



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Unfinished Business

I.1.

4/21/2020

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: For the St. Johns Heritage Parkway Intersection Project, there is no fiscal impact to the County. For the future Babcock Street Widening, the County will set aside 50% of the new revenue from 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. The reconstruction efforts by the County remain unchanged from current commitments.

Dept/Office:

Public Works Department/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 approve and authorize the Chair to execute the attached Interlocal Agreement.

Summary Explanation and Background:

Since February 11, 2020, staff for the County and City have been collaborating to resolve language to draft an Interlocal Agreement using direction as provided by the Board. The major points of the Interlocal Agreement include:

1. County agrees to make reasonable effort to fund and reconstruct existing Babcock Street in its current two-lane configuration south of Malabar Road. This obligation continues after transfers as described in items 5. b and c. The reconstruction may occur in portions over time as funding becomes available and as determined by the County. Reconstruction limits, methods, and specifications will be at the sole discretion of the County. The restoration efforts shall be restorative in nature such as Full Depth Reclamation (F.D.R.) or milling with resurfacing. Such efforts shall not be asphalt preservation in nature such as micro-resurfacing and asphalt rejuvenation.
2. City will complete the intersection improvements at Babcock Street and the newly constructed St. Johns Heritage Parkway in three phases in substantial conformance with the County permits.
3. City will accept ownership and maintenance responsibilities of the portion of Babcock Street necessary for the Intersection Project upon the Effective Date of the Interlocal Agreement.
4. City and County agree to partner in efforts to complete the future widening of Babcock Street south of 688

Malabar Road, as funding becomes available. Upon the Effective Date of the Interlocal Agreement, the City and County agree to set aside 50% of their respective transportation impact fees received from designated areas for the future widening of Babcock Street. 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.

5. City reaffirms its prior commitment as stated in the Joint Planning Agreement, dated July 26, 2016 and further agrees to take over ownership and maintenance of any segment of Babcock Street from the south City limits to Malabar Road under the following conditions:
 - a. After reconstruction and widening to four lanes (Future Project) or,
 - b. The Annual Average Daily Traffic (A.A.D.T.), as determined by the Space Coast Transportation Planning Organization (T.P.O.), exceeds the Maximum Acceptable Volume (M.A.V.) for any segment of Babcock Street south of Malabar Road to the southerly city limits.
 - c. For any segment of Babcock Street that already exceeds the Maximum Acceptable Volume (M.A.V.), the City will assume ownership and maintenance upon reconstruction of the current two-lane configuration or two years, whichever is later.
6. The Interlocal Agreement addresses annexation by the City as they accept ownership and maintenance of Babcock Street segments.

The attached Interlocal Agreement outlines the commitments, terms and conditions of the partnership between the City and County. The City of Palm Bay is currently expected to consider this Interlocal Agreement at a Special Council Meeting on April 22, 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.

Option 2: Do not approve the Interlocal Agreement.

Option 3: Provide staff with other direction.

Clerk to the Board Instructions:

Please return the Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street to the Public Works Department.



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

April 22, 2020

MEMORANDUM

TO: Corrina Gumm, Interim Public Works Director

RE: Item I.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 April 21, 2020, discussed Board action pertaining to the Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street; and approved Option 1 authorizing the Chair to execute the Interlocal Agreement with the City of Palm Bay for the St. Johns Heritage Parkway Intersection and Babcock Street. Enclosed is an executed copy of the Agreement.

Upon execution and recordation by the City of Palm Bay, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Deputy Clerk

/sm

Encl. (1)

cc: Finance
Budget
Contracts Administration
Assistant County Manager Denninghoff

new 1

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 jointly agree that the success of the future widening of Babcock Street south of Malabar Road will require joint partnership, planning, and resource allocations to complete the project for the benefit of the public; 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; and

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 Babcock Street necessary for the Intersection Project.

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 (J.P.A.) 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. Pursuant to Article III, Section 9 of the J.P.A. future transfers of right-of-way require a separate agreement. This Agreement shall fulfill the requirements of the J.P.A. in regards to maintenance and ownership transfers of Babcock Street from the County to the City.

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 and included for illustrative purposes only, 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.

- a. This Agreement does not address ownership and maintenance of the Interstate 95 bridge overpass on Babcock Street currently owned and maintained by F.D.O.T. There are no commitments made by the City and County to assume ownership and maintenance responsibility for the Interstate 95 bridge overpass.

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 preliminarily 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 the Effective Date of this Agreement, the City shall accept ownership and maintenance responsibilities of the Intersection Project area (including all retention/detention ponds and off-site acquisitions related to the Intersection Project) and all associated improvements, within the limits of the Intersection Project as shown in Exhibit C, and as revised in accordance with Section 31, in accordance with state statute.
- b. 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.a. 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.
- c. The City agrees to annex all areas for the portion of the Intersection Project, as described above in Section 7.a within one hundred and twenty days of the Effective Date.
- d. The County shall retain permit authority over right of way permits

19RW00460, 20RW00080, and 20RW00081 as part of the Intersection Project until such time as Intersection Project is complete and the associated right of way permits are closed and certificates of completions have been issued. The City shall assume all other permitting authority associated with Intersection Project area.

8. Right of Way for Intersection Project Phase 3

The 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 12 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. The County commits that it will work with the City to value engineer Phase 3 of the Intersection Project to try and reduce the overall cost of Phase 3. Any design changes needed or proposed 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 No. 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. July 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. Additionally, the City may submit an independent traffic analysis, funded by the City or a third party and signed and sealed by a Professional Engineer licensed in the State of Florida, to demonstrate that the improvements contemplated in Phase 3 of Intersection Project are not necessary by the deadlines in this Section and could be delayed. County shall review the submitted traffic analysis and provide a response within 60 days. Should the County agree with the traffic analysis and agree to delay Phase 3 of the Intersection Project, a written amendment shall be required as outlined in Section 31 of this Agreement.

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 and 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. 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. The impact fees collected for Future Project shall be expended in accordance with applicable City, County, and State laws and ordinances. The County and the City will work diligently to ensure transportation impact fees collected for Future Project are used as outlined in this Section in a timely manner. The Parties agree to send notice to each other one year prior to the expiration of any transportation impact fees collected for Future Project so that the parties may coordinate and identify a manner to expend transportation impact fees collected for Future Project consistent with this Section. The time periods prescribed in the County and City ordinances may be extended for an identified use so long as they will be used in the reasonably immediate future, which is defined as no more than one year.
- f. 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.
- g. 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.

16. Right-of-Way for Future Project

The City and the 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.

17. Joint Planning and Concurrency for Future Project

- a. The City and the County agree that coordination regarding future development, as further described in the Joint Planning Agreement (J.P.A.), 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 J.P.A. 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 J.P.A. 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.

18. Construction of Future Project Widening

Each party shall have the right to have a representative present at any construction-related meetings, such as preconstruction conferences, site meetings, and progress meetings which shall be set at such time and place as the parties deem appropriate. Prompt notice shall be provided in advance of the 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 each party's designated representative.

Each party shall have the opportunity to conduct inspections during the construction and report any findings to the lead agency. If at any time, any defects shall be found prior to final completion of the project, the party shall provide written notice to the lead agency giving the lead agency a cure period to correct such defects. Prior to the release of any Public Construction Bonds, the County and the City shall conduct a final inspection.

19. Ownership and Maintenance After Future Project Widening

- a. The City hereby reaffirms its prior commitment as stated in the J.P.A. and further agrees to take over ownership and maintenance of any portion of any segment(s) of Babcock Street from the south City limit to Malabar Road after reconstruction and widening to four lanes of travel. The City and County, consistent with state and local law, agree to 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.

- b. 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.
- c. Each party agrees to cooperate in enforcing the construction contracts, including but not limited to, assignment of contract rights to enforce Public Construction Bonds, claims, warranties and guarantees to the extent requested by the other party.
- d. If the County is the lead agency, the County shall deliver to the City all of the following:
 - (i) Plans. Construction plans for any portion of the widened Babcock Street, including certified As-Built Survey Drawings, and Engineer of Record project completion certifications.
 - (ii) Permits. Assignment of and copies of authorizations and permits issued to the County for the construction of the future widening of Babcock Street.

20. Permitting

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

Transfer Upon Over Capacity

21. Segments

The City and County agree that Babcock Street capacity status shall be evaluated in segments as defined and monitored by the Space Coast Transportation Planning Organization (T.P.O.) and as may be amended from time to time by the T.P.O. The City and County agree that the traffic count program that is managed by the T.P.O. shall be used to determine the current traffic volume in relation to the Maximum Acceptable Volume (M.A.V.). The M.A.V. of 17,700 is considered the capacity of the road for the purpose of this Agreement.

Notwithstanding the forgoing, the parties agree to the below modification to the T.P.O. defined segments: As the Intersection Project will bisect a current segment (Micco Rd to Grant Rd) as defined by the T.P.O. upon completion of Phase 1 of the Intersection Project, the City and County agree that the portion of Babcock Street from St. Johns Heritage Parkway to Grant Road will become a new segment for purposes of this

Agreement regardless of whether the TPO changes the segment evaluation of Babcock Street.

22. Ownership Transfer Once Capacity Reached

The City agrees that should the Annual Average Daily Traffic (A.A.D.T.), as determined by the T.P.O., exceed the Maximum Acceptable Volume (M.A.V.) for any segment of Babcock Street south of Malabar Road, excluding the F.D.O.T. Interstate 95 bridge area, to the southern terminus of the Intersection Project, the City shall take over maintenance and ownership of said segment of Babcock Street prior to reconstruction and widening to 4 lanes.

- a. The County shall prepare a county deed and resolution and any other documents necessary to effectuate the conveyance and transfer of the roadway. 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 60 days from a determination by the T.P.O. that the A.A.D.T. exceeds the M.A.V.
- b. The City and County, consistent with state and local law, agree to take appropriate action to annex segments of Babcock Street into the City once the T.P.O. determines that the A.A.D.T. exceeds the M.A.V. if the City has not previously annexed the section of Babcock Street right-of-way.

Should any segments of Babcock Street already exceed the M.A.V. for that segment on the Effective Date of this Agreement, the City shall assume ownership and maintenance pursuant to this Section upon reconstruction of the existing two-lane configuration by the County or two years from the Effective Date, whichever is later.

23. Reconstruction Efforts

The County agrees to make reasonable effort to fund and reconstruct existing Babcock Street in its current two-lane configuration south of Malabar Road one time notwithstanding ownership transfer in Section 22 (excluding Intersection Project area). The reconstruction may occur in portions over time as funding becomes available and as determined by the County. Reconstruction limits, methods, and specifications shall be at the sole discretion of the County, subject to the treatment activities described further. The appropriate treatment activity has been determined, at this time, for the following segments of Babcock Street to be reconstructed by Brevard County as follows:

- a. Babcock Street from Malabar Road to Saint Street is to be milled and overlaid with 2" SP 12.5 fiber reinforced superpave asphalt concrete, plus 1.5" FC 12.5 fiber reinforced asphalt concrete friction course.
- b. Babcock Street from Saint Street to Micco Road (excluding the limits of the Intersection Project) is to receive full-depth reclamation of the existing asphalt

and base material, and 2" SP 12.5 fiber reinforced superpave asphalt concrete, plus 1.5" FC 12.5 fiber reinforced asphalt concrete friction course.

- c. The Babcock Street and Wyoming Drive/Valkaria Road Intersection Improvement project that is currently under construction is to receive both of the above-mentioned activities, as designed and in accordance with the existing plans and contract.

The assessment and evaluations are performed in accordance with national standards. Should the assessment or evaluation change, or new methodologies become available, the County shall have the discretion to alter the appropriate activity. However, Pavement Preservation treatments, such as rejuvenators or micro-surfacing, will not be used.

Standard Conditions

24. 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

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 24.

33. 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.

34. Applicable Law

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

35. 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.

36. 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.

37. Termination

This Agreement will terminate upon the completion of the Future Project and all fees set aside in accordance with Section 15 will no longer be set aside.

38. 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.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY—SIGNATURES ON FOLLOWING PAGES]

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

Attest:

City of Palm Bay

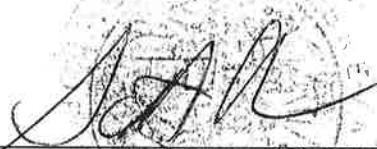
City Clerk

By: _____
(Name/Title)

Date

Attest:

Board of County Commissioners
of Brevard County, Florida



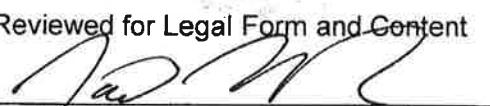
Scott Ellis, Clerk

By: 

Bryan Leber, Chair

As approved by the Board on: 4/21/2020

Reviewed for Legal Form and Content



Assistant County Attorney

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

Attest:

City of Palm Bay



By:

William Capote, Mayor

Date

William Capote

04-24-20

Attest:

Board of County Commissioners
of Brevard County, Florida

Scott Ellis, Clerk

By: _____

Bryan Lober, Chair

As approved by the Board on: _____

Reviewed for Legal Form and Content

Assistant County Attorney

Exhibit A

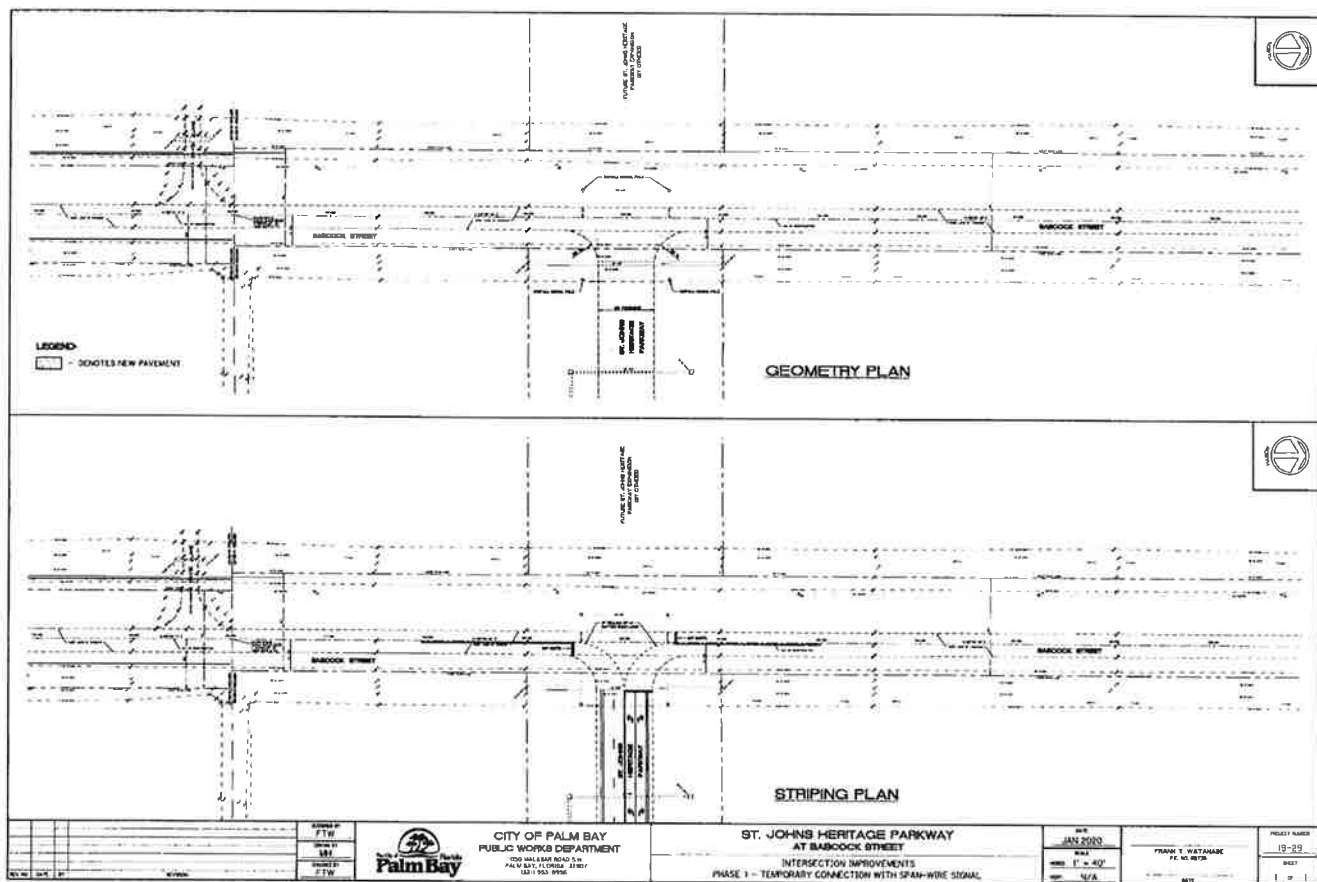


Exhibit B

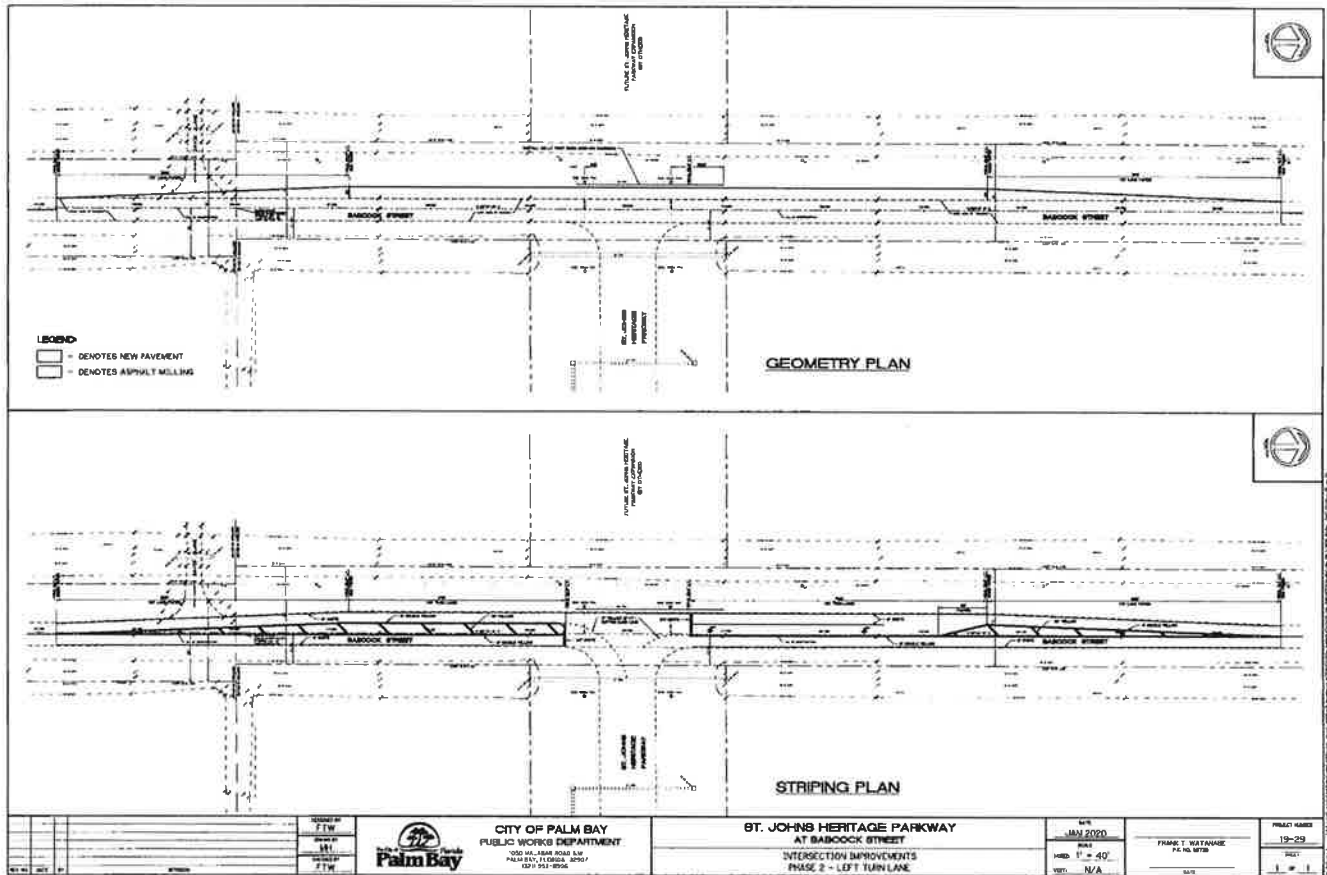


Exhibit C

ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS

OCTOBER 2019



OWNER: CITY OF PALM BAY
120 MAJABAR ROAD SE
PALM BAY, FLORIDA 32909

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

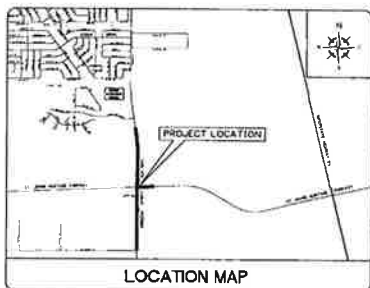
FLORIDA POWER AND LIGHT	(POWER)	(321) 726-4854
SPECTRUM	(CABLE)	(321) 757-6451
A.T. & T.	(TELEPHONE)	(321) 258-9244
PALM BAY C. & T.	(T.O.C)	(321) 952-3475
PALM BAY UTILITY DEPARTMENT	(WATER & SEWER)	(321) 952-3410

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+00)
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. 69+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 (SHP)
36	PLAN & PROFILE - STA. 13001+00 THRU STA. 13007+00 (SHP)
37	PLAN VIEW - OFF SITE DRAINAGE (SHP)
38	MARKING & SIGNING - STA. 13001+38.3 THRU STA. 13006+50 (SHP)

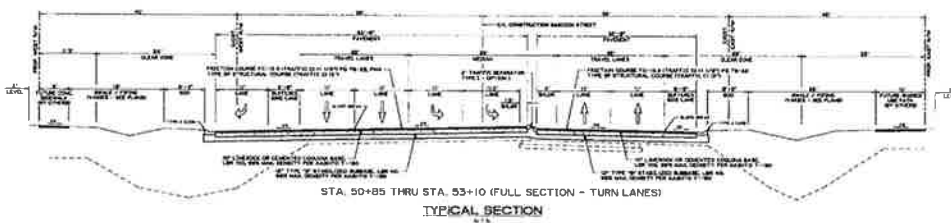
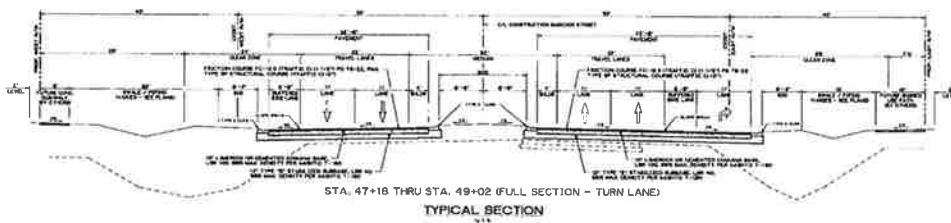
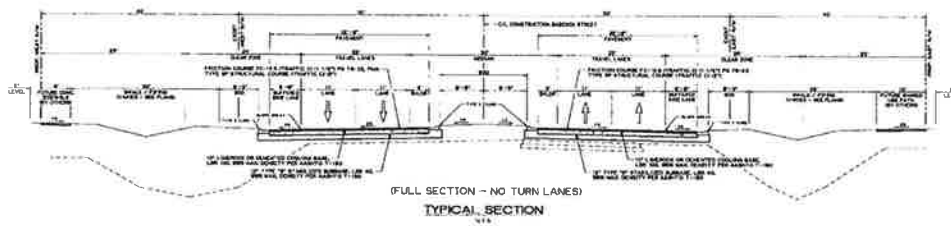


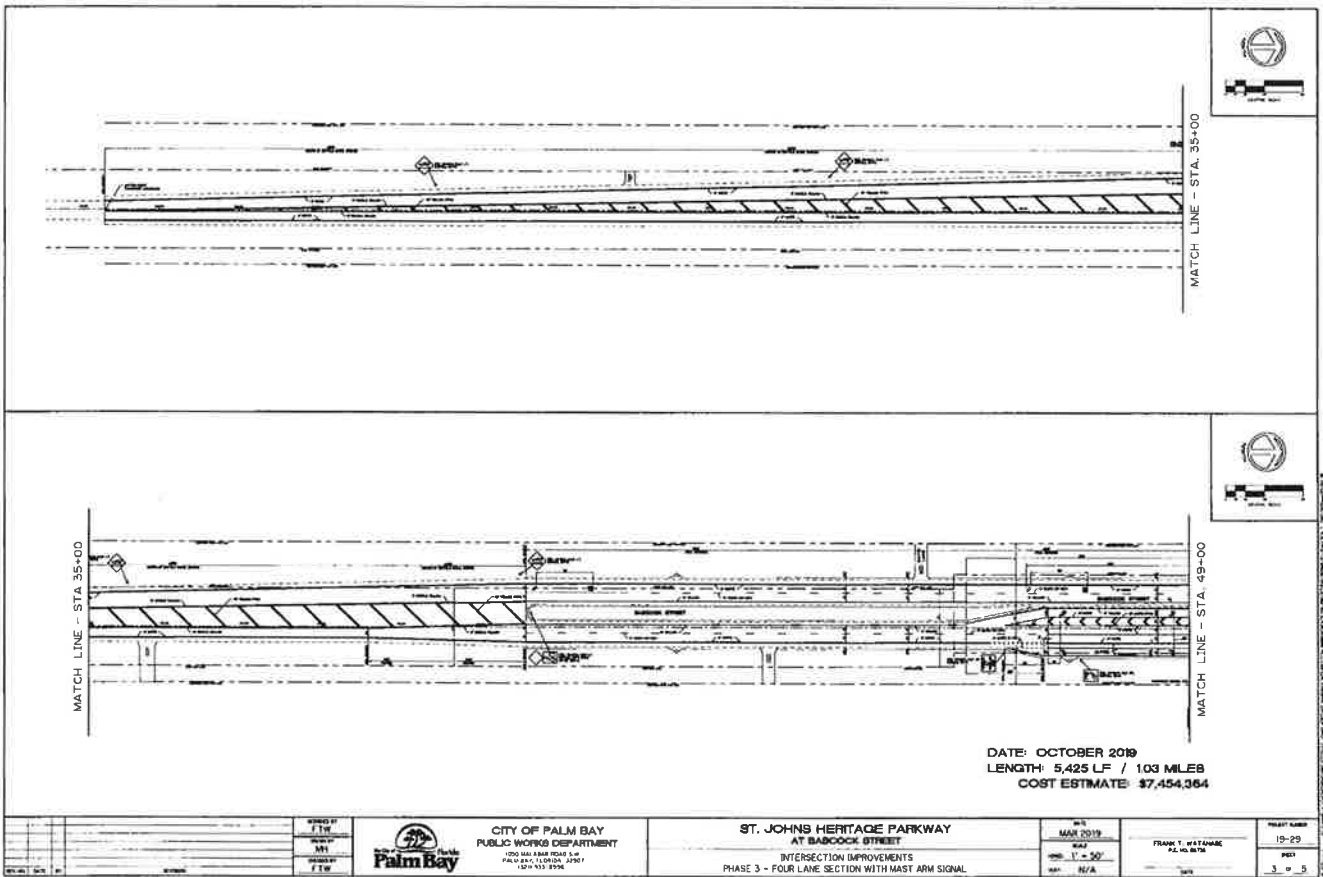
VICINITY MAP

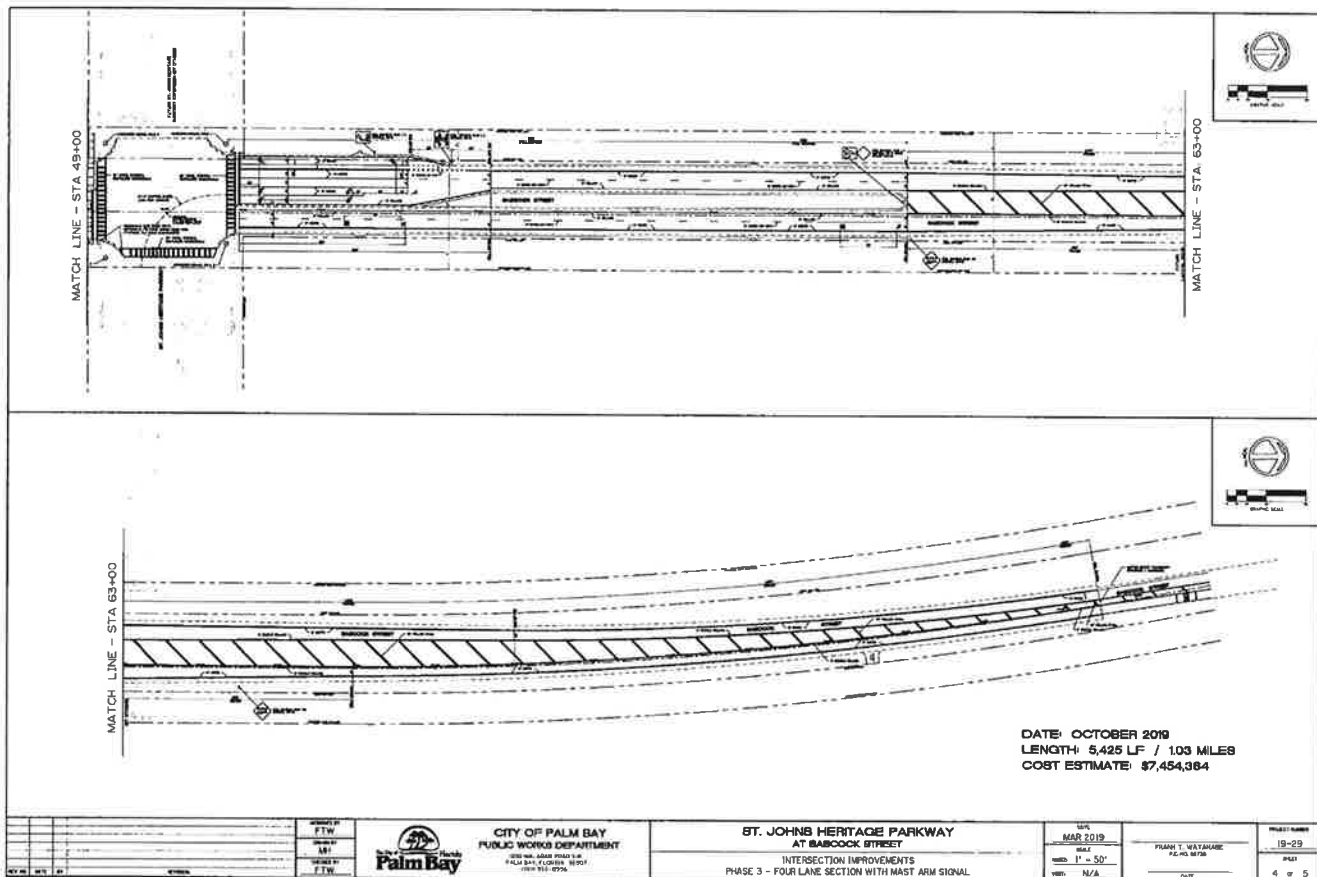


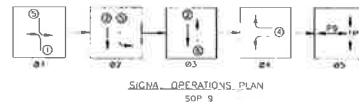
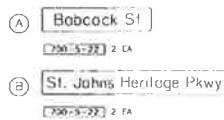
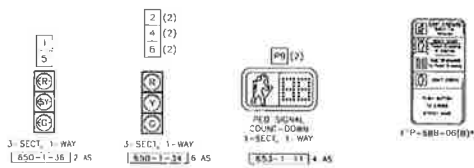
LOCATION MAP

DESIGNED BY DRAWN BY CHECKED BY DATE	CITY OF PALM BAY PUBLIC WORKS DEPARTMENT 120 MAJABAR ROAD SE PALM BAY, FLORIDA 32909 (321) 726-4854	ST. JOHNS HERITAGE PARKWAY AT BABCOCK STREET INTERSECTION IMPROVEMENTS PHASE 3 - FOUR LANE SECTION WITH MAST ARM SIGNAL	OCT 2019 N/A N/A	PROJECT NUMBER 19-20 SHEET 1 OF 5
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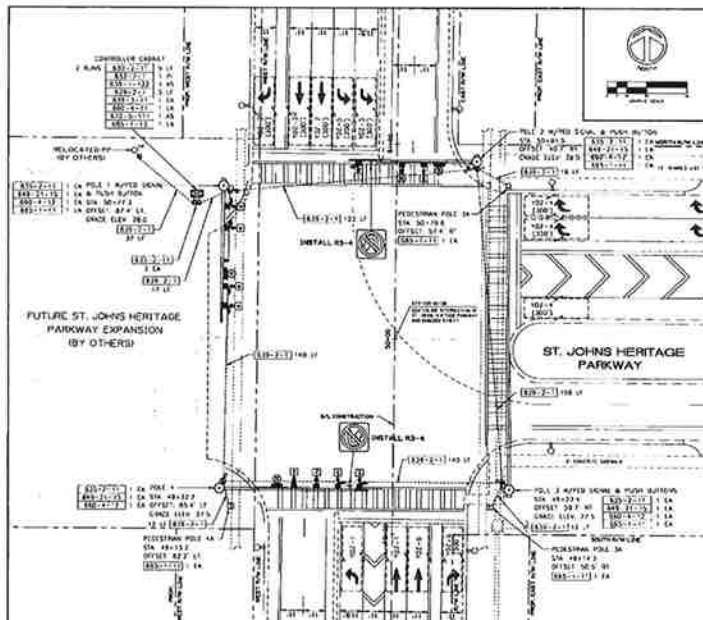


CONTROLLER OPERATIONS

- 1) THE MAJOR STREET IS BABCOCK STREET MOVEMENTS 1, 2, 3 AND 6; THE MINOR STREET IS ST. JOHN'S HERITAGE PARKWAY (MOVEMENT 4)
- 2) SIGNAL OPERATING PLAN IS 91 AS SHOWN ON THIS SHEET WITH THE FOLLOWING FEATURES
- A) CONCURRENT PEDESTRIAN MOVEMENTS TO BE DISPLAYED UPON ACTUATION ONE & 7 - CQ ALL PEDESTRIAN MOVEMENTS
 - B) PEDESTRIAN MOVEMENT WILL BE A SEPARATE PHASE 5 WITH 7 SECOND WALK AND 3 SECOND CLEARANCE

		CONTROLLER ERRORS							
TRIP FUNCTION		1	2	3	4	5	6	7	8
TRIP FUNCTION	VOYCEMENT NUMBER								
	WARNING GREEN	R	R		R	R	R		
	EXTENSION		2		2	2	2		
	MAXIMUM GREEN 1	60	50		60	60	50		
	MAXIMUM GREEN 2								
	YELLOW CLEARANCE	4.0	4.6		4.0	4.0	4.6		
	ALL RED	3	3		3	3	3		
	PEDESTRIAN WALK								
	RED CLEARANCE								
	RECALL		MIN					MPU	
DETECTOR FUNCTION		NL	NL		NL	NL	NL		

ZONE	DETECTOR NO	COVERAGE AREA	DETECTOR OPERATIONS	DE-AY TIME (SEC)
Y021	YC-1	10 x 300	NORMAL	5
Y022	YC-2	10 x 300	NORMAL	5
Y023	YC-3	10 x 300	NORMAL	5
Y024	YC-4	10 x 300	NORMAL	5
Y025	YC-5	10 x 300	NORMAL	5

[illegible]

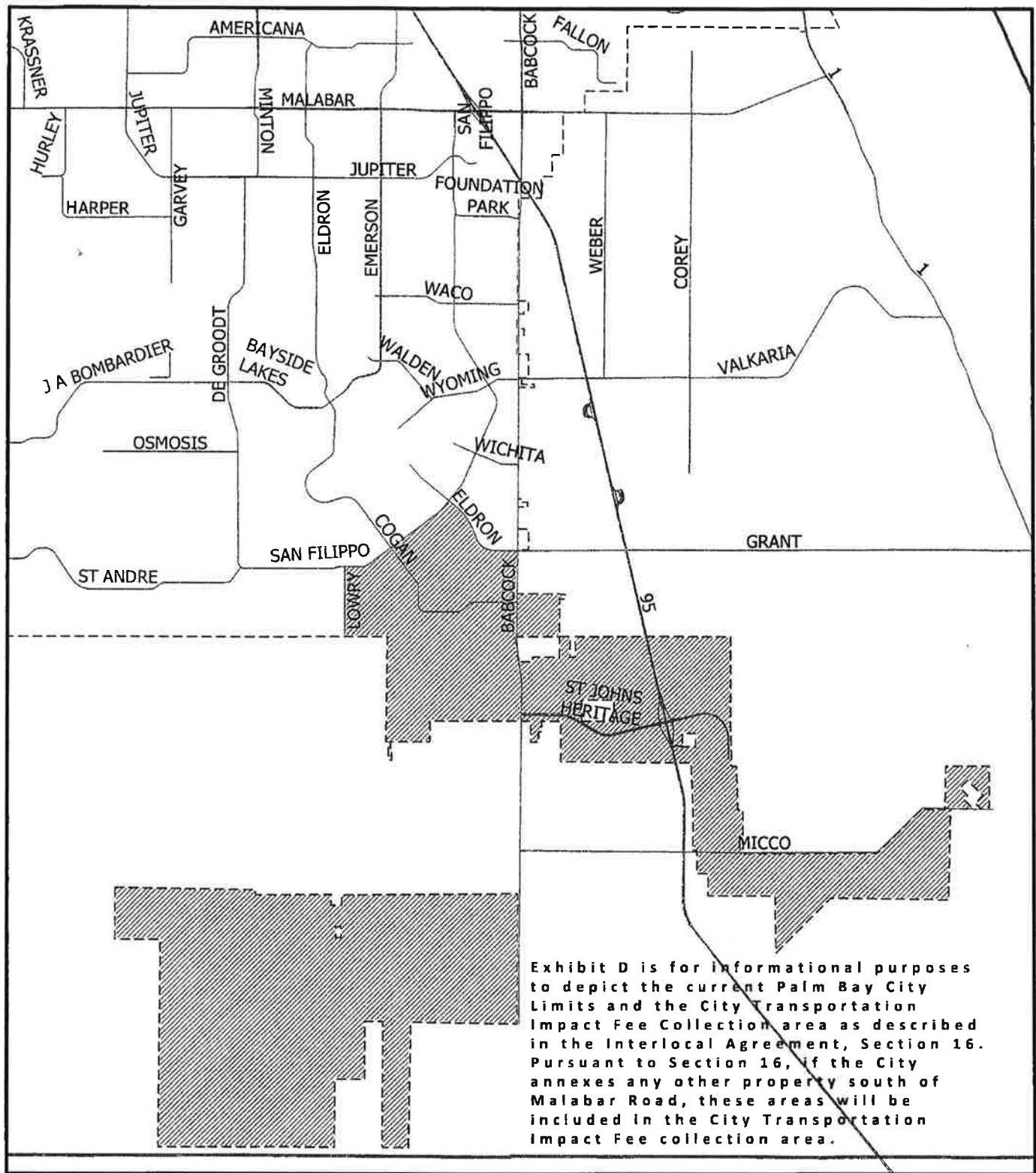


Exhibit D

- Brevard Borders
- Palm Bay City Limits
- City Fee Area

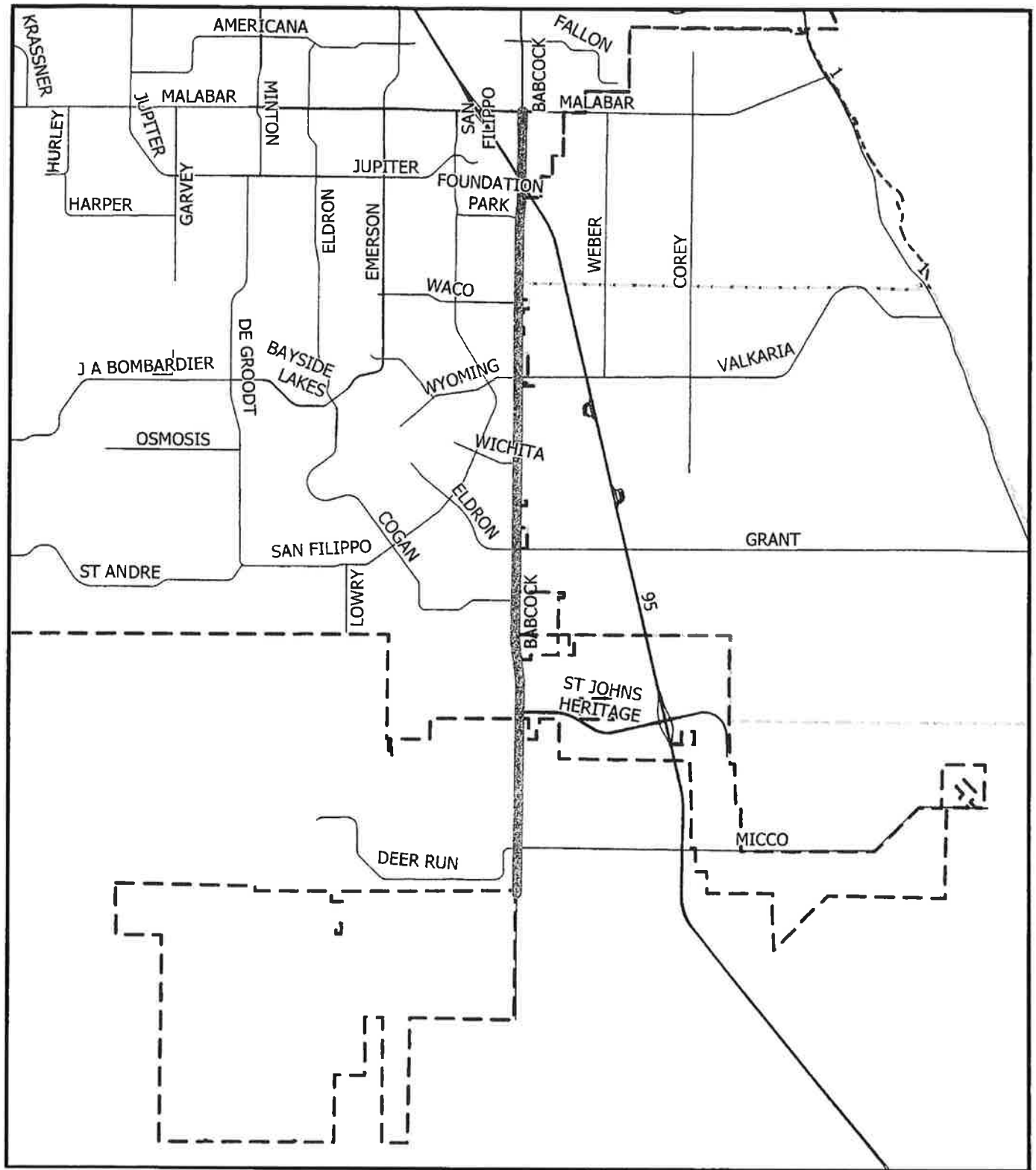






Exhibit E

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