

**AGREEMENT BETWEEN THE CITY OF FORT PIERCE AND
ST. LUCIE COUNTY TO EXCHANGE RIGHTS OF WAY**

THIS EXCHANGE AGREEMENT (hereinafter "Agreement") dated this 15th day of November, 2022 is entered into by and between THE CITY OF FORT PIERCE, FLORIDA, a municipal corporation, whose address is 100 North U.S. Highway 1, Fort Pierce, Florida 34950 (hereinafter "City"), and ST. LUCIE COUNTY, a political subdivision of the State of Florida (hereinafter "County"), whose address is 2300 Virginia Avenue, Fort Pierce, Florida 34982.

WITNESSETH:

WHEREAS, the County owns and maintains certain right of way (henceforth "County Right of Way") situate and being in St. Lucie County, Florida, generally described as follows:

- Indian River Drive from Avenue A to Seaway Drive

WHEREAS, the City owns and maintains certain rights of way (hereinafter "City Rights of Way") situate and being in St. Lucie County, Florida, generally described as follows:

- Avenue M Extension
- Fisherman's Wharf from the Florida East Coast Railway (FEC) right-of-way to its eastern terminus
- Harbor Street
- Port Avenue
- North 2nd Street from Seaway Drive to its northern terminus
- North Indian River Drive from Seaway Drive to Fisherman's Wharf

WHEREAS, the County and the City wish to exchange rights of way as set forth herein and as shown on the attached map (Exhibit A).

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements herein contained, the parties agree as follows:

1. **PROPERTY AND APPURTENANCES:** The County shall convey the **County Right of Way** including any retention ponds and stormwater systems on lands that are owned by the County and are necessary to drain the Rights of Way to the City together with all tenements, hereditaments and appurtenances thereunto belonging, all of which shall be deemed part and parcel of the **County Right of Way**. The City shall convey the **City Rights of Way** including any retention ponds and stormwater systems on lands that are owned by the City and are necessary to drain the Rights of Way to the County together with all tenements, hereditaments and appurtenances thereunto belonging, all of which shall be deemed part and parcel of the **City Rights of Way**.

2. **FEASIBILITY DETERMINATION:** The City and the County shall each have 90 days from the date of this Agreement to determine the feasibility of the exchange (hereinafter "Feasibility Determination"). Upon the Effective Date of the Agreement, each Party shall provide

copies to the other Party of available information regarding the Properties including site surveys, utility location drawings, soil borings, environmental reports, inspection reports, construction plans, repair proposals, pavement evaluations, and other similar documentation concerning the Properties in its possession, but shall not be obligated to obtain, create or draft such documents if such are not within the Parties' possession or control. During the **Feasibility Determination Period**, the **City** and the **County** may undertake at their respective expense, such physical inspections, tests and other investigations as may be deemed necessary in order to evaluate the feasibility of the exchange. For purposes of undertaking physical inspections, tests or investigations of the properties, the **County** grants to the **City** and the **City** grants to the **County**, their agents, and professionals engaged by such parties, the right to enter upon the **County Right of Way** and the **City Rights of Way** and any part thereof during the **Feasibility Determination**. The presence on the properties of such personnel shall be only for the purpose of conducting such inspections, tests or investigations as are necessary to make the assessments which are within the scope of this **Agreement**, and no other personnel activity shall be permitted. Any alternations or changes to the properties that are a direct result of the inspecting, testing and investigations will be repaired and replaced if a closing does not occur. Each party indemnifies the other against any loss or damages to the other party's parcel(s) arising out of, or in connection with, any inspection, testing or investigation of the property. The indemnification shall not cover any loss or damage due to preexisting conditions, problems or deficiencies of the property that are discovered through the inspection, testing and investigation authorized herein. The decision as to whether it is feasible to accept the exchange shall be at the sole discretion of the **City** and the **County**. If the **City** or the **County** determines that it is not feasible to exchange the **County Right of Way** or the **City Rights of Way**, then this **Agreement** will be terminated.

3. **TITLE EVIDENCE:** Within 60 days of the effective date, as hereinafter defined, the **County** shall cause a thirty (30) year title search and a commitment for title insurance to be issued for the **County Right of Way** and the **City Rights of Way**. The **City** and the **County** shall each have until the expiration of the **Feasibility Determination Period** to examine the search and commitment delivered to them and to notify the other party in writing specifying any objections which would render title unmarketable in accordance with current Uniform Title Standards adopted by the Florida Bar (hereinafter "**Title Defect**"). The **County** and the **City** shall each have until the closing date to remove such **Title Defect**, but without obligation to bring suits therefore, or to expend any funds in the removal of such **Title Defect**, and if the **County** or the **City** is unsuccessful in removing same, the other party shall have only the options of (a) waiving such **Title Defect** and accepting title as it is, or (b) terminating the **Agreement**, or (c) entering into any resolution which may be mutually acceptable to the parties.

4. **RESTRICTIONS, EASEMENTS, AND LIMITATIONS:** The **City** and the **County** shall take title subject to: zoning, restrictions, prohibitions and other agreements imposed by governmental authority, restrictions and matters appearing on the plat or otherwise common to the subdivision, public utility easements of record, zoning classifications and such other provisions of governmental regulation as are applicable. But any other provision herein notwithstanding, it is nevertheless agreed by the respective parties as follows:

(a) **Reverter; Restrictive Covenant:** Except as to Avenue M Extension, the **County Right of Way** and the **City Rights of Way** to be exchanged must be used henceforth

solely for public purposes. In the event the substantial, predominant use to be made of such property is for a use other than a public purpose, then, in that event, such property shall revert to the other. Except as to Avenue M Extension, in addition to the right of reverter, the County and City Deeds shall include a Restrictive Covenant running with the land. The parties acknowledge that the County is negotiating with Destin Beach, Inc. (DBI) to exchange the Avenue M Extension right-of-way for right-of-way over DBI property. The County is proposing to design, permit and construct a new entrance road over the property exchanged with DBI for use by the public to access the County's Harbour Pointe property.

5. **REPRESENTATIONS AND WARRANTIES:** Except as otherwise disclosed in this Agreement, the County and the City, with respect to the Rights of Way it is conveying, represents and warrants to the other as follows, which representations and warranties survive closing:

(a) That it has good, marketable title to, and is in possession of, the parcel(s) free and clear of all liens, security interest and encumbrances, excluding only those:

- (i) Which will be satisfied or released at closing; and
- (ii) To which the other party's title shall be subject as otherwise provided in this Agreement.

(b) That there is ingress and egress to the parcel(s).

(c) That there is no litigation or proceeding pending or threatened against or relating to the parcel(s).

(d) That it has full power and authority to enter into and perform this Agreement in accordance with its terms and the completion of this transaction will not violate any law, regulation or agreement affecting it or the parcel(s) it is conveying.

6. **POSSESSION:** Possession of the Rights of Way shall be delivered at the time of closing.

7. **AS IS:** Subject to the specific representations, warranties and disclosures contained in this Agreement, the Rights of Way are conveyed "As-Is", "Where-Is" and "With All Faults" as of the closing date. Each party has or will inspect the parcel(s) being acquired and is familiar, or will become familiar with, the physical condition thereof.

8. **CLOSING:**

(a) **Closing Date:** The closing of this Agreement and the transfer of title and possession of the Rights of Way, shall occur within 30 days after the expiration of the Feasibility Determination Period (hereinafter "Closing Date") unless otherwise extended by the terms herein. Closing shall be held within the County at a site agreeable to the parties or by mail.

(b) **Conveyance:** Conveyance of the County Right of Way shall be by

County Deed in accordance with Section 125.411, Florida Statutes from the County. Conveyance of the City Rights of Way shall be by City Deed.

(c) **Documents for Closing:** The closing agent designated by the County shall prepare the closing documents including, but not limited to, the Deeds, the Ownership and Lien Affidavits, the Certificates of Non-Foreign Status, and the Closing Statement.

(d) **Allocation of Expenses:** The County shall pay the cost of recording the County Deed. The City shall pay the cost of recording the City Deed. Each party shall pay its respective attorney's fees.

9. **DEFAULTS:**

(a) **Notice of Default:** No default as to any provision of this Agreement shall be claimed or charged by either party hereto against the other until notice thereof has been given to the defaulting party in writing, and such default remains uncured for a period of ten (10) business days after the defaulting party's receipt of such notice.

(b) **Remedy for Default:** If either party defaults on its obligations under this Agreement, without fault on the part of the other party, the non-defaulting party may terminate this Agreement, or alternatively, may seek specific performance against the defaulting party. Both parties agree that any action for specific performance shall be commenced within ninety (90) days of the occurrence of default or be forever barred. Under no circumstances shall either party have any claim or right of claim against the other party for monetary damages, including attorney's fees.

10. **MISCELLANEOUS:**

(a) **Binding Effect; Successors and Assigns:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns, if any.

(b) **Assignment:** This Agreement may not be assigned except upon the prior written consent of the other party.

(c) **Captions:** The caption for each paragraph or subparagraph of this Agreement is for convenience and reference only and in no way defines, describes, extends or limits the scope or intent of this Agreement, or the intent of any provision hereof.

(d) **Severability:** If any provision of this Agreement, the deletion of which would not materially adversely affect the material benefits receivable by any party hereunder or substantially increase the burden of any party hereto, shall be held to be invalid or unenforceable to any extent, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

100 North U.S. Highway 1
Fort Pierce, Florida 34950

Any notice or demand so given, delivered or made by United States Mail, shall be deemed so given, delivered or made three (3) days (excluding Sundays and holidays) after the same is deposited in the United States Mail, registered or certified, return receipt requested, addressed as above provided, with postage thereon prepaid. Any such notice, demand or document hand-delivered or made by overnight carrier shall be deemed to be given, delivered or made upon delivery (or attempted delivery if delivery is not accepted) of the same at the address where the same is to be given, delivered or made.


(j) **Interpretation:** This Agreement has been submitted to the scrutiny of each party hereto and each party has had opportunity to have it reviewed by legal counsel. This Agreement shall be given fair and reasonable interpretation in accordance with the words used herein without consideration or weight being given to its having been drafted by either party hereto or their respective counsel.

(k) **Non-Waiver:** No covenant, term, or condition (or the breach thereof), shall be deemed waived, except by written consent of the party against whom the waiver is claimed. A waiver of any covenant, term, or condition (or breach thereof) shall not be deemed to be a waiver of any other covenant, term or condition (or breach thereof).

(l) **Effective Date:** This Agreement shall be effective as to the County upon approval of a resolution by the Board of County Commissioners after a public hearing as required by Section 125.37, Florida Statutes. This Agreement shall be effective as to the City upon approval of the City Commission.


IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates accompanied by their respective executions.

ATTEST:




City Clerk

CITY OF FORT PIERCE, FLORIDA,
a Florida municipal Corporation



Mayor
Date: 11/7/2022

APPROVED AS TO FORM AND CORRECTNESS



City Attorney

ATTEST:

Vera Smith
Deputy Clerk



ST. LUCIE COUNTY,
a Political Subdivision of the State of Florida

Frankie Hutchinson

Chair ^{VICE}

Date: *11/15/08*

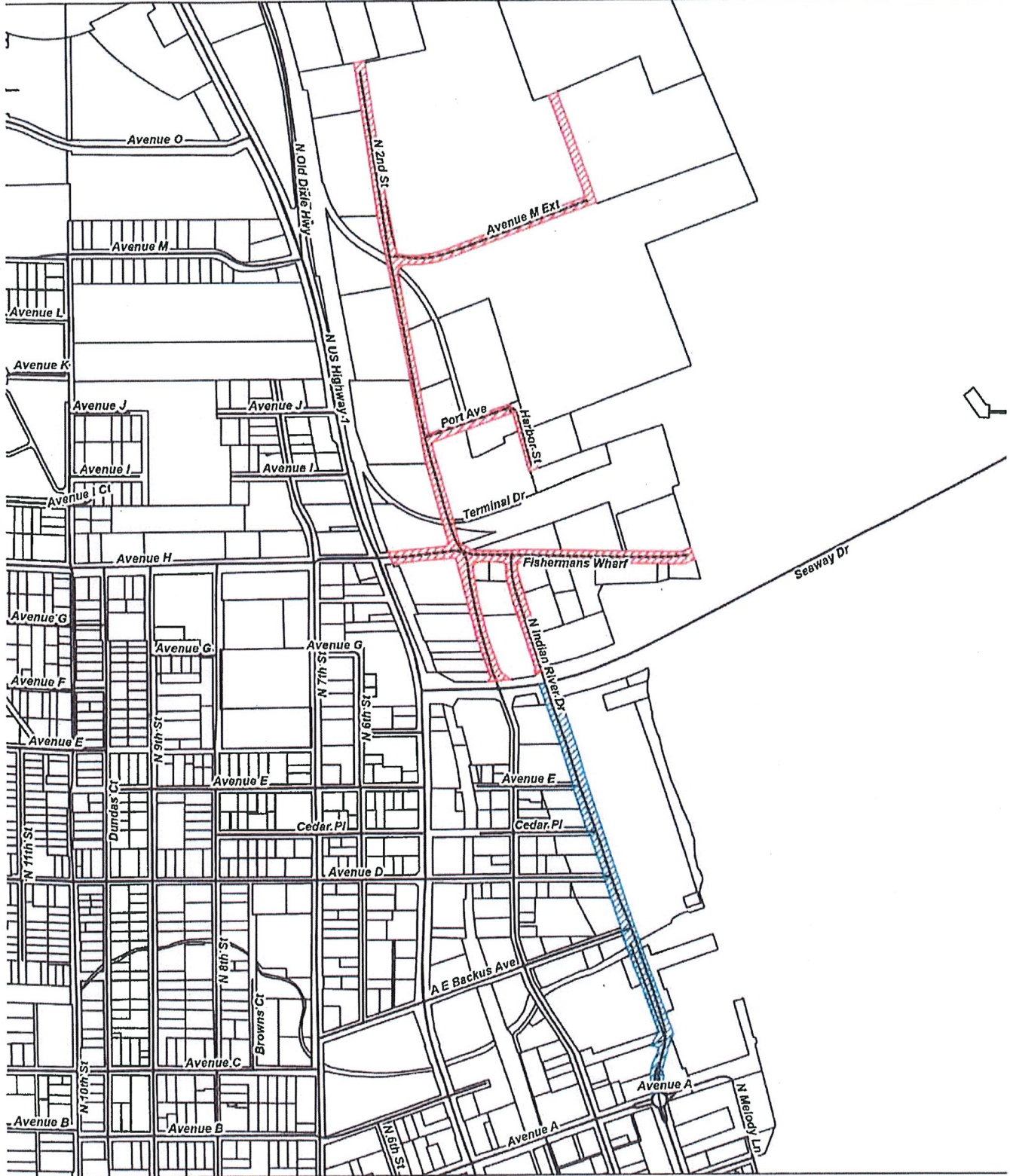
APPROVED AS TO FORM AND CORRECTNESS


[Signature]
County Attorney



Exchange of Rights-of-Way

EXHIBIT A



 Sections of roads to be conveyed to St. Lucie County by City of Fort Pierce

 Section of road to be conveyed to City of Fort Pierce by St. Lucie County

0 450 900 1,800

8 of 9 Feet

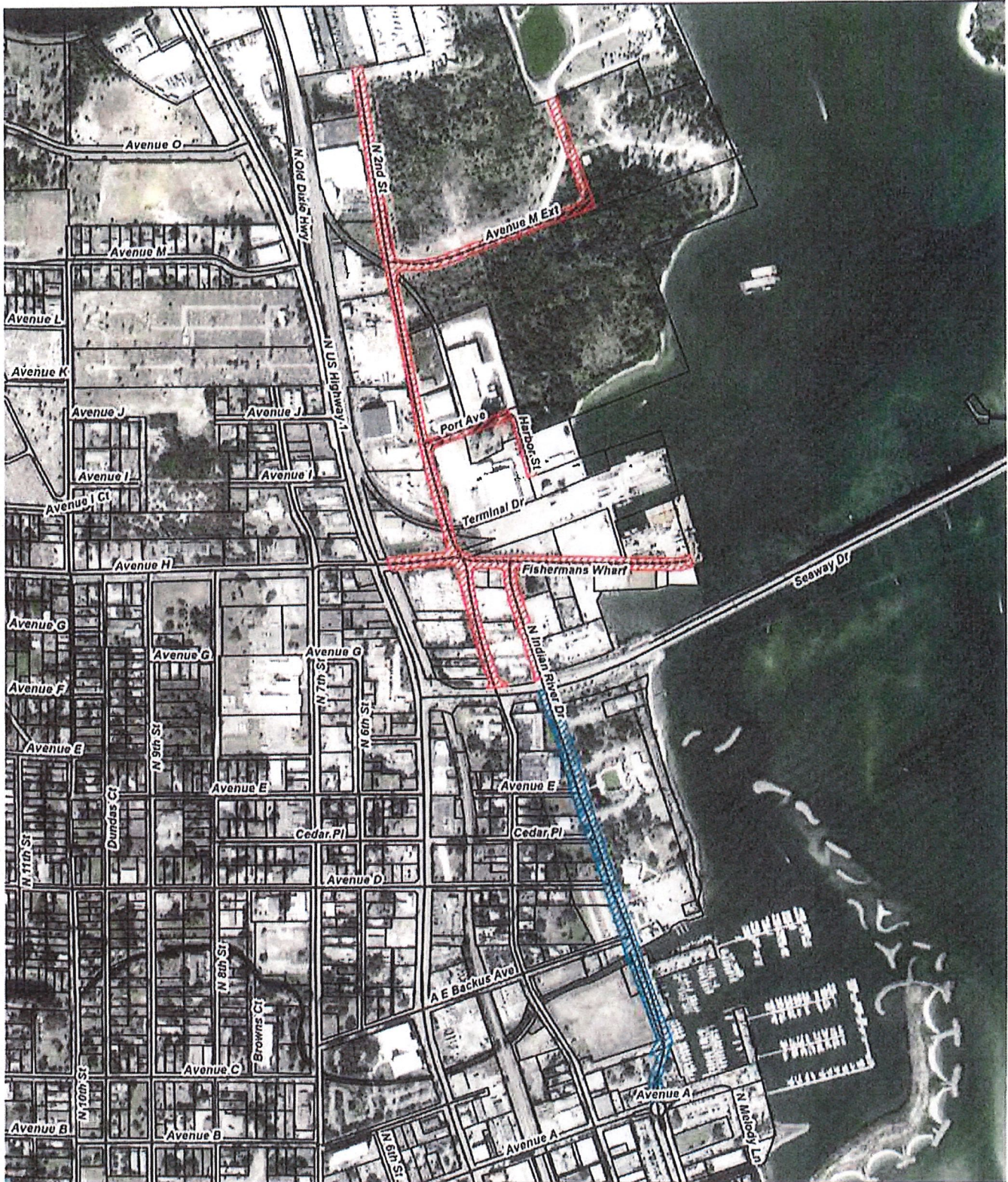



Map prepared 11/1/2022



Exchange of Rights-of-Way

Aerial



 Sections of roads to be conveyed to St. Lucie County by City of Fort Pierce

 Section of road to be conveyed to City of Fort Pierce by St. Lucie County



Map prepared 11/1/2022

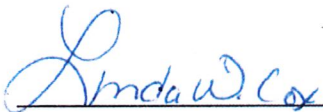
**FIRST ADDENDUM TO AGREEMENT BETWEEN THE CITY OF FORT PIERCE AND
ST. LUCIE COUNTY TO EXCHANGE RIGHTS OF WAY
C22-11-904**

This First Addendum is attached to and made a part of that certain Agreement between The City of Fort Pierce and St. Lucie County to exchange rights of way (hereinafter "City") on November 7, and approved by the St. Lucie County Board of County Commissioners (hereinafter "County") on November 15, 2022.

1. Paragraph 2, Feasibility Determination Period, states each party shall have 90-days (February 13, 2023) from the effective date to undertake such physical inspections, test, surveys and other investigations as may be deemed necessary to evaluate the feasibility of the exchange of parcels.
2. Paragraph 8, Closing, states the closing shall take place thirty (30) days after the expiration of the Feasibility Determination Period from the end of the due diligence period.
3. The parties agree to extend the Feasibility Determination Period 120-days (June 13, 2023), to allow the County to conduct additional Phase II Environmental Assessments as may be deemed necessary to evaluate the exchange.
4. In all other respects, the terms and conditions of the contract shall remain in full force and effect.

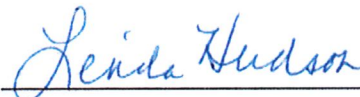
EXECUTED by the CITY this 20th day of March, 2023.

ATTEST:




City Clerk

CITY OF FORT PIERCE, FLORIDA,
a Florida municipal Corporation



Mayor
Date: 3/20/2023

APPROVED AS TO FORM AND CORRECTNESS



City Attorney

EXECUTED by the COUNTY this _____ day of _____, 2023.

By: _____
Interim County Administrator

APPROVED AS TO FORM AND CORRECTNESS

County Attorney

**SECOND ADDENDUM TO AGREEMENT BETWEEN THE CITY OF FORT PIERCE AND
ST. LUCIE COUNTY TO EXCHANGE RIGHTS OF WAY
C22-11-904**

This Second Addendum is attached to and made a part of that certain Agreement between The City of Fort Pierce and St. Lucie County to exchange rights of way (hereinafter "City") on November 7, and approved by the St. Lucie County Board of County Commissioners (hereinafter "County") on November 15, 2022.

1. Paragraph 2, Feasibility Determination Period, states each party shall have 90-days (February 13, 2023) from the effective date to undertake such physical inspections, test, surveys and other investigations as may be deemed necessary to evaluate the feasibility of the exchange of parcels.
2. Paragraph 8, Closing, states the closing shall take place thirty (30) days after the expiration of the Feasibility Determination Period from the end of the due diligence period.
3. The parties agree to further extend the Feasibility Determination Period through August 2, 2023, to allow the County to conduct additional Phase II Environmental Assessments as may be deemed necessary and to allow the County to obtain Right of Way Maps based on surveys to evaluate the exchange.
4. The Closing Date is amended to read on or before August 31, 2023.
5. In all other respects, the terms and conditions of the contract shall remain in full force and effect.

EXECUTED this _____ day of _____, 2023.

ATTEST:

CITY OF FORT PIERCE, FLORIDA,
a Florida municipal Corporation

City Clerk

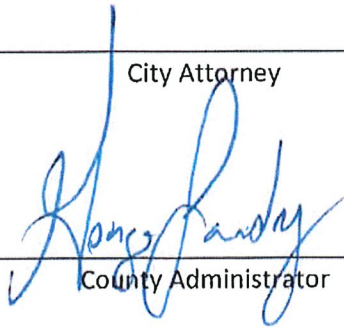
Mayor

Date: _____

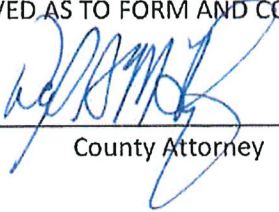
APPROVED AS TO FORM AND CORRECTNESS

City Attorney

EXECUTED this 30 day of June, 2023.

By: 
County Administrator

APPROVED AS TO FORM AND CORRECTNESS


County Attorney