounts appear fair. The received bids were approximately 23% higher than our estimated construction cost; most likely due to market increases in materials and labor costs.

We understand the City has had past experience with both contractors and that the City prefers to award the bid to McMahan Construction Company Inc. The Advertisement for Bid states: "The City reserves the right to reject any and all bids,..., as may be in the best interest of the City." Also, Article 19 – Evaluation of Bids and Award of Contract of the Instructions to Bidders states: "...Owner will consider the qualifications of the Bidder..." to determine if "...Bidder is responsible..." We suggest the City confirm the intent to award the bid to McMahan in accordance with these bid documents and City purchasing policies. Upon such, we recommend that the City award this bid/project to McMahan in the amount of \$881,760.00.

Jim Ramer  
May 31, 2024  
Page 2

Do not hesitate to contact the office if you have questions or need any further information regarding this bid review and recommendation.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. King', is positioned above the printed name.

David King, P.E.  
Vice President

cc: Penny Overstreet

DAK:bf

Attachment: Bid Tabulation



105 S. 2<sup>nd</sup> Street  
Flagler Beach, Florida 32136  
386-517-2000  
[www.cityofflaglerbeach.com](http://www.cityofflaglerbeach.com)

#### MEMO

DATE: June 08, 2024  
TO: Bid Package Holders City of Flagler Beach Bid No. FB-24-2105 Potable Water Well #16  
FROM: Penny Overstreet, City Clerk  
SUBJECT: Recommendation to award Bid - Memo containing the recommendation of award for the Potable Water Well No. 16, Bid No. FB-24-2105

The advertisement for the Invitation to Bid on the above referenced project ran as a legal ad one time in a newspaper of general circulation, the Daytona Beach News Journal, on Friday, April 19, 2024, as well as on the City's web-site, and listed on Demand Star a privately held company that provides online procurement and purchasing services for government agencies. The number of vendors the bid package was directed to was 142, of those recipients two (2) responded with bids. After a review by Staff, and our consulting engineers of the respondents bid packages and supporting documents, staff recommends the City Commission award the Base Bid to McMahan Construction Co., Inc., the most responsive bidder in the amount of \$881,760.



THE DAYTONA BEACH  
**NEWS-JOURNAL** PO Box 631244 Cincinnati, OH 45263-1244

**AFFIDAVIT OF PUBLICATION**

Penny Overstreet  
City Of Flagler Beach-Hr  
Po Box 70  
Flagler Beach FL 32136-0070

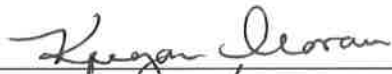
STATE OF WISCONSIN, COUNTY OF BROWN

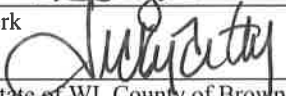
Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Coordinator of The News-Journal, published in Volusia and Flagler Counties, Florida; that the attached copy of advertisement, being a Govt Public Notices, was published on the publicly accessible website of Volusia and Flagler Counties, Florida, or in a newspaper by print in the issues of, on:

04/19/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 04/19/2024

  
\_\_\_\_\_  
Legal Clerk

  
\_\_\_\_\_  
Notary, State of WI, County of Brown

My commission expires  \_\_\_\_\_

Publication Cost: \$544.40  
Order No: 10082368 # of Copies:  
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**THIS IS NOT AN INVOICE!**

*Please do not use this form for payment remittance.*

VICKY FELTY  
Notary Public  
State of Wisconsin

ADVERTISEMENT FOR BID NO.

FB-24-2105

CITY OF FLAGLER BEACH  
POTABLE WATER WELL #16

City Project No. 209

NOTICE IS HEREBY GIVEN THAT THE CITY OF FLAGLER BEACH IS ISSUING THIS INVITATION TO BID (ITB) TO SOLICIT COMPETITIVE SEALED BIDS FROM LICENSED AND INSURED CONTRACTORS FOR THE CITY OF FLAGLER BEACH POTABLE WATER WELL #16 PROJECT. THE SCOPE OF WORK FOR THE PROJECT INCLUDES OUTFITTING OF A RECENTLY CONSTRUCTED POTABLE WATER WELL IN THE UPPER FLORIDIAN AQUIFER, ENCOMPASSING THE FURNISHING AND INSTALLATION OF A SUBMERSIBLE WELL PUMP, MECHANICAL PIPING, SITE WORK, FENCING, ELECTRICAL AND INSTRUMENTATION, INSTALLATION OF A GENERATOR SUPPLIED BY THE CITY, APPROXIMATELY 510 LF OF 10" RAW WATERMAIN CONNECTING POTABLE WATER WELL #16 TO THE NEW 12" RAW WATERMAIN (DESIGN BY THE DEVELOPER'S ENGINEER - SEE ATTACHMENT FOR DESIGN DRAWINGS), AND APPROXIMATELY 530 LF OF 12" RAW WATER MAIN TO CONNECT FROM POTABLE WATER WELL #14 TO THE NEW 12" RAW WATERMAIN. ALL WORK SHALL BE PERFORMED ACCORDING TO THE PLANS AND SPECIFICATIONS. BIDS WILL BE RECEIVED FOR A SINGLE PRIME CONTRACT. BIDS SHALL BE ON A LUMP SUM AS INDICATED IN THE BID FORM.

IT IS THE INTENT AND PURPOSE OF THE CITY OF FLAGLER BEACH THAT THIS INVITATION TO BID (ITB) PROMOTES COMPETITIVE SELECTION. IT IS THE BIDDER'S RESPONSIBILITY TO ADVISE THE FINANCE DIRECTOR IF ANY LANGUAGE, REQUIREMENTS, ETC., OR ANY COMBINATION THEREOF, INADVERTENTLY RESTRICTS OR LIMITS THE REQUIREMENTS STATED IN THIS ITB.

All applicants must be properly licensed and show proof of insurance, licenses, and certificates as required by all local, State of Florida, and Federal agencies. Successful applicants will obtain all required permitting as previously stated.

Interested contractors may secure the, bid forms and other pertinent information by visiting the city website bid page: <http://www.cityofflaglerbeach.com/Bids.aspx> or the website [www.demandstar.com](http://www.demandstar.com) Bid packages also may be obtained by contacting the City Clerk, Penny Overstreet at 386-517-2000 ext. 233 or [poverstreet@cityofflaglerbeach.com](mailto:poverstreet@cityofflaglerbeach.com)

For further information, contact: Penny Overstreet, City Clerk  
Preferred method of contact email: [poverstreet@cityofflaglerbeach.com](mailto:poverstreet@cityofflaglerbeach.com)  
Sealed Bids must be addressed to the attention of Penny Overstreet, City Clerk. Sealed Bids must be received on or before 2:00 P.M., MAY 21, 2024.

No bids will be accepted after this deadline.

Sealed Bids must have the project title and bid number on outside of package. The City of Flagler Beach reserves the right to reject any and all Bids, to award all or segments of the project, and to waive any informality in Bids received, as may be in the best interest of the City.

MAILING ADDRESS:

105 S. 2nd Street

Flagler Beach, FL 32136

WALK-IN DELIVERY ADDRESS:

105 S 2nd Street

Flagler Beach, FL 32136

Date of Distribution:

FRIDAY APRIL 19, 2024

Non-Mandatory Pre-Bid Meeting:

TUESDAY APRIL 30, 2024

at 10:00 AM EST

Last Date of Inquiries:

TUESDAY MAY 7, 2024

at 5:00 PM EST

Last Date for Addenda If Needed:

FRIDAY MAY 10, 2024

at 5:00 PM EST

BIDS DUE BY:

TUESDAY MAY 21, 2024

at 2:00 PM EST

L#10082368 4/19/2024

Section 7, Item a.

**Secs. 2-305—2-310. Reserved.**

### *DIVISION 3. COMPETITIVE BIDDING*

#### **Sec. 2-311. Invitation to bid and/or request for proposals.**

For the purposes of this section the word bid and proposal will be considered the same.

- (1) All bids must be advertised a minimum of one (1) time in a newspaper of general circulation at least fourteen (14) days prior to the bid opening unless the department head can document that all potential bidders have been given a copy of the bid package.
- (2) The advertisement shall include a brief description of the goods and/or services desired, where a copy of the bid package may be obtained, and the time and place for the bid opening.
- (3) The bid package shall contain the time and place for the bid opening, general conditions required of all vendors, some background on the project, a bid bond, a performance bond for all contracts where the bid may be in excess of fifty thousand dollars (\$50,000.00), and the specifications for the product and/or services desired.
- (4) The use of brand names in a bid is permitted, but only for the purposes of establishing a standard. Brand names shall not be used as a way of limiting or restricting competition.
- (5) Any time constraints on a project must be identified within the bid package. Inability to meet the time constraints may be sufficient reason for a bid to be rejected.
- (6) All bids received after the time designated shall be returned unopened.
- (7) Prebid conferences may be held if needed. Attendance at a prebid conference can be but does not have to be mandatory. Notice of a prebid conference must be included in the newspaper advertisement and the bid package.
- (8) Every bid package shall contain a hold harmless provision whereby the contractor, to the fullest extent permitted by law, shall at all times indemnify, defend and hold the city harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which the city may suffer, sustain, incur or in any way be subjected to, on account of death of or injury to any person whomsoever and damage to or loss of or destruction of any property whatsoever, arising from, or in any way connected with the construction project.
- (9) Prior to any work beginning the contractor must provide to the city a certificate of insurance for commercial liability insurance naming the city as an additionally insured in an amount not less than five hundred thousand dollars (\$500,000.00), auto liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00), and workers compensation insurance as required by the State of Florida. The amounts of the insurance can be adjusted depending on the job.
- (10) Bid proposals must be opened at the time and place stated in the bid package. There must be at least one (1) witness to the opening in addition to the person opening the bid.
- (11) The purpose of the bid opening is only to record the vendors and the bid amounts. No analysis of the bids will be performed at the bid opening.
- (12) All bids shall be available for public inspection immediately after the bid opening.

- (13) All information within a bid shall be considered public information unless the information has been clearly marked as proprietary. No proprietary information shall be released without the written consent of the bidder except under a court order.
- (14) The city shall always have the right to waive irregularities, reject any and all proposals, request the item be rebid, or to negotiate separately with vendors.
- (15) All vendors responding to the bid package shall be notified of the results of the bid prior to city commission approval.
- (16) All bid awards shall be to the bidder who has the lowest cost, the most responsive and responsible, and which is in the best interest of the city.
- (17) The memo containing the recommended vendor shall contain the date the bid was advertised, the number of vendors receiving a bid package, a list of those vendors responding, and a recommendation to the city commission as to the most responsive and responsible bidder. This does not have to be the lowest bidder. However, if the lowest bidder is not chosen an explanation must be included.

(Ord. No. 92-9, §§ 1, 2, 5-14-92)

### **Sec. 2-312. Bid challenge.**

Any bid may be challenged on the grounds of irregularities in the bid procedure or the evaluation process. Notice of intent to challenge must be made to the city clerk within seventy-two (72) hours after receipt of the intended recommendation of award. A formal written challenge must be filed within five (5) working days of the date the notice of intent was provided. Failure to file in a timely manner will constitute a waiver of the proceedings.

Notice of protest shall contain the name of the bidder, the bidder's address and phone number, the solicitation involved, and a brief summary of the basis of the protest.

The formal written protest shall identify the solicitation involved, a clear statement of the grounds on which the protest is based and specifically state the relief the vendor believes himself to be entitled. The challenger must mail a copy of the notice of protest to the vendor receiving city staff's recommendation.

The city manager shall investigate the challenge within ten (10) working days of the formal written protest. In the event the challenge is not resolved, the city commission shall be presented the written challenge and the administrator's decision on the challenge prior to the award of the bid.

(Ord. No. 92-9, §§ 1, 2, 5-14-92)

### **Sec. 2-313. Local preference.**

- (a) *Definition of local business.* "Local business" as used herein shall mean a business that meets the following criteria:
  - (1) Has a verifiable fixed office or distribution point and has had, for at least one (1) year prior to bid or proposal opening date, a street address, which shall not be interpreted to mean a post office box, in the City of Flagler Beach or a political jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
  - (2) Possesses all business licenses required by law;

- (3) Has paid, for at least one (1) year prior to bid or proposal opening date, its local business tax to the City of Flagler Beach or a jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
  - (4) Has a staff comprised of employees and not independent contractors or borrowed or leased employees;
  - (5) Is not a joint venture or partnership unless all members or partners of the joint venture or partnership meet the criteria of (1) through (4) above; and
  - (6) Is the principal offeror on the subject proposal.
- (b) *Submittal of verification of local business status.* A local business desiring to receive the local business preference shall submit all information necessary to verify its status as a local business upon submitting any bid, response to request for qualifications, letter of interest, or other proposal to the city.
- (c) *Local preference in purchasing and contracting.*
- (1) In bidding for, or letting contracts for procurement of, supplies, materials, equipment and services as described in the purchasing policies of the city, the city commission, or other authorized purchasing authority, may give a preference to local businesses in making purchases or awarding contracts in an amount not to exceed:
    - a. Five (5) percent of the local business' total bid price for procurement activities in amounts less than five hundred thousand dollars (\$500,000.00); or
    - b. Three (3) percent of the local business' total bid price for procurement activities in amounts over five hundred thousand dollars (\$500,000.00);
  - (2) The total bid price shall include not only the base bid price, but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other appropriate authority.
  - (3) In the case of requests for proposals or qualification, letters of interest, or other solicitations and competitive negotiations and selections in which objective factors are used to evaluate the responses, local businesses shall be assigned five (5) percent of the total points of the total evaluation points.
- (d) *Exceptions to local preference policy.*
- (1) The procurement preference set forth in this section shall not apply to any of the following purchases or contracts:
    - a. Goods or services provided under a cooperative purchasing agreement or interlocal agreement;
    - b. Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference;
    - c. Purchases made or contracts let under emergency or noncompetitive situations, for litigation related legal services, or sole source provider contracts;
    - d. Any contracts governed by the Consultants' Competitive Negotiations Act; or
    - e. Purchases with an estimated cost of five thousand dollars (\$5,000.00) or less.
  - (2) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation by the city manager and approval of the city commission.
  - (3) The preference established in this section does not prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and

services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.

- (4) The bid preference established in this ordinance does not prohibit the city commission, or other authorized purchasing authority, from giving any other preference permitted by law in addition to the preference authorized in this section.
- (e) *Reciprocity.* For purposes of this section, reciprocity shall be extended to any business located within the jurisdictional boundaries of any political jurisdiction of Flagler County, Volusia County, Putnam County or St. Johns County and such business shall be given the same preference as given to local businesses in the City of Flagler Beach if:
  - (1) Such business meets the criteria set forth in subsections (a)(1)—(6) above as to the subject political jurisdiction; and
  - (2) The subject political jurisdiction extends to businesses located in the City of Flagler Beach the same preference it extends to businesses located within its own jurisdictional boundaries.
- (f) *Application and enforcement of preference policy.*
  - (1) The local preference policy established in this section shall apply to new contracts and procurements solicited after the effective date of this section.
  - (2) This section shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.
- (g) *Promulgation of rules.*
  - (1) The city manager is hereby authorized to adopt administrative rules supplemental to the provisions of this section as deemed necessary and appropriate to implement the provisions of this section.
  - (2) The provisions of this section and the rules adopted by the city manager shall be provided to potential bidders, vendors and contractors to the widest extent practicable.

(Ord. No. 2010-04, § 2, 5-13-10; Ord. No. 2012-01, § 1, 2-9-12)

Editor's note(s)—Ordinance No. 2010-04, § 6, adopted May 13, 2010 states "this Ordinance shall automatically be repealed one year after the effective date unless prior to that time, the Ordinance is reaffirmed by a majority vote of the City Commission." On February 10, 2011, the Commission passed a motion to adopt Ordinance No. 2010-04 permanently.

**Secs. 2-314—2-389. Reserved.**



# STAFF REPORT

City Commission Regular Meeting

June 27, 2024

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**To:** City Commission

**From:** Dale L. Martin, City Manager

**Date:** June 27, 2024

**Item Name:** Proposed Resolution 2024-36- Award Bid No. FB-24-1806 for Stop Bar Repainting to SnG Pavement Marking Inc. in an amount not to exceed \$64,080.00.

**Background:** Included in this year’s budget is an appropriation for re-painting “Stop Bars” on City streets (including many within the Community Redevelopment Area). The advertisement for the Invitation to Bid on the above referenced project ran as a legal ad one time in a newspaper of general circulation, the Daytona Beach News Journal, on Tuesday, May 28, 2024, as well as on the City’s web site, and Demand Star. The City directed the Bid Package to eleven vendors; only one of those recipients one responded with a bid.

**Fiscal Impact:** The budgeted amount (General Fund, Roads/Bridges Department, Repairs and Maintenance) for this project is \$69,080.

**Staff Recommendation:** Staff recommends the City Commission award the Project to SnG Pavement Marking Inc. in an amount not to exceed \$64,080.

**Attachments:** Proposed Resolution 2024-36

RESOLUTION 2024-36

A RESOLUTION BY THE CITY OF FLAGLER BEACH, FLORIDA,  
AWARDING THE CONTRACT TO SNG PAVEMENT MARKING INC. FOR  
STOPBARS CITYWIDE; PROVIDING FOR CONFLICT AND PROVIDING AN  
EFFECTIVE DATE HEREOF.

WHEREAS, The Commission approved Stop Bars to be repainted city-wide in the FY 2023-2024 Budget;  
and,

WHEREAS, a request for proposals in accordance with City purchasing policies was solicited and one  
sealed bid was received.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH,  
FLORIDA:

SECTION 1. The City of Flagler Beach awards the contract for the Stop Bar Project to SNG Pavement  
Marketing Inc. in the amount of \$64,080.

SECTION 2. All Resolutions or parts thereof in conflict herewith be and the same are hereby repealed.

SECTION 3. This Resolution shall become effective immediately upon passage as provided by law.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF JUNE, 2024.

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

\_\_\_\_\_  
Patti King, Mayor

ATTEST:

\_\_\_\_\_  
Penny Overstreet, City Clerk



THE DAYTONA BEACH  
**NEWS-JOURNAL** PO Box 631244 Cincinnati, OH 45263-1244

**AFFIDAVIT OF PUBLICATION**

Penny Overstreet  
City Of Flagler Beach-Hr  
Po Box 70  
Flagler Beach FL 32136-0070

STATE OF WISCONSIN, COUNTY OF BROWN

Before the undersigned authority personally appeared, who on oath says that he or she is the Legal Coordinator of The News-Journal, published in Volusia and Flagler Counties, Florida; that the attached copy of advertisement, being a Govt Public Notices, was published on the publicly accessible website of Volusia and Flagler Counties, Florida, or in a newspaper by print in the issues of, on:

05/28/2024

Affiant further says that the website or newspaper complies with all legal requirements for publication in chapter 50, Florida Statutes.

Subscribed and sworn to before me, by the legal clerk, who is personally known to me, on 05/28/2024

Legal Clerk

Notary, State of WI, County of Brown

My commission expires

Publication Cost: \$331.96  
Order No: 10215295 # of Copies:  
Customer No: 465673 1  
PO #:

**THIS IS NOT AN INVOICE!**

Please do not use this form for payment remittance.

KAITLYN FELTY  
Notary Public  
State of Wisconsin

City of Flagler Beach, and Flagler Beach CRA  
Advertisement for Bids  
Stop Bar Repainting and CRA  
Crosswalk Striping Repainting Bid  
No. FB-24-1806

**Category A Project Description:**  
The project requires the contractor to repaint all stop bars within the city limits. The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards. Each stop bar is typically twenty-four (24) inches wide. Bids should be priced by linear feet.

**Category B Project Description:**  
The project requires restriping of twelve (12) inch crosslines on either side of decorative brick crosswalks within the Community Redevelopment Area. The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards.

Interested contractors may secure the bid forms and other pertinent information by visiting the city website bid page: <http://www.cityofflaglerbeach.com/Bids.aspx>. Bid packages also may be obtained by registering with Demand Star at [www.demandstar.com](http://www.demandstar.com).

Concerns or question can be addressed by contacting the City Clerk, Penny Overstreet at 386-517-2000 ext. 233 or [poverstreet@cityofflaglerbeach.com](mailto:poverstreet@cityofflaglerbeach.com)

All applicants must be properly licensed and show proof of insurance, licenses, and certificates as required by all local, State of Florida, and Federal agencies. Successful applicants will obtain all required permitting as previously stated.

For further information, contact:  
Penny Overstreet  
City Clerk

(386) 517-2000, ext. 233  
Sealed Bids must be addressed to the attention of Penny Overstreet, City Clerk.

Sealed Bids must be received on or before 1:00 P.M. Tuesday, June 18, 2024.

Sealed Bids must have the project title and bid number clearly marked on the outside of package. (Utilize the prepared label on Page 2 of this bid package)

The City of Flagler Beach reserves the right to reject any and all Bids, to award all or segments of the project, and to waive any informality in Bids received, as may be in the best interest of the City.

L#10215295 5/28/2024

Received  
JUN 03 2024  
City of Flagler Beach

**Member Name**  
**Bid Number** **FB-24-1806**  
**Bid Name** **osswalk Striping & Repainting**

**2 Document(s) found for this bid**

9 Planholder(s) found

[illegible]



**INVITATION TO BID**  
**City of Flagler Beach, and the Flagler Beach**  
**Community Redevelopment Agency (CRA)**  
**(386) 517 – 2000 ext. 233**

**TITLE: Stop Bar Repainting and CRA Crosswalk Striping Repainting**  
**BID NUMBER: FB-24-1806**

PRE-BID QUESTIONS DUE: 5:00 P.M. FRIDAY, JUNE 07, 2024  
FINAL ADDENDUM ISSUE DATE: 5:00 P.M. WEDNESDAY, JUNE 12, 2024  
BIDS DUE: 1:00 P.M. TUESDAY, JUNE 18, 2024  
BIDS OPEN: 1:00 P.M. TUESDAY, JUNE 18, 2024

**BIDS RECEIVED AFTER THE ABOVE DATE AND TIME WILL NOT BE ACCEPTED.**

BIDDER NAME: SnG Pavement Marking Inc.  
MAILING ADDRESS: 1104 NW 50th Ave STE A  
CITY: Gainesville STATE: FL ZIP: 32609  
TELEPHONE: (352) 378-2636  
E-MAIL: melanie@sngpavementmarking.com

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder. In submitting a bid to the City of Flagler Beach, the bidder offers and agrees that the bidder assigns and transfers to the City of Flagler Beach all rights and interest in, and to all causes for action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of Florida for price fixing relating to the particular commodities or services purchased or acquired by the City of Flagler Beach.

  
AUTHORIZED SIGNATURE

Melanie Clouse  
PRINT NAME  
4,272 LF @ \$15.00 per LF =  
\$ \$64,080.00  
Bid Amount Part A

Project Manager  
TITLE

6/12/2024  
DATE  
4,580 LF @ \$6.00 per LF =  
\$ \$27,480.00  
Bid Amount Part B

**SUBMIT THE BID IN A SEALED ENVELOPE TO THE ATTENTION OF THE CITY CLERK.**  
**INCLUDE THE BID NUMBER, TITLE, AND OPENING DATE.**

MAIL  
CITY OF FLAGLER BEACH  
105 SOUTH SECOND STREET  
FLAGLER BEACH, FL 32136

HAND DELIVERY  
CITY HALL  
105 SOUTH SECOND STREET  
FLAGLER BEACH, FL 32136

*THE CITY OF FLAGLER BEACH IS AN EQUAL OPPORTUNITY EMPLOYER*

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	<p align="center"><b>City of Flagler Beach, and Flagler Beach CRA</b> <b>Advertisement for Bids</b> <b>Stop Bar Repainting and CRA Crosswalk Striping</b> <b>Repainting      Bid No. FB-24-1806</b></p>
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**Category A Project Description:**

The project requires the contractor to repaint all stop bars within the city limits.  
The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards.  
Each stop bar is typically twenty-four (24) inches wide.  
Bids should be priced by linear feet.

**Category B Project Description**

The project requires restriping of twelve (12) inch crosslines on either side of decorative brick crosswalks within the Community Redevelopment Area.  
The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards.

Interested contractors may secure the, bid forms and other pertinent information by visiting the city website bid page: <http://www.cityofflaglerbeach.com/Bids.aspx>. Bid packages also may be obtained by registering with Demand Star at [www.demandstar.com](http://www.demandstar.com) . Concerns or question can be addressed by contacting the City Clerk, Penny Overstreet at 386-517-2000 ext. 233 or [poverstreet@cityofflaglerbeach.com](mailto:poverstreet@cityofflaglerbeach.com)

All applicants must be properly licensed and show proof of insurance, licenses, and certificates as required by all local, State of Florida, and Federal agencies. Successful applicants will obtain all required permitting as previously stated.

For further information, contact:

Penny Overstreet  
City Clerk  
(386) 517-2000, ext 233

Sealed Bids must be addressed to the attention of **Penny Overstreet, City Clerk**.  
Sealed Bids must be received on or before **1:00 P.M. Tuesday, June 18, 2024**.  
Sealed Bids must have the project title and bid number clearly marked on the outside of package.  
(Utilize the prepared label on Page 2 of this bid package)

The City of Flagler Beach reserves the right to reject any and all Bids, to award all or segments of the project, and to waive any informality in Bids received, as may be in the best interest of the City.

## INSTRUCTIONS FOR SUBMITTING A BID

### A. Preparation:

1. Bidders are expected to examine this bid form, attached drawings, specifications, and all instructions. Failure to do so will be at the Bidder's risk.
2. All prices and notations must be in ink or typewritten. No erasures are permitted. Mistakes may be crossed out with corrections typed adjacent to, and must be initialed and dated in ink by the person signing the bid. All bids must be signed with the firm's name and by a responsible officer or employee. Obligations assumed by such signature must be fulfilled.
3. Each bidder shall furnish the information required on the bid form and each accompanying sheet thereof on which he or she makes an entry.
4. The complete unit price for each unit bid shall be shown. A total shall be entered in the amount column for each bid. In case of discrepancy between a unit price and extended price, the unit price represented will be presumed to be correct.

### B. Questions regarding specifications or bidding process:

1. To ensure fair consideration for all Bidders, the City of Flagler Beach prohibits communication with any department or employee during the bid process, except as provided below.
2. All questions relative to an interpretation of specifications or the bid process shall be submitted by email (the preferred method): [poverstreet@cityofflaglerbeach.com](mailto:poverstreet@cityofflaglerbeach.com). Include the bid number in the subject line.
3. **Deadline for submittal of questions is Friday, June 7, 2024 5:00 p.m.**
4. Interpretations made to prospective bidders will be expressed in the form of an addendum to the specifications which, if issued, will be sent to all prospective bidders no later than 5:00 P.M. Wednesday, June 12, 2024.
5. It is the Bidder's responsibility to contact the City Clerk prior to submitting a bid to ascertain if any addenda have been issued, to obtain all such addenda, and to return executed addenda with the bid.

### C. Submittal

1. In order for your bid to be deemed responsive and evaluated, fill out all forms. Failure to return all City-issued forms will result in your bid being disqualified.
2. This Request for Bids is separated into two Categories. **Category A** is for the Stop Bars Repainting portion of the Bid. **Category B** is for the CRA Crosswalk Striping Repainting portion of the Bid.
3. Bidders must ensure the totals for each Category are presented separately within the Bid document, but will be expected to perform construction of both jobs concurrently.
4. Bids must contain an original signature of an authorized representative of the company.
5. It is the Bidder's responsibility to ensure the bid is delivered at the proper time and location. Bids received after the bid opening time of **1:00 PM, Tuesday, June 18, 2024**, will not be accepted.
6. Submit one (1) original signed document and one (1) copy for a total of two (2) packages, and one (1) portable Drive USB (thumb drive) with a .pdf electronic copy.
7. Submit both in one sealed envelope with the bid number, title, and due date clearly labeled (Utilize the prepared label on Page 2 of this bid package) on the lower left-hand side of the envelope: FB-24-1806, Stop Bar Repainting and CRA Crosswalk Striping.

8. Services required must be performed in a manner that meets the requirements of the city and any federal, state or local funding agency such as FEMA, FHWA, EPA, HUD/ CDBG-DR, NRCS, CWCB or others when required. The successful bidder shall execute a City contract and comply with all requirements set forth in any addendums issued required to maintain eligibility or compliance for City secured funding from additional sources in the future. The Contractor shall maintain the required documentation for project reimbursement to the City, per federal guidelines, as requested by the City. The Contractor shall preserve all project records for a period of ten (10) City fiscal years after the final payment, or longer, where required by law. The Contractor shall be responsible for being knowledgeable and performing any and all services under this contract in accordance with the following governing regulations along with any and all other relevant Federal, State, and local laws, regulations, codes and ordinances:
9. All bidders are required to complete and submit a Certificate of Liability Insurance, the Public Entity Crime Statement, the Anti-Collusion Statement, Drug Free and Tie Bid Preference Statement.

Address your sealed envelope as follows:

For U.S. Mail: City of Flagler Beach City Clerk 105 South 2 <sup>nd</sup> Street Flagler Beach, Florida 32136	For all others: City of Flagler Beach City Clerk 105 South 2 <sup>nd</sup> Street Flagler Beach, FL 32136
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**SCOPE OF WORK**

**Category A Project Description:**

The project requires the contractor to repaint all stop bars within the city limits.

The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards.

Each stop bar is typically twenty-four (24) inches wide.

Bids should be priced by linear feet.

**Project Location:**

The city is divided into three quadrants: North, South, and West. The project will encompass all quadrants with the exception of privately owned roads:

- Bridgewater Subdivision (West side of the city).
- Pebble Beach Subdivision (South side of the city).
- Ocean Marina Drive (near N. 23<sup>rd</sup> Street).
- Ocean Palm Villas South (near Golf Course, South end of City).

**Category B Project Description**

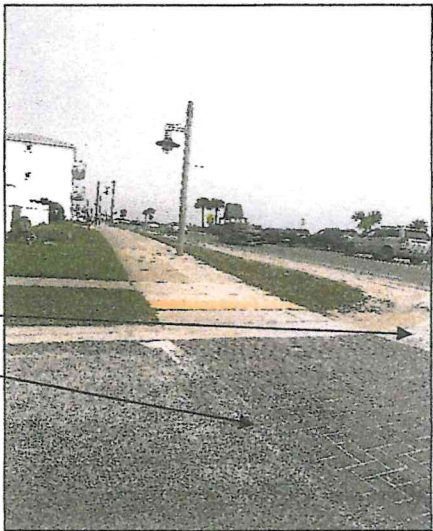
The project requires restriping of twelve (12) inch crosslines on either side of decorative brick crosswalks within the Community Redevelopment Area.

The project is required to be up to Florida Department of Transportation (FDOT) standards related to material specifications thermoplastic paint with reflective beads or updated FDOT current standards.

Each crossline is twelve (12) inches wide.

Bids should be priced by linear feet.

Crosslines

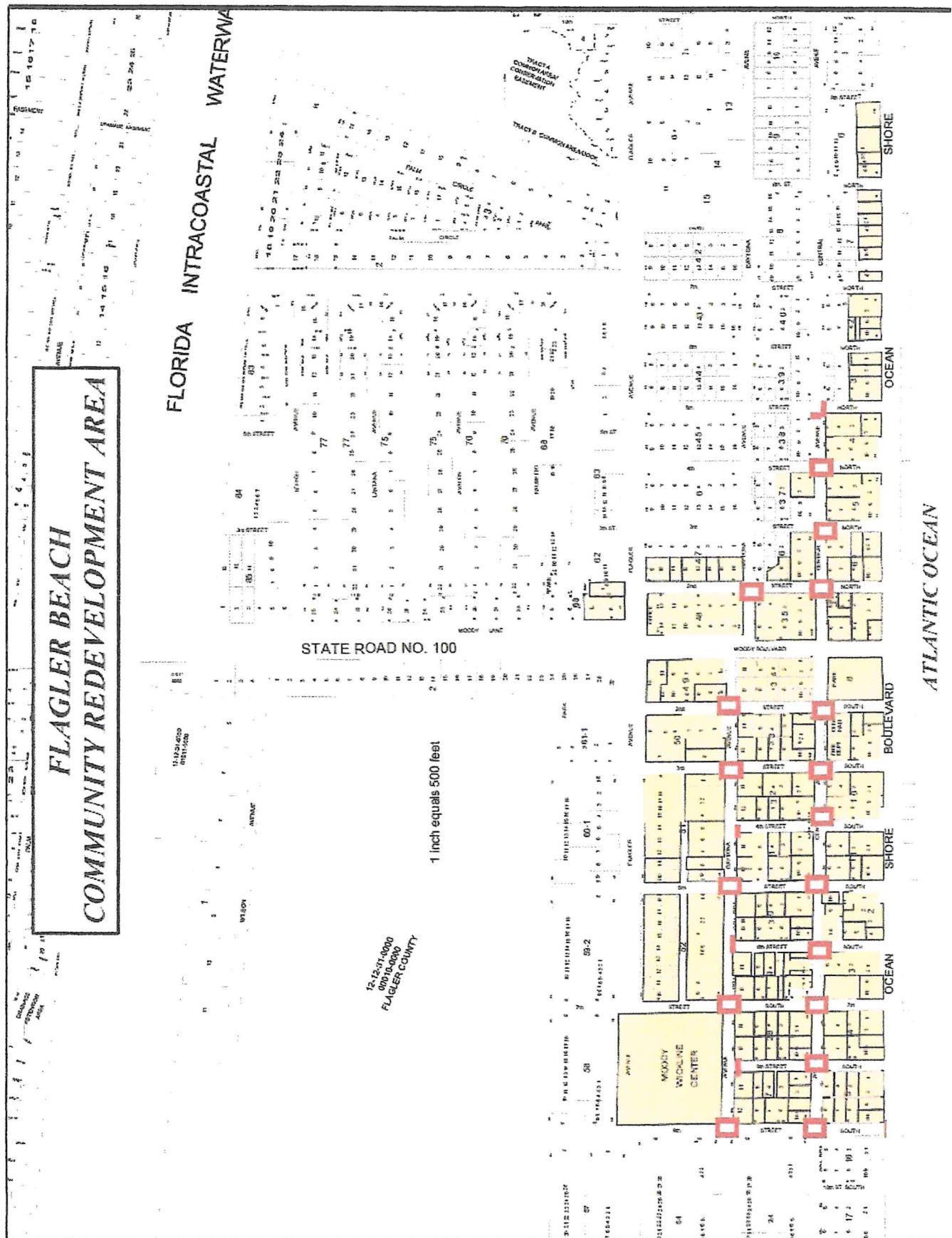




**Project Location:**

Decorative crosswalks are located within the above boundary map extending from South 9<sup>th</sup> Street up to North 5<sup>th</sup> Street in the highlighted areas. Flagler Avenue South and North, as well as A1A from South 8<sup>th</sup> Street to North 9<sup>th</sup> street are excluded. Please view map marked in red on the following page.

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## GENERAL CONDITIONS

**BIDDER:** To ensure acceptance of the bid, follow these instructions.

- 1. EXECUTION OF BID:** Bid must contain a manual signature of an authorized representative in the space provided.
- 2. SEALED BIDS:** All bids must be submitted in a sealed envelope. The face of the envelope shall contain the date and time of the bid opening and the bid number. Bids not submitted on the City of Flagler Beach bid forms may be rejected. All bids are subject to the conditions specified herein and on any attached sheets, specifications, special conditions or vendor notes.
- 3. BID OPENING:** Shall be public, on the date and at the time specified on the bid form. It is the bidder's responsibility to assure that the bid is delivered at the proper time and place of the bid opening. Bids that for any reason are not so delivered will not be accepted. Offers by telephone for a sealed bid cannot be accepted.
- 4. PRICES, TERMS, and PAYMENT:** All prices must be firm for the delivery schedule quoted herein. Bids stipulating "Price in effect at time of shipment" or other similar conditions will be considered not responsive to the bid invitation and will not be accepted. All prices shall be quoted F.O.B. delivered to City of Flagler Beach Department unless otherwise stipulated in the bid invitation.  
It is the policy of the City of Flagler Beach to make payment of invoices in time to earn any offered cash discounts. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from receipt of correct invoice at the Finance Department office, whichever is later.
- 5. TAXES:** The City of Flagler Beach does not pay Federal excise and State sales taxes. Our tax exemption number is found on all Purchase Orders.
- 6. POLITICAL SUBDIVISIONS:** Under Florida Law, prices contained in the State Contracts shall be available to the City of Flagler Beach, who might wish to purchase under a State Purchase Contract. The City of Flagler Beach therefore reserves the right to purchase any commodities from a State Purchase Contract if it is in the best interest of the City of Flagler Beach.
- 7. MISTAKES:** Bidders are expected to examine the specifications, delivery schedules, bid prices, and all instructions pertaining to supplies and services. Failure to do so will be at bidder's risk.
- 8. CONDITION and PACKAGING:** It is understood and agreed that any item offered or shipped as a result of this bid shall be new (current production model at the time of this bid). All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.
- 9. SAFETY STANDARDS:** Unless otherwise stipulated in the bid, all manufactured items and fabricated assemblies shall comply with applicable requirements of Occupational Safety and Health Act and any standards thereunder.
- 10. MARKING:** Each individual container shall be marked with the brand name of the product, quantity, and the name and address of the manufacturer. Each shipping container shall include the name of the vendor and must also clearly indicate the City of Flagler Beach Order number.
- 11. INVOICE and PAYMENT:** The supplier shall be paid upon submission of invoices to: City of Flagler Beach, ATTN: Accounts Payable, 105 S. 2<sup>nd</sup> Street, Flagler Beach, FL, 32136. Invoices are to be billed at the prices stipulated on the purchase order and as outlined in this bid. All invoices must show the City of Flagler Beach Purchase Order number.

**12. CONFLICT OF INTEREST:** The award hereunder is subject to Chapter 112, Florida Statutes. All bidders must disclose with their bid the name of any officer, director, or agent who is also an employee of the City of Flagler Beach. Further, all bidders must disclose the name of any City of Flagler Beach employee who owns, directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches.

**13. AWARDS:** As the best interest of the City of Flagler Beach may require, the right is reserved to make award(s) by individual items, group of items, all or none, or a combination thereof, with one or more suppliers; to reject any or all bids or waive any informality or technicality in bids received.

**14. INSPECTION, ACCEPTANCE, and TITLE:** Inspection and acceptance will be at destination unless otherwise stipulated. Title and risk of loss or damage to all items shall be the responsibility of the shipper (vendor) until accepted by the using department of the City of Flagler Beach, unless loss or damage results from the negligence by the City of Flagler Beach or its Departments.

**15. DISPUTES:** In case of any doubt or differences of opinion as to the items to be furnished hereunder, the decision of the City of Flagler Beach City Clerk shall be final and binding on both parties.

**16. LEGAL REQUIREMENTS:** Federal, State, City of Flagler Beach, and local laws, ordinances, rules and regulations that in any manner affect the item(s) covered herein apply. Lack of knowledge by the bidder will in no way be cause for relief from responsibility.

**17. LIABILITY:** The vendor shall hold and save the City of Flagler Beach, its officers, agents, and employees harmless from liability of any kind in the performance of or fulfilling the requirements of the Purchase Order which may result from this bid.

NOTE: ANY AND ALL SPECIAL CONDITIONS ATTACHED HERETO WHICH MAY VARY FROM THESE GENERAL CONDITIONS SHALL HAVE PRECEDENCE.

## SPECIAL CONDITIONS

### 1. BID DEADLINE:

Bids must be submitted no later than the specified bid opening date and time. Bids received after the specified date and time will not be accepted. Faxed bids will not be accepted.

### 2. BID BONDS:

Bid Bonds are not required for this project.

### 3. PAYMENT AND PERFORMANCE BONDS:

Unless it is deemed unnecessary by the City Manager, a contractor or vendor shall provide a surety bond of at least 100% of the total contract price from a surety company authorized to do business in Florida to guarantee the full and faithful performance of its contractual obligations and the payment of labor and material expended pursuant to the contract.

### 4. PRICING:

Firm prices shall be bid and include FOB destination, all packing, handling, shipping charges and delivery to any point within the City of Flagler Beach to a secure area or inside delivery.

### 5. PREPARATION AND SUBMISSION OF BID:

Each Vendor shall submit Bid Prices on this documentation in the proper spaces and substitutions on which the vendor bids. Any erasures or other corrections in the Bid must be explained or noted over the signature of the Vendor. Bids containing any conditions or irregularities of any kind may be rejected by the Owner. It is the intention of the city to award this bid based on the low total bid price meeting all specifications.

### 6. MANUFACTURERS' NAME AND APPROVED EQUIVALENTS:

Manufacturers' names, trade names, brand names, information and/or catalog numbers listed in a specification are for information and not intended to limit competition. The bidder may offer any brand

for which he is an authorized representative, which meets or exceeds the specifications for any item(s). If bids are based on equivalent products, indicate on the bid form the manufacturers' name and catalog number. Bidder shall submit with his bid cuts, sketches, and descriptive literature and/or specifications. The bidder should also explain in detail the reason(s) why and submit proof that the proposed equivalent will meet the specifications and not be considered an exception thereto. The City of Flagler Beach Commission reserves the right to be the sole judge of what is equal and acceptable. Bids which do not comply with these requirements are subject to rejection. If bidder fails to name a substitute it will be assumed that he is bidding on, and he will be required to furnish goods identical to, the bid standard.

**7. MEETING SPECIFICATIONS:**

All items quoted must comply with the specifications. If you are taking exception, indicate those exceptions as stated on the Bidder's Certification Form

**8. PENALTIES: BIDS MAY BE REJECTED AND/OR VENDOR(S) DISQUALIFIED FOR THE FOLLOWING REASONS:**

- Failure to perform according to contract provisions.
- Conviction in a court of law of any criminal offense in connection with the conduct of business.
- Evidence of a violation of any federal or state anti-trust law based on the submission of bids or proposals, or the awarding of contracts.
- Evidence that the vendor has attempted to give a Commission employee a gratuity of any kind for the purpose of influencing a recommendation or decision in connection with any part of the Commission's purchasing activity.
- Other reasons deemed appropriate by the City of Flagler Beach Commission.

**9. RECEIPT AND OPENING OF BIDS:**

Bids will be opened publicly at the time and place stated in the Invitation to Bid. The person whose duty it is to open them will decide when the specified time has arrived and no bids received thereafter will be considered. No responsibility shall be attached to any person for the premature opening of a Bid not properly addressed and identified. At the time fixed for the opening of bids, the contents of the bid form will be made public for the information of vendors and other interested parties who may be present either in person or by representative.

**10. REJECTION OF BIDS/PROPOSALS:**

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

**11. AMENDMENT OF THE INVITATION TO BID:**

It is the bidders' responsibility to contact the City Clerk prior to submitting a proposal to ascertain if any addenda have been issued, to obtain all such addenda, and return executed addenda with the RFP. The failure of a bidder to submit acknowledgement of any addenda that affects the RFP price(s) is considered a major irregularity and will be cause for rejection of the bid.

**The City of Flagler Beach reserves the right to consider the omission of any addendum as cause for rejection of the RFP/Bid submittal.**

**12. WITHDRAWAL OF BIDS:**

Bids may be withdrawn by written request received from Vendors prior to the time fixed for opening. Negligence on the part of the Vendor in preparing the Bid confers no right for the withdrawal of the bid after it has been opened.

**13. AWARD OF BIDS:**

The bid will be awarded as soon as possible to the lowest and/or best value responsive, responsible bidder meeting all specifications. The City of Flagler Beach reserves the right to waive any informality in bids and to award a bid in whole or in part when either or both conditions are in the best interest of the City. The City shall award all Bids per the City of Flagler Beach Purchasing Policy. The City does not award publicly funded contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act, 8 United States Code s1324a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the contract, agreement, bid or quote for purchase of services and goods by the City of Flagler Beach.

**14. BID CHALLENGE:**



Any bid award recommendation may be challenged administratively on the grounds of irregularities in the bid procedure, or the evaluation of the bid. Such notice of intent of bid challenge shall be made in writing and delivered to the City within 72 hours after receipt of the intended recommendation of award in the City Clerk's Office. A formal written bid challenge shall be filed within 5 working days in the City Clerk's Office after the date in which the notice of intent of bid challenge has been submitted. Failure to file a timely notice of intent of bid challenge or failure to file a timely formal written bid challenge shall constitute a waiver of all administrative rights granted under this section. At the time fixed for the opening bids, the contents of the Bid Form will be made public for the information of vendors and other interested parties, who may be present either in person or by representatives. This section confers no judicially enforceable rights. Its sole purpose is to give unsuccessful bidders a formalized opportunity to complain about the process.

**15. CANCELLATION:**

The contract with the successful bidder may be terminated by the City of Flagler Beach without cause by giving a minimum of thirty (30) days written notice of intent to terminate. Contract prices must be maintained until the end of the thirty (30) day period. The City of Flagler Beach may terminate the contract at any time as a result of the contractor's failure to perform in accordance with these specifications and applicable contract. The city may retain/withhold payment for nonperformance if deemed appropriate to do so by the city.

**16. COMMUNICATION**

There shall be **no communications** between the Vendor, their employees or subcontractors concerning this project to anyone within the City of Flagler Beach, including but not limited to, all City employees and elected officials (hereafter referred to as "City Representative"), except through the City Clerk.

Any attempt to communicate with any City Representative outside the City Clerk's Department will be considered a violation of the Purchasing Policy and may result in the removal of your company from the bidders list for this project, and/or removal or suspension of your company from future bidders' lists.

**17. PERIOD OF OFFER VALIDITY:**

Proposals offered in this Bid must remain firm for a period of one hundred twenty days (120) days from the Bid opening date.

**18. GUARANTEED DELIVERY (where applicable):**

Delivery is required as soon as possible, and the guaranteed date of delivery (after receipt of Purchase Order) will be taken into consideration in making the award.

**19. NON-PERFORMANCE:**

Time is of the essence in this contract and failure to deliver within the time period shall be considered a default. In case of default, the City may procure the required equipment from other sources and hold the Contractor responsible for any excess costs occasioned thereby and may immediately cancel the contract.

**20. LICENSES:**

The contractor shall be responsible for obtaining and maintaining city or county occupational license and any licenses required pursuant to the laws of the City of Flagler Beach or the State of Florida. In furnishing the service or product to the City, the vendor shall comply with all federal, state and county rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, agreement, and bid or quote.

**21. QUALIFICATIONS:**

Bids will be considered from firms who have adequate personnel and equipment and who are so situated as to perform prompt service, who maintain the regular business hours of 8:00 AM to 5:00 PM, Monday through Friday, except for City holidays.

The City of Flagler Beach reserves the right to conduct an inspection of the bidder's facility and equipment prior to award of the Bid.

Proposals will be considered only from firms which are regularly engaged in the business as described in this Bid package; with a record of performance for a reasonable period of time, which have sufficient financial support, equipment, and organization to ensure that they can satisfactorily execute the service if awarded an Agreement under the terms and conditions stated herein. The terms "equipment and organization" as used herein shall be construed to mean a fully equipped and well-established company in line with the best business practice in the industry and as determined by the City.

**22. VENDOR'S PRODUCT OR SERVICES:**

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

If the vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.

The vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the vendor. In furnishing the service or product to the City, the vendor shall comply with all federal, state, and City laws, rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations and codes may be grounds for delaying or reducing the amount due, or in rescinding the contract, agreement, bid or quote.

**23. SATISFACTORY SERVICES**

If the vendor is contracted to provide services, such services shall be fully satisfactory to the City as determined by the City.

**24. TRAINING, REPORTS, DATA**

The vendor shall provide the City with any data, reports or other information as required and requested by the City to enable it to utilize the product or service furnished by the vendor. At the convenience of and at no expense to City of Flagler Beach, the vendor may be required to provide training to City employees in the operation and maintenance of any item purchased unless otherwise specified.

**25. PATENT / COPYRIGHT HOLD HARMLESS:**

The bidder shall pay all royalties and assume all costs arising from the use of any invention, design, process materials, equipment, product or device which is the subject of patent rights or copyrights. Bidders shall, at their own expense, hold harmless and defend the City of Flagler Beach against any claim, suit, or proceeding brought against the City which is based on a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this bid, constitute infringement of any patent or copyright of the United States. The bidder shall pay all damages and costs awarded against the City.

**26. LEGAL COMPLIANCE**

In furnishing the service or product to the City, the vendor shall comply with all Federal, State, and County laws, rules, regulations and codes and their successors or amendments. Violation of such laws, rules, regulations, and codes may be grounds for delaying or reducing the amount due, or in rescinding the Contract, Agreement, Bid or Quote.

**27. PAYMENT AND PERFORMANCE BOND**

Where required by the City, the vendor shall furnish a satisfactory performance and payment bond within thirty (30) calendar days after notification of the Bid award, unless a different time is agreed upon or specified by the City. Failure to furnish a bond within the required period shall be cause for rejection of the Bid and Bid deposit may be retained by the City as payment for damages.

**28. LIABILITY:**

The supplier shall hold and save the City of Flagler Beach, its officers, agents, and employees harmless against claims by third parties resulting from the supplier's breach of contract or the supplier's negligence, including all damages, costs, reasonable attorney's fees, paralegal fees, expert witness fees, consultant fees and any other litigation cost.

**29. INSURANCE**

Upon the award of a Bid, the City may require evidence that the vendor's operations are covered by personal injury insurance, property damage liability insurance, worker's compensation insurance, and/or insurance coverage as reasonably deemed necessary by the City. The vendor's insurance carrier is required to notify the City, in writing, at least thirty (30) days prior to termination of such coverage and this requirement shall be so stated on the evidence of insurance furnished by the vendor.

**30. HOLD HARMLESS / INDEMNIFY:**

The successful bidder hereby agrees to indemnify and save harmless the City, its officers, agents, and employees from and against any and all liability, claims, demands, damages, fines, fees, expenses, penalties, suits, proceedings, actions and costs of actions, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the performance of the Agreement whether by act or omission of the bidder, its agents, servants, employees or others, or because of or due to the mere existence of the Agreement between the parties.

**31. DRUG-FREE WORKPLACE CERTIFICATION:**

By submitting a bid in response to this Invitation to Bid, you are certifying that your company is a drug-free workplace in accordance with Florida Statute 287.087.

**32. ALIEN WORKERS**

City of Flagler Beach does not award publicly funded Contracts to those who knowingly employ unauthorized alien workers in violation of section 274A(e) of the Immigration and Naturalization Act. 8 United States Code §132a(e). Such employment deprives legal workers of job opportunities. Violation of section 274A(e) shall be grounds for unilateral cancellation of the Contract, Agreement, Bid or Quote for purchase of services and goods by City of Flagler Beach.

**33. DISCRIMINATION**

The vendor will not discriminate against any employee in the performance of this Agreement, or against any applicant for employment, because of race, creed, color, handicap, national origin, or gender.

**34. CONFLICT OF INTEREST / STATEMENT OF NON-COLLUSION:**

The award hereunder is subject to Chapter 112, Florida Statutes. All bidders must disclose with their proposal the name of any officer, director, or agent who is also an employee of the City of Flagler Beach. Further, all bidders must disclose the name of any City of Flagler Beach employee who owns, directly or indirectly, an interest of five percent (5%) or more of the bidder's firm or any of its branches.

The bidder shall certify that he/she has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the RFP and that the bidder is not financially interested in, or otherwise affiliated in a business way with any other bidder on the same land or improvements.

**35. DISPUTES:**

The contract/agreement for this service/product will be conditioned on venue for any disputes being in the City of Flagler Beach Courts.

The vendor shall hold the City harmless from all claims, damages, costs, including reasonable attorney's fees, expert witness fees, consultant fees and litigation expenses, arising out of the vendor's delivery of the product or service to the City for acts of negligence by the vendor, its employees or its agents. The parties to the agreement hereby acknowledge that specific consideration has been given for this indemnity clause. To conform with F.S. 725.06 in the event the contract, agreement, bid or quote involves a construction project within the meaning of the statute, the City is providing a specific consideration to the vendor of one dollar (\$1.00) paid in hand which vendor hereby accepts as fulfilling the obligations of the statute. The City Commission reserves the right to reject any or all proposals, to waive informalities, and to accept all or any part of any proposals as may be deemed to be in the best interest of the City.

**36. NON-APPROPRIATION CLAUSE**

City of Flagler Beach is obligated only to the extent that funds are included in the City's fiscal year budget.

Should the City not include funds for this expense the Agreement is null and void.

**37. FLORIDA PROMPT PAYMENT**

Late payments of any sum due by City of Flagler Beach shall be in accordance with the Florida Prompt Payment Act applicable to local governments.

The City retains the right to reject any product or service with which it is not completely satisfied and may in such situations withhold payment until the product or service is made acceptable, or may reduce the amount it owes under the contract, agreement, bid or quote, or may rescind the contract, agreement, bid or quote. City is obligated only to the extent that funds are included in the City's fiscal year budget. Should the City not include funds for this expense the agreement is null and void.

**38. WAIVER**

No waiver by the City for any right or remedy granted hereunder and no failure by the City to insist on strict performance shall affect or extent or act as a waiver of any other right or remedy of the City hereunder, nor shall it affect the subsequent exercise of the same right or remedy by the City for any further or subsequent default by the vendor.

**39. CONTRACT ASSIGNMENT**



No Contract, Agreement, Bid or Quote, nor any part thereof, shall be assigned or delegated without the City's advance written consent. Such consent shall neither relieve the vendor from its obligations nor change the terms of the Agreement. If the City consents to assignment, the vendor agrees to include in the subcontract a provision that the subcontractor shall hold the City harmless against all claims of whatever nature arising out of the subcontractor's performance of work.

**40. PUBLIC ENTITY CRIMES STATEMENT:**

Bidders must complete and return with Bid/Proposal the Sworn Statement on Public Entity Crimes Pursuant to Section 287.133(3) (a), Florida Statutes.

**41. ADDITIONAL TERMS AND CONDITIONS:**

The City of Flagler Beach reserves the right to reject bids containing any additional terms or conditions not specifically requested in the original conditions and specifications.

**42. PUBLIC RECORDS LAW**

Insofar as this Agreement may delegate governmental or legislative functions to a private entity, and the private entity would be subject to public records laws codified in Chapter 119, Florida Statutes, and the public meeting requirements codified in Chapter 286, Florida Statutes, the vendor acknowledges familiarity with the above-referenced statutes and agrees to comply with the same unless the public records are specifically exempted or the meeting is specifically not subject to the provisions of Chapter 286, Florida Statutes. The city may unilaterally cancel this Agreement for any improper refusal by provider to hold a meeting or provide public access to public records as required by Chapter 119, Florida Statutes, made or received by the provider in conjunction with this Agreement.

**43. LIQUIDATED DAMAGES:**

The completion of this project is critical to the City of Flagler Beach. For this reason, the Contractor shall pay damages to City of Flagler Beach \$75.00 per calendar day past the contracted substantial or final completion schedule.

## LOCAL BUSINESS VENDOR PREFERENCE

In accordance with Ordinance No. 2010-04 and Chapter 2, Article IX, Section 2-313 of the Flagler Beach City Code, preference is shown to local businesses, i.e., vendors, contractors, or service providers, as follows:

### Sec. 2-313. Local preference.

(a) *Definition of local business.* "Local business" as used herein shall mean a business that meets the following criteria:

- (1) Has a verifiable fixed office or distribution point and has had, for at least one (1) year prior to bid or proposal opening date, a street address, which shall not be interpreted to mean a post office box, in the City of Flagler Beach or a political jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
- (2) Possesses all business licenses required by law;
- (3) Has paid, for at least one (1) year prior to bid or proposal opening date, its local business tax to the City of Flagler Beach or a jurisdiction located within Flagler County, Volusia County, Putnam County or St. Johns County that has been extended reciprocity pursuant to the terms of this section;
- (4) Has a staff comprised of employees and not independent contractors or borrowed or leased employees;
- (5) Is not a joint venture or partnership unless all members or partners of the joint venture or partnership meet the criteria of (1) through (4) above; and
- (6) Is the principal offeror on the subject proposal.

(b) *Submittal of verification of local business status.* A local business desiring to receive the local business preference shall submit all information necessary to verify its status as a local business upon submitting any bid, response to request for qualifications, letter of interest, or other proposal to the city.

(c) *Local preference in purchasing and contracting.*

- (1) In bidding for, or letting contracts for procurement of, supplies, materials, equipment and services as described in the purchasing policies of the city, the city commission, or other authorized purchasing authority, may give a preference to local businesses in making purchases or awarding contracts in an amount not to exceed:
  - a. Five (5) percent of the local business' total bid price for procurement activities in amounts less than five hundred thousand dollars (\$500,000.00); or

b. Three (3) percent of the local business' total bid price for procurement activities in amounts over five hundred thousand dollars (\$500,000.00);

(2) The total bid price shall include not only the base bid price, but also all alterations to that base bid price resulting from alternates which were both part of the bid and actually purchased or awarded by the city commission or other appropriate authority.

(3) In the case of requests for proposals or qualification, letters of interest, or other solicitations and competitive negotiations and selections in which objective factors are used to evaluate the responses, local businesses shall be assigned five (5) percent of the total points of the total evaluation points.

(d) *Exceptions to local preference policy.*

(1) The procurement preference set forth in this section shall not apply to any of the following purchases or contracts:

a. Goods or services provided under a cooperative purchasing agreement or inter-local agreement;

b. Purchases or contracts which are funded, in whole or in part, by a governmental entity and the laws, regulations, or policies governing such funding prohibit application of that preference;

c. Purchases made or contracts let under emergency or noncompetitive situations, for litigation related legal services, or sole source provider contracts;

d. Any contracts governed by the Consultants' Competitive Negotiations Act; or

e. Purchases with an estimated cost of five thousand dollars (\$5,000.00) or less.

(2) Application of local preference to a particular purchase, contract, or category of contracts for which the city commission is the awarding authority may be waived upon written justification and recommendation by the city manager and approval of the city commission.

(3) The preference established in this section does not prohibit the right of the city commission or other purchasing authority to compare quality or fitness for use of supplies, materials, equipment and services proposed for purchase and compare qualifications, character, responsibility and fitness of all persons, firms, or corporations submitting bids or proposals.

(4) The bid preference established in this ordinance does not prohibit the city commission, or other authorized purchasing authority, from giving any other preference permitted by law in addition to the preference authorized in this section.

(e) *Reciprocity.* For purposes of this section, reciprocity shall be extended to any business located within the jurisdictional boundaries of any political jurisdiction of Flagler County, Volusia County, Putnam County or St. Johns County and such business shall be given the same preference as given to local businesses in the City of Flagler Beach if:

(1) Such business meets the criteria set forth in subsections (a)(1)— (6) above as to the subject political jurisdiction; and

(2) The subject political jurisdiction extends to businesses located in the City of Flagler Beach the same preference it extends to businesses located within its own jurisdictional boundaries.

(f) *Application and enforcement of preference policy.*

(1) The local preference policy established in this section shall apply to new contracts and procurements solicited after the effective date of this section.

(2) This section shall be implemented in a fashion consistent with otherwise applicable city purchasing policies and procedures.

(g) *Promulgation of rules.*

(1) The city manager is hereby authorized to adopt administrative rules supplemental to the provisions of this section as deemed necessary and appropriate to implement the provisions of this section.

(2) The provisions of this section and the rules adopted by the city manager shall be provided to potential bidders, vendors and contractors to the widest extent practicable.

Certification: The Bidder hereby certifies that it is a “Local Business” as defined above and that copies of the business license and local business tax receipt have been attached.

BUSINESS NAME IN FULL: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED SIGNATURE: \_\_\_\_\_

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

DRUG FREE / TIE PREFERENCE STATEMENT


In the event of a tie bid, preference is given to vendors submitting with their bid, certification that they have a drug-free workplace in accordance with Section 287.087, Florida Statutes. This requirement affects all public entities of the State and became effective January 1, 1991. The Special Conditions follow:

Identical Tie Bids. Preference shall be given to businesses with drug-free workplace programs. Whenever two or more bids which are equal with respect to price, quality, and service are received by the State or by any political subdivision for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. Established procedures for processing tie bids will be followed if none of the tied vendors have a drug-free workplace program.

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

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

As the person authorized to sign this statement, I certify that this firm complies fully with the above requirements.

  
\_\_\_\_\_  
VENDOR'S SIGNATURE  
6/12/2024  
\_\_\_\_\_  
DATE

## INSURANCE REQUIREMENTS


1. The Contractor shall obtain and maintain such insurance as will protect it from claims under worker's compensation laws, disability benefit laws, or other similar employee benefit law; claims for damages because of bodily injury, occupational sickness or disease death of his employees including claims insured by usual personal injury liability coverage; claims for damages because of bodily injury, sickness or disease or death of any person other than its employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible personal property including loss of use resulting therefrom – any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of the Contract Documents, whether such services, work and operations be by the Contractor, its employees, or by Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.
2. This insurance shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.
3. The Contractor shall require, and shall be responsible for assuring throughout the time the Agreement is in effect, that any and all of its Subcontractors obtain and maintain until the completion of that Subcontractor's work, such of the insurance coverages described herein as are required by law to be provided on behalf of their employees and others.
4. The Contractor shall require the insurance agent/broker to provide replacement certificates of insurance on a timely basis, but no later than five (5) days prior to policy termination.
5. The Contractor shall obtain and maintain the following insurance coverages as provided hereinbefore and, in the type, amounts and in conformance with the following minimum requirements:
  - a. Florida Statutory worker's compensation and employer's liability with minimum limits of \$500,000.00, whether required by Chapter 440, Florida Statutes, or not. Contractor and Subcontractors may provide a valid certificate of exemption issued by the State of Florida in lieu of workers' compensation insurance coverage.
  - b. Commercial general liability with minimum combined single limits of \$1,000,000.00, including coverage parts of bodily injury, broad form property damage, personal property damage, personal injury, independent contractors, blanket contractual liability, and products completed operations. The exclusion for underground damage, explosion and collapse shall be removed through a policy endorsement. The Commercial General Liability policy's total pollution exclusion shall be removed by endorsement.
  - c. Automobile liability with minimum combined single limits of \$100,000.00 for all hired, owned and non-owned vehicles. The Automotive Liability policy's total pollution exclusion shall be removed by endorsement.
  - d. Excess umbrella liability with minimum limits of \$2,000,000.00 which are more restrictive than the underlying limits. Umbrella coverage shall drop down to provide coverage where the underlying limits are exhausted. The umbrella policy shall mirror the Commercial General and Automobile Policies' coverage with respect to removal of the total pollution exclusion.
  - e. Professional liability insurance with minimum limits of \$500,000.00 for engineers and architects employed by the Contractor.
  - f. Builders risk insurance underwritten on the "all risks of physical loss" basis for replacement cost for the full value of the completed Project to cover the City and the Contractor as their interest may appear. An installation floater may be an alternative if appropriate to the Agreement.

Contractor/Vendor must provide certificate of current General Liability Insurance with a minimum of \$1,000,000 and Workman's Compensation Insurance as required by State Statute.

Policy must:

- Name City of Flagler Beach as an additional insured
- Proof of Insurance MUST be submitted with your bid. The successful bidder MUST provide the City of Flagler Beach Purchasing with the attached insurance document prior to of purchase order



	<b>Work Write – Up / Bid Form</b> <b>Stop Bar Repainting and CRA Crosswalk Striping Repainting</b> <b>Bid No. FB-24-1806</b>
---	--

The work write-up / bid form is a general outline of the work to be performed including identification of alternate pricing. The base price of this project shall include:

DATE: 6/12/2024

TOTAL BASE BID CATEGORY A: \$ 64,080.00

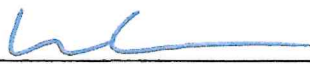
TOTAL BASE BID CATEGORY B: \$ 27,480.00

DATE CONTRACTOR CAN BEGIN WORK: 3 weeks from today

TIME NEEDED TO COMPLETE PROJECT: 2 weeks

All work to be performed in a professional manner, in accordance with the project drawings, specifications, local codes, and manufacturer’s specifications. The contractor shall be responsible for the repairs and/or reinstallation of materials, equipment, and fixtures which damaged or removed during the course of construction. All items must be cost itemized in the space provided or the bid will be rejected.

I hereby certify that I am licensed by the State of Florida, Department of Business and Professional Regulation.

CONTRACTOR’S SIGNATURE: 

CONTRACTOR'S PRINTED NAME: Melanie Clouse

CONTRACTOR’S BUSINESS ADDRESS: 1104 NW 50th Ave STE A  
Gainesville FL 32609

CONTRACTOR'S PHONE NUMBER: 352-378-2636

THIS PAGE MUST BE INCLUDED WITH THE BID FOR IT TO BE VALID.

**SIGNATURE PAGE**

The undersigned hereby discloses he /she has carefully examined the specifications to furnish goods/services as described herein:

I certify that all prices, terms and conditions as stated in WORK WRITE-UP / BID FORM are correct.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid for the bidder and that the bidder is in compliance with all requirements of the Invitation to Bid.

BID NO: FB-24-1806

BUSINESS NAME IN FULL: SnG Pavement Marking Inc.

ADDRESS: 1104 NW 50th Ave STE A

CITY: Gainesville STATE FL ZIP CODE 32609

TELEPHONE: 352-378-2636 FAX: \_\_\_\_\_

E-MAIL: melanie@sngpavementmarking.com

AUTHORIZED SIGNATURE: \_\_\_\_\_

PRINTED SIGNATURE: Melanie Clouse

TITLE: Project Manager

DATE: 6/13/2024

**The City Commission of the City of Flagler Beach reserves the right to reject any or all bid/proposals, to waive informalities, and to accept all or any part of any bid as may be deemed to be in the best interest of the City.**



SUBCONTRACTOR LIST

Bidders using their own workforce for all schedules may skip this section.

The Bidder acknowledges that each subcontractor has been fully investigated and has evidence each subcontractor has engaged successfully in his line of work for a reasonable period of time, and that the subcontractor maintains a fully equipped organization that is technically and financially capable of performing the work required.

List subcontractors below.

<u>Subcontract Work</u>	<u>Company Name</u>	<u>Address</u>	<u>\$ Amount</u>

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE

ADDENDUM ACKNOWLEDGEMENT

The undersigned acknowledges receipt of the following addenda to the Invitation to Bid  
(Indicate number and date of each):

Addendum No. <u>1</u>	Date: <u>6/12/2024</u>
Addendum No. _____	Date: _____
Addendum No. _____	Date: _____
Addendum No. _____	Date: _____

  
AUTHORIZED SIGNATURE

6/13/2024  
DATE

Failure to submit acknowledgement of any addendum that affects the pricing and / or scope is considered a major irregularity and may be cause for rejection of a bid.

**BIDDER’S CERTIFICATION**

I have carefully examined the Invitation to Bid, Instructions to Bidders, General and/or Special Conditions, Specifications, and any other documents accompanying or made a part of this invitation. I hereby propose to furnish the goods or services specified in the Invitation to Bid at the prices or rates quoted in my bid. I agree that my bid will remain firm for a period of up to one hundred twenty (120) days in order to allow the City adequate time to evaluate the bids. Furthermore, I agree to abide by all conditions of the bid.

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

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

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

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

**NO EXCEPTIONS WILL BE ALLOWED AFTER THE BID IS SUBMITTED.**

Please check one: I take NO exceptions.   X   I DO take exceptions.           

Exceptions: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If more space is needed, please attach additional pages as needed.)

AFFIDAVIT OF NON-COLLUSION

Melanie Clouse \*, being first duly sworn, deposes and says that he (it) is the bidder in Bid No. FB-24-1806, Stop Bar Repainting and CRA Crosswalk Striping, that the only person or persons interested in said bid are named therein, that no officer, employee or agent of the City of Flagler Beach, or of any other bidder, is interested in said bid; and that affiant makes the above bid with no past or present collusion with any other person, firm or corporation.

Affiant: [Signature] Title: Project Manager

STATE OF FLORIDA

COUNTY OF Alachua

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online

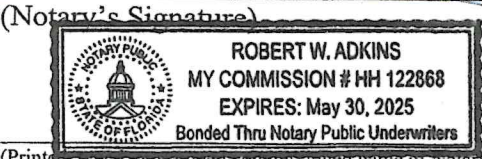
notarization, this 18<sup>th</sup> day of June, 2024 by Melanie Clouse, PM (name of officer or agent, title of officer or agent) of Sn6 Pavement Marking, Inc. (name of corporation)

acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced

\_\_\_\_\_ (type of identification) as identification.

Notary Public - State of Florida

[Signature]



(Printed, typed, or stamped commissioned name of Notary Public)

5-30-2025  
(My Commission Expires)

\* State name of Bidder, followed by name of authorized individual and title, who is signing as Affiant. If Bidder is an individual, state name of Bidder only.

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3)(a),  
FLORIDA STATUTE ON ENTITY CRIMES**

1. This sworn statement is submitted with Bid No. FB-22-1806 to the City of Flagler Beach,

2. by: SnG Pavement Marking Inc. at: 1104 NW 50th Ave STE A Gainesville FL 32609  
(Business Name) (Business Address)

whose Federal Employer Identification Number (FEIN) is 59-2021622.

(If entity has no FEIN, provide the SSN of the individual signing this sworn statement.)

3. My name is Melanie Clouse and my relationship to the entity named  
above is Project Manager.

4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), **Florida Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision or any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), **Florida Statutes**, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

6. I understand that an "affiliate" as defined in Paragraph 287.133(1) (a), **Florida Statutes**, means:

- a. A predecessor or successor of a person convicted of a public entity crime; or
- b. An entity under the control any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1) (e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors,



executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

- ☒ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- ☒ the entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- ☒ the entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order.)

[Signature]  
(Signature)

6/12/2024  
(Date)

STATE OF FLORIDA  
COUNTY OF Alachua

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online

notarization, this 13<sup>th</sup> day of June, 2024 by  
Melanie Clouse, PM (name of officer or agent, title of officer or agent) of  
Snb Pavement Marking, Inc (name of corporation)  
acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He/she is personally known to me or has produced  
\_\_\_\_\_ (type of identification) as identification.

Notary Public - State of Florida

[Signature]  
(Notary's Signature)

5-30-2025  
(My Commission Expires)

(Printed, typed, or stamped commission name of Notary Public)  




# CERTIFICATE OF LIABILITY INSURANCE

Section 7, Item b.

6/12/2024

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

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

<b>PRODUCER</b> Bowen, Miclette & Britt of Florida, LLC 850 Concourse Parkway S Suite #105 Maitland FL 32751	<b>CONTACT NAME:</b> Michelle Rushing	
	<b>PHONE (A/C, No, Ext):</b> 407-647-1616 <b>FAX (A/C, No):</b> 407-628-1635	
	<b>E-MAIL ADDRESS:</b> mrushing@bmbinc.com	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
	<b>INSURER A:</b> Gemini Insurance Company	10833
	<b>INSURER B:</b> Vantapro Specialty Insurance Company	44768
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** 796921649 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:	Y	Y	VGGP007918	3/1/2024	3/1/2025	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	Y	Y	5087-1331-00	3/1/2024	3/1/2025	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A				PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
The following policy provisions and/or endorsements form part of the policies of insurance represented by this certificate of insurance. The terms contained in the policies and/or endorsements supersede the representations made herein. Electronic copies of the policy provisions and/or endorsements listed below are available by emailing Contact Person as shown above.

When required by written contract, those parties listed in said contract, including the Certificate Holder, are added as an Additional Insureds with respect to the General Liability and Auto Liability as afforded by the policy and/or endorsements.

When required by written contract, a Waiver of Subrogation, with respect to the General Liability and Auto Liability, is granted to those parties listed in said See Attached...

**CERTIFICATE HOLDER****CANCELLATION**

City of Flagler Beach Building Department  
105 South 2nd St.  
Flagler Beach FL 32136

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

AUTHORIZED REPRESENTATIVE

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LOC #: \_\_\_\_\_

**ADDITIONAL REMARKS SCHEDULE**Page 1 of 1

AGENCY Bowen, Miclette & Britt of Florida, LLC		NAMED INSURED SNG Pavement Marking, Inc. SNG Commercial Maintenance, Inc. 1104 NW 50th Ave Suite A Gainesville FL 32609
POLICY NUMBER		
CARRIER	NAIC CODE	EFFECTIVE DATE:

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

contract, including the Certificate Holder.

The General Liability and Auto Liability, certified herein are primary and non-contributory to other insurance available, but only to the extent required by written contract.

RE: FB-24-1806 Stop Bar Repainting & CRA Crosswalk Striping Repainting

Policy #VGGP007918  
Effective Dates: 3/1/2024-3/1/2025

COMMERCIAL GENERAL LIABILITY  
CG 20 10 12 19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
<b>Any person or organization when you have agreed in a written and executed contract, prior to an "occurrence" that such person or organization be added as an additional insured on your policy</b>	<b>All locations for which you have agreed in a written and executed contract prior to an "occurrence"</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

Policy #VGGP007918  
Effective Dates: 3/1/2024-3/1/2025

COMMERCIAL GENERAL LIABILITY  
CG 20 37 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
<b>Any person or organization when you have agreed in a written and executed contract, prior to an "occurrence" that such person or organization be added as an additional insured to your policy.</b>	<b>All locations and completed operations for which you have agreed in a written and executed contract prior to an "occurrence".</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
  2. Available under the applicable limits of insurance;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

Policy #VGGP007918  
Effective Dates: 3/1/2024-3/1/2025

COMMERCIAL GENERAL LIABILITY  
CG 24 04 12 19

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES  
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

**SCHEDULE**

<p>Name Of Person(s) Or Organization(s): <b>Any person or organization you have agreed in a written and executed contract prior to an "occurrence" that you would provide such person or organization a waiver of transfer of rights of recovery against others to us on your policy.</b></p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us** of Section IV – Conditions:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

Policy #VGGP007918  
Effective Dates: 3/1/2024-3/1/2025

VE 09 73 04 20

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

Commercial General Liability Coverage Part

---

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

### **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other Commercial General Liability insurance available to an additional insured under your policy, but only if:

- (1) The additional insured is a Named Insured under such other Commercial General Liability insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other Commercial General Liability insurance available to the additional insured.

Coverage granted to an additional insured remains subject to all terms, conditions, limitations, and exclusions set forth in the endorsement form that conferred the additional insured status. In the event of conflict between this endorsement and an endorsement conferring additional insured status, then the endorsement conferring additional insured status shall govern the scope of coverage available to the additional insured.

All other terms and conditions of this Policy remain unchanged.

Policy #5087-1331-00  
Effective Dates: 3/1/2024-3/1/2025

COMMERCIAL AUTO

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**BUSINESS AUTO ENHANCEMENT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM**

**1. ADDITIONAL INSURED BY CONTRACT OR AGREEMENT**

**A. SECTION II – COVERED AUTOS LIABILITY COVERAGE, paragraph A. Coverage, paragraph 1. Who Is An Insured, is amended by adding the following:**

- (1) Any person or organization with respect to the operation, maintenance or use of a covered "auto" covered under this Policy, provided that you and such person or organization have agreed in a written contract or agreement, to add such person or organization to this Policy as an "insured".

However, such person or organization is and "insured":

- a. Only with respect to the operation, maintenance or use of a covered "auto" covered under this Policy;
- b. Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or agreement and during the policy period; and
- c. Only for the duration of the contract or agreement.

- (2) How Limits Apply – The most we will pay on behalf of an additional insured is the lesser of:

- a. The limits of insurance specified in the written contract or agreement between you and the person or organization you agreed to add as and additional insured; or
- b. The Limits of Insurance shown in the Declarations.

Such amount shall be part of and not in addition to the Limits of Insurance shown in the Declarations and described in this Section.

- (3) Additional Insureds Other Insurance – If we cover a claim or "suit" under this Coverage Part that may also be covered by other insurance available to an additional insured, such additional insured must submit such claim or "suit" to the other insurer for defense and indemnity.

However, this provision does not apply to the extent you have agreed in a written contract or agreement with the additional insured that this insurance is primary and non-contributory with the additional insured's own insurance.

- (4) Duties In the Event Of An Accident, Claim, Suit Or Loss – If you have agreed in a written contract or agreement that another person or organization be added as an additional insured on your policy, the additional insured shall be required to comply with the provisions in **SECTION IV – BUSINESS AUTO CONDITIONS, paragraph A. Loss Conditions, paragraph 2. Duties In the Event Of An Accident, Claim, Suit Or Loss**, in the same manner as the Named Insured.

**2. HIRED AUTO PHYSICAL DAMAGE COVERAGE**

**A. SECTION III – PHYSICAL DAMAGE COVERAGE, paragraph A. Coverage, paragraph 4. Coverage Extensions, is amended by adding the following:**

If hired "autos" are covered "autos" for Liability Coverage and if Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form for any "auto"



you own, then the Physical Damage Coverages provided are extended to "autos" you hire or borrow, subject to the following limit, deductible and conditions:

- (1) The most we will pay for "loss" to any hired "auto" is:
  - a. \$50,000; or
  - b. The actual cash value of the damaged or stolen property at the time of the "loss"; or
  - c. The cost of repairing or replacing the damaged or stolen property with other property of like kind,
 whichever is smallest, minus a deductible.
- (2) The deductible will be equal to the largest deductible applicable to any owned "auto" for Physical Damage Coverage.
- (3) Hired Auto Physical Damage coverage is excess over any other collectible insurance.
- (4) Subject to the above limit, deductible, and excess provisions, we will provide that Physical Damage Coverage applicable to any covered "auto" you own.
- (5) Subject to a maximum of \$1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable, and the lessor incurs an actual financial loss.
- (6) This coverage extension does not apply to:
  - a. Any "auto" that is hired, rented or borrowed with a driver;
  - b. Any "auto" you hire or borrow from any of your "employees" or members of their household;
  - c. Any "auto" you hire or borrow from any of your partners or members of their household (if you are a partnership); or
  - d. Any "auto" you hire or borrow from any of your members or members of their household (if you are a limited liability company).

### 3. TOWING AND LABOR

- A. SECTION III – PHYSICAL DAMAGE COVERAGE, paragraph A. Coverage, paragraph 2. Towing And Labor,** is deleted in its entirety and replaced with the following:

We will pay towing and labor costs you have incurred, up to the limits shown below, for each classification of covered "auto" shown below, each time a covered "auto" classified below is disabled:

- (1) For private passenger type vehicles, we will pay up to \$50.00 per disablement.
- (2) For "light trucks", we will pay up to \$75.00 per disablement. "Light trucks" are trucks that have a gross vehicle weight of 10,000 pounds or less.

However, the labor must be performed at the place of disablement.

### 4. ACCIDENTAL AIRBAG DEPLOYMENT COVERAGE

- A. SECTION III – PHYSICAL DAMAGE COVERAGE, paragraph B. Exclusions, paragraph 3** is amended by adding the following:

This exclusion does not apply to the accidental discharge of an airbag.

Any insurance we provide for "loss" relating to the accidental discharge of an airbag shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty.

## 5. LOAN/LEASE GAP COVERAGE

### A. SECTION III – PHYSICAL DAMAGE COVERAGE is amended by adding the following:

In the event of a "total loss" to a covered "auto" owned or leased by you we will pay your additional legal obligation for any difference between the actual cash value of the covered "auto" at the time of "loss" and the "outstanding balance" of the loan or lease.

As used in this provision "outstanding balance" means the amount you owe under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of the following:

- a. Overdue payments and financial penalties associated with those payments at the time of "loss";
- b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear;
- c. Security deposits not refunded by the lessor;
- d. Cost for Extended Warranties and additional protections such as but not limited to Credit Life, Health, Accident or Disability Insurance purchased with the lease or loan;
- e. Carryover, transfer or rollover balances from previous loans or leases;
- f. Any amount representing taxes;
- g. Loan or lease termination fees;
- h. The dollar amount of any unrepaired damage that that occurred prior to the "total loss" of a covered "auto";
- i. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto"; and
- j. Final payment under a "balloon loan".

As used in this provision a "balloon loan" is a loan with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final *payment*.

### B. For the purposes of this Loan/Lease Gap Coverage provision, SECTION V – DEFINITIONS is amended by adding the following Definitions:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value at the time of "loss".

A "balloon loan" is a loan with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

## 6. EXTENDED CANCELLATION CONDITION

### A. COMMON POLICY CONDITIONS, paragraph A. – Cancellation condition applies except as follows:

If we cancel for any reason other than nonpayment of premium, we will mail or deliver to the first Named Insured written notice of cancellation at least 60 days before the effective date of cancellation. This provision does not apply in those states which require more than 60 days' prior notice of cancellation.

## 7. VEHICLE WRAP COVERAGE

### A. SECTION III – PHYSICAL DAMAGE COVERAGE, paragraph A. Coverage, 4. Coverage Extensions, is amended by adding the following:

In the event of a "total loss" to a covered "auto" for which Comprehensive, Specified Causes of Loss, or Collision coverages are provided under this Coverage Form, we will pay up to \$1,000.00 for vinyl vehicle wraps which are displayed on the covered "auto" at the time of "total loss". Regardless of the number of autos deemed a "total loss", the most we will pay under this coverage extension for any one "loss" is \$5,000.00. For the purposes of this coverage extension, signs or other graphics painted or magnetically affixed to the vehicle are not considered vehicle wraps.

- B. For the purposes of this Vehicle Wrap Coverage provision, **SECTION V – DEFINITIONS** is amended by adding the following Definitions:

“Total loss” means a “loss” in which the cost of repairs plus the salvage value exceeds the actual cash value at the time of “loss”.

#### 8. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

- A. **SECTION III – PHYSICAL DAMAGE COVERAGE**, paragraph B. **Exclusions**, subparagraphs 5.a. and 5.b. are deleted and replaced with the following:

Exclusions 4.c and 4.d do not apply to electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment is permanently installed in the covered “auto” at the time of the “loss” and such equipment is designed to be solely operated by the use of power from the “auto’s” electrical system, in or upon the covered “auto” and physical damage coverages are provided for the covered “auto”; or

- B. For the purposes of this Audio, Visual and Data Electronic Equipment Coverage provision, **SECTION III – PHYSICAL DAMAGE COVERAGE**, paragraph B. **Exclusions**, Paragraph 5 is amended by adding the following:

If the “loss” occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a \$100 deductible.

All other terms and conditions of the Policy remain unchanged.

Policy #5087-1331-00  
Effective Dates: 3/1/2024-3/1/2025

COMMERCIAL AUTO  
CA 04 44 10 13

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<b>Named Insured:</b> SNG Pavement Marking, Inc. <b>Endorsement Effective Date:</b> 3/1/2024
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**SCHEDULE**

<b>Name(s) Of Person(s) Or Organization(s):</b>  Any person or organization whom you have agreed to include as an additional insured under a fully executed written contract or written agreement, provided that such was executed prior to an "accident", occurrence, loss, injury or damage.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.



# CERTIFICATE OF LIABILITY INSURANCE

Section 7, Item b.

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

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

<b>PRODUCER</b> King Insurance Partners, LLC 643 SW 4th Ave Suite 210  Gainesville FL 32601		<b>CONTACT NAME:</b> Dave Turgeon <b>PHONE (A/C, No, Ext):</b> <b>E-MAIL ADDRESS:</b> dave.turgeon@king-insurance.com <b>FAX (A/C, No):</b>	
		<b>INSURER(S) AFFORDING COVERAGE</b>	
		<b>INSURER A:</b> Southern Owners Insurance Co	
		<b>INSURER B:</b> FFVA Mutual Insurance Co	
		<b>INSURER C:</b>	
		<b>INSURER D:</b>	
		<b>INSURER E:</b>	
		<b>INSURER F:</b>	

**COVERAGES** **CERTIFICATE NUMBER:** CL244950544 **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			5325781101	04/06/2024	04/06/2025	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
B	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	WC840-0031078-2023A	12/22/2023	12/22/2024	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1000000 E.L. DISEASE - EA EMPLOYEE \$ 1000000 E.L. DISEASE - POLICY LIMIT \$ 1000000
A	Inland Marine			78199346	01/22/2024	01/22/2025	Equipment Limit \$390,282

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

**CERTIFICATE HOLDER****CANCELLATION**

City of Flagler Beach 105 South 2nd Street  Flagler Beach FL 32136	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  Dave Turgeon

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## STAFF REPORT

### City Commission Regular Meeting

June 27, 2024

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**To:** City Commission

**From:** Dale L. Martin, City Manager

**Date:** June 27, 2024

**Item Name:** Proposed Resolution 2024-38- Grant of Easements to DC BLOX for the Purpose of Undersea Cable Landings.

**Background:** Over the course of the last year, DC BLOX, an owner operator of multi-tenant data centers throughout the southeastern United States, entered into discussions with several Flagler County governments about the construction of such a center in Palm Coast. City of Flagler Beach officials were not part of any broader conversations among other governments related to the proposed project.

The project calls for easements granted by the City to have undersea cables come ashore in Flagler Beach at two locations: N. 11<sup>th</sup> Street and Veterans Park. From those locations, additional infrastructure will be installed to connect to the proposed data center in Palm Coast. DC BLOX officials have prepared a document (attached) to provide more information about the company and the project.

Due to general unfamiliarity with a project of this type and scope, a consultant was retained to provide technical and financial review and insight to aid the City in its determination on how to proceed. The resulting document from the consultant is attached.

**Fiscal Impact:** The terms and conditions of the proposed easements and cable landings remain to be negotiated by the City.

**Staff Recommendation:** Staff recommends granting the easements associated with the two landing sites upon satisfactory negotiation of the terms and conditions of those easements.

**Attachments:** Proposed Resolution 2024-36  
Correspondence, "Flagler Beach Community Q&A" (DC BLOX)  
Correspondence, M. Tammaro to D. Martin (June 21, 2024)

RESOLUTION 2024-38

**A RESOLUTION BY THE CITY OF FLAGLER BEACH, FLORIDA, APPROVING EASEMENT AGREEMENTS BETWEEN THE CITY OF FLAGLER BEACH AND DCB ORCHID TO CONSTRUCT INFRASTRUCTURE WITHIN THE CITY OF FLAGLER BEACH AND UTILIZE THE ASSOCIATED PROPERTY FOR THE PURPOSES OF LEASING THE INFRASTRUCTURE, PROVIDING FOR CONFLICT AND EFFECTIVE DATE.**

WHEREAS, the DC Blox seeks to secure easements (see Exhibit A, Exhibit B) for the purpose of constructing landings for undersea cables; and

WHEREAS, the City retained Mr. Michael Tammaro to assist the City in a technical and financial review of the proposed cable landings (see Exhibit C);

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FLAGLER BEACH:

SECTION 1. The Flagler Beach City Commission hereby grants the desired easements with the following terms and conditions: [AS DETERMINED/NEGOTIATED BY THE CITY COMMISSION THROUGH THE CITY ATTORNEY].

SECTION 2. All resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

SECTION 3. This Resolution shall become effective immediately as provided by law.

PASSED AND ADOPTED THIS 27<sup>th</sup> DAY OF JUNE, 2024.

CITY OF FLAGLER BEACH, FLORIDA  
CITY COMMISSION

ATTEST:  
\_\_\_\_\_  
Patti King, Mayor

\_\_\_\_\_  
Penny Overstreet, City Clerk



## Law Office of Michael S. Tammaro

113 Pegasus Drive  
Jupiter FL 33477

Tel: 561-310-3648  
Email: m.tammaro@mst-law.com

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June 21, 2024

Dale Martin, City Manager  
City of Flagler Beach  
P.O. Box 70  
Flagler Beach, FL 32136

***Re: DC BLOX/request for submarine cable landing easements***

Dear Mr. Martin:

DC Blox has requested that the City of Flagler Beach convey utility easements over city owned property to permit the installation of telecommunications infrastructure and landing of up to eight submarine cable systems. You have requested advice regarding issues involved in a submarine cable landing project from the local government's perspective so that the city can make an informed decision regarding the conveyance of easements for such facilities. I have reviewed the plans provided by the requesting parties. I am pleased to offer my insight and observations regarding the requested easements. I have based my input on personal professional experience on prior projects in Florida and on sources available to me.

### **Background**

Currently, over 95% of international communication is carried by submarine fiber optic cables linking the continents. Traditionally, a cable system would be proposed and financed by large communication carriers such as AT&T or by a consortium of carriers who in turn would sell or trade capacity on such systems. In the last several years, individual corporations such as Google and Facebook have initiated construction of their own systems, avoiding the need to purchase capacity for global operations. Since the 1970's, dozens of international communications systems have been landed in Florida. Currently, several new systems are in various stages of development. The interactive website [www.submarinecablemap.com](http://www.submarinecablemap.com) provides an excellent inventory of existing and planned systems.

An initial, basic consideration for an international communications system proposing a landing in Florida is securing a landing site. This is typically accomplished by purchasing easements for the necessary landing facilities on oceanfront property at locations that provide access to the larger land-based telecommunications infrastructure ("Beach Landing"). Facilities typically located at the Beach Landing include one or more underground vaults where a subsea cable will be anchored ( the "Beach Manhole"/ "BMH" ), one or more steel conduits @ 6 inches

in diameter installed underground by horizontal directional drilling (“HDD”) extending from the BMH to a point 1500-4000 feet offshore, and an “Ocean Ground Bed”/ “OGB” comprised of anodes buried underground to provide electrical grounding for each cable system landing at the facility. Once the landing facilities are in place, the shore end of future cables are delivered by specialized cable ships, connected to a pulley mechanism installed in the seaward end of an available conduit and pulled back to the BMH.

From the BMH, buried conduits of various sizes will be installed, typically in public road rights of way, from the BMH to a cable landing station (“CLS”). These facilities and the fiber optic cables installed within are called the “fronthaul”. The CLS is a building housing communications equipment where the submarine cable is integrated into the terrestrial network. The CLS’s are typically built by the international communications system to service the system being landed and potentially other systems landed at the Beach Landing site. Increasingly, these CLS’s are being built and promoted as “Data Centers” that perform higher levels of function than the traditional CLS.

### **DCBlox Proposal**

DC Blox has proposed a Data Center to be constructed in the City of Palm Coast. It has requested that the City of Flagler Beach convey easements at two separate locations to enable construction of Beach Landing sites with a combined eight conduits, four at each location, and the supporting facilities described above. The eight conduits proposed would allow the landing of up to eight international or domestic submarine communication systems. This is consistent with historical practice in Florida, where the initial telecommunications system proposing a landing installs additional conduits beyond the conduit needed for the proposed system. The additional conduits are reserved either for the landing party’s own future use or for conveyance. These additional existing conduits have become sought after and valuable commodities. The purchase of an existing conduit by a proposed communications project eliminates the need for feasibility studies, site acquisition, land use approvals, state and federal permitting and construction of a landing facility, a time consuming, expensive and potentially risky process. The owner of such surplus conduits can also market access to an existing CLS, Data Center or Internet Access Point (“IAP”). Although difficult to assess precisely because of the multiple variables involved, based on available information regarding conveyances occurring in California and Florida, the willing buyer/seller value appears to be between \$2.5 million to \$5.5 million per installed conduit.

The eight offshore conduits are proposed to be installed by horizontal directional drilling (“HDD”). This process can be expected to take approximately thirty days to complete at each proposed site. The proposed facilities at the Beach Landing sites are typical. The fronthaul proposed by DC Blox consists of two separate routes through the City of Flagler Beach from the Beach Manholes to the proposed Data Center. The north fronthaul is @12,190’ long. It consists of four six-inch HDPE ducts to be buried in the ROW. The south fronthaul is @8,560’ long, in the same configuration. Both fronthaul routes include installation of precast concrete manholes measuring 6’H x 5’W x 7’L every 800’ along the fronthaul routes.

### **Policy Considerations**

The decision to convey easements over public property for construction and operation of international communications infrastructure is of course discretionary. Once easements are conveyed, the city's use of the property subject to the easements is limited; the city could not interfere with the uses granted by the easements. On past projects, where use of public property has been proposed, local government staff and governing commissions /councils have expressed the following concerns:

1. Encumbrance of valuable beachfront property with little perceived public benefit.
2. Inconvenience to city residents from noise and vibration during HDD operations, particularly at night.
3. Inconvenience to residents from trenching/HDD work in rights of way from fronthaul construction. Any required road or lane closures are typically a matter of particular concern,
4. Staff and elected officials being burdened fielding complaints and concerns of residents regarding construction activity, both at the Beach Landing site and along the fronthaul route.
5. The permanent nature of the conveyances, preferring limited term easements or leases.
6. Potential damage to existing utility infrastructure such as water, gas and sewer facilities.
7. Construction timing relative to turtle nesting and the busy winter residential season.
8. Adequacy of compensation, including a desire for recurring revenue in lieu of or in addition to a single payment.

While the concerns expressed above can usually be adequately addressed by an entity requesting to purchase temporary construction and permanent utility easements, some local governments are simply declining to convey easements because of these concerns. Recent examples include the Town of Palm Beach declining to consider an AT&T request for landing a new system at an existing landing site, citing inconvenience to residents from fronthaul work and Lee County declining the request of a proposed international system to purchase easements to install two conduits, citing the "inherent value of the subject park/beach property." Additionally, while negotiations have not terminated, the City of Naples has not yet agreed to convey easements requested by the CSN-1 international communications system, notwithstanding a generous offer of compensation, discussed further in the next section.

### Compensation

Early telecommunication systems were able to negotiate landing easements in Florida with little or no monetary compensation, reflecting the view that telecommunications infrastructure was a public utility similar to telephone service. However, beginning in 1998 or so, local governments in Florida began seeking monetary and other compensation. The State of Florida also began seeking “fair compensation” for the easements required over sovereign lands. In recent times, the cell tower experience has colored the view of many local governments, which now increasingly view the matter as a purely business proposition.

The following examples of paid or proposed compensation are provided. Unless noted, all examples are a matter of public record.

1. **City of Hollywood. 1998.** Compensation paid by AT&T to the City of Hollywood was provided in the form of public improvements, including building several miles of sidewalks and providing the city with its own dedicated terrestrial conduit @ ten miles in length. Estimated dollar value in 1998 was \$400,000 to \$600,000. This information is based on personal knowledge, as I represented AT&T.
2. **City of Boca Raton. 2000.** Compensation paid by Tyco Electronics Submarine Systems included an initial payment of \$500,000 and annual payment of \$185,000 , CPI adjusted. The easement agreement reflecting this compensation is attached.
3. **City of Sunny Isles. 2007.** Compensation paid to a private party of \$950,000 by developers of the ARCOS telecommunications system for temporary construction and permanent easements for three conduits. This information is based on personal knowledge, as I represented the developers. The compensation is not public record. However, the amount can be calculated from the documentary stamp fee required for recording the easement.
4. **City of Naples. 2023.** As noted above, the City of Naples is considering a request by the developers of the CSN-1 cable system. Initially, \$500,000 was offered as compensation for two conduits and associated landing facilities. In response to staff requesting recurring revenue, the proposal was revised to add two more conduits, with compensation of \$500,000 for the initial installation of the CSN-1 cable and \$500,000 for each additional cable landed at the facility. The City Council considered the request at a public meeting, agreeing to consider the request, but raised all the concerns noted above. The City Council further indicated that the asements would be limited to twenty-five years, with renewal options, and advised that increased compensation would need to be offered.
5. **City of Boca Raton. 2024.** Telxius, a developer of international subsea systems and data centers, is currently negotiating with the City of Boca Raton for easements in Spanish River Park to allow the installation of three conduits and the landing of the AMX-2 communications system. I am attempting to determine the amount of compensation being offered, and will update this report when available. The matter has not been heard yet by the City Commission.

6. **Bonita Springs. 2024.** The developer of the CSN-1 system is negotiating the purchase of temporary construction and permanent utility easements from private parties to permit the landing of that system. Two conduits are proposed. I am not at liberty at this time to publicly disclose the compensation being discussed.
7. **State easement fees.** States issuing easements or leases allowing use of state lands assess fees for issued easements or leases. The State of Florida requires a one-time payment for easements of twenty-five years duration. At current rates, each conduit and associated cable would be assessed @ \$150,000. The State of California State Lands Commission assesses lease fees of @ \$120,000 per year, per conduit/cable.

I offer these examples as information only and not as suggested compensation. Compensation in any instance is a market-driven matter, reflecting what a willing buyer and seller agree upon.

I hope the insights offered are helpful as negotiations with the requesting parties progress. I am available to discuss any questions with individual commissioners if desired.

Should you need anything further, please let me know.

Sincerely,



---

Michael S. Tammaro

**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Jo O. Thacker, Esq.  
Nelson Mullins Riley & Scarborough LLP  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801

**EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF FLAGLER BEACH, FLORIDA, a municipal corporation of the State of Florida (the “**Grantor**”), and DCB Orchid, LLC, a Delaware limited liability company (the “**Grantee**”) (Grantor and Grantee are sometimes together referred to herein as the “**parties**”, and separately as the “**party**”).

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner of that certain real property located in Flagler County, Florida, Parcel ID #01-12-31-1100-00150-0060, as more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (“Grantor Property”); and

**WHEREAS**, Grantee is the developer of that certain project to be a multi-tenant and multi-cable subsea cable landing station (“CLS”) located within the City of Palm Coast and intends to construct a subsea cable landing infrastructure (“Outfall”), consisting of ocean ground beds, bored underground conduits and infrastructure within the City of Flagler Beach (the “Project”), utilizing the Property for the purposes of leasing its conduits and associated infrastructure, either by a Commercial Lease or Indefeasible Right of Use (“IRU”), as Grantee in its sole judgment, may deem necessary or appropriate for the provision of services; and

**WHEREAS**, Grantor desires to grant Grantee, and Grantee desires to obtain from Grantor, certain temporary and exclusive permanent easements on and over the Property, subject to the terms and conditions of this Agreement, for purposes of surveying, developing, constructing, installing, placing, reconstructing, replacing, altering, monitoring, maintaining, repairing, and operating a subsea cable landing site required for the Project.

**NOW, THEREFORE**, for and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid by the parties, the mutual covenants, promises, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Recitals.** The above recitals are true and correct, form a material part of this Agreement and are incorporated herein by reference.

2. **Grant of Easements.** Subject to the terms, conditions, and limitations set forth herein, the Grantor hereby grants and conveys to Grantee, its successors and assigns, the following easements:

a. **Permanent Easement.** An exclusive, perpetual, transferable and assignable easement (the “Easement”) upon, over, under, within, through and across, and right to use, those certain portions of Grantor’s Property being more particularly shown in Exhibit “B” (the “Easement Area”), for the purposes of (i) providing pipes, lines, systems, facilities and related equipment, and upgrades for the delivery of the fiber optic infrastructure and service to Grantee’s CLS to be a landing station for optical communication cables as part of the Project and (ii) providing power to the cables to regenerate the optical signal including without limitation: the right of Grantee, its successors, assigns, contractors, subcontractors, agents and permittees to lay, construct, locate, install, use, operate, maintain, inspect, repair, tie into, connect to, relocate and replace such fiber optic service cables, lines, systems, metering and regulating stations and facilities with necessary valves, meters, fittings, service lines, controls, devices, equipment and other usual appurtenances and improvements (collectively, “Improvements”) upon, over, under, within, through and across the Easement Area as are customary and reasonably necessary for the purpose of delivering such Improvements to Grantee’s CLS which might now or hereafter be installed within the Easement Area by Grantee, those using the Easement Area or any other Persons. Nothing herein shall be construed to limit Grantor or the public’s use of the surface area of the Property. The Parties acknowledge and agree that, as of the Effective Date, the surface area of the Property is currently used for public parking. The Easement and use thereof shall not impede or impair the public’s use or Grantor’s normal use of the Property. Grantee shall have the on-going right to construct Improvements which may impact Grantor’s temporary use of the Property. The Easement shall remain in full force and effect until six (6) months after the Project ceases operations by written notice from Grantee to Grantor.

3. **Payment for Easement.** As compensation for the Easements and interests granted in this Agreement, Grantee shall pay Grantor, within ninety (90) days after a customer receives an FCC landing license for a cable terminating in the Easement, \$100,000 per cable (the “Cable Payment”) that is permitted to run through the Improvements located on the Property and to be installed during the term of the Agreement.

4. **Construction Easement Specific Terms and Conditions.**

a. **Permits.** Before commencing any construction or installation, Grantee shall obtain all required permits for the construction, installation, use, and operation of the Improvements. Grantee shall furnish detailed plans of the work and other information required by Grantor, and shall pay all required fees prior to issuance of said permits in accordance with the rates in effect at the time of the payment. Grantee shall comply with all terms and conditions of said permits. Nothing herein shall be construed as a waiver or agreement to alter Grantor’s municipal approval processes undertaken in Grantor’s capacity as a municipality.



b. Requirements. No construction or installation of the Improvements may commence until all required bonds, letters of credit, certificates of insurance, and other instruments required by this Agreement have been filed with, accepted, and approved by Grantor, which acceptance and approval shall not be unreasonably delayed, conditioned, or withheld.

c. Barricades and Signs. During the course of construction on the Property, Grantee shall cause suitable barricades, warning signs, signals, and other measures to be erected, placed, and used to safeguard members of the general public, to adequately give notice, protection and warning of the existence of the actual conditions present so as to prevent injury or damage to any Person, vehicle, or property by reason of the construction work being conducted on the Property, and shall comply with all federal, state, and local laws and regulations.

d. Restoration.

i. Grantee shall not open, disturb, or obstruct any more of the Property than is reasonably necessary and shall not allow any portion of the Property so disturbed or obstructed by it to remain open, disturbed, or obstructed for a longer period of time than shall be reasonably necessary. After the construction and installation of any portion the Improvements is completed, Grantee shall, at its cost, repair and return the Property to a condition to a minimum of the same or similar condition existing before the start of the construction and installation. Grantee shall be responsible for any damage to street pavements, existing utilities, curbs, gutters, sand dunes, vegetation, landscaping, grounds, walkways, sidewalks and any other structures or improvements on the Property due to Grantee's construction and installation of the Improvements (the "Damaged Property"), and shall repair, replace, and restore in-kind, the said Damaged Property at its sole expense within thirty (30) days after the construction and installation is completed, subject to extension as provided in the Agreement . If Grantee fails to repair, replace, and restore said Damaged Property to the reasonable satisfaction of Grantor, after thirty (30) days' written notice given by Grantor to Grantee, Grantor may cause such necessary repairs to be made. All out-of-pocket costs incurred by Grantor, as well as reasonable, direct charges for Grantor's employee labor and use of Grantor's equipment, shall be charged against Grantee and payable within ten (10) business days or may be collected by exercising the right to draw on letters of credit. Grantor may collect such costs, and any expenses and reasonable attorney fees incurred in collecting such costs, as debts owed to Grantor, by bringing action in any court of competent jurisdiction or in any manner allowed by law.

ii. If weather or other conditions do not permit the complete restoration required by this Agreement, Grantee shall temporarily restore the Damaged Property to the reasonable satisfaction of Grantor. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

## 5. Easement Locations.

a. As-Built Plans. Grantee shall maintain and regularly update an accurate map of Grantee's Improvements. Within one-hundred eighty (180) days after completion of the construction and installation of the Improvements, Grantee shall provide Grantor with "as-built" drawings and an accurate map or maps showing the location of the Improvements, and any other facilities requested by Grantor to be included on the maps. Such as-built drawings and maps shall be drawn to scale, and shall include a digitized map(s) in both printed and electronic form readable by the current version of Auto CAD. Grantee shall supply and specify the location of all of its underground facilities by depth, line, grade and proximity to other facilities. Grantee shall, upon request, provide updated maps annually, or when any change in the location of any of the Improvements has occurred. If no changes have occurred since the last update provided by Grantee, an update shall not be required.

### b. Repair, Maintenance and Additional Installations.

i. Grantee shall construct, install, and maintain the Improvements in a good and safe manner, and in a manner that complies with all applicable federal, state, and local requirements, laws, ordinances, and regulations. Grantee shall at all times employ a standard of care consistent with good commercial practices and shall use industry standard methods and devices for preventing failure or accidents which are likely to cause damages, injuries, or nuisances to the public. Grantee acknowledges and agrees it is responsible for the work of all its subcontractors or others performing work on Grantee's behalf.

ii. In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided Grantee shall notify Grantor before commencing such repair or emergency work. Grantee shall perform the unexpected or emergency repair in the manner that causes the least interference with the use of the surface of the Property by Grantor or the public. Such unexpected or emergency repairs shall be completed and the site returned to its former condition in accordance with the Agreement, in a commercially reasonable manner.

iii. Grantee shall have the right to post signs at the Property to safeguard members of the general public, and prevent injury or damage to any Person, vehicle or other property by reason of the presence of the Improvements under the surface of the Property, including, but not limited to, signs specifying a maximum capacity or weight. Such signage must comply with the requirements of the City of Flagler Beach Code, including the requirements for approval of the same.

iv. If Subsea cables are not installed in some of the conduits during the term of the Construction Easement, Grantee may install Subsea cables in the empty conduits during the term of this Agreement.

1. Grantee shall provide Grantor with a schedule of its proposed installation activities before commencing any such activities.

2. Grantee shall communicate with Grantor to coordinate such installation, repair, or maintenance.

3. All installation, maintenance, and repair locations, activities, and schedules shall be coordinated with Grantor's designee to minimize public inconvenience, disruption, or damages. Grantee shall submit a written installation, repair, or maintenance schedule at least thirty (30) working days before commencing any such activities. Said schedule shall identify the portions of the surface of the Property that will be disturbed or that will need to be used in connection with the installation. Grantee shall further notify Grantor not less than five (5) working days in advance of such installation, maintenance, or repair. Grantee shall comply with all applicable provisions set forth in in the Agreement regarding barricades and signage, regarding repair and restoration of the Property after construction, installation, maintenance, or repair work.

v. Grantor and its agents, assigns, and successors agree that the Grantee shall not be liable for any maintenance work whatsoever to the surface of the Easement Areas except for any manhole covers installed, any damage or changes to the surface caused by the existence of Grantee's Improvements, or if the Grantee performs excavation within the Easement Areas in order to effectuate maintenance or repair of the Improvements or in order to install additional Subsea cables within the Conduits. All other maintenance of the surface of the Easement Areas shall be done by the Grantor or its designee, and the Grantee shall have no duty or liability to perform any routine maintenance work to the surface of the Easement Areas other than that work which arises out of maintaining, repairing, or installing the Improvements.

c. Improvements Before and After Termination.

i. Any and all Improvements installed on the Property by Grantee at any time during the term of any of the Easements granted in this Agreement shall, until the termination or expiration of the Easement, , be and remain the property solely of Grantee or its successors or assigns. Grantor may not, and may not permit any other Person to, access, and use or damage any of the Improvements or Easement. Notwithstanding the foregoing, it shall be the responsibility of Grantee to ensure any manhole covers are securely locked at all times.

ii. Upon the termination or expiration of the Easement, at the option of Grantor, Grantee shall remove the Improvements as directed by Grantor. Any Improvements left in place shall become the property of Grantor. If Grantor directs Grantee to remove all or part of the Improvements and Grantee fails to do so within one hundred eighty (180) days after the date of written notice by Grantor, then Grantor may cause such Improvements to be removed, without further notice.

6. **Maintenance and Repair of Easement Areas.** Grantee agrees, at Grantee's sole cost and expense, to utilize and control the Easement Area and all improvements constructed or installed by or on behalf of Grantee and located on or in the Easement Area for the purposes set forth herein during the construction period. Grantor shall bear the cost of any maintenance or repair that is necessitated by the acts or omissions of Grantor and its respective partners, members, officers, managers, directors, agents, or employees during the construction period. Grantee shall return Grantor Property to a similar state as the Grantor Property was in prior to the construction. Grantor agrees to maintain Grantor's property thereafter in such a manner as to not disturb or interfere with Grantee's easement rights and Grantor shall be responsible for the repairs and maintenance of any structures or improvements within the Easement area. This shall include not placing permanent structures within the Easement area or planting trees/shrubs with extensive root systems.

7. **Insurance.** Grantee shall procure and at all times maintain comprehensive public liability and property damage insurance, with companies authorized to do business in the State of Florida, against claims for personal injury, death, or property damage occurring upon the Grantor Property, including the Easement Areas, arising directly or indirectly out of the use by Grantee of the Grantor Property, and/or the exercise by Grantee, of any rights under this Agreement, with minimum coverage of \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence and worker's compensation insurance as required by applicable law (and employer's liability insurance). All such insurance policies shall (i) name the Grantor (or the then owner of all or a portion of the Grantor Property) as an additional insured, (ii) provide that it cannot be cancelled without at least thirty (30) days prior written notice being given to the Grantor, and (iii) be primary, and not contributory, as to any insurance coverage maintained by the Grantor. Grantee shall upon request provide evidence of such insurance to the Grantor.

8. **Indemnification.** Grantee agrees to indemnify, defend, and hold the Grantor and its respective partners, members, officers, managers, directors, agents, and employees (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, causes of action, suits, proceeding, claims, demands, damages, surcharges, liabilities, fines, penalties, judgments, costs, and expenses whatsoever (including, without limitation, reasonable paralegal and attorneys' fees at trial and appellate levels) to the extent arising directly or indirectly out of the use by Grantee of the Grantor Property, and/or the exercise by Grantee of any rights under this Agreement; provided, however, no such indemnification of the Indemnified Parties shall be given to the extent the foregoing arises from or is attributable to the sole negligence or willful misconduct of any of the Indemnified Parties and no such indemnification shall include indemnification of indirect, special, consequential, or punitive damages.

9. **Reservation of Rights.** Grantor reserves for itself and its successors, assigns, employees, agent, contractors, tenants, invitees, and licensees, the non-exclusive right to use, pass and repass over and upon the Conduit Easement Area. Grantor and its respective successors and assigns, further reserves the right to grant other non-exclusive easements with respect to all or a portion of the Grantor Property, which are not in conflict with the rights granted hereunder. The

Grantee shall exercise its rights under this Agreement with due regard to the rights reserved by the Grantor.

10. **Enforcement.** In the event Grantor fails to maintain and repair the Easement Areas after thirty (30) days prior notice from the Grantee, then the Grantee shall have the right, but not the obligation, to maintain and repair the Easement Areas. If the Grantee takes such action, then the Grantee shall be entitled to reimbursement from the Grantor for the maintenance and repair costs incurred by the Grantee.

11. **Further Assurances.** The parties hereto shall execute and deliver, or cause to be executed and delivered, such additional or further agreements, or other instruments, as may be required to evidence the agreement of the parties herein contained and the transactions contemplated hereunder.

12. **Covenants Running with the Land.** This Agreement shall be binding upon and inure to the benefit of each party and each party's respective successors and assigns. This Agreement and the easements, rights, benefits, and obligations of the parties under this Agreement shall run with, benefit and bind, as applicable, the titles to the Grantor Property.

13. **No Third Party Beneficiaries.** Except as otherwise expressly stated herein, this Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status unless otherwise expressly stated in this Agreement.

14. **No Public Dedication.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any reason whatsoever.

15. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the parties, shall be deemed to alter or affect the terms and conditions set forth herein.

16. **Amendments.** This Agreement may be amended or modified only by a writing signed by all the parties hereto or their express assigns, which must be duly recorded in the Public Records of Flagler.

17. **Singular and Plural Usages.** Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

18. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

19. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereto, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. **Execution in Counterparts.** This Agreement may be executed by the parties in multiple counterparts, which when taken together shall have the full force and effect of a fully executed agreement between the parties.

21. **Attorneys' Fees.** In the event that a party finds it necessary to commence an action against another party to enforce any provision of this Agreement or because of a breach by another party of any terms hereof, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees, paralegal fees and costs incurred in connection therewith, at both administrative, trial and appellate levels, including bankruptcy and collection proceedings, without regard to whether any legal proceedings are prosecuted to judgment.

22. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given: (i) three (3) days after depositing with the United States Postal Service, postage prepaid, registered or certified mail; (ii) one day after depositing with a nationally recognized overnight courier service; or (iii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, E.S.T. or E.D.T., as applicable), to the address listed below or to such other address as a party may from time to time designate by written notice in accordance with this paragraph.

To Grantor	To Grantee
City Manager City of Flagler Beach 105 S 2nd Street P.O. Box 70 Flagler Beach, FL 32136	DCB Orchid, LLC 1040 Crown Pointe Parkway, Suite 560 Atlanta, GA 30338 Attention: Chief Financial Officer Email: <a href="mailto:kevin.odonnell@dcblox.com">kevin.odonnell@dcblox.com</a>
With a copy to:	With a copy to:
City Attorney City of Flagler Beach 105 S 2nd Street P.O. Box 70 Flagler Beach, FL 32136	Nelson Mullins Riley & Scarborough LLP 390 N. Orange Avenue, Suite 1400 Orlando, FL 32801 Attention: Jo O. Thacker Email: <a href="mailto:jo.thacker@nelsonmullins.com">jo.thacker@nelsonmullins.com</a>

23. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any litigation or administrative proceeding shall be exclusively in Flagler County, Florida.

24. **Conflicts of Law.** If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting Agreement provision will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.

25. **Waiver of Jury Trial.** EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE BETWEEN THE PARTIES ARISING FROM THIS AGREEMENT, FROM ANY CLAIM ARISING HEREUNDER, OR IN ANY COURSE OF CONDUCT RELATED HERETO.

26. **Recording.** This Agreement shall be recorded in the official records of Flagler County, Florida.

*[Signatures are on the following pages]*



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

Signed, sealed and delivered  
in the presence of:

**GRANTOR:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, He [ ] is personally known to me, or [ ] has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

Notary Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

Signed, sealed and delivered  
in the presence of:

**GRANTEE:**

\_\_\_\_\_

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

\_\_\_\_\_  
Manager

Print Name: \_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of DCB Orchid, LLC, a Delaware limited liability company, on behalf of the company. He [ ] is personally known to me, or [ ] has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

Notary Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

EXHIBIT "A"  
LEGAL DESCRIPTION

COCHRAN PLACE SUB EAST OF A1A OPP 11TH ST N BLK 3 W OF MHW LINE

# EXHIBIT B EASEMENT AREA



**THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:**

Jo O. Thacker, Esq.  
Nelson Mullins Riley & Scarborough LLP  
390 North Orange Avenue, Suite 1400  
Orlando, FL 32801

**EASEMENT AGREEMENT**

**THIS EASEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF FLAGLER BEACH, FLORIDA, a municipal corporation of the State of Florida (the “**Grantor**”), and DCB Orchid, LLC, a Delaware limited liability company (the “**Grantee**”) (Grantor and Grantee are sometimes together referred to herein as the “**parties**”, and separately as the “**party**”).

**WITNESSETH:**

**WHEREAS**, the Grantor is the owner of that certain real property located in Flagler County, Florida, Parcel ID #s 12-12-31-4500-00080-0000 and 12-12-31-4500-00680-0200, as more particularly described in **Exhibit “A”** attached hereto and incorporated herein by this reference (“Grantor Property”); and

**WHEREAS**, Grantee is the developer of that certain project to be a multi-tenant and multi-cable subsea cable landing station (“CLS”) located within the City of Palm Coast and intends to construct a subsea cable landing infrastructure (“Outfall”), consisting of ocean ground beds, bored underground conduits and infrastructure within the City of Flagler Beach (the “Project”), utilizing the Property for the purposes of leasing its conduits and associated infrastructure, either by a Commercial Lease or Indefeasible Right of Use (“IRU”), as Grantee in its sole judgment, may deem necessary or appropriate for the provision of services; and

**WHEREAS**, Grantor desires to grant Grantee, and Grantee desires to obtain from Grantor, certain temporary and exclusive permanent easements on and over the Property, subject to the terms and conditions of this Agreement, for purposes of surveying, developing, constructing, installing, placing, reconstructing, replacing, altering, monitoring, maintaining, repairing, and operating a subsea cable landing site required for the Project.

**NOW, THEREFORE**, for and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid by the parties, the mutual covenants, promises, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

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3. **Payment for Easement.** As compensation for the Easements and interests granted in this Agreement, Grantee shall pay Grantor, within ninety (90) days after a customer receives an FCC landing license for a cable terminating in the Easement, \$100,000 per cable (the “Cable Payment”) that is permitted to run through the Improvements located on the Property and to be installed during the term of the Agreement.

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b. **Requirements.** No construction or installation of the Improvements may commence until all required bonds, letters of credit, certificates of insurance, and other instruments required by this Agreement have been filed with, accepted, and approved by Grantor, which acceptance and approval shall not be unreasonably delayed, conditioned, or withheld.

c. **Barricades and Signs.** During the course of construction on the Property, Grantee shall cause suitable barricades, warning signs, signals, and other measures to be erected, placed, and used to safeguard members of the general public, to adequately give notice, protection and warning of the existence of the actual conditions present so as to prevent injury or damage to any Person, vehicle, or property by reason of the construction work being conducted on the Property, and shall comply with all federal, state, and local laws and regulations.

d. **Restoration.**

i. Grantee shall not open, disturb, or obstruct any more of the Property than is reasonably necessary and shall not allow any portion of the Property so disturbed or obstructed by it to remain open, disturbed, or obstructed for a longer period of time than shall be reasonably necessary. After the construction and installation of any portion the Improvements is completed, Grantee shall, at its cost, repair and return the Property to a condition to a minimum of the same or similar condition existing before the start of the construction and installation. Grantee shall be responsible for any damage to street pavements, existing utilities, curbs, gutters, sand dunes, vegetation, landscaping, grounds, walkways, sidewalks and any other structures or improvements on the Property due to Grantee's construction and installation of the Improvements (the "Damaged Property"), and shall repair, replace, and restore in-kind, the said Damaged Property at its sole expense within thirty (30) days after the construction and installation is completed, subject to extension as provided in the Agreement . If Grantee fails to repair, replace, and restore said Damaged Property to the reasonable satisfaction of Grantor, after thirty (30) days' written notice given by Grantor to Grantee, Grantor may cause such necessary repairs to be made. All out-of-pocket costs incurred by Grantor, as well as reasonable, direct charges for Grantor's employee labor and use of Grantor's equipment, shall be charged against Grantee and payable within ten (10) business days or may be collected by exercising the right to draw on letters of credit. Grantor may collect such costs, and any expenses and reasonable attorney fees incurred



in collecting such costs, as debts owed to Grantor, by bringing action in any court of competent jurisdiction or in any manner allowed by law.

ii. If weather or other conditions do not permit the complete restoration required by this Agreement, Grantee shall temporarily restore the Damaged Property to the reasonable satisfaction of Grantor. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

## 5. **Easement Locations.**

a. **As-Built Plans.** Grantee shall maintain and regularly update an accurate map of Grantee's Improvements. Within one-hundred eighty (180) days after completion of the construction and installation of the Improvements, Grantee shall provide Grantor with "as-built" drawings and an accurate map or maps showing the location of the Improvements, and any other facilities requested by Grantor to be included on the maps. Such as-built drawings and maps shall be drawn to scale, and shall include a digitized map(s) in both printed and electronic form readable by the current version of Auto CAD. Grantee shall supply and specify the location of all of its underground facilities by depth, line, grade and proximity to other facilities. Grantee shall, upon request, provide updated maps annually, or when any change in the location of any of the Improvements has occurred. If no changes have occurred since the last update provided by Grantee, an update shall not be required.

### b. **Repair, Maintenance and Additional Installations.**

i. Grantee shall construct, install, and maintain the Improvements in a good and safe manner, and in a manner that complies with all applicable federal, state, and local requirements, laws, ordinances, and regulations. Grantee shall at all times employ a standard of care consistent with good commercial practices and shall use industry standard methods and devices for preventing failure or accidents which are likely to cause damages, injuries, or nuisances to the public. Grantee acknowledges and agrees it is responsible for the work of all its subcontractors or others performing work on Grantee's behalf.

ii. In the event of an unexpected repair or emergency, Grantee may commence such repair and emergency response work as required under the circumstances, provided Grantee shall notify Grantor before commencing such repair or emergency work. Grantee shall perform the unexpected or emergency repair in the manner that causes the least interference with the use of the surface of the Property by Grantor or the public. Such unexpected or emergency repairs shall be completed and the site returned to its former condition in accordance with the Agreement, in a commercially reasonable manner.

iii. Grantee shall have the right to post signs at the Property to safeguard members of the general public, and prevent injury or damage to any Person, vehicle or other property by reason of the presence of the Improvements under the surface of the Property,

including, but not limited to, signs specifying a maximum capacity or weight. Such signage must comply with the requirements of the City of Flagler Beach Code, including the requirements for approval of the same.

iv. If Subsea cables are not installed in some of the conduits during the term of the Construction Easement, Grantee may install Subsea cables in the empty conduits during the term of this Agreement.

1. Grantee shall provide Grantor with a schedule of its proposed installation activities before commencing any such activities.

2. Grantee shall communicate with Grantor to coordinate such installation, repair, or maintenance.

v. All installation, maintenance, and repair locations, activities, and schedules shall be coordinated with Grantor's designee to minimize public inconvenience, disruption, or damages. Grantee shall submit a written installation, repair, or maintenance schedule at least thirty (30) working days before commencing any such activities. Said schedule shall identify the portions of the surface of the Property that will be disturbed or that will need to be used in connection with the installation. Grantee shall further notify Grantor not less than five (5) working days in advance of such installation, maintenance, or repair. Grantee shall comply with all applicable provisions set forth in in the Agreement regarding barricades and signage, regarding repair and restoration of the Property after construction, installation, maintenance, or repair work.

vi. Grantor and its agents, assigns, and successors agree that the Grantee shall not be liable for any maintenance work whatsoever to the surface of the Easement Areas except for any manhole covers installed, any damage or changes to the surface caused by the existence of Grantee's Improvements, or if the Grantee performs excavation within the Easement Areas in order to effectuate maintenance or repair of the Improvements or in order to install additional Subsea cables within the Conduits. All other maintenance of the surface of the Easement Areas shall be done by the Grantor or its designee, and the Grantee shall have no duty or liability to perform any routine maintenance work to the surface of the Easement Areas other than that work which arises out of maintaining, repairing, or installing the Improvements.

c. Improvements Before and After Termination.

i. Any and all Improvements installed on the Property by Grantee at any time during the term of any of the Easements granted in this Agreement shall, until the termination or expiration of the Easement, , be and remain the property solely of Grantee or its successors or assigns. Grantor may not, and may not permit any other Person to, access, and use or damage any of the Improvements or Easement. Notwithstanding the foregoing, it shall be the responsibility of Grantee to ensure any manhole covers are securely locked at all times.

ii. Upon the termination or expiration of the Easement, at the option of Grantor, Grantee shall remove the Improvements as directed by Grantor. Any Improvements left in place shall become the property of Grantor. If Grantor directs Grantee to remove all or part of the Improvements and Grantee fails to do so within one hundred eighty (180) days after the date of written notice by Grantor, then Grantor may cause such Improvements to be removed, without further notice.

6. **Maintenance and Repair of Easement Areas.** Grantee agrees, at Grantee's sole cost and expense, to utilize and control the Easement Area and all improvements constructed or installed by or on behalf of Grantee and located on or in the Easement Area for the purposes set forth herein during the construction period. Grantor shall bear the cost of any maintenance or repair that is necessitated by the acts or omissions of Grantor and its respective partners, members, officers, managers, directors, agents, or employees during the construction period. Grantee shall return Grantor Property to a similar state as the Grantor Property was in prior to the construction. Grantor agrees to maintain Grantor's property thereafter in such a manner as to not disturb or interfere with Grantee's easement rights and Grantor shall be responsible for the repairs and maintenance of any structures or improvements within the Easement area. This shall include not placing permanent structures within the Easement area or planting trees/shrubs with extensive root systems.

7. **Insurance.** Grantee shall procure and at all times maintain comprehensive public liability and property damage insurance, with companies authorized to do business in the State of Florida, against claims for personal injury, death, or property damage occurring upon the Grantor Property, including the Easement Areas, arising directly or indirectly out of the use by Grantee of the Grantor Property, and/or the exercise by Grantee, of any rights under this Agreement, with minimum coverage of \$2,000,000.00 in the aggregate and \$1,000,000.00 per occurrence and worker's compensation insurance as required by applicable law (and employer's liability insurance). All such insurance policies shall (i) name the Grantor (or the then owner of all or a portion of the Grantor Property) as an additional insured, (ii) provide that it cannot be cancelled without at least thirty (30) days prior written notice being given to the Grantor, and (iii) be primary, and not contributory, as to any insurance coverage maintained by the Grantor. Grantee shall upon request provide evidence of such insurance to the Grantor.

8. **Indemnification.** Grantee agrees to indemnify, defend, and hold the Grantor and its respective partners, members, officers, managers, directors, agents, and employees (collectively, the "**Indemnified Parties**") harmless from and against any and all actions, causes of action, suits, proceeding, claims, demands, damages, surcharges, liabilities, fines, penalties, judgments, costs, and expenses whatsoever (including, without limitation, reasonable paralegal and attorneys' fees at trial and appellate levels) to the extent arising directly or indirectly out of the use by Grantee of the Grantor Property, and/or the exercise by Grantee of any rights under this Agreement; provided, however, no such indemnification of the Indemnified Parties shall be given to the extent the foregoing arises from or is attributable to the sole negligence or willful misconduct of any of the Indemnified Parties and no such indemnification shall include indemnification of indirect, special, consequential, or punitive damages.

9. **Reservation of Rights.** Grantor reserves for itself and its successors, assigns, employees, agent, contractors, tenants, invitees, and licensees, the non-exclusive right to use, pass and repass over and upon the Conduit Easement Area. Grantor and its respective successors and assigns, further reserves the right to grant other non-exclusive easements with respect to all or a portion of the Grantor Property, which are not in conflict with the rights granted hereunder. The Grantee shall exercise its rights under this Agreement with due regard to the rights reserved by the Grantor.

10. **Enforcement.** In the event Grantor fails to maintain and repair the Easement Areas after thirty (30) days prior notice from the Grantee, then the Grantee shall have the right, but not the obligation, to maintain and repair the Easement Areas. If the Grantee takes such action, then the Grantee shall be entitled to reimbursement from the Grantor for the maintenance and repair costs incurred by the Grantee.

11. **Further Assurances.** The parties hereto shall execute and deliver, or cause to be executed and delivered, such additional or further agreements, or other instruments, as may be required to evidence the agreement of the parties herein contained and the transactions contemplated hereunder.

12. **Covenants Running with the Land.** This Agreement shall be binding upon and inure to the benefit of each party and each party's respective successors and assigns. This Agreement and the easements, rights, benefits, and obligations of the parties under this Agreement shall run with, benefit and bind, as applicable, the titles to the Grantor Property.

13. **No Third Party Beneficiaries.** Except as otherwise expressly stated herein, this Agreement shall not be deemed to confer in favor of any third parties any rights whatsoever as third-party beneficiaries, the parties hereto intending by the provisions hereof to confer no such benefits or status unless otherwise expressly stated in this Agreement.

14. **No Public Dedication.** Nothing contained in this Agreement shall create or shall be deemed to create any easements or use rights in the general public or constitute a public dedication for any reason whatsoever.

15. **Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the parties, shall be deemed to alter or affect the terms and conditions set forth herein.

16. **Amendments.** This Agreement may be amended or modified only by a writing signed by all the parties hereto or their express assigns, which must be duly recorded in the Public Records of Flagler.

17. **Singular and Plural Usages.** Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

18. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

19. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereto, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

20. **Execution in Counterparts.** This Agreement may be executed by the parties in multiple counterparts, which when taken together shall have the full force and effect of a fully executed agreement between the parties.

21. **Attorneys’ Fees.** In the event that a party finds it necessary to commence an action against another party to enforce any provision of this Agreement or because of a breach by another party of any terms hereof, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees, paralegal fees and costs incurred in connection therewith, at both administrative, trial and appellate levels, including bankruptcy and collection proceedings, without regard to whether any legal proceedings are prosecuted to judgment.

22. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given: (i) three (3) days after depositing with the United States Postal Service, postage prepaid, registered or certified mail; (ii) one day after depositing with a nationally recognized overnight courier service; or (iii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, E.S.T. or E.D.T., as applicable), to the address listed below or to such other address as a party may from time to time designate by written notice in accordance with this paragraph.

<p>To Grantor</p> <p>City Manager City of Flagler Beach 105 S 2nd Street P.O. Box 70 Flagler Beach, FL 32136</p> <p>With a copy to:</p> <p>City Attorney City of Flagler Beach 105 S 2nd Street P.O. Box 70 Flagler Beach, FL 32136</p>	<p>To Grantee</p> <p>DCB Orchid, LLC 1040 Crown Pointe Parkway, Suite 560 Atlanta, GA 30338 Attention: Chief Financial Officer Email: <a href="mailto:kevin.odonnell@dcblox.com">kevin.odonnell@dcblox.com</a></p> <p>With a copy to:</p> <p>Nelson Mullins Riley &amp; Scarborough LLP 390 N. Orange Avenue, Suite 1400 Orlando, FL 32801 Attention: Jo O. Thacker Email: <a href="mailto:jo.thacker@nelsonmullins.com">jo.thacker@nelsonmullins.com</a></p>
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23. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue of any litigation or administrative proceeding shall be exclusively in Flagler County, Florida.

24. **Conflicts of Law.** If there is a conflict between the provisions of this Agreement and any law, whether federal, state, or City, including all future laws and ordinances, the law and conflicting Agreement provision will, to the extent reasonably possible, be construed so as to be consistent with each other and if such construction is not reasonably possible, the conflicting provision of this Agreement shall be deemed superseded by such law and have no effect, notwithstanding the contract clause of the United States Constitution.

25. **Waiver of Jury Trial.** **EACH PARTY HEREBY WAIVES ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE BETWEEN THE PARTIES ARISING FROM THIS AGREEMENT, FROM ANY CLAIM ARISING HEREUNDER, OR IN ANY COURSE OF CONDUCT RELATED HERETO.**

26. **Recording.** This Agreement shall be recorded in the official records of Flagler County, Florida.

*[Signatures are on the following pages]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

Signed, sealed and delivered  
in the presence of:

**GRANTOR:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, He [ ] is personally known to me, or [ ] has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

Notary Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

Signed, sealed and delivered  
in the presence of:

**GRANTEE:**

\_\_\_\_\_  
\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of [ ] physical presence or [ ] online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of DCB Orchid, LLC, a Delaware limited liability company, on behalf of the company. He [ ] is personally known to me, or [ ] has produced \_\_\_\_\_ (type of identification) as identification.

(NOTARY SEAL)

Notary Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_



EXHIBIT "A"  
GRANTOR PROERTY

Easement No. 1 – Veterans Park, Parcel No. 12-12-31-4500-00080-0000

Part of Parcel 12-12-31-4500-00080-0000, City of Flagler Beach, FL. (Veterans Park). Beginning at the northwest corner of said parcel N 66° 43' 52.98" E, a distance of 225.94 feet to the northeast corner of said parcel, thence S 24° 40' 11.70" E, a distance of 23.54 feet to a point, thence S 66° 35' 15.20" W, a distance of 181.96 feet, thence S 22° 50' 42.54" E, a distance of 62.84 feet, thence S 67° 53' 45.05" W, a distance of 45.85 feet, thence N 22° 06' 14.95" W, a distance of 85.92 feet to the northwest corner of said parcel also being the place of beginning. Containing 0.18 acres (8,228 square feet) more or less.

Easement No. 2 – City of Flagler Beach, Parcel No. 12-12-31-4500-00680-0200

Part of Parcel No. 12-12-31-4500-00680-0200, City of Flagler Beach, FL. Beginning at the southwest corner of said parcel N 67° 28' 21.35" E, a distance of 54.44 feet, thence N 23° 40' 53.20" W, a distance of 48.89 feet, thence S 67° 34' 24.73" W, a distance of 55.08 feet, thence S 24° 25' 38.34" E, a distance of 49.00 feet to the southwest corner of said parcel also being the place of beginning. Containing 0.06 acres (2,646 square feet) more or less.

# EXHIBIT B EASEMENT AREA









## ORDINANCE

5463

AN ORDINANCE OF THE CITY OF BOCA RATON  
AUTHORIZING A SALE OF CITY PROPERTY LOCATED  
WITHIN SPANISH RIVER PARK CONSISTING OF A  
MODIFICATION OF AN EASEMENT FOR  
TELECOMMUNICATIONS PURPOSES PREVIOUSLY  
APPROVED PURSUANT TO ORDINANCE NO. 4526;  
MODIFYING THE LOCATION OF A PORTION OF SAID  
EASEMENT; INCREASING THE SQUARE FOOTAGE OF  
SAID EASEMENT BY APPROXIMATELY 723.4 SQUARE  
FEET; ACCEPTING THE RELEASE OF A PORTION OF  
SAID EASEMENT; AUTHORIZING THE EXECUTION OF  
AN AGREEMENT FOR PURCHASE AND SALE WITH  
RESPECT TO THE MODIFIED EASEMENT AND AN  
AMENDED EASEMENT AGREEMENT WITH TYCO  
ELECTRONICS SUBSEA COMMUNICATIONS, LLC;  
PROVIDING FOR SEVERABILITY; PROVIDING FOR  
REPEALER; PROVIDING AN EFFECTIVE DATE (SC-18-  
05/18-30000004)

1 WHEREAS, on August 22, 2000, the City Council of the City of Boca Raton adopted  
2 Ordinance No. 4526, which authorized a sale of city-owned property (pursuant to the provisions  
3 of Article III, Chapter 13, City Code of Ordinances) to Tyco Submarine Systems LTD in the form  
4 of an easement for telecommunications purposes, consisting of approximately 53,338.73 square  
5 feet, located within Spanish River Park; and

6 WHEREAS, said easement (Attachment 1 of Exhibit A to Ordinance No. 4526)  
7 ("Easement") was recorded on October 17, 2000, in the official records of Palm Beach County  
8 at Official Record Book 12075, Page 1257; and

9 WHEREAS, Tyco Electronics Subsea Communications, LLC ("TE SubCom"), as  
10 successor to Tyco Submarine Systems LTD, has requested modification of a portion of the  
11 Easement to accommodate re-routing of a portion of the underground conduit and cables  
12 located in a portion of the existing Easement; and

13 WHEREAS, the modification of the Easement will require the granting of a new  
14 easement and extinguishing of a portion of the existing Easement; and

15 WHEREAS, the modification of the Easement will result in an increase of approximately  
16 723.4 square feet of easement area; and

17 WHEREAS, it is necessary to amend the Easement to accommodate the modification  
18 requested by TE SubCom as well as to update certain conditions and requirements in the  
19 Easement;

20 WHEREAS, Article III, Chapter 13, Code of Ordinances, authorizes the sale of a limited  
21 easement over City-owned property upon the adoption of an ordinance specifically authorizing  
22 the sale, upon the recommendation of the Planning and Zoning Board; and

23 WHEREAS, the Planning and Zoning Board has reviewed the proposed sale of a limited  
24 easement over the property described in this ordinance and has forwarded its recommendation  
25 to the City Council; and

1 WHEREAS, the City Manager has provided his recommendation of the request for the  
2 proposed sale of a limited grant of exclusive easement; and

3 WHEREAS, the City Council has held a public hearing on the sale of a limited easement,  
4 after due notice as required by Article III, Chapter 13, Code of Ordinances, at which parties of  
5 interest, property owners and citizens had an opportunity to be heard; now therefore

6  
7 THE CITY OF BOCA RATON HEREBY ORDAINS:  
8

9 Section 1. The sale of an easement over the property described in Exhibit "A",  
10 attached hereto, is hereby authorized:

11 Section 2. The purchase price shall not be less than the fair market value of the  
12 property according to an appraisal report made as of six months prior to the introduction of this  
13 ordinance or any more recent date. TE SubCom has submitted such an appraisal report by an  
14 appraiser mutually acceptable to the City Council and TE SubCom and the fair market value of  
15 the limited easement rights, as of May 19, 2018, has been established at \$22.26 per square foot  
16 of easement area which equates to \$16,102.88 (723.4 square foot difference X \$22.26 per  
17 square foot).

18 Section 3. The sale of the easement shall be subject to the terms and provisions of  
19 this ordinance and of Article III, Chapter 13, Code of Ordinances of the City of Boca Raton.  
20 Regardless of the method of sale, TE SubCom shall execute an agreement for purchase and  
21 sale of the easement, the form of which shall be as set forth in Exhibit "B" to this ordinance, prior  
22 to closing.  
23  
24  
25  
26

Section 4. The agreement for purchase and sale of the easement and the first amendment to the easement agreement, which are attached hereto as Exhibits "B" and "C", respectively, shall be executed on behalf of the City by the Mayor. This ordinance shall be deemed sufficient authority for the Mayor to execute such documents, and for the Mayor to execute such other documents as are necessary to close the sale.

Section 5. The proceeds from the sale of the easement shall be deposited and credited to the capital improvement fund of the City.

Section 6. If any section, subsection, clause or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

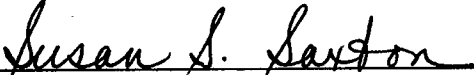
Section 7. All ordinances and resolutions or parts of ordinances and resolutions and all sections and parts of sections in conflict herewith shall be and hereby are repealed.


Section 8. This ordinance shall take effect immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Boca Raton this 21<sup>st</sup> day of August, 2018.

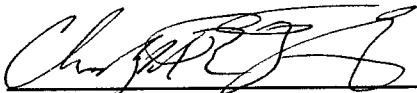
CITY OF BOCA RATON, FLORIDA

ATTEST:

  
Susan S. Saxton, City Clerk

  
Scott Singer, Mayor

Approved as to form:

  
for Diana Grub Frieser  
City Attorney

COUNCIL VOTE			
	YES	NO	ABSTAINED
MAYOR SCOTT SINGER	✓		
DEPUTY MAYOR JEREMY RODGERS	✓		
COUNCIL MEMBER MONICA MAYOTTE	✓		
COUNCIL MEMBER ANDREA LEVINE O'ROURKE	✓		

1  
2



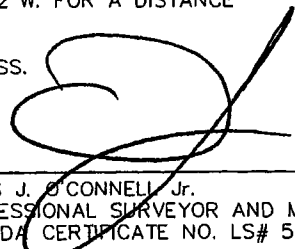
# LEGAL DESCRIPTION OF A PARCEL LYING IN SECTIONS 9 & 16, TOWNSHIP 47 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA

## AMENDED 2' FIBER OPTIC CABLE SYSTEM CONDUIT EASEMENT

AN AMENDED 2' FIBER OPTIC CABLE SYSTEM CONDUIT EASEMENT, LYING IN THE STATE OF FLORIDA, COUNTY OF PALM BEACH, IN SECTIONS 9 & 16, TOWNSHIP 47 SOUTH, RANGE 43 EAST, BEING PART OF BOCA RATONES LAGOON, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA. WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 9; THENCE N.89°03'05"E., ALONG THE SOUTH LINE OF SAID SECTION 9, FOR A DISTANCE OF 197.26; THENCE N.00°52'03"W. LEAVING SAID SOUTH LINE FOR A DISTANCE OF 6.03 FEET TO A POINT ON THE WEST RIGHT OF WAY OF A 300' INTRACOASTAL WATERWAY AS RECORDED IN PLAT BOOK 17, PAGE 21 OF THE PUBLIC RECORDS OF PALM BEACH COUNTY; THENCE N.87°51'46"E. CROSSING SAID 300' INTRACOASTAL WATERWAY FOR A DISTANCE OF 328.87 FEET; THENCE N.09°05'33"E. FOR A DISTANCE OF 6.63 FEET TO THE POINT OF BEGINNING HAVING A NORTHING OF 744873.05 AND AN EASTING OF 960550.35; THENCE CONTINUE N.09°05'33"E. FOR A DISTANCE OF 2.03 FEET; THENCE N.89°58'02"E. FOR A DISTANCE OF 148.82 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 22.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°04'38", A CHORD BEARING OF S.45°29'39"E., A CHORD LENGTH OF 30.86 FEET AND AN ARC LENGTH OF 34.20 FEET; THENCE N.89°02'40"E. FOR A DISTANCE OF 6.50 FEET; THENCE S.00°57'20"E. FOR A DISTANCE OF 15.00 FEET; THENCE S.89°02'40"W. FOR A DISTANCE OF 6.50 FEET; THENCE S.00°57'20"E. FOR A DISTANCE OF 121.66 FEET; THENCE S.10°51'03"E. FOR A DISTANCE OF 471.87 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 227.31 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 72°56'56", A CHORD BEARING OF S.65°23'36"E., A CHORD LENGTH OF 270.25 FEET AND AN ARC LENGTH OF 289.41 FEET; THENCE S.10°36'26"E. FOR A DISTANCE OF 2.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 229.31 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 73°01'03", A CHORD BEARING OF N.65°20'53"W., A CHORD LENGTH OF 272.85 FEET AND AN ARC LENGTH OF 292.23 FEET; THENCE N.10°51'03"W. FOR A DISTANCE OF 472.36 FEET; THENCE N.00°57'20"W. FOR A DISTANCE OF 121.83 FEET; THENCE S.89°02'40"W. FOR A DISTANCE OF 6.50 FEET; THENCE N.00°57'20"W. FOR A DISTANCE OF 15.00 FEET; THENCE N.89°02'40"E. FOR A DISTANCE OF 6.50 FEET TO THE BEGINNING OF A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°04'38", A CHORD BEARING OF N.45°29'39"W., A CHORD LENGTH OF 28.06 FEET AND AN ARC LENGTH OF 31.09 FEET; THENCE S.89°58'02"W. FOR A DISTANCE OF 149.15 FEET TO THE POINT OF BEGINNING.

AMENDED EASEMENT CONTAINS 2,358 SQUARE FEET, 0.054 ACRES, MORE OR LESS.

BY:   
DENIS J. O'CONNELL, Jr.  
PROFESSIONAL SURVEYOR AND MAPPER  
FLORIDA CERTIFICATE NO. LS# 5430


DATE SIGNED: 4/17/18

NOT VALID WITHOUT THE SIGNATURE  
AND THE ORIGINAL RAISED SEAL OF A  
FLORIDA LICENSED SURVEYOR AND  
MAPPER.

### NOTES:

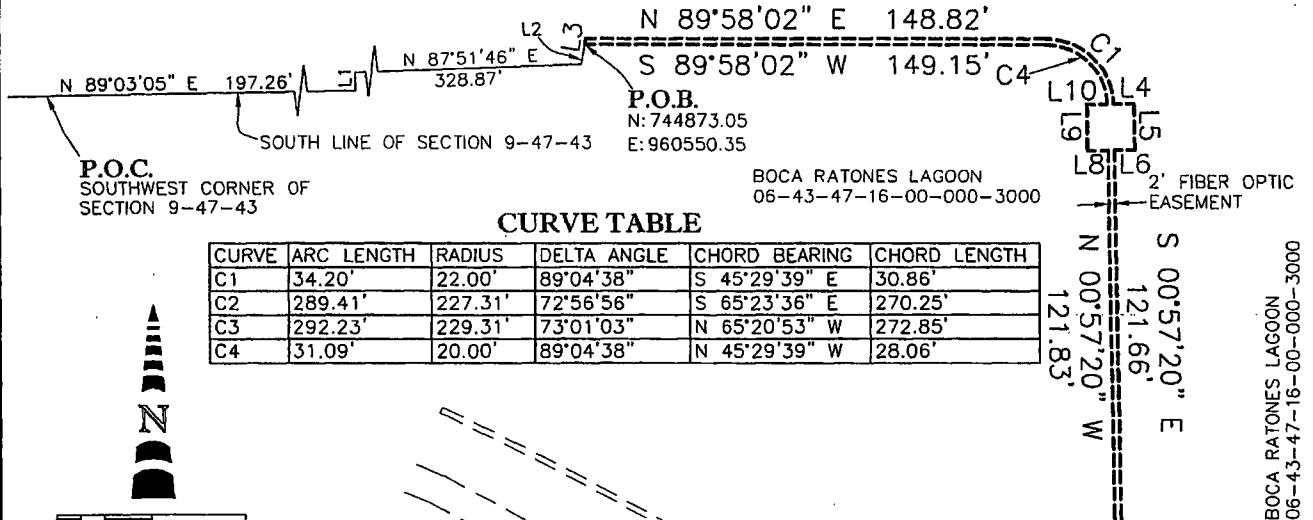
1. BEARINGS ARE BASED ON THE SOUTH LINE OF SECTION 9, TOWNSHIP 47 SOUTH, RANGE 43 EAST AS BEING N.89°03'05"E.
2. DISTANCES ARE IN FEET AND DECIMALS THEREOF.
3. PARCEL IS SUBJECT TO EASEMENTS, RESERVATIONS OR RESTRICTIONS AND RIGHT-OF-WAYS (RECORDED AND UNRECORDED, WRITTEN AND UNWRITTEN).
4. COORDINATES SHOWN ARE IN FEET, FLORIDA EAST ZONE, NORTH AMERICAN DATUM 1983 (90 ADJUSTMENT)

## AMENDED 2' FIBER OPTIC CABLE SYSTEM CONDUIT EASEMENT

<b>TITLE:</b> <h3 style="margin: 0;">LEGAL DESCRIPTION</h3>			
 <h2 style="margin: 0;">METRON</h2> <h3 style="margin: 0;">SURVEYING &amp; MAPPING, LLC</h3> <p style="margin: 0;">LAND SURVEYORS • PLANNERS</p> <p style="margin: 0;">LB# 7071</p>		<p style="margin: 0;">10970 S. CLEVELAND AVE. SUITE #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457</p> <p style="margin: 0;">www.metronfl.com</p>	
FILE NAME: 14253SR.DWG	FIELD BOOK/PAGE: SEE FILE	PROJECT NO.: 14253	SHEET: 1 OF 3
EXHIBIT DATE: 03-30-2018	DRAWN BY: JDF	SCALE: 1" = 60'	CHECKED BY: DJO
		FILE NO. (S-T-R) 9/16-47-43	

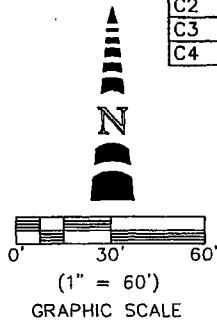
# SKETCH OF DESCRIPTION OF A PARCEL LYING IN SECTIONS 9 & 16, TOWNSHIP 47 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA

BOCA RATON LAGOON  
06-43-47-09-00-004-0030



CURVE TABLE

CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	34.20'	22.00'	89°04'38"	S 45°29'39" E	30.86'
C2	289.41'	227.31'	72°56'56"	S 65°23'36" E	270.25'
C3	292.23'	229.31'	73°01'03"	N 65°20'53" W	272.85'
C4	31.09'	20.00'	89°04'38"	N 45°29'39" W	28.06'



## LEGEND:

E.O.P. = EDGE OF PAVEMENT  
P.O.C. = POINT OF COMMENCEMENT  
P.O.B. = POINT OF BEGINNING  
INST = INSTRUMENT  
N: = NORTHING  
E: = EASTING  
L.C.U. = LEE COUNTY UTILITY  
A.E. = ACCESS EASEMENT  
U.E. = UTILITY EASEMENT  
O.R. = OFFICIAL RECORDS BOOK  
P.B. = PLAT BOOK  
⊕ = FIBER OPTIC MANHOLE

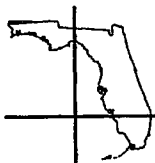
LINE TABLE

LINE	BEARING	DISTANCE
L1	N 00°52'03" W	6.03'
L2	N 09°05'33" E	6.63'
L3	N 09°05'33" E	2.03'
L4	N 89°02'40" E	6.50'
L5	S 00°57'20" E	15.00'
L6	S 89°02'40" W	6.50'
L7	S 10°36'26" E	2.00'
L8	S 89°02'40" W	6.50'
L9	N 00°57'20" W	15.00'
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## AMENDED 2' FIBER OPTIC CABLE SYSTEM CONDUIT EASEMENT

TITLE:

LEGAL DESCRIPTION



**METRON**  
SURVEYING & MAPPING, LLC

LAND SURVEYORS-PLANNERS

LB# 7071

10970 S. CLEVELAND AVE.  
SUITE #605  
FORT MYERS, FLORIDA 33907  
PHONE: (239) 275-8575  
FAX: (239) 275-8457

www.metronfl.com

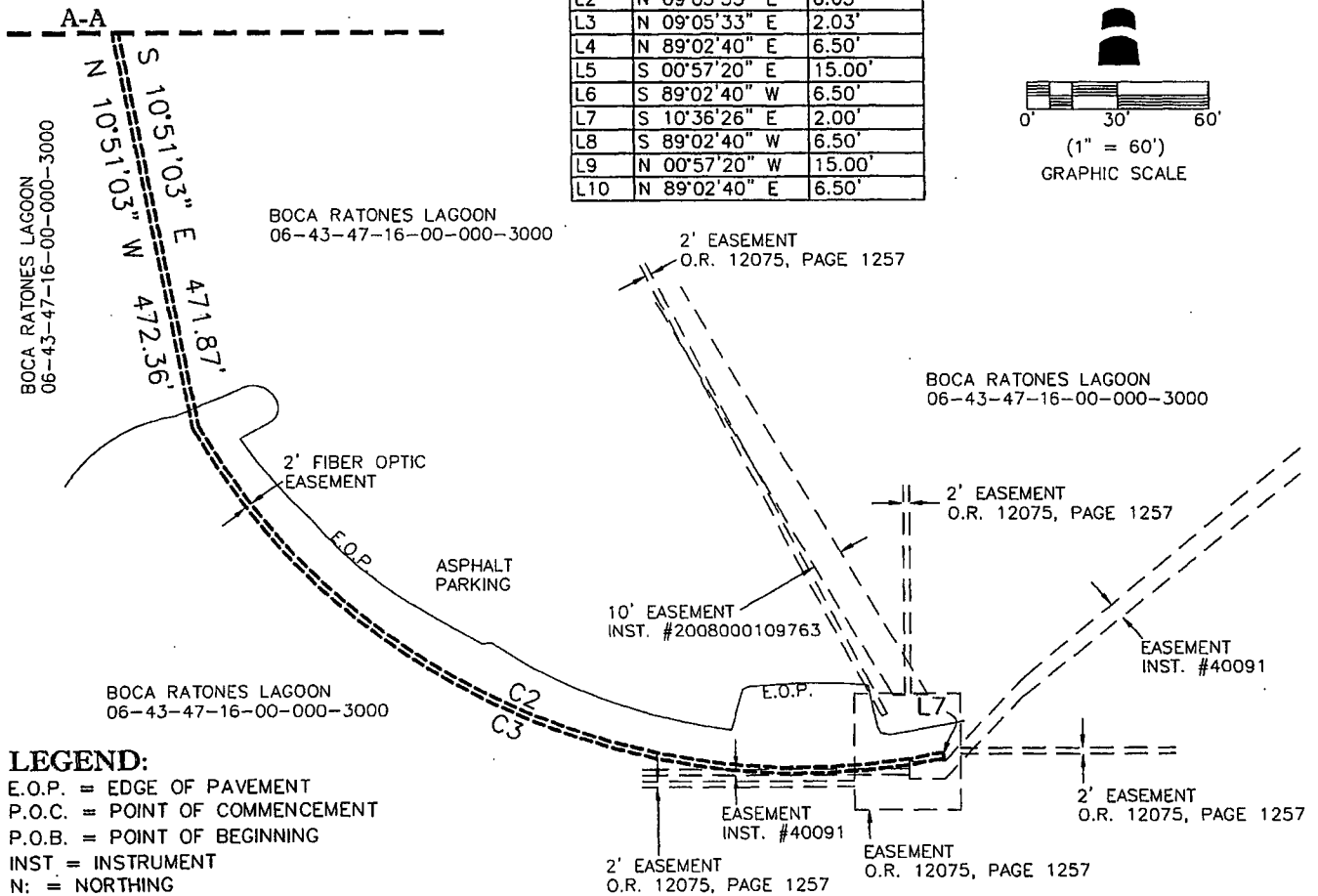
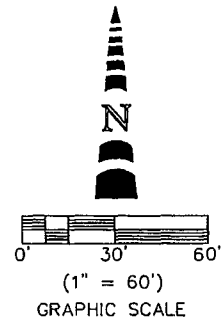
FILE NAME: 14253SR.DWG	FIELD BOOK/PAGE: SEE FILE	PROJECT NO.: 14253	SHEET: 2 OF 3
EXHIBIT DATE: 04-05-2018	DRAWN BY: JDF	SCALE: 1" = 60'	CHECKED BY: DJO
		FILE NO. (S-T-R) 9/16-47-43	

A-A

# SKETCH OF DESCRIPTION OF A PARCEL LYING IN SECTIONS 9 & 16, TOWNSHIP 47 SOUTH, RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA

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**AMENDED 2' FIBER OPTIC CABLE SYSTEM CONDUIT EASEMENT**

TITLE: <b>LEGAL DESCRIPTION</b>				
		<b>METRON</b> SURVEYING & MAPPING, LLC LAND SURVEYORS · PLANNERS LB# 7071		
10970 S. CLEVELAND AVE. SUITE #605 FORT MYERS, FLORIDA 33907 PHONE: (239) 275-8575 FAX: (239) 275-8457 www.metronfl.com				
FILE NAME: 14253SR.DWG	FIELD BOOK/PAGE: SEE FILE	PROJECT NO.: 14253	SHEET: 3 OF 3	
EXHIBIT DATE: 04-05-2018	DRAWN BY: JDF	SCALE: 1" = 60'	CHECKED BY: DJO	FILE NO. (S-T-R) 9/16-47-43

# EXHIBIT B

## AGREEMENT FOR SALE AND PURCHASE

This Agreement ("Contract" or "Agreement"), made this 6<sup>th</sup> day of September, 2018, by and between the CITY OF BOCA RATON, a Florida municipal corporation located at 201 West Palmetto Park Road, Boca Raton, Palm Beach County, Florida 33432 ("SELLER"), and TYCO ELECTRONICS SUBSEA COMMUNICATIONS, LLC, a Delaware limited liability company, with an address of 250 Industrial Way West, Eatontown, New Jersey 07724 ("BUYER"), the parties hereby agree that, pursuant to the First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement, the Seller shall sell and Buyer shall buy the following property upon the following terms and conditions:

### 1. DESCRIPTION:

#### (a) Legal Description:

See Exhibit "A", attached (the "Real Property")

#### (b) Personal property Included, if any: NONE

### 2. PURCHASE PRICE:

(a) The purchase price for the Real Property and all appurtenances is: \$16,102.88

Deposit: \$ 1,610.00

Balance to close, (U.S. cash, certified, wire or cashier's check) subject to adjustments and prorations: \$14,492.88

(b) In addition to the one-time payment in the amount of \$16,102.88, there shall be an annual payment due and payable to the Seller pursuant to a Telecommunications Rights-of-Way Use Agreement previously executed by Seller and by Buyer's predecessor in title, approved by City Council June 27, 2000 via Resolution No. 147-2000, and as renewed by City Council, May 12, 2015 via Resolution No. 55-2015.

### 3. CONDITIONS:

(a) This Contract is executed by SELLER subject to final acceptance by the City Council of the CITY OF BOCA RATON at an open meeting held in accordance with applicable Florida Statutes.

(b) BUYER hereby affirms that the BUYER has not been convicted of a public entity crime, as defined in Section 287.133, Fla. Stat. In the event the BUYER has been convicted of a public entity crime, as defined in Section 287.133, Fla. Stat., the SELLER may terminate this Agreement for cause by giving written notice to BUYER.

4. CLOSING DATE: This transaction shall be closed and instrument of conveyance delivered within thirty (30) days of the date of the adoption of Ordinance No. 5463

5. RESTRICTIONS, LIMITATIONS, EASEMENTS: BUYER shall take title subject to zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; and public utility and roadway easements of record.

6. BUYER OBLIGATIONS: It is mutually agreed that the BUYER shall execute and deliver to the SELLER the following documents prior to closing:

- (a) BUYER shall execute a First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement, in a form acceptable to BUYER and the City Attorney, and shall present same to SELLER for recording in the Public Records of Palm Beach County.

7. PLACE OF CLOSING: Closing shall be held at the office of the City Attorney, City Hall, 201 West Palmetto Park Road, Boca Raton, Florida 33432 or any other location to which the parties agree.

8. TIME: Time is of the essence of this Contract. Any reference herein to time periods of less than 6 days shall in the computation thereof exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday, or legal holiday shall extend to 5:00 p.m. of the next full business day.

9. DEED. Conveyance of title to the Real Property shall be by a First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement in substantially the form attached hereto as Exhibit "A". SELLER represents and warrants that it has all right and authority to convey the interest described herein.

10. DOCUMENTS FOR CLOSING. The SELLER shall prepare the First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement and the SELLER'S affidavits and the closing statement.

11. EXPENSES. BUYER shall pay the following:

- (a) Title binder and title insurance policy, if desired by BUYER.
- (b) Environmental Audit, if desired by BUYER.
- (c) Recording of the First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement in the public records in and for Palm Beach County.
- (d) All other costs for obtaining the First Amendment to Spanish River Park Limited Grant of Exclusive Easement Agreement including, but not limited to, costs of survey, abstracting, and documentary stamps.

(e) The cost of publication of any notices or ordinances required in connection with this sale.

SELLER shall pay the following:

(a) N/A.

12. ASSIGNABILITY. BUYER may not assign this Agreement.

13. ORDINANCES APPLICABLE. This sale is subject to the terms and provisions of Article III of Chapter 13, Code of Ordinances of the City of Boca Raton, as adopted and in effect as of the date of this Agreement, which is incorporated herein by reference as if set forth in full. In addition, this sale is subject to the terms and provisions of that certain ordinance of the City of Boca Raton authorizing this sale, namely Ordinance No. 5463 adopted by the City Council of Boca Raton on the 21<sup>st</sup> day of August, 2018, which is incorporated herein as if set forth in full.

14. DEFAULT. If SELLER has not defaulted and BUYER fails to perform this Agreement within the time specified, SELLER may proceed at law or in equity to enforce his legal rights under this Agreement including the right to specific performance.

15. CONTRACT NOT RECORDABLE, PERSONS BOUND AND NOTICE: Neither this Contract nor any notice thereof shall be recorded in any public records. This Contract shall bind and inure to the benefit of the parties hereto and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include all. Notice given by or to the attorney for either party shall be as effective as if given by or to said party. The parties however, acknowledge that the Non-Exclusive Easement shall be recorded in the public records.

16. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties. No representations, warranties or promises pertaining to this Agreement have been made by or shall be binding on any of the parties except as expressly stated in this Agreement. This Agreement may not be altered orally, but only by an amendment, in writing, signed by both parties. Except for the insertion of dates and ordinances numbers in the blank spaces provided for such information, no typewritten, handwritten or other provisions inserted herein or attached hereto as addenda shall be deemed to modify this Agreement unless and until such provisions have been approved and confirmed by the City Council of the City of Boca Raton.

17. LEGAL COUNSEL: The BUYER acknowledges that the BUYER: (1) was advised to seek the advice of an attorney; (2) had the opportunity to seek such advice; and (3) either obtained such advice or voluntarily elected not to seek such advice.

18. ATTORNEY'S FEES AND COSTS. In connection with any litigation, including appellate proceedings, arising out of this Agreement, each party shall bear its own reasonable attorney's fees and costs.

19. VENUE: APPLICABLE LAW. Venue in any actions arising out of the Agreement shall be in Palm Beach County. This Agreement shall be governed by, and construed under, the laws of the State of Florida and the Code of the City of Boca Raton.

IN WITNESS WHEREOF, the parties have executed this Agreement.

Witnesses:

sign

print

sign

print

STATE OF NEW JERSEY )  
COUNTY OF UNION )

BUYER:

Tyco Electronics Subsea Communications, LLC

sign

print

Its:

**Christopher Carobene**  
**Vice President**

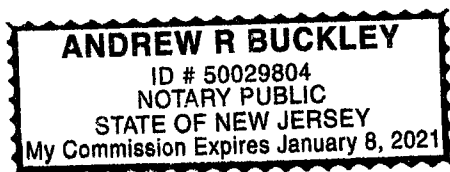
The foregoing instrument was acknowledged before me this 22 day of August, 2018, by Chris Carobene, as Vice President of Tyco Electronics Subsea Communications, LLC, a Delaware limited liability company, on behalf of the company. Chris Carobene is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

Sign

Print:

State of New Jersey at Large (Seal)  
My Commission Expires:





**SELLER:**

Witnesses:

City of Boca Raton, Florida  
a Florida municipal corporation

sign Diane M. King  
print Diane M. King

By: Scott Singer  
Scott Singer, Mayor

sign Mary Siddons  
print Mary Siddons

Attest: Susan S. Saxton  
Susan Saxton, City Clerk

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of September, 2018, by, Scott Singer, Mayor, and Susan Saxton, City Clerk, who are personally known to me.

NOTARY PUBLIC:

Sign Kathleen Maxwell  
Print: KATHLEEN MAXWELL

State of Florida at Large (Seal)  
My Commission Expires:



Approved as to Legal Form:

[Signature]  
FOR Diana Grub Frieser  
City Attorney

# EXHIBIT C

**FIRST AMENDMENT TO  
SPANISH RIVER PARK EASEMENT AGREEMENT**

THIS FIRST AMENDMENT TO SPANISH RIVER PARK EASEMENT AGREEMENT is made and entered into this 22<sup>nd</sup> day of August, 2018, by and between THE CITY OF BOCA RATON, a Florida municipal corporation (the "City"), hereinafter Grantor, and Tyco Electronics Subsea Communications LLC ("TE SubCom"), hereinafter Grantee.

WITNESSETH:

WHEREAS, on August 22, 2000, The City Council of the City of Boca Raton adopted Ordinance No. 4526, which authorized a sale of city-owned property (pursuant to the provisions of Chapter 13, Article III, City Code of Ordinances) to Tyco Submarine Systems LTD in the form of a grant of limited exclusive easement, consisting of approximately 53,338.73 square feet, located within Spanish River Park; and

WHEREAS, a "Spanish River Park Limited Grant of Exclusive Easement Agreement" (Attachment 1 of Exhibit A to Ordinance No. 4526) ("Easement") was recorded on October 17, 2000, in the official records of Palm Beach County at Official Record Book 12075, Pages 1257 - 1270; and

WHEREAS, TE SubCom (formerly Tyco Telecommunications (US), Inc., formerly TyCom (US), Inc., formerly Tyco Submarine Systems LTD) has requested modification of a portion of the Easement to accommodate re-routing of a portion of the underground conduit and cables located in the existing Easement; and

WHEREAS, with the modification of the Easement, a portion of the existing Easement will be terminated and replaced with a new Easement area; and

WHEREAS, the City and TE SubCom have agreed that the conduits located in the existing Easement to be terminated may be left in place, in whole or in part, provided they are stabilized and rendered inoperable in a manner reasonably acceptable to the City; and

WHEREAS, it is necessary to amend the Easement to accommodate the modification requested by TE SubCom and to update certain conditions and requirements in the Easement; and

WHEREAS, it is necessary to clarify that the Easement, while limited to telecommunications purposes, is not exclusive in that the City may, in the future, desire to install facilities over, under, or through the surface or sub-surface of the Easement area while not interfering with Grantee's use of the Easement for its telecommunications purposes;

NOW, THEREFORE, the Easement is hereby amended as follows:

1. Exhibit A of the Easement is amended by deleting the property described in the Legal Description "Proposed 2 Foot Utility Easement" as recorded in the official records of Palm Beach County at Official Record Book 12075, Page 1270 (which described an easement containing 1634.6 square feet, more or less). This deleted property constitutes the Terminated Easement Area. Grantee shall execute and deliver to the City an Easement Termination Agreement in the form attached hereto as Exhibit 1 in accordance with the provisions of Paragraph 17.

2. Exhibit A of the Easement is amended by adding the property described in the Legal Description "Amended 2' Fiber Optic Cable System Conduit Easement" dated April 17, 2018, prepared by Denis J. O'Connell, Jr. on behalf of Metron Survey & Mapping LLC (File Name 14253SR.DWG) to the grant of Easement, attached hereto as Exhibit 2. This additional property constitutes the Modified Easement Area.

3. Paragraph 1 is modified to read as follows:

1 KNOW ALL MEN BY THESE PRESENTS, that, THE CITY OF BOCA RATON, a municipal corporation organized and existing under the laws of the State of Florida, whose mailing address is 201 West Palmetto Park Road, Boca Raton, Florida 33432, hereinafter called "Grantor," for an in consideration of good and valuable consideration as delineated herein and the receipt of which is hereby acknowledged, does grant unto TYCO ELECTRONICS SUBSEA COMMUNICATIONS LLC ("TE SubCom," formerly Tyco Telecommunications (US), Inc, formerly TyCom (US), Inc., formerly Tyco Submarine Systems Ltd.), a Delaware corporation, its successors, assigns, lessees and agents, having an address at 250 Industrial Way West, Eatontown, New Jersey 07725, hereinafter called "Grantee," an easement to construct, operate, maintain, inspect, alter, replace and remove such underground communications system ("System") as the Grantee may, from time to time, require, consisting of seven (7) manhole facilities in the Spanish River Park Easement Area and underground cables, wires, conduits, and other facilities and equipment to serve the System under and beneath a parcel of land ("Easement") as described in Exhibit A attached hereto and made a part hereof ("Property"), together with:

4. Paragraph 1(B) is modified to read as follows:

1(B) The right to clear obstructions from the sub-surface of the Easement, and during construction or maintenance periods, to use additional areas adjacent to the Easement as reasonably required for ingress and egress to access the areas under and beneath the Easement. In any and all events, upon completion of any construction and/or repair and maintenance activities undertaken by or at the direction of the Grantee, including, but not limited to, the removal and/or clearing of obstructions from the sub-surface of the Easement, pursuant hereto, the Grantee shall be obligated to and shall cause the surface conditions to be fully restored, including, but not limited to, for purposes of walking and driving thereon, in substantially the same condition as existed immediately prior to the commencement of any such construction or maintenance activities in all areas of the Easement except where trees or vegetation other than grass are located thereon.

5. A new Paragraph 1(C) is added to read as follows:

1(C) Any right granted herein to the Grantee to access the Easement for construction, maintenance, or repairs shall be limited to the real property 10 linear feet on either side of the surface of the Easement and such access shall be limited to the specific time periods authorized, together with any vehicular access necessary to access the Easement for such construction, maintenance or repairs.

6. Paragraph 3 is modified to read as follows:

3. Grantee shall have the right to use and enjoy the surface of the Easement except when such use interferes with Grantor's use of the surface of the Easement. Grantor may, in the future, require use of the surface or subsurface of the Easement for public purposes as long as any proposed use does not conflict, prevent or otherwise impede Grantee's access and use of the Easement. Grantor will coordinate with Grantee regarding any use above, below, or through the surface or subsurface of the Easement. Grantee specifically acknowledges that the Easement is non-exclusive with regard to Grantor. Grantee must, where reasonably practicable, use subsurface, trenchless technology for cable installation and the Grantee must obtain the necessary City permits. Detailed plans and specifications for construction must be submitted to, and approved by, the City's

Civil Engineer prior to any work being conducted. The Grantee must also obtain the appropriate permits from the Department of Environmental Protection of the State of Florida, if required, before commencing work and must evidence same to Grantor prior to issuance of any permits by the City.

7. Paragraph 5 is modified to read as follows:

5. Grantee agrees to fully compensate Grantor for any damage or injury done to improvements, structures, parking areas, landscaping and other appurtenances and/or other improvements in the course of Grantee's construction and maintenance associated with the aforesaid System except if caused by the gross negligence or willful act or omissions of Grantor, its heirs, assigns, agents, employees or contractor. Grantee agrees that the Easement area and any areas outside the Easement that are altered or damaged as a result of construction or maintenance by Grantee, shall be restored to their prior condition when said construction or maintenance is completed.

8. Paragraph 7 is modified to read as follows:

7. The Grantee will tender to the Grantor a Letter of Credit underwritten by an institution or entity reasonably acceptable to the City Manager and the City Attorney (hereinafter referred to as the "SURETY"), in the total amount of the greater of One hundred thousand dollars (\$100,000.00) or one hundred ten (110%) percent of the certified estimate submitted by the Grantee's engineer and approved by the Grantor as the cost to insure the site is restored to a condition acceptable to the Grantor and that "as-built" drawings documenting the construction within the Modified Easement Area are delivered to the City, as required in Paragraph 16 below. Grantor shall have the right to draw upon such Surety after notice to Grantee of failure to complete construction pursuant to any permits issued by Grantor for improvements, and/or Grantee's failure to complete such construction and to provide "as-built" drawings of such construction within 90 days of receipt of such notice. In the event that the Grantee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, inability to procure materials, failure of power, moratoriums, riots, insurrection, war or other reason of a like nature not the fault of the Grantee, then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for the period of such delay. Notwithstanding anything contained herein to the contrary, performance shall not be extended for a period that exceeds one year. It shall be a condition precedent to the reliance on this provision that the Grantee shall have issued written notice to the Grantor within Five (5) working days after the event causing the delay, identifying the circumstance causing such delay and the period of the delay resulting from such cause, and if such notice is not timely given, then no extension shall be permitted hereunder. The Letter of Credit shall contain reference to this agreement by resolution number and/or other appropriate identification. No permit shall be issued unless and until the Letter of Credit is in the possession of the Grantor and has been approved by the Grantor's attorney. The Letter of Credit shall be returned to the Grantee upon proper completion of Grantee's improvements in the Easement and Grantee's delivery of "as-built" drawings; provided however, prior to the return of the Letter of Credit, the Grantee shall provide to the Grantor a bond or other security approved by the City Manager and the City Attorney ("Security") in an amount equal to the Letter of Credit in a form approved by the City Manager and the City Attorney, which Security shall provide and may be utilized by the Grantor in order to remove all improvements placed in the Easement or at any other location within Spanish River Park (including, but not limited to, conduits or other improvements that were installed by Grantee pursuant to a prior grant of easement [regardless of whether said easement is in effect or has been abandoned], but that are no longer utilized by Grantee) by or at the direction of the Grantee and restore all areas affected by such removal activities to the condition existing prior to installation of such improvements in the event the Grantee does not remove all such improvements and restore all areas affected by such removal activities to the condition existing prior to the installation of all such improvements within one (1) year subsequent to the termination of the Easement.

9. Paragraph 12 is modified to read as follows:

12. In the event that at any time subsequent to the expiration and/or termination of the TELECOMMUNICATIONS SYSTEMS RIGHTS-OF-WAY AGREEMENT (including any renewals thereof) by and between the City and Grantee effective May 22, 2015, pursuant to City of Boca Raton Resolution No. 55-2015 (a renewal of the predecessor agreement between the City and Tyco Submarine Systems Ltd., as then grantee, originally effective on July 14, 2000, pursuant to City of Boca Raton Resolution No. 147-2000), the technology regularly in use by Grantee ("Current Technology") does not require the use and occupation of the entire area constituting the Property, as reasonably determined taking into consideration further anticipated technological advancements which may require the use of additional areas, then, in that event, the legal description of the Property shall be restricted and amended to that portion of the real property constituting the Property as set forth on Exhibit "A" as is reasonably required to permit the Grantee to continue to reasonably provide telecommunications services in the manner that the Grantee is then operating, employing such Current Technology. By way of example, in the event the use of fiber optic cable is supplanted by a wireless system that only requires the area in which the manhole facility is located to provide the subject telecommunication services, then, the legal description of the Property would be reduced and amended to the area in which the manhole facility is then located. In such event, Grantor may request, and Grantee shall execute and deliver an appropriate instrument evidencing such amendment pursuant to the terms of this Paragraph 12. This instrument shall be recorded in the Public Records of Palm Beach County, Florida. Upon the written request of the Grantor, the Grantee and Grantor shall exercise good faith efforts to agree upon any amendment of the legal description of the real property constituting the Property. In the event that it is not possible for the Grantor and the Grantee to agree upon any such amendment within 180 days from the delivery of such written request to the Grantee, then, in that event, the matter shall be submitted to binding arbitration conducted in the State of Florida, in accordance with and pursuant to the rules of the American Arbitration Association or any successor body of similar function. Judgment upon the award rendered may be entered in any court having jurisdiction thereof. In the event that the American Arbitration Association or any successor body of similar function shall not then be in existence the party desiring arbitration will appoint a disinterested qualified person as arbitrator on its behalf and give notice thereof to the other party who will, within 10 days thereafter, appoint a second disinterested qualified person as arbitrator on its behalf and give written notice thereof to the first party. The arbitrators thus appointed will appoint a third disinterested person who shall serve as an arbitrator. The decision of the arbitrators will be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who has the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then, in such event, the other party (or if the two arbitrators appointed by the parties fail within 15 days after the appointment of the second arbitrator to appoint a third arbitrator, then either party) may apply to any court of competent jurisdiction to appoint such arbitrator. Venue for any such proceeding and/or arbitration shall be only in Palm Beach County, Florida. The expenses of arbitration will be shared equally by Grantor and Grantee but each party will be responsible for the fees and costs of its own attorney(s) and its own proof. Grantor and Grantee agree to sign all documents and do all other things necessary to submit any such matter to arbitration. The provisions for arbitration set forth in this Paragraph 12 shall only apply with respect to the provisions for reduction of the legal description of the real property constituting the Property as set forth in this Paragraph 12.

10. Paragraph 15 is modified to read as follows:

15. Trees and vegetation other than grass currently located in the proposed easement shall be relocated, at Grantee's expense, to another location within Spanish River Park or another City park, as specified by the City Manager of the City of Boca Raton, Florida, in the event the City's Horticulturist/Arborist determines that the relocation of any such trees or vegetation is necessary. All trees or vegetation remaining in the easement and/or relocated must be guaranteed by Grantee as both healthy and thriving, as determined by the City's Horticulturist/Arborist, for 365 consecutive days from the later of the date completion of the improvements in the Easement or the date of the relocation of any trees from the Easement pursuant hereto. In the event any such trees or vegetation

are deemed not to be both healthy and thriving, as determined by the City's Horticulturist/Arborist, Grantee shall reimburse the Grantor within thirty (30) days of receipt of a demand for payment from the City Manager of the City of Boca Raton, Florida.

11. A new Paragraph 16 is added to read as follows:

16. All construction in the Modified Easement Area shall be completed within 120 days of the issuance of all permits required by the City or any state or federal permitting entity authorizing the construction of the System within Spanish River Park and the adjacent Intracoastal Waterway. Grantee shall deliver to the City within 30 days of the completion of construction a complete set of "as-built" drawings, certified by Grantee's engineer, depicting the exact location and depth of all conduits, manholes, and appurtenances, as well as all details of the construction within the Modified Easement Area.

12. A new Paragraph 17 is added to read as follows:

17. Prior to the issuance by the City of any permit for any construction activity within the Modified Easement Area, Grantee shall submit to the City for review and approval a detailed plan to stabilize and render inoperable any unused conduits that will remain in the Terminated Easement Area. The approved stabilization shall be completed within 30 days of the completion of construction within the Modified Easement Area. Grantee shall execute and deliver to the City for recordation in the public records in and for Palm Beach County the Partial Termination of Limited Grant of Exclusive Easement Agreement (attached hereto as Exhibit 1) upon completion of the stabilization of any unused conduits that will remain in the Terminated Easement Area, but not later than 45 days after completion of construction within the Modified Easement Area.

13. A new paragraph 18 is added to read as follows:

18. In consideration for granting of this modification of the Easement pursuant to this First Amendment, Grantee shall pay to Grantor the agreed upon one-time payment of \$16,102.88, due and payable upon closing in accordance with the Agreement for Purchase and Sale, but not later than October 15, 2018. This amount shall constitute full payment in regard to and/or in any way related to this First Amendment to the Easement. Notwithstanding the foregoing, Grantee shall continue to make the Annual Conduit Payment due to the City pursuant to Paragraph 2(b)(4) of Exhibit A, "Agreement for Purchase and Sale" of Ordinance No. 4526 of the City of Boca Raton, adopted August 22, 2000, and the provisions of the Telecommunications Systems Rights-of-Way Agreement pursuant to City of Boca Raton Resolution No. 55-2015.

14. A new paragraph 19 is added to read as follows:

19. In the event Grantor in the future desires to locate facilities above, below, or through the sub-surface of the Easement, Grantor shall provide Grantee at least 60 days notice of such planned construction, including detailed plans for installation of the facilities, and Grantor shall coordinate the construction with Grantee. Grantor shall fully compensate Grantee for any damage or injury done to Grantee's installations in the Easement in the course of Grantor's installation of public facilities (not including lost revenues), except if caused by the gross negligence or willful act or omission of Grantee, its heirs, successors, assigns, agents, employees, or contractor.

15. Grantee shall pay the cost of recording this First Amendment to Spanish River Park Easement Agreement in the public records in and for Palm Beach County. Grantor shall record the Easement.

16. Except as specifically modified by this First Amendment to Spanish River Park Easement Agreement, the Easement, as recorded on October 17, 2000, as described above, shall remain in full force and effect.

16. Except as specifically modified by this First Amendment to Spanish River Park Easement Agreement, the Easement, as recorded on October 17, 2000, as described above, shall remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed this 22<sup>nd</sup> day of August, 2018.

CITY OF BOCA RATON, a Florida  
Municipal Corporation

Sign Pamela G. John  
Print Pamela G. John

By: Scott Singer  
Scott Singer, Mayor

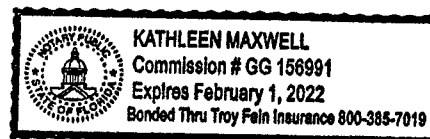
Sign Diane M. King  
Print Diane M. King

Attest: Susan S. Saxton  
Susan Saxton, City Clerk

#### ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this 22<sup>nd</sup> day of August, 2018, personally appeared SCOTT SINGER, known to me to be the person whose name is subscribed to the foregoing instrument, and who acknowledged to me that he/she executed the same as his/her free act and deed and for the purposes and consideration therein expressed. He/she is personally known to me or has provided \_\_\_\_\_ as identification.

Kathleen Maxwell  
Notary Public





# EXHIBIT 1

This Instrument Was Prepared By:

Section 7, Item c.

City Attorney's Office  
City of Boca Raton  
201 Palmetto Park Road  
Boca Raton, Florida 33432

Record and Return To:

Lynn Bodor / Land Records  
City of Boca Raton  
201 Palmetto Park Road  
Boca Raton, Florida 33432

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**PARTIAL TERMINATION OF LIMITED GRANT OF EXCLUSIVE EASEMENT AGREEMENT**

THIS PARTIAL TERMINATION OF LIMITED GRANT OF EXCLUSIVE EASEMENT AGREEMENT ("Termination") is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018 by TYCO ELECTRONICS SUBSEA COMMUNICATIONS, LLC, a Delaware limited liability company, whose address is 250 Industrial Way West, Eatontown, New Jersey 07724 ("TE SubCom")

Whereas, on October 17, 2000, the City of Boca Raton ("City"), a municipal corporation existing under the laws of the State of Florida, as Grantor, recorded a Limited Grant of Exclusive Easement Agreement for the benefit of Tyco Submarine Systems, Ltd., predecessor to TE SubCom, as Grantee, in Official Records Book 12075, Pages 1257 – 1270, inclusive, of the Public Records of Palm Beach County, Florida ("Easement"); and

Whereas, TE SubCom has requested modification of the Easement to accommodate re-routing of a portion of its fiberoptic facilities; and

Whereas, the City has agreed to said modification contingent upon the termination of the portion of the Easement that will no longer contain fiberoptic facilities;

Now therefore, TE SubCom hereby terminates, extinguishes and declares null and void and of no further force and effect the portion of the Easement recorded in Official Records Book 12075 at Page 1270 of the Public Records of Palm Beach County, Florida, as more particularly described herein:

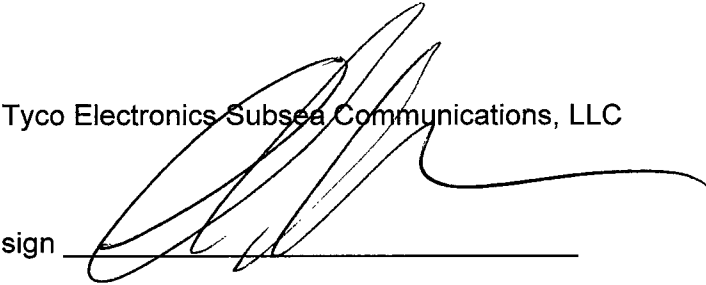
See Exhibit A, Attached

IN WITNESS WHEREOF, the undersigned does hereby execute this Termination as of the day and year first above written.

Witnesses:

Tyco Electronics Subsea Communications, LLC

sign 

sign 

print Mary Ann Brereton

print **Christopher Carobene**  
**Vice President**

sign 

Its: \_\_\_\_\_

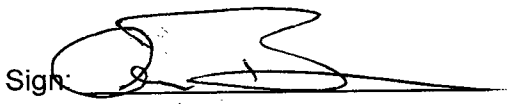
print David Blau

STATE OF NEW JERSEY )

COUNTY OF UNION )

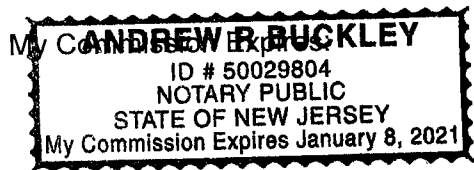
The foregoing instrument was acknowledged before me this 22 day of August, 2018, by Chris Carobene, as Vice President of Tyco Electronics Subsea Communications, LLC, a Delaware limited liability company, on behalf of the company. Chris Carobene is personally known to me or has produced \_\_\_\_\_ as identification.

NOTARY PUBLIC:

Sign: 

Print: ANDREW BUCKLEY

State of New Jersey at Large (Seal)



**LEGAL DESCRIPTION****Proposed 2 Foot Utility Easement**

A utility easement, 2 foot in width, lying in Section 16, Township 47 South, Range 43 East, Palm Beach County, Florida, the Centerline of said easement being more particularly described as follows:

**COMMENCING** at the Northwest corner of said Section 16;

**THENCE** with a bearing of N 89° 00' 04" E, along the North section line of said Section 16, a distance of 199.96 feet to a point, said point lying on the West right-of-way line of Intracoastal Waterway;

**THENCE** with a bearing of S 70° 57' 29" E, a distance of 300.17 feet to the **POINT OF BEGINNING** of the Centerline of the 2 foot utility easement, said point lying on the East right-of-way line of Intracoastal Waterway;

**THENCE** with a curve concave to the Southwest, having an initial tangent bearing of S 64° 06' 38" E, a radius of 1000.00 feet, a central angle of 36° 53' 29", an arc length of 643.88 feet to a point of tangency;

**THENCE** with a bearing of S 27° 13' 09" E, a distance of 173.45 feet, more or less, to the point of terminus of the Centerline of said 2 foot utility easement.

**CONTAINING** 1634.6 square feet, more or less, and subject to Restrictions, Reservations, Easements, and Rights-of-Way of Record.

H:\LIBRARY\00\22455\doc\Legal.description.wpd



## Flagler Beach Community Q&A

### Who is DC BLOX?

- DC BLOX is an owner/operator of multi-tenant data centers across the Southeastern US.
- We are based in Atlanta, Georgia and have been in the business since 2014.
- We own and operate data centers in 5 cities across the Southeast, one of which is a cable landing station in Myrtle Beach, SC.
- We have two additional data center facilities currently under construction in Atlanta.
- You can learn more at our website at [www.dcblox.com](http://www.dcblox.com)

### What is DC BLOX requesting from Flagler Beach?

- DC BLOX is planning to build a cable landing station (CLS) in Town Center in Palm Coast, FL.
- The CLS houses the communications and power equipment to support subsea cables that carry Internet communications traffic to and from international destinations.
- DC BLOX is requesting easements in Veteran's Park and North 11<sup>th</sup> Avenue to install underground manholes and conduits needed to land subsea fiber cables.
- In the future we will also request permits to place additional conduits and manholes underground in the utility right of way along certain roads in the City.

### What is a cable landing station?

- A subsea cable carries Internet traffic under the ocean between continents. At each end of a subsea cable is a "cable landing station." The cable landing station is a specialized data center that houses networking equipment for carrying data to and from the subsea cable, and power equipment to supply power to the cable and the computer systems within the data center.
- Cable landing stations are of global importance. The cables they host are crucial for global connectivity, carrying about 99% of international Internet traffic. This includes everything from content to financial transactions.
- The DC BLOX cable landing station located in Palm Coast will have the capacity to house the infrastructure for 8 subsea cables.

### **Why was Flagler Beach chosen for this project?**

- There is significant population and business growth in the Southeastern US, which is causing an increased need for digital infrastructure and fiber networks to transmit large volumes of data internationally to and from the region.
- Flagler Beach is located between other cable landing stations in Jacksonville and South Florida enabling geographic diversity of cables landing on the Southeast US coast, offering more reliable data transfer.
- Flagler Beach is attractive for subsea cable landing due to favorable seaward characteristics such as limited local commercial fishing, no major shipping lanes, and limited military operations, which all present potential risks to subsea cables.

### **How much money will DC BLOX pay for the easement?**

- DC BLOX will pay \$100,000 per subsea cable that lands in Flagler Beach and terminates into the Palm Coast Cable Landing Station. With a total capacity of 8 cables available, up to \$800,000 would be paid to the city for the easements under Veteran's Park and North 11<sup>th</sup> Street.
- DC BLOX will pay State sales tax on the equipment used to build the data center, and it will pay real and personal property taxes to Flagler County and the City of Palm Coast on the value of the data center.
- DC BLOX customers who place equipment in the data center will pay State sales tax and personal property taxes to Flagler County and the City of Palm Coast.

### **What are the benefits to local Flagler Beach residents?**

- All payments for the easement go directly to the city for purposes the City Council will determine.
- In addition, DC BLOX, the owner of the cable landing station located in Palm Coast, and its tenants, will contribute significant tax dollars to the county which will subsidize local schools, hospitals, roads, police and other city and county services,
- While there will be an economic gain for cable landing station components the city of Flagler Beach and Flagler County, there will be no costs borne by residents and could potentially lessen the tax burden to local businesses and residents.

### **What are the regional benefits of subsea cables?**

- Construction of the underground fiber and the CLS creates jobs and local tax benefits.
- Subsea cables are typically located near and spur development of regional data centers which offer the infrastructure necessary for tech companies to offer better access to many of the applications we use every day: social media, email and text messaging, streaming video and audio, and more. The closer data centers are to the users of these services, the faster and more reliable those services are to local consumers.

- This project is an investment in Florida's technology infrastructure. Local data centers and high-capacity optical fiber networks are necessary to attract technology-dependent businesses to locate in the area, bringing high-paying jobs and increased tax revenues, with very little burden on local roads and schools.

**Will subsea cables coming through Flagler Beach be a security or military risk?**

- Subsea cables are designed, installed, and maintained according to rigorous international standards. There are multiple layers of security protocols in place, both physical and cyber, to protect these cables and their landing stations.
- While there are a small number of examples worldwide of bad actors disrupting subsea cable operations, all of them involve cutting the cable somewhere offshore to disrupt communications over the cable. There are no examples of direct cable landing stations or subsea cable landing areas being targets.
- Even if a specific subsea cable is disrupted, it will not impact any local business or home Internet service in the area.
- No increase of law enforcement resources is needed to meet our requirements in the City or County.

**Do subsea cables cause damage to the environment or injury to wildlife?**

- Subsea cables have no adverse environmental impact. They are made of chemically inactive materials that don't harm the flora and fauna of the ocean.
- Through a study to be performed prior to installation and under consultation of NOAA, the cables will be routed around existing fish and natural animal habitats to ensure they are not disturbed.
- The process for installation involves the placement of conduits well below the beach surface area that emerge ~2000 feet offshore where the cable will be buried 1-2 meters below the sea floor until the ocean reaches acceptable depth.
- The drilling technique to install the conduits in the ground and under the sea floor is horizontal directional drilling, the same technique used to install other utilities such as water lines, power lines, and terrestrial fiber optic cables.
- The installation process is permitted and monitored by the US Army Corps of Engineers and Florida DEP, among other entities.
- Once the installation is complete, the underground cables will be unnoticeable, except for a few manhole covers around the landing sites and in the utility right of way along certain roads toward the CLS.

**Will the data center use a lot of power and water?**

- The cable landing station is smaller than many of the large data centers you read about in the news. Our total power consumption will likely be less than 15MW at

full build-out, an amount of power that is already supported by the power infrastructure available at the site.

- The cooling technology used at the data center does not require water usage, so our water consumption will be similar to other small businesses in the area.

**When will construction begin on the subsea cable project and how long will it take?**

- Construction on the cable landing infrastructure is expected to begin November 2025 for the two locations, pending approvals of the permits, and should last 3-5 months. This is a one-time development for each site and will accommodate the underground infrastructure for all 8 cables.
- Only the North side of Veteran's Park will be fenced off and screened during this process. The remainder of the park will be open and there will be no impact to vehicular traffic.
- On 11<sup>th</sup> Avenue North, part of the road will be blocked off, restricting access to A1A from 11<sup>th</sup> Avenue North during construction. Access to all homes on 11<sup>th</sup> Avenue North will be maintained.
- Construction in the utility right of way on the routes back to the CLS may require short-term lane closures in certain locations, which will be approved by permit from local authorities.



## Beach/Recreation

### Weekly Highlights June 19, 2024

- Ocean rescue lifeguards are on duty seven days per week through Labor Day weekend. Surf conditions are expected to increase as unsettling weather is forecasted for the end of the week.
- Monday, June 17 marked the beginning of the third session of Junior Lifeguard summer camp.
- Junior lifeguard swim testing is continuing during Saturday mornings in June at The Belle Terre Swim and Racquet Club in Palm Coast from 8:00 to 9:00.
- On Monday, June 17, Flagler County hosted the ground breaking ceremony in Veterans Park for the beach renourishment project. Work has already begun on the south end of the city and will continue to move north.
- Planning for the July 4<sup>th</sup> weekend is ongoing. The Rotary Club of Flagler Beach will be hosting the parade on Thursday, July 4<sup>th</sup>. The parade will begin at 9:00am. Later that evening, the fireworks show will be happening at the Flagler County Airport. Event schedule and parade information can be found on the City of Flagler Beach website and Facebook page.

## Penny Overstreet

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**From:** Robert Pace  
**Sent:** Thursday, June 13, 2024 11:17 AM  
**To:** Dale Martin  
**Cc:** Penny Overstreet; Katherine Monroy  
**Subject:** Weekly Highlights

Mr. Martin,

The following are the weekly highlights;

- Safety Inspection of Library Project

As you are aware, there is water proofing project taking place at the library. The project involved digging a trench around the exterior of the building. Melissa Parish requested that a safety inspection be conducted once the trenches were exposed to ensure there were not any safety issues for library patrons. I've gone to the library twice to inspect for any safety issues. There were no concerns identified. The contractors did an excellent job utilizing cones, stanchions and caution tape, creating a safety barrier and clear alerts for visitors.

- 1<sup>st</sup> Friday (Smoky Bear Reading Challenge)

I have discussed the Smoky Bear Reading Challenge that the library and the fire department are working on together. I joined Melissa and Marge to promote the event at 1<sup>st</sup> Friday. Melissa obtained several items from FEMA to hand out to interested children. This included informational literature, coloring books and tattoos. Registration forms were available to those interested as well. Daniel Anderson (Flagler News Weekly) conducted an interview with both Melissa and I and that article was posted last Saturday. Vern also plugged the program and a few kids did register. There were already some children that signed-up at the library as well. Additional registration forms will be accepted at the library and city hall, leading up to the party to held at the fire department, recognizing participants on July 20<sup>th</sup>.

- Deputy Chief Command Vehicle

Deputy Chief Cox's command vehicle was damaged due to water intrusion while responding to structure fire in the aftermath of Hurricane Ian. It has been a long road for this vehicle and the truck spent a long time at Palm Coast Ford diagnosing and repairing the electrical issues. Since the truck's return, a computer mount was required for better efficiency when responding to calls. The mount is installed and an electric inverter was the last piece of needed equipment. The inverter was installed earlier this week and Deputy Chief Cox has transferred back from the Emergency Service Vehicle back to his command vehicle.

- Update on Reserve Fire Trucks

I have recently reported on the arrival of the reserve fire engines to be purchased from the county. I am working to expedite the process, but there are a few moving parts. The tags were returned to the county and the titles were delivered to Chief Tucker (FCFR). I completed the PO and plan on hand delivering the check to Chief Tucker at the Monthly Chief's Meeting this afternoon. Once I have the titles, I will give them to Brenda, so city tags can be obtained. Finally, I will meet with Liz to have the trucks insured. The first stop after administrative duties is completed will be for

Engine 898 to be delivered to the Arch-Angel Maintenance facility. In the meantime, staff is completing housekeeping and cleaning responsibilities on the trucks.

- Update on Drone Program

The department's Drone Operators are required to go through new regulations as they are becoming proficient with the Skyido Drone. The department's Drone Operators include Deputy Chief Cox, Lt. Rainey and D/E Poeira. The operators have already recertified through an on-line program for the FAA. The next requirement is to attend the NIST Drone Training under the oversight of a certified instructor. The Phase II portion involves flying the drone and capture images from buckets while staying within the specified boundaries. Lt. Rainey and D/E Poeira have completed this portion and Deputy Chief Cox will attend the training tomorrow. The final portion (Phase III) is to complete four flight missions, three in the day and one night operation. The department's Drone Operators are expected to have this completed by the end of next week.

- Station Tour

The department will be conducting another station tour this afternoon. This group is the Wild Flower Program. They are kids that are home schooled that periodically for field trips and the department received a request for a station tour. D/E Jamal Prince was assigned as lead for today's tour. Jamal has become very good at station tours and the kids love him. The children will be given a tour of the station house, an equipment demonstration, flow water from a booster line and observe/explore the fire trucks. Before leaving, each one of our visitors will receive a plastic fire helmet, junior firefighter badge and a coloring book.

- Impact Issues

This weekend the Fire Department and Ocean Rescue are expecting many beach goers. In addition, The Pulse Remembrance Event will take place Sunday from 6:00-8:00 PM in Veterans Park. There are thousands of visitors anticipated in the city.

I look forward to talking to you soon.

Thanks,

***Robert Pace***

*Fire Chief*

*Flagler Beach Fire Rescue*

*320 S. Flagler Ave*

*Flagler Beach, Florida 32136*

*Office-386-517-2010*

*Cell-386-276-0405*





# FBFD Operational Response Report

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This weekly report conducted by the Flagler Beach Fire Department contains the following data:

- Number of incidents responded to over the dates listed below.
- Incident types.
- Total number of incidents for 2024.

Report Conducted: June 6 - June 12

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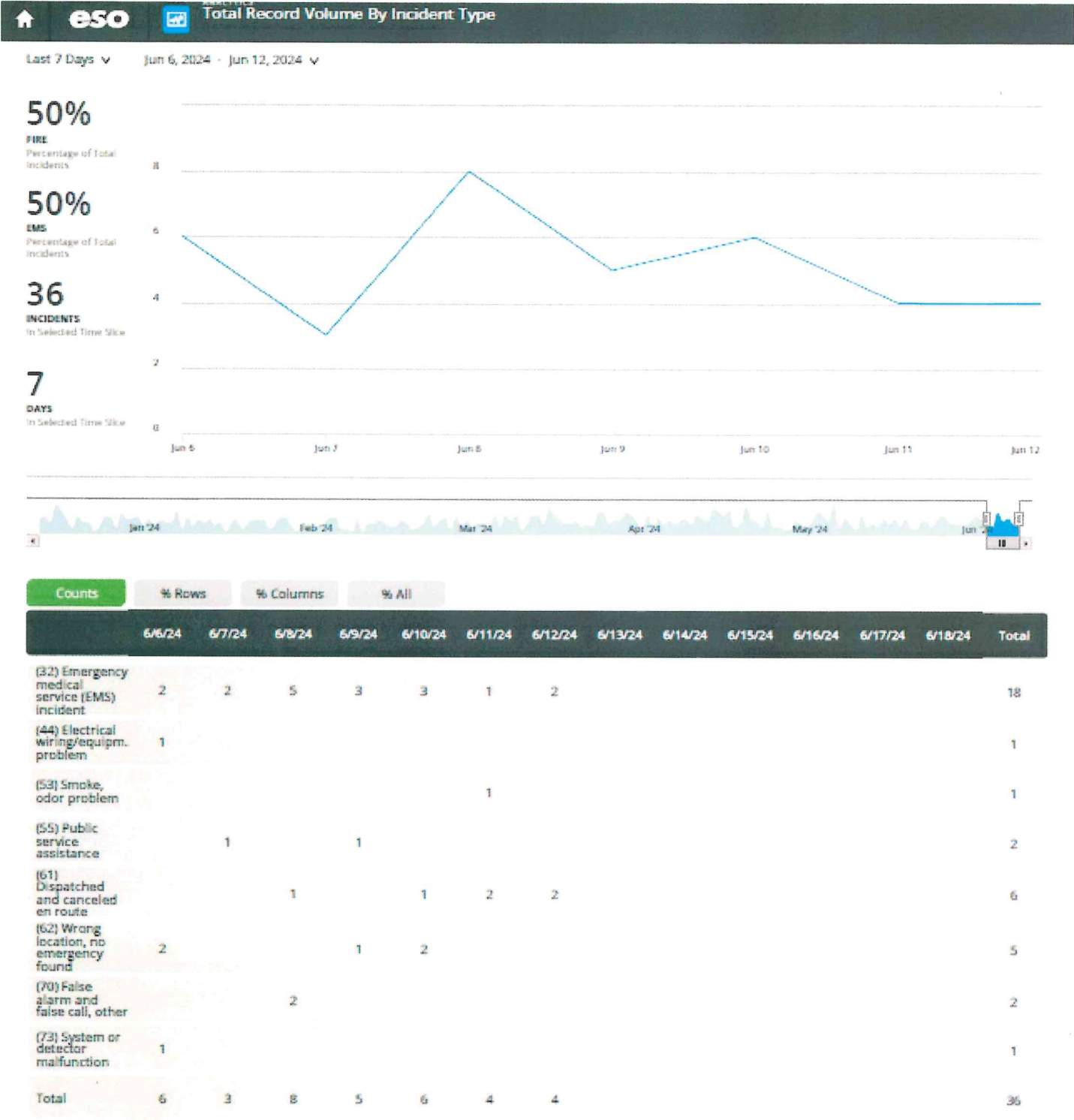
**Flagler Beach Fire Department**

Deputy Chief Stephen Cox

[Scox@Fbfire.org](mailto:Scox@Fbfire.org)



# Weekly Incident Response Data



Total Number of Incident for 2024

750



# FBFD Operational Response Report

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This weekly report conducted by the Flagler Beach Fire Department contains the following data:

- Number of incidents responded to over the dates listed below.
- Incident types.
- Total number of incidents for 2024.

Report Conducted: June 13 - June 19

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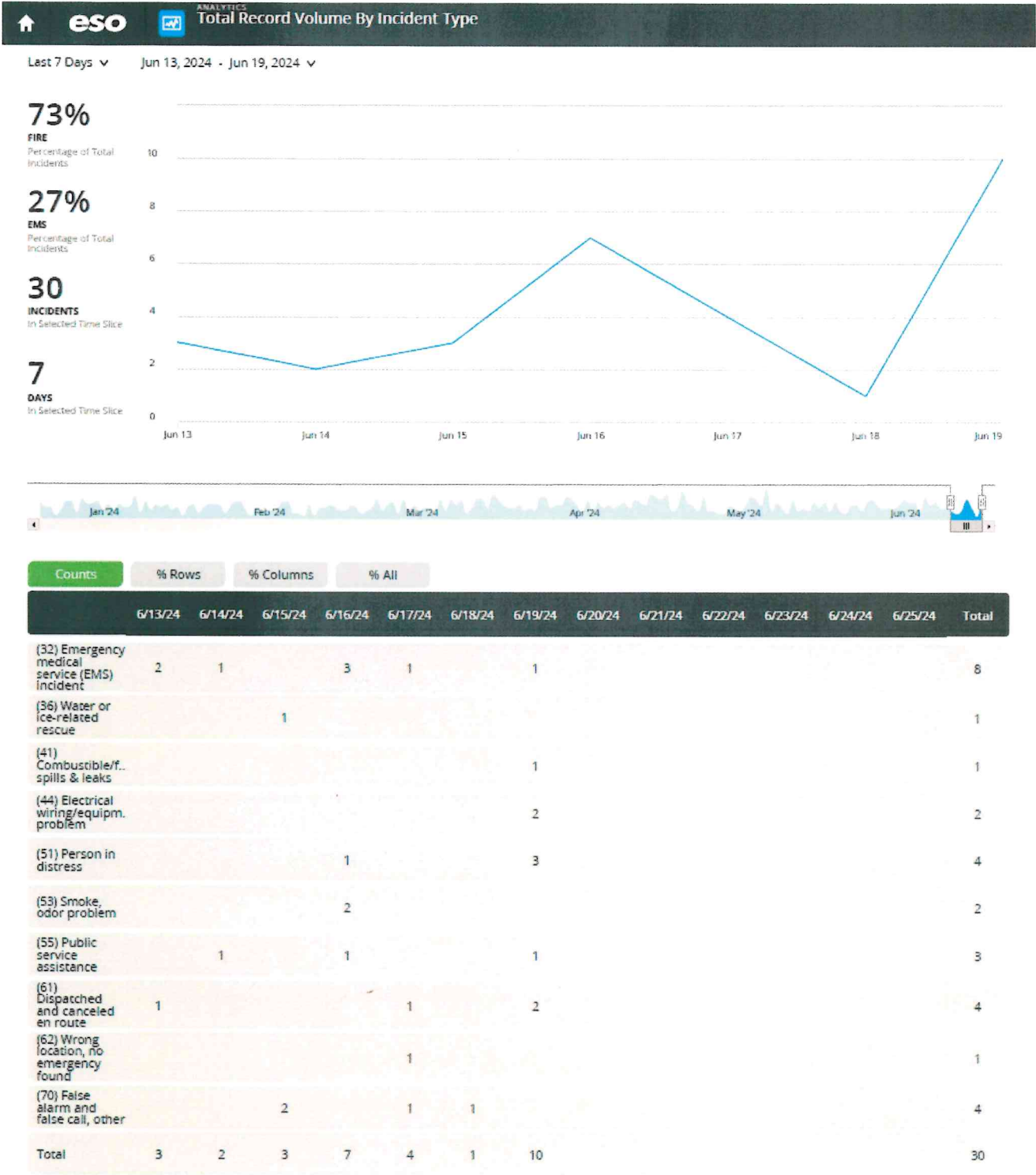
**Flagler Beach Fire Department**

Deputy Chief Stephen Cox

[Scox@Fbfire.org](mailto:Scox@Fbfire.org)



# Weekly Incident Response Data



Total Number of Incident for 2024

781

Penny Overstreet

---

**From:** Robert Pace  
**Sent:** Thursday, June 20, 2024 10:00 AM  
**To:** Dale Martin  
**Cc:** Penny Overstreet; Katherine Monroy  
**Subject:** Weekly Highlights

Mr. Martin,

The following are the weekly highlights;

- 214 Data Submission Training

Deputy Chief Cox and I attended the 214 Data Submission Training. The fire department is always committed to submitting accurate and thorough information utilizing 214s. This is done with mindset of the city being able maximize reimbursement through FEMA. There are several more moving parts involving the electronic submissions, but Deputy Chief Cox and I feel we have a good grasp on the new approach incorporating F-ROC to simplify the public assistance process. The required Adobe Reader software is already installed on station computers. An officer’s meeting will be conducted over the next couple of weeks to ensure all supervisors are on the same page as we are now in hurricane season.

- Monthly Chief’s Meeting

The Monthly Chief’s Meeting was held here at the station house. Station 11 has now become the designated place for the meetings. Attendees include the Chiefs and Deputy Chiefs from the three fire agencies within the county. The two Senior Rangers from Florida Forest Service (Bunnell Office) are now also attending the meetings. There were several points discussed in the meeting. Senior Ranger Jason Longfellow stated the number of wildfires in the region for the last year and specifically for the last two months. The FFS is in agreement with the local burn ban and the agency is utilizing GIS grids to determine wildland fire hot spots. FFS will continue to monitor wildfires in the region and if outside resources are required, a six-engine strike team can be deployed to the area. FCFR is expecting to take delivery of the new Fireflight helicopter next month. Eight policies/operating procedures have been completed by the Joint Field Operations Committee and delivered to the Executive Chiefs. New CAD updates are nearly completed by Tyler Technologies and will be delivered to line-staff in the coming weeks. An update was given on the 4<sup>th</sup> of July Event and the approach to be taken by the FBFD.

- Rotary Club of Flagler Beach Installation Dinner

The Rotary Club of Flagler Beach is holding its Annual Installation Dinner. The Installation Dinner was held this past Tuesday June 18<sup>th</sup> at Craves Kitchen & Cocktails. The club requested fire department representation to celebrate the accomplishments over the past year of the Rotary Club and welcome in the new club President, Karen Pastoriza and her Board of Directors. The Rotary Club provided the scholarship for FF/EMT Christian Carre to attend Paramedic School. The request for fire department representation was also to get an update on Christian’s progression and celebrate his achievements to this point. Both Deputy Chief Cox and FF/EMT Carre were in attendance.

- Vector Solutions Training



Vector Solutions is the company that provides the continual education units on-line training to the department. Solutions training was hosted by the Palm Coast Fire Department at Station 25. The in-service training provided an in-depth overview of the Target Solutions Operating System. Vector Solutions representatives identified key features that will enhance operational ability, data input and retrieval. The capabilities outlined in the training will be reviewed in the upcoming FBFD Officer's Meeting.

- Large- Scale Exercise Team

Deputy Chief Cox is a member of the Large-Scale Exercise Team. This group is tasked with identifying large-scale incidents that could occur in the region and to schedule applicable training. The planning committee for the Large-Scale Exercise Team met at Flagler Palm Coast High School to conduct a walkthrough of the areas that will be utilized for an Active Assailant Training. All agencies in the county were represented and those members will follow-up with a planning meeting at the EOC next week. Deputy Chief Cox plans to schedule several department staff members to participate in the training.

- 4<sup>th</sup> of July Planning Meeting

Multiple city departments were represented at the 4th of July Planning Meeting. Besides regular agenda items, there were several other points/issues discussed. Vern Shank is planning on having a few games available in the park, but there will not be a set schedule. Visitors to the park will dictate if games are played and when. Port-o-lets will be the only available restrooms for visitors. City Hall restrooms will not be utilized. South 2<sup>nd</sup> St. between A1A and S. Central Ave. will be completely blocked off and detour signs posted. An advisement that the use of personal fireworks in the city is prohibited will be posted on Facebook. Groups to include local churches and the Flagler Beach All-Stars will be lobbied for the beach clean-up July 5<sup>th</sup>.

- Impact Issues

There are no scheduled special events to take place in the city this weekend. However, FBOR and the FBFD are expecting busy beach days and thousands of visitors Saturday and Sunday.

I look forward to talking to you soon.

Thanks,

***Robert Pace***

*Fire Chief*

*Flagler Beach Fire Rescue*

*320 S. Flagler Ave*

*Flagler Beach, Florida 32136*

*Office-386-517-2010*

*Cell-386-276-0405*





**FLAGLER BEACH POLICE DEPARTMENT**  
Matthew P. Doughney, Chief of Police  
204 South Flagler Avenue  
Flagler Beach, FL 32136  
386.517.2023

Chief's Weekly Report

From: Friday		6/13/2024		To: Thursday		6/20/2024	
Calls For Service	66	Felony Arrest	0	Reports Written		Citations Issued	56
Self-Initiated	39	Misd. Arrest	4	Comm. Policing		Warnings (Written/Verbal)	88/41
Traffic Stops	124	City Ordinance	4	Security Checks			278

Chief's Weekly Summary

**Friday:** Chief Doughney attended a 4<sup>th</sup> of July logistics meeting with City Staff, along with a representative from the Rotary Club of Flagler Beach, and DJ Surfin' Vern, that was held at City Hall from 11:00 a.m. to 12:00 p.m.

**Friday:** 6/14/24 @ 9:55 a.m. / Civil / #24-00010640 / 1224 South Oceanshore Boulevard: The Officer was contacted regarding items at a closed restaurant. She wanted to retrieve them. The officer gave the caller information on how to proceed. No other action is needed.

**Friday:** 6/11/24 @ 10:00 a.m. / Civil / #24-00010641 / 407 Jasper Drive: Officers responded to the report of some workers cutting a tree. Contact was made, and all advised the issue was civil in nature. All parties need to contact their HOA for any violations.

**Friday:** 6/11/24 @ 11:51 a.m. / Ordinance Violation / #24-00010643 / block South Oceanshore Boulevard: Officer responded to a report of a truck and trailer in violation. Upon arrival, no violations were observed. No additional calls were received.

**Friday:** Dayshift Officers conducted proactive traffic enforcement at the following locations and times:  
400 block John Anderson Highway, 8:52 a.m. - 9:39 a.m., five (5) traffic stops with Four (4) written warnings and one (1) citation issued.

**Friday:** 6/14/24 @ 5:53 PM / Reckless driver / 2024-00010653 / 2200 Moody Blvd: Officers were dispatched to this location regarding subjects in a sports car driving recklessly and possibly drinking beer. Officers searched the area and possibly located the vehicle. No probable cause was observed after following the vehicle.

**Friday:** 6/14/24 @ 7:26 PM / Found property / 2024-00010660 / 204 S Flagler Ave: Officers were dispatched to a found iPhone on the beach. Officers attempted to locate an owner but were unsuccessful. The phone was turned into evidence as found property.

**Friday:** 6/15/24 @ 12:47 AM / Missing person recovered / 2024-00010688/ Moody and Roberts Rd: While searching the area for a missing 85 YO female from Gainsville, officers were able to locate the vehicle with the missing female driving the vehicle. The subject was reported missing by a family member who believed the female might have dementia. The reporting agency removed the subject from NCIC/FCIC as missing. The subject booked a room at the Topaz instead of driving due to the time of night.

**Friday:** 6/15/24 @ 3:55 AM/ Water Rescue/ 2024-00010703/ 360 Palm Cir: Officers were dispatched to this location regarding a male screaming for help in a canal outside his house. Upon arriving on the scene, officers met the subject, who was hanging onto the sea wall. The subject appeared to be under the influence and would not tell officers why he was in the water. Fire rescue was contracted to use the ladder to get the male out of the water to ensure he did not cut himself on the sea wall. The subject had family inside the residence and did not meet the requirements for a Marchman Act.

**Saturday:** 6/15/24 @ 7:05 a.m. / Ordinance Violation / #24-00010713 / 100 10th Street South: In a display of thoroughness, the Officer was following up on a report of possible camping in the area. The area was checked, and no violations could be found. No other action is needed.

**Saturday:** 6/15/24 @ 9:00 a.m. / Warrant Service / #24-00010723 / 112 5th Street North: Officers responded to the report of a subject with an active warrant. Contact was made, and the subject has moved from the area. No additional information is available.

**Saturday:** 6/15/24 @ 10:45 a.m. / Warrant Service / #24-00010727 / 212 3rd Street South Unit B: Officers attempted to contact in response to a report of a subject with an active warrant but were unsuccessful. The subject was not at the location, leading to negative results.

**Saturday:** 6/15/24 @ 12:57 p.m. / Ordinance Violation / #24-00010733 / 400 block North Oceanshore Boulevard (Ocean Beach): The Officer responded to the area for dogs on the beach. Upon arrival, a female advised that they had left the area before arrival.

**Saturday:** 6/15/24 @ 1:35 p.m. / Suspicious Incident / #24-00010736 / 800 South Daytona Avenue (Wickline): Officers responded to the area regarding a subject taking a taxi and fleeing without paying. The caller decided not to pursue the incident. No additional action was needed.

**Saturday:** 6/15/24 @ 3:15 p.m. / Ordinance Violation / #24-00010742 / 120 block South Oceanshore Boulevard (Ocean Beach): An Officer spotted several subjects on the dunes trying to access the beach. The Officer contacted and educated the subjects on the dunes and current fines for the violation. The Officer issued a verbal warning to all involved.

**Saturday:** 6/15/24 @ 4:36 p.m. / Missing Person Follow-up / #24-00010688 / 1224 South Oceanshore Boulevard: The Officer received a call from the original caller advising that the female had left the motel and was missing again. The Officer gathered all the needed information, had the missing person reentered in FCIC/NCIC, and hot-listed her vehicle as missing.



**Saturday:** Dayshift Officers conducted proactive traffic enforcement at the following locations and times:

2200 Moody Boulevard, 7:31 a.m. - 8:21 a.m., no violations were observed.

1300 block North Oceanshore Boulevard, 10:13 a.m. - 10:32 a.m., one (1) traffic stop with one (1) citation issued.

**Saturday:** Summer Overtime; Deputy Malta and Deputy Harrison, 10a-6p, one (1) arrest (felony)(firearm possession and drug possession), twenty (20) traffic stops, four (4) parking violations, five (5) citations and nineteen (19) verbal warnings.

**Saturday:** 6/15/24 @ 7:34 p.m. / Assist Motorist-DAV / 2024-00010750 / 611 South Daytona Avenue: Officer waved down by a female who fell off her bike. The officer assisted with minor medical by supplying the female with a band-aid. No further assistance needed.

**Saturday:** 6/15/24 @ 10:32 p.m. / Suspicious Person / 2024-00010770 / 101 North Ocean Shore Boulevard: While on routine patrol officers drove thru Finns parking lot and were stopped by staff reference to a white male that was acting suspicious. Contact was made with the male and was ultimately requested to leave the property by staff. No further issues.

**Saturday:** 6/16/24 @ 12:29 a.m. / DAV / 2024-00010779 / South Ocean Shore Boulevard @ 11th Street South: Officers checked out with a disabled white Dodge sedan on the side of the road. The vehicle was left legally parked. The driver was given a courtesy ride home.

**Saturday:** 6/16/24 @ 1:59 a.m. / Drunk Driver / 2024-00010786 / Moody Blvd. @ Beach Village: Officer conducted a traffic stop on a black Volks Wagon reference speed. The driver appeared to be under the influence and field sobriety exercises were conducted. The male was ultimately taken into custody for suspicion of driving under the influence. BAC .123 See below for arrestee information.

**Saturday:** 6/16/24 @ 2:49 a.m. / Traffic Stop / 2024-00010787 / Moody Blvd. @ Beach Village: Officers were standing by with a tow truck driver from a drunk driver call when a silver F-150 failed to move over for emergency vehicles. A traffic stop was conducted in the F-150, and the driver was found not to have a driver's license and was subsequently arrested for same. The F-150 was released to the parents/owner of the vehicle. See below for suspect information.

**Saturday:** 6/16/24 @ 4:43 a.m. / Suspicious Person / 2024-00010796 / South Central Avenue @ 7th Street South: Officer waved down by a male walking who advised that he almost tripped over another male sleeping on the sidewalk at 7th Street South. The officer made contact with the male, who advised he had too much to drink and fell asleep. The male was given a ride home.

**Sunday:** 6/16/24 @ 8:16 a.m. / Suspicious Incident / #24-00010816 / 62 Beechwood Drive: Officers responded to the area regarding a light seen earlier from this location. The house under construction was checked and appeared to be okay. Unknown what the light was or where it was coming from.

**Sunday:** 6/16/24 @ 9:18 a.m. / Baker Act / #24-00010818 / 1427 South Flagler Avenue: Officers responded to a report that a subject was in a mental state and needed assistance. The investigation resulted in the subject being successfully transported for treatment.

**Sunday:** 6/16/24 @ 11:29 a.m. / Crash No Injury / #24-00010823 / 700 North Central Avenue: The Officer responded to a minor crash. Investigation resulted in one driver being cited for violation of the right of way. Additionally, a long-form crash report was completed.

**Sunday:** 6/16/24 @ 2:04 p.m. / Traffic Stop (LPR) / #24-00010834 / 200 block North Oceanshore Boulevard: Officer conducted a traffic stop on an LPR hit for a DWLS. The investigation resulted in the tag being seized, the vehicle being towed, and the driver being cited for driving while their license was suspended unknowingly.

**Sunday:** 6/16/24 @ 3:21 p.m. / Property Lost / #24-00010840 / 215 South Oceanshore Boulevard: Officers responded to the area for a missing Apple watch. The area was checked with negative results. The owner did not wish for a report for the lost watch. No other action was needed.

**Sunday:** Summer Overtime: Sergeant Parthemore and Deputy Schraeger, 10:00 a.m. - 6 p.m., thirteen (13) traffic stops, eight (8) parking violations, ten (10) citations, three (3) written warnings, and seven (7) verbal warnings issued.

**Sunday:** Dayshift Officers conducted proactive traffic enforcement at the following locations and times;  
2200 South Oceanshore Boulevard, 8:36 a.m. - 9:01 a.m., one (1) traffic stop with one (1) written warning issued.

**Sunday:** Nightshift Officers monitored the Pulse Vigil held at Veterans Park; no issues were observed.

**Monday:** Deputy Chief Blanchette attended the Coastal Storm Risk Management Beach Renourishment Project groundbreaking ceremony at Veterans Park. In attendance were various County and City Commissioners, Congressman Michael Waltz, Commander James Booth of the United States Army Corps of Engineers, along with many other distinguished guests.

**Monday:** 6/17/24 @ 7:17 a.m. / Missing Person Adult - Assist Other Agency / 2024-00010904 / 150 Flagler Plaza Drive: The Flagler County Sheriff's Office received a call, in reference to a missing an endangered middle-aged male. Through investigative means, it was known that the male might frequent bars. The Sheriff's Office requested assistance to canvass our local bars and beach accesses for this missing male. At this time the male has not yet been located.

**Monday:** 6/17/24 @ 10:10 a.m. / Traffic Detail / 2024-00010906 / 101 South Ocean Shore Boulevard (Veterans Park): Officers were requested to assist with a city event. Citizens and public officials gathered at Veterans Park to discuss a beach restoration project. Officers assisted in traffic control when pedestrians were crossing State Road A1A.

**Monday:** 6/17/24 @ 3:47 p.m. / Reckless Driver / 2024-00010918 / 400 Block South Ocean Shore Boulevard: Officers were dispatched to this area in reference to a newer model gray Dodge Charger traveling at high rates of speed down side streets. Officers located the vehicle, and it was found through investigative means that the registered owner was not from this county. The vehicle was being operated by a juvenile.

**Monday:** 6/17/24 @ 4:52 p.m. / Suspicious Vehicle / 2024-00010920 / 100 Block 10th Street South: Officers were dispatched to this area in reference to a vehicle that supposedly parked in this area and stayed in the same location overnight. The reporting party advised the operator got out of the vehicle and walked down to the beach with a chair. Day shift Officers did not respond; however, the nature of the call was turned over to the oncoming night shift Officers to check on the vehicle.

**Monday:** 6/17/24 @ 8:38 PM / Suspicious Incident / Case # 2024-00010934 / 215 South Oceanshore Boulevard, Pier: Officers were dispatched to the location in reference to the reporting party believing they had seen a body floating in the water. Nobody was found in the water, only a large piece of wood. No further action was needed.

**Monday:** 6/18/24 @ 1:30 AM / Suspicious Incident / Case # 2024-00010948 / 215 South Oceanshore Boulevard, Pier: Officers were flagged down about people jumping off the end of the Pier. Officers checked the area and were unable to locate anyone on the Pier or in the water.

**Monday:** 6/18/24 @ 1:37 AM / Assist Motorist / Case # 2024-00010949 / 1700 Block South Oceanshore Boulevard: Officers were flagged down in reference to a Toyota Rav4 stuck on the concrete median. The vehicle was towed by Rogers Towing, and the driver was given a courtesy ride home.

**Monday:** 6/18/24 @ 3:34 AM / Suspicious Vehicle / Case # 2024-00010952 / 100 Block 10th Street South: Officers were dispatched to the area in reference to an occupied vehicle that had been parked there every night. Officers made contact with the driver and advised him of our camping ordinance. He was also issued a written warning. He left the area without incident.

**Monday:** Nightshift Officers conducted proactive traffic enforcement at the following locations and times;  
2200 North Oceanshore Boulevard, 8:00 AM - 8:30 AM, no violations observed.

**Tuesday:** 6/18/24 @ 11:13 a.m. / Reckless Driver / 2024-00010981 / 1700 Block South Central Avenue: Officers were flagged down in reference to a gray Nissan sedan traveling at approximately 60mph, running through stop signs and passing other motorists. Officers searched for the vehicle, but they couldn't locate it.

**Tuesday:** 6/18/24 @ 3:55 p.m. / Trespassing / 2024-00010990 / 414 Beach Village Drive (Publix): Officers were dispatched to this location in reference to a male subject walking out with a sandwich and two drinks from the deli without paying. The subject was followed by a manager to a neighboring business. Officers arrived on scene and located the subject as well as manager to confirm criminal charges. Officers received a full confession post Maranda Rights being read however, the business manager no longer wished to press charges and only wanted the subject trespassed from the business.

**Tuesday:** 6/18/2024 @ 3:51 p.m. / Vehicle Burglary / 2024-00010998 / 3100 South Ocean Shore Boulevard (Gamble Rogers State Park): Officers received a call at this location in reference to a female victim realizing her car had been burglarized. The female had left her windows down with her purse in plain view. When the female returned to her vehicle, she realized that her wallet had been gone through and her credit cards were missing. The investigation has been turned over to CID for further investigation.

**Tuesday:** At 6 pm, Deputy Chief Blanchette, Mr. Martin, Deputy Chief Cox, and Fire Fighter Carre, attended the annual Flagler Beach Rotary banquet and new officer induction ceremony at Craves Coastal Kitchen and Cocktails. At this event, Chief Doughney was awarded "Citizen of the Year" for his continued dedication and support of the Flagler Beach Rotary. Deputy Chief Blanchette accepted in his absence as Chief Doughney was out of town on a much-deserved vacation.

**Tuesday:** 6/18/24 @ 6:16 p.m./911 Investigation/2024-000010992/109 S Ocean Shore Blvd: 911 hang-up. No emergency found

**Tuesday:** 6/18/24 @ 6:47 p.m./COWB/2024-00010994/800 Henry Circle: Follow-up with the victim from a threats call that occurred in Manatee County. Found that all evidence and victim statement was already taken by Manatee County. Given our local information, if things progress with the subject who lives in Manatee,

**Tuesday:** 6/18/24 @ 7:20 p.m./BOLO/2024-00010998/SR100 EB: Vehicle with possible stolen tag. Vehicle could not be located.

**Tuesday:** 6/18/24 @ 7:29 p.m./Threats/2024-00011003/509 Ocean Marina: Another juvenile was threatening callers son. Only wanted contact via phone. Left two voicemails.

**Tuesday:** 6/18/24 @ 8:10 p.m./Suspicious Incident/2024-00011000/2140 S Central Ave: House under construction that has cameras inside heard voices on the camera but could not see anyone. Officers found the home secured and waited for the homeowner, who let us check the residence, but the results were negative. Unknown who the voices could have been.

**Tuesday:** 6/18/24 @ 8:52 p.m./Suspicious Incident/2024-00011005/3100 S Ocean Shore Blvd: Caller advised an orange light out on the water might be a boat in distress. The area was checked, and two blinking buoys were found as part of the beach re-nourishment project. No vessel was seen.

**Tuesday:** 6/18/24 @ 10:44 p.m./Warrant Service/2024-00011013/322 12th St. N: Attempted to pick up Ross Simard at his residence for his warrant. Their parents refused entry, and he did not voluntarily turn himself in.

**Wednesday:** 6/19/24 @ 9:18 a.m. / Civil / #24-00011042 / 40 Village Drive: The officer made contact via phone regarding the caller letting someone use her car, and now she cannot locate them. The officer gave the caller her options and said she would call again if needed.

**Wednesday:** 6/19/24 @ 10:05 a.m. / Disturbance Verbal / #24-00011045 / 300 block 3rd Street North: Officers responded to a report of two subjects yelling. The conflict was between a lawn guy and a homeowner. The dispute was resolved, and no other action was needed.

**Wednesday:** 6/19/24 @ 10:04 a.m. / Suspicious Incident / #24-00011046 / 215 South Oceanshore Boulevard: Officers responded to the report of a strange phone call received by the business. Once they contacted the caller, they thoroughly investigated the situation and determined the call was accidental. No crime was committed, ensuring the public's peace of mind.

**Wednesday:** 6/19/24 @ 10:06 a.m. / Notification-Welfare Check / #24-00011047 / 1931 South Daytona Avenue: Officers responded to a report of a female not answering her door and failing to answer her phone. Once on scene, Officers contacted the sleeping female. Everything was fine, and no action was needed.

**Wednesday:** 6/19/24 @ 12:06 p.m. / Civil / #24-00011051 / 408 South Oceanshore Boulevard: Officers responded to the location regarding a refund for a sandwich. The caller wanted a refund from the business and wanted the police to get it for him. The caller was informed that the business did not have to give a refund and wished that he would leave the property. The caller advised that he understood and left without incident.

**Wednesday:** 6/19/24 @ 12:19 p.m. / Crash No Injury / #24-000011052 / 105 John Anderson Highway: Officers responded to a report of a minor crash. An investigation showed that a truck hit and damaged the swing gate of the carwash. All information was gathered, and a short form was completed.

**Wednesday:** 6/19/24 @ 12:30 p.m. / Assist Outside Agency / #24-00011053 / 2136 South Daytona Avenue: Officer responded about a stand-by while DCF investigates a case from Volusia. The investigation was completed without incident.

**Wednesday:** 6/19/24 @ 2:24 p.m. / Assist Public / #24-00011054 / 2111 Oak Place: Officers responded to a male causing issues for the construction workers in the area. Officers attempted contact with negative results. A business card was left for the male to make contact.

**Wednesday:** 6/19/24 @ 3:37 p.m. / Suspicious Incident / #24-00011060 / 560 Shearwood Drive: The Officer responded to the report of a used vape found in the yard. The caller was concerned someone might have been in his yard. The vape was taken per the caller's request and disposed of in the trash. The caller also advised that his cameras showed nothing missing, and no one was on the property. No other action is needed.

**Wednesday:** 6/19/24 @ 12:58 p.m. / Suspicious Incident / #24-00011061 / 2200 Moody Boulevard: An officer responded to a report of a vehicle in the park for an hour and might be watching kids play basketball. The park was checked, and no car matching the description was found. No other calls referencing the vehicle were received.

**Wednesday:** Dayshift Officers conducted proactive traffic enforcement at the following locations and times;  
2200 Moody Boulevard, 7:35 a.m. - 9:07 a.m., two (2) traffic stops with one (1) written warning and one (1) verbal warning issued.

**Wednesday:** 6/19/24 @ 5:52 p.m. / Animal Problem / #24-00011064 / 2501 Moody Blvd: Officers were dispatched to this location regarding a subject holding a leash from within his car and driving next to his dog. Officers arrived on scene and spoke with the RP via PX, who had a video. After investigating, it was determined the subject was doing this due to his inability to walk the dog due to age. Officers saw the dog, and there was no evidence of the dog being injured from the event.



**Wednesday:** 6/19/24 @ 6:32 p.m. / Civil / #24-00011065/ 204 S Flagler Ave: Officers were dispatched to contact an RP via Px because the RP wanted information regarding a civil issue surrounding his friend's rental property.

**Wednesday:** 6/19/24 @ 9:28 p.m. / Reckless driver / #24-00011068/ 422 Beach Village: Officers were dispatched to the parking lot regarding someone driving recklessly in the parking lot. Officers searched the area but were unable to locate it.

**Thursday:** 6-20-24 @ 6:49 a.m. / Alarm Residential / #24-00011093 / 1718 North Central Avenue: Officers responded to a report of a home alarm sounding. Upon arrival, they contacted the homeowner, who confirmed she had set it off by accident.

**Thursday:** 6-20-24 @ 8:27 a.m. / Traffic Stop / #24-00011109 / 2200 Moody Boulevard: An Officer conducted a stop on a vehicle referencing an LPR hit on a driver with a suspended license due to a DUI. The investigation resulted in the driver being taken into custody and transported to the inmate facility and his SUV being towed.

**Thursday:** 6-20-24 @ 2:00 p.m. / Suspicious Incident / #24-00011120 / 116 Moody Boulevard: An officer responded to a report of a missing table. The table was taken on the 19th and, due to its location, could have been mistaken as trash. RP wanted us to know in case the table shows up in the city.

**Thursday:** 6-20-24 @ 2:43 p.m. / 911 Investigation / #24-00011122 / 2601 Moody Boulevard: Officer received a reported 911 hang-up. On callback, there was no answer; the call was geolocated to this area. The officer checked the area and said there was no emergency on site.

**Thursday:** Dayshift Officers conducted proactive traffic enforcement at the following locations and times; 2200 Moody Boulevard, 7:27 a.m. - 8:30 a.m., three (3) traffic stops with two (2) written warnings and one (1) citation resulting in arrest issued.

**Thursday:** Deputy Chief Blanchette attended a full-scale exercise planning meeting at the Flagler County Emergency Operation Center for a joint first-responder live training drill, which will take place later in July. This meeting was held from 2 p.m. to 3:30 p.m.

**Thursday:** Deputy Chief Blanchette attended the Family Life Center Board of Directors Meeting from 10 a.m. to 11 p.m.

**Monthly Training:** Officers continued to work on their June 2024 online monthly training through Police Law Institute. This month's topic is; **Lawful Personal Seizures.**

**Vacation:** Chief Doughney was on vacation this week, and he will return to work on Monday, June 24<sup>th</sup>.