

Jacksonville Tree Commission
Wednesday September 21, 2022 – 1:30 PM
For Approval November 16, 2022
Via Zoom Platform & In Person

**Commissioners
Present:**

Chris Flagg, Chair
Mike Robinson, Vice Chair
Susan Fraser
John Pappas
Rhodes Robinson
Ron Salem

Staff: Cindy Chism

Public: Jameka Smith, COJ
Dave McDaniel, COJ
Susan Caven, Scenic Jax
Tracey Arpen, Scenic Jax
Joe Anderson, JEA
Mike Zaffaroni, Liberty Landscape
Kelly O’Leary, Liberty Landscape
Lisa Grubba, Greenscape
Nancy Powell, Scenic Jax
Steve Long, COJ
John November, Public Trust
Kathleen McGovern, COJ
Mary Cress-Littlepage, KBT Assoc.

Advisors:

Susan Grandin, OGC
Justin Gearhart, City Arborist
Jose Regueiro, COJ

1. **Call to Order – Chair**
2. **Roll Call and Verification of Quorum – Cindy Chism**
3. **Submittal of Speaker’s Cards – Chair**
 - a) A raised hand icon as well as waving at the screen will be acknowledged by Chair or Ms. Chism.
 - b) For those attending in person, paper speakers’ cards are available.
4. **Reports:**
 - a) Fund balance and encumbrance report for 15(F) (Ordinance Tree Fund), 15(N) (Charter Tree Fund) and BJP (Attachment A) – Jose Regueiro
 - i. As a result of the meeting with Mr. Hart, Ms. Grandin and Mr. Gearhart, this month 2 reports were sent out; apparently it is not required for the financial report to match to the mitigation webpage. Included in the attachment is a report dated August 31 which resembles a standard monthly report. The report dated September 2 in the attachment matches the mitigation webpage. Which version does the Tree Commission want to use? The more accurate report is the report dated August 31 because it allows accounting to queue more of the month end work related to the prior month.
 - ii. Mr. Pappas asked Mr. Regueiro for clarification on the Mitigation page; does the amount listed as available for appropriation include any funds already allocated. Mr. Regueiro replied no it does not. Which means the \$33,767,871.32 listed on the August 31 Financials Combined page does include allocated funds. Mr. Gearhart added a large chunk of that is the \$8 million allocated for Level 2s for the upcoming year. Ms. Fraser asked if the \$8 million allocated for Level 2s have project names yet. Mr. Gearhart said when the budget for the Level 2s was presented there were various projects for

Parks which are in the works, Gold Star Hwy and then the usual \$2 million for normal projects. Those are anticipated expenditures for the year, projects known and unknown.

- iii. Mr. M. Robinson said the consensus of the Commission is to use the end of the month numbers and not worry about it tying back to the Mitigation webpage. Still show the webpage but the funds do not have to tie back to it.

b) Historical Fund Balances – Susan Fraser

- i. Historical data was disbursed in the January 2022 Agenda which has been reorganized into the single page format (page 10 of Attachment A). This goes back to the initial collection, by fund, 1996-2021 and the expenditures. The total revenue has been \$114 million dollars with the expenditures being \$38 million. What expenditures are missing, salaries, projects, the 25% maintenance to Public Works? There are obviously a piece(s) missing due to the differences in the amounts, but this allows us to see the trends through the years.

c) Status of Pending Level 2 Tree Projects (Attachment B) – Justin Gearhart

- i. As requested, the list has been divided into 2 different parts: an ongoing project spreadsheet and a completed project spreadsheet. The spreadsheet with the green lines is the ongoing projects. Mr. Pappas requested the titles be updated to Active Projects and Completed Projects. The projects move to the completed listed once the warranty and final inspection has been finalized. Ms. Fraser asked Mr. Gearhart to clarify if the year listed is the year it was authorized or completed. Then we could sort by year with subtotals of what the expenditures were for that year.

d) Fund Status of 630-CITY, Remove & Replace and Level 2 Programs– Justin Gearhart

- i. Level 2 has \$9,241,000.00, 630-CITY has \$558,000 and Remove & Replace has \$248,000. Level 3 has \$549,000. This may be a good time to request funds for 630-CITY, Remove & Replace and Level 3. Based on the 2-year average, except for Level 3, the request is for \$2 million for 630-CITY \$4 million for Remove & Replace and Level 3 \$1 million to add to the \$549,000 already there. CM Salem asked if that would be 1 years' worth? Mr. Gearhart replied those are using the 2-year averages so hopefully longer than a year.
- ii. Motion was made for legislation requesting \$7 million total for the various programs (listed above) by Mr. Pappas, seconded by Mr. R. Robinson, none opposed.

5. Action Items:

a) Approval of Minutes from August 17, 2022 meeting – Chair

- i. Motion to approve the minutes made by Mr. Pappas, seconded by Ms. Fraser, none opposed.

b) Approval of Minutes from September 1, 2022 Facilitator Strategic Planning meeting – Chair

- i. Motion to approve the minutes made by Ms. Fraser, seconded by Mr. R. Robinson, none opposed.

c) Proposed Level 2 Project(s) – Justin Gearhart

- i. Wolfson High School Tree Planting Project (Attachment C) – Justin Gearhart
 - 1. Presentation – There were several meetings to ensure there would be no utility conflicts, and no security issues to plant 56 trees. There will be a 2-year warranty on these trees. As part of the

Jessica Lundsford Act, one of which is every worker who goes onto school grounds must pass a background check. That includes the folks who plant the tree(s) and those that come after to water it. The cost is included in the quote.

2. Public Comment –

- i. Mr. M. Robinson asked how long the background check was good for? Mr. Gearhart replied, 5 years. It was requested for 12 contractors, 2 tree crews to make sure there are back ups so there will be no delays. Mr. Flagg asked who would pay for it if the Tree Fund wouldn't? Mr. Gearhart said the contractor would have to cover it. Ms. Grandin added it's like MOT so it must be done as a safety issue. Mr. R. Robinson asked what happens after the initial 2 years and the crew has been replaced? Mr. Gearhart replied, it would then fall to the contractor, we will cover the initial but after that it's on them.
 - ii. Ms. Fraser pointed out it could be in qualifications for a qualified bidder. Mr. Gearhart replied, this project is using our existing contract and not putting it out for bid but in the future if we want to do many more schools perhaps, we should only put it out for bid. Mr. Zaffaroni said that yes, of course they will have new people over the course of the 2-year warranty but feel that it is fair on the City's part to pay for the 12 initially and then it is our responsibility to keep ask many people as well as getting some of our JSEB contractors approved. We will cover their hourly wage to go through the check.
 - iii. CM Salem asked if the school was going to maintain the trees after the 2-year warranty was up. Mr. Gearhart said yes, they would. CM Salem then asked if there was an agreement in writing for their maintenance. Mr. Gearhart said no, but he could generate something and present it at the next meeting. CM Salem said he would like the Superintendent to sign the agreement; the school Principal will change. Mr. Gearhart said he did meet with the Principal but also with various members of the school board maintenance team.
 - iv. Mr. Arpen said I would hope the agreement they are signing makes it clear that we are planting trees, they are specifically prohibited from pruning them to shrubs. In an ideal world, it would be great if the agreement would also specify that if they prune them to the point they can't grow as trees anymore they are obligated to replace them. Mr. Gearhart will include that in the agreement.
 - v. CM Salem suggested the Superintendent sign it then it's up to them to filter it down to the individual school maintenance people.
 - vi. Mr. Flagg pointed out that planting on school grounds we must be very careful where we plant, how, etc. We certainly want to ensure they do remain as trees and not infringing on a view corridor or safety corridor, where people could hide behind. We need to make sure of that with the school because that will cause them to severely prune the tree. Mr. Gearhart said he did meet with them several times regarding various issues, security, and safety specifically but will ensure these things are in writing, so everyone understands.
3. Vote – Motion made by Mr. R. Robinson to approve the tree planting project to include an Agreement between the City of Jacksonville and the Duval County School Board, to be signed by the Superintendent, they will maintain the trees after the warranty period is complete specifically

to not improperly prune the trees, that they must remain as trees or else must be replaced at the current market rate. The drawings will be attached to the document so they will understand where the trees are being planted. There may also be an educational opportunity to be determined later. Seconded by Mr. Flagg, none opposed.

ii. Collins Road Tree Planting Project (Attachment D) – Justin Gearhart

1. Presentation – From Old Middleburg to Schindler Dr on Collins Rd there is a large median. We will plant 183 trees, depending on the size of the median there are shade trees versus some smaller trees or more vertical trees. We are trying a variety of structure, color, and shapes.
2. Public Comment – Mr. Pappas pointed out that there is a major road reconstruction project on the west end of Old Middleburg Rd. Mr. Gearhart said they were leaving 100 ft at the intersection before planting anything. Mr. Pappas suggested Mr. Gearhart contact Robyn Smith in the City Engineer's office is the contact. Tracey Arpen asked about planting Slash Pines, there were a lot planted in medians by Baptist South on Old St. Augustine Rd. and they have all died. Is there some type of infestation or soil conditions? They looked great for about 10 years and now they are all dead. Do you think that will be an issue and why did you select Slash Pines over Long leaf? Mr. Gearhart replied because of how the road is designed, Slash Pines are more tolerant for being in that area which is quite windy due to the fences and buildings; also the area was naturally Slash Pine previously.
3. Vote – Motion for approval was made by Mr. Pappas, seconded by Mr. Flagg, none opposed.

6. Old Business

a) Level 3 Program Agreement Revisions (Attachment E)– Susan Grandin

- i. Page 3 – We added the last sentence in the definition of Landscape Architect to include the Landscape Architect's firm. It doesn't have to be the exact Landscape Architect who goes to the site it could be a Project Manager (who almost has his license) attached to his firm.
 - ii. Page 8 – Change Orders – Mr. Arpen pointed out if there was a change order requested by the City, or the contractor and approved by the City then the Applicant (the Non-profit) should be paid for the amount of time they spend doing the change order. To do that, a rate sheet as to how much the hourly employees charge. On page 29 in Exhibit C for the Project Budget and Cost Breakdown. The instructions we approved discussed the cost breakdown, but it wasn't listed in the Agreement. What's added is a request for the team member's hourly rates. Additionally, there is a sample rate sheet as an example. Mr. Pappas suggested splitting Design and Inspection Services into 2 separate items on page 29 Exhibit C.
1. Ms. Grubba asked if in the industry change orders are handled by the hour. Mr. Pappas replied depending on which one but usually. Mr. Arpen asked about a form attached to the contract which is a notice to a subcontractor 'that your change order has been approved and you are authorized to proceed you can recover 10% of your change order amount as your administrative cost for the change order' but I didn't see any reference to that process in the contract. Would that be in this contract between the City and the Applicant or in the contract between the Applicant and their subcontractor? Ms. Grubba said the problem with it being just between the Applicant and the subcontractor is the work performed in the field approved by the City would

be incumbent upon the Applicant to pay, and it should be part of the overall contract. Ms. Grandin agreed. Mr. Arpen continued if it's not spelled out in the Agreement between the City and the Applicant, the Non-profit, there may be a dispute where the City says 'well that may be what you agreed to with the subcontractor but we (the City) didn't agree with that.' We want to make sure that anything that is being paid to the subcontractor is being paid by the City and is an amount that is not going to be argued about.

2. Ms. Grandin asked Mr. Pappas in the contracts we currently have with for-profit companies, if there is a 10% for change orders, is that 10% utilized without going through any other process? Mr. Pappas said he doesn't recall having any percentage for change orders. Typically, if there is an amendment to the contract because there is a need for more work, it is negotiated what that is which is based on hours of effort, what the scope of the work is.
3. Ms. Grandin continued, so if the budget set for a project was \$300,000, and the contract was \$250,000, that would give a \$50,000 contingency within the project. Which would give the administrative capability of increasing with change orders without having to change the contract. Mr. Pappas agreed it is wise to have some sort of contingency which may not be part of the contract but is in the budget allocation. Ms. Grandin added, in that respect at 10% anything.
4. Ms. Grubba asked if they weren't 2 different things? Isn't the 10% hold-back a performance incentive? Mr. Pappas asked if she meant retainage? Mr. Arpen said retainage is different. A contingency is for unforeseen circumstances which is what Ms. Grandin was discussing.
5. Mr. Arpen continued, it may have been a form Mr. Pope came up with back to the subcontractor or notice to subcontractor that the change order has been approved that they are also authorized a percentage over that amount as their cost of administering the change order. Mr. M. Robinson said it's not a flat 10%, it's negotiated or agreed upon. Mr. Pappas agreed. Mr. Arpen suggested that contingency and processing change orders are issues which need still to be addressed.
6. Ms. Grandin asked if what Mr. Arpen was suggesting is language in the Agreement about the handling of change orders? Mr. Arpen agreed. There is instructions on how the subcontractor gets paid for handling the change order and where those funds are going to come from to fund the change order, which comes back to the contingency which is not addressed at all. Ms. Grandin said typically in the City's contracts and agreements we don't go into that much detail. There is a process in place for change orders and this would follow the current process. The contingency isn't part of the Agreement with the Applicant. Mr. Pappas added, these are 2 different things; the change order negotiation would be between the Applicant, the funding to support any change order would have to come from a contingency within the allocation for the project. This contract is solely with who ever is doing the work and negotiating the change order with them is appropriate.
7. Mr. Flagg suggested including the detailed process for submitting a change order in the Agreement. Mr. McDaniel pointed out the process or a change order is simple; the subcontractor to the Applicant tells the Applicant the job has expanded and will cost an additional amount. The Applicant submits the change order which is funded from the

contingency to the Applicant and the subcontractor in the draw. Mr. Arpen pointed out there is no mention of contingency in the Agreement, it's not the same as retainage. Ms. Grandin said that's not true, the budget, whatever the Tree Commission agrees is the budget for the project, e.g., \$300,000, but the contract with the Applicant is for \$250,000. It's the City's \$50,000 contingency. Mr. Pappas pointed out that we are not currently putting in an amount for contingency. Mr. M. Robinson said there was 10% of construction costs for the Equestrian Center Level 3 project contingency. It was built into the budget.

8. Mr. Pappas suggested 2 ways to handle this issue; 1) a contingency could be built into every contract with a definition that is owner controlled, i.e., The person managing the project for the City can authorize funding from the contingency, or 2) not have a contingency in the contract, the budget just what is submitted but a contingency would be built into the allocation which the Tree Commission could decide to add. The second option is more time consuming. Mr. M. Robinson agreed the first option is better. Mr. Pappas continued if it's defined in the Agreement that its owner controlled, which would be City Staff, and based on negotiation with the Applicant. Ms. Grandin will add a definition of owner-controlled contingency.
 9. Mr. Arpen asked if the reimbursement to the non-profit a prospective estimate of time or retrospective payment of actual time expended in administering the change order? Mr. Pappas replied to it should be prospective, it should be defined ahead of the work being done. Mr. Pappas continued once the value of the change order is agreed, the hours, it's just like the contract, it becomes part of the contract.
 10. Ms. Grandin said for each Level 3 project, the contingency may be different and will be decided on a case-by-case basis by the Tree Commission. Mr. Flagg agreed. Ms. Grandin will add this to the Agreement.
 11. Mr. McDaniel asked about the Procurement threshold of \$350,000 and what would happen if a change order was submitted on a project which pushed the limit over the threshold. Ms. Grandin will find out. Mr. McDaniel wanted to make sure the Procurement viewpoint was considered. Ms. Grandin said that it would be best to keep the cost of the project under \$300,000 including the contingency. The non-profit who is most familiar with the project should determine what the contingency ought to be.
 - iii. Page 29 – The current form in the Exhibit is much too simple. There is a sample form (Attachment G), Mr. Pappas said this is the type of form Public Work's requires in their contracts. It's consistent and everyone knows what's necessary.
- b) Palm Tree Subcommittee – Ordinance Update – Susan Grandin**
- i. The point is to address the measurement of palm trees and some of the definitions of palm trees for CM Salem. In trying to focus on only those items, there is some bleed over into the Landscape Ordinance Code.
 - ii. The definition of a protected tree was amended; it was suggested that if a sabal palm, the Florida State Tree, has an 8 ft. clear trunk, defined as being where the fronds start, then it is protected, less than 8 ft. it is not protected. The flip side is if the developer is going to install a palm tree in the

design to be counted, not as a shade tree, but a tree, then it must be at least an 8 ft. clear trunk tree.

- iii. In addition, the explanation for a protected tree was also revised; it's either a protected tree in the right of way or on a lot. It doesn't matter whether it's a City lot or a private property lot.
- iv. An exceptional specimen tree, which for a woody tree is 24 in. or greater if a palm has a 24 ft. clear trunk or great that would qualify as an exceptional specimen tree.
- v. The definition of palm tree has been expanded to include multiple trunk palms.
- vi. Previously discussed removing some of the language about any tree located within an existing or proposed street right of way. That language was something negotiated when this was originally drafted; if it's in a residential subdivision, the trees that fall within the right of way, are not mitigated for, they are exempt. All other trees 11.5" DBH on the remainder of the site must be mitigated for.
- vii. The listing of invasive species was removed and instead sited University of Florida's IFAS Extension Service Invasive Plants and Trees.
- viii. If a palm is used for mitigation of a protected palm with a clear trunk height between 8 and 24 ft. the total clear trunk height of the replacement palm must be 1/3 of the clear trunk height removed. This matches the mitigation requirements for hardwood trees, except live oaks. Ms. Fraser pointed out that the total palm inches planted for mitigation must be divisible by 8, so it's a whole palm tree; the tree must be rounded up to 8 ft. Ms. Grandin will make this clear.
 1. Mr. Arpen asked if a developer wanted to replace a removed cabbage palm with a hardwood tree. How would the correlation between clear trunk in a palm tree with any other type of tree be calculated? Ms. Grandin said it was on page 19 (h)(iv); "calculation of payment for removal of a protected palm is as follows: every 1 foot or fraction thereof, or protected palm removed is equivalent to 1-in in caliper."
 2. Mr. Arpen said perhaps some language should be added to encourage the developer to replace instead of paying into the tree fund. If replanting a similar tree for credit then using the same formula, so there is away to know how many palm trees were offset. Ms. Grandin said on page 16 ((g)(9) says "Palms used for mitigation may not exceed the amount of CT feet of protected palms removed." Ms. Fraser said they are only getting credit for a third and are planting 3 times as many palm trees. For instance, an 8 ft. palm tree is removed, the mitigation is a third of that, but the replacement can be the full 8 ft. palm. So, palm trees removed could be converted to 3 times as many palm trees planted. But what is put back in palm trees cannot exceed the total taken down.
 3. Ms. Fraser said before the amendment which created a palm tree measurement based on clear trunk versus caliper, what was the limit on replacement of palm trees? Ms. Grandin said before the change the paragraph said, "Palms may be used only to replace protected palms removed." Ms. Fraser said it was one for one, so the 1/3 can go back in otherwise it's increasing to 3 to 1. The revision would give a 1/3 credit, but the replacement can be 3 times as many. We are holding the line, saying replacement is 1 for 1. Ms. Grandin agreed. Ms. Fraser continued, even if the language doesn't change, it would be clear trunk removed and number removed and

replacement number would have to be exceed. Ms. Grandin said it should read “palms used for mitigation may not exceed 1/3 of the amount of clear trunk feet of protected palms removed.

- ix. Added into Section 656.1208 “the total clear trunk height of replacement palms shall also be equal to twice the amount of CT height of palms that would have been required to be planted.” This is for a violation for removing trees without a permit. It was added to equalize the requirements between woody plants and palms. Ms. Fraser said it’s 2/3, what would have been mitigated was 1/3, we’re back to the minimum of 1. Ms. Grandin clarified instead of putting in 1 8 ft. palm tree, because this is for violations, the requirement is 2 8 ft. palm trees.
 - x. In Section 656.1211, there are some highlighted areas which are beyond the scope of what CM Salem has agreed to sponsor but Ms. Grandin wanted to bring them to the attention of the Tree Commission. Because this is beyond the scope of the task, it could be taken up with the Landscape Code revisions.
 - xi. Ms. Grandin will meet with Mr. Pittman and revise 1/3 to 2/3 item discussed above.
- c) Facilitator Strategic Planning Committee (Attachment E) – Susan Fraser
- i. Mr. Flagg will do the introductions, why we’re here, introductions of Commissioner’s; then there are duties of the Commission presented by Justin? Mr. Flagg suggested Ms. Grandin present that portion, she agreed.
 - ii. Ms. Fraser suggested Ms. Grandin discuss the funding. Both the different types of funds as well as the actual amounts. The order of magnitude of what is done is important. Historical revenue, and historical expenditures, continuing to chip away at the amount, which we are not doing fast enough. Mr. Pappas suggested also to find better ways to fulfill the duties. Ms. Grandin agreed to speak about it, but a member of the Finance department should be present to answer any possible questions. Mr. Flagg suggested Ms. Grandin focus on the 2-questions highlighted on the agenda and avoid any “rabbit holes.”
 - iii. Ms. Littlepage pointed out this is not a financial workshop. What could be said is historically we’ve brought in X dollars from mitigation and then use the sheet with the combined funds from August 31. There is no reason to get into the accounts. Mr. M. Robinson suggested, reporting how much was collected and this is the current balance. Mr. Flagg agreed. Ms. Littlepage continued, this first session is not for questions, it’s for presentations.
 - iv. Mr. Flagg asked if he could use some of the slides from last year’s City Council presentation and could they be updated? Mr. Gearhart said he could update them.
 - v. Ms. Littlepage said something to bear in mind is there may be questions which arise that may require additional research and data. One of the first steps may be to get those answers and use that to guide future decisions.
 - vi. A Zoom meeting will be scheduled for Tuesday September 27th to discuss the presentations at 9:30am.

7. New Business

- a) **None.**

8. Public Comment

a) Ms. Lisa Grubba showed the Tree Commission the award from the Florida Urban Forestry Council Greenscape won for the Equestrian Center Project. Greenscape has planted in every school in Duval County and are very excited about the upcoming projects.

b) Mr. John Pappas is retiring at the end of September. His successor is Steve Long.

9. **Adjournment** – the next Tree Commission meeting is scheduled for Wednesday, October 19, 2022, at 9:30am and will be a Hybrid/Zoom meeting in Ed Ball Building, 10th Floor, Public Works Office, conference room 5. This meeting will be to discuss any new Level 2 Projects for submission.

DRAFT