City of Atlantic Beach

Amended Agenda

Regular City Commission Meeting

Monday, August 14, 2023 - 6:30 p.m.
Commission Chamber
City Hall, 800 Seminole Road
Atlantic Beach, FL 32233

INVOCATION AND PLEDGE TO THE FLAG
CALL TO ORDER

Page(s)

1. APPROVAL OF MINUTES

* 1.A. Approve minutes of the Regular Commission Meeting held on July 24, 2023. 5 - 19
7-24-23 Regular City Commission Draft Minutes

2. COURTESY OF FLOOR TO VISITORS

2.A. Lifeguard Presentations - Recognition for winning 2nd place at Regional Competition as well as male and female rookie lifeguard of the year awards.

PUBLIC COMMENT

3. CITY MANAGER REPORTS

* 3.A. Accept the 90-Day Calendar (Aug. - Oct. 2023) 21 - 24
90-Day Calendar (Aug. - Oct. 2023)

3.B. Stormwater Master Plan Review 25 - 38
Stormwater Master Plan Review

* 3.C. Discussion regarding City Manager position

4. REPORTS AND/OR REQUESTS FROM CITY COMMISSIONERS

5. UNFINISHED BUSINESS FROM PREVIOUS MEETINGS

None.

6. CONSENT AGENDA

None.

7. COMMITTEE REPORTS

None.

8. ACTION ON RESOLUTIONS

* 8.A. **RESOLUTION NO. 23-26** ***(For Reconsideration with amendments)*** 39 - 74

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF ATLANTIC BEACH AND HOOSE HOMES AND INVESTMENTS, LLC, FOR THE PURCHASE OF 2.16+- ACRES OF REAL PROPERTY IN ATLANTIC BEACH ON DORA DRIVE (PARCEL ID 172118 0000, 172119 0000, 172122 0000) FOR THE PRICE OF $1,075,000; DESIGNATING AMERICAN RESCUE PLAN ACT FUNDS TO BE USED FOR THIS PURPOSE; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS, COMPLETE DUE DILIGENCE EFFORTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. 23-26

8.B. **RESOLUTION NO. 23-28** 75 - 78

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AWARDING BID 2223-07 MAYPORT RD WATER MAIN EXTENSION; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. 23-28

8.C. **RESOLUTION NO. 23-29** 79 - 89

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AWARDING BID NUMBER 2223-03 PUBLIC WORKS BUILDING RENOVATION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. 23-29

* 8.D. **RESOLUTION NO. 23-30** ***(Resolution Withdrawn: Candidate Withdrew)*** 91 - 104

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, APPOINTING MIKE NEW THE CITY MANAGER AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT DESIGNATING HIM AS SUCH EFFECTIVE SEPTEMBER ____, 2023; AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS NECESSARY, INCLUDING BUT NOT LIMITED TO AN EMPLOYMENT AGREEMENT, TO EFFECTUATE THE EMPLOYMENT OF MIKE NEW TO SERVE AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

Resolution No. 23-30

9. ACTION ON ORDINANCES

None.

10. MISCELLANEOUS BUSINESS

None.

11. CITY ATTORNEY/CITY CLERK REPORTS AND/OR REQUESTS

12. CLOSING COMMENTS BY CITY COMMISSIONERS AND CITY MANAGER

13. ADJOURNMENT

This meeting will be live-streamed and videotaped. The video recording will be posted within four business days on the City's website. To access live or recorded videos, click on the Meeting Videos tab on the city's home page at www.coab.us.

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

Any person wishing to speak to the City Commission on any matter at this meeting should submit a request to the City Clerk prior to the meeting. For your convenience, forms for this purpose are available at the entrance to the Commission Chamber.

Every effort is made to indicate what action the City Commission is expected to take on each agenda item. However, the City Commission may act upon any agenda subject, regardless of how the matter is stated on the agenda.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk’s Office at (904) 247-5821 or at City Hall, 800 Seminole Road, Atlantic Beach, FL 32233, no later than 5:00 PM on the Thursday prior to the meeting.

MINUTES
Regular City Commission Meeting
Monday, July 24, 2023 - 6:30 PM
Commission Chamber
City Hall, 800 Seminole Road
Atlantic Beach, FL 32233

INVOCATION AND PLEDGE OF ALLEGIANCE
CALL TO ORDER:

Following the Pledge of Allegiance, Mayor Ford called the meeting to order at 6:35 PM. CC Bartle called the roll.

ATTENDANCE:

Present:
Curtis Ford, Mayor - Seat 1
Bruce Bole, Commissioner - Seat 2
Michael Waters, Commissioner - Seat 3
Candace Kelly, Commissioner - Seat 4
Jessica Ring, Commissioner - Seat 5

Also Present:
Joe Gerrity, Interim City Manager (CM)
Jason Gabriel, City Attorney (CA)
Donna Bartle, City Clerk (CC)
Ladayija Nichols, Deputy City Clerk (DCC)
Kevin Hogencamp, Deputy City Manager (DCM)
Victor Gualillo, Police Chief (PC)
Steve Swann, City Engineer (CE)

Mayor Ford requested to move the Boys' and Girls' Club Resolution directly after Item 2.A.

MOTION: Move up the Item (8A) of the Boys' and Girls' Club to right after Yarborough's Presentation (Agenda Item 2.A).

Motion: ***Jessica Ring***
Second: ***Bruce Bole***

Curtis Ford	***For***
Bruce Bole (Seconded By)	***For***
Michael Waters	***For***
Candace Kelly	***For***
Jessica Ring (Moved By)	***For***

DRAFT

Motion passed 5 to 0.

1 APPROVAL OF MINUTES

1A. Approve minutes of the Special Town Hall Meeting on June 27, 2023.

Mayor Ford asked if there were any corrections or changes needed. There were no corrections to the minutes. Mayor Ford stated the minutes stand as submitted.

2. COURTESY OF FLOOR TO VISITORS

2.A. Presentation of check for Aquatic Gardens Drainage Improvements (Senator Yarborough and State Representative Michael)

Senator Yarborough and State Representative Michael spoke and presented a $500,000 check to the City. Mayor Ford expressed gratitude.

8A. RESOLUTION NO. 23-23
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING AN AGREEMENT BETWEEN THE CITY OF ATLANTIC BEACH AND THE BOYS' AND GIRLS' CLUBS OF NORTHEAST FLORIDA, INC., FOR PROGRAMMING MANAGEMENT OF GAIL BAKER COMMUNITY CENTER AND JORDAN PARK COMMUNITY CENTER; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Ford opened floor to public comments on this item.

Amy Rose commented on this item.

Mayor Ford read the title of the resolution.

CM Gerrity explained the item as detailed in the agenda packet.

MOTION: Adopt Resolution 23-23 as read.

Motion: Candace Kelly
Second: Jessica Ring

Curtis Ford	***For***
Bruce Bole	***For***
Michael Waters	***For***
Candace Kelly (Moved By)	***For***
Jessica Ring (Seconded By)	***For***

DRAFT

Motion passed 5 to 0.

PUBLIC COMMENT

Mayor Ford explained the process for public comments and opened the Courtesy of the Floor to Visitors. CC Bartle called each speaker to the podium.

Cindy Anderson spoke about Resolution No. 23-26.

Brinkley Harrell commented on the millage rate.

Amy Rose spoke about the CM search.

Emilio Perez expressed concerns regarding city staff pay.

Mark Gabrynowicz spoke about ESC and made recommendations regarding the budget. He also complimented Director of Cultural Arts & Recreation, Latrenia Thomas on her work with Shakespeare in the Park. He addressed the Charter Review Committee (CRC) and would like to see more environmental leadership.

Gregory Powell commented on Resolution No. 23-26.

Dr. Nancy Staatz commented on Resolution No. 23-26 and the CM search process.

Jim Wheatley commented on the Dora Drive property.

Jackie Beckenbach expressed concerns about the process for hiring a CM and appointing CRC members.

Susanne Barker expressed concerns about the process for hiring the CM.

Mitchell Reeves encouraged the Commission to keep the importance of stormwater management in mind.

3. CITY MANAGER REPORTS

3.B. CM Gerrity provided additional updates

CM Gerrity explained the upcoming CM process. He announced the budget workshop on 7/26/23 at 5:30 p.m. He mentioned that the fallen trees in Johansen Park have been a recent concern and that an arborist would be out to look at the trees soon. He clarified that Tri-Bridge Residential has plans to build a hotel, retail space and a brewery at the old K-Mart plaza in Neptune Beach. He spoke about the budget adoption meeting date change due to a conflict with the Duval County School Board.

3.A. Accept the 90-Day Calendar (July-Sept. 2023)

DRAFT

MOTION: Accept the 90-Day calendar.

Motion: Bruce Bole
Second: Michael Waters

Curtis Ford	***For***
Bruce Bole (Moved By)	***For***
Michael Waters (Seconded By)	***For***
Candace Kelly	***For***
Jessica Ring	***For***

Motion passed 5 to 0.

4. REPORTS AND/OR REQUESTS FROM CITY COMMISSIONERS

Commissioner Ring

- Thanked all of the CM candidates, CM Gerrity for his help during the process, and citizens for their input during the process.
- Mentioned that she supports Mr. Drysdale as a candidate but would abstain from a vote.

Commissioner Waters

- Thanked the public for their input in the CM process
- Commented about emails from residents.
- Expressed his opinion that Mr. Drysdale is not the right person for the job.

Spoke about the interview process.

Commissioner Bole

- Congratulated the Community Presbyterian Church for the food event they hosted for the homeless.
- Spoke about his experience in the HR Department in the Navy as it relates to hiring processes.
- Explained he would bring a resolution forward to standardize a process for CRC, charter officers, and other positions.
- Mentioned he has spoken with the CM candidates on the phone.

Commissioner Kelly

- Agreed that better tools should be implemented for interviews and other procedures.
- Spoke about not putting anything in the budget about pickleball until the park's plan is reopened.
- Stated she has also completed phone interviews with the CM candidates.

Mayor Ford spoke about the CM process.

5. UNFINISHED BUSINESS FROM PREVIOUS MEETINGS

None.

DRAFT

6. CONSENT AGENDA

6.A. Authorize the City Manager to sign the attached amendment to the three-year (2022-2025) agreement with the Union.

Commissioner Kelly opted to pull this item for discussion.

CM Gerrity explained the details on which the unions were in agreement.

MOTION: Approve Item 6A (as written).

Motion: Jessica Ring
Second: Bruce Bole

Curtis Ford	***For***
Bruce Bole (Seconded By)	***For***
Michael Waters	***For***
Candace Kelly	***For***
Jessica Ring (Moved By)	***For***

Motion passed 5 to 0.

7. COMMITTEE REPORTS
None.

8. ACTION ON RESOLUTIONS

8.B. RESOLUTION NO. 23-24
A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE EXPENDITURES OF FUNDS FROM THE TREE CONSERVATION TRUST FUND FOR DEFINED TREE PLANTINGS ON PUBLICLY OWNED LANDS WITHIN THE CITY OF ATLANTIC BEACH.

Mayor Ford read the title of the resolution.

CM Gerrity explained the resolution as detailed in the agenda packet.

MOTION: Adopt Resolution No. 23-24.

Motion: Michael Waters
Second: Jessica Ring

Commissioner Ring asked for information regarding how these specific funds would be used. CM Gerrity stated the funds would be used to study the tree canopy.

Curtis Ford	***For***
Bruce Bole	***For***

DRAFT

Michael Waters (Moved By)	***For***
Candace Kelly	***For***
Jessica Ring (Seconded By)	***For***

Motion passed 5 to 0.

8.C. RESOLUTION NO. 23-25
A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE CITY TO ACCEPT THE 2021 JUSTICE ASSISTANCE GRANT PROGRAM

Mayor Ford read the title of the resolution.

Chief Gualillo corrected the title of the resolution (which is attached hereto and made a part of this Official Record as **Attachment A**).

Commissioner Waters explained that he was okay with not getting another bid, but expressed that the cameras and signs did not help the noise issue. Chief Gualillo answered questions about the use, location, and life expectancy of the camera equipment.

7-24-23 Attachment A

MOTION: Approve Resolution No. 23-25 as amended.

Motion: Candace Kelly
Second: Michael Waters

Curtis Ford	***For***
Bruce Bole	***For***
Michael Waters (Seconded By)	***For***
Candace Kelly (Moved By)	***For***
Jessica Ring	***For***

Motion passed 5 to 0.

8.D. RESOLUTION NO. 23-26
A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF ATLANTIC BEACH AND HOOSE HOMES AND INVESTMENTS, LLC, FOR THE PURCHASE OF 2.16+- ACRES OF REAL PROPERTY IN ATLANTIC BEACH ON DORA DRIVE (PARCEL ID 172118 0000, 172119 0000, 172122 0000) FOR THE PRICE OF $1,075,000; DESIGNATING AMERICAN RESCUE PLAN ACT FUNDS TO BE USED FOR THIS PURPOSE; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS, COMPLETE DUE DILIGENCE EFFORTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

DRAFT

Mayor Ford read the title of the resolution.

Commissioner Bole asked if this purchase would save the City long term. CE Swann responded it would save the City money long term. Commissioner Bole confirmed the property should be purchased to help with resiliency and stormwater issues. CE Swann confirmed.

Commissioner Waters asked about the length of the due diligence period, and CA Gabriel responded 45 days was tentatively agreed upon. CE Swann spoke about phases one and two of the evaluation plan. There was further discussion about the due diligence period.

Commissioner Ring asked about the liability wording, and CA Gabriel provided details. Commissioner Ring spoke about the possibility of extending the due diligence period and proposed a 90-day period. She asked if there would be an opportunity to cancel the agreement if, during the evaluation period, issues arose. CA Gabriel confirmed there would be options for the deal to be withdrawn and answered additional questions.

MOTION: Approve Resolution No. 23-26 with an amendment to the agreement (changing the due diligent period to 90 days).

Motion: Bruce Bole
Second: Candace Kelly

Mayor Ford spoke in support of the resolution, noting that it is a stormwater project. He expressed interest in finding out if a tree survey would be necessary before closing.

CA Gabriel noted scrivener errors which he plans to amend in the contract.

Curtis Ford	***For***
Bruce Bole (Moved By)	***For***
Michael Waters	***For***
Candace Kelly (Seconded By)	***For***
Jessica Ring	***For***

Motion passed 5 to 0.

8.E. RESOLUTION NO. 23-27

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, ESTABLISHING THE PROPOSED MILLAGE RATE, THE CURRENT YEAR ROLLED-BACK RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND PUBLIC HEARINGS TO CONSIDER THE PROPOSED FISCAL YEAR 2023-24 MILLAGE RATE AND BUDGET AS REQUIRED BY LAW; DIRECTING THE CITY MANAGER TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER OF DUVAL COUNTY

DRAFT

PURSUANT TO REQUIREMENTS OF FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

Mayor Ford read the title of the resolution.

CM Gerrity noted a date change with the public hearing and the due date. He spoke about the amendment (which is attached hereto and made a part of this Official Record as **Attachment B**) and explained the item. He spoke about pending revenue sources from the state and noted the millage rate at 3.1035 mils.

Mayor Ford explained a decision needed to be made about the millage rate for the TRIM notice. The decision would be included in the TRIM notice sent to residents.

Commissioner Bole spoke about the effects of moving the millage rate back and that moving it forward in the future is difficult.

7-24-23 Attachment B

MOTION: Approve Resolution No. 23-27 as amended.

Motion: ***Bruce Bole***
Second: ***Michael Waters***

Curtis Ford	***For***
Bruce Bole (Moved By)	***For***
Michael Waters (Seconded By)	***For***
Candace Kelly	***For***
Jessica Ring	***For***

Motion passed 5 to 0.

9. ACTION ON ORDINANCES
None.

10. MISCELLANEOUS BUSINESS
None.

11. CITY ATTORNEY/CITY CLERK REPORTS AND/OR REQUESTS
None.

12. CLOSING COMMENTS BY CITY COMMISSIONERS AND CITY MANAGER
CM Gerrity spoke about the CM interview process and looks forward to spending time with each candidate.

DRAFT

Commissioner Bole said the City is lucky to have a tree fund. He thanked the CM and CA for their support. He mentioned the pickleball group would be attending an upcoming budget meeting.

Commissioner Kelly mentioned "Back to School with BEAM" is being held on July 29, 2023 and encouraged donations.

Commissioner Waters spoke about DCM Hogencamp and the CM position and expressed his support for DCM Hogencamp being considered for the CM position.

Commissioner Ring thanked the public for their participation and interest in the topics discussed at the meeting. She reminded everyone about Friday's upcoming meet and greet and public interviews on Saturday.

13. ADJOURNMENT

The meeting adjourned at 8:46 p.m.

Attest:

Donna L. Bartle, City Clerk

Curtis Ford, Mayor

Date Approved:_____

DRAFT

Attachment A to
7-24-23 Minutes

RESOLUTION NO. 23-25

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE CITY TO PURCHASE SEVEN (7) LICENSE PLATE READER (LPR) CAMERAS THROUGH VETTED SECURITY SYSTEMS (VSS) BY THE EXCEPTIONS GRANTED IN CITY ORDINANCE 2-336

WHEREAS, the Justice Assistance Grant Countywide (JAGC) has been established by the Federal Government and is administered by the State of Florida, The Florida Department of Law Enforcement (FDLE), Office of Criminal Justice Grants to act as a pass through entity for federal funding; and

WHEREAS, in August of 2022 the City Commission approved the Police Department to apply for the 2021 JAGC grant under Resolution 22-51; and

WHEREAS, $53,007 was awarded to the Atlantic Beach Police Department in the 2021 JAGC grant application; and

WHEREAS, the Atlantic Beach Police Department is requesting approval to purchase equipment and services from an existing vendor Vetted Security Systems (VSS) outside of city purchasing guidelines with said grant funds; and

WHEREAS, under Municipal Ordinance 2-336 the City Commission must approve by a majority vote purchases of $25,000 or greater that are made outside of city purchasing guidelines; and

WHEREAS, the City Commission has executed the required vote and a majority of the Commissioners present have voted to approve the purchasing exception requested by the Police Department;

NOW THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

SECTION 1. The City Commission hereby authorizes the use of current vendor, Vetted Security Solutions LLC, to purchase the equipment and services the Police Department is requesting under the 2021 JAGC Grant program; outside of city purchasing guidelines under the exceptions provided in City Ordinance 2-336; The formal bid procedure as defined in this division is not required in the following cases:

(1) When the city commission, by a vote of the majority of those members present, waives the formal bid procedure.

(5) Contracts for the maintenance or servicing of equipment which are made with the manufacturer or authorized service agent of the equipment when the maintenance or servicing can best be performed by the manufacture or authorized service agent where such a contract would otherwise be advantageous to the city.

(7) Purchase and contracts for the use or purchase of data processing equipment or data processing systems software and reproduction equipment.

Attachment A to
7-24-23 Minutes

SECTION 4. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City of Atlantic Beach, this 24th day of July, 2023.

_____
Curtis Ford, Mayor

Attest:

_____
Donna L. Bartle, City Clerk

Approved as to form and correctness:

_____
Jason Gabriel, City Attorney

Attachment B to
7-24-23 Minutes

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Resolution No 23-27 establishing the proposed millage rate; acknowledging the current year rolled-back rate; and setting the date, time and place for the first and second public hearings to consider the proposed Fiscal Year 2023-24 millage rate and budget.

SUBMITTED BY: Kevin Hogencamp, Deputy City Manager, and Brittany Percell, Director of Finance

TODAY'S DATE: July 24, 2023

MEETING DATE: July 24, 2023

BACKGROUND: On June 23, 2023, the Property Appraiser of Duval County served upon the City of Atlantic Beach a "Certification of Taxable Value" certifying to the City of Atlantic Beach its 2023 taxable value. The provisions of Florida Statutes Section 200.065 require that within 35 days of service of the Certification of Taxable Value upon a municipality, said municipality shall be required to furnish to the Property Appraiser the proposed millage rate, the current year rolled-back rate, and the date, time and place at which a first public hearing will be held to consider the proposed millage and tentative budget.

Resolution No. 23-27:

- Establishes a proposed millage rate of 3.1035 mills, which is $3.1035 per $1,000 of assessed property, within the City of Atlantic Bach, to fund the General Fund Operating Budget.
- Acknowledges the current year rolled back rate, computed pursuant to Section 200.065 F.S., is 2.8410 mills, which is $2.8410 per $1,000 of assessed property, within the City of Atlantic Beach.
- Sets the City Commission's 6:30 p.m. September 13 and September 25, 2023, meetings in the Commission Chamber of City Hall, 800 Seminole Road, Atlantic Beach, Florida 32233, as the dates, time and place for the first and second Public Hearings, respectively, to consider the proposed Fiscal Year 2023-24 millage rate and budget.
- Authorizes the City Manager to execute and submit DR-420 Certification of Taxable Value, and DR-420MM-P Maximum Millage Levy Calculation Preliminary Disclosure to the Duval County Property Appraiser's Office.

BUDGET: None

RECOMMENDATION: Commission review and vote on Resolution No. 23-27

ATTACHMENTS: Resolution No. 23-27
DR-420 Certification of Taxable Value Form
DR-420MM-P Maximum Millage Levy Calculation Preliminary Disclosure Form

REVIEWED BY CITY MANAGER: Joe Gerty

Attachment B to
7-24-23 Minutes

RESOLUTION NO. 23-27

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, ESTABLISHING THE PROPOSED MILLAGE RATE, THE CURRENT YEAR ROLLED-BACK RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND PUBLIC HEARINGS TO CONSIDER THE PROPOSED FISCAL YEAR 2023-24 MILLAGE RATE AND BUDGET AS REQUIRED BY LAW; DIRECTING THE CITY MANAGER TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER OF DUVAL COUNTY PURSUANT TO REQUIREMENTS OF FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on June 23, 2023, the Property Appraiser of Duval County, Florida, served upon the City of Atlantic Beach, a "Certification of Taxable Value" certifying to the City of Atlantic Beach its 2023 taxable value; and

WHEREAS, the provisions of Florida Statutes Section 200.065 require that within thirty-five (35) days of service of the Certification of Taxable Value upon a municipality, said municipality shall be required to furnish to the Property Appraiser the proposed millage rate, the current year rolled-back rate, and the date, time and place at which a first public hearing will be held to consider the proposed millage and tentative budget; and

WHEREAS, the City Commission of the City of Atlantic Beach has reviewed figures supplied by Property Appraiser of Duval County, conferred at a meeting, and desires to announce the dates of the first and second public hearings to the Property Appraiser of Duval County.

NOW, THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

Section 1. The City Commission hereby establishes a proposed millage rate of 3.1035 mills, which is $3.1035 per $1,000 of assessed property, within the City of Atlantic Bach, to fund the General Fund Operating Budget.

Section 2. The current year rolled back rate, computed pursuant to Section 200.065 F.S., is 2.8410 mills, which is $2.8410 per $1,000 of assessed property, within the City of Atlantic Beach.

Section 3. The City Commission hereby sets its 6:30 p.m. September 13 and September 25, 2023, meetings in the Commission Chamber of City Hall, 800 Seminole Road, Atlantic Beach, Florida 32233, as the dates, time and place for the first and second Public Hearings, respectively, to consider the proposed Fiscal Year 2023-24 millage rate and budget.

Section 4. The City Manager of the City of Atlantic Beach, Florida, is hereby authorized to execute and submit DR-420 Certification of Taxable Value, and DR-420MM-P Maximum Millage Levy Calculation Preliminary Disclosure to the Duval County Property Appraiser's Office.

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

Attachment B to
7-24-23 Minutes

Section 6. This Resolution shall become effective upon passage an adoption.

PASSED AND ADOPTED by the City Commission of the City of Atlantic Beach, this 24th day of July, 2023.

_____
Curtis Ford, Mayor

Attest:

_____
Donna L. Bartle, City Clerk

Approved as to form and correctness:

_____
Jason Gabriel, City Attorney

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: 90-Day Calendar for the Mayor and Commission

SUBMITTED BY: Yvonne Calverley, Executive Assistant to the City Manager

TODAY'S DATE: August 8, 2023

MEETING DATE: August 14, 2023

BACKGROUND: The 90-day calendar is included on the agenda for the purpose of setting meeting dates and determining the location, time and whether to videotape special meetings and workshops. The rolling 90-day calendar will be revised after receiving input from City staff and the Commission, and will be included in each agenda for consideration.

NOTES:

1) Budget Workshops have been scheduled for 5:30 pm on the following dates:
   August 24
*2) A Town Hall Meeting is scheduled at 10 am on Saturday, Oct. 14 in the Jordan Park Community Center.

BUDGET: None

RECOMMENDATION: Approve the 90-Day Calendar for August – October 2023

ATTACHMENT: 1) Mayor and Commission 90-Day Calendar (August – October 2023)

REVIEWED BY CITY MANAGER:

MAYOR AND COMMISSION

August 2023

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
		1	2	3	4	5
6 Farmers Market (Russell Park) 10 am - 2 pm Songwriters Concert (Bull Park) 6-8 pm	7 Special Called Meeting 5:20 pm Budget Workshop 5:30 pm	8 ARCC Meeting 6 pm	9 ESC Tree Subcommittee 5:15 pm ESC Meeting 6 pm	10 Pension Board 6:30 pm	11	12
13 Farmers Market (Russell Park) 10 am - 2 pm	14 Commission Mtg 6:30 pm (Invoc-Bole)	15 Community Development Board Mtg 6 pm	16 ESC Outreach Subcommittee 4:45 pm STOP Committee 6 pm	17 Board Member Review Committee 5:30 pm	18 Movies in the Park 8 pm-Johansen Family Paint Night 6:30 pm (Jordan Park)	19
20 Farmers Market (Russell Park) 10 am - 2 pm Acoustic Night (Bull Park) 6 pm	21	22 ARCC Meeting 9 am (Grant Presentations)	23 Charter Review Committee 6 pm	24 Sustainability & Resiliency Meeting Noon ARCC Meeting 3 pm (Grant Presentations) Budget Workshop 5:30 pm	25	26
27 Farmers Market (Russell Park) 10 am - 2 pm	28 Commission Mtg 6:30 pm (Invoc-Waters)	29	30	31		

MAYOR AND COMMISSION

September 2023

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
					1	2
3 Farmers Market 10 am – 2 pm (Russell Park) Songwriters 6 pm (Bull Park)	4 **Labor Day City Offices Closed**	5	6	7 Special Magistrate Hearing 2 pm ESC Speaker Series 6 pm	8 Movies in the Park 8 pm (Donner Park)	9
10 Farmers Market 10 am – 2 pm (Russell Park)	11 Commission Mtg 6:30 pm (Invoc-Kelly)	12 ARCC Meeting 6 pm	13 ESC Tree Subcommittee 5:15 pm ESC Meeting 6 pm	14	15 Family Paint Night 6:30 to 7:30 pm (Donner Park)	16
17 Farmers Market 10 am – 2 pm (Russell Park) Acoustic Night 6 pm (Bull Park)	18	19 Community Development Board Mtg 6 pm	20 ESC Outreach Subcommittee Meeting 4:45 pm	21 STOP Committee Meeting 6 pm	22	23
24 Farmers Market 10 am – 2 pm (Russell Park)	25 Commission Mtg 6:30 pm (Invoc-Ring)	26	27 Charter Review Committee 6 pm	28 ESC Sustainability & Resiliency Subcommittee Meeting 9 am	29	30 Fall Festival 10 am to 1 pm (Donner Park)

MAYOR AND COMMISSION

October 2023

SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
1 Farmers Market 10 am – 2 pm (Russell Park) Songwriters 6 pm (Bull Park)	2	3	4	5 ESC Speaker Series 6 pm	6	7
8 Farmers Market 10 am – 2 pm (Russell Park)	9 Commission MT 6:30 pm (Invoke-Ford)	10 CARAC 6 pm	11 ESC Tree Subcommittee 5:15 pm ESC Meeting 6 pm	12	13	14 Town Hall Meeting (Jordan Park) 10 am to Noon
15 Farmers Market 10 am – 2 pm (Russell Park)	16	17 Community Development Board Meeting 6 pm	18 ESC Outreach Subcommittee Meeting 4:45 pm	19 STOP Committee Meeting 6 pm	20	21
22 Farmers Market 10 am – 2 pm (Russell Park)	23 Commission MT 6:30 pm (Invoke-Bole)	24	25 Charter Review Committee 6 pm	26 ESC Sustainability & Resiliency Subcommittee Meeting 9 am	27	28 Family Fun Day 10 am (Jack Russell)
29	30	31				

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM:	Jones Edmunds Stormwater Master Plan Review
SUBMITTED BY:	Joe Gerrity
TODAY'S DATE:	August 3, 2023
MEETING DATE:	August 14, 2023
BACKGROUND:	Jones Edmunds will give a review of the Stormwater Master Plan approved by the City Commission in 2018.
BUDGET:	None
RECOMMENDATION:	None
ATTACHMENT(S):	On Site Storage Review Impervious Area Drainage Impact Analysis

REVIEWED BY CITY MANAGER: Joe Gerrity

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Attachment 2

On-Site Storage Calculation Review

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TECHNICAL MEMORANDUM

JonesEdmunds

On-Site Storage Calculation Review

TO: Scott Williams, Public Works Director

FROM: Brian Icerman, PE; Jarrod Hirneise, PE

DATE: October 2, 2018

SUBJECT: Onsite Storage Calculation Review
Jones Edmunds Project No. 08505-003-01

1 INTRODUCTION

Section 24-66 of the City of Atlantic Beach's Zoning, Subdivision, and Land Development Regulations requires that the difference between the pre- and post-development volume of stormwater runoff be stored on-site for rainfall depths up to the 25-year/24-hour return period depth if 400 square feet or more of new impervious area is added. The City previously developed a methodology using a Microsoft Excel spreadsheet to calculate pre-and post-development runoff volumes to determine how much on-site storage volume is required and compares the required volume to the actual storage volume provided. The City has asked Jones Edmunds to review the City's methodology and the validity/accuracy of the assumptions and parameters used in the calculations. This Technical Memorandum summarizes the findings and recommendations from the review.

2 PRE- AND POST-DEVELOPMENT RUNOFF VOLUME

The first step of the City's on-site storage calculator is generating pre- and post-development runoff volumes. The runoff volumes are calculated by multiplying an area-weighted runoff coefficient by the 25-year/24-hour rainfall depth and the parcel area. The difference between the pre- and post-development runoff is then calculated to determine the volume of storage that must be provided. This methodology is valid and within common engineering practices for completing this type of analysis.

We completed a detailed review of each parameter used to calculate the runoff volumes and summarized our review and findings below.

2.1 RAINFALL DEPTH

The calculator assumes a rainfall depth of 9.3 inches for the 25-year/24-hour event. We compared this depth to the latest rainfall data source available, the National Oceanic and Atmospheric Administration's (NOAA) Atlas 14. The 25-year/24-hour rainfall depth for the City of Atlantic Beach is 9.2 inches based on NOAA Atlas 14. The City has consistently used 9.3 inches since the on-site storage ordinance was passed. Hydrologically, the difference between

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using 9.3 inches versus 9.2 inches is nominal, therefore, using 9.3 inches for the 25-year/24-hour rainfall depth is valid.

2.2 Runoff Coefficient

The calculator uses runoff coefficients of 0.2 for pervious surfaces and 1.0 for impervious surfaces to calculate pre- and post-development composite runoff coefficients. Using a runoff coefficient of 1.0 for impervious surfaces is common practice and valid because the rainfall landing on impervious surfaces will not infiltrate and will run off.

Using a runoff coefficient of 0.2 for pervious surfaces is at the upper end of the range of commonly used values for lawns in flat landscapes with slopes from 0 to 2 percent. According to the table in Figure 1 from the Florida Department of Transportation's 1987 Drainage Design Guide, runoff coefficients for lawns in design storms with return periods less than or equal to 10 years range from 0.05 for sandy soils to 0.17 for clayey soils. As shown, to convert these values to coefficients that can be used for the 25-year return period the coefficients must be multiplied by 1.1, which moves the range to 0.06 for sandy soils and 0.19 for clayey soils. According to the Natural Resource Conservation Service's web soil survey, a majority of the soil in the City is classified as sandy, which means that the runoff coefficient should fall on the lower end of this range.

Figure 1 Runoff Coefficient Table

Table 24-1. Runoff Coefficients (*C*) for a Design Storm Return Period of Ten Years or Less[1]

Slope	Land Use	Sandy Soils Min.	Sandy Soils Max.	Clay Soils Min.	Clay Soils Max.
Flat (0-2%)	Lawns	0.05	0.10	0.13	0.17
	Rooftops and pavement	0.95	0.95	0.95	0.95
	Pervious pavements[2]	0.75	0.95	0.90	0.95
	Woodlands	0.10	0.15	0.15	0.20
	Pasture, grass, and farmland[3]	0.15	0.20	0.20	0.25
	Residential				
	SFR: 1/2 acre lots and larger	0.30	0.35	0.35	0.45
	SFR: smaller lots and duplexes	0.35	0.45	0.40	0.50
	MFR: apartments, condominiums	0.45	0.60	0.50	0.70
	Commercial and Industrial	0.50	0.95	0.50	0.95
Rolling (2-7%)	Lawns	0.10	0.15	0.18	0.22
	Rooftops and pavements	0.95	0.95	0.95	0.95
	Pervious pavements[2]	0.80	0.95	0.90	0.95
	Woodlands	0.15	0.20	0.20	0.25
	Pasture, grass, and farmland[3]	0.20	0.25	0.25	0.30
	Residential				
	SFR: 1/2 acre lots and larger	0.35	0.50	0.40	0.55
	SFR: smaller lots and duplexes	0.40	0.55	0.45	0.60
	MFR: apartments, condominiums	0.50	0.70	0.60	0.80
	Commercial and Industrial	0.50	0.95	0.60	0.95
Steep (>7%)	Lawns	0.15	0.20	0.25	0.35
	Rooftops and pavements	0.95	0.95	0.95	0.95
	Pervious pavements[2]	0.85	0.95	0.90	0.95
	Woodlands	0.20	0.25	0.25	0.30
	Pasture, grass, and farmland[3]	0.25	0.35	0.30	0.40
	Residential				
	SFR: 1/2 acre lots and larger	0.40	0.55	0.50	0.65
	SFR: smaller lots and duplexes	0.45	0.60	0.55	0.70
	MFR: apartments, condominiums	0.60	0.75	0.65	0.85
	Commercial and Industrial	0.60	0.95	0.65	0.95

Sources: Florida Department of Transportation, 1987, Wanielista, 1990

[1]For 25- to 100-yr recurrence intervals, multiply coefficient by 1.1 and 1.25, respectively, and the product cannot exceed 1.00.
[2]Coefficients assume good ground cover and conservation treatment.
[3]Depends on depth and degree of permeability of underlying strata.
Note: SFR = Single Family Residential;
MFR = Multi-Family Residential

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Lowering the runoff coefficient used in the calculator would reduce the pre-development runoff volume and increase the amount of storage required on-site. While the values are currently close to falling within the generally accepted range, they are skewed to benefit the applicant. Lowering this value would shift some of the burden of handing the additional runoff from the City to the applicants. The degree to which the runoff value is changed will determine how much or how little of this burden is shifted. If the City chooses to use the average sandy soil value it would change the runoff coefficient from 0.2 to 0.08.

3 PROVIDED STORAGE CALCULATION

Once the required on-site storage volume is determined, the provided on-site storage volume is calculated by summing the surface storage provided in the retention area on the parcel and the sub-surface storage provided in the soil column below the retention area. The provided storage is calculated and then compared to the required storage volume to determine if enough storage has been provided to retain the additional runoff volume. This methodology is valid and within common engineering practices for completing this type of analysis.

We completed a detailed review of each parameter and calculation used to determine the onsite storage volume provided and summarized our review and findings below.

3.1 Surface Storage Calculation

The surface storage provided is calculated by averaging the area at the bottom of the storage area and the area at the top of the storage area and multiplying by the depth of the storage area. The methodology assumes a constant side-slope is provided within the storage area, which is typically valid. This methodology is valid and within common practice for completing this type of storage volume calculation.

3.2 Subsurface Storage Calculation

The subsurface storage provided in the soil column below the surface storage area is calculated by multiplying the area of the surface storage by the estimated depth to the seasonal high water table (SHWT) and the fillable porosity/pore factor of the soil. This yields the volume of open void space in the soil column that can be used for water storage.

Currently, the subsurface storage calculation is double-counting and over-estimating the amount of storage that is available in the soil column because it does not reduce the soil storage capacity under the retention area to account for the rainfall volume that immediately infiltrates into the soil and does not runoff. To account for this, we recommend using a runoff coefficient of 1.0 for the storage area instead of the 0.2 runoff coefficient that is currently being used. Using a runoff coefficient of 1.0 for the storage area will ensure that the rainfall volume infiltrating at the pond is accounted for in the storage calculation.

The subsurface storage calculation assumes a soil fillable porosity/pore factor of 0.3 for the subsurface storage calculation. This means that 30 percent of the soil column volume is void and available for runoff retention. As part of the Stormwater Master Plan Update project, Jones Edmunds calculated the fillable porosities of the Natural Resources Conservation Service

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(NRCS) soil types within City limits using data from the University of Florida's Institute of Food and Agricultural Sciences (UF IFAS) Florida Soil Characterization Data Retrieval System database. We calculated an average fillable porosity across the City of approximately 0.4. Based on our calculations using a pore factor of 0.3 is slightly conservative and likely underestimates the subsurface pore space available.

The subsurface storage calculation assumes a constant SHWT elevation of 3.0 feet across the City. This elevation is used to determine the depth of the soil column available for soil storage by subtracting this elevation from the elevation of the bottom of the on-site surface storage area. Based on a desktop review of NRCS soils data, pond break line elevations in the 2007 Duval County Light Detection and Ranging (LiDAR) digital elevation model (DEM), and St. Johns River Water Management District (SJRWMD) permit data for developments within the City, the assumption of a constant groundwater table elevation across the City does not appear to be valid. According to the NRCS soils data, the SHWT depth for the City is typically within 2 feet of the surface with a majority of it being within 1 foot of the surface. This means that the water table elevation should vary as the surface elevation varies.

We reviewed the water surface elevations of wet detention stormwater ponds in the 2007 LiDAR DEM. Based on the water surface elevations in the DEM, the groundwater table elevation appears to vary with the surface elevation. Ponds at higher elevations have higher water level elevations in the DEM, and ponds in lower-lying areas have lower water-level elevations in the DEM.

We reviewed SJRWMD permit data obtained from the SJRWMD's website for the new RaceTrac gas station being built on Mayport Road and the Caliber Collision on Mayport Road. These developments are on a ridge that runs through the City and have site elevations between 12 and 13 feet North American Vertical Datum (NAVD) 88 based on the DEM. According to the geotechnical borings for the RaceTrac gas station, the groundwater table was encountered at approximately 5 feet below the surface or an approximate elevation of 8 feet NAVD88 and the Geotechnical Report estimates that the SHWT for the site is at an elevation of 10 feet NAVD88. The pond normal water level for the Caliber Collision is an elevation of 9.8 feet NAVD88 and is estimated to be 1 foot below the surface. According to SJRWMD permitting criteria, orifice elevations in wet detention stormwater ponds are set at the estimated SHWT elevation.

Using a water table elevation of 3 feet NAVD88 significantly benefits the applicants in a majority of the City, creating additional burden on the City's stormwater system. Using a water table depth of 1 foot below the surface may be too conservative for some of the higher elevation lots along east of Sherman Creek. Based on these findings, we recommend that the City hire a certified soil scientist to collect soil samples throughout the City at various elevations to better characterize how the SHWT varies across the City. The soil scientist should estimate the depth to SHWT based on indicators within the soil column. We believe the City could likely then be divided into zones that would more accurately represent the depth to the SHWT. Alternatively, a depth to SHWT of 1 or 2 feet could be used as a conservative estimate across the City unless site-specific data are provided that shows a greater depth to SHWT.

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Attachment 1

Impervious Area Drainage Impact Analysis

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TECHNICAL MEMORANDUM

JonesEdmunds

Impervious Area Drainage Impact Analysis

TO: Scott Williams, Public Works Director

FROM: Brian Icerman, PE; Jarrod Hirneise, PE

DATE: October 9, 2018

SUBJECT: Impervious Area Drainage Impact Analysis
Jones Edmunds Project No. 08505-003-02

1 INTRODUCTION

The City of Atlantic Beach has experienced an increasing amount of impervious area on residential lots, particularly in the area east of Sherman-Puckett Creek and south of Saturiba Drive where larger lots are commonly being subdivided into multiple lots with additional impervious area. Additional impervious area reduces the ability for stormwater to infiltrate into subsurface soil storage, increasing the volume and rate at which stormwater runoff is generated. The City is concerned with how this increase in impervious area and runoff will impact the existing stormwater collection system in these areas. The City's development code currently allows residential lots to be 50 percent covered by impervious area. We analyzed the impact of increasing impervious coverage on the City's stormwater collection system and how much of that impact could be mitigated by reducing the allowable impervious area on residential lots.

Jones Edmunds previously developed a hydrologic and hydraulic (H&H) model of the City's stormwater system using Streamline Technologies Inc. Interconnected Pond and Channel Routing Version 4.03.02 (ICPR4) as part of the *City of Atlantic Beach Stormwater Master Plan Update* project. The model was developed at the scale appropriate for evaluating potential stormwater improvement projects that will be included in the City's Capital Improvement Plan (CIP). The original model did not contain enough detail to quantify the impacts of increasing impervious areas on local-scale stormwater collection systems. To analyze the impacts of redevelopment we selected a representative basin within the existing model, increase the modeled level-of-detail within that basin, and run model simulations to show the impact of increased impervious area on the stormwater system. The following sections outline the steps taken to evaluate the impacts of additional impervious area, the results of the analysis, and recommendations.

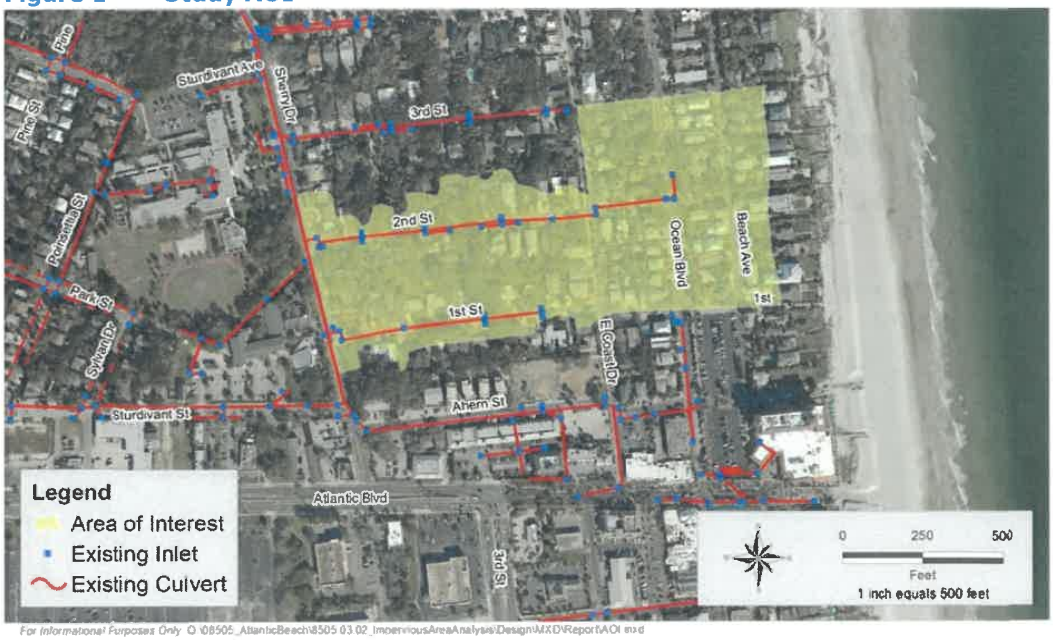
2 EXISTING CONDITIONS MODEL UPDATES

Figure 1 shows the representative area of interest (AOI) selected by Jones Edmunds from the existing ICPR4 model to increase the model level-of-detail within. This area was selected primarily because it contained several larger parcels with relatively low existing impervious

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surface coverage that have potential to be redeveloped with significantly more impervious surface coverage.

Figure 1 Study AOI



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2.1 HYDROLOGIC UPDATES

Jones Edmunds subdivided this area into 22 local-scale stormwater basins with an average contributing area of 0.84 acre. We characterized the hydrologic conditions in the new model basins using TR-55 curve number methodology with directly connected impervious area (DCIA) percentages.

We digitized the existing impervious surfaces using Nearmap's high-resolution imagery collected on May 4, 2018. City permit data was also reviewed from the previous 5 years for parcel-specific permitted impervious area calculations and plans sets. We incorporated this data into our impervious area dataset and calculations where available. The aerial imagery and permit data were used to identify locations where pavers have been installed. According to City development codes, pervious pavers are considered 50 percent pervious when calculating the total impervious area of a parcel. We identified approximately 28,000 square feet of pavers in the AOI, which is approximately 4 percent of the total impervious surface. After reviewing the permit data provided by the City and determining that most of the pavers in the AOI were permitted as 50 percent pervious, we decided to model all of the paver surfaces as if they were 50 percent pervious. We also considered pool footprints to be pervious based on current City development codes.

We used the impervious surface spatial dataset to determine the unconnected and directly connected impervious area percentages for each of the new basins. We developed a composite curve number representing the hydrologic response from the non-DCIA area for the basins. We

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used an open land curve number of 65 for all of the basins based on soil data obtained from the Natural Resource Conservation Service's (NRCS) Web Soil Survey.

2.2 Hydraulic Updates

Jones Edmunds added 26 nodes, 20 pipe links, and 34 overland flow weir links to model the local-scale hydraulics in this area. The City's stormwater asset database was used to determine pipe shape, size, inverts, and material. We used a 5-foot by 5-foot digital elevation model (DEM) created using the 2007 Florida Department of Emergency Management (FDEM) Light Detection and Ranging (LiDAR) data to parameterize the overland flow weir connections and assign stage-area relationships to the nodes.

3 FUTURE CONDITIONS HYDROLOGIC ANALYSIS

Jones Edmunds used the impervious surface spatial dataset, permit data, and Duval County Parcels spatial data to estimate the existing impervious surface percentage of each parcel within the AOI. We determined that approximately 35 percent of the parcels within the AOI were at or above the 50 percent allowable impervious surface limit and approximately 70 percent of the parcels were above 40 percent impervious surface coverage in existing conditions. The existing average impervious surface percentage was approximately 45 percent.

Section 24-66 of the City's Land Development Code requires that the difference between the pre-development and post-development volume of stormwater runoff be stored on-site for the 25-year storm event when 400 square feet or more of new impervious area is added to a parcel. Assuming that the provided on-site storage facilities are maintained and in working condition, this means that any additional runoff volume generated by new impervious area should not impact the City's drainage system if more than 400 square feet of new impervious area is added. No on-site storage is required if less than 400 square feet of new impervious area is added, and the additional runoff volume from the new impervious area will impact the City's stormwater system.

We developed hydrologic parameters for four future conditions build-out scenarios to simulate the potential impacts of new impervious area on flood conditions in the AOI. For the first two scenarios we assumed that all on-site storage facilities provided for new impervious area are maintained and in working condition in perpetuity. If this is the case, the greatest impact to the City's stormwater system would occur if all lots with new impervious capacity added the lesser of 400 square feet of new impervious or the remainder of their allowable impervious area coverage and were not required to provide on-site storage.

Scenario 1 assumed that the allowable parcel impervious area was 40 percent with maintained conditions, and Scenario 2 assumed that the allowable parcel impervious area was 50 percent with maintained conditions. In the maintained 40 percent coverage scenario (Scenario 1), we added approximately 13,500 square feet (0.3 acre) of impervious area to the AOI. This increased the basin impervious percentages by approximately 2 percent on average with a minimum increase of 0 percent and a maximum increase of 6 percent. In the maintained 50 percent coverage scenario (Scenario 2), we added approximately 28,500 square feet (0.65 acre) of impervious area to the AOI. This increased the basin impervious percentages by approximately 4 percent on average with a minimum increase of 0 percent and a maximum increase of 9 percent. Figures 2 and 3 show the spatial variation of basin impervious area

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percentage increases. Basins with the larger percentage increases contain parcels with low existing impervious percentages and basins with smaller percentage increases contain parcels with high existing impervious percentages, which limited the amount of impervious area that could be added.

Figure 2 Basin Impervious Area Increases for 40 Percent Impervious Maintained Scenario



Figure 3 Basin Impervious Area Increases for 50 Percent Impervious Maintained Scenario



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For Scenarios 3 and 4 we assumed that all on-site storage facilities provided for new impervious area were unmaintained and not in working condition. Currently, the City does not have a program to inspect the on-site storage facilities to ensure that they are maintained and kept in working condition. If these systems go unmaintained or are filled, the additional runoff from the new impervious surfaces will not be retained on-site and will impact the City's stormwater system. The worst-case scenario for the City's stormwater system would occur if all on-site storage systems were not maintained and all of the parcels with new impervious capacity in the AOI were built out to the maximum allowable impervious surface coverage.

Scenario 3 assumed that the allowable parcel impervious area was 40 percent with unmaintained conditions, and Scenario 4 assumed that the allowable parcel impervious area was 50 percent with unmaintained conditions. In the 40 percent coverage unmaintained scenario (Scenario 3), we added approximately 32,500 square feet (0.75 acre) of impervious area. This increased the basin impervious percentages by approximately 3.5 percent on average with a minimum increase of 0 percent and a maximum increase of 16 percent. In the 50 percent coverage unmaintained scenario (Scenario 4), we added approximately 76,000 square feet (1.75 acre) of impervious area. This increased the basin impervious percentages by approximately 9 percent on average with a minimum increase of 0 percent and a maximum increase of 26 percent. Figures 4 and 5 show the spatial variation of basin impervious area percentage increases. Basins with the larger percentage increases contain parcels with low existing impervious percentages and basins with smaller percentage increases contain parcels with high existing impervious percentages, which limited the amount of impervious area that could be added.

Figure 4 Basin Impervious Area Increases for 40 Percent Impervious Unmaintained Scenario



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Figure 5 Basin Impervious Area Increases for 50 Percent Impervious Unmaintained Scenario



4 HYDROLOGIC AND HYDRAULIC MODELING AND RESULTS

We simulated the FDOT 1-, 2-, 4-, 8-, and 24-hour storm events for the 2-, 5-, and 10-year return periods for the five model scenarios:

- Revised Existing Condition Model with Local scale elements modeled.
- Scenario 1 - 40 percent allowable impervious maintained on-site storage.
- Scenario 2 - 50 percent allowable impervious maintained on-site storage.
- Scenario 3 - 40 percent allowable impervious unmaintained on-site storage.
- Scenario 4 - 50 percent allowable impervious unmaintained on-site storage.

We compared peak flood stages from the four hypothetical scenarios to the revised existing conditions peak flood stages to determine how flood depths would be impacted by the additional impervious area. Changes in peak flood stages varied spatially depending on how much impervious area was added within the associated basin. Basins with lower impervious area percentage increases experienced smaller flood peak stage increases and basins with larger impervious area percentage increases experienced larger peak stage increases. Tables 1 and 2 summarize the maximum peak flood stage increases where surface flooding occurs in the four scenarios compared to existing conditions for the 2-, 5-, and 10-year return periods.

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Table 1 Maximum Flood Depth Increases from Existing Conditions

Scenario	Return Period			Average
	2-Year	5-Year	10-Year	
Scenario 1: Maximum Flood Stage Increase 40 Percent Impervious Maintained (Inches)	1	1	1	1
Scenario 2: Maximum Flood Stage Increase 50 Percent Impervious Maintained (Inches)	2	3	1	2
Difference (Inches)	1	2	0	1

Table 2 Maximum Flood Depth Increases from Existing Conditions

Scenario	Return Period			Average
	2-Year	5-Year	10-Year	
Scenario 3: Maximum Flood Stage Increase 40 Percent Impervious Unmaintained (Inches)	3	3	1	2
Scenario 4: Maximum Flood Stage Increase 50 Percent Impervious Unmaintained (Inches)	6	4	3	4
Difference (Inches)	3	1	2	2

As shown in Tables 1 and 2, local-scale surface flooding will worsen due to the increases in runoff volume and runoff rate from additional impervious surface coverage. The additional runoff adds stress to local-scale drainage features that have already met or exceeded their hydraulic capacities. Systems that are already at or exceeding capacity are prone to creating nuisance flooding. Our modeling assumes all stormwater structures and roadside swales between structures are in a well-maintained condition. Any changes to this maintenance condition could adversely impact the adjacent parcels.

Ultimately, surface flooding will occur more frequently and at greater depths as impervious surface coverage increases. The additional stress on the drainage system will cause more frequent instances of nuisance flooding in roadways and on private properties. More frequent maintenance of the City's stormwater system will be required because of the displacement of sediment created from increased flows and the deposition of that sediment in the stormwater system.

These results also show the importance of ensuring that on-site storage systems are maintained in proper working condition. If these systems are not maintained or are removed, impacts of additional impervious area on the City's stormwater system will worsen.

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Reconsideration of Resolution No. 23-26. Negotiations pertaining to Resolution No. 23-26 authorizing a purchase and sale agreement by and between the City of Atlantic Beach and Hoose Homes and Investments, LLC., for the purchase of 2.16+- acres of real property on Dora Drive (Parcel ID 172118 0000, 172119 0000, 172122 000) for the price of $1,075,000.

SUBMITTED BY: Joe Gerrity, City Manager
Jason Gabriel, City Attorney

TODAY'S DATE: Aug. 9, 2023

MEETING DATE: Aug. 14, 2023

BACKGROUND: At its meeting on July 24, 2023, the City Commission adopted Resolution No. 23-26 authorizing a purchase and sale agreement for the property at the eastern end of Dora Drive, where there are several undeveloped parcels totaling about 2.16 acres.

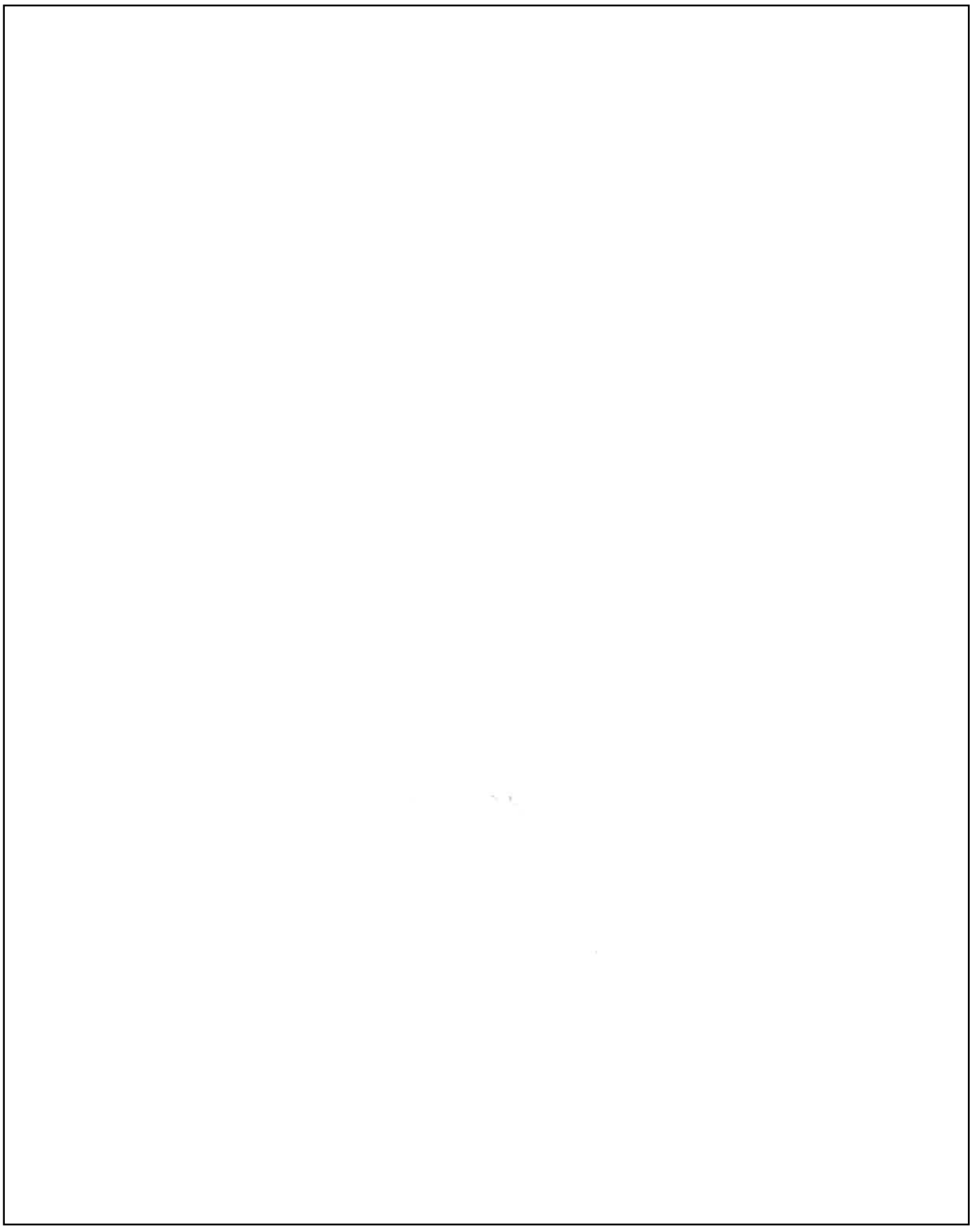
While the agreement authorized by the City Commission provides for a 90-day feasibility/due-diligence period, the prospective seller is opting not to execute the agreement unless it is revised to provide for a 45-day feasibility/due-diligence period.

BUDGET: $1,075,000 in American Rescue Plan Act funding.

RECOMMENDATION: Commission reconsider the terms authorized in Resolution 23-26.

REVIEWED BY CITY MANAGER: Joe Gerrity

ATTACHMENTS: July 24, 2023, Staff Report
Resolution No. 23-26
Purchase and Sale Agreement



CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Resolution No. 23-26 authorizing a purchase and sale agreement by and between the City of Atlantic Beach and Hoose Homes and Investments, LLC., for the purchase of 2.16+- acres of real property on Dora Drive (Parcel ID 172118 0000, 172119 0000, 172122 000) for the price of $1,075,000.

SUBMITTED BY: Joe Gerrity, City Manager / Steve Swann, City Engineer

TODAY'S DATE: July 18, 2023

MEETING DATE: July 24, 2023

BACKGROUND: At its meeting on March 20, 2023, the City Commission authorized staff to obtain an appraisal on the property at the eastern end of Dora Drive, where there are several undeveloped parcels totaling about 2.16 acres. The appraised valued the property, currently zoned for up to 40 units, at $2.2 million. At its June 12, 2023, meeting, the City Commission directed staff to negotiate a selling price with the owner. This property is owned by Hoose Homes and Investments, LLC.

A drainage ditch that serves Dutton Island Road East and the adjoining neighborhoods traverses the northern and western part of these parcels. The City has no drainage easements on this part of the ditch. Due to the location of these properties along the drainage ditch, the property could potentially be utilized as green space, park, stormwater pond or a combination of the three. The City is in the first phases of building out the Hopkins Creek drainage improvements recommended by the 2018 Stormwater Master Plan Update (SWMP Update). The Dora Drive parcels can be utilized as part of the overall drainage plan for this basin by creating a stormwater storage pond on the parcels.

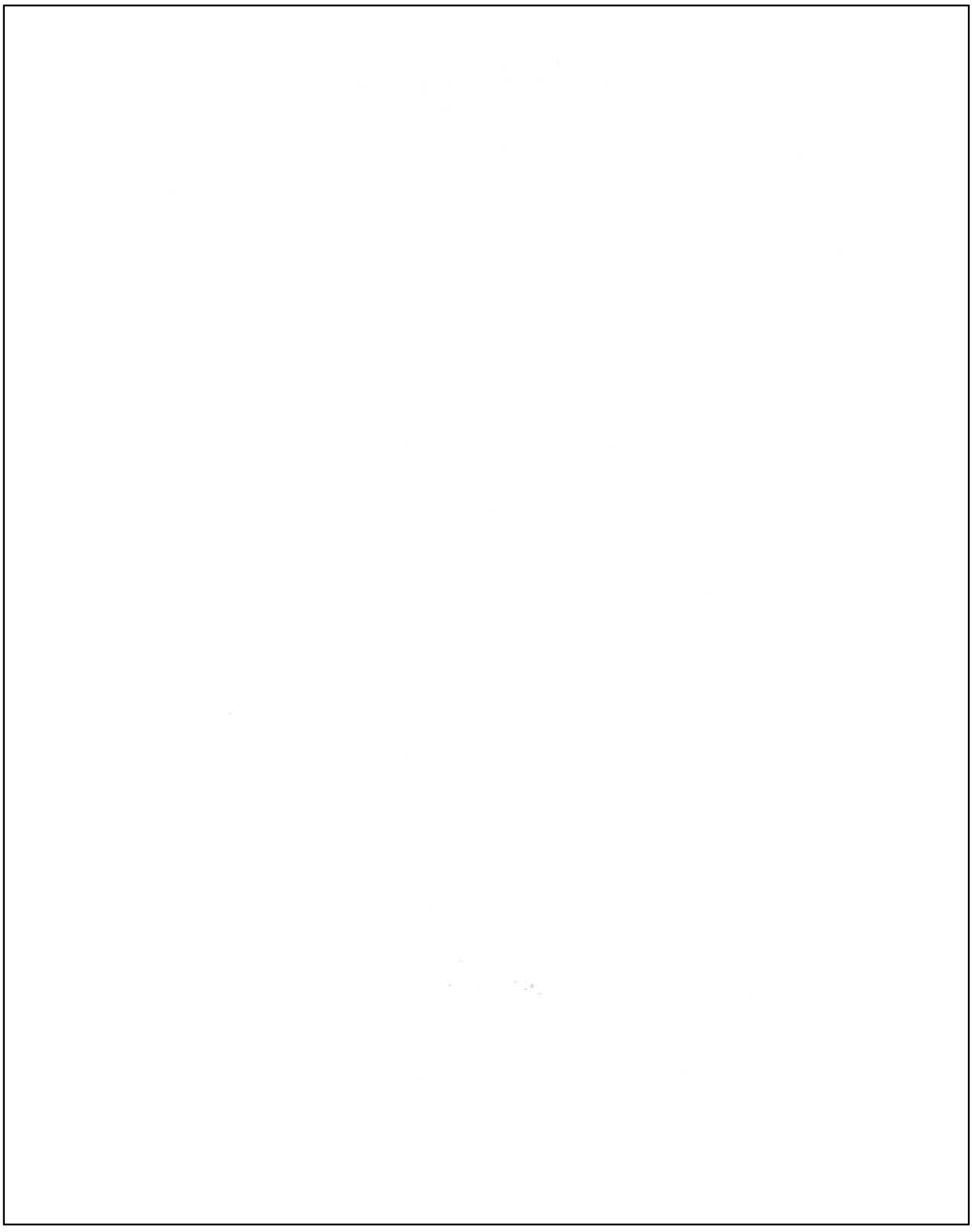
A rough order of magnitude cost to purchase the property and construct a 1.4-acre stormwater storage pond, including construction of drainage improvements between Stanley Road and Donner Road, is $2.9 million. Constructing a stormwater storage pond on these parcels will partially offset the need to create additional downstream stormwater runoff storage recommended by the SWMP Update. In terms of creating additional stormwater runoff storage volume, pond construction is far cheaper than the anticipated sheet pile installation required for downstream channel improvements. Although detailed engineering analyses have not been completed, the expected cost savings of purchasing the Dora Drive parcels and constructing a stormwater pond will significantly offset future costs required to fully implement the SWMP Update recommendations.

BUDGET: $1,075,000 in American Rescue Plan Act funding.

RECOMMENDATION: Commission consider approving Resolution 23-26.

REVIEWED BY CITY MANAGER: Joe Gerrity

ATTACHMENTS: Resolution No. 23-26
Purchase and Sale Agreement
Dora Drive Parcel & Adjacent Property Maps
Dora Drive Property Memo – 01-31-23
Hopkins Creek SW Management - Commission Presentation - 04-10-23



RESOLUTION NO. 23-26

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF ATLANTIC BEACH AND HOOSE HOMES AND INVESTMENTS, LLC, FOR THE PURCHASE OF 2.16+- ACRES OF REAL PROPERTY IN ATLANTIC BEACH ON DORA DRIVE (PARCEL ID 172118 0000, 172119 0000, 172122 0000) FOR THE PRICE OF $1,075,000; DESIGNATING AMERICAN RESCUE PLAN ACT FUNDS TO BE USED FOR THIS PURPOSE; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS, COMPLETE DUE DILIGENCE EFFORTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, to enhance the City of Atlantic Beach's stormwater management system, the City of Atlantic Beach desires to purchase 2.16+- acres of real property in Atlantic Beach on Dora Drive (Parcel ID 172118 0000, 172119 0000, 172122 0000) from Hoose Homes and Investments, LLC, for the price of $1,075,000; and

WHEREAS, the City of Atlantic Beach desires to utilize American Rescue Plan Act funds for this purpose, and.

WHEREAS, following a proper and valid vote for reconsideration of its passage of Resolution No. 23-26 on July 24, 2023, the City Commission now agrees to amend Exhibit A to provide for a 45-day feasibility/due-diligence period, rather than a 90-day feasibility/ due diligence.

NOW, THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

Section 1. The City Commission hereby authorizes the execution of a purchase and sale agreement between the City of Atlantic Beach and Hoose Homes and Investments, LLC, for the purchase of 2.16+- acres of real property in Atlantic Beach on Dora Drive (Parcel ID 172118 0000, 172119 00000, 172122 0000) for the price of $1,075,000.

Section 2. The City Commission hereby authorizes the use of American Rescue Plan Act funds for this purpose.

Section 3. The City Commission hereby authorizes the City Manager to execute contracts, complete due diligence efforts and purchase orders in accordance with and as necessary to effectuate the provisions of this Resolution.

Section 4. All Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. This Resolution shall become effective upon passage an adoption.

PASSED AND ADOPTED by the City Commission of the City of Atlantic Beach, this 24th day of July, 2023.

PASSED, as amended, by the City of Atlantic Beach following a proper and valid vote for reconsideration this __ day of August, 2023.

_____
Curtis Ford, Mayor

Attest:

_____
Donna L. Bartle, City Clerk

Approved as to form and correctness:

_____
Jason Gabriel, City Attorney

PURCHASE AND SALE AGREEMENT

Dora Drive

[Parcel ID 172118 0000, 172119 0000, 172122 0000]

THIS PURCHASE AND SALE AGREEMENT ("**Agreement**") by and between **HOOSE HOMES AND INVESTMENTS, LLC.,** a Florida limited liability company **whose address is 7563 Philips Highway Suite 111** ("**Seller**") and **the CITY OF ATLANTIC BEACH, FLORIDA, a municipal corporation whose address is 800 Seminole Road, Atlantic Beach, FL 32233** (or its assigns) ("**Buyer**"), is made effective as of the date on which the last of Seller or Buyer executes this Agreement (the "**Effective Date**").

RECITALS:

A. Seller owns approximately 2.16+/- acres of real property in Atlantic Beach, Duval County, Florida (the "**County**") described on **Exhibit "A"** attached and made a part of this Agreement (the "**Property**").

B. Seller desires to sell to Buyer and Buyer desires to buy from Seller the Property.

C. Seller and Buyer desire to enter into this Agreement to provide for the terms ofthe purchase and sale of the Property

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. PURCHASE AND SALE.

Upon and subject to the terms and provisions of this Agreement, Seller agrees to sell the Property to Buyer and Buyer agrees to buy the Property from Seller. As used herein, the term "Property" shall mean the land described in **Exhibit "A"**, together with all structures located thereon, as well as Seller's right, title and interests in and to all rights appurtenant to such land including but not limited to all subsurface rights, any reversionary interests in roads or streets adjoining such land, and any easements, express or implied, benefiting such land.

2. PURCHASE PRICE.

The purchase price (the "**Purchase Price**") for the Property will be $1,075,000.00. The Survey shall show the exact number of gross acres constituting the land.

3. DEPOSIT.

(a) Within three (3) business days after the Effective Date, Buyer shall deliver to **McKillop Law Firm, PL** ("**Escrow Agent**"), the sum of $10,000.00 (the "**Escrow Deposit**") by confirmed bank wire. In the event that Buyer fails to deposit the Escrow Deposit with Escrow Agent within the foregoing time period, Seller may terminate this Agreement.

(b) Escrow Agent shall hold the Escrow Deposit, in accordance with the terms of the Escrow

Agreement attached and made a part of this Agreement as **Exhibit "B"** (the "**Escrow Agreement**"). Buyer shall deliver the Escrow Deposit in the form of a confirmed wire transfer. The Escrow Deposit shall be credited against the Purchase Price at Closing. If the transaction does not close, the Escrow Deposit, or the applicable portion thereof, will be disbursed as provided elsewhere in this Agreement.

4. INFORMATION, ACCESS AND FEASIBILITY PERIOD.

(a) Within five (5) business days of the Effective Date, Seller will provide either an electronic form to Buyer true, correct, and complete copies of all the materials in possession of the Seller set forth in **Exhibit "D"** attached hereto, to the extent such items are in Seller's possession or control and Seller have not already provided to Buyer. In addition, prior to Closing, Seller shall promptly provide the Buyer with such additional information concerning expenses for the Property as Buyer may reasonably request, to the extent the same is in Seller's possession or control. In the event Seller fail to provide the materials set forth in **Exhibit "D"**, Buyer may not terminate this Agreement and request return of the Escrow Deposit. Failure of Seller to provide the materials set forth in **Exhibit D** shall not constitute a Default under this Agreement.

(b) Buyer shall have until 3:00 P.M. eastern time on the date that is forty-five (45) days from and after the Effective Date within which to inspect the Property and evaluate the feasibility of Buyer's consummation of the transaction contemplated in this Agreement (the "**Feasibility Period**").

During the Feasibility Period. Buyer may inspect any and all aspects of the Property or portions of the Property. At all times prior to Closing, upon reasonable of notice to Seller, Buyer, its agents, employees, designees, attorneys, engineers, environmental consultants, and other consultants (the "Consultants") shall have the right to reasonably physically inspect the Property, make surveys of the Property and conduct a phase 1 environmental assessment of the Property; provided, however, that Buyer shall be responsible for costs incurred by Buyer or any fees charged by Consultants. Buyer shall promptly restore any damage to the Property caused by Buyer's inspections.

Notwithstanding anything herein to the contrary, Buyer shall not be permitted to conduct borings of the Property or drilling in or on the Property, or any other invasive testing, in connection with the preparation of an environmental audit or in connection with any other inspection of the Property without the prior written consent of Seller. Buyer, at its expense, shall repair and restore any borings or holes created or any other damage to the Property). Buyer shall, in a timely manner, pay in full the cost of all inspections, investigations and inquiries of any kind, so that no person or entity shall have the right to file any lien against the Property. In the event any lien is filed, Buyer shall immediately satisfy or bond that lien off the Property. Buyer's obligations under this Section shall survive Closing and/or the termination of this Agreement, notwithstanding any term or provisions hereof to the contrary.

If applicable, Seller will make employees of its property manager available during the Feasibility Period, whether such property management group members are direct

employees of Seller or employed by a third-party property manager. Buyer agrees to coordinate all such property manager contact with Seller in advance. Seller reserves the right to have its representatives present at all such property manager interview(s).

Subject to all restrictions and limitations under Florida law including but limited to the restrictions set forth in Section 768.28, Florida Statutes, Buyer hereby agrees to indemnify, defend and hold Seller harmless from and against any and all claims, demands, actions losses, costs, damages, expenses or liabilities, including, but not limited to, personal injury or property damage claims or construction or other liens, including reasonable attorneys' fees caused by or incurred in connection with Buyer's inspection of the Property; provided however, that the restoration, indemnity, defense, and hold harmless obligations in this Section 4 will not apply to (a) any loss, liability, cost, or expense to the extent arising from or related to the acts of Seller, or Seller's agents or consultants, (b) any diminution in value in other real property owned by Seller arising from or relating to matters discovered but not caused by Buyer during its investigation, (c) any latent defects in the Property discovered but not caused by Buyer, or (d) the release or spread of any hazardous substances that are discovered (but not placed) on or under the Property by Buyer.

Buyer, in its sole discretion, shall have until the expiration of the Feasibility Period to deliver to Seller, with a copy to Escrow Agent, written notice of Buyer's disapproval of the feasibility of this transaction, which disapproval may be for any reason or no reason at all ("**Termination Notice**"). If Buyer delivers a Termination Notice to Seller on or before the expiration of the Feasibility Period this Agreement shall be deemed terminated. In the event of such termination prior to the end of the Feasibility Period, the Escrow Deposit shall be immediately returned to Buyer by Escrow Agent and this Agreement will be of no further force and effect and the parties hereto will have no further rights or obligations under this Agreement, except as to any obligations which survive termination. TIME IS OF THE ESSENCE with respect to the giving of the Termination Notice and the expiration of the Feasibility Period.

In the event Buyer does not deliver a Termination Notice to Seller on or before the expiration of the Feasibility Period, then the Escrow Deposit shall become non-refundable. If Buyer elects to proceed with Closing, it shall deliver notice to Seller prior to the end of the Feasibility Period.

5. SURVEY.

Seller shall, at Seller's expense, obtain and deliver to Buyer either an existing survey of the Property that is updated and renewed to the satisfaction of the Title Company in order to remove any survey-related title encumbrances or a brand new survey of the Property (the "**Survey**") within thirty (30) days of the Effective Date. The Survey shall be certified by the surveyor to Seller, Buyer, Escrow Agent, and the Title Company (as defined below), shall meet the minimum technical standards of the State of Florida, shall setforth the gross acres to the nearest 1/100th of an acre, shall show all easements and restrictions benefitting and burdening the Property, and shall establish a metes and bounds description of the Property. Provided the description of the Property as established by the Survey is consistent with the depiction set forth in Exhibit A attached hereto, such description shall supersede the Exhibit A depiction and the Title Commitment (as hereinafter

defined) shall be endorsed to reflect such new legal description. In the event the Survey reveals the encroachment of improvements from the Property onto adjacent property, or from adjacent property onto the Property, reveals any actual or potential boundary line disputes, or the presence of the right of third parties to use any part of the Property, or any other matter which is not acceptable to Buyer in its reasonable discretion, then the Buyer may notify the Seller of Buyer's objections to any such matters ("Survey Objections") within forty-five (45) days of the Effective Date. If Buyer does not deliver Survey Objections within such period, then any matters reflected on the Survey shall be deemed to be "Permitted Exceptions." Seller shall have a period of five (5) days after receipt of Buyer's notice of Survey Objections within which to notify Buyer whether Seller are willing to cure the Survey Objections. Thereafter, Survey Objections shall be resolved in the same manner as Title Objections under Sections 6(c), (d) and (e) below.

6. TITLE MATTERS.

(a) Upon Buyer's payment of the Purchase Price, Seller shall execute and deliver to Buyer its recordable and transferable special warranty deed ("**Deed**"), conveying to Buyer, good, record and marketable title to the Property, in fee simple, free and clear of all liens, encumbrances, leases or other occupancy agreements, rights and other matters whatsoever, except the following ("**Permitted Exceptions**"): utility and drainage easements of record which will not materially impair the value, use or operation of the Property for its current use; zoning and building laws of record; ad valorem real estate taxes and assessments for public improvements not then due and payable; defects and encumbrances caused by Buyer or consented to by Buyer; and any other matters set forth on the Title Commitment that are accepted or deemed accepted by Buyer.

(b) Within thirty (30) days after the Effective Date, Seller shall at Seller's expense, shall order and obtain a commitment for an owner's title insurance policy (the "**Title Commitment**") a title company (the "**Title Company**") providing for the issuance to Buyer upon the recording of the Deed (as hereinafter defined) of an ALTA owner's policy of title insurance in the amount of the Purchase Price insuring the Buyer's title to the Property (the "**Title Policy**"). The Title Commitment shall be accompanied by legible copies of all of the title exception documents referenced in the Title Commitment. The parties acknowledge that Buyer's attorney will serve as agent for the Title Company and that by acting in such capacity Buyer's attorney shall not be disqualified or otherwise precluded from representing Seller in connection with this Agreement.

(c) If the Buyer objects to any title exceptions in the Title Commitment, then Buyer shall give Seller written notice of the objections (the "**Title Objections**") no later than forty-five (45) days after the Effective Date. Any title matters reflected in the Title Commitment that are not objected to by Buyer in writing within such period shall become Permitted Exceptions.

(d) If Buyer provides timely notice of any Title Objections, Seller shall have the right, but not the obligation, to attempt to cure any Title Objections identified in Buyer's notice. Seller will advise Buyer within 5 days of receipt of the notice whether it intends to cure any Title Objections. If Seller does not specifically agree to cure any Title Objection identified in Buyer's notice, then Seller shall be deemed to have elected not to cure such Title Objection. If Seller elects to cure, it shall have 30 days to cure any matters it has elected to cure (the

"**Cure Period**"), except those objections as to any matters typically cured at real estate closings, such as requirements and standard exceptions which are satisfied and deleted by delivery of an owner's affidavit, authority documents or mortgage releases, shall be satisfied at Closing. The Closing Date shall automatically be extended to accommodate the Cure Period for Title or Survey Objections. In all events, Seller shall be obligated to satisfy mortgage liens, tax liens, construction liens and judgment liens created by or through Seller. Seller shall ensure that all mortgages are paid and released at or prior to closing and shall cooperate with closing agent regarding same. The Closing Date shall be automatically extended to a date that is 10 days after all mortgages are released or Such mortgagees provide a written payoff statement in a form acceptable to title/closing agent.

(e) If Seller elects not to cure certain Title Objections or if Seller elects to cure certain Title Objections but is unable to do so during the Cure Period, Buyer shall have the right to terminate this Agreement by written notice delivered to Seller within 7 days of receipt of notice that Seller will not cure certain Title Objections. In the event of any such termination, all parties shall be relieved of any further obligations under this Agreement (except any that specifically survive the termination of this Agreement) and Buyer shall be entitled to a return of the Escrow Deposit from Escrow Agent. If Buyer fails to terminate this Agreement pursuant to this paragraph, Buyer shall be deemed to have waived any Title Objections Seller elected not to cure or did not cure and agrees to accept the condition of title to the Property subject to such Title Objections (all of which shall be Permitted Exceptions) and proceed to Closing without diminution in the Purchase Price.

7. FINANCING

Closing is not contingent upon Buyer obtaining financing.

8. CONDITIONS TO CLOSE.

The items listed below are conditions precedent to Seller and Buyer's obligation as to the Closing of the Property. Buyer may waive such conditions applicable to Seller as Buyer chooses and proceed to Closing, without alteration in the Purchase Price. If Buyer does not elect to waive such conditions, Buyer shall be entitled to terminate this Agreement by written notice delivered to Seller on or before the Closing Date.

Seller may waive such conditions applicable to Buyer as Seller chooses and proceed to Closing, without alteration in the Purchase Price. If Seller does not elect to waive such conditions, Seller shall be entitled to terminate this Agreement by written notice delivered to Buyer on or before the Closing Date, whereupon Seller shall be entitled to receive the Escrow Deposit, as applicable, then held by Escrow Agent.

The following are conditions precedent to Buyer's obligation as to the Closing of the Property:

(a) At Closing, the Property is free from any outstanding liabilities, including but not limited to unpaid taxes (however, this does not include the current years taxes which are not yet due and which shall be apportioned on the closing statement).

(b) The Property is not subject to any actual or pending litigation.

(c) Seller has cured all Survey objections made by Buyer (if any)

(d) Seller has cured all Title Objections made by Buyer (if any).

The following are conditions precedent to Seller's obligation as to the Closing of the Property:

(a) Buyer is not in default under any terms of this Agreement.

(b) Buyer can deliver the Purchase Price to Seller.

As used herein, the term "*Force Majeure*" means acts of God, earthquakes, blizzards, tornados, hurricanes and tropical storms, pandemics, inclement weather in excess of historical weather patterns for the period in question, fire, flood, malicious mischief, insurrection, riots, strikes, lockouts, boycotts, picketing, labor disturbances, public enemy, terrorist attacks, war (declared or undeclared), landslides, explosions, epidemics, compliance with any order, ruling, injunction or decree by any court, tribunal or judicial authority of competent jurisdiction or inability to obtain materials or supplies after the exercise of reasonable efforts, delay in granting any required consent by the party entitled to so grant within the time frame required herein, delays by governmental authorities, and any other matter beyond the reasonable control of the party obligated to perform. Unavailability of funds shall not be considered Force Majeure.

BUYER AGREES AND ACKNOWLEDGES THAT THE SELLER HAS NEITHER MADE NOR HAS BUYER RECEIVED ANY PROMISES OR REPRESENTATIONS THAT ANY IMPROVEMENTS, UTILITIES, OR FACILITIES WILL BE BUILT BY SELLER DURING THE TERM OF THIS AGREEMENT. THE SELLER HAS NOT MADE ANY EXPRESS WARRANTIES AS TO THE PROPERTY AND WAIVES ANY IMPLIED WARRANTIES AS TO THE PROPERTY.

9. CLOSING.

(a) The closing of the sale and purchase of the Property (the "**Closing**") shall not later than fifteen (15) days after the expiration of the Feasibility Period. The Closing may take place by mail with delivery of the Closing documents in escrow to Escrow Agent, or at such other place as may be agreed upon by the parties. TIME IS OF THE ESSENCE withrespect to Closing and the Closing Date.

(b) At Closing, Seller shall deliver to Buyer the Special Warranty Deed (the "**Deed**") conveying to Buyer fee simple title to the Property, subject only to the Permitted Exceptions, which Special Warranty Deed shall be in form and content attached hereto as **Exhibit "C**."

(c) At Closing, Seller shall deliver duly executed originals of the closing statement, Bill of Sale and General Assignment in the form of **Exhibit "E"** and such other documents to be executed as may be reasonably required by Buyer or the Title Company.

(d) At Closing, Buyer shall deliver to Seller the Purchase Price, the closing statement, and such other documents to be executed as may be reasonably required by Seller or the Title Company.

(e) At the Closing, Seller shall deliver all keys and lock combinations in Seller's possession or control for all locks on the Property.

(f) At the Closing, Seller shall deliver such evidence, common documents or affidavits as may be reasonably required by the Title Company or Buyer relating to:

(i) Mechanic's or materialmen's liens (if any);
(ii) Parties in possession;
(iii) The status and capacity of Seller and the authority of the individuals who are executing the various documents on behalf of Seller in connection with sale of the Property, and
(iv) Such information as may be reasonably required by the Title Company or to ensure the "gap" between Closing and the recordation of the Deed contained in the Property to Buyer.
(v) That Seller has not caused any improvements, alterations or repairs to the Property for which the costs thereof remain unpaid.
(vi) That Seller is in open and exclusive possession of the Property and that there are no lease agreements other than what has been disclosed.
(vii) That there has been no change in title to the Property and that there are no pending matters concerning or against Seller that could give rise to a lien that would attach to the property or otherwise change the statute of title to the Property.
(viii) Such other documents are consistent with the terms of the Agreement and reasonably required to close the transaction contemplated hereby

10. CLOSING COSTS, REIMBURSEMENT AND PRORATIONS.

(a) Seller shall pay for documentary stamps on the Deed, all recording fees, the cost of the Survey, Seller's attorneys' fees, title insurance commitment and title premium.

(b) Buyer shall pay for all costs associated with Buyer's due diligence, the Buyer's attorneys' fees and any costs incurred by the Buyer that is not specifically attributable to Seller in this Agreement.

(c) The following items shall be prorated by the parties as of the Closing Date:

(i) Real estate taxes taking into consideration any discounts for early payment. Such taxes shall be prorated based upon the estimated amount of taxes for the year of Closing (based upon the prior years' tax bills if the tax bills for Closing are not available and in such case, Seller and Buyer shall re-prorate the taxes when actual tax bills for the current year are available). Any additional real estate taxes arising out of a change in the use of the Property on or a change in ownership after Closing shall be assumed by Buyer and paid by Buyer when due and payable.

(ii) Special assessments or charges imposed against the Property by any applicable governmental authorities with jurisdiction over the Property (if any).

(iii) If as of the Closing Date the Property is encumbered or otherwise affected by any assessment (whether or not a lien) which is or may become payable in installments, then for the purposes of this Agreement, any assessment currently due as of Closing shall be paid by the Seller and all remaining assessments shall be assumed and payable by the Buyer as they become due and Buyer shall take title to the Property subject to the unpaid installments not yet due and payable.

(iv) The actual or estimated charges for utilities accrued and payable by Seller shall be prorated between Seller and Buyer, provided Buyer is required by law or elects to assume Seller's utility account. Deposits for utilities (the "Utility Deposits"), plus any interest on the Utility Deposits to which Seller is or will be entitled that are held by the provider of the utilities and which are freely transferable to Buyer, shall at the election of the Buyer be assigned by Seller to Buyer and Buyer shall pay Seller the full amount thereof at Closing. Seller shall retain the right to obtain a refund of any Utility Deposits which are not required to be assigned to Buyer, and Buyer will cooperate with Seller as reasonably requested in obtaining any refund. With respect to water, sewer, electric and gas charges, Seller shall make reasonable efforts to obtain a reading of the meter or other consumption measuring device as of the Closing Date. If the Seller is unable to obtain such a reading, Seller shall furnish a reading as of a date not more than thirty (30) days prior to the Closing Date and the unknown charges shall be apportioned on the basis of an estimate computed by utilizing such reading and the most recent bill from the utility provider.

(v) Prepaid charges, payments and accrued charges made by Seller under any Continuing Contracts shall be prorated at Closing in a manner reasonably acceptable to Seller and Buyer.

11. REPRESENTATIONS BY BUYER.

Buyer represents and warrants to Seller as follows:

(a) Buyer's execution, delivery, and/or performance of this Agreement is not prohibited by and shall not constitute a default under any other agreement, covenant, document or instrument to which Buyer is subject or bound.

(b) Buyer has full power, capacity, authority, and legal right to execute and deliver this Agreement and to perform all transactions (including the execution and delivery of all documents) required of Buyer for the performance of this Agreement; and the person signing below on behalf of Buyer is duly authorized to execute this Agreement and bind Buyer.

(c) Buyer's city commission and/or mayor have performed all conditions precedent necessary for Buyer to enter into this Agreement, as set forth in Resolution _____.

(d) This Agreement has been duly authorized by Buyer and, when fully executed and delivered, shall constitute a legal, valid, and binding obligation of Buyer.

(e) To Buyer's actual knowledge, there is no litigation, pending or threatened, which would have a material and adverse effect on Buyer's ability to perform its obligations under this Agreement.

(f) Buyer has engaged no brokers related to this Agreement.

Buyer's representations and warranties set forth above are true and correct on the Effective Date, shall be true and correct on the date of Closing Date, and shall survive following the Closing. The truth and accuracy of these representations and warranties in all material respects at the time of Closing shall be a condition to Seller's closing obligations under this Agreement.

12. REPRESENTATIONS BY SELLER.

Seller represents and warrants to Buyer as follows:

(a) Seller's execution, delivery, and/or performance of this Agreement is not prohibited by and shall not constitute a default under any other agreement, covenant, document or instrument to which Seller is subject or bound.

(b) Seller have full power, capacity, authority, and legal right to execute and deliver this Agreement and to perform all transactions (including the execution and delivery of all documents) required of Seller for the performance of this Agreement, including conveyance of the Property to Buyer; and the person signing below on behalf of Seller is duly authorized to execute this Agreement and bind Seller.

(c) This Agreement has been duly authorized by Seller and, when fully executed and delivered, shall constitute a legal, valid, and binding obligation of Seller.

(d) To Seller's actual knowledge, there is no litigation, pending or threatened, which would have a material and adverse effect on the Property or on Seller's ability to perform its obligations under this Agreement.

(e) Seller has received no unresolved written notice from any applicable governmental authorities claiming a breach or other violation of any applicable federal, state or local laws, statutes, ordinances, codes, regulations, rules, or restrictions (collectively, "**Applicable Laws**") related to the Property.

(f) Seller has entered into no license, lease or option agreements for the Property or any portion of the Property.

(g) Seller has engaged no brokers related to this Agreement.

13. ACKNOWLEDGEMENTS AND ADDITIONAL COVENANTS.

(a) **Utilities and Permits**. Buyer understands and agrees that water, sewer, electrical, telephone, and other utility services to the Property will be provided by the County or other utility providers who have the legal right to serve the Property. Buyer shall be solely responsible for payment of all connection, service and meter charges imposed by all such utility providers and shall be solely responsible for any increases in such charges that may occur from time to time. Further, Buyer shall be solely responsible for payment of all fees and charges associated with all building or other permits which may be required for construction of improvements upon the Property. This Section 13(a) shall survive Closing.

(b) **Approvals.** Buyer shall, at its own cost and expense, be responsible for obtaining all future approvals and permits from all applicable governmental authorities necessary for the Property after Closing. However, Buyer's receipt of such future approval and permits, shall not be deemed a condition of Closing. This Section shall survive Closing.

14. NO RESALE LIABILITY.

Buyer acknowledges and agrees that Seller is not a co-venturer or partner of Buyer in Buyer's construction upon or resale of the Property, and that Seller shall bear no liability whatsoever resulting from or arising out of Buyer's ownership, construction upon or resale of the Property.

15. LEASING AND OTHER ACTIVITIES PRIOR TO CLOSING

(a) Seller shall not enter into any lease transaction or any other form of conveyance with respect to the Property, unless previously approved by the Buyer in writing, which consent may be granted or denied in Buyer's sole discretion.

(b) Seller shall not, without Buyer's prior written approval, (i) make any material alterations or additions to the Property, except as may be required by law or as may reasonably be required for the prudent repair and maintenance of the Property, (ii) change or attempt to change (or consent to any change in) the zoning or other legal requirements applicable to the Property, (iii) cancel, amend or modify in any material respect any certificate, license, approval or permit held by or on behalf of Seller with respect to the Property, or (iv) sell, convey or remove from the Property any personal property unless the same is obsolete and is replaced by similar, tangible personal property of equal or greater utility or value.

(c) At all times prior to Closing, Seller shall: (i) maintain the Property in good condition and repair; (ii) conduct business and operate and maintain the Property in substantially the same manner in which the Property was heretofore operated by Seller; (iii) maintain insurance in accordance with the insurance in place as of the Effective Date; (iv) not sell or further encumber the Property or any portion thereof or enter into any agreement relating thereto, and (v) promptly give Buyer a reasonably detailed written notice of: (1) any fire, flood or other material adverse change with respect to the Property of which Seller obtain actual knowledge; (2) any actual or proposed condemnation (or proceeding in lieu thereof) of which Seller obtain actual knowledge; (3) any written notice received by Seller claiming

that the Property or the use and operation thereof fails to comply with applicable legal requirements; and (4) any written notice received by Seller concerning any pending or threatened litigation or administrative proceeding affecting the Property. If Seller become aware during the term of this Agreement of any matters that render any of its representations or warranties untrue, Seller shall promptly disclose such matters to Buyer in writing.

16. DEFAULT.

If this transaction is not closed because of Buyer's default, of if Buyer is otherwise in breach of any obligation to be performed by Buyer prior to the Closing, **TIME BEING OF THE ESSENCE AS TO EACH OF BUYER'S AND SELLER'S OBLIGATIONS UNDER THIS AGREEMENT,** Seller shall, as its sole remedy, receive the Escrow Deposit as agreed upon liquidated damages, Seller's actual damages in such event are not readily ascertainable and the liquidated damages provided herein shall not be considered a penalty. It being hereby acknowledged by Buyer and Seller that if Buyer defaults, Seller will suffer damages incapable of exact ascertainment, and upon the exercise of such remedy, this Agreement shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder except as otherwise expressly provided in this Agreement. If this transaction is not closed because of the default of Seller or if Seller are otherwise in breach of any obligation to be performed by Seller prior to the Closing, Buyer may, as its sole discretion, receive a refund of the Escrow Deposit or Buyer may seek specific performance to enforce the terms of this Agreement. In no event may Buyer or Seller recover any consequential or punitive damages under any circumstances. All other remedies of Buyer and Seller with regard to failure to close or breach of any other provision of this Agreement (except for a breach of the indemnities herein and the obligations in this Agreement that specifically survive Closing) are expressly waived. With respect to any default in the obligations of Seller or Buyer to be performed subsequent to the Closing, Seller and Buyer shall each have all remedies available at law or in equity. With respect to any default under this Agreement other than a failure to timely close on the Closing Date, the non-defaulting party shall provide the defaulting party with written notice of such default and a period of fifteen (15) days in which to cure such default, prior to taking any enforcement action with respect to such default. The applicable provisions contained herein shall survive the Closing and the delivery of the deed of conveyance.

17. MISCELLANEOUS.

(a) **Notice.** In the event that more than one person or entity are listed as Buyer, any notice given by Seller to any of such persons or entities shall constitute notice to all. Any notice or approval under this contract shall be sent, postage prepaid, by registered, certified mail, or overnight mail, or by hand delivery or by electronic mail to the applicable party at the following addresses:

If to Seller: Steve Swann
Email: sswann@coab.us

With cc to: Jason Gabriel, Esq.
Email: jgabriel@burr.com

If to Buyer: Zach Miller, Esq.
Email: Zwmillerlaw@gmail.com

If to Escrow Agent: **McKillop Law Firm, PL**
Email: ian@mckilloplawfirm.com

Notices shall be effective on receipt and may be given by parties or counsel to either party.

(b) **Assignment**. Buyer shall not assign its interests in this Agreement in whole or in part without the prior approval of Seller, which approval may be granted or withheld in Seller's sole and absolute discretion.

(c) **Attorneys' Fees and Venue**. In connection with any litigation arising out of, or to enforce or interpret, this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs at all levels of proceeding in addition to any other relief granted. The venue for any proceeding of a dispute under this Agreement shall be in the Florida Circuit Court in and for Duval County, Florida or the Federal Courts in Jacksonville, Florida.

(d) **Entire Agreement.** This Agreement supersedes any and all understandings between the parties with respect to the subject matter of this Agreement. Any representations or inducements previously made which are not included and embodied in this Agreement in writing shall be of no force or effect. This Agreement may be modified or amended only in writing and signed by Buyer and Seller and any and all prior discussions, negotiations, or representations which are not specifically set forth in this Agreement or in addendum to this Agreement are null, void and of no force and effect.

(e) **Condemnation.** Upon obtaining knowledge of any proceedings for the condemnation of any portion of the Property (including negotiations in lieu of condemnation), Seller shall promptly notify Buyer of the pendency of such proceedings. If, after the Effective Date and prior to an applicable Closing, any portion of the Property shall become subject to a judicial condemnation (or sale in lieu of condemnation), Buyer may, by written notice to Seller given 5 days after notice, elect to cancel this Agreement prior to the Closing with respect to such Property, in which event both parties shall be released from any further liability hereunder with respect to such Property, however, this Agreement shall remain in full force and effect with respect to the Property that are not affected by the condemnation. If no such election is made, this Agreement shall remain in full force and effect with respect to all of the Property, and the purchase contemplated, less any interest taken by eminent domain or condemnation, shall be effected with no adjustment of the Purchase Price, and upon the applicable Closing, Seller shall assign or pay (to the extent previously received by Seller) over to Buyer, as applicable, all of the right and interest of Seller to any awards that have been or may be made for such taking.

(f) **Risk of Loss**. Unless and until the Closing is completed, the risk of loss to the Property from casualty or condemnation shall be borne by Seller. If all or a portion of the Property is damaged or destroyed by fire or other casualty prior to Closing such that: (1) Buyer's reasonable estimate of the cost to repair the same exceeds Ten Thousand and No/100 Dollars ($10,000.00); (2) parking that benefits the Property is lost; (3) access to or egress from the Property is materially impaired; or (4) Seller do not demonstrate to Buyer's reasonable satisfaction that the available insurance proceeds to be assigned to Buyer, together with the deductible amounts to be credited against the Purchase Price, are adequate to pay the cost to repair such damage or destruction (any such fire or other casualty, a "Material Casualty"), Buyer may, at Buyer's sole option, elect to either:

(i) terminate this Agreement and receive back the Escrow Deposit; or

(ii) purchase the Property subject to and in accordance with the terms of this Agreement.

In the event of a fire or other casualty that is not a Material Casualty, and in connection with any Material Casualty as to which Buyer elects to proceed pursuant to Section 17(f)(ii), (A) Buyer shall purchase the Property in accordance with the terms hereof without reduction in the Purchase Price (except for any applicable deductible that will reduce the insurance proceeds assigned to Buyer at Closing) and (B) Seller shall assign to Buyer at Closing all insurance proceeds paid or payable on account of such damage, including any rental or business interruption insurance (and the amount of any deductible shall be credited against the Purchase Price). Buyer shall be deemed to have elected to proceed under Section 17(f)(ii) unless, within fifteen (15) Business Days from reasonably detailed written notice to Buyer of such casualty, Buyer provides Seller with written notice that Buyer elects to terminate pursuant to Section 17(f)(i). If the Closing Date would otherwise occur sooner, it shall automatically be extended to the date that is twenty (20) Business Days after written notice to Buyer of the casualty. If any insurance proceeds paid or payable on account of a fire or other casualty are to be assigned to Buyer in accordance with the provisions of this Agreement, Seller shall cooperate as reasonably requested by Buyer to effectuate such assignment (including, if necessary, prosecuting claims in Buyer's name or for Buyer's benefit), and Seller's obligation to so cooperate shall survive the Closing.

(g) **Interpretation.** The captions in this Agreement are for information and convenience only and shall in no way define, limit or construe the contents of any provision of this Agreement. This Agreement shall be governed by the laws of the State of Florida. Unless otherwise specified, the term "**days**" shall refer to calendar days and not business or working days. If any provision of this Agreement, or the application of such provision to any person or circumstance is held invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those to which it is invalid, shall not be affected. Any time period provided for in this Agreement that ends on a Saturday, Sunday or other day when the Duval County, Florida courthouse is closed to the public (each, an "**Excluded Day**"), shall be extended to 3:00 p.m. of the next day that is not an Excluded Day.

(h) **Counterparts.** This Agreement may be executed in one or more original counterparts, all

of which when properly executed by the parties, shall constitute an original Agreement. Executed counterparts of this Agreement that are transmitted by facsimile or by electronic mail shall be effective and binding on all parties.

(i) **Electronic Signatures**. The exchange of copies of this Agreement and copies of signature pages (including, but not limited to, this Agreement and/or any closing related document) by facsimile, email or attachment of a scanned electronic copy to email shall constitute effective execution and delivery of such document as to the parties and may be used in lieu of the original for all purposes. Signatures of the parties transmitted by facsimile, email, or attachment of a scanned electronic copy to email shall be valid, enforceable and binding as an original signature for all purposes.

(j) **Confidentiality**. Buyer and Seller shall maintain at all times as confidential information: (i) the terms of this Agreement; and (ii) the existence and content of any negotiations. Notwithstanding the foregoing, Buyer and Seller shall have the right to indicate to County officials that Seller and Buyer have executed this Agreement. Buyer and Seller may also: (i) inform lenders, advisors, counsel and employees whom each party deems necessary or advisable, provided that such persons are advised of the confidential nature of this Agreement; (ii) make disclosures required by applicable laws; and (iii) make disclosures to utility and other service providers as to matters directly related to their services.

(k) **Press Releases**. Buyer shall not make any press releases or other media dissemination of information relating to the transactions contemplated herein without the prior approval of the other party.

(l) **1031 Exchange**. Buyer and Seller each hereby acknowledge that the sale of the Property pursuant to this Agreement may be part of a tax-free exchange for Seller pursuant to Section 1031 of the Code, the regulations promulgated thereunder, revenue procedures, pronouncements and other guidance issued by the Internal Revenue Service. Buyer hereby agrees to cooperate with Seller to facilitate such exchange (which shall include execution of typical 1031 exchange documentation required by Seller's 1031 accommodator), provided that same will not delay the Closing, cause additional expense to Buyer, increase Buyer liabilities or obligations, or otherwise modify any of the terms or provisions of this Agreement. Seller's rights under this Agreement may be assigned to a qualified intermediary for the purpose of completing such an exchange.

(m) **Possession**. Possession of the Property shall be delivered to Buyer by Seller at the Closing, subject only to the Permitted Exceptions.

(n) **Waiver; Governing Law.** The excuse or waiver of the performance by a party of any obligation of the other party under this Agreement shall only be effective if evidenced by a written statement signed by the party so excusing or waiving. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by Seller or Buyer or the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement. This Agreement shall be construed and the rights and obligations of Seller and Buyer hereunder determined in accordance with the internal laws of the State of Florida, without

regard to the principles of conflict of law. In recognition of the benefits of having any disputes with respect to this Agreement resolved by an experienced and expert person, Seller and Buyer hereby agree that any suit, action, or proceeding, whether claim or counterclaim, brought or instituted by any party hereto on or with respect to this Agreement for which any it relates, directly or indirectly, to this Agreement or any event, transaction, or occurrence arising out of or in any way connected with this Agreement whether Property, or the dealings of the parties with respect thereto, shall be tried only by a federal or state court having jurisdiction in Duval County, Florida.

(o) **Brokers**. Seller and Buyer shall each indemnify, defend, protect and hold harmless the other against and from any and all Losses (as hereinafter defined) for commissions or other compensation that may be made by anyone claiming through the indemnifying party in connection with this sale. As used in this Agreement, "Losses" shall mean all demands, claims, causes of action, losses, debts, controversies, damages, liabilities, obligations, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including, without limitation, attorneys' fees and costs of defense and costs and expenses of all experts and consultants. The provisions of this paragraph shall survive the Closing and the delivery of the Deed or the termination of this Agreement.

18. DISCLOSURES.

(a) **THE BUYER SHOULD NOT RELY ON SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FORINFORMATION.**

(b) **THE BUYER HEREBY WARRANTS THAT THE AGENTS OR EMPLOYEES OF THE SELLER AND ITS AFFILIATES HAVE MADE NO ORAL OR WRITTEN REPRESENTATIONS THAT THE BUYER WOULD DERIVE ECONOMIC BENEFITS OR EXPECTATIONS OF PROFITS FROM APPRECIATION IN PROPERTY VALUE, OR PROFITS TO BE DERIVED FROM THE ENTREPRENEURIAL OR MANAGERIAL EFFORTS OF THE SELLER, SELLER'S AGENTS OR THIRD PARTIES DESIGNATED OR ARRANGED FOR BY THE SELLER FOR RENTAL MANAGEMENT, OR OTHER FINANCIAL RETURNS FROM THE BUYER'S INVESTMENT.**

(c) **BUYER SHOULD RELY NOT UPON ANY REPRESENTATIONS OTHER THAN THOSE EXPRESSLY STATED IN THIS CONTRACT.**

(d) **Radon Gas Disclosure. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state**

guideline have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from the county health department.

19. EXCLUSIVITY

Seller agrees that during the entire Feasibility Period neither Seller, nor its officers, agents, employees, advisers or other representatives ("Seller's Representatives") will directly or indirectly commence or make any introductions with anyone other than the Buyer or a company which is a subsidiary or affiliate of the Buyer (or any of their officers, agents, employees, advisers or other representatives) in relation to fee title conveyance of the Property or any part of the Property. Nor shall Seller's Representatives seek, encourage or respond to any approach that might lead to negotiations in relation to the fee title conveyance of the Property with a third party nor supply or otherwise disclose any information about fee title conveyance of the Property to a third party that wishes, or may wish, to enter into negotiations in relation to fee title conveyance of the Property.

19. CONFIDENTIALITY

Buyer and its representatives shall hold in strictest confidence all data and information obtained with respect to Seller or their business, whether obtained before or after the execution and delivery of this Agreement which shall be used solely for the purposes of evaluating the proposed acquisition of the Property by Buyer, and shall not disclose the same to others; provided, however, that it is understood and agreed that Buyer may disclose such data and information to the employees, lenders, investors, partners, bankers, brokers, professionals, consultants, accountants and attorneys of Buyer provided that such persons agree to treat such data and information confidentially.

Both before and after the Closing, any press release or other public disclosure of information with respect to the sale contemplated herein or any matters set forth in this Agreement, including but not limited to the identity of Buyer, the principals of Buyer or any other individual related to Buyer or involved in the transaction, made or released by or on behalf of Seller shall be subject to Buyer's prior written approval, in Buyer's sole discretion. In the event of a breach or threatened breach by Seller or its agents or representatives of this Section 19, Buyer shall be entitled to an injunction restraining Seller or its agents or representatives from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting Buyer from pursuing any other available remedy at law or in equity for such breach or threatened breach. The provisions of this Section 19 shall survive the Closing or any termination of this Agreement.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Effective Date.

(*Signatures on the Following*)

BUYER:

CITY OF ATLANTIC BEACH, FLORIDA, a municipal corporation

By:_____
Name:_____
Title:_____
Date: _____

Attest:

_____
Donna Bartle, City Clerk

SELLER:

HOOSE HOMES AND INVESTMENTS, LLC., a Florida limited liability company

By:
By:_____
Name:_____
Title:_____
Date: _____

JOINDER BY THE ESCROW AGENT

By its execution hereof, the Escrow Agent hereby (i) covenants and agrees to hold the Deposit in accordance with the above provisions and the provisions of the Escrow Agreement executed by Escrow Agent, Seller and Buyer, and (ii) acknowledges receipt of a copy of the Purchase and Sale Agreement to which this Joinder is attached.

By:_____
Name:_____
Its:_____

Exhibit List:

Exhibit A – Description of the Property
Exhibit B – Form of Escrow Agreement
Exhibit C – Deed
Exhibit D – List of Due Diligence Materials
Exhibit E – Form of Bill of Sale and General Assignment

EXHIBIT A

DESCRIPTION OF PROPERTY

EXHIBIT B

ESCROW AGREEMENT

Escrow Agreement

THIS ESCROW AGREEMENT (this "Escrow Agreement") is made and entered into on this___day of_____, 2023, **HOOSE HOMES AND INVESTMENTS, LLC.,** a Florida limited liability company **whose address is 7563 Philips Highway Suite 111 ("Seller")** and **CITY OF ATLANTIC BEACH, FLORIDA, whose address is 800 Seminole Road, Atlantic Beach, FL** (or its assigns) (**"Buyer"**), (Seller and Buyer are collectively referred to as' "Principal(s)"), and **McKillop Law Firm, PL** ("Escrow Agent").

WHEREAS, Principals have entered into that certain Purchase Agreement dated the ____day of_____2023 (the "Agreement"). Unless otherwise defined herein, all capitalized terms used in this Escrow Agreement shall have the meanings assigned to the same in the Agreement.

WHEREAS, Principals desire that Escrow Agent hold the Escrow Deposit, as defined in the Agreement in escrow, subject to the conditions precedent set forth in the Agreement.

WHEREAS, the terms and obligations governing the Escrow Deposit shall be applied as applicable to each deposit per the requirements for each deposit as set forth in the Agreement and shall in no way require disbursement of either deposit to Escrow Agent or Seller prior to the applicable conditions precedent set forth in the Agreement.

NOW, THEREFORE, in consideration of the covenants and agreements herein set forth and other good and lawful consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. **Escrow**
   (a) Escrow Agent agrees to hold the Escrow Deposit in escrow, if in or converted to cash, subject to the terms and conditions contained in this Escrow Agreement and the Agreement.
   (b) Escrow Agent shall not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actual knowledge of such matter or thing, and Escrow Agent shall not be charged with any constructive notice or knowledge whatsoever.
   (c) In the event instructions from Principal(s) would require Escrow Agent to expend any monies or to incur any cost, Escrow Agent shall be entitled to refrain from

taking any action until it receives payment for such costs from the Principal(s).

2. Release of Deposit

(a) Escrow Agent agrees to release the Escrow Deposit in accordance with the terms and conditions set forth in this Escrow Agreement and the Agreement. Escrow Agent shall be required to obtain the consent of both parties to release the Escrow Deposit, provided, however, (i) if Escrow Agent is releasing the Escrow Deposit to Seller as a result of the termination of the Agreement by Buyer after the Feasibility Period or as a failure of Buyer to meet its conditions to close and Seller is not in default under the Purchase and Sale Agreement between Buyer and Seller, then Escrow Agent is not required to obtain the consent of Buyer to release the Escrow Deposit to Buyer and (ii) if Escrow Agent is releasing the Escrow Deposit as a result of Closing, then Escrow Agent is not required to obtain the consent of Buyer to release the Escrow Deposit to Seller.

(b) In the event Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive instructions, claims or demands from any Principal(s) with respect to the Escrow Deposit or any other sums or things which may be held hereunder, which, in its sole opinion, are in conflict with any provisions of this Escrow Agreement and/or the Agreement, if any, Escrow Agent shall be entitled to refrain from taking any action until it shall be directed otherwise in writing by all Principal(s) and said third persons, if any, or by a final order or judgment of a court of competent jurisdiction.

(c) If all or any portion of the Escrow Deposit delivered to Escrow Agent is in the form of a check or in any form other than cash, Escrow Agent shall deposit the same as required but shall not be liable for the nonpayment thereof nor responsible to enforce collection thereof. If such check or other instrument other than cash representing the Escrow Deposit is returned to Escrow Agent unpaid, Escrow Agent shall notify the applicable Principal(s) for further instructions.

(d) Escrow Agent shall deposit the Escrow Deposit, as applicable, if in or converted to cash. The account in which either is deposited shall be with a banking institution selected by Escrow Agent in an account insured by the Federal Deposit Insurance Corporation. The Escrow Agent shall have no liability or responsibility to any party regarding the financial failure or bankruptcy of such institution; provided, however, that such institution is a banking institution duly licensed under the federal or state banking laws.

3. Liability of Escrow Agent

(a) Escrow Agent may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, may assume the validity and accuracy of any statements or assertion contained in such writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow

Agent shall not be liable in any manner for the sufficiency or correctness as to form, manner of execution, or validity of any written instructions delivered to it; nor as to the identity, authority, or rights of any person executing the same and shall otherwise not be liable for any mistakes of fact or error of judgment, or for any acts or omissions of any kind unless caused by its willful misconduct or gross negligence.

(b) It is agreed that the duties of Escrow Agent are purely ministerial in nature and shall be expressly limited to the safekeeping of the Escrow Deposit and for the disposition of same in accordance with this Escrow Agreement and any costs, expenses or fees incurred by the Escrow Agent in the performance of these duties shall be borne equally by the Principals. Each Principal hereby agrees to indemnify, defend and hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings at law or in equity, or any other expenses, fees or changes of any character or nature (including, without limitation, attorneys' fees, paralegals' fees and costs incurred in all trial and appellate proceedings or otherwise if no litigation is instituted) which it may incur or with which it may be threatened directly or indirectly arising from or in any way connected with this Escrow Agreement, whether or not such claims, liabilities, damages, costs, penalties, losses, actions, suits or proceedings arise from or are in any way connected with any negligence of Escrow Agent. Notwithstanding anything in this subparagraph 3(b) to the contrary, in no event shall Escrow Agent be absolved from any liability arising from Escrow Agent's gross negligence or willful misconduct.

4. Disputes

(a) This Escrow Agreement shall remain in effect unless and until it is canceled in any of the following manners:

(i) In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrow Deposit Escrow Agent shall, at its option, either: (1) tender the Escrow Deposit to the registry of the appropriate court; or (2) disburse the Escrow Deposit in accordance with the court's ultimate disposition of the case, and Principal(s) hereby, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, attorneys' and paralegals' fees and court costs at all trial and appellate levels, except to the extent caused by Escrow Agent's gross negligence or willful misconduct.

(ii) In the event Escrow Agent tenders the Escrow Deposit to the registry of an appropriate court and files an action of interpleader naming the Principal(s) and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith and Principal(s) hereby, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against any damages or losses arising in connection therewith, including, but not limited to, all costs and expenses incurred by Escrow Agent in connection with

the filing of such action, including, but not limited to, attorneys' and paralegals' fees and court costs at all trial and appellate levels, except to the extent caused by Escrow Agent's gross negligence or willful misconduct.

5. Terms of Agreement

(a) This Escrow Agreement shall remain in effect unless and until it is canceled in any of the following manners:

(i) Upon written notice given by all Principal(s) of cancellation of designation of Escrow Agent to act and serve in said capacity, in which event cancellation shall take effect no earlier than twenty (20) days after notice to Escrow Agent of such cancellation; or

(ii) Escrow Agent may resign as escrow agent at any time upon giving notice to Principal(s) of its desire to so resign; provided, however, that resignation of Escrow Agent shall take effect no earlier than twenty (20) days after the giving of notice of resignation; or

(iii) Upon compliance with all escrow provisions as set forth in this Escrow Agreement.

(b) In the event Principal(s) fail to agree to a successor escrow agent within the period described hereinabove, Escrow Agent shall have the right to deposit the Escrow Deposit, as is applicable, into the registry of an appropriate court and request judicial determination of the rights between Principal(s), by interpleader or other appropriate action, and Principal(s) hereby, jointly and severally, indemnify, defend and hold Escrow Agent harmless from and against any damages or losses in connection therewith including, but not limited to, reasonable attorneys' and paralegals' fees and court costs at all trial and appellate levels.

(c) Upon termination of the duties of Escrow Agent in either manner set forth in Paragraph 5(a)(i) or Paragraph 5(a)(ii) above, Escrow Agent shall deliver the Escrow Deposit to the newly appointed escrow agent designated by the Principal(s), and, except for rights of Escrow Agent specified in Paragraph 3(b) above, Escrow Agent shall not otherwise have the right to withhold the Escrow Deposit from said newly appointed escrow agent.

(d) Escrow Agent shall not be bound by any modification, cancellation or rescission of this Escrow Agreement unless in writing and signed by all Principal(s) and Escrow Agent. In no event shall any modification of this Escrow Agreement, which shall affect the rights or duties of Escrow Agent, be binding on Escrow Agent unless it shall have given its prior written consent.

6. Notices

All notices, certificates, requests, demands, materials and other communications hereunder shall be in writing and deemed to have been duly given: (1) upon delivery by hand to the appropriate address of each Principal or Escrow Agent as set forth in this Escrow Agreement or in the

Agreement, if any; or (2) upon receipt if mailed by United States registered or certified mail, return receipt requested, postage prepaid to such address or (3) upon delivery by electronic mail id's listed elsewhere in this agreement. All notices to Escrow Agent shall be addressed to the attorneys signing on behalf of Escrow Agent at the following address:

Escrow Agent: **McKillop Law Firm, PL**
Email: ian@mckilloplawfirm.com

7. Choice of Law and Venue

This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event any action, suit or proceeding is instituted as a result of any matter or thing affecting this Escrow Agreement, the parties hereto hereby designate Duval County, Florida, as the proper jurisdiction and the venue in which same is to be instituted.

8. Cumulative Rights

Except as limited herein, no right, power or remedy conferred upon Escrow Agent by this Escrow Agreement is exclusive of any other right, power or remedy. All such rights, powers and/or remedies shall be cumulative and concurrent and shall be in addition to any other right, power or remedy Escrow Agent may have under the Escrow Agreement or now or hereafter existing at law, in equity or by statute, and the exercise of one right, power or remedy by Escrow Agent shall not be construed or considered as a waiver of any other right, power or remedy.

9. Binding Agreement

This Escrow Agreement shall be binding upon the Principal(s) and Escrow Agent and their respective successors and assigns. This Escrow Agreement may be executed in counterparts, all of which counterparts shall be deemed to be a single document. Signature pages received by facsimile transmission shall be deemed to be an original document.

10. Entire Agreement

The Agreement and this Escrow Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all other written or oral agreements, documents, memoranda, understandings or otherwise between the parties relating to the subject matter hereof. In the event of any conflict between the Agreement and this Escrow Agreement, the terms and provisions of this Escrow Agreement shall control.

11. WAIVER OF JURY TRIAL

THE PRINCIPAL(S) EACH HEREBY MUTUALLY, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR ARISING OUT OF OR UNDER OR IN CONNECTION WITH THIS ESCROW AGREEMENT OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF ANY PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS ESCROW AGREEMENT.

BUYER:

HOOSE HOMES AND INVESTMENTS, LLC., a Florida limited liability company

By:_____
Name:_____
Title:_____
Date: _____

SELLER:

CITY OF ATLANTIC BEACH, FLORIDA, a municipal corporation

By:_____
Name:_____
Title:_____
Date: _____

Attest:

_____
Donna Bartle, City Clerk

ESCROW AGENT:

McKillop Law Firm, PL,

By: _____
Name:_____
Title:_____
Date:_____

EXHIBIT C

DEED

PREPARED BY:

_____
_____
_____
_____

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED is made and executed as of the _____ day of _____, 2023, by_____, a _____ ("Grantors"), whose address is _____ to _____, a _____ ("Grantee"), whose address is_____ _____.

WITNESSETH:

That in consideration of the sum of Ten Dollars ($10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantors hereby grant, bargain, sell, convey and confirm to Grantee and its successors and assigns, all of the real property in Duval County, Florida, more particularly described on **Exhibit A** attached hereto and made a part of this Deed (the "Property"), together with all tenements, hereditaments, and appurtenances pertaining to the Property and subject to the restrictions, easements, agreements, reservations and other matters set forth on **Exhibit B** attached hereto and made a part hereof and other matters of record (the "Permitted Exceptions").

TO HAVE AND TO HOLD the same in fee simple forever.

Grantors hereby covenant with Grantee that the Property is free from all encumbrances placed on the Property by Grantors (except for the Permitted Exceptions) and that Grantors will warrant and defend Grantee's title against lawful claims of all persons claiming by, through or under Grantors (except claims made pursuant to the Permitted Exceptions) but against none other.

[Signature blocks, notary blocks, Exhibit A and Exhibit B to be added to document to be executed by the parties at the Closing]

EXHIBIT D

DUE DILIGENCE MATERIALS

DOCUMENTS REQUESTED

All title commitment, policies and related instruments
All surveys
All land records
Current Service Contracts
All environmental and geotechnical reports of the Property

EXHIBIT E

FORM OF BILL OF SALE AND GENERAL ASSIGNMENT

_____ ___, 202__

KNOW ALL PEOPLE BY THESE PRESENTS, that, **HOOSE HOMES AND INVESTMENTS, LLC.,** a Florida limited liability company **("Seller")**, for and in consideration of the sum of Ten and No/100 Dollars ($10.00) lawful money of the United States, and other good and valuable consideration to Seller in hand paid, at or before the ensealing and delivery of these presents, by **CITY OF ATLANTIC BEACH, FLORIDA.,** a municipal corporation **("Buyer"),** the receipt and sufficiency of which is hereby acknowledged, has bargained and sold, and by these presents does grant, bargain, sell, convey, set over, transfer, assign and deliver unto the Buyer, its successors and assigns, the following:

(a) All of Seller's right, title and interest in and to all fixtures and equipment attached to or located on and used in connection with the operation of the parcel of land attached hereto (the "Land") and the buildings and improvements erected thereon (the foregoing, collectively with the Land is herein, the "Premises"), including all fixtures, appliances, furniture, furnishings, equipment, machinery, signage and lighting systems ((including all communication related equipment integral to the operation of the Premises or utilized as an amenity in the Premises), plumbing, air conditioning, heating ventilating, mechanical, electrical and other utility systems, parking and all related amenities, window coverings, shades, screens, awnings, shutters, hot water heaters, appliances, carpeting and other coverings, mantels, fences, gates, trees, shrubs, if any, owned by Seller and installed, located or situated on or used in connection with the operation and maintenance of the Premises, which is being conveyed simultaneously with the conveyance by Seller to Buyer of all its right, title and interest in and to the Premises by a Deed of even date herewith;

(b) All of Seller's right, title and interest in and to all those permits, licenses, certificates, approvals, authorizations, variances and consents (including any and all presently pending applications therefor) affecting the Land and the buildings and improvements thereon issued to Seller or to its predecessors in interest in the Premises as holder, claimant, licensee, successor in interest, applicant and/or owner or lessor of the Premises, by any and all federal, state, county, municipal and local governments, and all departments, commissions, boards, bureaus and offices thereof, having or claiming jurisdiction over the Premises, whether or not the same may presently be in full force and effect, all to the extent that Seller may lawfully transfer the same to Buyer;

(c) all of Seller's right, title and interest in and to all intangible assets relating to the Premises, including all of Seller's right, title and interest, if any, in (a) all licenses, permits and approvals relating to the Premises, (b) the right to use the name of the Premises, if any, in connection with the Premises; and all logos and tradenames relating to the Premises, and (c) all contract rights, (d) all plans and specifications relating to the Premises.

(d) All of Seller's right, title and interest in and to all unexpired warranties and guaranties affecting the Premises, all to the extent that Seller may lawfully transfer the same to Buyer (it being agreed that nothing in this Section (d) shall be construed to affect Seller' rights under such warranties and guaranties with respect to periods prior to the date hereof); and

(e) All of Seller's right, title and interest in and to all appraisals, surveys, architectural and/or engineering renderings, plans and specifications, soils and other geological reports and studies, and all other reports, studies and other information relating in any way to development and/or use of the Premises.

(f) All of Seller's right, title and interest in and to any and all subsurface and/or other mineral rights for the Premises.

To have and to hold the same unto Buyer, its successors and assigns forever.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, this Bill of Sale has been duly signed and sealed by the Seller as of the date first set forth above.

BUYER:

CITY OF ATLANTIC BEACH, FLORIDA, a municipal corporation

By:_____
Name:_____
Title:_____
Date: _____

Attest:

_____
Donna Bartle, City Clerk

SELLER:

HOOSE HOMES AND INVESTMENTS, LLC, a Florida limited liability company

By:_____
Name:_____
Title:_____
Date: _____

Exhibit A
"Land"

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Resolution No. 23-28 Bid 2223-07 Mayport Road Water Main Extension

SUBMITTED BY: Troy Stephens, Public Utilities Director T.S.

TODAY'S DATE: August 1, 2023

MEETING DATE: August 14, 2023

BACKGROUND: A Bid Opening was held on July 12, 2023 for Bid 2223-07: Mayport Road Water Main Extension. The project consists of furnishing all labor, equipment and materials necessary for installing approximately 40 LF of 6" DR18 PVC water main and 54 LF of 8" DR18 PVC water main by direct bury. 271 LF of 10" DR11 HDPE water main by Horizontal Directional Drilling; 17LF of 8" DR18 PVC water main installed, connecting the 10" HDPE pipe to serve a private property on the west side of the ROW at 2150 Mayport Road . Work includes all pipe, fittings, valves as shown on the plans required to complete the work.

Three bids for the Water Main Extension were received as follows:

	C.A.P. Contracting, Inc.	DB Civil Construction, LLC	TB Landmark Construction, Inc.
Grand Total	$193,889.00	$269,894.00	$227,569.00

BUDGET: Funds for this project are budgeted in the infrastructure account 400-5504-533-6300. Project No. PU2101

RECOMMENDATION: Award Bid 2223-07 to C.A.P. Contracting, Inc. in the amount of $193,889.00, and authorize the City Manager to execute the contract.

ATTACHMENTS:
1. Resolution No 23-28
2. Bid 2223-07 Bid Tabulation
3. Map

REVIEWED BY CITY MANAGER: _____

RESOLUTION NO. 23-28

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AWARDING BID 2223-07 MAYPORT RD WATER MAIN EXTENSION; AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 13, 2023, a bid opening was held and three bids were received for City Bid 2223-07 for the Mayport Rd Water Main Extension; and

WHEREAS, the low bid price of $193,889.00 was received from C.A.P. Contracting, Inc.; and

WHEREAS, C.A.P. Contracting, Inc. submitted all required documents in their bid submittal and positive references were received; and

WHEREAS, the project consists of furnishing all labor, equipment and materials necessary for the Mayport Road water main extension; and

WHEREAS, funds for this design are budgeted in the infrastructure account 400-5504-533-6300 under project number PU2101; and

NOW THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

SECTION 1. The City Commission hereby authorizes the City Manager to execute the contract with C.A.P. Contracting, Inc., in the amount of $193,889.00 to perform the work for said bid in accordance with the bid specifications;

SECTION 2. The City Commission hereby authorizes the City Manager execute the contract with C.A.P. Contracting, Inc.;

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City of Atlantic Beach, this 14th day of August, 2023.

_____
Curtis Ford, Mayor

Attest:

_____
Donna L. Bartle, City Clerk

Approved as to form and correctness:

_____
Jason Gabriel, City Attorney

MAYPORT ROAD WATER MAIN EXTENSION
BID No. 2223-07 July 12. 2023

				C.A.P. Contracting, Inc		DB Civil Construction, LLC		T B Landmark Construction, Inc	
Bid Item No.	DESCRIPTION	UNIT	EST. QTY	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT	UNIT PRICE	AMOUNT
1	Traffic Control	LS	1	$13,000.00	$13,000.00	$14,000.00	$14,000.00	$10,000.00	$10,000.00
2	Mobilization	LS	1	$31,000.00	$31,000.00	$25,000.00	$25,000.00	$16,000.00	$16,000.00
3	Erosion and Sediment Control	LS	1	$7,500.00	$7,500.00	$6,300.00	$6,300.00	$2,500.00	$2,500.00
4	Silt Fence	LF	400	$12.00	$4,800.00	$4.00	$1,600.00	$2.00	$800.00
5	Asphalt Removal	SY	15	$135.00	$2,025.00	$200.00	$3,000.00	$40.00	$600.00
6	Asphalt Placement	SY	15	$576.00	$8,640.00	$600.00	$9,000.00	$500.00	$7,500.00
7	Concrete Removal	SY	70	$15.00	$1,050.00	$90.00	$6,300.00	$15.00	$1,050.00
8	Concrete Placement	SY	70	$288.00	$20,160.00	$250.00	$17,500.00	$100.00	$7,000.00
9	6" PVC DR18 Force Main (Restrained)	LF	43	$57.00	$2,451.00	$460.00	$19,780.00	$235.00	$10,105.00
10	8" PVC DR18 Force Main (Restrained)	LF	71	$63.00	$4,473.00	$490.00	$34,790.00	$235.00	$16,685.00
11	Directional Drill 10" HDPE Water Main	LF	268	$175.00	$46,900.00	$168.00	$45,024.00	$235.00	$62,980.00
12	Connect to Existing 6" Water Line W/8x8 Tapping Sleeve	EA	1	$10,100.00	$10,100.00	$8,000.00	$8,000.00	$15,000.00	$15,000.00
13	6" Gate Valve	EA	1	$2,100.00	$2,100.00	$5,000.00	$5,000.00	$2,800.00	$2,800.00
14	6" 90° DI MJ Bend	EA	2	$700.00	$1,400.00	$2,000.00	$4,000.00	$1,500.00	$3,000.00
15	6" 45° DI MJ Bend	EA	4	$710.00	$2,840.00	$2,000.00	$8,000.00	$1,500.00	$6,000.00
16	10"x 6" Reducer	EA	1	$800.00	$800.00	$2,200.00	$2,200.00	$3,500.00	$3,500.00
17	Connect to Existing 8" Water Line	EA	1	$3,200.00	$3,200.00	$8,500.00	$8,500.00	$15,000.00	$15,000.00
18	8" 90° DI MJ Bend	EA	1	$900.00	$900.00	$2,300.00	$2,300.00	$1,809.00	$1,809.00
19	8" 45° DI MJ Bend	EA	8	$950.00	$7,600.00	$2,300.00	$18,400.00	$2,000.00	$16,000.00
20	8" Gate Valve	EA	2	$3,200.00	$6,400.00	$5,500.00	$11,000.00	$3,800.00	$7,600.00
21	8" DI MJ Tee	LS	1	$1,400.00	$1,400.00	$5,000.00	$5,000.00	$3,500.00	$3,500.00
22	8" DI MJ Cap	EA	1	$1,650.00	$1,650.00	$2,000.00	$2,000.00	$1,500.00	$1,500.00
23	10" x 8" Tapping Sleeve	LF	1	$8,300.00	$8,300.00	$12,000.00	$12,000.00	$16,000.00	$16,000.00
24	Bahia Sod (W/4" Ex On -Site Topsoil)	SY	80	$65.00	$5,200.00	$15.00	$1,200.00	$8.00	$640.00
	TOTAL BASE BID (Items 1 - 24)				**$193,889.00**		**$269,894.00**		**$227,569.00**


2156
2160
2160-1 MAYPORT AP
ENDING POINT
2150
PROPOSED 10" WATER MAIN EXTENSION
MAYPORT RD
2120
STARTING POINT
2134
2130
2130-1 MAYPORT AP
2130-2 MAYPORT AP
2126
2079

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Resolution No. 23-29 - Public Works Building Renovation Project

SUBMITTED BY: Scott Williams, Public Works Director

TODAY'S DATE: August 3, 2023

MEETING DATE: August 14, 2023

BACKGROUND: Staff held a bid opening on Wednesday, March 8, 2023 for City Bid No. 2223-03 Public Works Building Remodel. The only bid submitted was from Atlantic Sales & Service, Inc. dba Atlantic Coast Construction Group in the amount of $1,989,000.00. The contractor met with the architectural design firm and City staff to determine the exact scope and materials required for the project. The contractor submitted a revised bid form in the amount of $1,493,390.66, along with a proposed project schedule.

BUDGET: The FY22-23 budget contains $950,000.00 budgeted in account 300-5001-541-6200 for the Public Works Building Renovations. The remaining project balance of $543,390.66 has been budgeted to account 300-5001-541-6200 for FY23-24.

RECOMMENDATION: Approve Resolution 23-29 awarding Bid No. 2223-03 Public Works Building Remodel to Atlantic Coast Sales & Service, Inc. dba Atlantic Coast Construction Group in the amount of $1,493,390.66.

ATTACHMENTS:
1) Resolution No. 23-29
2) Bid No. 2223-03 Form from Atlantic Coast Sales & Service, Inc. dba Atlantic Coast Construction Group for the Public Works Building Renovation
3) Proposed Project Schedule
4) Schedule of Values for Public Works Building Renovation

REVIEWED BY CITY MANAGER: _____

RESOLUTION NO. 23-29

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, AWARDING BID NUMBER 2223-03 PUBLIC WORKS BUILDING RENOVATION PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE CONTRACTS AND PURCHASE ORDERS IN ACCORDANCE WITH AND AS NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on Wednesday, March 8, 2023, one bid was received and opened for Bid 2223-03 Public Works Building Renovations; and

WHEREAS, the total bid price received, including contingency, was $1,989,000.00; and

WHEREAS, the contractor met with the architectural design firm and City staff to determine the exact scope and materials required for the project.; and

WHEREAS, the contractor submitted a revised bid form in the amount of $1,493,390.66, along with a proposed project schedule; and

WHEREAS, $950,000.00 had been budgeted to account 300-5001-541-6200 in FY22-23 and $543,390.66 has been budgeted to the same account for FY23-24; and

NOW THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

SECTION 1. The City Commission awards Bid 2223-03 to Atlantic Coast Sales & Service, Inc. dba Atlantic Coast Construction Group;

SECTION 2. The City Commission hereby authorizes the City Manager to execute the Contract with Atlantic Coast Sales & Service, Inc. dba Atlantic Coast Construction Group and approve a Purchase Order to said vendor in the amount of $1,493,390.66;

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City of Atlantic Beach, this 14th day of August, 2023.

_____
Curtis Ford, Mayor

Attest:

_____
Donna L. Bartle, City Clerk

Approved as to form and correctness:

_____
Jason Gabriel, City Attorney

BID FORM

PUBLIC WORKS BUILDING REMODEL

CITY BID NO. 2223-03

CITY OF ATLANTIC BEACH
February 2023

ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

City of Atlantic Beach

800 Seminole Road

Atlantic Beach, FL 32233

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER'S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 90 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER'S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

Addendum No.	Addendum, Date	Addendum No.	Addendum Date
1	February 27, 2023	5	March 2, 2023
2	February 27, 2023		
3	February 27, 2023		
4	February 27, 2023		

B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

E. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained

from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

F. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.

H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.

I. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.

J. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;

B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;

C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and

D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and

4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the e execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following lump sum price to include all material and labor needed to complete this project:

$1,493,187.36

One Million Four Hundred Ninety-Three Thousand One Hundred Eighty-Seven and 36/100 (Dollars)

Bidder acknowledges that the Lump Sum Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit.

ARTICLE 6 – TIME OF COMPLETION

6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before the dates or within the number of calendar days indicated in the Agreement.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

7.01 The following documents are submitted with and made a condition of this Bid:

A. Signed copy of Documents Requirements Checklist with referenced forms and documents.

ARTICLE 8 – DEFINED TERMS

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

Atlantic Coast Sales & Service, Inc. d.b.a. Atlantic Coast Construction Group

By:
[Signature] Bradley K. Clark

[Printed name] Bradley K. Clark
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] Bradley K. Clark

[Printed name] Bradley K. Clark

Title: President

Submittal Date: 08/01/2023

Address for giving notices:

5909 St. Augustine Rd.

Suite #2

Jacksonville, FL 32207

Telephone Number: (904) 396-4005

Fax Number: (888) 599-5713

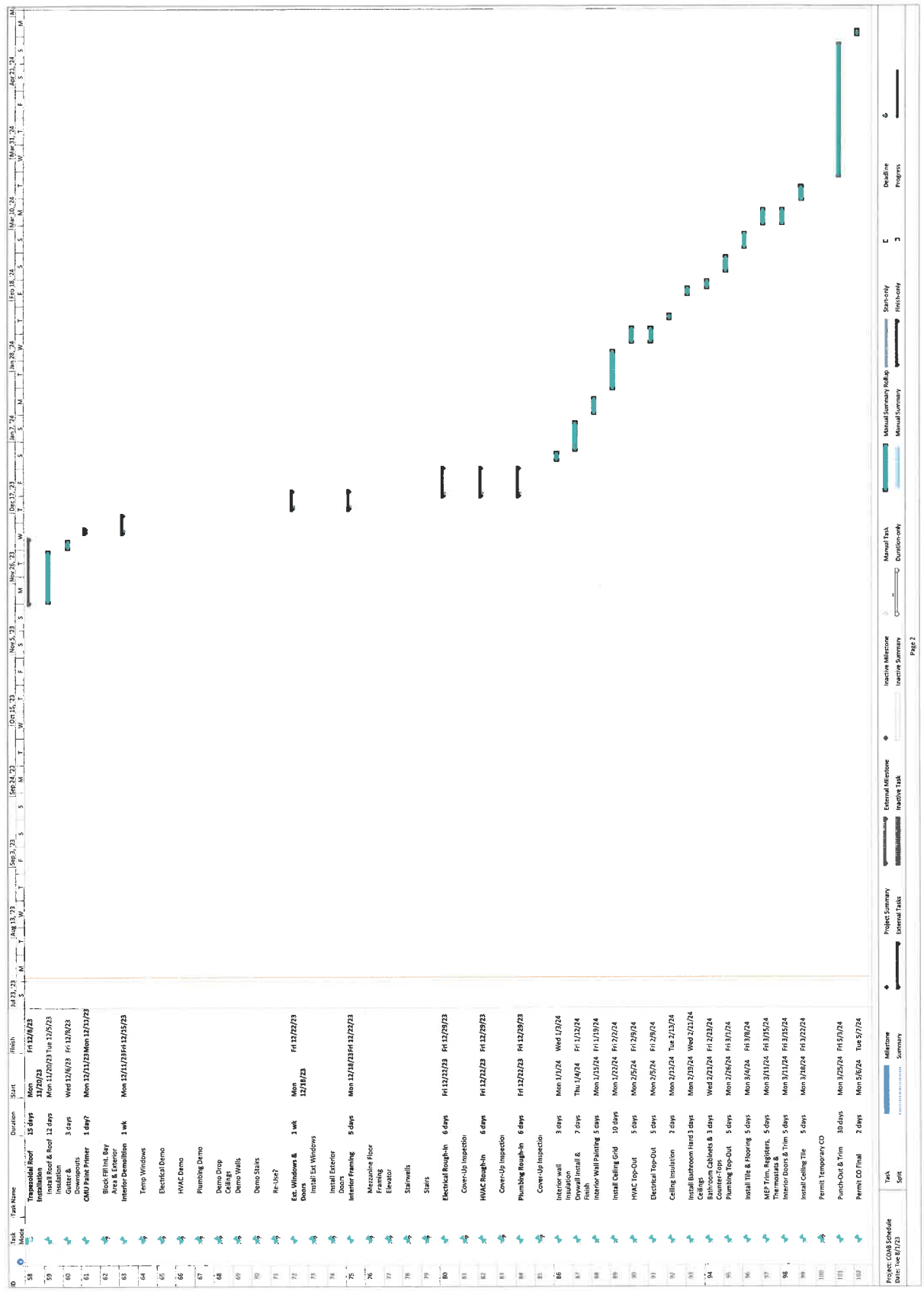
Contact Name: Bradley Clark

Contact e-mail address: bradc@atlcoast.org

Bidder's License No.: CGC-15909284

END OF SECTION

ID	Task Mode	Task Name	Duration	Start	Finish
1		**COAB Maintenance Renovation**	**205 days?**	**Tue 8/1/23**	**Mon 5/13/24**
2		**Pre-Construction**	**44 days?**	**Tue 8/1/23**	**Fri 9/29/23**
11		**Order Steel**	**34 days**	**Tue 8/15/23**	**Fri 9/29/23**
12		Steel Submittals	5 wks	Tue 8/15/23	Mon 9/18/23
13		Steel Fabrication	2 wks	Mon 9/18/23	Fri 9/29/23
14		**Order Roof**	**1 day**	**Tue 8/15/23**	**Tue 8/15/23**
15		McElroy Metal			
16		Order Insulation			
19		Steel			
20		Roofing			
21		Framing			
22		Masonry			
23		Rebar Shops			
24		Concrete			
25		Doors			
26		Windows			
27		Finishes			
28		Specialties			
29		Electrical			
30		HVAC			
31		Plumbing			
34		**Construction**	**176 days?**	**Mon 9/11/23**	**Mon 5/13/24**
35		**Ext. Demolition**	**10 days**	**Mon 9/11/23**	**Fri 9/22/23**
36		Demo Wall Ext. Wall Panels	2 wks	Mon 9/11/23	Fri 9/22/23
37		Demo Entrance Awning	2 days	Thu 9/21/23	Fri 9/22/23
38		**Footing Inspection**	**10 days**	**Mon 9/18/23**	**Fri 9/29/23**
39		Dig Ribbon Footing	5 days	Mon 9/18/23	Fri 9/22/23
40		Drill, Dowell & Stee	4 days	Mon 9/25/23	Thu 9/28/23
41		Footing Inspection	1 day	Thu 9/28/23	Thu 9/28/23
42		Pour Footing	1 day	Fri 9/29/23	Fri 9/29/23
43		**Steel Mob. 1**	**5 days**	**Mon 10/2/23**	**Fri 10/6/23**
44		Install "I" Girts	5 days	Mon 10/2/23	Fri 10/6/23
45		Steel Inspection	1 day	Fri 10/6/23	Fri 10/6/23
46		**Masonry**	**16 days**	**Mon 10/9/23**	**Mon 10/30/23**
47		1st Lift	4 days	Mon 10/9/23	Thu 10/12/23
48		2nd Lift	4 days	Thu 10/12/23	Tue 10/17/23
49		3rd Lift	4 days	Tue 10/17/23	Fri 10/20/23
50		4th Lift	4 days	Fri 10/20/23	Wed 10/25/23
51		Rake Beam	4 days	Wed 10/25/23	Mon 10/30/23
52		**Demo Roof & Perlins**	**5 days**	**Tue 10/31/23**	**Mon 11/6/23**
53		Partial Demolition of Roof Panels	3 days	Tue 10/31/23	Thu 11/2/23
54		Install Wood Nailer TOW	2 days	Fri 11/3/23	Mon 11/6/23
55		**Steel Mob 2**	**5 days**	**Tue 11/7/23**	**Fri 11/17/23**
56		Install Steel Roof Framing	5 days	Tue 11/7/23	Mon 11/13/23
57		Install Mezzanine Steel Framing	4 days	Tue 11/14/23	Fri 11/17/23





ATLANTIC COAST
SALES & SERVICE, INC.

5909 SAINT AUGUSTINE ROAD, SUITE 2 / JACKSONVILLE, FLORIDA 32207 / P (904) 396-4005 F (888) 599-5713 / www.atlcoast.org

FINAL PRICEING AND SCHEDULE OF VALUES
FOR
CITY OF ATLANTIC BEACH MAINTENANCE BUILDING RENOVATION

Below is the final price with the Schedule of Values Breakdown.

Project Duration Estimated at 37 Weeks

Division 00 - Procurement and Contracting Requirements	$ 4,750.00
Division 01 General Requirements	$ 169,990.00
Division 02 Existing Conditions	$ 49,425.00
Division 03 Concrete	$ 85,440.72
Division 04 - Masonry	$ 166,800.00
Division 05 Metals	$ 310,819.00
Division 06 Wood, Plastics, Composites	$ 110,525.00
Division 07 Thermal and Moisture Protection	$ 108,413.98
Division 08 Openings	$ 46,995.01
Division 09 Finishes	$ 43,111.86
Division 10 Specialties	$ 5,641.64
Division 13 Special Construction	$ 12,500.00

ATLANTIC COAST
SALES & SERVICE, INC.

5909 SAINT AUGUSTINE ROAD, SUITE 2 / JACKSONVILLE, FLORIDA 32207 / P (904) 396-4005 F (888) 599-5713 / www.atlcoast.org

Division 14 Conveying Equipment	$ 35,950.00
Division 15: Mechanical & Plumbing	$ 201,830.00
Division 16: Electrical	$ 43,500.00
Construction Bid Total	**$ 1,395,692.21**
Overhead & Profit	$ 69,784.61
Contingency	$ 27,913.84
TOTAL PRICE	$ 1,493,390.66

Please see attached Project Schedule for approximate duration.

Sincerely,

Bradley K. Clark
CEO/President

CITY OF ATLANTIC BEACH
CITY COMMISSION MEETING
STAFF REPORT

AGENDA ITEM: Appointment of City Manager

SUBMITTED BY: Cathy Varian, Director of Human Resources
Joe Gerrity, City Manager

TODAY'S DATE: August 9, 2023

MEETING DATE: August 14, 2023

BACKGROUND: The City advertised for a new City Manager and conducted interviews with several candidates. On July 31, 2023, the Commission voted to offer the position to Mike New. After discussion at the special-called meeting on Aug. 7, 2023, at the request of the City Commission, several changes have been made to the employee agreement.

BUDGET:

- $207,500 salary
- $6,000 automobile allowance
- $5,000 moving expenses (not-to-exceed)
- 10% retirement contribution
- Additional health, dental and vision benefits

RECOMMENDATION: Consider Resolution No. 23-30 appointing Mike New as the City Manager and consider the attached employment agreement, which has been reviewed and approved by the City Attorney.

ATTACHMENTS: Resolution No. 23-30
Employment Agreement for City Manager Services

REVIEWED BY CITY MANAGER: Joe Gerrity

RESOLUTION NO. 23-30

A RESOLUTION OF THE CITY OF ATLANTIC BEACH, FLORIDA, APPOINTING MIKE NEW THE CITY MANAGER AND AUTHORIZING THE EXECUTION OF AN EMPLOYMENT AGREEMENT DESIGNATING HIM AS SUCH EFFECTIVE SEPTEMBER ____, 2023; AUTHORIZING THE MAYOR TO EXECUTE THE DOCUMENTS NECESSARY, INCLUDING BUT NOT LIMITED TO AN EMPLOYMENT AGREEMENT, TO EFFECTUATE THE EMPLOYMENT OF MIKE NEW TO SERVE AS CITY MANAGER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Commission voted on July 31, 2023 to offer the City Manager position to Mike New and agreed that the Mayor and the City Attorney would negotiate a contract with Mike New and bring it back to the City Commission for consideration; and

WHEREAS, the Mayor, City Attorney and Mr. New have negotiated a proposed employment agreement, which is now being presented to the City Commission for its consideration; and

WHEREAS, it is the desire of the City Commission to enter into the attached employment agreement appointing and designating Mr. New as City Manager, effective September ____, 2023.

NOW THEREFORE, be it resolved by the City Commission of the City of Atlantic Beach as follows:

SECTION 1. Pursuant to Section 21 and Section 10 of the City Charter, the City Commission hereby approves the attached employment agreement designating Mike New as City Manager.

SECTION 2. The City Commission hereby authorizes the Mayor to execute the employment agreement and any documents necessary to effectuate the employment of Mr. New to serve as City Manager.

SECTION 3. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED by the City of Atlantic Beach, this 7th day of August, 2023.

_____
Curtis Ford, Mayor

Attest:

Approved as to form and correctness:

_____
Donna L. Bartle, City Clerk

_____
Jason Gabriel, City Attorney

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EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as the "Agreement") is by and between the City of Atlantic Beach, a municipal corporation (hereinafter referred to as the "City"), and Mike New a/k/a Gary Michael New (hereinafter referred to as "New" or as "City Manager"), an individual who has the education, training and experience in local government management and meets all of the qualification requirements of the City Charter including but not limited to Section 22.

W I T N E S S E T H:

WHEREAS, the City desires to employ New as City Manager of the City of Atlantic Beach, Florida, as provided for in Section 10 of the City Charter of the City of Atlantic Beach; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, New desires to accept employment as City Manager of the City of Atlantic Beach under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

Section 1. Term.

This Agreement shall remain in full force and effect from September ____, 2023 until terminated by the City or by the City Manager as provided herein.

Section 2. Duties and Authority

A. The City of Atlantic Beach agrees to employ New as its City Manager to perform the duties and functions specified in the City's Charter and Code (including but not limited to Article III, City Charter) and to perform other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City Manager is the chief executive officer of the City and shall faithfully perform the duties as prescribed in the job description as set forth in the City's charter and/or ordinances and as may be lawfully assigned by the City and shall comply with all lawful Commission directives, state and federal law, City policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the City Manager to employee on behalf of the City all other employees of the organization consistent with the policies of the governing body and the ordinances and charter of the City.

D. It shall also be the duty of the City Manager to direct, assign, reassign and evaluate all of the employees of the City consistent with policies, ordinances, charter, state and federal law.

E. It shall also be the duty of the City Manager to organize, reorganize and arrange the staff of the City and to develop and establish internal regulations, rules and procedures which the City Manager deems necessary for the efficient and effective operation of the City consistent with the lawful directives, policies, ordinances, state and federal law.

F. It shall also be the duty of the City Manager to accept all resignations of employees of the City consistent with the policies, ordinances, state and federal law, except the City Manager's resignation, which must be accepted by the Commission.

G. The City Manager shall perform the duties of City Manager of Atlantic Beach with reasonable care, diligence, skill and expertise.

H. All duties assigned to the City Manager by the Commission shall be appropriate to and consistent with the professional role and responsibility of the City Manager.

I. The City Manager cannot be reassigned from the position to another position without the Commission's express, written consent and approval.

J. The City Manager or designee shall attend and shall be permitted to attend, all meetings of the Commission.

K. The Commission, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to the City Manager for study and/or appropriate action.

Section 3. Compensation

A. The City agrees to pay the City Manager an annual base salary of $207,500.00 payable in installments at the same time as other City employees are paid.

B. Cost of Living Adjustments (COLA). The City Manager shall receive the same COLA increases provided to all other City general employees.

C. The City may increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Commission may determine desirable. This Agreement shall be automatically amended to reflect any salary adjustments that are provided to the City Manager by the Commission.

D. Annually, and in compliance with the provisions of applicable law, the City Commission and City Manager shall define such goals and performance objectives that they determine necessary for the proper operation of the City and in the attainment of the City Commission's policy objectives. Said goals and objectives shall be generally attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

Section 4. Health, Disability and Life Insurance Benefits; Moving Allowance.

A. The City agrees to provide and to pay the premiums for vision, dental and comprehensive medical insurance for the City Manager and his/her dependents, at the mid-level plan offered to other full-time City employees. The City Manager may elect to upgrade to a higher plan, but shall pay the cost differential.

B. The City agrees to put into force and to make required premium payments for short term and long-term disability coverage for the City Manager.

C. The City shall pay the amount of premium for term life insurance in the amount of $50,000. The City Manager shall name the beneficiary of the life insurance policy.

D. A one-time moving allowance not-to-exceed a total amount of $5,000 shall be payable to New by the City upon written proof of receipt(s) satisfactory to the City of moving costs and expenditures related to New's relocation from his current residence to the City.

Section 5. Personal Leave

A. Upon commencing employment the City Manager shall be credited with 120 hours of personal leave. In addition, beginning the first day of employment, the City Manager shall accrue personal leave at the rate for employees under the same rules and provisions applicable to other general employees, except for the maximum accrual, as outlined in B.

B. The City Manager is entitled to accrue all unused leave, up to 340 hours, and in the event the his/her employment is terminated, either voluntarily or involuntarily, the City Manager shall be compensated for all accrued personal leave.

Section 6. Automobile and Phone Allowance

A. The City agrees to pay to the City Manager, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of $500 per month, payable monthly, as a vehicle allowance to be used to purchase, lease or own, operate and maintain a vehicle. The City Manager shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair and regular maintenance of said

vehicle, including gasoline. The City shall reimburse the City Manager at the IRS standard mileage rate for any business use of the vehicle beyond 100 miles of the City limit.

B. The City shall provide the City Manager with his choice of a cell phone allowance of $50 per month or a city-issued cell phone to compensate him for the business use of his personal phone. The personal cell must be a smart phone and City Manager agrees to have an application loaded on his personal cell phone that will enable him to send and receive e-mails through the City system.

Section 7. Retirement

The City agrees to pay, on an annual basis, an amount equal to ten percent (10%) of the City Manager's base salary to a Mission Square 401k account, as designated by the City Manager. The City's contribution shall not exceed the limits established by federal statute and/or regulation. Such payments for City Manager's retirement will be in lieu of any such payments which the City would have otherwise made on behalf of City Manager to the City's defined contribution pension plan.

The City Manager may participate in any optional supplemental retirement plan offered to employees.

Section 8. Professional Development

A. The City agrees to pay the City Manager's professional dues for membership in the ICMA, Florida League of Cities and the Florida City and County Management Association. The City agrees to pay the costs associated with maintaining the City Manager's engineering license, including continuing education requirements. The City may pay other professional dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Commission.

B. The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at professional and official travel, meetings and occasions to adequately continue the professional development of the City Manager, including but not limited to the ICMA's annual conference, the Florida City and County Management Association's annual conference, the Florida League of Cities' annual conference or other similar professional development training opportunities, provided the associated expenses do not exceed the allocated appropriation in the City's annual budget.

Section 9. Community Involvement

The City recognizes the desirability of representation in and before local civic and other organizations, and encourages the City Manager to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas. The City may pay dues or membership fees toward local civic organization(s) on behalf of the City

Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Commission.

Section 10. Holidays

The City Manager is entitled to the same paid holidays as the general City staff.

Section 11. Termination by the City and Severance Pay

A. The City Manager shall serve at the pleasure of the City Commission, and the City Commission may terminate this Agreement and the City Manager's employment with the City at any time, for any reason, or for no reason.

B. Should a majority of the entire Commission vote to terminate the services of the City Manager "without cause", then within ten (10) business days following such vote, the Commission shall cause the City Manager to be paid any accrued and unpaid salary and benefits earned as of the date of the vote to terminate (including personal leave but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the automobile and cell phone allowance). Within forty-five (45) calendar days following the vote to terminate the City Manager's employment "without cause", the Commission shall cause the City Manager to be paid a lump sum severance pay equal to 20 weeks of his base salary as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement or otherwise. As consideration for such payment, the City Manager shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Commission members and its officers, agents, and employees for all acts and actions from the beginning of time until the date of release, in substantially the form which is attached hereto and made a part hereof as Appendix 1. Any severance pay paid under this Section shall be in accordance with, and subject to the limits of, Section 215.425, Florida Statutes.

C. In the event the City Manager is terminated "for cause," the City shall have no obligation to pay the amounts outlined in Section 11, paragraph B of this Agreement or to provide the general release set forth therein and attached as Appendix 1. For purposes of this Agreement, "for cause" is defined and limited for purposes of this Agreement to any of the following:

1. Conviction or a plea of guilty or no contest to a felony crime, or a misdemeanor crime involving a breach of public trust, whether or not adjudication is withheld;

2. Violation of any substantive City policy, rule, or regulation, which would subject any other City employee to termination;

3. Any intentional act involving moral turpitude causing substantial disrepute to the City; or

4. "Misconduct," as defined in Section 443.036(30), Florida Statutes.

Section 12. Termination by the City Manager

A. The City Manager may terminate this Agreement or voluntarily resign at any time by delivering to the City Commission a written notice of termination or voluntary resignation a minimum of forty-five (45) days prior to the effective date of the termination or resignation. In its sole discretion, the City may waive, or shorten, the forty-five (45) day notice period by a majority vote of the entire Commission (three members).

B. If the City Manager terminates this Agreement or voluntarily resigns after providing the written notice required in Section 12(A), then the provisions of Section 11(B) above, shall not apply. If the City Manager terminates this Agreement or voluntarily resigns after providing the written notice required in Section 12(A), the City shall pay to the City Manager any accrued personal leave. Other than paying the City Manager any accrued compensation that he has earned as of the date of his termination, the City shall have no further financial obligation to City Manager pursuant to this Agreement, unless the City Commission by a majority vote of the entire Commission (three members) agrees to provide any other consideration. In such event, and as consideration of said approval, the City Manager shall execute and deliver to the City the general release as referenced in Section 11 B hereof.

C. If the City Manager terminates this Agreement or voluntarily resigns without providing the notice required in Section 12(A) herein, the City shall not pay to the City Manager any accrued personal leave. Other than paying the City Manager any accrued compensation that he has earned as of the date of his termination, the City shall have no further financial obligation to City Manager pursuant to this Agreement.

Section 13. Residency Requirement

The City Manager agrees that he will reside within the City as a condition of his employment as City Manager and agrees to move to the City of Atlantic Beach, as his/her permanent residence, within six months of the date of this Agreement.

Section 14. Performance Evaluation

The City Commission has the option of conducting an annual review of the performance of the City Manager, to be coordinated by the Director of Human Resources.

Section 15. Indemnification.

A. Subject to the limitations set forth in Section 768.28, Florida Statutes, and without waiving the sovereign immunity of the City, the City shall defend, hold harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action committed by the City Manager within the scope of his employment hereunder, provided that the City Manager timely reports the same to the City Commission and cooperates fully and honestly in the City's defense thereof. The City may compromise and settle

any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The provisions of this Section shall not apply to any claim, demand, suit or cause brought or asserted against the City Manager for his acts or omissions committed while acting outside the course and scope of his employment under this Agreement, committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, property or civil rights. In such instance, the City shall be under no affirmative obligation to indemnify or defend the City Manager and the City Manager shall be solely responsible for all costs associated with his legal defense and any settlement(s) or judgment(s) rendered in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity with the City as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

Section 16. Bonding

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

Section 17. Code of Ethics

The "Code of Ethics" promulgated by the ICMA, as may from time to time be amended, is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to govern the City Manager's conduct and actions as City Manager of the City.

Section 18. General Terms and Conditions

A. This Agreement sets forth and establishes the entire understanding between the City and the City Manager relating to the employment of the City Manager by the City. Any prior discussions or representations by or between the City and the City Manager are merged into and rendered null and void by this Agreement. The City and the City Manager by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. This Agreement shall be binding on the City and the City Manager as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. This Agreement shall become effective on September _____, 2023.

D. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been

executed by both the City and City Manager subsequent to the expungement or judicial modification of the invalid provision.

E. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

F. A default shall consist of the breach or anticipatory breach of any covenant, agreement, representation, provision or warranty contained within this Agreement. If a default, breach or anticipatory breach occurs, the party not in default may, at any time or from time to time, pursue to enforce its remedies under this Agreement by suit in equity, action at law or by any other appropriate proceeding, for damages or other relief, or proceed to take any action authorized or permitted under applicable laws or regulations; provided, however, the parties shall, prior to initiating any court proceedings, initiate and complete mediation with a Florida Supreme Court certified mediator in accordance with the procedures set forth in Section 44.102, Florida Statutes, with costs to be equally shared.

G. This Agreement and the rights, obligations and remedies hereunder shall be interpreted and governed in all respects by the laws of the State of Florida. Any suit, action or other legal proceeding arising out of or relating to this Agreement shall be brought in courts of competent jurisdiction in and for Duval County, Florida.

Executed by the City of Atlantic Beach, Florida this ____ day of _____ 2023.

CITY OF ATLANTIC BEACH, FLORIDA

By: _____
Curtis Ford, Mayor

ATTEST:

_____
Donna Bartle, City Clerk

Executed by the CITY MANAGER this _____ day of _____, 2023.

_____
Mike New

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APPENDIX 1

SEPARATION OF EMPLOYMENT AND GENERAL RELEASE AND WAIVER

This Separation of Employment and General Release and Waiver Agreement (Agreement) is made by and between the City of Atlantic Beach (City) and New (City Manager).

WHEREAS, City has employed City Manager; however the parties wish to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of City Manager's employment or termination thereof.

WHEREAS, the parties desire to set forth the terms and conditions governing City Manager's separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between City and City Manager, including without limitation, any and all claims arising out of or in any way related to City Manager's employment with or separation from the City.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, City and City Manager agree and state:

1. **TERMINATION OF EMPLOYMENT**

Upon their mutual agreement, City Manager's employment with City shall terminate on _____, 20__, which shall be (was) City Manager's final date of employment.

2. **NO ADMISSION OF LIABILITY**

This Agreement is not an admission by City Manager or City of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.

3. **PAYMENT AND BENEFITS**

City Manager shall receive his/her last regular paycheck at the regular scheduled payroll date. Within ten days of this Agreement, City Manager shall receive an additional payment to compensate for accumulated personal leave, subject to customary payroll deductions.

As consideration for this Agreement and the release contained within, and in full and complete satisfaction of all obligations due and owing City Manager, City shall: Pay City Manager an amount equal to twenty (20) weeks of his current salary, subject to customary payroll deductions.

4. **SURRENDER AND VACATION OF EMPLOYER'S PROPERTY**

Upon execution of this Agreement, City Manager shall deliver all of City's property in his/her possession and further, shall vacate City's property.

5. **RELEASE AND WAIVER OF CLAIMS**

In consideration of the benefits to be provided to City Manager pursuant to this Agreement, City Manager hereby irrevocably and unconditionally releases, waives, acquits and discharges the City and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this agreement.

City hereby irrevocably and unconditionally releases, acquits and discharges City Manager from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

6. **REFERENCES AND NON-DISPARAGEMENT**

If it is necessary for City to provide a reference to a prospective employer, City Manager agrees that he will direct the prospective employer to contact the Director of Human Resources at the City of Atlantic Beach. Additionally, City Manager and the elected officials agree that they shall not disparage or make untrue statements about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

7. **REPRESENTATIONS AND WARRANTIES**

The undersigned parties hereby represent and warrant the following to the other:

a. City Manager represents and warrants that: he/she is legally and mentally competent to sign this Agreement; he/she is the sole owner of any claims against the City; he/she has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential claims has been sold, assigned or pledged to any third party; and he/she presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.

b. City Manager represents and warrants that he/she has not and will not file any complaints, charges or lawsuits against City or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his/her employment, except City Manager expressly reserves the right to file a claim for unemployment benefits. City Manager further agrees to indemnify and hold City harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by City, arising out of any claim that may hereafter be made by City Manager or any other party.

c. City represents and warrants that it has not and will not file any complaints, charges or lawsuits against City Manager with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of City Manager's employment with or separation of his/her employment with City.

d. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.

e. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.

f. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.

g. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.

h. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties, or copied. Each counterpart or copy shall be deemed an original, but all counterparts together shall constitute one and the same instrument.

8. **JURISDICTION**

This Agreement shall be governed by the laws of the State of Florida, and venue shall be in Duval County, Florida.

9. **BINDING EFFECT**

This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective heirs, personal representatives, successors in interest and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledges receipt of an executed copy of this Agreement.

On behalf of the City of Atlantic Beach, Florida:

_____ _____

Curtis Ford, Mayor Date

City Manager

_____ _____

Mike New Date

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