



**CITY OF DELAND
REGULAR MEETING OF THE CITY COMMISSION
NOVEMBER 7, 2022 AT 7:00 PM
CITY HALL, COMMISSION CHAMBERS
120 SOUTH FLORIDA AVENUE**

AGENDA

CALL TO ORDER

INVOCATION-Pastor Wendell Raulerson, Greater Bethlehem Baptist Church

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENTATIONS

1. Super Star Students of the Month.
2. Proclamation, James H. “Jimmy” Ford Day.
3. Police Department Introduction of New Officers: Angel Mercado; Jermaine McQueen; Javon Kelly; Anthony Denatale, Jr.
4. Employee Years of Service Awards.
5. Resolution No. 2022-86, In Honor of the Retirement of Mayor Robert F. Apgar.

CONSENT AGENDA

1. Resolution re Surplus Equipment.
It is recommended that the City Commission adopt the resolution declaring the equipment surplus and authorizing its disposal as set forth therein.
2. Resolution Approving the Retirement and Sale of K-9 Lancelot.
It is recommended that the City Commission retire K-9 Lancelot from active duty and approve the Bill of Sale to Sergeant Chalen Godwin for the sum of one dollar.
3. Consideration re Amendment to Existing Ground Lease, Schalk Enterprises, LLC.
Amendment to existing ground lease, Schalk Enterprises, LLC.
4. Consideration re Ground Lease, Kingspan Insulation US.
Consideration of a Ground Lease, Kingspan Insulation US.
5. Consideration re Approval of Ground Lease Renewal, Crete Carrier Corporation.

Consideration re Approval of Ground Lease Renewal, Crete Carrier Corporation.

6. Consideration re Additional Purchase of 300 Profile Unity Licenses with 3 Year Support, and Purchase of 3 Year Co-Term License for the Current 150 Profile Unity Licenses.

Staff recommends approving the purchase of the 300 Profile Unity licenses and the co-term support for 150 current licenses, approved in the FY 22/23 budget.

7. Resolution Approving Sole Source Purchase of Traffic Jet Xpert Avery Dennison Printing System - Sign Shop.

Staff approves the purchase of Avery Dennison Traffic Jet Xpert Print System for the sign shop which will replace the current Traffic Jet printing system. Avery Dennison is the Sole Source provider of equipment and maintenance.

8. Resolution Approving Sole Source Purchase for Selectron Technologies, Inc. Managed Services.

It is recommended that the City Commission approve the Sole Source expenditure to Selectron Technologies, Inc. for IVR/IWR, SelecTXT and Atlas Managed Services.

9. Resolution Approving Sole Source Parts and Services for Performance Enhancement of Utilities Remote Telemetry System.

Staff recommends that the City Commission approve the Sole Source Resolution to purchase parts and services for the Performance Enhancement of the Remote Telemetry System for the City's Utilities System in the amount of \$157,528.00.

10. Resolution Approving Amendment # 2 to FDOT Public Transportation Grant Agreement FM 438416-1-94-01 for Hangars - Construction.

Staff recommends that the City Commission approve the resolution and authorize the Mayor/Commissioner to execute the agreement on behalf of the City.

11. Consideration re Approval of Construction Services - AVCON, Inc. for Airport Hangars.

It is recommended the City Commission approve the AVCON, Inc. contract to provide professional services to support the successful construction of the t-hangars project in accordance with the plans and specifications that they designed.

12. Consideration re Award of Bid for Aviation T-Hangars.

Staff recommends that the City Commission award the base bid for the construction of 14 Aviation T-Hangars to Crunch Construction in the amount of \$2,620,022.89.

13. Consideration re Approval of Joint Project Agreement between Volusia County and the City for Utility Line Extension Concerning Blue Lake Avenue Extension Construction.

Approval of Joint Project Agreement between Volusia County And The City For Utility Line Extension Concerning Blue Lake Avenue Extension Construction.

14. Consideration re Approval of Interlocal Maintenance Agreement between the City of DeLand and Volusia County - Greenway Trail Part A.

City staff recommends that the City Commission approve the proposed interlocal maintenance agreement between Volusia County and the City for Greenway Trail project.

15. Consideration re Cresswind Residential Subdivision Utility Service Agreement.

Approval of Cresswind Residential Subdivision Utility Service Agreement.

16. Consideration re Cresswind Residential Subdivision Development Proportionate Share Agreement.

Approval of Cresswind Residential Subdivision Development Proportionate Fair Share Agreement.

17. Resolution Certifying Election Results of 2022 General and Special Elections; and, Setting Date for Organizational Meeting.

A resolution certifying the results of the August 23, 2022 general election.

PETITIONS AND REQUESTS FROM THE PUBLIC PRESENT

NEW BUSINESS

1. Resolution Approving the Proposed Amendment to Volusia County Comprehensive Plan; I-4 Frontage Road Project South Of Cassadaga.

Approval of a Resolution proposing the Removal of the I-4 Frontage Road Project South of Cassadaga from the Thoroughfare Future Needs List set forth in the Volusia County Comprehensive Plan.

2. Consideration re Approval of Agreement for Transfer of Certain Roads from Volusia County to the City of DeLand for Jurisdiction and Maintenance Pursuant to Section 335.0415, Florida Statutes.

Approval of an Agreement for Transfer of Certain Roads from Volusia County to the City of DeLand for Jurisdiction and Maintenance pursuant to Section 335.0415, Florida Statutes.

3. Consideration re Amendment to Utility Services Agreement (Interlocal Agreement) between Volusia County and the City Realigning the Utility Service Boundary Area and the Parties' Responsibilities for Construction of Force And Water Mains Along United States Highway 17.

Amendment to Utility Services Agreement (Interlocal Agreement) between Volusia County and the City realigning the Utility Service Boundary Area and the parties' responsibilities for construction of force and water mains along United States Highway 17.

4. Consideration re Approval of Interlocal Agreement between the School Board of Volusia County, the County of Volusia and the City of DeLand for the Exchange of Real Property and the Construction of the Beresford Avenue Extension.

Approval of Interlocal Agreement between the School Board of Volusia County, the County of Volusia And the City of Deland For the Exchange of Real Property And the Construction of The Beresford Avenue Extension.

5. Consideration re Approval of Deeds Related to Beresford Avenue Extension.

Approval of quit claim deed and acceptance of a warranty deed to revise the property boundaries of Lakewood Park / Beresford Avenue property dedication to the City of DeLand.

CITY MANAGER REPORT

CITY ATTORNEY REPORT

CITY CLERK REPORT

CITY COMMISSION

ADJOURNMENT

The DeLand City Commission holds its regular meetings on the first and third Mondays of each month at 7:00 p.m. in the DeLand City Commission Chambers, 120 South Florida Avenue, DeLand. Notice of special meetings, workshops, changes in dates, times or locations are provided by separate Public Notices, which are posted at City Hall and on the City's web site.

The City of DeLand may take action on any matter during this meeting, including items that are not set forth within this agenda.

Public participation is encouraged on any matter on the agenda. If you desire to be recognized by the Mayor, please fill out a Speaker's Card and present it to the City Clerk.

Minutes of the DeLand City Commission meetings are not transcribed verbatim. If any person decides to appeal a decision made by the City Commission with respect to any matter considered at a public meeting or hearing, he/she will need a record of the proceedings including all testimony and evidence upon which the appeal is to be based. To that end, such person will want to ensure that a verbatim record of the proceedings is made by a court reporter, at the person's own expense.

In accordance with the American Disabilities Act, persons needing a special accommodation in order to participate in the proceedings should notify the City Clerk's Office at least 48 hours in advance of the meeting: 626-7132.

Assisted Listening System receivers are available for the hearing impaired, and can be obtained from the City Clerk.

If you wish to obtain information regarding the City Commission's Agenda, please call the City Clerk's Office: 626-7132.

We respectfully request that all pagers and cell phones be turned OFF during City Commission meetings.

Electronic Information! City Commission agendas and short form minutes are now available on the City's web page: www.deland.org.



TO: Julia Hewitt, Deputy City Clerk

FROM: Teri Byrnes, Executive Assistant to the City Manager

DATE: October 26, 2022

SUBJECT: City of DeLand Super Star Student of the Month - November

For the November 7, 2022 agenda, the City of DeLand Super Star Student of the Month recognizes:

Blue Lake Elementary: Jerome Butler

Citrus Grove Elementary: Reese Harris

DeLand High School: no submission

DeLand Middle School: Grant Giddens

DeLand Preparatory Academy: Sophia Peppers-Bates

Freedom Elementary: Hendrick Carreno

George Marks Elementary: Rishard Inman

Southwestern Middle School: Myah Lee

St. Barnabas: no submission

St. Peter's Catholic School: Bryce Martin

Starke Elementary: no submission

Stetson Baptist: Zachary Floyd

TOP Academy: Deahn Pressley

Woodward Avenue: Glenna Buller



The CITY OF DELAND

Volusia County, Florida

Proclamation

***Whereas**, James H. Ford (Jimmy), at the age of 30 after only 11 years with (then) Florida National Bank, was promoted to Bank President, the youngest in the State of Florida; and*

***Whereas**, after retiring from Florida National Bank in 1986, Jimmy was called back to banking by the directors of Vista Bank to assist in increasing profits and finding a viable buyer for the bank; and*

***Whereas**, upon orchestrating the sale of Vista Bank to SouthTrust Bank, Jimmy was promoted to CEO and grew that bank to the fourth largest in a multi-state holding company; and*

***Whereas**, Jimmy's passion for helping people and providing excellent customer service became the foundation of the Bank's retail sales strategy rollout to all 42 market banks in eight states and was deemed the Cornerstone Retail Sales Process; and*

***Whereas**, after retiring from SouthTrust in June 2004, Jimmy was approached by the founders of Mainstreet Community Bank to discuss a Board of Directors position where he has served for 18 years; and*

***Whereas**, Jimmy's leadership at Mainstreet Community Bank was an integral part in the recruitment of bank principals and the continued sustainability of the bank today as it approaches its 20th anniversary in DeLand with additional branches in Lake, Marion, and Seminole counties; and*

***Whereas**, in addition to the current Mainstreet Community Bank CEO, Ben Flowers, Jimmy Ford has also mentored 16 other bankers who have gone on to become CEO of their own banks for which Jimmy is justly proud; and*

***Whereas**, Jimmy has also served as the DeLand Christmas Parade Grand Marshall, Chamber Board Chair, Krewe of Amalee Mardi Gras King, and Board Member of many Volusia County organizations over the decades; and*

***Whereas**, after a highly successful 64 years in banking, Jimmy and his wife of 61 years, Sharon, are looking forward to spending more time with their two sons and grandson, traveling, and visiting friends and family in DeLand and North Carolina.*

***Now, therefore**, I, Robert F. Apgar, Mayor of the City of DeLand, do hereby proclaim, November 7, 2022 as:*

James H. "Jimmy" Ford Day

in the City of DeLand and urge all citizens of DeLand to recognize James H. "Jimmy" Ford for his illustrious and legendary DeLand banking career and for his service to our community.

***Done and proclaimed** this 7th day of November 2022.*

Attest:

Robert F. Apgar, Mayor

Julie A. Hennessy, City Clerk - Auditor

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Employee Years of Service Awards.

DEPARTMENT: Human Resources

PREPARED BY: Mark Hayward, HR Director

ATTACHMENTS:

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

The City of DeLand is fortunate to have so many dedicated employees who have served the DeLand community for many years. To honor these outstanding employees, the City Commission presents them with a plaque.

20 Years of Service

Juan Millan, Police Department

15 Years of Service

Travis Sawyer, Fire Department

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

None

RECOMMENDATION:

It is recommended the City Commission present the service awards.

BACKGROUND/DISCUSSION:

N/A

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution re Surplus Equipment.

DEPARTMENT: City Clerk

PREPARED BY: Julie Hennessy, City Clerk

ATTACHMENTS: Resolution, Department Head Memo

APPROVED BY: Michael Pleus, City Manager, November 2, 2022

SUMMARY/HIGHLIGHT:

The proposed resolution declares certain equipment as surplus and authorizes the City Manager to dispose of same.

Tamoka Corrections Institute has been contacted and they are not interested in any of the surplus equipment.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The proceeds from the sale of surplus equipment are included as revenue in the budget.

RECOMMENDATION:

It is recommended that the City Commission adopt the resolution declaring the equipment surplus and authorizing its disposal as set forth therein.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION 2022 –

A RESOLUTION BY THE CITY OF DELAND; FLORIDA, DECLARING CERTAIN PROPERTY SURPLUS; AUTHORIZING DISPOSAL OF THE PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the disposal of tangible surplus property is authorized by Section 274.06, Florida Statutes; and

WHEREAS, the City Commission hereby finds that the below property is either: obsolete and the continued use of it is uneconomical or inefficient; that it serves no useful function; and/or that it is irreparable; and

WHEREAS, the City Commission hereby finds that it is in the best interests of the City to dispose of said surplus property;

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

Section 1. The following described property is hereby declared surplus, and the City Manager is hereby authorized to dispose of the surplus property in a manner provided by law and to remove the surplus property from the City's fixed assets:

<u>POLICE</u>	<u>VEHICLE #</u>	<u>MAKE/MODEL</u>	<u>VIN/SERIAL NO.</u>
<u>DEPT/ASSET NO.</u>	<u>CITY WORKS ID</u>		
126-5414	1260094 PD-94	2012 Toyota 4R	4T1BD1FK1CU007978
127-5264	1270083 PD-83	2009 Ford Escape	1FMCU92729KB08617
127-5129	1270065 PD-65	2007 Ford Crown Victoria	2FAFP71WX7X131018
126-4999	1260044 PD-44	2005 Ford 4DR	1FAFP53U35A163581
126-N/A	1260024 PD-24	2003 Toyota 4DR	JTDBE32K230220108

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 7th day of November, 2022.

ATTEST:

Robert F. Apgar
Mayor-Commissioner

Julie A. Hennessy
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney



DeLand Police Department

Jason D. Umberger
Chief of Police



TO: Julia Hewitt, Deputy City Clerk

FROM: Jason D. Umberger, Chief of Police

SUBJECT: Surplus of Vehicle

DATE: October 14, 2022

Listed below is City equipment we are requesting to surplus as we have received its replacement.

Vehicle Number	Dept.	Asset #	Make/Model	VIN Number
PD-94	126	126-5414	TOYOTA 4DR	4T1BD1FK1CU007978



DeLand Police Department

Jason D. Umberger
Chief of Police



TO: Julia Hewitt, Deputy City Clerk
FROM: Jason D. Umberger, Chief of Police *JDU*
SUBJECT: Surplus of Vehicle
DATE: October 14, 2022

Listed below is City equipment we are requesting to surplus as we have received its replacement.

Vehicle Number	Dept.	Asset #	Make/Model	VIN Number
PD-83	127	127-5264	FORD ESCAPE SUV	1FMCU92729KB08617



DeLand Police Department

Jason D. Umberger
Chief of Police



TO: Julia Hewitt, Deputy City Clerk

FROM: Jason D. Umberger, Chief of Police *JDU*

SUBJECT: Surplus of Vehicle

DATE: October 14, 2022

Listed below is City equipment we are requesting to surplus as we have received its replacement.

Vehicle Number	Dept.	Asset #	Make/Model	VIN Number
PD-65	127	127-5129	FORD CROWN VICTORIA	2FAFP71WX7X131018



DeLand Police Department

Jason D. Umberger
Chief of Police



TO: Julia Hewitt, Deputy City Clerk

FROM: Jason D. Umberger, Chief of Police *JDU*

SUBJECT: Surplus of Vehicle

DATE: October 14, 2022

Listed below is City equipment we are requesting to surplus as we have received its replacement.

Vehicle Number	Dept.	Asset #	Make/Model	VIN Number
PD-44	126	4999	FORD 4DR	1FAFP53U35A163581



DeLand Police Department

Jason D. Umberger
Chief of Police



TO: Julia Hewitt, Deputy City Clerk

FROM: Jason D. Umberger, Chief of Police

SUBJECT: Surplus of Vehicle

DATE: October 14, 2022

Listed below is City equipment we are requesting to surplus as we have received its replacement.

Vehicle Number	Dept.	Asset #	Make/Model	VIN Number
PD-24	126	N/A	TOYOTA 4DR	JTDBE32K230220108

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving the Retirement and Sale of K-9 Lancelot.

DEPARTMENT: Police

PREPARED BY: Jason Umberger, Police Chief

ATTACHMENTS: Resolution, Bill of Sale K-9 Lancelot

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Police K-9 Lancelot was donated to DeLand Police Department on September 20, 2017. He has provided six years of continuous service and during this time he's experienced health issues that required two major surgeries. Due to his age and health, Lancelot has reached the end of his career. A healthy working K-9 generally has a working life of seven to eight years.

Sergeant Chalen Godwin has been Lancelot's handler since he was donated to the Police Department and Sgt. Godwin would like to keep Lancelot as his personal companion and maintain the complete care of Lancelot at his own expense.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Maintaining a Safe Community

SUSTAINABILITY:

Safety and Security

FISCAL IMPACT:

The Police Department budgeted the purchase of a K-9 in Fiscal Year 2022-2023.

RECOMMENDATION:

It is recommended that the City Commission retire K-9 Lancelot from active duty and approve the Bill of Sale to Sergeant Chalen Godwin for the sum of one dollar.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION NO. 2022 -

**A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA,
DECLARING CERTAIN PROPERTY SURPLUS; AUTHORIZING THE
SALE OF THE YELLOW LABRADOR RETRIEVER K-9, “LANCELOT”;
AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, The City is the owner of a Yellow Labrador Retriever K-9, “Lancelot,” who is being retired; and

WHEREAS, staff is requesting that “Lancelot” be sold to his current handler, Sergeant Chalen Godwin, for the sum of one dollar (\$1.00).

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

Section 1. The Property described below, belonging to the City of DeLand, is hereby declared to be surplus property:

**POLICE DEPARTMENT
YELLOW LABRADOR RETRIEVER K-9 “Lancelot”**

Section 2. The City Manager or his designee, is hereby authorized to sell to Sergeant Chalen Godwin, the Yellow Labrador Retriever K-9, “Lancelot,” for the sum of one dollar (\$1.00) and to remove said K-9 from the City’s fixed assets.

Section 3. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 7th day of November, 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk - Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that the CITY OF DELAND, party of the first part, for and in consideration of the sum of ONE and NO/100 DOLLARS (\$1.00), lawful money of the United States, to them paid by Sergeant Chalen Godwin, party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered that certain retired labrador dog, "K-9 Lancelot" There are no warranties, either express or implied, given or made within this transfer.

TO HAVE AND TO HOLD the same unto the second party forever.

Dated this _____ day of November, 2022.

By: _____
Michael P. Pleus, City Manager
City of DeLand

By:  _____
Sergeant Chalen Godwin

ATTEST:

Julie A. Hennessy, MMC
City Clerk-Auditor

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Amendment to Existing Ground Lease, Schalk Enterprises, LLC.

DEPARTMENT: Community Development

PREPARED BY: Rick Werbiskis, Community Dev. Director

ATTACHMENTS: Schalk lease 2022 Ammendment

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Schalk Enterprises and The City of DeLand desire to amend the existing Ground Lease Agreement in order to reduce the area of land being leased by Schalk Enterprises, LLC in their current Ground Lease Agreement. Upon approval, the area of land being leased to Schalk Enterprises will be reduced to 2.41 acres. The 1.96 acres being removed from this lease will be leased by Kingspan Insulation by separate action by the City Commission.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Regional High Value Job Creation

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Schalk's monthly lease payment will decrease from \$4,057.20 to \$2,096.90, a reduction of \$1,960.30 per month or \$23,523.60 annually. Kingsoan's lease, which is included in another agenda item for this meeting, will increase to \$1,420.73 per month or \$17,048.76 annually. The net overall decrease in lease revenue for both of these leases is \$6,474,.84.

RECOMMENDATION:

Staff recommends that the City Commission approve the Ground Lease Amendment for Schalk Enterprises LLC.

BACKGROUND/DISCUSSION:

Schalk Enterprises and The City of DeLand desire to amend the existing Ground Lease Agreement in order to reduce the area of land being leased by Schalk Enterprises, LLC in their current Ground Lease Agreement.

LEASE AMENDMENT

THIS AMENDMENT TO GROUND LEASE AGREEMENT (the “Amendment”) is entered into as of November 1st, 2022, by and between SCHALK ENTERPRISES, LLC, a Florida Limited Liability Company, whose principal and mailing address is 231 North Woodland Boulevard, DeLand, Florida 32720, (“SCHALK ENTERPRISES”), and the CITY OF DELAND, a municipality of the State of Florida, whose mailing address is City Hall, 120 South Florida Avenue, DeLand, Florida 32720 (hereinafter the “CITY”).

WHEREAS, SCHALK ENTERPRISES and the CITY entered into that certain Ground Lease Agreement on August 1, 2016 (the “Ground Lease Agreement”), effective on August 1, 2016, relating to a parcel of real property approximately 4.36 acres in size, described in Exhibit “A” to the Ground Lease Agreement, which real property is located between Eidson Drive and Summerhill Drive at the DeLand Municipal Airport in DeLand, Volusia County, Florida (the “Leased Premises”); and

WHEREAS, SCHALK ENTERPRISES and the CITY desire to amend the Ground Lease Agreement in order to reduce the area of land being leased by the CITY to SCHALK ENTERPRISES pursuant to the Ground Lease Agreement and to reduce the lease payments proportionately as set forth herein; and

WHEREAS, after this Amendment, the area of land being leased by the CITY to SCHALK ENTERPRISES pursuant to the Ground Lease Agreement will be 2.41 acres as more particularly described on the attached Exhibit “A.”

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the City and SCHALK ENTERPRISES agree as follows:

1. RATIFICATION OF GROUND LEASE AGREEMENT TERMS AND CONDITIONS:

All provisions of the Ground Lease Agreement, except as set forth in the following provisions of this Amendment, shall remain in full force and effect.

2. AMENDMENT TO GROUND LEASE AGREEMENT:

Exhibit “A” of the Ground Lease Agreement is replaced with the Exhibit “A” attached to this Amendment.

Section 1 of the Ground Lease Agreement is hereby amended to read, in full, as follows:

Section 1. Property. Lessor hereby leases to Lessee +/- 2.41 acres of land described as Proposed Parcel 1 in the attached Exhibit A at the DeLand Municipal Airport in DeLand, Volusia County, Florida (hereinafter referred to as the “premises” or “leased premises”). Any use of the airport outside of the leased

premises shall be in accordance with any fee schedules or other regulations, rules or policies adopted by Lessor.

Section 5 of the Ground Lease Agreement is hereby amended to read, in full, as follows:

Section 5. Rent. Lessee shall pay Lessor as base rent for the premises the sum of TWENTY FIVE THOUSAND ONE HUNDRED SIXTY TWO AND 80/100 DOLLARS (\$25,162.80) annually, payable in twelve (12) equal monthly installments of TWO THOUSAND NINETY SIX AND 90/100 DOLLARS \$2,096.90, due in advance on the first day of each month. All rent payments are subject to state and/or local sales' taxes at the rate or rates then in effect, which shall be due and payable at the same time as the rent installments. This base rent shall be modified as follows:

Subsections A, B and C of Section 5 of the Ground Lease Agreement shall remain the same and are not being amended.

C. EFFECT OF AMENDMENT:

Aside from the foregoing, all other terms and conditions of the Ground Lease Agreement shall be, and remain, in full force and effect.

Signatures on following pages

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the days and year set forth herein.

CITY OF DELAND, FLORIDA

Robert F. Apgar
Mayor - Commissioner

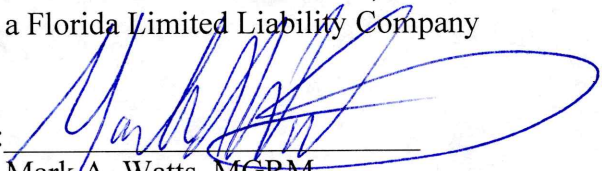
ATTEST:

Julie A. Hennessy, MMC
City Clerk – Auditor

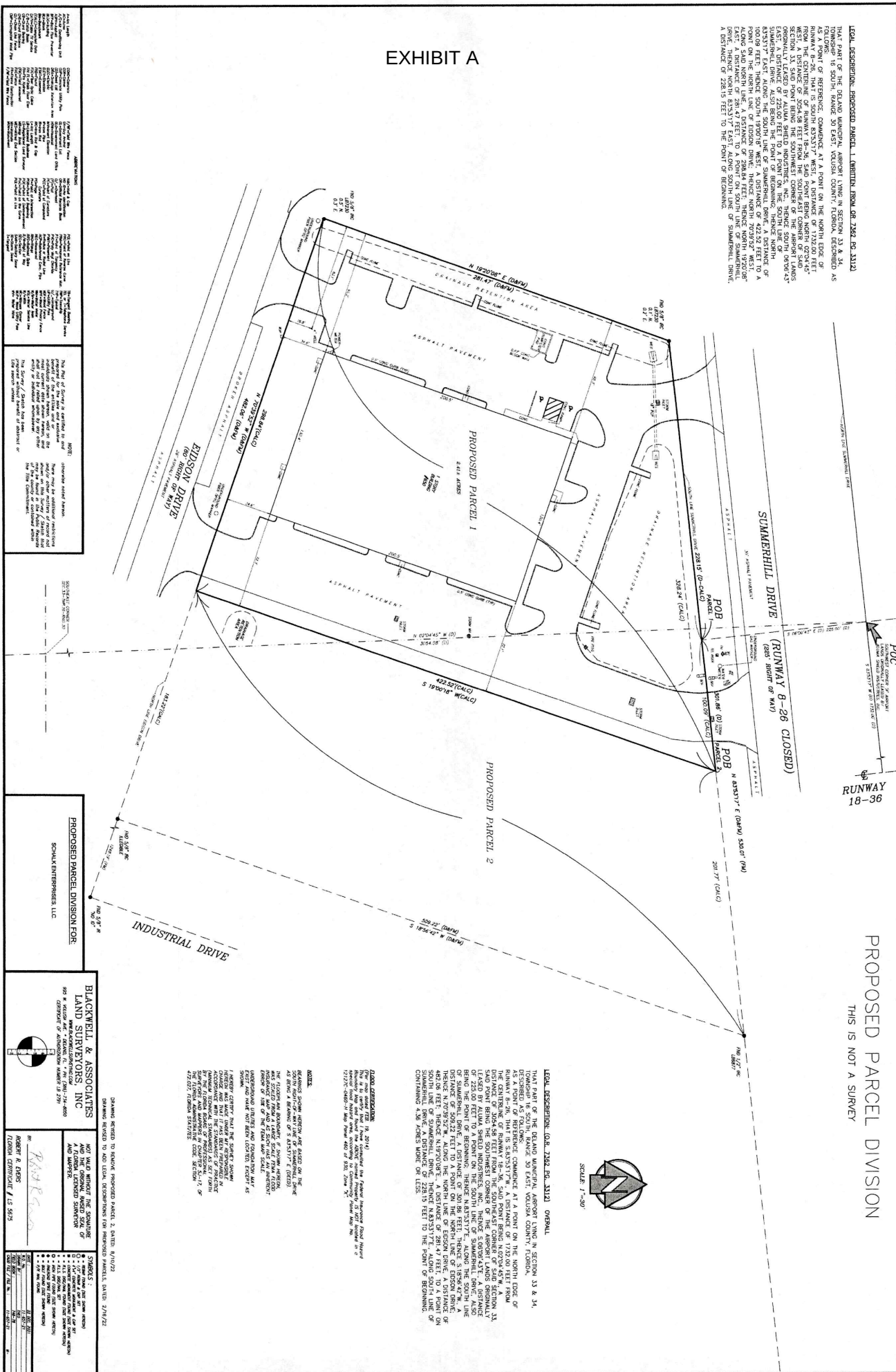
APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind, Esquire
City Attorney

SCHALK ENTERPRISES, LLC
a Florida Limited Liability Company

By: 

Mark A. Watts, MGRM



CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Ground Lease, Kingspan Insulation US.

DEPARTMENT: Community Development

PREPARED BY: Rick Werbiskis, Community Dev. Director

ATTACHMENTS: Kingspan Lease Parcel 2

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Kingspan Insulation US has leased four parcels of land within the airport industrial area for over 20 years. The company is moving forward with a substantial investment in their buildings which will include a complete refit and expansion of the company's corporate offices at 725 Summerhill Drive, an anticipated \$4m investment. The proposed expansion will utilize the additional 1.96 acres currently vacant and being leased by Schalk Enterprises.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Regional High Value Job Creation

SUSTAINABILITY:

Energy efficient building and infrastructure; Green jobs

FISCAL IMPACT:

The proposed capital investment will result in an increase in tax revenue from the expansion / renovation of the headquarters building and new job creation. As mentioned in another agenda item for this meeting, there will be a net annual reduction of \$6,474.84 in lease revenue resulting from the overall decrease to the existing Schalk lease and modified lease rate to the 1.96 acres being assumed by Kingspan due to the terms of the Kingspan lease.

RECOMMENDATION:

Staff recommends that the City Commission approve the ground lease for Kingspan Insulation US.

BACKGROUND/DISCUSSION:

Kingspan Insulation US has leased four parcels of land within the airport industrial area for over 20 years. The company is moving forward with a substantial investment in their buildings which will include a complete refit and expansion of the company's corporate offices at 725 Summerhill Drive, an anticipated \$4m investment. The proposed expansion will utilize the additional 1.96 acres.

GROUND LEASE AGREEMENT

The City of DeLand, a municipal corporation (hereinafter referred to as "Lessor"), and Kingspan Insulated Panels, Inc., a Florida corporation, with its principal place of business at 725 Summerhill Drive, DeLand, Florida 32724 (hereinafter referred to as "Lessee"), in consideration of the mutual terms and conditions of this Ground Lease Agreement (hereinafter referred to as the "Agreement"), dated this ____ day of _____, 2022, hereby agree as follows:

Section 1. Property. Lessor hereby leases to Lessee 1.96 +/- acres of land identified as "Proposed Parcel 2" in the attached Exhibit "A", which is located between Summerhill Drive and Eidson Drive at the DeLand Municipal Airport in DeLand, Volusia County, Florida (hereinafter referred to as the "premises" or "leased premises"). Any use of the airport outside of the leased premises shall be in accordance with any fee schedules or other regulations, rules or policies adopted by Lessor.

Section 2. Term. This Agreement shall be for a term beginning November 1, 2022, and ending on December 31, 2041, unless sooner terminated as provided below.

Section 3. Purposes. The premises shall be used solely for the purpose of manufacturing and for no other purpose whatsoever. Lessee shall make no unlawful, improper or offensive use of the premises. Lessee's activities shall be limited to those activities normally associated with the business of manufacturing.

Section 4. Renewals. So long as Lessee is completely current with its rent payments and is otherwise in full compliance with all of the terms, covenants and conditions of this Agreement, Lessee shall have the right and option to renew this Agreement, upon proper notice, for one (1) additional term of twenty (20) years under the same terms and conditions as the initial term of this Agreement, except as those terms and conditions may be modified in accordance with this Agreement. Rent for the renewal term shall be determined in accordance with Section 5.A. of this Agreement. Written notice of Lessee's intention to renew shall be sent to Lessor not less than 180 days and not more than 365 days prior to the expiration date of the initial term of this Agreement and any renewal of this Agreement.

Section 5. Rent. Lessee shall pay Lessor as base rent for the premises the initial sum of SEVENTEEN THOUSAND FORTY EIGHT AND 76/100 DOLLARS (\$17,048.76), payable in twelve monthly installments of ONE THOUSAND FOUR HUNDRED TWENTY AND 73/100 DOLLARS (\$1,420.76) each. All rent payments are due in advance on the first day of each month and are subject to state and/or local sales' taxes at the rate or rates then in effect, which shall be due and payable at the same time as the rent installments.

A. Annual cost of living adjustments. At the conclusion of every year of this Agreement, the rent payable by Lessee shall be adjusted for the following year in accordance with this subsection; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%. On September 1st of each year during the initial term or any renewal of this Agreement, Lessor shall use the latest available publications promulgated by the U.S. Department of Labor to determine the average annual change in the Cost of Living Index (All Urban Consumers) for the twelve (12) months immediately preceding the latest date for which data is available. On or October 1st of each year, Lessor shall send Lessee written notice of the average annual change in the Cost of Living Index and the required adjustment in annual rent and monthly installments. The annual cost of living adjustment shall be determined by applying the change in the Consumer Price Index to Lessee's annual rent at the time the notice is sent and shall become effective for the following

year beginning on the yearly anniversary date of this Agreement; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this Section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%.

B. Redetermination of rent for renewal term. Rent for the renewal term of this Agreement shall be at then prevailing market rates for similarly situated properties at the DeLand Municipal Airport. Upon receipt of notice by Lessor of Lessee's notice of Lessee's election to exercise its option to renew this Agreement, Lessor and Lessee shall attempt to negotiate in good faith an agreed upon rental rate. If the parties are unable to reach agreement on the rent within forty-five (45) days of the date of notice, each party shall appoint (at its own expense) a qualified MAI appraiser, who shall then appoint a third qualified MAI appraiser (whose costs shall be borne equally by the parties). These appraisers shall inspect and appraise the rental value of the property and arrive at a fair rental value for the premises based upon a value per square foot per year. This value for the property shall exclude the rental value of any improvements or renovations built or installed on the premises at the expense of Lessee. If the appraisers do not unanimously agree on the fair rental value of the premises, the base rent for the renewal period shall be established by averaging the two highest appraisals.

C. Adjustment when substantial part of premises unusable. If a substantial part of the premises is rendered unusable due to condemnation or force majeure, the rent payable by Lessee shall be adjusted in accordance with this subsection; provided, however, that Lessee shall continue to pay rent at the current rate until the adjustment amount has been finally determined in accordance with this subsection. Within 30 days of the condemnation action or event of force majeure, Lessee shall send Lessor written notice of its desire to adjust the rent in accordance with this subsection and include in that notice any proposed adjustment in the rent and the factual basis for same. If the parties are unable to reach agreement on the rent within 30 days after the notice is sent, the rent shall be determined by a panel of three (3) MAI appraisers, with one selected by Lessee, one selected Lessor, and the third selected by the other two appraisers. The rent arrived at through this subsection shall be subject to increases on the same basis as set forth in Exhibit "B". If the condition which renders a substantial part of the premises unusable is temporary, upon the termination or elimination of that condition, Lessee shall resume paying rent in the amount that would have been due had the condition never existed.

The taking by condemnation or otherwise of 30 feet or less of any of the premises immediately adjacent to a public or private road for purposes of improving that road shall not be deemed to be a taking of a substantial part of the premises.

Section 6. Taxes. In addition to applicable sales or other proper tax on rent installments, Lessee shall pay any and all taxes levied or assessed by any proper taxing authority upon the land; upon any personal property, buildings, fixtures or improvements belonging to Lessee and located on the leased premises, including but not limited to, all ad valorem or real estate taxes assessed against the land, and any and all taxes assessed or levied by any proper taxing authority as a result of Lessee's leasehold or possessory interest. Lessee shall pay in full all ad valorem taxes assessed against the leased premises on or before April 1st of each and every year. Nonpayment of ad valorem taxes in full by the Lessee shall create a default of this Agreement pursuant to **Section 29(B)** below. Lessee's default or termination of this Agreement shall not relieve Lessee of responsibility to pay taxes as set forth herein.

Section 7. Security deposit. [OMITTED]

Section 8. Buildings and improvements. Lessee may, at its sole cost and expense, make any changes, alterations or improvements that may be reasonable and necessary for its use

of the premises. All buildings, fixtures and improvements shall remain the property of Lessee, subject to Lessor's landlord lien for rent. Lessee may remove the improvements upon the termination of this Agreement if the removal can be done in a manner that does not injure or damage the leased premises. If Lessee fails to remove the buildings, fixtures or improvements as provided, Lessor, at its option, may require Lessee to remove them. If Lessee fails to do so, Lessor may remove and dispose of the buildings, fixtures, improvements and personal property not removed by Lessee. In that case, Lessee agrees to sell, assign and transfer to Lessor all of Lessee's right, title and interest in the buildings, fixtures, improvements and personal property not removed by Lessee for the sum of \$1.00. Lessee further agrees that if Lessor removes the buildings, fixtures, improvements and personal property as provided for above, Lessee shall pay Lessor upon written demand the cost of the removal, transportation, storage and/or disposition of the property.

Section 9. Review of plans for buildings and improvements. Before applying for a building permit for the construction, erection or installation on the leased premises of any alteration, fixture, building, structure or other improvement, Lessee shall submit complete building plans for Lessor's prior review and approval, which approval shall not be unreasonably withheld. The review and approval of the plans shall be subject to all applicable federal, state and local regulations, including but not limited to all zoning and airport development regulations. In the event of a conflict among such regulations, the more restrictive shall apply. Such plans shall also be subject to the approval of the Federal Aviation Administration (FAA).

Section 10. Mortgage of Lessee's interest. Lessor may, by further agreement, consent to subordination of some of its rights as landlord to any lending institution making a loan to Lessee to be used in connection with the construction or improvement of any building or facility upon the leasehold. However, in any such subordination agreement, Lessor shall reserve the right to be made a party to any foreclosure action and shall have the right to receive absolutely all proceeds on foreclosure sale above the amount of the judgment in foreclosure, and shall have the right to bid at foreclosure sale. Any subordination agreement shall provide for maintaining current at all times all payments owed to Lessor under this Agreement.

No mortgage or foreclosure or the consent thereto shall be deemed to encumber or affect Lessor's title to the real property which is demised in this Agreement. A copy of the mortgage instrument shall be provided to Lessor not more than 30 days after execution of the mortgage. Lessee shall at that time also provide Lessor the name and mailing address of a representative of the mortgagee authorized to receive notices under this Agreement. During the period of time that the mortgage remains unsatisfied, Lessor shall send the mortgagee a copy of any notices from Lessor to Lessee at the same time that notice is sent to Lessee.

Section 11. Water and sewer connections. Lessee shall connect the water and sewer systems on the premises to the airport water and sewer systems provided by Lessor. However, Lessor may permit Lessee to maintain additional water and sewer facilities on the premises if necessary to the carrying out of Lessee's activities on the premises.

Section 12. Mechanic's liens. The premises hereby leased shall not be subject to any mechanic's lien, and Lessee agrees that, not less than five (5) days before any construction material or services are provided to Lessee, it shall post and record in the public records of Volusia County a notice of nonresponsibility of Lessor, stating that Lessor is not responsible for payment of any labor, materials or services provided Lessee and that the leased premises are not subject to any mechanics' liens.

Section 13. Repairs and maintenance generally. Lessee is an existing tenant of the premises and this lease consolidates and renews existing leases. As such, Lessee acknowledges that it is familiar with the leased premises which it currently occupies and accepts them in their present condition. During the term of this Agreement, Lessee shall maintain the premises in good

repair and in a neat and orderly condition at Lessee's sole cost and expense. In the event that Lessee fails or refuses to perform any required repairs or maintenance, Lessor shall have the right, but not the duty, to undertake any such repairs or maintenance, and the cost thereof, together with interest thereon, shall be collectable as additional rent. Lessor shall not be required to make any improvements or repairs to or upon the premises whatsoever.

Section 14. Maintenance of premises exteriors. Lessee recognizes that Lessor has special economic and other interests in maintaining the clean, neat and orderly appearance of grounds and the exterior of structures at the DeLand Municipal Airport. Accordingly, Lessee shall landscape the premises in a manner acceptable to Lessor and keep the grounds and the exterior of structures on the premises in a clean, neat and orderly appearance. In the event Lessee fails substantially to correct a breach of this section within ten (10) days after Lessor sends written notice of such breach, Lessor shall have the right, but not the duty, to undertake any such required maintenance or landscaping, and the cost thereof, together with interest thereon, shall be collectable as additional rent.

Section 15. Surrender of possession. Upon termination of this Agreement, Lessee shall surrender the premises quietly and peaceably and in as good order and condition as at the commencement of the Agreement term, reasonable wear, tear and damage by the elements excepted. Lessee shall also leave the premises free from all nuisances and dangerous or defective conditions.

Section 16. Compliance with laws. Lessee shall at its own cost and expense comply with all applicable federal, state and local laws, rules and regulations pertaining to Lessee's use of the premises, as they may be amended from time to time, including but not limited to the following:

- A. All building, zoning, sign, airport development and fire protection regulations.
- B. All regulations and instructions regarding the disposal of sewage, garbage and industrial or hazardous wastes promulgated or enforced by any federal, state or local agency.
- C. All regulations requiring that Lessee obtain licenses or permits for its activities on the leased premises.
- D. All regulations restricting the height of structures, natural growths or other obstructions on the leased premises promulgated by the Federal Aviation Administration (FAA).

Section 17. Utility payments. Lessee shall pay all utilities for the leased premises and shall pay when due all bills for water, sewer, stormwater and garbage collection services provided to the premises by the City of DeLand.

Section 18. Prohibited activities. The following operations, activities and uses are specifically prohibited on the leased premises:

- A. The keeping or storage during any 24-hour period of any flammable liquids inside any covered or enclosed portion of the leased premises in excess of the amount of the liquids needed by Lessee for that 24-hour period. Any flammable liquids with a flash point of less than 100 degrees Fahrenheit shall be kept and stored only in safety containers of a type approved by Underwriters' Laboratories and the DeLand Fire Department. For purposes of enforcing this subsection, Lessee shall send to Lessor not more than 30 days after execution of this Agreement a list of the types, contents and quantities of any flammable liquids which will be maintained on the leased premises. Any additions to that list shall be sent within five (5) days after receipt by Lessee of the liquid in question.

B. Any improvements to or use of the property that unreasonably interferes with the use or enjoyment of adjacent or nearby premises by other lessees of Lessor.

C. Any use of the leased premises that would interfere with or adversely affect the operation or maintenance of the DeLand Municipal Airport, or would otherwise constitute an airport hazard.

D. The use of the premises in violation of any applicable federal, state or local law, rule or regulation.

E. The use of the premises for residential, labor camp or trailer court purposes.

F. The dumping, storage, disposal or incineration of junk, sewage, garbage or refuse.

G. The storage or repair of any motor vehicles, equipment or machinery not directly used by Lessee in the primary use of the premises.

H. Smelting, stockyards or large animal raising.

Section 19. Environmental matters.

A. Lessee shall not suffer, cause or permit the contamination of the leased premises, or any environmental contamination resulting from use of the leased premises, by any hazardous or toxic materials (including but not limited to petroleum products) and shall not handle or permit polychlorinated biphenyls ("PCB's") or asbestos or substances containing PCB's or asbestos on the premises. Lessee shall immediately provide Lessor with notice of any event of an environmental nature, including any spill or other incident which could result in contamination to the premises.

B. Lessee shall conduct all of its operations at the leased premises in compliance with all federal, state and local laws, rules, regulations, ordinances or requirements, including, but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments thereto, or any regulations promulgated pursuant thereto, or any similar state or local law, rule, regulation or ordinance ("Environmental Statutes"). Lessee shall obtain all registrations required by Environmental Statutes and shall submit to Lessor, upon request, for inspecting and copying all documents, permits, licenses, approvals, manifests and records required to be submitted and/or maintained by the provisions of the Environmental Statutes. Lessee shall also provide promptly to Lessor copies of any correspondence, notice of violation, summons, order, complaint or other document received by Lessee pertaining to compliance with Environmental Statutes.

C. Lessee shall permit Lessor and Lessor's agents, servants and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purposes of environmental inspections and sampling during regular business hours, or during other hours after reasonable notice by Lessor, or in the event of any environmental emergency. Lessee shall not restrict access to any part of the premises, and Lessee shall not impose any conditions to access. To the extent any hazardous conditions exist on the leased premises, Lessor, in its sole discretion may remedy and/or cause to be remedied at Lessee's sole expense, the defect or contamination, and Lessor reserves the right to re-inspect the leased premises after any remediation, and require Lessee to take appropriate action to remedy and/or cause to be remedied any further defect or contamination resulting from this tenancy.

D. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings,

actions and costs of action (including attorneys' fees, engineering and other professional or expert fees), of whatsoever kind or nature arising out of or in any way related to Lessee's responsibilities hereunder.

E. Notwithstanding the foregoing, Lessee shall have no liability for any hazardous conditions which may have existed on the leased premises before Lessee took possession or which may have arisen thereafter if Lessee demonstrates to the reasonable satisfaction of Lessor by substantial, competent evidence that the hazardous conditions were caused by identified, unrelated third parties acting without the express or implied consent of Lessee.

Section 20. Duties of Lessor. During the term of this Agreement, Lessor shall:

A. Continue to operate the DeLand Municipal Airport as a public airport, consistent with government regulations.

B. Allow Lessee free access to the premises over public roads leading to the leased premises and allow Lessee access to public airport facilities.

C. Not permit the construction by any other entity under its control of any improvements or structures which would interfere with Lessee's ingress and egress to the premises.

Section 21. Enjoyment of premises. Lessee acknowledges that its right to enjoy the leased premises is subject to the use of the surrounding property for industrial, commercial and airport purposes, with accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft, and the danger and nuisance thereof.

Section 22. Non-assignability. Lessee shall not assign this Agreement without the prior written approval of Lessor, which approval may not be unreasonably withheld. Any attempted assignment in contravention hereof shall be void.

No assignment shall relieve Lessee of its obligation to pay the rent provided for in this Agreement in the event of a default by the assignee unless Lessee is specifically relieved of that obligation in writing by Lessor. Lessee shall send Lessor a copy of the proposed assignment not less than 60 days prior to its proposed execution, and Lessor shall send Lessee notice of its consent or refusal to consent not less than 30 days thereafter.

Section 23. Nondiscrimination covenants. Lessee, for itself, its personal representatives, successors in interest, and permitted assigns, if any, agrees as a covenant running with the land that:

A. In the event facilities are constructed, maintained or operated on the leased premises for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended, or for any other purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the latest version of Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the DOT-Effectuation of Title VI of the Civil Rights Act of 1964 (DOT Regulations).

B. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of any facilities or services of Lessee on the grounds of race, color or national origin.

C. In the construction of any improvements on, over or under any facilities on the premises, and the furnishing of services on the premises, no person shall be excluded from

participation in, denied the benefits of, or otherwise be subjected to discrimination in such activity on account of race, color or national origin.

D. The premises shall be used in compliance with DOT Regulations.

E. Subject to appeal provisions in DOT Regulations, upon Lessee's breach of any provision of this section, Lessor may terminate this Agreement and reenter and repossess the premises, and hold the same as if this Agreement had never been made, if Lessee fails to cure and remedy the breach in a manner reasonably agreeable to Lessor within 30 days after written notice is sent to Lessee by Lessor.

Section 24. Liability insurance, indemnity and holdharmless. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions (including attorneys' fees), of whatsoever kind or nature arising out of or in any way related to the use, occupancy, management or control of the leased premises, or any act or omission of Lessee or its agents, servants, employees, independent contractors, customers, patrons or invitees, whether on the leased premises or elsewhere.

Within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain comprehensive public liability insurance coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all of the foregoing, with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) and a general aggregate of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit commercial general liability insurance on an occurrence basis (including coverage for the Premises and Lessee's operations). All such insurance shall cover complete contractual liability, bodily injury and property damage liability. The certificate shall list the City of DeLand as an additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

If the Lessee uses or stores any hazardous or toxic substances on the leased premises, then within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain pollution liability and storage tank coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all liability and costs of clean-up and remediation resulting from the storage, handling or disposal of any hazardous or toxic substances, as those terms are commonly defined, or for any other liability relating to such hazardous or toxic substances, with coverage limits in the amount not less than \$1,000,000 for any one occurrence. The certificate shall list the City of DeLand as an additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

Section 25. Nonliability of Lessor to Lessee. Lessor shall not be liable to Lessee or its agents, representatives, invitees, employees, or any other person, for any injury to or death of any of them, or for any damage to any of Lessee's property or loss of revenue, caused by any third persons in the maintenance, construction or operation of the Airport, its appurtenances, facilities or equipment, or caused by any third persons using the Airport or its appurtenances, facilities and equipment, or navigating any aircraft on or over the Airport, whether the injury, death or damage is due to negligence or not. Third persons, as used in this section, shall include the United States of America and the State of Florida, or any of their agencies, and all persons other than the City of DeLand.

Section 26. Non-exclusivity. Nothing in this Agreement shall be construed to grant Lessee the exclusive right to carry on any activity on any premises owned or subject to control by Lessor. Lessor reserves the right to lease or convey other premises to other operators of businesses or activities similar to those of Lessee upon terms and conditions set by Lessor.

Section 27. Agreement not a joint venture. Nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of partners or joint venturers between Lessor and Lessee or as constituting either party as the agent or representative of the other party for any purpose or in any manner.

Section 28. Reservation of airspace. Lessor reserves to itself for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the leased premises, together with the right to cause in the airspace such noise as is inherent in the operation of all types of aircraft, and to use the airspace for all airport and related activities, subject to Lessee's right to construct and maintain permitted improvements.

Section 29. Defaults. This Agreement shall be in default and may be terminated in any of the following events:

A. Failure to pay rent or other payments due. The failure by Lessee to pay to Lessor any sum when due, when the failure continues for three (3) or more days after written notice of default is sent to Lessee.

B. Violation of terms. The violation of or failure to perform any other term, covenant or condition of this Agreement, including the payment in full of ad valorem taxes on or before April 1st of each year, if the violation or failure to perform is not corrected or cured within ten (10) days after written notice of default is sent to the party in default. Any notice sent under this subsection shall specify the violation or failure to perform, and the steps which must be taken by that party to correct the violation or failure to perform.

C. Insolvency. If Lessee becomes insolvent or makes an assignment for benefit of creditors; or the interest of Lessee in the premises is levied upon or sold upon execution, or becomes vested by operation of law in some other person; or a receiver or trustee is appointed for Lessee.

D. Abandonment. If Lessee vacates or abandons the leased premises, or permits the premises to remain vacant or abandoned for a period of 30 days or more, regardless of whether or not rent payments are current. However, Lessor may at its sole discretion consent in writing to the vacation of the premises for a longer period of time upon terms and conditions set by Lessor.

E. Corporate Dissolution. If Lessee is a corporation and if Lessee suffers or permits its corporate franchise to be dissolved for a period of more than three (3) calendar months before seeking reinstatement.

Section 30. Remedies for default. In the event of a default as provided above, the parties shall have the following remedies:

A. Repossession by Lessor. Upon default by Lessee, Lessee's right to possession of the leased premises shall terminate, without notice or demand by Lessor, and Lessee shall surrender possession to Lessor. Lessee hereby grants to Lessor full and free license to enter the premises to take possession of the premises in any lawful manner, and to expel Lessee.

B. Damages. In addition to terminating this Agreement and retaking possession of the leased premises, Lessor may recover all damages and rent accrued or accruing under this

Agreement or arising out of any breach of this Agreement. Lessor may resume possession of the premises for its own account and recover from Lessee the difference between the total rent due under this Agreement and the fair market value of the property for the remainder of the term, reduced to present value, or Lessor may resume possession of the premises and re-rent it for the remainder of the term for the account of Lessee and recover from Lessee, at the end of the term or at the time any rent becomes due under this Agreement, the difference between the rent specified in this Agreement and the rent received upon the re-renting the premises.

C. Other remedies. Lessor may pursue any other remedies provided by law for the breach of this Agreement. No right or remedy conferred upon or reserved to Lessor in this Agreement is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy of Lessor under this Agreement, or now or hereafter existing at law or equity, or by statute.

D. Lessee's right of cancellation. Lessee may cancel this Agreement in the event of civil commotion or riot, acts of military power, damage to runways which preclude reasonable use of the airport, or court order restraining the use of the airport; however, this termination shall not create any liability to Lessee by Lessor. Lessee may also terminate this Agreement if Lessor fails to fulfill its obligations under this Agreement, upon a determination by a court of competent jurisdiction that such a default exists.

E. Attorney's fees. In any civil action brought to enforce the provisions of this Agreement, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the non-prevailing party.

Section 31. Force majeure. The performance of all provisions of this Agreement (except for the payment of rent) shall be postponed and suspended during any period that the performance thereof is prevented by acts of God, accidents, weather and conditions arising therefrom, riot, fire, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and conditions arising therefrom, the exercise of paramount power by the federal government, either through the taking of the leased premises or the imposition of regulations restricting the conduct of business on the premises, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction, or any other delay or contingency beyond the reasonable control of Lessor or Lessee.

Section 32. Eminent domain. If all or any substantial part of the leased premises is taken by any paramount public authority under the power of eminent domain, then the term of this Agreement shall cease as to the part taken from the day the possession of that part is taken for any public purpose, and from that day Lessee shall have the right either to cancel this Agreement or to continue in possession of the remainder of the premises upon payment of an adjusted rent as provided in **Section 5** above.

All damages awarded for the taking shall belong to and be the exclusive property of Lessor, except for any portion of the award made for loss of improvements belonging to Lessee or for loss of Lessee's leasehold interest in the premises taken.

The taking of 30 feet or less of any of the leased premises immediately adjacent to a public or private road for improvement of that road shall not be deemed to be a taking of a substantial portion of the premises.

Section 33. Waiver of default; effect. The acceptance by Lessor of one or more monthly rental installments after they fall due, or after knowledge of any breach by Lessee of this

Agreement, or after the sending of any notice or demand, or any other act or series of acts by Lessor except an express waiver in writing, shall not be deemed or construed as a waiver of Lessor's right to act or as a waiver of any other right given to Lessor under this Agreement, or as an election not to proceed under the provisions of this Agreement. The failure by Lessor to collect or demand any sums due under this Agreement shall not relieve Lessee's obligation to pay those sums when demanded.

Section 34. Notices. Any notices required by this Agreement, or which Lessor or Lessee may wish to serve on the other, shall be in writing and shall be deemed served, whether or not service is accepted, admitted or refused, when delivered in person to an agent or employee of the party at its place of business or when deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed to the parties as follows:

Assistant City Manager
City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Carlo Vezza, Sr. Financial Accountant
Kingspan Insulated Panels, Inc.
725 Summerhill Drive
DeLand, Florida 32724

Section 35. Subject to federal deeds and agreements. This Agreement is subject and subordinate to the provisions of a deed from the United States to the City of DeLand dated June 20, 1947, and recorded at Deed Book 383, Page 508, Public Records of Volusia County, Florida, and other existing agreements and leases between Lessor and the United States and any and all future leases, deeds and agreements entered into between the United States and the City of DeLand with reference to the conveyance by the United States to the City of DeLand of any real or personal property under any existing or future federal statutes authorizing the conveyance of such property by the federal government to the City for airport purposes.

Section 36. Inspection of premises. Lessee shall allow Lessor's authorized representative access to the leased premises at all reasonable hours for the purpose of examining and inspecting said premises; for the purposes necessary, incidental to or connected with the performance of Lessee's obligations under this Agreement; or in the exercise of its governmental functions.

Section 37. Signs. Lessee shall be allowed to install signs and advertisements promoting the business conducted by Lessee subject to the written consent of the Lessor, which consent shall not be unreasonably withheld, and subject to compliance with all applicable sign, zoning, building and other codes.

Section 38. Effect on prior agreements. This Agreement supersedes all prior agreements, if any, between the parties regarding the leasing of these premises and, as of the date of this Agreement, those prior agreements shall be of no further force or effect.

Section 39. Construction of lease. This Agreement shall be construed under the laws of the State of Florida and the Code of Ordinances of the City of DeLand.

Section 40. Short form of lease. Either party may prepare for execution a short form of this Agreement for recording in the public records. The costs of recording this Agreement shall be paid by Lessee.

Section 41. Amendments to lease. This Agreement may be amended only in writing signed by both parties.

Section 42. Late charge. All unpaid sums owed to Lessor under this Agreement shall bear interest at a rate of 18 percent per annum from the date when due.

Section 43. Time of essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

Section 44. Omitted provisions. Various sections of the City's standard Ground Lease for the DeLand Municipal Airport may have been omitted if they are not applicable to this Agreement. In that event, the section headings have been retained for reference only to facilitate administrative review.

Section 45. Subleases. Lessee may not sublease the premises without the express written consent of the Lessor, which consent shall not be unreasonably withheld.

Section 46. Special Conditions - Screening for Outdoor Storage – Lessee shall be required to install screening in accordance with City of DeLand regulations around any outdoor storage areas of the leased premises and such outside storage must otherwise comply with all applicable governmental regulations.

Section 47. Complete agreement. This Agreement constitutes the complete and exclusive understanding and agreement between the parties with respect to the subject matter hereof and may only be amended in writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties' heirs, personal representatives, successors and permitted assigns.

[SIGNATURE BLOCK ON NEXT PAGE]

EXECUTED by the Lessee this 4th day of October, 2022.

EXECUTED by the Lessor this _____ day of _____, 2022.

CITY OF DELAND, LESSOR

KINGSPAN INSULATED PANELS, INC.
LESSEE

Robert F. Apgar
Mayor-Commissioner

By: 
Donal Casey, Secretary/Treasurer

Address: City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Address: Kingspan Insulated Panels, Inc.
725 Summerhill Drive
DeLand, Florida 32724

ATTEST:

WITNESSES AS TO LESSEE:

Julie A. Hennessy
City Clerk-Auditor

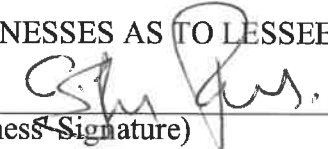


(Witness' Signature)

Nick Conte

(Print Name)

WITNESSES AS TO LESSEE:



(Witness' Signature)

C. JOHN PETERS

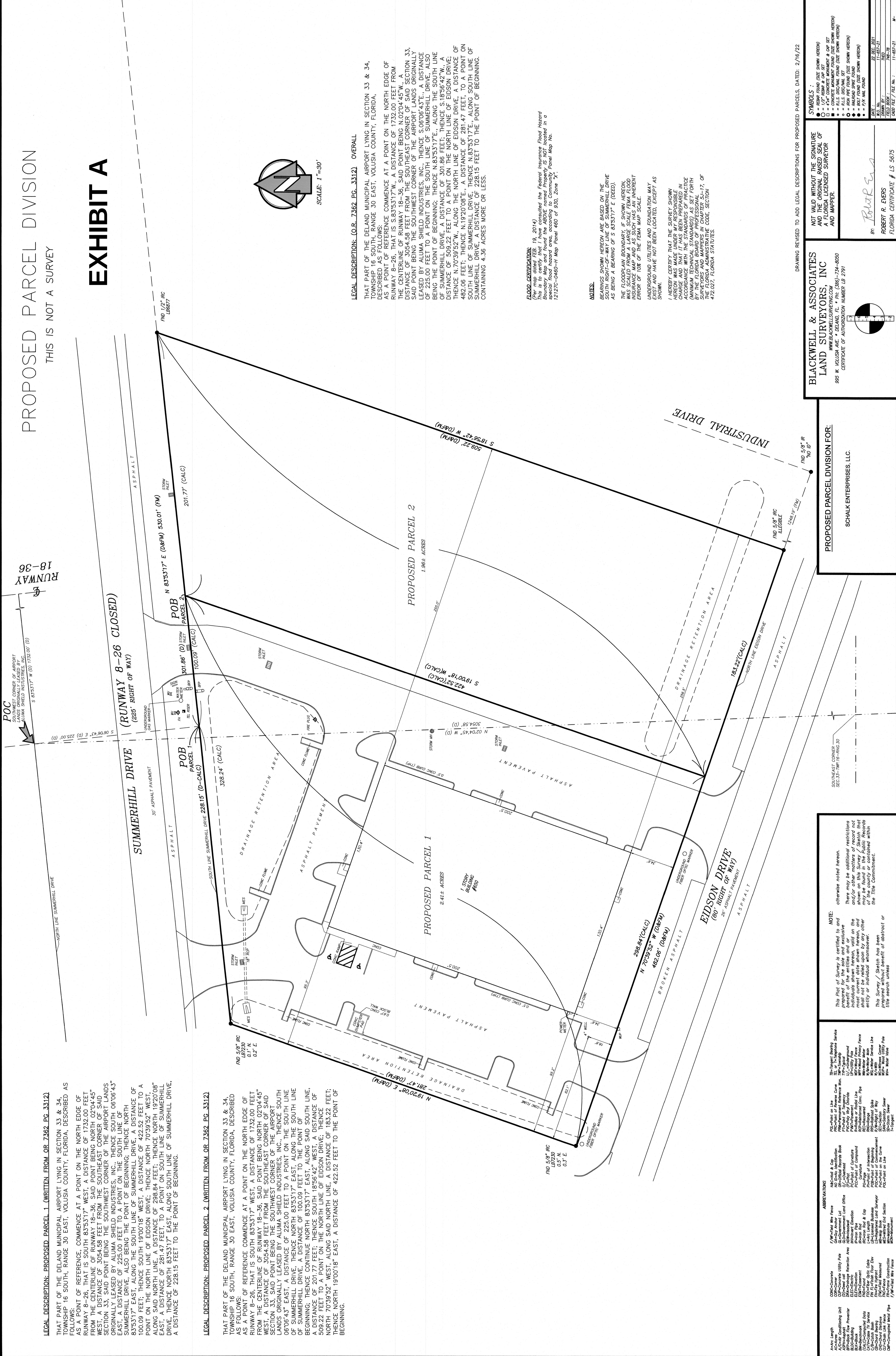
(Print Name)

This Instrument Prepared By:
City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

PROPOSED PARCEL DIVISION

THIS IS NOT A SURVEY

EXHIBIT A



LEGAL DESCRIPTION: PROPOSED PARCEL 1 (WRITTEN FROM OR 7362 PG. 3312)

THAT PART OF THE DELAND MUNICIPAL AIRPORT LYING IN SECTION 33 & 34, TOWNSHIP 16 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE, COMMENCE AT A POINT ON THE NORTH EDGE OF RUNWAY 8-26, THAT IS SOUTH 83°53'17" WEST, A DISTANCE OF 1732.00 FEET FROM THE CENTERLINE OF RUNWAY 18-36, SAID POINT BEING NORTH 02°04'45" WEST, A DISTANCE OF 3054.58 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 33, SAID POINT BEING THE SOUTHWEST CORNER OF THE AIRPORT LANDS ORIGINALLY LEASED BY ALUMA SHIELD INDUSTRIES, INC., THENCE SOUTH 06°06'43" EAST, A DISTANCE OF 225.00 FEET TO A POINT ON THE SOUTH LINE OF SUMMERHILL DRIVE, ALSO BEING THE POINT OF BEGINNING, THENCE NORTH 83°53'17" EAST, ALONG THE SOUTH LINE OF SUMMERHILL DRIVE, A DISTANCE OF 100.09 FEET; THENCE SOUTH 19°00'18" WEST, A DISTANCE OF 422.52 FEET TO A POINT ON THE NORTH LINE OF EDISON DRIVE; THENCE NORTH 70°39'52" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 298.84 FEET; THENCE NORTH 19°20'08" EAST, A DISTANCE OF 281.47 FEET, TO A POINT ON SOUTH LINE OF SUMMERHILL DRIVE, THENCE NORTH 83°53'17" EAST, ALONG SOUTH LINE OF SUMMERHILL DRIVE, A DISTANCE OF 228.15 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION: PROPOSED PARCEL 2 (WRITTEN FROM OR 7362 PG. 3312)

THAT PART OF THE DELAND MUNICIPAL AIRPORT LYING IN SECTION 33 & 34, TOWNSHIP 16 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

AS A POINT OF REFERENCE COMMENCE AT A POINT ON THE NORTH EDGE OF RUNWAY 8-26, THAT IS SOUTH 83°53'17" WEST, A DISTANCE OF 1732.00 FEET FROM THE CENTERLINE OF RUNWAY 18-36, SAID POINT BEING NORTH 02°04'45" WEST, A DISTANCE OF 3054.58 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 33, SAID POINT BEING THE SOUTHWEST CORNER OF THE AIRPORT LANDS ORIGINALLY LEASED BY ALUMA SHIELD INDUSTRIES, INC., THENCE SOUTH 06°06'43" EAST, A DISTANCE OF 225.00 FEET TO A POINT ON THE SOUTH LINE OF SUMMERHILL DRIVE, THENCE NORTH 83°53'17" EAST, ALONG THE SOUTH LINE OF SUMMERHILL DRIVE, A DISTANCE OF 100.09 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE NORTH 83°53'17" EAST, ALONG SAID SOUTH LINE, A DISTANCE OF 207.77 FEET, THENCE SOUTH 19°00'18" WEST, A DISTANCE OF 422.52 FEET TO A POINT ON THE NORTH LINE OF EDISON DRIVE, THENCE NORTH 70°39'52" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 183.22 FEET; THENCE NORTH 19°00'18" EAST, A DISTANCE OF 422.52 FEET TO THE POINT OF BEGINNING.

LEGAL DESCRIPTION: (O.R. 7362 PG. 3312) OVERALL

THAT PART OF THE DELAND MUNICIPAL AIRPORT LYING IN SECTION 33 & 34, TOWNSHIP 16 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

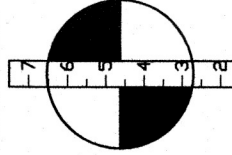
AS A POINT OF REFERENCE COMMENCE AT A POINT ON THE NORTH EDGE OF RUNWAY 8-26, THAT IS S 83°53'17" W, A DISTANCE OF 1732.00 FEET FROM THE CENTERLINE OF RUNWAY 18-36, SAID POINT BEING N 02°04'45" W, A DISTANCE OF 3054.58 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 33, SAID POINT BEING THE SOUTHWEST CORNER OF THE AIRPORT LANDS ORIGINALLY LEASED BY ALUMA SHIELD INDUSTRIES, INC., THENCE S 06°06'43" E, A DISTANCE OF 225.00 FEET TO A POINT ON THE SOUTH LINE OF SUMMERHILL DRIVE, ALSO BEING THE POINT OF BEGINNING; THENCE N 83°53'17" E, ALONG THE SOUTH LINE OF SUMMERHILL DRIVE, A DISTANCE OF 301.86 FEET; THENCE S 18°56'42" W, A DISTANCE OF 508.22 FEET TO A POINT ON THE NORTH LINE OF EDSON DRIVE; THENCE N 70°39'52" W, ALONG THE NORTH LINE OF EDSON DRIVE, A DISTANCE OF 582.06 FEET; THENCE N 19°20'08" E, A DISTANCE OF 281.47 FEET; TO A POINT ON THE SOUTH LINE OF SUMMERHILL DRIVE, THENCE S 83°53'17" W, ALONG THE SOUTH LINE OF SUMMERHILL DRIVE, A DISTANCE OF 228.15 FEET TO THE POINT OF BEGINNING, CONTAINING 4.36 ACRES MORE OR LESS.

FLOOD CERTIFICATION:
(Per map dated FEB. 19, 2014)
This is to certify that I have consulted the Federal Insurance Flood Hazard Map for Volusia County, Florida, and have determined that the property shown in a special flood hazard area, according to Community Panel Map No. 12127C-0460-H Map Panel 460 of 930, Zone "X".

NOTES:
BEARINGS SHOWN HEREON ARE BASED ON THE SOUTH RIGHT-OF-WAY LINE OF SUMMERHILL DRIVE AS BEING A BEARING OF S 83°53'17" E (DEED).
THE FLOODPLAIN BOUNDARY, IF SHOWN HEREON, WAS SCALED FROM A LARGE SCALE FEMA FLOOD MAP, AND IS NOT TO BE USED AS A BASIS FOR DETERMINING THE EXISTENCE OF A FLOOD HAZARD OR FOR THE PURPOSES OF THE FLOOD INSURANCE RATE MAP SCALE.
UNDERGROUND UTILITIES AND FOUNDATION MAY EXIST AND HAVE NOT BEEN LOCATED, EXCEPT AS SHOWN.
I HEREBY CERTIFY THAT THE SURVEY SHOWN HEREON WAS MADE UNDER MY RESPONSIBLE CHARGE AND THAT IT HAS BEEN PREPARED IN ACCORDANCE WITH THE FLORIDA SURVEYING ACT (MINIMUM TECHNICAL STANDARDS) AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS, AND THAT I AM A LICENSED SURVEYOR OF THE FLORIDA ADMINISTRATIVE CODE, SECTION 472.027, FLORIDA STATUTES.

DRAWING REVISED TO ADD LEGAL DESCRIPTIONS FOR PROPOSED PARCELS. DATED: 2/16/22

BLACKWELL & ASSOCIATES
LAND SURVEYORS, INC
WWW.BLACKWELLSURVEYING.COM
995 W. VOLUSIA AVE. • DELAND, FL. • PH: (386) 734-8000
CERTIFICATE OF AUTHORIZATION NUMBER LB 2791



SYMBOLS :
● = REBAR FOUND (SIZE SHOWN HEREON)
○ = 1/2" REBAR & CAP SET
■ = CONCRETE MONUMENT FOUND (SIZE SHOWN HEREON)
• = P.L.S. DISGYAL FOUND (SIZE SHOWN HEREON)
◆ = IRON PIPE FOUND (SIZE SHOWN HEREON)
● = RAILROAD SINK FOUND
● = P.V. MAN FOUND

BY: *Robert R. Evers*
ROBERT R. EVERS
FLORIDA CERTIFICATE # LS 5675

PROPOSED PARCEL DIVISION FOR:

SCHALK ENTERPRISES, LLC.

NOTE:
This Plot of Survey is certified to and guaranteed by the Surveyor as being a true and correct copy of the original survey and/or other matters of record not shown on this Survey. The Surveyor shall not be relied upon by any other entity or individual whosoever, the title Commitment.

otherwise noted hereon.
There may be additional restrictions and/or other matters of record not shown on this Survey. The Surveyor shall not be relied upon by any other entity or individual whosoever, the title Commitment.

ABBREVIATIONS	
As-Built Length	F/W-Find W/Fr Fence
As-Built Width	As-Built Width
As-Built Area	As-Built Area
As-Built Volume	As-Built Volume
As-Built Weight	As-Built Weight
As-Built Temperature	As-Built Temperature
As-Built Pressure	As-Built Pressure
As-Built Humidity	As-Built Humidity
As-Built Wind Speed	As-Built Wind Speed
As-Built Wind Direction	As-Built Wind Direction
As-Built Rainfall	As-Built Rainfall
As-Built Snowfall	As-Built Snowfall
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As-Built Drought	As-Built Drought
As-Built Flood	As-Built Flood
As-Built Earthquake	As-Built

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Ground Lease Renewal, Crete Carrier Corporation.

DEPARTMENT: Community Development

PREPARED BY: Rick Werbiskis, Community Dev. Director

ATTACHMENTS: Crete-renewal

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Crete Carrier Corporation, a Nebraska-based company, is looking to secure a five (5) year ground lease with The City of DeLand. The adjusted per square foot rate from their current lease rate is consistent with the FAA assessed value for the 6.0 acre property.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Regional High Value Job Creation

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The lease will generate \$62,726.40 in annual rental income for the Airport Fund.

RECOMMENDATION:

Staff recommends that the City Commission approve the Ground Lease renewal for Crete Carrier Corporation.

BACKGROUND/DISCUSSION:

Crete Carrier Corporation, a Nebraska-based company, is looking to secure a five (5) year ground lease with The City of DeLand. The adjusted per square foot rate is consistent with the FAA assessed value for the 6.0 acre property.

GROUND LEASE AGREEMENT

The City of DeLand, a municipal corporation (hereinafter referred to as "Lessor"), and Crete Carrier Corporation, a foreign corporation, with its principal address at 400 NW 56th Street, Lincoln, Nebraska 68528 (hereinafter referred to as "Lessee"), in consideration of the mutual terms and conditions of this Ground Lease Agreement (hereinafter referred to as the "Agreement"), dated this 19th day of September, 2022 hereby agree as follows:

Section 1. Property. Lessor hereby leases to Lessee 6.0 acres of land described in the attached Exhibit A, which is located at 2020 Eidson Drive, at the DeLand Municipal Airport in Volusia County, Florida (hereinafter referred to as the "premises" or "leased premises"). Any use of the airport outside of the leased premises shall be in accordance with any fee schedules or other regulations, rules or policies adopted by Lessor.

Section 2. Term. This Agreement shall be for a term of five (5) years, beginning October 01, 2022, and ending on September 30, 2027, unless sooner terminated as provided below.

Section 3. Purposes. The premises shall be used solely for the purpose of warehousing, distribution and truck parking and for no other purpose whatsoever. Lessee shall make no unlawful, improper or offensive use of the premises. Lessee's activities shall be limited to those activities normally associated with the business of warehouse space.

Section 4. Renewals. So long as Lessee is completely current with its rent payments and is otherwise in full compliance with all of the terms, covenants and conditions of this Agreement, Lessee shall have the right and option to renew this Agreement, upon proper notice, for one (1) successive terms of five (5) years under the same terms and conditions as the initial term of this Agreement, except as those terms and conditions may be modified in accordance with this Agreement. Written notice of Lessee's intention to renew shall be sent to Lessor not less than 90 days or not more than 180 days prior to the expiration date of the initial term of this Agreement and any renewal of this Agreement.

Section 5. Rent. Lessee shall pay Lessor as base rent for the premises the sum of SIXTY TWO THOUSAND SEVEN HUNDRED TWENTY SIX AND 40/100 DOLLARS (\$62,726.40) annually, payable in twelve (12) equal monthly installments of FIVE THOUSAND TWO HUNDRED TWENTY SEVEN AND 20/100 DOLLARS (\$5,227.20), due in advance on the first day of each month. Rent will commence on October 01, 2022. All rent payments are subject to state and/or local sales' taxes at the rate or rates then in effect, which shall be due and payable at the same time as the rent installments. This base rent shall be modified as follows:

A. Annual cost of living adjustments. At the conclusion of every year of this Agreement, the rent payable by Lessee shall be adjusted for the following year in accordance with this subsection; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%. On August 1st of each year (or the next business day following August 1st) during the initial term or any renewal of this Agreement, Lessor shall use the latest available publications promulgated by the U.S. Department of Labor to determine the average annual change in the Cost of Living Index (All Urban Consumers) for the twelve (12) months immediately preceding the latest date for which data is available. On or before September 1st of each year, Lessor shall send Lessee written notice of the average annual change in the Cost of Living Index and the required adjustment, if any, in annual rent and monthly installments. The annual cost of living adjustment shall be determined by applying the change in the Consumer Price Index to Lessee's annual rent at the time the notice is sent and shall become effective for the following year beginning on the

yearly anniversary date of this Agreement; provided, however, that in no event shall the annual rent payable by Lessee be less than the base rent reserved in the preceding paragraph of this Section; and provided further, however, that in no event shall any annual adjustment be less than 3% nor more than 6%.

B. Redetermination of rent for renewal term. At the end of the initial term of this Agreement, Lessor, in its sole discretion and at its sole option, may notify Lessee that the base rent to be paid by Lessee shall be altered and redetermined in accordance with this subsection. Written notice of Lessor's exercise of this option shall be sent to Lessee not less than 60 days prior to the expiration of the current term. The parties may then negotiate a new base rent for the ensuing term. If the parties are unable to reach agreement on the rent within 30 days of the date of notice, each party shall appoint (at its own expense) a qualified MAI appraiser, who shall then appoint a third qualified MAI appraiser (whose costs shall be borne equally by the parties). These appraisers shall inspect and appraise the rental value of the property and arrive at a fair rental value for the premises based upon a value per square foot per year. This value for the property shall exclude the rental value of any improvements or renovations built or installed on the premises at the expense of Lessee. If the appraisers do not unanimously agree on the fair rental value of the premises, the base rent for the renewal period shall be established by averaging the two highest appraisals.

C. Adjustment when substantial part of premises unusable. If a substantial part of the premises is rendered unusable due to condemnation or force majeure, the rent payable by Lessee shall be adjusted in accordance with this subsection; provided, however, that Lessee shall continue to pay rent at the current rate until the adjustment amount has been finally determined in accordance with this subsection. Within 30 days of the condemnation action or event of force majeure, Lessee shall send Lessor written notice of its desire to adjust the rent in accordance with this subsection and include in that notice any proposed adjustment in the rent and the factual basis for same. If the parties are unable to reach agreement on the rent within 30 days after the notice is sent, the rent shall be determined by a panel of MAI appraisers selected as provided in subsection B above. The rent arrived at through this subsection shall be subject to all other adjustments provided for in this section. If the condition which renders a substantial part of the premises unusable is temporary, upon the termination or elimination of that condition, Lessee shall resume paying rent in the amount that would have been due had the condition never existed.

The taking by condemnation or otherwise of 30 feet or less of any of the premises immediately adjacent to a public or private road for purposes of improving that road shall not be deemed to be a taking of a substantial part of the premises.

Section 6. Taxes. In addition to applicable sales or other proper tax on rent installments, Lessee shall pay any and all taxes levied or assessed by any proper taxing authority upon the land; upon any personal property, buildings, fixtures or improvements belonging to Lessee and located on the leased premises, including but not limited to, all ad valorem or real estate taxes assessed against the land, and any and all taxes assessed or levied by any proper taxing authority as a result of Lessee's leasehold or possessory interest. Lessee shall pay in full all ad valorem taxes assessed against the leased premises on or before April 1st of each and every year. Nonpayment of ad valorem taxes in full by the Lessee shall create a default of this Agreement pursuant to **Section 29(B)** below. Lessee's default or termination of this Agreement shall not relieve Lessee of responsibility to pay taxes as set forth herein.

Section 7. Security deposit. No security deposit is due or been paid in connection with this lease.

Section 8. Buildings and improvements. Lessee may, at its sole cost and expense, make any changes, alterations or improvements that may be reasonable and necessary for its use of the premises. All buildings, fixtures and improvements shall remain the property of Lessee, subject to Lessor's landlord lien for rent. Lessee may remove the improvements upon the termination of this Agreement if the removal can be done in a manner that does not injure or damage the leased premises. If Lessee fails to remove the buildings, fixtures or improvements as provided, Lessor, at its option, may require Lessee to remove them. If Lessee fails to do so, Lessor may remove and dispose of the buildings, fixtures, improvements and personal property not removed by Lessee. In that case, Lessee agrees to sell, assign and transfer to Lessor all of Lessee's right, title and interest in the buildings, fixtures, improvements and personal property not removed by Lessee for the sum of \$1.00. Lessee further agrees that if Lessor removes the buildings, fixtures, improvements and personal property as provided for above, Lessee shall pay Lessor upon written demand the cost of the removal, transportation, storage and/or disposition of the property.

Section 9. Review of plans for buildings and improvements. Before applying for a building permit for the construction, erection or installation on the leased premises of any alteration, fixture, building, structure or other improvement, Lessee shall submit complete building plans for Lessor's prior review and approval, which approval shall not be unreasonably withheld. The review and approval of the plans shall be subject to all applicable federal, state and local regulations, including but not limited to all zoning and airport development regulations. In the event of a conflict among such regulations, the more restrictive shall apply. Such plans shall also be subject to the approval of the Federal Aviation Administration (FAA).

Section 10. Mortgage of Lessee's interest. Lessor may, by further agreement, consent to subordination of some of its rights as landlord to any lending institution making a loan to Lessee to be used in connection with the construction or improvement of any building or facility upon the leasehold. However, in any such subordination agreement, Lessor shall reserve the right to be made a party to any foreclosure action and shall have the right to receive absolutely all proceeds on foreclosure sale above the amount of the judgment in foreclosure, and shall have the right to bid at foreclosure sale. Any subordination agreement shall provide for maintaining current at all times all payments owed to Lessor under this Agreement.

No mortgage or foreclosure or the consent thereto shall be deemed to encumber or affect Lessor's title to the real property which is demised in this Agreement. A copy of the mortgage instrument shall be provided to Lessor not more than 30 days after execution of the mortgage. Lessee shall at that time also provide Lessor the name and mailing address of a representative of the mortgagee authorized to receive notices under this Agreement. During the period of time that the mortgage remains unsatisfied, Lessor shall send the mortgagee a copy of any notices from Lessor to Lessee at the same time that notice is sent to Lessee.

Section 11. Water and sewer connections. Lessee shall connect the water and sewer systems on the premises to the airport water and sewer systems provided by Lessor. However, Lessor may permit Lessee to maintain additional water and sewer facilities on the premises if necessary to the carrying out of Lessee's activities on the premises.

Section 12. Mechanic's liens. The premises hereby leased shall not be subject to any mechanic's lien, and Lessee agrees that, not less than five (5) days before any construction material or services are provided to Lessee, it shall post and record in the public records of Volusia County a notice of nonresponsibility of Lessor, stating that Lessor is not responsible for payment of any labor, materials or services provided Lessee and that the leased premises are not subject to any mechanics' liens.

Section 13. Repairs and maintenance generally. This is a renewal lease, and lessee is and has been in possession of the premises for many years prior to the execution of this Agreement.

Lessee is completely familiar with the condition of the leased premises and accepts them in their present condition. During the term of this Agreement, Lessee shall maintain the premises in good repair and in a neat and orderly condition at Lessee's sole cost and expense. In the event that Lessee fails or refuses to perform any required repairs or maintenance, Lessor shall have the right, but not the duty, to undertake any such repairs or maintenance, and the cost thereof, together with interest thereon, shall be collectable as additional rent. Lessor shall not be required to make any improvements or repairs to or upon the premises whatsoever.

Section 14. Maintenance of premises exteriors. Lessee recognizes that Lessor has special economic and other interests in maintaining the clean, neat and orderly appearance of grounds and the exterior of structures at the DeLand Municipal Airport. Accordingly, Lessee shall landscape the premises in a manner acceptable to Lessor and keep the grounds and the exterior of structures on the premises in a clean, neat and orderly appearance. In the event Lessee fails substantially to correct a breach of this section within ten (10) days after Lessor sends written notice of such breach, Lessor shall have the right, but not the duty, to undertake any such required maintenance or landscaping, and the cost thereof, together with interest thereon, shall be collectable as additional rent.

Section 15. Surrender of possession. Upon termination of this Agreement, Lessee shall surrender the premises quietly and peaceably and in as good order and condition as at the commencement of the Agreement term, reasonable wear, tear and damage by the elements excepted. Lessee shall also leave the premises free from all nuisances and dangerous or defective conditions.

Section 16. Compliance with laws. Lessee shall at its own cost and expense comply with all applicable federal, state and local laws, rules and regulations pertaining to Lessee's use of the premises, as they may be amended from time to time, including but not limited to the following:

- A. All building, zoning, sign, airport development and fire protection regulations.
- B. All regulations and instructions regarding the disposal of sewage, garbage and industrial or hazardous wastes promulgated or enforced by any federal, state or local agency.
- C. All regulations requiring that Lessee obtain licenses or permits for its activities on the leased premises.
- D. All regulations restricting the height of structures, natural growths or other obstructions on the leased premises promulgated by the Federal Aviation Administration (FAA).

Section 17. Utility payments. Lessee shall pay all utilities for the leased premises and shall pay when due all bills for water, sewer, stormwater and garbage collection services provided to the premises by the City of DeLand.

Section 18. Prohibited activities. The following operations, activities and uses are specifically prohibited on the leased premises:

- A. The keeping or storage during any 24-hour period of any flammable liquids inside any covered or enclosed portion of the leased premises in excess of the amount of the liquids needed by Lessee for that 24-hour period. Any flammable liquids with a flash point of less than 100 degrees Fahrenheit shall be kept and stored only in safety containers of a type approved by Underwriters' Laboratories and the DeLand Fire Department. For purposes of enforcing this subsection, Lessee shall send to Lessor not more than 30 days after execution of this Agreement a list of the types, contents and quantities of any flammable liquids which will be maintained on

the leased premises. Any additions to that list shall be sent within five (5) days after receipt by Lessee of the liquid in question.

B. Any improvements to or use of the property that unreasonably interferes with the use or enjoyment of adjacent or nearby premises by other lessees of Lessor.

C. Any use of the leased premises that would interfere with or adversely affect the operation or maintenance of the DeLand Municipal Airport, or would otherwise constitute an airport hazard.

D. The use of the premises in violation of any applicable federal, state or local law, rule or regulation.

E. The use of the premises for residential, labor camp or trailer court purposes.

F. The dumping, storage, disposal or incineration of junk, sewage, garbage or refuse.

G. The storage or repair of any motor vehicles, equipment or machinery not directly used by Lessee in the primary use of the premises.

H. Smelting, stockyards or large animal raising.

Section 19. Environmental matters.

A. Lessee shall not suffer, cause or permit the contamination of the leased premises, or any environmental contamination resulting from use of the leased premises, by any hazardous or toxic materials (including but not limited to petroleum products) and shall not handle or permit polychlorinated biphenyls ("PCB's") or asbestos or substances containing PCB's or asbestos on the premises. Lessee shall immediately provide Lessor with notice of any event of an environmental nature, including any spill or other incident which could result in contamination to the premises.

B. Lessee shall conduct all of its operations at the leased premises in compliance with all federal, state and local laws, rules, regulations, ordinances or requirements, including, but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, or any amendments thereto, or any regulations promulgated pursuant thereto, or any similar state or local law, rule, regulation or ordinance ("Environmental Statutes"). Lessee shall obtain all registrations required by Environmental Statutes and shall submit to Lessor, upon request, for inspecting and copying all documents, permits, licenses, approvals, manifests and records required to be submitted and/or maintained by the provisions of the Environmental Statutes. Lessee shall also provide promptly to Lessor copies of any correspondence, notice of violation, summons, order, complaint or other document received by Lessee pertaining to compliance with Environmental Statutes.

C. Lessee shall permit Lessor and Lessor's agents, servants and employees, including but not limited to legal counsel and environmental consultants and engineers, access to the premises for the purposes of environmental inspections and sampling during regular business hours, or during other hours after reasonable notice by Lessor, or in the event of any environmental emergency. Lessee shall not restrict access to any part of the premises, and Lessee shall not impose any conditions to access. To the extent any hazardous conditions exist on the leased premises, Lessor, in its sole discretion may remedy and/or cause to be remedied at Lessee's sole expense, the defect or contamination, and Lessor reserves the right to re-inspect the leased premises after any remediation, and require Lessee to take appropriate action to remedy and/or cause to be remedied any further defect or contamination resulting from this tenancy.

D. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of action (including attorneys' fees, engineering and other professional or expert fees), of whatsoever kind or nature arising out of or in any way related to Lessee's responsibilities hereunder.

E. Notwithstanding the foregoing, Lessee shall have no liability for any hazardous conditions which may have existed on the leased premises before Lessee took possession or which may have arisen thereafter if Lessee demonstrates to the reasonable satisfaction of Lessor by substantial, competent evidence that the hazardous conditions were caused by identified, unrelated third parties acting without the express or implied consent of Lessee.

Section 20. Duties of Lessor. During the term of this Agreement, Lessor shall:

A. Continue to operate the DeLand Municipal Airport as a public airport, consistent with government regulations.

B. Allow Lessee free access to the premises over public roads leading to the leased premises and allow Lessee access to public airport facilities.

C. Not permit the construction by any other entity under its control of any improvements or structures which would interfere with Lessee's ingress and egress to the premises.

Section 21. Enjoyment of premises. Lessee acknowledges that its right to enjoy the leased premises is subject to the use of the surrounding property for industrial, commercial and airport purposes, with accompanying industrial, commercial and airport noises, odors, smoke, sonic booms and low-flying aircraft, and the danger and nuisance thereof.

Section 22. Non-assignability. Lessee shall not assign this Agreement without the prior written approval of Lessor, which approval may not be unreasonably withheld. Any attempted assignment in contravention hereof shall be void.

No assignment shall relieve Lessee of its obligation to pay the rent provided for in this Agreement in the event of a default by the assignee unless Lessee is specifically relieved of that obligation in writing by Lessor. Lessee shall send Lessor a copy of the proposed assignment not less than 60 days prior to its proposed execution, and Lessor shall send Lessee notice of its consent or refusal to consent not less than 30 days thereafter.

Section 23. Nondiscrimination covenants. Lessee, for itself, its personal representatives, successors in interest, and permitted assigns, if any, agrees as a covenant running with the land that:

A. In the event facilities are constructed, maintained or operated on the leased premises for a purpose for which a U.S. Department of Transportation (DOT) program or activity is extended, or for any other purpose involving the provision of similar services or benefits, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the latest version of Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the DOT-Effectuation of Title VI of the Civil Rights Act of 1964 (DOT Regulations).

B. No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of any facilities or services of Lessee on the grounds of race, color or national origin.

C. In the construction of any improvements on, over or under any facilities on the premises, and the furnishing of services on the premises, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in such activity on account of race, color or national origin.

D. The premises shall be used in compliance with DOT Regulations.

E. Subject to appeal provisions in DOT Regulations, upon Lessee's breach of any provision of this section, Lessor may terminate this Agreement and reenter and repossess the premises, and hold the same as if this Agreement had never been made, if Lessee fails to cure and remedy the breach in a manner reasonably agreeable to Lessor within 30 days after written notice is sent to Lessee by Lessor.

Section 24. Liability insurance, indemnity and holdharmless. Lessee shall defend, indemnify and hold harmless Lessor from and against any and all liability, losses, damages, claims, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions (including attorneys' fees), of whatsoever kind or nature arising out of or in any way related to the use, occupancy, management or control of the leased premises, or any act or omission of Lessee or its agents, servants, employees, independent contractors, customers, patrons or invitees, whether on the leased premises or elsewhere.

Within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain comprehensive public liability insurance coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all of the foregoing, with a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) and a general aggregate of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit commercial general liability insurance on an occurrence basis (including coverage for the Premises and Lessee's operations).

All such insurance shall cover complete contractual liability, bodily injury and property damage liability. The certificate shall list the City of DeLand as an additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

If the Lessee uses or stores any hazardous or toxic substances on the leased premises, then within ten (10) days of the beginning date of this Agreement, Lessee shall, at its own cost and expense, procure and maintain pollution liability and storage tank coverage from a company and in a form acceptable to Lessor, in its sole discretion, protecting and insuring Lessee and Lessor against any and all liability and costs of clean-up and remediation resulting from the storage, handling or disposal of any hazardous or toxic substances, as those terms are commonly defined, or for any other liability relating to such hazardous or toxic substances, with coverage limits in the amount not less than \$1,000,000 for any one occurrence. The certificate shall list the City of DeLand as an additional insured, indicate the location of the leased property by street address, and provide at least 30 days advance written notice of cancellation or change of coverage to the City of DeLand.

Section 25. Nonliability of Lessor to Lessee. Lessor shall not be liable to Lessee or its agents, representatives, invitees, employees, or any other person, for any injury to or death of any of them, or for any damage to any of Lessee's property or loss of revenue, caused by any third persons in the maintenance, construction or operation of the Airport, its appurtenances, facilities or equipment, or caused by any third persons using the Airport or its appurtenances, facilities and

equipment, or navigating any aircraft on or over the Airport, whether the injury, death or damage is due to negligence or not. Third persons, as used in this section, shall include the United States of America and the State of Florida, or any of their agencies, and all persons other than the City of DeLand.

Section 26. Non-exclusivity. Nothing in this Agreement shall be construed to grant Lessee the exclusive right to carry on any activity on any premises owned or subject to control by Lessor. Lessor reserves the right to lease or convey other premises to other operators of businesses or activities similar to those of Lessee upon terms and conditions set by Lessor.

Section 27. Agreement not a joint venture. Nothing contained in this Agreement is intended, or shall be construed, as in any way creating or establishing the relationship of partners or joint venturers between Lessor and Lessee or as constituting either party as the agent or representative of the other party for any purpose or in any manner.

Section 28. Reservation of airspace. Lessor reserves to itself for the use and benefit of the public a right of flight for the passage of aircraft in the airspace above the leased premises, together with the right to cause in the airspace such noise as is inherent in the operation of all types of aircraft, and to use the airspace for all airport and related activities, subject to Lessee's right to construct and maintain permitted improvements.

Section 29. Defaults. This Agreement shall be in default and may be terminated in any of the following events:

A. Failure to pay rent or other payments due. The failure by Lessee to pay to Lessor any sum when due, when the failure continues for three (3) or more days after written notice of default is sent to Lessee.

B. Violation of terms. The violation of or failure to perform any other term, covenant or condition of this Agreement, including the payment in full of ad valorem taxes on or before April 1st of each year, if the violation or failure to perform is not corrected or cured within ten (10) days after written notice of default is sent to the party in default. Any notice sent under this subsection shall specify the violation or failure to perform, and the steps which must be taken by that party to correct the violation or failure to perform.

C. Insolvency. If Lessee becomes insolvent or makes an assignment for benefit of creditors; or the interest of Lessee in the premises is levied upon or sold upon execution, or becomes vested by operation of law in some other person; or a receiver or trustee is appointed for Lessee.

D. Abandonment. If Lessee vacates or abandons the leased premises, or permits the premises to remain vacant or abandoned for a period of 30 days or more, regardless of whether or not rent payments are current. However, Lessor may at its sole discretion consent in writing to the vacation of the premises for a longer period of time upon terms and conditions set by Lessor.

E. Corporate Dissolution. If Lessee is a corporation and if Lessee suffers or permits its corporate franchise to be dissolved for a period of more than three (3) calendar months before seeking reinstatement.

Section 30. Remedies for default. In the event of a default as provided above, the parties shall have the following remedies:

A. Repossession by Lessor. Upon default by Lessee, Lessee's right to possession of the leased premises shall terminate, without notice or demand by Lessor, and Lessee shall surrender possession to Lessor. Lessee hereby grants to Lessor full and free license to enter the premises to take possession of the premises in any lawful manner, and to expel Lessee.

B. Damages. In addition to terminating this Agreement and retaking possession of the leased premises, Lessor may recover all damages and rent accrued or accruing under this Agreement or arising out of any breach of this Agreement. Lessor may resume possession of the premises for its own account and recover from Lessee the difference between the total rent due under this Agreement and the fair market value of the property for the remainder of the term, reduced to present value, or Lessor may resume possession of the premises and re-rent it for the remainder of the term for the account of Lessee and recover from Lessee, at the end of the term or at the time any rent becomes due under this Agreement, the difference between the rent specified in this Agreement and the rent received upon the re-renting the premises.

C. Other remedies. Lessor may pursue any other remedies provided by law for the breach of this Agreement. No right or remedy conferred upon or reserved to Lessor in this Agreement is intended to be exclusive of any other right or remedy, and each right and remedy shall be cumulative and in addition to any other right or remedy of Lessor under this Agreement, or now or hereafter existing at law or equity, or by statute.

D. Lessee's right of cancellation. Lessee may cancel this Agreement in the event of civil commotion or riot, acts of military power, damage to runways which preclude reasonable use of the airport, or court order restraining the use of the airport; however, this termination shall not create any liability to Lessee by Lessor. Lessee may also terminate this Agreement if Lessor fails to fulfill its obligations under this Agreement, upon a determination by a court of competent jurisdiction that such a default exists.

E. Attorney's fees. In any civil action brought to enforce the provisions of this Agreement, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney's fees, from the non-prevailing party.

Section 31. Force majeure. The performance of all provisions of this Agreement (except for the payment of rent) shall be postponed and suspended during any period that the performance thereof is prevented by acts of God, accidents, weather and conditions arising therefrom, riot, fire, flood, storm, lightning, epidemic, insurrection, rebellion, revolution, civil war, hostilities, war, the declaration or existence of a national emergency and conditions arising therefrom, the exercise of paramount power by the federal government, either through the taking of the leased premises or the imposition of regulations restricting the conduct of business on the premises, interference, restriction, limitation or prevention by legislation, regulation, decree, order or request of any federal, state or local government or any instrumentality or agency thereof, including any court of competent jurisdiction, or any other delay or contingency beyond the reasonable control of Lessor or Lessee.

Section 32. Eminent domain. If all or any substantial part of the leased premises is taken by any paramount public authority under the power of eminent domain, then the term of this Agreement shall cease as to the part taken from the day the possession of that part is taken for any public purpose, and from that day Lessee shall have the right either to cancel this Agreement or to continue in possession of the remainder of the premises upon payment of an adjusted rent as provided in **Section 5** above.

All damages awarded for the taking shall belong to and be the exclusive property of Lessor, except for any portion of the award made for loss of improvements belonging to Lessee or for loss of Lessee's leasehold interest in the premises taken.

The taking of 30 feet or less of any of the leased premises immediately adjacent to a public or private road for improvement of that road shall not be deemed to be a taking of a substantial portion of the premises.

Section 33. Waiver of default; effect. The acceptance by Lessor of one or more monthly rental installments after they fall due, or after knowledge of any breach by Lessee of this Agreement, or after the sending of any notice or demand, or any other act or series of acts by Lessor except an express waiver in writing, shall not be deemed or construed as a waiver of Lessor's right to act or as a waiver of any other right given to Lessor under this Agreement, or as an election not to proceed under the provisions of this Agreement. The failure by Lessor to collect or demand any sums due under this Agreement shall not relieve Lessee's obligation to pay those sums when demanded.

Section 34. Notices. Any notices required by this Agreement, or which Lessor or Lessee may wish to serve on the other, shall be in writing and shall be deemed served, whether or not service is accepted, admitted or refused, when delivered in person to an agent or employee of the party at its place of business or when deposited in the U.S. Mail, postage prepaid, return receipt requested, addressed to the parties as follows:

Assistant City Manager
City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Crete Carrier Corporation
Attn: Paul Marsh, Director of Facilities
400 NW 56th Street
Lincoln, Nebraska 68528

Section 35. Subject to federal deeds and agreements. This Agreement is subject and subordinate to the provisions of a deed from the United States to the City of DeLand dated June 20, 1947, and recorded at Deed Book 383, Page 508, Public Records of Volusia County, Florida, and other existing agreements and leases between Lessor and the United States and any and all future leases, deeds and agreements entered into between the United States and the City of DeLand with reference to the conveyance by the United States to the City of DeLand of any real or personal property under any existing or future federal statutes authorizing the conveyance of such property by the federal government to the City for airport purposes.

Section 36. Inspection of premises. Lessee shall allow Lessor's authorized representative access to the leased premises at all reasonable hours for the purpose of examining and inspecting said premises; for the purposes necessary, incidental to or connected with the performance of Lessee's obligations under this Agreement; or in the exercise of its governmental functions.

Section 37. Signs. Lessee shall be allowed to install signs and advertisements promoting the business conducted by Lessee subject to the written consent of the Lessor, which consent shall not be unreasonably withheld, and subject to compliance with all applicable sign, zoning, building and other codes.

Section 38. Effect on prior agreements. This Agreement supersedes all prior agreements, if any, between the parties regarding the leasing of these premises and, as of the date of this Agreement, those prior agreements shall be of no further force or effect.

Section 39. Construction of lease. This Agreement shall be construed under the laws of the State of Florida and the Code of Ordinances of the City of DeLand.

Section 40. Short form of lease. Either party may prepare for execution a short form of this Agreement for recording in the public records. The costs of recording this Agreement shall be paid by Lessee.

Section 41. Amendments to lease. This Agreement may be amended only in writing signed by both parties.

Section 42. Late charge. All unpaid sums owed to Lessor under this Agreement shall bear interest at a rate of 18 percent per annum from the date when due.

Section 43. Time of essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

Section 44. Omitted provisions. Various sections of the City's standard Ground Lease for the DeLand Municipal Airport may have been omitted if they are not applicable to this Agreement. In that event, the section headings have been retained for reference only to facilitate administrative review.

Section 45. Special terms and conditions. None.

Section 46. Complete agreement. This Agreement constitutes the complete and exclusive understanding and agreement between the parties with respect to the subject matter hereof and may only be amended in writing signed by both parties hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties' heirs, personal representatives, successors and permitted assigns.

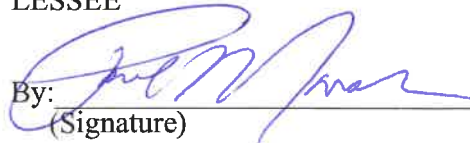
EXECUTED by the Lessee this 14th day of September, 2022.

EXECUTED by the Lessor this _____ day of _____, 2022.

CITY OF DELAND, LESSOR

CRETE CARRIER CORPORATION,
LESSEE

Robert F. Apgar
Mayor-Commissioner

By: 
(Signature)

Address: City of DeLand
120 South Florida Avenue
DeLand, Florida 32720

Address: 400 NW 56th St
Lincoln, NE 68528

ATTEST:

Julie A. Hennessy
City Clerk-Auditor

WITNESSES AS TO LESSEE:


(Witness' Signature)

Winston Ostergaard
(Print Name)

WITNESSES AS TO LESSEE:

(Witness' Signature)

(Print Name)

EXHIBIT A
LEGAL DESCRIPTION

ARTHUR W. STEINMAN & ASSOCIATES, INC.

Professional Land Surveyors

Post Office Box 1596 • DeLand, Florida 32721-1596 • Telephone: (904) 734-8050

September 9, 1987

LEGAL DESCRIPTION FOR: ARDMORE FARMS, INC. (6 Acre Parcel)

That part of the DeLand Municipal Airport lying in Section 33, Township 16 South, Range 30 East, Volusia County, Florida, described as follows:

Beginning at a point on the north edge of Runway 8-26 that is S83°53'17"W a distance of 1732.0 feet from the centerline of Runway 18-36, said point being the southwest corner of the Airport lands leased by Aluma Shield Industries, Inc. (being the southwest corner of Parcel 2, as shown on the survey for Aluma Shield Industries, Inc. by Long and Associates, Drawing Number I-198, dated January 7, 1982) run thence S83°53'17"W along the north line of said Runway 8-26 a distance of 971.70 feet to the point of tangency of the westerly right of way line of Eidson Drive (proposed), said point being the Point of Beginning; thence run S06°06'43"E, along the tangent of Eidson Drive a distance of 231.37 feet to the north line of a 60' Patrol Road; thence N89°51'43"W, parallel with and 60' north of the south line of Northeast 1/4 of said Section 33, a distance of 814.76 feet to the point of curvature of a curve concave to the northeast, having a central angle of 90°00'55" and a radius of 70.00 feet; thence run northwesterly along the arc of said curve a distance of 109.97 feet to the point of tangency thereof; thence run N00°09'12"E, parallel with and 60' east of the west line of the east 3/4 of the Northeast 1/4 of said Section 33, a distance of 232.23 feet; thence run S89°51'43"E, parallel with the south line of said Northeast 1/4 a distance of 851.60 feet to the westerly right of way line of said Eidson Drive (proposed); thence run S06°06'43"E along said westerly right of way line a distance of 72.69 feet to the Point of Beginning; said parcel containing 6.0 acres, more or less.

Description prepared by:

Michael D. Ruskin
Michael D. Ruskin, P.L.S. No. 1834

SEAL

EXHIBIT "A"

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Additional Purchase of 300 Profile Unity Licenses with 3 Year Support, and Purchase of 3 Year Co-Term License for the Current 150 Profile Unity Licenses.

DEPARTMENT: Information Technology

PREPARED BY: Greg Whidden, IT Director

ATTACHMENTS: CXtec Liquidware TIPS 2022 quote

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Currently, we are running both Profile Unity and KACE Desktop Authority. With the purchase of the additional 300 licenses, we will replace KACE Desktop Authority. We will gain functionality as well as allow users to login to a virtual desktop and/or physical desktop. Support for the 300 and the 150, a total of 450 licenses will co-term for 3 years. Support ending October 2025..

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Approved in FY 22/23 an amount of \$66,000 for the 300 Profile Unity licenses which includes 3 year support and \$5,250 for the 3 year support for the current 150 Profile Unity licenses for a total of \$71,250.

RECOMMENDATION:

Staff recommends approving the purchase of the 300 Profile Unity licenses and the co-term support for 150 current licenses, approved in the FY 22/23 budget.

BACKGROUND/DISCUSSION:

N/A



DIVISIONS OF CXTEC

Quote# 11260878
Expires: 11/25/2022

Prepared By: Carri Monette
315-883-3774
carri.monette@cxtec.com

Requested By:	Ship To:	Bill To:
City of DeLand Hope Armstrong Fax:	Stan Winzer 120 S Florida Ave De Land, FL 32720 United States	Hope Armstrong PO Box 449 De Land, FL 32721 United States

Notes: Pricing based off TIPS 2022

QTY	Mfr Part No.	Description	Unit Price	Ext Price
300	LWL-CON-VDI-FLEX1-B3	VDI ESSENTIALS + FLEXAPP CONCURRENT USER LICENSE WITH 3 YEAR SUPPORT	\$220.00	\$66,000.00
150	LWL-SUP-SYNC	LIQUIDWARE SUPPORT SYNC co-term 150 existing licenses from Oct-2024 to Nov-2025	\$35.00	\$5,250.00
Subtotal				\$71,250.00

Payment Terms: 30 Days

Check/ACH/wire payment. All net terms are subject to standard terms and conditions.

Combined Subtotals \$71,250.00

TOTAL PURCHASE PRICE \$71,250.00
(Purchase Order Must Be For This Amount)

Shipping Information

Priority GROUND
Carrier UPS

Terms Prepaid & Add
FOB Origin/Shipping

Voice Products
to meet all your needs

Save money on a wide variety of equal2new® phones and voice hardware
99.51% RELIABILITY RATING

Don't Forget the Cables

Stock Length CAT5E, CAT6 or
Premise Grade Fiber Jumpers
WE CAN EASILY ADD THEM TO THIS QUOTE

equal2new®

Up to **90% Off** list prices
Certified pre-owned network, server,
storage, and voice equipment

Terms & Conditions

Shipping Information: To accommodate your shipping preferences, CXtec will make every effort to bill your freight carrier account directly. Sometimes we are unable to comply with this request due to limitations based on carrier availability, shipment weight, or other circumstances. When this occurs, CXtec will ensure that the product is shipped to you in the most economical way and will inform you of any associated costs subject to additional billing.

Freight charges are prepaid & add, Syracuse, NY.

Warranty Information: equal2new® Products carry a lifetime warranty on parts and labor to the original End User purchaser.

CABLEExpress® products carry a limited lifetime warranty on parts and labor to the original End User purchaser.

CXtec
5404 South Bay Road

Syracuse NY 13212-3801
www.cxtec.com
www.cablexpress.com

North American Offices: 315.476.3000
North American Fax: 315.455.1800
International Offices: 011.315.476.3100
International Fax: 011.315.455.1800

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving Sole Source Purchase of Traffic Jet Xpert Avery Dennison Printing System - Sign Shop.

DEPARTMENT: Information Technology

PREPARED BY: Hope Armstrong, IT Admin

ATTACHMENTS: Resolution, Avery Dennison Traffic Jet proposal, Trafficjet Sole Source Justification - 2-25-2021

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

The current sign shop printer is not dependable, is printing slow and is hampering productivity. Currently, there is no warranty offered by Avery Dennison. The new purchase has been included in the approved FY 22/23 Budget in the amount of \$34,850 plus a 3 year maintenance package costing \$19,500 for a total of \$63,063.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Approved in FY 22/23 at a total cost of \$63,063 which includes a 3 year additional warranty.

RECOMMENDATION:

Staff approves the purchase of Avery Dennison Traffic Jet Xpert Print System for the sign sop which will replace the current Traffic Jet printing system. Avery Dennison is the Sole Source provider of equipment and maintenance.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION NO. 2022 -

**A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA,
AUTHORIZING A SOLE SOURCE PURCHASE OF A TRAFFIC JET
XPRT PRINT SYSTEM AND MAINTENANCE PACKAGE FROM
AVERY DENNISON; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, In an effort to continue the current operations of the sign shop and to maintain a high level of service, there is legitimate need to purchase a Traffic Jet Xpert Print System along with a maintenance package; and

WHEREAS, the current printer system has shown critical signs of needing to be replaced; and

WHEREAS, the Information Technology Director has informed the City Commission that Avery Dennison is the only manufacturer and vendor of the Traffic Jet Xpert Print System and maintenance package.

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

Section 1. The City Commission hereby authorizes the sole source purchase of the Traffic Jet Xpert Print System and maintenance package from Avery Dennison as referenced in the attached proposal.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 7th day of November, 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney



7542 N Natchez Ave
Niles, IL 60714
reflectives.averydennison.com

TrafficJet™ Xpert Print System Proposal

Customer:	City of DeLand, FL
Date:	September 21, 2022
Submitted by:	Robert S Kramer

TrafficJet™ Xpert – Simple, clean and cost-effective. Warranted durability

Avery Dennison's TrafficJet Xpert Print System offers incredible value, with an economical upfront and efficient running cost. TrafficJet True Traffic Color™ Spot inks are engineered to meet the color, retroreflectivity, and durability requirements of the traffic industry's rigid specifications. Our exclusive position as the system supplier guarantees performance compatibility between printer, inks, reflective sheeting and protective overlay when needed.

Signs printed on the TrafficJet Xpert carry longer warranties than signs produced by screen printing and colored overlay films. When using our standard OL-1000 Anti-Graffiti protective digital overlay:

- 15 years on OmniCube™ traffic sign colors
- 12 years on HIP traffic sign colors using
- Up to 10 years on custom ink colors

TrafficJet Xpert: includes an integrated dryer for production speeds up to 162 ft² per hour. This is double the speed of the HP Latex 360/365 printer at a fraction of the cost for electricity and consumables.

Engineered to meet your sign fabrication needs

- **MUTCD compliant signage**
- Easy, efficient sign fabrication
- Improved labor and material efficiency – no cutting, premasking or weeding
- Quick order turnaround – direct to print from design
- Lower operating costs – produce just in time instead of just in case
- Print unattended and manage multiple printers with a single operator
- Print signs in any orientation on our omni-directional sheeting, maximizing space while optimizing retroreflectivity.
- All permanent signs are graffiti cleanable with the use of standard OL-1000 protective overlay
- Ideal for multi-color signs and complex street name signs with variable information

DESCRIPTION	PART NO.	UNIT	PRICE	TTL (USD)
TrafficJet™ Xpert Print System Printer & Software, Integrated Dryer, Start-Up Kit, Installation & Training (see system breakdown on page 3). Fast printing up to 162 ft ² per hour, reduced ink consumption.	998208	Each	\$34,850.00	\$34,850.00
TrafficJet™ Extended Warranty – Prepaid Convenience Plan May be purchased with the printer or before the expiration of the manufacturer's 1-year warranty. May purchase up to 3 years of extended warranty, providing uninterrupted coverage for 4 years. Buy now and lock in at today's pricing.	998150	Per Year	\$6,500.00	Option
TrafficJet™ Roll to Roll Laminator 64"film width roll to roll laminator with heat assist. Includes 5 roll shafts and one unwinding shaft, metal feeding tray, safety and optical eye, multi-function footswitch. Also includes installation and on-site training. Purchase with printer and save!	998713 998714	Each Each	\$11,018 purchased with printer \$12,058 purchased separately	Option
Compact S Fume Extractor Consider adding a fume extractor if your printer will be operated in a shared office environment or room lacking adequate ventilation.	998717	Each	\$3,114.80	Option
TrafficJet™ True Traffic Color™ Spot Inks				
950 ml TJ01 Yellow	998011	Each	\$250.43	
950 ml TJ03 Black	998012	Each	\$250.43	
950 ml TJ05 Blue	998015AA	Each	\$250.43	
950 ml TJ07 Green	998017AC	Each	\$250.43	
950 ml TJ08 Red	998018	Each	\$250.43	
950 ml TJ Cyan	998015L	Each	\$250.43	
950 ml TJ Magenta	998018L	Each	\$250.43	
950 ml Flush	998010	Each	\$145.60	
TAPCO SignCentral™ MUTCD Sign and Font Library Software	998518	Each	\$520.00	Option
Total, not including options and inks (includes shipping):				\$34,850.00
Terms: 1. All prices shown in U.S. Dollars 2. Payment N30 Days from the date of shipment 3. Delivery and installation with three weeks after receipt of order 4. 12 month standard equipment warranty included 5. When operated according to Avery Dennison's recommendations, full long-term sheeting warranties are in effect, please see Instructional Bulletins, Product Data Bulletins for complete details.				

TrafficJet Print System Components Included in Pricing

Hardware

- (1) TrafficJet™ Xpert 8-color, 64" printer with take-up
- (1) Ionizing static bar
- (1) Integrated dryer

Software

- (1) FlexiPRINT Avery Dennison Edition

Maintenance Supplies

- (1) 0.5 bottle of TrafficJet flush
- (1) tweezers
- (1) tube of grease
- (1) wiper
- (3) spit pads
- (10) eye droppers
- (10) plastic gloves
- (25) lint free swabs
- (30) lint free wipes

TrafficJet™ Spot Inks*

- (8) Flush 950mL
- (1) TJ01 Yellow 950mL
- (2) TJ03 Black 950mL
- (1) TJ05 Blue 950mL
- (1) TJ08 Red 950mL
- (1) TJ07 Green 950mL
- (1) TJ Cyan 950ml
- (1) TJ Magenta 950ml

Reflective Media

- (1) roll white 48" x 25Y HIP sheeting
- (1) roll 48" x 25Y OL-1000 protective overlay

Installation and Training

- 2 day on-site installation and training
- Remote training sessions up to two weeks after installation

Lead time

- Printer and installation lead time is 15 to 20 working days after order
- Inks ship within 5 days of receipt of order

Once your order is confirmed

- A technical service representative will provide our TrafficJet Pre-Site Checklist #1.03, and schedule installation and training
- Your TrafficJet™ Print System will arrive on two pallets;
 1. Printer with software
 2. Installation kit including inks, flush, and reflective sheeting
- Important! Do not attempt assembly of the printer prior to the arrival of the technical service representative, do not open any packages to ensure that all parts and materials are accounted for

During installation: The technical service representative will be on-site to assemble the printer, load software and inks, and provide training on operation and maintenance



REFLECTIVE SOLUTIONS

7542 North Natchez Ave.

Niles, IL 60714

Phone: 847-824-7450

FAX: 847-824-7662

2/25/2021

RE: Avery Dennison TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print System Sourcing

To Whom It May Concern:

Avery Dennison® certifies that we are the only supplier of the TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print Systems. The TrafficJet™, TrafficJet™ Plus, and TrafficJet™ Xpert printer is manufactured by MUTOH™ and the TrafficJet™ Pro is manufactured by Vanguard Digital Printing Systems for Avery Dennison, and offered exclusively by Avery Dennison. The TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print System requires the use of proprietary components available only from Avery Dennison (or an exclusive sole distributor).

The components used in the TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print System have been specifically designed by Avery Dennison for traffic sign fabrication. The TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print System is the only system capable of providing all of the following benefits while providing installation, service, and warranty by the sheeting manufacturer:

- Print durable regulated traffic signs
- Print on a variety of retroreflective sheeting types, including ASTM Type I, Type IV, and Type XI
- Provide up to 15 years of warranty on all standard traffic signs
- Provide up to 10 years of warranty on all custom signs, using our patented True Traffic Color™ Spot ink technology

Extended warranty plans and additional training for the TrafficJet™, TrafficJet™ Plus, TrafficJet™ Xpert, and TrafficJet™ Pro Print Systems and the FlexiSIGN and PRINT Avery Dennison TrafficJet Edition are available only through Avery Dennison. Detailed product information, instructional bulletins, and warranty conditions are listed on the Avery Dennison Reflective Solutions website at reflectives.averydennison.com. For additional information please contact your local Avery Dennison representative.

Sincerely,

Aaron Means
Senior Manager – Global Traffic Segment and Digital Printing Solutions
Avery Dennison Corporation

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving Sole Source Purchase for Selectron Technologies, Inc. Managed Services.

DEPARTMENT: Information Technology

PREPARED BY: Hope Armstrong, IT Admin

ATTACHMENTS: Resolution , Sole Source Letter for 2023 Renewal, 2023 Renewal

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Included in the FY 22/23 budget, are funds for Managed Services annual fees with Selectron for the following: Interactive Voice Recognition (IVR), Interactive Web Recognition (IWR), SelecTXT, and Atlas. Selectron is the Sole Source provider for these services.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The cost of the annual managed services for IVR and IWR systems is \$106,858, SelecTXT is \$10,000, and Atlas is \$30,000. A total of \$146,855, which is included in the FY 22/23 budget.

RECOMMENDATION:

It is recommended that the City Commission approve the Sole Source expenditure to Selectron Technologies, Inc. for IVR/IWR, SelecTXT and Atlas Managed Services.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION NO. 2022 -

**A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA,
AUTHORIZING A SOLE SOURCE PURCHASE OF MANAGED
SERVICES, FROM SELECTRON TECHNOLOGIES, INC., FOR FISCAL
YEAR 2022-2023; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, Selectron Technologies, Inc., is the only authorized distributor to provide managed services for Interactive Voice Recognition (IVR), Interactive Web Recognition (IWR) Systems, SelecTXT and Atlas, all of which supports scheduling and inspection services; and

WHEREAS, the City Commission has determined that there is legitimate need to purchase managed services and annual call fees for IVR/IWR systems, SelecTXT and Atlas for the citizens of the City of DeLand; and

WHEREAS, the IT Director has informed the City Commission that, to the best of his knowledge, there are no other vendors that offer this support to the existing software.

**NOW, THEREFORE, IT IS RESOLVED BY THE COMMISSION OF THE CITY
OF DELAND, FLORIDA, AS FOLLOWS:**

Section 1. The City Commission hereby authorizes the sole source purchase of managed services for Interactive Voice Recognition (IVR), Interactive Web Recognition (IWR) Systems, SelecTXT and Atlas, from Selectron Technologies, Inc., for fiscal year 2022-2023.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 7th day of November, 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

October 20, 2022

Hope Armstrong
City of DeLand
120 South Florida Avenue
DeLand, FL 32720

To Whom It May Concern:

This letter is to attest that all maintenance services, enhancements, and upgrades for your **Relay Permits IVR™**, **Relay Permits Web™**, **Relay Utility IVR™**, **Relay Utility Web™**, **Relay Outbound™**, **SelecTXT™**, **Atlas Inspections™**, and **Atlas Insight™** systems are only available directly from Selectron Technologies. Selectron Technologies (Selectron) is the sole provider and manufacturer of our products and services.

Your Selectron system is comprised of proprietary software specifically installed for the City of DeLand to support the City's requirements. Anyone providing maintenance services, enhancements, and upgrades must have access to this software code to support your installation. Since this code is part of our proprietary intellectual property, we would not release it to any non-Selectron organization.

Best regards,



Todd A. Johnston
President, CEO



Service Renewal

12323 SW 66th Avenue
Portland, OR 97223

Date	Renewal #
10/20/2022	4738

Bill To:

City of DeLand
Accounts Payable
120 South Florida Avenue
DeLand, FL 32720

		Renew Before
		12/15/2022
Description	Rate	Amount
Renewal for IVR and Web Systems		
01/01/2023 - 12/31/2023 Annual Service Renewal for VoicePermits	11,965.00	11,965.00
01/01/2023 - 12/31/2023 Annual Service Renewal for WebPermits	11,990.00	11,990.00
01/01/2023 - 12/31/2023 Annual Service Renewal for VoiceUtility	15,618.00	15,618.00
01/01/2023 - 12/31/2023 Annual Service Renewal for WebUtility	7,282.00	7,282.00
01/01/2023 - 12/31/2023 Annual Inbound Calls - Includes 150,000 calls	45,000.00	45,000.00
Renewal for Outbound		
01/01/2023 - 12/31/2023 Annual Delivered Messages - Includes 100,000 outbound messages (Voice, E-mail, and SMS)	15,000.00	15,000.00
Renewal for SelecTXT		
01/01/2023 - 12/31/2023 Annual Recurring Bundle for SelecTXT	5,000.00	5,000.00
01/01/2023 - 12/31/2023 Annual Message Bundle for SelecTXT, Includes 100,000 messages	5,000.00	5,000.00
Renewal for Atlas		
01/01/2023 - 12/31/2023 Atlas Inspections Annual Service Fee - Includes 10 User Licenses	20,000.00	20,000.00
01/01/2023 - 12/31/2023 Atlas Insight Annual Service Fee - Includes 10 User Licenses	12,500.00	12,500.00
01/01/2023 - 12/31/2023 Hosting Fee for Atlas Inspections and Atlas Insight	2,500.00	2,500.00
Discount	-5,000.00	-5,000.00
A/R Contact - Sara Engel (503) 597-3304 sengel@Selectron.com	Subtotal	\$146,855.00
	Sales Tax (0.0%)	\$0.00
Remit Payment To: Selectron Technologies, Inc. 12323 SW 66th Avenue Portland, OR 97223	Total	\$146,855.00

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving Sole Source Parts and Services for Performance Enhancement of Utilities Remote Telemetry System.

DEPARTMENT: Utilities

PREPARED BY: Jim Ailes, Deputy Public Serv. Director/Utilities Director

ATTACHMENTS: Resolution, Sole Source & Quote

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

The City of DeLand's Utility System is monitored by a remote telemetry system that runs continuously to inform staff of how equipment is operating around our large service area. Staff uses the information provided by the system to maintain system pressure, tank elevations, security, pump status, generator status, well rotations, pump rotations, inter-connect status, flow meters, chemical inductions, pond elevations, and alarm conditions at over one hundred and sixty stations today. To improve the system, we have a proposed project in this year's Utility Budget to enhance the system.

As the system has grown in size, the polling loop speed and pump response times have slowed to an unacceptable level. Some of this equipment has been in operation since 1988, when the system was first put on line. The system was analyzed and a recommendation from the vendor was provided to address this issue. All of the old radio VDR legacy modules will be upgraded to a newer faster version that currently exists in sixty-one stations. This is estimated to improve communication speed by over fifty percent. Attached is exhibit "A" that describes this project in more detail for an estimated cost of \$143,207.

Based on the above, a specific quote was obtained from Data Flow Systems, who is the sole representative for the Data Flow Equipment in Florida for the replacement parts and services. Attached is a sole source letter which was also obtained from Data Flow Systems, to support having only one quote. Staff would like to request that an allowance for a contingency be approved should some need for additional radios, wiring, or programming be needed as well.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Sustainability

SUSTAINABILITY:

N/A

FISCAL IMPACT:

Funds for the cost for parts and services to provide performance enhancements of the Remote Telemetry System for the City of DeLand Utilities are budgeted in the current fiscal year in the amount of \$165,690 for this project:

Exhibit A	\$143,207.00
10% Contingency	\$ 14,321.00
Grand Total	\$157,528.00

RECOMMENDATION:

Staff recommends that the City Commission approve the attached Sole Source Resolution to purchase parts and services for the Performance Enhancement of the Remote Telemetry System for the City's Utilities System in the amount of \$157,528.00.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION NO. 2022 –

A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA, AUTHORIZING A SOLE SOURCE PURCHASE FOR PARTS AND SERVICES TO UPGRADE THE REMOTE TELEMETRY SYSTEMS FROM DATA FLOW SYSTEMS, INC.; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of DeLand’s Utility System is monitored by a remote telemetry system that informs staff of equipment operations in our servicing area; and

WHEREAS, as the system has grown in size, the polling loop speed and pump response times have slowed to an unacceptable level; and

WHEREAS, the remote telemetry system was built, installed, and has been supported with parts by Data Flow Systems, Inc.; and

WHEREAS, due to the specialized nature of the equipment and the parts required for the upgrades, the Utilities Director has informed the City Commission that, to the best of his knowledge, Data Flow Systems, Inc., is the sole source provider for all associated parts and services.

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

Section 1. The City Commission of the City of DeLand hereby authorizes the sole source purchase of parts and services to upgrade the Remote Telemetry System from Data Flow Systems, Inc., as referenced in the attached proposal.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND DULY ADOPTED this 7th day of November, 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney



Data Flow Systems

RECEIVED

OCT 07 2022

RECLAMATION

October 07, 2022

Mr. Jim Ailes
City of Deland

RE: TAC II SCADA System
Sole Source Status



Dear Mr. Ailes,

Please consider this document official confirmation that Data Flow Systems, Inc. (DFS), of Melbourne, Florida, is the sole source provider for the TAC II SCADA System and associated Remote Terminal Units (RTUs), Telemetry Control Units (TCUs), TAC Pack TCU RTUs, Hyper SCADA Servers (HSS), and DFS HTX SCADA Software as currently utilized by the City of Deland. DFS is also the sole source provider for all associated repairs, service and training.

DFS is responsible for the design, manufacture, and service of the entire TAC II SCADA System product line. There are no other manufacturers, dealers, distributors or service organizations that offer these products and associated services in the State of Florida. The TAC II SCADA System is Made in the USA.

Should you have any questions or require additional information, please contact me at 321-259-5009.

Sincerely,

Data Flow Systems, Inc.

David Walker
President

SCADA SOLUTIONS SINCE 1981 - www.dataflowsys.com - MADE IN THE USA WITH PRIDE

Data Flow Systems, Inc. • 605 John Rodes Blvd. • Melbourne, Florida 32934 • PH: 321.259.5009 • FAX: 321.259.4006



Data Flow Systems

RECEIVED

OCT 0 / 2022

RECLAMATION

**QUOTE NO. 220329-03-RW
HIGH SPEED RADIO UPGRADE
CITY OF DELAND
OCTOBER 7, 2022**

Thank you for this opportunity to offer our products and services for the above referenced project. This quote considers the following:

- DFS will provide in-house services to replace 99 of the city's existing VDR legacy mode radio modules with high-speed radios. This quote includes freight to ship the units back to the city. The city is responsible for the freight to ship them to DFS.
- The CTU radio will need to be configured as a "Hub" radio, which is specific and can only be used in the CTU.
- DFS recommends at least one unit be configured as a spare for the CTU, and a spare be provided for each of the two radios in the FTU.
- The system will remain in legacy mode until all the radio modules are replaced with high-speed radios, at which time the system will be switched to high-speed.
- Please note: A fade margin loss of 3 dB is expected on the communication links when switching to high-speed.

All products offered are compatible with the City of Deland's existing TAC II SCADA system. This quotation includes, and is limited to, the following. Should you have any questions or require additional information, please contact me at 321-259-5009.

Sincerely,

Data Flow Systems, Inc.

Randy E. Wyatt

Inside Sales Manager

Email: randy@dataflowsys.com

BILL OF MATERIAL & SERVICES:

- (99) High Speed VDR Radio Upgrade, each includes..... \$143,207.00
 (1) High Speed VDR Radio Assembly (DFS-00530-008-01)
 (1) In-house Labor

WORK TO BE PERFORMED BY THE UTILITY:

1. Send the radio modules to receive the high-speed radios to DFS for processing.
2. Replacement of the radio modules in the field.

PRICING & TERMS:

This quotation totals \$143,207.00. Pricing assumes credit approval by DFS and is based on DFS's General Terms & Conditions Governing Quotations and Performance. Partial billing may occur as individual services are

completed. Lead time will be determined after receipt of order. Please review the Quotation Notes listed below. This quotation will be honored for 90 days.

QUOTATION NOTES:

1. Only those items and services specifically listed above are included in this quotation.
2. Please note that lead times may be affected by product/material availability.
3. Lead time for submittal, if required, is 30 days after receipt of order.
4. All applicable taxes must be added to the quotation total. All prices are subject to increases by the amount of any sales, excise, or other tax levied or charged by any governmental agency and are subject to price adjustment in the amount expended by DFS in compliance with any governmental action.
5. All items shipped will be billed at the time of shipment. Shipping charges for shipping to the city are included.
6. This quotation is formatted and priced for direct purchase from the Utility. If this scope is to be purchased by others, a revised quote is required to cover additional project administration charges. These additional charges cover routine contractor/developer requirements such as contract management, submittal preparation, project coordination, owner notices, etc.

RECEIVED
OCT 0 / 2022
RECLAMATION

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving Amendment # 2 to FDOT Public Transportation Grant Agreement FM 438416-1-94-01 for Hangars - Construction.

DEPARTMENT: Airport

PREPARED BY: john Eiff, Airport Manager

ATTACHMENTS: Resolution , Exhibit A

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

At their June 6, 2022 meeting, the Commission awarded a FDOT grant Amendment #1 in the amount of \$2,045,000 to design and construct T-Hangars for based aircraft users to populate the East Hangar Complex. This grant, with the additional local match funded by the airport fund of \$511,250 brought the total project costs to \$2,556,250. Due to inflation costs, the T-hangar bids came in overbudget and new project cost is now \$3,306,250 for the base bid of 13 T-hangar, fencing, and new airport security gates. After a meeting between city staff, our consultant, Avcon, and FDOT staff, additional project funding was offered from FDOT in the total amount of \$750,000. Of this amount, the City will be required to pay an additional \$150,000. FDOT has proposed the attached amendment #2 to the Public Transportation Grant Agreement providing additional funds described above. The FDOT will be issuing a third grant amendment in approximately two months to cover the cost of the remaining seven (7) T-hangars that were included in the bids.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

New Business Development, High Value Government.

SUSTAINABILITY:

Awareness of community demographic trends and service demands.

FISCAL IMPACT:

The new total project cost of \$3,306,250 is memorialized in the amendment. This would require an increase of the City's original match of \$511,250 up to \$661,250 or an increase of \$150,000. In order to fund this project, funds will be reallocated from the East Hangaer Complex - Phase 1B project approved in the FY 22/23 budget to this project in the amount of \$750,000 (\$600,000 in FDOT grant funds and \$150,000 in City Match).

RECOMMENDATION:

Staff recommends that the City Commission approve the attached resolution and authorize the Mayor/Commissioner to execute the agreement on behalf of the City.

BACKGROUND/DISCUSSION:

Staff directed its consultants to bid the project with 2 of the 3 T-Hangar buildings as the base bid and the remaining t-hangar building and box hangars as an additional additive alternate to the bid. Based on discussions

and negotiations with FDOT personnel, they have agreed to provide this amendment #2 for the purposes of funding 2 of the T-hangar buildings. FDOT has also indicated that they also have additional monies in order to complete the funding for the third T-hangar building. Therefore we anticipate presenting to the commission a 3rd amendment in a few months to move forward with all three hangar building, or a grand total of 21 new T-hangars.

RESOLUTION NO. 2022 -

A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA, AUTHORIZING THE EXECUTION OF AN AMENDMENT TO THE PUBLIC TRANSPORTATION GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION, FINANCIAL MANAGEMENT NO. 438416-1-94-01; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Department of Transportation has offered the City an Amendment to the Public Transportation Grant Agreement, a copy of which is attached hereto as Exhibit “A”, which will provide funding for the construction of T-hangars at the DeLand Municipal Airport; and

WHEREAS, the aforesaid agreement requires the City of DeLand to pay 20% of the anticipated project cost; and

WHEREAS, this project is necessary to provide for the needs of the aviation-related businesses and public users at DeLand Municipal Airport.

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

Section 1. The City Commission hereby sets aside an additional amount of \$150,000 (20%) to cover its share of the anticipated cost.

Section 2. The Mayor-Commissioner is authorized to execute the Amendment to the Public Transportation Grant Agreement for this project.

Section 3. This Resolution shall take effect immediately upon its adoption.

PASSED AND DULY ADOPTED this 7th day of November 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy
City Clerk – Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

"EXHIBIT A"

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION

PUBLIC TRANSPORTATION

AMENDMENT TO THE PUBLIC TRANSPORTATION GRANT AGREEMENT

Form 725-000-03
STRATEGIC
DEVELOPMENT
OGC 11/19

Financial Project Number(s): (item-segment-phase-sequence)	Fund(s):	DDR,DPTO	FLAIR Category:	088719
438416-1-94-01	Work Activity Code/Function:	215	Object Code:	751000
	Federal Number/Federal Award		Org. Code:	55052000531
	Identification Number (FAIN) – Transit only:		Vendor Number:	VF596000307028
Contract Number: G1Q81	Federal Award Date:		Amendment No.:	2
CFDA Number: N/A	SAM/UEI Number:			
CFDA Title: N/A				
CSFA Number: 55.004				
CSFA Title: Aviation Grant Program				

THIS AMENDMENT TO THE PUBLIC TRANSPORTATION GRANT AGREEMENT ("Amendment") is made and entered into on _____, by and between the State of Florida, Department of Transportation ("Department"), and City of DeLand, ("Agency"), collectively referred to as the "Parties."

RECITALS

WHEREAS, the Department and the Agency on 10/5/2020 (date original Agreement entered) entered into a Public Transportation Grant Agreement ("Agreement").

WHEREAS, the Parties have agreed to modify the Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the mutual covenants in this Amendment, the Agreement is amended as follows:

1. **Amendment Description.** The project is amended This grant is amended to update the scope and add funds to PTGA based on bids for T-Hangars at Deland Municipal Airport.

2. **Program Area.** For identification purposes only, this Agreement is implemented as part of the Department program area selected below (select all programs that apply):

- ☒ **Aviation**
- ☐ **Seaports**
- ☐ **Transit**
- ☐ **Intermodal**
- ☐ **Rail Crossing Closure**
- ☐ **Match to Direct Federal Funding** (Aviation or Transit)
(Note: Section 15 and Exhibit G do not apply to federally matched funding)
- ☐ **Other**

3. **Exhibits.** The following Exhibits are updated, attached, and incorporated into this Agreement:

- ☒ Exhibit A: Project Description and Responsibilities
- ☒ Exhibit B: Schedule of Financial Assistance
- ☐ *Exhibit B1: Deferred Reimbursement Financial Provisions
- ☐ *Exhibit B2: Advance Payment Financial Provisions
- ☐ *Exhibit C: Terms and Conditions of Construction
- ☒ Exhibit D: Agency Resolution
- ☐ Exhibit E: Program Specific Terms and Conditions
- ☐ Exhibit F: Contract Payment Requirements
- ☒ *Exhibit G: Financial Assistance (Single Audit Act)
- ☐ *Exhibit H: Audit Requirements for Awards of Federal Financial Assistance

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
AMENDMENT TO THE PUBLIC TRANSPORTATION
GRANT AGREEMENT

Form 725-000-03
STRATEGIC
DEVELOPMENT
OGC 11/19

___ *Additional Exhibit(s):

4. Project Cost.

The estimated total cost of the Project is X increased/ ___ decreased by \$750,000 bringing the revised total cost of the project to \$3,306,250.

The Department's participation is X increased/ ___ decreased by \$600,000. The Department agrees to participate in the Project cost up to the maximum amount of \$2,645,000, and, additionally the Department's participation in the Project shall not exceed 80.00% of the total eligible cost of the Project.

Except as modified, amended, or changed by this Amendment, all of the terms and conditions of the Agreement and any amendments thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year written above.

AGENCY City of DeLand

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

By: _____
Name: C. Jack Adkins
Title: Director of Transportation Development

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION

Legal Review: Daniel L. McDermott

EXHIBIT A

Project Description and Responsibilities

A. Project Description (description of Agency's project to provide context, description of project components funded via this Agreement (if not the entire project)): Construction Hangars - The project consists of the construction for three (3) buildings with a total of twenty (20) T-Hangar units to be constructed in the previously prepared area located on the east side of the Airport. Site work will include building foundations, aprons and connections to existing taxilanes, drainage connections, utility connections, security fencing and gates with access card readers, and vehicular parking to serve each new hangar building. Alternate bids were received for the construction of the additional T-Hangar building.

B. Project Location (limits, city, county, map): DeLand Municipal - Sidney H Taylor Field/Deland, FL/Volusia

C. Project Scope (allowable costs: describe project components, improvement type/service type, approximate timeline, project schedule, project size): T-Hangars (Construction): As required by 215.971, F.S., this scope of work includes but is not limited to consultant and design fees, survey and geotechnical costs, permitting, construction inspection and material testing costs, mobilization and demobilization, maintenance of traffic, erosion control, demolition, pavement (access roadways, parking lots, and sidewalks), drainage, utilities, primary and back-up power supplies, building (foundation, structure, roof, MEP, drainage, and fire prevention and protection), pavement marking, lighting and signage, fencing and gates with access card readers, landscaping (including outdoor lighting), and indoor/outdoor security systems, including all materials, equipment, labor, and incidentals required to complete the T-hangars project. Alternate bids were received for the construction of additional T-Hangar building that was included in the designed.

The specifics of the Project Scope for construction are described in and limited by the Project Construction Plans identified as "Construct T-Hanger and Box Hangar Facilities" at Deland Municipal Airport prepared by AVCON, Inc., dated December 2021, together with all plan updates, necessary design variation, exceptions, and change orders approved by the Agency." The Sponsor will comply with Aviation Program Assurances

D. Deliverable(s): Final close out documents to be uploaded into Jacip.

The project scope identifies the ultimate project deliverables. Deliverables for requisition, payment and invoice purposes will be the incremental progress made toward completion of project scope elements. Supporting documentation will be quantifiable, measurable, and verifiable, to allow for a determination of the amount of incremental progress that has been made, and provide evidence that the payment requested is commensurate with the accomplished incremental progress and costs incurred by the Agency.

E. Unallowable Costs (including but not limited to): Stored Material

F. Transit Operating Grant Requirements (Transit Only):

Transit Operating Grants billed as an operational subsidy will require an expenditure detail report from the Agency that matches the invoice period. The expenditure detail, along with the progress report, will be the required deliverables for Transit Operating Grants. Operating grants may be issued for a term not to exceed three years from execution. The original grant agreement will include funding for year one. Funding for years two and three will be added by amendment as long as the grantee has submitted all invoices on schedule and the project deliverables for the year have been met.

TEMPORARY
FENCING, DE
WHICH ADDIT
AWARDED. TY

HASE 3A

PHASE 3B

PHASE 3C

PHASE 2

OLD NDB ROAD

EXISTING GATE 5 -
TO BE REMOVED

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 09/22

EXHIBIT B

Schedule of Financial Assistance

FUNDS AWARDED TO THE AGENCY AND REQUIRED MATCHING FUNDS PURSUANT TO THIS AGREEMENT
CONSIST OF THE FOLLOWING:

A. Fund Type and Fiscal Year:

Financial Management Number	Fund Type	FLAIR Category	State Fiscal Year	Object Code	CSFA/CFDA Number	CSFA/CFDA Title or Funding Source Description	Funding Amount
438416-1-94-01	DDR	088719	2022	751000	55.004	Aviation Grant Program	\$600,000.00
438416-1-94-01	DDR	088719	2023	751000	55.004	Aviation Grant Program	\$600,000.00
438416-1-94-01	DPTO	088719	2021	751000	55.004	Aviation Grant Program	\$1,445,000.00
438416-1-94-01	LF	088719	2021	751000	55.004	Aviation Grant Program	\$361,250.00
438416-1-94-01	LF	088719	2022	751000	55.004	Aviation Grant Program	\$150,000.00
438416-1-94-01	LF	088719	2023	751000	55.004	Aviation Grant Program	\$150,000.00
Total Financial Assistance							\$3,306,250.00

B. Estimate of Project Costs by Grant Phase:

Phases*	State	Local	Federal	Totals	State %	Local %	Federal %
Land Acquisition	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Planning	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Environmental/Design/Construction	\$2,645,000.00	\$661,250.00	\$0.00	\$3,306,250.00	80.00	20.00	0.00
Capital Equipment/ Preventative Maintenance	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Match to Direct Federal Funding	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Mobility Management (Transit Only)	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00	0.00
Totals	\$2,645,000.00	\$661,250.00	\$0.00	\$3,306,250.00			

*Shifting items between these grant phases requires execution of an Amendment to the Public Transportation Grant Agreement.

Scope Code and/or Activity Line Item (ALI) (Transit Only)	
--	--

BUDGET/COST ANALYSIS CERTIFICATION AS REQUIRED BY SECTION 216.3475, FLORIDA STATUTES:

I certify that the cost for each line item budget category (grant phase) has been evaluated and determined to be allowable, reasonable, and necessary as required by Section 216.3475, Florida Statutes. Documentation is on file evidencing the methodology used and the conclusions reached.

Allison McCuddy

Department Grant Manager Name

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 09/22



10/12/2022

Signature

Date

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 09/22

EXHIBIT D

AGENCY RESOLUTION

PLEASE SEE ATTACHED

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
**PUBLIC TRANSPORTATION
GRANT AGREEMENT EXHIBITS**

Form 725-000-02
STRATEGIC
DEVELOPMENT
OGC 09/22

EXHIBIT G

AUDIT REQUIREMENTS FOR AWARDS OF STATE FINANCIAL ASSISTANCE

THE STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:~

Awarding Agency: Florida Department of Transportation
State Project Title: Aviation Grant Program
CSFA Number: 55.004
***Award Amount:** \$2,645,000

*The award amount may change with amendments

Specific project information for CSFA Number 55.004 is provided at: <https://apps.fldfs.com/fsaa/searchCatalog.aspx>

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT:

State Project Compliance Requirements for CSFA Number 55.004 are provided at:
<https://apps.fldfs.com/fsaa/searchCompliance.aspx>

The State Projects Compliance Supplement is provided at: <https://apps.fldfs.com/fsaa/compliance.aspx>

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Construction Services - AVCON, Inc. for Airport Hangars.

DEPARTMENT: Airport

PREPARED BY: John Eiff, Airport Manager

ATTACHMENTS: AVCON DED Hangars Construction Phase Svcs

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

The construction services agreement will permit AVCON, the consultant for the Design of the proposed T-hangar buildings, to perform construction inspection, shop drawing review and approval and detailed management of the project to ensure the contractor's compliance with the construction documents. DeLand airport has maintained a substantial waiting list for t-hangars for the past several years. The addition of these hangars will bring in significant revenue to the airport enterprise fund.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

New Business Development, High Value Government.

SUSTAINABILITY:

Awareness of community demographic trends and service demands.

FISCAL IMPACT:

The consultant's scope of services for the construction services in connection with this project is not to exceed the amount of \$77,552. Of this amount, 80% or \$62,041.60 will be funded by the FDOT with remaining funds, 20% or \$15,510.40, to be provided by the Airport Enterprise Fund.

RECOMMENDATION:

It is recommended the City Commission approve AVCON, Inc. contract to provide professional services to support the successful construction of the t-hangars project in accordance with the plans and specifications that they designed.

BACKGROUND/DISCUSSION:

Completion of construction is expected in the summer/fall of 2023.

ATTACHMENT B
SCOPE OF SERVICES

PROPOSAL FOR CONSTRUCTION PHASE ENGINEERING SERVICES
FOR
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
DELAND MUNICIPAL AIRPORT

A. PROJECT DESCRIPTION

The PROJECT can be generally described as the construction of three (3) T-hangar buildings (20 units total), three (3) Box hangar buildings, and associated infrastructure. The bid package has been broken up into a Base Bid and multiple Additive Alternates. Based on the currently available funding, it is anticipated that the Base Bid, and possibly Add Alternate #1, will be awarded at this time. This award would include the procurement and construction of the three (3) T-hangar buildings, new AOA fencing and gates, security/access control for five (5) vehicle gates, and associated water, sewer, and stormwater connections. Any remaining work will be deferred for future construction.

The intent of this scope is to provide professional construction management/administration and limited resident project representation (RPR) during construction. NTP for Construction is anticipated in August 2022. The construction duration for the project is 180 calendar days for procurement, 120 calendar days for construction, and 30 calendar days for final completion and acceptance.

The PROJECT is possibly being funded by FDOT grants and City funds with a total project construction budget of **\$2.5M** (including construction engineering support).

Construction Team

- Owner – City of DeLand / DeLand Municipal Airport (DED)
- Design Engineer – AVCON
- Contractor – TBD

B. SCOPE OF PROFESSIONAL SERVICES

1. Construction Administration Services

- Prepare for and conduct the Pre-Construction meeting to review project scope, schedule, costs, questions, etc. Compile minutes and distribute to attendees.
- Evaluate the contractors' schedule and coordinate activities with DED Airport staff and Airport Tenants.
- Review the Contractor's Phasing plan, and project communications, experience record of the superintendent, and site clean-up procedures.

- Issue clarifications and interpretations to the Contract Documents. Receive, log, and respond to RFI's. The Design Engineer will be responsible for providing necessary interpretations and clarifications to the contract documents as may be required.
- Receive, log, and return shop drawing submittals or other submissions. The Design Engineer (AVCON) will be responsible for review of submittals as to conformance with design concept and construction documents.
- Conduct the bi-weekly construction progress meetings (8 total), in conjunction with periodic site visits to observe construction for general conformance with the Contract Documents.
- Review the contractor's schedule of values prior to processing of the contractor's applications for payment.
- Conduct substantial and final completion inspections and prepare a punch list and certify completion of construction.
- Review the Contractor's "as-builts" prior to preparation of "Record Drawings".

2. Limited Resident Project Representative (RPR) Services

Under this task, AVCON will provide part-time on-site Resident Project Representative (RPR) services for the Project. The RPR shall serve as the liaison between the Design Engineer and the Contractor throughout the project. The foremost duty of the RPR is to observe construction for general conformance with the Contract Documents. The RPR will be responsible for reporting to the Engineer-of-Record when observing work that is unsatisfactory, faulty, defective, or does not conform to the Contract Documents. The RPR will be responsible for rejecting such work as agreed upon with the Engineer-of-Record. It is anticipated that an RPR will be required to be on-site to observe the work for the following project elements:

- Concrete pour for each building foundation and slab
- Utility connections and associated testing for each building

Assuming that the Base Bid and Add Alt 1 are awarded, the review of these project elements would require the RPR to be on-site for a total of 12 days during construction.

The Resident Project Representative shall have limited authority on site as follows:

- Shall not authorize any deviation from the construction Contract Documents or substitution of materials or equipment.
- Shall not exceed limitations of Owner or design professional as set forth in the construction Contract Documents.
- Shall not undertake any of the responsibilities of the Contractors, subcontractors, or Contractor's superintendents.
- Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless

such advice or directions are specifically required by the construction Contract Documents.

- Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Contractor's work.
- Shall not accept shop drawings or sample submittals from anyone other than the Contractor.
- Shall not authorize the Owner to occupy the Project in whole or in part.
- Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized.

BASIC ASSUMPTIONS

The following is a list of assumptions forming the basis of the CONSULTANT's cost proposal for providing the services detailed in the Scope of Services for this project. Any modification and/or revision to these basic assumptions will constitute a change in the project scope and may result in a revision to the CONSULTANT's cost proposal.

1. RPR shall consult with and advise the City of DeLand and act as the DeLand Municipal Airport's representative and advisor. The extent and limitations of the duties, responsibilities, and authority of the RPR, as described in this scope or work, shall not be modified except as AVCON may otherwise agree in writing.
2. The fees for the provision of Construction Phase services are based on the construction duration for the project specified in this scope of work and an assumed level of staff effort as described above. In the event the construction duration or level of effort required of the Construction Phase services is greater than estimated and specified herein, AVCON shall be entitled to additional compensation and the terms of this agreement shall be re-negotiated and amended as needed.
3. AVCON shall not be responsible for the acts or omissions of any Contractor, subcontractor, or supplier at the site or otherwise furnishing or performing any of the Contractor's work.
4. The Design Engineer shall have the authority to issue a stop work order to the Contractor when witnessing efforts that do not conform to the construction contract or that may, in the judgment of the Design Engineer, jeopardize safety. This shall not relieve the Contractor of their responsibility to meet these requirements.
5. When recommending payment, AVCON is only representing that the Design Engineer has made visual checks on items installed in field. The Design Engineer will only check the quality or quantity of Contractor's work.
6. AVCON's review of Contractor's work for the purposes of recommending payments shall not impose on the Design Engineer the responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto or contractor(s)

compliance with laws, rules, regulations, ordinances, codes, or orders applicable to their furnishing and performing the work.

7. AVCON's review of Contractor's work for the purposes of recommending payments shall not impose responsibility on AVCON to make any examination to ascertain how or for what purposes any contractor has used the moneys paid on account of the Contract Price; or to determine that title to any of the work, materials or equipment has passed to DED free and clear of any lien, claims, security interests or encumbrances; or that there may not be other matters at issue between the City of DeLand and contractor that might affect the amount that should be paid.
8. AVCON shall have authority, as DED's representative, to require special inspection or testing of the work, and shall receive and review certificates of inspections, testing and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
9. It will be the responsibility of the Contractor to obtain any permits necessary for construction. The CONSULTANT will not be applying for or obtaining any construction related permits.
10. The CONSULTANT shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the project site.

C. **PROJECT FEE**

AVCON and all subconsultants will be compensated on a Lump Sum basis for all Basic Services (i.e., labor). Refer to the attached fee spreadsheets for a detailed breakdown of manhours and fees for each task.

**DELAND MUNICIPAL AIRPORT - CONSTRUCT T-HANGARS AND BOX HANGARS
BREAKDOWN OF LUMP SUM FEES**

	Position:	SR. PROJECT MANAGER		SENIOR ENGINEER		PROJECT ENGINEER		SR. CADD DESIGNER		RPR		ADMINISTRATIVE		TOTAL		
	Rate (\$/Hour):	\$220		\$145		\$100		\$89		\$105		\$65		Labor Hours	Cost	Avg. Rate
CONSTRUCTION PHASE SERVICES		Labor Hours	Cost	Labor Hours	Cost	Labor Hours	Cost	Labor Hours	Cost	Labor Hours	Cost	Labor Hours	Cost			
1) Construction Adminstration																
1.1 Prepare for and conduct Pre-Construction Meeting		2	\$ 440	4	\$ 580	0	\$ -	0	\$ -	0	\$ -	2	\$ 130	8	\$ 1,150	\$ 144
1.2 Prepare for and conduct Bi-weekly construction progress meetings and site visits		8	\$ 1,760	32	\$ 4,640	48	\$ 4,800	0	\$ -	0	\$ -	8	\$ 520	96	\$ 11,720	\$ 122
1.3 Issue Clarifications and Interpretations to the Contract Documents		4	\$ 880	20	\$ 2,900	40	\$ 4,000	24	\$ 2,136	0	\$ -	8	\$ 520	96	\$ 10,436	\$ 109
1.4 Shop Drawing Review		2	\$ 440	12	\$ 1,740	48	\$ 4,800	0	\$ -	0	\$ -	16	\$ 1,040	78	\$ 8,020	\$ 103
1.5 Review of monthly pay applications		4	\$ 880	10	\$ 1,450	0	\$ -	0	\$ -	0	\$ -	0	\$ -	14	\$ 2,330	\$ 166
1.6 Prepare and negotiate Change Orders and review/approve field directives		4	\$ 880	16	\$ 2,320	40	\$ 4,000	24	\$ 2,136	0	\$ -	8	\$ 520	92	\$ 9,856	\$ 107
1.7 Perform Substantial Completion Inspection and prepare punch-list		2	\$ 440	4	\$ 580	4	\$ 400	0	\$ -	0	\$ -	2	\$ 130	12	\$ 1,550	\$ 129
1.8 Perform Final Inspection		2	\$ 440	4	\$ 580	4	\$ 400	0	\$ -	0	\$ -	2	\$ 130	12	\$ 1,550	\$ 129
1.9 Record Drawings and Project Closout		4	\$ 880	8	\$ 1,160	16	\$ 1,600	24	\$ 2,136	0	\$ -	8	\$ 520	60	\$ 6,296	\$ 105
SUB TOTAL:		32	\$ 7,040	110	\$ 15,950	200	\$ 20,000	72	\$ 6,408	0	\$ -	54	\$ 3,510	468	\$ 52,908	
2) Resident Project Representative (RPR) Services																
2.1 On-site inspections (12 days @ 10 hours/day)		0	\$ -	0	\$ -	0	\$ -	0	\$ -	120	\$ 12,600	0	\$ -	120	\$ 12,600	\$ 105
SUB TOTAL:		0	\$ -	0	\$ -	0	\$ -	0	\$ -	120	\$ 12,600	0	\$ -	120	\$ 12,600	
TOTAL LUMP SUM LABOR FEE:																
		32	\$ 7,040.00	110	\$ 15,950.00	200	\$ 20,000.00	72	\$ 6,408.00	120	\$ 12,600.00	54	\$ 3,510.00	588	\$ 65,508.00	\$ 111
REIMBURSABLES																
		Cost		SUBCONSULTANTS												
Printing and Reprographics		\$ 200		Construction Material Testing - CalTech												
Mileage (10 trips)		\$ 644														
RPR expenes		\$ 1,200														
SUB TOTAL		\$ 2,044														
TOTAL LABOR															\$77,552	

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Award of Bid for Aviation T-Hangars.

DEPARTMENT: Public Service

PREPARED BY: Whitney Zittle, Project Cord.

ATTACHMENTS: T-hangar Budget and Bid Numbers, B2207Tab

APPROVED BY: Michael Pleus, City Manager, November 3, 2022

SUMMARY/HIGHLIGHT:

In August, 2022, the subject project was advertised via the internet-based Demandstar and the local newspaper. Bids were received from Crunch Construction, LLC and Burke Construction Group and the results are presented in the attached bid tabulation. After careful review of the budget and grant funding from the FDOT, staff recommends the award of the base bid for the amount of \$2,620,022.89. This will permit the construction of 14 T-hangars. The FDOT has indicated that they will approve an amendment to our current grant award to fund in large part the construction of an additional 6 T-hangars that are called out in bid additive alternate #1. This amendment will be brought before the commission for consideration once the City is in receipt of the FDOT grant amendment in the near future.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Facilities and Infrastructure

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The lowest bidder, Crunch Construction, LLC, submitted a base bid amount of \$2,620,022.89. The FDOT will fund \$2,096,000 in grant funds, some of which are also being approved via an FDOT grant amendment at the November 7th commission meeting. The airport fund will contribute \$524,000. The Airport has an FY 22 allocation of \$511,250 budgeted to put toward this project cost. As discussed in the grant agenda item at this meeting, funds will be reallocated from the East Hangar Complex - Phase 1B project approved in the FY 22/23 budget to this project (\$150,000 in City Match).

RECOMMENDATION:

Staff recommends that the City Commission award the base bid for the construction of 14 Aviation T-Hangars to Crunch Construction in the amount of \$2,620,022.89.

BACKGROUND/DISCUSSION:

The city has been working with purpose to develop the east T-Hangar Complex. The first phase was to install most of the underground and at grade infrastructure (sewers, water and taxilanes). This project will install the first T-hangars for the east T-hangar complex. The city currently has over 60 individuals on the T-hangar waiting list, so we are confident that within weeks of completion they will all be rented.

DeLand T-Hangar Funding

FDOT Funding Received	\$ 2,045,000.00
City Budgeted Funding	\$ 511,250.00
Total Current Funding	\$ 2,556,250.00

City FY23 Funding for Phase 1b	\$ 150,000.00
FDOT Allocated Funding in JACIP	\$ 600,000.00
Additional Funding Available in FY23	\$ 750,000.00

AVCON Design Services Fee	\$ 135,110.00
AVCON Construction Services Fee	\$ 77,552.00
AVCON Fee Totals	\$ 212,662.00

T-hangar Base Bid	\$ 2,620,000.00
Alt 1 - 3rd T-hangar Row	\$ 861,500.00
Total Crunch Construction Bids for 20 T-hangars	\$ 3,481,500.00

Total Amount to Build 20 T-hangars including Consultant Fees	\$ 3,694,162.00
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Total Funding Budgeted and Allocated	\$ 3,306,250.00
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Funding Shortage	\$ 387,912.00
FDOT	\$ 310,330.00
CITY	\$ 77,582.00

B-22-07
Construct T-Hangar & Box Hangar Facilities
Tabulation

Crunch Construction LLC							Burke Construction Group, Inc.						
BASE BID - NESTED T-HANGARS 1 AND 2							BASE BID - NESTED T-HANGARS 1 AND 2						
INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION	INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$17,111.25	\$17,111.25	1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$2,500.00	\$2,500.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$8,189.64	\$8,189.64	2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$3,600.00	\$3,600.00
3	C-105-1	Mobilization	LS	1	\$3,510.00	\$3,510.00	3	C-105-1	Mobilization	LS	1	\$590,688.47	\$590,688.47
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$6,423.89	\$6,423.89	4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$25,112.79	\$25,112.79
5	P-100-1	Construction Survey	LS	1	\$17,860.05	\$17,860.05	5	P-100-1	Construction Survey	LS	1	\$8,430.01	\$8,430.01
6	P-101-1	Asphalt Milling	SY	20	\$39.78	\$795.60	6	P-101-1	Asphalt Milling	SY	20	\$34.34	\$686.80
7	P-151-1	Clearing and Stripping	SY	7,630	\$2.05	\$15,641.50	7	P-151-1	Clearing and Stripping	SY	7,630	\$0.80	\$6,104.00
8	P-151-2	Remove Existing Security Fence and Gates	LF	132	\$15.95	\$2,105.40	8	P-151-2	Remove Existing Security Fence and Gates	LF	132	\$10.00	\$1,320.00
9	P-152-1	Unclassified Excavation	CY	1,153	\$5.85	\$6,745.05	9	P-152-1	Unclassified Excavation	CY	1,153	\$69.00	\$79,557.00
10	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,798	\$32.76	\$58,902.48	10	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,798	\$9.88	\$17,764.24
11	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	289	\$193.05	\$55,791.45	11	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	289	\$179.72	\$51,939.08
12	P-610-1	Concrete (6-inch Thick Ribbon Apron)	SY	351	\$100.04	\$35,114.04	12	P-610-1	Concrete (6-inch Thick Ribbon Apron)	SY	351	\$81.00	\$28,431.00
13	P-610-2	Concrete (6-inch Thick Pad)	SY	5	\$100.04	\$500.20	13	P-610-2	Concrete (6-inch Thick Pad)	SY	5	\$81.00	\$405.00
14	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	94	\$84.24	\$7,918.56	14	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	94	\$71.10	\$6,683.40
15	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	617	\$28.08	\$17,325.36	15	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	617	\$55.08	\$33,984.36
16	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	81	\$35.10	\$2,843.10	16	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	81	\$63.11	\$5,111.91
17	D-701-3	ADS N12WT HDPE Double Wall Smooth Interior Pipe (12-inch Diameter)	LF	802	\$37.44	\$30,026.88	17	D-701-3	ADS N12WT HDPE Double Wall Smooth Interior Pipe (12-inch Diameter)	LF	802	\$60.52	\$48,537.04
18	D-751-1	Type C Ditch Bottom Inlet	EA	6	\$5,265.00	\$31,590.00	18	D-751-1	Type C Ditch Bottom Inlet	EA	6	\$5,816.60	\$34,899.60
19	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	4	\$2,281.50	\$9,126.00	19	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	4	\$1,991.43	\$7,965.72
20	D-751-4	12-inch Nyloplast ADS Drain Basin	EA	11	\$4,680.00	\$51,480.00	20	D-751-4	12-inch Nyloplast ADS Drain Basin	EA	11	\$4,423.38	\$48,657.18
21	D-751-5	8-inch Cleanout	EA	5	\$1,872.00	\$9,360.00	21	D-751-5	8-inch Cleanout	EA	5	\$1,235.81	\$6,179.05
22	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	1,552	\$44.55	\$69,141.60	22	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	1,552	\$47.36	\$73,502.72
23	F-162-2	Construct 16-foot Manual Chain Link Security Fence Vehicle Gate with 3-Strand Barb Wire	EA	2	\$4,095.00	\$8,190.00	23	F-162-2	Construct 16-foot Manual Chain Link Security Fence Vehicle Gate with 3-Strand Barb Wire	EA	2	\$3,900.00	\$7,800.00
24	F-162-3	Construct 24-foot Automated Chain Link Security Fence Vehicle Gate with 3-Strand Barb Wire	EA	2	\$4,914.00	\$9,828.00	24	F-162-3	Construct 24-foot Automated Chain Link Security Fence Vehicle Gate with 3-Strand Barb Wire	EA	2	\$4,600.00	\$9,200.00
25	T-904-1	Sodding	SY	3,752	\$6.32	\$23,712.64	25	T-904-1	Sodding	SY	3,752	\$5.58	\$20,936.16
26	13 34 19-T1	T-hangar 1	LS	1	\$805,600.00	\$805,600.00	26	13 34 19-T1	T-hangar 1	LS	1	\$902,218.26	\$902,218.26
27	13 34 19-T2	T-hangar 2	LS	1	\$805,600.00	\$805,600.00	27	13 34 19-T2	T-hangar 2	LS	1	\$902,218.26	\$902,218.26
28	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	80	\$26.91	\$2,152.80	28	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	80	\$46.66	\$3,732.80
29	W405-1	Fire Hydrant Assembly	EA	1	\$7,956.00	\$7,956.00	29	W405-1	Fire Hydrant Assembly	EA	1	\$7,608.29	\$7,608.29
30	W407-1	Connection to Existing Water Main with Tapping Sleeve and Tapping Valve	EA	1	\$7,020.00	\$7,020.00	30	W407-1	Connection to Existing Water Main with Tapping Sleeve and Tapping Valve	EA	1	\$8,850.78	\$8,850.78
31	W407-2	2-inch Temporary Jumper Connection	EA	1	\$4,680.00	\$4,680.00	31	W407-2	2-inch Temporary Jumper Connection	EA	1	\$2,703.94	\$2,703.94
32	W407-3	Pressure and Leakage Testing	LS	1	\$1,755.00	\$1,755.00	32	W407-3	Pressure and Leakage Testing	LS	1	\$1,000.00	\$1,000.00
33	PA-1	Permitting Allowance	EA	1	\$50,000.00	\$50,000.00	33	PA-1	Permitting Allowance	EA	1	\$50,000.00	\$50,000.00
34	MA-1	Miscellaneous Allowance	EA	1	\$75,000.00	\$75,000.00	34	MA-1	Miscellaneous Allowance	EA	1	\$75,000.00	\$75,000.00

**DELAND MUNICIPAL AIRPORT
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
BID FORM
(continued)**

CONTRACTOR: Crunch Construction LLC

BASE BID - NESTED T-HANGARS 1 AND 2 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
35	W407-4	Disinfection and Bacteriological Testing	LS	1	\$1,170.00	\$1,170.00
36	W409-1	6-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$58.50	\$702.00
37	W409-2	8-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$65.52	\$786.24
38	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	2	\$3,510.00	\$7,020.00
39	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	301	\$25.74	\$7,747.74
40	S308-1	4-inch Sanitary Cleanouts	EA	3	\$585.00	\$1,755.00
41	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	2	\$585.00	\$1,170.00
42	26 05 00-1	T-Hangar Electrical Installation	LS	1	\$175,500.00	\$175,500.00
43	26 09 00-1	South Vehicle Gate	LS	1	\$4,182.75	\$4,182.75
44	26 09 00-2	West Vehicle Gate	LS	1	\$27,676.26	\$27,676.26
45	26 09 00-3	Gate 1	LS	1	\$33,052.50	\$33,052.50
46	26 09 00-4	Gate 2	LS	1	\$38,400.16	\$38,400.16
47	26 09 00-5	Gate 3	LS	1	\$16,684.20	\$16,684.20
48	26 09 00-6	Gate 4	LS	1	\$17,503.20	\$17,503.20
49	26 09 00-7	Gate 5	LS	1	\$27,676.35	\$27,676.35

SUB-TOTAL BASE BID **\$2,620,022.89**

ADDITIVE BID 1 - NESTED T-HANGAR 3

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$7,020.00	\$7,020.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,170.00	\$1,170.00
3	C-105-1	Mobilization	LS	1	\$1,170.00	\$1,170.00
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$3,861.00	\$3,861.00
5	P-100-1	Construction Survey	LS	1	\$10,350.00	\$10,350.00
6	P-151-1	Clearing and Stripping	SY	3.190	\$2.05	\$6,539.50
7	P-152-1	Unclassified Excavation	CY	271	\$5.85	\$1,585.35
8	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	833	\$32.76	\$27,289.08
9	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	143	\$193.05	\$27,606.15
10	P-610-1	Concrete (6-inch Thick Ribbon Apron)	SY	156	\$100.04	\$15,606.24
11	P-610-2	Concrete (6-inch Thick Pad)	SY	22	\$117.00	\$2,574.00
12	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8-inch Diameter)	LF	240	\$28.08	\$6,739.20
13	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	24	\$35.10	\$842.40
14	D-701-3	ADS N12WT HDPE Double Wall Smooth Interior Pipe (12-inch Diameter)	LF	291	\$37.44	\$10,895.04
15	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	2	\$2,281.50	\$4,563.00
16	D-751-4	12-inch Nyloplast ADS Drain Basin	EA	4	\$4,680.00	\$18,720.00
17	D-751-5	8-inch Cleanout	EA	4	\$1,872.00	\$7,488.00

CONTRACTOR: Burke Construction Group, Inc.

BASE BID - NESTED T-HANGARS 1 AND 2 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
35	W407-4	Disinfection and Bacteriological Testing	LS	1	\$1,000.00	\$1,000.00
36	W409-1	6-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$131.23	\$1,574.76
37	W409-2	8-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$143.93	\$1,727.16
38	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	2	\$400.00	\$800.00
39	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	301	\$38.12	\$11,474.12
40	S308-1	4-inch Sanitary Cleanouts	EA	3	\$709.57	\$2,128.71
41	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	2	\$1,058.46	\$2,116.92
42	26 05 00-1	T-Hangar Electrical Installation	LS	1	\$405,427.00	\$405,427.00
43	26 09 00-1	South Vehicle Gate	LS	1	\$40,221.54	\$40,221.54
44	26 09 00-2	West Vehicle Gate	LS	1	\$40,221.54	\$40,221.54
45	26 09 00-3	Gate 1	LS	1	\$18,877.12	\$18,877.12
46	26 09 00-4	Gate 2	LS	1	\$17,090.29	\$17,090.29
47	26 09 00-5	Gate 3	LS	1	\$17,090.29	\$17,090.29
48	26 09 00-6	Gate 4	LS	1	\$17,090.29	\$17,090.29
49	26 09 00-7	Gate 5	LS	1	\$28,102.79	\$28,102.79

SUB-TOTAL BASE BID **\$3,678,270.39**

ADDITIVE BID 1 - NESTED T-HANGAR 3

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$800.00	\$800.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,200.00	\$1,200.00
3	C-105-1	Mobilization	LS	1	\$245,107.73	\$245,107.73
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$800.00	\$800.00
5	P-100-1	Construction Survey	LS	1	\$1,200.00	\$1,200.00
6	P-151-1	Clearing and Stripping	SY	3.190	\$0.80	\$2,552.00
7	P-152-1	Unclassified Excavation	CY	271	\$69.00	\$18,699.00
8	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	833	\$9.88	\$8,230.04
9	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	143	\$179.72	\$25,699.96
10	P-610-1	Concrete (6-inch Thick Ribbon Apron)	SY	156	\$81.00	\$12,636.00
11	P-610-2	Concrete (6-inch Thick Pad)	SY	22	\$81.00	\$1,782.00
12	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8-inch Diameter)	LF	240	\$55.08	\$13,219.20
13	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	24	\$63.11	\$1,514.64
14	D-701-3	ADS N12WT HDPE Double Wall Smooth Interior Pipe (12-inch Diameter)	LF	291	\$60.52	\$17,611.32
15	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	2	\$1,991.43	\$3,982.86
16	D-751-4	12-inch Nyloplast ADS Drain Basin	EA	4	\$4,423.38	\$17,693.52
17	D-751-5	8-inch Cleanout	EA	4	\$1,235.81	\$4,943.24

**DELAND MUNICIPAL AIRPORT
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
BID FORM
(continued)**

CONTRACTOR: Crunch Construction LLC

ADDITIVE BID 1 - NESTED HANGAR 3 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
18	T-904-1	Sodding	SY	1,473	\$6.35	\$9,353.55
19	13 34 19-T3	T-hanger 3	LS	1	\$668,876.13	\$668,876.13
20	W403-1	1-inch Polyethylene Water Service Line and Fittings	LF	56	\$17.55	\$982.80
21	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	19	\$26.91	\$511.29
22	W405-1	Fire Hydrant Assembly	EA	1	\$7,956.00	\$7,956.00
23	W407-1	Connection to Existing Water Main with Tapping Sleeve and Tapping Valve	EA	1	\$7,020.00	\$7,020.00
24	W407-2	2-inch Temporary Jumper Connection	EA	1	\$4,680.00	\$4,680.00
25	W407-3	Pressure and Leakage Testing	LS	1	\$1,755.00	\$1,755.00
26	W407-4	Disinfection and Bacteriological Testing	LS	1	\$1,170.00	\$1,170.00
27	W409-1	6-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$58.50	\$702.00
28	W409-2	8-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$65.52	\$786.24
29	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$3,508.03	\$3,508.03
30	26 05 00-1	T-Hanger Electrical Installation	LS	1		\$0.00
SUB-TOTAL ADDITIVE BID 1					\$861,320.00	

ADDITIVE BID 2 - BOX HANGAR 1

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$4,660.69	\$4,660.69
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,585.00	\$1,585.00
3	C-105-1	Mobilization	LS	1	\$1,500.00	\$1,500.00
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$3,500.00	\$3,500.00
5	P-100-1	Construction Survey	LS	1	\$8,190.00	\$8,190.00
6	P-101-1	Asphalt Milling	SY	35	\$40.11	\$1,403.85
7	P-151-1	Clearing and Stripping	SY	2,860	\$2.05	\$5,863.00
8	P-152-1	Unclassified Excavation	CY	324	\$5.85	\$1,895.40
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,091	\$32.76	\$35,741.16
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	197	\$193.05	\$38,030.85
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$84.24	\$673.92
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$16.97	\$644.86
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$16.97	\$1,289.72
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	288	\$28.08	\$8,087.04
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	13	\$35.10	\$456.30
16	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	2	\$2,281.50	\$4,563.00
17	D-751-5	8-inch Cleanout	EA	2	\$1,872.00	\$3,744.00
18	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	-46	\$25.43	-\$1,169.78
19	T-904-1	Sodding	SY	1,746	\$6.37	\$11,122.02

CONTRACTOR: Burke Construction Group, Inc.

ADDITIVE BID 1 - NESTED HANGAR 3 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
18	T-904-1	Sodding	SY	1,473	\$5.58	\$8,219.34
19	13 34 19-T3	T-hanger 3	LS	1	\$588,883.59	\$588,883.59
20	W403-1	1-inch Polyethylene Water Service Line and Fittings	LF	56	\$46.66	\$2,612.96
21	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	19	\$46.66	\$886.54
22	W405-1	Fire Hydrant Assembly	EA	1	\$7,608.29	\$7,608.29
23	W407-1	Connection to Existing Water Main with Tapping Sleeve and Tapping Valve	EA	1	\$8,850.78	\$8,850.78
24	W407-2	2-inch Temporary Jumper Connection	EA	1	\$2,703.94	\$2,703.94
25	W407-3	Pressure and Leakage Testing	LS	1	\$1,000.00	\$1,000.00
26	W407-4	Disinfection and Bacteriological Testing	LS	1	\$1,000.00	\$1,000.00
27	W409-1	6-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$131.23	\$1,574.76
28	W409-2	8-inch Ductile Iron Pipe Water Main and Fittings with All Restrained Joints	LF	12	\$143.93	\$1,727.16
29	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$400.00	\$400.00
30	26 05 00-1	T-Hanger Electrical Installation	LS	1	\$169,000.00	\$169,000.00
SUB-TOTAL ADDITIVE BID 1					\$1,172,138.87	

ADDITIVE BID 2 - BOX HANGAR 1

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$800.00	\$800.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,200.00	\$1,200.00
3	C-105-1	Mobilization	LS	1	\$205,695.51	\$205,695.51
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$800.00	\$800.00
5	P-100-1	Construction Survey	LS	1	\$1,200.00	\$1,200.00
6	P-101-1	Asphalt Milling	SY	35	\$34.34	\$1,201.90
7	P-151-1	Clearing and Stripping	SY	2,860	\$0.80	\$2,288.00
8	P-152-1	Unclassified Excavation	CY	324	\$69.00	\$22,356.00
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,091	\$9.88	\$10,779.08
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	197	\$179.72	\$35,404.84
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$90.00	\$720.00
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$56.18	\$2,134.84
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$40.80	\$3,100.80
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	288	\$55.08	\$15,863.04
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	13	\$63.11	\$820.43
16	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	2	\$1,991.43	\$3,982.86
17	D-751-5	8-inch Cleanout	EA	2	\$1,235.81	\$2,471.62
18	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	-46	\$10.00	-\$460.00
19	T-904-1	Sodding	SY	1,746	\$5.58	\$9,742.68

**DELAND MUNICIPAL AIRPORT
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
BID FORM
(continued)**

CONTRACTOR: Crunch Construction LLC

ADDITIVE BID 2 - BOX HANGAR 1 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
20	A-100-1	Box Hangar 1	LS	1	\$768,397.49	\$768,397.49
21	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	36	\$22.23	\$800.28
22	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	20	\$26.91	\$538.20
23	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$3,510.00	\$3,510.00
24	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	125	\$25.74	\$3,217.50
25	S308-1	4-inch Sanitary Cleanouts	EA	2	\$585.00	\$1,170.00
26	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$585.00	\$585.00
27	P502-1	Oil/Water Separator	EA	1		\$0.00
28	26 05 00-2	Electrical Installation	LS	1		\$0.00

SUB-TOTAL ADDITIVE BID 2 **\$909,999.50**

ADDITIVE BID 3 - BOX HANGAR 2

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$5,500.00	\$5,500.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$2,794.35	\$2,794.35
3	C-105-1	Mobilization	LS	1	\$1,550.00	\$1,550.00
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$3,500.00	\$3,500.00
5	P-100-1	Construction Survey	LS	1	\$9,500.00	\$9,500.00
6	P-101-1	Asphalt Milling	SY	35	\$40.11	\$1,403.85
7	P-151-1	Clearing and Stripping	SY	2,703	\$2.05	\$5,541.15
8	P-152-1	Unclassified Excavation	CY	217	\$5.85	\$1,269.45
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,084	\$32.76	\$35,511.84
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	197	\$193.05	\$38,030.85
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$84.24	\$673.92
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$16.97	\$644.86
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$16.97	\$1,289.72
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	140	\$28.08	\$3,931.20
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	24	\$35.10	\$842.40
16	D-751-2	Type J Junction Manhole	EA	1	\$7,500.00	\$7,500.00
17	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	1	\$2,281.50	\$2,281.50
18	D-751-5	8-inch Cleanout	EA	3	\$1,872.00	\$5,616.00
19	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	-46	\$25.43	-\$1,169.78
20	T-904-1	Sodding	SY	946	\$6.37	\$6,026.02
21	A-100-1	Box Hangar 2	LS	1	\$768,397.49	\$768,397.49
22	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	12	\$22.23	\$266.76
23	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	20	\$26.91	\$538.20

CONTRACTOR: Burke Construction Group, Inc.

ADDITIVE BID 2 - BOX HANGAR 1 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
20	A-100-1	Box Hangar 1	LS	1	\$599,730.99	\$599,730.99
21	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	36	\$46.66	\$1,679.76
22	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	20	\$46.66	\$933.20
23	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$400.00	\$400.00
24	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	125	\$38.12	\$4,765.00
25	S308-1	4-inch Sanitary Cleanouts	EA	2	\$709.57	\$1,419.14
26	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$1,058.46	\$1,058.46
27	P502-1	Oil/Water Separator	EA	1	\$22,831.71	\$22,831.71
28	26 05 00-2	Electrical Installation	LS	1	\$147,550.00	\$147,550.00

SUB-TOTAL ADDITIVE BID 2 **\$1,100,469.86**

ADDITIVE BID 3 - BOX HANGAR 2

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$800.00	\$800.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,200.00	\$1,200.00
3	C-105-1	Mobilization	LS	1	\$193,035.85	\$193,035.85
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$800.00	\$800.00
5	P-100-1	Construction Survey	LS	1	\$1,200.00	\$1,200.00
6	P-101-1	Asphalt Milling	SY	35	\$34.34	\$1,201.90
7	P-151-1	Clearing and Stripping	SY	2,703	\$0.80	\$2,162.40
8	P-152-1	Unclassified Excavation	CY	217	\$69.00	\$14,973.00
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	1,084	\$9.88	\$10,709.92
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	197	\$179.72	\$35,404.84
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$90.00	\$720.00
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$56.18	\$2,134.84
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$40.80	\$3,100.80
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	140	\$55.08	\$7,711.20
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	24	\$63.11	\$1,514.64
16	D-751-2	Type J Junction Manhole	EA	1	\$6,441.40	\$6,441.40
17	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	1	\$1,991.43	\$1,991.43
18	D-751-5	8-inch Cleanout	EA	3	\$1,235.81	\$3,707.43
19	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	-46	\$10.00	-\$460.00
20	T-904-1	Sodding	SY	946	\$5.58	\$5,278.68
21	A-100-1	Box Hangar 2	LS	1	\$592,128.71	\$592,128.71
22	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	12	\$46.66	\$559.92
23	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	20	\$46.66	\$933.20

**DELAND MUNICIPAL AIRPORT
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
BID FORM
(continued)**

CONTRACTOR: Crunch Construction LLC

ADDITIVE BID 3 - BOX HANGAR 2 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
24	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$3,510.00	\$3,510.00
25	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	128	\$25.74	\$3,294.72
26	S308-1	4-inch Sanitary Cleanouts	EA	2	\$585.00	\$1,170.00
27	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$585.00	\$585.00
28	P502-1	Oil/Water Separator	EA	1		\$0.00
29	26 05 00-2	Electrical Installation	LS	1		\$0.00

SUB-TOTAL ADDITIVE BID 3 \$909,999.50

ADDITIVE BID 4 - BOX HANGAR 3

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$5,500.00	\$5,500.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$4,500.00	\$4,500.00
3	C-105-1	Mobilization	LS	1	\$5,000.00	\$5,000.00
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$4,685.54	\$4,685.54
5	P-100-1	Construction Survey	LS	1	\$11,900.00	\$11,900.00
6	P-101-1	Asphalt Milling	SY	35	\$40.11	\$1,403.85
7	P-151-1	Clearing and Stripping	SY	2,521	\$2.25	\$5,672.25
8	P-152-1	Unclassified Excavation	CY	140	\$5.85	\$819.00
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	841	\$32.76	\$27,551.16
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	151	\$193.05	\$29,150.55
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$84.24	\$673.92
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$16.97	\$644.86
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$16.97	\$1,289.72
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	213	\$28.08	\$5,981.04
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	8	\$35.10	\$280.80
16	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	1	\$2,281.50	\$2,281.50
17	D-751-5	8-inch Cleanout	EA	2	\$1,872.00	\$3,744.00
18	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	(46)	\$25.43	(\$1,169.78)
19	T-904-1	Sodding	SY	549	\$6.37	\$3,497.13
20	A-100-1	Box Hangar 3	LS	1	\$785,000.00	\$785,000.00
21	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	19	\$22.23	\$422.37
22	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	13	\$26.91	\$349.83
23	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$3,510.00	\$3,510.00
24	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	125	\$25.74	\$3,217.50
25	S308-1	4-inch Sanitary Cleanouts	EA	2	\$585.00	\$1,170.00

CONTRACTOR: Burke Construction Group, Inc.

ADDITIVE BID 3 - BOX HANGAR 2 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
24	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$400.00	\$400.00
25	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	128	\$38.12	\$4,879.36
26	S308-1	4-inch Sanitary Cleanouts	EA	2	\$709.57	\$1,419.14
27	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$1,058.46	\$1,058.46
28	P502-1	Oil/Water Separator	EA	1	\$22,831.71	\$22,831.71
29	26 05 00-2	Electrical Installation	LS	1	\$147,550.00	\$147,550.00

SUB-TOTAL ADDITIVE BID 3 \$1,065,388.83

ADDITIVE BID 4 - BOX HANGAR 3

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
1	C-100-1	Contractor Quality Control Program (CQCP)	LS	1	\$800.00	\$800.00
2	C-102-1	Temporary Air and Water Pollution, Soil Erosion, and Siltation Control	LS	1	\$1,200.00	\$1,200.00
3	C-105-1	Mobilization	LS	1	\$191,139.19	\$191,139.19
4	C-106-1	Safety, Security and Maintenance of Traffic	LS	1	\$800.00	\$800.00
5	P-100-1	Construction Survey	LS	1	\$1,200.00	\$1,200.00
6	P-101-1	Asphalt Milling	SY	35	\$34.34	\$1,201.90
7	P-151-1	Clearing and Stripping	SY	2,521	\$0.80	\$2,016.80
8	P-152-1	Unclassified Excavation	CY	140	\$69.00	\$9,660.00
9	P-211-1	Lime Rock Base Course (6-inch Thick)	SY	841	\$9.88	\$8,309.08
10	32 12 00.334-1	Asphalt Surface Course (3-inch Thick Type SP 12.5 Traffic A)	TN	151	\$179.72	\$27,137.72
11	P-610-3	Concrete (4-inch Thick Sidewalk)	SY	8	\$90.00	\$720.00
12	P-620-1	Permanent Yellow Pavement Marking with Reflective Media	SF	38	\$56.18	\$2,134.84
13	P-620-2	Permanent Black Pavement Marking without Reflective Media	SF	76	\$40.80	\$3,100.80
14	D-701-1	ADS N12WT HDPE Double Wall Smooth Interior Pipe (8 inch Diameter)	LF	213	\$55.08	\$11,732.04
15	D-701-2	ADS N12WT HDPE Double Wall Smooth Interior Pipe (10-inch Diameter)	LF	8	\$63.11	\$504.88
16	D-751-3	10-inch Nyloplast ADS Drain Basin	EA	1	\$1,991.43	\$1,991.43
17	D-751-5	8-inch Cleanout	EA	2	\$1,235.81	\$2,471.62
18	F-162-1	Construct 6-foot Chain Link Security Fence with 3-Strand Barb Wire	LF	(46)	\$10.00	(\$460.00)
19	T-904-1	Sodding	SY	549	\$5.58	\$3,063.42
20	A-100-1	Box Hangar 3	LS	1	\$595,180.99	\$595,180.99
21	W403-2	1 1/4-inch Polyethylene Water Service Line and Fittings	LF	19	\$46.66	\$886.54
22	W403-3	1 1/2-inch Polyethylene Water Service Line and Fittings	LF	13	\$46.66	\$606.58
23	W411-1	1-inch Water Service Meter with Reduced Pressure Zone Backflow Preventer	EA	1	\$400.00	\$400.00
24	S305-1	4-inch PVC Sanitary Sewer Service Lines and Fittings	LF	125	\$38.12	\$4,765.00
25	S308-1	4-inch Sanitary Cleanouts	EA	2	\$709.57	\$1,419.14

DELAND MUNICIPAL AIRPORT
CONSTRUCT T-HANGAR AND BOX HANGAR FACILITIES
BID FORM
(continued)

CONTRACTOR: Crunch Construction LLC

ADDITIVE BID 4 - BOX HANGAR 3 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
26	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$585.20	\$585.20
27	P502-1	Oil/Water Separator	EA	1		\$0.00
28	26 05 00-2	Electrical Installation	LS	1		\$0.00

SUB-TOTAL ADDITIVE BID 4 \$907,660.44

BID SUMMARY

SUB-TOTAL BASE BID (IN NUMBERS)	\$2,620,022.89
SUB-TOTAL ADDITIVE BID 1 (IN NUMBERS)	\$861,320.00
SUB-TOTAL ADDITIVE BID 2 (IN NUMBERS)	\$909,999.50
SUB-TOTAL ADDITIVE BID 3 (IN NUMBERS)	\$909,999.50
SUB-TOTAL ADDITIVE BID 4 (IN NUMBERS)	\$907,660.44
TOTAL BID (IN NUMBERS)	\$6,209,002.33

CONTRACTOR: Burke Construction Group, Inc.

ADDITIVE BID 4 - BOX HANGAR 3 (cont.)

INDEX	PAY ITEM	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	EXTENSION
26	S308-2	Connect Sanitary Services to Existing Sanitary Collection System at Existing Cleanout	EA	1	\$1,058.46	\$1,058.46
27	P502-1	Oil/Water Separator	EA	1	\$22,831.71	\$22,831.71
28	26 05 00-2	Electrical Installation	LS	1	\$147,550.00	\$147,550.00

SUB-TOTAL ADDITIVE BID 4 \$1,043,422.14

BID SUMMARY

SUB-TOTAL BASE BID (IN NUMBERS)	\$3,678,270.39
SUB-TOTAL ADDITIVE BID 1 (IN NUMBERS)	\$1,172,138.87
SUB-TOTAL ADDITIVE BID 2 (IN NUMBERS)	\$1,100,469.86
SUB-TOTAL ADDITIVE BID 3 (IN NUMBERS)	\$1,065,388.83
SUB-TOTAL ADDITIVE BID 4 (IN NUMBERS)	\$1,043,422.14
TOTAL BID (IN NUMBERS)	\$8,059,690.09

*Note: All bids are subject to review and tabulation is not final.

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Joint Project Agreement between Volusia County and the City for Utility Line Extension Concerning Blue Lake Avenue Extension Construction.

DEPARTMENT: Engineering

PREPARED BY: Ray Bahrami, City Engineer

ATTACHMENTS: Joint Protection Agreement

APPROVED BY: Michael Pleus, City Manager, November 3, 2022

SUMMARY/HIGHLIGHT:

The approval of a joint project agreement between Volusia County and the City for utility line extension concerning the Blue Lake Avenue extension construction project is proposed.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The fiscal impact of the proposed joint project agreement is favorable in that providing for the combined construction of the County's Blue Lake Avenue extension construction project road work and the City's utility work project relating to the same corridor of right-of-way will provide significant savings.

The costs for the installation of the proposed utilities, as outlined in the agreement, are anticipated and budgeted within the Utility fund.

RECOMMENDATION:

City staff recommends that the City Commission approve the proposed joint project agreement between Volusia County and the City for the utility line extension project concerning the County's Blue Lake Avenue extension construction project.

BACKGROUND/DISCUSSION:

The County is preparing to start construction of the Blue Lake Avenue extension from its current southerly terminus in the "Hills" section of Victoria Park south to State Road 472. Construction should commence around the first of the year. City staff and Volusia County staff have engaged in positive collaboration and cooperation with regard to the County's Blue Lake Avenue extension construction project in order to save public funds and reduce the potential for conflicts which could arise in the context of separate projects with separate contractors and separate administration of the projects. The City and County have developed a means

whereby providing for the combined construction of the County's Blue Lake Avenue extension construction project road work and the City's utility work project relating to the same corridor of right-of-way will result in significant savings.

The City Commission has been separately requested to address a modification of utility service boundary areas by means of amending the Utility Service Agreement between the County and the City which establishes service boundary areas. The joint project proposed in this agenda item would support the City's expansion of its utility service boundary area by providing for the City's extension of a 12" water main approximately 1,940 feet south along the Blue Lake Avenue extension project rights-of-way including adding several fire hydrants, future connections, valves, and fittings, as well as install one 8" reclaimed water line crossing under the Blue Lake Avenue extension project road work all in accordance with design drawings and specifications procured by the City.

In implementing the proposed joint project agreement, both the County and City work can be set forth in the same bid package and implemented by a single contractor with each party bearing the costs related to its particular part of the overall work for which a construction contract is entered. The collaborative efforts of the County and City should result in cost savings due to overall decreased mobilization costs, less administrative costs and other costs savings arising from economies of scale.

**JOINT PROJECT AGREEMENT BETWEEN COUNTY OF VOLUSIA AND THE
CITY OF DELAND FOR UTILITY LINE EXTENSION CONCERNING BLUE
LAKE AVENUE EXTENSION CONSTRUCTION**

THIS JOINT PROJECT AGREEMENT (AGREEMENT) is made and entered into by and between the **County of Volusia (COUNTY)**, a political subdivision of the State of Florida, and the **City of DeLand (CITY)**, a municipal corporation of the State of Florida, for the CITY's extension of utility lines within the COUNTY's right-of-way and in collaboration with the COUNTY's road construction work for the Blue Lake Avenue Extension (such collaboration is referred to as **JOINT PROJECT**). Each of the above individually may be referred to as **Party**, and collectively as **Parties**.

WITNESSETH:

WHEREAS, the COUNTY is constructing an extension of Blue Lake Avenue south of Victoria Hills to State Road 472 designated by the COUNTY as Project No. P-5832 which is described hereafter as "COUNTY's Road Work;" and

WHEREAS, the CITY, in a separate agreement with the COUNTY, will be the utility service provider for this service boundary area; and

WHEREAS, in support of expanding to this service boundary area, the CITY desires to extend a 12" water main approximately 1,940 feet south along the Blue Lake Avenue extension including adding several fire hydrants, future connections, valves, and fittings, as well as install one 8" Reclaim Water line crossing under the Blue Lake Avenue extension, all of which is referred to hereafter as the "CITY's Utility Work;" and

WHEREAS, the CITY has prepared, at its expense, design drawings and specifications for the CITY's Utility Work; and

WHEREAS, the CITY desires to have the COUNTY bid the CITY's Utility Work in the COUNTY's bid package; and

WHEREAS, the CITY has furnished the COUNTY with a complete set of design drawings including a bid tabulation sheet consistent with COUNTY standards covering all construction requirements of the CITY's Utility Work; and

WHEREAS, the COUNTY and the CITY have determined that it would be in the best interest of the general public and to the economic advantage of both parties to enter into this AGREEMENT providing for construction of the COUNTY's Road Work and the CITY's Utility Work to be combined into one JOINT PROJECT administered by the COUNTY; and

WHEREAS, the CITY, by this AGREEMENT, agrees to assume all costs incurred for the CITY's Utility Work; and

WHEREAS, the term "costs incurred for the CITY's Utility Work" shall include the

entire amount to be paid by the CITY that is properly attributed to such utility work.

NOW, THEREFORE, in consideration of the mutual covenants, promises, warranties and undertakings of the Parties contained herein and other good and valuable consideration given by each Party to the other, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto stipulate and agree as follows:

A. MUTUAL COOPERATION

The COUNTY and the CITY shall mutually participate in this AGREEMENT and shall work cooperatively to coordinate and accomplish all aspects of both the COUNTY's Road Work and the CITY's Utility Work within the limits of the COUNTY's Road Work as included in the CITY's and the COUNTY's design drawings and specifications. The COUNTY and CITY agree to endeavor to fulfill the responsibilities and complete the work set forth in this AGREEMENT, and any amendment, modification, supplement or change order, which may be approved by the COUNTY and the CITY subsequent to execution of this AGREEMENT, as expeditiously as possible.

B. CITY RESPONSIBILITIES

1. BID DOCUMENTS

At its sole cost and expense, the CITY shall prepare and provide all necessary plans and documents relating to the CITY's Utility Work (referred to hereafter as the "CITY's Utility Plans") for inclusion of the CITY's Utility Work in the bid documents for the COUNTY's Road Work.

Each Party shall be responsible for the accuracy and completeness of its own plans and documents.

2. UTILITY WORK PLANS

All of the CITY's Utility Work on the JOINT PROJECT is to be done according to design drawings as prepared and approved by the CITY. The CITY will be responsible for verifying the accuracy of the information furnished by the CITY to the COUNTY and will also be responsible for any changes in the CITY's design drawings made necessary by errors or omissions in the information as furnished by the CITY. The COUNTY will be responsible for the accuracy of the COUNTY's Road Work information supplied to the CITY for use in the drawings preparation.

3. PLAN COORDINATION

The CITY agrees to coordinate its plans for the CITY's Utility Work with the COUNTY's Road Work plans to avoid conflict or construction delays. The CITY shall work proactively with the COUNTY to eliminate any conflicts that may exist between the CITY's Utility Work and the COUNTY's Road Work. The basis of survey and

other survey information for the CITY's Utility Work shall be consistent with the COUNTY's Road Work plans.

4. CONFLICTS

The Parties expressly agree that the COUNTY's Road Work shall take priority over the CITY's Utility Work. The CITY's Utility Work shall be designed, located or relocated to avoid conflict between CITY's Utility Work and the COUNTY's Road Work. If there are any conflicts between the COUNTY's Road Work and the CITY's Utility Work, the CITY shall be notified and the CITY's Utility Work shall be adjusted or relocated to adequately accommodate the COUNTY's Road Work at the CITY's sole expense.

5. CITY REPRESENTATIVES

At its own expense, the CITY shall provide a knowledgeable representative to respond to any CITY's Utility Work related questions during the advertisement and bidding of the COUNTY'S Road Work. The CITY shall also provide a knowledgeable representative to attend any project meetings prior to and during the performance of the CITY'S Utility Work.

At its own expense, the CITY shall provide for the review and approval of shop drawings and any other submittals relating to the CITY's Utility Work during construction. The review and approval of any shop drawings and submittals shall be performed in a timely manner and shall not delay the COUNTY's Road Work.

At its own expense, the CITY shall provide on-site technicians as needed to observe the construction and assist in the coordination of testing of the CITY's Utility Work. At its own expense, the CITY shall provide for all testing required for the CITY's Utility Work, including but not limited to soil density and compaction testing. Field survey control, if required by the CITY for the CITY's Utility Work, shall be furnished to the CITY by the COUNTY. COUNTY is not responsible for observation of construction or assisting in coordination of testing of the CITY's Utility Work.

During construction, the CITY's on-site technician shall furnish the County Engineer, or other duly appointed designee, with daily progress reports or diary records, approved quantities and amounts for weekly, monthly and final estimates. Any deficiencies noted in construction shall be immediately reported to the County Engineer, or other duly appointed designee, and the COUNTY shall direct the contractor to remedy the deficiency consistent with the CITY's Utility Plans. The CITY's on-site technician shall not communicate directly with the contractor's field representatives, but instead, shall communicate through the County Engineer, or other duly appointed designee.

C. COUNTY'S RESPONSIBILITIES

1. PROJECT SUPERVISION

The COUNTY shall provide overall supervision to assure the JOINT PROJECT is constructed in compliance with all approved drawings and specifications.

2. ROAD WORK PLANS

The COUNTY has provided to the CITY an electronic copy of the COUNTY's Road Work plans at the 90% and 100% design phases.

D. PROJECT PROCESS

1. BID DOCUMENTS

The COUNTY shall be responsible for the assembly of all necessary bid documents for the COUNTY'S Road Work and the CITY's Utility Work. The COUNTY shall be responsible for advertisement, bidding, award and administration of the construction contract for the COUNTY's Road Work and the CITY's Utility Work. The bid documents shall provide that the CITY's Utility Work is a separate additive alternative which may or may not be awarded along with the COUNTY's Road Work. The plans, specifications, bid tabulation, and bid documents for the CITY's Utility Work shall be included in the COUNTY'S Road Work and separately labeled as "CITY's Utility Work" for clarification.

2. NOTIFICATION & AWARD

The COUNTY shall receive, open and evaluate all bids and award the contract to the contractor consistent with the public construction works bidding process in accordance with applicable law. The COUNTY shall provide the CITY with a copy of the selected contractor's bid package which shall include the amount of the CITY's Utility Work listed separately. The cost of the selection process shall be at the sole expense of the COUNTY. The COUNTY will not award the JOINT PROJECT without prior review and acceptance by the CITY of the CITY's Utility Work portions of the bid and issuance of a CITY purchase order. The CITY shall notify the COUNTY of its acceptance of the COUNTY's selection, in writing, within ten (10) days of receipt of notice. The CITY reserves the right to withdraw from this AGREEMENT and perform the CITY's Utility Work on its own at its own expense consistent with the utility requirements in public rights-of-way and shall not affect the County's Road Work construction schedule.

3. NO OBLIGATION

The COUNTY is under no obligation to accept any of the bids received at the bid opening for the combined COUNTY's Road Work and CITY's Utility Work, and may, at its option, without incurring any obligation to the CITY, reject all bids or any part of any bid received at bid opening.

4. CHANGE ORDERS

If any adjustments, relocations, repair and incidentals are required to be made to the CITY's Utility Work resulting from this JOINT PROJECT, not anticipated in this AGREEMENT, the CITY shall bear the sole responsibility and expense of the utility-related change order. COUNTY shall have the contractor provide the change order in written form with a description of the changed work and a sketch in a form acceptable to the COUNTY. The COUNTY shall review the change order documents only for their effect on COUNTY's Road Work and the overall cost of the contract. Once the City has reviewed, an authorized CITY representative shall sign the change order documents and return to the COUNTY. All such work shall be coordinated with the construction of the COUNTY's Road Work and in a manner that will not cause inordinate delay or expense to the road contractor.

5. CONSTRUCTION

All services and work under the construction contract shall be performed to the satisfaction of the County Engineer. All questions, difficulties and disputes of any nature which may arise under the construction contract for CITY'S Utility Work, including but not limited to the prosecution and fulfillment of the services thereunder and the character, quality, amount and value thereof, shall be decided by the County Engineer after consultation with the CITY. The decision of the County Engineer upon all such questions, difficulties and disputes thereunder shall be final.

6. OWNERSHIP

Upon completion and acceptance of the work and receipt by the CITY of as-built drawings of the completed work, the CITY shall own, control, maintain and be responsible for all the CITY's Utility Work involved, according to the terms of the standard use permit required by the COUNTY's land development code. The CITY agrees that it shall:

- (a) Maintain and keep in good repair, or cause to be maintained and kept in good repair, all such facilities or utilities within the right-of-way of the COUNTY road; and
- (b) Any Utility work following completion of this project shall be required to go through and comply with the COUNTY's right-of-way use permit process; and
- (c) Conform with all other regulations of the COUNTY pertaining to occupancy of public rights-of-way.

E. CITY FUNDING

The CITY warrants that sufficient funds to cover the CITY's Utility Work will be encumbered in an account upon the CITY's election to use the contractor selected by the COUNTY, and said funds shall be available exclusively for prompt payment of the costs of the CITY's Utility Work, including any administrative or contingency costs identified by the COUNTY. The CITY shall prepare and deliver a purchase order to

the COUNTY for the amount of the CITY's Utility Work prior to the award of a contract for the JOINT PROJECT. The COUNTY will prepare and deliver an invoice for the cost of the CITY's Utility Work to the CITY monthly as the CITY's work is completed and the contractor submits pay requests. The CITY will be provided the pay requests for review and written acceptance as to the percentage or quantities, as applicable, of work completed prior to processing for payment. The CITY shall pay all received invoices to the COUNTY within twenty (20) business days following receipt of the invoice. All invoices shall be sent to: City of DeLand, Whitney Zittle, 1102 South Garfield Avenue, DeLand, Florida 32724.

Upon final completion of all construction work, the COUNTY shall within one hundred eighty (180) days, furnish the CITY with two (2) copies of its final and complete billing of all remaining costs incurred in connection with the CITY's Utility Work performed hereunder, such statement to follow as closely as possible the order of the items contained in the job estimate. The final billing shall include the location where the records and accounts bill can be audited. All cost and accounts shall be subject to audit by a representative of the CITY. Upon receipt of the final invoice, the CITY agrees to reimburse the COUNTY, within twenty (20) business days the amount of such cost.

F. INDEMNIFICATION

Each Party shall be responsible for its sole negligence, breach of contract, or breach of this AGREEMENT, subject to the limitations in § 768.28, Florida Statutes.

G. MISCELLANEOUS

1. ENTIRE AGREEMENT

This AGREEMENT constitutes the entire agreement between the Parties regarding the COUNTY's Road Work and CITY's Utility Work as set forth herein. All negotiations, proposals and draft agreements, oral or written (or portions thereof) or understandings of any kind between the parties relating to the subject matter hereof are hereby superseded by this AGREEMENT to the extent the provisions of this AGREEMENT relate to such prior agreements or understandings or portions thereof.

2. AMENDMENT

This AGREEMENT may only be amended, modified or supplemented in writing which must be duly approved and executed by the COUNTY and CITY.

3. SEVERABILITY

In the event that any provision of this AGREEMENT shall for any reason be determined invalid, illegal or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements to this AGREEMENT or such other appropriate actions as shall implement and give

effect to the intentions of the Parties reflected herein. All other provisions of this AGREEMENT, as amended, modified, supplemented or otherwise affected by such action, shall remain in full force and effect.

4. LAW/VENUE

The applicable laws of the State of Florida shall govern the validity, interpretation, construction and performance of this AGREEMENT. Venue for any suit involving this AGREEMENT shall be Volusia County, Florida. In the event a Party deems it necessary to take legal action to enforce any provision of this AGREEMENT, each Party shall bear its own attorneys' fees and costs.

5. NOTICES

Any notice, statement, demand or other communication required or permitted to be delivered, served or given by either Party to the other shall be deemed delivered, served or given, if mailed in any general or branch United States Post Office (USPS) enclosed in a registered or certified envelope addressed to the respective Party, as follows:

TO COUNTY: VOLUSIA COUNTY
ATTN: GEORGE RECKTENWALD
COUNTY MANAGER
123 WEST INDIANA AVENUE, RM 301
DELAND, FL 32720

COPY TO: VOLUSIA COUNTY
TADD KASBEER
COUNTY ENGINEER
123 WEST INDIANA AVENUE
DELAND, FL 32720

TO CITY: CITY OF DELAND
ATTN: MICHAEL PLEUS
CITY MANAGER
120 SOUTH FLORIDA AVE
DELAND, FL 32720

COPY TO: CITY OF DELAND
ATTN: RAY BAHRAMI, P.E.
CITY ENGINEER
1102 SOUTH GARFIELD AVENUE
DELAND, FL 32724

6. COUNTY & CITY FUNDING

The COUNTY's responsibilities under this AGREEMENT are contingent upon the appropriation of funds required for the COUNTY's Road Work. The CITY's

responsibilities under this AGREEMENT are contingent upon the appropriation of funds required for the CITY's Utility Work.

7. EFFECTIVE DATE/TERM

This AGREEMENT shall be effective on the date of execution by the COUNTY and shall continue in full force and effect until final reconciliation and payment, in full by the CITY under this AGREEMENT, is received by the COUNTY. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL RESPONSIBILITIES UNDER THIS AGREEMENT.

8. FORCE MAJEURE

Neither the COUNTY nor the CITY shall be liable to the other for any failure to perform under this AGREEMENT to the extent such performance is prevented by an act of God, war, riot, natural catastrophe, or other event beyond the control of the nonperforming Party and which could not have been avoided or overcome by the exercise of due diligence; providing that the Party claiming the excuse from performance has (a) promptly notified the other Party of the occurrence of the event and its estimated duration; (b) promptly remedied or mitigated the effect of the event to the extent possible; and (c) resumed performance as soon as possible.

9. ASSIGNMENT

No assignment, delegation, transfer or novation of this AGREEMENT or any part thereof shall be made unless approved in writing by the Parties.

10. HEADINGS

All section headings contained herein are included for convenience only and shall not affect in any manner the construction or interpretation of the AGREEMENT.

11. SUCCESSORS AND ASSIGNS

This AGREEMENT shall be binding upon and inure to the benefit of the respective successors, assigns, administrators and managers of the COUNTY and the CITY.

12. EXECUTION OF DOCUMENTS; RECORDING

This AGREEMENT shall be executed in two (2) duplicate originals, any of which shall be regarded for all purposes as an original and all of which shall constitute one and the same instrument. The COUNTY shall retain one (1) fully executed original and the CITY shall retain one (1) fully executed original. After execution by the Parties, this AGREEMENT shall be recorded in the Public Records of Volusia County by the COUNTY.

IN WITNESS WHEREOF, the Parties hereto have made and executed this AGREEMENT as of the latest day and year written below.

CITY OF DELAND

By: _____
Robert F. Apgar, Mayor - Commissioner

DATE: _____

ATTEST:

By: _____
Julie A. Hennessy, City Clerk - Auditor

APPROVED AS TO FORM AND LEGALITY:

By: _____
Darren J. Elkind, City Attorney

ATTEST:

COUNTY OF VOLUSIA, FLORIDA

GEORGE RECKTENWALD
COUNTY MANAGER

BY: _____
JEFFREY S. BROWER
COUNTY CHAIR

DATE: _____

APPROVED AS TO FORM AND LEGALITY:

By: _____
Thomas R. Brown, III, Sr. Asst. County Atty

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Interlocal Maintenance Agreement between the City of DeLand and Volusia County - Greenway Trail Part A.

DEPARTMENT: Engineering

PREPARED BY: Ray Bahrami, City Engineer

ATTACHMENTS: Interlocal Maintenance Agreement

APPROVED BY: Michael Pleus, City Manager, November 3, 2022

SUMMARY/HIGHLIGHT:

The approval of the interlocal agreement between the County of Volusia and the City of DeLand for maintenance of Greenway Trail in County Right-of-Way once this project is constructed. Greenway Trail Part A is on Garfield Avenue which runs from the terminus of a previously installed trail segment at Minnesota Avenue to International Speedway Boulevard.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

Sustainability

SUSTAINABILITY:

N/A

FISCAL IMPACT:

City of DeLand will be responsible for trail maintenance once constructed

RECOMMENDATION:

City staff recommends that the City Commission approve the proposed interlocal maintenance agreement between Volusia County and the City for Greenway Trail project.

BACKGROUND/DISCUSSION:

At their August 2, 2022 meeting, Volusia County Council approved \$1.5M ECHO Grant for this project. Volusia County Use Permit has already been issued and this project is exempt from obtaining St. John's River Water Management District (SJRWMD) permit. Per discussion with Volusia County Engineering Staff, this interlocal maintenance agreement between Volusia County and the City is required to be executed prior to construction. The City will be responsible for the maintenance of the County right-of-way from back of curb on the west side of Garfield Avenue to the western right-of-way limits consistent with Exhibit A, right-of-way requirements.

**INTERLOCAL AGREEMENT (BETWEEN THE COUNTY OF VOLUSIA AND THE CITY OF
DELAND FOR MAINTENANCE OF A CITY BIKE TRAIL IN COUNTY RIGHT-OF-WAY)**

THIS INTERLOCAL AGREEMENT (hereinafter referred to as the “Agreement”) is made and entered into on this ____ day of _____, 2022, by and between the COUNTY OF VOLUSIA, a political subdivision of the State of Florida, whose address is Thomas C. Kelly Administration Center, 123 West Indiana Avenue, DeLand, Florida 32720 (hereinafter referred to as the “County”), and the CITY OF DELAND, a municipal corporation of the State of Florida, whose address is 120 South Florida Avenue DeLand, Florida 32720 (hereinafter referred to as the “City” or the “Permittee”), each one constituting a public agency as defined in Part I of Chapter 163, *Florida Statutes* (hereinafter referred to individually as “Party” and collectively as the “Parties”).

WITNESSETH:

WHEREAS, the County owns, controls and maintains right-of-way and has permitted the City, as Permittee, pursuant to permit #2015-P-USE-0471 (“Permit”), to use said right-of-way as a bike path or trail on Garfield Avenue from Minnesota Avenue to International Speedway Boulevard pursuant to the Permit and plan documents (“Project”); and

WHEREAS, the Parties to this Agreement, in addition to other controlling law to include, but not be limited to the County Code of Ordinances, are authorized pursuant to the *Florida Interlocal Cooperation Act of 1969*, as set forth in Section 163.01, *et. seq.*, *Florida Statutes*, to make efficient use of their respective powers, resources, authority, and capabilities; and

WHEREAS, the Parties desire to cooperate in the provision of multi-modal transportation facilities to County and City residents; and

WHEREAS, this Agreement serves as the maintenance agreement for the City to maintain the bike trail as required by the Use Permit.

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings expressed here, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Section 1. Recitals. The above recitals are true and correct and incorporated herein by this reference.

Section 2. City Responsibilities. The City shall be responsible for the maintenance of the County right of way from the back of curb on the west side of Garfield Avenue to the western right of way limits consistent with Exhibit A, right of way maintenance requirements. The foregoing or any other provision of this Agreement notwithstanding, the City shall not be responsible for the maintenance of any improvements which were not installed for the Project. If, at any time while the terms of this agreement are in effect, it shall come to the attention of the County, that the Permittee’s responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this agreement, the County Manager or designee, may, at his/her sole discretion, issue a written notice to the City to place the City on notice thereof. Thereafter, the City shall have a period of (30) thirty calendar days within which to correct the cited deficiency or deficiencies. If said deficiency or deficiencies are not corrected within this time period the County may at its option, proceed as follows:

(A). Maintain the status of the condition declared deficient using either the County or a Contractor's material, equipment and personnel. The actual cost for such work will be the responsibility of the Permittee and the County will send an invoice for actual cost to the Permittee, or

(B). Terminate this agreement in accordance with Section 7 of this Agreement.

Section 3. Indemnity. The City agrees and acknowledges that no part of this Agreement shall cause additional costs to the County. The City, as Permittee, shall to the extent and limits authorized by controlling law, indemnify, hold harmless and defend the County, from and against, all liability and expense including reasonable attorney's fees and costs, in conjunction with any and all claims whatsoever for personal injuries or property damage, including loss of use caused by the negligent or deliberate acts or omissions of the City or its agents, officers or employees arising in any way out of or from the negligent performance or failure to perform, or the intentional misconduct of the City, its assigns, contractors, employees or agents in connection with any of the obligations of City under this Agreement and the Use Permit issued herein. The Parties expressly retain all rights, benefits and immunities of sovereign immunity that are presently enjoyed under the Constitution and statutes of the State of Florida, and particularly with respect to Chapter 768, *Florida Statutes*. Notwithstanding anything set forth in this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the County or the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of the County of the City for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including, but not limited to, a claim sounding in tort, equity or contract. The Parties shall in no way be liable to any third party for any costs, expenses, losses, damages, or liabilities incurred by the Permittee or any third party in its use of the County's right-of-way. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against the County or City which would otherwise be barred under the doctrine of sovereign immunity or otherwise by operation of law

Section 4. Non-Waiver. No failure of either party hereto to exercise any right hereunder or to insist upon strict compliance with any obligations specified herein, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

Section 5. Entire Agreement. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements oral or otherwise, between the Parties not embodied herein, shall be of any force or effect. Any amendment of this Agreement shall not be binding upon the Parties to this Agreement unless such amendment is in writing and executed by the Parties to this Agreement.

Section 6. Successors. This Agreement and the provisions hereof shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns, including subsequent owners of the property subject to the Use Permit issued under and pursuant to this Agreement.

Section 7. Conflict Resolution/Breach of Agreement. If the Parties to this Agreement fail to resolve any conflicts related to issues covered in this Agreement, such dispute shall be resolved in accordance with governmental conflict resolution procedures specified in the *Florida Governmental Conflict Resolution Act*, Section 164.101, *et. seq.*, *Florida Statutes*. All

disputes shall be governed by the laws of Florida without regards to any conflicts of law provisions and venue of any dispute shall be solely in Volusia County. In the event of any litigation or dispute between the Parties arising out of this Agreement, each Party will bear its own attorneys' fees and costs. In the event of a material breach of this Agreement, the non-breaching party shall provide written notice of a breach to the other party. If the other party does not remedy the breach within thirty (30) days after receipt of the written notice, or such additional time as may be reasonably necessary and agreed upon by both Parties to remedy such breach, the non-breaching party may then terminate this Agreement by providing at least thirty (30) days notice in writing to the other party.

Section 8. Counterparts. This Agreement may be executed in several counterparts, each of which shall be construed to be an original hereof.

Section 9. Notices. Any notice by either party hereto shall be in writing and shall be sent by United States Registered or Certified Mail, postage prepaid, or by a nationally or regionally recognized overnight delivery service that maintains records of delivery (e.g., Federal Express), addressed to the party being notified at the address given below or at any other address which said party may from time-to-time hereafter designate to the other in writing:

TO THE COUNTY:

Volusia County
George Recktenwald
County Manager
123 W. Indiana Avenue
DeLand, Florida 32720

With a copy to:

Volusia County
Attn: Tadd Kasbeer
County Engineer
123 W. Indiana Avenue
DeLand, Florida 32720

TO THE CITY:

Michael P. Pleus, ICMA-CM
City Manager
City Hall
120 South Florida Avenue
DeLand, Florida 32720

With a copy to:

Ray Underwood
Public Works Director
City Hall
120 South Florida Avenue
DeLand, Florida 32720

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the dates as shown below.

SIGNATURE BLOCKS FOLLOW:

ATTEST:

COUNTY OF VOLUSIA

George Recktenwald
County Manager
Dated: _____

Jeffrey S. Brower
County Chair

APPROVED AS TO FORM AND LEGALITY:

Thomas R. Brown, III
Sr, Asst. County Attorney

CITY OF DELAND, FLORIDA

Robert F. Apgar
Mayor - Commissioner
Dated: _____

ATTEST:

Julie A. Hennessy, MMC
City Clerk - Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind, Esquire
City Attorney

Exhibit A – Right of Way Maintenance Requirements

1. Maintenance responsibility of the CITY shall, as applicable, include, but not be limited to: vegetation management, ornamental landscaping, repair of slopes/erosion, removal of graffiti, gravity walls, signing, pavement markings, pedestrian/bicycle signals, lighting, benches, litter receptacles, aesthetic features, and stormwater facilities installed for the Project. The CITY shall maintain pavement surfaces free from residue accumulation, algae, vegetation, and other slip or trip hazards. The CITY shall trim landscaping, provide litter pick-up, mow, blow off debris, and edge to provide weed control. The CITY shall ensure the safety of the Public by repairing slope erosion and maintaining signs, sign poles, striping, traffic markings, detectable warning surfaces, crosswalks, walls, railings, barriers, guardrail and any other safety features in accordance with COUNTY standards. Repairs to any structural or safety feature shall be in kind and to COUNTY standards. The CITY shall maintain paint on railings, sign poles, structures, etc. The CITY shall maintain all landscaping to COUNTY standards or higher and all irrigation systems in good operational condition. At its sole cost and expense, the CITY shall maintain and repair the right of way in a good and workmanlike manner and with reasonable care.
2. The CITY shall pay utility bills for lighting, signals, and irrigation associated with the Project.
3. The COUNTY may require the CITY to remove the bike trail within the COUNTY right of way in whole or in part and restore the property to the condition that existed immediately prior to the effective date of this Agreement if the COUNTY determines: (a) the improvements are not maintained in accordance with this Agreement; or (b) the CITY breaches a material provision (as determined by the COUNTY) of this Agreement. Removal and restoration shall be completed by the CITY within one-hundred twenty (120) days of the COUNTY's notice, or such time as the COUNTY and the CITY mutually agree in writing. Removal and restoration shall be completed by the CITY in accordance with COUNTY standards. Should the CITY fail to complete the removal and restoration work, the COUNTY may complete the removal and restoration at the CITY's sole cost and expense and send an invoice to the CITY, equal to the cost incurred by the COUNTY for such removal and restoration.

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Cresswind Residential Subdivision Utility Service Agreement.

DEPARTMENT: Utilities

PREPARED BY: Jim Ailes, Deputy Public Serv. Director/Utilities Director

ATTACHMENTS: Utility Service Agreement

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Approval of a utility service agreement relating to the Cresswind residential subdivision development is requested.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The proposed utility agreement ensures that the City will establish a normative customer relationship with the developer and resulting residents of the Cresswind residential subdivision development, that normative City terms and conditions will be in place in a binding agreement and that the City's rules and regulations for potable water, domestic sewer and reuse irrigation services will be applicable. The City will be granted the exclusive right to provide utility services to the property being developed.

RECOMMENDATION:

It is recommended that the City Commission approve the utility service agreement relating to the Cresswind residential subdivision development.

BACKGROUND/DISCUSSION:

The real property which is the subject of the utility service agreement relating to the Cresswind residential subdivision development totals about 318.4 acres of land located east of Lake Winnemissett, south of Daytona Park Estates and north of the old alignment of East State Road 44. The property is assigned Parcel Identification Numbers 7013-05-00-0010, 7118-00-00-0110, 7118-00-00-0070 and 7118-00-00-0090 by the Volusia County Property Appraiser. The developer is KH CW DeLand LLC, a Florida limited liability company located in Delray Beach, whose manager is The Kolter Group LLC, also a Florida limited liability company of Delray Beach, whose managers are Howard Erbstein, William Johnson, Robert Julien and Devin Radkay, who are all from Delray Beach.

The property is undergoing subdivision review by the City to authorize the construction of the Cresswind

residential development subject to the terms and conditions of the Cresswind DeLand Planned Development Agreement adopted by Ordinance Number 2020-19 as enacted by the City Commission.

In addition to the proposed utility agreement ensuring that the City will have normative customer relationship with the developer of the Cresswind residential subdivision development and the ultimate residents of the homes when constructed in accordance with normative terms and conditions with the City's rules and regulations for potable water, domestic sewer and reuse irrigation services applying to the services provided; the utility service agreement provides for approval of technical matters pertaining to the installation of utility facilities. Improvements to the utility system which must be constructed by the developer include improvements both on-site and off-site. The improvements include an array of equipment required for service connection and distribution. All connections to City facilities will be made at the developer's expense all in accordance with the plans and specifications approved by the City.

Although most of the utility service agreement is normative and similar or identical to most City utility service agreements, in this case the developer was permitted to commence construction of the first phase of the development without constructing the extension of a reclaimed water main or mains from their existing offsite location to the project site. However, the agreement provides that off-site reclaimed mains must be extended by the developer to ensure that reclaimed water is available for the development in conjunction with the next phase of development.

**UTILITY SERVICE AGREEMENT
FOR
CRESSWIND DELAND**

THIS AGREEMENT is entered into this ____ day of _____, 2022, between the City of DeLand (City) and **KH ACQUISITIONS LLC**. (Developer) regarding utility service for the **CRESSWIND DeLand** project. In consideration of the mutual covenants and conditions in this Agreement, and subject to any necessary approval by any other governmental agency having jurisdiction, the parties agree as follows:

Section 1. City to furnish service. Upon the terms and conditions in this Agreement, and in accordance with the City's rules and regulations, the City shall provide and shall have the exclusive right to furnish potable water, domestic sewer and reuse irrigation services to the real property located at approximately 425' East of the intersection of Lake Winnemissett Dr and E New York Ave in DeLand, FL and described as:

TAX PARCEL NUMBERS

701305000010

LOTS 1 TO 15 INC & 19 TO 22 INC & N 1/4 OF W 264 FT OF LOT 1, 8 & S 1/4 OF W 264 OF LOT 18 & E 1066 FT OF LOT 18 ASSORS WINNEMISSETT MB 15 PG 120 & S 1/2 OF SE 1/4 N OF OLD SR 44 EXC

711800000110

18 17 31 W 1/2 OF NW 1/4 EXC S 1/8 PER OR 2380 PG 0173 PER OR 6712 PG 4299 PER OR 6794 PG 4417

711800000070

18 17 31 N 1/8 OF NW 1/4 OF SW 1/4 & S 1/4 OF SW 1/4 OF NW 1/4 PER OR 2380 PG 0173 PER OR 6712 PG 4299 PER OR 6794 PG 4417

711800000090

18 17 31 W 20 ACRES OF S 7/8 OF NW 1/4 OF SW 1/4 EXC PART IN HWY PER OR 2380 PG 0173 PER OR 6712 PG 4299 PER OR 6794 PG 4417

70135000170

LOTS 16 17 & 29 TO 31 INC & S 1/4 OF LOT 28 EXC W 1227 FT OF LOTS 16 17 29 30 & 31 & OF S 1/4 OF LOT 28 LYING N OF A LINE 2326.37 FT S OF N/L OF SEC 13 17 30 RB 173 PG 566 PER OR 2380 PG 0173 PER OR 6712 PG 4299 PER OR 6794 PG 4417

701305000160

W 1227 FT OF LOTS 16 17 29 30 & 31 & OF S 1/4 OF LOT 28 ASSESSORS WINNEMISSETT LYING N OF A LINE 2326.37 FT S OF N/L OF SEC 13 17 30 RB 173 PG 566 PER OR 2380 PG 0173 PER OR 6712 PG 4299 PER OR 6794 PG 4417

Section 2. Service conditioned on construction and acceptance of systems. No water, wastewater or reuse service shall be provided to any part of the property, and no connections to such systems shall be allowed, until the Developer has installed system facilities and

improvements in accordance with approved plans and specifications and the City has accepted the conveyance of the systems in writing. The Developer shall apply in writing to the City Engineer for acceptance of the systems. Upon acceptance of the systems, all construction guarantees in favor of the City shall be released.

Section 3. Installation of improvements. The Developer shall install, at its own initial cost and expense (including engineering costs), all lines, pipes, manholes, lift stations, generators, RTU, machinery and other facilities which may be required on and off Developer's property to provide the buildings and occupants with water, wastewater or reuse service and to connect the property to existing City facilities and systems. Upon completion, all off-site and onsite utility improvements shall be conveyed and dedicated to the City. The improvements to be constructed by the Developer of the Developer's property (off-site improvements) shall include:

- One 12"x 10" potable stainless-steel tapping saddle and valve, 10" Gate Valves, and approximately 20 LF +/- of 10" C900 PVC or HDPE piping.
- One 12"x 12" potable stainless-steel tapping saddle and valve, 12" Gate Valve, and approximately 20 LF +/- of 12" C900 PVC or HDPE piping.
- One 8"x 6" force main stainless-steel tapping saddle, 6" Gate Valve, and approximately 30 LF +/- of 6" C900 PVC or HDPE piping.
- One 12"x 6" tee on reclaim main, two 6" Gate Valves, and approximately 40 LF +/- of 6" C900 PVC or HDPE piping and master meter with backflow check valve.

All connections to City facilities shall be made at Developer's expense. All water meters 2" and smaller will be installed by the City at the Developer's expense. All onsite improvements to be constructed by developer and dedicated to the City shall include all fire hydrants, all potable mains and services, and all sewer gravity lines, and two lift stations. Any other installations required in accordance with the plans and specifications for the subject development or which are otherwise required in accordance with sound utility engineering practices.

The City will own and be responsible for the reclaim system only up to the point of and including the reclaimed water master meter. All Reclaimed water mains and services beyond the subdivision master meter connection, onsite reclaimed water pump station and private irrigation wells, will remain privately owned, operated and maintained in perpetuity by the Developer or its assigns.

The Developer was permitted to commence construction of the first phase of the development without constructing the extension of a reclaimed water main or mains from their existing offsite location to the project site. The off-site reclaimed mains must be extended by the Developer such that reclaimed water is available for the development in conjunction with the next (second) phase of development.

Section 4. Approval of design and plans. The design and construction of all facilities to be transferred to and owned and operated by the City shall be subject to prior approval by the City Engineer. The Developer's engineer shall incorporate all applicable standards and specifications of the City into the Developer's engineering design, plans and specifications. The City shall provide assistance to the Developer's engineers as to design and construction requirements and must approve all construction plans and specifications in writing prior to any construction being commenced. The Developer shall obtain all necessary state, county and local permits required for construction, acceptance and operation of the improvements.

Section 5. Access to construction; approval of work and materials. The City may inspect the construction to ensure compliance with the approved plans and specifications and shall retain the power of final approval of work and materials.

Section 6. Testing during and after construction. The Developer's engineer shall properly supervise construction and shall certify to the City Engineer that the systems are installed in accordance with the approved design plans and specifications. The Developer shall conduct at its own expense whatever tests are deemed by the City Engineer to be necessary and reasonable to ensure that the systems are being constructed in accordance with the approved engineering plans and specifications.

Section 7. Conveyance of easements and improvements. The Developer shall at its expense grant to the City adequate transferable easements for water, sewer and reuse lines, for access to lift stations and water stations and related appurtenances as may be deemed necessary by the City.

Section 8. Evidence of conveyance of facilities. By this Agreement Developer hereby transfers to the City the title to the water, wastewater and reuse systems, facilities and improvements to be installed pursuant to this Agreement, effective without further action upon the completion and acceptance by the City of the installation of those systems. As further evidence of this transfer of title, the Developer shall provide to the City a copy of the recorded plat, if any; a bill of sale for the facilities; written easements; deeds to the land on which lift stations, water stations or similar facilities are located; and other evidences of conveyance required by the City.

Section 9. Additional documents to be provided before acceptance of facilities. In addition to the documents of title listed in the previous paragraph, the Developer shall provide to the City the following documents prior to acceptance of the facilities: As-built drawings of utility improvements, (one hard copy signed and sealed, one PDF and one AUTOCAD delivered on a USB drive) furnished one week prior to final inspection; an accounting of the actual costs (schedule of values) for on-site and off-site construction; letters of acceptance from the appropriate regulatory agency for the systems; certification by the design engineer that the system was constructed as designed; and right-of-way use permits and other permits and licenses obtained from applicable government agencies.

Section 10. Uninterrupted supply not guaranteed. The City does not guarantee an uninterrupted supply of water or reuse at any particular pressure, nor does it assume any duty or obligation to furnish water for extinguishing fires. The City reserves the right to shut off the water in its mains temporarily for necessary purposes. The City shall not be responsible for any damage caused by low pressure, interruption of service or variations in water quality or content.

Section 11. Connections subject to rates and fees. All connections to the water, wastewater and reuse systems shall be subject to the continuing operating rules and regulations of the City including, without limitation, the periodic payment of water, wastewater and reuse charges and fees as provided in the City's rate schedule, and payment of all deposits, meter charges and other fees, rates and charges, including development fees. The rates charged by the City for water, sewer, or reuse service shall be in accordance with its rate schedule, which shall be subject to change from time to time.

Section 12. Reimbursement for oversizing of off-site improvements. The Developer shall be reimbursed by the City in an amount related to the reasonable cost of installing off-site improvements of a size required by the City, but larger than those needed to serve a particular development.

Section 13. Surcharge for non-domestic waste. The terms wastewater or sanitary sewage used in this agreement are meant to include only human waste, including liquids and solid matter carried from plumbing fixtures normally carried off by drains and sewers, and, except where specifically excluded, bath and toilet wastes, laundry wastes, kitchen wastes and other similar wastes. This service agreement, and any charges contained in this agreement, is based on normal domestic sewage, defined herein as containing not more than two hundred (200) parts per million biochemical oxygen demand or two hundred (200) parts per million suspended solids. Whenever water which contains more than these amounts is to be admitted to the sewers the City and all other pollution control agencies must specifically agree to the connection and an additional charge shall be imposed in accordance with City regulations.

Section 14. Developer to obtain permits. The Developer shall obtain all governmental approvals, licenses and permits necessary for the design, routing, construction, connection and use of the water, wastewater and reuse systems to be installed under this agreement. The City shall render assistance to the Developer in obtaining these approvals, licenses and permits.

Section 15. Service of other properties. The City reserves the right to service other properties through the facilities conveyed by the Developer, and nothing in this Agreement shall be deemed to prohibit or prevent the City from extending its water, wastewater or reuse facilities to any other area.

Section 16. Default by Developer. The Developer's failure to carry out any provision in this agreement shall relieve the City from its obligation to provide water, wastewater or reuse service to the property.

Section 17. Covenant to support annexation. This section not used

Section 18. Entire Agreement; amendment. It is expressly agreed and understood that this is the entire Agreement between the Developer and the City, and that there are no other written or verbal agreements applicable to the subject of this Agreement between the Developer and the City. This Agreement may be amended and modified from time to time by written agreement of the parties.

Section 19. Developer required Reclaim Water Main Extension. As per the PD Agreement with the City, the Developer is required at their expense to construct and extend the reclaim line from just east of the Lakewood Park crossroad to the CRESSWIND Development. It is understood that this extension of the reclaim line must be installed, tested, and operational prior to Phase #2 approval of construction starting.

*** Signatures on following page ***

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

Signed, sealed and delivered in the presence of:

KH CW DELAND LLC, a Florida limited liability company

Witness 1

By: The Kolter Group, LLC, a Florida limited liability company

Its: Manager

Print Name of Witness 1

By: _____

William Johnson, Manager

Witness 2

Date: _____

Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ___ day of ____ 2022, by William Johnson, as Manager of The Kolter Group, LLC, on behalf of KH CW DELAND LLC,. He/she is [] personally known to me or [] produced as identification and did not take an oath.

Notary Public _____

Printed Name: _____

Commission No. _____

Signed, sealed and delivered in the presence of:

THE CITY OF DELAND,
FLORIDA, a Florida municipal
corporation

Witness 1

By: _____

Print Name of Witness 1

Robert F. Apgar, Mayor

Attest: _____

Witness 2

Julie Hennessy, City Clerk

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or
☐ online notarization, this ____ day of _____, 2022 by Robert F. Apgar and Julie
Hennessy, Mayor and City Clerk, respectively, of The City of DeLand, Florida, a chartered
municipal corporation, on behalf of the City. They are personally known to me and did not
take an oath.

Notary Public

Printed Name:

Commission No. _____

Approved as to form by:

By: _____
Darren Elkind, City Attorney

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Cresswind Residential Subdivision Development Proportionate Share Agreement.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Cresswind Proportionate Fair Share Agreement

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Approval of a Proportionate Fair Share Agreement relating to the Cresswind residential subdivision development is requested.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

FISCAL IMPACT:

The proportionate share payment set forth in the proposed Proportionate Fair Share Agreement is \$740,156.07 and relates to the needed transportation facilities resulting from the Cresswind residential subdivision development and ensures that the public will not pay for transportation impacts resulting from the development.

RECOMMENDATION:

It is recommended that the City Commission approve the Proportionate Fair Share Agreement relating to the Cresswind residential subdivision development.

BACKGROUND/DISCUSSION:

The real property which is the subject of the proportionate share agreement relating to the Cresswind residential subdivision development totals about 318.4 acres of land located east of Lake Winnemissett, south of Daytona Park Estates and north of the old alignment of East State Road 44. The property is assigned Parcel Identification Numbers 7013-05-00-0010, 7118-00-00-0110, 7118-00-00-0070 and 7118-00-00-0090 by the Volusia County Property Appraiser. The developer is KH CW DeLand LLC, a Florida limited liability company located in Delray Beach, whose manager is The Kolter Group LLC, also a Florida limited liability company of Delray Beach, whose managers are Howard Erbstein, William Johnson, Robert Julien and Devin Radkay, who are all from Delray Beach.

The property is undergoing subdivision review by the City to authorize the construction of the Cresswind

residential development subject to the terms and conditions of the Cresswind DeLand Planned Development Agreement adopted by Ordinance Number 2020-19 as enacted by the City Commission. A traffic impact analysis ("TIA"), dated October 2019, of the existing road network in the vicinity of the project was performed by the developer's traffic consultant in order to determine the availability of roadway capacity to serve the project. The results of the TIA indicate that there is insufficient roadway capacity in the vicinity of the property without the anticipated additional traffic impacts of the project being adequately addressed as set forth in the agreement. The agreement is based upon the provisions of Section 163.3180(5)(h), Florida Statutes, which authorizes payment of proportionate fair share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances, but specifically exempts backlogged failures from the requirement for proportionate fair share payments. The TIA, identifies certain traffic impacts in the area of the development as an "Impact Area") and the proportionate costs for said site related improvements are set forth in the agreement.

Luke Transportation Engineering Consultants, in a memorandum dated October, 2019, calculated a proportionate fair share for the total buildout of the project offsite traffic improvements based upon a maximum buildout of 599 dwelling units. Those impacts are addressed in the agreement which is proposed for approval by the City Commission. Table 1 of Exhibit B to the agreement details the proportionate share percentage calculations for Phase 1 of the development (first 155 lots) while Table 2 details the proportionate share percentage calculations for Phase 2 of the development (total of 267 lots). Phase 3 impacts (total of 378 lots) are addressed in Table 3 and Phase 4 impacts (total of 493 lots) are addressed in Table 4 with Table 5 addressing the buildout total of 599 lots.

The proportionate share costs for various development scenarios are addressed in the tables. In essence, the sum of \$740,156.07 is the calculated proportionate share amount to be paid by the development, which amount shall be paid to the County prior to issuance of final plat approval by the City for the first phase of development by a payment in the amount of \$263,584.54 together with a letter of credit in the amount of \$476,571.53 which can be drawn down as needed for road projects. Although not contractually required, it is intended that this money will be used for the Beresford Avenue extension project which will serve to relieve congestion on State Road 44.

**CRESSWIND
PROPORTIONATE FAIR SHARE AGREEMENT**

THIS PROPORTIONATE FAIR SHARE AGREEMENT (the "Agreement") is entered into by and between the following entities: **KH CW DELAND LLC**, a Florida limited liability company, ("Developer"), mailing address: 105 Northeast 1st Street, Delray Beach, FL 33444; **the City of DeLand**, a Florida municipal corporation ("City"), mailing address: 120 South Florida Avenue, DeLand, FL 32720; and the **County of Volusia**, a political subdivision of the State of Florida ("County"), mailing address: 123 West Indiana Avenue, DeLand, FL 32720.

WHEREAS, the real property subject to this Agreement is comprised of 318.4± acres of land located east of Lake Winnemissett; south of Daytona Park Estates; and north of the old alignment of E. SR-44 in the City of DeLand, with Parcel Identification Number(s) 7013-05-00-0010; 7118-00-00-0110; 7118-00-00-0070; and 7118-00-00-0090, and as further described in **Exhibit A**, attached hereto and incorporated herein (the "Property"); and

WHEREAS, the Property is undergoing subdivision review by the City to authorize the construction of the Cresswind development on the Property ("Project"); and

WHEREAS, the Project is subject to the terms and conditions of the Cresswind DeLand Planned Development Agreement adopted by Ordinance Number 2020-19 by the City; and

WHEREAS, a traffic impact analysis ("TIA"), dated October 2019, of the existing road network in the vicinity of the Project was performed by Developer's traffic consultant in order to determine the availability of roadway capacity to serve the Project; and

WHEREAS, the results of the TIA indicate that there is insufficient roadway capacity in the vicinity of the Property without the anticipated additional traffic impacts of the Project; and

WHEREAS, Florida Statutes § 163.3180(5)(h) authorizes payment of proportionate fair share mitigation funds as an alternative to demonstrating traffic concurrency in certain circumstances, but specifically exempts backlogged failures from the requirement for proportionate fair share payment; and

WHEREAS, the TIA, identifies certain traffic impacts in the area of the development ("Impact Area") and the proportionate costs for said site related improvements are set forth in this Agreement; and

WHEREAS, Luke Transportation Engineering Consultants, in a written memorandum dated October, 2019, calculated a proportionate fair share for the total

buildout of the Project offsite traffic improvements based upon a maximum buildout of 599 dwelling units;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and with the intent to be legally bound and to bind their successors and assigns, the Developer, County, and City do hereby agree as follows:

1. Recitals. The recitals set forth above are true and correct, form a material part of this Agreement, and are incorporated herein by reference.
2. Roadway Improvements. Developer shall make the following payments to address roadway improvements identified by the City and County as a result of the impacts created by the Project in order to satisfy concurrency requirements consistent with the requirements of Section 33-41 of the City's Land Development Regulations and Section 70 of the County's Land Development Code:

(a) Proportionate Share. For purposes of this Agreement, the amount of \$740,156.07 is referred to herein as "Proportionate Share" and calculated per Exhibit B. The Proportionate Share amount shall be paid to the County prior to issuance of final plat approval by the City for the first phase of development by a payment in the amount of \$263,584.54 together with a letter of credit from a banking institution, in a form acceptable to the County, in the amount of \$476,571.53. The County shall be entitled to draw upon the letter of credit when it needs the money, or any portion thereof, for a road project. Once payment is made, the Developer agrees to waive the right to request a return of the Proportionate Share payment. Nothing contained herein shall be deemed to waive the requirements for plat or site plan approval or an issuance of a concurrency certificate under the City's Land Development Regulations. If Developer does not pay the Proportionate Share within one year of the date of the execution of this Agreement by all parties hereto, then the Proportionate Share shall be revised based on the applicable Florida Department of Transportation published inflationary rate in effect at the time of such payment. Subsequent to receipt of payment by the County of payment of the Proportionate Share, Developer shall be entitled to County thoroughfare road impact fee credits in an amount equal to the Proportionate Share. Impact fee credits shall be issued as detailed in Exhibit C.

- (b) County's Application of Proportionate Share. The parties intend that the County will apply the Proportionate Share for the purpose of installing improvements in the Impact Area. Developer acknowledges that it has no right to direct or claim a right to direct the application of the Proportionate Share to making any specific public roadway infrastructure improvements.
3. Developer Acknowledgement/Waiver. Developer acknowledges that the payment of the Proportionate Share does not release the Developer from payment of any

other City imposed development or building related fees including other impact fees, or such other City fees as may be prescribed by law. Developer specifically waives Developer's right to claim any and all City road impact fee credits, should the City elect in the future to impose same, except as such credits may be due under the terms of the City's impact fee ordinance.

4. Timing. The parties agree that any roadway improvements shall be constructed as determined by the County.
5. Effective Date. The effective date this Agreement shall be the last date upon which all parties hereto cause this Agreement to be executed as indicated below their respective signatures.
6. Binding Nature of this Agreement. This Agreement shall inure to the benefit of the parties hereto and the subject property, and shall be binding upon any person, firm, or corporation that may become a subsequent owner, successor in interest or assign, directly or indirectly, of the subject property or any portion thereof.
7. Venue. In the event of any claim, action, litigation or proceeding under this Agreement, venue shall be in Volusia County, State of Florida.
8. Recordation. This Agreement will be recorded in the Public Records of Volusia County, Florida, at Developer's expense.
9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The electronic (i.e., facsimile or email) transmittal of an executed copy of this Agreement shall be deemed valid as if an original signature was delivered.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on behalf of the respective entities, their successors and assigns.

**Signed, sealed and delivered in the presence of: THE CITY OF DELAND,
FLORIDA, a Florida municipal
corporation**

Witness 1

Print Name of Witness 1

By: _____
Robert F. Apgar, Mayor

Attest: _____
Julie Hennessy, City Clerk

Witness 2

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2022 by Robert F. Apgar and Julie Hennessy, Mayor and City Clerk, respectively, of The City of DeLand, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public

Printed Name:

Commission No. _____

Approved as to form by:

Darren Elkind, City Attorney

Signed, sealed and delivered in the presence of:

COUNTY OF VOLUSIA, a political subdivision of the State of Florida

Witness 1

Jeffrey S. Brower, County Chair

Print Name of Witness 1

Attest

Witness 2

By: _____
George Recktenwald, County Manager

Print Name of Witness 2

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2022 by Jeffrey S. Brower, County Chair of the County of Volusia, Florida, a political subdivision of the State of Florida, on behalf of the County. They are personally known to me and did not take an oath.

Notary Public _____

Printed Name: _____

Commission No. _____

Approved as to form by:

Thomas "Russ" Brown
Asst. County Attorney

Signed, sealed and delivered in the presence of:

KH CW DELAND LLC, a Florida limited liability company

Witness 1

By: The Kolter Group, LLC, a Florida limited liability company

Its: Manager

Print Name of Witness 1

By: _____

William Johnson, Manager

Witness 2

Date: _____

Print Name of Witness 2

[Corporate Seal]

STATE OF FLORIDA

COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of ____ 2022, by William Johnson, as Manager of The Kolter Group, LLC, on behalf of KH CW DELAND LLC,. He/she is [] personally known to me or [] produced as identification and did not take an oath.

Notary Public _____

Printed Name: _____

Commission No. _____

EXHIBIT A
CRESSWIND – DELAND LEGAL DESCRIPTION (PER TITLE COMMITMENT)

LANDS SITUATED IN SECTION 13, TOWNSHIP 17 SOUTH, RANGE 30 EAST AND SECTION 18, TOWNSHIP 17 SOUTH, RANGE 31 EAST, DELAND, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 13, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA; THENCE RUN NORTH 01 DEGREES 57 MINUTES 34 SECONDS WEST, ALONG THE WEST LINE OF LOTS 12 THROUGH 17 INCLUSIVE, AND LOTS 28 AND 29, ASSESSORS MAP OF WINNEMISSETT, AS RECORDED IN MAP BOOK 3, PAGE 20, PUBLIC RECORDS OF VOLUSIA COUNTY, FLORIDA, A DISTANCE OF 2737.14 FEET TO THE NORTH LINE OF THE SOUTH 1/4 OF SAID LOT 28; THENCE RUN NORTH 89 DEGREES 57 MINUTES 59 SECONDS EAST, ALONG SAID NORTH LINE AND THE SOUTH LINE OF THE NORTH 1/2 OF THE SOUTH 1/2 OF LOT 18, SAID ASSESSOR'S MAP OF WINNEMISSETT, A DISTANCE OF 1592.45 FEET TO A POINT ON THE EAST LINE OF THE WEST 264 FEET OF SAID LOT 18, THENCE RUN NORTH 01 DEGREES, 31 MINUTES 18 SECONDS WEST, ALONG SAID EAST LINE OF THE WEST 264 FEET, A DISTANCE OF 166.03 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF SAID LOT 18; THENCE RUN NORTH 89 DEGREES 47 MINUTES 18 SECONDS WEST, ALONG SAID NORTH LINE OF THE SOUTH 1/2 OF THE NORTH 1/2 OF LOT 18, A DISTANCE OF 264.12 FEET TO THE WEST LINE OF SAID LOT 18 AND THE WEST LINE OF LOTS 21 AND 22 OF SAID ASSESSOR'S MAP OF WINNEMISSETT; THENCE RUN NORTH 01 DEGREES 31 MINUTES 18 SECONDS WEST, ALONG SAID WEST LINE OF LOTS 18, 21 AND 22, A DISTANCE OF 1079.32 FEET TO THE NORTH LINE OF SAID ASSESSOR'S MAP OF WINNEMISSETT AND THE NORTH LINE OF THE AFORESAID SECTION 13, THENCE RUN SOUTH 89 DEGREES 53 MINUTES 50 SECONDS EAST, ALONG SAID NORTH LINE OF SECTION 13, A DISTANCE OF 1338.00 FEET TO THE NORTHEAST CORNER OF SAID MAP AND THE NORTHEAST CORNER OF SAID SECTION 13; THENCE RUN NORTH 89 DEGREES 53 MINUTES 53 SECONDS EAST, ALONG THE NORTH LINE OF SECTION 18, TOWNSHIP 17 SOUTH, RANGE 31 EAST, VOLUSIA COUNTY, FLORIDA A DISTANCE OF 1342.24 FEET TO THE NORTHEAST CORNER OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 18, THENCE RUN SOUTH 01 DEGREES 20 MINUTES 00 SECONDS EAST ALONG THE EAST LINE OF SAID WEST 1/2 AND THE EAST LINE OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 18, A DISTANCE OF 2824.25 FEET TO THE NORTHEAST CORNER OF THE SOUTH 7/8 OF SAID NORTHWEST 1/4 OF THE SOUTHWEST 1/4; THENCE RUN SOUTH 89 DEGREES 30 MINUTES 33 SECONDS WEST, ALONG THE NORTH LINE OF SAID SOUTH 7/8 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4, A DISTANCE OF 545.12 FEET TO A POINT ON THE WEST LINE OF THE EAST 545 FEET OF SAID SOUTH 7/8 OF THE NORTHWEST 1/4 OF THE SOUTHWEST 1/4; THENCE RUN SOUTH 01 DEGREES 41 MINUTES 54 SECONDS EAST, ALONG SAID WEST LINE OF THE EAST 545 FEET, A DISTANCE OF 1238.51 FEET TO THE NORTH RIGHT-OF-WAY LINE OF OLD STATE ROAD 44; THENCE RUN SOUTH 89 DEGREES 08 MINUTES 34 SECONDS WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 810.31 FEET; THENCE RUN SOUTH 88 DEGREES 58 MINUTES 34 SECONDS WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 644.57 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 995.42 FEET AND A CENTRAL ANGLE OF 20 DEGREES 22 MINUTES 00 SECONDS; THENCE RUN SOUTHWESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE A DISTANCE OF 353.84 FEET; THENCE RUN NORTH 34 DEGREES 47 MINUTES 32 SECONDS WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 122.79 FEET; THENCE RUN SOUTH 55 DEGREES 12 MINUTES 24 SECONDS WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 60.00 FEET; THENCE RUN SOUTH 34 DEGREES 47 MINUTES 32 SECONDS EAST ALONG SAID RIGHT-OF-WAY LINE A DISTANCE OF 110.43 FEET TO A POINT ON A CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 995.42 FEET, A CHORD BEARING OF SOUTH 61 DEGREES 15 MINUTES 03 SECONDS WEST; A CHORD DISTANCE OF 133.04 FEET, AND A CENTRAL ANGLE OF 07 DEGREES 39 MINUTES 49 SECONDS; THENCE RUN SOUTHWESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, A DISTANCE OF 133.14 FEET; THENCE RUN SOUTH 57 DEGREES 25 MINUTES 09 SECONDS WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 215.16 FEET; THENCE DEPARTING SAID NORTH RIGHT-OF-WAY LINE, RUN NORTH 00 DEGREES 00 MINUTES 35 SECONDS EAST, A DISTANCE OF 355.86 FEET; THENCE RUN NORTH 88 DEGREES 56 MINUTES 01 SECONDS WEST, A DISTANCE OF 1285.28 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT ANY PORTION THAT LIES WITHIN LAKE WINNEMISSETT DRIVE. SAID PROPERTY CONTAINING +/- 318.4 ACRES.

EXHIBIT B

TABLE 1
Proportionate Share Percentage Calculations (1) - Phase 1 - 155 Lots

Roadways Over Capacity	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost (1)	Project Trips	Project Trip Percentage	Project Trips Prop Share
SR 44	Kepler Rd	Summit Ave	1.27	E	1,712	4LD	3,580	1,868	\$9,240,586.68	20	1.1%	\$98,935.62
Hill Avenue	Minesota Ave	SR 44	0.50	E	1,020	4LD	3,410	2,390	\$4,437,209.00	0	0.0%	\$0.00
Lakeview Drive	Main St	Ohio Ave	0.50	C	470	4LD	930	460	\$4,437,209.00	4	0.9%	\$38,584.43
Main Street	I-4	Lakeview Dr	0.95	C	470	4LD	930	460	\$8,430,697.10	5	1.1%	\$91,638.01
Orange Camp Road	Blue Lake Ave	Dr MLK Jr	0.55	E	1,540	4LD	3,440	1,900	\$4,880,929.90	1	0.1%	\$2,568.91
Orange Camp Road	Dr Martin Luther King Jr	I-4	1.00	E	1,540	4LD	3,440	1,900	\$8,874,418.00	3	0.2%	\$14,012.24
Taylor Road	US 17-92	Strafford Dr	0.95	E	1,020	4LD	3,410	2,390	\$8,430,697.10	1	0.0%	\$3,527.49
West Volusia Beltway	Minnesota Ave	SR 44	0.76	E	1,540	4LD	3,410	1,870	\$4,710,306.72	4	0.2%	\$10,075.52
West Volusia Beltway	Orange Camp Rd	Cassadaga Rd	1.28	E	1,540	4LD	3,410	1,870	\$7,933,148.16	1	0.1%	\$4,242.33
Phase 1 - Scenario A Total (Critical & Roadway Vested Critical only)												\$125,592.29
Phase 1 - Scenario B Total (All roadways)												\$263,584.54

1. Roadway cost based on Volusia County construction cost per mile plus (Additional Cost + Design + CEI) - Master PFS Table Feb 2021

Critical	Roadway Vested Critical
Near Critical	Roadway Vested Near Critical

Luke Transportation Engineering Consultants, Inc., 2021

TABLE 2
Proportionate Share Percentage Calculations (1) - Phase 2 - 267 Lots

Roadways Over Capacity	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost (1)	Project Trips	Project Trip Percentage	Project Trips Prop Share
SR 44	Kepler Rd	Summit Ave	1.27	E	1,712	4LD	3,580	1,868	\$9,240,586.68	31	1.7%	\$153,350.21
Hill Avenue	Minesota Ave	SR 44	0.50	E	1,020	4LD	3,410	2,390	\$4,437,209.00	1	0.0%	\$1,856.57
Lakeview Drive	Main St	Ohio Ave	0.50	C	470	4LD	930	460	\$4,437,209.00	7	1.5%	\$67,522.75
Main Street	I-4	Lakeview Dr	0.95	C	470	4LD	930	460	\$8,430,697.10	7	1.5%	\$128,293.22
Orange Camp Road	Blue Lake Ave	Dr MLK Jr	0.55	E	1,540	4LD	3,440	1,900	\$4,880,929.90	2	0.1%	\$5,137.82
Orange Camp Road	Dr Martin Luther King Jr	I-4	1.00	E	1,540	4LD	3,440	1,900	\$8,874,418.00	5	0.3%	\$23,353.73
Taylor Road	US 17-92	Strafford Dr	0.95	E	1,020	4LD	3,410	2,390	\$8,430,697.10	1	0.0%	\$3,527.49
West Volusia Beltway	Minnesota Ave	SR 44	0.76	E	1,540	4LD	3,410	1,870	\$4,710,306.72	7	0.4%	\$17,632.16
West Volusia Beltway	Orange Camp Rd	Cassadaga Rd	1.28	E	1,540	4LD	3,410	1,870	\$7,933,148.16	1	0.1%	\$4,242.33
Phase 2 - Scenario A Total (Critical & Roadway Vested Critical only)												\$199,473.92
Phase 2 - Scenario B Total (All roadways)												\$404,916.27
Phase 1 - Scenario A Total												\$125,592.29
Phase 1 - Scenario B Total												\$263,584.54
Scenario A Phase 2 Increase												\$73,881.63
Scenario B Phase 2 Increase												\$141,331.73

1. Roadway cost based on Volusia County construction cost per mile plus (Additional Cost + Design + CEI) - Master PFS Table Feb 2021

Critical	Roadway Vested Critical
Near Critical	Roadway Vested Near Critical

Luke Transportation Engineering Consultants, Inc., 2021

TABLE 3
Proportionate Share Percentage Calculations (1) - Phase 3 - 378 Lots

Roadways Over Capacity	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost (1)	Project Trips	Project Trip Percentage	Project Trips Prop Share
SR 44	Kepler Rd	Summit Ave	1.27	E	1,712	4LD	3,580	1,868	\$9,240,586.68	41	2.2%	\$202,818.02
Hill Avenue	Minesota Ave	SR 44	0.50	E	1,020	4LD	3,410	2,390	\$4,437,209.00	1	0.0%	\$1,856.57
Lakeview Drive	Main St	Ohio Ave	0.50	C	470	4LD	930	460	\$4,437,209.00	9	2.0%	\$86,814.96
Main Street	I-4	Lakeview Dr	0.95	C	470	4LD	930	460	\$8,430,697.10	9	2.0%	\$164,948.42
Orange Camp Road	Blue Lake Ave	Dr MLK Jr	0.55	E	1,540	4LD	3,440	1,900	\$4,880,929.90	3	0.2%	\$7,706.73
Orange Camp Road	Dr Martin Luther King Jr	I-4	1.00	E	1,540	4LD	3,440	1,900	\$8,874,418.00	6	0.3%	\$28,024.48
Taylor Road	US 17-92	Strafford Dr	0.95	E	1,020	4LD	3,410	2,390	\$8,430,697.10	2	0.1%	\$7,054.98
West Volusia Beltway	Minnesota Ave	SR 44	0.76	E	1,540	4LD	3,410	1,870	\$4,710,306.72	9	0.5%	\$22,669.93
West Volusia Beltway	Orange Camp Rd	Cassadaga Rd	1.28	E	1,540	4LD	3,410	1,870	\$7,933,148.16	2	0.1%	\$8,484.65

Phase 3 - Scenario A Total (Critical & Roadway Vested Critical only) **\$261,219.15**

Phase 3 - Scenario B Total (All roadways) **\$530,378.73**

Phase 2 - Scenario A Total **\$199,473.92**

Phase 2 - Scenario B Total **\$404,916.27**

Scenario A Phase 3 Increase **\$61,745.23**

Scenario B Phase 3 Increase **\$125,462.46**

1. Roadway cost based on Volusia County construction cost per mile plus (Additional Cost + Design + CEI) - Master PFS Table Feb 2021

Critical	Roadway Vested Critical
Near Critical	Roadway Vested Near Critical

Luke Transportation Engineering Consultants, Inc., 2021

TABLE 4
Proportionate Share Percentage Calculations (1) - Phase 4 - 493 Lots

Roadways Over Capacity	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost (1)	Project Trips	Project Trip Percentage	Project Trips Prop Share
SR 44	Kepler Rd	Summit Ave	1.27	E	1,712	4LD	3,580	1,868	\$9,240,586.68	50	2.7%	\$247,339.04
Hill Avenue	Minesota Ave	SR 44	0.50	E	1,020	4LD	3,410	2,390	\$4,437,209.00	1	0.0%	\$1,856.57
Lakeview Drive	Main St	Ohio Ave	0.50	C	470	4LD	930	460	\$4,437,209.00	11	2.4%	\$106,107.17
Main Street	I-4	Lakeview Dr	0.95	C	470	4LD	930	460	\$8,430,697.10	11	2.4%	\$201,603.63
Orange Camp Road	Blue Lake Ave	Dr MLK Jr	0.55	E	1,540	4LD	3,440	1,900	\$4,880,929.90	4	0.2%	\$10,275.64
Orange Camp Road	Dr Martin Luther King Jr	I-4	1.00	E	1,540	4LD	3,440	1,900	\$8,874,418.00	8	0.4%	\$37,365.97
Taylor Road	US 17-92	Strafford Dr	0.95	E	1,020	4LD	3,410	2,390	\$8,430,697.10	2	0.1%	\$7,054.98
West Volusia Beltway	Minnesota Ave	SR 44	0.76	E	1,540	4LD	3,410	1,870	\$4,710,306.72	11	0.6%	\$27,707.69
West Volusia Beltway	Orange Camp Rd	Cassadaga Rd	1.28	E	1,540	4LD	3,410	1,870	\$7,933,148.16	2	0.1%	\$8,484.65

Phase 4 - Scenario A Total (Critical & Roadway Vested Critical only) **\$322,688.34**

Phase 4 - Scenario B Total (All roadways) **\$647,795.34**

Phase 3 - Scenario A Total **\$261,219.15**

Phase 3 - Scenario B Total **\$530,378.73**

Scenario A Phase 4 Increase **\$61,469.19**

Scenario B Phase 4 Increase **\$117,416.61**

1. Roadway cost based on Volusia County construction cost per mile plus (Additional Cost + Design + CEI) - Master PFS Table Feb 2021

Critical	Roadway Vested Critical
Near Critical	Roadway Vested Near Critical

Luke Transportation Engineering Consultants, Inc., 2021

TABLE 5
Proportionate Share Percentage Calculations (1) - Build-out Total - 599 Lots

Roadways Over Capacity	Limits of Improvement (From - To)		Segment Length	Adopted LOS	Existing Generalized Capacity	Type of Improvement	Improved Generalized Capacity	Capacity Increase	Total Project Cost (1)	Project Trips	Project Trip Percentage	Project Trips Prop Share
SR 44	Kepler Rd	Summit Ave	1.27	E	1,712	4LD	3,580	1,868	\$9,240,586.68	57	3.1%	\$281,966.51
Hill Avenue	Minesota Ave	SR 44	0.50	E	1,020	4LD	3,410	2,390	\$4,437,209.00	1	0.0%	\$1,856.57
Lakeview Drive	Main St	Ohio Ave	0.50	C	470	4LD	930	460	\$4,437,209.00	12	2.6%	\$115,753.28
Main Street	I-4	Lakeview Dr	0.95	C	470	4LD	930	460	\$8,430,697.10	13	2.8%	\$238,258.83
Orange Camp Road	Blue Lake Ave	Dr MLK Jr	0.55	E	1,540	4LD	3,440	1,900	\$4,880,929.90	4	0.2%	\$10,275.64
Orange Camp Road	Dr Martin Luther King Jr	I-4	1.00	E	1,540	4LD	3,440	1,900	\$8,874,418.00	9	0.5%	\$42,036.72
Taylor Road	US 17-92	Strafford Dr	0.95	E	1,020	4LD	3,410	2,390	\$8,430,697.10	2	0.1%	\$7,054.98
West Volusia Beltway	Minnesota Ave	SR 44	0.76	E	1,540	4LD	3,410	1,870	\$4,710,306.72	12	0.6%	\$30,226.57
West Volusia Beltway	Orange Camp Rd	Cassadaga Rd	1.28	E	1,540	4LD	3,410	1,870	\$7,933,148.16	3	0.2%	\$12,726.98
Phase 5 (Build-out) - Scenario A Total (Critical & Roadway Vested Critical only)												\$364,505.44
Phase 5 (Build-out) - Scenario B Total (All roadways)												\$740,156.07
Phase 4 - Scenario A Total												\$322,688.34
Phase 4 - Scenario B Total												\$647,795.34
Scenario A Phase 5 (Build-out) Increase												\$41,817.09
Scenario B Phase 5 (Build-out) Increase												\$92,360.73

1. Roadway cost based on Volusia County construction cost per mile plus (Additional Cost + Design + CEI) - Master PFS Table Feb 2021

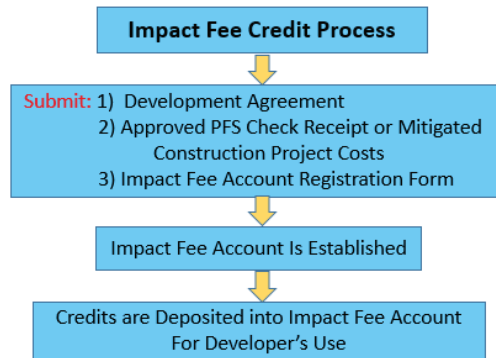
Critical	Roadway Vested Critical
Near Critical	Roadway Vested Near Critical

Luke Transportation Engineering Consultants, Inc., 2021

EXHIBIT C

IMPACT FEE CREDITS

The following steps are required to be able to obtain impact fee credits for PFS payment or construction mitigation improvement:



1. Establish an Impact Fee Credit Account:

- After the PFS payment is made or constructed improvements are complete, contact Engineering & Construction to establish an impact fee credit account and obtain credits. Contact: Storm Kazmierczak (skazmierczak@volusia.org, (386) 736-5967 x12294). Please allow 5-7 business days.
 - *For Impact Fee Credits related to PFS Payments, please submit the following supporting documentation to Engineering and Construction:*
 - Copy of the project's recorded development agreement
 - Copy of your PFS check and receipt.
 - Completed Volusia County Impact Fee Account Registration form** attached. Registration forms require original signatures. Copies or PDF's will not be accepted.
 - .
 - *For Impact fee credits related to Constructed Improvements, please submit the following to Engineering & Construction:*
 - Copy of the project's recorded development agreement.
 - Actual costs incurred such as executed construction contracts or contractor invoices. Engineers' estimates are not accepted. An itemized tabulation delineating eligible costs is required when contracts or invoices include ineligible items. Note: Eligible costs include design, permitting, right-of-way (if applicable), and construction & CEI.
 - Completed Volusia County Impact Fee Account Registration form**, attached. Registration forms require original signatures. Copies or PDF's will not be accepted.

***Note: Your Transportation Impact Fee Credit Account is like a bank account. The "List of Person(s) authorized to sign for this account", on the form, will be the people authorized to make withdrawals from your Transportation Impact Fee Credit Account.*

2. Allow Staff to Process Information and Make Deposit:

- The submittal will be reviewed by county engineering staff and additional information may be requested of the applicant.
- Engineering & Construction will deliver the original executed Registration Form to County Growth and Resource Management (GRM). Contact: Beth Branton (bbranton@volusia.org, (386) 736-5924, ext. 12097).
- GRM will not accept executed forms from anyone other than Engineering & Construction.
- GRM will establish the Transportation Impact Fee Credit Account and send the applicant an email with instructions on how to pay County Transportation Impact Fees with credits, or if desired, transfer your credits. Please be aware that the county auditor completes audits of transportation impact fee credit files.

For questions regarding the following, please call:

- **Impact Fee Credit Registration** - Storm Kazmierczak at (386) 736-5967, ext. 12294, skazmierczak@volusia.org
- **Impact Fees or Impact Fee Credit Account balance** - Beth Branton at (386) 736-5924, ext. 12097, bbranton@volusia.org.
- **PFS Agreements**, please contact Russ Brown at [386-736-5950](tel:386-736-5950) x12947, rbrown@volusia.org
- **PFS payments**, please contact Kristen Vieira at 386-736-5968, ext. 12177, kvieira@volusia.org
- **PFS calculations**, please contact Melissa Winsett at 386-736-5968, ext. 12322, mwinsett@volusia.org

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Certifying Election Results of 2022 General and Special Elections; and, Setting Date for Organizational Meeting.

DEPARTMENT: City Clerk

PREPARED BY: Julie Hennessy, City Clerk

ATTACHMENTS: Resolution

APPROVED BY: Michael Pleus, City Manager, November 2, 2022

SUMMARY/HIGHLIGHT:

A general election was held on August 23, 2022 for the election of Mayor-Commissioner (Seat 1), City Commissioner (Seat 3), and City Commissioner (Seat 5). A special election was also held on that date for the election of City Commissioner (Seat 4). The Volusia County Canvassing Board met and canvassed the returns of the general and special elections and determined the results thereof. After canvassing the results, it was found that no candidate received a majority of the votes cast for Mayor-Commissioner (Seat 1) and thus, a run-off election will be held for that Seat on November 8, 2022.

The attached Resolution formally certifies the results of the August 23, 2022 general election.

In addition, pursuant to Section 12 of the Charter, "After each general election, the newly elected commissioners shall assume the duties of office at the organizational meeting of the city commission, which shall be held on the third Tuesday in November." Thus, staff requests that the City Commission schedule an organizational meeting for Tuesday, November 15, 2022 at 7:00 p.m.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

N/A

SUSTAINABILITY:

N/A

FISCAL IMPACT:

None.

RECOMMENDATION:

It is recommended that:

- 1) the City Commission adopt the Resolution declaring the results of the 2022 general election; and
- 2) the City Commission schedule the Organizational Meeting for Tuesday, November 15, 2022, and direct the City Clerk to issue a public notice for same.

BACKGROUND/DISCUSSION:

N/A

RESOLUTION NO. 2022 -

A RESOLUTION OF THE CITY OF DELAND, FLORIDA, DECLARING THE RESULTS OF THE GENERAL AND SPECIAL ELECTIONS HELD IN THE CITY OF DELAND ON AUGUST 23, 2022; DECLARING THAT NO CANDIDATE RECEIVED A MAJORITY OF THE VOTES CAST IN THE GENERAL ELECTION FOR MAYOR-COMMISSIONER (SEAT 1); DECLARING THAT JESSICA DAVIS RECEIVED A MAJORITY OF THE VOTES CAST IN THE GENERAL ELECTION FOR CITY COMMISSIONER (SEAT 3); DECLARING THAT KEVIN REID RECEIVED A MAJORITY OF THE VOTES CAST IN THE GENERAL ELECTION FOR CITY COMMISSIONER (SEAT 5); DECLARING THAT DANIEL REED RECEIVED A MAJORITY OF THE VOTES CAST IN THE SPECIAL ELECTION FOR CITY COMMISSIONER (SEAT 4); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, general and special elections were held in the City of DeLand on August 23, 2022, for the election to the City Commission for Mayor-Commissioner (Seat 1), City Commissioner (Seat 3), City Commissioner (Seat 5), and City Commissioner (Seat 4); and

WHEREAS, the Volusia County Canvassing Board met and did canvass the returns of the general election for Seats 1, 3 and 5, and of the special election for Seat 4, and determined the results thereof;

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

Section 1. The City Commission hereby finds and declares that no candidate received a majority of the votes cast by the electors of the City of DeLand in the General Election for the office of Mayor - City Commissioner, Seat 1, and thus, there will be a run-off election for this Seat on November 8, 2022. The whole number of votes cast was 8074 of which number:

Chris Cloudman received 3792 votes

Buz Nesbit received 1591 votes

Reggie Williams received 2691 votes

Section 2. The City Commission hereby finds and declares that Jessica Davis received a majority of the votes cast by the electors of the City of DeLand in the General Election for the office of City Commissioner, Seat 3. The whole number of votes cast was 7461 of which number:

Jessica Davis received 5702 votes

Deirdre Dukes Perry received 1759 votes

Section 3. The City Commission hereby finds and declares that Kevin Reid received a majority of the votes cast by the electors of the City of DeLand in the General

Election for the office of City Commissioner, Seat 5. The whole number of votes cast was 7547 of which number:

Matthew Johnson received 2656 votes

Kevin Reid received 4891 votes

Section 4. The City Commission hereby finds and declares that Daniel Reed received a majority of the votes cast by the electors of the City of DeLand in the Special Election for the office of City Commissioner, Seat 4. The whole number of votes cast was 7703 of which number:

Troy A. Bradley received 3406 votes

Daniel Reed received 4297 votes

Section 5. This Resolution shall take effect immediately upon its adoption.

PASSED AND DULY ADOPTED by the City Commission of the City of DeLand, Florida, this 7th day of November, 2022.

Robert F. Apgar
Mayor - Commissioner

ATTEST:

Julie A. Hennessy, City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind, City Attorney

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Resolution Approving the Proposed Amendment to Volusia County Comprehensive Plan; I-4 Frontage Road Project South Of Cassadaga.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Resolution

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

Approval of a Resolution proposing the removal of the I-4 Frontage Road project south of Cassadaga from the Thoroughfare Future Needs List set forth in the Volusia County Comprehensive Plan is requested.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government

SUSTAINABILITY:

N/A

FISCAL IMPACT:

There is no adverse fiscal impact upon the City relative to the proposed action and the removal of the roadway segment that is the subject of the Resolution will free public funds for other projects and eliminate planning and development issues that could arise with the Thoroughfare Future Needs List, as discussed below, being left as currently adopted.

RECOMMENDATION:

It is recommended that the City Commission approve the Resolution proposing that the County Council remove the I-4 Frontage Road project south of Cassadaga from the Thoroughfare Future Needs List set forth in the Volusia County Comprehensive Plan.

BACKGROUND/DISCUSSION:

The Volusia County Comprehensive Plan contains a Thoroughfare Roadway Map which is not cost feasible, meaning the Map does not show roads that will be built by the County's comprehensive planning horizon year of 2035. Instead, the Map is utilized as a long-range planning tool in planning for future growth. Though some of the roadway improvements may be improved by 2035, several large, expensive and complex projects are not planned for construction within the Comprehensive Plan's timeline due to lack of funding as well as the County's need to construct capacity improvements that are already occurring or close to occurring within the developed/developing urban areas. The unfunded projects are placed on a Thoroughfare Future Needs List for construction when funding may become available. Having a Thoroughfare Future Needs List improves the County's ability to prioritize current and near-future transportation needs rather than having to shift funding

and priorities to a different, less significant project. The County will work with cities and developers to fund capacity improvements that typically have been needed for years. The Thoroughfare Future Needs List can prevent new roadways from being funded prior to the existing system needs and promotes developer-government enhanced coordination when expanding the thoroughfare network.

Policy 2.1.3.6 of the Volusia County Comprehensive Plan requires the County to look for opportunities to move improvements set forth in the Thoroughfare Future Needs List to the Thoroughfare Roadway Map by partnering with local governments and landowners that have secured necessary rights-of-way. The I-4 Frontage Road project was placed on the List in that in 2018 the County Council voted to abandon the Interstate 4/State Road 472 Southwest Activity Center Areawide Development of Regional Impact (DRI). The abandonment required Comprehensive Plan policy changes, a zoning map amendment and the establishment of related zoning classifications and development regulations. The I-4 Frontage Road project was originally envisioned as a major economic development road improvement project supporting the Activity Center. Though the DRI was abandoned, the I-4 Frontage Road project was to remain a thoroughfare road. However, the County had no immediate plans to construct it and viewed the road as a road that would be constructed by developers concurrent with associated impacting development. The I-4 Frontage Road project was included in Appendix “G” of the County Comprehensive Plan amendment at the request of the City. The County was otherwise prepared to remove the I-4 Frontage Road project from the Thoroughfare Plan when it processed its 2020 Comprehensive Plan amendment.

Since the City has now approved the DeLand Tech Park PUD with Kirk Drive providing a north-south connection between State Road 472 and Cassadaga Road, the County has requested the City to formally request an amendment to the County Thoroughfare Future Needs List to remove the section of the I-4 Frontage Road project located south of Cassadaga Road.

RESOLUTION NO. 2022 -

A RESOLUTION OF THE CITY COMMISSION OF DELAND, FLORIDA, REQUESTING THAT THE VOLUSIA COUNTY COUNCIL REMOVE THE I-4 FRONTAGE ROAD PROJECT SOUTH OF CASSADAGA ROAD FROM THE THOROUGHFARE FUTURE NEEDS LIST SET FORTH IN THE *VOLUSIA COUNTY COMPREHENSIVE PLAN*; PROVIDING FOR LEGISLATIVE FINDINGS AND INTENT; PROVIDING FOR A SAVINGS PROVISION; PROVIDING FOR IMPLEMENTING ADMINISTRATIVE ACTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the *Volusia County Comprehensive Plan* contains a Thoroughfare Roadway Map which is intended to show roads that will be built during the County's comprehensive planning horizon year of 2035; and

WHEREAS, the County's Thoroughfare Roadway Map is utilized as a long-range planning tool in planning for future growth and, although some of the roadway improvements may be improved by 2035, several large, expensive and complex projects are not planned for construction within the *Comprehensive Plan's* timeline due to lack of funding as well as the County's need to construct capacity improvements that are already occurring or close to occurring within the developed/developing urban areas; and

WHEREAS, the unfunded projects are placed on a Thoroughfare Future Needs List for construction when funding may become available with the Thoroughfare Future Needs List improving the County's ability to prioritize current and near-future transportation needs rather than having to shift funding and priorities to a different, less significant project; and

WHEREAS, the County will work with cities and developers to fund capacity improvements that typically have been needed for years and the Thoroughfare Future Needs List can prevent new roadways from being funded prior to the existing system need and promotes developer-government enhanced coordination when expanding the thoroughfare network; and

WHEREAS, Policy 2.1.3.6 of the *Volusia County Comprehensive Plan* requires the County to look for opportunities to move improvements set forth in the Thoroughfare Future Needs List to the Thoroughfare Roadway Map by partnering with local governments and landowners that have secured necessary rights-of-way; and

WHEREAS, the I-4 Frontage Road project was placed on the Thoroughfare Future Needs List in that in 2018, the County Council voted to abandon the Interstate 4/State Road 472 Southwest Activity Center Areawide Development of Regional Impact (DRI); and

WHEREAS, the abandonment of the DRI required *Comprehensive Plan* policy changes, a zoning map amendment and the establishment of related zoning classifications and development regulations; and

WHEREAS, the I-4 Frontage Road project was originally envisioned as a major economic development road improvement project supporting the Activity Center and, although the DRI was abandoned, the I-4 Frontage Road project was to remain a thoroughfare road, but the County had no immediate plans to construct it and viewed the road as a road that would be constructed by developers concurrent with associated development; and

WHEREAS, the I-4 Frontage Road project was included in Appendix “G” of the County *Comprehensive Plan* amendment at the request of the City although the County was otherwise prepared to remove the I-4 Frontage Road project from the Thoroughfare Plan when it processed its 2020 *Comprehensive Plan* amendment; and

WHEREAS, since the City has now approved the DeLand Tech Park PUD with Kirk Drive providing a north-south connection between State Road 472 and Cassadaga Road, the County has requested the City to formally request an amendment to the County Thoroughfare Future Needs List to remove the section of the I-4 Frontage Road project located south of Cassadaga Road; and

WHEREAS, the City of DeLand has complied with all requirements and procedures of Florida law in developing, processing and advertising this Resolution; and

WHEREAS, the City Commission of the City of DeLand determines that the adoption of this Resolution is in the best interests of the health, safety, and welfare of the citizens of the City of DeLand.

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

Section 1. Legislative Findings and Intent. The City Commission of the City of DeLand hereby adopts and incorporates into this Resolution the recitals (whereas clauses) set forth herein as the legislative findings and intent of the City Commission.

Section 2. Request to Volusia County Council; I-4 Frontage Road Project Located South of Cassadaga Road.

(a). The City Commission of the City of DeLand hereby respectfully requests that the Volusia County Council adopt an amendment to the County Thoroughfare Future Needs List to remove the section of the I-4 Frontage Road project located south of Cassadaga Road.

(b). The City Commission of the City of DeLand hereby expresses its appreciation to the Volusia County Council for engaging in collaborative and cooperative comprehensive planning actions and activities and expresses its desire to continue to work with the County for the benefit of the citizens of the City of DeLand and the general public.

Section 3. Savings. The prior actions of the City of DeLand relating to the matters relating to the action are hereby ratified and affirmed, but only to the extent not inconsistent with the action taken in this Resolution.

Section 4. Future Implementing Actions. The City Manager is hereby granted authority to take any and all necessary administrative actions that may be desirable or necessary to implement the actions taken in this Resolution.

Section 5. Conflicts. All resolutions or parts of resolutions in conflict with this Resolution are hereby repealed.

Section 6. Severability. If any section, sentence, phrase, word or portion of this Resolution is determined to be invalid, unlawful or unconstitutional, said determination shall not be held to invalidate or impair the validity, force or effect of any other section, sentence, phrase, word or portion of this Resolution not otherwise determined to be invalid, unlawful or unconstitutional.

Section 7. Effective Date. This Resolution shall become effective immediately upon adoption.

PASSED AND DULY ADOPTED this 7th day of November, 2022.

Robert F. Apgar
Mayor-Commissioner

ATTEST:

Julie A. Hennessy, MMC
City Clerk-Auditor

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Agreement for Transfer of Certain Roads from Volusia County to the City of DeLand for Jurisdiction and Maintenance Pursuant to Section 335.0415, Florida Statutes.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: County - DeLand Road Transfer Agreement

APPROVED BY: Michael Pleus, City Manager, November 3, 2022

SUMMARY/HIGHLIGHT:

The approval of an agreement for the transfer of certain roads from Volusia County to the City of DeLand for jurisdiction and maintenance, subject to conditions, pursuant to Section 335.0415, Florida Statutes, is proposed.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The fiscal impact of the road transfer will be that the subject transferred road segments will become the operational and maintenance responsibility of the City in all respects. The City will benefit by having permitting jurisdiction over the roads and other use authority and powers for the benefit of the citizens and property owners of the City. The County will be required to accomplish certain actions relative to certain of the roads being transferred within a certain number of years from the effective date of the proposed agreement. Additionally, the City's share of the Local Option Gas Tax will increase at the number of lane miles will be increased which is used in the formula to calculate each City's share.

RECOMMENDATION:

City staff recommends that the City Commission approve the proposed agreement for the transfer of certain roads from Volusia County to the City for jurisdiction and maintenance pursuant to Section 335.0415, Florida Statutes.

BACKGROUND/DISCUSSION:

City staff and Volusia County staff have been evaluating and negotiating the potential transfer of jurisdictional authority of certain segments of County right-of-way (roads) to the City. This discussion has come to fruition in an agreement based upon the County also agreeing to transfer to the City an expanded utility service area, which is the subject of another agenda item on this agenda. The road transfers must occur in accordance with the controlling provisions of State law and the County has authority pursuant to Section 125.01, *Florida*

Statutes, to enter into such agreements while the City has authority pursuant to Section 166.021, *Florida Statutes*, to do likewise. All roads which are open and available for use by the public and dedicated to public use, according to law or by prescription, are declared to be and established as, pursuant to Section 335.01(1), *Florida Statutes*, public roads. Section 335.0415, *Florida Statutes*, authorizes and provides a means whereby a local government may transfer jurisdiction and maintenance responsibility for roads to another local government. The proposed agreement identified certain roads to be transferred by the County to the City. The actual conveyance of the road segments would be implemented by means of the County issuing a County Deed to the City.

Upon transfer of ownership from the County to the City, the City will be responsible for maintenance responsibility for all matters relating to the right-of-way including the road pavement, sidewalks, stormwater system and signage and well as obligations pertaining to railroad line crossings subject to the provisions of the proposed agreement.

The road segments that are proposed to be transferred by the County to the City are as follows and total nearly 13 miles:

Name Of Road	From	To	Segment Length Miles/Feet
W. Minnesota Ave.	Hazen Rd.	Woodland Blvd	2.01M/10,638'
Boundary Ave. (N and S)	Beresford Ave.	Plymouth Ave.	2.00M/10,563'
Euclid Ave.	Boundary Ave.	Woodland Blvd.	1.01 M/5,326'
W. New Hampshire Ave.	S. Clara Ave.	U.S. HWY17/92	0.26M/1,348'
East New Hampshire Ave.	Woodland Blvd	Garfield Ave.	0.49M/2,608'
South Garfield Ave.	New Hampshire Ave.	Beresford Ave.	0.52M/2,767'
North Garfield Ave.	S.R. 44	Plymouth Ave.	1.02M/5,385'
1st St.	Beginning	Andover St.	0.11M/600'
Golf Club Drive	Begin Maintenance	U.S. HWY 17/92	0.30M/1,572'
Aquarius Ave.	Taylor Rd.	New Hampshire Ave.	0.50M/2,646'
South Boston Ave.	Beginning	Beresford Ave.	0.44M/2,302'
South Hill Ave.	Blue Grass Blvd.	S.R. 44	0.42M/10,647'
North Hill Ave.	Crescent Parkway	Plymouth Ave.	0.41M/2,155'
East Voorhis Ave.	Woodland Blvd.	Hill Ave.	1.25M/6,618'
Crescent Parkway	Hill Ave.	End	0.10M/551'
North McDonald Ave.	Lindley Blvd.	U.S. HWY 92	0.57M/3,027'
Old Daytona Rd.	U.S. 17 HWY	Old Daytona Ct.	0.67M/3,514'
Andover St.	1st Ave.	End	0.04M/220'
E. Wisconsin Ave.	Hill Ave.	Blue Lake Ave.	0.50M/2,634'
Chipola Ave.	S. Clara Ave.	U.S. HWY17/92	0.25M/1,342'

The County, upon transfer of the subject roads, will be obligated to make the following improvements with regard to the following roads which are set forth the road segments noted above:

Name Of Road	County Improvement Required
East Voorhis Ave.	Resurface within 3 years.
North Garfield Ave.	Resurface within 3 years.
Boundary Ave. (N and S)	Repair of approximately 350 linear feet between W. Minnesota Ave. and W.
May St. and approximately 1,650	linear feet between W. Euclid Ave. and Park Pl. within 1 year.
Chipola Ave.	Repair approximately 1,250 linear feet.
Old Daytona Rd.	Resurface within 3 years.

Prepared by:
County of Volusia, Florida
123 West Indiana Avenue
DeLand, Florida 32720

**AGREEMENT FOR TRANSFER OF CERTAIN ROADS TO CITY OF DELAND FOR
JURISDICTION AND MAINTENANCE PURSUANT TO SECTION 335.0415, F.S.**

This AGREEMENT FOR TRANSFER OF PUBLIC ROAD JURISDICTION AND MAINTENANCE PURSUANT TO SECTION 335.0415, F.S. (AGREEMENT) is made and entered into between the County of Volusia, a political subdivision of the State of Florida, 123 West Indiana Avenue, DeLand, Florida, 32720 (COUNTY), and the City of DeLand, a Florida municipal corporation, 120 South Florida Avenue, DeLand, Florida, 32720 (CITY), for the purposes and consideration set forth herein.

WHEREAS, the COUNTY has jurisdiction of certain roads within the city limits of DeLand as described in Exhibit A; and

WHEREAS, the COUNTY and the CITY each desire that the CITY take jurisdiction and maintenance responsibility permanently and indefinitely for those certain roads, as specifically identified and legally described in EXHIBIT A of this AGREEMENT; and

WHEREAS, the COUNTY shall carry out the improvements listed for certain roads within the timelines described in Exhibit B; and

WHEREAS, the COUNTY and the CITY are not proposing to transfer a road to or from the State Highway System; and

WHEREAS, section 335.0415, Florida Statutes, authorizes the COUNTY to transfer jurisdiction and maintenance responsibility for those local roads as identified and described in EXHIBIT A.

NOW, THEREFORE, the COUNTY and the CITY hereby agree as follows:

1. The above recitals are true and correct and incorporated herein by reference.
2. All jurisdiction and maintenance responsibility for those roads as described in and depicted in EXHIBIT A, is hereby transferred, pursuant to section 335.0415, Florida Statutes, from the COUNTY to the CITY.
3. The transfer includes the ownership and maintenance responsibility of all COUNTY assets within the right-of-way including the road pavement, sidewalks, stormwater system and signage unless noted in Exhibit A. The transfer also includes the CITY maintaining the Boundary Avenue railroad crossing by either accepting assignment of the current agreement from the COUNTY concerning that railroad crossing or the CITY entering into a separate agreement with the railroad entity to maintain the crossing. The CITY's requirement to maintain the Boundary Avenue railroad crossing shall begin upon the effective date of this AGREEMENT.
4. The COUNTY agrees to make the additional improvements within the time frames as described in Exhibit B from the effective date of this AGREEMENT.

5. CITY agrees that this AGREEMENT shall serve as permission for the COUNTY to make the improvements within Exhibit B and that no other AGREEMENT or permission, including a use permit, shall be required from the CITY for the COUNTY to make the improvements described in Exhibit B. However, the COUNTY agrees to provide reasonable notice prior to undertaking any improvements and to coordinate each project with the CITY accordingly.

6. From and after the effective date of this AGREEMENT, the COUNTY shall have no further jurisdiction of, or responsibility for the maintenance of, those roads as depicted on EXHIBIT A, except as previously stated herein, and the COUNTY shall be under no obligation to retake such jurisdiction or maintenance responsibility for those roads listed in Exhibit A in the future.

IN WITNESS WHEREOF, the COUNTY and the CITY have executed this AGREEMENT, effective as of the latest date written below.

ATTEST:

GEORGE RECKTENWALD
COUNTY MANAGER

**COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA**

BY: _____
JEFFREY S. BROWER
COUNTY CHAIR

DATE: _____

ATTEST:

MICHAEL PLEUS
CITY MANAGER

CITY OF DELAND, FLORIDA

BY: _____
ROBERT F. APGAR
MAYOR

DATE: _____

EXHIBIT A

This Instrument Prepared By:

County of Volusia
123 W. Indiana Avenue
DeLand, Florida 32720
386-736-5950

SPACE ABOVE THIS LINE FOR RECORDING DATA

COUNTY DEED F.S. 125.411 Statutory Form

THIS DEED, made this _____ day of _____, 2022, by the **COUNTY OF VOLUSIA**, a political subdivision of the State of Florida, whose address is 123 West Indiana Avenue, DeLand, Florida 32720, **GRANTOR**, to **CITY OF DELAND**, whose mailing address is 120 South Florida Avenue, DeLand, Florida 32720, **GRANTEE**;

WITNESSETH:

Grantor, pursuant to section 125.35, Florida Statutes, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations to said Grantor in hand paid by said Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to said Grantee, its successors and assigns forever, all of its interest, including any reservation referenced in section 270.11 Florida Statutes, in the following described land, situate, lying and being in Volusia County, Florida, to-wit:

SEE EXHIBIT A-1 ATTACHED

IN WITNESS WHEREOF, the **GRANTOR** has caused these presents to be executed in its name by its County Council acting as the Chairman of said Council, and its seal affixed on the day and year first above written.

**COUNTY COUNCIL
COUNTY OF VOLUSIA, FLORIDA**

BY: _____
Jeffrey S. Brower, County Chair

ATTEST: _____
George Recktenwald, County Manager

(OFFICIAL SEAL)

Note: Pursuant to F.S. 125.411 a County Deed of conveyance is not required to be witnessed or acknowledged and can be recorded for record when properly executed.

EXHIBIT A-1

West Minnesota Ave:

The portion of the West Minnesota Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East line of the West 40.00 feet of the East ½ of the Northwest ¼ AND lying easterly of the East line of the West 40.00 feet of the East ½ of the Southwest ¼ of Section 7, Township 17 South, Range 30 East, Volusia County, Florida and lying westerly of the Westerly Right of Way line of Woodland Boulevard (State Road 15/600). Less and except any portion thereof lying within the State Road Right-of-Way for State Road 15-A.

Boundary Avenue:

The portion of the Boundary Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying northerly of the North line of the South 40.00 feet of Section 17, Township 17 South, Range 30 East and lying southerly of the South line of the North 40.00 feet of Section 8, Township 17 South, Range 30 East, Volusia County, Florida. Less and except any portion thereof lying within the State Road Right-of-Way for State Road 44.

Euclid Avenue:

The portion of the Euclid Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the West Right-of-Way line of South Boundary Avenue and lying westerly of the West Right-of-Way line of Woodland Boulevard (State Road 15/600).

Chipola Avenue:

The portion of the Euclid Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East line of the West 35.00 feet of Section 21, Township 17 South, Range 30 East and lying westerly of the West Right-of-Way line of Woodland Boulevard (State Road 15/600).

West New Hampshire Avenue:

The portion of the West New Hampshire Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East line of the West 35.00 feet of Section 21, Township 17 South, Range 30 East and lying westerly of the West Right-of-Way line of Woodland Boulevard (State Road 15/600).

East New Hampshire Avenue:

The portion of the East New Hampshire Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East Right-of-Way line of Woodland Boulevard (State Road 15/600) and lying West of the southerly projection of the Easterly Right of Way line of Garfield

Avenue as established by plat, deed or virtue of maintenance.

Together with:

Lot 13, HARPER SUBDIVISION, as recorded in Map Book 9, Page 15 of the Public Records of Volusia County, Florida.

South Garfield Avenue:

The portion of the South Garfield Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying northerly of the South Right-of Way line of East New Hampshire Avenue and lying southerly of the South line of the North 40.00 feet of Section 21, Township 17 South, Range 30 East, Volusia County, Florida.

North Garfield Avenue:

The portion of the North Garfield Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying northerly of the North Right-of-Way line of East New York Avenue (State Road 44) and lying southerly of the South line of the North 40.00 feet of Section 9, Township 17 South, Range 30 East, Volusia County, Florida.

1st Street:

All that portion of 1st Street, lying north of the South line of the South ½ of the Northeast ¼ of the Southwest ¼ of Section 21, Township 17 South, Range 30 East, per the DO-DEL-SUB as recorded in Map Book 19, Page 108 of the Public Records of Volusia County, Florida.

Together with:

The portion of Andover Street lying east of the East Right-of-Way of 1st Street per the DO-DEL-SUB as recorded in Map Book 19, Page 108 of the Public Records of Volusia County, Florida.

Golf Club Drive:

That portion of Golf Club Drive (formerly known as Dixie Highway or South Boulevard) be it platted, deeded or by virtue of maintenance, lying northerly of the South line of the North ½ of the Northeast ¼ of the Southwest ¼ of Section 28, Township 17 South, Range 30 East Volusia County, Florida and lying east of the Easterly Right-of-Way line of Woodland Boulevard (State Road 15/600).

Aquarius Avenue:

All that portion of Aquarius Avenue, be it platted, deeded or by virtue of maintenance, lying north of the North line of the South 60.00 feet of Section 21, Township 17 South, Range 30 East And lying South of South Right of Way line of East New Hampshire as now established.

South Boston Avenue:

All that portion of South Boston Avenue, be it platted, deeded or by virtue of maintenance, lying south of the South line of the North 25.00 feet of Section 21, Township 17 South, Range 30 AND south of the Southerly limits of maintenance of Beresford Avenue in Section 22, Township 17 South, Range 30 East, said maintenance limit being 3.00 feet south of the southerly edge of pavement determined by the Volusia County Road and Bridge Department February 25, 2019.

South Hill Avenue:

That portion of South Hill Avenue, be it platted, deeded or by virtue of maintenance, lying south of the South Right of Way line of East New York Avenue (State Road 44) and lying north of the South line of the North 220.00 feet of the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 22, Township 17 South, Range 30 East AND lying North of the South line of the North 220.00 feet of the South $\frac{1}{2}$ of the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of said Section 22, Township 17 South, Range 30, Volusia County, Florida. Less and except that portion lying within the North 40.00 feet of said Section 22 AND the South 40.00 of Section 15, Township 17 South, Range 30 East.

North Hill Avenue:

The portion of the North Hill Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying southerly of the South line of the North 70.00 feet of Section 10, Township 17 South, Range 30 East, Volusia County, Florida AND lying north of the westerly projection of the South Right-of-Way line of Crescent Parkway, a 60.00 foot wide Right-of-Way as described in Official Records Book 844, Page 490 of the Public Records of Volusia County, Florida.

East Voorhis Avenue:

The portion of the East Voorhis Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East Right-of-Way line of Woodland Boulevard (State Road 15/600) and lying West of the Easterly Right of Way line of South Hill Avenue.

East Wisconsin Avenue:

The portion of the East Wisconsin Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying easterly of the East Right-of-Way line of North Hill Avenue and lying westerly of the West line of the East 30.00 feet of the Southeast $\frac{1}{4}$ of Section 10, Township 17 South, Range 30 East, Volusia County, Florida

Crescent Parkway:

That portion of Crescent Parkway as described in Official Records Book 844, Page 490 of the Public Records of Volusia County, Florida.

North McDonald Avenue:

The portion of the North McDonald Avenue Right-of-Way be it platted, deeded or by virtue of maintenance, lying northerly of the North line of the South 30.00 feet of Northwest $\frac{1}{4}$ of the

Southwest ¼ of Section 3, Township 17 South, Range 30 East, Volusia County, Florida AND lying south of the South Right-of-Way line of East International Speedway Boulevard (State Road 600).

Old Daytona Road:

The portion of the Old Daytona Road Right-of-Way be it platted, deeded or by virtue of maintenance, lying westerly of the East line of Section 4, Township 17 South, Range 30 East And that portion lying westerly of the East line of Section 33, Township 16 South, Range 30 East. Less and except any portion currently being maintained by the City of DeLand.

EXHIBIT B

County Required Improvements to the Roads Listed

Road Name	From	To	Length (mi)	Length (ft)	County Required Improvements
W Euclid Av	Boundary Av	Woodland Blvd	1.01	5,326	None.
E Voorhis Av	Woodland Blvd	Hill Av	1.25	6,618	County shall resurface road within three (3) years of the effective date of the Transfer Agreement.
N Garfield Av	SR 44	Plymouth Av	1.02	5,385	County shall resurface road within three (3) years of the effective date of the Transfer Agreement.
N Hill Av	Crescent Pkwy	Plymouth Av	0.41	2,155	None.
Crescent Pkwy	Hill Av	End of Road	0.10	551	None.
W Minnesota Av	Hazen Rd	Woodland Blvd	2.01	10,638	None.
N McDonald Av	Lindley Blvd	US 92	0.57	3,027	None.
North & South Boundary Av	Beresford Av	Plymouth Av	2.00	10,563	County shall repair approximately 350 linear feet between West Minnesota Av and West May St and approximately 1,650 linear feet between West Euclid and Park Pl within one (1) year of the effective date of the Transfer Agreement.
S Hill Av	Blue Grass Bv	SR 44	0.42	10,647	None.
E New Hampshire Av	Woodland Blvd	Garfield Av	0.49	2,608	None.
S Garfield Av	New Hampshire Av	Beresford Av	0.52	2,767	None.
Aquarius Av	Taylor Rd	New Hampshire Av	0.50	2,646	None.
1st Av	Begin Road	Andover St	0.11	600	None.
Andover St	1st Av	End of Road	0.04	220	None.
W New Hampshire Av	S Clara Av	US 17/92	0.26	1,348	None.
S Boston Av	Begin Road	Beresford Av	0.44	2,302	None.
E Wisconsin Av	Hill Av	Blue Lake Av	0.50	2,634	None.
Chipola Av	S Clara Av	US 17/92	0.25	1,342	County shall repair approximately 1,250 linear feet within one (1) year of the effective date of the Transfer Agreement.
Old Daytona Rd	US 17	Old Daytona Ct	0.67	3,514	County shall resurface road within three (3) years of the effective date of the Transfer Agreement.
Golf Club Dr	Begin Maintenance	US 17/92	0.30	1,572	None.

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Amendment to Utility Services Agreement (Interlocal Agreement) between Volusia County and the City Realigning the Utility Service Boundary Area and the Parties' Responsibilities for Construction of Force And Water Mains Along United States Highway 17.

DEPARTMENT: City Clerk

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Utility Service Boundary Agreement

APPROVED BY: Michael Pleus, City Manager, November 3, 2022

SUMMARY/HIGHLIGHT:

Approval by the City Commission of the proposed Amendment to Utility Services Agreement (Interlocal Agreement) Between Volusia County and the City Realigning the Utility Service Boundary Area and the Parties' Responsibilities for Construction of Force and Water Mains Along United States Highway 17 is requested.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The proposed action further implements the collaborative actions of the County and the City to provide adequate and high-quality utility services for the benefit of the citizens of the City and other users in a fair and equitable manner with costs distributed between the County and the City. The City will be gaining significant additional utility service area that will generate additional revenues to the City. In consideration to the actions of agreements of the County in the proposed Amendment to Utility Services Agreement, the City will contribute \$1,000,000 to assist the County in the funding of the construction of the water and wastewater pipelines along United States Highway 17 from the present termini to McGinnis Elementary School in DeLeon Springs.

RECOMMENDATION:

City staff recommends that the City Commission approve the proposed Amendment To Utility Services Agreement (Interlocal Agreement) Between Volusia County And The City Realigning The Utility Service Boundary Area And The Parties' Responsibilities For Construction Of Force And Water Mains Along United States Highway 17.

BACKGROUND/DISCUSSION:

The City and the County entered into a “Utility Service Agreement by and between Volusia County, Florida and the City of DeLand” which is dated July 14, 1994 and which is commonly referred to as the “Utility Service Agreement”. The Utility Service Agreement provided, among many other provisions, for the establishment of utility service boundary areas (or “SBAs”) within which the City and the County exercise sole authority to provide potable water, reclaimed water and wastewater utility services as delineated on service area maps.

The City has adopted its *Comprehensive Plan* pursuant to Part II, Chapter 163, *Florida Statutes*, which contain goals, policies and objectives that relate to public services delivery, land use planning and a wide array of other matters. The provisions of the *State Comprehensive Plan* (Chapter 187, *Florida Statutes*), encourage sound planning activities by the City together with other associated governments such as the County as joint planning efforts for the growth and development with other local government jurisdictions with regard to all matters of common impact and interest is consistent with State law and serves the public interest. Joint planning agreements addressing multi-jurisdictional issues pertaining to the provision of public services and facilities serve to further intergovernmental coordination to best serve the citizens and customers of the collaborating local governments. In furtherance of the Utility Service Agreement the County and the City have made significant capital investments while modernizing and enhancing their utility systems.

The proposed amendment to the Utility Service Agreement accomplishes the following:

- (1). Adjusts the City and County SBAs to allow for a more efficient delivery of utility services.
- (2). Allows for additional wells and utility transmission lines within the City’s SBA.
- (3). Supports and contributes to the County’s construction of water and wastewater pipelines along United States Highway 17 to McGinnis Elementary School located in DeLeon Springs relative to which the City will have post-construction maintenance responsibility.

The Utility Service Agreement is amended to expand the City’s service area boundaries as set forth in this Section 3 of this Amendment.

(a). The City’s utility SBA is expanded to the areas described herein and the City shall have the sole and exclusive right to provide potable water, reclaimed water and wastewater utility services within those expanded areas described as follows:

(1). *DeLeon Springs North SBA Expansion.* The City’s SBA is expanded to include the DeLeon Springs North area as depicted on Exhibit “A” hereto as area “1” and as more specifically described in Exhibit “B” hereto.

(2). *Expansion of City’s Northeast SBA in the Vicinity of Tomoka Woods subdivision.* The City’s SBA is expanded in the northeast in the vicinity of Tomoka Woods subdivision as depicted on Exhibit “A” hereto as area “2” and as more specifically described in Exhibit “C” hereto.

(3). *City’s SBA Expansion East of Interstate Highway 4 in the Vicinity of the County Fairgrounds.* The City’s SBA is expanded to the east of Interstate Highway 4 in the vicinity of the County Fairgrounds as depicted on Exhibit “A” hereto as area “3” and as more specifically described in Exhibit “D” hereto.

(4). *City’s SBA Expansion North of State Road 472, South of Victoria Hills.* The City’s SBA is expanded in the southeast, north of State Road 472 and south of Victoria Hills as depicted on Exhibit

“A” hereto as area “4” and as more specifically described in Exhibit “E” hereto. The County shall sell to the City, and the City shall purchase from the County, all potable water, reclaimed water and, wastewater treatment services from the County, in portions of this area “4” as more particularly depicted on Exhibit “F” hereto (“Wholesale Area”) pursuant to the terms set forth in Section 5 of this Amendment.

In consideration for the County agreeing to adjust the City’s SBA which will provide a broader City retail utility customer base, the City will contribute \$1,000,000 as a capital contribution to assist the County in the funding of the construction of the water and wastewater pipelines along United States Highway 17 from the present termini to McGinnis Elementary School in DeLeon Springs. The City contribution has been evaluated to be fair and reasonable based upon the earnings from the anticipated additional customer base and the overall context of the Utility Service Agreement.

The County will design, permit and construct the project which includes sanitary sewer force mains and potable water mains and the County will administer the project and implement the design and construction of the project. Upon project completion and payment for all project labor and materials, the County will convey the force and water mains and attendant infrastructure to the City. Additionally, the County will dedicate, as needed, the force and water mains to the City and convey to the City any easements or other real property interests pursuant to which the facilities were installed and shall assign to the City all rights to the permits and construction and design plans consistent with as-built surveys pertaining to the project.

Additionally, the agreement amends the Utility Service Agreement by expanding the “City of DeLand Annexation Area” to include all of the property depicted on Exhibit “A” hereto as area “4” and as more specifically described in Exhibit “E” hereto.

AMENDMENT TO UTILITY SERVICES AGREEMENT (INTERLOCAL AGREEMENT) BETWEEN THE COUNTY OF VOLUSIA AND THE CITY OF DELAND REALIGNING THE UTILITY SERVICE BOUNDARY AREA AND THE PARTIES' RESPONSIBILITIES FOR CONSTRUCTION OF FORCE AND WATER MAINS ALONG U.S. HIGHWAY 17

THIS AMENDMENT TO UTILITY SERVICES AGREEMENT (hereinafter referred to as the "Amendment") is made and entered into by and between Volusia County, Florida, a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4613 (hereinafter referred to as the "County"), and the City of DeLand, Florida, a Florida municipal corporation, whose mailing address is City Hall, 120 South Florida Avenue, DeLand, Florida 32720 (hereinafter referred to as the "City").

RECITALS

WHEREAS, the City and the County (collectively "Parties") entered into that certain Agreement entitled "Utility Service Agreement by and between Volusia County, Florida and the City of DeLand" dated July 14, 1994 ("Utility Service Agreement"); and

WHEREAS, the Utility Service Agreement provided, among many other provisions, for the establishment of utility service boundary areas ("SBAs") within which the City and the County exercise sole authority to provide potable water, reclaimed water and wastewater utility services; and

WHEREAS, the Parties have relied upon the Utility Service Agreement in making significant capital investments in, and the modernization of, the Parties' respective utility systems; and

WHEREAS, the Parties desire to amend the Utility Service Agreement to:

- (1). Adjust their respective SBAs to allow for a more efficient delivery of utility services to customers,
- (2). Allow for additional utility infrastructure within the City's SBA, and
- (3). Support and contribute to the County's construction of water and wastewater pipelines along United States Highway 17 to McGinnis Elementary School in DeLeon Springs, Florida.

; and

WHEREAS, the City desires to adjust four areas of its SBA as depicted in Exhibit A attached to and incorporated in this Amendment; and

WHEREAS, the City and the County desire to amend the Utility Service Agreement, amongst other things, to provide that the City shall have the exclusive right to provide reclaimed water service in the entirety of its SBA; and

WHEREAS, in consideration for adjusting the City's SBA so as to provide a broader City retail utility customer base, the City shall contribute the sum of \$1,000,000 ("City Capital Contribution") to assist in the funding of the construction of the water and wastewater pipelines along United States Highway 17 from their present termini to McGinnis Elementary School in DeLeon Springs, Florida ("Pipeline Extensions"); and

WHEREAS, the Parties agree and acknowledge that the City Capital Contribution to the County is fair and reasonable given the earnings from the anticipated additional customer base; and

WHEREAS, at the conclusion of construction of the Pipeline Extensions, the City shall assume ownership and control of the Pipeline Extensions; and

WHEREAS, the Parties agree, that unless specifically named herein as being terminated by the Parties, all other utility agreements between the Parties including, but not limited to, the Utility Service Agreement, shall remain in full force and effect after execution of this Amendment, except as specifically modified by this Amendment; and,

WHEREAS, it is in the interest of both Parties to cooperate in accommodating anticipated regional growth by providing efficient and cost effective potable water, wastewater and reclaimed water services; and

WHEREAS, the recitals set forth above are true and correct and are intended to form a material part of this Amendment and the Utility Service Agreement.

NOW, THEREFORE, in consideration of ten dollars (\$10.00) and other good and valuable consideration, including the mutual covenants set forth herein, the receipt and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

Section 1. The above recitals are true and correct and incorporated herein by this reference.

Section 2. Amendment to Utility Service Agreement; Construction of Agreement, Purpose, Intent and Interpretation.

(a). The following provision is added to the Utility Service Agreement:.

The parties enter this Amendment and entered into the Utility Service Agreement pursuant to the powers and authority granted under the Constitution and the State of Florida, including expressly (but not limited to) Section 2 of Article VIII of the Constitution of the State of Florida, applicable general and special acts, and Chapters 125, 166, and Section 163.01, *Florida Statutes*. The purpose of this Amendment is to (1) adjust their respective SBAs to allow for a more efficient

delivery of utility services to customers, (2) to allow for additional utility infrastructure within the City's SBA, (3) to support and contribute to the County's construction of the Pipeline Extensions, and (4) to allow for the City to provide retail utility services in the Wholesale Area, as defined below, by purchasing wholesale utility services exclusively from the County in the Wholesale Area. In construing this Amendment, it is hereby declared by the Parties to be the purpose and intent of this Amendment to prevent needless and wasteful expenditures, which result from unrestrained competition between two utilities operating in overlapping service areas. This Amendment shall not be construed as forming any basis of any understanding for the modifications or alteration of the powers of the Parties as they now exist or may be modified in the future, except as are lawfully and expressly modified by the terms of this Amendment.

(b). The Utility Service Agreement uses, somewhat interchangeably, the terms "service areas", "service area boundaries" and similar terms, and the term SBA as used in this Amendment is intended to include all areas in which the City was granted the exclusive rights to provide water and wastewater (sanitary sewer) service pursuant to the Utility Service Agreement, regardless of the terminology used in the Utility Service Agreement.

(c). The Utility Service Agreement provided for an area within which the City would have the exclusive right to provide reclaimed water service. The Utility Service Agreement is amended to provide that within all of the City's SBA, the City shall also have the exclusive right to provide reclaimed water service. Nothing in this Amendment or in the Utility Service Agreement shall be construed to require the City to provide reclaimed water service in any particular location.

Section 3. Adjustment of the City's Utility SBA; Amendment to Paragraph 3 of Utility Service Agreement. Paragraph 3 of the Utility Service Agreement is amended to expand the City's service area boundaries as set forth in this Section 3 of this Amendment.

(a). The City's utility SBA is expanded to the areas described herein and the City shall have the sole and exclusive right to provide potable water, reclaimed water and wastewater utility services within those expanded areas described as follows:

(1). *DeLeon Springs North SBA Expansion.* The City's SBA is expanded to include the DeLeon Springs North area as depicted on Exhibit "A" hereto as area "1" and as more specifically described in Exhibit "B" hereto.

(2). *Expansion of City's Northeast SBA in the Vicinity of Tomoka Woods subdivision.* The City's SBA is expanded in the northeast in the vicinity of Tomoka Woods subdivision as depicted on Exhibit "A" hereto as area "2" and as more specifically described in Exhibit "C" hereto.

(3). *City's SBA Expansion East of Interstate Highway 4 in the Vicinity of the County Fairgrounds.* The City's SBA is expanded to the east of Interstate Highway 4 in the vicinity of the County Fairgrounds as depicted on Exhibit "A" hereto as area "3" and as more specifically described in Exhibit "D" hereto.

(4). *City's SBA Expansion North of State Road 472, South of Victoria Hills.* The City's SBA is expanded in the southeast, north of State Road 472 and south of Victoria Hills as depicted on Exhibit "A" hereto as area "4" and as more specifically described in Exhibit "E" hereto. The County shall sell to the City, and the City shall purchase from the County, all potable water, reclaimed water and, wastewater treatment services from the County, in portions of this area "4" as more particularly depicted on Exhibit "F" hereto ("Wholesale Area") pursuant to the terms set forth in Section 5 of this Amendment.

(b). The exhibits to this Amendment are incorporated herein as if fully set forth in the text of this Amendment.

Section 4. Addition to Utility Service Agreement; County's Construction and City's Contribution and Acceptance of Ownership and Support of Construction of Force and Water Mains Along United States Highway 17. The following provisions are added to the Utility Service Agreement.

(a). *City's Contribution in Support of the County's Construction of Force and Water Mains Along United States Highway 17.* In recognition of the County's release of its customer base with the expansion of the City's SBA as detailed in section 3 of this Amendment, and the County's construction of the Pipeline Extensions, the City shall pay the City Capital Contribution to the County within 60 days of the Effective Date of this Amendment.

(b). *County's Construction of Pipeline Extensions.* The County shall design, permit, and construct the Pipeline Extensions, which shall include sanitary sewer force mains and potable water mains along United States Highway 17 from the City's existing mains to McGinnis Elementary School in DeLeon Springs (Project). The County shall administer the Project and have final decision authority for all aspects of the design and construction of the Pipeline Extensions. All services and work under the construction contract let by the County for the Project shall be performed to the satisfaction of the County. The County agrees to consult with the City on the design and construction of the Project. Upon completion of construction of the Project, as well as full payment for all labor and materials related thereto, the County shall execute a bill of sale conveying the force and water mains, and attendant infrastructure, ownership and control to the City. Additionally, to the extent necessary and permitted, the County will dedicate the force and water mains to the City and convey by county deed or other appropriate instrument, any easements or other real property interests pursuant to which the facilities were installed as part of the Project, and assign permits and construction and design plans, as necessary, to the City. Without in any way limiting the foregoing, the County will provide to the City as-built surveys of the facilities installed as part of the Project.

(c). *City's Ownership After County's Construction of Force and Water Mains Along United States Highway 17.* Upon the County completing the transfer of the mains as set forth in Section 3(b) of this Amendment, the City shall accept ownership and control of the force and water mains and acknowledge such acceptance in writing. The City further agrees to accept, if necessary, any assignment of easements or permits for the Project after construction completion. The City

agrees to assume any and all obligations and liabilities arising from the operation of the Project from and after the date of the transfer of the facilities installed as part of the Project, including, but not limited to, all costs related to maintenance, future permitting, future capital improvements, and administrative and billing responsibilities.

(d). *County's Representations and Warranties.* The County represents and warrants that it has, or will acquire, sufficient right-of-way or other real property interests sufficient to allow the installation and maintenance of the mains and other facilities being installed as part of the Project in perpetuity.

Section 5. Wholesale Provision of Utilities in Wholesale Area. The following provisions are added to the Utility Service Agreement.

(a). In the eastern portion of the Wholesale Area demarcated and labeled on Exhibit "F" as "Volusia County Utilities Wholesale Water, Wastewater and Reclaimed Service Provider to City", all potable water, wastewater and reclaimed water services provided by the City shall be purchased by the City from the County. The County shall have the exclusive rights to provide potable water, wastewater, and reclaimed water services to the City in said portion of the Wholesale Area. In the western portion of the Wholesale Area demarcated and labeled on Exhibit "F" as "Volusia County Utilities Wholesale Reclaimed Service Provider to City", all reclaimed water services provided by the City shall be purchased by the City from the County. The County shall have the exclusive rights to provide reclaimed water to the City in said portion of the Wholesale Area. However, should the City in the future elect to extend reclaimed water service to the aforescribed western portion of the Wholesale Area in which the City is required to purchase only wholesale reclaimed water from the County, the City may do so upon ninety (90) days written notice to the County and have no further obligation to purchase such reclaimed water from the County. However, the City shall not routinely purchase wholesale reclaimed water for distribution in this area from any other source, except pursuant to an interlocal agreement to which the County is a party. The City and the County may adjust by a written agreement, signed by the County Manager on behalf of the County and the City Manager on behalf of the City, the precise location of the boundary between the two portions of the Wholesale Area. However, in no event shall the boundary be shifted east of the Dr. Martin Luther King, Jr. Beltway without a written amendment to the Utility Service Agreement approved and executed by the City and the County.

(b). All potable water, wastewater collection and reclaimed water sold by the County to the City in the Wholesale Area will be billed at EIGHTY SIX PERCENT (86%) of the County's lowest tier of retail rates, together with ONE HUNDRED PERCENT (100%) of base fees charged by the County based upon the size of each of the master meters. However, should the County ever sell water, sewer or reclaimed water services to another utility provider at a lower rate, then such services shall be sold at that lower rate to the City in the Wholesale Area. The Wholesale Area currently has limited development, but much of the Wholesale Area is expected to be developed with both residential and commercial development in the near future. For each new retail customer connected to utilities in the portion of the Wholesale Area in which the City is required to purchase water, wastewater and reclaimed water from the County, the City shall pay to the County the amount of the County's then current water and sewer connection fees (which for the sake of clarity

are those fees related to treatment and production capacity and not CAIC or other fees related to the distribution systems), established by County ordinance and or rate resolution, per equivalent residential unit (ERU) which would be charged to such customer if it was a retail customer of the County's. The County agrees to reserve future water and wastewater capacity upon the City's payment of the County's water and wastewater connection fees per ERU at the rates established by County ordinance and or rate resolution.

(c). Potable water and reclaimed water sold by the County to the City in the Wholesale Area shall be metered by master meters at the points of connection between the County's potable and reclaimed water systems and the City's distributions systems. There are existing meters, and additional meters will be installed at locations mutually agreed upon by the City and the County. The City shall furnish and install all new metering equipment. All such master meters shall be owned and maintained by the County. The metering equipment shall be calibrated annually by the County with City concurrence in order to record flow accurately within industry standards. The City shall own and maintain the distribution systems from the master meters to the points of service (except for any facilities which are privately maintained by customers of the City).

(d). Wastewater flows will not be metered. As such, the County shall charge the City for the wholesale provision of wastewater service based upon the amount of potable water sold to the City in the Wholesale Area. For the sake of clarity, for every thousand gallons of water sold by the County to the City, the City shall also be charged for one thousand gallons of wastewater collection.

(e). The County shall invoice the City monthly for the wholesale supply of utilities in the Wholesale Area. Should the City identify any errors in the billing, the City shall endeavor to notify the County within fifteen (15) days of the City's receipt of the invoice. Payment shall be due, less any disputed amounts, within thirty (30) days from the City's receipt of the invoice.

Section 6. Amendment to Annexation Area Boundary. Exhibit 1 of the Utility Service Agreement is amended to expand the "City of DeLand Annexation Area" to include all of the property depicted on Exhibit "A" hereto as area "4" and as more specifically described in Exhibit "E" hereto.

Section 7. Miscellaneous Revisions to Utility Service Agreement. The following provisions are added to the Utility Service Agreement.

(a). Subject to the limitations provided in Section 768.28, *Florida Statutes*, and without otherwise waiving sovereign immunity, the City shall indemnify and hold harmless, in an amount not to exceed \$200,000 per person or \$300,000 per occurrence or such other amount as may be set forth from time to time in Section 768.28, *Florida Statutes*, for the limited waiver of sovereign immunity, the County from and against any and all third Party claims, demands, damages, losses, and expenses, including attorney's fees and costs, related to the Project after the date of transfer to the City, except that this indemnity obligation shall not include any claims related to payment for construction of the Project.

(b). This Amendment and the Utility Service Agreement are solely for the benefit of the County and the City, and no right or cause of action shall accrue to or for the benefit of any third Party that is not a Party hereto. Nothing in this Amendment or the Utility Service Agreement, express or implied, is intended or shall be construed to confer upon or give any person or corporation other than the County or the City any right, remedy, or claim under or by reason of this Agreement or the Utility Service Agreement, or any provisions or conditions thereof, and all of the provisions, covenants, and conditions therein contained shall inure to the sole benefit of and shall be binding upon the County and the City.

(c). The validity, construction, and performance of this Amendment and the Utility Service Agreement shall be governed by the laws of the State of Florida. In the event of the litigation of any dispute between the Parties regarding this Amendment or the Utility Service Agreement, the venue of such litigation shall be Volusia County, Florida.

(d). If any portion of this Amendment or the Utility Service Agreement is for any reason held or declared to be invalid or unenforceable, such determination shall not affect the remaining portions of this Amendment or the Utility Service Agreement.

(e). *Effective Date.* This Amendment shall commence upon its execution by the Parties and its recording with the Clerk of the Circuit court as required by Section 163.01(11), *Florida Statutes*, (Effective Date).

(f). The County and the City each expressly retain all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, *Florida Statutes*. Except as expressly provided for in this Amendment or the Utility Service Agreement, each party shall be liable for its own actions and negligence. Notwithstanding anything set forth in any section of this Amendment to the contrary, nothing in this Amendment shall be deemed as a waiver of sovereign immunity or limits of liability of any party beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature, or may be adopted by the Florida Legislature, and liability of any party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise, including, but not limited to, a claim sounding in tort, equity or contract.

(g). This Amendment or the Utility Service Agreement may not be assigned or transferred in any manner without prior written permission of the other party, which, absent consent by either party, any assignment or transfer of this Agreement shall be void.

(h). Waiver by either party for breach of any covenant or provision of this Amendment or the Utility Service Agreement shall not be deemed to constitute a waiver of any preceding or subsequent breach of the same or any other covenant or provision. Failure to object to or enforce this Amendment or the Utility Service Agreement as to a breach of any covenant or provision contained herein shall not constitute a waiver of such breach.

(i). In the event of any dispute concerning the interpretation or obligations of either party under this Amendment or the Utility Service Agreement, the Parties shall attempt in good

faith to resolve any dispute through discussion between the City Manager and County Manager or their representatives, or by any form of dispute resolution to which the Parties may agree. The Parties shall comply with any applicable requirements of the *Florida Governmental Conflict Resolution Act* as set forth at Chapter 164, *Florida Statutes*.

(j). The captions or section headings in this Amendment are provided for convenience only and shall not be deemed to explain, modify, amplify, or otherwise affect the substance of this Amendment.

(k). This Amendment may be executed in any number of counterparts, the aggregate of which shall constitute a single document, and electronic or facsimile signatures shall be deemed original signatures.

(l). Each party shall, upon written request from the other party and with no obligation to incur substantial costs, take reasonable steps to aid the other party to obtain any required approval or permit from any relevant governmental entity or to otherwise aid the other party in carrying out its functions and obligations as contemplated by this Amendment or the Utility Service Agreement.

Section 8. Amendment to Paragraph 18 of Utility Service Agreement. Paragraph 18 of the Utility Service Agreement is revised to read as follows:

(a). All notices required to be given by either party shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or in person:

(1). City of DeLand
ATTN: City Manager
120 South Florida Ave.
DeLand, Florida 32720

(2). County of Volusia
ATTN: County Manager
123 West Indiana Avenue
DeLand, Florida 32720

(b). Either party may, by written notice to the other party as provided herein above, change the address for any subsequent notice.

Section 9. Filing/Recording of Utility Service Agreement and Amendment. The City agrees to file an executed copy of this Amendment and the Utility Service Agreement with and the Clerk of the Circuit Court of Volusia County in accordance with Section 163.01(11), *Florida Statutes*.

Section 10. Term of Utility Service Agreement. The Utility Service Agreement, as amended hereby, shall remain in effect for so long as the Parties, their respective successors or assigns, shall provide utility services to the SBAs.

Section 11. Effect of Agreement/Savings Provision. Except as specifically amended by this Amendment, the Utility Service Agreement shall remain in full force and effect and is hereby ratified and confirmed by the Parties. All actions taken by the Parties under the provisions of the Utility Service Agreement are hereby ratified and affirmed.

IN WITNESS WHEREOF, the parties hereto executed this Amendment, by and through their duly authorized representatives, on the respective dates below.

[SIGNATURES ON FOLLOWING PAGES]

ATTEST:

COUNTY OF VOLUSIA

By: _____
George Recktenwald
County Manager

By: _____
Jeffrey S. Brower
County Chair

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Thomas R. Brown, III
Sr. Asst. County Attorney

ATTEST:

CITY OF DELAND

By: _____
Julie A. Hennessy, MMC
City Clerk - Auditor

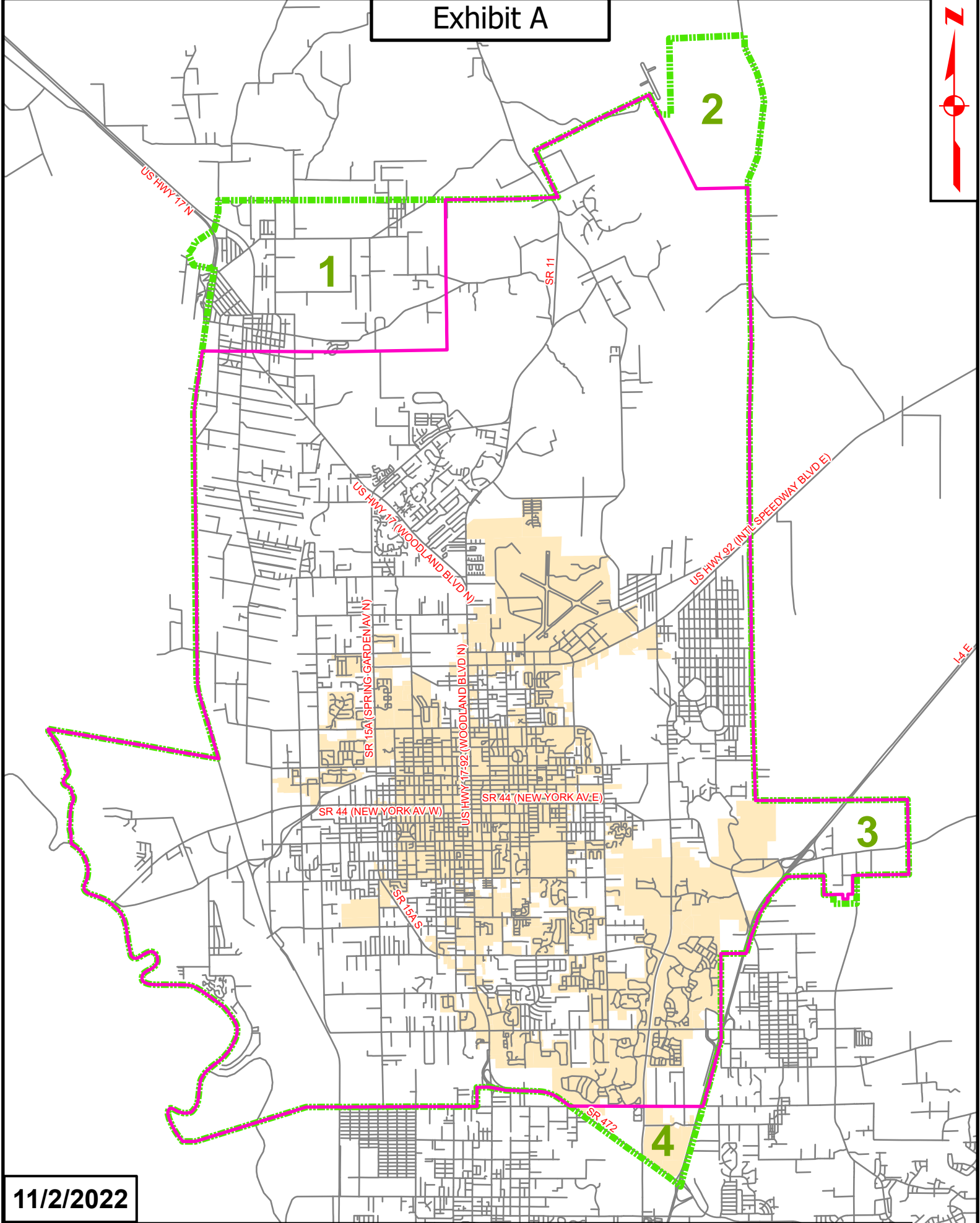
By: _____
Robert F. Apgar, Mayor

Date: _____

APPROVED AS TO FORM AND LEGALITY:

Darren J. Elkind
City Attorney

Exhibit A



11/2/2022



Existing Utility Service Boundary

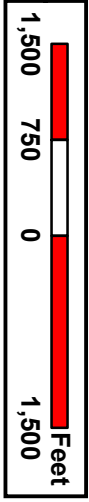
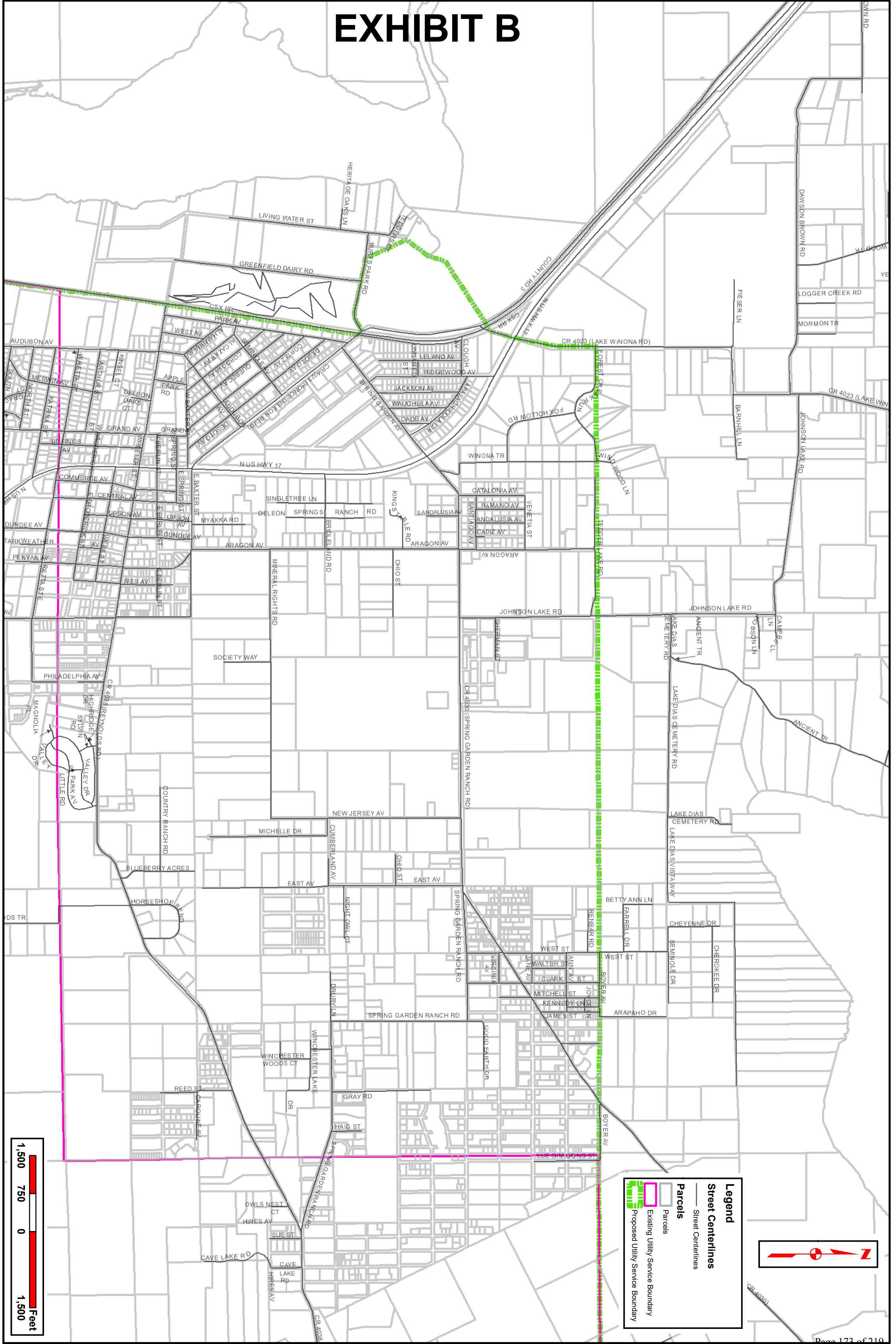


Proposed Utility Service Boundary



DeLand City Limits

EXHIBIT B



 Existing Utility Service Boundary

 Proposed Utility Service Boundary

 Parcels

 Street Centerlines

 Parcels

 Street Centerlines

Legend

Street Centerlines

Parcels

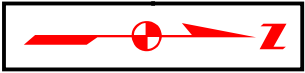
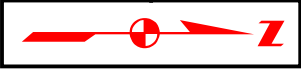
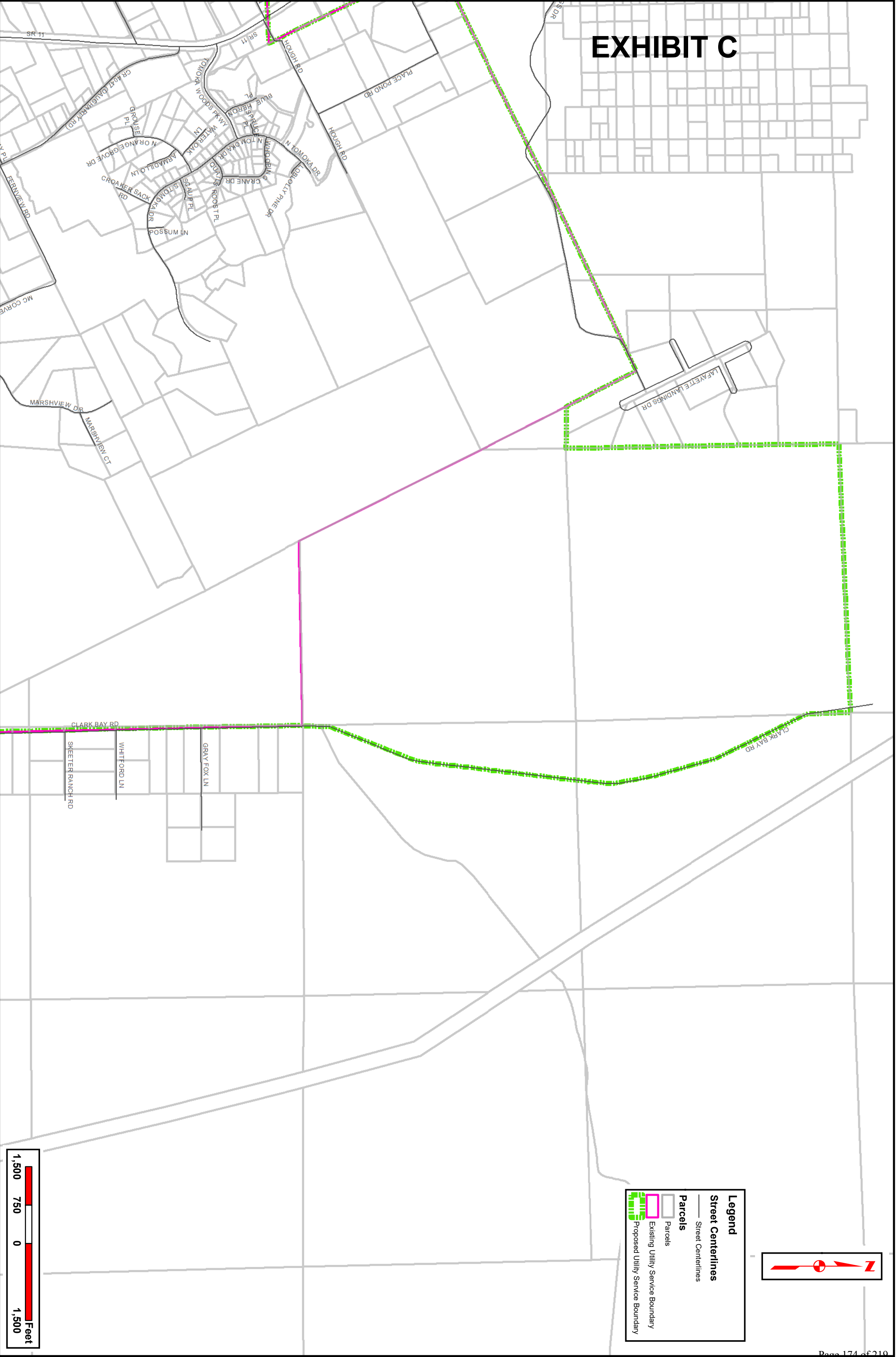


EXHIBIT C



Legend

Street Centerlines
— Street Centerlines

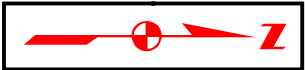
Parcels
□ Parcels

Existing Utility Service Boundary

Proposed Utility Service Boundary



EXHIBIT D



Legend

Street Centerlines

— Street Centerlines

Parcels

▭ Parcels

▭ Existing Utility Service Boundary

▭ Proposed Utility Service Boundary

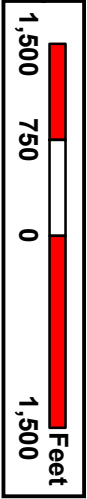


EXHIBIT E

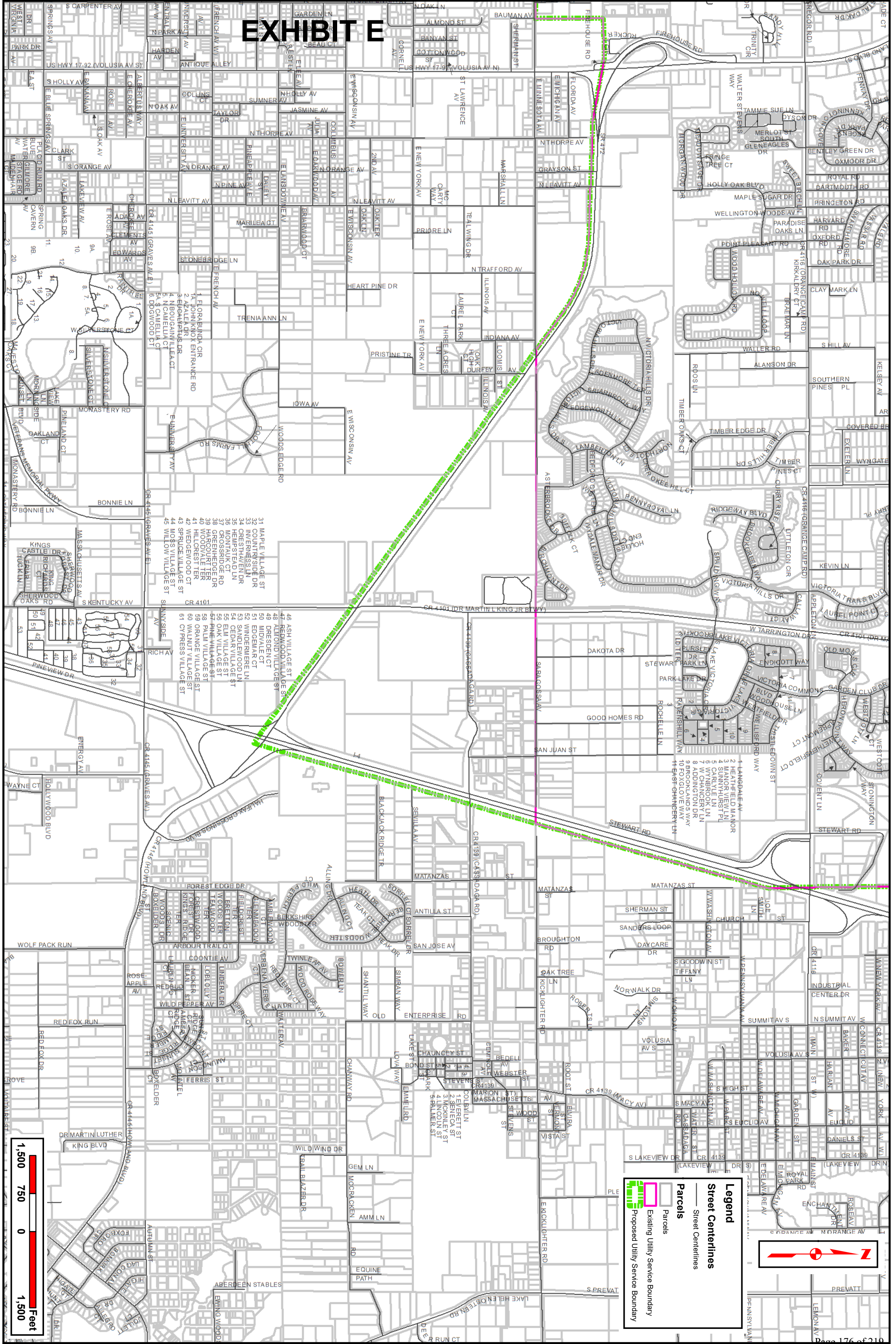
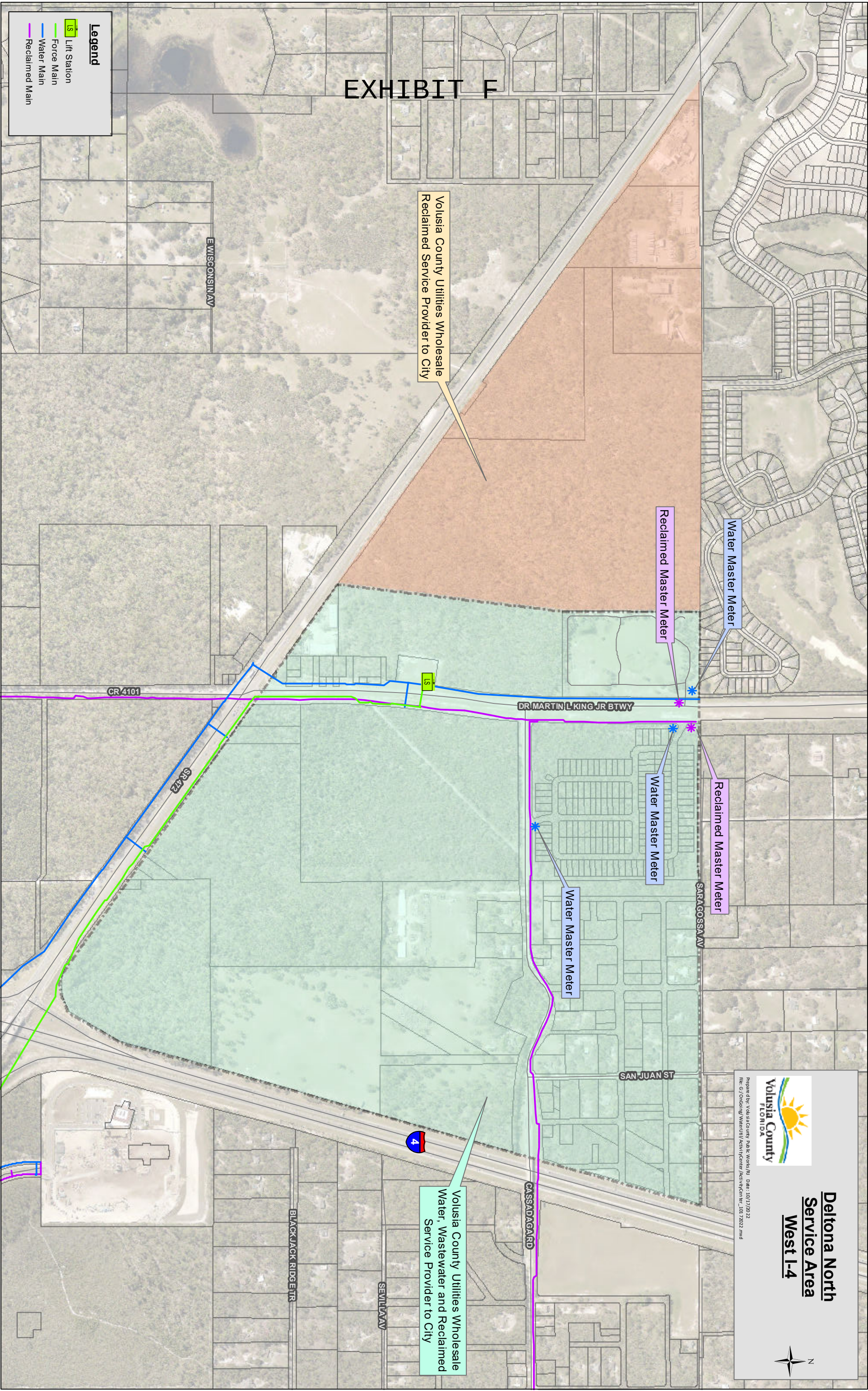


EXHIBIT F





**Deltona North
Service Area
West I-4**



Prepared by: Volusia County Public Works/PL Date: 10/17/2022
File: G:\Ongoing\WaterUtil\ActivityCenter\ActivityCenter_10172022.mxd

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Interlocal Agreement between the School Board of Volusia County, the County of Volusia and the City of DeLand for the Exchange of Real Property and the Construction of the Beresford Avenue Extension.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: Beresford Ave Extension ILA, Beresford Ext to SR 44_School Board Ac

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

The approval of an interlocal agreement (land exchange agreement) with the Volusia County School Board and Volusia County for the exchange of real property and the construction of the Beresford Avenue Extension Project is proposed.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

The City has procured real property in order to enter the proposed interlocal agreement and have the needed property for the exchange of lands which is proposed in the interlocal agreement. The actions taken have implemented right-of-way acquisition for the Beresford Avenue Extension Project in the most cost effective manner such that overall costs of the Project were minimized.

RECOMMENDATION:

City staff recommends that the City Commission approve the proposed interlocal agreement (land exchange agreement) with the Volusia County School Board and Volusia County for the exchange of real property and the construction of the Beresford Avenue Extension Project.

BACKGROUND/DISCUSSION:

City staff has been diligently working to procure the rights-of-way necessary to complete the Beresford Avenue Extension Project. The City recently consummated an exchange of real property with DEPROP, LLC in order to possess property that is needed to implement the provisions of the proposed interlocal agreement from the City's side of the transaction.

The School Board owns approximately 6.5 acres of real property and the City now owns approximately 7.5 acres of real property. The County is constructing the Beresford Avenue Extension Project from Kepler Road to

the area of State Road 44 and North Summit Avenue and the Project will cross the School Board property. In support of the Project, the Board will convey its property to the County for use as County Beresford Avenue right-of-way in exchange for the City conveying the City-owned real property to the School Board. All conveyances will be “AS IS” conveyances together with all mineral rights in accordance with Section 270.11, *Florida Statutes*.

The proposed interlocal agreement outlines the general responsibilities of the parties with regard to costs, etc. Importantly, the County will commence construction of the road within five years.

**INTERLOCAL AGREEMENT BETWEEN THE SCHOOL BOARD OF VOLUSIA
COUNTY, THE COUNTY OF VOLUSIA AND THE CITY OF DELAND FOR THE
EXCHANGE OF REAL PROPERTY AND THE CONSTRUCTION OF THE
BERESFORD AVENUE EXTENSION**

THIS AGREEMENT (LAND EXCHANGE AGREEMENT) (hereinafter “Interlocal Agreement”) is made and entered into as of the ___ day of _____, 2022 (the “Effective Date”) by and between School Board of Volusia County, Florida, whose principal address is at 200 North Clara Avenue, DeLand, Florida 32720 (hereinafter referred to as the “Board”); the County of Volusia, a political subdivision of the State of Florida, with administrative offices at 123 West Indiana Avenue, DeLand, Florida 32720-4613 (hereinafter referred to as the “County”); and the City of DeLand, Florida, a municipality of the State of Florida, whose mailing address is City Hall, 120 South Florida Avenue, DeLand, Florida 32720, (hereinafter referred to as the “City”), with the County, the City and the Board sometimes referred to herein collectively as the “Parties” with the Parties being a grantee hereunder as to certain property and a grantor as to other property, and Parties hereby state as follows:

RECITALS:

WHEREAS, the Board owns approximately 6.47 acres of real property, as shown and described in Exhibit A, attached and incorporated herein (hereinafter referred to as the “Board Property”); and

WHEREAS, the City owns or will own approximately 7.563 acres of real property consisting of 2 parcels of 6.105 acres and 1.458 acres, as shown and described in Exhibit B and Exhibit C, respectively, attached and incorporated herein, (hereinafter referred to as the “City Property”); and

WHEREAS, the County is constructing the Beresford Avenue Extension from Kepler Road to the area of State Road 44 and North Summit Avenue (hereinafter referred to as the “Beresford Project”) as shown and described in Exhibit D, attached and incorporated herein; and

WHEREAS, this section of Beresford Avenue Extension will cross the Board Property; and

WHEREAS, in support of the Beresford Project, the Board desires to convey the Board Property described in Exhibit A to the County for use as County right of way in exchange for the City giving the Board the City Properties described in Exhibit B and Exhibit C; and

WHEREAS, it is in the best interest of the Parties to the exchange and convey the property as set forth in this Interlocal Agreement in support of the Beresford Project; and

WHEREAS, the “Board Property” and the “City Property” are sometimes hereinafter referred to collectively as the “Properties” and individually as a “Property”.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

SECTION 1. RECITALS.

The Recitals set forth above have been relied upon by the Parties, are incorporated herein by this reference thereto and are hereby made a part of this Interlocal Agreement as fully as if set forth herein verbatim.

SECTION 2. DESCRIPTION OF CONVEYANCE AND EXCHANGE.

A. In support of the Beresford Project, the Parties agree to the following:

Board, County, & DeLand
Tri-party for land exchange
re. Beresford Ave. ext.

1. The Board shall convey the Board Property described in Exhibit A to the County in support of the Beresford Project; and
2. The City shall convey the City Property described in Exhibits B and C to the Board.

B. The Parties shall accept the respective properties “AS IS.”

SECTION 3. TITLE TO BE CONVEYED AND OTHER EXPENSES.

- A. All property conveyed by the Parties shall be conveyed “AS IS” by general statutory warranty deed, free and clear of all liens, encumbrances, and matters, except as may be specifically set forth herein. Additionally, the Parties shall convey all mineral rights per Florida Statute 270.11(3).
- B. Real estate taxes, if any are due, and other similar items shall be adjusted ratably as of the Closing Date. If the amount of the current real estate taxes is not then ascertainable, the adjustment thereof, except for that amount which may accrue by reason of new or additional improvements, recently voted millage or changes in valuation, shall be on the basis of the amount of the most recent ascertainable taxes. The grantor of each parcel shall pay all special assessments or installments of special assessments (if payable by the installment method) due on or prior to the Closing Date, if any. Special assessments or installments of special assessments (if payable by the installment method) for the year in which the Closing occurs which are not yet due and payable on the Closing Date shall be prorated to the Closing Date and assumed by the grantee of the respective parcel(s). In addition, the following expenses may apply:

- (1) Each Grantee of conveyed property shall be responsible for their respective recording costs.
- (2) The City shall provide the Board a title commitment and subsequent owner's title insurance policy at the City's sole expense.
- (3) The County, if desired, will purchase a title commitment and subsequent owner's title insurance policy at the County's sole expense for the Board property being conveyed to the County.
- (4) The Parties shall be responsible for their own respective attorney's fees, if any, that arise out of this Agreement and the closing.
- (5) The Parties each represent and warrant to the other that each party has not employed, retained, or consulted any broker, agent or other finder with respect to this Agreement. The Parties, to the extent permitted by law, agree to indemnify and hold the other harmless from and against any and all claims, demands, causes of action, debts, liabilities, judgments and damages (including costs and reasonable attorneys' fees incurred in connection with the enforcement of this indemnity) which may be asserted or recovered against the other on account of any brokerage fee, commission, or other compensation arising in breach of this representation and warranty. This warranty shall survive the Closing.

SECTION 4. RIGHT OF INSPECTION AND ACCESS.

The County and the Board shall have ninety (90) days from the Effective Date ("Inspection Period") to undertake at their own cost expense such physical inspections and other

investigations of and concerning the Property to be conveyed, including surveys, soil borings, engineering and environmental studies and other tests, studies and examinations, as the County or the Board consider useful and for their consultants to review and evaluate the Property to determine if it is suitable in that Party's sole and absolute discretion. Each Party will allow the other Parties and their representatives and agents reasonable access onto the Properties to conduct such tests and studies. If the County or the Board determines that the Property which it is to be conveyed is not acceptable, in its sole and absolute discretion, that Party shall provide a termination notice to the other Parties prior to the end of the Inspection Period and upon delivery of said termination notice, this Interlocal Agreement shall be deemed terminated and the Parties shall have no further obligations under this Interlocal Agreement except for matters which specifically provide that they are to survive Closing. Within seven (7) days of the Effective Date, all of the Parties shall provide the other Party with copies of all tests, written reports and studies related to the Property owned by it, or to be owned by it, in its possession or control for the other Parties' use in determining the feasibility of the Property for any intended use or purpose. In addition, should a Party conduct a study, report, or test to be performed of the Property being acquired by that Party, that Party will provide a copy of such test, study or report to the other Parties within ten (10) days of its receipt at no cost. All reports shall be delivered without any representation or warranty by the Party furnishing the report of whatsoever kind or nature and subject to any copyrights, rights of proprietorship or other intellectual property rights of the authors or creators thereof. All of the Parties shall promptly pay for all tests, studies and investigations that it performs on another Party's Property. Any boring holes made shall be promptly filled and packed to the surrounding earth level by the inspecting party. To the extent

permitted by law, the parties shall at all times save the other party harmless from any and all suits or claims made by any person or legal entity as a result of any boring tests or other action of the inspecting party, its agents, employees or representatives, while entering, leaving or on the Properties. This Section shall survive termination of this Interlocal Agreement and Closing.

SECTION 5. TITLE INSURANCE.

A. The City shall, at its sole cost and expense, provide to the Board title insurance commitments for the property conveyed to the Board by the City. The City shall provide to the Board title insurance commitments issued by a qualified title insurer agreeing to issue to the respective grantee, upon recording of the deed in to the respective grantee, a fee owner's policy of title insurance (ALTA Form), said title insurance insuring the title of the respective grantee subject only to the Permitted Exceptions (as hereinafter defined) and the so-called "Standard Exceptions" contained on the inside jacket cover of the standard ALTA Form of commitment; said commitment shall provide that said Standard Exceptions will be deleted by the title insurance company upon furnishing to the issuing agent a Lien, Possession and Encumbrance Affidavit in the customary form (and the Parties agreeing to furnish such affidavits at and as a part of the Closing) and a current survey and surveyor's report (on the prescribed company form; said survey and surveyor's report to be furnished by the respective grantee at the respective grantee's expense).

B. During the ninety (90) day due diligence period, within fifteen (15) days of receipt of the title insurance commitment, each prospective grantee shall notify the other Parties of such reasonable written objections as the prospective grantee may have to matters set forth in the Title Commitment and the surveys which materially affect the feasibility of the respective

grantee's contemplated use. In the event any such objections are made by the respective grantee; the respective grantor shall have a period of thirty (30) days (or longer, if so extended in writing by the respective grantee) from the receipt of the same in order to cure such objections. Failure to cure the objections to the respective grantee's satisfaction shall give the respective grantee the right to:

(1) waive the title objections and close the conveyance; or

(2) terminate this Interlocal Agreement in which event all rights and obligations between the Parties shall be null and void.

C. The County shall provide the Closing Agent for the closing on the Properties.

SECTION 6. SURVEY AND TOPO.

During, or prior to, the Inspection Period, the respective grantee-Parties may obtain surveys of the Properties. Each of the Parties will pay their own costs and expenses relative to such surveys.

SECTION 7. REPRESENTATIONS AND LIMITED WARRANTIES.

The Parties acknowledge that each of them is receiving the Property to be conveyed to it in its "as is" condition without any representation or warranty of any type whatsoever as to its condition. Each respective grantor, however, does hereby represent and warrant to the respective grantee that:

a. The party has full power and authority to enter into and perform this Agreement in accordance with its terms.

b. The party has no actual knowledge of and has not received any notice with respect to any of the lands subject to this Agreement: (i) of violation of any city, county,

state or federal law, ordinance, regulation or code, or (ii) of existence of dangerous or illegal conditions requiring corrective action.

c. To the best of each party's knowledge, there is no pending litigation or dispute involving or concerning the location of the boundaries of any of the Properties.

d. While the party has been in possession of the Properties, no hazardous material, pollutant or contaminant has been released or discharged onto the Properties or into any water body on the Properties, and party has no knowledge of hazardous material, pollutant or contaminant being released or discharged on the Properties or into any water body on the Properties.

e. The party has not entered into any leases, contracts or other written agreements relating to any of the Properties which are unrecorded other than the Developer Purchase Agreement and this Agreement.

f. The party represents that there are no mechanics' liens, claims of lien or other claims against the Properties and that the party has no unpaid bills for labor or services performed on, or for materials supplied to the Properties, except for those unpaid bills which will be paid prior to the closing.

g. That no person is now, or will at the time of closing be entitled to, or in possession of any portion of the Properties, except for persons employed by the party who may be on the Properties in connection with the performance of their duties and who will vacate the premises when the other party takes possession.

h. The party is not a "foreign person" as such term is defined in §1445(f) of the Internal Revenue Code.

i. At the time of closing, the party will provide the other party with an affidavit to the effect that the above warranties and representations are true and correct as of the Closing Date.

SECTION 8. OBLIGATION TO CLOSE.

Each respective grantee's obligation to close the exchange contemplated hereby is expressly conditioned upon:

A. All of the respective grantor's covenants and obligations being fully performed or performance waived by the respective grantee; and

B. All representations and warranties made by the respective grantor in this Interlocal Agreement being true and correct as of the Closing.

C. A determination that the Property to be conveyed to the respective Parties is suitable for its intended purpose as determined during the Inspection Period, and none of the Parties has terminated this Agreement prior to the end of the Inspection Period.

D. Receipt and approval by each of the appropriate Parties of surveys containing the identifying the location and the final legal descriptions of the applicable Property to be conveyed at Closing within the Inspection Period.

E. Receipt of a marked-down title insurance commitment whereby the title insurer agrees to insure fee simple title to the Property being acquired subject only to the Permitted Exceptions.

F. If the exchange contemplated hereby is not consummated due to a default or inability to perform on the part of the respective grantor, then no party shall have any further liability to the other.

SECTION 9. CLOSING.

At Closing the appropriate Parties shall deliver the following documents and funds and

take the following actions:

A. The respective grantor shall deliver a general statutory warranty deed to the respective grantee.

B. Possession of, and title to, the property to be conveyed shall be delivered to the respective grantee by the respective grantor subject only to the Permitted Exceptions as set forth herein.

C. The respective grantor shall furnish such typical affidavits as shall be reasonably required by the Title Company to remove from the Title Policy the standard printed exceptions, such affidavits to comply, among other things, with Section 1445 of the *Internal Revenue Code* (certifying that the respective grantee is not a foreign person) and such other typical documents reasonably required by the respective grantee or the Title Company.

D. *Ad valorem* taxes, if any, shall be prorated as set forth herein.

E. The appropriate Parties, if necessary, shall deliver to the Closing Agent sufficient funds with which to pay its share of the closing costs and to record the necessary documents at Closing.

F. If all requirements for Closing are met and no party is in default hereunder, the Parties shall exchange the deeds as set forth herein.

G. An affidavit of the representations and limited warranties as described in Section 7 of this Agreement.

SECTION 10. CONSTRUCTION OF BERESFORD PROJECT.

The County shall commence construction of the Beresford Project within five (5) years of the Closing.

SECTION 11. NOTICES.

A. All notices required or permitted hereunder shall be in writing and deemed delivered:

- (1) when actually received in person if hand-delivered, or
- (2) on the next day after being deposited with a recognized overnight courier,

or

(3) on the third day after being deposited in the U.S. Mail, certified letter, postage prepaid, return receipt requested.

To the County: Tadd Kasbeer
County Engineer
Thomas C. Kelly Administration Center
123 West Indiana Avenue
DeLand, Florida 32720

With copy to: Michael Dyer, Esquire
County Attorney
Thomas C. Kelly Administration Center
123 West Indiana Avenue
DeLand, Florida 32720

To the City: Michael P. Pleus, ICMA-CM
City Manager
City of DeLand
City Hall
120 South Florida Avenue
DeLand, Florida 32720

With copy to: Darren J. Elkind, Esquire
City Attorney
142 East New York Avenue
DeLand, Florida 32724

To the Board: Dr. Carmen J. Balgobin
Superintendent
200 North Clara Avenue

DeLand, Florida 32720

With copy to: Kevin W. Pendley, Esquire
General Counsel
200 North Clara Avenue
DeLand, Florida 32720

or such other address as delivered in writing to the other party.

B. The Parties hereby designate the above-named persons as representatives who shall be authorized to act on behalf of the Parties with respect to their communications with one another under the terms of this Interlocal Agreement. The Parties shall have the right to replace their representatives at any time without cause by delivering written notice of such replacement to the other party.

C. E-mails to a party shall not constitute valid notice under the provisions of this Interlocal Agreement.

SECTION 12. DATE AND PLACE OF CLOSING.

The County shall serve as the Closing Agent. This Interlocal Agreement shall be closed by (a) exchange of documents and funds in the form of a customary “mail away” closing, or (b) at the office of the Closing Agent within one hundred eighty (120) days after execution by all the Parties of this Agreement unless extended by mutual agreement of the Parties.

SECTION 13. PRORATIONS AND ADJUSTMENTS.

The following are to be apportioned as of 12:01 A.M. on the date of Closing:

Such items, if any, as are customarily adjusted between buyers and sellers/grantors and grantees, it being intended that the Parties will make such adjustments at or after Closing as are necessary so that the respective grantor shall have all the benefits and burdens of the property

being conveyed to and including midnight of the day preceding the date of Closing and the respective grantee shall have all the benefits and burdens of the property to be conveyed after midnight of the day preceding the date of Closing.

SECTION 14. TIME OF THE ESSENCE.

Time is of the essence in the performance of this Interlocal Agreement. The Parties agree that they shall diligently and expeditiously pursue their respective obligations set forth in this Interlocal Agreement.

SECTION 15. EXHIBITS.

All exhibits to this Interlocal Agreement are hereby incorporated into this Interlocal Agreement by this reference thereto.

SECTION 16. SECTION HEADINGS/CAPTIONS.

The section headings herein contained are inserted for convenience of reference only and shall not be deemed to be a part of this Interlocal Agreement; they shall be ignored in construing this Interlocal Agreement.

SECTION 17. CONSTRUCTION OR INTERPRETATION OF INTERLOCAL AGREEMENT.

The fact that one of the Parties may be deemed to have drafted or structured any provision hereof shall not effect the interpretation of this Interlocal Agreement and this Interlocal Agreement is the result of *bona fide* arm's length negotiations by and between the Parties and, accordingly, the fact that one or another party drafted this Interlocal Agreement, or any part of it, shall not be considered in construing the particular provision either in favor of or against such party. The Parties have contributed substantially and materially to the drafting of this Interlocal

Agreement.

SECTION 18. COUNTERPARTS.

This Interlocal Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed an original, and all such counterparts shall be deemed one and the same contract and agreement. In the event that this Interlocal Agreement is executed in counterparts, the Effective Date of this Interlocal Agreement shall be determined with reference to the date of the last execution of any of the counterparts.

SECTION 19. ENTIRE CONTRACT; INTEGRATION OF TERMS; MODIFICATION; AUTHORITY TO EXECUTE.

This Interlocal Agreement (and all exhibits thereto) constitutes the entire agreement, understanding and contract between the Parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous contracts, agreements and understandings of the Parties. No modification or amendment of this Interlocal Agreement shall be valid and binding upon the Parties unless in writing and executed by the Parties to be bound thereby. Each person executing this Interlocal Agreement warrants and represents that persons' full authorization to do so.

SECTION 20. SOVEREIGN IMMUNITY. Each party to this Agreement expressly retains all rights, benefits and immunities of sovereign immunity that they presently enjoy under the Constitution and Statutes of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes. Notwithstanding anything set forth in any article of this Agreement to the contrary, nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of either party beyond any statutory limited waiver of immunity or limits of liability

which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and any liability of either party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. Nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim against any party, which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 21. THIRD PARTIES. In no event shall any of the terms of this Agreement confer upon any third person, corporation, or entity other than the parties hereto any right or cause of action for damages claimed against any of the parties to this Agreement arising from the performance of the obligations and responsibilities of the parties herein or for any other reason.

SECTION 22. SEVERABILITY. If any provision of this Agreement is found to be unconstitutional, illegal, or otherwise unenforceable by judgment of a court of competent jurisdiction, such judgment shall not invalidate the remainder of this Agreement, unless such judgment renders the purpose or performance of this Agreement no longer practical for either party.

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below hereby represent that they have full authority to execute this Interlocal Agreement and to bind the Parties set forth herein.

SIGNATURE BLOCKS FOLLOW:

Board, County, & DeLand
Tri-party for land exchange
re. Beresford Ave. ext.

ATTEST:

VOLUSIA COUNTY SCHOOL BOARD

By: _____
Dr. Carmen J. Balgobin Superintendent
Date: _____

By: _____
Ruben Colón, Chairman
Date: _____

Approved as to form and legality:

Kevin W. Pendley, Esquire
General Counsel
Date: _____

ATTEST:

COUNTY OF VOLUSIA

By: _____
George Recktenwald
County Manager

By: _____
Jeffrey S. Brower
County Chair
Date: _____

APPROVED AS TO FORM AND LEGALITY:

Thomas R. Brown, III, Sr. Asst. County Attorney

ATTEST:

CITY OF DELAND

Julie A. Hennessy, MMC
City Clerk - Auditor

By: _____
Robert F. Apgar
Mayor - Commissioner
Date: _____

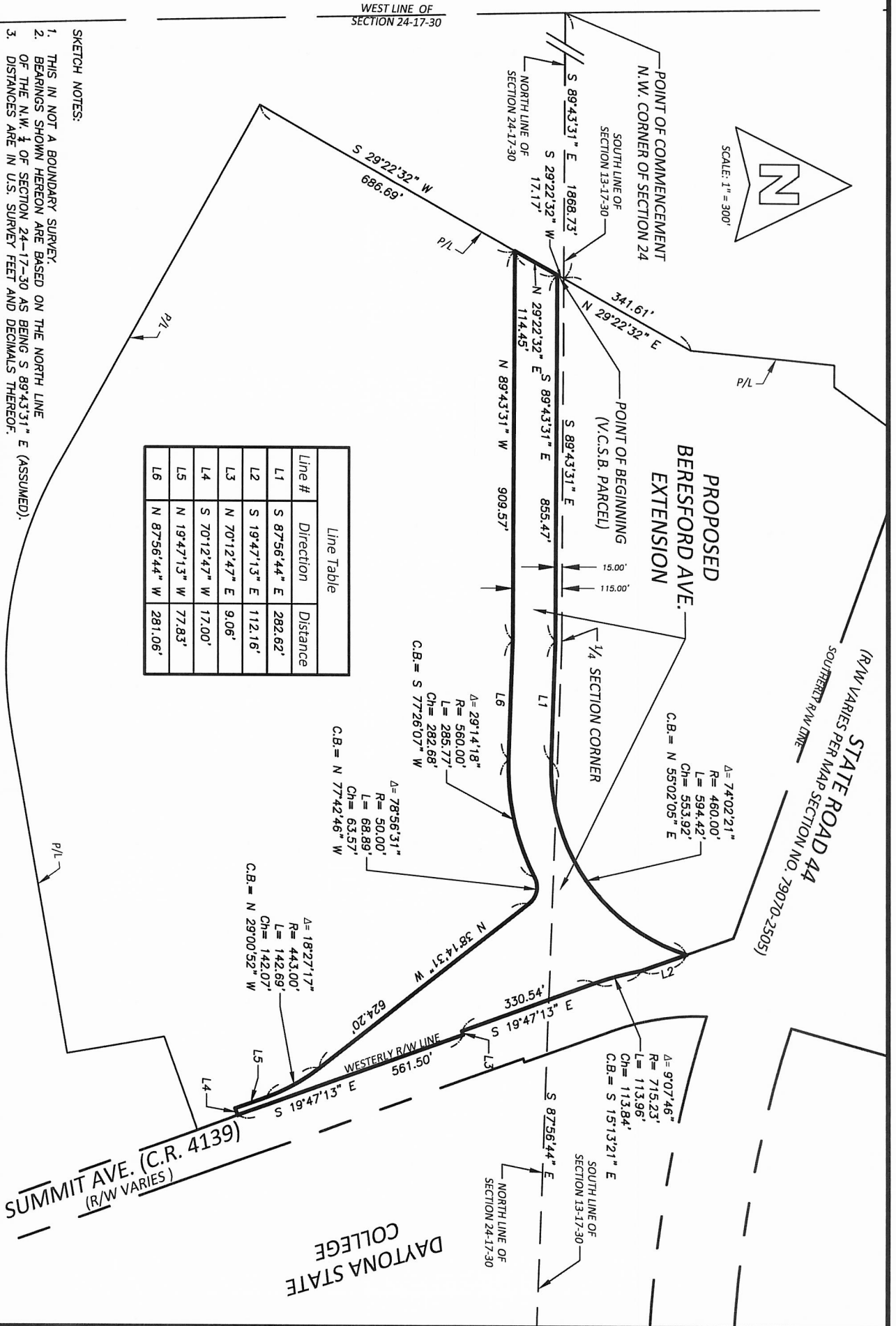
Approved as to form and legal sufficiency.

Darren J. Elkind
City Attorney

EXHIBITS FOLLOW:

Board, County, & DeLand
Tri-party for land exchange
re. Beresford Ave. ext.

EXHIBIT A



COUNTY OF VOLUSIA
PUBLIC WORKS DEPARTMENT
CONSTRUCTION ENGINEERING
SURVEY DIVISION
 123 W. INDIANA AVE. DELAND, FL 32720
 PHONE 1-386-736-6967 FAX 1-386-822-6736

BERESFORD AVENUE EXTENSION
VOLUSIA COUNTY SCHOOL BOARD PARCEL
 SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
 SECTION 13 & 24, TWP. 17 SOUTH, RNC. 30 EAST, VOLUSIA COUNTY, FLORIDA

DRAWING #
 2518
SHEET #
 1 OF 2

EXHIBIT A

Beresford Avenue Extension (M.L.K. Blvd. to Summit Ave. / CR 4139)

Legal Description (V.C.S.B. Parcel):

A portion of those lands described in Official Records Book 3755, Page 4964 of the Public Records of Volusia County, Florida, said lands also being a portion of Sections 13 and 24 of Township 17 South, Range 30 East, Volusia County, Florida and being more particularly described as follows:

Commence at the Northwest corner of aforesaid Section 24; thence run S 89°43'31" E (S 89°53'51" E, deed), along the North line of said Section 24, a distance of 1869.73 feet to the westerly boundary line of those lands described in aforesaid Official Records Book 3755, Page 4964; thence run S 29°22'32" W (S 29°12'12" W, deed), along said westerly line, a distance of 17.17 feet to its intersection with a line that is 15.00 feet south of and parallel with the North line of aforesaid Section 24 and the POINT OF BEGINNING: thence departing said westerly line, run S 89°43'31" E, along said parallel line, a distance of 855.47 feet; thence S 87°56'44" E, along said parallel line, a distance of 282.62 feet to the point of curvature of a curve concave northwesterly, said curve having a radius of 460.00 feet; thence run northeasterly along the arc of said curve, through a central angle of 74°02'21", an arc distance of 594.42 feet to the point on the westerly right-of-way line of Summit Avenue (C.R. 4139) as shown on and established by the Florida Department of Transportation (F.D.O.T.) right-of-way Map Section No. 79070-2505; thence, departing said curve, run S 19°47'13" E (S 19°47'24" E, F.D.O.T. Map), along said westerly right-of-way line, a distance of 112.16 feet to the Point of Curvature of a non-tangent curve concave northeasterly, said curve having a radius of 715.23 feet, a chord distance of 113.84 feet and a chord bearing of S 15°13'21" E; thence run southerly along the arc of said curve, through a central angle of 09°07'46", an arc distance of 113.96 feet to the point of tangency; thence run S 19°47'13" E (S 19°47'24" E, F.D.O.T. Map), a distance of 330.54 feet; thence N 70°12'47" E (N 70°12'36" E, F.D.O.T. Map), a distance of 9.06 feet; thence S 19°47'13" E (S 19°47'24" E, F.D.O.T. Map), a distance of 561.50 feet; thence, departing said right-of-way line, run S 70°12'47" W, a distance of 17.00 feet; thence N 19°47'13" W, a distance of 77.83 feet to the point of curvature of a curve concave southwesterly, said curve having a radius of 443.00 feet; thence run northwesterly along the arc of said curve, through a central angle of 18°27'17", an arc distance of 142.69 feet to the point of tangency; thence run N 38°14'31" W, a distance of 624.20 feet to the point of curvature of a curve concave southerly, said curve having a radius of 50.00 feet; thence run westerly along the arc of said curve, through a central angle of 78°56'31", an arc distance of 68.89 feet to the point of reverse curvature of a curve having a radius of 560.00 feet; thence run along the arc of said curve, through a central angle of 29°14'18", an arc distance of 285.77 feet to the point of tangency, said point being on a line that is 115.00 feet south of and parallel with the North line of aforesaid Section 24; thence run N 87°56'44" W, along said parallel line, a distance of 281.06 feet; thence N 89°43'31" W, along said parallel line, a distance of 909.57 feet to its intersection with the westerly boundary line of those lands described in aforesaid Official Records Book 3755, Page 4964; thence run, N 29°22'32" E (N 29°12'12" E, deed), a distance of 114.45 feet to the Point of Beginning.

The above-described lands contain 6.47 acres more or less.

REVISED:

BERESFORD AVENUE EXTENSION VOLUSIA COUNTY SCHOOL BOARD PARCEL

SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
SECTION 13 & 24, TWP. 17 SOUTH, RNG. 30 EAST, VOLUSIA COUNTY, FLORIDA



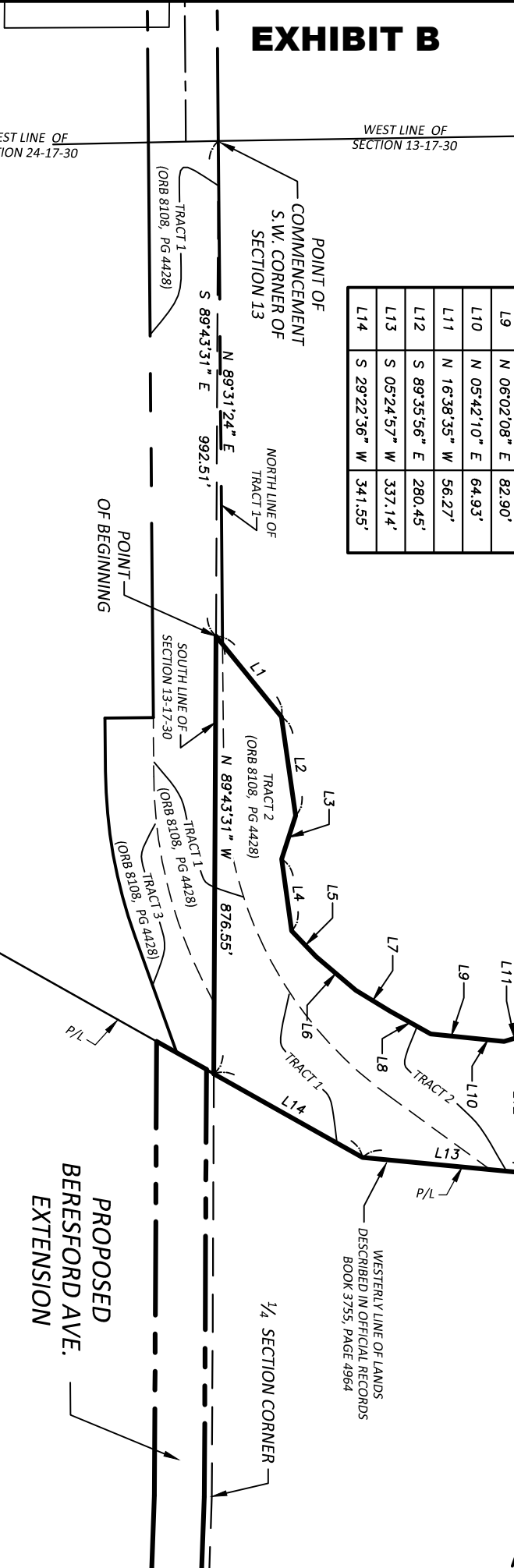
COUNTY OF VOLUSIA
PUBLIC WORKS DEPARTMENT
CONSTRUCTION ENGINEERING
SURVEY DIVISION
123 W. INDIANA AVE. DELAND, FL. 32720
PHONE 1-386-736-5967 FAX 1-386-822-5736

NAME	DATE	PLOT DATE:	DRAWING #
CADD	MEM	5/22	05/03/22
SURVEY DATE	N/A	N/A	SCALE:
CHECKED	EAB	5/22	N/A
PROJECT #	FIELD BOOK		SHEET #
T.B.D.	N/A		2 OF 2

EXHIBIT B

Line Table		
Line #	Direction	Distance
L1	N 50°56'03" E	207.62'
L2	N 81°43'16" E	200.20'
L3	S 71°55'50" E	91.35'
L4	N 81°58'43" E	145.51'
L5	N 46°35'12" E	71.00'
L6	N 40°09'24" E	104.12'
L7	N 31°32'26" E	79.52'
L8	N 29°07'44" E	94.19'
L9	N 06°02'08" E	82.90'
L10	N 05°42'10" E	64.93'
L11	N 16°38'35" W	56.27'
L12	S 89°35'56" E	280.45'
L13	S 05°24'57" W	337.14'
L14	S 29°22'36" W	341.55'

- SKETCH NO. : _____
1. THIS IS A BOUNDARY SURVEY.
 2. BEARING SHOWN HEREON ARE BASED ON THE SOUTH LINE OF SECTION 13-17-30 AS BEING S 89°43'31" E (ASSUMED).
 3. DISTANCES ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.



COUNTY OF VOLUSIA
PUBLIC WORKS DEPARTMENT
CONSTRUCTION ENGINEERING
SURVEY DIVISION
 123 W. INDIANA AVE. DELAND, FL. 32720
 PHONE 1-386-736-6967 FAX 1-386-822-6736

BERESFORD AVENUE EXTENSION
CITY OF DELAND - V.C. SCHOOL BOARD TRANSFER
 SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
 SECTION 13, TWP. 17 SOUTH, RNG. 30 EAST, VOLUSIA COUNTY, FLORIDA

DRAWING #
 2528
 SHEET #
 1 OF 2

EXHIBIT B

Legal Description:

A portion of Tract 1 and all of Tract 2 being described as part of those lands described in Official Records Book 8108, Page 4428 of the Public Records of Volusia County, Florida, said lands also being a portion of Section 13, Township 17 South, Range 30 East, Volusia County, Florida and being more particularly described as follows:

Commence at the Southwest corner of aforesaid Section 13; thence run S 89°43'31" E, along the South line of said Section 13, a distance of 992.51 feet to the POINT OF BEGINNING; thence, departing said South line, run N 50°56'03" E, a distance of 207.62 feet; thence N 81°43'16" E, a distance of 200.20 feet; thence S 71°55'50" E, a distance of 91.35 feet; thence N 81°58'43" E, a distance of 145.51 feet; thence N 46°35'12" E, a distance of 71.00 feet; thence N 40°09'24" E, a distance of 104.12 feet; thence N 31°32'26" E, a distance of 79.52 feet; thence N 29°07'44" E, a distance of 94.19 feet; thence N 06°02'08" E, a distance of 82.90 feet; thence N 05°42'10" E, a distance of 64.93 feet; thence N 16°38'35" W, a distance of 56.27 feet to a point of intersection with the South line of those lands described in Official Records Book 7707, Page 4683 of the aforementioned Public Records; thence run S 89°53'56" E, along said South line, a distance of 280.45 feet to the point of intersection with the Westerly line of those lands described in Official Records Book 3755, Page 4964 of said Public records; thence run S 05°24'57" W (S 05°14'52" W, deed), along said Westerly line, a distance of 337.14; thence S 29°22'36" W (S 29°12'12" W, deed), a distance of 341.55 feet to its intersection with the South line of aforesaid Section 13; thence run N 89°43'31" W, along said South line, a distance of 876.55 feet to the Point of Beginning.

The above-described parcel contains 6.105 acres more or less.

REVISED: 10/11/22 (MEM)

BERESFORD AVENUE EXTENSION CITY OF DELAND – V.C. SCHOOL BOARD TRANSFER

SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
SECTION 13, TWP. 17 SOUTH, RNG. 30 EAST, VOLUSIA COUNTY, FLORIDA

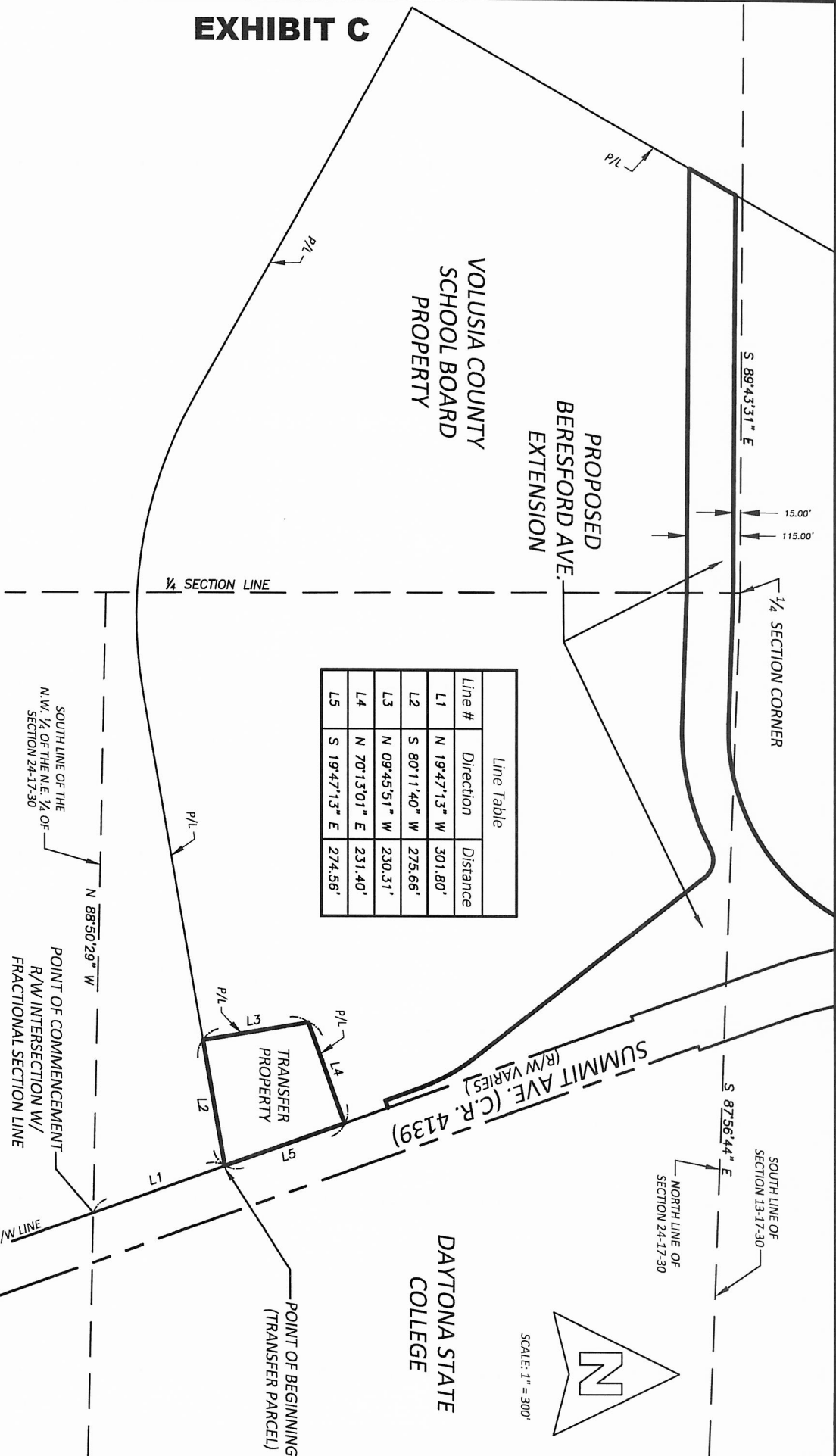


COUNTY OF VOLUSIA
PUBLIC WORKS DEPARTMENT
CONSTRUCTION ENGINEERING
SURVEY DIVISION
123 W. INDIANA AVE. DELAND, FL. 32720
PHONE 1-386-736-5967 FAX 1-386-822-5736

NAME	DATE	PLOT DATE:	DRAWING #
CADD	MEM	10/22	2528
SURVEY DATE	N/A	N/A	
CHECKED	EAB	10/22	
PROJECT #		FIELD BOOK	SHEET #
T.B.D.		N/A	2 OF 2

EXHIBIT C

- SKETCH NOTES:
1. THIS IS NOT A BOUNDARY SURVEY.
 2. BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF THE N.W. 1/4 OF SECTION 24-17-30 AS BEING S 89°43'31" E (ASSUMED).
 3. DISTANCES ARE IN U.S. SURVEY FEET AND DECIMALS THEREOF.



COUNTY OF VOLUSIA
 PUBLIC WORKS DEPARTMENT
 CONSTRUCTION ENGINEERING
 SURVEY DIVISION
 123 W. INDIANA AVE. DELAND, FL. 32720
 PHONE 1-386-736-5967 FAX 1-386-822-5736

BERESFORD AVENUE EXTENSION
CITY OF DELAND - V.C. SCHOOL BOARD TRANSFER
 SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
 SECTION 24, TWP. 17 SOUTH, RNG. 30 EAST, VOLUSIA COUNTY, FLORIDA

DRAWING #
 2529
SHEET #
 1 OF 2

EXHIBIT C

Legal Description (City of DeLand to V.C.S.B. transfer):

Those lands being described as Parcel 2 in Official Records Book 6015 Page 2134 of the Public Records of Volusia County, Florida, said lands also being a portion of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 24 of Township 17 South, Range 30 East, Volusia County, Florida and being more particularly described as follows:

Commence at the intersection of the Westerly Right-of-Way of County Road 4139 (Summit Ave.) and the South line of the Northwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of aforesaid Section 24; thence run N 19°47'13" W (N19°57'26" W, deed), a distance of 301.80 feet to the POINT OF BEGINNING: thence, departing said Right-of-Way line, , run S 80°11'40" W (S 80°01'27" W, deed), a distance of 275.66 feet; thence N 09°45'51" W (N 09°56'04" W, deed), distance of 230.31 feet; thence N 70°13'10" E (N 70°02'48" E, deed), a distance of 231.40 feet to a point on the Westerly Right-of-Way line of aforesaid County Road 4139; thence run S 19°47'13" E, along said Right-of -Way line, a distance of 274.56 feet to the Point of Beginning.

The above-described parcel contains 1.458 acres more or less.

REVISED:

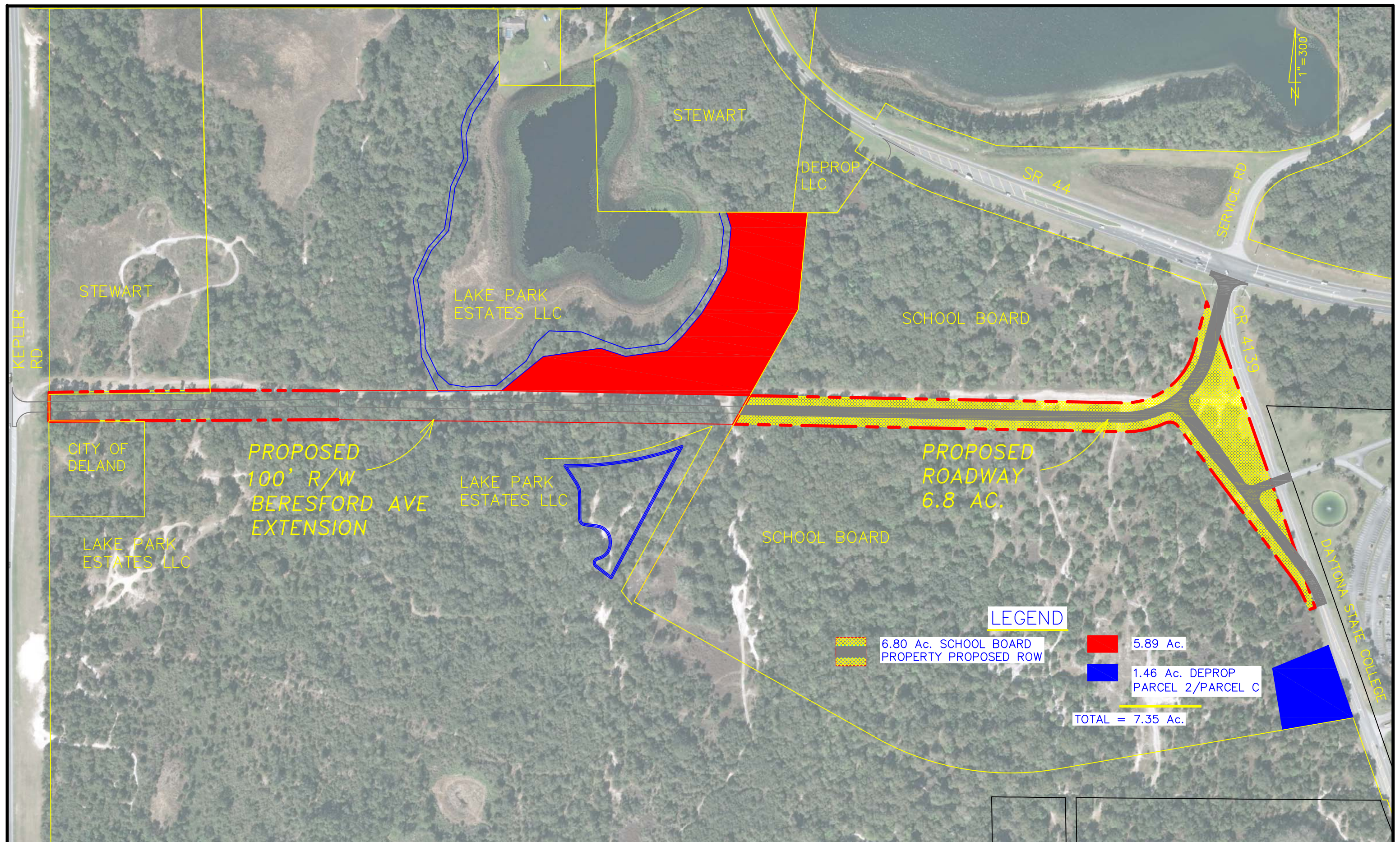
BERESFORD AVENUE EXTENSION CITY OF DELAND – V.C. SCHOOL BOARD TRANSFER

SKETCH OF DESCRIPTION ONLY / NOT A BOUNDARY SURVEY
SECTION 24, TWP. 17 SOUTH, RNG. 30 EAST, VOLUSIA COUNTY, FLORIDA



COUNTY OF VOLUSIA
PUBLIC WORKS DEPARTMENT
CONSTRUCTION ENGINEERING
SURVEY DIVISION
123 W. INDIANA AVE. DELAND, FL. 32720
PHONE 1-386-736-5967 FAX 1-386-822-5736

NAME	DATE	PLOT DATE:	DRAWING #
CADD	MEM	6/22	06/09/22
SURVEY DATE	N/A	N/A	SCALE:
CHECKED	M.B.	6/22	N/A
PROJECT #	T.B.D.	FIELD BOOK	SHEET #
		N/A	2 OF 2



PUBLIC WORKS DEPARTMENT
ENGINEERING & CONSTRUCTION
123 WEST INDIANA AVENUE
DELAND, FL. 32720-4262
(386) 736-5967

BERESFORD AVE EXTENSION EAST OF KEPLER RD TO SR 44

CITY OF DELAND
Request for Commission Action
November 7, 2022

SUBJECT: Consideration re Approval of Deeds Related to Beresford Avenue Extension.

DEPARTMENT: Legal

PREPARED BY: Darren Elkind, City Attorney

ATTACHMENTS: DeLand to Lakewood QC Deed, Lakewood to DeLand Warranty Deed

APPROVED BY: Michael Pleus, City Manager, November 1, 2022

SUMMARY/HIGHLIGHT:

As part of the Lakewood Park PD, the developer was required to convey to the City title to property to accommodate the Beresford Avenue extension. The property was conveyed to the City by the developer by way of a deed. However, now that the County has gotten further along in the layout of the road, it was necessary to revise the layout of the property being conveyed to the City. In addition, the deed pursuant to which the property was conveyed was not acceptable to the City Attorney and needed to be revised as well. The City will convey the property previously deeded to the City back to the developer, and simultaneously the developer will convey to the City the property in the layout requested by the County.

STRATEGIC PLAN FOCUS AREA/ACTION STEP:

High Value Government.

SUSTAINABILITY:

N/A

FISCAL IMPACT:

There is no direct fiscal impact with this transaction, other than the nominal costs associated with the preparation and recording of the documents.

RECOMMENDATION:

Staff recommends that the City Commission approve the attached quit claim deed and accept the attached warranty deed.

BACKGROUND/DISCUSSION:

The original alignment for the Beresford Avenue extension had the road turning north, just west of the School Board property, and taking and having the road intersect at State Road 44. The Lakewood Park developer used this alignment to survey and describe, and ultimately convey, the property to the City. However, through a collaborative effort between the County, the City and the School Board, a much more beneficial alignment was agreed upon that continued Beresford straight through from Dr. Martin Luther King, Jr. Boulevard to Summit Avenue. The interlocal agreement between the County, the School Board and the City to accomplish this alignment is another matter on this agenda, and the alignment is graphically shown with that agenda item. With this revised alignment, it was necessary for the County to revise the exact property that was needed

from the developer (and a little that is now not wanted). Therefore, the County has provided new legal descriptions for the property and the deeds being approved with this agenda item will provide for the revised layout.

This Instrument Prepared By:

Darren J. Elkind, Esq.
Paul, Elkind, Branz & Paul, LLP
142 E. New York Avenue
DeLand, FL 32724

QUITCLAIM DEED

THIS QUITCLAIM DEED (the "Deed") is made and executed this ___ day of November, 2022, by the CITY OF DELAND, a Florida municipal corporation, with a mailing address of 120 South Florida Avenue, DeLand, FL 32720 (hereinafter referred to as "Grantor") to LAKEWOOD PARK PROJECT I, LLC, a Florida limited liability company, whose address is 10100 Innovation Drive, Suite 410, Dayton, OH 45342 (hereinafter referred to as "Grantee").

W I T N E S S E T H:

That the Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby remise, release and quitclaim to the Grantee, its successors, heirs and assigns forever, all that certain land lying and being in the County of Volusia, City of DeLand, State of Florida, being more particularly described as follows:

All of those lands as described in Official Records Book 8108, Page 4428 of the Public Records of Volusia County, Florida, a copy of which is attached hereto as Exhibit A.

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Grantor, either in law or equity forever.

*** Remainder of page intentionally left blank ***

*** Signatures on following page ***

IN WITNESS WHEREOF, the party of the first part has caused this Quitclaim Deed to be executed as of the day and year first above written.

Signed, sealed and
delivered in the presence of:

**THE CITY OF DELAND,
FLORIDA**, a Florida municipal
corporation

Witness 1

By: _____
Robert F. Apgar, Mayor

Print Name of Witness 1

Attest: _____
Julie Hennessy, City Clerk

Witness 2

Print Name of Witness 2

Date: _____

STATE OF FLORIDA
COUNTY OF VOLUSIA

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2022, by Robert F. Apgar and Julie Hennessy, Mayor and City Clerk, respectively, of the City of DeLand, Florida, a chartered municipal corporation, on behalf of the City. They are personally known to me and did not take an oath.

Notary Public: _____

Printed Name: _____
Commission No. _____

Approved as to form by:

Darren J. Elkind, City Attorney

EXHIBIT A

This Instrument Prepared By:

Mark A. Watts, Esquire
CobbCole
231 N. Woodland Boulevard
DeLand, FL 32720

DEED OF DEDICATION (Roadways)

THIS DEED OF DEDICATION (the "Dedication") is made and executed this 26 day of AUGUST, 2021, by LAKEWOOD PARK PROJECT I, LLC, a Florida limited liability company, whose address is 10100 Innovation Drive, Suite 410, Dayton, OH 45342 (hereinafter referred to as "Dedicator"), to the CITY OF DELAND, a Florida municipal corporation, whose address is 120 South Florida Avenue, DeLand, FL 32720 (hereinafter referred to as "City").

WITNESSETH:

That the Dedicator, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, by these presents does hereby dedicate, unto the City, its successors, heirs and assigns forever, for the purposes of maintaining a public right of way and associated improvements, all that certain lands lying and being in the County of Volusia, City of DeLand, State of Florida, being more particularly described as follows:

See attached Exhibit "A"

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, lien, equity, and claim whatsoever of the Dedicator, either in law or equity forever.

CITY, by accepting this Dedication, obligates itself to forever preserve and use the property dedicated herein for the purpose listed above.

IN WITNESS WHEREOF, the Dedicator has caused this DEED OF DEDICATION to be executed as of the day and year first above written.

Signed, sealed, and delivered
in our presence:
Witnesses:

Aaron Jenkins
Print Name: Aaron Jenkins

Kenneth E. Leist
Print Name: Kenneth E. Leist

LAKEWOOD PARK PROJECT I, LLC,
A FLORIDA LIMITED LIABILITY COMPANY

BY: EBS RESIDENTIAL DEVELOPMENT FUND
III, LLC,
AN OHIO LIMITED LIABILITY COMPANY,
ITS SOLE MEMBER

BY: EUBEL BRADY & SUTTMAN ASSET
MANAGEMENT, INC.,
A DELAWARE CORPORATION,
ITS MANAGER

STATE OF Ohio
COUNTY OF Montgomery

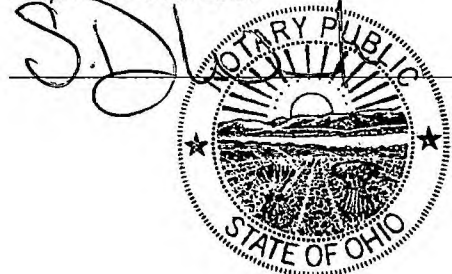
BY: Mark E. Brady
NAME: Mark E. Brady
ITS: Co-CEO

STATE OF Ohio

COUNTY OF Montgomery

I, S. Dawn Warrick, A NOTARY PUBLIC FOR Montgomery COUNTY, STATE
OF Ohio, DO HEREBY CERTIFY THAT Mark E. Brady
("SIGNATORY") OF EUBEL BRADY & SUTTMAN ASSET MANAGEMENT, INC., A
DELAWARE CORPORATION, MANAGER OF EBS RESIDENTIAL DEVELOPMENT FUND
III, LLC, AN OHIO LIMITED LIABILITY COMPANY, SOLE MEMBER OF LAKEWOOD
PARK PROJECT I, LLC, A FLORIDA LIMITED LIABILITY COMPANY, PERSONALLY
APPEARED BEFORE ME THIS DAY AND BY AUTHORITY DULY GIVEN,
ACKNOWLEDGED THE DUE EXECUTION OF THE FOREGOING INSTRUMENT.

NOTARY PUBLIC:



S DAWN WARRICK, Notary Public
In and for the State of Ohio
My Commission Expires Sept. 15, 2021

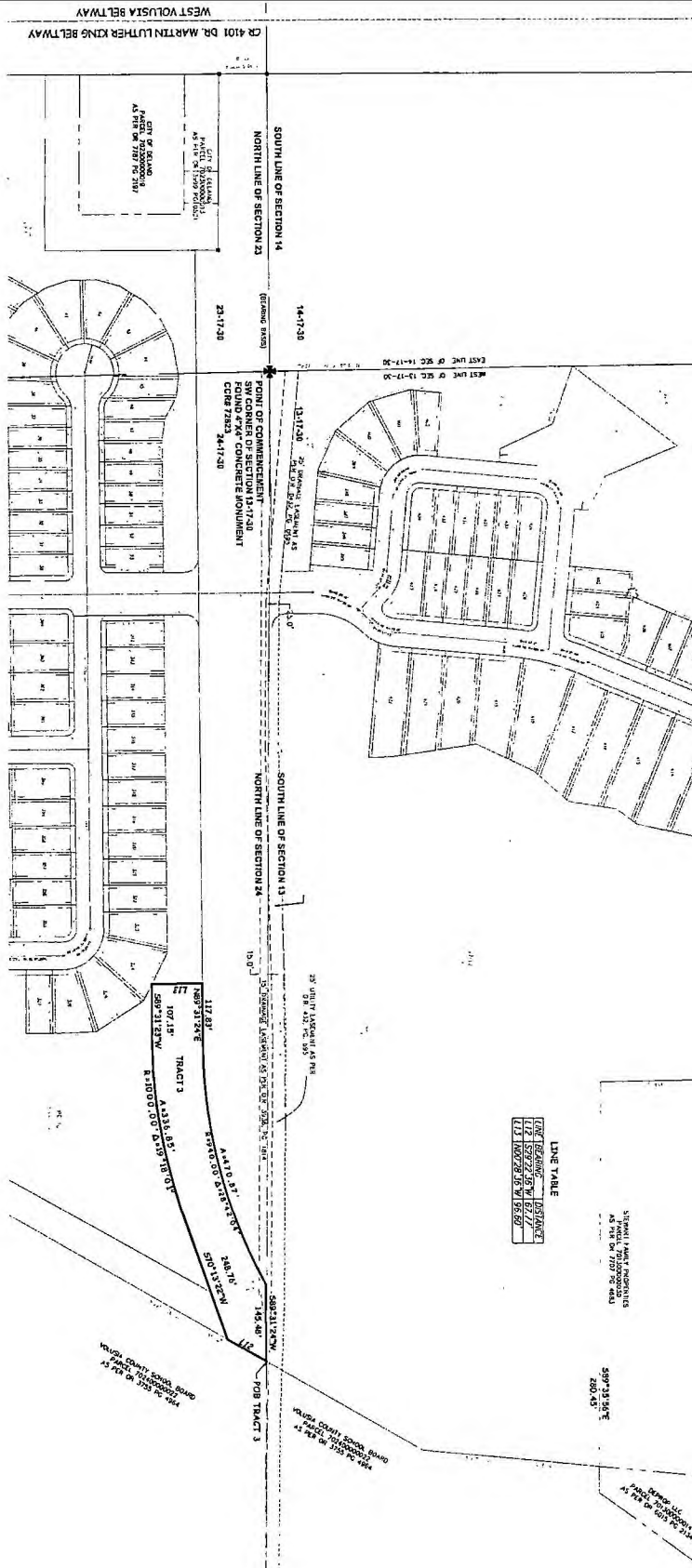
Exhibit A



LINE	DESCRIPTION	AMOUNT
1	1001.14 2.72 W	4.54
2	1001.14 2.72 W	91.67
3	5.01.55.52.7 W	91.35
4	146.35.12.6	71.00
5	51.32.26.2	79.52
6	123.07.44.2	94.18
7	108.02.08.2	82.90
8	105.42.10.2	64.93
9	116.28.15.5 W	56.27
10	505.24.51.4 W	29.81

SKETCH OF DESCRIPTION
OF
A PORTION OF SECTIONS 13, 23 & 24
TOWNSHIP-17-SOUTH, RANGE-30-EAST
VOLusia COUNTY, FL.

SKETCH OF DESCRIPTION
OF
A PORTION OF SECTIONS 13, 23 & 24
TOWNSHIP-17-SOUTH, RANGE-30-EAST
VOLUSIA COUNTY, FL.



SECTION 13 DESCRIPTION:

LANDS SITUATE IN SECTIONS 13, 23 AND 24, TOWNSHIP 17 SOUTH, RANGE 30 EAST, COMMENCE AT THE CORNER TO SECTION 13, 23 AND 24, HENCE THE SOUTHWEST CORNER OF SAID SECTION 13, THENCE S 17° 17' 30\"/>

- LEGEND:**
- 1. BOUNDARY LINE
 - 2. EASEMENT
 - 3. RIGHT-OF-WAY
 - 4. FLOOD ZONE
 - 5. POWER LINE
 - 6. ROAD
 - 7. RAILROAD
 - 8. WATER
 - 9. WETLAND
 - 10. UNDEVELOPED LAND
 - 11. DEVELOPED LAND
 - 12. CROWNED LAND
- SURVEYOR'S NOTES:**
- 1. THIS SURVEY WAS CONDUCTED ON 05/11/2021 BY ELLIS SURVEYS LLC.
 - 2. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING ACT.
 - 3. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 4. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 5. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 6. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 7. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 8. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 9. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 10. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 11. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.
 - 12. THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE FLORIDA SURVEYING BOARD RULES AND REGULATIONS.

This Instrument Prepared By:

Mark A. Watts, Esquire
CobbCole
231 N. Woodland Boulevard
DeLand, FL 32720

Warranty Deed

This Indenture, made this ____ day of _____, 2022 between **LAKEWOOD PARK PROJECT I, LLC**, a Florida limited liability company, whose address is 10100 Innovation Drive, Suite 410, Dayton, Ohio 45342, party of the first part, and the **CITY OF DELAND**, a Florida municipal corporation, whose address is 120 South Florida Avenue, DeLand, Florida 32720, of the County of Volusia, in the State of Florida, party of the second part:

Witnesseth, that said party of the first part, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to it in hand paid by said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land, situate, lying and being in the County of Volusia, State of Florida, to wit:

SEE EXHIBITS A & B

And the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Signatures on following page

IN WITNESS WHEREOF, the party of the first part has caused this Warranty Deed to be executed as of the day and year first above written.

WITNESSES:

Signed, sealed and delivered in the presence of:

Witness 1

Print Name of Witness 1

Witness 2

Print Name of Witness 2

**LAKEWOOD PARK PROJECT I, LLC, a
Florida limited liability company**

By: **EBS RESIDENTIAL DEVELOPMENT
FUND III, LLC**, an Ohio Limited Liability
Company, its Sole Member and Manager

By: **Eubel Brady & Suttman Asset
Management, Inc.**, a Delaware
Corporation, its Manager

By: _____

Name: Mark E. Brady

Title: Co-Chief Investment Officer

Date: _____

[Corporate Seal]

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or
☐ online notarization, this ____ day of _____, 2022, by _____, as
_____ of Lakewood Park Project I, LLC. He/she is [] personally known to me
or [] produced as identification and did not take an oath.

Notary Public _____
Printed Name: _____
Commission No. _____

EXHIBIT A

LANDS SITUATED IN SECTIONS 23 AND 24, TOWNSHIP 17 SOUTH, RANGE 30 EAST, VOLUSIA COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CORNER COMMON TO SECTIONS 23 AND 24 BEING THE NORTHEAST CORNER OF SAID SECTION 23, TOWNSHIP 17 SOUTH, RANGE 30 EAST, THENCE S89°43'31"E, ALONG THE NORTH LINE OF SAID SECTION 24, A DISTANCE OF 1,869.06 FEET TO A POINT OF INTERSECTION WITH THE WESTERLY LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3755 PAGE 4964 OF THE PUBLIC RECORDS OF SAID VOLUSIA COUNTY; THENCE, ALONG SAID WESTERLY LINE, S29°22'36"W, A DISTANCE OF 143.06 FEET; THENCE N89°43'31"W, PARALLEL WITH AFORESAID NORTH LINE OF SECTION 24, A DISTANCE OF 654.77 FEET; THENCE S89°31'24"W, A DISTANCE OF 1,372.05 FEET TO A POINT OF INTERSECTION WITH THE EAST LINE OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 3999 PAGE 0521 OF THE AFORESAID PUBLIC RECORDS; THENCE N00°14'27"W, ALONG SAID EAST LINE, A DISTANCE OF 43.44 FEET TO THE NORTHEAST CORNER OF SAID LANDS; THENCE N89°36'53"W, ALONG THE NORTH LINE OF SAID LANDS, A DISTANCE OF 330.02 FEET TO A POINT OF INTERSECTION WITH THE EAST RIGHT OF WAY LINE OF DR. MARTIN LUTHER KING JR. BELTWAY (FORMERLY KEPLER ROAD); THENCE N00°14'27"W, ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 91.60 FEET TO A POINT OF INTERSECTION WITH THE NORTH LINE OF AFORESAID SECTION 23; THENCE N 89°31'24" E, ALONG SAID NORTH LINE, A DISTANCE OF 558.51 FEET TO THE NORTHEAST CORNER THEREOF AND THE POINT OF BEGINNING.

HAVING AN AREA OF 300,826 SQUARE FEET, 6.91 ACRES, MORE OR LESS.

EXHIBIT B

A portion of Section 13, Township 17 South, Range 30 East, Volusia County, Florida and being more particularly described as follows:

Commence at the Southwest corner of aforesaid Section 13; thence run S 89°43'31" E, along the South line of said Section 13, a distance of 992.51 feet to the POINT OF BEGINNING; thence, departing said South line, run N 50°56'03" E, a distance of 207.62 feet; thence N 81°43'16" E, a distance of 200.20 feet; thence S 71°55'50" E, a distance of 91.35 feet; thence N 81°58'43" E, a distance of 145.51 feet; thence N 46°35'12" E, a distance of 71.00 feet; thence N 40°09'24" E, a distance of 104.12 feet; thence N 31°32'26" E, a distance of 79.52 feet; thence N 29°07'44" E, a distance of 94.19 feet; thence N 06°02'08" E, a distance of 82.90 feet; thence N 05°42'10" E, a distance of 64.93 feet; thence N 16°38'35" W, a distance of 56.27 feet to a point of intersection with the South line of those lands described in Official Records Book 7707, Page 4683 of the aforementioned Public Records; thence run S 89°35'56" E, along said South line, a distance of 280.45 feet to the point of intersection with the Westerly line of those lands described in Official Records Book 3755, Page 4964 of said Public records; thence run S 05°24'57" W (S 05°14'52" W, deed), along said Westerly line, a distance of 337.14; thence S 29°22'36" W (S 29°12'12" W, deed), a distance of 341.55 feet to its intersection with the South line of aforesaid Section 13; thence run N 89°43'31" W, along said South line, a distance of 876.55 feet to the Point of Beginning.

The above-described parcel contains 6.105 acres more or less.