



City of Pensacola

City Council

Agenda - Final

Thursday, October 27, 2022, 5:30 PM

Council Chambers, 1st Floor

Members of the public may attend the meeting in person. City Council encourages those not fully vaccinated to wear face coverings that cover their nose and mouth.

The meeting can be watched via live stream at cityofpensacola.com/video. Citizens may submit an online form at <https://www.cityofpensacola.com/ccinput> BEGINNING AT 3:00 P.M.

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

Council Vice President Delarian Wiggins

FIRST LEROY BOYD FORUM

AWARDS

APPROVAL OF MINUTES

1. [22-01072](#) APPROVAL OF MINUTES: REGULAR MEETING DATED OCTOBER 13, 2022

Attachments: [Draft: Regular Meeting Dated 10/13/22](#)

APPROVAL OF AGENDA

CONSENT AGENDA

2. [22-00986](#) AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND ESCAMBIA COUNTY FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT
- Recommendation:** That City Council approve the Amendment to the Interlocal Agreement between the City of Pensacola and Escambia County for the Burgess Road Sidewalk and Drainage Improvement Project.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Legislative Action Item FILE ID # 21-00206](#)
[Interlocal Agreement with Escambia County](#)
[Interlocal Agreement with Emerald Coast Utilities Authority](#)
[Amendment to Interlocal Agreement with Escambia County](#)
3. [22-00999](#) INTERLOCAL AGREEMENT - PENSACOLA-ESCAMBIA COUNTY PROMOTION AND DEVELOPMENT COMMISSION
- Recommendation:** That City Council approve and authorize the Mayor to take the actions necessary to execute the Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola relating to the funding of the Pensacola-Escambia County Promotion and Development Commission (PEDC) for FY 2023.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Interlocal Agreement between the Escambia County Board of County](#)
4. [22-01012](#) WRITE-OFF OF UNCOLLECTIBLE GOVERNMENTAL ACCOUNTS RECEIVABLE
- Recommendation:** That City Council approve the write-off of \$10,416.67 in unpaid annual lease fees due from Gulf Coast Tennis Group, LLC.
- Sponsors:** Grover C. Robinson, IV
5. [22-01029](#) WRITE-OFF OF UNCOLLECTIBLE GOVERNMENTAL ACCOUNTS RECEIVABLE
- Recommendation:** That City Council approve the write-off of \$44,635.11 in unpaid ad valorem equivalent payments due from the late Gary Lowry and \$5,345.00 in unpaid ad valorem equivalent payments due from Aberfeldy Home Construction LLC, retroactive to September 30, 2022.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Write-off Report for Leases FY2022 - Port Royal Phase II.pdf](#)

6. [22-01014](#) REVISED: AWARD OF CONTRACT - ITB NO. 22-052 BERTH 2/3 CORNER FENDERS REPAIRS PROJECT AT PORT OF PENSACOLA - GULF MARINE CONSTRUCTION INC.
- Recommendation:** That City Council award Bid No. 22-052 for Berth 2/3 Corner Fender Repairs Project at the Port of Pensacola to Gulf Marine Construction Inc. of Pensacola, Florida with a base bid of \$109,490.00 plus 10% contingency of \$10,949.00 for a total of \$120,439.00. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [ITB No. 22-052 Tabulation of Bids](#)
[ITB No 22-052 Vendor Reference List](#)
7. [22-01056](#) DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER CASEY JONES - DISTRICT 3
- Recommendation:** That City Council approve funding of \$1,000 for OnBikes Pensacola and \$500 for the H.Y.P.E. Annual Turkey Drive from the City Council Discretionary Funds for District 3.
- Sponsors:** Casey Jones
8. [22-01057](#) DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL VICE PRESIDENT DELARIAN WIGGINS - DISTRICT 7
- Recommendation:** That City Council approve funding of \$500 to OnBikes Pensacola from the City Council Discretionary Funds for District 7.
- Sponsors:** Delarian Wiggins

REGULAR AGENDA

9. [22-01055](#) CITY COUNCIL CONSENT TO THE MAYOR'S APPOINTMENT OF STEPHEN RINGL AS DIRECTOR OF INNOVATION AND TECHNOLOGY
- Recommendation:** That City Council consent to the Mayor's appointment of Stephen Ringl as Director of Innovation and Technology in accordance with City Charter Section 4.01(a)(7).
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Stephen Ringl Resume](#)

10. [22-01033](#) APPOINTMENT - ENVIRONMENTAL ADVISORY BOARD
- Recommendation:** That City Council appoint an at-large resident or property owner of the City to the Environmental Advisory Board to fill an unexpired term ending March 1, 2024.
- Sponsors:** Ann Hill
- Attachments:** [Member List](#)
[Nomination Form - Cheyenna Novotny](#)
[Application of Interest - Cheyenna Novotny](#)
[Resume - Cheyenna Novotny](#)
[Nomination Form - Michael Swords III](#)
[Application of Interest - Michael Swords III](#)
[Resume - Michael Swords III](#)
[Ballot.pdf](#)
11. [22-01008](#) CONTRACT WITH VEORIDE, INC. TO OPERATE AS A VENDOR FOR THE DOCKLESS SHARED MICROMOBILITY PROGRAM
- Recommendation:** That City Council approve a contract with VeoRide, Inc. to operate as a Dockless Shared Micromobility Program vendor in the City of Pensacola. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the contracting documents and the Mayor's Executive Powers as granted in the City Charter.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Operating Agreement and Permit with VeoRide, Inc.](#)
12. [22-01041](#) THIRD ADDENDUM TO THE PARTIAL ASSIGNMENT TO INSPIRED COMMUNITIES OF FLORIDA LLC OF THE OPTION AGREEMENT BETWEEN THE CITY OF PENSACOLA AND STUDER PROPERTIES LLP
- Recommendation:** That City Council approve and authorize the Mayor to execute the Third Addendum to the Partial Assignment to Inspired Communities of Florida LLC of the Option Agreement between the City of Pensacola and Studer Properties LLP for the development of Parcels 3, 6, and 8 of the Vince J. Whibbs Sr. Community Maritime Park, removing the previously-held option for Parcel 9 and extending the agreement for twelve months through September 30, 2023. Also, that City Council authorize the Mayor to take the actions necessary to execute and administer this agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Third Addendum to the Partial Assignment to Inspired Option Agreeer](#)

13. [22-01042](#) LEASE - GROUND SUBLEASE WITH NORTHWEST FLORIDA PROFESSIONAL BASEBALL LLC FOR PARCEL 9 OF THE VINCE J. WHIBBS SR. COMMUNITY MARITIME PARK
- Recommendation:** That City Council approve and authorize the Mayor to execute the Ground Sublease for Parcel 9 of the Vince J. Whibbs Sr. Community Maritime Park with Northwest Florida Professional Baseball LLC (NFPB) for the construction and use of batting cages and other stadium amenities, through March 31, 2032 and coterminous with the Multi-Use Facility Non-Exclusive Use Agreement for Blue Wahoos Stadium. Also, that City Council authorize the Mayor to take the actions necessary to execute and administer this sublease, consistent with the terms of the sublease and the Mayor's Executive Powers as granted in the City Charter.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Ground Sublease - Maritime Park Parcel 9](#)
[Map of CMP Parcels](#)
14. [22-00973](#) FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) SUBGRANT FOR HIGHWAY TRAFFIC FUNDS
- Recommendation:** That City Council accept the FY 2023 Florida Department of Transportation (FDOT) Subgrant for Highway Traffic Safety Funds in the amount of \$45,000. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer the grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter. Finally, that City Council adopt the supplemental budget resolution appropriating grant funds.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [FDOT Subgrant for Highway Traffic Safety Funds, Project #M5HVE-](#)
[Supplemental Budget Resolution No. 2022-098](#)
[Supplemental Budget Explanation No. 2022-098](#)

15. [2022-098](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2022-098 FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) SUBGRANT FOR HIGHWAY TRAFFIC FUNDS
- Recommendation:** That City Council adopt Supplemental Budget Resolution No. 2022-098.
- A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Supplemental Budget Resolution No. 2022-098](#)
[Supplemental Budget Explanation No. 2022-098](#)
16. [22-01010](#) FIRST AMENDMENT TO JOINT PARTICIPATION AGREEMENT (JPA) CONTRACT NO. ASR43 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION - LANDSCAPING OF ADDITIONAL STATE ROADS
- Recommendation:** That City Council approve the First Amendment to the Joint Participation Agreement (JPA) Contract No. ASR43 between the Florida Department of Transportation and the City of Pensacola for landscaping of additional state roads. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this First Amendment to JPA Contract No. ASR43, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter. Also, that City Council adopt a supplemental budget resolution appropriating the funds.
- Sponsors:** Grover C. Robinson, IV
- Attachments:** [Original JPA Landscape Agreement 1\)](#) [Original JPA Landscape Agreement](#) [First Amendment to JPA Landscape Agreement Contract No. ASR43](#)

17. [2022-105](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2022-105 - FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT (JPA) CONTRACT NO. ASR43 - LANDSCAPING OF STATE ROADS
- Recommendation:* That the City Council adopt Supplemental Budget Resolution No. 2022-105:
- A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.
- Sponsors:* Grover C. Robinson, IV
- Attachments:* [Supplemental Budget Resolution No. 2022-105](#)
 [Supplemental Budget Explanation No. 2022-105](#)
 [Original JPA Landscape Agreement Contract No. ASR43](#)
 [First Amendment to Joint Participation Agreement Contract No. ASR](#)
18. [52-22](#) PROPOSED ORDINANCE NO. 52-22 - PROPOSED AMENDMENT TO CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA - DOCKLESS SHARED MICROMOBILITY DEVICES PROGRAM
- Recommendation:* That City Council adopt Proposed Ordinance No. 52-22 on second reading.
- AN ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA AMENDING CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA TO REGULATE A DOCKLESS SHARED MICROMOBILITY DEVICE PROGRAM; PROVIDING FOR INDEMNIFICATION AND INSURANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.
- Sponsors:* Grover C. Robinson, IV
- Attachments:* [Proposed Ordinance No. 52-22](#)
 [Shared Micromobility Franchise Area Map](#)
 [Proposed Forced Parking Area Map](#)

19. [53-22](#) PROPOSED ORDINANCE NO. 53-22 - PROPOSED AMENDMENT - CITY OF PENSACOLA LAND DEVELOPMENT CODE CHAPTER 12-6 - APPENDIX A PROTECTED TREE LIST - INCLUSION OF QUERCUS HEMISPHERAERICA (DARLINGTON OAK)

Recommendation: That City Council adopt Proposed Ordinance No. 53-22 on second reading.

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE, TITLE 12, CHAPTER 12-6, APPENDIX A, OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA TO ADD QUERCUS HEMISPHERAERICA TO THE LIST OF PROTECTED TREES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

Sponsors: Ann Hill

Attachments: [Proposed Ordinance No. 53-22](#)
[Planning Board Minutes September 13, 2022](#)

COUNCIL EXECUTIVE'S REPORT

MAYOR'S COMMUNICATION

COUNCIL COMMUNICATIONS & CIVIC ANNOUNCEMENTS

SECOND LEROY BOYD FORUM

ADJOURNMENT

Any opening invocation that is offered before the official start of the Council meeting shall be the voluntary offering of a private person, to and for the benefit of the Council. The views or beliefs expressed by the invocation speaker have not been previously reviewed or approved by the City Council or the city staff, and the City is not allowed by law to endorse the religious or non-religious beliefs or views of such speaker. Persons in attendance at the City Council meeting are invited to stand during the invocation and to stand and recite the Pledge of Allegiance. However, such invitation shall not be construed as a demand, order, or any other type of command. No person in attendance at the meeting shall be required to participate in any opening invocation that is offered or to participate in the Pledge of Allegiance. You may remain seated within the City Council Chambers or exit the City Council Chambers and return upon completion of the opening invocation and/or Pledge of Allegiance if you do not wish to participate in or witness the opening invocation and/or the recitation of the Pledge of Allegiance.

If any person decides to appeal any decision made with respect to any matter considered at such meeting, he will need a record of the proceedings, and that for such purpose he may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

The City of Pensacola adheres to the Americans with Disabilities Act and will make reasonable accommodations for access to City services, programs and activities. Please call 435-1606 (or TDD 435-1666) for further information. Request must be made at least 48 hours in advance of the event in order to allow the City time to provide the requested services.



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01072

City Council

10/27/2022

SUBJECT:

APPROVAL OF MINUTES: REGULAR MEETING DATED OCTOBER 13, 2022



City of Pensacola

CITY COUNCIL

Regular Meeting Minutes

October 13, 2022

5:30 P.M.

Council Chambers

Council President Hill called the meeting to order at 5:30 P.M.

ROLL CALL

Council Members Present: Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton (arrived 5:33), Casey Jones, Jared Moore, Sherri Myers

Council Members Absent: None

Also Present: Mayor Grover C. Robinson, IV (arrived 5:38)

Members of the public may attend the meeting in person. City Council encourages those not fully vaccinated to wear face coverings that cover their nose and mouth.

The meeting can also be watched live stream at: cityofpensacola.com/428/Live-Meeting-Video.

To provide input:

- Leroy Boyd Forum, for items not on the agenda: citizens may submit an online form here <https://www.cityofpensacola.com/ccinput> **beginning at 3:00 P.M. until 5:30 P.M. only** to indicate they wish to speak during LeRoy Boyd Forum **and include a phone number. Staff will call the person** at the appropriate time so the citizen can directly address the City Council using a telephone held up to a microphone.
- Agenda Items, for specific items on the agenda: citizens may submit an online form here <https://www.cityofpensacola.com/ccinput> **beginning at 3:00 P.M. until that agenda item has been voted upon** to indicate they wish to speak to a specific item on the agenda **and include a phone number. Staff will call the person** at the appropriate time so the citizen can directly address the City Council using a telephone held up to a microphone. **Any form received after an agenda item has been voted upon will not be considered.**

INVOCATION

Moment of Silence

PLEDGE OF ALLEGIANCE

Council Member Sherri Myers

FIRST LEROY BOYD FORUM

The following individuals addressed Council regarding lack of affordable housing options, escalating costs of housing and utilities, and urged the City to declare a “Housing State of Emergency”:

Sarah Brummet
Charlie Dyell
Marley Smith

Dashaun McKenzie
Jasmine Brown

Discussion took place throughout speakers’ comments with Council Members and Mayor Robinson asking questions and making follow-up remarks. Housing Director Whitaker also provided input.

Daryn Flanders: Addressed Council regarding homelessness and panhandling downtown and thanked Pensacola Police Department for helping him try to understand the issues.

AWARDS

Mayor Robinson read a proclamation to be presented to the Independence for the Blind of West Florida recognizing *White Cane Safety Day* on October 15th.

APPROVAL OF MINUTES

1. [22-01016](#) APPROVAL OF MINUTES: REGULAR MEETING DATED SEPTEMBER 29, 2022

A motion to approve was made by Council Member Moore and seconded by Council Member Brahier.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

APPROVAL OF AGENDA

A motion to approve the agenda as presented was made by Council Member Moore and seconded by Council Member Brahier.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

CONSENT AGENDA

2. [22-00932](#) RELEASE OF LIENS FOR IMPROVEMENTS

Recommendation: That City Council approve the release of City liens totaling \$6,483.35 for improvements on the following parcel: 2300 West Jackson Street, #A, Property Account number 151498000. Further, that City Council authorize the Mayor to take those actions necessary to execute any documents related to the release of liens.

3. [22-00944](#) INTERLOCAL AGREEMENT WITH ESCAMBIA COUNTY HOUSING FINANCE AUTHORITY FOR LOCAL GOVERNMENT CONTRIBUTION FOR STATE APARTMENT INCENTIVE LOAN (SAIL) FINANCING OF AFFORDABLE MULTIFAMILY DEVELOPMENTS

Recommendation: That City Council approve the Interlocal Agreement with Escambia County Housing Finance Authority (ECHFA) to coordinate local government support of application(s) from developers within the Pensacola City limits for Florida Housing Finance Corporation's RFA 2022-205 State Apartment Incentive Loan (SAIL) Financing of Affordable Multifamily Housing Developments to be used in Conjunction with Tax-Exempt Bonds and Non-Competitive Housing Credits. Further, that the Council authorize the Mayor to sign the Local Government Verification of Contribution Form required.

4. [22-00968](#) AWARD OF BID # 22-048 2022 SIDEWALK PROJECT PHASE 5

Recommendation: That City Council approve Award of Bid # 22-048 - 2022 Sidewalk Project Phase 5 to Gulf Beach Construction, Inc. of Gulf Breeze, Florida, the lowest and most responsible bidder with a base bid of \$235,757.00, plus a 10% contingency in the amount of \$23,575.70 for the total amount of \$259,332.70. Further, that City Council authorize the Mayor to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.

CONSENT AGENDA (CONT'D.)

5. [22-00995](#) DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER TENIADE BROUGHTON - DISTRICT 5

Recommendation: That City Council approve funding of \$600 for the Real Women Radio Foundation, \$500 for the Pensacola Omega Lamplighters, \$500 for There is Hope Inc., and \$300 for the National Coalition of 100 Black Women Pensacola Chapter from the City Council Discretionary Funds for District 5.

6. [22-01004](#) DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL VICE PRESIDENT DELARIAN WIGGINS - DISTRICT 7

Recommendation: That City Council approve funding of \$500 to 17:18 Ministries, Inc. d/b/a Pensacola Dream Center and \$500 to the Southern Youth Sports Association from the City Council Discretionary Funds for District 7.

A motion to approve consent agenda items 2, 3, 4, 5, and 6 was made by Council Member Moore and seconded by Council Member Wiggins.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

REGULAR AGENDA

7. [22-00998](#) PUBLIC HEARING: PROPOSED AMENDMENT - CITY OF PENSACOLA LAND DEVELOPMENT CODE CHAPTER 12-6 - APPENDIX A, PROTECTED TREE LIST, INCLUSION OF QUERCUS HEMISPHERICA (DARLINGTON OAK)

Recommendation: That City Council conduct a Public Hearing on October 13, 2022 to consider a proposed amendment to Chapter 12-6, Appendix A of the City of Pensacola Land Development Code to include Quercus hemisphaerica (Darlington Oak) to the list of protected trees.

A motion to approve was made by Council Member Jones and seconded by Council Member Moore.

Brief discussion took place regarding expanding the protected tree list to include all native trees.

REGULAR AGENDA (CONT'D.)

Upon conclusion of discussion and there being no public input (on Public Hearing Item 7, 22-00998), the vote was called.

The motion carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

8. [53-22 PROPOSED ORDINANCE NO. 53-22 - PROPOSED AMENDMENT - CITY OF PENSACOLA LAND DEVELOPMENT CODE CHAPTER 12-6 - APPENDIX A PROTECTED TREE LIST - INCLUSION OF QUERCUS HEMISPHERICA \(DARLINGTON OAK\)](#)

Recommendation: That City Council approve Proposed Ordinance No. 53-22 on first reading:

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE, TITLE 12, CHAPTER 12-6, APPENDIX A, OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA TO ADD QUERCUS HEMISPHERAERICA TO THE LIST OF PROTECTED TREES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

A motion to approve on first reading was made by Council Member Jones and seconded by Council Member Moore.

The motion carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

REGULAR AGENDA (CONT'D.)

9. [22-00916](#) TRANSFER OF AMERICAN RESCUE PLAN ACT (ARPA) FROM VARIOUS PROJECTS TO FUND THE STUDER COMMUNITY INSTITUTE'S INITIATIVE "THE SPRING"

Recommendation: That City Council authorize the Mayor to transfer funds within the American Rescue Plan Act (ARPA) Fund to provide funding for expenses the Studer Community Institute's initiative called "The Spring".

A motion to approve was made by Council Member Jones and seconded by Council Member Wiggins.

Council Member Moore advised that he has a voting conflict due to his wife's employment with Studer Community Institute (SCI) therefore he will abstain from discussion and the vote on this item.

Council Vice President Wiggins (co-sponsor) made opening remarks and then indicated representatives from SCI are in attendance to address Council.

Rachael Gillette, President of SCI provided an overhead presentation (on file with background materials). Following the presentation she responded accordingly to questions from Council Members along with Gracie Price, Entrepreneurial Manager of The Spring.

As discussion ensued among Council, SCI representatives continued to respond to questions with additional input from Mayor Robinson related to the proposed use of ARPA funds in the amount of \$75,000 to go towards salary and the make-up of clientele to be served: City versus County business owners/residents.

Council Member Brahier offered a friendly amendment that at least eighteen percent (18%) of clients be residents of the City. Council Member Jones and Council Vice President Wiggins accepted.

Upon conclusion of discussion the vote was called.

The motion (with friendly amendment) carried by the following vote:

Yes: 6	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Sherri Myers
No: 0	None
Abstain:	Jared Moore

REGULAR AGENDA (CONT'D.)

10. [22-01005](#) AFFIRMATION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE PENSACOLA-ESCAMBIA DEVELOPMENT COMMISSION AND THE CITY OF PENSACOLA, PERTAINING TO THE USE OF PROPERTY KNOWN AS "DOWNTOWN TECHNOLOGY PARK."

Recommendation: That the City Council affirm the executed Memorandum of Understanding with the Pensacola-Escambia Development Commission and the City of Pensacola for the use of property known as "Downtown Technology Park."

A motion to approve was made by Council Member Jones and seconded by Council Member Moore.

Public input was heard by Jack Zoesch. He responded to questions from Council Member Brahier related to user fees for his group's use of the field.

Discussion took place among Council with Mayor Robinson (sponsor) and Parks & Recreation Director Stills responding accordingly to questions.

Upon conclusion of discussion, the vote was called.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

11. [22-00948](#) PENSACOLA INTERNATIONAL AIRPORT - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 420300-5-94-01 - RUNWAY 8/26 REHABILITATION - DESIGN

Recommendation: That City Council approve the acceptance of the Public Transportation Grant Agreement No. 420300-5-94-01 in the amount of \$580,000 to provide partial funding for the Runway 8/26 Rehabilitation Design. Further, that City Council adopt a resolution authorizing the Mayor to take those actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter.

A motion to approve was made by Council Member Moore and seconded by Council Member Brahier.

Mayor Robinson (sponsor) and Airport Director Coughlin responded accordingly to questions from Council Member Brahier.

Upon conclusion of discussion, the vote was called.

REGULAR AGENDA (CONT'D.)

The motion (to approve Item 11, 22-00948) carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

12. [2022-096](#) RESOLUTION NO. 2022-096 - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION AGREEMENT NO. 420300-5-94-01 RUNWAY 8/26 REHABILITATION - DESIGN AT THE PENSACOLA INTERNATIONAL AIRPORT

Recommendation: That City Council adopt Resolution No. 2022-096.

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 420300-5-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR RUNWAY 8/26 REHABILITATION - DESIGN AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Jones and seconded by Council Member Brahier.

The motion carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

13. [22-00953](#) PENSACOLA INTERNATIONAL AIRPORT - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 420300-6-94-01 - CORPORATE APRON AREA EXPANSION - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Recommendation: That City Council approve the acceptance of the Public Transportation Grant Agreement No. 420300-6-94-01 in the amount of \$95,000 to provide partial funding for the Corporate Apron Area Expansion National Environment Policy Act (NEPA) documentation. Further, that City Council adopt a resolution authorizing the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter.

A motion to approve was made by Council Member Moore and seconded by Council Member Jones.

Mayor Robinson (sponsor) and Airport Director Coughlin responded accordingly to questions from Council Member Myers.

REGULAR AGENDA (CONT'D.)

Upon conclusion of discussion, the vote was called.

The motion (to approve Item 13, 22-00953) carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

14. [2022-097 RESOLUTION NO. 2022-097 - STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION PUBLIC TRANSPORTATION AGREEMENT NO. 420300-6-94-01 - CORPORATE APRON AREA EXPANSION - NATIONAL ENVIRONMENTAL POLICY ACT \(NEPA\) AT THE PENSACOLA INTERNATIONAL AIRPORT](#)

Recommendation: That City Council adopt Resolution No. 2022-097.

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF PENSACOLA TO EXECUTE THE PUBLIC TRANSPORTATION GRANT AGREEMENT NO. 420300-6-94-01 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR CCORPORATE APRON AREA EXPANSION - NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) AT THE PENSACOLA INTERNATIONAL AIRPORT; PROVIDING AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Brahier and seconded by Council Member Moore.

The motion carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

REGULAR AGENDA (CONT'D.)

15. [22-00983](#) FLORIDA DEPARTMENT OF STATE GRANT AWARD FOR ALICE S. WILLIAMS LIBRARY RESTORATION PROJECT - GRANT NO. 23.S.AA.900.072

Recommendation: That City Council approve and authorize the Mayor to execute the acceptance of the African American Cultural and Historical (AACH) Grant from the State of Florida Department of State (DOS), Grant No. 23.s.aa.900.072, in the amount of \$500,000 for the Alice S. Williams Library Restoration Project. Also, that City Council adopt a supplemental budget resolution appropriating the grant funds for the project. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter.

A motion to approve was made by Council Member Moore and seconded by Council Member Brahier.

Council Member Broughton made comments commending Property Lease Manager Stallworth for her work in applying for grant funding of this project. Property Lease Manager Stallworth made follow-up remarks.

Upon conclusion of discussion, the vote was called.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

16. [2022-099](#) SUPPLEMENTAL BUDGET RESOLUTION NO. 2022-099 - FLORIDA DEPARTMENT OF STATE GRANT AWARD FOR ALICE S. WILLIAMS LIBRARY RESTORATION PROJECT - GRANT NO. 23.S.AA.900.072

Recommendation: That City Council adopt Supplemental Budget Resolution No. 2022-099.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Moore and seconded by Council Member Brahier.

Council Executive Kraher advised of hardcopies at Council's places of revisions providing for correction of dollar figures (on file with background materials).

REGULAR AGENDA (CONT'D.)

There being no discussion, the vote was called.

The motion (to adopt Res. No. 2022-099 as corrected) carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

17. [52-22 PROPOSED ORDINANCE NO. 52-22 - PROPOSED AMENDMENT TO CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA - DOCKLESS SHARED MICROMOBILITY DEVICES PROGRAM](#)

Recommendation: The City Council approve Proposed Ordinance No. 52-22 on first reading:

AN ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA AMENDING CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA TO REGULATE A DOCKLESS SHARED MICROMOBILITY DEVICE PROGRAM; PROVIDING FOR INDEMNIFICATION AND INSURANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

A motion to approve on first reading was made by Council Member Moore and seconded by Council Member Myers.

Mayor Robinson (sponsor) responded accordingly to questions from Council Member Brahier.

Upon conclusion of discussion, the vote was called.

The motion carried by the following vote:

Yes: 7 Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton,
Casey Jones, Jared Moore, Sherri Myers
No: 0 None

REGULAR AGENDA (CONT'D.)

18. [50-22 REVISED: PROPOSED ORDINANCE NO. 50-22 - REQUEST TO VACATE RIGHTS-OF-WAY - AIRLANE DRIVE, ST. ANNE DRIVE, DOUGLAS AVENUE, SHERRILL AVENUE, AND EXECUTIVE PLAZA](#)

Recommendation: That City Council adopt Proposed Ordinance No. 50-22 on second reading:

AN ORDINANCE CLOSING, ABANDONING AND VACATING AIRLANE DRIVE, ST. ANNE DRIVE, DOUGLAS AVENUE, SHERRILL AVENUE, AND EXECUTIVE PLAZA; IN PENSACOLA, ESCAMBIA COUNTY, STATE OF FLORIDA; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Moore and seconded by Council Member Brahier.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

19. [2022-104 RESOLUTION NO. 2022-104 - SUPPORTING THE ADDITION OF CITY POLICE AT YOUTH FOOTBALL HOME GAMES](#)

Recommendation: That the City Council adopt Resolution No. 2022-104.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PENSACOLA; SUPPORTING THE ADDITION OF CITY POLICE AT YOUTH FOOTBALL HOME GAMES; PROVIDING AN EFFECTIVE DATE.

A motion to adopt was made by Council Member Moore and seconded by Council Member Jones.

Mayor Robinson (co-sponsor) responded accordingly to questions from Council Member Broughton.

Upon conclusion of discussion, the vote was called.

The motion carried by the following vote:

Yes: 7	Ann Hill, Delarian Wiggins, Jennifer Brahier, Teniade Broughton, Casey Jones, Jared Moore, Sherri Myers
No: 0	None

COUNCIL EXECUTIVE'S REPORT

None

MAYOR'S COMMUNICATION

Mayor Robinson advised of today's quarterly meeting with FDOT district staff regarding various impending projects.

COUNCIL COMMUNICATIONS & CIVIC ANNOUNCEMENTS

Council Member Myers indicated she received notification from Public Works & Facilities Director Tootle that the bid went out for the Marketplace Greenway project and inquired as to specifications of the bid package. Deputy City Administrator Forte indicated he will ensure that the bid package is provided to Council Members via email.

SECOND LEROY BOYD FORUM

None.

ADJOURNMENT

WHEREUPON the meeting was adjourned at 7:55 P.M.

Adopted: _____

Approved: _____
Ann Hill, President of City Council

Attest:

Ericka L. Burnett, City Clerk



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-00986

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND ESCAMBIA COUNTY FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT

RECOMMENDATION:

That City Council approve the Amendment to the Interlocal Agreement between the City of Pensacola and Escambia County for the Burgess Road Sidewalk and Drainage Improvement Project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Escambia County owns and maintains the right of way along the portion of Burgess Road between Sanders Street and Lanier Drive and originally committed to contribute \$500,000.00 for the cost of said portions of the project that lie within the County's jurisdictional boundaries. The parties wish to amend the Agreement to reflect that the County has committed to contribute up to an additional \$35,000 for the cost of said portions of the project that lie within the County's jurisdictional boundaries as further provided therein.

PRIOR ACTION:

On April 8, 2021, City Council approved the Interlocal Agreement between the City of Pensacola and Escambia County, Florida for Burgess Road Sidewalk and Drainage Improvements Project and Interlocal Agreement between the City of Pensacola and Emerald Coast Utilities Authority, relating to Utility Upgrades as part of the Burgess Road and Drainage Improvements Project.

FUNDING:

Budget: \$ 1,640,000.00 Local Option Sales Tax Fund- Burgess Road
200,000.00 Local Option Sales Tax Fund- Sidewalk Improvements
500,000.00 Original Escambia County Interlocal Agreement
200,000.00 Emerald Coast Utilities Authority Agreement
35,000.00 Amendment #1 Escambia County, Florida contribution
\$ 2,575,000.00

Actual:	\$2,039,662.68	Construction Contract
	203,966.27	10% Contingency
	35,000.00	Amendment # 1 Escambia County, Florida contribution
	209,885.68	Engineering Design/Permitting/Surveying (Completed)
	50,000.00	Engineering Management/Inspection (Estimate)
	8,000.00	Construction Testing/Misc. (Estimate)
	<u>\$ 2,546,514.63</u>	

FINANCIAL IMPACT:

The City has allocated \$1,640,000.00 for this project through the Local Option Sales Tax Fund - Burgess Road. In Addition, a budget transfer in the amount of \$200,000 will be made within the Local Option Sales Tax Fund moving funding from Sidewalk Improvements to this project. Additional funding in the amount of \$700,000 will be reimbursed through Interlocal Agreements with Escambia County and the Emerald Coast Utility Authority., Escambia County will provide \$500,000.00 to be used for sidewalk and drainage improvements for those portions of Burgess Road that lie within the County's jurisdictional boundaries. The modified Agreement will reflect that Escambia County has committed to contribute up to an additional \$35,000.00 for the cost of attached said portions of the project that lie within the County's jurisdictional boundaries as further provided therein. Emerald Coast Utility Authority will provide \$200,000 for the cost of utility upgrades that lie within the project's boundaries.

The funding provided through the Escambia County and Emerald Coast Utilities Authority Interlocal Agreements are not reflected in the LOST IV Burgess Road project budget since those cost do not result in an asset to the City. Instead, as funds related to these Interlocal Agreements are expended, a due from the County or due from ECUA is booked on the City's general ledger to track the cost. As reimbursements are received those liability accounts are reduced.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/17/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator- Community Development
Amy Tootle, Director of Public Works & Facilities
Brad Hinote, City Engineer

ATTACHMENTS:

- 1) Legislative Action Item No. 21-00206 approved 4/2/2021
- 2) Interlocal Agreement with Escambia County
- 3) Interlocal Agreement with Emerald Coast Utilities Authority

4) Amendment to the Interlocal Agreement with Escambia County

PRESENTATION: No



Legislation Details (With Text)

File #: 21-00206 **Version:** 1 **Name:**
Type: Legislative Action Item **Status:** Passed
File created: 2/24/2021 **In control:** City Council
On agenda: 4/8/2021 **Final action:** 4/8/2021
Enactment date: **Enactment #:**
Title: INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND ESCAMBIA COUNTY, FLORIDA FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT
Sponsors: Grover C. Robinson, IV
Indexes:
Code sections:
Attachments: 1. Interlocal Agreement, Escambia County, Florida.pdf

Date	Ver.	Action By	Action	Result
4/8/2021	1	City Council	Approved	Pass
4/5/2021	1	Agenda Conference	Placed on Consent Agenda	Pass

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND ESCAMBIA COUNTY, FLORIDA FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT

RECOMMENDATION:

That City Council approve the Interlocal Agreement between the City of Pensacola and Escambia County, Florida for the Burgess Road Sidewalk and Drainage Improvement Project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

County owns and maintains the right of way along the portion of Burgess Road between Sanders Street and Lanier Drive and has committed to contribute \$500,000.00 for the cost of said portions of the project that lie within the County's jurisdictional boundaries.

PRIOR ACTION:

None

FUNDING:

Budget: \$ 1,640,000.00 Local Option Sales Tax Fund-Burgess Road
200,000.00 Local Option Sales Tax Fund-Sidewalk Improvements
500,000.00 Escambia County Interlocal Agreement
200,000.00 Emerald Coast Utilities Authority Agreement
\$ 2,540,000.00

Actual: \$ 2,039,662.68 Construction Contract
203,966.27 10% Contingency
209,885.68 Engineering Design/Permitting/Surveying (Completed)
50,000.00 Engineering Management/Inspection (Estimate)
8,000.00 Construction Testing/Misc. (Estimate)
\$ 2,511,514.63

FINANCIAL IMPACT:

The City has allocated \$1,640,000 for this project through the Local Option Sales Tax Fund-Burgess Road. In addition, a budget transfer in the amount of \$200,000 will be made within the Local Option Sales Tax Fund moving funding from Sidewalk Improvements to this project. Additional funding in the amount of \$700,000 will be reimbursed through Interlocal Agreements with Escambia County and the Emerald Coast Utility Authority. Escambia County will provide \$500,000 to be used for sidewalk and drainage improvements for those portions of Burgess Road that lie within the County's jurisdictional boundaries. ECUA will provide \$200,000 for the cost of utility upgrades that lie within the project's boundaries.

CITY ATTORNEY REVIEW: Yes

3/26/2021

STAFF CONTACT:

Keith Wilkins, City Administrator
Kerrith Fiddler, Duty City Administrator - Community Development
L. Derrik Owens, Director of Public Works and Facilities/City Engineer

ATTACHMENTS:

- 1) Interlocal Agreement, Escambia County, Florida

PRESENTATION: No

2/18/2021 CARTI-9

INTERLOCAL AGREEMENT BETWEEN THE
CITY OF PENSACOLA AND ESCAMBIA COUNTY, FLORIDA,
RELATING TO SIDEWALK AND DRAINAGE IMPROVEMENTS

THIS AGREEMENT is made and entered into by and between the City of Pensacola, Florida, a municipal corporation created and existing under the laws of the State of Florida (hereinafter referred to as "City") with administrative offices at 222 West Main Street, Pensacola, Florida 32502 and Escambia County, a political subdivision of the State of Florida (hereinafter referred to as "County") with administrative offices located at 221 Palafox Place, Suite 420, Pensacola, Florida 32502 (each being at times referred to as "party" or "parties").

WITNESSETH:

WHEREAS, City and County are authorized by §163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, City plans to install sidewalk and drainage improvements along Burgess Road; and

WHEREAS, County owns and maintains the right of way along that portion of Burgess Road between Sanders Street (Station 44+40) and Lanier Drive (Station 58+00) and has committed to contribute \$500,000.00 for the cost of said portions of the project that lie within the County's jurisdictional boundaries.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and terms of payment hereinafter set forth, City and County agree as follows:

Section 1. Purpose of Agreement.

1.1 The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

1.2 Pursuant to §163.01, Florida Statutes, this Agreement establishes the responsibilities of the parties with respect to the installation of sidewalk and drainage improvements along a portion of Burgess Road that lies within County's jurisdictional boundaries as provided herein.

Section 2. Responsibilities of the Parties.

2.1 In consideration of the faithful performance by City of the project described in **Exhibit "A"** which is attached hereto and incorporated by reference herein, County agrees to contribute an amount not to exceed \$500,000.00 in accordance with the terms of this Agreement for the cost of the installation of sidewalks and drainage improvements that lie within the jurisdictional boundaries of the County as set forth in Section 3.

2.2 City agrees to contract with a third party to fully perform and complete in a good workmanlike manner the project described in **Exhibit "A"**. The City will be fully responsible for payment of all monies due under any such contract with a third party.

2.3 City agrees to convey to the County such sidewalk and drainage improvements that are installed along those portions of Burgess Road that lie within the County's jurisdictional boundaries promptly upon completion and acceptance of the project described in **Exhibit "A"**.

2.4 It is anticipated by the parties that the time for completion of the project described in **Exhibit "A"** shall be within one (1) year from commencement of construction. The City will provide the County with a copy of the schedule for completion and any subsequent updates or revisions thereto.

2.5 This Agreement shall become effective upon filing with the Office of the Clerk of the Circuit Court of Escambia County, Florida. County shall be responsible for such filing.

2.6 Title to the improvements that are installed along those portions of Burgess Road that lie within the County's jurisdictional boundaries shall pass to County subsequent to final payment by County to City as provided herein and acceptance of the project. The City shall provide notice to the County when the project is ready for final inspection. County shall, upon reasonable notice, have the right to inspect all such work prior to the City accepting it. Following acceptance, County shall be entirely responsible, subject to Paragraph 2.7 below, for all maintenance, repair, and replacement to the improvements that lie within the County's jurisdictional boundaries.

2.7 City shall obtain and shall assign to County all express warranties given to City regarding the portion of the project paid for by the County. If within one (1) year of the date of completion and acceptance, any work is found to be defective or not in conformance with applicable contract documents, City shall reasonably cooperate with County regarding the enforcement of any warranty. These warranties are in addition to those implied warranties, if any, to which the County may be entitled as a matter of law.

2.8 County shall cooperate with City in obtaining such other easements and rights of way as may be required for successful completion of said portion of the project.

Section 3. Compensation and Method of Payment.

3.1 County agrees to reimburse City for sidewalk and drainage improvement project costs for those portions of Burgess Road that lie within the County's jurisdictional boundaries as further described in **Exhibit "A"** in an amount not to exceed **Five Hundred Thousand Dollars (\$500,000.00)**.

3.2 Upon request, City shall provide to County copies of any payment documentation and such other financial documents as County may reasonably require to verify any and all project costs related to said portion of the project that lies within the County's jurisdictional boundaries as further described in **Exhibit "A"**.

- 3.3 Invoices to County will be sent to: Escambia County
Attention: Robert McCracken
3363 West Park Place
Pensacola, Florida 32505
- 3.4 Payments to City will be sent to: City of Pensacola
Attention: Brad Hinote
222 W. Main Street
Pensacola, Florida 32502

Section 4. Miscellaneous Provisions.

4.1 Term and Termination: This Agreement will remain in effect for one year or until the completion of the project, whichever occurs first. This Agreement may be terminated by either party for cause or convenience upon providing at least thirty (30) days prior written notice to the non-terminating party.

4.2 Force Majeure: In the event that performance by County or City of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such party, whether such occurrence be an act of God or any other occurrence whatsoever that is beyond the reasonable control of such party, including a change in environmental law or regulation rendering performance impractical or impossible, then such party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

4.3 Liability: The parties hereto, their respective elected officials, officers and employees shall not be deemed to assume any liability for the acts, omissions or negligence of the other party. The City and County, as local government bodies of the State of Florida, agree to be fully responsible their individual negligent acts or omissions or tortious acts which result in claims or suits against their respective jurisdictions and agree to be fully liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or County and nothing herein shall be construed as consent by the City or County to be sued by third parties in any matter arising out of this Agreement.

4.4 Records: The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

4.5 Assignment: This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

4.6 All Prior Agreements Superseded:

(a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written.

(b) It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

4.7 Headings: Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

4.8 Survival: All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

4.9 Interpretation: For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

(a) If either party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, it shall immediately notify the other party and request clarification of the its interpretation of this Agreement.

(b) This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

4.10 Severability: The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion of provision.

4.11 Further Documents: The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

4.12 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is the subject of this Agreement shall be in the County of Escambia.

4.13 Notices: All notices required or made pursuant to this Agreement by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

COUNTY:

County Administrator
Escambia County
221 Palafox Place, Suite 420
Pensacola, FL 32502

CITY:

City Administrator
City of Pensacola
222 West Main Street
Pensacola, FL 32502

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

4.14 No Waiver: The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates, under each signature:

Approved as to form and legal sufficiency.

By/Title: Kristin D. Hual, SACA

Date: February 10, 2021

ATTEST: Pam Childers,
Clerk of the Circuit Court and Comptroller

BY: [Signature]

Deputy Clerk

(SEAL)

ATTEST: _____

City Clerk

(SEAL)

Legal in form and valid as drawn:

City Attorney

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners

BY: [Signature]

Robert Bender, Chairman

DATE: 2/22/2021

BCC Approved: 2/18/2021

CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council

BY: _____

Mayor, Grover C. Robinson, IV

DATE: _____

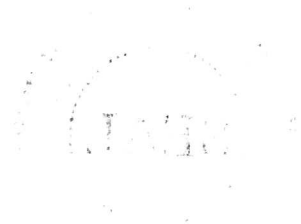


EXHIBIT 'A'
NON-ADA COMPLIANT

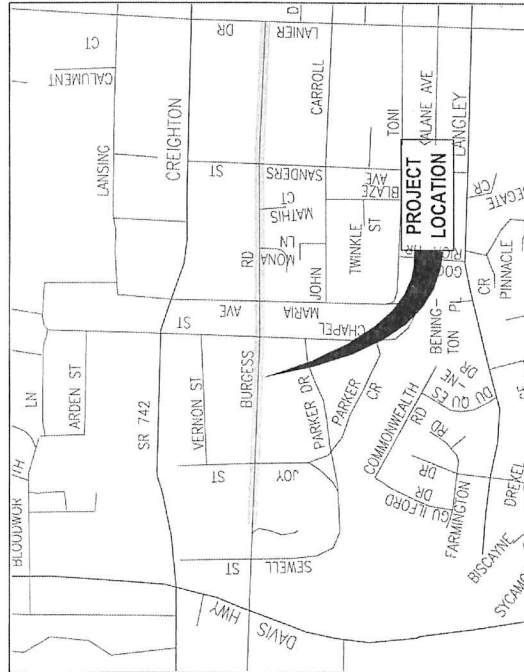
CONSTRUCTION PLANS FOR

BURGESS ROAD SIDEWALK DESIGN

PREPARED FOR



CITY OF PENSACOLA



VICINITY MAP
NOT TO SCALE

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
449 W. IAN ST., PENSACOLA, FL 32502 (850)438-9661
ENGINEERING BUSINESS: EB-000340
Pensacola - Panama City Beach - Tallahassee - Mobile

BDI PROJECT No. 24323.02
JANUARY 2021
PREPARED BY

100% SUBMITTAL
JANUARY 15, 2021

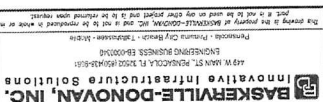


THIS DOCUMENT HAS BEEN DIGITALLY SIGNED
BY MICHAEL D. LANGSTON ON THE DATE
ADJACENT TO THE SEAL. PRINTED COPIES OF
THIS DOCUMENT ARE NOT CONSIDERED
SIGNED AND SEALED AND THE SIGNATURE
MUST BE VERIFIED ON ANY ELECTRONIC
COPIES.

INDEX

SHEET	CONTENT
C-000	COVER SHEET & VICINITY MAP
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C-003	TYPICAL SECTIONS
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C-101 - 103	EXISTING CONDITIONS, DEMOLITION & EROSION CONTROL PLAN
C-104 - 112	ROADWAY IMPROVEMENTS PLAN & PROFILE
C-115	STORM DRAINAGE STRUCTURE TABLE
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C-900 - 903	DETAILS
C-904 - 905	FOOT DETAILS

SIDEWALK DESIGN



g u o i n i ,
O N I .

[illegible]

UTILITY CONTACTS

[illegible]

LEGEND

EXISTING TELEPHONE PEDSTAL
EXISTING SANITARY MANHOLE
EXISTING STORM MANHOLE
EXISTING WATER VALVE
EXISTING MALEBOX
FINISHED SPOT GRADE
EXISTING TREE TO BE REMOVED
SILT FENCE
DRAINAGE FLOW DIRECTION
PALM TREE
PINE TREE
OAK TREE

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NOTES:

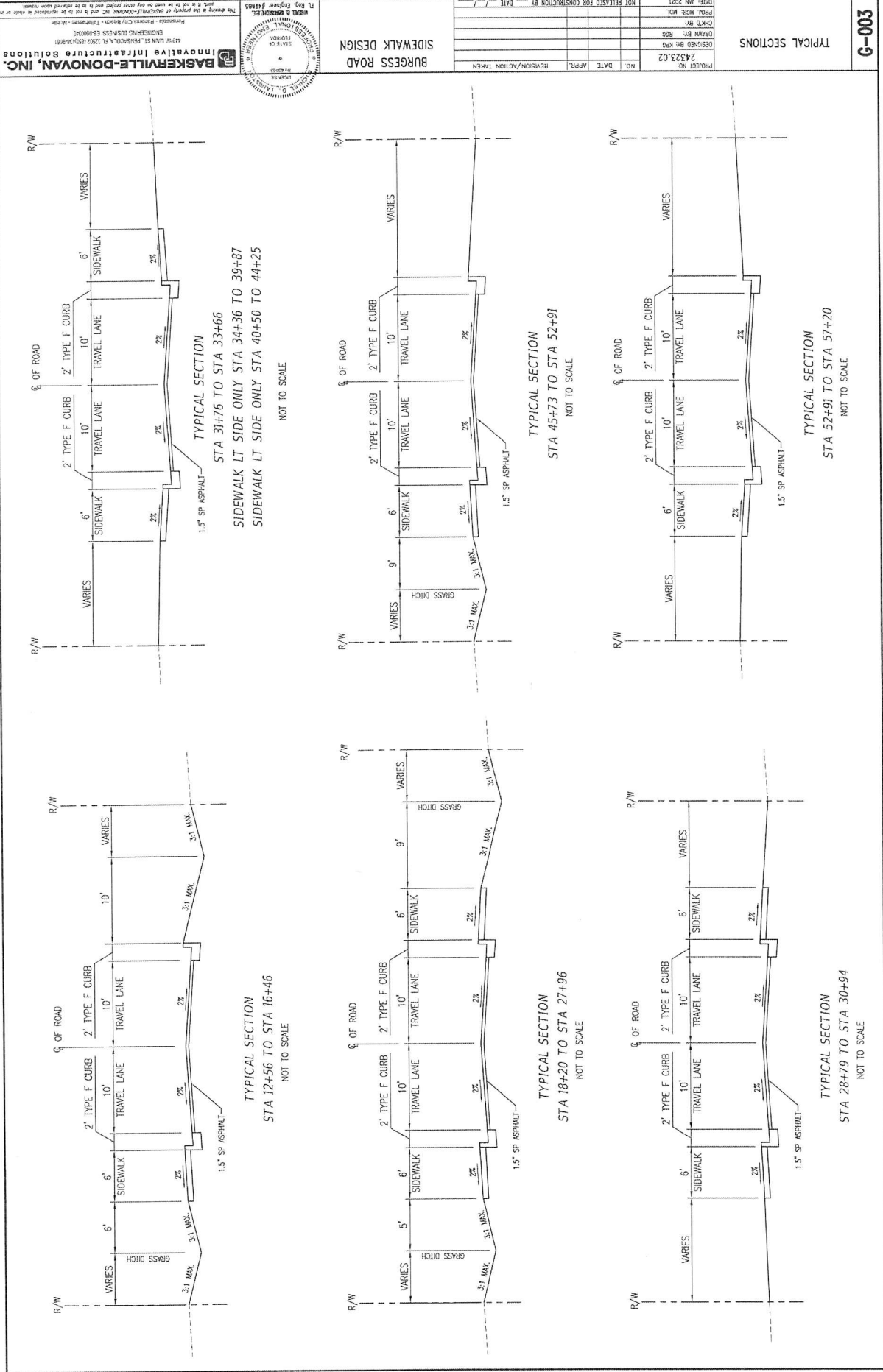
1. ALL WATER SYSTEM RELOCATIONS SHALL BE IN ACCORDANCE WITH ECUA ENGINEERING MANUAL, LATEST EDITION.
2. WATER SERVICE LINES TO INDIVIDUAL RESIDENCES WILL BE IMPACTED SERVICE LINE MUST BE RECONNECTED IMMEDIATELY AFTER DAMAGE OR RELOCATION; REPAIRS AND RELOCATIONS SHALL BE IN ACCORDANCE WITH ECUA ENGINEERING MANUAL, LATEST EDITION.

[illegible]

UTILITY CONTACTS
& LEGEND

G-002

[illegible]BURGESS ROAD
SIDEWALK DESIGN



E:\DWG\24323\24323.02\1.0-003 Typical Sections.dwg, Jan 12, 2021 - BJB, JLD, RSG

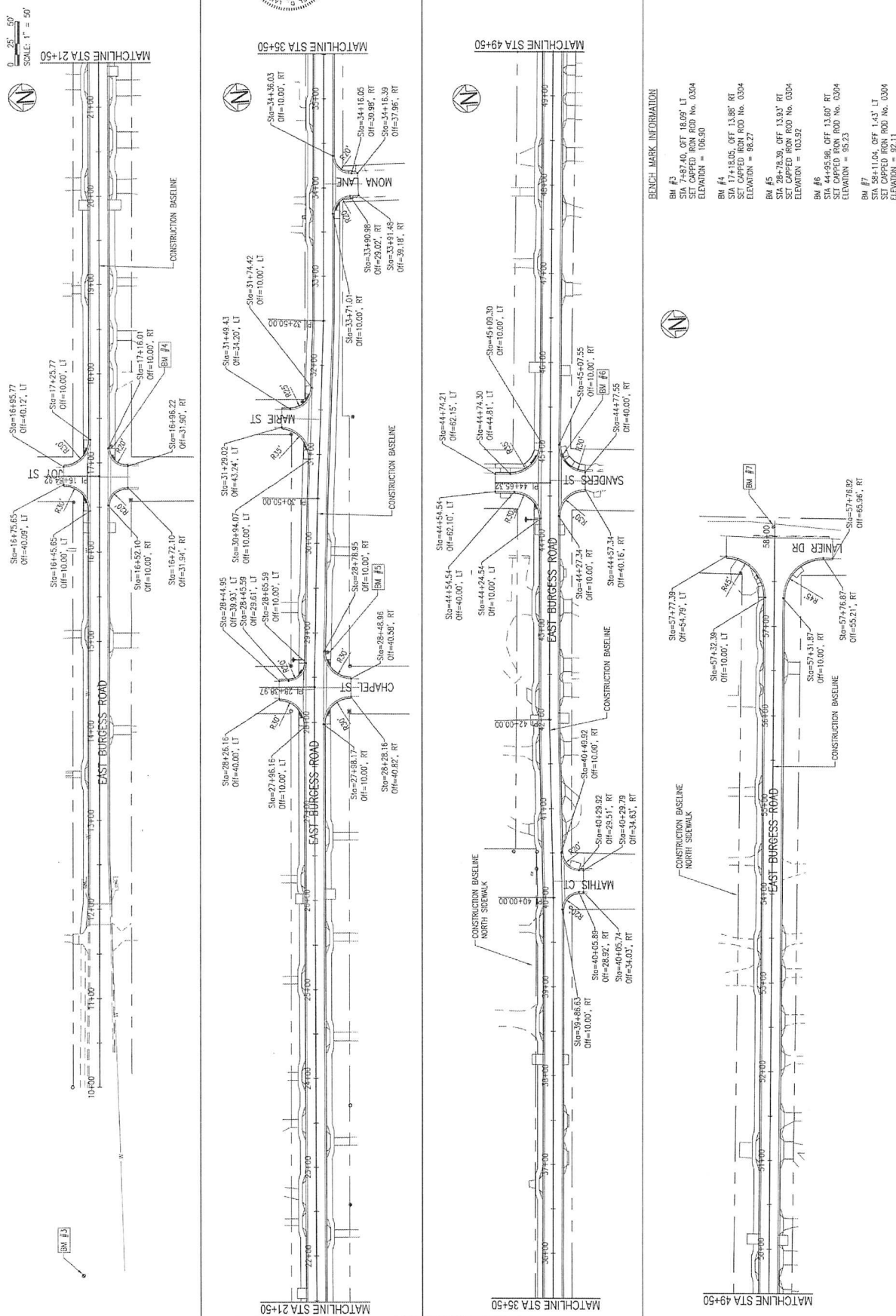
PROJECT NO.	24323.02
DESIGNED BY:	HB
DRAWN BY:	BOD
CHECKED BY:	MOL
PROJECT MGR:	MOL
DATE: JAN 2021	NOT RELEASED FOR CONSTRUCTION BY DATE

BURGESS ROAD
SIDEWALK DESIGN

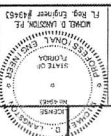
BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

449 W. MAIN ST., PERRIS, CA, FL 32050 (850)348-9551
ENGINEERING BUSINESS, DB-0003040
Perris/CA - Perris/City Beach - Tallahassee - Mobile

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PROJECT NO.	24333.02
DESIGNED BY:	
GRADED BY:	
CHD BY:	
PROD. MOD. MOD.	
DATE: JUN 2021	
NOT RELEASED FOR CONSTRUCTION BY	
DATE	
REVISIONS/ACTION TAKEN	
NO.	DATE
APPR.	

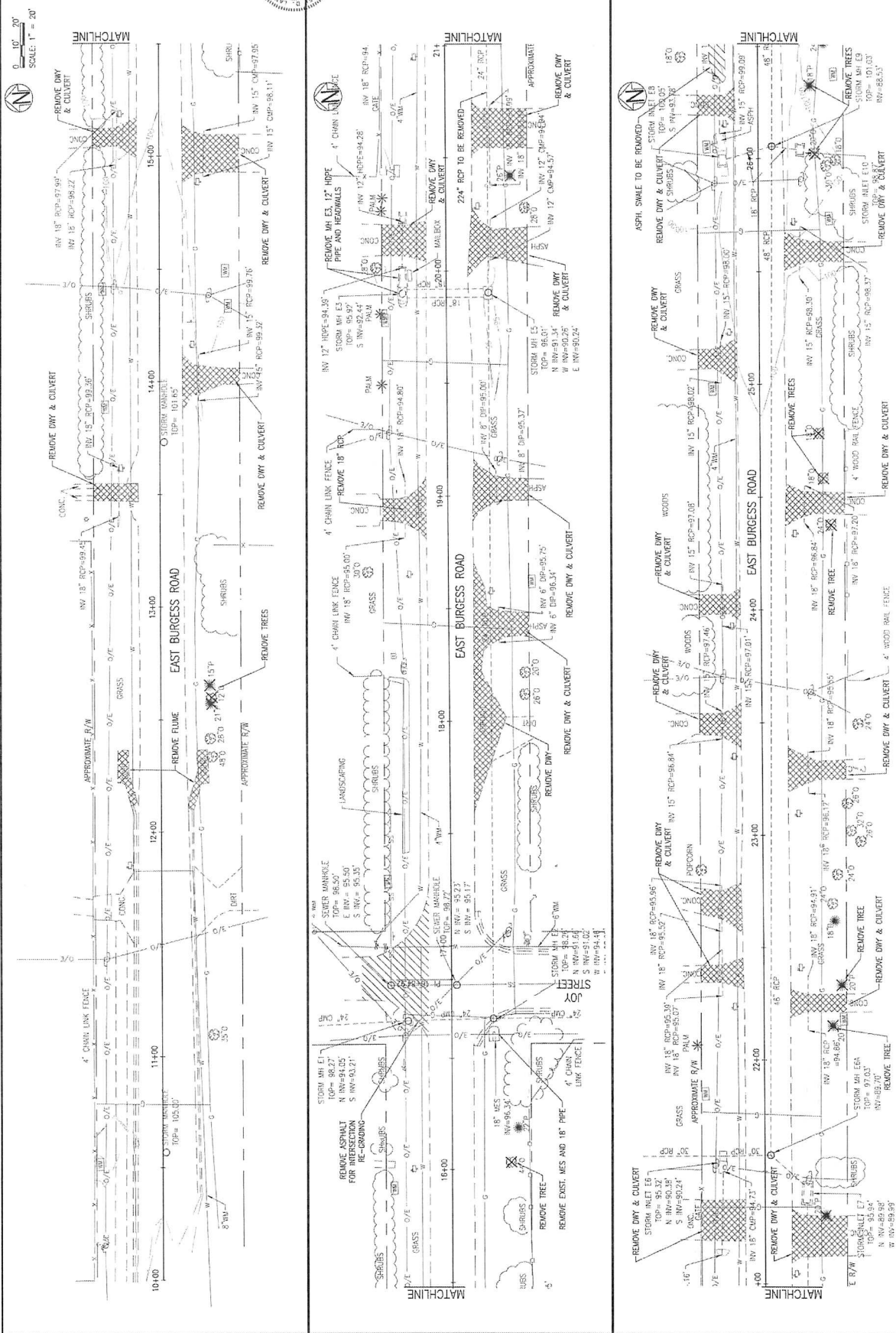
BURGESS ROAD
SIDEWALK DESIGN

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

450 W. MAIN ST., PENSACOLA, FL 32502 (850)363-9691
CHANGING BUSINESS ESSENTIALS

Pensacola • Panama City Beach • Tallahassee • Mobile

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NOIS

PROJECT NO.	24523.02	NO.	DATE	APPR.	REVISION/ACTION TAKEN
DESIGNED BY:					
DRAWN BY: MCD					
CHECK BY:					
PROJ. MGR: MCD					
DATE: JAN 2011					NOT RELEASED FOR CONSTRUCTION BY DATE

BURGESS ROAD
SIDEWALK DESIGN

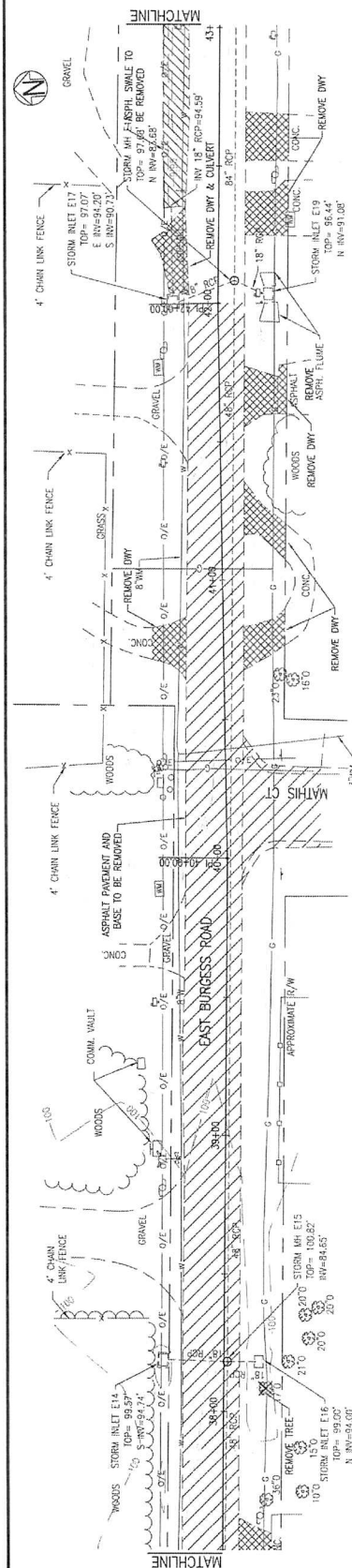
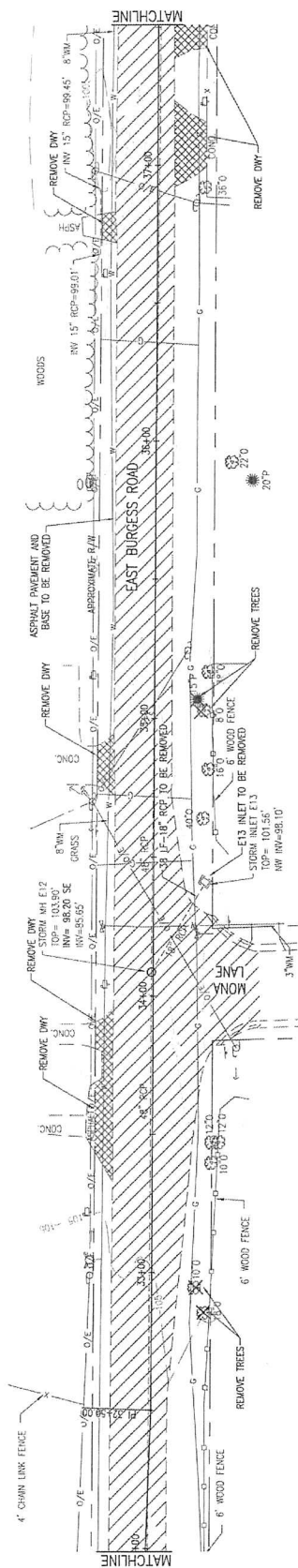
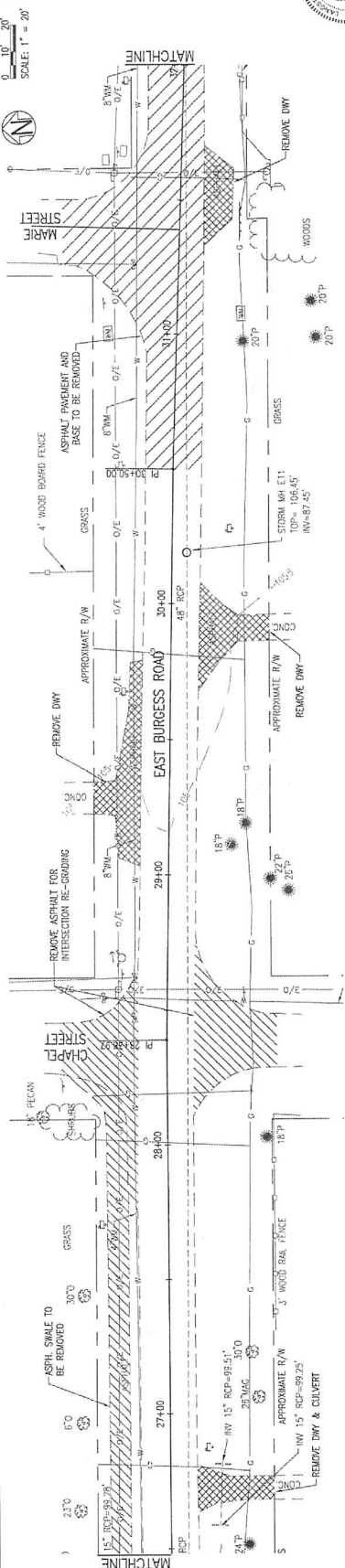
BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

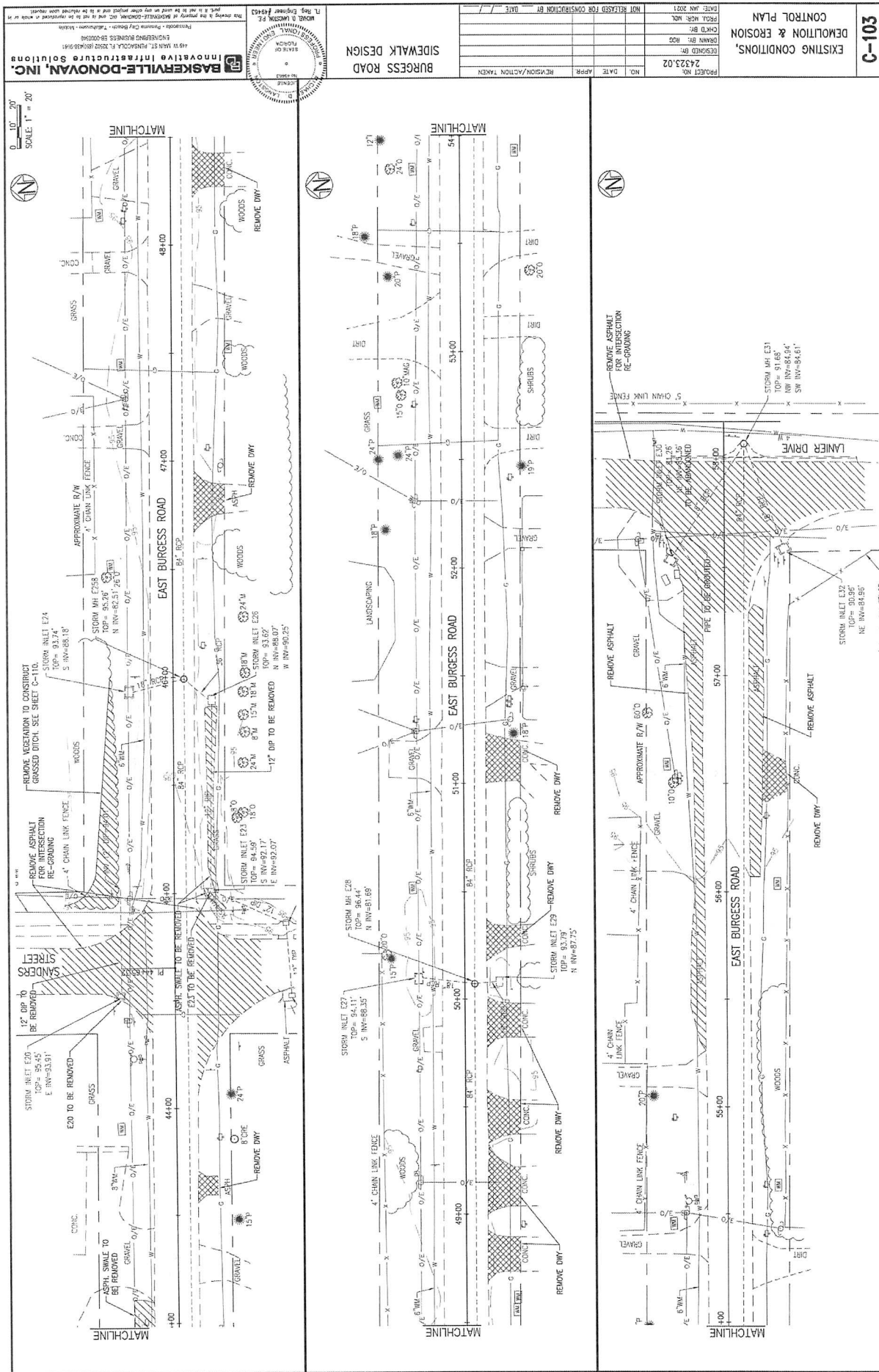
445 W. MAIN ST., PLYMOUTH, MI 48170 (517) 881-4457
ENGINEERING BUSINESS (800) 435-0300
Plymouth • Ann Arbor • Farmington Hills • Dearborn • Detroit • Troy • Jackson • Toledo

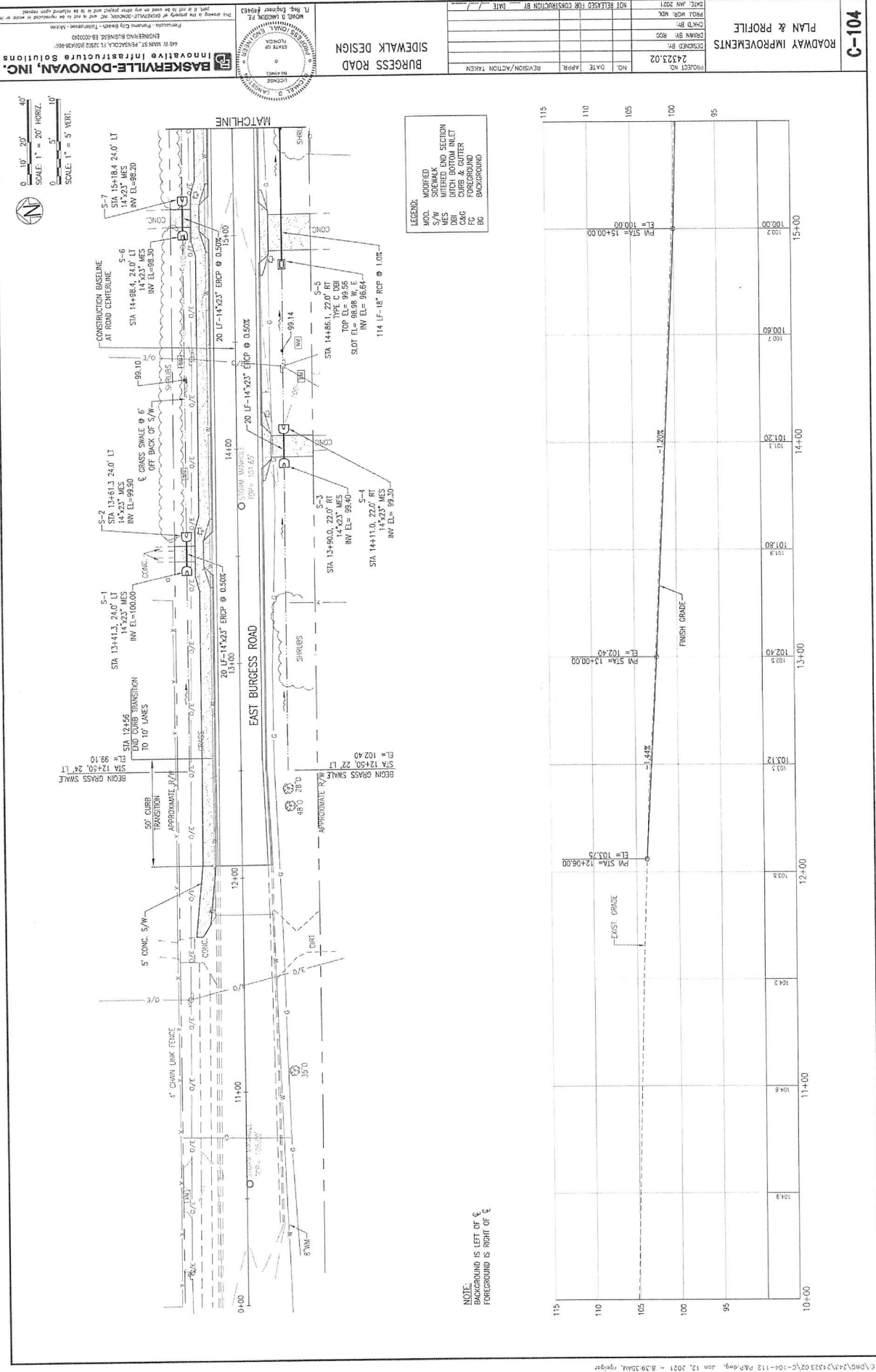
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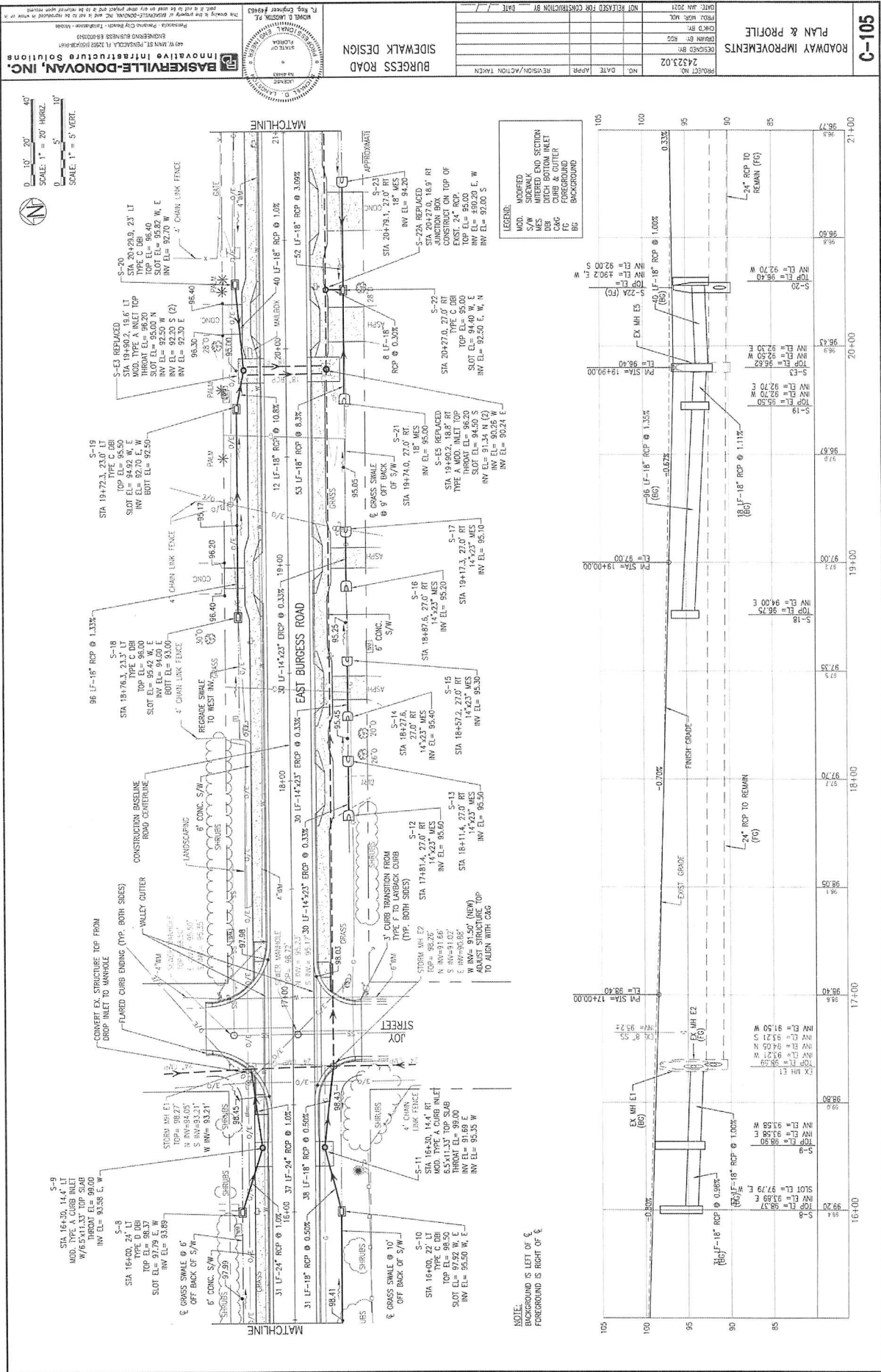
STATE OF
MICHIGAN
COUNTY OF
PLYMOUTH

W. BASKERVILLE-DONOVAN, INC.
REGISTERED PROFESSIONAL ENGINEER
No. 26,100

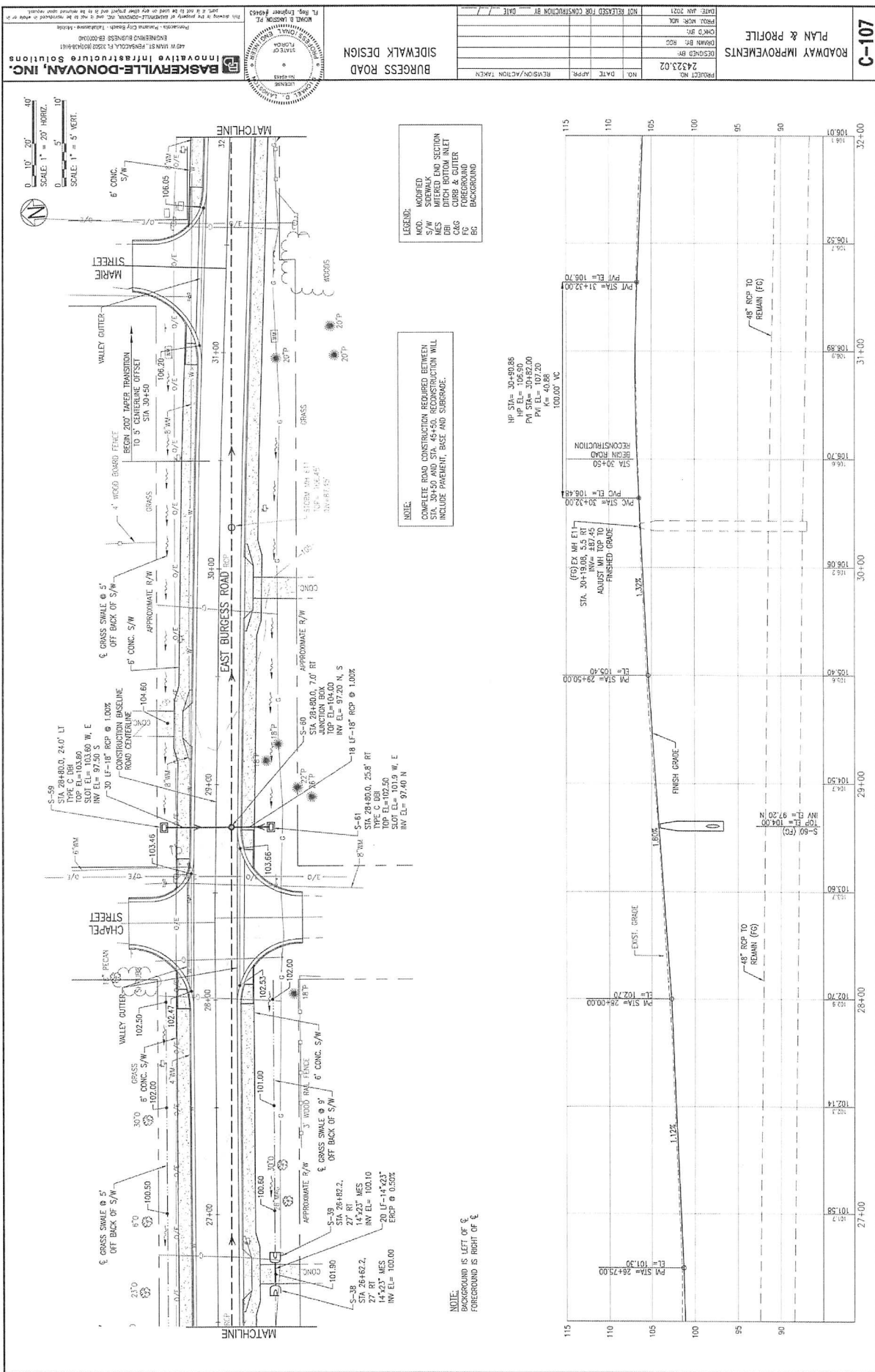












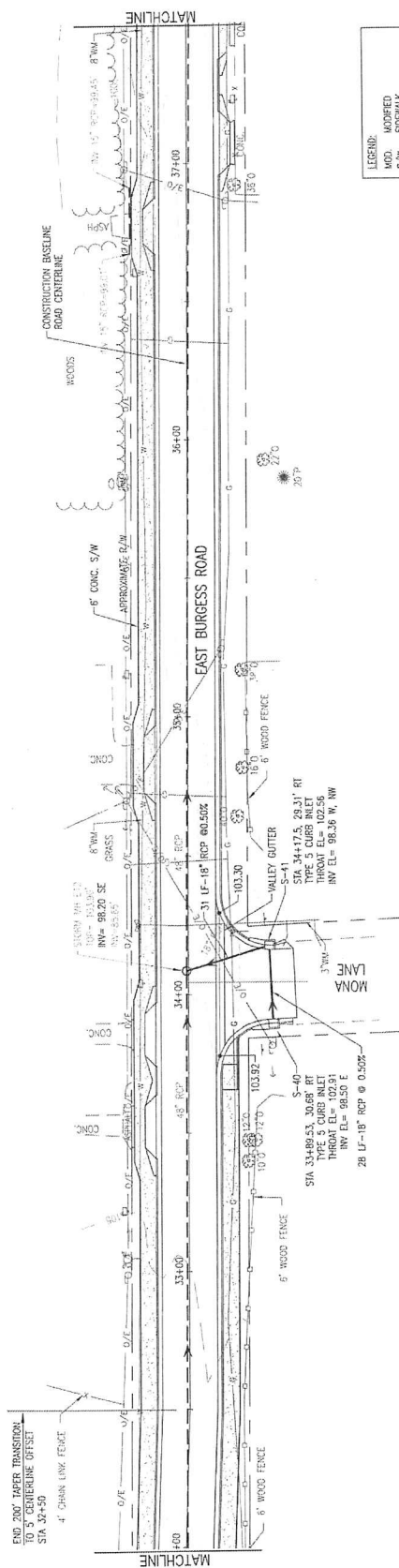
A circular professional engineer seal for the State of Florida. The outer ring contains the text "MICHAEL D. LANSTON" at the top and "FL. REG. ENGINEER #449463" at the bottom. The inner circle contains the text "PROFESSIONAL ENGINEER" at the top, "STATE OF FLORIDA" in the center, and "LICENSE NO. 449463" at the bottom.

BURGESS ROAD
SIDEWALK DESIGN

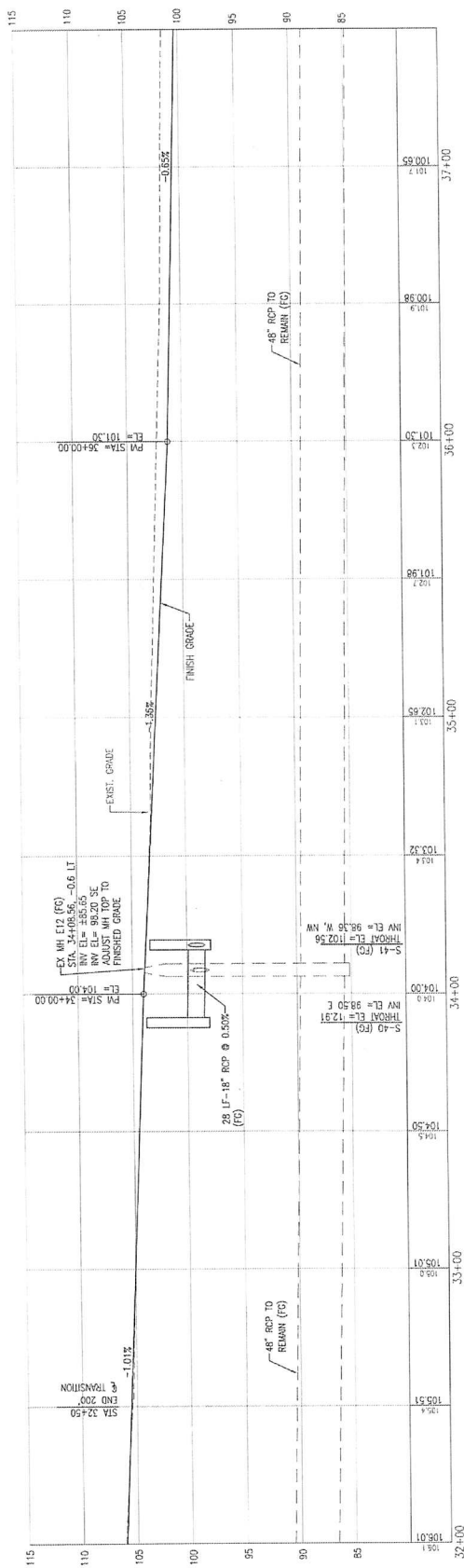
ES&K **BASKERVILLE-DONOVAN, INC.**
Innovative Infrastructure Solutions

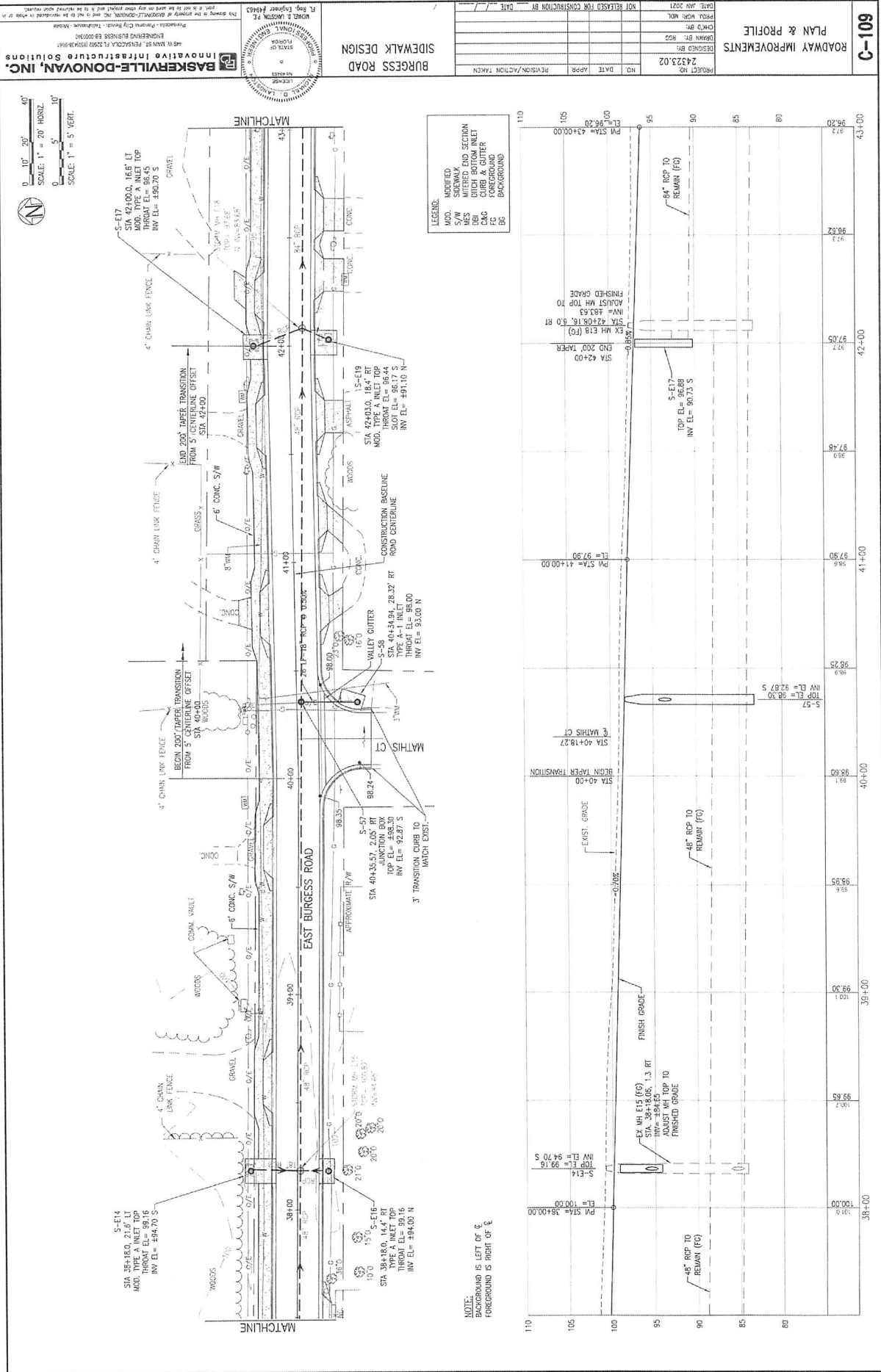
445 W. MAIN ST., PENSACOLA, FL 32502 (904)344-9651
ENGINEERING BUSINESS: EB0000040
Pensacola - Panama City Beach - Tallahassee - Mobile

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NOTE:-
BACKGROUND IS LEFT OF \mathbb{Q}
FOREGROUND IS RIGHT OF \mathbb{Q}





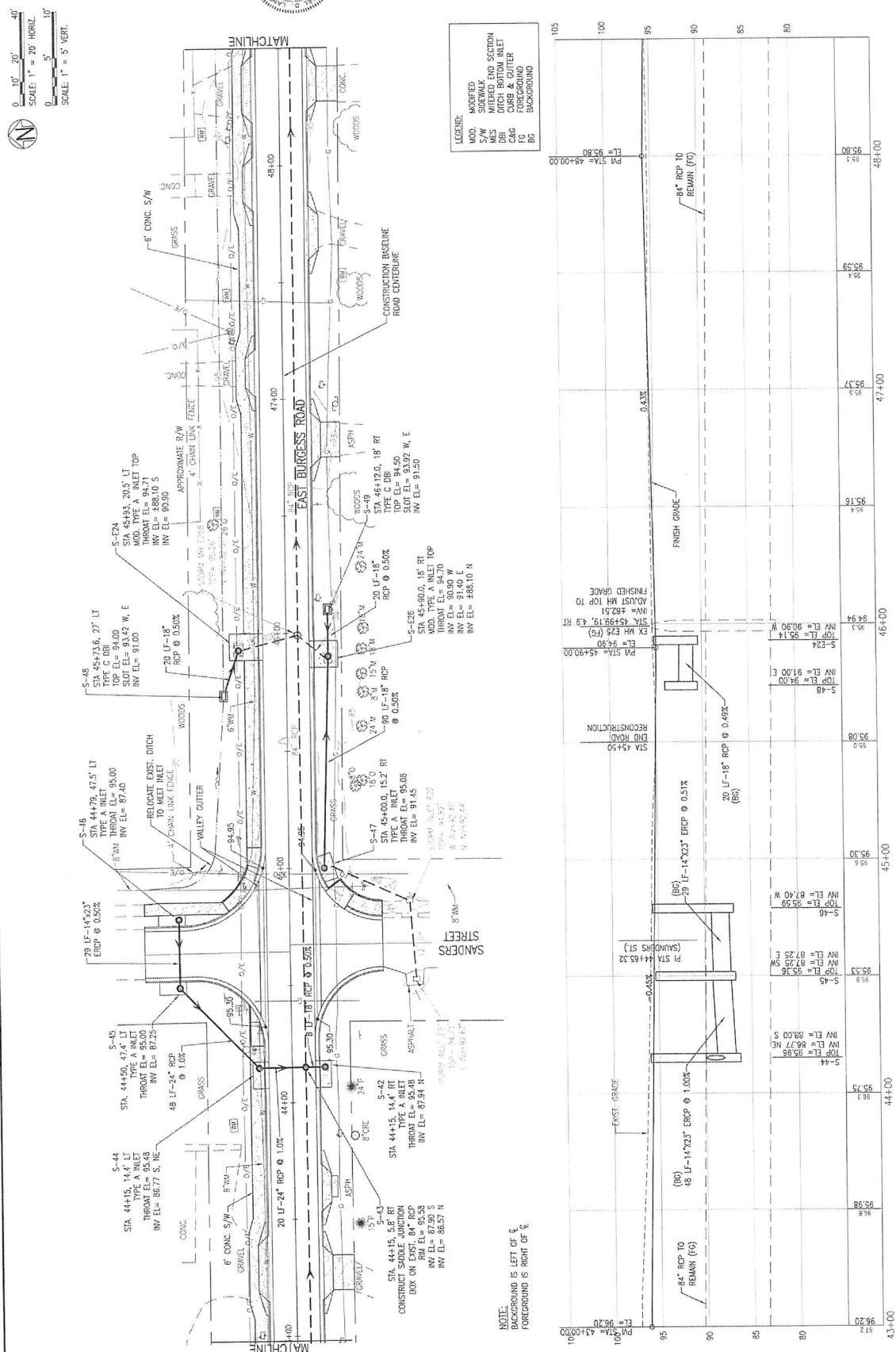
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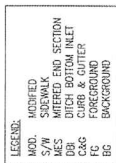
INNOVATIVE INFRASTRUCTURE SOLUTIONS
BASEKIRILL-DOVANY, INC.
440 N. MAIN ST., PENSACOLA, FL 32502 (904)582-9661
ENGINEERING BUSINESS - LEO/DOVANY
PENSACOLA • KENNEDY CITY BRANCH • TAMPA • MIAMI

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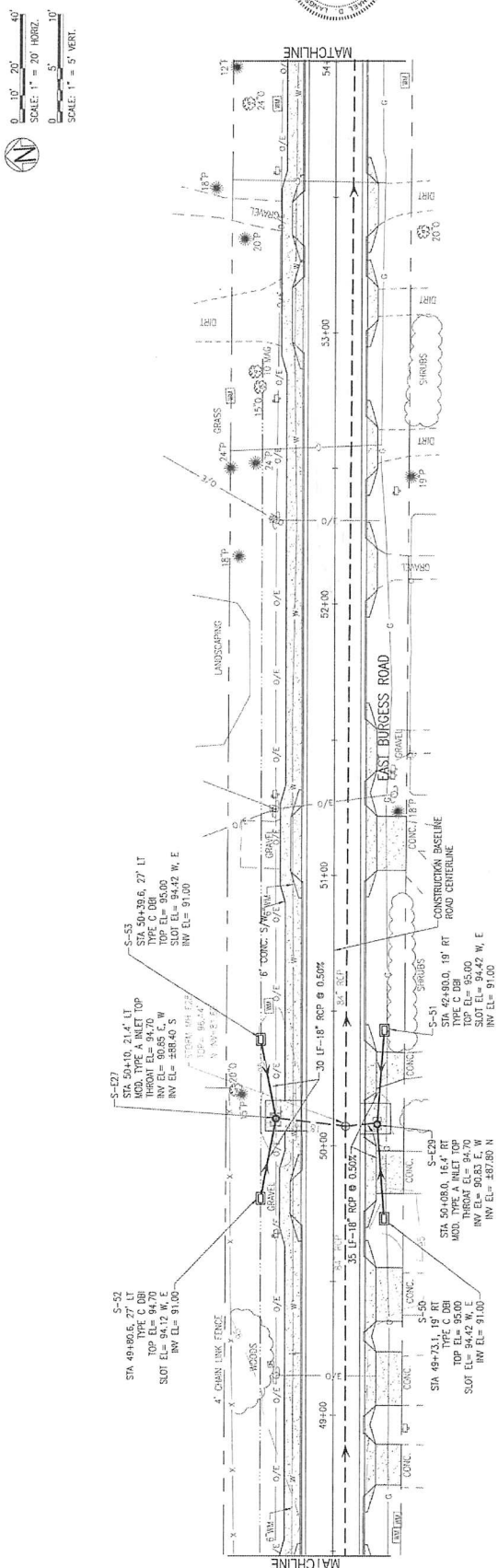
FL. Eng. Expiration: 12/31/2005
NATIONAL PE

STATE OF FLORIDA
Professional Engineer
No. 12501
Basekirill-Dovany, Inc.





NOTE:
BACKGROUND IS LEFT OF \mathbb{C}
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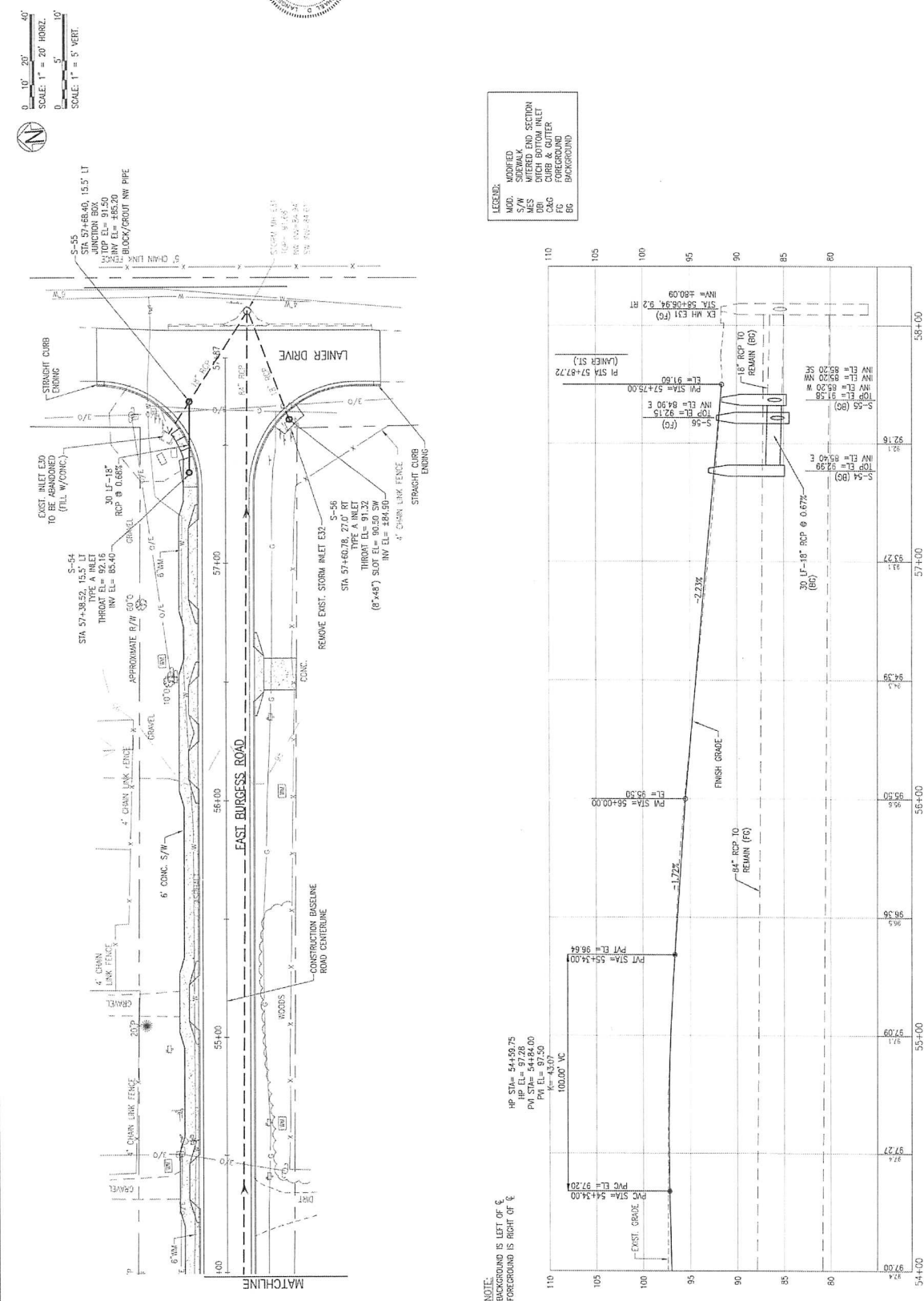


BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

449 W. MAIN ST., P.O. BOX 600, FARMINGTON, CT 06030-0600
ENGINEERING BUSINESS: 860-700-0040

Permitted - Various City Limits - Townships - States
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KONG & DUNN P.E.
Professional Engineer
STATE OF CONNECTICUT
No. 10007



DRI = DITCH BOTTOM INLETSTORM DRAINAGE STRUCTURE TABLE

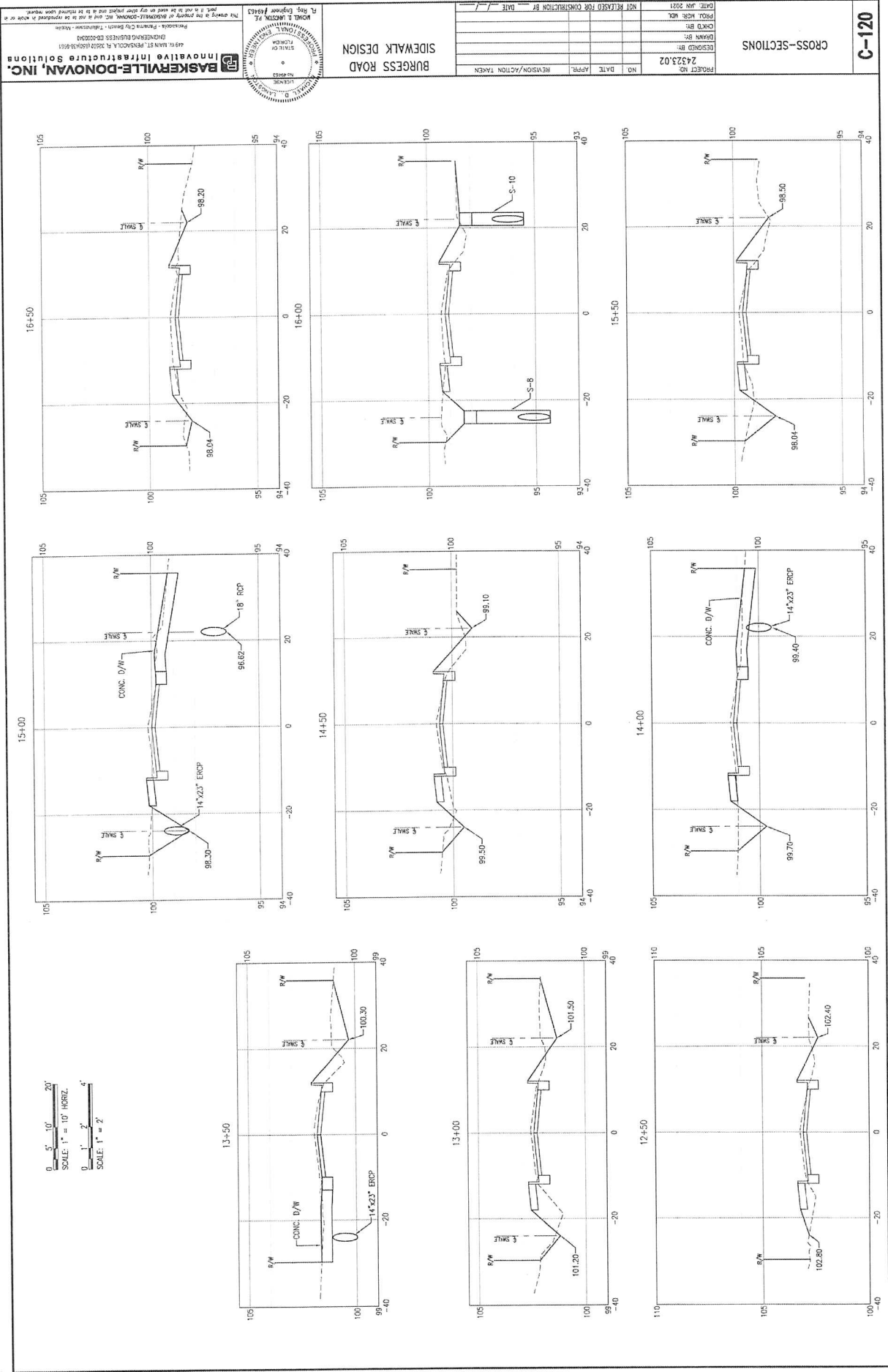
STORM DRAINAGE
STRUCTURE TABLE

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

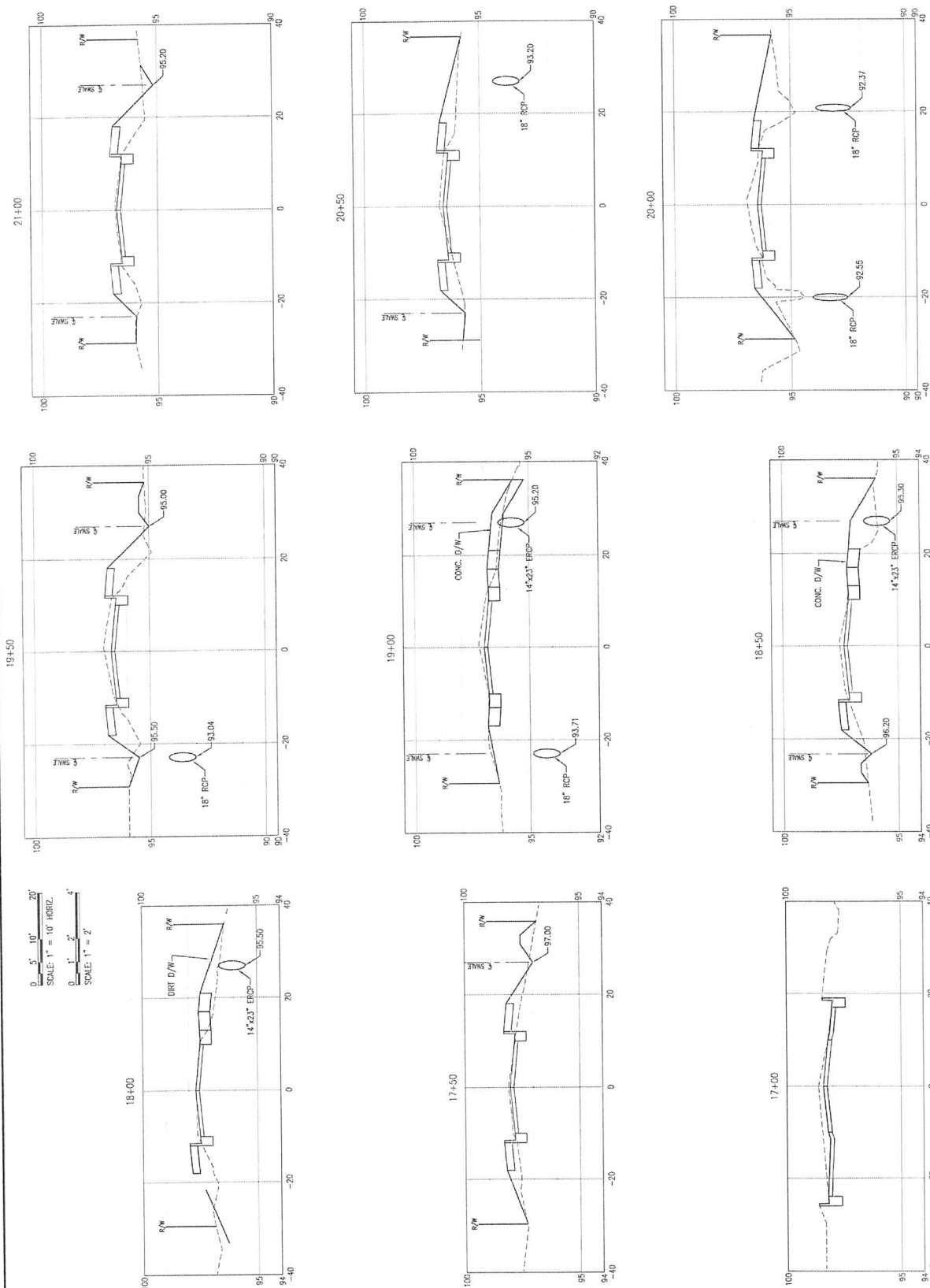
445 W. MAIN ST., PENSACOLA, FL 32504 (904)484-5951
ENGINEERING BUSINESS: ES-0007030

Pensacola • Panama City Beach • Tallahassee • Mobile

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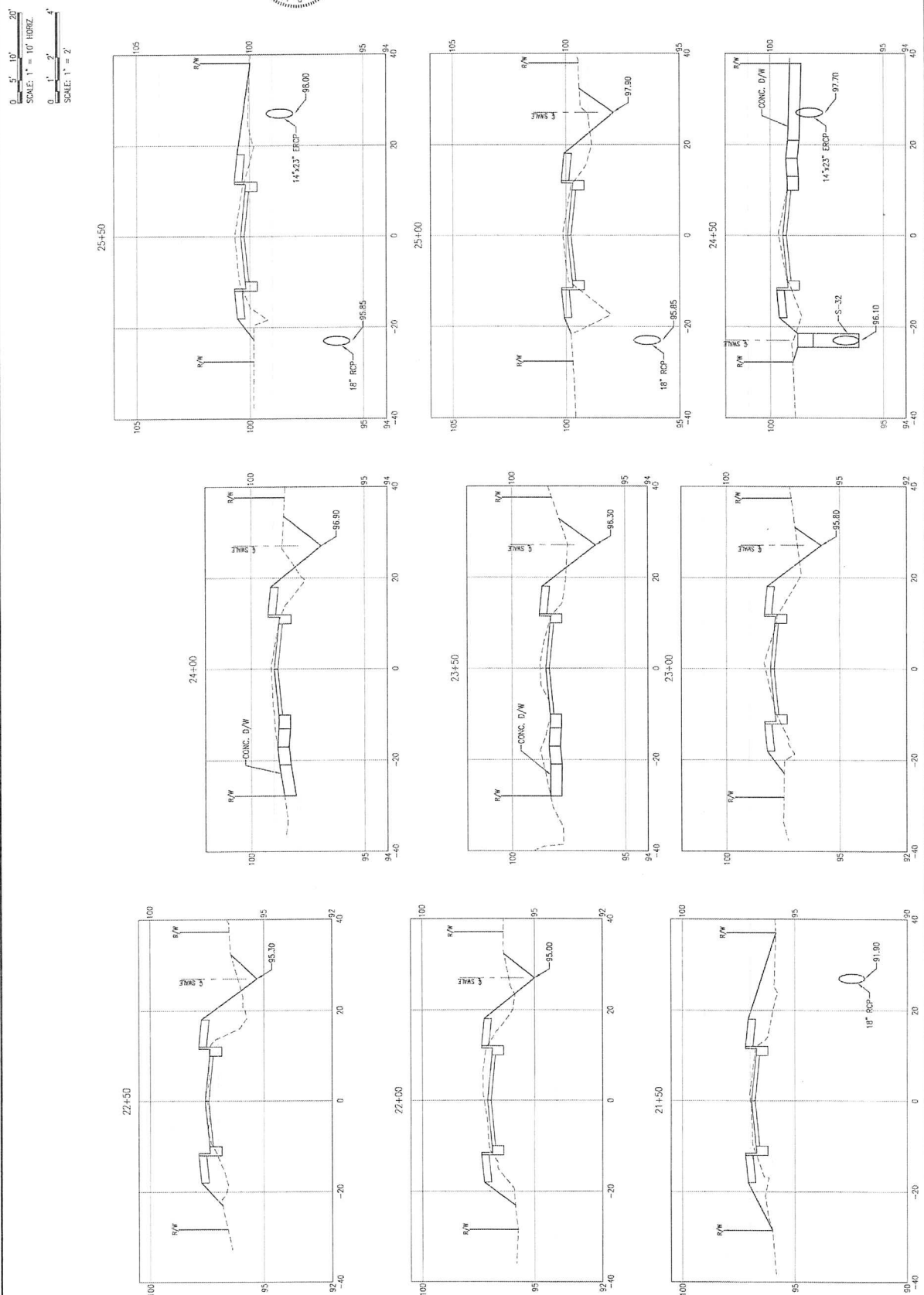
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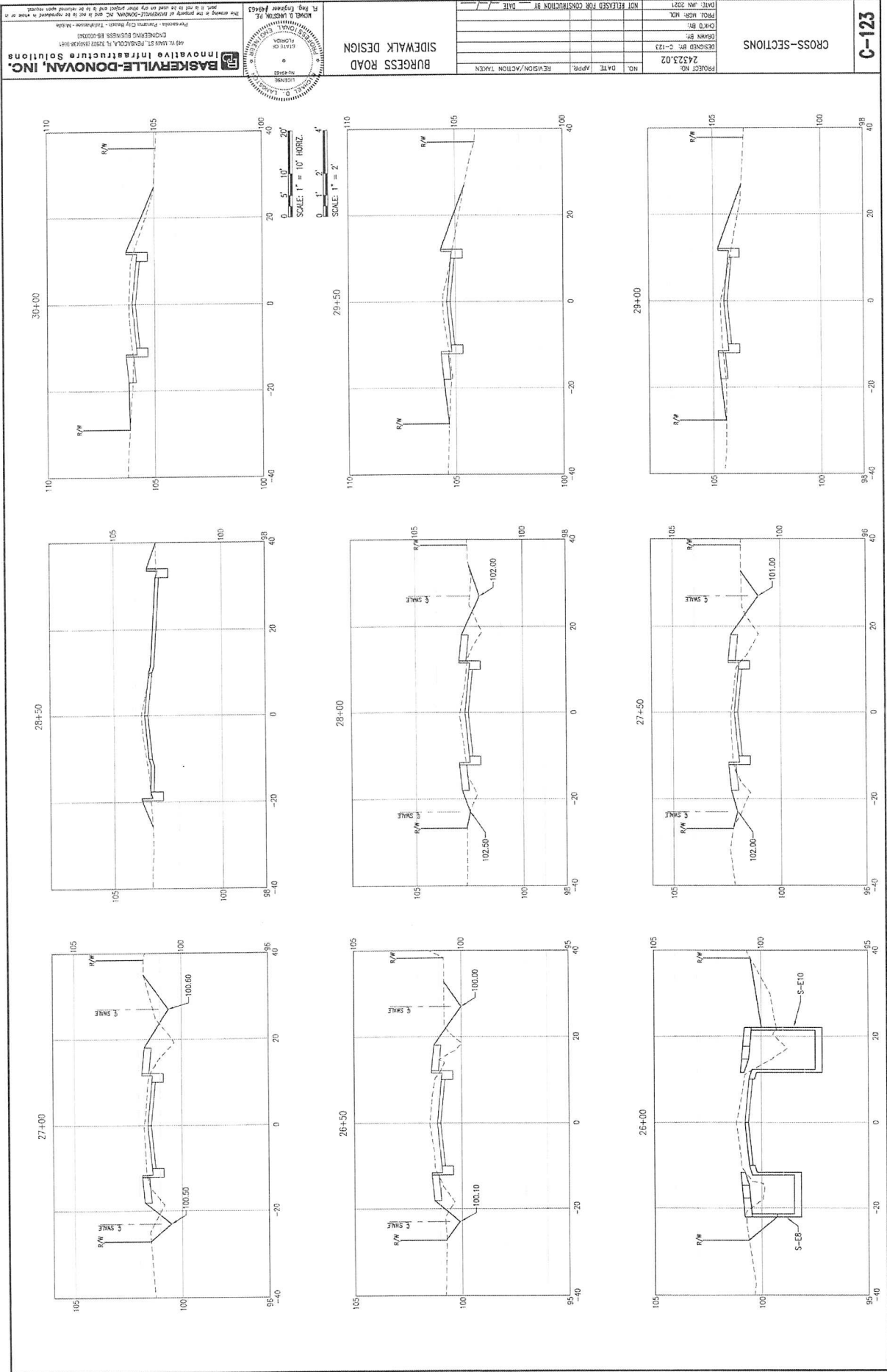


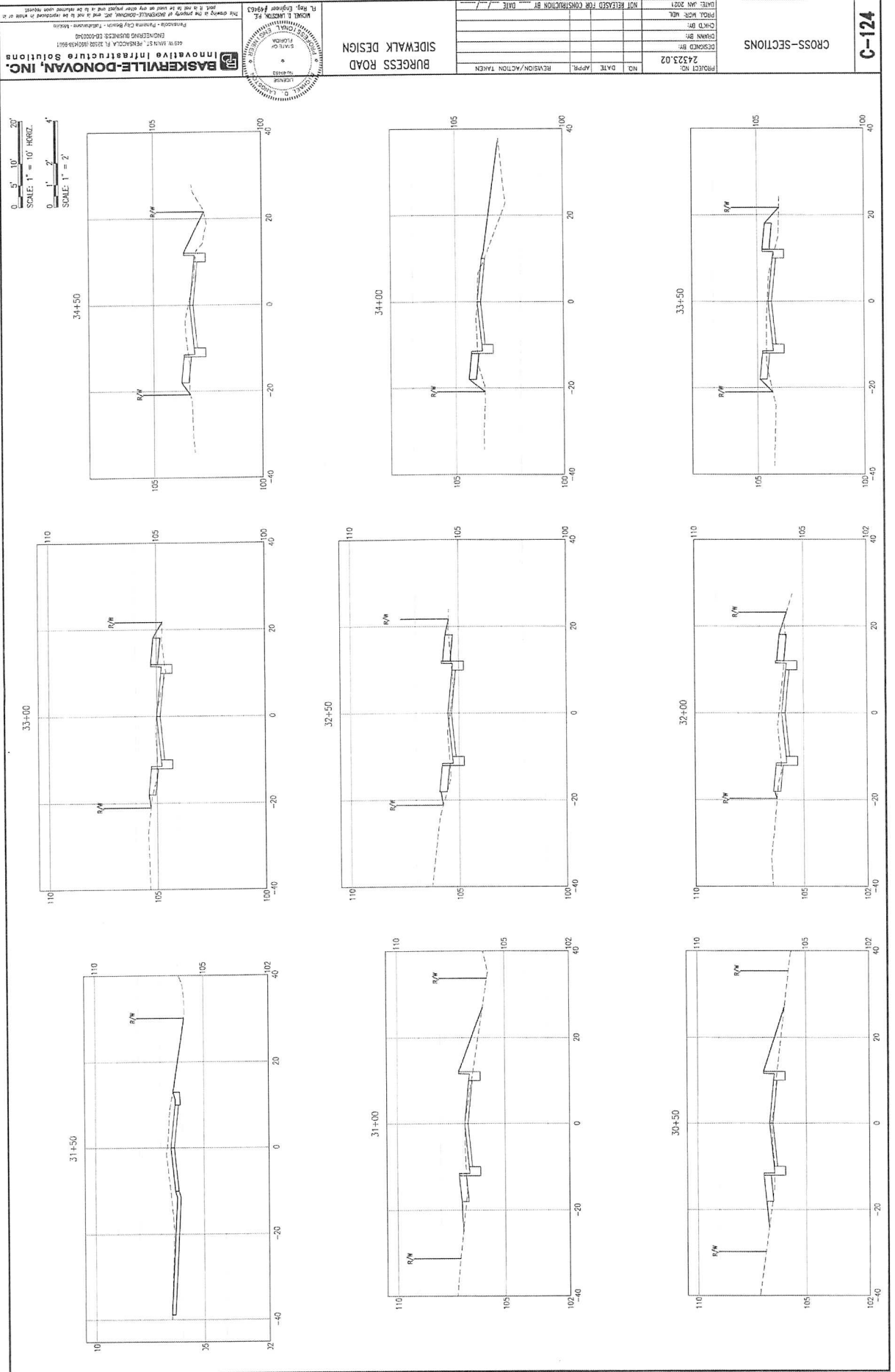
BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

448 W. MAIN ST., PENSACOLA, FL 32502 (904)266-5557
ENGINEERING BUSINESS (904)266-0000
Pensacola • Panama City Beach • Tallahassee • Mobile

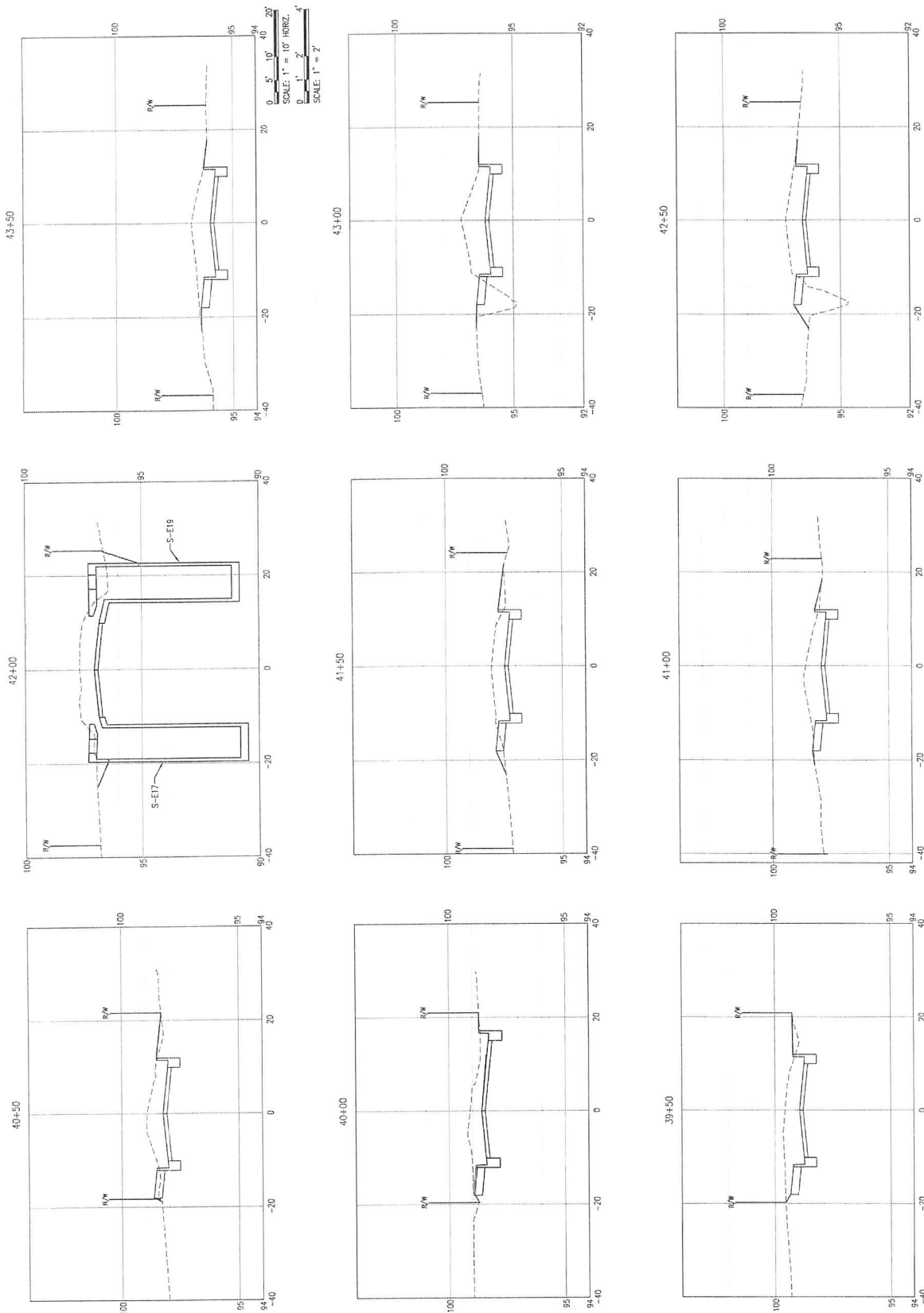
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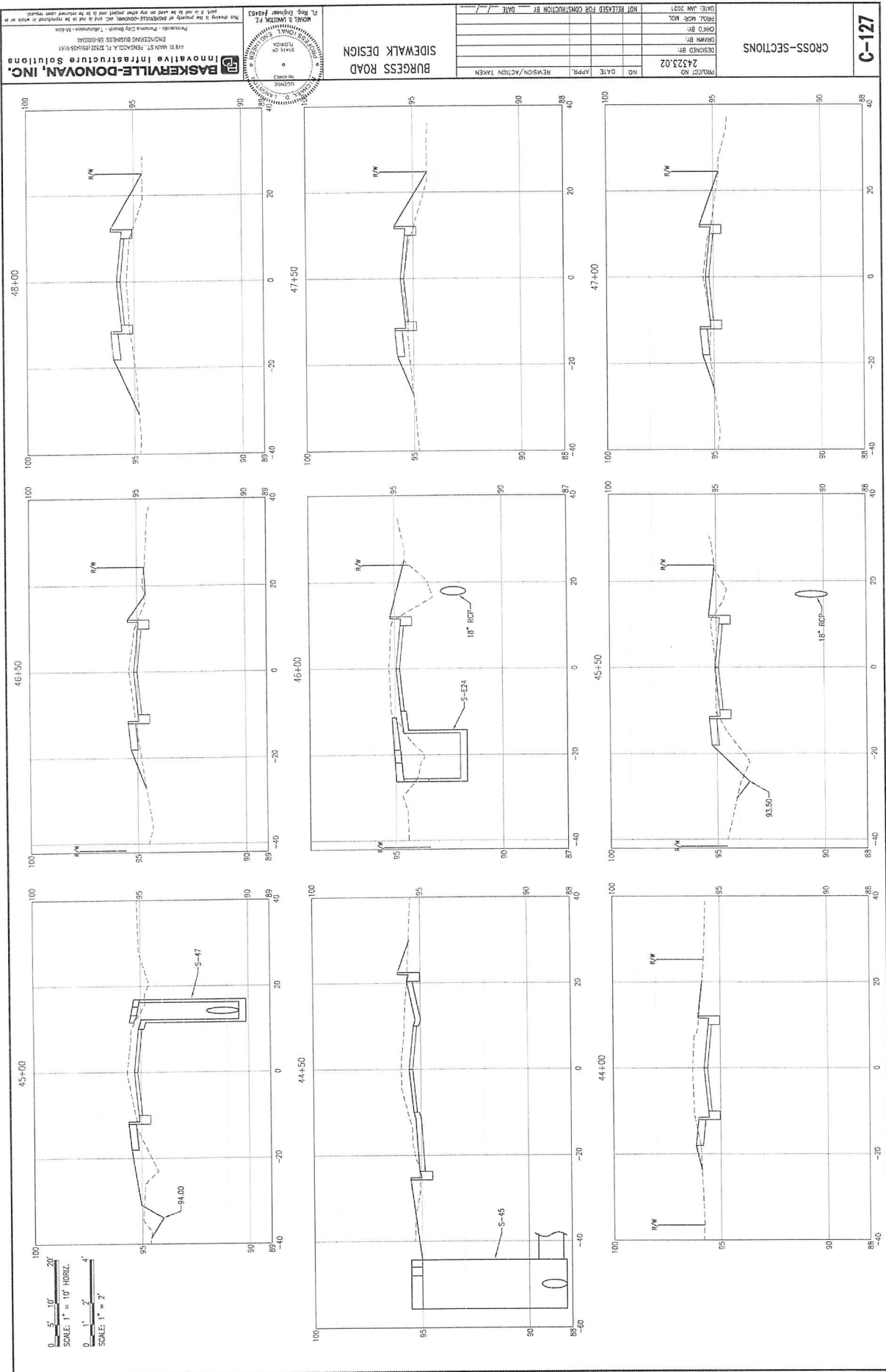


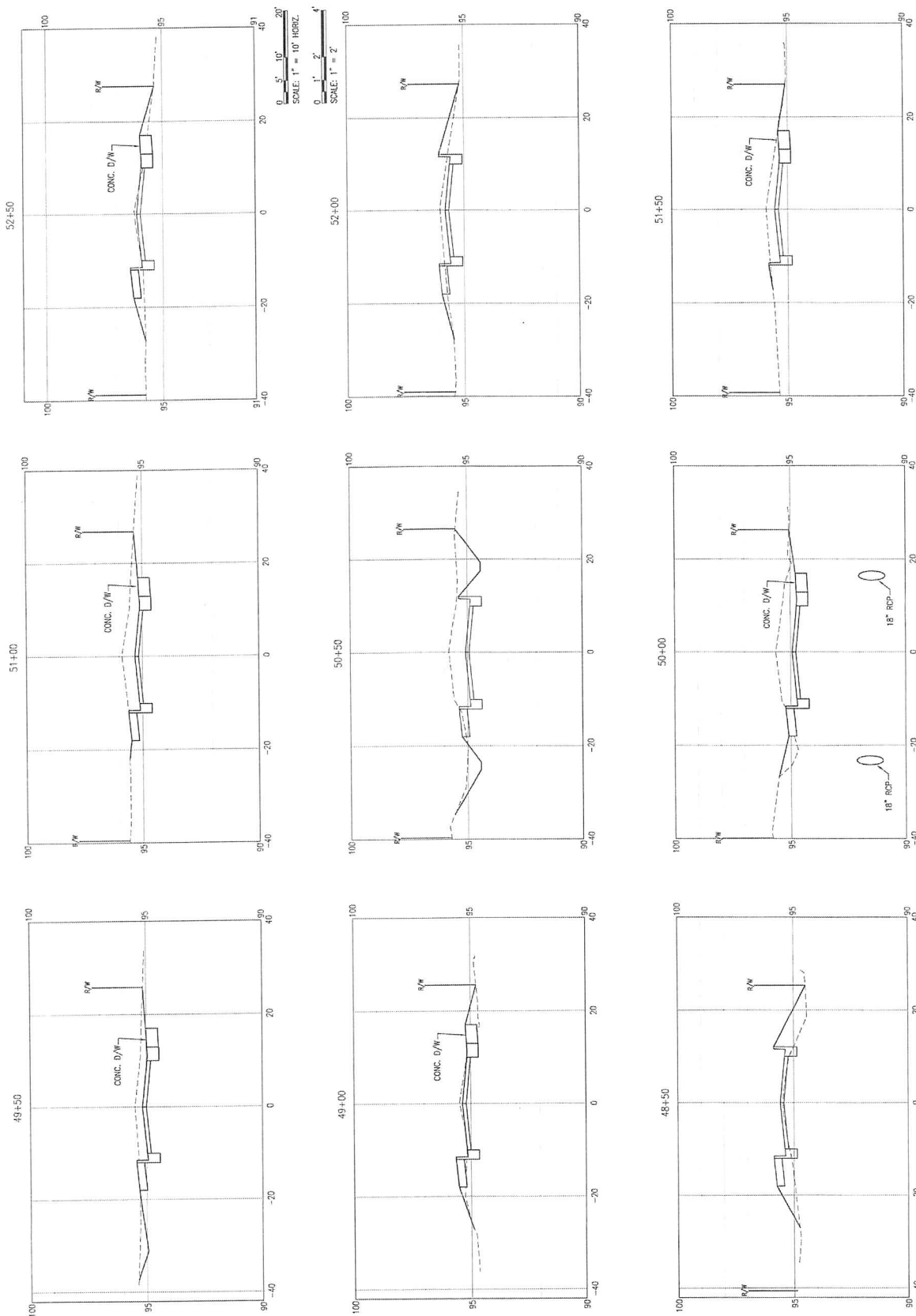




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BURGESS ROAD
SIDEWALK DESIGN[illegible]

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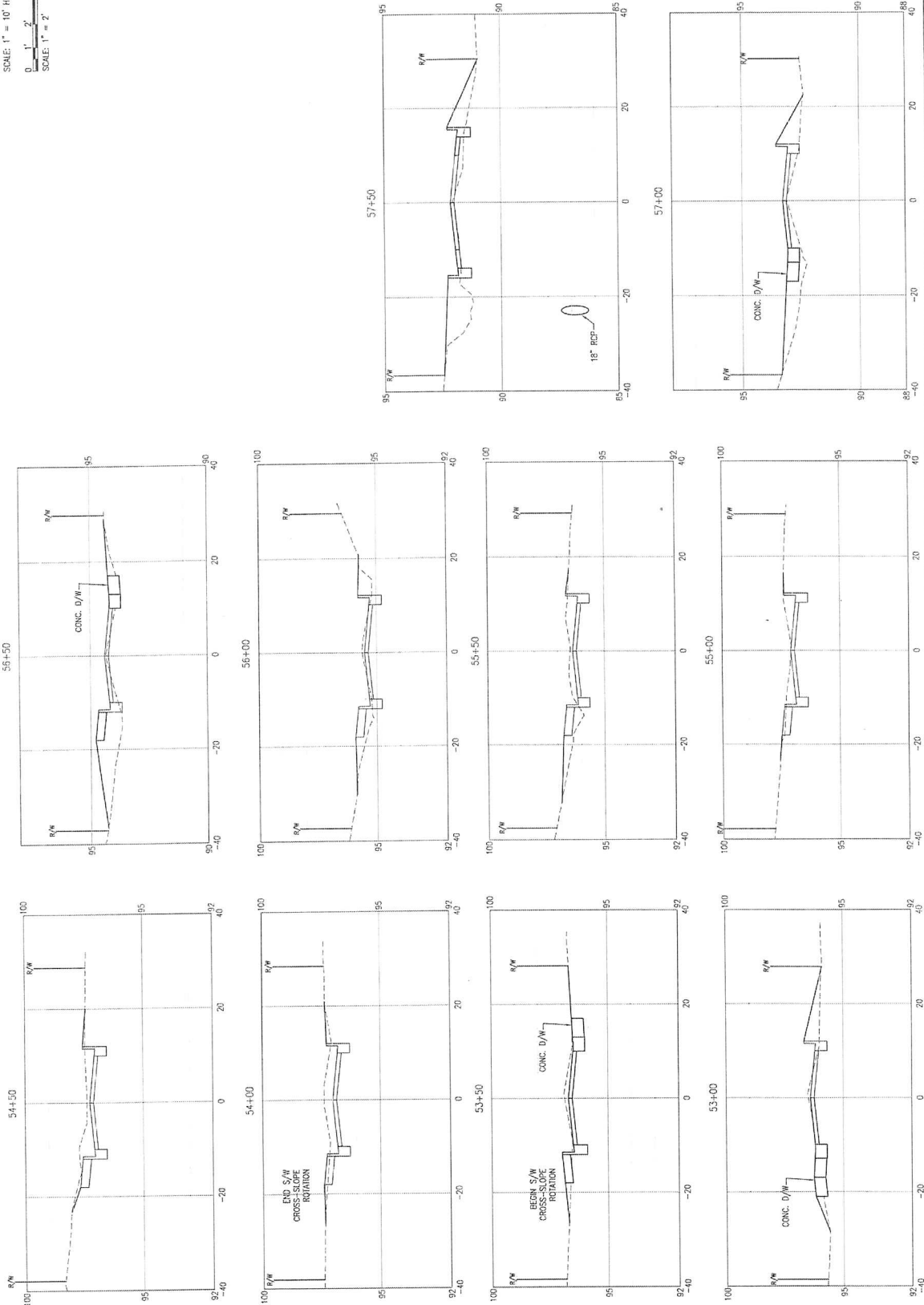
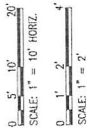
CROSS-SECTIONS

PROJECT NO.	24323.02
DESIGNED BY	
CHECKED BY	
DATE	
APPROVED	
REVISION/ACTION TAKEN	
NOT RELEASED FOR CONSTRUCTION BY	DATE

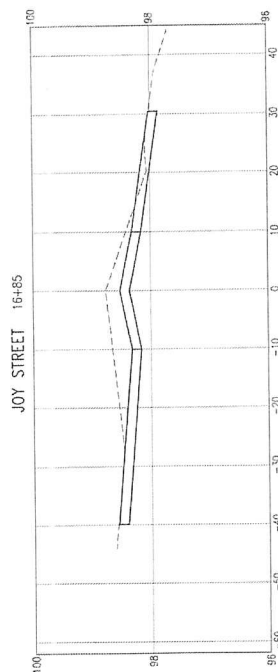
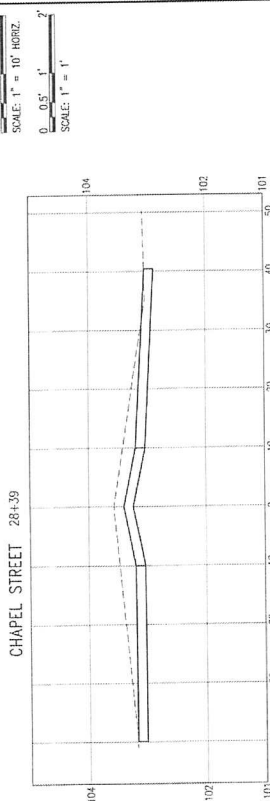
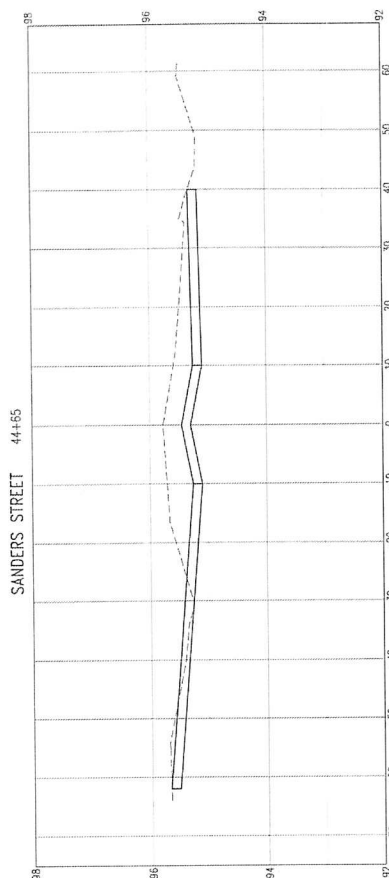
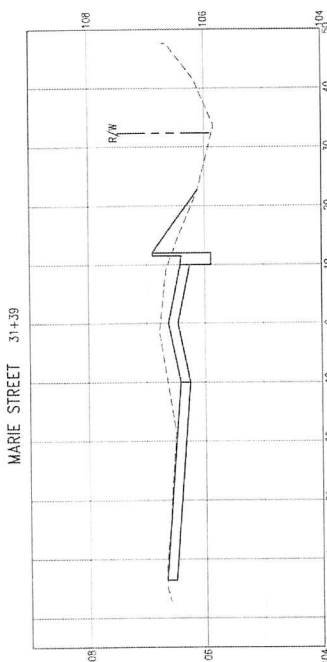
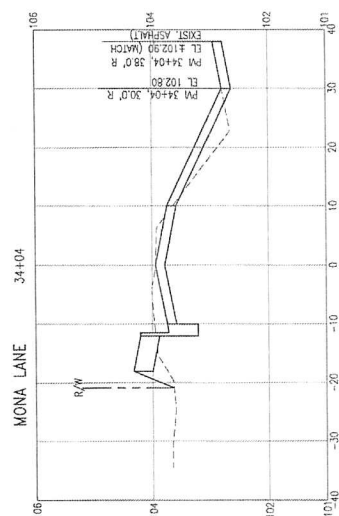
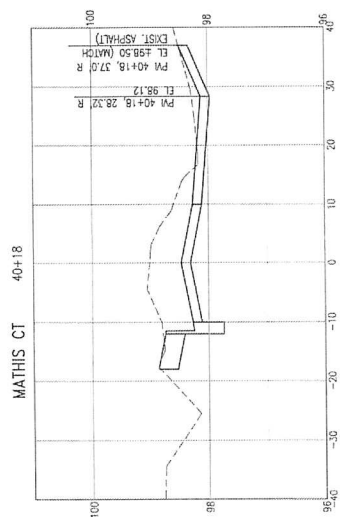
BURGESS ROAD
SIDEWALK DESIGN



BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
449 W. MAIN ST., PENSACOLA, FL 32501 (904) 391-9101
PENSACOLA - TAMPA - ORLANDO - JACKSONVILLE
EMPLOYING SURVEYORS: CS-000000
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PROJECT NO:	24235.02	NO.	DATE	APPR.	REVISION/ACTION TAKEN
DESIGNED BY:					
DRAWN BY:					
CHECK BY:					
PROJ. MGR. NO.					
DATE: JUN 2023					NOT RELEASED FOR CONSTRUCTION BY DATE

BURGESS ROAD
SIDEWALK DESIGN[illegible]

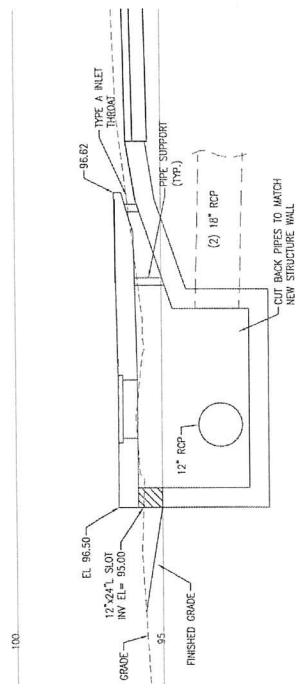
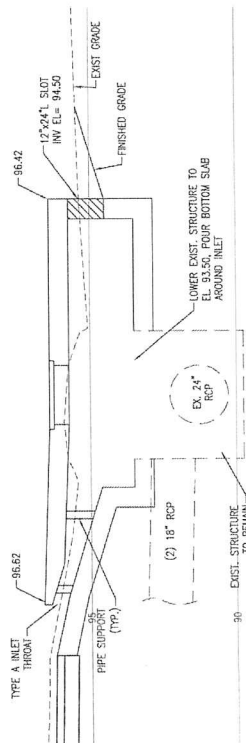
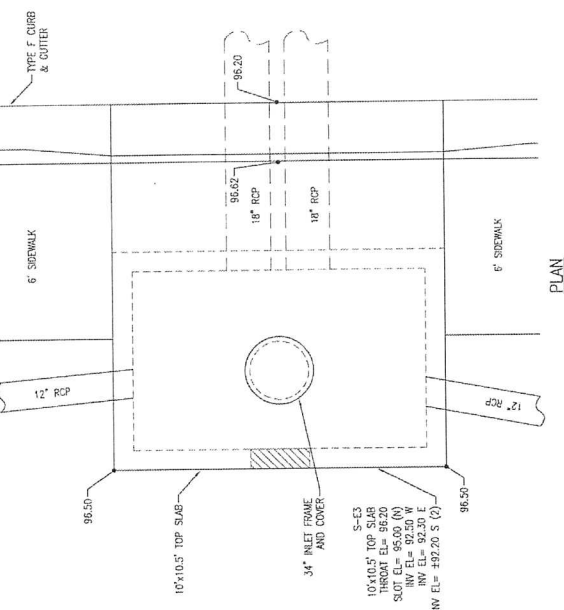
PROJECT NO:	24323.02
DESIGNED BY:	
DRAWN BY:	
CHECKED BY:	
PROJ. WORK NO:	
DATE: JUN 2021	NOT RELEASED FOR CONSTRUCTION BY DATE

BURGESS ROAD
SIDEWALK DESIGN

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

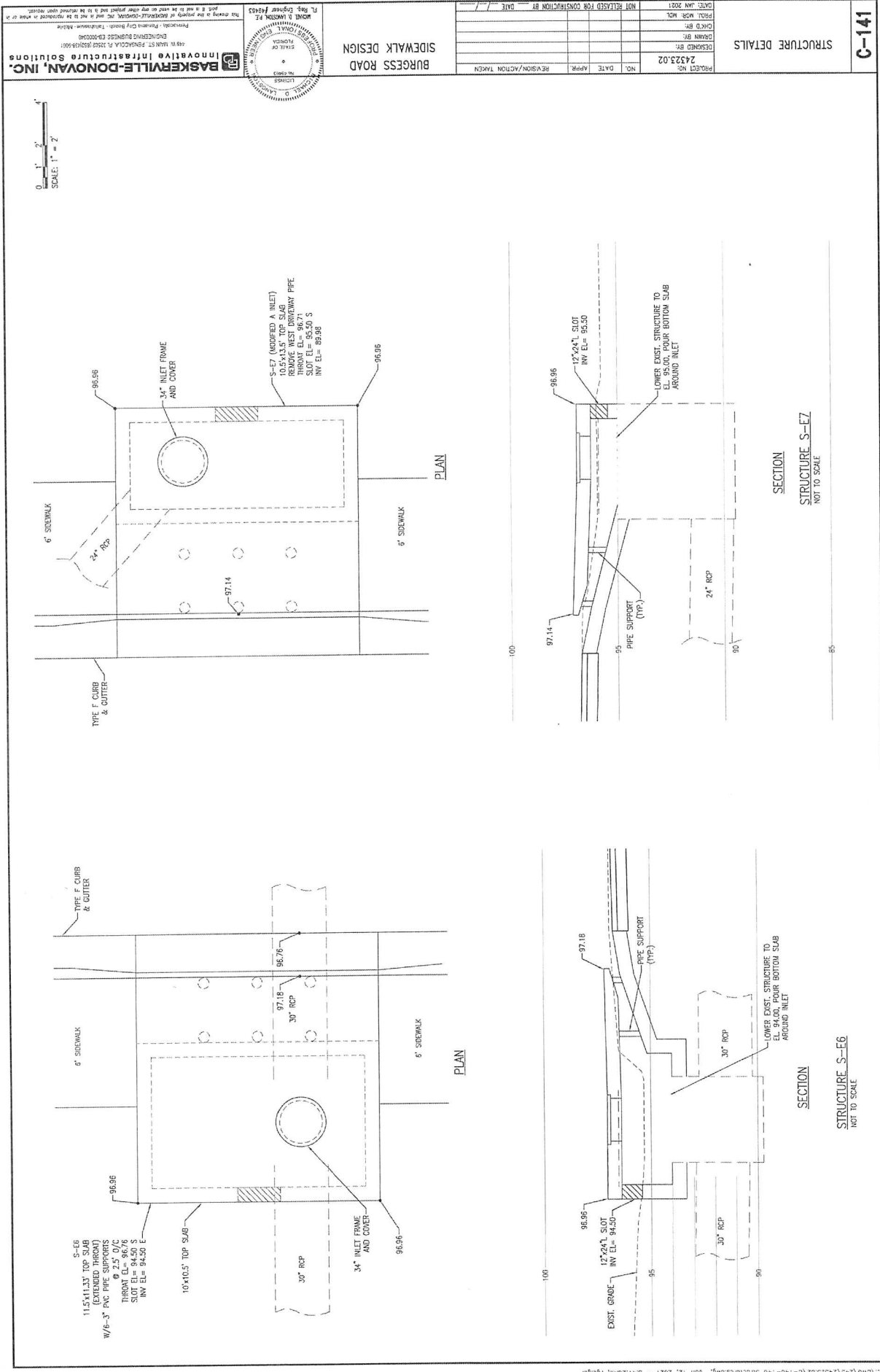
1449 W. MAIN ST., PENSACOLA, FL 32502 (850) 394-9547
ENGINEERING BUSINESS: EB-000000040
Pensacola • Panama City Beach • Tallahassee • Mobile

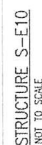
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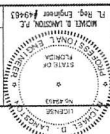
NOTE:

SECTION
STRUCTURE S-E5
NOT TO SCALE





PROJECT NO:	24323.02
DESIGNED BY:	
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PROJ. MGR. WOL	
DATE: JUN 2021	
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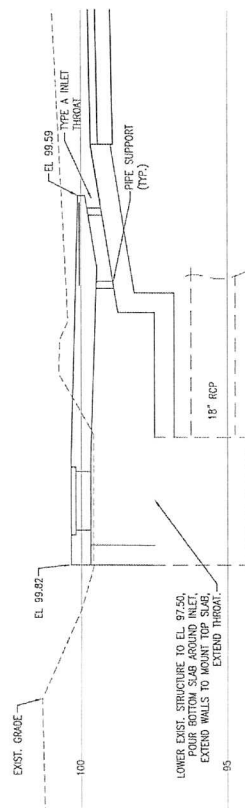
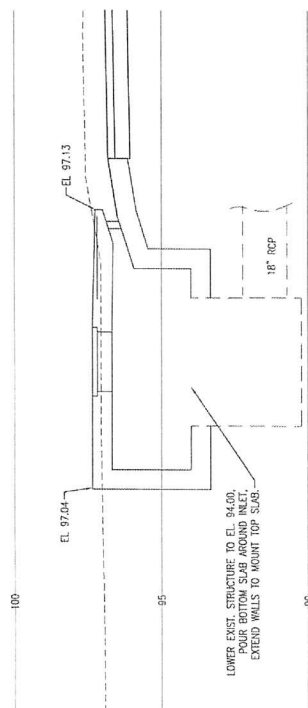
BURGESS ROAD
SIDEWALK DESIGN

BASKERVILLE-DONOVAN, INC.
innovative | infrastructure | solutions

4401 W. MAIN ST., PENSACOLA, FL 32502 (850) 396-0581
ENGINEERING DIVISION: EE-0000340
PROJECT: Pensacola City Beach - 1st Addition - Mobile

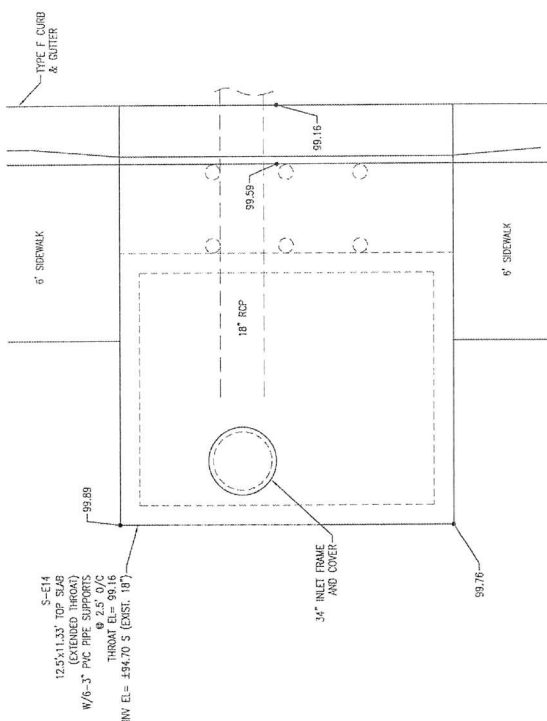
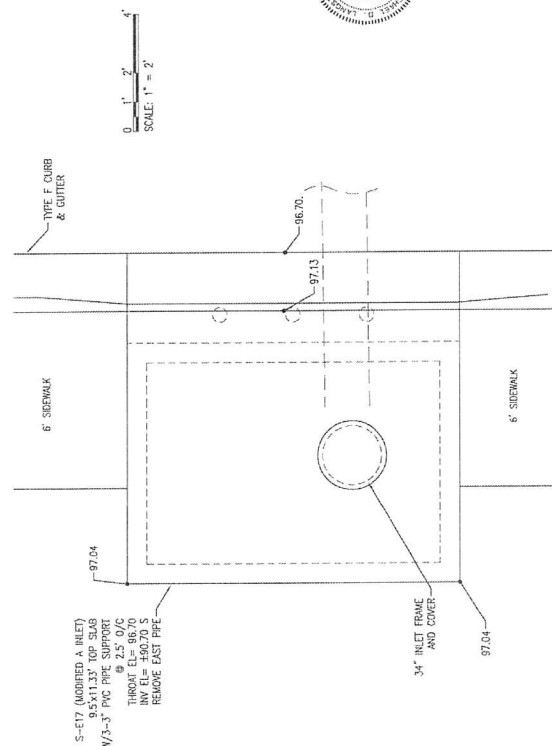
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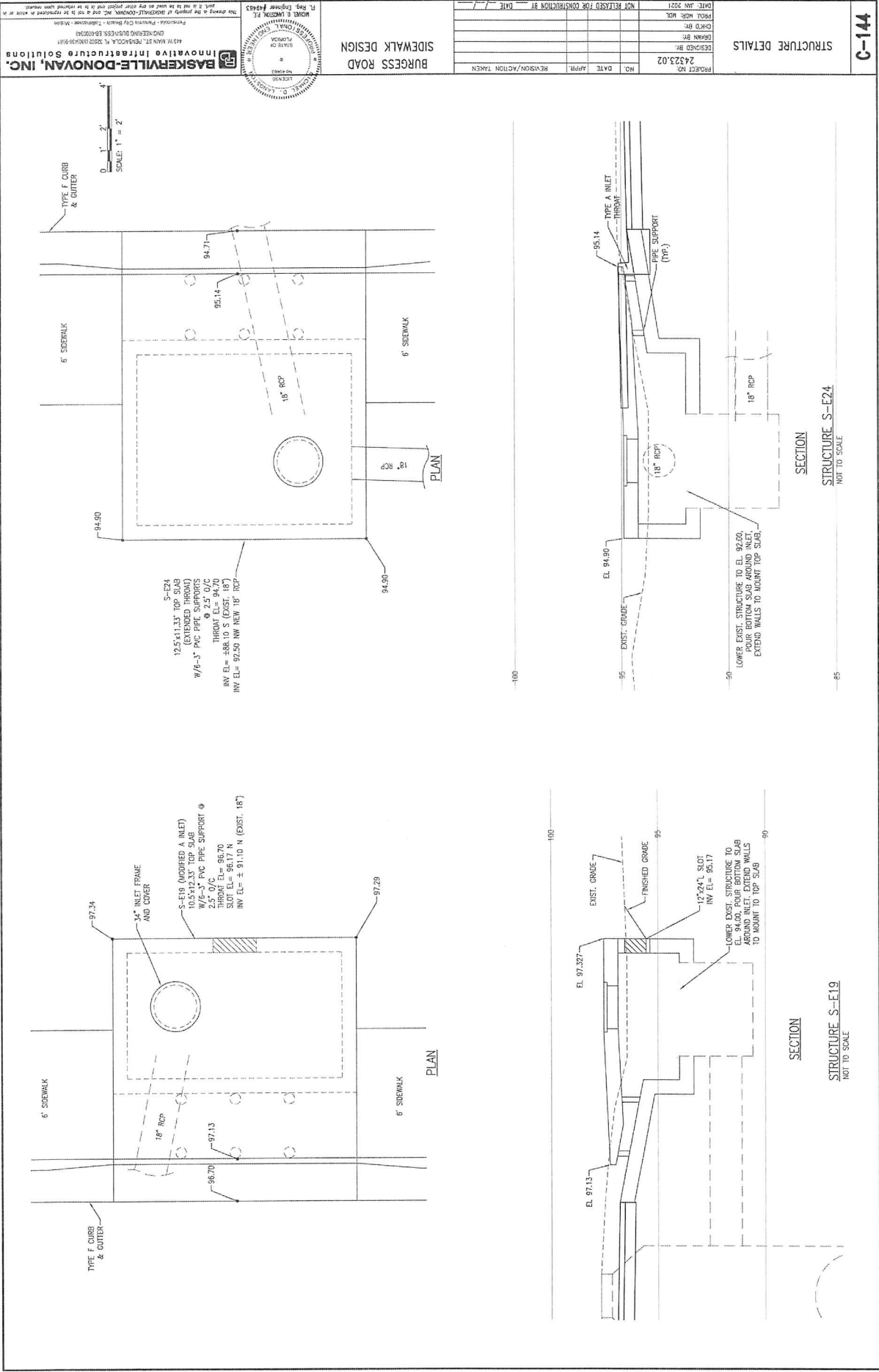
STRUCTURE S-E14
NOT TO SCALE



PLAN

PLAN



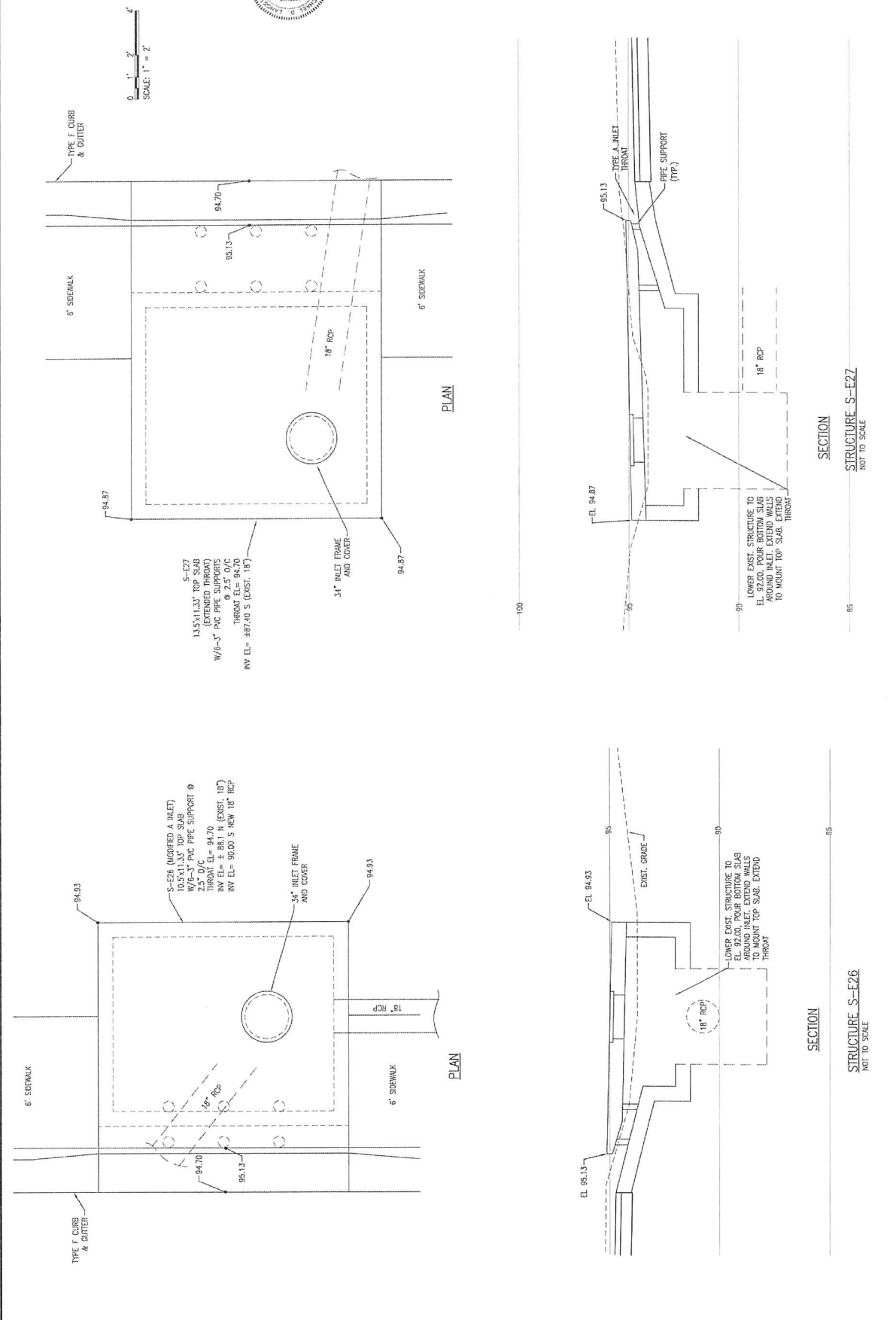


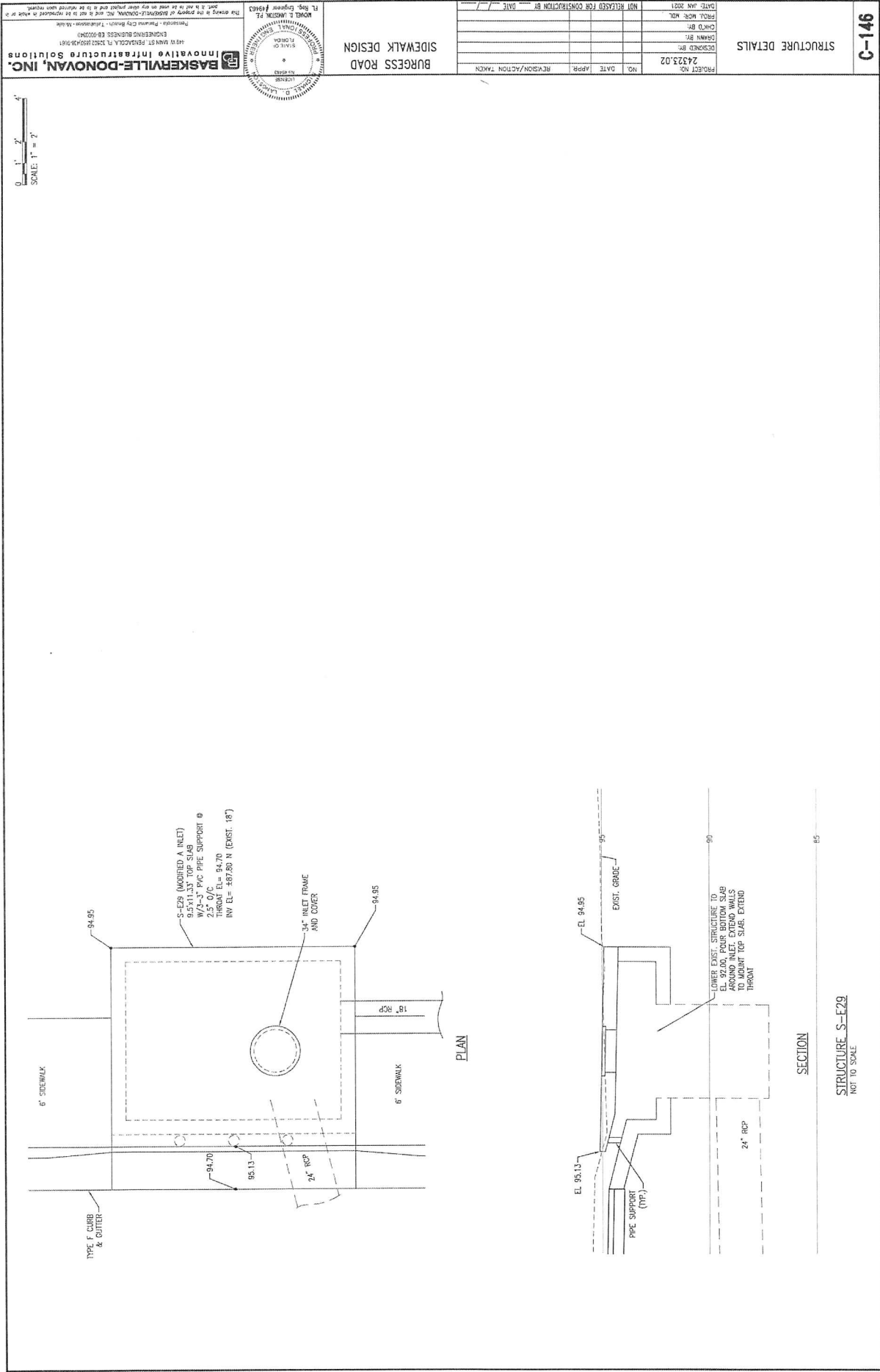
E:\DWG\24323.02\C-140-146 Structures.dwg, Jan 12, 2021 - B-413M, gmg

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

445 W. MAIN ST., PENSACOLA, FL 32502 (904)948-9881
ENGINEERING BUSINESS: EO-000040
Formations • Premium Dry Shrink • Tensar-Geotextile

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C-150

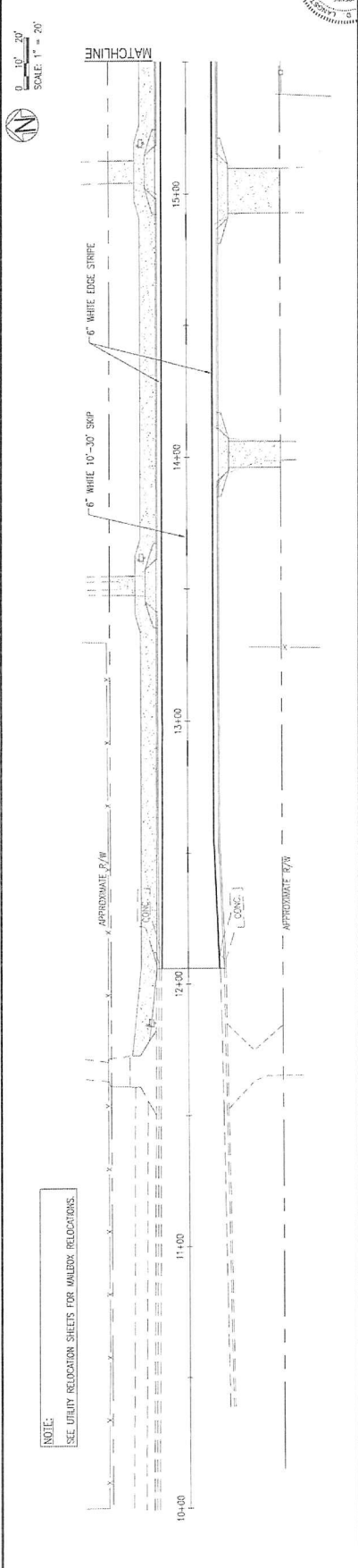
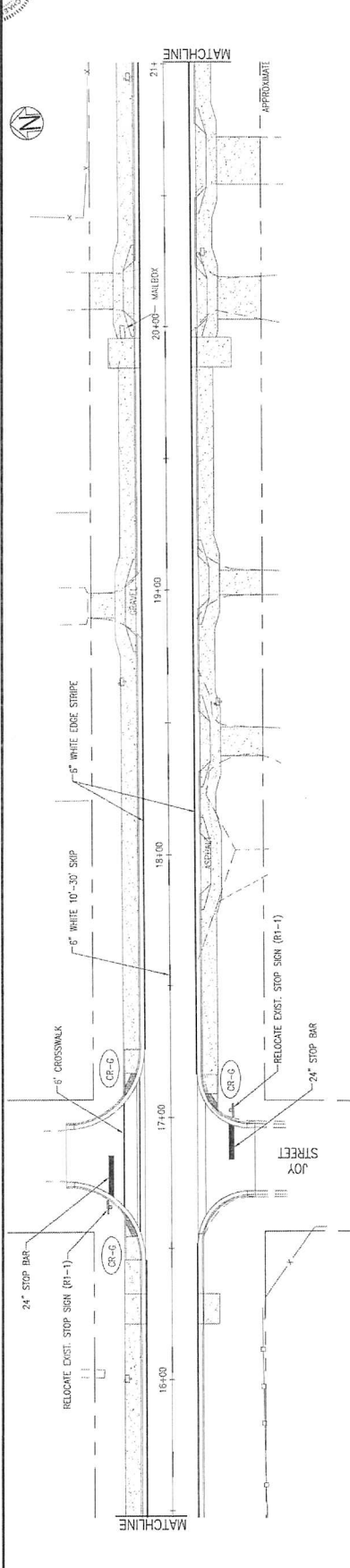
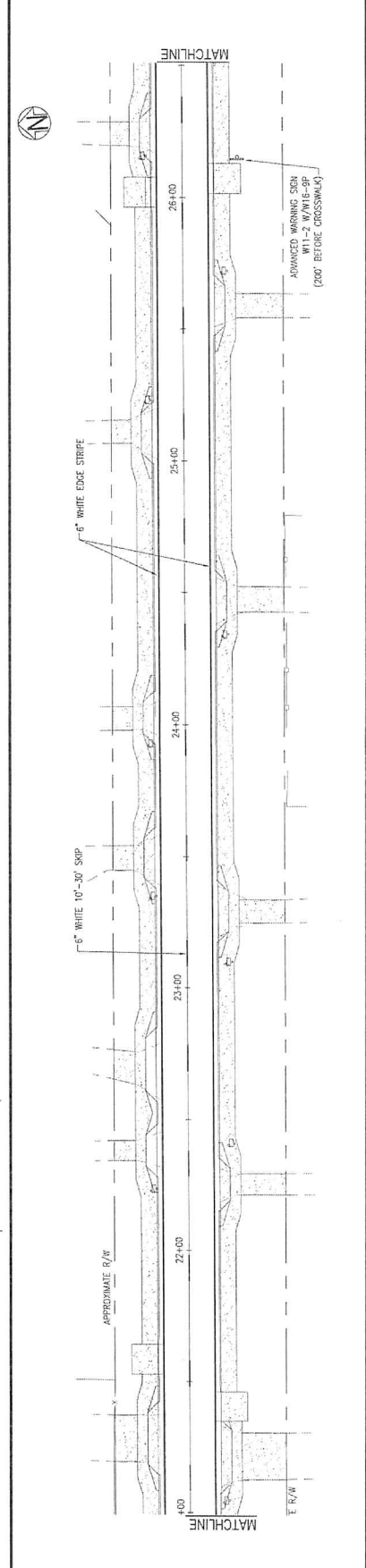
STRIPING AND
SIGNAGE PLAN

PROJECT NO.	2433.02
DESIGNED BY	402
DRAWN BY	402
CHECK BY	
DATE	NOV 2021
NO.	
DATE	
APPR.	
REVISION/ACTION	DATE

BURGESS ROAD
SIDEWALK DESIGN

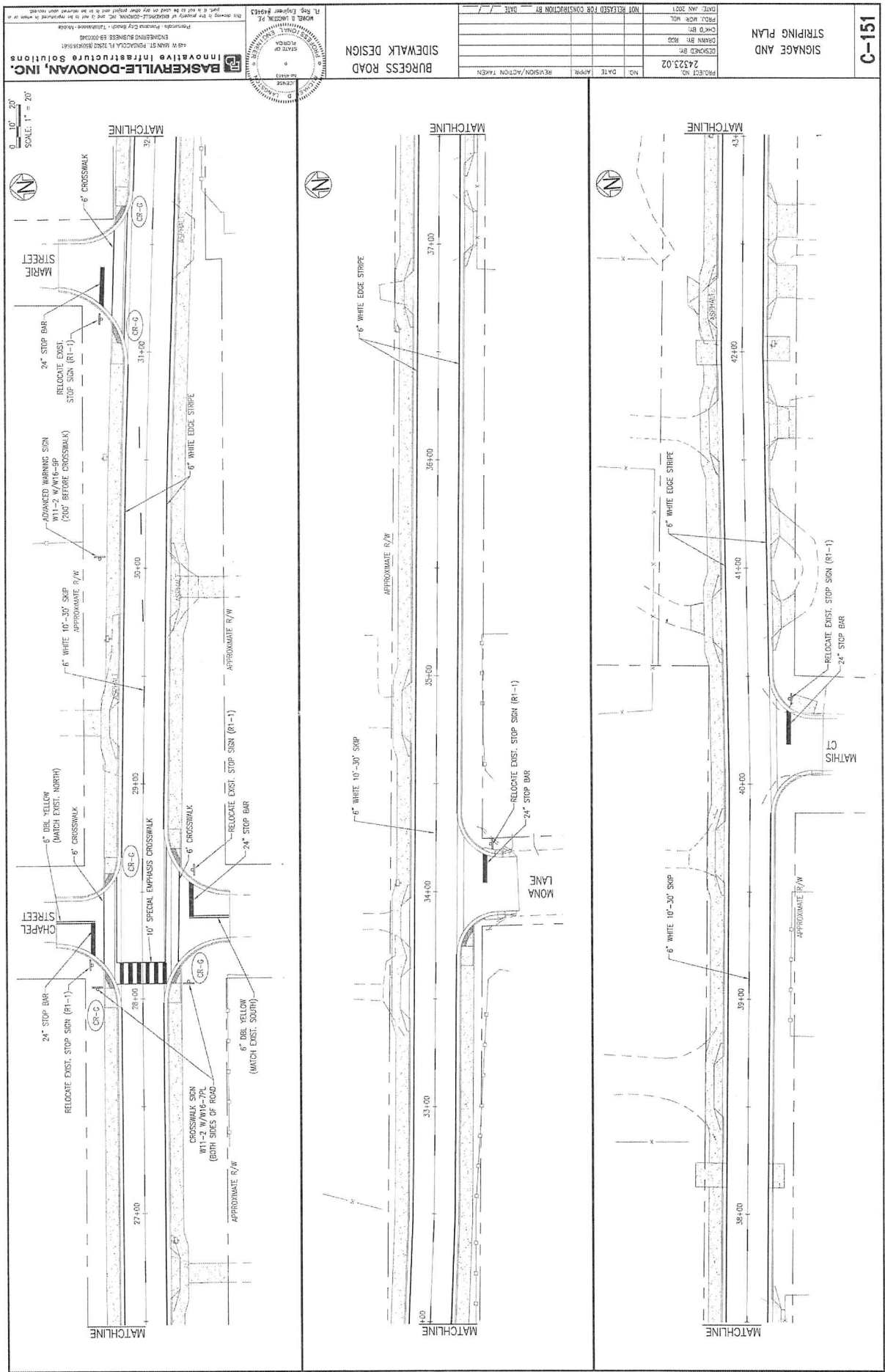


BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
449 W. MAIN ST., SUITE 200, PALM BEACH, FL 33402 (561) 838-1111
ENGINEERING BUSINESS - (561) 838-1111
This drawing is the property of BASKERVILLE-DONOVAN, INC. and is to be used only for the project and location specified. It is not to be used for any other project and is to be returned upon request.



NOTE:
SEE UTILITY RELOCATION SHEETS FOR MALEX RELOCATIONS.

C:\pwork\245\24523.02\C-150-152 Striping.dwg, Jun 12, 2021 - 8:41:52AM, rsglvr



C-151

SIGNAGE AND
STRIPING PLAN

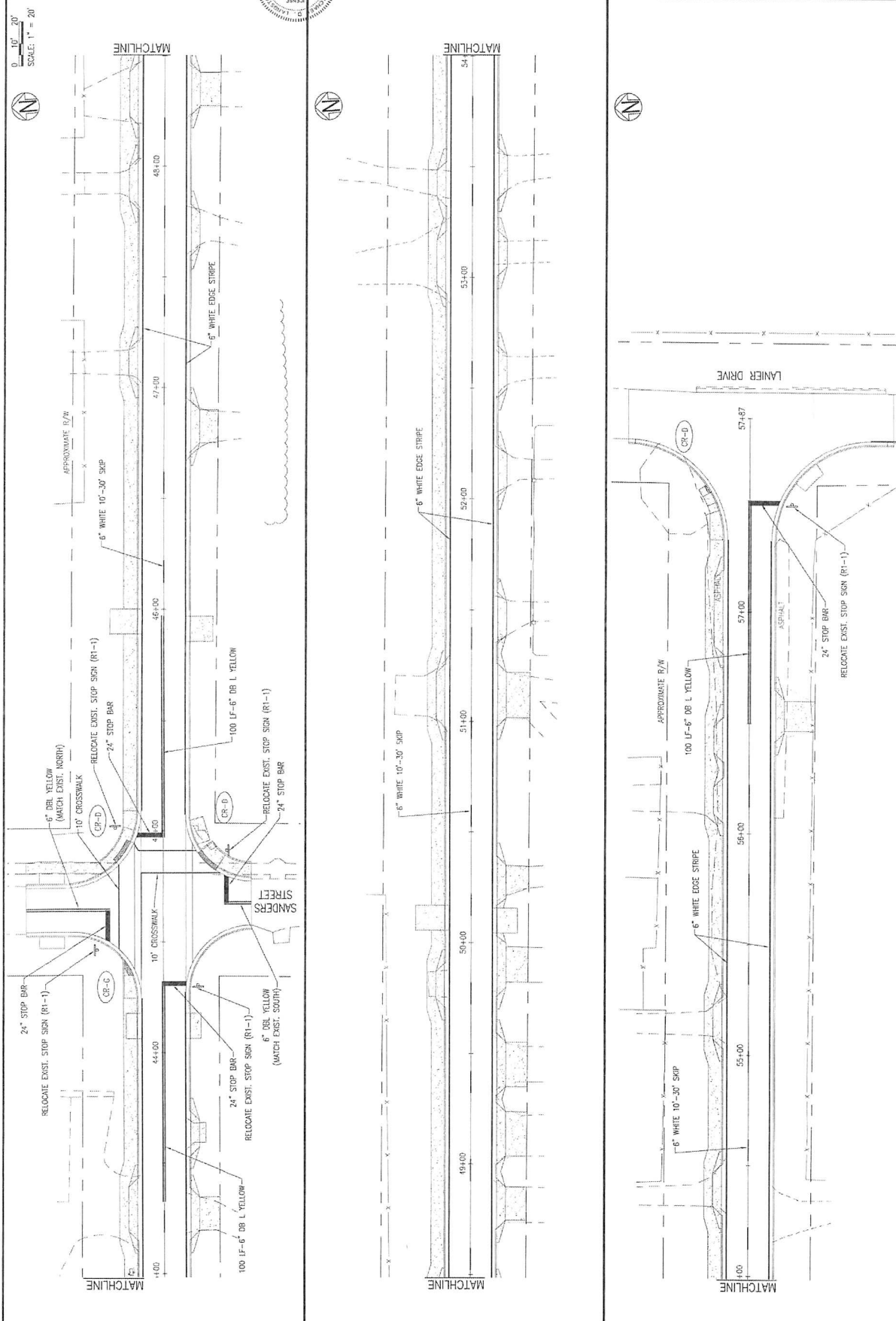
PROJECT NO.	24523.02
DESIGNED BY	RJS
DRAWN BY	RJS
CHECKED BY	
DATE	JUN 2021
NOT RELEASED FOR CONSTRUCTION BY	DATE

BURGESS ROAD
SIDEWALK DESIGN

WORK SHEET NO. 15
STATE OF NORTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
No. 10287
BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
400 N. MAIN ST., SUITE 200, RALEIGH, NC 27601
TELEPHONE: 919.966.1100 FAX: 919.966.1101
WWW.BASKERVILLE-DONOVAN.COM
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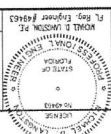
BASKERVILLE-DONOVAN, INC.
Innovative Infrastucture Solutions

449 W. MAIN ST., PENSACOLA, FL 32502 (904)353-5671
ENGINEERING BUSINESS (850-303-0340)
Firm located in Pensacola, FL and is not to be contacted in other areas.
This drawing is the property of BASKERVILLE-DONOVAN, INC. and is not to be used on any other project and is to be returned upon request.



UTILITY
RELOCATION

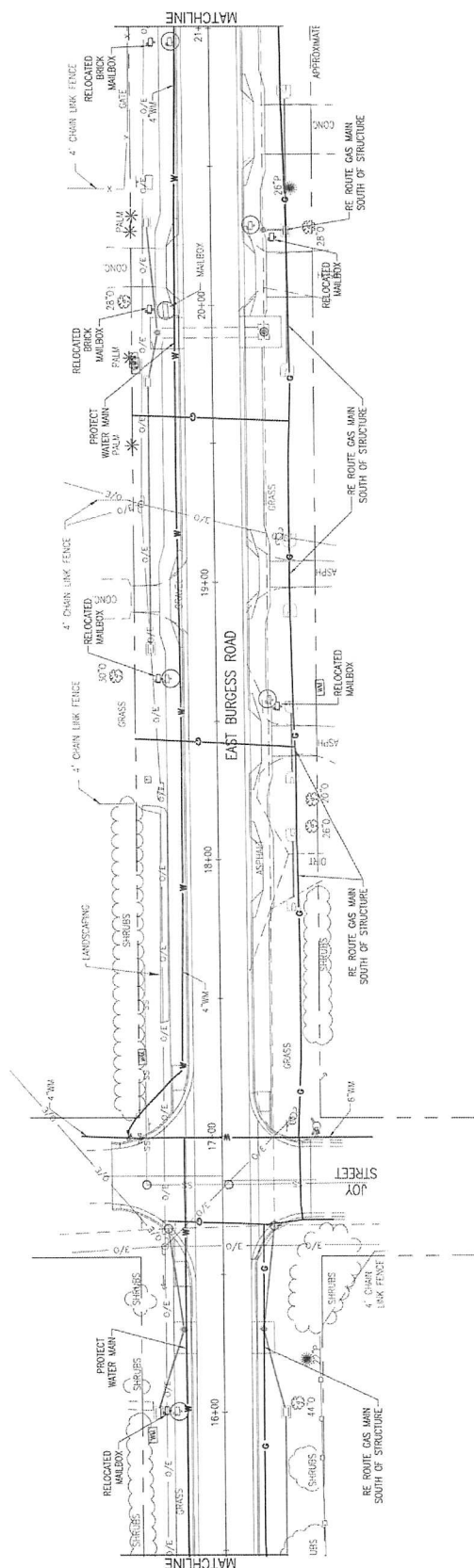
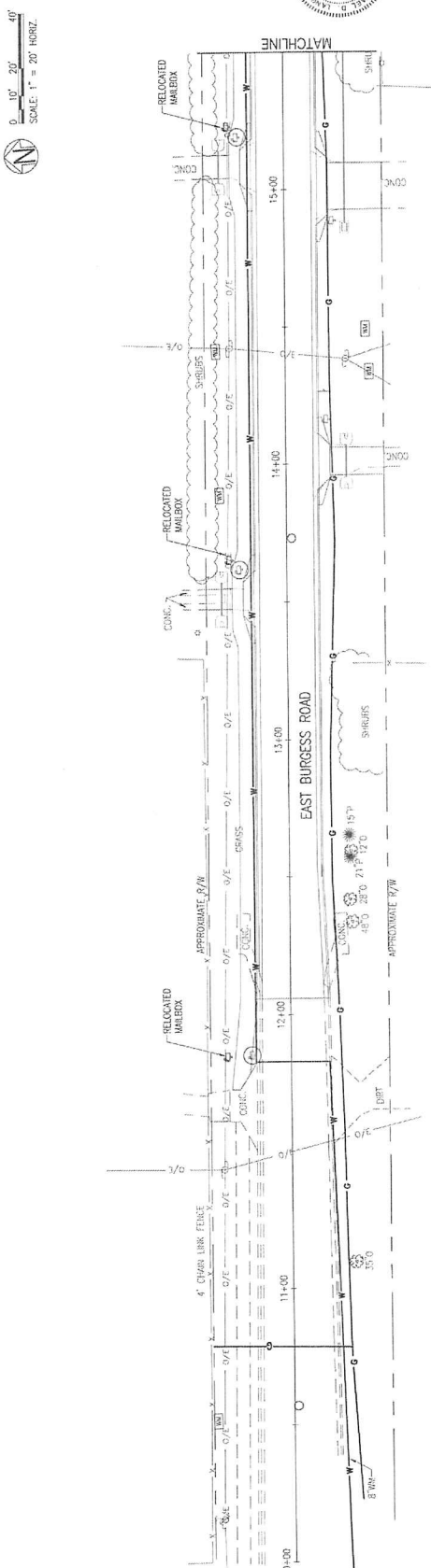
PROJECT NO:	24323.02	NO.	DATE	APPR.	REVISION / ACTION TAKEN
DESIGNED BY:					
DRAWN BY:	BOO				
CHECK BY:					
PROD. MGR. NO.					
DATE: JUN 2021					NOT RELEASED FOR CONSTRUCTION BY DATE

BURGESS ROAD
SIDEWALK DESIGN

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

646 W. MAIN ST., PENSACOLA, FL 32502 (904) 432-9601
EMPLOYEE BUSINESS: 88-000340
Pensacola - Panama City Beach - Tallahassee - Mobile

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C-201

UTILITY
RELOCATION

PROJECT NO.	24323.02
DESIGNED BY	
DRAWN BY	MD
CHECKED BY	
DATE	
APPROVED	
REVISION/ACTION TAKEN	
NOT RELEASED FOR CONSTRUCTION BY	DATE

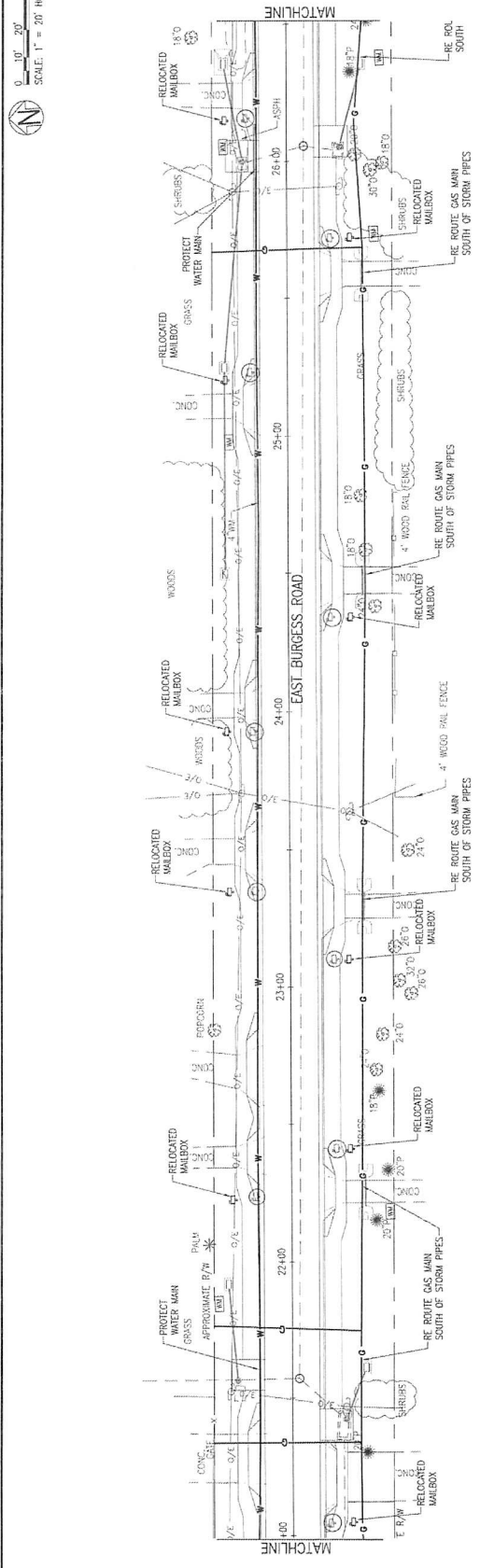
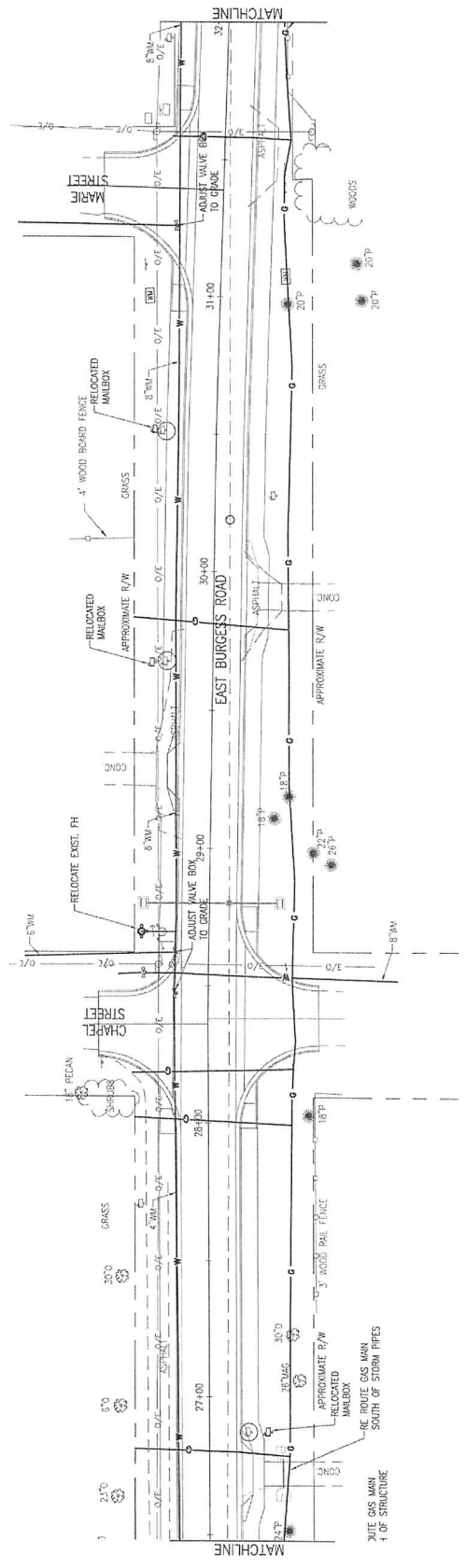


RONALD D. LAWSON, P.E.
STATE OF FLORIDA
LICENSE NO. 40833
MECHANICAL
12/15/2021

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
445 W. MAIN ST., FLEMINGHAM, FL 32043 (904) 896-9947
BIRMINGHAM, ALABAMA 35203-0000
FLEMINGHAM, FLORIDA 32043-0000

**BURGESS ROAD
SIDEWALK DESIGN**

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C-202

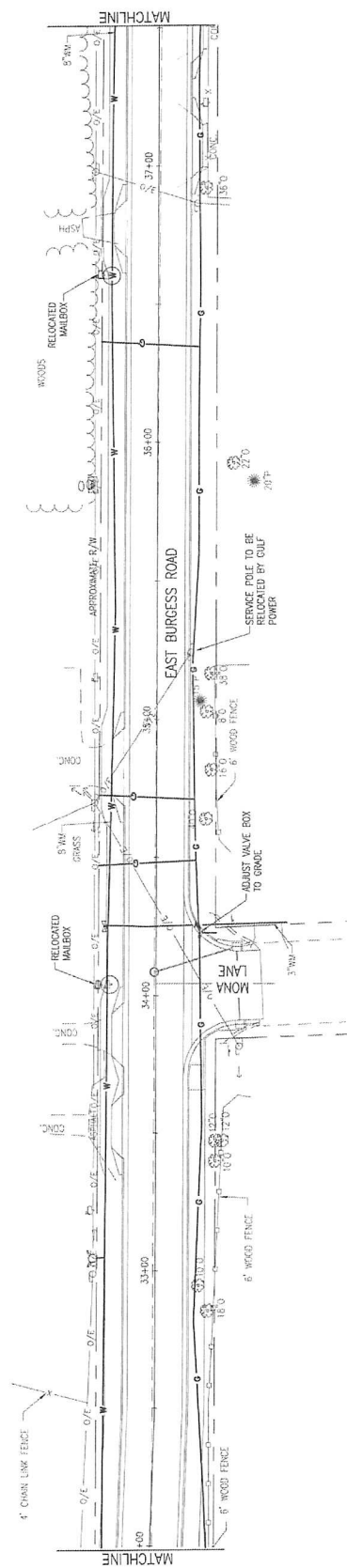
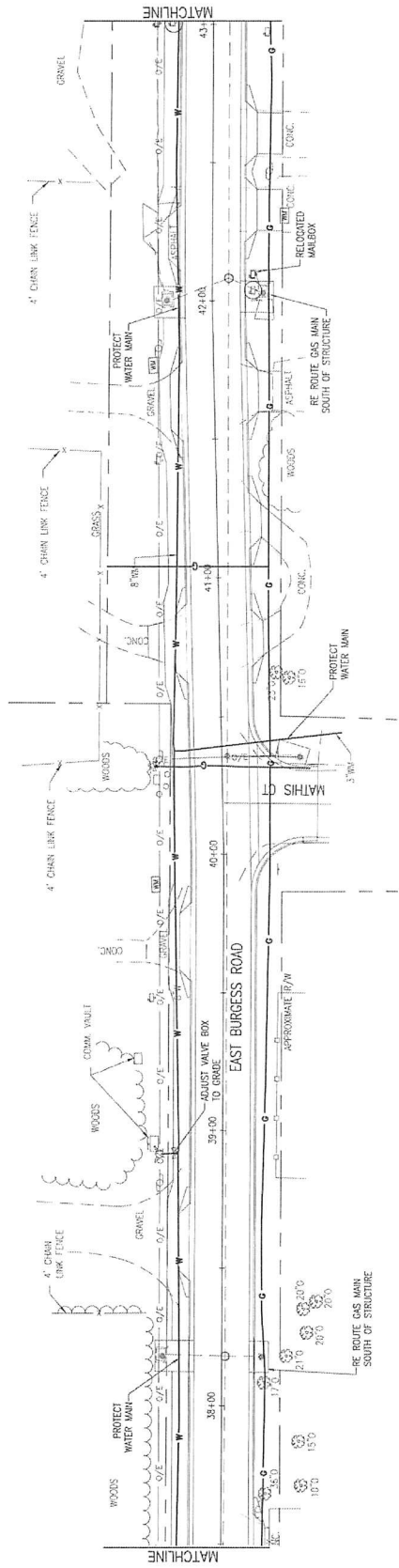
UTILITY
RELOCATION

PROJECT NO.	242323.02		
DESIGNED BY:			
CHECKED BY:			
PROJECT WORK NO.:			
DATE: JAN 2021	NOT RELEASED FOR CONSTRUCTION BY		
DATE			
NO.	DATE	APPR.	REVISION/ACTION TAKEN

**BASKERVILLE-DONOVAN, INC.**
Innovative Infrastructure Solutions
443 W. 9th St., P.O. Box 111, Muskogee, OK 74403
Phone: (918) 685-1111
Fax: (918) 685-1112
www.baskerville-donovan.com

BURGESS ROAD
SIDEWALK DESIGN
WORKSHEET NO. 22
1/2" = 1' (VERTICAL)
1" = 20' (HORIZONTAL)
1/2" = 1' (VERTICAL)
1" = 20' (HORIZONTAL)

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0' 10' 20' 40'
SCALE: 1" = 20' HORIZ.
N

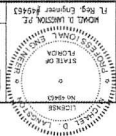
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C-203

UTILITY
RELOCATION

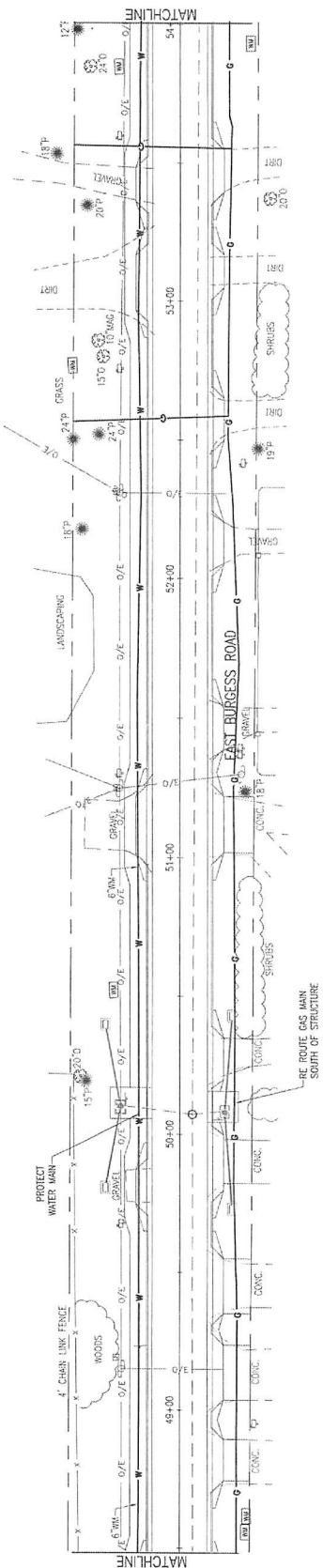
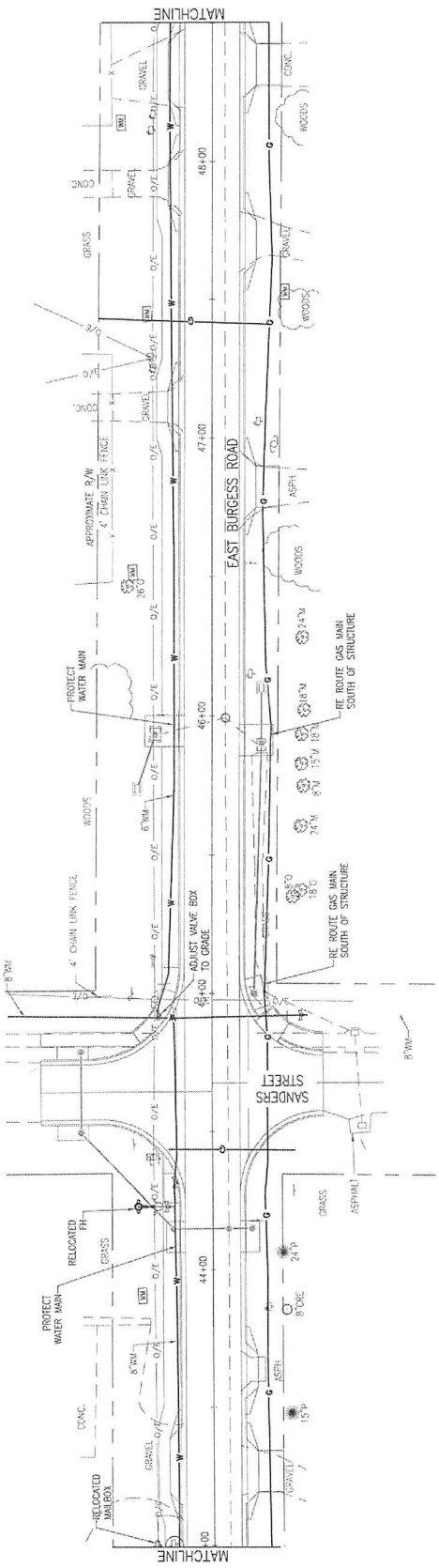
PROJECT NO.	24323.02
NO.	
DATE	
APPRO.	
REVISION/ACTION TAKEN	
NOT RELEASED FOR CONSTRUCTION BY	DATE

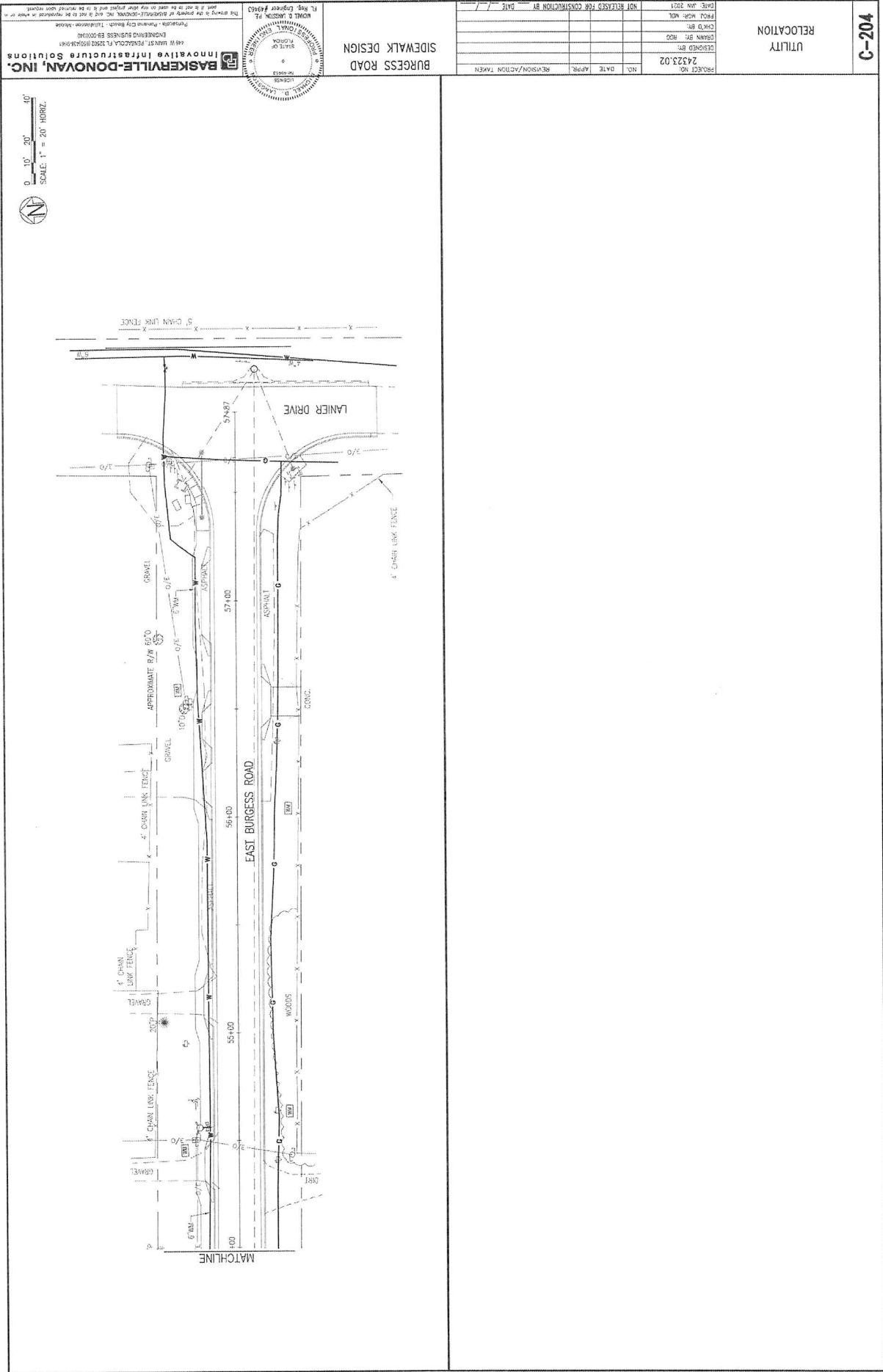
BURGESS ROAD
SIDEWALK DESIGN



BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions
4401 W. MAIN ST., SUITE 200, TAMPA, FL 33606
TEL: 813.241.1111 FAX: 813.241.1112
WWW.BASKERVILLE-DONOVAN.COM

SCALE: 1" = 20' HORIZ.
0 10' 20' 40'



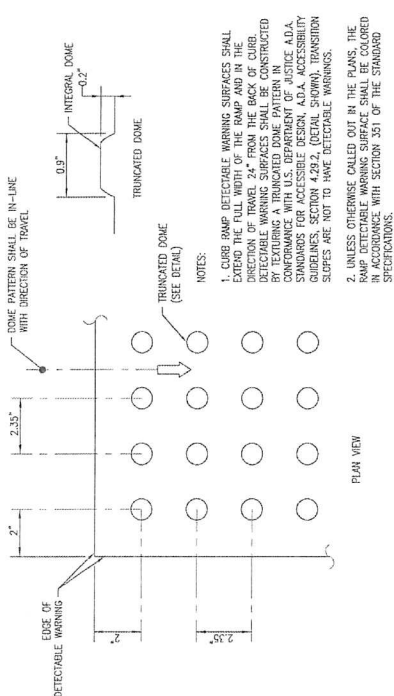


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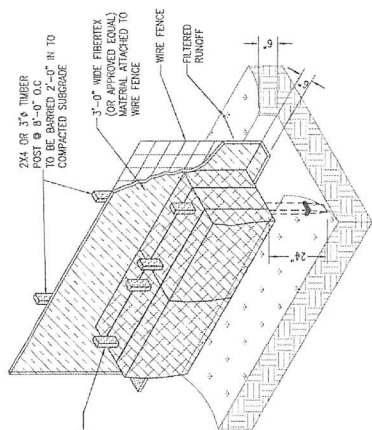
BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

400 W. Main St., Pensacola, FL 32501-9991
Phone: 904.438.1100 Fax: 904.438.1101
E-mail: info@baskerville-donovan.com
Web: www.baskerville-donovan.com

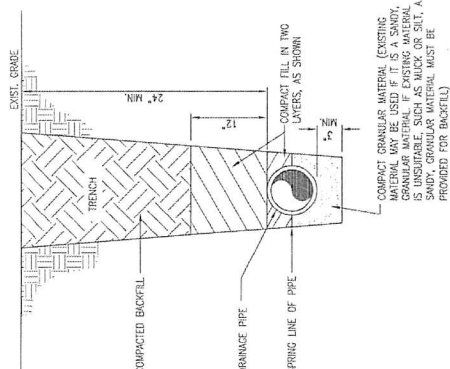
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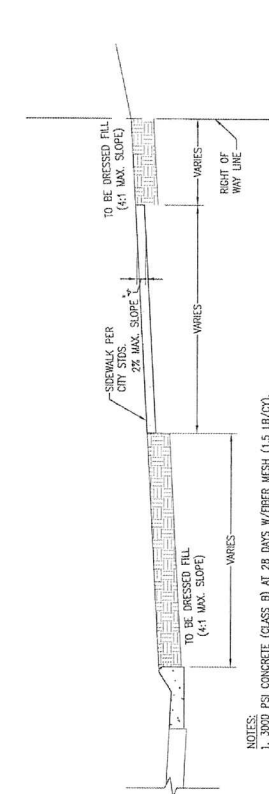
CURB RAMP DETECTABLE WARNING
NOT TO SCALE



NOTE: AT THE COMPLETION OF THE PROJECT AND AFTER SOIL STABILIZATION AND VEGETATIVE GROWTH HAVE BEEN ASSURED, THE SILT FENCE MUST BE COMPLETELY REMOVED AND THE EMBEDED TRENCH RESTORED TO A NATURAL CONDITION.

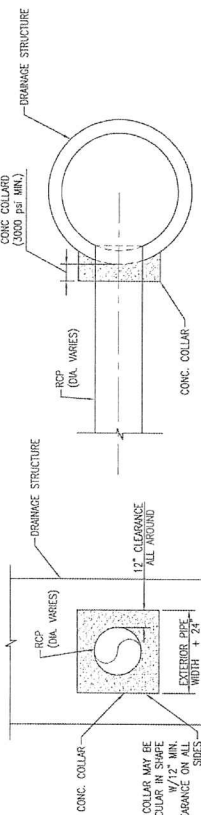


TYPICAL PIPE BEDDING
NOT TO SCALE



NOTES:

1. 3000 PSI CONCRETE (CLASS B) AT 28 DAYS W/FIBER MESH (1.5 LB./CY).
2. 1/2" DEEP DUMMY JOINTS 6' ON CENTER.
3. EXPANSION JOINTS 30' ON CENTER.
4. EDGED WITH 1/2" RADIUS AND BROOM FINISH.
5. ALL SLOPES SHALL BE NEATLY DRESSED TO TRUE LINE AND GRADE.



NOTE: COLLAR REQUIRED FOR EACH PIPE PENETRATION INTO DRAINAGE SYSTEM

PLAN

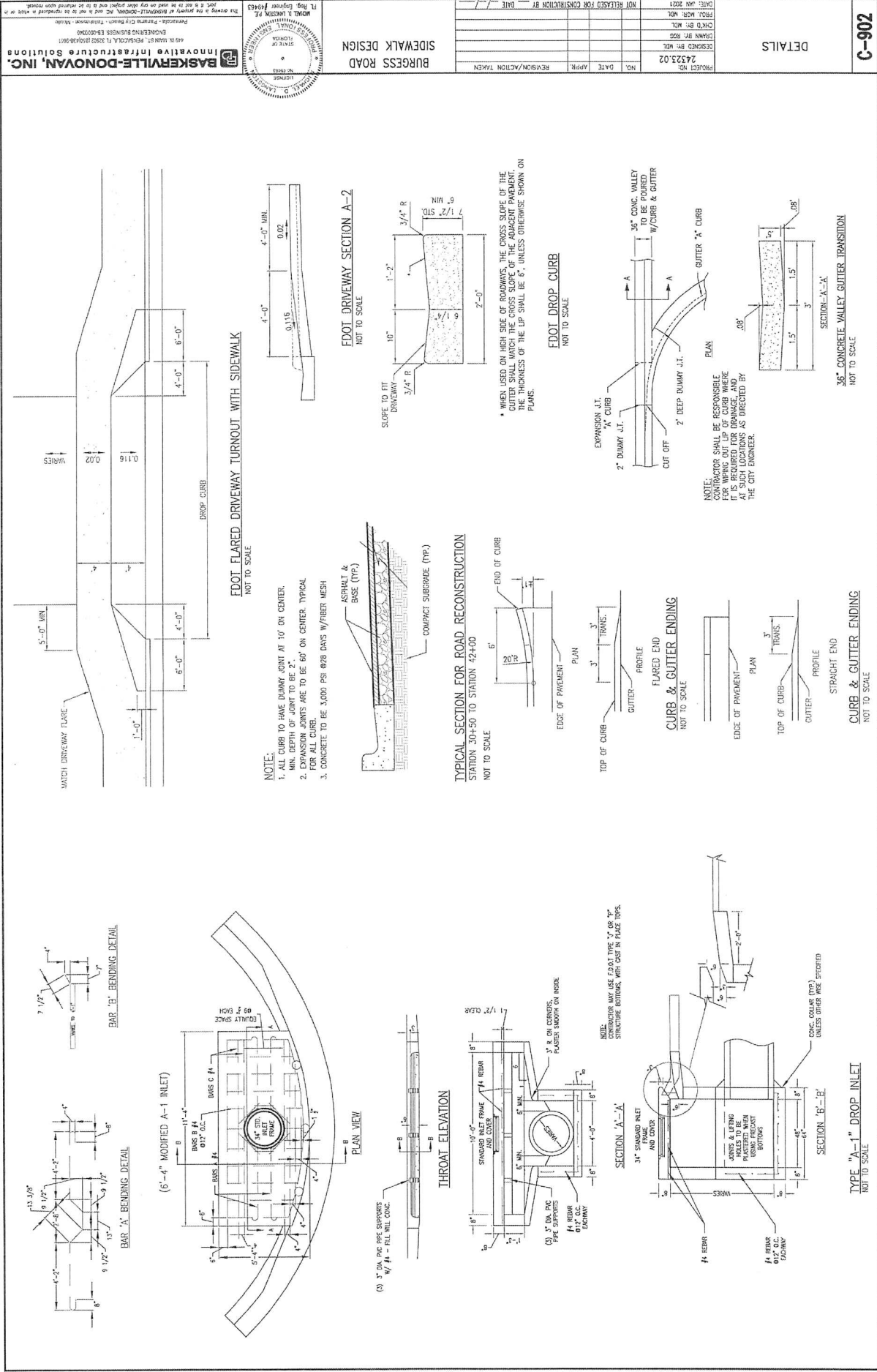
CONCRETE COLLAR DETAIL

NOT TO SCALE

ELEVATION

CITY STANDARD SIDEWALK SECTION
SCALE: N.T.S.

SCALE: N.T.S.



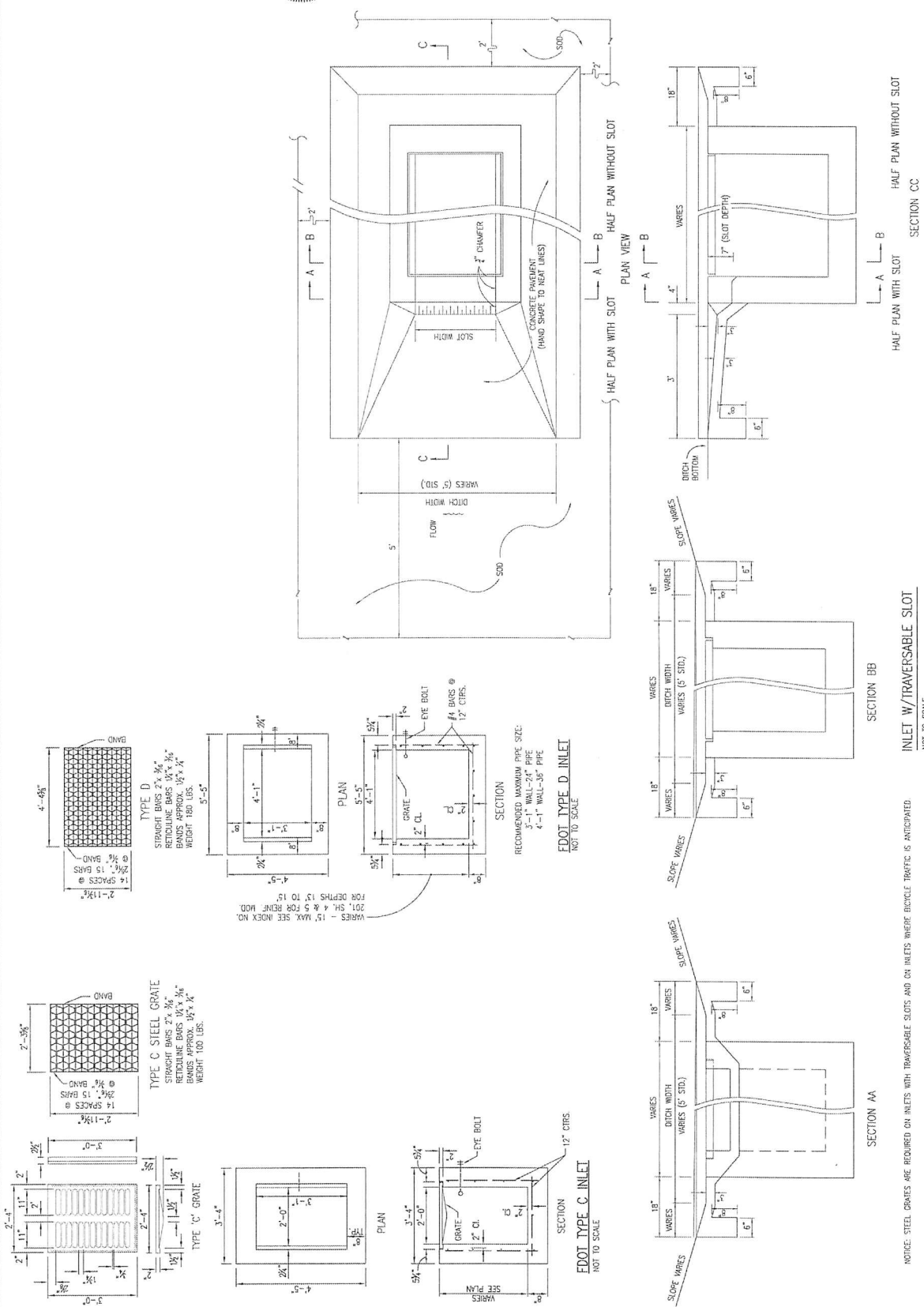
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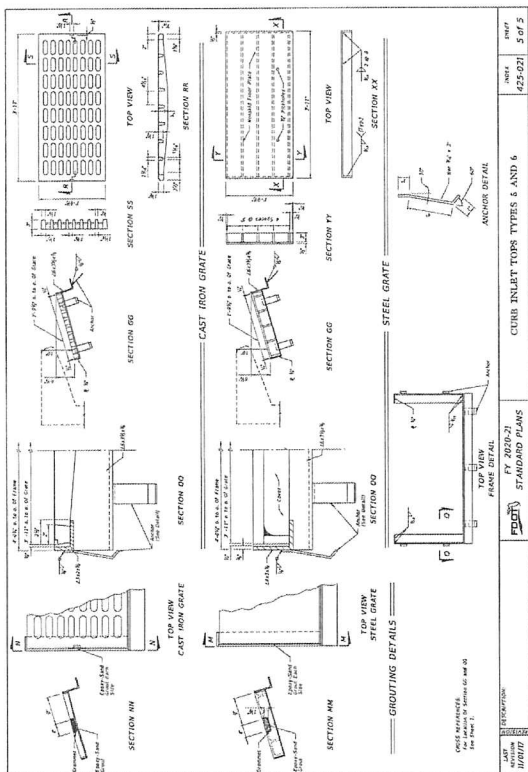
A circular professional engineer seal for Michael D. Langston, P.E. The outer ring contains the text "MICHAEL D. LANGSTON, P.E." at the top and "PROFESSIONAL ENGINEER" at the bottom. The inner circle contains the text "STATE OF FLORIDA" at the top and "LICENSE NO. 46163" at the bottom. The seal is stamped in black ink on a white background.

BASKERVILLE-DONOVAN, INC.
Innovative Infrastructure Solutions

445 W MAIN ST., PENSACOLA, FL 32522 (850)325-5811
Engineering Business EB 3000040
Pensacola • Panama City Beach • Tallahassee • Mobile

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**INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND
EMERALD COAST UTILITIES AUTHORITY, RELATING TO UTILITY UPGRADES AS
PART OF THE BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS
PROJECT**

THIS AGREEMENT is made and entered into as of 21ST day of APRIL, 2021, by and between the City of Pensacola, Florida, a municipal corporation created and existing under the laws of the State of Florida (hereinafter referred to as "City") with administrative offices at 222 West Main Street, Pensacola, Florida 32502 and Emerald Coast Utilities Authority, an independent special district of the State of Florida (hereinafter referred to as "ECUA") with administrative offices located at 9255 Sturdevant Street, Pensacola, Florida 32514 (each being at times referred to as "Party" or "Parties").

WITNESSETH:

WHEREAS, City and ECUA are authorized by §163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, City plans to install utility upgrades in addition to sidewalk and drainage improvements along Burgess Road; and

WHEREAS, ECUA owns and maintains the water and sewer utilities within the right of way along Burgess Road and has committed to contribute an amount not to exceed \$200,000.00 for the cost of said utility upgrades that lie within the project's boundaries.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and terms of payment hereinafter set forth, City and ECUA agree as follows:

Section 1. Purpose of Agreement.

1.1 **Recitals.** The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

1.2 **Purpose.** Pursuant to §163.01, Florida Statutes, this Agreement establishes the responsibilities of the Parties with respect to the utility upgrades installed by the City that lie within the project's boundaries as provided herein.

Section 2. Responsibilities of the Parties.

2.1 In consideration of the faithful performance by City of the project described in **Exhibit "A"** which is attached hereto and incorporated by reference herein, ECUA agrees to contribute an amount not to exceed \$200,000.00 in accordance with the terms of this Agreement for the cost of installation of utility upgrades to be completed in accordance with the project described in **Exhibit "A."**

2.2 City agrees to contract with a third party to fully perform and complete in a good workmanlike manner the project described in **Exhibit "A."**

2.3 City agrees to convey such utility upgrades to ECUA by quitclaim deed promptly upon completion and acceptance by ECUA of responsibility for future maintenance, repair, and replacement of the utility upgrades to be completed in accordance with the project described in **Exhibit "A."** Prior to the conveyance by quitclaim deed, ECUA shall have the right to inspect and approve the acceptance of the utility upgrades. ECUA shall be responsible for filing said deed with the Office of the Clerk of the Circuit Court of Escambia County, Florida.

2.4 This Agreement shall become effective upon filing with the Office of the Clerk of the Circuit Court of Escambia County, Florida. ECUA shall be responsible for such filing.

2.5 Title to the utility upgrades specified in **Exhibit "A"** shall pass to ECUA subsequent to payment by ECUA to City as provided herein and acceptance of the project and responsibility for future maintenance, repair, and replacement of the utility upgrades that are the subject of this agreement. ECUA shall, upon reasonable notice, have the right to inspect all utility upgrades prior to the City accepting it.

2.6 City shall obtain and shall assign to ECUA all express warranties given to City regarding the parts of the project paid for by the ECUA. If within one (1) year, any aspect of the project is found to be defective or not in conformance with applicable contract documents, City shall reasonably cooperate with ECUA regarding the enforcement of any warranty. These warranties are in addition to those implied warranties, if any, to which ECUA may be entitled as a matter of law.

2.7 ECUA shall cooperate with City in obtaining such other easements and rights of way as may be required for successful completion of this project.

Section 3. Compensation and Method of Payment.

3.1 ECUA agrees to reimburse City for project costs related to the work described in **Exhibit "A"** in an amount not to exceed **Two Hundred Thousand Dollars (\$200,000.00).**

3.2 Upon request, City shall provide to ECUA copies of any payment documentation and such other financial documents as ECUA may reasonably require to verify any and all costs related to the project described in Exhibit "A."

3.3 Invoices to ECUA will be sent to: ECUA
Attention: Brandon Knight, PE
9255 Sturdevant Street
Pensacola, Florida 32514

3.4 Payments to City will be sent to: City of Pensacola
Attention: Brad Hinote
222 W. Main Street
Pensacola, Florida 32514

Section 4. Miscellaneous Provisions.

4.1 **Term and Termination:** It is anticipated by the parties that the time for completion of the project described in Exhibit "A" shall be within one (1) year from commencement of construction, unless otherwise agreed between the parties in writing. This Agreement will remain in effect for one year unless terminated by either party for cause or convenience upon providing at least 180 days prior written notice to the non-terminating party.

4.2 **Force Majeure:** In the event that performance by ECUA or City of any of its obligations under this Agreement shall be interrupted, delayed, or prevented by any occurrence not occasioned by the conduct of such party, whether such occurrence be an act of God or any other occurrence whatsoever that is beyond the reasonable control of such party, including a change in environmental law or regulation rendering performance impractical or impossible, then such party shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, or until such performance is no longer impractical or impossible.

4.3 **Liability:** The parties hereto, their respective elected officials, officers and employees shall not be deemed to assume any liability for the acts, omissions or negligence of the other party. The City and ECUA, as local government bodies of the State of Florida, agree to be fully responsible for their individual negligent acts or omissions or tortious acts which result in claims or suits against their respective jurisdictions and agree to be fully liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or ECUA and nothing herein shall be construed as consent by the City or ECUA to be sued by third parties in any matter arising out of this Agreement.

4.4 Records: The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.

4.5 Assignment: This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.

4.6 All Prior Agreements Superseded:

(a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written.

(b) It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

4.7 Headings: Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

4.8 Survival: All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

4.9 Interpretation: For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

(a) If either Party discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of

any provision of the Agreement, it shall immediately notify the other Party and request clarification of its interpretation of this Agreement.

(b) This Agreement shall not be more strictly construed against either Party hereto by reason of the fact that one Party may have drafted or prepared any or all of the terms and provisions hereof.

4.10 Severability: The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

4.11 Further Documents: The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

4.12 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is the subject of this Agreement shall be in the County of Escambia.

4.13 Notices: All notices required or made pursuant to this Agreement by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

CITY:

City Administrator
City of Pensacola
P.O. Box 12910 (32521)
222 W. Main Street (32502)
Pensacola, Florida

ECUA:

ECUA
Attention: Brandon Knight, PE
9255 Sturdevant Street
Pensacola, FL 32514

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

4.14 No Waiver: The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates, under each signature:

ECUA, an independent special district of the State of Florida acting by and through its duly authorized ECUA Board

BY: [Signature]
Lois Benson, Chairwoman

DATE: 2/23/21

ATTEST:

BY [Signature]
Deputy Clerk (SEAL)

Legal in form and valid as drawn:

[Signature]
ECUA Attorney



CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council.

BY: [Signature]
Mayor, Grover C. Robinson, IV

DATE: 4-16-2021

ATTEST: [Signature]
City Clerk (SEAL)

Legal in form and valid as drawn:

[Signature]
City Attorney



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Legislation Details (With Text)

File #: 21-00222 **Version:** 1 **Name:**
Type: Legislative Action Item **Status:** Consent Agenda
File created: 2/24/2021 **In control:** City Council
On agenda: 4/8/2021 **Final action:**
Enactment date: **Enactment #:**
Title: INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND THE EMERALD COAST UTILITIES AUTHORITY (ECUA) FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT
Sponsors: Grover C. Robinson, IV

Indexes:

Code sections:

Attachments: 1. Interlocal Agreement, Emerald Coast Utilities Authority

Date	Ver.	Action By	Action	Result
4/5/2021	1	Agenda Conference	Placed on Consent Agenda	Pass

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

INTERLOCAL AGREEMENT BETWEEN THE CITY OF PENSACOLA AND THE EMERALD COAST UTILITIES AUTHORITY (ECUA) FOR BURGESS ROAD SIDEWALK AND DRAINAGE IMPROVEMENTS PROJECT

RECOMMENDATION:

That City Council approve the Interlocal Agreement between the City of Pensacola and the Emerald Coast Utilities Authority (ECUA) for the Burgess Road Sidewalk and Drainage Improvements Project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

ECUA owns and maintains the water and sewer utilities within the right of way along Burgess Road and has committed to contribute an amount not to exceed \$200,000 for the cost of said utility upgrades that lie within the project boundaries.

PRIOR ACTION:

None

FUNDING:

Budget: \$ 1,640,000.00 Local Option Sales Tax Fund-Burgess Road
200,000.00 Local Option Sales Tax Fund-Sidewalk Improvements
500,000.00 Escambia County Interlocal Agreement
200,000.00 Emerald Coast Utilities Authority Agreement
\$ 2,540,000.00

Actual: \$ 2,039,662.68 Construction Contract
203,966.27 10% Contingency
209,885.68 Engineering Design/Permitting/Surveying (Completed)
50,000.00 Engineering Management/Inspection (Estimate)
8,000.00 Construction Testing/Misc. (Estimate)
\$ 2,511,514.63

FINANCIAL IMPACT:

The City has allocated \$1,640,000 for this project through the Local Option Sales Tax Fund-Burgess Road. In addition, a budget transfer in the amount of \$200,000 will be made within the Local Option Sales Tax Fund moving funding from Sidewalk Improvements to this project. Additional funding in the amount of \$700,000 will be reimbursed through Interlocal Agreements with Escambia County and the Emerald Coast Utility Authority. Escambia County will provide \$500,000 to be used for sidewalk and drainage improvements for those portions of Burgess Road that lie within the County's jurisdictional boundaries. ECUA will provide \$200,000 for the cost of utility upgrades that lie within the project's boundaries.

CITY ATTORNEY REVIEW: Yes

3/26/2021

STAFF CONTACT:

Keith Wilkins, City Administrator
Kerrith Fiddler, Duty City Administrator - Community Development
L Derrik Owens, Director of Public Works and Facilities/City Engineer

ATTACHMENTS:

- 1) Interlocal Agreement, Emerald Coast Utilities Authority

PRESENTATION: No

CONTRACTS/AGREEMENTS REQUIRING MAYORAL SIGNATURE
FINAL DOCUMENT REVIEW FORM
(page 2)

RISK MANAGER

Date Received 4/16/21

☐ Pending (See comments below): _____ (Signature)

Sent to Department / /

☒ Approved: [Signature] (Signature)

Sent to City Attorney 4/16/21

Comments: _____

CITY ATTORNEY

Date Received 4/16/21

☐ Pending (See comments below): _____ (Signature)

Sent to Department / /

☒ Approved: [Signature] (Signature)

Sent to Mayor 4/16/21

Comments: _____

MAYOR'S OFFICE (CITY ADMINISTRATOR)

Date Received 4/16/21

☐ Pending (See comments below): _____ (Signature)

Sent to Department / /

☒ Approved: [Signature] (Signature)

Sent Original to City Clerk 4/19/2021

Comments: _____

CITY CLERK

Date Received 4/20/21

☐ Pending (See comments below): _____ (Signature)

Sent to Dept/Admin/Legal / /

☒ Approved: [Signature] (Signature)

Retained original in Fortis

Comments: Return (1) copies to Engineering

Returned 1 only original(s) to Department 4/21/21

Initials: [Signature]

**AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN THE
CITY OF PENSACOLA AND ESCAMBIA COUNTY, FLORIDA
RELATING TO SIDEWALK AND DRAINAGE IMPROVEMENTS**

THIS AMENDMENT is made and entered into by and between the City of Pensacola, Florida, a municipal corporation created and existing under the laws of the State of Florida (hereinafter referred to as "City") with administrative offices at 222 West Main Street, Pensacola, Florida 32502 and Escambia County, a political subdivision of the State of Florida (hereinafter referred to as "County") with administrative offices located at 221 Palafox Place, Suite 420, Pensacola, Florida 32502 (each at times referred to individually as "party" or collectively as "parties").

WITNESSETH:

WHEREAS, City and County are authorized by §163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, on or about April 16, 2021, the City and County entered into an Interlocal Agreement relating to the installation of sidewalk and drainage improvements along a portion of Burgess Road that lie within the County's jurisdictional boundaries (hereinafter referred to as the "Agreement"); and

WHEREAS, the parties wish to amend the Agreement to reflect that the County has committed to contribute up to an additional \$35,000.00 for the cost of said portions of the project that lie within the County's jurisdictional boundaries as further provided herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, benefits, and conditions contained herein, and for other good and valuable consideration the sufficiency and delivery of which is hereby acknowledged, the City and the County agree as follows:

1. The foregoing recitals are declared to be true and correct and are hereby incorporated into this Amendment to the Agreement.

2. Subsection 2.1 of the Agreement is hereby amended as follows:

2.1 In consideration of the faithful performance by City of the project described in **Exhibit "A"** which is attached hereto and incorporated by reference herein, County agrees to contribute an amount not to exceed ~~\$500,000.00~~**\$35,000.00** in accordance with the terms of this Agreement for the cost of the installation of sidewalks and drainage improvements that lie within the jurisdictional boundaries of the County as set forth in Section 3.

3. Subsection 3.1 of the Agreement is hereby amended as follows:

3.1 County agrees to reimburse City for sidewalk and drainage improvement project costs for those portions of Burgess Road that lie within the County's jurisdictional boundaries as further described in **Exhibit "A"** in an amount not to exceed **Five Hundred Thirty-Five Thousand Dollars (\$500,000.00\$35,000.00)**.

4. The parties hereby agree that all other terms and conditions of the Agreement will remain in full force and effect.

5. The Agreement and any amendments thereto shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue for any matter which is a subject of the Agreement shall be in the County of Escambia.

6. This Amendment to the Agreement shall become effective when filed in the Office of the Clerk of the Circuit Court of Escambia County, Florida. Upon execution by the parties, the County shall be responsible for such filing.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment to Interlocal Agreement on the respective dates under each signature.

ESCAMBIA COUNTY, FLORIDA, a political subdivision of the State of Florida acting by and through its duly authorized Board of County Commissioners.

By: _____
Jeff Bergosh, Chairman

ATTEST: Pam Childers
Clerk of the Circuit Court

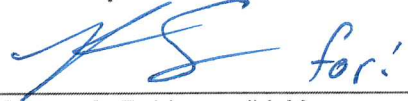
Date: _____

BCC APPROVED: _____


By: _____
Deputy Clerk

(SEAL)

CITY OF PENSACOLA, a Florida Municipal Corporation acting by and through its duly authorized City Council

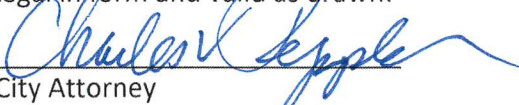
By:  for:
Grover C. Robinson, IV, Mayor

Date: 9/29/22

ATTEST:
By: 
City Clerk

(SEAL)

Legal in form and valid as drawn:


City Attorney

Approved as to form and legal sufficiency.

By/Title: Kristin D. Hual, DCA

Date: 09-28-2022



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-00999

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

INTERLOCAL AGREEMENT - PENSACOLA-ESCAMBIA COUNTY PROMOTION AND DEVELOPMENT COMMISSION

RECOMMENDATION:

That City Council approve and authorize the Mayor to take the actions necessary to execute the Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola relating to the funding of the Pensacola-Escambia County Promotion and Development Commission (PEDC) for FY 2023.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The PEDC was created by Chapter 67-1365, Florida Laws to promote and develop tourism and industry in Escambia County and the City of Pensacola. PEDC is governed by a nine-member board consisting of representatives from the Escambia County Board of County Commissioners, the Pensacola City Council, the Century Town Council, and the Greater Pensacola Chamber.

In 1989, House Bill 984 amended Chapter 67-1365, Florida Laws to require that the City and Escambia County jointly fund the PEDC through an annual Interlocal Agreement. For FY 2023, Escambia County has budgeted \$600,000, and the City has budgeted \$175,000.

PRIOR ACTION:

September 14, 2022 - City Council formally adopted the FY 2023 Budget that included an appropriation of \$175,000 for the PEDC.

FUNDING:

Budget: \$ 175,000.00

Actual: \$ 175,000.00

FINANCIAL IMPACT:

Funds have been appropriated in the FY 2023 Budget.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/12/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director

ATTACHMENTS:

- 1) Interlocal Agreement between the Escambia County Board of County Commissioners and the City of Pensacola - FY 2023

PRESENTATION: No

**STATE OF FLORIDA
COUNTY OF ESCAMBIA
INTERLOCAL AGREEMENT BETWEEN THE ESCAMBIA COUNTY BOARD OF
COUNTY COMMISSIONERS AND THE CITY OF PENSACOLA RELATING TO
THE FY 2022-2023 FUNDING OF PENSACOLA-ESCAMBIA COUNTY
PROMOTION AND DEVELOPMENT COMMISSION.**

THIS AGREEMENT is made by and between Escambia County, Florida, a political subdivision of the State of Florida (hereinafter referred to as the "County"), with administrative offices located at 221 Palafox Place, Pensacola, Florida 32502 and the City of Pensacola, a municipal corporation created and existing under the laws of the State of Florida (hereinafter referred to as the "City") with administrative offices at 222 West Main Street, Pensacola, Florida 32502 (each being at times referred to as a "party").

WITNESSETH:

WHEREAS, the County and the City have legal authority to perform general governmental services within their respective jurisdictions; and

WHEREAS, the Board of County Commissioners of Escambia County and the Pensacola City Council are authorized by §163.01, Florida Statutes, to enter into Interlocal agreements and thereby cooperatively utilize their powers and resources in the most efficient manner possible; and

WHEREAS, as the governing bodies of the County and the City, they recognize the leadership roles they play in assisting and guiding the development of the County's local economy and improving its economic base; and

WHEREAS, Chapter 89-481, Laws of Florida, restructured funding responsibilities of local governments to the Pensacola-Escambia County Promotion and Development Commission (hereinafter referred to as "PEDC"); and

WHEREAS, the County and the City are recognized in Chapter 89-481 as the leading governmental bodies supporting economic development in Escambia County, along with the Town of Century and the private sector, through their PEDC membership; and

WHEREAS, PEDC economic development activities are broadly recognized to include business and industry recruitment and retention, tourism promotion and development, and armed services support, which all serve critical public purposes; and

WHEREAS, as a result, Escambia County and the City of Pensacola now jointly find it advantageous and appropriate to contribute their fiscal resources to the PEDC programs and activities.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the receipt of sufficiency of which is hereby acknowledged, the County and the City agree as follows:

Article 1
Purpose

1.1 The recitals contained in the preamble of this Agreement are declared to be true and correct and are hereby incorporated into this Agreement.

- 1.2 Pursuant to the requirements of Chapter 89-481, Laws of Florida, the County, in cooperation with the City, hereby establishes a financial framework for shared funding responsibilities of the Pensacola-Escambia County Promotion and Development Commission for FY 2022-2023.

Article 2 **Responsibilities of Parties**

- 2.1 As set out in Chapter 89-481, Laws of Florida, the fiscal contribution of the City and the Fiscal contribution of the County are to be established yearly by Interlocal Agreement. Therefore, the City and the County agree for FY 2022-2023 that the County shall contribute to the PEDC the amount of Six Hundred Thousand Dollars (\$600,000.00) and the City shall contribute to the PEDC the amount of and One Hundred Seventy-Five Thousand Dollars (\$175,000.00). Each shall reflect such contributions in their respective budgets.
- 2.2 This Agreement shall bind the parties beginning October 1, 2022 with respect to their PEDC FY 2022-2023 budgetary contributions. However, contributions for the FY 2022-2023 PEDC budget and any subsequent budget years thereafter shall be in an amount agreed upon between the parties in separate and subsequent interlocal agreements as provided under Chapter 89-481, Laws of Florida.
- 2.3 The PEDC is intended to be a private-public partnership and united effort for economic development in Escambia County. To accomplish this goal, the parties also agree to encourage voluntary contributions to the PEDC from the private sector sources.
- 2.4 This Agreement shall become effective when filed in the office of the Clerk of the Circuit Court of Escambia County, Florida. The County shall be responsible for such filing.

Article 3 **General Provision**

- 3.1 **Termination:** This Agreement may be terminated by either party for cause, or for convenience, upon thirty (30) days written notice by the terminating party to the other party of such termination.
- 3.2 **Records:** The parties acknowledge that this Agreement and any related financial records, audits, reports, plans, correspondence, and other documents may be subject to disclosure to members of the public pursuant to Chapter 119, Florida Statutes, as amended. In the event a party fails to abide by the provisions of Chapter 119, Florida Statutes, the other party may, without prejudice to any right or remedy and after giving that party, seven (7) days written notice, during which period the party fails to allow access to such documents, terminate this Agreement.
- 3.3 **Assignment:** This Agreement or any interest herein shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties, without the prior written consent of the other party.
- 3.4 **All Prior Agreements Superseded:**
- (a) This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained

herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or Agreements whether oral or written.

- (b) It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

3.5 Headings: Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

3.6 Survival: All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

3.7 Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and the parties stipulate that venue, for any matter, which is the subject of this Agreement shall be in the County of Escambia.

3.8 Interpretation: For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities.

- (a) If the City discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the City shall immediately notify the County and request clarification of the County's interpretation of this Agreement.

- (b) This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

3.9 Severability: The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed to be enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

3.10 Further Documents: The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provisions of this Agreement.

3.11 No Waiver: The failure of a party to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any other provision or of either party's right to thereafter enforce the same in accordance with this Agreement.

3.12 Notices: All notices required or made pursuant to this Agreement by either party to the other shall be in writing and delivered by hand or by United States Postal Service, first class mail, postage prepaid, return receipt requested, addressed to the following:

TO THE COUNTY

Wesley J. Moreno
County Administrator
221 Palafox Place
Post Office Box 1591
Pensacola, FL 32597

TO THE CITY

Kerrith Fiddler
City Administrator
Post Office Box 12910
Pensacola, FL 32521

Either party may change its above noted address by giving written notice to the other party in accordance with the requirements of this section.

3.13 Liability: The parties hereto, their respective elected officials, officers and employees shall not be deemed to assume any liability for the acts, omissions or negligence of the other party. The County and City, as local government bodies of the State of Florida, agree to be fully responsible for their individual negligent acts or omissions or tortious acts which result in claims or suits against their respective jurisdictions and agree to be fully liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of sovereign immunity by the City or County and nothing herein shall be construed as consent by the City or County to be sued by third parties in any matter arising out of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates, under each signature:

ATTEST: Pam Childers
Clerk of the Court

By: _____
Deputy Clerk

(SEAL)

ATTEST: Ericka Burnett
Clerk of the City of Pensacola

By: _____
Clerk

COUNTY:
ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of Florida

BY: _____
Chairman
Board of County Commissioners

CITY:
THE CITY OF PENSACOLA, a Florida
Municipal Corporation

By: _____
Grover C. Robinson, IV, Mayor

Date: _____

Approved as to form and legal sufficiency.

By/Title: Kristin D. Hual, DCA

Date: 10-06-2022



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01012

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

WRITE-OFF OF UNCOLLECTIBLE GOVERNMENTAL ACCOUNTS RECEIVABLE

RECOMMENDATION:

That City Council approve the write-off of \$10,416.67 in unpaid annual lease fees due from Gulf Coast Tennis Group, LLC.

HEARING REQUIRED: No Hearing Required

SUMMARY:

During the Coronavirus Disease 2019 (COVID-19) pandemic, Roger Scott Tennis Center which is operated by Gulf Coast Tennis Group, LLC, was given an emergency directive to close the center during the pandemic for a period of time. The required closure period was from April 6, 2020 through April 30, 2020. Gulf Coast Tennis Group, LLC, participated in the City's Lease Deferral Program, and April, May and June 2020 payments totaling \$31,250 were deferred. After timely repayment of \$20,833.33 in deferred rent, Gulf Coast Tennis Group, LLC, requested that the remaining balance of \$10,416.67 be forgiven. This amount is a proration equal to one month of the annual \$125,000 payment due to the City at that time.

The City's Financial Planning and Administration Policy provides that all non-utility account receivable in amounts in excess of \$1,000, and in which a lien has not been filed be submitted to City Council for approval before being written off. The write-off of this uncollectible account is for account purposes only and will not impact the fiscal year 2022 revenues or expenditures of the City of Pensacola.

PRIOR ACTION:

None

FUNDING:

N/A

FINANCIAL IMPACT:

Current past due fees total \$10,416.67. The write-off of these receivables will not have an impact in fiscal year 2022 operating revenues of the City of Pensacola as the revenues were budgeted to be received in a prior fiscal year.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/5/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator

David Forte, Deputy City Administrator - Community Development

Adrian Stills, Parks and Recreation Director

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01029

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

WRITE-OFF OF UNCOLLECTIBLE GOVERNMENTAL ACCOUNTS RECEIVABLE

RECOMMENDATION:

That City Council approve the write-off of \$44,635.11 in unpaid ad valorem equivalent payments due from the late Gary Lowry and \$5,345.00 in unpaid ad valorem equivalent payments due from Aberfeldy Home Construction LLC, retroactive to September 30, 2022.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The City's Financial Planning and Administration Policy states that the write-off of any un-liened, non-utility uncollected accounts receivable in excess of \$1,000 must be approved by City Council. The two accounts under consideration have been determined to be uncollectible. The write-off of these uncollectible accounts is for accounting purposes only and will not impact the FY22 revenues or expenditures of the City.

Both accounts concern vacant or previously vacant parcels at Port Royal Phase II subdivision. In May 1997, the City entered into a Master Lease with Port Royal Phase II Inc., which included a performance schedule requiring completion of residence construction on each of the residential lots by the sublessees by April 2004, which was later extended to August 2009. Several of the lots remained undeveloped after the extended date and those sublessees subsequently entered into a Construction Performance Agreement with the City for their non-compliant lots. The Construction Performance Agreement notes the expectant date of construction completion and details the ad valorem tax equivalent payment due to the City each year.

Gary Lowry passed away in a tragic boating accident in 2013. Finance records show timely payments of the ad valorem tax equivalent made by Mr. Lowry for tax years 2010 thru 2012 but not for years 2006 thru 2009. The write-off amount is the total of those unpaid years plus interest as of 2013, and this amount has been deemed unrecoverable. This lot is the last undeveloped lot in the subdivision.

Aberfeldy Home Construction acquired the sublessee leasehold interest in their (former) lot in late 2019 and paid the ad valorem tax equivalent payment for tax year 2020, the year that their

Construction Performance Agreement indicated residence construction was expected to be completed. They sold their interest in the lot in January 2021. By the time staff was made aware of the sale in late 2021, the new owner had commenced but not completed construction. Upon contacting the new owner, staff was informed of the pandemic effects and supply chain issues resulting in the home not being completed prior to the end of 2021. The residence is now complete.

PRIOR ACTION:

N/A

FUNDING:

N/A

FINANCIAL IMPACT:

The write-off of these two receivables totaling \$49,980.11 will not have an impact on the FY22 revenues or expenditures of the City.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/11/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Lovoy, Finance Director

ATTACHMENTS:

- 1) Write-off Report for Leases FY2022 - Port Royal Phase II

PRESENTATION: No

9/30/2022 4:28:01PM

CITY OF PENSACOLA

Customer: 002615		Name: LOAVES & FISHES SOUP KITCHEN		Phone:				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0157275	9/20/2022	Land Lease - taxable		89.16	0.00	0.00	0.00	0.00
Customer Totals		89.16	0.00	89.16	0.00	0.00	0.00	0.00

Customer: 004484		Name: GARY LOWRY		Phone:				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0122580	11/5/2013	PORT ROYAL PHASE II		0.00	0.00	0.00	0.00	6,239.00
0122581	11/5/2013	PORT ROYAL PHASE II		0.00	0.00	0.00	0.00	38,396.11
Customer Totals		44,635.11	0.00	0.00	0.00	0.00	0.00	44,635.11

Customer: 004771		Name: FIRST CITY ARTS ALLIANCE, INC		Phone: (850) 723-7967				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0157277	9/20/2022	LAND LEASE		1.00	0.00	0.00	0.00	0.00
Customer Totals		1.00	0.00	1.00	0.00	0.00	0.00	0.00

Customer: 005201		Name: MARITIME PLACE LLC		Phone: (850) 477-7044 x151				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0157280	9/20/2022	MARITIME PARK CAM FEES		10,553.64	0.00	0.00	0.00	0.00
Customer Totals		10,553.64	0.00	10,553.64	0.00	0.00	0.00	0.00

Over 120 days

Accounts Receivable Customer Aging Detail
CITY OF PENSACOLA

Customer: 005233		Name: MARITIME ONE, LLC		Phone: (850) 477-7044 x151				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0157281	9/20/2022	MARITIME PARK CAM FEES		3,940.60	0.00	0.00	0.00	0.00
Customer Totals		3,940.60	0.00	3,940.60	0.00	0.00	0.00	0.00

Customer: 006522		Name: ABERFELDY HOME CONSTRUCTION LLC		Phone:				
Document #	Date	Description	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
0153223	10/20/2021	PORT ROYAL PHASE II		0.00	0.00	0.00	0.00	5,345.00
Customer Totals		5,345.00	0.00	0.00	0.00	0.00	0.00	5,345.00

	On Account/Credit	Current	30 - 59 days	60 - 89 days	90 - 119 days	Over 120 days
Grand Totals	64,564.51	0.00	14,584.40	0.00	0.00	49,980.11



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01014

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

REVISED: AWARD OF CONTRACT - ITB NO. 22-052 BERTH 2/3 CORNER FENDERS REPAIRS PROJECT AT PORT OF PENSACOLA - GULF MARINE CONSTRUCTION INC.

RECOMMENDATION:

That City Council award Bid No. 22-052 for Berth 2/3 Corner Fender Repairs Project at the Port of Pensacola to Gulf Marine Construction Inc. of Pensacola, Florida with a base bid of \$109,490.00 plus 10% contingency of \$10,949.00 for a total of \$120,439.00. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the bid, contracting documents, and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The fenders and associated concrete mounting surfaces at the corner of Berth 2/3 were damaged during Hurricane Sally. Originally, Berth Repair 2,3,5,6,7 project (Bid No. 21-025), awarded to contractor Underwater Mechanix LLC in 2021, was to remove and replace the damaged fenders.

The effort to complete the fender removal and replacement could not be completed in a cost-effective manner by Underwater Mechanix due to the deteriorated concrete facing thus making it impracticable to install the necessary mounting hardware for the new fenders. The change order price proposed by Underwater Mechanix was considered very excessive by port staff and its engineering firm APTIM Port Services. To achieve a more cost-effective solution port management decided to bid out the 2/3 corner fender repairs (this award) as a separate project under Bid No. 22-052.

PRIOR ACTION:

N/A

FUNDING:

Budget: \$1,281,621.60 Federal FEMA 90% Funding - Natural Disaster Fund
276,141.02 Additional FEMA 90% Funding To Be Requested

71,201.20	State FDEM 5% Funding - Natural Disaster Fund
15,341.17	Additional State of Florida 5% Funding - To Be Requested
71,201.20	City of Pensacola 5% Funding - Port Fund
15,341.17	Additional City of Pensacola Funding 5% - Port Fund
<u>\$1,730,847.36</u>	

Actual:	\$1,438,880.36	Work Complete under Bid #22-045
	171,582.00	Engineering Costs - Estimated
	109,490.00	Base Bid
	<u>10,949.00</u>	10% Contingency
	<u>\$1,730,847.36</u>	Total

FINANCIAL IMPACT:

FEMA has obligated a PW in the amount of \$1,424,024 with 90% provided by the Federal Emergency Management Agency (FEMA), 5% provided by the Florida Division of Emergency Management (FDEM) and the remaining 5% from the Port of Pensacola. The Port has sufficient reserves for the required 5% match for Hurricane Sally projects. Since this is a large project, upon closeout the City will request additional funds from FEMA and FDEM based on actual project cost.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/10/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator - Administration & Enterprise
Clark Merritt, Port Director

ATTACHMENTS:

- 1) ITB No. 22-052 Tabulation of Bids
- 2) ITB No. 22-052 Final Vendor Reference List

PRESENTATION: No

TABULATION OF BIDS

BID NO: 22-052

TITLE: BERTH 2/3 CORNER FENDERS REPAIRS

SUBMITTALS DUE: September 19, 2022, 2:30 P.M.	GULF MARINE CONSTRUCTION, INC.	SOULE CONSTRUCTION OF NORTHWEST FLORIDA, LLC	HEWES & COMPANY, LLC	UNDERWATER MECHANIX SERVICES, LLC
DEPARTMENT: Port of Pensacola	Pensacola, FL	Pensacola, FL	Pensacola, FL	Jacksonville, FL
Base Bid	\$109,490.00	\$145,910.00	\$260,000.00	\$338,233.24
Pre-bid Attendance	Yes	Yes	Yes	No

Submittal Due Date: 09/19/22

Bid No.: 22-052

**FINAL VENDOR REFERENCE LIST
BERTH 2/3 CORNER FENDERS REPAIRS
PORT OF PENSACOLA**

Vendor Name	Address	City	St	Zip Code	SMWBE
077498 ALL PHASE CONSTRUCTION OF NW FL LLC	5340 BRIGHT MEADOW RD	MILTON	F	32570	Y
068495 ANDALA ENTERPRISES INC	641 BAYOU BOULEVARD	PENSACOLA	F	32503	
071765 ATLAS BUILDERS GROUP	4366 AVALON BLVD	MILTON	F	32583	
069786 BEAR GENERAL CONTRACTORS LLC	2803 E CERVANTES ST STE C	PENSACOLA	F	32503	
053457 BIRKSHIRE JOHNSTONE LLC	507 E FAIRFIELD DR	PENSACOLA	F	32503	Y
067318 BLUE WATER CONSTRUCTION & LANDSCAPING INC	2314 S HWY 97	CANTONME	F	32533	Y
078635 CAJUN INDUSTRIES LLC	15635 AIRLINE HIGHWAY	BATON	L	70817	
075313 CAYO LLC	1400 EVERMAN PARKWAY STE 116	FORT	T	76140	
042045 CHAVERS CONSTRUCTION INC	801 VIRECENT ROAD	CANTONME	F	32533	Y
044571 CHRISTOPHER'S MARINE CONTRACTING	1774 SUNNY OAK STREET	GULF	F	32563	
057454 COASTAL PILE DRIVING INC	2201 VALLEY ESCONDIDO DRIVE	PENSACOLA	F	32526	
024722 COASTAL REEF BUILDERS INC	40 AUDUSSON AVENUE	PENSACOLA	F	32507	Y
033926 CONTINENTAL CONSTRUCTN CO INC DBA MACNEIL CONSTRUCTION CO	5646 SHELBY OAKS DRIVE	MEMPHIS	T	38134	
033554 D K E MARINE SERVICES	P O BOX 2395	PENSACOLA	F	32513	Y
070603 D+B BUILDERS	670 MOLINO ROAD	MOLINO	F	32577	
007055 DAVIS MARINE CONSTRUCTION INC	8160 ASHLAND AVENUE	PENSACOLA	F	32534	Y
032692 DECKS N SUCH MARINE INC	PO BOX 327	FT WALTON	F	32549	
030632 DEEP & WIDE DREDGING INC	PO BOX 5458	NAVARRE	F	32566	
032038 EVANS CONTRACTING INC	400 NEAL ROAD	CANTONME	F	32533	
074355 GANNETT MHC MEDIA INC DBA PENSACOLA NEWS JOURNAL	2 NORTH PALAFOX ST	PENSACOLA	F	32502	
050495 GB GREEN CONSTRUCTION MGMT & CONSULTING INC	303 MAN'O'WAR CIRCLE	CANTONME	F	32533	Y
053862 GFD CONSTRUCTION INC	8771 ASHLAND AVE	PENSACOLA	F	32514	
074827 GULF COAST MINORITY CHAMBER OF COMMERCE INC	321 N DEVILLERS ST STE 104	PENSACOLA	F	32501	
081690 GULF MARINE CONSTRUCTION, INC	1232 N PACE BLVD	PENSACOLA	F	32505	
052866 HEWES & COMPANY LLC	251 AMBER STREET	PENSACOLA	F	32503	Y
049240 J MILLER CONSTRUCTION INC	8900 WARING RD	PENSACOLA	F	32534	
002026 JACK MOORE & CO INC	P O BOX 37010	PENSACOLA	F	32526	
053161 JONBUILT INC	PO BOX 5482	NAVARRE	F	32566	
032824 KENNETH HORNE & ASSOCIATES	7201 NORTH 9TH AVENUE SUITE 6	PENSACOLA	F	32504	Y
068161 LEA, DOUGLAS C DBA L&L CONSTRUCTION SERVICES LLC	9655 SOUTH TRACE ROAD	MILTON	F	32583	Y
039164 LOFTIS MARINE DIVISION INC	7150 CLEARWOOD ROAD	PENSACOLA	F	32526	Y
069799 MAVERICK DEMOLITION OF NW FLORIDA INC	2355 SUMMIT BLVD	PENSACOLA	F	32503	
016210 NORD, STEVE DBA SEA HORSE GENERAL CONTRACTORS INC	4238 GULF BREEZE PKWY	GULF	F	32563	Y
001823 NWF CONTRACTORS INC	P O BOX 1718	FORT	F	32549	
049113 O'DANIEL MARINE CONSTRUCTION INC	1165 SUNSET LANE	GULF	F	32563	
059148 ORION MARINE CONSTRUCTION INC	4440 HIGHWAY 225 STE 180	DEER PARK	T	77536	
030951 PAV'R CONSTRUCTION INC	P O BOX1293	GULF	F	32562	
003956 Pensa CONCRETE CONSTR CO INC	P O BOX 2787	PENSACOLA	F	32513	Y
060344 PENSACOLA BAY AREA CHAMBER OF COMMERCE DBA GREATER PENSACOLA CHAMBER	117 W GARDEN ST	PENSACOLA	F	32502	

Submittal Due Date: 09/19/22

Bid No.: 22-052

FINAL VENDOR REFERENCE LIST
BERTH 2/3 CORNER FENDERS REPAIRS
PORT OF PENSACOLA

Vendor Name	Address	City	St	Zip Code	SMWBE
067916 PENSACOLA MARINE CONSTRUCTION INC	2207 LIBERTY LOOP ROAD	CANTONME	F	32533	Y
073174 PERRITT, CHRIS LLC	5340 BRIGHT MEADOWS ROAD	MILTON	F	32570	Y
049671 RADFORD & NIX CONSTRUCTION LLC	7014 PINE FOREST ROAD	PENSACOLA	F	32526	Y
057937 ROPER & ROPER GEN CNTRCTRS LLC	5042 SKYLARK COURT	PENSACOLA	F	32505	
058753 SAILWIND CONSTRUCTION INC	7 GILMORE DRIVE	GULF	F	32561	Y
044550 SEA COAST & COMPANY	P O BOX 1422	GULF	F	32562	
026614 SHORELINE FOUNDATION INC	2781 SW 56TH AVENUE	PEMBROKE	F	33023	
024992 SNELLGROVE CONSTRUCTION INC	P O BOX 34340	PENSACOLA	F	32507	
044578 SOULE CONSTRUCTION OF NORTHWEST FLORIDA LLC	2303 MAGNOLIA AVENUE	PENSACOLA	F	32503	
081797 SOUTHERN ROAD & BRIDGE LLC	715 WESLEY AVENUE	TARPON	F	34689	
028060 THE GREEN SIMMONS COMPANY INC	3407 NORTH W STREET	PENSACOLA	F	32505	Y
081798 UNDERWATER MECHANIX SERVICES LLC	1004 EASTPORT ROAD	JACKSONVIL	F	32218	
033913 UNITY ENTERPRISES INC	506 W BELMONT STREET	PENSACOLA	F	32501	
027461 VISION CONSTRUCTION ENT INC	P O BOX 9604	PENSACOLA	F	32513	Y
030317 W P R INC	4175 BRIARGLEN RD	MILTON	F	32583	Y

Vendors: 54



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01056

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Member Casey Jones

SUBJECT:

DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL MEMBER CASEY JONES - DISTRICT 3

RECOMMENDATION:

That City Council approve funding of \$1,000 for OnBikes Pensacola and \$500 for the H.Y.P.E. Annual Turkey Drive from the City Council Discretionary Funds for District 3.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In accordance with the Section 3.28-3.33 of the Policies of the City Council, prior to any distribution of grant or sponsorship funds from the City Council Discretionary Funds, approval by City Council is required.

OnBikes Pensacola was started in 2016 by Pensacola native, Walker Wilson. The initial goal was to provide 100 bikes and helmets to children in Pensacola's local foster care system and guardian ad litem program. Through the generosity of the local community, OnBikes has given over 3,000 bikes, bike locks, helmets and countless smiles to children in Pensacola. Through donations and sponsorships, they have been able to provide bikes to children in the Families First Foster Care Program, the Boys and Girls Club, Escambia County Schools, the Ronald McDonald House and Big Brothers Big Sisters of Northwest Florida. Almost all of these children were receiving bikes for the very first time. Funding will be used towards the purchase of bicycles.

H.Y.P.E. is a non-profit organization whose mission is to provide comprehensive and innovating programs that will serve the youth to envision and navigate a course for a rewarding future characterized by achievement, independent thought and social responsibility. One of those programs is their Annual Turkey Drive. The Annual Turkey Drive feeds many families that would not be able to afford Thanksgiving meals for their families. It also provides kids the opportunity to help their community and teach them the importance of giving back and community service.

PRIOR ACTION:

July 21, 2022 - City Council adopted Resolution No. 2022-065 establishing the City Council

Discretionary Fund Policy

FUNDING:

Budget:	\$19,867	Current Balance - FY 22 District 3 Discretionary Funds
	<u>10,700</u>	FY 23 District 3 Discretionary Funds
	<u>\$30,567</u>	
Actual:	\$ 1,000	OnBikes Pensacola
	<u>500</u>	H.Y.P.E. Annual Turkey Drive
	<u>\$ 1,500</u>	

FINANCIAL IMPACT:

A balance of \$19,867 is currently within the District 3 Discretionary Fund Account in FY 2022 and \$10,700 within the District 3 Discretionary Fund Account in FY 2023 for a total available amount of \$30,567. Upon approval by City Council, a balance of \$18,667 will remain within that account in FY 2022 and \$10,700 will remain in the FY 2023 District 7 Discretionary Fund Account. The balance remaining in FY 2022 will be carried forward to FY 2023 on the Unencumbered Carryover Resolution to be brought before City Council at the December 2022 City Council Meeting.

STAFF CONTACT:

Don Kraher, Council Executive
Yvette McLellan, Special Assistant to the Council Executive

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01057

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: City Council Vice President Delarian Wiggins

SUBJECT:

DISCRETIONARY FUNDING ALLOCATION - CITY COUNCIL VICE PRESIDENT DELARIAN WIGGINS - DISTRICT 7

RECOMMENDATION:

That City Council approve funding of \$500 to OnBikes Pensacola from the City Council Discretionary Funds for District 7.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In accordance with the Section 3.28-3.33 of the Policies of the City Council, prior to any distribution of grant or sponsorship funds from the City Council Discretionary Funds, approval by City Council is required.

OnBikes Pensacola was started in 2016 by Pensacola native, Walker Wilson. The initial goal was to provide 100 bikes and helmets to children in Pensacola's local foster care system and guardian ad litem program. Through the generosity of the local community, OnBikes has given over 3,000 bikes, bike locks, helmets and countless smiles to children in Pensacola. Through donations and sponsorships, they have been able to provide bikes to children in the Families First Foster Care Program, the Boys and Girls Club, Escambia County Schools, the Ronald McDonald House and Big Brothers Big Sisters of Northwest Florida. Almost all of these children were receiving bikes for the very first time. Funding will be used towards the purchase of bicycles.

PRIOR ACTION:

July 21, 2022 - City Council adopted Resolution No. 2022-065 establishing the City Council Discretionary Fund Policy

FUNDING:

Budget:	\$ 647	Current Balance - FY 2022 District 7 Discretionary Funds
	<u>10,700</u>	FY 2023 District 7 Discretionary Funds

\$11,347

Actual: \$ 500 OnBikes Pensacola

FINANCIAL IMPACT:

A balance of \$647 is currently within the District 7 Discretionary Fund Account in FY 2022 and \$10,700 within the District 7 Discretionary Fund Account in FY 2023 for a total available amount of \$11,347. Upon approval by City Council, a balance of \$147 will remain within that account in FY 2022 and \$10,700 will remain in the FY 2023 District 7 Discretionary Fund Account. The balance remaining in FY 2022 will be carried forward to FY 2023 on the Unencumbered Carryover Resolution to be brought before City Council at the December 2022 City Council Meeting.

STAFF CONTACT:

Don Kraher, Council Executive

Yvette McLellan, Special Assistant to the Council Executive

ATTACHMENTS:

None

PRESENTATION: No



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01055

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

CITY COUNCIL CONSENT TO THE MAYOR'S APPOINTMENT OF STEPHEN RINGL AS DIRECTOR OF INNOVATION AND TECHNOLOGY

RECOMMENDATION:

That City Council consent to the Mayor's appointment of Stephen Ringl as Director of Innovation and Technology in accordance with City Charter Section 4.01(a)(7).

HEARING REQUIRED: No Hearing Required

SUMMARY:

City Charter Section 4.01(a)(7) - Powers and Duties of the Mayor states:

(7) To appoint the head of each department, with the consent of the City Council by an affirmative vote of a majority of City Council Members.

After an extensive search and due diligence conducted by City administrative staff, the Mayor presents for your consideration and consent, Mr. Stephen Ringl as his appointee for the Director of Innovation & Technology.

Mr. Ringl will be charged with developing and implementing a strategic vision in all areas of technology for the city and will facilitate the integration of digital tools and best practices into usable tools for the employees and citizens.

Mr. Ringl attended Pensacola State College, where he achieved a BS in Business and Management, and is currently pursuing his MBA in Information Security from the University of West Florida. Before joining the City of Pensacola, he served as the IT Director for the City of Milton, and prior to public sector, he has a background in field service and managing technical support processes.

PRIOR ACTION:

None

FUNDING:

N/A

FINANCIAL IMPACT:

None

CITY ATTORNEY REVIEW: Yes

10/17/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator

ATTACHMENTS:

- 1) Stephen Ringl Resume

PRESENTATION: No

Professional Experience

IT Director

City of Milton – Milton, FL

February 2019 – Present

Responsibilities & Accomplishments

- Maintain roadmap for future technology endeavors. Present IT initiatives and requests for funding to the City Manager and City Council for approval.
- Create an annual budget for the Information Technology department, including scheduling future upgrades and change initiatives.
- Network manager for all municipal buildings, including public safety, utilities, and wastewater treatment facilities.
- Develop and maintain Information Technology department Standard Operating Procedures.
- Develop and maintain information security policies.
- Install & maintain JIRA/Confluence request tracking and documentation platform for the organization. Monitor and report on request statuses.
- Automate reports, administrative tasks, and monitoring tasks using a combination of Python 3, Powershell, and BASH/command-line scripting.
- Support and update the City's IBM iSeries server, hosting CentralSquare's Naviline H5 ERP software.
- Managed the City's CivicPlus hosted website.
- Support the City Clerk & CivicClerk agenda management software. Additional familiarity with Granicus Agenda and Meeting Management.
- Assist in maintaining and testing the City's emergency management plan.
- Installed and updated antivirus, backup, monitoring, and data replication systems.
- Automated workstation deployment with RMM & configuration management tools.
- Manage Office 365, Exchange Online, and SharePoint Online Systems.
- Provide helpdesk and technical support for Windows, Office 365 applications, Adobe Acrobat, Photoshop, and Premiere Pro.

Technical Support Manager

Mathes Electric Supply Co., Inc. – Pensacola Florida

September 2015 – January 2019

Responsibilities & Accomplishments

- Updated all internal IT documentation using modern Content Management and Knowledge Management systems.
- Formatted and updated price/cost data in Infor ERP system.
- Installed and maintained Veeam Backup & Replication; ConnectWise Automate RMM Software; Office 365; Google Suite Corporate Email.
- Maintained server infrastructure using VMWare hosts containing 20+ Windows Server 2008 R2 and Enterprise Linux guests across two datacenters.
- Automated reporting of sales data, sending invoices, and claiming vendor rebates with Python 3 and shell scripting.
- Responsible for coordinating support issues with vendors.

Field Service Engineer

Bayer Healthcare – Pensacola, FL

June 2014 – August 2015

Responsibilities & Accomplishments

- Installed, maintained, and repaired Medrad power injectors across the Florida panhandle and southern Alabama. Worked across regions as required.
- Qualified sales leads and worked with the inside sales team to sell maintenance contracts and billable services.
- Responsible for completing and turning in work orders promptly, billing customers, reporting revenue, and coordinating preventative maintenance procedures with customers.
- Performed field corrective actions according to established procedures, maintaining corporate and FDA compliance.
- Updated workstations to current versions of applications/operating systems in accordance with HIPAA guidelines and observing PII best practices.

Assistant IT Manager

Mathes Electric Supply Co., Inc.

January 2008 – June 2014

Responsibilities & Accomplishments

- Supported internal users with support requests.
- Created a request management system to ensure support requests were resolved within appropriate time frames.
- Migrated physical servers to a VMware environment.
- Led a project to migrate from an on-premises Exchange server to a cloud-hosted email solution.

Skills & Competencies

Microsoft Administration

Microsoft Windows Server 2003-2016; Windows XP-10+; Windows Domain Administration; Exchange Online; SharePoint Online

Linux Administration

Linux, Apache, MySQL, PHP (LAMP) Server Deployment; Patching & Upgrades; Server Monitoring

Virtualization Platforms

VMware ESXi and Microsoft Hyper-V

Security & Disaster Recovery

Multiple Antivirus & Antimalware platforms; Veeam Backup & Replication

Productivity Software

Microsoft Office 365; Adobe Software; Knowledge/Learning Management; Ticket Management (JIRA & Request Tracker 4); Google Workspace

Programming & Development Experience

Python 3. Scripting experience with PowerShell, Windows CMD (Batch), Linux Shell (BASH). General web development experience with HTML, CSS, JavaScript, Python. Intimate knowledge of Content Management Systems (CMS) such as CivicPlus CivicEngage and Wordpress.

Education & Certifications

Degrees

Bachelor's of Science, Business and Management
Concentration in Project Management
Pensacola State College – May 2022

Associate of Arts
Computer Information Systems
Pensacola State College – December 2019

Master's of Business Administration
Emphasis in Information Security
University of West Florida – Forcasted graduation August 2024

Certifications

CompTIA Security+
Certified December 2020; Expires December 2023
Certification ID Code: NW0MFERPZLQQ1PSQ

CompTIA Network+
Certified January 2020; Expires December 2023
Certification ID Code: K06B21GE8PQ4QLSN

CompTIA A+
Certified August 2019; Expires December 2023
Certification ID Code: 7XYV3893RDEEQ555

Mile2 C)DRE: Certified Disaster Recovery Engineer
Certified December 2021; Expires December 2024
Certificate ID#: 15223-163-902-6248

Awards

Presidents List – Pensacola State College
Fall 2019, Spring 2020, Summer 2020, Fall 2021

Community Involvement

Leadership Santa Rosa – Santa Rosa County Chamber of Commerce
Milton, Florida – 2021-Present

School Advisory Council – Bagdad Elementary School
Bagdad, Florida – 2016-2018

Parent Advisory Council – Santa Rosa County School Board
Milton, Florida – 2017-2018



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01033

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Ann Hill

SUBJECT:

APPOINTMENT - ENVIRONMENTAL ADVISORY BOARD

RECOMMENDATION:

That City Council appoint an at-large resident or property owner of the City to the Environmental Advisory Board to fill an unexpired term ending March 1, 2024.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The Environmental Advisory Board may review and make recommendations to the City Council and Mayor on environmental policy issues as follows:

- (1) Proposed ordinances and codes of an environmental nature.
- (2) Proposed changes to existing environmental ordinances and codes.
- (3) Other environmental matters affecting the city referred to the Board by the City Council and Mayor.
- (4) Other environmental matters affecting the City that are initiated by the Board and approved by the City Council and/or Mayor.

The following have been nominated:

Nominee:

Nominated by:

At-Large

Cheyenne Novotny
Michael Swords III

Brahier
Hill

PRIOR ACTION:

City Council makes appointments to this board annually.

FUNDING:

Budget: N/A

Actual: N/A

FINANCIAL IMPACT:

None.

STAFF CONTACT:

Ericka L. Burnett

ATTACHMENTS:

- 1) Member List
- 2) Nomination Form - Cheyenna Novotny
- 3) Application of Interest - Cheyenna Novotny
- 4) Resume - Cheyenna Novotny
- 5) Nomination Form - Michael Swords, III
- 6) Application of Interest - Michael Swords, III
- 7) Resume - Michael Swords, III
- 8) Ballot

PRESENTATION: No

Environmental Advisory Board

Name	Profession	Appointed By	No. of Terms	Year	Exp Date	First Appointed	Term Length	Comments
Bennett, Kristin	Environmental Group	Council	0	2022	3/1/2024	1/22/2021	2	
Butts, William "Blase"	Employed Env Professional	Council	2	2022	3/1/2024	4/12/2018	2	
Dineen, Katie	Employed Env Professional	Council	0	2022	3/1/2024	3/24/2022	2	
Dittmar, John "Drew" A.	At-Large/City Resident	Council	0	2022	3/1/2024	3/24/2022	2	
Fox, Katie	Environmental Profession	Council	1	2022	3/1/2024	2/28/2019	2	
Hagen, Kelly	At-large/City Resident	Council	0	2022	3/1/2024	1/21/2021	2	
Kopytchak, Kyle	At-Large	Council	5	2022	3/1/2024	7/18/2013	2	
Massey, P. Jay	Employed Env Professional	Council	0	2022	3/1/2024	1/21/2021	2	
Richards, Neil	At-large	Council	4	2022	3/1/2024	2/28/2014	2	

Term Length: TWO YEAR TERMS

The Environmental Advisory Board may review and make recommendations to the City Council and Mayor on environmental policy issues as follows:

- (1) Proposed ordinances and codes of an environmental nature.
- (2) Proposed changes to existing environmental ordinances and codes.
- (3) Other environmental matters affecting the city referred to the Board by the City Council and Mayor.
- (4) Other environmental matters affecting the City that are initiated by the Board and approved by the City Council and/or Mayor.

The Board shall be composed of nine (9) members appointed by the City Council: Five (5) members who are employed or retired environmental professionals, or members of local environmental organizations or businesses with an interest in City environmental issues. To the extent practicable, members will be residents or property owners of the City. Four (4) at-large members who are residents or property owners of the City.

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Jennifer Brahier, do nominate Cheyenna Novotny
(Nominee)
5700 Avenida Marina (850) 449-0288
(Home Address) (Phone)
JE Hall Center
30 E. Texas Drive 32503 (850) 469-5307
(Business Address) (Phone)
cnovotny@ecsdfl.us
(Email Address)
City Resident: YES NO
Property Owner within the City: YES NO

for appointment by the City Council for the position of:

**AT-LARGE MEMBER
WHO IS A CITY RESIDENT OR PROPERTY OWNER OF THE CITY
ENVIRONMENTAL ADVISORY BOARD
(Unexpired term ending 3/1/2024)**

Provide a brief description of nominee's qualifications:

Cheyenna Novotny is the whole package. She's is
an active Community leader and member, educator, and has
the background to be a integral and valued member of the
EAB. We will be extremely lucky to have her.

John M. Bili
City Council Member

I hereby certify that the above
nomination was submitted to my
office within the time limitations
prescribed by the Rules and
Procedures of Council.

Ericka L. Burnett, City Clerk

From: noreply@civicplus.com
Sent: Thursday, October 13, 2022 11:42 AM
To: [Ericka Burnett](#); [Robyn Tice](#)
Subject: [EXTERNAL] Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Application for Boards, Authorities, and Commissions - City Council Appointment

This application will be utilized in considering you for appointment to a City Council board, authority, or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

It is necessary to contact a member of Council to obtain a nomination in order to be placed on the ballot for consideration. Please go to cityofpensacola.com/council for Council Member contact information. If you have any questions, contact the City Clerk's Office.

(Section Break)

Personal Information

Name	Cheyenna Novotny
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Home Address	5700 Avenida Marina
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Business Address	<i>Field not completed.</i>
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To which address do you prefer we send correspondence regarding this application?	Home
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Preferred Contact Phone Number(s)	8504490288
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Email Address	cheyennanovotny@gmail.com
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Upload Resume (optional)	Novotny, Cheyenna, Resume.pdf
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(Section Break)

Details

Are you a City resident?	Yes
If yes, which district?	3
If yes, how long have you been a City resident?	20 years
Do you own property within the City limits?	Yes
Are you a registered voter in the city?	Yes
Board(s) of interest:	Environmental Advisory Board
Please list the reasons for your interest in this position:	I am interested in preserving the unique and fragile environment in and around the City of Pensacola for future generations.
Do you currently serve on a board?	No
If yes, which board(s)?	<i>Field not completed.</i>
Do you currently hold a public office?	No
If so, what office?	<i>Field not completed.</i>
Would you be willing to resign your current office for the appointment you now seek?	N/A

(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

Gender	Female
Race	Caucasian
Physically Disabled	No

(Section Break)

Acknowledgement of Terms I accept these terms.

Email not displaying correctly? [View it in your browser.](#)

Cheyenna Novotny

CONTACT INFORMATION Address: 5700 Avenida Marina, Pensacola, FL 32504
Telephone: 850-449-0288 Email: cnovotny@ecsdfi.us Date of Birth: 7/30/1977

EDUCATION

- High School – Oviedo High School, Oviedo, FL Graduated Spring 1995, Honor Roll
- Bachelor of Science, 1999 - The University of Southern Mississippi, Hattiesburg, MS
Major: Biology, Minor: Chemistry Ms. Dean's list all semesters; College of Science and Technology
Student Ambassador to Alumni and the Community
- Master of Science, 2006 – The University of West Florida, Pensacola, FL
Major: Biology with emphasis on Marine Biology and Eco-Physiology

EMPLOYMENT HISTORY

Education Director/Scientist – Marine Life Oceanarium Gulfport, Mississippi May – October 1999
Duties: instructor: dolphin interaction class, coordination and development of school field trips to our site, instructor of educational programs for all age students at the aquarium.

Fisheries Biologist/Marine Scientist I – Louisiana Department of Fish and Wildlife New Orleans, Louisiana October 1999 – August 2000 Duties: fisheries dependent and independent monitoring of local resources.

Teaching Assistant/Instructor of Record - University of West Florida Biology Department August 2000 – August 2004 Duties: instructor of marine biology and anatomy and physiology undergraduate science labs, coordinated and supervised undergrad summer field trips to the Florida Keys.

Teacher – West Florida High School of Advanced Technology August 2004 – July 2011 and August 2015 - present. Duties: instructor of General Chemistry, Honors Chemistry, Dual Enrollment Anatomy and Physiology, Environmental Science, and AP Environmental Science, *Science Department Chair 2006-2008 and 2015-present

Instructor – Summer Elementary Science Workshop for Escambia County Teachers Summer 2009
Duties: content lessons in biology for teachers of grades 3-5 including mini lessons and hands-on activities to enhance teacher content knowledge in biology.

Adjunct Instructor – Pensacola Junior College, Warrington Campus Fall 2008 and Spring 2009
Semesters Duties: instructor of Anatomy and Physiology I and Anatomy and Physiology II labs

Bioscopes Teacher Trainer – Escambia County School District/Florida State University, Learning Systems Institute. August 2011- July 2014 Duties: Coordinate payment and document credit earned in TrueNorthLogic for all teachers in the program. Plan travel logistics and communicate with teachers through email, Edmodo, phone and in person. Planned and delivered professional development and mentoring including Lesson study, curriculum planning, summer institutes, and professional development workshops (concept mapping, unit and lesson planning using backwards (standards based) design, CPALMS, formative assessment, inquiry and student engagement.). I also coordinated and taught professional development in text complexity and literacy for teachers state-wide.

Curriculum Innovator – WeatherSTEM Inc. 2014 – 2015 Duties: Plan and create original online curriculum that uses live weather data to teach STEM content for grades K-12. Examples of work can be

found here: <https://leon.weatherstem.com/learn>

PROFESSIONAL QUALIFICATIONS/EXPERIENCE

National Board for Professional Teaching Standards (NBPTS) Certification – 2010 Current Teaching Certifications: Biology 6-12 and Chemistry 6-12

Creating Independence through Student owned Strategies (CRISS) trained 2005 and 2009

New Teacher Mentor 2007-2011: Completed UWF Clinical Educator Training, observed, and mentored 4 new teachers (one each year) at West Florida High School of Advanced Technology School Technology Learning Group – 2008-2011 In-service Instructor-“Teaching Chemistry in the Block Schedule”.

Pre-school, 2009. I modified lesson plans to fit a 90 min. block and gave tips and tricks for labs, demos and activities

Textbook Adoption Committee (2005, 2011, and 2017). Selected Chemistry and AP Environmental Science Materials for use in Escambia County

Step Up To Writing - trained 2013

New Teacher Center – trained 2013

Regional Science Fair Assistant – 2012, 2013

Developed the Escambia County Biology EOC review website for student use – 2012 <https://ecsd-fl.schoolloop.com/BiologyEOCReview>

2021 Escambia County Teacher of the Year

EXTRACURRICULAR ACTIVITIES

JV Cheerleading Coach 2005-2006 Junior Class and Prom Sponsor 2004-2006

Science Olympiad Coach – West Florida High School Team – 2006 – 2011, 2016. Traveled with students to State competition in Orlando each year.

Science Fair – My students have participated in the West Panhandle Regional Science Fair each school year that I have been in the classroom. In addition, I served as the school science fair coordinator for 5 years and hosted a school fair at WFHS in 2010 and 2011.

Science Olympiad Event Sponsor – Wrote and administered the division B (middle school) meteorology event at the Orlando Regional and State Competitions - 2015

Environmental Club Sponsor - 2015-present. Implemented a school-wide recycling program. Participated in community cleanups, garden installations and environmental public service campaigns.

PUBLICATIONS/AWARDS

- Wallman, H. et. al. Distribution of three common species of damselfish on patch reefs within the Dry Tortugas National Park, Florida. Florida Scientist. Vol. 67, No. 3, Summer, 2004

- Reber, C.M. and W.A. Bennett. The influence of thermal parameters on the acclimation responses of pinfish *Lagodon rhomboides* exposed to static and decreasing low temperatures. Journal of Fish Biology 2007, 71, 833–841.

- CPALMS Resources: “What’s Up With Venus?”, “Phases of the Moon”, “Big Quake, Little Destruction”, “Food Web Woes”, “Investigating Variables”.

Escambia County School District Teacher of the Year 2021

CITY OF PENSACOLA, FLORIDA

NOMINATION FORM

I, Ann Hill, do nominate Michael Swords III
(Nominee)

616 E Belmont St 32501 850-712-7823
(Home Address) (Phone)

(Business Address) (Phone)

meswords3@gmail.com City Resident: YES NO
(Email Address) Property Owner within the City: YES NO

for appointment by the City Council for the position of:

**AT-LARGE MEMBER
WHO IS A CITY RESIDENT OR PROPERTY OWNER OF THE CITY
ENVIRONMENTAL ADVISORY BOARD
(Unexpired term ending 3/1/2024)**

Provide a brief description of nominee's qualifications:

Michael has a science and IT Background that will be a
great asset to the EAB. He has a proven capacity to
conduct public outreach and education

Ann Hill
City Council Member

I hereby certify that the above
nomination was submitted to my
office within the time limitations
prescribed by the Rules and
Procedures of Council.

Ericka L. Burnett, City Clerk

From: noreply@civicplus.com
Sent: Friday, October 7, 2022 7:29 PM
To: [Ericka Burnett](#); [Robyn Tice](#)
Subject: [EXTERNAL] Online Form Submittal: Application for Boards, Authorities, and Commissions - City Council Appointment

THIS EMAIL IS FROM AN EXTERNAL EMAIL ACCOUNT

Application for Boards, Authorities, and Commissions - City Council Appointment

This application will be utilized in considering you for appointment to a City Council board, authority, or commission. Pursuant to Florida Statutes, Chapter 119, all information provided on or with this form becomes a public record and is subject to disclosure, unless otherwise exempted by law.

Completed applications will be kept on file for a period of one (1) year from the date received in the Office of the City Clerk.

It is necessary to contact a member of Council to obtain a nomination in order to be placed on the ballot for consideration. Please go to cityofpensacola.com/council for Council Member contact information. If you have any questions, contact the City Clerk's Office.

(Section Break)

Personal Information

Name	Michael Swords
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Home Address	616 E Belmont St Pensacola, FL 32501
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Business Address	<i>Field not completed.</i>
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To which address do you prefer we send correspondence regarding this application?	Home
---	------

Preferred Contact Phone Number(s)	850-712-7823
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Email Address	meswords3@gmail.com
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Upload Resume (optional)	MSwords3-Resume.pdf
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(Section Break)

Details

Are you a City resident? Yes

If yes, which district? 6

If yes, how long have you been a City resident? Two years

Do you own property within the City limits? No

Are you a registered voter in the city? Yes

Board(s) of interest: Environmental Advisory

Please list the reasons for your interest in this position:

The city of Pensacola is on the front lines of Climate Change and its impacts. Now is the time to plan, prepare for those impacts, and take action to make the city of Pensacola more resilient. The environmental advisory board has a unique opportunity to work with industry professionals, local citizens, and environmental groups to begin the process of making this area more resilient to storms, heat, and climate migration.

There are also long standing issues of contaminated water sources. The city of Pensacola has been making good progress achieving the goals of the master plan set forth in 2019, but more work is still needed. There are still issues in our local bayous, and issues with storm water run-off contaminating our local water sources. If approved for the board, it would be a priority to locate the necessary funding to complete the proposed projects on this front. Furthermore, there are multiple assessments that the city has made available to the public. Identifying resolutions from the conclusions of the assessments would be a priority as well. Overall, I believe that the goal of the Environmental Board for the city of Pensacola continue to work diligently on current projects, and identify resources to take the next steps towards resolving many of the local issues that affect the area - within the ability of the city to do so. This will enrich the lives of the constituents across the city. I am confident that I am able to embody this goal, and provide unique insights to the complex issues at hand. Thank you for taking the time to review my application. I look forward to hearing updates on the status of this appointment.

Do you currently serve on a No

board?

If yes, which board(s)?	Field not completed.
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Do you currently hold a public office?	No
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If so, what office?	Field not completed.
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Would you be willing to resign your current office for the appointment you now seek?	N/A
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(Section Break)

Diversity

In order to encourage diversity in selections of members of government committees, the following information is required by Florida Statute 760.80 for some committees.

Gender	Male
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Race	Caucasian
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Physically Disabled	No
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(Section Break)

Acknowledgement of Terms	I accept these terms.
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Email not displaying correctly? [View it in your browser.](#)



MS

MICHAEL SWORDS III

BACHELOR OF SCIENCE: MARINE BIOLOGY
UNIVERSITY OF WEST FLORIDA (UWF)
CENTER FOR ENVIRONMENTAL DISASTER AND BIOREMEDIATION (CEDB)
US CITIZEN. ENROLLED IN SELECTIVE SERVICE

SKILLS

- Established exceptional database management skills while logging Citizen Science Volunteer (CSV) datasheets alongside WQ data into excel.
- High degree of familiarity with analytical chemistry techniques used to identify concentrations of a variety of nutrients.
- Demonstrated knowledge of marine grass habitats.
- Long-term understanding of best lab safety practices.
- Understanding of programmatic language R, and data visualization.
- Proven capacity to conduct public outreach and education.

EXPERIENCE & RESPONSIBILITIES

CITIZEN SCIENCE RESEARCH ASSISTANT • UWF – CEDB • 02/2019 – 09/2021 • 15 HOURS WEEKLY PAID AT 8.56/HOUR OR VOLUNTEER

- Obtained Water Quality (WQ) Data from field sites using approved NPDES methods and materials
- Processed WQ samples for a variety of physical and chemical conditions.
- Identify species and obtain pictures of seagrass sample sites.
- Use of programming language R to visualize WQ data for presentation at conferences, seminars, and to the public.
- Maintain lab equipment, wash glassware with acid as needed.
- Occasionally demonstrate use of equipment
- Work in a team of 2 – 4 to obtain, store, process, and log data.
- Occasionally assist with annual WQ report to public, or other publications and projects.

INVENTORY, HEAT PRESS OPERATOR, AND ONLINE SALES MANAGER • ISLAND STYLE FLORIDA 02/20 - CURRENT • 40 HOURS WEEKLY AT \$17/HOURS

- Identify, and communicate stock needs of sales floor, and retrieve stock.
- Ensure proper set up of heat press; ensuring ink transfer placement is within appropriate specifications.
- Assess, take pictures of, and add new inventory to website.
- Communicate in-store printing needs ensuring that assigned tasks are completed in timely manner.
- Fulfill orders completed via phone or website sales.
- Occasionally train new press operators, assist with needs on sales floor.
- Occasionally assist with annual purchases of stock.
- Respond to incoming customer issues via website

EDUCATION

BIOLOGY • DECEMBER 2021 • UNIVERSITY OF WEST FLORIDA

Relevant coursework: Aquatic Botany, Marine Aquatic Microbial Ecology, Physics, Biostatistics, Sampling Theory, Comparative Animal Physiology.

VOLUNTEER EXPERIENCE OR LEADERSHIP

VOLUNTEER • NAVARRE BEACH MARINE SCIENCE STATION (NBMSS) • 08/2013 – 05/2014 • 14 UNPAID HOURS WEEKLY

- Cultivate equitable space for children K-12 to learn about the importance, benefits, and challenges surrounding marine ecosystems and organisms.
- Facilitated further community-based engagement and learning opportunities through participation in conservation themed public events county wide.
- Attend inclusionary event - Autism OdysSea, that provided opportunity for children on the Autistic Spectrum to learn about marine ecosystems. Other events such as birthdays, or “Spooktacular” for Halloween

LEAD MARKET REPRESENTATIVE • ADCOMM • 01/2015 – 09/2019 • 40 PAID HOURS WEEKLY ~ \$16.50/HOUR

- Prioritize, track, and assign incoming conflicts from administrators, sales teams, and customers to department of up to 20.
- Support department members with creative and timely conflict resolution in accordance with Company mission to provide world class service to clientele and customers.
- Cultivated team cooperation that championed department to consistently achieve measures of success by intersecting company values of integrity and a tireless effort to provide the best customer service in the industry with a vision of fueling growth as an industry leader.



**MESWORDS3@GMAIL.CO
M**



@MESWORDS3



850-712-7823



**LINKEDIN.COM/IN/MICH
AEL-SW-171614222**

Ballot – **Environmental Advisory Board**

October 27, 2022

Unexpired term ending March 1, 2024

At Large

_____ Cheyenna Novotny

_____ Michael Swords, III

Vote for One

Signed: _____
Council Member



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01008

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

CONTRACT WITH VEORIDE, INC. TO OPERATE AS A VENDOR FOR THE DOCKLESS SHARED MICROMOBILITY PROGRAM

RECOMMENDATION:

That City Council approve a contract with VeoRide, Inc. to operate as a Dockless Shared Micromobility Program vendor in the City of Pensacola. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this contract and complete the work, consistent with the contracting documents and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Staff requests City Council approve a non-exclusive, three-year contract with VeoRide, Inc. with two (2), one (1) year renewal options to operate as a vendor in the City as part of the Dockless Shared Micromobility Program. The intent for instituting the program is to create a transportation network that helps reduce motor vehicle parking demand and improves transportation options. For the purposes of this contract, micromobility devices shall mean a seated scooter. Major contract components include:

Fleet Deployment

- The City will authorize deployment of 350 micromobility devices, with an opportunity to increase up to 500 through graduated deployment of additional devices, based on the Mayor or his or her designee's approval. Demonstration of high utilization rate and low number of 311 complaints will be considered. Additional devices above the cap may be considered and approved by the Mayor, or his or her designee, if the service area is expanded.

Permit and Program Fees

- \$15,000.00 non-refundable annual Permit Fee to participate in the Program.
- \$0.15 per micromobility device ride fee, to be calculated on a monthly basis.

Compliance

- A \$125 fine will be assessed if 10% or more of rides ending within the Forced Parking Boundary Area, as defined on the Shared Micromobility Franchise Area Map, are outside the forced parking zones/corrals. This percentage will be tracked and fines assessed on a monthly basis.
- A \$125 fine will be assessed if rides ending in exclusion zones, as depicted on the Shared Micromobility Devices Franchise Area Map, exceed 10% of all end trips. This percentage will be tracked and fines assessed on a monthly basis.

Vendor Operations and Responsibilities

- Vendor shall provide a minimum of one (1) full time locally based employee who is responsible for local market needs.
- Vendor will provide 24/7/365 live customer service to address User and City Staff questions and issues. Vendor will have emergency response capabilities, to disengage a device, if requested by the City.

Forced Parking

- The City may designate forced or incentivized Parking Areas which will be designed, constructed, and maintained by the City. The City will provide required Parking Areas, determined at its sole discretion. The Vendor is encouraged to provide suggestions, as to specific locations, for desired Parking Areas.
- The Vendor may identify and develop Parking Areas on private property provided the Vendor obtains an agreement with the landowner, provides a copy of such agreement to the City, and assumes responsibility for all costs associated with such agreement(s). Such Parking Areas shall be open to the general public during operational hours and the costs to design, construct and maintain these areas will be the responsibility of the Vendor.
- The Vendor shall incorporate methods to promote and require proper parking and storage of Scooters within designated Parking Areas. Methods could include, but are not limited to, user pictures of parked device to ensure proper parking, technology to alert users of improperly parked device(s) and promote correction of improperly parked device(s), warning/fines schedule, and/or ban imposed on habitual improper use.

PRIOR ACTION:

September 12, 2019 - City Council voted to adopt Dockless Shared Micromobility Devices Pilot Program Ordinance No. 17-19.

February 10, 2022 - City Council adopted Ordinance No. 02-22 amending the Dockless Shared Micromobility Pilot Program.

August 18, 2022- City Council extended the pilot program for seated scooters only through October 31st, 2022.

October 13, 2022 - City Council approved on first reading Proposed Ordinance No. 52-22 Dockless Shared Micromobility.

FUNDING:

Budget: N/A

FINANCIAL IMPACT:

The City will receive an annual permit fee from the vendor and a fee per ride will be assessed on a monthly basis.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/17/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator

David Forte, Deputy City Administrator - Community Development

Amy Tootle, PE - Director Public Works and Facilities

ATTACHMENTS:

- 1) Operating Agreement and Permit with VeoRide, Inc.

PRESENTATION: No

DOCKLESS SHARED MICROMOBILITY DEVICE PROGRAM
OPERATING AGREEMENT AND PERMIT

This Micromobility Device Program Operating Agreement and Permit (“Agreement”) is made this _____ day of _____ 2022, by and between the City of Pensacola, a Florida municipal corporation, whose address is 222 West Main Street, Pensacola, Florida 32502 (“City”) and _____, a _____, whose address is _____ (“Vendor”). The City and Vendor are each individually referred to as “Party,” and collectively as the “Parties.”

WHEREAS, the Florida Uniform Traffic Control Law allows municipalities to enact ordinances to permit, control or regulate the operation of vehicles, golf carts, mopeds, micromobility devices, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law as long as such vehicles are restricted to a maximum speed of 15 miles per hour. Section 316.008(7)(a), Florida Statutes; and

WHEREAS, the City strives to keep the City rights-of-ways compliant with the Americans with Disabilities Act (ADA), and other federal and state regulations, and is committed to keeping the City accessible for the mobility challenged; and

WHEREAS, the purpose of the program is to create a dynamic ecosystem of transportation options that reduces vehicle miles travelled and parking demand; and

WHEREAS, the regulated and permitted operation of dockless shared micromobility devices is recognized as a means of personal transportation; and

WHEREAS, dockless shared micromobility devices left unattended and parked or leaned on walls or left on sidewalks creates a hazard to pedestrians and individuals needing access and maneuverability for ADA mobility devices; and

WHEREAS, the City has a significant interest in ensuring the public safety and order in promoting the free flow of pedestrian traffic on streets and sidewalks; and

WHEREAS, Chapter 11-4 of the City Code of the City of Pensacola provides standards relating to the regulation of City rights-of-way; and

NOW, THEREFORE, in consideration of the promises and mutual covenants of the Parties hereto, the City and Vendor hereby enter into this Agreement subject to the following terms and conditions:

1. Term. Unless earlier lawfully terminated, this Agreement shall commence on the _____ day of _____, 2022, and shall expire after 36-months, on the _____ day of _____, 2025, with the option for two (2), one (1) year extensions at the sole discretion of the City. Upon expiration of the contract, the Vendor shall cease operations and within two (2) business days of the expiration of the Contract, remove all Micromobility Devices from the City. Failure to remove all Micromobility Devices within the two (2) business day timeframe, may result in the impoundment of the Micromobility Devices and Vendor will have to pay applicable fees to recover Micromobility Devices from impound.

2. Permit. The Vendor is hereby granted a non-exclusive license to operate a dockless shared micromobility device in accordance with the City Code of the City of Pensacola, Chapter 7-9, and subject to the terms and conditions of this Agreement. For the purposes of this contract, micromobility devices shall mean a seated scooter. Additional devices such as electric bicycles may be consider through a contract amendment. Nothing in this Agreement shall be construed to grant Vendor any other rights or interest in the Public Rights-of-Way (ROW). This agreement shall not be deemed or construed to create an easement, lease, fee, or any other interest, in the ROW, shall be personal to Vendor, and shall not run with the land. This Agreement shall not be recorded or any memorandum of it. The City may terminate this Agreement, as provided under its terms, without the need for court action or court order and shall not be deemed to breach the peace as a result of such termination or other exercise of self-help under this Agreement.

3. Definitions and Applicable City Codes. The definitions and all regulations contained in the City Code of the City of Pensacola, Chapter 7-9, are hereby incorporated by reference and shall apply to this Agreement.

4. Fees. The Vendor shall be responsible for the following fee structure to be paid to the City:

- i. \$15,000.00 non-refundable annual Permit Fee to participate in the Program;
- ii. \$0.15 per micromobility device ride fee to be calculated on a monthly basis;
- iii. \$10,000.00 minimum Performance Bond;
- iv. \$100.00 for a Permit Violation. If the Vendor fails to remove or relocate an improperly parked scooter with one (1) hour of a City initiated request, an additional \$75 will be assessed if the City has to remove or relocate the device.

5. Compliance. The City will use a third-party data aggregator to monitor user compliance with the rules and regulations set forth in Chapter 7-9 of the City of Pensacola Code of Ordinances.

- a) A \$125 fine will be assessed if 10% or more of rides ending within the Forced Parking Boundary Area as defined on the Shared Micromobility Franchise Area

Map are outside the forced parking zones/corrals. This percentage will be tracked and fines assessed on a monthly basis.

- b) Rides ending in exclusion zones as depicted on the Shared Micromobility Devices Franchise Area Map and exceeding 10% of all end trips will be fined \$125. This percentage will be tracked and fines assessed on a monthly basis.

The Vendor, upon City's request, shall provide the City with any documents or data appropriate for the City to calculate its entitlement under this Section.

6. Vendor Operations and Responsibilities.

- a) Vendor shall use reasonable efforts to ensure its Micromobility Devices are operated in accordance with all applicable local, state and federal laws, including without limitation, City Code of the City of Pensacola, Chapter 7-9, and the Florida Uniform Traffic laws, as amended. The Vendor represents and warrants it knows, and will comply with, the foregoing laws. Vendor acknowledges Micromobility Devices shall not be able to exceed 15 miles per hour.
- b) Devices shall have an identification system to verify rider age for individual and group rides.
- c) Vendor shall provide a minimum of one (1) full time locally based employee who is responsible for local market needs.
- d) Vendor will provide 24/7/365 live customer service to address User and City Staff questions and issues. Vendor will have emergency response capabilities to disengage a device if requested by the City.

7. Parking.

- a) Vendor shall provide parking instructions to Users, indicating the Micromobility Devices should be parked next to a bicycle rack, if possible, or in other parking areas designated by the City. If there is no bicycle rack or designated parking area nearby, instructions shall indicate ADA accessibility is ensured and Micromobility Devices are prohibited from blocking the sidewalks. Micromobility Devices shall be parked upright, and parking must maintain a four-foot minimum pedestrian path on sidewalks. Micromobility Devices shall be prohibited from blocking:
 - 1) Handicap accessible areas (ramps, parking spaces, etc.)
 - 2) Business or residential entryways
 - 3) Emergency exits
 - 4) Sidewalks
 - 5) Curb ramps
 - 6) Street furniture such as benches, parklets, refuse and recycling receptacles, parking meters and parking kiosks
 - 7) Fire hydrants

- 8) Driveways
 - 9) Parking spaces
 - b) The City may designate forced or incentivized Parking Areas which will be designed, constructed, and maintained by the City. The City will provide required Parking Areas, determined at its sole discretion. The Vendor is encouraged to provide suggestions as to specific locations for desired Parking Areas.
 - c) The Vendor may identify and develop Parking Areas on private property provided the Vendor obtains an agreement with the land owner, provides a copy of such agreement to the City, and assumes responsibility for all costs associated with such agreement(s). Such Parking Areas shall be open to the general public during operational hours and the costs to design, construct and maintain these areas will be the responsibility of the Vendor.
 - d) The Vendor shall incorporate methods to promote and require proper parking and storage of Scooters within designated Parking Areas. Methods could include, but are not limited to, User pictures of parked device to ensure proper parking, technology to alert users of improperly parked device(s) and promote correction of improperly parked device(s), warning/fines schedule, and/or ban imposed on habitual improper use.
8. Deployment and Geofencing Capabilities. Deployment locations and quantity of Micromobility Devices shall be set by the City.
- a) Fleet Deployment: The City will authorize deployment of 350 micromobility devices with an opportunity to increase up to 500 through graduated deployment of additional devices based on the Mayor or his or her designee's approval. Additional devices above the cap may be considered and approved by the Mayor, or his or her designee, if the service area is expanded.
 - i. The Mayor, or his or her designee, may request additional devices be temporarily added to the fleet for special events for a specified time.
 - b) Vendor shall have the capability to restrict Micromobility Device usage in areas not authorized by the City for deployment. Vendor represents it will utilize proper technology (i.e., geofencing) or other appropriate measures to ensure Micromobility Devices are only deployed and utilized within the designated deployment locations as set forth in Exhibit "A" or approved in writing by the City. Vendor shall have the capability to restrict Micromobility Devices as stated in City Code of the City of Pensacola, Chapter 7-9, Section 7-9-5. Vendor shall have the ability to accept Json, shapefile, or a KMZ files to incorporate geofenced areas into their online platform.
 - c) If directed by the City in writing, the Vendor at its sole cost and expense, shall remove any devices and other Program equipment from the right of way which may be impacted as a result of the City issuing a street closure permit, a special event permit, or construction in the right-of-way.

- d) Rebalancing: Vendors will monitor distribution of scooters across the service area and rebalance as needed to prevent excessive buildup of units in certain locations for more than 7 calendar days. At staff's discretion, the City may request a rebalance of devices to outside the forced parking boundary area.

9. Abandonment. Vendor shall promptly recover and take custody of all abandoned Micromobility Devices. Vendor shall respond to a City-initiated request to relocate a Micromobility Device within one (1) hour. Failure to timely respond may result in the Micromobility Device being impounded or removed by the City subject to applicable fines and fees.

10. Markings. Vendor shall ensure each Micromobility Device is conspicuously marked with Vendor's unique branding, a unique serial number and Vendor's contact information, including a 24-hour toll-free telephone number and email address to respond to User and the City's issues, regarding the Vendor's devices. Vendor shall not apply any other markings or advertising to any Micromobility Device.

The User support contact information is:

Telephone:

Email:

Website:

Social Media (Facebook/Twitter):

11. Maintenance. Vendor shall maintain Micromobility Devices in a good and safe working order and in accordance with all applicable laws and shall promptly remove from the ROW any Micromobility Device that is not in good and safe working order or fails to comply with applicable laws.

12. Data Sharing; Customer Survey.

- a) Monthly: Vendor shall provide City the following data in a format acceptable to the City:
 - i. Crash and/or Injury Reports including:
 - o incident type, location, time of incident, and outcomes or outstanding liabilities. Crashes and injuries should also be reported to the City immediately.
 - ii. Report of theft, vandalism, or any other incidents. The Vendor shall report any damage to devices they may have been the result of a crash with property such as a motor vehicle.
 - iii. Number of community educational/outreach events, including but not limited to the following:
 - o Safety demonstration/education sessions and estimated attendance
 - o Dissemination of the information on how to correctly use micromobility sharing

- Complementary helmet or safety equipment giveaways.
- b) Yearly: Vendor shall distribute a customer service survey that will assist the City in understanding travel demand, patterns, behaviors, and opportunities for future infrastructure investments.
- c) Upon request: Vendor shall share real-time data in both MDS and GBFS formats with the City. The City may, at its option, engage with a third-party such as a data aggregator and/or university research center to develop any analysis of the data reported to the City. The Vendor shall work cooperatively with the third party to share data in the format requested which may include both MDS and GBFS.

The Vendor shall provide information relating to dispute resolutions and settlements with Users.

Record of call center or live chat activity, response times, and issues reported

13. Insurance, Performance Bond and Indemnity.

- a) Insurance. Prior to deploying Micromobility Devices, Vendor shall procure and maintain, at their own expense, for the duration of this Agreement the following insurance against claims for injuries to person or damages to property which may arise from or in connection with the performance of the work or services hereunder by Vendor, their agents, representatives, employees or subcontractors.
- b) Vendor shall maintain limits no less than:
Commercial General/Umbrella Liability Insurance - \$1,000,000 per occurrence limit for property damage and bodily injury. The insurance shall include coverage for the following:
 - Premise/Operations
 - Explosion, Collapse, and Underground Property Damage Hazard
 - Products/Completed Operations
 - Contractual
 - Independent Vendors
 - Broad form Property Damage
 - Personal Injury

Business Automobile/Umbrella Liability Insurance - \$1,000,000 per crash for property damage and personal injury.

- Owned/Leased Autos
- Hired Autos
- Non-Owned Autos

Workers' Compensation and Employers'/Umbrella Liability Insurance-Workers' Compensation coverage with benefits and monetary limits as set forth in Chapter 440, Florida Statutes. This policy shall include Employers'/Umbrella Liability coverage for \$100,000 each person – accident, \$100,000 each person – disease, \$500,000 aggregate – disease as a condition of performing Work or services for the City whether or not the Vendor is otherwise required by law to provide such coverage.

Other Insurance Provisions:

Commercial General Liability and Automobile Liability Coverage:

The City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Vendor; products and completed operations of the Vendor; premises owned, leased or used by the Vendor or premises on which Vendor is performing services on behalf of the City. The coverage shall contain no special limitations on the scope of protection afforded to the City, members of the City Council, boards, commissions and committees, officers, agents, employees and volunteers

The Vendor's insurance coverage shall be primary insurance as respects the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers shall be in excess of Vendor's insurance and shall not contribute with it.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers.

Coverage shall state the Vendor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Workers' Compensation and Employers' Liability and Property Coverage:

The insurer shall agree to waive all rights of subrogation against the City, members of its City Council, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Vendor in the performance of services under the Contract.

All Coverage:

The Vendor must notify the City immediately upon any notice received by Vendor from its insurance carrier(s) that a policy was suspended, voided, canceled, or reduced in coverage or limits.

If the Vendor, for any reason, fails to maintain insurance coverage that is required pursuant to the Contract, the same shall be deemed a material breach of the Contract. City, at its sole option, may terminate the Contract and obtain damages from the Vendor resulting from said breach. Alternatively, City may purchase such required insurance coverage (but has no special obligation to do so), and without further notice to Vendor, the City may deduct from sums due to Vendor any premium costs advanced by City for such insurance.

All insurance coverages shall be placed with companies who are either licensed by the state of Florida or admitted as a surplus lines carrier by the state. All companies shall have at least a B+10 rating by A.M. Best or other recognized rating agency.

City named as "additional insured" as its interest may appear.

Certificate of insurance(s) filed with the City Treasurer-Clerk on or before commencement of Work.

Deductibles and Self-Insured Retention:

Any deductibles or self-insured retention's must be declared to the City.

Verification of Coverage:

Vendors are reminded that regardless of what the State of Florida requirements for insurance are (including the exemption for Workers Compensation Insurance), the insurance specified herein is the minimum requirements for firms wishing to enter into a contract with the City. Bidders, must supply proof with their bid, of insurance meeting the above mentioned requirements or provide a letter from an authorized agent of Florida admitted insurers stating that if awarded a contract the vendor will be eligible to buy insurance in the amounts required by the contract.

The Vendor shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences.

Subvendors:

The Vendor shall include each of its subvendors as insureds under the policies of insurance required herein.

- c) Performance Bond. Prior to the issuance of this Agreement, Vendor shall, at their own expense, obtain and file with the City a performance bond in the amount of no less than \$10,000.00, in a form acceptable to the City. The performance bond shall serve to guarantee proper performance under the requirements of this Agreement and City Ordinance; restore damage to the City's rights-of-way; and secure and enable City to recover all costs or fines permitted under the City Code if the Vendor fails to comply with such costs or fines. The performance bond must comply with the requirements of the City Code. Prior to the City filing a claim on Vendor's performance bond, City shall provide Vendor notice of its intent to use performance bond funds describing the Vendor's violation with this Agreement or the City Ordinance and such notice shall be supported by evidence showing proof of the violation. Within ten (10) business dates from the date of the notice, Vendor may respond to City with evidence showing proof of cure of the violation or to support Vendor's basis that such violation is not warranted. Notwithstanding the above language, the City may still file a claim on Vendor's performance bond if the Vendor does not respond within the ten (10) business day timeframe or, after reviewing the Vendor's documentation, the City still finds the Vendor is in violation and proceeds with filing a claim on the performance bond.
- d) Indemnification. Vendor agrees to indemnify, hold harmless and defend the City, its representatives, employees, elected and appointed officials, from and against all ADA accessibility claims and liability and any and all other liability, claims, damages, suits, losses and expenses of any kind, including reasonable attorney's fees and costs of appeal, associated with or arising out of, or from the permit, vendor's use of the rights-of-way or City-owned property for Program operations in violation of this agreement, or arising from any negligent act, omission or error of the Vendor, owner or managing agents, its agents or employees or from failure of the Vendor, its agents or employees, to comply with each and every requirements of the City Code, this Agreement, or with any applicable federal, state or local law, including traffic laws, or any combination of same. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the City (including its representatives, employees, elected and appointed officials) for 1) its own negligence; or (2) Vendor's action or conduct at the direction of the City or its agents or for action. These terms shall not be construed to waive or alter any statutory or constitutional sovereign immunity rights, limitations or extend the liability provided to the City.

Vendor's contracts or end user agreements with Users of Micromobility Devices, to the fullest extent permitted by law, consistent with Florida Statutes Chapter 768, shall obligate Users to release the City and its officers, affiliated entities, employees, agents and contractors from the same claims, damages, losses, expenses, including attorney fees, and suits for which Vendor is obligated to indemnify, defend and hold the City harmless.

Vendor's contracts or end user agreements with Users of Micromobility Devices, to the fullest extent permitted by law, shall obligate Users to release the City and its officers, affiliated entities, employees, agents and contractors from any claim, damage, loss, expense, including attorney fees, in relation to the possibility that Users may contract COVID-19 as a result of exposure while using Vendor's Micromobility Device.

14. Emergency Preparedness Plan; Tropical Storm or Hurricane Warnings. Before deploying Micromobility Devices in the City, Vendor must provide to City an emergency preparedness plan, approved by the City, that details where the Micromobility Devices will be located and the amount of time it will take to secure all Micromobility Devices once a tropical storm or hurricane warning has been issued by the National Weather Service (NWS). Once a tropical storm or hurricane warning has been issued by the NWS that includes the City of Pensacola, the vendor must remove and secure all Micromobility Devices within 24 hours of the warning issued by the NWS. Following the tropical storm or hurricane, the Vendor will not redistribute the devices without permission from the City.

15. Vendor Local Representative. Vendor shall designate one or more representatives who, as needed, can address any issues related to this Agreement in the City, in person, at any time and has authority to act on behalf of Vendor.

The City's direct contact for Vendor is _____Carol Antunez_____ ;
telephone number: 347-534-5700 _ email: _____cantunez@veoride.com_____.

16. Damage to City Property. To the fullest extent lawful, Vendor shall be liable to, and shall promptly reimburse the City for damage to City property, including without limitation ROW, related to or arising from a Micromobility Device user's participation in the Program, except to the extent the damage is due to the negligence or willful misconduct of the City or its agents and employees.

17. Education. Vendor shall, develop materials to instruct Users of all applicable laws, and provisions of this Agreement, that relate to operation and parking of Micromobility Devices. Vendor shall not allow any use of its Micromobility Devices by third parties/Users unless they have first reviewed these materials.

18. Compliance with Laws. Vendor shall comply with all applicable laws, this Agreement and City ordinances and policies, and guarantees its employees, agents and contractors, including independent contractors, do the same.

19. Micromobility Devices Seized by the City; Impoundment.

- a) Any shared Micromobility Device that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with City Code, applicable law, or left unattended on public property, including sidewalks, furniture areas, rights-of-way and parks, may be impounded, removed, or relocated by the City. A shared Micromobility Device is not considered unattended if it is secured in a designated parking area, rack (if applicable), parked correctly or in another location or device intended for the purpose of securing such devices.
- b) The City's Parking Department or other designated personnel by the City may, but are not obligated to remove, relocate, or impound a Micromobility Device that is in violation of this Agreement. In some cases, Micromobility Devices may be removed and impounded in a secure location to be retrieved by the vendor. A Vendor shall pay a fee per device as stated in Section 4 of this Agreement, that is removed, relocated, or impounded by the City. The City shall not be liable for damages connected with the removal, relocation, or impoundment of Micromobility Devices, theft of Micromobility Devices, or theft of personal property contained in or on Micromobility Devices, provided that removal, relocation, and / or impoundment has been performed with reasonable care.
- c) Impoundment, if occurs as a result of law enforcement involvement shall be done in accordance with F.S. § 713.78. The Vendor shall be solely responsible for all expenses, towing fees and costs required by the towing company to retrieve any impounded Micromobility Device(s).

The Vendor of a Micromobility Device impounded by law enforcement will be subject to all liens and terms described under F.S. § 713.78, in addition to payment of all applicable penalties, costs, fines or fees that are due in accordance with this Division and applicable local, state and federal law.

Impounded or Removed Micromobility Devices shall count towards the permitted maximum devices per Vendor.

20. Termination; Revocation.

- a) Vendor may terminate this Agreement by providing a ten (10) day written notice to City and removing all Micromobility Devices from the City.

- b) The City reserves the right to revoke any Program Operating Agreement and Permit, if there is a violation of the City Code, this Agreement, public health, safety or general welfare, or for other good and sufficient cause as determined by the City in its sole discretion.
- c) A Vendor is subject, at the discretion of the Mayor, or his or her designee, to a fleet size reduction or total Program Operating Agreement and Permit revocation should the following occur:
 - i. If the violations of the regulations set forth in this Division are not addressed in a timely manner or;
 - ii. 15 unaddressed violations of the regulations set forth by this Division within a thirty (30) day period or;
 - iii. Submission of inaccurate or fraudulent data.
- d) The City's rights of termination or revocation are in addition to all other rights and remedies which it may have at law or in equity.

21. Violations; Fines. Violations of the City Code or this Agreement shall be enforced as non-criminal infractions of City ordinances and shall be fined at \$250.00 per device per day for an initial offense, and \$500.00 per day for any repeat offenses within thirty (30) days of the last same offense by the same Vendor. Each day of non-compliance shall be a separate offense.

22. Appeals. Vendors who have been subject to imposition of violation fines or Agreement revocation, may appeal the imposition of violation fines or the revocation in accordance with the applicable City Code.

23. Notices. All notices or other correspondence or communications required by or related to this Agreement shall be in writing sent by email or, in the event of a notice of termination, revocation or violation fines, sent by regular United States Postal Service mail, postage prepaid or delivered by courier to the following:

City:

Engineering
ATTN: Caitlin Cerame- Transportation Planner
222 W. Main Street
Pensacola, FL 32502

With copy to:

City Attorney's Office
222 W. Main Street
Pensacola, FL 32502

Vendor:

VeoRide Inc.
ATTN: Candice Xie
1001 N Milwaukee Ave., Ste. 401
Chicago, IL 60642

With a copy to:

Gutwein Law
ATTN: Brian Casserly
250 Main St. #590
Lafayette, IN 47901

The Parties may change notice information with ten (10) days written notice to all Parties.

24. Condition of Rights-of-Way (ROW). The City makes the ROW available to Vendor in an “as-is” condition. The City makes no representations or warranties concerning the condition of the ROW or its suitability for use by Vendor or its Users and the City assumes no duty to warn either Vendor or User concerning conditions that exist now or may arise in the future.

25. Damages to Vendor Property. The City assumes no liability for loss or damage to Vendor’s Micromobility Devices or other property. Vendor agrees that the City is not responsible for providing security at any location where Vendor’s Micromobility Devices, or other property, is stored or located. Vendor hereby waives any claim against the City in the event Vendor’s Micromobility Devices or other property is lost or damaged.

26. Damages to City ROW. Vendor expressly agrees to repair, replace or otherwise restore any part or item or personal property damaged, lost or destroyed as a result of Vendor’s, or its User’s, use of ROW for (i) Program operations or (ii) arising from any negligent act, omission of Vendor. Should the Vendor fail to repair, replace or otherwise restore such real or personal property, Vendor expressly agrees to pay the City’s cost in making such repairs, replacements or restorations. In addition, the City shall have the right to make a claim on Vendor’s performance bond to recover said costs.

27. Modification. This Agreement shall not be amended, modified or canceled without the written consent of the Parties.

28. Headings; Construction of Agreement. The headings of each section of this Agreement are for reference only.

29. Severability of Provisions. In the event any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining

provisions of this Agreement shall be valid unless the court finds the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

30. Assignment. Vendor shall not assign, delegate or transfer any right or obligation under this Agreement without City's prior written approval. Any assignment, delegation or transfer made or attempted without such approval shall be void.

31. Binding Effect. This Agreement shall be binding upon the Parties and upon any successor-in-interest.

32. Controlling Law. This Agreement shall be construed and governed in accordance with the laws of the State of Florida. Any lawsuit arising out of or related to this Agreement, the license it grants, the Permit or the Micromobility Devices shall be filed in either the courts of Escambia County, Florida or in the United States District Court for the Northern District of Florida, to the general personal jurisdiction of which Vendor submits.

32. Waiver. No consent or waiver, express or implied, by any Party to this Agreement or any breach or default by any other Party in the performance of its obligations under this Agreement shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any Party to complain of any act or failure to act or to declare any of the other Parties in defaults, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this Agreement. The parties reserve the right to waive any term, covenant, or condition of this Agreement; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the Parties reserve the right to exercise any and all of the rights and remedies under this Agreement irrespective of any waiver granted.

34. Representations. The Parties certify they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms. Vendor represents and warrants it is the sole owner of the Micromobility Devices.

35. Conflicts of Interest. Vendor represents and warrants no officer or employee of City as, or will have, a direct or indirect financial or personal interest in this Agreement, and no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Company or its contractors under this Agreement.

36. No Partnership. The Parties are not joint ventures or partners and do not have an employer-employee or master-servant relationship. City shall not be vicariously liable for Vendor or any of the Users.

37. Licensing and Taxes. Prior to deploying Micromobility Devices in the City: (a) Vendor shall obtain any applicable licenses or permits required by applicable local, state or federal law to transact business in the City and to provide City with a copy of the same and

(b) Vendor shall be a Florida corporation or properly registered with the Florida Secretary of State to conduct business in Florida and provide evidence of the same to the City.

38. Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to its subject matter and supersedes all prior agreements and understandings of the Parties with respect to its subject matter. Nothing in this Agreement shall be construed to limit City's regulatory authority or waive any immunity to which the City is entitled by law.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement to be effective on the Effective Date.

ATTEST:

CITY OF PENSACOLA

Ericka L. Burnett
City Clerk

Grover C. Robinson, IV
Mayor

ATTEST:

VeoRide Inc.,

By: Corporate Secretary

By: President

File name: Operating Agreement

Legal in form and
Valid as drawn:

City Attorney's Office

Approved as to Substance:

Amy Tootle, P.E.
Public Works & Facilities Director

Shared Micromobility Devices Franchise Area Map

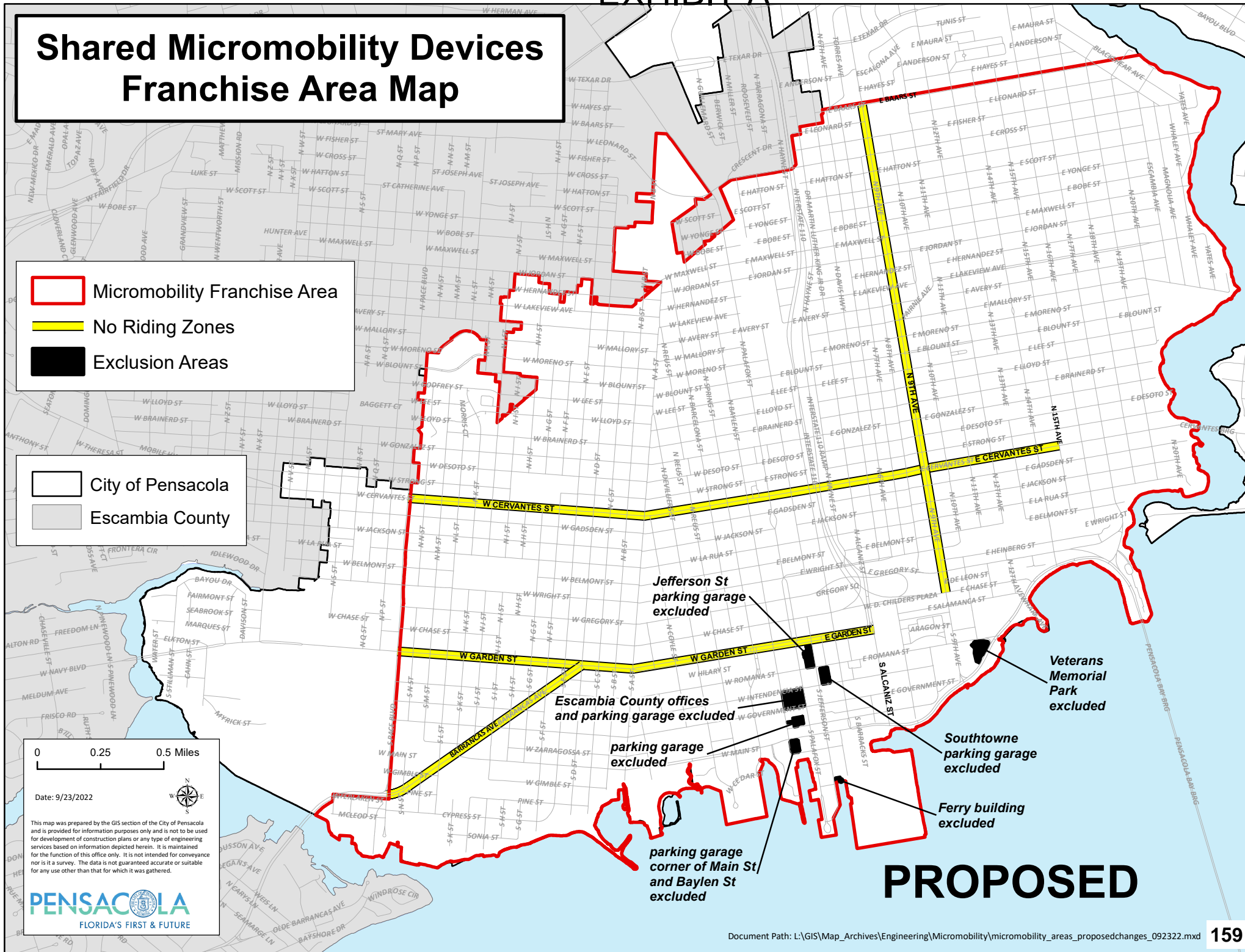
- Micromobility Franchise Area
- No Riding Zones
- Exclusion Areas

- City of Pensacola
- Escambia County

0 0.25 0.5 Miles

Date: 9/23/2022

This map was prepared by the GIS section of the City of Pensacola and is provided for information purposes only and is not to be used for development of construction plans or any type of engineering services based on information depicted herein. It is maintained for the function of this office only. It is not intended for conveyance nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.



**Jefferson St
parking garage
excluded**

**Escambia County offices
and parking garage excluded**

**parking garage
excluded**

**parking garage
corner of Main St
and Baylen St
excluded**

**Veterans
Memorial Park
excluded**

**Southtowne
parking garage
excluded**

**Ferry building
excluded**

PROPOSED



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01041

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

THIRD ADDENDUM TO THE PARTIAL ASSIGNMENT TO INSPIRED COMMUNITIES OF FLORIDA LLC OF THE OPTION AGREEMENT BETWEEN THE CITY OF PENSACOLA AND STUDER PROPERTIES LLP

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute the Third Addendum to the Partial Assignment to Inspired Communities of Florida LLC of the Option Agreement between the City of Pensacola and Studer Properties LLP for the development of Parcels 3, 6, and 8 of the Vince J. Whibbs Sr. Community Maritime Park, removing the previously-held option for Parcel 9 and extending the agreement for twelve months through September 30, 2023. Also, that City Council authorize the Mayor to take the actions necessary to execute and administer this agreement, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In October 2018, the City entered into an option agreement with Studer Properties for the exclusive right to develop and lease all of the vacant parcels at the Community Maritime Park, specifically parcels 3 through 9. In March 2020, the option agreement was extended through March 31, 2021.

In October 2020, prior to the expiration of the option agreement with Studer Properties, both parties entered into a partial assignment of the agreement with Inspired Communities of Florida for the parcels 3, 6, 8, and 9. Corresponding partial assignments were also entered into with two other development groups for the remainder of the parcels - Valencia Development Corporation for parcel 7 and Silver Hills Development for parcels 4 and 5 - with the former still in effect and the latter being no longer valid.

In March 2021, the City approved the first addendum to Inspired's partial assignment, extending the agreement through September 30, 2021. In September 2021, the City also approved the second addendum to Inspired's partial assignment, extending the agreement through September 30, 2022. In March 2022, Inspired agreed to relinquish their option on parcel 9 at the request of Northwest Florida Professional Baseball via the City for the construction of enhancements to Wahoo Stadium at

Community Maritime Park. The City and Inspired now seek to extend the term of their partial assignment for another twelve months through September 30, 2023.

PRIOR ACTION:

October 1, 2018 - City enters into an Option Agreement with Studer Properties for all vacant lots in Community Maritime Park

March 26, 2020 - City approves an Addendum to the Option Agreement with Studer Properties, extending the term through March 31, 2021

October 9, 2020 - City enters into a Partial Assignment of the Option Agreement with Studer Properties and Inspired Communities of Florida

March 25, 2021 - City approves the First Addendum to the Partial Assignment of the Option Agreement with Inspired, extending the term through September 30, 2021

September 9, 2021 - City approves the Second Addendum to the Partial Assignment of the Option Agreement with Inspired, extending the term through September 30, 2022

FUNDING:

N/A

FINANCIAL IMPACT:

Inspired Communities of Florida will continue their monthly option payment (\$2,426.81) per the terms of their agreement, as reduced from the previous payment (\$2,738.21) with the removal of Parcel 9. The City anticipates entering into a Ground Sublease with NFPB that will compensate for the difference. Upon successful negotiation of the ground lease(s) and development of parcels 3, 6, and 8, Inspired will receive a credit equal to payments made under the option agreement and its addendums.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/12/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Amy Lovoy, Finance Director

ATTACHMENTS:

- 1) Third Addendum to the Partial Assignment to Inspired Option Agreement

PRESENTATION: No

**THIRD ADDENDUM TO THE
PARTIAL ASSIGNMENT TO INSPIRED COMMUNITIES OF FLORIDA, LLC OF THE
OPTION AGREEMENT
BETWEEN THE CITY OF PENSACOLA AND STUDER PROPERTIES, LLP**

This **THIRD ADDENDUM TO THE PARTIAL ASSIGNMENT AND ASSUMPTION OF THE OPTION AGREEMENT** (this “**Third Addendum**”), dated as of _____, 2022 (the “**Effective Date**”), is entered into between the **CITY OF PENSACOLA, a Florida municipal corporation**, 222 West Main Street, Pensacola, Florida 32502 (“**City**”), and **INSPIRED COMMUNITIES OF FLORIDA, LLC, a Florida limited liability corporation**, 223 W. Gregory Street, Pensacola, Florida 32502 (“**Inspired**”). City, Inspired, and their successors are each a “Party,” and collectively referred to herein as the “Parties”.

RECITALS

WHEREAS, City and Studer Properties, LLP (“**Studer Properties**”) entered into an Option Agreement dated October 1, 2018, with an Addendum dated April 1, 2020, (collectively, the “**Studer Option Agreement**”), whereby City granted to Studer Properties the exclusive right to develop and lease vacant parcels at the Community Maritime Park more particularly described in Exhibit A to the Option Agreement (referred to hereinafter individually as a “**Parcel**” and collectively as the “**Parcels**”) subject to terms and conditions set forth in the Studer Option Agreement; and

WHEREAS, City, Studer Properties, and Inspired entered into a Partial Assignment of the Studer Option Agreement on October 9, 2020, expiring on March 31, 2021 (the “**Inspired Option Agreement**”); and

WHEREAS, City and Inspired desired to extend the term of the Inspired Option Agreement and entered into a First Addendum to the Inspired Option Agreement, with an effective date of April 1, 2021 and expiring on September 30, 2021 and further extended the Option Agreement in the Second Addendum, which expired on September 30, 2022; and

WHEREAS, Inspired timely and properly notified City on September 21, 2022, pursuant to Section 2 of the Second Addendum, of its election to extend the Option Term through and including November 14, 2022; and

WHEREAS, Inspired relinquished its claim on Parcel 9, which reduced its payment from \$2,738.21 to \$2,426.81; and

WHEREAS, the purpose of the Inspired Option Agreement is to provide for the development of one of the Parcels in a manner consistent with the 2010 City of Pensacola Community Redevelopment Agency Plan and all applicable statutes, ordinances, and regulations, and to provide for the development of the western side of downtown in a cohesive way; and

WHEREAS, City and Inspired understand and agree that the City and Inspired will negotiate in good faith revisions to the Inspired Option Agreement and a ground lease agreement; and

WHEREAS, Inspired understands and agrees that approval of any renegotiated option agreement, renegotiated ground lease, and development of Parcels 3, 6, and 8 are contingent upon the approval of the City Council in its sole and complete discretion; and

WHEREAS, City and Inspired desire to extend the term of the Inspired Option Agreement with a Third Addendum;

NOW, THEREFORE, in consideration of the payments made by Inspired pursuant to the Inspired Option Agreement and the other mutual covenants and agreements hereinafter set forth 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 recitals set forth above are true and correct and are hereby incorporated by reference.
2. Term. The Option Term, as that term is used in the Inspired Option Agreement, is extended for one year so that the Option Term automatically expires on September 30, 2023, unless duly extended, exercised, or sooner terminated as provided in the Inspired Option Agreement. The parties agree to negotiate in good faith, as defined by lease fee payments current by no more than 45 days outstanding and written communications of no more than 7 days aged, to reach an agreement within the Option Term, provided, however, in the event that a written agreement has not been reached between the parties prior to September 30, 2023, then either party shall have the option of further extending the Option Term for an additional forty-five (45) day period, upon delivery of written notice of such election to the other party on or before September 30, 2023. In such event, the Option Term shall automatically be extended until November 14, 2023.
3. Termination for Convenience. Inspired may terminate the Inspired Option Assignment for convenience at any time prior to the expiration of the Inspired Option Agreement on September 30, 2023 by providing 30 days' written notice to the City. Upon receipt of such notice of termination, Inspired shall be relieved of all rights and responsibilities, as of the date of termination, under the Inspired Option Assignment and shall have no further interest, other than the agreement responsibilities prior to termination, in the Property or the Inspired Option Assignment to which it pertains. The City shall be responsible for recording a Termination of Partial Assignment in the official records of Escambia County, Florida.
4. No Other Revisions to the Inspired Option Agreement. Except as expressly set forth above, none of the terms and conditions of this Third Addendum shall be deemed to modify or amend any of the terms and conditions of the Inspired Option Agreement and its prior addendum(s), and the Inspired Option Agreement, as amended by this Third Addendum to the Partial Assignment to Inspired Development Corporation of the Option Agreement Between the City of Pensacola and Studer Properties, LLP, shall remain in full force and effect during the term of this Third Addendum; provided, however, that the parties acknowledge that Inspired relinquished its claim on Parcel 9.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF PENSACOLA
a Florida municipal corporation

By: _____
Grover C. Robinson, IV, Mayor

Date signed: _____, 2021

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

Legal in form and valid as drawn:

Approved as to content:

Charles V. Peppler, City Attorney

Print Name: _____
Title: _____

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Grover C. Robinson, IV, the Mayor of City of Pensacola, a Florida municipal corporation, on behalf of said municipal corporation, who () is personally known to me or () has produced a driver's license as identification.

[SEAL]

NOTARY PUBLIC

[Signature page to Third Addendum between City of Pensacola and Inspired Communities of Florida, LLC]

INSPIRED COMMUNITIES OF FLORIDA, LLC

Print: _____

By: _____

Print name: _____

Print: _____

Its: _____

Date signed: _____, 2022.

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of INSPIRED COMMUNITIES OF FLORIDA, LLC, a Florida limited liability company, who () is personally known to me or () has produced a driver's license as identification.

NOTARY PUBLIC

[SEAL]

[Signature page to Third Addendum between City of Pensacola and Inspired Communities of Florida, LLC]



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01042

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

LEASE - GROUND SUBLEASE WITH NORTHWEST FLORIDA PROFESSIONAL BASEBALL LLC FOR PARCEL 9 OF THE VINCE J. WHIBBS SR. COMMUNITY MARITIME PARK

RECOMMENDATION:

That City Council approve and authorize the Mayor to execute the Ground Sublease for Parcel 9 of the Vince J. Whibbs Sr. Community Maritime Park with Northwest Florida Professional Baseball LLC (NFPB) for the construction and use of batting cages and other stadium amenities, through March 31, 2032 and coterminous with the Multi-Use Facility Non-Exclusive Use Agreement for Blue Wahoos Stadium. Also, that City Council authorize the Mayor to take the actions necessary to execute and administer this sublease, consistent with the terms of the sublease and the Mayor's Executive Powers as granted in the City Charter.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In July 2011, the City (via the now-defunct Community Maritime Park Associates Inc.) entered into an agreement with Northwest Florida Professional Baseball. The agreement was extended thru March 31, 2032 by City Council at the July 15, 2021 regular meeting. In late 2021, the City and NFPB began discussing the need for batting cages and similar items to enhance stadium use and visitor experience. In March 2022, Inspired Communities of Florida agreed to relinquish their development option on parcel 9, allowing for the City to negotiate a ground sublease with NFPB for the parcel. NFPB has agreed to invest \$400,000 to construct the initial improvements, which include batting cages, player amenities, and small parking area to complement the stadium use.

PRIOR ACTION:

July 10, 2011 - The City (via CMPA) enters into a Multi-Use Facility Non-Exclusive Use Agreement with NFPB for Blue Wahoos Stadium at Community Maritime Park

July 15, 2021 - City Council approves Amendment No. 5 to the NFPB Use Agreement, extending the term through March 31, 2032

FUNDING:

N/A

FINANCIAL IMPACT:

NFPB will remit \$6,000.00 in annual rent thru March 31, 2032, with rent adjusting to market rate pending an optional ten-year extension to the sublease. NFPB will also pay \$6,807.98 in annual CAM charges, with a 7% increase every five years through the term of the sublease.

Conditional uses such as retail shops, food and beverage services, restaurant/bar services, hotel etc. are prohibited; however, should the City grant any of these conditional uses, then the rent must be adjusted to the prevailing market rate at that time.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/12/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator
Amy Lovoy, Finance Director

ATTACHMENTS:

- 1) Ground Sublease - Maritime Park Parcel 9
- 2) Map of CMP Parcels

PRESENTATION: No

STATE OF FLORIDA
COUNTY OF ESCAMBIA

GROUND SUBLEASE
(Maritime Park Parcel 9)

THIS GROUND SUBLEASE (this "Sublease") is made and entered into this ____ day of _____, 20____ (the "Sublease Effective Date") by and between the CITY OF PENSACOLA, a Florida municipal corporation ("Sublessor") and Northwest Florida Professional Baseball, LLC, a Florida limited liability company ("Sublessee"), whose address is _____. Sublessor and Sublessee are collectively referred to herein as the "Parties".

W I T N E S S E T H:

WHEREAS, the City of Pensacola owns that property commonly referred to as the "Vince J. Whibbs, Sr. Community Maritime Park" located in downtown Pensacola on the shore of Pensacola Bay and south of Main Street, in Pensacola, Florida (the "Park Property"); and

WHEREAS, the City of Pensacola, as lessor, leased the Park Property to Community Maritime Park Associates, Inc. ("CMPA"), as lessee, for a term of sixty (60) years commencing on May 28, 2009 and expiring on May 28, 2069, pursuant to that certain Master Lease dated March 27, 2006 between the City of Pensacola, as lessor, and CMPA, as lessee, recorded in Official Records Book 5886, Page 1303, public records of Escambia County, Florida (the "Master Lease"); and

WHEREAS, effective June 1, 2017, the CMPA assigned all of its right, title, interest and leasehold estate in, to and under the Master Lease to the City of Pensacola pursuant to that certain Assignment of Master Lease ("Assignment") dated June 1, 2017, and recorded in Official Records Book 7722, Page 866, public records of Escambia County, Florida; and

WHEREAS, pursuant to Section 3 of the Assignment and Section 41 of the Master Lease, the assignment of the Master Lease by the CMPA to the City of Pensacola did not result in a merger of the Master Lease and the leasehold estate created thereby with the fee simple estate of the City of Pensacola in the Park Property; and

WHEREAS, as a result of the Assignment and the non-merger of title, the Master Lease remains in full force and effect, the City of Pensacola is both the lessor and the lessee under the Master Lease, and the City of Pensacola is the Sublessor under this Sublease; and

WHEREAS, Sublessee desires to lease from Sublessor the Leased Premises (as hereinafter defined) for the construction and operation of a certain building and other improvements as more particularly described hereinbelow; and

WHEREAS, Sublessee entered in to that certain Multi-Use Facility Nonexclusive Use Agreement with the CPMA on July 10, 2011, as amended ("Multi-Use Facility Use Agreement"), whereby Sublessee was permitted certain rights to use the Multi-Use Facility (as defined in the Multi-Use Facility Use Agreement);

WHEREAS, Sublessor is willing to lease the Leased Premises to Sublessee, and Sublessee is willing to lease the Leased Premises from Sublessor, for the purposes, upon the terms and subject to the conditions set forth in this Sublease;

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the covenants and conditions set forth below, the Parties mutually agree, each for itself and its successors, as follows:

1. LEASED PREMISES. Sublessor hereby leases to Sublessee, and Sublessee hereby rents and takes from the Sublessor, that certain unimproved parcel of land described as Lot 9 of Vince Whibbs, Sr. Community Maritime Park, according to the map or plat thereof recorded in Plat Book 19, Pages 23 and 23A, of the Public Records of Escambia County, Florida (the "Leased Premises"), upon the terms and subject to the conditions of this Sublease. Notwithstanding anything in this Sublease to the contrary, the Leased Premises are leased subject to the following exceptions:

- (a) All terms, covenants, conditions and provisions of the Master Lease;
- (b) All matters appearing in the public records of Escambia County, Florida;
- (c) Any state of facts which an accurate survey or physical inspection of the Leased Premises would show;
- (d) All zoning laws, ordinances, resolutions, restrictions, rules and regulations, building and use restrictions and other laws, rules and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction;
- (e) Easements hereby reserved by the City of Pensacola for sidewalks, roads, drives and utilities, if any, located on, over, under or across the Leased Premises or Park Property; and
- (f) All the terms, covenants, conditions and other provisions of this Sublease.

2. USE OF PREMISES. Sublessee shall use the Leased Premises as a permitted use for uses that support, supplement, or complement the Multi-Use Facility to include batting cages, player amenities, exclusive parking or any other use which is not

inconsistent with these uses or as otherwise approved by the Sublessor (the "Permitted Use"). The Sublessor's consent to any use not specified above may be given, withheld, or conditioned in its sole and absolute discretion. Sublessor represents and warrants that, as of the Sublease Effective Date, the Permitted Use does not conflict with any exclusive use granted prior to the Sublease Effective Date to any other licensee, lessee or sublessee of any portion of the Park Property or in any other way or manner contrary to any of the terms and provisions of the Master Lease. Any conditional use consisting of retail shops, food and beverage services, restaurant and bar services, hotel, etc. is prohibited. However, should the City consider the grant of any of the foregoing conditional uses, then an adjustment of the rent to market rates would be required. Further, in no event shall Sublessee use, or suffer or permit any other person or entity to use, the Leased Premises or any portion thereof (i) as residential property or use; or (ii) for any trade or business consisting of or including, in whole or in part, a private or commercial golf course, a country club, a massage parlor, a hot tub facility, a sun tan facility, a racetrack or other facility used for gambling or a store principally selling alcoholic beverages for off-premises consumption. Sublessee shall indemnify, defend and hold harmless Sublessor against all costs, expenses, damages, liability, or loss caused by any violation hereof of any provision of this Section by Sublessee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this Section 2 shall be exercisable only by the Pensacola City Council.

3. DUE DILIGENCE PERIOD. Commencing on the Sublease Effective Date, Sublessee shall have a period of sixty (60) days to perform its due diligence on the Leased Premises (the "Due Diligence Period"). During the Due Diligence Period, Sublessee, at its sole cost and expense, may conduct on the Leased Premises such surveys, inspections and other tests as Sublessee may reasonably desire; provided that no destructive testing, excavation or drilling shall be conducted without the prior written approval of the Sublessor. Such activities may be conducted only during normal business hours and shall not damage the Leased Premises or any other portion of the Park Property. Upon the expiration or termination of the Due Diligence Period, Sublessee shall promptly repair any damage to the Leased Premises or any other portion of the Park Property resulting from such activities. Sublessee shall indemnify, defend and hold Sublessor harmless from and against any construction or mechanics liens and all claims, liabilities, injuries and damages to persons and property (including without limitation the Leased Premises and the Park Property) suffered or incurred by Sublessor as a result of such activities or the acts or omissions of anyone undertaking such activities for or on behalf of Sublessee. Sublessee may terminate this Sublease at any time during the Due Diligence Period by providing written notice of termination to Sublessor on or before the expiration of the Due Diligence Period. If Sublessee terminates this Sublease pursuant to the preceding sentence, then all materials, inspection reports, environmental site assessments, surveys, title reports, site plans, drawings and all other documents in the possession or control of Sublessee relating to the Leased Premises shall become the property of the Sublessor and shall be provided by Sublessee to the Sublessor within ten (10) days after the date of termination of this Sublease. Sublessee's obligations under this Section shall survive the termination or expiration of this Sublease.

4. IMPROVEMENTS.

(a) Prior to the end of the Construction Period (hereinafter defined) Sublessee shall, at its sole cost and expense, complete construction of the following described improvements on the Leased Premises, to-wit: an additional batting cage and other amenities to complement the Multi-Use Facility as contemplated in the attached Building Conceptual Plans as Exhibit A, as more particularly described by the plans and specifications approved by the Sublessor pursuant to this Section 4 (collectively, the "Initial Improvements"). The Construction Period shall commence on the first day after the end of the Due Diligence Period, and shall expire 180 days thereafter (the "Construction Period"); provided that the Construction Period may be extended if and to the extent that the completion of the Initial Improvements is delayed solely due to Force Majeure (as defined in Section 17 below), but in no event shall the Construction Period be so extended by more than sixty (60) days. The Sublessee must commence construction of the Initial Improvements on or before thirty (30) days after commencement of the Construction Period, diligently and continuously prosecute such construction, and complete such construction not later than the last day of the Construction Period. For purposes of this Sublease, construction shall be deemed to have commenced upon the pouring of the footers or the sinking of pilings, as the case may be, for the foundation of the Initial Improvements, and construction shall be deemed to have been completed upon the substantial completion of all of the Initial Improvements in accordance with the plans and specifications approved by the Sublessor (subject only to normal punch list items) and the issuance of all final governmental permits and unconditional certificates of occupancy required for the full and lawful use and occupancy of the Improvements for the purposes permitted by Section 2 above.

(b) The Initial Improvements and all other buildings and improvements (including without limitation landscaping and signage) constructed or placed on the Leased Premises at any time and from time to time during the Term of this Sublease are referred to in this Sublease as the "Improvements". Sublessee shall not construct, alter, remove or demolish any Improvements, in whole or in part, without first having obtained the written approval of Sublessor, which approvals shall not be unreasonably withheld, conditioned or delayed; provided, however, that any alterations to the interior of any building that do not involve or affect the exterior appearance, roof or structural components of the building do not require such approval by Sublessor. No Improvements shall be constructed, altered, removed or demolished except in strict accordance with architectural design, site plan, construction contracts, construction budget, construction schedule and plans and specifications approved in writing by Sublessor prior to commencement of such work, such approvals not to be unreasonably withheld, conditioned or delayed; provided, however, that the approval of Sublessor required by this paragraph shall not be deemed to be any acknowledgement by the Sublessor that such plans and specifications, other approved items or the proposed Improvements or other work complies or will comply with applicable laws, codes, ordinances and regulations and shall not relieve Sublessee from obtaining all governmental authorizations, permits and approvals required by applicable laws, codes, ordinances and regulations, all of which shall be obtained prior to commencement of construction,

alteration, removal or demolition of any Improvements. Without limiting the generality of the foregoing, the materials, architectural design and plans and specifications of any Improvements shall conform with the published design criteria of the Park Property in effect from time to time and shall be compatible with the materials and architecture of other then-existing buildings and improvements within the Park Property; the approval of Sublessor required by this Section 4 shall be conditioned upon the provision of payment and performance bonds in favor of and satisfactory to Sublessor in accordance with paragraph (d) below; and all Improvements shall comply with the federal Americans with Disabilities Act and all regulations thereunder.

(c) Sublessee shall be solely responsible for payment of all hard and soft costs of construction, alteration, removal and demolition of any Improvements and, prior to commencement of any work on Improvements, Sublessee shall provide Sublessor with reasonably satisfactory evidence of Sublessee's ability to pay the costs of such work as and when due. Sublessee shall cause all work and Improvements on the Leased Premises to be performed and constructed with new materials and in a good and workmanlike manner, pursuant to valid building permits and in conformance with this Sublease, all applicable federal, state, county and municipal laws, rules and regulations, and Sublessor's reasonable construction rules and regulations. Sublessee shall indemnify, defend and hold Sublessor free and harmless from all liens and claims of lien, and all other liability, claims and demands arising out of any work done or material supplied to the Leased Premises by or at the request of Sublessee. All Improvements (expressly excluding, however, movable office furniture and trade fixtures, and trade equipment) shall be deemed to be a part of the real estate and shall remain upon and be surrendered with the Leased Premises upon the termination of this Sublease. Except to the extent otherwise provided in paragraph (a) above with respect to the Initial Improvements, upon commencement of any permitted construction, alteration, removal or demolition, Sublessee shall thereafter diligently and continuously prosecute such work to completion within a reasonable time.

(d) Prior to commencement of any work on Improvements, Sublessee shall provide to the Sublessor payment and performance bonds obtained by each general contractor of Sublessee ensuring performance of that general contractor's obligations under the prime construction contract between that general contractor and the Sublessee and payment of that contractor's subcontractors and suppliers with respect to the construction, alteration, removal or demolition of Improvements. Each of the bonds must (i) be issued by a Qualified Surety (hereinafter defined), (ii) be in form and substance satisfactory to the Sublessor, (iii) run in favor of the Sublessor, and (iv) be in the amount of the total cost of constructing, altering, removing or demolishing, as the case may be, the Improvements as approved by the Sublessor, as such cost is stipulated in the construction contract between the Sublessee and its general contractor. A "Qualified Surety" is a corporate surety or insurer authorized to do business, and to issue bonds for construction payment and performance, in the State of Florida and possessing a rating of A/VIII or better in A.M. Best's Insurance Reports. As noted above, Sublessee may erect additional structures on Leased Premises for its use and enjoyment. Any improvements

constructed whether initial or additional shall become the property of Sublessor after the improvements are erected, occupied, or controlled by Sublessee.

(e) Notwithstanding the foregoing or any other provision of this Sublease, Sublessor's interest in the Leased Premises, Improvements or Park Property shall not be subject to any lien, statutory or otherwise, by reason of any Improvements constructed or altered upon, removed from or demolished on the Leased Premises or work, labor, services or materials performed upon or supplied to the Leased Premises by or upon the order or request of Sublessee or its employees or contractors or anyone acting by, through or under Sublessee, and Sublessee shall include notice of the foregoing in all contracts for the furnishing of labor, services or materials to or on the Leased Premises. All persons performing labor or service or furnishing materials to the Leased Premises on the order of Sublessee must look solely to Sublessee for payment. Sublessee shall keep the Leased Premises, Improvements and Park Property free from any construction liens, mechanics liens, vendors liens or any other liens or claims arising out of any work performed, materials furnished or obligations incurred by Sublessee, all of which liens and claims are hereby expressly prohibited, and Sublessee shall defend, indemnify and hold Sublessor harmless from and against any such lien or claim or action thereon, together with costs of suit and reasonable attorneys' fees and costs incurred by Sublessor in connection with any such lien, claim or action. Before commencing any work of alteration, addition, demolition or improvement to the Leased Premises, Sublessee shall give Sublessor at least ten (10) business days' written notice of the proposed commencement of such work (to afford Sublessor an opportunity to post appropriate notices of non-responsibility). In the event that there shall be recorded against the Leased Premises, Improvements or Park Property any claim or lien arising out of any such work performed, materials furnished or obligations incurred by Sublessee and such claim or lien shall not be removed or discharged within thirty (30) days of filing, Sublessor shall have the right but not the obligation to pay and discharge said lien without regard to whether such lien shall be lawful or correct, or to require that Sublessee promptly deposit with Sublessor in cash, lawful money of the United States, one hundred fifty percent (150%) of the amount of such claim, which sum may be retained by Sublessor until such claim shall have been removed of record or until judgment shall have been rendered on such claim and such judgment shall have become final, at which time Sublessor shall have the right to apply such deposit in discharge of the judgment on said claim and any costs, including reasonable attorneys' fees and costs incurred by Sublessor, and shall remit the balance thereof to Sublessee. Sublessor shall have the right to execute and record in the public records of Escambia County, Florida, a notice of provisions of this paragraph, meeting the requirements of Section 713.10, Florida Statutes.

(f) Sublessee shall invest a minimum of four hundred thousand dollars (\$400,000.00) in capital costs to construct the Initial Improvements described in Subparagraph (a) above.

5. RENT COMMENCEMENT DATE. As used in this Sublease, the Rent Commencement Date shall mean the earliest of (a) the date the Initial Improvements are occupied and used for the purposes permitted by Section 2 above, (b) the date the Initial

Improvements are completed in accordance with Section 4(a) above, or (c) 180 days after the Sublease Effective Date.

6. **TERM.** The term of this Sublease (the "Term") shall commence on the Sublease Effective Date and shall end on March 31, 2032, such date being the expiration date of the Multi-Use Facility Use Agreement between Sublessor and Sublessee (the "Initial Sublease Lease Term"). Should the term of the Multi-Use Facility Use Agreement be extended for additional terms of ten (10) years or any other extended term, then this Sublease may be extended for additional ten (10) year terms or such other extended term consistent with the Multi-Use Facility Use Agreement (each an "Extended Term"). At all times, the term of this Sublease shall be coterminous with the Multi-Use Facility Use Agreement. Promptly after the occurrence of the Rent Commencement Date, the Parties shall enter into an amendment to this Sublease confirming the Rent Commencement Date and the expiration date of the Term.

7. **RENT; CAM CHARGES; AND BROKER'S COMMISSION.**

(a) **Base Rent.** Beginning on the Rent Commencement Date and continuing during the remainder of the Term, and as compensation for the use of the Leased Premises, Sublessee shall pay the Sublessor annual base rent in the amount of \$6,000.00 (the "Base Rent"), payable in twelve (12) equal monthly installments in accordance with paragraph (b) below (each such monthly installment being referred to herein as a "Monthly Rent Payment"), subject to adjustment as provided in paragraphs (c) and (d) below. Prepayment of Base Rent may be permitted upon such terms and conditions as the Parties shall mutually agree, in the sole and absolute discretion of each Party, if, but only if, such agreement is set forth in a written instrument duly executed by all Parties

(b) **Base Rent Payment Terms.** Each Monthly Rent Payment shall be due and payable in advance, without invoicing, notice, demand, deduction or set-off, on the first (1st) day of each calendar month beginning on the Rent Commencement Date and continuing during the remainder of the Term; provided that the first Monthly Rent Payment shall be pro-rated according to the Rent Commencement Date and the number of days remaining in the month in which the Rent Commencement Date occurs, and shall be due and paid by Sublessee to the Sublessor on the Commencement Date.

(c) **Market Rate Adjustments to Base Rent.** At the conclusion of the initial Term the annual Base Rent shall be adjusted to an amount equal to the Market Rate Rent (as hereinafter defined), and such adjusted Base Rent shall be in effect during such Extended Term, subject to further adjustment as provided in this paragraph (d); provided, however, that in no event shall such adjusted Base Rent be less than the Base Rent during the initial Term. For the purposes of this Sublease, the "Market Rate Rent" shall mean the most probable ground rent, that the Leased Premises should bring in a competitive and open market reflecting all conditions and restrictions of this Sublease, including without limitation term, rental adjustment and revaluation, permitted uses, use restrictions and expense obligations, the sublessor and sublessee each acting prudently and

knowledgeably, and assuming consummation of a sublease contract as of the date that is sixty (60) days prior to the date the adjusted Base Rent would become effective pursuant to this paragraph (the "Adjusted Rent Effective Date"), and assuming the passing of the subleasehold estate from sublessor to sublessee under conditions whereby:

- (1) Sublessor and sublessee are typically motivated.
- (2) Both parties are well informed or well advised, and acting in what they consider their best interests.
- (3) A reasonable time is allowed for exposure in the open market.
- (4) The rent payment is made in terms of case in United States dollars and is expressed as an amount per time period consistent with the payment schedule of this Sublease.
- (5) The rental amount represents the normal consideration for the Leased Premises unaffected by special fees or concessions granted anyone associated with the transaction.

During the time period between ninety (90) days and sixty-five (65) days prior to the Adjusted Rent Effective Date, Sublessor and Sublessee shall negotiate in good faith to agree on the Market Rate Rent. If Sublessor agrees in writing on the Market Rate Rent (whether during the foregoing time period or thereafter), then such mutually agreed Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. If Sublessor and Sublessee fail to agree upon the Market Rate Rent during such time period, then the Market Rate Rent shall be determined by appraisers as follows:

Not less than sixty (60) days prior to the Adjusted Rent Effective Date, Sublessee shall retain, at its sole expense, an appraiser who shall prepare a written market rent appraisal report setting forth such appraiser's opinion of the Market Rate Rent and the rationale and data supporting such opinion. Sublessee shall deliver such appraisal report to Sublessor not less than thirty (30) days prior to the Adjusted Rent Effective Date. If the Sublessor disagrees with the Market Rate Rent as determined by such appraisal report, then not less than twenty (20) days prior to the Adjusted Rent Effective Date, Sublessor shall retain, at its sole expense, an appraiser who shall prepare a written market rent appraisal report setting forth such appraiser's opinion of the Market Rate Rent and the rationale and data supporting such opinion. Sublessor shall deliver such appraisal report to Sublessee not less than ten (10) days after the Adjusted Rent Effective Date. In the event the two (2) appraisers agree on the Market Rate Rent, their determination of the Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. In the event that the determination of the Market Rate Rent set forth in the two appraiser's determinations differ by ten percent (10%) or less, then the Market Rate Rent shall be equal to the average of the two determinations, and such Market Rate Rent shall be conclusively binding upon Sublessor and Sublessee. In the event that the two appraisers'

respective determinations of Market Rate Rent differ by greater than 10%, then Sublessor and Sublessee shall cause their respective appraisers to designate a third appraiser not less than twenty (20) days after the Adjusted Rent Effective Date. Upon such designation of a third appraiser, Sublessor and Sublessee shall promptly jointly retain such third appraiser and furnish such third appraiser with the market rent appraisal reports prepared by the other two appraisers. The third appraiser shall evaluate such appraisal reports and their respective determinations of Market Rate Rent and shall determine the Market Rate Rent within twenty (20) days after his or her appointment, which determination shall be no lower or higher than the other two determinations. The determination of the Market Rate Rent by such third appraiser shall be conclusively binding upon Sublessor and Sublessee.

Sublessor and Sublessee shall each pay the fee of the appraiser it retains, and the fees of the third appraiser (if any) shall be borne equally by Sublessor and Sublessee. All appraisers engaged pursuant to this paragraph (d) shall be M.A.I. certified appraisers with at least six (6) years full time commercial appraisal experience, (ii) shall have demonstrable substantial experience in market rent appraisals of properties comparable to the Leased Premises, and (iii) shall adhere to the parameters set forth in this paragraph (d). Once the Market Rate Rent is determined, the parties shall execute an amendment to this Sublease specifying the amount of the adjusted Base Rent.

If for any reason the Market Rate Rent shall not have been determined prior to the Adjusted Rent Effective Date, then, until the Market Rate Rent is finally determined, Sublessee shall pay the monthly Base Rent required by paragraph (c) above. Upon final determination of the Market Rate Rent, the adjusted Base Rent equal to such Market Rate Rent shall be deemed effective retroactively to the Adjusted Rent Effective Date, and Sublessee shall promptly pay to Sublessor any shortfall in the payment of Base Rent from the Adjusted Rent Effective Date to the date of such final determination.

(d) CAM Charges. Effective upon the Rent Commencement Date, Sublessee shall pay to Sublessor \$6,807.98 ("Sublessee's Share") of the annual expenses incurred and reserves funded by Sublessor for the operation and maintenance of the common areas and facilities of the Park Property ("CAM Charges"). Sublessee shall pay such annual CAM Charge in equal monthly installments, without demand, reduction, or set off, commencing on the Rent Commencement Date and continuing on the first day of each month during the Term of this Sublease (if necessary the first monthly CAM Charges shall be prorated according to the Rent Commencement Date and shall be due and payable on or before the Rent Commencement Date, and the last monthly CAM Charges shall be prorated if necessary according to last day of the Term or any subsequent renewal of this Sublease, as the case may be). The annual CAM Charge shall be automatically adjusted in accordance with the following provisions of this paragraph. Effective on and as of the first day of the month following the fifth (5th) anniversary of the Rent Commencement Date and continuing on the first day of the same month every fifth (5th) year thereafter during the Term or any subsequent renewal of this Sublease, the then current CAM Charges shall be increased by seven percent (7%), and such increased CAM Charges shall be in effect until the next ensuing increase in the CAM Charges pursuant to this sentence.

(g) General. The term "Rent" when used in this Sublease shall include Base Rent, Percentage Rent (if any), Sublessee's Share of CAM Charges, and all other amounts payable by Sublessee to or on behalf of Sublessor under this Sublease.

(h) Sales Tax. Sublessee shall pay all sales and use taxes imposed by Florida Statutes Section 212.031 and any future amendments thereto or other applicable Florida law in effect from time to time (the "Sales Tax") on the Base Rent due under this Sublease and on all other payments required by this Sublease to be made by the Sublessee which are taxable under applicable Florida law. Such sales or use tax shall be due and payable concurrently with the payment of the Base Rent or other payment with respect to which such tax is required to be paid.

(i) Late Charges and Interest. If Rent or any other charge due under this Sublease by Sublessee to Sublessor is not paid within five (5) calendar days after such Rent or other charge became due, a late charge of five percent (5%) of the amount due shall be due and payable to Sublessor to compensate Sublessor for its added expenses due to said late payment. Further, any Rent or other charge due under this Sublease that is not paid on the date due shall bear interest at fifteen percent (15%) per annum, or the highest rate allowed by law, whichever is less, from the date due until the date paid in full.

8. **TAXES**. Sublessor and Sublessee shall cause the Leased Premises to be separately assessed for Taxes (hereinafter defined). Commencing on the Sublease Effective Date, Sublessee shall directly pay, prior to delinquency, all Taxes imposed against or with respect to the Leased Premises or improvements thereon with respect to any time period during the Term. As used herein the term "Taxes" shall mean all ad valorem and non-ad valorem taxes, fees, assessments and special assessments (including interest and penalties thereon), including without limitation real property ad valorem taxes and stormwater fees and assessments, which are, at any time and from time to time during the Term, assessed or imposed against any legal or equitable interest of Sublessor or Sublessee in the Leased Premises or in any improvements now or hereafter situated thereon by the City of Pensacola, Escambia County or State of Florida or by any school, agricultural, lighting, fire, mosquito control, water, drainage or other improvement, benefits or tax district thereof, and which are collected by the Escambia County Tax Collector (or comparable agency), together with any tax imposed in addition to or in substitution of, partially or totally, any such tax, fee or assessment. If at any time during the Term all or any part of the Leased Premises or any improvements thereon are deemed exempt and not subject to Taxes, in whole or in part, Sublessee, upon Sublessor's request, shall pay to the Community Redevelopment Agency of the City of Pensacola ("CRA") (or to the Sublessor itself if the CRA is not then in existence) amounts equivalent to the Taxes that would have otherwise been due and payable to the City of Pensacola and/or the CRA in the absence of such exemption. All taxes owed by Sublessee shall be paid to the appropriate authority on or before the due date.

9. ASSIGNMENT AND SUB-SUBLEASE.

(a) Assignment. The Sublessee shall not assign this Sublease (in whole or in part) or the Sublessee's interest in or to the Leased Premises or any part thereof without first having obtained the Sublessor's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. Without limiting the foregoing, it is a precondition to Sublessor review and approval of a requested assignment that there shall then exist no uncured Event of Default nor any event or state of facts which with notice or the lapse of time, or both, would constitute an Event of Default. Further, the Sublessor may, in its sole and absolute discretion, condition its consent to any such assignment upon changes in any terms or conditions of this Sublease, including but not limited to changes in the Rent and other charges payable by the Sublessee hereunder, and may also condition its consent to any such assignment upon the Sublessee's payment to the Sublessor of an assignment approval fee (either in a lump sum or in installments) acceptable to the Sublessor in its sole and absolute discretion, determined on the basis of such factors as the Sublessor deems relevant in its sole and absolute discretion, which factors may include, without limitation, the Sublessor's estimate of the financial and economic consideration payable to the Sublessee in respect of such assignment. In the event that the Sublessee requests permission to assign this Sublease, in whole or in part, the request shall be submitted to the Sublessor not less than sixty (60) days prior to the proposed effective date of the assignment requested, and shall be accompanied by a copy of the proposed assignment agreement and of all agreements collateral thereto, together with the following information and any other information requested by the Sublessor: the identity and contact information of the assignee, whether the requested assignment is a full or partial assignment of this Sublease, a statement of the entire consideration to be received by the Sublessee by reason of such assignment, the type of business to be conducted on the Leased Premises by the assignee, and history and financial information of the Assignee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (a) shall be exercisable only by the Pensacola City Council.

(b) Sub-sublease. The Sublessee shall not sub-sublease the Leased Premises or any part thereof without having first obtained the Sublessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed for any Permitted Use. Without limiting the generality of the foregoing, it is a precondition to Sublessor review and approval of a proposed sub-sublease of the Leased Premises that there shall then exist no uncured Event of Default nor any event or state of facts that with notice or the lapse of time, or both, would constitute an Event of Default. Further, the Sublessor may, in its sole and absolute discretion, condition its consent to any such sub-sublease upon changes in any terms or conditions of this Lease, including but not limited to changes in the Base Rent and other charges payable by the Sublessee hereunder, and may also condition its consent to any such sub-sublease upon the Sublessee's payment to the Sublessor of (i) a portion, acceptable to the Sublessor, of the amount of the excess of the rent and other charges payable from time to time by the sub-sublessee to the Sublessee over the Rent and other charges payable from time to time by the Sublessee to the Sublessor under this Sublease, as determined by the Sublessor in its sole and absolute discretion, and (ii) a sublease approval fee acceptable to the Sublessor in its sole and absolute discretion, determined on the basis of such factors as the Sublessor deems relevant in its sole and absolute discretion, which factors may include,

without limitation, the Sublessor's estimate of the financial and economic consideration payable to the Sublessee in respect of such sub-sublease. In the event that the Sublessee requests permission to sub-sublease the Leased Premises in whole or in part, the request shall be submitted to the Sublessor not less than sixty (60) days prior to the proposed effective date of the sub-sublease requested, and shall be accompanied by a copy of the proposed sub-sublease agreement and of all agreements collateral thereto, together with the following information and any other information requested by the Sublessor: the identity and contact information of the sub-sublessee, a description of the part of the Leased Premises to be subleased, a statement of the entire consideration to be received by the Sublessee by reason of such sub-sublease (including but not limited to sub-sublease rent and other charges payable by the sub-sublessee), the type of business to be conducted on sub-subleased premises by the sub-sublessee, and history and financial information of the sub-sublessee. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (b) shall be exercisable only by the Pensacola City Council.

(c) Consummation of Assignment or Sub-sublease. The Sublessor's consent for the assignment or sub-sublease for which the Sublessor's consent is required and for which such consent has been given shall be by written instrument, in a form satisfactory to the Sublessor and the Sublessor's legal counsel, and shall be executed by the assignee or sub-sublessee who shall agree, in writing, for the benefit of the Sublessor, to be bound by and to perform all the terms, covenants, and conditions of this Sublease. Failure either to obtain the Sublessor's prior written consent or to comply with the provisions of this Sublease shall serve to prevent any such transfer, assignment, or sublease from becoming effective. The Sublessee agrees and acknowledges that it shall remain fully and primarily liable for all obligations of sublessee under this Sublease, notwithstanding any full or partial assignment of this Sublease or any sub-sublease of all or any portion of the Leased Premises. Receipt by Sublessor of Rent or any other payment from an assignee, sub-sublessee, or occupant of the Leased Premises shall not be deemed a waiver of any covenant in this Sublease against assignment and subletting or as acceptance of the assignee, sub-sublessee, or occupant as a tenant or a release of the Sublessee from further observance or performance of the covenants contained in this Sublease. No provision of this Sublease shall be deemed to have been waived by the Sublessor, unless such waiver is in writing, signed by the Sublessor. Further, by applying for consent to an assignment or sub-sublease, the Sublessee agrees to reimburse the Sublessor for its out-of-pocket costs for consultants, attorneys, and experts to evaluate the request, to advise the Sublessor with respect thereto and to prepare or review appropriate documents. As provided in Section 42(c) below, all rights and privileges exercisable by the Sublessor under this paragraph (c) shall be exercisable only by the Pensacola City Council.

10. **IMPROVEMENTS.** This Sublease represents a ground lease only. During the Term, Sublessee shall own all improvements constructed on the Leased Premises. Upon the expiration or termination of this Sublease for any reason, the Improvements on the Leased Premises shall automatically be and become the sole property of Sublessor, and Sublessee shall have no further right, title or interest therein.

11. CONDITION OF PREMISES. SUBLESSEE HEREBY ACKNOWLEDGES AND AGREES THAT THE SUBLESSOR SUBLEASES THE LEASED PREMISES AND SUBLESSEE ACCEPTS THE LEASED PREMISES "AS/IS, WHERE IS AND WITH ALL FAULTS" WITHOUT ANY REPRESENTATION OR WARRANTY OF THE SUBLESSOR, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER. SUBLESSEE ACKNOWLEDGES THAT THE SUBLESSOR HAS MADE NO REPRESENTATIONS OR WARRANTIES RELATING TO THE SUITABILITY OF THE LEASED PREMISES FOR ANY PARTICULAR USE OR PURPOSE (INCLUDING WITHOUT LIMITATION THE USE SET FORTH IN SECTION 2 ABOVE) AND THAT THE SUBLESSOR SHALL HAVE NO OBLIGATION WHATSOEVER TO REPAIR, MAINTAIN, RENOVATE OR OTHERWISE INCUR ANY COST OR EXPENSE WITH RESPECT TO THE LEASED PREMISES OR PARK PROPERTY EXCEPT AS EXPRESSLY SET FORTH IN THIS SUBLEASE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE SUBLESSOR SHALL NOT BE LIABLE FOR ANY LATENT OR PATENT DEFECTS IN THE LEASED PREMISES OR PARK PROPERTY, AND THE SUBLESSOR SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY TO SUBLESSEE FOR ANY LOSS, DAMAGE OR EXPENSE INCURRED BY SUBLESSEE OCCASIONED BY THE CONDITION OR CHARACTERISTICS OF THE LEASED PREMISES OR PARK PROPERTY. FURTHER, SUBLESSOR HEREBY DISCLAIM ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AS TO THE CONDITION OF THE LEASED PREMISES AND THE PARK PROPERTY, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, HABITABILITY OR TENANTABILITY.

12. MAINTENANCE.

(a) Sublessor's Obligations. Sublessor, at its expense, but subject to Sublessee's payment of Sublessee's Share of CAM Charges as provided in Section 7 above, shall be solely responsible for maintaining the common areas and common use infrastructure serving the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter.

(b) Sublessee's Obligations. Sublessee, at Sublessee's sole cost and expense, shall keep and maintain the entire Leased Premises and the Improvements, and every part and component thereof, interior and exterior, including without limitation the grounds, landscaping and parking facilities, if any, on the Leased Premises, in first class condition, appearance and repair and shall promptly make all necessary repairs and replacements thereto, interior and exterior, structural and non-structural, ordinary as well as extraordinary, and foreseen as well as unforeseen, and Sublessee shall not do or suffer any waste, damage, disfigurement or injury to the Leased Premises, the Improvements or any portion thereof. Further, Sublessee shall at all times maintain the Leased Premises in a safe, neat and orderly manner; free from trash, debris or other unsafe, unsightly or unsanitary matter. Without limiting the generality of the foregoing, upon completion of the Initial Improvements, Sublessee shall not thereafter demolish, remove or materially alter the Initial Improvements or any portion thereof except pursuant to and in accordance with

Section 4 above. Upon termination of this Sublease for any reason, Sublessee shall surrender to the Sublessor the Leased Premises and the Improvements in good condition, appearance and repair, excepting only such ordinary wear and tear as could not have been prevented by reasonable routine maintenance and preventive maintenance. Notwithstanding the foregoing, however, if requested by the Sublessor in writing, within ninety (90) days after termination of this Sublease for any reason, Sublessee shall demolish and remove the Improvements and all trash and debris, grade the Leased Premises and deliver the Leased Premises to the Sublessor in a neat, clean, graded, level and safe condition. Sublessee's obligations under this Section shall survive the termination of this Sublease.

13. **PAYMENT OF UTILITIES.** Sublessee shall arrange for direct billing with all appropriate utility providers and shall pay when due all invoices for services rendered from time to time by such utility providers.

14. **TRASH COLLECTION.** Sublessee shall, at its sole expense, cause all trash and garbage to be removed from the Leased Premises and Improvements on a regular basis, not less than weekly. Sublessor shall not have any obligation to provide a dumpster on Park Property for use of Sublessee.

15. **DAMAGE AND DESTRUCTION.** In the event that the Improvements or any portion thereof shall be damaged or destroyed by fire or other casualty, Sublessee shall give immediate notice thereof to Sublessor and the same shall be repaired, restored and/or rebuilt by Sublessee at its sole cost and expense, to the condition at least equal to that which existed prior to its damage or destruction and in compliance with all laws and regulations applicable at the time of repair and/or restoration of any improvements constructed thereon, and in accordance with and subject to all terms and conditions of paragraphs (b) through (e) of Section 4 above. Any insurance proceeds payable with respect to such damage or destruction shall be deposited to and held in an escrow account (the "Insurance Escrow") with a financial institution designated by the Sublessor, which account shall be subject to the joint control of the Sublessor and Sublessee. Sublessee shall also promptly deposit the amount of any insurance deductible into the Insurance Escrow. Funds from the Insurance Escrow shall be used and disbursed only to pay for the reasonable costs of repair, restoration and rebuilding of the Improvements in accordance with the Sublessor-approved plans and specification in monthly draws based on the progress of construction. Any funds remaining in the Insurance Escrow after completion of such repairs, restoration and rebuilding shall be disbursed to Sublessee provided that at such time there exists no Event of Default by Sublessee under this Sublease nor any circumstance which with the giving of notice or the lapse of time, or both, would constitute such an Event of Default. Notwithstanding the foregoing, no Insurance Escrow shall be required if the total insurance proceeds payable with respect to such damage or destruction is \$5,000.00 or less. Further, notwithstanding the foregoing, if the Improvements are "totally destroyed" (as hereinafter defined) during the last five (5) years of the Term, either the Sublessor or Sublessee may elect to terminate this Sublease by giving written notice of termination to the other Parties within ninety (90) days after the Improvements are "totally destroyed" (as hereinafter defined). Promptly upon such

termination, Sublessor shall demolish any remaining Improvements, remove all debris, grade the Leased Premises and deliver the Leased Premises to the Sublessor in a neat, clean, graded, level and safe condition. Insurance proceeds payable with respect to total destruction shall be applied to pay the reasonable costs of such demolition, removal and grading and the outstanding indebtedness then secured by a Permitted Mortgage, but only if and to the extent such costs and indebtedness exceed the amount of the insurance deductible, and all remaining insurance proceeds shall be paid to the Sublessor. For the purposes of this paragraph the terms "totally destroyed" and "total destruction" shall mean that the total aggregate cost to repair or replace the damage to the Improvements exceeds fifty percent (50%) of the fair market value of the Improvements immediately prior to the occurrence of such damage. Absent termination of this Sublease there shall be no abatement of CAM Charges during any period that the Improvements are unusable, in whole or in part. If Sublessor or Sublessee elects to terminate this Sublease pursuant to the terms of this Section, all Parties shall be relieved of all further obligations owed under this Sublease, unless the survival of such obligation(s) is specifically provided for herein. The provisions of this Section shall survive the termination of this Sublease. Furthermore, if the Multi-Use Facility or any portion thereof shall be damaged or destroyed by fire or other casualty causing contemporaneous damage or destruction to the Improvements (as described hereinabove), making the rebuilding of the Improvements impractical without the rebuilding of the Multi-Use Facility, Sublessee's obligations to rebuild and/or repair the Improvements shall be stayed pending determination of Sublessor's determination of whether or not to repair the Multi-Use Facility.

16. **STORMWATER MANAGEMENT.** Provided that Sublessee pays when due all stormwater fees and assessments levied from time to time by the City of Pensacola with respect to the Leased Premises, Sublessee shall have the right to utilize the existing storm water retention facilities on the Park Property serving the Leased Premises (the "Retention Facilities"), and the Sublessor shall be responsible for the operation, maintenance and repair of the Retention Facilities.

17. **CONDEMNATION.** If more than 50% of the gross area of the Improvements shall be taken by eminent domain, condemnation or in any other manner for public or quasi-public use or purpose (a "taking") (other than for temporary use or occupancy), the term of this Sublease shall, at the option Sublessee or the Sublessor, terminate as of the date of vesting of title and upon such termination no further Rent shall be due hereunder or a pro-rata refund of Rent paid after such taking shall be made. If this Sublease is not terminated pursuant to the preceding sentence, the Parties shall enter into good faith negotiations to modify, alter, or amend this Sublease such that the remainder of the Leased Premises and Improvements remain tenantable for the uses permitted pursuant to Section 2 above. Sublessor and Sublessee shall have the right to participate in any condemnation proceedings. Each shall notify the other promptly of any contemplated or threatened condemnation proceeding of which it shall become aware and shall keep the other informed of developments with respect thereto.

18. **FORCE MAJEURE.** Except as otherwise provided in Section 4(a) above and except for Sublessee's obligations to pay Rent and other sums of money pursuant to

the terms of this Sublease, each party's obligations under this Sublease shall be abated or excused when performance of such obligations is rendered impossible or impracticable for a period of more than 30 days by reason of strikes, riots, acts of God, epidemics, pandemics, shortages of labor or materials, theft, fire, public enemy, injunction, insurrection, court order, requisition of other governmental body or authority, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the control of the Parties hereto (each a "Force Majeure Event"), until such Force Majeure Event is eliminated or ceases to exist; provided however, that each responsible party shall use all due diligence to eliminate or mitigate such Force Majeure Event or the effects thereof as soon as possible.

19. **PARKING.** Sublessee, at its sole cost and expense, shall construct vehicular parking on the Leased Premises and/or secure off-premises vehicular parking that is adequate for the permitted use of the Leased Premises by Sublessee and other occupants, if any, of the Leased Premises or Improvements and their respective agents, representatives, employees, contractors, guests and invitees, and is sufficient to meet applicable codes, ordinances and regulations. Without Sublessor's prior written consent in its sole discretion, Sublessee shall not cause, suffer or permit Sublessee or any other occupant of the Leased Premises or Improvements or their respective agents, representatives, employees, contractors, guests or invitees to park vehicles of any kind or description on any portion of the Park Property other than the Leased Premises.

20. **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Sublessee, in the use and enjoyment of the Leased Premises, shall comply with all governmental regulations, statutes, ordinances, rules, ordinances and directives of any federal, state, county or municipal governmental units or agencies having jurisdiction over the Leased Premises or the business being conducted thereon and all rules and regulations now in effect or hereafter imposed by Sublessor; provided, however, any such rules and regulations imposed by Sublessor shall be imposed uniformly against all similar businesses located in the Park Property and shall not conflict in any material respect with the express provisions of this Sublease or unreasonably interfere with Sublessee's permitted use of the Leased Premises.

21. **ENVIRONMENTAL MATTERS.** Sublessee shall comply with all federal, state, municipal and county laws, statutes, ordinances, codes, administrative orders, rules and regulations and permits relating to environmental matters, storm water, and other pollution control applicable to the construction, alteration or demolition of the Improvements or the occupancy, use or operation of the Leased Premises. Sublessee shall furnish to the Sublessor at the time same are filed, received, submitted or tendered, a copy of every permit application, permit, notice, order or other document sent to or received from any regulatory agency responsible for environmental matters, storm water, or other pollution control. Sublessee is prohibited from allowing, causing, condoning, licensing, permitting or sanctioning any activities, conduct or operations that enable or result in any pollutants, contaminants, hazardous materials or substances or other waste to be accumulated, deposited, placed, released, spilled, stored or used upon or under any portion of the Leased Premises or Park Property or adjacent waters contrary to or in

violation of any of said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. In the event Sublessee violates this prohibition, Sublessee shall be solely responsible for any and all reporting, cleanup, remediation, fines and penalties in accordance with said laws, statutes, ordinances, codes, administrative orders, rules, regulations or permits. Sublessee agrees to indemnify, defend and hold harmless Sublessor against any and all actions, claims, demands, judgments, penalties, liabilities, costs, damages and expenses, remediation costs and response costs, including court costs and attorney's fees incurred by Sublessor arising out of or in connection with contamination resulting from the construction, alteration or demolition of the Improvements or the occupancy, use or operation of the Leased Premises during the Term. The terms of this Section shall survive the termination of this Sublease.

22. SEVERABILITY. If any clause or provision of this Sublease is illegal, invalid or unenforceable under present or future laws effective during the term of this Sublease, then and in that event, it is the intention of the Parties hereto that the remainder of this Sublease shall not be affected thereby.

23. SURRENDER AND HOLDING OVER.

(a) With Sublessor's Consent. If Sublessee shall, with the written consent of the Sublessor, hold over after the expiration or sooner termination of the Term of this Sublease, the resulting tenancy shall, unless otherwise mutually agreed, be on a month-to-month basis until such time as Sublessee shall surrender the Leased Premises (with sixty (60) days' prior written notice to Sublessor) or Sublessor shall re-enter the Leased Premises (with sixty (60) days' prior written notice to Sublessee.) During such month-to-month tenancy, Sublessee shall continue to pay Rent and other charges as established in accordance with the provisions of this Sublease, and shall be bound by all of the other provisions of this Sublease.

(b) Without Sublessor's Consents. If Sublessee shall, without the written consent of the Sublessor, hold over after the expiration or sooner termination of the Term of this Sublease, the resulting tenancy privilege shall, unless otherwise mutually agreed, be a tenancy at sufferance. During such tenancy at sufferance, Sublessee shall pay Rent equal to one hundred fifty percent (150%) of the Rent in effect at the time of expiration or termination, and shall be bound by all of the other provisions of this Sublease.

24. CORPORATE TENANCY. If Sublessee is not a natural person, the undersigned representative of Sublessee hereby warrants and certifies that Sublessee is an entity in good standing and is authorized to do business in the State of Florida. The undersigned representative of Sublessee hereby further warrants and certifies that he or she, as such representative, is authorized and empowered to bind the entity to the terms of this Sublease by his or her signature thereto. Sublessor, before it accepts and delivers this Sublease, may require Sublessee to supply it with a certified copy of the entity resolution or such other document authorizing the execution of this Sublease by Sublessee.

25. INTEGRATION, MERGER AND AMENDMENT. This Sublease contains the entire agreement of the Parties with respect to the subject matter of this Sublease, and fully substitutes, replaces, and supersedes any prior letter of intent, memorandum of understanding and all other prior negotiations, agreements and understandings with respect thereto. This Sublease may not be altered, changed or amended, except by written instrument signed by all Parties hereto and executed in the same formality as this Sublease.

26. NO WAIVER. No provision of this Sublease shall be deemed waived by Sublessor by any act, omission, conduct or course of dealing by Sublessor. Rather, a provision of this Sublease may be waived by Sublessor only by a written instrument duly authorized and executed by Sublessor which specifically identifies the provision being waived. The terms, provisions, covenants, and conditions contained in this Sublease shall apply to, inure to the benefit of, and be binding upon the Parties hereto, and upon their respective permitted successors in interest and legal representatives, except as otherwise expressly provided herein and except that Sublessor shall have no liability to Sublessee under this Sublease except as otherwise expressly stated herein.

27. INSURANCE. Sublessee shall procure and maintain at all times during the term of this Sublease, insurance of the types and to the limits specified herein issued by insurer(s) qualified to do business in Florida whose business reputation, financial stability and claims payment reputation is reasonably satisfactory to Sublessor.

Sublessee acknowledges and agrees that the types and minimum limits of insurance herein required may become inadequate during the Term of this Sublease, and, therefore agrees that the minimum limits may be increased to commercially reasonable limits and/or additional types of insurance may be required by the Sublessor from time to time during the Term of this Sublease, but in no event more than once every five (5) Lease Years.

Unless otherwise agreed by the Sublessor in writing, the amounts, form and type of insurance shall conform to the following minimum requirements:

WORKER'S COMPENSATION

Sublessee shall purchase and maintain Worker's Compensation Insurance Coverage for all Workers' Compensation obligations if legally required. Additionally, the policy, or separately obtained policy, must include Employers Liability Coverage of at least \$100,000 each person- accident, \$100,000 each person-disease, and \$500,000 aggregate – disease.

COMMERCIAL GENERAL LIABILITY COVERAGE

Sublessee shall purchase coverage on forms no more restrictive than the latest editions of the Commercial General Liability forms filed by the Insurance Services Office. Sublessor shall not be considered liable for premium payment or entitled to any premium

return or dividend or be considered a member of any mutual or reciprocal company. Minimum limits of \$1,000,000 per occurrence, and per accident, combined single limit for liability must be provided, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. Coverage must be provided for bodily injury and property damage liability for premises and operations. Fire Legal Liability shall be endorsed onto this policy in an amount of at least \$300,000 per occurrence. The coverage shall be written on occurrence-type basis and the Sublessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

BUSINESS AUTOMOBILE POLICY

Sublessee shall purchase and maintain coverage with minimum limits of \$1,000,000 per accident combined single limits covering bodily injury and property damage liability arising out of operation, maintenance or use of owned, non-owned and hired automobiles and employee non-ownership use, with umbrella insurance coverage making up any difference between the policy limits of underlying policy coverage and the total amount of coverage required. The coverage shall be written on occurrence-type basis and the Sublessor must be listed as an additional insured. Umbrella Liability Insurance coverage shall not be more restrictive than the underlying insurance policy coverages. The coverage shall be written on an occurrence-type basis.

BUILDER'S RISK

Sublessee shall require any contractor constructing, altering, removing or demolishing Improvements of the Leased Premises to provide builder's risk insurance on an Inland Marine "All Risk" type form which includes, without limitation, collapse coverage and windstorm coverage. The amount of such insurance shall be 100% of the completed value of the work being done by such contractor. Such builder's risk policy shall contain a "Waiver of Subrogation" clause in favor of Sublessor. The Sublessor must be listed as an additional insured.

PROPERTY INSURANCE

Sublessee shall maintain in force at all times, property insurance coverage which insures any Improvements on the Leased Premises against fire, extended coverage and Standard Insurance Office (ISO) defined "Special Perils" of physical damage, together with coverages or endorsements for ordinance or law, vandalism, malicious mischief, earthquake, windstorm, hail and storm surge and flood. Sublessor shall be named as an additional insured and loss payee, as its interest may appear, under all such policies of insurance. The amount of coverage will be 100% of the replacement cost. The deductibles under such policies shall be subject to the prior written approval of Sublessor, such approval not to be unreasonably withheld. Such policy shall contain a "Waiver of Subrogation" clause in favor of Sublessor.

CERTIFICATES OF INSURANCE

Sublessee's required insurance shall be documented in Certificates of Insurance furnished to Sublessor that list this Sublease and provide that Sublessor shall be notified at least thirty (30) days in advance of cancellation, nonrenewal or adverse change or restriction in coverage. If requested by Sublessor, Sublessee shall furnish copies of Sublessee's insurance policies, forms, endorsements, jackets and other items forming a part of, or relating to such policies. Certificates shall be on the "Certificate of Insurance" form reasonably acceptable to the Sublessor. Sublessee shall replace any canceled, adversely changed, restricted or non-renewed policies with new policies reasonably acceptable to Sublessor and shall file with Sublessor Certificates of Insurance under the new policies at least fifteen (15) days prior to the effective date of such cancellation, adverse change or restriction. If any policy is not timely replaced, in a manner reasonably acceptable to Sublessor, Sublessee shall, upon instructions of Sublessor, cease all operations on the Leased Premises under this Sublease until authorized by Sublessor, in writing, to resume operations.

REQUIRED INSURANCE PRIMARY

The insurance coverage required of Sublessee shall be considered primary, and all other insurance shall be considered as excess, over and above the Sublessee's required coverage.

LOSS CONTROL AND SAFETY

Sublessee shall retain control over its employees, agents, servants and contractors, as well as control over its guests and invitees, and its activities on and about the Leased Premises and the manner in which such activities shall be undertaken and to that end, Sublessee shall not be deemed to be an agent of Sublessor. Reasonable precaution shall be exercised at all times by Sublessee for the protection of all persons, including employees, and property.

INDEMNITY

Sublessee shall indemnify and hold harmless Sublessor and its elected and appointed officials, officers, members, employees, volunteers, representatives and agents from any and all fines, claims, suits, actions, demands, losses, damages, liabilities, costs and expenses (including, without limitation, attorney's fees) in connection with any loss of life, bodily or personal injury, or damage to or loss of property arising from or out of any occurrence in, upon, at or about the Leased Premises or any part thereof occasioned or caused in whole or in part, either directly or indirectly, by the act omission, negligence, misconduct or breach of this Sublease by Sublessee, its employees, agents, customers, clients, guests, invitees or by any other person entering the Park Property under express or implied invitation of Sublessee; or arising out of this Sublease or Sublessee's use of the Leased Premises; provided, however, that nothing contained herein shall be construed as a waiver, in whole or in part, of the sovereign immunity of

the Sublessor under the Constitution, statutes and case law of the State of Florida, nor as a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Sublessor.

LIMITATION OF SUBLESSOR LIABILITY

In not event shall Sublessor shall be liable or responsible to Sublessee for any loss or damage to any property or the death or injury to any person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition of other governmental body or authority, by other licensee, occupant, user, sublessee or sub-sublessee of the Park Property or any portion thereof, or by any other matter beyond the control of Sublessor, or for any injury or damage or inconvenience which may arise through repair or alteration of any part of the Leased Premises, or failure to make repairs or from any cause whatsoever except the gross negligence or willful misconduct of Sublessor.

28. DEFAULT and REMEDIES.

(a) Events of Default. Each of the following events shall constitute a default by Sublessee under this Sublease (each, an "Event of Default"), to wit:

- (1) Sublessee's failure to pay when due any Monthly Rent Payment, Percentage Rent Payment, or CAM Charge and such failure continues for a period of five (5) days after the due date therefor;
- (2) Sublessee's failure to pay any other sum of money payable hereunder for a period of thirty (30) days after receipt of written notice by or invoice from Sublessor;
- (3) After completion of the Initial Improvements, Sublessee's abandonment of the Leased Premises or failure to substantially use and operate the Leased Premises for the uses and purposes permitted pursuant to Section 2 above for a period of thirty (30) consecutive days, except during the Off-Season (as defined in the Multi-Use Facility Use Agreement);
- (4) Sublessee's failure to observe keep or perform the terms, covenants, agreements and conditions of any of Sections 2, 4, 9, 27 or 45 of this Sublease;
- (5) Except as otherwise provided in clauses (1), (2), (3), (4), (6), (7), (8) or (9) of this paragraph (a), Sublessee's failure to observe, keep or perform any of the other terms, covenants, agreements or conditions of this Sublease for a period of thirty (30) days after receipt of written notice by Sublessor;

- (6) The filing of a voluntary petition in bankruptcy by Sublessee, or the filing of an involuntary petition in bankruptcy against Sublessee which involuntary petition is not dismissed with sixty (60) days after filing;
- (7) Sublessee making a voluntary assignment for the benefit of creditors;
- (8) A receiver or trustee being appointed for Sublessee or a substantial portion of Sublessee's assets;
- (9) Sublessee's interest under this Sublease being sold or transferred under execution or other legal process.

(b) Remedies. Following any Event of Default, Sublessor, in its sole discretion, may exercise any and all rights and remedies available under this Sublease, at law or in equity, and, without limiting the foregoing, may exercise any one or more of the following options, the exercise of any of which shall not be deemed to preclude the exercise of any others herein listed or otherwise provided by statute or general law at the same time or in subsequent times or actions:

- (1) Terminate Sublessee's right to possession of the Leased Premises by any lawful means, in which case this Sublease shall terminate and Sublessee shall immediately surrender possession of the Leased Premises and Improvements to the Sublessor. In such event the Sublessor shall be entitled to accelerate all Rent for the remainder of the Term of this Sublease and to recover from Sublessee all damages incurred by Sublessor by reason of Sublessee's default, including but not limited to the cost of recovering possession of the Leased Premises and Improvements; expenses of re-letting, including necessary renovation and alteration of the Leased Premises and Improvements, reasonable attorney's fees and any real estate commission actually paid; and the worth at the time of award by the court having jurisdiction thereof of (i) the unpaid Rent under this Sublease which had been earned at the time of termination, (ii) the unpaid Rent which would have been earned after termination until the time of award, and (iii) the amount of the unpaid Rent for the balance of the Term of this Sublease. The worth at the time of award of the sums referred to in clauses (i) and (ii) above, shall be computed by allowing interest from the due date at the legal rate applicable to money judgments entered by the courts of the State of Florida. The worth at the time of award of the amount referred to in clause (iii) above shall be computed by discounting such amount at a reasonable discount rate based upon the circumstances existing at the time of the award.

- (2) Without terminating this Sublease, enter and repossess the Leased Premises and Improvements, remove Sublessee's property and signs therefrom, and re-let the same for such rent and upon such terms as shall be satisfactory to the Sublessor without such re-entry and repossession working a forfeiture of the Rent and other charges to be paid and the covenants to be performed by the Sublessee during the remaining Term. For the purpose of such re-letting, the Sublessor shall be entitled to make any repairs, changes, alterations or additions in or to the Leased Premises and/or Improvements that may be necessary or convenient, and the Sublessor shall be entitled to recover from the Sublessee the cost of such repairs, changes, alterations and additions; the expenses of such re-letting; and the difference in value between the rent which would be payable by Sublessee hereunder for the remainder of the Term and the value of the rent to be realized from such re-letting.
- (3) Maintain Sublessee's right to possession, in which case this Sublease shall continue in effect whether or not Sublessee shall have abandoned the Leased Premises and Improvements. In such event the Sublessor shall be entitled to enforce all of Sublessor's rights and remedies under this Sublease, including the right to recover Rent as it becomes due hereunder.
- (4) Perfect a lien on the Leased Premises and Improvements to secure amounts due and owing and to become due and owing by Sublessee under this Sublease, in accordance with the following:
 - (a) The lien is effective from and shall relate back to recording of the original Memorandum of Lease. However, as to any Permitted Mortgage, the lien is effective from and after recording of a claim of lien in the public records of Escambia County.
 - (b) Upon the occurrence of an Event of Default, the Sublessor may record a claim of lien that states the description of the Leased Premises and Improvements, the name of Sublessee, the name and address of the Sublessor, the amounts then due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the Sublessor. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which Sublessor is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by Sublessee or any other person claiming an interest in the Leased Premises or Improvements. The claim of lien secures all unpaid Rent that is due at the time the claim of lien is recorded and Rent that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, all

reasonable costs and attorney's fees incurred by Sublessor incident to the collection process, and all other amounts that is or becomes due and owing by Sublessee under this Sublease. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, Sublessee or Sublessee's agent or attorney may require the Sublessor to enforce a recorded claim of lien against the Leased Premises and Improvements:

NOTICE OF CONTEST OF LIEN

TO: (Names and addresses of the Sublessor)

You are notified that the undersigned contests the claim of lien filed by you on the ____ day of _____, 2____, and recorded in Official Records Book ____ at Page _____, of the public records of Escambia County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice.

Executed this ____ day of _____, 2____.

Signed: (Sublessee or Attorney)

After notice of contest of lien has been recorded, Sublessee shall mail a copy of the recorded notice to the Sublessor by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, Sublessor shall have 90 days in which to file an action to enforce the lien; and, if the action is not filed within the 90-day period, the lien terminates, without prejudice to all other rights and remedies of Sublessor under this Sublease, at law or in equity. However, the 90-day period shall be extended for any length of time during which Sublessor is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by Sublessee or by any other person claiming an interest in the parcel.

(c) Rights Cumulative; No Waiver. The respective rights of Sublessor under this Sublease shall be cumulative and shall be in addition to rights as otherwise provided at law or in equity, and failure on the part of Sublessor to exercise promptly any such rights afforded it shall not operate to forfeit any such rights. No forbearance by Sublessor

of action upon any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions, and covenants herein contained. Forbearance by Sublessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any other violation or Event of Default. Further, the acceptance by the Sublessor of Rent, CAM Charges or other charges or payments by the Sublessee for any period or periods after the occurrence of an Event of Default shall not be deemed a waiver of such Event of Default or a waiver of or estoppel to enforce any right or remedy on the part of the Sublessor arising or existing by reason of such Event of Default, whether or not Sublessor has or had knowledge of such Event of Default. Legal actions to recover for loss or damage that Sublessor may suffer by reason of termination of this Sublease or the deficiency from any reletting as provided for above shall include the expense of repossession or reletting and any repairs or remodeling undertaken by the Sublessor following repossession.

29. QUIET ENJOYMENT. Provided Sublessee has performed all of the terms, covenants, agreements and conditions of this Sublease, including the payment of Rent and all other sums due hereunder, Sublessee shall peaceably and quietly hold and enjoy the Leased Premises subject to the provisions and conditions of this Sublease.

30. NOTICES. Any notices required or permitted by this Sublease or by law to be sent to Sublessor shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Sublessor as follows:

City of Pensacola
Attn: City Administrator
222 West Main Street, 7th Floor
Pensacola, Florida 32502

Any notices required or permitted by this Sublease or by law to be sent to Sublessee shall be sufficient if transmitted by personal delivery, nationally recognized overnight delivery service (such as Federal Express Corporation or UPS), or certified mail, return receipt requested, addressed to Sublessee as follows:

Northwest Florida Professional Baseball, LLC
Attn: Quinton D. Studer
351 W CEDAR STREET
PENSACOLA, FL 32502

Either Party may change the above address by providing written notice to the other Party.

31. VENUE. Venue for any claim, action or proceeding arising out of this Sublease shall be Escambia County, Florida.

32. STATE LAW APPLICATION. The laws of the State of Florida shall be the law applied in resolution of any action, claim or other proceeding arising out of this Sublease.

33. ATTORNEY'S FEES. In the event that any Party to this Sublease fails to comply with and abide by any of the stipulations, agreements, covenants, and conditions of this Sublease, such Party shall pay all and singular the reasonable costs, charges, and expenses of collection and enforcement of this Sublease, including without limitation reasonable attorneys' fees (including without limitation those in connection with any appeal or bankruptcy or insolvency proceeding) reasonably incurred or paid at any time by the other Party or Parties to this Sublease to enforce this Sublease or to collect any sums due and owing under this Sublease.

34. MEMORANDUM OF LEASE. Contemporaneously with the execution of this Sublease, the Parties shall execute a memorandum of this Sublease in recordable form, which shall be sufficient to give constructive notice of this Sublease and its material terms. Sublessee, at Sublessee's expense, shall record such memorandum in the official records of the Escambia County Clerk of Circuit Court.

35. ESTOPPEL CERTIFICATES. Within ten (10) business days after a written request from Sublessee, Sublessor shall certify, by a duly executed and acknowledged written instrument, to any mortgagee of Sublessee or proposed mortgagee or proposed sub-sublessee of the Leased Premises or any other person, firm or corporation specified by Sublessee, as to the validity and force and effect of this Sublease, the existence of any default on the part of any Party hereunder, and the existence of any offset, counterclaim or defense thereto on the part of Sublessor, as well as to any other matters as may be reasonably requested by Sublessee, up to but not more than three (3) times during any Lease Year. Sublessee shall pay the reasonable costs and attorney's fees incurred by the Sublessor in connection with each such estoppel certificate.

36. NON-DISCRIMINATION. Sublessee agrees that it will not discriminate upon the basis of race, creed, color, national origin, age, disability or sex in the construction, alteration or demolition of the Improvements or the use, occupancy, or operation of the Leased Premises or Improvements.

37. SIGNAGE. Except as otherwise permitted pursuant to Section 4 above, Sublessee shall not construct, operate or maintain any signage on the Leased Premises or Improvements or on any other portion of the Park Property without the prior the written approval of Sublessor which shall not be unreasonably withheld, conditioned or delayed. Notwithstanding any such approval, all signage shall comply with applicable codes, ordinances and regulations imposed by the City of Pensacola. Subject to the Sublessor's approval, Sublessee may affix signage to structures constructed on Parcel 9 and shall be permitted to place location/way-finding signs on the Leased Premises located adjacent to the Community Maritime Park.

38. SUBLEASEHOLD MORTGAGES BY SUBLESSEE. The Sublessee shall not mortgage or collaterally assign this Sublease (in whole or in part) or the Sublessee's interest in or to the Leased Premises or any part thereof without first having obtained the Sublessor's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed; provided that the Sublessor may, at its option, approve only a first priority mortgage or collateral assignment and provided further that the Sublessor shall not be obligated to subordinate its interest in this Sublease, the Master Lease or the Leased Premises to any subleasehold mortgage or collateral assignment. Sublessor covenants to execute, within a reasonable time after written request from the Sublessee, a commercially reasonable non-disturbance and attornment agreement, estoppel certificates, and otherwise provide such assurances regarding this Sublease, as Sublessee shall reasonably request in connection with any mortgage; provided, however, that Sublessor shall be bound by this covenant only if all of the provisions of any such certificate or assurance are true and accurate. Each party shall be responsible for its own attorneys' fees in reviewing any SNDA, agreement or certificate provided for in this Section.

39. MORTGAGES BY SUBLESSOR.

(a) In the event the City of Pensacola hereafter places one or more mortgages on its interest in the Leased Premises, this Sublease and Sublessee's rights and subleasehold estate hereunder shall be subject and subordinate to such mortgage(s), provided that the holder of such mortgage executes an subordination, non-disturbance and attornment agreement (SNDA) reasonably satisfactory to Sublessee whereby such holder agrees that in the event of foreclosure of such mortgage, Sublessee shall not be joined in such foreclosure suit and Sublessee's rights and leasehold estate under this Sublease shall not be disturbed so long as Sublessee is not in default under this Sublease. In consideration thereof, Sublessee shall execute such SNDA whereby Sublessee agrees to attorn to such holder or its successors or assigns and acknowledges that this Sublease and Sublessee's subleasehold estate in the Leased Premises are subject to and subordinate to such mortgage.

(b) Sublessee covenants to execute, within ten (10) days after written request from the Sublessor, such estoppel certificates, and otherwise provide such assurances regarding this Sublease, as Sublessor shall reasonably request in connection with any future mortgage; provided, however, that Sublessee shall be bound by this covenant only if all of the provisions of any such certificate or assurance are true and accurate. Each party shall be responsible for its own attorneys' fees in reviewing any SNDA, agreement or certificate provided for in this Section.

40. SUCCESSORS AND ASSIGNS. The terms and provisions of this Sublease are binding upon and shall inure to the benefit of the Sublessor and Sublessee, and their respective successors and assigns.

41. RECITALS; CONTRACT INTERPRETATION. The recitals set forth at the beginning of this Sublease are true and correct and are hereby incorporated herein by reference. The rule of construction to the effect that an instrument shall be construed against its draftsman shall not apply to this Sublease and shall not negate or invalidate any provision of this Sublease.

42. APPROVAL OF CITY; WHEN PENSACOLA CITY COUNCIL CONSENT REQUIRED.

(a) The City of Pensacola hereby approves this Sublease pursuant to Section 10 of the Master Lease.

(b) The consent of the Pensacola City Council shall be required for the matters requiring Sublessor consent or approval under Sections 2 and 9 of this Sublease. All other consents and approvals of the Sublessor required or permitted under the terms of this Sublease may be given, conditioned or withheld by the Mayor of the City of Pensacola or his or her designee.

43. MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. Any other provision of this Sublease to the contrary notwithstanding, in no event shall the Sublessor or Sublessee be liable to any other Party for any special or consequential damages by reason of any breach or default by it under this Sublease, including without limitation loss of income or profits, damage to reputation, or other loss or damages suffered by a Party arising from the interruption or cessation of the business conducted by such Party.

44. NO WAIVER OF SOVEREIGN IMMUNITY. Notwithstanding any contrary provision of this Sublease, except to the extent of the contractual obligations of Sublessor expressly set forth in this Sublease, nothing in this Sublease shall be construed as a waiver, in whole or in part, of the Sublessor's sovereign immunity under the Constitution, statutes and case law of the State of Florida, nor shall any provision of this Sublease be deemed a change or modification in any manner whatsoever of the method or conditions of preserving, asserting, or enforcing any claim or legal liability against the Sublessor.

45. FLORIDA PUBLIC RECORDS LAW. The Florida Public Records Law, as contained in Chapter 119, Florida Statutes, is very broad. As a result, any written communication created or received by Sublessor will be made available to the public and media, upon request, unless a statutory exemption from such disclosure exists. Sublessee shall comply with the Florida Public Records Law in effect from time to time if and to the extent that the Florida Public Records Law is applicable to Sublessee. Notwithstanding any contrary provision in this Sublease, any failure by Sublessee to comply with the Florida Public Records Law, if and to the extent that it is applicable to Sublessee, that continues for seven (7) days after written notice from the Sublessor shall constitute an Event of Default by Sublessee.

IN WITNESS WHEREOF, the Parties have set their respective hands and seals hereto as of the date first written above.

Signed, sealed and delivered
in the presence of:

Northwest Florida Professional Baseball, LLC

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

CITY OF PENSACOLA

a Florida municipal corporation

By: _____

Grover C. Robinson, IV, Mayor

(AFFIX CITY SEAL)

Attest:

Ericka L. Burnett, City Clerk

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

Legal in form and valid as drawn:

Passed: _____

Charles V. Peppler, City Attorney

Approved: _____

President of City Council

EXHIBIT A
BUILDING CONCEPTUAL PLANS



Date: 12/15/2017



This map was prepared by the GIS section of the City of Pensacola and is provided for information purposes only and is not to be used for development of construction plans or any type of engineering services based on information depicted herein. It is maintained for the function of this office only. It is not intended for conveyance nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

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City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-00973

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) SUBGRANT FOR HIGHWAY TRAFFIC FUNDS

RECOMMENDATION:

That City Council accept the FY 2023 Florida Department of Transportation (FDOT) Subgrant for Highway Traffic Safety Funds in the amount of \$45,000. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer the grant, consistent with the terms of the grant and the Mayor's Executive Powers as granted in the City Charter. Finally, that City Council adopt the supplemental budget resolution appropriating grant funds.

HEARING REQUIRED: No Hearing Required

SUMMARY:

According to recently published Traffic Safety Facts 2018 Alcohol-Impaired Driving by the National Highway Traffic Safety Administration (NHTSA), there were 10,511 alcohol related fatalities in 2018. Of those crashes, 67% (7,051) involved a driver with a blood alcohol concentration (BAC) of .15 g/ dL (grams per deciliter) or higher. Florida saw 26% of their fatalities caused by drivers with a BAC of .08 or higher. The City of Pensacola is not immune to the problems caused by people deciding to Drive Under the Influence (DUI).

This is reflected in the City of Pensacola's ranking on the Florida Department of Transportation's (FDOT) FY2023 Highway Safety Matrix (HSM) - Ranking of Florida Cities, Impaired Driving category. Pensacola is ranked 6th out of the 103 Florida Group II Cities for serious injuries and fatalities related to impaired driving (Group II: Population of 15,000-74,999). The HSM rankings are based on the total actual serious injuries and fatalities statewide from 2016 to 2020.

The City of Pensacola, located in Escambia County, is not only a popular place to live, but also a popular tourist destination. The City of Pensacola has a permanent population of approximately 55,000 residents. However, the number of people in the city limits during working days and evenings is significantly higher. An estimated 100,000 vehicles traverse city limits daily as motorists travel to and from work, shopping, errands, etc. Additional traffic is projected during tourist season as residents and tourists head to area beaches and attractions. The daily traffic can be more than 250,000 vehicles during holidays and the summer months. One example of the drastic increases of

population, and the influx of such, was with a recent three-day event at the Pensacola Bay Center in Downtown Pensacola that drew over 40,000 people during the few days. Another event, the Sunbelt Basketball Tournament draws thousands of people from the entire southeastern United States for multiple days, to enjoy the City of Pensacola. The Pensacola Police Department sees the influx of tourism daily, to include the traffic problems associated with it, but we know we can keep the citizens and tourists safe with extra enforcement shifts geared at reducing traffic statistics. It should also be noted, the City of Pensacola is the largest city in the panhandle of Florida, from the Alabama state line to Tallahassee. Thus, almost anyone traveling the area from out of state, and those within state, come to Pensacola because it is the hub for this area of the state.

During 2017, FDOT began reconstructing the Pensacola Bay Bridge. This bridge is an artery between Pensacola Beach and Downtown Pensacola. Both locations contain most of the areas' bar and restaurant establishments, which draw many patrons, especially during the evening and nighttime hours. Coincidentally, much of the construction work on the Pensacola Bay Bridge is being performed during these same hours. The current traffic matrix shows the City of Pensacola is now 20th out of 103 Florida Group II Cities in work zone traffic problems. This has been evident with the increase in traffic now that the coronavirus pandemic is slowing down and travel is increasing. There have been traffic fatalities within this work zone and directly related to impaired driving.

The traffic related statistics, to include impaired driving offenses, are continuing to rise within the City of Pensacola. The Pensacola Police Department (PPD) has significantly increased our efforts over the years, and will continue to do so, to make the roadways safer. Officers have been working overtime via FDOT subgrant funding to combat these statistics over the past few years. These efforts have shown to be useful to lower statistics, but we still have a long way to go to make our roadways some of the safest in the area. The PPD is determined to increase our efforts even more and encourage officers to work overtime for extra enforcement shifts to combat impaired driving offenses. We will also provide, as in years past, continued training in detection and enforcement of DUIs. Accompanied with the traffic statistics, the PPD is requesting overtime salary and benefits to pay for additional officers to conduct high visibility enforcement activities.

With the FDOT subgrant funding that is being provided, the Pensacola Police Department (PPD) will utilize countermeasures detailed in the NHTSA Tenth Edition of the "Countermeasures that Work (CTW): A Highway Safety Countermeasure Guide for State Highway Safety Offices." Specifically, the CTW's found under Chapter 1: Alcohol-and Drug-Impaired Driving. This includes CTW Chapter 1) Sections:

- 2. Deterrence: Enforcement: Subsections
 - 2.1 Publicized Sobriety Checkpoints
 - 2.2 High Visibility Saturation Patrols
 - 2.3 Preliminary Breath Test Devices (PBTs)
- 5. Prevention, Intervention, Communications, and Outreach: Subsections
 - 5.2 Mass-Media Campaigns
 - 5.4 Alternative Transportation
 - 5.5 Designated Drivers
- 6. Underage Drinking and Drinking and Driving: Subsections
 - 6.2 Zero-Tolerance Law Enforcement
 - 6.5 Youth Programs

- 7. Drug-Impaired Driving

7.1 Enforcement of Drug-Impaired Driving

CTW Chapter 1) Section 2. Subsections 2.1 and 2.2; Section 6. Subsection 6.2; Section 7. Subsection 7.1: PPD will conduct 3 publicized checkpoints and/or high visibility enforcement (HVE) saturation/heightened operations/patrols per quarter.

During all enforcement operations related to this subgrant, drug-Impaired driving and zero tolerance traffic laws will be enforced.

The PPD will conduct a public engagement campaign using message boards, local media outlets, social media, and/or press releases to raise awareness of the dangers of impaired driving at least 2 times per quarter. Lastly, the PPD will also participate in the Drive Sober or Get Pulled Over campaign waves throughout the year.

PRIOR ACTION:

None

FUNDING:

Budget: \$ 45,000 (Overtime Salary & Benefits)

Actual: \$ 45,000

FINANCIAL IMPACT:

Adoption of the supplemental budget resolution will appropriate the grant funds.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/4/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
Eric Randall, Chief of Police

ATTACHMENTS:

- 1) FDOT Subgrant for Highway Traffic Safety Funds, Project# M5HVE-2023-00205
- 2) Supplemental Budget Resolution No. 2022-098
- 3) Supplemental Budget Explanation No. 2022-098

PRESENTATION: No

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT)

SUBGRANT FOR HIGHWAY TRAFFIC SAFETY FUNDS

<i>For FDOT Use Only</i>	
Project Number: M5HVE-2023-00205	FDOT Contract Number:
Federal Funds Awarded: \$45,000	FDOT UEI/SAM Number: RFKGNHR7ZH37
Subgrant Award (Start) Date:	Subgrant End Date:
Part I: GENERAL ADMINISTRATIVE INFORMATION	
1. Project Title: Zero Tolerance - Impaired Driving Enforcement Initiative	
2. Federal Funding: \$45,000 Match: \$ Total Cost: \$45,000	
3. Subrecipient Agency: Agency Name: City of Pensacola Address: 222 W. Main Street City: Pensacola State: Florida Zip: 32502	4. Implementing Agency: Agency Name: Pensacola Police Department Address: 711 N. Hayne Street City: Pensacola State: Florida Zip: 32501
5. Federal ID Number or 29 Digit FLAIR Account Number (State Agencies): 596000406	
6. UEI/SAM Number: 073131559	
7. Chief Financial Officer: Agency Name: Amy Lovoy Address: 222 W. Main Street City: Pensacola State: Florida Zip: 32502 Telephone: (850) 435-1821 E-mail: alovoy@cityofpensacola.com	8. Project Director: (Can not receive any benefit under this subgrant) Agency Name: Captain Kristin Brown Address: 711 N. Hayne Street City: Pensacola State: Florida Zip: 32501 Telephone: (850) 435-1851 E-mail: kbrown@cityofpensacola.com
9. Financial Reimbursement Contact: Agency Name: Jennifer Cole Title: Budget & Planning Specialist Telephone: (850) 435-1856 E-Mail: jscole@cityofpensacola.com	10. Project Activity Contact: Agency Name: James Daniels Title: Sergeant Telephone: (850) 435-1862 E-Mail: jdaniels@cityofpensacola.com
11. Payment Remittance Address: Agency Name: City of Pensacola Address: 222 W. Main Street City: Pensacola State: Florida Zip: 32502	

Part II: PROJECT PLAN AND SUPPORTING DATA

State clearly and in detail the aims of the project, precisely what will be done, who will be involved, and what is expected to result. Use the following major headings:

1. Statement of the Problem
2. Proposed Solution
3. Project Objectives
4. Evaluation

1. Statement of the Problem:

According to recently published Traffic Safety Facts 2018 Alcohol-Impaired Driving by the National Highway Traffic Safety Administration (NHTSA), there were 10,511 alcohol related fatalities in 2018. Of those crashes, 67% (7,051) involved a driver with a blood alcohol concentration (BAC) of .15 g/ dL (grams per deciliter) or higher. Florida saw 26% of their fatalities caused by drivers with a BAC of .08 or higher. The City of Pensacola is not immune to the problems caused by people deciding to Drive Under the Influence (DUI).

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2. Proposed Solution:

With the FDOT subgrant funding, the Pensacola Police Department (PPD) will utilize countermeasures detailed

in the NHTSA Tenth Edition of the "Countermeasures that Work (CTW): A Highway Safety Countermeasure Guide for State Highway Safety Offices." Specifically, the CTW's found under Chapter 1: Alcohol-and Drug-Impaired Driving. This includes CTW Chapter 1) Sections:

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 - 6.2 Zero-Tolerance Law Enforcement
 - 6.5 Youth Programs
- 7. Drug-Impaired Driving
 - 7.1 Enforcement of Drug-Impaired Driving

CTW Chapter 1) Section 2. Subsections 2.1 and 2.2; Section 6. Subsection 6.2; Section 7. Subsection 7.1: PPD will conduct 3 publicized checkpoints and/or high visibility enforcement (HVE) saturation/heightened operations/patrols per quarter.

The purpose of checkpoints is to deter driving after drinking by increasing the perceived risk of arrest. To do this, checkpoints should be highly visible, publicized extensively, and conducted regularly, as part of an ongoing sobriety checkpoint program. A secondary benefit of publicized sobriety checkpoint programs is that checkpoints may also be used to check for valid driver licenses, safety belt use, outstanding warrants, stolen vehicles, and other traffic criminal infractions. When conducting a checkpoint, we will hold pre- and post-operation briefings to ensure all law enforcement officers are aware of and understand the policies and procedures, goals, duties, and objectives of the operation.

All checkpoints conducted will have their work documented through either the use of a FDOT Impaired Driving High Visibility Enforcement Activity Report for each law enforcement officer receiving overtime reimbursement under this subgrant or an after-action report. Each after-action report must include at the minimum, but is not limited to:

- The Date, Start and End Time, and Location of Checkpoint,
- A Roster/Attendees - All those working the checkpoint and receiving overtime subgrant reimbursement will have that status denoted next to their name, and
- A listing of checkpoint statistics, including totals for at the minimum: Total Number of Vehicles through the Checkpoint, Total Traffic Stops, Arrests (DUI), Speed Warnings, Speed Citations, Safety Belt Warnings, Safety Belt Citations, and Citations Total. (Note: Child Passenger Restraint violations do count toward the total safety belt violations)

A publicized HVE saturation patrol consists of law enforcement officers patrolling a specific area looking for impaired drivers. The primary purpose of publicized saturation patrol programs is to deter driving after drinking by increasing the perceived risk of arrest. Saturation patrols will be extensively publicized and conducted regularly.

Each law enforcement officer receiving overtime reimbursement during any HVE saturation will have their work documented through the use of an activity report. We understand that we can either use the FDOT Impaired Driving High Visibility Enforcement Activity Report or our agency's own activity report. If we use our own activity report, we understand it must include at the minimum, but are not limited to:

- Name of the law enforcement officer,
- The Date, Start and End Time, and Total Hours Worked That Shift

- Location of Each Contact,

- Type of contact (DUI, speed, aggressive driving, safety belt violation, etc.)

If citation/warnings/arrests are coded, a definition of each code must be provided. Example Code: A. – No Safety Belt

- If the contact was a citation, warning, and/or arrest,

- Comments on that contact. Example Comments: 2 Speeding Citations/1 Safety Belt Warning Speeding educational materials provided; and

- A listing of statistics for that activity report that includes totals for at the minimum: Total Number of Contacts, Total Number of Educational Materials Distributed, Total Arrests (DUI), Total Speed Citations, and Total Safety Belt Citations. (Note: Child Passenger Restraint violations do count toward the total safety belt violations)

During all enforcement operations related to this subgrant, drug-Impaired driving and zero tolerance traffic laws will be enforced.

For all impaired driving enforcement operations related to this subgrant, locations will be based on current data that identifies high-risk areas with the greatest number of impaired driving related crashes, serious injuries, fatalities, and/or traffic violations (citations). Data will be reviewed periodically to ensure that the most current high-risk areas are continually addressed throughout this project period, as outlined in the subgrant's Part V. All impaired driving enforcement operations related to this subgrant will only take place from the hours of 6:00 PM to 6:00 AM. We understand that expansion of enforcement operation hours can be adjusted during the subgrant development process with a justification provided or, if requested post award date, based on the submission of supporting data to and prior approval by the FDOT State Safety Office, as outlined in the subgrant's Part V.

All law enforcement officers taking enforcement actions and receiving overtime compensation under this subgrant will be both a sworn law enforcement officer and currently certified in at least one of the NHTSA required credentials for impaired driving enforcement within the last five years, as outlined in the subgrant's Part V.

All enforcement activities will start within 60 days of this subgrant's award date, unless otherwise approved by the FDOT State Safety Office.

CTW Chapter 1) Section 2. Subsections 2.3; Section 5. Subsections 5.2, 5.4, and 5.5; and Section 6. Subsections 6.2 and 6.5: PPD will also be conducting and/or participating in 4 educational/community outreach events focused on increasing impaired driving awareness during the project period.

PPD officers will be equipped with the Portable Breath Testing instruments to enforce the zero tolerance laws regarding underage drinking and driving. PPD officers will continue to educate the youth in area schools by periodically speaking at school events and public functions. We will also work closely with the Escambia County School District and the Santa Rosa County School District to promote impaired driving awareness and discuss the dangers and destructive behavior associated with impaired driving. Our agency has an impaired driving simulated course to assist in our efforts to educate the public and youth in our schools.

Our agency will conduct a public engagement campaign through the use of message boards, local media outlets, social media, and/or press releases to raise awareness of the dangers of impaired driving at least 2 times per quarter.

Lastly, we will also participate in the Drive Sober or Get Pulled Over campaign waves throughout the year.

3. Project Objectives:

- a. Start enforcement activities within 60 days of subgrant award, unless otherwise approved by the FDOT State Safety Office.
- b. Strive to decrease impaired driving crashes and fatalities citywide by 3% when compared to the previous three-year average.
- c. Conduct at least 3 impaired driving high visibility overtime enforcement operations per quarter.
- d. Participate in the Drive Sober or Get Pulled Over campaign through impaired driving overtime enforcement operations and educational/community activities.
- e. Conduct and/or participate in 4 educational/community outreach events/activities to increase impaired driving awareness during the project period.
- f. Provide impaired driving information and education to the public through the use of multimedia outlets (i.e., message boards, local media outlets, social media, press releases, printed materials, etc.) at least 2 times per quarter.

4. Evaluation:

- a. Enforcement activity start date.
- b. Impaired driving crashes and fatalities are reduced by 3% citywide, compared to the previous three-year average.
- c. The number of impaired driving high visibility overtime enforcement operations conducted each quarter.
- d. The number of impaired driving overtime enforcement operations conducted, and education/community activities conducted/participated in during the Drive Sober or Get Pulled Over campaign.
- e. The number of educational/community outreach events/activities conducted or participated in to increase impaired driving awareness during the project period.
- f. The number of instances that impaired driving information and education is provided to the public through the use of multimedia outlets each quarter.

Part III: PROJECT DETAIL BUDGET

Project Title: Zero Tolerance - Impaired Driving Enforcement Initiative
Project Number: M5HVE-2023-00205
FDOT Contract Number: _____

Each budget category subtotal and individual line item costs listed below cannot be exceeded. The FDOT State Safety Office may approve shifts between budget categories and line items via an amendment.

BUDGET CATEGORY	NARRATIVE	FEDERAL FUNDS	MATCH	TOTAL COST	INDIRECT ELIGIBLE
A. Personnel Services					
Overtime Salary and Benefits	Overtime Salary and Benefits for law enforcement officers, benefits to include FICA (Social Security and Medicare) and Retirement.	\$45,000	\$	\$45,000	No
Subtotal:		\$45,000	\$	\$45,000	
B. Contractual Services					
Subtotal:		\$	\$	\$	
C. Expenses					
Subtotal:		\$	\$	\$	
D. Equipment Costing \$5000 or More					
Subtotal:		\$	\$	\$	
E. Indirect Cost					
Subtotal:		\$		\$	
Total Cost of Project:		\$45,000	\$	\$45,000	

Part IV: PERFORMANCE REPORT

Project Title: Zero Tolerance - Impaired Driving Enforcement Initiative
Project Number: M5HVE-2023-00205
FDOT Contract Number: _____

Minimum Performance Standards

The following are the minimum performance standards required in this subgrant agreement. The status of these standards will be reported using FDOT form number 500-065-19 Performance Report and shall be included with each request for reimbursement.

1. Submit request(s) for financial reimbursement.
2. Provide performance report(s).
3. Collect and analyze crash data to determine focus areas for targeted impaired driving enforcement.
4. Conduct impaired driving high visibility enforcement (HVE) operations.
5. Conduct and/or participate in outreach/educational event/activities for impaired driving.
6. Disseminate impaired driving information and education to the public through the use of either message boards, local media outlets, social media, and/or press releases during this claim period.

National Highway Traffic Safety Administration (NHTSA) Required Activity Reporting

The following statistics are required reporting for any traffic safety enforcement grant. (enforcement grants only)

1. Number of seat belt citations issued during subgrant-funded enforcement activities.
2. Number of impaired driving arrests made during subgrant-funded enforcement activities.
3. Number of speeding citations issued during subgrant-funded enforcement activities.

Part V: Acceptance and Agreement

Conditions of Subgrant Agreement. Upon approval of this subgrant agreement for highway safety funds, the following terms and conditions shall become binding. The term "Subrecipient" referred to herein, will reference both the Subrecipient and its Implementing Agency. This agreement is line item specific and an amendment to the subgrant agreement is required for any reallocation of funds provided under this subgrant agreement.

FEDERAL REGULATIONS

1. **Access to Public Records and Monitoring.** The Florida Department of Transportation (FDOT), National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA), Chief Financial Officer (CFO), and Auditor General (AG) of the State of Florida, or any of their duly authorized representatives, shall have access for the purpose of audit and examination of books, documents, papers, and records of the Subrecipient and to relevant books and records of the Subrecipient which are not protected from disclosure by State or Federal law, and its consultants and contractors under this subgrant agreement, as provided under applicable State or Federal law.

In addition to review of audits conducted in accordance with 2 CFR Part 200, herein incorporated by reference, monitoring procedures will include on-site visits by Department staff, limited scope audits as defined by 2 CFR Part 200, and status checks of subgrant activity via telephone calls from FDOT State Safety Office staff to Subrecipients. By entering into this subgrant agreement, Subrecipients agree to comply and cooperate with monitoring procedures. In the event that a limited scope audit of the Subrecipient is performed, the Subrecipient agrees to bring the project into compliance with this subgrant agreement. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the CFO or AG to the extent allowed by State or Federal law.

2. **Audit.** The administration of resources awarded through the Department to the Subrecipient by this subgrant agreement may be subject to audits and/or monitoring by the Department. The following requirements do not limit the authority of the Department to conduct or arrange for the conduct of additional audits or evaluations of Federal awards or limit the authority of any State agency inspector general, the State of Florida Auditor General or any other State official. With the exception of documents protected by State law, the Subrecipient shall comply with all audit and audit reporting requirements as specified below.
 - (a) In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, monitoring procedures may include but not be limited to on-site visits by Department staff and/or other procedures including reviewing any required performance and financial reports, following up, ensuring corrective action, and issuing management decisions on weaknesses found through audits when those findings pertain to Federal awards provided through the Department by this subgrant agreement. By entering into this subgrant agreement, the Subrecipient agrees to comply and cooperate fully with any monitoring procedures/processes deemed appropriate by the Department. The Subrecipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Department, State of Florida Chief Financial Officer (CFO) or State of Florida Auditor General.
 - (b) The Subrecipient, a non-Federal entity as defined by 2 CFR Part 200, Subpart F – Audit Requirements, as a subrecipient of a Federal award awarded by the Department through this subgrant agreement is subject to the following requirements:
 - i. In the event the Subrecipient expends a total amount of Federal awards equal to or in excess of the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, the Subrecipient must have a Federal single or program-specific audit for such fiscal year conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements. Part VI to this subgrant agreement provides the required Federal award identification information needed by the Subrecipient to further comply with the requirements of 2 CFR Part 200, Subpart F – Audit Requirements. In determining Federal awards expended in a fiscal year, the Subrecipient must consider all sources of Federal awards based on when the activity related to the Federal award occurs, including the Federal award provided through the Department by this subgrant agreement. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR Part 200, Subpart F – Audit Requirements. An audit conducted by the State of Florida Auditor General in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, will meet the requirements of this part.
 - ii. In connection with the audit requirements, the Subrecipient shall fulfill the requirements relative to the auditee responsibilities as provided in 2 CFR Part 200, Subpart F – Audit Requirements.

- iii. In the event the Subrecipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards, the Subrecipient is exempt from Federal audit requirements for that fiscal year. However, the Subrecipient must provide a single audit exemption statement to the Department at FDOTSingleAudit@dot.state.fl.us no later than nine months after the end of the Subrecipient's audit period for each applicable audit year. In the event the Subrecipient expends less than the threshold established by 2 CFR Part 200, Subpart F – Audit Requirements, in Federal awards in a fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F – Audit Requirements, the cost of the audit must be paid from non-Federal resources (*i.e.*, the cost of such an audit must be paid from the Subrecipient's resources obtained from other than Federal entities).
- iv. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, and required by this section, shall be submitted, when required by 2 CFR §200.512, by or on behalf of the Subrecipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR §200.36 and §200.512. The FAC's website provides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website. The FAC is the repository of record for audits required by 2 CFR Part 200, Subpart F – Audit Requirements, and this Agreement. However, the Department requires a copy of the audit reporting package also be submitted to FDOTSingleAudit@dot.state.fl.us within the earlier of 30 calendar days after receipt of the auditor's report(s) or nine months after the end of the audit period as required by 2 CFR Part 200, Subpart F – Audit Requirements.
- v. Within six months of acceptance of the audit report by the FAC, the Department will review the Subrecipient's audit reporting package, including corrective action plans and management letters, to the extent necessary to determine whether timely and appropriate action on all deficiencies has been taken pertaining to the Federal award provided through the Department by this subgrant agreement. If the Subrecipient fails to have an audit conducted in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, the Department may impose additional conditions to remedy noncompliance. If the Department determines that noncompliance cannot be remedied by imposing additional conditions, the Department may take appropriate actions to enforce compliance, which actions may include but not be limited to the following:
 - 1. Temporarily withhold cash payments pending correction of the deficiency by the Subrecipient or more severe enforcement action by the Department
 - 2. Disallow (deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
 - 3. Wholly or partly suspend or terminate the Federal award
 - 4. Initiate suspension or debarment proceedings as authorized under 2 CFR Part 180 and Federal awarding agency regulations (or in the case of the Department, recommend such a proceeding be initiated by the Federal awarding agency)
 - 5. Withhold further Federal awards for the Project or program
 - 6. Take other remedies that may be legally available
- vi. As a condition of receiving this Federal award, the Subrecipient shall permit the Department, or its designee, the CFO or State of Florida Auditor General access to the Subrecipient's records including financial statements, the independent auditor's working papers and project records as necessary. Records related to unresolved audit findings, appeals or litigation shall be retained until the action is complete or the dispute is resolved.
- vii. Copies of financial reporting packages required by this section shall be submitted by or on behalf of the Subrecipient directly to each of the following:

Office of Comptroller, MS 24
605 Suwannee Street
Tallahassee, Florida 32399-0450
FDOTSingleAudit@dot.state.fl.us

The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<https://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

- viii. Any reports or other information required to be submitted to the Department pursuant to this Agreement shall be submitted timely in accordance with 2 CFR §200.512, section 215.97, Florida Statutes, and Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- ix. The Subrecipient, when submitting financial reporting packages to the Department for audits done in accordance with 2 CFR Part 200, Subpart F – Audit Requirements, or Chapters 10.550 (local government entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Subrecipient in correspondence accompanying the reporting package.

- (c) The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of five years from the date the audit report is issued and shall allow the Department, or its designee, the CFO or State of Florida Auditor General access to such records upon request. The Subrecipient shall ensure that the audit working papers are made available to the Department, or its designee, the CFO, or State of Florida Auditor General upon request for a period of five years from the date the audit report is issued unless extended in writing by the Department. The Subrecipient shall further permit access to all Project records by the Secretary and Inspector General of the United States Department of Transportation and the Comptroller General of the United States, or their designees.
- (d) The Subrecipient shall permit, and shall require its contractors to permit, the Department's and NHTSA's authorized representatives to access the Project site; inspect all work, materials, payrolls, and records; and to audit the books, records and accounts pertaining to the financing and development of the Project.

3. **Offsets.** If, after subgrant completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset the amount claimed from payments due for work or services under any other agreement it has with the Subrecipient if, upon demand, payment of the claimed amount is not made within 60 days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.

4. **Buy America Act.** The Subrecipient agrees to comply and require consultants and contractors to comply with all applicable standards, orders, and regulations issued pursuant to the Buy America Act, Buy America Act Waiver (Docket No. NHTSA-2015-0065) and NHTSA Guidance Buy American Act Procedure for Highway Safety Grant Programs (revised 11-20-2015) herein incorporated by reference. The Subrecipient shall include the following Buy America provisions in all subcontract awards:

The Buy America Act prohibits the use of Federal highway safety grant funds to purchase any manufactured product or software/information technology systems whose unit purchase price is \$5,000 or more, including motor vehicles, that is not produced in the United States. NHTSA may waive those requirements if (1) their application would be inconsistent with the public interest; (2) such materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) the inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

Each manufactured end product must comply with the provisions of the Buy America Act. Additionally, any manufactured add-on to an end product is, itself, an end product that must comply with the Act.

To be reimbursed with Federal highway safety grant funds for a purchase, a State must comply with the requirements of the Buy America Act. Non-compliance will result in denial of reimbursement.

5. **Clean Air Act and Federal Water Pollution Control Act.** Subgrant agreements for amounts in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). The Subrecipient shall include this provision in all subcontract awards in excess of \$150,000.

6. **Code of Conduct.** The Subrecipient has established, and will maintain, a written code or standard of conduct applicable to its officers, employees, board members or agents, and those individuals' relatives, that prohibits their involvement in the selection, award, or administration of any contract in connection with the Project if they have a present or potential financial or other significant interest therein and prohibits the acceptance of any gratuity, favor, or other thing of monetary value from any person interested or involved in the performance of work on the Project.
7. **Conferences and Inspection of Work.** Conferences may be held at the request of any party to this subgrant agreement. Representatives of the Department or the U.S. Department of Transportation (USDOT), or both, shall be privileged to visit the site for the purpose of inspection and assessment of work being performed at any time.
8. **Contract Work Hours and Safety Standards Act.** Where applicable, all subcontracts under this subgrant agreement in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
9. **Debarment and Suspension.** No subcontract issued under this subgrant agreement, will be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
10. **Disadvantaged Business Enterprises (DBE).**
 - (a) The Subrecipient agrees to the following assurance:

The Subrecipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program required by 49 CFR, Part 26, herein incorporated by reference. The Subrecipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this subgrant agreement. Upon notification to the Subrecipient of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.), herein incorporated by reference.
 - (b) The Subrecipient agrees to include the following assurance in each contract with a consultant or contractor and to require the consultant or contractor to include this assurance in all subcontract agreements:

The consultant or contractor and subconsultant or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The consultant or contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT-assisted contracts. Failure by the consultant or contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Subrecipient or the Department deems appropriate.
11. **Methods of procurement.** Subrecipients must follow the procurement standards in 2 CFR 200 sections 200.318 through 200.327.
12. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**
 - (a) The Subrecipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
 - (b) Affirmative steps must include:
 - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

13. Domestic Preference for Procurements. As appropriate and to the extent consistent with law, the Subrecipient should, to the greatest extent practicable under this Subgrant, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts including all purchase orders for work or products under this subgrant.

For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

14. Equal Employment Opportunity. No person shall, on the grounds of race, color, religion, sex, handicap, or national origin, be excluded from participation in, be refused the benefits of, or be otherwise subjected to discrimination under this Agreement, or any project, program, or activity that receives or benefits from this Agreement. The Subrecipient agrees to comply with Executive Order (E.O.) 11246, as amended by E.O. 11375, and as supplemented by 41 CFR, Part 60, herein incorporated by reference. The Equal Opportunity Clause contained in 41 CFR section 60-1.4 is included in this Agreement by reference.

In connection with the carrying out of the Project, the Subrecipient shall not discriminate against any employee or applicant for employment because of race, age, creed, color, sex or national origin and will comply with all Federal statutes and implementing regulations relating to nondiscrimination. The Subrecipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, age, creed, color, sex, or national origin. Such action shall include, but not be limited to, the following: Employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Subrecipient shall insert the foregoing provision modified only to show the particular contractual relationship in all its contracts in connection with the development or operation of the Project, except contracts for standard commercial supplies or raw materials, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Subrecipient shall post, in conspicuous places available to employees and applicants for employment for Project work, notices.

15. No Federal Obligation. This agreement is financed by federal funds. However, payments to the subrecipient will be made by the Department. The United States is not a party to this Agreement and no reference in this Agreement, to the United States, USDOT, NHTSA, or any representatives of the federal government makes the United States a party to this Agreement.

16. Nondiscrimination. Subrecipients will comply with all Federal statutes and implementing regulations relating to nondiscrimination ("Federal Nondiscrimination Authorities"). These include but are not limited to:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21
- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects)
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. 324 *et seq.*), and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683 and 1685–1686) (prohibit discrimination on the basis of sex)
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability) and 49 CFR part 27

- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 et seq.), (prohibits discrimination on the basis of age)
- (f) The Civil Rights Restoration Act of 1987, (Pub. L. 100–209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid recipients, Subrecipient’s and contractors, whether such programs or activities are Federally-funded or not)
- (g) Titles II and III of the Americans with Disabilities Act (42 U.S.C. 12131–12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing) and 49 CFR parts 37 and 38
- (h) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations)
- (i) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding recipients take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR 74087–74100)
- (j) Nondiscrimination Clause.

During the performance of this subgrant, the Subrecipient agrees:

- (a) To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time
- (b) Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein
- (c) To permit access to its books, records, accounts, other sources of information, and its facilities as required by the FDOT State Safety Office, USDOT or NHTSA
- (d) That, in event a Subrecipient fails to comply with any nondiscrimination provisions in this subgrant, the FDOT State Safety Office will have the right to impose such subgrant sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the Subrecipient under the contract/agreement until the Subrecipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part.
- (e) To insert this clause, including paragraphs (a) through (e), in every subcontract and sub-agreement and in every solicitation for a subcontract or sub-agreement, which receives Federal funds under this program

17. Ownership of Data and Creative Material. The ownership of material, discoveries, inventions and results developed, produced, or discovered by this subgrant agreement are governed by the terms of 2 CFR, Section 200.315, Intangible Property, herein incorporated by reference.

The Subrecipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this Subgrant. The Federal and State awarding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal and State purposes, and to authorize others to do so.

The Federal Government has the right to:

- (1) Obtain, reproduce, publish, or otherwise use the data produced under a Federal award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal and State purposes.

18. Political Activity. The Subrecipient will comply with provisions of the Hatch Act (5 U.S.C. 1501–1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

19. Prohibition on certain telecommunications and video surveillance services or equipment. Subrecipients are prohibited from obligating or expending loan or subgrant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or

- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

20. Property Accountability. The Subrecipient shall establish and administer a system to control, protect, preserve, use, and maintain and dispose of any property furnished by the Department, or purchased pursuant to this subgrant agreement in accordance with Federal Property Management Standards as set forth in 49 CFR, Section 18.32, 49 CFR 19, Section 19.34, or 2 CFR, 200.33, herein incorporated by reference. This obligation continues as long as the property is retained by the Subrecipient notwithstanding the ending of this subgrant agreement.

21. Restrictions on Lobbying. The Subrecipient agrees to comply and require consultants and contractors to comply with 49 CFR, Part 20, New Restrictions on Lobbying, herein incorporated by reference, for filing of certification and disclosure forms.

- (a) **Certification Regarding Federal Lobbying.** The Subrecipient certifies, to the best of his or her knowledge and belief, that:

- i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- iii. The Subrecipient shall require that the language of this certification be included in the award documents for all sub-award at all tiers (including subcontracts, subgrants, and contracts under grant, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly.
- iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- (b) **Restriction on State Lobbying.** None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

- (c) **Restriction of Use for Federal Civilian and Military Employees.** Subgrant funding is not allowable for the cost of training federal civilian and military employees. Indian Nations may be supported with written approval from the FDOT Traffic Safety Administrator and NHTSA.

22. Termination and Suspension.

- (a) **Generally.** If: (i) the Subrecipient abandons or, before the end of the federal fiscal year for which financial assistance for the Project is provided under this Agreement, finally discontinues the Project; (ii) the Subrecipient fails to comply with applicable law or the terms of this Agreement; or (iii) for any other reason, the commencement, prosecution, or timely completion of the Project by the Subrecipient is rendered improbable, infeasible, impossible, or illegal, the Department may, by written notice to the Subrecipient, suspend any or all of its obligations under this Agreement until such time as the event or condition resulting in such suspension has ceased or been corrected, or the Department may terminate any or all of its obligations under this Agreement. Termination of this Agreement shall be governed by the provisions of 2 CFR Part 200.

- (b) **Actions Upon Termination or Suspension.** Upon receipt of any final termination or suspension notice from the Department, the Subrecipient shall proceed promptly to carry out the actions required in such notice, which may include any or all of the following: (1) necessary action to terminate or suspend, as the case may be, Project activities and contracts and such other action as may be required or desirable to keep to the minimum the costs upon the basis of which the financing is to be computed; (2) furnish a statement of the Project activities and contracts, and other undertakings the cost of which are otherwise includable as Project costs; and, (3) remit to the Department such portion of the financing and any advance payment previously received as is determined by the Department to be due under the provisions of the Agreement. The termination or suspension shall be carried out in conformity with the latest schedule, plan, and budget as approved by the Department or upon the basis of terms and conditions imposed by the Department upon the failure of the Subrecipient to furnish the schedule, plan, and budget within a reasonable time. The approval of a remittance by the Subrecipient shall not constitute a waiver of any claim which the Department may otherwise have arising out of this Agreement.
 - (c) **Termination for Convenience.** In accordance with Appendix II to 2 CFR Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, either Party may terminate this Agreement for convenience upon thirty (30) days' advance written notice to the other Party. Termination of this Agreement, as such, will not affect payment for services satisfactorily furnished prior to the termination.
- 23. Human Trafficking.** The Subrecipient shall include a provision in each contract it enters into with a private entity in connection with the Project by which the Subrecipient's contractor agrees that it and its employees that perform any work on the Project shall not, during the term of this Agreement, engage in trafficking in persons, procure a commercial sex act, or use forced labor in the performance of work on the Project.
- 24. Unauthorized Aliens.** The Department shall consider the employment by the Subrecipient of unauthorized aliens a violation of Section 274A of the Immigration and Nationality Act. If the Subrecipient knowingly employs unauthorized aliens, such violation will be cause for unilateral cancellation of this Agreement.
- 25. Title VII - Civil Rights Act of 1964.** Execution of this Agreement constitutes a certification that the Subrecipient will comply with all the requirements imposed by Title VII of the Civil Rights Act of 1964 (42 U.S.C. 1981, et seq.), which among other things, prohibits discrimination in employment on the basis of race, color, national origin, creed, sex, and age.
- 26. Americans with Disabilities Act of 1990 (ADA).** Execution of this Agreement constitutes a certification that the Subrecipient will comply with all the requirements imposed by the ADA (42 U.S.C. 12101, et seq.), the regulations of the federal government issued thereunder, and the assurance by the Subrecipient pursuant thereto.
- 27. Integrity Certification.** By signing this Subgrant Agreement, the Subrecipient certifies that neither it nor its contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. This certification is a material representation of fact upon which the Department is relying in entering this Agreement. If it is later determined that the Subrecipient knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment. The Subrecipient shall provide to the Department immediate written notice if at any time the Subrecipient learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 28. Federal Encouragements.**
 - (a) **Vehicle Pursuits.** Pursuant to 23 U.S.C. 402(j), all law enforcement agencies are encouraged to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police that are currently in effect.
 - (b) **Policy on Seat Belt Use.** In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, subrecipients are encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles.
 - (c) **Policy on Banning Text Messaging While Driving.** In accordance with Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, and DOT Order 3902.10, Text Messaging While Driving, subrecipients are encouraged to:
 - i. Adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or rented vehicles, Government-owned, leased or rented vehicles, or privately-owned vehicles when on official business or when performing any work on behalf of the subrecipient agency and/or the Government.

- ii. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting and driving.
- iii. Insert the substance of this section, including this sentence, in all sub-agreement/subcontracts funded with the subaward provided under this Agreement that are \$15,000 or more.

29. Reversion of Unexpended Subgrant Funds. All funds granted by the Department under this Agreement that have not been expended during the term of this Agreement shall revert to the Department.

STATE REGULATIONS

30. Compliance with State Procurement of Personal Property and Services Laws. The Subrecipient agrees to comply with all applicable provisions of Chapter 287, Florida Statutes (F.S.). The following provisions are stated in this subgrant agreement pursuant to sections 287.133(2)(a) and 287.134(2)(a), F.S.

- (a) **Section 287.133 (2)(a), F.S.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in section 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
- (b) **Section 287.134 (2)(a), F.S.** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
- (c) The convicted vendor list and discriminatory vendor list can be found on the Florida Department of Management Services (DMS) website.

31. Compliance with State Public Records Laws. The Subrecipient agrees to comply with all provisions provided in Chapter 119 F.S. If the Subrecipient receives a public records request concerning its work undertaken pursuant to this Department subgrant agreement, the Subrecipient must take appropriate action as required by Chapter 119, F.S. If the Subrecipient is unable to ascertain how best to comply with its obligations, it should seek the advice of counsel and/or FDOT State Safety Office.

The Department shall unilaterally cancel this subgrant agreement if the Subrecipient refuses to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, F.S., and made or received by the Subrecipient in conjunction with this subgrant agreement.

32. Cooperation with Inspector General. It is the duty of every Subrecipient to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this subgrant agreement. Section 20.055(5), F.S. The Subrecipient agrees to comply with Section 20.055(5), F.S., and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), F.S.

33. E-Verify. Subrecipients:

- (a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Vendor/Contractor during the term of the contract; and
- (b) Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

34. Indemnification and Insurance.

(a) **Indemnification.** To the extent permitted by law and as limited by and pursuant to the provisions of Section 768.28, Florida Statutes, the Subrecipient shall indemnify and hold harmless the Department, including the Department's officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Subrecipient and persons employed or utilized by the Subrecipient in the performance of this Agreement. This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Subrecipient's sovereign immunity.

(b) **Subrecipient Contracts.** Subrecipient agrees to include the following indemnification clause in all contracts with contractors, subcontractors, consultants, or subconsultants who perform work in connection with this Agreement (modified to appropriately identify the parties):

"To the fullest extent permitted by law, the Subrecipient's contractor/consultant shall indemnify and hold harmless the Subrecipient and the State of Florida, Department of Transportation, including the Department's officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the contractor/consultant and persons employed or utilized by the contractor/consultant in the performance of this Agreement.

This indemnification shall survive the termination of this Agreement. Nothing contained in this paragraph is intended to nor shall it constitute a waiver of the State of Florida and the Subrecipient's sovereign immunity."

(c) **Workers' Compensation.** The Subrecipient shall provide Workers' Compensation Insurance in accordance with Florida's Workers' Compensation law for all employees. If contracting for any of the work, the Subrecipient shall ensure that its contractors have Workers' Compensation Insurance for their employees in accordance with Florida's Workers' Compensation law. If using "leased employees" or employees obtained through professional employer organizations ("PEO's"), the Subrecipient shall ensure that such employees are covered by Workers' Compensation insurance through the PEO's or other leasing entities. Ensure that any equipment rental agreements that include operators or other personnel who are employees of independent contractors, sole proprietorships or partners are covered by insurance required under Florida's Workers' Compensation law.

35. Reimbursement Obligation. The State of Florida's performance and obligation to reimburse the Subrecipient shall be subject to the availability of Federal highway safety funds and an annual appropriation by the Legislature.

36. Responsibility for Claims and Liability. Subject to the limitations of Section 768.28, F.S., the Subrecipient shall be required to defend, hold harmless and indemnify the Department, NHTSA, FHWA, and USDOT, from all claims and liability, or both, due to negligence, recklessness, or intentional wrongful misconduct of Subrecipient, and its contractor, consultant, agents and employees. The Subrecipient shall be liable for any loss of, or damage to, any material purchased or developed under this subgrant agreement which is caused by the Subrecipient's failure to exercise such care in regard to said material as a reasonable careful owner of similar materials would exercise.

The parties executing this subgrant agreement specifically agree that no provision in this subgrant agreement is intended to create in the public or any member thereof, a third-party beneficiary, or to authorize anyone not a party to this subgrant agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this subgrant agreement.

37. Restrictions on Lobbying. No funds subgranted hereunder shall be used for the purpose of lobbying the legislature, judicial branch, or state agencies, per Section 216.347, F.S.

38. Retention of Records. The Subrecipient shall retain sufficient records demonstrating its compliance with the terms of this subgrant agreement for a period of five years from the date the audit report is issued, and shall allow the Department, or its designee, the state CFO, or AG access to such records, which are not protected by State law, upon request. The Subrecipient shall ensure that the independent audit working papers are made available to the Department, or its designee, the state CFO, or AG upon request for a period of at least five years from the date the audit report is issued, unless extended in writing by the Department.

39. Tangible Property. Property purchased under this subcontract does not qualify as Tangible Personal Property as defined by Chapter 273, F.S.

MISCELLANEOUS PROVISIONS

- 40. Prohibited Interests.** The Subrecipient shall not enter into a contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any officer, director or employee of the Subrecipient, or any business entity of which the officer, director or employee or the officer's, director's or employee's spouse or child is an officer, partner, director, or proprietor or in which such officer, director or employee or the officer's, director's or employee's spouse or child, or any combination of them, has a material interest.
- "Material Interest" means direct or indirect ownership of more than 5% of the total assets or capital stock of any business entity.
 - The Subrecipient shall not enter into any contract or arrangement in connection with the Project or any property included or planned to be included in the Project, with any person or entity who was represented before the Subrecipient by any person who at any time during the immediately preceding two (2) years was an officer, director or employee of the Subrecipient.
 - The provisions of this subsection shall not be applicable to any agreement between the Subrecipient and its fiscal depositories, any agreement for utility services the rates for which are fixed or controlled by the government, or any agreement between the Subrecipient and an agency of state government.
- 41. Interest of Members of, or Delegates to, Congress or Legislature.** No member or delegate to the Congress of the United States, or the State of Florida legislature, shall be admitted to any share or part of the Agreement or any benefit arising therefrom.
- 42. Department Not Obligated to Third Parties.** The Department shall not be obligated or liable under this Agreement to any party other than the Subrecipient. It is specifically agreed between the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.
- 43. Relationship of Parties.** The Subrecipient, its employees, contractors, subcontractors, consultants, and subconsultants are not agents of the Department as a result of this Agreement.
- 44. When Rights and Remedies Not Waived.** In no event shall the making by the Department of any payment to the Subrecipient constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist, on the part of the Subrecipient, and the making of such payment by the Department while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.
- 45. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- 46. Sovereign Immunity.** Nothing in this Agreement shall constitute a waiver by either party of its sovereign immunity for any damages claimed by third parties.
- 47. Bonus or Commission.** By execution of the Agreement the Subrecipient represents that it has not paid and, also, agrees not to pay, any bonus or commission for the purpose of obtaining an approval of its application for the financing hereunder.
- 48. Notices.** Any notice, demand, or request which is required to be given under this Agreement in writing shall be delivered to the following address:
- Florida Department of Transportation
Attn: Traffic Safety Administrator
State Safety Office, MS 53
605 Suwannee Street
Tallahassee, Florida 32399-0450
- 49. Agreement Format.** All words used in this Agreement in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.
- 50. JURY TRIAL WAIVER.** The Subrecipient and the Department hereby irrevocably and unconditionally waive trial by jury in any legal action or proceeding relating to this agreement and for any counterclaim therein.
- 51. Execution of Agreement.** This Agreement may be simultaneously executed in a minimum of two counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one in the same instrument.

- 52. Agreement not Assignable.** The Subrecipient may not assign any of its rights or obligations under this Agreement.
- 53. IRS Form 990 Annual Report and Executive Compensation Reporting.** Pursuant to Governor's Executive Order 20-44, if the Subrecipient is required by the Internal Revenue Code to file *IRS Form 990* and is named in statute with which the Department must form a sole-source, public-private agreement; or through contract or other agreement with the State, annually receives 50% or more of its budget from the State or from a combination of State and Federal funds, Subrecipient shall submit an Annual Report to the Department, including the most recent *IRS Form 990*, detailing the total compensation for each member of the Subrecipient executive leadership team. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. Recipient shall inform the Department of any changes in total executive compensation during the period between the filing of Annual Reports required by this Amendment within 60 days of any change taking effect. All compensation reports shall detail the percentage of executive leadership compensation received directly from all State and/or Federal allocations to the Subrecipient. Annual Reports shall be in the form approved by the Department and shall be submitted to the Department at fdotsingleaudit@dot.state.fl.us within 180 days following the end of each tax year of the Subrecipient receiving Department funding.

GRANT MANAGEMENT

- 54. Amendments.** The Subrecipient shall obtain prior written approval from the FDOT State Safety Office for changes to this subgrant agreement. Amendments to this subgrant agreement will be approved if the modification(s) to be made will achieve or improve upon the outcome of this subgrant agreement's scope of work, or where factors beyond the control of the Subrecipient require the change. Requested amendments to this subgrant agreement shall be in the form of a written request signed by the one of the original signatories of this subgrant agreement. Specific delegation(s) for amendments must be provided in writing from the original signatory of the Subrecipient.
- 55. Disputes and Appeals.** Any dispute, disagreement, or question of fact arising under this subgrant agreement may be addressed to the Traffic Safety Administrator of the FDOT State Safety Office in writing. The Traffic Safety Administrator's decision may be appealed in writing within 30 calendar days from the notification to the Governor's Highway Safety Representative, whose decision is final. Addresses are:
- | | |
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| Florida Department of Transportation
Attn: Traffic Safety Administrator
State Safety Office, MS 53
605 Suwannee Street
Tallahassee, Florida 32399-0450 | Florida Department of Transportation
Attn: Governor's Highway Safety Representative
State Safety Office, MS 53
605 Suwannee Street
Tallahassee, Florida 32399-0450 |
|--|--|
- The Subrecipient shall proceed diligently with the performance of this subgrant agreement and in accordance with Department's decision(s).
- 56. Equipment.** Any equipment purchased under this subgrant agreement with highway safety funds shall not replace previously purchased equipment that is damaged, stolen, lost, or that wears out as a result of misuse, whether the equipment was purchased with federal, state, or local funds.
- (a) **Use of Equipment.** All equipment shall be used for the originally authorized subgrant agreement purpose(s) for as long as needed for those purposes. Subrecipients must maintain an inventory control system that has adequate safeguards in place to prevent loss, damage, or theft.
- (b) **Equipment Costing \$5,000 or more.** Equipment with a useful life of more than one year and an acquisition cost of \$5,000 or more per unit shall be subject to the following requirements:
- Purchases shall receive prior written approval from the FDOT Safety Office.
 - Biannual certification of appropriate use and condition of equipment shall be provided to the FDOT Safety Office.
 - Dispositions must be requested and shall receive prior written approval from the FDOT Safety Office.
- (c) **Disposition of Equipment Costing \$5,000 or more.** In the event the equipment is no longer needed for the originally authorized subgrant agreement purpose(s) or has reached the end of its useful life, Subrecipients should use the Equipment Disposition Request Form 500-065-026 to coordinate with the FDOT State Safety Office to obtain required approvals to dispose of the equipment or transfer the equipment to another agency for use.

- (d) **Disposition of Equipment Costing Less than \$5,000.** Equipment that does not meet the unit purchase price threshold of \$5,000 should be disposed of in accordance with the agencies own procurement and disposition policies. Documentation of this disposition should be noted in the Subrecipient files.
- (e) **Equipment Replacement or Repair.** The Subrecipient is responsible, at their own cost, for replacing or repairing any equipment purchased with Federal highway safety funds that is damaged, stolen, or lost, or that wears out as a result of misuse. The FDOT State Safety Office retains the right to replace or repair any equipment for statewide programs based on exceptional individual circumstances.
- (f) **Equipment Repossession.** Ownership of all equipment purchased with Federal highway safety funds rests with the Subrecipient; however, the USDOT maintains an interest in the equipment and title vests in the Subrecipient subject to several conditions and obligations under 2 CFR Section 200.313. The Subrecipient must use the equipment for the authorized purposes of the project, whether or not the project continues to be supported by the Federal award, unless the FDOT State Safety Office, on behalf of USDOT, provides written authorization for another use of the equipment that is permissible under 2 CFR Section 200.313. Any equipment purchased with Federal highway safety funds that is not being used by the Subrecipient for the purposes described in the project or in accordance with other authorized uses under 2 CFR Section 200.313, is subject to repossession by the FDOT State Safety Office, on behalf of the USDOT. Items that are repossessed shall be disbursed to agencies that agree to use the equipment for the activity described in this project or for other uses authorized by USDOT.

57. Expense Purchases for \$200 or more: Any office, training, communication, or computer supplies (including computers) with a per item unit cost of \$200 or more within the Expense Category, excluding software, must have FDOT State Safety Office written approval, prior to purchase.

58. Excusable Delays. Except with respect to the defaults of Subrecipient's consultants and contractors which shall be attributed to the Subrecipient, the Subrecipient shall not be in default by reason of any failure in performance of this subgrant agreement in accordance with its terms if such failure arises out of causes beyond the control and without the fault or negligence of the Subrecipient. Such causes are acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Subrecipient. If the failure to perform is caused by the failure of the Subrecipient's consultant or contractor to perform or make progress, and if such failure arises out of causes beyond the control of the Subrecipient and its consultant or contractor, and without the fault or negligence of any of them, the Subrecipient shall not be deemed to be in default, unless (1) the supplies or services to be furnished by the consultant or contractor were obtainable from other sources, (2) the FDOT State Safety Office shall have ordered the Subrecipient in writing to procure such supplies or services from other sources, and (3) the Subrecipient shall have failed to comply reasonably with such order.

Upon request of the Subrecipient, the FDOT State Safety Office shall ascertain the facts and extent of such failure and, if it shall be determined that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly.

If the Subrecipient is unable to fulfill the activities stated in the Proposed Solution or Project Objectives in this agreement (Part II: PROJECT PLAN AND SUPPORTING DATA) due to the COVID-19 pandemic, the Subrecipient must contact the FDOT State Safety Office immediately to discuss potential amendments and/or alternate plans.

59. How this Subgrant Agreement is Affected by Provisions Being Held Invalid. If any provision of this subgrant agreement is held invalid, the remainder of this subgrant agreement shall not be affected. In such an instance, the remainder would then continue to conform to the terms and requirements of applicable law. The Subrecipient acknowledges that federal grant requirements are subject to change and agrees that the most recent requirements shall govern its obligations under this Agreement at all times.

60. Ineligibility for Future Funding. The Subrecipient agrees that the Department shall find the Subrecipient ineligible for future funding for any of the following reasons:

- (a) Failure to provide the required audits
- (b) Failure to provide required performance and final narrative reports in the required time frame
- (c) Failure to perform work described in Part II of this subgrant agreement
- (d) Failure to provide reimbursement requests and performance reports in a timely manner
- (e) Providing fraudulent performance reports or reimbursement requests
- (f) Misuse of equipment purchased with Federal highway safety funds

61. Performance. In the event of default, noncompliance, or violation of any provision of this subgrant agreement by the Subrecipient, the Subrecipient's consultant(s) or contractor(s) and supplier(s), the Subrecipient agrees that the Department will impose sanctions. Such sanctions include withholding of reimbursements, retainage, cancellation, termination, or suspension of this subgrant agreement in whole or in part. In such an event, the Department shall notify the Subrecipient of such decision 30 days in advance of the effective date of such sanction. The sanctions imposed by the Department will be based upon the severity of the violation, the ability to remedy, and the effect on the project. The Subrecipient shall be paid only for those services satisfactorily performed prior to the effective date of such sanction.

62. Personnel Hired or Paid Under this Subgrant Agreement.

- (a) **Project Director.** Persons holding the position of Project Director for this subgrant agreement shall not receive reimbursement for personnel hours nor receive any other benefit under this subgrant agreement.
- (b) **Employer Responsibility.** Any and all employees of the Subrecipient whose positions are funded, in whole or in part through this subgrant agreement, shall be the employee of the Subrecipient only, and any and all claims that may arise from said employment relationship shall be the sole obligation and responsibility of the Subrecipient. Personnel hours will only be reimbursed based on actual hours worked on this subgrant agreement. No other allocation method is allowable for reimbursement.
- (c) **Bonuses or stipends.** Bonuses or one-time stipends issued to Subrecipient employees will not be eligible for subgrant reimbursement, as they are not considered salary and are an addition to the salary amounts approved for Subgrant execution. Increases in Subgrant employee salary must be approved by the FDOT State Safety Office. Annual fluctuations in benefits approved in the Subgrant are allowable and eligible for reimbursement.
- (d) **Overtime.**
 - i. **Overtime Hours.** Subgrant funds cannot be used to supplant standard activity hours; therefore, only hours qualifying as "overtime", per the Subrecipient policies will be eligible for reimbursement by this subgrant agreement. In the event a Subrecipient is awarded more than one subgrant agreement within a federal fiscal year, overtime hours for each traffic safety effort must be tracked, reported, and billed based on hours worked for each subgrant agreement type.
 - ii. **Overtime Rate.** Overtime hours are intended for enhanced/increased traffic safety activities. The overtime pay rate for personnel is based on actual cost per employee in accordance with the Subrecipient's payroll policy. Each Subrecipient shall comply with Fair Labor Standards Act (FLSA) requirements and thresholds for overtime accrual and payment and its own policies and procedures, insofar as those policies apply uniformly to both federally-financed and other activities of the Subrecipient, as required by 2 CFR 200.403(c). Additional hours may be called overtime, off duty, extra, additional, etc., as long as it enhances/increases traffic safety activities. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.

63. Reports. The following reports are required for reimbursement of subgrant funding:

- (a) **Performance Reports.** (FDOT Form No. 500-065-19). A performance report shall be provided with each request for financial reimbursement, providing the status of the subgrant minimum performance standards, as described in Part IV of this subgrant agreement.
- (b) **Final Narrative Report.** (FDOT Form No. 500-065-20). A Final Narrative Report giving a chronological history of the subgrant activities, problems encountered, major accomplishments, and NHTSA Required Activity Reporting shall be submitted by October 31. Requests for reimbursement will not be processed and will be returned to the Subrecipient as unpaid if the required reports are not provided, following notification.
- (c) **Enforcement Activity Reports.** Enforcement Activity Report(s) for each type of enforcement shall be provided with each request for financial reimbursement for overtime worked. Agency specific activity reports may be used, if those reports include all information detailed in each FDOT Activity Form.
- (d) **Other Reports.** The FDOT State Safety Office reserves the right to require other reports not specified above, as necessary, for subgrant agreement monitoring.

64. Term of this Subgrant Agreement. Each subgrant agreement shall begin on the date the last party signs this subgrant agreement and shall end on September 30, unless otherwise stipulated by the FDOT State Safety Office on the first page of this respective subgrant agreement. In the event this subgrant agreement is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135 (6)(a), F.S., are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the Department which are for an amount in excess of \$25,000.00 and which have a term for a period of more than 1 year."

65. Travel.

- (a) **Required Forms.** Travel costs for approved travel shall be submitted on the FDOT Contractor Travel Form (FDOT Form No. 300-000-06) or other approved Florida Department of Financial Services form and will be reimbursed in accordance with Section 112.061, F.S. and the most current version of the *Disbursement Handbook for Employees and Managers*.
- (b) **Authorization and Restriction.** All travel authorized under this subgrant shall be subject to any additional authorization requirements or restrictions imposed by: the Governor's Executive Order or other guidance; any requirements or forms for travel cost reimbursement imposed by the Subrecipient that do not violate FDOT travel cost reimbursement requirements; and/or FDOT during the subgrant period.
- (c) **Prerequisite Approvals.** All subgrant travel that has billable costs shall require a written request for approval from the FDOT State Safety Office prior to the incurring of actual travel costs. Request should include sufficient justification to prove that the travel will have significant benefits to the outcome of the subgrant activities and is within the travel budget of the project and relevant to the project. Additional detail is required if the travel meets any of the following criteria:
 - i. Purchase of Air fare
 - ii. Travel to conference
 - iii. Travel which includes a registration fee
 - iv. Out-of-subgrant-specified work area travel
 - v. Out-of-state travel

Failure to receive prior written approval will deem the entire travel cost ineligible for payment, regardless of available funding in travel budget.

- (d) **Lodging Reimbursement Limit.** The FDOT State Safety Office shall not pay for overnight lodging/hotel room rates that exceed \$175.00 per night (before taxes and fees). A Subrecipient and/or traveler will be required to expend his or her own funds for paying the overnight lodging/hotel room rate in excess of \$175.00 plus the applicable percentage of fees (other than flat fees). If multiple travelers share a room and the individual cost of the lodging/hotel exceeds the \$175 per night limit, the Subrecipient and/or travelers will be required to expend his or her own funds for paying the excess amount. If another entity is covering the cost of the overnight lodging/hotel then this paragraph does not apply.
- (e) **Lodging for Subgrant Funded Statewide Coalition Meetings and Conferences.** Lodging contracts may be funded to accommodate attendance of subgrant funded statewide coalition meetings, conferences, and programs. If lodging a lodging contract is executed to cover lodging cost, all travelers shall be expected to use the contract, and any attendees choosing alternate lodging accommodations based on preference, shall do so at their own out of pocket costs. Cost for these lodging contracts will be reviewed and approved for program appropriateness and costs savings to the State, as determined and approved by the FDOT State Safety Office.

66. Vehicles.

Any Subrecipient receiving subgrant funds to purchase a vehicle (excluding law enforcement vehicles) shall maintain a travel log that contains the beginning and ending mileage, location, and purpose of travel. All agencies must report any vehicle use (excluding law enforcement vehicles) and maintenance with each request for reimbursement using the Safety Grant Vehicle Use Form (FDOT Form No. 500-065-21) and the Safety Grant Equipment Maintenance Form (FDOT Form No. 500-065-22).

Vehicles purchased with federal highway safety funds shall be used for program use only and in accordance with Rule 60B-1.004 F.A.C. Subrecipients who are responsible for the operation and use vehicles for official state business are allowed to permit persons other than state officials or employees to travel in the vehicle provided these persons are conducting official state business or only on special occasions if the purpose of the travel can be more usefully served by including such persons and no additional expense is involved.

It is permissible to transport persons other than state officials and employees during disasters and emergency situations where the state must protect life and property. Providing assistance to motorists whose vehicles are disabled may be considered as an emergency when there is a need to protect life and property.

Any vehicles used for personal reasons or not being used by the Subrecipient for the purposes described in this subgrant agreement shall be subject to repossession by the FDOT State Safety Office.

FINANCIAL/FISCAL

67. Allowable Costs. The allowability of costs incurred under this subgrant agreement shall be determined in accordance with the general principles of allowability and standards for selected cost items set forth in the Applicable Federal Law, state law, and the FDOT Disbursement Handbook for Employees and Managers, to be eligible for reimbursement. All funds not spent in accordance with the Applicable Federal Law will be subject to repayment by the Subrecipient. Only costs directly related to this subgrant agreement shall be allowable.

68. Subcontract Agreements.

- (a) **Requirement for Pre- Approval.** All subcontract agreements must be submitted to the FDOT State Safety Office in draft form for review and approval. Approval of this subgrant agreement does not constitute approval of subcontract agreements.
- (b) **Minimum Mandatory Subcontract Language.** All subcontract agreements shall include at a minimum the following information:
 - i. Beginning and end dates of the subcontract agreement (not to exceed this subgrant agreement period)
 - ii. Total contract amount
 - iii. Scope of work/Services to be provided
 - iv. Quantifiable, measurable, and verifiable units of deliverables
 - v. Minimum level of service to be performed and criteria for evaluating successful completion
 - vi. Budget/Cost Analysis
 - vii. Method of compensation/Payment Schedule
- (c) **Additional Required Clauses.**
 - i. **All subcontract agreements shall contain the following statement:**
"The parties to this contract shall be bound by all applicable sections of Part V: Acceptance and Agreement of Project # (insert project number). A final invoice must be received by (insert date) or payment will be forfeited."
 - ii. **Buy American Act clause** (see Section 4 of Part V)
 - iii. **Certification Regarding Federal Lobbying** (see Section 21 of Part V)
 - iv. **Cooperation with Inspector General** (see Section 32 of Part V)
 - v. **DBE Clause** (see Section 10 of Part V)
 - vi. **E-Verify clause** (see Section 33 of Part V)
 - vii. **Nondiscrimination clause** (see Section 16 of Part V)
 - viii. **Clean Air Act and Federal Water Pollution Control Act clause** (subcontracts in excess of \$150,000) (see Section 5 of Part V)
 - ix. **Integrity Certification Clause** (see Section 27 of Part V)
 - x. **Contract Work Hours and Safety Standards Act** (subcontracts in excess of \$100,000) (see Section 8 of Part V)
 - xi. **Indemnification and Insurance** (see Section 34 of Part V)
 - xii. **Policy on Banning Text Messaging While Driving Act** (subcontracts in excess of \$15,000) (see Section 28 of Part V)
 - xiii. **Human Trafficking Clause** (see Section 23 of Part V)
 - xiv. **Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms** (see Section 12 of Part V)

xv. **Termination for Convenience** (see Section 22 of Part V)

69. Indirect Costs. Indirect costs included in this subgrant agreement in Part III, under the indirect line item are based on the indirect costs rate the Subrecipient used in the competitive concept paper application process. The rate will be applied in accordance with 2 CFR 200 and the Subrecipients federally approved rate agreement. If the Subrecipient does not have a federally approved costs rate agreement, a de minimis rate of 10% of modified total direct costs in the manner described in 2 CFR 200.414 will be used. [The de minimis rate is available only to entities that have never had a negotiated indirect cost rate. When selected, the de minimis rate must be used consistently for all federal awards until such time the Subrecipient chooses to negotiate a rate. A de minimis certification form must be submitted to the Department for review and approval.] All subgrant awards are based on cost benefit, available funding, and if the indirect costs rate requested significantly affects the proposed project's ability to adequately address the traffic safety need.

70. Obligation of Subgrant Funds. Subgrant funds shall not be obligated prior to the effective date or subsequent to the end date of this subgrant agreement period. Only project costs incurred on or after the effective date and on or prior to the end date of this subgrant agreement are eligible for reimbursement. A cost is incurred when the Subrecipient's employee or approved contractor or consultant performs the service required or when goods are received by the Subrecipient, notwithstanding the date of order.

71. Procedures for Reimbursement.

- (a) **Required Forms.** All requests for reimbursement of subgrant costs must be submitted on forms provided by the Department (FDOT Form Numbers 500-065-04 through 09 and 19) unless otherwise approved. Forms must be completed in detail sufficient for a proper pre-audit and post audit based on the quantifiable, measurable, and verifiable units of deliverables and costs, including supportive documentation. **ALL requests for reimbursement shall include FDOT Form 500-065-019 Performance Report for the period of reimbursement.**
- (b) **Supporting Documentation.** Invoices for cost reimbursement subgrants must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation shall be submitted for each amount for which reimbursement is being claimed indicating that the item has been paid. Documentation for each amount for which reimbursement is being claimed must indicate that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation should clearly reflect the dates of service. Only expenditures for categories in the approved subgrant budget may be reimbursed. These expenditures must be allowable (pursuant to law) and directly related to the services being provided. **Contracts between state agencies may submit alternative documentation to substantiate the reimbursement request, which may be in the form of FLAIR reports or other detailed reports.**

The Florida Department of Financial Services, online Reference Guide for State Expenditures can be found at this web address:

<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>

Listed below are types and examples of supporting documentation:

i. **Personnel Services.**

- a. **Salaries:** Timesheets that support the hours worked on the project or activity must be kept. A payroll register, or similar documentation should be maintained. The payroll register should show gross salary charges, fringe benefits, other deductions, and net pay. If an individual for whom reimbursement is being claimed is paid by the hour, a document reflecting the hours worked times the rate of pay will be acceptable.
- b. **Fringe Benefits:** Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee, e.g., insurance premiums paid. If the contract specifically states that fringe benefits will be based on a specified percentage rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

ii. **Contractual Services.** Should be supported by a copy of the approved subcontract agreement, invoice showing payment request and dates of service from the vendor, and proof of payment by the Subrecipient.

iii. **Expenses.** Should be supported by a copy of any required pre-approvals, invoice showing payment request from the vendor, and proof of payment by the Subrecipient.

- iv. **Travel.** Reimbursement for travel must be in accordance with s. 112.061, F.S. and the most recent version of the FDOT Disbursement Handbook, which includes submission of the travel costs on an approved state travel form along with supporting receipts and invoices.
- v. **Equipment Costing \$5,000 or More.** Should be supported by a copy of any required pre-approvals, invoice showing payment request from the vendor, and proof of payment by the Subrecipient.
- vi. **Indirect Cost.** If the subgrant stipulates that indirect costs will be paid based on a specified rate, then the calculation should be shown. Indirect costs must be in the approved agreement budget and the entity must be able to demonstrate that the costs are not duplicated elsewhere as direct costs. All indirect cost rates must be evaluated for reasonableness and for allowability and must be allocated consistently.

All documentation should be readable and include the necessary calculations to support the amounts being requested. Illegible documents or documents for the wrong time-period or calculation amounts will require resubmittal by the Subrecipient. If documents provided do not equal totals requested, additional documentation may be requested, or amounts reimbursed will be reduced to totals supported by documentation.

Subgrant agreements between state agencies, and/or subgrant agreements between universities may submit alternative documentation to substantiate the reimbursement request that may be in the form of FLAIR reports or other detailed reports and do not have to include check numbers.

(c) **Frequency and Deadlines for Submission.**

- i. **Partial Claims.** Subrecipients should submit all costs for reimbursement monthly unless no costs were incurred within a month. Reimbursement for personnel costs may be submitted after each pay period, if desired. Failure to submit reimbursement requests in a timely manner may result in this subgrant agreement being terminated.
- ii. **Final Claim.** A final financial request for reimbursement shall be submitted and/or postmarked no later than October 31 following the end of this subgrant agreement period. Such request should be distinctly identified as **Final**.

The Subrecipient agrees to forfeit reimbursement of any amount incurred or expended if the final request is not submitted and/or postmarked by October 31 following the end of this subgrant agreement period.

- (d) **Travel Reimbursement.** Bills for travel expenses specifically authorized in this subgrant agreement shall be submitted on the FDOT Contractor Travel Form (300-000-06) and will be paid in accordance with Section 112.061, F.S. and the most current version of the FDOT Disbursement Handbook for Employees and Managers.
- (e) **Equipment Reimbursement.** All requests for reimbursement of equipment having a unit cost of \$5,000 or more and a useful life of one year or more shall be accompanied by an Equipment Accountability Form (FDOT Form No. 500-065-09). Reimbursement of these equipment costs shall not be made before receipt of this form.
- (f) **Media Purchase Reimbursement.** Proof of performance (e.g., copies and/or images of posters, air schedules, etc.) of all paid media purchased with subgrant funds shall be attached to reimbursement requests.
- (g) **Signature Requirements.** All requests for reimbursement shall be signed by an Authorized Representative of the Subrecipient, or their delegate. Delegation letters must be provided for each subgrant agreement.
- (h) **Reimbursement Timeline.** Subrecipients providing goods and services to the Department should be aware of the following time frames. The FDOT State Safety Office has a 30-day review process to approve goods and services that starts on the date of receipt of financial reimbursement request. After that review and approval, the Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved. Financial reimbursement requests may be returned if not completed properly. If a payment is not available within 40 days from the FDOT State Safety Office approval, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the financial reimbursement request amount, to the Subrecipient. Interest penalties of less than one (1) dollar will not be enforced unless the Subrecipient requests payment. Financial reimbursement requests that have to be returned to a Subrecipient because of Subrecipient preparation errors will result in a delay in the payment. The financial reimbursement request payment requirements do not start until a properly completed financial reimbursement request is provided to the Department.

- (i) **Financial Consequences.** Payment shall be made only after receipt and approval of deliverables and costs incurred. If the Department determines that the performance of the Subrecipient is unsatisfactory, the Department shall notify the Subrecipient of the deficiency to be corrected, which correction shall be made within a timeframe to be specified by the Department. The Subrecipient shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the Subrecipient will address all issues of subgrant agreement non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or subgrant agreement noncompliance. If the corrective action plan is unacceptable to the Department, the Subrecipient will not be reimbursed to the extent of the non-performance. The Subrecipient will not be reimbursed until the Subrecipient resolves the deficiency. If the deficiency is subsequently resolved, the Subrecipient may bill the Department for the unpaid reimbursement request(s) during the next billing period. If the Subrecipient is unable to resolve the deficiency, the funds shall be forfeited at the end of this subgrant agreement term.
- (j) **Vendor Ombudsman.** A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Subrecipients who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

72. Tracking and Retention of Financial Records. The Subrecipient shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this subgrant agreement shall be maintained and made available upon request to the Department at all times during the period of this subgrant agreement and for five years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Subrecipients general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work.

73. Program Income. Program income means gross income earned by Subrecipient that is directly generated by a supported activity or earned as a result of the subgrant award during the subgrant period of performance. Program income must be deducted from total allowable costs to determine the net allowable costs. Program income must be used for current costs and any remaining program income must be offset against the final request for reimbursement. Program income that the Subrecipient did not anticipate at the time of the subgrant award must be used to reduce the Federal award and Subrecipient contributions rather than to increase the funds committed to the project.

74. Registration for Attendance. No activities funded under this subgrant agreement shall charge a registration fee for attendance.

75. Responsibility of Subrecipient. The Subrecipient shall establish fiscal control and fund accounting procedures that assure proper disbursement and accounting of subgrant funds and required non-federal expenditures. All monies spent on this project shall be disbursed in accordance with provisions of the Project Detail Budget as approved by the FDOT State Safety Office. All expenditures and cost accounting of funds shall conform to 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements For Federal Awards, herein incorporated by reference, (hereinafter referred to as Applicable Federal Law).

REQUIREMENTS

76. Child Safety Seats. Any agency that receives child safety seats must have at least one staff member who is a current Certified Child Passenger Safety Technician.

77. Enforcement.

- (a) **Automated Traffic Enforcement.** No subgrant funds will be awarded or expended to carry out a program to purchase, operate, or maintain an automated traffic enforcement system. (23 U.S.C. 402(c)(4)). The term "automated traffic enforcement system" includes any camera that captures an image of a vehicle for the purposes only of red light and speed enforcement, and does not include handheld radar and other devices operated by law enforcement officers to make an on-the-scene traffic stop, issue a citation, or other enforcement action at the time of violation. Subgrant funding will not be utilized or reimbursed for continuing priorly initiated investigations, court or Administrative Hearings, and enforcement from aircraft.
- (b) **Data Driven.** Selection of enforcement activity locations should be based on current data that identifies high-risk areas with the greatest number of crashes, serious injuries, fatalities, and/or traffic violations (citations). Data should be reviewed periodically to ensure that the most current high-risk areas are continually addressed throughout this subgrant agreement period.
- (c) **High Visibility Enforcement.** All law enforcement agencies shall conduct High Visibility Enforcement while conducting enforcement under this subgrant agreement.

High Visibility Enforcement is defined as:

Intense: Enforcement activities are over and above what normally takes place.

Frequent: Enforcement occurs often enough to create general deterrence.

Visible: A majority of the public sees or hears about the enforcement.

Strategic: Enforcement targets high-risk locations during high-risk times.

- (d) **Hours Limit.** Each officer is limited to a maximum of eight (8) hours of reimbursable overtime in any single day (defined as 12:00 a.m. to 11:59 p.m.), unless there are extenuating circumstances at the end of a shift that causes the hours to exceed this limit. Extenuating circumstances must be documented in the activity report. There is no pay period limit on hours worked.
- (e) **Impaired Driving Enforcement.**
 - i. **Hours of Emphasis.** A strong emphasis of enforcement operations should be during the hours of 6:00 pm to 6:00 am. Expansion of enforcement operation hours can be adjusted based on supporting data and prior approval by the FDOT State Safety Office. Agencies should ensure that enforcement saturation/wolfpack/roving patrols are conducted in periods of no fewer than 3 consecutive hours. The FDOT State Safety Office reserves the right to request a copy of any subgrant funded checkpoint After Action Report.
 - ii. **Mobilization Participation.** All law enforcement agencies that receive impaired driving subgrant funding should participate in all NHTSA impaired driving mobilizations for the following holidays and events: New Year's Day, NFL Super Bowl, St. Patrick's Day, Cinco de Mayo, Independence Day, Labor Day, Halloween, and the end of year holiday season.
 - iii. **Required Credentials for Impaired Driving Enforcement.** Any law enforcement officer who takes enforcement action and receives compensation under an impaired driving subgrant must have successfully completed at least one of the following within the last five years:
 - a. NHTSA/IACP 24 hour DWI Detection and Standardized Field Sobriety Testing (SFST) course
 - b. NHTSA/IACP 4 hour DWI Detection and Standardized Field Sobriety Testing (SFST) refresher course
 - c. NHTSA/IACP DWI Detection and Standardized Field Sobriety Testing (SFST) Instructor Development course
 - d. NHTSA/IACP 8-hour DWI Detection and Standardized Field Sobriety Testing (SFST) Instructor Update course
 - e. NHTSA/IACP Advanced Roadside Impaired Driving Enforcement (ARIDE) course
 - f. Be an active certified Drug Recognition Expert (DRE)
- (f) **Motorcycle Enforcement.** No subgrant funds will be used for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.
- (g) **Occupant Protection Enforcement.** All law enforcement agencies that receive occupant protection subgrant funding should participate in all NHTSA occupant protection mobilizations for Click It or Ticket and are encouraged to participate in Child Passenger Safety Week and National Seat Check Saturday. Safety belt enforcement is encouraged for both day and nighttime.
- (h) **Speed and Aggressive Driving Enforcement.** All law enforcement agencies that receive speed and aggressive driving subgrant funding should participate in the NHTSA Regional speed and aggressive driving mobilization for Operation Southern Slow Down.
- (i) **Required Credentials for Speed Enforcement.** Any law enforcement officer who is using a radar or laser speed detection system, must be certified in the use of that piece of equipment.

78. Public Service Announcements, Marketing, and Advertisements.

- (a) **Closed Caption Requirement.** All public service announcements produced with Federal highway safety funds shall be closed captioned for the hearing impaired.

- (b) **Media Plan.** All paid media reimbursed with subgrant funds shall contain a traffic safety message. In order to maximize the effectiveness of the paid media, when marketing or advertising is included in subgrant activities, it shall be done only in conjunction with proven, effective countermeasures, and when the message of the media is designed to call attention to those countermeasures. Before incurring costs related to the paid media, a final draft of the media and media plan shall be submitted to the FDOT State Safety Office for review.

Media plans should include the following:

- i. What program/policy the paid media is supporting
 - ii. How the paid media will be implemented to support an operational enforcement program whether it be a periodic crackdown/mobilization or an on-going saturation or roving patrol
 - iii. The amount allocated for paid media
 - iv. Anticipated creative costs associated with the paid media
 - v. The measures that will be used to assess message recognition and penetration of the target audience.
- (c) **Tagging.** All subgrant funded public service announcements, marketing, and advertisements shall be tagged "Funding provided by the Florida Department of Transportation, or Funded by FDOT", or FDOT logo, "Brought to you by" or "Provided by ..." may also be used for this requirement. Television commercials must include a statement as set forth above. The name of the Subrecipient and its logo can appear on the paid media, if approved by the FDOT State Safety Office, but the names of individuals connected with the Subrecipient shall not appear when paid for with Federal highway safety funds, unless otherwise approved by the FDOT State Safety Office.
- (d) **Prohibition of Gifts.** Contractual agreements for marketing and advertising which include communications, public information, and paid media expenditures shall not include gifts as defined by Section 112.312, F.S., which includes items such as tickets, seats, food, travel, apparel, memorabilia, etc., to any representative of this subgrant agreement or any of their traffic safety partners unless the item or service is regularly made available to the general public at no cost.

79. Public Information and Education Items. Public Information and Education Items are defined as materials whose purpose is to convey substantive information about highway safety. Paper, pamphlets, flash drives, CD-ROMs, and similar media that contain educational materials are all allowable because their purpose is to contain and convey educational information. In order to be considered educational, distributed material must provide substantial informational and educational content to the public (not merely a slogan) and have the sole purpose of conveying that information. If a Subrecipient chooses to provide educational content on a flash drive, CD-ROM, or similar device, that device must be an economical method of conveying the information.

Before printing or ordering any public information and education items, a final draft or drawing of the items shall be submitted to the FDOT State Safety Office for review and approval.

Requests should include the following:

- (a) What public information or educational item is being requested
- (b) What program/policy is the item supporting
- (c) Who the target audience is
- (d) How the item will be distributed
- (e) Estimated unit cost(s) for the item

The FDOT State Safety Office shall provide written approval for reimbursement if the items are appropriate for purchase under this subgrant agreement. Copies and/or images of all public information and education items purchased with highway safety funds shall be attached to the forms requesting reimbursement for the items.

Printed materials (tip cards, brochures, safety pledges, surveys, activity books, booklets, guides, etc.) can be freely distributed, however tangible items (helmets, DVDs, CD-ROMs, flash or thumb drives, reflective tape, etc.) require the person receiving the item to interact with the Subrecipient in some manner related to the goal of the project in order to receive the item. Interaction includes attending a presentation, having a discussion with a program representative, signing a pledge sheet, filling out a survey form, answering a traffic safety question, etc. The results of this interaction must be reported in the performance report.

Where feasible, either the Florida Department of Transportation logo or the words "Funding provided by the Florida Department of Transportation or Funded by FDOT" Shall appear on or in all items. "Brought to you by" or "Provided by" may also be used for this requirement. The name of the Subrecipient and its logo can appear on any of the public information and education items. The names of individuals connected with the Subrecipient shall not appear on any printed materials, and advertisements paid for with highway safety funds.

Per 2 CFR 200 and NHTSA Memo "Use of NHTSA Highway Safety Grant Funds for Certain Purchases" (dated May 18, 2016), Use of NHTSA grant funds to purchase promotional items or memorabilia (backpacks, cups, flashlights, key chains, magnets, shirts, stickers, sunglasses, umbrellas, etc.) is prohibited and therefore unallowable under this subgrant agreement.

80. Publication and Printing of Observational Surveys and Other Reports.

- (a) **Review and Publication.** During this subgrant agreement period, but before publication or printing, the final draft of any report or reports required under this subgrant agreement or pertaining to this subgrant agreement shall be submitted to the FDOT State Safety Office for review and concurrence. After this subgrant agreement period has concluded, Subrecipients may publish after providing the FDOT State Safety Office with at least a 15-day prior written notice.
- (b) **Discussion.** Both written and oral releases are considered to be within the context of publication. However, there is no intention to limit discussion of the study with small technical groups or lectures to employees or students. Lectures that describe plans but discuss neither data nor results may be given to other groups without advance approval.
- (c) **Required Language.** Each publication or other printed report covered by Paragraph 80(a) above shall include the following statement on the cover page:
 - i. This report was prepared for the FDOT State Safety Office, Department of Transportation, State of Florida, in cooperation with the National Highway Traffic Safety Administration, U.S. Department of Transportation and/or Federal Highway Administration, U.S. Department of Transportation.
 - ii. The conclusions and opinions expressed in these reports are those of the Subrecipient and do not necessarily represent those of the FDOT State Safety Office, Department of Transportation, State of Florida, and/or the National Highway Traffic Safety Administration, U.S. Department of Transportation and/or Federal Highway Administration, or any other agency of the State or Federal Government.

81. Safety Belt Policy. Each Subrecipient shall have a written safety belt policy, which is enforced for all employees. A copy of the policy shall be maintained by the Subrecipient and made available for review if requested.

82. Special Conditions.

Part VI: Federal Financial Assistance (Single Audit Act)

Federal resources awarded pursuant to this subgrant are as follows:

CFDA Number and Title:

- ☐ 20.600 - State and Community Highway Traffic Safety Program (NHTSA 402 Funds)
- ☐ 20.614 - National Highway Traffic Safety Administration Discretionary Safety Grants (NHTSA 403 funds)
- ☐ 20.616 - National Priority Safety Program (NHTSA 405 Funds)
- ☐ 20.205 - Highway Planning and Construction (FHWA Federal Aid Highway Program, Federal Lands Highway Program)

***Federal Funds Awarded:** \$45,000

Awarding Agency: Florida Department of Transportation

Indirect Cost Rate: 0%

****Award is for R&D:** No

*The federal award amount may change with supplemental agreements

**Research and Development as defined at §200.87, 2 CFR Part 20

Federal resources awarded pursuant to this subgrant are subject to the following audit requirements:

- (a) 2 CFR Part 200 - Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards
www.ecfr.gov

Federal resources awarded pursuant to this subgrant may also be subject to the following:

- (a) Federal Funding Accountability and Transparency Act (FFATA) Sub-award Reporting System (FSRS)
www.fsrs.gov

<u>Federal Award Identification Number (FAIN):</u>	<u>FAIN Award Date:</u>
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**RESOLUTION
NO. 2022-098**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

As Reads	Federal Grants	2,156,400
Amended		
To Read:	Federal Grants	2,201,400
As Reads	Personnel Services	65,300
Amended		
To Read:	Personnel Services	110,300

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA**OCTOBER 2022 - SUPPLEMENTAL BUDGET RESOLUTION - FDOT- SUBGRANT FOR HIGHWAY TRAFFIC FUNDS - RES NO. 2022-098**

FUND	AMOUNT	DESCRIPTION
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	45,000	Increase appropriation for Federal Grants - FDOT- Subgrant for Highway Traffic Funds
Total Revenues	<u>45,000</u>	
Appropriations		
Personnel Services	45,000	Increase appropriation for Personnel Services
Total Appropriations	<u>45,000</u>	



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2022-098

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION NO. 2022-098 FLORIDA DEPARTMENT OF
TRANSPORTATION (FDOT) SUBGRANT FOR HIGHWAY TRAFFIC FUNDS

RECOMMENDATION:

That City Council adopt Supplemental Budget Resolution No. 2022-098.

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS
FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN
EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

According to recently published Traffic Safety Facts 2018 Alcohol-Impaired Driving by the National Highway Traffic Safety Administration (NHTSA), there were 10,511 alcohol related fatalities in 2018. Of those crashes, 67% (7,051) involved a driver with a blood alcohol concentration (BAC) of .15 g/ dL (grams per deciliter) or higher. Florida saw 26% of their fatalities caused by drivers with a BAC of .08 or higher. The City of Pensacola is not immune to the problems caused by people deciding to Drive Under the Influence (DUI).

This is reflected in the City of Pensacola's ranking on the Florida Department of Transportation's (FDOT) FY2023 Highway Safety Matrix (HSM) - Ranking of Florida Cities, Impaired Driving category. Pensacola is ranked 6th out of the 103 Florida Group II Cities for serious injuries and fatalities related to impaired driving (Group II: Population of 15,000-74,999). The HSM rankings are based on the total actual serious injuries and fatalities statewide from 2016 to 2020.

The City of Pensacola, located in Escambia County, is not only a popular place to live, but also a popular tourist destination. The City of Pensacola has a permanent population of approximately 55,000 residents. However, the number of people in the city limits during working days and evenings is significantly higher. An estimated 100,000 vehicles traverse city limits daily as motorists travel to and from work, shopping, errands, etc. Additional traffic is projected during tourist season as residents and tourists head to area beaches and attractions. The daily traffic can be more than 250,000 vehicles during holidays and the summer months. One example of the drastic increases of

population, and the influx of such, was with a recent three-day event at the Pensacola Bay Center in Downtown Pensacola that drew over 40,000 people during the few days. Another event, the Sunbelt Basketball Tournament draws thousands of people from the entire southeastern United States for multiple days, to enjoy the City of Pensacola. The Pensacola Police Department sees the influx of tourism daily, to include the traffic problems associated with it, but we know we can keep the citizens and tourists safe with extra enforcement shifts geared at reducing traffic statistics. It should also be noted, the City of Pensacola is the largest city in the panhandle of Florida, from the Alabama state line to Tallahassee. Thus, almost anyone traveling the area from out of state, and those within state, come to Pensacola because it is the hub for this area of the state.

During 2017, FDOT began reconstructing the Pensacola Bay Bridge. This bridge is an artery between Pensacola Beach and Downtown Pensacola. Both locations contain most of the areas' bar and restaurant establishments, which draw many patrons, especially during the evening and nighttime hours. Coincidentally, much of the construction work on the Pensacola Bay Bridge is being performed during these same hours. The current traffic matrix shows the City of Pensacola is now 20th out of 103 Florida Group II Cities in work zone traffic problems. This has been evident with the increase in traffic now that the coronavirus pandemic is slowing down and travel is increasing. There have been traffic fatalities within this work zone and directly related to impaired driving.

The traffic related statistics, to include impaired driving offenses, are continuing to rise within the City of Pensacola. The Pensacola Police Department (PPD) has significantly increased our efforts over the years, and will continue to do so, to make the roadways safer. Officers have been working overtime via FDOT subgrant funding to combat these statistics over the past few years. These efforts have shown to be useful to lower statistics, but we still have a long way to go to make our roadways some of the safest in the area. The PPD is determined to increase our efforts even more and encourage officers to work overtime for extra enforcement shifts to combat impaired driving offenses. We will also provide, as in years past, continued training in detection and enforcement of DUIs. Accompanied with the traffic statistics, the PPD is requesting overtime salary and benefits to pay for additional officers to conduct high visibility enforcement activities.

With the FDOT subgrant funding that is being provided, the Pensacola Police Department (PPD) will utilize countermeasures detailed in the NHTSA Tenth Edition of the "Countermeasures that Work (CTW): A Highway Safety Countermeasure Guide for State Highway Safety Offices." Specifically, the CTW's found under Chapter 1: Alcohol-and Drug-Impaired Driving. This includes CTW Chapter 1) Sections:

- 2. Deterrence: Enforcement: Subsections
 - 2.1 Publicized Sobriety Checkpoints
 - 2.2 High Visibility Saturation Patrols
 - 2.3 Preliminary Breath Test Devices (PBTs)

- 5. Prevention, Intervention, Communications, and Outreach: Subsections
 - 5.2 Mass-Media Campaigns
 - 5.4 Alternative Transportation
 - 5.5 Designated Drivers
- 6. Underage Drinking and Drinking and Driving: Subsections
 - 6.2 Zero-Tolerance Law Enforcement
 - 6.5 Youth Programs

- 7. Drug-Impaired Driving

7.1 Enforcement of Drug-Impaired Driving

CTW Chapter 1) Section 2. Subsections 2.1 and 2.2; Section 6. Subsection 6.2; Section 7. Subsection 7.1: PPD will conduct 3 publicized checkpoints and/or high visibility enforcement (HVE) saturation/heightened operations/patrols per quarter.

During all enforcement operations related to this subgrant, drug-Impaired driving and zero tolerance traffic laws will be enforced.

The PPD will conduct a public engagement campaign using message boards, local media outlets, social media, and/or press releases to raise awareness of the dangers of impaired driving at least 2 times per quarter. Lastly, the PPD will also participate in the Drive Sober or Get Pulled Over campaign waves throughout the year.

PRIOR ACTION:

None

FUNDING:

Budget: \$45,000.00

Actual: \$45,000.00

FINANCIAL IMPACT:

Adoption of the supplemental budget resolution will appropriate the grants fund.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/4/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator

Eric Randall, Chief of Police

ATTACHMENTS:

- 1) Supplemental Budget Resolution No. 2022-098
- 2) Supplemental Budget Explanation No. 2022-098

PRESENTATION: No

**RESOLUTION
NO. 2022-098**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

As Reads	Federal Grants	2,156,400
Amended		
To Read:	Federal Grants	2,201,400
As Reads	Personnel Services	65,300
Amended		
To Read:	Personnel Services	110,300

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA**OCTOBER 2022 - SUPPLEMENTAL BUDGET RESOLUTION - FDOT- SUBGRANT FOR HIGHWAY TRAFFIC FUNDS - RES NO. 2022-098**

FUND	AMOUNT	DESCRIPTION
SPECIAL GRANTS FUND		
Estimated Revenues		
Federal Grants	45,000	Increase appropriation for Federal Grants - FDOT- Subgrant for Highway Traffic Funds
Total Revenues	<u>45,000</u>	
Appropriations		
Personnel Services	45,000	Increase appropriation for Personnel Services
Total Appropriations	<u>45,000</u>	



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 22-01010

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

FIRST AMENDMENT TO JOINT PARTICIPATION AGREEMENT (JPA) CONTRACT NO. ASR43 WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION - LANDSCAPING OF ADDITIONAL STATE ROADS

RECOMMENDATION:

That City Council approve the First Amendment to the Joint Participation Agreement (JPA) Contract No. ASR43 between the Florida Department of Transportation and the City of Pensacola for landscaping of additional state roads. Further, that City Council authorize the Mayor to take the actions necessary to execute and administer this First Amendment to JPA Contract No. ASR43, consistent with the terms of the agreement and the Mayor's Executive Powers as granted in the City Charter. Also, that City Council adopt a supplemental budget resolution appropriating the funds.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The parties wish to amend the Agreement to provide additional funding for landscape construction at two (2) added locations and provide funding for landscape maintenance. In total, additional funding in the amount of two hundred twenty thousand and 00/100 dollars (\$220,000.00) will be added to the funds originally agreed upon.

More specifically, the original JPA provided funding for landscaping of the median island at 9th Avenue and Creighton Road. This amendment allocates funding for landscaping of the median of I-110 at W. Fairfield Dr. as well as the median island of US98 at W Street.

In addition, this amendment provides funding for the City to maintain the landscaping already installed at Cervantes Street from Dominguez St. to A Street. All landscaping projects include a warranty period for which the contractor is responsible for landscape maintenance. As soon as that warranty period is over, this amendment states that the City agrees to then take over that landscape maintenance.

PRIOR ACTION:

On March 24, 2022 City Council approved the JPA Landscape Agreement Contract No. ASR43 with the Florida Department of Transportation for Landscaping of the State Road 289 N 9th Ave State Road 742 Creighton Road Intersection and adopted Supplemental Budget Resolution No. 2022-033.

FUNDING:

Budget: \$ 15,000.00 (amount of original JPA Reimbursement Agreement)
\$220,000.00 (additional amount added to JPA Reimbursement Agreement)
\$235,000.00 (total amended JPA Reimbursement Agreement)

Actual: \$231,950.00

FINANCIAL IMPACT:

Funding will be provided by the State of Florida Department of Transportation, who shall reimburse the City of Pensacola in an amount not to exceed two hundred thirty-five thousand dollars and 00/100 dollars (\$235,000), for actual costs incurred. The estimated total cost of all landscaping and maintenance activities is \$231,950.00.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/17/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator- Community Development
Brad Hinote, PE - City Engineer
Amy Tootle, PE - Director of Public Works & Facilities

ATTACHMENTS:

- 1) Original JPA Landscape Agreement Contract No. ASR43
- 2) First Amendment to JPA Landscape Agreement Contract No. ASR43

PRESENTATION: No



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

June 30, 2022

Mr. David Forte, Deputy City Administrator
City of Pensacola
222 West Main Street
Pensacola, FL 32502

Re: JPA on SR 289 from North 9th Avenue at SR 742 Creighton Intersection
FP ID: 439561-3-58-01
Contract No.: ASR43

Dear Mr. Forte:

Enclosed please find an original executed JPA landscape agreement for the above referenced project. You may consider this your Notice to Proceed with the construction of the landscape project. The deadline for completion of the project will be December 31, 2023.

The Department is pleased to assist the City of Pensacola with this project. If you have any questions, please contact Ms. Pam Miner, Project Manager, at 850-845-0325.

Sincerely,

A handwritten signature in blue ink that reads "Dustie Moss". The signature is written in a cursive, flowing style.

Dustie Moss
District Landscape Project Manager

Cc: Pam Miner

JOINT PARTICIPATION AGREEMENT
BETWEEN
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF PENSACOLA

Financial Project No.: 439561-3-58-01
Contract No.: ASR43
Vendor No.: F596000406002

This Joint Participation Agreement ("Agreement") is between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, "**DEPARTMENT**," and the City of PENSACOLA, "**CITY**." The **DEPARTMENT** and the **CITY** are desirous of having the **CITY** make certain improvements in connection with **Financial Project Identification Number (FP ID) 439561-3-58-01** for landscape improvements in the **CITY** of PENSACOLA, Florida, State Road 289 North 9TH Avenue at State Road 742 Creighton Road intersection, Pensacola, Florida, herein after referred to as the "**PROJECT**." The **PROJECT** will have an **Installation Phase** and a **Maintenance Phase**, which is further described herein. The **DEPARTMENT** and the **CITY** may sometimes be referred to in this Agreement as a "Party", and collectively as the "Parties."

1. The **DEPARTMENT** and the **CITY** have the authority under Section 339.12, Florida Statutes, to enter into this Agreement; and
2. A Roadside Beautification Assistance Program has been created by Section 334.044(26), Florida Statutes, to conserve the natural roadside growth and scenery" and "to provide for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs"; and
3. The **CITY** has certified to the **DEPARTMENT** that it has met the eligibility requirements of said Section 334.044(26), Florida Statutes; and
4. The **DEPARTMENT** shall reimburse the **CITY** for services as further described in this Agreement and in Exhibit "A" Scope of Services, attached and incorporated into this agreement hereto; and
5. The **CITY**, by resolution No. 2022--33, a copy of which is attached hereto as Exhibit "D", has authorized the Mayor or **CITY** Official to enter into this Agreement.

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

6. The recitals in paragraphs 1-5 above are true and correct and are made a part of this Agreement.

7. SERVICES AND PERFORMANCE

A. The CITY shall be responsible for the preparation of all design plans for the **PROJECT** at CITY's sole expense. Said design plans shall include the design for the installation and maintenance of any and all plants, planting material, and irrigation systems, to be maintained by the CITY under this Agreement (the "Plans"). The Plans shall be deemed to be incorporated by this reference into this Agreement upon completion by the CITY.

B. The CITY shall have the sole responsibility for resolving claims and requests for the addition work for the **PROJECT**. The CITY will make best efforts to obtain the **DEPARTMENT'S** input in its decisions.

C. The CITY shall furnish the services with which to undertake and complete the **PROJECT**, which shall consist of both an i) Installation Phase and ii) Maintenance Phase, said services being further described in Exhibit "A" to this Agreement.

D. The CITY agrees to undertake and complete the **PROJECT** in accordance with all applicable statutes, rules and regulations, including **DEPARTMENT** standards and specifications and in accordance with District Three Landscape Care Guide – Landscape and Irrigation Care along the State Highway System, dated February 4, 2016, as may be amended or revised from time to time ("Landscape Care Guide"), which is hereby incorporated by reference into this Agreement. The CITY shall take the necessary steps to ensure the **PROJECT** is completed within state or CITY right-of-way, or an appropriate easement has been acquired for off right-of-way actions. The CITY shall be responsible for obtaining clearances/permits required for the **PROJECT** from the appropriate permitting authorities.

i). The CITY shall obtain a Landscape Permit from the **DEPARTMENT** prior to performing any work under this Agreement.

ii.) If the **PROJECT** requires bore work to be performed, the CITY shall obtain a permit from the **DEPARTMENT** prior to performing the bore work.

iii). The CITY shall notify the **DEPARTMENT** field office responsible for overseeing the **PROJECT** at least 48 hours prior to beginning work on the **PROJECT**.

E. Upon completion of the Installation Phase of the **PROJECT**, the appropriate CITY representative shall certify to the **DEPARTMENT** that the Installation Phase of **PROJECT** has been completed in accordance with the Plans and specifications, and all the terms and conditions of this Agreement. Said certification shall be done by forwarding a completed Certification of Completion form, attached hereto as Exhibit "C," in accordance with Section 11.L. of this Agreement. Completion of the Installation Phase of the **PROJECT** shall be subject to final acceptance and certification by the **DEPARTMENT**.

F. The **DEPARTMENT** will be entitled at all times to be advised as to the status of work being done by the CITY and of the details thereof. Therefore, the CITY shall provide a

monthly report on the first business day of the month to the **DEPARTMENT** project manager during the Installation Phase.

G. If the **CITY** hires a consultant, it must certify that its consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes).

H. The **CITY** shall not sublet, assign or transfer this Agreement without prior written consent of the **DEPARTMENT**.

I. The **CITY** shall have sole responsibility for maintaining the subject landscaping according to **DEPARTMENT** standards and specifications, as well as stipulations outlined in the Landscape Care Guide. Upon the execution of this Agreement, The **CITY** certifies that it has received a copy of the Landscape Care Guide and agrees to be bound by the terms and conditions contained therein.

J. Upon completion of the Installation Phase of the **PROJECT** by the **CITY**, the **CITY** will assume responsibility for the Maintenance Phase of the **PROJECT**, which includes, irrigation and other related materials identified in the Plans, and will conduct such maintenance as specified in accordance with any maintenance plan identified in the notes of the **PROJECT** Plans, as well as the requirements set forth in the Landscape Care Guide. The **CITY** shall coordinate with the **DEPARTMENT's** District Landscape Project Manager or their designee to inspect the **PROJECT** on a quarterly basis and subsequently make corrections based on each quarterly inspection. In the event the **CITY** fails to maintain the **PROJECT** in accordance with a maintenance schedule and plan, the **DEPARTMENT**, at its option, may perform the required maintenance and the **CITY** shall reimburse the **DEPARTMENT** for the costs.

K. The **CITY**:

i). Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **CITY** during the term of the contract; and

ii). Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

8. TERM

A. The **CITY** shall commence the project activities subsequent to the execution of this Agreement and said activities shall be performed in accordance with the following schedule:

i). Installation Phase

The term of the Installation Phase of the **PROJECT** shall commence subsequent

to execution of this Agreement and shall end on the date the **DEPARTMENT** receives from the **CITY** notification and certification of completion of the Installation Phase in accordance with Section 7.E. of this Agreement, or **December 31, 2023**, whichever occurs first. The Installation Phase shall include a 365-day establishment period. If the **CITY** does not complete the Installation Phase of the **PROJECT** by **December 31, 2023**, or within the time granted by means of written extension(s) in accordance with Section 11.J. of this Agreement, then this Agreement will expire on the last day of the scheduled completion of the Installation Phase as provided in this paragraph.

ii). Maintenance Phase

The term of the Maintenance Phase of the **PROJECT** shall commence on the date the **CITY** provides certification of completion of the Installation Phase in accordance with Section 7.E. of this Agreement and shall continue for a period of ten (10) years from that date. This Agreement will expire on the last day of the ten (10) year term of the Maintenance Phase.

iii). Renewal Option

Notwithstanding the foregoing, this Agreement has a renewal option. Upon agreement by the **DEPARTMENT** and the **CITY**, this Agreement may be renewed for a period not to exceed ten (10) years, it being understood that the total number of renewal periods shall not exceed two separate ten (10) year renewals. The renewal(s) will be subject to the same terms and conditions set forth in the original Agreement, as well as any amendments thereto.

9. REIMBURSEMENT AND PAYMENT

A. i) The total cost of the **PROJECT** is estimated at **\$15,000.00**. The **DEPARTMENT** shall reimburse the **CITY** for one hundred percent (100%) of the total actual costs directly related to the Installation Phase of the **PROJECT**, in an amount not to exceed **FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)**, for actual costs incurred. It is understood and agreed to by the Parties that the total reimbursement amount under this Agreement shall not exceed **\$15,000.00**, unless otherwise provided herein or as may be subsequently agreed to by the Parties through the execution of an amendment. The method of compensation is further described in Exhibit "B", which is attached hereto. Any additional costs, such as design costs of the **PROJECT**, costs relating to the Maintenance Phase of the **PROJECT**, or other items not covered by this Agreement, shall be the **CITY's** sole responsibility.

ii) The **CITY** shall submit one invoice (3 copies) plus supporting documentation required by the **DEPARTMENT** to the Department's Landscape Project Manager, 1074 Highway 90, Chipley, FL, 32428, for approval and processing.

iii) The **DEPARTMENT** shall reimburse the **CITY** upon receipt of a properly submitted invoice and all supporting documentation. Supporting documentation shall include a copy of the cancelled check tendered by the **CITY** to the consultant/contractor who performed the work under the **PROJECT**. Supporting documentation shall also include dates of

services and items of work performed on the **PROJECT**.

iv) Invoices shall be submitted by the **CITY** in detail sufficient for a proper pre-audit and post-audit thereof, based on quantifiable, measurable and verifiable deliverables as established in Exhibit "A," Scope of Services Plans when approved by the **DEPARTMENT**. Deliverables must be received and accepted in writing by the **DEPARTMENT's** Project Manager or designee prior to reimbursements.

v) Supporting documentation must establish that the deliverables were received and accepted in writing by the **DEPARTMENT** and must also establish that the required minimum level of service to be performed was met, and that the criteria for evaluating successful completion was met, as specified in Section 7 and Exhibit "A" of this Agreement.

vi) The **CITY** may receive progress payments for deliverables based on a percentage of services that have been completed, approved and accepted to the satisfaction of the **DEPARTMENT** when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon completion of all **PROJECT** services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the **PROJECT** has been inspected, approved and accepted to the satisfaction of the **DEPARTMENT** in writing.

vii) If the schedule for performance exceeds 30 days the **CITY** shall submit invoices to the **DEPARTMENT** at the end of each calendar month. The **CITY** shall prepare and submit monthly invoices to the **DEPARTMENT** in a format acceptable to the **DEPARTMENT**. Optionally, in an extended performance as referred to in this item, the **CITY** may submit one complete invoice in the form and in accordance with the method required in items i), ii), iii), iv), v) and vi) above.

viii) If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

ix) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and post-audit thereof.

x) Travel costs will not be reimbursed.

B. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for ten (10) years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred includes the **CITY's** general accounting records and the project records, together with supporting documents and records of the **CITY** and all subcontractors performing work on the **PROJECT**, and all other records of the **CITY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

C. The **DEPARTMENT** during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in

excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **DEPARTMENT** shall require a statement from the Comptroller of the **DEPARTMENT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

10. TERMINATION AND DEFAULT

A. If the **DEPARTMENT** determines the performance of the **CITY** is not satisfactory, the **DEPARTMENT** shall have the option of (a) immediately terminating the Agreement, or (b) notifying the **CITY** of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or the **DEPARTMENT** will take whatever action is deemed appropriate by the **DEPARTMENT**.

B. The **DEPARTMENT** may cancel this Agreement in whole or in part at any time the interest of the **DEPARTMENT** requires such termination. The **DEPARTMENT** also reserves the right to terminate or cancel this Agreement in the event the **CITY** shall be placed in either voluntary or involuntary bankruptcy. The **DEPARTMENT** further reserves the right to terminate or cancel this Agreement in the event of an assignment being made for the benefit of creditors. This Agreement may be canceled by the **CITY** upon (60) sixty days written notice to the **DEPARTMENT**.

C. If the **DEPARTMENT** requires termination of the Agreement for reasons other than unsatisfactory performance of the **CITY**, the **DEPARTMENT** shall notify the **CITY** of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the **CITY** shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the **DEPARTMENT** and will be turned over promptly by the **CITY**.

11. MISCELLANEOUS

A. Participants (in this document identified as **CITY**) providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has ten (10) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The **DEPARTMENT** has twenty (20) days to deliver a request for payment (voucher) to the

Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

B. If a warrant in payment of an invoice is not issued within forty (40) days after receipt of the invoice and receipt, inspection, and approval of the goods and services, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount to the **CITY**. Interest penalties of less than one (1) dollar will not be enforced unless the **CITY** requests payment. Invoices which have to be returned to a **CITY** because of **CITY** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **DEPARTMENT**.

C. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Participants who may be experiencing problems in obtaining timely payment(s) from the **DEPARTMENT**. The Vendor Ombudsman may be contacted at (850) 413-5509.

D. The **CITY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **CITY** in conjunction with this Agreement. Failure by the **CITY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.

E. The **CITY** shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof. The **CITY** shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement.

F. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

G. The **CITY** and the **DEPARTMENT** agree that the **CITY**, its employees, and subcontractors are not agents of the **DEPARTMENT** as a result of this Agreement.

H. It is understood between the Parties hereto that any part of or the entire **PROJECT** may be removed, relocated or adjusted at any time in the future as determined to be necessary by the **DEPARTMENT** in order that the associated state road be widened, altered or otherwise changed to meet with the future criteria or planning of the **DEPARTMENT**. The **DEPARTMENT** shall give the **CITY** notice regarding such removal, relocation or adjustment and the **CITY** shall be allowed sixty (60) calendar days to remove all or part of the **PROJECT** at its own cost. The **CITY** shall own that part of the **PROJECT** it removes. After the sixty (60) calendar day's removal period, the **DEPARTMENT** may remove, relocate or adjust the **PROJECT** as it deems best. Wherever the **CITY** removes a **PROJECT** pursuant to this Agreement, the **CITY** shall restore the surface of the affected portion of the **PROJECT'S** premises to the same safe and trafficable condition as existed prior to installation of such **PROJECT**.

I. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement. Venue of any judicial proceedings arising out of this Agreement shall be in **LEON** ~~Escambia~~ County, Florida.

J. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions herein, nor any extension of time for completion of any phase of the PROJECT, shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

K. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

L. Any and all notices, reports, invoices, and certifications required pursuant to the terms of this Agreement shall be sent by First Class United States Mail to the addresses listed below; provided, however, that the **DEPARTMENT** may, by written authorization to the **CITY**, allow for a separate means of notification:

DEPARTMENT
 Dustie Moss, District Landscape
 Florida Department of Transportation
 1074 Highway 90
 Chipley, FL 32428

CITY

Mr. David Forte, Deputy City Administrator
City of PENSACOLA
222 West Main Street
Pensacola, FL 32502

M. The **DEPARTMENT** and the **CITY** agree to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

N. The **CITY** agrees to comply with requirements set forth in Section 334.044(26), Florida Statutes.

O. This Agreement shall become effective on the last date of a signature by a Party.

The remainder of this page intentionally left blank

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CITY OF PENSACOLA, FLORIDA

ATTEST: *Trisha L. Bennett* (SEAL)
CLERK

BY: *[Signature]*
TITLE: *Pensacola City Administrator*
DATE: *6/6/2022*

Harold Landray for
CITY ATTORNEY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: *Kristen Good* (SEAL)
EXECUTIVE SECRETARY

BY: *[Signature]*
DIRECTOR OF
TRANSPORTATION
OPERATIONS
DATE: *6/21/22*

LEGAL REVIEW:

Erin Oliver
OFFICE OF GENERAL COUNSEL
ERIN OLIVER

Exhibit "A"
Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection
SCOPE OF SERVICES

FP ID: 439561-3-58-01

Project Description: Landscape design of State Road 289 North 9TH Avenue at State Road 742 Creighton Road intersection, Pensacola, Florida

Project Name: LANDSCAPING AT 9TH AND CREIGHTON

Item #	Brief Description	Qty	Unit	Unit Price	Amount
1	Mobilization	1	LS	\$750.00	750.00
2	Traffic Control	1	LS	\$650.00	650.00
3	Irrigation Complete (Baylen to Clubbs Street)	1	LS	\$750.00	750.00
4	Lagerstroemia Indica 'Natchez'(Natchez Crape Myrtle	2	EA	\$300.00	600.00
5	Quercus Virginiana(Cathedral Live Oak)DBH '5"-6"C	5	EA	\$665.00	3,325.00
6	Diets 'Bicolor'(Yellow African Iris)'1" Gallon full	132	EA	\$3.75	495.00
7	Dianella Caerulea 'Variegated Flax Lily	72	EA	\$15.55	1,119.60
8	Raphiolepis Indica (Indian Hawthorne) '3" Gallon Full	187	EA	\$10.40	1,944.80
9	Serenoa Repens(Saw Palmetto)'3" Gallon, Partial '30"	93	EA	\$17.85	1,660.05
10	Trachelospermum Asiaticum(Asian Jasmine)'1" Gallon	30	EA	\$7.00	210.00
11	24" Root Barrier	359	LF	\$6.50	2,333.50
12	Pine Straw Mulch-'3" Depth	19	CY	\$19.50	370.50
	TOTAL:				14,208.45

Summary: The project will consist of various types of plantings and pine straw along the intersection of SR 289 & SR 742 intersection.

A 365-day establishment warranty will be included.

Total Project Estimate = \$15,000.00

The project design, set-backs, planting, etc. are subject to change pending FDOT design approval. Proposed plantings are also subject to change during construction based on availability, and subject to FDOT approval.

EXHIBIT "B"
Method of Compensation

FP ID: 439561-3-58-01

Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection

For satisfactory completion of all services related to the purchase of the plant materials, fertilizer, and the cost for labor associated with the installation of the planting detailed in Exhibit "A" Scope of Services of this Agreement, the **DEPARTMENT** shall reimburse the **CITY** in an amount not to exceed **FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)**, for actual costs incurred.

The **CITY** may receive progress payments for actual costs incurred for deliverables based on a percentage of services that have been completed, approved and accepted to the satisfaction of the **DEPARTMENT** when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon completion of all **PROJECT** services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the **PROJECT** has been inspected, approved and accepted to the satisfaction of the **DEPARTMENT** in writing.

EXHIBIT "C"
Certification of Completion

FP ID: 439561-3-58-01

Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection

CERTIFICATION OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and CITY OF PENSACOLA**

**PROJECT DESCRIPTION: Landscaping of State Road 289 N 9TH Ave. at State Road 742
Creighton Road Intersection, Pensacola, Florida**

FINANCIAL MANAGEMENT ID# 439561-3-58-01

In accordance with the terms and conditions of the JOINT PARTICIPATION AGREEMENT,
the undersigned hereby provides notification that the Installation Phase of Project under this
Agreement is complete as of _____, 2022.

By: _____

Name: _____

Title: _____

Exhibit "D"
RESOLUTION

FP ID: 439561-3-58-01

**Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection
Pensacola, Florida**

**RESOLUTION
NO. 2022-033**

**A RESOLUTION
TO BE ENTITLED:**

**A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2022; PROVIDING FOR AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. GENERAL FUND

As Reads	State Reimbursements	972,395
Amended		
To Read:	State Reimbursements	987,395
As Reads	Operating Expenses	16,141,877
Amended		
To Read:	Operating Expenses	16,156,877

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: March 24, 2022

Approved: *Ann Hill*
President of City Council

Attest:

Trisha L. Bennett
City Clerk

I, DO HEREBY CERTIFY THAT THE ABOVE AND
FOREGOING IS A TRUE AND CORRECT COPY OF
THE ORIGINAL THEREOF ON FILE IN MY OFFICE.
WITNESS MY HAND AND THE CORPORATE SEAL
OF THE CITY OF PENSACOLA, FLORIDA THIS THE
25 DAY OF March 2022
Trisha L. Bennett
CITY CLERK
CITY OF PENSACOLA, FLORIDA

THE CITY OF PENSACOLA
 APRIL 2022 - SUPPLEMENTAL BUDGET RESOLUTION - JPA LANDSCAPE AGREEMENT - RES NO. 2022-033

FUND	AMOUNT	DESCRIPTION
GENERAL FUND		
Estimated Revenues		
State Reimbursement Agreements	15,000	Increase appropriation for State Reimbursements
Total Revenues	<u>15,000</u>	
Appropriations		
Operating Expenses	15,000	Increase appropriation for Operating Expenses
Total Appropriations	<u>15,000</u>	



Legislation Details (With Text)

File #: 22-00261 **Version:** 1 **Name:**
Type: Legislative Action Item **Status:** Passed
File created: 3/4/2022 **In control:** City Council
On agenda: 3/24/2022 **Final action:** 3/24/2022
Enactment date: **Enactment #:**
Title: JOINT PARTICIPATION AGREEMENT BETWEEN STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND CITY OF PENSACOLA - LANDSCAPING OF THE STATE ROAD 289 N 9TH AVE STATE ROAD 742 CREIGHTON ROAD INTERSECTION
Sponsors: Grover C. Robinson, IV
Indexes:
Code sections:
Attachments: 1. Joint Participation Agreement No. 439561-3-58-01, 2. Supplemental Budget Resolution No. 2022-033, 3. Supplemental Budget Explanation No. 2022-033

Date	Ver.	Action By	Action	Result
3/24/2022	1	City Council	Approved	Pass
3/21/2022	1	Agenda Conference	Placed on Regular Agenda	Pass

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

JOINT PARTICIPATION AGREEMENT BETWEEN STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND CITY OF PENSACOLA - LANDSCAPING OF THE STATE ROAD 289 N 9TH AVE STATE ROAD 742 CREIGHTON ROAD INTERSECTION

RECOMMENDATION:

That City Council authorize the Mayor to execute a joint participation agreement between the State of Florida Department of Transportation and the City of Pensacola for landscaping installation on State Road 289 North 9th Avenue at State Road 742 Creighton Road Intersection, Pensacola, Florida. Further, that City Council adopt a Supplemental Budget Resolution appropriating funding for this project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In an effort to provide beautification within what is currently an unsightly island, grant funding has been secured through the State of Florida Department of Transportation. These JPA grant funds are earmarked for landscape installation that will consist of various types of plantings and ground cover

at the intersection of SR 289 & SR 742. A 365-day landscaping establishment warranty will be included.

PRIOR ACTION:

None.

FUNDING:

Budget: \$ 15,000.00 (amount FDOT will reimburse)

Actual: \$ 14,208.45

FINANCIAL IMPACT:

Funding will be provided by the State of Florida Department of Transportation, who shall reimburse the City of Pensacola in an amount not to exceed **FIFTEEN THOUSAND DOLLARS AND 00/100 DOLLARS (\$15,000)**, for actual costs incurred. The estimated total cost of Landscaping at 9th and Creighton is \$14,208.45.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

3/15/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator - Community Development
Amy Tootle, Director Public Works & Facilities
Brad Hinote, City Engineer

ATTACHMENTS:

- 1) Joint Participation Agreement Project No. 439561-3-58-01
- 2) Supplemental Budget Resolution No.2022-033
- 3) Supplemental Budget Explanation No. 2022-033

PRESENTATION: No



FLORIDA'S FIRST & FUTURE

GROVER C. ROBINSON, IV
Mayor

MEMORANDUM

To: Amy Lovoy, Finance Director

From: Grover Robinson, IV, Mayor

GCR

Date: October 1, 2021

Subject: Authority to Sign Documents

The signature or electronic routing approval of David Forte, Deputy City Administrator, on any of the following documents, represents the same authority as the Mayor's signature:

- Budget Transfers
- Request for Payments (RPs)
- Requisitions
- Purchase Orders
- Personnel Related Forms
- Contracts
- Council Memorandums
- Release of Lien
- Lien for Improvements
- Permit Applications

cc: Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator – Administration & Enterprise
David Forte, Deputy City Administrator – Community Development

To: Dustie.Moss@dot.state.fl.us

FLORIDA DEPARTMENT OF TRANSPORTATION FUNDS APPROVAL

ASR43

2/15/2022

CONTRACT INFORMATION

Contract:	ASR43
Contract Type:	AK - PROJ PARTICIPATION (PROJ PART)
Method of Procurement:	G - GOVERNMENTAL AGENCY (287.057,F.S.)
Vendor Name:	PENSACOLA, CITY OF
Vendor ID:	F596000406002
Beginning Date of This Agreement:	02/14/2022
Ending Date of This Agreement:	02/14/2023
Contract Total/Budgetary Ceiling:	ct = \$15,000.00
Description:	JPA for landscaping on SR 742 (Creighton) at 9th Avenue

FUNDS APPROVAL INFORMATION

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER ON 2/15/2022

Action:	Original
Reviewed or Approved:	APPROVED
Organization Code:	55034040312
Expansion Option:	A6
Object Code:	132900
Amount:	\$15,000.00
Financial Project:	43956135801
Work Activity (FCT):	303
CFDA:	
Fiscal Year:	2022
Budget Entity:	55150200
Category/Category Year:	088716/22
Amendment ID:	O001
Sequence:	00
User Assigned ID:	
Enc Line (6s)/Status:	0001/04

Total Amount: \$15,000.00

**FIRST AMENDMENT
TO
JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PENSACOLA, FLORIDA**

This Amendment is between the State of Florida, Department of Transportation, "Department," whose mailing address is, 1074 Highway 90, Chipley, Florida 32428 and the City of Pensacola, Florida "City".

WITNESSETH

WHEREAS, the Department and the City entered into an Agreement, Contract No. **ASR43**, on June 21, 2022, for landscaping improvements along SR 289 from North 9th Avenue at SR 742 Creighton Intersection under Financial Project No. 439561-3-58-01 ("Project") known by the Parties as the "Agreement" and

WHEREAS, the Parties desire to further amend the Agreement to provide additional landscape construction and maintenance of three (3) additional locations including two (2) intersections and median maintenance at the additional locations that are also the subject of this First Amendment, increase the limits of the Project (as indicated by an additional project number) and add additional funding in the amount of Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00) for the Project as set forth below.

NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. The recitals in the Whereas clauses above are true and correct and are incorporated into this Amendment.
2. Section 9 (Reimbursement and Payment), Paragraph 9(A)(i) of the Agreement is hereby amended by deleting the amount "FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)", wherever appearing therein, and substituting the amount "TWO HUNDRED THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$235,000.00)", in lieu thereof.
3. Exhibit "B" (Method of Compensation) of the Agreement is hereby amended by

deleting the amount “FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)”, wherever appearing therein, and substituting the amount “TWO HUNDRED THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$235,000.00)”, in lieu thereof.

4. The limits of the Project are amended to be as follows:

SR 289 from North 9th Avenue at SR 742 Creighton under Financial Project No. 439561-3-58-01 and I-110 at Fairfield and SR 30 (US 98) at W Street, SR 10A (US 90) W Cervantes Street from Dominguez Street to A Street under Financial Project No 450950-1-58-01(“Project”), which will now be known by the Parties as the “Project”.

5. Except as modified in this First Amendment, the provisions, terms and conditions of the Agreement shall remain in full force and effect.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this First Amendment shall be effective on the last date of execution hereof by a Party.

CITY OF PENSACOLA, FLORIDA

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____
Executive Secretary

Legal Review:

Legal Review:

City Attorney

Office of the General Counsel



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 2022-105

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

SUPPLEMENTAL BUDGET RESOLUTION NO. 2022-105 - FIRST AMENDMENT TO THE JOINT PARTICIPATION AGREEMENT (JPA) CONTRACT NO. ASR43 - LANDSCAPING OF STATE ROADS

RECOMMENDATION:

That the City Council adopt Supplemental Budget Resolution No. 2022-105:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

The parties wish to amend the Agreement to provide additional funding for landscape construction at two (2) additional locations and provide funding for landscape maintenance. In total, additional funding in the amount of two hundred twenty thousand and 00/100 dollars (\$220,000.00) will be added to the funds originally agreed upon.

More specifically, the original JPA provided funding for landscaping of the median island at 9th Avenue and Creighton Road. This amendment allocates funding for landscaping of the median of I-110 at W. Fairfield Dr. as well as the median island of US98 at W Street.

In addition, this amendment provides funding for the City to maintain the landscaping already installed at Cervantes Street from Dominguez St. to A Street. All landscaping projects include a warranty period for which the contractor is responsible for landscape maintenance. As soon as that warranty period is over, this amendment states that the City agrees to then take over that landscape maintenance.

PRIOR ACTION:

On March 24, 2022 City Council approved the JPA Landscape Agreement Contract No. ASR43 with the Florida Department of Transportation for Landscaping of the State Road 289 N 9th Ave State Road 742 Creighton Road Intersection and adopted Supplemental Budget Resolution No. 2022-033.

FUNDING:

Budget: \$ 15,000.00 (amount of original JPA Reimbursement Agreement)
 \$220,000.00 (additional amount added to JPA Reimbursement Agreement)
 \$235,000.00 (total amended JPA Reimbursement Agreement)

Actual: \$231,950.00

FINANCIAL IMPACT:

Funding will be provided by the State of Florida Department of Transportation, who shall reimburse the City of Pensacola in an amount not to exceed two hundred thirty-five thousand dollars and 00/1000 dollars (\$235,000.00), for actual costs incurred. The estimated total cost of Landscaping at 9th and Creighton is \$231,950.00.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

10/17/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator - Community Development
Amy Tootle, PE - Director Public Works & Facilities
Brad Hinote, PE - City Engineer

ATTACHMENTS:

- 1) Supplemental Budget Resolution No. 2022-105
- 2) Supplemental Budget Explanation No. 2022-105
- 3) Original JPA Landscape Agreement Contract No. ASR43
- 4) First Amendment to Joint Participation Agreement Contract No. ASR43

PRESENTATION: No

**RESOLUTION
NO. 2022-105**

A RESOLUTION
TO BE ENTITLED:

A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2023; PROVIDING FOR AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. SPECIAL GRANTS FUND

To:	State Grants	235,000
As Reads	Operating Expenses	67,720
Amended		
To Read:	Operating Expenses	302,720

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk

THE CITY OF PENSACOLA

OCTOBER 2022 - SUPPLEMENTAL BUDGET RESOLUTION - AMENDMENT TO THE JOINT PARTICIPATION AGRMT CONTRACT NO. ASR43 – LANDSCAPING OF STATE ROAD

FUND	AMOUNT	DESCRIPTION
SPECIAL GRANTS FUND		
Estimated Revenues		
State Grants	235,000	Increase appropriation for State Grants - Amedment to the Joint Agrmt Contract # ASR43-Landscaping of State Roads
Total Revenues	<u>235,000</u>	
Appropriations		
Operating Expenses	235,000	Appropriate Funding for Operating Expenses
Total Appropriations	<u>235,000</u>	



Florida Department of Transportation

RON DESANTIS
GOVERNOR

605 Suwannee Street
Tallahassee, FL 32399-0450

JARED W. PERDUE, P.E.
SECRETARY

June 30, 2022

Mr. David Forte, Deputy City Administrator
City of Pensacola
222 West Main Street
Pensacola, FL 32502

Re: JPA on SR 289 from North 9th Avenue at SR 742 Creighton Intersection
FP ID: 439561-3-58-01
Contract No.: ASR43

Dear Mr. Forte:

Enclosed please find an original executed JPA landscape agreement for the above referenced project. You may consider this your Notice to Proceed with the construction of the landscape project. The deadline for completion of the project will be December 31, 2023.

The Department is pleased to assist the City of Pensacola with this project. If you have any questions, please contact Ms. Pam Miner, Project Manager, at 850-845-0325.

Sincerely,

A handwritten signature in blue ink that reads "Dustie Moss". The signature is written in a cursive, flowing style.

Dustie Moss
District Landscape Project Manager

Cc: Pam Miner

JOINT PARTICIPATION AGREEMENT
BETWEEN
STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF PENSACOLA

Financial Project No.: 439561-3-58-01
Contract No.: ASR43
Vendor No.: F596000406002

This Joint Participation Agreement ("Agreement") is between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, "**DEPARTMENT**," and the City of PENSACOLA, "**CITY**." The **DEPARTMENT** and the **CITY** are desirous of having the **CITY** make certain improvements in connection with **Financial Project Identification Number (FP ID) 439561-3-58-01** for landscape improvements in the **CITY** of PENSACOLA, Florida, State Road 289 North 9TH Avenue at State Road 742 Creighton Road intersection, Pensacola, Florida, herein after referred to as the "**PROJECT**." The **PROJECT** will have an **Installation Phase** and a **Maintenance Phase**, which is further described herein. The **DEPARTMENT** and the **CITY** may sometimes be referred to in this Agreement as a "Party", and collectively as the "Parties."

1. The **DEPARTMENT** and the **CITY** have the authority under Section 339.12, Florida Statutes, to enter into this Agreement; and
2. A Roadside Beautification Assistance Program has been created by Section 334.044(26), Florida Statutes, to conserve the natural roadside growth and scenery" and "to provide for the implementation and maintenance of roadside conservation, enhancement, and stabilization programs"; and
3. The **CITY** has certified to the **DEPARTMENT** that it has met the eligibility requirements of said Section 334.044(26), Florida Statutes; and
4. The **DEPARTMENT** shall reimburse the **CITY** for services as further described in this Agreement and in Exhibit "A" Scope of Services, attached and incorporated into this agreement hereto; and
5. The **CITY**, by resolution No. 2022--33, a copy of which is attached hereto as Exhibit "D", has authorized the Mayor or CITY Official to enter into this Agreement.

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

6. The recitals in paragraphs 1-5 above are true and correct and are made a part of this Agreement.

7. SERVICES AND PERFORMANCE

A. The CITY shall be responsible for the preparation of all design plans for the **PROJECT** at CITY's sole expense. Said design plans shall include the design for the installation and maintenance of any and all plants, planting material, and irrigation systems, to be maintained by the CITY under this Agreement (the "Plans"). The Plans shall be deemed to be incorporated by this reference into this Agreement upon completion by the CITY.

B. The CITY shall have the sole responsibility for resolving claims and requests for the addition work for the **PROJECT**. The CITY will make best efforts to obtain the **DEPARTMENT'S** input in its decisions.

C. The CITY shall furnish the services with which to undertake and complete the **PROJECT**, which shall consist of both an i) Installation Phase and ii) Maintenance Phase, said services being further described in Exhibit "A" to this Agreement.

D. The CITY agrees to undertake and complete the **PROJECT** in accordance with all applicable statutes, rules and regulations, including **DEPARTMENT** standards and specifications and in accordance with District Three Landscape Care Guide – Landscape and Irrigation Care along the State Highway System, dated February 4, 2016, as may be amended or revised from time to time ("Landscape Care Guide"), which is hereby incorporated by reference into this Agreement. The CITY shall take the necessary steps to ensure the **PROJECT** is completed within state or CITY right-of-way, or an appropriate easement has been acquired for off right-of-way actions. The CITY shall be responsible for obtaining clearances/permits required for the **PROJECT** from the appropriate permitting authorities.

i). The CITY shall obtain a Landscape Permit from the **DEPARTMENT** prior to performing any work under this Agreement.

ii.) If the **PROJECT** requires bore work to be performed, the CITY shall obtain a permit from the **DEPARTMENT** prior to performing the bore work.

iii). The CITY shall notify the **DEPARTMENT** field office responsible for overseeing the **PROJECT** at least 48 hours prior to beginning work on the **PROJECT**.

E. Upon completion of the Installation Phase of the **PROJECT**, the appropriate CITY representative shall certify to the **DEPARTMENT** that the Installation Phase of **PROJECT** has been completed in accordance with the Plans and specifications, and all the terms and conditions of this Agreement. Said certification shall be done by forwarding a completed Certification of Completion form, attached hereto as Exhibit "C," in accordance with Section 11.L. of this Agreement. Completion of the Installation Phase of the **PROJECT** shall be subject to final acceptance and certification by the **DEPARTMENT**.

F. The **DEPARTMENT** will be entitled at all times to be advised as to the status of work being done by the CITY and of the details thereof. Therefore, the CITY shall provide a

monthly report on the first business day of the month to the **DEPARTMENT** project manager during the Installation Phase.

G. If the **CITY** hires a consultant, it must certify that its consultant has been selected in accordance with the Consultants Competitive Negotiation Act (Section 287.055, Florida Statutes).

H. The **CITY** shall not sublet, assign or transfer this Agreement without prior written consent of the **DEPARTMENT**.

I. The **CITY** shall have sole responsibility for maintaining the subject landscaping according to **DEPARTMENT** standards and specifications, as well as stipulations outlined in the Landscape Care Guide. Upon the execution of this Agreement, The **CITY** certifies that it has received a copy of the Landscape Care Guide and agrees to be bound by the terms and conditions contained therein.

J. Upon completion of the Installation Phase of the **PROJECT** by the **CITY**, the **CITY** will assume responsibility for the Maintenance Phase of the **PROJECT**, which includes, irrigation and other related materials identified in the Plans, and will conduct such maintenance as specified in accordance with any maintenance plan identified in the notes of the **PROJECT** Plans, as well as the requirements set forth in the Landscape Care Guide. The **CITY** shall coordinate with the **DEPARTMENT's** District Landscape Project Manager or their designee to inspect the **PROJECT** on a quarterly basis and subsequently make corrections based on each quarterly inspection. In the event the **CITY** fails to maintain the **PROJECT** in accordance with a maintenance schedule and plan, the **DEPARTMENT**, at its option, may perform the required maintenance and the **CITY** shall reimburse the **DEPARTMENT** for the costs.

K. The **CITY**:

i). Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the **CITY** during the term of the contract; and

ii). Shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

8. **TERM**

A. The **CITY** shall commence the project activities subsequent to the execution of this Agreement and said activities shall be performed in accordance with the following schedule:

i). Installation Phase

The term of the Installation Phase of the **PROJECT** shall commence subsequent

to execution of this Agreement and shall end on the date the **DEPARTMENT** receives from the **CITY** notification and certification of completion of the Installation Phase in accordance with Section 7.E. of this Agreement, or **December 31, 2023**, whichever occurs first. The Installation Phase shall include a 365-day establishment period. If the **CITY** does not complete the Installation Phase of the **PROJECT** by **December 31, 2023**, or within the time granted by means of written extension(s) in accordance with Section 11.J. of this Agreement, then this Agreement will expire on the last day of the scheduled completion of the Installation Phase as provided in this paragraph.

ii). Maintenance Phase

The term of the Maintenance Phase of the **PROJECT** shall commence on the date the **CITY** provides certification of completion of the Installation Phase in accordance with Section 7.E. of this Agreement and shall continue for a period of ten (10) years from that date. This Agreement will expire on the last day of the ten (10) year term of the Maintenance Phase.

iii). Renewal Option

Notwithstanding the foregoing, this Agreement has a renewal option. Upon agreement by the **DEPARTMENT** and the **CITY**, this Agreement may be renewed for a period not to exceed ten (10) years, it being understood that the total number of renewal periods shall not exceed two separate ten (10) year renewals. The renewal(s) will be subject to the same terms and conditions set forth in the original Agreement, as well as any amendments thereto.

9. REIMBURSEMENT AND PAYMENT

A. i) The total cost of the **PROJECT** is estimated at **\$15,000.00**. The **DEPARTMENT** shall reimburse the **CITY** for one hundred percent (100%) of the total actual costs directly related to the Installation Phase of the **PROJECT**, in an amount not to exceed **FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)**, for actual costs incurred. It is understood and agreed to by the Parties that the total reimbursement amount under this Agreement shall not exceed **\$15,000.00**, unless otherwise provided herein or as may be subsequently agreed to by the Parties through the execution of an amendment. The method of compensation is further described in Exhibit "B", which is attached hereto. Any additional costs, such as design costs of the **PROJECT**, costs relating to the Maintenance Phase of the **PROJECT**, or other items not covered by this Agreement, shall be the **CITY's** sole responsibility.

ii) The **CITY** shall submit one invoice (3 copies) plus supporting documentation required by the **DEPARTMENT** to the Department's Landscape Project Manager, 1074 Highway 90, Chipley, FL, 32428, for approval and processing.

iii) The **DEPARTMENT** shall reimburse the **CITY** upon receipt of a properly submitted invoice and all supporting documentation. Supporting documentation shall include a copy of the cancelled check tendered by the **CITY** to the consultant/contractor who performed the work under the **PROJECT**. Supporting documentation shall also include dates of

services and items of work performed on the **PROJECT**.

iv) Invoices shall be submitted by the **CITY** in detail sufficient for a proper pre-audit and post-audit thereof, based on quantifiable, measurable and verifiable deliverables as established in Exhibit "A," Scope of Services Plans when approved by the **DEPARTMENT**. Deliverables must be received and accepted in writing by the **DEPARTMENT's** Project Manager or designee prior to reimbursements.

v) Supporting documentation must establish that the deliverables were received and accepted in writing by the **DEPARTMENT** and must also establish that the required minimum level of service to be performed was met, and that the criteria for evaluating successful completion was met, as specified in Section 7 and Exhibit "A" of this Agreement.

vi) The **CITY** may receive progress payments for deliverables based on a percentage of services that have been completed, approved and accepted to the satisfaction of the **DEPARTMENT** when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon completion of all **PROJECT** services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the **PROJECT** has been inspected, approved and accepted to the satisfaction of the **DEPARTMENT** in writing.

vii) If the schedule for performance exceeds 30 days the **CITY** shall submit invoices to the **DEPARTMENT** at the end of each calendar month. The **CITY** shall prepare and submit monthly invoices to the **DEPARTMENT** in a format acceptable to the **DEPARTMENT**. Optionally, in an extended performance as referred to in this item, the **CITY** may submit one complete invoice in the form and in accordance with the method required in items i), ii), iii), iv), v) and vi) above.

viii) If this Agreement involves units of deliverables, then such units must be received and accepted in writing by the Contract Manager prior to payments.

ix) Bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and post-audit thereof.

x) Travel costs will not be reimbursed.

B. Records of costs incurred under terms of this Agreement shall be maintained and made available upon request to the **DEPARTMENT** at all times during the period of this Agreement and for ten (10) years after final payment is made. Copies of these documents and records shall be furnished to the **DEPARTMENT** upon request. Records of costs incurred includes the **CITY's** general accounting records and the project records, together with supporting documents and records of the **CITY** and all subcontractors performing work on the **PROJECT**, and all other records of the **CITY** and subcontractors considered necessary by the **DEPARTMENT** for a proper audit of costs.

C. The **DEPARTMENT** during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in

excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The **DEPARTMENT** shall require a statement from the Comptroller of the **DEPARTMENT** that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

10. TERMINATION AND DEFAULT

A. If the **DEPARTMENT** determines the performance of the **CITY** is not satisfactory, the **DEPARTMENT** shall have the option of (a) immediately terminating the Agreement, or (b) notifying the **CITY** of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time, or the **DEPARTMENT** will take whatever action is deemed appropriate by the **DEPARTMENT**.

B. The **DEPARTMENT** may cancel this Agreement in whole or in part at any time the interest of the **DEPARTMENT** requires such termination. The **DEPARTMENT** also reserves the right to terminate or cancel this Agreement in the event the **CITY** shall be placed in either voluntary or involuntary bankruptcy. The **DEPARTMENT** further reserves the right to terminate or cancel this Agreement in the event of an assignment being made for the benefit of creditors. This Agreement may be canceled by the **CITY** upon (60) sixty days written notice to the **DEPARTMENT**.

C. If the **DEPARTMENT** requires termination of the Agreement for reasons other than unsatisfactory performance of the **CITY**, the **DEPARTMENT** shall notify the **CITY** of such termination, with instructions to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

D. If the Agreement is terminated before performance is completed, the **CITY** shall be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by this Agreement. All work in progress will become the property of the **DEPARTMENT** and will be turned over promptly by the **CITY**.

11. MISCELLANEOUS

A. Participants (in this document identified as **CITY**) providing goods and services to the **DEPARTMENT** should be aware of the following time frames. Upon receipt, the **DEPARTMENT** has ten (10) working days to inspect and approve the goods and services unless the bid specifications, purchase order or contract specifies otherwise. The **DEPARTMENT** has twenty (20) days to deliver a request for payment (voucher) to the

Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.

B. If a warrant in payment of an invoice is not issued within forty (40) days after receipt of the invoice and receipt, inspection, and approval of the goods and services, a separate interest penalty at a rate as established pursuant to Section 55.03(1), F.S., will be due and payable, in addition to the invoice amount to the **CITY**. Interest penalties of less than one (1) dollar will not be enforced unless the **CITY** requests payment. Invoices which have to be returned to a **CITY** because of **CITY** preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the **DEPARTMENT**.

C. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for Participants who may be experiencing problems in obtaining timely payment(s) from the **DEPARTMENT**. The Vendor Ombudsman may be contacted at (850) 413-5509.

D. The **CITY** shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the **CITY** in conjunction with this Agreement. Failure by the **CITY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the **DEPARTMENT**.

E. The **CITY** shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof. The **CITY** shall not discriminate on the grounds of race, color, religion, sex or national origin in the performance of work under this Agreement.

F. No funds received pursuant to this Agreement may be expended for lobbying the Legislature, the judicial branch, or a state agency.

G. The **CITY** and the **DEPARTMENT** agree that the **CITY**, its employees, and subcontractors are not agents of the **DEPARTMENT** as a result of this Agreement.

H. It is understood between the Parties hereto that any part of or the entire **PROJECT** may be removed, relocated or adjusted at any time in the future as determined to be necessary by the **DEPARTMENT** in order that the associated state road be widened, altered or otherwise changed to meet with the future criteria or planning of the **DEPARTMENT**. The **DEPARTMENT** shall give the **CITY** notice regarding such removal, relocation or adjustment and the **CITY** shall be allowed sixty (60) calendar days to remove all or part of the **PROJECT** at its own cost. The **CITY** shall own that part of the **PROJECT** it removes. After the sixty (60) calendar day's removal period, the **DEPARTMENT** may remove, relocate or adjust the **PROJECT** as it deems best. Wherever the **CITY** removes a **PROJECT** pursuant to this Agreement, the **CITY** shall restore the surface of the affected portion of the **PROJECT'S** premises to the same safe and trafficable condition as existed prior to installation of such **PROJECT**.

I. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Florida. Any provision herein determined by a court of competent jurisdiction, or any other legally constituted body having jurisdiction, to be invalid or unenforceable shall be severable and the remainder of this Agreement shall remain in full force and effect, provided that the invalidated or unenforceable provision is not material to the intended operation of this Agreement. Venue of any judicial proceedings arising out of this Agreement shall be in **LEON** ~~Escambia~~ County, Florida.

J. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representation or agreements whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms and conditions herein, nor any extension of time for completion of any phase of the PROJECT, shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

K. **PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT:** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity.

L. Any and all notices, reports, invoices, and certifications required pursuant to the terms of this Agreement shall be sent by First Class United States Mail to the addresses listed below; provided, however, that the **DEPARTMENT** may, by written authorization to the **CITY**, allow for a separate means of notification:

DEPARTMENT
Dustie Moss, District Landscape
Florida Department of Transportation
1074 Highway 90
Chipley, FL 32428

CITY

Mr. David Forte, Deputy City Administrator
City of PENSACOLA
222 West Main Street
Pensacola, FL 32502

M. The **DEPARTMENT** and the **CITY** agree to comply with Section 20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with Section 20.055(5), Florida Statutes.

N. The **CITY** agrees to comply with requirements set forth in Section 334.044(26), Florida Statutes.

O. This Agreement shall become effective on the last date of a signature by a Party.

The remainder of this page intentionally left blank

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

CITY OF PENSACOLA, FLORIDA

ATTEST: *Trisha L. Bennett* (SEAL)
CLERK

BY: *[Signature]*
TITLE: *Pensacola City Administrator*
DATE: *6/6/2022*

Matthew Landray for
CITY ATTORNEY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

ATTEST: *Kristen Good* (SEAL)
EXECUTIVE SECRETARY

BY: *[Signature]*
DIRECTOR OF
TRANSPORTATION
OPERATIONS
DATE: *6/21/22*

LEGAL REVIEW:

Erin Oliver
OFFICE OF GENERAL COUNSEL
ERIN OLIVER

Exhibit "A"
Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection
SCOPE OF SERVICES

FP ID: 439561-3-58-01

Project Description: Landscape design of State Road 289 North 9TH Avenue at State Road 742 Creighton Road intersection, Pensacola, Florida

Project Name: LANDSCAPING AT 9TH AND CREIGHTON

Item #	Brief Description	Qty	Unit	Unit Price	Amount
1	Mobilization	1	LS	\$750.00	750.00
2	Traffic Control	1	LS	\$650.00	650.00
3	Irrigation Complete (Baylen to Clubbs Street)	1	LS	\$750.00	750.00
4	Lagerstroemia Indica 'Natchez'(Natchez Crape Myrtle	2	EA	\$300.00	600.00
5	Quercus Virginiana(Cathedral Live Oak)DBH '5"-6"C	5	EA	\$665.00	3,325.00
6	Diets 'Bicolor'(Yellow African Iris)'1" Gallon full	132	EA	\$3.75	495.00
7	Dianella Caerulea 'Variegated Flax Lily	72	EA	\$15.55	1,119.60
8	Raphiolepis Indica (Indian Hawthorne) '3" Gallon Full	187	EA	\$10.40	1,944.80
9	Serenoa Repens(Saw Palmetto)'3" Gallon, Partial '30"	93	EA	\$17.85	1,660.05
10	Trachelospermum Asiaticum(Asian Jasmine)'1" Gallon	30	EA	\$7.00	210.00
11	24" Root Barrier	359	LF	\$6.50	2,333.50
12	Pine Straw Mulch-'3" Depth	19	CY	\$19.50	370.50
	TOTAL:				14,208.45

Summary: The project will consist of various types of plantings and pine straw along the intersection of SR 289 & SR 742 intersection.

A 365-day establishment warranty will be included.

Total Project Estimate = \$15,000.00

The project design, set-backs, planting, etc. are subject to change pending FDOT design approval. Proposed plantings are also subject to change during construction based on availability, and subject to FDOT approval.

EXHIBIT "B"
Method of Compensation

FP ID: 439561-3-58-01

Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection

For satisfactory completion of all services related to the purchase of the plant materials, fertilizer, and the cost for labor associated with the installation of the planting detailed in Exhibit "A" Scope of Services of this Agreement, the **DEPARTMENT** shall reimburse the **CITY** in an amount not to exceed **FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)**, for actual costs incurred.

The **CITY** may receive progress payments for actual costs incurred for deliverables based on a percentage of services that have been completed, approved and accepted to the satisfaction of the **DEPARTMENT** when properly supported by detailed invoices and acceptable evidence of payment. The final balance due under this Agreement will be reimbursed upon completion of all **PROJECT** services, receipt of final construction cost documentation and proper submission of a detailed invoice and when the **PROJECT** has been inspected, approved and accepted to the satisfaction of the **DEPARTMENT** in writing.

EXHIBIT "C"
Certification of Completion

FP ID: 439561-3-58-01

Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection

CERTIFICATION OF COMPLETION

JOINT PARTICIPATION AGREEMENT

Between

**THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
and CITY OF PENSACOLA**

**PROJECT DESCRIPTION: Landscaping of State Road 289 N 9TH Ave. at State Road 742
Creighton Road Intersection, Pensacola, Florida**

FINANCIAL MANAGEMENT ID# 439561-3-58-01

In accordance with the terms and conditions of the JOINT PARTICIPATION AGREEMENT,
the undersigned hereby provides notification that the Installation Phase of Project under this
Agreement is complete as of _____, 2022.

By: _____

Name: _____

Title: _____

Exhibit "D"
RESOLUTION

FP ID: 439561-3-58-01

**Landscaping of State Road 289 N 9TH Ave. at State Road 742 Creighton Road Intersection
Pensacola, Florida**

**RESOLUTION
NO. 2022-033**

**A RESOLUTION
TO BE ENTITLED:**

**A RESOLUTION AUTHORIZING AND MAKING REVISIONS AND APPROPRIATIONS FOR THE
FISCAL YEAR ENDING SEPTEMBER 30, 2022; PROVIDING FOR AN EFFECTIVE DATE.**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA

SECTION 1. The following appropriations from funds on hand in the fund accounts stated below, not heretofore appropriated, and transfer from funds on hand in the various accounts and funds stated below, heretofore appropriated, be, and the same are hereby made, directed and approved to-wit:

A. GENERAL FUND

As Reads	State Reimbursements	972,395
Amended		
To Read:	State Reimbursements	987,395
As Reads	Operating Expenses	16,141,877
Amended		
To Read:	Operating Expenses	16,156,877

SECTION 2. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 3. This resolution shall become effective on the fifth business day after adoption, unless otherwise provided pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: March 24, 2022

Approved: *Ann Hill*
President of City Council

Attest:

Trisha L. Burnett
City Clerk

I, DO HEREBY CERTIFY THAT THE ABOVE AND
FOREGOING IS A TRUE AND CORRECT COPY OF
THE ORIGINAL THEREOF ON FILE IN MY OFFICE.
WITNESS MY HAND AND THE CORPORATE SEAL
OF THE CITY OF PENSACOLA, FLORIDA THIS THE
25 DAY OF March 2022
Trisha L. Burnett
CITY CLERK
CITY OF PENSACOLA, FLORIDA

THE CITY OF PENSACOLA
APRIL 2022 - SUPPLEMENTAL BUDGET RESOLUTION - JPA LANDSCAPE AGREEMENT - RES NO. 2022-033

FUND	AMOUNT	DESCRIPTION
GENERAL FUND		
Estimated Revenues		
State Reimbursement Agreements	15,000	Increase appropriation for State Reimbursements
Total Revenues	<u>15,000</u>	
Appropriations		
Operating Expenses	15,000	Increase appropriation for Operating Expenses
Total Appropriations	<u>15,000</u>	



Legislation Details (With Text)

File #: 22-00261 **Version:** 1 **Name:**
Type: Legislative Action Item **Status:** Passed
File created: 3/4/2022 **In control:** City Council
On agenda: 3/24/2022 **Final action:** 3/24/2022
Enactment date: **Enactment #:**
Title: JOINT PARTICIPATION AGREEMENT BETWEEN STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND CITY OF PENSACOLA - LANDSCAPING OF THE STATE ROAD 289 N 9TH AVE STATE ROAD 742 CREIGHTON ROAD INTERSECTION
Sponsors: Grover C. Robinson, IV
Indexes:
Code sections:
Attachments: 1. Joint Participation Agreement No. 439561-3-58-01, 2. Supplemental Budget Resolution No. 2022-033, 3. Supplemental Budget Explanation No. 2022-033

Date	Ver.	Action By	Action	Result
3/24/2022	1	City Council	Approved	Pass
3/21/2022	1	Agenda Conference	Placed on Regular Agenda	Pass

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

JOINT PARTICIPATION AGREEMENT BETWEEN STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION AND CITY OF PENSACOLA - LANDSCAPING OF THE STATE ROAD 289 N 9TH AVE STATE ROAD 742 CREIGHTON ROAD INTERSECTION

RECOMMENDATION:

That City Council authorize the Mayor to execute a joint participation agreement between the State of Florida Department of Transportation and the City of Pensacola for landscaping installation on State Road 289 North 9th Avenue at State Road 742 Creighton Road Intersection, Pensacola, Florida. Further, that City Council adopt a Supplemental Budget Resolution appropriating funding for this project.

HEARING REQUIRED: No Hearing Required

SUMMARY:

In an effort to provide beautification within what is currently an unsightly island, grant funding has been secured through the State of Florida Department of Transportation. These JPA grant funds are earmarked for landscape installation that will consist of various types of plantings and ground cover

at the intersection of SR 289 & SR 742. A 365-day landscaping establishment warranty will be included.

PRIOR ACTION:

None.

FUNDING:

Budget: \$ 15,000.00 (amount FDOT will reimburse)

Actual: \$ 14,208.45

FINANCIAL IMPACT:

Funding will be provided by the State of Florida Department of Transportation, who shall reimburse the City of Pensacola in an amount not to exceed **FIFTEEN THOUSAND DOLLARS AND 00/100 DOLLARS (\$15,000)**, for actual costs incurred. The estimated total cost of Landscaping at 9th and Creighton is \$14,208.45.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

3/15/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator
David Forte, Deputy City Administrator - Community Development
Amy Tootle, Director Public Works & Facilities
Brad Hinote, City Engineer

ATTACHMENTS:

- 1) Joint Participation Agreement Project No. 439561-3-58-01
- 2) Supplemental Budget Resolution No.2022-033
- 3) Supplemental Budget Explanation No. 2022-033

PRESENTATION: No



FLORIDA'S FIRST & FUTURE

GROVER C. ROBINSON, IV
Mayor

MEMORANDUM

To: Amy Lovoy, Finance Director

From: Grover Robinson, IV, Mayor

GC R

Date: October 1, 2021

Subject: Authority to Sign Documents

The signature or electronic routing approval of David Forte, Deputy City Administrator, on any of the following documents, represents the same authority as the Mayor's signature:

- Budget Transfers
- Request for Payments (RPs)
- Requisitions
- Purchase Orders
- Personnel Related Forms
- Contracts
- Council Memorandums
- Release of Lien
- Lien for Improvements
- Permit Applications

cc: Kerrith Fiddler, City Administrator
Amy Miller, Deputy City Administrator – Administration & Enterprise
David Forte, Deputy City Administrator – Community Development

To: Dustie.Moss@dot.state.fl.us

FLORIDA DEPARTMENT OF TRANSPORTATION FUNDS APPROVAL

ASR43

2/15/2022

CONTRACT INFORMATION

Contract:	ASR43
Contract Type:	AK - PROJ PARTICIPATION (PROJ PART)
Method of Procurement:	G - GOVERNMENTAL AGENCY (287.057,F.S.)
Vendor Name:	PENSACOLA, CITY OF
Vendor ID:	F596000406002
Beginning Date of This Agreement:	02/14/2022
Ending Date of This Agreement:	02/14/2023
Contract Total/Budgetary Ceiling:	ct = \$15,000.00
Description:	JPA for landscaping on SR 742 (Creighton) at 9th Avenue

FUNDS APPROVAL INFORMATION

FUNDS APPROVED/REVIEWED FOR ROBIN M. NAITOVE, CPA, COMPTROLLER ON 2/15/2022

Action:	Original
Reviewed or Approved:	APPROVED
Organization Code:	55034040312
Expansion Option:	A6
Object Code:	132900
Amount:	\$15,000.00
Financial Project:	43956135801
Work Activity (FCT):	303
CFDA:	
Fiscal Year:	2022
Budget Entity:	55150200
Category/Category Year:	088716/22
Amendment ID:	O001
Sequence:	00
User Assigned ID:	
Enc Line (6s)/Status:	0001/04

Total Amount: \$15,000.00

**FIRST AMENDMENT
TO
JOINT PARTICIPATION AGREEMENT
BETWEEN
THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
THE CITY OF PENSACOLA, FLORIDA**

This Amendment is between the State of Florida, Department of Transportation, “Department,” whose mailing address is, 1074 Highway 90, Chipley, Florida 32428 and the City of Pensacola, Florida “City”.

WITNESSETH

WHEREAS, the Department and the City entered into an Agreement, Contract No. **ASR43**, on June 21, 2022, for landscaping improvements along SR 289 from North 9th Avenue at SR 742 Creighton Intersection under Financial Project No. 439561-3-58-01 (“Project”) known by the Parties as the “Agreement” and

WHEREAS, the Parties desire to further amend the Agreement to provide additional landscape construction and maintenance of three (3) additional locations including two (2) intersections and median maintenance at the additional locations that are also the subject of this First Amendment, increase the limits of the Project (as indicated by an additional project number) and add additional funding in the amount of Two Hundred Twenty Thousand and 00/100 Dollars (\$220,000.00) for the Project as set forth below.

NOW THEREFORE, the Parties agree to amend the Agreement as follows:

1. The recitals in the Whereas clauses above are true and correct and are incorporated into this Amendment.
2. Section 9 (Reimbursement and Payment), Paragraph 9(A)(i) of the Agreement is hereby amended by deleting the amount “FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)”, wherever appearing therein, and substituting the amount “TWO HUNDRED THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$235,000.00)”, in lieu thereof.
3. Exhibit “B” (Method of Compensation) of the Agreement is hereby amended by

deleting the amount “FIFTEEN THOUSAND and 00/100 DOLLARS (\$15,000.00)”, wherever appearing therein, and substituting the amount “TWO HUNDRED THIRTY-FIVE THOUSAND and 00/100 DOLLARS (\$235,000.00)”, in lieu thereof.

4. The limits of the Project are amended to be as follows:

SR 289 from North 9th Avenue at SR 742 Creighton under Financial Project No. 439561-3-58-01 and I-110 at Fairfield and SR 30 (US 98) at W Street, SR 10A (US 90) W Cervantes Street from Dominguez Street to A Street under Financial Project No 450950-1-58-01(“Project”), which will now be known by the Parties as the “Project”.

5. Except as modified in this First Amendment, the provisions, terms and conditions of the Agreement shall remain in full force and effect.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this First Amendment shall be effective on the last date of execution hereof by a Party.

CITY OF PENSACOLA, FLORIDA

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____
Executive Secretary

Legal Review:

Legal Review:

City Attorney

Office of the General Counsel



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 52-22

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: Grover C. Robinson, IV, Mayor

SUBJECT:

PROPOSED ORDINANCE NO. 52-22 - PROPOSED AMENDMENT TO CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA - DOCKLESS SHARED MICROMOBILITY DEVICES PROGRAM

RECOMMENDATION:

That City Council adopt Proposed Ordinance No. 52-22 on second reading.

AN ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA AMENDING CHAPTER 7-9 OF THE CODE OF THE CITY OF PENSACOLA TO REGULATE A DOCKLESS SHARED MICROMOBILITY DEVICE PROGRAM; PROVIDING FOR INDEMNIFICATION AND INSURANCE; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Staff recommends amending Chapter 7 -9 to create a permanent micromobility program. This amendment would reflect a transition from a pilot program to a permanent program. A contract with Veo Ride for a seated scooter is forthcoming and will be brought before Council.

Changes to Chapter 7 -9 include the following:

- Delete references to "pilot".
- Add definition for forced parking.
- Add definition for different geofencing capabilities.
- Add definition for furniture zone.
- Add definition for No Park Zone.
- Add definition for No Ride Zone.
- Include motorized scooters and bicycles under the definition of Micromobility Device.

Fines will remain the same and the vendor will still have one hour to retrieve and relocate a micromobility device that is violating the ordinance. The midnight curfew on the weekends will stay

intact and the no sidewalk riding will remain.

Forced parking will be a major change to the new program, which will require devices located within a certain area to be parked in designated corrals. The forced parking area will consist mainly in the downtown core, but may change from time to time to accommodate new program needs. This essentially creates a hybrid system where scooters outside the forced parking area will be free floating and still allowed to park in furniture zones within the sidewalk, so long as they do not violate the ordinance by parking improperly.

To improve accessibility, staff will coordinate with vendors and event permit holders to create designated parking for scooters near major events. This will allow people to park and then use a micromobility device to get closer to the event.

Program Background:

On September 12, 2019, City Council adopted Ordinance No. 17-19, which created Chapter 7-9 within the City Code of Ordinances, establishing a 12-month shared micromobility device pilot program. House Bill 453 was previously passed allowing local governments to adopt an ordinance to govern the operation of micromobility devices and motorized scooters on streets, highways, sidewalks, and sidewalk areas.

In February, there was an amendment to the ordinance to update the regulations based on monitoring of the program and community feedback. Changes included the weekend curfew and no sidewalk riding.

In August, the pilot program and operating agreement permit with Veo Ride was extended to October 31 to allow time for a new contract to be negotiated and creation of an ordinance for a permanent program.

PRIOR ACTION:

September 12, 2019 - City Council voted to adopt Dockless Shared Micromobility Devices Pilot Program Ordinance. No. 17-19.

February 10, 2022 - City Council adopted Ordinance No. 02-22 amending the Dockless Shared Micromobility Pilot Program

June 16, 2022 - City Council extended the pilot program and operating agreement with Bird, Inc. through August 31, 2022.

August 18, 2022- City Council extended the pilot program for seated scooters only through October 31, 2022.

October 13, 2022 - City Council voted to approve Proposed Ordinance No. 52-22 on first reading.

FUNDING:

N/A

FINANCIAL IMPACT:

Program fees will be assessed as part of the contract with micromobility vendors.

LEGAL REVIEW ONLY BY CITY ATTORNEY: Yes

9/30/2022

STAFF CONTACT:

Kerrith Fiddler, City Administrator

David Forte, Deputy City Administrator - Community Development

Amy Tootle, P.E. - Director of Public Works and Facilities

Brad Hinote, P.E. - City Engineer

Caitlin Cerame, AICP - Transportation Planner

ATTACHMENTS:

- 1) Proposed Ordinance No. 52-22
- 2) Shared Micromobility Franchise Area Map
- 3) Proposed Forced Parking Area Map

PRESENTATION: No

PROPOSED
ORDINANCE NO. 52-22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE OF THE CITY OF PENSACOLA, FLORIDA
AMENDING CHAPTER 7-9 OF THE CODE OF THE CITY OF
PENSACOLA TO REGULATE A DOCKLESS SHARED
MICROMOBILITY DEVICE PROGRAM; PROVIDING FOR
INDEMNIFICATION AND INSURANCE; PROVIDING FOR
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Pensacola ("City") is subject to the Florida Uniform
Traffic Control Laws; and

WHEREAS, the Florida Uniform Traffic Control Law allows municipalities
to enact ordinances to permit, control or regulate the operation of vehicles, golf
carts, mopeds, micromobility devices, and electric personal assistive mobility
devices on sidewalks when such use is permissible under federal law as long as
such vehicles are restricted to a maximum speed of 15 miles per hour. *Section*
316.008(7)(a), Florida Statutes; and

WHEREAS, Chapter 11-4 of the City Code of the City of Pensacola
provides standards relating to the regulation of City rights-of-way; and

WHEREAS, the City strives to keep the City rights-of-ways compliant with
the Americans with Disabilities Act (ADA), and other federal and state
regulations, and is committed to keeping the City accessible for the mobility
challenged; and

WHEREAS, dockless shared micromobility devices left unattended and
parked or leaned on walls or otherwise obstructing access in a manner that
creates a hazard to pedestrians and individuals needing access and
maneuverability for ADA mobility devices; and

WHEREAS, the City has a significant interest in ensuring the public safety
and order in promoting the free flow of pedestrian traffic on streets and
sidewalks; and

WHEREAS, the City desired to study the impacts of dockless
shared micromobility devices; and

WHEREAS, the City Council on September 12, 2019 authorized the City to

engage in a 12 month pilot program to permit, control and regulate the use of dockless shared micromobility devices on sidewalks and roadways within the City; and

WHEREAS, the City Council has reviewed the Pilot Program, and desires to implement a permanent program for the citizens of Pensacola; and

WHEREAS, the City's intent for instituting the Program is to create a transportation network that helps reduce motor vehicle parking demand and improves transportation options;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Chapter 7-9, providing for a Dockless Shared Micromobility Device Pilot Program is hereby amended to read as follows:

Sec. 7-9-1. - Establishment of dockless shared micromobility device pilot program.

The purpose of this chapter is to establish, permit and regulate a dockless shared micromobility device pilot program in the city. The provisions of this chapter shall apply to the dockless shared micromobility device pilot program and dockless shared micromobility devices. For the purpose of this chapter, the applicant, managing agent or vendor, and owner shall be jointly and severally liable for complying with the provisions of this chapter, the operating agreement and permit.

Sec. 7-9-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The definitions in F.S. ch. 316 apply to this chapter and are hereby incorporated by reference.

Dockless shared micromobility device (micromobility device) means a micromobility device made available for shared use or rent to individuals on a short-term basis for a price or fee.

Dockless shared micromobility device system means a system generally, in which dockless shared micromobility devices are made available for shared use or rent to individuals on a short-term basis for a price or fee.

Forced Parking Area means a bounded area that contains designated parking for micromobility devices in city-owned and approved locations. Shared micromobility devices may only be parked on private property with permission of

the property owner.

Furniture Zone means the section of the sidewalk between the curb and the through zone in which street furniture and amenities, such as lighting, benches, newspaper kiosks, utility poles, tree pits, and parking are provided.

Geofencing means the use of GPS or RFID technology to create a virtual geographic boundary, enabling software to trigger a response when a mobile device enters or leaves a particular area.

Micromobility device shall have the meaning ascribed to it in F.S. § 316.003, as amended. Micromobility devices are further defined as a vehicle that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground. This term includes motorized scooters, electric bicycles, and bicycles as defined in F.S. § 316.003. This ordinance does not apply to personally owned motorized scooters, electric bicycles, and bicycles.

~~*Motorized scooter* means any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour on level ground.~~

No park zones means a geofenced area that creates a virtual geographic boundary where micromobility devices are unable to end a ride.

No ride zones means a geofenced area that creates a virtual geographic boundary where micromobility device use is prohibited.

Pedestrian means people utilizing sidewalks, ~~sidewalk area~~ or rights-of-way on foot and shall include people using wheelchairs or other ADA-compliant devices.

Rebalancing means the process by which shared micromobility devices, or other devices, are redistributed to ensure their availability throughout a service area and to prevent excessive buildup of micromobility devices or other similar devices.

Relocate or relocating or removal means the process by which the city moves the micromobility device and either secures it at a designated location or places it at a proper distribution point.

Rights-of-way means land in which the city owns the fee or has an easement devoted to or required for use as a transportation facility and may lawfully grant access pursuant to applicable law, and includes the surface, the air space over

the surface and the area below the surface of such rights-of-way.

Service area means the geographical area within the city where the vendor is authorized to offer shared micromobility device service for its users/customers as defined by the ~~pilot~~ program operating agreement and permit.

Sidewalk means that portion of a street between the curb line, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

~~*Sidewalk area* includes trail in the area of a sidewalk, as well as the sidewalk and may be a median strip or a strip of vegetation, grass or bushes or trees or street furniture or a combination of these between the curb line of the roadway and the adjacent property.~~

User means a person who uses a digital network in order to obtain a micromobility device from a vendor.

Vendor means any entity that owns, operates, redistributes, or rebalances micromobility devices, and deploys a shared micromobility device system within the city.

Sec. 7-9-3. - ~~Pilot~~ Program for shared micromobility devices on public rights-of-way; establishment; criteria.

- ~~(a) The city hereby establishes a 12-month shared micromobility device pilot program for the operation of shared micromobility devices on roadways sidewalks and sidewalk areas within the city limits.~~
- ~~(b) It is anticipated the pilot program will commence on January 1, 2020, or on such other date as directed by the city council ("commencement date") and will terminate 12 months after the commencement date.~~
- ~~(c)~~ (a) Shared micromobility devices shall not be operated in the city unless a vendor has entered into a fully executed operating license agreement and permit ("~~pilot~~ program operating agreement and permit") with the city. The mayor is authorized to develop, and execute, the ~~pilot~~ program operating agreement and permit and any other documents related to the ~~pilot~~ program.
- ~~(d)~~ (b) If two or more shared micromobility devices from a vendor, without a valid ~~pilot~~ program operating agreement and permit with the city, are found at a particular location within the city, it will be presumed that they have been deployed by that vendor, and it will be presumed the vendor is in violation of this chapter and the shared micromobility devices are subject to impoundment.

- ~~(e) A vendor shall apply to participate in the pilot program. The mayor shall select up to two vendors to participate in the pilot program, unless otherwise directed by the city council.~~
- ~~(f) No more than a total of 500 micromobility devices, distributed equally among the vendors selected to participate in the pilot program, or as directed by the mayor, will be permitted to operate within the city during the pilot program. Micromobility devices that are impounded or removed by the city shall count towards the maximum permitted micromobility devices authorized within the city.~~
- ~~(g) Once selected as a pilot program participant, a vendor shall submit a one-time, nonrefundable permit fee of \$500.00, prior to entering into the pilot program operating agreement and permit, which shall be used to assist with offsetting costs to the city related to administration and enforcement of this chapter and the pilot program.~~
- ~~(h) In addition to the nonrefundable permit fee set forth herein, prior to entering into the pilot program operating agreement and permit, a vendor shall remit to the city a one-time, nonrefundable fee in the amount of \$100.00 per device deployed by the vendor.~~
- ~~(i) (c) Prior to entering into a pilot program operating agreement and permit, a vendor shall, at its own expense, obtain and file with the city a performance bond in the amount of no less than \$10,000.00. The performance bond shall serve to guarantee proper performance under the requirements of this chapter and the pilot program operating agreement and permit; restore damage to the city's rights-of-way; and secure and enable city to recover all costs or fines permitted under this chapter if the vendor fails to comply with such costs or fines. The performance bond must name the city as obligee and be conditioned upon the full and faithful compliance by the vendor with all requirements, duties and obligations imposed by this chapter and the pilot program operating agreement and permit. The performance bond shall be in a form acceptable to the city and must be issued by a surety having an A.M. Best A-VII rating or better and duly authorized to do business in the state. The city's right to recover under the performance bond shall be in addition to all other rights of the city, whether reserved in this chapter, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the city may have. Any proceeds recovered under the performance bond may be used to reimburse the city for such~~

additional expenses as may be incurred by the city as a result of the failure of the vendor to comply with the responsibilities imposed by this chapter, including, but not limited to, attorney's fees and costs of any action or proceeding and the cost to relocate any micromobility device and any unpaid violation fines.

- ~~(j) The pilot program operating agreement and permit will be effective for a 12-month period and will automatically expire at the end of the 12-month period, unless extended, or otherwise modified, by the city council. Upon expiration of the pilot program, vendors shall immediately cease operations and, within two business days of the expiration of the pilot program, vendors shall remove all micromobility devices from the city, unless otherwise directed by the mayor. Failure to remove all micromobility devices within the two business day timeframe, may result in the impoundment of the micromobility devices and the vendor will have to pay applicable fees to recover the micromobility devices from impound in accordance with this chapter.~~
- ~~(k) In the event the pilot program is extended, or otherwise modified by the city council, the pilot program operating agreement and permit may be extended consistent with such direction.~~
- ~~(l) Upon expiration of the pilot program, micromobility devices shall not be permitted to operate within the city until and unless the city council adopts an ordinance authorizing the same.~~

Sec. 7-9-4. - Operation of a dockless shared micromobility device system—
Vendors' responsibilities and obligations; micromobility device specifications.

- (a) The vendor of a shared micromobility device system is responsible for maintenance of each shared micromobility device.
- (b) The micromobility device shall be restricted to a maximum speed of 15 miles per hour within the city.
- (c) Each micromobility device shall prominently display the vendor's company name, a unique identification number, and contact information, which may be satisfied by printing the company's uniform resource locator (URL) or providing a code to download company's mobile application.
- (d) Vendors must comply with all applicable local, state and federal regulations and laws.
- (e) Vendors must provide to the city an emergency preparedness plan

that details where the micromobility devices will be located and the amount of time it will take to secure all micromobility devices once a tropical storm or hurricane warning has been issued by the National Weather Service. The vendor must promptly secure all micromobility devices within 12 hours of an active tropical storm warning or hurricane warning issued by the National Weather Service. Following the tropical storm or hurricane, the city will notify the vendor when, and where, it is safe to redistribute the micromobility devices within the city.

- (f) Micromobility devices that are inoperable/damaged, improperly parked, blocking ADA accessibility or do not comply with this chapter must be removed by the vendor within one hour upon receipt of a complaint. An inoperable or damaged micromobility device is one that has non-functioning features or is missing components. A micromobility device that is not removed within this timeframe is subject to impoundment and any applicable impoundment fees, code enforcement fines, or penalties.
- (g) Vendors shall provide the city with data as required in the ~~pilot~~ program operating agreement and permit.
- (h) Vendors must provide details on how users can utilize the micromobility device without a smartphone.
- (i) Vendors must rebalance the micromobility devices daily based on the use within each service area as defined by the ~~pilot~~ program operating agreement and permit to prevent excessive buildup of units in certain locations.
- (j) The vendor's mobile application and website must inform users of how to safely and legally ride a micromobility device.
- (k) The vendor's mobile application must clearly direct users to customer support mechanisms, including, but not limited to, phone numbers or websites. The vendor must provide a staffed, toll-free customer service line which must provide support 24 hours per day, 365 days per year.
- (l) The vendor must provide a direct customer service or operations staff contact to city department staff.
- (m) All micromobility devices shall comply with the lighting standards set forth in F.S. § 316.2065(7), as maybe amended or revised, which requires a reflective front white light visible from a distance of at least 500 feet and a reflective rear red light visible from a distance of at least 600 feet.

- (n) All micromobility devices shall be equipped with GPS, cell phone or a comparable technology for the purpose of tracking.
- (o) All micromobility devices must include a kickstand capable of keeping the unit upright when not in use.
- (p) The only signage allowed on a micromobility device is to identify the vendor. Third-party advertising is not allowed on any micromobility device.
- (q) The mayor, at his or her discretion, may create geofenced areas where the micromobility devices shall not be utilized or parked. The vendor must have the technology available to operate these requirements upon request and make public within the vendor application. Information on geofenced areas will be available through the Engineering Department and available on the City website. Within geofenced areas, devices shall be capable of the following:
 - Reduce speed
 - Buffer speed
 - Incentivize and/or limit parking areas
 - Restrict riding and/or parking in predetermined areas
- (r) The mayor, at his or her discretion, may create a forced parking area which contains designated parking zones (i.e., parking bike corrals) in certain areas the micromobility devices shall be parked. Forced parking areas may be within the furniture zone or so long as they do not violate accessibility requirements.
- (s) No micromobility device shall be operational and available for use between the hours of 12:00 am and 5:00 am, Friday morning through Sunday morning.

Sec. 7-9-5. - Operation and parking of a micromobility device.

- (a) The riding and operating of micromobility devices upon a public sidewalk is prohibited except for the purposes of parking the device in an acceptable location and position. Sidewalks may or may not be geofenced as no ride zones depending on the location, technology capabilities, and safety considerations. Micromobility devices shall be allowed to operate on public roadways. The areas listed below shall be restricted:
 - (1) Veterans Memorial Park as designated by signage;
 - (2) Where prohibited by official posting;

- (3) Prohibited roadways identified on the Shared Micromobility Devices Franchise Area Map, which includes:
 - Cervantes Street
 - North 9th Avenue
 - Garden Street
 - Barrancas Avenue; or
 - (4) As designated in the ~~pilot program~~ operating agreement and permit.
- (b) A user of a micromobility device has all the rights and duties applicable to the rider of a bicycle under F.S. § 316.2065, except the duties imposed by F.S. § 316.2065(2), (3)(b) and (3)(c), which by their nature do not apply to micromobility devices.
 - (c) Micromobility devices shall be restricted to a maximum speed of 15 miles perhour.
 - (d) A user operating a micromobility device upon a roadway upon and along a crosswalk, has all the rights and duties applicable to a bicyclist under the same circumstances. A user may operate a micromobility device to cross prohibited roadways at intersections and designated crossings.
 - (e) A user operating a micromobility device must comply with all applicable local, state and federal laws.
 - (f) Ridership of more than one person on any micromobility device shall be prohibited unless the device is specifically designed to carry more than one person.
 - ~~(f)~~ (g) Use of public sidewalks for parking micromobility devices shall not:
 - (1) Adversely affect the streets or sidewalks.
 - (2) Inhibit pedestrian movement.
 - (3) Inhibit the ingress and egress of vehicles parked on- or off-street.
 - (4) Create conditions which are a threat to public safety and security.
 - (5) Prevent a minimum four-foot pedestrian clear path.
 - (6) Impede access to existing docking stations, if applicable.
 - (7) Impede loading zones, handicap accessible parking zones or other facilities specifically designated for handicap accessibility, on-street parking spots, curb ramps, business or residential entryways, driveways, travel lanes, bicycle lanes or be within 15 feet of a fire hydrant.
 - (8) Violate Americans with Disabilities Act (ADA) accessibility requirements.

~~(g)~~ (h) No Parking Zones may be created at the discretion of the Mayor to prohibit parking in certain areas within the service area. Micromobility Devices shall not park on sidewalks designated as No Parking Zones as identified on the Shared Micromobility Devices Franchise Area Map.

Sec. 7-9-6. - Impoundment; removal or relocating by the city.

- (a) Any shared micromobility device that is inoperable/damaged, improperly parked, blocking ADA accessibility, does not comply with this chapter or are left unattended on public property, including sidewalks, furniture zones, ~~sidewalk areas~~, rights-of-way and parks, may be impounded, removed, or relocated by the city. A shared rental micromobility device is not considered unattended if it is secured in a designated parking area, rack (if applicable), parked correctly or in another location or device intended for the purpose of securing such device.
- (b) Any micromobility device that is displayed, offered, made available for rent in the city by a vendor without a valid ~~pilot~~ program operating agreement and permit with the city is subject to impoundment or removal by the city and will be subject to applicable impoundment fees or removal fines as specified in this chapter.
- (c) The city may, but is not obligated to, remove or relocate a micromobility device that is in violation of this chapter. A vendor shall pay a \$75.00 fee per device that is removed or relocated by the city.
- (d) Impoundment shall occur in accordance with F.S. § 713.78. The vendor shall be solely responsible for all expenses, towing fees and costs required by the towing company to retrieve any impounded micromobility device. The vendor of a micromobility device impounded under this chapter will be subject to all liens and terms described under F.S. § 713.78, in addition to payment of all applicable penalties, costs, fines or fees that are due in accordance with this chapter and applicable local, state and federal law.

Sec. 7-9-7. - Operation of a shared micromobility device program—Enforcement, fees, fines and penalties.

- (a) The city reserves the right to revoke any ~~pilot~~ program operating agreement and permit, if there is a violation of this chapter, the ~~pilot~~ program operating agreement and permit, public health, safety or general welfare, or for other good and sufficient cause as determined by the city in its sole discretion.

- (b) Violations of sections 7-9-1 through 7-9-9 shall be enforced as non-criminal violations of city ordinances.
- (c) Violations of operating a shared micromobility device system without a valid fully executed ~~pilot program~~ operating agreement and permit, shall be fined \$250.00 per day for an initial offense, and \$500.00 per day for any repeat offenses within 30 days of the last offense by the same vendor. Each day of noncompliance shall be a separate offense.
- (d) Violations of this chapter or of the ~~pilot program~~ operating agreement and permit shall be fined at \$100.00 ~~per device per day for an initial offense~~, and \$200.00 ~~per device per day for any repeat offenses within 30 days of the last same offense by the same vendor~~. Each day of non-compliance shall be a separate offense.
- ~~(e) The following fees, costs and fines shall apply to vendors:~~

Pilot program permit fee	\$500.00 --- nonrefundable
Performance bond	\$10,000.00 minimum
One time per unit fee	\$100.00 per unit --- nonrefundable
Removal or relocation by the city	\$75.00 per device
Operating without a valid operating agreement and permit fine	\$250.00 per day; \$500.00 per day for second offense
Permit violation fine	\$100.00 per device per day; \$200.00 per device per day for second offense

- ~~(f)~~ (e) At the discretion of the mayor, a vendor is subject to a fleet size reduction or total ~~pilot program~~ operating agreement and permit revocation should the following occur:
- (1) If the violations of the regulations set forth in this chapter are not addressed in a timely manner;
 - (2) 15 unaddressed violations of the regulations set forth by this chapter within a 30-day period; or
 - (3) Submission of inaccurate or fraudulent data.

- ~~(g)~~ (f) In the event of fines being assessed as specified herein or a ~~pilot~~ program operating agreement and permit revocation, the mayor or his or her designee, shall provide written notice of the fines or revocation via certified mail or other method specified upon in the operating user agreement, informing the vendor of the violation fines or revocation.

Sec. 7-9-8. - Appeal rights.

- (a) Vendors who have been subject to the imposition of violation fines pursuant to section 13-3-2 or a ~~pilot~~ program operating agreement and permit revocation may appeal the imposition of violation fines or the revocation. Should a vendor seek an appeal from the imposition of violation fines or the ~~pilot~~ program operating agreement and permit revocation, the vendor shall furnish notice of such request for appeal to the city code parking management enforcement authority no later than ten business days from the date of receipt of the certified letter informing the vendor of the imposition of violation fines or revocation of the ~~pilot~~ program operating agreement and permit.
- (b) Upon receipt of a notice of appeal, a hearing shall be scheduled and conducted by the special magistrate in accordance with the authority and hearing procedures set forth in section 13-2-6. The hearing shall be conducted at the next regular meeting date of the code enforcement authority or other meeting date of the code enforcement authority as agreed between the city and the vendor.
- (c) Findings of fact shall be based upon a preponderance of the evidence and shall be based exclusively on the evidence of record and on matters officially recognized.
- (d) The special magistrate shall render a final order within 30 calendar days after the hearing concludes, unless parties waive the time requirement. The final order shall contain written findings of fact, conclusions of law, recommendation to approve, approve with conditions or deny the decision subject to appeal. A copy of the order shall be provided to the parties by certified mail or, upon mutual agreement of the parties, by electrocommunication.
- (e) A vendor may challenge the final order by a certiorari appeal filed in accordance with state law with the circuit court no later than 30 days following rendition of the final decision or in any court having jurisdiction.

Sec. 7-9-9. - Indemnification and insurance.

- (a) As a condition of the ~~pilot~~ program operating agreement and permit, the vendor agrees to indemnify, hold harmless and defend the city, its representatives, employees, and elected and appointed officials, from and against all ADA accessibility and any and all liability, claims, damages, suits, losses, and expenses of any kind, including reasonable attorney's fees and costs for appeal, associated with or arising out of, or from the ~~pilot~~ program operating agreement and permit, the use of right-of-way or city-owned property for ~~pilot~~ program operations or arising from any negligent act, omission or error of the vendor, owner, or managing agent, its agents or employees or from failure of the vendor, its agents or employees, or its Users of Micromobility Devices, to comply with each and every requirement of this chapter, the ~~pilot~~ program operating agreement and permit or with any other federal, state, or local traffic law or any combination of same.
- (b) Prior to commencing operation in the ~~pilot~~ program, the vendor shall provide and maintain such liability insurance, property damage insurance and other specified coverages in amounts and types as determined by the city and contained in the ~~pilot~~ program operating agreement and permit, necessary to protect the city its representatives, employees, and elected and appointed officials, from all claims and damage to property or bodily injury, including death, which may arise from any aspect of the ~~pilot~~ program or its operation.
- (c) A vendor shall include language in their user agreement that requires, to the fullest extent permitted by law, the user to fully release, indemnify and hold harmless the city.
- (d) In addition to the requirements set forth herein, the vendor shall provide any additional insurance coverages in the specified amounts and comply with any revised indemnification provision specified in the ~~pilot~~ program operating agreement and permit.
- (e) The vendor shall provide proof of all required insurance prior to receiving a fully executed ~~pilot~~ program operating agreement and permit.

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____

President of City Council

Attest:

City Clerk

Shared Micromobility Devices Franchise Area Map

- Micromobility Franchise Area
- No Riding Zones
- Exclusion Areas

- City of Pensacola
- Escambia County

0 0.25 0.5 Miles

Date: 9/23/2022

This map was prepared by the GIS section of the City of Pensacola and is provided for information purposes only and is not to be used for development of construction plans or any type of engineering services based on information depicted herein. It is maintained for the function of this office only. It is not intended for conveyance nor is it a survey. The data is not guaranteed accurate or suitable for any use other than that for which it was gathered.

**Jefferson St
parking garage
excluded**

**Escambia County offices
and parking garage excluded**

**parking garage
excluded**

**parking garage
corner of Main St
and Baylen St
excluded**





**Veterans
Memorial Park
excluded**

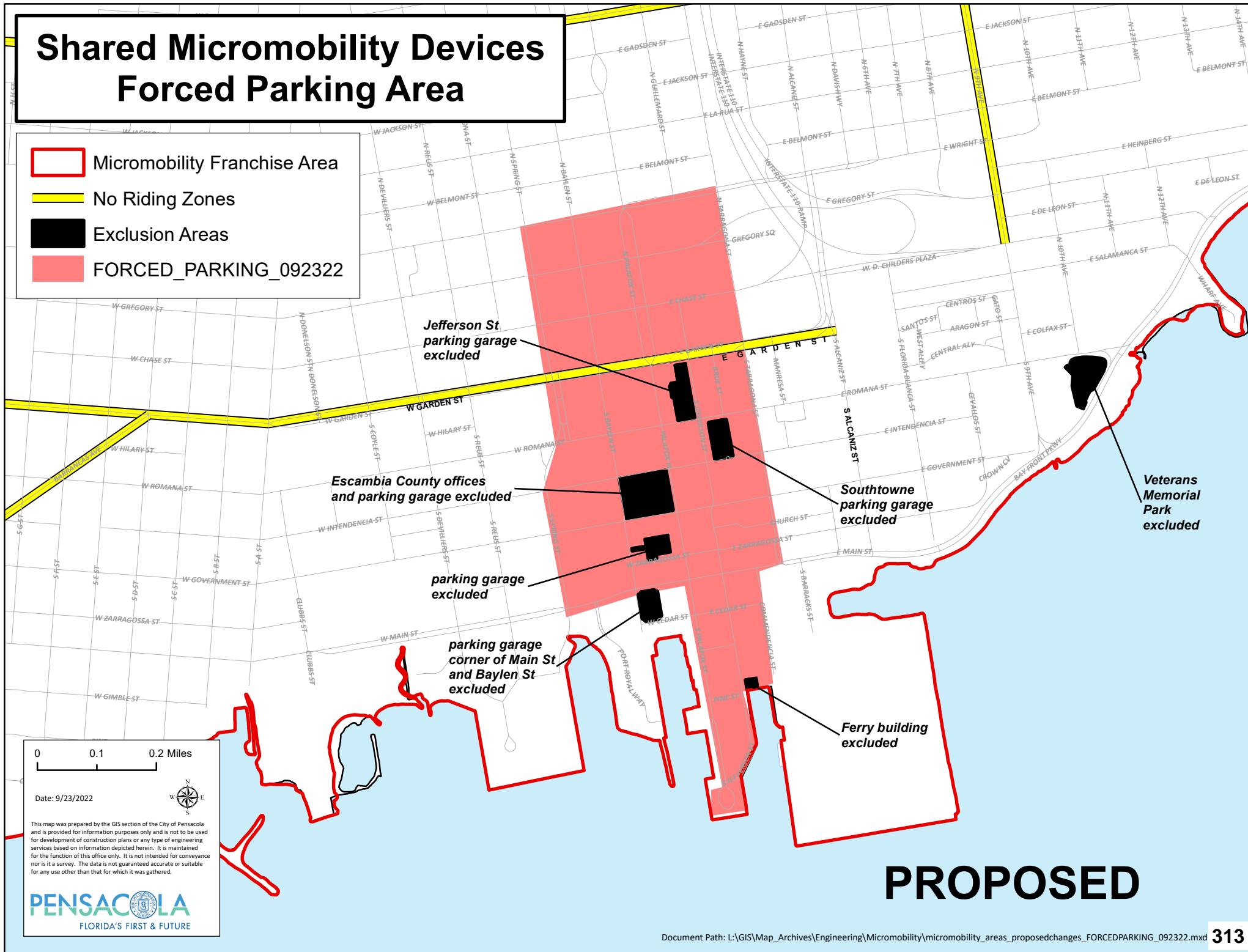
**Southtowne
parking garage
excluded**

**Ferry building
excluded**

PROPOSED

Shared Micromobility Devices Forced Parking Area

-  Micromobility Franchise Area
 No Riding Zones
 Exclusion Areas
 FORCED_PARKING_092322



PROPOSED



City of Pensacola

222 West Main Street
Pensacola, FL 32502

Memorandum

File #: 53-22

City Council

10/27/2022

LEGISLATIVE ACTION ITEM

SPONSOR: City Council President Ann Hill

SUBJECT:

PROPOSED ORDINANCE NO. 53-22 - PROPOSED AMENDMENT - CITY OF PENSACOLA LAND DEVELOPMENT CODE CHAPTER 12-6 - APPENDIX A PROTECTED TREE LIST - INCLUSION OF QUERCUS HEMISPHERICA (DARLINGTON OAK)

RECOMMENDATION:

That City Council adopt Proposed Ordinance No. 53-22 on second reading.

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE, TITLE 12, CHAPTER 12-6, APPENDIX A, OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA TO ADD QUERCUS HEMISPHERICA TO THE LIST OF PROTECTED TREES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

HEARING REQUIRED: No Hearing Required

SUMMARY:

Currently, Quercus hemisphaerica - Darlington Oak, are not on the list of protected trees within Appendix A, Chapter 12 of the City of Pensacola Land Development Code. It is estimated that nearly 90% of the trees protected within the city as Laurel oak, Quercus laurifolia, are actually Quercus hemisphaerica - Darlington Oak. In order to protect the majority species of the Red oak family within the city, the Darlington Oak would need to be added to the list of protected species.

On August 18, 2022, the City Council referred to the Planning Board for Review and Recommendation.

On September 13, 2022, the Planning Board took up this item, approving the recommendation with a vote of 7-0.

PRIOR ACTION:

August 18, 2022 - City Council referred this proposed amendment to Planning Board for Review and Recommendation

September 13, 2022 -Planning Board took up this item at their regularly scheduled Planning Board Meeting

October 13, 2022 - City Council voted to approve Proposed Ordinance No. 53-22 on first reading.

FUNDING:

N/A

FINANCIAL IMPACT:

None

STAFF CONTACT:

Don Kraher, Council Executive

ATTACHMENTS:

- 1) Proposed Ordinance No. 53-22
- 2) Planning Board Minutes September 13, 2022

PRESENTATION: No

PROPOSED
ORDINANCE NO. 53-22

ORDINANCE NO. _____

AN ORDINANCE
TO BE ENTITLED:

AN ORDINANCE AMENDING THE LAND DEVELOPMENT CODE, TITLE 12, CHAPTER 12-6, APPENDIX A, OF THE CODE OF THE CITY OF PENSACOLA, FLORIDA TO ADD QUERCUS HEMISPHERICA TO THE LIST OF PROTECTED TREES; PROVIDING FOR SEVERABILITY; REPEALING CLAUSE; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PENSACOLA, FLORIDA:

SECTION 1. Appendix A of Chapter 12-6 of the Code of the City of Pensacola, Florida, in the Land Development Code, is hereby amended to read as follows:

APPENDIX A. PROTECTED TREE LIST

Species Type A (Small, 4" + diameter trunk)	
1.	Dogwood (<i>Cornus florida</i>)
2.	Redbud (<i>Cercis canadensis</i>)
3.	Crape Myrtle (<i>Lagerstroemia indica</i>)
4.	Fringe Tree (<i>Chionanthus virginicus</i>)
5.	Flatwoods Plum (<i>Prunus umbellata</i>)
6.	Crabapple (<i>Malus angustifolia</i>)
7.	Sand Oak (<i>Quercus geminata</i>)
Species Type B (Medium, 6" + diameter trunk)	
1.	American Holly (<i>Ilex opaca</i>)
2.	Dahoon Holly (<i>Ilex cassine</i>)
3.	Southern Magnolia (<i>Magnolia grandiflora</i>) **
4.	Eastern Red Cedar (<i>Juniperus virginiana</i>) **
5.	Southern Red Cedar (<i>Juniperus silicicola</i>) **

6.	White Cedar (<i>Chamaecyparis thyoides</i>)
7.	River Birch (<i>Betula nigra</i>)
8.	Long Leaf Pine (<i>Pinus palustris</i>)
Species Type C (Large, 8" + diameter trunk)	
1.	Live Oak (<i>Quercus virginiana</i>)**
2.	Laurel Oak (<i>Quercus laurifolia</i>)**
3.	<u>Darlington Oak (<i>Quercus hemisphaerica</i>)**</u>
4.	Sweet Gum (<i>Liquidambar styraciflua</i>)**
4-5.	Sycamore (<i>Platanus occidentalis</i>)**
5-6.	Pecan (<i>Carya illinoensis</i>)**
6-7.	Red Maple (<i>Acer rubrum</i>)**
7-8.	Hickory (<i>Carya</i> spp.)**
8-9.	White Oak (<i>Quercus alba</i>)**
9-10.	Southern Red Oak (<i>Quercus falcata</i>)
10-11.	Florida Sugar Maple (<i>Acer barbatum</i>)
11-12.	Black Tupelo (<i>Nyssa sylvatica</i>)
12-13.	Silver Maple (<i>Acer saccharinum</i>)
*When measuring a tree to determine if it meets the trunk diameter criteria, it shall be measured at diameter breast height (DBH), which is the diameter of the tree at 4½ feet (54 inches) above ground. The scientific name controls for compliance purposes. Common names are furnished for reference purposes only.	
**Shade trees.	

SECTION 2. If any word, phrase, clause, paragraph, section or provision of this ordinance or the application thereof to any person or circumstance is held invalid or unconstitutional, such finding shall not affect the other provision or applications of the ordinance which can be given effect without the invalid or unconstitutional provisions or application, and to this end the provisions of this ordinance are declared severable.

SECTION 3. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4. This ordinance shall take effect on the fifth business day after adoption, unless otherwise provided, pursuant to Section 4.03(d) of the City Charter of the City of Pensacola.

Adopted: _____

Approved: _____
President of City Council

Attest:

City Clerk



MINUTES OF THE PLANNING BOARD
September 13, 2022

MEMBERS PRESENT: Chairperson Paul Ritz, Vice Chairperson Larson, Board Member Grundhoefer, Board Member Van Hoose, Board Member Powell, Board Member Villegas, Board Member Sampson

MEMBERS ABSENT: None

STAFF PRESENT: Assistant Planning & Zoning Manager Cannon, Historic Preservation Planner Harding, Development Services Director Morris, Help Desk Technician Johnston, Deputy City Administrator Forte, Executive Assistant Chwastyk, City Arborist Stultz

STAFF VIRTUAL: Senior Planner Statler, Assistant City Attorney Lindsay

OTHERS PRESENT: Paul Battle, Doris Hayes

AGENDA:

- Quorum/Call to Order
- Approval of Meeting Minutes from August 9, 2022

New Business:

- Request for Preliminary Plat Approval – Javelin Landing Subdivision
- Request for Preliminary Plat Approval – Girard Place Phase II
- Referral to Planning Board – Inclusion of Quercus Hemisphaerica – Darlington Oak to the list of protected trees in City Code Chapter 12-6 Tree/Landscape Regulations
- Open Forum
- Discussion
- Adjournment

Call to Order / Quorum Present

Chairperson Paul Ritz called the meeting to order at 2:01 pm with all members present and explained the procedures of the Board meeting including requirements for audience participation.

Approval of Meeting Minutes - Board Member Larson made a motion to approve the August 9, 2022 minutes, seconded by Board Member Powell, and it carried 7:0.

New Business –

Request for Preliminary Plat Approval – Javelin Landing Subdivision

Assistant Planning & Zoning Manager, Cannon introduced the item and stated that this subdivision plat was previously approved in July 2021. Since the 365-day window had passed, the applicant was required to resubmit their application. Board Member Grundhoefer inquired about stormwater treatment. Paul Battle with Rebol-Battle stated that they have a stormwater pond located on the east side of the parcel which is designed to serve the entire development. Chairperson Paul Ritz noted that the city and county boundary lines intersect in that area. Paul Battle stated there will be amenities for this subdivision located at one of the other four subdivisions that are planned in the nearby County parcels. Assistant Planning & Zoning Manager, Cannon, verified that this parcel had been rezoned C-1 based on a recommendation from the Planning Board and City Council. Chairperson Paul Ritz stated there were very few comments from staff and that they had all been addressed. Assistant Planning & Zoning Manager, Cannon, confirmed that all review comments had been addressed. **Board member Villegas made a motion to approve, seconded by Vice Chairperson Larson, and it carried 7:0.**

Request for Preliminary Plat Approval – Girard Place Phase II

Chairperson Paul Ritz stated he would like to move the item to the next available meeting since there were no representatives to speak on the item. Board Member Grundhoefer questioned if Phase II was similar to Phase I. Assistant Planning & Zoning Manager Cannon and Development Services Director Morris could not recall if it was like Phase I since an extended amount of time had passed and the applicants representatives weren't available to address the question. Vice Chairperson Larson inquired about the access available to emergency vehicles. Assistant Planning & Zoning Manager Cannon stated that both the Engineering and Fire Departments reviewed the plat and had no comments or concerns. Chairperson Paul Ritz stated there was a consensus that there were too many questions to vote at this time and they would move this item to the end of the meeting in case the representatives would arrive prior to adjournment.

Referral to Planning Board – Inclusion of Quercus Hemisphaerica – Darlington Oak to the list of protected trees in City Code Chapter 12-6 Tree/Landscape Regulations

City Arborist Stultz stated that most of the trees in the city are the quercus hemisphaerica and in order to maintain the biodiversity of the urban forest and keep the carbon sequestration that the City would need to protect the quercus hemisphaerica. Board Member Villegas asked if this tree was equally important as the live oak. City Arborist Stultz stated it's equally important in the natural forest ecosystem but not so much in the urban environment. City Arborist Stultz stated that if we wanted to protect the city canopy, we needed to protect this tree because it is the largest number of tree species we have in the city. Chairperson Paul Ritz asked if they needed to offer this to City Council as a tree that needs protection, board members concurred that it warranted further protection. Chairperson Paul Ritz stated this board feels the canopy of the City of Pensacola is important, therefore it's important to include this tree, which according to the City Arborist is the most numerous in the city limits, as a protected tree.

Board Member Grundhoefer made a motion to approve, seconded by Board member Villegas, and it carried 7:0.

Request for Preliminary Plat Approval – Girard Place Phase II

Chairperson Paul Ritz asked if there was a representative to speak on this request and it was noted that there were no representatives at the meeting. Assistant City Attorney Lindsay stated the board is expected to act promptly on all applications per the city ordinance. Chairperson Paul Ritz asked if they could deny it without prejudice to allow them to return without reapplying or paying another fee. Assistant City Attorney Lindsay answered yes. Board Member Villegas questioned if there was any communication stating they would not be here and Assistant Planning & Zoning Manager Cannon stated she notified the applicant and their representatives via email and she only received an out of office reply. Cannon stated that various attempts had been made to reach the applicant and that there was no response. Historic Preservation Planner Harding mentioned that the application form states the applicant must be present on the date of the Planning Board meeting.

Board Member Larson made a motion to deny without prejudice allowing them time to return, seconded by Board member Villegas, and it carried 4:3.

Open Forum – none

Discussion – Board Member Grundhoefer inquired about the two rezonings on Hewitt Street and Baptist Hospital that were denied, Assistant Planning & Zoning Manager Cannon stated that both rezonings were pulled at the request of the applicants. The board began an open discussion regarding Airbnb's and how they are affecting neighborhoods.

Adjournment – With no further business, the Board adjourned at 3:02 p.m.

Respectfully Submitted,

Cynthia Cannon, AICP
Assistant Planning Director
Secretary of the Board