



**AGENDA**  
**CITY OF LAKE WORTH BEACH**  
**REGULAR CITY COMMISSION MEETING**  
**CITY HALL COMMISSION CHAMBER**  
**TUESDAY, OCTOBER 15, 2024 - 6:00 PM**

**ROLL CALL:**

**INVOCATION OR MOMENT OF SILENCE:** led by Commissioner Christopher McVoy

**PLEDGE OF ALLEGIANCE:** led by Commissioner Mimi May

**AGENDA - Additions / Deletions / Reordering:**

**PRESENTATIONS:** (there is no public comment on Presentation items)

- A. Recycling Program Update by Willie Puz, Legislative and Public Affairs Manager for the Solid Waste Authority of Palm Beach County
- B. [Proclamation declaring October 20, 2024 as el dia del Guatemalteco](#)

**PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:**

**APPROVAL OF MINUTES:**

- A. [September 20, 2024 - pre-agenda workshop](#)
- B. [September 23, 2024 - special meeting](#)
- C. [September 26, 2024 - special meeting](#)
- D. [October 1, 2024 - regular meeting](#)

**CONSENT AGENDA:** (public comment allowed during Public Participation of Non-Agendaed items)

- A. [Resolution No. 43-2024 -- adopting the Palm Beach County Local Mitigation Strategy 2024](#)
- B. [Resolution No. 44-2024 – Fiscal Year 2025 State Aid to Libraries Grant Application](#)
- C. [Proclamation declaring October 21-27, 2024 as Florida City Government Week](#)
- D. [Proclamation declaring October 23-31, 2024 as Red Ribbon Week](#)
- E. [Settlement Agreement in Case No. 50-2024-CA-001688, City of Lake Worth Beach v 1 Jeanne 923, LLC](#)

**PUBLIC HEARINGS:**

- A. [Ordinance No. 2024-15 - Second Reading – amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language](#)
- B. [Ordinance No. 2024-13 - First Reading – amending multiple sections of Chapter 23 “Land Development Regulations” to address several housekeeping items and minor changes for clarity](#)

### **UNFINISHED BUSINESS:**

- A. [Interlocal Agreement with the Lake Worth Beach CRA and Grant Agreement with Florida Neighbors Foundation, Inc. for financial support of a project to be known as Madison Terrace Phase One](#)

### **NEW BUSINESS:**

- A. [Agreement with MAXX Environmental, LLC to provide Infrastructure Maintenance and Repair Services](#)
- B. [Amendment to Agreement with USP Technologies to provide Hydrogen Sulfide Control Services](#)
- C. [Formal Development Agreement between the City of Lake Worth Beach, the Lake Worth Beach CRA and Sunshine Lake Worth Development for the creation of a downtown Wiener Museum of Decorative Arts \(WMODA\) Mixed-Use Cultural Arts Campus](#)
- D. [Unsolicited Proposal from Sunshine Lake Worth Development, LLC \(K Street Parking Garage\) – First Publicly Noticed Meeting](#)
- E. [Agreements with Akerman, LLP and Capital City Consulting, LLC for Lobbying Services](#)
- F. [Construction Contracts for The Paving Lady, M & M Asphalt Maintenance Inc., and Boulder Construction for city wide concrete sidewalk, apron, curb and valley gutter repairs](#)

### **COMMISSION LIAISON REPORTS AND COMMENTS:**

#### **CITY MANAGER'S REPORT:**

#### **CITY ATTORNEY'S REPORT:**

#### **UPCOMING MEETINGS AND WORKSHOPS:**

October 18 @ 9 am - pre-agenda workshop  
October 22 @ 6 pm - workshop  
October 29 @ 5 pm - special followed by regular  
November 1 @ 9 am - pre-agenda workshop  
November 15 @ 9 am - pre-agenda workshop

#### **ADJOURNMENT:**

The City Commission has adopted Rules of Decorum for Public Participation and public comment which are posted within the City Hall Chambers, online at: <https://hub.lakeworthbeachfl.gov/public-comment>, and available through the City Clerk's office. Compliance with the Rules of Decorum is expected and appreciated.

If a person decides to appeal any decision made by the board, agency or commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

# CITY OF LAKE WORTH BEACH

## PROCLAMATION

- WHEREAS,** on 20 October 1944, a group of university students, workers, farmers, teachers and young military personnel defeated the repressive administration of General Jorge Ubico Castaneda, the last of a series of dictators who had ruled Guatemala since 1871; and
- WHEREAS,** this group followed the heroic example of Tecun Uman, one of the last rulers of the K'iche' Maya people who in 1524 died fighting the Spaniards in the Battle of El Pinar, near Quetzaltenango, becoming a national Guatemalan hero; and
- WHEREAS,** the Guatemalan Revolution that initiated the "Ten Years of Spring" continues to influence life in Guatemala to this day; and
- WHEREAS,** the Guatemalan "Ten Years of Spring" in 1944 witnessed the first truly free democratic process in Guatemala, electing President Dr. Juan José Arévalo Bermejo, a professor of education and philosophy; and
- WHEREAS,** President Arévalo's administration focused on labor reform, education, a new constitution, and formation of a national system of social security, with one result being a dramatic increase in national literacy between 1944 and 1954; and
- WHEREAS,** in continued majority support of the Guatemalan Revolution, Colonel Jacobo Árbenz Guzmán was elected President in 1950 through free and fair elections, with the exception of the disenfranchisement of illiterate female voters; and
- WHEREAS,** agrarian reform was a major focus of President Árbenz' administration, leading to increased agricultural production; improved living standards for previously landless Mayan families; and compensation to former landowners at their land's self-declared tax value; and
- WHEREAS,** the histories of Guatemala and the United States of America are closely intertwined and increased awareness of those histories is beneficial to all; and
- WHEREAS,** in Lake Worth Beach, the Guatemalan-Maya Center and the organization Maya Iq' Balam, along with nationally the Organización Amancio Samuel Villatoro, work actively to foster pride in Guatemalan culture, customs and accomplishments for younger generations; and
- WHEREAS,** Guatemalan-American families in Lake Worth Beach are committed to maintaining both Guatemalan and American cultures, and to promoting cultural interchange; and
- WHEREAS,** as proud men and women, Guatemalan-Americans seek to participate and contribute to the social, educational, professional and political advancement of the United States of America; and
- WHEREAS,** the Guatemalan-American community has long hoped for the creation of a day of recognition—"El Dia del Guatemalteco" or "Guatemala Day"—to acknowledge the contributions and value of their culture and to pass these forward with pride to future generations.

**NOW, THEREFORE, I, Betty Resch, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me and on behalf of the City Commission, do hereby proclaim:**

**OCTOBER 20, 2024**

**as**

**“EL DIA DEL GUATEMALTECO”**

**in the City Of Lake Worth Beach**

**IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 15<sup>th</sup> day of October, 2024.**

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk



**MINUTES  
CITY OF LAKE WORTH BEACH  
CITY COMMISSION PRE-AGENDA WORKSHOP  
VIA ZOOM  
FRIDAY, SEPTEMBER 20, 2024 – 9:00 AM**

The meeting was called to order by Mayor Betty Resch on the above date at 9:03 AM on Zoom in Lake Worth Beach.

**ROLL CALL:** (0:35) Present were Mayor Betty Resch, Vice Mayor Malega, and Commissioners Christopher McVoy (left the meeting at 9:35 AM), Mimi May (left the meeting at 9:54 AM) and Reinaldo Diaz. Also present were Interim City Manager Jamie Brown, City Attorney Elizabeth Lenihan and City Clerk Melissa Ann Coyne.

**UPDATES / FUTURE ACTION / DIRECTION:**

**ADJOURNMENT:** (57:20)

The meeting adjourned at 9:59 AM.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

Minutes approved: October 15, 2024

Item time stamps correlate to the video available on YouTube.

**MINUTES**  
**CITY OF LAKE WORTH BEACH**  
**SPECIAL CITY COMMISSION MEETING - HOUSING STUDY & STRS**  
**CITY HALL COMMISSION CHAMBER**  
**MONDAY, SEPTEMBER 23, 2024 - 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:06 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

**ROLL CALL:** (0:38) Present were Mayor Betty Resch, Vice Mayor Sarah Malega, Commissioners Christopher McVoy, Mimi May and Reinaldo Diaz. Also present were Interim City Manager Jamie Brown, City Attorney Elizabeth Lenihan and City Clerk Melissa Ann Coyne.

**PLEDGE OF ALLEGIANCE:** (1:04) was led by Commissioner Mimi May.

**UNFINISHED BUSINESS:** (1:48)

A. Housing Study Presentation by Philip Lewin Associate, Professor and Director of Undergraduate Studies, Department of Sociology, Florida Atlantic University (2:15)

The meeting recessed at 7:24 PM and reconvened at 7:34 PM.

B. Discussion and Update on Vacation and Short-Term Rentals (STRs) (1:28:48)

**Action:** Motion made by Commissioner McVoy and seconded by Commissioner May to extend the discussion.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega, Commissioners McVoy, May and Diaz.  
NAYS: None.

**Action:** Motion made by Commissioner May and seconded by Vice Mayor Malega instructing staff to bring back options for a successful STR program without restrictions related to length of stay. (3:26:17)  
**Motion rescinded by Commissioner May.**

**Action:** Motion made by Commissioner McVoy and seconded by Vice Mayor Malega to bring the issue back at a special meeting to determine the options for STRs. (3:39:11)

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega, Commissioners McVoy, May and Diaz.  
NAYS: None.

**ADJOURNMENT:** (3:44:23)

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner McVoy to adjourn the meeting at 9:50 PM.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega, Commissioners McVoy, May and Diaz.  
NAYS: None.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

Minutes Approved: October 15, 2024

Item time stamps correspond to the recording on YouTube.

**MINUTES  
CITY OF LAKE WORTH BEACH  
SPECIAL CITY COMMISSION MEETING – 2ND BUDGET HEARING  
CITY HALL COMMISSION CHAMBER  
THURSDAY, SEPTEMBER 26, 2024 - 5:01 PM**

The meeting was called to order by Mayor Resch on the above date at 5:04 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

**ROLL CALL:** (1:38) Present were Mayor Betty Resch, Vice Mayor Sarah Malega, Commissioners Christopher McVoy, Mimi May and Reinaldo Diaz. Also present were Interim City Manager Jamie Brown, City Attorney Glen Torcivia (via Zoom) and City Clerk Melissa Ann Coyne.

**PLEDGE OF ALLEGIANCE:** (1:58) led by Vice Mayor Sarah Malega.

**PUBLIC HEARINGS:** (2:25)

- A. Resolution No. 31-2024 – Second Public Hearing – adopting the Fiscal Year 2024-2025 final Millage Rate (2:27)

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 31-2024 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA; LEVYING MUNICIPAL TAXES ON ALL TAXABLE PROPERTY WITHIN THE CITY OF LAKE WORTH BEACH, FLORIDA, FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024 AND ENDING SEPTEMBER 30, 2025; REPEALING ALL RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner McVoy to approve Resolution No. 31-2024 adopting the Fiscal Year 2024-2025 final Millage Rate.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

- B. Resolution No. 32-2024 - Second Public Hearing - adopting the final Debt Service Rate (2:57)

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 32-2024 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA; LEVYING MUNICIPAL TAXES ON ALL TAXABLE PROPERTY WITHIN THE CITY OF LAKE WORTH BEACH, FLORIDA, FOR VOTER APPROVED DEBT SERVICE FUND FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024, AND ENDING SEPTEMBER 30, 2025; REPEALING ALL RESOLUTIONS AND ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR THE EFFECTIVE DATE THEREOF

**Action:** Motion made by Commissioner McVoy and seconded by Commissioner May to approve Resolution No. 32-2024 adopting the final Debt Service Rate.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

- C. Resolution No. 33-2024 - Second Public Hearing - adopting the fiscal year 2024-2025 final City budget (3:14)

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 33-2024, A GENERAL APPROPRIATION RESOLUTION OF THE CITY OF LAKE WORTH BEACH, A MUNICIPAL CORPORATION OF THE STATE OF FLORIDA, MAKING SEPARATE AND SEVERAL APPROPRIATIONS FOR ITS NECESSARY OPERATING EXPENSES, THE USES AND EXPENSES OF THE VARIOUS FUNDS AND DEPARTMENTS OF THE CITY FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2024, AND ENDING SEPTEMBER 30, 2025; PROVIDING FOR THE EFFECTIVE DATE THEREOF

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner Diaz to approve Resolution No. 33-2024 adopting the fiscal year 2024-2025 final City budget.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

**NEW BUSINESS:** (3:30)

A. FY 2024-25 City Pay Plan (3:33)

**Action:** Motion made by Commissioner Diaz and seconded by Vice Mayor Malega to approve the FY 2024-25 City Pay Plan.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

B. First Amendment to Employee Agreement for Interim City Manager Jamie Brown (14:10)

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner Diaz to approve the First Amendment to Employee Agreement for Interim City Manager Jamie Brown.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

**ADJOURNMENT:** (15:07)

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner McVoy at 5:19 PM.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor McVoy, and Commissioners Malega, May and Diaz. NAYS: None.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

Minutes Approved: October 15, 2023

Item time stamps correspond to the recording of the meeting on YouTube.



**MINUTES  
CITY OF LAKE WORTH BEACH  
REGULAR CITY COMMISSION MEETING  
CITY HALL COMMISSION CHAMBER  
TUESDAY, OCTOBER 1, 2024 – 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:00 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

**ROLL CALL:** (0:22) Present were Mayor Betty Resch, Vice Mayor Malega and Commissioners Christopher McVoy (arrived at 6:06 PM), Mimi May and Reinaldo Diaz. Also present were Interim City Manager Jamie Brown, City Attorney Elizabeth Lenihan and Deputy City Clerk Shayla Ellis.

**INVOCATION OR MOMENT OF SILENCE:** (0:52) was led by Vice Mayor Sarah Malega.

**PLEDGE OF ALLEGIANCE:** (1:37) was led by Mayor Betty Resch.

**ADDITIONS/DELETIONS/REORDERING:** (1:56)

Public Hearing D, Amended and Restated Transmission Operator Alliance Agreement, was moved to Consent Agenda F.

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner Diaz to approve the agenda as amended.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners May and Diaz. NAYS: None. ABSENT: Commissioner McVoy.

**PRESENTATIONS:** (there is no public comment on Presentation items) (2:38)

- A. Presentation of Challenge Coin to D/S Kevin Mellers from the Palm Beach Sheriff's Office brought forward by Commissioner May (2:41)
- B. Presentation regarding the State of Education by Erica Whitfield, District 4 School Board Member (7:40)
- C. Proclamation declaring October 2024 as National Principals Month (24:34)
- D. Library Update by Cindy Ansell, Librarian (29:43)
- E. Proclamation declaring October 7 - 11, 2024 as Customer Service Week (46:56)
- F. Proclamation declaring October 2024 as LGBT History Month (50:50)
- G. Proclamation commemorating the 95th anniversary of Grant Chapel brought forward by Vice Mayor Malega (55:52)

**PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:** (1:02:41)

**APPROVAL OF MINUTES:** (1:19:36)

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner Diaz to approve the following minutes:

- A. September 6, 2024 - pre-agenda workshop
- B. September 12, 2024 - 1st budget hearing
- C. September 16, 2024 - workshop
- D. September 17, 2024 - regular meeting

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

**CONSENT AGENDA:** (public comment allowed during Public Participation of Non-Agendaed items) (1:19:16)

**Action:** Motion made by Commissioner May and seconded by Vice Mayor Malega to approve the Consent Agenda.

- A. Ninth Amendment to Professional Services Agreement with Ben Few & Company, Inc.
- B. Proclamation declaring October 2024 as Breast Cancer Awareness Month
- C. Proclamation declaring October 2024 as Domestic Violence Awareness Month
- D. Proclamation declaring October 7-13, 2024 as Florida Climate Week
- E. Settlement of personal injury lawsuit Carlos Garcia Pina and Elizabeth Rodriguez v. City of Lake Worth Beach
- F. (reordered) Amended and Restated Transmission Operator Alliance Agreement

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

**PUBLIC HEARINGS:** (1:19:47)

- A. Ordinance No. 2024-11 - Second Reading – amending Chapter 23 “Land Development Regulations,” Article 4 “Development Standards,” Section 23.4-25 “Micro-units” to provide minor changes to the development standards for Micro-Units (1:19:48)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2024-11 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE 4 “DEVELOPMENT STANDARDS,” SECTION 23.4-25 “MICRO-UNITS,” AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

**Action:** Motion made by Vice Mayor Malega and seconded by Commissioner Diaz to approve Ordinance No. 2024-11 amending Chapter 23 “Land Development Regulations,” Article 4 “Development Standards,” Section 23.4-25 “Micro-units” to provide minor changes to the development standards for Micro-Units.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

- B. Ordinance No. 2024-16 - Second Reading – amending Chapter 9 “Buildings and Structural Regulations,” Article I “In General,” Section 9-3 to remove redundant language (1:20:15)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2024-16 - AN ORDINANCE BY THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 9 “BUILDINGS AND STRUCTURAL REGULATIONS,” ARTICLE 1 “IN GENERAL,”; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

**Action:** Motion made by Commissioner McVoy and seconded by Commissioner Diaz to approve Ordinance No. 2024-16 amending Chapter 9 “Buildings and Structural Regulations,” Article I “In General,” Section 9-3 to remove redundant language.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

C. Ordinance No. 2024-15 - First Reading – amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language (1:20:42)

City Attorney Lenihan read the ordinance by title only.

ORDINANCE 2024-15 - AN ORDINANCE BY THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE 7 “FLOODPLAIN MANAGEMENT,”; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

**Action:** Motion made by Commissioner May and seconded by Commissioner Diaz to approve Ordinance No. 2024-15 on first reading and set the second reading and public hearing for October 15, 2024.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

D. (moved to Consent F) Amended and Restated Transmission Operator Alliance Agreement

**UNFINISHED BUSINESS:**

There were no Unfinished Business items on the agenda.

**NEW BUSINESS:**

There were no New Business items on the agenda.

**COMMISSION LIAISON REPORTS AND COMMENTS:** (1:21:10)

**Action:** Pre-agenda workshop scheduled for October 4 would be canceled due to lack of a quorum.

**Action:** Consensus to review the possibility of utilizing empty storefronts downtown to display some of the historic items owed by the city.

**Action:** Consensus to have staff review the possibility of changing the bulk pick up to the first week of the month instead of the third week of the month or reviewing the possibility of adding additional bulk pick-up times.

**CITY MANAGER'S REPORT:** (1:57:37)

Interim City Manager Brown provided the following report:

- A joint workshop with the CRA regarding WMODA would be held on Monday, October 7 at the Casino Ballroom; the Finance Director and City Attorneys were reviewing all aspects of the project with the project going to the CRA on October 8 and to the Commission on October 15
- Both contracts from the selected lobbyists had been received and there would be a workshop on October 22 to address which legislative projects to present for FY 25 and which lobbyist would be utilized for which project

**CITY ATTORNEY'S REPORT:**

City Attorney Lenihan did not provide a report.

**UPCOMING MEETINGS AND WORK SESSIONS:**

October 4 @ 9 am - pre-agenda workshop - CANCELLED  
October 7 - joint workshop with CRA at Casino Ballroom  
October 15 - regular meeting

**ADJOURNMENT:** (2:03:49)

**Action:** Motion made Vice Mayor Malega and seconded by Commissioner McVoy to adjourn the meeting at 8:04 PM.

**Vote:** Voice vote showed: AYES: Mayor Resch, Vice Mayor Malega and Commissioners McVoy, May and Diaz. NAYS: None.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

Minutes approved October 15, 2024

Item time stamps correspond to the recording on YouTube.

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** City Manager's Office

**TITLE:**

Resolution No. 43-2024 -- adopting the Palm Beach County Local Mitigation Strategy 2024

**SUMMARY:**

Resolution 43-2024 approves and authorizes the formal adoption of the Palm Beach County Local Mitigation Strategy 2024. The Palm Beach County Local Mitigation Strategy 2024LMS 2024 provides a comprehensive approach to effectively reduce the impact of current and future hazards and risks faced within Palm Beach County. The Board of County Commissioners approved the Palm Beach County Local Mitigation Strategy 2024 on September 17, 2024, and it must now be adopted by all municipalities and special districts in Palm Beach County by August 6, 2025, for full approval.

**BACKGROUND AND JUSTIFICATION:**

The Palm Beach County Public Safety Department, Division of Emergency Management has prepared the Palm Beach County Local Mitigation Strategy 2024. This effort involved coordination with local governmental and non-governmental stakeholders having an interest in reducing the impact of disasters and input from the private sector and other members of the public.

The purpose of the Palm Beach County Local Mitigation Strategy 2024 is to develop and execute an ongoing methodology for reducing the community's vulnerability to identified natural, technological and human caused hazards. The strategy provides a rational, managed basis for considering and prioritizing hazard-specific mitigation options, and for developing and executing sound cost-effective mitigation projects. The Palm Beach County Local Mitigation Strategy serves as a basis for justifying the solicitation and use of local, state, federal and other funding sources to support hazard mitigation projects and initiatives.

The Palm Beach County Local Mitigation Strategy 2024 has been determined to be compliant with all federal standards by the State Hazard Mitigation Officer 2024 in the State of Florida Division of Emergency Management on August 6, 2024. The Palm Beach Board of County Commissioners has since approved the Palm Beach County Local Mitigation 2024 on September 17, 2024. All municipalities and special districts are now required to adopt it by August 6, 2025, for full approval.

The City of Lake Worth Beach is required to adopt the Palm Beach County Local Mitigation Strategy 2024 to be eligible for any mitigation funding in the future. Failure to do so will negate the City's community hazard mitigations plans as a condition for receiving certain types of non-emergency disaster assistance, including funding for mitigation projects.

**MOTION:**

Move to approve/not approve Resolution No. 43-2024 to approve and adopt the Palm Beach County Local Mitigation Strategy 2024

**ATTACHMENT(S):**

Resolution

Link to PBC Mitigation Strategy: [PBC Mitigation Strategy](#)

RESOLUTION NO. 43-2024 OF THE CITY OF LAKE WORTH BEACH, FLORIDA,  
APPROVING AND ADOPTING THE PALM BEACH COUNTY LOCAL  
MITIGATION STRATEGY PLAN 2024; PROVIDING FOR AN EFFECTIVE DATE;  
AND FOR OTHER PURPOSES

WHEREAS the Disaster Mitigation Act of 2000 was enacted to establish a national disaster hazard mitigation program to reduce the loss of life and property, human suffering, economic disruption, and disaster assistance costs resulting from disasters, and to assist state, local, and tribal governments in implementing effective hazard mitigation measures to ensure the continuation of critical services and facilities after a natural disaster; and

WHEREAS, the Disaster Mitigation Act of 2000, as a condition for qualifying for and receiving future Federal mitigation assistance funding as well as reimbursement for Presidentially Declared Disasters, requires such governments to have Federal Emergency Management Agency approved hazard mitigation plans in place to identify the hazards that could impact their jurisdictions, identify actions and activities to mitigate the effects of those hazards, and establish a coordinated process to implement plans; and

WHEREAS, Palm Beach County's Emergency Management staff, in coordination with governmental and non-governmental stakeholders having an interest in reducing the impact of disasters, and with input from the private sector and other members of the public, developed and revised the Palm Beach County Local Mitigation Strategy 2024; and

WHEREAS, the Palm Beach County Local Mitigation Strategy 2024 has been approved by the Florida Division of Emergency Management and the Federal Emergency Management Agency as being compliant with the federal hazard mitigation planning standards contained in 44 CFR 201.6(b)-(d) and subject to adoption by the Palm Beach County Board of County Commissioners, and

WHEREAS, the Palm Beach Board of County Commissioners has approved and adopted the Palm Beach County Local Mitigation Strategy 2024, including all future enhancements contained therein, on September 17, 2024; and

WHEREAS, the Palm Beach County Local Mitigation Strategy 2024, must be adopted by all 38 participating municipalities and 3 Special Districts in Palm Beach County by August 6, 2025, for full approval.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA, that:

SECTION 1: The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby approves and adopts the Palm Beach County Local Mitigation Strategy 2024, a copy of which is available in the City Clerk's Office upon request, in its entirety, as revised by the Palm Beach County Local Mitigation Strategy Steering Committee as submitted to and approved by the Palm Beach County

Board of County Commissioners, the Florida Division of Emergency Management and Federal Emergency Management Agency.

SECTION 3. The City Commission of the City of Lake Worth Beach, Florida authorizes the appropriate Lake Worth Beach Officials to pursue available funding opportunities for implementation of proposed mitigation initiatives described in the Local Mitigation Strategy and upon receipt of such funding or other necessary resources, seek to implement the actions in accordance with the mitigation strategies set out by the Palm Beach County Local Mitigation Strategy 2024.

SECTION 4. The City Commission of the City of Lake Worth Beach, Florida will continue to support and participate in the Local Mitigation Strategy planning and implementation process as required by Federal Emergency Management Agency, the Florida Division of Emergency Management, and the Palm Beach County Local Mitigation Strategy Steering Committee and Local Mitigation Strategy Working Group.

SECTION 5: The City Commission of the City of Lake Worth Beach, Florida will consider incorporating climate change concerns, sea level rise and natural hazards into the local comprehensive plan and into future reviews of flood prevention regulations and zoning codes.

SECTION 6. The City Commission of the City of Lake Worth Beach, Florida directs the City Clerk to transmit an original of the executed Resolution of the Palm Beach County Division of Emergency Management, attention Local Mitigation Strategy Coordinator for submission to the State of Florida Division of Emergency Management and the Federal Emergency Management Agency for formal approval of the Palm Beach County Local Mitigation Strategy 2024.

SECTION 7: This resolution shall become effective upon adoption.

The passage of this resolution was moved by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Mimi May
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Leisure Services

**TITLE:**

Resolution No. 44-2024 – Fiscal Year 2025 State Aid to Libraries Grant Application

**SUMMARY:**

The City intends to apply for funding assistance in the estimated amount of \$9,000 from the Fiscal Year 2025 State Aid to Libraries grant program. This funding will be used to supplement the operating budget of the City's public library.

**BACKGROUND AND JUSTIFICATION:**

The City of Lake Worth Beach has recently been notified by the Florida Department of State, Division of Library and Information Services that it is eligible for a formula allocation of an estimated \$9,000 under the State Aid to Libraries Program to assist with the operation and maintenance of its public library for Fiscal Year 2025. These funds cannot supplant existing local funds budgeted for the operation of the City's public library during this period. As an eligibility requirement, the City must have a single administrative head employed on a full-time basis with the responsibility of management and coordination of the operations of the library. The library must provide its services free to the public.

Approval is requested for submission of the application for this funding. It is further requested that authorization be given to the Mayor, or her designee, to execute the grant application, the Grant Agreement with the Florida Department of State, Division of Library and Information Services and the "Certification of Hours, Free Library Services and Access to Materials" form on behalf of the City as part of the application process. The agreement sets forth the terms and conditions for the use of this funding and certifies the expenditure of local funds under a single administrative head for the operation and maintenance of its public library during the previous fiscal year.

**MOTION:**

Move to approve/disapprove Resolution 44-2024, submitting of an application to the State of Florida, Division of Library and Information Services for the Fiscal Year 2025 State Aid to Libraries grant program and authorizing the Mayor, or her designee, to execute the Grant Agreement, the Certification of Hours, Free Library Service and Access to Materials" form, FY 23 Revenue and Expenditures form, and the FY 25 Certification of Hours form.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Grant Agreement  
"Certification of Hours, Free Library Service and Access to Materials" form  
Operating Expenditures  
FY 23 Revenue and Expenditures  
FY 25 Certification of Hours



**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
<b>Inflows</b>					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	\$9,000*	0	0	0	0
In Kind	0	0	0	0	0
<b>Outflows</b>					
Current Appropriation	0	0	0	0	0
Operating	\$9,000*	0	0	0	0
Capital	0	0	0	0	0
<b>Net Fiscal Impact</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>No. of Addn'l Full-Time Employee Positions</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\*estimated amounts

<b>New Appropriation Fiscal Impact:</b>		
	<b>Revenue Source</b>	<b>Expenditure</b>
<b>Department</b>	Leisure Services	Leisure Services
<b>Division</b>	Library	Library
<b>GL Description</b>	State Grants/ Culture/ Recreation	Culture & Recreation/ Operating Supplies
<b>GL Account Number</b>	180-0000-334.70-00	180-9720-5721-52.00
<b>Project Number</b>	TBD	TBD
<b>Requested Funds</b>	9,000 (est.)	9,000 (est.)

RESOLUTION NO. 44-2024 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, APPROVING THE SUBMISSION OF AN APPLICATION FOR FUNDING UNDER THE FISCAL YEAR 2025 STATE AID TO LIBRARIES GRANT PROGRAM; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT 25-ST-59 BETWEEN THE FLORIDA DEPARTMENT OF STATE, DIVISION OF LIBRARY AND INFORMATION SERVICES AND THE CITY FOR GRANT FUNDS IN THE ESTIMATED AMOUNT OF \$9,000 PROVIDED THROUGH THE FISCAL YEAR 2025 STATE AID TO LIBRARIES PROGRAM; APPROVING AND AUTHORIZING THE SUBMISSION OF THE CERTIFICATION OF LOCAL OPERATING EXPENDITURES, THE FISCAL YEAR 2023 REVENUE AND EXPENDITURES SUMMARY FOR THE CITY'S PUBLIC LIBRARY, AND THE FISCAL YEAR 2025 CERTIFICATION OF HOURS; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the State Aid to Libraries Program ("Program") is administered by the Florida Department of State, Division of Library and Information Services ("Division") for the purpose of supplementing the operating budgets of eligible public libraries to encourage the development and provision of free public library service; and

WHEREAS, Program funding allocations for a given fiscal year are determined by statutory formula based on the expenditure of local funds by eligible grantees for the maintenance and operation of their public libraries during the preceding fiscal year; and

WHEREAS, grant funds made available to eligible grantees under the Program to supplement the operating budgets of eligible libraries to assist in maintaining and developing vital services for the public; and

WHEREAS, the City of Lake Worth Beach ("City") meets the basic eligibility requirements to receive a formula allocation in Program funding to supplement the operating budget of its Public Library for Fiscal Year 2025; and

WHEREAS, the City is not required to provide a matching cost share for these Program funds and

WHEREAS, the Division and the City both desire to enter into a grant agreement that sets forth the terms and conditions for the use of these Program funds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE WORTH BEACH, FLORIDA, that:

SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, hereby approves and authorizes the Mayor to execute the Grant Agreement 25-ST-59 between the Florida Department of State, Division of Library and Information Services and the City for grant funds made available through the Fiscal Year 2025 State Aid to Libraries Program to assist with the operation of the Lake Worth Beach Public Library.

SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby authorizes the Mayor to execute the Certification of the Local Operating Expenditures, the Fiscal Year 2023

Revenue and Expenditures, and the Fiscal Year 2025 Certification of Hours for the Lake Worth Beach Public Library for submission to the State.

SECTION 3. Upon execution of the resolution, one copy shall be forwarded to the Leisure Services Department Director. The fully executed original shall be maintained by the City Clerk as a public record of the City

SECTION 4. This resolution shall become effective upon adoption

The passage of this resolution was moved by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Mimi May
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this resolution duly passed and adopted on the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

**STATE AID TO LIBRARIES GRANT  
AGREEMENT BETWEEN  
THE STATE OF FLORIDA, DEPARTMENT OF STATE  
AND  
City of Lake Worth Beach for and on behalf of Lake Worth Beach Public Library**

This Agreement is by and between the State of Florida, Department of State, Division of Library and Information Services, hereinafter referred to as the "Division," and the City of Lake Worth Beach for and on behalf of Lake Worth Beach Public Library, hereinafter referred to as the "Grantee."

The Grantee has submitted an application and has met all eligibility requirements and has been awarded a State Aid to Libraries Grant (CSFA 45.030) by the Division in the amount specified on the "Fiscal Year 2024-25 State Aid to Libraries Final Grants" document (which is incorporated as part of this Agreement and entitled Attachment B). The Division has the authority to administer this grant in accordance with Section 257, *Florida Statutes*. By reference, the application and any approved revisions are hereby made a part of this agreement.

In consideration of the mutual covenants and promises contained herein, the parties agree as follows:

**1. Grant Purpose.** This grant shall be used exclusively for the "State Aid to Libraries Grant," the public purpose for which these funds were appropriated.

a) The Grantee shall perform the following **Scope of Work**:

In accordance with Sections 257.17-257.18, Florida Statutes, the Grantee shall receive a grant amount that is calculated and based upon local funds expended during the second preceding fiscal year for the operation and maintenance of the library. For this grant, the local expenditures shall have been made during the period October 1, 2022 - September 30, 2023.

In order to be eligible to receive the grant funding, the Grantee shall manage or coordinate free library service to the residents of its legal service area for the period October 1, 2022 through June 30, 2025. The Grantee shall:

- o Have a single administrative head employed full time by the library's governing body;
- o Provide free library service, including loaning materials available for circulation free of charge and providing reference and information services free of charge;
- o Provide access to materials, information and services for all residents of the area served; and
- o Have at least one library, branch library or member library open 40 hours or more each week (excluding holidays or emergencies; between Sunday through Saturday, on a schedule determined by the library system) during the length of the agreement.

a) The Grantee agrees to provide the following **Deliverables** related to the Scope of Work for payments to be awarded.

Payment 1, Deliverable/Task :

Payment will be a fixed price in the amount of 100% of the grant award for the period October 1, 2022 through June 30, 2025.

The Grantee will:

- o Have expended funds to provide free library service during the period October 1, 2022 - September 30, 2023;
- o Provide an Expenditure Report and certification of Local Operating Expenditures for the period October 1, 2022 - September 30, 2023 only;
- o Provide documentation showing that at least one library, branch library or member library is open 40 hours or more each week (excluding holidays or emergencies; between Sunday through Saturday, on a schedule determined by the library system) during the length of the agreement;
- o Provide the Certification of Credentials for the Single Administrative Head; and
- o Provide a Certification of Hours, Free Library Service and Access to Materials.

a) Grant funds shall be used for the operation and maintenance of the library. The allowable budget categories are: Personnel Services (salaries, wages, and related employee benefits provided for all persons employed by the reporting entity whether on full-time, part-time, temporary, or seasonal basis); Operating Expenses (expenditures for goods and services which primarily benefit the current period and are not defined as personal services or capital outlays); Non-Fixed Capital Outlay (outlays for the acquisition of or addition to fixed assets); and Other (other operating expenditure categories in the library budget).

2. **Length of Agreement.** This Agreement covers the period of October 1, 2022 to June 30, 2025, unless terminated in accordance with the provisions of Section 30 of this Agreement. This period begins with the start of the Grantee's second preceding fiscal year (October 1, 2022) and concludes with the end of the State of Florida's current fiscal year (June 30, 2025).
3. **Expenditure of Grant Funds.** Grant funds will be used to reimburse a portion of local funds expended by the Grantee during their second preceding fiscal year (October 1, 2022 – September 30, 2023) for the operation and maintenance of a library and shall not exceed the amount specified in Attachment B.
4. **Contract Administration.** The parties are legally bound by the requirements of this agreement. Each party's contract manager, named below, will be responsible for monitoring its performance under this Agreement and will be the official contact for each party. Any notice(s) or other communications regarding this agreement shall be directed to or delivered to the other party's contract manager by utilizing the information below. Any change in the contact information below should be submitted in writing to the contract manager within 10 days of the change.

**For the Division of Library and Information Services:**

Tom Peña, Grant Programs Supervisor  
Florida Department of State  
R.A. Gray Building  
Mail Station # 9D  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
Phone: 850.245.6620  
Email: Thomas.Pena@dos.fl.gov

**For the Grantee:**

Cindy Ansell  
Lake Worth Beach Public Library

15 North M Street Lake Worth Beach Florida 33460

Phone: 561.533.7354

Email: [cansell@lakeworthbeachfl.gov](mailto:cansell@lakeworthbeachfl.gov)

5. **Grant Payments.** The total grant award shall not exceed the amount specified on the “Fiscal Year 2024-25 State Aid to Libraries Final Grants” document (Attachment B), which shall be paid by the Division in consideration for the Grantee’s minimum performance as set forth by the terms and conditions of this Agreement. Payment will be a fixed price in the amount of 100% of the grant award as specified in Attachment B. Payment will be made in accordance with the completion of the Deliverables.
6. **Electronic Payments.** The Grantee can choose to use electronic funds transfer (EFT) to receive grant payments. All grantees wishing to receive their award through EFT must submit a Vendor Direct Deposit Authorization Form (form number DFS-AI-26E, rev 3/2022), incorporated by reference, to the Florida Department of Financial Services. If EFT has already been set up for your organization, you do not need to submit another authorization form unless you have changed bank accounts. To download this form visit [myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/vendors/vendor-relations/dfs-a1-26e-direct-deposit-vendors.pdf?sfvrsn=eff728cf\\_16](https://myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/vendors/vendor-relations/dfs-a1-26e-direct-deposit-vendors.pdf?sfvrsn=eff728cf_16). The form also includes tools and information that allow you to check on payments.
7. **Florida Substitute Form W-9.** A completed Substitute Form W-9 is required from any entity that receives a payment from the State of Florida that may be subject to 1099 reporting. The Department of Financial Services (DFS) must have the correct Taxpayer Identification Number (TIN) and other related information in order to report accurate tax information to the Internal Revenue Service (IRS). To register or access a Florida Substitute Form W-9 visit [fvendor.myfloridacfo.com](https://fvendor.myfloridacfo.com). **A copy of the Grantee’s Florida Substitute Form W-9 must be submitted by the Grantee to the Division before or with the executed Agreement.**
8. **Financial Consequences.** The Department shall apply the following financial consequences for failure to perform the minimum level of services required by this Agreement in accordance with Sections 215.971 and 287.058, *Florida Statutes*:

The Department shall require the return of the award in a prorated amount based upon the percentage of time that the library failed to perform the minimum level of services. The prorated reduction will be in the same percentage as the percentage of time that the library was not providing minimum level of services.

9. **Credit Line(s) to Acknowledge Grant Funding.** The Division requires public acknowledgement of State Aid to Libraries Grant funding for activities and publications supported by grant funds. Any announcements, information, press releases, publications, brochures, videos, webpages, programs, etc., created as part of a State Aid to Libraries Grant project must include an acknowledgment that State Aid to Libraries Grant funds were used to create them.

Use the following text:

“This project has been funded under the provisions of the State Aid to Libraries Grant program, administered by the Florida Department of State’s Division of Library and Information Services.”

10. **Grant Expenditures.** The Grantee agrees to expend all grant funds received under this agreement solely for the purposes for which they were authorized and appropriated. Expenditures shall be in compliance with the state guidelines for allowable project costs as outlined in the Department of Financial Services’ Reference Guide for State Expenditures (as of October 2022), incorporated by reference, which are available online at [myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-](https://myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-)

[expenditures.pdf?sfvrsn=b4cc3337\\_2](#).

Grant funds may not be used for the purchase or construction of a library building or library quarters.

11. **Travel Expenses.** The Grantee must pay any travel expenses, from grant or local matching funds, in accordance to the provisions of Section 112.061, *Florida Statutes*.
12. **Unobligated and Unearned Funds and Allowable Costs.** In accordance with Section 215.971, *Florida Statutes*, the Grantee shall refund to the State of Florida any balance of unobligated funds which has been advanced or paid to the Grantee. In addition, funds paid in excess of the amount to which the recipient is entitled under the terms and conditions of the agreement must be refunded to the state agency. Further, the recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period. Expenditures of state financial assistance must be in compliance with the laws, rules and regulations applicable to expenditures of State funds as outlined in the Department of Financial Service's Reference Guide for State Expenditures (as of October 2022) [myfloridacfo.com/docs-sf/accounting-and-auditing-libraries/state-agencies/reference-guide-for-state-expenditures.pdf?sfvrsn=b4cc3337\\_2](#), incorporated by reference.
13. **Repayment.** All refunds or repayments to be made to the Department under this agreement are to be made payable to the order of "Department of State" and mailed directly to the following address: Florida Department of State, Attention: Thomas Peña, Division of Library and Information Services, 500 South Bronough Street, Mail Station #9D, Tallahassee, FL 32399. In accordance with Section 215.34(2), *Florida Statutes*, if a check or other draft is returned to the Department for collection, Recipient shall pay to the Department a service fee of \$15.00 or five percent (5%) of the face amount of the returned check or draft, whichever is greater.
14. **Single Audit Act.** Each Grantee, other than a Grantee that is a State agency, shall submit to an audit pursuant to Section 215.97, *Florida Statutes*. See Attachment A for additional information regarding this requirement. If a Grantee is not required by law to conduct an audit in accordance with the Florida Single Audit Act because it did not expend at least \$750,000 in state financial assistance, it must submit a Financial Report on its operations pursuant to Section 218.39, *Florida Statutes* within nine months of the close of its fiscal year. Audits must be submitted on the DOS Grants System at [dosgrants.com](#).
15. **Retention of Accounting Records.** Financial records, supporting documents, statistical records and all other records, including electronic storage media pertinent to the Project, shall be retained for a period of five (5) fiscal years after the closeout of the grant and release of the audit. If any litigation or audit is initiated or claim made before the expiration of the five-year period, the records shall be retained for five fiscal years after the litigation, audit or claim has been resolved.
16. **Obligation to Provide State Access to Grant Records.** The Grantee must make all grant records of expenditures, copies of reports, books, and related documentation available to the Division or a duly authorized representative of the State of Florida for inspection at reasonable times for the purpose of making audits, examinations, excerpts and transcripts.
17. **Obligation to Provide Public Access to Grant Records.** The Division reserves the right to unilaterally cancel this Agreement in the event that the Grantee refuses public access to all documents or other materials made or received by the Grantee that are subject to the provisions of Chapter 119, *Florida Statutes*, known as the *Florida Public Records Act*. The Grantee must immediately contact the Division's Contract Manager for assistance if it receives a public records request related to this Agreement.
18. **Noncompliance.** Any Grantee that is not following Florida Statutes or rules, the terms of the grant agreement, Florida Department of State (DOS) policies and guidance, local policies, or other applicable law or that has not submitted required reports or satisfied other

administrative requirements for other Division of Library and Information Services grants or grants from any other DOS Division will be in noncompliance status and subject to the DOS Grants Compliance Procedure. DOS Divisions include the Division of Arts and Culture, the Division of Elections, the Division of Historical Resources and the Division of Library and Information Services. Grant compliance issues must be resolved before a grant award agreement may be executed and before grant payments for any DOS grant may be released.

- 19. Accounting Requirements.** The Grantee must maintain an accounting system that provides a complete record of the use of all grant funds as follows:
- a) The accounting system must be able to specifically identify and provide audit trails that trace the receipt, maintenance and expenditure of state funds;
  - b) Accounting records must adequately identify the sources and application of funds for all grant activities and must classify and identify grant funds by using the same budget categories that were approved in the grant application. If Grantee's accounting system accumulates data in a different format than the one in the grant application, subsidiary records must document and reconcile the amounts shown in the Grantee's accounting records to those amounts reported to the Division;
  - c) An interest-bearing checking account or accounts in a state or federally chartered institution may be used for revenues and expenses described in the Scope of Work and detailed in the Estimated Project Budget;
  - d) The name of the account(s) must include the grant award number;
  - e) The Grantee's accounting records must have effective control over and accountability for all funds, property and other assets; and
  - f) Accounting records must be supported by source documentation and be in sufficient detail to allow for a proper pre-audit and post-audit (such as invoices, bills and canceled checks).
- 20. Availability of State Funds.** The State of Florida's performance and obligation to pay under this Agreement are contingent upon an annual appropriation by the Florida Legislature. In the event that the state funds upon which this Agreement is dependent are withdrawn, this Agreement will be automatically terminated and the Division shall have no further liability to the Grantee beyond those amounts already expended prior to the termination date. Such termination will not affect the responsibility of the Grantee under this Agreement as to those funds previously distributed. In the event of a state revenue shortfall, the total grant may be reduced accordingly.
- 21. Lobbying.** The Grantee will not use any grant funds for lobbying the state legislature, the state judicial branch or any state agency.
- 22. Independent Contractor Status of Grantee.** The Grantee, if not a state agency, agrees that its officers, agents and employees, in performance of this Agreement, shall act in the capacity of independent contractors and not as officers, agents or employees of the state. The Grantee is not entitled to accrue any benefits of state employment, including retirement benefits and any other rights or privileges connected with employment by the State of Florida.
- 23. Grantee's Subcontractors.** The Grantee shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The Grantee may subcontract, as necessary, to perform the services and to provide commodities required by this Agreement. The Division shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the Grantee's subcontract(s), and the Grantee shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The Grantee must take the necessary steps to ensure that each of its subcontractors will be deemed to be independent contractors and will not be considered or permitted to be agents, servants, joint venturers or partners of the Division.



- 24. Liability.** The Division will not assume any liability for the acts, omissions to act or negligence of the Grantee, its agents, servants or employees; nor may the Grantee exclude liability for its own acts, omissions to act or negligence to the Division.
- a) The Grantee shall be responsible for claims of any nature, including but not limited to injury, death and property damage arising out of activities related to this Agreement by the Grantee, its agents, servants, employees and subcontractors. The Grantee shall indemnify and hold the Division harmless from any and all claims of any nature and shall investigate all such claims at its own expense. If the Grantee is governed by Section 768.28, *Florida Statutes*, it shall only be obligated in accordance with this Section.
  - b) Neither the state nor any agency or subdivision of the state waives any defense of sovereign immunity or increases the limits of its liability by entering into this Agreement.
  - c) The Division shall not be liable for attorney fees, interest, late charges or service fees, or cost of collection related to this Agreement.
  - d) The Grantee shall be responsible for all work performed and all expenses incurred in connection with the project. The Grantee may subcontract as necessary to perform the services set forth in this Agreement, including entering into subcontracts with vendors for services and commodities, provided that such subcontract has been approved in writing by the Department prior to its execution and provided that it is understood by the Grantee that the Department shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
- 25. Strict Compliance with Laws.** The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations of the local, state and federal law. For consequences of noncompliance, see Section 18, Noncompliance.
- 26. Prohibition of Expenditures to a Library Association.** Expenditure of project funds (grant funds and local match funds) must not be used for an activity related to a library association. This prohibition does not apply to expenditure of project funds related to a library cooperative that receives state moneys under sections 257.40-257.42, *Florida Statutes*. The Grantee shall perform all acts required by this Agreement in strict conformity with all applicable local, state and federal laws and regulations. The Grantee shall during the term of this Agreement be in strict conformity with all applicable local, state and federal laws and regulations.
- 27. Total Compensation Paid to Non-Profit Personnel.** Per Section 216.1366, *Florida Statutes*, all non-profit organizations as defined in Section 215.97(2)(m), *Florida Statutes*, shall complete and return to the division within 30 days of the execution of this grant agreement the "Total Compensation Paid to Non-Profit Personnel Using State Funds" report, incorporated by reference, which shall satisfy the requirement to provide documentation that indicates the amount of state funds:
- a) Allocated to be used during the full term of the agreement for remuneration to any member of the board of directors or an officer of the contractor.
  - b) Allocated under each payment by the public agency to be used for remuneration of any member of the board of directors or an officer of the contractor. The documentation must indicate the amounts and recipients of the remuneration.
- Non-Profit organization grantees shall complete a Total Compensation Paid to Non-Profit report for each required filer for the invoice period covered by the Payment Request.
- The grantee shall also post their reports on their website, and the public agency shall post all reports to FACTS.

- 28. No Discrimination.** The Grantee may not discriminate against any employee employed under this Agreement or against any applicant for employment because of race, color, religion, gender, national origin, age, handicap, pregnancy or marital status. The Grantee shall insert a similar provision in all of its subcontracts for services under this Agreement.
- 29. Breach of Agreement.** The Division will demand the return of grant funds already received, will withhold subsequent payments and/or will terminate this agreement if the Grantee improperly expends and manages grant funds; fails to prepare, preserve or surrender records required by this Agreement; or otherwise violates this Agreement.
- 30. Termination of Agreement.** The Division will terminate or end this Agreement if the Grantee fails to fulfill its obligations herein. In such event, the Division will provide the Grantee a notice of its violation by letter and shall give the Grantee fifteen (15) calendar days from the date of receipt to cure its violation. If the violation is not cured within the stated period, the Division will terminate this Agreement. The notice of violation letter shall be delivered to the Grantee's Contract Manager, personally, or mailed to his/her specified address by a method that provides proof of receipt. In the event that the Division terminates this Agreement, the Grantee shall be compensated for any work completed in accordance with this Agreement prior to the notification of termination if the Division deems this reasonable under the circumstances. Grant funds previously advanced and not expended on work completed in accordance with this Agreement shall be returned to the Division, with interest, within thirty (30) days after termination of this Agreement. The Division does not waive any of its rights to additional damages if grant funds are returned under this Section.
- 31. Preservation of Remedies.** No delay or omission to exercise any right, power or remedy accruing to either party upon breach or violation by either party under this Agreement shall impair any such right, power or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default or any similar breach or default.
- 32. Non-Assignment of Agreement.** The Grantee may not assign, sublicense or otherwise transfer its rights, duties or obligations under this Agreement without the prior written consent of the Division, which shall not unreasonably be withheld. The agreement transferee must demonstrate compliance with the requirements of the project. If the Division approves a transfer of the Grantee's obligations, the Grantee shall remain liable for all work performed and all expenses incurred in connection with this Agreement. In the event the Legislature transfers the rights, duties and obligations of the Division to another governmental entity, pursuant to Section 20.06, *Florida Statutes* or otherwise, the rights, duties and obligations under this Agreement shall be transferred to the succeeding governmental agency as if it was the original party to this Agreement.
- 33. Required Procurement Procedures for Obtaining Goods and Services.** The Grantee shall provide maximum open competition when procuring goods and services related to the grant-assisted project in accordance with Section 287.057, *Florida Statutes*.
- a) Procurement of Goods and Services Not Exceeding \$35,000. The Grantee must use the applicable procurement method described below:
1. Purchases Up to \$2,500: Procurement of goods and services where individual purchases do not exceed \$2,500 do not require competition and may be conducted at the Grantee's discretion.
  2. Purchases or Contract Amounts Between \$2,500 and \$35,000: Goods and services costing between \$2,500 and \$35,000 require informal competition and may be procured by purchase order, acceptance of vendor proposals or other appropriate procurement document.
- b) Procurement of Goods and Services Exceeding \$35,000. Goods and services costing over \$35,000 may be procured by either Formal Invitation to Bid, Request for Proposals or Invitation to Negotiate and may be procured by purchase order, acceptance of vendor proposals or other appropriate procurement document.

- 34. Conflicts of Interest.** The Grantee hereby certifies that it is cognizant of the prohibition of conflicts of interest described in Sections 112.311 through 112.326, *Florida Statutes* and affirms that it will not enter into or maintain a business or other relationship with any employee of the Department of State that would violate those provisions. The Grantee further agrees to seek authorization from the General Counsel for the Department of State prior to entering into any business or other relationship with a Department of State Employee to avoid a potential violation of those statutes.
- 35. Binding of Successors.** This Agreement shall bind the successors, assigns and legal representatives of the Grantee and of any legal entity that succeeds to the obligations of the Division of Library and Information Services.
- 36. Employment of Unauthorized Aliens.** The employment of unauthorized aliens by the Grantee is considered a violation of Section 274A (a) of the Immigration and Nationality Act (8 USC 1324(a) (as of April 2019)), incorporated by reference. If the Grantee knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement.
- 37. Severability.** If any term or provision of the Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.
- 38. Americans with Disabilities Act.** All programs and facilities related to this Agreement must meet the standards of Sections 553.501-553.513, *Florida Statutes* and the Americans with Disabilities Act of 1990 ([ada.gov](http://ada.gov) (as of January 2020)), incorporated by reference).
- 39. Governing Law.** This Agreement shall be construed, performed and enforced in all respects in accordance with the laws and rules of Florida. Venue or location for any legal action arising under this Agreement will be in Leon County, Florida.

**40. Entire Agreement.** The entire Agreement of the parties consists of the following documents:

- a) This Agreement
- b) Florida Single Audit Act Requirements (Attachment A)
- c) Fiscal Year 2024-25 State Aid to Libraries Final Grants (Attachment B)

**The Grantee hereby certifies that they have read this entire Agreement and will comply with all of its requirements.**

**Grantee:**

**Department of State**

By: \_\_\_\_\_

By: \_\_\_\_\_

Chair of Governing Body or Chief Executive Officer

Amy L. Johnson, Director  
Division of Library and Information Services  
Department of State, State of Florida

\_\_\_\_\_

\_\_\_\_\_

Typed name and title

\_\_\_\_\_

\_\_\_\_\_

Date

Date

\_\_\_\_\_

\_\_\_\_\_

Clerk or Chief Financial Officer

Witness

\_\_\_\_\_

\_\_\_\_\_

Date

Date

## ATTACHMENT A

### FLORIDA SINGLE AUDIT ACT REQUIREMENTS

#### AUDIT REQUIREMENTS

The administration of resources awarded by the Department of State to the Grantee may be subject to audits and/or monitoring by the Department of State as described in this Addendum to the Grant Award Agreement.

#### Monitoring

In addition to reviews of audits conducted in accordance with 2 *CFR* 200, Subpart F - Audit Requirements, and section 215.97, *Florida Statutes (F.S.)*, as revised (see Audits below), monitoring procedures may include, but not be limited to, on-site visits by Department of State staff, limited scope audits as defined by 2 *CFR* 200.425, or other procedures. By entering into this agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of State. In the event the Department of State determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department of State staff to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

#### Audits

##### **Part I: Federally Funded**

This part is applicable if the recipient is a state or local government or a nonprofit organization as defined in 2 *CFR* §200.90, §200.64, and §200.70.

1. A recipient that expends \$750,000 or more in federal awards in its fiscal year must have a single or program-specific audit conducted in accordance with the provisions of 2 *CFR* 200, Subpart F - Audit Requirements. Exhibit 1 to this agreement lists the federal resources awarded through the Department of State by this agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of State. The determination of amounts of federal awards expended should be in accordance with the guidelines established by 2 *CFR* 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 *CFR* 200.514, will meet the requirement of this Part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 *CFR* 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 *CFR* 200, subpart F - Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 *CFR* 200, subpart F - Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than federal entities).

##### **Part II: State Funded**

This part is applicable if the recipient is a nonstate entity as defined by section 215.97(2) *F.S.*

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017 and thereafter), the recipient must have a state single or project-specific audit for such fiscal year in accordance with Section 215.97, *F.S.*; Rule Chapter 69I-5 *F.A.C.*, State Financial Assistance; and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this agreement indicates state financial assistance awarded through the Department of State by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of State, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for federal program matching requirements.
2. For the audit requirements addressed in Part II, paragraph 1, the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), *F.S.* This includes submission of a financial reporting package as defined by Section 215.97(2) *F.S.*, and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal years ending June 30, 2017 and thereafter), an audit conducted in accordance with the provisions of Section 215.97, *F.S.*, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, *F.S.*, the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).

The Internet web addresses listed below will assist recipients in locating documents referenced in the text of this agreement and the interpretation of compliance issues.

State of Florida Department Financial Services (Chief Financial Officer)

<http://www.myfloridacfo.com/>

State of Florida Legislature (Statutes, Legislation relating to the Florida Single Audit Act)

<http://www.leg.state.fl.us/>

### **Part III: Report Submission**

1. Copies of reporting packages for audits conducted in accordance with 2 *CFR* 200, Subpart F - Audit Requirements, and required by PART I of this agreement shall be submitted, when required by 2 *CFR* 200.512, by or on behalf of the recipient directly to each of the following:
  - A. The Department of State via the DOS Grants System at <https://dosgrants.com>
  - B. The Federal Audit Clearinghouse (FAC) as provided in 2 *CFR* 200.6 and section 200.512  
  
The FAC's website prides a data entry system and required forms for submitting the single audit reporting package. Updates to the location of the FAC and data entry system may be found at the OMB website.
2. Copies of financial reporting packages required by PART II of this agreement shall be submitted by or on behalf of the recipient directly to each of the following:
  - A. The Department of State via the DOS Grants System at <https://dosgrants.com>

B. The Auditor General's Office at the following address:

Auditor General  
Local Government Audits/342  
Claude Pepper Building, Room 401  
111 West Madison Street  
Tallahassee, Florida 32399-1450

3. Any reports, management letter, or other information required to be submitted to the Department of State pursuant to this agreement shall be submitted timely in accordance with 2 *CFR* 200.512, section 215.97 *F.S.* and Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
4. Recipients, when submitting financial reporting packages to the Department of State for audits done in accordance with 2 *CFR* 200, Subpart F - Audit Requirements or Chapters 10.550 (local governmental entities) and 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

#### **Part IV: Record Retention**

1. The recipient shall retain sufficient records demonstrating its compliance with the terms of the award(s) and this agreement for a period of five years from the date the audit report is issued, and shall allow the Department of State, or its designee, the CFO, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of State, or its designee, the CFO, or Auditor General upon request for a period of at least three years from the date the audit report is issued, unless extended in writing by the Department of State.

## **EXHIBIT – 1**

**FEDERAL RESOURCES AWARDED TO THE RECIPIENT  
PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

Not applicable.

**COMPLIANCE REQUIREMENTS APPLICABLE TO THE FEDERAL RESOURCES AWARDED  
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

Not applicable.

**STATE RESOURCES AWARDED TO THE RECIPIENT  
PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:**

**MATCHING RESOURCES FOR FEDERAL PROGRAMS:**

Not applicable.

**SUBJECT TO SECTION 215.97, *FLORIDA STATUTES*:**

Florida Department of State, State Aid to Libraries;  
CSFA Number. 45.030  
Award Amount: See Attachment B.

**COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED  
PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:**

The compliance requirements of this state project may be found in Part Four (State Project Compliance Requirements) of the State Projects Compliance Supplement located at <https://apps.fldfs.com/fsaa/>.



**ATTACHMENT B**  
**Fiscal Year 2024-25 State Aid to Libraries Final Grants**

## Florida Administrative Code

### 1B-2.011 Library Grant Programs.

(1) This rule provides procedures for library grant programs administered by the Division of Library and Information Services (Division). Each program shall be governed by guidelines which contain information on eligibility requirements, application review procedures, evaluation and funding criteria, grant administration procedures, if applicable, and application forms. All grant awards shall be subject to final approval by the Secretary of State.

(2) Applicants for grants shall meet the eligibility and application requirements as set forth in the following guidelines for each grant program:

(a) State Aid to Libraries Grant Guidelines, <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, which contain guidelines and instructions; Certification of Credentials – Single Library Administrative Head (Form DLIS/SA01), effective xx-xxxx; Grant Agreement (Form DLIS/SA02), effective xx-xxxx; Annual Statistical Report Form for Public Libraries (Form DLIS/SA03), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, xx-xxxx; Certification of Hours, Free Library Service and Access to Materials (Form DLIS/SA04), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx.

(b) Public Library Construction Grants Guidelines, <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, which contains guidelines and instructions; and Public Library Construction Grant Agreement (Form DLIS/PLC01), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx.

(c) Library Cooperative Grant Guidelines, <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, which contains guidelines and instructions; Annual Statistical Report Form for Multitype Library Cooperatives (Form DLIS/LCG01), effective xx-xxxx; Grant Agreement (Form DLIS/LCG02), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx; and the Florida Library Information Network Manual <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx.

(d) The Library Services and Technology Act Grant Guidelines, <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, which contains guidelines and instructions, Library Services and Technology Act Grant Agreement (Form DLIS/LSTA01) <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, MLS Certification (Form DLIS/LSTA02), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective xx-xxxx, and Certification Regarding Trafficking in Persons (Form DLIS/LSTA03).

(e) The Community Libraries in Caring Program Application, <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective 04-10-12; which contains instructions and application (Form DLIS/CLIC01), effective 04-10-12; Annual Report (Form DLIS/CLIC02), effective 04-10-12; and Grant Agreement (Form DLIS/CLIC03), <http://www.flrules.org/Gateway/reference.asp?No=Ref-xxxx>, effective 04-10-12.

(3) Guidelines and forms in this rule are incorporated by reference and may be obtained from the Director of the Division, Florida Department of State, Division of Library and Information Services, R.A. Gray Building, 500 South Bronough Street, Tallahassee, Florida 32399-0250.

(4) The Division of Library and Information Services will waive the financial matching requirements on grants for rural communities that have been designated in accordance with Sections 288.0656 and 288.06561, F.S. Eligible communities applying for Library Services and Technology Act grants and Library Construction grants must request waiver of matching requirements at the time of grant application.

Rulemaking Authority 257.14, 257.191, 257.192, 257.24, 257.41(2) FS. Law Implemented 257.12, 257.15, 257.16, 257.17, 257.171, 257.172, 257.18, 257.191, 257.192, 257.195, 257.21, 257.22, 257.23, 257.24, 257.25, 257.40, 257.41, 257.42 FS. History—New 1-25-93, Amended 7-17-96, 4-1-98, 2-14-99, 4-4-00, 12-18-00, 11-20-01, 3-20-02, 1-9-03, 12-28-03, 11-16-04, 2-21-06, 2-21-07, 1-24-08, 4-1-10, 4-21-10, 4-10-12, 12-25-13, 7-8-14, 4-7-15, 7-12-16, 7-6-17, 4-30-18, 11-19-18, 7-1-19, 3-17-20, 2-27-22, 5-4-23, x-x-xx



**FLORIDA DEPARTMENT OF STATE  
DIVISION OF LIBRARY AND INFORMATION SERVICES  
FY 2025 STATE AID TO LIBRARIES GRANT APPLICATION  
CERTIFICATION OF LOCAL OPERATING EXPENDITURES**

The City of Lake Worth Beach governing body for Lake Worth Beach Public Library

We hereby certify that the following total funds from local sources were expended centrally during the fiscal year beginning October 1, 2022 and ending September 30, 2023 for the operation and maintenance of a library under the provisions outlined in Chapter 257.14 - 257.25, *Florida Statutes*, and guidelines for the State Aid to Libraries Grant Program.

We further certify that the amount listed below does not include funds received from the federal government; funds received from state government; or funds used for purchase or construction of a library building or library quarters. Such funds are not eligible to be used as local match for State Aid applications under Chapter 257, *Florida Statutes*, and guidelines for the State Aid to Libraries Grant Program.

**Total local funds expended centrally by the library for the operation and maintenance of a library between October 1, 2022 and September 30, 2023:**

\$574,436

**SIGNATURES**

\_\_\_\_\_  
**Library Finance Manager**

\_\_\_\_\_  
**Single Library Administrative Head**

\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

## Revenue and Expenditures

### By Period

### 001 - General Fund

### Fiscal Year 2023

Report Generated on Nov 16, 2023 10:38:49 AM

		2023
<b>Revenue and Other Sources</b>		
001-0000-347.10-10	Library Fees	35.00
001-0000-352.00-00	Library Fines	335.00
<b>Total Revenue and Other Sources</b>		<b>370.00</b>
<b>Expenditures and Other Uses</b>		
001-8020-571.12-10	Regular	215,978.02
001-8020-571.14-10	Standard Overtime	4,753.63
001-8020-571.15-10	Longevity	2,808.75
001-8020-571.15-30	Other Pays	1,092.99
001-8020-571.21-00	FICA Taxes	16,856.52
001-8020-571.22-10	Defined Benefit Plan	38,646.74
001-8020-571.22-20	401-a Plan	362.53
001-8020-571.23-00	Life & Health Insurance	52,629.91
001-8020-571.24-10	Workers' Comp Regular	352.42
		<b>\$ 333,482 Personnel Services</b>
001-8020-571.31-50	Internal IT Support	105,120.00
001-8020-571.34-50	Other Contractual Service	1,832.25
001-8020-571.40-10	Training/Registration	110.00
001-8020-571.43-10	Water	1,155.83
001-8020-571.43-20	Sewer	592.59
001-8020-571.43-30	Electricity	14,824.06
001-8020-571.43-40	Refuse/Waste Disposal	2,296.08
001-8020-571.45-10	Property/Liability	33,831.00
001-8020-571.46-10	Buildings	9,921.27
001-8020-571.47-00	Printing & Binding	717.10
001-8020-571.48-00	Promotional Activities	5,461.82
001-8020-571.51-10	Office Supplies	2,023.24
001-8020-571.52-20	Small Tools & Equipment	1,454.32
001-8020-571.52-90	Other	3,044.23
001-8020-571.54-00	Books, Publ, Subsc & Memb	17,695.58
001-8020-571.54-90	Library Materials	40,874.43
		<b>\$ 240,954 Operating Expenses</b>
<b>Total Expenditures and Other Uses</b>		<b>574,435.31</b>
<b>Excess (Deficit) of Revenue over Expenditures</b>		<b>(574,065.31)</b>

Server Name: bi.mylakeworth.org

**Total Local Expenditures Submitted for the  
Operation and Maintenance of the Library: \$ 574,436**

**Prior year's State Aid Certified Expenditure: \$ 518,505**

**Difference: \$ 55,931**

**FLORIDA DEPARTMENT OF STATE**  
**DIVISION OF LIBRARY AND INFORMATION SERVICES**  
**STATE AID TO LIBRARIES GRANT APPLICATION**  
**Certification of Hours, Free Library Service and Access to Materials**

The City of Lake Worth Beach \_\_\_\_\_,

(Name of library governing body)

governing body for the Lake Worth Beach Public Library \_\_\_\_\_,

(Name of library)

hereby certifies that the following statements are true for the time period October 1, 2025 through June 30, 2026.

- Provides free library service, including loaning materials available for circulation free of charge and providing reference and information services free of charge.
- Provides access to materials, information and services for all residents of the area served.
- Has at least one library, branch library or member library open 40 hours or more each week (excluding holidays or emergencies; between Sunday through Saturday, on a schedule determined by the library system).

**Signature**

\_\_\_\_\_  
Chair, Library Governing Body

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name (Typed)

# CITY OF LAKE WORTH BEACH

## PROCLAMATION

**WHEREAS,** Florida City Government Week is a time for cities across the state to celebrate, showcase and engage citizens in the work of municipal government; and

**WHEREAS,** City government is the government closest to most citizens and the one with the most direct daily impact upon its residents; and

**WHEREAS,** City government is administered for and by its citizens, and is dependent upon public commitment to and understanding of its many responsibilities; and

**WHEREAS,** Municipal government provides services and programs that enhance the quality of life for residents, making their city their home; and

**WHEREAS,** City government officials and employees share the responsibility to pass along their understanding of public services and their benefits; and

**WHEREAS,** Florida City Government Week offers an important opportunity for elected officials and city staff to spread the word to all citizens of Florida that they can shape and influence this branch of government; and

**WHEREAS,** the Florida League of Cities and its member cities have joined together to teach citizens about municipal government through different projects and information.

**NOW, THEREFORE,** I, Betty Resch, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me and on behalf of the City Commission, do hereby proclaim:

**OCTOBER 21-27, 2024**

as

**FLORIDA CITY GOVERNMENT WEEK**

and encourage all citizens, city government officials and employees to participate in events that recognize and celebrate Florida Government Week.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 15<sup>th</sup> day of October, 2024.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

# CITY OF LAKE WORTH BEACH

## PROCLAMATION

**WHEREAS,** Communities across America have been plagued by the numerous problems associated with illicit drug use and those that traffic in them; and

**WHEREAS,** There is hope in winning the war on drugs, and that hope lies in education and drug demand reduction, coupled with the hard work and determination of many organizations to foster a healthy, drug-free lifestyle; and

**WHEREAS,** Governments and community leaders know that citizen support is one of the most effective tools in the effort to reduce the use of illicit drugs in our communities; and

**WHEREAS,** The red ribbon has been chosen as a symbol commemorating the work of Enrique "Kiki" Camarena, a Drug Enforcement Administration Agent who was murdered in the line of duty, and represents the belief that one person can make a difference; and

**WHEREAS,** The Red Ribbon Campaign was established by Congress in 1988 to encourage a drug-free lifestyle and involvement in drug prevention and reduction efforts; and

**WHEREAS,** The 2024 National Red Ribbon week theme is "Life is a movie, film drug free" which serves as a powerful reminder that ordinary Americans nationwide contribute significantly to their communities every day by embracing a drug-free lifestyle; and

**WHEREAS,** October 23-31 has been designated National Red Ribbon Week, encouraging Americans to wear a red ribbon to show their support for a drug-free environment.

**NOW, THEREFORE,** I, Betty Resch, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me and on behalf of the City Commission, do hereby proclaim:

**OCTOBER 23-31, 2024**

**as**

**RED RIBBON WEEK**

and urge all citizens of the City of Lake Worth, Florida to join me in this special observance.

**IN WITNESS WHEREOF,** I have hereunto set my hand and caused the Seal of the City of Lake Worth Beach, Florida, to be affixed this 15<sup>th</sup> day of October, 2024.

\_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** City Attorney

**TITLE:**

Settlement Agreement in Case No. 50-2024-CA-001688, City of Lake Worth Beach v 1 Jeanne 923, LLC

**SUMMARY:**

The City initiated a foreclosure action relative to the property located at 528 S J St for outstanding code compliance liens. The Settlement Agreement proposes that after the Defendant pays the City \$50,000 and the Defendant spends at least \$37,000 to fence and landscape the property; any unexpended funds (from the \$37,000) will be deposited into the City's tree fund. In exchange, the City will dismiss its foreclosure action and release all code liens on the subject property.

**BACKGROUND AND JUSTIFICATION:**

The current property owner purchased the property in 2014. Prior to that time, there were numerous code compliance cases on the property that were eventually corrected, and any outstanding liens paid through foreclosure and the bank that took ownership after foreclosure. Since 2014, the following is the code compliance case history for this property:

Case 15-893	trash, garbage (mattress in front yard)	complied prior to hearing
Case 16-1360	no business license; abandoned/inoperable vehicle; trash, garbage	complied prior to hearing
Case 16-1593	no business license – need to schedule inspection	closed prior to issuance of formal notice of violation
Case 18-1027	inoperable vehicle	resolved without hearing (may have been red tagged)
Case 19-1120	parking on grass; landscaping; trash, garbage	complied prior to hearing
Case 21-092	multiple, including removal of siding without permit	City foreclosing
Case 23-349	chronic nuisance	complied - active for 1 year of monitoring
Case 23-2268	work without permits	reference 23-2300
Case 23-2300	work without permits	resolved without hearing

There is one lien on the property, related to Case 21-092, which the City is foreclosing.

Shortly after the City filed the foreclosure action, the Defendant indicated its desire to enter into settlement negotiations to resolve the matter. The total amount of the City's lien on the property is \$74,200.00. The property is currently in compliance with the City Code. After several rounds of negotiations and participation in mediation, the Defendant agreed to a payment of \$50,000 to the City,

to be made within thirty days of the effective date of the Settlement Agreement. In addition, Defendant will spend at least \$37,000 to fence and landscape the property; any unexpended funds (from the \$37,000) will be deposited into the City's tree fund. In addition, In return, the City would dismiss the foreclosure action and release all code liens at the subject property.

**MOTION:**

Move to approve/disapprove the Settlement Agreement with 1 Jeanne 923 LLC.

**ATTACHMENT(S):**

Settlement Agreement

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH BEACH,  
a Florida municipal corporation,

CASE NO.: 50-2024CA001688-XXXA-MB

Plaintiff,

v.

1 JEANNE 923, LLC,

Defendant.

SETTLEMENT AGREEMENT

Plaintiff, CITY OF LAKE WORTH BEACH (hereinafter referred to as the "CITY"), by and 1 JEANNE 923, LLC (hereinafter referred to as "1 JEANNE") conducted a mediation with Robyn Hankins on October 2, 2024, and agree to the following terms which shall be presented to the City Commission for consideration as a settlement to this litigation; subject to approval by the City Commission,

- 1) 1 JEANNE will pay or cause to be paid the sum of \$50,000, payable to CITY through plaintiff counsel's trust account within thirty (30) days.
- 2) 1 JEANNE shall deposit \$37,000 into an account to be used only for landscaping improvements to the subject property located at 528 S. J Street, Lake Worth, FL, within thirty (30) days following approval by the City Commission. The landscaping shall include underground irrigation of the entire property and the installation of a full perimeter fencing. Landscape plans will be presented to the CITY within 60 days of approval. All landscape work will be completed within six (6) months of approval by the CITY of the Landscape plan. Any funds not expended on the Landscape plan and landscape work shall be deposited into the City's tree fund.
- 3) Each Party shall bear their own attorney's fees and costs, and all motions and pending discovery shall be dismissed. The Parties will file a stipulation for dismissal with prejudice and record any required releases of lien within ten (10) days following receipt of the payment and proof of the remittal of funds.
- 4) The Parties will work together to ensure that the terms of this Agreement are finalized. The Court shall retain jurisdiction to enforce this Agreement.

  
\_\_\_\_\_  
City of Lake Worth Beach

  
\_\_\_\_\_  
1 Jeanne 923, LLC

AS TO FORM ONLY IN COMPLIANCE WITH THE FLORIDA MEDIATION RULES:


GOREN, CHEROF, DOODY & EZROL, P.A.  
*Attorneys for City of Lake Worth Beach*  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308



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BRIAN J. SHERMAN, Esq.

JONES FOSTER  
Attorneys for 1 JEANNE 923, LLC  
505 South Flagler Dr., 11<sup>th</sup> Floor  
West Palm Beach, FL 33401



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MICHAEL J. GORE, Esq.

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Community Sustainability

**TITLE:**

Ordinance No. 2024-15 - Second Reading – amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language

**SUMMARY:**

Ordinance 2024-15 would adopt the new FEMA Floodplain maps and amend required language in the Floodplain Management section of the Land Development Regulations

**BACKGROUND AND JUSTIFICATION:**

The City of Lake Worth Beach participates in the National Flood Insurance Program, which requires the City to meet the requirements of Title 44, Code of Federal Regulations. The Federal Emergency Management Agency (FEMA) has revised and reissued the Flood Insurance Study for Palm Beach County with an effective date of December 20, 2024. The subject ordinance adopts the new FEMA Floodplain maps and amends required language, including:

- **Flood Insurance Study Date:** Identifies the effective date of the new FEMA Flood Insurance Study and Flood Insurance Rate Maps.
- **Historic Buildings:** Corrects the Florida Building Code reference in the Historic Building definition and in the section regarding variances and appeals for repair, improvement or rehabilitation to Historic Buildings in the floodplain.
- **Letter of Map Change:** Revises the definition to properly categorize Letter of Map Amendment, Letter of Map Revision, Letter of Map Revision Based on Fill, and Conditional Letter of Map Revision as subtypes of a Letter of Map Change.
- **Market Value:** Revises the language defining Market Value.

The **Historic Resources Preservation Board (HRPB)** unanimously voted to recommend approval of the proposed text amendments at their meeting on September 11, 2024.

The **Planning & Zoning Board (PZB)** unanimously voted to recommend approval of the proposed text amendments at their meeting on September 18, 2024.

At their meeting on October 1, 2024, the **City Commission** unanimously voted to approve the ordinance on first reading.

**MOTION:**

Move to approve/disapprove Ordinance 2024-15 amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language.

**ATTACHMENT(S):**

Ordinance 2024-15  
2017 & 2024 FEMA Floodplain Maps  
PZB/HRPB Staff Report

**ORDINANCE 2024-15 - AN ORDINANCE BY THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 "LAND DEVELOPMENT REGULATIONS," ARTICLE 7 "FLOODPLAIN MANAGEMENT,"; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the City of Lake Worth Beach participates in the National Flood Insurance Program and the City desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

**WHEREAS**, the Federal Emergency Management Agency has revised and reissued the Flood Insurance Study for Palm Beach County, Florida and Incorporated Areas, with an effective date of December 20, 2024; and

**WHEREAS**, the City wishes to amend Chapter 23, "Land Development Regulations," Article 7 "Floodplain Management," Section 23.7-2 "Applicability" to identify the effective date of the revised Flood Insurance Study and Flood Insurance Rate Maps; and

**WHEREAS**, the City wishes to amend Chapter 23, "Land Development Regulations," Article 7 "Floodplain Management," Section 23.7-7 "Variances and appeals" to correct the cited reference to the Florida Building Code; and

**WHEREAS**, the City has determined that it is in the public interest to amend Chapter 23, "Land Development Regulations," Article 7 "Floodplain Management," Section 23.7-10 "Definitions" to revise the definitions for historic structure, letter of map change, and market value; and

**WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

**WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local planning agency, considered the proposed amendments at a duly advertised public hearing; and

**WHEREAS**, the City Commission has reviewed the proposed amendments and has determined that it is in the best interest of the public health, safety, and general welfare of the City to adopt this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAKE WORTH BEACH, FLORIDA, that:**

**Section 1:** The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this ordinance as if set forth herein.

**Section 2:** Chapter 23 "Land Development Regulations," Article 7 "Floodplain Management," Division 1 "Administration," Section 23.7-2 "Applicability" is hereby amended by

52 adding the words shown in underline type and deleting the words struck through as indicated in  
53 **Exhibit A.**

54  
55 **Section 3:** Chapter 23 “Land Development Regulations,” Article 7 “Floodplain  
56 Management,” Division 1 “Administration,” Section 23.7-7 “Variances and appeals” is hereby  
57 amended by adding the words shown in underline type and deleting the words struck through as  
58 indicated in **Exhibit B.**

59  
60 **Section 4:** Chapter 23 “Land Development Regulations,” Article 7 “Floodplain  
61 Management,” Division 2 “Definitions,” Section 23.7-10 “Definitions” is hereby amended by adding  
62 the words shown in underline type and deleting the words struck through as indicated in **Exhibit**  
63 **C.**

64  
65 **Section 5:** Severability. If any section, subsection, sentence, clause, phrase or portion  
66 of this Ordinance is for any reason held invalid or unconstitutional by any court of competent  
67 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and  
68 such holding shall not affect the validity of the remaining portions thereof.

69  
70 **Section 6:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict  
71 herewith are hereby repealed to the extent of such conflict.

72  
73 **Section 7:** Codification. The sections of the ordinance may be made a part of the City  
74 Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and  
75 the word “ordinance” may be changed to “section”, “division”, or any other appropriate word.

76  
77 **Section 8:** Effective Date. This ordinance shall become effective 10 days after  
78 passage.

79  
80 The passage of this ordinance on first reading was moved by Commissioner May,  
81 seconded by Commissioner Diaz, and upon being put to a vote, the vote was as follows:

82		
83	Mayor Betty Resch	AYE
84	Vice Mayor Sarah Malega	AYE
85	Commissioner Christopher McVoy	AYE
86	Commissioner Mimi May	AYE
87	Commissioner Reinaldo Diaz	AYE
88		

89 The Mayor thereupon declared this ordinance duly passed on first reading on the 1<sup>st</sup> day  
90 of October, 2024.

91  
92  
93 The passage of this ordinance on second reading was moved by \_\_\_\_\_,  
94 seconded by \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

95		
96	Mayor Betty Resch	
97	Vice Mayor Sarah Malega	
98	Commissioner Christopher McVoy	
99	Commissioner Mimi May	
100	Commissioner Reinaldo Diaz	
101		



102           The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
103 \_\_\_\_\_, 2024.

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115

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

**EXHIBIT A**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 7 "FLOODPLAIN MANAGEMENT"

*Article 7, "Floodplain Management," Division 1, "Administration"*

**Sec. 23.7-2. Applicability.**

\*\*\*

c) *Basis for establishing flood hazard areas.* The Flood Insurance Study for Palm Beach County, Florida and Incorporated Areas, dated ~~October 5, 2017~~ **December 20, 2024**, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Lake Worth City Hall, 7 North Dixie Highway, Lake Worth **Beach**, Florida 33460.

\*\*\*

**EXHIBIT B**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 7 “FLOODPLAIN MANAGEMENT”

*Article 7, “Floodplain Management,” Division 1, “Administration”*

**Sec. 23.7-7. Variances and appeals.**

\*\*\*

d) *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter 44 **12** Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

\*\*\*

158 **EXHIBIT C**

159 Chapter 23

160 LAND DEVELOPMENT REGULATIONS ARTICLE 7 "FLOODPLAIN MANAGEMENT"

161  
162  
163  
164 *Article 7, "Floodplain Management," Division 2, "Definitions"*

165  
166 **Sec. 23.7-10. Definitions.**

167 \*\*\*

168  
169 *Historic structure:* Any structure that is determined eligible for the exception to the flood  
170 hazard area requirements of the Florida Building Code, Existing Building, Chapter 44 **12** Historic  
171 Buildings.

172  
173 *Letter of map change (LOMC):* An official determination issued by FEMA that amends or  
174 revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of map change  
175 include:

176 **1.** *Letter of map amendment (LOMA):* An amendment based on technical data showing  
177 that a property was incorrectly included in a designated special flood hazard area. A  
178 LOMA amends the current effective Flood Insurance Rate Map and establishes that a  
179 specific property, portion of a property, or structure is not located in a special flood  
180 hazard area.

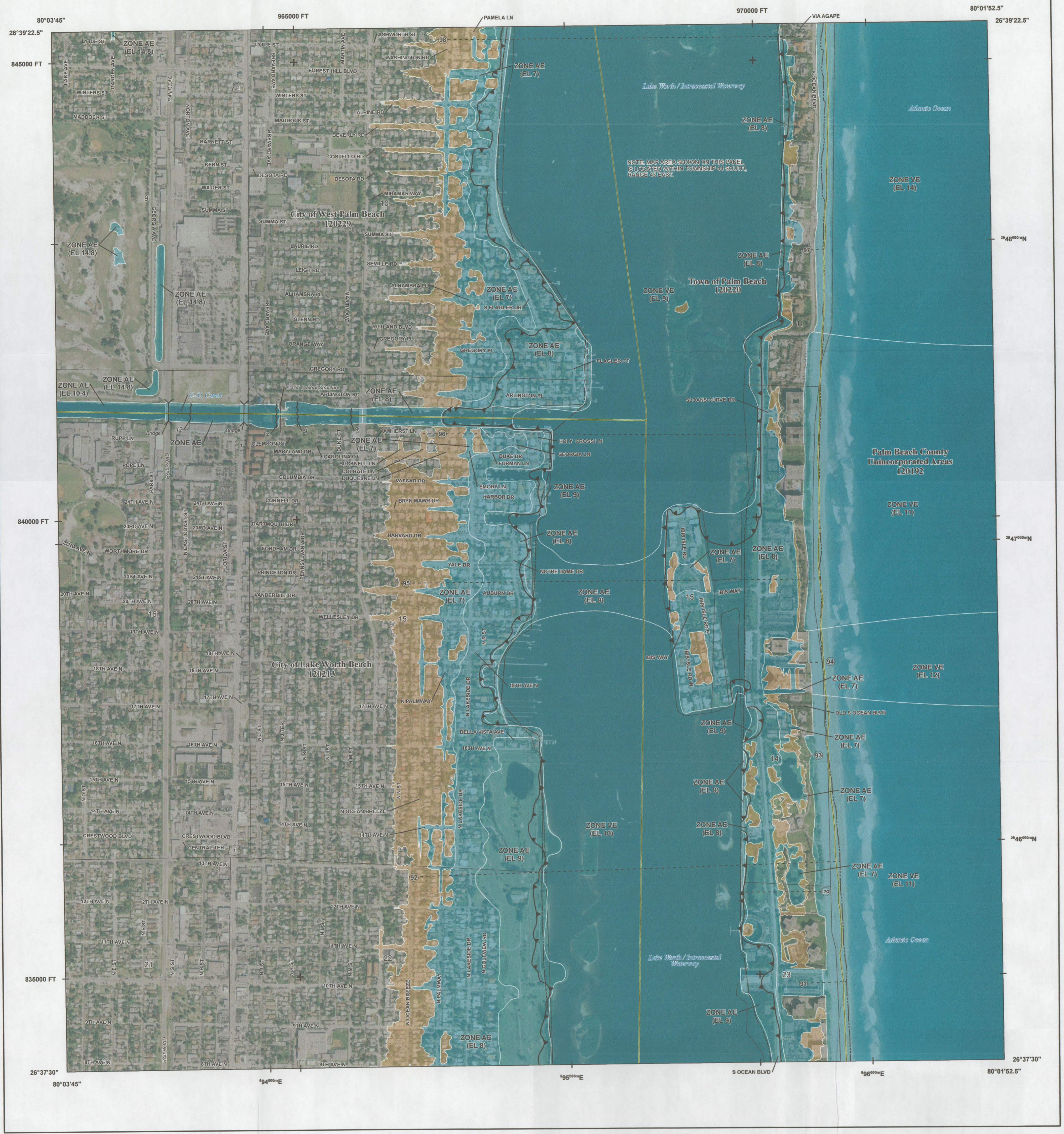
181  
182 **2.** *Letter of map revision (LOMR):* A revision based on technical data that may show  
183 changes to flood zones, flood elevations, special flood hazard area boundaries and  
184 floodway delineations, and other planimetric features.

185  
186 **3.** *Letter of map revision based on fill (LOMR-F):* A determination that a structure or parcel  
187 of land has been elevated by fill above the base flood elevation and is, therefore, no  
188 longer located within the special flood hazard area. In order to qualify for this  
189 determination, the fill must have been permitted and placed in accordance with the  
190 community's floodplain management regulations.

191  
192 **4.** *Conditional letter of map revision (CLOMR):* A formal review and comment as to  
193 whether a proposed flood protection project or other project complies with the minimum  
194 NFIP requirements for such projects with respect to delineation of special flood hazard  
195 areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood  
196 Insurance Study; upon submission and approval of certified as-built documentation, a  
197 letter of map revision may be issued by FEMA to revise the effective FIRM.

198 \*\*\*

199  
200 *Market value:* ~~The price at which a property will change hands between a willing buyer and~~  
201 ~~a willing seller, neither party being under compulsion to buy or sell and both having reasonable~~  
202 ~~knowledge of relevant facts.~~ As used in this ordinance, the term refers to the market value of  
203 buildings and structures, excluding the land and other improvements on the parcel. Market value  
204 ~~may be established by a qualified independent appraiser, is the~~ actual cash value (in-kind  
205 replacement cost depreciated for age, wear and tear, neglect, and quality of construction)  
206 ~~determined by a qualified independent appraiser,~~ or tax assessment value adjusted to  
207 approximate market value by a factor provided by the county property appraiser.  
208



**FLOOD HAZARD INFORMATION**

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT  
**THE INFORMATION DEPICTED ON THIS MAP AND SUPPORTING DOCUMENTATION ARE ALSO AVAILABLE IN DIGITAL FORMAT AT**  
[HTTPS://MSC.FEMA.GOV](https://MSC.FEMA.GOV)

- SPECIAL FLOOD HAZARD AREAS**
  - Without Base Flood Elevation (BFE) Zone A, V, A99
  - With BFE or Depth Zone AE, AO, AH, VE, AR
  - Regulatory Floodway
  - 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Future Conditions 1% Annual Chance Flood Hazard Zone X
  - Area with Reduced Flood Risk due to Levee See Notes, Zone X
  - Area with Flood Risk due to Levee Zone D
- OTHER AREAS OF FLOOD HAZARD**
  - NO SCREEN Area of Minimal Flood Hazard Zone X
  - Area of Undetermined Flood Hazard Zone D
- OTHER AREAS**
- GENERAL STRUCTURES**
  - Channel, Culvert, or Storm Sewer
  - Levee, Dike, or Floodwall
  - Cross Sections with 1% Annual Chance Water Surface Elevation
  - Coastal Transect
  - Coastal Transect Baseline
  - Profile Baseline
  - Hydrographic Feature
  - Base Flood Elevation Line (BFE)
- OTHER FEATURES**
  - Limit of Study
  - Jurisdiction Boundary

**NOTES TO USERS**

For information and questions about this Flood Insurance Rate Map (FIRM), available products associated with this FIRM, including historic versions, the current map date for each FIRM panel, how to order products, or the National Flood Insurance Program (NFIP) in general, please call the FEMA Map Information eXchange at 1-877-FEMA-MAP (1-877-336-6627) or visit the FEMA Flood Map Service Center website at <https://msc.fema.gov>. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. Many of these products can be ordered or obtained directly from the website.

Communities annexing land on adjacent FIRM panels must obtain a current copy of the adjacent panel as well as the current FIRM index. These may be ordered directly from the Flood Map Service Center at the number listed above.

For community and countywide map dates refer to the Flood Insurance Study Report for this jurisdiction.

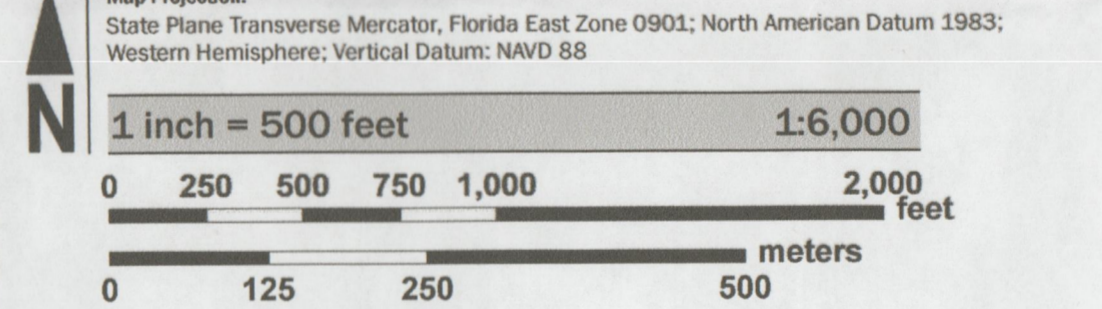
To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.

Base map information shown on this FIRM was provided by Palm Beach County, dated 2009 and 2019; the United States Geological Survey, dated 2004; and the Federal Emergency Management Agency, dated 2014 and 2017. Aerial imagery was provided by the United States Department of Agriculture, dated 2017, and has a ground sample resolution of 1 meter.

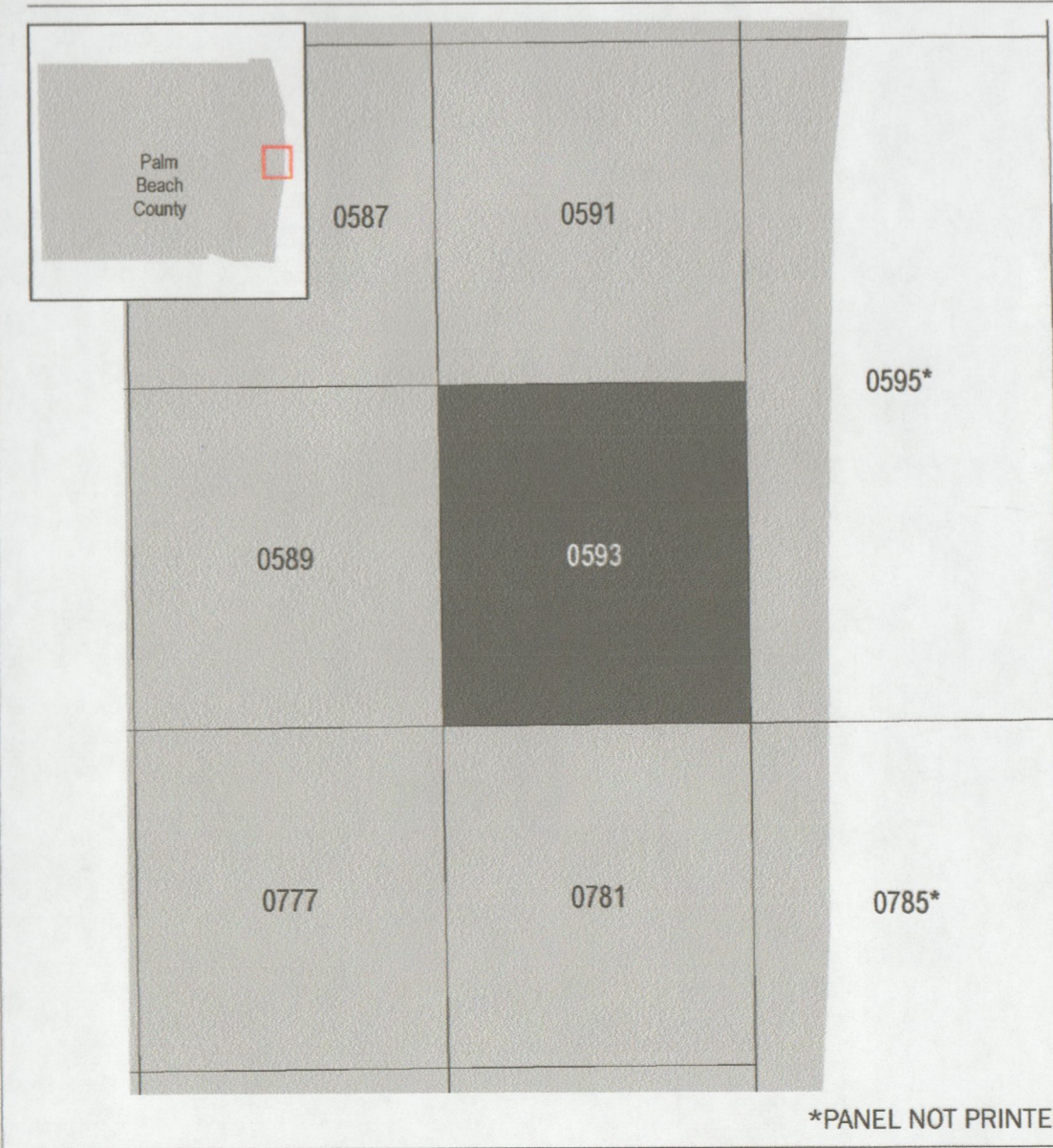
**LIMIT OF MODERATE WAVE ACTION:** Zone AE has been divided by a Limit of Moderate Wave Action (LIMWA). The LIMWA represents the approximate landward limit of the 1.5-foot breaking wave. The effects of wave hazards between Zone VE and the LIMWA (or between the shoreline and the LIMWA for areas where Zone VE is not identified) will be similar to, but less severe than, those in the Zone VE.

**Limit of Moderate Wave Action (LIMWA)**

**SCALE**



**PANEL LOCATOR**



**NATIONAL FLOOD INSURANCE PROGRAM**  
**FLOOD INSURANCE RATE MAP**

**PALM BEACH COUNTY, FLORIDA**  
 and Incorporated Areas  
 PANEL 593 of 1200

Panel Contains:

COMMUNITY	NUMBER	PANEL	SUFFIX
LAKE WORTH BEACH, CITY OF	120213	0593	G
PALM BEACH COUNTY	120192	0593	G
PALM BEACH, TOWN OF	120220	0593	G
WEST PALM BEACH, CITY OF	120229	0593	G

**FEMA**  
 National Flood Insurance Program

**VERSION NUMBER**  
 2.6.3.4

**MAP NUMBER**  
 12099C0593G

**MAP REVISED**  
 DECEMBER 20, 2024



**FLOOD HAZARD INFORMATION**

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT  
**THE INFORMATION DEPICTED ON THIS MAP AND SUPPORTING DOCUMENTATION ARE ALSO AVAILABLE IN DIGITAL FORMAT AT [HTTPS://MSC.FEMA.GOV](https://MSC.FEMA.GOV)**

	Without Base Flood Elevation (BFE) Zone A, V, X, Y
	With BFE or Depth Zone AE, AD, AH, VE, AR
	Regulatory Floodway
	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X
	Future Conditions 1% Annual Chance Flood Hazard Zone X
	Area with Reduced Flood Risk due to Levee See Notes, Zone X
	Area with Flood Risk due to Levee Zone D
	Area of Minimal Flood Hazard Zone X
	Area of Undetermined Flood Hazard Zone D
	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall
	Cross Sections with 1% Annual Chance Water Surface Elevation 18.2 17.5
	Coastal Transect
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary

**NOTES TO USERS**

For information and questions about this Flood Insurance Rate Map (FIRM), available products associated with this FIRM, including historic versions, the current map date for each FIRM panel, how to order products, or the National Flood Insurance Program (NFIP) in general, please call the FEMA Map Information eXchange at 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA Flood Map Service Center website at <https://msc.fema.gov>. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. Many of these products can be ordered or obtained directly from the website.

Communities annexing land on adjacent FIRM panels must obtain a current copy of the adjacent panel as well as the current FIRM Index. These may be ordered directly from the Flood Map Service Center at the number listed above.

For community and countywide map dates refer to the Flood Insurance Study Report for this jurisdiction.

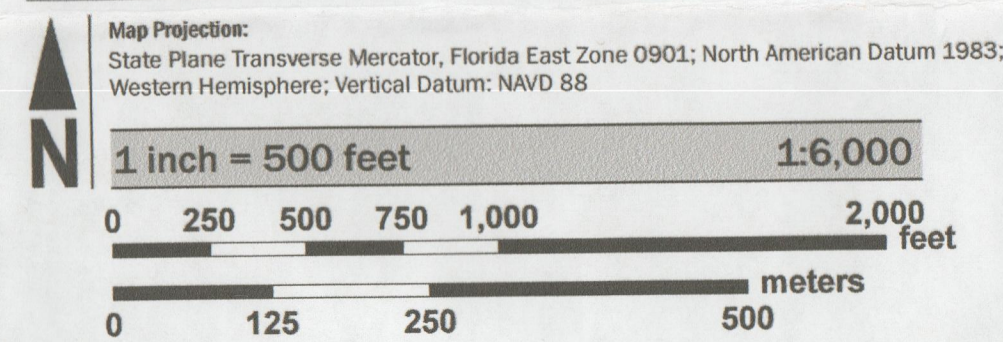
To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.

Base map information shown on this FIRM was provided by Palm Beach County, dated 2009 and 2019; the United States Geological Survey, dated 2004; and the Federal Emergency Management Agency, dated 2014 and 2017. Aerial imagery was provided by the United States Department of Agriculture, dated 2017, and has a ground sample resolution of 1 meter.

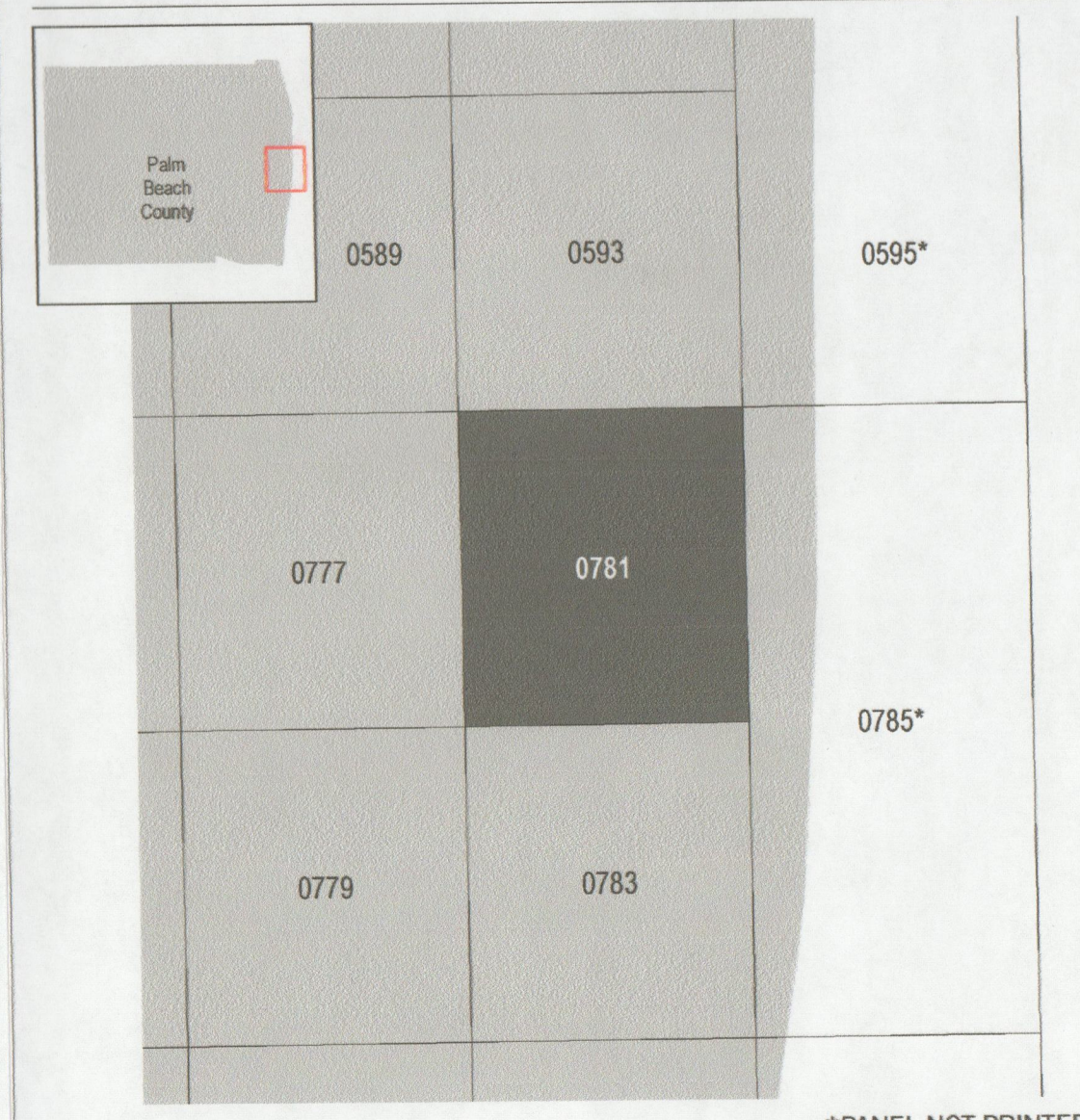
LIMIT OF MODERATE WAVE ACTION: Zone AE has been divided by a Limit of Moderate Wave Action (LIMWA). The LIMWA represents the approximate landward limit of the 1.5-foot breaking wave. The effects of wave hazards between Zone VE and the LIMWA (or between the shoreline and the LIMWA for areas where Zone VE is not identified) will be similar to, but less severe than, those in the Zone VE.

▲ Limit of Moderate Wave Action (LIMWA)

**SCALE**



**PANEL LOCATOR**



**NATIONAL FLOOD INSURANCE PROGRAM**  
 FLOOD INSURANCE RATE MAP  
**PALM BEACH COUNTY, FLORIDA**  
 and Incorporated Areas  
 PANEL 781 of 1200

COMMUNITY CONTAINS:  
 LAKE WORTH BEACH, CITY OF 120213 0781 G  
 LANTANA, TOWN OF 120214 0781 G  
 PALM BEACH COUNTY 120192 0781 G  
 PALM BEACH, TOWN OF 120220 0781 G

VERSION NUMBER 2.6.3.4  
 MAP NUMBER 12099C0781G  
 MAP REVISED DECEMBER 20, 2024

**NOTES TO USERS**

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded tenth-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations (BFEs) shown on this map apply only landward of 0.0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was Transverse Mercator State Plane Florida East FIPS Zone 0901 Feet. The horizontal datum was NAD83 HARN, GRS1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov/> or contact the National Geodetic Survey at the following address:

NGS Information Services  
NOAA, NNGS12  
National Geodetic Survey  
SSMC-3, #9201  
1315 East-West Highway  
Silver Spring, Maryland 20910-3282  
(301) 713-3242

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242 or visit its website at <http://www.ngs.noaa.gov/>.

Base map information shown on this FIRM was provided in digital format by Palm Beach County. The original orthophotographic base imagery was provided in color with a one-foot pixel resolution at a scale of 1" = 200' from photography flown November 2010 - January 2011.

This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels, community map repository addresses, and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

For information and questions about this map, available products associated with this FIRM including historic versions of this FIRM, how to order products or the National Flood Insurance Program in general, please call the FEMA Map Information eXchange at 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA Map Service Center website at <http://msc.fema.gov/>. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. Many of these products can be ordered or obtained directly from the website. Users may determine the current map date for each FIRM panel by visiting the FEMA Map Service Center website or by calling the FEMA Map Information eXchange.

NOTE: MAP AREA SHOWN ON THIS PANEL IS LOCATED WITHIN TOWNSHIP 44 SOUTH, RANGE 43 EAST.

**LEGEND**

- SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD
- The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.
- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently identified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Areas to be protected from 1% annual chance flood event by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.
- FLOODWAY AREAS IN ZONE AE
- The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.
- OTHER FLOOD AREAS**
- ZONE X** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
- OTHER AREAS**
- ZONE X** Areas determined to be outside the 0.2% annual chance floodplain.
- ZONE D** Areas in which flood hazards are undetermined, but possible.
- COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS**
- OTHERWISE PROTECTED AREAS (OPAs)**
- CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.
- 1% annual chance floodplain boundary
- 0.2% annual chance floodplain boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths, or flood velocities
- Base Flood Elevation line and value; elevation in feet\*
- Base Flood Elevation value where uniform within zone; elevation in feet\*

\* Referenced to the North American Vertical Datum of 1988

Cross section line

Transsect line

97°07'30", 32°22'30"

4750000E

6000000 FT

DX5510

M1.5

River Mile

MAP REPOSITORIES

Refer to Map Repositories List on Map Index

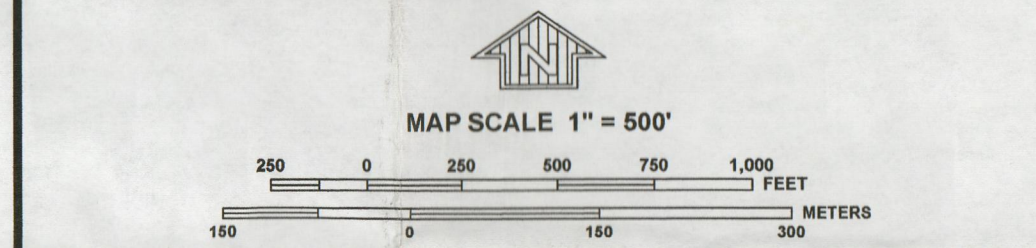
EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP

OCTOBER 5, 2017

EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.



**NATIONAL FLOOD INSURANCE PROGRAM**

PANEL 0593F N.E.

**FIRM**

**FLOOD INSURANCE RATE MAP**

**PALM BEACH COUNTY, FLORIDA**

**AND INCORPORATED AREAS**

PANEL 593 OF 1200

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

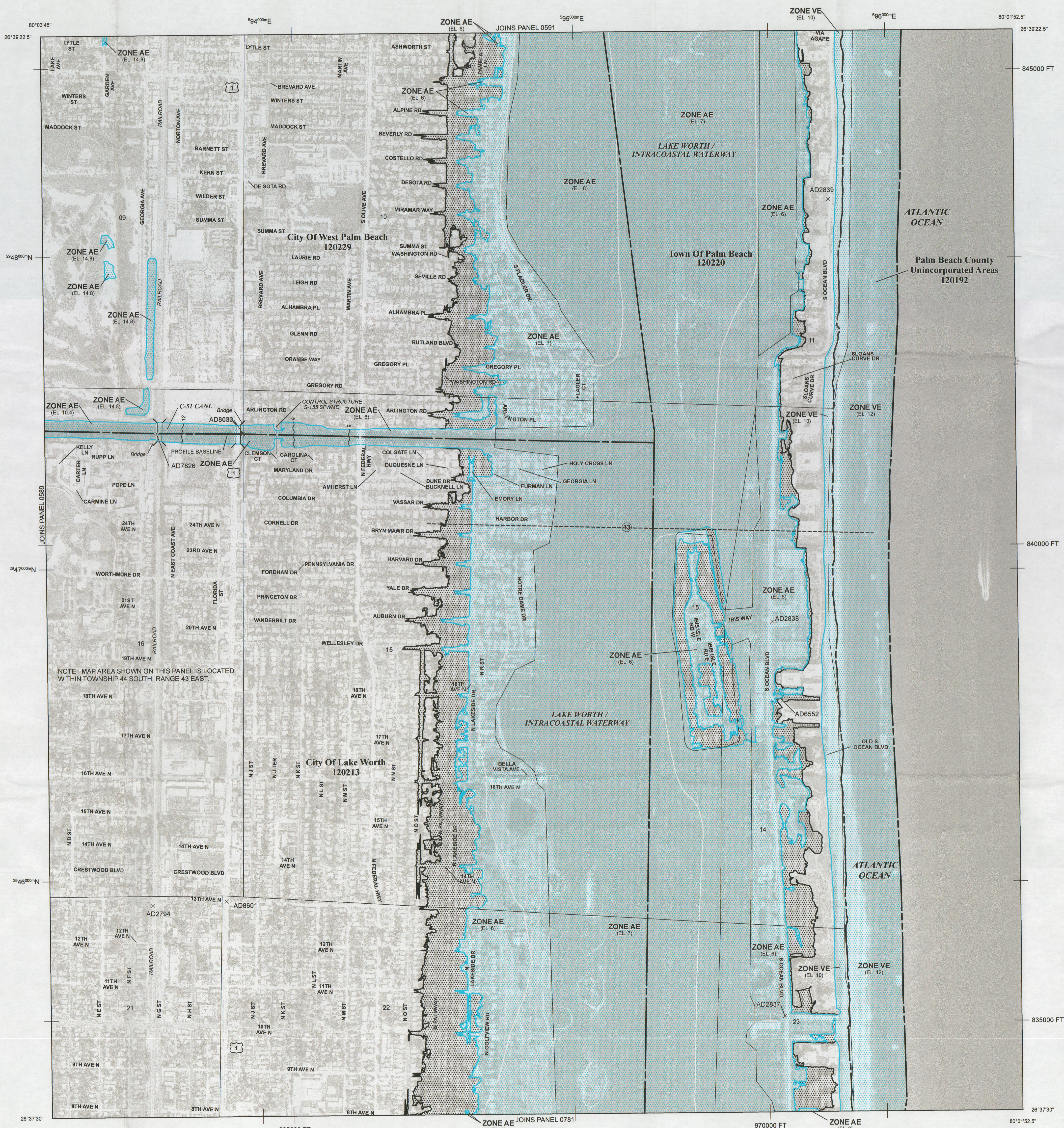
COMMUNITY	NUMBER	PANEL	SUFFIX
LAKE WORTH, CITY OF	120213	0593	F
PALM BEACH COUNTY	120192	0593	F
PALM BEACH, TOWN OF	120220	0593	F
WEST PALM BEACH, CITY OF	120229	0593	F

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

**MAP NUMBER**  
12099C0593F

**EFFECTIVE DATE**  
OCTOBER 5, 2017

Federal Emergency Management Agency



**NOTES TO USERS**

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where Base Flood Elevations (BFEs) and/or floodways have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded tenth-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations (CBFEs) shown on this map apply only landward of 0.0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations table in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations table should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the floodways were computed at cross sections and interpolated between cross sections. The floodways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by flood control structures. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The projection used in the preparation of this map was Transverse Mercator State Plane Florida East FIPS Zone 9901 Feet. The horizontal datum was NAD83 HARN, GRS1980 spheroid. Differences in datum, spheroid, projection or UTM zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov/> or contact the National Geodetic Survey at the following address:

NGS Information Services  
NOAA, NGS12  
National Geodetic Survey  
SSMC-3, #9202  
1315 East-West Highway  
Silver Spring, Maryland 20910-3282  
(301) 713-3242

To obtain current elevation, description, and/or location information for bench marks shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242 or visit its website at <http://www.ngs.noaa.gov/>.

Base map information shown on this FIRM was provided in digital format by Palm Beach County. The original orthophotographic base imagery was provided in color with a one-foot pixel resolution at a scale of 1" = 200' from photography flown November 2010 - January 2011.

This map reflects more detailed and up-to-date stream channel configurations than those shown on the previous FIRM for this jurisdiction. The floodplains and floodways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed Map Index for an overview map of the county showing the layout of map panels, community map repository addresses, and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

For information and questions about this map, available products associated with this FIRM including historic versions of this FIRM, how to order products or the National Flood Insurance Program in general, please call the FEMA Map Information eXchange at 1-877-FEMA-MAP (1-877-336-2827) or visit the FEMA Map Service Center website at <http://msc.fema.gov>. Available products may include previously issued Letters of Map Change, a Flood Insurance Study Report, and/or digital versions of this map. Many of these products can be ordered or obtained directly from the website. Users may determine the current map date for each FIRM panel by visiting the FEMA Map Service Center website or by calling the FEMA Map Information eXchange.

**LEGEND**

**SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD**

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Areas to be protected from 1% annual chance flood event by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

**FLOODWAY AREAS IN ZONE AE**

The floodways is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

**OTHER FLOOD AREAS**

- ZONE X** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

**OTHER AREAS**

- ZONE X** Areas determined to be outside the 0.2% annual chance floodplain.
- ZONE D** Areas in which flood hazards are undetermined, but possible.

**COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS**

**OTHERWISE PROTECTED AREAS (OPAs)**

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

- 1% annual chance floodplain boundary
- 0.2% annual chance floodplain boundary
- Floodway boundary
- Zone D boundary
- CBRS and OPA boundary
- Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths, or flood velocities
- Base Flood Elevation line and value; elevation in feet\* (EL 987)
- \* Referenced to the North American Vertical Datum of 1988

**MAP REPOSITORIES**

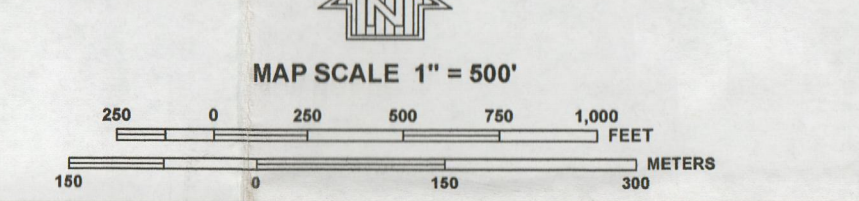
Refer to Map Repositories List on Map Index

**EFFECTIVE DATE OF COUNTY-WIDE FLOOD INSURANCE RATE MAP**  
OCTOBER 5, 2017

**EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL**

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your insurance agent or call the National Flood Insurance Program at 1-800-638-6620.



**NATIONAL FLOOD INSURANCE PROGRAM**

**PANEL 0781F S.E.**

**FIRM**  
FLOOD INSURANCE RATE MAP  
PALM BEACH COUNTY,  
FLORIDA  
AND INCORPORATED AREAS

**PANEL 781 OF 1200**  
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

**CONTAINS:**

COMMUNITY	NUMBER	PANEL	SUFFIX
LAKE WORTH, CITY OF	120213	0781	F
LANTANA TOWN OF	120214	0781	F
PALM BEACH COUNTY	120192	0781	F
PALM BEACH, TOWN OF	120220	0781	F

Notice to User: The Map Number shown above should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

**MAP NUMBER**  
12099C0781F

**EFFECTIVE DATE**  
OCTOBER 5, 2017

**Federal Emergency Management Agency**





DATE: September 4, 2024

TO: Members of the Planning & Zoning and Historic Resources Preservation Boards

FROM: William Waters, Director Community Sustainability

MEETING: September 11 & September 18, 2024

SUBJECT: **Ordinance 2024-15**: Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 7 “Floodplain Management” to adopt the new FEMA Floodplain maps and required language.

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**PROPOSAL / BACKGROUND/ ANALYSIS:**

The City of Lake Worth Beach participates in the National Flood Insurance Program, which requires the City to meet the requirements of Title 44, Code of Federal Regulations. The Federal Emergency Management Agency (FEMA) has revised and reissued the Flood Insurance Study for Palm Beach County with an effective date of December 20, 2024. Ordinance 2024-15 would adopt the new FEMA Floodplain maps and amend required language in the Floodplain Management section of the Land Development Regulations.

The proposed ordinance would amend the following sections of Article 7 of the City’s Land Development Regulations:

- Division 1 “Administration,” Section 23.7-2 – Applicability
- Division 1 “Administration,” Section 23.7-7 – Variances and Appeals
- Division 2 “Definitions,” Section 23.7-10 – Definitions

**Flood Insurance Study Date:** Identifies the effective date of the new FEMA Flood Insurance Study and Flood Insurance Rate Maps.

**Historic Buildings:** Corrects the Florida Building Code reference in the Historic Building definition and in the section regarding variances and appeals for repair, improvement or rehabilitation to Historic Buildings in the floodplain.

**Letter of Map Change:** Revises the definition to properly categorize Letter of Map Amendment, Letter of Map Revision, Letter of Map Revision Based on Fill, and Conditional Letter of Map Revision as subtypes of a Letter of Map Change.

**Market Value:** Revises the language defining Market Value.

**STAFF RECOMMENDATION:**

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission adopt Ordinance 2024-15.

**POTENTIAL MOTION:**

I move to **RECOMMEND/NOT RECOMMEND** TO THE CITY COMMISSION TO ADOPT the proposed LDR text amendments included in Ordinance 2024-15.

Attachments

- A. Draft Ordinance 2024-15

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Community Sustainability

**TITLE:**

Ordinance No. 2024-13 - First Reading – amending multiple sections of Chapter 23 “Land Development Regulations” to address several housekeeping items and minor changes for clarity

**SUMMARY:**

The subject amendments to the City’s Land Development Regulations (LDRs) were drafted to clarify several provisions, address general housekeeping items, and resolve inconsistencies.

**BACKGROUND AND JUSTIFICATION:**

The subject amendment consists of multiple housekeeping modifications, as well as several other issues that were identified by staff in the building permit and site plan review processes, including:

- **Accessory Indoor Storage:** Adding a definition for accessory storage, including clarifications to the maximum use area, and revising definitions to contractor showroom and low-intensity office uses to allow accessory indoor storage.
- **Use Table:** Revising the single family dwelling use to match the text of the Mixed Use – East zoning district, removing a redundant listing of low-intensity take-out establishments, revising the specialty brewery/distillery use to be permitted with an Administrative Use Permit (AUP) in the Transit Oriented Development East and Artisanal Industrial zoning districts, revising the wholesale use to permitted with an AUP in the Artisanal Industrial zoning district, creating a low-intensity indoor storage use permitted by right in the industrial zoning districts, creating a high-intensity place of worship use, and revising the institutional uses to allow for museums and environmental nature centers in multiple zoning districts.
- **Public Neighborhood Meeting:** Require neighborhood meetings to include an in-person component
- **Roof Overhang Encroachment:** Revising language in multiple zoning districts to correct and clarify the maximum two-foot encroachment of a roof overhang into a side setback.
- **Build-To Line:** Amending language in the Mixed Use – Dixie Highway and Transit Oriented Development East zoning districts to clarify the requirement for a street side build-to line.
- **Fences and Gates:** Clarifying permitted fence height for industrial uses as well as revising and clarifying permitted gate heights and locations for residential, commercial, and industrial uses.
- **Parking:** Creating a definition and standards for ribbon driveways, clarifying the requirement for an access aisle to an ADA parking space, and creating standard dimensions for motorcycle parking spaces.
- **Pools:** Creating a new section to clarify and establish supplementary development standards for residential pools, including setbacks, distance from easements, pool decks, and pool enclosures.

- Housekeeping Items: Revising the definition of holistic health care facilities to allow for singular or multiple services within one facility, revising the definition for semi-pervious surface to clarify the minimum setback requirement, correcting the use approval review processes for places of worship, clarifying the maximum sign area requirements for multi-tenant buildings, and clarifying the requirements for a nonconforming lot of record.

The **Historic Resources Preservation Board (HRPB)** unanimously voted to recommend approval of the proposed text amendments at their meeting on September 11, 2024.

The **Planning & Zoning Board (PZB)** unanimously voted to recommend approval of the proposed text amendments at their September 18, 2024, meeting with the recommendation that the City Commission consider revisions to:

- Exhibit A, line 330 to clarify that semi-pervious surfaces used to access parking at the rear of a property do not need to maintain a one-foot setback from the rear property line.
- Exhibit S, lines 747, 769, and 778 to strike all references to the Municipal Golf Course. The board expressed concern about limiting gate access to the golf course without prior direction from the Commission, and would prefer that the Commission have a public discussion regarding this issue prior to bringing it back under a separate ordinance.
- Exhibit T, line 817 to clarify that the access aisle can be shared between two adjacent handicapped parking spaces.

**MOTION:**

Move to approve/disapprove Ordinance 2024-13 on first reading, and to schedule the second reading and public hearing for November 19, 2024.

**ATTACHMENT(S):**

Ordinance 2024-13  
PZB/HRPB Staff Report

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**ORDINANCE 2024-13 - AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND DEVELOPMENT REGULATIONS,” ARTICLE 1 “GENERAL PROVISIONS,” DIVISION 2 “DEFINITIONS,” SECTION 23.1-12 – DEFINITIONS; ARTICLE 2 “ADMINISTRATION,” DIVISION 2 “PROCEDURES,” SECTION 23.2-19.1 PUBLIC NEIGHBORHOOD MEETING; ARTICLE 3 “ZONING DISTRICTS,” DIVISION 1, “GENERALLY,” SECTION 23.3-6 USE TABLES; AND DIVISION 2, “RESIDENTIAL DISTRICTS,” SECTION 23.3-7 – SF-R - SINGLE-FAMILY RESIDENTIAL, SECTION 23.3-8 – SF-TF-14 - SINGLE-FAMILY AND TWO-FAMILY RESIDENTIAL, SECTION 23.3-10 – MF-20 - MULTI-FAMILY AND TWO-FAMILY RESIDENTIAL, SECTION 23.3-11 – MF-30 - MEDIUM DENSITY MULTI-FAMILY RESIDENTIAL, AND SECTION 23.3-12 – MF-40 - HIGH DENSITY MULTI-FAMILY RESIDENTIAL; AND DIVISION 3, “MIXED USE DISTRICTS,” SECTION 23.3-13 – MU-E - MIXED USE EAST, SECTION 23.3-14 – DT - DOWNTOWN, SECTION 23.3-16 – MU-FH – MIXED USE – FEDERAL HIGHWAY, SECTION 23.3-17 – MU-DH - MIXED USE – DIXIE HIGHWAY, SECTION 23.3-18 – MU-W - MIXED USE WEST, SECTION 23.3-19 – TOD-E - TRANSIT ORIENTED DEVELOPMENT EAST, AND SECTION 23.3-20 – TOD-W - TRANSIT ORIENTED DEVELOPMENT WEST; AND DIVISION 4, “COMMERCIAL DISTRICTS,” SECTION 23.3-21 – NC - NEIGHBORHOOD COMMERCIAL; AND DIVISION 5, “INDUSTRIAL DISTRICTS,” SECTION 23.3-23 – AI - ARTISANAL INDUSTRIAL AND SECTION 23.3-24 – I-POC - INDUSTRIAL PARK OF COMMERCE; ARTICLE 4 “DEVELOPMENT STANDARDS,” SECTION 23.4-4 FENCES, WALLS AND GATES, SECTION 23.4-10 OFF-STREET PARKING, SECTION 23.4-13 ADMINISTRATIVE USES AND CONDITIONAL USES, AND ADDING A NEW SECTION 23.4-26 POOLS; AND ARTICLE 5 “SUPPLEMENTAL REGULATIONS,” SECTION 23.5-1 SIGNS AND SECTION 23.5-3 NONCONFORMITIES; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE**

**WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

**WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing body of each municipality in the state has the power to enact legislation concerning any subject matter upon which the state legislature may act, except when expressly prohibited by law; and

**WHEREAS**, the City wishes to amend Chapter 23, Article 1 “General Provisions,” Division 2 “Definitions,” Section 23.1-12 – Definitions to create a definition for accessory storage, revise the definition for contractor–showroom, revise the definition for holistic health care facility, revise the definition for low-intensity office uses, create a definition for ribbon driveway, and revise the definition for semi-pervious surface; and

50           **WHEREAS**, the City wishes to amend Chapter 23, Article 2 “Administration,” Division 2  
51 “Procedures,” Section 23.2-19.1 – “Public neighborhood meeting” to require neighborhood  
52 meetings to include an in-person component; and

53  
54           **WHEREAS**, the City wishes to amend Chapter 23, Article 3 “Zoning Districts,” Division 1  
55 “Generally,” Section 23.3-6 “Use Tables” to correct errors related to single-family dwellings in the  
56 Mixed Use East zoning district and wholesale facilities in the Artisanal Industrial zoning district, to  
57 allow and modify required review processes by zoning district for specialty breweries/distilleries,  
58 museums, and environmental nature centers, to allow low-intensity indoor storage in industrial  
59 districts, and to correct a repeated listing of low-intensity takeout establishments; and

60  
61           **WHEREAS**, the City wishes to amend Chapter 23, Article 3 “Zoning Districts,” Division 2  
62 “Residential Districts,” Section 23.3-7 “SF-R – Single-family residential,” Section 23.3-8 “SF-TF  
63 14 – Single-family and two-family residential,” Section 23.3-10 “MF-20 – Multifamily and two-  
64 family residential,” Section 23.3-11 “MF-30 – Medium density multi-family residential,” and Section  
65 23.3-12 “MF-40 – High density multi-family residential.”; Division 3 “Mixed Use Districts,” Section  
66 23.3-13 “MU-E – Mixed use east,” Section 23.3-14 “DT – Downtown,” Section 23.3-16 “MU-FH –  
67 Mixed use – Federal Highway,” Section 23.3-17 “MU-DH – Mixed use – Dixie Highway,” Section  
68 23.3-18 “MU-W – Mixed use west,” Section 23.3-19 “TOD-E – Transit oriented development east,”  
69 and Section 23.3-20 “TOD-W – Transit oriented development west.”; Division 4 “Commercial  
70 Districts,” Section 23.3-21 “NC – Neighborhood commercial.”; and Division 5 “Industrial Districts,”  
71 Section 23.3-23 “AI – Artisanal industrial,” and Section 23.3-24 “I-POC – Industrial park of  
72 commerce,” to correct the maximum encroachment of roof overhangs into a side setback; and

73  
74           **WHEREAS**, the City wishes to amend Chapter 23, Article 3 “Zoning Districts,” Division 3  
75 “Mixed Use Districts,” Section 23.3-17 “MU-DH – Mixed use – Dixie Highway,” and Section 23.3-  
76 19 “TOD-E – Transit oriented development east,” to clarify the front build-to line and street side  
77 build-to line; and

78  
79           **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development Standards,”  
80 Section 23.4-4 – “Fences, walls, and gates,” to clarify permitted fence heights for industrial uses,  
81 as well as clarify permitted gate locations and permitted gate heights for residential commercial,  
82 and industrial uses; and

83  
84           **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development Standards,”  
85 Section 23.4-10 – “Off-street parking,” to create standards for ribbon driveways, clarify dimensions  
86 of handicapped spaces, and create standard dimensions for motorcycle spaces; and

87  
88           **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development Standards,”  
89 Section 23.4-13 – “Administrative and conditional uses,” to correct the review process for places  
90 of worship; and

91  
92           **WHEREAS**, the City wishes to amend Chapter 23, Article 4 “Development Standards,” to  
93 establish a new section, Section 23.4-26 – “Pools,” to establish supplementary development  
94 standards for pools associated with residential uses; and

95  
96           **WHEREAS**, the City wishes to amend Chapter 23, Article 5 “Supplemental Regulations,”  
97 Section 23.5-1 - “Signs,” to clarify sign area requirements for multi-tenant buildings; and

98

99           **WHEREAS**, the City wishes to amend Chapter 23, Article 5 “Supplemental Regulations,”  
100 Section 23.5-3 - “Nonconformities,” to clarify the requirements for a nonconforming lot of record;  
101 and

102  
103           **WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning agency,  
104 considered the proposed amendments at a duly advertised public hearing; and

105  
106           **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local  
107 planning agency, considered the proposed amendments at a duly advertised public hearing; and

108  
109           **WHEREAS**, the City Commission has reviewed the proposed amendments and has  
110 determined that it is in the best interest of the public health, safety, and general welfare of the City  
111 to adopt this ordinance.

112  
113           **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF**  
114 **LAKE WORTH BEACH, FLORIDA, that:**

115  
116           **Section 1:**     The foregoing “WHEREAS” clauses are ratified and confirmed as being  
117 true and correct and are made a specific part of this ordinance as if set forth herein.

118  
119           **Section 2:**     Chapter 23 “Land Development Regulations, Article 1 “General  
120 Provisions,” Division 2 “Definitions,” Section 23.1-12 “Definitions” is hereby amended by adding  
121 the words shown in underline type and deleting the words struck through as indicated in **Exhibit**  
122 **A.**

123  
124           **Section 3:**     Chapter 23 Land Development Regulations, Article 2 “Administration,”  
125 Division 2 “Procedures,” Section 23.2-19.1 “Public neighborhood meeting” is hereby amended by  
126 adding the words shown in underline type and deleting the words struck through as indicated in  
127 **Exhibit B.**

128  
129           **Section 4:**     Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
130 Division 1 “Generally,” Section 23.3-6 “Use Tables” is hereby amended by adding the words  
131 shown in underline type and deleting the words struck through as indicated in **Exhibit C.**

132  
133           **Section 5:**     Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
134 Division 2 “Residential Districts,” Section 23.3-7 “SF-R – Single-family residential” is hereby  
135 amended by deleting the words struck through as indicated in **Exhibit D.**

136  
137           **Section 6:**     Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
138 Division 2 “Residential Districts,” Section 23.3-8 “SF-TF 14 – Single-family and two-family  
139 residential” is hereby amended by deleting the words struck through as indicated in **Exhibit E.**

140  
141           **Section 7:**     Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
142 Division 2 “Residential Districts,” Section 23.3-10 “MF-20 – Multi-family and two-family residential”  
143 is hereby amended by deleting the words struck through as indicated in **Exhibit F.**

144  
145           **Section 8:**     Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
146 Division 2 “Residential Districts,” Section 23.3-11 “MF-30 – Medium density multi-family  
147 residential” is hereby amended by deleting the words struck through as indicated in **Exhibit G.**  
148

149            **Section 9:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
150 Division 2 “Residential Districts,” Section 23.3-12 “MF-40 – High density multi-family residential”  
151 is hereby amended by deleting the words struck through as indicated in **Exhibit H**.

152  
153            **Section 10:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
154 Division 3 “Mixed Use Districts,” Section 23.3-13 “MU-E – Mixed use east” is hereby amended by  
155 deleting the words struck through as indicated in **Exhibit I**.

156  
157            **Section 11:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
158 Division 3 “Mixed Use Districts,” Section 23.3-14 “DT – Downtown” is hereby amended by adding  
159 the words shown in underline type and deleting the words struck through as indicated in **Exhibit**  
160 **J**.

161  
162            **Section 12:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
163 Division 3 “Mixed Use Districts,” Section 23.3-16 “MU-FH – Mixed use-Federal Highway ” is  
164 hereby amended by adding the words shown in underline type and deleting the words struck  
165 through as indicated in **Exhibit K**.

166  
167            **Section 13:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
168 Division 3 “Mixed Use Districts,” Section 23.3-17 “MU-DH – Mixed use-Dixie Highway” is hereby  
169 amended by deleting the words struck through as indicated in **Exhibit L**.

170  
171            **Section 14:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
172 Division 3 “Mixed Use Districts,” Section 23.3-18 “MU-W – Mixed use west” is hereby amended  
173 by adding the words shown in underline type and deleting the words struck through as indicated  
174 in **Exhibit M**.

175  
176            **Section 15:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
177 Division 3 “Mixed Use Districts,” Section 23.3-19 “TOD-E – Transit oriented development east” is  
178 hereby amended by adding the words shown in underline type and deleting the words struck  
179 through as indicated in **Exhibit N**.

180  
181            **Section 16:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
182 Division 3 “Mixed Use Districts,” Section 23.3-20 “TOD-W – Transit oriented development west”  
183 is hereby amended by adding the words shown in underline type and deleting the words struck  
184 through as indicated in **Exhibit O**.

185  
186            **Section 17:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
187 Division 4 “Commercial Districts,” Section 23.3-21 “NC – Neighborhood commercial” is hereby  
188 amended by deleting the words struck through as indicated in **Exhibit P**.

189  
190            **Section 18:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
191 Division 5 “Industrial Districts,” Section 23.3-23 “AI – Artisanal Industrial” is hereby amended by  
192 adding the words shown in underline type and deleting the words struck through as indicated in  
193 **Exhibit Q**.

194  
195            **Section 19:** Chapter 23 Land Development Regulations, Article 3 “Zoning Districts,”  
196 Division 5 “Industrial Districts,” Section 23.3-24 “I-POC – Industrial Park of Commerce” is hereby  
197 amended by adding the words shown in underline type and deleting the words struck through as  
198 indicated in **Exhibit R**.

199



200           **Section 20:** Chapter 23 Land Development Regulations, Article 4 “Development  
201 Standards,” Section 23.4-4 “Fences, walls and gates” is hereby amended by adding the words  
202 shown in underline type and deleting the words struck through as indicated in **Exhibit S**.

203  
204           **Section 21:** Chapter 23 Land Development Regulations, Article 4 “Development  
205 Standards,” Section 23.4-10 “Off-street parking” is hereby amended by adding the words shown  
206 in underline type as indicated in **Exhibit T**.

207  
208           **Section 22:** Chapter 23 Land Development Regulations, Article 4 “Development  
209 Standards,” Section 23.4-13 “Administrative and conditional uses” is hereby amended by adding  
210 the words shown in underline type and deleting the words struck through as indicated in **Exhibit**  
211 **U**.

212  
213           **Section 23:** Chapter 23 Land Development Regulations, Article 4 “Development  
214 Standards,” is hereby amended by adding thereto a new Section 23.4-26 “Pools” to read as shown  
215 in underline type in **Exhibit V**.

216  
217           **Section 24:** Chapter 23 Land Development Regulations, Article 5 “Supplemental  
218 Regulations,” Section 23.5-1 “Signs” is hereby amended by adding the words shown in underline  
219 type and deleting the words struck through as indicated in **Exhibit W**.

220  
221           **Section 25:** Chapter 23 Land Development Regulations, Article 5 “Supplemental  
222 Regulations,” Section 23.5-3 “Nonconformities” is hereby amended by adding the words shown  
223 in underline type and deleting the words struck through as indicated in **Exhibit X**.

224  
225           **Section 26:** Severability. If any section, subsection, sentence, clause, phrase or portion  
226 of this Ordinance is for any reason held invalid or unconstitutional by any court of competent  
227 jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and  
228 such holding shall not affect the validity of the remaining portions thereof.

229  
230           **Section 27:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in conflict  
231 herewith are hereby repealed to the extent of such conflict.

232  
233           **Section 28:** Codification. The sections of the ordinance may be made a part of the City  
234 Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and  
235 the word “ordinance” may be changed to “section”, “division”, or any other appropriate word.

236  
237           **Section 29:** Effective Date. This ordinance shall become effective 10 days after  
238 passage.

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240           The passage of this ordinance on first reading was moved by \_\_\_\_\_,  
241 seconded by \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- 242  
243           Mayor Betty Resch  
244           Vice Mayor Sarah Malega  
245           Commissioner Christopher McVoy  
246           Commissioner Mimi May  
247           Commissioner Reinaldo Diaz

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249           The Mayor thereupon declared this ordinance duly passed on first reading on the \_\_\_\_\_  
250 day of \_\_\_\_\_, 2024.

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The passage of this ordinance on second reading was moved by \_\_\_\_\_,  
seconded by \_\_\_\_\_, and upon being put to a vote, the vote was as follows:

- Mayor Betty Resch
- Vice Mayor Sarah Malega
- Commissioner Christopher McVoy
- Commissioner Mimi May
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the \_\_\_\_\_ day of  
\_\_\_\_\_, 2024.

LAKE WORTH BEACH CITY COMMISSION

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

\_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

EXHIBIT A

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 1 "GENERAL PROVISIONS"

Article 1, "General Provisions," Division 2, "Definitions"

Sec. 23.1-12. – Definitions.

\*\*\*

Accessory storage: Indoor storage area(s) that are incidental and subordinate to a permitted principal use on a property. Accessory storage shall not exceed thirty (30%) of the total use area. Indoor storage exceeding thirty percent of the total use area shall be considered a principal use and shall be subject to the requirements in the Use Table, Section 23.3-6.

\*\*\*

*Contractor—Showroom:* A showroom where no manufacturing, assembly, processing or any other industrial uses are located. A contractor showroom greater than two thousand five hundred (2,500) square feet is not permitted in the DT districts. Outdoor ~~or indoor~~ storage uses are not permitted as accessory to a contractor showroom outside of industrial districts. The business office of a contractor and a contractor showroom may occur within the same structure.

\*\*\*

*Holistic health care facility:* A health-related use conducting natural, non-invasive procedures to promote self-healing. Holistic health care facilities offer singular or multiple services including but not limited to diet counseling, exercise, psychotherapy, relationship and spiritual counseling, acupuncture, chiropractic care, massage therapy, naturopathy.

\*\*\*

*Low-intensity offices uses:* These are commercial office uses that typically do not generate high volumes of customer traffic, to include the following and those that are substantially similar or related:

*Administrative/professional services non medical.*

*Contractor office no outdoor/~~indoor~~ storage.*

*Home occupation.*

*Management office.*

\*\*\*

Ribbon driveway: A ribbon driveway consists of two strips of impermeable or semi-permeable surface to accommodate vehicle tires. Ribbon driveways are a common and historically appropriate alternative to standard residential driveways, as they reduce a property's overall impermeable surface coverage. Ribbon driveways are subject to the same minimum dimensions as standard parking spaces. Individual "ribbons" are only permitted within the property (not the right-of-way) and shall measure between eighteen (18) inches and thirty (30) inches in width.

\*\*\*

*Semi-pervious surface:* A surface covered by materials with a percolation rate of at least fifty (50) percent relative to the ground percolation rate. Semi-pervious surface may include but are

325 not limited to permeable paving material and other semi-pervious materials such as gravel, small  
326 stone, and other substantially similar materials. For semi-pervious surfaces, two (2) square feet  
327 of semi-pervious surface shall be equivalent to one (1) square foot of impervious surface for the  
328 purpose of calculating development regulations. The semi-pervious surface credit shall not reduce  
329 the required open space and landscape area requirements. Semi-pervious surfaces shall have a  
330 minimum of a one-foot setback from the side property lines and rear property line.  
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**EXHIBIT B**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 2 "ADMINISTRATION"

*Article 2, "Administration," Division 2, "Procedures"*

**Sec. 23.2-19.1. – Public Neighborhood Meeting.**

\*\*\*

(e) The public neighborhood meeting shall be held at a location that is accessible to the public and which will reasonably accommodate the number of persons notified of the meeting. The meeting may be in person, ~~virtual~~ or a combination of ~~both~~ in person and virtual.

**EXHIBIT C**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

*Article 3, "Zoning Districts" Division 1, "Generally"*

**Sec. 23.3-6. – Use Tables.**

**Under separate cover.**

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**EXHIBIT D**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 2, "Residential Districts"

**Sec. 23.3-7. – SF-R – Single-Family Residential.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs not to exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

**EXHIBIT E**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 2, "Residential Districts"

**Sec. 23.3-8. – SF-TF 14 – Single-Family and Two-Family Residential.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs not to exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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**EXHIBIT F**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 2, "Residential Districts"

**Sec. 23.3-10. – MF-20 – Multi-Family and Two-Family Residential.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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**EXHIBIT G**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 2, "Residential Districts"

**Sec. 23.3-11. – MF-30 – Medium Density Multi-Family Residential.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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**EXHIBIT H**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 2, "Residential Districts"

**Sec. 23.3-12. – MF-40 – High Density Multi-Family Residential.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	Street lot side – 10 ft. minimum up to a maximum of 22 ft.
		Interior lot side - 10% of width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		Roof overhangs shall not exceed more than 2 ft.

*portion of table omitted for brevity.*

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**EXHIBIT I**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

**Sec. 23.3-13. – MU-E – Mixed Use East.**

\*\*\*

d) Development regulations for uses permitted by right

*portion of table omitted for brevity.*

Setback	Side	Lake Avenue and Lucerne Avenue – 10ft. on street and 0 ft. on interior lot.
		First Avenue South and Second Avenue North – 10ft. on street and 0 ft. on interior lot for.
		Federal Highway – 10ft. on street and 10% of width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width on interior lot.
		Sixth Avenue South and Tenth Avenue North – Gateways – 10ft. on street and 10% of width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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**EXHIBIT J**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

**Sec. 23.3-14. – DT – Downtown.**

\*\*\*

d) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10ft. on street and 0 ft. on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

4. *Minimum setbacks for buildings.*

\*\*\*

B. Minimum side setback:

\*\*\*

(4) Roof overhangs shall not project more than two (2) feet into the setback.

\*\*\*

**EXHIBIT K**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

**Sec. 23.3-16. – MU-FH – Mixed Use – Federal Highway.**

\*\*\*

d) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width.
		Two story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

3. *Minimum setbacks for nonresidential buildings.*

\*\*\*

B. Minimum side setback:

\*\*\*

(3) Roof overhangs shall not project more than two (2) feet into the setback.

\*\*\*

EXHIBIT L

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

Sec. 23.3-17. – MU-DH – Mixed Use – Dixie Highway.

\*\*\*

d) Development regulations for uses permitted by right

portion of table omitted for brevity.

Setback	Side	10ft. on street and 0 ft. on interior lot.
		Roof overhangs shall not exceed more than 2 ft.

portion of table omitted for brevity.

\*\*\*

3. Setbacks and Build-to lines.

A. Front build-to line:

\*\*\*

(3) Front ~~setback~~ build-to line can be increased by eight (8), ten (10) or twelve (12) feet if the building provides an open arcade or public plaza.

\*\*\*

B. ~~Minimum side setback~~ Side:

(1) ~~From street side~~ build-to lot-line: Ten (10) feet.

(2) ~~From~~ Minimum interior side setback ~~lot-line~~: None.

(3) Street side ~~setback~~ build-to line can be increased by eight (8), ten (10) or twelve (12) feet if the building is provided an open arcade or public plaza.

4. ~~Build-to line.~~ All buildings fronting on Dixie Highway shall be situated ten (10) feet from the property line to afford a consistent building line along the street. If public arcade or public open space is provided the build-to-line may be adjusted in increments of eight (8), ten (10) and twelve (12) feet. Reserved.

\*\*\*

**EXHIBIT M**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

**Sec. 23.3-18. – MU-W – Mixed Use West.**

\*\*\*

d) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	20ft. minimum on street
		10% of overall lot width, minimum of 3 ft., up to a minimum of 20 ft. for lots over 200 ft. in width on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

4. *Minimum setbacks for buildings.*

\*\*\*

B. Minimum side setback:

\*\*\*

(4) Roof overhangs shall not project more than two (2) feet into the setback.

\*\*\*



EXHIBIT N

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

Sec. 23.3-19. – TOD-E – Transit Oriented Development East.

\*\*\*

d) Development regulations for uses permitted by right

portion of table omitted for brevity.

Setback	Side	10ft. on street and 0 ft. on interior lot.
		Roof overhangs shall not exceed more than 2 ft.

portion of table omitted for brevity.

\*\*\*

3. ~~Minimum setbacks and build-to lines for buildings.~~

A. Front setback-build-to line:

\*\*\*

(3) Front ~~setback~~ build-to line can be increased by eight (8), ten (10) or twelve (12) feet if the building is provided an open arcade or public plaza.

\*\*\*

B. ~~Minimum side setback~~ Side:

(1) ~~From street side~~ build-to lot-line: Ten (10) feet.

(2) ~~From~~ Minimum interior side setback ~~lot line~~: None.

(3) Street side ~~setback~~ build-to line can be increased by eight (8), ten (10) or twelve (12) feet if the building is provided an open arcade or public plaza.

(4) Roof overhangs shall not exceed more than two (2) feet into the setback.

4. ~~Build-to line. All buildings fronting on Lake or Lucerne Avenues shall be situated five (5) feet from the property line to afford a consistent building line along the avenues. If public arcade or public open space is provided the build-to-line may be adjusted in increments of eight (8), ten (10) and twelve (12) feet. Reserved.~~

\*\*\*

**EXHIBIT O**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 3, "Mixed Use Districts"

**Sec. 23.3-20. – TOD-W – Transit Oriented Development West.**

\*\*\*

d) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10ft. on street and 0 ft. on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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4. *Minimum setbacks for buildings.*

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B. Minimum side setback:

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(4) Roof overhangs shall not project more than two (2) feet into the setback.

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**EXHIBIT P**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 4, "Commercial Districts"

**Sec. 23.3-21. – NC – Neighborhood Commercial.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10% lot width, minimum of 3 ft. up to a minimum of 10 ft. for lots over 100 ft. in width
		Two-story buildings shall be set back a minimum of 5 ft.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

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**EXHIBIT Q**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 5, "Industrial Districts"

**Sec. 23.3-23. – AI – Artisanal Industrial.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	10ft. on street and 0 ft. on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

3. *Minimum setbacks for buildings.*

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B. Minimum side setback:

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(3) Roof overhangs shall not project more than two (2) feet into the setback.

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**EXHIBIT R**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 3 "ZONING DISTRICTS"

Article 3, "Zoning Districts" Division 5, "Industrial Districts"

**Sec. 23.3-24. – I-POC – Industrial Park of Commerce.**

\*\*\*

c) *Development regulations for uses permitted by right*

*portion of table omitted for brevity.*

Setback	Side	20 ft. on street and 0 ft. on interior lot.
		<del>Roof overhangs shall not exceed more than 2 ft.</del>

*portion of table omitted for brevity.*

\*\*\*

3. *Minimum setbacks for buildings.*

\*\*\*

B. Minimum side setback:

\*\*\*

(3) Roof overhangs shall not project more than two (2) feet into the setback.

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**EXHIBIT S**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

**Sec. 23.4-4. – Fences, walls and gates.**

\*\*\*

d) *Single-family and two-family residential uses.*

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4. *Gates and gateposts.*

\*\*\*

C. ~~Electronic security gates and keypad/call boxes shall be located a minimum of twenty-five (25) feet from the property line/right-of-way to prevent stacking of automobiles into the public right-of-way.~~ Rolling, swing, or electronic gates leading to a driveway, and/or parking space(s) shall be located a minimum of five (5) feet from the property line. The minimum stacking distance may be increased in the event the city engineer determines traffic safety so requires. Such increase shall be based on a gate queuing analysis performed by a certified traffic engineer to be provided by the applicant.

\*\*\*

E. Gates shall only provide access to the property listed on the permit application. Gates shall not be located so as to provide access to a neighboring property or the Municipal Golf Course.

\*\*\*

e) *Multi-family residential uses.*

\*\*\*

4. *Gates and gateposts.*

\*\*\*

C. ~~Electronic security gates and keypad/call boxes shall be located a minimum of twenty-five (25) feet from the property line/right-of-way to prevent stacking of automobiles in the public right-of-way.~~ Rolling, swing, or electronic gates leading to a driveway, parking space, and/or parking lot shall be located a minimum of five (5) feet from the property line. The minimum queuing distance may be increased in the event the city engineer determines traffic safety so requires. Such increase shall be based on a gate queuing analysis from a certified traffic consultant to be provided by the applicant.

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E. Gates shall only provide access to the property listed on the permit application. Gates shall not be located so as to provide access to a neighboring property or the Municipal Golf Course.

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f) *Commercial/vehicular/non-residential uses.*

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6. Gates and gateposts shall not exceed a height of two (2) feet above the allowable fence height for the location. Gates shall only provide access to the property listed on the permit application. Gates shall not be located so as to provide access to a neighboring property or the Municipal Golf Course.

\*\*\*

g) *Industrial uses.*

\*\*\*

5. Except as otherwise provided herein, all fences, walls, and hedges shall have a maximum height of six (6) feet. Except as otherwise provided herein, all fences and walls shall be set back to the minimum building setback line on the front of the lot for traffic vision purposes and hedges within the front setback area shall be a maximum of thirty (30) inches in height from the edge of the street or alley surface.

**EXHIBIT T**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

**Sec. 23.4-10. – Off-street parking.**

\*\*\*

j) *Minimum parking dimensions.*

1. The standard parking space is nine (9) feet in width and eighteen (18) feet in length in a perpendicular and/or angled configuration. Parallel parking spaces shall be nine (9) feet in width and twenty-two (22) feet in length.

- a. Ribbon driveways (also called parking strips) shall leave a nine (9) foot-wide area for the parking space and the ribbons shall measure between eighteen (18) and thirty (30) inches in width.

\*\*\*

2. *Parking lot designs:*

- a. Parking space dimension for other types of spaces are:

\*\*\*

- ii. Handicapped Spaces at twelve (12) feet x eighteen (18) feet, with a five (5) foot wide designated access aisle.
- iii. Motorcycle Spaces at four (4) feet x nine (9) feet.



**EXHIBIT U**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

**Sec. 23.4-13. – Administrative uses and conditional uses.**

\*\*\*

c) *Standards.*

\*\*\*

9. *Places of worship.*

A. *Purpose.* It is the purpose of this section ~~is~~ to provide regulations and standards for places of worship within designated zoning districts. Places of worship shall be approved through the appropriate regulatory board by ~~conditional~~ administrative use procedures.

**EXHIBIT V**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 4 "DEVELOPMENT STANDARDS"

**Sec. 23.4-26. – Pools.**

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848 a) Residential swimming pools.  
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850 1. No swimming pool shall be located closer than five (5) feet to any rear property  
851 line or within any easement for utilities, drainage or access.  
852 2. Special yard situations.  
853 a. Pools in the rear yard of a property with dual frontage shall have a minimum  
854 setback of 10 feet from the secondary front (rear) property line and shall be  
855 screened with fencing and/or landscape screening, subject to the  
856 regulations in LDR Sections 23.4-4 and 23.6-1.  
857 3. Pool decks and patios.  
858 a. At grade deck or patio constructed in conjunction with any swimming pool  
859 shall not be located within an easement or closer than one (1) foot to any  
860 property line.  
861 b. Above grade deck or patio constructed in conjunction with any swimming  
862 pool shall be not be located within an easement or and shall follow the  
863 setback requirements for structures as provided in the subject zoning  
864 district.  
865 4. Pool enclosures. Screen enclosures for swimming pools shall not be located within  
866 an easement and shall follow the setback requirements for structures as provided  
867 in the subject zoning district.  
868 5. Pool equipment shall be subject to the requirements of Section 23.4-16.  
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**EXHIBIT W**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 5 "SUPPLEMENTAL REGULATIONS"

**Sec. 23.5-1. – Signs.**

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f) *Regulations according to property uses.*

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6. ~~Shopping centers and strip centers.~~ Multi-tenant buildings.

A. ~~Shopping centers and strip centers.~~ Multi-tenant buildings shall be exempt from the total combined sign area requirements.

B. The maximum allowable sign area for wall signs for each business in a multi-tenant building shall be one (1) square foot for each linear foot of the subject business' frontage.

**EXHIBIT X**

Chapter 23

LAND DEVELOPMENT REGULATIONS ARTICLE 5 "SUPPLEMENTAL REGULATIONS"

**Sec. 23.5-3. – Nonconformities.**

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- c) *Nonconforming lots of record.* A nonconforming lot of record is a ~~platted~~ legally created lot which by width, depth, area, dimension or location does not meet current standards set forth in these LDRs. In any zoning district in which single-family dwelling units are permitted, notwithstanding limitations imposed by other provisions of these LDRs, a single-family dwelling unit and customary accessory buildings may be erected on any single nonconforming lot of record ~~so platted~~ legally created on or before January 5, 1976. For lots in the College Park and Worthmore Park subdivisions, if two (2) or more such lots, or combination of lots or portions of lots, with continuous frontage in single ownership were of record on January 5, 1976, the lands involved shall be considered to be an individual parcel or building site for the purpose of these LDRs and shall be no less than fifty (50) feet in width. No portion of said parcel shall be used or sold in a manner which prevents compliance with lot width and area requirements established by these LDRs. For lots created after January 5, 1976, no division of any parcel shall be made which creates a lot width or area below the requirements stated in these LDRs.

Sec. 23.3-6. Use tables. Note: amended text is shown below as underlined for new text and stricken text for deleted text. Uses or sections with modified text are also highlighted.

TYPE/USE	SF-R	SF-TF 14	MH-7	MF-20	MF-30	MF-40	MU-E Lake & Lucerne	MU-E 1 <sup>st</sup> & 2 <sup>nd</sup> Edges	MU-E Federal Hwy	MU-E 10 <sup>th</sup> & 6 <sup>th</sup>	DT	MU- FH	MU- DH	MU-W Lake & 10 <sup>th</sup>	TOD-E	TOD- W	NC	BAC	AI	I-POC	
Note: P is Permitted by Right, A is Administrative Use Permit (staff level review), and C is Conditional Use Permit (board level review). All residential uses except for single-family and two-family greater than 7,500 sf shall require a conditional use approval.																					
<b>RESIDENTIAL</b>																					
***																					
Dwelling, Single Family	P	P		P	P	P			P			P									
***																					
<b>RETAIL</b>																					
***																					
Low Intensity Retail Uses—Use area less than 2,500 sq. ft. and low intensity impact uses.																					
Take-out Establishments											A		A	A	A	A		A			
***																					
TYPE/USE	SF-R	SF-TF 14	MH-7	MF- 20	MF- 30	MF- 40	MU-E Lake & Lucerne	MU-E 1 <sup>st</sup> & 2 <sup>nd</sup> Edges	MU-E Federal Hwy	MU-E 10 <sup>th</sup> & 6 <sup>th</sup>	DT	MU- FH	MU- DH	MU- W Lake & 10 <sup>th</sup>	TOD-E	TOD- W	NC	BAC	AI	I-POC	
Note: P is Permitted by Right, A is Administrative Use Permit (staff level review), and C is Conditional Use Permit (board level review).																					
***																					
<b>INDUSTRIAL</b>																					
***																					
Medium Intensity Industrial Uses—Use area less than 7,500 sq. ft. and/or medium intensity impact uses.																					
***																					
Brewery/Distillery—Specialty											C		C	C	A				A		
***																					
Wholesale and Distribution Facilities														A					A	A+U M1- AA &2	A
***																					
Low Intensity Industrial Uses—Use area less than 2,500 sq. ft. and low intensity impact uses.																					
***																					
Storage – Indoor																				P	P
***																					

TYPE/USE	SF-R	SF-TF 14	MH-7	MF- 20	MF- 30	MF- 40	MU-E Lake & Lucerne	MU-E 1st & 2nd Edges	MU-E Federal Hwy	MU-E 10th & 6th	DT	MU- FH	MU- DH	MU- W Lake & 10th	TOD- E	TOD- W	NC	BAC	AI	I-POC	Cultural Arts
<b>Note: P is Permitted by Right, A is Administrative Use Permit (staff level review), and C is Conditional Use Permit (board level review).</b>																					
<b>INSTITUTIONAL</b>																					
<b>High Intensity Institutional Uses—Use area greater than 7,500 sq. ft. and/or high intensity impact uses.</b>																					
***																					
Museums							C		C		C		C		<u>C</u>				C		
***																					
Places of Worship	<u>C</u>	<u>C</u>		<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>					
***																					
<b>Medium Intensity Institutional Uses—Use area less than 7,500 sq. ft. and/or medium intensity impact uses.</b>																					
***																					
Museums							A		A		A				<u>A</u>				A		
***																					
<b>Low Intensity Institutional Uses—Use area less than 2,500 sq. ft. and low intensity impact uses.</b>																					
Environmental Nature Centers							<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>			<u>P</u>	<u>P</u>	<u>P</u>				<u>P</u>	
Museum							<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	P			<u>P</u>	<u>P</u>	<u>P</u>				P	



DATE: September 4, 2024

TO: Members of the and Historic Resources Preservation and Planning & Zoning Boards

FROM: William Waters, Director Community Sustainability

MEETING: September 11 & September 18, 2024

SUBJECT: **Ordinance 2024-13**: Consideration of an ordinance amending multiple sections of Chapter 23 “Land Development Regulations” to address several housekeeping items and minor changes for clarity.

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**PROPOSAL / BACKGROUND/ ANALYSIS:**

The proposed LDR Amendments will modify the following sections of the City’s Land Development Regulations:

- Article 1 – Section 23.1-12: Definitions
- Article 2 – Section 23.2-19.1: Public Neighborhood Meeting
- Article 3 – Section 23.3-6: Use Tables
- Article 3 – Section 23.3-7: Single-Family Residential (SF-R)
- Article 3 – Section 23.3-8: Single-Family and Two-Family Residential (SF-TF 14)
- Article 3 – Section 23.3-10: Multi-Family Residential (MF-20)
- Article 3 – Section 23.3-11: Medium Density Multi-Family Residential (MF-30)
- Article 3 – Section 23.3-12: High Density Multi-Family Residential (MF-40)
- Article 3 – Section 23.3-13: Mixed Use – East (MU-E)
- Article 3 – Section 23.3-14: Downtown (DT)
- Article 3 – Section 23.3-16: Mixed Use – Federal Highway (MU-FH)
- Article 3 – Section 23.3-17: Mixed Use – Dixie Highway (MU-DH)
- Article 3 – Section 23.3-18: Mixed Use – West (MU-W)
- Article 3 – Section 23.3-19: Transit Oriented Development East (TOD-E)
- Article 3 – Section 23.3-20: Transit Oriented Development West (TOD-W)
- Article 3 – Section 23.3-21: Neighborhood Commercial (NC)
- Article 3 – Section 23.3-23: Artisanal Industrial (AI)
- Article 3 – Section 23.3-24: Industrial Park of Commerce (I-POC)
- Article 4 – Section 23.4-4: Fence, Walls, and Gates
- Article 4 – Section 23.4-10: Off-Street Parking
- Article 4 – Section 23.4-13: Administrative Uses and Conditional Uses
- Article 4 – Section 23.4-26: Pools
- Article 5 – Section 23.5-1: Signs
- Article 5 – Section 23.5-3: Nonconformities

**Accessory Indoor Storage:** Adding a definition for accessory storage, including clarifications to the maximum use area, and revising definitions to contractor showroom and low-intensity office uses to allow accessory indoor storage.

**Use Table:** Revising the single family dwelling use to match the text of the Mixed Use – East zoning district, removing a redundant listing of low-intensity take-out establishments, revising the specialty brewery/distillery use to be permitted with an Administrative Use Permit (AUP) in the Transit Oriented Development East and Artisanal Industrial zoning districts, revising the wholesale use to permitted with an AUP in the Artisanal Industrial zoning district, creating a low-intensity indoor storage use permitted by right in the industrial zoning districts, creating a high-intensity place of worship use, and revising the institutional uses to allow for museums and environmental nature centers in multiple zoning districts.

**Public Neighborhood Meeting:** Require neighborhood meetings to include an in-person component

**Roof Overhang Encroachment:** Revising language in multiple zoning districts to correct and clarify the maximum two-foot encroachment of a roof overhang into a side setback.

**Build-To Line:** Amending language in the Mixed Use – Dixie Highway and Transit Oriented Development East zoning districts to clarify the requirement for a street side build-to line.

**Fences and Gates:** Clarifying permitted fence height for industrial uses as well as revising and clarifying permitted gate heights and locations for residential, commercial, and industrial uses.

**Parking:** Creating a definition and standards for ribbon driveways, clarifying the requirement for an access aisle to an ADA parking space, and creating standard dimensions for motorcycle parking spaces.

**Pools:** Creating a new section to clarify and establish supplementary development standards for residential pools, including setbacks, distance from easements, pool decks, and pool enclosures.

**Housekeeping Items:** Revising the definition of holistic health care facilities to allow for singular or multiple services within one facility, revising the definition for semi-pervious surface to clarify the minimum setback requirement, correcting the use approval review processes for places of worship, clarifying the maximum sign area requirements for multi-tenant buildings, and clarifying the requirements for a nonconforming lot of record.

**STAFF RECOMMENDATION:**

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission adopt Ordinance 2024-13.

**POTENTIAL MOTION:**

I move to **RECOMMEND/NOT RECOMMEND** TO THE CITY COMMISSION TO ADOPT the proposed LDR text amendments included in Ordinance 2024-13.

Attachments

- A. Draft Ordinance 2024-13
- B. Exhibit C – Use Table



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** City Manager and City Attorney

**TITLE:**

Interlocal Agreement with the Lake Worth Beach CRA and Grant Agreement with Florida Neighbors Foundation, Inc. for financial support of a project to be known as Madison Terrace Phase One

**SUMMARY:**

The Lake Worth Beach CRA is requesting support from the City, including the City enter into a Grant Agreement, for a low income housing tax credit application by New South Residential to develop a residential housing project to be known as Madison Terrace Phase One.

**BACKGROUND AND JUSTIFICATION:**

The Lake Worth Beach CRA has been requested to financially support a proposed residential housing project by New South Residential to be known as Madison Terrace Phase One. Support for and an Interlocal Agreement between the City and the CRA for Phase Two of this project were approved by the City Commission on July 16, 2024. The project will be developed on South Dixie Highway just south of 8<sup>th</sup> Avenue South. The CRA has agreed to commit \$640,000 toward the project's application for Low Income Housing Tax Credits (LIHTC) for Phase One. In order for the funding to meet Federal application requirements, the CRA funding would need to pass through the City and then to the Developer, Madison Terrace, LLC.

The request here is to support the CRA's commitment of \$640,000 for the LIHTC application by entering into an Interlocal Agreement with the CRA and entering into a Grant Agreement with Florida Neighbors Foundation, Inc. and Madison Terrace, LLC and to provide authorization for the Mayor and City Manager to sign the necessary Interlocal Agreement, Grant Agreement, and other required documents for the City to be a pass through of CRA funding to the Developer.

**MOTIONS:**

Move to approve/disapprove the Interlocal Agreement between the City and CRA, and other required documents, to support the CRA funding of and the City to be a pass through of the CRA funding for the proposed project to be known as Madison Terrace Phase One.

Move to approve/disapprove the Grant Agreement between the City and Florida Neighbors Foundation, Inc. to provide the CRA funding to Madison Terrace, LLC for the proposed project to be known as Madison Terrace Phase One.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A (Pass Through)  
Interlocal Agreement  
Grant Agreement  
Madison Terrace Summary  
Madison Terrace Renderings

**INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF LAKE WORTH BEACH AND THE  
LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY  
FOR FUNDING OF LOCAL GOVERNMENT CONTRIBUTION  
MADISON TERRACE PROJECT – PHASE I**

**THIS INTERLOCAL AGREEMENT FOR FUNDING OF LOCAL GOVERNMENT CONTRIBUTION FOR THE MADISON TERRACE PROJECT (“AGREEMENT”)** is made this \_\_\_ day of \_\_\_\_\_, 2024, by and between the **CITY OF LAKE WORTH BEACH**, a Florida municipal corporation, (hereinafter referred to as “**CITY**”), and the **LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic, duly created and operated pursuant to Chapter 163, Florida Statutes (hereinafter referred to as the “**LWBCRA**”).

**WITNESSETH:**

**WHEREAS**, the **CITY** is a municipal corporation organized and existing under the constitution and laws of the State of Florida; and

**WHEREAS**, Chapter 163, Florida Statutes, provides for the creation of community redevelopment agencies as separate but dependent governments of the municipalities that create community redevelopment agencies; and

**WHEREAS**, the **LWBCRA** is a Community Redevelopment Agency established by the **CITY**, pursuant to Part III, Chapter 163, Florida Statutes, to provide for redevelopment of blighted areas within the **LWBCRA** Community Redevelopment Area; and

**WHEREAS**, the developer of the Madison Terrace Project, Phase I (the “**Project**”), which is located at 821 S. Dixie Highway, Lake Worth Beach, Florida, within the **LWBCRA** Community Redevelopment Area, is required to have a local government contribution for the **Project** to be eligible for low income housing tax credits (the “**Contribution**”); and

**WHEREAS**, pursuant to this Agreement, the **City** and the **LWBCRA** are coordinating to provide funding pursuant to the Local Government Verification of Contribution – Loan Form which is attached hereto as Exhibit “**A**.” as the **Project** is located within the **LWBCRA**’s Community Redevelopment Area; and

**WHEREAS**, the Florida Housing Finance Corporation requires that the local government contribution be certified by the county or municipality to be eligible for low income housing tax credits; and

**WHEREAS**, this Agreement and the funding provided by the **CITY** and the **LWBCRA** complies with the provisions of Part III, Chapter 163, Florida Statutes, is consistent with the Community Redevelopment Plan, and serves both a municipal and public purpose.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

1. The recitations set forth above are hereby incorporated herein by reference.

2. **Payment of Funds by LWBCRA.** The LWBCRA agrees to provide to the CITY funds, which represent the Contribution, in a total amount not to exceed Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) for the Project, in a manner consistent with the Local Government Verification of Contribution – Loan Form which is attached hereto as Exhibit “A.” Upon request for funds from the developer, each party agrees to ensure the other party receives the notice and that the parties will proceed to process the payment to the developer. Once the CITY receives the Funds from the LWBCRA, the CITY shall provide the Funds to the developer of the Project within thirty (30) days, and provide the LWBCRA with proof of payment of the Contribution.

3. **Ratification.** The CITY hereby ratifies the signature of the Mayor on the Local Government Verification of Contribution – Loan Form attached hereto as Exhibit “A”.

4. **Continued Cooperation.** This Agreement assumes the close coordination and cooperation between the LWBCRA and the CITY particularly regarding certain aspects of the consideration and approval of the Project.

5. **Term and Termination.** This Agreement shall be in effect upon execution by the CITY and the LWBCRA, and shall remain in effect until December 31, 2026, unless extended or terminated. The LWBCRA and the CITY may agree to extend the Agreement, through the execution of a written amendment to this Agreement.

6. **Public Records.** The CITY and LWBCRA shall comply with the requirements of Section 119.07, *et.seq.*, Fla.Stat., related to the handling of public records.

7. **Sovereign Immunity.** Nothing contained in this Agreement shall be deemed to be a waiver of, or affect the rights, privileges, and immunities of the CITY or LWBCRA as set forth in Section 768.28, Fla.Stat.

8. **No General Obligation.** Neither this Agreement, nor the obligations imposed upon the CITY or the LWBCRA hereunder shall be or constitute an indebtedness or general obligation of the CITY or LWBCRA within the meaning of any constitutional statutory or charter provisions requiring the CITY or the LWBCRA, or other Governmental Authority to levy ad valorem taxes nor a lien upon any properties or funds of the CITY or the LWBCRA or other Governmental Authority. Nothing contained herein shall be deemed construed or applied to cause any Governmental Authority, specifically including the CITY and the LWBCRA, to waive its right to exercise its governmental power and authority or to consider any request causing the exercise of its governmental powers in any manner other than that which is customary for the exercise of such governmental powers.

(SIGNATURE PAGE TO FOLLOW)

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed on the day and year first above written.

**CITY OF LAKE WORTH BEACH**

**ATTEST:**

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC,  
City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

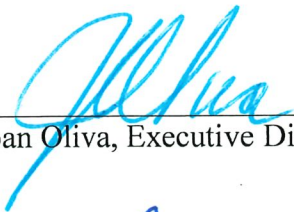
APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

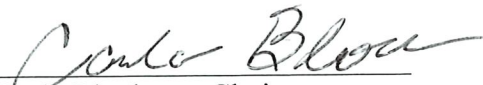
APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**LAKE WORTH BEACH COMMUNITY  
REDEVELOPMENT AGENCY**

  
\_\_\_\_\_  
Joan Oliva, Executive Director

  
\_\_\_\_\_  
Carla Blockson, Chair

Dated this 9 day of July, 2024

Exhibit A

FLORIDA HOUSING FINANCE CORPORATION  
LOCAL GOVERNMENT VERIFICATION OF CONTRIBUTION – LOAN FORM

Name of Development: Madison Terrace

Development Location: 821 S Dixie Hwy, Lake Worth Beach, FL 33460

(At a minimum, provide the address number, street name and city, and/or provide the street name, closest designated intersection and either the city (if located within a city) or county (if located in the unincorporated area of the county). If the Development consists of Scattered Sites, the Development Location stated above must reflect the Scattered Site where the Development Location Point is located.)

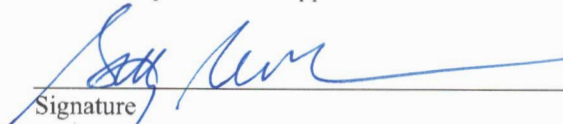
The City County of Lake Worth Beach, commits \$ 640,000 at face value, (which may be used as an FHFC Non-Corporation Funding Proposal in an Application for FHFC funding if it meets the required criteria) in the form of a reduced interest rate loan to the Applicant for its use solely for assisting the proposed Development referenced above.

Please note: In some competitive processes, Florida Housing will use the face value of the commitment minus the net present value of the commitment for scoring purposes. The net present value of the above-referenced loan, based on its payment stream, inclusive of a reduced interest rate and the designated discount rate (as stated in the applicable RFA) is: \$ \_\_\_\_\_.

No consideration or promise of consideration has been given with respect to the loan. For purposes of the foregoing, the promise of providing affordable housing does not constitute consideration. The commitment for this loan must be effective as of the Application Deadline for the applicable RFA, and is provided specifically with respect to the proposed Development.

CERTIFICATION

I certify that the foregoing information is true and correct and that this commitment is effective at least through the date required in the applicable RFA.

 _____ Signature	Betty Resch _____ Print or Type Name
Mayor _____ Print or Type Title	<u>Aug 31, 2023</u> _____ Date Signed

NOTE TO LOCAL GOVERNMENT OFFICIAL: Additional information is set forth in the applicable Request for Application under which the Applicant is applying for funding for the above referenced Development.

This certification must be signed by the chief appointed official (staff) responsible for such approvals, Mayor, City Manager, County Manager /Administrator/Coordinator, Chairperson of the City Council/Commission or Chairperson of the Board of County Commissioners. If the contribution is from a Land Authority organized pursuant to Chapter 380.0663, Florida Statutes, this certification must be signed by the Chair of the Land Authority. One of the authorized persons named above may sign this form for certification of state, federal or Local Government funds initially obtained by or derived from a Local Government that is directly administered by an intermediary such as a housing finance authority, a community reinvestment corporation, or a state-certified Community Housing Development Organization (CHDO). Other signatories are not acceptable. The Applicant will not receive credit for this contribution if the certification is improperly signed. The amount of the contribution stated on this form must be a precise dollar amount and cannot include words such as estimated, up to, maximum of, not to exceed, etc.

If there are alterations made to this form that change the meaning of the form, the form will not be accepted.

**AFFORDABLE HOUSING DEVELOPMENT AND GRANT AGREEMENT  
BETWEEN  
CITY OF LAKE WORTH BEACH  
and  
FLORIDA NEIGHBORS FOUNDATION, INC.**

This Affordable Housing Development and Grant Agreement (the “Agreement” or “Grant Agreement”), by and between the City of Lake Worth Beach, a municipal corporation organized and existing under the laws of the State of Florida (the “City”), through its City Commission (the “Commission”), and Florida Neighbors Foundation, Inc., a Florida not for profit corporation (the “Grantee”), with offices at 404 Avondale Ct., Winter Springs, Florida 32708, is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024.

WHEREAS, specifically, the 91 residential units will be leased to tenants whose incomes qualify them for occupancy under the Federal Low Income Housing Tax Credit program (the “LIHTC program”). Such income restrictions shall provide that all units shall be leased to families in compliance with the LIHTC program (the “**Project**”); and

WHEREAS, Madison Terrace, LLC, a Florida limited liability company (“Developer”) has agreed to build the Project on the property (known herein as the “Property” and described on “**Exhibit 1**”, attached hereto);

WHEREAS, the Developer has agreed to build the Project on the Property and operate and manage same for occupancy by tenants at certain rents based on a percentage of the AMI, adjusted for family size, established by HUD and as specifically set forth in the Rental Regulatory Agreement; and

WHEREAS, pursuant to the terms of this Agreement, the City has agreed to provide funding, not to exceed Six Hundred Forty Thousand and 00/100 Dollars (\$640,000.00) (the “Funding Allocation”), for reimbursable capital expenditures, provided, however, that the disbursement of funds is subject to the conditions set forth in this Agreement; and

WHEREAS, pursuant to a separate agreement between the City and the Lake Worth Beach Community Redevelopment Agency (the “CRA”), the CRA intends to provide the Funding Allocation to the City for disbursement subject to the conditions set forth in this Agreement; and

WHEREAS, the Board of Directors of the Grantee through a corporate resolution, have authorized its representative(s) to enter into this Agreement; and

WHEREAS, pursuant to a separate agreement between the Grantee and the Developer (the “Funding Agreement”), Grantee intends to lend the Funding Allocation to Developer for the development of the Property; and

NOW, THEREFORE, in consideration of the mutual covenants recorded in this Agreement and in consideration of the mutual promises and covenants contained and the mutual benefits to be derived from this Agreement, the parties agree as follows:

**Section 1. Parties; Effective Date; and Term.** The parties to this Agreement are the Grantee and the City. It is agreed by the parties hereto that the Project will be developed and constructed by the Developer in accordance with the description set forth in Section 2 below. The City acknowledges that the Grantee may delegate certain of its responsibilities to the Developer. It is agreed by the parties hereto that the Funding Allocation will be provided by the CRA through the City.

This Agreement shall take effect as of the date written above upon its execution by the authorized officers of the City and of the Grantee (such date the “Effective Date” or “Commencement Date”) and shall terminate upon the disbursement of funds following the completion of the Project and the issuance of a certificate of occupancy for the Units or twenty-four (24) months from the date of this Agreement, whichever occurs first. In this Agreement, Fiscal Year means the City's Fiscal Year which currently is October 1 through the following September 30. If the Project is not completed by the date set forth herein, this Agreement shall terminate and the City shall have no further obligation hereunder.

Notwithstanding the foregoing, this Agreement may be extended consistent with the extension of the Development Order issued by the City for the Project, subject to approval by the City.

**Section 2. Project Development and Description: Timetable; Use of Funds; Conditions to Disbursement of Funds.** The Project shall be developed in accordance with the requirements set forth in any and all plans and/or specifications reasonably necessary and provided to the City, which detail the Project (the “Development Plan”). As part of the Development Plan, the Developer shall be obligated to build 91 units that will be maintained and operated in accordance with the Project’s affordability restrictions (the “Affordable Units”) and all of the required parking for the Units as prescribed by the building code and the City’s land development regulations, including, Ordinance No. 2023-16, which shall control over any other regulations to the contrary (known herein as the “Project PD” and described on “**Exhibit 2**”, attached hereto). The Developer will take all actions necessary to fulfill all obligations of Grantee described pursuant to the Development Plan and related specifically to the construction of the Project.

**Section 3. Restrictive Covenant.** 100% of the Affordable Units shall be set aside for a mix of Eligible Tenants as that term is defined in the Rental Regulatory Agreement (the “Eligible Tenants”). The Rental Regulatory Agreement shall be recorded by the Grantee at its expense. City shall have no obligation to disburse any funds pursuant to this Agreement until evidence of such recordation is delivered to the City. City will have the opportunity to review the Rental Regulatory Agreement before it is recorded, and the Rental Regulatory Agreement will be in compliance with the requirements of the requirements of the City’s affordable/workforce housing program.

**Section 4. Payment of Funding Allocation; Disbursement of Funds.** The City agrees to disburse the full amount of the Funding Allocation to the Grantee or the Developer, if designated by the Grantee, as soon as it is practical or as soon as requested by either the Grantee or the Developer, but in no event sooner than the completion of the Project and the issuance by the City of a certificate of occupancy for the Project. Such funding shall be a) in accordance with this Agreement, and b) for eligible costs incurred in connection with the development of the Project. Such disbursement shall be made not more than thirty (30) days after the City’s receipt of the Grantee’s or Developer’s request for disbursement and receipt of invoices detailing the eligible costs incurred in connection with the development of the Project and shall, in any event, be no sooner than upon the issuance of a certificate of occupancy for the Project. In connection with the Grantee’s or Developer’s request for reimbursement, the Grantee and/or Developer, as applicable, shall also provide a written statement that (a) the Grantee is not in default pursuant to the provisions of this Agreement; and (b) all reasonably necessary reports relating to the Project have been submitted. The City shall only be obligated to reimburse the Grantee provided the Grantee is not in breach of this Agreement. Funds directly funded to the Developer shall be treated as if such funds were made to the Grantee directly and further remitted to the Developer.

**Section 5. Reserved.**

**Section 6. Reserved.**

**Section 7. Reserved.**

**Section 8. Program Monitoring and Evaluation.** The City may monitor and conduct an evaluation of the Grantee’s operations and the Project, which may include visits by City representatives to observe and discuss the progress of the Project with the



Grantee's or Developer's personnel; provided however, that (i) the City shall provide the Grantee ten (10) days' written notice of any such visit by City representatives and (ii) such visit does not stop, hinder, limit or interfere with the construction of the Project. In the event the City reasonably concludes, as a result of such monitoring and/or evaluation, that the Grantee is not in compliance with the terms of this Agreement or the Administrative Rules or for other reasons, then the City must provide in writing to the Grantee, within thirty (30) days of the date of said monitoring/evaluation, notice of the inadequacy or deficiencies noted which may significantly impact on the Grantee's and/or Developers' ability to complete the Project and fulfill the terms of this Agreement within a reasonable time frame. If Grantee and/or Developer refuses or is unable to address the areas of concern within thirty (30) days of receipt of such notice from the City, then the City, at its discretion, may declare the Grantee in Default of this Agreement. The City may also institute a moratorium on applications from the Grantee to City grants programs for a period of up to one (1) year. In addition to the Grantee, the City agrees to provide all notices required in this Section 8 to the Developer.

**Section 9. Accounting, Financial Review and Access to Records and Audits.** The Grantee must keep accurate and complete books and records for all receipts and expenditures of Funds received pursuant to this Agreement in conformance with general accounting standards. The City may examine these books, records and documents at the Grantee's offices or other approved site under the direct control and supervision of the Grantee during regular business hours and upon reasonable notice. These books and records, as well as all documents pertaining to payments received and made in contemplation of the disbursement of Funds pursuant to this Agreement, such as vouchers, bills, invoices, receipts and canceled checks, shall be retained within the City in a secure place and in an orderly fashion by the Grantee for a duration of no less than as required by the General Records Schedules published by the Florida Division of Library and Information Services.

The provisions in this Section shall apply to the Grantee, its contractors and their respective officers, agents and employees. The Grantee shall cause the Developer to meet the requirements of this Section and to incorporate the provisions in this Section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the City has under this Section shall not be the basis for any liability to accrue to the City from the Grantee, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the City shall have no obligation to exercise any of its rights for the benefit of the Grantee.

Grantee agrees to cooperate with the Internal Auditor of the City who has the right to access all financial and performance related records, property, and equipment purchased in whole or in part with governmental funds.

**Section 10. Reserved.**

**Section 11. Naming Rights and Advertisements.** It is understood and agreed between the parties that the Grant is collaboratively funded by the City and the CRA. Further, by

acceptance of the Funds, the Grantee agrees that the Project funded by this Agreement shall recognize and adequately reference the City and the CRA as funding sources.

**Section 12. Liability and Indemnification.** It is expressly understood and intended that neither the Grantee, as the recipient of the Funding Allocation, nor the Developer is an officer, employee or agent of the City, its Commission, or its officers; or of the CRA, its Board, or its officers. Further, for purposes of this Agreement, the parties agree that the Grantee, Developer, and the officers, agents and employees of each are independent contractors and solely responsible for the Project.

The Grantee shall take all actions as may be necessary to ensure that the Developer and the officers, agents, employees, assignees and/or subcontractors of the Grantee and the Developer shall not act as nor give the appearance of that of an agent, servant, joint venture partner, collaborator or partner of the City, the Commission, the CRA, the Board of the CRA, or the employees of the City or the CRA. No party or its officers, elected or appointed officials, employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

The Grantee agrees to be responsible for all work performed and all expenses incurred in connection with the Project. The Grantee may subcontract as necessary to complete Project, including entering into subcontracts with vendors for services and commodities, provided that it is understood by the Grantee that the City and the CRA shall not be liable to the subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract. It is expressly understood that the Grantee shall be loaning the proceeds of the Funds to the Developer which will be building the Project. The development of the Project will be overseen by, and shall be the responsibility of, the Developer. It is understood that certain of the responsibilities set forth herein undertaken by the Grantee may be satisfied by the Developer. The Grantee covenants and agrees that any loan of such proceeds to the Developer will be evidenced by a promissory note and secured by a mortgage which the Grantee will collaterally assign to the City to secure the obligation of the Grantee and Developer to comply with the terms of the restrictive covenant placed upon the Project in accordance with the terms of Section 42 of the Internal Revenue Code and the City's land development regulations, including the Project PD, which shall control over any other regulations to the contrary.

The Grantee shall indemnify and hold harmless the City, the CRA and the officers, employees, agents and instrumentalities of the City and the CRA from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City, the CRA or the officers, employees, agents or instrumentalities of the City or the CRA may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement and/or the

development of the Project by the Grantee or the Developer or their employees, agents, servants, partners, principals, sub-consultants or subcontractors (collectively, “Adverse Proceedings”). Grantee shall pay all actual losses in connection with such Adverse Proceedings and shall investigate and defend all Adverse Proceedings in the name of the City or CRA, where applicable, including appellate proceedings, and shall pay all out-of-pocket costs, and reasonable attorneys' fees, which may result from such Adverse Proceedings. Grantee expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Grantee shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City, the CRA or the officers, employees, agents and instrumentalities of the City and the CRA as provided in this Section 12. The Grantee shall have the Developer provide a substantially similar form of indemnification to the City and the CRA.

**Section 13. Assignment.** Other than as provided herein, the Grantee is not permitted to assign this Agreement or any portion of it other than as herein provided. Any purported assignment will render this Agreement null and void and subject to immediate rescission of the full amount of the Funding Allocation. The Grantee may assign its rights and obligations hereunder to an affiliate which is controlled by Grantee or its principals or to a Florida not for profit corporation if necessary to facilitate the use of federal low income tax credits for the benefit of the Project. The City acknowledges that the Grantee and/or Developer will be obtaining additional financing for the Project and that such lender(s) will require an assignment of this Agreement and/or the Funds to such lender(s) as additional security for their loans. To the extent required by the lender(s), the City agrees to cause a legal opinion acceptable to the lender(s) to be provided to the lender(s) regarding the enforceability of this Agreement and any such assignment to the lender(s). Such assignment will be expressly conditioned on the lender's agreement to use such Funds solely in fulfillment of the purposes set forth herein. Any such financing obtained by the Grantee for purposes of developing the Project will be senior in lien priority to the funding evidenced by this Grant Agreement.

**Section 14. Compliance with laws.** The Grantee is obligated and agrees to abide by and be governed by all Applicable laws necessary for the development and completion of the Project. “Applicable law” means any applicable law (including, without limitation, any environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued.

**Section 15. Default. Opportunity to Cure and Termination.**

- (a) Each of the following shall constitute a default (a “Grantee Default”) by the Grantee:
  - (1) If the Grantee shall breach any of the other covenants and/or this Agreement and the Grantee fails to cure its default within thirty (30) days after written notice of the default is given to the Grantee by the City; provided, however, that if not reasonably possible to cure

such default within the thirty (30) day period, such cure period may be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Grantee commences diligently and thereafter continues to cure. Such extension must be requested in writing to the City by the Grantee within the initial thirty (30) day cure period and approved in writing by the City.

(2) If the Grantee fails to complete the Project within two (2) years of the Commencement Date of this Agreement subject to extension as provided above and in Section 1.

(b) The following shall constitute a default (a "City Default") by the City:

(1) If the City shall breach any of the covenants or provisions in this Agreement and the City fails to cure its default within thirty (30) days after written notice of the default is given to the City by the Grantee; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the City commences diligently and thereafter continues to cure.

(c) Remedies:

(1) Upon the occurrence of a Grantee Default as provided in Section 15(a) and such default is not cured within the applicable grace or cure period, in addition to all other remedies conferred by this Agreement, this Agreement shall be terminated. This remedy shall survive the termination of this Agreement in the event funds were expended in violation of law or applicable City program regulations.

(2) Either party may institute litigation to recover damages for any Grantee Default or City Default (as applicable) or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy), provided, however, any damages sought by the Grantee shall be limited solely to legally available Funds in accordance with and not to exceed the Funding Allocation, and no other revenues of the City.

(3) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same

default or any other default.

- (4) Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.
  - (5) The Developer shall have the opportunity to cure any default of the Grantee within the time frame allotted to the Grantee under this Agreement.
- (d) Termination:
- (1) Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Agreement, by giving written notice of termination to the other party, but with respect to the City's right to termination, only to the extent that a material Grantee Default has occurred and is continuing beyond any applicable grace or cure period.
  - (2) Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.
  - (3) Upon termination of this Agreement pursuant to Section 15(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

These provisions do not waive or preclude the City from pursuing any other remedy, which may be available to it at law or equity.

The Developer and \_\_\_\_\_ as the \_\_\_\_\_ of the Developer and as lender to the Developer, shall have the opportunity to cure any default of the Grantee within the time frame allotted to the Grantee under this Agreement.

**Section 16. Waiver.** There shall be no waiver of any right related to this Agreement unless in writing and signed by the Grantee and the City. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

**Section 17. Written Notices.** Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person, one ( 1 ) business day after being sent by reputable overnight carrier or t h r e e ( 3 ) business days after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party);

The City:

City of Lake Worth Beach  
7 North Dixie Hwy.  
Lake Worth Beach, FL 33460  
Attn: City Manager

Copy to:

Torcivia, Donlon, Goddeau, & Rubin, P.A.  
City of Lake Worth Beach City Attorney  
701 Northpoint Pkwy., Suite 209  
West Palm Beach, FL 3407

Grantee:

Florida Neighbors Foundation, Inc.  
558 W. New England Ave., Suite 230  
Winter Park, FL 32789  
Attention: Lance Reibeling

Developer:

Madison Terrace, LLC  
558 W. New England Ave., Suite 230  
Winter Park, FL 32789  
Attention: Stacy Banach

**Section 18. Captions.** Captions as used in this Agreement are for convenience of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions in this Agreement.

**Section 19. Agreement Represents Total Agreement: Amendments.** This Agreement, and its attachments, which are incorporated in this Agreement, incorporate and include all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters pertaining to the Funding Allocation for the Project by the City and the development of the Affordable Units by the Grantee. Accordingly, it is agreed that no deviation from the terms of

this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect. This Agreement may be modified, altered or amended only by a written amendment duly executed by the City and the Grantee or their authorized representatives.

**Section 20. Litigation Costs/Venue.** In the event that the Grantee or the City institutes any action or suit to enforce the provisions of this Agreement, each party shall be responsible for its own out-of-pocket costs and reasonable attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The City and the Grantee agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Fifth Judicial Circuit in and for Palm Beach County, Florida, or in the United States District Court for the Southern District of Florida, in Palm Beach County, Florida. **TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.**

**Section 21. Representations of the Grantee.** The Grantee represents that this Agreement has been duly authorized by the governing body of the Grantee and that the governing body has designated Lindsey Sultan or such other individual or individuals who may be designated by the Grantee in writing from time to time (the "Authorized Officer"), as the individual with the required power and authority to execute this Agreement on behalf of Grantee. The Grantee represents that it is a validly existing not for profit corporation in good standing under the laws of the State of Florida.

Once this Agreement is properly and legally executed by its Authorized Officer, the governing body of the Grantee agrees to a) comply with the terms of this Agreement; b) comply with the terms of the Rental Regulatory Agreement; c) comply with all applicable laws, including, without limitation, the City's policy against discrimination; d) comply with the Administrative Rules; e) submit all written documentation required by the Administrative Rules and this Agreement to the City; f) not use coercion for labor or services as defined in section 787.06, Florida Statutes.

**Section 22. Responsibilities of Developer.** The City's agreement to allow the Funds paid to the Grantee to be subsequently re-loaned by the Grantee to the Developer was specifically conditioned upon the Developer developing the Project. Thus the parties acknowledge that the Developer will be responsible for the various obligations of the Grantee set forth in this Agreement. The Developer has joined in this Agreement for the express purpose of acknowledging such obligation. The Developer also certifies that it does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

**Section 23. Representation of the City.** The City represents that this Agreement has been duly approved by the Commission, as the governing body of the City, and the Commission has granted the Mayor, the required power and authority to execute this Agreement and that this is a legally enforceable agreement in accordance with its terms. The City agrees to provide Funds to the Grantee for the purpose of developing and improving the Project in accordance with terms of this Agreement, including its Exhibits, which are incorporated in this Agreement. The City shall only disburse the Funds if the Grantee is not in breach of this Agreement. The City's reimbursement obligations shall be fully subject to and contingent upon the availability of Funds when requested by the Grantee and/or Developer. The City's agreement to provide the Funding Allocation to the Grantee is reliant upon receipt of funds to the City from the CRA.

**Section 24. Reserved.**

**Section 25. Special Conditions.** The Funding Allocation has been allocated to the Grantee with the understanding that the Grantee is performing a public purpose by providing affordable rental units through the development of the Project. Use of the Funds for any purpose other than for the construction of the Affordable Units, certain soft costs related thereto and any such purpose previously approved by the CRA will be considered a material breach of the terms of this Agreement and will allow the City to seek remedies including, but not limited to, those outlined in Section 15 of this Agreement.

**Section 26. City's Rights As Sovereign.** Notwithstanding any provision of this Grant Agreement:

(a) The City retains all of its sovereign, regulatory, and police power prerogatives and rights as a municipality under Florida laws and shall not be estopped by virtue of this Agreement from withholding or refusing to issue any zoning approvals and/or building permits; from exercising its planning or regulatory duties and authority; and from requiring the Project to comply with all development requirements under present or future laws and ordinances applicable to its design, construction and development; and

(b) The City shall not by virtue of this Agreement be obligated to grant the Grantee, the Developer, or the Project or any portion of it, any approvals of applications for building, zoning, planning or development under present or future laws and ordinances applicable to the design, construction and development of the Project.


**Section 27. Invalidity of Provisions; Severability.** Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited or invalid under Applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

[Signature Pages to Follow]



[Grantee Signature Page to Grant Agreement]

FLORIDA NEIGHBORS FOUNDATION,  
INC., a Florida not-for-profit corporation

By:  \_\_\_\_\_

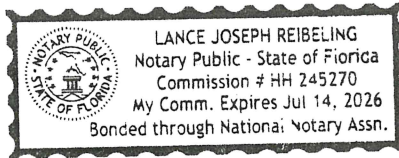
STATE OF FLORIDA

COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, by means of  physical presence or  online notarization, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, by Lindsey Sultan, as President of Florida Neighbors Foundation, Inc., a Florida not for profit corporation. He/she  is personally known to me or  has produced \_\_\_\_\_ as identification, and who did take an oath that the facts stated in the foregoing instrument with regard to section 787.06, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Florida Neighbors Foundation, Inc. to the same.

WITNESS my hand and official seal in the County and State last aforesaid this 30th day of September, 2024.

By:   
Notary Public  
Print Name:  
My Commission Expires:



[City Signature Page to Grant Agreement]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above:

ATTEST:

CITY OF LAKE WORTH BEACH, a  
municipal corporation organized and  
existing under the laws of the State of  
Florida

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

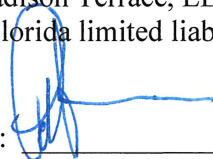
Approved by City Attorney as  
to form and legal sufficiency

By: \_\_\_\_\_  
Glen Torcivia, City Attorney

[Developer Signature Page to Grant Agreement]

AGREED TO AND ACKNOWLEDGED BY:

Madison Terrace, LLC,  
a Florida limited liability company


By:   
\_\_\_\_\_  
Patrick E. Law, its manager

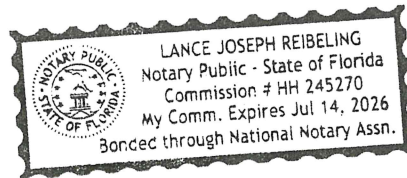
STATE OF FLORIDA

COUNTY OF ORANGE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgements, the foregoing instrument was acknowledged before me by means of X physical presence or    online notarization, by Patrick E. Law, as manager of Madison Terrace, LLC, a Florida limited liability company. He/she is X personally known to me or    has produced \_\_\_\_\_ as identification, and who did take an oath that the facts stated in the foregoing instrument with regard to section 787.06, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Madison Terrace, LLC, to the same.

WITNESS my hand and official seal in the County and State last aforesaid this 30<sup>th</sup> day of September, 2024.

By:   
Notary Public  
Print Name:  
My Commission Expires:



**EXHIBIT 1**  
**PROPERTY LEGAL DESCRIPTION**

**EXHIBIT 2**  
**PROJECT PD**

**ATTACHMENT 1  
ADMINISTRATIVE RULES**

[To Be Attached]

## Madison Terrace Affordable Housing Apartments for Seniors (55+)

### History

- In November 2022 the Lake Worth Beach CRA approved a grant of \$640,000 in support of the “Local Government Area of Opportunity Funding Goal” sponsored by the Florida Housing Finance Corporation.
- In August 2023 the Lake Worth Beach City Commission approved a PD zoning allowing two six-story buildings and up to 176 residential units of affordable housing age restricted to seniors 55 and older.
- The development provides for two phases with Phase 1 consisting of 91 units and Phase 2 consisting of 85 units.
- In September 2023 the developer New South Residential applied to Florida Housing for Low-Income Housing Tax Credits to fund the construction of Phase 1.
- In December 2023 the developer received its Invitation to Credit Underwriting and secured funding for Phase 1 construction which will start by the end of 2024.

### Status of Phase 2

- On July 18<sup>th</sup>, 2024 the developer New South Residential intends to submit an application to Florida Housing for tax credit funding for Phase 2.
- This year applicants in Palm Beach County do not qualify for the same “Local Government Area of Opportunity” funding goal but because the Phase 2 site is located in a CRA it qualifies for the “Revitalization” funding goal which the developer intends to apply for.
- This funding goal requires a “Local Government Contribution” of at least \$75,000.
- On July 9<sup>th</sup> the CRA Board will consider providing a grant in the amount of \$75,000 to support Phase 2.
- Although the CRA can provide the required funding it must pass through to the City for distribution to the developer.

### Request of the City Commission

- At the City’s July 16<sup>th</sup> Commission meeting, assuming that the CRA board approves the \$75,000 grant at its July 9<sup>th</sup> Board meeting, we request that the City Commission agrees to enter into an Interlocal Agreement with the CRA allowing the City Commission to utilize the CRA’s funds to support Madison Terrace Phase 2.

Phase I

Phase II







# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Water Utilities

**TITLE:**

Agreement with MAXX Environmental, LLC to provide Infrastructure Maintenance and Repair Services

**SUMMARY:**

The Agreement authorizes MAXX Environmental, LLC to provide Infrastructure Maintenance and Repair services for a cost not to exceed \$150,000.

**BACKGROUND AND JUSTIFICATION:**

The City of Lake Worth Beach is seeking authorization to piggyback the Sun'n Lake of Sebring Improvement District Contract awarded to MAXX Environmental, LLC for Infrastructure Maintenance and Repair services. Sun'n Lake of Sebring Improvement District put a request for proposal out for Infrastructure Repair and Maintenance services under Solicitation #21-04. After evaluation by the District, the contract was awarded to MAXX Environmental, LLC effective March 25, 2024, for one (1) year, with an option to renew for three (3) additional one (1) year periods. The City's Water Utilities Department will use the agreement for the rehabilitation of existing manholes in the wastewater system.

**MOTION:**

Move to approve/disapprove the agreement with MAXX Environmental, LLC to provide Infrastructure Maintenance and Repair services at a cost not to exceed \$150,000.00.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
MAXX Environmental Agreement

**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
<b>Inflows/Revenues</b>					
Appropriated (Budgeted)	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
<b>Outflows/Expenditures</b>					
Appropriated (Budgeted)	\$150,000	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
<b>Net Fiscal Impact</b>					
<i>(If not budgeted)</i>	0	0	0	0	0
<b>No. of Addn'l Full-Time</b>					
<b>Employee Positions</b>	0	0	0	0	0

<b>Contract Award - Existing Appropriation (Budgeted)</b>	
	Expenditure
Department	Water Utilities
Division	Local Sewer
GL Description	Improve Other than Build / Infrastructure
GL Account Number	423-7231-535.63-15
Project Number	LS2106
Requested Funds	\$150,000.00
Remaining Balance	\$85,198.10
Source of Revenue (i.e. Paygo. Current Revenue, Bond Money, Grants, etc.)	Utility Bond

**AGREEMENT FOR  
INFRASTRUCTURE MAINTENANCE AND REPAIR WORK  
(Utilizing the Sun'n Lake of Sebring Improvement District Contract)**

THIS AGREEMENT FOR INFRASTRUCTURE MAINTENANCE AND REPAIR WORK ("Agreement") is made as of \_\_\_\_\_, by and between the **CITY OF LAKE WORTH BEACH**, 7 N. Dixie Highway, Lake Worth Beach, FL 33460, a municipal corporation organized and existing under the laws of the State of Florida, ("CITY"), and **MAXX ENVIRONMENTAL, LLC**, a Limited Liability Company authorized to do business in the State of Florida, located at 3610 Fiscal Court, West Palm Beach, FL ("CONTRACTOR").

**RECITALS**

**WHEREAS**, the CITY's Water Utilities Department is in need of a company to perform certain infrastructure maintenance and repair work; and,

**WHEREAS**, the CITY's Procurement Policy and Code authorizes the purchases of goods and services through "piggybacking" other governmental competitively procured contracts; and

**WHEREAS**, on March 25, 2024, the Sun'n Lake of Sebring Improvement District ("District") competitively awarded a contract for infrastructure maintenance and repair work to the CONTRACTOR based on the District's Request for Proposal (RFP 21-04 SNL) ("District Contract") which is valid until March 25, 2025 with three (3) additional one (1) year (s) renewal options; and

**WHEREAS**, the CITY has requested and the District has authorized the CITY to extend the terms and conditions of the District's Contract to the CITY; and

**WHEREAS**, the CITY has reviewed the unit prices from the District Contract, as provided in **Exhibit "A"**, and determined that the unit prices are competitive and will result in the best value to the CITY; and

**WHEREAS**, the CITY finds entering this Agreement with the CONTRACTOR serves a valid public purpose.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties agree that the recitals set forth above are true and correct and are fully incorporated herein by reference.
2. Contract. The District Contract is hereby incorporated by reference into and expressly made a part of this Agreement as if set forth at length herein. The CITY shall have all rights and obligations of District under the District Contract except as specifically modified herein. The term of this Agreement shall be consistent with the term of the District Contract and valid until **March 25, 2025** unless earlier terminated in accordance with the District Contract terms. This Agreement may be extended by the City Manager consistent with extensions of the District Contract.
3. Not to Exceed Amount. While the CONTRACTOR is not guaranteed that the CITY will utilize this Agreement for any services, if the CITY utilizes this Agreement for services, the not to exceed amount for this Agreement shall be **One Hundred Fifty Thousand Dollars (\$150,000)** each fiscal year.

4. Work Orders. When the CITY identifies a need for the CONTRACTOR's services, the CITY will request a proposal from the CONTRACTOR to provide the services requested at the unit prices set forth in **Exhibit "A"**. The CITY will provide the CONTRACTOR with plans and/or specifications in order for the CONTRACTOR to develop its proposal. The CONTRACTOR's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "B"** along with a copy of the CONTRACTOR's proposal. Upon receipt of the CONTRACTOR's proposed work order and proposal, the CITY shall decide in its sole discretion whether to award the work order to the CONTRACTOR. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager, if within their purchasing authority (currently not to exceed \$50,000), or the City Commission. If the work order is approved by the CITY, the CONTRACTOR shall commence the identified services upon the CITY's approval of the work order for the services and issuance of a notice to proceed. The CITY reserves the right to reject any and all proposals submitted by the CONTRACTOR. A CITY-approved work order shall include (by reference) the plans and/or specifications provided by the CITY to the CONTRACTOR.

5. Conflict of Terms and Conditions. Conflicts between documents that make up this Agreement shall be resolved in the following order of precedence:

- a. This Agreement (including its exhibits);
- b. The District Contract; and,
- c. The City issued Work Order.

6. Compensation to CONTRACTOR. CONTRACTOR shall submit invoices to the CITY for review and approval by the CITY's representative, indicating that all goods and services have been provided and rendered in conformity with this Agreement and then will be sent to the Finance Department for payment. Invoices will normally be paid within thirty (30) days following the CITY representative's approval. CONTRACTOR waives consequential or incidental damages for claims, disputes or other matters in question arising out of or relating to this Agreement. In order for both parties herein to close their books and records, CONTRACTOR will clearly state "final invoice" on the CONTRACTOR's final/last billing to the CITY. This certifies that all services have been properly performed and all charges have been invoiced to the CITY. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the CONTRACTOR. The CITY will not be liable for any invoice from the CONTRACTOR submitted thirty (30) days after the provision of all services.

7. Miscellaneous Provisions.

- A. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.
- B. Except for any obligation of the CONTRACTOR to indemnify the CITY, if any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall be liable and responsible for their own attorney's fees incurred in that enforcement action, dispute, breach, default or misrepresentation. FURTHER, TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

- C. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
  - D. All notices required in this Agreement shall be sent by certified mail, return receipt requested or by nationally recognized overnight courier, and sent to the addresses appearing on the first page of this Agreement.
  - E. The CITY and the CONTRACTOR agree that this Agreement (and the other documents described herein) sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.
  - F. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be executed electronically.
  - G. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.
  - H. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
  - I. In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance
8. Public Records. The CONTRACTOR shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:
- A. Keep and maintain public records required by the City to perform the service.
  - B. Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
  - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this

Agreement and following completion of this Agreement if the Contractor does not transfer the records to the City.

D. Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1662, CITYCLERK@LAKEWORTHBEACHFL.GOV, 7 N. DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

9. Scrutinized Companies.

A. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

B. If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

C. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

D. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

E. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

10. E-Verify

Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

B. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

C. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

D. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

E. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,

F. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

11. Compliance With Section 787.06, Florida Statutes (2024). By signing this Amendment before a notary public and taking an oath under the penalty of perjury, the undersigned on behalf of the CONTRACTOR attests and warrants that the CONTRACTOR does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS**



IN WITNESS WHEREOF, the CITY and CONTRACTOR hereto have made and executed this Agreement for Infrastructure Maintenance and Repair Work as of the day and year first above written.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney  
Director

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services

**CONTRACTOR: MAXX ENVIRONMENTAL, LLC**

[Corporate Seal]

By: \_\_\_\_\_  
Print Name: Randy S. Tyo  
Title: President

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 3 day of October 2024, by Randy S. Tyo, as the President [title] of **Maxx Environmental, LLC**, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Maxx Environmental, LLC** to the same.

Tanner Farmer  
Notary Public Signature

Notary Seal:  
My Commission expires: 8/19/2028



**TANNER FARMER**  
Notary Public  
State of Florida  
Comm# HH584543  
Expires 8/19/2028



**TANNER FARMER**  
Notary Public  
State of Florida  
Comm# HH584543  
Expires 8/19/2028

**EXHIBIT "A"**  
**(Unit Price Schedule from District Contract)**

Sun 'n Lake of Sebring Improvement District  
 Infrastructure Construction Maintenance - Bid Sheet  
 RFP - 21-04

1 of 3

<b>Sewer Bypass Pumping and Set-up</b>		
50	8" By-pass set-up	EA \$ 2000.00
51	10"-12" By-pass set-up	EA \$ 2500.00
52	15"-18" By-pass set-up	EA \$ 2900.00
53	24" By-pass set-up	EA \$ 3400.00
54	4" By-pass pump	DAY \$ 400.00
55	6" By-pass pump	DAY \$ 500.00
56	8" By-pass pump	DAY \$ 600.00
57	10" By-pass pump	DAY \$ 800.00
<b>Adjust Existing Manhole Casting</b>		
58	Within Asphalt Pavement	EA \$ 800.00
59	Within Green Area	EA \$ 600.00
60	Furnish New Ring and Cover	EA \$ 300.00
61	Reconstruct Manhole Bench and Flow Channel	EA \$ 500.00
<b>Miscellaneous Sewer Services</b>		
62	Jet and Vacuum Truck Service	HOUR \$ 290.00
63	CCTV Truck Service	HOUR \$ 390.00

*Morse Environmental, LLC*

**EXHIBIT "B"**  
**SAMPLE WORK ORDER**  
**AGREEMENT FOR INFRASTRUCTURE MAINTENANCE AND REPAIR WORK**

**WORK ORDER NO. \_\_\_\_\_**

THIS WORK ORDER for Infrastructure Maintenance and Repair Work ("Work Order" hereafter) is made on the \_\_\_\_\_, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Maxx Environmental, LLC**, a Limited Liability Company authorized to do business in State of Florida ("Contractor" hereafter).

**1.0 Project Description:**

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Infrastructure Maintenance and Repair project generally described as: \_\_\_\_\_ (the "Project"). The Project is more specifically described in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, and which are incorporated herein by reference.

**2.0 Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

**3.0 Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within        **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within        **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

**Liquidated Damages.** The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

for each day that expires after the time specified in this Work Order.

**4.0 Compensation and Direct Purchases**

This Work Order is issued for a lump sum, not to exceed amount of \$\_\_\_\_\_. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**5.0 Project Manager**

The Project Manager for the Contractor is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_; and, the Project Manager for the City is: \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_.

**6.0 Progress Meetings**

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

**7.0 Contractor's Representations**

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities

are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

**8.0 Warranty.** The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

**9.0 Authorization**

This Work Order is issued pursuant to the Infrastructure Maintenance and Repair Contract for between the City of Lake Worth Beach and the Contractor, dated \_\_\_\_\_, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

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**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have made and executed this **Work Order** No. \_\_\_\_\_ as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Betty Resch, Mayor / Or Jamie Brown, Interim City Manager

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney  
Director

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services

CONTRACTOR:      **MAXX ENVIRONMENTAL, LLC**

By: DO NOT SIGN SAMPLE ONLY

[Corporate Seal]

Print Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ of **Maxx Environmental, LLC**, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Maxx Environmental, LLC** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:  
My Commission expires: \_\_\_\_\_

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Water Utilities

**TITLE:**

Amendment to Agreement with USP Technologies to provide Hydrogen Sulfide Control Services

**SUMMARY:**

The Amendment authorizes USP Technologies to provide Hydrogen Sulfide Control services for a cost not to exceed \$425,000 in FY2025.

**BACKGROUND AND JUSTIFICATION:**

The City Water Utility Department has used the chemical peroxide for odor control of hydrogen sulfide in the wastewater collection system for several years with great success. The current Agreement with USP Technologies for odor control in the local sewer system enables the City to utilize the existing contract prices, the terms and conditions of the City of Orlando's contract that was competitively bid under IFB221-0285 for Hydrogen Sulfide Control Services valid until August 23, 2024 unless extended. The City's Procurement Policy and Code authorize the purchases of goods and services through "piggybacking" other governmental competitively procured contracts. City of Orlando and the Contractor amended the City of Orlando Contract to revise the price and extend the term for an additional one (1) year. City's Water Department has reviewed the price increase from the City of Orlando's Contract and has determined that the price increase is fair and reasonable and would like to Amend the Agreement with USP Technologies for additional year, until August 23, 2025 and increase the total amount to \$425,000 annually. This Amendment extends the term of the Agreement by one (1) year to be valid until August 23, 2025 with a cost not to exceed \$425,000.

**MOTION:**

Move to approve/disapprove the Amendment to Agreement with USP Technologies to provide Hydrogen Sulfide Control services at a cost not to exceed \$425,000.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
USP Technologies Amendment to Agreement

**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
<b>Inflows/Revenues</b>					
Appropriated (Budgeted)	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
<b>Outflows/Expenditures</b>					
Appropriated (Budgeted)	\$425,000	0	0	0	0
Operating	0	0	0	0	0
Capital	0	0	0	0	0
<b>Net Fiscal Impact</b>					
<i>(If not budgeted)</i>	0	0	0	0	0
<b>No. of Addn'l Full-Time</b>					
<b>Employee Positions</b>	0	0	0	0	0

<b>Contract Award - Existing Appropriation (Budgeted)</b>	
	<b>Expenditure</b>
<b>Department</b>	Water Utilities
<b>Division</b>	Local Sewer & Regional Sewer
<b>GL Description</b>	Operating Supplies/ Chemicals
<b>GL Account Number</b>	403-7231-535.52-30 / 405-7421-535.52-30
<b>Project Number</b>	N/A
<b>Requested Funds</b>	\$50,000 / \$375,000
<b>Remaining Balance</b>	\$35,000/ \$5,000
<b>Source of Revenue</b> (i.e. Paygo. Current Revenue, Bond Money, Grants, etc.)	Paygo/ Current Revenues



**FIRST AMENDMENT TO AGREEMENT FOR  
HYDROGEN SULFIDE CONTROL SERVICES  
(Utilizing the City of Orlando Contract)**

THIS FIRST AMENDMENT to the Agreement for Hydrogen Sulfide Control Services (“Amendment”) is made on \_\_\_\_\_ by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **US Peroxide, LLC dba USP Technologies**, a corporation authorize to do business in the State of Florida (“Contractor”).

**WHEREAS**, on August 12, 2022, the City and the Contractor entered into an Agreement for Hydrogen Sulfide Control Services (“Agreement”) utilizing the existing contract prices, terms and conditions provided in the Contractor’s contract with the City of Orlando, Florida (“City of Orlando Contract”); and

**WHEREAS**, the original Agreement was consistent with the terms of City of Orlando’s Contract and valid until August 24, 2024; and

**WHEREAS**, on August 12, 2024, the City of Orlando and the Contractor amended the City of Orlando Contract to revise the price and extend the term for an additional one (1) year;

**WHEREAS**, the City has reviewed the price increase from the City of Orlando’s Contract as provided in **Exhibit “A”** and has determined that the price increase is fair and reasonable; and

**WHEREAS**, the City desires to enter this Amendment with the Contractor and finds this Amendment is in the best interest of the City and serves as a valid public purpose.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by each party hereto, the City and Contractor agree to amend the Agreement, as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Term of Agreement.** The parties agree that the term of the Agreement is hereby extended to August 23, 2025 with an effective date of August 23, 2024.
3. **Compensation to Contractor.** The City agrees to revise the compensation to the Contractor consistent with the revised price set forth in Exhibit “A”, which is attached hereto and incorporated herein.
4. **Entire Agreement.** The City and the Contractor agree that the Agreement and this Amendment set forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Amendment may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto. All other terms and conditions of the Agreement (except as amended herein) remain in full force and effect.

5. **Counterparts.** This Amendment may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. Either or both parties may sign this Amendment via facsimile, email or electronically and such signature is as valid as the original signature of such party.

6. **Scrutinized Companies**

A. CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

B. If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

C. The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

D. The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

E. The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

F. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

7. **E-Verify.** Pursuant to Section 448.095(2), Florida Statutes, the CONTRACTOR shall:

A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

B. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, Agreement with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

C. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;

- D. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- E. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- F. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded an Agreement for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

8. **Compliance with Section 787.06, Florida Statutes (2024).** By signing this Amendment before a notary public and taking an oath under the penalty of perjury, the undersigned on behalf of the Contractor attests and warrants that the Contractor does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

**REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF the parties hereto have made and executed this Amendment to the Agreement for Hydrogen Sulfide Control Services on the day and year first above written.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Jamie Brown, Interim City Manager

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney  
Director

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services

**CONTRACTOR: US PEROXIDE, LLC dba USP TECHNOLOGIES**



[Corporate Seal]

By: Jordan Butler

Print Name: Jordan Butler

Title: VP/GM USP Technologies

STATE OF Colorado )  
COUNTY OF Larimer )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 19 day of September 2024, by Jordan Butler, as the VP/GM [title] of **US Peroxide, LLC dba USP Technologies**, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **US Peroxide LLC, dba USP Technologies** to the same.

[Signature]  
Notary Public Signature

Notary Seal:  
My Commission expires: 3/22/27

**DAMON JARED TALABOCK**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20234011137  
MY COMMISSION EXPIRES MARCH 22, 2027

**EXHIBIT "A"**  
(Schedule of price increase)



Javarie McDonald  
Purchasing Agent II  
City of Orlando  
Procurement and Contracts  
July 8, 2024

Re: Price Adjustment for 4<sup>th</sup> Amendment IFB21-0285

Dear Javarie,

Thank you for the opportunity to renew the current agreement with USP Technologies for odor control in your collection system, we have appreciated the partnership with the City of Orlando and look forward to continuing working with your team. There have been significant changes to cost of raw materials, and the following changes are proposed for the renewal, sharing the cost increase for iron and reducing the cost in two other areas.

- Iron pricing has increased 17% and request an increase of 12.8%
  - Pricing will change from \$1729 to \$1951/dry ton to share added cost
- Peroxide is expected to increase 3% in 2024
  - Price change from the current \$5.27/gal to \$5.43/gal
- Facility Fees changed to reflect current servicing demands (reduce \$1120/month)
  - Billing will be \$560/month for peroxide
  - Billing will be \$560/month for iron
- Earlier the Transportation and Energy Surcharge was reduced from 13% to 5%
  - Surcharge will remain at 5%.

Please let me know if you have any questions.

Regards,

*Jim Graham*

USP Technologies  
Territory Manager, Southeast  
(901) 288-7177  
jgraham@usp technologies.com



USP Technologies  
1375 Peachtree Street NE, Suite 300N, Atlanta 30309  
Phone: 404-352-6070 Fax: 404-352-6077

usp technologies.com  
info@usp technologies.com

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Community Sustainability

**TITLE:**

Formal Development Agreement between the City of Lake Worth Beach, the Lake Worth Beach CRA and Sunshine Lake Worth Development for the creation of a downtown Wiener Museum of Decorative Arts (WMODA) Mixed-Use Cultural Arts Campus

**SUMMARY:**

A formal development agreement has been negotiated among the City, the CRA and Sunshine Lake Worth Development on behalf of The Wiener Museum of Decorative Arts (WMODA) to develop a multi-faceted Mixed-Use Cultural Arts Campus that includes a 33,000 sq ft museum, 110 unit residential development with 8 affordable live/work lofts and numerous amenities including an arts alley, community art space and significant funding for a City owned downtown parking garage as well as the relocation of four (4) historic, contributing structures.

**BACKGROUND AND JUSTIFICATION:**

Beginning in late 2023, representatives of WMODA, currently in Hollywood, Florida, approached the Lake Worth CRA regarding their search for a permanent home for WMODA. Over the intervening months, WMODA's team in collaboration with the Lake Worth CRA and City Staff have developed a comprehensive proposal for a Mixed-Use Cultural Arts Campus (Campus). The Campus is proposed to be constructed on properties that the CRA owns on the block between South M Street and South L Street along Lake Avenue. It will include a 33,000 plus sq ft museum for the WMODA collection and 110 residential apartments to the south, whose revenue will support the museum's operations. The proposal also includes below grade parking for the residential units, an arts alley running east and west between the museum and residential structure as well as public open space, community art space, 8 affordable live/work, artist lofts and a wide array of amenities. The proposal also includes the relocation (by WMODA) and restoration (by the City and CRA) of 4 contributing structures and support for a downtown parking garage to be owned and operated by the City.

On October 7, 2024, the City held a public workshop including both the City Commission and the CRA Board members as well as the team representing WMODA. A lengthy presentation was provided with discussion among the three parties outlining all for the responsibilities, components, timelines and financial considerations to bring the proposed project to reality. The development agreement encapsulates and summarizes all of the parties' roles, commitments and financial contributions as well as other project particulars.

Following an approval of the proposed development agreement, other agreements necessary for the project will be forthcoming for consideration by the City Commission including an eventual entitlement approval for an urban mixed-use planned development. The entitlement approval process will include a review by the City's Site Plan Review Team (SPRT), a formal neighborhood developer's meeting, at least one hearing before the Historic Resources Preservation Board (HRPB) and then two public hearings before the City Commission.

With the development agreement, its approval shall be conditional upon the approval of the unsolicited proposal from Sunshine Lake Worth Development regarding the development of a city-owned parking garage, which shall be discussed on both October 15 and October 29.

**DIRECTION:**

Move to approve/disapprove the formal Development Agreement between for the creation of a downtown Wiener Museum of Decorative Arts (WMODA) Mixed-Use Cultural Arts Campus.

**ATTACHMENT(S):**

Fiscal Impact Analysis (See WMODA Presentation Pg. 76-78)  
WMODA Development Agreement  
CRA WMODA CRA Package  
WMODA Presentation  
Chiluly Press Release

**WMODA MIXED USE DEVELOPMENT  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), by and between SUNSHINE LAKE WORTH DEVELOPMENT, LLC, a Florida limited liability company (the “Developer”) and the CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation (the “CITY”), and the LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY, an entity created pursuant to Florida Statutes, Chapter 163 (the “CRA”).

**RECITALS**

A. The CRA is the owner of approximately 1.7 acres of land generally located in the City of Lake Worth Beach, Florida, as more particularly described on Exhibit A attached hereto (each of such parcels being referred to herein individually as a “Parcel,” or jointly as the “Parcels,” and collectively, as the “Property”), which Property the CRA desires to be sold to and redeveloped by Developer pursuant to the Purchase and Sale Agreement (hereinafter defined) and this Agreement; and

B. The CITY and CRA are the owners of that certain K Street Property (hereinafter defined) which K Street Property the CITY and CRA desire to be developed into a parking garage to support downtown parking for the Property (as developed) and other public parking; and

C. The Developer is proposing to design and construct certain improvements on the Property and K Street Property which improvements are estimated to provide the City of Lake Worth Beach with \$56M in economic output during construction (first two (2) years), increase visitors to the CITY and downtown, increase jobs, increase downtown business revenues, provide an increase in property taxes over 10 years, and provide additional residential units and eight (8) affordable live/work artist units; and,

D. The CITY and CRA recognize the positive public impacts the Developer’s improvements will bring to the City of Lake Worth Beach. The CITY and CRA agree to enter this Agreement with the Developer to advance the positive public impacts that the Developer’s proposed improvements will make to the City of Lake Worth Beach and its residents, guests and visitors; and

D. The Parties find entering this Agreement is in each Party’s best interest and serves a valid public purpose.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the sufficiency of which is acknowledged by the Developer, CRA, and CITY, the Developer, CRA, and CITY hereby agree as follows:

**Article 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.

**Article 2. General; Project; Definitions.**

2.1 General. The purpose of this Agreement is to provide the terms and conditions pursuant to which the Developer shall develop the Project, obtain entitlements for the Property, close on the Property and develop the Project and the Property in substantial accordance with the terms set forth in this Agreement, the Development Plan, the Site Plan, all other Government Approvals, the Construction Documents, Permits and Applicable Laws (all as hereinafter defined) and within the time periods set forth in the Critical



Path (as hereinafter defined). From and after the Effective Date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop the Project (inclusive of all Components (as hereinafter defined)) and the Property for the Project in accordance with the terms and conditions of this Agreement, and in compliance with the Project timeline set forth in the Critical Path attached as Exhibit B to this Agreement.

2.2 “Project” means the comprehensive project by Developer as illustrated in Exhibit C. The Project consists of the following components proposed under the Site Plan: 33,000 square foot museum, 102 market rate residential apartment units, eight (8) artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support residential uses, offsite parking garage on K street to support museum parking and public parking, art alley between L and M Street, relocation of four (4) contributing structures, together with related amenities and utilities, as generally set forth in the Development Plan, attached hereto as Exhibit C (individually a “Component” and collectively, the “Components”). Except for certain Components (hereinafter defined), each respective Component of the Project will be developed on that portion of the Property which is so designated on the Development Plan and each component of the Project is more particularly described as follows:

(a) Museum and Residential Component: 33,000 square foot museum, 102 market rate residential apartment units, eight (8) artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support the residential uses.

(b) K Street Parking Component: offsite parking garage on K street to support museum parking and public parking on property owned by the CITY and CRA. The CITY and Developer will enter a comprehensive agreement to set forth the parameters of the K Street Parking Component consistent with the CITY’s Parking Feasibility Study (hereinafter defined). The CITY and CRA shall enter into a ground lease for the proposed site of the K Street Parking Component. The CITY, CRA, and the Developer shall enter into a Construction Agreement for the purpose of developing the K Street Parking Component, which shall require the contributions of \$1 million from the Developer, \$2.5 million from the CITY, and \$1.5 million from the CRA along with the CRA issuing a \$3.5 million capital improvement revenue note. The CITY, CRA, and the Developer shall collaborate to identify Cost Savings for the K Street Parking Component as derived from the CITY’s Parking Feasibility Study. Cost Savings identified for the K Street Parking Component shall be designated to fund the Arts Alley Extension (as hereinafter defined). The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement for a term of less than twenty (20) years as further defined herein.

(c) Arts Alley Component: Arts Alley shall be limited to the portions of this amenity that lies between L Street and M Street. The Developer shall construct and maintain the Arts Alley which includes part of the Property and the existing public easement. The Arts Alley shall be open to the public in perpetuity. The Developer shall maintain the portion of the Arts Alley within the existing public easement and Property boundaries. The CITY and the Developer shall enter into a Long-Term Maintenance Agreement for the Arts Alley that lies between L and M Street which shall dictate the agreed upon maintenance, repair, and capital replacement responsibilities between the CITY and the Developer. The Parties agree that the Developer shall be responsible for the day-to-day maintenance of the Arts Alley, and the CITY shall be responsible for repairs and capital replacement needed as a result of infrastructure and or utility line repairs or upgrades, as set forth in the Long-Term Maintenance Agreement. All other terms and conditions shall be set forth in the Long-Term Maintenance Agreement.

(d) Arts Alley Extension: The Developer shall provide the CITY with design documents for the extension of the Arts Alley in the public easement between L and K Streets. The design shall match the

design implemented along the L and M Street portion of the Arts Alley within the existing public easement and Property boundaries. The CITY, CRA, and the Developer agree that the extension of the Arts Alley to K Street benefits the overall campus concept of the Project. If sufficient funding from the K Street Parking Component's Cost Savings and/or other sources are realized to construct the Arts Alley Extension, the Developer shall construct the Arts Alley Extension on behalf of the CITY. The Parties agree and acknowledge that the Developer's obligation to construct the Arts Alley Extension shall be limited to the amount of the Cost Savings realized from the construction of the K Street Parking Component. Absent sufficient funding from the Cost Savings of the K Street Parking Component or otherwise, the Developer shall be under no obligation to construct the Arts Alley Extension.

(e) Structure Relocation: The Developer shall relocate the four (4) contributing structures currently located on the Property to 704 and 710 1st Avenue South and 126 South J Street. Three (3) contributing structures shall be relocated to 704 and 710 1<sup>st</sup> Avenue South and one (1) contributing structure shall be moved to 126 South J Street, as set forth in detail below:

- 17 South M and Garage: 17 South M and its garage shall be relocated from its current location to the lot on South K and 1st Avenue South, situated on the northwest corner.
- 24 South L: 24 South L shall be relocated from its current location to 126 South J, contingent upon the CITY's approval for the demolition of the existing house at that location.
- 26 South L: 26 South L shall be relocated to the lot on South K and 1st Avenue South, situated on the southwest corner adjacent to the CITY buildings.

CITY and CRA shall be responsible for any permit fees and utility relocation costs associated with the relocation of the structures. The Developer shall obtain all Government Approvals, prepare and make ready the site and construct the foundation and exterior utility connections for the structure currently located at 17 South M Street. The Developer's obligation for the relocation of all four (4) contributing structures shall not exceed \$500,000. In the event that costs exceed \$500,000, the CITY and the CRA shall be responsible for the amount in excess of that value. CITY and CRA shall also obtain all Government Approvals, prepare and make ready the relocation sites at 704 and 710 1<sup>st</sup> Avenue and 126 South J Street in accordance with the specifications from the qualified house mover for the delivery of the remaining three (3) contributing structures. The CITY shall be responsible for all utility hook-ups for the relocated structures, including the former 17 South M and Garage. The Developer shall ensure its qualified house mover(s) use best efforts to preserve the structures during relocation, however, except for the exterior utility connections, the CITY and CRA agree to accept the relocated structures in their as-is condition upon delivery, which terms shall be included within the Construction Agreement Relocation of Contributing Structures (as hereinafter defined) to be entered by the parties. This provision shall survive the termination of this Agreement.

2.3 Definitions. As used in this Agreement, the following defined terms shall have the following meanings; provided however that each capitalized term which is used but not defined in this Agreement shall have the meaning set forth in the Purchase and Sale Agreement:

"Agreement" shall mean this Development Agreement.

"Applicable Laws" shall mean any applicable law, statute, code, ordinance, regulation, permit, license, approval or other rule or requirement now existing or hereafter enacted, adopted, promulgated, entered, or issued by Governmental Authorities, including, but not limited to, the Florida Building Code.

"Authorized Financing" shall mean acquisition, development, or construction financing consisting of, without limitation: debt financing, private equity, equity participations, joint venture, hybrid financing, mezzanine financing, or other financing arrangements, provided in each such event the material terms of

all such financing arrangements shall be documented in the Construction Loan Commitment (or its reasonable equivalent).

"Business Day" shall mean any day that the CITY is open for business.

"CITY" shall mean the City of Lake Worth Beach, a Florida municipal corporation.

"CITY Commission" shall mean the five (5) public officials elected to serve on the Lake Worth Beach City Commission.

"CITY Parking Feasibility Study" shall mean that study conducted by WGI, Inc., and provided to the CRA and Developer in draft form in September , 2024.

"Closing Date" shall have the meaning set forth in the Purchase and Sale Agreement.

"Code" shall mean the CITY's Charter, Code of Ordinances, including but not limited to the Land Development Regulations now existing or hereafter amended.

"Comprehensive Agreement" means an agreement required under Section 255.065 Florida Statutes (2024) to be entered into between the Developer and the CITY for the construction of the K Street Parking Component.

"Construction Agreement K Street Parking Component" means the transaction contemplated between the Developer, CITY, and CRA which shall govern the construction of a Parking Component on K Street to support the museum and public parking.

"Construction Loan Commitment" shall have the meaning set forth in the Purchase and Sale Agreement.

"Construction Agreement Relocation of Contributing Structures" The transaction contemplated between the Developer, CITY, and CRA shall be subject to the relocation of four (4) contributing structures. The material terms for this Construction Agreement shall include but not be limited to, construction costs, critical path, location of facilities, site specifications, roles and responsibilities of the parties, cost overruns, and liability.

"Cost Savings" shall be defined as the difference between the City's Parking Feasibility Study estimate of cost and savings realized as may be set forth in the Construction Agreement for the K Street Parking Component or herein.

"CRA" shall mean the Lake Worth Beach Community Redevelopment Agency.

"Critical Path" shall mean the sequence of activities from this Agreement's execution to Final Completion of the Project. The Critical Path, which is attached hereto as composite Exhibit B, describes the consequential elements of the schedule of the Purchase and Sale Agreement and this Agreement, including but not limited to, development obligations, termination, and default and is subject to the terms of the Purchase and Sale Agreement (for those Critical Path items only) and this Agreement.

"Developer" shall have the meaning provided in the introductory paragraph herein.

"Developer Financing" shall mean a Construction Loan (i) from a reputable lender regularly engaged in commercial real estate lending, (ii) which contains such terms as are typical in Palm Beach

County for loans similar in size and purpose to the Construction Loan and (iii) which contains business terms such as interest rate, terms of repayment, loan to value, guaranty and collateral and equity requirements which are typical in State of Florida for loans similar in size and purpose to the Construction Loan and are otherwise reasonably acceptable to Developer. The Construction Loan Commitment must be provided to the CRA on the date prescribed on the Critical Path.

"Developer's Representatives" shall mean Developer and its directors, officers, employees, agents, affiliates, or other representatives (including without limitation, attorneys, accountants, engineers, experts, consultants, contractors, financial advisors, and any other person or entity performing services for Developer in connection with this Agreement), and their respective successors and assigns.

"Development Review Application" shall mean the Application submitted by the Developer to the CITY for all Entitlements for the Project.

"Development Review Application Date" shall mean the date the Development Review Application is submitted to the CITY.

"Effective Date" shall mean the date when the CITY Commission and CRA Board respectively approves and authorizes the proper CITY and CRA officials to execute and deliver the Agreement previously executed by the Developer, which date shall be inserted on the first page of this Agreement.

"Entitlements" shall mean those CITY approvals required for the Developer to seek Permits for the construction of the Project Components.

"Final Completion Date" shall mean that date which is defined in composite Exhibit "B", the Critical Path.

"Governmental Authorities" shall mean the United States Government, the State of Florida, Palm Beach County, the CITY (in its legislative/police power/quasi-judicial capacity), the CRA, and/or any other governmental agency or any instrumentality of any of them.

"Government Approvals" shall mean all approvals required from all applicable Governmental Authorities for the Entitlements, Permits, and other licenses and authorizations for the Developer to develop all Components of the Project. .

"Governmental Approval Date" shall mean all or each date the Developer obtains Government Approvals.

"Hazardous Materials" shall mean any material which may be dangerous to health or to the environment, including, without implied limitation, all "hazardous matter", "hazardous waste", and "hazardous substances", and "oil" as defined in or contemplated by any applicable federal, state or local law, rule, order or regulation relating to the protection of human health and the environment or hazardous or toxic substances or wastes, pollutants or contaminants, including all of the following statutes and their implementing regulations, as the same may have been amended from time to time:

- (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;
- (b) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
- (c) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136;
- (d) Hazardous Materials Transportation Act, 49 U.S.C. §§1801 -1812;
- (e) Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.;

- (f) Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;
- (g) Clean Air Act, 42 U.S.C. §7401 et seq.;
- (h) Safe Drinking Water Act, 42 U.S.C. §3808 et seq.; or
- (i) Applicable or equivalent laws and regulations of the State of Florida relating to hazardous matter, substances or wastes, oil or other petroleum products, and air or water quality.

"Inspection Period" shall have the meaning set forth in the Purchase and Sale Agreement and as identified in the Critical Path.

"Institutional Lender" established federally chartered United States bank, United States trust company or other such recognized United States financial institution (or consortium thereof) of good repute and sound financial condition and having assets in excess of One Hundred Million Dollars (\$100,000,000.00).

"K Street Property" means that real property owned by the CITY and CRA generally located at 13 South K Street, 19 South K Street, and 25 South K Street (with PCNs: 38-43-44-21-15-019-0220, 38-43-44-21-15-019-0230, and 38-43-44-21-15-019-0290) to be utilized as the site for the K Street Parking Component.

"Long Term Maintenance Agreement Arts Alley" means the agreement by which the transaction contemplated between the Developer and the CITY that will govern the roles and responsibilities of each party regarding the long term maintenance and repair of the Arts Alley.

"Long Term Parking Agreement" The transaction contemplated between the Developer, the CITY, and the CRA that will govern the access, parking fees, special event parking, residential lease opportunities, and liability for the K Street Parking Component.

"Museum" means that certain building located on the corner of Lake Avenue and South M Street to be built by the PURCHASER for the display of Fired Art as part of the Project.

"Museum Parcel" means that portion of the Property as set forth the Site Plan.

"Permits" shall mean those permits issued by the CITY in its police-power/regulatory power for the construction of the Project's Components.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"PILOT Agreement" means the agreement for payment in lieu of taxes to be made by the Developer to the CITY and CRA (as applicable) as set forth herein for the Museum Parcel.

"Placed-In-Service" shall mean the date when the Developer notifies the CITY and the CRA in writing that it has received the final certificate of occupancy, certificate of completion, and executed any and all bills of sale and easements required under this Agreement or other agreement contemplated herein and that the Project and all Components are complete and operational.

"Purchase and Sale Agreement" shall mean that certain Purchase and Sale Agreement between the CRA and Developer for the CRA-owned Property as defined in Exhibit A, as the same may be amended from time to time by the parties thereto.

"Site Plan " shall mean the proposed submittal for the Project and as conceptually shown on composite Exhibit C, attached hereto and made a part hereof, and as may be revised during the site plan approval process from time to time, subject to the terms of this Agreement.

"Substantial Completion Date" shall mean that date on which the Developer makes application to the CITY for Temporary Certificate of Occupancy (TCO) (and maintains the same until Final Completion or obtains a final Certificate of Occupancy (CO)) for the Project.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of the Parties which survive the closing under the Purchase and Sale Agreement, and any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, all indemnities of the Parties contained in this Agreement shall be Surviving Obligations.

"Unsolicited Proposal for Qualifying Project Process" shall mean the public entity procedures required under Section 255.065 Florida Statutes (2024) for the CITY to proceed with an unsolicited proposal for the construction of the K Street Parking Component. Approval of this Agreement shall be contingent upon the CITY Commission's determination that the K Street Parking Component is in the public's best interest consistent with the requirements of the aforementioned statutory section.

"Utility Incentive Fund" shall mean a maximum amount of \$82,547, which is based upon the CITY's calculation of a reasonable rate of return to the CITY for the estimated increase in utility revenues from the Project (whose parameters are stated herein) and the City's current utility rate schedules. If the as-built Project parameters differ from what is stated in this Agreement or the City's current rate schedule(s) changes, the Utility Incentive Fund amount paid by the CITY to the Developer will be revised to be an estimate based upon the as-built parameters and the then current rate schedule(s). The CITY's calculations for the Utility Incentive Fund are set forth herein.

"Water and Sewer Public Utility Relocation Incentive" shall mean the lump sum payment to be made by the CITY to the Developer based on certain water and sewer utility relocations the Developer will be required pay for and perform as part of the Work for the Project.

2.4 Physical Condition after Development Agreement Execution. The CITY and CRA agree that, after the execution of this Agreement, the CITY and CRA shall not take any actions that could materially and adversely affect (i) the physical condition of the Property and/or the K Street Property owned by the CITY and/or CRA or (ii) the status of title to the Property and/or K Street Property owned by the City or the CRA (as described in (i) or (ii) of this sentence, each a "material adverse change"). The parties acknowledge that the CRA will demolish, at its own cost, the existing structure on the Property located at 501 Lake Avenue, Lake Worth Beach, prior to the Closing Date as set forth in the Critical Path.

### **Article 3. Site Plan Development.**

3.1 Government Approvals. The CITY and CRA hereby acknowledges and agree that the conceptual Site Plan, as shown on Exhibit C, under the described conditions herein, is generally acceptable to the CITY and CRA; provided that any Material Change (as hereinafter defined), shall require the approval of the CRA Board before submission to the CITY as part of the Development Review Application, which approval shall not be unreasonably withheld. The foregoing shall in no way constitute or be construed as the Government Approval of the Site Plan or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities. As soon as practicable and consistent with the Critical Path(subject to a Force Majeure event), the Developer shall submit to the CITY for its review and approval, the Development Review Application

required to obtain the Entitlements and Government Approvals for the Project, which applications and other submittals are consistent with this Agreement and comply with all Applicable Laws. Prior to submittal of the Development Review Application and other submittals required to obtain the Government Approvals, the Developer shall present to the CRA the Site Plan for review. Following such review, the CRA hereby agrees to execute and deliver to the Developer, in the CRA's capacity as the owner of the Property and a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. If the Purchase and Sale Agreement or this Agreement is terminated prior to obtaining the Government Approvals, then upon the CITY and CRA's request, Developer shall withdraw all of its pending applications and terminate all agreements which are terminable and/or withdrawable by Developer, with respect to the Government Approvals, which foregoing obligations shall survive termination of this Agreement. No later than the time of Site Plan submittal to the CITY as part of the Development Review Application, the Developer shall complete and submit to the CITY: all design requirements, including the proposed Site Plan prior to submittal; preliminary civil engineering; any other plans and specifications required for the Project to proceed; design elements (excluding logos) for the various buildings within the Project, including definitions of sample architectural styles with representative illustrations; and copies of applications for any Government Approvals required for the development and construction of the Project. Once the CITY approves the foregoing (if they are substantially consistent with the Site Plan attached hereto as Exhibits C), the CITY hereby agrees to execute and deliver to Developer, in the CITY's capacity as the owner of a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. Thereafter, the Government Approvals shall proceed in accordance with the CITY's Code and other Applicable Law, Governmental Authorities, and Government Approvals and the representative design elements and style portion of the documents, if approved, will be the Entitlements for the Project.

3.2 Third Party Review To Assist With Government Approvals. The Developer may at its sole discretion and cost in order to expedite the Government Approval process, including construction and inspection phase, request that the CITY engage the services of an outsourced consulting firm to complete the various development reviews in connection with the issuance of the Government Approvals should the CITY so elect to outsource the development review process.

3.3 Site Plan. The CITY hereby acknowledges and agrees that the Developer's Site Plan, as shown on Exhibit C, is the conceptual designs which have been reviewed and no formal approval has been issued by the CITY in its police power/quasi-judicial capacity. The foregoing shall in no way constitute or be construed as the approval or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities.

(a) For purposes of this Agreement, a "Material Change" to the Site Plan, at Exhibit C, means and refers to a requested change, alteration or modification that (i) increases or decreases the total number of residential units by greater than fifteen percent (15%), (ii) decreases the amount of square footage in the Museum by greater than fifteen percent (15%), (iii) revisions that significantly alters the architectural scheme from that previously approved by the CRA, as determined by the CRA EXECUTIVE DIRECTOR. For the avoidance of doubt, a Material Change hereunder shall refer to a change, alteration or modification of the Site Plan prior to such Site Plan approval by the CITY in its police power/quasi-judicial capacity. Furthermore, Material Change shall not refer to any increase or decrease of the square footage of the K Street Parking Component.

(b) All Material Changes to the Site Plan attached as Exhibit "C" are subject to requirements of the CITY and CRA's review process.

(c) Following issuance of the Entitlements for the Site Plan for the Project by the CITY, the CITY shall endeavor to expeditiously process all requests by the Developer for Material Changes and Permitted Changes (hereinafter defined) consistent with the CITY's Code.

(d) For the purposes of this Agreement, "Permitted Changes" mean revisions or changes that arise as a result of (i) any term or provision in the Florida Building Code, the fire code, or any other Applicable Law, (ii) any unforeseen site conditions which reasonably require a revision or change, or (iii) any life safety issues.

### 3.4 Timeline; Development, Government Approvals and Permits.

(a) Any Material Change shall require the approval of the CRA Board, which approval shall not be unreasonably withheld. The CRA shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such plans and specifications as to the existence of Material Changes within ten (10) Business Days of receipt of request for same. If the CRA fails to either approve or disapprove (either with or without conditions) the submitted plans and specifications within fifteen (15) Business Days following written notice to the CRA, then, the plans and specifications submitted shall be deemed approved as to compliance with the elements of this Agreement by the CRA.

(b) However, should the final Site Plan include a Material Change the aforementioned timelines for review shall not apply.

### 3.5 Critical Path.

(a) The Developer will be responsible for initiating and diligently pursuing the Government Approval applications and Entitlements in accordance with the Critical Path as amended from time to time due to a Force Majeure event, shall serve as the Developer's time frame for performance with respect to obtaining the Government Approvals and Entitlements, to obtaining the Permits for the Project, and constructing the Project, and as applicable, subject to the terms of the Purchase and Sale Agreement and this Agreement.

(b) Notwithstanding any other provisions of this Agreement, the Critical Path may be extended for delays occasioned by the following events: (i) acts of God; (ii) pandemic or other health related occurrence; (iii) terrorism; (iv) once construction begins - extreme weather, a named storm, a hurricane or other tropical event as declared by the National Weather Service, (v) strikes, lockouts or other labor trouble, (vi) inability to procure material that adversely affect the construction of the Project, (viii) restrictive governmental ordinances, orders, policies, directives, decrees, laws, regulations or any other form of governmental controlling guidance, (ix) riots, insurrections, or war, (x) other reason of like nature not within the control of and not the fault of the party delayed in performance work or doing acts required under this Agreement, (xi) withholding of Government Approvals or restrictions not due to the fault, delay or negligence of the Developer, (xii) unreasonable delay or negligence by the CITY or CRA; (xiii) appeals of governmental approvals or lawsuits by any third party (whether individual or otherwise) instituted to prevent the issuance of any approvals or permits, or otherwise stop construction of the development after commencement; (xiv) unreasonable delay or negligence by the Developer; or (xv) similar events not reasonably foreseeable and beyond the reasonable control of the Party requesting to extend the Critical Path (collectively, "Force Majeure"). Any Party seeking an extension for a Force Majeure event shall send written notice to the other Parties within ten (10) Business Days of the start of the delay, which notice may be sent via email (delivery receipt requested). Failure to provide such notice shall waive the delay until proper notice is provided unless otherwise agreed to by both of the other Parties in writing. The Parties shall work together to maintain the Critical Path.



(c) The CITY shall cooperate with the Developer in processing all necessary Government Approvals and Entitlements to be issued by the CITY, as well as by all other applicable Governmental Authorities. The parties recognize that certain Government Approvals will require the CITY and/or its boards, departments or agencies, acting in their legislative/police power/quasi-judicial capacity, to consider certain governmental actions. The parties further recognize that all such considerations and actions shall be undertaken in accordance with established requirements of Applicable Laws in the exercise of the CITY's jurisdiction.

(d) Time is of the essence for the performance of all obligations under this Agreement consistent with the Critical Path, which may be extended as stated herein. The timeframes set forth herein for the Developer's obligations may be extended in writing by the CITY's City Manager and CRA's Executive Director up to a maximum of 60 calendar days. Beyond 60 calendar days, a written amendment to this Agreement with CITY Commission, CRA Board, and Developer approval shall be required. The Developer shall give the CITY and CRA at least fifteen (15) calendar days' notice prior to the deadline to be extended.

3.6 Failure to Provide Government Approvals. In the event that the CITY and or its boards, departments, or agencies, acting in their legislative/police power/quasi-judicial capacity to consider certain governmental actions, fails to provide Government Approvals and Entitlements necessary to construct the Project, as such time period may be extended as set forth herein after the Developer submitted the Development Review Application in compliance with Applicable Laws and in accordance with the Developer's Site Plan shown on Exhibit C and all applicable timeframes for appeals have been exhausted to the City Commission then, such failure shall entitle the Developer to terminate this Agreement.

3.7 As noted in the Critical Path, the parties recognize that the following agreements are anticipated to be entered as part of the Project:

- (a) Comprehensive Agreement: between CITY and Developer for K Street Parking Component;
- (b) K Street Ground Lease: between CITY and CRA for K Street Parking Component;
- (c) Construction Agreement – K Street Parking Component: between CITY, CRA and Developer;
- (d) Construction Financing Agreement: between CRA and Developer;
- (e) Repayment Loan Agreement: between CRA and CITY;
- (f) Long Term Parking Agreement: between Developer, CRA and CITY;
- (g) Construction Agreement – Relocation of Contributing Structures: between CITY, CRA, and Developer;
- (h) PILOT Agreement: between CITY, CRA and Developer;
- (i) Long Term Maintenance Agreement: between CITY and Developer for Arts Alley; and,
- (j) Purchase and Sale Agreement : between CRA and Developer.

#### **Article 4. Development Obligations.**

##### 4.1 General Obligations.

(a) Subject to the terms and provisions of this Agreement, in the event the Government Approvals and Entitlements are issued to Developer, then, the Developer shall be responsible for the design, engineering, and permitting of the Project in accordance with the terms of this Agreement. After obtaining all required Permits, , then, the Developer shall be responsible to construct the Project pursuant to the approved Construction Documents and within the time periods required by the Critical Path.

(b) In connection therewith, Developer shall provide or cause to be provided and furnish or cause to be furnished, all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all other facilities provided for in the Construction Documents, and shall provide all labor, supervision, transportation, utilities and all other services, as and when required for or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in the Project, (collectively, the "Work").

(c) Developer shall cause the design, engineering, permitting, and construction of the Project to be prosecuted with diligence and continuity and will achieve Substantial Completion (as defined herein) and Final Completion of the Work, free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith on or before the Final Completion Date (as hereinafter defined). The Developer shall diligently and in good faith proceed to obtain the issuance of all permanent certificates of occupancy or their equivalent and all other certificates, licenses, consents, and approvals required for the permanent occupancy, use and operation of the Project, all within the time frames required by Applicable Laws and the Critical Path.

(d) For the purposes of this Agreement, "Final Completion" shall mean all Work for the Project shall have been fully completed, in accordance with Construction Documents, (1) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of the Project shall have been issued or obtained from the appropriate Governmental Authorities, and (2) all record drawings (other than as-builts to be delivered to the CITY), electronic files, warranties, and manuals have been delivered to the CITY. Substantial Completion of the Project shall occur not later than the respective "Project Substantial Completion Date" set forth on the Critical Path, subject to a day for day extension for events of Force Majeure.

#### 4.2 K Street Parking Component.

(a) The Developer shall, as a part of the requirements for the Project, construct the K Street Parking Component to support the museum and public parking. The Developer shall cause the design and construction of the K Street Parking Component in accordance with the specifications outlined the City's Parking Feasibility Study, the Entitlements, the Permits, and in accordance with the K Street Parking Component Critical Path Attached hereto as Exhibit B-1 .

(b) The Developer shall provide construction financing for the construction of the K Street Parking Component to the CRA in an amount not to exceed \$3.5 Million at a four (4%) percent rate of interest for a period of five (5) years. Payments of principal and interest by the CRA shall be made annually based on a five (5) year amortization schedule until paid in full.

(c) The CRA shall issue a capital improvement revenue note providing for the covenant to budget and appropriate amounts necessary for the payments of the \$3.5 Million capital improvement revenue note. The Developer's obligation to provide construction financing in an amount not to exceed \$3.5 Million is contingent upon CRA issuing the Developer a capital improvement note in an amount necessary to repay the loan and the CRA shall covenant to budget and appropriate, each year, monies sufficient to pay the principal and interest on the obligation to the Developer. The CITY and the CRA shall enter into a loan repayment agreement no later than the CITY's and the CRA's execution of the Construction Agreement for the K Street Parking Component to provide for the CITY's and CRA's respective obligations with respect to the repayment of the capital improvement note.

(d) The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement which shall govern Developer's access, parking fees, special event parking, residential leasing opportunities, and liability for a term of less than 20 years.

(e) The CITY and Developer shall enter the Comprehensive Agreement for the K Street Parking Component and the CITY, CRA, and the Developer shall enter a Construction Agreement for the K Street Parking Component. In addition to the statutory requirements for the Comprehensive Agreement, the aforementioned agreements shall include, but not be limited to, construction cost, critical path, payment schedules, revenue note commitments, and ground lease provisions. The Parties agree that the aforementioned agreements for the K Street Parking Component shall be executed by the Parties no later than the expiration of the Inspection Period. If not (and not due to a Force Majeure event), then the Developer at its discretion may either extend the Inspection Period in accordance with the Purchase and Sale Agreement or terminate this Agreement.

4.3 Construction Contracts. All Developer's contractors and subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done.

4.4 Financing of Project. Except as specifically set forth above for the K Street Parking Component, the parties acknowledge and agree that the Developer will obtain Developer Financing for the construction of the Project. All financing under this provision of the Agreement shall be in conformance with the Purchase and Sale Agreement.

4.5 No General Obligation. Any funding or financing obligation of either the CITY or CRA as contemplated under this Agreement shall not be considered a general obligation of either the CITY or CRA. Neither this Agreement or any other agreement entered into with respect to the Project, nor the obligations imposed upon the CITY or the CRA hereunder shall be or constitute an indebtedness or general obligation of the CITY, the CRA, or other Governmental Authorities within the meaning of any constitutional statutory or charter provisions requiring the CITY, the CRA, or other Governmental Authorities to levy ad valorem taxes nor a lien upon any properties or funds of the CITY, the CRA, or other Governmental Authorities. Developer agrees that the obligations of the CITY and the CRA to provide any funding or to make any payments to Developer pursuant to this Agreement, or any other agreement related to the Project, shall be subordinate to the obligations of the CITY or the CRA to pay debt service on any bonds or notes issued by the CITY or CRA as contemplated by the CITY's and CRA's approved annual budgets, up to the principal amount of such bonds or notes. Nothing contained herein shall be deemed, construed, or applied to cause any Governmental Authorities, specifically including the CITY or CRA, to waive its right to exercise its governmental power and authority or to consider any request causing the exercise of its governmental powers in any manner other than that which is customary for the exercise of such governmental powers.

Notwithstanding the foregoing, the CRA hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from lawfully available funds in each fiscal year of the CRA, amounts sufficient to pay the principal and interest due on the capital improvement revenue note not to exceed \$3.5 Million at a four (4%) percent rate of interest for a period of five (5) years, as further referenced in Section 4.2 herein. "Lawfully available funds" means all revenues of the CRA derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this section, but only after provision has been made by the CRA for the payment, to the extent are not otherwise provided for by ad valorem taxes, of (a) all services necessary for conducting of the governmental obligations of the CRA and (b) all legally mandated services of the CRA. Such covenant and agreement on the part of the CRA to budget and appropriate such amounts of legally available funds shall be cumulative to the extent not paid, and shall continue until such legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid.

4.6 Lack of Appropriations. Based upon the timeframes set forth in this Agreement, the CITY agrees to propose in each applicable fiscal year budget an amount to cover the CITY's obligations as stated herein commencing with the Fiscal Year 2024-2025 budget; however, the CITY's funding obligations as

stated herein are all subject to the CITY's annual budgeting and appropriation process. The Developer understands and agrees that the CITY's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement.

4.7 Right of Repurchase. The CRA shall have the right to repurchase the Property in accordance with the Purchase and Sale Agreement and the Memorandum of Agreement to be executed by the CRA and the Developer prior to the conveyance of the CRA Property.

4.8 CITY Obligations. Subject to a Force Majeure event, the CITY shall be responsible for the following obligations:

- (a) The CITY shall vacate all operations on the Property in accordance with the Critical Path.
- (b) Subject to the CITY Commission's legislative approval capacity, the CITY shall complete the Unsolicited Proposal for Qualifying Project Process in accordance with the Critical Path.
- (c) The CITY shall complete the electric utility services upgrades in and around the project, which includes but is not limited to placing utility lines underground along the Arts Alley and the relocation of lines around the site as defined in the Critical Path.
- (d) Enter into a ground lease with the CRA for the K Street Parking Component site in accordance with the Critical Path.
- (e) Enter into a loan repayment agreement with the CRA for the K Street Parking Component.

4.9 CRA Obligations. Subject to a Force Majeure event, the CRA shall be responsible for the following obligations:

- (a) The CRA shall demolish the existing building located at 501 Lake Avenue in accordance with the Critical Path.
- (b) The CRA shall prepare the sites located at 126 South J. Street and 701 and 710 1<sup>st</sup> Avenue South for the two (2) contributing structures, currently located at 24 South L and 26 South L to be renovated by the CRA in accordance with the Critical Path.
- (c) Enter into a ground lease with the CITY for the K Street Parking Component site in accordance with the Critical Path.
- (d) Enter into a loan repayment agreement with the CITY for the K Street Parking Component.
- (e) Issue a capital improvement revenue note for the construction of the K Street Parking Component in accordance with the Critical Path .

**Article 5. Performance of the Work.**

5.1 Developer shall commence construction of the Project pursuant to the Critical Path. Following commencement of any Work, Developer shall diligently pursue in good faith the commencement and completion of the Work in order that Final Completion of the Project is achieved no later than the Final Completion date set forth in the Critical Path, subject to a Force Majeure event.

5.2 The Developer agrees that all Work performed under this Agreement shall be (a) performed in accordance with Applicable Laws, including the Florida Building Code; (b) executed in a good and workmanlike manner, free from defects, and that all materials shall be new or made of recycled materials generally accepted and used in the construction industry; (c) undertaken in such a commercially reasonable manner as to minimize, to the extent reasonably practicable, material interference and not materially adversely affect the business or residential operations of the parties and their respective tenants, invitees, customers and/or guests; (d) done in a manner consistent with industry standards and providing for safety measures for persons and property as is standard within the construction industry;

5.3 Warranty. In each Construction Agreement contemplated herein for the Project, the Developer shall provide a warranty of its Developer's Representatives Work for a period of 12-months from the date of Substantial Completion for all faults and defects in the Work and any provided materials and/or equipment (unless otherwise covered under the applicable manufacturer's warranty which must be at least 12-months in duration).

5.4 The Developer agrees that all Work on public property including but not limited to relocation of the structures and the K Street Parking Component will not commence until a public construction bond consistent with section 255.05, Florida Statutes, is secured and recorded in the Official Records in and for Palm Beach County, Florida, with the CITY and/or CRA (as applicable) as obligees thereof.

5.5 OPPORTUNITIES FOR CITY OF LAKE WORTH BEACH RESIDENTS AND BUSINESSES. The Developer shall make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach residents with opportunities for training and employment in connection with the Project. The Developer shall also make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach business concerns with opportunities in connection with the Project, including the utilization of small business, minority/women-owned business enterprises, and veteran-owned business enterprises.

## **Article 6. Incentives**

6.1 Intentionally Omitted.

6.2 CRA Infrastructure. In recognition of the additional expense associated with the incorporation of underground parking to minimize the scale of the development for the community, the public dedication of the arts alley, and the construction of community art space, the Developer shall receive \$2,000,000.00 in infrastructure improvement grants from the CRA as follows:

a)	Fiscal year 25/26	\$500,000
b)	Fiscal year 26/27	\$500,000
c)	Fiscal year 27/28	\$500,000
d)	Fiscal year 28/29	\$500,000

6.3 Water and Sewer Public Utility Relocation Incentive. The Developer shall receive a one-time, lump sum payment of \$250,000 from the CITY to support water and sewer public utility relocation costs required for the Project (which relocation costs are estimated to cost the Developer \$400,000). The Developer shall be responsible for the water and sewer public utility relocations potentially within the City right of way. If the Project changes and the water and sewer public utility relocations are not made by the Developer, the CITY and the Developer shall agree to a new amount for the CITY to pay consistent with the water and sewer public utility relocation(s) and the estimated cost of the same actually made by the

Developer for the Project. If no water and sewer public utility relocations are made by the Developer for the Project, the CITY shall be relieved of making any such payment to the Developer.

This one-time lump sum payment shall be made by the CITY upon completion when the Project is deemed to have been Placed-In-Service upon written request of the Developer, which written request shall be submitted at least 60-days in advance of the payment due date.

6.4 Utility Rate Incentive. The Developer shall receive, an economic investment incentive from the CITY based on the projected Project revenue streams to the CITY's electrical, water, sewer, and stormwater utilities estimated at a maximum amount of \$82,547 based on the following Project parameters:

- Water Utilities - 0.0999 per sq ft of conditioned space
- Stormwater - \$0.04 per sq ft of conditioned space
- Electric - \$.50 per sq ft of conditioned space
- For the Project estimate of 129,000 sq. ft.

The maximum amount of \$82,547 to be paid by the CITY to the Developer is the total Utility Incentive Fund set forth in this Agreement; however, if the above stated Project parameters change, the City's actual payment shall be the lesser of the maximum amount to be paid for the Utility Incentive Fund set forth in this Agreement or a re-calculation of the Utility Incentive Fund based upon the actual as-built Project parameters. Upon the Project being Placed-In-Service, the Developer shall submit a written request to the CITY for the disbursement of the Utility Incentive Fund and identify in its request to whom and where payment shall be made by the CITY. Within ninety (90) days of the CITY's receipt of the Developer's written request for the disbursement of the Utility Incentive Fund, the City shall re-calculate the Utility Incentive Fund based on the as-built Project parameters ("Re-Calculated Amount"). The CITY shall then pay the lesser of the total Utility Incentive Fund as set forth in this Agreement or the Re-Calculated Amount to the Developer.

6.5 Entitlement Fee Waivers.

(a) Developer shall be entitled to certain entitlement fee waivers from the CITY in the estimated amounts listed below but in no event shall the entitlement fee waivers to the Developer be less than the total cost calculated by the CITY for the fees listed below:

Transfer of Development Rights:	\$ 183,000.00
Sustainable Bonus Incentive:	\$ 67,000.00
Land Development Application Fees:	\$ 15,000.00
Affordable Housing Waiver:	\$ 340,080.00

(b) The CITY agrees and acknowledges that the Developer's \$1,000,000 contribution to the K Street Parking Component shall satisfy the full cost of all parking in lieu of parking waiver fees imposed by the CITY.

6.6 Affordable Housing. Developer agrees to offer eight (8) Residential Units as Artist Lofts. These lofts are inclusive of artist workspace and will be dedicated as affordable at the 80-120% Area Median Income Level as follows: three (3) One Bedroom unit at 80% Area Median Income ("AMI"); two (2) bedroom units at 80% of AMI; and three (3) two bedroom units at 120% of AMI for the Arts community for a period of 15 years. The affordability of the Artist Lofts shall be evidenced by a Land Use Restriction Agreement recorded in the public records of Palm Beach County. In return, the CRA will provide an Affordable Housing Construction Incentive to the Developer in the total amount of \$1,400,000.00 payable at the time of Closing. If the developer adjusts the unit mix of the residential component, the CRA reserves

the right to recalculate the affordable housing buydown for the sole purpose of confirming the Affordable Housing Construction Incentive value . If the Affordable Housing Incentive value is less than previous estimates, the developer may adjust the affordable housing unit mix to equal a total amount of \$1,400,000 in Affordable Housing Incentive Value.

(a) The CRA shall partner with the Developer to screen and pre-qualify artists for the program. If the CRA is unable to identify qualified candidates to occupy the units within 12 months of operation, Developer shall have the option of returning the units to market rate rentals. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the full value of what was paid to the Developer for the units that shall be returned to market rate status.

(b) Post Lease Up Provision: After a period of twenty-four (24) months from the issuance of the certificate of occupancy for the Artist Lofts, the Developer may exercise its rights to offer the units as market rate should the CRA be unable to provide qualified candidates to occupy vacated units after a five (5) month vacancy period. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the remaining value of what was paid to the Developer for the units that shall be returned to market rate status. The remaining value shall be reduced by \$11,667 per year.

6.7 Community Art Space. Developer shall provide 2,100 SF of Community Art space along the Art Alley which shall be open to the public and available as a community gathering space for the arts. This space shall be programed and activated in partnership with the CRA and Developer. The Developer shall have the flexibility to adjust the square footage of this space up to fifteen (15%) percent at its sole discretion.

6.8 Impact Fees. CITY and CRA shall support and reasonably assist the Developer in obtaining from the Palm Beach County an abatement or significant reduction in impact fees (currently estimated at \$1,092,334).

6.9 Arts Alley Extension Contribution. The City shall dedicate \$340,000 toward the construction of the Arts Alley Extension.

6.10 Museum Parcel Payment in Lieu of Taxes. The CITY and/or the CRA shall enter into a Payment in Lieu of Tax (PILOT) agreement (the "PILOT Agreement") with the Developer for the Museum Parcel for a period of fifteen years prior to the Project being Placed-In-Service. The PILOT Agreement shall commence in the calendar year 2031, at which time the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due to the CITY for a period of five years (2031 through 2035). If the CRA is still in existence the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due for both the CITY and the County portion of the annual property tax bill to the CRA. Beginning in the year 2036, the Developer shall be responsible for the payment of fifty (50%) percent of the total ad valorem tax liability due to the CITY for a period of ten (10) years (2036 through 2045). If the CRA is still in existence the Developer will pay fifty (50%) percent of the total ad valorem tax liability due for both the CITY and the County portion of the annual property tax bill to the CRA. The provisions of this subsection shall survive until 2045.

**Article 7. Books and Records.** Upon execution of this Agreement by the Developer, the Developer shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the Project.

**Article 8. Default; Termination.**

8.1 Developer Default. An "Event of Default" or "default" entitling CITY or the CRA to its remedies below shall occur by the Developer on the happening of any of the following events:

(a) Failure to Observe Agreement. The Developer shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement; or

(b) Inaccuracy of Representation and Warranties. Any material representation or warranty made herein by the Developer shall prove to have been incorrect in any material respect as of the date made; or

(c) Abandonment of Project. The abandonment of the Project by Developer , other than as a result of Force Majeure. "Abandonment of the Project" shall be defined unilateral cessation of work by the Developer without justification or prior notification to the CITY and CRA for reasons other than as a result of Force Majeure . The CITY and CRA may not consider the Project abandoned until the following conditions are met: (i) the Developer ceases operations without notice for a period of fifteen consecutive days; and (ii) the Developer refuses to resume work after being notified by the CITY and/or the CRA after the 16<sup>th</sup> consecutive day of abandonment.; or

(d) Failure to Complete by Completion Dates. The failure of the Developer to achieve Substantial Completion and/or Final Completion of the entire Project by the date set out in the Critical Path, unless subject to a Force Majeure event; or

(e) Abandonment of Government Approvals. The Developer abandons the diligent prosecution of any of the Government Approvals for the Project, or withdraws applications for the Government Approvals, each without the consent of the CITY and CRA, without amending or re-submitting requests for the Government Approvals within one hundred twenty (120) calendar days; or

(f) Material Adverse Change. The occurrence of a material adverse change in the financial condition of the Developer that materially and adversely impairs the Developer's ability to perform or to cause to be performed its obligations under this Agreement; or

(g) Bankruptcy. The Developer shall generally fail to pay debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; the Developer shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer shall be commenced seeking to have an order for relief entered against the Developer, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or for all or any substantial part of their respective properties, and (i) the Developer shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) calendar days after the entry thereof, or (iii) such, case, proceeding or action remains undismissed for a period of ninety (90) calendar days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or



(h) Attachment/Garnishment. The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within sixty (60) calendar days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or

(i) Judgments. One or more judgments, orders or decrees shall be entered against the Developer which materially interfere with Developer's ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) calendar days from the entry of such judgment, order or decree; or

(j) Failure to Close. Should the Developer fail to close on the purchase of Property by the Closing Date, as such Closing Date may be extended by the Purchase and Sale Agreement, unless the CRA under the Purchase and Sale Agreement has defaulted or a condition to Developer's obligations under the Purchase and Sale Agreement has not been satisfied. Nothing in this sub-section shall be construed as limiting any other provision of this Agreement or the Purchase and Sale Agreement providing an extension of the Closing Date.

8.2 CITY and CRA's Remedies. Upon the occurrence of an Event of Default by the Developer, which Event of Default continues without remedy for twenty (20) calendar days after written notice thereof from the CITY or CRA to the Developer; provided, however, that if such Event of Default is capable of cure but cannot reasonably be cured within twenty (20) calendar days, such failure shall not constitute an Event of Default so long as the Developer provides CITY and CRA with written notice within five (5) calendar days of receipt of the CITY or CRA's default notice advising the CITY or CRA that the default cannot be reasonably cured within twenty (20) calendar days and specifying the reasons therefore and, within the twenty (20) Calendar Day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after Developer's receipt of the original written default notice unless approved by the CITY or CRA, CITY and/or CRA shall have the right to terminate this Agreement if the Event of Default and the following additional remedies:

(a) Require the Developer to assign to the CITY and CRA, on a non-exclusive basis, all of Developer's assignable rights in and to the non-privileged plans and specifications produced in conjunction with the Project. The Developer shall deliver to the CITY and CRA within thirty (30) calendar days, an assignment of all of Developer's assignable rights in and to all plans, construction documents, reports, studies, permits, drawings, and designs produced by the Developer and the Developer's contracted professionals as of the date of termination and Developer shall deliver to the CITY and CRA a copy of such documents. CITY and CRA shall not be entitled to punitive damages, or consequential damages, or loss profits damages from Developer, whether the default occurs before or after the occurrence of the Closing.

(b) The sum of (i) CITY and CRA's documented actual and direct damages incurred in furtherance of the Project's development after the Effective Date of this Agreement; and, (ii) CITY and CRA's reasonable attorney fees and costs incurred by CITY and CRA to collect its actual and direct damages under this subsection.

(c) Any and all other remedies under any other agreement contemplated herein and duly executed by the Developer, CITY and/or CRA.

8.3 CITY or CRA Default. An "Event of Default" or "default" entitling the Developer to its remedies below shall occur by the CITY or CRA upon the happening of any of the following events:

(a) Failure to Observe Agreement. The CITY or CRA shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement.

(b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the CITY or the CRA shall prove to have been incorrect in any material respect as of the date made.

8.4 Developer's Remedies. Upon the occurrence of an Event of Default by the CITY and/or CRA, which Event of Default shall continue unremedied for twenty (20) calendar days after written notice thereof from the Developer to the CITY and CRA; provided, however, that if such failure is capable of cure but cannot reasonably be cured within twenty (20) calendar days, such failure shall not constitute an Event of Default, so long as the CITY or CRA provides the Developer with written notice within five (5) calendar days of receipt of the Developer's default notice advising the Developer that the default cannot be reasonably cured within twenty (20) Calendar Days and specifying the reasons therefore and, within the twenty (20) calendar day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after CITY or CRA's receipt of the original written default notice, the Developer shall have the right to terminate this Agreement and the following additional remedies:

(a) The sum of (i) Developer's documented actual and direct damages incurred in furtherance of the Project's development after the Effective Date of this Agreement; and, (ii) Developer's reasonable attorney fees and costs incurred by Developer to collect its actual and direct damages under this subsection.

(b) Any and all other remedies under any other agreement contemplated herein and duly executed by the Developer, CITY and/or CRA.

8.5 In no event shall either party be liable to the other for any indirect, incidental, consequential, special, or punitive damages, including but not limited to loss of profits, revenue, or business opportunities, arising out of or relating to this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if such party has been advised of the possibility of such damages. For the avoidance of doubt, the CITY and CRA are not jointly and severally liable under this Agreement and the default of one such party shall not cause the other party to be in default, provided, however, that termination of this Agreement by Developer as a result of a default of one such party shall entitle Developer to terminate this Agreement as to all parties.

8.6 Cross Termination. The parties agree that notwithstanding anything to the contrary herein a default (after the expiration of any applicable notice and cure period related thereto, if any) by either party under either this Agreement or the Purchase and Sale Agreement shall afford either party the right to terminate this Agreement and/or the Purchase and Sale Agreement.

8.7 Termination. This Agreement (but not the Surviving Obligations) shall terminate upon the occurrence of the earlier of the following events:

- (a) A termination of this Agreement as otherwise may be permitted in accordance with the provisions of this Agreement; or
- (b) Failure of the Project to obtain the Entitlements or Permits as defined herein necessary to develop the Project, which failure is not an Event of Default.

- (c) The completion of the development and construction of the Project and the remaining obligations of the parties under this Agreement with respect to the Project pursuant to the terms and conditions of this Agreement.

8.8 Effect of Termination. If this Agreement shall terminate prior to Closing, the Developer shall, as soon as practicable, but in no event later than the fifteenth (15) calendar days after a termination notice is given, or such shorter period of time in the event of emergency or a life/safety issue:

(a) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder, including, without limitation, the delivery to the CITY and CRA of any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CITY and CRA; and (iii) not destroy originals without first offering to deliver the same to the CITY and CRA.

(b) Notwithstanding the above in the event of CITY or CRA Default and the Developer elects to terminate this Agreement, Developer shall have no obligation or responsibility to produce documentation referenced in this section to the defaulting party.

#### **Article 9. Indemnification.**

9.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CITY and CRA, its Commission members, agents, consultants and employees harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), assessed against, levied upon, or collected from, the CITY or CRA arising out of, from, or in any way connected with or arising from any Developer's breach of its obligations under this Agreement. The CITY and/or CRA shall be required to provide notice to the Developer of any liability, loss, damage, interest, or cost and/or expense, which the Developer is required to hold the CITY or CRA harmless in accordance with this provision, within ten (10) days of receipt of by the CITY and/or the CRA of such claim or request for damages, provided, however, that the failure to give such prompt written notice shall not, however, relieve the Developer of its indemnification obligations, except and only to the extent that the Developer forfeits rights or defenses by reason of such failure. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CITY or CRA with respect to any liability, loss, damages, costs or expenses suffered as a direct and proximate result of the negligence, gross negligence and/or willful misconduct of the CITY or CRA or its agents.

9.2 Limitation on Indemnification. Notwithstanding anything in this Article to the contrary, Developer shall not have any obligation to indemnify or defend the CITY or CRA against any claims brought against the CITY or CRA by any third party challenging: (1) the CRA's or CITY's legal authority to sell all or any portion of the Property or enter into this Agreement, (2) the CRA's or CITY's judgment in selling all or any portion of the Property or entering into this Agreement or the terms and provisions of this Agreement, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. In this event of any conflict between this Section and any other provision in this Article, this Section shall control and govern.

9.3 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

9.4 Tort Liability. Any tort liability to which the CITY or CRA is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. This Agreement shall not be construed or interpreted as the CITY or CRA's waiver of any of their rights and immunities under Applicable Law or consent to be sued by a third party.

**Article 10. Condition of Property.** CITY and CRA's Existing Studies. The CRA and CITY have previously provided to Developer copies of all existing engineering studies, surveys, maps, and reports in the CITY's possession pertaining to the Property (the "Property Reports"). The CITY and CRA consent to Developer's use of the Property Reports in connection with the development of the Project. Within thirty (30) calendar days after the Effective Date, the CITY and CRA will deliver to a Developer a written list describing all Property Reports and copies of any Property Reports not previously delivered to Developer.

**Article 11. Representations and Warranties.**

11.1 Developer. The Developer represents and warrants to the CITY and CRA as follows:

(a) That (i) the Developer is a limited liability company duly organized, validly existing and in good standing under the laws of Florida; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions provided for in this Agreement have been duly authorized and upon execution and delivery by the Developer will constitute the valid and binding agreement of the Developer enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the Developer hereunder, will not conflict with, or breach or result in a default under, any agreement to which it is bound.

(b) That there are no pending, threatened, judicial, municipal or administrative proceedings, consent decrees or judgments against Developer which would materially and adversely affect Developer's ability to perform its obligations hereunder.

(c) That the Developer has the credit worthiness and financial capacity to reasonably obtain conventionally acceptable financing to complete this Project.

11.2 CITY. The CITY represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CITY will constitute the valid and binding agreement of the CITY enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CITY hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

11.3 CRA. The CRA represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CRA will constitute the valid and binding agreement of the CRA enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CRA hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

11.4 Survival. The representative and warranties set forth in this Article shall survive the expiration or earlier termination of this Agreement.

**Article 12. No Liens.**

12.1 Developer acknowledges and agrees that prior to Closing, the Property is excluded from the definition of "real property" upon which liens may be placed as set forth in Section 713.01(24), Florida Statutes. The Developer shall include a provision substantially similar to this Section in each of its contracts and purchase orders to be performed prior to Closing, requiring contractors, subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Property owned by the CRA upon which the Work or any portion thereof is to be performed and to look solely to the credit of the Developer or its surety or the credit of the contractor or its surety for payment of any sums due in connection with the Work.

12.2 Prior to Closing, the Developer shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work, the K Street Property, or the Property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed, the Developer shall provide notice thereof to the CITY and the CRA and shall cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, within thirty (30) days.

**Article 13. Miscellaneous.**

13.1 Notices. All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier, with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with "FORMAL NOTICE UNDER DEVELOPMENT AGREEMENT" in the subject line (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c), addressed to:

- (a) If to the CITY:  
City of Lake Worth Beach, Florida  
Jaime Brown , Interim City Manager  
1749 3<sup>rd</sup> Avenue South  
Lake Worth Beach, Florida 33460

With copies to:  
Torcivia, Donlon, Goddeau, and Rubin, PA  
Attn: Christy Goddeau, Esq.  
701 Northpoint Parkway, 209  
West Palm Beach, FL 33407

- (b) If to the CRA:  
Lake Worth Beach Community  
Redevelopment Agency  
Joan Oliva, Executive Director  
1121 Lucerne Avenue  
Lake Worth Beach, FL 33460

With copies to:

Weiss, Serota, Helfman, Cole, and Bierman  
Attn: David N. Tolces, Esq.  
2255 Glades Road, Suite 200 E  
Boca Raton, FL 33431

- (c) If to the Developer:  
Sunshine Lake Worth Development, LLC  
16711 Collins Avenue  
Sunny Isles Beach, FL 33160

With copies to:

R. Miller Consulting Group  
ATTN: Renee Miller  
[reneem@rmcglc.com](mailto:reneem@rmcglc.com)  
Phone: 786-253-8436

Goren, Cherof, Doody and Ezrol, PA  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308  
Attn: Donald J. Doody, Esq.  
Email: [ddoody@gorencherof.com](mailto:ddoody@gorencherof.com)

Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a business day).

13.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

13.3 Assignment. The Developer may not assign this Agreement or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the CITY and CRA.

13.4 Project Representatives. The CITY hereby appoints the CITY Manager to serve as its representative. The CITY Manager shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CITY; provided, however the CITY Manager shall have the right at any time to obtain the approval of the CITY Commission to the extent required by Applicable Laws, where specifically required under this Agreement, or when deemed necessary in the CITY Manager's sole discretion. The CRA hereby appoints the CRA Executive Director to serve as its representative. The CRA Executive Director shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CRA; provided, however the CRA Executive Director shall obtain the consent of the CRA Board to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints David Kastner, Esq., to serve as its representative. The parties may change their respective designated representative(s) at any time by providing written notice thereof to the other party.

13.5 No Permit. This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, Government Approval or authorization to commence development.

13.6 Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida and venue shall lay exclusively in Palm Beach County, Florida.

13.7 Captions. Captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

13.8 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project as of the Effective Date and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto.

13.9 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CITY and CRA, and the Developer shall not have any obligation or liability, in tort or in contract, with respect to the Property, either by virtue of this Agreement or otherwise, except as may be set forth to the contrary herein. The Developer shall not have nor claim any entitlement to the CITY or the CRA's immunities under Applicable Law.

13.10 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

13.11 Successors. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

13.12 Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

13.14 Civil Rights Compliance. The Developer warrants and represents that it shall not discriminate against any of its employees or prospective employees on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

13.15 Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement.

13.16 Equitable Remedies. In the event of a breach or threatened breach of this Agreement by any party, the remedy at law in favor of the other party will be inadequate and such other party, in addition to any and all other rights which may be available, shall accordingly have the right of injunction in the event of any threatened breach of this Agreement by any party.

13.17 Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the CITY, CRA or the Developer) shall have any right or claim against the CITY, CRA or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CITY, CRA or the Developer.

13.18 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

13.19 Remedies Cumulative; No Waiver. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non- defaulting party by law.

13.20 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

13.21 Signage. Subject to the reasonable approval of the CITY and CRA and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the Property.

13.22 Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

13.23 Compliance. In the performance of all parties' obligations under this Agreement, each party shall perform its obligations in accordance with all Applicable Laws.

13.24 WAIVER OF JURY TRIAL. The parties to this Agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

13.25 CONFLICT OF INTEREST. The Developer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. Developer further represents that no person having any such conflicting interest shall be employed for said performance. Developer shall promptly notify the CITY and CRA, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Developer's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Developer may undertake and request an opinion of the CITY and CRA as to whether the association, interest or circumstance would, in the opinion of the CITY and CRA, constitute a conflict of interest if entered into by Developer. The CITY and CRA agree to notify Developer of their opinion(s) within thirty (30) days of receipt of notification by the Developer. If, in the opinion of the CITY and/or CRA, the prospective business association, interest or circumstance would not constitute a conflict of interest by Developer, the CITY and CRA shall so state in the notification and the Developer may, at its option, enter into said association, interest or circumstance.



13.26 PUBLIC ENTITY CRIMES, SCRUTINIZED COMPANIES, E-VERIFY AND HUMAN TRAFFICKING.

(a) As provided in Sections 287.132-133, Florida Statutes, as amended from time to time, by entering into this Agreement, the Developer certifies that it, its affiliates, suppliers, subcontractor and any other contractors who will perform hereunder, have not been placed on the convicted contractor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof.

(b) As provided in Section 287.135, Florida Statutes, as amended from time to time, by entering into this Agreement, the Developer certifies that it is not participating in a boycott of Israel. The Developer agrees that the CITY will have the right to terminate this Agreement is found to have been placed on the Scrutinized Companies that Boycott Israel List or as otherwise set forth in Section 287.135, Florida Statutes.

(c) To the extent applicable, Developer shall comply with the E-Verify requirements of section 448.095, Florida Statutes.

(d) By signing this Agreement as set forth below, the Developer's authorized representative swears or affirms under penalty of perjury that the Developer does not use coercion for labor or services as defined in section 787.06, Florida Statutes.

13.27 PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL. Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

13.28 PUBLIC RECORDS. The Developer shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, to the extent applicable to any public records related to or arising from this Agreement.

13.29 CONFIDENTIAL INFORMATION. If during the term of this Agreement, any party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by the Developer or the Developer's Representatives. The Developer shall ensure the Developer's Representatives are also contractually required to maintain the confidentiality of such information.

**Article 14. Safety and Protection.**

14.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work. Developer shall take all necessary safety precautions (required by Applicable Laws), and shall take commercially reasonable industry practices and precautions, to prevent damage, injury or loss to:

(a) all persons on the Property or K Street Property or who may be affected by the construction;

(b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the Property or K Street Property; and

(c) other property at the Property or K Street Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

14.2 Developer shall comply with Applicable Laws of Governmental Authorities having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain commercially reasonable safeguards for such safety and protection, taking into consideration the effect on the Project. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

14.3 Developer shall act in a commercially reasonable manner to protect and prevent damage to all components of the Work, and any existing facilities or improvements, including but not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Developer shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under required insurance) to the Work caused in whole or in part by the Developer, the general contractor, a contractor, subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible.

14.4 Developer shall cause its general contractor to be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Applicable Laws.

**Article 15. CITY's Representative.**

15.1 The parties acknowledge and agree that the CITY and CRA may engage in one or more consultants to assist the CITY and CRA in the administration of this Agreement and the Project. The Developer agrees to reasonably cooperate with any such consultants engaged by the CITY and CRA.

**[This Space is Intentionally Blank; Signature Pages to Follow]**

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

**DEVELOPER:**

SUNSHINE LAKE WORTH DEVELOPMENT, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Arthur Wiener, Manager

Date: \_\_\_\_\_, 2024

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ [title] of Sunshine Lake Worth Development, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification, and who did take an oath that the facts stated with regard to section 787.09, Florida Statutes, are true and correct, and he or she is duly authorized to execute the foregoing instrument and bind Sunshine Lake Worth Development, LLC, to the same.

\_\_\_\_\_  
Notary Public Signature  
Notary Seal:

**Remainder of this page intentionally left blank**  
**Signature page of CITY and CRA follows**

**CITY:**

CITY OF LAKE WORTH BEACH, FLORIDA,  
a Florida municipal corporation

Attest:

By: \_\_\_\_\_  
MAYOR

By: \_\_\_\_\_  
CITY Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

Approved for financial sufficiency

By: \_\_\_\_\_  
CITY Attorney

By: \_\_\_\_\_  
Financial Services Director

**CRA:**

LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

Attest:

By: \_\_\_\_\_  
CHAIR

By: \_\_\_\_\_  
Board Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
CRA Attorney

EXHIBIT A

Legal Descriptions for the Project Site:

EXHIBIT B  
EXHIBITB-1

Project Critical Path  
Parking Component Critical Path

EXHIBIT C  
Site Plan

# LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

1121 Lucerne Avenue | Lake Worth Beach, Florida 33460-3346 | T: 561-493-2550

[www.lakeworthcra.org](http://www.lakeworthcra.org)

## MEMORANDUM

**TO:** Chair, Vice-Chair and Members of the Board

**FROM:** Joan C. Oliva, Executive Director 

**DATE:** October 8, 2024

**SUBJECT:** **Public Private Partnership with Sunshine Lake Worth Development and the City of Lake Worth Beach for a Downtown, Mixed-use, Cultural Campus**

### EXPLANATION:

In February of 2024, the CRA heard a presentation from the Wiener Museum of Decorative Arts and United Management for the development of a downtown art-campus. The Board unanimously agreed to give WMODA/ United the summer months to develop a proposal for the CRA owned sites in the downtown versus the advertising of a 2-part RFP developed by the CRA and City.

Since February, both City and CRA Staff have been working with Renee Miller and Associates, representatives for WMODA/United and other consultants to develop a thorough plan and development project that meets both the needs of the Museum, the City and the community. This has not been an easy task, taking into consideration the Downtown Parcel Master Plan and charette results, the LDR's, and the feedback the CRA has received over the years from the Commission. Specifically, the outcome of years of meetings and plans resulted in the need for a development that could meet the community's needs, including;

- A mixed-use development with reduced height and scale
- High quality design
- Lush landscaping
- Affordable housing
- Pedestrian amenities
- Community Space
- Activity on Lake Avenue
- The moving and restoration of historic structures
- Additional parking opportunities without a structure on "L" and "M" Streets
- Reactivation of alleyways
- An increased customer base for downtown
- Employment opportunities

### History – 2018 - 2022

The City of Lake Worth Beach and the CRA partnered to create a mixed-use project in the downtown with the acquisition of several parcels of land beginning as far back as 2018. Since that time, the CRA has created an RFP, a Master Plan, had public charettes and workshops and held over 30 meetings to discuss future plans for both "L" and "M" Street and the "K" and 1<sup>st</sup> Avenue South assemblage.

The City has held HRPB meetings, City Commission meetings, hired Treasure Coast Regional Planning Council and managed the Master Plan process, helped staff public workshops, changed ULDR's, created historic design and thoroughfare guidelines and worked on the development of a downtown parking plan.

Both entities have sought the advice of professionals in addition to those at the TCRPC and these include Elizabeth Plater-Zyberk, Joe Minnicozi from Urban 3 and the architecture firm of Dover/Kohl. A number of Staff memos are included to help provide information on the various steps and discussions held in relation to the downtown parcels. These are attached as Exhibit "A."

## **2022 - today**

The final Downtown Master Plan was submitted to the City in December 2022. TCRPC made several policy recommendations for the redevelopment of the downtown parcels. To assist with the creation of a new RFP, the CRA hired Dover/Kohl to help draft plan diagrams and language that would give a proposer a clear idea of what the CRA and City were seeking. Once Dover/Kohls input was complete, Staff finished up the RFP and sent it over in draft form to the City Manager and Staff for review and editing. To help facilitate the RFP, William Waters and CRA Staff, wrote a detailed *Process, Tasks and Responsibility* update for the Commission and this is included in the packet as Exhibit "B."

At approximately the same time the two-part draft RFP was sent to the City Manager's office, CRA Staff was put in contact with a representative from Wiener Museum of Art. Although the Museum is currently located in Hollywood, Florida, the museum is seeking a permanent home. Shortly after speaking with Renee Miller, from the Miller Consulting Group, and Staff from the Wiener Museum, a tour was set up for CRA Staff, then City Manager, Carmen Davis, Community Sustainability Director William Waters and Mayor Betty Resch to visit the Museum at its temporary headquarters in Hollywood.

Because representatives from the City and CRA were so impressed with the museum and the idea of bringing such a prominent and distinguished museum campus to downtown Lake Worth Beach, a visit to the City was arranged for Mr. Wiener, his family and team. On the tour were CRA and City Staff, CRA Board Member Anne Fairfax, and Mayor Betty Resch. During the month of January, Staff worked closely with the consultants and Staff at WMODA to arrange private tours of the Museum for all seven Board members and with the City Commissioners.

At the February CRA Regular Meeting, the Board agreed to give WMODA/United sufficient time to develop a proposal that met both the needs of both parties. The CRA Board selected both Anne Fairfax and Drew Bartlett as CRA Liaisons for the project.

## **The Proposal**

As mentioned earlier in this Memo, the team from WMODA, United Management(aka Sunshine Lake Worth Development), CRA and City Staff worked together, with all our respective attorneys, to develop a set of agreements that would not only meet the needs of the developer and the Museum but also accomplish several other City goals, including a long-term downtown parking solution, the activation and beautification of City alleyways, the undergrounding of City electric lines to allow for shade trees and a way to finance improvements.

What is proposed is a multi-partner, multi-property, mixed-use project that will create:

- A 33,000 square foot museum on the corner of Lake Avenue and South "M" Street
  - The Museum will also include a gift store and café;
  - Classroom space, and;



- Community space
- A 110-unit apartment building with 8 affordable, live/work lofts
- An Arts Alley from M – L Street that will be created and maintained by WMODA in perpetuity
- The design and creation of an Arts Alley extension from L – K that will be paid for by the City and WMODA, to be maintained by the City
- The movement of 4 historical structures, identified by the City Commission to lots on “J” and “K” Streets owned by the CRA
- The design and construction of a City parking garage on lots on K owned by the City and the CRA

The development, due to its complexity, will be a Public-Private Partnership between the CRA, City and developer. Copies of the preliminary agreements, the Purchase and Sale and Development Agreement, are included for the Board’s review as Exhibit “C.” Ultimately, to cover all the details of the many transactions and plans needed, an additional 4 agreements will be created after the CRA comes to terms on the Purchase and Sale and Development Agreement for the parcels on both “L” and “M.” These will be provided at a later date.

The purchase and sale is an agreement between the CRA and Sunshine Lake Worth Development (WMODA, United) that sets terms and requirements of both parties as they relate to the sale of the CRA owned property. The development agreement is a tri-party agreement that defines the role of each party in the development of the overall project that includes a museum, residential units, the Arts Alley’s, public garage and historic home relocations.

A summary of the deal structure follows.

- The CRA will sell the parcels on “L” and “M” to Sunshine for \$0.00. In exchange the project will pay property taxes to the CRA. Over the course of 10 years, the tax increment created by the project will reimburse the CRA for the cost of the land.
- The CRA will provide a \$2M infrastructure incentive. These funds will go towards paying for portions of the Arts Alley, landscaping, lighting and other improvements in the public realm. These funds will also be reimbursed to the CRA in the form of tax increment.
- The CRA will “buy down” eight, live-work units in the project, making them affordable for households making 80 – 120% of area median income. These funds will come from our housing program that consists mostly of federal and other grant funding.

WMODA will be providing \$1M to the City for their downtown parking fee. This fee pays the City for spaces that the City is requiring for the Museum component of the project. Instead of collecting the in-lieu-of-fee, the City wanted to take advantage of the opportunity this public-private development creates and implement their parking plan which includes the building of a City garage on “K” Street. The CRA will play an active role in the development of the garage by donating one of the CRA owned parcels on K Street and helping to finance the structure.

To expediate the development and to keep construction costs in check, WMODA has agreed to hold the note on the garage. According to the City’s consultant, WGI, the 3.5 story garage will cost approximately \$8.5M. An initial payment is needed before construction starts and totals \$5M. Of this \$5M, WMODA will pay \$1M, the CRA \$1.5M and the City \$2.5M. The remaining \$3.5M note will be held by the developer at a 4% (below market) interest rate for up to 5 years. The CRA will pay another \$2.5M to buy down the note while the remaining payment (approx. \$1M) will be paid by the City in years 3-5.

This allows the City to pay off the garage in 5 years, saving the City millions of dollars in interest. Additionally, because Sunshine development will design and constructing the garage, the City saves on time and money.

This five-year time frame gives the City time to implement a downtown parking program, discussed by the Administration and Commission for at least six years.

The CRA will also be responsible for the rehabilitation of the two historic structures being moved by WMODA. At the present time, the CRA plans to move the smaller structure (24 South "L") to 126 South "J" and use it as an affordable rental ADU. Community Partners will be the owner of the site and will add another few units on the site for households making 80% or below of Area Median Income. The larger, two-story house (formerly on 26 S "L") will be moved to the K and 1<sup>st</sup> Street site along with the building and garage for Leisure Services, formerly 17 South "M." The CRA will partner with our non-profit housing developers and rehabilitate the structure and offer rental units to households making less than 80% or less of area median income.

These two addresses will produce approximately 8 new rental units. In addition, the CRA lot on the northeast corner of South "K" and 1<sup>st</sup> Avenue South can be developed in the future to accommodate a combination of both affordable and market rate units.

Again, for clarification, the CRA's purchase and sale and development agreement provides the legal building blocks for which the rest of the public-private partnership will be built. Additional agreements will be needed between the three partners to address all the components of the public-private partnership. In addition to that, the project will have to go through an entitlement process that will require city staff, HRPB and Commission review and approval.

**RECOMMENDATION:**

Staff recommends the Board review and approve the Purchase and Sale agreement with Sunshine Lake Worth Development and the Development Agreement between the City of Lake Worth Beach and Sunshine Lake Worth Development.

## LAKE WORTH BEACH COMMUNITY DEVELOPMENT DEPARTMENT

1121 Lucerne Avenue | Lake Worth Beach  
www.lakeworthcra.org

## Exhibit "A"

## MEMORANDUM

**TO:** Chair, Vice-Chair and Members of the Board

**FROM:** Joan C. Oliva, Executive Director

**DATE:** February 13, 2024

**SUBJECT:** Wiener Museum of Art and Possible Downtown Collaboration with CRA/City

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**EXPLANATION:**

At the October 2023 meeting, a brief presentation was given to the Board regarding the status of the "L," "M," and "K" or downtown properties. Present at the Board meeting, in person or via zoom was Joe Kohl from Dover/Kohl and Dana Little from Treasure Coast Regional Planning Council (TCRPC). The purpose of the meeting was to have the Board review the 2-part Request for Proposals/ Qualifications written by CRA Staff with input from City Staff, TCRPC and Dover/Kohl. Once input from the Board was included, the draft request for proposal was sent to the City for their input. For context, a brief timeline of the downtown acquisition and development process is attached as Exhibit "A."

**History**

A draft, 2-part RFP was drafted after TCRPC was hired by the City to conduct a public charette and master parcel plan-like document that was paid for by the CRA. The final plan was submitted to the City in December 2022 but was never formally approved or adopted. TCRPC made several policy recommendations for the redevelopment of the downtown parcels. However, it was noted by Staff that some of the recommendations differed from what was allowed by zoning or the comprehensive plan. Because the Plan and City Policy differ, the CRA hired Dover/Kohl to help draft plan diagrams and language that would give a developer wishing to respond to an RFP a clear idea of what the CRA and City were seeking for this important group of parcels. Once Dover/Kohls input was complete, Staff finished up the RFP and sent it over in draft form to the City Manager and Staff for review and make changes. To help facilitate the RFP, William Waters and CRA Staff, wrote a detailed *Process, Tasks and Responsibility* update for the Commission and this is included in the packet as Exhibit "B".

The majority of recommendations by TCRPC can be accomplished through a Planned Development application. If the Commission wants to adopt policy recommendations from the Master Plan they could remove maximum density requirements, sustainability requirements and any affordable housing requirements. However, if the City does not want to incorporate the policy recommendations by TCRPC and a proposer comes along who is willing to develop something similar to the plan diagrams designed by TCRPC and/ or Dover/Kohl, it would make sense to work with the City to develop a plan that most closely resembles the key recommendations and implementation steps listed in the Plan.

At approximately the same time the draft RFP, Exhibit "C", was sent to the City Managers office, CRA Staff was put in contact with a representative from Wiener Museum of Art. Although the Museum is currently located in Hollywood, Florida, the museum is seeking a permanent home. Shortly after speaking with Renee Miller, from the Miller Consulting Group, and Staff from the Wiener Museum, a tour was set up for CRA Staff,

then City Manager, Carmen Davis, Community Sustainability Director William Waters and Mayor Betty Resch to visit the Museum at its temporary headquarters in Hollywood.

Because representatives from the City and CRA were so impressed with the museum and the idea of bringing such a prominent and distinguished museum campus to downtown Lake Worth Beach, a visit to the City was arranged for Mr. Wiener, his family and team. In December of last year, Mr. Weiner, his daughter and team came to visit the downtown site to get a sense of its appropriateness and if there was a possibility of us all working together to bring the museum along with housing, to the Downtown. On the tour were CRA and City Staff, CRA Board Member Anne Fairfax, and Mayor Betty Resch. Staff made all local plans and documents available to the Team for review, including the Lake Worth Beach Downtown Parcels Plan, the Lake Worth Beach Cultural Master Plan (excerpts attached as Exhibit "D") various design guidelines and the Redevelopment Plan.

During the month of January, Staff worked closely with the consultants and Staff at WMODA to arrange private tours of the Museum for all seven Board members. The virtual tour is available on-line at <https://www.wmoda.com/at-home-with-wmoda/>.

### **The Museum**

The Museum was founded in Dania Beach in 2014 and was created by Arthur Wiener and his family. Mr. Wiener started collecting art when he was in college and today has amassed thousands of spectacular pieces from around the world. The Wiener Museum of Decorative Arts is a world-class collection of ceramic art and studio glass in South Florida. Their galleries showcase the finest British and European pottery and porcelain from the last two centuries, including Wedgwood, Royal Doulton and Lladró. Glass collections feature stunning works of art by Lalique and Chihuly. In addition to the collection, the 501(3)(c) museum engages the community with workshops, programs for both children and seniors and charitable events.

A real, rare possibility exists whereby the Museum, the CRA and the City could partner to bring this unique and impactful project to the City. The museum would make a substantial statement, solidifying Lake Worth Beach as the home to Arts and Artists. The Museum, along with the Playhouse, Historical Museum and other cultural attractions (Exhibit "E") would provide the City with a catalog of valuable destinations that would not only engage the public and add to the cultural fabric of the City but attract tourists and investment to our wonderful downtown area. Furthermore, the development would include new housing units which are desired by the City and County.

A presentation will be made by WMODA at Tuesday night's meeting. After the presentation and Board discussion, the Board can give Staff direction on next steps. To work out a program and plan that would include adopted City policies and Plan recommendations, some time and consideration would need to be given to WMODA so they would have guidance and direction for their proposal. In the meantime, CRA Staff would hold off on advertising the RFP. Although the CRA would like to immediately move forward with a development everyone could agree on, the reality is that compromises will have to be made to attract the right kind of development that enhances the area while being financially feasible.

### **RECOMMENDATION:**

Staff recommends the Board discuss the possibility of allowing WMODA to develop a proposal for the downtown sites, working closely with City and CRA Staff. CRA Staff will hold off on advertising the 2-part RFP until after WMODA is able to put together a proposal and possible terms are worked out with Staff and brought back to the Board by the summer.

Lastly, the Board may want to consider appointing a CRA Board member to be the Board liaison for this important project.

**LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY**

1121 Lucerne Avenue | Lake Worth Beach, Florida 33460-3346 | T: 561-493-2550  
www.lakeworthcra.org

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**MEMORANDUM**

**TO:** Chair, Vice Chair and Members of the CRA Board

**FROM:** Joan C. Oliva, Executive Director *JO*

**DATE:** January 25, 2022

**SUBJECT:** Downtown Properties along “L” and “M” Streets and 1<sup>st</sup> Ave. South and “K” St.

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**EXPLANATION**

In February of 2020, the CRA advertised Request for Proposals (RFP) #02-1920 for the development of two sites in downtown Lake Worth Beach. The sites currently consist of a mixture of vacant lots, public parking and unoccupied residential structures (Exhibit “A”.) The three combined sites located primarily along South ‘K’, ‘L’ & ‘M’ Streets just south of Lake Avenue, total approximately 2.6 acres. On August 4<sup>th</sup>, 2020 the CRA received 3 qualified submittals from interested development teams.

The downtown sites were assembled over a three-year period, starting in 2018 and with ten different transactions, adding to the two lots previously bought in 2005 by the CRA and the old Chamber building, which is still owned by the City although an agreement was signed in November 2019 for its sale to the CRA. The two assemblages consist of 16 separate parcels that are owned outright by either the CRA or City of Lake Worth Beach. Attached in Exhibit “B” are the City authorization of funds, Interlocals and the preliminary Parking Plan. The lots were purchased with CRA loan proceeds and/or City funds provided through the County’s penny sales tax program.

In order to help stimulate the downtown core, this area of the City was identified by our (previous) local officials and administration as being ideal and prime for redevelopment efforts. The future of the downtown, its shops, restaurants and stores hinge on consumers visiting and spending money in the downtown. Also, Downtown Lake Worth Beach is a walkable and attractive area where additional units could house those seeking lower than PBC market rents.

In September of 2020, an RFP evaluation committee was setup to review and rank the 3 submittals that were received for #02-1920. Although the chosen developer, Rosemurgy Properties, never submitted a site plan or final rendering due to several impediments, including a lawsuit filed against the City, community reactions, a change in the make-up of the Commission and concerns about the City sustainability incentive program that currently allow up to 5 stories in the downtown.

The CRA was then asked, by the City, to do a charette and take public feedback more in line with the new Commissions and public’s vision for downtown before reproducing an RFP. Staff’s understanding is that any future RFP would have additional restrictions placed on the height, density and design, in addition to the existing City’s land development regulations and design guidelines.

CRA Staff reached out to Treasure Coast Regional Planning Council (TCRPC) to help develop a scope for engaging the community and preparing for a re-advertised RFP with parameters. TCRPC is responsible for constructing the City's Historic Design Guidelines and, previously, the City's Transit Oriented Development Master Plan (TOD Plan) in 2008. The TCRPC, and specifically Dana Little, is very familiar with the City, its historic districts, character and New Urbanist principles.

The TCRPC was hired by the City to conduct a charette-like master plan for the downtown and in January of this year, an agreement was approved by the Commission. The CRA previously approved paying for the Plan in October of 2021, with the understanding that it would be led by City Staff so the City Administration and Commission would manage the program and oversee the outcome. Dana Little, Urban Design Director at the TCRPC began stakeholder interviews and plan review earlier this month after execution of the agreement.

Although the downtown properties were originally slated for redevelopment, there have been significant changes in CRA and Commission Board members, a lawsuit and other considerations that have come to light slowing down the project, almost to a halt. Time has a significant influence on structures, resources and although the CRA continually boards up the buildings, cleans and landscapes the properties, pays non-ad-valorem taxes and provides routine maintenance, there are outside factors making it more and more difficult to keep the buildings in decent condition.

At the City Commissions January 2022 meeting, the Commission directed Staff to inspect the City-bought properties and to investigate the hiring of a contractor or contractors so the City could house people in the buildings in the short term. Of the 7 historic properties, not including 509 Lake Ave. (fka: Havanna Hideout), 5 were purchased using City sales tax dollars.

These include:

25 S. K

704 1<sup>st</sup> Ave. South

26 S. L

30 S. L

32 S. L

Structural assessments were conducted by WGI on behalf of the City last November, however, those assessments focused on whether the homes could be moved and not their current condition or approximate costs to rehabilitate.

If the City were to proceed with inspections and reviews, it would be in the best interest of the CRA to have the City release the CRA from any liability. Our attorney, David Tolces, has prepared a license agreement for the Board to review and potentially approve (Exhibit "C"). What transpires after the homes are inspected and scopes of services produced remains something the Boards will have to discuss at the joint February meeting.

At this time, Staff recommends the CRA Board review the attached agreements the CRA has with the City in regards to these properties. There are serious implications associated with deviating from the already agreed to plan. If we are to continue with the TCRPC plan for the area, what ramifications does moving tenants into the buildings have on the ability of finalizing a redevelopment plan for the area? Certainly, doing one does not negate the possibility of the other but resources, time and the attraction of a developer can be impacted. It should be clear to everyone that one of the possible outcomes of the Plan is to keep the current buildings in place and build around them. However, if the Commission would prefer to own the buildings and rehabilitate them then the CRA could focus its efforts on doing a smaller redevelopment project on the properties owned by the Agency.

Because the majority of the CRA Board were not members in 2018-19, when the properties were purchased, I have included a link to the CRA web page, [https://www.lakeworthcra.org/index.php?option=com\\_content&view=article&id=552:the-element&catid=87:cra-projects&Itemid=958](https://www.lakeworthcra.org/index.php?option=com_content&view=article&id=552:the-element&catid=87:cra-projects&Itemid=958) that includes the Parking Plan, the various agreements, a list of properties and other information.

#### **RECOMMENDATION**

CRA Staff recommends the Board review and approve the license agreement between the CRA and City, attached to this memo, allowing the City to access CRA owned properties purchased with City penny sales tax money and discuss the CRA's role in the wake of changing City policy.

**LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY**

1121 Lucerne Avenue | Lake Worth Beach, Florida 33460-3346 | T: 561-493-2550  
www.lakeworthcra.org

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**MEMORANDUM**

**TO:** Chair, Vice Chair and Members of the CRA Board

**FROM:** Joan C. Oliva, Executive Director *JO*

**DATE:** October 12, 2021

**SUBJECT:** Interlocal Agreement with City of Lake Worth Beach for the funding of TCRPC for Public Outreach and Master Plan Development for Downtown/ Planning Services

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**EXPLANATION**

At the September CRA meeting the Board voted to approve the scope of work provided by the Treasure Coast Regional Planning Council (TCRPC) for the provision of public outreach and planning services in relation to City/CRA held properties in the downtown. The Board, after thoughtful discussion, asked that the City Commission also approve the scope and the City manage the project. This was decided in an effort to provide continuity in development parameters in the downtown, increase community participation and create a unified vision for growth.

At their October 5, 2021 meeting, the City Commission voted 4-1 in support of the Interlocal between the City and TCRPC, provided the CRA cover the costs for the services. A copy of the CRA Staff memo and the scope of services, Exhibit "A", is attached for the Board's review. An Interlocal needed between the City and CRA to authorize the payment is included as Exhibit "B". A revised timeline is also attached for the Boards review (Exhibit "C").

**RECOMMENDATION**

Staff recommends the Board approve the IL between the City and the CRA for the funding of planning services to be provided by the Treasure Coast Regional Planning Council for public outreach and downtown master planning.





# LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

1121 Lucerne Avenue | Lake Worth Beach, Florida 33460-3346 | T: 561.402.2550  
www.lakeworthcra.org

**Exhibit "A"**

**FAX: (561) 586-1750**

## MEMORANDUM

**TO:** Chair, Vice Chair and Members of the CRA Board

**FROM:** Joan C. Oliva, Executive Director *JO*

**DATE:** September 14, 2021

**SUBJECT:** **Interlocal Agreement with TCRPC for Downtown Property Public Outreach and Master Plan Development**

---

### EXPLANATION

In February of 2020, the CRA advertised Request for Proposals (RFP) #02-1920 for the development of two sites in downtown Lake Worth Beach. The sites currently consist of a mixture of vacant lots, public parking lots and unoccupied residential structures. The combined sites located primarily along South 'K', 'L' & 'M' Streets just south of Lake Avenue, total approximately 2.4 acres (including the City surface lot). Due to the pandemic associated with COVID-19, the submission deadline for responses was extended from early June to August 4<sup>th</sup>, 2020. The CRA received 3 qualified submittals from interested development teams.

The downtown sites were assembled over a three-year period and with ten different transactions, adding to the two lots previously bought in 2005 by the CRA and the old Chamber building, which is still owned by the City although an agreement was signed in November 2019 for its sale to the CRA. The two assemblages consist of 14 separate parcels that are owned outright by either the CRA or City of Lake Worth Beach. The lots were purchased with CRA loan proceeds and/or City funds provided through the County's penny sales tax program. In order to help stimulate the downtown core, this area of the City was identified by our (previous) local officials as being ideal and prime for redevelopment efforts. The future of the downtown, its shops, restaurants and stores hinge on consumers visiting and spending money in the downtown.

In September of 2020, an RFP evaluation committee was setup to review and rank the 3 submittals that were received for #02-1920. The evaluation committee was comprised of CRA Staff, the Director of the Lake Worth Beach Community Sustainability Department, William Waters, and CRA Board members Drew Bartlett and Brent Whitfield. A virtual RFP review meeting, which included all submittal teams and members of the public, was conducted using the *ZOOM* application. The highest rated proposal was received from *Rosemurgy Properties/Stateside Development*. The evaluation committee forwarded the

highest ranked development submittal and the Board approved the selection committee's recommendation in October 2020.

In early 2021, CRA Staff and the developers were asked to host a public meeting to engage the public on the design of the proposed building. In April, Rosemurgy Properties hosted a Zoom meeting to answer questions posted by the public. However, the developer was not given the opportunity to present a redesigned project to the Board due to many reasons including time and lack of direction. An agreement with Rosemurgy/ Stateside was never negotiated or presented to the Board.

The CRA was asked to do a charette and take public feedback before reproducing an RFP, more in line with the new Commissions vision for downtown. Staff's understanding is that any future RFP may have additional restrictions placed on the height, density and design, in addition to the City's land development regulations and design guidelines. At this stage in the process, the CRA Board should decide whether or not to set aside the previous approval given to the selection of Rosemurgy/ Stateside as the chosen developer for this project. If the Board does agree to set aside the previous decision, Staff can then focus on a possible alternative path.

In light of previous discussions, Staff reached out to Treasure Coast Regional Planning Council (TCRPC) to help develop a scope for engaging the community and preparing for a re-advertised RFP with parameters. TCRPC is responsible for constructing the City's Historic Design Guidelines and, previously, the City's Transit Oriented Development Master Plan (TOD Plan) in 2008. The TCRPC is very familiar with the City, its historic districts, character and New Urbanist principles.

After touring the area and meeting with Dana Little, the Urban Design Director, and taking into consideration Covid protocols, the attached scope was created for the Board's review and possible approval. A copy of this scope and Interlocal agreement is attached as Exhibit "A". The scope includes due diligence and the development of a clear understanding of the land purchases and restrictions, site reconnaissance, stakeholder interviews, public workshops, a redevelopment masterplan for the area with strategic recommendations, and reports to both the City and the CRA. Once the public process is complete, Staff will rewrite the RFP, better reflecting the community's vision. Once responsive proposals are received, a new committee will be created to review and score them. All responsive submittals will then be reviewed by the Board.

The Board has several options available. These include:

1. Moving forward with a public process, negotiations and an agreement with the previously chosen developer, Rosemurgy/ Stateside
2. Setting the previously selected proposal aside and approving a contract with TCRPC for a public input process and production of a Master Plan to use in a future RFP
3. Land bank downtown CRA properties and wait for other opportunities to present themselves
4. Develop CRA properties paid for with LOC funds while returning the others to the City (17 S. M and 26-32 S. L Street)
5. A combination of the above or an alternative

If the Scope with TCRPC is approved, the initial payment will be paid from 20/21 Capital Project fund and the remainder will come from next year's Operating budget. Funds from the Business Assistance line item will be transferred into Professional Services to cover the expense.

## **RECOMMENDATION**

Staff suggests the Board review the proposal, consider setting aside the previous selection of a developer and engage the Treasure Coast Regional Planning Council with a public input process and the development of a master plan for the downtown parcels under CRA/ City ownership. Staff further recommends the Board seek approval from the City Commission on this redesigned process so both Boards can work in unison with the public and devise a future redevelopment plan, with implementation, that results in new housing, retail and other needed uses. If the Board chooses to engage TCRPC, an Interlocal must also be approved and executed.



# LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

1121 Lucerne Avenue | Lake Worth Beach, Florida 33460-3346 | T: 561-493-2550

www.lakeworthcra.org

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## MEMORANDUM

**TO:** Chair, Vice Chair and Members of the CRA Board

**FROM:** Joan C. Oliva, Executive Director *JO*

**DATE:** October 13, 2020

**SUBJECT:** Downtown Property Redevelopment RFP – Multiple Downtown Lots

---

### EXPLANATION

In February of this year, the CRA advertised Request for Proposals (RFP) #02-1920 for the development of three sites in downtown Lake Worth Beach. The sites currently consist of a mixture of vacant lots, public parking lots and unoccupied residential structures. The three combined sites located primarily along South 'K', 'L' & 'M' Streets just south of Lake Avenue, total approximately 2.6 acres. The formal RFP document is included for your review as Exhibit "A". Due to the pandemic associated with COVID-19, the submission deadline for responses was extended from early June to August 4<sup>th</sup>, 2020. As a result of widely promoting the RFP through various professional channels, the CRA received 3 qualified submittals from interested development teams.

Below is a summary of each development submission:

- **AINA Development – 'Eco-Jewell' (Exhibit "B"):** A phased project consisting of 107 residential units in Phase I. Project would include market rate studio / apartment units and amenities such as a clubhouse, green building techniques and up to 127 parking spaces in a 2-story parking garage. Phase II of the project would include an additional parking garage and up to 20,000 sq. ft of commercial space. Development of the Lake Avenue sites were to be completed at a later date and payment of the required \$2.8M was to be distributed over 3-5 years.
- **ATELIER 305/Lineaire Group – 'The MODULOR' (Exhibit "C"):** Up to 195 rental units located within a 6-7 story building. Some of the rental units would be for extended stay and/or hotel use. Also included is up to 12,000 sq. ft of commercial space, 218 parking spaces, pool, gym and lounge. This development team also proposed additional surface parking at the sites on K Street with the potential for future redevelopment. This group offered to pay the CRA \$2.8M for the sites.
- **Stateside Development/Rosemergy Properties – 'ELEMENT' (Exhibit "D"):** This project would consist of approximately 100-120 apartment units located in a 5 -story building. Amenities include a pool, fitness facility, communal office space, ground floor commercial space, UBER/LYFT lounge and a 4-story parking garage. Element would include a stepped-down, live-work component along 1<sup>st</sup> Avenue South and the development will be a certified Florida Green Building Council project. The group offered the CRA \$2.81M for the site and will help develop Site number 2, once the City confirms it's plans for Site 3, the City owned parking lot.

The downtown sites were assembled over a three-year period and with ten different transactions, adding to the two lots previously bought in 2005 by the CRA and the old Chamber building, still owned by the City. The two assemblages consist of 16 separate parcels that are owned outright by either the CRA or City of Lake Worth Beach. The lots were purchased with CRA loan proceeds and/or City funds provided through the County's penny sales tax program. In order to help stimulate the downtown core, this area of the City has been identified by our local officials as being ideal and prime for redevelopment efforts. The future of the downtown, its shops, restaurants and stores hinge on consumers visiting and spending money in the downtown. With an additional 100-200 new, downtown residents, downtown Lake Worth Beach will not only survive but flourish as new people live and visit the area, shop and eat locally.

Before issuing the RFP, Staff, along with their consultants, WGI, prepared an application for a Condition of Approval to the City's Historic Resource Board, requesting relocation or demolition of the structures located at "L" and "M" Streets. The request was approved with conditions (Exhibit "E"). In October of 2019, the CRA issued an RFP for the relocation and renovation of the contributing houses. By the closing date, January 30, no proposals were submitted.

Last month, an RFP evaluation committee was setup to review and rank the 3 submittals that were received for #02-1920. The evaluation committee was comprised of CRA Staff, the Director of the Lake Worth Beach Community Sustainability Department, and CRA Board members Drew Bartlett and Brent Whitfield. A virtual RFP review meeting, which included all submittal teams, was conducted using the ZOOM application. Meeting minutes from this evaluation committee review meeting are included as Exhibit "F". As reflected in the minutes, the scores of the submittals received from the evaluation committee indicate that the proposal received from *Stateside Development/Rosemurgy Properties* as being the highest ranked. The evaluation committee decided to forward the highest ranked development submittal to the CRA Board of Commissioners for final review, discussion and selection.

The development of this project fulfills the CRA's Redevelopment Plan goals and objectives by:

- Eliminating dilapidated or unsafe structures
- Encourage the consolidation of small parcels of land into parcels of adequate size to accommodate new construction
- Increase the tax base
- Work in conjunction with the City to ensure future economic stability
- Eliminate conditions that decrease property values
- Encourage the acquisition, demolition and the reuse of properties that no longer function at their highest potential economic use
- Initiate programs to improve and strengthen existing businesses
- Improve the investment image of the redevelopment area
- Make the redevelopment area competitive with major activity centers in the region
- Expand the economic base of the district
- Create investment opportunities by capitalizing on the development and redevelopment opportunities associated with the revitalization of Downtown
- Seek opportunities for land assemblage and encourage mixed-use development in the downtown
- Encourage private efforts toward building housing in the redevelopment area
- Promote in-fill housing and housing choice

A strong Downtown can be a major stimulator for economic growth and a revenue generator for small businesses and local government. Visually appealing and lively downtowns represent the image and

character of a City. Vibrant downtowns are not only important to the local economy, they are inherently equitable because they enable a diverse range of users, from various income apartment dwellers, to house and condo owners. They provide jobs, civic space, recreation and essential services. Compact downtowns promote tourism and offer area cultural assets as well as transportation choices.

**RECOMMENDATION**

Staff recommends the Board review the submittal packages and contact Staff prior to the October 13<sup>th</sup> Board meeting to request any additional information. Representatives from Stateside Development/ Rosemurgy Properties will be available during the CRA Board meeting to answer any questions. Staff recommends the Board approve the development project and authorize Staff to negotiate a purchase/sale and development agreement with Stateside Development/ Rosemurgy Properties.



City of  
**Lake Worth  
Beach**  
FLORIDA

DEPARTM

## Exhibit "B"

Lake Worth Beach, FL 33461  
561-586-1687

To: Honorable Mayor and City Commission

From: William Waters, DCS Director  
Joan Oliva, LWB CRA Executive Director

Through: Carmen Y. Davis, City Manager

Date: October 2, 2023

Subject: L&M Project Process, Tasks and Responsibilities Update

As an update for the proposed L&M Project, the final downtown master plan presentation took place on January 24, 2023 where the Treasure Coast Regional Planning Commission (TCRPC) and Dana Little offered suggestions for future RFP based on the recommendations for the Downtown Master Plan. The Commission considered those recommendations and arrived at consensus in many areas. The preferred recommendations as well as further feedback provided at a workshop held on March 21, 2023 regarding the solicitation process led to a proposed two-step RFP process, whereby qualifications and track record of interested developers would be considered first. The initial proposals would be short listed to arrive at several developers preparing full proposals including conceptual design and pro formas for consideration by the CRA and City.

The CRA contracted with Dover Kohl in May of 2023 to assist with the preparation of a formal RFP to incorporate recommendations accepted from the Downtown Master Plan and to craft the preferred two step selection process. After several months of collaborating with both CRA and City Staff, a draft RFP is ready for consideration. The CRA Board will receive a copy of the proposed RFP as part of their October 10, 2023 meeting package. In addition, the proposed RFP will be provided to the City Commission once areas of concern and recommendations are collected from the CRA Board. The City Commission will be requested to provide its input and suggestions to be incorporated with those from the CRA Board with a final draft of the anticipated two-step RFP being ready for advertisement by the end of the calendar year.

The following is provided as an overview of the tasks completed, tasks pending, the process and the responsibilities for each step of the process, including the steps in the RPF solicitation process and the project entitlement process, if a proposed project is selected.

### Tasks Completed

1. Completion of Downtown Parking Study, 2017-2018
2. City and CRA Authorization of Funding for Assemblage, 2018-2019
3. Acquisition of sites, 2018-2020
4. Approval of conditional Certificate of Appropriateness Application for Relocation/Demolition of ten (10) structures in Old Town Historic District, 2019
5. Massing Study prepared of maximum development potential on combined sites, 2019

6. Hearing before Historic Resources Preservation Board (HRPB) for review and approval of relocation/demolition plans, 2019
7. Stay of original RFP Process, 2020
8. Preparation of Downtown Master Plan by Treasure Coast Regional Planning Commission (TCRPC), 2021
9. Demolition of non-contributing structures, 2020
10. Assessment of contributing structures with presentation to the Commission on condition assessment and costs for rehabilitation 2022
11. Commission provides consensus to preserve two contributing structures at 24 and 26 S L Street and the structures at 17 S M Street, Spring 2023
12. Presentation to Commission on types of solicitation processes available. Consensus provided to draft two step RFP with one step being a selection of several qualified entities to move forward to second step where formal conceptual plans including proformas, entitlement process being sought, financial incentives being requested and financial return to both the CRA and City, Spring 2023
13. Collaborative drafting of second RFP with input from TCRPC, Dover Kohl and staff from the CRA and City, Summer 2023
14. Final initial draft of RFP completed, Fall 2023

### **Tasks to Complete**

#### **Selection of Project Developer – three to six months**

1. Complete draft of two stage RFP for advertising and soliciting of developers for project
2. Advertise RFP
3. Hold required pre-bid meeting
4. Close stage one of RFP after review by CRA Board and City Commission
5. Review and evaluate proposals – public meeting
6. Select Developers to move along to stage two
7. Review and evaluate proposals by Selection Committee– public meeting
8. Select final Developer(s) at CRA Board meeting
9. Negotiate contract and terms including payments and proposed incentives
10. Present Developer(s) and conceptual project including financials and proforma to CRA Board for approval – open to the public

#### **Developer(s) Prepares Formal Conceptual Design and Entitlement Application – three to six months**

1. Review Land Development Regulations
2. Review Historic Preservation Design Guidelines
3. Review Major Thoroughfare Design Guidelines
4. Review Affordable/Workforce Housing Program
5. Review Site and Building Qualitative Design Standards
6. Review Sustainable Bonus Incentives
7. Review Transfer Development Rights Incentives

#### **Entitlement Process – six months, possibly longer based on responsiveness of developer to staff comments and neighborhood meeting(s)**



1. Developer/Architect/Engineer/Consultants prepare entitlement and site plan submittal documents including site plan, elevations and justification statements
2. Prepare Universal Development Applications
  - a. Certificate(s) of Appropriateness – New Construction and Demolition
  - b. Conditional Use(s)
  - c. Major Site Plan
  - d. Development of Significant Impact (DSI) (if applicable)
  - e. Sustainable Bonus
    1. Density/Height/Intensity
    2. Any requests for financial relief
  - f. Transfer Development Rights (if applicable)
  - g. Planned Development (if applicable)
  - h. Affordable/Workforce Housing Program (if applicable)
  - i. Alley vacation request (if applicable)
  - j. Prepare easements, covenants and other agreements for project
3. Review of Application by Site Plan Review Team
4. Conduct Required Neighborhood Meeting(s)
  - a. Prepare Project Website and Social Media Presence
  - b. Prepare project links from both City and CRA websites
  - c. Advertise meeting
  - d. Conduct meeting
  - e. Report back to City Staff
5. Public hearing(s) before the HRPB – Hearing can be delayed 30 days at request of qualified affected party
  - a. Approval of Certificate(s) of Appropriateness
  - b. Recommendations for the following
    1. Major Site plan
    2. Conditional Use(s)
    3. Sustainable Bonus
    4. Development of Regional Impact (if applicable)
    5. Transfer Development Rights (if applicable)
    6. Planned Development (if applicable)
    7. Affordable Housing Program (if applicable)
    8. Alley vacation request (if applicable)
9. Minimum of Two Public Hearings before the City Commission – Initial hearing (first reading) can be delayed 30 days at request of qualified affected party
  - a. Notice of intent to abandon alley (if applicable)
  - b. Public Hearing and First Reading of Development Ordinance
  - c. Public Hearing and Second Reading of Development Ordinance
  - d. Review and approve economic development incentive package (if requested)
  - e. Abandonment resolution for alley

**Preparation of Construction Documents for Permitting – six months**

**Submission and Review of Permit Application – two to four months**

**Construction Schedule – 12 to 24 months depending on size and complexity of proposed project**

**Note: Any proposed project may be phased or have separate, independent components that may be permitted separately or in tandem. Permitting and construction schedules would need to be adjusted if more than one project phase is proposed.**

Please keep in mind that a prospective developer may wish to avail themselves of financial support for the proposed project from entities outside of the City such as the Palm Beach County Affordable Housing Bond, Federal Low-Income Housing Tax Credits, National Register Historic Preservation Tax Credits, State of Florida Low Income Housing Funds and/or other funding sources. Depending on the application requirements of one or more of these programs and their deadlines as well as approval of funding, the project timeline may extend out accordingly.

It is highly unlikely that any Developer will not request the waiver of all or a portion of the City's Sustainable Bonus Incentive Program requirements, Transfer Development Rights payments and/or Affordable/Workforce Housing requirements. Also, there likely will be waivers requested as part of the Planned Development process to better align a project with several of the recommendations of the Downtown Master Plan. At stage two of the RFP process, any financial relief from these programs or incentives needs to be outlined by the prospective developer including any proposed waivers from the City's Code of Ordinances.

Lastly, provided, as additional background information, are several CRA documents outlining the sequence of events leading up to the L&M project and the prior failed initial RFP process. The Executive Summary from the Downtown Master Plan and the minutes from the two Commission meetings held this year regarding this subject are also included.

I hope that you find this information helpful. If you have any questions, please let me know.

**WMODA MIXED USE DEVELOPMENT**  
**PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (hereinafter the "Agreement") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2024 and entered into by and between the **LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY**, an entity created pursuant to Florida Statutes, Chapter 163 (hereinafter the "SELLER") and **SUNSHINE LAKE WORTH DEVELOPMENT, LLC**, a Florida limited liability company (hereinafter the "PURCHASER").

In consideration of the mutual agreements and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

**DEFINITIONS.**

The following terms when used in this Agreement shall have the following meanings:

- 1.1 Arts Alley shall mean the platted alleyway that lies east and west between South M Street and South L Street across the Property.
- 1.2 Business Day shall mean any day that the SELLER is open for business.
- 1.3 City means the City of Lake Worth Beach, a Florida municipal corporation.
- 1.4 City Development Approval the final approval by the City's operational, development and legal staff of the Development Review Application and the Site Plan and all appeal periods with respect to such approval shall have expired.
- 1.5 City Commission means the five (5) public officials elected to serve on the Lake Worth Beach City Commission.
- 1.6 City Commission Approval means the final approval by the City Lake Worth Beach Commission of all required entitlements for the project and all appeal periods with respect to such approval shall have expired.
- 1.7 Closing means the consummation of the transaction contemplated by this Agreement.
- 1.8 Closing Date means that date which is sixty (60) calendar days from and after PURCHASER has obtained the following: (i) the City Development Approval and the City Commission Approval, and (ii) all Permits required to commence construction for the Project.
- 1.9 Comprehensive Agreement means an agreement required under Section 255.065 Florida Statutes (2024) to be entered into between the Purchaser, the Seller and the City, for the construction of the K Street Parking Garage
- 1.10 Construction Agreement K Street Parking Garage: Means that certain agreement to be entered into between the PURCHASER and SELLER concerning the construction of a Parking Garage on K Street to support the Museum. The material terms for the Construction

Agreement shall include but not be limited to, construction cost, critical path, payment schedules, revenue note commitments, and ground lease provisions. The Parties agree that the Construction agreement will have to be approved by the Community Redevelopment Agency Board and executed and delivered among the parties no later than the expiration of the Inspection Period. If the Construction Agreement for the K street parking Garage is not executed by the parties during the Inspection Period, then either party may terminate this agreement as set forth in Section 3

1.11 Construction Agreement Relocation of Contributing Structures means that certain agreement to be entered into between the PURCHASER and SELLER concerning the relocation of four contributing structures. The material terms for the Construction Agreement shall include but not be limited to, construction costs, critical path, location of facilities, site specifications, roles and responsibilities of the parties, cost overruns, and liability.

1.12 Construction Loan means acquisition, development, or construction financing related to the Project consisting of, without limitation: debt financing, private equity, equity participations, joint venture, hybrid financing, mezzanine financing, or other financing arrangements, provided in each such event the material terms of all such financing arrangements shall be described in the Construction Loan Commitment (or its reasonable equivalent).

1.13 Construction Loan Commitment means a loan commitment issued to PURCHASER from a bona fide third party lender describing the proposed Construction Loan with respect to the Project, which shall be provided to the SELLER within thirty (30) calendar days of the PURCHASER obtaining all Permits required to commence construction for the Project.

1.14 CRA means the Lake Worth Beach Community Redevelopment Agency.

1.15 Deed means the special warranty deed which shall convey the Property from SELLER to PURCHASER at the Closing.

1.16 Development Agreement means that certain Development Agreement by and between the City, Seller, and Purchaser, as developer, with respect to the Project.

1.17 Development Plan has the meaning set forth in the Development Agreement.

1.18 Development Review Application means PURCHASER'S applications to the City to approve the Site Plan as required in the development review procedure.

1.19 Development Review Application Date means that date which is within thirty (30) calendar days after the expiration of the Inspection Period by which date the PURCHASER must submit to the City the Development Review Application.

1.20 Effective Date means the date when the last one of the SELLER and PURCHASER executes this Agreement and delivers an unaltered counterpart hereof to the other party.

1.21 Force Majeure events or Force Majeure shall have the meaning set forth in Section 34(c).

1.22 Government Approval means the collective reference to all preliminary and final approvals, consents, amendments, rezonings, special exceptions or variances by the City with

respect to the sale of the portion of the Property owned by the Seller to Purchaser and the development of the Project as described in this Agreement and in the Development Agreement, including, without limitation, the City Development Approval, and the City Commission Approval, which will be required to obtain the necessary approvals to develop the Project without conditions which modify or adversely impact, in a material respect, the design, cost, use, timing or functionality, and density of the Project and the applicable appeal period has run without appeal or, if an appeal is taken, then the date the appeal is resolved in favor of the approval, (and, if any such Governmental Approvals are issued with any governmental conditions, then, such conditions must be consistent with, and in alignment with, and directly related to, the development plan described in the Site Plan, the definition of "Project", and the Primary Site Plan or Alternate Site Plans ).

1.23 Government Approval Date means within one hundred eighty (180) calendar days from the Development Review Application Date.

1.24 Governmental Authority means the Federal or State government of or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal, or any other level, and any agency, authority, instrumentality, regulatory body, or other entity exercising executive, legislative, taxing, regulatory, or administrative powers or functions of, or pertaining to, government.

1.25 Inspection Period means the period of ninety (90) calendar days which commences upon the Effective Date of the Development Agreement. If the expiration date of the Inspection Period ends on a Saturday, Sunday or legal holiday, the expiration date shall be extended until the end of the next business day. However, the Inspection Period shall be automatically extended until the following agreements are approved and executed by the CRA and City (i) the approval of the Construction Agreement for the K Street Parking Garage (ii) the approval of the Construction Agreement for the relocation of the four (4) contributing structures (iii) the approval of the Arts Alley Long Term Maintenance Agreement (iv) the approval of the Long Term Parking Agreement for the K Street Parking Garage.

1.26 Long Term Maintenance Agreement Arts Alley means that certain agreement to be entered into between the PURCHASER and the City that will govern the roles and responsibilities of each party regarding the long-term maintenance and repair of the Arts Alley. The parties agree that this is an integral part of the operational success of the project. The material terms for the Long-Term Maintenance Agreement shall include but not be limited to roles and responsibilities of parties, repair and replacement costs, public access, and liability.

1.27 Long Term Parking Agreement means that certain agreement to be entered into between the PURCHASER and City for the operation of long-term parking facilities developed as part of the Project. The material terms for the parking agreement shall include but not be limited to, access, parking fees, special event parking, residential lease opportunities, and liability.

1.28 Museum means that certain building located on the corner of Lake Avenue and South M Street to be built by the PURCHASER for the display of Fired Art as part of the Project.

1.29 Permitted Exceptions means the collective reference to: (a) taxes for the year of Closing (which shall be prorated at the Closing) and subsequent years not yet due and payable; and (b) any exception to title set forth in the Title Commitment which has not been objected to by PURCHASER as a Title Objection pursuant to Section 11; provided that such exception does not cause the fee simple title to the Property to be to be unmarketable under applicable law.

1.30 Permits means all building and construction permits necessary or required by the SELLER, Palm Beach County, and any other Governmental Authority in order for the PURCHASER to develop, construct and operate the Project including, without limitation, site development permits, utility permits, environmental permits, FDOT permits, mechanical, plumbing, electrical and building permits, and, if any such permits are issued with any governmental conditions, then, such conditions must be consistent with, and in alignment with, and directly related to, the development plan described in the Site Plan, the definition of "Project", the applicable building code.

1.31 Project means the comprehensive project submitted by PURCHASER consisting of the following components as illustrated in the Site Plan attached hereto as **Exhibit "A"**: Museum, 102 market rate residential apartment units, 8 artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support residential uses, off parking garage on K street to support Museum parking and public parking, art alley between K and M Street, relocation of (4) contributing structures, together with related amenities and utilities, as generally set forth in the Development Plan as provided in the Development Agreement. Each respective component of the Project will be developed on that portion of the Property which is so designated on the Development Plan and each component of the Project is more particularly described in the Development Agreement.

1.32 Property is a collective term comprising 1.7 acres of real property situate, lying and being located in Lake Worth Beach, Palm Beach County, Florida, more particularly described in the final approved Site Plan and in **EXHIBIT "B"** attached hereto and made a part hereof, together with all improvements thereon, together with all of the right, title and interest of the SELLER in and to any site plans, site plan approvals, development plans, specifications, engineering drawings, impact fee credits, if any, and all other related matters and things owned by the SELLER which relate to said Property; it being the intent of the SELLER to sell, transfer, set over unto and convey to the PURCHASER all interests of the SELLER of whatsoever kind, type, nature, description or characterization in and to the Property, free and clear of all liens, claims, interests, and encumbrances or possible liens, claims, interests, or encumbrances of whatsoever kind, type, nature, description or characterization, including, without limitation, the following, to-wit:

- (a) All, privileges, easements and appurtenances which are on or benefit all the Property;
- (b) All right, title and interest, if any, of SELLER in any property lying in the bed of any public or private street, which has formally been abandoned in accordance with applicable Florida law, in front of any adjoining property to the centerline thereof;
- (c) To the extent transferable, all licenses, permits, approvals, and other governmental authorizations relating to the operation use or occupancy of the Property (including those all licenses, permits, approvals, and other governmental authorizations obtained by PURCHASER hereunder) and in effect as of the Closing Date; provided that PURCHASER shall not be required to assume any contracts with respect to the Property at the Closing or otherwise;
- (d) All development rights, if any, including but not limited to entitlements, water and sewer connection rights, air rights, oil, gas and other mineral rights, any impact fee credits previously paid.

1.33 Purchase Price has the meaning set forth in Section 2(a).

1.34 Purchaser Termination Provisions means the collective reference to the

following sections in this Agreement which grant to Purchaser the right to terminate this Agreement: (i) Section 3(c) (Termination by PURCHASER During Inspection Period), (ii) Section 4(c) (Failure to Obtain City Development Approval and City Commission Approval prior to the Government Approval Date), (iii) Section 9.2 (Seller Default), (iv) Section 11.1(d) (Title/Survey Uncured Matter), (v) Section 12. (Condemnation Termination) (vi) and Section 17.

1.35 Seller Reports has the meaning set forth in Section 3.

1.36 Site Plan means the illustrative site plans referred to in Exhibit "A", which include, as a minimum, the location of the proposed buildings, residential apartment units, parking, arts alley, and public open space which constitute the Project and the public streets surrounding the Property and which illustrates the proposed off street parking, sidewalks and major landscape features as such plans may be modified subject to the 10% variance, from time to time and approved by SELLER.

1.37 Third Party Reports means all reports, studies, plans and specifications prepared by third parties for PURCHASER in connection with the design, development and construction of the Project (but not any internal reports work product or analysis prepared by PURCHASER in connection with the Project or any materials covered by a privilege).

1.38 Title Commitment has the meaning set forth in Section 11.1 (a).

1.39 Title Company means Fidelity Title Insurance Company or any other national title insurance company selected by PURCHASER.

1.40 Other Definitions. The terms defined in this Agreement shall have the defined meaning wherever capitalized herein. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. As used in this Agreement, the terms "herein", "hereof" and the like refer to this Agreement in its entirety and not to any specific section or subsection.

## 2. PURCHASE PRICE AND DEPOSITS.

(a) Purchase Price. Subject to the provisions of this Agreement, SELLER hereby agrees to sell the Property to PURCHASER, and PURCHASER hereby agrees to purchase the Property from SELLER for the total purchase price of **Ten (\$10.00) Dollars (\$10.00)**, subject to prorations and adjustments as set forth herein (the "Purchase Price"), upon and subject to the terms and conditions set forth herein.

## 3. INSPECTIONS.

(a) PURCHASER shall, during the Inspection Period, (a) determine whether or not the Property is satisfactory for PURCHASER'S purposes with respect to the development and construction of the Project in PURCHASER'S sole and absolute discretion, and (b) determine whether or not the Property has adequate services available and that all federal, state, county and local laws, rules and regulations have been and are currently being complied with relative to the Property. PURCHASER shall be responsible for all costs and expenses in conducting inspections of the Property.

(b) During the Inspection Period, it shall be the responsibility of the

PURCHASER to determine that utility services including, water, waste water, electric, telephone and all other utilities are available in the proper size and capacity to serve the Property and installed to the Property lines. Furthermore, it shall be the responsibility of the PURCHASER to determine whether or not the existing zoning classification of the Property will permit PURCHASER to construct, develop and utilize the Property as the Project. At all times during the Inspection Period, PURCHASER and its agents shall be provided with reasonable access during normal business hours to the Property for purposes of on-site inspections. The scope of the inspections shall be determined by the PURCHASER as deemed appropriate under the circumstances.

(c) In the event that any inspections and any review of documents conducted by the PURCHASER relative to the Property during the Inspection Period prove unsatisfactory to the PURCHASER, or for any reason at all, at its sole and absolute discretion, PURCHASER shall be entitled to terminate this Agreement by providing written notice by mail, overnight delivery service, or by e-mail or facsimile to SELLER and/or SELLER'S counsel, at any time prior to 5:00 p.m. Florida time on or before the last day of the Inspection Period and receive an immediate refund of the Earnest Money plus interest earned thereon.

(d) In the event that PURCHASER fails to provide a timely notice of termination prior to the expiration of the Inspection Period, then, this Agreement shall not terminate pursuant to this Section 3 and the PURCHASER and SELLER shall proceed to Closing as set forth herein, subject to the terms and provisions of this Agreement, including, without limitation, the respective rights of termination as provided for herein. PURCHASER hereby indemnifies and holds the Seller harmless from any loss, cost or expense including, but not limited to reasonable attorney's fees and out-of-pocket costs actually incurred by the Seller as a result of the negligence or misconduct of any of Purchaser's agents who enter the Property. The indemnification provided herein shall survive any termination or closing under this Agreement.

(e) On or before ten (10) calendar days after the Effective Date, SELLER shall provide to PURCHASER reasonable access to any appraisals, environmental reports (Phase I and Phase II, if any), surveys, abstracts and title policies and all other studies, reports, plans or other documents relating to the Property that SELLER may have in its possession or is subject to its control relating to the Property (collectively, the "SELLER Reports") and SELLER shall, without additional consideration, consent to the use of the SELLER Reports by PURCHASER and to PURCHASER'S lender(s). PURCHASER shall have access to, and the right to review and use, the SELLER Reports upon receipt and through the Closing Date and thereafter, if the Closing occurs.

(f) PURCHASER'S right to inspect and enter onto the Property during and after the Inspection Period is expressly conditioned upon PURCHASER'S covenant to protect SELLER from the filing of any liens against the Property. In the event that any claims of lien are filed against the Property as a result of work performed or requested by PURCHASER, the PURCHASER shall either pay the sum claimed by the lienor or bond such claim of lien in the manner permitted by law within twenty (20) Business Days after PURCHASER receives written notice of the existence of the lien.

(g) PURCHASER shall give the SELLER forty-eight (48) hour notice prior to any physical inspections upon the Property. PURCHASER and its consultants shall maintain requisite insurance coverage during the term of this Agreement and provide evidence of insurance to the SELLER prior to any physical inspection of the Property and restore the Property to substantially the same as such Property's condition as of the date of such testing after any testing for Inspection purposes.

(h) Except as otherwise provided herein, all inspections shall be conducted and completed during the Inspection Period. In the event PURCHASER elects not to terminate this Agreement as provided herein, PURCHASER and its consultants shall continue to have access to the



Property after the expiration of the Inspection Period through and including the Closing Date upon twenty-four (24) hour advance notice to SELLER.

(i) The PURCHASER and SELLER agree that, after the execution of this Agreement, the PURCHASER and SELLER shall not take any actions that could materially and adversely affect (i) the physical condition of the Property owned by the SELLER or (ii) the status of title to the Property owned by the SELLER (as described in (i) or (ii) of this sentence, each a "material adverse change"). At least thirty (30) calendar days, but not more than sixty (60) calendar days, days before the Closing on Project, the PURCHASER shall have the right to update its environmental reports and re-inspect the Property comprising the Project to confirm that the condition of the Property has not materially and adversely changed since the expiration of the Inspection Period. If the updated inspections or reports reveal any material adverse changes in the physical condition of, or title to, the Property occurring after the expiration of the Inspection Period, which were not caused by PURCHASER or PURCHASER's Representatives, the SELLER shall have forty-five (45) calendar days, following written notice thereof from the PURCHASER to the SELLER, to cure the material adverse change; provided, however, that if such material adverse change is capable of cure but cannot reasonably be cured within forty-five (45) calendar days, such failure shall not constitute an Event of Default so long as the SELLER provides the PURCHASER with written notice within fifteen (15) calendar days of receipt of the PURCHASER's notice advising the PURCHASER that the default cannot be reasonably cured within forty-five (45) calendar days and specifying the reasons therefore and, within the thirty (30) day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed one hundred eighty (180) calendar days in the aggregate after SELLER's receipt of the original written notice. If the SELLER cannot cure such material adverse changes to PURCHASER's reasonable satisfaction in the time set forth herein, then, (i) SELLER shall be in default under this Agreement and (ii) PURCHASER shall have the right to terminate this Agreement and the Development Agreement by delivering written notice to the SELLER and the City, in which case, (a) the Earnest Money shall be returned to the PURCHASER and (b) the PURCHASER shall be entitled to recover actual damages against the SELLER for such breach as set forth herein.

4. DEVELOPMENT REVIEW APPLICATION; CITY DEVELOPMENT APPROVAL, CITY COMMISSION APPROVAL AND SITE PLAN APPROVAL.

(a) During the term of this Agreement, PURCHASER shall exercise due diligence in order to obtain the Government Approvals with respect to the Development Review Application and the Site Plan.

(b) PURCHASER agrees that within thirty days (30) calendar days after the expiration of the Inspection Period, PURCHASER, at PURCHASER'S expense, (i) shall submit to the SELLER the Development Review Application and (ii) shall apply, when appropriate, for the Permits. The parties each agree that they will act promptly throughout the approval process and cooperate with each other in an effort to obtain the Government Approvals and the Permits in as short a time period as is possible within the applicable laws that define the approval process. With respect to such Governmental Approvals and the Permits, PURCHASER shall not be deemed to have obtained or received such Government Approvals until all appeal periods shall have passed without

any appeal having been taken or, if any such appeal shall have been taken, such appeal(s) shall have been finally and conclusively resolved in favor of PURCHASER.

(c) If PURCHASER does not receive written evidence that, with respect to the Project, the Government Approvals have been obtained by the Government Approval Date (hereinafter defined), then (only after PURCHASER has exhausted all extension rights available to PURCHASER to the "Government Approval Date" described in this clause (c) or otherwise in this Agreement), PURCHASER or the SELLER may terminate this Agreement by delivering written notice, whereupon the PURCHASER and the parties shall be relieved of any further liability or obligation hereunder. Any notice of termination shall be effective upon delivery and shall be delivered prior to the end of the applicable Governmental Approval Date. The PURCHASER shall have the right, upon giving written notice to SELLER no later than fifteen (15) calendar days prior to the expiration of the "Governmental Approval Date", to extend the Government Approval Date for an additional one hundred eighty (180) calendar days, so long as PURCHASER is still seeking, and continues to seek, in good faith, to obtain the Governmental Approvals; provided further that such Government Approval Date shall automatically be extended in the event (a) any person or legal entity (other than PURCHASER) appeals the issuance of any City Development Approval or any City Commission Approval by the applicable Governmental Authority or (b) PURCHASER appeals any denial of any requested Governmental Approval, until, in each case, thirty (30) calendar days after the final, non-appealable resolution of such appeal(s).

(d) If the CITY issues the applicable City Development Approval and the City Commission Approval for the Development Review Application, the Site Plan and the Project and approves the issuance to PURCHASER of the Permits, then, PURCHASER agrees to pay the required fees for such approvals and for the issuance of such Permits and to accept delivery of such Permits upon issuance thereof by the CITY.

5. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, warranties and covenants, all of which, to the best of its knowledge, in all material respects and except as otherwise provided in this Agreement (i) are now true, and (ii) shall be true on the Closing Date:

5.1 At all times prior to Closing, SELLER shall keep the Property free and clear of any construction, mechanic's or materialmen's liens for work or materials furnished to or contracted for, by or on behalf of SELLER prior to the Closing.

5.2 SELLER has no actual knowledge of pending or contemplated condemnation proceedings affecting the Property or any part thereof.

5.3 SELLER has no actual knowledge nor has SELLER received any notice of any litigation, claim, action or proceeding, actual or threatened, against SELLER or the Property by any organization, person, individual or governmental agency or other entity which would affect the use, occupancy or value of the Property or any part thereof or which would otherwise relate to the Property.

5.4 To the best of SELLER'S knowledge, SELLER has not received any written notice claiming that the Property or any method of operation of the Property is in violation ("Violation") of any applicable law, ordinance, code, rule, order, regulation or requirement of any governmental authority, the requirements of any local board of fire underwriters (or other body exercising similar functions) and SELLER further represents that the Property shall be delivered free of any Violation at Closing.

5.5 SELLER shall not (i) license, lease, convey, hypothecate, pledge or otherwise encumber the Property, (ii) file any application to change or modify, or take any governmental action to change or modify, the current zoning or land use of the Property unless requested by PURCHASER, (iii) enter into any contracts, licenses or leases relating to, or affecting, any of the Property, or (iv) impose a moratorium on building or development of any of the Property. Notwithstanding the foregoing, the property located at [501 Lake] shall remain subject to a lease to the City which shall remain in effect until Closing.

5.6 No individual, person, legal entity, trust, real estate investment trust, association or any other legal entity has or is entitled to occupancy, possession of, or to purchase or acquire, any portion of the Property.

5.7 No development rights with respect to any portion of the Property has been sold, transferred, assigned, leased, pledged, or otherwise encumbered in any manner whatsoever.

5.8 SELLER is not a party to any unrecorded leases, contracts, restrictions, easements, leases, option contracts, rights of first refusal, commitments, or any other contracts with respect to all or any portion of the Property nor shall SELLER enter into any of the foregoing from the Effective Date through after the termination of this Agreement in accordance with the terms of this Agreement, without the prior written consent of PURCHASER. To the extent there are any leases, agreements or service contracts affecting any of the Property as of the Closing (other than this Agreement and the Development Agreement), then, such leases, contracts and service contracts will be terminated by SELLER on or prior to Closing at no cost to PURCHASER.

5.9 SELLER maintains the casualty and commercial liability insurance with respect to the Property which is described on Schedule 5.9 attached hereto and SELLER shall contain to maintain such insurance until the later to occur of (i) the Closing or (ii) the termination of this Agreement in accordance with the terms hereof.

5.10 Prior to the Closing, SELLER shall comply with all of the obligations of SELLER under the service agreements and all other agreements and contractual arrangements by which SELLER and/or the Property are bound. SELLER shall maintain all existing insurance coverage in full force and effect through Closing and shall pay all required premiums and other charges.

5.11 REAL PROPERTY SOLD AS IS, WHERE IS, RELEASE: Except as otherwise provided herein, SELLER makes and shall make no warranty regarding the title to the Property except as to any warranties which will be contained in the Deed and in the other instruments to be delivered by SELLER at Closing in accordance with this Agreement (including the Affidavit described in Section 6.b. hereof), and SELLER makes and shall make no representation or warranty either expressed or implied (except as specifically set forth in this Agreement) regarding condition, operability, safety, fitness for intended purpose, use, governmental requirements, development potential, utility availability, legal access, economic feasibility or any other matters whatsoever with respect to the Property. Subject to SELLER'S representations and warranties set forth in this Agreement, PURCHASER specifically acknowledges and agrees that SELLER shall sell and PURCHASER shall purchase the Property on an "AS IS, WHERE IS, AND WITH ALL FAULTS" basis and that, except for the SELLER'S representations and warranties set forth in this Agreement, PURCHASER is not relying on any representations or warranties of any kind whatsoever, express or implied, from SELLER, its agents, officers, or employees, as to any matter concerning the Property including, without limitation, any matter relating to (i) the quality, nature, adequacy or physical condition of the Property; (ii) the quality, nature, adequacy or physical condition of soils, fill, geology, or any groundwater; (iii) the existence, quality, nature, adequacy or physical condition of utilities serving the Property; (iv) the development potential, income potential, or expenses of the Property; (v) the Property's value, use, habitability, or merchantability; (vi) the fitness, suitability,

or adequacy of the Property for any particular use or purpose; (vii) the zoning or other legal status of the Property; (viii) the compliance of the Property or its operation with any applicable codes, laws, rules, regulations, statutes, ordinances, covenants, judgments, orders, directives, decisions, guidelines, conditions, or restrictions of any governmental or quasi-governmental entity or of any other person or entity, including without limitation, environmental person or entity, environmental laws; (ix) the presence of Hazardous Materials, as defined herein, or any other hazardous or toxic matter on, under or about the Property or adjoining or neighboring property; (x) the freedom of the Property from latent or apparent defects; (xi) peaceable possession of the Property; (xii) environmental matters of any kind or nature whatsoever relating to the Property; (xiii) any development order or agreement, or (xiv) any other matter or matters of any nature or kind whatsoever relating to the Property.

(a) As used herein, the term "Hazardous Materials" means (i) those substances included within the definitions of "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §960 et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S. C. §1801 et seq., or the Clean Water Act, 33 U.S.C. §1321 et seq., as amended, and in the regulations promulgated pursuant thereto; (ii) those substances listed in the United States Department of Transportation Table (49 CFR §172.101) or by the Environmental Protection Agency as "hazardous substances," "hazardous materials," "toxic substances" or "solid waste;" (iii) such other substances, materials and wastes which are regulated, or classified as hazardous or toxic, under applicable local, state or federal laws, ordinances or regulations; and (iv) any material, waste or substance which is petroleum, asbestos, polychlorinated, biphenyls, flammable explosives or radioactive materials.

5.12 Notwithstanding the foregoing, from and after the Effective Date, SELLER shall maintain the Property and shall cause the Property to be maintained in a manner generally consistent with past practices and in a manner fully compliant with applicable law and the SELLER shall reasonably endeavor to prevent the introduction of any Hazardous Materials onto the Property and the PURCHASER shall have and is hereby granted the right to enter upon the Property to confirm the compliance of the SELLER with the foregoing duties and obligations. Any notices received by SELLER concerning an environmental condition, condemnation, code violation or other matter concerning the Property shall promptly be sent to PURCHASER.

5.13 Notwithstanding the foregoing, the SELLER does not and PURCHASER acknowledges that SELLER has not waived the provisions of sovereign immunity that exist within Section 768.28 of the Florida Statutes.

5.14 SELLER has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by SELLER at the Closing will be, authorized and properly executed and constitute or will constitute, as appropriate, the valid and binding obligation of SELLER, enforceable against SELLER in accordance with their terms.

5.15 SELLER has full power and authority to enter into this Agreement and to assume and perform its obligations hereunder. There is no agreement to which SELLER is a party or to SELLER'S knowledge, binding on SELLER which is in conflict with this Agreement.

5.16 All of the representations, warranties, and covenants of SELLER contained in this Agreement or in any other document delivered to PURCHASER in connection with the transaction contemplated herein shall be true and correct in all material respects and not in default at

the time of Closing, just as though they were made on the Closing Date and shall survive Closing for the applicable statute of limitations period.

5.17 SELLER shall indemnify, hold harmless and defend PURCHASER against any claims, demands, losses, liabilities, costs, and expenses including attorney's fees imposed upon or accruing against PURCHASER as a result of any of the representations, warranties and covenants contained in this Section 5 not being true and correct in all material respects. Subject to the limitations contained in Section 768.28, Florida Statutes. Nothing herein shall constitute a waiver to the SELLER's entitlement to sovereign immunity.

5.18 SELLER shall demolish the 501 Lake Avenue Building, prior to closing in accordance with the Development Agreement.

## 6. SELLER'S CLOSING DOCUMENTS.

SELLER shall deliver to the Title Company which is serving as the closing agent for the Closing originals of the following documents with a copy to PURCHASER (and its counsel), at least three (3) calendar days prior to the Closing:

(a) Special Warranty Deed. A special warranty deed in recordable form, duly executed by the SELLER, conveying to the PURCHASER good, marketable and insurable fee simple title to the Property subject only to the Permitted Exceptions, with the legal description provided in the Title Commitment.

(b) Affidavit. A no-lien and exclusive possession affidavit sufficient for the title company to delete the gap, any exceptions for parties in possession and mechanic's or materialmen's liens from the title policy (the "Affidavit").

(c) FIRPTA Affidavit. In order to comply with the requirements of the Foreign Investment Real Property Tax Act of 1980 ("FIRPTA"), SELLER will deliver to PURCHASER at closing SELLER'S affidavit stating the SELLER is not a "foreign person," as defined in Section 1445 of the Internal Revenue Code of 1986 and the U.S. Treasury Regulations thereunder.

(d) General Assignment and Bill of Sale. An Assignment and Bill of Sale (the "Assignment and Bill of Sale") of SELLER'S right, title and interest in and to (i) the personal property described in the definition of "Property" in Section 1.31 hereof and (ii) the SELLER Reports.

(e) Certificate of Seller. A certificate of SELLER certifying to the PURCHASER that each of the representations and warranties of SELLER set forth in Section 5 of this Agreement are true and correct in all material respects as of the Closing Date.

(f) Evidence of Authorization. Evidence of authority of the individual executing and delivering the Deed and the other closing documents on behalf of the Seller for the satisfaction of the Title Company and PURCHASER.

(g) Closing Statement. An executed copy of the Closing Statement executed by Seller.

(h) Possession. SELLER shall deliver possession of the Property to PURCHASER at Closing. SELLER will provide keys, remote controls, necessary to operate all locks, mailboxes, and security systems.

(i) Other Documents. Such additional documents or instruments as may be reasonably required to effectuate the terms, conditions and provisions hereof and to carry out the intent of the parties hereto, or as may be reasonably required by the Title Company, so as to be able to delete at Closing all of the requirements of Schedule B-I of the Title Commitment.

## 7. PURCHASER'S DELIVERIES.

At the Closing, and after the SELLER has complied with all of the terms and conditions of this Agreement and simultaneously with SELLER'S delivery of the original documents required in Section 6 to the Title Company:

(a) Purchase Price. PURCHASER shall deliver to the Title Company, as title agent, by wire transfer the Purchase Price, adjusted for the prorations, adjustments and other payments provided for in this Agreement;

(b) Closing Statement. An executed copy of the Closing Statement to PURCHASER.

(c) Title Commitment and Closing Statements. At Closing, PURCHASER shall have received from the Title Company, as a condition to the closing, a "marked up" owner's and mortgagee's Title Commitment, in form and substance acceptable to PURCHASER and to PURCHASER'S lender, provided, however, that the Property shall be sold, assigned, and conveyed by Seller to Buyer, and Buyer shall accept and assume same, subject to the following matters (collectively, the "Permitted Exceptions"):

1. Any and all present zoning, building, environmental, and other laws, statutes, ordinances, codes, rules, regulations, requirements, or executive mandates of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any.
2. Possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, satellite dishes, protective netting; sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air-conditioners, and the like, if any, on, under, or above any street or highway, the Property or any adjoining property, provided, however, that the same do not materially impact the value of the Property or impair the continued use of the Property as it is being used on the date of this Agreement.
3. All presently existing liens for unpaid real estate taxes, assessments, and water and sewer charges that are not due and payable as of the Closing Date, subject to any apportionments as provided for in this Agreement.
4. All covenants, restrictions, and rights of record, and all easements and agreements of record for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under the Property, provided, however, that the same are not violated by the Improvements and do not impose any monetary obligation on the owner of the Property.
5. Party walls and party wall rights; beams and beam rights; the possible revocable nature of or lack of right to maintain vaults or other improvements or installations beyond building or property lines.

6. Variations between tax lot lines and lines of record title provided same do not render title unmarketable.
7. Any lien or encumbrance arising out of the acts or omissions of the Buyer.
8. Any financing statements filed on a date more than five (5) years prior to the Closing Date and not renewed, and any financing statements, chattel mortgages, encumbrances, or construction liens, or other liens filed against the property or equipment which is not part of the Property.
9. Any exceptions disclosed on Schedule B-2 of the Title Commitment (as hereinafter defined) which will be extinguished upon the transfer of the Property.

8. REAL ESTATE COMMISSIONS.

PURCHASER and SELLER represent and warrant to each other that each has not dealt with any broker, agent or similar person in connection with this transaction. Each of PURCHASER and SELLER agree to indemnify and hold harmless the other party from and against and any all liability, loss, cost, damage and expense, including but not limited to attorneys' fees and costs of litigation both prior to and on appeal, which either PURCHASER or SELLER shall ever suffer or incur because of any claim by any agent, broker or finder engaged by either party whether or not meritorious, for any fee, commission or other compensation with respect to this Agreement or to the sale and purchase of the Property contemplated herein.

9. DEFAULT.

9.1 DEFAULT BY PURCHASER. The PURCHASER shall be deemed to be in default hereunder only upon the occurrence of any of the following events, to-wit:

(a) In the event that PURCHASER fails to file the Development Review Application on or before the Developer Review Application Date, which date shall be extended by Force Majeure events; or

(b) In the event that the PURCHASER fails to close the acquisition of the Property on or before the Closing Date (which date shall be extended by Force Majeure events) and such failure to close is not otherwise attributable to a default by SELLER; provided SELLER is not in material default herein, if PURCHASER materially defaults in the performance of any of the obligations to which reference is made in the immediately preceding subsections (a) through (b), both inclusive, and PURCHASER fails to remedy such default within ten (10) calendar days after written notice by SELLER to PURCHASER of such default(s) unless the Default is not reasonably curable within 10 calendar days, and SELLER and PURCHASER fail to agree on a reasonable time to cure (the "SELLER Default Notice"), SELLER may terminate this agreement. Provided SELLER is not in material default herein, if Purchaser defaults herein, then SELLER remedies for such default shall be the recovery of the sum of (i) SELLER actual, documented expenses incurred in connection with the negotiation of this Agreement, the inspections to be performed, and actual expenses for the planning and development of the Property and upon the receipt thereof, (ii) SELLER'S attorney fees and costs described in Section 30 incurred by SELLER to collect items (i) and (ii), then this Agreement shall become null and void, and neither party shall have any claims of whatsoever kind, type, nature or description against the other party.

(c) The PURCHASER shall be entitled to an extension of no more than ninety (90) calendar days for the completion of obligations referenced in subsections (a) and (b). It shall be the PURCHASER'S obligation to notify the SELLER in writing prior to the deadlines referenced in subsections (a) and (b) that the PURCHASER will exercise its right to an extension.

9.2 DEFAULT BY SELLER. The SELLER shall be deemed to be in default hereunder only upon the occurrence of any of the following events, to-wit:

(a) In the event that SELLER fails to perform SELLER'S obligations under this Agreement or in the event any of the representations and warranties of SELLER in this Agreement are not true and correct in all material respects as of the Effective Date and as of the Closing; or

(b) In the event that the SELLER fails to close the sale of the Property on or before the Closing Date (which date shall be extended by Force Majeure events) and such failure to close is not otherwise attributable to a default by PURCHASER.

Provided PURCHASER is not in material default herein, if Seller defaults herein, then PURCHASER remedies for such default shall be the recovery of the sum of (i) PURCHASER actual, documented expenses incurred in connection with the negotiation of this Agreement, the inspections to be performed, and actual expenses for the planning and development of the Property ) and upon the receipt thereof, (ii) PURCHASER'S attorney fees and costs described in Section 30 incurred by PURCHASER to collect items (i) and (ii), then, this Agreement shall become null and void, and neither party shall have any claims of whatsoever kind, type, nature or description against the other party.

## 10. TIMELINE FOR CITY DEVELOPMENT APPROVAL, CITY COMMISSION APPROVAL AND PERMITS.

### 10.1 Governmental Approvals.

(a) Prior to submission of the Development Review Application, SELLER'S staff shall consult with and advise PURCHASER on the resolution of zoning and related entitlement issues associated with the proposed Development Review Application and the development of the Project.

(b) PURCHASER shall file its Development Review Application with the City by the Development Review Application Date.

(c) PURCHASER shall exercise due diligence in order to obtain the Government Approvals which are in the control of the City within one hundred eighty (180) calendar days after the Development Review Application is filed. The parties agree that they will act promptly and in good faith throughout the approval process in an effort to obtain the Government Approvals which are in the control of the City in as short a time period as is possible within the applicable laws that define the approval process for such Government Approvals.

(d) PURCHASER shall exercise due diligence in order to obtain the approvals which are not in the control of the City (including, without limitation, any required approvals issued by any federal, state or county Governmental Authorities having jurisdiction over the Project) within one hundred eighty (180) calendar days after the Development Review Application is filed with the SELLER.

### 10.2 Permits for the Project.



(a) After PURCHASER has obtained the Government Approvals, then, PURCHASER shall use commercially reasonable efforts in order to obtain all Permits necessary to permit the construction of the Project within eight (8) months after all required Government Approvals have been finally issued (and all appeals periods have expired with respect thereto).

(b) INTENTIONALLY DELETED.

(c) PURCHASER shall exercise due diligence in order to obtain the Permits for the Project which are not in the control of the City (including, without limitation, any required Government Approvals issued by any federal, state or county Governmental Authorities having jurisdiction over the Project) within eight (8) months after all the required Government Approvals have been finally issued (and all appeals periods have expired with respect thereto).

### 10.3 Closing of Acquisition By PURCHASER of Property from SELLER.

The Closing for the acquisition of the Property by PURCHASER from SELLER shall occur within sixty (60) calendar days after PURCHASER has obtained the following: (i) the Governmental Approvals, (ii) all of the Permits to develop and construct the Project.

## 11. EVIDENCE OF TITLE.

11.1 Title to the Property. SELLER shall convey the Property, including all easements and restrictions of record with the exception of the encroachment(s), if any, to PURCHASER at Closing by delivery of the Deed and the Assignment and Bill of Sale.

(a) PURCHASER shall, during the Inspection Period, secure a title insurance commitment issued by an agent (on behalf of a Title Company) selected by and acceptable to PURCHASER which commits to insure PURCHASER'S title to the Property (the "Title Commitment"). The costs and expenses relative to the issuance of a title commitment and an owner's title policy and mortgagee title insurance policy, if applicable, at the Closing shall be borne by the PURCHASER.

(b) PURCHASER shall have fifteen (15) calendar days from the date of receiving the Title Commitment and a Current Survey (as set forth in Section 11.2) to review and examine said Title Commitment and any survey exception as shown in the Current Survey. If PURCHASER objects to any exception to title as shown in the Title Commitment and Current Survey, PURCHASER shall, within ten (10) calendar days of receipt of said Title Commitment, notify SELLER in writing specifying the specific exception(s) to which it objects (collectively, the "Title Objections"). Any Title Objection(s) of which PURCHASER has so notified SELLER, shall be cured by SELLER so as to enable the removal of said Title Objection(s) from the Title Commitment within ninety (90) calendar days after PURCHASER has provided notice to SELLER. For the avoidance of doubt, the matters described in Section 13 may be included as a Title Objection by Purchaser.

(c) Within twenty (20) calendar days after the expiration of SELLER'S time to cure any Title Objection, SELLER shall send to PURCHASER a notice in writing (the "Cure Notice") stating either (i) that each of the Title Objection has been cured and, in such case, enclosing evidence of such cure, or (ii) that SELLER is unable to cure such Title Objection despite the good faith efforts of the SELLER to effectuate the cure.

(d) If SELLER is unable to cure all Title Objections within the time period set forth in the preceding sentence despite the good faith efforts of the SELLER, then PURCHASER

may (a) terminate this Agreement by written notice to the SELLER within thirty (30) calendar days after receipt of a Cure Notice specifying an uncured Title Objection, in which event all Earnest Money held by the Escrow Agent, together with interest thereon, shall be immediately returned to PURCHASER; or (b) subject to the provisions set forth below, proceed to close the transaction contemplated herein despite the uncured Title Objection(s).

(e) At least five (5) calendar days prior to Closing, PURCHASER shall obtain an update to the Title Commitment showing all new items which affect title to the Property. Should any additional matters (including any Survey matters) be listed in the updated Title Commitment or the updated Survey, if applicable, subsequent to the original effective date of the original Title Commitment (a "New Encumbrance"), then, PURCHASER shall have five (5) Business Days from receipt of the updated Title Commitment, together with a copy of said title document to object to same, in which event, such New Encumbrance shall be deemed a "Title Objection" by PURCHASER and be subject to the same terms and conditions set forth above in this Section 11.1.

(f) Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be obligated to prosecute legal action to cure any title defects or expend more than \$5,000.00 in curing such defects. (provided SELLER shall not be obligated to cure any such financial liens arising solely because of the acts or failure to act of PURCHASER).

11.2 Survey and Legal Description. During the Inspection Period, PURCHASER shall order: (i) a Current Survey ("Current" is defined to be certified within ninety (90) calendar days of the Effective Date), prepared by a registered land surveyor or engineer licensed in the State of Florida showing the boundaries of the Property, and the location of any easements and other matters as reflected on Schedule B II of the Title Commitment thereon and certifying the number of acres (to the nearest one thousandth acre) of land contained in the Property, all buildings, improvements and encroachments; and (ii) a correct legal description of the Property which, upon approval thereof by PURCHASER and SELLER (not to be unreasonably withheld, conditioned or delayed), and the title underwriter, shall be the legal description for the Property that is used in the Deed; provided however if the granting deed(s) for the Property into the SELLER contained a different legal description for the Property, then, the SELLER shall grant to PURCHASER, pursuant to the Deed, the Property as described in the legal description(s) set forth in such granting deed(s). The Current Survey shall be certified to SELLER, PURCHASER, the PURCHASER'S mortgage lender and the title insurance company issuing the title insurance.

(a) In the event the Current Survey shows (i) any material encroachments, strips, gores, or any portion of the land non-contiguous to any other portion of the Property or (ii) any other matter affecting the intended use of the Property or marketability of title to the Property (any such matter is herein called a "Survey Objection" and treated as an object to title by PURCHASER), PURCHASER shall have a period of fifteen (15) calendar days after receipt of the Title Commitment and Current Survey by PURCHASER within which to approve or disapprove any Survey Objection and to give notice to SELLER of any disapproval thereof indicating in reasonable detail the nature and reasons for PURCHASER'S objection. As used in this Section 11.2, the term "material encroachment, strips, gores or any other portion of the land" shall mean any such encroachment, strips, gores or other portion of the land" which prevents all of the Property from being continuous or which otherwise adversely affects the ability of PURCHASER to develop and/or finance the development of, the Property, as reasonably determined by PURCHASER.

(b) In the event PURCHASER provides a notice of disapproval of a Survey Objection to SELLER, the rights and obligations of the parties respecting such objections shall be governed by Section 11.1 hereof such that the parties shall have the same rights and objections as

though such Survey Objection objected to as a new exception to title which was listed on the updated Title Commitment and objected to by PURCHASER within the contemplation of Section 11.1.

12. RISK OF LOSS; CONDEMNATION.

(a) Risk of Loss. Risk of loss or damage from fire, other casualty, or both, is assumed by SELLER until the Closing occurs and the Deed is delivered by SELLER to PURCHASER.

(b) Condemnation. If at any time following the Effective Date and prior to the Closing Date, SELLER receives written notice of any pending or threatened condemnation or similar type of proceeding by any agency of the Federal Government, or the State of Florida or Palm Beach County, in each case, affecting all or any portion of the Property, then, SELLER shall promptly give written notice thereof to PURCHASER, and upon receipt of such notice PURCHASER shall have the following options:

(c) to terminate this Agreement by delivering a written notice of termination to SELLER, whereupon this Agreement shall terminate, the Escrow Agent shall promptly return the Earnest Money to PURCHASER and the parties shall be released from all terms, provisions, obligations and liabilities of this Agreement, except from those that expressly survive its termination; or

(d) to waive its right under (i) above and close on and take title to the Property subject to such proceeding or material damage, provided that: in the event of any such pending or threatened condemnation or similar type of proceeding, (A) SELLER shall have no right to enter into any settlement of the proceeding or grant any deed in lieu of condemnation or similar type of conveyance in connection with the proceeding without PURCHASER'S prior written consent, (B) SELLER shall assign to PURCHASER at Closing all of SELLER'S right, title and interest in and to any and all proceeds payable in the proceeding, and (C) Any proceeds awarded to SELLER shall be assigned to PURCHASER.

PURCHASER shall be required to deliver written notice of its election to SELLER within twenty (20) calendar days after receiving written notice, "written notice" shall include notice by email (which is confirmed by written notice delivered via overnight delivery), of the condemnation proceeding from SELLER and the Closing Date shall be extended accordingly. If PURCHASER fails to timely deliver its election to SELLER under this Section, then it shall be deemed that PURCHASER elected to terminate this Agreement under (i) above.

13. TRANSFER OF TITLE SUBJECT TO.

Except as otherwise set forth and subject to Section 11, the Property shall be conveyed subject only to the following matters affecting the Property existing as of the Effective Date: water lines, sanitary sewer, drainage, gas distribution, electrical and telephone easements of record; provided however that nothing in this Section 13 shall prohibit the PURCHASER from objecting to any matter described in this Section 13 as a title objection under Section 11.1(a) above.

14. ADJUSTMENTS AT CLOSING.

(a) All prorations, if any, shall be calculated as of midnight of the day before the Closing Date.

(b) All utilities, security deposits, electric, non-delinquent taxes and assessments (real property and personal property), and water and sewer charges. Adjustments shall be based upon the maximum discount available.

#### 15. CLOSING DATE AND PLACE.

The Closing shall occur on the Closing Date. The Closing shall be held in the offices of the Escrow Agent/Title Company as a "mail away closing" and upon satisfaction of all Conditions Precedent.

#### 16. TERMINATION.

(a) In the event the Closing does not occur solely because of either Party's failure to close on or before sixty (60) calendar days from and after the date PURCHASER has obtained the City Governmental Approvals and the Permits, subject to the right of PURCHASER to extend the Closing Date and the Closing as provided herein, the non-breaching Party shall have the right to terminate this Agreement and each Party shall be released from any and all liability to one another.

(b) The PURCHASER shall have the right to terminate this Agreement in its sole discretion in the event:

(c) The PURCHASER, SELLER and the City do not agree upon and execute within one hundred eighty (180) calendar days from the Effective Date of this Agreement the following (all such agreements, the "Accompanying Agreements"):

1. Development Agreement
2. Construction Agreement K Street Parking Garage
3. Construction Agreement Relocation of Contributing Structures
4. Long Term Maintenance Agreement Arts Alley
5. Long Term Parking Agreement

#### 17. CLOSING COSTS.

Upon Closing, PURCHASER shall be responsible for the costs and expenses related to the owner's title insurance commitment and policy, and the costs and expenses related to the recording of the Deed, the SELLER shall be responsible for, documentary stamps affixed to the Deed, to the extent required, and all related costs. PURCHASER, at its own expense, may conduct and obtain an Environmental Site Assessment Phase I and Phase II (if so mandated by the Phase I) of the Property. All costs and expenses related to the development of the Property shall be borne by PURCHASER. The SELLER and PURCHASER shall bear their own costs for legal fees with respect to this Agreement, the Government Approvals, the Permits, the Development Agreement and the Project.

#### 18. PURCHASER'S WARRANTIES.

PURCHASER hereby acknowledges and warrants to the best of its knowledge that all of the following are true and correct as of Closing:

(a) PURCHASER has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.

(b) The execution and delivery of this Agreement and the performance by PURCHASER of the obligations hereunder have been duly authorized by the PURCHASER as may be required, and no further action or approval is required in order to constitute this Agreement as a binding obligation of the PURCHASER.

(c) The execution and delivery of this Agreement and the consummation of the transaction contemplated hereunder on the part of the PURCHASER do not and will not violate the organizational documents of PURCHASER and do not and will not conflict with or result in the breach of any condition or provision, or constitute a default under, or result in the creation or imposition of any lien, charge or encumbrance upon any of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which PURCHASER is a party.

All of the representations, warranties and covenants of PURCHASER contained in this Agreement shall be true and correct in all material respects and not in default at the time of Closing, just as though they were made on the Closing Date and will survive Closing. PURCHASER shall indemnify, hold harmless and defend SELLER against all claims, demands, losses, liabilities, costs and expenses, including attorney's fees, imposed upon or accruing against SELLER as a result of any of the representations contained in this Section 18 not being true and correct in all material respects.

#### 19. OPTION TO REPURCHASE ALL OF THE PROPERTY.

(a) SELLER expressly reserves the right at its sole option and election to repurchase all of the Property for the same Purchase Price as paid by PURCHASER to SELLER in connection with the Project (the "Right of Repurchase") in the event the PURCHASER fails to commence construction of the Project within one hundred twenty days\_ ( 120\_ ) calendar days following the Closing.

(b) The SELLER'S right to repurchase and its terms and conditions herein shall be incorporated in a Memorandum of Agreement executed by the parties prior to Closing and shall survive the Closing. At PURCHASER's request, SELLER shall record a termination of the right to repurchase in form and content acceptable to PURCHASER within ten (10) Business Days of PURCHASER receiving certificate of occupancy for the Project. The Memorandum of Agreement shall expressly provide that the Seller be afforded the right to repurchase the Property only in the event the PURCHASER:

(1) fails to commence construction of the Project, within one hundred twenty (120) calendar days following the Closing. For purposes of this Section, "Commence construction" shall be considered site preparation and/or securing the Property with an enclosed barrier; and

(2) fails to commence the installation of the concrete foundation for the structures to be constructed within the Project within one hundred eighty (180) days following the commencement of construction;

(3) fails to perform its material obligations arising under this Agreement and the Development Agreement.

(c) In the event SELLER elects to repurchase the Property as provided herein, then, within thirty (30) calendar days after SELLER'S election to exercise the Right to Repurchase, (i) PURCHASER shall tender in escrow a Special Warranty Deed to the title company designated by SELLER conveying the Property, (ii) SELLER and PURCHASER shall prorate the real estate taxes and other expenses of the Property in the manner such prorations occurred on the Closing Date and (iii) each of the parties shall provide to such title company evidence of authority necessary to satisfy the title company with respect to the authorization to convey the Property and to close on the transfer of the Property from PURCHASER to SELLER.

(d) This Section 19 shall survive Closing. Notwithstanding the foregoing, the Right of Repurchase granted herein shall be subject to and subordinate to any acquisition, development and/or Construction Loan and mortgage on the Property and all modifications thereof and SELLER will execute and deliver a subordination of the Right of Repurchase in recordable form upon request of any mortgagee of an acquisition, development and/or Construction Loan, in form acceptable to such mortgagee, which shall provide, among other things, written notice and opportunity to cure any failure to receive a certificate of occupancy by PURCHASER in favor of the lender under such Construction Loan and mortgage.

## 20. ENFORCEABILITY.

If any term, covenant or condition of this Agreement, or the application thereof to any person or circumstance, shall be determined to be unenforceable by a court of competent jurisdiction (the "Offending Provision"), then the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Agreement shall be valid and enforced to the fullest extent permitted by law; provided however, that the parties affected by the Offending Provision shall endeavor in good faith, within sixty (60) calendar days after the date such determination is made, to agree upon alternative provisions which shall have the same practical effect as the Offending Provision and upon any agreement being reached, the new provision shall be incorporated into and form a part of this Agreement.

## 21. CONDITIONS PRECEDENT TO CLOSING AND CONTINGENCIES.

21.1 SELLER'S Conditions Precedent to Closing: SELLER'S obligation to close the subject transaction is contingent upon the satisfaction of the following conditions:

(a) Government Approvals shall have been obtained by PURCHASER and all time periods to challenge or appeal the issuance of such approvals shall have expired.

(b) No legal or administrative proceeding shall exist which challenges the enforceability of any of the terms and provisions of this Agreement or otherwise seeks to stay, restrict or prohibit the construction, development and/or operation of the Project.

(c) PURCHASER'S execution and continued performance under this Agreement and the Development Agreement.

21.2 PURCHASER'S Conditions Precedent to Closing: PURCHASER'S obligation to close the subject transaction is contingent upon satisfying the following condition:

(a) PURCHASER closing on the Construction Loan (i) from a reputable lender regularly engaged in commercial real estate lending, (ii) which contains such terms as are typical in

Palm Beach County for loans similar in size and purpose to the proposed Construction Loan.

(b) All Government Approvals shall have been obtained by PURCHASER and all time periods to challenge or appeal such approvals shall have expired.

(c) No legal or administrative proceeding shall exist which challenges the enforceability of any of the terms and provisions of this Agreement or otherwise seeks to stay, restrict or prohibit the construction, development and/or operation of the Project.

### 21.3 CONTINGENCIES

PURCHASER obligation to close is contingent upon:

(a) PURCHASER, SELLER and City shall have negotiated, executed and delivered to one other the following agreements in form and substance reasonably acceptable to PURCHASER, SELLER and City on or before one hundred eighty (180) calendar days subsequent to the Effective Date : (a) Construction Agreement – K street Parking Garage (b) Construction Agreement – Contributing Structure Relocation (c) Arts Alley Long Term Maintenance Agreement; and (d) Long Term Parking Agreement;

(b) Purchaser has obtained a loan commitment in an amount and terms acceptable to it allowing for the construction of the Project;

(c) Seller providing clear and marketable title to the Property:

(d) Title to the Property shall be free of all encumbrances other than the Permitted Exceptions and the Property shall be free of violations of record of any applicable law:

e) The title company shall be able to deliver at Closing an ALTA Form B Marketability Owner's Title Insurance Policy ("Title Policy") insuring Purchaser's right, title and interest in the Property, excepting no matters other than the Permitted Exceptions;

f) All of the Approvals from the applicable governmental authorities contained in this Agreement have been granted and all appeal periods have expired.

### 22. NOTICE.

Except as otherwise provided herein, all written notices shall be effective upon the actual receipt or first refusal of the addressee to accept delivery after having been sent by reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the following addresses:

SELLER: Joan Oliva, Executive Director  
Lake Worth Beach Community Redevelopment Agency  
1121 Lucerne Avenue  
Lake Worth Beach, FL 33460  
Telephone: (561) 493-2550

With Copy to: David N. Tolces, Esquire  
Weiss Serota Helfman Cole + Bierman, PL  
2255 Glades Road, Suite 200-E

Boca Raton, FL 33431  
Telephone: (561) 835-2111

PURCHASER: Sunshine Lake Worth Development, LLC  
16711 Collins Avenue  
Sunny Isles Beach, FL 33160

With a Copy to: Donald J. Doody, Esquire  
GOREN, CHEROF, DOODY & EZROL, P.A.  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, Florida 33308  
Telephone: (954) 771-4500

23. HEADINGS.

The paragraph headings as set forth in this Agreement are for convenience or reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any paragraph herein.

24. EFFECTIVE DATE.

This Agreement shall be deemed effective as of the Effective Date.

25. GOVERNING LAW AND VENUE.

This Agreement shall be governed by the laws of the State of Florida and venue with respect to any suit in connection with this Purchase and Sale Agreement shall reside in the courts of Palm Beach County, Florida.

26. ENTIRE AGREEMENT.

This Agreement and the Development Agreement constitute the entire agreement between the parties with respect to the transaction contemplated herein, and it supersedes all other prior understandings or agreements between the parties. In the event a conflict exists between this Agreement and the Development Agreement, the terms of this Agreement shall control with respect to the purchase and sale of the Property by SELLER to PURCHASER.

27. NO ORAL CHANGE.

This Agreement may not be changed or amended orally.

28. SUCCESSORS.

This Agreement shall apply to and bind the successors and assigns of SELLER and PURCHASER. The SELLER shall not assign this Agreement without first obtaining the approval of PURCHASER, which approval shall not be unreasonably withheld. The PURCHASER shall not assign this Agreement without first obtaining the written approval of the SELLER, which approval shall not be unreasonably withheld, provided, however, PURCHASER may assign this Agreement to an entity which is owned and controlled by PURCHASER (or its principals). For purposes of this Agreement, the terms "controls", "is controlled by" or "is under common control with" shall mean



the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise. In connection with any permitted assignment, PURCHASER shall provide SELLER with the name of the assignee and the executed assignment and assumption agreement not less than ten (10) calendar days prior to the Closing Date. A permitted assignment shall not release PURCHASER from liability under this Agreement.

29. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which shall be and shall be taken to be an original and all collectively deemed one instrument. The parties hereto agree that a facsimile copy hereof and any signatures thereon shall be considered for all purposes as originals

30. RADON GAS.

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health unit.

31. ATTORNEYS' FEES.

If for any reason a party initiates any legal or equitable action to secure, protect or enforce its rights under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and expenses incurred by it, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

32. COOPERATION AND STATUS UPDATES.

(a) Cooperation. SELLER shall reasonably cooperate with PURCHASER, its agents and professional advisors, in connection with the filing of applications and the obtaining of all required Government Approvals and Permits (including but not limited to demolition permits, site development permits, utility permits, landscaping, mechanical, plumbing, electrical and all necessary permits, authorizations and approvals to commence immediate improvements for the Project) and any necessary utility access agreements, and shall sign any application reasonably made by PURCHASER that is required in order to obtain such Government Approvals and Permits and utility access agreements and shall provide PURCHASER with any information and/or documentation not otherwise reasonably available to PURCHASER (if available to City) which is necessary to procure such Government Approvals and Permits and utility access agreements. Any such accommodation by SELLER shall be without prejudice to, and shall not constitute a limit on, impairment or waiver of, or otherwise affect SELLER'S rights to exercise its discretion in connection with its governmental or quasi-governmental functions.

(b) Status Updates. During the term of this Agreement, PURCHASER agrees to provide SELLER with updates as to the status of the Project on at least a quarter-annual basis.

33. ESCROW.

Any Escrow Agent receiving funds is authorized and agrees by acceptance thereof to promptly deposit and to hold same in escrow and to disburse the same subject to clearance thereof in accordance with terms and conditions of this Agreement. Failure of clearance of funds shall not excuse performance by the PURCHASER. In the event of doubt as to its duties or liabilities under the provisions of this Agreement, the Escrow Agent may, in its sole discretion, continue to hold the monies which are the subject of this escrow until the parties mutually agree to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the parties thereto, or it may deposit all the monies then held pursuant to this Agreement with the Clerk of the Circuit Court of Palm Beach County, Florida, and upon notifying all parties concerned of such action, all liability on the part of the Escrow Agent shall fully terminate, except to the extent of accounting for any monies theretofore delivered out of escrow. In the event of any suit between PURCHASER and SELLER wherein the Escrow Agent is made a party by virtue of acting as such Escrow Agent hereunder, or in the event of any suit wherein Escrow Agent interpleads the subject matter of this escrow, the Escrow Agent shall be entitled to recover a reasonable attorney's fee and costs incurred, said fees and costs to be charged and assessed as court cost in favor of the prevailing party. All parties agree that the Escrow Agent shall not be liable to any party or person whomsoever for mis delivery to PURCHASER or SELLER of monies subject to this escrow, unless such mis delivery shall be due to willful breach of this Agreement or gross negligence on the part of the Escrow Agent. PURCHASER acknowledges that Escrow Agent has been retained as counsel for the SELLER in this matter and other matters and agrees that Escrow Agent may continue to represent SELLER in this matter and any and all present and future matters including any dispute resulting in litigation arising from the obligations set forth in this Agreement.

34. TIME OF THE ESSENCE; FORCE MAJEURE.

(a) Time is of the essence with respect to each provision of this Agreement. Provided however, if the date for performance is on a Saturday, Sunday or federal holiday, the date for performance shall be extended to the next business day.

(b) Notwithstanding the foregoing provisions, the commencement dates provided above and all other times for the commencement or completion of all performances required in this Agreement by the PURCHASER shall be extended on a day for day basis for Force Majeure events, as agreed upon by PURCHASER and SELLER. By the tenth (10) business day of each of month, PURCHASER shall deliver or cause to be delivered to SELLER a list of the days during each proceeding month as to which PURCHASER believes the Force Majeure provisions that apply and the reasons therefor. SELLER shall, within ten (10) business days after receipt of any such list, provide notice to PURCHASER as to whether SELLER disputes that any of the days set forth on that list would give rise to an extension of time for PURCHASER's performance based on Force Majeure. Any days claimed to be subject to the foregoing Force Majeure provision by PURCHASER which are not so disputed by SELLER within said time period shall be deemed approved by SELLER.

(c) If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of acts of God, extreme weather, a named storm, hurricane, strikes, lockouts, labor trouble, inability to procure material, failure of power, restrictive governmental ordinances, orders, policies, directives, decrees, laws, regulations or any other form of governmental controlling guidance, riots, insurrections, war, or other reason of like nature not within the control of and not the fault of the party delayed in performance work or doing acts required under this Agreement (collectively, "Force Majeure events" or "Force Majeure"), then,

the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

(d) Notwithstanding anything to the contrary herein, any time deadline for PURCHASER to apply for or receive any Government Approvals or Permits shall be extended for any appeal period applicable to the issuance of such approval or permit and, if an appeal is taken, then such deadline shall further be extended for so long as it shall take to resolve the appeal.

(e) Notwithstanding anything to the contrary herein, the Development Review Application Date may be extended for up to sixty (60) calendar days each provided: (i) PURCHASER is not in material default of this Agreement beyond any applicable notice and grace period and (ii) PURCHASER gives SELLER written notice of an extension of time at least fifteen (15) calendar days prior to the deadline being extended.

35. NO THIRD PARTY BENEFICIARIES.

This Agreement is an agreement between SELLER and PURCHASER only and no third parties shall be entitled to assert any rights as third party beneficiaries hereunder.

36. SURVIVAL.

Except as otherwise provided herein, the provisions of this Agreement shall not survive the Closing and shall be merged into the conveyance documents executed and delivered at Closing.

37. WAIVER OF JURY TRIAL.

The parties hereto hereby waive any right which either or both of them may have to receive a trial by jury on any claims, defenses or controversies arising out of, directly or indirectly, this Agreement and the transaction described herein.

38. CLOSING AGENT ESCROW AGREEMENT.

The Title Company, as closing agent for the Closing, may require that the parties execute and deliver an escrow agreement and/or the parties may provide to the Title Company separate written escrow instruction letters with respect to the Closing. In the event that the Title Company requires that the parties execute an escrow agreement with the Title Company, each party shall cooperate with the Title Company to execute and deliver an escrow agreement for the Closing which is reasonably acceptable to the Title Company, SELLER and PURCHASER.

*Signatures on Next Page*

The parties have executed this Purchase and Sale Agreement as of the dates indicated below:

**SELLER:**

**Lake Worth Beach Community  
Redevelopment Agency**

By: \_\_\_\_\_  
Title: Chair

Date: \_\_\_\_\_, 2024

**PURCHASER:**

**Sunshine Lake Worth Development LLC**

By: \_\_\_\_\_  
Arthur Wiener, Manager

Date: \_\_\_\_\_, 2024

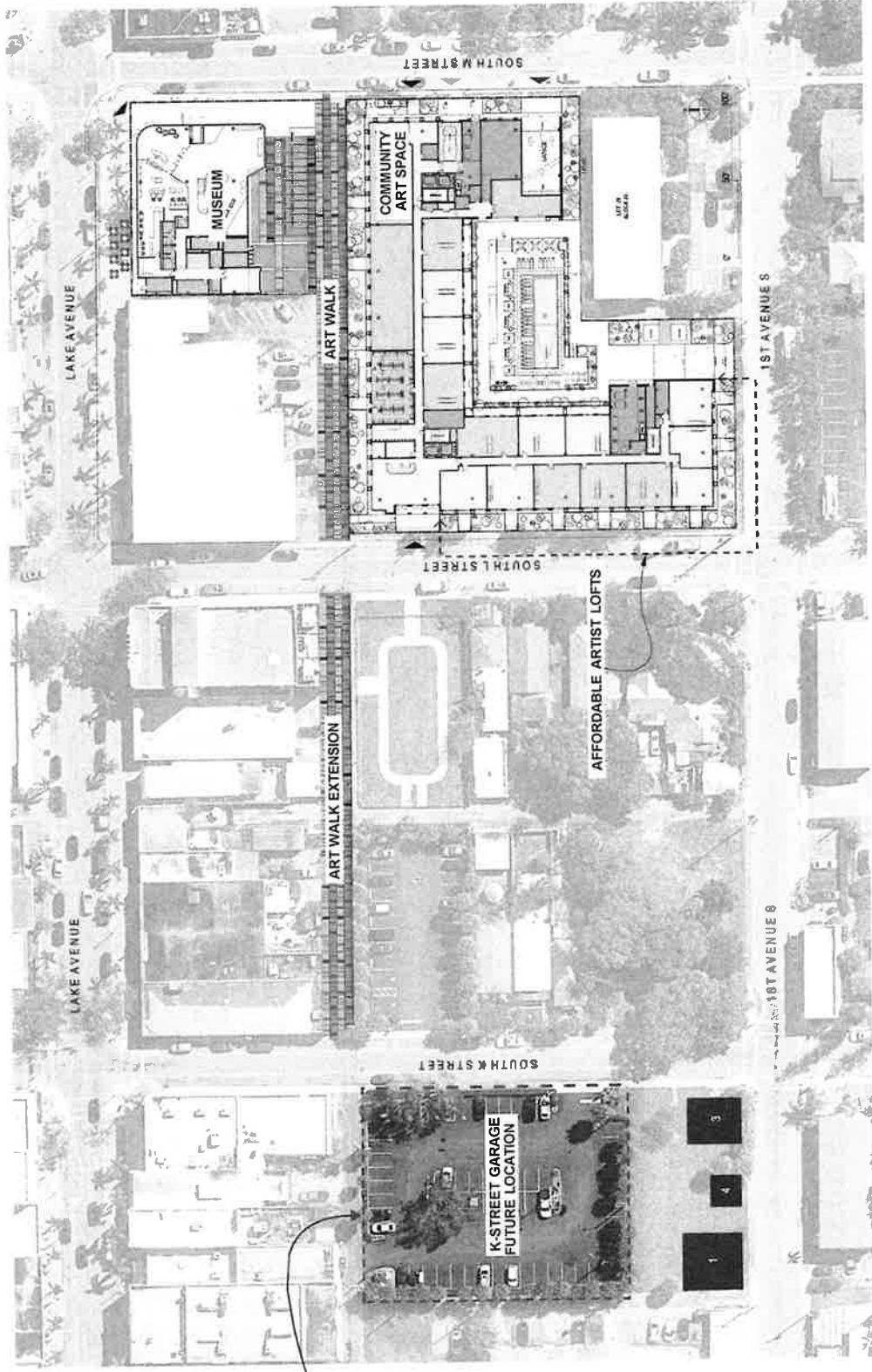
**ESCROW AGENT:  
GOREN, CHEROF, DOODY & EZROL, P.A.**

By: \_\_\_\_\_  
Donald J. Doody, Secretary

Date: \_\_\_\_\_, 2024

# Exhibit "A"

## SITE PLAN AERIAL OVERLAY



**MUSEUM PROGRAM:**  
 \_MUSEUM: +/- 33Ksf  
**MUSEUM REQUIRED PARKING: 66 CARS**  
**66 PROVIDED** ON SITE (ALLEY + STREET): 15  
**PARKING AT K-STREET GARAGE: +/- 51**

**RESIDENTIAL PROGRAM:**  
 \_RESIDENTIAL (+/- 129Ksf) + PARKING (45Ksf) + AMENITY (7Ksf) = 181Ksf  
 110 units total

**RESI REQUIRED PARKING: 180 CARS**  
**184 PROVIDED (W/ CREDIT)**  
 PROVIDED ON SITE CELLAR: 117 CARS  
 STREET PARKING: 27  
 BICYCLE PARKING PROVIDED



## EXHIBIT "B"

PCN #	Address	Size/acres	Zoning	Land Use
38-43-44-21-15-023-0090	16 S L ST	0.16	MU-E	DMU
38-43-44-21-15-023-0220	13 S M ST	0.08	MU-E	DMU
38-43-44-21-15-023-0060	20 S L ST	0.23	MU-E	DMU
38-43-44-21-15-023-0230	17 S M ST	0.16	MU-E	DMU
38-43-44-21-15-023-0250	23 S M ST	0.23	MU-E	DMU
38-43-44-21-15-023-0050	24 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0030	26 S L ST	0.16	MU-E	DMU
38-43-44-21-15-023-0020	30 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0010	32 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0191	501 LAKE AVE.	0.1866	DT	DMU
38-43-44-21-15-023-0170	509 LAKE AVE.	0.1722	DT	DMU

**WMODA MIXED USE DEVELOPMENT  
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_, 2024 (the "Effective Date"), by and between SUNSHINE LAKE WORTH DEVELOPMENT, LLC, a Florida limited liability company (the "Developer") and the CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation (the "CITY"), and the LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY, an entity created pursuant to Florida Statutes, Chapter 163 (the "CRA").

**RECITALS**

A. The CRA is the owner of approximately 1.7 acres of land generally located in the City of Lake Worth Beach, Florida, as more particularly described on Exhibit A attached hereto (each of such parcels being referred to herein individually as a "Parcel," or jointly as the "Parcels," and collectively, as the "Property"), which Property the CRA desires to be sold to and redeveloped by Developer pursuant to the Purchase and Sale Agreement (hereinafter defined) and this Agreement; and

B. The CITY and CRA are the owners of that certain K Street Property (hereinafter defined) which K Street Property the CITY and CRA desire to be developed into a parking garage to support downtown parking for the Property (as developed) and other public parking; and

C. The Developer is proposing to design and construct certain improvements on the Property and K Street Property which improvements are estimated to provide the City of Lake Worth Beach with \$56M in economic output during construction (first two (2) years), increase visitors to the CITY and downtown, increase jobs, increase downtown business revenues, provide an increase in property taxes over 10 years, and provide additional residential units and eight (8) affordable live/work artist units; and,

D. The CITY and CRA recognize the positive public impacts the Developer's improvements will bring to the City of Lake Worth Beach. The CITY and CRA agree to enter this Agreement with the Developer to advance the positive public impacts that the Developer's proposed improvements will make to the City and its residents, guests and visitors; and

D. The Parties find entering this Agreement is in each Party's best interest and serves a valid public purpose.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein set forth, the sufficiency of which is acknowledged by the Developer, CRA, and CITY, the Developer, CRA, and CITY hereby agree as follows:

Article 1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

Article 2. General; Project; Definitions.

2.1 General. The purpose of this Agreement is to provide the terms and conditions pursuant to which the Developer shall develop the Project, obtain entitlements for the Property, close on the Property and develop the Project and the Property in substantial accordance with the terms set forth in this Agreement, the Development Plan, the Site Plan, all other Government Approvals, the Construction Documents, Permits and Applicable Laws (all as hereinafter defined) and within the time periods set forth in the Critical Path (as hereinafter defined). From and after the date of this Agreement, Developer shall diligently, expeditiously, and in good faith take all action necessary to develop the Project (inclusive of all Components (as hereinafter defined)) and the Property for the Project in accordance with the terms and conditions of this Agreement, and in compliance with the Project timeline set forth in the Critical Path attached as Exhibit B to this Agreement.

2.2 "Project" means the comprehensive project by Developer as illustrated in Exhibit C. The Project consists of the following components proposed under the Site Plan: 33,000 square foot museum, 102 market rate residential apartment units, 8 artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support residential uses, offsite parking garage on K street to support museum parking and public parking, art alley between L and M Street, relocation of (4) contributing structures, together with related amenities and utilities, as generally set forth in the Development Plan, attached hereto as Exhibit C (individually a "Component" and collectively, the "Components"). Except for certain Components (hereinafter defined), each respective Component of the Project will be developed on that portion of the Property which is so designated on the Development Plan and each component of the Project is more particularly described as follows:

(a) Museum and Residential Component: 33,000 square foot museum, 102 market rate residential apartment units, 8 artist lofts with artist workspace dedicated at 80%-120% of adjusted median income for 15 years, 117 parking space subterranean parking structure to support the residential uses.

(b) K Street Parking Component: offsite parking garage on K street to support museum parking and public parking on property owned by the CITY and CRA. The CITY and Developer will enter a comprehensive agreement to set forth the parameters of the K Street Parking Component consistent with the CITY's Parking Feasibility Study (hereinafter defined). The CITY and CRA shall enter into a ground lease for the proposed site of the K Street Parking Component. The CITY, CRA, and the Developer shall enter into a Construction Agreement for the purpose of developing the K Street Parking Component, which shall require the contributions of \$1 million from the Developer, \$2.5 million from the CITY, and \$1.5 million from the CRA along with the CRA issuing a \$3.5 million capital improvement revenue note. The CITY, CRA, and the Developer shall collaborate to identify Cost Savings for the K Street Parking Component as derived from the CITY's Parking Feasibility Study. Cost Savings identified for the K Street Parking Component shall be designated to fund the Arts Alley Extension (as hereinafter defined). The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement for a term of less than twenty (20) years as further defined herein.



(c) Arts Alley Component: Arts Alley shall be limited to the portions of this amenity that lies between L Street and M Street. The Developer shall construct and maintain the Arts Alley along the existing public easement. The Arts Alley shall be open to the public in perpetuity. The Developer shall maintain the portion of the Arts Alley within the existing public easement and Property boundaries. The CITY, CRA, and the Developer shall enter into a Long-Term Maintenance Agreement for the Arts Alley that lies between L and M Street which shall dictate the agreed upon maintenance, repair, and capital replacement responsibilities between the CITY, CRA, and the Developer. The Parties agree that the Developer shall be responsible for the day-to-day maintenance of the Arts Alley, and the CITY shall be responsible for repairs and capital replacement needed as a result of infrastructure and or utility line repairs or upgrades, as set forth in the Long-Term Maintenance Agreement. All other terms and conditions shall be set forth in the Long-Term Maintenance Agreement.

(d) Arts Alley Extension: The Developer shall provide the CITY with design documents for the extension of the Arts Alley between L and K Streets. The design shall match the design implemented along the L and M Street portion of the Arts Alley within the existing public easement boundaries. The CITY, CRA, and the Developer agree that the extension of the Arts Alley to K Street benefits the overall campus concept of the Project. If sufficient funding from the K Street Parking Component's Cost Savings and/or other sources are realized to construct the Arts Alley Extension on or before the date of construction commencement for the Project as identified in the Critical Path, the Developer shall construct the Arts Alley Extension on behalf of the CITY. The Parties agree and acknowledge that the Developer's obligation to construct the Arts Alley Extension shall be limited to the amount of the Cost Savings realized from the construction of the K Street Parking Garage. Absent sufficient funding from the Cost Savings of the K Street Parking Garage, the Developer shall be under no obligation to construct the Arts Alley Extension.

(e) Structure Relocation: The Developer shall relocate the four (4) contributing structures currently located on the Property to 704 and 710 1st Avenue South and 126 South J Street. Three (3) contributing structures shall be relocated to 704 and 710 1<sup>st</sup> Avenue South and one (1) contributing structure shall be moved to 126 South J Street, as set forth in detail below:

- 17 South M and Garage: 17 South M and its garage shall be relocated from its current location to the lot on South K and 1st Avenue South, situated on the northwest corner.

- 24 South L: 24 South L shall be relocated from its current location to 126 South J, contingent upon the CITY's approval for the demolition of the existing house at that location.

- 26 South L: 26 South L shall be relocated to the lot on South K and 1st Avenue South, situated on the southwest corner adjacent to the CITY buildings.

CITY and CRA shall be responsible for any permit fees and utility relocation costs associated with the relocation of the structures. The Developer shall obtain all Government Approvals, prepare and make ready the site and construct the foundation and exterior utility connections for the structure currently located at 17 South M Street. The Developer's obligation for the relocation of all three (3) contributing structures shall not exceed \$500,000. In the event that costs exceed \$500,000, the CITY and the CRA shall be responsible for the amount in excess of that value. CITY and CRA shall also obtain all Government Approvals, prepare and make ready the relocation sites at 704 and 710 1<sup>st</sup> Avenue and 126 South J Street in accordance with the specifications from the qualified house mover for the delivery of the remaining three (3) contributing structures. The City shall be responsible for all utility hook-ups for the relocated

structures, including the former 17 South M and Garage. The Developer shall ensure its qualified house mover(s) use best efforts to preserve the structures during relocation, however, except for the exterior utility connections, the CITY and CRA agree to accept the relocated structures in their as-is condition upon delivery, which terms shall be included within the Construction Agreement Relocation of Contributing Structures as defined in the Purchase and Sale Agreement. This provision shall survive the termination of this Agreement.

2.3 Definitions. As used in this Agreement, the following defined terms shall have the following meanings; provided however that each capitalized term which is used but not defined in this Agreement shall have the meaning set forth in the Purchase and Sale Agreement:

"Agreement" shall mean this Development Agreement.

"Applicable Laws" shall mean any applicable law, statute, code, ordinance, regulation, permit, license, approval or other rule or requirement now existing or hereafter enacted, adopted, promulgated, entered, or issued by Governmental Authorities, including, but not limited to, the Florida Building Code.

"Authorized Financing" shall mean acquisition, development, or construction financing consisting of, without limitation: debt financing, private equity, equity participations, joint venture, hybrid financing, mezzanine financing, or other financing arrangements, provided in each such event the material terms of all such financing arrangements shall be documented in the Construction Loan Commitment (or its reasonable equivalent).

"Business Day" shall mean any day that the CITY is open for business.

"CITY" shall mean the City of Lake Worth Beach, a Florida municipal corporation.

"CITY Commission" shall mean the five (5) public officials elected to serve on the Lake Worth Beach City Commission.

"CITY Parking Feasibility Study" shall mean that study conducted by WGI, Inc., in \_\_\_\_\_ 2024.

"Closing Date" shall have the meaning set forth in the Purchase and Sale Agreement.

"Code" shall mean the CITY's Charter, Code of Ordinances, including but not limited to the Land Development Regulations now existing or hereafter amended.

"Comprehensive Agreement" means an agreement required under Section 255.065 Florida Statutes (2024) to be entered into between the Developer and the CITY for the construction of the K Street Parking Component.

"Construction Agreement K Street Parking Garage" means the transaction contemplated between the Developer, CITY, and CRA which shall govern the construction of a Parking Garage on K Street to support the museum and public parking.

“Construction Loan Commitment” shall have the meaning set forth in the Purchase and Sale Agreement.

“Construction Agreement Relocation of Contributing Structures” The transaction contemplated between the Developer, CITY, and CRA shall be subject to the relocation of four (4) contributing structures. The material terms for this Construction Agreement shall include but not be limited to, construction costs, critical path, location of facilities, site specifications, roles and responsibilities of the parties, cost overruns, and liability.

“Cost Savings” shall be defined as the difference between the City’s Parking Feasibility Study estimate of cost and savings realized as may be set forth in the Construction Agreement for the K Street Parking Garage or herein.

“CRA” shall mean the Lake Worth Beach Community Redevelopment Agency.

“Critical Path” shall mean the sequence of activities from this Agreement’s execution to Final Completion of the Project. The Critical Path, which is attached hereto as composite Exhibit B, describes the consequential elements of the schedule of the Purchase and Sale Agreement and this Agreement, including but not limited to, development obligations, termination, and default and is subject to the terms of the Purchase and Sale Agreement (for those Critical Path items only) and this Agreement.

"Developer" shall have the meaning provided in the introductory paragraph herein.

"Developer Financing" shall mean a Construction Loan (i) from a reputable lender regularly engaged in commercial real estate lending, (ii) which contains such terms as are typical in Palm Beach County for loans similar in size and purpose to the Construction Loan and (iii) which contains business terms such as interest rate, terms of repayment, loan to value, guaranty and collateral and equity requirements which are typical in State of Florida for loans similar in size and purpose to the Construction Loan and are otherwise reasonably acceptable to Developer. The Construction Loan Commitment must be provided to the CRA on the date prescribed on the Critical Path.

"Developer’s Representatives" shall mean Developer and its directors, officers, employees, agents, affiliates, or other representatives (including without limitation, attorneys, accountants, engineers, experts, consultants, contractors, financial advisors, and any other person or entity performing services for Developer in connection with this Agreement), and their respective successors and assigns.

“Development Review Application” shall mean the Application submitted by the Developer to the CITY for all Entitlements for the Project..

“Development Review Application Date” shall mean the date the Development Review Application is submitted to the CITY.

“Effective Date” shall mean the date when the CITY Commission and CRA Board respectively approves and authorizes the proper CITY and CRA officials to execute and deliver the Agreement previously executed by the Developer, which date shall be inserted on the first page of this Agreement.

“Entitlements” shall mean those CITY approvals required for the Developer to seek Permits for the construction of the Project Components.

“Final Completion Date” shall mean that date which is defined in composite Exhibit “B”, the Critical Path.

"Governmental Authorities" shall mean the United States Government, the State of Florida, Palm Beach County, the CITY (in its legislative/police power/quasi-judicial capacity), the CRA, and/or any other governmental agency or any instrumentality of any of them.

"Government Approvals" shall mean all approvals required from all applicable Governmental Authorities for the Entitlements, Permits, and other licenses and authorizations for the Developer to develop all Components of the Project. .

“Governmental Approval Date” shall mean all or each date the Developer obtains Government Approvals.

"Hazardous Materials" shall mean any material which may be dangerous to health or to the environment, including, without implied limitation, all "hazardous matter", "hazardous waste", and "hazardous substances", and "oil" as defined in or contemplated by any applicable federal, state or local law, rule, order or regulation relating to the protection of human health and the environment or hazardous or toxic substances or wastes, pollutants or contaminants, including all of the following statutes and their implementing regulations, as the same may have been amended from time to time:

- (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.;
- (b) Toxic Substances Control Act, 15 U.S.C. §2601 et seq.;
- (c) Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136;
- (d) Hazardous Materials Transportation Act, 49 U.S.C. §§1801 -1812;
- (e) Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.;
- (f) Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.;
- (g) Clean Air Act, 42 U.S.C. §7401 et seq.;
- (h) Safe Drinking Water Act, 42 U.S.C. §3808 et seq.; or
- (i) Applicable or equivalent laws and regulations of the State of Florida relating to hazardous matter, substances or wastes, oil or other petroleum products, and air or water quality.

"Inspection Period" shall have the meaning set forth in the Purchase and Sale Agreement and as identified in the Critical Path.

"Institutional Lender" established federally chartered United States bank, United States trust company or other such recognized United States financial institution (or consortium thereof) of good repute and sound financial condition and having assets in excess of One Hundred Million Dollars (\$100,000,000.00).

"K Street Property" means that real property owned by the CITY and CRA generally located at 13 South K Street, 19 South K Street, and 25 South K Street (with PCNs: 38-43-44-21-15-019-0220, 38-43-44-21-15-019-0230, and 38-43-44-21-15-019-0290) to be utilized as the site for the K Street Parking Component.

"Long Term Maintenance Agreement Arts Alley" means the agreement by which the transaction contemplated between the Developer, CRA, and the CITY that will govern the roles and responsibilities of each party regarding the long term maintenance and repair of the Arts Alley.

"Long Term Parking Agreement" The transaction contemplated between the Developer, the CITY, and the CRA that will govern the access, parking fees, special event parking, residential lease opportunities, and liability for the K Street Parking Component.

"Museum" means that certain building located on the corner of Lake Avenue and South M Street to be built by the PURCHASER for the display of Fired Art as part of the Project.

"Permits" shall mean those permits issued by the CITY in its police-power/regulatory power for the construction of the Project's Components.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Placed-In-Service" shall mean the date when the Developer notifies the CITY and the CRA in writing that it has received the final certificate of occupancy, certificate of completion, and executed any and all bills of sale and easements required under this Agreement or other agreement contemplated herein and that the Project and all Components are complete and operational.

"Purchase and Sale Agreement" shall mean that certain Purchase and Sale Agreement between the CRA and Developer for the CRA-owned Property as defined in Exhibit A, as the same may be amended from time to time by the parties thereto.

"Site Plan " shall mean the proposed submittal for the Project and as conceptually shown on composite Exhibit C, attached hereto and made a part hereof, and as may be revised during the site plan approval process from time to time, subject to the terms of this Agreement.

"Substantial Completion Date" shall mean that date on which the Developer makes application to the CITY for Temporary Certificate of Occupancy (TCO) (and maintains the same until Final Completion or obtains a final Certificate of Occupancy (CO)) for the Project.

"Surviving Obligations" shall mean any indemnities, covenants and obligations of the Parties which survive the closing under the Purchase and Sale Agreement, and any termination of this Agreement. Unless otherwise expressly set forth in this Agreement, all indemnities of the Parties contained in this Agreement shall be Surviving Obligations.

"Unsolicited Proposal for Qualifying Project Process" shall mean the public entity procedures required under Section 255.065 Florida Statutes (2024) for the CITY to proceed with an unsolicited proposal for the construction of the K Street Parking Component. Approval of this Agreement shall be contingent upon the CITY Commission's determination that the K Street Parking Component is in the public's best interest consistent with the requirements of the aforementioned statutory section.

"Utility Incentive Fund" shall mean a maximum amount of \$82,547, which is based upon the CITY's calculation of a reasonable rate of return to the CITY for the estimated increase in utility revenues from the Project (whose parameters are stated herein) and the City's current utility rate schedules. If the as-built Project parameters differ from what is stated in this Agreement or the City's current rate schedule(s) changes, the Utility Incentive Fund amount paid by the CITY to the Developer will be revised to be an estimate based upon the as-built parameters and the then current rate schedule(s). The CITY's calculations for the Utility Incentive Fund are set forth herein.

"Water and Sewer Public Utility Relocation Incentive" shall mean the lump sum payment to be made by the CITY to the Developer based on certain water and sewer utility relocations the Developer will be required pay for and perform as part of the Work for the Project.

#### 2.4 Physical Condition after Development Agreement Execution.

The CITY and CRA agree that, after the execution of this Agreement, the CITY and CRA shall not take any actions that could materially and adversely affect (i) the physical condition of the Property and/or the K Street Property owned by the CITY and/or CRA or (ii) the status of title to the Property and/or K Street Property owned by the City or the CRA (as described in (i) or (ii) of this sentence, each a "material adverse change"). The parties acknowledge that the CRA will demolish, at its own cost, the existing structure on the Property located at 501 Lake Avenue, Lake Worth Beach prior to the Closing Date as set forth in the Critical Path.

### Article 3. Site Plan Development.

3.1 Government Approvals. The CITY and CRA hereby acknowledges and agree that the conceptual Site Plan, as shown on Exhibit C, under the described conditions herein, is generally acceptable to the CITY and CRA; provided that any Material Change (as hereinafter defined), shall require the approval of the CRA Board before submission to the CITY as part of the Development Review Application, which approval shall not be unreasonably withheld. The foregoing shall in no way constitute or be construed as the Government Approval of the Site Plan or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of

the CITY's Code and requirements of any other Governmental Authorities. As soon as practicable and consistent with the Critical Path(subject to a Force Majeure event), the Developer shall submit to the CITY for its review and approval, the Development Review Application required to obtain the Entitlements and Government Approvals for the Project, which applications and other submittals are consistent with this Agreement and comply with all Applicable Laws. Prior to submittal of the Development Review Application and other submittals required to obtain the Government Approvals, the Developer shall present to the CRA the Site Plan for review. Following such review , the CRA hereby agrees to execute and deliver to the Developer, in the CRA's capacity as the owner of the Property and a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. If the Purchase and Sale Agreement or this Agreement is terminated prior to obtaining the Government Approvals, then upon the CITY and CRA's request, Developer shall withdraw all of its pending applications and terminate all agreements which are terminable and/or withdrawable by Developer, with respect to the Government Approvals, which foregoing obligations shall survive termination of this Agreement. No later than the time of Site Plan submittal to the CITY as part of the Development Review Application, the Developer shall complete and submit to the CITY: all design requirements, including the proposed Site Plan prior to submittal; preliminary civil engineering; any other plans and specifications required for the Project to proceed; design elements (excluding logos) for the various buildings within the Project, including definitions of sample architectural styles with representative illustrations; and copies of applications for any Government Approvals required for the development and construction of the Project. Once the CITY approves the foregoing (if they are substantially consistent with the Site Plan attached hereto as Exhibits C), the CITY hereby agrees to execute and deliver to Developer, in the CITY's capacity as the owner of a portion of the K Street Property, all applications and other submittals required to obtain the Government Approvals. Thereafter, the Government Approvals shall proceed in accordance with the CITY's Code and other Applicable Law, Governmental Authorities, and Government Approvals and the representative design elements and style portion of the documents, if approved, will be the Entitlements for the Project.

3.2 Third Party Review To Assist With Government Approvals. The Developer may at its sole discretion and cost in order to expedite the Government Approval process, including construction and inspection phase, request that the CITY engage the services of an outsourced consulting firm to complete the various development reviews in connection with the issuance of the Government Approvals should the CITY so elect to outsource the development review process.

3.3 Site Plan. The CITY hereby acknowledges and agrees that the Developer's Site Plan, as shown on Exhibit C, is the conceptual designs which have been reviewed and no formal approval has been issued by the CITY in its police power/quasi-judicial capacity. The foregoing shall in no way constitute or be construed as the approval or issuance of a CITY development order, it being expressly acknowledged and agreed by the Developer that the "Site Plan" will require separate submission, review, and approval pursuant to the requirements of the CITY's Code and requirements of any other Governmental Authorities.

(a) For purposes of this Agreement, a "Material Change" to the Site Plan, at Exhibit C, means and refers to a requested change, alteration or modification that (i) increases or decreases the total number of residential units by greater than fifteen percent (15%), (ii) decreases the amount

of square footage in the Museum by greater than fifteen percent (15%), (iii) revisions that significantly alters the architectural scheme from that previously approved by the CRA, as determined by the CRA EXECUTIVE DIRECTOR. For the avoidance of doubt, a Material Change hereunder shall refer to a change, alteration or modification of the Site Plan prior to such Site Plan approval by the CITY in its police power/quasi-judicial capacity. Furthermore, Material Change shall not refer to any increase or decrease of the square footage of the K Street Parking Component.

(b) All Material Changes to the Site Plan attached as Exhibit "C" are subject to requirements of the CITY and CRA's review process.

(c) Following issuance of the Entitlements for the Site Plan for the Project by the CITY, the CITY shall endeavor to expeditiously process all requests by the Developer for Material Changes and Permitted Changes (hereinafter defined) consistent with the CITY's Code.

(d) For the purposes of this Agreement, "Permitted Changes" mean revisions or changes that arise as a result of (i) any term or provision in the Florida Building Code, the fire code, or any other Applicable Law, (ii) any unforeseen site conditions which reasonably require a revision or change, or (iii) any life safety issues.

### 3.4 Timeline; Development, Government Approvals and Permits.

(a) Any Material Change shall require the approval of the CRA Board, which approval shall not be unreasonably withheld. The CRA shall provide its written approval or disapproval (specifying the basis for disapproval and/or comments) to any such plans and specifications as to the existence of Material Changes within ten (10) Business Days of receipt of request for same. If the CRA fails to either approve or disapprove (either with or without conditions) the submitted plans and specifications within fifteen (15) Business Days following written notice to the CRA, then, the plans and specifications submitted shall be deemed approved as to compliance with the elements of this Agreement by the CRA.

(b) However, should the final Site Plan include a Material Change the aforementioned timelines for review shall not apply.

### 3.5 Critical Path.

(a) The Developer will be responsible for initiating and diligently pursuing the Government Approval applications and Entitlements in accordance with the Critical Path as amended from time to time due to a Force Majeure event, shall serve as the Developer's time frame for performance with respect to obtaining the Government Approvals and Entitlements, to obtaining the Permits for the Project, and constructing the Project, and as applicable, subject to the terms of the Purchase and Sale Agreement and this Agreement.

(b) Notwithstanding any other provisions of this Agreement, the Critical Path may be extended for delays occasioned by the following events: (i) acts of God; (ii) pandemic or other health related occurrence; (iii) terrorism; (iv) once construction begins - extreme weather, a named storm, a hurricane or other tropical event as declared by the National Weather Service, (v) strikes,



lockouts or other labor trouble, (vi) inability to procure material that adversely affect the construction of the Project, (viii) restrictive governmental ordinances, orders, policies, directives, decrees, laws, regulations or any other form of governmental controlling guidance, (ix) riots, insurrections, or war, (x) other reason of like nature not within the control of and not the fault of the party delayed in performance work or doing acts required under this Agreement, (xi) withholding of Government Approvals or restrictions not due to the fault, delay or negligence of the Developer, (xii) unreasonable delay or negligence by the CITY or CRA; (xiii) appeals of governmental approvals or lawsuits by any third party (whether individual or otherwise) instituted to prevent the issuance of any approvals or permits, or otherwise stop construction of the development after commencement; (xiv) unreasonable delay or negligence by the Developer; or (xv) similar events not reasonably foreseeable and beyond the reasonable control of the Party requesting to extend the Critical Path (collectively, "Force Majeure"). Any Party seeking an extension for a Force Majeure event shall send written notice to the other Parties within ten (10) Business Days of the start of the delay, which notice may be sent via email (delivery receipt requested). Failure to provide such notice shall waive the delay until proper notice is provided unless otherwise agreed to by both of the other Parties in writing. The Parties shall work together to maintain the Critical Path.

(c) The CITY shall cooperate with the Developer in processing all necessary Government Approvals and Entitlements to be issued by the CITY, as well as by all other applicable Governmental Authorities. The parties recognize that certain Government Approvals will require the CITY and/or its boards, departments or agencies, acting in their legislative/police power/quasi-judicial capacity, to consider certain governmental actions. The parties further recognize that all such considerations and actions shall be undertaken in accordance with established requirements of Applicable Laws in the exercise of the CITY's jurisdiction.

(d) Time is of the essence for the performance of all obligations under this Agreement consistent with the Critical Path, which may be extended as stated herein. The timeframes set forth herein for the Developer's obligations may be extended in writing by the CITY's City Manager and CRA's Executive Director up to a maximum of 60 calendar days. Beyond 60 calendar days, a written amendment to this Agreement with CITY Commission, CRA Board, and Developer approval shall be required. The Developer shall give the CITY and CRA at least fifteen (15) calendar days' notice prior to the deadline to be extended.

3.6 Failure to Provide Government Approvals. In the event that the CITY and or its boards, departments, or agencies, acting in their legislative/police power/quasi-judicial capacity to consider certain governmental actions, fails to provide Government Approvals and Entitlements necessary to construct the Project, as such time period may be extended as set forth herein after the Developer submitted the Development Review Application in compliance with Applicable Laws and in accordance with the Developer's Site Plan shown on Exhibit C and all applicable timeframes for appeals have been exhausted to the City Commission then, such failure shall entitle the Developer to terminate this Agreement.

#### Article 4. Development Obligations.

#### 4.1 General Obligations.

(a) Subject to the terms and provisions of this Agreement, in the event the Government Approvals and Entitlements are issued to Developer, then, the Developer shall be responsible for the design, engineering, and permitting of the Project in accordance with the terms of this Agreement. After obtaining all required Permits, , then, the Developer shall be responsible to construct the Project pursuant to the approved Construction Documents and within the time periods required by the Critical Path.

(b) In connection therewith, Developer shall provide or cause to be provided and furnish or cause to be furnished, all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements and all other facilities provided for in the Construction Documents, and shall provide all labor, supervision, transportation, utilities and all other services, as and when required for or in connection with the construction, furnishing or equipping of, or for inclusion or incorporation in the Project, (collectively, the "Work").

(c) Developer shall cause the design, engineering, permitting, and construction of the Project to be prosecuted with diligence and continuity and will achieve Substantial Completion (as defined herein) and Final Completion of the Work, free and clear of liens or claims for liens for materials supplied and for labor or services performed in connection therewith on or before the Final Completion Date (as hereinafter defined). The Developer shall diligently and in good faith proceed to obtain the issuance of all permanent certificates of occupancy or their equivalent and all other certificates, licenses, consents, and approvals required for the permanent occupancy, use and operation of the Project, all within the time frames required by Applicable Laws and the Critical Path.

(d) For the purposes of this Agreement, "Final Completion" shall mean all Work for the Project shall have been fully completed, in accordance with Construction Documents, (1) all final certificates of occupancy (or their equivalent) all other certificates, licenses, consents and approvals required for the permanent occupancy, use and operation of the Project shall have been issued or obtained from the appropriate Governmental Authorities, and (2) all record drawings (other than as-builts to be delivered to the CITY), electronic files, warranties, and manuals have been delivered to the CITY. Substantial Completion of the Project shall occur not later than the respective "Project Substantial Completion Date" set forth on the Critical Path, subject to a day for day extension for events of Force Majeure.

#### 4.2 K Street Parking Component.

(a) The Developer shall, as a part of the requirements for the Project, construct the K Street Parking Component to support the museum and public parking. The Developer shall cause the design and construction of the K Street Parking Component in accordance with the specifications outlined the City's Parking Feasibility Study, the Entitlements, the Permits, and in accordance with the K Street Parking Component Critical Path Attached hereto as Exhibit B-1 .

(b) The Developer shall provide construction financing for the construction of the K Street Parking Component to the CRA in an amount not to exceed \$3.5 Million at a four (4%)

percent rate of interest for a period of five (5) years. Payments of principal and interest by the CRA shall be made annually based on a five (5) year amortization schedule until paid in full.

(c) The CRA shall issue a capital improvement revenue note providing for the covenant to budget and appropriate amounts necessary for the payments of the \$3.5 Million capital improvement revenue note. The Developer's obligation to provide construction financing in an amount not to exceed \$3.5 Million is contingent upon CRA issuing the Developer a capital improvement note in an amount necessary to repay the loan and the CRA shall covenant to budget and appropriate, each year, monies sufficient to pay the principal and interest on the obligation to the Developer. The City and the CRA shall enter into a loan repayment agreement no later than the CITY's and the CRA's execution of the Construction Agreement for the K Street Parking Component to provide for the CITY's and CRA's respective obligations with respect to the repayment of the capital improvement note.

(d) The CITY, CRA, and the Developer shall execute a Long Term Parking Agreement which shall govern Developer's access, parking fees, special event parking, residential leasing opportunities, and liability for a term of less than 20 years.

(e) The CITY and Developer shall enter the Comprehensive Agreement for the K Street Parking Garage Component and the CITY, CRA, and the Developer shall enter a Construction Agreement for the K Street Parking Component. In addition to the statutory requirements for the Comprehensive Agreement, the aforementioned agreements shall include, but not be limited to, construction cost, critical path, payment schedules, revenue note commitments, and ground lease provisions. The Parties agree that the aforementioned agreements for the K Street Parking Component shall be executed by the Parties no later than the expiration of the Inspection Period. If not (and not due to a Force Majeure event), then the Developer at its discretion may either extend the Inspection Period in accordance with the Purchase and Sale Agreement or terminate this Agreement.

4.3 Construction Contracts. All Developer's contractors and subcontractors on the Project shall be properly licensed and insured and properly skilled in the type of work being done.

4.4 Financing of Project. Except as specifically set forth above for the K Street Parking Component, the parties acknowledge and agree that the Developer will obtain Developer Financing for the construction of the Project. All financing under this provision of the Agreement shall be in conformance with the Purchase and Sale Agreement.

4.5 No General Obligation. Any funding or financing obligation of either the CITY or CRA as contemplated under this Agreement shall not be considered a general obligation of either the CITY or CRA. Neither this Agreement or any other agreement entered into with respect to the Project, nor the obligations imposed upon the CITY or the CRA hereunder shall be or constitute an indebtedness or general obligation of the CITY, the CRA, or other Governmental Authorities within the meaning of any constitutional statutory or charter provisions requiring the CITY, the CRA, or other Governmental Authorities to levy ad valorem taxes nor a lien upon any properties or funds of the CITY, the CRA, or other Governmental Authorities. Developer agrees that the obligations of the CITY and the CRA to provide any funding or to make any payments to

Developer pursuant to this Agreement, or any other agreement related to the Project, shall be subordinate to the obligations of the CITY or the CRA to pay debt service on any bonds or notes issued by the CITY or CRA as contemplated by the CITY's and CRA's approved annual budgets, up to the principal amount of such bonds or notes. Nothing contained herein shall be deemed, construed, or applied to cause any Governmental Authorities, specifically including the CITY or CRA, to waive its right to exercise its governmental power and authority or to consider any request causing the exercise of its governmental powers in any manner other than that which is customary for the exercise of such governmental powers.

Notwithstanding the foregoing, the CRA hereby covenants and agrees to appropriate in its annual budget, by amendment, if necessary, from lawfully available funds in each fiscal year of the CRA, amounts sufficient to pay the principal and interest due on the capital improvement revenue note not to exceed \$3.5 Million at a four (4%) percent rate of interest for a period of five (5) years, as further referenced in Section 4.2 herein. "Lawfully available funds" means all revenues of the CRA derived from any source other than ad valorem taxation on real or personal property and which are legally available to make the payments required under this section, but only after provision has been made by the CRA for the payment, to the extent are not otherwise provided for by ad valorem taxes, of (a) all services necessary for conducting of the governmental obligations of the CRA and (b) all legally mandated services of the CRA. Such covenant and agreement on the part of the CRA to budget and appropriate such amounts of legally available funds shall be cumulative to the extent not paid, and shall continue until such legally available funds in amounts sufficient to make all such required payments shall have been budgeted, appropriated and actually paid.

4.6 Lack of Appropriations. Based upon the timeframes set forth in this Agreement, the City agrees to propose in each applicable fiscal year budget an amount to cover the City's obligations as stated herein commencing with the Fiscal Year 2024-2025 budget; however, the City's funding obligations as stated herein are all subject to the City's annual budgeting and appropriation process. The Owner understands and agrees that the City's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement.

4.7 Right of Repurchase. The CRA shall have the right to repurchase the Property in accordance with the Purchase and Sale Agreement and the Memorandum of Agreement to be executed by the CRA and the Developer prior to the conveyance of the CRA Property.

4.8 CITY Obligations. Subject to a Force Majeure event, the CITY shall be responsible for the following obligations:

- (a) The CITY shall vacate all operations on the Property in accordance with the Critical Path.
- (b) Subject to the CITY Commission's legislative approval capacity, the CITY shall complete the Unsolicited Proposal for Qualifying Project Process in accordance with the Critical Path.

- (c) The CITY shall complete the electric utility services upgrades in and around the project, which includes but is not limited to placing utility lines underground along the Arts Alley and the relocation of lines around the site as defined in the Critical Path.
- (d) Enter into a ground lease with the CRA for the K Street Parking Component site in accordance with the Critical Path.
- (e) Enter into a loan repayment agreement with the CRA for the K Street Parking Component.

4.7 CRA Obligations. Subject to a Force Majeure event, the CRA shall be responsible for the following obligations:

- (a) The CRA shall demolish the existing building located at 501 Lake Avenue in accordance with the Critical Path.
- (b) The CRA shall prepare the sites located at 126 South J. Street and 701 and 710 1<sup>st</sup> Avenue South for the two (2) contributing structures, currently located at 24 South L and 26 South L to be renovated by the CRA in accordance with the Critical Path.
- (c) Enter into a ground lease with the CITY for the K Street Parking Component site in accordance with the Critical Path.
- (d) Enter into a loan repayment agreement with the CITY for the K Street Parking Component.
- (e) Issue a capital improvement revenue note for the construction of the K Street Parking Component in accordance with the Critical Path .

#### Article 5. Performance of the Work.

5.1 Developer shall commence construction of the Project pursuant to the Critical Path. Following commencement of any Work, Developer shall diligently pursue in good faith the commencement and completion of the Work in order that Final Completion of the Project is achieved no later than the Final Completion date set forth in the Critical Path, subject to a Force Majeure event.

5.2 The Developer agrees that all Work performed under this Agreement shall be (a) performed in accordance with Applicable Laws, including the Florida Building Code; (b) executed in a good and workmanlike manner, free from defects, and that all materials shall be new or made of recycled materials generally accepted and used in the construction industry; (c) undertaken in such a commercially reasonable manner as to minimize, to the extent reasonably practicable, material interference and not materially adversely affect the business or residential operations of the parties and their respective tenants, invitees, customers and/or guests; (d) done in a manner

consistent with industry standards and providing for safety measures for persons and property as is standard within the construction industry;

5.3 **Warranty.** In each Construction Agreement contemplated herein for the Project, the Developer shall provide a warranty of its Developer's Representatives Work for a period of 12-months from the date of Substantial Completion for all faults and defects in the Work and any provided materials and/or equipment (unless otherwise covered under the applicable manufacturer's warranty which must be at least 12-months in duration).

5.4 The Developer agrees that all Work on public property including but not limited to relocation of the structures and the K Street Parking Garage Component will not commence until a public construction bond consistent with section 255.05, Florida Statutes, is secured and recorded in the Official Records in and for Palm Beach County, Florida, with the CITY and/or CRA (as applicable) as obligees thereof.

5.5 **OPPORTUNITIES FOR CITY OF LAKE WORTH BEACH RESIDENTS AND BUSINESSES.** The Developer shall make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach residents with opportunities for training and employment in connection with the Project. The Developer shall also make commercially reasonable efforts consistent with Applicable Law to provide City of Lake Worth Beach business concerns with opportunities in connection with the Project, including the utilization of small business, minority/women-owned business enterprises, and veteran-owned business enterprises.

Article 6. Incentives

6.1 Intentionally Omitted.

6.2 **CRA Infrastructure.** In recognition of the additional expense associated with the incorporation of underground parking to minimize the scale of the development for the community g, the public dedication of the arts alley, and the construction of community art space, the Developer shall receive \$2,000,000.00 in infrastructure improvement grants from the CRA as follows:

- |    |                   |           |
|----|-------------------|-----------|
| a) | Fiscal year 25/26 | \$500,000 |
| b) | Fiscal year 26/27 | \$500,000 |
| c) | Fiscal year 27/28 | \$500,000 |
| d) | Fiscal year 28/29 | \$500,000 |

6.3 **Water and Sewer Public Utility Relocation Incentive.** The Developer shall receive a one-time, lump sum payment of \$250,000 from the CITY to support water and sewer public utility relocation costs required for the Project (which relocation costs are estimated to cost the Developer \$400,000). The Developer shall be responsible for the water and sewer public utility relocations potentially within the City right of way.

If the Project changes and the water and sewer public utility relocations are not made by the Developer, the CITY and the Developer shall agree to a new amount for the CITY to pay consistent with the water and sewer public utility relocation(s) and the estimated cost of the same actually made by the Developer for the Project. If no water and sewer public utility relocations are made by the Developer for the Project, the CITY shall be relieved of making any such payment to the Developer.

This one-time lump sum payment shall be made by the CITY upon completion when the Project is deemed to have been Placed-In-Service upon written request of the Developer, which written request shall be submitted at least 60-days in advance of the payment due date.

6.4 Utility Rate Incentive. The Developer shall receive, an economic investment incentive from the CITY based on the projected Project revenue streams to the CITY's electrical, water, sewer, and stormwater utilities estimated at \$92,000 based on the following:

- Water Utilities - 0.0999 per sq ft of conditioned space
- Stormwater - \$0.04 per sq ft of conditioned space
- Electric - \$.50 per sq ft of conditioned space

The maximum amount to be paid by the CITY to the Developer is the total Utility Incentive Fund set forth in this Agreement; however, if the Project Parameters change from those set forth in this Agreement and when the Project is deemed to have been Placed-In-Service, the City's actual payment shall be the lesser of the total Utility Incentive Fund set forth in this Agreement or a recalculation of the Utility Incentive Fund based upon the actual As-Built Project Parameters. Upon the Project being Placed-In-Service, the Developer shall submit a written request to the CITY for the disbursement of the Utility Incentive Fund and identify in its request to whom and where payment shall be made by the CITY. Within ninety (90) days of the CITY's receipt of the Developer's written request for the disbursement of the Utility Incentive Fund, the City shall recalculate the Utility Incentive Fund based on the As-Built Project Parameters ("Re-Calculated Amount"). The CITY shall then pay the lesser of the total Utility Incentive Fund as set forth in this Agreement or the Re-Calculated Amount to the Developer.

#### 6.5 Entitlement Fee Waivers.

(a) Developer shall be entitled to certain entitlement fee waivers from the CITY in the estimated amounts listed below but in no event shall the entitlement fee waivers to the Developer be less than the total cost calculated by the CITY for the fees listed below:

Transfer of Development Rights:	\$ 183,000.00
Sustainable Bonus Incentive:	\$ 67,000.00
Land Development Application Fees:	\$ 15,000.00
Affordable Housing Waiver:	\$ 340,080.00

(b) The CITY agrees and acknowledges that the Developer's \$1,000,000 contribution to the K Street Parking Component shall satisfy the full cost of all parking in lieu of parking waiver fees imposed by the CITY.

#### 6.6 Affordable Housing.

Developer agrees to offer eight (8) Residential Units as Artist Lofts. These lofts are inclusive of artist workspace and will be dedicated as affordable at the 80-120% Area Median Income Level as follows: three (3) One Bedroom unit at 80% Area Median Income ("AMI"); two (2) bedroom units at 80% of AMI; and three (3) two bedroom units at 120% of AMI for the Arts community for a period of 15 years. The affordability of the Artist Lofts shall be evidenced by a Land Use Restriction Agreement recorded in the public records of Palm Beach County. In return, the CRA will provide an Affordable Housing Construction Incentive to the Developer in the total amount of \$1,400,000.00 payable at the time of Closing. If the developer adjusts the unit mix of the residential component, the CRA reserves the right to recalculate the affordable housing buydown for the sole purpose of confirming the Affordable Housing Construction Incentive value. If the Affordable Housing Incentive value is less than previous estimates, the developer may adjust the affordable housing unit mix to equal a total amount of \$1,400,000 in Affordable Housing Incentive Value.

(a) The CRA shall partner with the Developer to screen and pre-qualify artists for the program. If the CRA is unable to identify qualified candidates to occupy the units within 12 months of operation, Developer shall have the option of returning the units to market rate rentals. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the full value of what was paid to the Developer for the units that shall be returned to market rate status.

(b) Post Lease Up Provision: After a period of twenty-four (24) months from the issuance of the certificate of occupancy for the Artist Lofts, the Developer may exercise its rights to offer the units as market rate should the CRA be unable to provide qualified candidates to occupy vacated units after a five (5) month vacancy period. Upon notification that the Developer intends to exercise its right to offer the units at market rate, the Developer shall reimburse the CRA for the remaining value of what was paid to the Developer for the units that shall be returned to market rate status. The remaining value shall be reduced by \$11,667 per year.

6.7 Community Art Space. Developer shall provide 2,100 SF of Community Art space along the Art Alley which shall be open to the public and available as a community gathering space for the arts. This space shall be programed and activated in partnership with the CRA and Developer. The Developer shall have the flexibility to adjust the square footage of this space up to fifteen (15%) percent at its sole discretion.

6.8 Impact Fees. City and CRA shall support and reasonably assist the Developer in obtaining from the Palm Beach County an abatement or significant reduction in impact fees (currently estimated at \$1,092,334).



6.9 Arts Alley Extension Contribution. The City shall dedicate \$340,000 toward the construction of the Arts Alley Extension.

6.10 Museum Parcel Payment in Lieu of Taxes. The CITY and/or the CRA shall enter into a Payment in Lieu of Tax (PILOT) arrangement with the Developer for the Museum Parcel for a period of fifteen years. The PILOT arrangement shall commence in the calendar year 2031, at which time the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due to the City for a period of five years (2031 through 2035). If the CRA is still in existence the Developer will pay twenty-five (25%) percent of the total ad valorem tax liability due for both the City and the County portion of the annual property tax bill. Beginning in the year 2036, the Developer shall be responsible for the payment of fifty (50%) percent of the total ad valorem tax liability due to the City for a period of ten (10) years (2036 through 2045). If the CRA is still in existence the Developer will pay fifty (50%) percent of the total ad valorem tax liability due for both the City and the County portion of the annual property tax bill. The provisions of this subsection shall survive until 2045.

#### Article 7. Books and Records.

Upon execution of this Agreement by the Developer, the Developer shall maintain complete and accurate books, records and accounts of all costs and expenses incurred in connection with the Project.

#### Article 8. Default; Termination.

8.1 Developer Default. An "Event of Default" or "default" entitling CITY or the CRA to its remedies below shall occur by the Developer on the happening of any of the following events:

(a) Failure to Observe Agreement. The Developer shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement; or

(b) Inaccuracy of Representation and Warranties. Any material representation or warranty made herein by the Developer shall prove to have been incorrect in any material respect as of the date made; or

(c) Abandonment of Project. The abandonment of the Project by Developer, other than as a result of Force Majeure. "Abandonment of the Project" shall be defined unilateral cessation of work by the Developer without justification or prior notification to the CITY and CRA for reasons other than as a result of Force Majeure. The CITY and CRA may not consider the project abandoned until the following conditions are met: (i) the Developer ceases operations without notice for a period of fifteen consecutive days; and (ii) the Developer refuses to resume work after being notified by the City and the CRA after the 16<sup>th</sup> consecutive day of abandonment.; or

(d) Failure to Complete by Completion Dates. The failure of the Developer to achieve Substantial Completion and/or Final Completion of the entire Project by the date set out in the Critical Path, unless subject to a Force Majeure event; or

(e) Abandonment of Government Approvals. The Developer abandons the diligent prosecution of any of the Government Approvals for the Project, or withdraws applications for the Government Approvals, each without the consent of the CITY and CRA, without amending or re-submitting requests for the Government Approvals within one hundred twenty (120) calendar days; or

(f) Material Adverse Change. The occurrence of a material adverse change in the financial condition of the Developer that materially and adversely impairs the Developer's ability to perform or to cause to be performed its obligations under this Agreement; or

(g) Bankruptcy. The Developer shall generally fail to pay debts as such debts become due or shall admit in writing its or their inability to pay its or their debts as such debts become due or shall make a general assignment for the benefit of creditors; the Developer shall commence any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or them or its or their debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for it or them or for all or any substantial part of its or their property; or any case, proceeding or other action against the Developer shall be commenced seeking to have an order for relief entered against the Developer, as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of the Developer or their debts under any law relating to insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar official for the Developer or for all or any substantial part of their respective properties, and (i) the Developer shall by any act or omission, indicate its consent or approval, of, or acquiescence in such case, proceeding or action, (ii) such case, proceeding or action results, in the entry of an order for relief that is not fully stayed within sixty (60) calendar days after the entry thereof, or (iii) such case, proceeding or action remains undismissed for a period of ninety (90) calendar days or more or is dismissed or suspended only pursuant to Section 305 of the United States Bankruptcy Code or any corresponding provision of any future United States bankruptcy law; or

(h) Attachment/Garnishment. The issuance of any attachment or garnishment against the Developer and the failure to discharge the same (by bond or otherwise) within sixty (60) calendar days from the issuance thereof, and the impact of which shall materially and adversely affect the Developer's ability to perform its obligations hereunder; or

(i) Judgments. One or more judgments, orders or decrees shall be entered against the Developer which materially interfere with Developer's ability to perform under this Agreement, and such judgments, orders, or decrees are not fully covered by effective insurance (less deductibles) or shall not have been vacated, discharged, stayed or bonded pending an appeal within thirty (30) calendar days from the entry of such judgment, order or decree; or

(j) Failure to Close. Should the Developer fail to close on the purchase of Property by the Closing Date, as such Closing Date may be extended by the Purchase and Sale Agreement, unless the CRA under the Purchase and Sale Agreement has defaulted or a condition to Developer's obligations under the Purchase and Sale Agreement has not been satisfied. Nothing

in this sub-section shall be construed as limiting any other provision of this Agreement or the Purchase and Sale Agreement providing an extension of the Closing Date.

8.2 CITY and CRA's Remedies. Upon the occurrence of an Event of Default by the Developer, the CITY or the CRA, as the case may be, shall be entitled to terminate this Agreement and, if the Event of Default occurs prior to the Closing Date, the following additional remedies set forth below:

8.2.1 If Developer fails to materially perform or observe any of the covenants, restrictions, requirements and/or stipulations to be performed and/or observed by Developer hereunder and such failure shall continue without remedy for twenty (20) Calendar Days after written notice thereof from the CITY or CRA to the Developer; provided, however, that if such failure is capable of cure but cannot reasonably be cured within twenty (20) Calendar Days, such failure shall not constitute an Event of Default so long as the Developer provides CITY and CRA with written notice within five (5) calendar days of receipt of the CITY or CRA's default notice advising the CITY or CRA that the default cannot be reasonably cured within twenty (20) Calendar Days and specifying the reasons therefore and, within the twenty (20) Calendar Day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after Developer's receipt of the original written default notice unless approved by the CITY or CRA. CITY and CRA shall have the right to require the Developer to assign to the CITY and CRA, on a non-exclusive basis, all of Developer's assignable rights in and to the non-privileged plans and specifications produced in conjunction with the Project. The Developer shall deliver to the CITY and CRA within thirty (30) calendar days, an assignment of all of Developer's assignable rights in and to all plans, construction documents, reports, studies, permits, drawings, and designs produced by the Developer and the Developer's contracted professionals as of the date of termination and Developer shall deliver to the CITY and CRA a copy of such documents. CITY and CRA shall not be entitled to punitive damages, or consequential damages, or loss profits damages from Developer, whether the default occurs before or after the occurrence of the Closing.

8.3 CITY or CRA Default. An "Event of Default" or "default" entitling the Developer to its remedies below shall occur by the CITY or CRA upon the happening of any of the following events:

(a) Failure to Observe Agreement. The CITY or CRA shall fail to observe, satisfy or perform any material term, covenant or agreement contained in this Agreement.

(b) Inaccuracy of Representation and Warranties. Any representation or warranty made herein by the CITY or the CRA shall prove to have been incorrect in any material respect as of the date made.

8.4 Developer's Remedies. If CITY or CRA fails to materially perform or observe any of the covenants, restrictions, requirements and/or stipulations to be performed and/or observed by CITY or CRA hereunder, and such failure shall continue unremedied for twenty (20) Calendar Days after written notice thereof from the Developer to the CITY or CRA; provided, however, that if such failure is capable of cure but cannot reasonably be cured within twenty (20) Calendar Days,

such failure shall not constitute an Event of Default, so long as the CITY or CRA provides the Developer with written notice within ten (10) calendar days of receipt of the Developer's default notice advising the Developer that the default cannot be reasonably cured within twenty (20) Calendar Days and specifying the reasons therefore and, within the twenty (20) Calendar Day period, commences and thereafter is in good faith proceeding diligently and continuously to remedy such failure, but in no event shall any additional time to cure granted hereunder exceed ninety (90) calendar days in the aggregate after CITY or CRA'S receipt of the original written default notice. , Developer's remedies for such default shall be the sum of (i) Developer's documented actual and direct damages incurred in furtherance of the Project's development, (ii) Developer's reasonable attorney fees and costs described herein incurred by Developer to collect its actual and direct damages under subsection (i) (above), then, this Agreement shall become null and void, and neither party shall have any claims of whatsoever kind, type, nature or description against the other party.

8.5 In no event shall either party be liable to the other for any indirect, incidental, consequential, special, or punitive damages, including but not limited to loss of profits, revenue, or business opportunities, arising out of or relating to this Agreement, regardless of the form of action, whether in contract, tort (including negligence), strict liability, or otherwise, even if such party has been advised of the possibility of such damages. For the avoidance of doubt, the CITY and CRA are not jointly and severally liable under this Agreement and the default of one such party shall not cause the other party to be in default, provided, however, that termination of this Agreement by Developer as a result of a default of one such party shall entitle Developer to terminate this Agreement as to all parties.

8.5 Cross Termination. The parties agree that notwithstanding anything to the contrary herein a default (after the expiration of any applicable notice and cure period related thereto, if any) by either party under either this Agreement or the Purchase and Sale Agreement shall afford either party the right to terminate this Agreement and/or the Purchase and Sale Agreement.

8.6 Termination. This Agreement (but not the Surviving Obligations) shall terminate upon the occurrence of the earlier of the following events:

- (a) A termination of this Agreement as otherwise may be permitted in accordance with the provisions of this Agreement; or
- (b) Failure of the CITY to provide the Entitlements or Permits as defined herein, necessary to develop the Project.
- (c) The completion of the development and construction of the Project and the remaining obligations of the parties under this Agreement with respect to the Project pursuant to the terms and conditions of this Agreement.

8.7 Effect of Termination. If this Agreement shall terminate prior to Closing, the Developer shall, as soon as practicable, but in no event later than the fifteenth (15) calendar days after a termination notice is given, or such shorter period of time in the event of emergency or a life/safety issue:

(a) Furnish all such information and otherwise cooperate in good faith in order to effectuate an orderly and systematic ending of the Developer's duties and activities hereunder, including, without limitation, the delivery to the CITY and CRA of any written reports required hereunder for any period not covered by prior reports at the time of termination. With regard to the originals of all papers and records pertaining to the Project, the possession of which are retained by the Developer after termination, the Developer shall: (i) reproduce and retain copies of such records as it desires; (ii) deliver the originals to the CITY and CRA; and (iii) not destroy originals without first offering to deliver the same to the CITY and CRA.

(b) Notwithstanding the above in the event of CITY or CRA Default and the Developer elects to terminate this Agreement, Developer shall have no obligation or responsibility to produce documentation referenced in this section.

## Article 9. Indemnification.

9.1 Indemnification by the Developer. The Developer agrees to indemnify and hold the CITY and CRA, its Commission members, agents, consultants and employees harmless, to the fullest extent permitted by law, from all liabilities, losses, interest, damages, costs and/or expenses (including, without limitation, reasonable attorneys' fees, whether suit is instituted or not, and if instituted, whether incurred at any trial, appellate or post judgment level), assessed against, levied upon, or collected from, the CITY or CRA arising out of, from, or in any way connected with or arising from any Developer's breach of its obligations under this Agreement. The CITY and/or CRA shall be required to provide notice to the Developer of any liability, loss, damage, interest, or cost and/or expense, which the Developer is required to hold the CITY or CRA harmless in accordance with this provision, within ten (10) days of receipt of by the CITY and/or the CRA of such claim or request for damages, provided, however, that the failure to give such prompt written notice shall not, however, relieve the Developer of its indemnification obligations, except and only to the extent that the Developer forfeits rights or defenses by reason of such failure. Notwithstanding the foregoing, the Developer shall not be required to indemnify the CITY or CRA with respect to any liability, loss, damages, costs or expenses suffered as a direct and proximate result of the negligence, gross negligence and/or willful misconduct of the CITY or CRA or its agents. To the extent this indemnification clause or any other indemnification clause in this Agreement is subject to the provisions of Chapter 725, Florida Statutes, and such does not comply with Chapter 725, Florida Statutes, as such may be amended, such provision shall hereby be interpreted as the parties' intention for the indemnification clauses and to comply with Chapter 725, Florida Statutes, as such may be amended.

9.2 Limitation on Indemnification. Notwithstanding anything in this Article to the contrary, Developer shall not have any obligation to indemnify or defend the CITY or CRA against any claims brought against the CITY or CRA by any third party challenging: (1) the CRA's or CITY's legal authority to sell all or any portion of the Property or enter into this Agreement, (2) the CRA's or CITY's judgment in selling all or any portion of the Property or entering into this Agreement or the terms and provisions of this Agreement, regardless of whether such claim seeks monetary damages or injunctive, declaratory or other relief. In this event of any conflict between this Section and any other provision in this Article, this Section shall control and govern.

9.3 Survival. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

9.4 Tort Liability. Any tort liability to which the CITY or CRA is exposed under this Agreement will be limited to the extent permitted by applicable law and subject to the provisions and monetary limitations of Section 768.28, Florida Statutes, as may be amended, which statutory limitations will be applied as if the parties had not entered into this Agreement. This Agreement shall not be construed or interpreted as the CITY or CRA's waiver of any of their rights and immunities under Applicable Law or consent to be sued by a third party.

#### Article 11. Condition of Property.

11.1 CITY and CRA's Existing Studies. The CRA and CITY have previously provided to Developer copies of all existing engineering studies, surveys, maps, and reports in the CITY's possession pertaining to the Property (the "Property Reports"). The CITY and CRA consent to Developer's use of the Property Reports in connection with the development of the Project. Within thirty (30) calendar days after the Effective Date, the CITY and CRA will deliver to a Developer a written list describing all Property Reports and copies of any Property Reports not previously delivered to Developer.

#### Article 12. Representations and Warranties.

12.1 Developer. The Developer represents and warrants to the CITY and CRA as follows:

(a) That (i) the Developer is a limited liability company duly organized, validly existing and in good standing under the laws of Florida; (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions provided for in this Agreement have been duly authorized and upon execution and delivery by the Developer will constitute the valid and binding agreement of the Developer enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the Developer hereunder, will not conflict with, or breach or result in a default under, any agreement to which it is bound.

(b) That there are no pending, threatened, judicial, municipal or administrative proceedings, consent decrees or judgments against Developer which would materially and adversely affect Developer's ability to perform its obligations hereunder.

(c) That the Developer has the credit worthiness and financial capacity to reasonably obtain conventionally acceptable financing to complete this Project.

12.2 CITY. The CITY represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been

duly authorized and upon execution and delivery by the CITY will constitute the valid and binding agreement of the CITY enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CITY hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

12.3 CRA. The CRA represents and warrants to the Developer that it is a public body corporate and politic of the State of Florida duly organized under the laws of the State of Florida; (ii) the execution, delivery and performance of transactions provided for this Agreement have been duly authorized and upon execution and delivery by the CRA will constitute the valid and binding agreement of the CRA enforceable in accordance with its terms; and (iii) the execution and delivery of this Agreement and the performance by the CRA hereunder, will not conflict with, or breach or result in a default under any agreement to which it is bound.

12.4 Survival. The representative and warranties set forth in this Article shall survive the expiration or earlier termination of this Agreement.

#### Article 13. No Liens.

13.1 Developer acknowledges and agrees that prior to Closing, the Property is excluded from the definition of "real property" upon which liens may be placed as set forth in Section 713.01(24), Florida Statutes. The Developer shall include a provision substantially similar to this Section in each of its contracts and purchase orders to be performed prior to Closing, requiring contractors, subcontractors, materialmen, vendors and suppliers to waive any claim or entitlement to a mechanic's or materialmen's lien on the Property owned by the CRA upon which the Work or any portion thereof is to be performed and to look solely to the credit of the Developer or its surety or the credit of the contractor or its surety for payment of any sums due in connection with the Work.

13.2 Prior to Closing, the Developer shall not voluntarily permit any laborer's, materialmen's, mechanic's, or other similar lien to be filed or otherwise imposed on any part of the Work, the K Street Property, or the Property on which the Work is performed. If any laborer's, materialmen's, mechanic's, or other similar lien or claim thereof is filed, the Developer shall provide notice thereof to the CITY and the CRA and shall cause such lien to be released and discharged forthwith, or file a bond in lieu thereof, within thirty (30) days.

#### Article 14. Miscellaneous.

14.1 Notices. All notices, requests, consents, demands, approvals or other communications required or permitted under this Agreement shall be in writing, addressed to the appropriate person at the receiving party, and shall be (as elected by the person giving such notice): (a) hand delivered, (b) delivered by overnight courier by a nationally recognized courier, with all fees prepaid; (c) delivered by Registered or Certified Mail, in each case, return receipt requested and postage prepaid; or (d) delivered by email with "FORMAL NOTICE UNDER DEVELOPMENT AGREEMENT" in the subject line (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (a) through (c), addressed to:

- (a) If to the CITY:  
City of Lake Worth Beach, Florida  
Jaime Brown , Interim City Manager 1749 3<sup>rd</sup> Avenue South  
Lake Worth Beach, Florida 33460

With copies to:  
Torcivia, Donlon, Goddeau, and Rubin, PA  
Attn: Christy Goddeau, Esq.  
701 Northpoint Parkway, 209  
West Palm Beach, FL 33407

- (b) If to the CRA:  
Lake Worth Beach Community  
Redevelopment Agency  
Joan Oliva, Executive Director  
1121 Lucerne Avenue  
Lake Worth Beach, FL 33460

With copies to:  
Weiss, Serota, Helfman, Cole, and Bierman  
Attn: David N. Tolces, Esq.  
2255 Glades Road, Suite 200 E  
Boca Raton, FL 33431

- (c) If to the Developer:  
Sunshine Lake Worth Development, LLC  
16711 Collins Avenue  
Sunny Isles Beach, FL 33160

With copies to:

R. Miller Consulting Group  
ATTN: Renee Miller  
[reneem@rmcglc.com](mailto:reneem@rmcglc.com)  
Phone: 786-253-8436

Goren, Cherof, Doody and Ezrol, PA  
3099 East Commercial Boulevard, Suite 200  
Fort Lauderdale, FL 33308  
Attn: Donald J. Doody, Esq.  
Email: [ddoody@gorencherof.com](mailto:ddoody@gorencherof.com)



Each such notice shall be deemed delivered: (i) if delivered by hand, the date the receipt is signed; (ii) if sent by overnight courier, on the courier's confirmation of delivery date, (iii) if sent by Registered or Certified Mail, upon receipt as indicated by the date on the signed return receipt; (iv) if sent by email, the date the notice was emailed (but only if a party's email address is included in its notice address and a hard copy is delivered via one of the other methods described in (i) - (iii) above); or (v) if the notice is rejected or refused at a physical notice address shown above, or to such other address as either party may designate by notice to the other party from time to time (as long as such rejection or refusal of delivery occurs on a business day).

14.2 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument.

14.3 Assignment. The Developer may not assign this Agreement or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the CITY and CRA.

14.4 Project Representatives. The CITY hereby appoints the CITY Manager to serve as its representative. The CITY Manager shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CITY; provided, however the CITY Manager shall have the right at any time to obtain the approval of the CITY Commission to the extent required by Applicable Laws, where specifically required under this Agreement, or when deemed necessary in the CITY Manager's sole discretion. The CRA hereby appoints the CRA Executive Director to serve as its representative. The CRA Executive Director shall have the right and authority to provide all consents and approvals, and take other actions, required hereunder on behalf of the CRA; provided, however the CRA Executive Director shall obtain the consent of the CRA Board to the extent required by Applicable Laws or where specifically required under this Agreement. The Developer hereby appoints David Kastner, Esq., to serve as its representative. The parties may change their respective designated representative(s) at any time by providing written notice thereof to the other party.

14.5 No Permit. This Agreement is not and shall not be construed as a development agreement under Chapter 163, Florida Statutes, nor a development permit, Government Approval or authorization to commence development.

14.6 Governing Law. The nature, validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida and venue shall lay exclusively in Palm Beach County, Florida.

14.7 Captions. Captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

14.8 Entire Agreement and Amendment. This Agreement constitutes the entire agreement between the parties hereto related to the development and construction of the Project as of the Effective Date and no modification hereof shall be effective unless made by a supplemental agreement in writing executed by all of the parties hereto.

14.9 No Joint Venture. The Developer shall not be deemed to be a partner or a joint venturer with the CITY and CRA, and the Developer shall not have any obligation or liability, in tort or in contract, with respect to the Property, either by virtue of this Agreement or otherwise, except as may be set forth to the contrary herein. The Developer shall not have nor claim any entitlement to the CITY or the CRA's immunities under Applicable Law.

14.10 Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

14.11 Successors. Except as herein otherwise specifically provided, this Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns.

14.12 Pronouns. Whenever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns stated in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

14.14 Civil Rights Compliance. The Developer warrants and represents that it shall not discriminate against any of its employees or prospective employees on the basis of race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

14.15 Further Assurances. The parties to this Agreement have negotiated in good faith. It is the intent and agreement of the parties that they shall cooperate with each other in good faith to effectuate the purposes and intent of, and to satisfy their obligations under, this Agreement in order to secure to themselves the mutual benefits created under this Agreement; and, in that regard, the parties shall execute such further documents as may be reasonably necessary to effectuate the provisions of this Agreement.

14.16 Equitable Remedies. In the event of a breach or threatened breach of this Agreement by any party, the remedy at law in favor of the other party will be inadequate and such other party, in addition to any and all other rights which may be available, shall accordingly have the right of injunction in the event of any threatened breach of this Agreement by any party.

14.17 Third Party Rights. The provisions of this Agreement are for the exclusive benefit of the parties to this Agreement and no other party (including without limitation, any creditor of the CITY, CRA or the Developer) shall have any right or claim against the CITY, CRA or the Developer by reason of those provisions or be entitled to enforce any of those provisions against the CITY, CRA or the Developer.

14.18 Survival. All covenants, agreements, representations and warranties made herein or otherwise made in writing by any party pursuant hereto shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

14.19 Remedies Cumulative; No Waiver. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

14.20 No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

14.21 Signage. Subject to the reasonable approval of the CITY and CRA and in accordance with Applicable Laws, the Developer shall have the right to place one or more appropriate signs upon the Property.

14.22 Construction. This Agreement shall be interpreted without regard to any presumption or rule requiring construction against the party causing this Agreement to be drafted.

14.23 Compliance. In the performance of all parties' obligations under this Agreement, each party shall perform its obligations in accordance with all Applicable Laws.

14.24 WAIVER OF JURY TRIAL. The parties to this Agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the contract, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

14.25 CONFLICT OF INTEREST. The Developer represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. Developer further represents that no person having any such conflicting interest shall be employed for said performance. Developer shall promptly notify the CITY and CRA, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Developer's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Developer may undertake and request an opinion of the CITY and CRA as to whether the association, interest or circumstance would, in the opinion of the CITY and CRA, constitute a conflict of interest if entered into by Developer. The CITY and CRA agree to notify Developer of their opinion(s) within thirty (30) days of receipt of notification by the Developer. If, in the opinion of the CITY and/or CRA, the prospective business association, interest or circumstance would not constitute a conflict of interest by Developer, the CITY and CRA shall so state in the notification and the Developer may, at its option, enter into said association, interest or circumstance.

14.26 PUBLIC ENTITY CRIMES. As provided in section 287.133, Florida Statutes, by entering into this Agreement or performing any of its obligations and tasks in furtherance hereof, Developer certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida

Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by section 287.133 (3)(a), Florida Statutes. Developer is under a continuing obligation for the term of this Agreement to immediately notify the City of any violation of this provision.

14.27. PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL. Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

14.28 PUBLIC RECORDS. The Developer shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, to the extent applicable to any public records related to or arising from this Agreement.

14.29 CONFIDENTIAL INFORMATION. If during the term of this Agreement, any party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by the Developer or the Developer's Representatives. The Developer shall ensure the Developer's Representatives are also contractually required to maintain the confidentiality of such information.

#### Article 15. Safety and Protection.

15.1 Developer shall be responsible for initiating, maintaining and supervising commercially reasonable safety precautions and programs in connection with the Work. Developer shall take all necessary safety precautions (required by Applicable Laws), and shall take commercially reasonable industry practices and precautions, to prevent damage, injury or loss to:

- (a) all persons on the Property or K Street Property or who may be affected by the construction;
- (b) all Work and materials and equipment to be incorporated in the Project, whether in storage on or off the Property or K Street Property; and
- (c) other property at the Property or K Street Property or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadway, structures, utilities and underground facilities (i.e., the Force Main) not designated for removal, relocation or replacement in the course of construction.

15.2 Developer shall comply with Applicable Laws of Governmental Authorities having jurisdiction for safety or persons or property to protect them from damage, injury or loss; and shall erect and maintain commercially reasonable safeguards for such safety and protection, taking into consideration the effect on the Project. Developer's duties and responsibilities for safety and for protection of the construction shall continue until Final Completion.

15.3 Developer shall act in a commercially reasonable manner to protect and prevent damage to all components of the Work, and any existing facilities or improvements, including but

not limited to the protection thereof from damage by the elements, theft, or vandalism. During the course of the Work, the Developer shall remain responsible for the risk of loss of the Work and shall promptly remedy, repair and replace all damage and loss (other than damage or loss insured under required insurance) to the Work caused in whole or in part by the Developer, the general contractor, a contractor, subcontractor, or anyone directly or indirectly employed or controlled by any of them, or by anyone for whose acts they may be liable and for which the Developer is responsible.

15.4 Developer shall cause its general contractor to be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Applicable Laws.

Article 16. CITY's Representative.

16.1 The parties acknowledge and agree that the CITY and CRA may engage in one or more consultants to assist the CITY and CRA in the administration of this Agreement and the Project. A Developer agrees to reasonably cooperate with any such consultants engaged by the CITY and CRA.

[This Space is Intentionally Blank; Signature Pages to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be duly executed by their duly authorized officer where applicable and sealed as of the date first above written.

**DEVELOPER:**

SUNSHINE LAKE WORTH DEVELOPMENT, LLC,  
a Florida limited liability company

By: \_\_\_\_\_  
Arthur Wiener, Manager

Date: \_\_\_\_\_, 2024

**CITY:**

CITY OF LAKE WORTH BEACH, FLORIDA,  
a Florida municipal corporation

Attest:

By: \_\_\_\_\_  
MAYOR

By: \_\_\_\_\_  
CITY Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

Approved for financial sufficiency

By: \_\_\_\_\_  
CITY Attorney

By: \_\_\_\_\_  
Financial Services Director

**CRA:**

LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY

Attest:

By: \_\_\_\_\_  
CHAIR

By: \_\_\_\_\_  
Board Clerk

Date: \_\_\_\_\_

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
CRA Attorney

EXHIBIT A

Legal Descriptions for the Project Site:



## Exhibit "A"

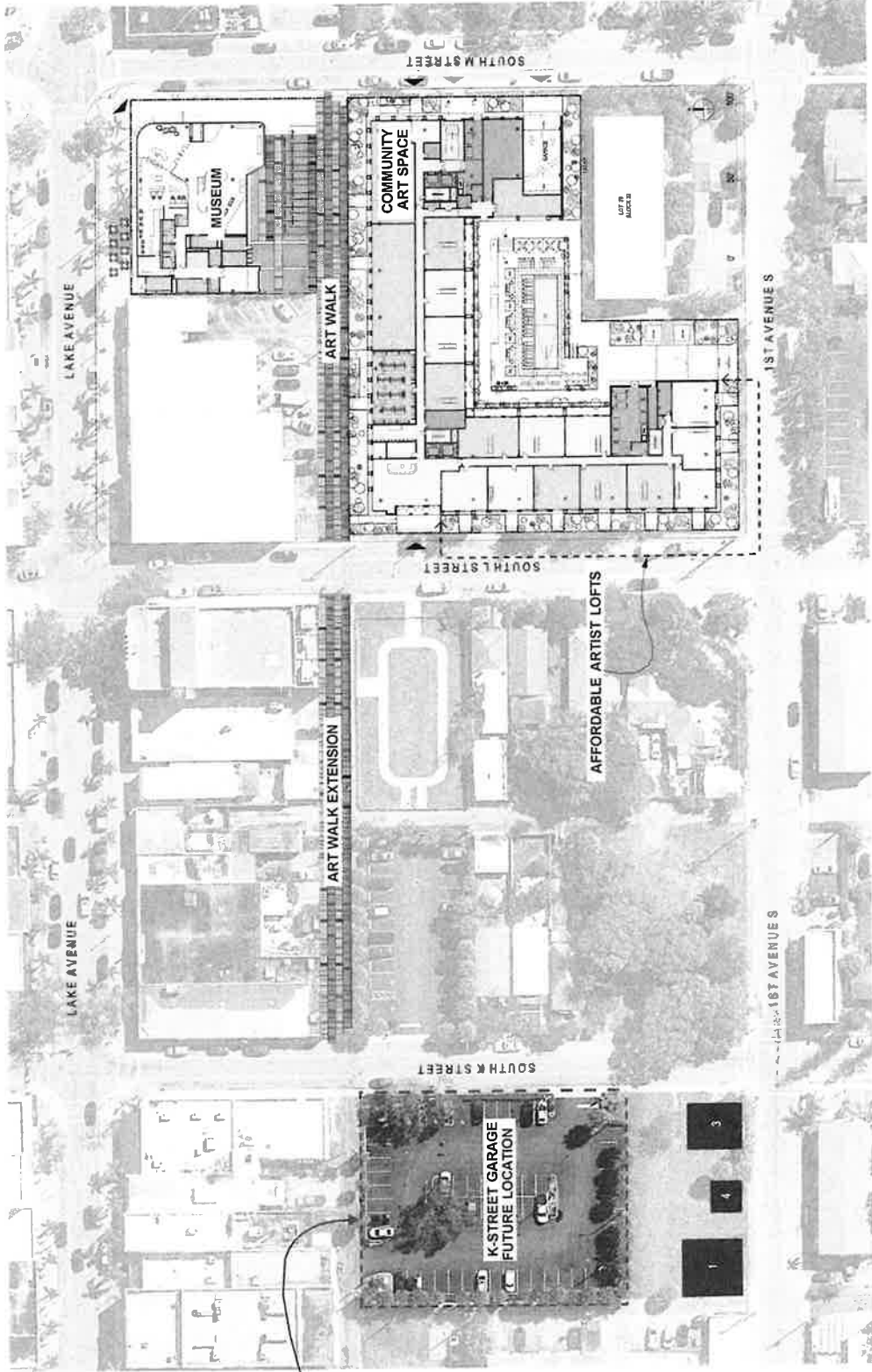
PCN #	Address	Size/acres	Zoning	Land Use
38-43-44-21-15-023-0090	16 S L ST	0.16	MU-E	DMU
38-43-44-21-15-023-0220	13 S M ST	0.08	MU-E	DMU
38-43-44-21-15-023-0060	20 S L ST	0.23	MU-E	DMU
38-43-44-21-15-023-0230	17 S M ST	0.16	MU-E	DMU
38-43-44-21-15-023-0250	23 S M ST	0.23	MU-E	DMU
38-43-44-21-15-023-0050	24 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0030	26 S L ST	0.16	MU-E	DMU
38-43-44-21-15-023-0020	30 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0010	32 S L ST	0.08	MU-E	DMU
38-43-44-21-15-023-0191	501 LAKE AVE.	0.1866	DT	DMU
38-43-44-21-15-023-0170	509 LAKE AVE.	0.1722	DT	DMU

# EXHIBIT B - DEVELOPMENT AGREEMENT

## Critical Path

1	Joint Workshop CRA and City Commission
2	CRA Approval of Development Agreement and PSA
3	City Commission Approval of the Development Agreement and the P3 Process First Hearing
4	City Commission Final Hearing of the P3 Process
5	<b>90 days from Contract Execution: Inspection Period expires</b>
6	<b>90 Days from Contract Execution Deadline for the City, CRA, and Developer to Execute Construction Agreement for K Street lots, and Contributing Structure Relocation Agreement , Long term Maint. agreement for Arts alley, and Long Term Parking Agreement</b>
7	<b>W/in 30 days from the expiration of the Inspection Period: Developer will file its Development Review Application with the City</b>
8	<b>W/in 6 months of Development Review Application Date: DRC APPROVAL/Historic Preservation Board/City Commission approval of all necessary entitlements - Developer shall use commercially reasonable efforts to obtain the Government Approvals</b>
9	<b>Deadline for the City to Vacate 501 Lake Avenue</b>
10	<b>Deadline for the Demolition of 501 Lake Avenue by CRA</b>
11	<b>City Deadline to complete electric utility upgrades</b>
12	<b>W/in 8 Months from Government Approval: Developer to obtain all permits for construction</b>
13	<b>W/in 30 Days of Obtaining all Permits : Developers Deadline to provide Proof of Financing provided to CRA</b>
14	<b>W/in 60 Days of Obtaining all Permits is Developers Deadline to Close on the parcels</b>
15	<b>W/in 90 Days from Closing: Commence Construction</b>
16	<b>W/in 90 Days from Closing- Deadline for Contributing Structure Relocation</b>
17	<b>12 months from Closing : Museum Substantial Completion -Temporary Certificate of Occupancy</b>
18	<b>24 months from Closing: Substantial Completion of Residential -Temporary Certificate of Occupancy</b>
19	<b>26 months from Closing: Final Completion of Residential- Certificate of Occupancy</b>

# SITE PLAN AERIAL OVERLAY



**MUSEUM PROGRAM:**  
 MUSEUM: +/- 33Ksf  
**MUSEUM REQUIRED PARKING: 66 CARS**  
 66 PROVIDED  
 PROVIDED ON SITE (ALLEY + STREET): 15  
**PARKING AT K-STREET GARAGE: +/- 51**

**RESIDENTIAL PROGRAM:**  
 RESIDENTIAL (+/- 129Ksf) + PARKING (45Ksf) + AMENITY (7Ksf) = 181Ksf  
 110 units total

**RESI REQUIRED PARKING: 180 CARS**  
 184 PROVIDED (W/ CREDIT)  
 PROVIDED ON SITE CELLAR: 117 CARS  
 STREET PARKING: 27  
 BICYCLE PARKING PROVIDED



**CONTRIBUTING BUILDINGS\***  
\*NOTE: #1A STRUCTURE TO BE LOCKED AT 108 SOUTH K STREET



# WIMODA

WIENER MUSEUM OF DECORATIVE ARTS

MIXED-USE CULTURAL ARTS CAMPUS

Lake Worth Beach  
Joint Workshop Presentation  
October 7, 2024

# Overview

**Background**

**City and CRA Goals**

**WMODA Project Design**

**WMODA Fiscal Impact**

**Development Deal Structure**

**Critical Path**

**Next Steps**

# Downtown Redevelopment Background

## Highlighted meetings:

2011-2013 – Downtown LDR and Comp. Plan updates – numerous Advisory and City Commission meetings

2015-2017 – Cultural Master Plan Completed

2018 – Downtown Parking Study Completed

2018 – 2019 – City and CRA make purchases of lots of “L” and “M” Streets (8 separate public meetings)

2019 – HRPB meeting to discuss historic structures

2019 – CRA issues RFP for Historic Home Relocation, related public meetings

2020 – RFP advertised, but after numerous public meetings, the proposal is rejected

2021 – City workshop with Elizabeth Plater-Zyberk

2021 – Downtown Seminar with Joe Minicozzi

2022 – Downtown Charette

2022 – Treasure Coast Regional Planning Council Master Plan development with numerous public meetings

2023 – Dover/Kohl presents the CRA with language and images to use for the next downtown RFP

2024 – Public Charette by WMODA

2024 – WMODA presents to the CRA

2018 – present, over 40 meetings on Downtown and “L” and “M” parcels

Since 2021 – 10 meetings by the City Commission regarding the Downtown Parcels, multiple joint meetings and CRA updates\*

\*municode search only dates back to 2021

# Background

## CRA /City Goals:

- Expand Tax Base
- Expand Access to the Arts
- Create an Arts Destination to Expand Tourism
- High Quality Housing for All Income Levels
- Support for Downtown
- Increased Daytime Activation
- Preservation of Historic Character
- Alignment with Existing Community Fabric



## WMODA Goals:

- Permanent Home for WMODA
- Market Rate Apartments
- Campus Feel
- Financially Feasible Project
- Revenue to Support Museum Operations
- Classroom Space
- Event Space
- Committed Partners
- Community Connectivity
- Arts Partnership Opportunities

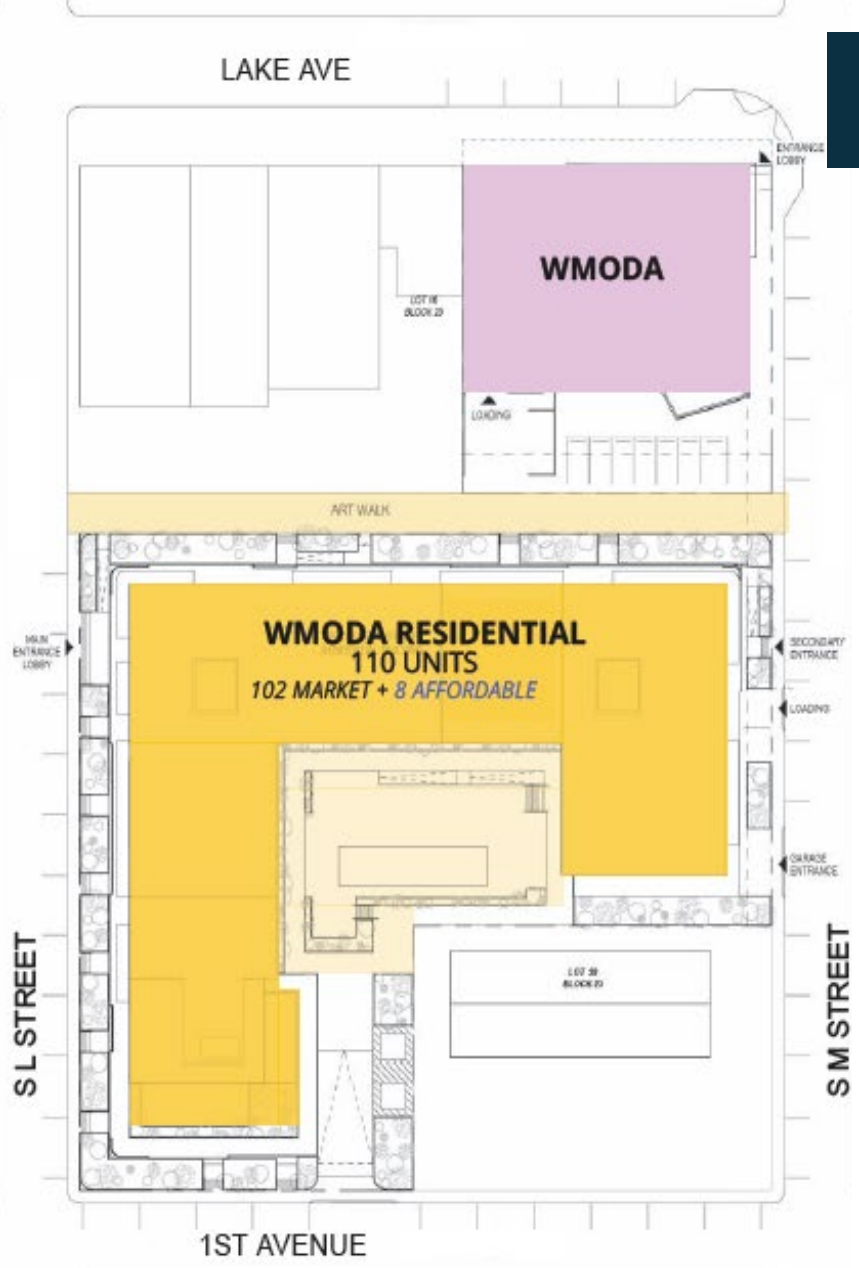
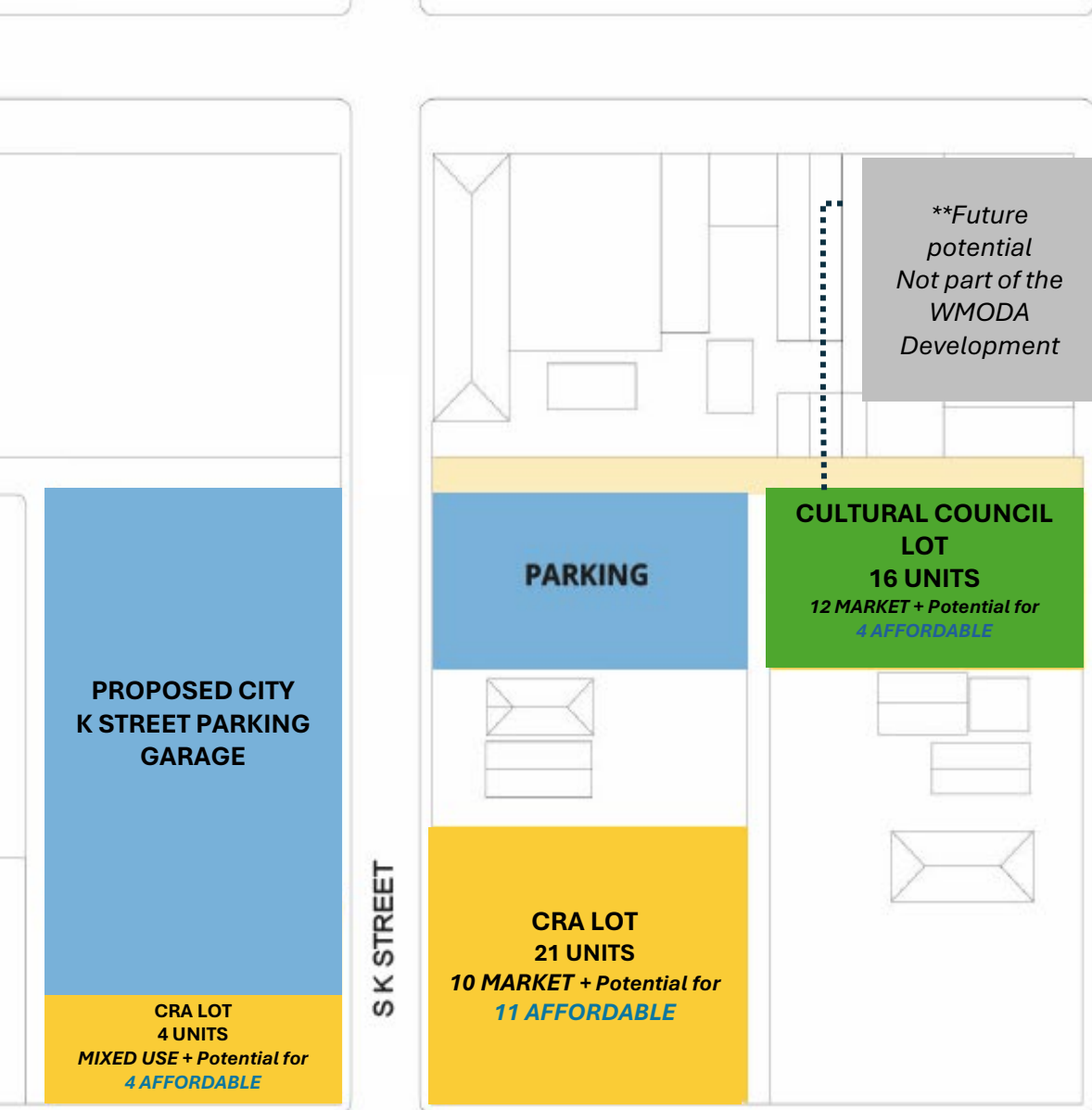


## Community Feedback:

- Height Sensitivity
- Transparency
- Community engagement
- Preserve/Expand Parking
- Affordable Housing
- Desire for Activation of Arts Alley
- Sense of Place
- Community Gathering Space
- Preservation of Historic Structures
- Quality Infill Development
- Sensitivity to Existing Character
- Walkability



# Downtown Planned Development Concept

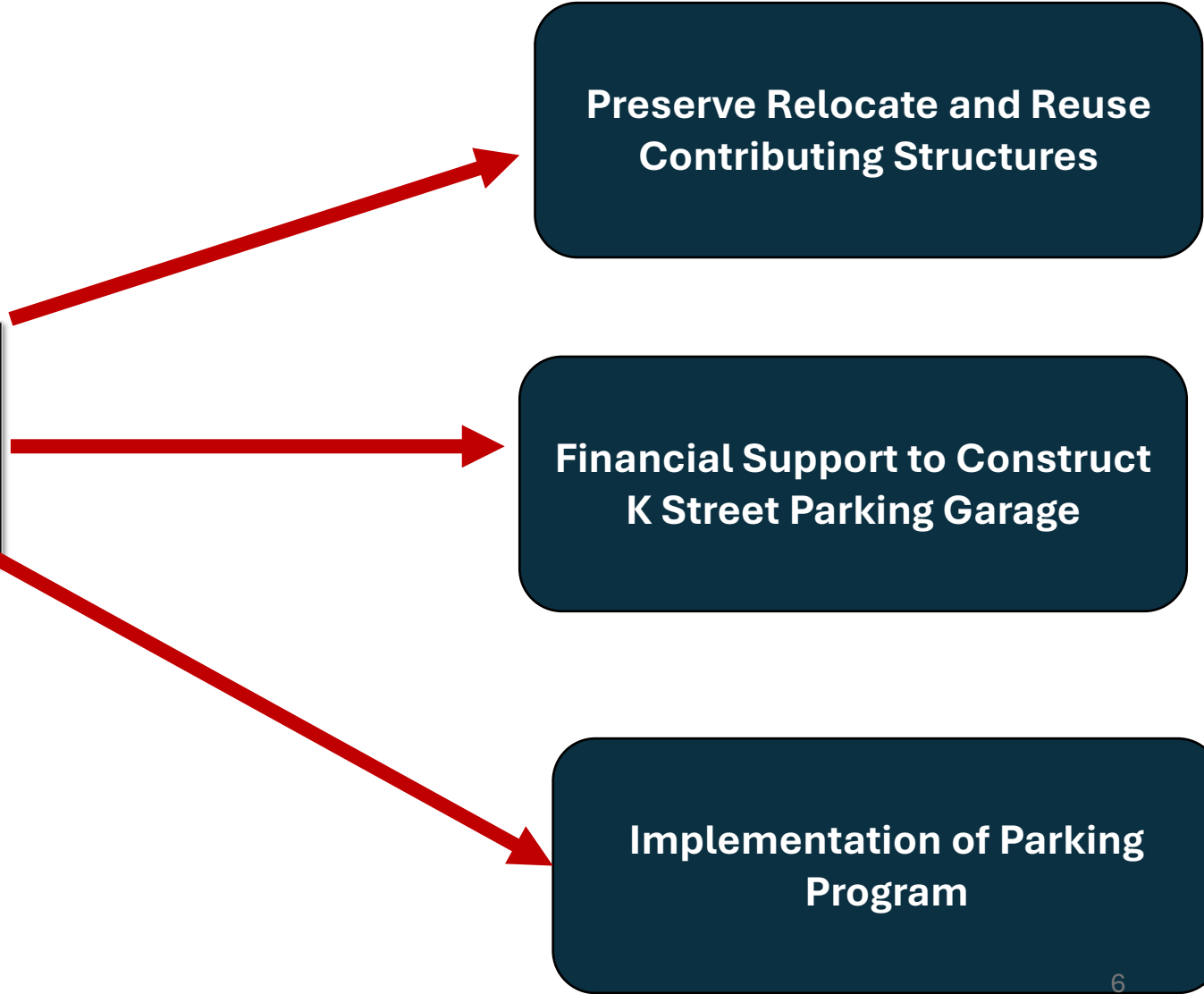


## Development Application Partners





# Leveraging Private Investments



# Benefits to the CRA – Redevelopment Goals and Objectives

- Eliminate blighted conditions
- Encourage upgrade of structures and financial incentives
- Consolidation of small parcels to allow new construction and stable growth
- Increase tax base to generate additional revenue for redevelopment projects
- Encourage a high degree of design and development standards
- Eliminate conditions that decrease property values
- Make redevelopment area competitive with other activity centers
- Establish a regional economic base in the District that retain and create jobs
- Initiate in-fill housing projects on existing or newly vacated land
- Restore historic housing that may be in a state of deterioration
- Work with the City to clean up problem properties
- Encourage mixed-use and multi-family development in the Downtown
- Encourage private efforts towards building housing in the redevelopment area
- Capitalize on development and redevelopment opportunities associated with Downtown

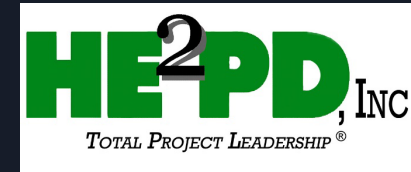
# Benefits to the City – Goals and Objectives

- In 2018 the city identified a need to address the demand for parking in the downtown area
- WGI was contracted to perform a parking study and later updated the plan in 2020
- The study concluded a need for increased parking capacity to ensure future demands for parking are met in the downtown core
- In 2023, the city requested an update to the parking plan from WGI
- On 6/18/24, the City Commission passed Resolution 21-2024 declaring support for the WMODA Museum of Fired Arts Mixed Use Campus / construction of a structured parking garage as part of a public private partnership inclusive of the City / the CRA / and WMODA
- During open discussion with CRA and WMODA in 2024, the city identified an opportunity to collaborate on a parking garage that would benefit the city, CRA and WMODA
- Building a parking garage on property owned by the City and CRA would be consistent with the Downtown Parking Study
- The parking garage would increase parking capacity and assist with meeting future demands in the core downtown area
- A parking garage will assist with eliminating overflow and neighborhood parking
- The proposed financing model would allow the city to purchase the parking structure at a lower interest rate and without impacting the City's bonding capacity
- Financing for the parking garage will take place for 5 years
- The city would benefit from improved public utilities infrastructure in the K Street downtown areas as part of the construction

# Project Team

The project team includes the following partners:

- Developer (United Management)
- Museum Curator (WMODA)
- Project Manager (*HE2PD*)
- Civil Engineer (*Bohler*)
- Architect (*HLW*)
- Market Analyst (*Lambert Advisory*)
- P3 Coordination (*RMCG*)
- Historic Preservation Consultant (*KSK Preservation*)



R. MILLER  
CONSULTING GROUP



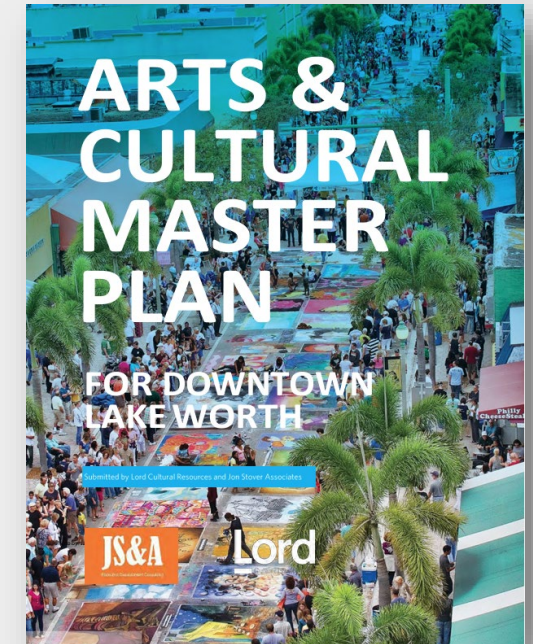
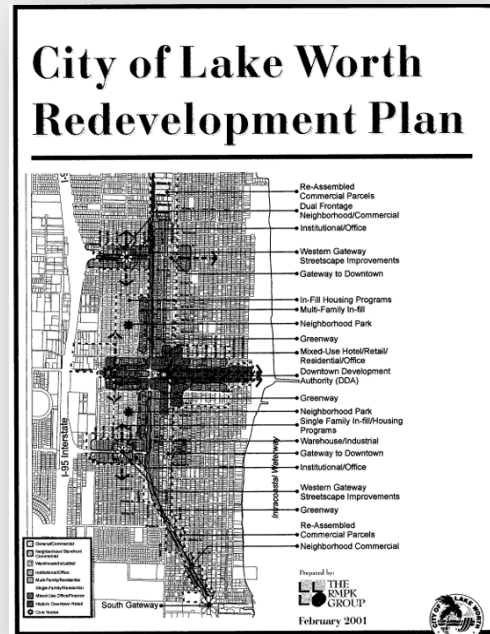
**BOHLER //**



# Background



# WMODA Alignment



# 501 LAKE AVE

CRA & CITY DESIGN PRESENTATION

| 7 OCT 2024



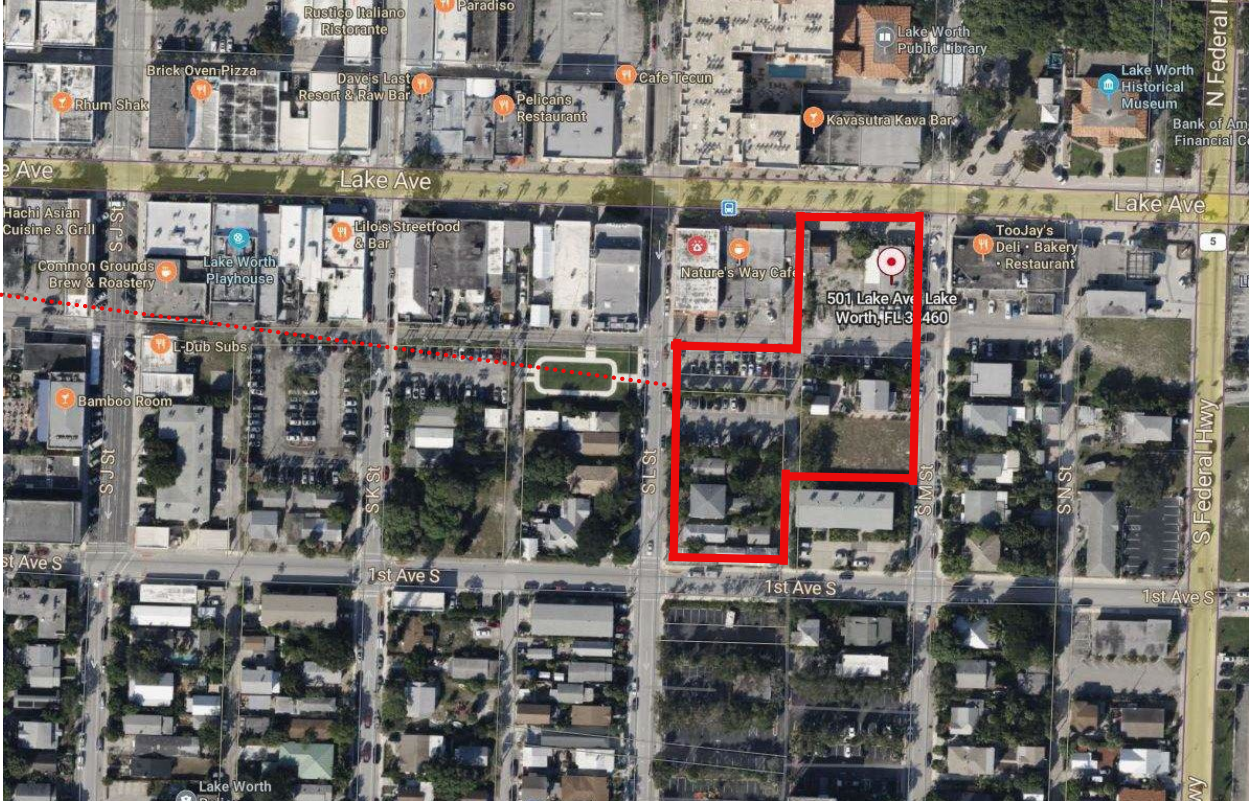
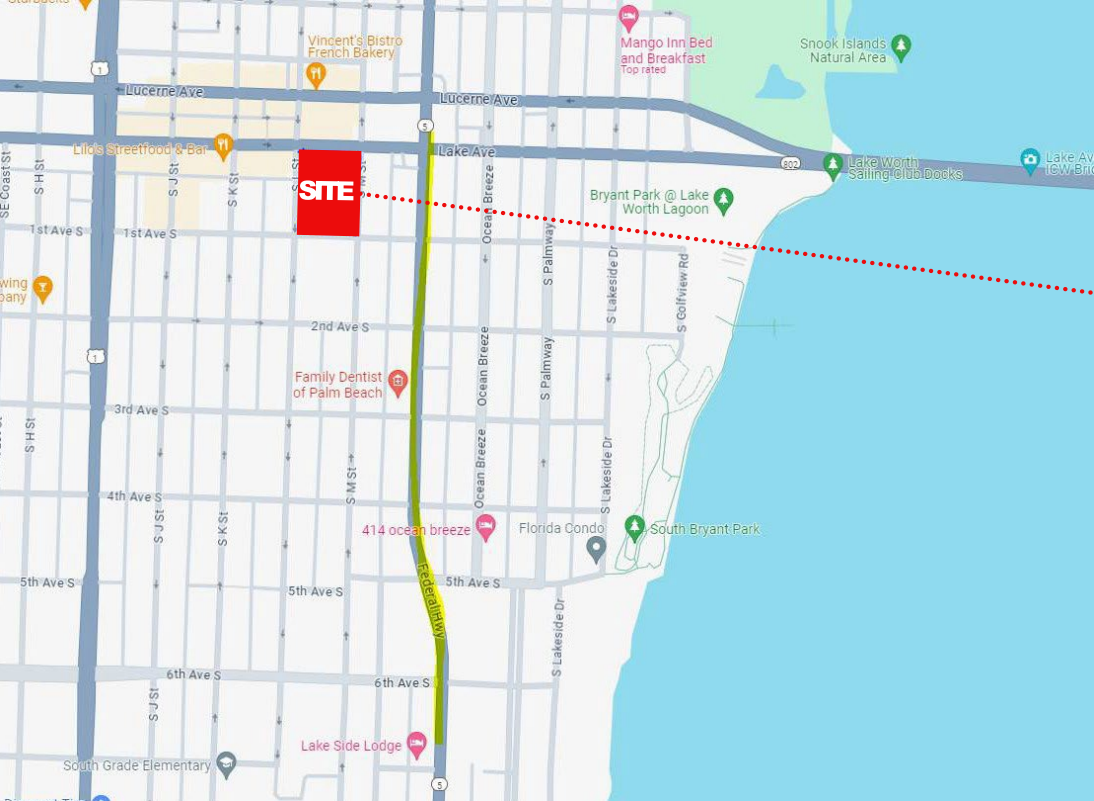
# SITE & CONTEXT



# SITE ANALYSIS

## LOCATION

stair/elev  
bulkhead



# HISTORIC DISTRICT REFERENCES

## OLD TOWN & SOUTHEAST LUCERNE



The City Hall Annex MEDITERRANEAN REVIVAL



City Hall MOORISH REVIVAL



Oakley Brothers Theatre ART DECO



Palm Beach Cultural Arts Council ART DECO

# CONCEPT

# DRIVING PRINCIPLES



**URBAN CONNECTIVITY**



**ART BUZZ**



**CONTEXTUAL**

CONNECTIVITY  
COMMUNITY



CULTURE  
ART

ARCHITECTURE  
ART DECO

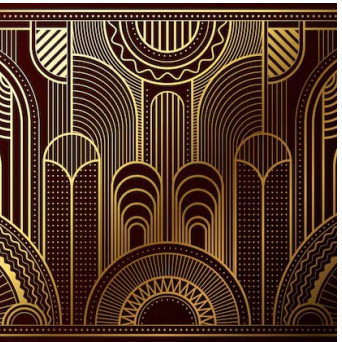
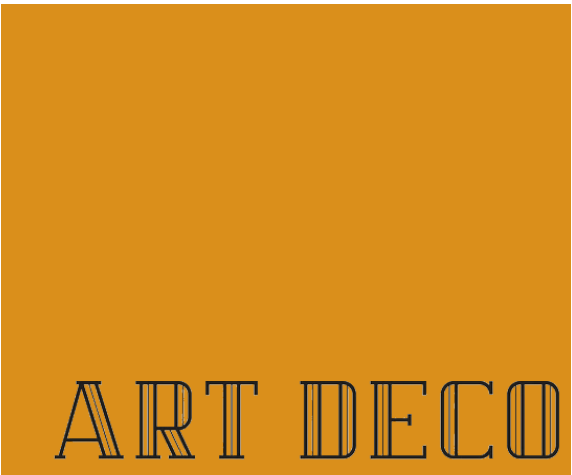
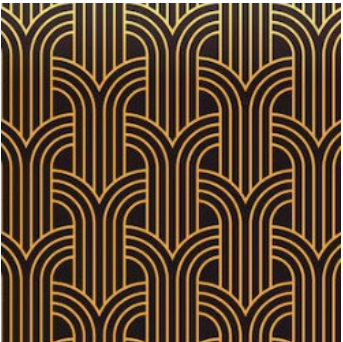
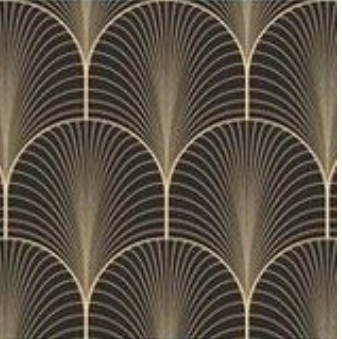
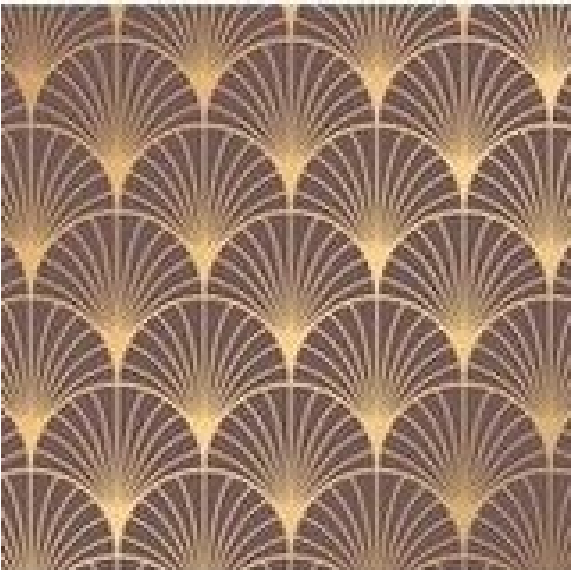


# DESIGN CONCEPT .....>

CONNECTIVITY  
COMMUNITY  
ACTIVATE ALLEY



REFERENCES: PATTERNS & SYMBOLS



# SITE PLAN & PARKING

# SITE MOBILITY PLAN

## Walking Travel Time

- 5 mins
- 10 mins
- 15 mins
- 20 mins

## Cycleway

- Bike Lane
- Bike Storage

## Nearby Bus/Shuttle

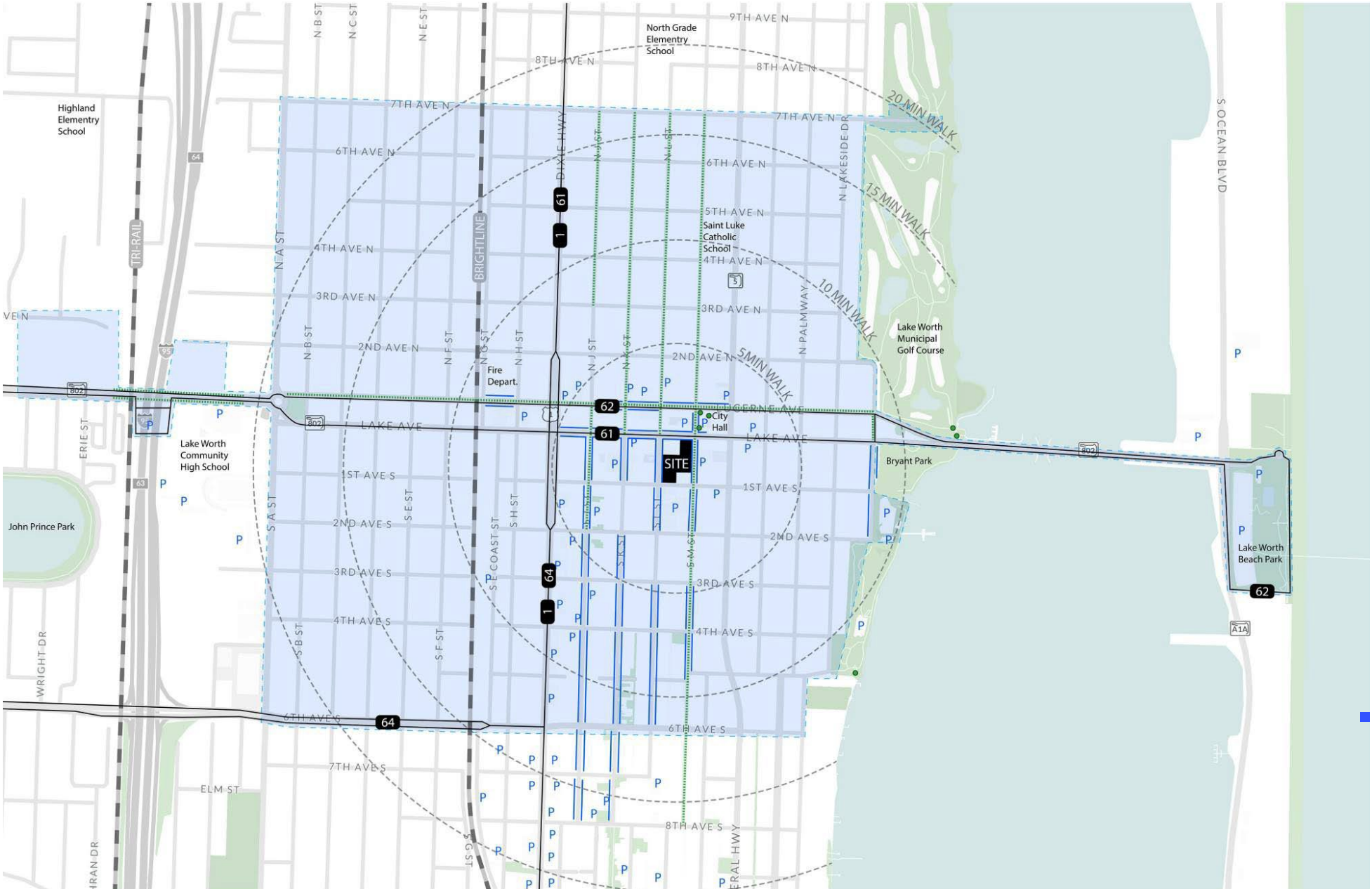
- Palm Tran 1 61 62 64
- FlixBus 2410 2411
- Circuit Shuttle Zone

## Nearby Train Lines

- Tri-Rail
- Brightline

## Parking Space

- On-street Parking
- Parking Lot





# SITE PLAN AERIAL OVERLAY

**MUSEUM PROGRAM:**  
 \_MUSEUM: +/- 33Ksf

**MUSEUM REQUIRED PARKING: 66 CARS**  
**66 PROVIDED**  
 PROVIDED ON SITE (ALLEY + STREET): 15







**PARKING AT K-STREET GARAGE: +/- 51**

**RESIDENTIAL PROGRAM:**  
 \_RESIDENTIAL (+/- 129Ksf) + PARKING (45Ksf) +  
 AMENITY (7Ksf) = 181Ksf  
 110 units total

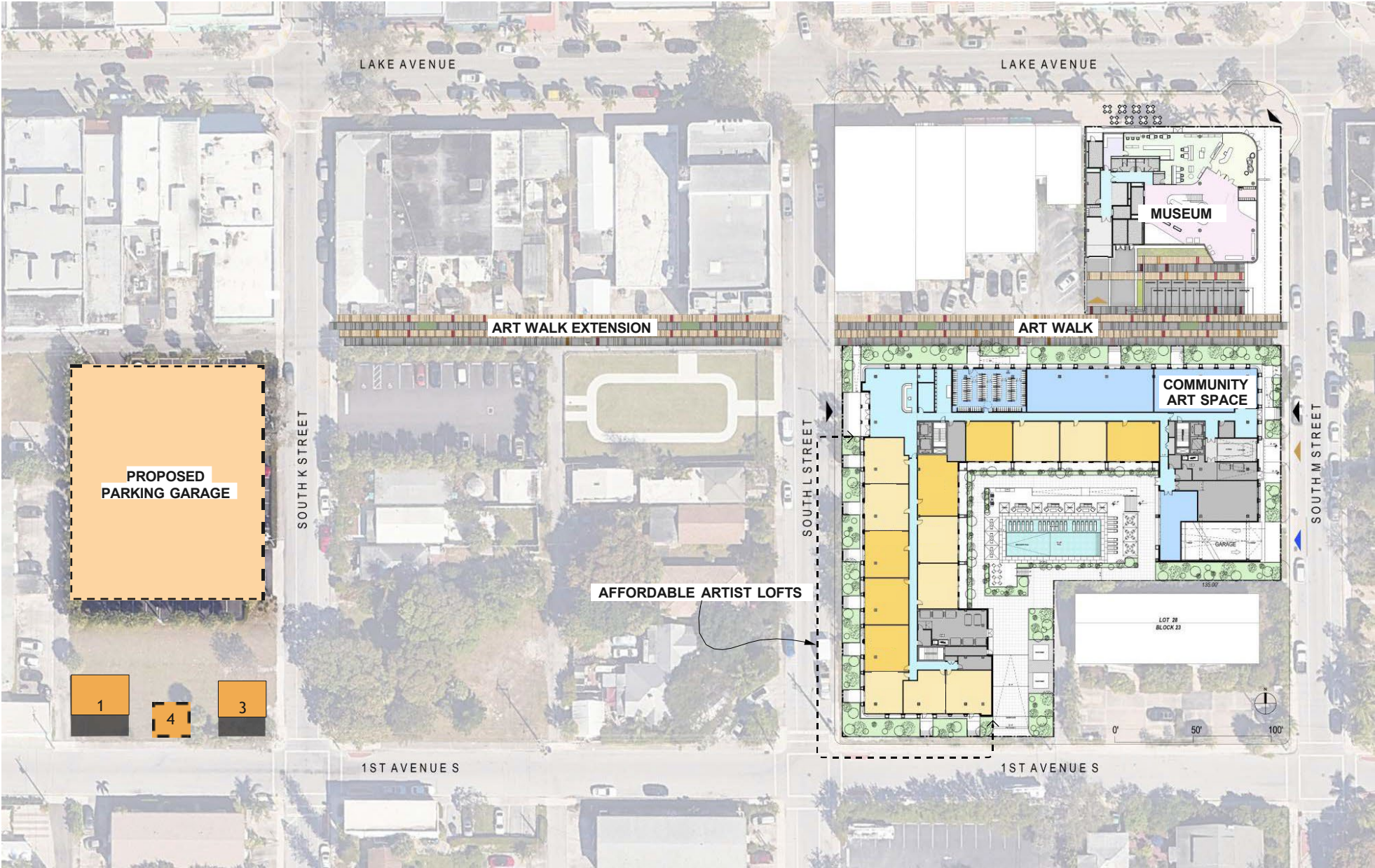
**RESI REQUIRED PARKING: 180 CARS**  
**184 PROVIDED (W/ CREDIT)**  
 PROVIDED ON SITE CELLAR: 117 CARS  
 STREET PARKING: 27

BICYCLE PARKING PROVIDED

**LEGEND:**

-  Property Line
-  Building Entrance
-  Subgrade Parking Entrance
-  Loading Entrance
-  Proposed Parking Garage
-  Contributing Buildings

\*NOTE: 4TH STRUCTURE TO BE LOCATED AT 126 SOUTH J STREET



# PROPOSED PARKING GARAGE & CONTRIBUTING BUILDING LOCATION

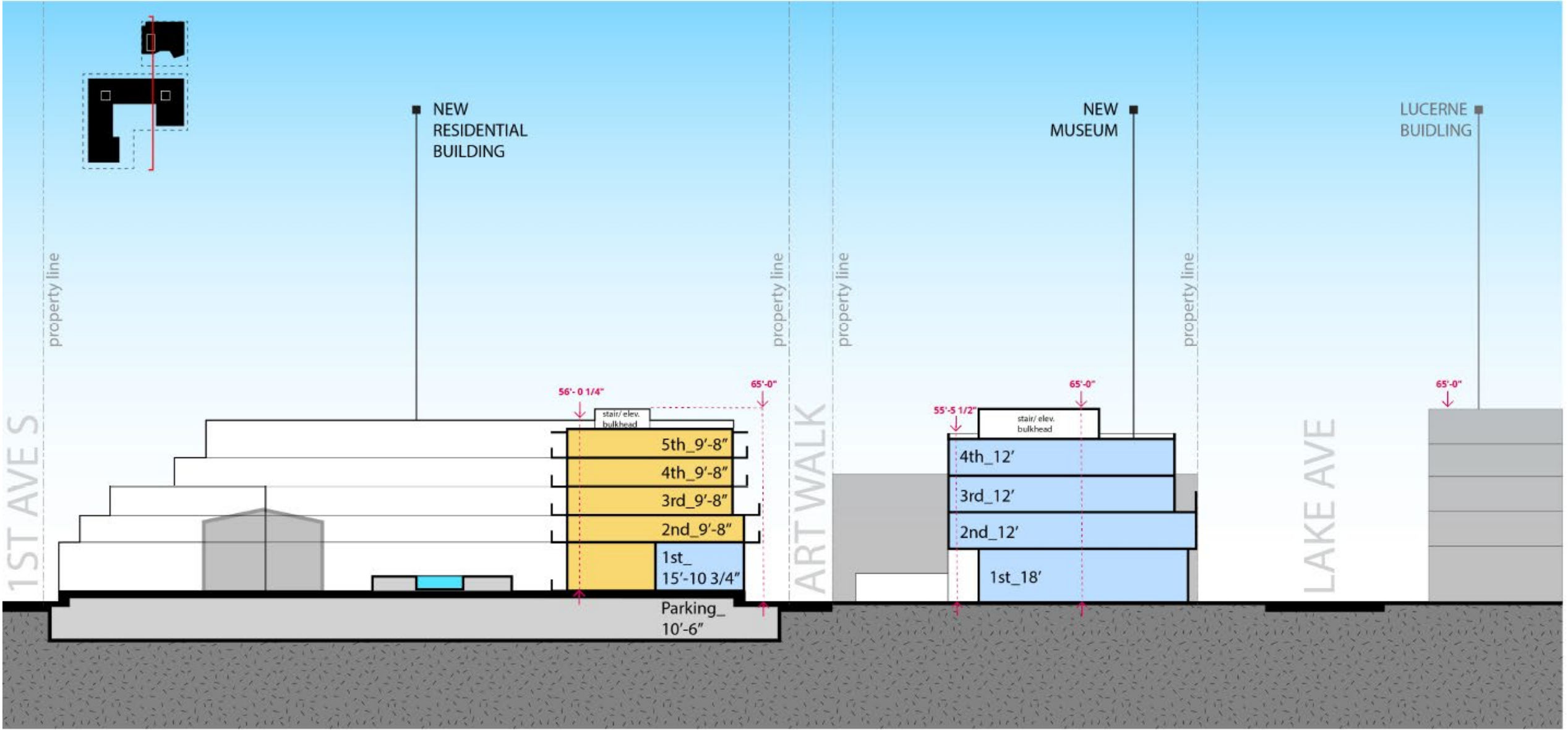


CONTRIBUTING BUILDING 1    CONTRIBUTING BUILDING 4    CONTRIBUTING BUILDING 3

\*NOTE: CONTRIBUTING BUILDING 2 TO BE LOCATED AT 126 SOUTH J

NEW RESIDENTIAL BUILDING

SECTION: RESIDENTIAL & MUSEUM



**NEIGHBORHOOD CONTEXT**









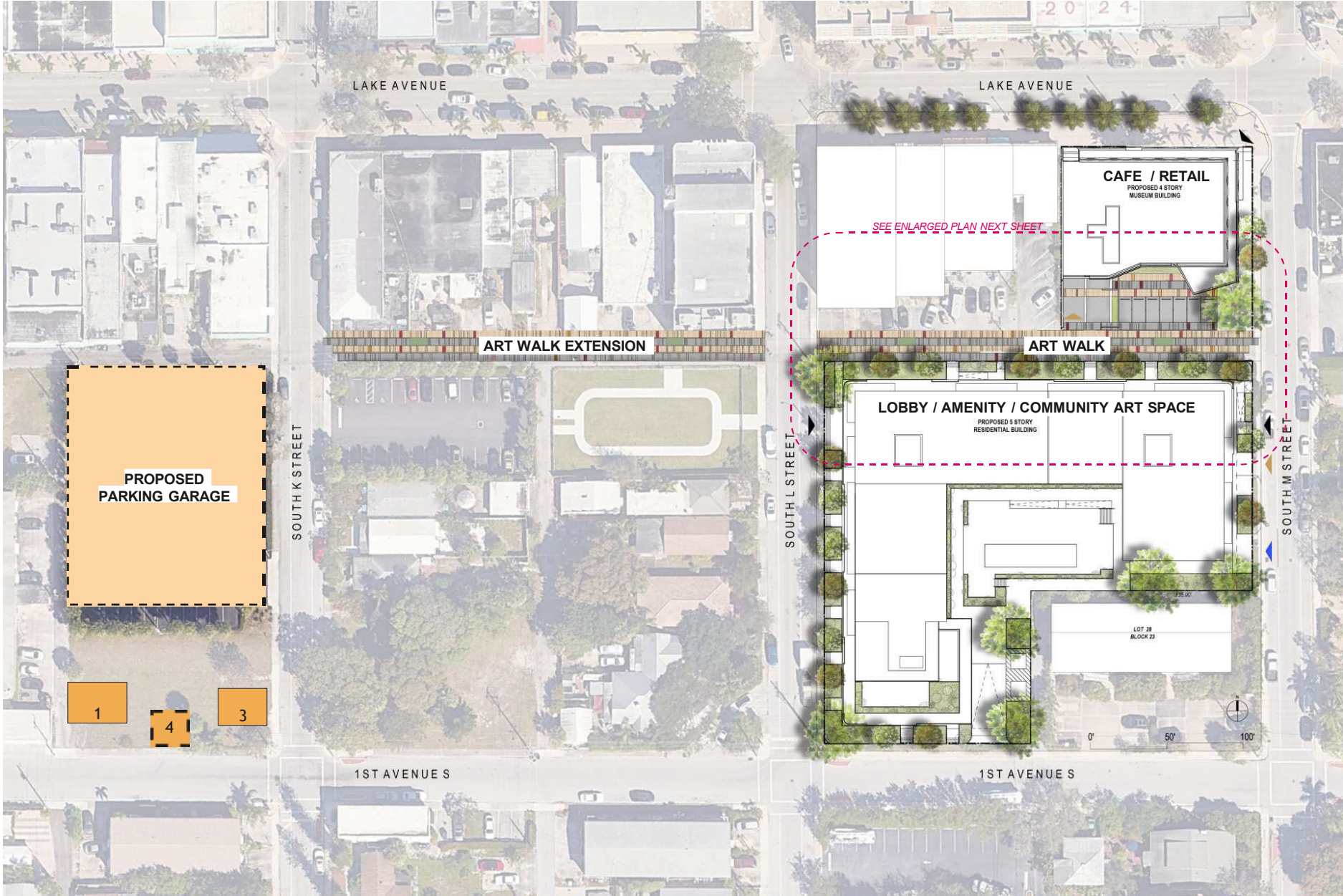
**EXISTING**



**PROPOSED**







# ART WALK LANDSCAPE PLAN

- LEGEND:**
-  Property Line
  -  Building Entrance
  -  Subgrade Parking Entrance
  -  Loading Entrance
  -  Proposed Parking Garage
  -  Contributing Buildings  
\*NOTE: 4TH STRUCTURE TO BE LOCATED AT 126 SOUTH J STREET

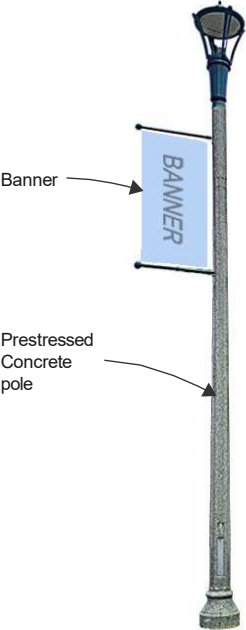


# ART WALK: PLAN

**LEGEND:**

-  Property Line
-  Building Entrance
-  Subgrade Parking Entrance
-  Loading Entrance
-  Proposed Parking Garage
-  Contributing Buildings  
\*NOTE: 4TH STRUCTURE TO BE LOCATED AT 126 SOUTH J STREET

Proposed City Light Pole:



## ART WALK: VIEW

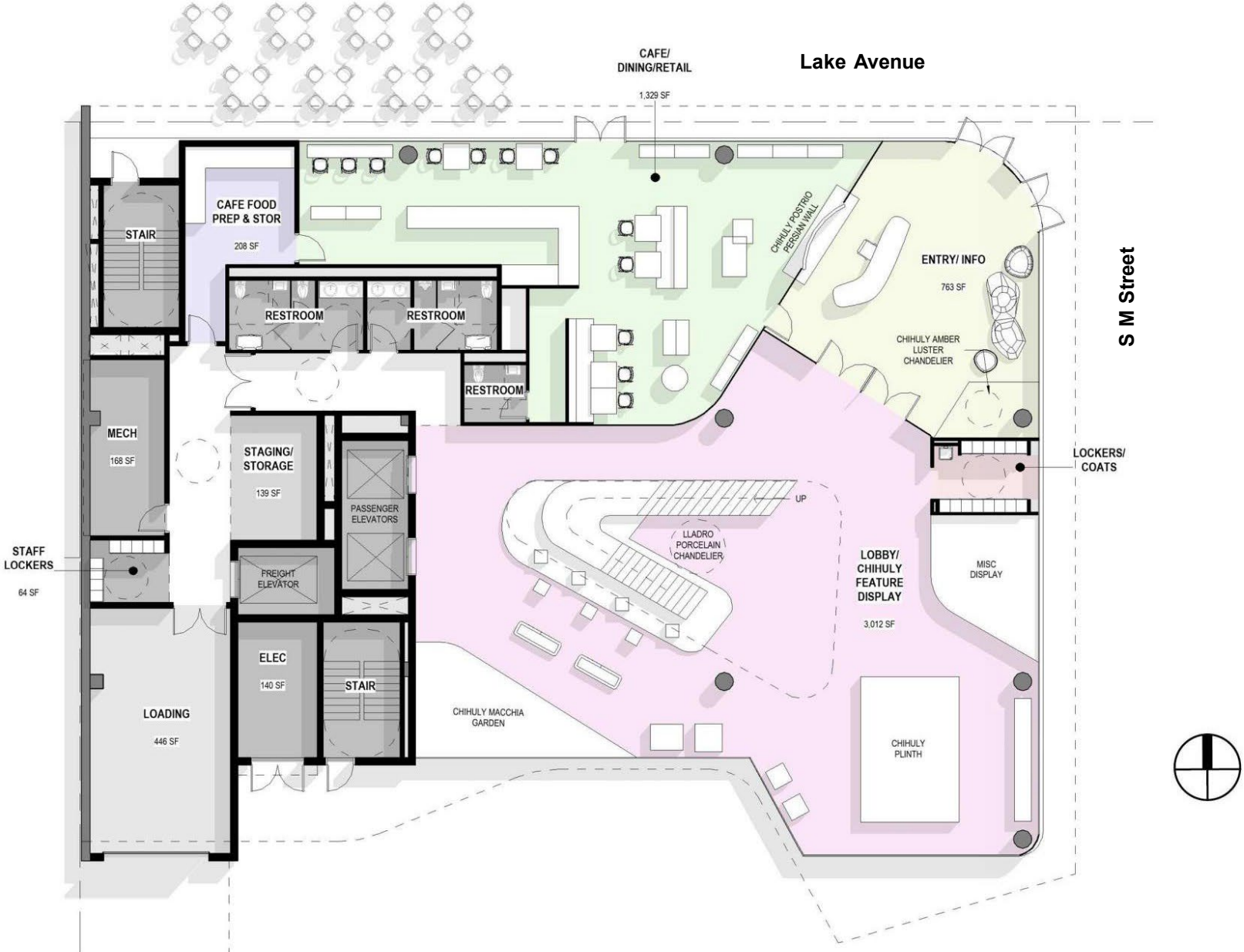


*General Note: All renderings for illustrative purposes to depict design intent. Proposed trees to be Wax Myrtle, Red Maple, and other native trees that are shading and/or flowering trees.*

# MUSEUM



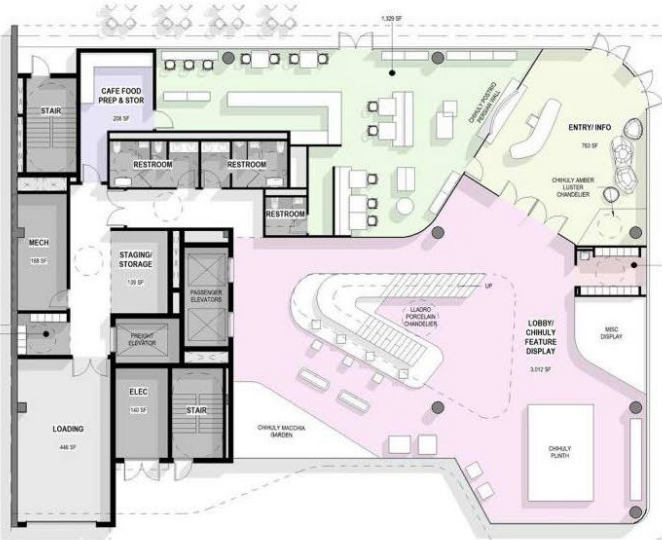
**MUSEUM: LEVEL 1 PLAN**



**Totals - Level 1**

SPACE TYPE	APPROX TEST FIT AREA
GALLERY/DISPLAY	3,012 SF
STORAGE	511 SF
CAFE/MERCANTILE	1,329 SF
CLASSROOM/DEMONSTRATION	0 SF
OFFICE/ADMIN	0 SF
SUPPORT	754 SF

# MUSEUM: PLANS OF ALL LEVELS



Level 1



Level 2



Level 3

## Totals - All Levels

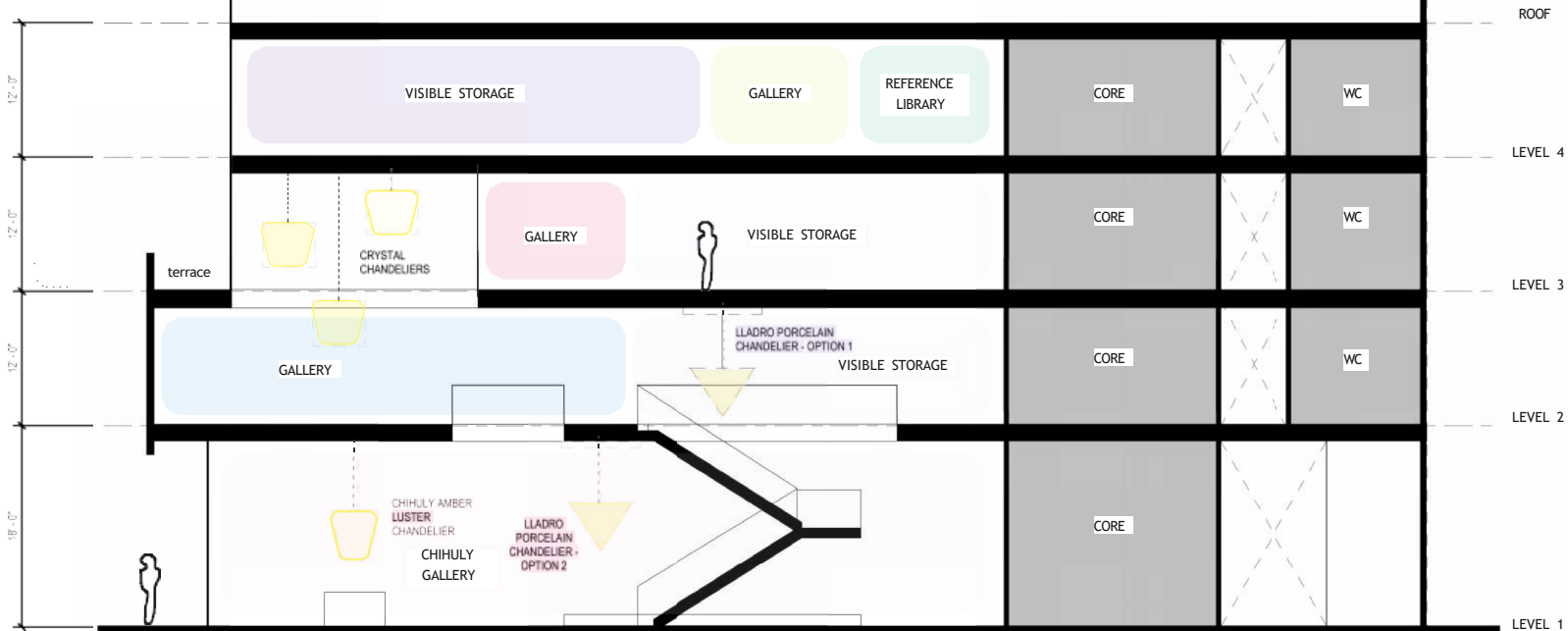
SPACE TYPE	APPROX EXISTING AREA**	APPROX TEST FIT AREA	DELTA
GALLERY/ DISPLAY	10,920 SF*	10,452 SF	-468 SF
SUPPORT/ STORAGE	5,860 SF	6,324 SF	+464 SF
CAFE/ MERCANTILE	574 SF	1,329 SF	+ 755 SF
CLASSROOM/ DEMONSTRATION	714 SF	644 SF	-70 SF
OFFICE/ ADMIN	1252 SF	1,262 SF	+10SF

Notes:  
 \* Includes existing 1,200sf of "visible storage" displays  
 \*\* existing square footage calculations are approximate and subject to adjustment



Level 4

MUSEUM: SECTION



4 level museum scheme

# MUSEUM FACADE

VIEW FROM LAKE AVENUE & SOUTH M STREET



# MUSEUM FACADE W/ STREET TREES

VIEW FROM LAKE AVENUE



# MUSEUM FACADE W/ STREET TREES

VIEW FROM LAKE AVENUE



# MUSEUM ART WALK VIEW

VIEW FROM THE ART WALK



# MUSEUM & RESIDENTIAL

VIEW FROM EAST AT ARTS WALK





# MOBILITY PLAN/ AXON



### SCHOOL BUS ZONE

Temporary space for school bus to pick-up and drop-off for student group visiting.

### PEDESTRIAN ACCESS

Intended pedestrian path for foot traffic. Path widens in front of museum entrance to accommodate groups of people for access.

### PICK-UP / DROP-OFF ZONE

Designated space for Uber, taxi, private car, and other vehicles to reduce travel lane blockage.

### PARKLETS

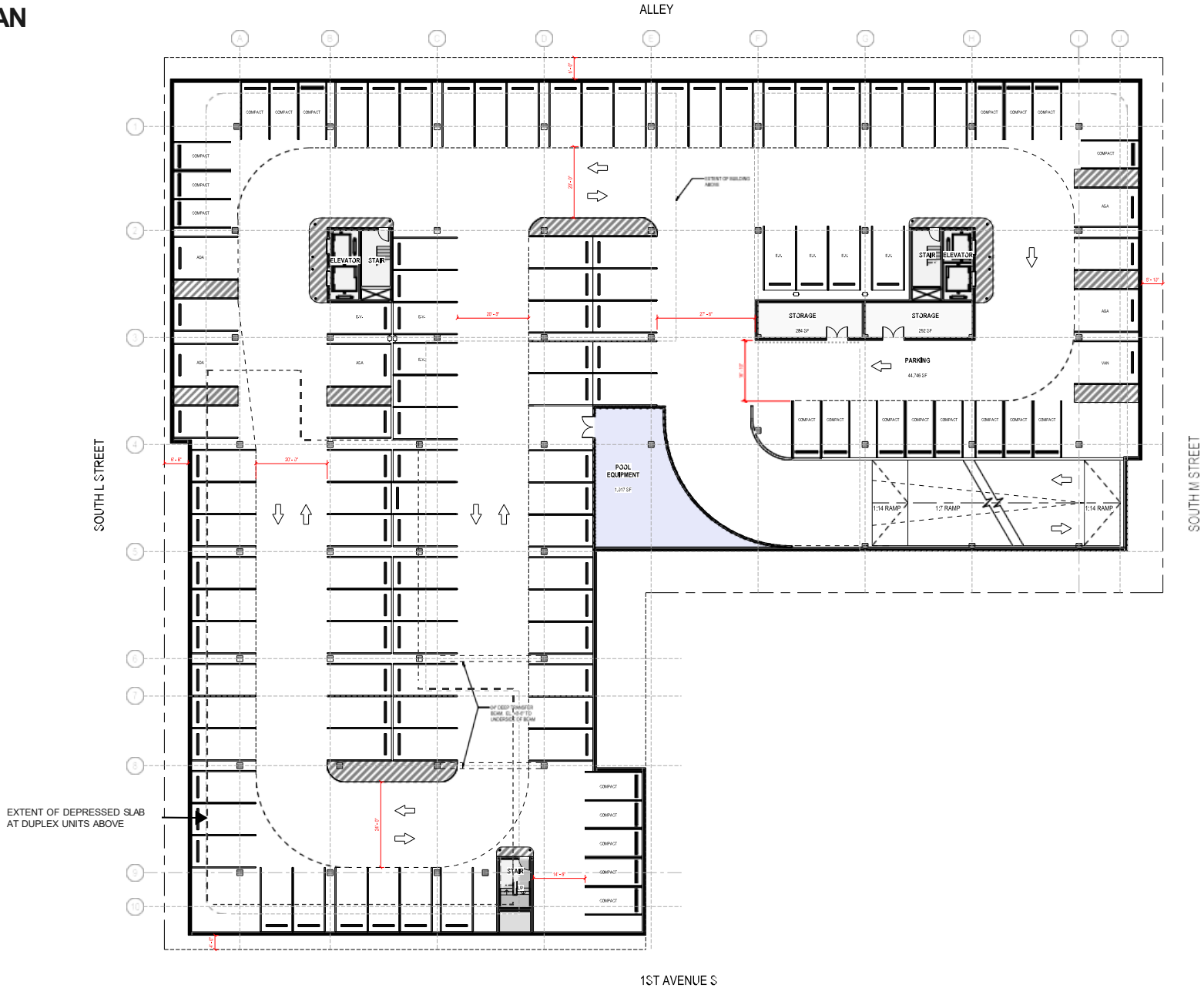
Low cost approach to placemaking and adding greenspaces. Provides sufficient buffering from adjacent parking spaces.

### PALM TRAN BUS

Fully accessible bus lane is an available transit point for museum visitors coming through public transit.

# RESIDENTIAL

# GARAGE FLOOR PLAN



## GARAGE PARKING

- REGULAR - 88 CARS
- COMPACT - 23 CARS
- ADA (INCLUDES VAN) - 6 CARS
- TOTAL - 117 CARS



# 2ND & 3RD FLOOR PLANS



## 2ND FLOOR

STUDIO - 1  
 1 BED - 15  
 2 BED - 13  
 TOTAL - 29



## 3RD FLOOR

1 BED - 11  
 2 BED - 13  
 TOTAL - 24

- LOBBY
- AMENITY
- STUDIO
- 1 BED
- 2 BED
- BOH

# 4TH & 5TH FLOOR PLANS



## 4TH FLOOR

1 BED - 11  
 2 BED - 11  
 TOTAL - 22



## 5TH FLOOR

1 BED - 8  
 2 BED - 12  
 TOTAL - 20

- LOBBY
- AMENITY
- STUDIO
- 1 BED
- 2 BED
- BOH

RESIDENTIAL SUMMARY

**181,129 sf** TOTAL AREA

\_RESI 129.1K + PARKING 44.8K + AMENITY 7.2K

---

**110** TOTAL UNITS

\_MARKET UNITS: 102  
\_LOFT UNITS: 8

---

**1 - 1%** STUDIOS

**54 - 49%** 1 BEDROOM'S

**55 - 50%** 2 BEDROOM'S

# RESIDENTIAL FACADE: NORTH ELEVATION

BUILDING ELEVATION FACING ART WALK



EAST LOBBY



WEST LOBBY



**RESIDENTIAL FACADE: WEST ELEVATION**

BUILDING ELEVATION FACING S L STREET



↑  
WEST LOBBY

↑ ————— DUPLEX APARTMENT ON STREET LEVEL ————— ↑

**RESIDENTIAL: EAST ELEVATION**

BUILDING ELEVATION FACING S M STREET



↑  
GARAGE ENTRY

↑  
LOADING

↑  
EAST LOBBY

**RESIDENTIAL: INNER SOUTH ELEVATION**

BUILDING ELEVATION FACING COURTYARD



↑  
FIRE ACCESS

# RESIDENTIAL FACADE

VIEW TO ART WALK



RESIDENTIAL FACADE  
VIEW TO RESIDENTIAL LOBBY



**RESIDENTIAL FACADE**

AERIAL VIEW TO S L STREET & ART WALK



ADDRESS

# RESIDENTIAL FACADE

AERIAL VIEW TO S L STREET & 1ST AVE S





**PARKLETS**

Low cost approach to placemaking and adding greenspaces. Provides sufficient buffering from adjacent off-street parking.

**PICK-UP / DROP-OFF ZONE**

Designated space for Uber, taxi, private car, and other vehicles to reduce travel lane blockage.

**ON-STREET PARKING**

Utilize the existing street infrastructure, making it a space efficient option in urban and densely populated area.

**PEDESTRIAN ACCESS**

Intended pedestrian path for foot traffic. Path widens in front of lobby entrance to accommodate groups of people for access.



# WIMODA

WIENER MUSEUM OF DECORATIVE ARTS





# WMODA Seniors



**Chelsea Rousso · Unity in the Community**

# WMODA Local Artists



**Blown Away · Rob Stern**

# WMODA Partnerships



## Music in the Museum

# WMODA Events





# Art on Fire

## The Chihuly Connection

**WMODA**  
WIENER MUSEUM OF DECORATIVE ARTS



# WMODA ECONOMIC IMPACT

Four key areas the proposed WMODA Mixed-Use Cultural Arts Campus will provide positive economic impacts:



**1**  
Short-term construction employment and expenditure



**2**  
Long-term residential and museum employment and visitor expenditure



**3**  
Incremental Ad Valorem Tax Revenue



**4**  
Positive Impacts on Surrounding Property Values



# WMODA ECONOMIC IMPACT

## Impact During Construction Period

The anticipated construction period of the proposed WMODA Mixed-Use Cultural Arts Campus project will generate the following:

**522 JOBS**  
created over 2-years  
*(direct, indirect, induced)*

**\$53,000**  
annual wage per FTE

**\$56 MILLION**  
in total output (GDP)

**\$27 MILLION**  
labor income added  
to economy



## Impact Upon Stabilized Operations

- A large portion of the museum's **estimated 50,000 annual visitors** will come from beyond Lake Worth Beach, and their potential expenditures will have significant impacts on surrounding business and properties.
- It is anticipated that **\$12+ million** will be generated from the expenditure on goods and services in the City.
- The on-site employment, building operations, Museum Operation, guest spending, and spending of on-site residents will generate approximately **21 full-time jobs, \$2.2 million in annual salaries and wages, and \$5.1 million in annual business revenue** that will flow through the Downtown Business area.
- The addition of the K Street Garage will increase positive traffic flow to the Downtown and is anticipated to have a significant financial impact to the existing businesses and support the leasing of vacant storefronts.

## Impact on Surrounding Properties

Based upon an illustrative assessment of impacts on surrounding properties, the proposed development will potentially enhance property taxable values within a 1/3 mile radius by an estimated \$6 million per annum which translates into roughly **\$40,000 additional ad valorem tax revenue annually.**





## **PUBLIC SPACES**

Museum, Arts Alley and Community Workshop space which directly benefits the Public.

## **ECONOMIC DEVELOPMENT**

WMODA will increase daytime and nighttime activation supporting small downtown businesses and will generate over \$54 Million in increased resident and visitor spending in the downtown over 10 years.

## **PARKING**

The WMODA development will improve parking in the downtown with the construction of an underground parking lot to support its residents and a public parking garage on K Street in partnership with the City and the CRA.

# **Community Benefit Elements**



## ART AND CULTURE ACCESS

WMODA will have a dedicated community arts space which will offer classes for children and seniors, as well as events that will bring additional investment and people downtown.

## TOURISM

As one of the only museums in the country dedicated to the fired arts, WMODA offers immeasurable arts and culture destination opportunities.

Partnerships with the existing arts community and the new Gulfstream Hotel will create opportunities to increase visitor spending that will support local businesses.

# Community Benefit Elements



## AFFORDABLE HOUSING

The WMODA Development includes 8 Artist Lofts that will provide both housing and artist workspace at 80-120% of AMI.

## HISTORIC PRESERVATION

WMODA will relocate four contributing structures to nearby lots with no cost to the City. The WMODA development meets the City's desire to honor the scale and the historic character of the downtown with its streamlined art deco architecture.

# Community Benefit Elements

WMODA Contribution to Cultural Arts Campus	CRA Contribution To WMODA Cultural Arts Campus	City Contribution to WMODA Cultural Arts Campus
Complete a \$60M dollar, mixed-use tax paying development in the downtown area	Land at \$0 (value \$3.3M)	Reuse former building at 17 South M for Leisure Services office on K St.
Build and fund a 33,000sf quality art museum dedicated to the fired arts	Up to \$2M in Infrastructure incentive – paid over 4 years	City Water Infrastructure Contribution to Area - values at \$200-250K
Design and creation of a 2-block arts alley worth over \$1.5M. Maintenance of L-M alley in perpetuity	Up to \$1.4M for Affordable housing units	City Electric Utility is contributing up to \$650K to underground all the Utilities around garage and project and adding decorative light poles on both blocks of the Alley
Creation of a subterranean garage to lower height of the overall project - \$8M		Contribute \$340K from CRA to L-K alley construction City Maintains alleyway from L- K
Create 8 affordable, live/work units and 102 units in the downtown to support local business and create jobs		
Relocate 4 historic structures to other lots in the downtown - \$500K		
Contribute all design services for alleyway and for historic home site		
Construction and maintenance of a Community Art Space worth \$600K+		
Create an arts destination along with the Playhouse, Benzaiten and Cultural Council		
<p style="text-align: center;"><b>WMODA</b></p> <p style="text-align: center;"><b>\$63M</b></p>	<p style="text-align: center;"><b>CRA</b></p> <p style="text-align: center;"><b>\$6.7M</b></p>	<p style="text-align: center;"><b>City</b></p> <p style="text-align: center;"><b>\$1.2M</b></p>

# Tax Increment Projection

TIRAP Calculation @ 6% Increase in Assessed Value											
	Stabilizing	Performing	Performing	Performing	Performing	Performing	Performing	Performing	Performing	Performing	
ASSESSMENT YEAR	2027	2028	2030	2031	2032						
TAXES PAID YEAR	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	
PERIOD	1	2	3	4	5	6	7	8	9	10	
TIRAP Calculations											
Tax Increment Value	\$ 15,000,000	\$ 51,000,000	\$ 54,060,000	\$ 57,303,600	\$ 60,741,816	\$ 64,386,325	\$ 68,249,504	\$ 72,344,475	\$ 76,685,143	\$ 81,286,252	
Eligible Tax Increment											
Tax Increment Value	\$ 15,000,000	\$ 51,000,000	\$ 54,060,000	\$ 57,303,600	\$ 60,741,816	\$ 64,386,325	\$ 68,249,504	\$ 72,344,475	\$ 76,685,143	\$ 81,286,252	
City and County Millage Rate	9.9945	9.9945	9.9945	9.9945	9.9945	9.9945	9.9945	9.9945	9.9945	9.9945	
Eligible Tax Increment	\$149,918	\$509,720	\$540,303	\$572,721	\$607,084	\$643,509	\$682,120	\$723,047	\$766,430	\$812,415	
% Attributable to Project	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	
Increment Revenues Attributed to Project	\$142,422	\$484,234	\$513,288	\$544,085	\$576,730	\$611,334	\$648,014	\$686,895	\$728,108	\$771,795	\$5,706,902
Total Tax Paid	22.2742	\$334,113	\$1,135,984	\$1,204,143	\$1,276,392	\$1,352,975	\$1,434,154	\$1,520,203	\$1,611,415	\$1,708,100	\$1,810,586
Assesses Value-Performing*	\$46M										
Assessed Value Incr	6.00%										
Years 1-5	\$ 2,260,757										
Years 6-10	\$ 3,446,145										
<b>Total \$</b>	<b>5,706,902</b>										

➤ Within 10 years, at a 6% increase in assessed values, the CRA investment will be paid back through the TIF revenue generated by the project.

➤ Over the past 10 years values increased on an average of 10.2%





## Highlights



Definition



Right-Size Subsidy



Buydown Calculator



Premium



Buydown Amount - \$1.4M

# Buydown Scenarios

Lake Worth Beach CRA Buydown Commitment

\$1,400,000 (Limited Due To Other Commitments)

Discount Rate as of September 17th

3.82%

Affordability Period

15

Total Number of 1BR Live/Work Units

3

Total Number of 2BR Live/Work Units

5

Rent Level Options:

80% AMI

120% AMI

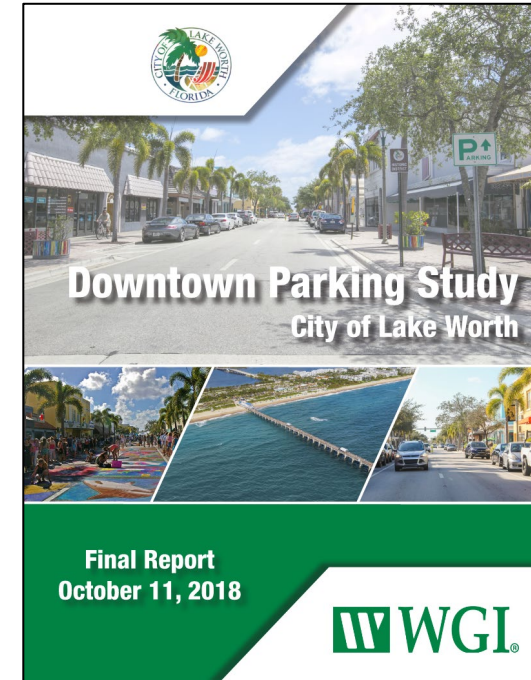
80%		120%		Total		Buydown
1 BR	2 BR	1 BR	2 BR	1BR	2BR	\$ Amount
1	4	2	1	3	5	\$1,456,165
2	3	1	2	3	5	\$1,432,574
3	2	0	3	3	5	\$1,408,982
0	4	3	1	3	5	\$1,338,500
1	3	2	2	3	5	\$1,314,909

# Background on Downtown Parking Program

For several years City leaders and staff have been investigating options for how to best manage downtown parking...

## 2018 Downtown Parking Study:

- Consultant performed inventory of available parking in Downtown Core
  - 462 On-Street Parking Spots
  - 205 Off-Street Parking Spots (Surface lots)
- Performed in person surveys of availability at specific times Saturday night and Thursday afternoon.
  - At capacity from 6-8pm on a Saturday night
- Recommended adding 150 more downtown spots to accommodate peak and prevent “spill over” to neighboring areas.



				On-Street Parking			Off-Street Public Parking		
	Date	Weekday	Period	Inventory	Occupancy	Occupancy %	Inventory	Occupancy	Occupancy %
DOWNTOWN AREA	1/20/2018	Saturday	4PM - 6PM	462	429	92.86%	205	195	95.12%
	1/20/2018	Saturday	6PM - 8PM	462	461	99.78%	205	209	101.95%
	1/25/2018	Thursday	10AM-12PM	462	333	72.08%	205	101	49.27%
	1/25/2018	Thursday	12PM-2PM	462	292	63.20%	205	111	54.15%

# Background on Downtown Parking Program

For several years City leaders and staff have been investigating options for how to best manage downtown parking...

- 2024 Downtown Parking Update:**
- Analyzed License Plate Scanner data from Jan-May 2024
    - Showed 80-85% occupancy from 12pm to 6pm
  - Projected that if current available building space is fully utilized:
    - No parking will be available from 12pm-6pm on weekends
    - Parking at 90% occupancy on weekday evenings

**Current Parking Adequacy with building occupancies at 95%**

Off-Street Parking Adequacy - w/ 95% Building Occupancies		Spaces
Current Parking Demand (70% building occupancies)		385
Additional Demand (building occupancies to 95%)		96
Current Parking Demand (95% building occupancies)		482
15% Excess Demand (Optimal vacancy)		144
<b>Total Current Demand (95% building occupancies)</b>		<b>626</b>
Current Supply		385
<b>Parking Adequacy - Current</b>		<b>-241</b>

**Future Parking Demand by Area (without fees)**

	Weekday				Weekend			
	6-12 A	12-3 P	3-6 P	6-10 P	6-12 A	12-3 P	3-6 P	6-10 P
Full City	73%	77%	76%	84%	38%	89%	95%	79%
Downtown	70%	79%	75%	89%	38%	92%	97%	80%
<b>Downtown Core</b>	77%	<b>86%</b>	82%	<b>90%</b>	38%	<b>100%</b>	<b>105%</b>	84%

# Summary of Downtown Parking Studies

## Both studies recommended a Paid Parking Program

### Manage Parking with Zones that have Rules and Rates

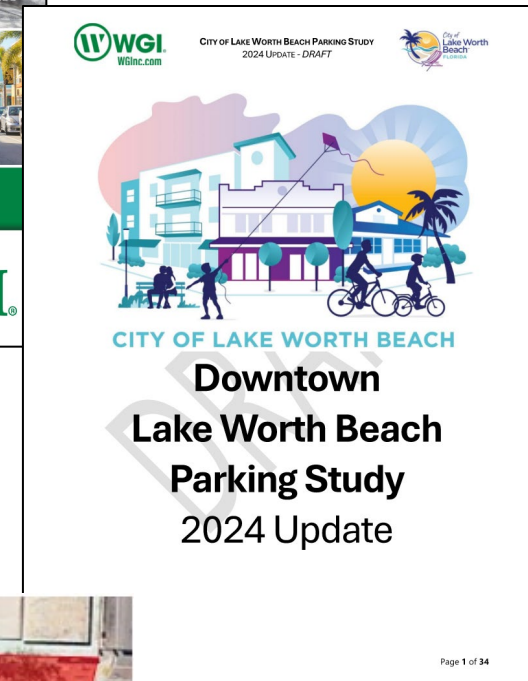
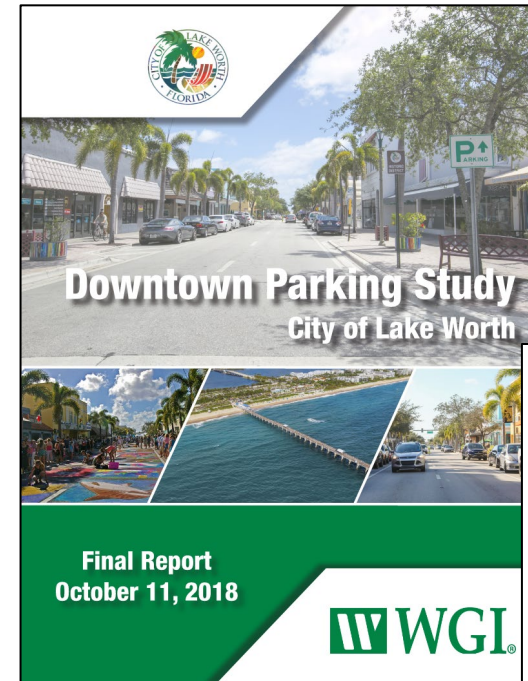
- Create Availability of Curbside Spaces
  - Increased turnover along Lake and Lucerne
- Improve Efficiency for Use of Spaces
  - Designated locations for resident & employee decals

### Encourage Alternative Modes of Transportation

- Incentivizes walking, biking, and transit

### Generate Revenue to Improve Parking & Downtown Amenities

- Construct a City-owned parking garage (K Street)
  - Additional 185 parking spots proposed
  - Conversion of existing surface lots into new development
- Additional downtown improvements



Parking Zones - Example

# Summary of Downtown Parking Studies

## **Take-aways from 2018 and 2024 Studies**

- Existing parking availability is near capacity during peak hours but sufficient
- When all existing downtown spaces are leased and operating, the parking demand will exceed the supply
- A paid parking plan allows the City to better manage existing parking and prepare for future demand.

## **Relevance of the City's Parking Studies to the WMODA Project**

- City has been working on how to manage Downtown Parking for years
- WMODA is a unique opportunity to help achieve the City's parking objectives
- By leveraging the WMODA project, the City will be able to own a parking garage on K Street within 5 years of construction netting ~185 new parking spots.

# CITY GARAGE

Total Garage Funding - \$8.5M\*

## FUNDING SOURCES

Down Payment - \$5M

- \$1M WMODA
- \$1.5M CRA. This will be from TIF Funds. The CRA will budget and pay out \$500K this coming fiscal year (FY25) and \$1M in FY26.
- \$2.5M City

Balance of Payment - \$3.5M

- \$2.5M in payments over 5 years of CRA Dollars (TIF)
- \$1+M in payments over 5 years of City Dollars

% of Total Cost for City Owned Garage

**CRA** – 47% of total cost

**City** – 41% of total cost

**WMODA** – 12%\*\* of total cost

**WMODA will hold the note for the CRA, not to exceed 5 years.**

**The City will see considerable savings by not having to secure a 20-year revenue note.**

\* Based on WGI Study procured by City of Lake Worth Beach \*\*WMODA – paying for design & building of garage

# FINANCING COMPARISON

20 Year City Revenue Note @ 6%

WMODA Financing  
5 Year Revenue Note @ 4%

K Street Garage	Scenario 1	Scenario 2
Revenue earmarked for garage	City Debt Financing for Garage@ 6% over 20 years	project managed and financed by CRA and City , WMODA execute note for CRA -5 years @ 4%
WMODA Parking Garage Contribution	\$ 1,000,000.00	\$ 1,000,000.00
CRA Parking Garage Contribution	\$ 1,500,000.00	\$ 1,500,000.00
City Parking Garage Contribution	\$ 2,500,000.00	\$ 2,500,000.00
Upfront Revenue for Garage	\$ 5,000,000.00	\$ 5,000,000.00
Less Estimated GMP	\$ 8,500,000.00	\$ 8,500,000.00
Debt amount	<b>\$ 3,500,000.00</b>	<b>\$ 3,500,000.00</b>
*Estimated annual debt service	\$ 309,315.00	\$ 762,036.00
<i>CRA pays per year FY 26,27, 28</i>	0	\$ 762,036.00
<i>City pays per year FY 26,27, 28</i>	\$ 309,315.00	\$ -
<i>City Pays FY 29</i>	\$ 309,315.00	\$ 762,036.00
<i>City pays FY 30</i>	\$ 309,315.00	\$ 825,538.00
<i>City pays FY 31-FY 46</i>	\$ 309,315.00	\$ -



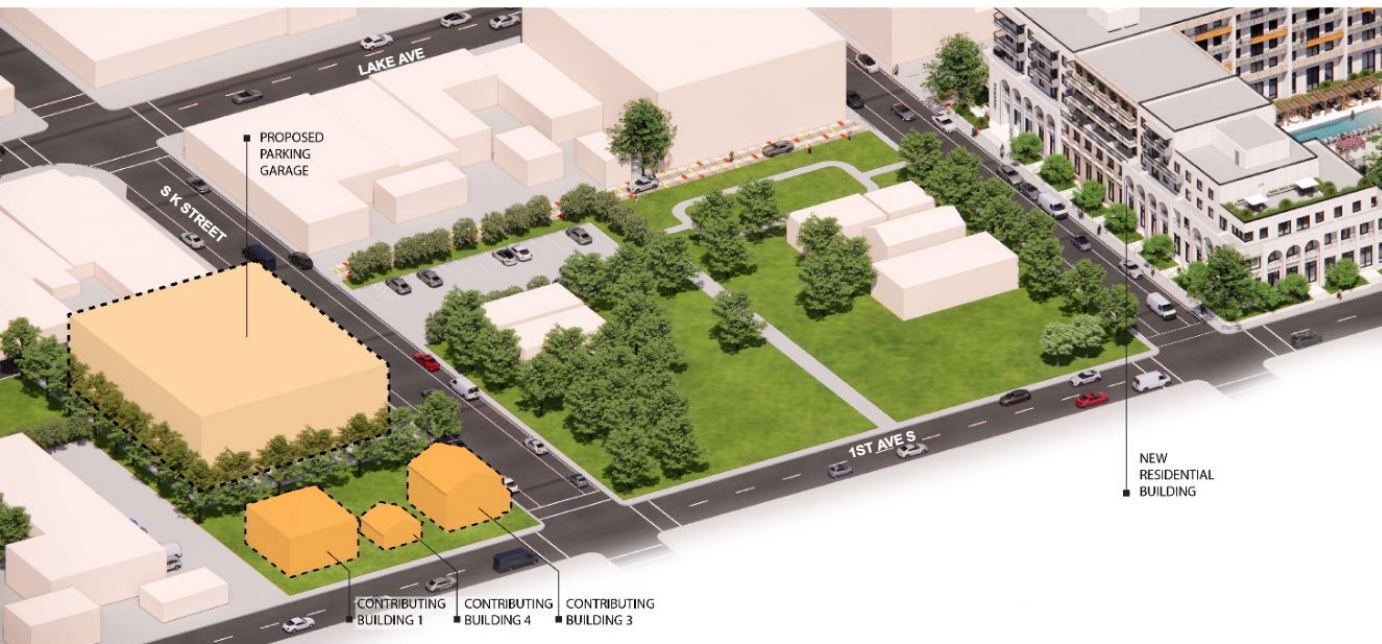
# FINANCING COMPARISON

20 Year City  
Revenue Note @ 6 %

WMODA Financing  
5 Year Revenue Note @4%

Comparison of Total Cost (capital and debt service)	Scenario 1	Scenario 2
CRA	\$ 1,500,000.00	\$ 3,786,119.00
City	\$ 8,686,306.00	\$ 4,087,574.00
WMODA	\$ 1,000,000.00	\$ 1,000,000.00
<b>TOTAL</b>	<b>\$ 11,186,306.00</b>	<b>\$ 8,873,693.00</b>
Comparison of Debt Service Expense	Scenario 1	Scenario 2
CRA	\$ -	\$ 3,051,155.00
City	\$ 6,186,306.00	\$ 825,538.00
<b>TOTAL</b>	<b>\$ 6,186,306.00</b>	<b>\$ 3,876,693.00</b>
	<b>City/CRA Cost Savings</b>	<b>\$ 2,309,613.00</b>
	<i>Developer Outlay</i>	\$ 3,126,306.00

City realizes a savings of over \$2.3 Million dollars, by utilizing the WMODA 5-Year Note



## Contributing Structures Plan

- 17 S. "M" St and its garage will be moved from its current location to 1<sup>st</sup> Avenue South and "K" Street (buildings 3 & 4)
- 24 South "L" will be moved to an existing CRA owned lot on 126 South "J," also in the historic district (Building 2)
- 26 South "L" will be moved to the northwest corner of 1<sup>st</sup> Avenue South and "K" Street

All 4 buildings will be moved and paid for by WMODA/ United

17 South M and the garage structure will be rehabilitated and used for Leisure Services/Parking Staff

24 and 26 South "L" will be renovated by the CRA and our housing partners and will be used as affordable rentals for households making less than 80% or less of Area Median Income

The renovated buildings will produce up to 8 affordable units in the downtown

# The City's Entitlement Process

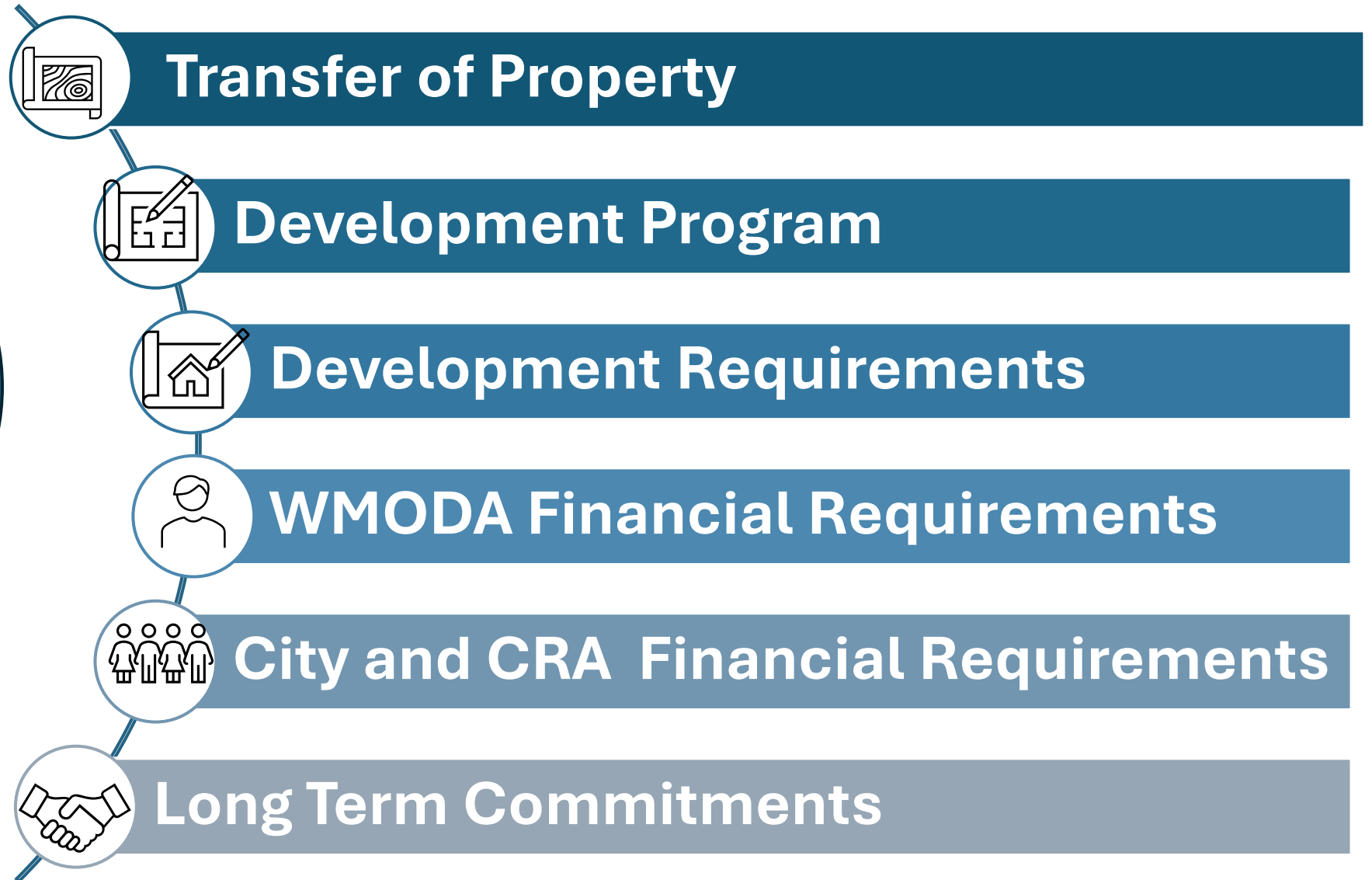
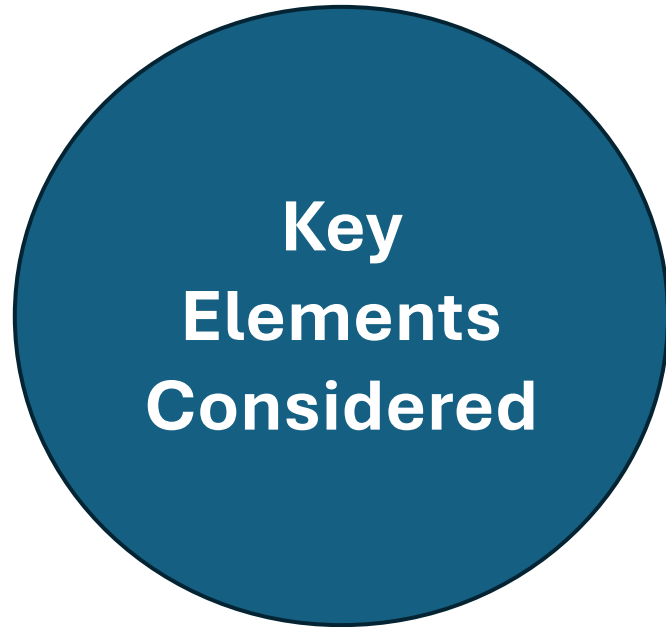


# The City's Entitlement Process

## Required Design Review Criteria



# Development Deal Structure



# Development Deal Structure

Purchase and Sale Agreement



Development Agreement



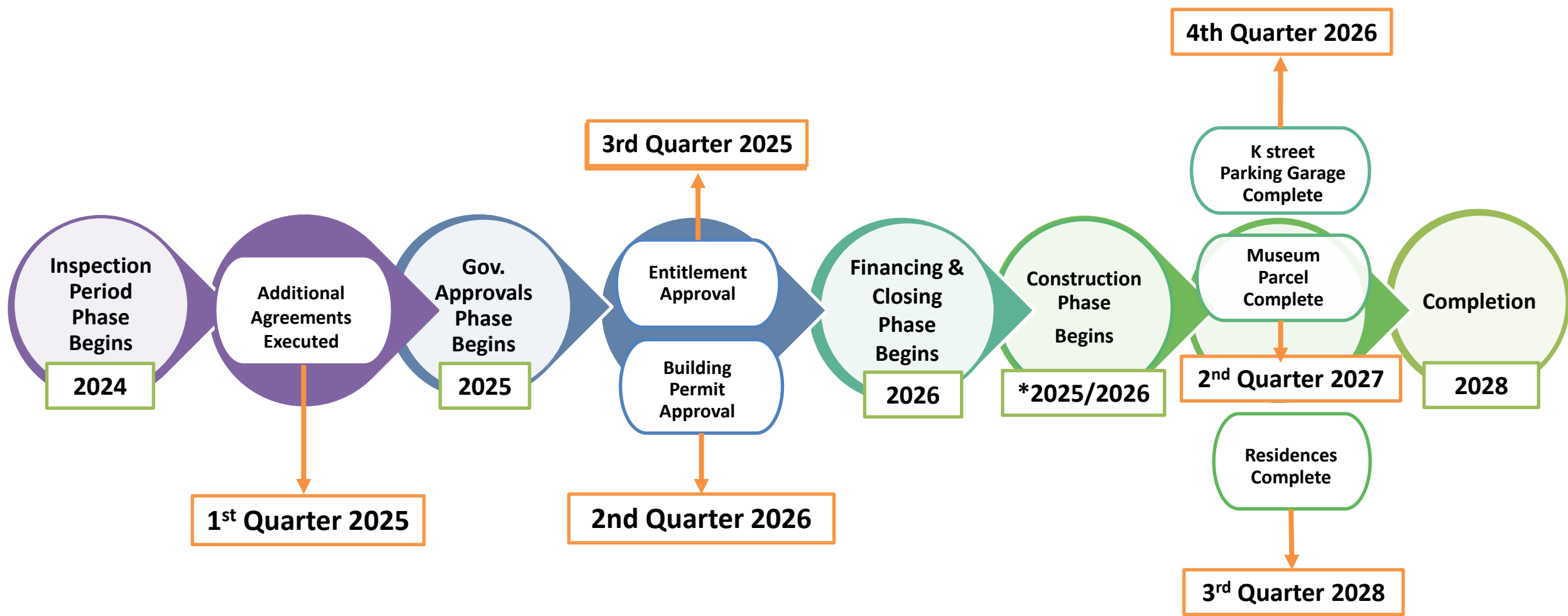
K Street Garage Construction Agreement

Contributing Structure Relocation Agreement

Long Term Parking Agreement

\*Long Term Maintenance Agreement – Art Alley

# Critical Path for the Development



\* Note : Construction for the K Street Garage begins before the WMODA project starts its construction activity on L & M

# Next Steps

## **October 7, 2024 –City Commission /CRA Board Joint Workshop**

- WMODA Project Presentation

## **October 8, 2024 –Community Redevelopment Agency Meeting**

- Purchase and Sale and Development Agreements Considered

## **October 15, 2024 –City Commission Meeting (1<sup>st</sup> Hearing)**

- Public Private Partnership Process – Unsolicited Proposal Acceptance
- Development Agreement Considered

## **October 29, 2024 –City Commission Meeting (2<sup>nd</sup> Hearing)**

- Public Private Process- Finding of Public Benefit Considered





# WMODA

WIENER MUSEUM OF DECORATIVE ARTS

MIXED-USE CULTURAL ARTS CAMPUS

## Lake Worth Beach City Commission and CRA Board Briefings

**October 2, 2024**

## **Press Release**

### **Wiener Museum of Decorative Arts (WMODA) Secures Partnership with Chihuly Studios**

*To create a permanent art installation and creative experience at the proposed Lake Worth Beach Location*

The City of Lake Worth Beach, the Lake Worth Beach Community Redevelopment Agency (CRA) and the Wiener Museum of Decorative Arts (WMODA) is pleased to announce that a partnership with the Chihuly Studio of Seattle has been reached to bring a permanent art installation and immersive Chihuly experience to WMODA in the City of Lake Worth Beach.

The proposed WMODA Project, currently being considered by the City and CRA, entails the construction of a 33,000 square foot museum dedicated to the Fired Arts. Through his continued relationship with Dale Chihuly, Arthur Wiener, WMODA's benefactor, has secured a commitment from the Chihuly Studio to partner with the Museum to create a new cultural experience in Lake Worth Beach that promises to captivate the imagination of residents and visitors alike. As one of only eight other permanent Chihuly exhibitions in the World, WMODA Lake Worth Beach would now enter the realm of being an international destination for lovers of the fired arts and Chihuly in particular.

Chihuly's career has spanned over six decades and is known for his exhibitions and large-scale architectural installations around the world, for revolutionizing the studio glass movement, and creating some of contemporary art's most iconic works. Chihuly is an artist who transforms spaces with experiments in color, light, transparency and form. With these immersive experiences, visitors are drawn in, encouraging them to explore and interact with the space. These dynamic spaces foster community engagement, creativity and provide educational opportunities for all.

**"I want people to be overwhelmed with light and color in some way that they've never experienced." –CHIHULY**

The opportunity to bring Chihuly's work to the City of Lake Worth Beach and WMODA is a testament to the quality of this groundbreaking project that is currently being considered for approval. The number of visitors coming specifically to see these works of art will be transformative for the Downtown Business Community and the overall Art's District.

Dale Chihuly's exhibitions have consistently generated significant economic impact in cities across the U.S. by attracting large numbers of visitors which drive hotel bookings, restaurant sales, retail spending, and job creation in the tourism and hospitality sectors. Cities hosting his exhibitions, such as Seattle, Asheville, Dallas, and Richmond, have seen increased foot traffic in local attractions, resulting in millions of dollars in economic benefits. For Example:

#### **Chihuly Garden and Glass, Seattle, Washington (Permanent Installation Location)**

- Opened in 2012, this permanent installation continues to attract millions of visitors to Seattle, boosting tourism. It supports local businesses, restaurants, and hotels in the Seattle Center area, contributing significantly to the local economy. The exhibition is estimated to generate over \$1.1 million annually in direct revenue.

### **Morean Arts Center, St. Petersburg, Florida (Permanent Installation Location)**

- Chihuly's permanent collection at the Morean Arts Center has made St. Petersburg a cultural destination, attracting tourists and art enthusiasts alike. The economic impact includes increased visitor spending at local restaurants, hotels, and shops, contributing millions to the local economy since its opening.

### **Fairchild Tropical Garden, Miami, Florida (2006)**

- The Chihuly at Fairchild exhibition, held at the Fairchild Tropical Botanic Garden in Miami, Florida, had a substantial economic impact during its multiple showings, particularly in 2006 and later revisits in subsequent years. The initial Chihuly exhibition in 2006 attracted over 160,000 visitors, more than doubling the typical attendance of the garden. This significant increase in foot traffic brought a surge in local tourism, with many out-of-town visitors coming specifically for the exhibit.

### **Virginia Museum of Fine Arts, Richmond, Virginia (2012)**

- The museum saw record attendance during Chihuly's exhibit, with a direct economic impact estimated at \$11 million. Visitors traveled from across the region, spending money on hotels, restaurants, and local businesses, benefiting the broader Richmond economy

### **Cheekwood Estate & Gardens, Nashville, Tennessee (2010 & 2020)**

- Chihuly's exhibitions at Cheekwood led to significant spikes in visitor numbers. In 2020, the event attracted over 150,000 visitors, contributing to Nashville's hospitality and retail sectors. Economic impact studies estimated that Chihuly's exhibits brought millions in revenue to the region through tourism.

The WMODA Mixed Use Cultural Arts Campus is a visionary project that has been well received by the community, largely due to its approach to public involvement in planning and implementation, and the WMODA Team hopes that this commitment by the Chihuly Studio will only create more excitement about the project. Upon hearing the news Mayor Betty Resch stated "I cannot think of a better home for the Wiener Museum of Art and a permanent exhibit by Dale Chihuly than downtown Lake Worth Beach. Culture, history, art, and creativity are woven into the fabric that makes our City so special."

From the CRA perspective CRA Chair Carla Blockson commented "The Lake Worth Beach Community Redevelopment Agency is grateful for the opportunity Mr. Wiener, his family and the Wiener Museum of Decorative Arts are bringing to downtown Lake Worth Beach. The partnership that now includes world-renown artist, Dale Chihuly, fulfills the long-term goal of positioning Lake Worth Beach as the place where art is made, seen, and appreciated by all. This new development joins many other local endeavors including the siting of the Cultural Council headquarters, the Urban Arts Lofts, the Benzaiten Center for the Arts, and local galleries and shops, making Lake Worth Beach an authentic, unique City where different cultures are celebrated and commingled through artistic expression."

"We could not be happier that we were able to accomplish this arrangement. The opportunity to share Chihuly with the public and specifically children and seniors is my passion, and the ability to

enhance our educational programs thought this relationship is immense”, stated Arthur Wiener. The Chihuly Experience will be the center focus of the museum which will have community programming and events dedicated to exposing visitors of all ages to the fired arts.

A Joint City and CRA Workshop for the WMODA Mixed Use Cultural Arts Project is scheduled for Monday, October 7, at the Lake Worth Beach Casino Complex at 6:00 p.m.

For more information on this exciting development and proposed project please contact the WMODA Team at [WMODALOVESLWB@gmail.com](mailto:WMODALOVESLWB@gmail.com) or visit their website at [www.wmodaloveslwb.com](http://www.wmodaloveslwb.com). For more information related to the City of Lake Worth Beach at 561-586-1631 or visit [www.lakeworthbeachfl.gov](http://www.lakeworthbeachfl.gov). You may also visit [www.lakeworthbeachcra.org](http://www.lakeworthbeachcra.org).



# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Community Sustainability and  
City Attorney

**TITLE:**

Unsolicited Proposal from Sunshine Lake Worth Development, LLC (K Street Parking Garage) – First Publicly Noticed Meeting

**SUMMARY:**

Pursuant to section 255.065, Florida Statutes, Sunshine Lake Worth Development, LLC, submitted an unsolicited proposal to develop a parking garage on the City's property at K Street

**BACKGROUND AND JUSTIFICATION:**

As a companion item to the City's consideration of the Development Agreement with the Lake Worth Beach CRA (CRA) and Sunshine Lake Worth Development, LLC (SLWD) for the Wiener Museum of Decorative Arts (WMODA) Project, SLWD submitted an unsolicited proposal to construct a parking garage on K Street property. The property at issue is owned by the City (with a small parcel owned by the CRA) and is generally located at 13 South K Street, 19 South K Street, and 25 South K Street (with PCNs: 38-43-44-21-15-019-0220, 38-43-44-21-15-019-0230, and 38-43-44-21-15-019-0290).

SLWD's unsolicited proposal is attached to this item. SLWD has stated in the submission of its proposal that the WMODA Project will provide the City and the CRA the opportunity to advance the long-standing goal of constructing a centrally located parking garage in the downtown. Further since the potential development of the WMODA Project will remove sixty-five centrally located parking spaces which are heavily utilized for downtown parking, the proposed public / private solution to develop a multi-story, structured parking garage in accordance with the City's 2024 *WGI Lake Worth Beach Parking Study Update* will not only replace the removed parking spaces but will add further public parking for the downtown and in support of the WMODA museum component.

Pursuant to section 255.065, Florida Statutes (2024), the City may proceed with an unsolicited proposal without engaging in a public bidding process if it holds two (2) publicly noticed meetings. At the **first publicly noticed meeting**, the unsolicited proposal must be presented and affected public entities and the public must be allowed to provide comment. At the **second publicly noticed meeting**, the City Commission will be required to determine whether the proposal is in the public's interest based on the following factors:

1. The benefits to the public.
2. The financial structure of and the economic efficiencies achieved by the proposal.
3. The qualifications and experience of the private entity that submitted the proposal and such entity's ability to perform the project.
4. The project's compatibility with regional infrastructure plans.
5. Public comments submitted at the meeting. The responsible public entity must provide a statement that explains why the proposal should proceed and addresses such comments.

Accordingly, for this first meeting, the City Commission should allow for public comment on the unsolicited proposal and discuss whether the City Commission desires to move to the second meeting on consideration of the proposal and whether it is in the public's interest.

**MOTION:**

Move to approve/disapprove moving to second publicly noticed meeting to consider unsolicited proposal of Sunshine Lake Worth Development, LLC's unsolicited proposal for construction of the K Street Parking Garage.

**ATTACHMENT(S):**

Fiscal Impact Analysis (See Parking Garage Proposal Page 5-8)  
WMODA Unsolicited K Street Parking Garage Proposal

*City of Lake Worth Beach*

# **K STREET PARKING GARAGE**

## **UNSOLICITED PROPOSAL**

| Presented By

**SUNSHINE LAKE WORTH  
DEVELOPMENT LLC**



September 30, 2024

**SUNSHINE LAKE WORTH DEVELOPMENT, LLC  
UNSOLICITED PROPOSAL FOR THE  
CONSTRUCTION OF THE K STREET PARKING GARAGE**

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**SUNSHINE LAKE WORTH DEVELOPMENT, LLC  
UNSOLICITED PROPOSAL FOR THE  
CONSTRUCTION OF THE K STREET PARKING GARAGE**

**BACKGROUND:**

The Wiener Museum of Decorative Arts (WMODA) currently located in Hollywood, Florida has been collaborating since the beginning of 2024 with the Lake Worth Beach Community Redevelopment Agency (CRA) and the City of Lake Worth Beach to evaluate the feasibility of developing a permanent home for the museum’s 15,000 plus piece art collection as well as associated residential development to support the museum’s operations and sustainability. The proposed project would be developed on properties owned and/or controlled by the CRA generally located at 501-509 Lake Avenue for the museum and other parcels to the south along South M and L Streets for the residential component.

As currently proposed, the WMODA Mixed Uses Cultural Arts Campus in partnership with the City, CRA, and Cultural Council, sets forth a plan for the future development of other parcels throughout the Downtown that are owned by each of these respective agencies. This multi-parcel planned development plan includes future planning for utilities improvements, streetscape improvements, landscaping, the relocation of four contributing historic structures to parcels identified by the City, and additional downtown parking.

The WMODA Project will provide the City and the CRA the opportunity to advance long standing goals of preservation of the four (4) contributing structures currently located on the L and M parcels and the construction of a centrally located parking garage in the downtown. In 2018, the City Commission hired WGI Engineering to complete the *City of Lake Worth Beach Parking Study*. As a part of this overall parking evaluation, the City analyzed the feasibility of a potential parking structure on S. K Street between Lake Avenue and 1st Avenue S on the parcels associated with street addresses 13, 19, and 25 S K Street as shown in the RED box in the included enclosed image. In 2020, the City developed several design scenarios for a structured parking garage on the K Street sites but at the time postponed implementation of the parking program and appropriations for the construction of the facility due to COVID.



The potential development of the WMODA Project will remove sixty-five centrally located parking spaces which are heavily utilized from the downtown area. As such, in partnership with the City and CRA, the Sunshine Lake Worth Development is proposing a public private

partnership solution to develop a multi-story, structured parking garage, at 13, 19, and 25 South K Street in accordance with the City's 2024 *WGI Lake Worth Beach Parking Study Update*.

On June 18, 2024, the City Commission adopted Resolution 21-2024 which declared support for the creation of the WMODA fired arts, mixed use museum cultural arts campus and the construction of a structured parking garage on the municipal surface parking lot located at 19 South K Street, in partnership with the CRA and Sunshine Lake Worth Development. Resolution 21-2024 also went on to declare support for downtown parking for the WMODA mixed use cultural arts campus, existing businesses, visitors, and planned future development. In line with Sunshine Lake Worth Development's commitment to the redevelopment of the L and M Parcels in Downtown Lake Worth Beach, and in accordance with Florida Statutes 255.062, regarding unsolicited proposals for the development of a facility that serves a public purpose; the organization is formally submitting for Lake Worth Beach City Commission consideration the enclosed proposal for the construction of the K-Street Parking Garage.

**PROJECT PROPOSAL:**

*Developer Qualifications and Experience:*

United Management is a renowned family-owned business with over 80 years of expertise in multifamily real estate. Operated by Arthur Wiener and Family, United's extensive portfolio spans key locations across New York City and Washington D.C. In addition to managing over 50 properties, United has successfully developed a wide range of ground-up real estate development projects. With a commitment to family values, resident satisfaction, and a passion for the arts, United is now excited to bring both their love of art and culture and real estate development expertise to Lake Worth Beach, Florida.

To ensure the success of this project, United has engaged HE2PD, Inc., a full-service Owner's Representative firm specializing in construction and real estate. With over 20 years of collaboration, United and HE2PD have built a proven track record of excellence. HE2PD, Inc., founded by Jeffrey S. Wengroff and now joined by his son Bryan Wengroff and Nicholas Tangredi, brings over 40 years of experience in the development and construction of a diverse range of buildings. Recognized for handling specialized and complex projects, HE2PD excels in both design-build and traditional ground-up construction.

*Description of the Project*

The construction of a four to five level, 265 - 291 space parking structure, using precast concrete, located on S. K Street between Lake Avenue and 1st Avenue S on the parcels associated with street addresses 13, 19, and 25 S K Street. This proposal is based solely on

the K Street Parking Garage specifications as detailed in the *2024 City of Lake Worth Beach WGI Parking Study Update*.

The parking garage shall have the following elements:

Design Limitations Specified:

- Building Height (Historic District): 45-feet with a 10-foot allowance for an elevator lobby.
- Setbacks: 10-feet from north and west alleyway, 7-feet from K St. no setback for the adjoining parcel to the south.
- Parking Stall Size: 9-feet wide by 18-feet in length (90-degree stall)
- Compact Parking Spaces: 8-feet wide by 16-feet in length (90-degree stall), allocation of up to 25% of parking facility capacity allowed
- Accessible/ADA Spaces: 12-feet wide by 18-feet in length (90-degree stall),
- Drive Aisle Width: 20-feet for two-way drive aisle

Structured Parking Concept Key Points:

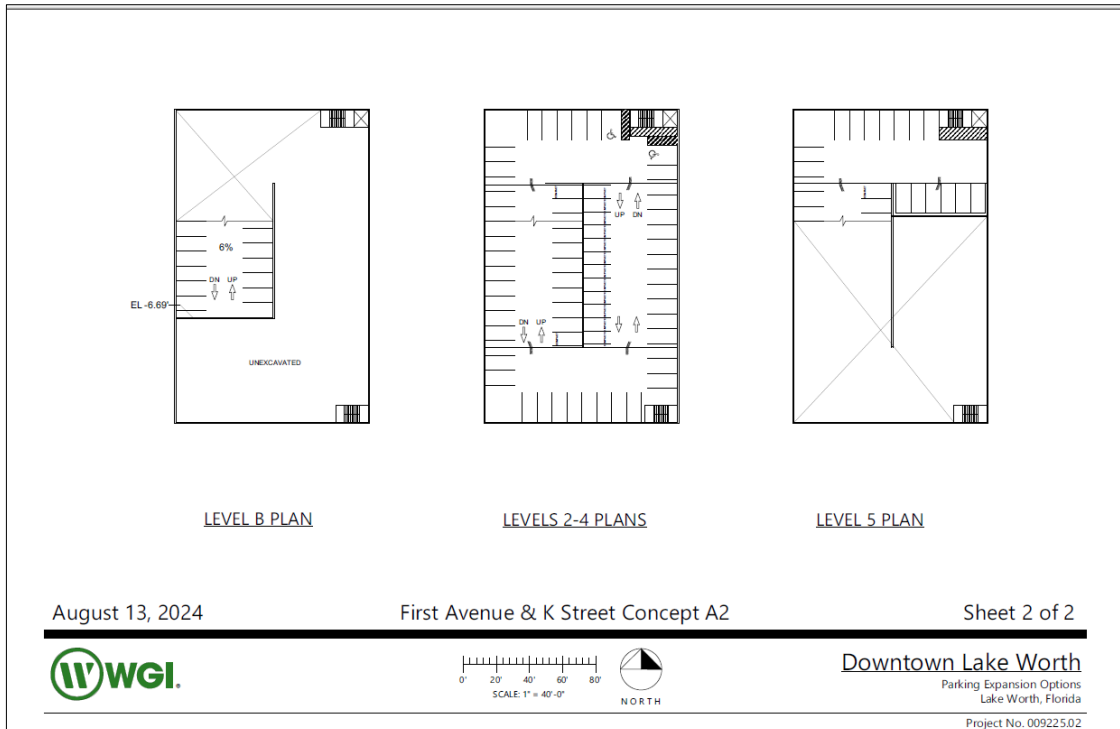
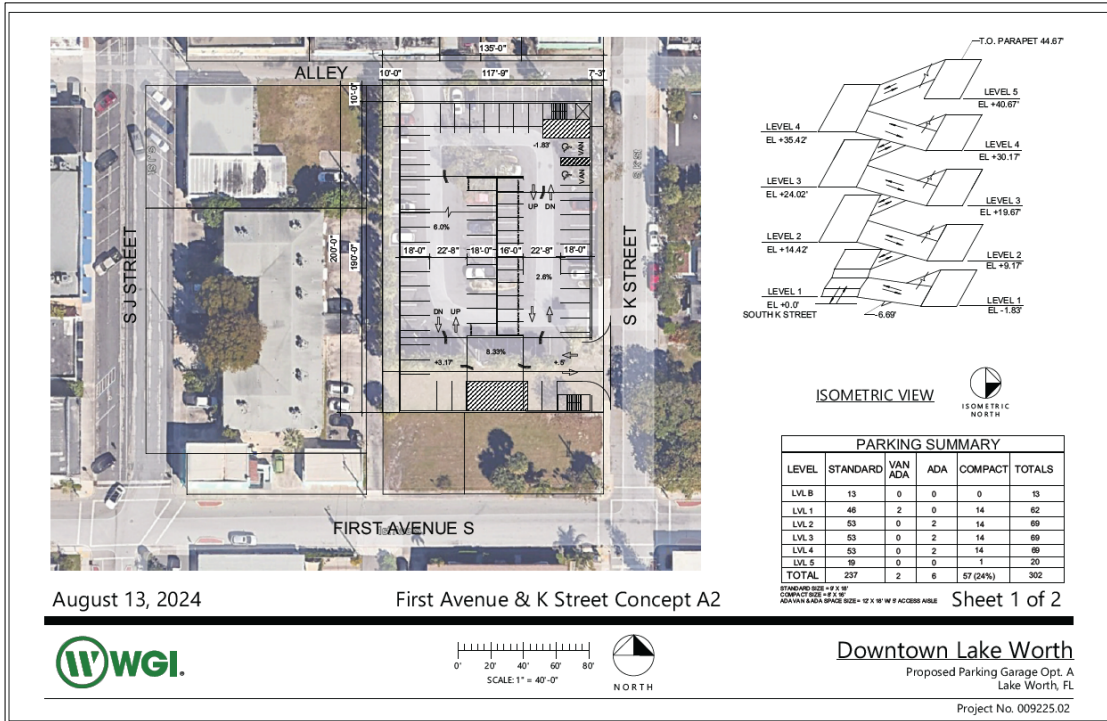
- 5-level parking structure on S K St measures 117'-9" from east to west, and 190' from North to South, with approximately 22,373 square feet per level, providing a total of 291 parking spaces.
- Vehicular access is provided via the existing curb cut on S K Street.
- Includes eight (8) Accessible/ADA spaces, 57 compact spaces (24% of capacity), and 237 standard stalls
- Pedestrian access to K Street via two (2) separate stairwells and a single (1) elevator, with one (1) stairwell in the
- SE corner and a combined stairwell and elevator tower in the NE corner of the garage adjacent to S K Street.

Options yet to be specified by City:

- Evaluate and specify desired structure height
- Evaluate and specify exterior design
- Evaluate and specify the desire for sub-terranean parking at additional cost

# CONCEPTUAL DESIGN

The conceptual design for the K Street Parking Structure is based on the City's 2024 WGI Parking Study Update, and the conceptual data provided on August 13, 2024, which is attached hereto as Exhibit A:



## K STREET PARKING GARAGE PUBLIC PRIVATE PARTNERSHIP PROPOSED TERMS

The benefits of the redevelopment of the L & M parcels are significant, however, the development of the site also means that the downtown will lose approximately 65 heavily utilized spaces that currently exist on the site. The WMODA project is designed to honor the community’s sensitivity to height and mass in the historic downtown, which was the main driver behind a significant investment in underground parking to support the residential portion of the project. A solution for the additional spaces to support the museum parking remained at issue.

The Developer could opt to pay the City’s “payment in lieu of parking fee” to address the zoning requirement at a time when the city’s parking study states that the downtown during peak times is at 100% capacity. However, in partnership with the City and the CRA, and in accordance with previously adopted plans to address parking in the downtown, the Developer is offering the following terms in an effort to leverage the WMODA Mixed Use Cultural Arts Campus Project to advance the City’s long-standing goal of constructing a structured parking garage in the Downtown Core.

- The City’s public parking Garage is estimated to cost \$8,500,000 according to the City procured 2024- WGI Parking Study Update.
- The Developer will design and construct the K Street Parking Garage in accordance with the City’s specifications.
- The City, CRA and the Developer shall provide and Initial Investment to construct the City’s K Street Garage as follows:

Developer:	\$1,000,000
City:	\$2,500,000
CRA: _____	\$1,500,000
Total Initial Investment	\$5,000,000

- The remaining \$3,500,000 will be provided as follows:
  - The Developer will provide a \$3.5 million capital improvement revenue note to the CRA for 5 years at a fixed interest rate of 4%, to be paid annually in equal principal and interest payments.
  - The CRA will hold the capital improvement revenue note for a maximum of 5 years and will provide \$2.5 million to pay down the debt service due to the developer.

- The City will pay the remaining debt service due to the developer and will own the asset free and clear after 5 years.
- The parking structure will include the additional parking needed to support the museum, which is estimated at 51 parking spaces.
- Parking spaces for the museum will not be reserved or designated.
- The Developer's parking requirement shall be deemed satisfied with this investment.

**THIS SECTION INTENTIONALLY LEFT BLANK**

**FINANCIAL STRUCTURE AND ECONOMIC EFFICIENCIES GAINED**

<b>K Street Garage Financing</b>	<b>City Financing</b>	<b>Developer Financing</b>
<b>Revenue earmarked for garage</b>	<b>City Debt Financing for Garage@ 6% over 20 years</b>	<b>Financed by CRA and City , Developer execute note for CRA -5 years @ 4%</b>
WMODA Parking Garage Contribution	\$ 1,000,000.00	\$ 1,000,000.00
CRA Parking Garage Contribution	\$ 1,500,000.00	\$ 1,500,000.00
City Parking Garage Contribution	\$ 2,500,000.00	\$ 2,500,000.00
Initial Investment for Garage	\$ 5,000,000.00	\$ 5,000,000.00
Less Estimated GMP	\$ (8,500,000.00)	\$ (8,500,000.00)
Debt amount	<b>\$ (3,500,000.00)</b>	<b>\$ (3,500,000.00)</b>
*Estimated annual debt service	\$ 309,315.00	\$ 762,036.00
<i>CRA pays per year FY 26,27, 28</i>	0	\$ 762,036.00
<i>City pays per year FY 26,27, 28</i>	\$ 309,315.00	\$ -
<i>City Pays FY 29</i>	\$ 309,315.00	\$ 762,036.00
<i>City pays FY 30</i>	\$ 309,315.00	\$ 825,538.00
<i>City pays FY 31-FY 46</i>	\$ 309,315.00	\$ -
<b>Total Cost</b>	<b>\$ 11,186,306.00</b>	<b>\$ 8,873,693.00</b>

<b>Comparison of Total Cost (capital and debt service)</b>	<b>City Financing Scenario</b>	<b>Developer Financing Scenario</b>
CRA	\$ 1,500,000.00	\$ 3,786,119.00
City	\$ 8,686,306.00	\$ 4,087,574.00
WMODA	\$ 1,000,000.00	\$ 1,000,000.00
<b>TOTAL</b>	<b>\$ 11,186,306.00</b>	<b>\$ 8,873,693.00</b>

<b>Comparison of Total Cost (capital and debt service)</b>	<b>City Financing Scenario</b>	<b>Developer Financing Scenario</b>
CRA	\$ 1,500,000.00	\$ 3,786,119.00
City	\$ 8,686,306.00	\$ 4,087,574.00
WMODA	\$ 1,000,000.00	\$ 1,000,000.00
<b>TOTAL</b>	<b>\$ 11,186,306.00</b>	<b>\$ 8,873,693.00</b>

<b>Comparison of Debt Service Expense</b>	<b>City Financing Scenario</b>	<b>Developer Financing Scenario</b>
CRA	\$ -	\$ 3,051,155.00
City	\$ 6,186,306.00	\$ 825,538.00
<b>TOTAL</b>	<b>\$ 6,186,306.00</b>	<b>\$ 3,876,693.00</b>
	<b>City/CRA Cost Savings</b>	<b>\$ 2,309,613.00</b>

### Amortization Schedule – Developer Financing Scenario

Year	Beginning Balance	Interest	Principal	Ending Balance
2026	\$ 3,500,000.00	\$ 128,468.30	\$ 633,569.85	\$ 2,866,430.15
2027	\$ 2,866,430.15	\$ 102,655.69	\$ 659,382.46	\$ 2,207,047.69
2028	\$ 2,207,047.69	\$ 75,791.43	\$ 686,246.72	\$ 1,520,800.98
2029	\$ 1,520,800.98	\$ 47,832.68	\$ 714,205.47	\$ 806,595.51
2030	\$ 869,887.71	\$ 18,945.82	\$ 806,595.50	\$ -

### Amortization Schedule – City Financing Scenario

	Beginning Balance	Interest	Principal	Ending Balance
1	\$3,500,000.00	\$215,872.34	\$93,442.96	\$3,406,557.04
2	\$3,406,557.04	\$210,108.98	\$99,206.32	\$3,307,350.73
3	\$3,307,350.73	\$203,990.16	\$105,325.14	\$3,202,025.58
4	\$3,202,025.58	\$197,493.93	\$111,821.37	\$3,090,204.21
5	\$3,090,204.21	\$190,597.03	\$118,718.27	\$2,971,485.95
6	\$2,971,485.95	\$183,274.75	\$126,040.55	\$2,845,445.40
7	\$2,845,445.40	\$175,500.85	\$133,814.45	\$2,711,630.94
8	\$2,711,630.94	\$167,247.46	\$142,067.84	\$2,569,563.10
9	\$2,569,563.10	\$158,485.03	\$150,830.27	\$2,418,732.83
10	\$2,418,732.83	\$149,182.15	\$160,133.15	\$2,258,599.68
11	\$2,258,599.68	\$139,305.49	\$170,009.81	\$2,088,589.87
12	\$2,088,589.87	\$128,819.65	\$180,495.65	\$1,908,094.22
13	\$1,908,094.22	\$117,687.08	\$191,628.22	\$1,716,466.00
14	\$1,716,466.00	\$105,867.87	\$203,447.43	\$1,513,018.56
15	\$1,513,018.56	\$93,319.67	\$215,995.63	\$1,297,022.94
16	\$1,297,022.94	\$79,997.54	\$229,317.76	\$1,067,705.17
17	\$1,067,705.17	\$65,853.72	\$243,461.58	\$824,243.59
18	\$824,243.59	\$50,837.54	\$258,477.76	\$565,765.83
19	\$565,765.83	\$34,895.20	\$274,420.10	\$291,345.73
20	\$291,345.73	\$17,969.57	\$291,345.73	-\$0.00



**PROPOSED PROJECT TIMELINE**

<b>Critical Path Draft Timeline</b>	<b>START DATE</b>	<b>END DATE</b>
Joint Workshop CRA and City Commission	10/07/2024	10/07/2024
CRA Approval of Development Agreement and PSA	10/08/2024	10/08/2024
City Commission Approval of the Development Agreement and the P3 Ordinance	10/15/2024	10/15/2024
City Commission Final Reading of the P3 Ordinance	10/29/2024	10/29/2024
City Commission Posts Advertisement of the P3 in State P3 Registry	11/1/2024	11/8/2024
<b>30 Days from Contract Execution</b> - City Provides formal resolution defining scope, location, and development program details for parking structure and location of houses	10/29/2024	11/28/2024
<b>90 Days from Contract Execution</b> Deadline for the City, CRA, and Developer to <b>Execute Construction Agreement for K Street lots, and Contributing Structure Relocation Agreement</b>	10/29/2024	1/27/2025
<b>90 Days from Construction /Relocation Agreement Execution</b> - Deadline for Developer to provide <b>design documents for the K street garage and the relocation of the contributing structures</b>	1/27/2025	4/27/2025
<b>120 Days from Construction/Relocation Agreement Execution</b> - Deadline for Developer to <b>provide Guaranteed Maximum Price (GMP) for construction of the Parking Structure and foundations for contributing structure</b>	1/27/2025	5/27/2025
30 Days from <b>Guaranteed Maximum Price (GMP) - Deadline for the City and the CRA to send to formally accept GMP for construction costs</b>	5/27/2025	6/26/2025
<b>Deadline for the City and the CRA to execute a Ground lease for the K street Parking Garage and Deadline for the CRA to issue a capital improvement revenue note</b> for the construction of the K Street Garage		7/1/2025
<b>60 Days from GMP - City and CRA Deadline to have all entitlement approvals for the garage and contributing structure relocation</b>	5/27/2025	7/26/2025
<b>90 Days from GMP - Deadline for the Developer to submit permit application for parking garage, and contributing structure relocation</b>	5/27/2025	8/25/2025
<b>120 Days from GMP - City and CRA Deadline to fund initial (1st) construction Draw</b>	5/27/2025	9/24/2025
<b>120 Days from GMP - Deadline for the Developer and the City to have permits issued for construction</b> of the parking structure and relocation	5/27/2025	9/24/2025

<b>60 Days</b> from Permit Issuance - <b>Deadline</b> for developer <b>to commence construction</b> on parking structure	9/24/2025	11/23/2025
<b>Second Construction Draw</b> due at <b>Start of the Precast Structure Erection</b>		
<b>Third Construction Draw</b> due at <b>Top out of the Structure</b>		
<b>Final (4th) Construction Draw</b> due at <b>Substantial Completion/Temporary Certificate of Occupancy</b>		
<b>12 months</b> from construction commencement: <b>Substantial Completion - Temporary Certificate of Occupancy</b>	11/23/2025	11/23/2026
<b>14 months</b> from construction Commencement: <b>Final Completion- Certificate of Occupancy</b>	11/23/2026	1/22/2027

**PROJECT COMPATIBILITY WITH CITY INFRASTRUCTURE PLANS**

Sunshine Lake Worth Development’s Proposal for the Construction of the K Street Garage is well aligned with the City’s long-term plans for the construction of a parking garage in Downtown Lake Worth Beach. The City has a long and well-documented need for additional parking in the Downtown area. Since 2017, the City has consistently identified the lack of parking downtown as a high priority in numerous plans and studies and encouraged the use of public private partnerships to support the cost of construction of a garage. These strategies are included in the City’s *2017 Arts and Cultural Master Plan*, the *2018 WGI Parking Study*, official actions associated with the acquisition of properties in the downtown by the City, and the CRA, *the Comprehensive Plan*, and the 2020 evaluation of the feasibility of a structured parking garage at the site of the current K Street municipal surface lot.

The following is a list of references that support the Projects’ compatibility with long standing City Infrastructure Plans:

**2020- City of Lake Worth Beach Comprehensive Plan:**

Future Land Use Element, Goal 1.2 states that the City “strives to foster the City of Lake Worth Beach as a livable community where live, work, play and learn become part of the daily life of residents and visitors;” and

- Policy 1.2.1.3 states that, “The City shall continue to be proactive in development of strategies that facilitate adequate parking in the DMU and Dixie Highway Corridor;” and

- Policy 1.2.1.4 states that, “Development and redevelopment opportunities in the Downtown area will be enhanced through modification or reduction of parking space requirements, in recognition of public parking opportunities in the downtown area.”

Future Land Use Element, Goal 1.6 states that the City shall, “support and coordinate with the City’s Community Redevelopment Area (CRA) infill and redevelopment initiatives and programs and to provide incentives for the continued redevelopment of the historic downtown commercial core of the City (downtown);” and

- Objective 1.6.3 states that “the City will continue to improve the quality of public infrastructure in Downtown Lake Worth Beach.”
  - Policy 1.6.3.3 states that “the City and CRA shall continue to study and make modifications to improve the traffic flow on downtown streets, to accommodate existing development and redevelopment.
- Objective 1.6.4 states that “the City will support redevelopment plans which recognize and respect the historic urban character of Downtown Lake Worth Beach and other historic districts and structures in the City and the surrounding neighborhoods;” and
  - Policy 1.6.4.6 states that “The City shall support a full range of services to enhance the attractiveness of living and working in the Downtown area.”

**2018 - City of Lake Worth Beach WGI Parking Study:**

**SECTION IV – FUTURE PARKING DEMAND -Downtown Core (page 14)**

*“As noted previously, **parking occupancy in the downtown core is over 100% at peak times. Occupancy levels this high create frustration for patrons of the parking system. To operate optimally and allow parkers to find open parking when coming to the downtown, parking occupancy levels should ideally not exceed 85% -90%. To achieve this goal, 100 additional parking spaces would need to be created or opened up in downtown. This does not include the number of vehicles spilling over into the neighborhoods north and south of downtown. Data suggests there is a need for at least 50 more spaces to accommodate those parkers. In total, it is estimated the downtown is deficient by approximately 150 parking spaces to accommodate current parking demand”***

“City staff estimates approximately 30% of the usable building space in the downtown core is currently vacant. Conservatively, if the **vacant buildings were utilized at 90%, this could add an additional need for over 100 parking spaces.** This does not include

development of the current parking lot into occupied space, or conversion of low intensity usage (residential or office) into high intensity usage (restaurant or bar).”

... *“While walking and biking are encouraged, Lake Worth has little public transit or alternative transportation options, making Lake Worth reliant on automobile traffic and a need for parking. **It is possible that the 100% occupancy levels being experienced are dampening economic growth as developers consider the impact the lack of parking could have on customer willingness to visit their locations.**”*

### **2017 - City of Lake Worth Beach Arts and Culture Master Plan:**

- Priority D: Improve Access to Art and Culture in the Downtown
  - Explore a **public/private partnership which leverages a City-built parking garage to encourage private-sector development** to meet city goals of bringing a hotel and/or housing downtown as a strategy.
  - **Assist with assemblages along or near the corridors so private development can help contribute to public parking needs.** Incentives currently exist in the Comprehensive Plan and the CRA has a Line of Credit to purchase property for redevelopment. Offering fast track zoning changes, demolition approvals or other incentives are already in the Code.

### **BENEFITS TO THE PUBLIC**

As a part of the overall plan for the redevelopment of the L & M sites, Sunshine Lake Worth Development will invest over \$60 million dollars to develop the WMODA Mixed Use Arts Campus. The economic sustainability of Downtown Lake Worth Beach is vital to the long-term success of this development. The lack of parking downtown to support existing businesses, residents, and future growth is needed to ensure the future viability of this area. Therefore, Sunshine Lake Worth Development understands that the K Street parking structure will be key to the future success of Downtown and will therefore play a role in the future success of the WMODA mixed use development. It is for these reasons WMODA is making the investment in the public private partnership to facilitate the construction of the K Street Garage.

The WMODA Development will have a significant impact on downtown Lake Worth Beach both socially and economically. The benefits to the public associated with the K Street garage can be best expressed by outlining: (1) the financial benefits of the unsolicited proposal for the construction of the garage; (2) the financial benefits of the WMODA development on the community.

### ***Benefits of the K Street Garage P3 Structure:***

Since 2018, the City has a well-documented need for at least an additional 250 parking spaces in the downtown core area. The proposed K Street Garage will:

- Replace the existing 126 spaces that will be taken offline by the construction of the garage at the current K Street surface lot and development of the L & M lots by the WMODA mixed use project.
- Create an additional 138-165 spaces in the downtown core, which is in line with the 2018 Parking Study recommendations.

The K Street Parking Garage P3 Structure creates an ability for the City to secure the financing necessary to construct the \$8.5 Million dollar parking, due to the following:

- Sunshine Lake Worth Development LLC will provide a \$1 million dollar contribution to the construction of the garage, which will create additional spaces that will be available for downtown businesses, visitors, and museum patrons. Museum spaces will not be dedicated or reserved, which will result in additional parking availability downtown as museum peak times are from 9 AM -5 PM and downtown peak times are weekends after 4 PM.
- Sunshine Lake Worth Development LLC will design and construct the parking garage on behalf of the City and the CRA. It is the developer's intention to group the WMODA Mixed Use Project and the K Street Garage construction together to take advantage of economies of scale, which we anticipate will result in reduced per unit costs because of more efficient use of resources, bulk purchasing, and optimized labor deployment. As a result of this, it is conservatively estimated that the City and the CRA may realize a ten (10%) percent savings on the cost of constructing the K Street Garage, valued at \$850,000. This amount per the WMODA development agreement may be used to complete the Art Alley Extension.
- Currently the City has a limited revenue history for the existing parking in and around the downtown either on street or structured. This lack of revenue history makes it difficult for the City to obtain the best rates on a revenue bond to support the construction of the K Street Garage.
- In light of this challenge, Sunshine Lake Worth Development LLC has offered to hold the note for the CRA for the remaining \$3.5 million dollars necessary to construct the project. The developer will offer this financing at a below market rate of 4% interest, with principal and interest payments to be made annually in equal installments over 5 years.

- When comparing this to standard City revenue note over 20 years, this offer of financing is estimated to save the City and the CRA \$2.3 million dollars in financing expense.
- Since CRA will hold the note on behalf of the City, the City’s future debt capacity will not be encumbered.
- The City will own this revenue producing asset free and clear after only 5 years.

The WMODA Mixed Use Development will bring additional ad valorem revenue to the downtown and the CRA to support the payment of future debt service for the K Street Garage.

- Because of the redevelopment opportunity that is created by the WMODA garage, the CRA will realize sufficient future ad valorem revenue to support their \$4 million investment in the investment in the K street Garage.

**Benefits of the WMODA Development:**

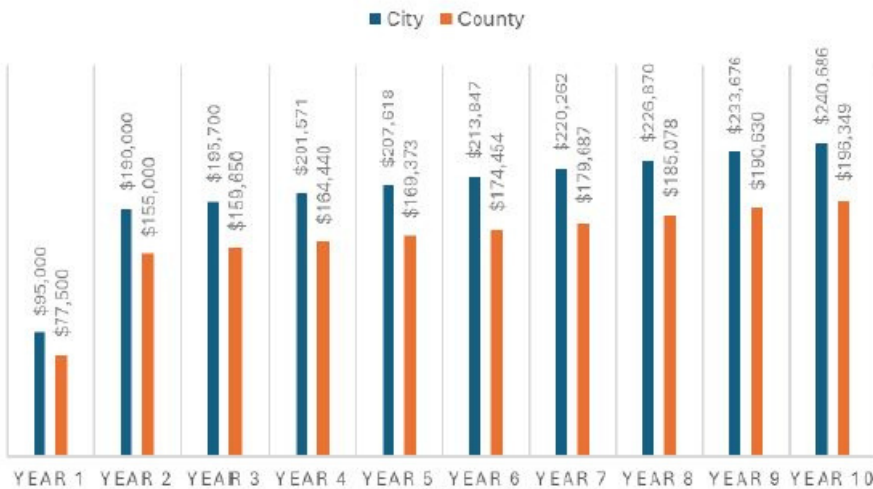
## Impact During Construction Period

The anticipated construction period of the proposed WMODA Mixed-Use Cultural Arts Campus project will generate the following:

<b>\$48 MILLION</b> of revenue	<b>\$53,000</b> annual wage for FTE's
<b>522 JOBS</b> created over 2-years	<b>\$27 MILLION</b> labor income added to economy
<b>\$56 MILLION</b> in total output (GDP)	



# Impact on Ad Valorem Revenue



## ACROSS 10 YEARS

**\$2,025,000**  
to City (Operating)

**\$1,650,000**  
to Palm Beach (Operating)

**\$2,400,000**  
to County School Board

# Impact Upon Stabilized Operations

- A large portion of the museum's **estimated 50,000 annual visitors** will come from beyond Lake Worth Beach, and their potential expenditures will have significant impacts on surrounding business and properties.
- It is anticipated that **\$12+ million in annual household income** will be generated in the area from the expenditure on goods and services in the City.
- The on-site employment, building operations, Museum Operation, guest spending, and spending of on-site residents will generate approximately **21 full-time jobs, \$2.2 million in annual salaries and wages, and \$5.1 million in annual business revenue** that will flow through the Downtown Business area.
- The addition of the K Street Garage will increase positive traffic flow to the Downtown and is anticipated to have a significant financial impact to the existing businesses and lead to the leasing of vacant storefronts.

# Impact on Surrounding Properties

Based upon an illustrative assessment of impacts on surrounding properties, the proposed development will potentially enhance property taxable values within a select geography by an estimated \$6 million per annum which translates into roughly **\$40,000 in additional ad valorem tax revenue annually.**



## PROPOSED COSTS AND PAYMENT SCHEDULES

Payment Milestones	Responsible Party	Amount
<b>120 Days from Guaranteed Maximum Price</b> - City , CRA, and Developer <b>Deadline to fund initial (1st) construction Draw</b>	City of Lake Worth Beach	\$2,500,000.00
	City of Lake Worth Beach - Community Redevelopment Agency	\$1,500,000.00
	Sunshine Lake Worth Development, LLC	\$1,000,000.00
<b>Second Construction Draw</b> due at Start of the Precast Structure Erection	City of Lake Worth Beach - Community Redevelopment Agency	\$1,575,000.00
<b>Third Construction Draw</b> due at Top out of the Structure	City of Lake Worth Beach - Community Redevelopment Agency	\$1,575,000.00
<b>Final (4th) Construction Draw</b> due upon Substantial Completion/Temporary Certificate of Occupancy	City of Lake Worth Beach - Community Redevelopment Agency	\$350,000.00
<b>Total Proposed Cost</b>		<b>\$8,500,000.00</b>



## DEVELOPMENT SAFEGUARDS AND DEVELOPER'S ABILITY TO ADD CAPACITY

Sunshine Lake Worth Development LLC is proposing the utilization of a Construction Manager at Risk (CMAR) delivery method. In this approach, a construction manager (CM) will be hired early in the design process, to collaborate with the City, the CRA, and the Developer. The CM will provide preconstruction services and oversee the project to completion. This early collaboration ensures that all parties involved are participating in the design and construction decisions, monitoring costs, and evaluating the need for scope changes prior to the start of construction. Under this delivery method, the CM assumes the risk for delivering the project within a guaranteed maximum price (GMP), aligning their interests with the City's goal of staying on budget and on schedule.

Key Benefits of CMAR:

**Early Collaboration:** This allows for better collaboration between the developer, City, CRA, and contractor, resulting in more accurate budgeting and scheduling. The CM can provide input on construction methods, materials, and cost-saving opportunities, reducing the likelihood of costly design errors or changes later in the project.

**Cost Control and Budget Certainty:** With CMAR, the CM agrees to a guaranteed maximum price (GMP) before construction begins. This ensures cost predictability and reduces the risk of budget overruns, as the CM is responsible for managing the project within the agreed-upon budget. Any costs that exceed the GMP must be absorbed by the CM, protecting the City from financial exposure.

**Reduced Risk for the City:** The CMAR method shifts significant risk from the City to the CM. Because the CM is responsible for meeting both the project's schedule and budget under the GMP, the City benefits from reduced financial and performance risks. The CM is incentivized through an agreement to share in the cost savings identified.

**Transparency and Accountability:** CMAR offers a high degree of cost transparency. The CM is required to openly share cost estimates, subcontractor bids, and ongoing expenses with the city. This collaborative, open-book process fosters trust and accountability, ensuring that the city has full visibility into how taxpayer dollars are being spent.

**Flexibility in Managing Changes:** Unlike traditional design-bid-build models, CMAR provides flexibility in managing scope changes and unforeseen conditions. Because the CM is involved throughout the project, they can quickly assess and address issues like material shortages or design modifications without disrupting the project timeline or significantly increasing costs.

## **METHODS FOR THE SECURITY OF PROPERTY INTERESTS**

While the comprehensive agreement for the construction of the K Street Garage is a separate legal instrument from the Development Agreement for the WMODA Mixed Use Development, Sunshine Lake Worth Development LLC has tied their performance for the construction of the K Street Garage to the overarching redevelopment timeline for the construction of the WMODA development in an effort to limit the impact of loss of parking on the community. More specifically, the Developer must complete the K Street Parking Garage prior to delivering the components of the WMODA Mixed use Development or face default on its agreement with the City and the CRA.

The City, CRA, and Sunshine Real Estate Development LLC will enter into a construction agreement for the K Street Parking Garage. This agreement will require that the City and the CRA will engage in a ground lease for a period no less than five years to facilitate the construction of the garage while the CRA is paying the debt service to Sunshine Real Estate Development LLC for the garage. During that time the City will retain parking revenues, and operate and maintain the parking garage. At the end of the lease the asset will return to the City without encumbrance and free of debt for the construction of the garage.

## **SUNSHINE LAKE WORTH DEVELOPMENT CONTACT INFORMATION:**

Sunshine Lake Worth Development, LLC

Attn: David Kastner, Esq.

166 Montague Street

Brooklyn, NY 11201

[david@unitedmgmt.com](mailto:david@unitedmgmt.com)

With copies to:

R. Miller Consulting Group

ATTN: Renee Miller

[reneem@rmcglc.com](mailto:reneem@rmcglc.com)

Goren, Cherof, Doody and Ezrol, PA

3099 East Commercial Boulevard, Suite 200

Fort Lauderdale, FL 33308

Attn: Donald J. Doody, Esq.

Email: [ddoody@gorencherof.com](mailto:ddoody@gorencherof.com)

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** City Manager

**TITLE:**

Agreements with Akerman, LLP and Capital City Consulting, LLC for Lobbying Services

**SUMMARY:**

Agreements with Akerman, LLP and Capital City Consulting, LLC authorizes the Consultants to provide lobbying services for the City of Lake Worth Beach

**BACKGROUND AND JUSTIFICATION:**

The City requested proposals from qualified and experienced firms to provide lobbying and intergovernmental consultant services in accordance with the highest legal, ethical, and professional standards. The services include a full range of professional lobbying services and advocacy before the Florida Legislature, the Governor, the Cabinet, and executive departments, agencies, offices, commissions, and other governmental units of the State of Florida with respect to all matters contained within the City's State legislative agenda, assigned executive branch projects, and other issues or projects of the City.

The City received a total of six (6) responses. The Evaluation Committee was comprised of the City Commissioners which heard presentations from all six (6) respondents and evaluated their proposals in accordance with the evaluation criteria set forth in solicitation documents.

Proposals submitted by Akerman, LLP and Capital City Consulting, LLC were the highest scoring responsive and responsible respondents and are being recommended for an award. The City staff negotiated with both Respondents and reduced the originally proposed annual costs by \$18,000 per year. It is the intention of the City to award the agreements for an initial period of three (3) years with each Respondent. These agreements may be renewed for two (2) additional renewal periods of one (1) year each if mutually agreed upon by the City and Respondents.

**MOTION:**

Move to approve/disapprove the Agreements for lobbying services with Akerman, LLP for the cost of not to exceed \$32,000 annually and Capital City Consulting for the cost of not to exceed \$36,000 annually.

**ATTACHMENT(S):**

Fiscal Impact Analysis  
Agreement with Akerman, LLP  
Agreement with Capital City Consulting, LLC  
Evaluation Results.

**FISCAL IMPACT ANALYSIS**

Five Year Summary of Fiscal Impact:

<b>Fiscal Years</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>	<b>2028</b>	<b>2029</b>
<b>Inflows/Revenues</b>					
Appropriated (Budgeted)	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
<b>Outflows/Expenditures</b>					
Appropriated (Budgeted)	\$68,000.00	\$68,000.00	\$68,000.00	\$68,000.00	\$68,000.00
Operating	0	0	0	0	0
Capital	0	0	0	0	0
<b>Net Fiscal Impact</b>					
<i>(If not budgeted)</i>	0	0	0	0	0
<b>No. of Addn'l Full-Time</b>					
Employee Positions	0	0	0	0	0

<b>Contract Award - Existing Appropriation (Budgeted)</b>	
	<b>Expenditure</b>
Department	Legislative
Division	City Manager
GL Description	Contractual Services
GL Account Number	001-1020-512.34-50
Project Number	N/A
Requested Funds	\$68,000.00
Remaining Balance	\$147,000.00
Source of Revenue (i.e. Paygo, Current Revenue, Bond Money, Grants, etc.)	Paygo/ Current Revenue

**PROFESSIONAL SERVICES AGREEMENT**  
**(Lobbying Services)**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **AKERMAN, LLP**, a partnership, with principal address at 98 S.E. 7th Street, Suite 1100 Three Brickel City Centre, Miami, FL 33131, authorized to do business in the State of Florida (“Consultant”).

**RECITALS**

**WHEREAS**, the City issued a Request for Proposal (No.24-209) for the Lobbying Services (“RFP”); and

**WHEREAS**, Consultant has provided the City with a written proposal in response to the RFP to provide the services as described and set out in the RFP; and

**WHEREAS**, the City desires to accept Consultant’s proposal (incorporated herein by the reference) in order for Consultant to render the services to the City as provided herein; and

**WHEREAS**, Consultant further warrants that it is experienced and capable of performing the services hereunder in a professional and competent manner; and

**WHEREAS**, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by Consultant to the City.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and Consultant agree as follows:

**SECTION 1: INCORPORATION OF RECITALS.** The foregoing Recitals are incorporated into this Agreement as true and correct statements.

**SECTION 2: CONSULTANT’S SERVICES.** The Consultant shall provide lobbying and intergovernmental consultant services, including but not limited to, representing the City’s interests before the Florida Legislature and the Executive Branch of the State government as more specifically described in the RFP and Consultant’s proposal, which are incorporated herein by reference, and Scope of Services attached hereto as an Exhibit “A” and incorporated herein by reference. The Consultant warrants that the services provided under this Agreement will be performed to that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided.

**SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP.** No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of Consultant’s, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

**SECTION 4: TERM, TIME AND TERMINATION.**

a. Term. The term of this Agreement shall commence upon the approval of this Agreement and shall be for the initial period of three (3) consecutive years with possibility of extension for two (2) more one (1) year periods upon the mutual agreement of both parties and dependent on the annual appropriation of funds by the CITY's City Commission. The renewal terms may be approved by the City Manager. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

b. Time for Completion. Time is of the essence in the performance of this Agreement. Consultant shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Scope of Services and as set forth in RFP or as otherwise agreed between the parties.

c. Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Consultant or City may suspend its performance under this Agreement as a result of a force majeure event without being in default of this Agreement, but upon the removal of such force majeure event, the Consultant or City shall resume its performance as soon as is reasonably possible. Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the services and, if the Consultant's failure to perform was without its or its sub-consultant's fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

d. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

e. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement for breach shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) business days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) business days, then this Agreement shall terminate at the end of the three (3) business day period without further notice or demand, unless otherwise agreed to in writing by the parties.

f. Early Termination. If this Agreement is terminated before the completion of all services by either party, the Consultant shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

g. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. In the event of termination and except as otherwise set forth in this Agreement, the Consultant will be compensated for services performed in accordance with this Agreement through the date of termination.

h. Termination for Non-appropriation. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation existing under the laws of the State of

Florida, and as such, this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City. Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify Consultant of such occurrence and either the City or Consultant may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay Consultant for all services performed under this Agreement through the date of termination.

#### **SECTION 5: COMPENSATION.**

a. **Payments.** The Consultant expressly acknowledges and agrees that the total not to exceed cost to complete the Scope of Services in accordance with the RFP and this Agreement is **Thirty Thousand Dollars (\$30,000.00)** annually, and no additional costs shall be authorized without prior written approval from the City. The City shall not reimburse Consultant for any additional costs incurred as a direct or indirect result of Consultant providing services to the City under this Agreement and not set forth in **Exhibit "A"**. The Consultant must receive prior written approval from the City before providing any additional services to be charged under the hourly rate or otherwise.

b. **Invoices.** Consultant shall render invoices to the City for services that have been rendered in conformity with this Agreement, the RFP, and the price schedule set forth in **Exhibit "B"**. The monthly invoices shall set forth the Total Annual Cost (at monthly increments). Invoices will be reviewed for approval and if an invoice is not approved, the City will notify Consultant within ten (10) days of deficiencies in the invoice. Once the deficiencies are corrected and a new or amended invoice submitted, the City shall make payment within twenty (20) days. Invoices will normally be paid within thirty (30) days following the City's receipt of Consultant's invoice. All invoices shall be paid in accordance with the Local Government Prompt Payment Act, Section 218.70, et. seq.

c. **No contingency fees.** Both parties agree that the payment of compensation under this Agreement is not contingent upon the outcome or success of the services provided. In accordance with Section 11.047, Florida Statutes, and Section 112.3217, Florida Statutes, as amended from time to time, both parties agree that neither shall pay or accept any contingency fee for services provided under this Agreement.

**SECTION 6: INDEMNIFICATION; LIMITATION OF LIABILITY.** Consultant, its officers, employees and agents shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness, willful misconduct, actions or inactions of Consultant, its officers, directors, employees, representatives, agents and any other person employed or utilized by Consultant in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver and limitations provided in section 768.28, Florida Statutes, as amended from time to time. The provisions and limitations set forth in section 768.28, Florida Statutes, are deemed to apply to this Agreement to claims or actions arising in tort and claims or actions arising in contract.

IN NO EVENT WILL THE CITY BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES WHETHER OR NOT CAUSED BY THE CITY'S NEGLIGENCE EVEN IF THE CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**SECTION 7: COMPLIANCE AND DISQUALIFICATION; INTEREST OF CONSULTANT.** Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws,

regulations and administrative instructions that relate to the parties' performance of this Agreement. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, in any services to which this Agreement pertains or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed.

**SECTION 8: PERSONNEL.** The services to be performed hereunder shall be performed by the Consultant's own employees/staff, unless otherwise authorized in writing by the City. Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

**SECTION 9: SUB-CONSULTANTS.** The City reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, Consultant shall indemnify and hold harmless the City for any claim in excess of the sub-consultant's insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.

**SECTION 10: FEDERAL AND STATE TAX.** The City is exempt from payment of Florida State Sales and Use Tax. Consultant is not authorized to use the City's Tax Exemption Number.

**SECTION 11: INSURANCE.** Prior to commencing any services, Consultant shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than "excellent" by A.M. Best or as mutually agreed upon by the City and Consultant. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u>Type of Coverage</u>	<u>Amount of Coverage</u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1, 000,000 per occurrence \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker's Compensation	\$ statutory limits

The commercial general liability and automobile liability policies will name the "City of Lake Worth Beach, its officials, employees and representatives" as an additional insured; all policies shall apply on a primary, non-contributing basis; and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that Consultant has obtained insurance of the type, amount, and classification as



required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

**SECTION 12: SUCCESSORS AND ASSIGNS.** The City and Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

**SECTION 13: LAW, VENUE, REMEDIES AND ENFORCEMENT COSTS.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. Except as otherwise provided in the indemnification provision herein, each party shall be responsible for its own attorney's fees and costs in any dispute arising out of or related to this Agreement.

**SECTION 14: WAIVER OF JURY TRIAL.** TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

**SECTION 15: ACCESS AND AUDITS.** Consultant shall maintain adequate records to justify all payments made by the City under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Consultant's place of business. In no circumstances will Consultant be required to disclose any confidential or proprietary information regarding its products and service costs.

**SECTION 16: NONDISCRIMINATION.** Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**SECTION 17: AUTHORITY TO PRACTICE.** Consultant hereby represents and warrants that it has and will continue to maintain all licenses, registrations, and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses, registrations, and approvals shall be submitted to the City upon request.

**SECTION 18: SEVERABILITY.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**SECTION 19: PUBLIC ENTITY CRIMES.** Consultant acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months

following the date of being placed on the convicted vendor list. Consultant certifies that it and its affiliates have not been placed on the convicted vendor list within the 36 months immediately preceding this Agreement. The Consultant will advise the City immediately if it becomes aware of any violation of this statute.

**SECTION 20: NOTICE.** All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the City shall be sent to:

City of Lake Worth Beach  
Attn: City Manager/Financial Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

and if sent to Consultant, shall be sent to:

Akerman, LLP  
Attn: Richard Pinsky  
777 S. Flagler Dr. Ste. 1100, West Tower  
West Palm Beach, FL 33411

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

**SECTION 21: ENTIRETY OF AGREEMENT.** The City and Consultant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**SECTION 22: WAIVER.** Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

**SECTION 23: PREPARATION AND NON-EXCLUSIVE.** This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

**SECTION 24: MATERIALITY.** All provisions of the Agreement shall be deemed material. In the event Consultant fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to Consultant to terminate for cause.

**SECTION 25: LEGAL EFFECT.** This Agreement shall not become binding and effective until approved by the City. The Effective Date is the date this Agreement is executed by the City.

**SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS.** Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

**SECTION 27: SURVIVABILITY.** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

**SECTION 28: COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be signed digitally and each digitally signed counterpart shall be considered as an original of the signing party.

**SECTION 29: PALM BEACH COUNTY IG.** In accordance with Palm Beach County ordinance number 2011-009, Consultant acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Consultant has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

**SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS.** This Agreement consists of this Agreement, the RFP (which is incorporated herein by reference as if set forth in full), **Exhibit “A”** (Scope of Services), and **Exhibit “B”** (Price Proposal). The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement and the remaining aforementioned documents, the terms and conditions of this Agreement shall prevail. The RFP shall take precedence over the Consultant’s Price Proposal in Exhibit “B”. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

**SECTION 31: OWNERSHIP OF DELIVERABLES.** The deliverables, work product, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the City in the RFP or in **Exhibit “A”** (or otherwise) shall become the property of the City. Consultant may keep copies or samples thereof and shall have the right to use the same for its own purposes. The City accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents.

**SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY.** By signing this Agreement, on behalf of Consultant, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of Consultant for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

**SECTION 33: PUBLIC RECORDS.** Consultant shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Consultant does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant

transfers all public records to the City upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement, Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

**SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION.** Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

**SECTION 35: EXPORT ADMINISTRATION.** Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

**SECTION 36: SCRUTINIZED COMPANIES.**

(a) Consultant certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Consultant may immediately terminate this Agreement at its sole option if the Consultant or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the Consultant certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the Consultant, or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

- (d) The Consultant agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.
- (e) The Consultant agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Consultant shall immediately notify the CITY of the same.
- (f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**SECTION 37: E-VERIFY.** Pursuant to Section 448.095(5), Florida Statutes, the Consultant shall:

- (a) Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees;
- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;
- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- (f) Be aware that if the City terminates this Agreement under Section 448.095(5)(c), Florida Statutes, the Consultant may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

**SECTION 38: COMPLIANCE WITH SECTION 787.06.** By signing this Agreement before a notary public and taking an oath under the penalty of perjury, the Consultant attests and warrants that Consultant does not use coercion for labor or services as defined in section 787.06, Florida Statutes, as amended from time to time.

**REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement (Lobbying Services) as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

By: \_\_\_\_\_  
Melissa Anne Coyne, MMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONSULTANT: Akerman, LLP**

By: [Signature]

[Corporate Seal]

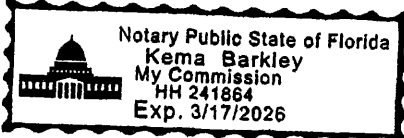
Print Name: Richard Pinsky

Title: Policy Group Manager

STATE OF Florida  
COUNTY OF palm beach

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 26 day of September, 2024, by Kema Barkley, as the notary [title] of Akerman, LLP a partnership authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, ~~are true and correct~~, and that he or she is duly authorized to execute the foregoing instrument and bind Akerman, LLP, to the same.

[Signature]  
Notary Public Signature

Notary Seal: 

## EXHIBIT "A"

### Scope of Services

The Consultant will, in accordance with the highest legal, ethical, and professional standards, provide, at the discretion of the City Manager, lobbying services to the City of Lake Worth Beach. The Consultant will provide a full range of professional lobbying services and advocacy before the Florida Legislature, the Governor, the Cabinet, and executive departments, agencies, offices, commissions, and other governmental units of the State of Florida with respect to all matters contained within the City's State legislative agenda, assigned executive branch projects, and other issues or projects of the City as assigned by the City Manager and/or designee.

Areas of responsibility to achieve such representation include, but are not limited to, the following:

1. Generally, identify, review, and analyze any and all relevant state legislative bills, resolutions, ballot issues, journals, votes, fiscal notes, and all relevant discourse pertaining to the legislative sessions of the Legislature of the State of Florida in a timely manner to assist the City in determining its policy positions. This work effort includes detecting introduction of pertinent legislation and regulations that may affect the City. Help develop an annual legislative agenda that clearly and concisely communicates the City's:
  - a. Objectives for funding allocations, grants, and local projects;
  - b. Position on legislation that preempts home rule;
  - c. Position on specific issues of local interest that are under debate in committees;
2. Consult with the City on specific strategies to effectively:
  - a. Promote the City's agenda to members of the Legislature, the Governor and Cabinet members, executive departments, agencies, offices, commissions, and other governmental units of the State of Florida;
  - b. Maximize the City's use of State programs and allocations.
3. Implement these strategies by:
  - a. Attending legislative committee meetings, briefings, and hearings during Session and interim committee weeks;
  - b. Regularly briefing City staff and Commission members and identifying opportunities for the City to appear before committees, participate in hearings, and submit comments;
  - c. Arranging meetings if needed in Tallahassee among City staff and Commission members and legislative committee members, and State agency staff.
  - d. Regularly communicating with key legislative committee chairs, members, and staff to inform them of the City's interests and learn about potential legislative developments before they occur.
  - e. Submitting weekly reports to City Staff and monthly in person presentations to the City Commission
4. Monitor, review and comment on the:
  - a. Progress of pertinent legislation that has been introduced.
  - b. Progress of City bills, amendments, applications, and proposals.
  - c. Filing of new bills with the potential to affect issues important to the City and updating the City's legislative agenda, its objectives, and communication strategies, if needed;
  - d. Proposed changes to funding formulas and allocations and agency proposals, administrative rules and regulations, if any.
  - e. Status of any pertinent rollover bills and any key studies being conducted by executive officials, legislative officials, or other state employees concerning any proposed action that may impact the City.

- f. Progress of the state budget to determine the potential and final fiscal impacts of the state budget on the City.
  - g. Gubernatorial vetoes and special sessions of the Florida Legislature to determine their impact on the City.
5. Provide advice and recommendations and take the lead on the development of support materials including but not limited to drafting all letters, briefing sheets, talking points, written summaries and materials necessary to develop and implement timely and efficient processes to forecast, screen, review, analyze and respond to legislative matters, and other written communication materials used to promote the City's agenda.
6. Be readily available during Regular, Extended, or Special Sessions to monitor and interpret, obtain documentation and research materials, and prepare responses.
7. Secure sponsorship of bills and/or amendments needed to further the City's legislative agenda.
8. Prepare and submit written reports during Session and interim committee weeks regarding progress on the City's agenda and objectives. These will include:
  - a. Generally, the status, prospects, movement, opposition, support, etc., of pertinent legislation or proposed regulations.
  - b. Weekly reports on activities directly related to the agenda's specific funding, home rule, and issues objectives. NOTE: This will focus on the activities of the consultant that specifically relate to the City's agenda and objectives, not on the routine news of what legislative committees did;
  - c. These reports will be distributed to the City prior to a weekly (or as otherwise requested by the City Manager or designee) phone conference with key staff to discuss progress toward the agenda items and emerging issues;
  - d. An end-of-session report that summarizes the City's success in accomplishing its agenda objectives. This should include project/issue analysis of each agenda item and its objectives, with a quantifiable assessment of the benefit/loss to the City for specific allocations, grants, and costs of operation because of new unfunded mandates.
9. Upon request of the City Manager or designee, coordinate and participate in scheduled conference calls or meetings with officials from the City Manager's Office, Mayor and Commission, or the City Attorney to provide updates on contacts and advocacy efforts made on behalf of the City. The Consultant will be available for such consultation on a regular basis as requested, and in accordance with the ebb and flow of legislative work over the course of the legislative sessions.
10. Provide monthly invoice with reasonably detailed time and appointment report.
11. Attend City Commission meetings once per month and make in person presentation outlining all activities of the consultant that specifically relate to the City's agenda, objectives and ongoing efforts.
12. Coordinate all efforts with the City Manager or designee to ensure consistent advocacy of City priorities and projects; communicate through the Mayor or designated Commission liaison. Represent and advocate, as designated, the City's position on legislative matters to elected members of the Florida Legislature, state organizations, policymakers, legislative support staff, other lobbyists, the Governor and staff, other municipal leaders, Florida League of Cities, community groups or any other designated entity or individual engaging in efforts that may impact the operations or success of the City.
13. When appropriate to advance the City's interests, the Consultant shall coordinate the attendance of elected officers, appointed officers, or employees of the City at meetings at the County or State level. Organize and schedule visits and testimony by the City Manager and staff, the Mayor and Commission, or City Attorney when in the best interest of the City.



14. Recommend development of appropriate coalitions and participation in joint association with other cities on common interests and of benefit to the City. Attend key regional meetings of cities as needed.
15. Comply with all State and local requirements for ethics, accountability, and registration applicable to lobbying activities.
16. Other related services as assigned by the City Manager or designee.

If any services, functions, or responsibilities are not specifically described in this Exhibit "A" or elsewhere in this Agreement but are necessary for the proper performance and provision of the services, they shall be deemed to be implied by and included within the Scope of Services to the same extent and in the same manner as if specifically described herein.

**EXHIBIT "B"**

**CONSULTANT'S PRICE SCHEDULE**

<b>Item #</b>	<b>Description</b>	<b>Price per Month</b>	<b>Qty</b>	<b>Annual Total</b>
1.	Lobbying services to include all services as described in the solicitation	\$ 2,500.00	12	\$ 30,000.00

**PROFESSIONAL SERVICES AGREEMENT**  
**(Lobbying Services)**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Capital City Consulting, LLC**, a limited liability company, with principal address at 124 W. Jefferson Street, Tallahassee, FL 32301, authorized to do business in the State of Florida (“Consultant”).

**RECITALS**

**WHEREAS**, the City issued a Request for Proposal (No.24-209) for the Lobbying Services (“RFP”); and

**WHEREAS**, Consultant has provided the City with a written proposal in response to the RFP to provide the services as described and set out in the RFP; and

**WHEREAS**, the City desires to accept Consultant’s proposal (incorporated herein by the reference) in order for Consultant to render the services to the City as provided herein; and

**WHEREAS**, Consultant further warrants that it is experienced and capable of performing the services hereunder in a professional and competent manner; and

**WHEREAS**, the purpose of this Agreement is to set forth certain terms and conditions for the provision of services by Consultant to the City.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein contained, the sufficiency of which is hereby acknowledged by the parties, the City and Consultant agree as follows:

**SECTION 1: INCORPORATION OF RECITALS.** The foregoing Recitals are incorporated into this Agreement as true and correct statements.

**SECTION 2: CONSULTANT’S SERVICES.** The Consultant shall provide lobbying and intergovernmental consultant services, including but not limited to, representing the City’s interests before the Florida Legislature and the Executive Branch of the State government as more specifically described in the RFP and Consultant’s proposal, which are incorporated herein by reference, and Scope of Services attached hereto as an Exhibit “A” and incorporated herein by reference. The Consultant warrants that the services provided under this Agreement will be performed to that degree of care and skill ordinarily exercised, under similar circumstances, by reputable members of its profession practicing in the same or similar locality at the time the services are provided.

**SECTION 3: INDEPENDENT CONTRACTOR RELATIONSHIP.** No relationship of employer or employee is created by this Agreement, it being understood that Consultant will act hereunder as an independent contractor and none of Consultant’s, officers, directors, employees, independent contractors, representatives or agents performing services for Consultant pursuant to this Agreement shall have any claim under this Agreement or otherwise against the City for compensation of any kind under this Agreement. The relationship between the City and Consultant is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.

**SECTION 4: TERM, TIME AND TERMINATION.**

a. **Term.** The term of this Agreement shall commence upon the approval of this Agreement and shall be for the initial period of three (3) consecutive years with possibility of extension for two (2) more

one (1) year periods upon the mutual agreement of both parties and dependent on the annual appropriation of funds by the CITY's City Commission. The renewal terms may be approved by the City Manager. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

b. Time for Completion. Time is of the essence in the performance of this Agreement. Consultant shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Scope of Services and as set forth in RFP or as otherwise agreed between the parties.

c. Force Majeure. Neither party hereto shall be liable for its failure to perform hereunder due to any circumstances beyond its reasonable control, such as acts of God, wars, riots, national emergencies, sabotage, strikes, labor disputes, accidents, and governmental laws, ordinances, rules, or regulations. The Consultant or City may suspend its performance under this Agreement as a result of a force majeure event without being in default of this Agreement, but upon the removal of such force majeure event, the Consultant or City shall resume its performance as soon as is reasonably possible. Upon the Consultant's request, the City shall consider the facts and extent of any failure to perform the services and, if the Consultant's failure to perform was without its or its sub-consultant's fault or negligence, the schedule and/or any other affected provision of this Agreement may be revised accordingly, subject to the City's rights to change, terminate, or stop any or all of the services at any time. No extension shall be made for delay occurring more than seven (7) days before a notice of delay or claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) notice of delay or claim is necessary.

d. Termination without cause. Either party may terminate this Agreement at any time with or without cause by giving not less than thirty (30) days written notice of termination.

e. Termination for cause. Either party may terminate this Agreement at any time in the event that the other party engages in any act or makes any omission constituting a material breach of any term or condition of this Agreement. The party electing to terminate this Agreement for breach shall provide the other party with written notice specifying the nature of the breach. The party receiving the notice shall then have three (3) business days from the date of the notice in which to remedy the breach. If such corrective action is not taken within three (3) business days, then this Agreement shall terminate at the end of the three (3) business day period without further notice or demand, unless otherwise agreed to in writing by the parties.

f. Early Termination. If this Agreement is terminated before the completion of all services by either party, the Consultant shall:

1. Stop services on the date and to the extent specified including without limitation services of any sub-consultants.
2. Transfer all work in progress, completed work, and other materials related to the terminated services to the City in the format acceptable to City.
3. Continue and complete all parts of the services that have not been terminated.

g. Effect of Termination. Termination of this Agreement shall not affect any rights, obligations, and liabilities of the parties arising out of services provided prior to the date of termination. In the event of termination and except as otherwise set forth in this Agreement, the Consultant will be compensated for services performed in accordance with this Agreement through the date of termination.

h. Termination for Non-appropriation. Notwithstanding the foregoing, the parties acknowledge and agree that the City is a municipal corporation existing under the laws of the State of Florida, and as such, this Agreement (and all Exhibits hereto) are subject to budgeting and appropriation by the City of funds sufficient to pay the costs associated herewith in any fiscal year of the City.

Notwithstanding anything in this Agreement to the contrary, in the event that no funds are appropriated or budgeted by the City's governing board in any fiscal year to pay the costs associated with the City's obligations under this Agreement, or in the event the funds budgeted or appropriated are, or are estimated by the City to be, insufficient to pay the costs associated with the City's obligations hereunder in any fiscal period, then the City will notify Consultant of such occurrence and either the City or Consultant may terminate this Agreement by notifying the other in writing, which notice shall specify a date of termination no earlier than twenty-four (24) hours after giving of such notice. Termination in accordance with the preceding sentence shall be without penalty or expense to the City of any kind whatsoever; however, City shall pay Consultant for all services performed under this Agreement through the date of termination.

**SECTION 5: COMPENSATION.**

a. Payments. The Consultant expressly acknowledges and agrees that the total not to exceed cost to complete the Scope of Services in accordance with the RFP and this Agreement is **Thirty-Six Thousand Dollars (\$36,000.00)** annually, and no additional costs shall be authorized without prior written approval from the City. The City shall not reimburse Consultant for any additional costs incurred as a direct or indirect result of Consultant providing services to the City under this Agreement and not set forth in **Exhibit "A"**. The Consultant must receive prior written approval from the City before providing any additional services to be charged under the hourly rate or otherwise.

b. Invoices. Consultant shall render invoices to the City for services that have been rendered in conformity with this Agreement, the RFP, and the price schedule set forth in **Exhibit "B"**. The monthly invoices shall set forth the Total Annual Cost (at monthly increments). Invoices will be reviewed for approval and if an invoice is not approved, the City will notify Consultant within ten (10) days of deficiencies in the invoice. Once the deficiencies are corrected and a new or amended invoice submitted, the City shall make payment within twenty (20) days. Invoices will normally be paid within thirty (30) days following the City's receipt of Consultant's invoice. All invoices shall be paid in accordance with the Local Government Prompt Payment Act, Section 218.70, et. seq.

c. No contingency fees. Both parties agree that the payment of compensation under this Agreement is not contingent upon the outcome or success of the services provided. In accordance with Section 11.047, Florida Statutes, and Section 112.3217, Florida Statutes, as amended from time to time, both parties agree that neither shall pay or accept any contingency fee for services provided under this Agreement.

**SECTION 6: INDEMNIFICATION; LIMITATION OF LIABILITY.** Consultant, its officers, employees and agents shall indemnify and hold harmless the City, including its officers and employees from liabilities, damages, losses, and costs, including but not limited to, reasonable attorney's fees (at the trial and appellate levels), to the extent caused by the negligence, recklessness, willful misconduct, actions or inactions of Consultant, its officers, directors, employees, representatives, agents and any other person employed or utilized by Consultant in the performance of the services under this Agreement. The City agrees to be responsible for its own negligence. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the City or Consultant, nor shall this Agreement be construed as a waiver of sovereign immunity for the City beyond the waiver and limitations provided in section 768.28, Florida Statutes, as amended from time to time. The provisions and limitations set forth in section 768.28, Florida Statutes, are deemed to apply to this Agreement to claims or actions arising in tort and claims or actions arising in contract.

IN NO EVENT WILL THE CITY BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES WHETHER OR NOT CAUSED BY THE CITY'S NEGLIGENCE EVEN IF THE CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**SECTION 7: COMPLIANCE AND DISQUALIFICATION; INTEREST OF CONSULTANT.** Each of the parties agrees to perform its responsibilities under this Agreement in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of this Agreement. The Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect,

in any services to which this Agreement pertains or any other interest which would conflict in any manner or degree with the performance of its services hereunder. The Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed.

**SECTION 8: PERSONNEL.** The services to be performed hereunder shall be performed by the Consultant’s own employees/staff, unless otherwise authorized in writing by the City. Consultant represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by Consultant or under its supervision, and all personnel engaged in performing the services shall be fully qualified and authorized or permitted under federal, state and local law to perform such services.

**SECTION 9: SUB-CONSULTANTS.** The City reserves the right to accept the use of a sub-consultant or to reject the selection of a particular sub-consultant and approve all qualifications of any sub-consultant in order to make a determination as to the capability of the sub-consultant to perform properly under this Agreement. All sub-consultants providing professional services to Consultant under this Agreement will also be required to provide their own insurance coverage identical to those contained in this Agreement. In the event that a sub-consultant does not have insurance or does not meet the insurance limits as stated in this Agreement, Consultant shall indemnify and hold harmless the City for any claim in excess of the sub-consultant’s insurance coverage, arising out of the negligent acts, errors or omissions of the sub-consultant.

**SECTION 10: FEDERAL AND STATE TAX.** The City is exempt from payment of Florida State Sales and Use Tax. Consultant is not authorized to use the City’s Tax Exemption Number.

**SECTION 11: INSURANCE.** Prior to commencing any services, Consultant shall provide proof of insurance coverage as required hereunder. Such insurance policy(s) shall be issued by the United States Treasury or insurance carriers approved and authorized to do business in the State of Florida, and who must have a rating of no less than “excellent” by A.M. Best or as mutually agreed upon by the City and Consultant. All such insurance policies may not be modified or terminated without the express written authorization of the City.

<u><b>Type of Coverage</b></u>	<u><b>Amount of Coverage</b></u>
Professional liability/ Errors and Omissions	\$1,000,000 per occurrence
Commercial general liability (Products/completed operations Contractual, insurance broad form property, Independent Consultant, personal injury)	\$1, 000,000 per occurrence  \$2,000,000 annual aggregate
Automobile (owned, non-owned, & hired)	\$ 1,000,000 single limits
Worker’s Compensation	\$ statutory limits

The commercial general liability and automobile liability policies will name the “City of Lake Worth Beach, its officials, employees and representatives” as an additional insured; all policies shall apply on a primary, non-contributing basis; and proof of all insurance coverage shall be furnished to the City by way of an endorsement to same or certificate of insurance prior to the provision of services. The certificates shall clearly indicate that Consultant has obtained insurance of the type, amount, and classification as required for strict compliance with this section. Failure to comply with the foregoing requirements shall not relieve Consultant of its liability and obligations under this Agreement.

**SECTION 12: SUCCESSORS AND ASSIGNS.** The City and Consultant each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as agreed in writing by all parties, this Agreement is not assignable.

**SECTION 13: LAW, VENUE, REMEDIES AND ENFORCEMENT COSTS.** This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof. Except as otherwise provided in the indemnification provision herein, each party shall be responsible for its own attorney's fees and costs in any dispute arising out of or related to this Agreement.

**SECTION 14: WAIVER OF JURY TRIAL.** TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

**SECTION 15: ACCESS AND AUDITS.** Consultant shall maintain adequate records to justify all payments made by the City under this Agreement for at least three (3) years after completion of this Agreement and longer if required by applicable federal or state law. The City shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at Consultant's place of business. In no circumstances will Consultant be required to disclose any confidential or proprietary information regarding its products and service costs.

**SECTION 16: NONDISCRIMINATION.** Consultant warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

**SECTION 17: AUTHORITY TO PRACTICE.** Consultant hereby represents and warrants that it has and will continue to maintain all licenses, registrations, and approvals required to conduct its business and provide the services required under this Agreement, and that it will at all times conduct its business and provide the services under this Agreement in a reputable manner. Proof of such licenses, registrations, and approvals shall be submitted to the City upon request.

**SECTION 18: SEVERABILITY.** If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**SECTION 19: PUBLIC ENTITY CRIMES.** Consultant acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. Consultant certifies that it and its affiliates have not been placed on the convicted vendor list within the 36 months immediately preceding this

Agreement. The Consultant will advise the City immediately if it becomes aware of any violation of this statute.

**SECTION 20: NOTICE.** All notices required in this Agreement shall be sent by hand-delivery, certified mail (RRR), or by nationally recognized overnight courier, and if sent to the City shall be sent to:

City of Lake Worth Beach  
Attn: City Manager/Financial Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

and if sent to Consultant, shall be sent to:

Capital City Consulting, LLC  
Attn: Jared Rosenstein  
124 W. Jefferson Street  
Tallahassee, FL 32301

The foregoing names and addresses may be changed if such change is provided in writing to the other party. Notice shall be deemed given upon receipt.

**SECTION 21: ENTIRETY OF AGREEMENT.** The City and Consultant agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

**SECTION 22: WAIVER.** Failure of a party to enforce or exercise any of its right(s) under this Agreement shall not be deemed a waiver of that parties' right to enforce or exercise said right(s) at any time thereafter.

**SECTION 23: PREPARATION AND NON-EXCLUSIVE.** This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation. This is a non-exclusive Agreement and the City reserves the right to contract with individuals or firms to provide the same or similar services.

**SECTION 24: MATERIALITY.** All provisions of the Agreement shall be deemed material. In the event Consultant fails to comply with any of the provisions contained in this Agreement or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Agreement and City may at its option provide notice to Consultant to terminate for cause.

**SECTION 25: LEGAL EFFECT.** This Agreement shall not become binding and effective until approved by the City. The Effective Date is the date this Agreement is executed by the City.

**SECTION 26: NOTICE OF COMPLAINTS, SUITS AND REGULATORY VIOLATIONS.** Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the performance of this Agreement. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named and shall do nothing to impair or invalidate any applicable insurance coverage.

**SECTION 27: SURVIVABILITY.** Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.



**SECTION 28: COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the effective date at such time as all the signatories hereto have signed a counterpart of this Agreement. This Agreement may be signed digitally and each digitally signed counterpart shall be considered as an original of the signing party.

**SECTION 29: PALM BEACH COUNTY IG.** In accordance with Palm Beach County ordinance number 2011-009, Consultant acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. Consultant has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

**SECTION 30: AGREEMENT DOCUMENTS AND CONTROLLING PROVISIONS.** This Agreement consists of this Agreement, the RFP (which is incorporated herein by reference as if set forth in full), **Exhibit “A”** (Scope of Services), and **Exhibit “B”** (Price Proposal). The parties agree to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that there exists a conflict between the terms and conditions of this Agreement and the remaining aforementioned documents, the terms and conditions of this Agreement shall prevail. The RFP shall take precedence over the Consultant’s Price Proposal in Exhibit “B”. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

**SECTION 31: OWNERSHIP OF DELIVERABLES.** The deliverables, work product, specifications, calculations, supporting documents, or other work products which are listed as deliverables by the City in in the RFP or in **Exhibit “A”** (or otherwise) shall become the property of the City. Consultant may keep copies or samples thereof and shall have the right to use the same for its own purposes. The City accepts sole responsibility for the reuse of any such deliverables in a manner other than as initially intended or for any use of incomplete documents.

**SECTION 32: REPRESENTATIONS AND BINDING AUTHORITY.** By signing this Agreement, on behalf of Consultant, the undersigned hereby represents to the City that he or she has the authority and full legal power to execute this Agreement and any and all documents necessary to effectuate and implement the terms of this Agreement on behalf of Consultant for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this Agreement.

**SECTION 33: PUBLIC RECORDS.** Consultant shall comply with Florida’s Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City’s custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion of this Agreement if Consultant does not transfer the records to the City.
- (d) Upon completion of this Agreement, transfer, at no cost, to the City all public records in possession of Consultant or keep and maintain public records required by the City to perform the service. If Consultant transfers all public records to the City upon completion of the Agreement, Consultant shall destroy any duplicate public records that are exempt or confidential or exempt from public records disclosure requirements. If Consultant keeps and maintains public records upon completion of the Agreement,

Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, [CITYCLERK@LAKEWORTHBEACHFL.GOV](mailto:CITYCLERK@LAKEWORTHBEACHFL.GOV), OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.**

**SECTION 34: CONFIDENTIAL AND PROPRIETARY INFORMATION.** Each party (the "Receiving Party") will keep confidential and not disclose to any other person or entity or use (except as expressly and unambiguously authorized by this Agreement) information, technology or software ("Confidential Information") obtained from the other party (the "Disclosing Party"); provided, however, that the Receiving Party will not be prohibited from disclosing or using information (i) that at the time of disclosure is publicly available or becomes publicly available through no act or omission of the Receiving Party, (ii) that is or has been disclosed to the Receiving Party by a third party who is not under, and to whom the Receiving Party does not owe, an obligation of confidentiality with respect thereto, (iii) that is or has been independently acquired or developed by the Receiving Party without access to the Disclosing Party's Confidential Information, (iv) that is already in the Receiving Party's possession at the time of disclosure, or (v) that is required to be released by law.

**SECTION 35: EXPORT ADMINISTRATION.** Each party agrees to comply with all export laws and regulations of the United States ("Export Laws") to assure that no software deliverable, item, service, technical data or any direct product thereof arising out of or related to this Agreement is exported directly or indirectly (as a physical export or a deemed export) in violation of Export Laws.

**SECTION 36: SCRUTINIZED COMPANIES.**

(a) Consultant certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in a boycott of Israel. Pursuant to section 287.135, Florida Statutes, the Consultant may immediately terminate this Agreement at its sole option if the Consultant or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel during the term of this Agreement.

(b) If this Agreement is for one million dollars or more, the Consultant certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the Consultant, or any of its subcontractors are found to have submitted a false certification; or if the Consultant or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

(c) The Consultant agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

(d) The Consultant agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

- (e) The Consultant agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Consultant shall immediately notify the CITY of the same.
- (f) As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**SECTION 37: E-VERIFY.** Pursuant to Section 448.095(5), Florida Statutes, the Consultant shall:

- (a) Register with and use the E-Verify system to verify the work authorization status of all new employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' new employees;
- (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the City upon request;
- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- (f) Be aware that if the City terminates this Agreement under Section 448.095(5)(c), Florida Statutes, the Consultant may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

**SECTION 38: COMPLIANCE WITH SECTION 787.06.** By signing this Agreement before a notary public and taking an oath under the penalty of perjury, the Consultant attests and warrants that Consultant does not use coercion for labor or services as defined in section 787.06, Florida Statutes, as amended from time to time.

**REMAINDER OF PAGE IS INTENTIONALLY LEFT BLANK**  
**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the parties hereto have made and executed this Professional Services Agreement (Lobbying Services) as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

By: \_\_\_\_\_  
Betty Resch, Mayor

ATTEST:

By: \_\_\_\_\_  
Melissa Anne Coyne, MMC, City Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONSULTANT: Capital City Consulting, LLC**

By: Jared Rosenstein

[Corporate Seal]

Print Name: Jared Rosenstein

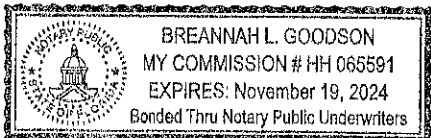
Title: Partner

STATE OF FL  
COUNTY OF Leon

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 1 day of October 2024, by Jared Rosenstein, as the Partner [title] of **Capital City Consulting, LLC** a partnership authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Capital City Consulting, LLC**, to the same.

[Signature]  
Notary Public Signature

Notary Seal:



## EXHIBIT "A"

### Scope of Services

The Consultant will, in accordance with the highest legal, ethical, and professional standards, provide, at the discretion of the City Manager, lobbying services to the City of Lake Worth Beach. The Consultant will provide a full range of professional lobbying services and advocacy before the Florida Legislature, the Governor, the Cabinet, and executive departments, agencies, offices, commissions, and other governmental units of the State of Florida with respect to all matters contained within the City's State legislative agenda, assigned executive branch projects, and other issues or projects of the City as assigned by the City Manager and/or designee.

Areas of responsibility to achieve such representation include, but are not limited to, the following:

1. Generally, identify, review, and analyze any and all relevant state legislative bills, resolutions, ballot issues, journals, votes, fiscal notes, and all relevant discourse pertaining to the legislative sessions of the Legislature of the State of Florida in a timely manner to assist the City in determining its policy positions. This work effort includes detecting introduction of pertinent legislation and regulations that may affect the City. Help develop an annual legislative agenda that clearly and concisely communicates the City's:
  - a. Objectives for funding allocations, grants, and local projects;
  - b. Position on legislation that preempts home rule;
  - c. Position on specific issues of local interest that are under debate in committees;
2. Consult with the City on specific strategies to effectively:
  - a. Promote the City's agenda to members of the Legislature, the Governor and Cabinet members, executive departments, agencies, offices, commissions, and other governmental units of the State of Florida;
  - b. Maximize the City's use of State programs and allocations.
3. Implement these strategies by:
  - a. Attending legislative committee meetings, briefings, and hearings during Session and interim committee weeks;
  - b. Regularly briefing City staff and Commission members and identifying opportunities for the City to appear before committees, participate in hearings, and submit comments;
  - c. Arranging meetings if needed in Tallahassee among City staff and Commission members and legislative committee members, and State agency staff.
  - d. Regularly communicating with key legislative committee chairs, members, and staff to inform them of the City's interests and learn about potential legislative developments before they occur.
  - e. Submitting weekly reports to City Staff and monthly in person presentations to the City Commission
4. Monitor, review and comment on the:
  - a. Progress of pertinent legislation that has been introduced.
  - b. Progress of City bills, amendments, applications, and proposals.
  - c. Filing of new bills with the potential to affect issues important to the City and updating the City's legislative agenda, its objectives, and communication strategies, if needed;
  - d. Proposed changes to funding formulas and allocations and agency proposals, administrative rules and regulations, if any.
  - e. Status of any pertinent rollover bills and any key studies being conducted by executive officials, legislative officials, or other state employees concerning any proposed action that may impact the City.

- f. Progress of the state budget to determine the potential and final fiscal impacts of the state budget on the City.
  - g. Gubernatorial vetoes and special sessions of the Florida Legislature to determine their impact on the City.
5. Provide advice and recommendations and take the lead on the development of support materials including but not limited to drafting all letters, briefing sheets, talking points, written summaries and materials necessary to develop and implement timely and efficient processes to forecast, screen, review, analyze and respond to legislative matters, and other written communication materials used to promote the City's agenda.
6. Be readily available during Regular, Extended, or Special Sessions to monitor and interpret, obtain documentation and research materials, and prepare responses.
7. Secure sponsorship of bills and/or amendments needed to further the City's legislative agenda.
8. Prepare and submit written reports during Session and interim committee weeks regarding progress on the City's agenda and objectives. These will include:
  - a. Generally, the status, prospects, movement, opposition, support, etc., of pertinent legislation or proposed regulations.
  - b. Weekly reports on activities directly related to the agenda's specific funding, home rule, and issues objectives. NOTE: This will focus on the activities of the consultant that specifically relate to the City's agenda and objectives, not on the routine news of what legislative committees did;
  - c. These reports will be distributed to the City prior to a weekly (or as otherwise requested by the City Manager or designee) phone conference with key staff to discuss progress toward the agenda items and emerging issues;
  - d. An end-of-session report that summarizes the City's success in accomplishing its agenda objectives. This should include project/issue analysis of each agenda item and its objectives, with a quantifiable assessment of the benefit/loss to the City for specific allocations, grants, and costs of operation because of new unfunded mandates.
9. Upon request of the City Manager or designee, coordinate and participate in scheduled conference calls or meetings with officials from the City Manager's Office, Mayor and Commission, or the City Attorney to provide updates on contacts and advocacy efforts made on behalf of the City. The Consultant will be available for such consultation on a regular basis as requested, and in accordance with the ebb and flow of legislative work over the course of the legislative sessions.
10. Provide monthly invoice with reasonably detailed time and appointment report.
11. Attend City Commission meetings once per month and make in person presentation outlining all activities of the consultant that specifically relate to the City's agenda, objectives and ongoing efforts.
12. Coordinate all efforts with the City Manager or designee to ensure consistent advocacy of City priorities and projects; communicate through the Mayor or designated Commission liaison. Represent and advocate, as designated, the City's position on legislative matters to elected members of the Florida Legislature, state organizations, policymakers, legislative support staff, other lobbyists, the Governor and staff, other municipal leaders, Florida League of Cities, community groups or any other designated entity or individual engaging in efforts that may impact the operations or success of the City.
13. When appropriate to advance the City's interests, the Consultant shall coordinate the attendance of elected officers, appointed officers, or employees of the City at meetings at the County or State level. Organize and schedule visits and testimony by the City Manager and staff, the Mayor and Commission, or City Attorney when in the best interest of the City.

14. Recommend development of appropriate coalitions and participation in joint association with other cities on common interests and of benefit to the City. Attend key regional meetings of cities as needed.
15. Comply with all State and local requirements for ethics, accountability, and registration applicable to lobbying activities.
16. Other related services as assigned by the City Manager or designee.

If any services, functions, or responsibilities are not specifically described in this Exhibit “A” or elsewhere in this Agreement but are necessary for the proper performance and provision of the services, they shall be deemed to be implied by and included within the Scope of Services to the same extent and in the same manner as if specifically described herein.

**EXHIBIT "B"**

**CONSULTANT'S PRICE SCHEDULE**

<b>Item #</b>	<b>Description</b>	<b>Price per Month</b>	<b>Qty</b>	<b>Annual Total</b>
1.	Lobbying services to include all services as described in the solicitation	\$ 3,000.00	12	\$ 36,000.00



City of Lake Worth Beach

Evaluation Matrix

RFP #24-209 Lobbying Services

		RANKED:	1	2	3	4	5	6
Evaluation Criteria Score Sheet:		Weight	Akerman LLP	Capital City Consulting, LLC	GrayRobinson, P.A.	Pittman Law Group, P.L.	Ronald L. Book, P.A.	The Southern Group
1	Successful Experience and Qualification of Firm and Staff:	40	182	175	181	163	177	154
2	Plan of Approach and Capacity:	30	129	143	141	125	118	117
3	Fee Proposal:	20	95	87	78	83	80	94
4	Veteran Business Enterprise, Small Business and Local Business Preference:	5	0	0	0	25	0	0
5	Default, Termination, Litigation or Debarment:	5	25	25	25	25	25	25
<b>Total Points Received:</b>			<b>431</b>	<b>430</b>	<b>425</b>	<b>421</b>	<b>400</b>	<b>390</b>
Exhibit "B" - City's Campaign Contribution Statement			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "C" - Respondent Information Form			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "D" - Similar projects & References			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "E" - Drug Free Form			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "F" - Scrutinized Companies Certification			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "G" - Fee Schedule			submitted	submitted	submitted	submitted	submitted	submitted
Exhibit "H" - Veteran Bus. Enterprise, Small Bus. Local Bus. Preference			n/a	n/a	requested/non-compliant	yes - small business	n/a	n/a
default, termination, litigation statement			submitted	submitted	submitted	submitted	submitted	submitted

# STAFF REPORT REGULAR MEETING

**AGENDA DATE:** October 15, 2024

**DEPARTMENT:** Public Works

**TITLE:**

Construction Contracts for The Paving Lady, M & M Asphalt Maintenance Inc., and Boulder Construction for city wide concrete sidewalk, apron, curb and valley gutter repairs

**SUMMARY:**

The contract authorizes the City to utilize the Paving Lady Inc., M & M Asphalt Maintenance Inc., and Boulder Construction to Concrete Restoration Work on a project basis.

**BACKGROUND AND JUSTIFICATION:**

The city is actively engaged in the repair and maintenance of the city sidewalks. The Public Works Department frequently has projects for restoration work that are beyond the capabilities of the in-house labor force and need to be outsourced. On Monday August 28th the city received 8 bids in response to Invitation for Bid (IFB) 24-116 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs. In accordance with the bid document, three (3) contractors were selected for the award. Upon review of the bid submittals, it was determined that The Paving Lady, M & M Asphalt Maintenance Inc and Boulder Construction were the lowest, most responsive, and responsible bidders. All three agreements are attached to this agenda item. The funds for this project are from ARPA in the amount of \$1,000,000.00 and will be in place until all the funds have been utilized.

These are the unit price agreements and there is no financial impact until Work Order is issued. The city will be issuing work orders for individual projects that are funded by ARPA.

**MOTION:**

Move to approve/disapprove the construction contracts with The Paving Lady Inc., M & M Asphalt Maintenance Inc., and Boulder Construction. for Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs.

**ATTACHMENT(S):**

Fiscal Impact Analysis – N/A  
Construction Agreements  
Bid Tabulations

**CONSTRUCTION CONTRACT FOR  
(Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs)  
IFB #24-116**

THIS CONSTRUCTION CONTRACT for Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs (“Contract”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Janice M. Riley, Inc. dba The Paving Lady**, a Corporation authorized to do business in the State of Florida with its principal office located at 1000 W Industrial Ave, Boynton Beach, FL 33426 . (“Contractor”)

**WHEREAS**, the City is a Municipality organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

**WHEREAS**, the City issued Invitation for Bids #24-116 (“IFB”) to perform construction and maintenance services including concrete sidewalk, curbing, driveway aprons and associated restoration work for the City’s Public Works Department on as needed basis; and

**WHEREAS**, the Contractor submitted a unit price bid to perform the work generally described and set out in response to the IFB; and

**WHEREAS**, the City desires to accept Contractor’s bid in order for Contractor to render the services to the City as provided herein; and

**WHEREAS**, the Contractor further warrants that it is experienced and capable of performing the Task hereunder in a professional and competent manner; and

**WHEREAS**, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the Contractor agrees that any services performed pursuant to the IFB and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, Federal policies, procedures, and directives and special clauses as provided for in **Exhibit “D”**;

**WHEREAS**, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

**NOW THEREFORE**, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Scope of Services/Work.** The Contractor shall provide the services described in IFB and detailed scope of services attached hereto as Exhibit “A” and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction and maintenance services for the City’s Public Works Department for the citywide concrete sidewalk, curb and driveway aprons repairs. It is the intention of the City to award the work in the multiple smaller projects between \$20,000 and \$ 100,000. Some projects may be of different sizes and value.

1.3 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth

in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, Detailed Scope of Work; addendum, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed Work Orders
Fourth Priority:	IFB

1.4 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean the City Manager or designee, City of Lake Worth Beach, Florida. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.5 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "C"** along with a copy of the Contractor's proposal and shall be based on the Unit Prices attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.6 **Term.** The term of this Agreement shall be for an initial period of (3) years with the possibility of two (2) one (1) year renewals options. The option(s) to renew may be exercised by the City Manager. Notwithstanding the term, the parties may terminate this Agreement as stated herein.

1.7 **Unit Prices.** The Unit Prices set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Unit Prices, the City and Contractor may execute a written amendment to this Contract to establish new Unit Prices for the renewal term(s). The City Manager may approve changes in the Unit Prices based on the recommendation of the City's Public Works Director or designee.

Article 2. CONTRACT TIME.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach  
Attn: Finance Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Local Government Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the

City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage. Retainage shall be released to the Contractor in accordance with Section 218.735, Florida Statutes, and as set forth in this Contract.

3.3 Upon substantial completion, the Contractor shall notify the City's Contract Administrator that the work is substantially complete and request an inspection. Within five (5) business days thereafter, the Contractor and City's Contract Administrator or designee shall make an inspection of the work and begin the development of a draft punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request (Punch List Walkthrough). The City shall submit the punch list to the Contractor within fifteen (15) days of the Punch List Walkthrough and the Contractor shall have ten (10) days to agree to the same. If the Contractor wishes to revise the punch list, it must send the revised punch list to the City's Contract Administrator no later than twenty-five (25) days after reaching substantial completion. Thereafter the parties shall agree on the final punch list no later than thirty (30) days after substantial completion. The punch list shall include every remaining item required to render complete, satisfactory, and acceptable services to the City and the estimated cost to complete each remaining item. The final agreed upon punch list shall be sent to the Contractor five (5) days after the punch list is finalized. In no event may the Contractor request payment of final retainage until the Contractor has completed all items on the punch list. All items that require correction under the Contract which are identified after the preparation and delivery of the punch list remain the obligation of the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Contract.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Work.

**3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.**

#### Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if

required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

#### Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, which the parties agree apply to all claims whether in tort or in contract.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; or,
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.



The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

## 7.2 TERMINATION BY THE CITY FOR CONVENIENCE

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

## Article 8. TAXES AND DIRECT PURCHASES.

8.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment and materials for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment and materials it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and materials and identify which equipment and materials are to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment and materials to be used in

completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment and materials receipt, inspecting shipments, and assuring that the equipment and materials are in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment and materials will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the equipment/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment and materials relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment and materials. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment and materials at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchase order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment and materials as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment and materials purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment and materials as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment and materials (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment and materials to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and materials and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment and materials. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment and materials received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and

sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers, addresses, phone numbers, etc. All payments will be made in accordance with the Local Government Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

- a. In the event of a claim of infringement, the Contractor shall, at its option:
  1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
  2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
  3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).
- b. The Contractor will have no obligation under this section for infringement if and to the extent

that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or
2. combination of the deliverables with products other than those supplied by the Contractor; and,
3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

#### Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the

Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit, action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.

(d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR**

**CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE  
HIGHWAY, LAKE WORTH BEACH, FL 33460.**

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS.

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonably request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Work. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach  
Attn: City Manager/Finance Department/Procurement Division  
7 N. Dixie Highway

Lake Worth Beach, FL 33460

and to the Contractor as follows:

Janice M. Riley, Inc. dba The Paving Lady  
Attn: Mauro Comuzzi, President  
1000 W Industrial Ave.  
Boynton Beach, Fl 33426

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF

CHAPTER 558, FLORIDA STATUTES.

11.24 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

Article 12. SCRUTINIZED COMPANIES

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.

2. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.

3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.

4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.



5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(5), Florida Statutes, the Contractor shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(f), Florida Statutes;

13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;

13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,

13.6. Be aware that if the City terminates this Contract under Section 448.095(5)(c), Florida Statutes, Contractor may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

Article 14. COMPLIANCE WITH SECTION 787.06, FLORIDA STATUTES (2024)

By signing this Contract before a notary public and taking an oath under the penalty of perjury, the Contractor attests and warrants that the Contractor does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

**Remainder of this page intentionally left blank**  
**Signature page follows**

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for Citywide concrete sidewalk, curb and driveway aprons repairs to be executed the day and year shown below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **JANICE M. RILEY dba THE PAVING LADY**

By: \_\_\_\_\_  
*Mauro Comuzzi*

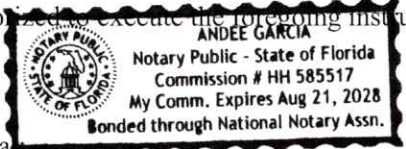
[Corporate Seal]

Print Name: MAURO COMUZZI

Title: President

STATE OF Florida )  
COUNTY OF Palm Beach )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 2 day of October 2024, by MAURO COMUZZI, as the President [title] of **Janice M. Riley dba The Paving Lady**, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Janice M. Riley dba The Paving Lady** to the same.



Andee Garcia  
Notary Public Signature

Notary Seal

My Commission expires: 8/21/28

## EXHIBIT "A"

### Detailed Scope of Work

The objective of this Contract is to repair concrete curbing, sidewalk and aprons throughout the city limits that are in poor condition and could be tripping hazards. The City will identify locations for repair, measure and provide information to subcontractor selected through the bid process.

Work covered with this Contract will address the removal and replacement of concrete curb, gutter, sidewalk, driveway aprons and other miscellaneous concrete work.

The maintenance and construction work is generally described as follows:

- Concrete sidewalk and driveway apron removal and installation
- ADA concrete ramps
- Concrete curbing removal and replacement (Type D or F)
- Green area grading and sodding as needed
- Asphalt repairs as needed
- Associated Misc. Restoration Work

All works shall be constructed in accordance with the City's design specifications and standards. It is the intention of the City to award Work Orders in the multiple smaller projects between \$20,000 and \$100,000. Some projects may be of the different sizes or higher or lower value. Contractor must have equipment and sufficient number of employees to manage the Contract. Equipment shall include at minimum backhoe or excavator, dump truck, skid steer with bucket and forks, jack hammer etc.

#### Detailed Contractor Responsibility:

1. The Contractor shall furnish all necessary labor, material, equipment, and supervision to repair & replace existing concrete within the city limits of Lake Worth Beach.
2. The contractor shall confirm measurements by visiting the repair locations.
3. The contractor shall provide proper MOT needed. i.e. cones, barricades, sidewalk closed signs
4. A schedule will be provided to the Public Works Project Manager with two (2) week lead time to allow proper notification to residents.
5. All locations prepped for concrete will be poured on the same day unless prior approval from the Public Works Assistant Director or Project Manager.
6. Contractor will use concrete with a 3,000 PSI
7. Saw cut concrete
8. Break-up, remove and dispose of existing concrete
9. Reconstruct new concrete curb, gutter, sidewalk, other miscellaneous work, and if necessary replace or install valve and manhole risers.
10. Remove and dispose of tree roots, debris, asphalt, and inferior road base to prepare proper foundation.
11. Add and compact proper road base following City standards
12. Keep work area neat, tidy and passable conditions. Secure work area with MOT during construction.
13. Contractor will park vehicles with accordance to City laws and ordinances to not impede traffic flow unless necessary. Proper MOT will be used.
14. Contractor shall respond to City staff within two business days of a request for work.
15. Contractor will be responsible for billing and accounting, project management and administration.
16. Contractor will provide one point of contact for all locations.

City of Lake Worth Beach Public Works Project Manager Responsibility:

1. Identify locations for repair.
2. Marking of locations
3. Notify residents of upcoming work.
4. Inspections of the work being completed

The City may consider doing works on a case-by-case basis for the following:

1. Broken Irrigation Lines and Sprinkler Heads
2. Broken asphalt from removal of concrete

**EXHIBIT "B"**

**SCHEDULE OF UNIT PRICES**

**(B4)**

**IFB #24-116 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs**

SCHEDULE OF UNIT PRICES

In order to evaluate the bids, each Bidder must identify the unit prices for the work set forth in the Scope of Work and to be used for individual Work Orders. In the event additional work is added to this contract by Change Order, the following unit prices will be utilized (as applicable)

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
<b>CONCRETE</b>				
1	MOBILIZATION (LESS THAN 100 LF)	1	LS	\$ 3,500.00
2	MOBILIZATION (OVER 100 LF)	1	LS	\$2,500.00
3	REMOVE EX. 4" CONCRETE	1	SF	\$ 3.00
4	REMOVE EX. 6" CONCRETE	1	SF	\$ 3.50
5	4" CONCRETE SIDEWALK (3,000 PSI)	1	SF	\$ 7.75
6	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1	SF	\$ 9.50
7	MONOLITHIC CURB AND SIDEWALK	1	SF	\$ 10.25
8	REMOVE EX. CONCRETE CURBING (ALL TYPES)	1	LF	\$ 14.00
9	TYPE F CURB AND GUTTER	1	LF	\$ 47.00
10	VALLEY GUTTER	1	LF	\$ 40.00
11	TYPE D CURBING	1	LF	\$ 32.00
12	ADA TACTILE DOME SURFACE (YELLOW) CAST-IN-PLACE	1	SF	\$ 140.00
<b>MISC. WORK</b>				
13	MISC. ASPHALT REPAIR	1	SF	\$ 15.50
14	BAHIA SODDING (INCL. GRADING WORK)	1	SY	\$ 8.50
15	FLORATAM SODDING (INCL. GRADING WORK)	1	SY	\$ 11.00
16	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$ 700.00
17	ADJUST EX. VALVE BOX	1	EA	\$ 450.00
18	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$ 725.00
19	PAVER BRICK REPAIR (EXIST. BRICKS)	1	SF	\$ 9.00
20	MOBILIZATION (LESS THAN 100 SF)	1	EA	\$ 1,500.00
21	MOBILIZATION (OVER 100 SF)	1	EA	\$ 1,350.00
22	MOT CONES	1	EA	\$ 25.00
23	MOT TYPE II BARRICADES	1	EA	\$ 40.00

Name of Bidder: Janice M. Riley Inc dba The Paving Lady

Print Name: Mauro Comuzzi Title: President

SIGNATURE:  Date: 8.28.2024

EXHIBIT "C"

SAMPLE WORK ORDER

CONSTRUCTION CONTRACT FOR CITYWIDE CONCRETE SIDEWALK, CURB,  
DRIVEWAY APRON REPAIRS  
IFB#24-116

WORK ORDER NO. \_\_\_\_\_

THIS WORK ORDER for the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs ("Work Order" hereafter) is made on the \_\_\_\_\_, between the City of Lake Worth Beach, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and Janice M. Riley dba The Paving Lady a corporation authorized to do business in State of Florida ("Contractor" hereafter).

**1.0 Project Description:**

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs described as: \_\_\_\_\_ (the "Project"). The Project is more specifically described in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, and which are incorporated herein by reference.

**2.0 Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

**3.0 Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

**Liquidated Damages.** The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead

of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \_\_\_\_\_ hundred dollars (\$ \_\_\_\_\_ .00) for each day that expires after the time specified in this Work Order.

**4.0 Compensation and Direct Purchases**

This Work Order is issued for a lump sum, not to exceed amount of \$ \_\_\_\_\_ (\_\_\_\_\_). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**5.0 Project Manager**

The Project Manager for the Contractor is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_; and, the Project Manager for the City is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_.

**6.0 Progress Meetings**

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

**7.0 Contractor's Representations**

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional

examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

**8.0 Warranty.** The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

**9.0 Authorization**

This Work Order is issued pursuant to the Construction Contract for Citywide concrete sidewalk, curb, and driveway aprons repairs Contract IFB#24-116 between the City of Lake Worth Beach and the Contractor, dated \_\_\_\_\_, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.



IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

**CONTRACTOR: JANICE M. RILEY dba THE PAVING LADY**

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_

\_\_\_\_\_  
[Corporate Seal]

Print Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ [title] of **Janice M. Riley dba The Paving Lady**, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Janice M. Riley dba The Paving Lady** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:

My Commission expires: \_\_\_\_\_

## Exhibit "D"

### Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from the IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of

such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
  - Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

#### Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

#### DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

#### Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

#### No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

#### Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

#### Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
  - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

#### Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
  - (a) Procure or obtain;
  - (b) Extend or renew a contract to procure or obtain; or
  - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS**

This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

### **INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the

certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

MAURO COMUZZI President

Name and Title of Contractor's Authorized Official

10/2/24

Date



**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor MAURO COMUZZI certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Mauro Comuzzi  
Signature of Contractor's Authorized Official

MAURO COMUZZI President  
Name and Title of Contractor's Authorized Official

10/2/24  
Date

**CONSTRUCTION CONTRACT FOR  
(Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs)  
IFB #24-116**

THIS CONSTRUCTION CONTRACT for Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs (“Contract”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida with its principal office located at 1180 SW 10<sup>th</sup> Street, Delray Beach, FL 33444. (“Contractor”)

**WHEREAS**, the City is a Municipality organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

**WHEREAS**, the City issued Invitation for Bids #24-116 (“IFB”) to perform construction and maintenance services including concrete sidewalk, curbing, driveway aprons and associated restoration work for the City’s Public Works Department on as needed basis; and

**WHEREAS**, the Contractor submitted a unit price bid to perform the work generally described and set out in response to the IFB; and

**WHEREAS**, the City desires to accept Contractor’s bid in order for Contractor to render the services to the City as provided herein; and

**WHEREAS**, the Contractor further warrants that it is experienced and capable of performing the Task hereunder in a professional and competent manner; and

**WHEREAS**, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the Contractor agrees that any services performed pursuant to the IFB and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, Federal policies, procedures, and directives and special clauses as provided for in **Exhibit “D”**;

**WHEREAS**, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

**NOW THEREFORE**, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Scope of Services/Work.** The Contractor shall provide the services described in IFB and detailed scope of services attached hereto as Exhibit “A” and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction and maintenance services for the City’s Public Works Department for the citywide concrete sidewalk, curb and driveway aprons repairs. It is the intention of the City to award the work in the multiple smaller projects between \$20,000 and \$ 100,000. Some projects may be of different sizes and value.

1.3 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth

in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, Detailed Scope of Work; addendum, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed Work Orders
Fourth Priority:	IFB

1.4 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.5 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "C"** along with a copy of the Contractor's proposal and shall be based on the Unit Prices attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.6 **Term.** The term of this Agreement shall be for an initial period of (3) years with the possibility of two (2) one (1) year renewals options. The option(s) to renew may be exercised by the City Manager. Notwithstanding the term, the parties may terminate this Agreement as stated herein.

1.7 **Unit Prices.** The Unit Prices set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Unit Prices, the City and Contractor may execute a written amendment to this Contract to establish new Unit Prices for the renewal term(s). The City Manager may approve changes in the Unit Prices based on the recommendation of the City's Public Works Director or designee.

Article 2. CONTRACT TIME.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach  
Attn: Finance Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Local Government Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the

City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage. Retainage shall be released to the Contractor in accordance with Section 218.735, Florida Statutes, and as set forth in this Contract.

3.3 Upon substantial completion, the Contractor shall notify the City's Contract Administrator that the work is substantially complete and request an inspection. Within five (5) business days thereafter, the Contractor and City's Contract Administrator or designee shall make an inspection of the work and begin the development of a draft punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request (Punch List Walkthrough). The City shall submit the punch list to the Contractor within fifteen (15) days of the Punch List Walkthrough and the Contractor shall have ten (10) days to agree to the same. If the Contractor wishes to revise the punch list, it must send the revised punch list to the City's Contract Administrator no later than twenty-five (25) days after reaching substantial completion. Thereafter the parties shall agree on the final punch list no later than thirty (30) days after substantial completion. The punch list shall include every remaining item required to render complete, satisfactory, and acceptable services to the City and the estimated cost to complete each remaining item. The final agreed upon punch list shall be sent to the Contractor five (5) days after the punch list is finalized. In no event may the Contractor request payment of final retainage until the Contractor has completed all items on the punch list. All items that require correction under the Contract which are identified after the preparation and delivery of the punch list remain the obligation of the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Contract.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Work.

**3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.**

#### Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if

required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, which the parties agree apply to all claims whether in tort or in contract.

INSURANCE: Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

Article 7. TERMINATION.

7.1 **TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

## **7.2 TERMINATION BY THE CITY FOR CONVENIENCE**

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

## Article 8. TAXES AND DIRECT PURCHASES.

8.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment and materials for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment and materials it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and materials and identify which equipment and materials are to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment and materials to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment and materials receipt,



inspecting shipments, and assuring that the equipment and materials are in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment and materials will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the equipment/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment and materials relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment and materials. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment and materials at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchase order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment and materials as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment and materials purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment and materials as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment and materials (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment and materials to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and materials and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment and materials. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment and materials received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers,

addresses, phone numbers, etc. All payments will be made in accordance with the Local Government Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or

2. combination of the deliverables with products other than those supplied by the Contractor; and,

3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

#### Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit,

action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 Public Records: The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

- (a) Keep and maintain public records required by the City to perform the service.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR [CITYCLERK@LAKEWORTHBEACHFL.GOV](mailto:CITYCLERK@LAKEWORTHBEACHFL.GOV) OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS.

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonably request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Work. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach  
Attn: City Manager/Finance Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

and to the Contractor as follows:

M&M Asphalt Maintenance Inc. d/b/a All County Paving  
Attn: Kenneth Goldberg  
1180 SW 10<sup>th</sup> Street  
Delray Beach, FL 33444

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 PUBLIC ENTITY CRIMES. The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contract shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible

for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

#### Article 12. SCRUTINIZED COMPANIES

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
2. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.
5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

Article 13. E-VERIFY

Pursuant to Section 448.095(5), Florida Statutes, the Contractor shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(f), Florida Statutes;

13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;

13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,

13.6. Be aware that if the City terminates this Contract under Section 448.095(5)(c), Florida Statutes, Contractor may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

Article 14. COMPLIANCE WITH SECTION 787.06, FLORIDA STATUTES (2024)

By signing this Contract before a notary public and taking an oath under the penalty of perjury, the Contractor attests and warrants that the Contractor does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

**Remainder of this page intentionally left blank**  
**Signature page follows**



IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for Citywide concrete sidewalk, curb and driveway aprons repairs to be executed the day and year shown below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **M&M Asphalt Maintenance Inc. d/b/a All County Paving**

By: \_\_\_\_\_

[Corporate Seal]

Print Name: Kenneth Goldberg

Title: President

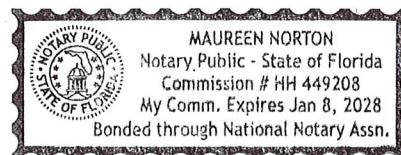
STATE OF FLORIDA )  
COUNTY OF PAUL BEACH )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 3rd day of OCTOBER 2024, by KENNETH GOLDBERG, as the PRESIDENT [title] of **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **M&M Asphalt Maintenance Inc. d/b/a All County Paving** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:

My Commission expires: 01/08/2028



## EXHIBIT "A"

### **Detailed Scope of Work**

The objective of this Contract is to repair concrete curbing, sidewalk and aprons throughout the city limits that are in poor condition and could be tripping hazards. The City will identify locations for repair, measure and provide information to subcontractor selected through the bid process.

Work covered with this Contract will address the removal and replacement of concrete curb, gutter, sidewalk, driveway aprons and other miscellaneous concrete work.

The maintenance and construction work is generally described as follows:

- Concrete sidewalk and driveway apron removal and installation
- ADA concrete ramps
- Concrete curbing removal and replacement (Type D or F)
- Green area grading and sodding as needed
- Asphalt repairs as needed
- Associated Misc. Restoration Work

All works shall be constructed in accordance with the City's design specifications and standards. It is the intention of the City to award Work Orders in the multiple smaller projects between \$20,000 and \$100,000. Some projects may be of the different sizes or higher or lower value. Contractor must have equipment and sufficient number of employees to manage the Contract. Equipment shall include at minimum backhoe or excavator, dump truck, skid steer with bucket and forks, jack hammer etc.

#### Detailed Contractor Responsibility:

1. The Contractor shall furnish all necessary labor, material, equipment, and supervision to repair & replace existing concrete within the city limits of Lake Worth Beach.
2. The contractor shall confirm measurements by visiting the repair locations.
3. The contractor shall provide proper MOT needed. i.e. cones, barricades, sidewalk closed signs
4. A schedule will be provided to the Public Works Project Manager with two (2) week lead time to allow proper notification to residents.
5. All locations prepped for concrete will be poured on the same day unless prior approval from the Public Works Assistant Director or Project Manager.
6. Contractor will use concrete with a 3,000 PSI
7. Saw cut concrete
8. Break-up, remove and dispose of existing concrete
9. Reconstruct new concrete curb, gutter, sidewalk, other miscellaneous work, and if necessary replace or install valve and manhole risers.
10. Remove and dispose of tree roots, debris, asphalt, and inferior road base to prepare proper foundation.
11. Add and compact proper road base following City standards
12. Keep work area neat, tidy and passable conditions. Secure work area with MOT during construction.
13. Contractor will park vehicles with accordance to City laws and ordinances to not impede traffic flow unless necessary. Proper MOT will be used.
14. Contractor shall respond to City staff within two business days of a request for work.
15. Contractor will be responsible for billing and accounting, project management and administration.
16. Contractor will provide one point of contact for all locations.

City of Lake Worth Beach Public Works Project Manager Responsibility:

1. Identify locations for repair.
2. Marking of locations
3. Notify residents of upcoming work.
4. Inspections of the work being completed

The City may consider doing works on a case-by-case basis for the following:

1. Broken Irrigation Lines and Sprinkler Heads
2. Broken asphalt from removal of concrete

**EXHIBIT "B"**  
**SCHEDULE OF UNIT PRICES**

**(B4)**

**IFB #24-116 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs**

**SCHEDULE OF UNIT PRICES**

In order to evaluate the bids, each Bidder must identify the unit prices for the work set forth in the Scope of Work and to be used for individual Work Orders. In the event additional work is added to this contract by Change Order, the following unit prices will be utilized (as applicable).

<u>ITEM #</u>	<u>DESCRIPTION</u>	<u>QTY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>
<b>CONCRETE</b>				
1	MOBILIZATION (LESS THAN 100 LF)	1	LS	\$ 3,000.00
2	MOBILIZATION (OVER 100 LF)	1	LS	\$ 2,000.00
3	REMOVE EX. 4" CONCRETE	1	SF	\$ 3.00
4	REMOVE EX. 6" CONCRETE	1	SF	\$ 4.50
5	4" CONCRETE SIDEWALK (3,000 PSI)	1	SF	\$ 8.50
6	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1	SF	\$ 2.25
7	MONOLITHIC CURB AND SIDEWALK	1	SF	\$ 20.00
8	REMOVE EX. CONCRETE CURBING (ALL TYPES)	1	LF	\$ 15.00
9	TYPE F CURB AND GUTTER	1	LF	\$ 38.00
10	VALLEY GUTTER	1	LF	\$ 35.00
11	TYPE D CURBING	1	LF	\$ 30.00
12	ADA TACTILE DOME SURFACE (YELLOW) CAST-IN-PLACE	1	SF	\$ 55.00
<b>MISC. WORK</b>				
13	MISC. ASPHALT REPAIR	1	SF	\$ 9.00
14	BAHIA SODDING (INCL. GRADING WORK)	1	SY	\$ 20.00
15	FLORATAM SODDING (INCL. GRADING WORK)	1	SY	\$ 20.00
16	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$ 350.00
17	ADJUST EX. VALVE BOX	1	EA	\$ 200.00
18	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$ 1,500.00
19	PAVER BRICK REPAIR (EXIST. BRICKS)	1	SF	\$ 12.00
20	MOBILIZATION (LESS THAN 100 SF)	1	EA	\$ 2,000.00
21	MOBILIZATION (OVER 100 SF)	1	EA	\$ 1,500.00
22	MOT CONES	1	EA	\$ 12.00
23	MOT TYPE II BARRICADES	1	EA	\$ 50.00

Name of Bidder: M&M ASPHALT MAINTENANCE INC., D/B/A ALL COUNTY PAVING

Print Name: KENNETH GOLDBERG Title: PRESIDENT

SIGNATURE:  Date: 08/28/24

**EXHIBIT "C"**

**SAMPLE WORK ORDER**

**CONSTRUCTION CONTRACT FOR CITYWIDE CONCRETE SIDEWALK, CURB,  
DRIVEWAY APRON REPAIRS  
IFB#24-116**

**WORK ORDER NO. \_\_\_\_\_**

THIS WORK ORDER for the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs ("Work Order" hereafter) is made on the \_\_\_\_\_, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **M&M Asphalt Maintenance Inc. d/b/a All County Paving** a corporation authorized to do business in State of Florida ("Contractor" hereafter).

**1.0 Project Description:**

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs described as: \_\_\_\_\_ (the "Project"). The Project is more specifically described in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, and which are incorporated herein by reference.

**2.0 Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

**3.0 Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

**Liquidated Damages. The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix**

**the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \_\_\_\_\_ hundred dollars (\$ \_\_\_\_\_ .00) for each day that expires after the time specified in this Work Order.**

**4.0 Compensation and Direct Purchases**

This Work Order is issued for a lump sum, not to exceed amount of \$ \_\_\_\_\_ (\_\_\_\_\_). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**5.0 Project Manager**

The Project Manager for the Contractor is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_; and, the Project Manager for the City is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_.

**6.0 Progress Meetings**

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

**7.0 Contractor's Representations**

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the

Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

**8.0 Warranty.** The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

**9.0 Authorization**

This Work Order is issued pursuant to the Construction Contract for Citywide concrete sidewalk, curb, and driveway aprons repairs Contract IFB#24-116 between the City of Lake Worth Beach and the Contractor, dated \_\_\_\_\_, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR:

**M&M Asphalt Maintenance Inc. d/b/a All County Paving**

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_

\_\_\_\_\_  
[Corporate Seal]

Print Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ [title] of **M&M Asphalt Maintenance Inc. d/b/a All County Paving**, a corporation authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **M&M Asphalt Maintenance Inc. d/b/a All County Paving** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:

My Commission expires: \_\_\_\_\_



## Exhibit "D"

### Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from the IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,

regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of

such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### Rights to Inventions Made Under a Contract or Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### Clean Air Act

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### Federal Water Pollution Control Act

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### Suspension and Debarment.

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

#### Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

#### DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

#### Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

#### No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

#### Affirmative Steps. Required Affirmative Steps

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

Domestic preferences for procurements.

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
  - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Prohibition on certain telecommunications and video surveillance services or equipment.

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
  - (a) Procure or obtain;
  - (b) Extend or renew a contract to procure or obtain; or
  - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS**

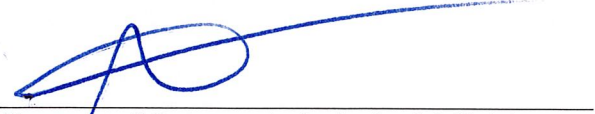
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non- procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

### **INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the

certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



Signature of Contractor's Authorized Official

Kenneth Goldberg / President  
Name and Title of Contractor's Authorized Official

10/02/24  
Date

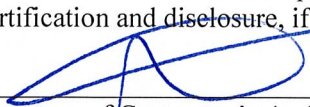
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

Kenneth Goldberg / President  
Name and Title of Contractor's Authorized Official

10/02/24  
Date



**CONSTRUCTION CONTRACT FOR  
(Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs)  
IFB #24-116**

THIS CONSTRUCTION CONTRACT for Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs (“Contract”) is entered on \_\_\_\_\_, by and between the **City of Lake Worth Beach**, a Florida municipal corporation (“City”) and **Boulder Construction LLC**, a Limited Liability Company authorized to do business in the State of Florida with its principal office located at 5181 Kim CT, West Palm Beach, FL 33415. (“Contractor”)

**WHEREAS**, the City is a Municipality organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

**WHEREAS**, the City issued Invitation for Bids #24-116 (“IFB”) to perform construction and maintenance services including concrete sidewalk, curbing, driveway aprons and associated restoration work for the City’s Public Works Department on as needed basis; and

**WHEREAS**, the Contractor submitted a unit price bid to perform the work generally described and set out in response to the IFB; and

**WHEREAS**, the City desires to accept Contractor’s bid in order for Contractor to render the services to the City as provided herein; and

**WHEREAS**, the Contractor further warrants that it is experienced and capable of performing the Task hereunder in a professional and competent manner; and

**WHEREAS**, this Agreement may be funded, in whole or in part, by the Federal agencies, in which case, the Contractor agrees that any services performed pursuant to the IFB and this Agreement will comply with all applicable Federal law, Federal regulations, executive orders, Federal policies, procedures, and directives and special clauses as provided for in **Exhibit “D”**;

**WHEREAS**, the City finds awarding the IFB to the Contractor as described herein serves a valid public purpose.

**NOW THEREFORE**, the City hereby engages the services of the Contractor, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

Article 1. GENERAL INFORMATION.

1.1 The foregoing recitals are incorporated into this Contract as true and correct statements.

1.2 **Scope of Services/Work.** The Contractor shall provide the services described in IFB and detailed scope of services attached hereto as Exhibit “A” and work requested by the City and required under a City approved work order as described herein. The general nature of the services and work to be provided by the Contractor under this Contract are the construction and maintenance services for the City’s Public Works Department for the citywide concrete sidewalk, curb and driveway aprons repairs. It is the intention of the City to award the work in the multiple smaller projects between \$20,000 and \$ 100,000. Some projects may be of different sizes and value.

1.3 **Contract Documents.** The Contract Documents are incorporated herein by reference as if set forth

in this Contract and comprise the entire agreement between the City and Contractor. The Contract Documents consist of this Contract, the IFB (including, but not limited to, the documents issued with the IFB as the scope and specifications, Detailed Scope of Work; addendum, attachments and exhibits); and, any duly executed and issued work orders, change orders and Contract amendments relating thereto. If, during the performance of the work, the Contractor finds an ambiguity, error or discrepancy in the Contract Documents, the Contractor shall so notify the City, in writing, within five (5) business days and before proceeding shall obtain a written interpretation or clarification. Failure to obtain a written interpretation or clarification will be deemed a waiver of the ambiguity, error or discrepancy by the Contractor. The City will not be responsible for any oral instructions, clarifications, or other communications except those provided in writing in response to Contractor's request for clarification of an ambiguity, discrepancy or error.

In resolving conflicts in any of the Contract Documents, the order of precedence shall be as follows:

First Priority:	Fully executed Change Orders or Contract amendments
Second Priority:	This Contract
Third Priority:	Fully executed Work Orders
Fourth Priority:	IFB

1.4 **Contract Administrator.** Whenever the term Contract Administrator is used herein, it is intended to mean **the City Manager or designee, City of Lake Worth Beach, Florida**. In the administration of this Contract, all parties may rely upon instructions or determinations made by the Contract Administrator except that all requests and/or determinations that result in an increase in change in time of completion and/or an increase in the contract price shall require a formal change order or contract amendment executed by the City Manager or the City Commission (depending on the authority set forth in the City's Procurement Code).

1.5 **Work Orders.** This Contract does not guarantee that the City will utilize the Contractor in any capacity or for any services hereunder. When the City identifies a need for the Contractor's services, the City will request a proposal from the Contractor to provide the services requested. The City will provide the Contractor with plans and/or specifications in order for the Contractor to develop its proposal. The Contractor's proposal shall be submitted in the format of the sample work order, attached hereto and incorporated herein as **Exhibit "C"** along with a copy of the Contractor's proposal and shall be based on the Unit Prices attached hereto and incorporated herein as **Exhibit "B"**. Upon receipt of the Contractor's proposed work order and proposal, the City shall decide in its sole discretion whether to award the work order to the Contractor. Depending on the lump sum amount of each work order, the work order may be awarded by the City Manager (if within City Manager's purchasing authority (currently not to exceed \$50,000)) or the City Commission. If the work order is approved by the City, the Contractor shall commence the identified services upon the City's approval of the work order for the services and issuance of a notice to proceed. The City reserves the right to reject any and all proposals submitted by the Contractor. A City-approved work order shall include (by reference) the plans and/or specifications provided by the City to the Contractor.

1.6 **Term.** The term of this Agreement shall be for an initial period of (3) years with the possibility of two (2) one (1) year renewals options. The option(s) to renew may be exercised by the City Manager. Notwithstanding the term, the parties may terminate this Agreement as stated herein.

1.7 **Unit Prices.** The Unit Prices set forth as **Exhibit "B"** shall remain fixed for the first three (3) years of this Contract. If due to applicable price escalations and/or reductions which impact the Contractor's Unit Prices, the City and Contractor may execute a written amendment to this Contract to establish new Unit Prices for the renewal term(s). The City Manager may approve changes in the Unit Prices based on the recommendation of the City's Public Works Director or designee.

Article 2. CONTRACT TIME.

2.1 Contract Time. Final completion of the work and all punch-list items (if any) shall be within the time frame as set forth in each Work Order for each project.

2.2 The Contractor shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the Contractor or its subcontractors (if authorized) and without the Contractor's or subcontractor's fault or negligence. Upon the Contractor's request, the City shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the Contractor and, if the Contractor's delay and failure to timely perform was without it or its subcontractors' fault or negligence, as reasonably determined by the City, the time of completion shall be extended for any reasonable time that the City may reasonably decide; subject to the City's rights to change, terminate, or stop any or all of the work at any time. If the Contractor is delayed at any time in the progress of the work by any act or neglect of the City or its employees, by an approved written change in the scope from the original Contract Documents, or by any other contractor employed by the City, or by changes ordered by the City or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Contractor's reasonable control, or by delay authorized by the City pending negotiation or by any cause which the City shall reasonably decide justifies the delay, then the time of completion shall be extended for any reasonable time the City may reasonably decide. The Contractor must provide the City with written notice of any delay claims and no extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the City. In the case of continuing cause of delay, only one (1) claim is necessary. With the exception of an approved written change in the scope from the original Contract Documents, the Contractor's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and Contractor specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by Contractor due to a delay in completion of the work. Provided, however, and subject to sovereign immunity under section 768.28, Florida Statutes, that this provision shall not preclude recovery or damages by the Contractor for hindrances or delays due solely to fraud, bad faith or active interference on the part of the City. Otherwise, the Contractor shall be entitled only to extensions of the Contract Times as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided above.

Article 3. PAYMENT PROCEDURES

3.1 Generally. The Contractor shall submit invoices on a monthly basis detailing all work accomplished in the prior month and all materials installed and used in the work pursuant to City approved work order. Contractor's invoices shall be submitted to:

City of Lake Worth Beach  
Attn: Finance Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

The City's Contract Administrator or designee will review each invoice submitted by the Contractor. If approved, the City will make payment in accordance with the Contract Documents. If not approved, the City will notify the Contractor within twenty (20) business days of the City's receipt and identify the action necessary to correct the invoice or a deficiency.

3.2 Payment to the Contractor shall be made pursuant Florida's Local Government Prompt Payment Act (for construction services), section 218.735, Florida Statutes, except as provided herein. Specifically, the

City will withhold five percent (5%) of each payment from a work order to the Contractor as retainage. Retainage shall be released to the Contractor in accordance with Section 218.735, Florida Statutes, and as set forth in this Contract.

3.3 Upon substantial completion, the Contractor shall notify the City's Contract Administrator that the work is substantially complete and request an inspection. Within five (5) business days thereafter, the Contractor and City's Contract Administrator or designee shall make an inspection of the work and begin the development of a draft punch-list of items that must be completed by the Contractor prior to the Contractor submitting its final payment request (Punch List Walkthrough). The City shall submit the punch list to the Contractor within fifteen (15) days of the Punch List Walkthrough and the Contractor shall have ten (10) days to agree to the same. If the Contractor wishes to revise the punch list, it must send the revised punch list to the City's Contract Administrator no later than twenty-five (25) days after reaching substantial completion. Thereafter the parties shall agree on the final punch list no later than thirty (30) days after substantial completion. The punch list shall include every remaining item required to render complete, satisfactory, and acceptable services to the City and the estimated cost to complete each remaining item. The final agreed upon punch list shall be sent to the Contractor five (5) days after the punch list is finalized. In no event may the Contractor request payment of final retainage until the Contractor has completed all items on the punch list. All items that require correction under the Contract which are identified after the preparation and delivery of the punch list remain the obligation of the Contractor. The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the Contractor to complete all the construction services purchased pursuant to the Contract.

3.4 Final Payment. Upon final completion and acceptance of the work in accordance with the Contract Documents (including all punch-list items) and final inspection by the appropriate agency with jurisdiction over the project (if other than the City), the Contractor shall submit a "final invoice" to the City. In order for both parties to close their books and records, the Contractor will clearly state "FINAL" on the Contractor's final invoice. This certifies that all work under the applicable work order has been properly completed and all charges have been invoiced to the City. Since this account will thereupon be closed, any and other further charges if not properly included in this final invoice are waived by the Contractor. If the Contractor's Final Invoice is approved as set forth above, the City shall pay the remainder of the work order price including any amount held as retainage.

3.5 Notwithstanding the foregoing, the City shall not be required to pay or release any amount of retainage that is subject of a good faith dispute, the subject of a claim brought pursuant to section 255.05, Florida Statutes, or otherwise the subject of a claim or demand by the City.

3.6 Final payment shall not become due until the Contractor and all of its subcontractors submit to the City releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract Documents or otherwise related to the Work.

**3.7 Acceptance of final payment by the Contractor or a subcontractor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final invoice.**

#### Article 4. SUBCONTRACTS

The Contractor represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the City. All of the services required hereunder shall be performed by the Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if

required, authorized or permitted under state and local law to perform such services. The Contractor shall furnish services in a manner consistent with industry standards and to a level of professional skill generally acceptable in the industry with regard to services of this kind. The Contractor shall comply with all applicable laws in the provision of services under this Contract. The Contractor agrees that it is fully responsible to the City for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City. All of the Contractor's personnel (and all subcontractors) while on City premises, will comply with all City requirements governing conduct, safety, and security. The City reserves the right to request replacement of any of subcontractor or subcontractor's personnel furnished by the Contractor upon written notice by City to Contractor of the cause for such replacement. All work performed by a subcontractor will be at cost to the City without any mark-up by the Contractor. All subcontractors must provide the same level and type of insurance as required of the Contractor under this Contract prior to commencing any services. The Contractor shall submit the subcontractors' proof of insurance upon receipt of a notice to proceed.

#### Article 5. INDEMNITY AND INSURANCE.

The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys of, from, and against all liability and expense, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor, its agents, officers, contractors, subcontractors, employees, or anyone else utilized by the Contractor in the performance of this Contract. The Contractor's liability hereunder shall include all attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor against the City and the Contractor hereby waives its entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Contract and shall not be limited by the amount of any insurance required to be obtained or maintained under this Contract.

Subject to the limitations set forth in this Section, Contractor shall assume control of the defense of any claim asserted by a third party against the City and, in connection with such defense, shall appoint lead counsel, in each case at the Contractor's expense. The City shall have the right, at its option, to participate in the defense of any third-party claim, without relieving Contractor of any of its obligations hereunder. If the Contractor assumes control of the defense of any third party claim in accordance with this paragraph, the Contractor shall obtain the prior written consent of the City before entering into any settlement of such claim. Notwithstanding anything to the contrary in this Section, the Contractor shall not assume or maintain control of the defense of any third party claim, but shall pay the fees of counsel retained by the City and all expenses, including experts' fees, if (i) an adverse determination with respect to the third party claim would, in the good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party claim seeks an injunction or equitable relief against the City; or (iii) the Contractor has failed or is failing to prosecute or defend vigorously the third party claim. Each party shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party claim and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Section 725.06, Florida Statutes, as amended. The Contractor expressly agrees that it will not claim, and waives any claim, that this indemnification violates Section 725.06, Florida Statutes. Nothing contained in the foregoing indemnification or any other provision in the Contract Documents shall be construed as a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes, which the parties agree apply to all claims whether in tort or in contract.

**INSURANCE:** Prior to commencing any work, the Contractor shall provide proof of insurance coverage as required in the IFB. All such insurance policies may not be modified or terminated without the express written authorization of the City. Failure to comply with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Contract. Each party will promptly notify the other of any complaint, claim, suit or cause of action threatened or commenced against it which arises out of or relates, in any manner, to the Contract Documents and/or performance of the work. Each party agrees to cooperate with the other in any investigation either may conduct, the defense of any claim or suit in which either party is named, and shall do nothing to impair or invalidate any applicable insurance coverage.

**Article 6. REIMBURSEMENT OF ENGINEER EXPENSES.**

Should the completion of a work order be delayed beyond the specified or adjusted time limit, Contractor shall reimburse the City for all expenses of engineering and inspection incurred by the City during the period between said specified or adjusted time and the actual date of final completion. All such expenses for engineering and inspection incurred by the City will be charged to Contractor and be deducted from payments due Contractor as provided by this Contract. Said expenses shall be further defined as engineer charges associated with the construction contract administration, including resident project representative costs. All such expenses shall be separate from and in addition to any Liquidated Damages as provided for in an applicable Work Order.

**Article 7. TERMINATION.**

**7.1 TERMINATION BY CITY:** The City may terminate any work order, the Contract and/or the Contract Documents if the Contractor is in default as follows:

- (a) refuses or fails to supply enough properly skilled workers or proper materials to timely and competently complete the work;
- (b) fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- (c) disregards or takes action contrary to any laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- (d) takes action, short of declaring bankruptcy, evidencing insolvency;
- (e) fails to prosecute the services or work in a timely manner and reasonably be unable to reach substantial completion and/or final completion within the timeframe(s) required;
- (f) fails or refuses to provide and/or maintain insurance or proof of insurance as required by the Contract Documents; **or,**
- (g) otherwise is in breach of a provision of the Contract Documents.

When any of the above reasons exist, the City, may without prejudice to any other rights or remedies of the City and after giving the Contractor and the Contractor's surety (if applicable), written notice and five (5) days to cure, terminate the work order, Contract and/or Contract Documents and may:

- (a) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by or paid for by the City; and,
- (b) finish the work by whatever reasonable method the City may deem expedient.

The Contractor and its surety (if any) shall be liable for any damage to the City, including additional attorney and engineering/architectural fees, resulting from the Contractor's termination under this provision by the City, including but not limited to, and any increased costs incurred by the City in completing the work.

When the City terminates the Contract for one of the reasons stated above, the Contractor shall not be entitled to receive further payment, if any, until the work is finished.

Should it be determined by a mediator or a court of competent jurisdiction that the City wrongfully terminated the Contract, then the Contractor agrees to treat such termination as a termination for convenience.

## 7.2 TERMINATION BY THE CITY FOR CONVENIENCE

The City may, at any time, terminate the Contract and Contract Documents for the City's convenience and without cause. Upon receipt of written notice from the City of such termination for the City's convenience, the Contractor shall:

- (a) cease operations as directed by the City in the notice;
- (b) take actions necessary, or that the City may direct, for the protection and preservation of the work; and
- (c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

In case of such termination for the City's convenience, the Contractor shall be entitled to receive payment for work executed, and costs incurred by reason of such termination including termination payments to subcontractors and demobilization costs.

## Article 8. TAXES AND DIRECT PURCHASES.

8.1 TAXES: The City is exempt from payment of Florida State Sales and Use Tax. The Contractor is not authorized to use the City's Tax Exemption Number unless approved in writing.

8.2 DIRECT PURCHASES: For certain projects, the City may seek to make direct purchases of equipment or materials to be used by the Contractor. Pursuant to Section 212.08(6), Florida Statutes, and the Fla. Admin. Code Ann. R. 12A-1.094 and 12A-1.038, the Parties agree to the following procedure regarding the City's direct-purchase from vendors of certain equipment and materials to be used in specific projects:

8.2.1 The City reserves the right, at the City's option, to direct purchase equipment and materials involved in a specific project, including subcontracts, if any so as to save the sales tax which would otherwise have been due with regard to the same. The Contractor and its subcontractors shall comply with the City's direct purchase procedures, including but not limited to those listed below.

8.2.2 As specifically set forth in a City issued work order, within 30 days (or other time as specified in the work order), the Contractor will present a list of direct purchase equipment and materials for the City's consideration which will include the recommended vendors' name; the price quotes from all vendors provided to the Contractor; and, any terms and conditions the Contractor has negotiated with the recommended vendors. The City will then inform the Contractor as to which equipment and materials it will direct purchase. In the event the City fails to exercise its option to direct purchase equipment and materials and identify which equipment and materials are to be purchased by the City within thirty (30) calendar days of receipt of the list from the Contractor, the City shall waive its right to direct purchase any and all equipment and materials to be used in completion of the work under the applicable work order.

8.2.3 The Contractor is responsible for selecting each direct purchase vendor, subject to City approval. The Contractor is responsible for specifications, equipment and materials receipt,

inspecting shipments, and assuring that the equipment and materials are in accordance with the work order and the Contractor's specifications. The Contractor is also responsible for providing the City with enough advance notice of when the direct purchase equipment and materials will need to be ordered and delivered. In absence of the Contractor's receipt of a written notice of City's disapproval of a vendor within thirty (30) calendar days of City's receipt of the equipment/material list referenced in 9.2.2, the City shall be deemed to have waived any and all objections thereto.

8.2.4 The Contractor shall retain all responsibility for installing all equipment and materials relating to the work and for maintaining the construction schedule so long as the City timely orders and pays for the correct direct purchase equipment and materials. The City's direct purchase mechanism to effectuate tax savings in no way effects the obligation of the Contractor to meet all of the terms and conditions and all provisions and technical specifications of the Contract Documents. The Contractor shall be responsible for insuring all equipment once the equipment is in its care, custody and control, regardless of whether directly purchased by City.

8.2.5 The City will issue a direct purchase order to the vendor of the direct purchase equipment and materials at the price proposed in the Contractor's or its subcontractor's bid, less sales tax. The City will promptly send a copy of the issued purchase order to the Contractor.

8.2.6 It will be the Contractor's primary responsibility to properly expedite and follow up on direct purchase orders, thereby assuring delivery of the equipment and materials as ordered and at the time and place needed by the Contractor to complete the work in accordance with the work order and construction schedule. To the extent required by the Contractor, the City shall cooperate with all requests of the Contractor related to the expedition of and follow up on direct purchase orders.

8.2.7 The Contractor shall take delivery, unload, and install the equipment and materials purchased on the direct purchase order in accordance with the work order and the Contract Documents with the vendor to repair, replace, and make good any defect without cost to the City, until such time as the work has been completed and accepted by City in accordance with the Contract Documents. The City, with assistance from the Contractor, will be responsible for undertaking and completing any returns of direct purchase equipment and materials as requested by the Contractor and working with the vendor to effectuate any credits or warranties for the returned equipment and materials (if applicable). Any returns not replaced shall be credited to City and acknowledged by a supplement to the direct purchase order and, if applicable, amendment to the Contract Sum. The Contractor shall not be responsible for warranting the direct purchase equipment and materials to the City; however, the Contractor shall be responsible for facilitating the vendor's warranty of the direct purchase equipment and materials and the Contractor shall be responsible for warranting the work to install and/or incorporate the equipment and materials. The Contractor shall maintain records of all direct purchases received and incorporated into the work and provide the City with a monthly accounting until all direct purchase items that are received and accepted for inclusion in the specific project.

8.2.8 When delivery of a direct purchase order is complete, or a payment is to be made on a partial shipment, the Contractor will timely submit to City the documentation supporting the equipment and materials received. Invoices for direct purchase orders will be sent by the direct purchase vendor directly to City's Finance Department, with all such invoices addressed to and in the name of the City. The City's Finance Department will forward invoices to the City's Contract Administrator. The City's Contract Administrator will forward the invoices to the Contractor to verify delivery and sign the invoice and associated documentation supporting the amount of the payment. The City will make timely payment to all vendors in compliance with each vendor's payment procedures. The City will take title to all equipment ordered through direct purchase upon or at the time of purchase. The Contractor will assist City in assuring prompt payment by supplying the vendor's FEI numbers,



addresses, phone numbers, etc. All payments will be made in accordance with the Local Government Prompt Payment Act.

Article 9. CONTRACTOR'S REPRESENTATIONS AND AGREEMENTS.

In order to induce the City to enter into this Contract, the Contractor makes the following representations:

9.1 Contractor has or will familiarize itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work prior to commencing the work under an applicable Work Order. All work shall be performed consistent with all applicable laws and regulations.

9.2 Contractor agrees to be solely responsible for compliance with all applicable environmental regulations, for any liability arising from non-compliance with the regulations and to reimburse the City for any loss incurred in connection therewith. This compliance provision specifically includes the Contractor's compliance with all applicable standards, orders or regulations including, without limitation, those issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

9.3 The Contractor represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business and provide the work required under the Contract Documents. Proof of such licenses and approvals shall be submitted to the City upon request.

Article 10. INFRINGEMENT INDEMNITY.

10.1 The Contractor will defend or settle at its expense a claim or suit brought by a third party against the City arising out of a claim asserting that the services, work, repair, materials or other deliverables ("deliverables" hereafter) provided by the Contractor under the Contract Documents (if any) infringes any U.S. copyright or any U.S. patent or misappropriates a trade secret. The Contractor will indemnify and hold harmless the City against and from damages, costs, and attorneys' fees, if any and at all levels of trial and appeal or mediation or arbitration, finally awarded in such suit or the amount of the settlement thereof; provided that (i) the Contractor is promptly notified in writing of such claim or suit, (ii) the Contractor will have the sole control of the defense and settlement thereof, and (iii) City furnishes the Contractor, on reasonable request, information available to City for such defense. The City will not admit any such claim without prior consent of the Contractor.

a. In the event of a claim of infringement, the Contractor shall, at its option:

1. procure for City the right to continue using the deliverables provided under the Contract Documents; or
2. replace or modify the deliverables so that the same becomes non-infringing but substantially equivalent in functionality and performance.
3. If neither of the above actions is reasonably feasible, the Contractor will refund to City the fee actually paid by City under the Contract Documents (as amortized on a straight-line basis over the time in which the City was able to use the deliverables).

b. The Contractor will have no obligation under this section for infringement if and to the extent that such claim arises from:

1. modification of the deliverables other than by the Contractor or by its recommendation; or

2. combination of the deliverables with products other than those supplied by the Contractor; and,

3. the alleged infringement or misappropriation relates to such modification or combination.

c. The Contractor will also not have any indemnification obligation with respect to a claim: (i) if it has provided City with reasonable changes that would have avoided the problem and the reasonable changes are not fully implemented by City within a reasonable time or (ii) arising out use of the deliverables not in accordance with the Contract Documents.

d. The Contractor's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the Contractor whether such injury or damage shall accrue, or may be discovered, before or after termination or expiration of the Contract Documents.

#### Article 11. MISCELLANEOUS.

11.1 The City and Contractor each binds itself, its partners, its successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.2 Additional work and/or changes to a work order's price and/or time, is subject to the City's prior written approval. Only the City Manager and City Commission (based on the procurement code) have the authority to approve such additional work and changes.

11.3 The headings contained in this Contract are inserted for convenience of reference only and shall not be a part or control or affect the meaning hereof.

11.4 This Contract may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall be deemed to be an original, but each of which together shall constitute one and the same instrument.

11.5 This Contract (together with the other Contract Documents) supersedes any and all prior negotiations and oral or written agreements heretofore made relating to the subject matter hereof and, except for written agreements, if any, executed and delivered simultaneously with or subsequent to the date of this Contract, constitutes the entire agreement of the parties relating to the subject matter hereof. This Contract may not be altered or amended except by a writing signed by the parties hereto. No waiver of any of the terms or conditions of this Contract shall be effective unless in writing and executed by the party to be changed therewith. No waiver of any condition or of the breach of any term, covenant, representation, warranty or other provision hereof shall be deemed to be construed as a further or continuing waiver of any such condition or breach or a waiver of any other condition or of any breach of any other term, covenant, representation, warranty or other provision contained in this Contract.

11.6 This Contract shall be binding upon, and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11.7 This Contract shall be governed by and construed and interpreted in accordance with the laws of the State of Florida. Each of the parties hereto (a) irrevocably submit itself to the exclusive jurisdiction of the Fifteenth Judicial Circuit Court in and for Palm Beach County, Florida for state actions and jurisdiction of the United States District Court for the Southern District of Florida, Palm Beach Division, for federal actions, for the purposes of any suit, action or other proceeding arising out of, or relating to, this Contract; (b) waives and agrees not to assert against any party hereto, by way of motion, as a defense of otherwise, in any suit,

action or other proceeding, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason whatsoever; and (c) to the extent permitted by applicable law, any claim that such suit, action or proceeding by any part hereto is brought in an inconvenient forum or that the venue of such suit, action or proceeding is improper or that this Contract or the subject matter hereof may not be enforced in or by such courts.

11.8 This Contract shall create no rights or claims whatsoever in any third party.

11.9 If any one or more of the provisions of the Contract shall be held to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

11.10 The effective date of this Contract is the date the Contract is approved by the City Commission.

11.11 **Public Records:** The Contractor shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, and, if determined to be acting on behalf of the City as provided under section 119.011(2), Florida Statutes, specifically agrees to:

(a) Keep and maintain public records required by the City to perform the service.

(b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.

(d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION CITY CLERK, (561) 586-1660 OR CITYCLERK@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FL 33460.**

11.12 This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

11.13 In accordance with Palm Beach County ordinance number 2011-009, the Contractor acknowledges that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

11.14 If any legal action or other proceeding is brought for the enforcement of this Contract or the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract or the Contract Documents, each party shall be responsible for their own attorney's fees at all levels. EACH PARTY ALSO AGREES AND VOLUNTARILY WAIVES ANY RIGHT TO A JURY TRIAL ARISING OUT OF ALLEGED DISPUTE, BREACH, DEFAULT, MISREPRESENTATION OR ANY OTHER CLAIM IN CONNECTION WITH OR ARISING FROM ANY PROVISION OF THIS CONTRACT OR THE CONTRACT DOCUMENTS.

11.15 Each of the parties agrees to perform its obligations under the Contract Documents in conformance with all laws, regulations and administrative instructions that relate to the parties' performance of the work and under the Contract Documents.

11.16 All documents, including but not limited to drawings, specifications, plans, reports, other items and data or programs stored in hard-copy, electronically or otherwise (collectively referred to as "Documents" hereafter), prepared by the Contractor or its subcontractors under this Contract shall be considered a "Work for Hire" and the exclusive property of the City. To the extent such Documents may not be deemed a "Work for Hire" under applicable law, Contractor and Contractor's Subcontractors will assign to the City all right, title and interest in and to Contractor and/or Contractor's Subcontractors' copyright(s) for such Documents. Contractor shall execute and deliver to City such instruments of transfer and take such other action that City may reasonably request, including, without limitation, executing and filing, at City's expense, copyright applications, assignments and other documents required for the protection of City's right to such Documents. The Contractor shall retain copies of the Documents for a period of three (3) years from the date of completion of the Work. The City grants to the Contractor and Contractor's subcontractors the right and/or limited license to use a portion of the Documents prepared by the Contractor or the Contractor's subcontractors in future projects of the Contractor or Contractor's subcontractors with said right and/or limited license to use a portion at Contractor's or Contractor's subcontractor's own risk and without any liability to City. Any modifications made by the City to any of the Contractor's Documents, or any use, partial use or reuse of the Documents without written authorization or adaptation by the Contractor will be at the City's sole risk and without liability to the Contractor.

11.17 Any provision of this Contract which is of a continuing nature or imposes an obligation which extends beyond the term of this Contract shall survive its expiration or earlier termination.

11.18 Any notice required to be given under the Contract Documents shall be sent by certified mail (return receipt requested) or by nationally recognized overnight courier as follows to the City:

City of Lake Worth Beach  
Attn: City Manager/Finance Department/Procurement Division  
7 N. Dixie Highway  
Lake Worth Beach, FL 33460

and to the Contractor as follows:

Boulder Construction LLC  
Attn: Richard Rama  
5181 KIM CT  
West palm Beach, FL 33415

Either party may amend this provision by written notice to the other party.

11.19 The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Section 112.311, Florida Statutes. The Contractor further represents that no person having any such conflicting interest shall be employed for said performance. The Contractor shall promptly notify the City's representative, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by the Contractor. The City agrees to notify the Contractor of its opinion within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the City shall so state in the notification and the Contractor shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by the Contractor under the terms of this Contract.

11.20 The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, Contractor shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

11.21 This Contract is not intended to be and shall not be construed as an exclusive agreement, and the City may employ additional or other contractors to perform services contemplated by this Contract without liability to the City.

11.22 **PUBLIC ENTITY CRIMES.** The Contractor acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. The Contractor will promptly advise the City if it becomes aware of any violation of this statute.

11.23 PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

11.24 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of all services and work. This includes being responsible

for all precautions for safety of, and reasonable protection to prevent damage, injury or loss to employees performing the services and work and other persons who may be affected thereby; the work, materials and equipment incorporated therein; and other property, equipment or materials at the site or adjacent thereto including, without limitation, trees, shrubs, lawns, sidewalks, pavements, roadways or structures and utilities not designated for removal, relocation or replacement in the course of the work. The Contractor shall comply with and give all notices required by applicable laws, statutes, ordinances, rules and regulations bearing on safety of persons or property, or their protection from damage, injury or loss. The Contractor shall implement, erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards reasonably related to the work or which could arise therefrom. The Contractor shall promptly remedy damage and loss (other than covered by applicable insurance) caused in whole or in part by the Contractor or anyone directly or indirectly employed by or utilized by the Contractor in the performance of the work, which is not attributable to the City's negligence.

11.25 The Contractor agrees that, in all matters relating to this Contract, it will be acting as an independent contractor with exclusive control of the manner and means of performing the work, its obligations and tasks in accordance with the requirements of this Contract and the Contract Documents. The Contractor has no authority to act or make any agreements or representations on behalf of the City. This Contract is not intended, and shall not be construed to create, between the City and the Contractor, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City.

#### Article 12. SCRUTINIZED COMPANIES

1. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate this Contract at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Contract.
2. If this Contract is for one million dollars or more, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the City may immediately terminate this Contract at its sole option if the Contractor, or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or the Scrutinized Companies with Activities in Iran Terrorism Sectors List, or are or have been engaged with business operations in Cuba or Syria during the term of this Contract.
3. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Contract.
4. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of this Contract, including any and all renewals.
5. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.

6. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**Article 13. E-VERIFY**

Pursuant to Section 448.095(5), Florida Statutes, the Contractor shall:

13.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Contract) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

13.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Contract) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(f), Florida Statutes;

13.3. Maintain copies of all subcontractor affidavits for the duration of this Contract and provide the same to the CITY upon request;

13.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

13.5. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Contract; and,

13.6. Be aware that if the City terminates this Contract under Section 448.095(5)(c), Florida Statutes, Contractor may not be awarded a public contract for at least 1 year after the date on which the Contract is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Contract.

**Article 14. COMPLIANCE WITH SECTION 787.06, FLORIDA STATUTES (2024)**

By signing this Contract before a notary public and taking an oath under the penalty of perjury, the Contractor attests and warrants that the Contractor does not use coercion for labor or services as defined in section 787.06, Florida Statutes (2024).

**Remainder of this page intentionally left blank**  
**Signature page follows**

IN WITNESS WHEREOF, the City and Contractor have caused this Construction Contract for Citywide concrete sidewalk, curb and driveway aprons repairs to be executed the day and year shown below.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **Boulder Construction LLC**

[Corporate Seal]

By: \_\_\_\_\_  
*[Signature]*

Print Name: Richard Rama

Title: Operation Manager

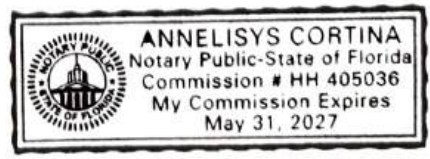
STATE OF Florida  
COUNTY OF Palm Beach

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this 2 day of October, 2024, by Richard Rama, as the Operation Manager [title] of **Boulder Construction LLC**, a limited liability company authorized to do business in the State of Florida, who is  personally known to me or  who has produced Driver license as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Boulder Construction LLC** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:

My Commission expires: May 31, 2027





## EXHIBIT "A"

### **Detailed Scope of Work**

The objective of this Contract is to repair concrete curbing, sidewalk and aprons throughout the city limits that are in poor condition and could be tripping hazards. The City will identify locations for repair, measure and provide information to subcontractor selected through the bid process.

Work covered with this Contract will address the removal and replacement of concrete curb, gutter, sidewalk, driveway aprons and other miscellaneous concrete work.

The maintenance and construction work is generally described as follows:

- Concrete sidewalk and driveway apron removal and installation
- ADA concrete ramps
- Concrete curbing removal and replacement (Type D or F)
- Green area grading and sodding as needed
- Asphalt repairs as needed
- Associated Misc. Restoration Work

All works shall be constructed in accordance with the City's design specifications and standards. It is the intention of the City to award Work Orders in the multiple smaller projects between \$20,000 and \$100,000. Some projects may be of the different sizes or higher or lower value. Contractor must have equipment and sufficient number of employees to manage the Contract. Equipment shall include at minimum backhoe or excavator, dump truck, skid steer with bucket and forks, jack hammer etc.

#### Detailed Contractor Responsibility:

1. The Contractor shall furnish all necessary labor, material, equipment, and supervision to repair & replace existing concrete within the city limits of Lake Worth Beach.
2. The contractor shall confirm measurements by visiting the repair locations.
3. The contractor shall provide proper MOT needed. i.e. cones, barricades, sidewalk closed signs
4. A schedule will be provided to the Public Works Project Manager with two (2) week lead time to allow proper notification to residents.
5. All locations prepped for concrete will be poured on the same day unless prior approval from the Public Works Assistant Director or Project Manager.
6. Contractor will use concrete with a 3,000 PSI
7. Saw cut concrete
8. Break-up, remove and dispose of existing concrete
9. Reconstruct new concrete curb, gutter, sidewalk, other miscellaneous work, and if necessary replace or install valve and manhole risers.
10. Remove and dispose of tree roots, debris, asphalt, and inferior road base to prepare proper foundation.
11. Add and compact proper road base following City standards
12. Keep work area neat, tidy and passable conditions. Secure work area with MOT during construction.
13. Contractor will park vehicles with accordance to City laws and ordinances to not impede traffic flow unless necessary. Proper MOT will be used.
14. Contractor shall respond to City staff within two business days of a request for work.
15. Contractor will be responsible for billing and accounting, project management and administration.
16. Contractor will provide one point of contact for all locations.

City of Lake Worth Beach Public Works Project Manager Responsibility:

1. Identify locations for repair.
2. Marking of locations
3. Notify residents of upcoming work.
4. Inspections of the work being completed

The City may consider doing works on a case-by-case basis for the following:

1. Broken Irrigation Lines and Sprinkler Heads
2. Broken asphalt from removal of concrete

**EXHIBIT "B"**  
**SCHEDULE OF UNIT PRICES**

**(B4)**

**#B 204-118 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs**

**SCHEDULE OF UNIT PRICES**

In order to evaluate the bids, each Bidder must identify the unit prices for the work set forth in the Scope of Work and to be used for individual Work Orders. In the event additional work is added to this contract by Change Order, the following unit prices will be utilized (as applicable).

ITEM #	DESCRIPTION	QTY	UNIT	UNIT PRICE
<b>CONCRETE</b>				
1	MOBILIZATION (LESS THAN 100 LF)	1	LS	\$2400
2	MOBILIZATION (OVER 100 LF)	1	LS	\$2000
3	REMOVE EX. 4" CONCRETE	1	SF	\$2.20
4	REMOVE EX. 6" CONCRETE	1	SF	\$2.80
5	4" CONCRETE SIDEWALK (3,000 PSI)	1	SF	\$7.00
6	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1	SF	\$8.90
7	MONOLITHIC CURB AND SIDEWALK	1	SF	\$9.50
8	REMOVE EX. CONCRETE CURBING (ALL TYPES)	1	LF	\$11.00
9	TYPE F CURB AND GUTTER	1	LF	\$29.00
10	VALLEY GUTTER	1	LF	\$32.90
11	TYPE D CURBING	1	LF	\$24.00
12	ADA TACTILE DOME SURFACE (YELLOW) CAST-IN-PLACE	1	SF	\$39.00
<b>MISC. WORK</b>				
13	MISC. ASPHALT REPAIR	1	SF	\$11.00
14	BATHA SODDING (INCL. GRADING WORK)	1	SY	\$6.50
15	FLORATAM SODDING (INCL. GRADING WORK)	1	SY	\$6.95
16	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$630
17	ADJUST EX. VALVE BOX	1	EA	\$300
18	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$1000
19	PAVER BRICK REPAIR (EXIST. BRICKS)	1	SF	\$7.40
20	MOBILIZATION (LESS THAN 100 SF)	1	EA	\$2400
21	MOBILIZATION (OVER 100 SF)	1	EA	\$2000
22	MOT CONES	1	EA	\$7.50
23	MOT TYPE II BARRICADES	1	EA	\$15.00

Name of Bidder: Boulder construction LLC

Print Name: Richard Rama

Title: President

SIGNATURE: 

Date: 08/26/2024

EXHIBIT "C"

SAMPLE WORK ORDER

CONSTRUCTION CONTRACT FOR CITYWIDE CONCRETE SIDEWALK, CURB,  
DRIVEWAY APRON REPAIRS  
IFB#24-116

WORK ORDER NO. \_\_\_\_\_

THIS WORK ORDER for the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs ("Work Order" hereafter) is made on the \_\_\_\_\_, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 ("City" hereafter) and **Boulder Construction LLC** a limited liability company authorized to do business in State of Florida ("Contractor" hereafter).

**1.0 Project Description:**

The City desires the Contractor to provide all goods, services, materials and equipment as identified herein related to the Construction Contract for Citywide concrete sidewalk, curb, driveway aprons repairs described as: \_\_\_\_\_ (the "Project"). The Project is more specifically described in the plans prepared by \_\_\_\_\_, dated \_\_\_\_\_, and which are incorporated herein by reference.

**2.0 Scope**

Under this Work Order, the Contractor will provide the City of Lake Worth Beach with construction services for the Project as specified in the **Contractor's proposal attached hereto and incorporated herein as Exhibit "1"**.

**3.0 Schedule and Liquidated Damages**

Substantial completion of all services and work under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. Final completion of all services and work (and all punch-list items (if any)) under this Work Order shall be within \_\_\_\_\_ **calendar days** from the Effective Date of this Work Order. The Effective Date of this Work Order is the date following the parties' execution of this Work Order and the City's delivery of a Notice to Proceed to the Contractor via e-mail, facsimile or other form of delivery as documented by the City. Substantial completion occurs when the services and work has progressed to the point where, in the opinion of the City, the work is sufficiently complete in accordance with the Contract Documents and this Work Order, so that the Project can be utilized for the purposes for which it is intended. Final completion occurs when all services and work (including punch-list items) has been completed and the project becomes fully operational and accepted by the City.

**Liquidated Damages.** The City and Contractor recognize that time is of the essence under this Work Order and the Contract Documents, and that the City will suffer financial loss if the services and work described in this Work Order and the Contract Documents are not completed within the times specified in this Work Order. The City and Contractor recognize, agree and acknowledge that it would be impractical and extremely difficult to ascertain and fix the actual damages that the City would suffer in the event Contractor neglects, refuses, or otherwise fails to complete the services and work within the time specified. Accordingly, instead

of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City \_\_\_\_\_ hundred dollars (\$\_\_\_\_\_.00) for each day that expires after the time specified in this Work Order.

**4.0 Compensation and Direct Purchases**

This Work Order is issued for a lump sum, not to exceed amount of \$ \_\_\_\_\_ (\_\_\_\_\_). The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

The following Direct Purchases are to be made under this Work Order by the City:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**5.0 Project Manager**

The Project Manager for the Contractor is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_; and, the Project Manager for the City is \_\_\_\_\_, phone: \_\_\_\_\_; email: \_\_\_\_\_.

**6.0 Progress Meetings**

The Contractor shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

**7.0 Contractor's Representations**

In order to induce the City to enter into this Work Order, the Contractor makes the following representations:

7.1 Contractor has familiarized itself with the nature and extent of the Contract Documents including this Work Order, work, site, locality, and all local conditions and laws and regulations that in any manner may affect cost, progress, performance or furnishing of the work.

7.2 Contractor has obtained at his/her own expense and carefully studied, or assumes responsibility for obtaining and carefully studying, soil investigations, explorations, and test reports which pertain to the subsurface conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the work as Contractor considers necessary for the performance or furnishing of the work at the stated work order price within the Work Order stated time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the IFB; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or is deemed necessary by Contractor for such purposes.

7.3 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional

examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or is deemed necessary by the Contractor in order to perform and furnish the work under this Work Order price, within the Work Order time and in accordance with the other terms and conditions of the Contract Documents.

7.4 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.5 Contractor has given the City's Contract Administrator written notice of all conflicts, errors or discrepancies that he or she has discovered in the Contract Documents and the written resolution thereof by City or its designee is acceptable to the Contractor.

**8.0 Warranty.** The Contractor warrants and guarantees to the City that all services and work provided under this Work Order will be in accordance with this Work Order and the other Contract Documents. The Contractor warrants that (a) all materials and parts supplied under this Work Order shall be free from defects for one (1) year from the final completion of all work (unless a longer manufacturer warranty applies); (b) all services and work performed under this Work Order will be free from defects for one (1) year from the final completion of all work and the project shall be fully operational without unreasonable downtime or failures; and (c) that the services and work will conform to the requirements of the Contract Documents. If, at any time prior to the expiration of the one (1) year warranty period, the City discovers any failure or breach of the Contractor's warranties or the Contractor discovers any failure or breach of the Contractor's warranties, the Contractor will, upon written notice from City or of its own accord, at the Contractor's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). The Contractor will remedy any such failure or breach so, to the extent possible, to avoid unnecessary disruptions to the operations of City or its systems. In the event the Contractor fails to initiate and diligently pursue corrective action within five (5) days of the Contractor's receipt of the City's notice or the Contractor's discovery of the same, the City may undertake such corrective action at the Contractor's expense.

#### **9.0 Authorization**

This Work Order is issued pursuant to the Construction Contract for Citywide concrete sidewalk, curb, and driveway aprons repairs Contract IFB#24-116 between the City of Lake Worth Beach and the Contractor, dated \_\_\_\_\_, ("Contract" hereafter). If there are any conflicts between the terms and conditions of this Work Order and the Contract, the terms and conditions of the Contract shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Work Order No. \_\_\_\_\_ as of the day and year set forth above.

**CITY OF LAKE WORTH BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_  
Melissa Ann Coyne, MMC, City Clerk

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_  
Betty Resch, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL  
SUFFICIENCY:

By: \_\_\_\_\_  
Glen J. Torcivia, City Attorney

By: \_\_\_\_\_  
Yannick Ngendahayo, Financial Services Director

CONTRACTOR: **Boulder Construction LLC**

By: DO NOT SIGN – SAMPLE ONLY \_\_\_\_\_

\_\_\_\_\_  
[Corporate Seal]

Print Name: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

THE FOREGOING instrument was acknowledged before me by means of  physical presence or  online notarization on this \_\_\_\_ day of \_\_\_\_\_ 2024, by \_\_\_\_\_, as the \_\_\_\_\_ [title] of **Boulder Construction LLC** \_\_\_\_\_, a company authorized to do business in the State of Florida, who is  personally known to me or  who has produced \_\_\_\_\_ as identification, and who did take an oath under penalty of perjury that the facts stated with regard to section 787.06, Florida Statutes, are true and correct, and that he or she is duly authorized to execute the foregoing instrument and bind **Boulder Construction LLC** to the same.

\_\_\_\_\_  
Notary Public Signature

Notary Seal:

My Commission expires: \_\_\_\_\_

## Exhibit "D"

### Federal Contract Provisions

The Contractor hereby agrees that the following terms, at a minimum, will be incorporated into any subsequent contract resulting from the IFB, which is funded in whole or in part with any federal or other funding where the following terms are applicable:

Equal Employment Opportunity. During the performance of the resulting contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules,



regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

#### Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. DOJ, the State of Florida, or the CITY shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of

such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

#### **Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401. "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

#### **Clean Air Act**

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The Contractor agrees to report each violation to the City, and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### **Federal Water Pollution Control Act**

(1) The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by DOJ.

#### **Suspension and Debarment.**

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification, as laid out in Exhibit I, is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State of Florida or the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification as laid out in Exhibit J. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

#### Procurement of Recovered materials.

- (i) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- Competitively within a timeframe providing for compliance with the contract performance schedule;
  - Meeting contract performance requirements; or
  - At a reasonable price.
- (ii) Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iii) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

#### Access to Records.

- (1) The Contractor agrees to provide the State of Florida, the CITY, the DOJ Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The Contractor agrees to provide the Federal Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the DOJ Administrator or the Comptroller General of the United States.

#### DHS Seal, Logo, and Flags.

The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific DOJ pre-approval.

#### Compliance with Federal Law, Regulations, and Executive Orders.

By signing this agreement, the Contractor acknowledges that federal financial assistance may be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, federal policies, procedures, and directives.

#### No Obligation by Federal Government.

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**Affirmative Steps. Required Affirmative Steps**

If the Contractor intends to subcontract any portion of the work covered by this Contract, the Contractor must take all necessary affirmative steps to assure that small and minority businesses, women's business enterprises and labor surplus area firms are solicited and used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

**Domestic preferences for procurements.**

- (1) As appropriate and to the extent consistent with law, the Contractor should purchase, acquire, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- (2) For purposes of this section:
  - (a) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (b) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**Prohibition on certain telecommunications and video surveillance services or equipment.**

- (1) The Contractor is prohibited from obligating or expending loan or grant funds to:
  - (a) Procure or obtain;
  - (b) Extend or renew a contract to procure or obtain; or
  - (c) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
    - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
    - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
    - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (2) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), the City shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

## **CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS - LOWER-TIER COVERED TRANSACTIONS**

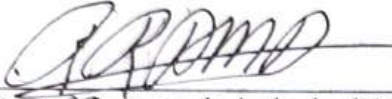
This document is a covered transaction for purposes of the debarment and suspension regulations implementing Executive Order 12549, Debarment and Suspension (1986) and Executive Order 12689, Debarment and Suspension (1989) at 2 C.F.R. Part 3000 (Non-procurement Debarment and Suspension). As such, Contractor is required to confirm that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

### **INSTRUCTIONS FOR CERTIFICATION**

- 1) By signing this Certification, the Contractor, also sometimes referred to herein as a prospective primary participant, is providing the certification set out below.
- 2) The inability of a Contractor to provide the certification required below will not necessarily result in denial of participation in the covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the City's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the City determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the City if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal and voluntarily excluded, as used in this certification, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.
- 6) The prospective primary participant agrees by signing the Addendum that it shall not knowingly enter into any lower tier covered transactions with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction. If it is later determined that the prospective primary participant knowingly entered into such a transaction, in addition to other remedies available to the City, the City may terminate this transaction for cause or default.
- 7) The prospective primary participant further agrees by signing this Addendum that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," as available through the United States Department of Homeland Security, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the

certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.



\_\_\_\_\_  
Signature of Contractor's Authorized Official

**Richard Rama - Operation Manager**

Name and Title of Contractor's Authorized Official

10/02/2024  
Date

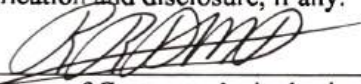
**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. **No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.**
2. **If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.**
3. **The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.**

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor \_\_\_\_\_ certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

**Richard Rama - Operation Manager**  
\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

10/02/2024 \_\_\_\_\_  
Date



City of Lake Worth Beach

Bid Tabulation

IFB#24-116 Citywide Concrete Sidewalk, Curb and Driveway Apron Repairs

Item #	Unit Price Description	QUANTITY	UNIT	FG Construction, LLC	Champion Quality Construction, LLC	M&M Asphalt Maintenance, Inc. d/b/a All County Paving	Boulder Construction LLC	Janice M. Riley, Inc. d/b/a The Paving Lady	Construction 95, LLC
				UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE	UNIT PRICE
<b>CONCRETE</b>									
1	MOBILIZATION (LESS THAN 100 LF)		EA	\$4,000.00	\$700.00	\$3,000.00	\$2,400.00	\$3,500.00	\$1,500.00
2	MOBILIZATION (OVER 100 LF)	1	EA	\$2,500.00	\$450.00	\$2,000.00	\$2,000.00	\$2,500.00	\$750.00
3	REMOVE EX. 4" CONCRETE	2000	SF	\$7.00	\$4.50	\$3.00	\$2.20	\$3.00	\$3.00
4	REMOVE EX. 6" CONCRETE	1000	SF	\$7.50	\$5.00	\$4.50	\$2.90	\$3.50	\$4.00
5	4" CONCRETE SIDEWALK (3,000 PSI)	1000	SF	\$12.00	\$9.00	\$8.50	\$7.00	\$7.75	\$6.00
6	6" CONCRETE SIDEWALK / DRIVEWAY (3,000 PSI)	1000	SF	\$15.00	\$9.50	\$9.25	\$8.90	\$9.50	\$7.50
7	MONOLITHIC CURB AND SIDEWALK	1000	SF	\$20.00	\$16.50	\$20.00	\$9.50	\$10.25	\$47.50
8	REMOVE EX. CONCRETE CURBING (ALL TYPES)	359	LF	\$50.00	\$8.75	\$15.00	\$11.00	\$14.00	\$4.00
9	TYPE F CURB AND GUTTER	1	LF	\$60.00	\$29.00	\$38.00	\$29.00	\$47.00	\$40.00
10	VALLEY GUTTER	1	LF	\$60.00	\$32.00	\$35.00	\$32.90	\$40.00	\$40.00
11	TYPE D CURBING	359	LF	\$60.00	\$28.00	\$30.00	\$24.00	\$32.00	\$40.00
12	ADA TACTILE DOME SURFACE (YELLOW) CAST-IN-PLACE	1	SF	\$50.00	\$47.50	\$55.00	\$39.00	\$140.00	\$35.00
				\$2,841.50	\$639.75	\$2,218.25	\$2,166.40	\$2,807.00	\$977.00
<b>MISC. WORK</b>									
13	MISC. ASPHALT REPAIR	100	SF	\$10.00	N/A	\$9.00	\$11.00	\$15.50	\$8.00
14	BAHIA SODDING (INCL. GRADING WORK)	100	SY	\$40.00	N/A	\$20.00	\$6.50	\$8.50	\$90.00
15	FLORATAM SODDING (INCL. GRADING WORK)	100	SY	\$40.00	N/A	\$20.00	\$6.95	\$11.00	\$90.00
16	ADJUST EX. MANHOLE RING AND COVER	1	EA	\$3,500.00	N/A	\$350.00	\$630.00	\$700.00	\$1,200.00
17	ADJUST EX. VALVE BOX	1	EA	\$1,500.00	N/A	\$200.00	\$300.00	\$450.00	\$1,200.00
18	ADJUST EX. CURB INLET / DRAINAGE INLET	1	EA	\$3,500.00	N/A	\$1,500.00	\$1,000.00	\$725.00	\$2,000.00
19	PAVER BRICK REPAIR (EXIST. BRICKS)	1	EA	\$10.00	N/A	\$12.00	\$7.40	\$9.00	\$7.50
20	MOBILIZATION (LESS THAN 100 SF)	1	EA	\$4,000.00	N/A	\$2,000.00	\$2,400.00	\$1,500.00	\$300.00
21	MOBILIZATION (OVER 100SF)	1	EA	\$2,500.00	N/A	\$1,500.00	\$2,000.00	\$1,350.00	\$150.00
22	MOT CONES	1	EA	\$0.50	N/A	\$12.00	\$7.50	\$25.00	\$14.75
23	MOT TYPE II BARRICADES	1	EA	\$1.00	N/A	\$50.00	\$15.00	\$40.00	\$150.00
				\$20,011.50		\$8,524.00	\$6,404.90	\$6,799.00	
				\$130,671.50	\$62,751.75	\$75,057.00	\$53,770.80	\$63,040.00	



	Rosso Site Development, Inc.		RMJ Maintenance Corp.	
	UNIT PRICE		UNIT PRICE	
	\$6,000.00		\$1,500.00	
\$750.00	\$5,200.00	\$5,200.00	\$3,000.00	\$3,000.00
\$6,000.00	\$4.90	\$9,800.00	\$4.00	\$8,000.00
\$4,000.00	\$6.10	\$6,100.00	\$4.50	\$4,500.00
\$6,000.00	\$9.30	\$9,300.00	\$10.00	\$10,000.00
\$7,500.00	\$16.10	\$16,100.00	\$12.00	\$12,000.00
\$47,500.00	\$27.80	\$27,800.00	\$20.00	\$20,000.00
\$1,436.00	\$15.60	\$5,600.40	\$20.00	\$7,180.00
\$40.00	\$50.70	\$50.70	\$40.00	\$40.00
\$40.00	\$50.70	\$50.70	\$40.00	\$40.00
\$14,360.00	\$43.40	\$15,580.60	\$40.00	\$14,360.00
\$35.00	\$47.50	\$47.50	\$50.00	\$50.00
\$87,661.00	\$5,472.10	\$95,629.90	\$3,240.50	\$79,170.00
\$800.00	\$6.10	\$610.00	\$30.00	\$3,000.00
\$9,000.00	\$12.40	\$1,240.00	\$20.00	\$2,000.00
\$9,000.00	\$14.90	\$1,490.00	\$20.00	\$2,000.00
\$1,200.00	\$1,375.00	\$1,375.00	\$750.00	\$750.00
\$1,200.00	\$538.00	\$538.00	\$350.00	\$350.00
\$2,000.00	\$1,588.20	\$1,588.20	\$1,500.00	\$1,500.00
\$7.50	\$11.60	\$11.60	\$20.00	\$20.00
	\$6,000.00		\$500.00	
\$150.00	\$5,200.00	\$5,200.00	\$750.00	\$750.00
\$14.75	\$2.60	\$2.60	\$5.00	\$5.00
\$150.00	\$2.60	\$2.60	\$5.00	\$5.00
\$23,522.25		\$12,058.00		\$10,380.00
\$111,183.25		\$107,687.90		\$89,550.00