



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

New Business - Development and Environmental Services Group

J.1.

2/11/2020

Subject:

Discussion Re: Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street - Districts 3 and 5

Fiscal Impact:

Option 1: 50% of future Transportation Impact Fees collected in the unincorporated areas south of Grant Road to west of the Florida East Coast Railway right-of-way.

Dept/Office:

Public Works/Finance and Contracts Administration

Requested Action:

It is requested the Board of County Commissioners discuss and determine Board action pertaining to the Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street. If the Board determines to enter into agreement, it is requested the Board authorize the Chair to execute the attached Interlocal Agreement.

Summary Explanation and Background:

The City of Palm Bay desires to complete the intersection improvements at Babcock Street and the newly constructed St. Johns Heritage Parkway known as the Intersection Project. The Interlocal Agreement provides for a detailed definition of the Intersection Project and associated phases, including a timeline for completion of the Project. The phases are described as:

Phase 1: The City shall construct and maintain a three-leg intersection to allow for the temporary opening of the St. Johns Heritage Parkway to traffic in substantial conformance with the County permit no. 19RW00460.
Phase 2: The City shall construct and maintain southbound left turn lane improvements and associated tapers at the intersection in substantial conformance with the County permit no. 20RW00080.
Phase 3: The City shall construct and maintain an improved intersection and widen Babcock Street to include turn lanes, deceleration lanes, sidewalks, drainage, and the installation of a mast arm traffic signal at the intersection in substantial conformance with the County permit no. 20RW00081.

The County and City agree to partner in efforts to complete the future widening of Babcock Street south of Malabar Road, as funding becomes available. Upon the effective date of the Interlocal Agreement, the County and City agree to set aside 50% of the transportation impact fees received for the future widening of Babcock Street. The Interlocal Agreement details the Transportation Impact Fee commitments by the County and City for the future widening.

The County will also seek separate agreement of the Towns of Malabar and Grant-Valkaria to set aside any transportation impact fees collected within the town limits. The Transportation Impact Fee commitments by the County and City addressed in the Interlocal Agreement are irrespective of any separate agreements with 273

the Towns.

In the Interlocal Agreement, the City reaffirms its prior commitment as stated in the Joint Planning Agreement, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida and further agrees to take over ownership and maintenance of any section of Babcock Street from the south City limits to Malabar Road after reconstruction and widening to four lanes of travel.

The City of Palm Bay will consider this Interlocal Agreement at their Regular Council Meeting on Thursday, February 6, 2020.

Please find below options for the Board's consideration:

Option 1: Approve and authorize the Chair to execute the Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street.

Fiscal Impact: For the St. Johns Heritage Parkway Intersection Project, there is no fiscal impact to the County. The City of Palm Bay is responsible for all costs associated with the Intersection Project. For the Babcock Street Widening, the County will set aside 50% of the transportation impact fees received for any new development in the unincorporated area in that portion of the south mainland benefit district located south of Grant Road and west of the Florida East Coast Railway right-of-way for the future widening of Babcock Street south of Malabar Road.

Option 2: Do not approve the Interlocal Agreement.

Option 3: Provide staff with other direction.

Clerk to the Board Instructions:

If Option 1 is chosen by the Board, please return the executed Interlocal Agreement to the Public Works Department.



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February 12, 2020

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

RE: Item J.1, Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street

The Board of County Commissioners, in regular session on February 11, 2020, reached consensus to dedicate the intersection at St. Johns Heritage Parkway and Babcock Street to the City of Palm Bay, and to dedicate Babcock Street to the City Palm Bay from north of the Parkway intersection to Malabar Road; and directed staff to negotiate an agreement for the dedication and for the County to commit to reconstruct the remainder of Babcock Street south of Malabar Road that has not recently been reconstructed yet.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: Assistant County Manager Denninghoff

February 11, 2020

Board of County Commissioners Meeting

Item J.1. Discussion for Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street

John Denninghoff (JD)- This Agenda Item has been a long time coming; there has been a great deal of discussion with the City of Palm Bay staff; it has been before the City of Palm Bay City Council on at least three occasions that I'm aware of, the most recent being this past Thursday evening; the purpose of the interlocal agreement is to try to establish future funding for the eventual need to widen Babcock street from two lanes, which it currently is, to four lanes; there has been multiple traffic studies done, including by the developers in the area that indicate that the widening is going to be needed in the relatively near future with respect to when the developments come on line; and as a part of this there is an interchange that was constructed by FDOT and a connecting road from I-95 towards Babcock Street and that has been constructed by the City of Palm Bay up to the Babcock Street right-of-way. County staff has previously denied a permit from Palm Bay to make the actual physical connection as a result of the City's refusal to comply with permit conditions that they had spelled out and that was a result of the previous denial on the part of the City Council to accept the previously proposed interlocal agreement; after we denied the permit, the City came back and reopened the interlocal agreement negotiations again to see if they could come to an acceptable position with us. I want to point out that County staff had been consistent with what we want in this agreement for many years, quite frankly, and they had discussed thoroughly, for a great deal of time, and the basic concepts have been agreed to at least at a staff level; I personally had also met with at least three different City Council members at different points in time to discuss the project and the potential interlocal agreement; and so we had moved forward in that manner. One of the things I did want, I asked Don to put up the map here that you see on the screen and I'm hoping that we can get that up there, one of the things that I wanted to show with this is, is this is where I-95 is, try to get you oriented, and Babcock street is right here.; this is the connection road where the interchange is and comes over to Babcock, almost makes the connection; and what you see here is, in the green coming all around over here and the green down here, is all currently property that has been annexed into the City of Palm Bay. Previously the property over here was also annexed into the City of Palm Bay, but has recently been de-annexed, for reasons which I don't know and have not indulged my efforts of curiosity to find out; I will point out that the City and the developers hear, by their own studies and FDOT studies, indicate that the overwhelming, vastly, wildly-overwhelming majority of the traffic that is projected to be on Babcock Street, which is a County road, is coming, will be coming from these developments; so the City is in effect generating the developers within the City or in effect generating the traffic that's going to trigger the need to widen Babcock Street; and in order to comply with concurrency, we need to be thinking about how we will eventually be able to widen the road. The County has been thinking about that for some time and has coordinated with DOT to get them to do a PD&E study, which is currently underway, hasn't been approved yet but is currently underway; in order to get that done we had to fund the design of the widening, that's a requirement in order to get the PD&E even underway; and the County provided the matching funds for that and it's in our budget. The City hadn't participated in that and in fact, we expect at this point we're going to have to increase the amount as the PD&E study is indicating a higher price for the design than

we had planned on; with all of that, the location of the connection point on to Babcock was determined by the City and/or the developers in the area, the County did not choose that, the County did not propose that; we did point out that a portion of the intersection improvements that would come in at that point would extend south of the City limit lines, at least in this particular area; so there's been some expression of dismay, from on the part of the Council, that they were going to have to pay for some of the intersection improvements that are outside of the city; I just point out that we didn't pick the spot, they did and it was pointed out to them that they would have improvements outside of the City limits; and I know this because I am the one who told them. In this particular situation, I've also heard dismay raised by many, at least two Council members Thursday evening, that the County took away the \$1.5 million that may have been able to go to this intersection improvement; I just want to point out in fact that \$1.5 million had never actually been allocated to that intersection, it had been allocated to Babcock Street for either widening or maintenance purposes; the Council, the night before the Board meeting, was to consider whether to take that \$1.5 million and spend it on some other part of Babcock; they determined that they would see what the County would do rather than indicate that they would agree to in the interlocal agreement; I would also point out that they seemed to indicate that what the funds were used for was to reconstruct Babcock Street, which is badly needed; we combined that \$1.5 million with other funds and we were able to widen on Babcock Street coming up through this area, right up to Micco Road; so one of the things that they were frustrated by was that apparently they thought all of that \$1.5 million was spent outside the City limits; and that's simply not true. You see this green area here and they have a mile and half of frontage here that's on Babcock Street which we reconstructed during the month of January, so I just wanted to sort of set that record straight; I wanted to point out that one of the things that happened back in the mid-2000s; the City embarked on annexing all of this property down here south of the old traditional General Development Corporation plat boundaries, which is along here; so they annexed all those, thousands of acres actually, and at the time several of those developments were easily triggering the threshold for developments of regional impact (DRIs); and DRIs have requirements to plan reasonably and correctly, particularly with respect to transportation. The City had the responsibility to find them to be a DRI; they did not do that; that gave up an awful lot of opportunity they would have had to have tried to regulate the development future of this and be able to deal with the widening of the road; so our proposal, this was our second proposal actually, was for them to contribute 50 percent of their impact fees that would be collected from these developments down here towards widening of Babcock Street; the County would also contribute 50 percent of their impact fees collected in the unincorporated portion of the County located south of I think it was Valkaria Road, I had forgotten the limit on that, maybe its Grant Road, and the City, Malabar and Grant Valkaria still have their impact fees and those will be un-impacted, although we would approach them if they would contribute because they would also benefit; but again, the overwhelming majority of the traffic that is coming to the road is coming from the City of Palm Bay; finally, what I wanted to mention is that we had originally proposed, and the JPA that we currently have in place with the City, contemplates that we would give segments of Babcock Street to Palm Bay as they either tripped the thresholds of capacity or the maximum allowable volume of traffic, it's called an MAV, or the road was widened; with either one of those occurring they would take the road; and they did not like that one, and so we went to this sort of secondary one which sort of kept us in a partnership arrangement for an undetermined period of time. The PD&E currently has an estimate of a very large amount of money to be able to widen Babcock from Micco Road to Malabar Road and construction goes over \$150 million, estimated, and that does not include the design, the signalization, it does not include

the right-of-way, the retention ponds, and the compensatory storage that is required; that number is probably going to go well north of \$200 and probably close to \$250 million; so this is a very serious issue; that is pretty much what I wanted to go over; there's other items that are included in the Agenda Report that we added in yesterday trying to address some of the concerns that were raised by the City Council; I think we've done provided most of that information for you; and I'll be happy to answer any questions.

Lober- Well, seeing as how we have no lights and this impacts three and five the most, I don't know if any of my colleagues on my left would care to chime in.

Isnardi – I think you guys are probably tired of hearing me talk about it; I think some important points that you mentioned is that the County did not choose the place for that intersection, I think is probably one of the most important; the fact that that money wasn't dedicated to that intersection, it just could be used for it and that may have been discussed in the past; it was discussed before I even got on the Commission, but that we did utilize that money in a very fair way that was desperately needed, that benefits people not just in Brevard County but the people of Palm Bay; just because the whole thing is not within the City limits, doesn't mean the City of Palm Bay residents aren't benefitting from it; I think the idea was to keep it in the district at least was my intention; and it actually benefits both three and five. There's a lot I could say, I'm trying not to get too far into the weeds, but again the City of Palm Bay keeps approving these developments that are going to cause the amount of traffic that is going to hit Babcock; I think the County is trying to make sure that all parties are responsible to make sure that the road can handle the capacity; so I think we're moving in the right direction; and it certainly isn't because we're holding anybody up for any other reason but, just to make sure that we're being responsible when it comes to our future. I appreciate all the work that, Mr. Denninghoff, have done to try to reason with them; I'm very careful with what I'm going to say because unfortunately it becomes a politicians talking point and I'm so thankful to you that you are able to put out not just that historical information but that it is coming from staff and not from any of us, because I think it is more impactful that way because not only do you have the history but you actually have the engineering and the public works background; and you've dealt with the unnamed developer that is sort of responsible for not just the amount of traffic that is going to go, but the reason why that intersection is there. Again, I just want to thank you for working so hard to try to get this done and that's all I will say about it for now.

JD – Commissioners there's one thing that I didn't mention that I thought I should have and I meant to; one of the reasons why the City has so much of the traffic generation potential there is this gray area that you see throughout down here, that is unincorporated Brevard County, it's also all EELs, buffer, preserve, State-owned property and it's going to remain undeveloped and so we're not developing anything in there, we the unincorporated County; there is a large subdivision right here called Deer Run, already developed; there's a couple of small parcels in here and down here that are unincorporated but their development intensities and future land use map are very minimal compared to what the City has done; and so that's why when you look at potential traffic generation is it's so low for the County and so very high for the City, even though the land areas might not look like it, it adds up.

Tobia – Mr. Denninghoff, I want to thank you for your consistency on this. I listened to the Palm Bay City Council meeting and while I expect that type of name calling for members of the Commission, many times we deserve it, it's certainly not deserved for an individual of staff who's worked so diligently and has gone above and beyond on this; and I was hoping you would keep the beard until this was solved, I

figured it would be all the way to the ground at that point. Palm Bay put us in this position, this was their intent as you pointed out; they wanted to start it, so I just want to throw this out there; can we dedicate, if Palm Bay is concerned about permitting, if Palm Bay is concerned and they are blaming it on us, why don't we give the City the responsibility, to the citizens, the workers, so forth and so on; if they accept the dedication they can, you know, overlook the safety concerns that you've outlaid many times before; they can take care, if they want to play to this developer, they can deal with it on that end; I think that probably we even could hopefully take a little bit of responsibility on the areas that need to be reconstructed on this one as well as we move forward; they would probably say that that's our issue; and I think that that's promptly something that we could look at. But when I hear numbers, you know \$250 million, I just don't think that's fair to the taxpayers that I represent as we did not do this; I imagine that you, on many occasions, pointed this out to the folks years ago that this was a possibility; I imagine it's grown from where it was to \$250 million; but even if it was a small fraction of that, when we're looking at you know, 11 or 12 digits, that's eight or nine digits, that's still extremely, extremely daunting. I would hope that you would continue with your consistency on this, you certainly have my backing; I certainly can't apologize for the City Council members of Palm Bay that used your name in vain but I thank you for your service; and again, I would feel extremely comfortable, I hope this Board would, if we want to dedicate our portion of this road, the interchange, and it would take the issue off the table for blaming us for permitting. So, if that is something you're willing to do, I don't think it may be in the best interest of Palm Bay, but I think Palm Bay does many things that aren't in the best interest of Palm Bay; and I'm just throwing that out there, as we move forward with this or if we don't move forward, we're level right now; but this is just an alternate way to go. You certainly would have my support with the dedication.

Pritchett – Can we dedicate it to Palm Bay?

Isnardi – They would have to accept it.

JD – They would have to consent to it, but yes, we can do that.

Pritchett – Okay, well seeing that unincorporated property, then that would make sense that there's a lot of back and forth properties there. How did we get here? I think I heard Commissioner Isnardi kind of give an overview a while ago, is it because developers came in and they weren't charging them the correct impact fees to help alleviate some of these?

JD – Well, at one point the City hadn't enacted an impact fees; but I think the real reason that the annexations took place were twofold; one was that the City had a better utility service potential but also there was no doubt that County staff would have found them to be a DRI and would have required them to comply with the statutory requirements associated with being a DRI, which would have required an awful lot of expenditure on their part; I would point out that originally we had an interchange that was to be located at Micco Road, right about right there; and the developer induced the DOT to agree to move the interchange up to this location here, which is inside the City, and the inducement was a signed statement on the part of the developer, which I happen to have a copy of that, said that he was going to pay for the interchange and pay for the connecting road to go over to Babcock and to go down to Micco Road.

Isnardi – Can you make copies of that for all of the Commission so we have it?

JD – I can do that, yes.

Isnardi – Thank you.

Pritchett – That would be like what The Viera Company did also, correct?

JD – That's correct.

Pritchett – So that would have been appropriate, so he is supposed to be paying for this?

JD – Well that's what the statement says.

Pritchett – Okay.

JD – But to my knowledge at this point, the developer hasn't paid for the construction of anything.

Pritchett – Shouldn't the City be handling that?

JD – Excuse me.

Pritchett – Shouldn't the City kind of be dealing with that then?

JD – They should be. This was part of the subject of the audit that they recently underwent with the State and is still, I think, at some level of effort in that regard; we stayed out of it, the County stayed out of it on the perception that they were going to be building all these things; and as it turns out, that's not what really happened. I don't know how that happened or why that happened, and I certainly do not want to figure it out. I'm sure it would be mind-numbing.

Pritchett – It makes a lot of sense, Commissioner Tobia's suggestion there. I mean they made all these decisions and Palm Bay should handle it in that direction then; we weren't in on it so I think that's a good solution for them to do that because otherwise, they are going to have great financial issues in Palm Bay, if they don't already; but they're going to have to do something with that road so Commissioner Tobia I'm on board with that.

Isnardi – I'm interested to hear your thoughts on it because I think it's a great idea but I know in my heart of hearts that they're not going to say yes, I mean that's a reality; but let's call their bluff, if they're saying that we're not doing it right when we're actually trying to do it the right way then offer them, I don't have a problem with it, unless you're going to advise in your expert opinion that it's a bad idea, let's offer them that segment of the road; if they want to have control of it then let them be responsible for it; and they can open it tomorrow. But putting up four stop signs is about as ridiculous as the first drawing they gave us, I mean it's just not something we're willing to do.

JD – They did propose four stop signs.

Isnardi – I'm not kidding, I wasn't kidding when I said that, but I'm saying that's how ridiculous, that's where we've come and it's not from wasted effort; I mean how often and how many meetings have we had to try to get this straight; and it's not extortion, it's not anybody misleading, it is us trying to make sure the road can handle the capacity. It's already, it can't handle the capacity it has now.

JD – What I would suggest if we were going to try to go that route, in which I would support by the way, is to just cut to the chase on that, the County has either spent or scheduled to spend about \$5.9 million

so far on the future widening of Babcock Street; we did the preliminary study, which was necessary in order to get the PD&E started; we committed to the design, which was necessary in order to get the PD&E started; the PD&E is necessary in order to have federal funds available to widen the road, which is probably the only chance of it being widened, coupled with some impact fees I would expect; and we've purchased a couple of significant parcels along the way for retention areas and that's exclusive of the maintenance of the regular maintenance or reconstruction maintenance that we just did in January and will be doing more of. I would suggest we somehow worked out with them to where we would continue to help along those lines; they take it over, we continue to do the reconstruction effort to get that completed; that seems to me to be a fairly reasonable approach to it; it gets us, so-to-speak, out of their hair; they can go ahead and issue their permits, and they don't have to get their permission; and they can continue to seek their fate as the Statutes allow.

Isnardi – And I would suggest, if we're going to go that route, obviously I don't think they're going to agree to it because they don't have the money for it anyway, and that was made clear to me by Council member, if they're going to go that route that you just keep us informed in the future assuming, you know; I know it's a leap but if they ever went that route, you keep us informed on your thoughts on the design, your thoughts on what they come up with because I would be really interested to see how, if they try to present something that's inadequate or if they try to design something that's inadequate that wasn't acceptable based on our standard to what to have for an intersection.

JD – We can keep you informed; I don't know what to expect from them at this point; but they did ask for a meeting with the Commission at their last Council meeting.

Isnardi – Because it changes every time, you sit with them, you guys get somewhere, you and I talk about it, and you say we've nailed down these five things, and then you come back and the story is completely different, is that correct?

JD – We've had some of that going on, yes Ma'am.

Isnardi – Judged basing on your last email; and I would encourage anybody listening to request that last email that Mr. Denninghoff had that corresponds with City staff, and it breaks it down pretty nicely, I think.

JD – I think you're referring to the one on the 29th or the 27th of January.

Isnardi – Yes. I think the word 'sham' was used in the email.

JD – Yes, Ma'am.

Pritchett – This really sounds like to me this should be the developer throwing in costs. We can't go after the developer and make him pay for this if it's on paper, right, this has to be the City?

JD – I believe that's the appropriate mechanism; the City is who is going to issue the permits that allow the developer to build the buildings and so under the Statutes they are issuing what is called the development order for that; and the minute we allow the connection onto Babcock we will lose control of the situation and we suffer whatever fate the City deals out to us. Well really it's the developer.

Pritchett – The City should be doing this with the developer at this point, correct? This should be the City now trying to get the funding for this intersection?

JD – For the intersection and seeing to the concurrency needs associated with the transportation network, it's not just about the City roads, it's about the County road as well as FDOT.

Pritchett – This isn't something we can do because they're allowing the developer, correct?

JD – That's correct. We have no, the developer doesn't need to come to us for anything except the driveway on Babcock, which they have not done yet, only the City has come to ask us for that. The City is then going to give the driveway to the developer on to their road, that connecting road, St. John's Heritage Parkway, and the developer's traffic will be able to get on to Babcock via that road and there will be no mechanism for us to control that whatsoever.

Pritchett – Well I'm going to be interested in either handing this over or seeing what the City does moving forward and getting the developer to take care of their promise on that intersection, so I think that's the answers.

Lober – First final word, Commissioner Isnardi.

Isnardi – Again, I'll just reiterate, the developer was going to pay for the whole interchange at the 95 interchange, was going to pay for the connector road, and was going to pay entirely for the intersection. And just slowly, but over time based on a company going bankrupt and other hokey business with mitigation banks and all kinds of other stuff, then it was a third...I've had the developer in my office talking about the design of this intersection when I first got elected, and based on that, then the developer is out of the picture. Then it's me on the phone with a Council member telling me they don't know where the City is going to come up with the money for the intersection. So, if the City has the responsibility for the intersection because they're obviously playing some sort of political game over there trying to blame the County for this, if the City wants responsibility for that intersection and wants to issue the permit then it is up to them to take it over. I think it's a great idea, Commissioner Tobia. I don't say that too often but I think Commissioner Tobia had a great idea. Let them be responsible for it then they can finally hold that developer to his promises to agree to help with that intersection and they will be responsible for what happens. The only thing I don't like about it is are they going to make a good decision because based on what they're doing so far, it's not been good.

Lober – Mr. Denninghoff, do you feel warm and fuzzy in terms in the amount of direction you've gotten from the Board?

JD – I think I have clarity.

Lober – Perfect, alright we're going to move on unless someone wants to make a motion with respect to this Item, I don't know that it's necessary though.

INTERLOCAL AGREEMENT

ST. JOHNS HERITAGE PARKWAY INTERSECTION AND BABCOCK STREET

This Agreement, made and entered into by and between the Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and the City of Palm Bay, Brevard County, Florida, hereinafter referred to as "City".

Recitals

WHEREAS, the City desires to complete intersection improvements at Babcock Street and the newly constructed St. Johns Heritage Parkway, defined below as Intersection Project; and

WHEREAS, the County and City agree to partner in efforts to complete the future widening of Babcock Street south of Malabar Road, as funding is available; and

WHEREAS, the County and the City have entered into a Joint Planning Agreement, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida which includes, as part of Exhibit C of the Joint Planning Agreement, an agreement that the City will accept maintenance responsibility for segments of Babcock Street within six months after four-laning is complete;

WHEREAS, the County and the City have agreed that it is in the best interest of both parties that the City will take ownership of the portion of the Intersection Project area north of Davis Lane.

NOW THEREFORE, the County and City covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

1. Recitals

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

2. Statutory Authority

This Agreement shall be considered an Interlocal Agreement pursuant to authority of Florida Statutes, Chapter 163, Part 1, 2013.

3. Existing Joint Planning Agreement

This Agreement is not intended to replace the Joint Planning Agreement between the County and the City, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida.

Definitions

4. Development

Shall be defined as set forth in Sections 163.3164(13), Florida Statutes (2002), as amended or superseded from time to time.

5. Future Project

Widening of Babcock Street from south of Micco Road (Deer Run Road) to Malabar Road from the current two-lane roadway to a four-lane roadway, a distance of approximately nine miles, to include associated improvements such as identified in the Florida Department of Transportation (F.D.O.T.) Project Development and Environment Study (P.D.& E.) Study, and as amended, Financial Project No. 437204-1.

6. Intersection Project

Means those intersection improvements that the City shall construct at the St. Johns Heritage Parkway (S.J.H.P.) and its intersection with Babcock Street and further defined in this section as Phases 1, 2 and 3.

Phase 1

Means the first phase of the Intersection Project. The City shall construct and maintain an at grade three leg intersection to allow for the temporary opening of the St. Johns Heritage Parkway to traffic. Improvements to include the installation of a span wire traffic signal at said intersection in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 19RW00460, attached hereto as Exhibit A. No additional right-of-way or stormwater infrastructure are necessary for this phase.

Phase 2

Means the second phase of the Intersection Project. The City shall construct and maintain southbound left turn lane improvements and associated tapers at said intersection, to meet opening year geometry recommendations on Babcock Street, in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 20RW00080, attached hereto as Exhibit B. No additional right-of-way or stormwater infrastructure are necessary for this phase.

Phase 3

Means the third phase of the Intersection Project. The City shall construct and

maintain an improved intersection and widen Babcock Street to include turn lanes, deceleration lanes, sidewalks, drainage, and the installation of a mast arm traffic signal system at said intersection in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 20RW00081, attached hereto as Exhibit C. The intersection will be at final raised grade of the new roadways and generally comply with the typical sections as preliminary identified in the Florida Department of Transportation (F.D.O.T.) Project Development and Environment Study (P.D. & E.) Study, Financial Project No. 437204-1 and build out geometry recommendations. Additional right-of-way acquisition is needed for this phase.

Intersection Project

7. Maintenance and Ownership Transfer

- a. The County and the City agree that upon effective date of this Agreement, the City shall assume maintenance responsibilities of the Intersection Project area (including all retention/detention ponds and off-site acquisitions related to the Intersection Project). The City may assign this responsibility to contractor during the construction phase of the Intersection Project.
- b. Upon completion of all phases of the Intersection Project and acceptance by the County, City agrees to accept ownership and maintenance of the roadway, and all associated improvements, within the limits of the Intersection Project north of Davis Lane and extending to the terminus of the north taper as shown in Exhibit C, and as amended in accordance with Section 28, in accordance with state statute.
- c. The County shall prepare a county deed and resolution and any other documents necessary to effectuate the conveyance and transfer of the roadway for the portion of the Intersection Project as described above in Section 7.b. The City agrees to pass a resolution accepting transfer of ownership and maintenance from the County. The transfer of the property shall be completed within sixty days of the closeout of County acceptance of Phase 3 of Intersection Project.
- d. The City agrees to annex all areas for the portion of the Intersection Project, as described above in Section 7.b within one hundred and twenty days of final completion of the Intersection Project.

8. Right of Way for Intersection Project Phase 3

City shall be responsible for acquisition of all right-of-way within City limits that may be necessary for Phase 3 of the Intersection Project. All acquisitions of right-of-way by the City, whether voluntary or involuntary, shall conform to Federal Highway Administration and F.D.O.T. rules, procedures, and standards. Failure to follow applicable rules, procedures, and standards may require the City to re-acquire right-of-way at its own expense.

9. Permitting and Stormwater

The City shall be required to secure any permits required by any other permitting agencies with jurisdiction necessary to support the Intersection Project and will coordinate with Developers and the County regarding any joint permit applications as needed.

- a. The City shall be required to demonstrate that the rights to discharge Intersection Project stormwater off-site by agreement or easement has been obtained. The County shall extend all approved right-of-way permit expirations to comply with the timelines as outlined in Section 15 of this Agreement.

10. Construction Plans

The City agrees to construct the Intersection Project in substantial conformance with the permitted plans conceptually shown in Exhibits A through C. The Intersection Project design shall meet or exceed F.D.O.T. and County standards. The County acknowledges the City is conducting further review of Exhibit C plans to achieve value engineering changes to reduce the cost of Phase 3. Any design changes needed shall meet or exceed F.D.O.T. and County standards and be approved by the Engineer of Record and County via a revision to the permit. Failure of the City to construct per the approved plans, or failure to seek County Public Works Department approval of any substantial changes in the approved plans through a formal permit modification, shall constitute a breach of this Agreement.

11. Construction

Both parties agree that the City shall be the lead agency to perform all work on the Intersection Project. County shall not be a party to the contract with contractor selected by City to build any phase of the Intersection Project. Nothing in this Agreement shall be in any way construed to constitute the County, or any of its agents or employees, to be an agent, employee or representative of the City. Construction completion shall be in accordance with the project timeline as defined in Section 12 of this Agreement.

12. Project Timeline

Within five days of the effective date of this Agreement, the County shall issue the Right-of-Way/Easement permit number 19RW00460 to the City for the construction of Phase 1. The City agrees to the following timeline for completion of the Intersection Project:

- a. December 31, 2020: The City shall fund and complete construction of Phase 1. Upon joint final inspection of constructed improvements and subsequent County approval, the County shall allow the intersection to be opened to traffic.
- b. December 31, 2020: The City shall obtain all permits, fund and complete construction of Phase 2. The City shall be required to closeout all applicable

permits. Upon joint final inspection of constructed improvements, receipt of all closeout documentation, and subsequent County approval, the County shall closeout the right-of-way permits for Phases 1 and 2.

- c. December 31, 2021: The City shall complete acquisition of all right-of-way for Phase 3.
- d. December 31, 2022: The City shall fund and obtain all permits for the construction of Phase 3.
- e. December 31, 2023: The City shall complete utility relocation and construction of Phase 3 improvements. The City shall be required to closeout all applicable permits. Upon joint final inspection of constructed improvements, receipt of all closeout documentation, and subsequent County approval, the County shall closeout the right-of-way permit for Phase 3.

Timeline dates agreed to herein may be extended by written agreement of both parties at least ninety days prior to the date of the specific item.

13. Bond

The City shall provide a copy of the Public Construction Bond obtained by the City from chosen contractor to the County before the start of Phases 2 & 3 of the Intersection Project. Failure to provide proof of said bond shall result in revocation of intent to issue Right-of-Way/Easement Permits for said phase. The City shall not release any Public Construction Bond until all County and other jurisdictional permits have been completed and/or closed out. The County shall be named additional Obligee on all Public Construction Bonds with the authority to call the Public Construction Bond and direct Surety to complete construction.

14. Construction Review Meetings

The County shall have the right to have a representative present at any construction-related meetings, such as preconstruction conference, site meetings, and progress meetings. The City shall promptly provide advance notice of date, time and location of any construction-related meeting, unless an emergency meeting is required, in which case all best efforts shall be made to contact the County's Representative or designee.

The County shall be conducting inspections during the Intersection Project and shall report any findings to the City. If at any time, any defects shall be found prior to final completion of the Intersection Project, the County shall provide notice to the City giving the City a cure period to correct such defects. Prior to the release of any Public Construction Bond, the County and the City shall conduct a joint final inspection.

Future Project

15. Lead Agency

The City agrees that the County and/or the F.D.O.T. shall be the lead agency for the future widening of Babcock Street.

16. Transportation Impact Fees

Upon the effective date of this Agreement and until completion of the Future Project, the County and the City further agree to set aside transportation impact fees for the future widening and improvements of Babcock Street south of Malabar Road as follows:

- a. The City agrees, following payment of existing debt and impact fee credit obligations in effect at the Effective Date of this Agreement paid for out of the transportation impact fee fund, to set aside 50% of the transportation impact fees received for any new development in the area south of Eldron Boulevard SE and San Filippo Drive, and south of San Filippo Drive to Lowry Boulevard SE, as shown in Exhibit D, as well as any other property annexed by the City south of Malabar Road. The City shall not provide impact fee credits for the portion of set aside required by this Agreement, except for the following:
 - i. Donations of right-of-way along Babcock Street needed for the Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - ii. Purchase of right-of-way needed for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iii. Design and construction on Babcock Street resulting in widening to a minimum of a 4-lane configuration to match the typical sections and recommendations as found in the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iv. Purchase of stormwater retention area necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - v. Floodplain compensation area and/or Wetland Mitigation as necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions) with agreement of all Parties.
- b. The County agrees to set aside 50% of the transportation impact fees received for any new development in the unincorporated area in that portion of the south mainland benefit district located south of Grant Road and west of the Florida East Coast Railway right-of-way. The County shall

not provide impact fee credits for the portion of set aside required by this Agreement, except for the following:

- i. Donations of right-of-way along Babcock Street needed for the Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - ii. Purchase of right-of-way needed for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iii. Design and construction on Babcock Street resulting in widening to a minimum of a 4-lane configuration to match the typical sections and recommendations as found in the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iv. Purchase of stormwater retention area necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - v. Floodplain compensation area and/or Wetland Mitigation as necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions) with agreement of all Parties.
- c. The County will seek separate agreement of the Towns of Malabar and Grant-Valkaria to set aside any transportation impact fees collected within the town limits, or any designated portion thereof, of the Towns of Malabar and Grant-Valkaria up to the percentage allocated by the Towns.
- d. The County and the City shall provide each other an itemized accounting of all impact fee collections and expenditures in the affected areas referenced in (a) and (b) of this section at a minimum annually, due not later than January 31 of each year hereafter. The itemized accounting shall include the date of collection of the impact fees. The County and the City shall disclose any existing debt and impact fee credit agreements or any other impact fee arrangements with any developers that would impact the amount of impact fees collected pursuant to this Agreement, in effect at the Effective Date of this Agreement. Such disclosure shall occur within 30 days of the Effective Date of this Agreement. Any proposed impact fee credit agreements shall be disclosed prior to legislative action by either body.
- e. All parties acknowledge that F.D.O.T. is currently conducting a P.D.&E. Study under Financial Project No. 437204-1 on the Babcock Street corridor from south of Micco Road (Deer Run Road) to Malabar Road. Should F.D.O.T. complete all phases of Future Project using state and/or

federal funds, any retained transportation impact fees shall be refunded to all parties respectively.

- f. Nothing in this section shall be interpreted to prohibit the County, City, and other governmental agencies from jointly acquiring right-of-way needed for Future Project from other funding sources, so long as all other provisions of the Agreement and applicable laws are followed.

17. Right-of-Way for Future Project

The City and County agree, as a condition of future development along Babcock Street in the Future Project area, to acquire right-of-way along Babcock Street to be held for the future widening project, and to be transferred to the Lead Agency for the Future Project. All acquisitions of right-of-way by either the City or the County, will occur within each party's respective jurisdiction, and whether voluntary or involuntary, shall conform to Federal Highway Administration and F.D.O.T. rules, procedures, and standards. Failure to follow applicable rules, procedures, and standards may require the City or the County to re-acquire right-of-way at its own expense.

18. Joint Planning and Concurrency for Future Project

- a) The City and County agree that coordination regarding future development, as further described in the Joint Planning Agreement, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida, is necessary to support concurrency for Babcock Street. The parties further agree to coordinate through the Joint Planning Agreement process on mitigation strategies if a transportation assessment determines that a proposed development project will potentially result in a deficiency in the Level of Service for Babcock Street.
- b) The City and County agree that termination of the aforementioned Joint Planning Agreement will not remove the obligations of both parties to follow the Development Order Application process outlined in Article II, Paragraph 13 and Article III of the aforementioned Joint Planning Agreement as it applies to Babcock Street, which sections shall be incorporated herein by reference with the same force and effect as though fully set forth herein.

19. Ownership and Maintenance After Future Project Widening

The City hereby reaffirms its prior commitment as stated in the Joint Planning Agreement and further agrees to take over ownership and maintenance of any section(s) of Babcock Street from the south City limit to Malabar Road after reconstruction and widening to four lanes of travel. The City agrees to annex sections of Babcock Street into the City after reconstruction and widening to four lanes of travel within one hundred and twenty days of final completion.

The County shall prepare a county deed and resolution and any other documents necessary to effectuate the conveyance and transfer of the roadway after reconstruction and widening to four lanes of travel. The City agrees to pass a resolution accepting transfer of ownership and maintenance from the County. The transfer of the property shall be completed within sixty days of final completion of any reconstruction and widening to four lanes of travel on Babcock Street from the south City limit to Malabar road.

20. Permitting

The City and County jointly agree the parties shall not unreasonably withhold any permits required to be issued for Future Project.

Standard Conditions

21. Notices

All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail (e-mail) and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement.

- a. General Notices. Unless otherwise notified in writing, general notices shall be sent to the following:

i. City Representative

Lisa Morrell
City Manager
120 Malabar Rd SE
Palm Bay, FL 32907

ii. County Representative

John Denninghoff
Assistant County Manager
2725 Judge Fran Jamieson Way, Suite C-301
Viera, FL 32940

With a copy to:

Tammy Thomas-Wood
Support Services Manager
2725 Judge Fran Jamieson Way, Suite A-201
Viera, Florida 32940

b. All notices related to design, construction, construction meetings, permitting, or engineering shall be sent to the following:

i. City Representative

City of Palm Bay Public Works Department
Frank Watanabe, P.E., City Engineer
1050 Malabar Rd
Palm Bay, Florida 32907

ii. County Representative

Brevard County Public Works Engineering
Attn: Rachel Gerena, P.E., Engineering Program Manager
2725 Judge Fran Jamieson Way, Suite A-204
Viera, Florida 32940

With a copy to:

John Denninghoff
Assistant County Manager
2725 Judge Fran Jamieson Way, Suite C-301
Viera, FL 32940

22. Indemnification

To the extent allowed by law and subject to the provisions set forth in Sec. 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Sec. 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

23. Insurance

The City shall require the contractor to name Brevard County as additional insured for all work associated with Phases 2 and 3. In any contract for the construction of any Phase of Intersection Project in this Agreement the City shall require contractor to indemnify and defend County.

24. Public Records

The County and the City shall comply with Florida's Public Records Laws and agree to keep and maintain public records in accordance with Florida law and records retention schedules. Further the parties will ensure that records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

25. Attorney's Fees

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

26. Default

Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

27. Severability

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

28. Entirety

This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties. The construction plans as shown in Exhibits A through C are conceptual in nature. The parties agree that Exhibits A through C may be modified through the County permit approval process.

29. Recording

Upon execution of the Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded Agreement to the City Representative listed in Section 21.

30. Effective Date

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County.

31. Applicable Law

This Agreement and the provisions herein shall be construed, controlled and interpreted according to the laws of Florida.

32. Venue and Non-Jury Trial

Venue for any action brought by any party to this agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

33. Breach

In the event the County determines that the City has breached any term or provision of this Agreement, the County shall provide written notice of such breach to the City. Failure to timely begin any Phase of construction or failure to complete any Phase shall be a breach of this Agreement. The City shall have forty-five days after receipt of such notice to cure such breach. The County may extend the time to cure any breach beyond forty-five days provided the City commences reasonable action to cure within the forty-five-day cure period and continuously pursues the cure to completion.

34. Termination

This Agreement will terminate upon the completion of the Future Project and all fees set aside in accordance with Section 16 will no longer be set aside.

35. Binding Effect

Each party represents to the other it has undertaken all necessary actions to execute this Agreement and has the legal authority to enter this Agreement and to undertake all obligations imposed on it.

51
②

In witness whereof, we have set our hands and seals on the day and year written below.

Attest:

City of Palm Bay

City Clerk

By: _____
(Name/Title)

Date

Attest:

Board of County Commissioners
of Brevard County, Florida

Scott Ellis, Clerk

By: _____
Bryan Lober, Chair

As approved by the Board on: 2/11/2020

Reviewed for Legal Form and Content

Assistant County Attorney

Exhibit A

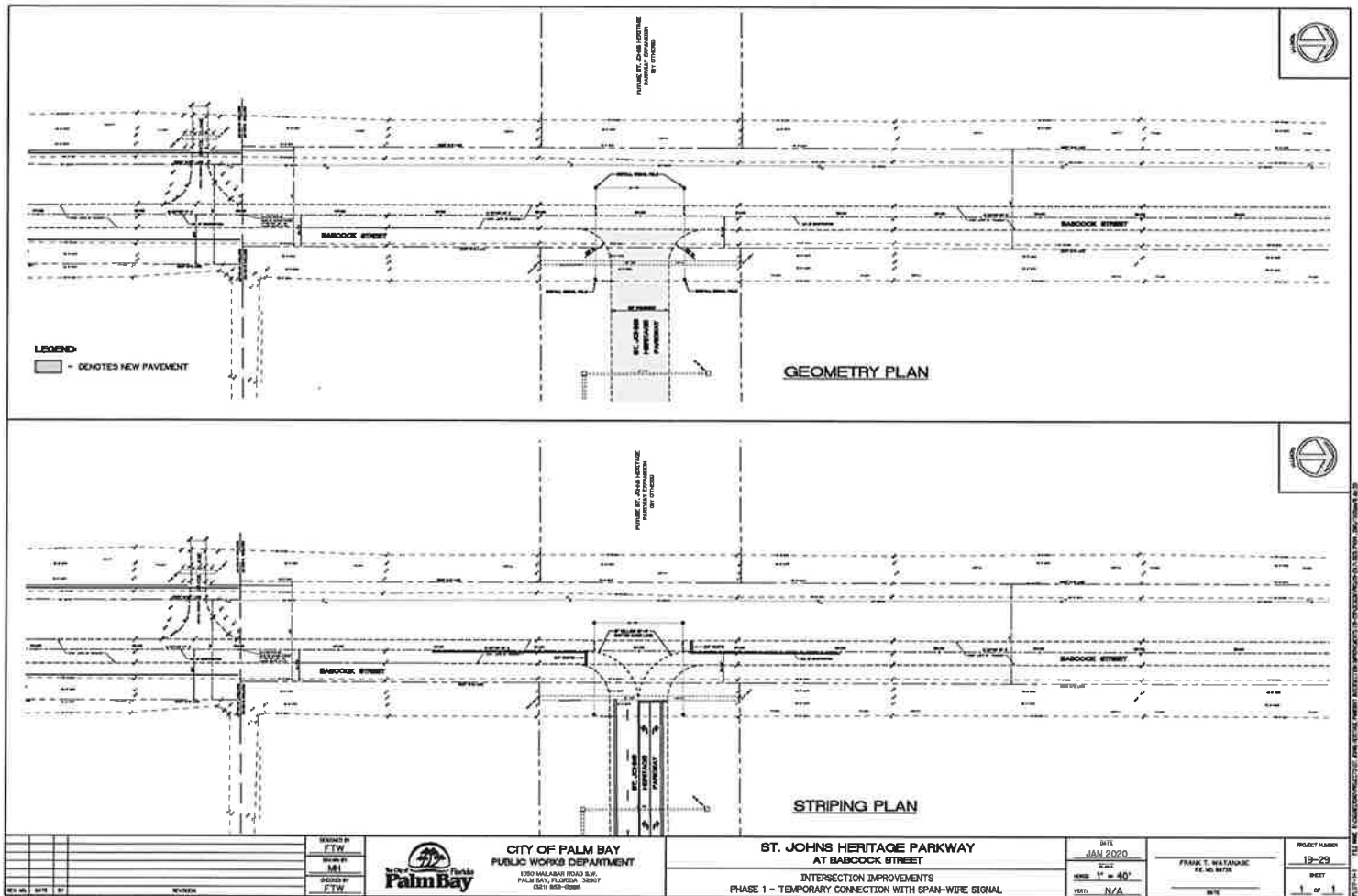
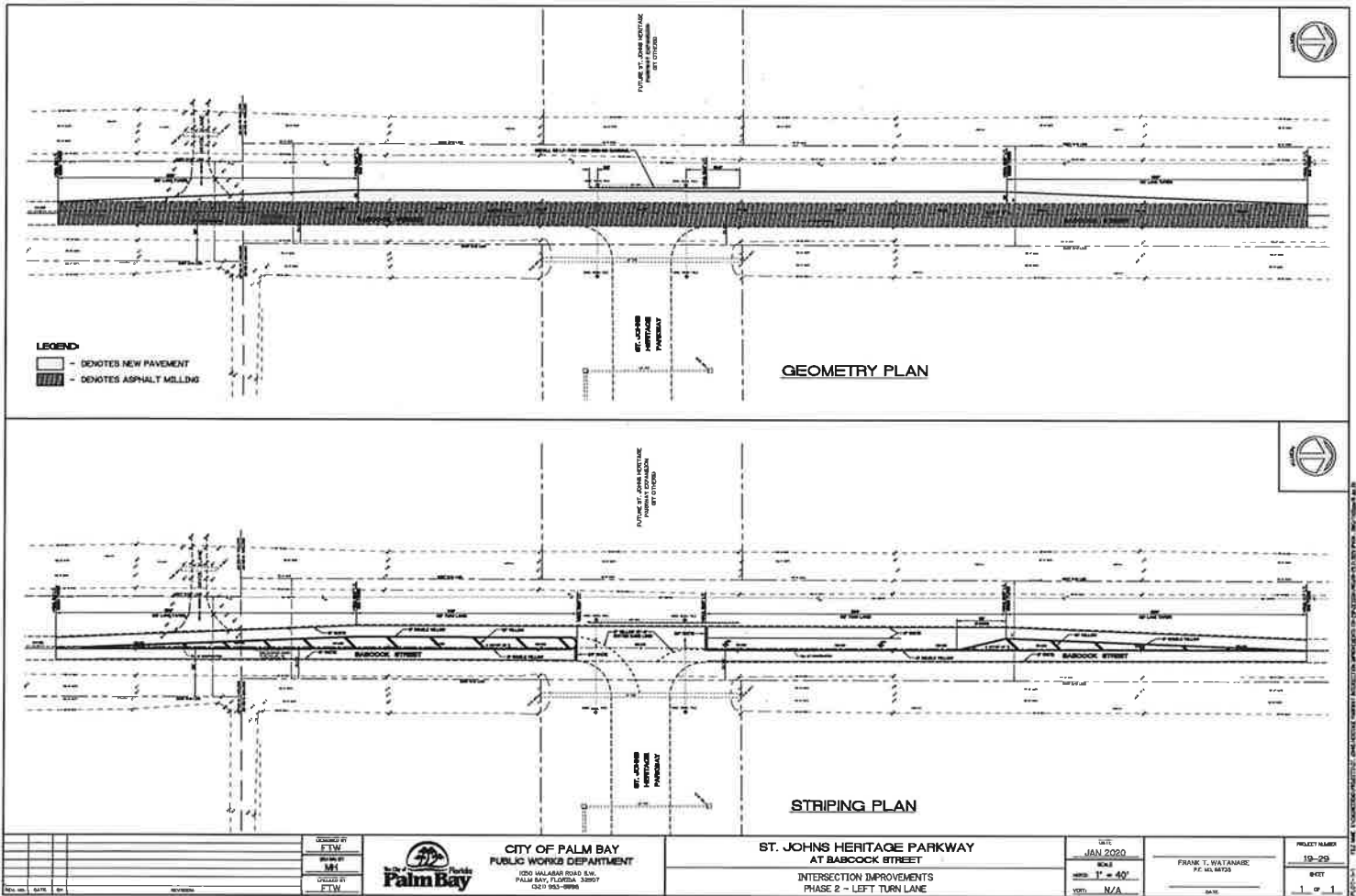


Exhibit B



ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS



OCTOBER 2019



OWNER: CITY OF PALM BAY
120 MALABAR ROAD SE
PALM BAY, FLORIDA 32907

SITE ADDRESS: ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET
PALM BAY, FLORIDA 32909

LOCATION: SECTIONS 3 & 10, TOWNSHIP 30 SOUTH, RANGE 37 EAST

ZONING: N/A

F.L.U.C.S.: 1900 OPEN LAND

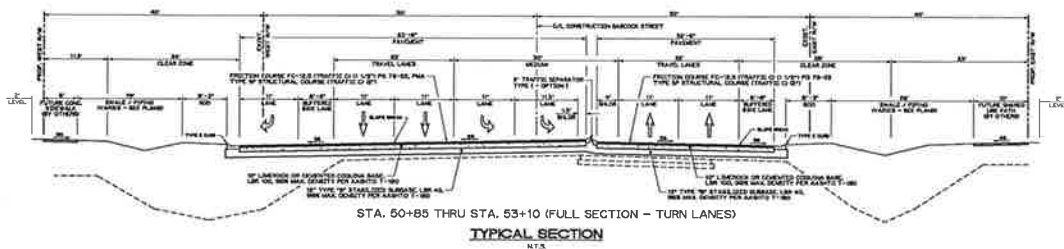
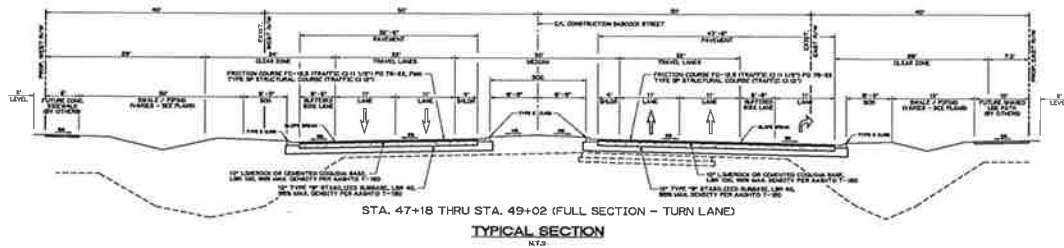
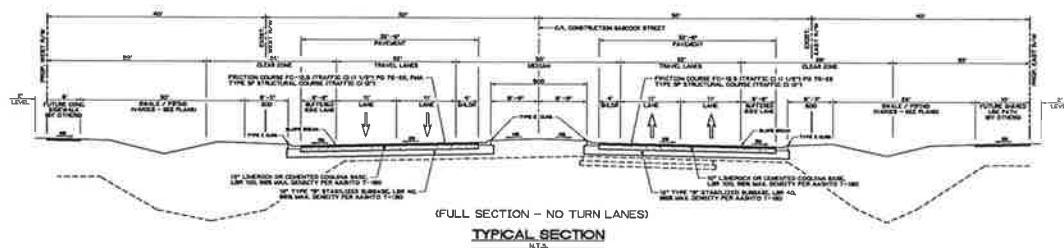
DESCRIPTION OF WORK: ROAD CONSTRUCTION, PAVING AND TRAFFIC SIGNAL
AT BABCOCK STREET, APPROXIMATELY 2,875 L.F.
SOUTH OF AND 2,550 L.F. NORTH OF ST. JOHNS
HERITAGE PARKWAY, ALONG WITH DRAINAGE
IMPROVEMENTS AND FINAL STRIPING.
(5,425 L.F. / 1.03 MILES)

UTILITIES ENCOUNTERED		
FLORIDA POWER AND LIGHT	(POWER)	(321) 726-4864
SPECTRUM	(CABLE)	(321) 757-6451
A.T. & T.	(TELEPHONE)	(321) 258-9244
PALM BAY C & T	(F.O.C.)	(321) 952-3475
PALM BAY UTILITY DEPARTMENT	(WATER & SEWER)	(321) 952-3410

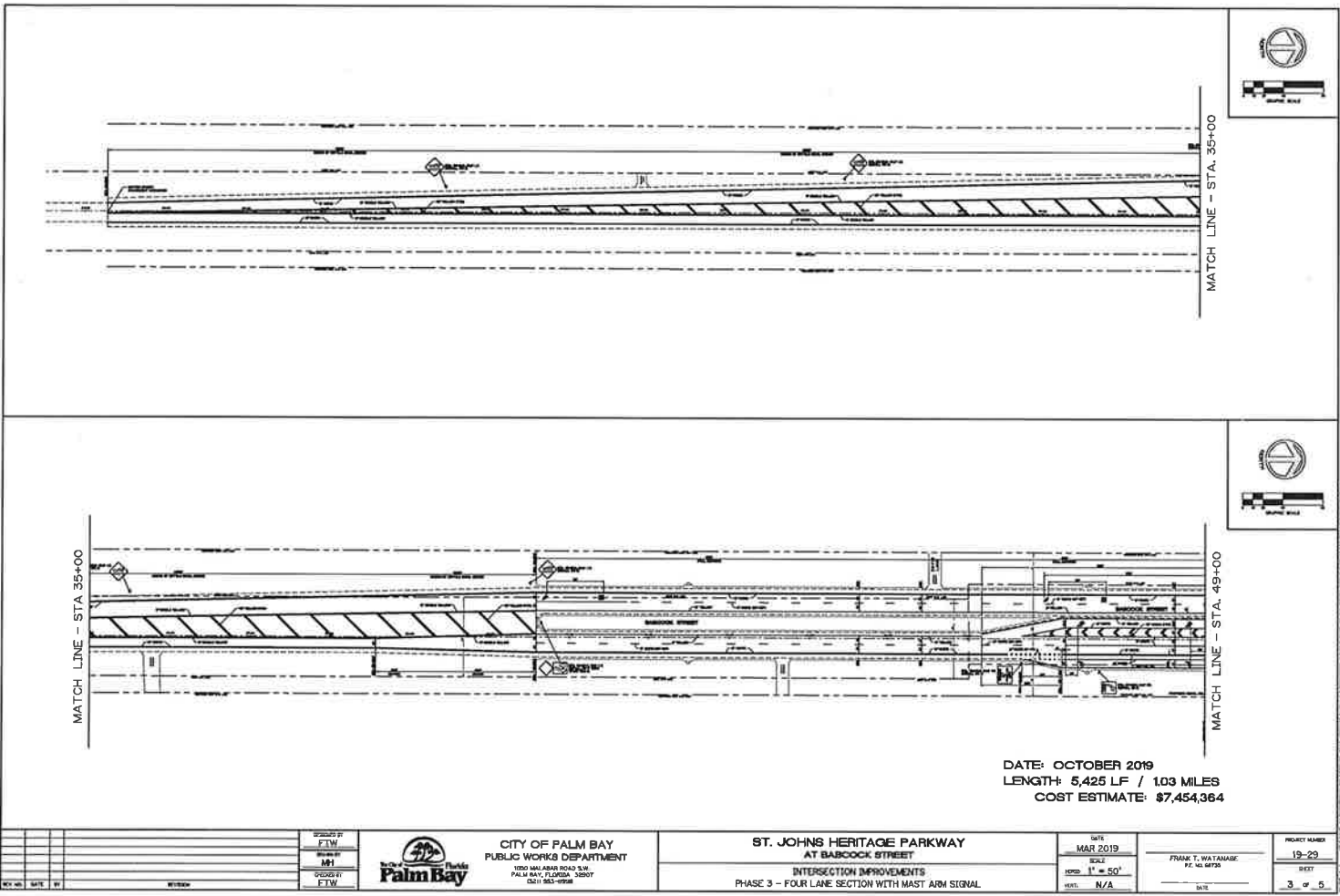
INDEX OF SHEETS

1	COVER SHEET
2	GENERAL NOTES
3	STORMWATER POLLUTION PREVENTION PLAN
4	TYPICAL ROADWAY SECTIONS
5	PLAN & PROFILE - STA. 21+00 THRU STA. 27+00
6	PLAN & PROFILE - STA. 27+00 THRU STA. 33+00
7	PLAN & PROFILE - STA. 33+00 THRU STA. 39+00
8	PLAN & PROFILE - STA. 39+00 THRU STA. 45+00
9	PLAN & PROFILE - STA. 45+00 THRU STA. 51+00
10	PLAN & PROFILE - STA. 51+00 THRU STA. 57+00
11	PLAN & PROFILE - STA. 57+00 THRU STA. 63+00
12	PLAN & PROFILE - STA. 63+00 THRU STA. 69+00
13	PLAN & PROFILE - STA. 69+00 THRU STA. 74+00
14	PLAN & PROFILE - STA. 74+00 THRU STA. 76+00
15	DETAIL SHEET
16	CROSS SECTIONS - 1 THRU 4 (STA. 21+15 THRU STA. 27+00)
17	CROSS SECTIONS - 5 THRU 8 (STA. 29+00 THRU STA. 35+00)
18	CROSS SECTIONS - 9 THRU 12 (STA. 37+00 THRU STA. 42+50)
19	CROSS SECTIONS - 13 THRU 16 (STA. 45+00 THRU STA. 51+00)
20	CROSS SECTIONS - 17 THRU 20 (STA. 52+50 THRU STA. 60+00)
21	CROSS SECTIONS - 21 THRU 24 (STA. 62+18 THRU STA. 68+18)
22	CROSS SECTIONS - 25 THRU 28 (STA. 70+18 THRU STA. 76+28)
23	MAINTENANCE OF TRAFFIC - PHASE 1
24	MAINTENANCE OF TRAFFIC - PHASE 1
25	MAINTENANCE OF TRAFFIC - PHASE 2
26	MAINTENANCE OF TRAFFIC - PHASE 2
27	MARKING & SIGNING - STA. 21+00 THRU STA. 33+00
28	MARKING & SIGNING - STA. 33+00 THRU STA. 45+00
29	MARKING & SIGNING - STA. 45+00 THRU STA. 57+00
30	MARKING & SIGNING - STA. 57+00 THRU STA. 69+00
31	MARKING & SIGNING - STA. 69+00 THRU STA. 76+00
32	SIGNALIZATION - PLAN VIEW
33	SIGNALIZATION - MAST ARM TABULATION
34	SIGNALIZATION - MAST ARM ASSEMBLIES
35	TYPICAL ROADWAY SECTIONS (S.J.H.P.)
36	PLAN & PROFILE - STA. 13001+00 THRU STA. 13007+00 (S.J.H.P.)
37	PLAN VIEW - OFF SITE DRAINAGE (S.J.H.P.)
38	MARKING & SIGNING - STA. 13001+38.3 THRU STA. 13006+50 (S.J.H.P.)


DESIGNED BY: FTW DRAWN BY: MI CHECKED BY: FTW	CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 1200 MALABAR ROAD SE PALM BAY, FLORIDA 32907 (321) 757-4999	ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL	DATE: OCT 2019 BY: N/A VEH: N/A	PROJECT NUMBER: 19-29 FRANK T. WATANABE P.E. 46, 8739 DATE: 10/15/19 SHEET: 1 of 5
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DATE: OCTOBER 2019
 LENGTH: 5,425 LF / 1.03 MILES
 COST ESTIMATE: \$7,454,964

REV	DATE	BY	DESCRIPTION	DESIGNED BY FTW	CHECKED BY MH	DESIGNED BY FTW	 CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 1000 MAJAS ROAD SW PALM BAY, FLORIDA 32909 (321) 325-4755	ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL	DATE MAR 2019 SCALE 1" = 50' UNIT N/A	PROJECT NUMBER 19-29 DRAWN BY FRANK T. WATKINS FT. WATKINS DATE	SHEET 3 of 5
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MATCH LINE - STA 49+00

MATCH LINE - STA 63+00

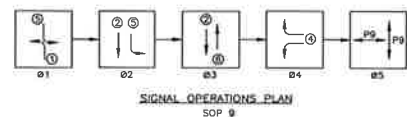


MATCH LINE - STA 63+00

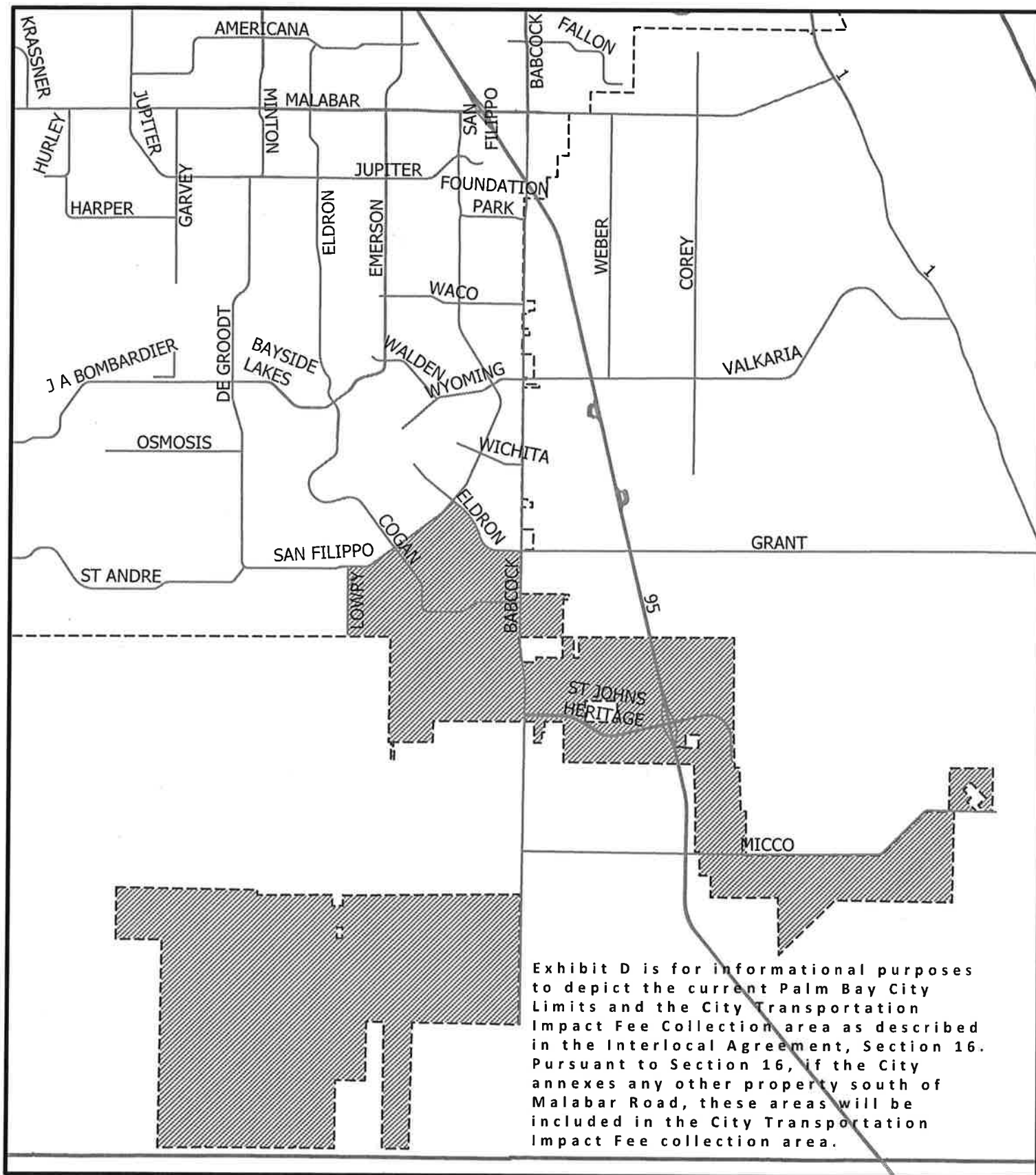


DATE: OCTOBER 2019
 LENGTH: 5,425 LF / 1.03 MILES
 COST ESTIMATE: \$7,454,364

<div> <div>DESIGNED BY</div> <div>FTW</div> </div> <div> <div>DRAWN BY</div> <div>MB</div> </div> <div> <div>CHECKED BY</div> <div>FTW</div> </div>	<div> <div>  <div> <div>CITY OF PALM BAY</div> <div>PUBLIC WORKS DEPARTMENT</div> <div>1000 PALM BLVD. ROAD SW</div> <div>PALM BAY, FLORIDA 32909</div> <div>(321) 955-8996</div> </div> </div> </div>	<div> <div>ST. JOHNS HERITAGE PARKWAY</div> <div>AT BABCOCK STREET</div> <div>INTERSECTION IMPROVEMENTS</div> <div>PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL</div> </div>	<div> <div>DATE</div> <div>MAR 2019</div> </div> <div> <div>SCALE</div> <div>1" = 50'</div> </div> <div> <div>DATE</div> <div>N/A</div> </div>	<div> <div>PROJECT NUMBER</div> <div>19-29</div> </div> <div> <div>DATE</div> <div>4</div> </div> <div> <div>DATE</div> <div>5</div> </div>
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PROJECT NUMBER
19-29
NEXT
5 of 5





BOARD OF COUNTY COMMISSIONERS

Public Works Department

2725 Judge Fran Jamieson Way
Building A, Room 201
Viera, Florida 32940

EXHIBIT B

Please find a summary of the efforts to enter into agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street:

- The City, the City's developer and County staff met for years (seven years +) to develop an approach to best address the intersection and its location.
- County staff has consistently held the position that the intersection must serve the future widening needs of Babcock Street which are required due to traffic from City development. The intersection as designed (Phase 3) meets that requirement. Phase 1 and Phase 2 do not meet that requirement.
- During these meetings, it was felt that there would be a tri-party agreement between the County, the City, and the developer to address the intersection and future widening of Babcock Street and traffic-related development impacts and costs.
- The City determined that separate agreements would be entered into between the City and the developer and the City and the County. To our knowledge, no such agreement between the City and the developer exists. The I.L.A. currently under consideration is the agreement between the City and the County.
- As noted by the recent audit findings and the City Attorney, the City failed to secure financial participation on the part of the developer.
- The development potential of unincorporated Brevard County in this area is exceptionally low.
- The principal beneficiaries of the intersection are the developers in the vicinity of the Interchange and intersection, all located within Palm Bay, as demonstrated in the developer's own traffic study.
- The overwhelming majority of the traffic growth that will occur on Babcock Street, causing the need to widen it to four lanes, is associated with the new development expected within the City limits.
- The City and the developer determined the location of the intersection. At the time, the County pointed out that a portion of the intersection improvements would be outside the City limits.
- Any portion of the intersection improvements outside of the City limits are a direct result of the location of the intersection as determined by the City and the developer.
- Without the developer-needed intersection and many other pending Palm Bay developments, Babcock Street would not need a new intersection nor widening to four lanes.

- To accommodate the City's current financial constraints, the County has agreed to a phasing approach for the construction of the intersection. The County has also agreed to allow a temporary signal with span wires (Phases 1 and 2). This County flexibility is intended to reduce early expenses upfront by the City which facilitates the earlier Interchange opening.
- The County determined that the City's intersection design for Phase 3 exceeds Florida Department of Transportation (F.D.O.T.) and County design standards as to length. This observation resulted in a provision in the I.L.A. provides, at the County's suggestion, an opportunity to value engineer a less costly intersection improvement. Currently, the County estimates there could be a potential \$1M cost reduction.
- The County suggested and agreed to allow Phase 1 of the intersection to be constructed prior to development of the value-engineered plans for Phase 3, which is provided for the County's draft I.L.A.
- As of Monday, February 10, 2020, the County has not received the modified Phase 2 intersection design which reportedly cures the otherwise unacceptable, substandard condition (clear zone), posing a serious safety hazard for traffic. If the County receives the modified plans timely, the County anticipates to complete the review by the February 11, 2020 Board meeting.
- County staff has diligently worked with City staff to develop acceptable intersection plans, the I.L.A. and exhibits. The County staff position regarding the major points has been consistent while we have also offered numerous opportunities for the City to realize savings and improve efficiency.
- Every effort has been made by the County to provide resources toward the future widening of Babcock Street including the purchase of parcels, local coordination with F.D.O.T., match funds for the design phase, and attempting to preserve the potential for federal funding on future phases (right-of-way acquisition and construction). Actual expenses or scheduled expenses, along these lines, are in excess of \$5.6M.
- Statements have been made suggesting that the County recently took \$1.5M from the intersection and spent it outside the City limits. This is objectively and factually incorrect.
- The referenced funds were never specifically allocated to the intersection.
- The referenced funds were spent to reconstruct Babcock Street from the County line north nearly to Micco Road.
- 1.5 miles of the reconstructed Babcock Street frontage is located in the City of Palm Bay.

EXHIBIT C

The following is an explanatory narrative summarizing the current status of the Interlocal Agreement.

County and City staff have been coordinating on drafting the St. Johns Heritage Parkway Intersection and Babcock Street Interlocal Agreement for an extensive amount of time. Overall, at the staff level, there has been much consensus on the terms and conditions of the agreement.

Summary of the key remaining differences between the two versions (County staff, City staff) of the proposed Interlocal Agreement (I.L.A.) are as follows:

1. Section 7 Maintenance and Ownership Transfer of the Intersection Project

The City desires the transfer of the Intersection Project to occur upon the effective date of the I.L.A. The County proposes the transfer to occur upon completion of all three Phases of the Intersection Project. It is the County's understanding that the City wants to acquire the right-of-way in their name without multiple transfers of ownership. This position is not warranted, because the County's proposed I.L.A. does not require such transfers and re-transfers. The County desires to maintain ownership until completion of the intersection to assure the improvements are completed in accordance with the permits, plans, and standards. Also, to assure any other driveway connections are designed and constructed appropriately.

2. Section 19 Ownership and Maintenance After Future Project Widening

The City desires to make the J.P.A. an attachment to the I.L.A. in their attempt to "interconnect" the two agreements, thus providing a potential resolution mechanism relative to future growth management concerns.

- The City of Palm Bay – Brevard County Joint Planning Interlocal Agreement (J.P.A.), entered into on July 26, 2016, is a high-altitude planning agreement for intergovernmental coordination for sound growth management. As indicated in the J.P.A., the future transfer of Babcock Street and associated drainage facilities, upon widening, from the County to the City "shall require an agreement between the County and City". The St. Johns Heritage Parkway Intersection and Babcock Street Interlocal Agreement (I.L.A.), would be the implementation document to the J.P.A. in regards to the widening and transfer of the ownership and maintenance of Babcock Street to the City. However:
 - The J.P.A will terminate automatically after five years which will be on July 16, 2021 unless it is renewed for an additional five-year period.
 - The J.P.A. can be terminated by either party by delivering sixty days written notice.
 - If the J.P.A. is not in force or otherwise terminated, the City's version of the I.L.A. has virtually no effect with respect to the future widening of Babcock Street. Further, it would eliminate Transportation Impact Fee participation and future ownership and maintenance of Babcock Street by the City. Thus, neutralizing much of the intent of the I.L.A.

- The City version of the I.L.A. would permit the City to have an “out” from the obligations to provide Transportation Impact Fees and assume ownership and maintenance responsibility of the widened Babcock Street while still having the benefits of the intersection for their developers. Also, this would neutralize virtually all of the County’s ability to assure responsible growth, including concurrency.
- During the February 6, 2020 staff call, the City Attorney, for the first time, expressed concerns about how an economic downturn could affect the City’s financial ability to maintain the future widened and reconstructed Babcock Street. In the call, the City Attorney expressed concern that the I.L.A. would leave the City with no ability to “get out” of the I.L.A. Furthermore, during the 2/6/2020 Council meeting, the City Attorney stated that the City cannot amend nor rescind the I.L.A. if the City does not have the financial ability to maintain the road. If there were an economic downturn in the economy, the Transportation Impact Fees would not be collected, the traffic would not be generated, and the road would not be widened. Therefore, the City would not be taking the road over for maintenance. Instead, the widening of Babcock Street would be delayed until the traffic volumes created by development warrant such widening. Then, the Transportation Impact Fees would be collected, development would take place, tax revenues would be realized, and the road would eventually be widened. The new tax revenue would support funding the maintenance of Babcock Street. Therefore, the concerns that an economic downturn would potentially obligate the City in a way that was unacceptable seems to be incorrect.
 - Staff would conceptually be agreeable with revising the I.L.A. to provide for a conditional requirement associated with Phase 3 of the intersection that would allow an extension to the deadline based on a traffic analysis reviewed and agreed upon by both parties. The traffic analysis will need to be provided and funded by the City or a third party, signed and sealed by a Professional Engineer licensed in the State of Florida and would be used to determine when improvements are warranted based on updated proposed development.
- During the February 6, 2020 staff call, the City Attorney raised concerns about the recent audit findings, specifically Finding 1. She inquired what is the public purpose for Palm Bay to accept ownership and maintenance of the road without financial consideration by the County.
 - The majority of this finding in the preliminary audit findings is focused on the City’s lack of follow through with developer contributions to the new roadway and intersection as well as the misrepresentations made by previous City administration to the City Council.
 - The audit references a 2008 multi-agency agreement regarding the St. Johns Heritage Parkway. However, this agreement is limited to that portion of the St. Johns Heritage Parkway located north of Malabar Road to US 192. This portion of the SJHP is complete with the City maintaining the portion within the City of Palm Bay limits and the County maintaining the portion outside of Palm Bay. Thus, the audit reference has no relevance to Babcock Street maintenance in the future, or the southernly portion of the St. Johns Heritage Parkway in general.
 - The overwhelming majority of additional traffic that is going to be on Babcock Street that will cause it to go over maximum allowable volumes of traffic causing the need to

widen is a direct result of developments which are taking place or scheduled to take place in the City of Palm Bay.

- The primary beneficiaries of the widening of Babcock Street and the Intersection Project, are Palm Bay residents, developers within the City, and the City of Palm Bay.
- The audit finding did not focus on or address assuming future maintenance responsibility for a roadway that will overwhelmingly benefit the City after reconstruction and widening by a joint effort of the County, City, and F.D.O.T.
- During the February 6, 2020 Council meeting, there were statements about the County “not having skin in the game” with respect to the intersection and the future widening and maintenance of Babcock Street. County staff offers the following information demonstrating past, present and future financial contributions by the County totaling over \$5.6M. This excludes all maintenance costs (including the recent reconstruction, 1.5M).
 - The County secured the funds for the Project Development and Environment (P.D.&E.) Study which is currently underway and is necessary to secure federal funds for the future widening of Babcock Street. Such widening will benefit the City and their developers.
 - Since 2016, the County has held funding to benefit Babcock Street Improvements which could have included the intersection. After years of lack of progress towards an interlocal agreement, the Board directed \$1.5M to be utilized to reconstruct a portion of Babcock Street south of Micco Road. 1.5 miles of the reconstructed Babcock Street are located within the City of Palm Bay. Such reconstruction is a benefit to the City.
 - The County also committed \$1.5M as matching funds for the design of the future Babcock Street widening which will greatly benefit the City and their developers. This commitment was necessary to induce F.D.O.T. to fund and perform the P.D.&E. Study for Babcock Street. Without a P.D.&E. Study, federal funds would not be available. Currently, it appears an additional \$1M will be required as match for the design.
 - In the I.L.A, the County agrees to set aside 50% of the Transportation Impact Fees received for any new development in the unincorporated area in the South Mainland Benefit District located south of Grant Road and west of the Florida East Coast Railway right-of-way. This benefits the City and their developers. The County does not collect Transportation Impact Fees from development within the City of Palm Bay.
 - The County completed the Preliminary Engineering Report which supported the need for the P.D.&E. This Report cost \$671,592.
 - The County has purchased multiple parcels of land for retention area purposes along the Babcock corridor in preparation of the future widening investing \$320,733.
 - The County has spent and committed \$2.17M to reconstruct the intersection located at Babcock Street and Wyoming Drive with no contribution by the City.
 - This attitude by the City also ignores the fact that F.D.O.T. originally intended to locate the new I-95 interchange at Micco Road which would have been much more cost effective as it does not require construction of a new road to connect to Babcock Street. Furthermore, the Micco location would not have required construction of a new road on the east side of the interchange. The City and developers induced F.D.O.T. to move the interchange.
- The subject of value engineering regarding the Intersection Project is one that County staff raised as we determined that the design proffered by City staff exceeds the design standards in

terms of its length. The I.L.A. provides for that value engineering effort to reduce the cost of Phase 3 of the Intersection Project so as to avoid delaying Phase 1 implementation while the value engineering is performed.

- At this time, Phase 2 of the Intersection Project still has an unacceptable, substandard condition (clear zone) which is shown and called for in its design and requires modification. On February 6, 2020, City staff informed the County that the City is working on that correction. As of this writing, the County has not received revised plans from the City.

In closing, during the February 6, 2020 Council meeting, it was said that there seemed to be no financial consideration for ongoing County participation or “skin in the game” associated with the future widening of Babcock. As indicated by the aforementioned bullet points, this is not the case; however, there seems to be little recognition that the overwhelming majority of additional traffic that is going to be on Babcock Street that will cause it to go over maximum allowable volumes of traffic is a direct result of developments which are taking place or scheduled to take place in the City of Palm Bay. This indicates that the primary beneficiaries of the widening of Babcock Street and the Intersection Project, which are the subjects of the I.L.A., are the City of Palm Bay residents, developers within the City and the City of Palm Bay. Under this scenario, County staff recommends it would be appropriate that the widened road should be maintained by the City of Palm Bay.

EXHIBIT D

Timeline for the drafting of the Interlocal Agreement depicting significant events. The below timeline omits dozens of meetings, calls and correspondence prior to October 16, 2019.

October 16, 2019	Meeting with F.D.O.T., County and City re: the status of the St. Johns Heritage Parkway Interchange opening. County staff informed F.D.O.T. that the County and City have been working on a draft I.L.A. to provide
October 17, 2019	Palm Bay City Council consideration of a draft I.L.A. City staff briefed the Council that there had not been sufficient time for review by the City Attorney prior to the 10/17/19 Council meeting. Mayor Capote indicated he did not want the City to give up its home rule authority. As such, the Council concurred to schedule a Special Council Meeting for October 21, 2019.
October 21, 2019	Palm Bay Special Council Meeting was conducted. Council concurred to wait on the County's decision regarding \$1.5M to take place on 10/22/2019 and took no action on the agreement as presented on 10/21/2019.
October 22, 2019	Brevard County Board of County Commissioners considered options pertaining to the utilization of the budgeted amount of \$1.5M for Babcock Street Improvements including possibly using it as part of the I.L.A. The Board chose Option 2 to expand the reconstruction limits on Babcock Street from Centerlane road north to Micco Road.
December 11, 2019	County receipt of a letter from the City stating that, with respect to the County's proffered permit conditions for the intersection, the City could not commit to constructing the permitted improvement prior to the permit expiration and declining to comply with several other permit conditions.
December 13, 2019	The County denied the City's permit application due to lack of City commitment to meet the permit conditions.
January 13, 2020	City staff provided a very rough and heavily revised draft I.L.A. intended to meet the County's permit conditions.
January 27, 2020	County staff provided a heavily revised draft I.L.A. to the City, including Exhibits A-C.
January 27, 2020	City staff provided general comments on the 1/27/2020 draft I.L.A.
January 29, 2020	County staff provided a commentary of the City's general comments.
February 4, 2020	County staff sent Exhibit D with note added to the City.
February 4, 2020	City staff provided the City's version of the I.L.A. that would be presented to the City Council on February 6, 2020.

- February 6, 2020 County and City staff conducted a conference call at 2:45 pm to discuss the differences in the versions of the I.L.A.
- February 6, 2020 Palm Bay City Council considered the City's version of the I.L.A. After much discussion, the Council voted to request a meeting with the Brevard County Board of County Commissioners.
- February 11, 2020 Board of County Commissioners scheduled to discuss the I.L.A. (both versions).

Exhibit E

INTERLOCAL AGREEMENT

ST. JOHNS HERITAGE PARKWAY INTERSECTION AND BABCOCK STREET

This Agreement, made and entered into by and between the Brevard County, Florida, a political subdivision of the State of Florida, hereinafter referred to as "County" and the City of Palm Bay, Brevard County, Florida, hereinafter referred to as "City".

Recitals

WHEREAS, the City desires to complete intersection improvements at Babcock Street and the newly constructed St. Johns Heritage Parkway, defined below as Intersection Project; and

WHEREAS, the County and City agree to partner in efforts to complete the future widening of Babcock Street south of Malabar Road, as funding is available; and

WHEREAS, the County and the City have entered into a Joint Planning Agreement, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida which includes, as part of Exhibit C of the Joint Planning Agreement, an agreement that the City will accept maintenance responsibility for segments of Babcock Street within six months after four-laning is complete;

WHEREAS, the County and the City have agreed that it is in the best interest of both parties that the City will take ownership of the portion of the Intersection Project area north of Davis Lane.

NOW THEREFORE, the County and City covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

1. Recitals

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

2. Statutory Authority

This Agreement shall be considered an Interlocal Agreement pursuant to authority of Florida Statutes, Chapter 163, Part 1, 2013.

3. Existing Joint Planning Agreement

This Agreement is not intended to replace the Joint Planning Agreement between the County and the City, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida.

Definitions

4. Development

Shall be defined as set forth in Sections 163.3164(13), Florida Statutes (2002), as amended or superseded from time to time.

5. Future Project

Widening of Babcock Street from south of Micco Road (Deer Run Road) to Malabar Road from the current two-lane roadway to a four-lane roadway, a distance of approximately nine miles, as shown in Exhibit E, to include associated improvements such as identified in the Florida Department of Transportation (F.D.O.T.) Project Development and Environment Study (P.D.& E.) Study, and as amended, Financial Project No. 437204-1.

6. Intersection Project

Means those intersection improvements that the City shall construct at the St. Johns Heritage Parkway (S.J.H.P.) and its intersection with Babcock Street and further defined in this section as Phases 1, 2 and 3.

Phase 1

Means the first phase of the Intersection Project. The City shall construct and maintain an at grade three leg intersection to allow for the temporary opening of the St. Johns Heritage Parkway to traffic. Improvements to include the installation of a span wire traffic signal at said intersection in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 19RW00460, attached hereto as Exhibit A. No additional right-of-way or stormwater infrastructure are necessary for this phase.

Phase 2

Means the second phase of the Intersection Project. The City shall construct and maintain southbound left turn lane improvements and associated tapers at said intersection, to meet opening year geometry recommendations on Babcock Street, in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 20RW00080, attached hereto as Exhibit B. No additional right-of-way or stormwater infrastructure are necessary for this phase.

Phase 3

Means the third phase of the Intersection Project. The City shall construct and

maintain an improved intersection and widen Babcock Street to include turn lanes, deceleration lanes, sidewalks, drainage, and the installation of a mast arm traffic signal system at said intersection in substantial conformance with the 100% plans approved in County Right-of-Way/Easement Permit No. 20RW00081, attached hereto as Exhibit C. The intersection will be at final raised grade of the new roadways and generally comply with the typical sections as preliminary identified in the Florida Department of Transportation (F.D.O.T.) Project Development and Environment Study (P.D. & E.) Study, Financial Project No. 437204-1 and build out geometry recommendations. Additional right-of-way acquisition is needed for this phase.

Intersection Project

7. Maintenance and Ownership Transfer

- a. The County and the City agree that upon effective date of this Agreement, the City shall assume maintenance responsibilities of the Intersection Project area (including all retention/detention ponds and off-site acquisitions related to the Intersection Project). The City may assign this responsibility to contractor during the construction phase of the Intersection Project.
- b. Upon the effective date of this Agreement, the City agrees to accept ownership from the County for the roadway, and all associated improvements, within the limits of the Intersection Project north of Davis Lane and extending to the terminus of the north taper as shown in Exhibit C, and as amended in accordance with Section 28, in accordance with state statute.
- c. The County shall prepare a county deed and resolution and any other documents necessary to effectuate the conveyance and transfer of the roadway for the portion of the Intersection Project as described above in Section 7.b. The City agrees to pass a resolution accepting transfer of ownership and maintenance from the County. The transfer of the property shall be completed within sixty days of the effective date of this Agreement.
- d. The City agrees to annex all areas for the portion of the Intersection Project, as described above in Section 7.b within one hundred and twenty days of final completion of the Intersection Project.

8. Right of Way for Intersection Project Phase 3

City shall be responsible for acquisition of all right-of-way within City limits that may be necessary for Phase 3 of the Intersection Project. All acquisitions of right-of-way by the City, whether voluntary or involuntary, shall conform to Federal Highway Administration and F.D.O.T. rules, procedures, and standards. Failure to follow applicable rules, procedures, and standards may require the City to re-acquire right-of-way at its own expense.

9. Permitting and Stormwater

The City shall be required to secure any permits required by any other permitting agencies with jurisdiction necessary to support the Intersection Project and will coordinate with Developers and the County regarding any joint permit applications as needed.

- a. The City shall be required to demonstrate that the rights to discharge Intersection Project stormwater off-site by agreement or easement has been obtained. The County shall extend all approved right-of-way permit expirations to comply with the timelines as outlined in Section 15 of this Agreement.

10. Construction Plans

The City agrees to construct the Intersection Project in substantial conformance with the permitted plans conceptually shown in Exhibits A through C. The Intersection Project design shall meet or exceed F.D.O.T. and County standards. The County acknowledges the City is conducting further review of Exhibit C plans to achieve value engineering changes to reduce the cost of Phase 3. Any design changes needed shall meet or exceed F.D.O.T. and County standards and be approved by the Engineer of Record and County via a revision to the permit. Failure of the City to construct per the approved plans, or failure to seek County Public Works Department approval of any substantial changes in the approved plans through a formal permit modification, shall constitute a breach of this Agreement.

11. Construction

Both parties agree that the City shall be the lead agency to perform all work on the Intersection Project. County shall not be a party to the contract with contractor selected by City to build any phase of the Intersection Project. Nothing in this Agreement shall be in any way construed to constitute the County, or any of its agents or employees, to be an agent, employee or representative of the City. Construction completion shall be in accordance with the project timeline as defined in Section 12 of this Agreement.

12. Project Timeline

Within five days of the effective date of this Agreement, the County shall issue the Right-of-Way/Easement permit number 19RW00460 to the City for the construction of Phase 1. The City agrees to the following timeline for completion of the Intersection Project:

- a. December 31, 2020: The City shall fund and complete construction of Phase 1. Upon joint final inspection of constructed improvements and subsequent County approval, the County shall allow the intersection to be opened to traffic.
- b. December 31, 2020: The City shall obtain all permits, fund and complete construction of Phase 2. The City shall be required to closeout all applicable

permits. Upon joint final inspection of constructed improvements, receipt of all closeout documentation, and subsequent County approval, the County shall closeout the right-of-way permits for Phases 1 and 2.

- c. December 31, 2021: The City shall complete acquisition of all right-of-way for Phase 3.
- d. December 31, 2023: The City shall fund and obtain all permits for the construction of Phase 3.
- e. December 31, 2023: The City shall complete utility relocation and construction of Phase 3 improvements. The City shall be required to closeout all applicable permits. Upon joint final inspection of constructed improvements, receipt of all closeout documentation, and subsequent County approval, the County shall closeout the right-of-way permit for Phase 3.

Timeline dates agreed to herein may be extended by written agreement of both parties at least ninety days prior to the date of the specific item.

13. Bond

The City shall provide a copy of the Public Construction Bond obtained by the City from chosen contractor to the County before the start of Phases 2 & 3 of the Intersection Project. Failure to provide proof of said bond shall result in revocation of intent to issue Right-of-Way/Easement Permits for said phase. The City shall not release any Public Construction Bond until all County and other jurisdictional permits have been completed and/or closed out. The County shall be named additional Obligee on all Public Construction Bonds with the authority to call the Public Construction Bond and direct Surety to complete construction.

14. Construction Review Meetings

The County shall have the right to have a representative present at any construction-related meetings, such as preconstruction conference, site meetings, and progress meetings. The City shall promptly provide advance notice of date, time and location of any construction-related meeting, unless an emergency meeting is required, in which case all best efforts shall be made to contact the County's Representative or designee.

The County shall be conducting inspections during the Intersection Project and shall report any findings to the City. If at any time, any defects shall be found prior to final completion of the Intersection Project, the County shall provide notice to the City giving the City a cure period to correct such defects. Prior to the release of any Public Construction Bond, the County and the City shall conduct a joint final inspection.

Future Project

15. Lead Agency

The City agrees that the County and/or the F.D.O.T. shall be the lead agency for the future widening of Babcock Street.

16. Transportation Impact Fees

Upon the effective date of this Agreement and until completion of the Future Project, the County and the City further agree to set aside transportation impact fees for the future widening and improvements of Babcock Street south of Malabar Road as follows:

- a. The City agrees, following payment of existing debt and impact fee credit obligations in effect at the Effective Date of this Agreement paid for out of the transportation impact fee fund, to set aside 50% of the transportation impact fees received for any new development in the area south of Eldron Boulevard SE and San Filippo Drive, and south of San Filippo Drive to Lowry Boulevard SE, as shown in Exhibit D, as well as any other property annexed by the City south of Malabar Road. The City shall not provide impact fee credits for the portion of set aside required by this Agreement, except for the following:
 - i. Donations of right-of-way along Babcock Street needed for the Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - ii. Purchase of right-of-way needed for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iii. Design and construction on Babcock Street resulting in widening to a minimum of a 4-lane configuration to match the typical sections and recommendations as found in the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iv. Purchase of stormwater retention area necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - v. Floodplain compensation area and/or Wetland Mitigation as necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions) with agreement of all Parties.
- b. The County agrees to set aside 50% of the transportation impact fees received for any new development in the unincorporated area in that portion of the south mainland benefit district located south of Grant Road and west of the Florida East Coast Railway right-of-way. The County shall

not provide impact fee credits for the portion of set aside required by this Agreement, except for the following:

- i. Donations of right-of-way along Babcock Street needed for the Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - ii. Purchase of right-of-way needed for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iii. Design and construction on Babcock Street resulting in widening to a minimum of a 4-lane configuration to match the typical sections and recommendations as found in the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - iv. Purchase of stormwater retention area necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions);
 - v. Floodplain compensation area and/or Wetland Mitigation as necessary for Future Project as determined by the P.D.&E. or final design of Future Project as defined in Section 5 (Definitions) with agreement of all Parties.
- c. The County will seek separate agreement of the Towns of Malabar and Grant-Valkaria to set aside any transportation impact fees collected within the town limits, or any designated portion thereof, of the Towns of Malabar and Grant-Valkaria up to the percentage allocated by the Towns.
- d. The County and the City shall provide each other an itemized accounting of all impact fee collections and expenditures in the affected areas referenced in (a) and (b) of this section at a minimum annually, due not later than January 31 of each year hereafter. The itemized accounting shall include the date of collection of the impact fees. The County and the City shall disclose any existing debt and impact fee credit agreements or any other impact fee arrangements with any developers that would impact the amount of impact fees collected pursuant to this Agreement, in effect at the Effective Date of this Agreement. Such disclosure shall occur within 30 days of the Effective Date of this Agreement. Any proposed impact fee credit agreements shall be disclosed prior to legislative action by either body. The impact fees collected for the future project shall be expended within seven years of collection, unless the County provides written documentation to the City that the impact fees will be expended in the reasonably immediate future, as defined as no more than one year.
- e. All parties acknowledge that F.D.O.T. is currently conducting a P.D.&E. Study under Financial Project No. 437204-1 on the Babcock Street corridor from south of Micco Road (Deer Run Road) to Malabar Road.

Should F.D.O.T. complete all phases of Future Project using state and/or

federal funds, any retained transportation impact fees shall be refunded to all parties respectively.

- f. Nothing in this section shall be interpreted to prohibit the County, City, and other governmental agencies from jointly acquiring right-of-way needed for Future Project from other funding sources, so long as all other provisions of the Agreement and applicable laws are followed.

17. Right-of-Way for Future Project

The City and County agree, as a condition of future development along Babcock Street in the Future Project area, to acquire right-of-way along Babcock Street to be held for the future widening project, and to be transferred to the Lead Agency for the Future Project. All acquisitions of right-of-way by either the City or the County, will occur within each party's respective jurisdiction, and whether voluntary or involuntary, shall conform to Federal Highway Administration and F.D.O.T. rules, procedures, and standards. Failure to follow applicable rules, procedures, and standards may require the City or the County to re-acquire right-of-way at its own expense.

18. Joint Planning and Concurrency for Future Project

- a) The City and County agree that coordination regarding future development, as further described in the Joint Planning Agreement, dated July 26, 2016 and as recorded in ORB 8514, PG 1709 of the Official Records of Brevard County, Florida, is necessary to support concurrency for Babcock Street. The parties further agree to coordinate through the Joint Planning Agreement process on mitigation strategies if a transportation assessment determines that a proposed development project will potentially result in a deficiency in the Level of Service for Babcock Street.
- b) The City and County agree that termination of the aforementioned Joint Planning Agreement will not remove the obligations of both parties to follow the Development Order Application process outlined in Article II, Paragraph 13 and Article III of the aforementioned Joint Planning Agreement as it applies to Babcock Street, which sections shall be incorporated herein by reference with the same force and effect as though fully set forth herein.

19. Ownership and Maintenance After Future Project Widening

- a) The City hereby reaffirms its prior commitment as stated in the Joint Planning Agreement to take over ownership and maintenance of specified segments of Babcock Street from the south City limit to Malabar Road after reconstruction and widening to four lanes of travel. The City and County acknowledge a scrivener's error in Exhibit C of the Joint Planning Agreement, (ORB 8514, PG 1709 of the Official Records of Brevard County, Florida), and agree that "Babcock Boulevard" should be modified "Babcock Street." Unless expressly stated herein, the terms in paragraph 19 are only intended to supplement the terms contained in Exhibit C of the Joint Planning

Agreement by providing the terms for how the transfer in ownership and maintenance responsibilities shall take place.

- b) The City and County agree that each local government has critical funding needs including, but not limited to, improving infrastructure to improve transportation. The County is not providing any financial consideration for the City to assume responsibility for the sections of Babcock Street that the City will assume ownership and maintenance responsibility.
- c) The City's acceptance of ownership and maintenance responsibility for segments of Babcock after four-laning is complete is contingent upon the following conditions:
 - a. The County will provide maintenance records that include all maintenance performed on the road segment and related stormwater drainage system;
 - b. The County is not providing any financial consideration for the City to assume ownership and maintenance responsibility for the designated sections of Babcock Street. The County will perform all necessary maintenance and repair of the road segment and related stormwater drainage at the sole cost of the County. The terms "maintenance" and "repair" shall include, but not be limited to, repairing the road surface, clearing obstructions, unplugging or opening culverts or drainpipes, and performing any and all other necessary work required to maintain the road in a condition that will allow for reasonable and safe access of standard passenger vehicles.
 - c. The City will inspect the road segment and appurtenant structures, including both existing and the newly constructed lanes to determine whether repairs are needed. The City will notify the County in writing of any needed repairs;
 - d. The County will make any and all needed repairs in a timely manner and the repairs will be reinspected by the City;
 - e. The County will assign any construction contracts that involve the road segment to the City to enable the City to pursue any claims for any road defects, that may not be apparent prior to the transfer of ownership, against the construction company. The County also agrees to not release any Public Construction Bond related to repairs or construction of the road segment without the express written consent of the City.
- d) The County and City, consistent with state and local law, will take appropriate action to annex sections of Babcock Street into the City after reconstruction and widening to four lanes of travel within one hundred and twenty days of final completion. The City agrees to pass a resolution accepting transfer of ownership and maintenance from the County. The transfer of the property shall be completed within sixty days of final completion of any reconstruction and widening to four lanes of travel on Babcock Street from the south City limit to Malabar road.

20. Permitting

The City and County jointly agree the parties shall not unreasonably withhold any permits required to be issued for Future Project.

Standard Conditions

21. Notices

All notices required pursuant to the terms hereof may be sent by first class United States Mail, facsimile transmission, hand delivery, express mail or electronic mail (e-mail) and shall be deemed to have been received by the end of five business days from the proper sending thereof unless proof of prior actual receipt is provided. Each party hereto shall have the continuing obligation to notify each other of the appropriate persons for notices to be sent to pursuant to the terms of this Agreement.

- a. General Notices. Unless otherwise notified in writing, general notices shall be sent to the following:

i. City Representative

Lisa Morrell
City Manager
120 Malabar Rd SE
Palm Bay, FL 32907

ii. County Representative

John Denninghoff
Assistant County Manager
2725 Judge Fran Jamieson Way, Suite C-301
Viera, FL 32940

With a copy to:

Tammy Thomas-Wood
Support Services Manager
2725 Judge Fran Jamieson Way, Suite A-201
Viera, Florida 32940

b. All notices related to design, construction, construction meetings, permitting, or engineering shall be sent to the following:

i. City Representative

City of Palm Bay Public Works Department
Frank Watanabe, P.E., City Engineer
1050 Malabar Rd
Palm Bay, Florida 32907

ii. County Representative

Brevard County Public Works Engineering
Attn: Rachel Gerena, P.E., Engineering Program Manager
2725 Judge Fran Jamieson Way, Suite A-204
Viera, Florida 32940

With a copy to:

John Denninghoff
Assistant County Manager
2725 Judge Fran Jamieson Way, Suite C-301
Viera, FL 32940

22. Indemnification

To the extent allowed by law and subject to the provisions set forth in Sec. 768.28, Florida Statutes, each party is responsible for the negligent or wrongful acts or omissions of its own employees, agents or other representatives while acting within the scope of their employment or otherwise within their authorized capacity, arising from the activities encompassed by this Agreement. Nothing contained within this Agreement requires either party to indemnify the other party for any losses, damages or injuries caused by or otherwise arising from the negligent or wrongful act or omission of its employees, agents or representatives. Neither party, by execution of this Agreement, will be deemed to have waived its statutory right/defense of sovereign immunity, or to have increased its limits of liability under Sec. 768.28, Florida Statutes, as may be amended from time to time. Each party shall retain all rights, defenses, and remedies under Florida law in the event of any claims, suits or other disputes arising from its performance of the obligations under this Agreement. Nothing in this Agreement shall be interpreted to create any causes of action for any third parties not a party to this Agreement.

23. Insurance

The City shall require the contractor to name Brevard County as additional insured for all work associated with Phases 2 and 3. In any contract for the construction of any Phase of Intersection Project in this Agreement the City shall require contractor to indemnify and defend County.

24. Public Records

The County and the City shall comply with Florida's Public Records Laws and agree to keep and maintain public records in accordance with Florida law and records retention schedules. Further the parties will ensure that records which are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

25. Attorney's Fees

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

26. Default

Either party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

27. Severability

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

28. Entirety

This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to the Agreement unless such amendments are in writing and signed by both parties. The County and the City acknowledge and agree that this Agreement was mutually negotiated and drafted and, if an ambiguity requires judicial interpretation, the terms of this Agreement shall not be more harshly construed against one party over the other party. The construction plans as shown in Exhibits A through C are conceptual in nature. The parties agree that Exhibits A through C may be modified through the County permit approval process.

29. Recording

Upon execution of the Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded Agreement to the City Representative listed in Section 21.

30. Effective Date

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County.

31. Applicable Law

This Agreement and the provisions herein shall be construed, controlled and

interpreted according to the laws of Florida.

32. Venue and Non-Jury Trial

Venue for any action brought by any party to this agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be non-jury.

33. Breach

If the County or the City shall allege or otherwise assert the other party has failed to perform any of its material obligations under this Agreement, the non defaulting party shall provide written notice of such breach specifying in reasonable detail the nature of such breach or failure of condition. The party alleged to have breached the Agreement shall have forty-five days after receipt of such notice to cure such breach. Failure to timely begin any Phase of construction or failure to complete any Phase shall be a breach of this Agreement. The failure to issue Right-of-Way/Easement permit number 19RW00460 within five days by the County shall be a breach of this Agreement. Either party may extend the time to cure any breach beyond forty-five days provided the defaulting party commences reasonable action to cure within the forty-five-day cure period and continuously pursues the cure to completion.

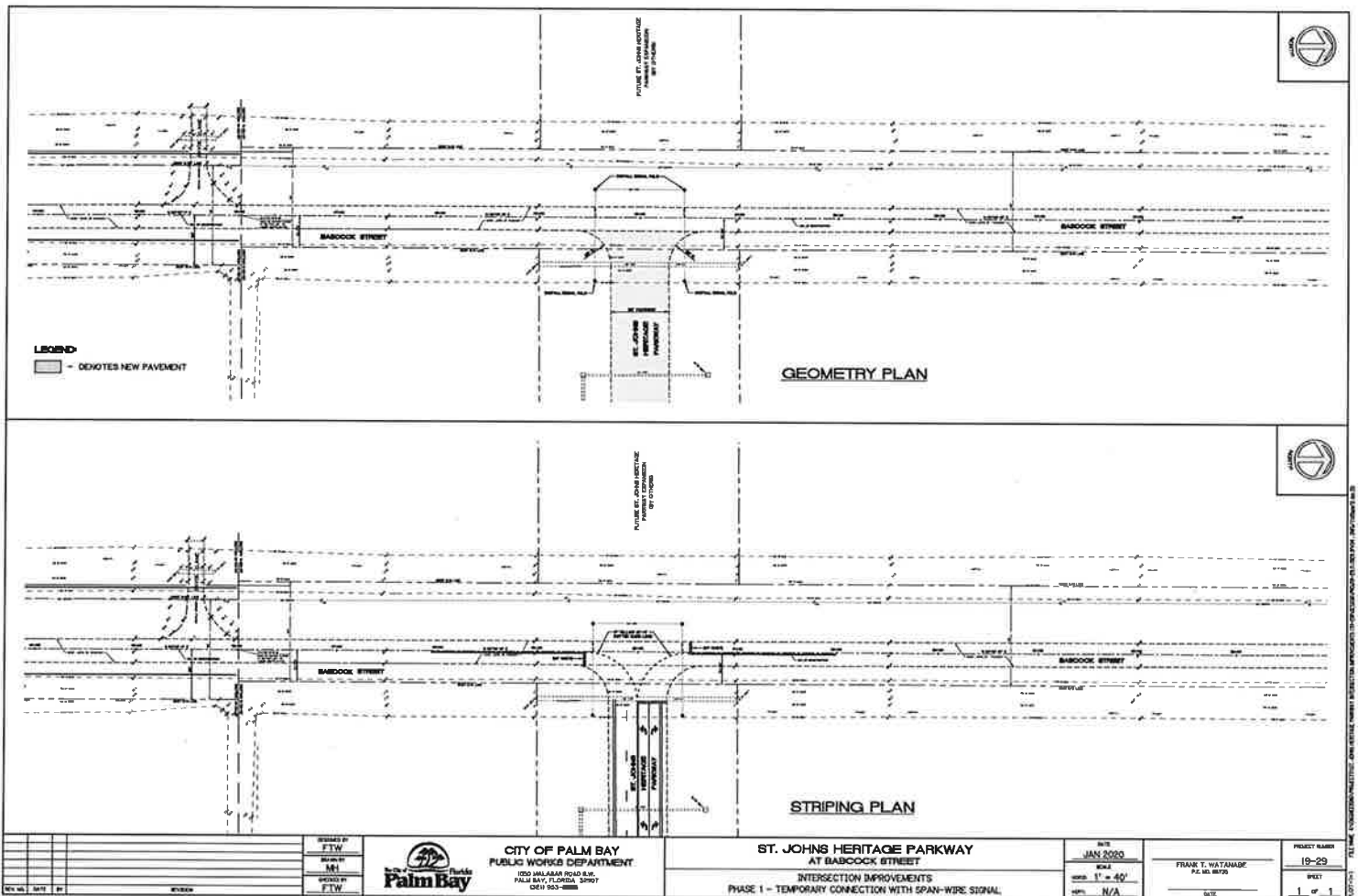
34. Termination

This Agreement will terminate upon the completion of the Future Project and all fees set aside in accordance with Section 16 will no longer be set aside.

35. Binding Effect

Each party represents to the other it has undertaken all necessary actions to execute this Agreement and has the legal authority to enter this Agreement and to undertake all obligations imposed on it.

Exhibit A



					<div>DESIGNED BY FTW</div> <div>DRAWN BY MM</div> <div>CHECKED BY FTW</div>		<div><div>CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 1000 PALM JAVELIN ROAD, S.W. PALM BAY, FLORIDA 32909 (321) 953-4888</div></div>		<div>ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET</div> <div>INTERSECTION IMPROVEMENTS PHASE 1 - TEMPORARY CONNECTION WITH SPAN-WIRE SIGNAL</div>				<div>DATE JAN 2020</div> <div>SCALE 1" = 40'</div> <div>DATE N/A</div>		<div>PROJECT NUMBER 19-29</div> <div>SHEET 1 OF 1</div>	
REV. NO. DATE BY REVISION									FRANK T. WATANABE P.E. NO. 88726							

Exhibit B

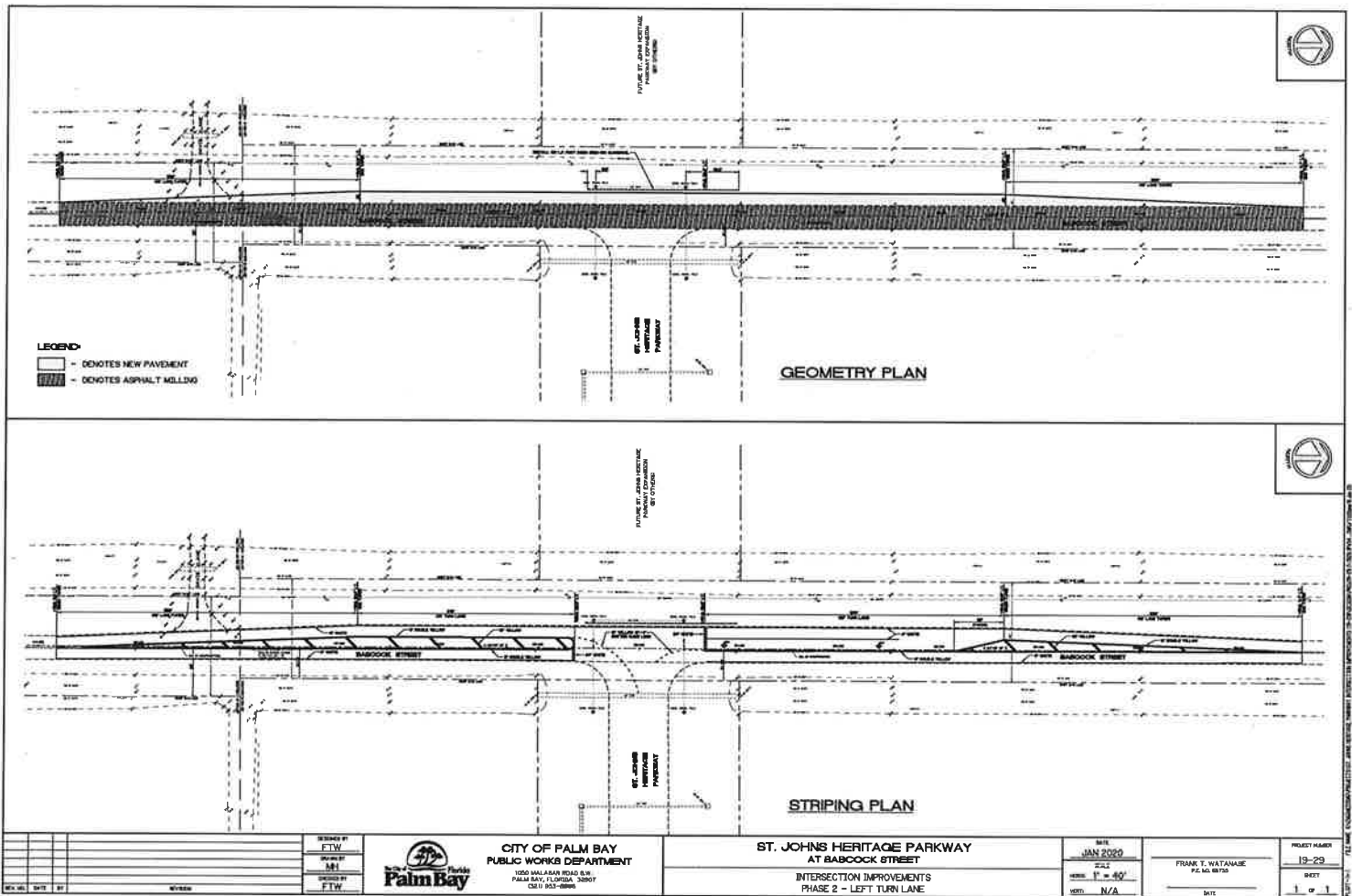
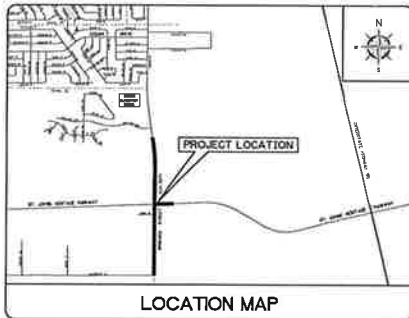


Exhibit C

ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS



OCTOBER 2019



OWNER: CITY OF PALM BAY
120 MALABAR ROAD SE
PALM BAY, FLORIDA 32907

SITE ADDRESS: ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET
PALM BAY, FLORIDA 32909

LOCATION: SECTIONS 3 & 10, TOWNSHIP 30 SOUTH, RANGE 37 EAST

ZONING: N/A

F.L.U.C.C.S.: 1900 OPEN LAND

DESCRIPTION OF WORK: ROAD CONSTRUCTION, PAVING AND TRAFFIC SIGNAL AT BABCOCK STREET, APPROXIMATELY 2,875 L.F. SOUTH OF AND 2,550 L.F. NORTH OF ST. JOHNS HERITAGE PARKWAY, ALONG WITH DRAINAGE IMPROVEMENTS AND FINAL STRIPING. (5,425 L.F. / 1.03 MILES)

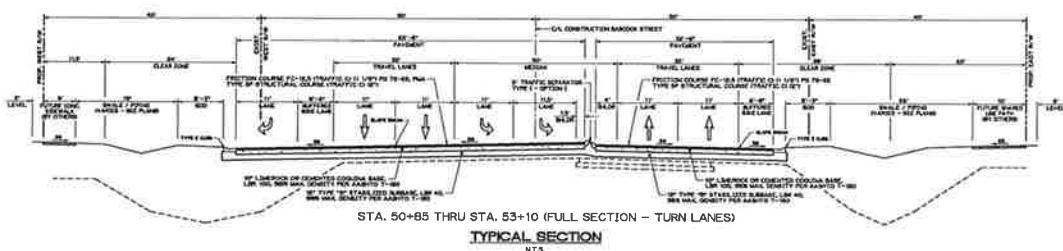
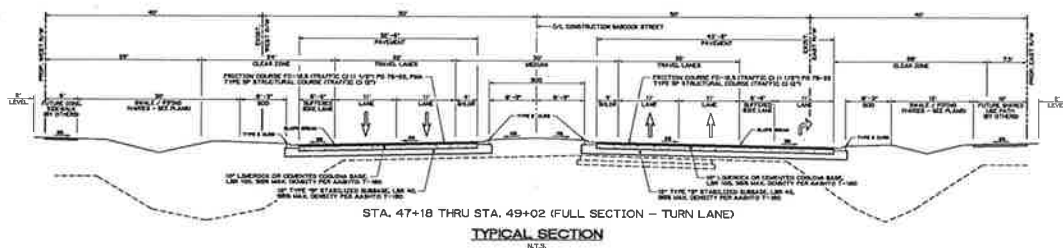
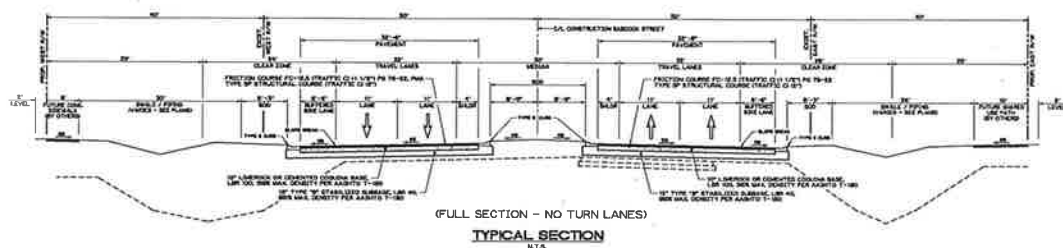
UTILITIES ENCOUNTERED


FLORIDA POWER AND LIGHT	(POWER)	(321) 726-4864
SPECTRUM	(CABLE)	(321) 757-6451
A T & T	(TELEPHONE)	(321) 255-9244
PALM BAY C & I T	(F.O.C)	(321) 952-3475
PALM BAY UTILITY DEPARTMENT	(WATER & SEWER)	(321) 952-3410

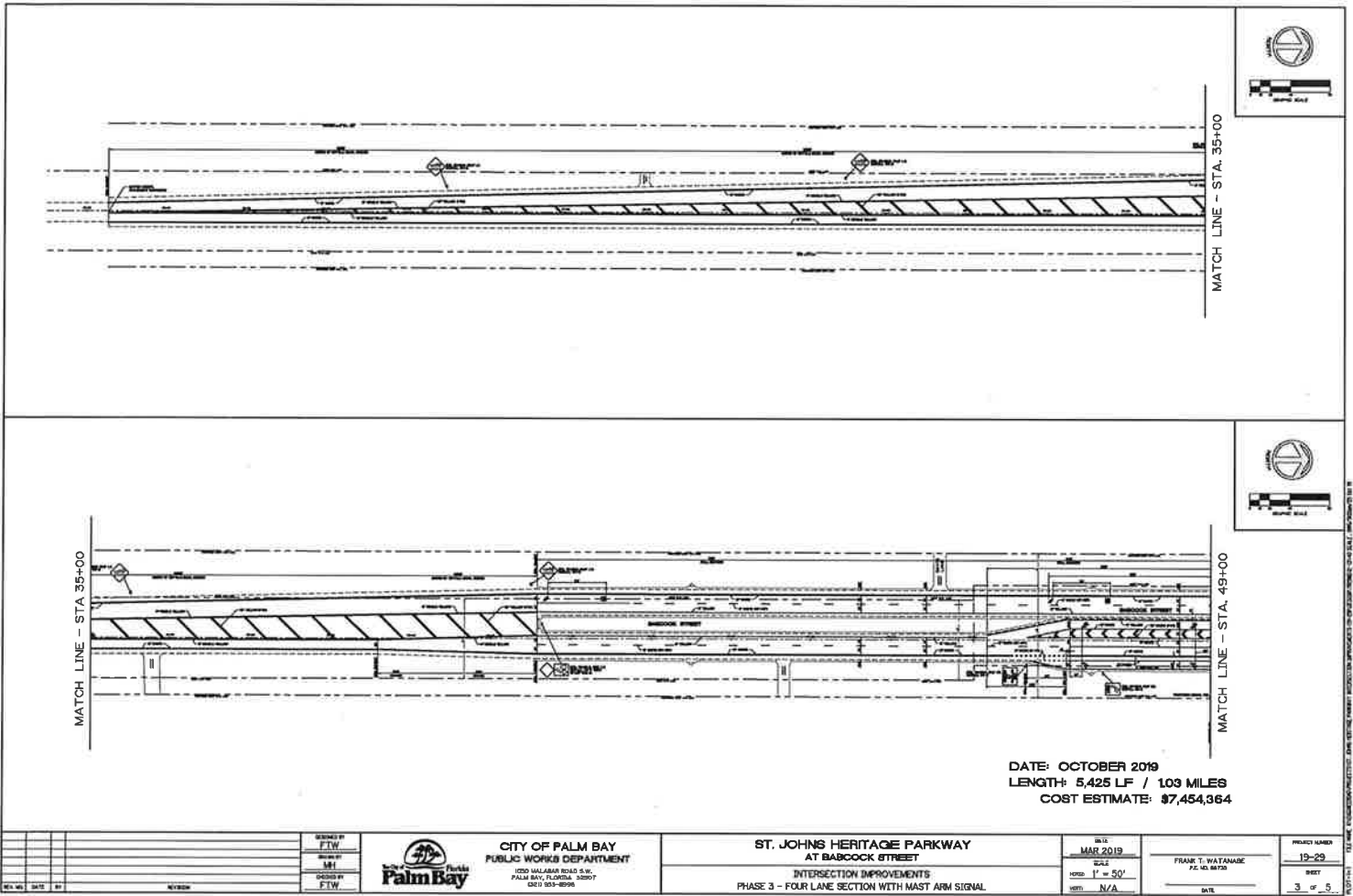
INDEX OF SHEETS

1	COVER SHEET
2	GENERAL NOTES
3	STORMWATER POLLUTION PREVENTION PLAN
4	TYPICAL ROADWAY SECTIONS
5	PLAN & PROFILE - STA. 21+00 THRU STA. 27+00
6	PLAN & PROFILE - STA. 27+00 THRU STA. 33+00
7	PLAN & PROFILE - STA. 33+00 THRU STA. 39+00
8	PLAN & PROFILE - STA. 39+00 THRU STA. 45+00
9	PLAN & PROFILE - STA. 45+00 THRU STA. 51+00
10	PLAN & PROFILE - STA. 51+00 THRU STA. 57+00
11	PLAN & PROFILE - STA. 57+00 THRU STA. 63+00
12	PLAN & PROFILE - STA. 63+00 THRU STA. 69+00
13	PLAN & PROFILE - STA. 69+00 THRU STA. 74+00
14	PLAN & PROFILE - STA. 74+00 THRU STA. 76+00
15	DETAIL SHEET
16	CROSS SECTIONS - 1 THRU 4 (STA. 21+15 THRU STA. 27+00)
17	CROSS SECTIONS - 5 THRU 8 (STA. 29+00 THRU STA. 35+00)
18	CROSS SECTIONS - 9 THRU 12 (STA. 37+00 THRU STA. 42+50)
19	CROSS SECTIONS - 13 THRU 16 (STA. 45+00 THRU STA. 51+00)
20	CROSS SECTIONS - 17 THRU 20 (STA. 52+50 THRU STA. 60+00)
21	CROSS SECTIONS - 21 THRU 24 (STA. 62+18 THRU STA. 68+18)
22	CROSS SECTIONS - 25 THRU 28 (STA. 70+18 THRU STA. 76+28)
23	MAINTENANCE OF TRAFFIC - PHASE 1
24	MAINTENANCE OF TRAFFIC - PHASE 1
25	MAINTENANCE OF TRAFFIC - PHASE 2
26	MAINTENANCE OF TRAFFIC - PHASE 2
27	MARKING & SIGNING - STA. 21+00 THRU STA. 33+00
28	MARKING & SIGNING - STA. 33+00 THRU STA. 45+00
29	MARKING & SIGNING - STA. 45+00 THRU STA. 57+00
30	MARKING & SIGNING - STA. 57+00 THRU STA. 69+00
31	MARKING & SIGNING - STA. 69+00 THRU STA. 76+00
32	SIGNALIZATION - PLAN VIEW
33	SIGNALIZATION - MAST ARM TABULATION
34	SIGNALIZATION - MAST ARM ASSEMBLIES
35	TYPICAL ROADWAY SECTIONS (S.J.H.P)
36	PLAN & PROFILE - STA. 13001+00 THRU STA. 13007+00 (S.J.H.P)
37	PLAN VIEW - OFF SITE DRAINAGE (S.J.H.P)
38	MARKING & SIGNING - STA. 13001+38.3 THRU STA. 13006+50 (S.J.H.P)


DESIGNED BY FTW		CHECKED BY MI		DRAWN BY FTW		CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 1200 MALABAR ROAD SE PALM BAY, FLORIDA 32907 (321) 952-4996		ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL		DATE OCT 2019		PROJECT NUMBER 19-29	
SCALE N/A		DATE N/A		PROJECT NUMBER 19-29		PROJECT NUMBER 19-29		PROJECT NUMBER 19-29		PROJECT NUMBER 19-29		PROJECT NUMBER 19-29	

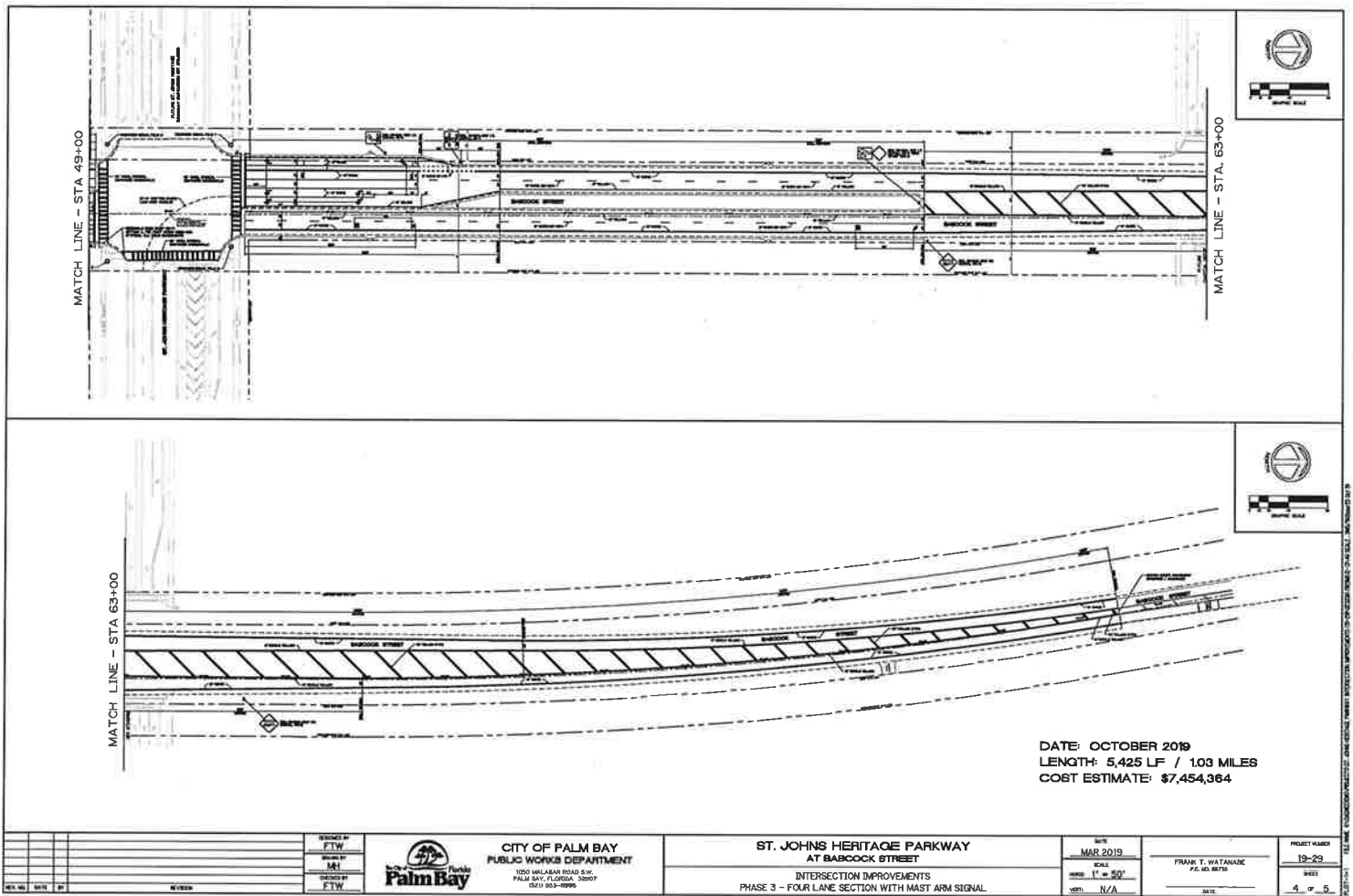


DATE: 09/15/2019 TIME: 10:00 AM BY: [Signature] REVIEWED: [Signature]		DESIGNED BY: FTW DRAWN BY: M-L CHECKED BY: FTW	 CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 1250 MALABO ROAD SW. PALM BAY, FLORIDA 32909 TEL: 321-953-0986	ST. JOHNS HERITAGE PARKWAY AT BARDOOK STREET INTERSECTION IMPROVEMENTS PHASE 3 - FOUR LANE SECTION WITH WEST ARM SIGNAL	DATE: OCT 2019 NAME: [Blank] VOTES: N/A HOURS: N/A	PROJECT NUMBER: 19-29 SHEET: 2 of 5 DRAWN BY: FRANK T. WATANABE DATE: [Blank]
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DATE: OCTOBER 2019
 LENGTH: 5,425 LF / 1.03 MILES
 COST ESTIMATE: \$7,454,364

<table><tr><td>REV</td><td>NO</td><td>DATE</td><td>BY</td><td>REVISION</td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr></table>					REV	NO	DATE	BY	REVISION																					<table><tr><td>DESIGNED BY</td><td>FTW</td></tr><tr><td>CHECKED BY</td><td>MI</td></tr><tr><td>DESIGNED BY</td><td>FTW</td></tr></table>	DESIGNED BY	FTW	CHECKED BY	MI	DESIGNED BY	FTW		<p>CITY OF PALM BAY PUBLIC WORKS DEPARTMENT</p> <p>1200 PALM BEACH BLVD. S.W. PALM BAY, FLORIDA 32907 (321) 325-3000</p>	<p>ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET</p> <p>INTERSECTION IMPROVEMENTS</p> <p>PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL</p>	<table><tr><td>DATE</td><td>MAR 2019</td></tr><tr><td>SCALE</td><td>1" = 50'</td></tr><tr><td>UNIT</td><td>N/A</td></tr></table>	DATE	MAR 2019	SCALE	1" = 50'	UNIT	N/A	<table><tr><td>FRANK T. WATANABE P.C. NO. 04730</td><td>PROJECT NUMBER 19-29</td></tr><tr><td>DATE</td><td>SHEET 3 of 5</td></tr></table>	FRANK T. WATANABE P.C. NO. 04730	PROJECT NUMBER 19-29	DATE	SHEET 3 of 5
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DATE	SHEET 3 of 5																																																		





700-5-22 2 FA

700-5-22 2 EA



8) PEDESTRIAN MOVEMENT WILL BE A SEPARATE PHASE 9 WITH 7 SECOND WALK AND 36 SECOND CLEARANCE.

5 of 5

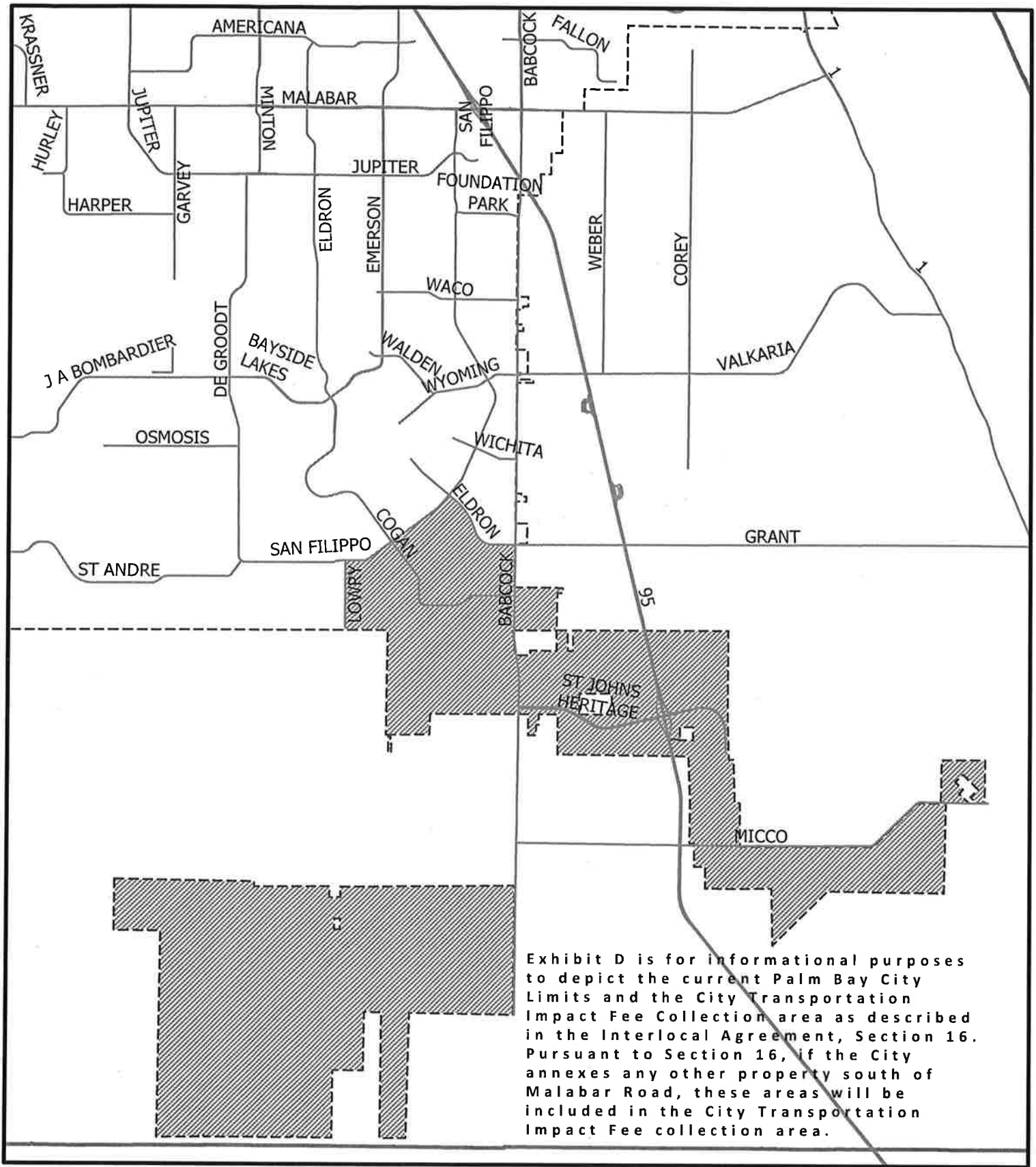


Exhibit D

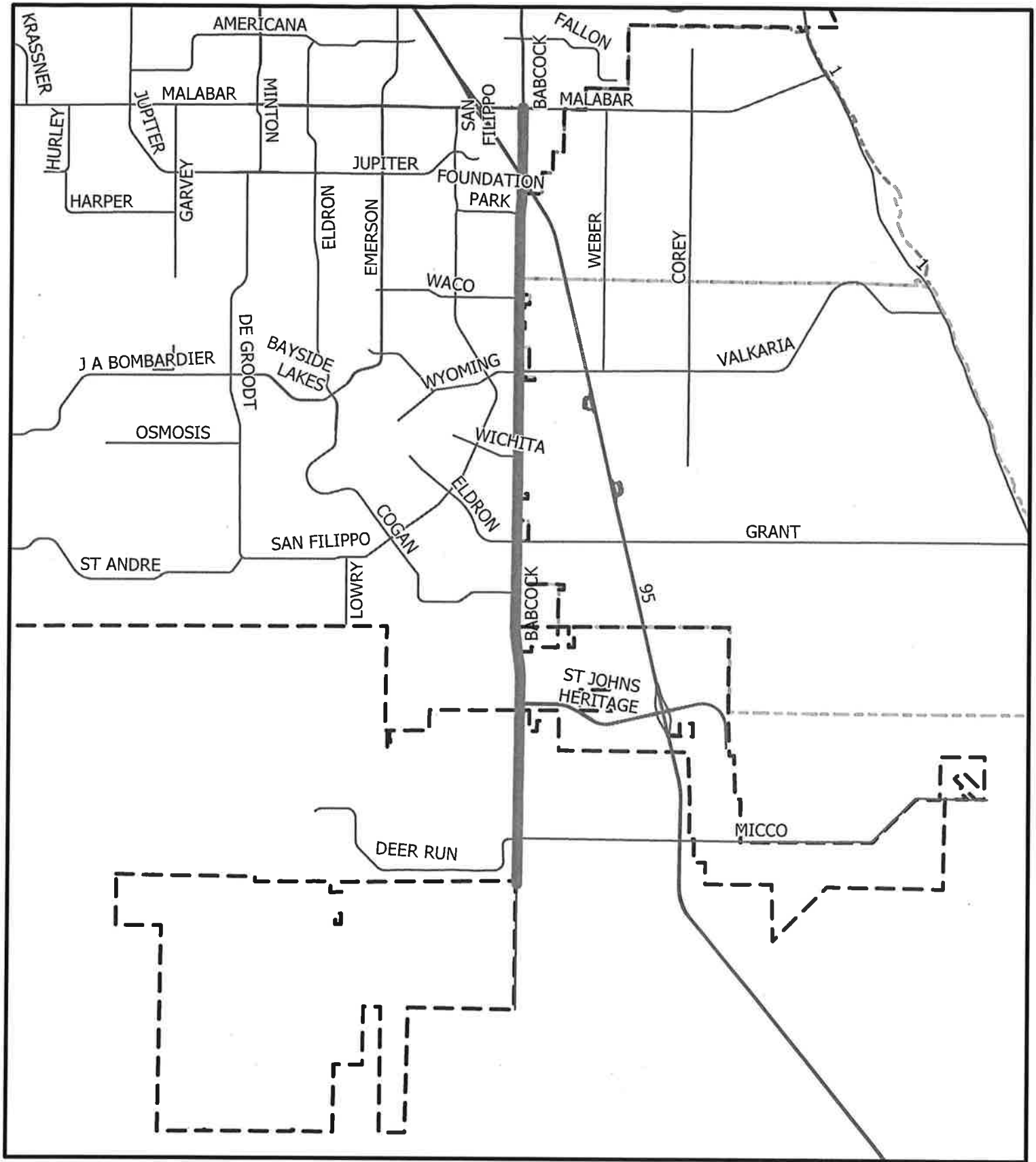






Exhibit E

-  Babcock Widening
-  Palm Bay City Lin 326
-  Grant-Valkaria City Limits
-  Malabar City Limits