

REGULAR MEETING  
CITY COMMISSION  
CITY OF APALACHICOLA, FLORIDA  
TUESDAY, DECEMBER 3, 2019 - 6:00 PM  
APALACHICOLA COMMUNITY CENTER  
#1 BAY AVENUE  
APALACHICOLA, FLORIDA

AGENDA

You are welcome to speak or comment on any matter under consideration by the Apalachicola Board of City Commissioners when recognized to do so by the Mayor. Once recognized please rise to the podium, state your name for the record and adhere to the five minute time limit for public comment. Those wishing to speak concerning an item on the agenda shall complete a speaker card and give it to the City Clerk before the meeting starts.

- I. Call to Order
  - Invocation (Please rise and remain standing)
  - Pledge of Allegiance
- II. Agenda Adoption
- III. Mayor's and Commissioners Reports and Communications
- IV. City Manager Communications
  - Census 2020 Complete Count Committee
  - DEP Revolving Loan Repayment Plan Update
- V. Attorney Kristy Branch Banks Communication
- VI. Presentations
  - A. Presentation of Service Award – Former Commissioner Mitchell Bartley
  - B. Resolution 2019-26 Thanking the Apalachicola Volunteer Fire Department for Improving the ISO Rating and Protecting the City
    - **Suggested Motion:** To Approve Resolution 2019-26 Thanking the Apalachicola Volunteer Fire Department for Improving the ISO Rating and Protecting the City
- VII. Public Hearing
  - A. Duke Energy Electric Franchise Agreement –Public Hearing and Second Reading
- VIII. Public Comment

The public is invited to speak on any agenda, non-agenda and/or consent agenda topics. Comments should be less than “five” minutes.

*All items on the Consent Agenda are considered routine, to be enacted by one motion. If a member of the governing body requests discussion of an item, it will be removed from the Consent Agenda and considered separately.*

IX. Consent Agenda

A. Meeting Minutes Adoption

- **Suggested Motion:** Adopt the October 8, 2019 Regular Meeting, October 14, 2019 Special Meeting, October 17, 2019 Special Meeting and November 5, 2019 Regular Meeting.

B. CareerSource Gulf Coast Lease Agreement – Community Center

- **Suggested Motion:** To Approve the Lease Agreement for a portion of the Community Center with CareerSource Gulf Coast and Authorize the Mayor to Execute the Agreement.

X. Unfinished Business

A. Duke Energy Electric Franchise Agreement –Public Hearing and Second Reading

- **Suggested Motion:** To Adopt Ordinance 2019-02 Granting Duke Energy of Florida an Electric Franchise with the City of Apalachicola.

B. Resolution 2019-25 Requesting Franklin County Honor the Intent of the Interlocal Agreement with the City of Apalachicola for Small County Surtax and Requesting Additional Information

- **Suggested Motion:** To Adopt To Adopt Resolution 2019-25 Requesting Franklin County Honor the Intent of the Interlocal Agreement with the City of Apalachicola for Small County Surtax and Requesting Additional Information

C. Sale of City Owned Property Discussion

- **Suggested Motion:** None at this time pending further discussion by the City Commission.

D. Resolution 2019-27 Rescinding the Economic Development Partnership with Apalachicola Main Street

- **Suggested Motion:** To Adopt Resolution 2019-27 Rescinding the Economic Development Partnership with Apalachicola Main Street

E. Apalachicola Community Redevelopment Association Discussion

- **Suggested Motion:** None at this time pending further discussion by the City Commission.

XI. New Business

A. Ordinance 2019-10 Designating the Official Seal of the City – First Reading

- **Suggested Motion:** To Approve the First Reading of Ordinance 2019-10 and Proceed with the Adoption Process.

B. Professional Services - Forensic Audit

- **Suggested Motion:** None at this time pending further discussion by the City Commission.

C. Encroachment Agreement – Lindley 71 Market Street

- **Suggested Motion:** To Approve the Encroachment Agreement with Lindley Development LLC for a Balcony Addition at 71 Market Street.

D. Scipio Creek Maintenance Management Agreement

- **Suggested Motion:** None at this time pending further discussion by the City Commission.

XII. Adjournment

Any person who desires to appeal any decision at this meeting will need a record of the proceeding and for this purpose, may need to ensure that a verbatim record of the proceeding is made which includes testimony and evidence upon which the appeal is based. Persons with disabilities needing assistance to participate in any of these proceedings should contact the City Clerk's Office 48 hours in advance of the meeting.



# CITY OF APALACHICOLA

192 Coach Wagoner Boulevard • Apalachicola, Florida 32320 • 850-653-9319 • Fax 850-653-2205  
www.cityofapalachicola.com

December 3, 2019

Mayor

Kevin Begos

TO: Mayor and City Commission

Commissioners

Brenda Ash

Adriane Elliott

Despina George

Anita Grove

FR: Ron Nalley, City Manager *RN*

RE: City Manager Communications – December City Commission Meeting

During your meeting on December 3<sup>rd</sup>, I will be giving a brief update on several matters. Below is a summary of those topics:

City Manager

Ron Nalley

1) Census 2020 Complete Count Committee – The Complete Count Committee met on November 22<sup>nd</sup>. “Apalachicola Counts” is suggested as the slogan for educating residents about the need to complete their 2020 Census. Additional information regarding events and opportunities to volunteer will be forthcoming. It is important to remember that help is needed to encourage everyone to complete and respond to the 2020 Census. An increase response rate means increased dollars for the community. Their next meeting is scheduled for December 20<sup>th</sup> at 2:00 p.m. at City Hall.

City Clerk

Deborah Guillotte, CMC

2) DEP Revolving Loan Repayment Plan Update – At your last meeting, the Commission asked that I give an update on our repayment of the debt default for the State Revolving Loan. I have attached a spreadsheet that details our payments over the last year. It is important to remember that in December of 2018, the State agreed to let us make quarterly payments for the revolving loan amounts. For this reason, I have included the payments we will make on December 1, 2019 and March 1, 2020. As we have discussed, payments are applied to the oldest past due amounts. As of December 1<sup>st</sup>, the City will have paid \$171,333.34 towards our debt default. This puts our default amount now at \$583,430.90. At this rate, we will pay off the default amount in four and a half years rather than the projected seven years. Of course DEP would still like us to consider selling property in order to pay off the amount owed in one lump sum. Overall, we have made good progress this year in our repayment schedule.

City Attorney

Kristy Branch Banks

If you questions or have other topics that you would like for me to update you on, please do not hesitate to contact me.

**State Revolving Loan Fund  
Payment History**

	<u>Due Date</u>	<u>Amount Due</u>	<u>Revolving Loan Payments</u>	<u>SUF Fee Paid Towards Debt Default</u>
Payment 32	Jun-17	\$ 222,967.92		
Payment 33	Dec-17	\$ 265,898.16		
Payment 34	Jun-18	\$ 265,898.16		
Payment 35A	Dec-18	\$ 216,015.46	\$ 108,007.73	
Payment 35B	Mar-19	\$ -	\$ 108,007.73	\$ 15,861.12
Payment 36A	Jun-19	\$ 216,015.46	\$ 108,007.73	\$ 37,987.10
Payment 36B	Sep-19	\$ -	\$ 108,007.73	\$ 61,977.14
Payment 37A	Dec-19	\$ 216,015.46	\$ 108,007.73	\$ 55,507.98
Payment 37B	Mar-20	\$ -	\$ 108,007.73	TBD
		\$ 1,402,810.62	\$ 648,046.38	\$ 171,333.34

To be made 12/01/19  
To be made 03/01/20

**Original Amount of Debt Default = \$754,764.24**

**Debt Default Amount after December 2019 Payment = \$ 583,430.90**

CITY OF APALACHICOLA  
ADMINISTRATION DEPARTMENT  
NOVEMBER 2019

- Updated meeting calendar on website
- Complete all quarterly Payroll Reports
- Posted October revenues and expenses
- Assisted staff with tree applications, utility bill issues, and payroll processing
- Staff assisted with Cemetery, utility bills, garbage, permitting issues, city property rentals and other miscellaneous duties
- My Billing Clerk has taken on the responsibility of managing the front office, taking bills, answering phones, assisting customer with permit applications in the absence of our permit clerk in addition to her own duties. Her duties fall behind due to this increased load and she manages to stay on task and meet deadlines. She has assisted me with the preparation of Agenda packets and fills in during my absence.
- Completed tasks as assigned by the City Manager
- Continue working on FEMA issues
- Public Records Request 1

63 work orders issued and 60 work orders completed  
1,813 payments processed  
2,048 bills processed  
45 cuts-off – unpaid water bills  
Approximately 100 accounts payable checks processed

**City of Apalachicola  
Police Department Report**

The month of November, despite bringing in the crowds for the Seafood Festival, turned out to be relatively quiet. Despite the increase of traffic in our city, the number of warnings and traffic citations were down. Arrests/warrants were the same and thankfully, burglaries were down! As expected, more time was spent interacting with the public, answering questions and concerns, giving directions and unlocking lots of car doors. The end of festival weekend did bring about a large fight at the annual Chunky Sunday event; two warrants for arrest were issued. Chief Varnes attended a special program held at the Franklin County schools to honor our Veterans on Veterans Day. As the month closes, police presence will be on hand during the downtown festivities that accompany the light up night event on November 29th and the increase in visitors during the holidays. Our gun range now has 30 members!

<u>November</u>	<u>Totals</u>
Traffic Stops/ Warnings/ citations	48
Arrests/ Warrant Requests	4
Traffic Accidents	8
Burglary/Theft calls	4
Assist Citizens/ Complaints/investigations	612
Trespass Warnings/agreements	4
Business alarm calls/building checks/welfare checks	402
Assist county call/other agencies	60
Domestic cases involving violence/disturbance calls	20
Drugs	0
Total calls from dispatch	679

Lizzette Dearing  
Apalachicola Police Department  
127 Ave E  
Apalachicola, FL 32320  
850-653-9755  
Lizzette@gtcom.net

## Apalachicola Margaret Key Library Monthly Report -- November 2020

### Statistics:

- 11 new cards issued
- 195 new items added to the collection
- 334 items checked out
- 169 computer & 354 Wi-Fi use
- 2 programs for youth with 34 participants
- 25 information inquiries & assists
- 2 archival inquiries
- 5 archival documents added to database

### Activities:

- After a half dozen false starts, the Memory Lab was finally dedicated and officially opened on November 14th. Mayor Begos was gracious in his remarks and cut the ribbon. The evening included demonstrations of all the grant funded items the library received in FY 2019, including the memory lab equipment and innovative technology equipment. In total, the library received more than \$24,000 in non-matching funds grants support this past year.
- The library hosted two youth programs this month: "Gobble Up a Good Book" reading challenge for beginning readers garnered 14 participants with 46 books read. Tweens & teens took over the library one Saturday evening and indulged in all things tech, building working robots, creating t-shirts on the hot press, and building sculptures with the 3D filament pens. As always, the 3D VR goggles were a big hit. Pizza and other snacks were provided by the PALS. We will repeat this program in December and again in January.
- The library board is hard at work on the 6 goals adopted for this year. Progress includes:
  - Developing a draft technology replacement plan and network map -- recommendations for a phased replacement plan have been drafted and will be reviewed in December; work on the network map will begin after January 1.
  - Investigating feasibility of purchasing and installing a new Integrated Library System software -- Information on KOHA software and quotes from vendors will be discussed at the December board meeting.
  - Explore a possible library intern position with Florida State University library science program -- preliminary contacts have been made and in-depth discussion will resume after the holidays.

Preliminary discussions have taken place with the library board concerning development of partnerships with the Wilderness Coast Library Cooperative and the Franklin County Library System. Preliminary discussions have also focused on developing and adopting final proposal for Phase II of the library construction project, and the board is discussing how the library can provide support services to the City and the Commissioners.

**City of Apalachicola Public Works Report  
NOVEMBER 2019**

The public works department, services all city vehicles and replaces all the tires on city vehicles, services all the mowers and weed eaters, cuts all city parks, cut all city properties, clean all city buildings, empty all garbage cans down town and city parks, clean city right of ways, cut city right of ways, and patch holes on city roads as needed.

We put culvert in on 13<sup>th</sup> Street to control storm water run-off.

We cut and cleaned storm ditches on Avenue H from 12<sup>th</sup> to 17<sup>th</sup>.

We cleaned culvert pipes on 12<sup>th</sup> Street at addresses 436, 434, and 428.

We finished clearing and cleaning fence at water and sewer plant.

We weeded and cleaned bricks at Lafayette Park.

We cut storm ditches on Fred Meyers.

We cut and cleaned several alleys on hill side of town.

We assisted Ms. Jill moving books at library.

We cut and cleaned all alleys from 12<sup>th</sup> Street to Sawyer Lane.

We picked up 140 bags of garbage from downtown and city parks.

We have completed 13 work orders.

We opened and closed 3 funerals.

We presser washed deck at Community Center.

We hung all Christmas lights on Highway 98, and put up Christmas tree lights and ornaments up at Riverfront Park.

Public Works Monthly Work Load Indicators 2019/2020							
	signs replaced	work orders	down town trash bags	culverts replaced	veh. Serviced		funerals
oct	1	11	137	0	1		4
nov	2	13	140	1	1		3
dec							
jan							
feb							
march							
april							
may							
june							
july							
aug							
sept							
total	3	24	277	1	2		7

Prepared by ROBERT OSBURN



## Water and Wastewater Department

### Monthly Report

November 2019

#### Water Plant

- . We treated 10,890,000 gal of Drinking water
- . Greased and cleaned both of the blowers for the Ground storage tank

#### Wastewater Plant

- . We treated 7,650,000 gal of wastewater
- . Did some cleaning and prep work on # 1 Disc filter for it to be painted .
- . Worked in the east spray fields cutting brushes around control houses.

#### Distribution and Collection

- . Handled 38 work orders from City hall
- . Repaired 4 water leaks
- . unstopped 3 sewer backups
- . Rhett and TJ found a 6 " water valve on Market st. that was covered up and not on any of our water line maps. The valve was between the auto flusher and the Tap where we get our TTHMs sample on Market st. It was closed they were able to get it to open. This should help on our TTHM results and with water quality.
- . Our latest TTHM results were a 77 and 81 Both readings have to be below 80 for us to get in compliance.



**APALACHICOLA CITY COMMISSION**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date:** December 3, 2019

**SUBJECT:** Presentation of Service Award – Former Commissioner Mitchell Bartley

**AGENDA INFORMATION:**

**Agenda Location:** Presentation  
**Item Number:** A  
**Department:** Governing Body  
**Contact:** Sharon Berrian, Dir. of Membership Relations, Florida League of Cities  
**Presenter:** Sharon Berrian, Dir. of Membership Relations, Florida League of Cities

**BRIEF SUMMARY:** The Florida League of Cities would like to recognize former Commissioner Mitchell Bartley for his 20 years of service as City Commissioner to the City of Apalachicola.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** None at this time.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Not Applicable

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Staff is thankful for Commissioner Bartley's many years of service to the City and appreciative of his continuous support and service to our community.



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Resolution 2019-26 Thanking the Apalachicola Volunteer Fire Department for Improving the ISO Rating and Protecting the City

**AGENDA INFORMATION:**

**Agenda Location:** Presentations  
**Item Number:** B  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Commissioner Anita Grove

**BRIEF SUMMARY:** Fire departments are rated on a scale of 1 to 10 for their readiness to respond to fires which is known as an ISO rating. The ISO rating impacts insurance rates for all home and business owners in a city. During its most recent assessment, the Apalachicola Volunteer Fire Department improved the City's rating to a 5.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Approve Resolution 2019-26 Thanking the Apalachicola Volunteer Fire Department for Improving the ISO Rating and Protecting the City.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Resolution 2019-26

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Thank you to all the members of the volunteer fire department for their hard work and dedication to improving the community's ISO rating.

**CITY OF APALACHICOLA  
RESOLUTION 2019-26**

**A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA THANKING THE APALACHICOLA VOLUNTEER FIRE DEPARTMENT FOR IMPROVING THE ISO RATING AND PROTECTING THE CITY.**

**WHEREAS**, fire departments are rated on a scale of 1 to 10 for their readiness to respond to fires; and

**WHEREAS**, that rating impacts insurance rates for all home and business owners in a city; and

**WHEREAS**, members of the Apalachicola Volunteer Fire Department have volunteered many hours in training to improve their skills and to help meet the City's equipment needs; and

**WHEREAS**, our Volunteer Fire Department was able to improve its rating in the most recent national assessment from a probationary 10 to a 5;

**NOW, THEREFORE, BE IT RESOLVED** that the City Commission of the City of Apalachicola expresses its gratitude to all members of the Apalachicola Volunteer Fire Department for their work and dedication to improving the City's ISO rating.

**READ, APPROVED AND ADOPTED** this 3rd day of December, 2019.

**FOR THE CITY COMMISSION OF  
THE CITY OF APALACHICOLA**

ATTEST:

\_\_\_\_\_  
Deborah Guillotte, City Clerk

\_\_\_\_\_  
Kevin Begos, Mayor



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Ordinance 2019-02 - Duke Energy Electric Franchise Agreement – Public Hearing and Second Reading

**AGENDA INFORMATION:**

**Agenda Location:** Public Hearing and Unfinished Business  
**Item Number:** A  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** The Electric Franchise Ordinance with Duke Energy was approved on January 13, 1989 for a thirty year period and expired in January 2019. Duke Energy contacted the City to discuss the renewal of the franchise for an additional term however progress stalled due to several legal matters. The updated and revised agreement is attached. No revisions to the proposed Ordinance have been made since the first reading and the document is now being submitted for public hearing and second reading. Danny Collins, our Local Government Liaison with Duke Energy, will be present at the meeting to answer any questions the Commission may have about the renewal.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Adopt Ordinance 2019-02 Granting Duke Energy of Florida an Electric Franchise within the City of Apalachicola.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Draft Ordinance 2019-02

**STAFF'S COMMENTS AND RECOMMENDATIONS:** The proposed Ordinance requires two readings and a public hearing. The first reading was held at the November meeting, and the public hearing and second reading with final approval is scheduled for the December meeting.



**ORDINANCE # 2019-02**

**AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC, d/b/a DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS OF WAY IN THE CITY OF APALACHICOLA, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF APALACHICOLA, FLORIDA:**

**SECTION 1 - Findings**

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights of way utilization franchise (sometimes referred to herein as the "Franchise") granting the Company permission to occupy the Rights of Way in the City of Apalachicola, Florida, for the purpose of providing electric services.

**SECTION 2 - Short Title**

This ordinance shall be known and may be cited as the "Duke Energy Rights of Way Utilization Franchise."

**SECTION 3 - Definitions**

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely permissive.

(A) "Adversely Affected" – For the Company, a loss of one percent (1%) of Base Revenues within the corporate City limits due to Retail Wheeling. For the City, a loss of one percent (1%) of franchise fees due to Retail Wheeling.

(B) "Base Revenues" – All Company's revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and City sponsored street lighting all within the corporate limits of the City.

(C) "Company" or Grantee" – Duke Energy Florida, LLC d/b/a Duke Energy, its successors and permitted assigns. This Agreement shall not be assigned without the prior written consent of the City, which shall not be unreasonably withheld; provided, however, Company may assign this Agreement without the consent of the City if such assignment is to an entity that purchases all or substantially all of the assets of Company, an entity affiliated with Company or any assignment pursuant to a merger or re-organization of Company or any affiliate of Company.

(D) "City" or "Grantor" – The City of Apalachicola, Florida.

(E) “Electric Energy Provider” – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company’s distribution or other facilities. Without limitation or the foregoing, “Electric Energy Provider” shall also include every Electric Utility, electric power marketer or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.

(F) “Electric Utility” -- Shall have the meaning set out in Section 366.02(2), *Florida Statutes* (2010), and shall also include every electric “Public Utility” as defined in Section 366.02(1), *Florida Statutes* (2010). “Electric Utility” shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or County.

(G) “Electric Utility System” – An electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not to limited to electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(H) “Franchise Area” – That area for which Company provides electric utility service within the corporate City limits of the City.

(I) “Facilities” – The meaning as set forth in Section 4.

(J) “Person” – Any person, firm, partnership, association, corporation, company or organization of any kind.

(K) “Public Service Commission” – The Florida Public Service Commission.

(L) “Rights of Way” – All of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(M) “Retail Wheeling” – A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

#### **SECTION 4 - Grant of Authority**

(A) This grant of authority is limited to the provision by Company to have, maintain, or place its Facilities within the Rights of Way for its electric utility services. Accordingly, the

City hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the "Facilities"), provided that all portions of the same shall conform to accepted industry standards, including but not limited, to the National Electrical Safety Code. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside "Rights of Way" as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights of Way, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to place its Facilities or perform any work maintenance activities on or related to its Facilities within the Rights of Way. Subject to the foregoing and except in emergencies, Company shall use reasonable efforts to provide electronic notice to the Public Works Director or their designee when Company intends to perform underground boring work within the Rights of Way.

(B) Annexation or Contraction. City and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If City approves any Franchise Area expansion or reduction by annexation or contraction, City shall provide written notice to Company's Annexation Coordinator, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas.

Additionally, within sixty (60) days of any such annexation or contraction, City shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Duke Energy  
Tax Team DT02-V  
9700 David Taylor Drive  
Charlotte NC 28262  
Or by email to: [TaxTeam@duke-energy.com](mailto:TaxTeam@duke-energy.com)

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. City understands and

affirmatively acknowledges that the Company will exclusively rely upon the City to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, City acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights of Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights of Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

#### **SECTION 5 - Notice of Acceptance and Term of Franchise**

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Commission; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Commission and shall signify its acceptance in writing within thirty (30) days after the City Commission's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of ten (10) years.

#### **SECTION 6 - Payment to City**

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any franchise amounts that will be paid to the City will be collected by the Company from Company's customers in the Franchise Area and passed through to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder.

Payment shall be made to City for each month no later than the twentieth (20<sup>th</sup>) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute.

(C) The City acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

## **SECTION 7 - Favored Nations**

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to pay such greater franchise fee to Grantor shall apply prospectively beginning with the next monthly franchise fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights of Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Grantee without utilizing Grantor's Rights of Way.

(C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Grantee to customers within Grantor's municipal boundaries, whether utilizing Grantor's Rights of Way or not utilizing Grantor's Rights of Way, Grantee's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, City shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

## **SECTION 8 - Grantor Rights**

The right is hereby reserved to the City to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the City relating to Company's rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

**SECTION 9 - Work In Rights of Way**

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights of Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

Any request to underground electric utility facilities shall be submitted to Company and will be performed as can be reasonably done in accordance with Company's applicable tariffs, policies adopted by Company, and any applicable laws and/or regulations. All costs associated with such underground work requested by Grantor shall be at Grantor's expense and/or any costs associated with such underground work requested by any third party shall be at the third party's expense and estimated and applied in accordance with Company's tariffs and policies and any applicable laws and/or regulations.

**SECTION 10 - Indemnification**

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. In no event shall Company be liable to City for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise. Subject to any and all applicable laws, the indemnification obligations set forth in this Section 10 shall survive the expiration of this Agreement.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 10 (A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;  
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

#### **SECTION 11 - Records and Reports**

(A) Company Rules and Regulations. The following documents shall be available to City upon City's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of City's Rights of Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information that City or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every three (3) years and then only for the preceding three (3) years. Company will reimburse City's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to City's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Agreement, City shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the City and annually thereafter a report identifying any changes to the address listing provided the previous year.

#### **SECTION 12 - Retail Wheeling**

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between The Company and the City. If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Franklin County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

**SECTION 13 - Severability**

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority’s decision.

**SECTION 14 - Governing Law and Venue**

(A) This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida.

(B) In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Franklin County, Florida, or, if a federal claim, in the U.S. District Court in and for the Northern District of Florida, Tallahassee Division.

**SECTION 15 - Merger**

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

**SECTION 16 - Notices**

Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. “Business Day” for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City:  
City Clerk  
192 Coach Wagoner Boulevard  
Apalachicola, Florida 32320  
Phone: (850) 653-9319  
Facsimile: (850) 653-2205

To Company:  
Gov’t and Community Relations  
Duke Energy  
299 1<sup>st</sup> Street North – FL163  
St. Petersburg, FL 33733-4042  
Phone: (727) 820-5474  
Facsimile: (727) 820-5715

**SECTION 17 - Non-Waiver Provision**

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be



construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

**SECTION 18 - Repealer and Superseding Provision**

This ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance No. 88-10 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance and none of the provisions of such repealed Ordinance No. 88-10 and any amendments thereto shall have any further force and effect.

**SECTION 19 - Dispute Resolution**

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

FIRST READING:

November 5, 2019.

SECOND READING, ADOPTION, AND PUBLIC HEARING:

December 3, 2019.

ATTEST:

\_\_\_\_\_  
Deborah Guillotte, City Clerk

\_\_\_\_\_  
Kevin Begos, Mayor

Approved as to form and legality  
for the use and reliance of the  
City of Apalachicola, Florida, only.

\_\_\_\_\_  
Kristy Banks, City Attorney

\_\_\_\_\_  
Catherine Stempien, State President  
Duke Energy Florida, LLC d/b/a Duke Energy



**MINUTES OF THE REGULAR MEETING OF THE APALACHICOLA CITY COMMISSION HELD TUESSDAY, OCTOBER 8, 2019, 6:00 PM AT THE APALACHICOLA COMMUNITY CENTER.**

**PRESENT:** Mayor Van W. Johnson, Sr.  
Commissioner Brenda Ash  
Commissioner Jimmy Elliott  
Commissioner Mitchell Bartley  
Mayor Kevin Begos  
Commissioner Adriane Elliott  
Commissioner Despina George

Ron Nalley, City Manager  
Deborah Guillotte, City Clerk  
Pat Floyd, City Attorney  
Kristy Branch Banks

**ABSENT:** Commissioner Anita Grove

**CALL TO ORDER**

Mayor Van Johnson called the meeting to order at 6:00 PM and Attorney Pat Floyd gave the invocation. Council members led the pledge of allegiance.

**AGENDA ADOPTION**

Mayor Johnson called for a motion to approve the agenda.

Commissioner Brenda Ash made a motion to approve the agenda as presented. Commissioner Mitchell Bartley seconded and the motion carried 4-0.

**MAYOR'S AND COMMISSIONERS REPORTS AND COMMUNICATIONS**

Commissioner Jimmy Elliott thanked George Mahr for all his help in the past, Rose McCoy for getting the grant for the Community Center, to the past and present Mayors and Commissioners during his tenure as Commissioner for their commitment and dedication to the City and to the residents who put him in office.

Commissioner Ash stated that it has been an honor and privilege to serve with Mayor Johnson and Commissioner's Bartley and Elliott and that she has learned so much from their leadership, dedication, commitment and also their being honorable men to this community.

Mayor Johnson thanked the Commissioners for his years of service with each of them and to the citizens for his twenty two years of service to the community and all they did to help with the many accomplishments of the City of Apalachicola during his tenure as Mayor.

A. Resolution 2019-21 – Honoring Granville Croom for his Services to the Recreational Needs of the Youth

Attorney Floyd read Resolution 2019-21 in its entirety.

**A RESOLUTION OF THE APALACHICOLA BOARD OF CITY COMMISSIONERS RECOGNIZING AND HONORING GRANVILLE CROOM FOR HIS MANY YEARS OF UNSELFISH AND DEDICATED SERVICE TO THE RECREATIONAL NEEDS, GROWTH AND DEVELOPMENT OF THE YOUTH OF APALACHICOLA**

Commissioner Ash made a motion to adopt Resolution 2019-21 honoring Granville Croom for his services to the recreational needs of the youth. Commissioner Bartley seconded and the motion carried 4-0.

B. Resolution 2019-20 Honoring J. Patrick "Pat" Floyd on his Retirement

Mayor Johnson read Resolution 2019-20 in its entirety.

**A RESOLUTION OF THE APALACHICOLA BOARD OF CITY COMMISSIONERS RECOGNIZING THE RETIREMENT OF CITY ATTORNEY, JOHN PATRICK FLOYD AND COMMENDING HIM FOR THREE DECADES OF PROFESSIONAL, OUTSTANDING AND DEDICATED LEGAL SERVICE TO THE PEOPLE OF THE HISTORIC CITY OF APALACHICOLA**

Commissioner Elliott made a motion to adopt Resolution 2019-20 honoring J. Patrick "Pat" Floyd on his retirement. Commissioner Bartley seconded and the motion carried 4-0.

**CITY MANAGER COMMUNICATIONS**

- Mr. Ron Nalley thanked the board, staff and members of the community for all the kind words and prayers for him and his family this week during the loss of his mother.
- Mr. Nalley stated that on behalf of staff he would like to welcome the newly elected officials and we look forward to working with them. Also, on behalf of staff, we thank those leaving and that we truly appreciated working with each of them, and wish them well with their future endeavors.

**ATTORNEY PAT FLOYD COMMUNICATIONS**

- Attorney Floyd thanked everyone for their appreciation and gratitude, for the many comments and the many years of efforts the Mayor and Commission have put in serving the community. Attorney Floyd stated it all begins with two words "thanks" and "Apalachicola" and that he has been blessed to be born and raised in Apalachicola, and have the privilege of being the City Attorney for so many years.

**PUBLIC COMMENT**

Mayor Johnson opened the floor for public comment.

- Robin Vroegop expressed her concerns with the order of when newly elected officials take seat at the October meeting, and the grant submission approvals being listed under consent agenda.
- Despina George expressed her concerns with the agenda and when the newly elected officials take seat and asked that the old board step down after the public comment section of this meeting.
- Dolores Croom thanked Mayor Johnson and Commissioners Bartley and Elliott for their many years of service to the community. Mrs. Croom also stated that she was at the Community Center for an event, and that the air conditioner was not working, only the two window units. Mrs. Croom stated she passed out due to the heat and requested that when the air conditioner is not working it should not be rented out. Mrs. Croom also requested that the ditch at 233 12<sup>th</sup> Street be filled in.
- Pastor David Walker thanked the Mayor and City Commissioners for all they have done for the community.
- Carl Whaley thanked the outgoing Mayor and City Commissioners for all they have done for the Florida Seafood Festival and they look forward to working with the newly elected officials.

**CONSENT AGENDA**

Mayor Johnson presented the Consent Agenda and asked if any items should be removed before consideration of a motion.

- Meeting Minutes Adoption - Adopt the August 6, 2019 Special Meeting and the August 27, 2019 Special Meeting, September 5, 2019 Regular Meeting, September 10, 2019 Special Meeting and September 24, 2019 Special Meeting Minutes.
- Planning & Zoning Minutes Confirmation – Confirm the June 2019 Planning and Zoning Minutes.
- Grant Submittal Approval – 2019 Urban and Community Forestry Grant Program – To approve submittal of a grant proposal to Florida's Urban and Community Forestry (UCF) grant program on behalf of the City of

Apalachicola. The Tree Committee is preparing a grant request of \$5,000 to fund a tree inventory and management study for Battery and Lafayette Parks. A dollar-for-dollar match is required; however in-kind services of the FAMU arborist will be used as match for the grant proposal.

- Grant Submittal Approval – FDEM Hurricane Michael State Recovery Grant Program – To approve submittal of a grant proposal to FDEM’s Hurricane Michael State Recovery grant program on behalf of the City of Apalachicola. The repair of the Popham building meets the dollar threshold and non-eligibility for FEMA public assistance requirement. This may be one of the few grant programs that can bridge the funding gap between the cost of repairs and insurance proceeds for this building.
- Partial Road Closures for Events/Festivals – To approve the temporary closure of SR 30/US 98 with a detour along Avenue D for the Florida Seafood Festival and the temporary closure of Dr. Martin Luther King Jr. Boulevard between 8<sup>th</sup> and 9<sup>th</sup> Street for the Chunky Sunday Festival event.

Commissioner Ash made a motion to approve the Consent Agenda. Commissioner Elliott seconded and the motion carried 4-0.

**UNFINISHED BUSINESS**

**A. CITY ATTORNEY LEGAL SERVICES CONTRACT – KRISTY BANKS**

Attorney Floyd stated he had received and reviewed the Contract from Kristy Banks and changes have been made and that the contract is ready for approval.

Commissioner Ash requested that the attorney contract be tabled so that it can be reviewed by the board, since it was received just prior to the meeting. In a response to a question from Commissioner Ash, Mr. Nalley stated that Kristy Branch was hired at last month’s meeting and that the Contract was drawn up by her and Attorney Floyd. Mr. Nalley further stated he and Attorney Floyd reviewed the contract and that it was ready for approval if they chose to do so.

Commissioner Ash made a motion to table the Contract for Kristy Branch for further review. Motion died for lack of second.

Commissioner Elliott made a motion to approve the City Attorney Legal Services Contract between Kristy Banks and the City of Apalachicola. Commissioner Bartley seconded and the motion carried 3-1, with Commissioner Ash voting Nay.

Mayor Johnson administered the oath of office to City Attorney Kristy Banks.

**UNFINISHED BUSINESS**

**B. RESOLUTION 2019-13 – CREATING A CENSUS 2020 COMPLETE COUNT COMMITTEE FOR THE CITY OF APALACHICOLA**

Mr. Nalley stated the goal of the Complete Count Committee is to help educate the community and increase the response rate to Census 2020 which is vital to the City of Apalachicola. Attorney Kristy Banks read Resolution 2019-13 in its entirety.

**A RESOLUTION CREATING A CENSUS 2020 COMPLETE COUNT COMMITTEE TO PLAN AND CONDUCT LOCAL EDUCATIONAL INITIATIVES, PUBLICITY AND PROMOTIONAL ACTIVITIES TO INCREASE COMMUNITY AWARENESS AND PARTICIPATION IN THE 2020 CENSUS**

Commissioner Ash made a motion to adopt Resolution 2019-13 creating a Census 2020 Complete Count Committee for the City of Apalachicola. Commissioner Bartley seconded and the motion carried 4-0.

**NEW BUSINESS**

**A. OATHS OF OFFICE**

- Kevin Begos administered his own oath of office as Mayor.

- Jimmy Elliott administered the oath of office to Commissioner Adriane Elliott.
- Despina George administered her own oath of office as Commissioner.

**NEW BUSINESS**

**B. ELECTION OF MAYOR PRO-TEM AND DETERMINATION OF BOARD LIASONS**

Mr. Nalley stated that the City Clerk will get a list of Board Liaisons to the Mayor as requested.

Mayor Begos suggested that Commissioner Brenda Ash continue to serve as Mayor Pro-Tem.

Attorney Banks read Resolution 2019-22 in its entirety.

A RESOLUTION BY THE CITY OF APALACHICOLA APPOINTING AND DESIGNATING A MAYOR PRO-TEM OF THE CITY OF APALACHICOLA.

Commissioner George made a motion to adopt Resolution 2019-22 appointing and designating Brenda Ash as Mayor Pro-Tem for the City of Apalachicola. Commissioner Adriane Elliott seconded and the motion carried 4-0.

**NEW BUSINESS**

**C. RESOLUTION 2019-17 – HONORING VAN W. JOHNSON SR., FOR HIS SERVICE TO THE CITY OF APALACHICOLA**

Mayor Begos read Resolution 2019-17 in its entirety.

A RESOLUTION OF THE APALACHICOLA BOARD OF CITY COMMISSIONERS RECOGNIZING THE RETIREMENT OF VAN W. JOHNSON, SR. AND COMMENDING HIM FOR TWENTY-TWO YEARS OF OUTSTANDING PUBLIC SERVICE TO BOTH THE PEOPLE OF APALACHICOLA AND THE NORTHWEST DISTRICT OF FLORIDA.

Commissioner Ash made a motion to adopt Resolution 2019-17 honoring Van W. Johnson Sr., for his service to the City of Apalachicola. Commissioner Elliott seconded and the motion carried 4-0.

**NEW BUSINESS**

**D. RESOLUTION 2019-18 – HONORING JAMES L. ELLIOTT, FOR HIS SERVICE TO THE CITY OF APALACHICOLA**

Mayor Begos read Resolution 2019-18 in its entirety.

A RESOLUTION OF THE APALACHICOLA BOARD OF CITY COMMISSIONERS RECOGNIZING THE RETIREMENT OF JAMES L. ELLIOTT AND COMMENDING HIM FOR THIRTY-SIX YEARS OF OUTSTANDING PUBLIC SERVICE TO BOTH THE PEOPLE OF APALACHICOLA AND THE NORTHWEST DISTRICT OF FLORIDA.

Commissioner Elliott made a motion to adopt Resolution 2019-18 honoring James L. Elliott, for his service to the City of Apalachicola. Commissioner Ash seconded and the motion carried 4-0.

**NEW BUSINESS**

**E. RESOLUTION 2019-19 – HONORING JOHN M. BARTLEY SR., FOR HIS SERVICE TO THE CITY OF APALACHICOLA**

Mayor Begos read Resolution 2019-19 in its entirety.

A RESOLUTION OF THE APALACHICOLA BOARD OF CITY COMMISSIONERS RECOGNIZING THE RETIREMENT OF JOHN M. BARTLEY SR. AND COMMENDING HIM FOR TWENTY YEARS OF OUTSTANDING PUBLIC SERVICE TO BOTH THE PEOPLE OF APALACHICOLA AND THE NORTHWEST DISTRICT OF FLORIDA.

Commissioner Ash made a motion to adopt Resolution 2019-19 honoring John M. Bartley Sr., for his service to the City of Apalachicola. Commissioner Elliott seconded and the motion carried 4-0.

**NEW BUSINESS**

**F. BOARD OF ADJUSTMENT MEMBER APPOINTMENT**

Mayor Begos announced that the City needs to fill two positions on the Board of Adjustment. Commissioner Ash made a motion to appoint Trisha McLemore and Lois Swoboda to the Board of Adjustment. Commissioner George seconded and the motion carried 4-0.

**NEW BUSINESS**

**G. BUDGET WORKSHOP DISCUSSION**

Mayor Begos stated that before moving forward with the budget workshop discussion, he wanted the community to know that he ran for Mayor because he loves the City of Apalachicola, and wanted better for the City of Apalachicola and its senior citizens, working families and youth. He would like to take steps to include having a 2<sup>nd</sup> meeting to discuss key issues, including water and sewer, the budget, expenses and revenues and re-visiting the Community Redevelopment Agency program to allow investment in the working waterfront, the hill neighborhood and the bowery. Mayor Begos stated his concerns with transparency, city committees, the website and social media and noted that he will listen to the citizens at all times and welcomes all their thoughts and ideas.

Commissioner George then stated that she would like to make a motion to rescind the Consent Agenda vote on the grant items dealing with the Popham building previously approved by the outgoing Board. Commissioner Elliott seconded the motion. In a response to a question from Commissioner Elliott, Mr. Nalley stated the grant was for a Division of Emergency grant and not FEMA. The DEM grant has strict guidelines and the only project that qualifies for the grant is the Popham building, which information was distributed before the meeting for review. In a response to a question from Mayor Begos, Mr. Nalley stated this grant will make the Popham building structurally sound, which it is not at this time and that the board can if granted, decline to grant. The grant money is only available to certain designated areas. Mayor Begos suggested Commissioner George withdraw her motion until a Special meeting and review of the grant application can be done before the due date on Tuesday.

At the request of the Board, Mr. Nalley reviewed the requirements for the FDEM Hurricane Michael State Recovery Grant stating that allowable costs are: - Local operating deficits/revenue loss; Infrastructure (building, road, bridge, etc.) repair and/or replacement; Beach re-nourishment/Recreational facilities; and debris removal. All projects must be over \$500,000; and show proof that the project is ineligible for FEMA public assistance.

Commissioner George then made a motion to set a Special Meeting on Monday, October 14, 2019 a 4:00 p.m. to review the request for approval for a grant application for the Florida Division of Emergency Management Grant and to determine if there are other projects that may qualify that may be more beneficial to the City. Commissioner Elliott seconded and the motion carried 4-1, with Commissioner Ash voting nay.

In a response to a question from Mayor Begos, Commissioner Ash stated she has all the confidence and faith in staff, and doesn't believe that staff should be micro-managed with the business of the City. In response to a question from Commissioner Elliott on the 2019 Urban and Community Forestry Grant Program, Mr. Dennis Winterringer stated in-kind services of the FAMU arborist and volunteer time will be used as match for the grant proposal, and also my volunteer time.

**NEW BUSINESS**

**H. FUTURE WORKSHOP TOPICS DISCUSSION**

Mayor Begos stated that he ran for Mayor because he loves Apalachicola and could not sit back and see the City crumble. Mayor Begos stated that he would like to have a budget workshop to review in depth the budget that was adopted last month for the 2019-2020 fiscal year. The purpose of the meeting is to put a freeze on some items in order to give us extra funds. In a response to a question from Commissioner Ash, Mr. Nalley stated that any budget change would have to go

through the Ordinance adoption and public hearing process. Mr. Nalley further stated that while fees can be amended, the millage rate is already set. After further discussion, it was decided by the City Commission to hold a workshop next Thursday, October 17, 2019 at 5:00 p.m. to review the 2019-2020 fiscal year budget. Mr. Begos stated he would like to have a workshop in November on affordable housing and a future workshop on zoning challenges. Commissioner Elliott suggested having a full city audit on the finances, that the City Committees have regular monthly meetings, that department heads attend the City meetings, that the Land Development Code be revised, that the City Parks be better maintained, and that the City Seal be officially adopted. Mayor Begos stated the Commission will have the audit and budget review workshop next week.

Mayor Begos introduced State Representative, Jason Shoaf. Jason Shoaf stated that he is happy to help the City in any way he can.

Mayor Begos then gave an update on the crash of the City website stating that no files were lost and that it is now back up and running.

There were numerous citizens concerns about how grants and ordinances are handled and publicized. Mr. Nalley stated they have been handled in the same ways as they have in the past, with advertisement and public notice to the citizens, and that anyone is welcome to come by City Hall anytime to talk about their needs.

Bonnie Davis stated her concern with a scrivener's error in a zoning ordinance and stated this needs to be corrected.

Chris Moore stated her concern with ordinances not being available on the internet. Mr. Nalley stated that the City is still in the process of making them available through Municode and that this should be completed within the next few months.

Commissioner Elliott expressed her concerns with the CRA and the Main Street partnership with the City. She feels that the CRA should be terminated and that it does not benefit the City. Mayor Begos stated that this matter will be brought up at a future meeting.

<b>ADJOURNMENT</b>
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With no further business, Commissioner Elliott made a motion to adjourn the meeting at 8:00 pm. Commissioner George seconded and the motion carried 4-0.

\_\_\_\_\_  
Kevin Begos, Mayor

\_\_\_\_\_  
Deborah Guillotte, City Clerk





**APALACHICOLA CITY COMMISSION**  
**REQUEST FOR BOARD ACTION**  
**Meeting Date:** December 3, 2019

**SUBJECT:** CareerSource Gulf Coast Lease Agreement – Community Center

**AGENDA INFORMATION:**

**Agenda Location:** Consent  
**Item Number:** B  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** The Lease Agreement between the City and CareerSource Gulf Coast expired at the end of September. A revised agreement has been developed to extend the lease for a portion of the Community Center for an additional year.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Approve the Lease Agreement for a portion of the Community Center with CareerSource Gulf Coast and Authorize the Mayor to Execute the Agreement.

**FUNDING SOURCE:** General Fund - Property Rent

**ATTACHMENTS:** CareerSource Lease Agreement

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Staff recommends extending the lease agreement for an additional year.

## CONTRACT AND WAIVER/ GENERAL RELEASE OF ALL CLAIMS

AGREEMENT for lease ("Lease"), by and between the CITY OF APALACHICOLA a Florida municipality, (hereinafter called "Lessor" or "Landlord") and CAREERSOURCE GULF COAST, (hereinafter called "Lessee" or "Tenant")

**1. DESCRIPTION OF PREMISES:** Lessor hereby leases unto Lessee for the time period stated herein the "Premises", a certain specified part of the facility known as the Apalachicola Community Center, located at the following address: 1 Bay Avenue, Apalachicola, Florida 32320, with provision being made (as attached hereto Exhibit A) for the use of such space and the description of the space as is leased under this agreement to Lessee.

**2. TERM:** The term shall be for a period commencing on October 1, 2019, ending on September 30, 2020. Lessee will only be provided under this lease with the use of office space in the Apalachicola Community Center which space is designated and described on attached Exhibit A.

**3. RENT:** Lessor shall provide the leased premises under the terms and conditions specified herein to operate an office that provide service to the community of Apalachicola as specified in and limited to the description in Exhibit B for a rental fee of \$400 per month due no later than the first day of the month of each month of the lease. This fee covers water, waste water, garbage, and electricity, and Lessor's liability insurance; entities must use utilities conservatively and within reasonable parameters. As referenced above, the City may surcharge the Lessee for additional expenses for each quarter for utility and insurance expenses for its share of the same which monies shall be due to be paid to the City within (30) days of the surcharge.

**4. USE OF PREMISES, GENERALLY.** Said premises shall be used by Lessee to operate an office, meeting area and/or storage facility for the limited purposes as described in attached Exhibit B, which is incorporated herein by reference. Lessee shall not use, or permit said premises, or any part thereof, to be used for any purpose or purposes other than the purpose or purposes for which the said premises are hereby leased as described in Exhibit B. The foregoing is a material consideration to the Lessor for entering into this lease. Tenant shall not do, bring, keep or permit to be done in, on or about the premises, nor bring, keep, or permit to be brought therein, anything which is prohibited by, or will in any way conflict with any Governmental Regulations or cause a cancellation or an increase in the rate of any insurance policy covering said Premises. Tenant shall not do or permit anything to be done in, on or about the Premises for any improper, immoral, or unlawful purpose, nor shall Tenant cause, maintain or permit any nuisance in, or about the Premises or commit or suffer to be committed any waste in, on or about the Premises. Lessee shall not commit, nor suffer to be committed, any waste upon the said premises, or a public or private nuisance, or other act or thing that may disturb the quiet enjoyment of others in the building in which the demised premises may be located. Nor shall Lessee in any way increase the amount of electricity, water or heating or cooling to be furnished or supplied under this Lease (if any), and Lessee further agrees not to connect with or plug in or connect to electricity or electric wires, or air pipes, any apparatus machinery or device without the written consent of Lessor. Lessee shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the said premises, and said faithfully observe in the use of the premises all municipal ordinances and state and federal statutes now in force or which may hereafter be in force.

**5. CONDITION AND SURRENDER OF PREMISES.** Lessee agrees that the premises are now in a tenantable and good condition; that Lessee shall take good care of the premises including cleaning, repair and proper maintenance of the same and they shall not be altered, repaired or changed without the written consent of the

Lessor; and that, unless otherwise provided by written agreement, all alterations, improvements and changes that are required shall be done pursuant to the plans and specifications in writing which are approved in writing by the Lessor's representative and shall be at the cost of the Lessee and shall be the property of Lessor, and shall remain upon and be surrendered with the premises, excepting however, that at Lessor's option, Lessee shall, at its expense, when surrendering the premises, remove from said premises and said building, all partitions, counter, etc., installed in said premises by the Lessee; that all damage or injury done to the premises by Lessee, or by any person who may be in or upon the premises with the consent of Lessee, shall be paid for by Lessee, and that Lessee shall, at the termination of this Lease, surrender the premises to Lessor in good condition and repair as the same space was at the start of the term of the Lease terminated.

Lessee shall not store any trash, garbage, merchandise, crates, pallets or materials of any kind outside the building in violation of Governmental Requirements. All trash and garbage shall be kept in hard plastic or metal containers that are subject to Lessor's approval which approval shall not be unreasonably withheld or delayed. No recreational vehicles, boats, motors, or other equipment shall be parked or stored outside the building. It is the intent of the Lease to prohibit any outside storage of any type, unless approved by facility manager. Lessee shall be responsible for any damage to the premises, ordinary wear and tear excepted, due to its negligence or intentional acts and those of its officers, agents, employees, invitees and members.

## **6. FIXTURES AND PERSONAL PROPERTY.**

**A. FIXTURES.** All additions, fixtures and improvements made or placed by Lessee to or on the premises shall immediately become and be the property of Lessor and shall remain on and be surrendered with the premises as a part thereof at expiration of said term by lapse of time or otherwise, unless otherwise directed by Lessor; and Lessee will not make any alterations in or additions to the premises without written consent of Lessor first had and obtained in writing.

**B. PERSONAL PROPERTY.** All personal property in the premises shall be at the risk of Lessee only, and Lessor shall not be liable for any damage, either to person or property, sustained by Lessee or other persons, due to the building or any part or appurtenance thereof, or machinery or appliances used in connection therewith, whether becoming out of repair or in defective condition, or arising from bursting or leaking of water, gas, sewer or steam pipes, or from any acts on negligence of City employees, co-tenants, or other occupants of the building, or any other person due to the happening of any accident in or about the building.

**7. ABANDONMENT OF PREMISES.** If Lessee shall abandon, vacate or surrender said premises, or be dispossessed by process of laws, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed and is hereby agreed by Lessee to be abandoned to and owned by Lessor, at the option of Lessor.

**8. RULES AND REGULATION.** Tenant will follow all rules and regulations, (and those as amended from time to time), which Lessor prescribes for the health, welfare and safety of all tenants and their employees, members and officers, invitees as well as the care and cleanliness of the building and the convenience of other tenants including the City, including but not limited to, rules and regulations relating to the use of the parking areas at the building. Tenant shall be responsible for ensuring that its agents, employees, invitees and guests abide by all rules and regulations of Lessor.

**9. GENERAL RELEASE AND LESSOR'S NON-LIABILITY. LESSEE, AS A MATERIAL PART OF THE CONSIDERATION TO BE RENDERED TO LESSOR UNDER THIS LEASE, HEREBY WAIVES AND RELEASES AND ABANDONS ANY**

**AND ALL CLAIMS AGAINST LESSOR, ITS EMPLOYEES, REPRESENTATIVES, AGENTS AND OFFICIALS FOR DAMAGES TO PERSON OR PROPERTY, AND MERCHANDISE, IN, UPON OR ABOUT SAID PREMISES FROM ANY CAUSE ARISING AT ANY TIME, AND LESSEE WILL HOLD AND DOES HEREBY HOLD LESSOR EXEMPT AND HARMLESS FROM AND ON ACCOUNT OF ANY DAMAGES OR INJURY TO ANY PERSON, OR PROPERTY ARISING OUT OF ITS USE OR OCCUPANCY OR RENTAL OF THE FACILITY AS HEREIN PROVIDED AND AGREES TO INDEMNIFY AND DEFEND THE CITY AS TO ANY DAMAGES, CLAIMS, SUITS OR CAUSES OF ACTIONS THEREFORE INCLUDING ALL ATTORNEY'S FEES AND COSTS AND EXPENSE OF DEFENSES OF THE SAME BY THE LESSOR.** Lessor shall not be liable to Lessee for any damages by or from any act or negligence of any co-tenant or other occupant of the same building, or by any owner or occupant of adjoining or contiguous property. Lessee agrees to pay for all damages to the building, as well as all damages to tenants or occupants therefore caused by Lessee's misuse misconduct, or negligent acts or omissions relating to said premises, its apparatus or appurtenances. Lessee must name the City of Apalachicola and Tenant, as additional insureds on liability insurance to be carried and maintained by Lessee in amount acceptable by the City.

**10. ENTRY BY LESSOR.** Lessee shall permit Lessor and its agents to enter into and upon said premises at all reasonable times for the purpose of maintaining the building in which the said premises are situated, or for the purpose of making repairs, alterations or additions to any other portion of said building, including the erection of scaffolding, props, or their mechanical devices, or for the purpose of posting notices of non-liability for alterations, additions, or repairs, without any rebate of rent to Lessee or damages for and loss of occupation or quiet enjoyment of the leased premises thereby occasioned. However, it is agreed by Lessee that it shall be and is hereby responsible until termination or expiration of this Lease for the cleaning of said premises and to maintain the premises in its present good and clean condition and neat in appearance and Lessee shall provide all materials for its use and that of its invitees such as paper towels, toiletries, cleaning materials, etc. A clearly marked copy of the key/keys and/or combination to each lock must be maintained and provided to the City of Apalachicola.

**11. ASSIGNMENT AND SUBLETTING.** Lessee shall not assign this Lease, or any interest therein, and shall not sublet the said premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Lessee excepted) to occupy or use the said premises, or any portion thereof, without such consent of Lessor first had and obtained. Lessor may withhold such written consent at its absolute and unrestricted discretion. This Lease shall not, nor shall any interest therein, be assignable, as to the interest of Lessee, by operation of law, or otherwise without the written consent of Lessor.

A. **SURRENDER OF PREMISES.** In case suit shall be brought for an unlawful detainer of said premises, for the recovery of any rent or payment due under the provision of this Lease, or because of the breach of any other covenant herein contained, on the part of Lessee to be kept or performed, Lessee shall pay to Lessor a reasonable attorney's fee which shall be fixed by the court, and such attorney's fee shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

**12. TERMINATION.** Anything in this Lease to the contrary notwithstanding Lessor at its option may terminate this Lease by written notice giving Lessee the opportunity to correct the stated breach or default within thirty (30) days and failing such Lessor may terminate this Lease and re-enter and take possession of the leased premises in the event of a default in the payment of the usage fee or a breach by the Lessee of any of the terms and conditions of this Lease. Provided that Lessee is not in default of this Lease and has satisfactorily performed all terms and

conditions on its part to be performed, Lessee shall have the right, subject to the conditions set forth in the Lease, to renew this Lease for a term of additional six months on conditions mutually agreeable to the parties hereto and such other requirements that may be imposed by regulatory authorities, and subject to and conditioned on Lessor's prior commitments to other lessees. In the event Lessee elects to renew this Lease, it shall give Lessor ninety (90) days written notice, and the terms must be negotiated and agreed upon prior to the termination of the terms then in effect.

Lessor, City of Apalachicola, shall have and reserves the right to terminate this lease without breach or any cause at its sole discretion by giving Lessee 30 days written Notice of Termination. Lessee will have the option to cancel the Lease with a 30-day written notice.

### 13. MISCELLANEOUS.

**A. NOTICES.** Notices given pursuant to the provisions of the Lease, necessary to carry out its provisions, shall be in writing, and delivered personally to the person to whom the notice is given, or mailed postage prepaid, addressed to such person.

Lessor's address for the purpose shall be:

City of Apalachicola  
192 Coach Wagoner Boulevard  
Apalachicola, FL 32320

Lessee's address for this purpose shall be:

CareerSource Gulf Coast  
5230 W. Hwy 98  
Panama City, FL 32401

All notices to be given to Lessee may be given in writing personally or by depositing the same in the United States Mail, Postage Prepaid and addressed to Lessee at the above address, whether or not Lessee has departed from, abandoned or vacated the premises.

**14. ENTIRE AGREEMENT AND BINDING AFFECT.** This Lease, together with all attached Exhibits (if applicable) which are hereby made a part of the Lease, contains the entire and only agreement between the parties. No oral statements or prior written statements not contained in this Lease shall have no effect. This Lease may not be modified except in writing by the Lessor and Lessee. This Lessee shall be binding on Lessor only after Lessor has signed and delivered a copy to Lessee. This Lease shall be for the benefit of and are binding upon Lessor and Lessee, and their respective heirs, personal representatives, successors and permitted assigns. Lessor may assign its interest in this Lease, and the Term "Lessor" means only the current owner of the building.

**15. COMMON AREAS MEAN:** All facilities furnished by Lessor that are designed for the general use, in common, of occupants of the building, including Lessee, its respective officers, agents, employees, and customers, including but not limited in any of the following which may be furnished by Lessor: restrooms, kitchen, parking areas, driveways, lobbies and entrances and exits thereto, and landscape areas. All such areas shall be subject to the exclusive control, administration and management of Lessor and Lessor shall have the right from time to time to change the area, level of, location, amount and arrangement and use of such areas, including parking areas, if any, and other facilities referred to above, and to restrict parking by Lessee and their employees/guests and to

make all rules and regulations pertaining thereto for the proper operation and maintenance of the Common Areas. Provided, however, any control, administration and management of such Common Areas, and any changes to the area, level of, location and amount and arrangement of such Common Areas shall not unreasonably restrict Lessee's use and enjoyment of its/this leased area during the term of this lease.

**16. RESERVED:**

**17. PAYMENT:** Lessee shall pay all monies due, without demand, deduction or set off, to Lessor at the place specified for notice in Section 25 below. Lessee also shall pay a late charge ("Late Charge") equal to five percent (5%) of the amount of any delinquent installment of rent as an administrative fee with each payment of rent or payment due not paid within five (5) days after same is due hereunder. The provisions herein for a Late Charge shall not be construed to extend the date for payment of any sums required to be paid by Lessee hereunder or to relieve Lessor of its obligations to pay all such items at the time or times herein stipulated. Notwithstanding the imposition of such Late Charge pursuant to this section, Lessee shall be in default under this Lease if any or all payments required to be made by Lessee are not made at the time herein stipulated.

**18. SECURITY DEPOSIT (IF REQUIRED):** Lessee shall deposit with Lessor upon execution hereof an amount equal to \$ \_\_\_\_\_ as security for Lessee's faithful performance of Lessee's obligations hereunder ("Security Deposit"). If Lessee fails to pay the monies due hereunder, or other charges due hereunder or otherwise defaults with respect to any provision of the Lease, Lessor may use, apply or retain all or any portion of the Security Deposit for the payment of any amount, or other charge in default or the payment of any other sum to which Lessor may become entitled under the Lease by reason of Lessee's default. The parties expressly acknowledge and agree that the Security Deposit is not an advance payment of rent or additional rent, nor a measure of Lessor's damages in the event of any default by Lessee. If Lessor so uses or applies all or any portion of the Security Deposit to any obligation due under the Lease, Lessee shall within ten (10) days after written demand therefor, deposit cash with Lessor in an amount sufficient to restore the Security Deposit to the full amount stated above and Lessee's failure to do so shall be a material breach of this Lease. Lessor shall be required to keep the Security Deposit separate from its general accounts, in trust for the Lessee, and shall provide to Lessee the location of such funds and the account number for the account in which it is held. If Lessee performs all of Lessee's obligations hereunder, the Security Deposit, or so much thereof as has not theretofore been applied by Lessor, shall be returned without payment of interest for its use to Lessee (or at Lessor's option, to the last assignee, if any of Lessee's interest hereunder) within ninety (90) days of the later of (i) the last of the Lease Term, (ii) the date Lessee vacated the premises, or (iii) the date Lessee has fulfilled all its obligations hereunder. Lessee acknowledges and agrees that Lessor shall have the right to transfer the Security Deposit to any assignee or other transferee of Lessor subject to the terms hereof, and that the provisions hereof shall apply to every such assignment or transfer to a new Lessor. Upon actual delivery of the Security Deposit to any assignee or other transferee of Lessor's interest in the premises, Lessor shall thereupon be discharged from any further liability with respect to the Security Deposit. Lessee hereby agrees not to look to any mortgagee as mortgagee, mortgagee-in-possession or successor in title to the premises for accountability for the Security Deposit unless the Security Deposit has actually been received by said mortgagee as security for Lessee's performance of this Lease.

**19. LIENS:** Notwithstanding any provision of this Lease to the contrary, Lessee shall never, under any circumstances, have the power to subject the interest of Lessor in the premises or building to any mechanics' or material men's liens or liens of any kind nor shall any provision in this Lease ever be construed as empowering Lessee to encumber or cause Lessee to encumber the title or interest of Lessor in the premises or building. In order to comply with the provisions of Section 713.10 Florida Statutes, it is specifically provided that neither Lessee nor anyone claiming by, through or under Lessee, including but not limited to contractors, subcontractors, material

men, mechanics and laborers, shall have any right to file or place any kind of lien whatsoever upon the premises or building or any improvement thereon, and any such liens are specifically prohibited. All parties with whom Lessee may deal are put on notice that Lessee has no power to subject Lessor's interest in any claim or lien of any kind or character, and all such persons so dealing with Lessee must look solely to the credit of Lessee, and not to Lessor's interest or assets. Lessee shall put all such parties with whom Lessee may deal on notice of the terms of this Section.

**20. ACCESS:** Upon reasonable notice, except in the case of an emergency, Lessor shall be permitted to enter the premises at all reasonable times with reasonable notice for the purposes of inspecting, repairing and leasing the premises and of ascertaining compliance by Lessee with the provisions of this Lease. Lessor shall use reasonable efforts so as to minimize any inconvenience to or disruption of Lessee. Lessor may show the premises to prospective purchasers, mortgagees, or Lessee's at any time.

**21. LESSEE'S DEFAULT:**

A. All rights and remedies of Lessor herein enumerated shall be cumulative, and none shall exclude any other rights or remedies allowed by law or in equity.

B. Any and all property which may be removed from the premises by Lessor, pursuant to the authority of this Lease or of law, to which Lessee is or may be entitled, may be handled, removed or stored by Lessor at the sole risk, cost and expense of Lessee, and Lessor shall in no event be responsible for the value, preservation or safekeeping thereof. Lessee shall pay to Lessor, upon demand, any and all expenses incurred in such removal and all storage charges against such property. Any such property of Lessee not removed from the premises or retaken from storage by Lessee within thirty (30) days after the end of the term or of Lessee's right to possession of the premises, however terminated, shall be conclusively deemed to have been forever abandoned by Lessee and may either be retained by Lessor as its property or may be disposed of as Lessor may see fit in its sole discretion.

C. In the event of a breach or threatened breach by Lessee of any of the terms, covenants and conditions of this Lease, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Lessee hereby expressly waives any and all rights, of redemption granted by or under any present or future laws in the event of Lessee's being evicted or dispossessed for any cause, or in the event of Lessor's obtaining possession of the premises, by reason of the violation by Lessee of any of the terms, covenants or conditions of this Lease or otherwise; and further expressly waives service of any notice of Lessor's intention to re-enter. Notwithstanding the aforementioned, Lessee shall pay all and singular the costs, charges, expenses, and attorney's fees, reasonably incurred or paid at any time by Lessor, including initial collection efforts and continuing through all litigation, appeals and any post-judgment execution efforts until fully satisfied, because of the failure of Lessee to perform, comply with and abide by each and every of the terms, covenants and conditions of this Lease.

D. **INSURANCE:** Lessee shall, during the Lease Term, procure at its expense and keep in force the following insurance:

1. Commercial general liability insurance naming the Lessor as an additional insured against any and all claims for bodily injury and property damage occurring in, or about the Premises arising out of Lessee's use and occupancy of the Premises and the common areas utilized by Lessee, its invitees, employees, agents, customers and members. Such insurance shall have a combined single limit of not less than \$1,000,000 per occurrence with a \$2,000,000 aggregate limit and excess umbrella liability insurance in the amount of \$5,000,000. Such liability insurance shall be primary and not contributing to any insurance available to Lessor and Lessor's



insurance shall be in excess thereto. In no event shall the limits of such insurance be considered as limiting the liability of Lessee under this Lease.

2. Worker's Compensation Insurance in accordance with Statutory Law, as applicable.

3. Certificates of insurance, naming Lessor as Additional Insured and Loss Payee shall for those required by Florida Law to have workers compensation insurance coverage and/or benefits offered be delivered to Lessor prior to the Lease Commencement date and annually thereafter at least thirty (30) days prior to the policy expiration date. Lessee shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Lessor as required by this Lease. Each policy of insurance shall provide notification to Lessor at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

4. Lessee, as a material part of the consideration to Lessor, hereby assumes all risk of damage to property or injury to person, in, upon, or about the Premises from its own negligence, gross negligence, or intentional acts, except that which is caused by the negligence, gross negligence, or willful misconduct of the Lessor or its agents or any of them or Lessor's breach of this Lease. The provisions of this section shall survive the expiration or termination of this Lease with respect to any damage, injury, death, breach, claim or default occurring prior to such expiration or termination.

5. The policies required to be maintained by Tenant shall be with companies rated A-X or better by A.M. Best. Insurers shall be licensed to do business in the state in which the Premises are located and domiciled in the USA. Certificates of insurance, naming Landlord as Additional Insured and Loss Payee shall be delivered to Landlord prior to the Lease Commencement Date and annually thereafter at least thirty (30) days prior to the policy expiration date. Tenant shall have the right to provide insurance coverage which it is obligated to carry pursuant to the terms hereof in a blanket policy, provided such blanket policy expressly affords coverage to the Premises and to Landlord as required by this lease. Each policy of insurance shall provide notification to Landlord at least thirty (30) days prior to any cancellation or modification to reduce the insurance coverage.

In the event Tenant does not purchase the insurance required by this lease or keep the same in full force and effect, Landlord may, but shall not be obligated to purchase the necessary insurance and pay the premium. The Tenant shall repay to Landlord, as additional rent, the amount so paid promptly upon demand. In addition, Landlord may recover from Tenant and Tenant agrees to pay, as additional rent, any and all reasonable expenses (including attorneys' fees) and damages which Landlord may sustain by reason of the failure to Tenant to obtain and maintain such insurance. An amount equal to \$150.00 shall be charged as Additional Rent for each month in which Tenant fails to deliver to Landlord the insurance policies required herein.

**22. ACCORD AND SATISFACTION:** No receipt and retention by Lessor of any payment tendered by Lessee in connection with this Lease shall give rise to or support or constitute an accord or satisfaction, or a compromise or other settlement, notwithstanding any accompanying statement, instruction or other assertion to the contrary (whether by notation on a check or in a transmittal letter or otherwise), unless Lessor expressly agrees to an accord and satisfaction, or a compromise or other settlement, in a separate writing duly executed by Lessor. Lessor may receive and retain, absolutely and for itself, any and all payments so tendered, notwithstanding any accompanying instructions by Lessee to the contrary. Lessor will be entitled to treat any such payments as being received on account of any item or items of rent, interest, expense or damage due in connection therewith, in such amounts and in such order, as Lessor may determine in its sole discretion.

**23. APPLICABLE LAW AND VENUE:** This Lease shall be construed according to the laws of the State of Florida. Should any provision of this Lease require judicial interpretation, it is agreed by the parties hereto that the court interpreting or construing the same shall not apply a presumption that any such provision shall be more strictly construed against the party who itself or through its agent prepared the same, as all parties have participated in the preparation of the provisions of this Lease and that all terms, covenants and conditions were negotiable. Furthermore, a part of this Lease, it is agreed that any litigation regarding or arising out of the same, shall be brought in the courts in and for Franklin County, Florida (Circuit or County Court) as the creation of this Lease, the obligation to pay and the location of the space/rental used are located in Apalachicola, Florida.

**24. SURRENDER OF PREMISES:** Lessee agrees to surrender to Lessor, at the end of the Term or upon any earlier termination of this Lease, the Premises in (i) as good condition as the Premises were at the Lease Commencement Date, ordinary wear and tear excepted. (ii) Lessee shall remove its trade fixtures, furnishings and equipment from the Premises and shall repair any damage caused by such removal; and (iii) Lessee shall also remove all rubbish, trash and/or garbage from the Premises. Property not so removed by Lessee shall be deemed abandoned by Lessee, and title to the same shall thereupon pass to Lessor at Lessor's option. Lessee hereby expressly authorizes Lessor, as agent of Lessee, to remove such rubbish, trash and/or garbage and make such repairs as may be necessary to restore the Premises to such condition at the sole cost and expense of Lessee. The delivery of keys to any employee or agent of Lessor will not operate as a termination of this Lease or a surrender of the Premises unless such delivery of keys is done in connection with a written instrument executed by Lessor approving such termination or surrender.

**25. ATTORNEY'S FEES:** If either party brings an action to enforce the terms, hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to its costs and reasonable attorney's fees, including all appeals from the non-prevailing party. Jurisdiction for any lawsuit shall be Franklin County, Florida.

**26. WAIVER OF SUBROGATION.** Tenant and Landlord release each other and waive any right of recovery against each other for loss or damage to their respective property, which occurs on or about the Premises (whether due to the negligence of either party, their agents, employees, licensees, invitees or otherwise), to the extent that such loss or damage is reimbursed by insurance proceeds. Tenant and Landlord agree that all policies of insurance obtained by either of them in connection with the Premises shall contain appropriate waiver of subrogation clauses.

**27. HAZARDOUS WASTE.** Other than commercially reasonable quantities of general office supplies, provided Tenant's use complies with all Environmental Requirements and is incidental to Tenant's operation of its business, Tenant shall not cause, permit or suffer any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Property by the Tenant, without the prior written consent of Landlord. From time to time during the term of this Lease, Tenant may request Landlord's approval of Tenant's use of other Hazardous Materials, which approval may be withheld in Landlord's sole discretion.

**28. JURY WAIVER; COUNTERCLAIMS. LANDLORD AND TENANT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM INVOLVING ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH (i) THIS LEASE, (ii) THE RELATIONSHIP OF LANDLORD AND TENANT, (iii) TENANT'S USE OR OCCUPANCY OF THE PREMISES OR (iv) THE RIGHT TO ANY STATUTORY RELIEF OR REMEDY. TENANT AGREES THAT IT SHALL NOT INTERPOSE ANY PERMISSIVE**

**COUNTERCLAIM OF ANY NATURE IN ANY SUMMARY PROCEEDING BROUGHT AGAINST TENANT BY LANDLORD TO OBTAIN POSSESSION OF THE PREMISES. THIS WAIVER IS MADE KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY BY TENANT. TENANT FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS LEASE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. THIS PROVISION IS A MATERIAL INDUCEMENT TO LANDLORD IN AGREEING TO ENTER INTO THIS LEASE. TENANT ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISIONS AND AS EVIDENCE OF THIS FACT SIGNS IT INITIALS OR THE INITIALS OF ITS DULY AUTHORIZED REPRESENTATIVE AT THE BOTTOM OF THIS DOCUMENT.**

**29. INDIVIDUAL REPRESENTATION AND WARRANTY.** The individual representative of the Tenant executing this Lease hereby represents and warrants to Landlord that: (a) Tenant is in good standing under the laws of the State of Florida; (b) Tenant has full corporate power and authority to enter into this Lease and to perform all of Tenant's obligations under the Lease; and, (c) each individual signing this Lease on behalf of Tenant is duly and validly authorized to do so. Tenant shall not permit any affiliated entities or non-affiliated entities to operate within the Premises except for meetings in "Community Meeting Space, or identify the Premises as its principal place of business, principal address, or mailing address without the express prior written consent of the Landlord and without such entity or entities first agreeing in writing to being fully bound by the terms and conditions of the Lease. In the event of a default of this Section 50 of the Lease, the individual representative executing this Lease on behalf of the Tenant agrees to be personally and individually obligated to Landlord for the full and faithful performance of all terms, conditions, conveyances, obligations, and agreements contained in the Lease, including, but not limited to, the payment of rent and all other monetary obligations contained herein.

**IN WITNESS WHEREOF**, Lessor and Lessee have executed this Agreement on the 3rd day of December, 2019.

Signed, Sealed and Delivered in the presence of:

CITY OF APALACHICOLA,  
a Florida Municipality

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Printed name of witness

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Facility Manager

\_\_\_\_\_  
Printed name of witness

ATTEST:

BY: \_\_\_\_\_  
Title \_\_\_\_\_

Signed, Sealed and Delivered in the presence of:

CAREER SOURCE GULF COAST

\_\_\_\_\_  
Witness

BY: \_\_\_\_\_

\_\_\_\_\_  
Printed name of witness

Title: \_\_\_\_\_

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Printed name of witness



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Ordinance 2019-02 - Duke Energy Electric Franchise Agreement – Public Hearing and Second Reading

**AGENDA INFORMATION:**

**Agenda Location:** Public Hearing and Unfinished Business  
**Item Number:** A  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** The Electric Franchise Ordinance with Duke Energy was approved on January 13, 1989 for a thirty year period and expired in January 2019. Duke Energy contacted the City to discuss the renewal of the franchise for an additional term however progress stalled due to several legal matters. The updated and revised agreement is attached. No revisions to the proposed Ordinance have been made since the first reading and the document is now being submitted for public hearing and second reading. Danny Collins, our Local Government Liaison with Duke Energy, will be present at the meeting to answer any questions the Commission may have about the renewal.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Adopt Ordinance 2019-02 Granting Duke Energy of Florida an Electric Franchise within the City of Apalachicola.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Draft Ordinance 2019-02

**STAFF'S COMMENTS AND RECOMMENDATIONS:** The proposed Ordinance requires two readings and a public hearing. The first reading was held at the November meeting, and the public hearing and second reading with final approval is scheduled for the December meeting.

**ORDINANCE # 2019-02**

**AN ORDINANCE GRANTING TO DUKE ENERGY FLORIDA, LLC. d/b/a DUKE ENERGY, A NON-EXCLUSIVE ELECTRIC UTILITY RIGHTS OF WAY UTILIZATION FRANCHISE; PRESCRIBING THE TERMS AND CONDITIONS RELATED TO THE OCCUPANCY OF MUNICIPAL STREETS AND RIGHTS OF WAY IN THE CITY OF APALACHICOLA, FLORIDA, FOR THE PURPOSE OF PROVIDING ELECTRIC SERVICE; PROVIDING FOR SEVERABILITY OF PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.**

**BE IT ORDAINED BY THE CITY COMMISSION OF APALACHICOLA, FLORIDA:**

**SECTION 1 - Findings**

The City deems it necessary, desirable and in the interest of its citizens to establish by ordinance a rights of way utilization franchise (sometimes referred to herein as the “Franchise”) granting the Company permission to occupy the Rights of Way in the City of Apalachicola, Florida, for the purpose of providing electric services.

**SECTION 2 - Short Title**

This ordinance shall be known and may be cited as the “Duke Energy Rights of Way Utilization Franchise.”

**SECTION 3 - Definitions**

For the purposes of this ordinance, the following terms, phrases, words, and their derivatives shall have the meaning given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely permissive.

(A) “Adversely Affected” – For the Company, a loss of one percent (1%) of Base Revenues within the corporate City limits due to Retail Wheeling. For the City, a loss of one percent (1%) of franchise fees due to Retail Wheeling.

(B) “Base Revenues” – All Company’s revenues from the retail sale of electricity, net of customer credits, to residential, commercial and industrial customers and City sponsored street lighting all within the corporate limits of the City.

(C) “Company” or “Grantee” – Duke Energy Florida, LLC d/b/a Duke Energy, its successors and permitted assigns. This Agreement shall not be assigned without the prior written consent of the City, which shall not be unreasonably withheld; provided, however, Company may assign this Agreement without the consent of the City if such assignment is to an entity that purchases all or substantially all of the assets of Company, an entity affiliated with Company or any assignment pursuant to a merger or re-organization of Company or any affiliate of Company.

(D) “City” or “Grantor” – The City of Apalachicola, Florida.

(E) “Electric Energy Provider” – Every legal entity or association of any kind (including their lessees, trustees or receivers), including any unit of state, federal or local government (including City herein), which owns, maintains, or operates an electric generation, transmission, or distribution system or facilities, or which otherwise provides, arranges for, or supplies electricity or electric energy to the public, or which supplies electricity to itself utilizing Company’s distribution or other facilities. Without limitation or the foregoing, “Electric Energy Provider” shall also include every Electric Utility, electric power marketer or electric power aggregator. It shall also include every entity providing such services as metering, customer billing, payment collection and processing, and customer information and data processing.

(F) “Electric Utility” -- Shall have the meaning set out in Section 366.02(2), *Florida Statutes* (2010), and shall also include every electric “Public Utility” as defined in Section 366.02(1), *Florida Statutes* (2010). “Electric Utility” shall further include every investor owned, municipally or governmentally owned, or cooperatively owned electric utility (including their lessees, trustees or receivers), which owns, maintains, or operates an electric generation, transmission, or distribution system in any State or County.

(G) “Electric Utility System” – An electric power system installed and operated in the Franchise Area in accordance with the provisions of the Florida Public Service Commission establishing technical standards, service areas, tariffs and operating standards, which shall include but not to limited to electric light, heat, power and energy facilities, and a generation, transmission, and distribution system, with such extensions thereof and additions hereto as shall hereafter be made.

(H) “Franchise Area” – That area for which Company provides electric utility service within the corporate City limits of the City.

(I) “Facilities” – The meaning as set forth in Section 4.

(J) “Person” – Any person, firm, partnership, association, corporation, company or organization of any kind.

(K) “Public Service Commission” – The Florida Public Service Commission.

(L) “Rights of Way” – All of the public streets, alleys, highways, waterways, bridges, sidewalks and parks, and any other public ways or places owned by the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

(M) “Retail Wheeling” – A customer/supplier arrangement whereby an Electric Energy Provider utilizes transmission and/or distribution facilities of Company to make energy sales directly to an end use customer located within the Franchise Area.

#### **SECTION 4 - Grant of Authority**

(A) This grant of authority is limited to the provision by Company to have, maintain, or place its Facilities within the Rights of Way for its electric utility services. Accordingly, the



City hereby grants to the Company, its successors and assigns the non-exclusive right, authority, and franchise to lay, erect, construct, maintain, repair and operate its Facilities in, under, upon, over and across the present and future Rights of Way, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, including but not limited to conduits, cables, poles, wires, supports and such other structures or appurtenances as may be reasonably necessary for the construction, maintenance and operation of an electric generation, transmission and distribution system, including information, telecommunication, and video transmission used solely for the provision of electric service (collectively the "Facilities"), provided that all portions of the same shall conform to accepted industry standards, including but not limited, to the National Electrical Safety Code. Nothing in this Ordinance shall require Grantee to remove, de-energize, or cease using any poles, wires, or other things or Facilities identified hereinabove that were in place under previous ordinances or permits prior to the Effective Date of this Ordinance, regardless of whether such poles, wires or other Facilities are located outside "Rights of Way" as defined herein. Nor shall anything in this Ordinance prohibit Company from performing upgrades, replacements, maintenance or servicing of such poles, wires, or other Facilities after the Effective Date of this Ordinance. Rather, all such preexisting poles, wires, or other Facilities shall be authorized under this Ordinance. Because this Franchise is intended to grant Company the non-exclusive, but unrestricted right to place its Facilities within the Rights of Way, the City expressly acknowledges and agrees that Company shall not be required to pull or pay for permits to place its Facilities or perform any work maintenance activities on or related to its Facilities within the Rights of Way. Subject to the foregoing and except in emergencies, Company shall use reasonable efforts to provide electronic notice to the Public Works Director or their designee when Company intends to perform underground boring work within the Rights of Way.

(B) Annexation or Contraction. City and Company agree that the Franchise Area is subject to expansion or reduction by annexation and contraction of municipal boundaries. If City approves any Franchise Area expansion or reduction by annexation or contraction, City shall provide written notice to Company's Annexation Coordinator, at the address provided below, within sixty (60) days of such approval and this Franchise shall automatically extend to include any such annexed areas.

Additionally, within sixty (60) days of any such annexation or contraction, City shall provide to Company an updated list containing the new or removed street names, known street name aliases, street addresses, and zip codes associated with each street name. All notices of annexation or contraction and address listings shall be addressed to the Annexation Coordinator as follows with the address subject to change:

Duke Energy  
Tax Team DT02-V  
9700 David Taylor Drive  
Charlotte NC 28262  
Or by email to: [TaxTeam@duke-energy.com](mailto:TaxTeam@duke-energy.com)

Company must revise its payments due to any expansion or reduction by annexation within a reasonable time after Company has received such notice and updated list from City, but no later than sixty (60) days after receipt of notice and the list. City understands and

affirmatively acknowledges that the Company will exclusively rely upon the City to provide timely and accurate information to the Company regarding any such annexations or contractions, and that failure to do so will impair, inhibit, and/or preclude the Company's ability to revise any payments due to the City that are impacted by such annexations or contractions. Further, City acknowledges that if such information is not timely furnished to Company as required herein, any related obligation to collect payments shall be suspended during the period of delay.

(C) Non-Exclusive Use. The Company's right to use and occupy Rights of Way for the purposes herein set forth shall be non-exclusive as to entities not engaged in the provision of electric energy and service, and the City reserves the right to grant to others the right to utilize the Rights of Way, to any person at any time during the period of this Franchise so long as such grant does not create an unsafe condition or unreasonably conflict with the rights granted to Company herein.

#### **SECTION 5 - Notice of Acceptance and Term of Franchise**

This ordinance shall become effective upon being legally passed and adopted ("Effective Date") by the City Commission; and it is further agreed that Grantee shall accept this Franchise as of the date of the passage and adoption by the City Commission and shall signify its acceptance in writing within thirty (30) days after the City Commission's approval of this ordinance by filing its written acceptance with the City Clerk. If Grantee fails to accept this franchise within thirty (30) days of its date of passage and adoption, then this Ordinance shall be null and void, and of no force and effect of any kind. Commencing on the Effective Date, the term of the Franchise granted herein shall be for a period of ten (10) years.

#### **SECTION 6 - Payment to City**

(A) Effective the first day of the second month beginning after the Effective Date of this ordinance, City shall be entitled to receive from Company a monthly franchise amount that will equal six percent (6%) of Company's Base Revenues (the "Franchise Fee") for the preceding month, which amount shall be the total compensation due City for any and all rights, authority and privileges granted by this Franchise, including compensation for any required permits, parking fees, or any other fee or cost related to the rights granted hereunder. Any franchise amounts that will be paid to the City will be collected by the Company from Company's customers in the Franchise Area and passed through to the City in the manner described herein. The City expressly acknowledges that no additional or other amounts shall be due or remitted by Company for the exercise of its rights granted hereunder.

Payment shall be made to City for each month no later than the twentieth (20<sup>th</sup>) day of the following month. The monthly payment shall be made by wire transfer. Any monthly payment or any portion thereof made twenty (20) days after the due date without good cause shall be subject to interest at the rate of ten percent (10%) per annum.

(B) Only disputed amounts shall be allowed to be withheld by Company, and any such amount shall not accrue any interest during the pendency of any such dispute.

(C) The City acknowledges that all classifications and categories of retail customers of Company shall be subject to the payment of the Franchise Fee due hereunder.

**SECTION 7 - Favored Nations**

(A) In the event Grantee shall hereafter accept an electric utility franchise ordinance from any municipality providing for the payment of a franchise fee in excess of that provided for in Section 6 above, Grantee shall notify Grantor, and Grantor reserves the right to amend this Franchise to increase the franchise fee payable under this ordinance to no more than the greater franchise fee that Grantee has agreed to pay to such other municipality. Grantee's obligation to pay such greater franchise fee to Grantor shall apply prospectively beginning with the next monthly franchise fee payment following Grantor's timely notice of its exercise of its amendment right to which Grantee may collect such increased fee from its customers. Grantee's failure to notify Grantor of such additional payments does not limit Grantor's right to amend to require such additional franchise fees.

(B) It is the intent and agreement of Grantor and Grantee that Grantee shall not be required to pay Grantor a franchise fee under Section 6 of a percentage greater than that paid to Grantor by any other Electric Utility or Electric Energy Provider utilizing Grantor's Rights of Way on such Electric Utility's or Electric Energy Provider's revenues attributable to services that are the same or substantially the same as those performed by Grantee. It is further the intent and agreement of Grantor and Grantee that Grantee should not be placed at a competitive disadvantage by the payments required by Section 6 of this Ordinance in the event other Electric Utilities or Electric Energy Providers provide services in competition with Grantee without utilizing Grantor's Rights of Way.

(C) If Grantor imposes a lesser fee, or no fee, or is unable to impose a fee on another Electric Utility or Electric Energy Provider providing or seeking to provide services in competition with Grantee to customers within Grantor's municipal boundaries, whether utilizing Grantor's Rights of Way or not utilizing Grantor's Rights of Way, Grantee's fee under Section 6 for such services shall be automatically reduced to the lesser fee charged the other Electric Utility or Electric Energy Provider (or to zero (0), if no fee is charged such other Electric Utility or Electric Energy Provider). In all events, City shall not grant more favorable treatment to other Electric Energy Providers than is granted to Company under this ordinance, it being the intent of the parties that no future provider of electric service, be it generation, transmission or distribution service, to customers within the corporate limits of City shall be given a competitive advantage over Company.

**SECTION 8 - Grantor Rights**

The right is hereby reserved to the City to adopt such regulations as it shall find necessary in the exercise of its police power, provided that such regulations, by ordinance or otherwise, shall be reasonable, and shall not be in conflict with the laws of the State of Florida or the lawful regulations of any state agency possessing the power to regulate the activities of the Company, or conflict with or otherwise interfere with the benefits conferred on the Company hereunder. In the event of a conflict between this Franchise Agreement and any other ordinance or regulation adopted by the City relating to Company's rights to perform work in and/or occupancy of the Rights of Way as permitted hereunder, the rights under this Franchise Agreement shall govern and control.

## **SECTION 9 - Work In Rights of Way**

The Company is hereby granted the right, authority and privilege to perform all necessary work and excavations in said Rights of Way of the City related to its Facilities and necessary or incidental to carrying out such rights and obligations as permitted hereunder. The Company shall have the right to fasten and to stretch and lay along the lines of said poles, conduits, pipes and cables necessary for transmitting and conveying the electric current to be used in the Company's business, together with all the rights and privileges necessary or convenient for the full use including the right to trim, cut and keep clear all trees and limbs near or along Company's Facilities that may in any way endanger the proper operation of same. Moreover, the Company shall have the right to construct, erect, operate and maintain within the City an electric system consisting of its Facilities for carrying on the Company's business; provided that, in accomplishing these purposes, the streets of said City shall not be unnecessarily obstructed for an unreasonable amount of time and work in connection therewith shall be done and carried on in conformity with such reasonable rules, standards, regulations and local ordinances with reference thereto as may be adopted by the City for the protection of the public and which are not in conflict with or otherwise interfere with the benefits conferred on the Company hereunder.

Any request to underground electric utility facilities shall be submitted to Company and will be performed as can be reasonably done in accordance with Company's applicable tariffs, policies adopted by Company, and any applicable laws and/or regulations. All costs associated with such underground work requested by Grantor shall be at Grantor's expense and/or any costs associated with such underground work requested by any third party shall be at the third party's expense and estimated and applied in accordance with Company's tariffs and policies and any applicable laws and/or regulations.

## **SECTION 10 - Indemnification**

(A) The acceptance of this Franchise by Company shall be deemed an agreement on the part of Company to indemnify City and hold it harmless against any and all direct damages, claims, expenses, reasonable attorneys' fees (including appellate fees) and costs that City may incur to the extent arising out of or resulting from the negligence or willful misconduct of Company, its contractors and agents in the construction, repair, operation, or maintenance of its electric utility Facilities hereunder. In no event shall Company be liable to City for any consequential, incidental, punitive, exemplary, multiple, or indirect damages, lost profits or other business interruption damages, by statute, in tort (including negligence or strict liability), in contract, or under any indemnity provision or otherwise. Subject to any and all applicable laws, the indemnification obligations set forth in this Section 10 shall survive the expiration of this Agreement.

(B) Company shall maintain throughout the term of this Franchise sufficient financial resources to provide self-insurance insuring City and Company with regard to all damages set forth in Section 10 (A) in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person;  
\$3,000,000 for bodily injury or death resulting from any one accident.
- (ii) \$50,000 for property damage resulting from any one accident.
- (iii) \$1,000,000 for all other types of liability.

(C) City acknowledges that Company provides its own liability insurance (self-insured).

**SECTION 11 - Records and Reports**

(A) Company Rules and Regulations. The following documents shall be available to City upon City's reasonable request: copies of rules, regulations, and procedures adopted by Company that relate to Company's use of City's Rights of Way.

(B) Accounting. Company shall use the system of accounts and the form of books, accounts, records, and memoranda prescribed by the Florida Public Service Commission or such other applicable governing agency having jurisdiction over Company as determined by Company.

(C) Reports. Company will submit monthly a statement of its estimated Base Revenues for the period on which such payment is based. The acceptance of any statement or payment shall not prevent the City from asserting that the amount paid is not the amount due, or from recovering any deficit by any lawful proceeding, including interest to be applied at the rate set forth in Section 6 (A).

(D) Availability of Records and Reports. Company shall supply information that City or its representatives may from time to time reasonably request relative to the calculation of franchise fees. Such records shall, on written request of City, be open for examination and audit by City and City's representatives at Company's headquarters in St. Petersburg, Florida, during ordinary business hours and such records shall be retained by Company for a period of three (3) years.

(E) Audit. City may require, upon prior written notice and during Company's normal business hours, an audit of Company's books related to this Agreement not more than once every three (3) years and then only for the preceding three (3) years. Company will reimburse City's audit costs if the audit identifies errors in Company's franchise Base Revenues of five percent (5%) or more for the period audited. If an underpayment of franchise fees has occurred due to the Company's error, interest will be calculated at the rate of ten percent (10%) per annum. Both the underpayment and interest shall be paid within ninety (90) days from completion of the audit.

(F) Customer Report. In addition to City's obligations in Section 4 (B), within ninety (90) days of the Effective Date of this Agreement, City shall provide to Company a report in a format acceptable to Company setting forth a listing of all addresses within the corporate limits of the City and annually thereafter a report identifying any changes to the address listing provided the previous year.

**SECTION 12 - Retail Wheeling**

In the event the appropriate governmental authorities authorize Retail Wheeling, then either party, if Adversely Affected thereby, may reopen this ordinance upon thirty (30) days written notice to the other for the sole purpose of addressing the Franchise Fee payments between The Company and the City. If the parties are unable to agree within ninety (90) days of reopening, either party may declare an impasse and may file an action in the Circuit Court in Franklin County, Florida for declaratory relief as to the proper Franchise Fee in light of Retail Wheeling.

**SECTION 13 - Severability**

Should any section or provision of this Franchise ordinance or any portion thereof, the deletion of which would not adversely affect the receipt of any material benefits or, substantially increase the burden of any party hereunder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid. In the event of any such partial invalidity, City and Company shall meet and negotiate in good faith to obtain a replacement provision that is in compliance with the judicial authority's decision.

**SECTION 14 - Governing Law and Venue**

(A) This Franchise ordinance shall be construed and interpreted according to the laws of the State of Florida.

(B) In the event that any legal proceeding is brought to enforce the terms of this Franchise, the same shall be brought in Franklin County, Florida, or, if a federal claim, in the U.S. District Court in and for the Northern District of Florida, Tallahassee Division.

**SECTION 15 - Merger**

This Franchise agreement is the full, complete and entire understanding and agreements of the parties as to its subject matter, and the written terms supersede all prior contemporaneous representations, discussions, negotiations, understanding and agreements relating to the subject matter of this agreement. The parties shall not be bound or liable for any statement, prior negotiations, correspondence, representation, promise, draft agreements, inducements, or other understanding of any kind or nature not set forth or provided herein.

**SECTION 16 - Notices**

Except in exigent circumstances, all notices by either City or Company to the other shall be made by depositing such notice in the United States Mail, Certified Mail return receipt requested or by recognized commercial delivery, e.g. FedEx, UPS or DHL or facsimile. Any notice served by certified mail return receipt shall be deemed delivered five (5) days after the date of such deposit in the United States mail unless otherwise provided. Any notice given by facsimile is deemed received by next Business Day. "Business Day" for purposes of this section shall mean Monday through Friday, with Saturday, Sunday and City and Company observed holidays excepted. All notices shall be addressed as follows:

To City:

City Clerk  
192 Coach Wagoner Boulevard  
Apalachicola, Florida 32320  
Phone: (850) 653-9319  
Facsimile: (850) 653-2205

To Company:

Gov't and Community Relations  
Duke Energy  
299 1<sup>st</sup> Street North – FL163  
St. Petersburg, FL 33733-4042  
Phone: (727) 820-5474  
Facsimile: (727) 820-5715

**SECTION 17 - Non-Waiver Provision**

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Franchise shall not be

construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

**SECTION 18 - Repealer and Superseding Provision**

This ordinance shall supersede, as to the rights, privileges and obligations between City and Company, all ordinances and parts of ordinances in conflict with the terms of this ordinance. Ordinance No. 88-10 and any amendments thereto, are hereby deemed null and void and/or repealed upon the effective date of this ordinance and none of the provisions of such repealed Ordinance No. 88-10 and any amendments thereto shall have any further force and effect.

**SECTION 19 - Dispute Resolution**

The parties to this Franchise agree that it is in each of their respective best interests to avoid costly litigation as a means of resolving disputes which may arise hereunder. Accordingly, the parties agree that prior to pursuing their available legal remedies they will meet in an attempt to resolve any differences. If such informal effort is unsuccessful, then the Parties may exercise any of their available legal remedies.

FIRST READING: November 5, 2019.

SECOND READING, ADOPTION, AND PUBLIC HEARING: December 3, 2019.

ATTEST:

\_\_\_\_\_  
Deborah Guillotte, City Clerk

\_\_\_\_\_  
Kevin Begos, Mayor

Approved as to form and legality  
for the use and reliance of the  
City of Apalachicola, Florida, only.

\_\_\_\_\_  
Kristy Banks, City Attorney

\_\_\_\_\_  
Catherine Stempien, State President  
Duke Energy Florida, LLC d/b/a Duke Energy





**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Resolution 2019-25 Requesting Franklin County Honor the Intent of the Interlocal Agreement with the City of Apalachicola for Small County Surtax and Requesting Additional Information

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** B  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** In 2007, Franklin County citizens voted and approved a Small County Sales Surtax Referendum with the sole purpose of improving the quality and delivery of healthcare by constructing a healthcare facility in Carrabelle first, upgrading the ambulance service, and paying the cost of operations of healthcare infrastructure and services, including the construction and paying debt service on bonds to construct a new public hospital facility to replace Weems Memorial Hospital in Apalachicola. In addition, the City of Apalachicola entered into an Inter-local Agreement for Small County Surtax in Good Faith with the Franklin County Board of County Commission and the City of Carrabelle on October 9, 2007. Since 2007, the City of Apalachicola has contributed its portion of the Surtax to the Healthcare Trust Fund with the understanding that both the Signed Ordinance and Inter-local Agreement in 2007 would be honored and fulfilled by the Franklin County Board of County Commission. The attached Resolution states that the City Commission expects that the Franklin County Board of County Commission to honor the Ordinance and Inter-local Agreement adopted in 2007 and allow a healthcare facility to remain in the City of Apalachicola. The Resolution also requests that any additional information on this matter that will affect the outcome or intent of the signed Inter-local Agreement be shared with the City so that any amendments can be discussed and agreed to as provided for in the Inter-local Agreement.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Adopt Resolution 2019-25 Requesting Franklin County Honor the Intent of the Interlocal Agreement with the City of Apalachicola for Small County Surtax and Requesting Additional Information

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Resolution 2019-25

**STAFF'S COMMENTS AND RECOMMENDATIONS:** As you know, there has been a lot of discussion in the community about this issue. Several of the Commission members have attended the public meetings held by Franklin County and the Weems Memorial Hospital Board and requested that the City take a public stance on this issue. The attached Resolution is only a draft and can be modified based on additional discussion and direction provided by the City Commission. Originally presented at the November 19<sup>th</sup> meeting, the Board asked that this matter be tabled until the December 3<sup>rd</sup> meeting.

**CITY OF APALACHICOLA  
RESOLUTION 2019-25**

**A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA,  
FLORIDA, REQUESTING FRANKLIN COUNTY HONOR THE INTENT OF THE  
INTERLOCAL AGREEMENT WITH THE CITY OF APALACHICOLA FOR SMALL  
COUNTY SURTAX AND REQUESTING ADDITIONAL INFORMATION**

**WHEREAS**, Franklin County citizens voted and approved a Small County Sales Surtax Referendum on November 7, 2007 with the sole purpose of improving the quality and delivery of healthcare by constructing a healthcare facility in Carrabelle first, upgrading the ambulance service, and paying the cost of operations of healthcare infrastructure and services, including the construction and paying debt service on bonds to construct a new public hospital facility to replace Weems Memorial Hospital; and,

**WHEREAS**, The City of Apalachicola entered into an Inter-local Agreement for Small County Surtax in Good Faith with the Franklin County Board of County Commission and the City of Carrabelle on October 9, 2007; and,

**WHEREAS**, a Franklin County Ordinance signed on October 9, 2007, Section 4 Use of Proceeds states, "Said tax proceeds and any interest accrued thereto shall be expanded for the sole purpose of improving the quality and delivery of healthcare by constructing an urgent care facility in Carrabelle first, upgrading the ambulance service, and paying the cost of operations of healthcare infrastructure and services, including the construction and paying debt service on bonds to construct a new public hospital facility to replace Weems Memorial Hospital;" and,

**WHEREAS**, since 2007, the City of Apalachicola has contributed its portion of the Surtax to the Healthcare Trust Fund with the understanding that both the Signed Ordinance and Inter-local Agreement in 2007 would be honored and fulfilled by the Franklin County Board of County Commission; and,

**WHEREAS**, The City of Apalachicola is submitting this Resolution with the expectation that the Franklin County Board of County Commission will honor the signed Ordinance and Inter-local Agreement.

**NOW THEREFORE BE IT RESOLVED** that the City Commission for the City of Apalachicola expects the Franklin County Board of County Commission to honor the Ordinance and Inter-local Agreement adopted in 2007 and allow a healthcare facility to remain in the City of Apalachicola.

**BE IT FURTHER RESOLVED**, that the City Commission for the City of Apalachicola acknowledges that over the past twelve years, the need for improving the quality and delivery of healthcare in the City and Franklin County may have changed and revisions to the original Agreement may be needed, and requests that any additional information on this matter that will affect the outcome or intent of the signed Inter-local Agreement be shared with the City so that any amendments can be discussed and agreed to as provided for in the Inter-local Agreement.

**READ, APPROVED AND ADOPTED** this 3<sup>rd</sup> day of December, 2019.

**FOR THE CITY COMMISSION OF  
THE CITY OF APALACHICOLA**

**ATTEST:**

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Deborah Guillotte, City Clerk

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Kevin Begos, Mayor



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Sale of City Owned Property Discussion

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** C  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** In August of 2018, the former City Commission approved a list of surplus parcels to be marketed and sold as a method of reducing the default debt for the water and sewer fund. A Request for Proposals was developed and distributed through a number of channels seeking qualified and experienced real estate brokerage or auctioneer services. In September 2018, the City received three proposals and in October, the City Commission authorized the City Manager to develop a final professional services contract with Higgenbotham Auctioneers International Limited, Inc. In mid-October Hurricane Michael hit the panhandle and this matter was delayed. In consultation with Higgenbotham Auctioneers it was recommended to postpone the auction of City owned property.

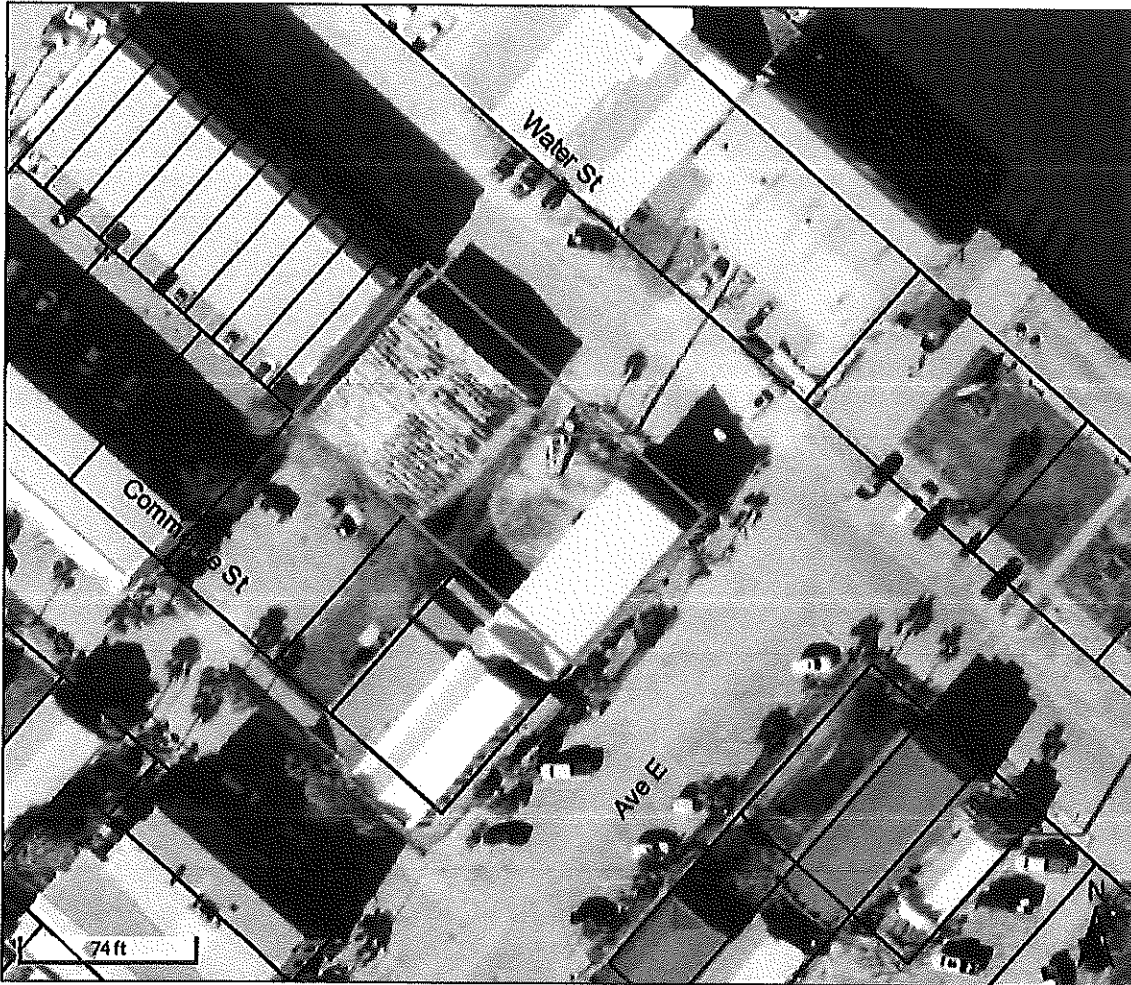
Initially discussed at their Board Retreat, the former Commission discussed the possibility of selling or leasing the City Hall building at 1 Avenue E. Combining City Hall, the lot next to it and the Old Fire Station offers a valid alternative to paying off the debt default amount in the water and sewer fund rather than using the individual lots proposed in 2018. At their August 2019 meeting, the former Commission voted to permanently relocate City Hall to the Van Johnson Complex freeing up the possibility of moving forward with the sale of the City Hall. At their November meeting, the current City Commission expressed interest in moving forward with the possible sale of the City Hall building and the old Fire Station and requested that the City Attorney research the matter and bring back a proposal for their review and consideration.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** None at this time pending further discussion by the City Commission.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Aerial Map of Property and Florida Attorney General Legal Opinion




**STAFF'S COMMENTS AND RECOMMENDATIONS:** Staff supports the possible sale of the old City Hall, the adjoining lot and the old fire station. The potential sale of the old City Hall may prove to be a valid alternative to paying off the debt default amount in the water and sewer fund rather than using the individual lots that can support the housing initiative. There has been little downside, other than maintenance and repair expense, to relocating and consolidating city offices at the Van Johnson Complex. By moving city services, the downtown location is freed up as a valuable commercial asset that can be sold with protective covenants.



Overview



Legend

-  Parcels
-  Roads
-  City Labels

Parcel ID	01-09S-08W-8330-00F1-0010	Alternate ID	08W09S01833000F10010	Owner Address	CITY OF APALACHICOLA
Sec/Twp/Rng	1-9S-8W	Class	MUNICIPAL	BOX 10	
Property Address		Acreage	n/a	APALACHICOLA, FL 32320	
District	3				
Brief Tax Description	BLKF-1 LOTS 1 THRU 5 (Note: Not to be used on legal documents)				

Date created: 11/26/2019  
 Last Data Uploaded: 11/26/2019 7:39:18 AM

Developed by  **Schneider**  
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## Florida Attorney General Advisory Legal Opinion

Number: AGO 82-76

Date: September 28, 1982

Subject: Procedure for sale of surplus real estate

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Mr. David B. Higginbottom  
City Attorney  
City of Frostproof  
Post Office Box 697  
Frostproof, Florida 33843

RE: MUNICIPALITIES--Procedure for sale of surplus real property within discretion of governing body

Dear Mr. Higginbottom:

This is in response to your request for an opinion on substantially the following question:

Does the City of Frostproof need to conform to a specific procedure or method when selling surplus municipal real property or does the governing body of the city have the discretion to choose whatever method it decides will be most likely to produce the best price for the property?

According to your letter and supplemental information furnished this office, the City Council of the City of Frostproof is contemplating the sale of its old city hall which is no longer needed for municipal use or purposes. The city charter and the Florida Statutes are silent on prescribing a procedure for disposition or sale of city-owned real property and you inquire whether the city is still required to follow a specific procedure of method when disposing of surplus municipal real property.

The Municipal Home Rule Powers Act, Ch. 166, F.S., grants to municipalities broad home rule powers. Section 166.021(1) states:

"As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."

See also, s. 166.021(4), F.S., stating that the provisions of s. 166.021, F.S., shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the Constitution and that it is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary

purposes not expressly prohibited by the Constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.

Section 6, Art. I, Ch. 8955, 1921, Laws of Florida, generally empowers the city to hold and dispose of real estate for the benefit of the city and specifically authorizes the city to acquire and hold real property to be used for a city hall and to sell or dispose of the same for the benefit of the city to the same extent that a natural person might do. Pursuant to s. 166.021(5), F.S., these provisions of Ch. 8955, *supra*, along with other provisions of Ch. 8955 pertaining exclusively to the power of the municipality were converted to an ordinance of the city on the effective date of Ch. 73-129, Laws of Florida, October 1, 1973, subject to modification or repeal as other ordinances. No procedural conditions or restrictions are placed on this power of the city to sell or dispose of its real property, except that any such sale shall be for the benefit of the city. See generally, 63 C.J.S. *Municipal Corporations* s. 962c. at p. 513 stating that insofar as no statute or ordinance governs matters of procedure, they may be committed to the discretion of the municipal authorities.

Section 166.77, F.S. 1971, which was repealed by Ch. 73-129, Laws of Florida (the Municipal Home Rule Powers Act), granted additional or supplemental authority to the governing bodies of municipalities in the state to sell their real property not needed for municipal use "to the highest and best bidder after notice thereof is published once a week for at least two weeks in some newspaper of general circulation in the municipality, calling for bids." Section 166.042(1), F.S., of the Municipal Home Rule Powers Act, states that it is the legislative intent that the repeal of the above statute, in addition to others enumerated therein, shall not be interpreted to limit or restrict the powers of municipal officials but shall be interpreted as a recognition of residual constitutional home rule powers in municipal government which can best be accomplished by the removal of legislative direction from the statutes. Moreover, in s. 166.042(1), *supra*, the Legislature further expresses its intent that municipalities continue to exercise all powers conferred on municipalities by, *inter alia*, Ch. 167, *supra*, "but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe." (e.s.)

In accordance with the above, it appears clear that the Legislature not only granted municipalities in the state the authority to continue to exercise all powers previously conferred by Ch. 167, F.S. 1971, and in this instance, particularly s. 167.77, F.S. 1971, but additionally left it up to the municipalities' own discretion to determine what terms, conditions, and methods to employ in exercising the power to sell or dispose of surplus municipal real property. Compare, AGO 080-49 concluding that a municipality may, by virtue of broad home rule powers implemented by ss. 166.021(4) and (5), 166.031, 166.042(1), and 167.06 and Ch. 180, F.S., establish a procedure for direct negotiation and contracting for residential garbage collection and disposal services without competitive bidding by ordinance or amendment of the charter; and AGO 079-79, in which it was opined that a municipality has the power and authority to acquire



and dispose of real property by means of an exchange of property so long as for a valid municipal purpose and not expressly prohibited by law.

In summary, it is my opinion that in the absence of a city charter provision requiring the governing body of a municipality to proceed in a certain manner in the sale of surplus municipal real property no longer needed for municipal use or purposes, the governing body may, in its discretion, choose and utilize whatever method or procedure it decides will be in the best interest of the city and most likely produce the best price for the property.

Sincerely,

Jim Smith  
Attorney General

Prepared By:

Linda Lettera  
Assistant Attorney General

# Florida Attorney General Advisory Legal Opinion

Number: AGO 96-16

Date: February 29, 1996

Subject: Municipalities--disposition of surplus property

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Mr. Kevin K. Dixon  
Crystal River City Attorney  
Post Office Box 250  
Inverness, Florida 34451-0250

RE: MUNICIPALITIES--REAL PROPERTY--BIDS--procedures for disposition of surplus municipal property. ss. 166.042 and 125.35, Fla. Stat.

Dear Mr. Dixon:

You ask substantially the following question:

Do the provisions of section 125.35, Florida Statutes, govern the disposition of surplus municipal property and, if not, what procedures exist?

In sum:

The provisions of section 125.35, Florida Statutes, apply to the disposition of county property, not municipal property. In the absence of a charter provision or ordinance prescribing the procedures to be used in disposing of surplus municipal real property, the manner of disposing of such property is left to the discretion of the municipality's governing body, provided such body acts in the best interests of the municipality.

According to your letter, the City of Crystal River is exploring its options for disposing of surplus municipal property. In the absence of a provision in Chapter 166, Florida Statutes, establishing a procedure for the disposition of such property, a question has been raised as to whether the municipality is subject to the provisions of section 125.35, Florida Statutes.

Section 125.35, Florida Statutes, authorizes the board of county commissioners to sell and convey any real or personal property belonging to the county, whenever the board of county commissioners determines that it is in the best interest of the county, to the

highest and best bidder for the particular use the board determines to be the highest and the best. [1] Subsection (2) of the statute sets forth the notice requirements for such a sale. [2]

If, however, the value of a parcel of real property is \$5,000 or less and, due to its size, shape, location, and value, is of use only to one or more adjacent property owners, the board of county commissioners may effect a private sale, after sending notice of its intentions to the adjacent property owners by certified mail. [3] The statute provides that if two or more such owners, within 10 working days of receiving notice, notify the board of their desire to purchase the property, the board is required to accept sealed bids from such property owners and may convey the property to the highest bidder or reject all offers. [4]

The plain language of the above statutory provision makes it clear that its terms apply exclusively to counties. [5] Nowhere in the statute is there any evidence that the requirements of section 125.35, Florida Statutes, are applicable to the municipalities of this state. While a municipality may utilize similar procedures, the specific requirements of section 125.35 are not binding on municipalities.

This office has previously recognized that in the absence of a city charter provision, ordinance or rule to the contrary, the governing body may, in its discretion, utilize whatever method or procedure it decides will be in the best interest of the municipality in disposing of surplus municipal real property. [6] Such a conclusion was based on the broad home powers granted to municipalities by Article VIII, section 2(b), Florida Constitution, and implemented by Chapter 166, Florida Statutes, the Municipal Home Rule Powers Act.

Section 166.77, Florida Statutes 1971, formerly provided supplemental authority to municipalities to sell their real property not needed for municipal use "to the highest and best bidder after notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation in the municipality, calling for bids." This statute, however, was repealed by the Municipal Home Rule Powers Act in 1973. [7] Section 166.042(1), Florida Statutes, states that it is the legislative intent that the repeal of the above statute, along with the other enumerated statutes,

"shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on

municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe."

Thus, while the Legislature granted municipalities the authority to continue to exercise the powers formerly conferred by Chapter 167, Florida Statutes, it left to the municipalities' own discretion the determination of what terms, methods, and conditions to employ in disposing of surplus municipal real property. Accordingly, while municipalities may utilize the provisions of former section 167.35, Florida Statutes, they are not required to do so.

The courts of this state have generally recognized that in the absence of a statute or charter provision requiring competitive bids, a municipality has no legal obligation to submit a contract to competitive bids or to award the contract to the lowest bidder. [8] In such cases, the public body is required only to act in good faith and in the best interests of the public, and it is within its discretion whether to let the contract by competitive bid or not. [9]

Accordingly, I am of the opinion that in the absence of a charter provision or ordinance specifying the procedure to be utilized in disposing of surplus municipal real property, the method of disposing of such property is left to the discretion of the municipality's governing body, which is required only to act in good faith and in the best interest of the municipality. While the municipality may utilize the procedures prescribed in section 125.35, Florida Statutes, or former section 167.35, Florida Statutes 1971, it is not required to do so.

Sincerely,

Robert A. Butterworth  
Attorney General

RAB/tgjw

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[1] Section 125.35(1) (a), Fla. Stat. (1995).

[2] See s. 125.35(1) (b), Fla. Stat. (1995), providing:

"No sale of any real property shall be made unless notice thereof is published once a week for at least 2 weeks in some newspaper of general circulation published in the county, calling for bids for the purchase of the real estate so advertised to be sold. In the case of a sale, the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted, unless the board of county commissioners rejects all bids because

they are too low. The board of county commissioners may require a deposit to be made or a surety bond to be given, in such form or in such amount as the board determines, with each bid submitted."

[3] Section 125.35(2), Fla. Stat. (1995).

[4] *Id.*

[5] See *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984) (where a statute is clear and unambiguous as it is here, a court will not look behind the statute's plain language for legislative intent).

[6] Attorney General Opinion 82-76.

[7] Chapter 73-129, Laws of Florida.

[8] See *Brown v. City of St. Petersburg*, 153 So. 140 (Fla. 1933); and see, *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, 369 So. 2d 391 (Fla. 2d DCA 1979) (in absence of specific constitutional or statutory requirements, public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious).

[9] See Ops. Att'y Gen. Fla. 80-49 (1980) and 77-140 (1977) (city not required to take competitive bids in purchase of commodities in absence of charter provision or ordinance). And see, *State ex rel. Roberts v. Knox*, 14 So. 2d 262 (Fla. 1943) (discretion conferred by law on an officer must be exercised according to established rules of law, and not in an arbitrary or capricious manner or for personal, selfish, or fraudulent motives or for any reason or reasons not supported by the discretion conferred); *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, *supra*; *Mayes Printing Company v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963).



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Resolution 2019-27 Rescinding the Economic Development Partnership with Apalachicola Main Street

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** D  
**Department:** Administration  
**Contact:** Kevin Begos, Mayor  
**Presenter:** Kevin Begos, Mayor

**BRIEF SUMMARY:** Mayor Begos requested that the City Commission have an opportunity to discuss this matter further at their December meeting along with consideration of Resolution 2019-27.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Adopt Resolution 2019-27 Rescinding the Economic Development Partnership with Apalachicola Main Street

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Resolution 2019-27

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Apalachicola Main Street is a non-profit organization dedicated to enhancing downtown Apalachicola through sound economic development which promotes our future while preserving our past. The Main Street downtown district is defined as Ten Foot Hole (the City Marina) to Scipio Creek, and 6th Street to Water Street.

**CITY OF APALACHICOLA  
RESOLUTION 2019-27**

**A RESOLUTION BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA,  
FLORIDA RESCINDING THE ECONOMIC DEVELOPMENT PARTNERSHIP WITH  
APALACHICOLA MAIN STREET**

**WHEREAS**, The City of Apalachicola previously endorsed an economic development partnership with the Apalachicola Main Street group; and

**WHEREAS**, the City and Main Street no longer share staff; and

**WHEREAS**, the City Commission now seeks to treat Main Street no differently than it does any other non-profit group.

**NOW, THEREFORE, BE IT RESOLVED** that Apalachicola Main Street is no longer an economic development partner with the City and Main Street has no special relationship with the City Commission of the City of Apalachicola.

**READ, APPROVED AND ADOPTED** this 3rd day of December, 2019.

**FOR THE CITY COMMISSION OF  
THE CITY OF APALACHICOLA**

ATTEST:

\_\_\_\_\_  
Deborah Guillotte, City Clerk

\_\_\_\_\_  
Kevin Begos, Mayor





**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Apalachicola Community Redevelopment Association Discussion

**AGENDA INFORMATION:**

**Agenda Location:** Unfinished Business  
**Item Number:** E  
**Department:** Administration  
**Contact:** Kevin Begos, Mayor  
**Presenter:** Kevin Begos, Mayor

**BRIEF SUMMARY:** Mayor Begos requested that the City Commission have an opportunity to continue discussion of this matter at the December 3<sup>rd</sup> meeting. The City Commission also requested that the City Manager present options for fully funding the Apalachicola Community Redevelopment Association along with options for reducing the City's contributions to 70% and 50%.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** None at this time pending further discussion by the City Commission.

**FUNDING SOURCE:** General Fund and Special Revenue Fund - CRA

**ATTACHMENTS:** CRA Funding Options and Tax Increment Funding Information

**STAFF'S COMMENTS AND RECOMMENDATIONS:** Calculations have been made to fully fund the CRA through a combination of additional revenue and reduction in expenditures. Staff will review the attached worksheets at the Commission meeting.



Tax Increment Adjustment  
 City of Apalachicola  
 CRA District

	2014	2015	2016	2017	2018	2019
Budgeted Taxable Value (DR-420 Preliminary Values)	\$ 31,376,822	\$ 33,227,135	\$ 34,595,427	\$ 37,443,906	\$ 38,584,825	\$ 39,961,108
Base Year Taxable Value	\$ 31,376,822	\$ 31,376,822	\$ 31,376,822	\$ 31,376,822	\$ 31,376,822	\$ 31,376,822
Budgeted Tax Increment Value	\$ -	\$ 1,850,313	\$ 3,218,605	\$ 6,067,084	\$ 7,208,003	\$ 8,584,286
Final Taxable Value (After VAB Petitions - DR-422 Values)	\$ -	\$ 33,101,535	\$ 34,478,897	\$ 37,289,990	\$ 38,425,884	
Final Tax Increment Value	N/A	\$ 1,724,713	\$ 3,102,075	\$ 5,913,168	\$ 7,049,062	
Percentage Proportion of which Payment is Based	95%	95%	95%	95%	95%	95%
<b>BUDGETED</b>						
Budgeted Dedicated Increment Value	\$ -	\$ 1,850,313	\$ 3,218,605	\$ 6,067,084	\$ 7,208,003	\$ 8,584,286
Estimated County Millage Rate Used in Budget Process	N/A	6.4705	6.3065	6.3065	6.3065	5.9494
Budgeted CRA Distribution	N/A	\$ 11,374	\$ 19,283	\$ 36,349	\$ 43,184	\$ 48,518
<b>FINAL/ACTUAL</b>						
Final Dedicated Increment Value	\$ -	\$ 1,724,713	\$ 3,102,075	\$ 5,913,168	\$ 7,049,062	
Adopted County Millage Rate Used in Budget Process	N/A	6.3065	6.3065	6.3065	6.2679	
Amount of Payment to CRA - County (less 5%)	\$ -	\$ 10,333	\$ 18,585	\$ 35,427	\$ 41,974	
Date of payment from Franklin County		02/16/16	2/7/2017	12/18/2017	12/18/2018	
Adopted City Millage Rate Used in Budget Process	N/A	9.3543	9.3543	9.6043	9.6043	9.3000
Amount of Payment to CRA - City	\$ -	\$ 15,327	\$ 27,567	\$ 53,952	\$ 64,316	\$ 75,842
						\$ 237,004

Amount of Payment Owed to CRA by City \$ 161,162  
 Amount of Payment Due to CRA in 2019/2020 by City \$ 75,842  
 \$ 237,004



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Ordinance 2019-10 Designating the Official Seal of the City – First Reading

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** A  
**Department:** Administration  
**Contact:** Ron Nalley, City Manager  
**Presenter:** Ron Nalley, City Manager

**BRIEF SUMMARY:** Florida Statutes, Section 165.043, provides that a municipality may by Ordinance designate an official municipal seal. During the past election, there was some uncertainty about whether the City had adopted or designated by Ordinance the current city seal. The Commission requested that a draft Ordinance be presented to them for consideration.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Approve the First Reading of Ordinance 2019-10 and Proceed with the Adoption Process.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** Ordinance 2019-10 Designating the Official Seal of the City.

**STAFF'S COMMENTS AND RECOMMENDATIONS:** The proposed Ordinance adopts and designates the seal that has been in use for many years by the City Commission. It also makes the unauthorized use of the seal a misdemeanor without the expressed written authority of the City Commission. If the City Commission chooses to grant permission for use of the seal, the Ordinance proposed certain standards that must be met and considered by the Commission prior to approval. Adoption of this Ordinance will help clear up any future confusion about the appropriate use of the City Seal.

**CITY OF APALACHICOLA  
ORDINANCE NO. 2019-10**

**AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF APALACHICOLA, FLORIDA DESIGNATING THE OFFICIAL SEAL OF THE CITY; PROVIDING FOR PENALTIES FOR UNAUTHORIZED USE; STANDARDS FOR PUBLIC USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, in accordance with Florida Statutes, section 165.043, which provides that a municipality may by Ordinance designate an official municipal seal to be affixed on all official actions or documents of the City and to identify and authenticate documents; and,

**WHEREAS**, the current seal has been in use for many years and the City Commission wishes to designate its seal as an official municipal seal pursuant to section 165.043, which provides for adoption of the municipal seal by Ordinance; and,

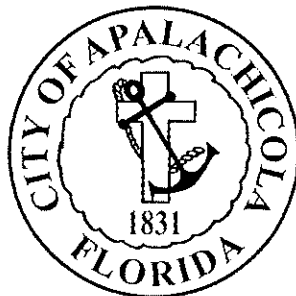
**WHEREAS**, Florida Statute, Section 165.043 further provides that a seal so adopted shall be entitled to the protections afforded by that statute, including that the unauthorized use of the seal constitutes a misdemeanor of the second degree; and,

**WHEREAS**, the City Commission of the City of Apalachicola finds that the seal of the City is an important representation of the unique characteristics of the City of Apalachicola, and that the seal should be protected as a matter of intellectual property to the fullest extent allowed by law, such that the general public may rely upon the display or representation of the municipal seal as the official logo or brand of the City; and,

**WHEREAS**, the City Commission of the City of Apalachicola finds that regulating and prohibiting the unauthorized use of the City's designated seal serves an important municipal purpose.

**NOW, THEREFORE, BE IT ENACTED BY THE PEOPLE OF THE CITY OF APALACHICOLA, FLORIDA:**

**Section 1. Official Seal:** The Official Seal for the City of Apalachicola, Florida shall be composed of two concentric circles. Between such circles the following words shall appear, "City of Apalachicola Florida." Within the inner circle shall appear the picture of a cross and anchor with the year "1831." A copy of the seal of the City of Apalachicola is reproduced below:



**Section 2. Adoption:** The City Commission of the City of Apalachicola hereby adopts and designates the seal described and depicted in Section 1 as the official municipal seal of the City of Apalachicola.

**Section 3. Affixation of Seal:** Wherever it shall be necessary for the City under the authority of its City Commission, City Manager, City Charter, Code of Ordinances, or the general laws of the State of Florida, to execute contracts, deeds, or other documents on behalf of the City, the official seal of the City shall be affixed to such contract, deed or other document.

**Section 4. Unauthorized Use of City Seal:** It shall be unlawful and a violation of this Section for any person, firm, corporation or other legal entity to print for the purpose of sale or distribution or circulate, manufacture, publish, use, display, or offer for sale any letters, papers, documents, or items of merchandise which simulate the official seal of the City or the stationery or a real or fictitious agency, department or instrumentality of the City of Apalachicola without the expressed written authority of the City Commission for the City of Apalachicola. The unauthorized use shall be punishable as provided in Florida Statutes 775.082 and 775.083. This Section does not apply to municipal officials or employees in the performance of their official duties.

**Section 5. Standards for Public Use:** The City Commission is delegated the authority to grant permission to others to use the City Seal. The following standards are hereby adopted for the granting of consent for the public use of the City Seal. Public requests to use the City Seal shall consider:

- a) The specific item to be manufactured;
- b) The manner in which the City Seal is to be displayed on the item to be manufactured;
- c) The nature of the proposed use, including manner, purpose and place of use;
- d) Whether the public would tend to be misled by the appearance of the Seal on the product to believe that the product carries official City sanction or approval;
- e) Whether the use of the Seal would tend to mislead the public into believing that a person, meeting, project or event carries official City sanction or approval;
- f) Whether the dignity of the Seal will be preserved if approval is granted.
- g) In no event shall approval be given for the use of the Seal for the following:
  1. Political or campaign purposes;
  2. Stationery other than official government stationery;
  3. Decorative automobile license tags;
  4. Business cards other than official government business cards;
  5. Designation of landmarks not designated as a historical site under a local ordinance;
  6. T-shirts, jackets or other clothing which might lead the public to believe that the person wearing such apparel is an official of the City;
  7. Publications other than official government publications or publications serving a governmental purpose; or
  8. Advertising and news releases

**Section 6. Severability:** Should the provisions of this Ordinance be declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it



being the legislative intent that this Ordinance shall remain notwithstanding the invalidity of any part.

**Section 7. Effective Date:** This Ordinance shall be effective upon final adoption.

**ADOPTED** in open regular session this \_\_\_\_ day of January, 2020.

Voting Aye:

Voting Nay:

FOR THE CITY OF COMMISSION OF THE  
CITY OF APALACHICOLA

---

Kevin Begos, Mayor

ATTEST:

---

Deborah Guillotte, City Clerk

Approved as to Form:

---

Kristy Banks, City Attorney



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Professional Services - Forensic Audit

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** B  
**Department:** Administration  
**Contact:** Kevin Begos, Mayor  
**Presenter:** Kevin Begos, Mayor

**BRIEF SUMMARY:** At the November 19<sup>th</sup> meeting, the City Commission requested that a Request for Proposals (RFP) be developed and advertised from qualified auditing firms to perform a forensic in nature Agreed Upon Procedures Audit for the City of Apalachicola. Proposals are due by 2:00 p.m. on December 2<sup>nd</sup>. Staff will review the proposals for compliance with the RFP and then submit them to the Commission at their meeting on December 3<sup>rd</sup> for their review and consideration.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** None at this time pending further discussion by the City Commission.

**FUNDING SOURCE:** Governing Body – Professional Services

**ATTACHMENTS:** Audit RFP

**STAFF'S COMMENTS AND RECOMMENDATIONS:** None at this time.

**CITY OF APALACHICOLA  
REQUEST FOR PROPOSALS FOR AUDIT SERVICES**

**Opening Date and Time: December 2, 2019 at 2:00 PM (ET), City Hall Conference Room located at 192 Coach Wagoner Blvd, Apalachicola, Florida.**

The Apalachicola City Commission is soliciting proposals from qualified auditing firms to perform a forensic in nature Agreed upon Procedures Audit for the City of Apalachicola.

In order to be considered, submittals must be received by **2:00 p.m., DECEMBER 2, 2019 (ET)** by the City Manager at City of Apalachicola City Hall, 192 Coach Wagoner Blvd, Apalachicola, Florida. Late submittals received after the deadline date, either by mail or otherwise, will not be considered and returned unopened. No faxed, electronic, or oral RFP will be accepted.

A copy of the instructions and RFP documents can be obtained at the City of Apalachicola's website [www.cityofapalachicola.com](http://www.cityofapalachicola.com), from City Hall located at 192 Coach Wagoner Blvd, Apalachicola, Florida, or by calling City Hall directly at 850-653-9319.

This solicitation does not commit the Apalachicola City Commission to award any contracts, to pay any costs incurred in the preparation of a response to this RFP, or to contract for any services. The City of Apalachicola reserves the right to reject any or all submittals received as a result of this solicitation, or to cancel in part or in its entirety this RFP, if it is in the best interest of the City to do so.

The City of Apalachicola is an Equal Opportunity Employer and Drug Free Work Place.

**GENERAL INFORMATION**

1. Proposals must be made in the official name of the firm or individual under which business is conducted (showing official business address) and must be signed in ink by a person duly authorized to legally bind the person, partnership, company, or corporation submitting the response to this RFP.
2. One clearly identified original and five (5) copies of your proposal must be submitted in one sealed package, clearly marked on the outside "RFP for Audit Services".
3. Proposals will be received until 2:00 noon (ET), December 2, 2019.

Proposals are to be hand delivered or mailed to:

City of Apalachicola  
Attn: Ron Nalley, City Manager  
192 Coach Wagoner Blvd.  
Apalachicola, FL 32320

4. This RFP is not to be construed as creating a contractual relationship between the City and any firm submitting a response to this RFP. The City shall incur no financial obligation or liability to

any firm, solely based on the firm having responded to this RFP. All costs associated with preparation of a response to this RFP are to be borne solely by the respondent.

5. This RFP is not intended to create a public bidding process and the proposal with the lowest quoted fees will not necessarily be accepted, nor will any reason for the rejection of any proposal be indicated. The City reserves the right to reject any or all responses, to modify the scope with one or more of the respondents, and to waive any and all requirements which the City deems to be in its best interest. The City reserves the right to privately negotiate with any firm.
6. Firms submitting a proposal in response to this RFP may be required to give an oral presentation to the City Commission. The City's request for an oral presentation shall in no way constitute acceptance of a proposal or imply that an agreement is pending. The City reserves the right to award the opportunity to provide the services specified herein on initial proposal submissions without oral presentations.
7. The Proposal must include evidence of the Responder's ability to provide Worker's Compensation Insurance; General Liability Insurance; Comprehensive Automobile Liability Insurance; and if applicable to the services requested hereunder, Professional Liability (Errors and Omissions) Insurance coverage. Such insurance shall be procured from a company licensed to do business in the State of Florida and maintained for the entire duration of the proposed contract.
8. If in the opinion of the City Commission, the successful respondent, refuses to begin work, improperly performs said work, unnecessarily delays, or neglects to follow generally acceptable professional standards, the City may notify the Contractor to discontinue all work under the contract.
9. The Contractor shall comply with all federal, state and local rules and regulations regarding forensic auditing services to be rendered.
10. Unless otherwise provided in this Solicitation, the Contractor shall furnish the following, including but not limited to, all labor, material, equipment, adequate supervision, and coordination for satisfactory Contract performance.
11. The Contractor will be responsible for complying with all federal, state, and local laws related to minimum wage, social security, nondiscrimination, Americans with Disability Act, unemployment compensation.
12. The Contractor must be available to attend City Commission meetings when required and be prepared to answer any questions and/or provide oral presentation if requested.

#### **SCOPE OF WORK**

The purpose of this solicitation is to select a firm to provide a forensic in nature Agreed upon Procedures Audit. Of interest, is the control and use of credit cards to purchase goods and services;

review of vehicle insurance policies; financial transactions relating to the State Revolving Loan Fund through the Department of Environmental Protection; financial transactions relating to the BP Deep Horizon Oil Spill Settlement Agreement; and financial transactions relating to the Scipio Creek Improvement Project.

The Contractor shall conduct the engagement with care and due diligence in accordance with the relevant industry guidance. The audit report shall develop findings, conclusions and any recommendations. Following the completion of the audit, the contractor shall issue a report communicating all discovered abnormal financial activity, its quantification, cause and consequence. The report will be in sufficient detail to enable the City to collect any potentially recoverable losses.

The Contractor shall provide all findings and observations in both a verbal presentation and in its written report. The Contractor may be required to attend City Council meeting(s) to report the progress of the audit or to report significant findings, or obtain authorization for any expansion of the scope of services, if required.

All working papers and reports must be retained, at the Contractor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period. The Contractor will be required to make working papers available upon request to the City or the designees.

Time is of the essence and the successful Proposer shall be readily available and capable of immediately assuming all duties involved in the Work upon award and shall be capable of meeting any and all deadlines.

The City will make personnel available for inquiries and make available accounting and other documents for review.

### **SUBMISSION REQUIREMENTS**

Interested Proposers should submit a Letter of Interest and include the following information:

1. RFP Name: Audit Services for City of Apalachicola
2. Proposers name and address.
3. Proposed responsible office for firm.
4. Contact person with valid email address, phone number, and fax number.
5. Statement regarding qualifications and experience of firm/ and or sub-contractors for the advertised Work, including proof that the firm is a certified public accounting firm.
6. Statement regarding proposed methodology and approach to Work including a schedule of proposed services.

7. Proposed key personnel, their abilities and their proposed roles (do not include resumes) and sub-contractor(s) that may be used for the audit work.
8. Indication as to whether the prime firm and/or sub-contractors are a Disadvantaged Business Enterprise (DBE).
9. Provide a list of similar projects completed in the last three (3) years.
10. Provide two (2) references from clients of similar projects.
11. Provide a not-to-exceed amount for the proposed services contained within the agreement along with quoted hourly rates. For additional services required after the inception of the agreement, written approval by the City is required in advance of such services being rendered, for which a fee will be paid based on the auditor's quoted hourly rates.
12. The forms included as Attachments A – G to this RFP:

Attachment A – No Lobbying Affidavit  
Attachment B – Anti-Collusion and No Gifts Affidavit  
Attachment C – Public Entity Crime Statement  
Attachment D – Conflict of Interest Disclosure Form  
Attachment E – Immigration Law Certification  
Attachment F – Drug-Free Workplace Certification  
Attachment G – Exception (if needed)

One clearly identified original and five (5) copies of your proposal must be submitted in one sealed package, clearly marked on the outside "RFP for Audit Services".

Proposals will be received until 2:00 noon (ET), December 2, 2019.

Proposals are to be hand delivered or mailed to:  
City of Apalachicola  
Attn: Ron Nalley, City Manager  
192 Coach Wagoner Blvd.  
Apalachicola, FL 32320

Inquiries concerning the RFP shall be directed in writing to:

City of Apalachicola  
Attn: Ron Nalley, City Manager  
192 Coach Wagoner Blvd  
Apalachicola, FL 32320  
rnalley@cityofapalachicola.com

### **EVALUATION CRITERIA**

The evaluation of Proposals will be undertaken by the City Commission. The City Commission will compare and evaluate all RFP packages to determine the strength and ability of the potential proposers to provide the services required in the most advantageous manner to the City, using the following criteria:

A. Qualifications and Experience of Respondent	45 Points
B. Letter of Introduction and Approach to Work	25 Points
C. Price Proposal	15 Points
D. Key Personnel and References	15 Points

The final selection process may include the submission of additional information and/or participation in an oral interview.

The City Commission will not be limited to the criteria referred to above, and the Commission may consider other criteria that they identify as relevant during the evaluation process. The Commission may apply the evaluation criteria on a comparative basis, evaluating the Proposals by comparing one Proposal to another Proposal. All criteria considered will be applied evenly and fairly to all Proposals.

The City Commission may, at its discretion, request clarifications or additional information from a Proposer with respect to any Proposal, and they may make such requests to only selected Proposers. The City Commission may consider such clarifications or additional information in evaluating the Proposal.

### **REJECTION OF SUBMITTALS**

1. The City may reject any or all proposals whenever it is deemed in the best interest of the City to do so.
2. The City may reject any part of a proposal whenever it is deemed in the best interest of the City to do so.
3. The City may waive any minor informalities or irregularities in any proposal.
4. The City reserves the right to award the contract to a vendor submitting a responsive submittal with a resulting negotiated agreement which is most advantageous and in the best interest of the City of Apalachicola. The City of Apalachicola shall be the sole judge of the submittals and the resulting negotiated agreement that is in its best interest and its decision shall be final.

### **BID PROTEST PROCEDURE**

1. Any vendor that has submitted a formal submittal to the City of Apalachicola, and who is adversely affected by the decision with respect to the award of the contract, may file with City



Hall, 192 Coach Wagoner Blvd., Apalachicola, Florida 32320 or email Ron Nalley, City Manager, at [rnalley@cityofapalachicola.com](mailto:rnalley@cityofapalachicola.com) a written protest and supporting affidavits, if any, no later than forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) of the decision of the City of Apalachicola City Commission to award the contract.

2. The protest shall be in the form of a letter stating all grounds claimed for the protest. Failure to do so shall constitute a waiver of all rights to seek any further remedies provided for under this protest procedure.
3. The City Manager shall submit the protest and supporting affidavits, if any, along with his or her own statement and supporting affidavits, if any, in support of the award of the contract to the City of Apalachicola City Commission for a final determination of the protest.

#### **ATTACHMENT A – NO LOBBYING AFFIDAVIT**

All respondents are hereby placed on notice that any communication, whether written or oral, with City of Apalachicola elected officials, City Staff, or Audit Committee members (with the exception of the personnel designated to receive inquiries) is prohibited. These persons shall not be lobbied, either individually or collectively. To do so is grounds for immediate disqualification from the selection process. All respondents must submit the attached No Lobbying Affidavit with their submittal stating that they and their subcontractors, sub-consultants and other agents agree to abide by the no lobbying restrictions in order to be considered for this request. Any respondent that does not submit the required No Lobbying Affidavit will be automatically disqualified from further consideration.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

#### **ATTACHMENT B – ANTI-COLLUSION & NO GIFTS AFFIDAVIT**

It shall be unethical for any respondent to collude with any other respondent or offer, give or agree to give any City Commission member, City Employee or City Representative (including Audit Committee members) a gift, gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of RFQ process.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

#### **ATTACHMENT C – PUBLIC ENTITY CRIME AFFIDAVIT**

As provided by Florida Statute 287.133(2)(a), a person or affiliate who has been placed on the convicted vendor list following a conviction for Public Entity Crime may not submit a bid on a contract to provide any good or services to a Public Entity, may not submit a bid on a contract with a Public Entity for the construction or repair of a public building or a public work, may not submit bids on leases of real property to a Public Entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any Public Entity, and may

not transact business with any Public Entity in excess of the threshold amount provided in F.S. 287.017 for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Any person must notify the City of Apalachicola within 30 days after a conviction of a Public Entity crime applicable to that person or to an affiliate of that person.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

**ATTACHMENT D - CONFLICT OF INTEREST DISCLOSURE FORM**

The award hereunder is subject to the provisions of Chapter 112, Florida Statutes. All respondents must disclose with their submission the name of any officer, director, employee or agent who is also a public officer, employee of an agent of the City of Apalachicola City Commissioners, or any of its agencies.

Furthermore, all respondents must disclose the name of any City officer, employee or agent who owns, directly or indirectly, any interest of five percent (5%) or more in the firm or any of its parent companies or subsidiaries.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

**ATTACHMENT E - IMMIGRATION LAW CERTIFICATION**

Respondents must comply with all applicable immigration laws in their employment practices.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

**ATTACHMENT F - DRUG-FREE WORKPLACE CERTIFICATION**

Preference will be given to businesses with Drug-Free Workplace Programs. Whenever two (2) or more bids which are equal with respect to quality and service are received by the City of Apalachicola for the procurement of commodities or contractual services, a bid received from a business that certifies that it has implemented a Drug-Free Workplace Program shall be given preference in the award process.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFP package.

**ATTACHMENT G - EXCEPTIONS TO SOLICITATION**

Any exceptions, substitutions, deletions, or deviations from these specifications shall be explained in detail on a separate page entitled "EXCEPTIONS". Respondents must show proof that any exceptions are equal or superior to those specified.

NOTE: For respondent's convenience, this certification form is attached and is made part of the RFQ package.

Further information relative to this RFP may be obtained by contacting: Ron Nalley, City Manager, [rnalley@cityofapalachicola.com](mailto:rnalley@cityofapalachicola.com), 850-653-9319.



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Encroachment Agreement – Lindley 71 Market Street

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** C  
**Department:** Administration  
**Contact:** Kevin Begos, Mayor  
**Presenter:** Kevin Begos, Mayor

**BRIEF SUMMARY:** The Commission requested that consideration of the encroachment agreement with Mr. Lindley at 71 Market Street be included on the December 3<sup>rd</sup> agenda. The proposed balcony addition was approved by the Planning and Zoning Board conditioned on the approval of an encroachment agreement with the City of Apalachicola and the Florida Department of Transportation.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** To Approve the Encroachment Agreement with Lindley Development LLC for a Balcony Addition at 71 Market Street.

**FUNDING SOURCE:** Not Applicable

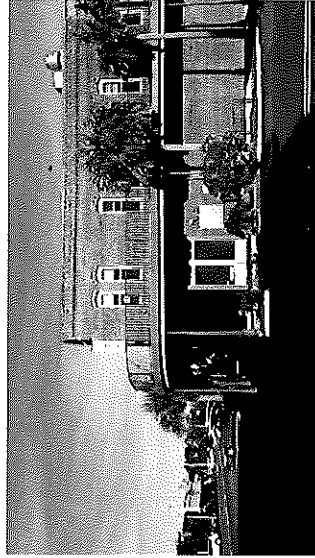
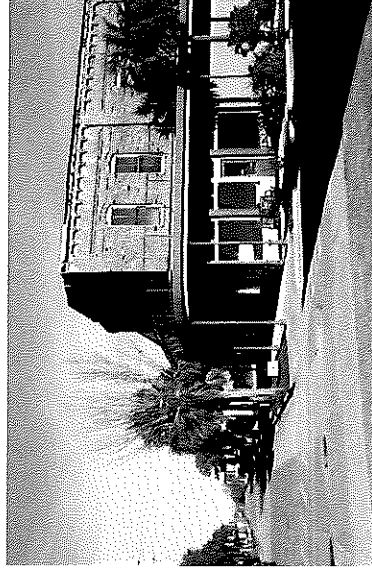
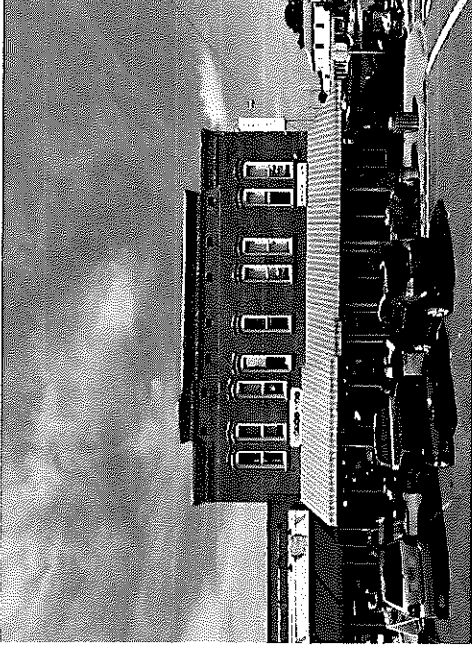
**ATTACHMENTS:** Balcony Addition Plans

**STAFF'S COMMENTS AND RECOMMENDATIONS:** A copy of the encroachment agreement will be sent to the Commission on Monday prior to the meeting.

# 71 Market Street Balcony Addition

## Contents:

1. Survey existing conditions
2. AS1 Existing Plan
3. AS2 Revised Plan with Balcony
4. A1 Building Before Addition of Balcony
5. A2 Building After Addition of Balcony
6. A3 Revision to A2
7. A4 Section Thro' Balcony detail
8. A5 Original Column/Revised Column



GATEWAY TO APALACHICOLA, IRON WORK BALCONIES\*

## LINDLEY BALCONY DRAWINGS

SCALES: AS SHOWN

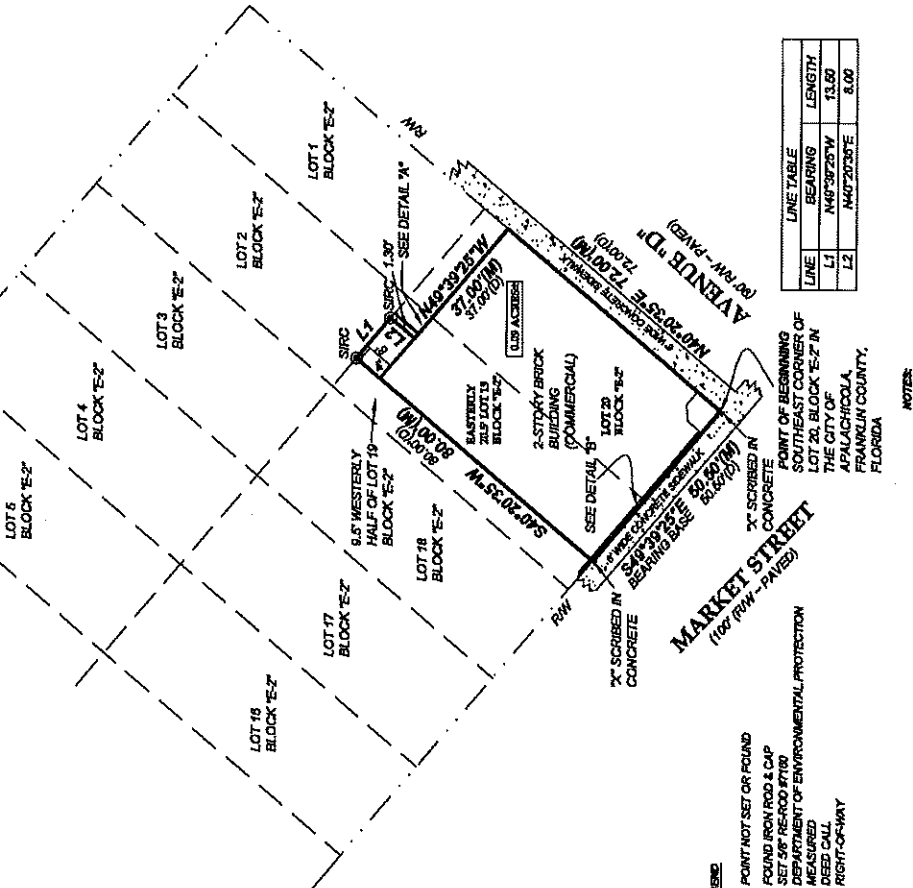
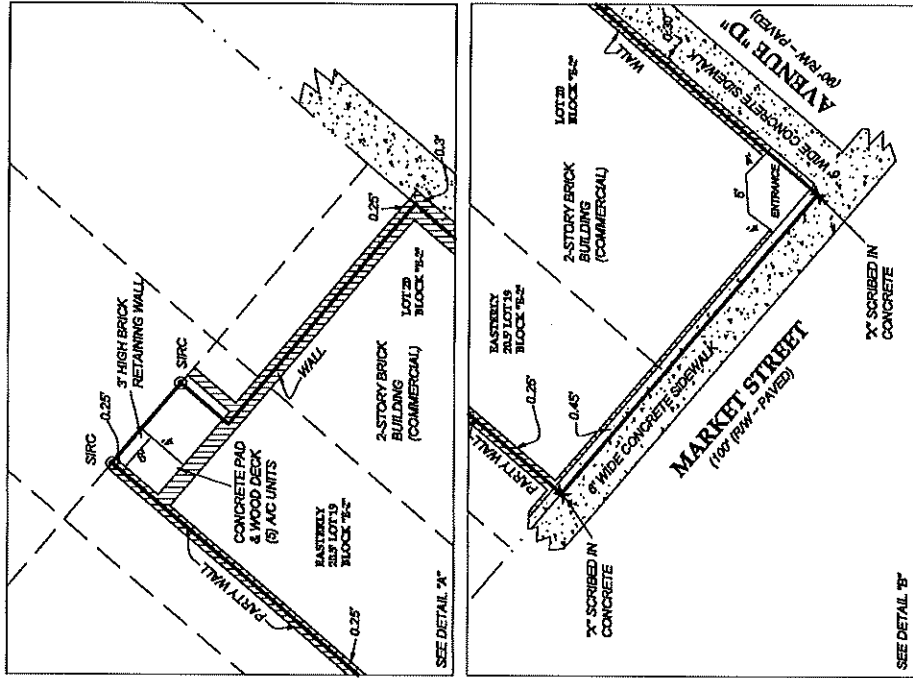
DATE: MAY, 2019

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552 Sixth Street • Apalachicola • FL 32320 • (850)227 6698 • georgecoon@gmail.com

Architectural  
Planning  
Interiors  
**LUCAS**  
Associates  
Architects

PLAT OF BOUNDARY SURVEY CERTIFIED TO:  
 SALTY BAY PROPERTIES, II, LLC,  
 FIRST WESTERN FEDERAL SAVINGS BANK,  
 SANDERS & DUNCAN, P.A.  
 CHICAGO TITLE INSURANCE COMPANY



LINE	BEARING	LENGTH
L1	N49°39'25\"/>	
L2	N40°20'35\"/>	

POINT OF BEGINNING  
 SOUTHEAST CORNER OF  
 LOT 20, BLOCK 'E-2' IN  
 THE CITY OF  
 APALACHCOLA,  
 FRANKLIN COUNTY,  
 FLORIDA

- LEGEND:**
- △ POINT NOT SET OR FOUND
  - FRC FOUND IRON ROD & CAP
  - SIRC SET 3/8\"/>
  - DEP DEPARTMENT OF ENVIRONMENTAL PROTECTION
  - M MEASURED
  - D DEED CALL
  - R/W RIGHT-OF-WAY

- NOTES:**
1. SURVEY SOURCE: Plat of record and a field survey performed by the undersigned surveyor.
  2. BEARING AND DISTANCE: Neighboring right-of-way boundary of Market Street being surveyed and shown as per Department of Transportation Right-of-Way Map Section 84840-2010.
  3. NO ENCROACHMENTS have been located in this survey other than those shown herein.
  4. There are NO USABLE ENCROACHMENTS other than those shown herein.
  5. This survey is dependent upon EXISTING INFORMATION.
  6. Not valid without the signature and the original sealed seal of a Florida Licensed Surveyor and map.
  7. See attached sheet for legal description.
  8. Easements shown herein were established W/07 08

FILE: 1152296  
 DATE: 12/01/11  
 DRAWN BY: MAD  
 PC: AS & SD  
 COUNTY: FRANKLIN  
 JOB NUMBER: 13-82

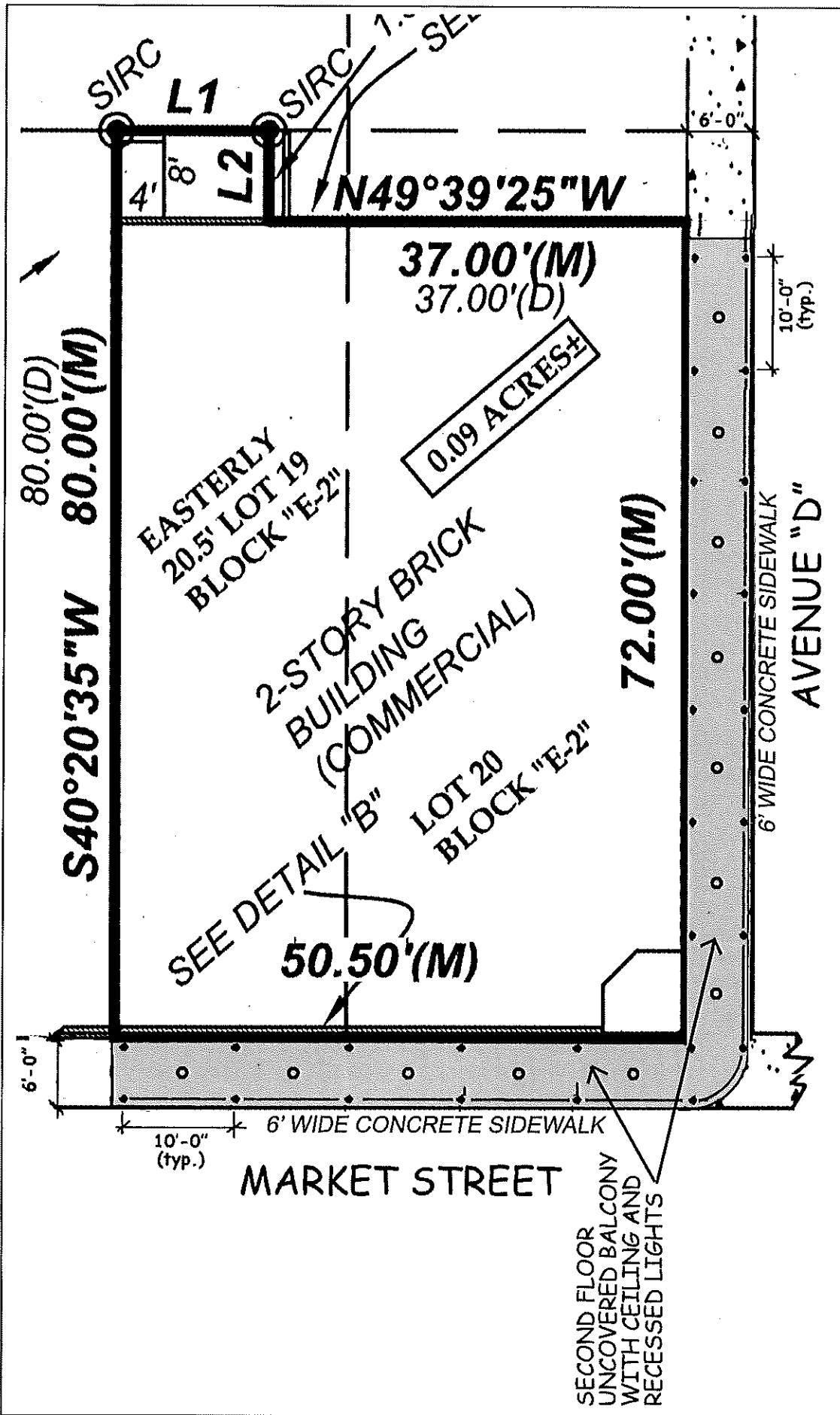
**FLOOD ZONE INFORMATION:** Subject property is located in Zone X-1 (Special Flood Hazard Area) as shown on the Flood Insurance Rate Map Community Panel Number 120089 0502E, Issue Date June 17, 2002, Franklin County, Florida.

**JR & A**  
**THEURMAN RODDENBERRY & ASSOCIATES, INC.**  
 PROFESSIONAL SURVEYORS AND MAPPERS  
 241 WOODS • 25 REDBON STREET • BOKSCAMP, FLORIDA 32008  
 PHONE: 904.261.1111 FAX: 904.261.1112  
 www.theurman.com

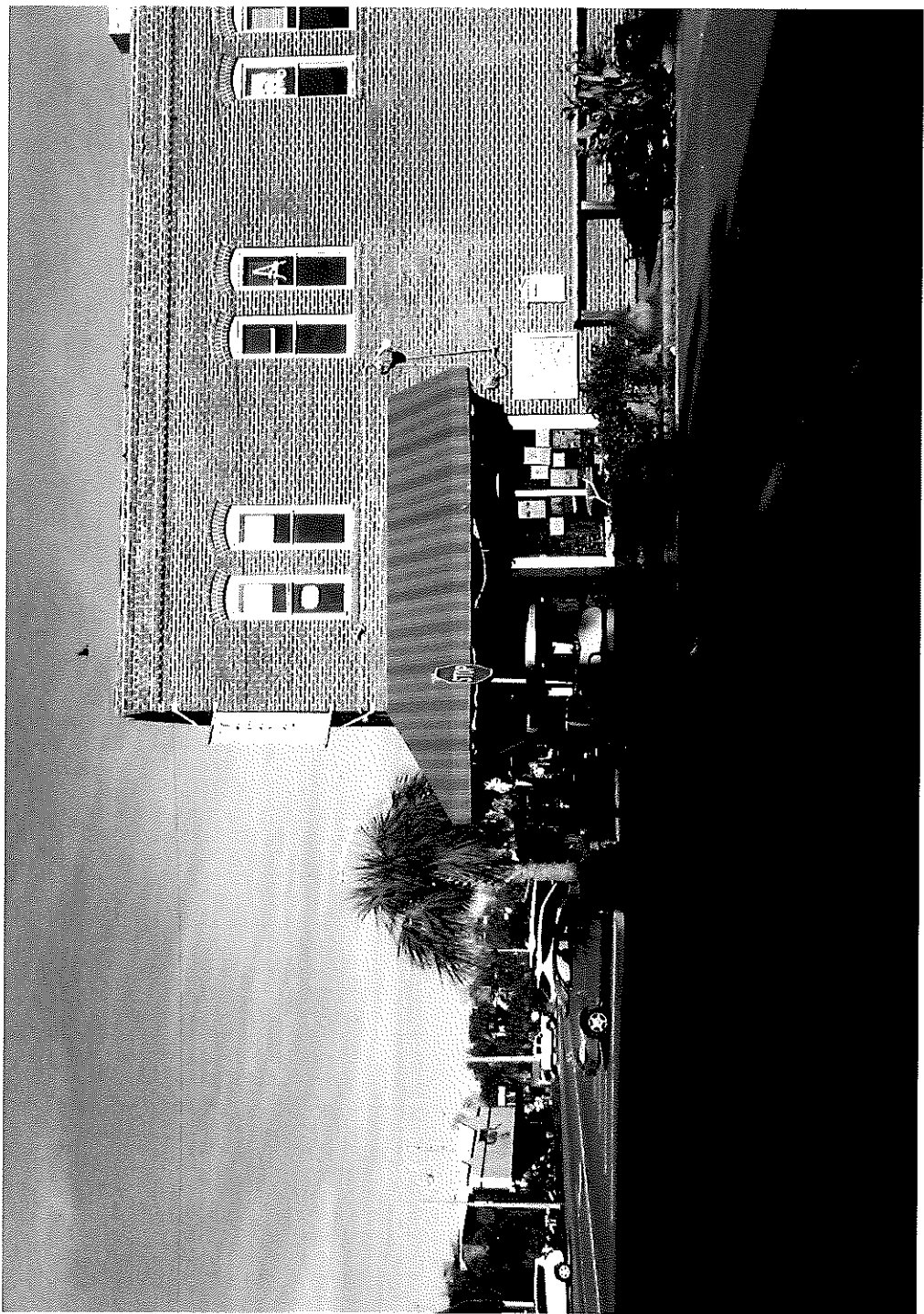
FILE: 1152296  
 DATE: 12/01/11  
 DRAWN BY: MAD  
 PC: AS & SD  
 COUNTY: FRANKLIN  
 JOB NUMBER: 13-82







<p><b>LINDLEY IMAGES</b></p> <p>SCALE: AS SHOWN</p>	<p>george coon inc residential · planning · design 252 56th Street - Apalachicola - FL 32320 - (850)227 6898 - georgecoon@gmail.com</p>	<p><b>AS2</b></p> <p>Architecture Planning Interiors <b>LUCAS</b> ASSOCIATES ARCHITECTS</p>
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BUILDING BEFORE ADDITION OF BALCONY

LINDLEY IMAGES

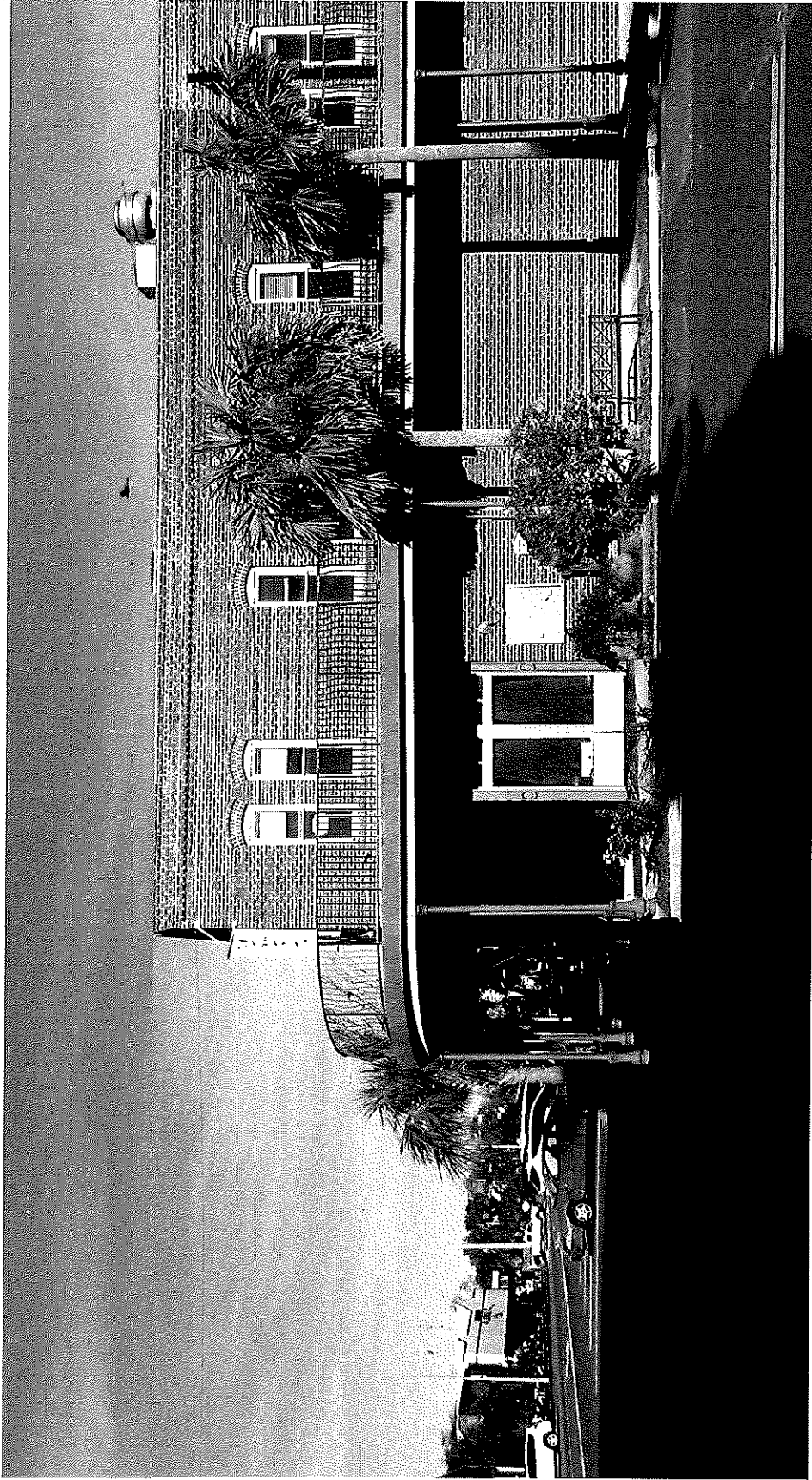
SCALE: NO SCALE

DATE: MAY, 2019

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A1



GATEWAY TO APALACHICOLA, "IRON WORK BALCONIES"

LINDLEY IMAGES

SCALE:NO SCALE

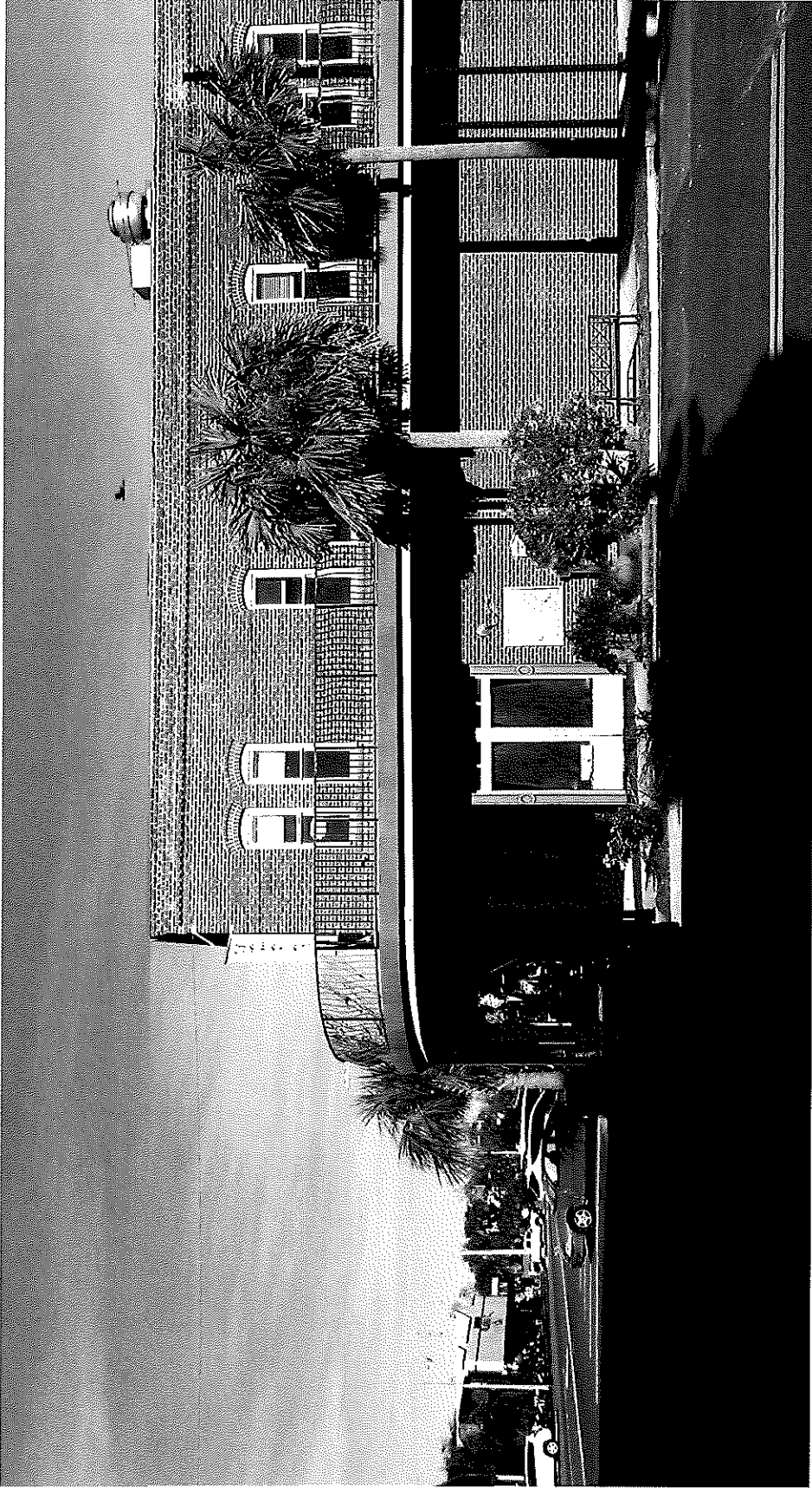
DATE: MAY, 2019

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352 Sixth Street · Apalachicola · FL 32330 · (850)227 6896 · georgecoon@gmail.com



A2



**GATEWAY TO APALACHICOLA, "IRON WORK BALCONIES"**

ALTERNATIVE COLUMN DESIGN DIRECTED BY PLANNING & ZONING 10 JUNE 2019

**LINDLEY IMAGES**

SCALE:NO SCALE

DATE: AUGUST, 2019

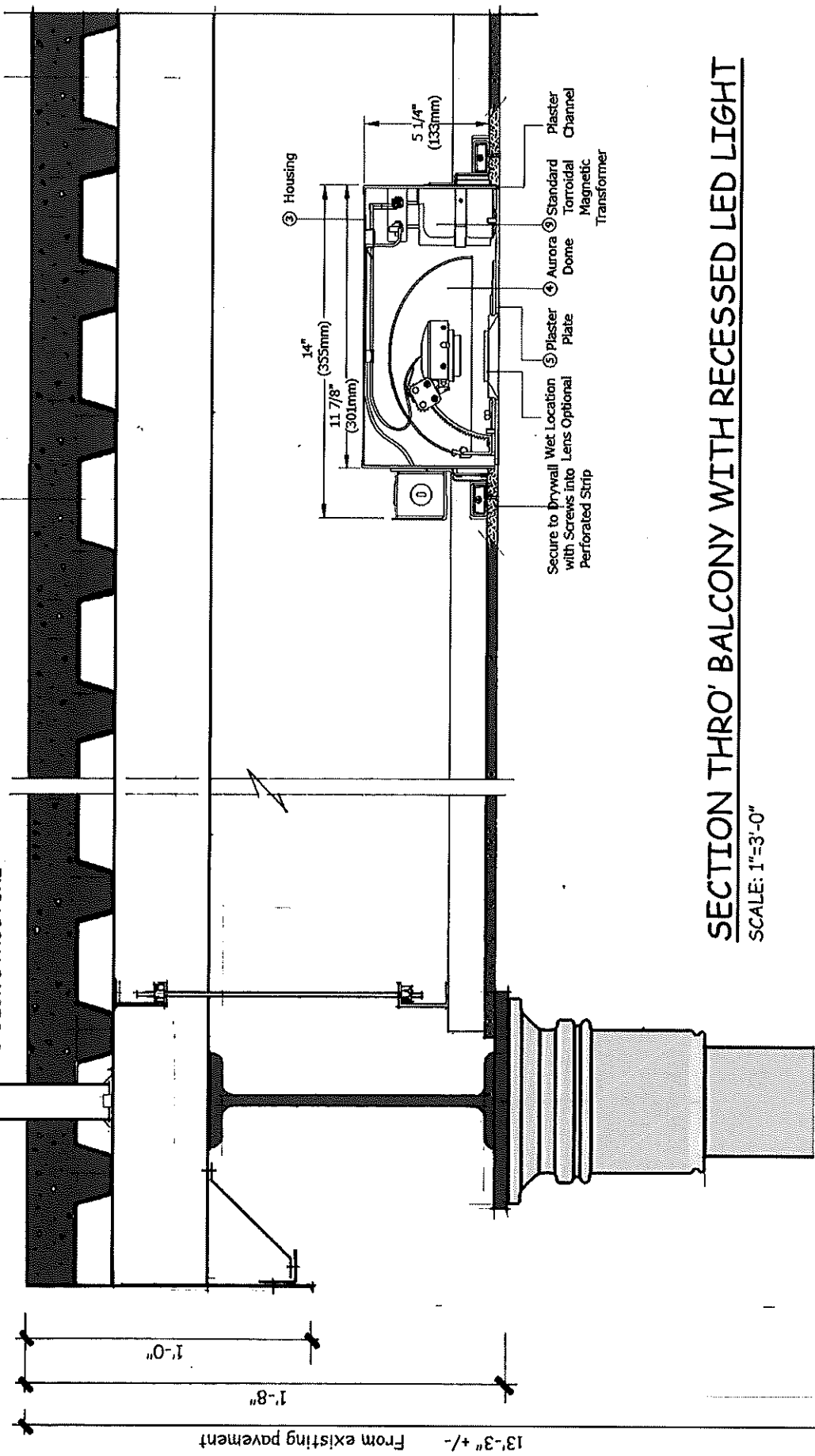
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Architecture  
Planning  
Interiors  
**LUCAS**  
ASSOCIATES  
ARCHITECTS

**A3**

6x6 HANDRAIL POST BOLTED TO DECK STRUCTURE



13'-3" +/- From existing pavement

- ① Secure to Prywall Wet Location with Screws into Lens Optional Perforated Strip
- ② Housing
- ③ 11 7/8" (301mm)
- ④ 14" (355mm)
- ⑤ Aurora Dome
- ⑥ Standard Torroidal Magnetic Transformer
- ⑦ Plaster Plate
- ⑧ Plaster Channel
- ⑨ 5 1/4" (133mm)

**SECTION THRO' BALCONY WITH RECESSED LED LIGHT**

SCALE: 1"=3'-0"

**LINDLEY IMAGES**

SCALE: AS SHOWN

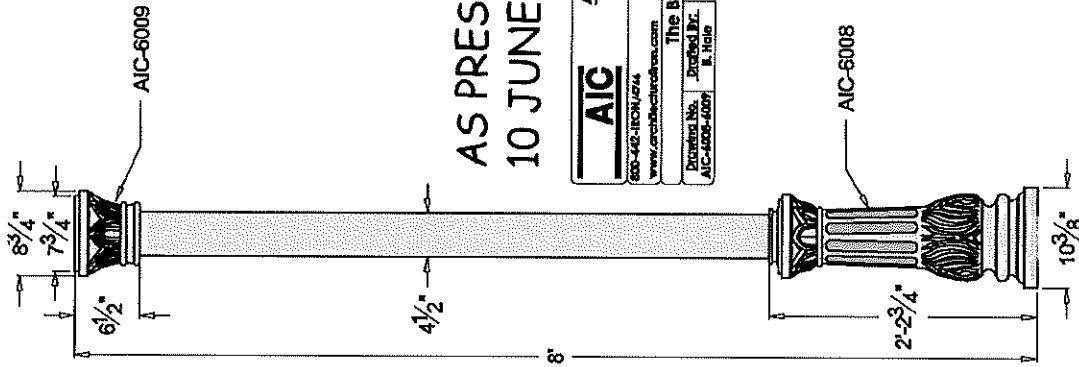
DATE: MAY, 2019

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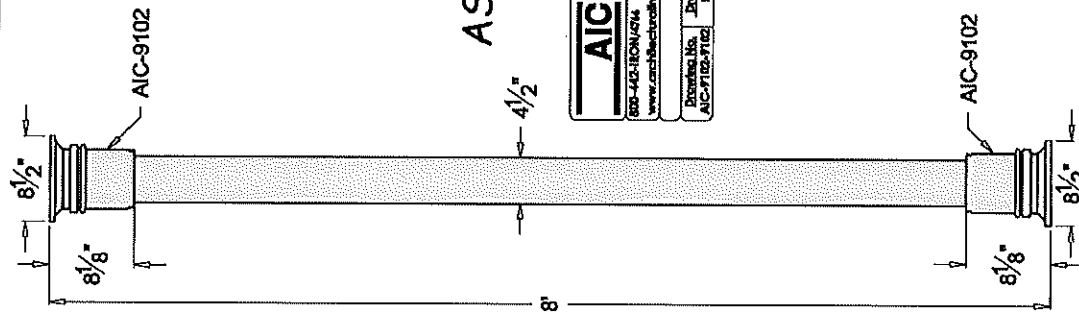
**A4**



AS PRESENTED TO P&Z  
10 JUNE 2019

<b>AIC</b>		Architectural Iron Company	
800-442-IRON/474		104 Ironwood Court / P.O. Box 124	
www.aicarchitecturaliron.com		Millsboro, PA 19337	
E-mail: info@aicarchitecturaliron.com		Fax: 376-276-IRON/474	
Drawing No. AIC-6008-6007		The Bradford Column	
Checked By: M. Hall	DWG. D.C.	Date: 1/19/14	Part Number: AIC-6008-6007

Rev. 1-15-09



AS REVISED

<b>AIC</b>		Architectural Iron Company	
800-442-IRON/474		104 Ironwood Court / P.O. Box 124	
www.aicarchitecturaliron.com		Millsboro, PA 19337	
E-mail: info@aicarchitecturaliron.com		Fax: 376-276-IRON/474	
Drawing No. AIC-9102-9102		The Exceler Column	
Checked By: M. Hall	DWG. D.C.	Date: 3/28/08	Part Number: AIC-9102-9102

THIS DRAWING IS THE PROPERTY OF ARCHITECTURAL IRON COMPANY. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. NO PART OF THIS DRAWING IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ARCHITECTURAL IRON COMPANY.

Rev. 1-15-09

LINDLEY IMAGES

SCALE: AS SHOWN DATE: AUGUST, 2019

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Architecture  
Planning  
Interiors  
**LUCAS**  
ASSOCIATES  
Architects

A5



**APALACHICOLA CITY COMMISSION  
REQUEST FOR BOARD ACTION  
Meeting Date: December 3, 2019**

**SUBJECT:** Scipio Creek Maintenance Management Agreement

**AGENDA INFORMATION:**

**Agenda Location:** New Business  
**Item Number:** D  
**Department:** Administration  
**Contact:** Kevin Begos, Mayor  
**Presenter:** Kevin Begos, Mayor

**BRIEF SUMMARY:** Mayor Begos requested that the City Commission have an opportunity to continue discussion of this matter at the December 3<sup>rd</sup> meeting. At their November 19<sup>th</sup> meeting, the Commission requested that the City Attorney begin working on a maintenance management agreement for Scipio Creek. Due to the short time frame between meetings, a draft of the agreement may not be ready for consideration, but an update on the progress can be made.

**RECOMMENDED MOTION AND REQUESTED ACTIONS:** None at this time pending further discussion by the City Commission.

**FUNDING SOURCE:** Not Applicable

**ATTACHMENTS:** None

**STAFF'S COMMENTS AND RECOMMENDATIONS:** None at this time.