



TOWN COUNCIL AGENDA REGULAR MEETING

THURSDAY
OCTOBER 17, 2024 – 2:00 P.M.

TOWN COUNCIL CHAMBERS
4300 S. ATLANTIC AVENUE, PONCE INLET, FL

SUNSHINE LAW NOTICE FOR BOARD MEMBERS – Notice is hereby provided that one or more members of the Town’s various boards may attend and speak at this meeting.

A complete copy of the materials for this agenda is available at Town Hall.

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. ROLL CALL.

NOTE: Citizens who wish to speak during Public Participation about any subject that is not on the meeting agenda should fill out the Citizen Participation Request form and submit it to the Town Clerk prior to the start of the meeting.

4. ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA.

5. CITIZENS’ PARTICIPATION - *The Town of Ponce Inlet encourages engagement by citizens via a variety of means. This is an opportunity for our citizens to talk to us collectively on any subject that is not identified on the meeting agenda. The Town’s Rules for Conducting Town Council meetings are set forth in Resolution 2024-09 and include the following guidelines:*

- *Citizens are provided with **5 minutes** at each meeting to speak on one or more issues that are not otherwise placed on the meeting agenda.*
- *Please introduce yourself with your name and address clearly for the record.*
- *Share with us your thoughts, ideas, and opinions; we want to hear them.*
- *Under our rules, all questions and comments are directed to the Mayor.*

While some questions may be able to be addressed at this meeting, others may require research or more information than we have readily available from our staff, so we may have to defer the response to you until we have that information. Also, depending on the type of issue, we may place the matter on a properly noticed subsequent meeting agenda. As a Council, we welcome the opportunity to hear from you and hope you will speak with us not only during Citizen Participation but outside of these meetings. We understand the formal nature of this meeting, but rest assured, we want to hear from you, we want to address your concerns, and we are appreciative of your involvement.

6. PROCLAMATIONS, PRESENTATIONS, AND AWARDS:

- A. Certificate of Recognition to Braeden Kopec for his national surfing championship.
- B. Mayor’s Report of Proclamations.

7. CONSENT AGENDA - *Items on the consent agenda are defined as routine in nature that do not warrant detailed discussion or individual action by the Council; therefore, all items remaining on the consent agenda shall be approved and adopted by a single motion, second and vote by the Town Council.*

Items on the consent agenda are not subject to discussion. Any member of the Town Council may remove any item from the consent agenda simply by verbal request at the Town Council meeting. Removing an item from the consent agenda does not require a motion, second or a vote; it would simply be a unilateral request of an individual Council member and this item would then be added as the last item under New Business. As with all agenda items, the public will have the opportunity to comment prior to a motion being placed on the floor and their comment(s) may persuade the Council to remove the item from the Consent Agenda and place under New Business for discussion.

- A. Approval of the Town Council Regular meeting minutes. – September 19, 2024.
 - B. Approval of the Town Council Special meeting minutes. – September 26, 2024.
 - C. Request to approve piggyback contracts through the City of Edgewater for emergency debris monitoring services.
8. OLD/NEW BUSINESS ITEMS PREFERRED AT THE BEGINNING OF THE MEETING:
- A. Financing for the 75' Quint Fire Apparatus.
 - i. Acceptance of Capital Finance Bid Proposal from Cogent Leasing and Financing, Inc. for the 75' Quint Fire Apparatus.
 - ii. Approval of Resolution 2024-20 Authorizing the Town Manager to Proceed with Entering into a Lease-Purchase Finance Agreement.
 - B. Request to Dispose of Fixed Capital Asset – Fire Department Pierce Mini-Pumper.
 - C. Request to Retain the Current Fire Engine as a Reserve Apparatus.
9. PUBLIC HEARINGS / QUASI-JUDICIAL MATTERS: *None*.
10. PUBLIC HEARINGS / NON-QUASI-JUDICIAL MATTERS: *None*.
11. ORDINANCES (FIRST READING) AND RESOLUTIONS:
- A. Ordinance 2024-06 – 1st reading – Amending Section 2.40 – Table of Permitted Uses in the Land Use and Development Code to include farmers markets as a major special exception use in the P-I (Public-Institutional) zoning district.
 - B. Ordinance 2024-07 – 1st reading – Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.
 - C. Ordinance 2024-08 – 1st reading – Amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

12. OLD BUSINESS: *None.*

13. NEW BUSINESS:

- A. Lien abatement request for Guada Joseph – 4745 South Atlantic Avenue, Unit 404.
- B. Discussion – Recommendation to abolish restrictions on panhandling and aggressive solicitation following ruling by the U.S. District Court of the Middle District of Florida.

14. FROM THE TOWN COUNCIL:

- A. Vice-Mayor Smith, Seat #5
- B. Councilmember Villanella, Seat #4
- C. Councilmember White, Seat #3
- D. Councilmember Milano, Seat #2
- E. Mayor Paritsky, Seat #1

15. FROM THE TOWN MANAGER.

16. FROM THE TOWN ATTORNEY.

17. CITIZENS' PARTICIPATION - *The Town of Ponce Inlet encourages engagement by citizens via a variety of means. This is another opportunity for our citizens to talk to us collectively for **2 minutes** before closure of this meeting regarding reports provided by the Town Council, Town Manager, or Town Attorney in items 14-16 (only) of the meeting agenda.*

18. ADJOURNMENT.

Upcoming Town Council meeting(s) and Important date(s):

- Thursday, November 21, 2024, 2:00 PM – Regular Town Council Meeting.

*If a person decides to appeal any decision made by the Town Council with respect to any matter considered at a meeting or hearing, he/she will need a record of the proceedings and that for such purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Persons who require accommodation to attend this meeting should contact the Ponce Inlet Town Hall at 236-2150 **at least 48 hours prior to the meeting** to request such assistance.*



Meeting Date: 10/17/2024

Agenda Item: 6

Report to Town Council

Topic: Proclamations, Presentations, and Awards.

Summary:

- A. Certificate of Recognition to Braeden Kopec for his national surfing championship.
- B. Mayor's proclamation report.

Suggested motion: None required.

Requested by: Mayor Paritsky

Approved by: Mr. Disher, Town Manager

Town of Ponce Inlet
Certificate of Recognition

This certificate is hereby presented to

Braeden Kopec

For his remarkable achievements in the sport of surfing.

Braeden recently showcased his talent at the National Scholastic Surfing Association National Surfing Championships where he earned two national titles in the Explorer Juniors' and Explorer Men's divisions.

His commitment to excellence in surfing is proven by his 22 championship event wins. Braeden's resilience, passion for the ocean, and future aspirations exemplify the spirit of perseverance, inspiring all those around him.

**Keep riding the waves of success! Presented with sincere appreciation on this day,
October 17th, 2024.**

Lois A. Paritsky

Lois A. Paritsky, Mayor



MEMORANDUM

Town of Ponce Inlet - Office of the Mayor

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council
Through: Michael E. Disher, Town Manager
From: Mayor Lois A. Paritsky *LAP*
Date: October 17, 2024
Subject: Proclamation Report

In honor to call upon the residents of the Town of Ponce Inlet to join in activities that will increase awareness of what Americans can do to prevent breast cancer, I present a Proclamation declaring the month of October 2024 as *National Breast Cancer Awareness Month*.

A copy of the Proclamations may be viewed at the Town Hall kiosk.

PROCLAMATION

OF THE

TOWN OF PONCE INLET, FLORIDA

WHEREAS, breast cancer touches the lives of Americans from every background and in every community across our Nation; and

WHEREAS, though we have made great strides in combating this devastating illness, more than 200,000 women will be diagnosed with breast cancer this year, and tens of thousands are expected to lose their lives to the disease; and

WHEREAS, during the month of October, National Breast Cancer Awareness Month, we honor those we have lost, lend our strength to those who carry on the fight, and pledge to educate ourselves and our loved ones about this tragic disease; and

WHEREAS, though the exact causes of breast cancer are unknown, understanding its risk factors is essential to prevention; and

WHEREAS, early detection is also key in the fight against breast cancer and getting recommended screening mammograms can help to detect breast cancer early.

NOW, THEREFORE, I, Lois A. Paritsky, Mayor of the Town of Ponce Inlet do hereby proclaim the month of October as


National Breast Cancer Awareness Month

FURTHER, I call upon the residents of the Town of Ponce Inlet to join in activities that will increase awareness of what Americans can do to prevent breast cancer.

IN WITNESS WHEREOF, I hereunto set my hand and cause the Seal of the Town of Ponce Inlet Florida, to be affixed this 17th day of October, 2024.



Town of Ponce Inlet, Florida


Mayor Lois A. Paritsky

Attest:


Kim Cherbano, CMC
Town Clerk



Meeting Date: 10/17/2024

Agenda Item: 7

Report to Town Council

Topic: Consent Agenda

- A. Approval of the Town Council Regular meeting minutes. – September 19, 2024.
- B. Approval of the Town Council Special meeting minutes. – September 26, 2024.
- C. Request to approve piggyback contracts through the City of Edgewater for emergency debris monitoring services.

Summary: See attached staff reports.

Suggested motion: To approve the Consent agenda as presented.

Requested by: Ms. Cherbano, Town Clerk

Approved by: Mr. Disher, Town Manager



4

**Town of Ponce Inlet
Town Council
Regular Meeting Minutes
September 19, 2024**

1. CALL TO ORDER: Pursuant to proper notice, Mayor Paritsky called the meeting to order at 6:00 p.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

2. PLEDGE OF ALLEGIANCE: Mayor Paritsky led the Pledge of Allegiance.

3. ROLL CALL:

Town Council:

Mayor Paritsky, Seat #1

Councilmember Milano, Seat #2

Councilmember White, Seat #3

Councilmember Villanella, Seat #4

Vice-Mayor Smith, Seat #5

Staff Members Present:

Ms. Alex, Cultural Services Manager

Ms. Cherbano, Town Clerk

Mr. Disher, Town Manager

Ms. Dowling, HR Coordinator

Mr. Dunlap, Acting Public Works Director

Ms. Gjessing, Assistant Deputy Clerk

Chief Glazier, Police Chief

Ms. Hall, Assistant Finance Director

Ms. Hugler, Fire Department Office Manager/PIO

Mr. Lear, Planning & Development Director

Ms. McColl, Finance Director

Mr. Okum, IT Director

Chief Scales, Public Safety Director

Attorney Shepard, Town Attorney

Other representatives present:

Ms. Barbara Ann Heegan, President & CEO of the Port Orange-South Daytona Chamber of Commerce

Volusia Young Marines

4. ADDITIONS, CORRECTIONS, OR DELETIONS TO THE AGENDA: Item 6-A was postponed and replaced with a presentation regarding the results of a recent informal social media survey conducted by Town staff. Item 11-C was moved to Item 8-A.

Mayor Paritsky moved to approve the agenda as amended; seconded by Councilmember Milano; The motion PASSED 5-0, consensus.

5. **CITIZENS PARTICIPATION:** Mayor Paritsky opened citizens participation – Ms. Bonni Carney, 86 Rains Court, referred to the Town Charter, and discussed operations of the town and budget allocations. Mr. John Carney, 86 Rains Court, raised concerns regarding conflicts of interest, vehicle acquisitions, and purchasing policies. Mr. Shannon White, 39 Coastal Oaks Circle, stated the town needs to collectively analyze the needs, use, and requests for future budgets. He also commented on the vehicle fleets, land use restrictions, equipment, and how total funds are reflected. Steve Fields, 6 Mar Azul, provided suggestions for future budget cycles including setting targets by department, forming a budget committee, and amending the Land Acquisition Fund to include capital expenditures.

Council directed staff to research amending Ordinance 2003-05 to include capital expenditures.

Mr. Steve Miller, 383 Walnut Street, introduced himself as a candidate for County Council Member, District 2. Mr. Jim Sustr, 4650 Links Village Drive, commented on the cost participation arrangement for the Harbour Village dune walkover. Mayor Paritsky closed citizens participation.

6. **PROCLAMATIONS, PRESENTATIONS, AND AWARDS:**

~~A. **Certificate of recognition to “Ponce Harvey Winchester” and his parents.** – To be presented at a future regularly scheduled Town Council meeting.~~

A. **Presentation on “Life in Ponce Inlet” survey.** – Ms. Becky Hugler, Fire Department Office Manager and PIO, provided the results of an informal survey recently conducted through social media on what people like most about living in Ponce Inlet. Comments included the love of the first responders, parks, community events, wildlife, and peaceful atmosphere.

B. **Proclamation – Declaring October 23-31 as Red Ribbon week, supporting the Volusia Young Marines.** – Mayor Paritsky presented the Volusia Young Marines with a proclamation declaring October 23-31 as Red Ribbon Week. This proclamation is intended to encourage a drug-free lifestyle and involvement in drug prevention and reduction efforts.

C. **Port Orange-South Daytona Chamber of Commerce presentation:** Ms. Barbara Ann Heegan provided the Council and residents with updates from the Port Orange – South Daytona Chamber of Commerce. She noted an upcoming event to be held at the Ponce Inlet Community Center on October 8th. Ms. Heegan also described a ten-week leadership course hosted by the Chamber each year.

D. **Mayor’s Proclamation Report:** Mayor Paritsky informed everyone she will be presenting proclamations declaring the month of October 2024 *National Community Planning Month* and *Florida Native Plant Month* and declaring the week of October 21st – 27th as *Florida City Government Week*.

7. **CONSENT AGENDA:** Mayor Paritsky asked if there was any item Council would like to remove from the consent agenda; there were no requests. Mayor Paritsky asked if there were any requests from the public – there were none.

92
93 **A. Disposal of fixed assets.**
94

95 **B. Approval of the Town Council Regular meeting minutes – August 22, 2024.**
96

97 **C. Approval of the Town Council Special Budget Hearing meeting minutes. –**
98 **September 4, 2024.**
99

100 *Mayor Paritsky moved to approve the Consent Agenda as presented; seconded by Councilmember*
101 *Milano; The motion PASSED 5-0, consensus.*
102

103 **8. OLD/NEW BUSINESS ITEMS PREFERRED AT THE BEGINNING OF THE**
104 **MEETING:** *(moved from item 11-C)*
105

106 **A. Purchase of 75' quint fire apparatus.** – Mayor Paritsky requested Resolution
107 2024-19 be read by title only. Attorney Shepard read Resolution 2024-19 by title only. **A**
108 **RESOLUTION OF TOWN OF PONCE INLET, VOLUSIA COUNTY FLORIDA,**
109 **AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE**
110 **AGREEMENT WITH TD EQUIPMENT FINANCING, INC., WITH RESPECT TO THE**
111 **ACQUISITION, FINANCING, LEASING, AND PURCHASE OF A 75' QUINT FIRE**
112 **APPARATUS; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS**
113 **REQUIRED IN CONNECTION THEREWITH; AUTHORIZING ALL OTHER ACTIONS**
114 **NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS**
115 **CONTEMPLATED BY THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND**
116 **PROVIDING AN EFFECTIVE DATE.**
117

118 **i. Request to purchase a 75' quint apparatus from Matheny Fire and**
119 **Emergency in the amount of \$1,263,200.** – Mayor Paritsky introduced Chief Scales, and he
120 answered questions related to his professional work history and credentials. He then provided a
121 [PowerPoint presentation](#) detailing the request to purchase a 75' quint fire apparatus. He stated the
122 current apparatus is around 15 years old, and neighboring cities no longer have an aerial apparatus
123 that the Town could use in case of an emergency. Discussions surrounding this purchase began in
124 January 2024 and was supported by the Essential Services Advisory Board (ESAB) in March 2024.
125 An opportunity became available in May 2024 for the purchase of a completed unit versus the
126 original consideration of a vehicle with a build time of 24-36 months. Chief Scales explained
127 features of the apparatus and how this will benefit the Town, as well as the benefits to placing the
128 existing apparatus in reserves and how the new apparatus would be utilized regarding the number
129 and different types of structures around Ponce Inlet. Chief Scales explained the available fire
130 apparatus meets or exceeds the Town's requirements and is within the anticipated price point.
131 Councilmember White and Chief Scales discussed the types and availability of fire equipment in
132 neighboring municipalities, restrictions to the use of the existing apparatus if placed in reserve,
133 navigation of the truck through the Town, and when the new apparatus would be placed in service.
134 Councilmember Milano spoke about the public sector bidding process and requested clarification
135 between the 7-year versus 10-year term financing options. Mayor Paritsky asked whether it is in
136 the best interest of the Town to purchase the new apparatus and to retain the existing truck in
137 reserves; Chief Scales stated yes to both. Councilmember White stated his opposition to retaining

the existing truck in reserves. He further elaborated on the maintenance schedule, usage of the reserve truck, and terms of existing interlocal agreements.

ii. Acceptance of proposal from TD Equipment Finance, Inc. for the financing of the 75' quint fire apparatus. Chief Scales explained that due to the recent change in reduction in interest rates since the agenda was distributed, there have been discussion to re-issue the request for proposals. Council concurred that would be a good idea, utilizing both 7- and 10-year terms.

iii. Resolution 2024-19 – Authorizing the execution and delivery of a lease-purchase agreement with TD Equipment Finance, Inc. for the acquisition, financing, leasing, and purchase of a 75' quint fire apparatus from Matheny Fire and Emergency. – Resolution 2024-19 was deemed obsolete considering the rejection of the financing proposals for the financing of the 75' quint fire apparatus.

Mayor Paritsky opened public participation – Mayor Paritsky read an [email](#) from Mr. Joe Jackerson, 4757 South Atlantic Avenue, in which he voiced his support for the purchase of the new fire apparatus. Mr. Ryan McConaughy, 66 Seawinds Circle, explained how he and the rest of the Essential Services Advisory Board members asked numerous questions regarding the purchase of the fire apparatus as part of their review and recommendation; he also stated that from his own experience, the town will benefit by purchasing the apparatus now versus waiting later, as prices will continue to increase. Mr. Tony Hynes, 4621 South Atlantic Avenue Unit 7703, asked if the ladder would reach the seventh floor of the Dimucci Tower; Chief Scales stated it would not. Mr. John Carney, 86 Rains Court, asked questions related to the purchasing timeline, piggyback agreements, the contract, and the truck's lifespan. Ms. Bonni Carney, 86 Rains Court, asked when the new apparatus would be acquired and recommended a decision process based on the best value for the proposals rather than focusing on the lowest bid. Mr. Steve Field, 6 Mar Azul, suggested requesting 7- and 10-year proposals for financing of the apparatus. Ms. Judy DiCarlo, 32 Caribbean Way, thanked staff for their daily efforts. Ms. Barbara Davis, 4871 Sailfish Drive, provided a brief history on fires that have occurred in Ponce Inlet and commented on retaining the existing fire truck for reserves. Mr. Shannon White, 39 Coastal Oaks, asked for the cost associated with storing the reserve fire apparatus and asked if all condominium buildings in Ponce Inlet had sprinkler systems. Chief Scales answered no. Mr. Robert Bullard, 4802 South Peninsula Drive, stated his opinion that if the existing apparatus is kept in reserves, it should be continuously used. Chief Scales clarified the truck would be used periodically. A brief discussion ensued between Councilmember White and Chief Scales regarding the budgeted amount for maintenance and insurance of both fire trucks, and who would be allowed to use the truck in reserves if it is stored in Port Orange or New Smyrna. Mr. Ken Cox, 4757 South Atlantic Avenue, provided a brief synopsis on the makeup of the Essential Services Advisory Board and his professional history. As Chair of the ESAB, he met with Chief Scales prior to the March ESAB meeting to discuss concerns he had related to the fire apparatus; he felt confident to recommend approval of this item. Ms. Cathy Harvey, 41 Loggerhead, spoke on meeting decorum. Mr. Field suggested accepting quotes for the current fire apparatus; Vice-Mayor Smith stated his belief that this would not be appropriate for a public setting. Mr. McConaughy commented on ways to support the maintenance cost and necessary training. A brief discussion ensued between Council on stipulations when readvertising the request for proposal of the financing of the fire apparatus.

Councilmember Milano made a motion to approve the piggyback agreement to purchase a 75' quint apparatus from Matheny Fire and Emergency in the amount of \$1,263,200, with the financing yet to be determined; seconded by Councilmember White. The motion PASSED, 5-0 with the following vote: Councilmember Milano – yes; Councilmember White – yes; Mayor Paritsky – yes; Councilmember Villanella – yes; Vice-Mayor Smith – yes.

Councilmember Milano made a motion to reject the proposals from TD Equipment Finance, Inc. and all other RFP responders for the financing of the 75' quint apparatus; seconded by Councilmember White. The motion PASSED, 5-0 with the following vote: Councilmember Milano – yes; Councilmember White – yes; Mayor Paritsky – yes; Councilmember Villanella – yes; Vice-Mayor Smith – yes.

9. PUBLIC HEARINGS / QUASI-JUDICIAL MATTERS: None.

10. PUBLIC HEARINGS / NON-QUASI-JUDICIAL MATTERS:

A. Ordinance 2024-03. Attorney Shepard read Ordinance 2024-03 by title only. **AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE LAND USE AND DEVELOPMENT CODE, ARTICLE 3 USE REGULATIONS, SECTION 3.17 DOCKS, BOATHOUSES, BOAT SLIPS, AND PIERS; PROVIDING DEFINITIONS AND STANDARDS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.** – Mr. Disher explained this is the second reading of ordinance 2024-03 and there have been no changes. Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public participation.

Councilmember White moved to approve and adopt Ordinance 2024-03, amending Section 3.17, Docks, Boathouses, Boat Slips, and Piers of the Land Use and Development Code to be consistent with the comprehensive plan upon second reading; seconded by Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember White – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember Villanella – yes; Vice-Mayor Smith – yes.

B. Final Millage Rate and Budget for Fiscal Year 2024/2025. – Mayor Paritsky requested Resolution 2024-16 and Ordinance 2024-05 be read by title only.

i. RESOLUTION 2024-16. – Attorney Shepard read Resolution 2024-16 by title only. **A RESOLUTION OF THE TOWN OF PONCE INLET, VOLUSIA COUNTY, FLORIDA ADOPTING THE TENTATIVE MILLAGE RATE FOR THE LEVYING OF AD VALOREM PROPERTY TAXES FOR MUNICIPAL PURPOSES ON ALL TAXABLE PROPERTY WITHIN THE TOWN FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025; STATING THE PERCENTAGE BY WHICH THE MILLAGE TO BE LEVIED IS ABOVE OR BELOW THE ROLLED BACK RATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

230 ii. **ORDINANCE 2024-05.** Attorney Shepard read Ordinance 2024-05 by title only.
231 **AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA INCORPORATING**
232 **THE FINAL AUDITED BUDGET FOR FISCAL YEAR 2022-2023 WHICH BEGAN ON**
233 **OCTOBER 1, 2022 AND ENDED ON SEPTEMBER 30, 2023; AMENDING THE BUDGET**
234 **FOR FISCAL YEAR 2023-2024 WHICH BEGAN ON OCTOBER 1, 2023 AND ENDS ON**
235 **SEPTEMBER 30, 2024; ADOPTING THE BUDGET FOR THE FISCAL YEAR 2024-2025**
236 **WHICH WILL BEGIN ON OCTOBER 1, 2024 AND ENDS ON SEPTEMBER 30, 2025;**
237 **PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTING**
238 **ORDINANCES; AND PROVIDING FOR AN EFFECTIVE DATE.**
239

240 Mr. Disher explained that the final budget being presented includes input from all departments,
241 recommendations from two advisory boards, the public, and direction from the Town Council. He
242 provided a synopsis on the discussions held during previous hearings, workshops, and advisory
243 board meetings. He further explained that during the first budget hearing on September 4, 2024,
244 the Town Council approved the proposed budget ordinance on first reading, subject to the removal
245 of two new leased vehicles that had been proposed. Since then, the budget has been revised to
246 exclude the two new leased vehicles, which has reduced the budget by approximately \$26,000.
247 This reduction lowered the final millage rate to **6.4559**, which is a **11.24% increase** above the
248 rolled-back rate. Councilmember White raised concerns including the proposed new golf cart, the
249 fire hose replacement, utility box wraps, and maintenance costs for the new fire apparatus. Chief
250 Scales clarified the maintenance costs for the new fire apparatus would be offset by the reduced
251 maintenance costs for the old fire truck once it is placed in reserve. Discussion ensued regarding
252 maintenance schedules for the fire apparatus.
253

254 Mayor Paritsky opened public participation. Mr. Steve Field, 6 Mar Azul, raised questions
255 regarding the ambulance usage and services. Mr. Ryan McConaughy, 66 Seawinds Circle, stated
256 the most-beneficial equipment in the ambulance is the power-lift stretcher. Mr. Shannon White,
257 39 Coastal Oaks, expressed his opposition to the golf cart. Chief Glazier explained the usage of
258 the Citizen's Watch vehicle, the budget assembly process for his department, and the anticipated
259 utilization of the golf cart. Mr. Disher stated that if the Council decides to withdraw the golf cart
260 from the FY 24/25 budget, the final millage would be 6.4402, which is a 10.97% increase above
261 the rolled-back rate. Ms. Bonnie Carney, 86 Rains Court, commented on items such as the golf
262 cart, power-lift stretcher, travel expenses, and tasers from the proposed FY 24/25 budget. Mr. John
263 Carney, 86 Rains Court, referred to the ten-year budget comparison and emphasized the
264 importance of prioritization. Mayor Paritsky closed public participation.
265

266 Councilmember White expressed his concern that the maintenance expenses for the new fire
267 apparatus may not have been included in the budget. He recommended selling the existing fire
268 truck to make up the cost deficit.
269

270 Councilmember Villanella moved to approve Resolution 2024-16 at the final millage rate of
271 6.4402 mills; the motion died due to lack of second.
272

273 Councilmember Milano moved to approve Resolution 2024-16 at the final millage rate of 6.4559
274 mills; the motion was seconded by Vice-Mayor Smith. The motion PASSED 4-1, with the following

275 vote: Councilmember Milano – yes; Vice-Mayor Smith – yes; Mayor Paritsky – yes;
276 Councilmember White – no; Councilmember Villanella – yes.

277
278 Councilmember Villanella moved to approve and adopt on second reading, Ordinance 2024-05
279 as presented; the motion was seconded by Councilmember Milano. The motion PASSED 4-1, with
280 the following vote: Councilmember Villanella – yes; Councilmember Milano – yes; Mayor
281 Paritsky – yes; Councilmember White – no; Vice-Mayor Smith – yes.

282 283 **11. ORDINANCES (FIRST READING) AND RESOLUTIONS:**

284
285 **A. Resolution 2024-17.** Attorney Shepard read Resolution 2024-17 by title only. **A**
286 **RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET,**
287 **VOLUSIA COUNTY, FLORIDA, ACCEPTING THE RESULTS OF THE AUGUST 20,**
288 **2024 ELECTION AS CANVASSED BY THE VOLUSIA COUNTY CANVASSING**
289 **BOARD; AND PROVIDING AN EFFECTIVE DATE.** – Ms. Cherbano explained the results
290 of the election held on August 20, 2024. Councilmember Milano was re-elected to Seat #2 and
291 Councilmember Villanella was re-elected to Seat #4. Mayor Paritsky opened public participation
292 – hearing none, Mayor Paritsky closed public participation.

293
294 Councilmember Villanella moved to approve Resolution 2024-17, as presented; seconded by
295 Councilmember Milano. The motion PASSED, 5-0 with the following vote: Councilmember
296 Villanella – yes; Councilmember Milano – yes; Mayor Paritsky – yes; Councilmember White –
297 yes; Vice-Mayor Smith – yes.

298
299 **B. Resolution 2024-18.** Attorney Shepard read Resolution 2024-18 by title only. **A**
300 **RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF PONCE INLET,**
301 **VOLUSIA COUNTY, FLORIDA, AUTHORIZING A SUPPLEMENTAL**
302 **APPROPRIATION TO THE TOWN'S BUDGET FOR FISCAL YEAR 2023-2024;**
303 **PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND**
304 **PROVIDING FOR AN EFFECTIVE DATE.** – Chief Scales explained the appropriation request
305 is for the reallocation of funds for the repairs to the pilings at the Ponce Preserve boardwalk,
306 Timucuan Oaks boardwalk, and the docks at the Ponce Inlet boat ramp. He stated the funds came
307 from additional building permit revenue received this fiscal year. Councilmember White requested
308 clarification on whether the Ponce Preserve boardwalk was recently repaired; Chief Scales
309 explained the decking was recently repaired, but these funds are for underwater repair to the
310 pilings. Mayor Paritsky opened public participation – hearing none, Mayor Paritsky closed public
311 participation.

312
313 Councilmember Milano moved to approve Resolution 2024-18, authorizing the supplemental
314 appropriation of \$125,000 from the General Fund excess revenue in building permits to fund the
315 necessary piling repairs at the Ponce Preserve boardwalk, Timucuan Oaks boardwalk, and the
316 docks at the Ponce Inlet boat ramp; seconded by Councilmember Villanella. The motion PASSED,
317 5-0 with the following vote: Councilmember Milano – yes; Councilmember Villanella – yes; Mayor
318 Paritsky – yes; Councilmember White – yes; Vice-Mayor Smith – yes.

319
320 **C. —Purchase of 75' quint fire apparatus. (Moved to item 8-A)**

~~i. Request to purchase a 75' quint apparatus from Matheny Fire and Emergency in the amount of \$1,263,000.~~

~~ii. Acceptance of proposal from TD Equipment Finance, Inc. for the financing of the 75' quint fire apparatus.~~

~~iii. Resolution 2024-19 Authorizing the execution and delivery of a lease-purchase agreement with TD Equipment Finance, Inc. for the acquisition, financing, leasing, and purchase of a 75' quint fire apparatus from Matheny Fire and Emergency.~~

12. OLD BUSINESS: None.

13. NEW BUSINESS:

A. Interlocal Agreement with Volusia County to maintain the current process for payment of Volusia County transportation impact fees on County-maintained roads within the Town of Ponce Inlet. – Mr. Lear explained this item comes after state law was amended earlier in the year requiring that municipalities that issue building permits also collect a transportation impact fee for county roads, unless there is an interlocal agreement in place to allow the county to collect the impact fees directly. He provided more details on the impact fees and how Volusia County currently collects them. The interlocal agreement maintains the existing system between the Town and County for the calculation and collection of county-wide thoroughfare road impact fees. Mayor Paritsky opened public comment – hearing none, Mayor Paritsky closed public participation.

Councilmember Milano moved to approve the Interlocal Agreement as presented to maintain the current process for County Transportation Impact fee collection and remittance; seconded by Councilmember Villanella; The motion PASSED 5-0, consensus.

B. Acceptance of bid from Sea Level Development, LLC for the Ponce Inlet Stormwater Improvements Project, Bid No. 2024-01 – Chief Scales stated only one bid was received for Bid No. 2024-01, Stormwater Improvements Project. Sea Level Development, LLC. was determined to be the lowest responsible bidder and staff has met with them to discuss the projects and ensure everyone is in agreement. Staff is confident they will appropriately complete the project. Mayor Paritsky opened public comment – hearing none, Mayor Paritsky closed public participation.

Councilmember Milano made a motion to award the contract for Ponce Inlet Stormwater Project, Bid No. 2024-01, to Sea Level Development, LLC. in the total project amount of \$264,142; seconded by Councilmember Villanella. The motion PASSED 5-0, consensus.

14. FROM THE TOWN COUNCIL:

A. Vice-Mayor Smith, Seat #5 – Vice-Mayor Smith thanked residents for their insightful questions throughout the meeting and budget process.

367
368 **B. Councilmember Villanella, Seat #4** – Councilmember Villanella commended
369 staff and residents on their work and stated he has had other entities commend the Town on the
370 decorum of meetings.

371
372 **C. Councilmember White, Seat #3** – Councilmember White congratulated Mayor
373 Paritsky on her appointment to the Florida League of Cities Utilities, Natural Resources, and
374 Public Works committee as Vice-Chair. He provided information on the webinars hosted by the
375 Florida League of Cities and elaborated on the benefit they provide. He concluded by thanking the
376 residents for their input and commented on the importance of community engagement with the
377 Council.

378
379 **D. Councilmember Milano, Seat #2** – Councilmember Milano thanked the staff for
380 their work on the budget. He provided an update to the First Step Shelter and thanked the Town
381 for supporting the organization.

382
383 **E. Mayor Paritsky, Seat #1** – Mayor Paritsky provided [information](#) obtained from
384 the last Volusia County Elected Officials Roundtable meeting she attended and brought everyone's
385 attention to the *Community Health Update and Information* which was discussed. She provided a
386 brief update to the resident registration program on beach parking. She stated a representative from
387 the Coastal Division of Volusia County will be coming to Ponce Inlet at a future date and will be
388 available to answer more questions. Mayor Paritsky explained her role as newly elected Vice-
389 Chair of the Florida League of Cities Utilities, Natural Resources, and Public Works committee,
390 and further elaborated on the matters the committee discusses.

391
392 **15. FROM THE TOWN MANAGER** – Mr. Disher spoke on the importance of public
393 participation in the annual budget process and thanked Councilmembers for their support. He
394 stated there will be a special Town Council meeting on September 26, 2024 to ratify the
395 employment offer of Public Works Director to Mr. Steven Wargo. He further provided an update
396 on town-wide personnel, explained the police department will be hosting a free seminar on
397 *Avoiding Frauds & Scams*, and provided an update on the South Peninsula Septic-to-Sewer
398 project. The Town recently received \$16,424.49 from FEMA reimbursements due to Hurricane
399 Ian, and he stated the final projected reimbursement is estimated around \$1,800.

400
401 **16. FROM THE TOWN ATTORNEY** – Attorney Shepard requested clarification on an
402 upcoming meeting.

403
404 **17. PUBLIC PARTICIPATION (on items 14 – 16 only)** – Mayor Paritsky opened public
405 participation – Mr. Robert Bullard, 4802 South Peninsula Drive, provided comments regarding
406 homestead exemptions. Ms. Milagros Gerena, 4625 Riversedge Village Lane, and Mr. Jeffrey
407 Wilner, 4670 Links Village Drive, thanked the Council for its support of the Harbour Village cost-
408 participation request for their dune walkover, and provided some updates on their next steps.
409 Mayor Paritsky closed public participation.

410
411 **18. ADJOURNMENT** – Mayor Paritsky adjourned the meeting at 9:12 P.M.
412

413 Respectfully submitted by:

414

415 *Draft*

416 Kim Cherbano, CMC, Town Clerk

417 Prepared by: Stephanie Gjessing, Assistant Deputy Clerk

418

419 Attachment(s): Fire Apparatus Presentation by Chief Scales

420 Volusia County Elected Officials Roundtable Agenda – 9/9/2024

DRAFT



**Town of Ponce Inlet
Town Council
Special Meeting Minutes
September 26, 2024**

1 **1. CALL TO ORDER:** Pursuant to proper notice, Mayor Paritsky called the meeting to
2 order at 10:00 a.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

3
4 **2. PLEDGE OF ALLEGIANCE:** Mayor Paritsky led the Pledge of Allegiance.

5
6 **3. ROLL CALL:**

7 **Town Council:**

8 Mayor Paritsky, Seat #1

9 Councilmember Milano, Seat #2 – Absent

10 Councilmember White, Seat #3

11 Councilmember Villanella, Seat #4

12 Vice-Mayor Smith, Seat #5

13
14 **Staff Members Present:**

15 Ms. Cherbano, Town Clerk

16 Mr. Christensen, Investigator

17 Mr. Disher, Town Manager

18 Ms. Dowling, HR Coordinator

19 Mr. Dunlap, Assistant Public Works Manager

20 Ms. Gjessing, Assistant Deputy Clerk

21 Chief Glazier, Police Department

22 Ms. Hall, Assistant Finance Director

23 Ms. Hugler, Fire Department Office Manager/PIO

24 Mr. Lear, Planning & Development Director

25 Ms. McColl, Finance Director

26 Mr. Okum, IT Director

27 Chief Scales, Public Safety Director

28 Ms. Stewart, Assistant Deputy Clerk

29
30 **4. Ratification of employment offer for public works director position.** – Mr. Disher
31 introduced Mr. Steven Wargo and provided information on his role as Public Works Director. He
32 explained Mr. Wargo's educational and professional history and described the selection process
33 behind the consideration of employment. Mr. Disher stated he appreciated Mr. Wargo's attitude,
34 commitment to safety, and collaboration with his employees. Mayor Paritsky thanked Mr. Steve
35 Dunlap for his term as Acting Public Works Director and invited Mr. Wargo to introduce himself,
36 which he did, providing a brief personal background. Councilmember Villanella stated Mr. Wargo
37 had a well-rounded career. Councilmember White mentioned the connection between residents
38 and staff and asked what input Mr. Wargo will take from his employees. Mr. Wargo explained he
39 encourages input from employees and residents, and he values an open-door policy. He stated he

wants to understand the town and there is no one better to assist him in doing so than the residents and his employees. Councilmember White asked that Mr. Wargo take charge to reduce the volume of staff turnover throughout the last couple of years. Vice-Mayor Smith commended Mr. Wargo on his resume and stated he looks forward to their future discussions. Mayor Paritsky applauded Mr. Wargo on his certifications and references and welcomed Mr. Wargo to the Town.

Councilmember Villanella moved to ratify the employment offer of Public Works Director to Steven Wargo on the terms set forth in the September 17, 2024 offer of employment letter; the motion was seconded by Councilmember White. The motion PASSED 4-0, with the following vote: Councilmember Villanella – yes; Councilmember White – yes; Mayor Paritsky – yes; Vice-Mayor Smith – yes.

5. ADJOURNMENT – With no further business, Mayor Paritsky adjourned the meeting at 10:14 AM.

Respectfully submitted by:

DRAFT

Kim Cherbano, CMC / Town Clerk

Prepared by: Stephanie Gjessing, Assistant Deputy Clerk

Attachment(s): None.



MEMORANDUM

Office of the Public Safety Director

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager
From: Daniel Scales, Public Safety Director
Date: October 9, 2024
Subject: Request to approve piggyback contracts through the City of Edgewater for emergency debris monitoring services

MEETING DATE: October 17, 2024

The Town's debris monitoring consultant, Witt O'Briens, no longer performs debris monitoring services; however, the City of Edgewater has three (3) vendors under contract to provide this service. Emergency debris monitoring is required by FEMA as a condition for reimbursement after a federally declared disaster. This is intended to verify that debris operations are eligible for reimbursement, costs are reasonable, contract and procurement processes are appropriate, quantification of the debris is accurate, and the tracking of the debris to its final disposition is recorded and in compliance with all FEMA guidelines and regulatory requirements. Failure to properly monitor debris removal operations may jeopardize FEMA funding.

The City has agreed to allow the Town to piggyback off their contracts they have in place. Attached are Edgewater's executed agreements with their top three (3) ranked firms listed below from their Request for Proposals (RFP 23-ES-10):

- Goodwyn Mills Cawood (GMC), as successor and assign to Witt O'Briens
- Tetra Tech, Inc.
- Thompson Consulting Services, LLC

The terms of the above agreements for these contracts are from 11/7/23 through 11/6/26, with option for two additional one-year renewals. The City of Edgewater can choose which debris monitoring firm to use, for each activation, during the contract period. The decision is based on availability and pricing of each hauler. The Town would be able to do the same provided the firms agree to allow us to piggyback.

The City of Edgewater has approved our request to a piggyback of Edgewater's debris monitoring contracts (see letter attached). Staff has been in contact with all three (vendors) and the one that currently has availability for Hurricane Milton is Thompson Consulting Services, LLC.

Staff recommends that the Town Council approve a piggyback of Edgewater's debris monitoring contracts for use on Hurricane Milton as needed, and pending declaration of any future major events (local disasters).

Attachments:

City of Edgewater Debris Monitoring Services Agreements

City of Edgewater approval letter

**PROFESSIONAL SERVICES AGREEMENT
EMERGENCY DEBRIS MONITORING SERVICES
Request for Proposal (RFP) #23-ES-10**

THIS AGREEMENT is made and entered into this 6th day of November, 2023, by and between Thompson Consulting Services, LLC, duly authorized to conduct business in the State of Florida and whose address is 2601 Maitland Center Parkway, Maitland, FL 32751 hereinafter, called "CONSULTANT" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

SECTION 1. AGREEMENT. The terms of this Agreement, together with the incorporation of the terms and conditions of the Request for Proposals (RFP #23-ES-10), and any exhibits, schedules and attachments hereto, and any and all amendments relating to same, and any and all submittals from CONSULTANT, constitute the entire Agreement between CITY and CONSULTANT. This Agreement is the final, complete and exclusive expression of the terms and conditions of the parties' Agreement. Any and all prior agreements, representations, negotiations, and understandings made by the parties, oral or written, expressed or implied, are hereby superseded and merged herein.

SECTION 2. TERM OF AGREEMENT. The term of this Agreement shall be for an initial period of three (3) years from the date of award. At the option of the parties, this Agreement may be renewed for two (2) additional one (1) year terms. Renewal options may be exercised at the discretion of the City based on performance of the company and adherence to the terms and conditions set forth in the RFQ documents. The City retains the sole right to determine whether the renewal option shall be granted.

SECTION 3. COMPENSATION. For Services rendered, The CITY shall pay the CONSULTANT based on actual time spent per position and established hourly billing rate for tasks, including or excluding reimbursable expenses as mutually agreed upon. Unless otherwise agreed in a Scope of Services, the CONSULTANT will invoice the City monthly based upon the CONSULTANT's actual time spent and provide an estimate of the portion of the total services actually completed at the time of billing.

SECTION 4. REIMBURSABLE EXPENSES. "Reimbursable Expenses" means the actual, necessary and reasonable expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto for travel; toll telephone calls and facsimiles; reproduction of reports, drawings and specifications, and similar Project-related items; as provided in the City's Purchasing Policy. (Not applicable to this contract)

SECTION 5. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For City:

Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 ext. 1101

For CONSULTANT:

Jon Hoyle, President (Name, Title)
Thompson Consulting Services, LLC (Company)
2601 Maitland Center Parkway (Address)
Maitland, Florida 32751 (City, State, Zip)
407-792-0018 (Phone)

SECTION 6. RIGHTS AT LAW RETAINED. The rights and remedies of CITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

SECTION 7. CONTROLLING LAW, VENUE, ATTORNEY'S FEES. This Agreement is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Agreement shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

SECTION 8. MODIFICATIONS TO AGREEMENT. This Agreement and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

SECTION 9. SEVERABILITY. If, during the term of this Agreement, it is found that a specific clause or condition of this Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in force and effect.

SECTION 10. WAIVER OF JURY TRIAL. THE CITY AND CONSULTANT HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

SECTION 11. NON-WAIVER. No indulgence, waiver, election or non-election by City under this Contract shall affect CONSULTANT's duties and obligations hereunder.

SECTION 12. ASSIGNMENT. This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

SECTION 13. INDEPENDENT CONSULTANT. It is the intent of the parties hereto that CONSULTANT shall be legally considered an independent CONSULTANT and that neither CONSULTANT nor its employees shall under any circumstances be considered employees or agents of the City and that the City shall be at no time legally responsible for any negligence on the part of CONSULTANT, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, CONSULTANT or corporation.

SECTION 14. NO THIRD-PARTY BENEFICIARIES. The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

SECTION 15. WARRANTY OF TITLE OF CONSULTANT. CONSULTANT warrants to the City that all goods and materials furnished under the Contract will be new unless otherwise specified and that CONSULTANT possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim for which, if established, the City might become liable, and which may be chargeable to the CONSULTANT, or if the CONSULTANT shall incur any liability to the City, or the City shall have any claim or demand against the CONSULTANT, of any kind or for any reason, whether related to or arising out of this Agreement or any other agreement between the CONSULTANT and the City, and whether or not reduced to judgment or award, the City shall have the

right to retain out of any payment due the CONSULTANT, or which may become due to the CONSULTANT, under this Contract or any other Contract between the CONSULTANT and the City, an amount sufficient to indemnify the City against such claim, and/or to compensate the City for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert CONSULTANT fees, and expert witness fees. Should any claim develop after final payment has been made, the CONSULTANT shall refund to the City all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the CONSULTANT.

SECTION 16. TERMINATION FOR CAUSE OR CONVENIENCE. (a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the City. (b) Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the CONSULTANT, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the CONSULTANT shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice; (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the CONSULTANT as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the CONSULTANT shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the CONSULTANT shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the CONSULTANT by reason of termination under this clause, the Finance Director shall pay the CONSULTANT the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the CONSULTANT is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the CONSULTANT may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

SECTION 17. TERMINATION FOR DEFAULT. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the CONSULTANT, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result.

SECTION 18. EXAMINATION OF RECORDS. (a) The CONSULTANT agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the

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DEO/HUD/CDBG grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the CONSULTANT involving transactions related to this Contract. (b) The CONSULTANT further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the sub-contractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after closeout of the DEO/HUD/CDBG grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such CONSULTANT involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

SECTION 19. MODIFICATIONS OR CHANGES TO THIS CONTRACT. (a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in CONSULTANT's cost of, or time required for the performance of the work hereunder, CONSULTANT shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the CONSULTANT, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) CONSULTANT need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

SECTION 20. SOVEREIGN IMMUNITY. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

SECTION 21. LIABILITY FOR LOSS OR DAMAGE. (a) CONSULTANT shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of CONSULTANT, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by CONSULTANT, his/its agents, servants and employees. CONSULTANT shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury. (b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between CONSULTANT's work and any injury, loss, damage, death

or property damage, CONSULTANT expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by CONSULTANT hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by CONSULTANT as long as the claims made could be causally connected to CONSULTANT as reasonable determined by City.

SECTION 22. NON-DISCRIMINATION. During the performance of this Contract, CONSULTANT agrees as follows: (a) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of CONSULTANT. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. CONSULTANT agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) CONSULTANT shall state in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT that CONSULTANT is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. CONSULTANT shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each sub-contractor or vendor.

SECTION 23. DISPUTES. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

SECTION 24. FORCE MAJEURE. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

SECTION 25. CONTROLLING LAW. This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

SECTION 26. COMPLIANCE WITH OTHER FEDERAL STANDARDS.

(a) Compliance with Federal Laws, Regulations and Executive Orders. This is an acknowledgement that DEO/HUD/CDBG financial assistance will be used to fund the agreement. The CONSULTANT will comply with all applicable federal laws, regulations, and Executive Orders, including DEO/HUD/CDBG policies, procedures, and directives. The CONSULTANT shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. CONSULTANT shall ensure that all subcontracts comply with DEO/HUD/CDBG.

(b) Fraud and False or Fraudulent or Related Acts. The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this agreement.

(c) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All CONSULTANTS entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The CONSULTANT shall comply with this requirement.

(d) Mandatory Disclosures: The CONSULTANT must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(e) Utilization of Minority and Women Firms (M/WBE): The CONSULTANT must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime CONSULTANT will require compliance of this provision by all sub-CONSULTANTS. Prior to contract award, the CONSULTANT shall document efforts to assure that such businesses are solicited when there are potential sources; that the CONSULTANT made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the CONSULTANT has established delivery schedules, where permitted, to encourage such businesses to respond. CONSULTANT and sub-CONSULTANT shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub-CONSULTANTS, as applicable, shall be included with the bid proposal.

(f) Equal Employment Opportunity: (i) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (ii) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (iii) The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information. (iv) The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (v) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules,

regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (vi) In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (vii) The CONSULTANT will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. The CONSULTANT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The CONSULTANT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONSULTANTS and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The CONSULTANT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a CONSULTANT debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon CONSULTANTS and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CONSULTANT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CONSULTANT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CONSULTANT; and refer the case to the Department of Justice for appropriate legal proceedings.

(g) Davis-Bacon Act: If applicable to this contract, the CONSULTANT agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. CONSULTANT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONSULTANT must be required to pay wages not less than once a week. This contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

(h) Copeland Anti Kick Back Act: (i) CONSULTANT. The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, if applicable, which are incorporated by reference into this contract. (ii) Subcontracts. The CONSULTANT or sub-contractor shall insert in any

subcontracts the clause above and such other clauses as DEO/HUD/CDBG may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all of these contract clauses. (iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONSULTANT and sub-contractor as provided in 29 C.F.R. § 5.12.

(i) Contract Work Hours and Safety Standards Act: (i) Overtime requirements. No CONSULTANT or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section the CONSULTANT and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section. (iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or sub-contractor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section. (iv) Subcontracts. The CONSULTANT or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (i) through (iv) of this section.

(j) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) as amended. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(k) Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts. The CONSULTANT shall certify compliance.

(l) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract,

(s) DHS Seal, LOGO, and Flags: The CONSULTANT shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DEO/HUD/CDBG preapproval.

(t) No Obligation by Federal Government. The Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract.

SECTION 26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONSULTANT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

SECTION 27. AUTHORITY TO SIGN. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date written above for execution by CITY.

WITNESSES:

Manique Toupin

Lisa Bloomer

CITY OF EDGEWATER

Glenn A. Irby
Glenn A. Irby, City Manager

Bonnie Zlotnik
Bonnie Zlotnik, City Clerk

Dated: 11/7/2023

WITNESSES:

Jon Hoyle

Thompson Consulting Services, LLC

Thompson Consulting Services, LLC
(Firm Name)

By: Jon Hoyle, President
(Authorized Officer)

Dated: 9/25/2023

Approved by the City Council of the City of
Edgewater at a meeting held on this 6th
day of November, 2023 under
Agenda Item No. 10a.

grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. CONSULTANT agrees to comply with this provision. CONSULTANT shall file the required certification.

(m) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the CONSULTANT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the CONSULTANT must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(n) Procurement of Recovered Materials: CONSULTANT must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(o) Access to Records and Reports: The CONSULTANT agrees to provide City, Recipient (if applicable), the DEO/HUD/CDBG Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONSULTANT agrees to provide the DEO/HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the City and the CONSULTANT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DEO/HUD/CDBG Administrator or the Comptroller General of the United States.

(p) Record Retention: CONSULTANT will retain all required records pertinent to this contract for a period of five years after closeout of the DEO/HUD/CDBG grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(q) Federal Changes: CONSULTANT shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

(r) Safeguarding Personal Identifiable Information: CONSULTANT will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

**PROFESSIONAL SERVICES AGREEMENT
EMERGENCY DEBRIS MONITORING SERVICES
Request for Proposal (RFP) #23-ES-10**

THIS AGREEMENT is made and entered into this 6th day of November, 2023, by and between Tetra Tech, Inc., duly authorized to conduct business in the State of Florida and whose address is 2301 Lucien Way, Suite 120, Maitland, FL 32751, hereinafter, called "CONSULTANT" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

SECTION 1. AGREEMENT. The terms of this Agreement, together with the incorporation of the terms and conditions of the Request for Proposals (RFP #23-ES-10), and any exhibits, schedules and attachments hereto, and any and all amendments relating to same, and any and all submittals from CONSULTANT, constitute the entire Agreement between CITY and CONSULTANT. This Agreement is the final, complete and exclusive expression of the terms and conditions of the parties' Agreement. Any and all prior agreements, representations, negotiations, and understandings made by the parties, oral or written, expressed or implied, are hereby superseded and merged herein.

SECTION 2. TERM OF AGREEMENT. The term of this Agreement shall be for an initial period of three (3) years from the date of award. At the option of the parties, this Agreement may be renewed for two (2) additional one (1) year terms. Renewal options may be exercised at the discretion of the City based on performance of the company and adherence to the terms and conditions set forth in the RFQ documents. The City retains the sole right to determine whether the renewal option shall be granted.

SECTION 3. COMPENSATION. For Services rendered, The CITY shall pay the CONSULTANT based on actual time spent per position and established hourly billing rate for tasks, including or excluding reimbursable expenses as mutually agreed upon. Unless otherwise agreed in a Scope of Services, the CONSULTANT will invoice the City monthly based upon the CONSULTANT's actual time spent and provide an estimate of the portion of the total services actually completed at the time of billing.

SECTION 4. REIMBURSABLE EXPENSES. "Reimbursable Expenses" means the actual, necessary and reasonable expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto for travel; toll telephone calls and facsimiles; reproduction of reports, drawings and specifications, and similar Project-related items; as provided in the City's Purchasing Policy. (Not applicable to this contract)

SECTION 5. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For City:
Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 ext. 1101

For CONSULTANT:
Contracts Department (Name, Title)
Tetra Tech, Inc. (Company)
2301 Lucien Way, Suite 120 (Address)
Maitland, FL 32751 (City, State, Zip)
407-803-2551 (Phone)

SECTION 6. RIGHTS AT LAW RETAINED. The rights and remedies of CITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

SECTION 7. CONTROLLING LAW, VENUE, ATTORNEY'S FEES. This Agreement is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Agreement shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

SECTION 8. MODIFICATIONS TO AGREEMENT. This Agreement and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

SECTION 9. SEVERABILITY. If, during the term of this Agreement, it is found that a specific clause or condition of this Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in force and effect.

SECTION 10. WAIVER OF JURY TRIAL. THE CITY AND CONSULTANT HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

SECTION 11. NON-WAIVER. No indulgence, waiver, election or non-election by City under this Contract shall affect CONSULTANT's duties and obligations hereunder.

SECTION 12. ASSIGNMENT. This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

SECTION 13. INDEPENDENT CONSULTANT. It is the intent of the parties hereto that CONSULTANT shall be legally considered an independent CONSULTANT and that neither CONSULTANT nor its employees shall under any circumstances be considered employees or agents of the City and that the City shall be at no time legally responsible for any negligence on the part of CONSULTANT, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, CONSULTANT or corporation.

SECTION 14. NO THIRD-PARTY BENEFICIARIES. The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

SECTION 15. WARRANTY OF TITLE OF CONSULTANT. CONSULTANT warrants to the City that all goods and materials furnished under the Contract will be new unless otherwise specified and that CONSULTANT possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim for which, if established, the City might become liable, and which may be chargeable to the CONSULTANT, or if the CONSULTANT shall incur any liability to the City, or the City shall have any claim or demand against the CONSULTANT, of any kind or for any reason, whether related to or arising out of this Agreement or any other agreement between the CONSULTANT and the City, and whether or not reduced to judgment or award, the City shall have the

right to retain out of any payment due the CONSULTANT, or which may become due to the CONSULTANT, under this Contract or any other Contract between the CONSULTANT and the City, an amount sufficient to indemnify the City against such claim, and/or to compensate the City for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert CONSULTANT fees, and expert witness fees. Should any claim develop after final payment has been made, the CONSULTANT shall refund to the City all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the CONSULTANT.

SECTION 16. TERMINATION FOR CAUSE OR CONVENIENCE. (a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the City. (b) Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the CONSULTANT, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the CONSULTANT shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any subcontractors except as may be necessary to perform that portion of this Contract not subject to the Notice; (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the CONSULTANT as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the CONSULTANT shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the CONSULTANT shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the CONSULTANT by reason of termination under this clause, the Finance Director shall pay the CONSULTANT the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the CONSULTANT is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the CONSULTANT may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

SECTION 17. TERMINATION FOR DEFAULT. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the CONSULTANT, the City reserves the right to procure the item(s) bid from other sources and holds the bidder responsible for excess costs incurred as a result.

SECTION 18. EXAMINATION OF RECORDS. (a) The CONSULTANT agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the

DEO/HUD/CDBG grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the CONSULTANT involving transactions related to this Contract. (b) The CONSULTANT further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the sub-contractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after closeout of the DEO/HUD/CDBG grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such CONSULTANT involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

SECTION 19. MODIFICATIONS OR CHANGES TO THIS CONTRACT. (a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in CONSULTANT's cost of, or time required for the performance of the work hereunder, CONSULTANT shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the CONSULTANT, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) CONSULTANT need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

SECTION 20. SOVEREIGN IMMUNITY. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

SECTION 21. LIABILITY FOR LOSS OR DAMAGE. (a) CONSULTANT shall be liable for any loss of, or damage to, City property caused by the negligence, recklessness, or intended wrongful misconduct of CONSULTANT, his/its agents, servants and employees and shall indemnify and save the City harmless against all actions, proceedings, claims, demands, costs, damages and expenses, including attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, resulting from the performance of the Contract by CONSULTANT, his/its agents, servants and employees. CONSULTANT shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury. (b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between CONSULTANT's work and any injury, loss, damage, death

or property damage, CONSULTANT expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by CONSULTANT hereby expressly include all costs of litigation, attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is maintained by the City or assumed by CONSULTANT as long as the claims made could be causally connected to CONSULTANT as reasonable determined by City.

SECTION 22. NON-DISCRIMINATION. During the performance of this Contract, CONSULTANT agrees as follows: (a) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of CONSULTANT. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. CONSULTANT agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) CONSULTANT shall state in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT that CONSULTANT is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. CONSULTANT shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each sub-contractor or vendor.

SECTION 23. DISPUTES. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

SECTION 24. FORCE MAJEURE. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

SECTION 25. CONTROLLING LAW. This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

SECTION 26. COMPLIANCE WITH OTHER FEDERAL STANDARDS.

(a) Compliance with Federal Laws, Regulations and Executive Orders. This is an acknowledgement that DEO/HUD/CDBG financial assistance will be used to fund the agreement. The CONSULTANT will comply with all applicable federal laws, regulations, and Executive Orders, including DEO/HUD/CDBG policies, procedures, and directives. The CONSULTANT shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. CONSULTANT shall ensure that all subcontracts comply with DEO/HUD/CDBG.

(b) Fraud and False or Fraudulent or Related Acts. The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this agreement.

(c) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub L 100-690, Title V, Subtitle D). All CONSULTANTS entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The CONSULTANT shall comply with this requirement.

(d) Mandatory Disclosures: The CONSULTANT must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(e) Utilization of Minority and Women Firms (M/WBE): The CONSULTANT must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime CONSULTANT will require compliance of this provision by all sub-CONSULTANTS. Prior to contract award, the CONSULTANT shall document efforts to assure that such businesses are solicited when there are potential sources; that the CONSULTANT made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the CONSULTANT has established delivery schedules, where permitted, to encourage such businesses to respond. CONSULTANT and sub-CONSULTANT shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub-CONSULTANTS, as applicable, shall be included with the bid proposal.

(f) Equal Employment Opportunity: (i) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (ii) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (iii) The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information. (iv) The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (v) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules,

regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (vi) In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (vii) The CONSULTANT will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. The CONSULTANT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The CONSULTANT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONSULTANTS and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The CONSULTANT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a CONSULTANT debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon CONSULTANTS and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CONSULTANT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CONSULTANT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CONSULTANT; and refer the case to the Department of Justice for appropriate legal proceedings.

(g) Davis-Bacon Act: If applicable to this contract, the CONSULTANT agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. CONSULTANT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONSULTANT must be required to pay wages not less than once a week. This contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

(h) Copeland Anti Kick Back Act: (i) CONSULTANT. The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, if applicable, which are incorporated by reference into this contract. (ii) Subcontracts. The CONSULTANT or sub-contractor shall insert in any

subcontracts the clause above and such other clauses as DEO/HUD/CDBG may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all of these contract clauses. (iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONSULTANT and sub-contractor as provided in 29 C.F.R. § 5.12.

(i) Contract Work Hours and Safety Standards Act: (i) Overtime requirements. No CONSULTANT or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section the CONSULTANT and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section. (iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or sub-contractor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section. (iv) Subcontracts. The CONSULTANT or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (i) through (iv) of this section.

(j) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(k) Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts. The CONSULTANT shall certify compliance.

(l) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract,

(s) DHS Seal, LOGO, and Flags: The CONSULTANT shall not use the Department of Homeland Security (DHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DEO/HUD/CDBG preapproval.

(t) No Obligation by Federal Government. The Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract.

SECTION 26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONSULTANT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

SECTION 27. AUTHORITY TO SIGN. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date written above for execution by CITY.

WITNESSES:

Monique Taupin

Lisa Bloomer

CITY OF EDGEWATER

Glenn A. Irby
Glenn A. Irby, City Manager

Bonnie Zlotnik
Bonnie Zlotnik, City Clerk

Dated: 11/7/2023

WITNESSES:

Kayla Lemaire
Kayla Lemaire, Contract Administrator

Betty Kamara
Betty Kamara, Senior Contracts Manager

Tetra Tech, Inc.

(Firm Name)

By: Jonathan Burgiel
Jonathan Burgiel, Business Unit President

Dated: 09/25/2023

Approved by the City Council of the City of Edgewater at a meeting held on this 6th day of November, 2023 under Agenda Item No. 10a.

grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. CONSULTANT agrees to comply with this provision. CONSULTANT shall file the required certification.

(m) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the CONSULTANT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the CONSULTANT must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(n) Procurement of Recovered Materials: CONSULTANT must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(o) Access to Records and Reports: The CONSULTANT agrees to provide City, Recipient (if applicable), the DEO/HUD/CDBG Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONSULTANT agrees to provide the DEO/HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the City and the CONSULTANT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DEO/HUD/CDBG Administrator or the Comptroller General of the United States.

(p) Record Retention: CONSULTANT will retain all required records pertinent to this contract for a period of five years after closeout of the DEO/HUD/CDBG grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(q) Federal Changes: CONSULTANT shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

(r) Safeguarding Personal Identifiable Information: CONSULTANT will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

**PROFESSIONAL SERVICES AGREEMENT
EMERGENCY DEBRIS MONITRING SERVICES
Request for Proposal (RFP) #23-ES-10**

THIS AGREEMENT is made and entered into 10th day of November, 2023, by this and between Witt O'Brien's LLC, duly authorized to conduct

business in the State of Florida and whose address is 818 Town and Country Blvd, Suite 200, Houston, TX 77024 hereinafter, called "CONSULTANT" and the **CITY OF EDGEWATER**, a political subdivision of the State of Florida, whose address is 104 North Riverside Drive, Edgewater, FL 32132, hereinafter called "CITY".

SECTION 1. AGREEMENT. The terms of this Agreement, together with the incorporation of the terms and conditions of the Request for Proposals (RFP #23-ES-10), and any exhibits, schedules and attachments hereto, and any and all amendments relating to same, and any and all submittals from CONSULTANT, constitute the entire Agreement between CITY and CONSULTANT. This Agreement is the final, complete and exclusive expression of the terms and conditions of the parties' Agreement. Any and all prior agreements, representations, negotiations, and understandings made by the parties, oral or written, expressed or implied, are hereby superseded and merged herein.

SECTION 2. TERM OF AGREEMENT. The term of this Agreement shall be for an initial period of three (3) years from the date of award. At the option of the parties, this Agreement may be renewed for two (2) additional one (1) year terms. Renewal options may be exercised at the discretion of the City based on performance of the company and adherence to the terms and conditions set forth in the RFQ documents. The City retains the sole right to determine whether the renewal option shall be granted.

SECTION 3. COMPENSATION. For Services rendered, The CITY shall pay the CONSULTANT based on actual time spent per position and established hourly billing rate for tasks, including or excluding reimbursable expenses as mutually agreed upon. Unless otherwise agreed in a Scope of Services, the CONSULTANT will invoice the City monthly based upon the CONSULTANT's actual time spent and provide an estimate of the portion of the total services actually completed at the time of billing.

SECTION 4. REIMBURSABLE EXPENSES. "Reimbursable Expenses" means the actual, necessary and reasonable expenses incurred directly or indirectly in connection with the Project for: transportation and subsistence incidental thereto for travel; toll telephone calls and facsimiles; reproduction of reports, drawings and specifications, and similar Project-related items; as provided in the City's Purchasing Policy. **(Not applicable to this contract)**

SECTION 5. NOTICES. Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, return receipts requested, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this Section. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

For City:

Bonnie Zlotnik, City Clerk
City of Edgewater
104 N. Riverside Drive
Edgewater, FL 32132
(386)424-2400 ext. 1101

For CONSULTANT:

Cheryl Joiner, Director Contracts & Compliance (Name, Title)
Witt O'Brien's LLC (Company)
818 Town & Country Blvd, Suite 200 (Address)
Houston, TX 77024 (City, State, Zip)
281-320-9796 (Phone)

SECTION 6. RIGHTS AT LAW RETAINED. The rights and remedies of CITY, provided for under this Agreement, are in addition and supplemental to any other rights and remedies provided by law.

SECTION 7. CONTROLLING LAW, VENUE, ATTORNEY'S FEES. This Agreement is to be governed, construed, and interpreted by, through and under the laws of Florida. Venue for any litigation between the parties to this Agreement shall be in the County of Volusia, Florida and any trial shall be non-jury. Each party agrees to bear its own costs and attorney's fees relating to any dispute arising under this Agreement.

SECTION 8. MODIFICATIONS TO AGREEMENT. This Agreement and any exhibits, amendments and schedules may only be amended, supplemented, modified or canceled by a written instrument duly executed by the parties hereto of equal dignity herewith.

SECTION 9. SEVERABILITY. If, during the term of this Agreement, it is found that a specific clause or condition of this Agreement is illegal under federal or state law, the remainder of the Agreement not affected by such a ruling shall remain in force and effect.

SECTION 10. WAIVER OF JURY TRIAL. THE CITY AND CONSULTANT HAVE SPECIFICALLY WAIVED THE RIGHT TO A JURY TRIAL CONCERNING ANY DISPUTES WHICH MAY ARISE CONCERNING THIS AGREEMENT.

SECTION 11. NON-WAIVER. No indulgence, waiver, election or non-election by City under this Contract shall affect CONSULTANT's duties and obligations hereunder.

SECTION 12. ASSIGNMENT. This Contract, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstances, by the parties hereto without prior written consent of the opposite party and only by a document of equal dignity herewith. However, this Contract shall run to the Edgewater City Government and its successors.

SECTION 13. INDEPENDENT CONSULTANT. It is the intent of the parties hereto that CONSULTANT shall be legally considered an independent CONSULTANT and that neither CONSULTANT nor its employees shall under any circumstances be considered employees or agents of the City and that the City shall be at no time legally responsible for any negligence on the part of CONSULTANT, its employees or agents, resulting in either bodily or personal injury or property damage to any individual, CONSULTANT or corporation.

SECTION 14. NO THIRD-PARTY BENEFICIARIES. The agreements contained herein are for the sole benefit of the parties hereto and their successors and permitted assigns and no other party shall have the right to enforce any provision of this Contract or to rely upon the provisions of this Contract.

SECTION 15. WARRANTY OF TITLE OF CONSULTANT. CONSULTANT warrants to the City that all goods and materials furnished under the Contract will be new unless otherwise specified and that CONSULTANT possess good, clear, and marketable title to said goods and there are no pending liens, claims or encumbrances whatsoever against said goods. All work not conforming to these requirements, including substitutions not properly approved and authorized may be considered defective. If at any time there shall be evidence of any claim under this contract for services provided by the Consultant for which, if established, the City might become liable, and which may be chargeable to the CONSULTANT, or if the CONSULTANT shall incur any liability to the City, or the City shall have any claim or demand against the CONSULTANT, directly connected to this Agreement or any other agreement between the CONSULTANT and the City, and whether or not reduced to judgment or award, the City shall have the

right to retain out of any payment due the CONSULTANT, or which may become due to the CONSULTANT, under this Contract or any other Contract between the CONSULTANT and the City, an amount sufficient to indemnify the City against such claim, and/or to compensate the City for, and fully satisfy, such liability, claim or demand, and to charge or deduct all cost of defense or collection with respect thereto, including, but not limited to, reasonable attorneys' fees, expert CONSULTANT fees, and expert witness fees. Should any claim develop after final payment has been made, the CONSULTANT shall refund to the City all monies that the latter may be compelled to pay in discharging such claims, or that the latter may have incurred in collecting said monies from the CONSULTANT.

SECTION 16. TERMINATION FOR CAUSE OR CONVENIENCE. (a) The parties agree that the City may terminate this Contract, or any work or delivery required hereunder, from time to time either in whole or part, whenever the City Manager of Edgewater shall determine that such termination is in the best interest of the City. (b) Termination, in whole or in part, shall be affected by delivery of a Notice of Termination signed by the City Manager or his designee, mailed or delivered to the CONSULTANT, and specifically setting forth the effective date of termination. (c) Upon receipt of such Notice, the CONSULTANT shall: (i) cease any further deliveries or work due under this Contract, on the date, and to the extent, which may be specified in the Notice; (ii) place no further orders with any sub-contractors except as may be necessary to perform that portion of this Contract not subject to the Notice; (iii) terminate all subcontracts except those made with respect to contract performance not subject to the Notice; (iv) settle all outstanding liabilities and claims which may arise out of such termination, with the ratification of the Finance Director of Edgewater; and (v) use best efforts to mitigate any damages which may be sustained by the CONSULTANT as a consequence of termination under this clause. (d) After complying with the provisions of subparagraph (c), above, the CONSULTANT shall submit a termination claim, in no event later than six (6) months after the effective date of termination, unless one or more extensions of three (3) months each are granted by the Finance Director. (e) The Finance Director, with the approval of the City Manager, shall pay from the using department's budget, reasonable costs of termination, including a reasonable amount for profit on supplies or services delivered or work completed. In no event shall this amount be greater than the original contract price, reduced by any payments made prior to Notice of Termination, and further reduced by the price of the supplies not delivered or the services not provided. This Contract shall be amended accordingly, and the CONSULTANT shall be paid the agreed amount. (f) In the event that the parties cannot agree on the whole amount to be paid to the CONSULTANT by reason of termination under this clause, the Finance Director shall pay the CONSULTANT the amounts determined as follows, without duplicating any amounts which may have already been paid under the preceding paragraph of this clause: (i) With respect to all Contract performance prior to the effective date of Notice of Termination, the total of: (1) the cost of work performed or supplies delivered; (2) the cost of settling and paying any reasonable claims as provided in paragraph (c) (iv), above; (3) a sum as profit on (a) determined by the Finance Director to be fair and reasonable. (ii) The total sum to be paid under (i) above shall not exceed the contract price, as further reduced by the contract price of work or supplies not terminated. (g) In the event that the CONSULTANT is not satisfied with any payments which the Finance Director shall determine to be due under this clause, the CONSULTANT may appeal any claim to the City Council in accordance with Paragraph 23 of this contract concerning disputes.

SECTION 17. TERMINATION FOR DEFAULT. Either party may terminate this Contract, without further obligation, for the default of the other party or its agents or employees with respect to any agreement or provision contained herein. In the event of default by the CONSULTANT, the City shall notify the Consultant and give the Consultant five (5) business days to cure the default and if not cured within the specified time period, the City may terminate. The City reserves the right to procure the item(s) bid from other sources.

SECTION 18. EXAMINATION OF RECORDS. (a) The CONSULTANT agrees that the City, or any duly authorized representative, shall, until the expiration of five (5) years after closeout of the

DEO/HUD/CDBG grant, have access to and the right to examine and copy any pertinent books, documents, papers and records of the CONSULTANT involving transactions related to this Contract. (b) The CONSULTANT further agrees to include in any subcontract for more than \$10,000 entered into as a result of this Contract, a provision to the effect that the sub-contractor agrees that the City or any duly authorized representative shall, until the expiration of five (5) years after closeout of the DEO/HUD/CDBG grant under the subcontract, have access to and the right to examine and copy any pertinent books, documents, papers and records of such CONSULTANT involved in transactions related to such subcontract, or this Contract. The term subcontract as used herein shall exclude purchase orders for public utility services at rates established for uniform applicability to the general public. (c) The period of access provided in subparagraphs (a) and (b) above for records, books, documents and papers which may relate to any arbitration, litigation, or the settlement of claims arising out of the performance of this contract or any subcontract shall continue until any appeals, arbitration, litigation or claims shall have been finally disposed of.

SECTION 19. MODIFICATIONS OR CHANGES TO THIS CONTRACT. (a) Change Orders. The Department Head, with the concurrence of the City's signatory as required by the City's Purchasing Policy, shall without notice to any sureties, have the authority to order changes in this Contract which affect the cost or time of performance. Such changes shall be ordered in writing specifically designated to be a change order. Such orders shall be limited to reasonable changes in the services to be performed or the time of the performance. The City will not be held liable for any changes which have not been properly authorized and approved in accordance with this Contract. (b) If any change under this clause causes an increase or decrease in CONSULTANT's cost of, or time required for the performance of the work hereunder, CONSULTANT shall receive an equitable adjustment in accordance with subparagraph (d), which shall include all compensation to the CONSULTANT, or the City, of any kind in connection with such change, including all costs and damages related to or incidental to such change. (c) CONSULTANT need not perform any work described in any change order unless it has received a certification from the City that there are funds budgeted and appropriated sufficient to cover the cost of such changes. (d) No claim for changes ordered hereunder shall be considered if made after final payment in accordance with the Contract.

SECTION 20. SOVEREIGN IMMUNITY. The City expressly retains all rights, benefits and immunities of sovereign immunity in accordance with Section 768.28, Florida Statutes. Notwithstanding anything set forth in any section of this Contract to the contrary, nothing in this Contract shall be deemed as a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature or may be adopted by the Florida Legislature and the cap on the amount and liability of the City for damages regardless of the number or nature of claims in tort or equity shall not exceed the dollar amount set by the legislature for tort. Nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim against the City which would otherwise be barred under the Doctrine of Sovereign Immunity or operation of law.

SECTION 21. LIABILITY FOR LOSS OR DAMAGE. (a) CONSULTANT shall be liable for loss of, or damage to, City property directly caused by the negligence, recklessness, or intended wrongful misconduct of CONSULTANT, his/its agents, servants and employees and shall indemnify and save the City harmless against actions, proceedings, claims, demands, costs, damages and expenses, including reasonable attorney's fees, by reason of any suit or action brought for any actual or alleged injury to or death of any person or damage to property other than City property, directly connected to the performance of the Contract by CONSULTANT, his/its agents, servants and employees. CONSULTANT shall submit a full written report to the Finance Director within twenty-four (24) hours following the occurrence of such damage, loss or injury. (b) To the fullest extent permitted by law, in addition to the express duty to indemnify City when there is any causal connection between CONSULTANT's work and any injury, loss, damage, death or property damage, CONSULTANT expressly undertakes a duty to defend City as a separate duty, independent of and broader than the duty to indemnify. The duty to defend agreed to by CONSULTANT hereby expressly include all costs of litigation, reasonable attorney's fees, settlement costs and reasonable expenses in connection with the litigation, whether or not the claims made for loss, injury, damage or property damage are valid or groundless and regardless of whether the defense of City is

maintained by the City or assumed by CONSULTANT as long as the claims made could be directly connected to CONSULTANT as reasonably determined by City. This indemnification clause is not intended to convert a claim based solely upon a breach of contract theory into a tort claim.

SECTION 22. NON-DISCRIMINATION. During the performance of this Contract, CONSULTANT agrees as follows: (a) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, sex, disability, marital status, age or national origin, except where such is a bona-fide occupational qualification reasonably necessary to the normal operation of CONSULTANT. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. CONSULTANT agrees and fully supports and complies with the Americans with Disabilities Act of 1990. (b) CONSULTANT shall state in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT that CONSULTANT is an equal opportunity employer. (c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient compliance with this provision. CONSULTANT shall include the provisions of the foregoing subparagraphs (a), (b), and (c) in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each sub-contractor or vendor.

SECTION 23. DISPUTES. The City Manager, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT, shall decide disputes with respect to this Agreement. The decision by the City Manager shall be final and binding unless, within five (5) business days from the date of delivery of the decision of the City Manager, appeal is made to the City Council in writing and delivered to the City Clerk. The decision of the City Council shall be final and binding unless set aside by a court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessary to imply bad faith, or not to be supported by any evidence.

SECTION 24. FORCE MAJEURE. Neither party shall be liable for any delay in performance or failure to perform any obligation hereunder if, and to the extent that, such failure or delay is caused by an event of Force Majeure. Force Majeure shall mean any act, event or condition that is beyond the party's reasonable control, that materially and adversely affects the party's ability to perform its obligations hereunder, and that is not the result of the party's willful neglect, error, omission or failure to exercise reasonable due diligence.

SECTION 25. CONTROLLING LAW. This agreement contains important matters affecting legal rights and is accepted and entered into in Florida and any question regarding its validity, construction, enforcement of performance shall be governed by Florida Law. Any legal proceeding arising from or in any way regarding the agreement shall have its venue located exclusively in the Circuit Court of Volusia County, Florida and the parties hereby expressly consent and submit themselves to the personal jurisdiction and venue of the court.

SECTION 26. COMPLIANCE WITH OTHER FEDERAL STANDARDS.

(a) Compliance with Federal Laws, Regulations and Executive Orders. This is an acknowledgement that DEO/HUD/CDBG financial assistance will be used to fund the agreement. The CONSULTANT will comply with all applicable federal laws, regulations, and Executive Orders, including DEO/HUD/CDBG policies, procedures, and directives. The CONSULTANT shall comply with all uniform administrative requirements, cost principles, and audit requirements for federal awards. CONSULTANT shall ensure that all subcontracts comply with DEO/HUD/CDBG. Fraud and False or Fraudulent or Related Acts. The CONSULTANT acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONSULTANT's actions pertaining to this agreement.

(b) Drug Free Workplace Requirements: Drug-free workplace requirements in accordance with Drug Free Workplace Act of 1988 (Pub l 100-690, Title V, Subtitle D). All CONSULTANTS entering into Federal funded contracts over \$100,000 must comply with Federal Drug Free workplace requirements as Drug Free Workplace Act of 1988. The CONSULTANT shall comply with this requirement.

(c) Mandatory Disclosures: The CONSULTANT must disclose in writing all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

(d) Utilization of Minority and Women Firms (M/WBE): The CONSULTANT must take all necessary affirmative steps to assure that small, minority, and women-owned businesses are utilized when possible, in accordance with 2 CFR 200.321. If subcontracts are to be let, prime CONSULTANT will require compliance of this provision by all sub-CONSULTANTS. Prior to contract award, the CONSULTANT shall document efforts to assure that such businesses are solicited when there are potential sources; that the CONSULTANT made an effort to divide total requirement, when economically feasible, into smaller tasks or quantities to permit maximum participation by such businesses; and, that the CONSULTANT has established delivery schedules, where permitted, to encourage such businesses to respond. CONSULTANT and sub-CONSULTANT shall utilize service and assistance from such organizations as SBA, Minority Business Development Agency of the Department of Commerce, the Florida Department of Management Services (Office of Supplier Diversity), the Florida Department of Transportation, Minority Business Development Center, and Local Government M/DBE programs, available in many large counties and cities. Documentation, including what firms were solicited as suppliers and/or sub-CONSULTANTS, as applicable, shall be included with the bid proposal.

(e) Equal Employment Opportunity: (i) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The CONSULTANT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause. (ii) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the CONSULTANT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin. (iii) The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the CONSULTANT's legal duty to furnish information. (iv) The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. (v) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant

orders of the Secretary of Labor. The CONSULTANT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders. (vi) In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the CONSULTANT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law. (vii) The CONSULTANT will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the administering agency, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States. The CONSULTANT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work. Provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The CONSULTANT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of CONSULTANTS and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The CONSULTANT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a CONSULTANT debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon CONSULTANTS and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the CONSULTANT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the CONSULTANT under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such CONSULTANT; and refer the case to the Department of Justice for appropriate legal proceedings.

(f) Davis-Bacon Act: If applicable to this contract, the CONSULTANT agrees to comply with all provisions of the Davis Bacon Act as amended (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29C.F.R. pt. 5 as may be applicable. CONSULTANT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, CONSULTANT must be required to pay wages not less than once a week. This contract was conditioned upon the acceptance of the Department of Labor Wage Determination.

(g) Copeland Anti Kick Back Act: (i) CONSULTANT. The CONSULTANT shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3, if applicable, which are incorporated by reference into this contract. (ii) Subcontracts. The CONSULTANT or sub-contractor shall insert in any

subcontracts the clause above and such other clauses as DEO/HUD/CDBG may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for the compliance by any sub-contractor or lower tier sub-contractor with all of these contract clauses. (iii) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a CONSULTANT and sub-contractor as provided in 29 C.F.R. § 5.12.

(i) Contract Work Hours and Safety Standards Act: (i) Overtime requirements. No CONSULTANT or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek. (ii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (i) of this section the CONSULTANT and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such CONSULTANT and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (i) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (i) of this section. (iii) Withholding for unpaid wages and liquidated damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the CONSULTANT or sub-contractor under any such contract or any other Federal contract with the same prime CONSULTANT, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONSULTANT, such sums as may be determined to be necessary to satisfy any liabilities of such CONSULTANT or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (ii) of this section. (iv) Subcontracts. The CONSULTANT or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (i) through (iv) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime CONSULTANT shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (i) through (iv) of this section.

(j) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387) as amended. The CONSULTANT agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(k) Debarment and Suspension (Executive Orders 12549 and 12689): A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension. SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The CONSULTANT agrees to include a provision requiring such compliance in its lower tier covered transactions and subcontracts. The CONSULTANT shall certify compliance.

(l) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract,

grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency. CONSULTANT agrees to comply with this provision. CONSULTANT shall file the required certification.

(m) Rights to Inventions Made Under a Contract or Agreement: If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the CONSULTANT wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the CONSULTANT must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(n) Procurement of Recovered Materials: CONSULTANT must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the CONSULTANT shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired (i) competitively within a timeframe providing for compliance with the contract performance schedule; (ii) meeting contract performance requirements; or (iii) at a reasonable price. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. The CONSULTANT also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

(o) Access to Records and Reports: The CONSULTANT agrees to provide City, Recipient (if applicable), the DEO/HUD/CDBG Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONSULTANT agrees to provide the DEO/HUD/CDBG Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract. In compliance with the Disaster Recovery Act of 2018, the City and the CONSULTANT acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DEO/HUD/CDBG Administrator or the Comptroller General of the United States.

(p) Record Retention: CONSULTANT will retain all required records pertinent to this contract for a period of five years after closeout of the DEO/HUD/CDBG grant, beginning on a date as described in 2 C.F.R. §200.333 and retained in compliance with 2 C.F.R. §200.333. This provision is supplemental to other provisions in this Agreement.

(q) Federal Changes: CONSULTANT shall comply with all applicable Federal agency regulations, policies, procedures and directives, including without limitation those listed directly or by reference, as they may be amended or promulgated from time to time during the term of the contract.

(r) Safeguarding Personal Identifiable Information: CONSULTANT will take reasonable measures to safeguard protected personally identifiable information and other information designated as sensitive by the awarding agency or is considered sensitive consistent with applicable Federal, State and/or local laws regarding privacy and obligations of confidentiality.

(s) OHS Seal, LOGO, and Flags: The CONSULTANT shall not use the Department of Homeland Security (OHS) seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DEO/HUD/CDBG preapproval.

(t) No Obligation by Federal Government. The Federal Government is not a party to this agreement and is not subject to any obligations or liabilities to the non-Federal entity, CONSULTANT, or any other party pertaining to any matter resulting from the contract.

SECTION 26. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS. This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The CONSULTANT will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

SECTION 27. AUTHORITY TO SIGN. Each person signing this Agreement warrants **that** be or she is duly authorized to do so and to bind the respective party to the Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date written above for execution by CITY.

WITNESSES:

Monique Tauspin

Lisa Bloomer

CITY OF EDGEWATER

Glenn A. Irby

Glenn A. Irby, City Manager

Bonnie Zlotnik

Bonnie Zlotnik, City Clerk

Dated: 11/7/2023

WITNESSES:

Angela Green

Kelly Stoffer

FIRM

Witt O'Brien's LLC

Cheryl Joiner

(Authorized Officer Signature)

Cheryl Joiner, Director Contracts & Compliance

Dated: 10/25/2023

Approved by the City Council of the City of Edgewater at a meeting held on this 10th day of November, 2023 under Agenda Item No. 10a.

ATTACHMENT A (EMERGENCY CONTRACTS)
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Contractor, Witt O'Brien's LLC, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Cheryl Joiner

Signature of Contractor's Authorized Official

Cheryl Joiner, Director Contracts & Compliance

Name and Title of Contractor's Authorized Official

10/25/2023

Date



October 7, 2024

Kim McColl
Finance Director
Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

[Original delivered via email to kmccoll@ponce-inlet.org & jhall@ponce-inlet.org]

Re: Emergency Debris Monitoring Services Contract

Ms. McColl & Ms. Hall,

The City of Edgewater currently has three (3) vendors under contract to provide Emergency Debris Monitoring Services in accordance with the competitively bid solicitation RFP 23-ES-10. The initial period of these contracts is from 11/7/2023 thru 11/6/2026, with option for two additional one-year renewals. All vendors were awarded equally with no preference or ranking.

The vendors are listed below alphabetically:

- Goodwyn Mills Cawood (GMC), as successor & assign to Witt-O'Brien's LLC
- Tetra Tech, Inc.
- Thompson Consulting Services, LLS

The City of Edgewater consents and does not object to any of these vendors extending the same contract terms and conditions (i.e. piggyback) to the Town of Ponce Inlet.

Sincerely,

A handwritten signature in blue ink, appearing to read "Randy J. Coslow", is written over the word "Sincerely,".

Randy J. Coslow, P.E.
Director of Environmental Services / City Engineer
RCoslow@CityofEdgewater.org



Meeting Date: 10/17/2024

Agenda Item: 8-A

Report to Town Council

Topic: Financing for the 75' Quint Fire Apparatus.

- i. Acceptance of Capital Finance Bid Proposal from Cogent Leasing and Financing, Inc. for the 75' Quint Fire Apparatus.
- ii. Approval of Resolution 2024-20 Authorizing the Town Manager to Proceed with Entering into a Lease-Purchase Finance Agreement.

Summary: Please see attached staff report and supporting documents.

Suggested motion:

- i. To approve the acceptance of the capital finance bid proposal from Cogent Leasing and Financing, Inc. for the 75' Quint Fire Apparatus.
- ii. To approve Resolution 2024-20, authorizing the Town Manager to Proceed with Entering into a Lease-Purchase Finance Agreement.

Requested by: Chief Scales, Public Safety Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

Office of the Public Safety Director

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager
From: Daniel Scales, Public Safety Director
Date: October 9, 2024
Subject: Acceptance of Capital Finance Bid Proposal from Cogent Leasing and Financing, Inc. for Quint Fire Apparatus and Approval of Resolution 2024-20 Authorizing the Town Manager to Proceed with Entering into a Lease-Purchase Finance Agreement

MEETING DATE: October 17, 2024

BACKGROUND:

The Fire Department requires a new fire apparatus to enhance operational capabilities and maintain our current level of service. In August, a Request for Proposals (RFP) for fire apparatus capital financing was issued to secure the most favorable terms for acquiring a "quint" fire apparatus with a principal purchase amount of \$1,263,000 for a 10-year term. Following a reduction in interest rates by the Federal Reserve, the Town Council rejected the initial three bids at its meeting on September 19, 2024, and directed Staff to re-issue the RFP with 7- and 10-year term options. Four proposals were subsequently received by the new October 7, 2024 bid deadline, specifically from Cogent Leasing and Financing, Inc., TD Equipment Finance Inc., First American Equipment Finance, and Bank Funding, LLC.

PROPOSALS REVIEWED:

The new proposals have been thoroughly reviewed and evaluated by staff, as follows:

Vendor	Interest Rate	Term	Annual Payment	Initial Payment Date	Total Interest	Total Payment
Cogent Leasing and Financing, Inc.	4.18%	10 years	\$157,139.79	11-04-25	\$308,197.90	\$1,571,397.90
	3.92%	7 years	\$209,839.49	11-04-25	\$205,676.43	\$1,468,876.43
Bank Funding, LLC	4.40%	10 years	\$158,857.76	11-01-25	\$325,377.60	\$1,588,577.60
	4.22%	7 years	\$212,175.60	11-01-25	\$203,584.32	\$1,485,229.20
First American Equipment Finance	Did not Provide	10 years	N/A	N/A	N/A	N/A
	4.066%	7 years	\$210,941.21	10-31-25	\$213,588.47	\$1,476,588.47
TD Equipment Finance, Inc.	4.22%	10 <i>months</i>	\$1,263,000.00	11-30-24	\$24,706.00	\$1,287,706.00
	4.20%	7 <i>months</i>	\$1,263,000.00	11-30-24	\$17,891.15	\$1,280,891.15

Note that two proposals received did not meeting the RFP parameters. The proposal from TD Equipment Finance Inc. contained discrepancies over the length of the term, with the proposal exhibit providing 7- and 10-year terms, but the amortization schedule providing only 7 and 10 *months*. The terms offered did not meet the RFP conditions, so the proposal from TD Equipment Finance Inc. is not included for consideration.

First American Equipment Finance only provided a 7-year term, but not a 10-year terms. The submittal from First American Equipment Finance therefore did not meet the RFP conditions, so its proposal is not included for consideration.

ANALYSIS:

Of the two qualified bids, Cogent Leasing and Financing, Inc. offers the most competitive interest rate at 4.18% for 10 years, and 3.92% for 7 years. Additionally, Cogent Leasing and Financing, Inc. provides favorable payment terms, with the lowest annual payment of the three, and the first installment not due until November 4, 2025. Furthermore, this bank offers three different payment options for each of the two terms, including annual, semi-annual, and quarterly payments. The deferment of the first installment payment until November 4, 2025, allows for better fiscal planning and budget allocation.

Selecting Cogent Leasing and Financing, Inc. for this capital lease-purchase will result in lower total interest paid over the 7 or 10-year terms compared to the other proposal, providing long-term savings to the Town. The lower interest rate and deferred payment schedule aligns with the Town's financial planning and makes the proposal from Cogent Leasing and Financing, Inc. the most financially advantageous option.

ALTERNATIVES:

- Accept the proposal from Bank Funding, LLC at 4.22% interest for a 7-year term or 4.40% interest for a 10-year term.
- Decline all proposals and seek alternative financing options.

RECOMMENDATION:

It is recommended that the Town Council **accept** the capital lease-purchase proposal from Cogent Leasing and Financing, Inc. for the acquisition of the new fire apparatus with a principal amount of \$1,263,000, at either:

1. A 7-year term at a 3.92% interest rate, with annual payments of \$209,839.49 and a total cost of \$1,468,876.43;

OR

2. A 10-year term at a 4.18% interest rate, with annual payments of \$157,139.79 and a total cost of \$1,571,397.90.

Staff is also recommending that the Town Council **approve** Resolution 2024-20 authorizing the Town Manager to enter into a capital finance agreement with Cogent Leasing and Financing, Inc. pursuant to the terms selected above. Approving this capital lease will ensure the timely acquisition of critical fire apparatus while minimizing the financial impact on the Town. The draft Agreement and related Financing Documents are attached.

Attachment 1



Cogent Leasing and Financing, Inc.
420 S Orange Ave., Suite 850
Orlando, FL 32801
Phone: (410) 409-7579
Email: mhorkey@cogentbank.net

October 3, 2024

Town Clerk
Town of Ponce Inlet
4300 South Atlantic Ave.
Ponce Inlet, Florida 32127

Via Overnight Courier

RE: RFP #2024-03

Dear All:

Cogent Bank is pleased to present this proposal for tax-exempt lease financing to the Town in connection with its purchase of a new fire truck.

Lessee:	Town of Ponce Inlet, Florida
Lessor:	Cogent Leasing and Financing, Inc.
Type of Financing:	Tax-exempt lease financing. The Lease will constitute a "state or local bond" with the meaning of Section 103(a) of the Internal Revenue Code of 1986, as amended.
Net Obligation:	The lease shall be a net lease arrangement whereby Lessee is responsible for all costs of operation, maintenance, insurance, and taxes. Payments due under the lease agreement shall be based on the annual appropriation of funds during each year of the lease.
Equipment:	One (1) new fire truck
Total Equipment Cost:	\$1,263,200.00 (+/- 10%)
Total Lease Amount:	\$1,263,200.00 (+/- 10%)
Lease Terms:	Either seven (7) or ten (10) years
Lease Rates:	7 year Lease Rate: 3.92% 10 year Lease Rate: 4.18%
Rental Payments:	Please refer to Exhibits A, B, C, D, E and F - Sample Amortization Schedules. <i>Please note that the options provided represent payments in arrears. Lessor is willing to accept payments in advance or irregularly at the same Lease Rates and Lease Terms provided. At the request of the Lessee, Lessor will provide additional amortization schedules.</i>

Anticipated Closing

Date: On or before November 5, 2024

Rate Lock:

The indicated Lease Rate will be fixed until November 5, 2024. If, for any reason, the Lease is not closed by November 5, 2024, the Lessor may adjust the Lease Rate to reflect then current market conditions.

Pre-Payment

Premium: No-call throughout the term of the Lease

Tax Status:

Lessee will designate the lease as a qualified obligation (Bank Qualified), stating that the total amount of tax-exempt obligations (other than private activity bonds) to be issued by Lessee during the 2024 calendar year will not exceed ten million dollars (\$10,000,000).

The interest portion of the rental payments under the lease will be excludable from the gross income of Lessor for federal income taxation purposes. Upon a determination that the interest component of the rental payments under the lease is includable in gross income of Lessor for federal income tax purposes, the interest rate on the lease will increase to a rate sufficient to restore Lessor to its after-tax yield from and after the date such interest became includable in Lessor's gross income, and taking into account all penalties, fines, interest and additions to tax.

Reimbursement:

If Lessee intends to be reimbursed for any Equipment costs associated with this Agreement, intent for reimbursement from the proceeds of this Agreement must be evidenced and must qualify under Treasury Regulation Section 1.150.2.

Escrow Funding:

Proceeds of the Lease may be deposited with Cogent Bank. Payments to vendors will be made directly out of the escrow account upon the delivery to and acceptance of the Equipment by the Lessee. Lessor will maintain a security interest in the Escrow account.

Authorization:

Lessee's governing board shall provide Lessor with its resolution or ordinance authorizing this Agreement and shall designate the Individual(s) to execute all necessary documents used therein.

Legal Title:

Title to the Equipment will be in the name of the Lessee, subject to Lessor's interests under the lease agreement.

Legal Opinion(s):

Lessee's counsel shall furnish Lessor with an opinion with respect to Lessee's obligations under the lease documents described herein. This opinion shall be in a form and substance satisfactory to Lessor.

Other Costs and

Expenses: Documentation fee of \$500.00

Documentation:	Lease documentation will be furnished by Lessor subject to Lessee's review and approval. The documentation for the Lease will contain covenants, representations, and warranties usual and customary for transactions of this type and others appropriate to the transaction. All documentation to be executed in connection herewith shall be in satisfactory form and substance to Lessor.
Performance Bond:	N/A
Insurance:	Lessee shall furnish of (a) all risk physical damage insurance coverage for the full replacement cost of the Equipment, (b) \$1 million combined single limit liability insurance. Lessor shall be named as loss payee on casualty insurance and additional insured on liability insurance.
Financial Statements:	Lessee shall provide to Lessor financial statements for at least the last three consecutive years of financial information, as well as a current budget, demographics, and proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue the lease agreement as may be reasonably requested by Lessor.
Assignment:	Lessor may sell, assign or encumber all or any part of its right title and interest in any portion or all of the lease agreement including, without limitation, an assignment, transfer or conveyance to a trustee as part of a multiple asset pool to a partnership or trust or similar transaction; provided, however, in no event shall the Lessor assign such interests as a public offering. Lessee consents to a private placement transaction within the meaning of applicable federal securities laws. The lease agreement may be offered and sold solely to one or more persons who are reasonably believed to be qualified institutional buyers or accredited investors.
Disclosure:	Lessor is not a registered municipal advisor as defined under the Dodd-Frank Wall Street Reform and Consumer Protection Act and does not provide financial or tax advice.
Proposal Expiration:	Lessee must notify Lessor that the Lessor is the apparent winner of the bid by October 15, 2024, otherwise this Proposal shall expire unless extended, in writing, by Lessor.
Credit Due Diligence:	<p>In order for Lessor's credit administration group to expedite its review of this transaction, lessor will require the following information:</p> <ul style="list-style-type: none"> • 3 most recent years of audited financial statements (2023, 2022 and 2021) • Most recent budget • Lessee's w-9 • Related invoices, purchase orders and / or vendor quotes • Documentation referenced throughout the RFP and this Proposal • Municipal Loan Application and other info needed by Lessor

This Proposal is a summary regarding the financing transaction on the general terms and conditions outlined herein. This Proposal is not intended to and does not create any binding legal obligation on the part of either party. Credit, legal and investment approval have not yet been obtained for the amount or other aspects of the proposed financing, and after obtaining the same, any commitment will be subject to the negotiation, execution and delivery of final legal documentation acceptable to all parties and their counsel.

Lessor may change the terms or cease future consideration of the financing at any time without liability to Lessee. In any event, the terms and conditions of this Proposal, shall be superseded by and shall no longer be effective upon the execution and delivery of final legal documentation with respect to this proposed transaction.

This Proposal does not purport to summarize all of the terms and conditions upon which the lease is to be based, which terms and conditions would be contained fully in final documentation and indicates only the principal term and conditions under which the transaction will be considered.

It is a pleasure to offer this financing proposal to the Town. We hope that our genuine excitement regarding the opportunity shines through in our response. And as always, please don't hesitate to reach out with any questions.

Very truly yours,

Michael J. Horkey

Michael J. Horkey
President

Agreed to and Accepted by:
Town of Ponce Inlet, Florida

By: _____

Name: _____

Title: _____

Date: _____

Desired Term and Repayment Option: _____

Exhibit A
Sample 7 Year Amortization Schedule
Annual Payments in Arrears

Amortization Report 10/04/2024 3:05 PM
7 Year - Annual Payments in Arrears

Compounding Period: Annual

Nominal Annual Rate: 3.92%

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	11/4/2024	1,263,200.00	1		
2 Payment	11/4/2025	209,839.49	7	Annual	11/4/2031

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	11/4/2025	209,839.49	49,517.44	160,322.05	1,102,877.95
2	11/4/2026	209,839.49	43,232.82	166,606.67	936,271.28
3	11/4/2027	209,839.49	36,701.83	173,137.66	763,133.62
4	11/4/2028	209,839.49	29,914.84	179,924.65	583,208.97
5	11/4/2029	209,839.49	22,861.79	186,977.70	396,231.27
6	11/4/2030	209,839.49	15,532.27	194,307.22	201,924.05
7	11/4/2031	209,839.49	7,915.44	201,924.05	0.00
Grand Totals		1,468,876.43	205,676.43	1,263,200.00	

Last interest amount increased by 0.02 due to rounding.

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Exhibit B
Sample 7 Year Amortization Schedule
Semiannual Payments in Arrears

Amortization Report 10/04/2024 3:11 PM

7 Year - Semiannual Payments in Arrears

Compounding Period: Semiannual

Nominal Annual Rate: 3.92%

Cash Flow Data - Loans and Payments

	Event	Date	Amount	Number	Period	End Date
	1 Loan	11/4/2024	1,263,200.00	1		
	2 Payment	5/4/2025	104,049.29	14	Semiannual	11/4/2031

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	5/4/2025	104,049.29	24,758.72	79,290.57	1,183,909.43
2	11/4/2025	104,049.29	23,204.62	80,844.67	1,103,064.76
3	5/4/2026	104,049.29	21,620.07	82,429.22	1,020,635.54
4	11/4/2026	104,049.29	20,004.46	84,044.83	936,590.71
5	5/4/2027	104,049.29	18,357.18	85,692.11	850,898.60
6	11/4/2027	104,049.29	16,677.61	87,371.68	763,526.92
7	5/4/2028	104,049.29	14,965.13	89,084.16	674,442.76
8	11/4/2028	104,049.29	13,219.08	90,830.21	583,612.55
9	5/4/2029	104,049.29	11,438.81	92,610.48	491,002.07
10	11/4/2029	104,049.29	9,623.64	94,425.65	396,576.42
11	5/4/2030	104,049.29	7,772.90	96,276.39	300,300.03
12	11/4/2030	104,049.29	5,885.88	98,163.41	202,136.62
13	5/4/2031	104,049.29	3,961.88	100,087.41	102,049.21
14	11/4/2031	104,049.29	2,000.08	102,049.21	0.00
Grand Totals		1,456,690.06	193,490.06	1,263,200.00	

Last interest amount decreased by 0.08 due to rounding.

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Exhibit C
Sample 7 Year Amortization Schedule
Quarterly Payments in Arrears

Amortization Report 10/04/2024 3:15 PM

7 Year - Quarterly Payments in Arrears

Compounding Period: Quarterly

Nominal Annual Rate: 3.92%

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	11/4/2024	1,263,200.00	1		
2 Payment	2/4/2025	51,806.01	28	Quarterly	11/4/2031

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	2/4/2025	51,806.01	12,379.36	39,426.65	1,223,773.35
2	5/4/2025	51,806.01	11,992.98	39,813.03	1,183,960.32
3	8/4/2025	51,806.01	11,602.81	40,203.20	1,143,757.12
4	11/4/2025	51,806.01	11,208.82	40,597.19	1,103,159.93
5	2/4/2026	51,806.01	10,810.97	40,995.04	1,062,164.89
6	5/4/2026	51,806.01	10,409.22	41,396.79	1,020,768.10
7	8/4/2026	51,806.01	10,003.53	41,802.48	978,965.62
8	11/4/2026	51,806.01	9,593.86	42,212.15	936,753.47
9	2/4/2027	51,806.01	9,180.18	42,625.83	894,127.64
10	5/4/2027	51,806.01	8,762.45	43,043.56	851,084.08
11	8/4/2027	51,806.01	8,340.62	43,465.39	807,618.69
12	11/4/2027	51,806.01	7,914.66	43,891.35	763,727.34
13	2/4/2028	51,806.01	7,484.53	44,321.48	719,405.86
14	5/4/2028	51,806.01	7,050.18	44,755.83	674,650.03
15	8/4/2028	51,806.01	6,611.57	45,194.44	629,455.59
16	11/4/2028	51,806.01	6,168.66	45,637.35	583,818.24
17	2/4/2029	51,806.01	5,721.42	46,084.59	537,733.65
18	5/4/2029	51,806.01	5,269.79	46,536.22	491,197.43
19	8/4/2029	51,806.01	4,813.73	46,992.28	444,205.15
20	11/4/2029	51,806.01	4,353.21	47,452.80	396,752.35
21	2/4/2030	51,806.01	3,888.17	47,917.84	348,834.51
22	5/4/2030	51,806.01	3,418.58	48,387.43	300,447.08
23	8/4/2030	51,806.01	2,944.38	48,861.63	251,585.45
24	11/4/2030	51,806.01	2,465.54	49,340.47	202,244.98
25	2/4/2031	51,806.01	1,982.00	49,824.01	152,420.97
26	5/4/2031	51,806.01	1,493.73	50,312.28	102,108.69
27	8/4/2031	51,806.01	1,000.67	50,805.34	51,303.35
28	11/4/2031	51,806.01	502.66	51,303.35	0.00
Grand Totals		1,450,568.28	187,368.28	1,263,200.00	

Last interest amount decreased by 0.11 due to rounding.

Exhibit D
Sample 10 Year Amortization Schedule
Annual Payments in Arrears

Amortization Report 10/04/2024 3:19 PM
 10 Year - Annual Payments in Arrears

Compounding Period: Annual

Nominal Annual Rate: 4.18%

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	11/4/2024	1,263,200.00	1		
2 Payment	11/4/2025	157,139.79	10	Annual	11/4/2034

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	11/4/2025	157,139.79	52,801.76	104,338.03	1,158,861.97
2	11/4/2026	157,139.79	48,440.43	108,699.36	1,050,162.61
3	11/4/2027	157,139.79	43,896.80	113,242.99	936,919.62
4	11/4/2028	157,139.79	39,163.24	117,976.55	818,943.07
5	11/4/2029	157,139.79	34,231.82	122,907.97	696,035.10
6	11/4/2030	157,139.79	29,094.27	128,045.52	567,989.58
7	11/4/2031	157,139.79	23,741.96	133,397.83	434,591.75
8	11/4/2032	157,139.79	18,165.94	138,973.85	295,617.90
9	11/4/2033	157,139.79	12,356.83	144,782.96	150,834.94
10	11/4/2034	157,139.79	6,304.85	150,834.94	0.00
Grand Totals		1,571,397.90	308,197.90	1,263,200.00	

Last interest amount decreased by 0.05 due to rounding.

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Exhibit E
Sample 10 Year Amortization Schedule
Semiannual Payments in Arrears

Amortization Report 10/04/2024 3:23 PM
10 Year - Semiannual Payments in Arrears

Compounding Period: Semiannual

Nominal Annual Rate: 4.18%

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	11/4/2024	1,263,200.00	1		
2 Payment	5/4/2025	77,925.75	20	Semiannual	11/4/2034

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	5/4/2025	77,925.75	26,400.88	51,524.87	1,211,675.13
2	11/4/2025	77,925.75	25,324.01	52,601.74	1,159,073.39
3	5/4/2026	77,925.75	24,224.63	53,701.12	1,105,372.27
4	11/4/2026	77,925.75	23,102.28	54,823.47	1,050,548.80
5	5/4/2027	77,925.75	21,956.47	55,969.28	994,579.52
6	11/4/2027	77,925.75	20,786.71	57,139.04	937,440.48
7	5/4/2028	77,925.75	19,592.51	58,333.24	879,107.24
8	11/4/2028	77,925.75	18,373.34	59,552.41	819,554.83
9	5/4/2029	77,925.75	17,128.70	60,797.05	758,757.78
10	11/4/2029	77,925.75	15,858.04	62,067.71	696,690.07
11	5/4/2030	77,925.75	14,560.82	63,364.93	633,325.14
12	11/4/2030	77,925.75	13,236.50	64,689.25	568,635.89
13	5/4/2031	77,925.75	11,884.49	66,041.26	502,594.63
14	11/4/2031	77,925.75	10,504.23	67,421.52	435,173.11
15	5/4/2032	77,925.75	9,095.12	68,830.63	366,342.48
16	11/4/2032	77,925.75	7,656.56	70,269.19	296,073.29
17	5/4/2033	77,925.75	6,187.93	71,737.82	224,335.47
18	11/4/2033	77,925.75	4,688.61	73,237.14	151,098.33
19	5/4/2034	77,925.75	3,157.96	74,767.79	76,330.54
20	11/4/2034	77,925.75	1,595.21	76,330.54	0.00
Grand Totals		1,558,515.00	295,315.00	1,263,200.00	

Last interest amount decreased by 0.10 due to rounding.

Exhibit F **Sample 10 Year Amortization Schedule** **Quarterly Payments in Arrears**

Amortization Report 10/04/2024 3:25 PM

10 Year - Quarterly Payments in Arrears

Compounding Period: Quarterly

Nominal Annual Rate: 4.18%

Cash Flow Data - Loans and Payments

Event	Date	Amount	Number	Period	End Date
1 Loan	11/4/2024	1,263,200.00	1		
2 Payment	2/4/2025	38,801.06	40	Quarterly	11/4/2034

TValue Amortization Schedule - Normal, 30E3/360

	Date	Payment	Interest	Principal	Balance
Loan	11/4/2024				1,263,200.00
1	2/4/2025	38,801.06	13,200.44	25,600.62	1,237,599.38
2	5/4/2025	38,801.06	12,932.91	25,868.15	1,211,731.23
3	8/4/2025	38,801.06	12,662.59	26,138.47	1,185,592.76
4	11/4/2025	38,801.06	12,389.44	26,411.62	1,159,181.14
5	2/4/2026	38,801.06	12,113.44	26,687.62	1,132,493.52
6	5/4/2026	38,801.06	11,834.56	26,966.50	1,105,527.02
7	8/4/2026	38,801.06	11,552.76	27,248.30	1,078,278.72
8	11/4/2026	38,801.06	11,268.01	27,533.05	1,050,745.67
9	2/4/2027	38,801.06	10,980.29	27,820.77	1,022,924.90
10	5/4/2027	38,801.06	10,689.57	28,111.49	994,813.41
11	8/4/2027	38,801.06	10,395.80	28,405.26	966,408.15
12	11/4/2027	38,801.06	10,098.97	28,702.09	937,706.06
13	2/4/2028	38,801.06	9,799.03	29,002.03	908,704.03
14	5/4/2028	38,801.06	9,495.96	29,305.10	879,398.93
15	8/4/2028	38,801.06	9,189.72	29,611.34	849,787.59
16	11/4/2028	38,801.06	8,880.28	29,920.78	819,866.81
17	2/4/2029	38,801.06	8,567.61	30,233.45	789,633.36
18	5/4/2029	38,801.06	8,251.67	30,549.39	759,083.97
19	8/4/2029	38,801.06	7,932.43	30,868.63	728,215.34
20	11/4/2029	38,801.06	7,609.85	31,191.21	697,024.13
21	2/4/2030	38,801.06	7,283.90	31,517.16	665,506.97
22	5/4/2030	38,801.06	6,954.55	31,846.51	633,660.46
23	8/4/2030	38,801.06	6,621.75	32,179.31	601,481.15
24	11/4/2030	38,801.06	6,285.48	32,515.58	568,965.57
25	2/4/2031	38,801.06	5,945.69	32,855.37	536,110.20
26	5/4/2031	38,801.06	5,602.35	33,198.71	502,911.49
27	8/4/2031	38,801.06	5,255.43	33,545.63	469,365.86
28	11/4/2031	38,801.06	4,904.87	33,896.19	435,469.67
29	2/4/2032	38,801.06	4,550.66	34,250.40	401,219.27
30	5/4/2032	38,801.06	4,192.74	34,608.32	366,610.95
31	8/4/2032	38,801.06	3,831.08	34,969.98	331,640.97
32	11/4/2032	38,801.06	3,465.65	35,335.41	296,305.56
33	2/4/2033	38,801.06	3,096.39	35,704.67	260,600.89
34	5/4/2033	38,801.06	2,723.28	36,077.78	224,523.11
35	8/4/2033	38,801.06	2,346.27	36,454.79	188,068.32
36	11/4/2033	38,801.06	1,965.31	36,835.75	151,232.57
37	2/4/2034	38,801.06	1,580.38	37,220.68	114,011.89
38	5/4/2034	38,801.06	1,191.42	37,609.64	76,402.25
39	8/4/2034	38,801.06	798.4	38,002.66	38,399.59
40	11/4/2034	38,801.06	401.47	38,399.59	0.00
Grand Totals		1,552,042.40	288,842.40	1,263,200.00	

Last interest amount increased by 0.19 due to rounding.

RFP 2024-03 Capital Financing – Purchase of Fire Apparatus – REFERENCES

#1	Agency	Hunterdon County Educational Services Commission
Address	37 Hoffman's Crossing Road	
Town, State, ZIP	Califon, New Jersey 07830	
Contact Person	Dennis R. Balodis	
Telephone	(908) 439-4280 ext. 4510	Email: dbalodis@hunterdonesc.org
Date(s) of Service	Numerous over multiple years	
Type of Service	Tax-exempt Equipment Financing	
Comments:		
#2	Agency	Town of Bronson
Address	650 Oak Street, PO Box 266	
Town, State, ZIP	Bronson, FL 32621	
Contact Person	Wendy Maragh	
Telephone	(352) 486-2354	Email: bronsonclerk@townofbronson.org
Date(s) of Service	April, 2024	
Type of Service	Tax-exempt Equipment Financing	
Comments:		
#3	Agency	Town of Clover
Address	116 Bethel Street	
Town, State, ZIP	Clover, SC 29710	
Contact Person	Mark Bates	
Telephone	(803) 222-9495	Email: mbates@cloversc.org
Date(s) of Service	September, 2023	
Type of Service	Tax-exempt Equipment Financing	
Comments:		

REFERENCES – CONTINUED

#4	Agency	City of Fairborn	
Address	44 W. Hebble Ave.		
Town, State, ZIP	Fairborn, OH 45324		
Contact Person	Annetta Williams		
Telephone	(937) 754-3005	Email:	annetta.williams@fairbornoh.gov
Date(s) of Service	October, 2023		
Type of Service	Tax-exempt Equipment Financing		
Comments:			
#5	Agency	Guilford Public Schools	
Address	55 Park Street		
Town, State, ZIP	Guilford, CT 06437		
Contact Person	Linda Trudeau		
Telephone	(203) 458-0001 ext. 202	Email:	trudeau@guilfordschools.org
Date(s) of Service	July, 2024		
Type of Service	Tax-exempt Equipment Financing		
Comments:			

NON-COLLUSION AFFIDAVIT

I, Michael J. Horkey, depose and say that:

1. I am President of the firm Cogent Leasing and Financing, Inc. the firm submitting the response described in this proposal for RFP 2024-03; Capital Financing – Purchase of Fire Apparatus and that I executed the said response with full authority to do so;
2. The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
3. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor;
4. No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit, or not to submit, a bid for the purpose of restricting competition; and
5. The statements contained in this affidavit are true and correct, and made with full knowledge that the Town of Ponce Inlet relies upon the truth of the statements contained in this affidavit in awarding contracts for said project.

Proposer's Signature

October 4, 2024

Date Signed

STATE OF: SOUTH CAROLINA

COUNTY OF: CHARLESTON

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization this 4 day of OCTOBER, 2024, by Joseph Wilhite as authorized representative of the bidder agency submitting this RFP 2024-03 packet.
Notary Stamp/Seal

Notary Signature

Personally known _____ OR _____ Produced Identification: DRIVER LICENSE
Type of ID presented: SCDUT# 103904702





BankFunding, LLC

a subsidiary of a MBE/SWAM-certified firm

Stanley G. Oldroyd
Managing Director
BankFunding, LLC
14024 Clopper Road
Boyd's, MD 20841
Phone 301-518-4360
Email sol_droyd@comcast.net

October 1, 2024

Ms. Kim Cherbano
Town Clerk
Town of Ponce Inlet
4300 South Atlantic Ave.
Ponce Inlet, FL 32127

Re: RFP #2024-03 - Financing of Fire Apparatus

Dear Ms. Cherbano:

BankFunding, LLC is pleased to propose the following terms to provide tax-exempt lease/purchase financing of the new fire apparatus for the Town, in accordance with your Request For Proposals.

BankFunding, LLC is not a registered Municipal Advisor with the SEC or MSRB, and is not acting as a municipal or financial advisor. The information provided in this document is not intended to be and should not be construed as "advice" within the meaning of Section 15B of the Securities Exchange Act of 1934 and the municipal advisor rules of the SEC.

Lessee: **Town Council of the Town of Ponce Inlet, FL.**
Lessee is a state or political subdivision within the meaning of Section 103(e) of the Internal Revenue Code of 1986, as amended (the "Code").

Lessor: **BankFunding, LLC, Boyd's, MD, on behalf of its Assignee/Designee.**

Type of Financing: Schedule under a tax-exempt Lease/Purchase Agreement (the "Agreement"). Said Agreement shall be a net lease arrangement whereby Lessee is responsible for all costs of operation, maintenance, insurance and taxes. Payments due under the Agreement shall be based on the annual appropriation of funds during each year of the lease.

Ms. Kim Cherbano
October 1, 2024
Page 2

Equipment Type: new E-One fire rescue truck, as outlined in the RFP, subject to review and acceptance by the Lessor.

Date of Funding: assumed to be prior to November 6, 2024.

Amount Financed: assumed to be \$1,263,200.

Option 1

Lease Term / Rate: 7 years / 4.22%, or as adjusted with movements in Treasury rates (see Proposal Expiration below).

Payments: Seven (7) payments of \$212,175.60, payable annually in arrears, approximately as shown on the attached amortization schedule.

Option 2

Lease Term / Rate: 10 years / 4.40%, or as adjusted with movements in Treasury rates (see Proposal Expiration below).

Payments: Ten (10) payments of \$158,857.76, payable annually in arrears, approximately as shown on the attached amortization schedule.

Escrow Funding: Subject to the terms of acceptance of this proposal, Lessor is willing to fund the final Amount Financed for this transaction into an escrow account as a means of holding the Lease Rate. In the event an escrow account is utilized, the escrow account will be used to pay equipment vendors, contractors, and any escrow expenses. Lessor will review and approve disbursement requests prior to disbursement of funds by the Escrow Agent.

Pre-Payment: Lessee will have the option to pre-pay the remaining lease balance on any payment due date after the first anniversary for 102% of the remaining balance.

Reimbursement: If Lessee intends to be reimbursed for any equipment costs associated with this Agreement, intent for reimbursement from the proceeds of this Agreement must be evidenced, and must qualify under Treasury Regulation Section 1.150.2.

Authorized Signors: Lessee's governing board shall provide Lessor with its resolution or ordinance authorizing this Agreement and shall designate the Individual(s) to execute all necessary documents used therein.

Legal Title: Title to the equipment will be in the name of the Lessee. Lessor will be granted a security interest or lien on all collateral being financed.

Insurance: Lessee shall furnish confirmation of all-risk physical damage insurance coverage for the full cost of the property plus one million dollars (\$1,000,000) combined single limit property damage and bodily injury insurance covering the property. In the event the Lessee maintains self-insurance, or alternative coverage, Lessor must approve the final insurance arrangements.

Documentation: Documentation will be industry-standard and will be furnished by Lessor subject to negotiation between the parties.

Legal Opinion: Lessee's counsel shall furnish Lessor with an opinion covering this transaction and the documents used herein. This opinion shall be in a form and substance satisfactory to Lessor.

Proposal Expiration: In order to hold the interest rate through the date of funding into escrow, Lessee must notify Lessor that the Lessor is the apparent winner of the bid by October 13, 2024. If notification occurs by this date the Lessor will honor the quoted Lease Rate for a closing on or before November 6, 2024.

However, if notice is not received by October 13, 2024, or if funding does not take place by November 6, 2024, the Lease Rate and Lease Payment Amounts may be adjusted up or down in accordance with 79% of any change in the 5-year SOFR swap rate (currently 3.20%).

Financial Statements: Lessee shall provide to Lessor updated financial statements as needed so that the Lessor has at least the last three consecutive years of financial information, as well as a current budget, demographics, and proof of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be reasonably requested by Lessor.

This proposal is subject to final credit approval by the Credit/Investment Committee of the Lessor, and to mutually-acceptable documentation. To render a credit decision, Lessee shall provide Lessor with the information requested above.

Ms. Kim Cherbano
October 1, 2024
Page 4

Upon receipt of the signed proposal, we will endeavor to provide you with a timely commitment.
It is a pleasure to offer this proposal to the Town.

Sincerely,
BankFunding, LLC



Stanley G. Oldroyd
Managing Director

The proposed financing terms of Option ____ as outlined above are hereby agreed to and
accepted by:

(Name) (Title) (Date)

Lessor: BankFunding, LLC
Lessee: Town of Ponce Inlet, FL

Option 1

		4.22%				
	payment	interest	principal	balance	pre-payment	
11/1/2024				\$ 1,263,200.00	N/A	
11/1/2025	\$ 212,175.60	53,307.04	158,868.56	1,104,331.44	N/A	
11/1/2026	212,175.60	46,602.79	165,572.81	938,758.63	\$ 957,533.80	
11/1/2027	212,175.60	39,615.61	172,559.99	766,198.64	781,522.61	
11/1/2028	212,175.60	32,333.58	179,842.02	586,356.62	598,083.76	
11/1/2029	212,175.60	24,744.25	187,431.35	398,925.27	406,903.78	
11/1/2030	212,175.60	16,834.65	195,340.95	203,584.32	207,656.01	
11/1/2031	212,175.60	8,591.28	203,584.32	(0.00)	(0.00)	
	\$ 1,485,229.20	\$ 222,029.20	\$ 1,263,200.00			

Lessor: BankFunding, LLC
Lessee: Town of Ponce Inlet, FL

Option 2

		4.40%			
	payment	interest	principal	balance	pre-payment
11/1/2024				\$ 1,263,200.00	N/A
11/1/2025	\$ 158,857.76	55,580.80	103,276.96	1,159,923.04	N/A
11/1/2026	158,857.76	51,036.61	107,821.15	1,052,101.89	\$ 1,073,143.93
11/1/2027	158,857.76	46,292.48	112,565.28	939,536.62	958,327.35
11/1/2028	158,857.76	41,339.61	117,518.15	822,018.47	838,458.84
11/1/2029	158,857.76	36,168.81	122,688.95	699,329.52	713,316.11
11/1/2030	158,857.76	30,770.50	128,087.26	571,242.26	582,667.10
11/1/2031	158,857.76	25,134.66	133,723.10	437,519.16	446,269.54
11/1/2032	158,857.76	19,250.84	139,606.92	297,912.24	303,870.49
11/1/2033	158,857.76	13,108.14	145,749.62	152,162.62	155,205.87
11/1/2034	158,857.76	6,695.14	152,162.62	0.00	0.00
	\$ 1,588,577.60	\$ 325,377.60	\$ 1,263,200.00		

(please see attached list of references)

RFP 2024-03 Capital Financing – Purchase of Fire Apparatus – REFERENCES

#1	Agency	
Address		
Town, State, ZIP		
Contact Person		
Telephone		Email:
Date(s) of Service		
Type of Service		
Comments:		
#2	Agency	
Address		
Town, State, ZIP		
Contact Person		
Telephone		Email:
Date(s) of Service		
Type of Service		
Comments:		
#3	Agency	
Address		
Town, State, ZIP		
Contact Person		
Telephone		Email:
Date(s) of Service		
Type of Service		
Comments:		

BankFunding, LLC was organized in 2016 to provide tax-exempt lease financing of essential-use vehicles and equipment for Municipalities and K-12 school districts.

The Managing Director of BankFunding, LLC has been in the equipment-financing business for over 20 years and has originated hundreds of millions of dollars of equipment-based financing transactions.

References for BankFunding, LLC would include the following.

Marie Ash, Procurement
Wicomico County BOE
Salisbury, MD
410-677-4503
mash@wcboe.org

Cathy Wuertz, Deputy Comptroller
Town of Babylon
Lindenhurst, NY
631-957-3044
cwuertz@townofbabylon.com

Krista Wareham
Finance Manager
City of Fredericksburg, TX
830-990-2039
kwareham@fbgtx.org

Laurie A. Andre
Acting Director, GGSC
State of Maine
207-592-0725
laurie.a.andre@maine.gov

David Griesel
General Manager
Oklahoma Environmental Management Authority
El Reno, OK
405-262-0161
dgriesel@oemaok.org

STATE OF: Maryland COUNTY OF: Montgomery

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization
this 30 day of September, 2024, by Stanley G. Oldroyd
 as authorized representative of the bidder agency submitting this RFP 2024-03 packet.

[Signature]
Notary Signature

Notary Stamp/Seal

TELLY MICHALOPOULOS
Notary Public - State of Maryland
Montgomery County
My Commission Expires Nov 5, 2027

Personally known _____ OR X Produced Identification: _____
Type of ID presented: MD driver's license

RESOLUTION 2024-20

A RESOLUTION OF TOWN OF PONCE INLET, VOLUSIA COUNTY FLORIDA, AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE-PURCHASE AGREEMENT WITH COGENT LEASING AND FINANCING, INC., , WITH RESPECT TO THE ACQUISITION, FINANCING, LEASING, AND PURCHASE OF A 75' QUINT FIRE APPARATUS; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS REQUIRED IN CONNECTION THEREWITH; AUTHORIZING ALL OTHER ACTIONS NECESSARY TO THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED BY THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Ponce Inlet, a municipal corporation duly organized and existing as a political subdivision of the State of Florida ("Lessee"), is authorized by the laws of the State of Florida to purchase, acquire, and lease personal property for the benefit of Lessee and to enter into contracts with respect thereto; and

WHEREAS, Lessee desires to acquire, finance, lease, and purchase a 75' Quint fire apparatus with a principal cost not to exceed \$1,263,000, constituting personal property necessary for Lessee to perform essential governmental functions (the "Equipment"); and

WHEREAS, Lessee proposes to enter into that certain Lease-Purchase Agreement (the "Agreement"), with Cogent Leasing and Financing, Inc. ("Lessor"), the form of which has been available for review by the governing body of Lessee prior to this meeting; and

WHEREAS, Lessee has taken the necessary steps, including those relating to any applicable legal bidding requirements, to arrange for the acquisition of the Equipment; and

WHEREAS, the governing body of Lessee deems it for the benefit of Lessee and for the efficient and effective administration thereof to enter into the Financing Documents and any other documentation necessary, convenient or appropriate for the purpose of the financing the Equipment on the terms and conditions described therein;

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET FLORIDA, AS FOLLOWS:

SECTION 1. Lessee is hereby authorized to execute and deliver the Agreement with principal components of rental payments in an aggregate amount not to exceed \$1,263,000.

SECTION 2. The Financing Documents and the acquisition and financing of the Equipment under the terms and conditions as described in the Financing Documents are hereby approved. The Town Manager or designee of Lessee is authorized to execute, acknowledge, and deliver the Financing Documents and any and all instruments, documents and certificates which may be

required by or provided for in the Financing Documents or as may otherwise be required for or necessary, convenient or appropriate to the financing described in this resolution together with any changes, insertions and omissions therein as may be approved by the officer(s) who execute the Financing Documents, such approval to be conclusively evidenced by such execution and delivery of the Financing Documents. The Town Manager or designee of Lessee is authorized to affix the official seal of Lessee to the Financing Documents and attest the same.

SECTION 3. The proper officers of Lessee are authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do or cause to be done any and all other acts and things as necessary or proper for carrying out this resolution and the Financing Documents.

SECTION 4. Pursuant to Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), Lessee hereby specifically designates the Agreement as a "qualified tax-exempt obligation" for purposes of Section 265(b)(3) of the Code.

SECTION 5. Nothing contained in this resolution, the Agreement nor any other instrument shall be construed with respect to Lessee as incurring a pecuniary liability or charge upon the general credit of Lessee or against its taxing power, nor shall the breach of any agreement contained in this resolution, the Agreement or any other instrument or document executed in connection therewith impose any pecuniary liability upon Lessee or any charge upon its general credit or against its taxing power, except to the extent that the rental payments payable under the Agreement are special limited obligations of Lessee as provided in the Agreement.

SECTION 6. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

SECTION 7. Effective Date. This resolution shall take effect immediately upon its adoption.

It was moved by _____ and seconded by _____ that said Resolution be adopted. A roll call vote of the Town Council on said motion resulted as follows:

Mayor Paritsky, Seat #1	_____
Councilmember Milano, Seat #2	_____
Councilmember White, Seat #3	_____
Councilmember Villanella, Seat #4	_____
Vice-Mayor Smith, Seat #5	_____

Passed this 17th day of October 2024.

Town of Ponce Inlet, Florida

Lois A. Paritsky, Mayor

ATTEST:

Kim Cherbano, CMC
Town Clerk

MASTER LEASE PURCHASE AGREEMENT

This Master Lease Purchase Agreement (this "Agreement"), dated as of [DATE], is made and entered into by and between [LESSOR] (together with its successors and assigns, "Lessor"), and [LESSEE], a political subdivision of the State of [State] ("Lessee").

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. LEASE OF EQUIPMENT; FUNDING

1.1. Lease; Possession and Use. Lessor hereby agrees to sell, transfer and lease to Lessee, and Lessee hereby agrees to acquire, purchase and lease from Lessor the property described in each Lease Schedule (defined herein) executed and delivered by Lessor and Lessee, upon the terms and conditions set forth herein, together with all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto (the "Equipment"). Each Lease (defined herein) executed and delivered by Lessor and Lessee pursuant to this Agreement shall constitute a separate and independent lease and installment purchase of the Equipment described therein. This Agreement is not a commitment by Lessor to enter into any Lease and nothing in this Agreement shall be construed to impose any obligation upon Lessor to enter into any proposed Lease. The decision whether Lessor enters into any Lease is within Lessor's sole discretion. As used herein, (i) "Lease Schedule" means a schedule substantially in the form attached as Exhibit A to this Agreement, together with all addenda, riders, attachments, certificates and exhibits thereto, as the same may from time to time be amended, modified or supplemented, and (ii) "Lease" means a Lease Schedule each together with this Agreement the terms and conditions of which are incorporated therein.

1.2. Funding. Unless otherwise provided in the applicable Lease Schedule, in order to provide financing to pay the costs to acquire and install the Equipment and to pay certain costs related to the execution and delivery of the Lease Documents (defined herein) as set forth in the applicable Lease Schedule (the "Purchase Price"), Lessor and Lessee shall execute and deliver an escrow agreement relating to such Schedule in form and substance and with an escrow agent satisfactory to Lessor (an "Escrow Agreement"). If all conditions set forth in Section 1.3 have been satisfied in full or waived, then Lessor will deposit or cause to be deposited into an escrow fund under the related Escrow Agreement, if applicable, or pay to Lessee an amount equal to the Purchase Price for the Equipment to be financed under the related Lease Schedule.

1.3. Funding Requirements. The funding of the Purchase Price and the performance by Lessor of any of its obligations pursuant to any Lease, are subject to the satisfaction or waiver of the following:

(a) Lessor has received all of the following documents, which shall be reasonably satisfactory, in form and substance, to Lessor: (1) evidence of insurance coverage or self-insurance as required by the Lease; (2) an opinion of Lessee's counsel and/or bond counsel to Lessee with respect to certain matters related to the Lease; (3) waivers of third party holders of interests in the real property where the Equipment will be located, as Lessor may deem necessary; (4) copies of resolutions by Lessee's governing body, duly authorizing the Lease and the Escrow Agreement and incumbency certificates for the person(s) executing the Lease and the Escrow Agreement; (5) such documents and certificates as Lessor may request relating to federal tax-exemption of interest payable under the Lease, including (without limitation) IRS Form 8038-G or 8038-GC and evidence of the adoption of a reimbursement resolution or other official action in the event that Lessee is to be reimbursed for expenditures that it has paid more than 60 days prior to the funding of the Purchase Price; (6) if all or a portion of the Purchase Price will be paid to Lessee (or vendor(s) or supplier(s) of the Equipment on behalf of Lessee), an acceptance certificate for the Equipment (substantially in the form attached as Exhibit B to this Agreement)(an "Acceptance Certificate"); and (7) such other documents and information previously identified by Lessor or otherwise reasonably requested by Lessor.

- (b) Lessee has executed and delivered to Lessor the Lease Schedule, its related Payment Schedule and the related Escrow Agreement (if applicable);
- (c) no Event of Default shall have occurred and be continuing under any Lease;
- (d) no material adverse change shall have occurred in the financial condition of Lessee;
- (e) the Equipment is reasonably satisfactory to Lessor and is free and clear of any Liens (defined herein) other than the respective rights of Lessor and Lessee as herein provided; and
- (f) all representations of Lessee in the Lease remain true, accurate and complete.

1.4. Delivery, Installation and Acceptance of Equipment. Lessee shall order each Equipment, shall cause the Equipment to be delivered and installed at the locations specified under the applicable Lease Schedule and shall pay all taxes, delivery costs and installation costs, if any, in connection therewith. If the Purchase Price is deposited under an Escrow Agreement for the acquisition of the Equipment, such funds shall be disbursed as provided therein. The insufficiency of proceeds of any Lease to pay all costs of the Equipment subject thereto shall not affect Lessee's obligations under this Section. When the Equipment described in such Lease Schedule is delivered, installed and accepted, Lessee shall promptly execute and deliver to Lessor an Acceptance Certificate for the Equipment.

2. TERM

2.1. Term. The term of each Lease (the "Lease Term") shall commence on the Lease Date set forth in the applicable Lease Schedule and shall continue until the end of the fiscal year of Lessee in effect at such Lease Date (the "Original Term"); provided that the Lease Term for each Lease may be continued, solely at the option of Lessee, at the end of the Original Term or any renewal term of each Lease, each having a duration of one year and a term coextensive with Lessee's fiscal year or such earlier date specified in the Lease (each a "Renewal Term"), as specified in the Lease Schedule applicable thereto up to the maximum Lease Term set forth in such Lease. At the end of the Original Term and at the end of each Renewal Term until the maximum Lease Term has been completed, Lessee shall be deemed to have exercised its option to continue each Lease for the next Renewal Term, unless sooner terminated pursuant to the Lease.

3. RENTAL PAYMENTS

3.1. Rental Payments. Lessee agrees to pay the rent payments ("Rental Payments") in the amounts and on the dates (each a "Payment Date") as specified in the Payment Schedule attached to each Lease Schedule. A portion of each Rental Payment is paid as interest as specified in the Payment Schedule for each Lease. All Rental Payments shall be paid to Lessor, at such places as Lessor may from time to time designate by written notice to Lessee. Lessee shall pay the Rental Payments with lawful money of the United States of America from moneys legally available therefor.

3.2. Current Expense. The obligations of Lessee under this Agreement and all Lease Schedules, including its obligation to pay the Rental Payments due in any fiscal year shall constitute a current expense of Lessee for such fiscal year and shall not constitute an indebtedness of Lessee within the meaning of the Constitution and laws of the State of [STATE] (the "State"). THE RENTAL PAYMENTS AND ANY OTHER AMOUNTS PAYABLE HEREUNDER ARE TO BE MADE ONLY FROM LESSEE'S LEGALLY AVAILABLE REVENUES APPROPRIATED ON AN ANNUAL BASIS, AND NONE OF LESSEE, THE STATE, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY ANY SUMS DUE UNDER A LEASE FROM THE COMPELLED LEVY OF AD VALOREM OR OTHER TAXES EXCEPT FROM THOSE LEGALLY AVAILABLE REVENUES APPROPRIATED BY LESSEE ON AN ANNUAL BASIS. Nothing herein shall constitute a pledge by Lessee of the full faith and credit or taxing power of the Lessee, the State or any political subdivision or

agency thereof. The person or entity in charge of preparing Lessee's budget will include in the budget request for each fiscal year the Rental Payments to become due during such fiscal year, and will use all reasonable and lawful means available to secure the appropriation of money for such fiscal year sufficient to pay all Rental Payments coming due therein; provided that Lessee's governing body retains the authority to approve or reject such budget request. Lessor acknowledges that appropriation for Rental Payments and any other amounts payable hereunder is a governmental function which Lessee cannot contractually commit itself in advance to perform. Without committing itself to do so, Lessee reasonably believes that moneys in an amount sufficient to make all Rental Payments can and will lawfully be appropriated and made available to permit Lessee's continued utilization of the Equipment in the performance of its essential functions during the applicable Lease Term.

3.3. Unconditional Rental Payments. Subject to Section 3.4 hereof, (a) Lessee's obligation to make Rental Payments and any other payments hereunder shall be absolute and unconditional; (b) Lessee shall make such payments when due and shall not withhold any of these payments pending final resolution of any disputes; (c) Lessee shall not assert any right of set-off or counterclaim against its obligation to make these payments; (d) Lessee's obligation to make Rental Payments or other payments shall not be abated through accident, unforeseen circumstances, failure of the Equipment to perform as desired, damage or destruction to the Equipment, loss of possession of the Equipment or obsolescence of the Equipment; and (e) Lessee shall be obligated to continue to make payments required of it by this Agreement if title to, or temporary use of, the Equipment or any part thereof shall be taken under exercise of the power of eminent domain.

3.4. Nonappropriation. If during the then current fiscal year of Lessee, sufficient funds are not appropriated to make Rental Payments required under a Lease for the following fiscal year (an "Event of Nonappropriation"), Lessee shall be deemed not to have renewed such Lease for the following fiscal year, and the Lease shall terminate at the end of the then current fiscal year, and Lessee shall not be obligated to make Rental Payments under the Lease beyond the then current fiscal year for which funds have been appropriated. Upon an Event of Nonappropriation, Lessee shall return the Equipment subject to the Lease to Lessor in accordance with the requirements of Section 11.3. Lessee shall notify Lessor in writing no later than 30 days following an Event of Nonappropriation, but failure to provide such notice shall not operate to extend the Lease Term. If Lessee fails to return the applicable Equipment or otherwise comply with Section 11.3, the termination shall nevertheless be effective, but Lessee shall be responsible for the payment of an amount equal to the Rental Payments that would thereafter have come due if the Lease had not been terminated and which are attributable to the number of days after which Lessee fails to comply with Lessor's instructions and for any other loss suffered by Lessor as a result of Lessee's failure to take such actions as required. In addition, Lessor may, by written instructions to any escrow agent who is holding proceeds of the Lease, instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor.

3.5. Security Interest. As security for Lessee's obligations to pay all Rental Payments and all other amounts due and payable under each Lease and to perform and observe all covenants, agreements and conditions (direct or indirect, absolute or contingent, due or to become due or existing or hereafter arising) of Lessee under such Lease, Lessee hereby grants to Lessor a first priority, security interest in any and all of the Equipment (now existing or hereafter acquired) under each Lease, moneys and investments held from time to time in the escrow fund under each Escrow Agreement and any and all proceeds of any of the foregoing. Lessee agrees to execute and deliver to Lessor all necessary documents to evidence and perfect such security interest, including, without limitation, Uniform Commercial Code financing statements and any amendments thereto and certificates of title or certificates of origin (or applications thereof) noting Lessor's interest thereon.

3.6. Tax Covenants.

(a) Lessee covenants and agrees that it will (i) complete and timely file an information reporting return with the Internal Revenue Service ("IRS") in accordance with Section 149(e) of the

Internal Revenue Code of 1986, as amended (the “Code”); (ii) not permit the Equipment to be directly or indirectly used for a private business use within the meaning of Section 141 of the Code including, without limitation, use by private persons or entities pursuant to contractual arrangements which do not satisfy IRS guidelines for permitted management contracts, as the same may be amended from time to time; (iii) invest and reinvest moneys on deposit in the any escrow fund related to each Lease from time to time in a manner that will not cause such Lease to be classified as an “arbitrage bond” within the meaning of Section 148(a) of the Code; (iv) rebate an amount equal to excess earnings in any such escrow fund to the federal government if required by, and in accordance with, Section 148(f) of the Code and make the determinations and maintain the records required by the Code; and (v) comply with all provisions and regulations applicable to establishing and maintaining the excludability of the interest component of the Rental Payments under each Lease from federal gross income pursuant to Section 103 of the Code.

(b) If Lessor either (i) receives notice, in any form, from the IRS; or (ii) reasonably determines, based on an opinion of independent tax counsel selected by Lessor that Lessor may not exclude the interest component of any Rental Payment under a Lease from federal gross income, then Lessee shall pay to Lessor, within thirty (30) days after Lessor notifies Lessee of such determination, the amount which, with respect to Rental Payments previously paid and taking into account all penalties, fines, interest and additions to tax (including all federal, state and local taxes imposed on the interest component of all Rental Payments under the Lease due through the date of such event) that are imposed on Lessor as a result of the loss of the exclusion, will restore to Lessor the same after tax yield on the transaction evidenced by such Lease (assuming tax at the highest marginal corporate tax rate) that it would have realized had the exclusion not been lost. Additionally, Lessee agrees that upon the occurrence of such an event, it shall pay additional rent to Lessor on each succeeding Rental Payment due date in such amount as will maintain such after tax yield to Lessor. Lessor's determination of the amount necessary to maintain its after-tax yield as provided in this subsection (b) shall be conclusive (absent manifest error).

4. PURCHASE AND PREPAYMENT

4.1. End of Lease Term. Lessee shall have the option to purchase all of the Equipment under a Lease upon the expiration of the Lease Term and payment in full of all Rental Payments then due and all other amounts then owing under the Lease, and the payment of \$1.00 to Lessor.

4.2. Optional Prepayment. Lessee shall have the option to prepay its obligations under any Lease in whole but not in part on any Payment Date as set forth in the applicable Payment Schedule, but only if and to the extent the Lease Schedule provides for such prepayment. Lessee shall give written notice to Lessor of its intention to exercise its option not less than thirty (30) days prior to the Payment Date on which the option will be exercised and shall pay to Lessor not later than such Payment Date an amount equal to all Rental Payments and any other amounts then due or past due under such Lease, including the Rental Payment due on the Payment Date on which the option shall be effective, and the applicable Prepayment Price set forth in the applicable Payment Schedule (the “Prepayment Price”).

4.3. Excess Proceeds. Lessee's obligations under a Lease shall be prepaid in part from the excess proceeds of the Lease on the terms set forth in any Escrow Agreement pursuant to which proceeds of the Lease are being held.

4.4. Release of Lessor's Interest. Upon timely receipt, in collected funds, of all amounts required for the purchase of the Equipment subject to any Lease pursuant to Section 4.1 or the prepayment in whole of any Lease pursuant to Section 4.2, such Lease shall terminate, all of Lessor's right, title and interest in and to the Equipment shall terminate, and Lessor shall deliver to Lessee all such documents and instruments as Lessee may reasonably request to evidence the termination of the Lease and Lessor's interest in the Equipment, without warranty by or recourse to Lessor.

5. REPRESENTATIONS AND WARRANTIES.

5.1. Representations and Warranties. Lessee shall be deemed to make the following representations and warranties to Lessor with respect to each Lease, in each case as of the Lease Date for such Lease:

(a) Lessee is a state or political subdivision of the State within the meaning of Section 103(c) of the Code, duly organized and existing under the Constitution and laws of the State, and is authorized under the Constitution and laws of the State to enter into this Agreement, the other Lease Documents and the transactions contemplated hereby and thereby, and to perform all of its obligations under this Agreement and the other Lease Documents.

(b) The execution and delivery of this Agreement and the Lease Schedule have been duly authorized by all necessary action of Lessee's governing body and such action is in compliance with all public bidding and other State and federal laws applicable to this Agreement and the acquisition and financing of the Equipment by Lessee.

(c) This Agreement and the Lease Schedule have been duly executed and delivered by and constitute the valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms.

(d) The execution, delivery and performance of this Agreement and the Lease Schedule by Lessee does not (i) violate any State or federal law or local law or ordinance, or any order, writ, injunction, decree, or regulation of any court or other governmental agency or body applicable to Lessee, or (ii) conflict with or result in the breach or violation of any term or provision of, or constitute a default under, any note, bond, mortgage, indenture, agreement, deed of trust, lease or other obligation to which Lessee is bound.

(e) There is no action, suit, proceeding, claim, inquiry or investigation, at law or in equity, before or by any court, regulatory agency, public board or body pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee, challenging Lessee's authority to enter into this Agreement or any other Lease Document or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other Lease Document.

(f) Lessee or Lessee's governing body has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments during the current fiscal year, and such moneys will be applied in payment of all Rental Payments due and payable during such current fiscal year.

(g) Lessee has an immediate need for, and expects to make immediate use of, the Equipment, which need is not temporary or expected to diminish during the applicable Lease Term.

6. INSURANCE

6.1. Liability and Property Insurance. Lessee shall, at its own expense, procure and maintain continuously in effect during each Lease Term: (a) public liability insurance for death or injuries to persons, or damage to property arising out of or in any way connected to the Equipment sufficient to protect Lessor and its assigns from liability in all events, with a coverage of not less than \$1,000,000 per occurrence unless specified differently in the related Lease Schedule, and (b) insurance against such hazards as Lessor may require, including, but not limited to, all-risk casualty and property insurance, in an amount equal to the greater of the full replacement cost of the Equipment or the applicable Prepayment Price.

6.2. Insurance Requirements. All insurance policies required by Section 6.1 shall be taken out and maintained with insurance companies acceptable to Lessor and shall contain a provision that thirty (30) days prior to any change in the coverage (including cancellation) the insurer must provide written notice to the insured parties. No insurance shall be subject to any co-insurance clause. Each liability insurance policy shall be endorsed to name Lessor and its assigns as an additional insured party and each casualty and property insurance policy shall be endorsed to name Lessor and its assigns as loss payee, in each case regardless of any breach of warranty or other act or omission of Lessee. Lessee may self-insure against the risks described in Section 6.1 with the prior written consent of Lessor.

7. ADDITIONAL OBLIGATIONS

7.1. Use and Maintenance of Equipment. Lessee shall, at its own expense, maintain the Equipment in good condition and proper working order, and shall make all necessary repairs and replacements to keep the Equipment in such condition. The Equipment will be used by Lessee only for the purpose of performing Lessee's essential governmental functions. Lessee shall not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any manufacturer's guidelines or in violation of any applicable law or regulation or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain and maintain all permits and licenses necessary for the installation and operation of the Equipment. Lessee shall have sole responsibility to maintain and repair the Equipment. Lessee shall keep (or in the case of Equipment constituting motor vehicles, house) the Equipment at the address specified in the related Lease Schedule; provided that Lessee may change the location at which any Equipment is kept (or housed) with thirty (30) days prior written notice to Lessor specifying the address of the new location. Lessee shall provide Lessor access at all reasonable times to examine and inspect the Equipment and provide Lessor with such access to the Equipment as may be reasonably necessary to perform maintenance on the Equipment in the event of failure by Lessee to perform its obligations hereunder. If Lessor reasonably determines that Lessee is not maintaining any of the Equipment in accordance with this Section, Lessor may (to the extent permitted by law and in addition to any other remedies it may have) require Lessee to enter into maintenance contracts for such Equipment in form approved by Lessor and with approved providers.

7.2. Taxes. Lessee shall pay all taxes, assessments and other charges which are assessed or levied against the Equipment or any part thereof, during the Lease Term, whether assessed against Lessee or Lessor. With respect to any taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term for such Equipment.

7.3. Modification of Equipment. Lessee will not, without the prior written consent of Lessor, affix or install any accessory equipment or device on any of the Equipment if such addition will change or impair the originally intended value, function or use of the Equipment.

7.4. Liens. Lessee shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or other claim with respect to the Equipment (each, a "Lien"), other than the respective rights of Lessor and Lessee as herein provided. Lessee shall promptly, at its own expense, take such actions as may be necessary duly to discharge or remove any such claim if the same shall arise at any time.

7.5. Financial Information. Lessee shall deliver to Lessor (i) its annual audited financial statements within 270 days after the end of each fiscal year, (ii) its annual budget for each fiscal year promptly following approval thereof, and (iii) such other financial statements and information relating to the ability of Lessee to satisfy its obligations under this Agreement and the Lease as may be reasonably requested by Lessor from time to time.

8. TITLE; NO WARRANTIES BY LESSOR

8.1. Title. During the Lease Term, legal title to all Equipment shall be in Lessee, subject to Lessor's interests under the applicable Lease Schedule and this Agreement. Upon an Event of Default or Event of Nonappropriation, title shall immediately vest in Lessor, free and clear of any right, title or interest of Lessee.

8.2. Personal Property. The Equipment is and shall at all times be and remain personal property and not fixtures.

8.3. No Warranties. LESSEE ACQUIRES AND LEASES THE EQUIPMENT UNDER EACH LEASE "AS IS." LESSEE ACKNOWLEDGES THAT LESSOR DID NOT MANUFACTURE THE EQUIPMENT UNDER ANY LEASE. LESSOR DOES NOT REPRESENT THE MANUFACTURER, SUPPLIER, OWNER OR DEALER, AND LESSEE SELECTED THE EQUIPMENT BASED UPON LESSEE'S OWN JUDGMENT. LESSOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OR AS TO THE EQUIPMENT'S VALUE, DESIGN, CONDITION, USE, CAPACITY OR DURABILITY. LESSEE AGREES THAT REGARDLESS OF CAUSE, LESSOR IS NOT RESPONSIBLE FOR, AND LESSEE WILL NOT MAKE ANY CLAIM AGAINST LESSOR FOR, ANY DAMAGES, WHETHER CONSEQUENTIAL, DIRECT, SPECIAL OR INDIRECT INCURRED BY LESSEE IN CONNECTION WITH THE EQUIPMENT UNDER ANY LEASE. NEITHER THE MANUFACTURER, SUPPLIER OR DEALER NOR ANY SALESPERSON, EMPLOYEE OR AGENT OF THE MANUFACTURER, SUPPLIER OR DEALER IS LESSOR'S AGENT OR HAS ANY AUTHORITY TO SPEAK FOR LESSOR OR TO BIND LESSOR IN ANY WAY. For and during the Lease Term under each Lease, Lessor assigns to Lessee any manufacturer's or Supplier's product warranties, express or implied, applicable to any Equipment and Lessor authorizes Lessee to obtain the customary services furnished in connection with such warranties at Lessee's sole expense. Lessee agrees that (a) all Equipment will have been purchased by Lessor for the benefit of the Lessee in accordance with Lessee's specifications from suppliers selected by Lessee, (b) Lessor is not a manufacturer or dealer of any Equipment and has no liability for the delivery or installation of any Equipment, (c) Lessor assumes no obligation with respect to any manufacturer's or Supplier's product warranties or guaranties, (d) no manufacturer or Supplier or any representative of said parties is an agent of Lessor, and (e) any warranty, representation, guaranty or agreement made by any manufacturer or supplier or any representative of said parties shall not be binding upon Lessor.

9. RISK OF LOSS; CASUALTY; INDEMNITY

9.1. Risk of Loss. As between Lessee and Lessor, Lessee bears the entire risk of loss, theft, damage or destruction of any Equipment in whole or in part for any reason whatsoever. No loss to any Equipment shall relieve Lessee from the obligation to make any Rental Payments or to perform any other obligation under any Lease. Proceeds of any insurance recovery will be applied to Lessee's obligations under this Section 9.

9.2. Notice of Loss. If a casualty occurs to any Equipment, Lessee shall immediately notify Lessor of the same and Lessee shall, unless otherwise directed by Lessor, immediately repair the same.

9.3. Application of Proceeds. If any item of Equipment has suffered a casualty loss is beyond repair, then Lessee shall either: (a) promptly replace such Equipment with similar equipment in good repair, condition and working order free and clear of any liens (except Lessor's rights hereunder), in which event such replacement equipment shall automatically be Equipment under the applicable Lease, or (b) on the next scheduled Payment Date, pay Lessor (i) all amounts owed by Lessee under the applicable Lease, including the Rental Payment due on such date, plus (ii) an amount equal to the applicable Prepayment Price set forth in the Payment Schedule to the applicable Lease. If Lessee is making such payment with respect to less than all of the Equipment under a Lease, then Lessor will provide Lessee

with the pro rata amount of the Prepayment Price to be paid by Lessee with respect to the such Equipment.

9.4. Claims and Expenses. To the extent permitted by and enforceable under State law, Lessee shall bear the risk for, shall pay directly and shall defend against any and all claims, liabilities, proceedings, actions, expenses (including reasonable attorneys' fees), damages or losses arising under or related to any Equipment, including, but not limited to, the possession, ownership, lease, use or operation thereof. These obligations of Lessee shall survive any expiration or termination of any Lease.

10. ASSIGNMENT

10.1. Assignment by Lessor. Lessor may assign its rights, title and interest in and to any Lease, any Equipment or any Escrow Agreement (including the escrow fund thereunder), and/or may grant or assign a security interest in any Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder), in whole or in part, to any party at any time and from time to time without Lessee's consent. Any such assignee or lien holder (an "Assignee") shall have all of the rights of Lessor under the applicable Lease and Escrow Agreement. LESSEE AGREES NOT TO ASSERT AGAINST ANY ASSIGNEE ANY CLAIMS, ABATEMENTS, SETOFFS, COUNTERCLAIMS, RECOUPMENT OR ANY OTHER SIMILAR DEFENSES WHICH LESSEE MAY HAVE AGAINST LESSOR. Unless otherwise agreed by Lessee in writing, any such assignment transaction shall not release Lessor from any of Lessor's obligations under the applicable Lease. An assignment or reassignment of any of Lessor's right, title or interest in a Lease, its Equipment or any Escrow Agreement (including the escrow fund thereunder) shall be enforceable against Lessee only after Lessee receives a written notice of assignment that discloses the name and address of each such Assignee. Lessee agrees to acknowledge in writing any such assignments if so requested. Lessee shall keep a complete and accurate record of all such assignments in the form necessary to comply with Section 149(a) of the Code. Lessee agrees to acknowledge in writing any such assignments if so requested.

10.2. Assignment and Subleasing by Lessee. Neither this Agreement nor any Lease or any Equipment may be assigned, subleased, sold, transferred, pledged or mortgaged by Lessee.

11. EVENTS OF DEFAULT; REMEDIES

11.1. Events of Default Defined. The occurrence of any of the following events with respect to a Lease shall constitute an Event of Default under the Lease:

(a) Lessee's failure to pay any Rental Payment or other amount required to be paid to Lessor under the Lease within ten (10) days following the due date thereof, other than by reason of an Event of Nonappropriation;

(b) Lessee fails to perform or observe any of its obligations under Section 6, 7.4 or 10.2 hereof;

(c) With the exception of the above clauses (a) or (b), Lessee's failure to perform or abide by any condition, agreement or covenant with respect to the Lease for a period of thirty (30) days after written notice by Lessor to Lessee specifying such failure and requesting that it be remedied, unless Lessor shall agree in writing to an extension of time prior to its expiration;

(d) Lessee is in default with respect to the payment or performance of any indebtedness, liability or obligation to Lessor or any of its affiliates under any note, loan agreement, security agreement, lease, title retention or conditional sales agreement or any other instrument or agreement (including the occurrence of any Event of Default under any other Lease then held by Lessor), whether accelerated or otherwise and any applicable grace period with respect thereto has expired; or

(e) Any statement, representation or warranty made by Lessee in the Lease or in any writing delivered by Lessee pursuant thereto or in connection therewith proves at any time to have been false, misleading or erroneous in any material respect as of the time when made; or

(f) Lessee applies for or consents to the appointment of a receiver, trustee, conservator or liquidator of Lessee or of all or a substantial part of its assets, or a petition for relief is filed by Lessee under any federal or state bankruptcy, insolvency, moratorium or similar law.

11.2. Remedies on Default. Upon the occurrence of any Event of Default with respect to a Lease, Lessor shall have the right, at its option and without any further demand or notice to one or more or all of the following remedies with respect to the Lease:

(a) Lessor, with or without terminating the Lease, may declare all Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee to be immediately due and payable by Lessee, whereupon such Rental Payments shall be immediately due and payable.

(b) Lessor may require Lessee to promptly return all Equipment to Lessor in the manner set forth in Section 11.3 (and Lessee agrees that it shall so return the Equipment), or Lessor may, at its option, enter upon the premises where any Equipment is located and repossess such Equipment without demand, without any court order or other process of law and without liability for any damage occasioned by such repossession; and Lessor may thereafter dispose of the Equipment. If Lessor terminates the Lease and disposes of any or all of the Equipment, Lessor shall apply the proceeds of any such disposition to pay the following items in the following order: (i) all costs and expenses (including, but not limited to, attorneys' fees) incurred in securing possession of the Equipment; (ii) all costs and expenses incurred in completing the disposition of the Equipment; (iii) any sales or transfer taxes incurred in the disposition of the Equipment; (iv) any Rental Payments payable under the Lease to the end of the then-current fiscal year of Lessee; (v) the outstanding principal component of Rental Payments under the Lease; and (vi) any other amounts then due under the Lease. Any disposition proceeds remaining after the requirements of clauses (i), (ii), (iii), (iv), (v) and (vi) have been met shall be paid to Lessee.

(c) By written notice to any escrow agent that is holding proceeds of the Lease under an Escrow Agreement, Lessor may instruct such escrow agent to release all such proceeds and any earnings thereon to Lessor, such sums to be credited to payment of Lessee's obligations under the Lease; or

(d) Lessor may exercise any other remedy available, at law or in equity, with respect to such Event of Default. Lessee shall pay the reasonable attorneys' fees and expenses incurred by Lessor in exercising any remedy hereunder.

11.3. Return of Equipment; Release of Lessee's Interest. Upon termination of any Lease prior to the payment of all Rental Payments or the applicable Prepayment Price thereunder (whether as result of an Event of Nonappropriation or Event of Default), Lessee shall, within ten (10) days after such termination, at its own expense: (a) perform any testing and repairs required to place the related Equipment in the condition required by Section 7; (b) if deinstallation, disassembly or crating is required, cause such Equipment to be deinstalled, disassembled and crated by an authorized manufacturer's representative or such other service person as is satisfactory to Lessor; (c) return such Equipment to a location in the continental United States specified by Lessor, freight and insurance prepaid by Lessee; and (d) comply with any additional return conditions specified in the Lease Schedule. Lessee shall execute and deliver to Lessor such documents as Lessor may request to evidence the passage of legal title and ownership to Lessor and termination of Lessee's interest in the Equipment.

With respect to any provision of the Agreement requiring Lessee to return all or any portion of the Equipment to Lessor or to transfer title to all or any portion of the equipment to Lessor, Lessee agrees to voluntarily do so. In the event that Lessee fails or refuses to return or transfer the Equipment or title

thereto voluntarily as set forth above, Lessor acknowledges that the Agreement does not and shall not create a right in Lessor to involuntarily dispossess Lessee of title to or possession of all or any item of the Equipment. In lieu of such right Lessor shall be entitled to and Lessee agrees to pay to Lessor immediately, but only from legally available funds, the Prepayment Price, plus any Rental Payments accrued and unpaid as of the date of such payment.

11.4. Late Charge. To the extent permitted by and enforceable under State law, Lessee shall pay Lessor a charge on any Rental Payment not paid on the date such payment is due at a rate equal to the interest rate set forth in the applicable Lease Schedule plus 5% per annum or the maximum amount permitted by law, whichever is less (the "Default Rate"), from such date.

11.5. No Remedy Exclusive. Each of the rights and remedies under this Agreement and each Lease is cumulative and may be enforced separately or concurrently. No course of dealing or conduct between Lessor and Lessee shall be effective to amend, modify or change any provisions of this Agreement or any Lease. No failure or delay by Lessor to insist upon the strict performance of any term, covenant or agreement of the Agreement or any Lease, or to exercise any right, power or remedy consequent upon a breach thereof, shall constitute a waiver of any such term, covenant or agreement or of any such breach, or preclude Lessor from exercising any such right, power or remedy at any later time or times.

11.6. Costs and Attorneys' Fees. To the extent permitted by and enforceable under State law, upon the occurrence of an Event of Default, Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts payable hereunder, all of Lessor's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon written notice and demand given to Lessee, shall be secured by this Agreement until paid, and shall bear interest at the Default Rate. In the event suit or action is instituted to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial and on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

12. MISCELLANEOUS PROVISIONS

12.1. Notices. All written notices to be given under this Agreement shall be given (a) personally, (b) by mail in registered or certified form, with postage prepaid, or (c) by overnight courier, charges prepaid, in each case to the party entitled thereto at its address specified beneath each party's signature, or at such address as the party may provide to the other parties hereto in writing from time to time, and to any assignee at its address as it appears on the registration books maintained by Lessee. Any such notice shall be deemed to have been received 72 hours after deposit in the United States mail, 24 hours after deposit with a courier, or, if given by other means, when delivered.

12.2. Binding Effect. This Agreement and each Lease hereunder shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns. Specifically, as used herein the term "Lessor" means, with respect to a Lease, any person or entity to whom Lessor has assigned its right to receive Rental Payments under such Lease.

12.3. Severability. In the event any provision of this Agreement or any Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

12.4. Entire Agreement; Amendments. Each Lease constitutes the entire agreement of the parties with respect to the subject matter thereof and supersedes all prior and contemporaneous writings, understandings, agreements, solicitation documents and representations, express or implied. Each Lease may be amended or modified only by written documents duly authorized, executed and delivered by Lessor and Lessee.

12.5. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions, Articles, Sections or clauses hereof.

12.6. Further Assurances and Corrective Instruments. Lessor and Lessee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to perfect, confirm, establish, reestablish, continue or complete the interests of Lessor in this Agreement and each Lease, to consummate the transactions contemplated hereby and thereby, and to carry out the purposes and intentions of this Agreement and each Lease.

12.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

12.8. Usury. It is the intention of the parties hereto to comply with any applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary herein or in any Lease Schedule, in no event shall this Agreement or any Lease hereunder require the payment or permit the collection of interest or any amount in the nature of interest or fees in excess of the maximum amount permitted by applicable law. Any such excess interest or fees shall first be applied to reduce principal, and when no principal remains, refunded to Lessee. In determining whether the interest paid or payable exceeds the highest lawful rate, the total amount of interest shall be spread through the applicable Lease Term so that the interest is uniform through such term.

12.9. Waiver of Jury Trial. To the extent permitted by applicable law, Lessor and Lessee hereby waive any right to trial by jury in any action or proceeding with respect to, in connection with or arising out of this Agreement.

12.10. Relationship of Parties. Lessee acknowledges and agrees that (i) this Agreement and each Lease and the transactions related thereto is an arm's-length commercial transaction between Lessor and Lessee, (ii) in connection therewith and with the discussions, undertakings, and procedures leading up to the consummation of this transaction, Lessor is and has been acting solely as a principal and is not acting as the agent, advisor or fiduciary of Lessee, (iii) Lessor has not assumed an advisory or fiduciary responsibility in favor of Lessee with respect to the transactions contemplated hereby or the discussions, undertakings, and procedures leading thereto (regardless of whether Lessor or any affiliate thereof has provided other services or is currently providing other services to Lessee on other matters) and Lessor has no obligation to Lessee with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and any Lease, and (iv) Lessee has consulted its own legal, financial, and other advisors to the extent it has deemed appropriate.

12.11. Filing of Leases. Lessee shall not file or submit, or permit the filing or submission, of all or any portion this Agreement or any Lease, any document related to this Agreement or any Lease, any default, event of acceleration, termination event, waiver, modification of terms or other similar events relating to this Agreement or any Lease or any summary of the foregoing with the Municipal Securities Rulemaking Board ("MSRB") (or any successor to the MSRB or similar entity or service) unless such document or portion thereof has been provided to the Lessor in advance for review and redaction to the extent required by the Lessor and otherwise permitted under applicable MSRB rules or federal securities law, if any. Lessor is not responsible for the Lessee's or any other entity's compliance with any continuing disclosure obligations under any applicable securities law or related agreement or undertaking.

12.12. Counterparts. This Agreement and any Lease Schedules may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Agreement and any Lease Schedules it shall not be necessary to produce or account for more than one such counterpart.

12.13. Electronic Signatures. The parties agree that the electronic signature of a party to this Agreement and any Lease Schedule shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement and such Lease Schedule(s). The parties agree that any electronically signed document (including this Agreement and any Lease Schedule) shall be deemed (i) to be "written" or "in writing," (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or "printouts", if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, "electronic signature" means a manually signed original signature that is then transmitted by electronic means; "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a "pdf" (portable document format) or other replicating image attached to an e mail message; and, "electronically signed document" means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

[The remainder of this page is intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, Lessor has caused this Agreement to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Agreement to be executed in its name by its duly authorized officer.

[LESSEE]
Lessee

[LESSOR]
Lessor

By: _____
Name:
Title:

Address:

Telephone:
E-mail address:

By: _____
Name:
Title:

Address:

Telephone:
E-mail address:

DRAFT

LEASE SCHEDULE NO. ____
to Master Lease Purchase Agreement

Dated [DATE]

This Lease Schedule (this "Lease Schedule") relates to the Master Lease Purchase Agreement dated as of [DATE] (the "Agreement") between the undersigned Lessor and Lessee, together with the terms and conditions of the Agreement incorporated herein by reference, constitutes a Lease. Unless otherwise defined herein, capitalized terms will have the same meaning ascribed to them in the Agreement. All terms and conditions of the Agreement are incorporated herein by reference.

1. Equipment Description. As used in the Lease, "Equipment" means all of the property described in Exhibit 1 attached to this Lease Schedule and all attachments, additions, accessions, parts, repairs, improvements, replacements and substitutions thereto.
2. Purchase Price. The Purchase Price for the Equipment is \$_____ which amount shall be deposited in the Escrow Fund established pursuant to that certain Escrow Agreement dated as of [DATE] among Lessor, Lessee and [ESCROW AGENT].
3. Rental Payments; Lease Term. The Rental Payments to be paid by Lessee to Lessor, the Lease Date and the Lease Term of this Lease are set forth on the Payment Schedule attached to this Lease Schedule as Exhibit 2.
4. Essential Use; Current Intent of Lessee. Lessee represents that (a) the use of the Equipment is essential to Lessee's proper, efficient and economic functioning or to the services that Lessee provides to its citizens, (b) the Equipment will be used by Lessee only for the purpose of performing its governmental or proprietary functions consistent with the permissible scope of its authority and will not be used in a trade or business of any person or entity, and (c) the useful life of the Equipment is not less than the stated full Lease Term of this Lease. Lessee has determined that a present need exists for the Equipment which need is not temporary or expected to diminish in the near future. Lessee currently intends for the full Lease Term: to use the Equipment; and to continue this Lease.
5. Representations, Warranties and Covenants. Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the date of execution of this Lease Schedule.
6. [Bank Qualified] Lessee certifies that it has designated this Lease as a qualified tax-exempt obligation in accordance with Section 265(b)(3) of the Code, that it has not designated more than \$10,000,000 of its obligations as qualified tax-exempt obligations in accordance with such Section for the current calendar year and that it reasonably anticipates that the total amount of tax-exempt obligations to be issued by Lessee during the current calendar year will not exceed \$10,000,000.]
7. [Optional Prepayment/No Call.]

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor has caused this Lease Schedule to be executed in its corporate name by its duly authorized officer, and Lessee has caused this Lease Schedule to be executed in its name by its duly authorized officer.

[LESSEE]

Lessee

[LESSOR]

Lessor

By: _____

Name:

Title:

Address:

Telephone:

E-mail address:

By: _____

Name:

Title:

Address:

Telephone:

E-mail address:

DRAFT

Equipment Description

[Equipment and Purchase Price]

DRAFT

Payment Schedule

Annual Rate ____%

DRAFT

**Form of
ACCEPTANCE CERTIFICATE**

[Lessor]

Re: Lease Schedule No. ____ dated [DATE] (the "Lease Schedule") to that certain Master Lease Purchase Agreement dated as of [DATE] (the "Agreement" and together with the Lease Schedule, the "Lease") between [Lessor], as Lessor, and [Lessee], as Lessee

Ladies and Gentlemen:

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Lessee identified below and, with respect to the above-referenced Lease Schedule, that:

1. The Equipment subject to the Lease Schedule and the Lease has been delivered and installed, is in good working order and is fully operational and has been fully accepted by Lessee on or before the date hereof.

2. Attached hereto are true and correct copies of the manufacturers' and dealers' invoices for the Equipment.

3. Lessee has appropriated and/or taken other lawful actions necessary to provide moneys sufficient to pay all Rental Payments required to be paid under the Lease during the current fiscal year of Lessee. Such moneys will be applied in payment of all such Rental Payments due and payable during such current fiscal year.

4. No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Lease) exists at the date hereof.

Date: _____

[LESSEE]

Lessee

By: _____

Name:

Title:



Meeting Date: 10/17/2024

Agenda Item: 8-B

Report to Town Council

Topic: Request to Dispose of Fixed Capital Asset – Fire Department
Pierce Mini-Pumper

Summary: Please see attached staff report and supporting documents.

Suggested motion: Staff recommends approval to dispose of fixed capital asset, 2002 Pierce Mini-Pumper, and authorize its removal from the fleet.

Requested by: Chief Scales, Public Safety Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

Office of the Public Safety Director

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager
From: Dan Scales, CFO, Public Safety Director, Fire Chief
Date: October 4, 2024
Subject: Request to Dispose of Fixed Capital Asset - Fire Department Pierce Mini-Pumper

Meeting Date: October 17, 2024

1 **Introduction:**

2 Staff is seeking approval from the Town Council to declare the 2002 Pierce Mini-Pumper (VIN#
3 1FDAF57P73EB38835) as surplus property and authorize its removal from the Town's fire
4 department fleet. Staff recommends disposing of this fixed asset due to the vehicle's age, limited
5 utility, significant maintenance costs, and the anticipated reorganization of the fleet with the
6 acquisition of a new Quint apparatus.

7
8 **Process:**

9 Capital assets are defined by the Town as real or personal property that are used in operations,
10 have an initial cost equal to or greater than \$5,000, and have an estimated useful life of two or
11 more years. Per Code of Ordinances Article VII, Division 3, Sec 2-382, personal property
12 deemed obsolete, unusable, or in the best interest of the Town for sale, may be sold by negotiated
13 sales, auction or other procedure approved by the Town Manager. Approval from the Town
14 Manager and Town Council is required for the disposition of capital assets.

15
16 **Background:**

17 The 2002 Mini-Pumper was purchased by Harbour Village at the request of a former fire chief,
18 specifically for accessing the "cloverleaf" parking decks of the condominiums. These areas
19 required a specialized vehicle at the time due to access constraints. However, with the
20 implementation of comprehensive fire suppression systems, including sprinkler systems and
21 accessible standpipes, the need for the mini-pumper has diminished significantly. Over the years,
22 the vehicle has not been needed or utilized for its original intended purpose.

23
24
25 **Discussion:**

26 In conjunction with the department's accreditation process, staff has been evaluating the
27 necessity of retaining the mini-pumper in the fleet. The vehicle is over 20 years old and no
28 longer serves a critical function within the department, as described further below.

29
30 1. **Limited Utility:**

31 The mini-pumper was originally purchased to address specific fire protection needs in the
32 Harbour Village "cloverleaf" parking structures. At the time, its smaller size and
33 maneuverability were deemed essential for navigating these confined spaces. However,
34 these buildings have always been equipped with modern fire suppression systems,
35 including fully operational sprinkler systems and well-positioned standpipes, which
36 provide robust fire protection. As a result, the mini-pumper has become redundant, as its
37 primary mission has been effectively handled by these advanced systems. The decision to
38 dispose of the vehicle will not compromise the fire department's ability to protect the
39 Harbour Village structures, as the existing fire suppression infrastructure more than meets
40 current safety requirements.
41

42 2. **Maintenance Costs and Mechanical Issues:**

43 The vehicle is currently experiencing significant maintenance issues. The fire pump
44 requires a complete rebuild, which is estimated to cost between \$8,000 and \$10,000.
45 Additionally, the mini-pumper is equipped with a six-liter diesel engine, known for head
46 gasket failures, which is a likely and costly repair as the vehicle ages. Given these
47 mechanical concerns, continuing to maintain the vehicle would not be cost-effective.
48 Given the truck's age—over 20 years—and the increasing costs associated with its
49 maintenance, its removal from the fleet is both practical and timely.
50

51 3. **Fleet Reorganization:**

52 With the pending acquisition of a new 75' Quint apparatus and the proposed
53 reassignment of the current fire engine to reserve status, the mini-pumper will no longer
54 have a defined role in the Town's fleet. The new Quint will provide the fire suppression
55 capabilities needed, and the existing fire engine will serve as a reserve, eliminating the
56 need for the mini-pumper.
57

58 4. **Vehicle Value and Sale Method:**

59 The mini-pumper's current value is slightly more than \$10,000, and investing in further
60 repairs would not increase its value significantly. To maximize the return from the sale,
61 staff recommends selling the vehicle using the method that realizes the greatest financial
62 return. Potential options include public auction platforms like GovDeals or specialized
63 fire apparatus brokers.
64

65 **Conclusion:**

66 The mini-pumper has outlived its intended purpose and is becoming increasingly costly to
67 maintain. With the department's evolving needs and the upcoming reorganization of the fleet,
68 Staff believes that it is in the Town's best interest to dispose of the vehicle. The financial burden
69 of maintaining a vehicle with no defined mission and significant mechanical issues outweighs
70 any potential benefit of keeping it in service.
71

72 **Recommendation:**

73 Staff recommends that the Town Council approve the request to dispose of this fixed capital

74 asset: the 2002 Pierce Mini-Pumper (VIN# 1FDAF57P73EB38835), and authorize its removal
75 from the fleet.

Attachment:
Fixed Asset Disposal Form

TOWN OF PONCE INLET

Capital Assets Policies and Procedures Manual



EXHIBIT D - FIXED ASSET DISPOSAL FORM

Dept# 22
(not required)

TO: FINANCE DEPARTMENT

DISPOSAL DATE: 10/17/2024

The following item was: Junked/Scrapped

From the : FIRE Department

ASSET INFORMATION:

Description: FIRE TRUCK-MINI PUMPER A78
Acquisition Date: 10/29/1992
Cost New: \$139,942.00
Town Asset#: 1783
Town Vehicle#:
VIN#: 1FDAF57P73EB38835
Serial#:
Model#:
Manufacturer:

PLEASE AUTHORIZE TRANSFER/DISPOSAL IN ACCORDANCE WITH CURRENT COUNCIL POLICY

Signature of Department Custodian Verifying Deletion

Daniel Scales

Signature of Town Manager

Disposal Method: ☐ Sale/Auction
☐ Donation Recipient
☐ Junked/Scrapped ☐ Obsolete ☐ Broken
☐ Stolen Police Report Filed ☐ Yes ☐ No
☐ Lost
☒ Other To be determined

PLEASE FORWARD COPY OF SIGNED FORM AND ANY SUPPORTING BACKUP DOCUMENTION TO FINANCE DEPARTMENT



Meeting Date: 10/17/2024

Agenda Item: 8-C

Report to Town Council

Topic: Request to Retain the Current Fire Engine as a Reserve Apparatus.

Summary: Please see attached staff report and supporting documents.

Suggested motion: Staff recommends approval for the retention of the current fire engine as a reserve apparatus, as recommended by the Essential Services Advisory Board.

Requested by: Chief Scales, Public Safety Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

Office of the Public Safety Director

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Micheal E. Disher, AICP, Town Manager
From: Dan Scales, Public Safety Director
Date: October 4, 2024
Subject: Request to Retain the Current Fire Engine as a Reserve Apparatus

Town Council Meeting Date: October 17, 2024

1 **Introduction:**

2 At the October 3, 2024, Essential Services Advisory Board (ESAB) meeting, the Board
3 discussed the proposal from Staff to retain the Town's current fire engine as a reserve unit,
4 pending the placement of the new 75' Quint apparatus into service. The Board ultimately
5 supported this proposal after weighing the public safety benefits and financial considerations.
6 This report summarizes the decision factors and rationale behind the Board's recommendation to
7 the Town Council.

8 **Background:**

9 The Town's Fire Department operates a full-service emergency response system with around
10 1,000 calls annually, 750 of which are EMS-related. The current fire engine plays a dual role as a
11 fire suppression unit and an Advanced Life Support (ALS) emergency medical responder. With
12 the new Quint apparatus expected to be delivered in the next few months, a decision was needed
13 on whether to retain the 2009 fire engine as a backup unit or remove it from the fleet.

14 At the September 19, 2024, Town Council meeting, the Town Council approved purchasing the
15 Quint, with the financing to be determined. However, no final decision was made regarding the
16 retention of the existing engine, and it was referred to the ESAB for further evaluation. On
17 October 3, the ESAB reviewed the operational and financial implications and voted 5-0 to
18 recommended retaining the fire engine as a reserve.

19 **Discussion:**

20 The information provided to the ESAB is attached to this report for the Council's review, and is
21 also summarized below:
22

23 1. **Operational Impact:**

24 The retention of the existing fire engine ensures continuity in fire and EMS responses when
25 the new Quint is out of service for maintenance or repairs. The Town's fire engine is the

only ALS-equipped vehicle available when the ambulance is engaged in patient transport, making it crucial to have as a backup to avoid service interruptions. Although there had been previous discussions and analysis about storing the reserve unit off-site with a neighboring department, there now appears to be sufficient space available at the Town's fire station and Public Works facilities for this purpose. Neighboring departments have historically provided reserve fire engines; however, the availability of such units has diminished, making it more essential for the Town to retain its own reserve engine rather than relying on other jurisdictions.

2. Financial Considerations:

While selling the fire engine could generate a one-time revenue of \$6,000 to \$50,000, retaining the engine as a reserve is estimated to cost approximately \$3,600 annually for maintenance and insurance. This modest cost is justified given the engine's critical role in maintaining uninterrupted emergency services, outweighing the short-term financial gain of selling it.

3. National Standards and Best Practices:

The National Fire Protection Association (NFPA) recommends maintaining a reserve apparatus to ensure operational readiness. Most communities follow this best practice to avoid relying solely on mutual aid agreements, which may result in delayed response times during emergencies.

4. Risk of Not Retaining a Reserve Engine:

Without a backup engine, any mechanical failure of the new Quint would leave the Town without sufficient fire and EMS response capabilities. Delayed response times could lead to higher property damage, increased risk to life and safety, and potential legal liabilities.

Retaining the current fire engine as a reserve unit aligns with industry best practices, supports continuous emergency services, and mitigates operational risks.

Recommendation:

That the Town Council approve the retention of the current fire engine as a reserve apparatus, as recommended by the ESAB.

Attachments:

September 26, 2024 Retention of Current Engine as Reserve Engine Justification memo

September 27, 2024 Supplemental Information to Keep Current Engine as Reserve Engine



MEMORANDUM

Public Works Department

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Essential Services Advisory Board
 From: Dan Scales, Public Safety Director
 Date: September 26, 2024
 Subject: Discussion to Retain Current Fire Engine as a Reserve Apparatus

MEETING DATE: October 3, 2024

PURPOSE

This report outlines the pros and cons for retaining the Town's current fire engine as a reserve unit following the acquisition of a new Quint. With a significant portion of the department's responses being EMS-related, the availability of a backup engine is critical to ensuring continuous fire and EMS service. This report also considers the financial implications, including maintenance costs, and the operational impact of the engine's reassignment as a reserve vehicle.

BACKGROUND

The Town's Fire Department is a full-service operation, handling approximately 750 emergency medical service (EMS) calls per year, with a total call volume of about 1,000 calls annually. As part of the standard response protocol, the fire engine responds to every EMS call in town. The fire engine is equipped with Advanced Life Support (ALS) capabilities and a paramedic, making it the only responding ALS unit when the ambulance is engaged in patient transport.

At the January 11, and March 7, 2024, Essential Services Advisory Board (ESAB) meetings, the justification for replacing the Town's existing 2009 fire engine with a new 75' Quint apparatus was discussed, and the Board included the purchase of a Quint with its budgetary recommendations to the Town Council for FY 2024/2025. On September 19, 2024, the Town Council approved the purchase a 75' Quint, with financing to be determined. That same evening, the Council approved the fiscal year 2024/2025 budget, which included funding for equipment for the new Quint along with a replacement hose for the existing apparatus. Staff has put out an RFP for financing for the new Quint, with options for 7- and 10-year terms, which will be reviewed by the Council at the October 17, 2024, Council meeting. Delivery of the new Quint vehicle is expected within the next few months.

As part of the fleet plan, Staff proposes to surplus the current 2001 mini-pumper and retain the 2009 fire engine as a reserve unit. This approach would allow the Town to maintain reliable fire and EMS response capabilities while managing its fleet efficiently.

At the September 19th Council meeting, the Council discussed but did not decide on whether to retain the current fire engine as a backup or remove it from the fleet. Staff is requesting the Board's review and recommendation on this topic for presentation to the Town Council on October 17th.

DISCUSSION

Operational Impact

The absence of a backup engine during maintenance or mechanical failure could severely disrupt the Town's ability to provide continuous fire and EMS services. While selling the engine could generate short-term revenue, the operational risks posed by not having a reserve engine far outweigh the financial benefits. The potential risks are discussed further below.

Continuous Fire and EMS Coverage

The Fire Department relies on its fire engine not only for fire emergencies but also for medical responses, particularly when the ambulance is occupied with patient transport. The fire engine is the only department vehicle equipped with Advanced Life Support (ALS) capabilities. Without a backup engine, any mechanical failure or required maintenance on the primary engine would cause delays in response times, directly compromising public safety. Maintaining a reserve engine ensures operational readiness at all times. This minimizes service interruptions, reduces dependency on neighboring cities for reserve apparatus, and helps avoid service gaps during critical situations.

Decrease in Available Reserve Trucks from Neighboring Departments

Historically, neighboring fire departments have provided reserve fire engines to the Town when needed. However, the availability of these units has diminished significantly, which means the Town can no longer rely on external cities for backup. This reduction in available support makes it even more crucial for the Town to retain its own reserve engine, ensuring its ability to maintain consistent and effective response capabilities for both fire and EMS calls.

Financial and Maintenance Considerations

Although the current engine remains in good mechanical condition, its age and continuous use as a frontline vehicle have led to significant wear and tear. Transitioning the engine to a reserve unit will greatly reduce its future usage, minimizing the strain that daily operations place on the vehicle. Continued daily use of the engine would likely result in more frequent repairs, which, while manageable, present ongoing concerns regarding operational availability. Each unanticipated repair affects both the engine's usability and the department's ability to respond effectively.

The department currently allocates just over \$40,000 annually for maintenance across its entire fleet. By eliminating routine and unscheduled maintenance costs associated with the 2001 mini-pumper and transitioning the current engine to reserve status, we expect the budgeted repair and maintenance costs to remain stable, with the potential for future reductions. The estimated routine maintenance for the reserve engine is approximately \$2,000 annually, along with an insurance cost of \$1,600. This is a modest expense, especially considering the critical role the engine plays in maintaining uninterrupted fire and EMS services.

NFPA 1901 Recommendations:

The National Fire Protection Association (NFPA) is a non-profit organization dedicated to reducing deaths, injuries, and economic losses caused by fire, electrical, and related hazards. NFPA establishes industry standards for fire services, including recommendations for the lifespan of fire apparatus.

78 According to NFPA 1900¹, which governs the standards for Aircraft Rescue and Firefighting Vehicles,
79 Automotive Fire Apparatus, Wildland Fire Apparatus, and Automotive Ambulances, the typical
80 service life for a frontline fire engine is 15 years.

81
82 NFPA also recommends that frontline engines transitioned to reserve status can remain in service for
83 an additional 10 years, with the potential for further extension if the vehicle is used infrequently and
84 maintained properly. Given the current fire engine's condition and the reduced wear it will experience
85 as a reserve unit, keeping it aligns well with NFPA 1900 standards. This means the engine is expected
86 to provide reliable service for several more years, offering a cost-effective solution for maintaining
87 operational readiness.

88 89 **Sale/Auction Value**

90 Information from fire engine brokers, apparatus dealers, and neighboring cities indicates that selling
91 or auctioning the current fire engine could yield between \$6,000 and \$50,000 for the Town. While this
92 could provide a one-time influx of funds, the long-term benefits of retaining the engine far outweigh
93 the short-term financial gain from its sale. Keeping the engine as a reserve unit ensures that the Town
94 can maintain effective response capabilities, particularly in emergencies when operational readiness is
95 critical. The value of uninterrupted fire and EMS service cannot be overstated, making the decision to
96 retain the engine a prudent one for the community's safety and well-being.

97 98 **Risk of Not Retaining a Reserve Engine**

99 The lack of a reserve engine presents risks to operational response and the community at large,
100 including:

101
102 Service Disruptions: Without a backup engine, any failure or downtime of the primary engine could
103 leave the Town without adequate fire and EMS response capabilities, with the closest fire response
104 unit a minimum of 10-13 minutes from town (assuming the apparatus is in the station at the time
105 of call). The closest responding stations are located in Daytona Beach Shores on AIA, and Port
106 Orange on US 1.

107
108 Increased Liability: Delayed response times due to a lack of apparatus could expose the Town to
109 liability, particularly in cases where lives or property are lost due to preventable delays.

110 111 Increased Property Damage:

- 112 • *Fire Spread:* Fires double in size every minute. A delayed response allows the fire to
113 intensify and spread, causing more extensive structural damage over time.
- 114 • *Higher Costs:* The longer a fire burns unchecked, the more damage is done, leading to
115 significantly higher repair or rebuilding costs.
- 116 • *Loss of Property:* Irreplaceable personal belongings may be completely destroyed. A fire in
117 one of the Town's historical structures could lead to the loss of unique historic artifacts.

118 119 Greater Risk to Life and Safety:

- 120 • *Casualties:* A delayed response increases the risk of injuries or fatalities to building
121 occupants, as they have less time to evacuate.

¹ <https://www.nfpa.org/codes-and-standards/nfpa-1900-standard-development/1900>

- *Firefighter Safety*: A more advanced fire can pose greater hazards to responding firefighters, requiring more aggressive firefighting tactics, which come with increased risk.
- *Evacuation Challenges*: As the fire grows, it may block potential exit routes, complicating evacuation efforts for trapped individuals.

Economic Consequences/Loss of Business: If the structure is a commercial property, a slow response can result in more significant downtime, leading to lost income for businesses.

- *Insurance Costs*: Higher property damage often leads to increased insurance claims, which can drive up premiums for the property owner and potentially for the community as a whole.
- *Rebuilding Delays*: Extensive damage may take longer to repair, delaying the recovery of the affected area.

Community Impact: A slow response time for Emergency Medical Services (EMS) calls can have several adverse impacts, many of which can significantly affect patient outcomes and community trust in public safety systems. These impacts include:

- *Public Trust*: Slow response times can erode public confidence in emergency services, particularly if delays are repeated or have serious consequences.
- *Displacement*: Residents may be displaced for extended periods if their homes are rendered uninhabitable, leading to additional social and financial strain on the community.
- *Impact on Infrastructure*: Fires can damage critical infrastructure such as electrical systems, roadways, or water lines, resulting in further disruptions.
- *Increased Mortality and Morbidity*: Delays in EMS response can lead to worse medical outcomes, especially for time-sensitive emergencies like heart attacks, strokes, or traumatic injuries. The "golden hour" is critical for trauma patients, and any delay reduces the chance of survival and successful recovery.
- *Worsening of Medical Conditions*: A slow response may allow a patient's condition to deteriorate further. For example, in cardiac arrest cases, brain damage can occur within minutes if appropriate life-saving interventions, like CPR and defibrillation, are not administered promptly.
- *Legal and Financial Consequences*: In cases where slow response times lead to death or severe injury, municipalities and EMS providers could face legal action, leading to lawsuits, increased insurance premiums, and financial liabilities. This can further strain public resources.

CONCLUSION

Maintaining a reserve fire engine is considered a standard industry practice across fire departments for several important reasons, rooted in operational efficiency, safety, and service reliability. Fire engines are essential tools for providing critical emergency services, and the inherent unpredictability of mechanical failures or maintenance needs makes it crucial for any fire department to have backup apparatus readily available. A reserve engine ensures that when the primary engine is undergoing repairs or routine maintenance, the department can continue to meet the community's emergency needs without disruption.

Mutual aid between fire departments in different jurisdictions is intended to provide temporary assistance during extraordinary circumstances, such as large-scale incidents or when local resources are temporarily overwhelmed. It is not designed to replace a department's own operational readiness for everyday emergency calls. Neighboring cities are not required, nor obligated, to loan their equipment for extended periods or to cover gaps in another department's fleet.

The reserve apparatus of neighboring cities is often limited as well, and a city's priority will always be to ensure that they can maintain adequate coverage for their own communities. Given that fire departments face many of the same challenges, such as aging fleets, budget constraints, and equipment maintenance cycles, it is increasingly difficult to rely on other municipalities to provide continuous support. When multiple departments are under strain, such as during natural disasters or periods of high call volume, the availability of mutual aid becomes even more uncertain.

Borrowing an apparatus from neighboring jurisdictions places an additional burden on those departments, potentially leaving them less prepared for emergencies in their own areas. This reliance could lead to delays in response times for both the borrowing and lending departments, ultimately putting public safety at risk. In situations where an emergency escalates or simultaneous incidents occur, having a reserve engine ensures that a fire department is self-sufficient and ready to respond promptly.

By maintaining a reserve fire engine, the Ponce Inlet Fire Department can uphold its responsibility to provide uninterrupted emergency services to the community. This practice reduces dependence on external resources, mitigates the risk of service gaps, and ensures the department remains prepared for both routine and extraordinary situations. In contrast, relying solely on mutual aid without a reserve engine can expose the department to operational vulnerabilities and may compromise its ability to meet the safety needs of the community effectively.

RECOMMENDATION

Staff recommends retaining the existing fire engine for the reasons outlined above. Staff requests the Board's review and recommendation on this issue for a future decision by the Town Council.



MEMORANDUM

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Micheal E. Disher, AICP, Town Manager
 From: Dan Scales, Public Safety Director
 Date: September 27, 2024
 Subject: Supplementary information regarding use of the existing fire engine as a reserve apparatus

MEETING DATE: October 3, 2024

Below is additional information about the decision to retain or dispose of the existing fire engine, in response to questions that have been received from the public. I hope you and the ESAB find the responses helpful as part of the evaluation process.

1. **What is the potential sale value of the existing fire engine?** To date we have the following price information from current research:

City of New Smyrna engine auction (through J.J. Kane Auctioneers) - \$6,000
 City of Deltona engine auction (through Govdeals.com)- \$19,105
 Matheny Fire & Emergency offer - \$50,000

We also have outstanding submittals with Fenton Fire Apparatus, Command Fire Apparatus, Brindlee Mountain Fire Apparatus, Fire Line Equipment, Bunker Fire Safety and Fire Mall but have not received any offers yet.

2. **Can the Town solicit bids for the sale of the existing engine to get an idea of the best price?** Yes, soliciting bids is a standard practice for obtaining competitive pricing. This allows the Town to compare bids and evaluate different vendors based on cost, specifications, and qualifications, ensuring the most cost-effective solution. Although not used frequently, this process is authorized by the Code of Ordinances Sec. 2-382(a) upon declaration of the engine as surplus property by the Town Council.
3. **Do other communities have reserve fire engines? What is the nationally recommended best practice or standard?** Yes, most communities have reserve fire trucks to ensure coverage when primary vehicles are out of service. The National Fire Protection Association (NFPA) recommends having reserve apparatus to ensure operational continuity. Maintaining a reserve unit is viewed as best practice for fire departments.

- 29 **4. If the Town keeps the existing fire engine, where would it be stored?** There are two
30 options. The first option is to store the reserve engine at the Town's fire station. Room can
31 be made available by disposing of the mini-pumper, moving the two lawn equipment
32 trailers at Public Works to the garages behind the fire station, and relocating the reserve
33 ambulance to one of the tall bays at the Public Works facility. Relocating the two Public
34 Works lawn equipment trailers to the garages behind the fire station has the added benefit
35 of providing more convenient positioning for grounds equipment maintenance for the north
36 half of town. The second option is to store it in New Smyrna Beach, which has agreed to do
37 so at no cost to the Town.
38
- 39 **5. How are such arrangements typically handled between Fire Departments? Is an MOU**
40 **or interlocal agreement typical or necessary? Even if not typical, can it be handled**
41 **that way?** The fire departments in southeast Volusia County, including Port Orange,
42 Daytona Beach Shores, New Smyrna, South Daytona, and Edgewater, have maintained a
43 close, informal working relationship regarding the use of reserve apparatus. We have
44 borrowed fire trucks and ambulances from other southeast cities for over a decade without
45 any conflicts or disputes over maintenance and insurance responsibility. While this system
46 has worked well, we could formalize it with an MOU or interlocal agreement to clarify
47 terms of use, responsibility, and liability.
48
- 49 **6. Will other communities get to use our existing fire engine if they agree to store it? If**
50 **so, what does the Town get in return?** Typically, if another community stores our
51 existing engine, there will be an agreement allowing them to use it when needed. In return,
52 the Town will require that the storage will be at no cost and that the city using the reserve
53 engine covers the cost of fuel and maintenance services. *It should be noted that the loaning*
54 *city always has priority for use of its apparatus and can reclaim it at any time.* This type of
55 arrangement can be clearly defined in a Memorandum of Understanding (MOU) or
56 interlocal agreement.
57
- 58 **7. For the community using our reserve fire engine, are Ponce Inlet taxpayers**
59 **subsidizing it by paying for something they won't?** No, since there would be a clear
60 cost-sharing or mutual benefit arrangement in place.
61
- 62 **8. How much will it cost annually to maintain and insure the existing fire engine in a**
63 **reserve capacity?** The estimated routine maintenance for the reserve engine is
64 approximately \$2,000 annually, along with an insurance cost of \$1,600.
65
- 66 **9. Does the Town bear any liability for an accident caused by the other community using**
67 **our reserve vehicle? Who pays?** If the other community is using our reserve fire engine,
68 they assume responsibility for any damages or accidents. Liability insurance or
69 indemnification clauses would be important to include in an MOU or interlocal agreement
70 to protect Ponce Inlet.
71
- 72 **10. If the Town does not keep the existing fire engine, how many reserve fire engines are**
73 **currently available in surrounding communities for us to use if necessary?** Below is

the current reserve inventory for the surrounding departments:

Daytona Beach Shores – 1

Port Orange – 2

Edgewater – 1

New Smyrna Beach – 0 (will have 2 when new engines are received)

South Daytona – 1

No fire department is under any obligation to loan its vehicles to another jurisdiction.

Ponce Inlet has been able to do so over the years because of the close working relationship our region has had, both on response and asset sharing.

11. What is the process for securing a fire engine from another community if we need to do so? How long does it take? The time to secure a reserve engine takes time, provided one is actually available. It is not uncommon for it to take hours to find a vehicle from another city. The process involves calling each city to find an available reserve apparatus.

12. How often can we expect our existing fire engine to be used as a backup in Ponce Inlet? In other words, how often will the new engine be out of service for maintenance? The new fire engine will need to undergo regular preventive maintenance, which will require it to be out of service for short periods. We expect the frequency to be a few times a year with an average occurrence of once every other month. This does not include unforeseen repairs, which can still occur, even if less frequently with a new apparatus.

13. At the September 19, 2024 Town Council meeting, it was disclosed that the existing pumper is being sold. Why now? The removal of the mini-pumper from the fleet has been under evaluation for over a year. To keep fleet vehicle maintenance costs manageable, we believe that now is the appropriate time to retire the truck. The vehicle, which is over 20 years old, no longer serves a functional purpose in the department.

The mini-pumper was originally purchased by Harbour Village at the request of the former fire chief, specifically to access the “cloverleaf” parking decks of the condominiums. However, these areas are fully sprinklered, and standpipes are easily accessible, eliminating the need for a specialized vehicle like the mini-pumper. Over the years, we have not had to use the vehicle for its intended purpose.

In addition to its limited utility, the mini-pumper now faces significant maintenance issues. The fire pump now requires a complete rebuild, which would cost between \$8,000 and \$10,000. Furthermore, the truck is equipped with a six-liter diesel engine, which are known for head gasket failures—a likely and costly repair as the vehicle ages. The value of the vehicle itself is only slightly more than \$10,000.

With the pending acquisition of a new Quint apparatus, and if the current fire engine is reassigned to reserve status, the mini-pumper would no longer have a clear role in the fleet.

Given the maintenance costs, mechanical issues, and lack of a defined mission, Staff does not believe it is in the town's best interest to keep the vehicle in service.

- 14. The Town currently has two ambulances. Why is the fire engine also needed to provide EMS services? Why is the fire engine equipped with Advanced Life Support capabilities rather than both ambulances?** The second ambulance currently serves as a reserve transport vehicle and is not fully equipped with its own advanced life support (ALS) gear. When the reserve ambulance is needed, the ALS equipment—such as monitors, defibrillators, and medication kits—is transferred from the primary ambulance to the reserve unit. This allows the reserve ambulance to be deployed for patient transport when the primary unit is unavailable or out of service.

The town's fire engine is dual-purpose, functioning as both an ALS response vehicle and a fire suppression unit. It carries medical supplies and firefighters trained as paramedics or EMTs, enabling the engine to respond to medical emergencies as well as fires. This is a standard practice in many departments and ensures the town maintains both emergency medical services (EMS) and firefighting capabilities if both are needed for the same emergency call.

- 15. If the Town elects to keep the existing fire engine, and it is being stored out of town 30 minutes away, what is the difference between that and requesting help from another nearby department for an emergency?** The difference is that when the existing engine is being stored out of town or retrieved for back-up use, the process would be planned and scheduled well in advance. This coordination ensures the reserve engine is available when needed.

In the case of unscheduled maintenance, such as mechanical failures or emergency repairs, the situation is less predictable. During these instances, our immediate fire response would rely on mutual aid agreements with neighboring cities while we secure a reserve engine, as per our current practice. This ensures the town remains protected during the interim. There are risks to this approach, though. Relying solely on mutual aid can create response time gaps and add strain to neighboring departments, especially if they are handling their own emergencies.



Meeting Date: 10/17/2024

Agenda Item: 11-A

Report to Town Council

Topic: Ordinance 2024-06 – 1st reading – Amending Section 2.40 – Table of Permitted Uses in the Land Use and Development Code to include farmers markets as a major special exception use in the P-I (Public-Institutional) zoning district.

Summary: This attached ordinance has been drafted in response to the Town Council's directive to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public-Institutional (P-I) zoning district.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-06, amending Section 2.40 – Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 14 of the 17 P-I zoned properties.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager
From: Patty Rippey, AICP, Principal Planner
Through: Darren Lear, AICP, Planning & Development Director
Date: October 4, 2024
Subject: Ord. No. 2024-06 – Amending Section 2.40 – Table of Permitted Uses in the Land Use and Development Code to include farmers markets as a major special exception use in the Public-Institutional zoning district

MEETING DATE: October 17, 2024

1 INTRODUCTION

2 This proposed ordinance has been drafted in response to the Town Council’s directive to amend
3 the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use
4 in the Public-Institutional (P-I) zoning district.
5

6 AUTHORITY AND PROCESS

7 Pursuant to LUDC Section 6.2.2.A, the Planning Board, “...serves as the local planning agency
8 in accordance with the Community Planning Act (2011) F.S. § 163.3161 et. Seq.” Pursuant to
9 LUDC Section 6.2.2.D. “As the local planning agency, [the Board shall] ... review proposed land
10 development regulations, determine their consistency with the comprehensive plan, and make
11 recommendations to the town council as to whether the regulations should be adopted.”
12

13 If the Town Council approves the ordinance at 1st reading at a public hearing, the amendment will
14 then be scheduled for a 2nd reading at a public hearing for adoption.
15

16 BACKGROUND

17 Town staff received a written request from the Ponce Inlet Community Center Board of Trustees
18 earlier this year requesting that farmers markets be added as a permitted or special exception use
19 in the P-I zoning district (**Attachment I**).
20

At the June 4, 2024 Special meeting with Planning Board and Town Council, the Council and Board discussed the request, after which the Town Council directed staff to move forward with the amendment (**Attachment II**).

The Planning Board reviewed the proposed amendment at its regularly scheduled meeting on September 24, 2024. A motion to recommend approval of the amendment failed with two members voting in favor, two members voting against the motion, one member abstaining, and two members not present (**Attachment III**).

DISCUSSION

Farmers markets are defined in the LUDC as a temporary or occasional outdoor retail sale of farm produce or seafood, typically located within a parking lot or approved location in a public right-of-way closed to vehicular traffic (Section 3.20.1.A). Farmers markets are only permitted by right in the PWD zoning district and are allowed as a minor special exception use in the B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a permitted or special exception use, although they may be allowed through a special event permit, limited to 12 times per calendar year.

According to LUDC Section 6.6.3, “A special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. These uses require more comprehensive review, and by their nature may necessitate specific conditions to mitigate any potential adverse impacts. Such uses may be permitted in a zoning district as a special exception only if identified as such in this code.” The Planning Board serves as the decision-making authority for minor special exceptions (LUDC Section 6.4), while major special exceptions require a recommendation from the Planning Board and approval by the Town Council.

The request to add farmers markets as a major special exception use to the P-I zoning district would provide additional locations for farmers markets to serve the local population. Seventeen (17) properties within the Town limits are zoned Public-Institutional (**Attachment IV**). Those properties include Town-owned facilities and parks, County-owned facilities and parks, and private scientific facilities.

The Ponce Inlet Community Center Board of Trustees is in support of allowing a local farmers market to operate at the Community Center. Based on the safety, convenience and unique location, the Board has requested that farmers markets be added as a special exception use in the P-I zoning district in the LUDC, Section 2.40 Table of Permitted Uses. The Ponce Inlet Community Center is owned by the Town and is zoned P-I.

The proposed amendment will add a major special exception notation, “S^{MJ}” in the P-I zoning column in Section 2.40 of Table 2-5 (Table of Permitted Uses) under the section of the table titled “COMMUNITY FACILITIES AND PUBLIC ASSEMBLY”. Footnote [10] is included with the “S^{MJ}” notation, with the note itself located on the last row of Table 2-5. Footnote [10] identifies certain P-I zoned properties from which this major special exception use is excluded.

The three P-I zoned properties where the farmers market would be allowed as a major special exception include the Ponce Inlet Community Center, Ponce Inlet Fire Rescue station, and Timothy Pollard Memorial Park.

The 14 P-I zoned properties where the farmers market major special exception use would be excluded are: Batelle Institute properties (S. Atlantic & Sailfish Drive), Jesse Linzy Boat Ramp, Kay and Ayres Davies Lighthouse Park, Lighthouse Point Park, Marine Science Center, Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Ponce Inlet Historic Museum, Ponce Preserve, Port Orange lift station (adjacent to Ponce Inlet Community Center), Public Works facility, Timucuan Oaks Garden, and Winter Haven Park.

It should be noted that adoption of this LUDC amendment does not automatically allow a farmers market at the Community Center. It only allows the Community Center Board to *apply* for a special exception at this location, which is a separate application process. As a major special exception, the application would first be reviewed by staff, then by the Planning Board for a recommendation, and then by the Town Council for a final decision.

COMPREHENSIVE PLAN

Staff reviewed the policies of the Comprehensive Plan and found the Ordinance will maintain consistency with the Town's desired vision and direction. The Future Land Use Element of the Comprehensive plan classifies the P-I land use category as land used for quasi-public and private activities or facilities which will serve the public interest in an educational, recreational, or scientific context.

RECOMMENDATION

Staff recommends approval of Ordinance No. 2024-06, amending Section 2.40 – Table of Permitted Uses to include farmers markets as a major special exception use in the P-I zoning district excluding 14 of the 17 P-I zoned properties.

Attachments

1. Ponce Inlet Community Center Board of Trustees letter
2. Special meeting with Planning Board & Town Council minutes
3. Draft Planning Board September 24, 2024 meeting minutes
4. Ponce Inlet zoning map

ATTACHMENT I
PONCE INLET COMMUNITY CENTER BOARD OF TRUSTEES LETTER



Ponce Inlet Community Center
4670 S. Peninsula Drive
Ponce Inlet, FL 32127

Mr. Darren Lear,

Recently our Board of Trustees were unanimous in support of allowing the local Farmers Market to operate at the North end of the parking area at the Community Center. We feel that this location provides the safety and convenience that would add significant value to the vendors and those enjoying the market.

In looking at our ability to have the market on the property we found that, per the current zoning, we are classified a PUBLIC/INSTITUTIONAL property. Based-on Table 2-5, TABLE OF PERMITTED USES we are precluded from having a Farmers Market on the property, as listed under the COMMUNITY FACILITIES AND PUBLIC ASSEMBLY section – even as a minor or major special exception.

Given the importance to the residents of Ponce Inlet of continuing to have a Farmers Market here in the Town and the unique location we provide, we are requesting that the COMMUNITY AND PUBLIC ASSEMBLY section be changed to - under the 'P/I' column - to either: P, S_{MIN} or S_{MI}. This will allow the Community Center to move forward with soliciting the Town to be a permanent 'home' for the Farmers Market at the Community Center – the center of community activities.

As the Farmers Market has lost their ability to operate at their current location, we ask that this reclassification of the abilities of a PUBLIC/INSTITUTIONAL entity is expedited.

Respectfully submitted,

A handwritten signature in black ink that reads "Kimberly Canny". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kimberly Canny

President, Ponce Inlet Community Center.

ATTACHMENT II
SPECIAL MEETING MINUTES



Town of Ponce Inlet
TOWN COUNCIL
SPECIAL JOINT MEETING MINUTES
WITH PLANNING BOARD

4

TUESDAY

TOWN COUNCIL CHAMBERS

JUNE 4, 2024 at 10:00 AM

4300 S. ATLANTIC AVENUE, PONCE INLET, FL

1. **CALL TO ORDER.** Pursuant to proper notice, Mayor Paritsky called the meeting to order at 10:00 a.m. in the Council Chambers at 4300 South Atlantic Avenue, Ponce Inlet, Florida.

2. **PLEDGE OF ALLEGIANCE.** Mayor Paritsky led the Pledge of Allegiance.

3. **ROLL CALL OF TOWN COUNCIL.**

Mayor Paritsky, Seat #1

Councilmember Milano, Seat #2

Councilmember White, Seat #3

Councilmember Villanella, Seat #4

Vice-Mayor Smith, Seat #5

ROLL CALL OF PLANNING BOARD.

Mr. Oebbecke, Seat #1

Mr. Kaszuba, Seat #2; Chair

Mr. Burge, Seat #3

Mr. Cannon, Seat #4 - Absent

Mr. Carney, Seat #5; Vice Chair - Absent

Mr. Revak, Alternate #1

Mr. Young, Alternate #2

Staff Members Present:

Mr. Baker, Chief Building Official

Ms. Cherbano, Town Clerk

Mr. Disher, Town Manager

Ms. Gjessing, Assistant Deputy Clerk

Chief Glazier, Police Chief

Mr. Griffith, Public Works Director

Mr. Okum, IT Director

Ms. Pierce, Planning & Development Office Manager

Ms. Rippey, Principal Planner

Chief Scales, Public Safety Director

Ms. Stewart, Assistant Deputy Clerk

4. **ADDITIONS, CORRECTIONS OR DELETIONS TO THE AGENDA.**

Mayor Paritsky moved to approve the agenda as presented; seconded by Councilmember Villanella; The motion PASSED 5-0, consensus.

47 **5. REVIEW AND APPROVAL OF WATERSHED MASTER PLAN TO MEET THE**
48 **STATUTORY REQUIREMENTS FOR CRS ACTIVITY 450 – STORMWATER**
49 **MANAGEMENT.** – Mr. Disher reviewed the history of this project, noting that it began with a Florida
50 Department of Environmental Protection (FDEP) grant application in 2020; it then was shifted into the
51 Resilient Florida Program in 2022 when that program was created. The Town hired a consultant at the
52 beginning of 2023 and has been working with them since then to prepare the Watershed Master Plan for
53 the Board and Council's review and approval today; it is due to the state by the end of the month per the
54 term of the grant. Ms. Rippey explained the Watershed Master Plan analyzes the combined impacts on
55 the Town's drainage system from existing and expected development; various long rainfall events, such
56 as the 100-year storm; tidal flooding and projected sea level rise. Based on these projections, the
57 Watershed Master Plan also provides policy recommendations for future decision making; it will also
58 allow the Town to improve its community rating system (CRS) rating which will eventually lower
59 insurance costs for our residents. Ms. Rippey introduced Ms. Elizabeth Perez and Mr. Joel Jordan,
60 Collective Water Resources, LLC (CWR), to give the presentation on the Watershed Master Plan.

61
62 Ms. Perez provided a [Watershed Presentation.pptx](#) and explained the Watershed Master Plan is a
63 thorough assessment of the potential types of flooding that could impact the Town and includes
64 recommendations for future decision-making and mitigation. The Watershed Master Plan is a term
65 coined by FEMA under the CRS program; it is reviewed by national reviewers and assigned credit. A
66 vulnerability assessment was conducted as part of this study that was funded by FDEP under the Resilient
67 Florida Program. She explained that a watershed master plan is a comprehensive decision-making tool
68 to assist communities with stormwater management; it provides an opportunity to enhance relevant
69 datasets, address climate vulnerability, and update stormwater modeling to current standards. The plan
70 looks at both existing and future conditions; FEMA asks that we look out to the year 2100. The
71 consultants reviewed the impact of sea level rise and climate change; wetlands; applicable codes and
72 regulations; and mitigation of potential impacts. Ms. Perez noted that the plan is not a comprehensive
73 capital improvement plan, adaptation plan, or a detailed funding plan. She noted that currently, the Town
74 is a Class 5 within the CRS program; this plan is essential to move to a higher rating which could result
75 in residents receiving a lower insurance premium. She explained the CRS program and how the rating
76 system provides incentives for communities that adopt and enforce flood management practices. Ms.
77 Perez explained the vulnerability assessment and the three steps required under the Resilient Florida
78 program for assessments of this type: conduct an exposure analysis; conduct a sensitivity analysis; and
79 assign focus areas. She provided general definitions of terms used within the Watershed Master Plan
80 including community assets, vulnerability and risk, and other related terms.

81
82 Mr. Jordan continued the presentation with the hydrology and hydraulics overview; he explained that
83 hydrology looks at how much runoff will be generated from a rainfall event, while hydraulics is how
84 that runoff gets moved from wherever it collects. The topography, land use and land cover, soils, and
85 climate and rainfall were reviewed for current and future conditions. He explained the hydraulics
86 overview and provided a digital map. Ms. Perez resumed the presentation and stated that for the
87 vulnerability assessment, the State of Florida requires you to look at critical and regionally significant
88 assets. The first step is the exposure analysis which included flooding threats: tidal, storm surge, rainfall-
89 induced, and compound; the time horizons up to the year 2100; and sea level rise projections. She
90 reviewed the exposure analysis results from year 2023 to year 2100; and she provided digital maps for
91 the results for rainfall-induced flooding, Category 2 storm surge flooding, and compound flooding. She
92 reviewed the analysis results for the percentage of buildings exposed to flooding and the percentage of
93 property assets exposed to flooding by flood type and scenario; she noted that this analysis will make

94 the Town compliant with Resilient Florida requirements. She also reviewed the roadway assets and the
95 table showing the percentage of assets exposed to potential future flooding. Councilmember White
96 referred to the buildings and properties assets and asked if a property had a building on it, would it not
97 be an asset? Ms. Perez explained that for planning purposes, they look at properties; she noted that Mr.
98 Jordan will explain more on the focus areas. Mr. Revak asked for clarification on the meaning of the
99 total number of assets; the Town has more than the 65 buildings shown on the table. Ms. Perez explained
100 that is as prescribed by the state of Florida; they specifically state what counts as a building. She
101 continued the presentation and reviewed the sensitivity analysis results.
102

103 Mr. Jordan reviewed the eight focus areas; they were analyzed using future land use changes and known
104 flooding complaints. The analyzed areas were: Old Carriage Road and Anchor Drive area; Calumet
105 Avenue; Michael Lane (Oceanside Village Subdivision); Las Olas Subdivision; Bay Harbour Drive to
106 Beach Street; South Atlantic Avenue; and the Riverfront area. He reviewed each focus area individually
107 and the proposed improvements for each. Councilmember Milano stated that years ago, the two
108 developments at Old Carriage and Anchor Drive had trouble with the silt in the canal not draining; he
109 asked if the suggestions provided in this report would include the cleaning of those canals. Mr. Jordan
110 explained they did not look at any dredging in the intercoastal waterway; that is a costly process and it
111 is not easy to obtain the needed permits. He continued to review the analysis results and recommended
112 improvements for the focus areas; he noted that the Town contracted with Zev Cohen & Associates to
113 evaluate the current system at Michael Lane (Oceanside Village Subdivision). Councilmember White
114 commented that everything was connected through a series of pipes and ponds in the Bay Harbour area
115 and asked where the water ends up. Mr. Jordan replied there is a 24" outfall pipe at Beach Street that
116 runs to the intercoastal waterway; this is why it takes time for water to drain from yards and roadways
117 after a rain event. This is a complex area; there were seven flood reports from Hurricane Ian from just
118 this focus area. He continued with the presentation; the Bay Harbour area has a combination of
119 alternative improvements recommended to alleviate flooding. He continued with South Atlantic Avenue,
120 and reviewed the evaluated improvements which include swale improvements on both sides of the road,
121 where practical. He noted that any improvements on this roadway would have to be coordinated with
122 Volusia County as the County owns the roadway. Councilmember White asked if Volusia County
123 Council Member Matt Reinhart could be provided with this presentation. Mayor Paritsky agreed that
124 was an excellent idea. Mr. Jordan reviewed the analysis of the Riverfront area and recommended
125 improvements. He noted that this area is subject to both rainfall-induced flooding and tidal flooding. He
126 reviewed the recommended solutions including flap-gates and additional retention capacity.
127 Councilmember Villanella commented that it does not seem that there are enough swales in the Town.
128 Mr. Jordan explained there are some; and swales are encouraged as part of retention areas in the LUDC.
129 Some swales in the town are perfectly adequate for a storm event but in other areas, due to soil conditions,
130 etc., they cannot store the runoff. Retention would need to be combined with other potential
131 improvements.
132

133 Ms. Perez reviewed the recommended adaptation strategies, explaining that FEMA asks that as part of
134 the Watershed Master Plan we document other strategies and mitigation measures. The adaption
135 strategies include 1) regulation strategies (stormwater manual, LUDC); 2) public information (required
136 by FEMA); 3) structural controls (flap-gates, seawalls, etc.); 4) non-structural controls (swales,
137 improved site design, etc.); 5) protection of natural areas; and 6) acquisition of flood-prone properties.
138 She explained these things are included in the plan to optimize the Town's ability to apply for funding;
139 she reviewed funding examples including the Resilient Florida program. She noted that the Town will
140 qualify for the second Resilient Florida funding grant with this plan. She briefly discussed other funding

examples. Mayor Paritsky reminded the Council and Planning Board that this document is a foundation, and that the Town has methodically worked toward a resilient Ponce Inlet. The Town adopted a Resolution that memorializes the importance of resilience and identifying all our issues; whether it is flooding, or sea level rise, and how we are going to mitigate and adapt to the issues. She was recently in Washington D.C. representing Ponce Inlet for the American Flood Coalition when the Watershed Master Plan was completed, and it is a big deal – we are ahead of the curve; we were already ahead of the curve with the vulnerability assessment. This plan is also a diagnostic tool for the Town. Not only will we prioritize the funding opportunities presented in the plan, but we can forward it to Volusia County as Councilmember White suggested; she can also take it to the state legislature for appropriations requests. She pointed out that the Town Manager was the former Planning & Development Director for the Town so there has always been a focus on resiliency in our plans and codes. Mayor Paritsky opened discussion for the Council.

Councilmember White commented he is trying to understand the ranking; noting that the challenge is going to be how we rank it. He asked if there are any current regulations for the Town to pump stormwater into the river; it will be a challenge if it must be treated before it goes into the river. Ms. Perez explained that Ponce Inlet is in the St. Johns River Water Management District who protects water quality vigilantly; therefore, along with the new stormwater rule, the Town will likely be required to provide pre-treatment. For a large storm event, it may not be possible to treat all the water; there are pump stations in the state that are permitted with nominal treatment but not the St. John's. She added that pump stations must be carefully engineered, and they consume a lot of power. There is no uniform requirement for pretreatment throughout the state currently. However, that will change with the new stormwater rule. Mayor Paritsky asked if the Town has been funded for the adaptation plan. Mr. Disher replied yes; the next step is to put it out for bid. Councilmember Milano referred to the objectives that the Town could start doing right away; one is the storm retention which is at 1"; the recommendation is 2.5". The next objective was land acquisition. He suggested the Town Manager and Planning Board review the retention now instead of when it comes up in the ranking; to do some of these smaller things now while we wait for funding to do the big projects. He understands the retention ponds are being dredged and cleaned. The Town has tried to be proactive with resiliency and do some of these things; perhaps we have not communicated that well to the residents. Councilmember White added that the Planning Board has been working on this for two years; the comprehensive plan has been adjusted based off the resiliency program. Mayor Paritsky opened discussion for the Planning Board.

Mr. Burge asked if the river level is higher than the flap-gate if the outflow will still occur. Mr. Jordan replied yes, and explained how the flap-gate would work. Mr. Burge asked if the flap-gate prevents street litter or dirt from flowing into the river. Mr. Jordan explained devices can be installed that will catch it before it goes into the receiving body of water; however, they must be maintained. There is an option of installing concrete baffle boxes; however, they also must be maintained. Mr. Burge referred to the streets between Peninsula Drive and South Atlantic Avenue that frequently flood, and asked if there is a way to lower the water table so the rainfall would percolate into the ground. Mr. Jordan replied yes, from a technical standpoint, but it would be much more problematic from a permitting standpoint because that is where the natural vegetation has grown expecting the water table to be there. If it is lowered, the root systems may not be able to reach the water table and there would be adverse effects to plants and wildlife. Discussion continued regarding the water table. Planning Board Chair Kaszuba stated it is important for the Town to have a good working relationship with the other jurisdictions, particularly Volusia County and the federal government. He watched the County work on the swales last summer and it seemed inadequate. He hopes this report will get a more serious look at the suggested solutions. He understands

188 some projects have hefty price tags but some smaller projects we could start doing. Mayor Paritsky
189 agreed. Mr. Oebbecke commented that we need to get this information to our citizens; we need the
190 committees such as the Land Acquisition Committee, etc., to get the citizens involved so they feel they
191 are part of the solution.

192
193 Mayor Paritsky opened public comment. Barbara Davis, 4871 Sailfish Drive, thanked the Council for
194 recognizing that we need to be proactive. It flooded in 2004; we had a rain event in 2009; we did a
195 resiliency report; in 2022 everything flooded during a tropical storm. She has been beating her drum for
196 16 years about the 1" retention; she explained why that needs to be changed. She mentioned several
197 properties where the structures are being lifted instead of the lot being filled and why more properties
198 should be allowed to do that. She referred to swales and stated there is a 75-foot right-of-way on Sailfish
199 Drive that is supposed to be protected by resolution; however, people are putting sod on it and clearing
200 it out. We need to legislate on the 1" retention and swales; and land acquisition. The Town bought a
201 parcel on Sailfish Dr. and sold it for the same price instead of installing retention. The Land Acquisition
202 Committee was disbanded so we cannot look for more retention areas. She referred to the Las Olas
203 information provided and asked what will happen there; sewer water is in the water there when it floods.
204 Until Mr. Griffith came to work here, we did not have a flap-gate on the river; water was backing up
205 through the storm gates onto Sailfish Drive. We need more retention. The focus area recommended low-
206 impact development; we need legislation to stop people from filling and not putting in adequate plants
207 to absorb the water. Improve site design. We have the right-of-way where we could install swales,
208 particularly in the flood zones on Sailfish Drive. The north end of the right-of-way is 30 or 40 feet wide
209 and 75 feet on the south end – swales could be installed all the way down in the flood area and increase
210 retention. Let's get proactive; let's take this list and get started; let's legislate and get the 2.5" retention
211 at least. Councilmember Milano agreed and referred to the slide depicting swales, noting their location.
212 He provided the history of the 1" retention and how he tried to get it increased. He explained he had to
213 go through the county's road and bridge department to have a swale installed near his property. They
214 provided the dirt and built a mound to help direct water to the south to the stormwater drain. Mayor
215 Paritsky closed public comment. Mayor Paritsky provided instructions to the Planning Board on what
216 the motion should be: to recommend approval of the Watershed Master Plan; suggest modifications as
217 part of the approval; or recommend rejection of the plan. Mayor Paritsky opened discussion to the
218 Planning Board; there was no discussion.

219
220 Mr. Young moved to recommend approval of the Watershed Master Plan as presented; seconded by Mr.
221 Burge; The motion PASSED 5-0, with the following vote: Mr. Young – yes; Mr. Burge – yes – Mr.
222 Oebbecke – yes; Mr. Kaszuba – yes; Mr. Revak – yes.

223
224 Councilmember White moved to adopt the Watershed Master Plan to meet the requirements for CRS
225 Activity 450 Stormwater Management as presented; seconded by Councilmember Villanella; The motion
226 PASSED 5-0, following vote: Councilmember White – yes; Councilmember Villanella – yes; Mayor
227 Paritsky – yes; Councilmember Milano – yes; Vice-Mayor Smith – yes.

228
229 Councilmember Milano referred to the "near term recommendations" listed on page 57 and asked if we
230 could start on those items now; hopefully the Town can submit for a grant for other items. Mr. Disher
231 explained this will be entered into a list and sorted by area, priority, and timeframe. Councilmember
232 Milano suggested sending a letter to residents that this plan is available for them to review. Mr. Disher
233 explained notice was provided regarding today's meeting. Mayor Paritsky reiterated that the public is
234 noticed; she explained staff will create an outline that will prioritize everything. Mr. Disher explained

that Hurricane Ian was a wake-up call; that is when we began cleaning the stormwater pipes which was recently concluded; that had never been done before. Staff is currently designing two pond excavations, and stormwater flaps on a couple of roads are being installed. We are in the process of securing \$10.4 million to complete the septic-to-sewer project. We are being proactive and moving forward as best we can. He referred to the 2.5" recommended retention and explained that number was not arbitrarily picked; this was an incredible study with specific recommendations for us. It is a computerized model of the entire Town's watershed and drainage pattern and considers the groundwater table. These recommended projects are eligible for future grant funding through the Resilient Florida Program with up to 50% construction funding for some. Mr. Disher announced the Town has received grant funding for the adaptation plan which is the next step in these efforts; we are doing a combination of planning and construction to address these issues. He also added that lots that may have had stormwater drainage retention when they were first developed may have since filled in; each property must retain the first inch of rainfall that comes off the roof during a storm. Over time, and as properties change hands, these drainage areas have been filled in. That is another aspect that could be addressed if homeowners are unaware of what those holes in their yards are for. Mayor Paritsky thanked Ms. Perez and Mr. Jordan for being here today and requested a copy of the PowerPoint be provided to Council. Mr. Disher asked that it be provided to the Planning Board and posted on the Town's website.

Mayor Paritsky adjourned the meeting at 12:19 pm for lunch

Mayor Paritsky reconvened the meeting at 12:50 p.m.

6. REQUEST FOR DIRECTION ON AMENDING THE LAND USE & DEVELOPMENT CODE TO ALLOW FARMER'S MARKETS AS A PERMITTED SPECIAL EXCEPTION USE IN THE PUBLIC INSTITUTION (P-I) ZONING DISTRICT. – Ms. Rippey explained staff is requesting direction from the Council on amending the LUDC to allow farmer's markets as a permitted special use in the public institutional (P-I) zoning district, as Town staff received a written request from the Ponce Inlet Community Center Board requesting it. Code amendments are initiated in one of three ways: 1) sponsored or directed by a Councilmember; 2) proposed by staff to implement policies in the comprehensive plan or changes to state law; or 3) through an application with a fee payment. Barring these, staff can only devote time to such requests after other Council-directed goals and tasks have been completed. Farmers markets are a temporary or occasional outdoor retail sale of farm produce or seafood; typically located within a parking lot or approved location in a public right-of-way closed to vehicular traffic. Farmers markets are only permitted by right in the PUD and PWD zoning districts and are also allowed as a minor special exception in the B-1 and B-2 commercial zoning districts. The request to add farmers markets as a special exception use to the P-I zoning district would provide additional locations for farmers markets to serve the local population. In the P-I zoning classification, farmers markets are only allowed through a special event permit, limited to 12 times per calendar year. Mayor Paritsky asked for clarification that if this P-I zoning was amended, it would be applicable to any area zoned P-I. Ms. Rippey answered yes. Mayor Paritsky asked if the special event permit applications are submitted through the Cultural Services Department. Mr. Disher replied yes. Mayor Paritsky stated that if Council agrees to this amendment for the community center, the impact would be that every P-I zoned area would have the right to do this. Ms. Rippey answered yes. Mayor Paritsky stated the consequence of approving this is bigger than just for the community center. She asked if there was a way the community center could have a farmers market every Sunday without this sweeping change; she asked if there was anything in the code would allow that to happen.

281 Ms. Rippey explained she did not find anything in her research that would allow it without amending
282 the zoning district and land use. Mr. Disher agreed and added that he has not had an opportunity to
283 research if it could be allowed to occur inside the building. Mayor Paritsky commented that would be
284 like renting the community center; they could also use the kitchen as she knows some of the vendors
285 cook. Vice-Mayor Smith asked what the difference is between the food trucks there on that site
286 periodically and a farmer's market. Mr. Disher explained the food trucks are through a special event
287 permit, so it is limited to 12 times per year. Vice-Mayor Smith asked if there could be multiple special
288 event permits. Discussion ensued regarding special event permits; the limitations of special events; the
289 food trucks; and farmers market. Councilmember White noted that the responses he has received from
290 residents is that they want to see a farmers market at the community center; and they feel very strongly
291 about the location. He asked if there is a way to have the farmers market at the community center on a
292 permanent day. Mayor Paritsky asked if his opinion would change if the consequence would then permit
293 farmers markets in similarly zoned districts. Councilmember White explained no, if the vendors follow
294 the permits and supply the documentation, whether it is at PICCI or another location, it is an added
295 advantage for the residents of Ponce Inlet regardless of what a P-I property holds; it needs to benefit the
296 residents. Vice-Mayor Smith asked if the farmers market would interfere with the church that is held at
297 PICCI on Sunday morning. Councilmember Milano stated he supports the farmers market, but the church
298 is a concern. He noted that PICCI has insurance, but if it opens it up to other locations, such as the
299 museum, it puts the liability on the Town. Mr. Oebbecke explained he spoke to the pastor of the church
300 about the possibility of having the farmers market at the community center; he is fine with it with one
301 condition; that people attending the farmers market do not enter the community center. The external
302 doors to the restrooms will be available to farmers market attendees but everything else will be restricted.
303 Signs will be posted that church is in service. The pastor is there from 9:30 am to noon; church service
304 starts at 10:30 am. The community center is requesting this be allowed as a special exception use; if
305 another request is submitted for a Public-Institutional property, the Town could always deny it if it
306 deemed not appropriate. He explained this would be a farmer's market; it will not be extended to include
307 crafts or things not directly related to food stuffs. Mayor Paritsky asked if that would include food that
308 is cooked on-site. Mr. Oebbecke replied yes, it would. Mayor Paritsky asked if this request was made at
309 the Board of Directors of PICCI. Mr. Oebbecke answered yes, and it was a unanimous vote.

310
311 Councilmember White asked what the process is to request a special exception. Mr. Disher explained
312 that currently, someone would submit an application that is reviewed by staff; then it is reviewed by the
313 Planning Board for approval. If the Council wants to review applications for Town-owned property, then
314 it would be considered a major special exception, which is reviewed by the Planning Board for a
315 recommendation, then by the Council for final approval. Mayor Paritsky asked what Town-owned
316 property is not zoned Public-Institutional? Mr. Disher explained only the Green Mound and Lighthouse
317 Point Park. Discussion continued; other locations were suggested and discussed. Councilmember
318 Villanella stated he would like the farmers market at PICCI; however, he understands the legal concerns
319 that we cannot say the special permit is only for PICCI. Councilmember White reiterated the number of
320 residents that have voiced their opinion to hold the farmers market at PICCI, he feels we must move
321 forward with this. Councilmember Milano and Vice-Mayor Smith agreed.

322
323 Mayor Paritsky provided staff direction to move forward with the farmers market at the Ponce Inlet
324 Community Center.
325

7. **DISCUSSION – AMENDING THE PLANNING BOARD BY-LAWS TO CHANGE THE MEETING TIME TO 2:00 P.M. AND SPECIFYING THE TIMING OF AGENDA PACKET DELIVERY.**

Mayor Paritsky asked the Planning Board members to explain what they are asking for. Planning Board Chair Kaszuba explained that some of the Planning Board meetings are held at 10:00 am and others are at 5:30 pm, depending on whether it was a quasi-judicial hearing. Some Planning Board members wanted a better idea of how much of their day would be consumed with a meeting for better planning purposes for their schedules. Mayor Paritsky asked for clarification that the new proposed meeting start time is 2:00 pm. Chair Kaszuba answered yes. Mr. Burge explained it was presented by a member for personal reasons; personally, he is happy with 10:00 am.

Mr. Oebbecke moved to change the Planning Board meeting time to 2:00 pm for non-quasi-judicial items; seconded by Mr. Revak; The motion PASSED 4-1, with the following vote: Mr. Oebbecke – yes; Mr. Revak – yes; Mr. Kaszuba – yes; Mr. Burge – no; Mr. Young – yes.

Mayor Paritsky stated the Planning Board bylaws will be brought to the Town Council for approval. She stated the next part of this item is specifying the timing of the agenda packet delivery; she explained the Planning Board packet is provided in the same timeframe and manner as for the Council and other Boards; one week in advance. She asked the reason for this request. Chair Kaszuba referred to the Sailfish Marina project and explained that Planning Board members had less than a week to review it. They are looking for more time to review the material; ensuring it is a week would be a step in the right direction. Mr. Young commented Board members heard that Sailfish marina had been in the process for two years, yet only received the packet a week in advance. He understands the quasi-judicial nature of that particular application and that the Board's role is to hear the case and decide it; however, when it is something so controversial, it would be helpful to have the information more in advance. Mayor Paritsky asked if they separated out that project (Sailfish Marina), if they were comfortable with the process as it stands today. Mr. Young answered yes. Mayor Paritsky explained there is one week in advance for Council and Boards because there is an internal process of dates; when staff works on something, it is reviewed by the Town Manager, etc. Planning Board materials are labor intensive and there is a lot to read; there are facts that must be applied to ordinances, etc. She suggested that if Board members feel ill-prepared on an item, they make a motion to table it for a month. She referred to Sailfish and reminded members that even if they hear of something for two years, they cannot discuss before the hearing it if it is quasi-judicial. Discussion continued regarding the timing of agenda packet delivery and consensus was reached to leave it as-is. Mr. Disher added that staff is always available to answer questions or explain anything if needed; and staff can provide updates on projects that are not quasi-judicial. Mayor Paritsky asked if anything like Sailfish Marina is coming, to inform the Planning Board and Council it is coming.

8. **ADJOURNMENT.** — Mayor Paritsky adjourned the meeting at 1:43 P.M.

Respectfully submitted by:


Kim Cherbano, CMC, Town Clerk

Prepared by: Debbie Stewart, Assistant Deputy Clerk

Attachment(s): None



ATTACHMENT III
DRAFT PLANNING BOARD SEPTEMBER 24, 2024 MEETING MINUTES



Town of Ponce Inlet

Planning Board

Regular Meeting Minutes

September 24, 2024

1 **1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE:** Pursuant to proper notice,
2 Chair Kaszuba called the meeting to order at 2:00 p.m. in the Council Chambers, 4300 S. Atlantic
3 Avenue, Ponce Inlet, FL, and led attendees in the Pledge of Allegiance.
4

5 **2. ROLL CALL AND DETERMINATION OF QUORUM:**
6

7 Board members present:

8 Mr. Oebbecke, Seat #1
9 Mr. Kaszuba, Seat #2; Chair
10 Mr. Burge, Seat #3
11 Mr. Cannon, Seat #4
12 Mr. Carney, Seat #5; Vice Chair
13 Mr. Revak, Alternate #1 - Absent
14 Mr. Young, Alternate #2 - Absent
15

16 Staff present:

17 Ms. Dowling, HR Coordinator
18 Ms. Fisher, Senior Planner
19 Ms. Gjessing, Assistant Deputy Clerk
20 Mr. Hooker, Code Compliance Manager
21 Ms. Hugler, Fire Department Office Manager
22 Attorney Knight, Town Attorney
23 Mr. Lear, Planning & Development Director
24 Ms. Rippey, Principal Planner
25

26 Other officials present:

27 Mayor Paritsky
28 Councilmember Villanella
29

30 **3. ADOPTION OF AGENDA:** - Mr. Cannon moved to adopt the agenda as presented;
31 seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0.
32

33 **4. APPROVAL OF MINUTES:**
34

35 **A. July 23, 2024 -** Mr. Cannon moved to approve the July 23, 2024, meeting minutes
36 as presented; seconded by Vice-Chair Carney. The motion PASSED by consensus, 5-0
37

38 **5. REPORT OF STAFF:**

39 **A. Planning Division Reports** – Mr. Lear announced there are three new employees
40 in the Planning and Development Department: Bernadette Fisher, Senior Planner; Bailey
41 Hornbuckle, Code Enforcement Administrative Assistant; and Heather Ricci, Permit Technician.

He announced a Town Hall landscaping project to replant the areas previously cleared by Public Works of the muscadine grape vines; planting is scheduled to begin in October. They will be installing 272 native plants varieties; once established, these plants will help reduce soil erosion, conserve water and water run-off, lower maintenance needs, and enhance wildlife habitat. Regarding the S. Peninsula Drive sidewalk, contractors were hired last month by Volusia County to conduct survey work from the northern town limits to Lighthouse Drive; the survey is expected to take approximately five months after which the county will engage an engineer for the design work. Chair Kaszuba asked if there is a completion date for the sidewalk project. Mr. Lear explained that will be finalized during the design phase; public meetings must still take place.

B. Other Updates and/or Reports - There were no other updates.

6. CORRESPONDENCE/DISCLOSURE OF EX-PARTE COMMUNICATION: Mr. Oebbecke stated he identified communications between Mr. Revak and himself that was forwarded to staff for the record regarding the ordinance change to the LUDC. Mr. Revak texted Mr. Oebbecke on September 23, 2024 at 5:28 PM indicating he had reviewed what was being presented and the only question he had was “with modification zoning district permitting uses with major special exceptions designation what are the next steps required to get the event approved?”. Mr. Oebbecke replied he received the message; Mr. Revak responded that he should probably bring up his thoughts and potentially identify an issue with Sunshine requirements. Vice-Chair Carney commented he went to the farmers market on Sunday and spoke with the ladies that run it who discussed their concerns with him; he requested they send their concerns to Ms. Rippey which they have done.

7. HEARING OF CASES: None.

8. BUSINESS ITEMS/PUBLIC HEARINGS:

A. Ordinance 2024-XX (proposed), Amending the LUDC, Article 2 “Zoning Districts”, Section 2.40.1 “Interpretation of Uses and Structures Permitted, Table 2-5, “Table of Permitted Uses”; adding farmers markets as a major special exception to the public-institutional district. – Ms. Rippey explained this proposed ordinance has been drafted in response to the Town Council’s directive at the June 4, 2024 special meeting with the Planning Board and Town Council to amend the Land Use and Development Code (LUDC) to allow farmers markets as a special exception use in the Public Institutional (P-I) zoning district. She explained how amendments are adopted and reviewed the background of this proposed amendment to the LUDC. Currently, farmers markets are only permitted in the planned waterfront development (PWD) zoning district and allowed as a minor special exception use in the B-1, B-2, and PUD zoning districts. In the P-I zoning classification, farmers markets are not a permitted or special exception use, although they may be allowed through a special event permit, limited to 12 times per calendar year. According to LUDC Section 6.6.3, a special exception is a use that would not be appropriate without restriction, but which, if controlled as to number, area, location or relation to the surrounding area, would promote the public health, safety and general welfare. These uses require more comprehensive review, and by their nature may necessitate specific conditions to mitigate any potential adverse impacts. The Planning Board serves as the decision-making authority for minor special exceptions while major special exceptions require a recommendation from the Planning Board and approval by the Town Council. The request to add farmers markets as a special exception use to the P-I zoning district would provide additional locations for farmers

90 markets to serve the local population; 16 properties within the town limits are zoned Public-
91 Institutional. Those properties include town-owned facilities and parks, county-owned facilities
92 and parks, and private scientific facilities. The Ponce Inlet Community Center Board of Trustees
93 is in support of allowing a farmer's market to operate at the Community Center. Based on the
94 safety, convenience and unique location, the Board has requested that farmers markets be added
95 as a special exception use. The proposed amendment will add a major special exception notation
96 in the P-I zoning column in Section 2.40 of Table 2-5 (Table of Permitted Uses) under the section
97 of the table in the LUDC titled "Community Facilities and Public Assembly"; footnote 10 is
98 included in the notation and is located on the last row of Table 2-5 to identify P-I zoned properties
99 excluded from the major special exception. The three P-I zoned properties proposed to be included
100 as a major special exception are: Ponce Inlet Community Center, Ponce Inlet Fire Rescue, and
101 Timothy Pollard Memorial Park which are located adjacent to each other on S. Peninsula Drive.
102 The P-I zoned properties excluded from the special exception are Ponce Preserve, Timucuan Oaks
103 Garden, Winter Haven Park, Public Works facility, Ponce Inlet Historic Museum, the two Batelle
104 Institute properties, Jesse Linzy Boat Ramp, Marine Science Center, and Lighthouse Point Park.
105 Originally, the Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Kay and Ayres
106 Davies Lighthouse Park were included; however, after a discussion with Ed Gunn, Director of the
107 Historic Lighthouse Preservation Association, they did not want that to occur on those properties
108 and upon further review, there are some restrictions on those properties that are included in the 10-
109 acre location. As reviewed regarding the comprehensive plan, the ordinance will maintain
110 consistency with the Town's desired vision and direction. The Future Land Use Element of the
111 comprehensive plan classifies the P-I land use category as land used for quasi-public and private
112 activities or facilities which will serve the public interest in an educational, recreational, or
113 scientific context. Staff recommends Ordinance 2024-##, amending Section 2.40 Table of
114 Permitted Uses to include farmers markets as a major special exception use in the P-I zoning
115 district excluding 13 of the 16 P-I zoned properties.

116
117 Vice-Chair Carney referred to the email provided by Jair Kessler regarding this issue and
118 her concern that Mr. Oebbecke has a conflict of interest as he is a Board Member of the Ponce
119 Inlet Community Center. Attorney Knight explained Mr. Oebbecke will be recusing himself from
120 the vote on this issue. Mr. Lear clarified that Ms. Kessler's email was forwarded to the Planning
121 Board members. Members discussed the proposed amendment, the use of the Fire Department and
122 Timothy Pollard Park properties, other uses than farmers markets, and potential parking issues.
123 They discussed it being a major versus minor exception; they discussed the properties that are
124 excluded and why. Board members discussed communication submitted from the Ponce Inlet
125 Community Center Board of Directors and their decision to allow farmers markets. Mr. Oebbecke
126 explained on behalf of the PICCI Board of Directors why a weekly farmers market will be a benefit
127 to the community and their reasons for supporting this amendment. Discussion continued. Chair
128 Kaszuba opened public comment; seeing none, he closed public comment. Chair Kaszuba opened
129 the floor for more Board discussion or a motion. Mr. Cannon asked for clarification of the nature
130 of a farmer's market; that it is an aggregation of vendors that are not beholden to anyone. There is
131 no contractual agreement; it is only an assembly point. Mr. Oebbecke explained that is correct;
132 there is no agreement, no contract is signed, and no fee is charged to the vendors; it is a place for
133 them to congregate and sell their wares on a weekly basis. Mr. Lear clarified that the current
134 farmers market operating at the North Turn Restaurant is under a special event permit that is
135 allowable only 12 times per year. Mr. Cannon asked if this is approved, if there is anything that
136 prohibited one market operating at will and another that is limited to 12 times per year. Vice-Chair
137 Carney commented that the Board members recently received training, and he would like guidance
138 on what the threshold should be for an exception like this or what they should be looking for to

make this decision. Attorney Knight explained there is no set criteria, and this is not a quasi-judicial proceeding. Discussion continued; Attorney Knight explained the difference between a variance and a special exception.

Mr. Cannon moved Ordinance 2024-XX, amending the LUDC, Article 2 “Zoning Districts”, Section 2.40.1 “Interpretation of Uses and Structures Permitted, Table 2-5, “Table of Permitted Uses” to include farmers markets as a major special exception to the public-institutional district excluding 13 of the 16 P-I zoned properties be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Chair Kaszuba. The motion FAILED 2-2, with the following vote: Mr. Cannon – yes; Chair Kaszuba – yes; Mr. Burge – no; Vice-Chair Carney – no.

Mr. Oebbecke abstained, and his filed Form 8-B is attached as part of the record.

B. Ordinance 2024-XX (proposed), Amending Articles 3, 8, and 9 of the LUDC to substitute references of Code Enforcement Board with Special Magistrate – Mr. Lear explained that this ordinance has been developed to implement the Town Council’s directive to shift from a Code Enforcement Board process to a Special Magistrate process. The amendment changes references found throughout the LUDC pertaining to enforcement of land development regulations. Chapter 162, Florida Statutes, authorizes the use of a Special Magistrate to enforce the city’s codes and ordinances. A Special Magistrate is an attorney and a member of the Florida bar who is appointed by the Town Council; he explained the duties of a Special Magistrate in relation to code enforcement. He noted that the Town of Ponce Inlet is the only municipality in Volusia County that exclusively uses a Code Enforcement Board rather than a Special Magistrate or a combination of both. At the July 18, 2024 Town Council meeting, Council directed staff to proceed with transitioning from a Code Enforcement Board to a Special Magistrate. Staff recommends approval for this item. Vice-Chair Carney commented he has heard that Ponce Inlet code, as it refers to housing and short-term leasing, is grandfathered and could not be changed; he wants to ensure that when we update this, we do not lose the grandfather status. Mr. Lear explained that would not affect this. Attorney Knight explained it is not a substantive change where we would lose the grandfathering status. Chair Kaszuba asked how long the Town has had a Code Enforcement Board. Mr. Hooker explained the first Code Enforcement Board meeting was in the 1980’s. The Town has had the same attorney since that time, Mr. Charles Cino, who has indicated he will likely retire within the next year. The Special Magistrate would start in January; Mr. Hooker explained the process and noted that the Special Magistrate would only serve the Town of Ponce Inlet. He explained that the Special Magistrate will be chosen through an RFP process. He explained the appeal process and why the Town is transitioning to a Special Magistrate. Chair Kaszuba opened public comment; seeing none, he closed public comment.

Mr. Cannon moved that Ordinance 2024-XX amending Articles 3, 8, and 9 of the Land Use Development Code to substitute references of the Code Enforcement Board with Special Magistrate be forwarded to the Town Council with a recommendation of APPROVAL; seconded by Vice-Chair Carney. The motion PASSED 5-0, with the following vote: Mr. Cannon – yes; Vice-Chair Carney – yes; Mr. Oebbecke – yes; Chair Kaszuba – yes; Mr. Burge – yes.

9. PUBLIC PARTICIPATION: Chair Kaszuba opened public participation – hearing none, he closed public participation.

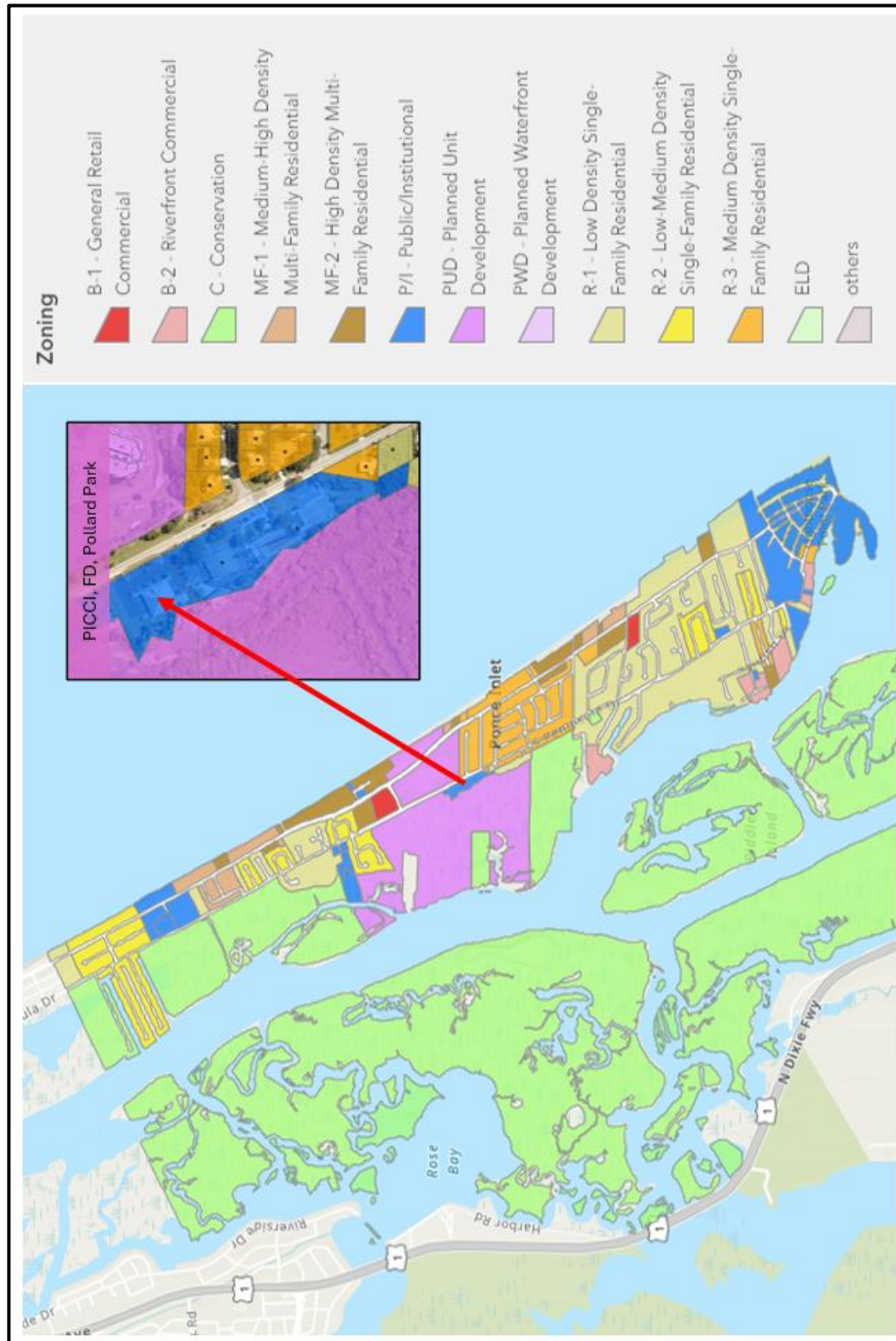
10. BOARD DISCUSSION: None.

11. ADJOURNMENT: The meeting was adjourned at 3:07 p.m.

189 Prepared and submitted by,
190
191 Draft
192 Debbie Stewart
193 Assistant Deputy Clerk
194

DRAFT

ATTACHMENT IV ZONING MAP



ORDINANCE NO. 2024-06

AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE LAND USE AND DEVELOPMENT CODE, ARTICLE 2 “ZONING DISTRICTS”, SECTION 2.40.1 “INTERPRETATION OF USES AND STRUCTURES PERMITTED”, TABLE 2-5 “TABLE OF PERMITTED USES”; ADDING FARMERS MARKETS AS A MAJOR SPECIAL EXCEPTION USE TO THE PUBLIC-INSTITUTIONAL ZONING DISTRICT; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article 2 of the Ponce Inlet Land Use and Development Code (LUDC) establishes regulations for zoning districts and permitted uses by zoning district; and

WHEREAS, Section 2.40 of Article 2 provides a table listing the permitted uses and special exception uses in each zoning district; and

WHEREAS, the Town Council directed staff at Town Council Special Joint Meeting with the Planning Board held on June 4, 2024 to amend the LUDC to allow farmers markets as a special exception use in the Public-Institutional zoning district; and

WHEREAS, the Planning Board, at its regularly scheduled meeting on September 24, 2024, reviewed the Ordinance in its capacity as the Local Planning Agency, but failed to pass a motion recommending its approval to the Town Council; and

WHEREAS, the Town Council affirms that this Ordinance is consistent with the Comprehensive Plan and is in the best interest of the public welfare of the Town; and

WHEREAS, the Town has complied with all requirements and procedures of the LUDC and Florida law in processing, noticing, and advertising this Ordinance; and

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA:

NOTE: Underlined words constitute additions to the Town of Ponce Inlet Land Use Development Code (LUDC) as amended by Ordinance 2024-06, ~~striketrough~~ constitutes deletions, and asterisks (***) indicate an omission from the existing text of said LUDC as amended which is intended to remain unchanged.

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being

true and correct and are hereby made a part of this Ordinance.

SECTION 2. Incorporation of Amendments. The proposed amendments to **Article 2, Section 2.40** of the Land Use and Development Code are attached to this Ordinance as Exhibit "A" and are hereby incorporated into the text of this Ordinance as though fully set forth herein verbatim as amendments to the Land Use and Development Code.

SECTION 3. Codification. It is the intent of the Town Council of the Town of Ponce Inlet that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail.

SECTION 6. Effective date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Ponce Inlet, Florida.

It was moved by _____ and seconded by _____ that said Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:

Mayor Paritsky, Seat #1 _____

Councilmember Milano, Seat #2 _____

Councilmember White, Seat #3 _____

Councilmember Villanella, Seat #4 _____

Vice-Mayor Smith, Seat #5 _____

Approved on first reading this ____ day of _____ 2024.

It was moved by _____ and seconded by _____ that said Ordinance be passed on second reading. A roll call vote of the Town Council on said motion resulted as follows:

Mayor Paritsky, Seat #1 _____

87 Councilmember Milano, Seat #2 _____
88 Councilmember White, Seat #3 _____
89 Councilmember Villanella, Seat #4 _____
90 Vice-Mayor Smith, Seat #5 _____

91
92 Approved and adopted on second reading this ____ day of _____ 2024.
93

94 Town of Ponce Inlet, Florida:
95
96
97 _____
98 Lois A. Paritsky, Mayor

99 ATTEST:
100
101
102 _____
103 Kim Cherbano, CMC
104 Town Clerk

EXHIBIT “A”

ARTICLE 2 – ZONING DISTRICTS

SECTION 2.40 TABLE OF PERMITTED USES

2.40.1 Interpretation of uses and structures permitted.

A use or structure that is not expressly permitted in a zoning district is prohibited.

Table 2-5, Table of Permitted Uses

USE MATRIX			
P	=	Permitted use	
S ^{MN}	=	Use requires minor special exception approval by planning board.	
S ^{MJ}	=	Use requires major special exception approval by town council.	See section 6.6.3, for Permitting Process

	Residential					Commercial			Public and Open Space			Use Regulations
Use	R-1	R-2	R-3	MF-1	MF-2	B-1	B-2	PWD	P/I	C	PUD	

COMMUNITY FACILITIES AND PUBLIC ASSEMBLY												

Farmers Market						S ^{MN}	S ^{MN}	P	S ^{MJ} [10]		S ^{MN}	Section 3.20

[10] Excludes Batelle Institute properties, Jesse Linzy Boat Ramp, Kay and Ayres Davies Lighthouse Park, Lighthouse Point Park, Marine Science Center, Pacetti Hotel Museum, Ponce de Leon Lighthouse and Museum, Ponce Inlet Historic Museum, Ponce Preserve, Port Orange Lift Station (adjacent to Ponce Inlet Community Center), Public Works Facility, Timucuan Oaks Garden and Winter Haven Park.												



Meeting Date: 10/17/2024

Agenda Item: 11-B

Report to Town Council

Topic: Ordinance 2024-07 – 1st reading – Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

Summary: The attached ordinance has been created to fulfill the Town Council's directive to transition from a Code Enforcement Board to a Special Magistrate hired by the Town. The amendment modifies references throughout the Code of Ordinances related to the enforcement process for various regulations.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-07, amending Chapter 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager

From: Darren Lear, AICP, Planning & Development Director

Date: October 8, 2024

Subject: Ord. No. 2024-07 – Amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

MEETING DATE: October 17, 2024

1 INTRODUCTION

2 This proposed ordinance has been created to fulfill the Town Council's directive to transition from
3 a code enforcement system that relies on an appointed volunteer board to a special magistrate hired
4 by the Town. The amendment modifies references throughout the Code of Ordinances related to
5 the enforcement process for various regulations. Modifications to the code enforcement board
6 references in the Land Use Development Code will be handled in a separate ordinance.

8 BACKGROUND

9 In June 2024, Town staff conducted a survey of 16 Volusia County agencies regarding their
10 methods for prosecuting code cases. The findings indicated that the Town of Ponce Inlet is the
11 only municipality that relies solely on a Code Enforcement Board, rather than a special magistrate
12 or a combination of both. During the Town Council meeting on July 18, 2024, the Council directed
13 staff to move forward with transitioning from the current code enforcement process using an
14 appointed volunteer board to a Special Magistrate enforcement process.

16 DISCUSSION

17 Florida Statutes Chapter 162 outlines the code enforcement process for municipalities in Florida.
18 In the early 2000s, reforms were introduced to streamline this process by incorporating the role of
19 a hearing officer, commonly known as a special magistrate, into the statute. Over the past two
20 decades, an increasing number of agencies have shifted from traditional code boards to employing
21 special magistrates for code enforcement matters.

The special magistrate was introduced to address several concerns associated with the traditional Code Enforcement Board process, including:

- *Lack of Volunteers*: Difficulty in recruiting and maintaining sufficient board members.
- *Attendance Requirements*: Challenges in meeting attendance requirements for board members.
- *Expertise Gaps*: Insufficient expertise in specific subject areas relevant to code violations.
- *Property Visits*: Board members visiting violating properties and engaging with property owners prior to hearings.
- *Post-Violation Assistance*: Board members personally assisting violators in correcting issues after violations were identified.
- *Ex-Parte Communications*: Failure to properly identify and manage ex-parte communications.
- *Sunshine Law Violations*: Issues with compliance with Sunshine Law regulations.

Chapter 162 of the Florida Statutes, as amended, allows for the use of a Special Magistrate to enforce the City's codes and ordinances. *“A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter...”*

The proposed amendments, particularly in Chapter 2 “Administration,” include but are not limited to the following:

- Defining the role of a special magistrate.
- Updating procedures and clarifying powers and duties.
- Streamlining and revising existing language.

Recommendation

Staff recommends approval of Ordinance No. 2024-07, amending Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances to substitute references of the Code Enforcement Board with Special Magistrate.

ORDINANCE NO. 2024-07

AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 1 "GENERAL PROVISIONS", CHAPTER 2 "ADMINISTRATION", CHAPTER 6 "ALCOHOLIC BEVERAGES", CHAPTER 10 "ANIMALS", CHAPTER 18 "BUILDINGS AND BUILDING REGULATIONS", CHAPTER 34 "ENVIRONMENT", CHAPTER 42, "OFFENSES AND MISCELLANEOUS PROVISIONS", CHAPTER 46 "PARKS AND RECREATION", CHAPTER 51 "SPECIAL EVENTS", CHAPTER 62 "SOLID WASTE", CHAPTER 66 "STORMWATER AND CONSERVATION", CHAPTER 70 "STREETS, SIDEWALKS AND OTHER PUBLIC PLACES", CHAPTER 74 "TRAFFIC AND VEHICLES", CHAPTER 78 "UTILITIES", AND CHAPTER 82 "VEGETATION" TO REPLACE REFERENCES TO THE "CODE ENFORCEMENT BOARD" WITH "SPECIAL MAGISTRATE" AND TO UPDATE RELATED DEFINITIONS AND PROCEDURES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances (Code) define the code enforcement process, code enforcement board, and certain enforcement responsibilities and functions granted to it; and

WHEREAS, Chapter 162, Florida Statutes, as amended, authorizes the use of a Special Magistrate to enforce a local government's codes and ordinances; and

WHEREAS, the Town Council has directed staff to transition from an appointed Code Enforcement Board to a Special Magistrate to perform said responsibilities and functions; and

WHEREAS, for this transition to occur, it is necessary to amend the Code of Ordinances to replace all references to the "Code Enforcement Board" with "Special Magistrate"; and to update related definitions and procedures; and

WHEREAS, the Town Council affirms that this Ordinance is in the best interest of the public welfare of the Town; and

WHEREAS, the Town has complied with all requirements and procedures of the Code and Florida law in processing, noticing, and advertising this Ordinance; and

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

46
47 **NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE**
48 **TOWN OF PONCE INLET, FLORIDA:**
49

50 **NOTE:** Underlined words constitute additions to the Town of Ponce Inlet Code as
51 amended by Ordinance 2024-07, ~~strike through~~ constitutes deletions, and asterisks (***) indicate
52 an omission from the existing text of said Code as amended which is intended to remain
53 unchanged.
54

55 **SECTION 1. Recitals.** The foregoing recitals are hereby ratified and confirmed as being
56 true and correct and are hereby made a part of this Ordinance.
57

58 **SECTION 2. Incorporation of Amendments.** The proposed amendments to **Chapters 1,**
59 **2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82** of the Code are attached to this Ordinance as
60 Exhibit "A" and are hereby incorporated into the text of this Ordinance as though fully set forth
61 herein verbatim as amendments to the Code.
62

63 **SECTION 3. Codification.** It is the intent of the Town Council of the Town of Ponce Inlet
64 that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal
65 authority in codifying the provisions of this Ordinance.
66

67 **SECTION 4. Severability.** If any section, subsection, sentence, clause, phrase, word, or
68 provision of this Ordinance is for any reason held invalid or unconstitutional by any court of
69 competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall
70 be deemed a separate, distinct, and independent provision, and such holding shall not affect the
71 validity of the remaining portions of this Ordinance.
72

73 **SECTION 5. Conflicts.** In any case where a provision of this Ordinance is found to be in
74 conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail.
75

76 **SECTION 6. Effective date.** This Ordinance shall become effective immediately upon
77 appointment of a special magistrate by the Town Council of the Town of Ponce Inlet, Florida.
78

79 It was moved by _____ and seconded by _____ that said Ordinance
80 be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:
81

82 Mayor Paritsky, Seat #1 _____

83 Councilmember Milano, Seat #2 _____

84 Councilmember White, Seat #3 _____

85 Councilmember Villanella, Seat #4 _____

86 Vice-Mayor Smith, Seat #5 _____

87
88 Approved on first reading this ____ day of _____ 2024.

89
90 It was moved by _____ and seconded by _____ that said Ordinance
91 be passed on second reading. A roll call vote of the Town Council on said motion resulted as
92 follows:

93
94 Mayor Paritsky, Seat #1 _____
95 Councilmember Milano, Seat #2 _____
96 Councilmember White, Seat #3 _____
97 Councilmember Villanella, Seat #4 _____
98 Vice-Mayor Smith, Seat #5 _____

99
100 Approved and adopted on second reading this ____ day of _____ 2024.

101
102 Town of Ponce Inlet, Florida:

103
104
105 _____
106 Lois A. Paritsky, Mayor

107 ATTEST:

108
109
110 _____
111 Kim Cherbano, CMC
112 Town Clerk
113

EXHIBIT "A"

Chapters 1, 2, 6, 10, 18, 34, 42, 46, 51, 62, 66, 70, 74, 78 and 82 of the Code of Ordinances of the Town of Ponce Inlet, are hereby amended to read as follows:

Chapter 1 GENERAL PROVISIONS

* * *

Sec. 1-11. General penalty.

- (a) It shall be unlawful for any person to violate or fail to comply with any provision of this Code or any ordinance of the town. Penalties for violations are as follows:
- (1) For noncriminal prosecution, by a fine not exceeding \$500.00.
 - (2) For criminal prosecution, by a fine to not exceed \$500.00 and/or a term of imprisonment not to exceed 60 days.
 - (3) For code enforcement **board** prosecution, by a fine not exceeding \$250.00 per day for a first offense, and not exceeding \$500.00 per day for repeat violations.
 - (4) In accordance with all other available civil remedies.
- (b) Each day any violation of any provision of this Code shall continue shall constitute a separate offense.
- (c) Where a penalty is not specified for a violation of this Code, the penalty shall be limited to the penalties provided for noncriminal prosecution or code enforcement **board** prosecution in subsections (a)(1) and (3) of this section respectively.

* * *

Chapter 2 ADMINISTRATION

* * *

ARTICLE V. CODE ENFORCEMENT

Sec. 2-141. Intent; jurisdiction.

- (a) It is the intent of this article to promote, protect, and improve the health, safety and welfare of the citizens and to safeguard property values of the town by providing an equitable, expeditious, effective and inexpensive method of enforcing the various codes of the town.
- (b) Further, the provisions of this article are intended to provide an additional and supplemental means of enforcing the various codes of the town, and nothing contained in this article shall prohibit the town from enforcing its codes or ordinances by any other means, specifically including F.S. ch. 162.

Sec. 2-142. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code means any section of the land use and development code for the town.

~~Code enforcement board attorney means the legal counselor for the code enforcement board of the town, as appointed by the town council.~~

Code enforcement officer means any authorized agent or employee of the town whose duty it is to ensure compliance with the various codes and ordinances in force in the town.

~~Enforcement board and code enforcement board mean the code enforcement board as provided for in F.S. § 162.03.~~

Ordinance means any section of the Code of Ordinances for the town.

Repeat violator means a violation of a provision of a code or ordinance by a person who has been previously found through a ~~code enforcement board~~ special magistrate, or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding that the violations occur at different locations.

Special magistrate means the qualified individual appointed by the town council to hear and decide code violations under this section and F.S. ch. 162 in lieu of a code enforcement board.

Town attorney means the town attorney or any assistant town attorney.

Secs. 2-143—2-160. Reserved.

DIVISION 2. SPECIAL MAGISTRATE ~~CODE ENFORCEMENT BOARD~~

Sec. 2-161. Procedures; powers and duties; legal counsel.

(a) The special magistrate ~~code enforcement board~~ shall act in accordance with the Local Government Enforcement Boards Act, F.S. ch. 162, as it may be amended from time to time, and shall have all of the powers and duties set forth therein. The code enforcement officer ~~town attorney~~ shall serve as a prosecutor before the special magistrate ~~code enforcement board~~ at all code enforcement hearings, with legal counsel to the prosecution provided by the town attorney. ~~Legal counsel to the code enforcement board, if desired, shall be provided by the code enforcement board attorney.~~

(b) The special magistrate ~~code enforcement board~~ shall have the power to:

(1) Adopt rules for the conduct of hearings.

(2) Hold code enforcement hearings and assess fines against violators of the various codes of the town.

(3) Subpoena alleged violators and witnesses for hearings. Subpoenas may be served by any law enforcement officer of the town or as otherwise provided for by Florida Statutes. The police department of the town may serve subpoenas. Fees for the service of subpoenas by the police department shall be the same as that provided by law for service of witness subpoenas by sheriffs of the state.

(4) Subpoena evidence for hearing.

(5) Take testimony under oath.

(65) Issue orders having the force of law ~~to commanding~~ ing whatever steps are necessary to bring a violation into compliance or otherwise resolve an administrative matter in accordance with the Code ~~with town codes or ordinances.~~

(76) Review and provide recommendations to the Town Council regarding cases suggested for foreclosure. The Town Council will then have the discretion to decide whether to proceed with any property foreclosures ~~Hear and decide appeals when authorized to do so pursuant to any ordinance in which the town council adopts a supplemental means of enforcing its codes.~~

(8) Hear certain appeals as provided by this code.

~~Sec. 162—Composition~~

~~The code enforcement board shall consist of five members and two alternates.~~

Sec. 2 ~~163~~162. – Appointment ~~and term of members~~of special magistrate.

~~The members and alternates of the code enforcement board shall be appointed by the town council and shall serve three year staggered terms, with an exception for the current terms of members on this board: terms for seats one and four shall expire in December 2018, terms for seats two and five shall expire in December 2016, and the term for seat three shall expire in December 2017. Alternate members shall be appointed to an annual term ending in December of each year.~~

The Town Council, may, from time to time, appoint one or more special magistrates to adjudicate any code enforcement matter. The special magistrate shall be subject to all the provisions of this article unless specified in the order of appointment.

Secs. 2-~~163~~164—2-180. Reserved.

DIVISION 3. - CODE ENFORCEMENT PROCEDURE

Sec. 2-181. Initiation of proceedings.

It shall be the duty of the code enforcement officer, as provided in this article, to investigate or initiate complaints of violations of town codes and to initiate enforcement proceedings relative thereto. The ~~code enforcement boards~~ special magistrate shall not have any independent authority to conduct its own investigation of such complaints or to initiate enforcement proceedings.

* * *

Sec. 2-183. Citation format.

A citation issued by the code enforcement officer shall be on a form approved by the town manager and town attorney and shall include, but is not limited to, the following:

- (1) The date and time of issuance.
- (2) The name and address of the person to whom the citation is issued.
- (3) The date and the time the violation was issued.
- (4) The facts constituting reasonable cause for issuance.

(5) The specific section number of the code that has been violated and a description of the nature of the violation.

(6) The name and authority of the code enforcement officer.

(7) The statutory range of fines amount available to the ~~code enforcement boards~~ special magistrate to be imposed against the violator and subsequent purchasers, successors in interest or assigns.

Sec. 2-184. Notice of hearing.

If, upon personal investigation, the code enforcement officer has reasonable cause to believe that the violator has not corrected the violation within the prescribed period of time, he shall issue a notice of hearing on a form approved by the town manager and town attorney, which shall include, but not be limited to, the following:

(1) Notice of a scheduled hearing before the special magistrate ~~code enforcement board~~ which includes the date, time and location of the hearing.

(2) A provision that failure to attend such a hearing shall be deemed as a waiver of the violator's right to contest the citation.

(3) The statutory range of fines amount available to the ~~code enforcement boards~~ special magistrate to be imposed against the violator and subsequent purchasers, successors in interest or assigns.

Sec. 2-185. Record-keeping.

~~After issuing a citation and/or notice of hearing to a violator, the code enforcement officer shall deposit the original citation in a file for the code enforcement board, and shall file the copies with the code enforcement and/or street files.~~ All records shall be maintained in accordance with the requirements of F.S. ch. 119.

Sec. 2-186. Failure to appear at hearing.

If a violator fails to appear at the hearing to contest the violation, the violator shall be deemed to have waived his right to contest the violation, and in such a case the special magistrate ~~code enforcement board~~ may enter an order against the violator imposing a fine in an amount no more than allowed by section 2-193. Notice of the hearing shall be made in accordance with section 2-195. If the violation is corrected and then recurs or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the special magistrate ~~code enforcement board~~ even if the violation has been corrected prior to the hearing, and the notice shall so state.

Sec. 2-187. Repeat violations.

If a repeat violation is found, the code enforcement officer shall notify the violator and advise him of the nature of the repeat violation but is not required to give the violator a reasonable time to correct the repeat violation. The code enforcement officer shall, upon notifying the violator of a repeat violation, issue a citation to the violator in accordance with the requirements of section 2-183. Notice of the hearing shall be provided to the violator pursuant to section 2-195. If the repeat violation has been corrected prior to the hearing, ~~the a code enforcement boards~~ special magistrate may determine and impose, as costs against the violator, reasonable enforcement fees incurred by

the town. The repeat violator may choose to waive his rights to this hearing and pay such costs as determined by the ~~code enforcement boards~~special magistrate.

Sec. 2-188. Emergency violations.

If the code enforcement officer has reason to believe a violation presents a serious threat to the public health, safety and welfare or the violation is irreparable or irreversible in nature, the code enforcement officer shall make a reasonable effort to notify the violator of the violation and direct the violator to immediately remedy the violation, and may immediately schedule the matter for a hearing before the special magistrate~~code enforcement board~~.

* * *

Sec. 2-190. Continuing violations.

Each day that a violation exists shall constitute a separate violation for the purpose of assessing a fine by the ~~code enforcement boards~~special magistrate.

* * *

Sec. 2-192. Conduct of hearings.

- (a) Code enforcement hearings shall be held at a time established by the special magistrate~~chairman of the code enforcement board~~ upon coordination with the town attorney. Unless there are no cases set for hearing, code enforcement hearings shall be held on a monthly basis.
- (b) The town manager or his designee shall provide clerical and administrative personnel to the special magistrate~~code enforcement board~~ and town attorney as may be reasonably required for the performance of his duties.
- (c) Each case before the ~~code enforcement boards~~special magistrate shall be presented by the ~~code enforcement officer, with the~~ town attorney providing legal counsel. If the town prevails in prosecuting a case before the ~~code enforcement boards~~special magistrate, it shall be entitled to recover all costs incurred in prosecuting the case and such costs may be included in any lien authorized by section 2-193.
- (d) The ~~code enforcement boards~~special magistrate shall proceed to hear the cases on the agenda for the respective hearing. All testimony shall be under oath and shall be recorded. The ~~code enforcement boards~~special magistrate shall take testimony from the code enforcement officer, from the alleged violator, and from any witnesses presented by the town ~~attorney~~ or the alleged violator. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and shall govern all proceedings. Both the town and alleged violator shall have the right to subpoena witnesses to testify at the hearing.
- (e) The ~~code enforcement boards~~special magistrate shall direct the ~~code enforcement officer~~ town attorney to state the section of the code or ordinance which the alleged violator is accused of violating and the nature of the violation. ~~The code enforcement board shall first seek to determine whether or not the alleged violator admits the violation. If the alleged violator admits the violation, the code enforcement board shall hear such testimony and evidence as presented by the town attorney or the amount the code enforcement board deems necessary to determine the existence of the violation or to punish the alleged violator. If the alleged violator denies the violation,~~ the code enforcement boardsspecial magistrate shall first hear

301 testimony and evidence ~~first~~ from the town, and the alleged violator shall have the right to
302 cross examine the town's witnesses. At the close of the town's presentation, the violator shall
303 be permitted to present testimony of witnesses and evidence. The town shall have the right to
304 cross examine the alleged violator and his witnesses.

- 305 (f) The town shall have the burden of proving the violation by a preponderance of the evidence.
- 306 (g) At the conclusion of the hearing, the ~~code enforcement boards~~ special magistrate shall issue
307 findings of fact and conclusions of law based on the evidence of the record, and shall issue an
308 order ~~affording the proper relief~~ consistent with the powers granted in this article. The order
309 may include a notice that it must be complied with by a specified date, that a fine may be
310 imposed for noncompliance, and that the cost of repairs may be included along with the fine
311 under the conditions specified in section 2-193 if the order is not complied with by the
312 prescribed date. A certified copy of this order shall be recorded in the public records of the
313 county and shall constitute notice to any subsequent purchasers, successors in interest or
314 assigns if the violation concerns real property; ~~and~~ the findings therein shall be binding
315 upon the violator and, if the violation concerns real property, any subsequent purchasers,
316 successors in interest or assigns. When an order is recorded in the public records pursuant to
317 this subsection and the order is complied with by the date specified in the order, the ~~code~~
318 ~~enforcement boards~~ special magistrate shall issue an order acknowledging compliance that
319 shall be recorded in the public records. A hearing is not required for the issuance of such an
320 order acknowledging compliance.

321 **Sec. 2-193. Administrative fines and liens.**

- 322 (a) *Order imposing fine.* The ~~code enforcement boards~~ special magistrate, upon notification by the
323 code enforcement officer that a previous order of noncompliance of the ~~code enforcement~~
324 ~~boards~~ special magistrate has not been complied with by the prescribed time or upon finding
325 that a repeat violation has been committed, may order the violator to pay a fine in an amount
326 specified in this article for each day the violation continues past the date set by the ~~code~~
327 ~~enforcement boards~~ special magistrate in an order of noncompliance; or, in the case of a repeat
328 violation, for each day the repeat violation continues to exist, beginning with the date the
329 repeat violation is found to have occurred by the code enforcement officer. Further, if the
330 violation is an emergency violation as described in section 2-188, the ~~code enforcement~~
331 ~~boards~~ special magistrate shall notify the town council, which may authorize and make all
332 reasonable repairs that are required to bring the property into compliance, and the reasonable
333 cost of those repairs may be charged against the violator along with any fine imposed pursuant
334 to this article. Making such repairs does not create a continuing obligation on part of the town
335 and does not create any liability against the town for any damages to the property. If a finding
336 of a violation or a repeat violation has been made as provided in this article, a hearing shall
337 not be necessary for issuance of the order imposing a fine. If, after due notice and hearing,
338 the ~~code enforcement boards~~ special magistrate finds a violation to be irreparable or irreversible
339 in nature, the ~~code enforcement boards~~ special magistrate may order the violator to pay a fine
340 as specified in subsection (b)(1) of this section.
- 341 (b) *Amount of fine.* The ~~code enforcement boards~~ special magistrate may impose a civil fine as
342 prescribed in this article, or may determine and impose a fine up to the following maximum
343 amount:

(1) A fine imposed pursuant to this section shall not exceed \$250.00 per day for the first violation and shall not exceed \$500.00 per day for a repeat violation, and, in addition thereto, may include all costs of repairs pursuant to subsection (a) of this section. However, if the ~~code-enforcement board~~special magistrate finds the violation to be irreparable or irreversible in nature, it may impose a fine not to exceed \$5,000.00 per violation.

(2) In determining the amount of the fine, if any, the ~~code-enforcement board~~special magistrate shall consider the following factors:

a. The gravity of the violation.

b. Any corrective actions taken by the violator to remedy the violation.

c. Any previous violations committed by the violator.

(3) Each day a violation exists shall constitute a separate violation for the purpose of assessing a fine.

(c) *Reduction or abatement of fine.*

(1) Prior to recordation as a lien, the ~~code-enforcement board~~special magistrate may reduce any fine imposed pursuant to this article upon written request by the violator or subsequent purchasers, successors in interest or assigns ~~sent by certified mail, return receipt requested,~~ to the town's planning and development services department. ~~The code-enforcement board may waive the requirement that the written request be made by certified mail, return receipt requested.~~ The town's planning and development services department shall direct the request to the ~~code-enforcement board~~special magistrate for hearing. The ~~code-enforcement board~~special magistrate may reduce or abate the fine with a hearing based on the factors enumerated in subsection (b)(2) of this section and due consideration to any expenses incurred by the town to prosecute the violation. However, aAny fine recorded as a lien may not be reduced or abated by the ~~code-enforcement board~~special magistrate.

(2) The town council may reduce or abate any fine recorded as a lien upon written request by the violator or subsequent purchasers, successors in interest or assigns ~~sent by certified mail, return receipt requested,~~ to the town's planning and development code enforcement department. The town's planning and development code enforcement department shall direct the request to the town council for consideration.

(d) *Lien for unpaid fine.* A certified copy of an order imposing a fine may be recorded in the public records of the county and shall thereafter constitute a lien against the land on which the violation exists and upon any other real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order shall not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to this section shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a lien filed pursuant to this article, whichever occurs first. A lien arising from a fine imposed pursuant to this section runs in favor of the town and the town council may authorize the execution of a satisfaction and release of lien entered. The ~~code-enforcement board~~special magistrate may authorize the town attorney to foreclose on a lien after three months from the filing of any such lien that remains

unpaid. No such lien may be foreclosed on real property classified as a homestead pursuant to section 6, article VII of the Florida Constitution.

* * *

Sec. 2-194. Appeals.

Final administrative orders of the ~~code enforcement boards~~ special magistrate may be appealed by an aggrieved party to the circuit court as provided for in the Local Government Enforcement Act, F.S. ch. 162. The town attorney shall represent the town on all such appeals.

Sec. 2-195. Notices.

* * *

(b) In addition to providing notice as set forth in subsection (a) of this section, at the option of the ~~code enforcement boards~~ special magistrate, notice may also be served by publication or posting, as follows:

- (1) Such notice shall be published once during each week for four consecutive weeks (four publications being sufficient) in a newspaper of general circulation in the county. The newspaper shall meet such requirements as are prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication shall be made as provided for in F.S. §§ 50.041 and 50.051.
- (2) In lieu of publication as described in subsection (b)(1) of this section, such notice may be posted at least ten days prior to hearing, or prior to any deadline contained in the notice, in at least two locations, one of which shall be the property upon which the violation is alleged to exist and the other of which shall be at the town hall. Proof of posting shall be by affidavit of the person posting the notice, which affidavit shall include a copy of the notice posted and the date and places of its posting.
- (3) Notice by publication or posting may run concurrently with, or may follow, an attempt to provide notice by hand delivery or by mail as required under subsection (a) of this section. Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a) of this section, together with proof of publication or posting as provided in subsection (b) of this section, shall be sufficient to show that the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

* * *

ARTICLE IX. LIENS AGAINST PROPERTY

* * *

Sec. 2-424. Liens included and excluded from ~~affecte~~ effect of article.

- (a) This section applies to all liens imposed that are due and owing to the town as set forth in this article.
- (b) Liens that are the subject of this article include, but are not limited to:
 - (1) Nuisance abatement liens;

- (2) Sanitation (weeds, trash, and debris removal) liens;
(3) Stormwater utility liens;
(4) Water, sewer, and other related utility liens;
(5) Liens/debts relating to permits issued by the town; and
(6) Impact fee liens.

(c) Liens resulting from ~~code enforcement boards~~ special magistrate orders imposing fines are excluded from the provisions of this article, except for those specifically authorized by law. Liens arising from ~~code enforcement boards~~ special magistrate proceedings shall be subject to the controlling provisions of law. Liens may be satisfied upon full payment, or the town council or town manager, to the extent of delegated powers, may settle and satisfy liens at amounts less than the total amount of liens.

* * *

Chapter 6 ALCOHOLIC BEVERAGES

* * *

Sec. 6-2. Hours of sale.

* * *

(c) Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

Sec. 6-3. Sales to intoxicated persons.

No alcoholic beverages may be sold to, consumed by, or served to any intoxicated person, or permitted to be sold to, served to, or consumed by any intoxicated person, in any place holding a license to sell alcoholic beverages. Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

Sec. 6-6. Sale, possession or consumption on Lighthouse Reservation.

* * *

(d) Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

Chapter 10 ANIMALS

* * *

ARTICLE III. OWNER'S/KEEPER'S RESPONSIBILITIES

DIVISION 1 - GENERAL

Sec. 10-51. Running at large.

* * *

(b) Dogs are permitted to be off leash while contained within the fenced boundaries of the town's dog park, if the following conditions are met:

(1) Dogs are well behaved, which for the purpose of this section shall mean that the dog does not bite, growl, bark excessively, jump at other people or dogs, or behave in any manner which is deemed disruptive by a town employee, and remains in direct control of the owner or agent at all times.

(2) Dog owners or agents must adhere to all posted rules pertaining to the dog park and to all town ordinances.

Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3) respectively.

* * *

Sec. 10-53. Removal and disposal of excrement.

* * *

(b) Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

ARTICLE IV. DANGEROUS ANIMALS

* * *

Sec. 10-112. Hearing to determine if animal should be classified dangerous.

(a) A hearing to determine if an animal should be classified dangerous shall be conducted by the ~~code enforcement board~~ special magistrate whenever there is cause to believe that an animal may be dangerous or become dangerous as defined in section 10-111. This hearing shall be conducted within five days of actual notice by hand delivery to the owner of the animal, or as soon as practicable thereafter.

(b) Pending the outcome of the hearing, the animal must be securely confined in a humane manner either on the premises of the owner or with a licensed veterinarian or kennel.

(c) The ~~code enforcement board~~ special magistrate of the town shall determine whether to declare the animal to be a dangerous animal based upon evidence and the testimony presented at the time of the hearing by the owner, witnesses to any incidents which may be considered material to such a determination, health department personnel, animal control personnel, police or any other persons possessing information material to a determination that the animal is dangerous.

(d) The ~~code enforcement board~~ special magistrate of the town shall issue written findings within five days after the determination hearing. The owner of the animal found to be dangerous by this hearing has the right to appeal the decision within ten days of receiving notice of the decision to the town council. Failure to appeal the decision of the ~~code enforcement~~

~~board~~special magistrate constitutes a waiver of the right to appeal and failure to exhaust administrative remedies.

Sec. 10-113. Standards for determination as to whether animal should be classified as dangerous.

In determining whether an animal should be classified as dangerous and subject to the requirements of this article pursuant to the hearing process, the ~~code enforcement board~~special magistrate shall consider the standards set forth in section 10-111.

Sec. 10-114. Initiation of hearing process.

Upon receipt of an affidavit of complaint signed by one or more residents or police officers of the town made under oath before an individual authorized by law to take sworn statements, setting forth the nature and the date of the act, the owner of the animal, the address of the owner and the description of the animal doing such act, the ~~code enforcement board~~special magistrate of the town shall schedule a hearing upon notice to the owner to investigate the complaint to determine if in fact the animal is dangerous.

* * *

Sec. 10-116. Requirements imposed on owners of dangerous animals.

* * *

(j) Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively.

* * *

Sec. 10-117. Confiscation; penalty.

* * *

(d) Violators of subsections (b) and (c) above shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

Chapter 18 BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Sec. 18-1. Key box required for multifamily buildings restricting public access.

* * *

(c) All buildings listed in addendum A and as may be hereafter identified and constructed shall be in compliance with this section by June 1, 1986. The provisions of this section shall be subject to enforcement by the ~~code enforcement board~~special magistrate.

* * *

Sec. 18-9. Violations and penalties.

Any person violating any of the provisions of this article shall be subject to all procedures and remedies available to the town under section 1-11, and upon conviction of any violation, shall be subject to the penalties designated in section 1-11. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as a separate offense pursuant to the provisions of section 1-11, or pursuant to the provisions of F.S. ch. 162 as enforced by the ~~code enforcement boards~~ special magistrate. Violation of the requirements of this article shall, in addition to the applicable penalties provided for in this code, subject the violator to cancellation of any building permit previously issued.

* * *

ARTICLE VIII – RENTAL PROPERTY MAINTENANCE PROGRAM

* * *

Sec. 18-214. Enforcement.

- (a) The ~~code enforcement boards~~ special magistrate shall have jurisdiction to hear and decide cases related to the enforcement of the provisions of this article, and any person, firm, corporation, or agent determined to be in violation shall be subject to all penalties and remedies available to the ~~code enforcement boards~~ special magistrate as provided by law.

* * *

Chapter 34 ENVIRONMENT

* * *

ARTICLE II. SANITATION AND HEALTH

* * *

Sec. 34-34. Nuisances injurious to health designated.

* * *

- (7) Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively.

* * *

ARTICLE IV – NOISE AND NUISANCE LIGHTING REGULATIONS

* * *

Sec. 34-98. Violation of restrictions on outside sound amplification.

* * *

- (b) If any permit holder accumulates three written warnings for violation of any portion of this article during a 30-day period, the town's ~~code enforcement boards~~ special magistrate shall suspend the permit holder's permit for outside sound amplification for a period of 30 days if it is determined ~~the board determines~~ that the permit holder violated this article in the manner described in each written warning. Suspension shall be effective upon written notice thereof by the town's ~~code enforcement boards~~ special magistrate.

(c) If any permit holder accumulates six or more written warnings for violation of any portion of this article within a period of 365 days during the duration of the period for which the permit is issued, the town's ~~code enforcement board~~ special magistrate shall suspend the permit holder's permit for outside sound amplification for a period of 180 days if it is determined ~~the board determines~~ that the permit holder violated this article in the manner described in each written warning. Suspension shall be effective upon written notice thereof by the town's ~~code enforcement board~~ special magistrate.

* * *

Sec. 34-99.5. Compliance.

The violator of this section shall be entitled to an opportunity to correct the violation prior to referral to the ~~code enforcement board~~ special magistrate as provided in chapter 2, article V, division 3 of this Code.

* * *

Chapter 42 - OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

* * *

Sec. 42-4. Camping.

* * *

(d) Violators of this section shall be subject to noncriminal prosecution, criminal prosecution, or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively.

* * *

Sec. 42-7. Spray or wash from sprinkler heads and other irrigation devices.

* * *

(e) *Enforcement.* Violators of this section shall be subject to noncriminal prosecution or code enforcement prosecution and subject to the penalties provided in section 1-11(a)(1) or 1-11(a)(3), respectively. ~~Upon the passage of 180 days from the effective date of the ordinance from which this section is derived, the chief building official shall initiate enforcement proceedings against those property owners that are not in compliance with the terms of this section. The building official shall be required to provide written notice to property owners that are in violation of this section. The notice provided by the chief building official shall notify the property owner of the terms of this section, the possible penalty for violation of this section and the steps necessary to comply with the terms of this section. Upon failure of the property owner to comply with the terms of this section within ten days from the date of notification by the chief building official, the chief building official or other authorized agent of the town shall institute proceedings to enforce compliance with the terms of this section. Enforcement proceedings may be instituted in a court of competent jurisdiction or before the code enforcement board, at the option of the chief building official. If the chief building~~

~~official elects seeking enforcement in a court of competent jurisdiction, the town attorney shall be so informed and directed to institute prosecution of the ordinance violation.~~

* * *

Sec. 42-9. Trespass warnings on public property.

* * *

(g) A person who is issued a trespass warning under this section may appeal as follows:

- (1) The appeal of the trespass warning must be filed, in writing, within ten days of the issuance of the warning. The appeal shall include the appellant's name, address and phone number, if any. No fee shall be charged for filing the appeal.
- (2) The appeal shall be filed at the location specified in the trespass warning.
- (3) The appeals shall be heard by the ~~code enforcement boards~~ special magistrate. The hearing shall be scheduled at the special magistrate's board's next regular meeting at least ten days after the filing of the appeal. Notice of the hearing shall be posted at town hall and on the town's ~~city's~~ website, as well as sent by mail to the trespassed individual.
- (4) The ~~code enforcement boards~~ special magistrate shall first determine whether the appellant violated one or more statutes or town ordinances, rules or regulations as alleged by the town. Should the special magistrate board find that the town has proven a violation by a preponderance of the evidence, the special magistrate board may reduce the duration of the trespass warning at its discretion. The appellant and the town shall each have the right to attend with an attorney, to testify, to call witnesses, to cross-examine witnesses and to present evidence. Formal rules of evidence shall not apply; however, fundamental due process shall be observed and shall govern the proceeding.
- (5) The ~~code enforcement boards~~ special magistrate shall issue a written decision on the appeal within five days of the hearing, which shall be provided to the appellant by mail. The decision of the ~~code enforcement boards~~ special magistrate shall be final. Such decision may be subject to judicial review by petition for writ of certiorari or as otherwise provided by law.
- (6) The trespass warning shall remain in effect during the appeal and review process, including any judicial review.

Secs. 42-10—42-30. - Reserved.

ARTICLE II. NUDITY AND SEXUAL CONDUCT

Sec. 42-31. Nudity and sexual conduct prohibited in establishments dealing in alcoholic beverages.

* * *

- (h) Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

Sec. 42-32. Nudity and sexual conduct prohibited in public.

* * *

(d) *Penalty.* Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

Sec. 42-33. Urinating or defecating in public.

* * *

(b) Violators of this section shall be subject to criminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in section 1-11(a)(2) or 1-11(a)(3), respectively.

* * *

Chapter 46 - PARKS AND RECREATION

ARTICLE I. IN GENERAL

* * *

Sec. 46-3. Behavior prohibited within public parks.

* * *

(d) Violations of the section shall be subject to code enforcement ~~board~~, noncriminal, and criminal prosecution under section 1-11.

* * *

Chapter 51 - SPECIAL EVENTS

* * *

Sec. 51-18. Enforcement.

The town may immediately cause any special event conducted without a valid permit issued pursuant to this chapter to be ceased and disbanded. In addition, the town may bring any violations of this chapter before its ~~code enforcement board or~~ special magistrate, which may make findings of violations and impose administrative fines as authorized by the Florida Statutes. Nothing in this section may be construed to prevent the town from seeking to enjoin violations of this article, or seeking damages caused by violations of this article, in a court of competent jurisdiction.

* * *

Chapter 62 - SOLID WASTE

ARTICLE I. IN GENERAL

* * *

Sec. 62-3. Removal of weeds and refuse.

* * *

(b) *Notice to owner required; contents.* If the town clerk, the code enforcement officer or the town clerk's designee determines a public nuisance exists on any lot, tract or parcel of land within the town, the owner of the land shall be notified of the following:

- (1) It has been determined that a public nuisance exists on his land, setting forth in the notice what constitutes the nuisance.
- (2) The owner shall have 20 days from the date of mailing the notice to remove the condition causing the nuisance from the land.
- (3) If the conditions are not removed as stated in subsection (b)(2) of this section, the town may have the nuisance removed at the expense of the owner.
- (4) The owner has 20 days from the date of receipt of the notice or 20 days from the mailing, whichever is less, to petition the town clerk for a hearing before the ~~code enforcement board~~ special magistrate. The hearing shall be held at the normal hearing date, or by special hearing, within 20 days from the time the petition was received by the town clerk.

(c) *Determination by* ~~code enforcement board~~ special magistrate. The issues to be determined at the hearing are whether the conditions do in fact exist, or, if they exist, whether they constitute a menace to life, property or the public health, or the public welfare, or create a fire hazard, and why the conditions should not be abated by the town.

* * *

(e) *Abatement by town.* If, after a hearing, the special magistrate ~~board~~ determines that the conditions which exist on the property constitute a public nuisance, the owner of the property shall have an additional ten days to remove the conditions, after which the town shall have the right to have the objectionable condition abated at the expense of the property owner. If the owner has not requested a hearing within the 20-day period, the town shall have the right to have the objectionable condition removed at the expense of the owner. If the town has the condition abated, the town shall place a lien against the property for the cost which the town has incurred in abating the public nuisance. Such costs shall include the cost of removing the conditions together with any other actual expenses which the town has incurred. A lien for such costs shall be recorded and enforced as provided in the latest chapter of the state statutes, F.S. ch. 162, ~~the Local Government Code Enforcement Boards Act~~.

* * *

ARTICLE III – LITTER

* * *

718 **Sec. 62-73. Enforcement.**

719 In addition to any criminal penalty, the ~~code-enforcement boards~~special magistrate shall have
720 jurisdiction to enforce this article. Any person determined to be in violation of any of the sections
721 of this article shall be subject to all penalties and remedies available as provided by law.

722 * * *

723 **Chapter 66 STORMWATER AND CONSERVATION**

724 * * *

725 **ARTICLE III - ILLICIT CONNECTIONS AND DISCHARGE TO THE TOWN'S**
726 **SEPARATE STORM SEWER SYSTEM (MS4)**

727 * * *

728 **Sec. 66-59. Violations, enforcement and penalties.**

729 * * *

730 b. *Notice of violation.* Whenever the town finds that a person or an establishment has violated a
731 prohibition or failed to meet a requirement of this article, the town manager or designee shall
732 order compliance by written notice of violation to the responsible person.

733 The notice of violation shall contain:

734 * * *

735 vi. A statement that the town manager or designee's determination of violation may be
736 appealed, de novo, to the town's special magistrate~~code-enforcement board~~ within
737 seven days of service of notice of violation; and

738 * * *

739 **Sec. 66-60. Appeal of notice of violation.**

740 Any person receiving a notice of violation may appeal the town manager or designee's
741 determination of the violation to the town's ~~code-enforcement boards~~special magistrate. The written
742 notice of appeal must be received within seven days from the date of service of the notice of
743 violation. Hearing on the appeal before the ~~code-enforcement boards~~special magistrate shall take
744 place within 30 days from the date of receipt of the notice of appeal. At the de novo hearing, the
745 special magistrate~~board~~ may affirm, reverse, or affirm and modify the administrative
746 determination of the town manager or designee that a violation was committed. The decision of
747 the ~~board~~special magistrate shall be final.

748 **Sec. 66-61. Enforcement measures after appeal.**

749 If a violation has not been corrected pursuant to the requirements set forth in the notice of
750 violation, or, in the event of an appeal, within seven days of the decision of the ~~code-enforcement~~
751 ~~board~~special magistrate affirming the decision of the town, then the town shall undertake those
752 actions pursuant to section 66-59 of this article, take corrective action, and place a lien on the
753 property of the owner for any unpaid penalty, costs, and expenses thereof.

754 * * *

Chapter 70 STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

Sec. 70-1. Obstruction of street or sidewalk.

It shall be unlawful for any person to obstruct any public street or sidewalk by displaying or placing thereon any goods, wares, or merchandise or otherwise except as may be permitted under the building codes. Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in sections 1-11(a)(1) or 1-11(a)(3), respectively.

* * *

Chapter 74 TRAFFIC AND VEHICLES

* * *

ARTICLE II – STOPPING, STANDING AND PARKING

DIVISION 1. - GENERALLY

* * *

Sec. 74-35. Parking prohibited for certain purposes.

No person shall park a motor vehicle, trailer, moped or boat upon any street or right-of-way for the principal purpose of:

- (1) Displaying such motor vehicle for sale.
- (2) Washing, greasing or repairing such motor vehicle, except repairs necessary in an emergency.
- (3) Displaying advertising.
- (4) Selling merchandise from such motor vehicle, except in a duly established market place, or when so authorized or licensed under the ordinances of the town.
- (5) Storage or as junkage or dead storage for more than 24 hours.

Violators of this section shall be subject to noncriminal prosecution or code enforcement ~~board~~ prosecution and subject to the penalties provided in subsection 1-11(a)(1) or subsection 1-11(a)(3), respectively.

* * *

Chapter 78 UTILITIES

* * *

ARTICLE II. WATER AND SEWER SERVICE

* * *

DIVISION 2 – WATER SERVICE

* * *

Sec. 78-65. Cross-connection control.

* * *

(b) Cross connection, as defined by Rule 62-550.200, Florida Administrative Code, is prohibited. However, a person who owns or manages a public water system may interconnect to another public water system if that system is operated and maintained in accordance with this chapter. Any person making, or allowing to be made, such cross connection to the town water system shall be subject to the penalties of sections 1-11 and 78-65(k) of this Code or may be brought before the ~~code enforcement boards~~ special magistrate, at the option of the town.

* * *

(k) *Violations and liability.*

* * *

(3) Any inspector, town officer, employee, or special magistrate, ~~or member of the code enforcement board, if any,~~ who is or may be charged with or involved in the enforcement of this section, in the discharge of such duties, shall not thereby be personally liable, and is, to the extent permitted by law, hereby relieved from all and protected by the town against any personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of such duties.

* * *

DIVISION 5. - INDUSTRIAL PRETREATMENT PROGRAM

* * *

Sec. 78-122. Enforcement.

* * *

(5) *Hearings before a special ~~magistrate~~master.*

- a. Port Orange may order any industrial user who causes or allows an unauthorized discharge to enter the WWF to appear before a special ~~magistrate~~master who has the authority, pursuant to the Port Orange Code of Ordinances sections 2-209 through 2-218, to issue orders having the force of law commanding whatever steps are necessary to bring a violation into compliance. All procedures for notice, conduct of hearing, and appeal procedures are governed by the Port Orange Code of Ordinances sections 2-209 through 2-218, F.S. Ch. 162, and the applicable rules and regulations adopted by the ~~Code-Enforcement-Boards~~special magistrate for the City of Port Orange, and any amendments thereto.

(6) *Administrative fines.*

- a. When Port Orange finds that an industrial user has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit or order issued hereunder, or any other pretreatment standard or requirement, the special ~~magistrate~~master may order a fine against such industrial user and that a lien be recorded against the land where the violation exists if the fine is unpaid, in accordance with Port Orange Code of Ordinances sections 2-209 through 2-218, F.S. Ch. 162, and the applicable rules and regulations adopted by the ~~code-enforcement-board~~special magistrate for the City of Port Orange (and any amendments thereto). The fine imposed shall not exceed the maximum fines established in the section 2-193, Administrative fines, and any amendments thereto.

* * *

Sec. 78-123. - Penalty.

- (a) A person violating any of the terms, conditions, orders, rules, regulations, permits, limitations or provisions shall be punished in accordance with the provisions herein. Any continuing violations may be enjoined and restrained by an injunctive order of the circuit court in appropriate proceedings instituted for such purposes.
- (b) Violations of the industrial pretreatment program ordinance codified in this division may be referred to a special ~~magistrate~~master to issue orders, fines or liens as provided herein.

* * *

ARTICLE III. - WATER CONSERVATION: LANDSCAPE IRRIGATION

* * *

Sec. 78-142. Declaration; penalties.

- (a) The town council hereby finds and declares that a violation of this article presents a serious threat to the public health, safety and welfare and is irreparable or irreversible in nature. Warning notices and/or citations shall be as follows:
- (1) *First and second offenses:* Warning notices. The violator may be given educational material and information regarding the requirements of this article.
 - (2) *Third offense and subsequent offenses:* \$50.00.
- (b) If a person has been previously found through a code enforcement ~~board~~-action or any other quasi-judicial or judicial process to have violated, or who has admitted violating, this article within five years prior to the violation, the civil penalty shall be \$100.00 for a second violation, \$250.00 for a third violation, and \$500.00 for a fourth or subsequent violation.
- (c) All fines shall be paid to the Town of Ponce Inlet within 30 days of receipt of the citation. Notice of the offense and fine shall be given in accordance with code enforcement procedures of Chapter 2 of the Code of Ordinances. Failure to pay the fines shall result in a code enforcement action being brought by the town against the violator.

* * *

Chapter 82 VEGETATION

* * *

ARTICLE II. WEEDS AND NOXIOUS PLANTS

* * *

Sec. 82-112. Notice to cut or remove.

The code enforcement officer is hereby authorized to notify persons who violate the provisions of section 82-111 that unless such grass or weeds are cut or removed within ten days after the serving of such notice, the violator of such provision will be summoned to appear before the ~~code enforcement boards~~special magistrate. Upon the failure of any persons so violating the provisions of section 82-111 to comply with provisions of such notice within the time specified therein, it shall be the duty of the code enforcement officer to serve notice of hearing to appear before the ~~code enforcement boards~~special magistrate pursuant to article V of chapter 2 of the Code of Ordinances.

* * *



Meeting Date: 10/17/2024

Agenda Item: 11-C

Report to Town Council

Topic: Ordinance 2024-08 – 1st reading – Amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

Summary: The attached ordinance has been created to fulfill the Town Council's directive to transition from a Code Enforcement Board to a Special Magistrate hired by the Town. The amendment changes these references found throughout the Land Use and Development Code (LUDC) pertaining to the enforcement of land development regulations.

Suggested motion: Staff recommends approval of proposed Ordinance 2024-08, amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

Requested by: Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET, PLANNING AND DEVELOPMENT DEPARTMENT

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet residents obtain the greatest value for their tax dollar.

To: Michael E. Disher, AICP, Town Manager
From: Darren Lear, AICP, Planning & Development Director
Date: October 8, 2024
Subject: Ord. No. 2024-08 – Amending Articles 3, 8, and 9 of the Land Use and Development Code to substitute references of the Code Enforcement Board with Special Magistrate.

MEETING DATE: October 17, 2024

1 INTRODUCTION

2 This proposed ordinance has been developed to implement the Town Council's directive to shift
3 from a code enforcement process utilizing an appointed volunteer board to a special magistrate
4 hired by the Town. The amendment changes these references found throughout the Land Use and
5 Development Code (LUDC) pertaining to the enforcement of land development regulations.

7 AUTHORITY AND PROCESS

8 According to Section 6.6.2 of the LUDC, the procedures for a text amendment are as follows:

- 9
- 10 • Initiation, submission, and fees (if applicable)
 - 11 • Staff review and referral
 - 12 • Public notice
 - 13 • Action by review and decision-making authorities
- 14

15 Section 6.6.2 specifies that “the town council shall refer the application to the planning board to
16 review and recommend approval, approval with conditions, or denial.” Section 6.2.2 establishes
17 the planning board as the local planning agency for the Town in accordance with the Community
18 Planning Act (2011) F.S. § 163.3161 et seq.

19
20 Chapter 163 of the Florida Statutes indicates that one of the local planning agency’s
21 responsibilities is to “review proposed land development regulations, land development codes, or
22 amendments, and make recommendations to the governing body regarding the proposal’s
23 consistency with the adopted comprehensive plan, or any of its elements or portions. This applies
24 when the local planning agency serves as the land development regulation commission or when

the local government requires a review by both the local planning agency and the land development regulation commission.”

The Planning Board reviewed and unanimously approved the proposed amendment at its regularly scheduled meeting on September 24, 2024. Changes to the code enforcement process itself will be addressed in a separate ordinance amendment to the Code of Ordinances. Both ordinances related to this enforcement transition will be presented to the Town Council together.

BACKGROUND

A recent survey conducted by Town staff in June 2024 examined the approaches of 16 Volusia County agencies for prosecuting code cases. The survey revealed that the Town of Ponce Inlet is the only municipality that exclusively uses a Code Enforcement Board rather than a special magistrate or combination of the two. At the Town Council meeting on July 18, 2024, the Council directed staff to proceed with transitioning from a code enforcement process utilizing an appointed volunteer board to a Special Magistrate enforcement process.

DISCUSSION

Florida Statute Chapter 162 outlines the code enforcement process for municipalities in Florida. In the early 2000s, reforms were introduced to streamline the process by incorporating the role of a hearing officer, commonly referred to as a special magistrate, into the statute. Over the past two decades, a growing number of agencies have transitioned from traditional code boards to using these special magistrates to handle code enforcement matters.

The special magistrate was introduced to address several concerns associated with the traditional Code Enforcement Board process, including:

- *Lack of Volunteers*: Difficulty in recruiting and maintaining sufficient board members.
- *Attendance Requirements*: Challenges in meeting attendance requirements for board members.
- *Expertise Gaps*: Insufficient expertise in specific subject areas relevant to code violations.
- *Property Visits*: Board members visiting violating properties and engaging with property owners prior to hearings.
- *Post-Violation Assistance*: Board members personally assisting violators in correcting issues after violations were identified.
- *Ex-Parte Communications*: Failure to properly identify and manage ex-parte communications.
- *Sunshine Law Violations*: Issues with compliance with Sunshine Law regulations.

Chapter 162, Florida Statutes, as amended, authorizes the use of a Special Magistrate to enforce the City's codes and ordinances, “*A charter county, a noncharter county, or a municipality may, by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or special magistrates designated by the local governing body, or both, the authority to hold hearings and assess fines against violators of the respective county or municipal codes and ordinances. A special magistrate shall have the same status as an enforcement board under this chapter...*”

The proposed amendments substitute references to the Code Enforcement Board with a Special Magistrate in LUCD Article 3 “Use Regulations,” Article 8 “Enforcement,” and Article 9 “Definitions and Rules of Interpretation.”

Comprehensive Plan

Staff reviewed the policies of the Comprehensive Plan and found the proposed amendments will not conflict with any goal, objective, or policy, and will maintain consistency with the Town’s desired vision and direction.

Recommendation

Staff recommends approval of Ordinance No. 2024-08, amending Articles 3, 8, and 9 of the LUDC to substitute references of the Code Enforcement Board with Special Magistrate.

ORDINANCE NO. 2024-08

AN ORDINANCE OF THE TOWN OF PONCE INLET, FLORIDA, AMENDING THE LAND USE AND DEVELOPMENT CODE, ARTICLE 3 "USE REGULATIONS", ARTICLE 8 "ENFORCEMENT", AND ARTICLE 9 "DEFINTIONS AND RULES OF INTERPRETATION" TO REPLACE REFERENCES TO THE "CODE ENFORCEMENT BOARD" WITH "SPECIAL MAGISTRATE"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Articles 3, 8 and 9 of the Ponce Inlet Land Use and Development Code (LUDC) define the code enforcement board and certain enforcement functions granted to it; and

WHEREAS, Chapter 162, Florida Statutes, as amended, authorizes the use of a Special Magistrate to enforce a local government's codes and ordinances; and

WHEREAS, the Town Council has directed staff to transition from an appointed Code Enforcement Board to a Special Magistrate to perform these functions; and

WHEREAS, for this transition can occur, it is necessary to amend the LUDC to replace all references to the "Code Enforcement Board" with "Special Magistrate"; and

WHEREAS, the Planning Board, in its capacity as the Local Planning Agency, has determined that this Ordinance is consistent with the Comprehensive Plan and has recommended approval of this Ordinance to the Town Council; and

WHEREAS, the Town Council affirms that this Ordinance is consistent with the Comprehensive Plan and is in the best interest of the public welfare of the Town; and

WHEREAS, the Town has complied with all requirements and procedures of the LUDC and Florida law in processing, noticing, and advertising this Ordinance; and

WHEREAS, this Ordinance is enacted under the general home rule and police powers of the Town of Ponce Inlet.

NOW, THEREFORE, BE IT ENACTED BY THE TOWN COUNCIL OF THE TOWN OF PONCE INLET, FLORIDA:

NOTE: Underlined words constitute additions to the Town of Ponce Inlet Land Use Development Code (LUDC) as amended by Ordinance 2024-08, ~~strike through~~ constitutes deletions, and asterisks (***) indicate an omission from the existing text of said LUDC as amended which is intended to remain unchanged.

SECTION 1. Recitals. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

SECTION 2. Incorporation of Amendments. The proposed amendments to **Articles 3, 8, and 9** of the LUDC are attached to this Ordinance as Exhibit "A" and are hereby incorporated into the text of this Ordinance as though fully set forth herein verbatim as amendments to the LUDC.

SECTION 3. Codification. It is the intent of the Town Council of the Town of Ponce Inlet that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

SECTION 4. Severability. If any section, subsection, sentence, clause, phrase, word, or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

SECTION 5. Conflicts. In any case where a provision of this Ordinance is found to be in conflict with a provision of any other ordinance of this Town, this Ordinance shall prevail.

SECTION 6. Effective date. This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Ponce Inlet, Florida.

It was moved by _____ and seconded by _____ that said Ordinance be passed on first reading. A roll call vote of the Town Council on said motion resulted as follows:

Mayor Paritsky, Seat #1	_____
Councilmember Milano, Seat #2	_____
Councilmember White, Seat #3	_____
Councilmember Villanella, Seat #4	_____
Vice-Mayor Smith, Seat #5	_____

Approved on first reading this ____ day of _____ 2024.

It was moved by _____ and seconded by _____ that said Ordinance be passed on second reading. A roll call vote of the Town Council on said motion resulted as follows:

88 Mayor Paritsky, Seat #1 _____
89 Councilmember Milano, Seat #2 _____
90 Councilmember White, Seat #3 _____
91 Councilmember Villanella, Seat #4 _____
92 Vice-Mayor Smith, Seat #5 _____

93
94 Approved and adopted on second reading this ____ day of _____ 2024.

95
96 Town of Ponce Inlet, Florida:

97
98
99 _____
100 Lois A. Paritsky, Mayor

101 ATTEST:

102
103
104 _____
105 Kim Cherbano, CMC
106 Town Clerk

EXHIBIT “A”

AMENDMENTS TO ARTICLES 3, 8 AND 9.

Articles 3, 8 and 9 of the Town of Ponce Inlet Land Use Development Code, are hereby amended to read as follows:

ARTICLE 3 USE REGULATIONS

SECTION 3.18. DWELLING RENTALS

* * *

3.18.4 General regulations.

The following regulations shall pertain to the rental of dwellings:

- A. A contact person must be available 24 hours per day, seven days per week to respond to complaints regarding the conduct of the occupants of the subject dwelling.
- B. Occupancy of individual units shall conform to the occupancy limits of all applicable building codes.
- C. The owner or manager shall maintain a tenant and vehicle registration that includes the name and address of each unit's tenant and the make, year and tag number of the tenant's vehicle.
- D. There shall be a written lease between the owner and tenant and that includes an explicit statement that the tenant agrees to follow these regulations.
- E. Violation of these provisions may result in revocation of the rental permit for cause, upon notice and opportunity to be heard by the town council and subject to prosecution before the ~~code enforcement board~~special magistrate, and any other penalties, as provided for in section 3.18.6 below.
- F. The rental permit application shall be filed with the town prior to rental of the subject property.

* * *

3.18.7 Annual reporting requirements.

- A. *Annual summary report.*
 - 1. An annual summary report must be filed by:
 - 2. All licensed real estate agents, brokers, agents or other parties who represent an owner of a property rented at any time during a calendar year; and
 - 3. All owners of dwellings rented at any time during a calendar year.
 - 4. The summary report is due by February 1 of each year.

5. The report shall reflect the rental activities of all subject dwellings within the town for the previous calendar year. This report shall include, at a minimum, the address of subject property and length of rental period per tenant.
6. The town shall maintain a third-party rental summary report form and make it available to the public upon request.
7. Violation of this requirement subjects violators to prosecution before the ~~code enforcement boards~~special magistrate and other penalties in section 3.18.6.

* * *

SECTION 3.34 MOBILE FOOD VENDORS

* * *

- B. *Temporary use permit.* A mobile food vendor shall be required to obtain a temporary use permit, pursuant to LUDC Sec. 6.6.17, prior to operating on any property within the town, subject to the following:
1. *Duration.* Temporary use permits shall be valid for the duration of time specified pursuant to 6.6.17.F. (Expiration).
 2. *Permit revocation.* In addition to the provisions of section 6.6.17.H.1, a temporary use permit for a mobile food vendor may be revoked by the town for any one of the following violations:
 - a. Operating outside of the approved mobile food vending site.
 - b. Operating without the required state licenses.
 - c. Creating a public nuisance as defined in this code.
 3. *Violation and penalties.* No person shall violate the provisions of this section, nor shall any person fail to comply with all state and town laws, codes, ordinances, rules, or regulations. The ~~code enforcement boards~~special magistrate shall have jurisdiction to enforce these provisions pursuant to F.S. Ch. 162 and this code. Any person determined to be in violation will be subject to penalties and remedies available as provided by law.

* * *

ARTICLE 8 ENFORCEMENT

* * *

SECTION 8.2. ENFORCEMENT PROCEDURES AND PENALTIES

* * *

8.2.2 Enforcement penalties.

Any person who violates any provision of the LUDC, fails to secure a permit or certificate of occupancy as required by the LUDC, or fails to comply with any order issued by the authorities set forth in section 8.1.2, is punishable in accordance with section 1-11 of the Code of Ordinances.

Penalties shall be assessed upon finding of violation by the ~~code enforcement board~~special magistrate or any court of competent jurisdiction.

* * *

ARTICLE 9 DEFINITIONS AND RULES OF INTERPRETATION

* * *

SECTION 9.4. DEFINITIONS

* * *

~~*Code enforcement board.* The code enforcement board of the Town of Ponce Inlet, Florida. See Code of Ordinances chapter 2, article V.~~

* * *

Special magistrate. The qualified individual appointed by the town council to hear and decide code violations under this section and F.S. ch. 162 in lieu of a code enforcement board.

* * *



Meeting Date: 10/17/2024

Agenda Item: 13-A

Report to Town Council

Topic: Lien abatement request for Guada Joseph – 4745 South Atlantic Avenue, Unit 404.

Summary: Please see attached staff report and supporting documents.

Suggested motion: At Council's discretion.

Requested by: Mr. Hooker, Code Compliance Manager
Mr. Lear, Planning & Development Director

Approved by: Mr. Disher, Town Manager



MEMORANDUM

TOWN OF PONCE INLET – PLANNING & DEVELOPMENT DEPARTMENT

*THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING
PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.*

To: Michael E. Disher, AICP, Town Manager
From: David Hooker, Code Compliance Manager
Through: Darren Lear, AICP, Planning & Development Director
Date: October 2, 2024
Subject: Code Enforcement Lien Abatement Request
Code Case Number 2021-249
Guada Joseph
4745 South Atlantic Avenue # 404

MEETING DATE: October 17, 2024

INTRODUCTION:

Mr. Joseph is formally requesting a reduction or abatement of a Code Enforcement lien totaling \$48,000, which was imposed on November 9, 2021. This lien consists of a \$47,750 fine, accrued over 955 days at a daily rate of \$50, plus a \$250 administrative fee.

The property was brought into compliance as of June 21, 2024. **(Exhibit #1)**

BACKGROUND:

On June 17, 2021, during an inspection of a neighboring property, staff noticed construction activity on the subject property. The property owner was then notified that a permit was required for the bathroom remodel.

After several weeks with no response a Notice of Violation was sent to the property owner reemphasizing, that a licensed contractor would need to be engaged to secure the necessary permits for the work performed **(Exhibit #2)**. Despite this communication, several additional weeks passed without further action or correspondence from the property owner. As a result, a formal Notice of Hearing was issued on September 2, 2021 **(Exhibit #3)**.

On September 20, 2021, staff received an email from Mr. Joseph requesting a continuance of the Code Enforcement Board hearing to the October session, so he could secure the necessary permits

(Exhibit #4). Subsequently, the case was presented to the Code Enforcement Board on September 27, 2021, where staff recommended a continuance based on the owner's request for more time to engage a contractor **(Exhibit #5).**

The Code Enforcement Board ultimately heard the case on October 25, 2021. During this meeting, the owner was found to be in violation of the relevant section of the Town Code and was given a deadline of November 8, 2021, to have a contractor secure the necessary permits. **(Exhibits #6 and #7).**

At the subsequent hearing on November 15, 2021, staff presented testimony confirming noncompliance with the original order. As a result, the Code Enforcement Board imposed a fine of \$50 per day, in addition to a \$250 administrative fee, until the property reached compliance **(Exhibits #8 and #9).**

On June 23, 2022, staff sent a courtesy reminder to the owner regarding the outstanding lien **(Exhibit #10).** On July 18, 2022, staff received a records request from the owner, seeking all documentation related to the case **(Exhibit #11).**

Between August 2022 and June 2024, staff received multiple inquiries from various individuals identifying themselves as contractors, seeking information on the necessary steps to obtain the permit.

On June 21, 2024, staff received the permit application for the completed work. The permit was issued, and a final inspection was conducted and passed on August 21, 2024.

RECOMMENDATION:

Pursuant to Florida Statutes 162.09(3), “the lien runs in favor of the local governing body,” in this case, the Town Council. The authority to reduce or remove the lien rests solely with the Council’s discretion.

The owner has indicated in his request that he is willing to settle this matter. In his supporting documents, the owner has indicated that he has a home equity line of \$4,000 remaining and is willing to pay this amount to close this case.

Staff recommends that if the settlement offer is accepted, it be contingent upon a payment deadline of no more than 30 days. If Mr. Joesph does not provide the agreed-upon funds within this period, the original amount of \$48,000 would become payable to the Town, and no further settlement requests would be considered.

EXHIBITS

- 1. Lien Abatement Request**
- 2. Notice of Violation**
- 3. Notice of Hearing and Certified Receipts**
- 4. Email from Mr. Joseph**
- 5. Code Board Minutes of September 27, 2021**
- 6. Code Board Minutes of October 25, 2021**
- 7. Code Board Order of October 25, 2021**
- 8. Code Board Minutes of November 15, 2021**
- 9. Code Board Order Imposing Fine – November 15, 2021**
- 10. Courtesy letter**
- 11. Records request from owner**

EXHIBIT 1

Requirements for Requesting Waiver or Reduction of Code Enforcement Fines

1. Complete the waiver/reduction request form and submit to Code Enforcement staff. All blanks are to be filled in by the property owner or agent on the owner's behalf. Completed requests are then reviewed and decided by the Town Council. Such decisions are entirely at the discretion of the Town Council.
2. The Town Council will not consider a request for a waiver or reduction of a fine until the property is in compliance with the Code Enforcement Board Order.
3. Written Explanation and Justification – Please provide an explanation in the space provided on the next page, along with back-up documentation, of how and why your request meets one or more of the situations below. Please feel free to attach additional pages if necessary.
 - A. Medical Hardship – Include written documentation such as doctor bills, hospital bills, or any other documents that demonstrate how a medical hardship prevented the owner from correcting the violation.
 - B. Financial Hardship – Provide written documentation such as bank records, financial statements, or any other documents illustrating that a financial hardship prevented the owner from correcting the violation.
 - C. Mitigating Circumstances – Description should include the gravity of the violation, any actions taken to correct the violation, technical irregularities, and any other relevant information.
4. Request forms must be submitted to Code Enforcement staff at least two weeks prior to the scheduled Town Council meeting, which is the third Thursday of every month unless otherwise determined by the Council.
5. Requests will not be accepted without the above.

Request for Waiver or Reduction of Code Enforcement Fines

CEB Case Number 2021-249

Property Address with Fine 4745 S. Atlantic Ave, Unit #404 Ponce Inlet FL 32127

Owner's Name Guada Joseph

Owner's Mailing Address (if different from Property Address) _____

Same as property address

Owner's Contact Information (phone and e-mail) Ph#770-639-3433 / Email Guada.Joseph@outlook.com

Agent's Name (if other than the owner) N/A
(Please fill out attached Owner Authorization Form)

Agent's Mailing Address N/A

Agent's Contact Information (phone and e-mail) N/A

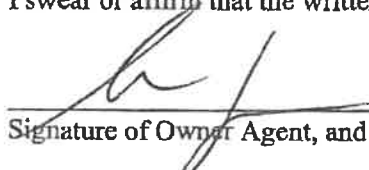
Nature of Violation Building Permit

Date Fine Began 11/9/2021 Date Fine Ended 6/21/2024

Daily Amount of Fine Imposed \$50 Total Amount of Fine \$48,000

This request is to be provided to Code Enforcement staff at least two weeks prior to the Ponce Inlet Town Council meeting.

I swear or affirm that the written or typed information for this request is true and correct.

 9/10/2024
Signature of Owner Agent, and Date

State of Florida, County of _____

The foregoing instrument was acknowledged by ☐ physical presence or ☐ online notarization before me
this ____ day of _____, 20____ by _____

_____, who is personally known to me or has
produced _____ as identification.

Notary Public Signature

Notary Stamp/Seal

Commission Expires: _____

Written Explanation and Justification – The Town Council will not consider any waiver or reduction of fines without justification. Please provide an explanation in the space provided on the next page, along with back-up documentation, of how and why your request meets one or more of the situations below. Please feel free to attach additional pages if necessary.

Financial Hardship

Please see the attached word document.

Medical Hardship

Please see the attached word document.

Mitigating Circumstances

Please see the attached word document.

Waiver or Reduction of Code Enforcement Fines

CEB Case # 2021-249

Financial Hardship

Immediately after we received the notice of violation in the fall of 2021, we met with the city official, Mr. David Hooker. We find Mr. Hooker to be informative and provide valuable guidance. He directed us to find a general contractor to file for the permit. We looked for months to find a general contractor with no success. This was at the height of the pandemic. We went back to Mr. Hooker and informed him that the pandemic was causing havoc on construction resources. Two weeks after our second visit with Mr. Hooker, my husband, Alex Zahedi, lost his job due to COVID, and we were forced to move back to Atlanta for him to search for a job. We received notice that the court had found us guilty and started the fine. While we were trying to find a general contractor, we kept communication open with Mr. Hooker. He was very understanding and agreed that locating a general contractor during COVID was difficult. To make matters worse, the hurricane caused significant damage in Ponce, including our shoreline and unit. This made it even more challenging to find a general contractor. We tried very hard to find a contractor while living in Atlanta.

Medical Hardship

In 2022, both my husband and I had COVID. He was 65 at the time, and it took him four months to fully recover.

Mitigating Circumstances

We must first mention that during this entire ordeal, we communicated with the city, and they indicated that once we get a general contractor and the permit, they can review the fines. They have been aware of and understand the following circumstances:

1. The pandemic caused issues and delays, and we could not find a general contractor.
2. My husband lost his job during the pandemic, and the financial hardship caused us to move back to Atlanta, which made it difficult to travel back to Ponce.
3. It took my husband four months to recover from COVID-19, and he was out of commission.
4. While we were looking for a general contractor, the hurricane in late 2022 caused even more problems finding contractors.

5. We have now spent \$16,380.00, to remediate this issue, we had to use our home equity line to pay for this. At this point, we have \$4,000 left with our line of credit. We would ask the city to either waive the entire amount or we would be happy to provide the last \$4000.00 from our line of credit as the settlement.



Submittal Details

Submittal Name
Building Review 1

Submittal Status *
Approved

Action Priority Order
2

Action Sort Order
2



Start Date

06/21/2024



Due Date

07/10/2024



Complete Date

06/25/2024



ITEM REVIEWS (1)

NOTES

HB Building • Hank Baker • Approved

Assigned	Due	Complete	Review Set	Set Priority	Item Priority	Required
06/21/2024	07/10/2024	06/25/2024			0	Yes

CANCEL

UPDATE



EXHIBIT 2

Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 236-2182

Case Number: **CODE2021-000249**

Case Type: **Code Enforcement**

Date Case Established: **06/17/2021**

Compliance Deadline: **07/31/2021**

Violation Notice

Owner: Guada Joseph

Mailing Address

4980 Haydens Walk Drive
Alpharetta, Georgia 30022

Notice of Violation for the following location:

Address

4745 South Atlantic Avenue – Unit 4040
PONCE INLET, FL 32127

Parcel

6419-10-00-4040

This violation letter is to inform you staff has observed a violation at that the property, in which according to the Volusia County Property Appraiser's Office this property is owned by you, located in Ponce Inlet, Florida.

The violation is for an interior remodel including (bathroom) without permits or inspection approvals.

You are hereby cited with the following adopted section of Town Code:

Florida Building Code

Section 105.1 - No Building Permit

Any owner or authorized or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

Compliance Date: 07/31/2021

If you are unable to meet the required time frame, this case will be referred over to the Town's Code Enforcement Board. If you are found in violation of the cites sections of code, a daily fine of up to \$250 may be imposed. Furthermore, an administrative fee of \$250 shall also be imposed. Both these fines will be recorded into the public records and will constitute a lien of your property.

If you have any questions related to this matter, please do not hesitate to contact my office

Kindest Regards,

David Hooker, CEP
Code Compliance Manager


Certified Mail –

7020-2450-0000-8214-8414 – 4980 Haydens Walk Drive, Alpharetta, Georgia
7020-2450-0000-8214-8421 – 4745 South Atlantic Avenue, Ponce Inlet, Florida



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, Florida 32127
Phone: (386)236-2182
Fax: (386) 322-6717

NOTICE OF HEARING

Guada Joseph
4980 Haydens Walk Drive
Alpharetta, Georgia 30022

September 2, 2021

Method of Delivery: Via USPS Certified Mail
7020-2450-0000-8214-8681

RE: CODE ENFORCEMENT BOARD – NOTICE OF HEARING – CASE NUMBER 2021-249
PROPERTY LOCATION: 4745 South Atlantic Avenue # 4040

Dear Mr. Joseph:

The Ponce Inlet Code Enforcement Board was created pursuant to Florida Statutes, Chapter 162 and Chapter 2, Article V of the Town's Code of Ordinances with the purpose of facilitating the enforcement of the town's code and rendering quick and fair decisions concerning violations of this code.


You are hereby notified that Case Number 2021-249 will be heard at a public hearing to be held at :30 am on Monday, September 27, 2021 before the Town of Ponce Inlet Code Enforcement Board, in the Council Chambers located at 4300 S Atlantic Avenue, Ponce Inlet, Florida.

Failure to attend this hearing shall be deemed as a waiver of the violator's right to contest the imposition of fines. The fines could be up to \$250 per day per violation and they will be recorded into the public record and establish a lien against this property and any other properties that you own in the State of Florida. You have the right to obtain an attorney at your own expense to represent you before the board should you desire.

If you wish to appeal any decision of the Board you will need a recorded copy of the proceedings, and, therefore, may need to ensure that a verbatim record of the proceedings, including all testimony and evidence, is made. The entire proceedings will be recorded. Should you desire, you may employ a court reporter, but it must be at your expense.

If you have any further questions, please contact the Code Enforcement office within five (5) days of receipt of this notice at (386) 236-2187.

Kind Regards,


David Hooker, CEP
Code Compliance Manager

Certified Mail – 7020-2450-0000-8214-8674 – 4745 South Atlantic Avenue # 4040, Ponce Inlet, Florida



Town of Ponce Inlet

4300 S. Atlantic Avenue
Ponce Inlet, FL 32127

(386) 236-2182

Case Number: **CODE2021-000249**

Case Type: **Code Enforcement**

Date Case Established: **06/17/2021**

Compliance Deadline: **07/31/2021**

Violation Notice

Owner: Guada Joseph

Mailing Address

4980 Haydens Walk Drive
Alpharetta, Georgia 30022

Notice of Violation for the following location:

Address

4745 South Atlantic Avenue – Unit 4040
PONCE INLET, FL 32127

Parcel

6419-10-00-4040

This violation letter is to inform you staff has observed a violation at that the property, in which according to the Volusia County Property Appraiser's Office this property is owned by you, located in Ponce Inlet, Florida.

The violation is for an interior remodel including (bathroom) without permits or inspection approvals.

You are hereby cited with the following adopted section of Town Code:

Florida Building Code

Section 105.1 - No Building Permit

Any owner or authorized or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application to the building official and obtain the required permit.

Compliance Date: 07/31/2021

If you are unable to meet the required time frame, this case will be referred over to the Town's Code Enforcement Board. If you are found in violation of the cites sections of code, a daily fine of up to \$250 may be imposed. Furthermore, an administrative fee of \$250 shall also be imposed. Both these fines will be recorded into the public records and will constitute a lien of your property.

If you have any questions related to this matter, please do not hesitate to contact my office

Kindest Regards,

David Hooker, CEP
Code Compliance Manager

Certified Mail –

7020-2450-0000-8214-8414 – 4980 Haydens Walk Drive, Alpharetta, Georgia
7020-2450-0000-8214-8421 – 4745 South Atlantic Avenue, Ponce Inlet, Florida

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Guada Joseph
4980 Haydens Walk Drive
Alpharetta, GA 30022



9590 9402 6070 0125 5392 86

2. Article Number (Transfer from service label)

7020 2450 0000 8214 8681

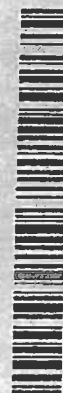
PS Form 3811, July 2015 PSN 7530-02-000-9053

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3.
- ☐ Print your name and address on the reverse so that we can return the card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Guada Joseph
4745 S Atlantic # 4040
Ponce Inlet, Florida 32127



9590 9402 6070 0125 5393 16

2. Article Number (Transfer from service label)

7020 2450 0000 8214 8674

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Address
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Return Receipt for Merchandise
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Address
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☐ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
 - ☐ Restricted Delivery
 - ☐ Priority Mail Express®
 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☐ Return Receipt for Merchandise
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

EXHIBIT 4

Hooker, David

From: Guada Joseph <guada.joseph@outlook.com>
Sent: Monday, September 20, 2021 3:12 PM
To: Hooker, David
Subject: Case Number: CODE2021-000249

[EXTERNAL: This email was sent from outside of ponce-inlet.org, confirm this is a trusted sender before opening any links or attachments]

Guada Joseph
4745 S. Atlantic Avenue
Unit 404
Ponce Inlet, FL 32127
Monday, September 20, 2021
Case Number: CODE2021-000249

David Hooker, CEP
Town of Ponce Inlet
4300 S. Atlantic Avenue
Ponce Inlet, FL 32127
Office: 386.236.2187
Re: Case Number 2021-249 Public Hearing on September 27, 2021

Good Afternoon Mr. David,

Thank you very much for meeting with us last Friday afternoon to discuss our case. As we mentioned, we have not had any luck finding a licensed plumber to pull a permit and resolve the bathroom remodeling concerns.

At this point, we want to request a continuance of the public hearing for one month so we will have time to find and contract a licensed plumber.

Please do not hesitate to contact us with any questions.

Thank you for your time.

Guada Joseph
Mobile: 770.639.3433
Email: guada.joseph@outlook.com

EXHIBIT 5



**TOWN OF PONCE INLET
CODE ENFORCEMENT BOARD
HEARING MINUTES
September 27, 2021**

1
2 **1. CALL TO ORDER:** Pursuant to proper notice, Chairman Villanella called the meeting to
3 order at 9:30 a.m. in the Council Chambers, located at 4300 S. Atlantic Avenue, Ponce Inlet, FL.
4

5 **2. PLEDGE OF ALLEGIANCE:** Led by Chairman Villanella.
6

7 **3. ROLL CALL & DETERMINATION OF QUORUM:**
8

9 Board members present:

10 Ms. Bullock, Seat 1
11 Mr. Villanella, Seat 2; Chair
12 Mr. Finch, Seat 3; Vice-Chair
13 Mr. Michel, Seat 4
14 Ms. Cannon, Seat 5
15 Ms. Richards, Alternate 1
16

17 A quorum was established with all members present.
18

19 Staff present:

20 Attorney Cino, Code Board Attorney
21 Mr. Disher, Planning & Development Director
22 Mr. Hooker, Code Compliance Manager
23 Ms. Hunt, Assistant Deputy Clerk
24 Attorney Smith, Town Attorney
25

26 **4. ADOPTION OF THE AGENDA:** Chairman Villanella asked if there were any changes
27 to the agenda; there were none.
28

29 Ms. Cannon moved to adopt the agenda as presented; seconded by Ms. Bullock. The motion
30 PASSED 5-0, with the following vote: Ms. Bullock - yes; Chairman Villanella - yes; Vice-Chair
31 Finch - yes; Mr. Michel - yes; Ms. Cannon - yes.
32

33 **5. DISCLOSURE OF EX-PARTE COMMUNICATION:** Attorney Cino asked if there
34 were any ex-parte communications to disclose; there were none.
35

36 **6. ADMINISTERING THE OATH TO WITNESSES:** Attorney Cino administered the
37 Oath to Mr. Hooker.
38

39 **7. APPROVAL OF THE MINUTES:**

40 A. August 23, 2021 – Chairman Villanella asked if there were any changes requested
41 to the meeting minutes; there were none.
42

43 Ms. Cannon moved to approve the August 23, 2021 hearing minutes as presented; seconded by
44 Chairman Villanella. The motion PASSED 5-0, with the following vote: Ms. Bullock - yes;
45 Chairman Villanella - yes; Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes.

46
47 **8. OLD BUSINESS:**

- 48 A. Case # 2021-284; Property Address: 137 Anchor Drive
49 Owner(s): Beverly & Joseph Kaminski
50 Alleged Violation(s): Fill Dirt requiring Permits within a Flood Zone; Work
51 Without Permits; and Violation of STOP WORK Order
52

53 Mr. Hooker briefly reviewed the case and the Board's Order from the August 23, 2021 meeting;
54 the owners submitted the permit application on September 10, 2021, which was then issued by the
55 Town and picked up by the applicant on September 23, 2021. After speaking with the contractor
56 (Mr. Kennedy), staff learned that the project will be completed by Wednesday, September 29,
57 2021. Mr. Hooker noted that the Kaminski's have paid the Administrative Fee as ordered by the
58 Board at last month's hearing; and staff now requests a continuance of this case until the October
59 25, 2021 meeting date. Chairman Villanella asked if there was anyone present to speak on this
60 case; there was not.

61
62 Chairman Villanella moved to continue this case to the October 25, 2021 Code Board hearing
63 date; seconded by Ms. Cannon. The motion PASSED 5-0, with the following vote: Ms. Bullock -
64 yes; Chairman Villanella - yes; Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes.
65

66 **9. NEW BUSINESS:**

- 67 A. Case #2021-249; Property Address: 4745 South Atlantic Avenue, #404
68 Owner(s): Guada Joseph
69 Alleged Violation(s): Work Without Permits
70

71 Mr. Hooker stated that on September 20, 2021, he received an email from the property owner
72 requesting a continuance of this case until the October 25, 2021 meeting. Mr. Cino asked if there
73 were any life-safety issues [that would warrant immediate action]; there were not. Chairman
74 Villanella asked if there was anyone present to speak on this case; there was not.

75
76 Mr. Michel moved to continue this case to the October 25, 2021 Code Board hearing date;
77 seconded by Chairman Villanella. The motion PASSED 5-0, with the following vote: Ms. Bullock
78 - yes; Chairman Villanella - yes; Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes.
79

- 80 B. Case # 2021-250; Property Address: 4631 South Atlantic Avenue, #8407
81 Owner(s): Yani & Luz Jusakos
82 Alleged Violation(s): Work Without Permits
83

84 Mr. Hooker reviewed the following evidence: proof of property ownership and proof of receipt of
85 Notices; he then provided testimony, photographs, and evidence depicting renovation activities
86 occurring without a valid permit. He confirmed that a Stop Work Order was posted on the property
87 on June 16, 2021; and on September 14, 2021, the owners obtained the required permit. He
88 requested that the owners be found in non-compliance and the \$250 Administrative Fee be
89 assessed. Chairman Villanella asked if there was anyone present to speak on this case - there was
90 not.
91

EXHIBIT 6



**TOWN OF PONCE INLET
CODE ENFORCEMENT BOARD
HEARING MINUTES
October 25, 2021**

1
2 **1. CALL TO ORDER:** Pursuant to proper notice, Chairman Villanella called the meeting to
3 order at 9:30 a.m. in the Council Chambers, located at 4300 S. Atlantic Avenue, Ponce Inlet, FL.

4
5 **2. PLEDGE OF ALLEGIANCE:** Led by Chairman Villanella.

6
7 **3. ROLL CALL & DETERMINATION OF QUORUM:**

8
9 Board members present:

10 Mr. Villanella, Seat 2; Chair
11 Mr. Finch, Seat 3; Vice-Chair
12 Mr. Michel, Seat 4
13 Ms. Cannon, Seat 5
14 Ms. Richards, Alternate 1

15
16 A quorum was established with five members present; Ms. Bullock, Seat #1 was absent.

17
18 Staff present:

19 Attorney Cino, Code Board Attorney
20 Mr. Disher, Planning & Development Director
21 Mr. Hooker, Code Compliance Manager
22 Ms. Hunt, Assistant Deputy Clerk
23 Attorney Smith, Town Attorney

24
25 **4. ADOPTION OF THE AGENDA:** Chairman Villanella asked if there were any changes
26 to the agenda; there were none.

27
28 Ms. Cannon moved to adopt the agenda as presented; seconded by Vice-Chairman Finch. The
29 motion PASSED 5-0, consensus.

30
31 **5. DISCLOSURE OF EX-PARTE COMMUNICATION:** Chairman Villanella asked if
32 there were any ex-parte communications to disclose; there was none.

33
34 **6. ADMINISTERING THE OATH TO WITNESSES:** Chairman Villanella asked if there
35 were any parties present to testify; Attorney Cino administered the Oath.

36
37 **7. APPROVAL OF THE MINUTES:**

38 A. September 27, 2021 – Chairman Villanella asked if there were any changes
39 requested to the meeting minutes; there were none.

40
41 Ms. Cannon moved to approve the September 27, 2021 hearing minutes as presented; seconded
42 by Ms. Richards. The motion PASSED 5-0, with the following vote: Chairman Villanella - yes;
43 Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.

Order dated August 31, 2021, which provided for a fine of \$250 per day to begin on September 23, 2021 if not in compliance. So, if the Board choses to impose fines today, it may do so.

Chairman Villanella moved to impose a fine of \$250 per day starting today, and continuing until the property is brought into compliance, plus assess the \$250 Administrative Fee. Motion died for lack of a "second."

Vice-Chairman Finch suggested giving the owners until the next meeting to come into compliance and that the town could install the orange construction fencing around the property, noting that Mr. Hooker has now had communication with representatives, and he believes that fining them at this point is not necessary. Attorney Smith stated that the Board could include language in the Order that the fines would be imposed but no lien would be recorded until after the next meeting, and a provision in the Order would allow for a reduction or elimination of fines if the property is brought into compliance within thirty days; that will act as an incentive to get the repairs started in a timely manner. Chairman Villanella asked how many of these utility boxes are in Town; Mr. Hooker stated two - this location and the one on S. Peninsula Drive. Mr. Michel asked how long it takes to review a permit application; Mr. Hooker stated two to three days depending on workload, and that any properties with active or pending code enforcement actions are flagged in the system to alert staff. Mr. Michel stated his support of Attorney Smith's idea, as that might give them the incentive to bring this property into compliance.

Chairman Villanella moved to find the property out of compliance with the August 31, 2021 Order, to impose a \$250 fine starting November 8th, 2021 and continuing until the property is brought into compliance, and to assess the \$250 Administrative Fee; seconded by Mr. Michel. The motion PASSED 5-0, with the following vote: Chairman Villanella - yes; Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.

9. NEW BUSINESS:

- A. Case #2021-249; Property Address: 4745 South Atlantic Avenue, #404
Owner(s): Guada Joseph
Alleged Violation(s): Work Without Permits

Mr. Hooker stated this case was continued from last month's meeting at the owner's request. He provided testimony and evidence of notice, ownership, and alleged violations, showing that construction work was done without permits or inspections (bathroom remodel). The owner has indicated that he has hired a contractor, but no permit application has been submitted. Chairman Villanella asked who is supposed to apply for the permit; Mr. Hooker stated the contractor. Vice-Chairman Finch asked if any of the work has been done; Mr. Hooker stated all of the work has been completed. Vice-Chairman Finch asked if any inspections had been performed; Mr. Hooker stated no, without a permit, the town is unable to inspect the project. Chairman Villanella asked if there was anyone present to speak on this case; there was not. Vice-Chairman Finch stated there is no way to know if the contractor will apply for a permit; Mr. Hooker answered yes, , during a verbal conversation with Mr. Joseph, property owner, he was informed that the (unnamed) contractor would submit the permit application.

Chairman Villanella moved to find this property in non-compliance, grant until November 8, 2021 to bring the property into compliance by securing a permit, and to assess the \$250 Administrative Fee; seconded by Mr. Michel. The motion PASSED 5-0, with the following vote: Chairman Villanella - yes; Vice-Chair Finch - yes; Mr. Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.

EXHIBIT 7

**BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA**

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2021-249

JOSEPH GUADA,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

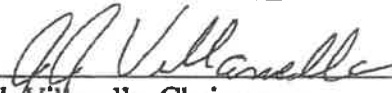
This cause was heard on the 25th day of October, 2021 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondent and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondent is the owner of property located at 4745 South Atlantic Avenue #4040, Ponce Inlet, Florida, with Volusia County Parcel-ID 6419-10-00-4040 (the "Subject Property").
2. On June 17, 2021, the Code Enforcement Officer issued a Notice of Violation to Respondent citing a violation of Section 105.1 of the Florida Building Code for interior remodeling construction without permits.
3. Respondent has not cured the violation as of the date of the hearing.

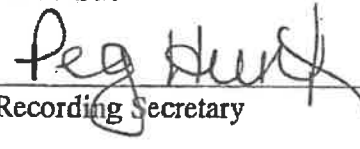
BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

4. Respondent is in violation of Section 105.1 of the Florida Building Code.
5. Respondent shall cure the violation prior to November 8, 2021 by obtaining permits for all work requiring building permits.
6. Respondent shall pay to the Town of Ponce Inlet the administrative costs incurred by the Town in prosecuting this case in the amount of \$250.00 within thirty (30) days of the date of this Order.
7. Any violation of the same code section by the Respondent within five years of the date of this Order may be prosecuted as a repeat violation pursuant to Chapter 162, Florida Statutes.

ORDERED at Ponce Inlet, Volusia County, Florida on this 29th day of October, 2021.


Joseph Villanella, Chairperson
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the 3rd day of ~~October~~ ^{NOV}, 2021.

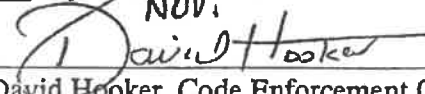

David Hooker, Code Enforcement Officer

EXHIBIT 8



**TOWN OF PONCE INLET
CODE ENFORCEMENT BOARD
HEARING MINUTES
November 15, 2021**

1
2 **1. CALL TO ORDER:** Pursuant to proper notice, Vice-Chairman Finch called the meeting
3 to order at 9:30 a.m. in the Council Chambers, located at 4300 S. Atlantic Avenue, Ponce Inlet,
4 FL.

5
6 **2. PLEDGE OF ALLEGIANCE:** Led by Vice-Chairman Finch.

7
8 **3. ROLL CALL & DETERMINATION OF QUORUM:**

9
10 Board members present:

11 Ms. Bullock, Seat #1
12 Mr. Finch, Seat 3; Vice-Chairman
13 Mr. Michel, Seat 4
14 Ms. Cannon, Seat 5
15 Ms. Richards, Alternate 1

16
17 A quorum was established with five members present; Mr. Villanella, Seat 2; Chairman was
18 absent.

19
20 Staff present:

21 Attorney Cino, Code Board Attorney
22 Mr. Disher, Planning & Development Director
23 Mr. Hooker, Code Compliance Manager
24 Ms. Hunt, Assistant Deputy Clerk
25 Attorney Smith, Town Attorney

26
27 **4. ADOPTION OF THE AGENDA:** Vice-Chairman Finch asked if there were any changes
28 to the agenda; there were none.

29
30 Ms. Cannon moved to adopt the agenda as presented; seconded by Bullock. The motion PASSED
31 5-0, with the following vote: Ms. Bullock - yes; Vice-Chairman Finch - yes; Mr. Michel - yes; Ms.
32 Cannon - yes; Ms. Richards - yes.

33
34 **5. DISCLOSURE OF EX-PARTE COMMUNICATION:** Vice-Chairman Finch asked if
35 there was any ex-parte communication to disclose; there was none.

36
37 **6. ADMINISTERING THE OATH TO WITNESSES:** Attorney Cino administered the
38 Oath to Mr. Hooker, there were no other witnesses present to testify.

39
40 **7. APPROVAL OF THE MINUTES:**

41 A. October 25, 2021 – Vice-Chairman Finch asked if there were any changes requested
42 to the meeting minutes; there were none.
43

44 Ms. Cannon moved to approve the October 25, 2021 hearing minutes as presented; seconded by
45 Vice-Chairman Finch. The motion PASSED 5-0, consensus.

46
47 **8. OLD BUSINESS:**

- 48 A. Case # 2021-284; Property Address: 137 Anchor Drive
49 Owner(s): Beverly & Joseph Kaminski
50 Violation(s): Fill Dirt requiring Permits within a Flood Zone; Work
51 Without Permits; and Violation of a STOP WORK Order
52

53 Mr. Hooker briefly reviewed the case and the Board's Order from the August 23, 2021 meeting
54 finding the property in violation; as reported at the September 27th meeting, the contractor (Mr.
55 Kennedy), stated that the project would be completed by September 30, 2021. A landscape
56 inspection revealed that the owners planted a palm tree, not a magnolia shade tree as required and
57 noted on their after-the-fact application. Mr. Hooker stated the owners paid the \$250
58 Administrative Fee, but the property remains in non-compliance due to failure to plant the required
59 shade tree. Vice-Chairman Finch asked if there was anyone present to speak on this case; there
60 was not.
61

62 Vice-Chairman Finch moved to find the property in non-compliance and to impose a fine of \$25
63 per day beginning November 9, 2021 and continuing daily until the property is brought into
64 compliance and acknowledged that the Administrative Fee has been paid; seconded by Ms.
65 Cannon. The motion PASSED 5-0, with the following vote: Ms. Bullock - yes; Vice-Chairman
66 Finch - yes; Mr. Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.
67

- 68 B. Case #2021-217; Property Address: 48 Inlet Harbor Road
69 Owner(s): Southern Bell Telephone Company (AT&T)
70 Violation(s): Property Maintenance Issues including lot and dwelling
71

72 Mr. Hooker briefly reviewed the case and the Board's Orders from the August 23, 2021 and
73 October 25, 2021 meetings; he stated that he has had no further communications with the property
74 owner; there has not been any maintenance performed on the property, no improvements have
75 been made, and no permit application has been submitted. Vice-Chairman Finch asked if there was
76 anyone present to speak on this case; there was not.
77

78 Vice-Chairman Finch moved to find that the property is out of compliance with this Board's
79 Orders, impose a fine of \$50 per day beginning November 9, 2021 and continuing until the
80 property is brought into compliance, and re-affirm the assessment of the \$250 Administrative Fee;
81 seconded by Mr. Michel. The motion PASSED 5-0, with the following vote: Ms. Bullock - yes;
82 Vice-Chairman Finch - yes; Mr. Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.
83

- 84 C. Case #2021-249; Property Address: 4745 South Atlantic Avenue, #404
85 Owner(s): Guada Joseph
86 Violation(s): Work Without Permits
87

88 Mr. Hooker briefly reviewed the case and the Board's Order from October 25, 2021; he reported
89 that the property remains in non-compliance, no permit application has been submitted, nor has
90 the \$250 Administrative Fee been paid. Vice-Chairman Finch asked if there was anyone present
91 to speak on this case; there was not.
92

93 Ms. Cannon moved to find this property remains in non-compliance, impose a \$50 per day fine
94 beginning November 9, 2021 and continuing until the property is brought into compliance, and to
95 re-affirm the \$250 Administrative Fee; seconded by Ms. Bullock. The motion PASSED 5-0, with
96 the following vote: Ms. Bullock - yes; Vice-Chairman Finch - yes; Mr. Michel - yes; Ms. Cannon
97 - yes; Ms. Richards - yes.
98

- 99 D. Case # 2021-380; Property Address: 55 Oceanview Avenue
100 Owner(s): Thomas Hager
101 Violation(s): Property Maintenance Issues including lot and dwelling
102

103 Mr. Hooker briefly reviewed the case and the Board's Order from October 25, 2021; he noted that
104 the property is now in compliance, but the \$250 Administrative Fee has not been paid. Vice-
105 Chairman Finch asked if there was anyone present to speak on this case; there was not.
106

107 Vice-Chairman Finch moved to find the property was in non-compliance, is now in compliance,
108 to re-affirm the \$250 Administrative Fee and to dismiss the case; seconded by Ms. Richards. The
109 motion PASSED 5-0, with the following vote: Ms. Bullock - yes; Vice-Chairman Finch - yes; Mr.
110 Michel - yes; Ms. Cannon - yes; Ms. Richards - yes.
111

- 112 E. Case # 2021-378; Property Address: 4746 South Peninsula Drive
113 Owner(s): Gary Swick
114 Violation(s): Property Maintenance Issues including lot and dwelling
115

116 Mr. Hooker briefly reviewed the case and the Board's Order from October 25, 2021; he noted that
117 the property is now in compliance. Vice-Chairman Finch asked if there was anyone present to
118 speak on this case; there was not.
119

120 Mr. Michel moved to find the property was in non-compliance, is now in compliance, and to assess
121 the \$250 Administrative Fee; seconded by Vice-Chairman Finch. The motion PASSED 5-0, with
122 the following vote: Ms. Bullock - yes; Vice-Chairman Finch - yes; Mr. Michel - yes; Ms. Cannon
123 - yes; Ms. Richards - yes.
124

125 9. NEW BUSINESS:

- 126
127 A. Case # 2021-416; Property Address: 13 Arena Blanca
128 Owner(s): Florida Real Estate Services, LLC
129 Alleged Violation(s): Work Without Permit(s)
130

131 Mr. Hooker provided testimony and photographic evidence of alleged violations of work without
132 permits, specifically the installation of at least two loads of fill dirt dumped on a vacant lot, with
133 no active permits. The owner was advised to remove the fill dirt or obtain a permit, neither of
134 which has been done as of today's date. He requested that the property be found in non-compliance
135 and to assess fines and fees accordingly. Vice-Chairman Finch asked if there was anyone present
136 to speak on this case; there was not.
137

138 Vice-Chairman Finch moved to find the property in non-compliance, grant thirty days to come
139 into compliance, if not in compliance by December 17, 2021, a \$100 per day fine will be imposed
140 and continue until the property is brought into compliance, and to assess the \$250 Administrative

EXHIBIT 9

11/5/2021 9:03:38 AM
Instrument# 2021266483 2 pages
Book: 8149 Page: 4966
Electronically Recorded By
Volusia County Clerk of the Court

**BEFORE THE CODE ENFORCEMENT BOARD
OF THE TOWN OF PONCE INLET, FLORIDA**

TOWN OF PONCE INLET, FLORIDA,
a municipal corporation,

Petitioner,

vs.

CASE NO.: 2021-249

JOSEPH GUADA,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER


This cause was heard on the 25th day of October, 2021 by the Code Enforcement Board of the Town of Ponce Inlet after due notice to Respondent and a public hearing, and the Code Enforcement Board, having heard testimony and argument thereon, and being otherwise duly advised in the premises, makes the following FINDINGS OF FACT:

1. Respondent is the owner of property located at 4745 South Atlantic Avenue #4040, Ponce Inlet, Florida, with Volusia County Parcel ID 6419-10-00-4040 (the "Subject Property").
2. On June 17, 2021, the Code Enforcement Officer issued a Notice of Violation to Respondent citing a violation of Section 105.1 of the Florida Building Code for interior remodeling construction without permits.
3. Respondent has not cured the violation as of the date of the hearing.


BASED ON THE FOREGOING IT IS ORDERED AND ADJUDGED that:

4. Respondent is in violation of Section 105.1 of the Florida Building Code.
5. Respondent shall cure the violation prior to November 8, 2021 by obtaining permits for all work requiring building permits.
6. Respondent shall pay to the Town of Ponce Inlet the administrative costs incurred by the Town in prosecuting this case in the amount of \$250.00 within thirty (30) days of the date of this Order.
7. Any violation of the same code section by the Respondent within five years of the date of this Order may be prosecuted as a repeat violation pursuant to Chapter 162, Florida Statutes.

ORDERED at Ponce Inlet, Volusia County, Florida on this 29th day of October, 2021.

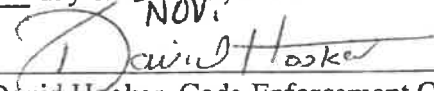

Joseph Villanella, Chairperson
Code Enforcement Board

ATTEST:


Recording Secretary

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon the Respondent by U.S. Mail, First Class, the 3rd day of ~~October~~ ^{NOV.}, 2021.


David Hooker, Code Enforcement Officer



Town of Ponce Inlet

4300 South Atlantic Avenue
Ponce Inlet, Florida 32127
Phone: (386) 236-2150
Fax: (386) 322-6717
www.ponce-inlet.org

June 23, 2022

Joseph Guada
4745 S Atlantic Ave #404
Ponce Inlet, Florida 32127

Reference:
Outstanding Code Enforcement Lien
Case Number 2021-249

Mr. Guada –

This courtesy letter is to inform you of an outstanding Code Enforcement lien that is still attached to your property. As you are aware, the Town's Code Enforcement Board found you in violation of the adopted code for interior remodel without a valid permit on June 17, 2021.

As you are aware, the Enforcement Boards Order was a \$50 per day fine (which continues to accrue until the property comes into compliance) and they also imposed a \$250 administrative fine, which both fines have been recorded into the public records of Volusia County.

This recorded document establishes a lien of your property and will remain in effect until the corrections and payment are made.

Please be directed to Florida Statutes 162.09(3) which states "After 3 months from the filing of any such lien which remains unpaid, the enforcement board may authorize the local governing body attorney to foreclose on the lien or to sue to recover a money judgement for the amount of the lien plus accrued interest".

As of today's, date (June 23, 2022) the lien has accrued for a total of total of 226 days at \$50 per day for a total of \$11,300. Plus, the administrative fee of \$250, the outstanding lien amount attached to your property as of today's date is \$11,550.

Once the corrections are made, the Town of Ponce Inlet, will stop the lien from accruing. You will still be responsible for the outstanding lien amount as well as the administrative fee.

If you should have any further questions, related to this matter, please feel free to contact my office directly at 386-293-0032.

Kindest Regards,

David Hooker, CEP
Code Compliance Manager

The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens the greatest value for their dollar.



TOWN OF PONCE INLET

REQUEST FOR PUBLIC RECORDS

FILE COPY

Requestor's information is **VOLUNTARY**. We ask that you provide a method for staff to notify you when your request is complete or if there are any questions regarding your records request.

DATE OF REQUEST:

7/18/2022

JUL 18 2022

REQUESTOR'S NAME:

GUADA JOSEPHBY: SG

PHONE:

770-639-3433

EMAIL:

guada.joseph@onthrone.com

Description of records requested should include, whenever possible, the date, description, and title of record(s):

- ① copy of all notices For case 2021-249
- ② code enforcement Report case 2021-249
- ③ copy of all findings
- ④ Evidence The ~~city~~ use for the lien

Requestor: I agree to pay the actual costs of duplication as set forth in Chapter 119 of the Florida Statutes as long as the cost for duplication does not exceed ten dollars (\$10.00). In the event that the actual cost of duplication of records exceeds ten dollars (\$10.00), I agree to pay the cost in advance. I understand that Town staff will advise me of the costs of duplication to be incurred before I am obligated for payment. I further understand that, if the notice of volume of this public records request requires the extensive use of information technology resources and/or extensive clerical or supervisory assistance, the Town may charge a reasonable service charge based on the cost actually incurred by the Town in excess of 15 minutes to satisfy the request pursuant to Florida Statute §119.07(4)(d).

FOR OFFICE USE ONLY

Number of Copies _____ @ 15¢ per single-sided page, not more than 8½ x 14": \$ _____

Number of Copies _____ @ 20¢ per color copies, not more than 8½ x 14": \$ _____

Staff time: under 15 minutes @ _____ per hour: \$ _____
(The first 15 minutes of staff time is FREE)

Other services: (vendor, postage, supplies, etc.) _____ \$ _____

Note(s): _____ \$ _____

TOTAL COST OF REQUEST: \$ _____

☐ The record(s) requested do not exist in the public records of the Town of Ponce Inlet, FL.

Request Completed by: Stephanie Gjessing Date: 7/19/2022

Requestor Notified by: ☐ Phone ☒ Email ☐ In Person

Stephanie Gjessing

From: Stephanie Gjessing
Sent: Tuesday, July 19, 2022 9:18 AM
To: guada.joseph@outlook.com
Subject: Public Records Request
Attachments: Joseph, Guada 7-18-22.pdf

Good morning,

Your public records request from 7/18/22 has been completed and the information has been attached to this email.

Below is a link which will lead you to the presentations given at the code board hearings where case number CODE2021-249 were heard.

https://ponceinlet-my.sharepoint.com/:f/g/personal/phunt_ponce-inlet_org/Er-2xPaL3rxGs3lVbG47vj0Bu39DCa7u939x1DtrpEESDw?e=mxsfAQ

This records request is now completed and closed.

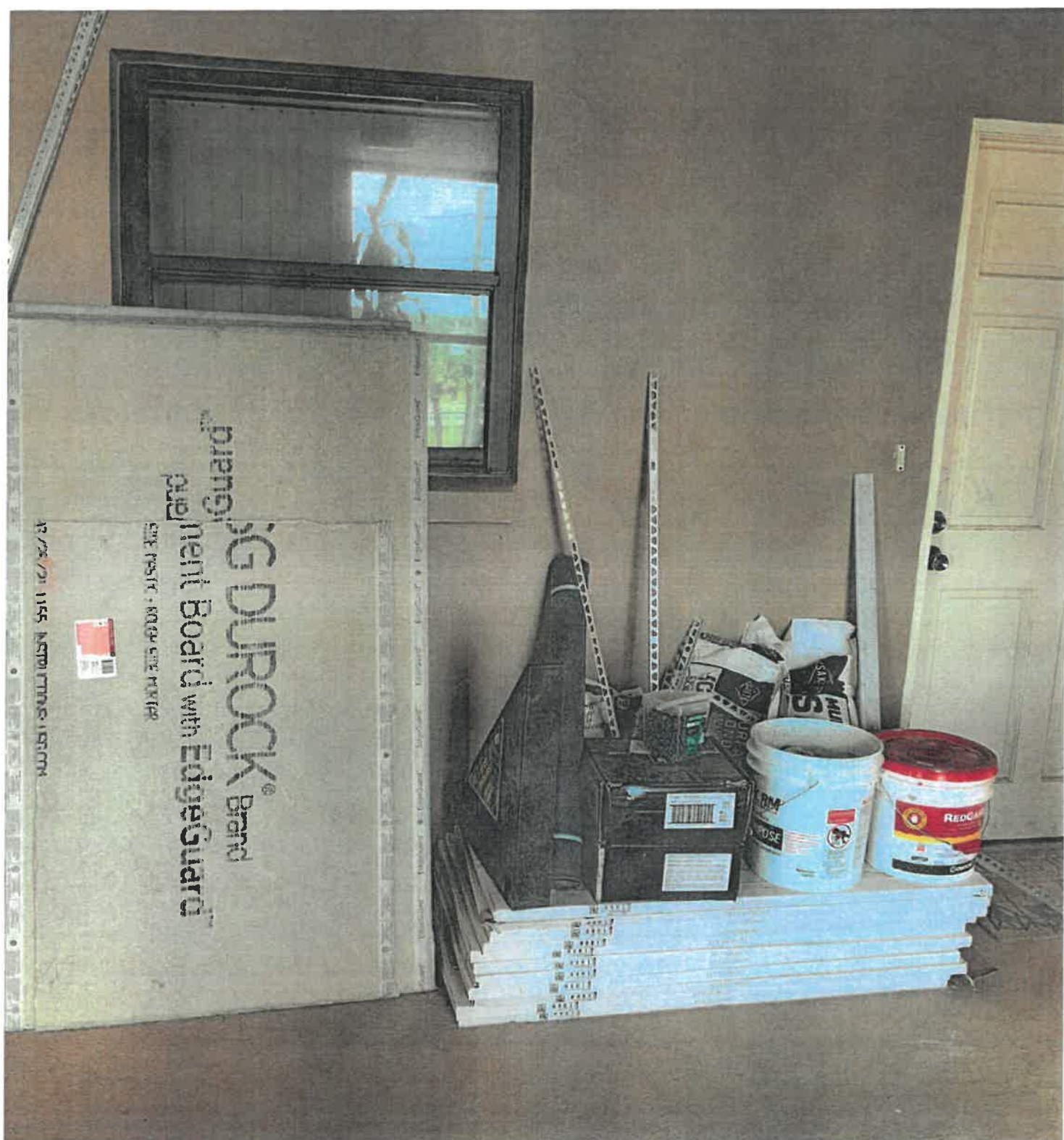
Thank you and have a good day.

From,
Stephanie Gjessing
Administrative Assistant
Town of Ponce Inlet
4300 S Atlantic Ave, Ponce Inlet, FL. 32127
Phone: 386-293-0032
Fax: 386-236-2190
sgjessing@ponce-inlet.org



The Town of Ponce Inlet staff shall be professional, caring, and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

Public Records Notice: Do not send **personal** E-mails to this address. Florida has very broad public records laws and most written communication to or from Town of Ponce Inlet officials and employees regarding public business are **public records** and must be made available to the public and media upon request. Under Florida law, E-mail addresses are public records; therefore, your E-mail may be subject to public disclosure. If you do not want your E-mail address released in response to a public records request, do not send electronic mail to this entity instead, contact this office by phone or in writing via fax or letter. Thank you.







Meeting Date: 10/17/2024

Agenda Item: 13-B

Report to Town Council

Topic: Discussion – Recommendation to abolish restrictions on panhandling and aggressive solicitation following ruling by the U.S. District Court of the Middle District of Florida.

Summary: Please see attached staff report and supporting documents.

Suggested motion: At Council's discretion.

Requested by: Chief Glazier, Police Chief

Approved by: Mr. Disher, Town Manager



MEMORANDUM

PONCE INLET POLICE DEPARTMENT – OFFICE OF THE POLICE CHIEF

THE TOWN OF PONCE INLET STAFF SHALL BE PROFESSIONAL, CARING, AND FAIR IN DELIVERING COMMUNITY EXCELLENCE WHILE ENSURING PONCE INLET CITIZENS OBTAIN THE GREATEST VALUE FOR THEIR TAX DOLLAR.

TO: Michael E. Disher, AICP, Town Manager

FROM: Jeff Glazier, Police Chief

DATE: September 24, 2024

SUBJECT: Discussion - Recommendation to abolish restrictions on panhandling and aggressive solicitation following ruling by the U.S. District Court

Meeting Date: October 17, 2024

Recently, the Federal District Court for the Middle District of Florida held the City of Daytona Beach's panhandling ordinance unconstitutional and ruled the city was liable for monetary damages. The Town of Ponce Inlet's panhandling ordinance is less restrictive, but still problematic given the Daytona decision.

Attached to this report is an analysis of the Ponce Inlet panhandling regulations conducted by Shepard, Smith, Kohlmyer, and Hand, P.A. (**Attachment 1**). They recommend abolishing the code sections on aggressive solicitation and, instead, relying on standard criminal statutes governing criminal mischief, disorderly conduct, open container violations, public intoxication, and assault. These statutes do not typically create free speech concerns and would be enforceable by the Ponce Inlet Police Department. Copies of the criminal regulations and statutes are attached for reference (**Attachment 2**).

The Ponce Inlet Police Department recommends following the guidance of the Shepard, Smith, Kohlmyer and Hand, P.A. report and abolish Code of Ordinances Sec. 50-1 (Definitions) & Sec. 50-2 (Aggressive Solicitation Prohibited). If so directed by the Town Council, staff will prepare an ordinance for the Council's review and approval at a future Council meeting. For now, a draft version of the code amendment is also attached (**Attachment 3**).

Memo

To: Chief Jeff Glazier

From: Jerry Hanberry

CC: Cliff Shepard

Issue: Should Ordinance 50-1 of Town of Ponce Inlet be modified considering the recent decision in *Dennis Scott, et al. v. City of Daytona Beach Florida*, Case No.: 6:22-cv-2192-WWB-RMN.

Discussion:

Daytona Beach's panhandling ordinance recently received heavy criticism from the Federal District Court for the Middle District of Florida, where the court found in favor of homeless plaintiffs in a 42 U.S.C. §1983 civil rights case. The court held Daytona Beach's ordinance unconstitutional and ruled that the city was also liable for damages in an amount to be determined at a later trial. This holding is part of a larger group of cases reaching similar conclusions. *See, e.g., Messina v. City of Fort Lauderdale*, 2024 U.S. Dist. Lexis 14120, *15(S.D. Fla. Jan. 26, 2024); *Messina v. City of Fort Lauderdale* 546 F. Supp. 3d 1227; *Homeless Helping Homeless, Inc. v. City of Tampa*, 2016 U.S. Dist. LEXIS 103204, (M.D. Fla. Aug. 5, 2016); *Reed v. Town of Gilbert*, 576 US. 155, 163, 135 S. Ct. 2218, 192 L.Ed. 236 (2015).

Accordingly, the Town's should consider revising its current solicitation ordinances to address the holdings in the Daytona Beach case. Additionally, training police officers to

enforce other established criminal violations might be a better way to avoid the risks of becoming the next Daytona Beach.

The Daytona Beach ordinances the Middle District addressed are as follows:

66-1(c)(1)(c) Prohibited conduct, proximity and location restrictions.

(1) It shall be unlawful for any person to engage in aggressive panhandling on any sidewalk, highway, street, roadway, right-of-way, parking lot, park, or other public or semi-public area or in any public building lobby, entranceway, plaza or common area, public forum or limited public forum within the city limits of the City of Daytona Beach.

The Court also addressed **66-1(c)(3)-(4)**:

(3) It shall be unlawful for any person to engage in panhandling when either the person engaged in panhandling or the panhandler or the person being panhandled, is located in, on or at the following locations:

- a. Within 20 feet, in any direction, from any entrance or exit of commercially zoned property;*
- b. Within 20 feet, in any direction, of any bus or trolley stop or any public transportation facility;*
- c. Within 20 feet, in any direction, of an automated teller machine or any electronic information processing device which accepts or dispenses cash in connection with a credit, deposit or convenience account with a financial institution;*
- d. Within 20 feet, in any direction, of any parking lot, parking garage, parking meter or parking pay station owned or operated by the city;*

- e. Within 20 feet, in any direction, of any public restroom owned and operated by a governmental agency;*
 - f. Within 100 feet, in any direction, of any daycare or school, including pre-kindergarten through grade 12;*
 - g. Within 150 feet of any signalized intersection of: 1) arterial roads; 2) collector roads; and 3) arterial and collector roads;*
 - h. Occurring on the boardwalk as visibly defined by the map at the end of this section.*
- (4) It shall be unlawful for any person to engage in the following prohibited conduct:*
- a. Approach an operator or other occupant of a motor vehicle for the purpose of panhandling, soliciting or begging, or offering to perform a service in connection with such vehicle, or otherwise soliciting the sale of goods or services, if such panhandling, soliciting or begging is done in an aggressive manner;*
 - b. Panhandle or solicit or beg at any lawfully permitted outdoor dining area amphitheater, amphitheater seating area, playground or lawfully permitted outdoor merchandise area, provided such areas are in active use at the time;*
 - c. Panhandle, solicit or beg at any transit stop or taxi stand or in a public transit vehicle;*
 - d. Panhandle, solicit or beg while the person or persons being solicited is standing in line waiting to be admitted to a commercial establishment;*
 - e. Panhandle, solicit or beg by touching the person or persons being solicited without that person's consent;*
 - f. Panhandle, solicit or beg with the use of profane or abusive language during the solicitation or following an unsuccessful solicitation;*

- g. *Panhandle, solicit or beg by or with the use of any gesture or act intended to cause a reasonable person to be fearful of the solicitor or feel compelled to accede to the solicitation;*
- h. *Panhandle, solicit or beg while under the influence of alcohol or after having illegally used any controlled substance, as defined in chapter 893 of the Florida Criminal Statutes; or*
- i. *Panhandle, solicit or beg after dark.*

The Daytona Beach panhandling ordinances are specific and extensive. The Town of Ponce Inlet's code is broader and briefer by comparison but still problematic based on the Daytona decision.

Ponce Inlet ordinances.

50-1 Defines both Aggressive Solicitation and the term Solicit:

Sec. 50-1. - Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them as follows:

Aggressive solicitation means:

- (a) *To solicit a person in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within two feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or*

- (b) To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property or a monetary transaction after the solicited person has made a negative response to an initial demand or request (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money or a transaction from that person after that person has refused); or*
- (c) To obstruct, block or impede either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or*
- (d) To touch or cause physical contact or to threaten to touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's consent; or*
- (e) To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.*

***Solicit** means to beg or make any demand or request in person for an immediate donation or transaction of money or some other article of value from another person. Solicitation is considered as having taken place regardless of whether the person making the solicitation received any contribution or successfully instigated a transaction. A solicitation may be*

made by explicit language or by implication, such as by holding or displaying an open can or container of any sort with any indication on the can or container or by the solicitor that money or some other article of value is being requested.

For this memo, no distinction is made between “solicitation” and “panhandling” because if a similar 42 USC § 1983 case was filed against Ponce Inlet, the issues and arguments made against the Town would mirror those made in the Daytona Beach case.

Comparison between the Daytona Code and the Ponce Inlet Code.

Location Restrictions:

Daytona’s ordinance identifies a wide area where panhandling is completely prohibited and restricts “aggressive panhandling” in those remaining areas where panhandling is legal. This prohibition was struck down in the Daytona case.

Ponce Inlet does not have any location restrictions on standard solicitation, but instead prohibits “all aggressive solicitation within the Town of Ponce Inlet.” However, the ordinance applies to the entire Town and might be treated similarly in a legal challenge for that reason.

The Daytona case illustrates the problem with ordinances so restrictive as to prevent any activity deemed aggressive panhandling anywhere within the Town. If the Ponce Inlet ordinance regarding aggressive solicitation is challenged and found to be equivalent to panhandling, with the entire town limits as a restricted area, it could be subject to a similar injunction against enforcement. Daytona Beach has so many places listed in their ordinance there are very few if any geographic places free speech activities such as panhandling can occur. Ponce Inlet has prohibited activity it deems aggressive in the entire town. The similarities could be a problem.

Conduct-Based Restrictions:

Daytona's ordinances define panhandling to include a demand or request for money or something of value. This includes charities and charitable organizations. It can include paying for an item far more than its value. Begging and Soliciting are included in this definition of panhandling.

Ponce Inlet defines panhandling under the general term Solicitation, which is much narrower and is defined solely by begging or making any demand or request in person for an immediate donation or transaction of money or some other article of value from another person. A solicitation may be made by explicit language or by implication, such as by holding or displaying an open can or container of any sort with any indication on the can or container or by the solicitor that money or some other article of value is being requested.

The Daytona case describes its ordinances as overly inclusive. Specifically, the conduct-based provisions include much more protected speech activity than is necessary to promote public safety, including speech that is entirely innocuous. If the conduct-based provisions applied only to tortious or criminal conduct, Daytona might have prevailed. However, Daytona's conduct-based provisions effectively prohibited any repeated request for charity, which does nothing to promote public safety. § 66-1(b)(2). Accordingly, the court found that the ordinance was unconstitutional.

The Ponce Inlet ordinance could be similarly scrutinized and found to be overinclusive and lacking in any guidance that protects public charity, specifically when it comes to panhandler's repeated requests for charity which do not endanger public safety.

The bottom line is that content-based restrictions like those highlighted in the Daytona case are subject to strict scrutiny by the courts. “To survive strict scrutiny, Defendant bears the burden of showing the challenged provisions are narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163. Defendant must establish that the asserted harms are “real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.” *Turner Broad. Sys., Inc. v. Fed. Commc’ns Comm’n*, 512 U.S. 622, 664 (1994). Laws can fail narrow tailoring when they are over-inclusive, *i.e.*, they “burden substantially more speech than is necessary to further the government’s legitimate interests.” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014) (quotation omitted). Similarly, a law can fail narrow tailoring as underinclusive when the law targets one type of speech, but not another that poses the same danger to the government’s asserted interest. See *Reed*, 576 U.S. at 172.

The Daytona ordinances went too far in their restrictions on aggressive panhandling. Unfortunately, the Ponce Inlet ordinance may be subject to a similar analysis because panhandling is considered a form of protected speech under the First Amendment.

Our recommendation would be to redefine aggressive solicitation so that it is clear what would be prohibited and is in line with the holdings in the Daytona case.

Another approach, which avoids the difficulties inherent in crafting a legal panhandling ordinance, might be to rely on standard criminal statutes governing criminal mischief, disorderly conduct, open container violations, public intoxication, assault and battery, etcetera. These statutes definitively protect the general welfare of the public but do not typically create free speech concerns that panhandling and solicitation ordinances do.

ATTACHMENT 2

Criminal Statutes

PONCE INLET CODE OF ORDINANCES

Sec. 42-33 - Urinating or defecating in public

- (a) It shall be unlawful for any person to urinate or defecate in a public place other than one set aside and designated for that particular purpose.
- (b) Violators of this section shall be subject to criminal prosecution or code enforcement board prosecution and subject to the penalties provided in [section 1-11\(a\)\(2\)](#) or [1-11\(a\)\(3\)](#), respectively.

46-3 - Behavior prohibited within public parks

- (a) It shall be unlawful for any person to do any one or more of the following in any town park:
 - (1) Violate any Federal or Florida statute or any other provision of this Code, including violating park hours as defined in [section 46-2](#) of the Code.
 - (2) Interfere with, hinder or physically oppose any law enforcement officer or cultural services personnel in the discharge of their duties, including the enforcement of the park rules and regulations.
 - (3) Post any flyers or signs except as approved by the cultural services manager or designee, either by policy or specific permission.
 - (4) Use any portable cooking equipment except in areas designated for that purpose within Davies Lighthouse Park. Within designated areas, only propane and electric portable equipment is permitted.
 - (5) Sleep on any park property, except for children under the age of six.
 - (6) Mark, deface, tamper with, damage, displace or remove any park property or any plant life or landscape element within a park.
 - (7) Construct or erect any temporary or permanent structure.
 - (8) Intentionally disturb or interfere with wildlife without reasonable justification.
 - (9) Litter or otherwise dispose of refuse except in a receptacle provided for that purpose.
 - (10) Smoke marijuana or tobacco.
 - (11) Operate or fly a remote-controlled flying device except in areas designated for that purpose.
 - (12) If bringing an animal into the park:
 - i. Failing to keep the animal on a leash at all times.
 - ii. Failing to keep the animal under control such that the animal intimidates other park attendees.
 - iii. Failing to remove or dispose of any feces deposited by the animal within the park.
- (b) Special events within public parks shall require a permit issued in accordance with [chapter 51](#) of this Code.
- (c) The following additional rules apply to athletic courts within town parks:

- (1) No pets are allowed on the athletic courts.
 - (2) No bicycling, rollerblading, or skateboarding on the courts.
 - (3) Persons using the athletic courts without reservations shall yield to attendees with reservations. If an attendee with a reservation does not arrive to the court within ten minutes of their reservation start time, the reservation is void.
 - (4) Persons using the athletic courts without reservations shall limit their time on the court to one hour.
- (d) Violations of the section shall be subject to code enforcement board, noncriminal and criminal prosecution under [section 1-11](#).
- (e) In addition to the rules provided herein, the cultural services manager may promulgate additional rules for behavior within parks and publish such rules on the town's website. Violation of such rules shall provide a valid basis for a trespass warning as otherwise provided in the Code, but shall not subject the violator to other prosecution under the Code.

FLORIDA STATUTES

784.03 - Battery

- (1)(a) The offense of battery occurs when a person:
1. Actually and intentionally touches or strikes another person against the will of the other; or
 2. Intentionally causes bodily harm to another person.
- (b) Except as provided in subsection (2) or subsection (3), a person who commits battery commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (2) A person who has one prior conviction for battery, aggravated battery, or felony battery and who commits any second or subsequent battery commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). For purposes of this subsection, "conviction" means a determination of guilt that is the result of a plea or a trial, regardless of whether adjudication is withheld or a plea of nolo contendere is entered.
- (3) A person who commits a battery in furtherance of a riot or an aggravated riot prohibited under s. [870.01](#) commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or [775.084](#).

784.011- Assault

- (1) An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.
- (2) Except as provided in subsection (3), a person who assaults another person commits a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).
- (3) A person who assaults another person in furtherance of a riot or an aggravated riot prohibited under s. [870.01](#) commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

877.03- Breach of Peace; Disorderly Conduct

Whoever commits such acts as are of a nature to corrupt the public morals, or outrage the sense of public decency, or affect the peace and quiet of persons who may witness them, or engages in brawling or fighting, or engages in such conduct as to constitute a breach of the peace or disorderly conduct, shall be guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

ATTACHMENT 3

Draft Amendments

PONCE INLET CODE OF ORDINANCES

Sec. 50-1. -- Definitions.

For the purposes of this article, the following words and phrases shall have the meanings ascribed to them as follows:

Aggressive solicitation means:

- (a) ~~To solicit a person in such a manner as would cause a reasonable person to believe that the person is being threatened with imminent bodily injury or the commission of a criminal act upon the person approached or another person in the solicited person's company, or upon property in the person's immediate possession (for example, placing oneself within two feet of a solicited person and/or using abusive or profane language in a loud voice while demanding or requesting money); or~~
- (b) ~~To maintain contact with a solicited person and continue demanding, requesting or begging for money or a donation of valuable property or a monetary transaction after the solicited person has made a negative response to an initial demand or request (for example, walking in front of, next to, or behind a solicited person while continuing to demand, request or beg for money or a transaction from that person after that person has refused); or~~
- (c) ~~To obstruct, block or impede either individually or as part of a group of persons, the passage or free movement of a solicited person or a person in the company of a solicited person, including persons on foot, on bicycles, in wheelchairs or operating motor vehicles or persons attempting to enter or exit motor vehicles (for example, walking, standing, sitting, lying, or placing an object in such a manner as to block passage of another person or vehicle, or to require another person or driver of a vehicle to take evasive action to avoid physical contact); or~~
- (d) ~~To touch or cause physical contact or to threaten to touch or cause physical contact to a solicited person or a person in the company of a solicited person, or to touch any vehicle occupied by a solicited person or by a person in the company of the solicited person, without the person's consent; or~~
- (e) ~~To engage in conduct that would reasonably be construed as intended to intimidate, compel or force a solicited person to accede to demands.~~

Solicit means: ~~to beg or make any demand or request in person for an immediate donation or transaction of money or some other article of value from another person. Solicitation is considered as having taken place regardless of whether the person making the solicitation received any contribution or successfully instigated a transaction. A solicitation may be made by explicit language or by implication, such as by holding or displaying an open can or container of any sort with any indication on the can or container or by the solicitor that money or some other article of value is being requested.~~

~~Sec. 50-2. -- Aggressive solicitation prohibited.~~

~~(a) It shall be unlawful for any person to engage in aggressive solicitation within the Town of Ponce Inlet.~~

~~(b) Violators of this section shall be subject to criminal prosecution and the penalties provided in section 1-11(a)(2) of this Code.~~

Secs. 50-~~1~~³—50-30. - Reserved.



Meeting Date: 10/17/2024

Agenda Item: 15

Report to Town Council

Topic: From the Town Manager

Summary: Please see attached report.

Requested by: Mr. Disher, Town Manager

Approved by: Mr. Disher, Town Manager



MEMORANDUM

OFFICE OF THE TOWN MANAGER

The Town of Ponce Inlet staff shall be professional, caring and fair in delivering community excellence while ensuring Ponce Inlet citizens obtain the greatest value for their tax dollar.

To: Town Council
From: Michael E. Disher, AICP, Town Manager
Date: October 10, 2024
Subject: Town Manager's Report

MEETING DATE: October 17, 2024

1. At its [October 15, 2024](#) meeting, the County Council will consider the following:
 - [Item K](#) - Ponce Inlet Annual Veterans Christmas Parade Request for Lighthouse Point Park Access Fee Waiver Use of the Park for Parade Staging. This is a request from the Ponce Inlet Veterans Memorial Association, in partnership with the Town of Ponce Inlet, to stage the parade vehicles inside the western entrance of the park.
 - [Item 03](#) – Resolution 2024-XX, providing a limited one-time waiver of the 4ft artificial dune restoration and replanting requirements for coastal properties impacted by Hurricanes Ian and Nicole. This item was originally drafted as an ordinance for a permanent waiver on the County's October 1, 2024 agenda, but then pulled for procedural reasons, given its limited, storm-specific nature.
2. Public Works update:
 - The repair of the boardwalk pilings at Ponce Preserve is set to begin in the next few weeks. The contractor will be assessing the pilings again once Hurricane Milton passes. The permit for the work has been submitted and is under review.
 - Now that the contractor has been hired, the excavation maintenance work for the Town's retention ponds at Inlet Point and Beach Street is expected to begin later this month. Once finished, the same contractor will begin work on installing the one-way stormwater valves on low-lying streets
3. The Fire Department is nearing the end of its effort to become an accredited agency. The final report has been submitted to the Center for Public Safety Excellence, with the goal of completing the process by the end of this calendar year.

4. Septic-to-sewer update:

- We now have received the fully executed loan agreement from FDEP. The Town was one of the first municipalities to receive the loan agreement for SAHFI funding.
- The design documents are expected to be completed and approved by FDEP in January 2025.
- The Phase 1 formal bid process is expected to begin in February 2025.

5. Building permit activity:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total	Avg
Permit applications	94	112	112	111	142	124	102	115	89				1,001	111
Permits issued	85	118	113	96	147	119	121	88	95				982	109
Plan reviews	85	118	113	118	137	115	120	117	90				1,018	113
Inspections	243	242	274	292	254	238	255	258	210				2,266	252

* * *