



AGENDA
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, MAY 05, 2020 - 6:00 PM

ROLL CALL:

INVOCATION OR MOMENT OF SILENCE: led by Commissioner Herman Robinson

PLEDGE OF ALLEGIANCE: led by Commissioner Scott Maxwell

AGENDA - Additions / Deletions / Reordering:

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

- A. Quarterly update by PBSO given by Captain Todd Baer

COMMISSION LIAISON REPORTS AND COMMENTS:

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

Click on this link to submit a public comment card: <https://lakeworthbeachfl.gov/public-comment-card/>

APPROVAL OF MINUTES:

- A. [Regular Meeting - April 9, 2020](#)
- B. [Regular Meeting - April 21, 2020](#)

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

- A. [Resolution No. 14-2020 – authorizing the submission of an application to the Bureau of Justice Assistance for funding under the Coronavirus Emergency Supplemental Funding program](#)
- B. [Resolution No. 15-2020 – Amendment 001 to Interlocal Cooperation Agreement with Palm Beach County](#)
- C. [Contracts for the supply of Bulk Fuel, Gasoline, and Diesel for Public Works](#)
- D. [Task Order #13 with Baxter Woodman for the Construction Engineering Inspections Services for the Year 4, District 2 Neighborhood Road Program project](#)
- E. [Resolution No. 16-2020 – documenting the levy of municipal special assessment liens for unpaid boarding and securing charges](#)
- F. [Resolution No. 17-2020 – documenting the levy of municipal special assessment liens for unpaid demolition charges](#)

- G. [Resolution No. 18-2020 – documenting the levy of municipal special assessment liens for unpaid lot clearing charges](#)
- H. [Proclamation declaring April 2020 as Water Conservation Month](#)
- I. [Consideration of a Purchase and Sale Agreement with the Lake Worth Community Redevelopment Agency \(“CRA”\) for properties located at 1602 Lake Avenue and 15 North B Street](#)
- J. [Consideration of an Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach](#)
- K. [Assignment to the Community Redevelopment Agency \(“CRA”\) the Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach.](#)
- L. [Consideration of settlement with Brenda Marie Velez-Martinez in the amount of \\$65,000 \(inclusive of attorney’s fees\)](#)
- M. [Amendment 1 to Task Order No. 5 with Craig A. Smith & Associates, Inc. for additional engineering design services for Lake Osborne Estates Water Main Replacement Project – Phase 1](#)

NEW BUSINESS:

- A. [Consideration of a vote to utilize the Snook Islands docks brought forward by Commissioner Robinson](#)
- B. [Discussion to ascertain Commission direction on how to address the impacts of the COVID-19 pandemic as it relates to the businesses who lease facilities from the City at the Beach/Casino and Golf Course](#)

CITY ATTORNEY'S REPORT:

CITY MANAGER'S REPORT:

ADJOURNMENT:

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)

**MINUTES
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
BY TELECONFERENCE
THURSDAY, APRIL 9, 2020 - 6:00 PM**

The meeting was called to order by Mayor Triolo on the above date at 6:05 PM by teleconference in Lake Worth Beach, Florida.

ROLL CALL: Present were Mayor Pam Triolo; Vice Mayor Andy Amoroso; and Commissioners Scott Maxwell, Omari Hardy and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Christy L. Goddeau and City Clerk Deborah M. Andrea.

PLEDGE OF ALLEGIANCE: led by Commissioner Scott Maxwell.

AGENDA - Additions/Deletions/Reordering:

Consent Item C was deleted from the agenda.

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to approve the agenda as amended.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

PRESENTATIONS: (there was no public comment on Presentation items)

A. Presentation by staff regarding COVID-19 response

Michael Bornstein, City Manager, gave an update and clarified the City's role related to the County since the Governor declared a State of Emergency on March 9, 2020. He explained that there was an Emergency Management Plan in place and that the City was small and did not have the resources available to surrounding cities like Boynton Beach or West Palm Beach. He iterated the responsibilities the City had to its residents including: public safety, which was provided through the partnership with PBSO that had more resources than the City; emergency medical and fire services through a partnership with PBC Fire Rescue, which brought vast resources and staffing; and water, sewer, electric, sanitation and permits, all of which were being provided in creative ways by the City staff. He spoke highly of the Finance, Human Resource, IT and Leisure Services departments that were doing a great job. He stated that Lake Worth Beach was one of the few cities holding a meeting currently, and thanked Ben Kerr, Keith Sullivan, Lauren Bennett and Juan Ruiz. He said that there were administrative orders coming from the State, which the City was adjusting to in real time, such as closing the beaches and parks but allowing for food pickup and delivery from the restaurants in those places. He stated that the City was working with the County to enact the orders in a creative way. He announced that the administrative orders were temporary stopgap measures to address the problems arising from the pandemic and that the City was in the lead by implementing telecommuting and split shifts.

COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Hardy: did not have any comments.

Vice Mayor Amoroso: thanked staff for going above and beyond. He reported that the CRA and the City were working with Feeding South Florida and thanked all the volunteers. He spoke in appreciation of the County and State elected officials who were helping with obtaining funding for the City. He reported that the CRA was working on funding for local businesses and that Patrick was providing food at 12th Avenue South and Wingfield; the City was working on more food programs for residents.

Commissioner Maxwell: stated that he wanted to make sure that all residents were healthy and safe, wearing masks, washing hands and thanked the members of the community and neighbors helping neighbors; everyone was coming together. He reported that people were helping getting groceries and the food distribution at the Hatch had fed hundreds of people. He said that he had been trying to find hand sanitizer and toilet paper and working on a plan to get supplies and distribute them as a care package. He thanked the staff, including Public Works, as there had been no glitches. He encouraged all the residents to visit the website for the latest information.

Commissioner Robinson: said that he appreciated all the efforts to put the virtual meeting together, but it did not take away from everyone having to fill out the census to be counted. He iterated that he looked forward to a Charter Review Committee. He stated that the budget was coming but he did not there would be an extension. He expressed hope that the City would continue to forward with the public private partnership discussed before the virus and the NAPC was still hoping that the raft race would take place. He reminded the public to be vigilant about current scams. He said that commercial electric rates could be adjusted for City businesses and mentioned a non-profit to collect money for the unemployed. He wished everyone a Happy Easter and Happy Passover.

Mayor Triolo: read a prepared statement about being a business owner and a resident, that people in the Community knew that she had a heart. She reported that Commissioner Hardy and she had both apologized and he did not condone the death threats and other threats to her family. She stated that the global pandemic was more important and that most of the comments were not from Florida. She said that Lake Worth Beach was known for having passionate meetings, but just like families, everyone banded together. She thanked her neighbors and residents for their support and prayers.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

City Clerk Andrea read the comment cards submitted online by the following individuals:

Robert Robinson wrote that the pier be opened for limited occupancy.

Pavlina Merkova wrote asking why the City had not declared a state of emergency.

Debra Robert wrote on behalf of the neighbors in the Downtown Jewell District that the sidewalks should be pressure washed.

Dustin Zacks wrote about the positive accomplishments of the Commission and that it should continue to act competently.

Nick Paliughi wrote thanking the City for its involvement in the food distribution efforts and for the efforts to get the residents through this time.

APPROVAL OF MINUTES:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Robinson to approve the following minutes:

- A. Regular Meeting - February 18, 2020
- B. Regular Meeting, March 3, 2020
- C. Work Session - March 5, 2020
- D. Special Meeting - March 19, 2020

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

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

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve the Consent Agenda.

- A. Agreement with Collective Water Resource, LLC for the Multi-Jurisdictional Climate Change Vulnerability Assessment
- B. Ratification of Proclamation for Bangladesh Day
- C. (deleted) Agreement with Rosso Site Development for the District 2, Year 4 Full Construction Neighborhood Road Program Project
- D. Work Order #4 with All County Paving for the District 1, Year 4 Pushbutton Neighborhood Road Program Project
- E. Resolution No. 12-2020 of the City of Lake Worth Beach endorsing the City's applications for the PBC TPA's 2020 Local Initiatives and Transportation Alternatives Programs

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

PUBLIC HEARINGS:

- A. Ordinance 2020-03 – second reading – adopting the official City seal

City Attorney Goddeau read the ordinance by title only:

ORDINANCE NO. 2020-02 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 ENTITLED “LAND DEVELOPMENT REGULATIONS” OF THE CODE OF ORDINANCES BY AMENDING ARTICLE I “GENERAL PROVISIONS” RELATING TO DEFINITIONS; ARTICLE 3 “ZONING DISTRICTS” BY CREATING A CULTURAL ARTS DISTRICT OVERLAY; AND FOR OTHER

PURPOSES; PROVIDING FOR SEVERABILITY, CONFLICTS, AND CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to approve Ordinance 2020-03 adopting the City seal.

Mayor Triolo announced that this was the time for public comment. City Clerk Andrea read the comment card from Mary Lindsay in favor of the City seal and Dustin Zacks in opposition to the City seal.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

NEW BUSINESS:

A. Ratification of Temporary/Emergency Compassionate Code Compliance Policy (Administrative Order [AO] No.: 2020-03)

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to ratify the Temporary/Emergency Compassionate Code Compliance Policy.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

B. Discussion regarding upcoming responses to the City's COVID-19 response

Action: Discuss and provide input regarding the various issues and challenges, which the City organization was addressing.

City Manager Bornstein explained that the item was for a discussion regarding implementing policies that would either be brought before the Commission or established as AOs. He stated that the City would apply for reimbursement from FEMA where applicable. He spoke about adjusting operations to proactively aiding residents and gave the example of having the Electric Utility (EU) Conservation staff provide information about assistance programs. He said that staff would work towards having infrastructure projects ready when funding became available.

Comments/requests summary:

Commissioner Hardy iterated that there should be two AOs related to Personal Protective Equipment (PPE), one requiring that citizens must wear masks to receive service and the other for the employers to provide PPE to essential workers.

Commissioner Maxwell said that people should be both protecting themselves and protecting their neighbors and employers should be responsible for providing PPE. He opined that it would be difficult to force people to wear facemasks and be difficult to enforce from a law enforcement prospective. He suggested a motion for the City Manager should draft an AO on both points, one to strongly encourage the wearing of facemasks in public and the second for employers to provide PPE.

City Attorney Goddeau explained that consensus or direction was being sought from the Commission, as there could not be a motion on a discussion item.

Vice Mayor Amoroso asked if a Commissioner sending in an email late in the afternoon on the day of the meeting gave the public enough time to comment.

Commissioner Maxwell asked that the Commission craft direction to the City Manager.

City Manager Bornstein said that it seemed that the consensus from the Body was a modification of Commissioner Hardy's request from mandating to strongly encouraging the wearing of masks.

Commissioner Robinson thanked Commissioner Hardy for bringing the topic forward and said that the wearing of facemasks should be a mandate, not a suggestion.

Vice Mayor Amoroso expressed concern about having a mandate that could result in a person walking miles to Publix to be turned away.

Lengthy discussion ensued regarding whether to encourage or mandate the wearing of masks and how it would be enforced.

Capt. Baer said that although he and his family were using masks, it was essential for measures to be consistent on a County basis to avoid confusion. He stated that education and persuasion were being used for compliance and anything requiring enforcement should be done at the County level.

Mayor Triolo stated that she had spoken with many mayors throughout the County who agreed that the cities should work together as a County. She spoke in favor of encouraging businesses and residents regarding masks, she had ordered masks and gloves but had had a hard time getting them so a mandate would be difficult when the supplies were unavailable. She suggesting a discussion at the next meeting.

City Manager Bornstein reported that Assistant City Manager Ruiz had been on calls with the County every day and that County Administrator Verdenia Baker stated that the County had not decided nor was not inclined to have a mandate for masks.

Mayor Triolo said that it was the time for public comment. City Clerk Andrea read the comment submitted by Rodney Moser. Mr. Moser wrote in appreciation of the Commissioners' intentions to keep the residents safe and inquired about FEMA reimbursements.

City Manager Bornstein said regarding food sanitation and household basics distribution, he was trying to find programs with which the City could partner and he would take advantage of those that could help the residents and apprise the Commission.

Mayor Triolo said that she was in favor of anything the City could do to help the community.

City Manager Bornstein said he would move forward with an AO strongly encouraging residents to wear masks.

Vice Mayor Amoroso requested that correct the information out about resources and scams be disseminated. He thanked the County and Mayor Kerner for doing a good job to get information out.

City Manager Bornstein said that there were ongoing internal discussions regarding the businesses that had leases with the City, such as those at the beach and asked the Commissioners if they would support a program to help the tenants.

Commissioner Hardy stated that he would need more information regarding the businesses' financial situations.

Commissioner Maxwell requested that the City Manager bring back potential recommendations with their financial impacts to the Commission. He expressed concern about local businesses and asked to discuss if the City could assist in any way.

City Manager Bornstein reported that FPL was considering a fuel charge discount for their customers; this discount was mandated to be done over a year but FPL would do the discount in May. He stated that the Commission might give direction for LWEU to have a similar plan. He asked Mr. Liberty to speak about the impact on the bottom line.

Ed Liberty, Electric Utility Director, thanked all of the EU employees who had been very accommodating. He stated that the trajectory for the LWEU was \$5.2 million ahead of budget due to lower fuel costs and higher an increase in delivering power to customers. He explained that there were projections for losing from five to fifteen percent of revenue since neither late fees nor reconnection fees were being collected, but he did not know which percentage it would be. He reported that there had been an average of 26 disconnections per day before the moratorium but that the current average would be 79 a day. He said that customers who miss the due dates for their bills are receiving information about agencies that could help and that all customers would receive a reminder about assistance programs in the monthly bills. He stated that matching the reduction from FPL would affect the operating budget by about \$1 million and that hurricane costs were not in the budget, but cost approximately two to three million dollars.

Vice Mayor Amoroso opined that the LWEU should not give a rebate to customers currently because reserves could be needed during hurricane season.

Commissioner Hardy asked if the City's resolution regarding rate parity would affect the rebate.

City Manager Bornstein responded that it had been an ordinance regarding rate parity and had expired.

Commissioner Hardy said that the intent of the ordinance was to have parity with FPL so the City should match the rebate.

Mr. Liberty stated that any money above the budget was being reinvested into the system and reliability improvements and that although FPL rates would go down in May, the rates would go back up in June.

Commissioner Maxwell expressed pride in the City for having reached rate parity with FPL but said that the City was not in the same financial position. He said that a rebate discussion

would be easier in October because no one knew how long the pandemic would last nor what the hurricane season would bring.

Commissioner Robinson said that the commercial electric rates needed to should be discussed.

Commissioner Hardy spoke in favor of a rebate for both commercial and residential customers.

Mayor Triolo said that the City would help members of and businesses in the community where it could while maintaining the resources to run a safe City.

City Manager Bornstein inquired if there was consensus for direction regarding a rebate.

Mayor Triolo stated that more information was needed and she would meet with Mr. Liberty.

City Manager Bornstein replied that he would ensure that all of the Commissioners received the information. He said that there was a consultant studying the electric rates.

C. Agreement Extension Request from 14 S East Coast, LLC for property located at 14 S. East Coast Street, Lake Worth Beach Florida

Action: Motion made by Commissioner Maxwell and seconded by Commissioner Hardy to approve the request from 14 S East Coast, LLC, granting an extension until July 8, 2020, to demolish the building on the Subject Property and replace it with a surface parking lot as required and set forth in section 3B of the Declaration of Covenants and Restrictions.

Mayor Triolo announced that there were no public comment cards.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

CITY ATTORNEY'S REPORT:

City Attorney Goddeau did not provide a report.

CITY MANAGER'S REPORT:

City Manager Bornstein provided the following report:

- Thanked staff for their hard work to put the meeting together
- Announced that the Planning and Zoning Board would be using the virtual meeting model
- Stated that the next regular Commission meeting would be on April 21, the agenda was being worked on and the intent was to have meetings to take place as scheduled
- Said that the commercial electric rate study pre-dated the pandemic and asked Mr. Liberty to give a brief explanation

Mr. Liberty stated that the study was a cost of service study of all categories of customers being done by Leidos and began in March.

City Manager Bornstein iterated that the audited financials would be completed at the end of April. He stated that it would be unproductive to discuss commercial rates until the study was completed.

ADJOURNMENT:

Action: Motion made by Commissioner Maxwell and seconded by Vice Mayor Amoroso to adjourn the meeting at 9:22 PM.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: May 5, 2020

A digital audio recording of this meeting will be available in the Office of the City Clerk.

**MINUTES
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
BY TELECONFERENCE
TUESDAY, APRIL 21, 2020 - 6:00 PM**

The meeting was called to order by Mayor Triolo on the above date at 6:05 PM by teleconference in Lake Worth Beach, Florida.

ROLL CALL: Present were Mayor Pam Triolo; Vice Mayor Andy Amoroso; and Commissioners Scott Maxwell, Omari Hardy and Herman Robinson. Also present were City Manager Michael Bornstein, City Attorney Glen Torcivia and City Clerk Deborah M. Andrea.

INVOCATION OR MOMENT OF SILENCE: led by Vice Mayor Andy Amoroso.

PLEDGE OF ALLEGIANCE: led by Commissioner Omari Hardy.

AGENDA - Additions/Deletions/Reordering:

There were no changes to the agenda.

PRESENTATIONS: (there was no public comment on Presentation items)

A. Presentation regarding the City of Lake Worth Beach(LWB) COVID-19 response

Michael Bornstein, City Manager, gave an update on activities that had occurred after the last Commission meeting. He reported that an Administrative Order (AO) strongly encouraging the use of masks was issued and the County had followed suit. The City had been working with Feeding South Florida to match people with resources other than food. He reminded everyone about the importance of the census; the percentage of participation nationwide was 51%, while LWB was only 38%. He asked everyone to recommit to making phone calls to ensure that LWB residents respond to the census. He said that Conservation staff was reaching out to customers who were up for (but not being) disconnected to tell them about the services that could help them get with grant money. He spoke about the calendar, which was planned far in advance; before COVID-19 many work sessions had been scheduled and the intention would be to hold the work sessions remotely. He stated that Staff was working and looking at other cities regarding events in the summer. He said the City was attending remote meetings with the County and State to stay informed. He announced that there were over 27,000 cases in Florida with south Florida a hot spot, PBC tested 18,536 people and over 2000 were positive; they were looking for trends such as 14 days of declining numbers, but it was too soon for that data. He iterated that the core critical functions at the City had been going well.

Vice Mayor Amoroso asked about virtual meetings with the County and that the City looked to the County and State to move forward. He said it was important that the cities stayed and worked together.

City Manager Bornstein stated that there were daily meetings with constant updates; the County was taking its lead from the State, but south Florida had high numbers so the beaches in PBC would not be opening any time soon. He said that there was conversation about planning to reactivate normal life in phases.

COMMISSION LIAISON REPORTS AND COMMENTS:

Commissioner Robinson: thanked the citizens of the City for volunteering with food distribution and making masks. He said that people should make discussion about the census part of their conversations. He announced that Earth Day would be having virtual events. He thanked Public Works for having amnesty for bulk pickup. He said that the City would be in catch up mode for future meetings and that there should be a discussion with the Commission at a public meeting regarding opening the beaches, etc.

Commissioner Hardy: said that it was important that coastal cities did the right thing to contain the virus within their communities. He spoke about having a mandate for masks. He thanked the CRA for pressure washing the sidewalks downtown. He stated that some students did not have access to online learning or were not logging on because their parents were working; he said that there should be a conversation about free public Wi-Fi. He said that the City should only rely on itself for decisions regarding re-opening the City.

Commissioner Maxwell: said that the residents realized that this pandemic was a marathon and felt they were being useful to the community. He expressed pride in LWB, which showed how a diverse community could work together for the betterment of all. He thanked PBSO for their help and support and PB Fire Rescue for all they did for the community. He said that he had been working with various churches regarding matching needs to the residents. He stated that the small businesses could contact him for assistance with filling out the paperwork.

Vice Mayor Amoroso: thanked staff for their great work, Mayor Kerner and his staff for assisting the City, Cathy Turk for making masks and Don Rosenshine who donated to Feeding South Florida. He spoke about the various food programs around the City, including drive up programs. He said that the CRA had 20 grants for small restaurants or bars. He said that there were free programs to ensure that children were fed and that Leisure Services was having virtual programs on the website. He stated that the census numbers were low and information was being distributed at the feeding programs to encourage people to participate.

Mayor Triolo: reported that the MPO had met virtually. She thanked the CRA for the sidewalk cleaning and said the sidewalks would be sanitized as well.

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

Deborah Andrea, City Clerk, read the comment cards submitted online by the following individuals:

Cliff Kohlmeyer wrote in opposition to the demolition of the historic structures on South L and M Streets.

Dustin Zacks wrote to request that the Commission reevaluate the decision to allow only two medical marijuana dispensaries in town.

Don Rosenshine wrote about possible initiatives to assist the small businesses in the City.

APPROVAL OF MINUTES:

There were no minutes on the agenda.

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

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Robinson to approve the Consent Agenda.

- A. Amendment #2 to Task Order #6 with Kimley Horn and Associates for the Neighborhood Road Program District 3, Year 4 project
- B. Consent to Assignment and Estoppel Agreement with IDON Media LLC

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

PUBLIC HEARINGS:

There were no Public Hearing items on the agenda.

UNFINISHED BUSINESS:

There were no Unfinished Business items on the agenda.

NEW BUSINESS:

- A. Discussion regarding the City's COVID-19 response going forward

City Manager Bornstein explained that he was seeking direction from the Commission regarding providing assistance with lease payments to tenants at the beach and the golf course. He asked if there should be a deferral program or adjustments to the lease payments or a combination of the two, with conditions applied, such as the business would have to apply for an SBA loan. He stated that a deferral program could be added to the end of the lease or there could be a payback beginning in January 2021.

Comments/requests summary:

Commissioner Hardy said that there would be either a loan or a payment deferral; the businesses' financial positions should be known before they received any funds. He stated that there would be a shortfall in funds used to pay for upkeep and the City was not receiving any parking revenue currently.

Vice Mayor Amoroso stated that there should be a deferment with a payment plan during season for both rent and utility bills. He expressed concern about the legalities of assisting some businesses and not all businesses.

Mayor Triolo said that she was more apt to have a deferment program and would need more information regarding the finances for the businesses leasing directly from the City.

Commissioner Robinson said that the City would have to judge the businesses fairly on a case-by-case basis.

Mayor Triolo said that many businesses in the City needed help.

Vice Mayor Amoroso stated that there were small businesses throughout the City and all should be included; the CRA grants were only available to businesses in the CRA district.

He suggested that the City could help facilitate information regarding the SBA loans. He asked City Attorney Torcivia what would happen if the City tenants stopped paying their bills.

Commissioner Hardy opined that each business should be dealt with differently as each had its own needs and only those that needed help should receive it. He requested to see their tax returns and balance sheets.

City Attorney Torcivia responded that each business had a lease and would require an amendment to the lease. He stated that no tenants had defaulted at this time and actions would be tailored to each lease.

Commissioner Maxwell stated that it would be important to determine if the tenants had a real need and then the City would examine their books to see if they had exhausted their options with the Federal government. He iterated three options, one to repay the rent over three seasons, an abatement of 75% or an abatement of 50% of the rent over one season.

Mayor Triolo agreed with having options for the businesses.

City Manager Bornstein explained that each lease was different and had been difficult to negotiate; staff was willing to speak with each business to tailor specific options appropriate to the specific business.

Commissioner Robinson spoke in favor of deferments rather than grants. He said that there should be a policy to assist the other businesses in the City.

Commissioner Hardy asked City Attorney Torcivia if an amendment of the leases would fall under emergency powers or have to go before the Commission. He asked Assistant City Manager Ruiz about how the Common Area Maintenance (CAM) had been determined and if there were any other issues with the leases.

City Attorney Torcivia responded that lease amendments could be under emergency powers, which would then be brought back to the Commission for ratification at a future meeting. He said that the businesses could not receive both an SBA loan and a deferment from the City.

Juan Ruiz, Assistant City Manager, replied that the CAM issue had been resolved and he could not answer any other questions pertaining to the leases; he said that the tenants were paying their rents and other charges and were adhering to the terms of their leases.

City Manager Bornstein stated that he had spoken with several of the businesses and some had expressed concern about what was happening; he said that nothing would be initiated with the tenants without Commission approval at the May 5 meeting.

Commissioner Maxwell stated that the City would have to exercise extreme caution when reopening the City. He suggested that the City produce a sign with guidelines to post at every business when the City reopened.

Commissioner Hardy suggested giving direction to the City Manager for staff to assist businesses with loan application processes and residents with unemployment.

City Clerk Andrea read the public comment submitted by the following individual:

Ryan Oblander wrote in favor of giving a partial refund of commercial utility deposits to help the small businesses of Lake Worth Beach during these economically unstable times along with having a payback plan.

City Manager Bornstein stated that staff would be able to assist the six tenants with loan applications but did not have enough staff to assist all the businesses in the City.

Commissioner Hardy stated that the City should be able to get something in return if a tenant was asking the City for help.

Vice Mayor Amoroso suggested having Finance Department staff help the businesses through the process.

The meeting recessed at 7:51 PM and reconvened at 8:08 PM.

B. Discussion regarding a Charter Review brought forward by Commissioner Robinson

Commissioner Robinson stated that the Charter had not been reviewed in 20 years and there might be items to be added or changed.

Commissioner Hardy spoke in favor of having a Charter Review Committee with each Commissioner appointing the same number of appointees, as well as participating on the committee. He said that there were issues in the Charter to review such as the necessity for run-off elections, moving the election to November and the composition of the Commission.

Commissioner Robinson sought a consensus regarding a committee rather than discussing specific changes.

Mayor Triolo asked how the number of appointees per Commissioner was determined.

City Attorney Torcivia replied that it was in the Rules of Procedure, not the Charter.

City Clerk Andrea responded that the number was in the ordinances establishing each board or committee.

Commissioner Robinson asked for consensus to work towards setting up a committee to review the Charter.

Commissioner Maxwell opined that Commissioner Hardy seemed to be taking the lead on the issue and with the pandemic; this was not the time to discuss the Charter. He said that the issues that Commissioner Hardy brought up had all been discussed in the past. He stated that there was a reason that the municipal elections were held in March.

Vice Mayor Amoroso agreed with Commissioner Maxwell regarding a Charter review at this time.

Commissioner Hardy gave his reasons regarding changing the election to November.

Commissioner Robinson asked when a Charter Review committee would be convened.

Mayor Triolo explained the reasoning behind moving the municipal elections to March, which had included keeping partisanship out of the elections and the cost for the election was less in March. She spoke in favor of having a Charter Review Committee established in late summer or early fall with new rules regarding appointees and without telling the committee what to review.

Commissioner Hardy stated that there was no reason to wait to draft an ordinance to create a Charter Review Committee now to meet jointly with the Commission to decide what changes should be made to the Charter.

Commissioner Robinson said that he envisioned forming the committee and bringing different ideas to the table.

Mayor Triolo stated that there were no public comment cards.

CITY ATTORNEY'S REPORT:

City Attorney Torcivia provided the following report:

- Everyone should continue to follow the applicable orders and stay safe.

CITY MANAGER'S REPORT:

City Manager Bornstein did not provide a report.

ADJOURNMENT:

Action: Motion made by Vice Mayor Amoroso and seconded by Commissioner Maxwell to adjourn the meeting at 8:37 PM.

Vote: Voice vote showed: AYES: Mayor Triolo, Vice Mayor Amoroso and Commissioners Maxwell, Hardy and Robinson. NAYS: None.

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

Minutes Approved: May 5, 2020

A digital audio recording of this meeting will be available in the Office of the City Clerk.

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: City Manager

TITLE:

Resolution No. 14-2020 – authorizing the submission of an application to the Bureau of Justice Assistance for funding under the Coronavirus Emergency Supplemental Funding program

SUMMARY:

This resolution authorizes the submission of an application to the Bureau of Justice Assistance for funding under the Coronavirus Emergency Supplemental Funding program in the amount of \$115,881. These funds must be used to prevent, prepare for and respond to the COVID-19 outbreak locally.

BACKGROUND AND JUSTIFICATION:

The Bureau of Justice Assistance (BJA) has announced the solicitation of applications for funding under the Coronavirus Emergency Supplemental Funding (CESF) program. These funds must be used to prevent, prepare for and respond to the coronavirus pandemic.

As an eligible unit of local government, the City is able to submit an application for an allocation of \$115,881 as determined by statutory formula. Allowable projects and purchases with this funding include overtime, the provision of law enforcement and medical equipment, hiring, supplies such as sanitizer, masks, gloves, etc., and travel and translation services necessary for the distribution of resources to the most impacted areas locally.

Resolution No. 14-2020 approves and authorizes the submission of the City's application to BJA for funding in the amount of \$115,881 under the CESF program. In accordance with the permitted uses of this funding, the City will purchase allowed personal protection equipment, the purchase of supplies such as sanitizer, masks and gloves, and for travel and interpretation/translation services for the distribution of resources to the most impacted areas of the jurisdiction.

The City's application is due to BJA by its set deadline of May 29, 2020,

MOTION:

Move to approve/disapprove Resolution No. 14-2020 - authorizing the submission of the City's application to the Bureau of Justice Assistance for funding under the Coronavirus Emergency Supplemental Funding program.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution 14-2020

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4 RESOLUTION NO. 14-2020 OF THE CITY OF LAKE WORTH BEACH,
5 FLORIDA, AUTHORIZING THE SUBMISSION OF AN APPLICATION TO
6 THE BUREAU OF JUSTICE ASSISTANCE FOR FUNDING UNDER THE
7 CORONAVIRUS EMERGENCY SUPPLEMENTAL FUNDING PROGRAM
8 IN THE FORMULA AMOUNT OF \$115,881; PROVIDING FOR AN
9 EFFECTIVE DATE; AND FOR OTHER PURPOSES.

10
11 WHEREAS, the Bureau of Justice Assistance has announced the availability of
12 funding under the Coronavirus Emergency Supplemental Funding (CESF) program; and
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14 WHEREAS, the funding provided under the CESF program is to be utilized by
15 eligible applicants to prevent, prepare for and respond to the coronavirus pandemic ; and
16

17 WHEREAS the City is eligible to apply for a formula based allocation of \$115,881
18 in CESF funds; and
19

20 WHEREAS the City intends to use its funding allocation under the CESF program
21 for the purchase of allowed personal protection equipment, for the purchase of supplies
22 such as sanitizer, masks and gloves, and for travel and interpretation/translation services
23 for the distribution of resources to the most impacted areas of the jurisdiction; and
24

25 WHEREAS, the City desires to submit an application to the Bureau of Justice
26 Assistance for funding in the formula based amount of \$115,881 for this purpose.
27

28 NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY
29 OF LAKE WORTH BEACH, FLORIDA as follows:
30

31 SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, hereby
32 authorizes the submission of an application to the Bureau of Justice Assistance for
33 funding in the formula based amount of \$115,881 under the Coronavirus Emergency
34 Supplemental Funding program for the purpose of preventing, preparing for and
35 responding to the coronavirus pandemic locally.
36

37 SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby
38 authorizes Michael Bornstein, City Manager, to execute documents related to the City's
39 application for funding under the Coronavirus Emergency Supplemental Funding
40 program.
41

42 SECTION 3: Upon execution of the resolution, one copy shall be provided to the City
43 Manager's Office. The fully executed original shall be maintained by the City Clerk as a
44 public record of the City.
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46 SECTION 4: This resolution shall become effective upon adoption.
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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 Pam Triolo
- Vice Mayor Andy Amoroso
- Commissioner Scott Maxwell
- Commissioner Omari Hardy
- Commissioner Herman Robinson

The Mayor thereupon declared this resolution duly passed and adopted on the 5th
day of May, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: City Manager

TITLE:

Resolution No. 15-2020 – Amendment 001 to Interlocal Cooperation Agreement with Palm Beach County

SUMMARY:

This resolution authorizes and approves Amendment 001 to the Interlocal Cooperation Agreement for the City's continued participation in the Urban County Partnership with Palm Beach County for the period of Fiscal Years 2021 – 2023. The City will continue to be eligible for access to federal community development funding from the U.S. Department of Housing and Urban Development, including its formula allocation of Community Development Block Grant funds.

BACKGROUND AND JUSTIFICATION:

On August 19, 2014, the Board of County Commissioners executed an Interlocal Cooperation Agreement with the City of Lake Worth Beach (formerly the City of Lake Worth) as part of the Urban County Qualification Process for Federal Fiscal Years 2015-2017. Under this Agreement, the City agreed to participate with the County for access to federal community development funds from the U.S Department of Housing and Urban Development (HUD), including its annual formula allocation of Community Development Block Grant funds.

The terms of the Agreement include the option to renew participation in the Urban Partnership at the end of every qualification period of three years. The current three year qualification period will expire on September 30, 2020.

Resolution No. 15-2020 authorizes and approves Amendment 001 to the Interlocal Cooperation Agreement for the City's continued participation in the Urban County Partnership during the three year period of Federal Fiscal Years 2021-2023 (October 1, 2020 through September 30, 2024). This amendment to the agreement to renew the City's continued participation contains an amended clause that HUD has provided to promote adherence to Section 3 of the Housing and Community Development Act of 1968. Section 3 seeks to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent possible, be directed to low and very-low income persons. Applicability of Section 3 requirements is limited to activities funded by HUD programs.

MOTION:

Move to approve/disapprove Resolution No. 15-2020 authorizing and approving Amendment 001 to the Interlocal Cooperation Agreement to extend the City's participation in the Urban County Partnership with Palm Beach County for Federal Fiscal Years 2021-2023.

ATTACHMENT(S):

Fiscal Impact Analysis – not applicable
Resolution 15-2020
Amendment 001

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RESOLUTION NO. 15-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AUTHORIZING THE EXECUTION OF AMENDMENT 001 TO THE INTERLOCAL COOPERATION AGREEMENT TO RENEW ITS PARTICIPATION IN THE PALM BEACH COUNTY URBAN COUNTY PARTNERSHIP PROGRAM FOR FEDERAL FISCAL YEARS 2021, 2022 AND 2023; PROVIDING FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, Palm Beach County, as an eligible Urban County Entitlement Jurisdiction, receives an annual statutory formula allocation of Community Development Block Grant (CDBG) Program, HOME Investment Partnership (HOME) Program and Emergency Solution Grant (ESG) Program funds from the U.S. Department of Housing and Community Development (HUD); and

WHEREAS, the City entered into an Interlocal Cooperation Agreement with Palm Beach County on August 19, 2014 for participation in the Urban County Partnership; and

WHEREAS the qualification period for continued participation in the Urban County Partnership is to be renewed every three federal fiscal years; and

WHEREAS, the current three year qualification period will expire on September 30 2020; and

WHEREAS, Amendment 001 to the Interlocal Cooperation Agreement extends the City’s participation in the Urban County Partnership for the next three federal fiscal years through September 30, 2024; and

WHEREAS, Amendment 001 to the Interlocal Cooperation Agreement contains an amended clause provided by HUD to promote adherence to Section 3 of the Housing and Urban Development Act of 1968 to ensure that employment and other economic opportunities generated by HUD financial assistance are directed to low and very low income persons to the greatest extent possible; and

WHEREAS, the City desires to continue its participation in the Urban County Partnership with Palm Beach County by entering into Amendment 001 to the Interlocal Cooperation Agreement for access to funding under HUD financial assistance programs, including its formula allocation of CDBG funding for Federal Fiscal Years 2021, 2022 and 2023..

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

SECTION 1: The City Commission of the City of Lake Worth Beach, Florida, hereby approves and authorizes the Mayor to execute four originals of Amendment 001 to the Interlocal Cooperation Agreement for the City’s continued participation in the Urban County Partnership for Federal Fiscal Years 2021, 2022 and 2023.

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SECTION 2: The City Commission of the City of Lake Worth Beach, Florida, hereby authorizes Michael Bornstein, City Manager, to execute all documents related to Amendment 001 of the Interlocal Cooperation Agreement with Palm Beach County for the City's continued participation in the Urban County Partnership with Palm Beach County.

SECTION 3: Upon execution of the resolution, one copy shall be provided to the City Manager's Office. 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 Pam Triolo
- Vice Mayor Andy Amoroso
- Commissioner Scott Maxwell
- Commissioner Omari Hardy
- Commissioner Herman Robinson

The Mayor thereupon declared this resolution duly passed and adopted on the 5th day of May, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

AMENDMENT 001 TO THE AGREEMENT WITH CITY OF LAKE WORTH BEACH

Amendment 001, effective as of _____, by and between **Palm Beach County** (County), and the **City of Lake Worth Beach** (Municipality).

WITNESSETH:

WHEREAS, Palm Beach County entered into an Interlocal Cooperation Agreement (R2014-1158) (the "Agreement") with the City of Lake Worth Beach (formerly known as the City of Lake Worth) on August 19, 2014, to formalize the City of Lake Worth Beach's participation in the urban county qualification process for Federal Fiscal Years 2014, 2016, and 2017; and

WHEREAS, the Agreement is renewable every three years and is now due for renewal; and

WHEREAS, the Department of Housing and Urban Development (HUD) has expressed in its most recent Instructions for Urban County Participation in Community Development Block Grant (CDBG) Program for FY 2021-2023 that all interlocal agreements should contain specific language regarding Section 3 of the Housing and Community Development Act of 1968; and

WHEREAS, the Interlocal Cooperation Agreements between Palm Beach County and the municipalities participating in the urban county program did not contain this specific language; and

WHEREAS, both parties desire to amend the Agreement approved on August 19, 2014, to comply with HUD's requirements.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

A. DELETE THE FOLLOWING CLAUSE 11:

The Municipality and the County shall take all actions necessary to assure compliance with the County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing. The Municipality and the County shall comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975), the Americans with Disabilities Act of 1990 and other applicable laws. The County shall not fund any activities in, or in support of, the Municipality should the Municipality not affirmatively further fair housing within its jurisdiction or should the Municipality impede the County's actions to comply with the County's fair housing certification.

B. REPLACE DELETED CLAUSE WITH REVISED CLAUSE 11:

The Municipality and the County shall take all actions necessary to assure compliance with the County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and affirmatively furthering fair housing. The Municipality and the County shall comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, Section 3 of the Housing and Urban Development Act of 1968, and other applicable laws. The County shall not fund any activities in, or in support of, the Municipality should the Municipality not affirmatively further fair housing within its

jurisdiction or should the Municipality impede the County's actions to comply with the County's fair housing certification.

IN WITNESS HEREOF, the Municipality and the County have caused this Amendment 001 to be executed on the date first written above:

(MUNICIPAL SEAL BELOW)

**CITY OF LAKE WORTH BEACH, a
municipality duly organized and existing by
virtue of the laws of the State of Florida**

ATTEST:

By: _____
Pam Triolo, Mayor

By: _____
Deborah Andrea, City Clerk

By: _____
Michael Bornstein, City Manager

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida**

BOARD OF COUNTY COMMISSIONERS

ATTEST: SHARON R. BOCK,
Clerk & Comptroller

By: _____
Dave Kerner, Mayor

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Dept. of Housing and Economic Sustainability

By: _____
Howard J. Falcon, III,
Chief Assistant County Attorney

By: _____
Sherry Howard
Deputy Director

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Public Works

TITLE:

Contracts for the supply of Bulk Fuel, Gasoline, and Diesel for Public Works

SUMMARY:

Utilization of the State of Florida, Department of Management Services Contracts for Bulk Fuel, Gasoline, and Diesel supply with Mansfield Oil Company of Gainesville, Inc and Pro Energy Fleet Fueling, LLC. In an amount of \$600,000 annually.

BACKGROUND AND JUSTIFICATION:

Public Works is responsible for purchasing and providing unleaded and diesel fuel resources for the City's fleet and heavy equipment. In order to meet this demand and be in compliance with the City's procurement code, and provide the best cost to the City the Department is planning to utilize State of Florida, Department of Management Services Contract No. 15100000-19-1 for Bulk Fuel, Gasoline, and Diesel with the following contractors:

- (1) Mansfield Oil Company of Gainesville, Inc.
- (2) Pro Energy Fleet Fueling, LLC.

The State of Florida Department of Management Services' Division of State Purchasing Department issued Invitation to Bid (ITB) 16-15100000-W for Bulk Fuel, Gasoline, and Diesel fuel to establish a state term contract for Bulk Fuel, Gasoline, and Biodiesel. Customers for these contracts include all state agencies and eligible users, including City of Lake Worth Beach.

The Initial Contract Term is for the three years until June 30, 2022, with the possibility for the renewal for additional three-year period as defined in the State of Florida, Department of Management Services Contract. The City will issue annual Purchase Orders to manage fuel ordering. The City is planning to utilize these contracts for the same duration if considered to be in the best interest of the City.

The estimated Fiscal Year expenditure for these contracts will be up to \$600,000 annually.

MOTION:

Move to approve/ not approve the authorization of utilizing the State of Florida, Department of Management Services Contracts for Bulk Fuel, Gasoline, and Diesel, Mansfield Oil Company of Gainesville, Inc and Pro Energy Fleet Fueling, LLC for a period up to June 30, 2022, with the possibility for extension to June 30, 2025, subject to State of Florida, Department of Management Services Contract renewal.

ATTACHMENT(S):

Fiscal Impact Analysis
Mansfield Oil Company Agreement
Pro Energy Fleet Fueling Agreement

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Recommended Sources of Funds/Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	\$300,000	\$600,000	600,000	600,000	600,000
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	300,000	600,000	600,000	600,000	600,000
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Public Services						
Account Number	Account Description	FY2020 Budget	Project #	Pre Exp; Balance	Expenditure for this item	Post Exp; Balance
530-0000-141-03-00	UNLEADED FUEL		N/A		300,000	
530-0000-141-04-00	DIESEL FUEL		N/A		300,000	



**State Term Contract
No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida and Mansfield Oil Company of Gainesville, Inc. (Contractor), collectively referred to herein as the “Parties.”

Accordingly, the Parties agree as follows:

I. Contract Award

The Contractor has been awarded in all four regions for the following fuel groups and fuel types:

- Diesel Fuel, Grade No. 2-D Ultra Low Sulfur- Transport
- Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur- Transport
- Biodiesel Blend- Transport
- Gasoline E10, Unleaded 87 Octane- Transport

II. Initial Contract Term.

The Initial Contract Term shall be for three years. The Initial Contract Term shall begin on July 1, 2019. The Contract shall expire on June 30, 2022, unless terminated earlier in accordance with the Special Contract Conditions.

III. Renewal Term.

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term, pursuant to the incorporated Special Contract Conditions.

IV. Contract.

As used in this document, “Contract” (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

All Attachments listed below are incorporated in their entirety into, and form part of this Contract. The Contract Attachments shall have priority in the order listed:

- a) Exhibit A: Scope of Work, Attachment A
- b) Exhibit B Markup Sheet
- c) Exhibit C: Special Contract Conditions, Attachment C
- d) Exhibit D: Addenda to Solicitation
- e) Exhibit E: ITB and other ITB Attachments

**State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

V. Amendment to Exhibit E (ITB)

ITB Section 2.1 Definitions; is hereby amended to replace two definitions for Transport and Non transport delivery to the definitions listed below:

Transport Delivery - A delivery by a transport truck or other means with a minimum delivery of 6,000 gallons and a maximum delivery of; 8,500 gallons for gasoline, 7,500 gallons for diesel, and 7,500 gallons for a combination load of gasoline and diesel.

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of; 5,999 gallons for gasoline, 5,999 gallons for diesel, and 5,999 gallons for a combination load of gasoline and diesel.

VI. Contract Management.

Department's Contract Manager:

Frank Miller
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8855
Email: Frank.Miller2@dms.myflorida.com

Contractor's Contract Manager:

Josh Epperson
Mansfield Oil Company of Gainesville, Inc.
1025 Airport Parkway SW
Gainesville, GA 30501
Telephone: (800) 255-6699
Email: mocbids@mansfieldoil.com

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

**MANSFIELD OIL COMPANY
OF GAINESVILLE, INC.**

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**

Patrick Gillespie, Deputy Secretary

Date:

Date:

**State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

V. Amendment to Exhibit E (ITB)

ITB Section 2.1 Definitions; is hereby amended to replace two definitions for Transport and Non transport delivery to the definitions listed below:

Transport Delivery - A delivery by a transport truck or other means with a minimum delivery of 6,000 gallons and a maximum delivery of; 8,500 gallons for gasoline, 7,500 gallons for diesel, and 7,500 gallons for a combination load of gasoline and diesel.

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of; 5,999 gallons for gasoline, 5,999 gallons for diesel, and 5,999 gallons for a combination load of gasoline and diesel.

VI. Contract Management.

Department's Contract Manager:


Frank Miller
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8855
Email: Frank.Miller2@dms.myflorida.com

Contractor's Contract Manager:

Josh Epperson
Mansfield Oil Company of Gainesville, Inc.
1025 Airport Parkway SW
Gainesville, GA 30501
Telephone: (800) 255-6699
Email: mocbids@mansfieldoil.com

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

**MANSFIELD OIL COMPANY
OF GAINESVILLE, INC.**



6/14/2019

Date:

Josh Epperson
Director of Government Services

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**


~~Patrick Gillespie, Deputy Secretary~~
David Clark, Chief of Staff

Date:

6/24/19

Exhibit A Scope of Work

A. General Statement

1. Purpose

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Biodiesel. Customers for this contract include all state agencies and eligible users. (It is anticipated that Customers will use approximately 10,000,000 gallons annually under the resulting Contract, if any).

2. Commodity Code List

UNSPSC	Commodity Description
15101505	Diesel fuel
15101506	Gasoline or Petrol
15101513	Diesel fuel off road
15101801	Biodiesel

B. Definitions

1. **Back Haul-** Return of unused fuel.
2. **Contractor** - The successful bidder/Vendor who is awarded the resultant contract under this solicitation. Contractor is also known as the "Shipper".
3. **Contract Manager** - Person designated by the Department of Management Services (the Department) to be responsible for managing the performance of a contract.
4. **Customer** - An ordering entity including state agencies and eligible users, as defined in Rule 60A-1.001, Florida Administrative Code (F.A.C.).
5. **Eligible User** - A governmental entity defined in Rule 60A-1.001, F.A.C.
6. **Emergency Delivery-** When a delivery is required to help immediate risk to health, life, or property.
7. **Freight Charge-** The fee is applied to all shipments and is set by local authorities which means this fee may apply to both import or export shipments.
8. **Pump Off-** Using a pump to pull the fuel from the truck/trailer and pushes the fuel to its destination.
9. **Top Off-** To bring fuel to the maximum tank level of 1,000 gallons or less.

C. Commodity Specifications

1. **Biodiesel Blend:** Blend of grade no. 2-D ultra-low sulfur diesel and up to 20% biodiesel, for use in over the road diesel engine, meeting the American Society for Testing and Materials (A.S.T.M.) specification D7467 for biodiesel blends (6% – 20%). The biodiesel component shall consist of mono-alkyl esters of long chain fatty acids derived from new and used vegetable oils, designated B100, B99.9, or B99, meeting the A.S.T.M. specification D6751 and be certified under the BQ9000 quality program. The diesel component (grade no. 2-D ultra-low sulfur diesel) and any blends with less than 6% biodiesel shall meet A.S.T.M. specification D975. The final product shall comply with the standards in Rule 5J-21.001, F.A.C. **The Contractor must deliver any blend requested by the Customer.**
2. **Diesel Fuel, Grade No. 2-D Ultra Low Sulfur:** Grade no. 2-D (.0015 mass Percentage sulfur, 40 cetane min.), for use in over the road diesel engine, per A.S.T.M. specification D975, complying with Rule 5J-21.001, F.A.C.
3. **Gasoline E10, Unleaded 87 Octane:** The product shall comply with the standards in Rule 5J-21.001, F.A.C.
4. **Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur:** for use in off-road diesel engine, minimum cetane number of 40 using A.S.T.M. D613, A.S.T.M specification D975, Grade # 2 S15. The product shall comply with the standards in Rule 5J-21.001, F.A.C.

Upon Customer request, Contractor must provide all certificates concerning product quality of all commodities listed in Section C (1-4) inclusive in this Scope of Work.

D. Pricing Elements for Purchase of Fuels

1. Cost of Fuel

Prices will be calculated for each fuel type using the following information:

1.1 Biodiesel Blend

- 1.1.1 Data Transmission Network (DTN) FastRacks Average Price for Ultra Low No. 2. The daily price will be used to calculate the diesel portion for Biodiesel.
- 1.1.2 The Wall Street Journal's published Monday closing price for soybean oil, as printed in the Tuesday edition under "Fats and Oils" in the "Cash Prices" column. This weekly price will be used to calculate the bio portion of the Biodiesel. This method will be used unless vendor(s) can show a better way of getting the price weekly. If no Monday price is published, then the next available published price will apply (Tuesday, Wednesday, etc.).
- 1.1.3 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.1.4 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

Sample Calculations:

B20 wholesale price = 0.80 times the price for ultra-low sulfur no. 2 diesel plus 0.20 times the price for soybean oil.

B10 wholesale price = 0.90 times the price for ultra-low sulfur no. 2 diesel plus 0.10 times the price for soybean oil.

B5 wholesale price = 0.95 times the price for ultra-low sulfur no. 2 diesel plus 0.05 times the price for soybean oil.

The Contractor is prohibited from negotiating or billing in a manner that exceeds the stated prices included in the Contract. The Contractor agrees that the price charged to the Customer shall be subject to audit, and the Contractor shall make all records supporting the invoiced prices available for inspection, upon written request by the Customer.

1.2 Diesel Fuel, Grade No. 2-D Ultra Low Sulfur

- 1.2.1 DTN FastRacks Average Price for Ultra Low No. 2.
- 1.2.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.2.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.3 Gasoline E10, Unleaded 87 Octane

- 1.3.1 DTN FastRacks Average Price for Gasoline E-10 10% Ethanol.
- 1.3.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.3.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.4 Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur

- 1.4.1 DTN FastRacks Average Price for Ultra Low Red No. 2.
- 1.4.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.4.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

The DTN FastRacks Average Price used above will be that of the closest appropriate terminal, on the date of delivery to the Customer, regardless of when or where the Contractor obtained fuel. The Contractor must subscribe to the DTN FastRacks Averages by calling DTN's Sales Department at 1-800-779-5775.

The following terminals are used to refer to the DTN FastRacks Average Prices:

- Pensacola
- Panama City
- Jacksonville

- Orlando
- Tampa
- Miami
- Bainbridge, GA

2. Fuel Fees, Taxes, and Other Costs

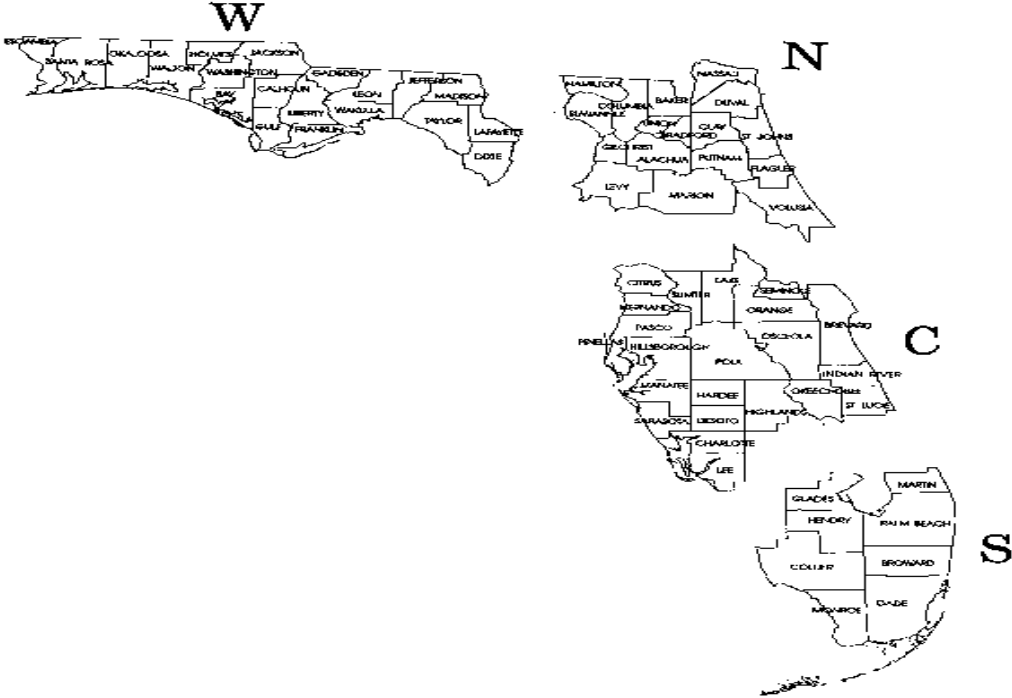
The Contractor may assess the following charges as determined by the price sheet for the county in which delivery of Fuel is made:

- 2.1. Delivery charges are allowed.
- 2.2. Freight charges will apply on all Transport Deliveries.
- 2.3. Pump off charge for Transport Delivery. This may be charged more than once if Transport Delivery truck is required to relocate to deliver to additional tanks.
- 2.4. Excessive delay charge if Contractor should wait more than 30 minutes to begin Fuel delivery.
- 2.5. Back haul charge if Customer orders more than tanks can hold.
- 2.6. Top off charge.
- 2.7. Tank maintenance, if customer and vendor agree.
- 2.8. Other fees were permitted by paragraph 215.422(3)(b), Florida Statutes.

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E. Delivery to Customers

Map of Four Geographic Regions for Delivery to Customers



Identification of Counties within Four Geographic Regions

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Bay	Alachua	Brevard	Broward
Calhoun	Baker	Charlotte	Collier
Dixie	Bradford	Citrus	Glades
Escambia	Clay	Desoto	Hendry
Franklin	Columbia	Hardee	Martin
Gadsden	Duval	Hernando	Miami-Dade
Gulf	Flagler	Highlands	Monroe
Holmes	Gilchrist	Hillsborough	Palm Beach
Jackson	Hamilton	Indian River	
Jefferson	Levy	Lake	
Lafayette	Marion	Lee	
Leon	Nassau	Manatee	
Liberty	Putnam	Okeechobee	

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Madison	St. Johns	Orange	
Okaloosa	Suwannee	Osceola	
Santa Rosa	Union	Pasco	
Taylor	Volusia	Pinellas	
Wakulla		Polk	
Walton		Sarasota	
Washington		Seminole	
		St. Lucie	
		Sumter	

NOTE: Gallons listed below may be converted to liters.

1. Normal delivery on this Contract shall be from 6,000 to 8,500 gallons for a Delivery of gasoline; 6,000 to 7,500 gallons for a Delivery of diesel; and 7,500 gallons for a combination load Transport Delivery of gasoline and diesel.
2. Delivery options on the contract for less than the normal delivery can be made via a tank wagon, LPG trucks, or other means to receive less than 6,000 gallons.
3. In the event of an emergency, gas and/or diesel deliveries/top offs can be made by a tank wagon or other available transportation for gas or diesel deliveries less than the normal delivery load.
4. Delivery shall be made available to all state agencies and their locations.

Imperial measurements appearing are not intended to preclude bids for commodities with metric measurements.

5. Normal delivery of fuel will be delivered to the Customer's tank(s) within 48 hours after telephone notification is received unless specified otherwise by the Customer. For new accounts, the Contractor will be allowed additional time to enter all required account information into their ordering/billing system to establish the new account. This time will be agreed upon by the Customer and the Contractor. The State prefers that vehicles equipped with meters make delivery. If non-metered vehicles are used, the driver shall leave a metered loading report from the terminal with the Customer. If temperature corrected billing is used, the loading report shall give all pertinent information. Customer may be subject to a service charge if request is for same day delivery.
6. Before unloading of Fuel begins, Customer personnel and Contractor personnel shall measure the Customer's tank(s) to receive Fuel and shall again measure the tank(s) after delivery. Customer may be subject to a back-haul charge if the Customer orders more Fuel than the Customer's tank(s) can hold upon delivery and a portion of the Fuel ordered has to be returned.

F. Emergency Fuel Plan

Within thirty days of contract signing, the Contractor and the State shall jointly develop an Emergency Fuel Plan (Plan). The emergency purchases under the Plan shall include the use of

equipment and tools, and all services and responsibilities prescribed or implied which are necessary for the complete performance by the Contractor of its obligations under the Plan. This Plan shall include but not be limited to:

- Commodities and services available to Customers during emergencies
- An assessment of risks
- Operational assignments (Who does what, when and how)
- Procedures for Emergency notification (How do we tell people there's a problem?)
- Procedures for activation in the event of an emergency to protect and/or recover critical assets and functions
- Procedures for Plan testing
- Procedures for an annual review, updating, altering and re-writing that results in a document that is fully functional and operational
- The plan must be able to work with the State's Fuel Card program

G. Invoices

1. The Contractor shall submit timely invoices to the Customer.
2. At a minimum the invoices are to provide the following information:
 - 2.1. Contractor's name, contract number, actual date of delivery, location of delivery, fuel manufacturer, and fuel quantity delivered;
 - 2.2. DTN FastRacks Average Price based on the actual delivery date and named closest terminal used for price;
 - 2.3. Exempted taxes, fees, credits, markup, and other fees consisting of freight, pump-off, excessive delay, back-haul, top-off, tank maintenance pump off fee;
 - 2.4. Adjustments due to unforeseen circumstances including but not limited to erroneous orders, fuel spills, delivery of incorrect fuel, and cross-fueling; and
 - 2.5. Total invoice price.
3. To encourage transparency, all line item costs on all invoices shall include a description of each cost sufficient for a Customer to understand and audit.

H. Punch-out Catalog and Electronic Invoicing

The Contractor will be required to provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line

items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier.

At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply “flipping” the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.

I. Contract Reporting

The Contractor shall report information on orders received from state agencies and eligible users associated with this contract. The Contractor shall supply to the Department all the data, calculations, and documents used in computing all costs associated with the supply and delivery of Fuel.

No favorable action will be considered for any contractor who has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation, to include fees / monies that is required under this Contract.

The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Dates
MFMP Transaction Report	Calendar month	15th calendar day of the month following the receipt of payment for the vendor's good or services.
Contract Quarterly Sales Report	State's Fiscal Quarter	10 calendar days after close of the period
Savings / Price Reductions	Annual	10 business days after each action that adjusts prices
Diversity Report (submitted to the Customer)	State Fiscal Year	10 business days after close of the period
Preferred Pricing Affidavit	Annual	Contract anniversary date

J. MFMP Transaction Fee Report

The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due 15 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendor on the MFMP website: MFMP Transaction Fee and Reporting. Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk by email at feeprocessing@myfloridamarketplace.com or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. ET.

K. Quarterly Sales Report

The Contractor agrees to submit a Quarterly Sales Report to the Department's Contract Manager within 10 calendar days after the close of each State Fiscal quarter (September 30, December 31, March 31, and June 30).

Quarterly Reporting periods should coincide with the contract term and should begin the quarter following contract execution. Reports must be submitted in MS Excel format. The report will include all sales (orders) from state agencies and eligible users received (associated with this contract) during the period. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated for convenience or the Department may choose to not renew the Contract.

The Contractor shall report to each Customer (ordering entity), spend with certified and other minority business enterprises. These reports shall include the period covered, the name, minority code and Federal Employer Identification Number of each minority business utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority business on behalf of each purchasing agency ordering under the terms of this Contract.

In addition, the Department may require additional Contract sales information such as copies of purchase orders, or ad hoc sales reports. The Contractor shall submit these specific ad hoc requests within the specified amount of time as requested by the Department.

The Contractor is required to submit ad hoc reports within the specified amount of time as requested by the Department.

L. Business Review Meetings

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables
- Review of the Contractor’s performance
- Review of minimum required reports
- Addressing of any elevated Customer issues
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies

M. Financial and Other Consequences

The following financial consequences will apply for nonperformance of the contract by a Contractor. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform/comply with provisions of the Contract. These consequences for non-performance are not to be considered penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in US Dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every quarter thereafter.

Performance Metrics	Description	Frequency	Financial Consequences Trigger for Non-Performance Per Day Late
Submission of complete and accurate Contract Quarterly Sales Report	Submit Quarterly Sales Report 10 calendar days after close of the period	Each quarter	\$250
Submission of complete and accurate Contract Monthly Transaction Fee Report	Submit Monthly Transaction Fee Report 15 calendar days after close of the period	Each month	\$100

N. Service Level Agreement (SLA) Performance

State agencies and eligible users may add SLA requirements and additional financial consequences in their statements of work for failing to meet performance requirements within any negotiated SLA or purchase order.

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In accordance with Rule 60A-1.002(5), F.A.C., Form PUR 1000 is included herein by reference and is superseded in its entirety by these Special Contract Conditions.

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SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes, (F.S.) and rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of suspension. Examples of a reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with any active or new purchase orders. Within ninety (90) calendar days, or any longer period agreed to by the Contractor, the Department or Customer will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

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If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may: (a) immediately terminate the Contract; (b) notify the Contractor of the noncompliance or default and require correction within a specified time, otherwise the Contract will terminate at the end of such time; or (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

(a) Preferred Pricing. Consistent with the goals of section 216.0113, F.S., Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in pricing over the course of the Contract period. To that end, the pricing indicated in this Contract is a maximum guarantee under the terms of this clause. Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those which are similar in size, scope, and terms. Contractor must annually submit an affidavit from an authorized representative attesting that the Contract is in compliance with this clause.

(b) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract. If applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. The purchase order period of performance survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than twelve (12) months.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

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Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior agreements between the Parties.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested; reputable air courier service; email; personal delivery; or as otherwise identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be provided in a separate writing to the Contractor upon Contract signing in the following format:

Jane Doe
Address

Exhibit C Special Contract Conditions

Telephone #
Email

In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be provided in a separate writing to the Department upon Contract signing in the following format:

Jane Doe
<Insert Contractor name>
<Insert Contractor's physical address>
Telephone: (XXX) 555-XXXX
Email: jane.doe@business.gmail.com

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity Reporting.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Department purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER

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BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all

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privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

5.5 Scrutinized Companies—Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website, whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

5.7 Inspection.

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Section 215.422, F.S., provides that agencies have five (5) working days, unless the contract specifies otherwise, to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also limited according to section 215.422, F.S.

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the Department and are not entitled to State of Florida benefits. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

6.4 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor.

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Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

6.7 Time is of the Essence.

Time is of the essence regarding each and every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Agencies wishing to make purchases under this Contract are required to follow the requirements of section 287.042(16) or 287.057(3) (b), F.S., and rule 60A-1.045, F.A.C. These provisions require the Department to determine that the requesting agency's use of the Contract is cost-effective and in the best interest of the State.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, government entities may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Non-Customer purchases are independent of the Contract between the Department and the Contractor. The Department is not a party to any transaction between the Contractor and any purchaser.

SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION

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Special Contract Conditions

7.1 Workers' Compensation Insurance.

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Department for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal & advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from the services and/or operations completed under the Contract, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include the State of Florida as an additional named insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor must submit via email, to the Department's contract manager, insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department and provide Department notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal.

7.3 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Department, the Customer, and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Department or Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

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SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY.

8.1 Public Records.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with the Contract.

Pursuant to section 119.0701(2) (a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

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 AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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8.2 Protection of Trade Secrets or Confidential Information.

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department or the Customer will be owned by the State of Florida at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

SECTION 9. DATA SECURITY AND SERVICES.

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9.1 Duty to Provide Secure Data.

The Contractor will maintain the security of State of Florida data including, but not limited to, a secure area around any displayed visible data. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

9.2 Warranty of Security.

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Customer and will entitle the Customer to a credit as provided in the Contract documents. This credit is intended only to cover the Customer's internal staffing and administrative costs as well as the diminished value of services provided under the Contract and will not preclude the Customer from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Customer to recover any damages arising from a breach of this section and constitutes an event of default.

The Contractor must notify the Department and the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any data is breached, any unauthorized access of data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of data affected. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

9.3 Remedial Measures.

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's and the Customer's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30)-minute notice will be given to allow Department

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personnel to be available for the call. If the designated time is not practical for the Customer, an alternate time for the call will be scheduled. Contractor must share all available information on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department and the Customer with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's and the Customer's Contract Manager and in all events, within one business day.

9.4 Indemnification (Breach of Warranty of Security).

The Contractor agrees to defend, indemnify, and hold harmless the Department, the Customer, and the State of Florida, its officers, directors, and employees for any claims, suits, or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two-year period of time following the breach.

9.5 Annual Certification.

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

10.3 Communications.

Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements which concern the Contract or its subject matter, disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract, or use any statement attributable to the Department or its employees. Public statements include press releases, publicity

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releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a time-frame specified by the Department. The Contractor must provide the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies.

11.3 Liquidated Damages.

The Contractor will promptly notify the Department or the Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

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The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the

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Contractor's contracts relating to this Contract. The State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department may require the Contractor and its employees, agents, representatives, and subcontractors to provide fingerprints and be subject to such background checks as directed by the Department. The cost of the background checks will be borne by the Contractor. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. The Contractor will ensure that all background screening will be refreshed upon the request of the Department for each person during the term of the Contract.

13.2 E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any

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jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. INFORMATION TECHNOLOGY.

The following applies to all contracts for information technology commodities and contractual services. "Information technology" is defined in section 287.012(15), F.S., to have the same meaning as provided in section 282.0041, F.S.

14.1 Limitation of Liability.

For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$250,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the

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Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to backup data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due to the Contractor under any contract with the State.

14.2 Information Technology Standards.

Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the agency in furtherance of its efforts to comply with AST standards, established in Title 74, F.A.C., as applicable.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

state purchasing

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Exhibit D

ADDENDUM NO. 1

Questions and Answers ITB Amendments

Contained herein are the answers to the questions submitted to the Department of Management Services (Department). The Department hereby amends ITB No. 16-15100000-W, as noted within this Addendum. In the event of a conflict between previously released information and the information contained herein, the information herein shall control. The information included in this addendum is now made part of this solicitation.

FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), FLORIDA STATUTES, OR FAILURE TO POST THE BOND OR OTHER SECURITY REQUIRED BY LAW WITHIN THE TIME ALLOWED FOR FILING A BOND SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES.

Any protest must be timely filed with the Department of Management Services' Agency Clerk.

Please Note: This Addendum No. 1 does not need to be returned with the response.

The Department has received the following questions from the vendor community through the MFMP Sourcing Tool and answers are provided in the following table:

#	QUESTION	ANSWER
1.	Could you please provide SOME idea of entities that use the contract, locations, tank sizes, ordering volume, etc?	The Department has not previously collected detailed sales information by tank size, volume, fuel type, or location, so we cannot provide detailed historic measures. However, the estimated annual spend can be located in section 1.1 of the ITB.
2.	How often are 500 gallon tank wagon deliveries needed versus 6000 gallon?	The requested information is not in the possession of the Department.
3.	Is freight priced separately or included in the bid differential?	Freight is priced separately. Please refer to Revised Attachment J, Instructions tab, which has been uploaded in MFMP Sourcing, for additional information.
4.	Similarly, what is the Delivery Charge (per gallon) and the Freight Charge (flat fee, not to exceed)? How do they differ? Is this a freight rate per location?	Freight Charge is the cost associated with the transportation of goods from one place to another. This can include, but is not limited to, packaging and insurance cost. Delivery Charge is what the Bidder is charging to deliver to the customer and may include, but is not limited to, handling and inside delivery. The freight rate is a not to exceed rate and is applicable to

		all locations within a given region, as identified in the Revised Attachment J.
5.	What is the Top Off charge? Is this a tank wagon delivery to a transport tank that is already full?	A Top Off charge is a not to exceed rate that the Bidder provides in Revised Attachment J. For the definition of Top Off, please refer to Attachment A, section B.
6.	Do we have to bid transport AND tank wagon?	No, please refer to Revised Attachment J, Instructions tab for this information.
7.	Is a punch-out catalog required? I noticed there is no fuel supplier listed on the punch-out catalog vendor list.	No, punch-out catalogs are optional. Please see the modification to Attachment A, section H, incorporated below.
8.	Must all fuel invoices go through the Ariba Network? There is no fuel vendor listed on the MFMP vendor list.	No. Please refer to Attachment A, section H of the ITB for additional information.
9.	What is the Transaction Fee? Is it .7 of one percent of the entire price of the invoice?	Currently the fee is .7% of the total contract sales per month. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by Rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law.
10.	Who determines what the nearest terminal is to a delivery location to be able to use the correct DTN FastRack?	A successful Bidder shall choose the closest terminal in physical distance to the delivery location.
11.	Can you please provide a spreadsheet of all tanks with sizes, locations, annual usage, and average load?	Please refer to the answer to question 1.
12.	What are the payment terms?	Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices.
13.	When will the bid go from preview mode to open mode with the ability to join?	Please refer to Attachment D and the Timeline of Events in the ITB for this information.
14.	Can you please provide a list of all the tank physical addresses, tank sizes, average load size, and estimated annual usage along with product type?	Please refer to the answer to question 1.
15.	Can we use 10am OPIS report for Tampa and Port Everglades?	No. Please refer to section D in Attachment A, Scope of work.

16.	Is the discount sheet mandatory?	Revised Attachment J is a required document. Please refer to section 7 of the ITB.
17.	How do we submit the contract, online?	Please refer to Attachment D, Special Instructions to Bidders for instructions on uploading documents in MFMP Sourcing. If you need additional assistance with using MFMP Sourcing, please contact the MFMP Customer Service Desk at VendorHelp@myfloridamarketplace.com or (866) 352-3776.
18.	Can the freight increase based on the distance from the port?	Freight charge is a not to exceed flat rate. Please refer to Revised Attachment J for further instructions.
19.	What are State of Florida's payment terms. Are Net 10 payment terms acceptable?	It is unclear what "Net 10 payment terms" means. Please refer to the answer to question 12.
20.	Are the previous bids available to review?	Copies of the current contract/vendor agreements can be located at the following link .
21.	Please provide the estimated annual volumes for each product in the ITB. 1. How much Ultra Low Sulfur Diesel number 2 2. How much Ultra Low Sulfur Diesel Red Dye 3. How much Biodiesel blend 4. How much gasoline	Please refer to the answer to question 1.
22.	Please provide the following information per location and per fuel type: 1 - What volumes will be required per lift? 2 - What is the volume required for the life of the contract? 3 - Where is the fuel being delivered to? 4 - How frequent are the deliveries?	Please refer to the answer to question 1.
23.	When is the first board meeting after the opening?	The Department does not have board meetings, nor are there any meetings after the opening. Please refer to the Timeline of Events.
24.	Will decision be made before or at the board meeting?	Please refer to the answer to question 23.
25.	Attachment C – 3.7 – Transaction Fees... How much is the transaction fee? Does this need to be accounted for in the	Please refer to the answer to question 9. The fee cannot be billed as a separate line item on invoices.

	vendor pricing or can it be billed as a separate line item on invoices?	
26.	Please explain how the Delivery Charge and Freight charges are to be handled. With a bid submission by region, the actual delivery and freight rates can vary greatly depending on site distance from the terminals. Under the current contract, freight charges are passed directly to the customer.	Please refer to the answer to question 4.
27.	With the bid submission by region as opposed to by county, the freight/delivery rates can vary greatly, as can the markups depending on which terminal is closest to each county. Can the bid be changed to be done by county to allow more accurate individual pricing?	No, you must bid by region as provided in Revised Attachment J.
28.	If we are unable to do a Punch-Out Catalog, will we still be considered for an award?	Please refer to the answer to question 7.
29.	Main solicitation Page 7 of 17 lists Transport delivery as minimum of 8000 gallons of gas, 7200 gallons of diesel, and 7200 gallons as a gas/diesel split. Attachment 'A' page 6 of 10 lists normal deliveries as 6000-8500 for gas, 6000-7500 for diesel, and 7500 gallons for gas/diesel splits. Attachment 'J' lists 8000-7500 (should be 8500?) for gas, and 7200-7500 for diesels (more in line with solicitation page 7). Which is accurate?	Please refer to Revised Attachment J.
30.	The list of required documents on the main solicitation page 17 of 17 does not match what the online submission currently lists. Online also indicates Attachments F and K are also required, and Attachment I (if applicable) is required. Which is accurate for submission?	Please refer to the Revised Attachment E that has been uploaded in MFMP Sourcing.
31.	Do you consider common carriers as subcontractors? If so, how should we go about getting written approval from the State to use the various carriers throughout the state? Also, as we will not know which carrier's we will need until we know specific site information, will we have ample notification of sites to allow time to get the state's approval?	Yes, however the Department does not require written approval when using common carriers to deliver the commodities associated with this ITB.
32.	Could you provide physical addresses for delivery locations?	Please refer to the answer to question 2.
33.	Could you provide volume by product per delivery locations?	Please refer to the answer to question 2.
34.	What are the average load sizes per location?	Please refer to the answer to question 2.

35.	What is the volume of each product?	Please refer to the answer to question 1.
36.	Is the Fuel Surcharge supposed to be included in the Freight Rate?	All allowable charges are shown in Revised Attachment J.
37.	What is the fee for the MFMP Transaction fees? Is it a per gallon rate, or %? Please provide number.	Please refer to Question 9.
38.	What are the sizes of tanks at size?	Please refer to the answer to question 2.
39.	Are tanks above or underground?	Please refer to the answer to question 2.
40.	Will any sites have special instructions for deliveries?	Please refer to the answer to question 2.
41.	Is the FSC to be included in the freight rate?	The question is unclear.
42.	When is actual bid due, I notice on the site it stated time remaining in preview 12 days?	Please refer to the Solicitation's Timeline of Events.

The following requirements supplement or replace those found in the ITB. The variations between the new and the old requirements are highlighted in yellow.

1. Section H of Attachment A, Scope of work, is hereby replaced in its entirety as follows:

H. Punch-out Catalog and Electronic Invoicing

The Contractor ~~will be required to~~ **may** provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier. At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

state purchasing

We serve those who serve Florida

Exhibit E

The State of Florida

Department of Management Services

Invitation to Bid (ITB) No: 16-15100000-W

Bulk Fuel, Gasoline, and Diesel

Stephanie Wyland, Procurement Officer

4050 Esplanade Way, Suite 360

Tallahassee, FL 32399

850-488-1985

Stephanie.Wyland@dms.myflorida.com

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes (F.S.), or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, F.S. Any protest must be timely filed with the Department of Management Services' Agency Clerk listed at:

http://www.dms.myflorida.com/agency_administration/general_counsel

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Timeline of Events

The table below contains the timeline of events for this solicitation. It is the responsibility of the Bidder to check for any changes. The dates and times within the Timeline of Events may be subject to change. All changes to the Timeline of Events will occur through an addendum to the solicitation and will be noticed on the [Vendor Bid System \(VBS\)](#).

Bidders shall not rely on the MyFloridaMarketPlace sourcing time clock. It is not the official submission date and time deadline. The official solicitation closing time and deadlines are reflected in the Timeline of Events listed below.

Event	Time (ET)	Date
ITB posted on the Vendor Bid System (VBS) and posted in MFMP Sourcing		April 2, 2019
Deadline to submit questions within MFMP Sourcing Messaging Tab	10:00 A.M.	April 18, 2019
Anticipated posting of answers to Bidders' questions to the solicitation		April 30, 2019
Deadline to submit bids and all required documentation	10:00 A.M.	May 14, 2019
Public Opening 4050 Esplanade Way, Conference Room 101 Tallahassee, FL 32399	10:01 A.M.	May 14, 2019
Anticipated Notice of Intended Award		May 28, 2019
Anticipated Contract start date		July 1, 2019

1 INTRODUCTION

1.1 Objective

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Diesel. The solicitation will be administered using MFMP Sourcing.

The current Bulk Fuel, Gasoline, and Diesel contract has approximately \$12 million in spend annually. State agencies account for 48% of the total annual spend. The historical spend is for informational purposes only and should not be construed as representing actual, guaranteed, or minimum spend under a new contract.

The Department intends to make regional awards with up to five Contractors per region. However, the Department reserves the right to award to one or multiple bidders, statewide or by counties, or to make no award, as determined to be in the best interest of the State.

1.2 Term

The initial term of the contract resulting from this solicitation will be for three years.

1.3 Renewal Term

Upon written agreement, the contract may be renewed in whole or in part for a period that will not exceed the term of the initial contract at the renewal pricing specified in the initial contract. Any renewal is contingent upon the satisfactory performance of the Vendor and subject to the availability of funds.

2 ITB OVERVIEW

2.1 Definitions

Definitions contained in section 287.012, F.S., Rule 60A-1.001, Florida Administrative Code (F.A.C.), Special Contract Conditions and the PUR 1001 form are incorporated by reference. In the event of a conflict, the definitions listed in this section supersede the incorporated definitions. All definitions apply in both their singular and plural sense.

Bidder or "Respondent" - A Vendor who submits a response to this ITB.

Biodiesel Blend - An alternative fuel consisting of Diesel Fuel, Grade No. 2-D Ultra Low Sulfur and a requested blend of soybean oil.

BQ-9000® - A cooperative and voluntary program for the accreditation of producers and marketers of biodiesel fuel created by the National Biodiesel Accreditation Program.

Business Day - Each day Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Time (ET) during which the State and its agencies are open for business.

Commodity - A product. The terms products and commodities may be used interchangeably throughout this ITB.

Commodity Code - The State of Florida numeric code for classifying commodities and contractual services that meet specific requirements, specifications, terms, and conditions herein. Florida has adopted the United Nations Standard Products and Services Code (UNSPSC) for classifying commodities and services.

Confidential Information - Any portion of a company's documents, data, or records relating to its bid that a Vendor claims is confidential and not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution, or other applicable authority, and that is clearly marked "Confidential".

Contract - The written agreement resulting from this ITB.

Contractor - The business entity that is awarded a Contract resulting from this ITB. The terms Vendor, Successful Bidder or Awarded Vendor may be used interchangeably throughout this ITB.

Customer - An ordering entity including state agencies and eligible users.

Dealer or Certified Representative - A representative authorized to market, sell, and service specific commodities such as gasoline and diesel.

Department - The Florida Department of Management Services.

DTN FastRacks Average - The fuel pricing service provided by the Data Transmission Network, an industry benchmark for pricing fuel and other commodities.

Eligible User (EU) - A governmental entity defined in Rule 60A-1.001, F.A.C.

Fuel - Any Fuel product obtained through this Contract. Fuel product shall include unleaded E10 gasoline, Ultra Low Sulfur no. 2 diesel, Ultra Low Sulfur no. 2 off road, dyed diesel and biodiesel to be delivered to State and Customer facilities.

Markup - The Contractor's price to cover all costs associated with providing Fuel to Customer facilities. Markups may differ based on where the Fuel is obtained according to the Fuel terminals and actual type of Fuel ordered. Markup for Fuel shall be on a price per gallon basis. Markup may be expressed as a negative number if the Contractor is offering a discount off the DTN FastRacks Average Price. The Contractor shall assess no other fees associated with the delivery of Fuel except as detailed in the Scope of Work (Attachment A).

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of 7,999 gallons for gasoline, 7,199 gallons for diesel, and 7,199 gallons for a combination load of gasoline and diesel.

Purchase - A transaction that results in the Customer obtaining ownership of a commodity.

Responsible vendor - A vendor who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance. (Subsection 287.012(25), F.S.)

Responsive bid - A bid submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation. (Subsection 287.012(26), F.S.)

State - The State of Florida.

Tank Wagon - A delivery by a tank wagon or other means with a minimum delivery of 500 gallons.

Transport Delivery - A delivery by a transport truck with a minimum delivery of 8,000 gallons for gasoline, 7,200 gallons for diesel, and 7,200 gallons for a combination load of gasoline and diesel.

United Nations Standard Products and Services Code (UNSPSC) - A commodity code list used by the State.

Vendor Bid System (VBS) - The State of Florida bidding system. (Subparagraph 287.042(3)(b)2., F.S.)

Vendor - An entity that is in the business of providing a commodity or service similar to those within the solicitation.

2.2 Procurement Officer

The Procurement Officer is the sole point of contact from the date of release of this ITB until 72 hours after the intent to award is posted.

The Procurement Officer for this ITB is:
Stephanie Wyland, Associate Category Manager
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Phone: (850) 488-1985
Email: Stephanie.Wyland@dms.myflorida.com

****ALL EMAILS TO THE PROCUREMENT OFFICER SHOULD CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL****

2.3 Limitation on Contact with Government Personnel (subsection 287.057(23), F.S.)

Between the release of this solicitation and the end of the 72-hour period following the Department posting the Notice of Intended Award, excluding Saturdays, Sundays, and State holidays (section 110.117, F.S.), Bidders to this solicitation or persons acting on their behalf may not contact any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the Procurement Officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

2.4 Must, Shall, Will, and Is Required

Although this solicitation uses terms such as "must," "shall," "will," and "is required," and may define certain items as requirements, the Department reserves the right, in its discretion, to waive any minor irregularity, technicality, or omission if the Department determines that it is in the best interest of the State to do so. However, failure to provide requested information may result in the rejection of a bid. There is no guarantee that the Department will waive an omission or deviation, or that any Vendor with a bid containing a deviation or omission will be considered for award of this procurement. The Department may reject any bid not submitted in the manner specified by this solicitation. The words "should" or "may" in this solicitation indicate desirable attributes or conditions but are permissive in nature.

2.5 Registration with the Florida Department of State

If awarded a Contract, the Bidder shall provide a PDF file of its current and active registration with the Department of State prior to contract execution. NOTE: Pursuant to section 607.1501, F.S., out-of-state corporations where required, must obtain a Florida Certificate of Authorization pursuant to section 607.1503, F.S., from the Florida Department of State, Division of Corporations, to transact business in the State of Florida. Website: www.sunbiz.org.

2.6 Florida Substitute Form W-9

All vendors must register and complete an electronic Florida Substitute Form W-9 prior to execution of a Contract. The Internal Revenue Service (IRS) receives and validates the information vendors provide on the Florida Substitute Form W-9. For instructions on how to complete the Florida Substitute Form W-9, please visit: <https://flvendor.myfloridacfo.com/>.

2.7 Special Accommodations

Any person requiring a special accommodation due to a disability should contact the Department's Americans with Disabilities Act (ADA) Coordinator at (850) 922-7535 at least five business days prior to the scheduled event. If you are hearing or speech impaired, please contact the ADA Coordinator by using the Florida Relay Service at (800) 955-8771 (TDD). The telephone numbers are supplied for notice purposes only.

2.8 Lobbying Disclosure

The successful Bidder shall comply with applicable federal requirements for the disclosure of information regarding lobbying activities of the successful Bidder, subcontractors or any authorized agent. Certification forms shall be filed by the successful Bidder and all subcontractors, certifying that no federal funds have been or shall be used in federal lobbying activities and the disclosure forms shall be used by the successful Bidder and all subcontractors to disclose lobbying activities. The successful Bidder shall comply with the provisions of section 216.347, F.S., which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature or a state agency.

2.9 Permits

The Customer will be responsible for all facility-required permits pertaining to Fuel storage, maintenance, and handling in accordance with all local, state and federal laws. The Contractor and Customer may work together to create a maintenance program for the fuel tanks.

2.10 Federal and State Standards

All specifications shall be in full and complete compliance with all Federal and State of Florida laws and regulations applicable to the type and class of Commodity being provided. This includes, but is not limited to, Federal Motor Equipment Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida requirements that apply to the type and class of Commodity being provided. In addition, any Federal or State legislation that should become effective during the term of the Contract, including any renewals, regarding equipment safety or emissions shall immediately become a requirement of the Contract. The Contractor must meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor must contact the Contract Manager immediately. Delivery of non-conforming product shall be cause for Contract termination and possible Contractor suspension.

2.11 Order of Precedence for Solicitation

In the event of a conflict, the conflict will be resolved in the following order of precedence (highest to lowest):

- a) Addenda to Solicitation, if issued (in reverse order of issuance)
- b) Attachment A: Scope of Work
- c) Attachment C: Special Contract Conditions
- d) This ITB and other Attachments

3 ITB BIDDING PROCESS

The ITB is a method of competitively soliciting a commodity or contractual service pursuant to paragraph 287.057(1)(a), F.S. The Department posts an ITB on the VBS to initiate the process and posts the ITB in MFMP Sourcing.

Bidders must submit questions in writing to the Procurement Officer via the Messages tab in MFMP Sourcing by the date listed in the Timeline of Events. Bids must be submitted in MFMP Sourcing by the deadline listed in the Timeline of Events. The Department will open the bids in a public meeting. Once the Department has verified the bids, the Department will post an agency decision in accordance with the Basis of Award section on the VBS.

3.1 False or Erroneous Information

The Department will evaluate responses from Responsive and Responsible Vendors. A Respondent who fails to provide the requested information or clarification or submits false or erroneous information may be deemed non-responsive and not awarded a contract. If the Respondent's response is found to contain false or erroneous information after contract award, the Contract may be terminated, and the Department may pursue any other legal action punishable by law.

3.2 Commitment to Diversity in Government Contracting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by woman-, veteran-, and minority-owned small businesses enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects certified business enterprises with private corporations for business development mentoring. The Department strongly encourages firms doing business with the State of Florida to consider participating in this initiative. More information on the Mentor Protégé Program may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915 or osdinfo@dms.myflorida.com.

The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this solicitation enthusiastically embrace diversity. The award of subcontracts should reflect the vast array of citizens in the State of Florida. The Bidder can contact the Office of Supplier Diversity at (850) 487-0915 for information on certified business enterprises that may be considered for subcontracting opportunities.

3.3 Question Submission

The Department invites interested and registered Vendors to submit questions regarding the solicitation. Vendors who have 'Joined' the MFMP Sourcing event are able to submit questions using the MFMP Sourcing 'Messages' tab (referred to as the "Q&A Board" in PUR 1001). Questions can be submitted in MFMP Sourcing until the Question Submission Deadline listed in the Timeline of Events.

The following quoted text replaces Paragraph 5 of PUR 1001:

"Questions must be submitted via the Q&A Board within MFMP Sourcing and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline of Events. Questions

shall be answered in accordance with the Timeline of Events. All questions submitted shall be published and answered in a manner that all proposers will be able to view. Proposers shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the Vendor Bid System for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained in the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 20 of these Instructions."

Bidders are strongly encouraged to raise any questions or concerns regarding this ITB, including the proposed Contract terms and conditions, during the open question period.

3.4 Addenda to the ITB

The Department reserves the right to modify this solicitation by addenda. Addenda may modify any aspect of this solicitation. Any addenda issued will be posted on the VBS. It is the Bidder's responsibility to check for any changes to a solicitation prior to submitting a bid.

3.5 Protest of Terms, Conditions, and Specifications

With respect to a protest of the terms, conditions and specifications contained in this solicitation, including any provisions governing the methods for scoring responses, awarding contracts, or modifying or amending any contract, a notice of protest shall be filed in writing with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within 72 hours after the posting of the solicitation. For purposes of this provision, the term "the solicitation" includes this solicitation document, any addendum, response to written questions, clarification or other document concerning the terms, conditions, and specifications of the solicitation.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S. When protesting a decision or intended decision (including a protest of the terms, conditions, and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

3.6 Public Opening

Bids will be opened on the date and at the location indicated in the Timeline of Events. Bidders are not required to attend. The Department generally does not announce prices or release other materials at this public meeting, pursuant to paragraph 119.071(1)(b), F.S.

3.7 Electronic Posting of Notice of Intended Award

The Department shall electronically post a Notice of Intended Award on the VBS for review by interested parties at the time and location specified in the Timeline of Events. The Notice of Intended Award shall remain posted for a period of 72 hours, not including weekends or State observed holidays. If the Notice of Intended Award is delayed, in lieu of posting the Notice of Intended Award the Department may post a notice of delay and a revised date for posting the Notice of Intended Award.

3.8 Protest of Notice of Intended Decision

Anyone desiring to protest the Notice of Intended Award shall file any notice of protest and any subsequent formal written protest with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within the time prescribed in subsection 120.57(3) F.S., and Chapter 28-110, Florida Administrative Code. The Procurement Officer should be copied on such filings.

When protesting a decision or intended decision (including a protest of the terms, conditions and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S.

3.9 Firm Response

The Department intends to award a contract within sixty days after the date of the bid opening, during which period bids shall remain firm and shall not be withdrawn. If an award is not made within sixty days, all bid responses shall remain firm until either the Department awards the Contract, or the Department receives from the Bidder written notice that the response is withdrawn. Bid responses that express a shorter duration may, in the Department's sole discretion, be accepted or rejected.

3.10 Modification or Withdrawal of Bid

Bidders are responsible for the content and accuracy of their bid. Bidders may modify or withdraw their bid at any time prior to the bid due date in accordance with the Timeline of Events.

3.11 Cost of Response Preparation and Independent Preparation

The costs related to the development and submission of a response to this ITB is the full responsibility of the Bidder and are not chargeable to the Department. A Bidder shall not, directly or indirectly, collude, consult, communicate or agree with any other Vendor or Bidder as to any matter related to the response each is submitting. Additionally, a Bidder shall not induce any other Bidder to modify, withdraw, submit or not submit a response.

3.12 Contract Formation

The Department may issue a Notice of Intended Award to successful Bidder(s). However, no contract shall be formed between a Bidder and the Department until the Department signs the contract. The Department shall not be liable for any work performed before the contract is effective.

The Department intends to enter into a contract(s) with Bidder(s) pursuant to the Basis of Award section of this solicitation. No additional documents submitted by a Bidder shall be incorporated in the contract unless it is specifically identified, incorporated by reference, and approved by the Department. If any additional documents are submitted by the Bidder, the additional documents will not be considered for the Basis of Award.

4 HOW TO BID ON THE ITB

This section contains instructions to Bidders on how to submit a bid.

4.1 General Instructions

PUR 1001, the General Instructions to Bidders, is incorporated by reference and provided via the link below:

<http://www.dms.myflorida.com/content/download/2934/11780/1001.pdf>

In the event any conflict exists between Attachment D – Special Instructions to Bidders and these General Instructions to Bidders, the Attachment D, Special Instructions shall prevail.

The following section of the PUR 1001 (General Instructions) is modified as follows:

9. In submitting a response, each respondent understands, represents, and acknowledges the following.

* The respondent is not currently under suspension or debarment by the State or any other governmental authority.

* To the best of the knowledge of the person signing the response, the Respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last 10 years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

* Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.

* The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.

* The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.

* The respondent has fully informed the Department in writing of all convictions of the firm, its affiliates (as defined in paragraph 287.133(1)(a), F.S.), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.

* Neither the Respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.

* The product offered by the Respondent will conform to the specifications without exception.

* The Respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.

* If an award is made to the Respondent, the Respondent agrees that it intends to be legally bound to the Contract that is formed with the State.

* The Respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.

* The Respondent shall indemnify, defend, and hold harmless the Department and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.

* All information provided by, and representations made by, the Respondent are material and important and will be relied upon by the Department in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Department of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817, F.S.

4.2 How to Submit a Bid

Bidders will submit their bids electronically via MFMP Sourcing. Bidders shall enter all required attachments and documents electronically in MFMP Sourcing during this solicitation as indicated. The Department will only evaluate bids submitted using MFMP Sourcing.

Mass produced general information/promotional material about the Bidder that is prepared/printed for general distribution is not permitted. The emphasis of each bid shall be on completeness and clarity of content, prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this solicitation.

By submitting a bid to this solicitation, the Bidder agrees to and waives any objections to requirements contained in the solicitation. By submitting a bid, the Bidder certifies that it agrees to and satisfies all requirements specified in this solicitation.

Respondents must upload an electronic copy of all required documentation in the MFMP Sourcing application. The following conditions apply:

- In the case where the Department provides an attachment that is able to be filled in, Respondents are to download the attachment, fill it out, and then attach the filled in copy in the link provided.
- In the case of original or signed documentation, Respondents may attach scanned copies of original documents which have been filled in and signed by an individual authorized to respond on the Bidder's behalf.
- In the case where multiple original or signed items are requested as part of a single requirement, please combine multiple scanned items into a single PDF attachment. Each link in MFMP will only accept a single attachment.
- MFMP accepts files up to 20 megabytes (MB) in size.

Submit all required attachments and documentation in MFMP Sourcing in accordance with the applicable instructions. Failure to submit all of the required attachments and documentation in MFMP Sourcing may result in a determination of Bidder non-responsiveness. Bidders are responsible for submitting their bids in MFMP Sourcing by the date and time specified in the Timeline of Events of this solicitation. The Department will not consider late bids.

Attachments submitted in MFMP Sourcing should be named similarly to the following file naming conventions:

Example:

JohnDoeLLC_Attachment_E.pdf

JohnDoeLLC_AttachmentJMarkupSheet.xlsx (Excel)

5 PRIOR TO AWARD

5.1 Rejection of Bids

Bids that do not meet all requirements, specifications, terms, and conditions of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Bidders whose bids, references, or current status does not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a contract may be rejected as not responsible. The Department reserves the right to determine which bids meet the requirements of this solicitation, and which Bidders are responsive and responsible.

5.2 Minor Irregularities/Right to Reject

The Department reserves the right to accept or reject any or all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so shall serve the Department's best interests. The Department may reject any response not submitted in the manner specified by the solicitation documents.

5.3 Redacted Submissions

The following section supplements section 19 of the PUR 1001. If Bidder considers any portion of the documents, data or records submitted in response to this solicitation to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution or other authority, Bidder must mark the document as "Confidential" and simultaneously provide the Department with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law,

including the specific statutory citation for such exemption. This redacted copy shall contain the Department's solicitation name, number, and the Bidder's name on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Bidder claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

In the event of a request for public records pursuant to Chapter 119, F.S., the Florida Constitution or other authority, to which documents that are marked as confidential are responsive, the Department will provide the Redacted Copy to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Bidder such an assertion has been made. It is the Bidder's responsibility to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Bidder in a legal proceeding, the Department shall give the Bidder prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Bidder shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

By submitting a bid, the Bidder agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Bidder's determination that the redacted portions of its bid are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Bidder fails to submit a redacted copy of information it claims is confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request for these records.

5.4 Additional Information

By submitting a bid, Bidder certifies that it agrees to and satisfies all requirements specified in the ITB. The Department may request, and Bidder shall provide, additional supporting information or documentation. Failure to supply supporting information or documentation as required and requested may result in the bid being deemed non-responsive.

5.5 Bid Disqualification

Bids that do not meet all requirements, specifications, terms and conditions of the solicitation or fail to provide all required information, documents or materials may be rejected as non-responsive. Bids that contain provisions that are contrary to the requirements of the solicitation are not permitted. Bidders whose bids, past performance or current status do not reflect the capability, integrity or reliability to fully and in good faith perform the requirements of this solicitation may be rejected as non-responsive. The Department reserves the right to determine which bids meet the requirements of this solicitation and which Bidders are responsive and responsible.

6 BASIS OF AWARD

The Contract will be awarded to the responsible and responsive bidders with the lowest Calculated Markup for each fuel and delivery type in each of the four regions, as shown on the Markup Sheet (Attachment J). The Department may issue up to five awards for each fuel and delivery type in each of the four regions described in the Scope of Work (Attachment A).

6.1 Transport Delivery

For Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(T^I \times 0.54) + (A^I \times 0.06) + (T^R \times 0.36) + (A^R \times 0.04) = Z$$

Where:

T^I = Initial Term Markup

A^I = Sum of Initial Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

T^R = Renewal Term Markup

A^R = Sum of Renewal Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

Z = Bidder's Calculated Markup

6.2 Non-Transport Delivery

For Non-Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(NI \times 0.54) + (BI \times 0.06) + (NR \times 0.36) + (BR \times 0.04) = Z$$

Where:

NI = Initial Term Markup

BI = Sum of Initial Term Allowable Charges ("All Delivery Types" only)

NR = Renewal Term Markup

BR = Sum of Renewal Term Allowable Charges ("All Delivery Types" only)

Z = Bidder's Calculated Markup

6.3 Preference to Florida Businesses

Pursuant to the requirements of paragraph 287.084(1)(a), F.S., if the lowest responsible and responsive bid is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, the Department will award a preference to the lowest responsible and responsive bidder having a principal place of business within Florida, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive bidder has its principal place of business.

If the lowest bid is submitted by a bidder whose principal place of business is located outside the state, and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive bidder having a principal place of business in this state will be five percent.

A vendor whose principal place of business is outside this state must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts

7 ITB ATTACHMENTS

Attachment A	Scope of Work
Attachment B	Draft Contract
Attachment C	Special Contract Conditions
Attachment D	Special Instructions for Bidders
Attachment E	Responsiveness Requirements
Attachment F	Vendor Information Form
Attachment G	Certification of Drug-Free Workplace
Attachment H	Quarterly Sales Report
Attachment I	Savings/Price Reductions
Attachment J	Markup Sheet
Attachment K	No Offshoring

Required Documents to be submitted by vendor prior to ITB opening

Attachment E Responsiveness Requirements

Attachment G Certification of Drug-Free Workplace (if applicable)

Attachment J Markup Sheet

Written Opinion of an Attorney at Law - Section 6.3 of the ITB (if applicable)



**State Term Contract
No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

This Contract is between the State of Florida, Department of Management Services (Department), an agency of the State of Florida and Pro Energy Fleet Fueling LLC (Contractor), collectively referred to herein as the “Parties.”

Accordingly, the Parties agree as follows:

I. Contract Award

The Contractor has been awarded the following regions, fuel groups, and fuel types:

Northern and Central Regions

Diesel Fuel, Grade No. 2-D Ultra Low Sulfur- Transport
Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur- Transport
Gasoline E10, Unleaded 87 Octane- Transport

Southern Region

Diesel Fuel, Grade No. 2-D Ultra Low Sulfur- Transport and Non-Transport
Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur- Transport and Non-Transport
Gasoline E10, Unleaded 87 Octane- Transport and Non-Transport

II. Initial Contract Term.

The Initial Contract Term shall be for three years. The Initial Contract Term shall begin on July 1, 2019. The Contract shall expire on June 30, 2022, unless terminated earlier in accordance with the Special Contract Conditions.

III. Renewal Term.

Upon mutual written agreement, the Parties may renew this Contract, in whole or in part, for a Renewal Term not to exceed the Initial Contract Term, pursuant to the incorporated Special Contract Conditions.

IV. Contract.

As used in this document, “Contract” (whether or not capitalized) shall, unless the context requires otherwise, include this document and all incorporated Attachments, which set forth the entire understanding of the Parties and supersedes all prior agreements. All modifications to this Contract must be in writing and signed by all Parties.

**State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

All Attachments listed below are incorporated in their entirety into, and form part of this Contract. The Contract Attachments shall have priority in the order listed:

- a) Exhibit A: Scope of Work, Attachment A
- b) Exhibit B Markup Sheet
- c) Exhibit C: Special Contract Conditions, Attachment C
- d) Exhibit D: Addenda to Solicitation
- e) Exhibit E: ITB and other ITB Attachments

V. Amendment to Exhibit E (ITB)

ITB Section 2.1 Definitions; is hereby amended to replace two definitions for Transport and Non transport delivery to the definitions listed below:

Transport Delivery - A delivery by a transport truck or other means with a minimum delivery of 6,000 gallons and a maximum delivery of; 8,500 gallons for gasoline, 7,500 gallons for diesel, and 7,500 gallons for a combination load of gasoline and diesel.

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of; 5,999 gallons for gasoline, 5,999 gallons for diesel, and 5,999 gallons for a combination load of gasoline and diesel.

VI. Contract Management.

Department's Contract Manager:

Frank Miller
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360
Tallahassee, Florida 32399-0950
Telephone: (850) 488-8855
Email: Frank.Miller2@dms.myflorida.com

Contractor's Contract Manager:

Chas DeFelice
Pro Energy Fleet Fueling LLC.
1093 Shotgun Rd.
Sunrise, FL 33326
Telephone: (954) 431-5389
Email: chas@proenergy.us

**State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel**

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

PRO ENERGY FLEET FUELING LLC

**STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES**

Patrick Gillespie, Deputy Secretary

Date:

Date:

State Term Contract No. 15100000-19-1
For
Bulk Fuel, Gasoline, and Diesel

IN WITNESS THEREOF, the Parties hereto have caused this Contract, which includes the incorporated Attachments, to be executed by their undersigned officials as duly authorized. This Contract is not valid and binding until signed and dated by the Parties.

PRO ENERGY FLEET FUELING LLC

STATE OF FLORIDA,
DEPARTMENT OF MANAGEMENT SERVICES



Clemente Cruz, Owner

6/11/19
Date:



~~Patrick Gillespie, Deputy Secretary~~
David Clark, Chief of Staff

6/24/19
Date:

Exhibit A Scope of Work

A. General Statement

1. Purpose

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Biodiesel. Customers for this contract include all state agencies and eligible users. (It is anticipated that Customers will use approximately 10,000,000 gallons annually under the resulting Contract, if any).

2. Commodity Code List

UNSPSC	Commodity Description
15101505	Diesel fuel
15101506	Gasoline or Petrol
15101513	Diesel fuel off road
15101801	Biodiesel

B. Definitions

- 1. **Back Haul-** Return of unused fuel.
- 2. **Contractor** - The successful bidder/Vendor who is awarded the resultant contract under this solicitation. Contractor is also known as the "Shipper".
- 3. **Contract Manager** - Person designated by the Department of Management Services (the Department) to be responsible for managing the performance of a contract.
- 4. **Customer** - An ordering entity including state agencies and eligible users, as defined in Rule 60A-1.001, Florida Administrative Code (F.A.C.).
- 5. **Eligible User** - A governmental entity defined in Rule 60A-1.001, F.A.C.
- 6. **Emergency Delivery-** When a delivery is required to help immediate risk to health, life, or property.
- 7. **Freight Charge-** The fee is applied to all shipments and is set by local authorities which means this fee may apply to both import or export shipments.
- 8. **Pump Off-** Using a pump to pull the fuel from the truck/trailer and pushes the fuel to its destination.
- 9. **Top Off-** To bring fuel to the maximum tank level of 1,000 gallons or less.

C. Commodity Specifications

1. **Biodiesel Blend:** Blend of grade no. 2-D ultra-low sulfur diesel and up to 20% biodiesel, for use in over the road diesel engine, meeting the American Society for Testing and Materials (A.S.T.M.) specification D7467 for biodiesel blends (6% – 20%). The biodiesel component shall consist of mono-alkyl esters of long chain fatty acids derived from new and used vegetable oils, designated B100, B99.9, or B99, meeting the A.S.T.M. specification D6751 and be certified under the BQ9000 quality program. The diesel component (grade no. 2-D ultra-low sulfur diesel) and any blends with less than 6% biodiesel shall meet A.S.T.M. specification D975. The final product shall comply with the standards in Rule 5J-21.001, F.A.C. **The Contractor must deliver any blend requested by the Customer.**
2. **Diesel Fuel, Grade No. 2-D Ultra Low Sulfur:** Grade no. 2-D (.0015 mass Percentage sulfur, 40 cetane min.), for use in over the road diesel engine, per A.S.T.M. specification D975, complying with Rule 5J-21.001, F.A.C.
3. **Gasoline E10, Unleaded 87 Octane:** The product shall comply with the standards in Rule 5J-21.001, F.A.C.
4. **Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur:** for use in off-road diesel engine, minimum cetane number of 40 using A.S.T.M. D613, A.S.T.M specification D975, Grade # 2 S15. The product shall comply with the standards in Rule 5J-21.001, F.A.C.

Upon Customer request, Contractor must provide all certificates concerning product quality of all commodities listed in Section C (1-4) inclusive in this Scope of Work.

D. Pricing Elements for Purchase of Fuels

1. Cost of Fuel

Prices will be calculated for each fuel type using the following information:

1.1 Biodiesel Blend

- 1.1.1 Data Transmission Network (DTN) FastRacks Average Price for Ultra Low No. 2. The daily price will be used to calculate the diesel portion for Biodiesel.
- 1.1.2 The Wall Street Journal's published Monday closing price for soybean oil, as printed in the Tuesday edition under "Fats and Oils" in the "Cash Prices" column. This weekly price will be used to calculate the bio portion of the Biodiesel. This method will be used unless vendor(s) can show a better way of getting the price weekly. If no Monday price is published, then the next available published price will apply (Tuesday, Wednesday, etc.).
- 1.1.3 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.1.4 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

Sample Calculations:

B20 wholesale price = 0.80 times the price for ultra-low sulfur no. 2 diesel plus 0.20 times the price for soybean oil.

B10 wholesale price = 0.90 times the price for ultra-low sulfur no. 2 diesel plus 0.10 times the price for soybean oil.

B5 wholesale price = 0.95 times the price for ultra-low sulfur no. 2 diesel plus 0.05 times the price for soybean oil.

The Contractor is prohibited from negotiating or billing in a manner that exceeds the stated prices included in the Contract. The Contractor agrees that the price charged to the Customer shall be subject to audit, and the Contractor shall make all records supporting the invoiced prices available for inspection, upon written request by the Customer.

1.2 Diesel Fuel, Grade No. 2-D Ultra Low Sulfur

- 1.2.1 DTN FastRacks Average Price for Ultra Low No. 2.
- 1.2.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.2.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.3 Gasoline E10, Unleaded 87 Octane

- 1.3.1 DTN FastRacks Average Price for Gasoline E-10 10% Ethanol.
- 1.3.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.3.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

1.4 Diesel Fuel, Red Dye Grade No. 2 Ultra Low Sulfur

- 1.4.1 DTN FastRacks Average Price for Ultra Low Red No. 2.
- 1.4.2 Contractor's Markup as determined by the Price Sheet for the region in which delivery of Fuel is made.
- 1.4.3 All applicable Fuel taxes and/or petroleum associated fees as determined by the county in which delivery of Fuel is made.

The DTN FastRacks Average Price used above will be that of the closest appropriate terminal, on the date of delivery to the Customer, regardless of when or where the Contractor obtained fuel. The Contractor must subscribe to the DTN FastRacks Averages by calling DTN's Sales Department at 1-800-779-5775.

The following terminals are used to refer to the DTN FastRacks Average Prices:

- Pensacola
- Panama City
- Jacksonville

- Orlando
- Tampa
- Miami
- Bainbridge, GA

2. Fuel Fees, Taxes, and Other Costs

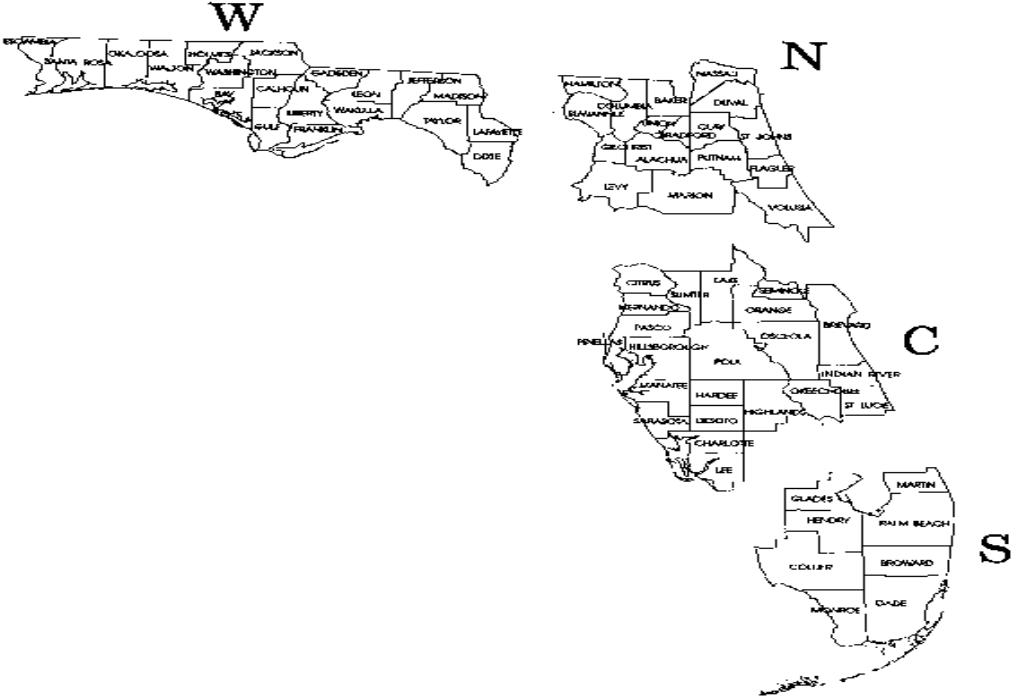
The Contractor may assess the following charges as determined by the price sheet for the county in which delivery of Fuel is made:

- 2.1. Delivery charges are allowed.
- 2.2. Freight charges will apply on all Transport Deliveries.
- 2.3. Pump off charge for Transport Delivery. This may be charged more than once if Transport Delivery truck is required to relocate to deliver to additional tanks.
- 2.4. Excessive delay charge if Contractor should wait more than 30 minutes to begin Fuel delivery.
- 2.5. Back haul charge if Customer orders more than tanks can hold.
- 2.6. Top off charge.
- 2.7. Tank maintenance, if customer and vendor agree.
- 2.8. Other fees were permitted by paragraph 215.422(3)(b), Florida Statutes.

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E. Delivery to Customers

Map of Four Geographic Regions for Delivery to Customers



Identification of Counties within Four Geographic Regions

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Bay	Alachua	Brevard	Broward
Calhoun	Baker	Charlotte	Collier
Dixie	Bradford	Citrus	Glades
Escambia	Clay	Desoto	Hendry
Franklin	Columbia	Hardee	Martin
Gadsden	Duval	Hernando	Miami-Dade
Gulf	Flagler	Highlands	Monroe
Holmes	Gilchrist	Hillsborough	Palm Beach
Jackson	Hamilton	Indian River	
Jefferson	Levy	Lake	
Lafayette	Marion	Lee	
Leon	Nassau	Manatee	
Liberty	Putnam	Okeechobee	

<u>WESTERN (W)</u>	<u>NORTHERN (N)</u>	<u>CENTRAL (C)</u>	<u>SOUTHERN (S)</u>
Madison	St. Johns	Orange	
Okaloosa	Suwannee	Osceola	
Santa Rosa	Union	Pasco	
Taylor	Volusia	Pinellas	
Wakulla		Polk	
Walton		Sarasota	
Washington		Seminole	
		St. Lucie	
		Sumter	

NOTE: Gallons listed below may be converted to liters.

1. Normal delivery on this Contract shall be from 6,000 to 8,500 gallons for a Delivery of gasoline; 6,000 to 7,500 gallons for a Delivery of diesel; and 7,500 gallons for a combination load Transport Delivery of gasoline and diesel.
2. Delivery options on the contract for less than the normal delivery can be made via a tank wagon, LPG trucks, or other means to receive less than 6,000 gallons.
3. In the event of an emergency, gas and/or diesel deliveries/top offs can be made by a tank wagon or other available transportation for gas or diesel deliveries less than the normal delivery load.
4. Delivery shall be made available to all state agencies and their locations.

Imperial measurements appearing are not intended to preclude bids for commodities with metric measurements.

5. Normal delivery of fuel will be delivered to the Customer's tank(s) within 48 hours after telephone notification is received unless specified otherwise by the Customer. For new accounts, the Contractor will be allowed additional time to enter all required account information into their ordering/billing system to establish the new account. This time will be agreed upon by the Customer and the Contractor. The State prefers that vehicles equipped with meters make delivery. If non-metered vehicles are used, the driver shall leave a metered loading report from the terminal with the Customer. If temperature corrected billing is used, the loading report shall give all pertinent information. Customer may be subject to a service charge if request is for same day delivery.
6. Before unloading of Fuel begins, Customer personnel and Contractor personnel shall measure the Customer's tank(s) to receive Fuel and shall again measure the tank(s) after delivery. Customer may be subject to a back-haul charge if the Customer orders more Fuel than the Customer's tank(s) can hold upon delivery and a portion of the Fuel ordered has to be returned.

F. Emergency Fuel Plan

Within thirty days of contract signing, the Contractor and the State shall jointly develop an Emergency Fuel Plan (Plan). The emergency purchases under the Plan shall include the use of

equipment and tools, and all services and responsibilities prescribed or implied which are necessary for the complete performance by the Contractor of its obligations under the Plan. This Plan shall include but not be limited to:

- Commodities and services available to Customers during emergencies
- An assessment of risks
- Operational assignments (Who does what, when and how)
- Procedures for Emergency notification (How do we tell people there's a problem?)
- Procedures for activation in the event of an emergency to protect and/or recover critical assets and functions
- Procedures for Plan testing
- Procedures for an annual review, updating, altering and re-writing that results in a document that is fully functional and operational
- The plan must be able to work with the State's Fuel Card program

G. Invoices

1. The Contractor shall submit timely invoices to the Customer.
2. At a minimum the invoices are to provide the following information:
 - 2.1. Contractor's name, contract number, actual date of delivery, location of delivery, fuel manufacturer, and fuel quantity delivered;
 - 2.2. DTN FastRacks Average Price based on the actual delivery date and named closest terminal used for price;
 - 2.3. Exempted taxes, fees, credits, markup, and other fees consisting of freight, pump-off, excessive delay, back-haul, top-off, tank maintenance pump off fee;
 - 2.4. Adjustments due to unforeseen circumstances including but not limited to erroneous orders, fuel spills, delivery of incorrect fuel, and cross-fueling; and
 - 2.5. Total invoice price.
3. To encourage transparency, all line item costs on all invoices shall include a description of each cost sufficient for a Customer to understand and audit.

H. Punch-out Catalog and Electronic Invoicing

The Contractor will be required to provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line

items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier.

At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply “flipping” the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.

I. Contract Reporting

The Contractor shall report information on orders received from state agencies and eligible users associated with this contract. The Contractor shall supply to the Department all the data, calculations, and documents used in computing all costs associated with the supply and delivery of Fuel.

No favorable action will be considered for any contractor who has outstanding Contract Quarterly Sales Reports, MFMP Transaction Fee Reports, or any other documentation, to include fees / monies that is required under this Contract.

The Contractor shall submit reports in accordance with the following schedule:

Report	Period Covered	Due Dates
MFMP Transaction Report	Calendar month	15th calendar day of the month following the receipt of payment for the vendor's good or services.
Contract Quarterly Sales Report	State's Fiscal Quarter	10 calendar days after close of the period
Savings / Price Reductions	Annual	10 business days after each action that adjusts prices
Diversity Report (submitted to the Customer)	State Fiscal Year	10 business days after close of the period
Preferred Pricing Affidavit	Annual	Contract anniversary date

J. MFMP Transaction Fee Report

The Contractor is required to submit monthly Transaction Fee Reports in the Department's electronic format. Reports are due 15 calendar days after the end of the reporting period. For information on how to submit Transaction Fee Reports online, please reference the detailed fee reporting instructions and Vendor training presentations available online at the Transaction Fee Reporting and Vendor Training subsections under Vendor on the MFMP website: MFMP Transaction Fee and Reporting. Assistance is also available with the Transaction Fee Reporting System from the MFMP Customer Service Desk by email at feeprocessing@myfloridamarketplace.com or telephone 866-FLA-EPRO (866-352-3776) from 8:00 a.m. to 6:00 p.m. ET.

K. Quarterly Sales Report

The Contractor agrees to submit a Quarterly Sales Report to the Department's Contract Manager within 10 calendar days after the close of each State Fiscal quarter (September 30, December 31, March 31, and June 30).

Quarterly Reporting periods should coincide with the contract term and should begin the quarter following contract execution. Reports must be submitted in MS Excel format. The report will include all sales (orders) from state agencies and eligible users received (associated with this contract) during the period. Initiation and submission of the Quarterly Report is the responsibility of the Contractor without prompting or notification from the Department's Contract Manager. If no orders are received during the period, the Contractor must submit a report stating that there was no activity. If the Contractor fails to submit two consecutive quarterly sales reports, the Contract may be terminated for convenience or the Department may choose to not renew the Contract.

The Contractor shall report to each Customer (ordering entity), spend with certified and other minority business enterprises. These reports shall include the period covered, the name, minority code and Federal Employer Identification Number of each minority business utilized during the period, commodities and services provided by the minority business enterprise, and the amount paid to each minority business on behalf of each purchasing agency ordering under the terms of this Contract.

In addition, the Department may require additional Contract sales information such as copies of purchase orders, or ad hoc sales reports. The Contractor shall submit these specific ad hoc requests within the specified amount of time as requested by the Department.

The Contractor is required to submit ad hoc reports within the specified amount of time as requested by the Department.

L. Business Review Meetings

In order to maintain the partnership between the Department and the Contractor, each quarter the Department may request a business review meeting. The business review meeting may include, but is not limited to, the following:

- Successful completion of deliverables
- Review of the Contractor’s performance
- Review of minimum required reports
- Addressing of any elevated Customer issues
- Review of continuous improvement ideas that may help lower total costs and/or improve business efficiencies

M. Financial and Other Consequences

The following financial consequences will apply for nonperformance of the contract by a Contractor. The State reserves the right to withhold payment or implement other appropriate remedies, such as contract termination or nonrenewal, when the Contractor has failed to perform/comply with provisions of the Contract. These consequences for non-performance are not to be considered penalties.

The financial consequences will be paid via check or money order and made out to the Department of Management Services in US Dollars within 30 calendar days after the required report submission date. These consequences are individually assessed for failures over each target period beginning with the first full month or quarter of the contract performance and every quarter thereafter.

Performance Metrics	Description	Frequency	Financial Consequences Trigger for Non-Performance Per Day Late
Submission of complete and accurate Contract Quarterly Sales Report	Submit Quarterly Sales Report 10 calendar days after close of the period	Each quarter	\$250
Submission of complete and accurate Contract Monthly Transaction Fee Report	Submit Monthly Transaction Fee Report 15 calendar days after close of the period	Each month	\$100

N. Service Level Agreement (SLA) Performance

State agencies and eligible users may add SLA requirements and additional financial consequences in their statements of work for failing to meet performance requirements within any negotiated SLA or purchase order.

Exhibit C Special Contract Conditions

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In accordance with Rule 60A-1.002(5), F.A.C., Form PUR 1000 is included herein by reference and is superseded in its entirety by these Special Contract Conditions.

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SECTION 1. DEFINITION.

The following definition applies in addition to the definitions in Chapter 287, Florida Statutes, (F.S.) and rule Chapter 60A-1, Florida Administrative Code (F.A.C.):

1.1 Customer.

The agency or eligible user that purchases commodities or contractual services pursuant to the Contract.

SECTION 2. CONTRACT TERM AND TERMINATION.

2.1 Initial Term.

The initial term will begin on the date set forth in the Contract documents or on the date the Contract is signed by all Parties, whichever is later.

2.2 Renewal.

Upon written agreement, the Department and the Contractor may renew the Contract in whole or in part only as set forth in the Contract documents, and in accordance with section 287.057(13), F.S.

2.3 Suspension of Work and Termination.

2.3.1 Suspension of Work.

The Department may, at its sole discretion, suspend any or all activities under the Contract, at any time, when it is in the best interest of the State of Florida to do so. The Customer may suspend a resulting contract or purchase order, at any time, when in the best interest of the Customer to do so. The Department or Customer will provide the Contractor written notice outlining the particulars of suspension. Examples of a reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, the Contractor must comply with the notice and will cease the activities associated with any active or new purchase orders. Within ninety (90) calendar days, or any longer period agreed to by the Contractor, the Department or Customer will either (1) issue a notice authorizing resumption of work, at which time activity will resume, or (2) terminate the Contract or purchase order. Suspension of work will not entitle the Contractor to any additional compensation.

2.3.2 Termination for Convenience.

The Contract may be terminated by the Department in whole or in part at any time, in the best interest of the State of Florida. If the Contract is terminated before performance is completed, the Contractor will be paid only for that work satisfactorily performed for which costs can be substantiated. Such payment, however, may not exceed an amount which is the same percentage of the Contract price as the amount of work satisfactorily performed. All work in progress will become the property of the Customer and will be turned over promptly by the Contractor.

2.3.3 Termination for Cause.

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If the performance of the Contractor is not in compliance with the Contract requirements or the Contractor has defaulted, the Department may: (a) immediately terminate the Contract; (b) notify the Contractor of the noncompliance or default and require correction within a specified time, otherwise the Contract will terminate at the end of such time; or (c) take other action deemed appropriate by the Department.

SECTION 3. PAYMENT AND FEES.

3.1 Pricing.

The Contractor will not exceed the pricing set forth in the Contract documents.

3.2 Price Decreases.

The following price decrease terms will apply to the Contract:

(a) Preferred Pricing. Consistent with the goals of section 216.0113, F.S., Contractor acknowledges and recognizes that the Department wants to take advantage of any improvements in pricing over the course of the Contract period. To that end, the pricing indicated in this Contract is a maximum guarantee under the terms of this clause. Contractor's pricing will not exceed the pricing offered under comparable contracts. Comparable contracts are those which are similar in size, scope, and terms. Contractor must annually submit an affidavit from an authorized representative attesting that the Contract is in compliance with this clause.

(b) Sales Promotions. In addition to decreasing prices for the balance of the Contract term due to a change in market conditions, the Contractor may conduct sales promotions involving price reductions for a specified lesser period. The Contractor must submit documentation identifying the proposed (1) starting and ending dates of the promotion, (2) commodities or contractual services involved, and (3) promotional prices compared to then-authorized prices.

3.3 Payment Invoicing.

The Contractor will be paid upon submission of invoices to the Customer after delivery and acceptance of commodities or contractual services is confirmed by the Customer. Invoices must contain detail sufficient for an audit and contain the Contract Number and the Contractor's Federal Employer Identification Number.

3.4 Purchase Order.

A Customer may use purchase orders to buy commodities or contractual services pursuant to the Contract. If applicable, the Contractor must provide commodities or contractual services pursuant to purchase orders. The purchase order period of performance survives the expiration of the Contract. The duration of purchase orders must not exceed the expiration of the Contract by more than twelve (12) months.

3.5 Travel.

Travel expenses are not reimbursable unless specifically authorized by the Customer in writing, and may be reimbursed only in accordance with section 112.061, F.S.

3.6 Annual Appropriation.

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Pursuant to section 287.0582, F.S., if the Contract binds the State of Florida or an agency for the purchase of services or tangible personal property for a period in excess of one fiscal year, the State of Florida's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Legislature.

3.7 Transaction Fees.

The State of Florida, through the Department of Management Services, has instituted MyFloridaMarketPlace, a statewide eProcurement system pursuant to section 287.057(22), F.S. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by rule 60A-1.031, F.A.C., or as may otherwise be established by law. Vendors must pay the Transaction Fees and agree to automatic deduction of the Transaction Fees when automatic deduction becomes available. Vendors will submit any monthly reports required pursuant to the rule. All such reports and payments will be subject to audit. Failure to comply with the payment of the Transaction Fees or reporting of transactions will constitute grounds for declaring the Vendor in default and subject the Vendor to exclusion from business with the State of Florida.

3.8 Taxes.

Taxes, customs, and tariffs on commodities or contractual services purchased under the Contract will not be assessed against the Customer unless authorized by Florida law.

3.9 Return of Funds.

Contractor will return any overpayments due to unearned funds or funds disallowed pursuant to the terms of the Contract that were disbursed to the Contractor. The Contractor must return any overpayment within forty (40) calendar days after either discovery by the Contractor, its independent auditor, or notification by the Department or Customer of the overpayment.

SECTION 4. CONTRACT MANAGEMENT.

4.1 Composition and Priority.

The Contractor agrees to provide commodities or contractual services to the Customer as specified in the Contract. Additionally, the terms of the Contract supersede the terms of any and all prior agreements between the Parties.

4.2 Notices.

All notices required under the Contract must be delivered to the designated Contract Manager by certified mail, return receipt requested; reputable air courier service; email; personal delivery; or as otherwise identified by the Department.

4.3 Department's Contract Manager.

The Department's Contract Manager, who is primarily responsible for the Department's oversight of the Contract, will be provided in a separate writing to the Contractor upon Contract signing in the following format:

Jane Doe
Address

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Telephone #
Email

In the event that the Department changes the Contract Manager, the Department will notify the Contractor. Such a change does not require an amendment to the Contract.

4.4 Contractor's Contract Manager.

The Contractor's Contract Manager, who is primarily responsible for the Contractor's oversight of the Contract performance, will be provided in a separate writing to the Department upon Contract signing in the following format:

Jane Doe
<Insert Contractor name>
<Insert Contractor's physical address>
Telephone: (XXX) 555-XXXX
Email: jane.doe@business.gmail.com

In the event that the Contractor changes its Contract Manager, the Contractor will notify the Department. Such a change does not require an amendment to the Contract.

4.5 Diversity Reporting.

The State of Florida supports its diverse business community by creating opportunities for woman-, veteran-, and minority-owned small business enterprises to participate in procurements and contracts. The Department encourages supplier diversity through certification of woman-, veteran-, and minority-owned small business enterprises, and provides advocacy, outreach, and networking through regional business events. For additional information, please contact the Office of Supplier Diversity (OSD) at osdinfo@dms.myflorida.com.

Upon request, the Contractor will report to the Department its spend with business enterprises certified by the OSD. These reports must include the time period covered, the name and Federal Employer Identification Number of each business enterprise utilized during the period, commodities and contractual services provided by the business enterprise, and the amount paid to the business enterprise on behalf of each Department purchasing under the Contract.

4.6 RESPECT.

Subject to the agency determination provided for in section 413.036, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES THAT ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM A NONPROFIT AGENCY FOR THE BLIND OR FOR THE SEVERELY HANDICAPPED THAT IS QUALIFIED PURSUANT TO CHAPTER 413, FLORIDA STATUTES, IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 413.036(1) AND (2), FLORIDA STATUTES; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER

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BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THE STATE AGENCY INsofar AS DEALINGS WITH SUCH QUALIFIED NONPROFIT AGENCY ARE CONCERNED.

Additional information about RESPECT and the commodities or contractual services it offers is available at <http://www.respectofflorida.org>.

4.7 PRIDE.

Subject to the agency determination provided for in sections 287.042(1) and 946.515, F.S., the following statement applies:

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ANY ARTICLES WHICH ARE THE SUBJECT OF, OR REQUIRED TO CARRY OUT, THIS CONTRACT SHALL BE PURCHASED FROM THE CORPORATION IDENTIFIED UNDER CHAPTER 946, F.S., IN THE SAME MANNER AND UNDER THE SAME PROCEDURES SET FORTH IN SECTION 946.515(2) AND (4), F.S.; AND FOR PURPOSES OF THIS CONTRACT THE PERSON, FIRM, OR OTHER BUSINESS ENTITY CARRYING OUT THE PROVISIONS OF THIS CONTRACT SHALL BE DEEMED TO BE SUBSTITUTED FOR THIS AGENCY INsofar AS DEALINGS WITH SUCH CORPORATION ARE CONCERNED.

Additional information about PRIDE and the commodities or contractual services it offers is available at <http://www.pride-enterprises.org>.

SECTION 5. COMPLIANCE WITH LAWS.

5.1 Conduct of Business.

The Contractor must comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. For example, the Contractor must comply with section 274A of the Immigration and Nationality Act, the Americans with Disabilities Act, Health Insurance Portability and Accountability Act, if applicable, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status.

Pursuant to subsection 287.058(1), F.S., the provisions of subparagraphs 287.058(1)(a)-(c), and (g), F.S., are hereby incorporated by reference, to the extent applicable.

5.2 Dispute Resolution, Governing Law, and Venue.

Any dispute concerning performance of the Contract shall be decided by the Department's designated Contract Manager, who will reduce the decision to writing and serve a copy on the Contractor. The decision of the Contract Manager shall be final and conclusive. Exhaustion of this administrative remedy is an absolute condition precedent to the Contractor's ability to pursue legal action related to the Contract or any other form of dispute resolution. The laws of the State of Florida govern the Contract. The Parties submit to the jurisdiction of the courts of the State of Florida exclusively for any legal action related to the Contract. Further, the Contractor hereby waives any and all

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privileges and rights relating to venue it may have under Chapter 47, F.S., and any and all such venue privileges and rights it may have under any other statute, rule, or case law, including, but not limited to those based on convenience. The Contractor hereby submits to venue in the county chosen by the Department.

5.3 Department of State Registration.

Consistent with Chapters 605 through 623, F.S., the Contractor and any subcontractors that assert status, other than a sole proprietor, must provide the Department with conclusive evidence of a certificate of status, not subject to qualification, if a Florida business entity, or of a certificate of authorization if a foreign business entity.

5.4 Suspended, Convicted and Discriminatory Vendor Lists.

In accordance with sections 287.042, 287.133, and 287.134, F.S., an entity or affiliate who is on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List may not perform work as a contractor, supplier, subcontractor, or consultant under the Contract. The Contractor must notify the Department if it or any of its suppliers, subcontractors or consultants have been placed on the Suspended Vendor List, Convicted Vendor List or the Discriminatory Vendor List during the term of the Contract.

5.5 Scrutinized Companies—Termination by the Department.

The Department may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), F.S., or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

5.6 Cooperation with Inspector General and Records Retention.

Pursuant to subsection 20.055(5), F.S., Contractor, and any subcontractor to the Contractor, understand and will comply with their duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing. Upon request of the Inspector General or any other authorized State official, the Contractor must provide any information the Inspector General deems relevant to the Contractor's integrity or responsibility. Such information may include, but will not be limited to, the Contractor's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The Contractor will retain such records for five years after the expiration of the Contract, or the period required by the General Records Schedules maintained by the Florida Department of State, at the Department of State's Records Management website, whichever is longer. The Contractor agrees to reimburse the State of Florida for the reasonable costs of investigation incurred by the Inspector General or other authorized State of Florida official for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the State of Florida which results in the suspension or debarment of the Contractor. Such costs will include, but will not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees.

5.7 Inspection.

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Section 215.422, F.S., provides that agencies have five (5) working days, unless the contract specifies otherwise, to inspect and approve commodities or contractual services. Items may be tested for compliance with specifications. Items delivered not conforming to specifications may be rejected and returned at the Contractor's expense. Interest penalties for late payment are also limited according to section 215.422, F.S.

SECTION 6. MISCELLANEOUS.

6.1 Subcontractors.

The Contractor will not subcontract any work under the Contract without prior written consent of the Department. The Contractor is fully responsible for satisfactory completion of all its subcontracted work. The Department supports diversity in its procurements and contracts, and requests that Contractor offer subcontracting opportunities to certified woman-, veteran-, and minority-owned small businesses. The Contractor may contact the OSD at osdhelp@dms.myflorida.com for information on certified small business enterprises available for subcontracting opportunities.

6.2 Assignment.

The Contractor will not sell, assign, or transfer any of its rights, duties, or obligations under the Contract without the prior written consent of the Department. However, the Contractor may waive its right to receive payment and assign same upon notice to the Department. In the event of any assignment, the Contractor remains responsible for performance of the Contract, unless such responsibility is expressly waived by the Department. The Department may assign the Contract with prior written notice to the Contractor.

6.3 Independent Contractor.

The Contractor and its employees, agents, representatives, and subcontractors are independent contractors and not employees or agents of the Department and are not entitled to State of Florida benefits. The Department will not be bound by any acts or conduct of the Contractor or its employees, agents, representatives, or subcontractors. The Contractor agrees to include this provision in all of its subcontracts under the Contract.

6.4 Risk of Loss.

Matters of inspection and acceptance are addressed in section 215.422, F.S. Until acceptance, risk of loss or damage will remain with the Contractor. The Contractor will be responsible for filing, processing, and collecting all damage claims. To assist the Contractor with damage claims, the Customer will: record any evidence of visible damage on all copies of the delivering carrier's Bill of Lading; report damages to the carrier and the Contractor; and provide the Contractor with a copy of the carrier's Bill of Lading and damage inspection report. When a Customer rejects a commodity, Contractor will remove the commodity from the premises within ten (10) calendar days after notification of rejection, and the risk of loss will remain with the Contractor.

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Commodities not removed by the Contractor within ten (10) calendar days will be deemed abandoned by the Contractor and the Customer will have the right to dispose of such commodities. Contractor will reimburse the Customer for costs and expenses incurred in storing or effecting removal or disposition of rejected commodities.

6.5 Safety Standards.

Performance of the Contract for all commodities or contractual services must comply with requirements of the Occupational Safety and Health Act and other applicable State of Florida and federal requirements.

6.6 Ombudsman.

A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this office are found in section 215.422, F.S., which include disseminating information relative to prompt payment and assisting contractors in receiving their payments in a timely manner from a Customer. The Vendor Ombudsman may be contacted at (850) 413-5516.

6.7 Time is of the Essence.

Time is of the essence regarding each and every obligation of the Contractor under the Contract. Each obligation is deemed material, and a breach of any such obligation (including a breach resulting from untimely performance) is a material breach.

6.8 Waiver.

The delay or failure by the Department or the Customer to exercise or enforce any rights under the Contract will not constitute waiver of such rights.

6.9 Modification and Severability.

The Contract may only be modified by written agreement between the Department and the Contractor. Should a court determine any provision of the Contract is invalid, the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if the Contract did not contain the provision held invalid.

6.10 Cooperative Purchasing.

Agencies wishing to make purchases under this Contract are required to follow the requirements of section 287.042(16) or 287.057(3) (b), F.S., and rule 60A-1.045, F.A.C. These provisions require the Department to determine that the requesting agency's use of the Contract is cost-effective and in the best interest of the State.

Pursuant to their own governing laws, and subject to the agreement of the Contractor, government entities may make purchases under the terms and conditions contained herein, if agreed to by Contractor. Non-Customer purchases are independent of the Contract between the Department and the Contractor. The Department is not a party to any transaction between the Contractor and any purchaser.

SECTION 7. WORKERS' COMPENSATION AND GENERAL LIABILITY INSURANCE, AND INDEMNIFICATION

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7.1 Workers' Compensation Insurance.

To the extent required by law, the Contractor must be self-insured against, or must secure and maintain during the life of the contract, Worker's Compensation Insurance for all its employees connected with the work of this project, and in case any work is subcontracted, the Contractor must require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees engaged in work under the resulting contract are covered by the Contractor's insurance program. Self-insurance or insurance coverage must comply with the Florida Worker's Compensation law. In the event hazardous work is being performed by the Contractor under the resulting contract and any class of employees performing the hazardous work is not protected under Worker's Compensation statutes, the Contractor must provide, and cause each subcontractor to provide adequate insurance satisfactory to the Department for the protection of employees not otherwise protected.

7.2 General Liability Insurance.

The Contractor must secure and maintain Commercial General Liability Insurance, including bodily injury, property damage, products, personal & advertising injury, and completed operations. This insurance must provide coverage for all claims that may arise from the services and/or operations completed under the Contract, whether such services or operations are by the Contractor or anyone directly or indirectly employed by them. Such insurance must include the State of Florida as an additional named insured for the entire length of the resulting contract. The Contractor is responsible for determining the minimum limits of liability necessary to provide reasonable financial protections to the Contractor and the State of Florida under the resulting contract.

All insurance policies must be with insurers licensed or eligible to transact business in the State of Florida. The Contractor must submit via email, to the Department's contract manager, insurance certificates evidencing such insurance coverage prior to execution of a contract with the Department and provide Department notice of any cancellation or nonrenewal at least ten (10) calendar days prior to cancellation or nonrenewal.

7.3 Indemnification.

To the extent permitted by Florida law, the Contractor agrees to indemnify, defend, and hold the Department, the Customer, and the State of Florida, its officers, employees, and agents harmless from all fines, claims, assessments, suits, judgments, or damages, including consequential, special, indirect, and punitive damages, including court costs and attorney's fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret, or intellectual property right or out of any acts, actions, breaches, neglect, or omissions of the Contractor, its employees, agents, subcontractors, assignees, or delegates related to the Contract, as well as for any determination arising out of or related to the Contract that the Contractor or Contractor's employees, agents, subcontractors, assignees, or delegates are not independent contractors in relation to the Department. The Contract does not constitute a waiver of sovereign immunity or consent by the Department or the State of Florida or its subdivisions to suit by third parties. Without limiting this indemnification, the Department or Customer may provide the Contractor (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at Contractor's sole expense, and (3) assistance in defending the action at Contractor's sole expense.

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SECTION 8. PUBLIC RECORDS, TRADE SECRETS, DOCUMENT MANAGEMENT AND INTELLECTUAL PROPERTY.

8.1 Public Records.

The Department may unilaterally cancel this Contract for refusal by the Contractor to comply with this section by not allowing access to all public records, as defined in Chapter 119, Florida Statutes, made or received by the Contractor in conjunction with the Contract.

Pursuant to section 119.0701(2) (a), F.S., for contracts for services with a contractor acting on behalf of a public agency, as defined in section 119.011(2), F.S., the following applies:

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 AT THE TELEPHONE NUMBER, EMAIL ADDRESS AND MAILING ADDRESS PROVIDED IN THE RESULTING CONTRACT OR PURCHASE ORDER.

Pursuant to section 119.0701(2)(b), F.S., for contracts for services with a contractor acting on behalf of a public agency as defined in section 119.011(2), F.S., the Contractor shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency 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, F.S., or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law for the duration of the contract term and following the completion of the Contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the Contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency 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 public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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8.2 Protection of Trade Secrets or Confidential Information.

If the Contractor considers any portion of materials made or received in the course of performing the Contract ("contract-related materials") to be trade secret under section 688.002 or 812.081, F.S., or otherwise confidential under Florida or federal law, the Contractor must clearly designate that portion of the materials as trade secret or otherwise confidential when submitted to the Department. The Contractor will be responsible for responding to and resolving all claims for access to contract-related materials it has designated trade secret or otherwise confidential.

If the Department is served with a request for discovery of contract-related materials designated by the Contractor as trade secret or otherwise confidential, the Contractor will be responsible for filing the appropriate motion or objection in response to the request for discovery. The Department will provide materials designated trade secret or otherwise confidential if the Contractor fails to take appropriate and timely action to protect the materials designated as trade secret or otherwise confidential.

The Contractor will protect, defend, indemnify, and hold harmless the Department for claims, costs, fines, and attorney's fees arising from or relating to its designation of contract-related materials as trade secret or otherwise confidential.

8.3 Document Management.

The Contractor must retain sufficient documentation to substantiate claims for payment under the Contract and all other records, electronic files, papers and documents that were made in relation to this Contract. Contractor must retain all documents related to the Contract for five (5) years after expiration of the Contract, or, if longer, the period required by the General Records Schedules maintained by the Florida Department of State available at the Department of State's Records Management website.

8.4 Intellectual Property.

Unless specifically addressed in the Contract, intellectual property rights to all property created or otherwise developed by the Contractor for the Department or the Customer will be owned by the State of Florida at the completion of the Contract.

Any inventions or discoveries developed in the course of or as a result of services performed under the Contract which are patentable pursuant to 35 U.S.C. § 101 are the sole property of the State of Florida. Contractor must inform the Customer of any inventions or discoveries developed or made in connection with the Contract and will be referred to the Florida Department of State for a determination on whether patent protection will be sought for the invention or discovery. The State of Florida will be the sole owner of any and all patents resulting from any invention or discovery made in connection with this contract.

Contractor must notify the Department or State of Florida of any publications, artwork, or other copyrightable works developed in connection with the Contract. All copyrights created or developed in connection with the Contract are the sole property of the State of Florida.

SECTION 9. DATA SECURITY AND SERVICES.

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9.1 Duty to Provide Secure Data.

The Contractor will maintain the security of State of Florida data including, but not limited to, a secure area around any displayed visible data. The Contractor will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

9.2 Warranty of Security.

Unless otherwise agreed in writing, the Contractor and its subcontractors will not perform any of the services from outside of the United States, and the Contractor will not allow any State of Florida data to be sent by any medium, transmitted, or accessed outside of the United States.

The Contractor agrees that a violation of items listed above will result in immediate and irreparable harm to the Customer and will entitle the Customer to a credit as provided in the Contract documents. This credit is intended only to cover the Customer's internal staffing and administrative costs as well as the diminished value of services provided under the Contract and will not preclude the Customer from recovering other damages it may suffer as a result of such violation. For purposes of determining the damages due hereunder, a group of violations relating to a common set of operative facts (e.g., same location, same time period, same off-shore entity) will be treated as a single event. A violation of this provision will also entitle the Customer to recover any damages arising from a breach of this section and constitutes an event of default.

The Contractor must notify the Department and the Customer as soon as possible, in accordance with the requirements of section 501.171, F.S., if applicable, and in all events within one (1) business day in the event Contractor discovers any data is breached, any unauthorized access of data occurs (even by persons or companies with authorized access for other purposes), any unauthorized transmission of data occurs, or of any credible allegation or suspicion of a material violation of the above. This notification is required regardless of the number of persons or type of data affected. The notification must be clear and conspicuous and include a description of the following:

- (a) The incident in general terms.
- (b) The type of information that was subject to the unauthorized access and acquisition.
- (c) The type and number of entities who were, or potentially have been affected by the breach.
- (d) The actions taken by the Contractor to protect the data from further unauthorized access. However, the description of those actions in the written notice may be general so as not to further increase the risk or severity of the breach.

9.3 Remedial Measures.

Upon becoming aware of an alleged security breach, Contractor's Contract Manager must set up a conference call with the Department's and the Customer's Contract Manager. The conference call invitation must contain a brief description of the nature of the event. When possible, a thirty (30)-minute notice will be given to allow Department

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personnel to be available for the call. If the designated time is not practical for the Customer, an alternate time for the call will be scheduled. Contractor must share all available information on the call. The Contractor must answer all questions based on the information known at that time and answer additional questions as additional information becomes known. The Contractor must provide the Department and the Customer with final documentation of the incident including all actions that took place. If the Contractor becomes aware of a security breach or security incident outside of normal business hours, the Contractor must notify the Department's and the Customer's Contract Manager and in all events, within one business day.

9.4 Indemnification (Breach of Warranty of Security).

The Contractor agrees to defend, indemnify, and hold harmless the Department, the Customer, and the State of Florida, its officers, directors, and employees for any claims, suits, or proceedings related to a breach of the Warranty of Security. The Contractor will include credit monitoring services at its own cost for those individuals affected or potentially affected by a breach of this warranty for a two-year period of time following the breach.

9.5 Annual Certification.

The Contractor is required to submit an annual certification demonstrating compliance with the Warranty of Security to the Department by December 31 of each Contract year.

SECTION 10. GRATUITIES, LOBBYING, AND COMMUNICATIONS.

10.1 Gratuities.

The Contractor will not, in connection with this Contract, directly or indirectly (1) offer, give, or agree to give anything of value to anyone as consideration for any State of Florida officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone anything of value for the benefit of, or at the direction or request of, any State of Florida officer or employee.

10.2 Lobbying.

In accordance with sections 11.062 and 216.347, F.S., Contract funds are not for the purpose of lobbying the Legislature, the judicial branch, or the Department. Pursuant to subsection 287.058(6), F.S., the Contract does not prohibit the Contractor from lobbying the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding the Contract, after the Contract execution and during the Contract's term.

10.3 Communications.

Contractor shall not, without first notifying the Department's Contract Manager and securing the Department's prior written consent, make public statements which concern the Contract or its subject matter, disclose or permit disclosure of any data or information obtained or furnished in accordance with the Contract, or use any statement attributable to the Department or its employees. Public statements include press releases, publicity

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releases, promotions, marketing materials, corporate communications, or other similar communications. The Department's written consent shall not be construed to supersede or waive the Contract requirements imposed on the Contractor to maintain confidential information.

SECTION 11. CONTRACT MONITORING.

11.1 Performance Standards.

The Contractor agrees to perform all tasks and provide deliverables as set forth in the Contract. The Department and the Customer will be entitled at all times, upon request, to be advised as to the status of work being done by the Contractor and of the details thereof.

11.2 Performance Deficiencies and Financial Consequences of Non-Performance.

In addition to the processes set forth in the Contract (e.g., service level agreements), if the Department determines that there is a performance deficiency that requires correction by the Contractor, then the Department will notify the Contractor. The correction must be made within a time-frame specified by the Department. The Contractor must provide the Department with a corrective action plan describing how the Contractor will address all performance deficiencies identified by the Department.

If the corrective action plan is unacceptable to the Department, or implementation of the plan fails to remedy the performance deficiencies, the Department will retain ten percent (10%) of the total invoice amount. The retainage will be withheld until the Contractor resolves the performance deficiencies. If the performance deficiencies are resolved, the Contractor may invoice the Department for the retained amount. If the Contractor fails to resolve the performance deficiencies, the retained amount will be forfeited in order to compensate the Department for the performance deficiencies.

11.3 Liquidated Damages.

The Contractor will promptly notify the Department or the Customer upon becoming aware of any circumstances that may reasonably be expected to jeopardize the timely and successful completion (or delivery) of any commodity or contractual service. The Contractor will use commercially reasonable efforts to avoid or minimize any delays in performance and will inform the Department or the Customer of the steps the Contractor is taking or will take to do so, and the projected actual completion (or delivery) time. If the Contractor believes a delay in performance by the Department or the Customer has caused or will cause the Contractor to be unable to perform its obligations on time, the Contractor will promptly so notify the Department and use commercially reasonable efforts to perform its obligations on time notwithstanding the Department's delay.

The Contractor acknowledges that untimely performance or other material noncompliance will damage the Department, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in the Contract documents will apply. Liquidated damages are not intended to be a penalty and are solely intended to compensate for damages.

11.4 Force Majeure, Notice of Delay, and No Damages for Delay.

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The Contractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the Contractor or its employees or agents contributed to the delay and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar cause wholly beyond the Contractor's reasonable control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to the Contractor. The foregoing does not excuse delay which could have been avoided if the Contractor implemented any risk mitigation required by the Contract. In case of any delay the Contractor believes is excusable, the Contractor will notify the Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if the Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result. The foregoing will constitute the Contractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Contractor. The Contractor will not be entitled to an increase in the Contract price or payment of any kind from the Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Contractor will perform at no increased cost, unless the Department determines, in its sole discretion, that the delay will significantly impair the value of the Contract to the State of Florida or to Customers, in which case the Department may (1) accept allocated performance or deliveries from the Contractor, provided that the Contractor grants preferential treatment to Customers with respect to commodities or contractual services subjected to allocation, or (2) purchase from other sources (without recourse to and by the Contractor for the related costs and expenses) to replace all or part of the commodity or contractual services that are the subject of the delay, which purchases may be deducted from the Contract quantity, or (3) terminate the Contract in whole or in part.

SECTION 12. CONTRACT AUDITS.

12.1 Performance or Compliance Audits.

The Department may conduct or have conducted performance and/or compliance audits of the Contractor and subcontractors as determined by the Department. The Department may conduct an audit and review all the Contractor's and subcontractors' data and records that directly relate to the Contract. To the extent necessary to verify the Contractor's fees and claims for payment under the Contract, the Contractor's agreements or contracts with subcontractors, partners or agents of the Contractor, pertaining to this Contract, may be inspected by the Department upon fifteen (15) calendar days' notice, during normal working hours and in accordance with the Contractor's facility access procedures where facility access is required. Release statements from its subcontractors, partners or agents are not required for the Department or its designee to conduct compliance and performance audits on any of the

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Contractor's contracts relating to this Contract. The State of Florida's Chief Financial Officer and the Office of the Auditor General also have authority to perform audits and inspections.

12.2 Payment Audit.

Records of costs incurred under terms of the Contract will be maintained in accordance with section 8.3 of these Special Contract Conditions. Records of costs incurred will include the Contractor's general accounting records, together with supporting documents and records of the Contractor and all subcontractors performing work, and all other records of the Contractor and subcontractors considered necessary by the Department, State of Florida's Chief Financial Officer or the Office of the Auditor General.

SECTION 13. BACKGROUND SCREENING AND SECURITY.

13.1 Background Check.

The Department may require the Contractor and its employees, agents, representatives, and subcontractors to provide fingerprints and be subject to such background checks as directed by the Department. The cost of the background checks will be borne by the Contractor. The Department may require the Contractor to exclude the Contractor's employees, agents, representatives or subcontractors based on the background check results. In addition, the Contractor must ensure that all persons have a responsibility to self-report to the Contractor within three (3) calendar days any arrest for any disqualifying offense. The Contractor must notify the Contract Manager within twenty-four (24) hours of all details concerning any reported arrest. The Contractor will ensure that all background screening will be refreshed upon the request of the Department for each person during the term of the Contract.

13.2 E-Verify.

In accordance with Executive Order 11-116, the Contractor agrees to utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired during the term of the Contract for the services specified in the Contract. The Contractor must also include a requirement in subcontracts that the subcontractor must utilize the E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term. In order to implement this provision, the Contractor must provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five (5) calendar days of Contract execution. If the Contractor is not enrolled in DHS E-Verify System, it will do so within five (5) calendar days of notice of Contract award, and provide the Contract Manager a copy of its MOU within five (5) calendar days of Contract execution. The link to E-Verify is <https://www.uscis.gov/e-verify>. Upon each Contractor or subcontractor new hire, the Contractor must provide a statement within five (5) calendar days to the Contract Manager identifying the new hire with its E-Verify case number.

13.3 Disqualifying Offenses.

If at any time it is determined that a person has been found guilty of a misdemeanor or felony offense as a result of a trial or has entered a plea of guilty or nolo contendere, regardless of whether adjudication was withheld, within the last six (6) years from the date of the court's determination for the crimes listed below, or their equivalent in any

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jurisdiction, the Contractor is required to immediately remove that person from any position with access to State of Florida data or directly performing services under the Contract. The disqualifying offenses are as follows:

- (a) Computer related crimes
- (b) Information technology crimes;
- (c) Fraudulent practices;
- (d) False pretenses;
- (e) Frauds;
- (f) Credit card crimes;
- (g) Forgery;
- (h) Counterfeiting;
- (i) Violations involving checks or drafts;
- (j) Misuse of medical or personnel records; and
- (k) Felony theft.

13.4 Confidentiality.

The Contractor must maintain confidentiality of all confidential data, files, and records related to the services and/or commodities provided pursuant to the Contract and must comply with all state and federal laws, including, but not limited to sections 381.004, 384.29, 392.65, and 456.057, F.S. The Contractor's confidentiality procedures must be consistent with the most recent version of the Department security policies, protocols, and procedures. The Contractor must also comply with any applicable professional standards with respect to confidentiality of information.

SECTION 14. INFORMATION TECHNOLOGY.

The following applies to all contracts for information technology commodities and contractual services. "Information technology" is defined in section 287.012(15), F.S., to have the same meaning as provided in section 282.0041, F.S.

14.1 Limitation of Liability.

For all claims against the Contractor under any contract or purchase order, and regardless of the basis on which the claim is made, the Contractor's liability under a contract or purchase order for direct damages shall be limited to the greater of \$250,000, the dollar amount of the contract or purchase order, or two times the charges rendered by the

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Contractor under the purchase order. This limitation shall not apply to claims arising under the Indemnity paragraph contained in this agreement.

Unless otherwise specifically enumerated in the Contract or in the purchase order, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records (unless the contract or purchase order requires the Contractor to backup data or records), even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and Department may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due to the Contractor as may be necessary to satisfy any claim for damages, penalties, costs, and the like asserted by or against them. The State may set off any liability or other obligation of the Contractor or its affiliates to the State against any payments due to the Contractor under any contract with the State.

14.2 Information Technology Standards.

Pursuant to sections 282.0051 and 282.318, F.S., the Agency for State Technology (AST) is to establish standards for the implementation and management of information technology resources. Vendors agree to cooperate with the agency in furtherance of its efforts to comply with AST standards, established in Title 74, F.A.C., as applicable.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

state purchasing

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Exhibit D

ADDENDUM NO. 1

Questions and Answers ITB Amendments

Contained herein are the answers to the questions submitted to the Department of Management Services (Department). The Department hereby amends ITB No. 16-15100000-W, as noted within this Addendum. In the event of a conflict between previously released information and the information contained herein, the information herein shall control. The information included in this addendum is now made part of this solicitation.

FAILURE TO FILE A PROTEST WITHIN THE TIME PRESCRIBED IN SECTION 120.57(3), FLORIDA STATUTES, OR FAILURE TO POST THE BOND OR OTHER SECURITY REQUIRED BY LAW WITHIN THE TIME ALLOWED FOR FILING A BOND SHALL CONSTITUTE A WAIVER OF PROCEEDINGS UNDER CHAPTER 120, FLORIDA STATUTES.

Any protest must be timely filed with the Department of Management Services' Agency Clerk.

Please Note: This Addendum No. 1 does not need to be returned with the response.

The Department has received the following questions from the vendor community through the MFMP Sourcing Tool and answers are provided in the following table:

#	QUESTION	ANSWER
1.	Could you please provide SOME idea of entities that use the contract, locations, tank sizes, ordering volume, etc?	The Department has not previously collected detailed sales information by tank size, volume, fuel type, or location, so we cannot provide detailed historic measures. However, the estimated annual spend can be located in section 1.1 of the ITB.
2.	How often are 500 gallon tank wagon deliveries needed versus 6000 gallon?	The requested information is not in the possession of the Department.
3.	Is freight priced separately or included in the bid differential?	Freight is priced separately. Please refer to Revised Attachment J, Instructions tab, which has been uploaded in MFMP Sourcing, for additional information.
4.	Similarly, what is the Delivery Charge (per gallon) and the Freight Charge (flat fee, not to exceed)? How do they differ? Is this a freight rate per location?	Freight Charge is the cost associated with the transportation of goods from one place to another. This can include, but is not limited to, packaging and insurance cost. Delivery Charge is what the Bidder is charging to deliver to the customer and may include, but is not limited to, handling and inside delivery. The freight rate is a not to exceed rate and is applicable to

		all locations within a given region, as identified in the Revised Attachment J.
5.	What is the Top Off charge? Is this a tank wagon delivery to a transport tank that is already full?	A Top Off charge is a not to exceed rate that the Bidder provides in Revised Attachment J. For the definition of Top Off, please refer to Attachment A, section B.
6.	Do we have to bid transport AND tank wagon?	No, please refer to Revised Attachment J, Instructions tab for this information.
7.	Is a punch-out catalog required? I noticed there is no fuel supplier listed on the punch-out catalog vendor list.	No, punch-out catalogs are optional. Please see the modification to Attachment A, section H, incorporated below.
8.	Must all fuel invoices go through the Ariba Network? There is no fuel vendor listed on the MFMP vendor list.	No. Please refer to Attachment A, section H of the ITB for additional information.
9.	What is the Transaction Fee? Is it .7 of one percent of the entire price of the invoice?	Currently the fee is .7% of the total contract sales per month. All payments issued by Customers to registered Vendors for purchases of commodities or contractual services will be assessed Transaction Fees as prescribed by Rule 60A-1.031, Florida Administrative Code, or as may otherwise be established by law.
10.	Who determines what the nearest terminal is to a delivery location to be able to use the correct DTN FastRack?	A successful Bidder shall choose the closest terminal in physical distance to the delivery location.
11.	Can you please provide a spreadsheet of all tanks with sizes, locations, annual usage, and average load?	Please refer to the answer to question 1.
12.	What are the payment terms?	Payment shall be made in accordance with sections 215.422 and 287.0585 of the Florida Statutes, which govern time limits for payment of invoices.
13.	When will the bid go from preview mode to open mode with the ability to join?	Please refer to Attachment D and the Timeline of Events in the ITB for this information.
14.	Can you please provide a list of all the tank physical addresses, tank sizes, average load size, and estimated annual usage along with product type?	Please refer to the answer to question 1.
15.	Can we use 10am OPIS report for Tampa and Port Everglades?	No. Please refer to section D in Attachment A, Scope of work.

16.	Is the discount sheet mandatory?	Revised Attachment J is a required document. Please refer to section 7 of the ITB.
17.	How do we submit the contract, online?	Please refer to Attachment D, Special Instructions to Bidders for instructions on uploading documents in MFMP Sourcing. If you need additional assistance with using MFMP Sourcing, please contact the MFMP Customer Service Desk at VendorHelp@myfloridamarketplace.com or (866) 352-3776.
18.	Can the freight increase based on the distance from the port?	Freight charge is a not to exceed flat rate. Please refer to Revised Attachment J for further instructions.
19.	What are State of Florida's payment terms. Are Net 10 payment terms acceptable?	It is unclear what "Net 10 payment terms" means. Please refer to the answer to question 12.
20.	Are the previous bids available to review?	Copies of the current contract/vendor agreements can be located at the following link .
21.	<p>Please provide the estimated annual volumes for each product in the ITB.</p> <ol style="list-style-type: none"> 1. How much Ultra Low Sulfur Diesel number 2 2. How much Ultra Low Sulfur Diesel Red Dye 3. How much Biodiesel blend 4. How much gasoline 	Please refer to the answer to question 1.
22.	<p>Please provide the following information per location and per fuel type:</p> <ol style="list-style-type: none"> 1 - What volumes will be required per lift? 2 - What is the volume required for the life of the contract? 3 - Where is the fuel being delivered to? 4 - How frequent are the deliveries? 	Please refer to the answer to question 1.
23.	When is the first board meeting after the opening?	The Department does not have board meetings, nor are there any meetings after the opening. Please refer to the Timeline of Events.
24.	Will decision be made before or at the board meeting?	Please refer to the answer to question 23.
25.	Attachment C – 3.7 – Transaction Fees... How much is the transaction fee? Does this need to be accounted for in the	Please refer to the answer to question 9. The fee cannot be billed as a separate line item on invoices.

	vendor pricing or can it be billed as a separate line item on invoices?	
26.	Please explain how the Delivery Charge and Freight charges are to be handled. With a bid submission by region, the actual delivery and freight rates can vary greatly depending on site distance from the terminals. Under the current contract, freight charges are passed directly to the customer.	Please refer to the answer to question 4.
27.	With the bid submission by region as opposed to by county, the freight/delivery rates can vary greatly, as can the markups depending on which terminal is closest to each county. Can the bid be changed to be done by county to allow more accurate individual pricing?	No, you must bid by region as provided in Revised Attachment J.
28.	If we are unable to do a Punch-Out Catalog, will we still be considered for an award?	Please refer to the answer to question 7.
29.	Main solicitation Page 7 of 17 lists Transport delivery as minimum of 8000 gallons of gas, 7200 gallons of diesel, and 7200 gallons as a gas/diesel split. Attachment 'A' page 6 of 10 lists normal deliveries as 6000-8500 for gas, 6000-7500 for diesel, and 7500 gallons for gas/diesel splits. Attachment 'J' lists 8000-7500 (should be 8500?) for gas, and 7200-7500 for diesels (more in line with solicitation page 7). Which is accurate?	Please refer to Revised Attachment J.
30.	The list of required documents on the main solicitation page 17 of 17 does not match what the online submission currently lists. Online also indicates Attachments F and K are also required, and Attachment I (if applicable) is required. Which is accurate for submission?	Please refer to the Revised Attachment E that has been uploaded in MFMP Sourcing.
31.	Do you consider common carriers as subcontractors? If so, how should we go about getting written approval from the State to use the various carriers throughout the state? Also, as we will not know which carrier's we will need until we know specific site information, will we have ample notification of sites to allow time to get the state's approval?	Yes, however the Department does not require written approval when using common carriers to deliver the commodities associated with this ITB.
32.	Could you provide physical addresses for delivery locations?	Please refer to the answer to question 2.
33.	Could you provide volume by product per delivery locations?	Please refer to the answer to question 2.
34.	What are the average load sizes per location?	Please refer to the answer to question 2.

35.	What is the volume of each product?	Please refer to the answer to question 1.
36.	Is the Fuel Surcharge supposed to be included in the Freight Rate?	All allowable charges are shown in Revised Attachment J.
37.	What is the fee for the MFMP Transaction fees? Is it a per gallon rate, or %? Please provide number.	Please refer to Question 9.
38.	What are the sizes of tanks at size?	Please refer to the answer to question 2.
39.	Are tanks above or underground?	Please refer to the answer to question 2.
40.	Will any sites have special instructions for deliveries?	Please refer to the answer to question 2.
41.	Is the FSC to be included in the freight rate?	The question is unclear.
42.	When is actual bid due, I notice on the site it stated time remaining in preview 12 days?	Please refer to the Solicitation's Timeline of Events.

The following requirements supplement or replace those found in the ITB. The variations between the new and the old requirements are highlighted in yellow.

1. Section H of Attachment A, Scope of work, is hereby replaced in its entirety as follows:

H. Punch-out Catalog and Electronic Invoicing

The Contractor ~~will be required to~~ **may** provide an MFMP punch-out catalog. The punch-out catalog provides an alternative mechanism for suppliers to offer the State of Florida access to products awarded under the Contract. The punch-out catalog also allows for direct communication between the MFMP eProcurement System and a supplier's Enterprise Resource Planning (ERP) system, which can reflect real-time product inventory/availability information.

Through utilization of the punch-out catalog model, a Florida buyer will "punch out" to a supplier's website. Using the search tools on the supplier's Florida punch-out catalog site, the user selects the desired products and services. When complete, the user exits the supplier's punch-out catalog site and the shopping cart (full of products and services) is "brought back" to MFMP. No orders are sent to a supplier when the user exits the supplier's punch-out catalog site. Instead, the chosen products and services are "brought back" to MFMP as Contract line items. The user can then proceed through the normal workflow steps, which may include adding/editing the products to a requisition or a purchase order. An order is not submitted to a supplier until the buyer actually adds the line items to a requisition and the purchase order is approved and sent to the supplier. At the State's option, the Contractor holds the option to invoice electronically pursuant to guidelines of the Department of Management Services. Electronic invoices will be submitted to the agency through the Ariba Network (AN) in one of three mechanisms as listed below. The Contractors may select the method that best meets their capabilities from the following list:

- cXML (commerce eXtensible Markup Language)
- This standard establishes the data contents required for invoicing via cXML within the context of an electronic environment. This transaction set can be used for invoicing via the Ariba Network (AN) for catalog and non-catalog products and services. The cXML format is the Ariba preferred method for eInvoicing.
- EDI (Electronic Data Interchange)
- This standard establishes the data contents of the Invoice Transaction Set (810) for use within the context of an Electronic Data Interchange (EDI) environment. This transaction set can be used for invoicing via the AN, for catalog and non-catalog products and services.
- PO Flip via AN
- The online process allows suppliers to submit invoices via the AN, for catalog and non-catalog products and services. Suppliers have the ability to create an invoice directly from their Inbox in their AN account by simply "flipping" the PO into an invoice. This option does not require any special software or technical capabilities.

For the purposes of this section, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider of MFMP, a State Contractor, the right and license to use, reproduce, transmit, distribute, and publicly display within the system the information outlined above. In addition, the Contractor warrants and represents that it is authorized and empowered to and hereby grants the State and the third-party provider the right and license to reproduce and display within the system the Contractor's trademarks, system marks, logos, trade dress, or other branding designation that identifies the products made available by the Contractor under the Contract.

The Contractor will work with the MFMP management team to obtain specific requirements for the punch-out catalog and electronic invoicing.



FLORIDA DEPARTMENT OF MANAGEMENT SERVICES

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Exhibit E

The State of Florida

Department of Management Services

Invitation to Bid (ITB) No: 16-15100000-W

Bulk Fuel, Gasoline, and Diesel

Stephanie Wyland, Procurement Officer

4050 Esplanade Way, Suite 360

Tallahassee, FL 32399

850-488-1985

Stephanie.Wyland@dms.myflorida.com

Failure to file a protest within the time prescribed in section 120.57(3), Florida Statutes (F.S.), or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under chapter 120, F.S. Any protest must be timely filed with the Department of Management Services' Agency Clerk listed at:

http://www.dms.myflorida.com/agency_administration/general_counsel

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Timeline of Events

The table below contains the timeline of events for this solicitation. It is the responsibility of the Bidder to check for any changes. The dates and times within the Timeline of Events may be subject to change. All changes to the Timeline of Events will occur through an addendum to the solicitation and will be noticed on the [Vendor Bid System \(VBS\)](#).

Bidders shall not rely on the MyFloridaMarketPlace sourcing time clock. It is not the official submission date and time deadline. The official solicitation closing time and deadlines are reflected in the Timeline of Events listed below.

Event	Time (ET)	Date
ITB posted on the Vendor Bid System (VBS) and posted in MFMP Sourcing		April 2, 2019
Deadline to submit questions within MFMP Sourcing Messaging Tab	10:00 A.M.	April 18, 2019
Anticipated posting of answers to Bidders' questions to the solicitation		April 30, 2019
Deadline to submit bids and all required documentation	10:00 A.M.	May 14, 2019
Public Opening 4050 Esplanade Way, Conference Room 101 Tallahassee, FL 32399	10:01 A.M.	May 14, 2019
Anticipated Notice of Intended Award		May 28, 2019
Anticipated Contract start date		July 1, 2019

1 INTRODUCTION

1.1 Objective

The State of Florida Department of Management Services' Division of State Purchasing (Department) is issuing this Invitation to Bid (ITB) to establish a state term contract for Bulk Fuel, Gasoline, and Diesel. The solicitation will be administered using MFMP Sourcing.

The current Bulk Fuel, Gasoline, and Diesel contract has approximately \$12 million in spend annually. State agencies account for 48% of the total annual spend. The historical spend is for informational purposes only and should not be construed as representing actual, guaranteed, or minimum spend under a new contract.

The Department intends to make regional awards with up to five Contractors per region. However, the Department reserves the right to award to one or multiple bidders, statewide or by counties, or to make no award, as determined to be in the best interest of the State.

1.2 Term

The initial term of the contract resulting from this solicitation will be for three years.

1.3 Renewal Term

Upon written agreement, the contract may be renewed in whole or in part for a period that will not exceed the term of the initial contract at the renewal pricing specified in the initial contract. Any renewal is contingent upon the satisfactory performance of the Vendor and subject to the availability of funds.

2 ITB OVERVIEW

2.1 Definitions

Definitions contained in section 287.012, F.S., Rule 60A-1.001, Florida Administrative Code (F.A.C.), Special Contract Conditions and the PUR 1001 form are incorporated by reference. In the event of a conflict, the definitions listed in this section supersede the incorporated definitions. All definitions apply in both their singular and plural sense.

Bidder or "Respondent" - A Vendor who submits a response to this ITB.

Biodiesel Blend - An alternative fuel consisting of Diesel Fuel, Grade No. 2-D Ultra Low Sulfur and a requested blend of soybean oil.

BQ-9000® - A cooperative and voluntary program for the accreditation of producers and marketers of biodiesel fuel created by the National Biodiesel Accreditation Program.

Business Day - Each day Monday through Friday from 8:00 a.m. to 5:00 p.m. Eastern Time (ET) during which the State and its agencies are open for business.

Commodity - A product. The terms products and commodities may be used interchangeably throughout this ITB.

Commodity Code - The State of Florida numeric code for classifying commodities and contractual services that meet specific requirements, specifications, terms, and conditions herein. Florida has adopted the United Nations Standard Products and Services Code (UNSPSC) for classifying commodities and services.

Confidential Information - Any portion of a company's documents, data, or records relating to its bid that a Vendor claims is confidential and not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution, or other applicable authority, and that is clearly marked "Confidential".

Contract - The written agreement resulting from this ITB.

Contractor - The business entity that is awarded a Contract resulting from this ITB. The terms Vendor, Successful Bidder or Awarded Vendor may be used interchangeably throughout this ITB.

Customer - An ordering entity including state agencies and eligible users.

Dealer or Certified Representative - A representative authorized to market, sell, and service specific commodities such as gasoline and diesel.

Department - The Florida Department of Management Services.

DTN FastRacks Average - The fuel pricing service provided by the Data Transmission Network, an industry benchmark for pricing fuel and other commodities.

Eligible User (EU) - A governmental entity defined in Rule 60A-1.001, F.A.C.

Fuel - Any Fuel product obtained through this Contract. Fuel product shall include unleaded E10 gasoline, Ultra Low Sulfur no. 2 diesel, Ultra Low Sulfur no. 2 off road, dyed diesel and biodiesel to be delivered to State and Customer facilities.

Markup - The Contractor's price to cover all costs associated with providing Fuel to Customer facilities. Markups may differ based on where the Fuel is obtained according to the Fuel terminals and actual type of Fuel ordered. Markup for Fuel shall be on a price per gallon basis. Markup may be expressed as a negative number if the Contractor is offering a discount off the DTN FastRacks Average Price. The Contractor shall assess no other fees associated with the delivery of Fuel except as detailed in the Scope of Work (Attachment A).

Non-Transport Delivery - A delivery by tank wagon or other means with a minimum delivery of 500 gallons and a maximum delivery of 7,999 gallons for gasoline, 7,199 gallons for diesel, and 7,199 gallons for a combination load of gasoline and diesel.

Purchase - A transaction that results in the Customer obtaining ownership of a commodity.

Responsible vendor - A vendor who has the capability in all respects to fully perform the Contract requirements and the integrity and reliability that will assure good faith performance. (Subsection 287.012(25), F.S.)

Responsive bid - A bid submitted by a responsive and responsible vendor that conforms in all material respects to the solicitation. (Subsection 287.012(26), F.S.)

State - The State of Florida.

Tank Wagon - A delivery by a tank wagon or other means with a minimum delivery of 500 gallons.

Transport Delivery - A delivery by a transport truck with a minimum delivery of 8,000 gallons for gasoline, 7,200 gallons for diesel, and 7,200 gallons for a combination load of gasoline and diesel.

United Nations Standard Products and Services Code (UNSPSC) - A commodity code list used by the State.

Vendor Bid System (VBS) - The State of Florida bidding system. (Subparagraph 287.042(3)(b)2., F.S.)

Vendor - An entity that is in the business of providing a commodity or service similar to those within the solicitation.

2.2 Procurement Officer

The Procurement Officer is the sole point of contact from the date of release of this ITB until 72 hours after the intent to award is posted.

The Procurement Officer for this ITB is:
Stephanie Wyland, Associate Category Manager
Division of State Purchasing
Florida Department of Management Services
4050 Esplanade Way, Suite 360, Tallahassee, FL 32399-0950
Phone: (850) 488-1985
Email: Stephanie.Wyland@dms.myflorida.com

****ALL EMAILS TO THE PROCUREMENT OFFICER SHOULD CONTAIN THE SOLICITATION NUMBER IN THE SUBJECT LINE OF THE EMAIL****

2.3 Limitation on Contact with Government Personnel (subsection 287.057(23), F.S.)

Between the release of this solicitation and the end of the 72-hour period following the Department posting the Notice of Intended Award, excluding Saturdays, Sundays, and State holidays (section 110.117, F.S.), Bidders to this solicitation or persons acting on their behalf may not contact any employee or officer of the executive or legislative branch concerning any aspect of this solicitation, except in writing to the Procurement Officer or as provided in the solicitation documents. Violation of this provision may be grounds for rejecting a response.

2.4 Must, Shall, Will, and Is Required

Although this solicitation uses terms such as “must,” “shall,” “will,” and “is required,” and may define certain items as requirements, the Department reserves the right, in its discretion, to waive any minor irregularity, technicality, or omission if the Department determines that it is in the best interest of the State to do so. However, failure to provide requested information may result in the rejection of a bid. There is no guarantee that the Department will waive an omission or deviation, or that any Vendor with a bid containing a deviation or omission will be considered for award of this procurement. The Department may reject any bid not submitted in the manner specified by this solicitation. The words “should” or “may” in this solicitation indicate desirable attributes or conditions but are permissive in nature.

2.5 Registration with the Florida Department of State

If awarded a Contract, the Bidder shall provide a PDF file of its current and active registration with the Department of State prior to contract execution. NOTE: Pursuant to section 607.1501, F.S., out-of-state corporations where required, must obtain a Florida Certificate of Authorization pursuant to section 607.1503, F.S., from the Florida Department of State, Division of Corporations, to transact business in the State of Florida. Website: www.sunbiz.org.

2.6 Florida Substitute Form W-9

All vendors must register and complete an electronic Florida Substitute Form W-9 prior to execution of a Contract. The Internal Revenue Service (IRS) receives and validates the information vendors provide on the Florida Substitute Form W-9. For instructions on how to complete the Florida Substitute Form W-9, please visit: <https://flvendor.myfloridacfo.com/>.

2.7 Special Accommodations

Any person requiring a special accommodation due to a disability should contact the Department's Americans with Disabilities Act (ADA) Coordinator at (850) 922-7535 at least five business days prior to the scheduled event. If you are hearing or speech impaired, please contact the ADA Coordinator by using the Florida Relay Service at (800) 955-8771 (TDD). The telephone numbers are supplied for notice purposes only.

2.8 Lobbying Disclosure

The successful Bidder shall comply with applicable federal requirements for the disclosure of information regarding lobbying activities of the successful Bidder, subcontractors or any authorized agent. Certification forms shall be filed by the successful Bidder and all subcontractors, certifying that no federal funds have been or shall be used in federal lobbying activities and the disclosure forms shall be used by the successful Bidder and all subcontractors to disclose lobbying activities. The successful Bidder shall comply with the provisions of section 216.347, F.S., which prohibits the expenditure of contract funds for the purpose of lobbying the Legislature or a state agency.

2.9 Permits

The Customer will be responsible for all facility-required permits pertaining to Fuel storage, maintenance, and handling in accordance with all local, state and federal laws. The Contractor and Customer may work together to create a maintenance program for the fuel tanks.

2.10 Federal and State Standards

All specifications shall be in full and complete compliance with all Federal and State of Florida laws and regulations applicable to the type and class of Commodity being provided. This includes, but is not limited to, Federal Motor Equipment Safety Standards ("FMVSS"), Occupational Safety and Health Administration ("OSHA"), Environmental Protection Agency ("EPA") Standards, and State of Florida requirements that apply to the type and class of Commodity being provided. In addition, any Federal or State legislation that should become effective during the term of the Contract, including any renewals, regarding equipment safety or emissions shall immediately become a requirement of the Contract. The Contractor must meet or exceed any such requirements of the laws and regulations. If an apparent conflict exists, the Contractor must contact the Contract Manager immediately. Delivery of non-conforming product shall be cause for Contract termination and possible Contractor suspension.

2.11 Order of Precedence for Solicitation

In the event of a conflict, the conflict will be resolved in the following order of precedence (highest to lowest):

- a) Addenda to Solicitation, if issued (in reverse order of issuance)
- b) Attachment A: Scope of Work
- c) Attachment C: Special Contract Conditions
- d) This ITB and other Attachments

3 ITB BIDDING PROCESS

The ITB is a method of competitively soliciting a commodity or contractual service pursuant to paragraph 287.057(1)(a), F.S. The Department posts an ITB on the VBS to initiate the process and posts the ITB in MFMP Sourcing.

Bidders must submit questions in writing to the Procurement Officer via the Messages tab in MFMP Sourcing by the date listed in the Timeline of Events. Bids must be submitted in MFMP Sourcing by the deadline listed in the Timeline of Events. The Department will open the bids in a public meeting. Once the Department has verified the bids, the Department will post an agency decision in accordance with the Basis of Award section on the VBS.

3.1 False or Erroneous Information

The Department will evaluate responses from Responsive and Responsible Vendors. A Respondent who fails to provide the requested information or clarification or submits false or erroneous information may be deemed non-responsive and not awarded a contract. If the Respondent's response is found to contain false or erroneous information after contract award, the Contract may be terminated, and the Department may pursue any other legal action punishable by law.

3.2 Commitment to Diversity in Government Contracting

The State of Florida is committed to supporting its diverse business industry and population through ensuring participation by woman-, veteran-, and minority-owned small businesses enterprises in the economic life of the state. The State of Florida Mentor Protégé Program connects certified business enterprises with private corporations for business development mentoring. The Department strongly encourages firms doing business with the State of Florida to consider participating in this initiative. More information on the Mentor Protégé Program may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915 or osdinfo@dms.myflorida.com.

The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this solicitation enthusiastically embrace diversity. The award of subcontracts should reflect the vast array of citizens in the State of Florida. The Bidder can contact the Office of Supplier Diversity at (850) 487-0915 for information on certified business enterprises that may be considered for subcontracting opportunities.

3.3 Question Submission

The Department invites interested and registered Vendors to submit questions regarding the solicitation. Vendors who have 'Joined' the MFMP Sourcing event are able to submit questions using the MFMP Sourcing 'Messages' tab (referred to as the "Q&A Board" in PUR 1001). Questions can be submitted in MFMP Sourcing until the Question Submission Deadline listed in the Timeline of Events.

The following quoted text replaces Paragraph 5 of PUR 1001:

"Questions must be submitted via the Q&A Board within MFMP Sourcing and must be RECEIVED NO LATER THAN the time and date reflected on the Timeline of Events. Questions

shall be answered in accordance with the Timeline of Events. All questions submitted shall be published and answered in a manner that all proposers will be able to view. Proposers shall not contact any other employee of the Buyer or the State for information with respect to this solicitation. Each respondent is responsible for monitoring the Vendor Bid System for new or changing information. The Buyer shall not be bound by any verbal information or by any written information that is not contained in the solicitation documents or formally noticed and issued by the Buyer's contracting personnel. Questions to the Procurement Officer or to any Buyer personnel shall not constitute formal protest of the specifications or of the solicitation, a process addressed in paragraph 20 of these Instructions.”

Bidders are strongly encouraged to raise any questions or concerns regarding this ITB, including the proposed Contract terms and conditions, during the open question period.

3.4 Addenda to the ITB

The Department reserves the right to modify this solicitation by addenda. Addenda may modify any aspect of this solicitation. Any addenda issued will be posted on the VBS. It is the Bidder's responsibility to check for any changes to a solicitation prior to submitting a bid.

3.5 Protest of Terms, Conditions, and Specifications

With respect to a protest of the terms, conditions and specifications contained in this solicitation, including any provisions governing the methods for scoring responses, awarding contracts, or modifying or amending any contract, a notice of protest shall be filed in writing with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within 72 hours after the posting of the solicitation. For purposes of this provision, the term “the solicitation” includes this solicitation document, any addendum, response to written questions, clarification or other document concerning the terms, conditions, and specifications of the solicitation.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S. When protesting a decision or intended decision (including a protest of the terms, conditions, and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

3.6 Public Opening

Bids will be opened on the date and at the location indicated in the Timeline of Events. Bidders are not required to attend. The Department generally does not announce prices or release other materials at this public meeting, pursuant to paragraph 119.071(1)(b), F.S.

3.7 Electronic Posting of Notice of Intended Award

The Department shall electronically post a Notice of Intended Award on the VBS for review by interested parties at the time and location specified in the Timeline of Events. The Notice of Intended Award shall remain posted for a period of 72 hours, not including weekends or State observed holidays. If the Notice of Intended Award is delayed, in lieu of posting the Notice of Intended Award the Department may post a notice of delay and a revised date for posting the Notice of Intended Award.

3.8 Protest of Notice of Intended Decision

Anyone desiring to protest the Notice of Intended Award shall file any notice of protest and any subsequent formal written protest with the Agency Clerk, Department of Management Services, 4050 Esplanade Way, Tallahassee, FL 32399-0950, within the time prescribed in subsection 120.57(3) F.S., and Chapter 28-110, Florida Administrative Code. The Procurement Officer should be copied on such filings.

When protesting a decision or intended decision (including a protest of the terms, conditions and specifications of the solicitation), the protestor must post a bond with the formal protest that is equal to one percent of the Department's estimated contract amount. The estimated contract amount is not subject to protest.

Failure to file a protest within the time prescribed in subsection 120.57(3), F.S., or failure to post the bond or other security required by law within the time allowed for filing a bond shall constitute a waiver of proceedings under Chapter 120, F.S.

3.9 Firm Response

The Department intends to award a contract within sixty days after the date of the bid opening, during which period bids shall remain firm and shall not be withdrawn. If an award is not made within sixty days, all bid responses shall remain firm until either the Department awards the Contract, or the Department receives from the Bidder written notice that the response is withdrawn. Bid responses that express a shorter duration may, in the Department's sole discretion, be accepted or rejected.

3.10 Modification or Withdrawal of Bid

Bidders are responsible for the content and accuracy of their bid. Bidders may modify or withdraw their bid at any time prior to the bid due date in accordance with the Timeline of Events.

3.11 Cost of Response Preparation and Independent Preparation

The costs related to the development and submission of a response to this ITB is the full responsibility of the Bidder and are not chargeable to the Department. A Bidder shall not, directly or indirectly, collude, consult, communicate or agree with any other Vendor or Bidder as to any matter related to the response each is submitting. Additionally, a Bidder shall not induce any other Bidder to modify, withdraw, submit or not submit a response.

3.12 Contract Formation

The Department may issue a Notice of Intended Award to successful Bidder(s). However, no contract shall be formed between a Bidder and the Department until the Department signs the contract. The Department shall not be liable for any work performed before the contract is effective.

The Department intends to enter into a contract(s) with Bidder(s) pursuant to the Basis of Award section of this solicitation. No additional documents submitted by a Bidder shall be incorporated in the contract unless it is specifically identified, incorporated by reference, and approved by the Department. If any additional documents are submitted by the Bidder, the additional documents will not be considered for the Basis of Award.

4 HOW TO BID ON THE ITB

This section contains instructions to Bidders on how to submit a bid.

4.1 General Instructions

PUR 1001, the General Instructions to Bidders, is incorporated by reference and provided via the link below:

<http://www.dms.myflorida.com/content/download/2934/11780/1001.pdf>

In the event any conflict exists between Attachment D – Special Instructions to Bidders and these General Instructions to Bidders, the Attachment D, Special Instructions shall prevail.

The following section of the PUR 1001 (General Instructions) is modified as follows:

9. In submitting a response, each respondent understands, represents, and acknowledges the following.

* The respondent is not currently under suspension or debarment by the State or any other governmental authority.

* To the best of the knowledge of the person signing the response, the Respondent, its affiliates, subsidiaries, directors, officers, and employees are not currently under investigation by any governmental authority and have not in the last 10 years been convicted or found liable for any act prohibited by law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract.

* Respondent currently has no delinquent obligations to the State, including a claim by the State for liquidated damages under any other contract.

* The submission is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive response.

* The prices and amounts have been arrived at independently and without consultation, communication, or agreement with any other respondent or potential respondent; neither the prices nor amounts, actual or approximate, have been disclosed to any respondent or potential respondent, and they will not be disclosed before the solicitation opening.

* The respondent has fully informed the Department in writing of all convictions of the firm, its affiliates (as defined in paragraph 287.133(1)(a), F.S.), and all directors, officers, and employees of the firm and its affiliates for violation of state or federal antitrust laws with respect to a public contract for violation of any state or federal law involving fraud, bribery, collusion, conspiracy or material misrepresentation with respect to a public contract. This includes disclosure of the names of current employees who were convicted of contract crimes while in the employ of another company.

* Neither the Respondent nor any person associated with it in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, or position involving the administration of federal funds:

- Has within the preceding three years been convicted of or had a civil judgment rendered against them or is presently indicted for or otherwise criminally or civilly charged for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
- Has within a three-year period preceding this certification had one or more federal, state, or local government contracts terminated for cause or default.

* The product offered by the Respondent will conform to the specifications without exception.

* The Respondent has read and understands the Contract terms and conditions, and the submission is made in conformance with those terms and conditions.

* If an award is made to the Respondent, the Respondent agrees that it intends to be legally bound to the Contract that is formed with the State.

* The Respondent has made a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the response, and has been advised by each of them that he or she has not participated in any communication, consultation, discussion, agreement, collusion, act or other conduct inconsistent with any of the statements and representations made in the response.

* The Respondent shall indemnify, defend, and hold harmless the Department and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the respondent's preparation of its bid.

* All information provided by, and representations made by, the Respondent are material and important and will be relied upon by the Department in awarding the Contract. Any misstatement shall be treated as fraudulent concealment from the Department of the true facts relating to submission of the bid. A misrepresentation shall be punishable under law, including, but not limited to, Chapter 817, F.S.

4.2 How to Submit a Bid

Bidders will submit their bids electronically via MFMP Sourcing. Bidders shall enter all required attachments and documents electronically in MFMP Sourcing during this solicitation as indicated. The Department will only evaluate bids submitted using MFMP Sourcing.

Mass produced general information/promotional material about the Bidder that is prepared/printed for general distribution is not permitted. The emphasis of each bid shall be on completeness and clarity of content, prepared simply and economically, providing a straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this solicitation.

By submitting a bid to this solicitation, the Bidder agrees to and waives any objections to requirements contained in the solicitation. By submitting a bid, the Bidder certifies that it agrees to and satisfies all requirements specified in this solicitation.

Respondents must upload an electronic copy of all required documentation in the MFMP Sourcing application. The following conditions apply:

- In the case where the Department provides an attachment that is able to be filled in, Respondents are to download the attachment, fill it out, and then attach the filled in copy in the link provided.
- In the case of original or signed documentation, Respondents may attach scanned copies of original documents which have been filled in and signed by an individual authorized to respond on the Bidder's behalf.
- In the case where multiple original or signed items are requested as part of a single requirement, please combine multiple scanned items into a single PDF attachment. Each link in MFMP will only accept a single attachment.
- MFMP accepts files up to 20 megabytes (MB) in size.

Submit all required attachments and documentation in MFMP Sourcing in accordance with the applicable instructions. Failure to submit all of the required attachments and documentation in MFMP Sourcing may result in a determination of Bidder non-responsiveness. Bidders are responsible for submitting their bids in MFMP Sourcing by the date and time specified in the Timeline of Events of this solicitation. The Department will not consider late bids.

Attachments submitted in MFMP Sourcing should be named similarly to the following file naming conventions:

Example:

JohnDoeLLC_Attachment_E.pdf

JohnDoeLLC_AttachmentJMarkupSheet.xlsx (Excel)

5 PRIOR TO AWARD

5.1 Rejection of Bids

Bids that do not meet all requirements, specifications, terms, and conditions of the solicitation or fail to provide all required information, documents, or materials may be rejected as non-responsive. Bidders whose bids, references, or current status does not reflect the capability, integrity, or reliability to fully and in good faith perform the requirements of a contract may be rejected as not responsible. The Department reserves the right to determine which bids meet the requirements of this solicitation, and which Bidders are responsive and responsible.

5.2 Minor Irregularities/Right to Reject

The Department reserves the right to accept or reject any or all bids, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if the Department determines that doing so shall serve the Department's best interests. The Department may reject any response not submitted in the manner specified by the solicitation documents.

5.3 Redacted Submissions

The following section supplements section 19 of the PUR 1001. If Bidder considers any portion of the documents, data or records submitted in response to this solicitation to be confidential, proprietary, trade secret or otherwise not subject to disclosure pursuant to Chapter 119, F.S., the Florida Constitution or other authority, Bidder must mark the document as "Confidential" and simultaneously provide the Department with a separate redacted copy of its response and briefly describe in writing the grounds for claiming exemption from the public records law,

including the specific statutory citation for such exemption. This redacted copy shall contain the Department's solicitation name, number, and the Bidder's name on the cover, and shall be clearly titled "Redacted Copy." The Redacted Copy should only redact those portions of material that the Bidder claims is confidential, proprietary, trade secret or otherwise not subject to disclosure.

In the event of a request for public records pursuant to Chapter 119, F.S., the Florida Constitution or other authority, to which documents that are marked as confidential are responsive, the Department will provide the Redacted Copy to the requestor. If a requestor asserts a right to the Confidential Information, the Department will notify the Bidder such an assertion has been made. It is the Bidder's responsibility to assert that the information in question is exempt from disclosure under Chapter 119, F.S., or other applicable law. If the Department becomes subject to a demand for discovery or disclosure of the Confidential Information of the Bidder in a legal proceeding, the Department shall give the Bidder prompt notice of the demand prior to releasing the information (unless otherwise prohibited by applicable law). The Bidder shall be responsible for defending its determination that the redacted portions of its response are confidential, proprietary, trade secret, or otherwise not subject to disclosure.

By submitting a bid, the Bidder agrees to protect, defend, and indemnify the Department for any and all claims arising from or relating to the Bidder's determination that the redacted portions of its bid are confidential, proprietary, trade secret, or otherwise not subject to disclosure. If Bidder fails to submit a redacted copy of information it claims is confidential, the Department is authorized to produce the entire documents, data, or records submitted to the Department in answer to a public records request for these records.

5.4 Additional Information

By submitting a bid, Bidder certifies that it agrees to and satisfies all requirements specified in the ITB. The Department may request, and Bidder shall provide, additional supporting information or documentation. Failure to supply supporting information or documentation as required and requested may result in the bid being deemed non-responsive.

5.5 Bid Disqualification

Bids that do not meet all requirements, specifications, terms and conditions of the solicitation or fail to provide all required information, documents or materials may be rejected as non-responsive. Bids that contain provisions that are contrary to the requirements of the solicitation are not permitted. Bidders whose bids, past performance or current status do not reflect the capability, integrity or reliability to fully and in good faith perform the requirements of this solicitation may be rejected as non-responsive. The Department reserves the right to determine which bids meet the requirements of this solicitation and which Bidders are responsive and responsible.

6 BASIS OF AWARD

The Contract will be awarded to the responsible and responsive bidders with the lowest Calculated Markup for each fuel and delivery type in each of the four regions, as shown on the Markup Sheet (Attachment J). The Department may issue up to five awards for each fuel and delivery type in each of the four regions described in the Scope of Work (Attachment A).

6.1 Transport Delivery

For Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(T^I \times 0.54) + (A^I \times 0.06) + (T^R \times 0.36) + (A^R \times 0.04) = Z$$

Where:

T^I = Initial Term Markup

A^I = Sum of Initial Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

T^R = Renewal Term Markup

A^R = Sum of Renewal Term Allowable Charges ("All Delivery Types" and "Transport Delivery Only")

Z = Bidder's Calculated Markup

6.2 Non-Transport Delivery

For Non-Transport Delivery bids, the Bidder's Calculated Markup for each fuel type will be calculated on the Markup Sheet (Attachment J) using the following formula:

$$(NI \times 0.54) + (BI \times 0.06) + (NR \times 0.36) + (BR \times 0.04) = Z$$

Where:

NI = Initial Term Markup

BI = Sum of Initial Term Allowable Charges ("All Delivery Types" only)

NR = Renewal Term Markup

BR = Sum of Renewal Term Allowable Charges ("All Delivery Types" only)

Z = Bidder's Calculated Markup

6.3 Preference to Florida Businesses

Pursuant to the requirements of paragraph 287.084(1)(a), F.S., if the lowest responsible and responsive bid is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, the Department will award a preference to the lowest responsible and responsive bidder having a principal place of business within Florida, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive bidder has its principal place of business.

If the lowest bid is submitted by a bidder whose principal place of business is located outside the state, and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive bidder having a principal place of business in this state will be five percent.

A vendor whose principal place of business is outside this state must accompany any written bid documents with a written opinion of an attorney at law licensed to practice law in that foreign state, as to the preferences, if any or none, granted by the law of that state to its own business entities whose principal places of business are in that foreign state in the letting of any or all public contracts

7 ITB ATTACHMENTS

Attachment A	Scope of Work
Attachment B	Draft Contract
Attachment C	Special Contract Conditions
Attachment D	Special Instructions for Bidders
Attachment E	Responsiveness Requirements
Attachment F	Vendor Information Form
Attachment G	Certification of Drug-Free Workplace
Attachment H	Quarterly Sales Report
Attachment I	Savings/Price Reductions
Attachment J	Markup Sheet
Attachment K	No Offshoring

Required Documents to be submitted by vendor prior to ITB opening

Attachment E Responsiveness Requirements

Attachment G Certification of Drug-Free Workplace (if applicable)

Attachment J Markup Sheet

Written Opinion of an Attorney at Law - Section 6.3 of the ITB (if applicable)

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Public Works

TITLE:

Task Order #13 with Baxter Woodman for the Construction Engineering Inspections Services for the Year 4, District 2 Neighborhood Road Program project

SUMMARY:

Task Order #13 with Baxter Woodman authorizes the consultant to perform CEI services for the Neighborhood Road Program District 2, Year 4 project at a cost not to exceed \$78,640.00.

BACKGROUND AND JUSTIFICATION:

The Neighborhood Road Program is entering the fourth and final year of construction. The District 2, Year 4 project was bid and Rosso Site Development was the lowest most responsive and responsible bidder for the construction of the project. As part of the quality control and inspection services process, Baxter Woodman will be performing the construction inspection services for the watermain and infrastructure improvements. Task Order #13 will authorize Baxter Woodman to perform the CEI services at a cost not to exceed \$78,640.00.

MOTION:

Move to approve / disapprove Task Order #13 with Baxter Woodman for the CEI services at a cost not to exceed \$78,640.00.

ATTACHMENT(S):

Fiscal Impact Analysis
Task Order #13

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	78,640	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
Net Fiscal Impact	78,640	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
308-5020-519-63-15	Improve other than build	NR2002	19,187,507	8,258,540	60,639	8,197,901
422-7034-533-63-15	Improve other than build	NR2002	4,183,920	-3,712,448	18,001	-3,730,449

C. Department Fiscal Review: _____

EXHIBIT "A"
TASK ORDER

**PROFESSIONAL SERVICES
FOR
NEIGHBORHOOD STREETS PROGRAM
TASK ORDER NO. 13**

THIS TASK ORDER FOR PROFESSIONAL SERVICES ("Task Order" hereafter) is made on the ____ day of _____, 20_, 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 **Baxter & Woodman, Inc.**, an Illinois corporation, whose local business address is 477 S. Rosemary Avenue, Suite 330, West Palm Beach, Florida, 33401 ("Consultant" hereafter).

1.0 Project Description:

The City desires the Consultant to provide those services as identified herein for the Neighborhood Streets Program. The services are generally described as: District 2, Year 4 Project Construction Engineering & Inspection (CEI) Services (the "Project").

2.0 Scope

Under this Task Order, the Consultant will provide the City of Lake Worth Beach Public Services Department with plans, specifications and/or construction inspection services for the Project as specified in the **Consultant's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within 180 calendar days from the City's approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of \$78,640.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the Consultant is Rebecca Travis, P.E. phone: 561-655-6175; email: rtravis@baxterwoodman.com; and, the Project Manager for the City is Richard C. Hasko, P.E., phone : (561) 586-1686 ; email: rhasko@lakeworthbeachfl.gov .

6.0 Progress Meetings

The Consultant shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued in compliance with the Consultants' Competition Negotiation Act, section 287.055, Florida Statutes, and pursuant to the Agreement for Professional Services between the City of Lake Worth Beach and the Consultant, dated February 7, 2017 ("Agreement" hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have made and executed this Task Order as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Debbie Andrea, City Clerk

By: _____
Pam Triolo, Mayor

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney /
mpa

By: _____
Bruce T. Miller, Financial Services Director

BAXTER & WOODMAN, INC.

By: Rebecca Travis
Rebecca Travis, P.E.
Vice President



STATE OF Florida)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged before me this 8 day of April, 2020, by Rebecca Travis, as Vice President of Baxter & Woodman, Inc., a corporation authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.



Courtney Marshall
Notary Public

EXHIBIT "B"
FEE SCHEDULE
(Consisting of 1 page(s))

Exhibit B

Neighborhood Streets Bond Program - District 2, Year 4 CMS

Phase 1 - North G Street, North H Street, 4th Avenue North, 6th Avenue North, & North East Coast Street

Phase 2 - 13th Avenue North, 11th Avenue North, North F Street, Alleyway between North H Street & North Dixie Hwy., & 19th Avenue North

Budget Summary for Baxter & Woodman, Inc. (4/8/2020)

Task No.	Task Description	Labor Classification and Hourly Rates								Sub-Consultant Services
		Principal \$170.00	Senior Engineer III to IV \$160.00	Engineer II \$110.00	Construction Manager \$120.00	Construction Inspector \$90.00	CAD Technician \$110.00	Clerical \$70.00	Total Labor	
6	Construction Administration Services - Phase 1									
6.1	Preconstruction Conference				4	3		1	\$820.00	
6.2	General Administration, Project & Inspection Management				20				\$2,400.00	
6.3	Contractor RFI's (related to Phase 1 work only)		8		15			4	\$3,360.00	
6.4	Monthly Progress Meetings (every month - 2 mtgs)				8				\$960.00	
6.5	Periodic Field Inspections				30	30			\$6,300.00	
	Subtotal Task 6	0	8	0	77	33	0	5	\$13,840.00	\$0.00
7	Construction Administration Services - Phase 2									
7.1	General Administration, Project & Inspection Management				40				\$4,800.00	
7.2	Submittal Review (up to 25 shop drawings)		10		30				\$5,200.00	
7.3	Review As-Builts (monthly, estimated at 4)				20		4		\$2,840.00	
7.4	Construction Quantities Review (4 pay periods during Phase 2 work)				12				\$1,440.00	
7.5	Contractor RFI's (related to Phase 2 work only)		12		20			4	\$4,600.00	
7.6	Monthly Progress Meetings (every month - 4 mtgs)				16				\$1,920.00	
7.7	Periodic Field Inspections		8		20				\$3,680.00	
7.8	Partial and Final Water Main Certifications		8		15		6	2	\$3,880.00	
7.9	Substantial and Final Inspections - Prepare Punch List (Phase 2 work only)		2		30				\$3,920.00	
7.10	Project Close-out Documentation	6			10				\$2,220.00	
	Subtotal Task 7	6	40	0	213	0	10	6	\$34,500.00	\$0.00
8	Construction Inspections									
8.1	Inspections Phase 2 work - avg 20 hrs/wk (4 months)					320			\$28,800.00	
	Subtotal Task 8	0	0	0	0	320	0	0	\$28,800.00	\$0.00
	Labor Subtotal Hours	6	48	0	290	353	10	11		\$0.00
	Labor Subtotal	\$1,020	\$7,680	\$0	\$34,800	\$31,770	\$1,100	\$770	\$77,140.00	
	Labor Total Costs	\$77,140								
	Subconsultant Costs Total	\$0								
	Subconsultant Multiplier	1.05								
	Subconsultant Total	\$0								
	Reimbursables - Phase 1	\$750								
	Reimbursables - Phase 2	\$750								
	Phase 1 Project Total	\$14,590.00								
	Phase 2 Project Total	\$64,050.00								
	GRAND TOTAL	\$78,640								

Exhibit 1

City of Lake Worth – Construction Services for the Neighborhood Road Program

District 2, Year 4

Phase 1 – North G Street, North H Street, 4th Avenue North, 6th Avenue North, & North East Coast Street

Phase 2 – 13th Avenue North, 11th Avenue North, North F Street, Alleyway between North H Street & Dixie Hwy, & 19th Avenue North

A. Background

The City of Lake Worth Beach (CITY) has selected Baxter & Woodman, Inc. (B&W) to provide Construction Engineering Services for the City of Lake Worth Beach Neighborhood Road Program, District 2, Year 4 Roadway Improvements. Refer to project location map in *Figure 1* for the project limits.

B. Scope of Services

The Engineering Services shall include the following tasks:

- Task 6 – Construction Administration Services – Phase 1
- Task 7 – Construction Administration Services – Phase 2
- Task 8 – Construction Inspections – Phase 2

The specific scope of services to be provided by B&W in this Contract includes the following:

TASK 6 – CONSTRUCTION ADMINISTRATION SERVICES – PHASE 1

The general administration services during Phase 1 construction of the Project shall include the following tasks:

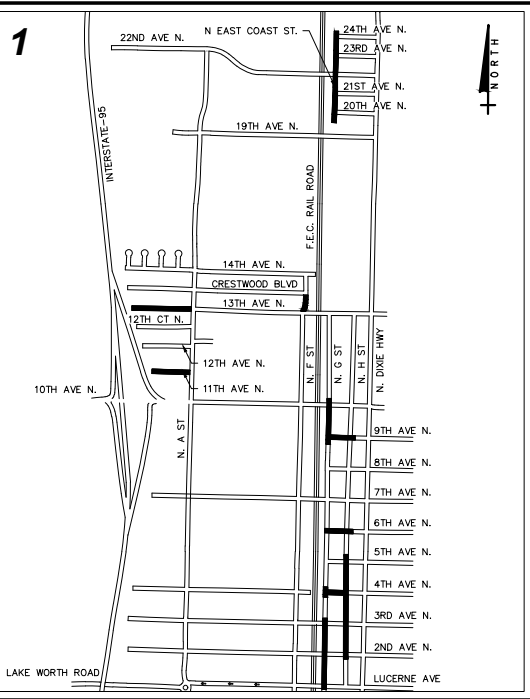
Subtask 6.1 Preconstruction Conference

B&W shall attend a preconstruction conference with representatives of CITY, contractor and major subcontractors for the construction contract. CITY shall prepare, in writing, minutes of conference.

Subtask 6.2 General Administration, Project & Inspection Coordination

B&W's Construction Manager will provide general construction administration as required for the Contract. This includes coordination with the CITY and Contractor on a weekly basis. This also includes coordination with the design engineer as necessary.

Figure 1



S21, T44S, R43E

— = LIMITS OF PROJECT AREA

PROJECT LOCATION MAP

N.T.S.

Subtask 6.3 Contractor RFI's

Respond in writing to Contractor's Request for Information (RFI) regarding design documents related to the Phase 1 work only during the estimated 2-month Phase 1 construction period. B&W shall issue interpretations and clarifications of the Contract Documents, along with associated support materials, as requested by the Contractor. Those interpretations will be rendered and a response prepared and submitted to the Contractor within 5 working days of receipt.

Subtask 6.4 Monthly Progress Meetings

B&W shall attend monthly construction progress meetings (estimated 2 meetings) and provide an agenda and written summary of the issues discussed. Following the meeting, the Construction Manager will prepare and distribute meeting minutes (within 5 days after the meeting) to the CITY and other attendees. Meetings will be held at the CITY facilities.

Subtask 6.5 Periodic Field Inspections

B&W's Construction Manager and Construction Inspector shall make periodic field visits to observe progress of the Phase 1 work and attend any required field meetings. We have budgeted 30 hours each for the Construction Manager and Construction Inspector for this subtask.

TASK 7 – CONSTRUCTION ADMINISTRATION SERVICES – PHASE 2

The general administration services during Phase 2 construction of the Project shall include the following tasks:

Subtask 7.1 General Administration

B&W's Construction Manager will provide general construction administration as required for the Contract. This includes coordination with the CITY and Contractor on a weekly basis. We have budgeted approximately 40 hours total for this subtask.

Subtask 7.2 Submittal Review

B&W shall receive, log and review Shop Drawing and Product submittals for general conformance with the design intent and provisions of the Contract Documents. Review of up to 25 submittals (total, which includes submittals and re-submittals, if required) is included in the budget for this subtask. B&W will return submittals to the Contractor and CITY within 7 to 14 days of receipt.

Subtask 7.3 As-Built Review

B&W shall review monthly (total of 4 months) as-built (Record Drawings) information from the Contractor for the Phase 2 work only to confirm conformance to the Contract Documents.

Subtask 7.4 Construction Quantities Review

Based on onsite observations as an experienced and qualified design professional and on review of Contractor's monthly pay quantities, determine the amounts owing to the Contractor and recommend, in writing, approved quantity amounts due to Contractor. Review of stored materials items and

invoices as required. This includes the review of Phase 2 quantity amounts for each of 4 monthly applications, including re-submittals.

Subtask 7.5 Contractor RFI's

Respond in writing to Contractor's Request for Information (RFI) regarding design documents related to the Phase 2 work only during the estimated 4-month Phase 2 construction period. B&W shall issue interpretations and clarifications of the Contract Documents, along with associated support materials, as requested by the Contractor. Those interpretations will be rendered and a response prepared and submitted to the Contractor within 5 working days of receipt.

Subtask 7.6 Monthly Progress Meetings

B&W shall attend monthly construction progress meetings (estimated 4 meetings) and provide an agenda and written summary of the issues discussed. Following the meeting, the Construction Manager will prepare and distribute meeting minutes (within 5 days after the meeting) to the CITY and other attendees. Meetings will be held at the CITY facilities.

Subtask 7.7 Periodic Field Inspections

B&W's Construction Manager shall make periodic field visits to observe progress of the Phase 1 work and attend any required field meetings. We have budgeted 20 hours for this subtask.

Subtask 7.8 Water Main Partial Certifications and Final Certifications

B&W shall provide coordination with Palm Beach County Health Department (PBCHD) regarding the water mains included in the project. This also includes certifying to PBCHD based on project features, B&W's inspections and review of testing reports that the project was constructed in accordance with the plans and specifications submitted in the permit applications. Coordination will be provided in conjunction with City staff and the contractor, for the relocation of rear yard water services.

Certification will include that water mains were properly pressure tested and bacteriologically sampled to allow a "request for release of facilities to be placed into service" to be filed with the PBCHD. It is assumed that up to three final releases will be prepared for the PBCHD.

Subtask 7.9 Substantial and Final Inspections

B&W shall conduct a substantial and final inspection with the CITY and Contractor to determine if the construction contractor has fulfilled his obligations thereunder for Phase 2 of the project. A punch-list will be prepared for each inspection (substantial and final) for the project. B&W shall recommend, in writing, final acceptance of the Phase 2 work to the CITY. The CITY may, at CITY's option, proceed to make final payment to the construction contractor.

Subtask 7.10 Project Close-Out Documentation

B&W shall prepare and submit all required project close-out documentation and issue final letter of acceptance for the Phase 2 work only to the CITY.

TASK 8 – RESIDENT PROJECT REPRESENTATIVE (RPR) SERVICES – PHASE 2

The Construction Inspections phase services to be provided by B&W include the following:

1. Provide a Construction Inspector to provide part-time inspections (approximately 4 hrs/day) during the construction of the Phase 2 work only in a total period of not-to-exceed 4 months (which equates to 320 hours) for the Phase 2 construction contract. Activities performed under this task consist of furnishing a Construction Inspector during the construction of the project, to observe the performance of the work of the Contractor, who will:
 - Serve as B&W’s liaison with construction contractor, working principally through the contractor’s construction manager and assist him in understanding the intent of the contract documents.
 - Conduct on-site observations of the work in progress to assist in determining if the work is proceeding in accordance with the contract documents and that completed work conforms to the contract documents. Report, in writing, whenever B&W believes that work is unsatisfactory, faulty or defective, or does not conform to the contract documents, or does not meet the requirements of inspections, tests or approval required to be made, or has been damaged prior to final payment.
 - Accompany visiting inspectors representing public or regulatory agencies having jurisdiction over the project. Record, in writing, the outcome of these inspections and report same to CITY.
 - Consider and evaluate construction contractor’s suggestions for modifications in drawings or specifications and report them to CITY, in writing. B&W shall make recommendation for action by the CITY.
 - Review Contractor As-Built information on a monthly basis to confirm updates are being made.
 - Review all Contractor density test results performed by Professional Geotechnical Company.
 - RPR shall work with the Contractor and develop a Daily Quantity Sheet (based on the approved Schedule of Values) to be reviewed and accepted each day agreeing to the quantities of Schedule of Value items installed.
 - Document construction through preparation of daily inspection reports to include photo documentation of constructed improvements. Reports to be forwarded to City weekly.

LIMITATIONS OF AUTHORITY

Except upon written instructions of Engineer, Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or approve any substitute materials or equipment.
2. Shall not exceed limitations on Engineer’s authority as set forth in the Contract Documents.
3. Shall not undertake any of the responsibilities of Contractor, Subcontractors or Construction Manager, or expedite the Work.

4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
5. Shall not advise on or issue directions as to safety precautions and programs in connection with the Work.
6. Shall not participate in specialized field or laboratory tests.

C. Assumptions

In addition to the work items discussed above, the following assumptions were made in establishing the scope of this Contract and associated fee. Changes and/ or modifications in the above work items or these assumptions are considered an Additional Services Item under the terms of the contract. Assumptions include:

1. One (1) pre-construction meeting will be held for the entire project (Phase 1 and Phase 2).
2. B&W assumes that all existing and proposed infrastructure roadway/pipeline alignments are within the CITY's, rights-of-way and/or approved easements.
3. B&W assumes that the CITY will perform substantial and final field inspections and project close-out documentation for the Phase 1 work.
4. B&W will only provide review and approval for the underground utility quantities for the Phase 2 work. After quantity approval by B&W, CITY will review and approve all pay applications.
5. CITY will be responsible for acquisition of easements (including temporary construction easements), if required. Surveying and legal work necessary to prepare document for and to secure easements (temporary and permanent) required for installation of the roadway/piping improvements is the responsibility of the CITY.
6. CITY to prepare change orders.
7. Contractor shall be responsible for preparing Record Drawings.
8. B&W assumes that there are no contaminated soils or groundwater in the project area.
9. Shop drawings will be electronically submitted by the contractor.
10. Work by others includes:
 - Identifying stakeholders and creating a database for notifications
 - Public outreach meetings during the 6-month time-frame
 - Provision of periodic progress and status reports regarding public outreach
 - Create, coordinate schedule for and distribution of door hangers
 - Provision of project tools to keep residents informed
 - Provision of information for website postings
 - Tracking and reporting of Resident Complaints, coordination of response and resolution
 - Preparation of public outreach material

D. Additional Services

The following are examples of some specific Additional Services Items that may be required, but are not included within this Amendment. Generally, a condition contrary to the work description in Section B or assumptions of Section C (upon which the Contract fee is based) is considered an Additional Services Item. Examples include:

1. Additional supervision or construction observation in excess of that specified in this Contract.
2. Assisting the CITY in the settlement of construction contract claims will be an additional service.

These and other services can be provided, if desired by the CITY, under separate Contract(s) or by an amendment to this Contract. Services performed will be on an as-directed basis in accordance with a written Notice to Proceed from the CITY.

E. Compensation

Compensation by the CITY to B&W for all tasks will be on a Not-to-Exceed (time utilized) basis in accordance with the above mentioned Agreement. The estimated compensation for the services described in this Contract is **\$78,640.00** as shown in Table 1 below and detailed in **Exhibit B**.

TABLE 1: LABOR AND EXPENSE SUMMARY

	Total Cost
Task 6 – Construction Administration Services – Phase 1	\$13,840.00
Task 7 – Construction Administration Services – Phase 2	\$34,500.00
Task 8 – Construction Inspections – Phase 2	\$28,800.00
Reimbursables	\$1,500.00
Phase 1 Total	\$14,590.00
Phase 2 Total	\$64,050.00
GRAND TOTAL	\$78,640.00

F. Schedule

The Construction time-frame is as follows:

- The project will be awarded by the end of April 2020.
- Construction Administration Services=>total of 2 months for Phase 1 and total of 4 months for Phase 2 (total construction period = 180 days)
- Construction Inspection Services => Phase 2 – total of 20 hours/week for 4 months

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Community Sustainability

TITLE:

Resolution No. 16-2020 – documenting the levy of municipal special assessment liens for unpaid boarding and securing charges

SUMMARY:

This resolution documents the assessment of the costs incurred by the City for boarding and securing services and the levy of such costs as special assessment liens against the properties identified in the resolution.

BACKGROUND AND JUSTIFICATION:

Pursuant to the provisions of sections 2-75.2 through 2-75.2.7 of the Code of Ordinances (the “Board and Secure Ordinance”), the owners of certain parcels of real property were notified of the existence of a structure that allows access to its interior which is not boarded or secured and that does not have a certificate of boarding which were determined to create a hazard declared to be a public nuisance and a violation of the City’s Board and Secure Ordinance. Certain owners failed to abate such nuisances and the City or its contractor, in accordance with the procedures set forth in the Board and Secure Ordinance, have abated said nuisances by boarding and securing the structure. In accordance with section 2-75.2.7, the costs incurred by the City to abate said nuisances were assessed against each property as a special assessment lien at the time services were provided. The list of properties assessed for unpaid boarding and securing charges, along with the associated administrative costs, total **\$8,000.03** and are attached to Resolution No. 16-2020 as Exhibit “A”. If not paid, these liens may be foreclosed by the City or they may be certified to the tax collector for collection pursuant to the uniform method provided in section 197.3632, Florida Statutes.

Attached is the proposed resolution documenting the levy of the special assessments for unpaid boarding and securing charges including a spreadsheet of addresses, services and charges. All services and costs incurred occurred prior to March 1, 2020 and the adoption of the Compassionate Code Compliance Policy.

MOTION:

Move to approve/disapprove Resolution 16-2020 – documenting the levy of municipal special assessment liens for unpaid boarding and securing charges.

ATTACHMENT(S):

Resolution 16-2020
Exhibit “A”

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RESOLUTION NO. 16-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, DOCUMENTING THE ASSESSMENT OF THE COSTS INCURRED BY THE CITY PURSUANT TO SECTION 2-75.2.7 OF THE CITY CODE OF ORDINANCES FOR THE ABATEMENT OF CERTAIN NUISANCES (BOARDING AND SECURING) WITHIN THE CITY; LEVYING LIENS ON SAID PROPERTIES IDENTIFIED HEREIN; PROVIDING FOR THE RECORDING OF THIS RESOLUTION IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City of Lake Worth Beach, Florida has, pursuant to sections 2-75.2 through 2-75.2.7 of the Code of Ordinances of the City of Lake Worth Beach, Florida, as amended, found and determined that the condition of certain properties or parcels of land as hereinafter described violated section 2-75.2.2(a) of said Code by reason of the existence of a structure that allows access to its interior and which is not boarded and secured or a structure that is boarded and secured but does not have a certificate of boarding which thereby has created a hazard declared to be a public nuisance; and

WHEREAS, the respective owners of the parcels of property hereinafter described were duly notified of the existence of the aforesaid nuisances on their properties and were required to abate the nuisances; and

WHEREAS, said owners have, after being duly notified by a Notice of Violation, failed to bring their property into code compliance; and

WHEREAS, the structures have been boarded and secured by the City or its contractor at a cost to the City as set forth below; and

WHEREAS, it is recommended that in accordance with section 2-75.2.7 of the Code of Ordinances of the City of Lake Worth Beach, the costs incurred to abate said nuisances, which are assessed against the respective properties as special assessment liens, be hereby documented and recorded against the properties in the Public Records of the Palm Beach County, Florida.

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

Section 1. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution.

Section 2. Legislative Determinations. It is hereby ascertained and declared that the boarding and securing of the structures on the properties listed in **Exhibit "A"** (attached hereto and incorporated herein) provided a special benefit to each parcel assessed, based upon the following legislative determinations:

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(A) It is hereby ascertained, determined, and declared that each assessed parcel has benefitted by the City’s provision of boarding and securing services in an amount not less than the amount of the boarding and securing services costs imposed against each parcel.

(B) It is fair and reasonable to assess the boarding and securing services costs in the amounts actually expended by the City to benefit each assessed parcel.

Section 3. In accordance with sec. 2-75.2.7 of the Code of Ordinances, at the time services were provided, all costs incurred by the City in the abatement of nuisances on the following parcels of land, along with an administrative fee, were levied and assessed against said properties as municipal special assessment liens on the properties identified and in the amounts indicated on the attached “**Exhibit A**”. To each of the aforesaid lien amounts shall be added the cost to reimburse the City to record each lien in the Public Records of Palm Beach County, Florida. The City Commission is hereby documenting such special assessment liens through this resolution.

Section 4. Said liens shall be prior in dignity to all other liens, encumbrances, titles and claims against the property and equal in rank and dignity with ad valorem taxes and shall remain on such property until paid. A failure to pay any such lien, even a lien upon homesteaded property, may result in a loss of title to property.

Section 5. Said liens shall bear interest from the date of adoption of this resolution at the legal rate until fully paid.

Section 6. The City Clerk is hereby directed to record a certified copy of this resolution in the Public Records of Palm Beach County, Florida. The failure to record a certified copy of this resolution shall not affect the validity of any special assessment.

Section 7. The Finance Department is hereby directed to mail a copy of this resolution to the owners of the parcels of land levied hereby at the last known address of such owner.

Section 8. Such assessment liens, together with interest, administrative fees costs, and reasonable attorneys’ fees shall be enforced and collected, and may be foreclosed, pursuant to the Code of Ordinances of the City of Lake Worth Beach and applicable provisions of law. Such assessment liens, if they remain unpaid, may also be collected pursuant to the uniform method set forth in sec. 197.3632, Fla. Stat. or through any other remedy available at law or in equity.

Section 9. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 10. If any provision of this resolution or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications

of this resolution which can be given effect without the invalid provision or application and to this end the provisions of this resolution are declared severable.

Section 11. This resolution shall take effect 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 Pam Triolo
- Vice Mayor Andy Amoroso
- Commissioner Scott Maxwell
- Commissioner Omari Hardy
- Commissioner Herman Robinson

The Mayor thereupon declared this resolution duly passed and adopted on this 5th day of May, 2020.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, CMC, City Clerk

BOARD AND SECURES

CASE #	OWNER	OWNER ADDRESS	OWNER CITY/STATE	PCN	LEGAL	PROPERTY ADDRESS	INVOICE AMOUNT
19-3239	DALCOURT JUDITH	8943 NW 23RD ST	POMPANO BEACH FL 33065 5635	38-43-44-21-15-503-0141	TOWN OF LAKE WORTH W 25 FT OF LT 14 & E 25 FT OF LT 15 BLK C	1418 LAKE AVE	\$2,015.90
19-3610	1031 N J ST LAND TRUST CHRISTOPHER HOUSE OF HOPE INC TR	931 VILLAGE BLVD STE 905 358	WEST PALM BEACH FL 33409	38-43-44-21-15-310-0090	TOWN OF LAKE WORTH LT 9 BLK 310	1031 N J ST	\$3,273.23
19-3245	PADMA RENTAL HOLDINGSLLC	6412 MELALEUCA LN	LAKE WORTH FL 33463	38-43-44-21-15-124-0040	TOWN OF LAKE WORTH LTS 4 & 5 BLK 124	410 N E ST	\$2,710.90
						TOTAL	\$8,000.03

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Community Sustainability

TITLE:

Resolution No. 17-2020 – documenting the levy of municipal special assessment liens for unpaid demolition charges

SUMMARY:

This resolution documents the assessment of the costs incurred by the City for demolishing unsafe structures and the levy of such costs as special assessment liens against the properties identified in the Resolution

BACKGROUND AND JUSTIFICATION:

Pursuant to the provisions of sections 9-2.2(a) through 9-2.2(t) of the Code of Ordinances (the “Unsafe Building Abatement Code”), the owners of certain parcels of real property were notified of the existence of an unsafe structure which was determined to create a hazard declared to be a public nuisance and a violation of the City’s Unsafe Building Abatement Code. Certain owners failed to abate such nuisances and the City or its contractor, in accordance with the procedures set forth in the Unsafe Building Abatement Code, have abated said nuisances by demolishing the unsafe structure. In accordance with sections 9-2.2 (p) and (q), the costs incurred by the City to abate said nuisances were assessed against each property as a special assessment lien at the time services were provided. The list of properties to be assessed for demolition charges, along with the associated administrative costs, total **\$18,132.90** and are attached to Resolution No. 17-2020 as Exhibit “A”. If not paid, these liens may be foreclosed by the City or they may be certified to the tax collector for collection pursuant to the uniform method provided in section 197.3632, Florida Statutes.

Attached is the proposed resolution documenting the levy of the special assessments for unpaid demolition charges including an exhibit with the addresses, services provided and costs. All services and costs incurred occurred prior to March 1, 2020 and the adoption of the Compassionate Code Compliance Policy.

MOTION:

Move to approve/disapprove Resolution 17-2020 - documenting the levy of municipal special assessment liens for unpaid demolition charges.

ATTACHMENT(S):

Resolution 17-2020
Exhibit “A”

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RESOLUTION NO. 17-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, DOCUMENTING THE ASSESSMENT OF THE COSTS INCURRED BY THE CITY PURSUANT TO SECTION 9-2.2(q) OF THE CITY CODE OF ORDINANCES FOR THE ABATEMENT OF CERTAIN NUISANCES (DEMOLITIONS) WITHIN THE CITY; LEVYING LIENS ON SAID PROPERTIES IDENTIFIED HEREIN; PROVIDING FOR THE RECORDING OF THIS RESOLUTION IN THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

WHEREAS, the City of Lake Worth Beach, Florida has, pursuant to sections 9-2.2(a) through 9-2.2(t) of the Code of Ordinances of the City of Lake Worth Beach, Florida, as amended, found and determined that the condition of certain properties or parcels of land as hereinafter described violated section 9-2.2(c) of said Code by reason of the existence of a structure that is unsafe which thereby has created a hazard declared to be a public nuisance; and

WHEREAS, the respective owners of the parcels of property hereinafter described were duly notified of the existence of the aforesaid nuisances on their properties and were required to abate the nuisances; and

WHEREAS, said owners have, after being duly notified by a Notice of Violation, failed to bring their property into code compliance; and

WHEREAS, the structures have been demolished by the City or its contractor at a cost to the City as set forth below; and

WHEREAS, it is recommended that in accordance with section 9-2.2(q) of the Code of Ordinances of the City of Lake Worth Beach, the costs incurred to abate said nuisances, which are assessed against the respective property owners as special assessment liens, be hereby documented and recorded against the properties in the Public Records of the Palm Beach County, Florida.

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

Section 1. The foregoing recitals are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this resolution.

Section 2. Legislative Determinations. It is hereby ascertained and declared that the demolitions of the structures on the properties listed in **Exhibit "A"** (attached hereto and

46 incorporated herein) provided a special benefit to each parcel assessed, based upon the
47 following legislative determinations:

48
49 (A) It is hereby ascertained, determined, and declared that each assessed
50 parcel has benefitted by the City's provision of demolition services in an amount not less
51 than the amount of the demolition services costs imposed against each parcel.

52
53 (B) It is fair and reasonable to assess the demolition services costs in the
54 amounts actually expended by the City to benefit each assessed parcel.

55
56 **Section 3.** In accordance with secs. 9-2.2(p) and (q) of the Code of Ordinances, at the
57 time services were provided, all costs incurred by the City in the abatement of nuisances
58 on the following parcels of land, along with an administrative fee, were levied and
59 assessed against said properties as municipal special assessment liens on the properties
60 identified and, in the amounts, indicated on the attached "**Exhibit A**". To each of the
61 aforesaid lien amounts shall be added the cost to reimburse the City to record each lien
62 in the Public Records of Palm Beach County, Florida. The City Commission is hereby
63 documenting such special assessment liens through this resolution.

64
65 **Section 4.** Said liens shall be prior in dignity to all other liens, encumbrances, titles and
66 claims against the property and equal in rank and dignity with ad valorem taxes and shall
67 remain on such property until paid. A failure to pay any such lien, even a lien upon
68 homesteaded property, may result in a loss of title to property.

69
70 **Section 5.** Said liens shall bear interest from the date of adoption of this Resolution at
71 the legal rate until fully paid.

72
73 **Section 6.** The City Clerk is hereby directed to record a certified copy of this resolution
74 in the Public Records of Palm Beach County, Florida. The failure to record a certified
75 copy of this resolution shall not affect the validity of any special assessment.

76
77 **Section 7.** The Finance Department is hereby directed to mail a copy of this resolution
78 to the owners of the parcels of land levied hereby at the last known address of such
79 owner.

80
81 **Section 8.** Such assessment liens, together with interest, administrative fees costs,
82 and reasonable attorneys' fees shall be enforced and collected, and may be foreclosed,
83 pursuant to the Code of Ordinances of the City of Lake Worth Beach and applicable
84 provisions of law. Such assessment liens, if they remain unpaid, may also be collected
85 pursuant to the uniform method set forth in sec. 197.3632, Fla. Stat. or through any other
86 remedy available at law or in equity.

87
88 **Section 9.** All resolutions or parts of resolutions in conflict herewith are hereby
89 repealed.

90
91 **Section 10.** If any provision of this resolution or the application thereof to any person or
92 circumstances is held invalid, the invalidity shall not affect other provisions or applications

93 of this resolution which can be given effect without the invalid provision or application and
94 to this end the provisions of this resolution are declared severable.

95
96 **Section 11.** This resolution shall take effect upon adoption.

97
98 The passage of this resolution was moved by _____,
99 seconded by _____, and upon being put to a vote, the vote was as
100 follows:

- 101
102 Mayor Pam Triolo
103 Vice Mayor Andy Amoroso
104 Commissioner Scott Maxwell
105 Commissioner Omari Hardy
106 Commissioner Herman Robinson

107
108 The Mayor thereupon declared this resolution duly passed and adopted on this 5th
109 day of May, 2020.

110
111 LAKE WORTH BEACH CITY COMMISSION

112
113
114 By: _____
115 Pam Triolo, Mayor

116 ATTEST:

117
118
119 _____
120 Deborah M. Andrea, CMC, City Clerk
121

DEMOLITIONS

CASE #	OWNER	OWNER ADDRESS	OWNER CITY/STATE	PCN	LEGAL	PROPERTY ADDRESS	INVOICE AMOUNT
19-1994	S PINE ST LAND TRUST MARTIN ANTONIO G ESQ TR	1420 CELEBRATION BLVD STE 200	KISSIMMEE FL 34747 5162	38-43-44-28-03-000-0280	ADD 1 TO LAKEVIEW HGTS LT 28	616 S PINE ST	\$ 18,132.90

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Community Sustainability

TITLE:

Resolution No. 18-2020 – documenting the levy of municipal special assessment liens for unpaid lot clearing charges

SUMMARY:

This resolution documents the assessment of the costs incurred by the City for lot clearing services and the levy of such costs as special assessment liens against the properties identified in the resolution.

BACKGROUND AND JUSTIFICATION:

Pursuant to the provisions of sections 12-38 through 12-42 of the Code of Ordinances (the “Lot Clearing Ordinance”), the owners of certain parcels of real property were notified of the existence of debris, vegetation, tree or other matter thereon which were determined to create a hazard declared to be a public nuisance and a violation of the City’s Lot Clearing Ordinance. Certain owners failed to abate such nuisances and the City or its contractor, in accordance with the procedures set forth in the Lot Clearing Ordinance, have abated said nuisances by clearing the offending lots. In accordance with section 12-42, the costs incurred by the City to abate said nuisances were assessed against each property as a special assessment lien at the time services were provided. The list of properties assessed for unpaid lot clearing charges, along with the associated administrative costs, total **\$19,287.33** and are attached to Resolution No. 18-2020 as Exhibit “A”. If not paid, these liens may be foreclosed by the City or they may be certified to the tax collector for collection pursuant to the uniform method provided in section 197.3632, Florida Statutes

Attached is the proposed resolution documenting the levy of the special assessments for unpaid lot clearing charges including a spreadsheet of addresses, services provided and costs. All services and costs incurred occurred prior to March 1, 2020 and the adoption of the Compassionate Code Compliance Policy.

MOTION:

Move to approve/disapprove Resolution 18-2020 – documenting the levy of municipal special assessment liens for unpaid lot clearing charges.

ATTACHMENT(S):

Resolution 18-2020
Exhibit “A”

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5 RESOLUTION NO. 18-2020 OF THE CITY OF LAKE WORTH BEACH, FLORIDA,
6 DOCUMENTING THE ASSESSMENT OF THE COSTS INCURRED BY THE CITY
7 PURSUANT TO SECTION 12-42 OF THE CITY CODE OF ORDINANCES FOR THE
8 ABATEMENT OF CERTAIN NUISANCES (LOT CLEARING) WITHIN THE CITY;
9 LEVYING LIENS ON SAID PROPERTIES IDENTIFIED HEREIN; PROVIDING FOR THE
10 RECORDING OF THIS RESOLUTION IN THE PUBLIC RECORDS OF PALM BEACH
11 COUNTY, FLORIDA; PROVIDING A SEVERABILITY CLAUSE, AN EFFECTIVE DATE
12 AND FOR OTHER PURPOSES.

13
14 WHEREAS, the City of Lake Worth Beach, Florida has, pursuant to sections 12-
15 38 through 12-42 of the Code of Ordinances of the City of Lake worth beach, Florida, as
16 amended, found and determined that the condition of certain properties or parcels of land
17 as hereinafter described violated section 12-38 of said Code by reason of the existence
18 of debris, vegetation, tree, or other matter thereon and thereby created a hazard declared
19 to be a public nuisance; and

20
21 WHEREAS, the respective owners of the parcels of property hereinafter described
22 were duly notified of the existence of the aforesaid nuisances on their properties and were
23 required to abate the nuisances; and

24
25 WHEREAS, said owners have, after being duly notified by a Notice of Violation,
26 failed to bring their property into code compliance; and

27
28 WHEREAS, the lots have been cleared of debris, vegetation, tree or other public
29 nuisance thereon by the City or its contractor at a cost to the City as set forth below; and

30
31 WHEREAS, it is recommended that in accordance with section 12-42 of the Code
32 of Ordinances of the City of Lake Worth Beach, the costs incurred to abate said
33 nuisances, which are assessed against the respective properties as special assessment
34 liens, be hereby documented and recorded against the properties in the Public Records
35 of the Palm Beach County, Florida.

36
37
38 NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE
39 CITY OF LAKE WORTH BEACH, FLORIDA, that:

40
41 **Section 1.** The foregoing recitals are hereby ratified and confirmed as being true and
42 correct and are hereby made a specific part of this resolution.

44 **Section 2.** Legislative Determinations. It is hereby ascertained and declared that the
45 lot clearing on the properties listed in **Exhibit "A"** (attached hereto and incorporated
46 herein) provided a special benefit to each parcel assessed, based upon the following
47 legislative determinations:

48
49 (A) It is hereby ascertained, determined, and declared that each assessed
50 parcel has benefitted by the City's provision of lot clearing services in an amount not less
51 than the amount of the lot clearing services costs imposed against each parcel.

52
53 (B) It is fair and reasonable to assess the lot clearing services costs in the
54 amounts actually expended by the City to benefit each assessed parcel.

55
56 **Section 3.** In accordance with sec. 12-42 of the Code of Ordinances, at the time
57 services were provided, all costs incurred by the City in the abatement of nuisances on
58 the following parcels of land, along with an administrative fee, were levied and assessed
59 against said properties as municipal special assessment liens on the properties identified
60 and in the amounts indicated on the attached "**Exhibit A**". To each of the aforesaid lien
61 amounts shall be added the cost to reimburse the City to record each lien in the Public
62 Records of Palm Beach County, Florida. The City Commission is hereby documenting
63 such special assessment liens through this resolution.

64
65 **Section 4.** Said liens shall be prior in dignity to all other liens, encumbrances, titles and
66 claims against the property and equal in rank and dignity with ad valorem taxes and shall
67 remain on such property until paid. A failure to pay any such lien, even a lien upon
68 homesteaded property, may result in a loss of title to property.

69
70 **Section 5.** Said special assessment liens shall bear interest from the date of adoption
71 of this resolution at the legal rate until fully paid.

72
73 **Section 6.** The City Clerk is hereby directed to record a certified copy of this resolution
74 in the Public Records of Palm Beach County, Florida. The failure to record a certified
75 copy of this resolution shall not affect the validity of any special assessment.

76
77 **Section 7.** The Finance Department is hereby directed to mail a copy of this resolution
78 to the owners of the parcels of land levied hereby at the last known address of such
79 owner.

80 **Section 8.** Such assessment liens, together with interest, administrative fees costs,
81 and reasonable attorneys' fees shall be enforced and collected, and may be foreclosed,
82 pursuant to the Code of Ordinances of the City of Lake worth beach and applicable
83 provisions of law. Such assessment liens, if they remain unpaid, may also be collected
84 pursuant to the uniform method set forth in sec. 197.3632, Fla. Stat. or through any other
85 remedy available at law or in equity.

86
87 **Section 9.** All resolutions or parts of resolutions in conflict herewith are hereby
88 repealed.

89

90 **Section 10.** If any provision of this resolution or the application thereof to any person or
91 circumstances is held invalid, the invalidity shall not affect other provisions or applications
92 of this resolution which can be given effect without the invalid provision or application and
93 to this end the provisions of this resolution are declared severable.

94
95 **Section 11.** This resolution shall take effect upon adoption.

96
97 The passage of this resolution was moved by Commissioner _____,
98 seconded by Commissioner _____, and upon being put to a vote, the vote
99 was as follows:

- 100 Mayor Pam Triolo
- 101 Vice Mayor Andy Amoroso
- 102 Commissioner Scott Maxwell
- 103 Commissioner Omari Hardy
- 104 Commissioner Herman Robinson

105
106
107 The Mayor thereupon declared this resolution duly passed and adopted on this 5th
108 day of May, 2020.

109
110 LAKE WORTH BEACH CITY COMMISSION

111
112
113 By: _____
114 Pam Triolo, Mayor

115 ATTEST:

116
117
118 _____
119 Deborah M. Andrea, CMC, City Clerk
120

LOT CLEARINGS

CASE #	OWNER	MAILING ADDRESS	MAILING CITY/STATE	PCN	LEGAL DESCRIPTION	PROPERTY ADDRESS	INVOICE AMOUNT
18-5432	S PINE ST LAND TRUST MARTIN ANTONIO G ESQ TR	1420 CELEBRATION BLVD STE 200	KISSIMMEE FL 34747 5162	38-43-44-28-03-000-0280	ADD 1 TO LAKEVIEW HGTS LT 28	616 S PINE ST	\$ 567.20
19-1245	RIVASDARDAN AMANDA S & CELESTINA MALDONADO	417 S D ST	LAKE WORTH , FL 33460-4345	38-43-44-21-15-139-0240	TOWN OF LAKE WORTH LTS 24 & 25 BLK 139	417 S D ST	\$ 2,349.90
19-1089	LEVENFOX INVESTMENT GROUP LLC	1771 S CONGRESS AVE STE 7	WEST PALM BEACH FL 33406 6606	38-43-44-21-15-062-0110	TOWN OF LAKE WORTH LT 11 BLK 62	222 N D ST	\$ 668.50
19-1074	BARRIOS CARLOS	2520 IDA WAY	WEST PALM BEACH FL 33415 7402	38-43-44-27-01-026-0051	LAKE WORTH TOWN OF ADD 1, LT 5 (LESS E 42.7 FT) BLK 26	912 S J ST	\$ 1,230.24
19-1700	S PINE ST LAND TRUST	1420 CELEBRATION BLVD STE 200	KISSIMMEE FL 34747 5162	38-43-44-28-03-000-0280	ADD 1 TO LAKEVIEW HGTS LT 28	616 S PINE ST	\$ 295.90
19-2287	BOYLE PATRICK	513 CONREY TRL	WEST GROVE PA 19390 1363	38-43-44-15-16-003-0070	NORTH LAKE WORTH LOT 7 BLK 3	1528 N N ST	\$ 633.20
19-2443	FOR THE CHILDREN	1718 DOUGLAS ST	LAKE WORTH FL 33460	38-43-44-34-02-000-0510	AMENDED PL OF LATONA COURT LTS 51 TO 54 INC	609 LATONA AVE	\$ 1,349.50
19-2636	MALDONADO CELESTINA RIVASDARDAN AMANDA S	417 S D ST	LAKE WORTH FL 33460 4345	38-43-44-21-15-139-0240	TOWN OF LAKE WORTH LTS 24 & 25 BLK 139	417 S D ST	\$ 247.18
19-2598	JOHNSON BRUCE	412 S B ST	LAKE WORTH FL 33460 4338	38-43-44-21-15-137-0061	TOWN OF LAKE WORTH N 25 FT OF LT 6 BLK 137	412 S B ST	\$ 626.43
19-2470	MAESEL SHAWN R	105 E PALMETTO PARK RD	BOCA RATON FL 33432 4801	38-43-44-21-15-118-0091	TOWN OF LAKE WORTH N 1/2 OF LT 9 & LT 10 BLK 118	420 N H ST	\$ 308.43
19-2963	S PINE ST LAND TRUST MARTIN ANTONIO G ESQ TR	1420 CELEBRATION BLVD STE 200	KISSIMMEE FL 34747 5162	38-43-44-28-03-000-0280	ADD 1 TO LAKEVIEW HGTS LT 28	616 S PINE ST	\$ 347.04
19-2748	KLAUSMEYER HOLDINGS LLC	7183 CHARLESTON POINT DR	LAKE WORTH FL 33467 7743	38-43-44-21-15-066-0130	TOWN OF LAKE WORTH LT 13 BLK 66	215 N C ST	\$ 1,289.94
19-3016	BOYLE PATRICK	513 CONREY TRL	WEST GROVE PA 19390 1363	38-43-44-15-16-003-0070	NORTH LAKE WORTH LOT 7 BLK 3	1528 N N ST	\$ 488.45
19-2852	PADMA RENTAL HOLDINGS LLC	6412 MELALEUCA LN	LAKE WORTH FL 33463 3807	38-43-44-21-15-124-0040	TOWN OF LAKE WORTH LTS 4 & 5 BLK 124	410 N E ST	\$ 626.70
19-2985	REISINGER JOSEPH	1128 S N ST APT A	LAKE WORTH FL 33460 5204	38-43-44-21-15-092-0170	TOWN OF LAKE WORTH LTS 17 & 18 BLK 92	331 N M ST	\$ 463.50
19-2763	LEVENFOX INVESTMENT GROUP LLC	1771 S CONGRESS AVE STE 7	WEST PALM BEACH FL 33406 6606	38-43-44-21-15-062-0110	TOWN OF LAKE WORTH LT 11 BLK 62	222 N D ST	\$ 176.90
19-3236	DALCOURT JUDITH	8943 NW 23RD ST	POMPANO BEACH FL 33065	38-43-44-21-1-503-0141	TOWN OF LAKE WORTH W25 FT & E25 FT OF LT 15	1418 LAKE AVE	\$1,026.08

LOT CLEARINGS

CASE #	OWNER	MAILING ADDRESS	MAILING CITY/STATE	PCN	LEGAL DESCRIPTION	PROPERTY ADDRESS	INVOICE AMOUNT
19-3478	MTAG CUST FOR HAYDEN MANAGEMENT LLC	PO BOX 409584	ATLANTA GEORGIA 30384 9584	38-43-44-21-15-082-0010	TOWN OF LAKE WORTH LT BLK 82	302 N G ST	\$433.41
19-3317	MAESEL SHAWN R	105 E PALMETTO PARK RD	BOCA RATON FL 33432 4801	38-43-44-21-15-118-0091	TOWN OF LAKE WORTH N 1/2 OF LT 9 & LOT 10 BLK 118	420 N H ST	\$296.41
19-3324	CITRUS LAND & TIMBER INC	1908 NW 4TH AVE APT 112	BOCA RATON FL 33432	38-43-44-21-15-064-0030	TOWN OF LAKE WORTH LTS 3 TO 5 INC BLK 64	204 N C ST	\$605.66
19-3670	S PINE ST LAND TRUST MARTIN ANTONIO G ESQ TR	1420 CELEBRATION BLVD STE 200	KISSIMMEE FL 34747	38-43-44-28-03-000-0280	ADD 1 TO LAKEVIEW HGTS LT 28	616 S PINE ST	\$276.78
19-3680	1031 N J ST LAND TRUST CHRISTOPHER HOUSE OF HOPE INC TR	931 VILLAGE BLVD STE 905 358	WEST PALM BEACH FL 33409	38-43-44-21-15-310-0090	TOWN OF LAKE WORTH LT 9 BLK 310	1031 N J ST	\$700.42
19-3885	MALDONADO CELESTINA RIVASDARDAN AMANDA S	417 S D ST	LAKE WORTH BEACH FL 33460	38-43-44-21-15-139-0240	TOWN OF LAKE WORTH LTS 24 & 25 BLK 139	417 S D ST	\$246.65
19-4294	HAAS ROY H TRUST	517 N L ST	LAKE WORTH BEACH FL 33460	38-43-44-21-15-154-0230	TOWN OF LAKE WORTH LTS 23 & 24 BLK 154	517 N L ST	\$2,318.39
19-4331	CUSTOM LW 511 LLC	4371 NORTHLAKE BLVD STE 305	PALM BEACH GARDENS FL 33410	38-43-44-21-15-213-0071	TOWN OF LAKE WORTH E 45 FT OF N 20 FT OF LT 7 & E 45 FT OF LT 8 BLK 213	511 6TH AVE S	\$801.08
19-4273	JOHNSON BRUCE	412 S B ST	LAKE WORTH BEACH FL 33460	38-43-44-21-15-137-0061	TOWN OF LAKE WORTH N 25 FT OF LT 6 BLK 137	412 S B ST	\$271.08
19-4227	KEIRN MICHAEL & SCARCELLA KEIRN ANNETTE	1420 HILLCERST DR	LAKE WORTH BEACH FL 33460	38-43-44-33-07-000-0150	LAKE OSBORNE MANOR LT 15	1420 HILLCERST DR	\$919.14
						TOTALS	\$ 19,287.33

CITY OF LAKE WORTH BEACH

PROCLAMATION

- WHEREAS,** Water is a basic and essential need of every living creature; and
- WHEREAS,** The State of Florida, Water Management Districts and the City of Lake Worth Beach are working together to increase awareness about the importance of water conservation; and
- WHEREAS,** The Florida Section of the American Water Works Association has designated April, typically a dry month when water demands are most acute, Florida's Water Conservation Month, to educate citizens about how they can help save Florida's precious water resources; and
- WHEREAS,** Lake Worth Beach has always encouraged and supported water conservation through various educational programs and special events; and
- WHEREAS,** Every business, industry, school and citizen can make a difference when it comes to conserving water; and
- WHEREAS,** Every business, industry, school and citizen can help by saving water and thus promote a healthy economy and community; and

NOW, THEREFORE, I, Pam Triolo, Mayor of the City of Lake Worth Beach, Florida, by virtue of the authority vested in me, do hereby proclaim

APRIL 2020

as

WATER CONSERVATION MONTH

and call upon each citizen and business in the City of Lake Worth Beach to help protect our precious resource by practicing water saving measures and becoming more aware of the need to save water.

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 5th day of May 2020.

Pam Triolo, Mayor

ATTEST:

Deborah M. Andrea, City Clerk

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Legal

TITLE:

Consideration of a Purchase and Sale Agreement with the Lake Worth Community Redevelopment Agency ("CRA") for properties located at 1602 Lake Avenue and 15 North B Street

SUMMARY:

Pursuant to a mediation settlement agreement entered into between the City and then owner, 1511 Lucerne, LLC, involving property located at 1511 Lucerne Avenue in Lake Worth Beach, the City and CRA have agreed to enter into a Purchase and Sale Agreement for properties located at 1602 Lake Avenue and 15 North B Street to facilitate development of the properties.

BACKGROUND AND JUSTIFICATION:

In August 2019, the City Commission entered into a mediation settlement agreement with then owner, 1511 Lucerne, LLC, to settle code enforcement liens on properties owned by 1511 Lucerne, LLC, and to facilitate development of three parcels: 15 North B Street, 7 North B Street, and 1602 Lake Avenue. The City owns 15 North B Street and 1602 Lake Avenue. WENJO Partners owned 7 North B Street at the time of the mediation and shortly thereafter sold its interest to 7 North B, LLC, whose primary manager is Bhavin Shah.

In a separate agenda item, 7 North B, LLC will be selling 7 North B Street to the City as was contemplated by and in accordance with the mediation settlement agreement. The City will thereafter assign its interest to the CRA. Once the CRA has control of all three parcels, it will develop and issue a request for proposals for a qualified developer to develop a project and site plan for the three properties.

This Purchase and Sale Agreement is one of the three components necessary to bring a project to fruition.

MOTION:

Move to approve /approve with conditions the Purchase and Sale Agreement with the Lake Worth Community Redevelopment Agency.

ATTACHMENT(S):

Fiscal Impact Analysis – n/a

Purchase and Sale Agreement with the CRA

Mediation Settlement Agreement approved by the Commission in Aug. 2019

Map of Area

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (hereinafter the "Agreement") is made on this _____ day of _____, 2020, and entered into by and between the **LAKE WORTH BEACH COMMUNITY REDEVELOPMENT AGENCY**, a Florida public body corporate and politic created pursuant to Section 163.356 F.S., or its successors and assigns (hereinafter the "PURCHASER"), whose address is 1121 Lucerne Avenue, Lake Worth Beach, FL 33460, and the **CITY OF LAKE WORTH BEACH**, a Florida municipal corporation (hereinafter the "SELLER"), whose address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460.

W I T N E S S E T H:

WHEREAS, on or about October 29, 2019, the SELLER entered into a settlement agreement with the owner of 7 North B. Street, Lake Worth ("7 North B Property"), to facilitate the development of the SELLER's property located at 1602 Lake Avenue and 15 North B Street, which lay on either side of the 7 North B Property (all three parcels collectively referred to as the "Project Property"); and

WHEREAS, in order to develop the Project Property, the PURCHASER agreed to facilitate the issuance of a Request for Proposals ("RFP"), and to enter into an agreement with the successful, qualified proposer to develop the Project Property; and

WHEREAS, in order to proceed with the RFP process, the SELLER and PURCHASER desire to enter into this Agreement that will allow the PURCHASER to issue the RFP, and ultimately negotiate and enter into a Development Agreement with the successful, qualified proposer; and

WHEREAS, in the event the PURCHASER does not enter into a Development Agreement with a proposer to develop the Project Property, the PURCHASER and SELLER agree that this Agreement shall terminate.

In consideration of the mutual agreements, and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement shall have the following

meanings:

1.1. Property. That certain property located at 15 North B Street and 1602 Lake Avenue, Lake Worth Beach, Florida, which Property is more particularly described with the legal description in **Exhibit "A,"** attached hereto and made a part hereof.

1.2. Closing. The delivery of a General Warranty Deed to PURCHASER concurrently with the delivery of the purchase price and other cash consideration to SELLER.

1.3. Closing Date. The Closing Date shall occur contemporaneously with the closing of the sale of the Project Property, to a qualified developer, subject to any extensions agreed to by the parties.

1.4. Deed. A General Warranty Deed, in its statutory form, which shall convey the Property from SELLER to PURCHASER.

1.5. Earnest Money. The sum of One Hundred and 00/100 (\$100.00) which is to be delivered from PURCHASER to Escrow Agent pursuant to Section 2.1 of this Agreement.

1.6. Effective Date means the date that the SELLER executes this Agreement and delivers an unaltered counterpart hereof to the PURCHASER.

1.7. Escrow Agent means Weiss Serota Helfman Cole & Bierman, P.L., 1200 N. Federal Highway, Suite 312, Boca Raton, FL 33432.

1.8. PURCHASER's Address. Purchaser's mailing address is 1121 Lucerne Avenue, Lake Worth Beach, Florida 33460.

1.9. SELLER's Address. Seller's mailing address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460.

1.10. 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

2.1. Subject to the provisions of this Agreement, the 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 One Hundred and 00/100 Dollars (\$100.00), upon and subject to the terms and conditions set forth herein.

2.2. Earnest Money. PURCHASER, within three (3) calendar days after the Effective Date, shall deposit and cause to be placed in an escrow account maintained by Weiss Serota Helfman Cole & Bierman, PL (“Escrow Agent”) an amount of One Hundred and 00/100 Dollars (\$100.00) (“Earnest Money). Purchaser’s obligation to close the transaction in accordance with the provisions of this Agreement is contingent upon the SELLER’s ability to deliver good and marketable title for the Property in accordance herewith. Should the SELLER default hereunder, the PURCHASER shall be entitled to an immediate refund of the entire sum of the Earnest Money held by the Escrow Agent. At Closing, a copy of the closing statement signed by the SELLER and the PURCHASER shall be conclusive evidence of the SELLER’s right to receive the Earnest Money deposit.

2.3. PURCHASER shall pay the balance of the Purchase Price, if any, to SELLER, net of applicable prorations, at Closing by readily negotiable funds drawn on a financial institution pursuant to the terms of this Agreement or by wire transfer to an account identified in writing by SELLER.

2.4. The Purchase includes:

2.4.1. All buildings and improvements located on the Property;

2.4.2. All fixtures and articles of personal property, if any attached to or used in connection with the Property as more particularly identified on **Exhibit “B”** (personal property) as provided by SELLER, which is attached hereto and made a part hereof. SELLER represents that such fixtures and articles are paid for and are owned by SELLER free and clear of any lien or encumbrance;

2.4.3. All right-of-ways, alleys, privileges, easements and appurtenances which are on or benefit all the Property;

- 2.4.4. All right, title and interest, if any, of SELLER in any property lying in the bed of any public or private street or highway, opened or proposed, in front any of the adjoining property to the center line thereof;
- 2.4.5. 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 and all contracts and leases, if applicable, with respect to the Property;
- 2.4.6. The conveyance also includes any right to any unpaid award relative to the Property to which the SELLER may be entitled: (1) due to taking by condemnation of any right, title or interest of the SELLER and, (2) for any damage to the Property due to change of grade of any street or highway. SELLER shall deliver to PURCHASER at Closing, or thereafter on demand, proper instruments for the conveyance of title and the assignment and collection of award and damages;
- 2.4.7. All development rights, if any, including but not limited to entitlements, water and sewer connection rights, air rights, mineral rights, any impact fee credits previously paid, concurrency rights, zoning rights, guaranties and warranties, if any, and any other intangible rights, if any, associated with the Property and all of SELLER's right, title and interest in any and all consents, authorizations, variances and waivers, licenses, permits and approvals (including vested rights) from any governmental or quasi-governmental authorities relating to the Property (and the development of same);
- 2.4.8. All of SELLER's right, title and interest in and to the rights related to the Property (and the development of same), which shall be identified as all water and sewer connections, water wells and other sources of water, water permits, irrigation systems, pumping facilities and pipelines related thereto.

3. INSPECTIONS.

3.1. PURCHASER shall have fifteen (15) days, the "Inspection Period," to determine (a) whether or not the Property is satisfactory for PURCHASER's purposes in PURCHASER's sole and absolute discretion, and (b) whether or not the Property has adequate water, waste water, electric, telephone 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.

3.2. 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. In the event that any inspections and any review of documents conducted by the PURCHASER relative to the Property during this Inspection Period prove unsatisfactory in any fashion, the PURCHASER, at PURCHASER's sole discretion, shall be entitled to terminate this Agreement prior to the end of the fifteen (15) day Inspection Period and PURCHASER also agrees to indemnify and hold SELLER harmless from any losses, claims, costs, and expenses, including reasonable attorney's fees, which may result from or be connected with any acts or omissions of PURCHASE during inspections that are done pursuant hereto. PURCHASER will provide written notice by mail or facsimile to SELLER and/or SELLER's counsel and receive an immediate refund of all Earnest Money deposits plus interest paid hereto in the event the PURCHAER determines that the Property is unsuitable during the Inspection Period or proceed to Closing as set forth herein.

3.3. REAL PROPERTY SOLD AS IS, WHERE IS RELEASE: SELLER makes and shall make no warranty regarding the title to the Property except as to any warranties which will be contained in the instruments to be delivered by SELLER at Closing in accordance with this Agreement, and SELLER makes and shall make no representation or warranty either expressed or implied (except as specifically set forth in the 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. The

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 specifically set forth in this Agreement, PURCHASER is not relying on any representation or warranties of any kind whatsoever, express or implied, from SELLER, its agents, officers, or employees, as to any matters concerning the Property including, without limitation any matters 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, 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.

3.4. 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 any material, waste or substance which is petroleum, asbestos, polychlorinated, biphenyls, flammable explosives or radioactive materials.

3.5. At any time prior to completion of the Inspection Period, for any reason, or for no reason, PURCHASER shall be entitled to terminate this Agreement by providing written notice by mail, overnight delivery service, or by facsimile to SELLER and/or SELLER's counsel, at any time prior to 5:00 p.m. Florida time on that date which is the second business day next following the expiration of the Inspection Period and receive an immediate refund of the Earnest Money and neither party shall have any further rights, liabilities or obligations under this Agreement. In the event that PURCHASER fails to provide a timely notice of termination, this Agreement shall not terminate and the PURCHASER and SELLER shall proceed to Closing as set forth herein. Except for matters related to SELLER's negligence, PURCHASER does hereby agree to hold SELLER harmless from any damages to personal injury or to the Property during inspections conducted on the Property.

3.6. PURCHASER's right to inspect and enter onto the Property during 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 five (5) business days after PURCHASER receives written notice of the existence of the lien.

3.7. 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 may continue to have access to the Property after the expiration of the Inspection Period upon reasonable notice

to SELLER for all purposes PURCHASER may desire or deem necessary.

4. SELLER'S REPRESENTATIONS AND COVENANTS. To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, 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, (ii) shall be true on the Closing Date, and (iii) shall survive the Closing: In that event, PURCHASER shall be provided immediate notice as to the change to the following representations:

4.1. At all times prior to Closing, SELLER shall keep the Property free and clear of any and all liens for work or materials furnished to or contracted for, by or on behalf of SELLER prior to the Closing.

4.2. There are no pending or to SELLER's knowledge contemplated condemnation proceedings affecting the Property or any part thereof.

4.3. No individual, general or limited partnership, limited liability partnership or company, corporation, trust, estate, real estate investment trust, association or any other entity has or is entitled to possession of any part of the Property.

4.4. The Property is vacant and no tenant or other occupant, no licensor or franchisor and no other person, firm, corporation, or other entity has any right or option to lease or acquire the Property or any portion thereof. PURCHASER has the exclusive right to purchase the Property and SELLER shall not engage in any negotiations with or solicit offers from any other party relating to the lease or sale of the Property.

4.5. 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, including environmental laws, 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.

4.6. SELLER shall not encumber the Property, file any application to change the current zoning or land use of the Property unless requested by PURCHASER, or enter into any contracts relating to the Property unless subject to thirty (30) day termination provisions.

4.7. All activities at the Property have been conducted in compliance with all statutes, ordinances, regulations, orders, and requirements of common law concerning (A) those activities; (B) repairs or construction of any improvements; (C) handling of any materials; (D) discharges to the air, soil, surface water, or groundwater; and (E) storage, treatment, or disposal of any waste at or connected with any activity at the Property.

4.8. To the best of SELLER's knowledge, no Hazardous Materials are present on, over or under the Property, or are migrating from any premises adjacent to the Property, nor have they been generated, stored, reacted, disposed of, discharged, released, emitted or otherwise handled on, over, under, from or any manner affecting the Property or any premises adjacent to the Property. 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 any material, waste or substance which is petroleum, asbestos, polychlorinated, biphenyls, flammable explosives or radioactive materials.

4.9. From and after the Effective Date, SELLER shall maintain the Property and shall cause the Property to be maintained in a manner consistent with past practices and in a manner fully compliant with applicable law and the terms of this Agreement and the SELLER shall reasonably endeavor to prevent the introduction of any Hazardous Materials onto the Property and the SELLER shall reasonably endeavor to prevent the release 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. SELLER will not (i) mortgage or subject any of the Property to a lien or other encumbrance that is not discharged on or prior to Closing, (ii) permit any construction lien for work performed or materials supplied to attach against any other property, (iii) execute or cause to be placed of record any document affecting title to any portion of the Property, nor shall SELLER execute, record or acquiesce to any new encumbrance affecting the Property or any amendment/supplement to any existing agreement or instrument which encumbers the Property, or (iv) enter into or subject any portion of the Property to any option contract, sales contract, or any other agreement pursuant to which any party shall have any right to occupy any portion of the Property that would be binding on PURCHASER or the Property upon consummation of the transaction contemplated herein.

4.10. SELLER has full power and authority to enter into this Agreement and to assume and perform its obligations hereunder.

4.11. SELLER warrants that it will not, between the Effective Date and the Closing, without PURCHASER's prior written consent, create by its consent any encumbrances on the Property. For purposes of this provision, the term "encumbrances" shall mean any liens, claims, options, or other encumbrances, encroachments, rights-of-way or leases.

5. EVIDENCE OF TITLE.

5.1. Title to the Property. SELLER shall convey title to 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 such title shall be good and marketable and free and clear of all liens, assessments, restrictions, encumbrances, easements, leases, tenancies, claims or rights of use or possession and other title objects, except as otherwise set forth herein. PURCHASER shall, during the Inspection Period, secure a title insurance commitment issued by a title insurance underwriter committing to insure PURCHASER's title to the Property. The costs and expenses relative to the issuance of a title commitment and an owner's title policy shall be

borne by the PURCHASER.

5.2. PURCHASER shall have ten (10) calendar days from the date of receiving the title commitment to examine said commitment. If PURCHASER objects to any exception to title as shown in the title commitment, PURCHASER shall, within ten (10) days of receipt of said commitment, notify SELLER in writing specifying the specific exception(s) to which it objects. Any objection(s) of which PURCHASER has so notified SELLER, shall be cured by SELLER so as to enable the removal of said objection(s) from the title commitment within ten (10) days after PURCHASER has provided notice to SELLER. Within five (5) days after the expiration of SELLER'S time to cure any objection, SELLER shall send to PURCHASER a notice in writing (the "Cure Notice") stating either (i) that the objection has been cured and, in such case, enclosing evidence of such cure to PURCHASER's satisfaction with the requirement that SELER is obligated to cure any objection that can be cured by the payment of money and (ii) if SELLER is unable to cure such objection that cannot be cured by the payment of money, despite the good faith efforts of the SELLER to effectuate the cure, 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 five (5) days after receipt of a Cure Notice specifying an uncured objection, in which event all instruments and monies held by the Escrow Agent 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 objection.

5.3. Survey and Legal Description. During the Inspection Period, PURCHASER may order: (i) a current survey ("current" is defined to be certified within thirty (20) 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), shall be the legal description used in the Deed. The survey shall be certified to SELLER, PURCHASER and

the title insurance company issuing the title insurance.

6. PURCHASER'S REPRESENTATIONS.

PURCHASER hereby represents and warrants to the best of its knowledge that all of the following are true and correct as of Closing:

6.1 PURCHASER has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.

6.2 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.

6.3 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.

6.4 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.

6.5 No action by any federal, state, municipal or other governmental department, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon PURCHASER in accordance with its terms and conditions.

6.6 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 the representations contained in this Section 6 not being true and correct in all material respects.

7. TRANSFER OF TITLE SUBJECT TO.

Except as otherwise set forth, the Property shall be conveyed subject only to water lines, sanitary sewer, drainage, gas distribution, electrical and telephone easements of record. It shall be the sole and exclusive responsibility of the PURCHASER to coordinate with the City of Lake Worth Beach to relocate any utilities, and any such relocation costs and expenses shall be borne by the PURCHASER. In the event of any relocation of the utilities within the Property, PURCHASER shall provide to the City of Lake Worth Beach or the appropriate service provider, if applicable, easements for the relocated utilities.

8. RISK OF LOSS.

Risk of loss or damage from fire, other casualty, or both, is assumed by SELLER until the Deed is delivered by SELLER to PURCHASER. In the event any portion of the Property is destroyed by fire or other casualty then the PURCHASER shall proceed to close the transaction contemplated herein. In the event the damage results in increased costs to PURCHASER relating to demolition costs, Hazardous Material abatement costs, or both, as determined during the Inspection Period, or prior to the Closing Date the insurance proceeds equal to the amount of said increase in costs shall be paid to the PURCHASER and PURCHASER shall be entitled to a credit against the Purchase Price for any deductible not paid to PURCHASER.

9. CONDITIONS PRECEDENT TO CLOSING.

Each of the following events or occurrences ("Conditions Precedents") shall be a condition precedent to PURCHASER's obligation to close this transaction:

9.1 That the PURCHASER has not notified the SELLER that it has deemed the Property to be unsuitable for its intended purpose as a result of the Investigations conducted on the Property during the Inspection Period.

9.2 SELLER has performed all covenants, agreements and obligations, and complied with all conditions required by this Agreement to convey clear and marketable title of the Property to PURCHASER, prior to closing.

9.3 Approval of this Agreement by the Lake Worth Beach City Commission.

9.4 Approval of this Agreement by the Lake Worth Beach Community Redevelopment Agency Board of Commissioners.

10. CLOSING DOCUMENTS.

10.1 At Closing, SELLER shall deliver to PURCHASER a General Warranty Deed, Bill of Sale, if applicable, No Lien/Gap Affidavit, Non-Foreign Certification in accordance with Section 1445 of the Internal Revenue Code, 1099 Form and any other documents as listed as title requirements in Schedule B-I of the Title Commitment to assure the conveyance of good and marketable fee simple title of the Property to the PURCHASER.

11. CLOSING COSTS, TAXES AND PRORATIONS.

11.1 Ad Valorem Taxes. PURCHASER and SELLER shall comply with Section 196.295, Florida Statutes, with respect to the payment of prorated ad valorem taxes for the year of closing into escrow with the Palm Beach County Revenue Collector. In the event that, following the Closing, the actual amount of assessed real property tax on the Property for the current year is higher than any estimate of such tax used for purposes of the Closing, the parties shall re-prorate any amounts paid or credited based on such estimate as if paid in November. This shall survive the Closing.

11.2 SELLER's Closing Costs. SELLER shall pay for the following items prior to or at Closing:

11.2.1 Cost and expense related to updating the title and providing marketable title as provided herein.

11.3 PURCHASER's Closing Costs. PURCHASER shall pay for the following items prior to or at Closing,

11.3.1 Costs associated to appraisals, survey, environmental reports (phase I and phase II);

11.3.2 Documentary Stamps on the deed as provided under Chapter 201, Florida Statutes;

11.3.3 Title Update and Owner's Title Insurance Policy; and

11.3.4 Recording fees of the Warranty Deed, the Repurchase Agreement, and any other instrument as required to be recorded in the Public Records.

12. CLOSING DATE AND PLACE.

The Closing shall occur on the date noticed by PURCHASER to SELLER, but in no event later than the date of the closing of the sale of the Project Property, at the offices of the PURCHASER's attorney. In the alternative, the parties agree to provide for a closing by courier and wire transfer of funds necessary for Closing. Unless extended by the parties, in the event the Closing does not occur prior to February 3, 2021, this Agreement shall terminate, and the parties shall have no further obligations related hereto.

13. DEFAULT.

In the event of a default by SELLER, PURCHASER shall have the election of the following remedies, which shall include the return of the earnest money, and accrued interest as liquidated damages or equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or injunctive relief.

If the PURCHASER shall fail or refuse to consummate the transaction in accordance with the terms and provisions of this Agreement, all monies on deposit and interest earned on the deposit shall be immediately forfeited to SELLER as agreed upon liquidated damages and PURCHASER shall have no other responsibility or liability of any kind to SELLER by virtue of such default. SELLER's sole and entire remedy shall be restricted to retention of the earnest money.

14. CONTINGENCIES. PURCHASER's obligations under the Agreement are contingent upon the following:

14.1 That the PURCHASER is fully satisfied with its due diligence investigation conducted during the Inspection Period.

14.2 The conveyance of clear and marketable title to the Property.

14.3 That the environmental audit, if any, is satisfactory and acceptable to PURCHASER.

15. 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.

16. NOTICES.

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:

PURCHASER: Lake Worth Beach Community Redevelopment Agency
1121 Lucerne Avenue
Lake Worth, Florida 33460
Attn: Joan Oliva, Executive Director

With Copy to: David N. Tolces, Esq.
Weiss Serota Helfman Cole & Bierman, P.L.
1200 N. Federal Highway, Suite 312
Boca Raton, FL 33432
Telephone: (561) 835-2111
Fax: (954) 764-7770

SELLER: City of Lake Worth Beach
7 N. Dixie Highway
Lake Worth Beach, Florida 33460
Attn: Michael Bornstein, City Manager

With copy to: Glen J. Torcivia, City Attorney
7 N. Dixie Highway
Lake Worth Beach, Florida 33460

ESCROW AGENT: Weiss Serota Helfman Cole & Bierman, P.L.
1200 N. Federal Highway, Suite 312
Boca Raton, FL 33432
Telephone: (561) 835-2111

17. EFFECTIVE DATE.

This Agreement shall be deemed effective as of the Effective Date.

18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Florida. Venue shall be in the Federal or State Courts in Palm Beach County, Florida.

19. ENTIRE AGREEMENT.

All prior understandings and agreements between SELLER and PURCHASER are merged in this Agreement. This Agreement completely expresses their full agreement.

20. NO ORAL CHANGE.

This Agreement may not be changed or amended orally.

21. SUCCESSORS.

This Agreement shall apply to and bind the successors and assigns of SELLER and PURCHASER. The PURCHASER may not assign this agreement without first obtaining the written approval of the SELLER, which approval shall not be unreasonably withheld.

22. 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

23. 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.

24. 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates indicated below:

WITNESS:

Witness:

Print Name:

Attest:

Deborah M. Andrea, City Clerk



Witness



Witness



SELLER:

CITY OF LAKE WORTH BEACH,
a Florida municipal corporation

By: _____
Pam Triolo, Mayor

Signed on: _____


Approved as to Legal Sufficiency:

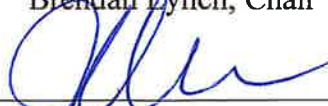
Glen J. Torcivia, City Attorney

PURCHASER:

LAKE WORTH BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: 

Brendan Lynch, Chair

By: 

Joan Oliva, Executive Director

Date: March 11, 2020.

ESCROW AGENT:

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.

By: _____

Title: _____

Date: _____, 2020.

EXHIBIT "A"
LEGAL DESCRIPTION

(SUBJECT TO VERIFICATION BY SURVEY THAT THE AFOREMENTIONED PARCELS OF REAL PROPERTY ARE: a) CONTIGUOUS, AND b) CONSTITUTE, IN THE AGGREGATE, ALL REAL PROPERTY WHICH IS THE SUBJECT OF THE RFP)

Address: 15 North B Street, Lake Worth Beach, Florida

Property Control Number: 38-43-44-21-15-501-0030

Address: 1602 Lake Avenue, Lake Worth Beach, Florida

Property Control Number: 38-43-44-21-15-501-0060

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH,
FLORIDA, a municipal corporation,

CASE NO.: 2018-CA-008086 MB

Plaintiff,

v.

1511 LUCERNE, LLC,
a Florida Corporation,

Defendant.

MEDIATION SETTLEMENT AGREEMENT

Plaintiff (also referred to as "City") and Defendant agree as follows, (subject to approval by the Lake Worth Beach City Commission):

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff agrees to accept \$6,320.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida, Plaintiff agrees to accept \$23,900.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
3. Plaintiff agrees at the time of signing this Agreement, Defendant is in compliance with regard to the above-referenced properties.
4. Plaintiff and Defendant shall jointly inform the Court of this settlement, and request a stay of the proceedings within 30 days following approval of this Agreement by the City Commission. Plaintiff shall file a "Notice of Voluntary Dismissal with Prejudice" of the above-captioned litigation no later than 10 days after receipt of payment of the fines, fees, and liens as referenced herein.

5. WENJO Partners, hereinafter referred to as "WENJO," is the Owner of property located at 7 North B Street, Lake Worth Beach, Florida. In an effort to reach agreement with the City, Defendant has induced WENJO to become a part of this Mediation Settlement Agreement. As such, WENJO agrees to enter into a Purchase and Sale Agreement with the City as it relates to 7 North B Street. The Purchase and Sale Agreement shall be in a form substantially similar to the FAR-BAR Contract, and provide, among other things, a specific purchase price that shall be determined as follows:

- a. The City shall order and provide to Defendant and WENJO an appraisal for the 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue properties, all located in the City of Lake Worth Beach, Florida, as though the properties were unified, ("The Project Property") within 30 days of execution of this Agreement.
- b. If Defendant/WENJO does not accept the appraisal obtained by the City, then Defendant/WENJO shall obtain its own appraisal of the Project Property within 30 days of receiving the City's appraisal.
- c. If the appraisals differ by less than 15%, then the parties shall split the difference between the two appraisals, and the resulting amount will be included in the Purchase and Sale Agreement. If the appraisals differ by more than 15%, then the parties shall split the cost of a third appraisal from an appraiser who the City's and Defendant/WENJO's appraisers shall select within 15 days. The third appraiser must provide the appraisal within 15 days of selection. The three appraisals shall then be averaged together, and the average of the appraisals shall determine the minimum purchase price for the sale of the Project Property ("The Purchase Price").
- d. Upon the sale of the Project Property, WENJO shall be entitled to receive an amount equal to the pro rata share of the Purchase Price based on the square footage of the 7 North B Street property in relation to the entire Project Property, less WENJO's pro rata share of all fees and costs incurred by the

Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

6. The closing on the sale of 7 North B Street shall be contingent on the approval of a site plan for a project ("Project") located on The Project Property by the City Commission and the expiration of all appeal periods.
7. The City shall be entitled to assign the Purchase and Sale Agreement to the CRA without having to obtain the consent of the Defendant/WENJO.
8. The Defendant/WENJO may assign its interest in the Purchase and Sale Agreement to a third party, subject to the consent of the City Commission and the CRA, such consent shall not be unreasonably withheld. The City Commission and the CRA shall consider the request for the assignment no later than sixty (60) days after receipt of the request for the assignment from Defendant/WENJO. The request for the assignment shall be provided to the City Manager with a copy to the City Attorney.
9. When the Purchase and Sale Agreement is assigned to the CRA, the CRA shall issue a Request for Proposals ("RFP") for the development and sale of The Project Property no later than 60 days after the execution of the Purchase and Sale Agreement by the City. If the Purchase and Sale Agreement is not assigned to the CRA, then the CRA's obligations contained in this Agreement shall become the City's obligation.
10. The RFP shall be awarded by the CRA to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020.
11. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of Defendant or WENJO, then the City shall have the right of first refusal to purchase 7 North B Street from WENJO for the Purchase Price as calculated through the process contained herein.

- 12. If the City does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, the Purchase and Sale Agreement shall terminate and WENJO shall retain ownership of 7 North B Street. In such event, the Defendant shall pay to Plaintiff the amounts stated herein as fines, administrative expenses, and attorneys fees no later than thirty (30) days following the expiration of the City's right of first refusal.
- 13. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees. Payment shall be made on or by closing, or as otherwise provided herein.
- 14. This Agreement may be amended by mutual agreement of both the Plaintiff and Defendant.
- 15. The Court reserves jurisdiction to enforce the terms of this Settlement Agreement.

Defendant (s)

Date

Plaintiff

Date

John F. Romano 6/10/19

[Signature] 7/14/19

Attorney

Date

Attorney

Date

[Signature]

7/19/19

[Signature] 7/10/19

City Attorney

Date

Pamela H. Ry 7/16/19

On behalf of WENJO Partnership

Date

John F. Romano
John Romano, Partner

6 JUL 2019

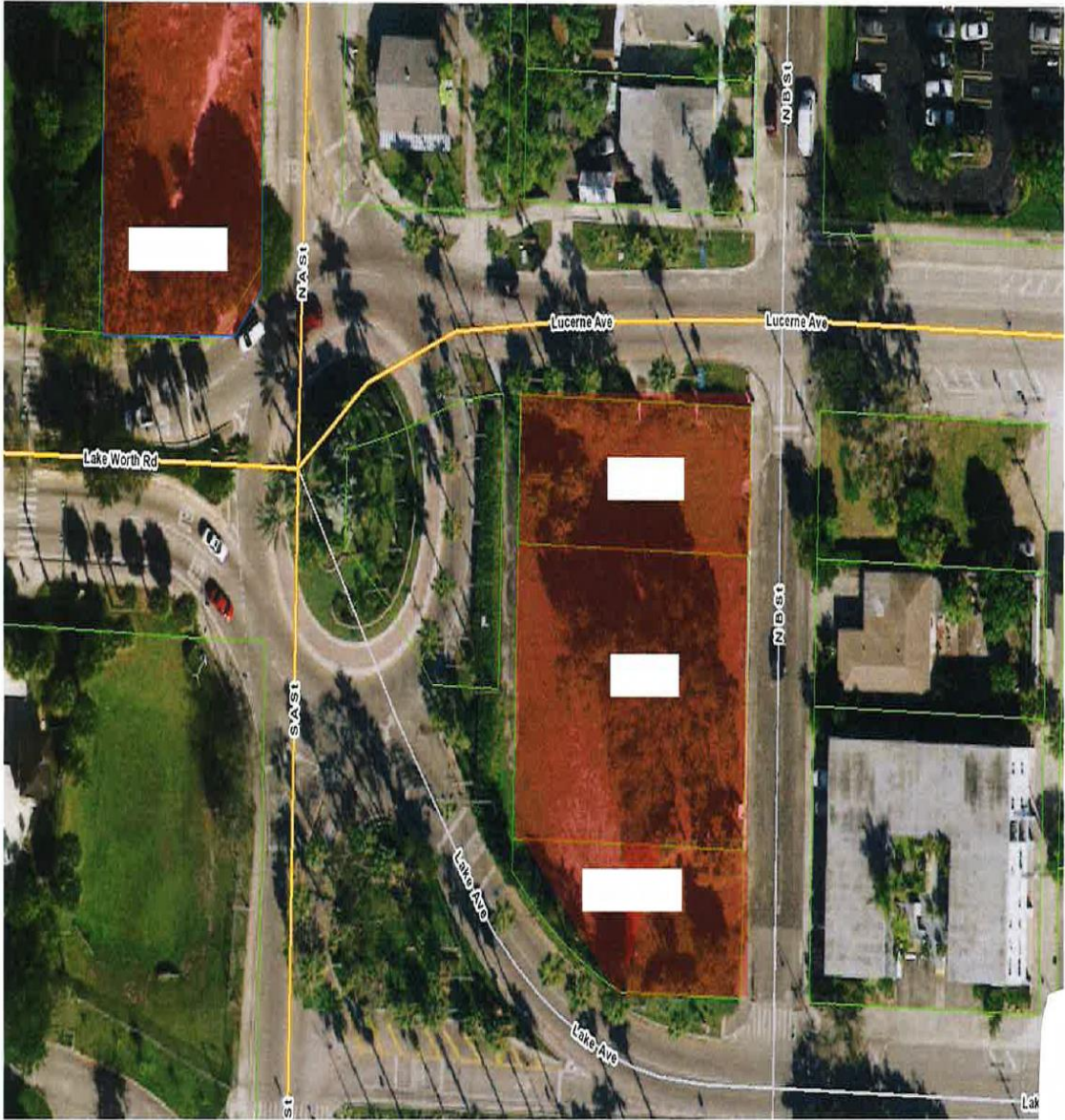


Figure 15 N B St., 7 N B St. and 1602 Lake Avenue

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Legal

TITLE:

Consideration of an Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach

SUMMARY:

Pursuant to a mediation settlement agreement entered into with 1511 Lucerne, LLC, and WENJO Partners, then owners of properties located at 1511 Lucerne Avenue and 7 North B Street in Lake Worth Beach, respectively, the City agreed to enter into a purchase and sale agreement with WENJO Partners to facilitate development of 7 North B Street. WENJO Partners sold its interest in the property to 7 North B, LLC, before an agreement to sell the property to the City could be facilitated. At this time, the Agreement for Purchase and Sale of Real Property with 7 North B, LLC is being presented to the commission for its consideration. Pursuant to the terms of the mediation settlement agreement, the sale price of 7 North B Street shall not be less than \$272,375.68, with the closing to take place after certain conditions have been met.

BACKGROUND AND JUSTIFICATION:

In August 2019, the City Commission entered into a mediation settlement agreement with then owner, 1511 Lucerne, LLC, to settle code enforcement liens on properties owned by 1511 Lucerne, LLC, and to facilitate development of three parcels: 15 North B Street, 7 North B Street, and 1602 Lake Avenue.

The City owns 15 North B Street and 1602 Lake Avenue. WENJO Partners owned 7 North B Street at the time of the mediation and shortly thereafter sold its interest to 7 North B, LLC, whose primary manager is Bhavin Shah.

In this transaction, 7 North B, LLC will be selling the 7 North B Street property to the City for not less than \$272,375.68, as was contemplated by, and in accordance with the mediation settlement agreement. The closing will not take place until after certain conditions have been met as outlined in the mediation settlement agreement.

If this agenda item is approved, then in a separate agenda item, the City will assign its interest in 7 North B Street to the Community Redevelopment Agency ("CRA").

In a third agenda item, the City Commission will consider entering into a Purchase and Sale Agreement with the CRA for properties the City owns at 1602 Lake Avenue and 15 North B Street.

Once the CRA has control of all three parcels, it will develop and issue a request for proposals for a qualified developer to develop a project and site plan for the three properties.

This Agreement for Purchase and Sale of Real Property is one of the three components necessary to bring a project to fruition.

MOTION:

Move to approve /approve with conditions an Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach.

ATTACHMENT(S):

Fiscal Impact Analysis – n/a

Agreement for Purchase and Sale of Real Property with 7 North B, LLC

Mediation Settlement Agreement approved by the Commission in Aug. 2019

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2020 ("Agreement") by and between the **CITY OF LAKE WORTH BEACH, a Florida municipal corporation**, whose address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460 (hereinafter referred to as "PURCHASER") and **7 NORTH B, LLC**, whose address is 640 Lee Road, Suite 300, Wayne PA 19087 (hereinafter referred to as "SELLER").

WITNESSETH

In consideration of the mutual agreements and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement for Purchase and Sale shall have the following meanings:

1.1 Property. The certain portion of property located at 7 North "B" Street, Lake Worth Beach, Florida, (the "Property") which Property is more particularly described with the legal description in **Exhibit "A"**, attached hereto and made a part hereof.

1.2 Closing. The delivery of a General Warranty Deed to PURCHASER, or such other deed as may be required by the title insurance company, concurrently with the delivery of the purchase price and other cash consideration to SELLER.

1.3 Closing Date. The Closing Date shall occur no later than thirty (30) days after the approval of the site plan for the Project Property, as defined herein, and the expiration of all appeal periods.

1.4 Deed. A General Warranty Deed, or such other deed as may be required by the title insurance company, in its statutory form, which shall convey the Property from SELLER to PURCHASER.

1.5 Settlement Agreement. That certain Settlement Agreement entered into by and between the PURCHASER and SELLER dated July 16, 2019, as approved by Judge Hafele on October 29, 2019, a copy of which is attached hereto as **Exhibit "B,"** and incorporated herein by reference.

1.5 Effective Date. The Effective Date of this Agreement shall be the date upon its execution by all parties to this Agreement: SELLER and PURCHASER, and Escrow Agent.

1.6 Earnest Money Deposit. The sum of Five Thousand and 00/100 Dollars (\$5,000.00) to be delivered from PURCHASER to Escrow Agent pursuant to Section 2.2 set forth herein.

1.7 SELLER's Address. Seller's mailing address is 640 Lee Road, Suite 300, Wayne, PA 19087.

1.8 PURCHASER's Address. Purchaser's mailing address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460, with copy to Weiss Serota Helfman Cole & Bierman, PL, Attn: David N. Tolces, Esq., at 1200 N. Federal Highway, Suite 312, Boca Raton, FL 33432.

1.9 Project Property. The Project Property is defined as follows: 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue, all located in the City of Lake Worth Beach, Florida, as though the properties were unified.

1.10 Other Definitions. The terms defined in any part of 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.

2.1 Subject to the provisions of this Agreement, and the terms of the Settlement Agreement, the SELLER hereby agrees to sell to PURCHASER, and PURCHASER hereby agrees to purchase from SELLER, the Property previously identified on Exhibit "A" for the total Purchase Price of an amount that shall not be less than **Two hundred seventy-two thousand three hundred seventy-five dollars and 68/100 (\$272,375.68)**, (the "Minimum Purchase Price") other good and valuable consideration, and upon and subject to the terms and conditions hereinafter set forth. PURCHASER shall pay the Purchase Price to SELLER at Closing pursuant to the terms of this Agreement by check or wire transfer of readily negotiable funds to an account identified in writing by SELLER. The Purchase Price to be paid to SELLER shall be an amount equal to the pro rata share of the Project Property Purchase Price based on the square footage of the Property in relation to the Project Property, but not less than the Minimum Purchase Price, less SELLER's pro rata share of all fees and costs incurred by the Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

2.2 Earnest Money. No later than five (5) business days following approval of this Agreement by the City Commission of the City of Lake Worth Beach, PURCHASER shall deposit and cause to be placed in an escrow account maintained by Weiss Serota Helfman Cole & Bierman, PL ("Escrow Agent") the amount of Five Thousand Dollars (\$5,000.00) ("Earnest Money"). Within twenty-four (24) hours of receipt of PURCHASER's Earnest Money Deposit, Escrow Agent shall send confirmation of receipt to SELLER. PURCHASER's obligation to close the transaction in accordance with provisions of this Agreement is contingent upon the SELLER's ability to deliver good and marketable title for the Property in accordance herewith. Should the SELLER default hereunder, the PURCHASER shall be entitled to an immediate refund of the entire sum of the Earnest Money held by the Escrow Agent. At Closing, a copy of the closing statement signed by both parties hereto shall be conclusive evidence of the SELLER's right to receive the Earnest Money Deposit.

2.3 Balance of Purchase Price. PURCHASER shall pay the balance of the Purchase Price to SELLER at Closing pursuant to the terms of this Agreement by check or wire transfer of immediately available funds to an account identified in writing by SELLER.

2.4 The Purchase includes:

- (a) All buildings and improvements located on the Property;
- (b) All right-of-ways, alleys, waters, privileges, easements and appurtenances which are on or benefit all the Property;
- (c) All right, title and interest, if any, of SELLER in any Property lying in the bed of any public or private street or highway, opened or proposed, in front any of the adjoining Property to the center line thereof. The sale also includes any right of SELLER to any unpaid award to which SELLER may be entitled: (1) due to taking by condemnation of any right, title or interest of SELLER and (2) for any damage to the Property due to change of grade of any street or highway. SELLER will deliver to PURCHASER at closing, or thereafter on demand, proper instruments for the conveyance of title and the assignment and collection of award and damages;
- (d) All fixtures and articles of personal property, if any, attached to or used in connection with the Property as more particularly identified on **Exhibit "C" (personal property)** as provided by SELLER, which is attached hereto and made a part hereof. SELLER represents that such fixtures and articles are paid for and are owned by SELLER free and clear of any lien or encumbrance.

(e) To the extent transferable, all licenses, permits, contracts and leases, if applicable, with respect to the property.

3. INSPECTIONS.

3.1 PURCHASER shall have thirty (30) days commencing on the Effective Date to perform inspections of the property as the PURCHASER deems necessary ("Inspection Period"). During the Inspection Period, PURCHASER shall, at PURCHASER's sole cost and expense, 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 existing facilities and installed to the property lines. At all times during the Inspection Period, PURCHASER and PURCHASER's agents shall be provided with reasonable access during normal business hours to the Property for purposes of on-site inspection, upon reasonable prior Notice to SELLER. The scope of the inspection contemplated herein shall be determined by the PURCHASER as deemed appropriate under the circumstances. PURCHASER, at PURCHASER's sole cost and expense, and at PURCHASER's sole discretion, may obtain and accept a satisfactory Phase I Environmental Audit, and if deemed necessary at its discretion, a Phase II Environmental Audit for which it will be granted an additional sixty (60) days for inspections, upon the receipt of an additional Earnest Money Deposit in the amount of \$5,000 ("Additional Earnest Money Deposit"). PURCHASER's Earnest Money Deposit, plus the Additional Earnest Money Deposit, shall be applied to the Purchase Price at closing, unless this Agreement is terminated prior to the expiration of the Inspection Period.

In the event that any inspections and any review of documents conducted by the PURCHASER relative to the Property during this Inspection period prove unsatisfactory in any fashion, the PURCHASER, at PURCHASER's sole discretion, shall be entitled to terminate this Agreement prior to the end of the Inspection Period and PURCHASER also agrees to indemnify and hold SELLER harmless from any losses, claims, costs, and expenses, including reasonable attorney's fees, which may result from or be connected with any acts or omissions of PURCHASER during inspections that are done pursuant hereto. PURCHASER will provide written notice by mail or facsimile to SELLER and/or SELLER's counsel and receive an immediate refund of all Earnest Money deposits plus interest paid hereto in the event the PURCHASER determines that the Property is unsuitable during the Inspection Period or proceed to Closing as set forth herein.

3.2 During the Inspection Period, SELLER shall provide copies of any

surveys, environmental reviews or assessments, and any other information in the SELLER's possession regarding the Property in order to assist PURCHASER with its inspection of the Property.

3.3 Unless this Agreement is terminated prior to the expiration of the Inspection Period, Escrow Agent is hereby authorized to advance the Earnest Money Deposit, and any Additional Earnest Money Deposit, to SELLER without notice or demand.

4. SELLER'S REPRESENTATIONS.

To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, all of which, to the best of SELLER's knowledge, in all material respects and except as otherwise provided in this Agreement (i) are now true, and (ii) shall be true as of the date of the Closing unless SELLER receives information to the contrary, and (iii) shall survive the Closing. In that event, PURCHASER shall be provided immediate notice as to the change to the following representations:

4.1 At all times from the Effective Date until Closing, SELLER shall keep the Property (whether before or after the date of Closing) free and clear of any 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, and SELLER shall indemnify, defend and hold PURCHASER harmless from and against all expense and liability in connection therewith (including, without limitation, court costs and reasonable attorney's fees).

4.2 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 which would affect (as to any threatened litigation, claim, action or proceeding, in a materially adverse fashion) the use, occupancy or value of the Property or any part thereof or which would otherwise relate to the Property except for those matters set forth in that certain Settlement Agreement entered into by and between the PURCHASER and SELLER dated July 16, 2019, as approved by Judge Hafele on October 29, 2019, a copy of which is attached hereto as **Exhibit "B,"** and incorporated herein by reference.

4.3 SELLER has full power and authority to enter into this Agreement and to assume and perform SELLER's obligations hereunder in this Agreement. SELLER does 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 Property or assets of the SELLER by reason of the terms of any contract,

mortgage, lien, lease, agreement, indenture, instrument or judgment to which the SELLER is a party of which is or purports to be binding upon the SELLER or which affects the SELLER; no action by any federal, state or municipal or other governmental department, CRA, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon the SELLER in accordance with its terms.

4.4 SELLER represents that SELLER will not, between the date of this Agreement and the Closing, without PURCHASER's prior written consent, which consent shall not be unreasonably withheld or delayed, except in the ordinary course of business, create by SELLER'S consent any encumbrances on the Property. For purposes of this provision the term "encumbrances" shall mean any liens, claims, options, or other encumbrances, encroachments, rights-of-way, leases, easements, covenants, conditions or restrictions.

4.5 SELLER represents that there are no parties other than SELLER in possession of the Property or any portion of the Property as a lessee.

4.6 SELLER shall not list or offer the Property for sale or solicit or negotiate offers to purchase the Property while this Agreement is in effect. SELLER shall use SELLER's best efforts to maintain the Property in its present condition so as to ensure that it shall remain substantially in the same condition from the conclusion of the Inspection Period to the Closing Date.

4.7 SELLER represents that SELLER has no actual knowledge nor has SELLER received any notice that the Property has been, is presently or is contemplated to be utilized as a reservoir of hazardous material. As used herein, the term "Hazardous Material" shall mean any substance, water or material which has been determined by any state, federal or local government authority to be capable of posing a risk of injury to health, safety and property, including, but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the U.S. Department of Labor, the U.S. Department of Transportation, and/or any other state or local governmental agency now or hereafter authorized to regulate materials and substances in the environment (collectively "Governmental Authority(ies)").

5. EVIDENCE OF TITLE.

5.1 Title to the Property. SELLER shall convey to PURCHASER at Closing, by delivery of a General Warranty Deed, title to the subject Property. PURCHASER shall, within fifteen (15) days of the commencement of the Inspection Period, secure a title

insurance commitment issued by a title insurance underwriter approved and selected by PURCHASER for the Property insuring PURCHASER's title to the Property subject only to those exceptions set forth in the commitment. The costs and expenses relative to the issuance of a title commitment and an owner's title policy shall be borne by the PURCHASER.

PURCHASER shall have fifteen (15) days from the date of receiving said commitment to examine the title commitment. If PURCHASER objects to any exception to title as shown in the title commitment, PURCHASER, prior to ten (10) days of expiration of the Inspection Period, shall notify SELLER, and SELLER's counsel, in writing specifying the specific exception(s) to which it objects. Any objection(s) of which PURCHASER has so notified SELLER, and which SELLER chooses to cure, shall be cured by SELLER so as to enable the removal of said objection(s) from the title commitment within ten (10) days after PURCHASER has provided notice to SELLER. Within five (5) days after the expiration of SELLER's time to cure any objection, SELLER shall send to PURCHASER a notice in writing (a "cure notice") stating either (1) that the objection has been cured and in such case enclosing evidence of such cure, or (ii) that SELLER is either unable to cure or has chosen not to cure such objection. If SELLER shall be unable or unwilling to cure all objections within the time period set forth in the preceding sentence, then PURCHASER may (a) terminate this Agreement by written notice to the SELLER within five (5) days after receipt of a cure notice specifying an uncured objection, or (b) subject to the provisions set forth below, proceed to close the transaction contemplated herein despite the uncured objection.

5.2. Survey and Legal Description. Within ten (10) days of the commencement of the Inspection Period, PURCHASER at PURCHASER's own expense shall order: (i) a survey prepared by a registered Property surveyor or engineer licensed in the State of Florida showing the boundaries of the Property, and the location of any easements thereon and certifying the number of acres (to the nearest one thousandth acre) of Property 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), shall be the legal description used in the deed of conveyance. The survey and legal description shall be prepared and certified by a surveyor licensed and registered in the State of Florida and shall comply with the requirements of the survey map established in connection with the issuance of an owner's title insurance policy on the Property. The survey shall be certified to PURCHASER and the

title insurance company issuing the title insurance.

6. PURCHASER'S REPRESENTATIONS.

PURCHASER hereby represents and warrants to the best of PURCHASER's knowledge that all of the following are true and correct:

6.1 PURCHASER has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.

6.2 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 corporate or organizational documents of PURCHASER 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 the PURCHASER is a party.

6.3 Except as provided herein, no action by any federal, state, municipal or other governmental department, CRA, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon PURCHASER in accordance with its terms and conditions.

All of the representations, warranties and covenants of PURCHASER contained in this Agreement or in any other document, delivered to SELLER 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 at such time.

7. CONDITIONS PRECEDENT TO CLOSING.

Each of the following events or occurrences ("Conditions Precedents") shall be a condition precedent to PURCHASER's obligation to close this transaction:

7.1 That the PURCHASER has not notified the SELLER, prior to the expiration of the Inspection Period, or any extension thereof, that it has deemed the property to be unsuitable for its intended purpose as a result of the Investigations conducted on the Property during the Inspection Period.

7.2 SELLER has performed all covenants, agreements and obligations, and complied with all conditions required by this Agreement to convey clear and marketable title of the Property to PURCHASER, prior to

closing.

- 7.3 SELLER shall comply with the disclosure requirements as provided in Section 286.23, Florida Statutes.
- 7.4 That the PURCHASER, or any assignee, obtains site plan approval for the development of the Project Property, and that all appeal periods have expired.
- 7.5 Approval of this Agreement by the City of Lake Worth Beach City Commission.

8. RISK OF LOSS.

Risk of loss or damage from fire, other casualty, or both, is assumed by SELLER until the deed described in Paragraph 5.1 hereof is delivered by SELLER to PURCHASER. In the event any portion of the Property is destroyed, rendered unleaseable or dysfunctional by fire or other casualty then the following shall apply:

- 8.1 If the damage, as determined by the insurance adjuster, is not more than Ten Thousand and 00/100 Dollars (\$10,000.00): (i) PURCHASER shall complete settlement and all insurance proceeds relating to the improvements damaged by such casualty loss shall be paid to the PURCHASER, and (ii) SELLER shall assign to PURCHASER on the date of Closing the full amount of any proceeds payable under SELLER's fire and extended coverage insurance policy applicable to said damage; and,
- 8.2 If the damage, as determined by the insurance adjuster, is more than Ten Thousand and 00/100 Dollars (\$10,000.00), PURCHASER shall have the option to (i) complete the settlement hereunder and collect all available insurance proceeds relating to the improvements damaged by such casualty loss, in which case SELLER shall pay to PURCHASER on the date of Closing the full amount of any deductible under SELLER'S fire and extended coverage insurance policy, or (ii) terminate this Agreement and receive a refund of entire deposit and interest. SELLER warrants that it shall maintain until the date of the Closing adequate "All Risk" property insurance.

9. ASSIGNMENT; RIGHT OF FIRST REFUSAL.

9.1 The SELLER authorizes the PURCHASER to assign this Agreement without any prior written consent or authorization to the City of Lake Worth Beach Community Redevelopment Agency ("CRA"). The CRA will then process a Request for Proposals ("RFP") for the development of the Project Property, which includes the property that is the subject of this Agreement. Pursuant to the Settlement Agreement, the CRA shall award the RFP to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of SELLER, then the PURCHASER shall have the right of first refusal to purchase the Property from the SELLER for the Purchase Price. If the PURCHASER exercises the right of first refusal, then the SELLER shall pay the amounts not already paid, as provided in the Settlement Agreement as fines, administrative expenses, and attorney's fees at closing.

9.2 If the PURCHASER does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, this Agreement shall terminate, and SELLER shall retain ownership of the Property, and the Earnest Money Deposit shall be returned to PURCHASER. In such event, the SELLER shall pay to PURCHASER the amounts not already paid, as provided in the Settlement Agreement as fines, administrative expenses, and attorney's fees no later than thirty (30) days following the expiration of the PURCHASER's right of first refusal.

10. CLOSING DOCUMENTS.

At closing, SELLER shall deliver to PURCHASER a General Warranty Deed, or such other deed as may be required by the title insurance company, Bill of Sale, if applicable, No Lien/Gap Affidavit, Non-Foreign Certification in accordance with Section 1445 of the Internal Revenue Code, 1099 Form and any other documents as listed as title requirements in Schedule B-I of the Title Commitment and in this Agreement to assure the conveyance of good and marketable fee simple title of the Property to the PURCHASER.

11. CLOSING COSTS, TAXES AND PRORATIONS.

11.1. At closing the PURCHASER shall pay for all costs relating to the purchase of the Property: title commitment, survey, deed recording costs, attorney's fees, and Owner's Title Policy.

11.2. At closing, SELLER shall pay all real estate taxes, personal property taxes on any tangible personal property, outstanding utility bills, and any

outstanding and unpaid assessments all of which will be prorated through the day of closing.

12. CLOSING DATE AND PLACE.

The Closing will take place on or before the expiration of thirty (30) days subsequent to the approval of the site plan for the development of the Project Property, unless otherwise agreed by the parties in writing, at the law offices of Weiss Serota Helfman Cole & Bierman, PL located at 1200 N. Federal Highway, Suite 312, Boca Raton, FL 33432.

13. DEFAULT.

In the event of a default by SELLER, PURCHASER shall have the election of the following remedies, which shall include the return of the earnest money, and accrued interest as liquidated damages or equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or injunctive relief.

If the PURCHASER shall fail or refuse to consummate the transaction in accordance with the terms and provisions of this Agreement, all monies on deposit and interest earned on the deposit shall be immediately forfeited to SELLER as agreed upon liquidated damages and PURCHASER shall have no other responsibility or liability of any kind to SELLER by virtue of such default. SELLER'S sole and entire remedy shall be restricted to retention of the deposit plus all accrued interest.

14. RESERVED

15. BROKER.

The parties each represent to the other that they have not dealt with any real estate broker, real estate salesman or finder in conjunction with this transaction who is entitled to a fee or brokerage commission in accordance with Florida law.

16. ENFORCEABILITY.

If any provision in this Agreement shall be held to be excessively broad, it shall be construed, by limiting and reducing it, to be enforceable to the extent compatible with applicable law. If any provision in this Agreement shall, notwithstanding the preceding sentence, be held illegal or unenforceable, such illegality or unenforceability shall not affect any other provision of this Agreement.

17. NOTICE.

All written notices shall be deemed effective if sent to the following places:

PURCHASER: City of Lake Worth Beach
7 N. Dixie Highway

Lake Worth Beach, Florida 33460
Attn: Michael Bornstein, City Manager

With Copy to: David N. Tolces, Esq.
WEISS SEROTA HELFMAN COLE & BIERMAN, PL
1200 N. Federal Highway, Suite 312
Boca Raton, Florida 33432
Tel: (561) 835-2111
Fax:(954) 764-7770

Glen J. Torcivia, City Attorney
7 N. Dixie Highway
Lake Worth Beach, Florida 33460

SELLER: 7 North B, LLC
c/o Sandra Ross
640 Lee Road, Suite 300
Wayne, PA 19087
Tel: 610-296-6028

With a Copy to: Michael W. Simon, Esq.
Simon & Sigalos, LLP
3839 NW Boca Raton Blvd. #100
Boca Raton, FL 33431
Tel: (561) 447-0017
Fax:(561) 447-0018

18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Florida. Venue shall be in the Federal or State Courts in Palm Beach County, Florida.

19. ENTIRE AGREEMENT.

All prior understandings and agreements between SELLER and PURCHASER are merged in this Agreement. This Agreement completely expresses their full agreement.

20. AMENDMENT.

No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by both SELLER and PURCHASER.

21. SUCCESSORS.

This Agreement shall apply to and bind the executors, administrators, successors and assigns of SELLER and PURCHASER.

22. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which 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 hereon shall be considered for all purposes as originals.

23. LITIGATION COSTS.

In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses incurred, including its reasonable attorney's fees at all trial and appellate levels and post judgment proceedings.

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

IN WITNESS WHEREOF, the parties have executed this Agreement for Purchase and Sale of Real Property as of the dates indicated below:

PURCHASER:

CITY OF LAKE WORTH BEACH,
a Florida municipal corporation

Witness:

Print Name:

By: Pam Triolo, Mayor

Signed on: _____

Attest:

Approved as to Legal Sufficiency:

Deborah M. Andrea, City Clerk

Glen J. Torclvia, City Attorney

SELLER:

7 NORTH B, LLC

BY: Brookeville Associates, LLC.
Its; Manager

Witness:

Sandra Rhee Ross
Print Name: Sandra Rhee Ross

Bhavin Shah
Print Name: Bhavin Shah
Signed on: February 25, 2020
[Corporate Seal]

State of PENNSYLVANIA

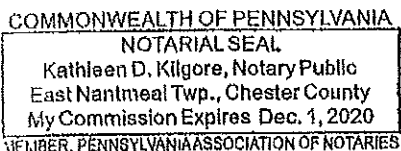
County of DELAWARE

The foregoing instrument was acknowledged before me this 25th day of February, 2020, by BHAVIN SHAH who is personally known to me or produced a photo I.D. as identification. He did not take an oath.

Notary Public:

(Notary Seal)

Kathleen D. Kilgore
Print Name: Kathleen D. Kilgore
My commission expires: 12/1/2020



ESCROW AGENT:

Accepted and Agreed to:

Weiss Serota Helfman Cole & Bierman, PL

By: _____ Signed on _____, 2019
David N. Tolces

EXHIBIT "A"
LEGAL DESCRIPTION

A portion of PCN: 38-43-44-21-15-501-0040

Lot 4 and 5, Block A, Palm Beach Farms Company Plat No. 2, (now known as Lake Worth), according to the Plat thereof recorded in Plat Book 2, pages 29 through 40, Public Records of Palm Beach County, Florida.

(SUBJECT TO VERIFICATION BY SURVEY TO BE OBTAINED BY PURCHASER)

EXHIBIT "B"
SETTLEMENT AGREEMENT

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH, FLORIDA,
a municipal corporation

Plaintiff,
vs.

1511 LUCERNE, LLC., a Florida Corporation;
et. al.,

Defendants.

CASE NO: 50-2018-CA-008086-XXXX-MB

FILED DISPOSITION FORM
UNRATIFIED Case 1094

THE CLERK IS DIRECTED TO CLOSE THIS FILE
UPON THE FINAL DISPOSITION

<input checked="" type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash
<input type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash
<input type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash
<input type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash

AGREED ORDER

THIS CAUSE having come before the Court on Plaintiff and Defendant's Mediation Settlement Agreement, the Court understanding counsels for the parties have reached an agreement, and the Court having considered the Mediation Settlement Agreement entered on July 18, 2019, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff shall accept \$6,320.00 plus administrative costs of \$1,000.00 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, on or before February 3, 2021, or as otherwise provided by the Mediation Settlement Agreement attached hereto as *Exhibit "A"* (hereafter "MSA").
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida. Plaintiff shall accept \$23,900.00 plus administrative costs of \$1,000.00 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, on or before February 3, 2021, or as otherwise provided by the Mediation Settlement Agreement.
3. At the time of signing the Mediation Settlement Agreement, Defendant was, and is, in compliance with regard to the above-referenced properties.
4. WENJO Florida, LLC, a Florida limited liability company, successor to WENJO Partners, (hereafter "WENJO") will enter into a purchase and sale agreement with the City of Lake Worth Beach, Florida (the "City") in accordance with the provisions of the

MSA and both shall perform their requirements and obligations, all as set out in Paragraphs 5 through 12 of the MSA.

5. The Plaintiff shall file a Notice of Voluntary Dismissal with Prejudice no later than 10 days after the closing of the sale of the Subject Property.
6. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees on or by closing, on or before February 3, 2021.
7. The Mediation Settlement is hereby accepted by the Court.
8. The Mediation Settlement may be amended by mutual agreement of both the Plaintiff and Defendant and WENJO.
9. The Court shall retain jurisdiction to enforce the terms of the Joint Stipulation of Settlement consistent with the terms of said document. *The case shall be closed for administrative purposes but may be reopened w/one fee in case of default.*
10. To the extent anything is not contained in these recitals herein or anything is contradicted by the mediation settlement agreement, the provisions of the mediation settlement agreement control.

DONE and ORDERED in Chambers, at Palm Beach County, Florida on this 29 day of October, 2019.



DONALD W. HAFELE
CIRCUIT JUDGE

Copies Furnished To:

Brian J Sherman, Esq. (bsherman@gorencherof.com)

Goren, Cherof, Doody & Ezrol, P.A., 3099 E. Commercial Blvd., Suite 200, Fort Lauderdale, FL 33308

John F. Romano, Esq. and Corey B. Friedman, Esq. (Service@RomanoLawGroup.com)

P.O. Box 21349, West Palm Beach, FL 33416

Robert Bulfin, Esq. (rbulfin@panzamaurer.com)

Panza, Maurer & Maynard, P.A., 2400 E. Commercial Blvd., Suite 905, Fort Lauderdale, FL 33308

Bernie Conko, Esq. (bac@cohenorris.com)

Cohen, Norris, Wolner, Ray, Telepman, Berkowitz & Cohen, 712 US Highway One, Suite 400, North Palm Beach, FL 33408

CASE NO.: 2018-CA-008086 MB

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH,
FLORIDA, a municipal corporation,

CASE NO.: 2018-CA-008086 MB

Plaintiff,

v.

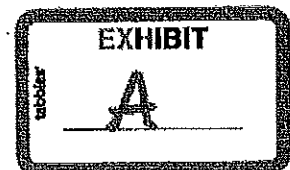
1511 LUCERNE, LLC,
a Florida Corporation,

Defendant.

MEDIATION SETTLEMENT AGREEMENT

Plaintiff (also referred to as "City") and Defendant agree as follows, (subject to approval by the Lake Worth Beach City Commission):

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff agrees to accept \$6,320.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida, Plaintiff agrees to accept \$23,900.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
3. Plaintiff agrees at the time of signing this Agreement, Defendant is in compliance with regard to the above-referenced properties.
4. Plaintiff and Defendant shall jointly inform the Court of this settlement, and request a stay of the proceedings within 30 days following approval of this Agreement by the City Commission. Plaintiff shall file a "Notice of Voluntary Dismissal with Prejudice" of the above-captioned litigation no later than 10 days after receipt of payment of the fines, fees, and liens as referenced herein.



5. WENJO Partners, hereinafter referred to as "WENJO," is the Owner of property located at 7 North B Street, Lake Worth Beach, Florida. In an effort to reach agreement with the City, Defendant has induced WENJO to become a part of this Mediation Settlement Agreement. As such, WENJO agrees to enter into a Purchase and Sale Agreement with the City as it relates to 7 North B Street. The Purchase and Sale Agreement shall be in a form substantially similar to the FAR-BAR Contract, and provide, among other things, a specific purchase price that shall be determined as follows:
- a. The City shall order and provide to Defendant and WENJO an appraisal for the 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue properties, all located in the City of Lake Worth Beach, Florida, as though the properties were unified, ("The Project Property") within 30 days of execution of this Agreement.
 - b. If Defendant/WENJO does not accept the appraisal obtained by the City, then Defendant/WENJO shall obtain its own appraisal of the Project Property within 30 days of receiving the City's appraisal.
 - c. If the appraisals differ by less than 15%, then the parties shall split the difference between the two appraisals, and the resulting amount will be included in the Purchase and Sale Agreement. If the appraisals differ by more than 15%, then the parties shall split the cost of a third appraisal from an appraiser who the City's and Defendant/WENJO's appraisers shall select within 15 days. The third appraiser must provide the appraisal within 15 days of selection. The three appraisals shall then be averaged together, and the average of the appraisals shall determine the minimum purchase price for the sale of the Project Property ("The Purchase Price").
 - d. Upon the sale of the Project Property, WENJO shall be entitled to receive an amount equal to the pro rata share of the Purchase Price based on the square footage of the 7 North B Street property in relation to the entire Project Property, less WENJO's pro rata share of all fees and costs incurred by the

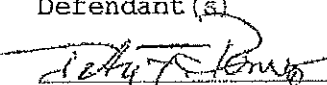
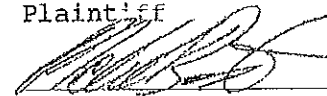
CASE NO.: 2018-CA-008086 MB

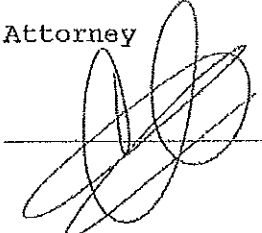

Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

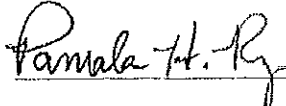
6. The closing on the sale of 7 North B Street shall be contingent on the approval of a site plan for a project ("Project") located on The Project Property by the City Commission and the expiration of all appeal periods.
7. The City shall be entitled to assign the Purchase and Sale Agreement to the CRA without having to obtain the consent of the Defendant/WENJO.
8. The Defendant/WENJO may assign its interest in the Purchase and Sale Agreement to a third party, subject to the consent of the City Commission and the CRA, such consent shall not be unreasonably withheld. The City Commission and the CRA shall consider the request for the assignment no later than sixty (60) days after receipt of the request for the assignment from Defendant/WENJO. The request for the assignment shall be provided to the City Manager with a copy to the City Attorney.
9. When the Purchase and Sale Agreement is assigned to the CRA, the CRA shall issue a Request for Proposals ("RFP") for the development and sale of The Project Property no later than 60 days after the execution of the Purchase and Sale Agreement by the City. If the Purchase and Sale Agreement is not assigned to the CRA, then the CRA's obligations contained in this Agreement shall become the City's obligation.
10. The RFP shall be awarded by the CRA to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020.
11. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of Defendant or WENJO, then the City shall have the right of first refusal to purchase 7 North B Street from WENJO for the Purchase Price as calculated through the process contained herein.

CASE NO.: 2018-CA-008086 MB

12. If the City does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, the Purchase and Sale Agreement shall terminate and WENJO shall retain ownership of 7 North B Street. In such event, the Defendant shall pay to Plaintiff the amounts stated herein as fines, administrative expenses, and attorneys fees no later than thirty (30) days following the expiration of the City's right of first refusal.
13. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees. Payment shall be made on or by closing, or as otherwise provided herein.
14. This Agreement may be amended by mutual agreement of both the Plaintiff and Defendant.
15. The Court reserves jurisdiction to enforce the terms of this Settlement Agreement.

Defendant(s)	Date	Plaintiff	Date
	6-20-19		7/16/19

Attorney	Date	Attorney	Date
	7/15/19		7/10/19

City Attorney	Date
	7/16/19

On behalf of WENJO Partnership

Date


John Romano, Partner

6 JUL 2019

EXHIBIT "C"
PERSONAL PROPERTY
(TO BE PROVIDED IF ANY)

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH,
FLORIDA, a municipal corporation,

CASE NO.: 2018-CA-008086 MB

Plaintiff,

v.

1511 LUCERNE, LLC,
a Florida Corporation,

Defendant.

MEDIATION SETTLEMENT AGREEMENT

Plaintiff (also referred to as "City") and Defendant agree as follows, (subject to approval by the Lake Worth Beach City Commission):

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff agrees to accept \$6,320.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida, Plaintiff agrees to accept \$23,900.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
3. Plaintiff agrees at the time of signing this Agreement, Defendant is in compliance with regard to the above-referenced properties.
4. Plaintiff and Defendant shall jointly inform the Court of this settlement, and request a stay of the proceedings within 30 days following approval of this Agreement by the City Commission. Plaintiff shall file a "Notice of Voluntary Dismissal with Prejudice" of the above-captioned litigation no later than 10 days after receipt of payment of the fines, fees, and liens as referenced herein.

5. WENJO Partners, hereinafter referred to as "WENJO," is the Owner of property located at 7 North B Street, Lake Worth Beach, Florida. In an effort to reach agreement with the City, Defendant has induced WENJO to become a part of this Mediation Settlement Agreement. As such, WENJO agrees to enter into a Purchase and Sale Agreement with the City as it relates to 7 North B Street. The Purchase and Sale Agreement shall be in a form substantially similar to the FAR-BAR Contract, and provide, among other things, a specific purchase price that shall be determined as follows:

- a. The City shall order and provide to Defendant and WENJO an appraisal for the 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue properties, all located in the City of Lake Worth Beach, Florida, as though the properties were unified, ("The Project Property") within 30 days of execution of this Agreement.
- b. If Defendant/WENJO does not accept the appraisal obtained by the City, then Defendant/WENJO shall obtain its own appraisal of the Project Property within 30 days of receiving the City's appraisal.
- c. If the appraisals differ by less than 15%, then the parties shall split the difference between the two appraisals, and the resulting amount will be included in the Purchase and Sale Agreement. If the appraisals differ by more than 15%, then the parties shall split the cost of a third appraisal from an appraiser who the City's and Defendant/WENJO's appraisers shall select within 15 days. The third appraiser must provide the appraisal within 15 days of selection. The three appraisals shall then be averaged together, and the average of the appraisals shall determine the minimum purchase price for the sale of the Project Property ("The Purchase Price").
- d. Upon the sale of the Project Property, WENJO shall be entitled to receive an amount equal to the pro rata share of the Purchase Price based on the square footage of the 7 North B Street property in relation to the entire Project Property, less WENJO's pro rata share of all fees and costs incurred by the

Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

6. The closing on the sale of 7 North B Street shall be contingent on the approval of a site plan for a project ("Project") located on The Project Property by the City Commission and the expiration of all appeal periods.
7. The City shall be entitled to assign the Purchase and Sale Agreement to the CRA without having to obtain the consent of the Defendant/WENJO.
8. The Defendant/WENJO may assign its interest in the Purchase and Sale Agreement to a third party, subject to the consent of the City Commission and the CRA, such consent shall not be unreasonably withheld. The City Commission and the CRA shall consider the request for the assignment no later than sixty (60) days after receipt of the request for the assignment from Defendant/WENJO. The request for the assignment shall be provided to the City Manager with a copy to the City Attorney.
9. When the Purchase and Sale Agreement is assigned to the CRA, the CRA shall issue a Request for Proposals ("RFP") for the development and sale of The Project Property no later than 60 days after the execution of the Purchase and Sale Agreement by the City. If the Purchase and Sale Agreement is not assigned to the CRA, then the CRA's obligations contained in this Agreement shall become the City's obligation.
10. The RFP shall be awarded by the CRA to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020.
11. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of Defendant or WENJO, then the City shall have the right of first refusal to purchase 7 North B Street from WENJO for the Purchase Price as calculated through the process contained herein.

- 12. If the City does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, the Purchase and Sale Agreement shall terminate and WENJO shall retain ownership of 7 North B Street. In such event, the Defendant shall pay to Plaintiff the amounts stated herein as fines, administrative expenses, and attorneys fees no later than thirty (30) days following the expiration of the City's right of first refusal.
- 13. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees. Payment shall be made on or by closing, or as otherwise provided herein.
- 14. This Agreement may be amended by mutual agreement of both the Plaintiff and Defendant.
- 15. The Court reserves jurisdiction to enforce the terms of this Settlement Agreement.

Defendant (s)	Date	Plaintiff	Date
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<u>John F. Romano</u>	<u>6-10-19</u>	<u>[Signature]</u>	<u>7/14/19</u>
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Attorney	Date	Attorney	Date
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<u>[Signature]</u>	<u>7/19/19</u>	<u>[Signature]</u>	<u>7/10/19</u>
--------------------	----------------	--------------------	----------------

City Attorney	Date
---------------	------

<u>Pamela H. Ry</u>	<u>7/16/19</u>
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On behalf of WENJO Partnership	Date
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John F. Romano
John Romano, Partner

6 JUL 2019

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Legal

TITLE:

Assignment to the Community Redevelopment Agency (“CRA”) the Agreement for Purchase and Sale of Real Property with 7 North B, LLC for property located at 7 North B Street in Lake Worth Beach.

SUMMARY:

Pursuant to a mediation settlement agreement entered into with 1511 Lucerne, LLC, and WENJO Partners, then owners of properties located at 1511 Lucerne Avenue and 7 North B Street in Lake Worth Beach, respectively, the City agreed to enter into a purchase and sale agreement with WENJO Partners to facilitate development of 7 North B Street. WENJO Partners sold its interest in the property to 7 North B, LLC, before an agreement to sell the property to the City could be facilitated. In a separate agenda item, the city commission has considered whether to enter into the Agreement for Purchase and Sale of Real Property with 7 North B, LLC. If approved, the City Commission is being asked to assign its interest in the Agreement to the CRA.

BACKGROUND AND JUSTIFICATION:

In August 2019, the City Commission entered into a mediation settlement agreement with then owner, 1511 Lucerne, LLC, to settle code enforcement liens on properties owned by 1511 Lucerne, LLC, and to facilitate development of three parcels: 15 North B Street, 7 North B Street, and 1602 Lake Avenue.

The City owns 15 North B Street and 1602 Lake Avenue. WENJO Partners owned 7 North B Street at the time of the mediation and shortly thereafter sold its interest to 7 North B, LLC, whose primary manager is Bhavin Shah.

In a separate transaction, 7 North B, LLC will be selling the 7 North B Street property to the City in accordance with the mediation settlement agreement. The settlement agreement also contemplated that the City would assign its interest to the CRA.

Therefore, if the City Commission approves the purchase of 7 North B Street, and then approves this transaction to assign its interest in 7 North B Street to the CRA, and if the City also approves the Purchase and Sale Agreement with the CRA for properties located at 1602 Lake Avenue and 15 North B Street, then once the CRA has control of all three parcels, it will develop and issue a request for proposals for a qualified developer to develop a project and site plan for the three properties.

MOTION:

Move to approve/disapprove Assignment and Assumption of Contract of the Agreement for Purchase and Sale of Real Property to the CRA for property located at 7 North B Street in Lake Worth Beach.

ATTACHMENT(S):

Fiscal Impact Analysis – n/a

Assignment and Assumption of Contract

Agreement for Purchase and Sale of Real Property with 7 North B, LLC

Mediation Settlement Agreement approved by the Commission in Aug. 2019

ASSIGNMENT AND ASSUMPTION OF CONTRACT

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACT ("Agreement") is entered into and is effective as of this ____ day of May 2020, by and between the City of Lake Worth Beach, a Florida municipal corporation, whose address is 7 N. Dixie Highway, Lake Worth Beach, Florida 33460 ("**Assignor**") and the Lake Worth Beach Community Redevelopment Agency, a Florida public body corporate and public created pursuant to Section 163.356 F.S. ("**Assignee**") whose address is 1121 Lucerne Avenue, Lake Worth Beach, Florida 33460.

WITNESSETH

WHEREAS, Assignor executed and entered into that certain "As-Is" Residential Contract For Sale And Purchase titled "Agreement for Purchase and Sale of Real Property" (the "**Contract**") dated _____, 2020, for the acquisition of that certain vacant real property located at 7 North B Street, Lake worth Beach, Florida (the "**Property**") to said Contract; and,

WHEREAS, pursuant to terms and conditions of the Contract, the Assignor has the right to assign its rights under the Contract subject to the certain terms and conditions thereof; and,

WHEREAS, by execution hereof, the Assignor desires to assign all of its rights and obligations under the Contract to the Assignee and Assignee desires to assume all of Assignor's obligations under the Contract.

NOW, THEREFORE, in consideration of the promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor and Assignee hereby agree as follows:

1. The foregoing recitals are hereby incorporated herein in their entirety.
2. The Assignor and Assignee hereby agree that the Assignor shall assign all its right, title, and interest, and delegate all its obligations responsibilities and duties, in and to the Contract, to the Assignee without omission or alteration.
3. The Assignee hereby accepts the assignment of all of Assignor's obligations responsibilities and duties in and under the terms of the Contract and agrees to accept all of Assignor's right, title and interest in and to the Contract without omission or alteration.
4. This Agreement shall become effective on the date executed by the Chair of the Assignee.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates indicated below.

ASSIGNOR:

CITY OF LAKE WORTH BEACH

Witness

By: _____
Pam Triolo, Mayor

Signed on: _____

Attest:

Approved as to Legal Sufficiency:

Deborah M. Andrea, City Clerk

Glen J. Torcivia, City Attorney

ASSIGNEE:

LAKE WORTH BEACH COMMUNITY
REDEVELOPMENT AGENCY

Witness

By: _____
Brendan Lynch, Chair

Signed on: _____

By: _____
Joan Oliva, Executive Director

Witness

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2020 ("Agreement") by and between the **CITY OF LAKE WORTH BEACH, a Florida municipal corporation**, whose address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460 (hereinafter referred to as "PURCHASER") and **7 NORTH B, LLC**, whose address is 640 Lee Road, Suite 300, Wayne PA 19087 (hereinafter referred to as "SELLER").

WITNESSETH

In consideration of the mutual agreements and upon and subject to the terms and conditions herein contained, the parties hereto agree as follows:

1. DEFINITIONS.

The following terms when used in this Agreement for Purchase and Sale shall have the following meanings:

1.1 Property. The certain portion of property located at 7 North "B" Street, Lake Worth Beach, Florida, (the "Property") which Property is more particularly described with the legal description in **Exhibit "A"**, attached hereto and made a part hereof.

1.2 Closing. The delivery of a General Warranty Deed to PURCHASER, or such other deed as may be required by the title insurance company, concurrently with the delivery of the purchase price and other cash consideration to SELLER.

1.3 Closing Date. The Closing Date shall occur no later than thirty (30) days after the approval of the site plan for the Project Property, as defined herein, and the expiration of all appeal periods.

1.4 Deed. A General Warranty Deed, or such other deed as may be required by the title insurance company, in its statutory form, which shall convey the Property from SELLER to PURCHASER.

1.5 Settlement Agreement. That certain Settlement Agreement entered into by and between the PURCHASER and SELLER dated July 16, 2019, as approved by Judge Hafele on October 29, 2019, a copy of which is attached hereto as **Exhibit "B,"** and incorporated herein by reference.

1.5 Effective Date. The Effective Date of this Agreement shall be the date upon its execution by all parties to this Agreement: SELLER and PURCHASER, and Escrow Agent.

1.6 Earnest Money Deposit. The sum of Five Thousand and 00/100 Dollars (\$5,000.00) to be delivered from PURCHASER to Escrow Agent pursuant to Section 2.2 set forth herein.

1.7 SELLER's Address. Seller's mailing address is 640 Lee Road, Suite 300, Wayne, PA 19087.

1.8 PURCHASER's Address. Purchaser's mailing address is 7 N. Dixie Highway, Lake Worth Beach, FL 33460, with copy to Weiss Serota Helfman Cole & Bierman, PL, Attn: David N. Tolces, Esq., at 1200 N. Federal Highway, Suite 312, Boca Raton, FL 33432.

1.9 Project Property. The Project Property is defined as follows: 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue, all located in the City of Lake Worth Beach, Florida, as though the properties were unified.

1.10 Other Definitions. The terms defined in any part of 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.

2.1 Subject to the provisions of this Agreement, and the terms of the Settlement Agreement, the SELLER hereby agrees to sell to PURCHASER, and PURCHASER hereby agrees to purchase from SELLER, the Property previously identified on Exhibit "A" for the total Purchase Price of an amount that shall not be less than **Two hundred seventy-two thousand three hundred seventy-five dollars and 68/100 (\$272,375.68)**, (the "Minimum Purchase Price") other good and valuable consideration, and upon and subject to the terms and conditions hereinafter set forth. PURCHASER shall pay the Purchase Price to SELLER at Closing pursuant to the terms of this Agreement by check or wire transfer of readily negotiable funds to an account identified in writing by SELLER. The Purchase Price to be paid to SELLER shall be an amount equal to the pro rata share of the Project Property Purchase Price based on the square footage of the Property in relation to the Project Property, but not less than the Minimum Purchase Price, less SELLER's pro rata share of all fees and costs incurred by the Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

2.2 Earnest Money. No later than five (5) business days following approval of this Agreement by the City Commission of the City of Lake Worth Beach, PURCHASER shall deposit and cause to be placed in an escrow account maintained by Weiss Serota Helfman Cole & Bierman, PL ("Escrow Agent") the amount of Five Thousand Dollars (\$5,000.00) ("Earnest Money"). Within twenty-four (24) hours of receipt of PURCHASER's Earnest Money Deposit, Escrow Agent shall send confirmation of receipt to SELLER. PURCHASER's obligation to close the transaction in accordance with provisions of this Agreement is contingent upon the SELLER's ability to deliver good and marketable title for the Property in accordance herewith. Should the SELLER default hereunder, the PURCHASER shall be entitled to an immediate refund of the entire sum of the Earnest Money held by the Escrow Agent. At Closing, a copy of the closing statement signed by both parties hereto shall be conclusive evidence of the SELLER's right to receive the Earnest Money Deposit.

2.3 Balance of Purchase Price. PURCHASER shall pay the balance of the Purchase Price to SELLER at Closing pursuant to the terms of this Agreement by check or wire transfer of immediately available funds to an account identified in writing by SELLER.

2.4 The Purchase includes:

- (a) All buildings and improvements located on the Property;
- (b) All right-of-ways, alleys, waters, privileges, easements and appurtenances which are on or benefit all the Property;
- (c) All right, title and interest, if any, of SELLER in any Property lying in the bed of any public or private street or highway, opened or proposed, in front any of the adjoining Property to the center line thereof. The sale also includes any right of SELLER to any unpaid award to which SELLER may be entitled: (1) due to taking by condemnation of any right, title or interest of SELLER and (2) for any damage to the Property due to change of grade of any street or highway. SELLER will deliver to PURCHASER at closing, or thereafter on demand, proper instruments for the conveyance of title and the assignment and collection of award and damages;
- (d) All fixtures and articles of personal property, if any, attached to or used in connection with the Property as more particularly identified on **Exhibit "C" (personal property)** as provided by SELLER, which is attached hereto and made a part hereof. SELLER represents that such fixtures and articles are paid for and are owned by SELLER free and clear of any lien or encumbrance.

(e) To the extent transferable, all licenses, permits, contracts and leases, if applicable, with respect to the property.

3. INSPECTIONS.

3.1 PURCHASER shall have thirty (30) days commencing on the Effective Date to perform inspections of the property as the PURCHASER deems necessary ("Inspection Period"). During the Inspection Period, PURCHASER shall, at PURCHASER's sole cost and expense, 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 existing facilities and installed to the property lines. At all times during the Inspection Period, PURCHASER and PURCHASER's agents shall be provided with reasonable access during normal business hours to the Property for purposes of on-site inspection, upon reasonable prior Notice to SELLER. The scope of the inspection contemplated herein shall be determined by the PURCHASER as deemed appropriate under the circumstances. PURCHASER, at PURCHASER's sole cost and expense, and at PURCHASER's sole discretion, may obtain and accept a satisfactory Phase I Environmental Audit, and if deemed necessary at its discretion, a Phase II Environmental Audit for which it will be granted an additional sixty (60) days for inspections, upon the receipt of an additional Earnest Money Deposit in the amount of \$5,000 ("Additional Earnest Money Deposit"). PURCHASER's Earnest Money Deposit, plus the Additional Earnest Money Deposit, shall be applied to the Purchase Price at closing, unless this Agreement is terminated prior to the expiration of the Inspection Period.

In the event that any inspections and any review of documents conducted by the PURCHASER relative to the Property during this Inspection period prove unsatisfactory in any fashion, the PURCHASER, at PURCHASER's sole discretion, shall be entitled to terminate this Agreement prior to the end of the Inspection Period and PURCHASER also agrees to indemnify and hold SELLER harmless from any losses, claims, costs, and expenses, including reasonable attorney's fees, which may result from or be connected with any acts or omissions of PURCHASER during inspections that are done pursuant hereto. PURCHASER will provide written notice by mail or facsimile to SELLER and/or SELLER's counsel and receive an immediate refund of all Earnest Money deposits plus interest paid hereto in the event the PURCHASER determines that the Property is unsuitable during the Inspection Period or proceed to Closing as set forth herein.

3.2 During the Inspection Period, SELLER shall provide copies of any

surveys, environmental reviews or assessments, and any other information in the SELLER's possession regarding the Property in order to assist PURCHASER with its inspection of the Property.

3.3 Unless this Agreement is terminated prior to the expiration of the Inspection Period, Escrow Agent is hereby authorized to advance the Earnest Money Deposit, and any Additional Earnest Money Deposit, to SELLER without notice or demand.

4. SELLER'S REPRESENTATIONS.

To induce PURCHASER to enter into this Agreement, SELLER makes the following representations, all of which, to the best of SELLER's knowledge, in all material respects and except as otherwise provided in this Agreement (i) are now true, and (ii) shall be true as of the date of the Closing unless SELLER receives information to the contrary, and (iii) shall survive the Closing. In that event, PURCHASER shall be provided immediate notice as to the change to the following representations:

4.1 At all times from the Effective Date until Closing, SELLER shall keep the Property (whether before or after the date of Closing) free and clear of any 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, and SELLER shall indemnify, defend and hold PURCHASER harmless from and against all expense and liability in connection therewith (including, without limitation, court costs and reasonable attorney's fees).

4.2 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 which would affect (as to any threatened litigation, claim, action or proceeding, in a materially adverse fashion) the use, occupancy or value of the Property or any part thereof or which would otherwise relate to the Property except for those matters set forth in that certain Settlement Agreement entered into by and between the PURCHASER and SELLER dated July 16, 2019, as approved by Judge Hafele on October 29, 2019, a copy of which is attached hereto as **Exhibit "B,"** and incorporated herein by reference.

4.3 SELLER has full power and authority to enter into this Agreement and to assume and perform SELLER's obligations hereunder in this Agreement. SELLER does 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 Property or assets of the SELLER by reason of the terms of any contract,

mortgage, lien, lease, agreement, indenture, instrument or judgment to which the SELLER is a party of which is or purports to be binding upon the SELLER or which affects the SELLER; no action by any federal, state or municipal or other governmental department, CRA, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon the SELLER in accordance with its terms.

4.4 SELLER represents that SELLER will not, between the date of this Agreement and the Closing, without PURCHASER's prior written consent, which consent shall not be unreasonably withheld or delayed, except in the ordinary course of business, create by SELLER'S consent any encumbrances on the Property. For purposes of this provision the term "encumbrances" shall mean any liens, claims, options, or other encumbrances, encroachments, rights-of-way, leases, easements, covenants, conditions or restrictions.

4.5 SELLER represents that there are no parties other than SELLER in possession of the Property or any portion of the Property as a lessee.

4.6 SELLER shall not list or offer the Property for sale or solicit or negotiate offers to purchase the Property while this Agreement is in effect. SELLER shall use SELLER's best efforts to maintain the Property in its present condition so as to ensure that it shall remain substantially in the same condition from the conclusion of the Inspection Period to the Closing Date.

4.7 SELLER represents that SELLER has no actual knowledge nor has SELLER received any notice that the Property has been, is presently or is contemplated to be utilized as a reservoir of hazardous material. As used herein, the term "Hazardous Material" shall mean any substance, water or material which has been determined by any state, federal or local government authority to be capable of posing a risk of injury to health, safety and property, including, but not limited to, all of those materials, wastes and substances designated as hazardous or toxic by the U.S. Environmental Protection Agency, the U.S. Department of Labor, the U.S. Department of Transportation, and/or any other state or local governmental agency now or hereafter authorized to regulate materials and substances in the environment (collectively "Governmental Authority(ies)").

5. EVIDENCE OF TITLE.

5.1 Title to the Property. SELLER shall convey to PURCHASER at Closing, by delivery of a General Warranty Deed, title to the subject Property. PURCHASER shall, within fifteen (15) days of the commencement of the Inspection Period, secure a title

insurance commitment issued by a title insurance underwriter approved and selected by PURCHASER for the Property insuring PURCHASER's title to the Property subject only to those exceptions set forth in the commitment. The costs and expenses relative to the issuance of a title commitment and an owner's title policy shall be borne by the PURCHASER.

PURCHASER shall have fifteen (15) days from the date of receiving said commitment to examine the title commitment. If PURCHASER objects to any exception to title as shown in the title commitment, PURCHASER, prior to ten (10) days of expiration of the Inspection Period, shall notify SELLER, and SELLER's counsel, in writing specifying the specific exception(s) to which it objects. Any objection(s) of which PURCHASER has so notified SELLER, and which SELLER chooses to cure, shall be cured by SELLER so as to enable the removal of said objection(s) from the title commitment within ten (10) days after PURCHASER has provided notice to SELLER. Within five (5) days after the expiration of SELLER's time to cure any objection, SELLER shall send to PURCHASER a notice in writing (a "cure notice") stating either (1) that the objection has been cured and in such case enclosing evidence of such cure, or (ii) that SELLER is either unable to cure or has chosen not to cure such objection. If SELLER shall be unable or unwilling to cure all objections within the time period set forth in the preceding sentence, then PURCHASER may (a) terminate this Agreement by written notice to the SELLER within five (5) days after receipt of a cure notice specifying an uncured objection, or (b) subject to the provisions set forth below, proceed to close the transaction contemplated herein despite the uncured objection.

5.2. Survey and Legal Description. Within ten (10) days of the commencement of the Inspection Period, PURCHASER at PURCHASER's own expense shall order: (i) a survey prepared by a registered Property surveyor or engineer licensed in the State of Florida showing the boundaries of the Property, and the location of any easements thereon and certifying the number of acres (to the nearest one thousandth acre) of Property 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), shall be the legal description used in the deed of conveyance. The survey and legal description shall be prepared and certified by a surveyor licensed and registered in the State of Florida and shall comply with the requirements of the survey map established in connection with the issuance of an owner's title insurance policy on the Property. The survey shall be certified to PURCHASER and the

title insurance company issuing the title insurance.

6. PURCHASER'S REPRESENTATIONS.

PURCHASER hereby represents and warrants to the best of PURCHASER's knowledge that all of the following are true and correct:

6.1 PURCHASER has full power and authority to enter into this Agreement and to assume and perform all of its obligations hereunder.

6.2 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 corporate or organizational documents of PURCHASER 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 the PURCHASER is a party.

6.3 Except as provided herein, no action by any federal, state, municipal or other governmental department, CRA, board, bureau or instrumentality is necessary to make this Agreement a valid instrument binding upon PURCHASER in accordance with its terms and conditions.

All of the representations, warranties and covenants of PURCHASER contained in this Agreement or in any other document, delivered to SELLER 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 at such time.

7. CONDITIONS PRECEDENT TO CLOSING.

Each of the following events or occurrences ("Conditions Precedents") shall be a condition precedent to PURCHASER's obligation to close this transaction:

7.1 That the PURCHASER has not notified the SELLER, prior to the expiration of the Inspection Period, or any extension thereof, that it has deemed the property to be unsuitable for its intended purpose as a result of the Investigations conducted on the Property during the Inspection Period.

7.2 SELLER has performed all covenants, agreements and obligations, and complied with all conditions required by this Agreement to convey clear and marketable title of the Property to PURCHASER, prior to

closing.

- 7.3 SELLER shall comply with the disclosure requirements as provided in Section 286.23, Florida Statutes.
- 7.4 That the PURCHASER, or any assignee, obtains site plan approval for the development of the Project Property, and that all appeal periods have expired.
- 7.5 Approval of this Agreement by the City of Lake Worth Beach City Commission.

8. RISK OF LOSS.

Risk of loss or damage from fire, other casualty, or both, is assumed by SELLER until the deed described in Paragraph 5.1 hereof is delivered by SELLER to PURCHASER. In the event any portion of the Property is destroyed, rendered unleaseable or dysfunctional by fire or other casualty then the following shall apply:

- 8.1 If the damage, as determined by the insurance adjuster, is not more than Ten Thousand and 00/100 Dollars (\$10,000.00): (i) PURCHASER shall complete settlement and all insurance proceeds relating to the improvements damaged by such casualty loss shall be paid to the PURCHASER, and (ii) SELLER shall assign to PURCHASER on the date of Closing the full amount of any proceeds payable under SELLER's fire and extended coverage insurance policy applicable to said damage; and,
- 8.2 If the damage, as determined by the insurance adjuster, is more than Ten Thousand and 00/100 Dollars (\$10,000.00), PURCHASER shall have the option to (i) complete the settlement hereunder and collect all available insurance proceeds relating to the improvements damaged by such casualty loss, in which case SELLER shall pay to PURCHASER on the date of Closing the full amount of any deductible under SELLER'S fire and extended coverage insurance policy, or (ii) terminate this Agreement and receive a refund of entire deposit and interest. SELLER warrants that it shall maintain until the date of the Closing adequate "All Risk" property insurance.

9. ASSIGNMENT; RIGHT OF FIRST REFUSAL.

9.1 The SELLER authorizes the PURCHASER to assign this Agreement without any prior written consent or authorization to the City of Lake Worth Beach Community Redevelopment Agency ("CRA"). The CRA will then process a Request for Proposals ("RFP") for the development of the Project Property, which includes the property that is the subject of this Agreement. Pursuant to the Settlement Agreement, the CRA shall award the RFP to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of SELLER, then the PURCHASER shall have the right of first refusal to purchase the Property from the SELLER for the Purchase Price. If the PURCHASER exercises the right of first refusal, then the SELLER shall pay the amounts not already paid, as provided in the Settlement Agreement as fines, administrative expenses, and attorney's fees at closing.

9.2 If the PURCHASER does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, this Agreement shall terminate, and SELLER shall retain ownership of the Property, and the Earnest Money Deposit shall be returned to PURCHASER. In such event, the SELLER shall pay to PURCHASER the amounts not already paid, as provided in the Settlement Agreement as fines, administrative expenses, and attorney's fees no later than thirty (30) days following the expiration of the PURCHASER's right of first refusal.

10. CLOSING DOCUMENTS.

At closing, SELLER shall deliver to PURCHASER a General Warranty Deed, or such other deed as may be required by the title insurance company, Bill of Sale, if applicable, No Lien/Gap Affidavit, Non-Foreign Certification in accordance with Section 1445 of the Internal Revenue Code, 1099 Form and any other documents as listed as title requirements in Schedule B-I of the Title Commitment and in this Agreement to assure the conveyance of good and marketable fee simple title of the Property to the PURCHASER.

11. CLOSING COSTS, TAXES AND PRORATIONS.

11.1. At closing the PURCHASER shall pay for all costs relating to the purchase of the Property: title commitment, survey, deed recording costs, attorney's fees, and Owner's Title Policy.

11.2. At closing, SELLER shall pay all real estate taxes, personal property taxes on any tangible personal property, outstanding utility bills, and any

outstanding and unpaid assessments all of which will be prorated through the day of closing.

12. CLOSING DATE AND PLACE.

The Closing will take place on or before the expiration of thirty (30) days subsequent to the approval of the site plan for the development of the Project Property, unless otherwise agreed by the parties in writing, at the law offices of Weiss Serota Helfman Cole & Bierman, PL located at 1200 N. Federal Highway, Suite 312, Boca Raton, FL 33432.

13. DEFAULT.

In the event of a default by SELLER, PURCHASER shall have the election of the following remedies, which shall include the return of the earnest money, and accrued interest as liquidated damages or equitable relief to enforce the terms and conditions of this Agreement either through a decree for specific performance or injunctive relief.

If the PURCHASER shall fail or refuse to consummate the transaction in accordance with the terms and provisions of this Agreement, all monies on deposit and interest earned on the deposit shall be immediately forfeited to SELLER as agreed upon liquidated damages and PURCHASER shall have no other responsibility or liability of any kind to SELLER by virtue of such default. SELLER'S sole and entire remedy shall be restricted to retention of the deposit plus all accrued interest.

14. RESERVED

15. BROKER.

The parties each represent to the other that they have not dealt with any real estate broker, real estate salesman or finder in conjunction with this transaction who is entitled to a fee or brokerage commission in accordance with Florida law.

16. ENFORCEABILITY.

If any provision in this Agreement shall be held to be excessively broad, it shall be construed, by limiting and reducing it, to be enforceable to the extent compatible with applicable law. If any provision in this Agreement shall, notwithstanding the preceding sentence, be held illegal or unenforceable, such illegality or unenforceability shall not affect any other provision of this Agreement.

17. NOTICE.

All written notices shall be deemed effective if sent to the following places:

PURCHASER: City of Lake Worth Beach
7 N. Dixie Highway

Lake Worth Beach, Florida 33460
Attn: Michael Bornstein, City Manager

With Copy to: David N. Tolces, Esq.
WEISS SEROTA HELFMAN COLE & BIERMAN, PL
1200 N. Federal Highway, Suite 312
Boca Raton, Florida 33432
Tel: (561) 835-2111
Fax:(954) 764-7770

Glen J. Torcivia, City Attorney
7 N. Dixie Highway
Lake Worth Beach, Florida 33460

SELLER: 7 North B, LLC
c/o Sandra Ross
640 Lee Road, Suite 300
Wayne, PA 19087
Tel: 610-296-6028

With a Copy to: Michael W. Simon, Esq.
Simon & Sigalos, LLP
3839 NW Boca Raton Blvd. #100
Boca Raton, FL 33431
Tel: (561) 447-0017
Fax:(561) 447-0018

18. GOVERNING LAW.

This Agreement shall be governed by the laws of the State of Florida. Venue shall be in the Federal or State Courts in Palm Beach County, Florida.

19. ENTIRE AGREEMENT.

All prior understandings and agreements between SELLER and PURCHASER are merged in this Agreement. This Agreement completely expresses their full agreement.

20. AMENDMENT.

No modification or amendment of this Agreement shall be of any force or effect unless in writing and executed by both SELLER and PURCHASER.

21. SUCCESSORS.

This Agreement shall apply to and bind the executors, administrators, successors and assigns of SELLER and PURCHASER.

22. COUNTERPARTS.

This Agreement may be executed in two or more counterparts, each of which 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 hereon shall be considered for all purposes as originals.

23. LITIGATION COSTS.

In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses incurred, including its reasonable attorney's fees at all trial and appellate levels and post judgment proceedings.

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

IN WITNESS WHEREOF, the parties have executed this Agreement for Purchase and Sale of Real Property as of the dates indicated below:

PURCHASER:

CITY OF LAKE WORTH BEACH,
a Florida municipal corporation

Witness:

Print Name:

By: Pam Triolo, Mayor

Signed on: _____

Attest:

Approved as to Legal Sufficiency:

Deborah M. Andrea, City Clerk

Glen J. Torclvia, City Attorney

SELLER:

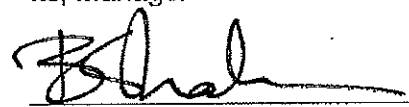
7 NORTH B, LLC

BY: Brookeville Associates, LLC.
Its; Manager

Witness:



Print Name: Sandra Rhee Ross



Print Name: Bhavin Shah
Signed on: February 25, 2020
[Corporate Seal]

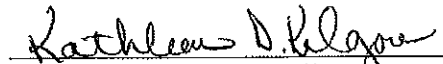
State of PENNSYLVANIA

County of DELAWARE

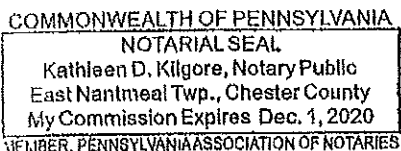
The foregoing instrument was acknowledged before me this 25th day of February, 2020, by BHAVIN SHAH who is personally known to me or produced a photo I.D. as identification. He did not take an oath.

Notary Public:

(Notary Seal)



Print Name: Kathleen D. Kilgore
My commission expires: 12/1/2020



ESCROW AGENT:

Accepted and Agreed to:

Weiss Serota Helfman Cole & Bierman, PL

By: _____ Signed on _____, 2019
David N. Tolces

EXHIBIT "A"
LEGAL DESCRIPTION

A portion of PCN: 38-43-44-21-15-501-0040

Lot 4 and 5, Block A, Palm Beach Farms Company Plat No. 2, (now known as Lake Worth), according to the Plat thereof recorded in Plat Book 2, pages 29 through 40, Public Records of Palm Beach County, Florida.

(SUBJECT TO VERIFICATION BY SURVEY TO BE OBTAINED BY PURCHASER)

EXHIBIT "B"
SETTLEMENT AGREEMENT

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH, FLORIDA,
a municipal corporation

Plaintiff,
vs.

1511 LUCERNE, LLC., a Florida Corporation;
et. al.,

Defendants.

CASE NO: 50-2018-CA-008086-XXXX-MB

FILED DISPOSITION FORM
UNRATIFIED Case 1094

THE CLERK IS DIRECTED TO CLOSE THIS FILE
UPON THE FINAL DISPOSITION

<input checked="" type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash
<input type="checkbox"/> Settled by check	<input type="checkbox"/> Settled by cash
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AGREED ORDER

THIS CAUSE having come before the Court on Plaintiff and Defendant's Mediation Settlement Agreement, the Court understanding counsels for the parties have reached an agreement, and the Court having considered the Mediation Settlement Agreement entered on July 18, 2019, and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED:

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff shall accept \$6,320.00 plus administrative costs of \$1,000.00 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, on or before February 3, 2021, or as otherwise provided by the Mediation Settlement Agreement attached hereto as *Exhibit "A"* (hereafter "MSA").
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida. Plaintiff shall accept \$23,900.00 plus administrative costs of \$1,000.00 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, on or before February 3, 2021, or as otherwise provided by the Mediation Settlement Agreement.
3. At the time of signing the Mediation Settlement Agreement, Defendant was, and is, in compliance with regard to the above-referenced properties.
4. WENJO Florida, LLC, a Florida limited liability company, successor to WENJO Partners, (hereafter "WENJO") will enter into a purchase and sale agreement with the City of Lake Worth Beach, Florida (the "City") in accordance with the provisions of the

MSA and both shall perform their requirements and obligations, all as set out in Paragraphs 5 through 12 of the MSA.

5. The Plaintiff shall file a Notice of Voluntary Dismissal with Prejudice no later than 10 days after the closing of the sale of the Subject Property.
6. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees on or by closing, on or before February 3, 2021.
7. The Mediation Settlement is hereby accepted by the Court.
8. The Mediation Settlement may be amended by mutual agreement of both the Plaintiff and Defendant and WENJO.
9. The Court shall retain jurisdiction to enforce the terms of the Joint Stipulation of Settlement consistent with the terms of said document. *The case shall be closed for administrative purposes but may be reopened w/one fee in case of default.*
10. To the extent anything is not contained in these recitals herein or anything is contradicted by the mediation settlement agreement, the provisions of the mediation settlement agreement control.

DONE and **ORDERED** in Chambers, at Palm Beach County, Florida on this 29 day of October, 2019.



DONALD W. HAFELE
CIRCUIT JUDGE

Copies Furnished To:

Brian J Sherman, Esq. (bsherman@gorencherof.com)

Goren, Cherof, Doody & Ezrol, P.A., 3099 E. Commercial Blvd., Suite 200, Fort Lauderdale, FL 33308

John F. Romano, Esq. and Corey B. Friedman, Esq. (Service@RomanoLawGroup.com)

P.O. Box 21349, West Palm Beach, FL 33416

Robert Bulfin, Esq. (rbulfin@panzamaurer.com)

Panza, Maurer & Maynard, P.A., 2400 E. Commercial Blvd., Suite 905, Fort Lauderdale, FL 33308

Bernie Conko, Esq. (bac@cohenorris.com)

Cohen, Norris, Wolner, Ray, Telepman, Berkowitz & Cohen, 712 US Highway One, Suite 400, North Palm Beach, FL 33408

CASE NO.: 2018-CA-008086 MB

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH,
FLORIDA, a municipal corporation,

CASE NO.: 2018-CA-008086 MB

Plaintiff,

v.

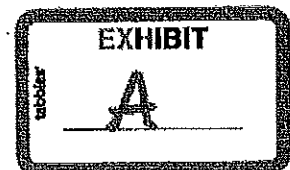
1511 LUCERNE, LLC,
a Florida Corporation,

Defendant.

MEDIATION SETTLEMENT AGREEMENT

Plaintiff (also referred to as "City") and Defendant agree as follows, (subject to approval by the Lake Worth Beach City Commission):

1. With regard to the property located at 1511 Lucerne Avenue, Lake Worth Beach, Florida, Plaintiff agrees to accept \$6,320.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
2. With regard to the property located at 1108 1st Avenue South, Lake Worth Beach, Florida, Plaintiff agrees to accept \$23,900.00 plus administrative costs of \$1,000 as full and final settlement of all claims and liens on said property. Payment shall be made on or by closing, or as otherwise provided herein.
3. Plaintiff agrees at the time of signing this Agreement, Defendant is in compliance with regard to the above-referenced properties.
4. Plaintiff and Defendant shall jointly inform the Court of this settlement, and request a stay of the proceedings within 30 days following approval of this Agreement by the City Commission. Plaintiff shall file a "Notice of Voluntary Dismissal with Prejudice" of the above-captioned litigation no later than 10 days after receipt of payment of the fines, fees, and liens as referenced herein.



5. WENJO Partners, hereinafter referred to as "WENJO," is the Owner of property located at 7 North B Street, Lake Worth Beach, Florida. In an effort to reach agreement with the City, Defendant has induced WENJO to become a part of this Mediation Settlement Agreement. As such, WENJO agrees to enter into a Purchase and Sale Agreement with the City as it relates to 7 North B Street. The Purchase and Sale Agreement shall be in a form substantially similar to the FAR-BAR Contract, and provide, among other things, a specific purchase price that shall be determined as follows:
- a. The City shall order and provide to Defendant and WENJO an appraisal for the 7 North B. Street, 15 North B. Street, and 1602 Lake Avenue properties, all located in the City of Lake Worth Beach, Florida, as though the properties were unified, ("The Project Property") within 30 days of execution of this Agreement.
 - b. If Defendant/WENJO does not accept the appraisal obtained by the City, then Defendant/WENJO shall obtain its own appraisal of the Project Property within 30 days of receiving the City's appraisal.
 - c. If the appraisals differ by less than 15%, then the parties shall split the difference between the two appraisals, and the resulting amount will be included in the Purchase and Sale Agreement. If the appraisals differ by more than 15%, then the parties shall split the cost of a third appraisal from an appraiser who the City's and Defendant/WENJO's appraisers shall select within 15 days. The third appraiser must provide the appraisal within 15 days of selection. The three appraisals shall then be averaged together, and the average of the appraisals shall determine the minimum purchase price for the sale of the Project Property ("The Purchase Price").
 - d. Upon the sale of the Project Property, WENJO shall be entitled to receive an amount equal to the pro rata share of the Purchase Price based on the square footage of the 7 North B Street property in relation to the entire Project Property, less WENJO's pro rata share of all fees and costs incurred by the

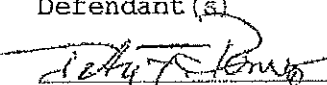
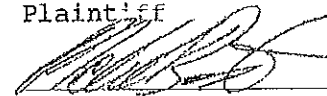
CASE NO.: 2018-CA-008086 MB

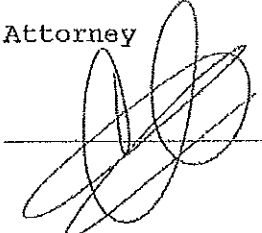

Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

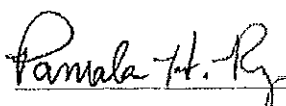
6. The closing on the sale of 7 North B Street shall be contingent on the approval of a site plan for a project ("Project") located on The Project Property by the City Commission and the expiration of all appeal periods.
7. The City shall be entitled to assign the Purchase and Sale Agreement to the CRA without having to obtain the consent of the Defendant/WENJO.
8. The Defendant/WENJO may assign its interest in the Purchase and Sale Agreement to a third party, subject to the consent of the City Commission and the CRA, such consent shall not be unreasonably withheld. The City Commission and the CRA shall consider the request for the assignment no later than sixty (60) days after receipt of the request for the assignment from Defendant/WENJO. The request for the assignment shall be provided to the City Manager with a copy to the City Attorney.
9. When the Purchase and Sale Agreement is assigned to the CRA, the CRA shall issue a Request for Proposals ("RFP") for the development and sale of The Project Property no later than 60 days after the execution of the Purchase and Sale Agreement by the City. If the Purchase and Sale Agreement is not assigned to the CRA, then the CRA's obligations contained in this Agreement shall become the City's obligation.
10. The RFP shall be awarded by the CRA to a qualified developer entity, and a contract between the developer and the CRA shall be executed on or before August 3, 2020.
11. If the CRA does not execute a Purchase and Sale Agreement with a qualified developer entity prior to August 3, 2020, or if the sale of the Project Property does not close on or before February 3, 2021, through no fault of Defendant or WENJO, then the City shall have the right of first refusal to purchase 7 North B Street from WENJO for the Purchase Price as calculated through the process contained herein.

CASE NO.: 2018-CA-008086 MB

12. If the City does not exercise the right of first refusal within ninety (90) days of the date that the RFP process terminates or fails, the Purchase and Sale Agreement shall terminate and WENJO shall retain ownership of 7 North B Street. In such event, the Defendant shall pay to Plaintiff the amounts stated herein as fines, administrative expenses, and attorneys fees no later than thirty (30) days following the expiration of the City's right of first refusal.
13. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees. Payment shall be made on or by closing, or as otherwise provided herein.
14. This Agreement may be amended by mutual agreement of both the Plaintiff and Defendant.
15. The Court reserves jurisdiction to enforce the terms of this Settlement Agreement.

Defendant(s)	Date	Plaintiff	Date
	6-20-19		7/16/19

Attorney	Date	Attorney	Date
	7/15/19		7/10/19

City Attorney	Date
	7/16/19

On behalf of WENJO Partnership

Date


John Romano, Partner

6 JUL 2019

EXHIBIT "C"
PERSONAL PROPERTY
(TO BE PROVIDED IF ANY)

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CITY OF LAKE WORTH,
FLORIDA, a municipal corporation,

CASE NO.: 2018-CA-008086 MB

Plaintiff,

v.

1511 LUCERNE, LLC,
a Florida Corporation,

Defendant.

MEDIATION SETTLEMENT AGREEMENT

Plaintiff (also referred to as "City") and Defendant agree as follows, (subject to approval by the Lake Worth Beach City Commission):

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3. Plaintiff agrees at the time of signing this Agreement, Defendant is in compliance with regard to the above-referenced properties.
4. Plaintiff and Defendant shall jointly inform the Court of this settlement, and request a stay of the proceedings within 30 days following approval of this Agreement by the City Commission. Plaintiff shall file a "Notice of Voluntary Dismissal with Prejudice" of the above-captioned litigation no later than 10 days after receipt of payment of the fines, fees, and liens as referenced herein.

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Lake Worth Beach Community Redevelopment Agency ("CRA") with respect to the sale of the Project Property.

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7. The City shall be entitled to assign the Purchase and Sale Agreement to the CRA without having to obtain the consent of the Defendant/WENJO.
8. The Defendant/WENJO may assign its interest in the Purchase and Sale Agreement to a third party, subject to the consent of the City Commission and the CRA, such consent shall not be unreasonably withheld. The City Commission and the CRA shall consider the request for the assignment no later than sixty (60) days after receipt of the request for the assignment from Defendant/WENJO. The request for the assignment shall be provided to the City Manager with a copy to the City Attorney.
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- 13. Defendant shall pay to Plaintiff \$7,500.00 for attorneys' fees. Payment shall be made on or by closing, or as otherwise provided herein.
- 14. This Agreement may be amended by mutual agreement of both the Plaintiff and Defendant.
- 15. The Court reserves jurisdiction to enforce the terms of this Settlement Agreement.

Defendant (s)

Date

Plaintiff

Date

John F. Romano 6/10/19

[Signature] 7/14/19

Attorney

Date

Attorney

Date

[Signature]

7/19/19

[Signature] 7/10/19

City Attorney

Date

Pamela H. Ry 7/16/19

On behalf of WENJO Partnership

Date

John F. Romano
John Romano, Partner

6 JUL 2019

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Legal

TITLE:

Consideration of settlement with Brenda Marie Velez-Martinez in the amount of \$65,000 (inclusive of attorney's fees)

SUMMARY:

This is a request to settle a lawsuit with Ms. Velez-Martinez for injuries she sustained in a motor vehicle accident in November 2018. If approved, the claimant will execute a general release in favor of the City.

BACKGROUND AND JUSTIFICATION:

This case arises out of a motor vehicle accident between former City employee Yvalon Perou and Brenda Marie Velez-Martinez ("Plaintiff") on November 13, 2018. Mr. Perou was a public services employee. Plaintiff's vehicle sustained significant damage during the accident, requiring her to be extracted because most of the damage was to her driver's side door. Plaintiff filed suit against the City and over the next year, she underwent chiropractic and orthopedic care and according to medical records, continues to seek pain management for her back and neck. Plaintiff's medical expenses total \$44,041.58 to date, which will increase with time.

On April 6, 2020, the parties participated in court ordered mediation, and a settlement agreement was entered into for \$65,000, which is inclusive of attorney's fees and costs. The settlement agreement is contingent upon City Commission approval. Settlement is recommended.

MOTION:

Move to approve the settlement with Ms. Velez-Martinez for \$65,000, in exchange for a complete release.

ATTACHMENT(S):

Fiscal Impact Analysis

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	0	0	0	0	0
Operating Expenditures	\$65,000	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 0	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 0	 0	 0	 0	 0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
520-1332-513-.45-60	Self Insurance					

C. Department Fiscal Review: _____

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Water Utilities

TITLE:

Amendment 1 to Task Order No. 5 with Craig A. Smith & Associates, Inc. for additional engineering design services for Lake Osborne Estates Water Main Replacement Project – Phase 1.

SUMMARY:

Amendment 1 to Task Order No. 5 authorizes Craig A. Smith & Associates, Inc. to provide additional engineering and survey design of Lake Osborne Estates Water Main Replacement Project – Phase 1 in the amount of \$96,400.

BACKGROUND AND JUSTIFICATION:

The City Water Utilities Department was working with Craig A. Smith & Associates, Inc. on this project based on existing records from US Water, who owned the territory until a few years ago. It was discovered that no watermain exists on a section that was assumed to exist, so a new watermain needs to be designed. Upon permitting the project with Palm Beach County Right-of-Way, as the project limits are outside the City limits and within unincorporated Palm Beach County, it was discovered that additional permitting from the Florida Department of Health Palm Beach County would be required for properties that have a septic system onsite, in order to maintain required spacing between the water service and septic system. Craig A. Smith & Associates, Inc. will provide additional design, ground penetrating radar, survey and permitting of these properties impacted, as well as the new main needed that did not previously exist.

MOTION:

Move to approve/disapprove Amendment 1 to Task Order No. 5 with Craig A. Smith & Associates, Inc. for additional engineering design services for Lake Osborne Estates Water Main Replacement Project – Phase 1 in the amount of \$96,400.00

ATTACHMENT(S):

Fiscal Impact Analysis
Amendment 1
Budget Transfer

FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	\$96,400	0	0	0	0
Operating Expenditures	0	0	0	0	0
External Revenues	0	0	0	0	0
Program Income	0	0	0	0	0
In-kind Match	0	0	0	0	0
 Net Fiscal Impact	 \$96,400	 0	 0	 0	 0
 No. of Addn'l Full-Time Employee Positions	 0	 0	 0	 0	 0

B. Recommended Sources of Funds/Summary of Fiscal Impact:

Account Number	Account Description	Project Number	FY20 Budget	Current Balance	Agenda Expenditure	Balance
422-7034-533.63-15	Mains	WT1803	\$4,183,920	\$96,400	-\$96,400	\$0

C. Department Fiscal Review: _____

Brian Shields – Director

Bruce Miller – Finance Director

Christy Goddeau – City Attorney

Michael Bornstein – City Manager

TASK ORDER

Task Order for the Lake Worth Beach Lake Osborne Estates Water Main Replacement Project Phase I - Expansion Area

TASK ORDER NO. 5 AMENDMENT NO. 1

THIS TASK ORDER ("Task Order") is made on the ___ day of ___, 2020, between the **City of Lake Worth Beach**, a Florida municipal corporation located at 7 North Dixie Highway, Lake Worth, Florida 33460 ("City") and Craig A. Smith & Associates, Inc., a Florida corporation ("Consultant").

1.0 Project Description:

The City desires the Consultant to provide those services as identified herein and generally described as: **Lake Osborne Estates Water Main Replacement Project Phase I - Expansion Area** (the "Project").

2.0 Scope

Under this Task Order, the Consultant will provide professional services to the City as detailed in the **Consultant's proposal attached hereto and incorporated herein as Exhibit "1"**.

3.0 Schedule

The services to be provided under this Task Order shall be completed within 150 calendar days from the City's approval of this Task Order or the issuance of a Notice to Proceed.

4.0 Compensation

This Task Order is issued for a lump sum, not to exceed amount of \$96,400.00. The attached proposal identifies all costs and expenses included in the lump sum, not to exceed amount.

5.0 Project Manager

The Project Manager for the Consultant is Dimitrios Scarlatos, phone: (561) 400-2811; email: dscarlatos@craigasmith.com; and, the Project Manager for the City is Giles Rhoads, phone: (561) 586-1640; email: grhoads@lakeworthbeachfl.gov.

6.0 Progress Meetings

The Consultant shall schedule periodic progress review meetings with the City Project Manager as necessary but every 30 days as a minimum.

7.0 Authorization

This Task Order is issued in compliance with the Consultants' Competition Negotiation Act, section 287.055, Florida Statutes, and pursuant to the Agreement for Professional

Services between the City of Lake Worth Beach and the Consultant, dated March 16, 2018 ("Agreement" hereafter). If there are any conflicts between the terms and conditions of this Task Order and the Agreement, the terms and conditions of the Agreement shall prevail; however, the specific scope of services set forth in this Task Order shall take precedence over any other more general description of services.

IN WITNESS WHEREOF the parties hereto have made and executed this Task Order as of the day and year set forth above.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Pam Triolo, Mayor

ATTEST:

By: _____
Deborah M. Andrea, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney
Bar 42520

By: _____
Bruce T. Miller, Financial Services Director

CONSULTANT: Craig A. Smith & Associates

By: _____
[Signature]

[Corporate Seal]

Name: Stephen C. Smith, P.E.

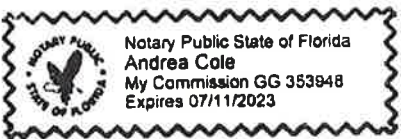
Title: Senior Vice President

STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 20 day of April, 2020, by Stephen C. Smith, who was physically present, as Senior Vice President of Craig A. Smith & Associates, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following _____ as identification.

Notary Public

[Signature]
Print Name: Andrea Cole
My commission expires: 7-11-2023





CRAIG A. SMITH & ASSOCIATES

21045 Commercial Trail • Boca Raton, FL 33486

CONSULTING ENGINEERS • SURVEYORS • UTILITY LOCATORS

www.craigasmith.com

April 20, 2020

EXHIBIT 1

Mr. Giles M. Rhoads, P.E.
Utilities Engineer
City of Lake Worth Beach
301 College Street
Lake Worth, FL 33460

(via email)

**RE: LAKE OSBORNE ESTATES WATER MAIN REPLACEMENT PROJECT - PHASE I
EXPANSION
PROFESSIONAL ENGINEERING & SURVEYING SERVICES
CAS PROPOSAL NO. P3849**

Dear Mr. Rhoads:

Craig A. Smith & Associates (CAS) is pleased to submit this proposal to provide professional engineering, surveying services and utility locates services associated with the City of Lake Worth Beach (CITY) Phase I Replacement of Water Main in the Lake Osborne Estates Neighborhood.

It is the CITY's preference to eliminate all rear service mains, eliminate undersized water mains and that any existing galvanized water mains be replaced. As a result, the CITY has performed pothole investigations and records research in the Lake Osborne Estates neighborhood areas. As a result of the City investigations, it was determined that the phase I project area would be expanded to include additional water main improvements in the area of Lake Geneva Drive and High Ridge Road as shown in **Exhibit A** and as follows:

- o Propose approximately 1,500 linear feet of new 4"-6" water main.
- o Abandon approximately 2,650 linear feet of existing water main. Rear lot water mains will be abandoned in place after cutting and capping the lines at the right of way. Water mains to be abandoned that are located within the road right of ways will be grout filled, abandoned in place and cut/capped where necessary.
- o As a result of the water main abandonments, approximately 41 existing meter services will be reconnected to either existing water mains to remain or to new water mains installed.

The anticipated CAS services for the scope of work areas identified in **Exhibit A** include surveying, utility locating services, utility test hole services, engineering design and permitting. **It is anticipated that the new expanded project areas under this proposal can be addressed by modifying the existing design plans for Lake Osborne Estates Water Main Improvements Phase I and submitting those additional plans for permit modifications.**

Please note that contractor permits, dewatering permits or NPDES permits are not included in this proposal. Engineering and construction management services during construction are not

included in this proposal. Geotechnical services are not provided as part of this proposal at the request of the CITY.

Information to be provided by the CITY:

- As-built, utility atlas and available GIS information for existing utilities within the project area;
- CITY Standard Details for Construction in CADD format;
- Payment of all Permitting Fees;
- Sizing and system configuration model of the water system.

Note: The CITY has indicated that they will provide CAS with the proposed watermain system sizing and configuration for design. Water modeling design is not part of this proposal.

TASK DESCRIPTION

SURVEY AND LOCATES TASKS

Pursuant to your request, Craig A. Smith & Associates (CAS) will provide professional surveying services in connection with the above referenced project. The limits are described in the narrative below. More specifically, the surveying tasks to be provided will include the following:

S85 PROVIDE UTILITY LOCATES – GPR/EM SERVICES

Provide utility location and verification services within the area requested per task S86 below. Using AWWA standards for marking, a sub-surface ground penetrating radar (GPR) unit shall be used in addition to electromagnetic induction (EM) to perform/verify horizontal locations of existing utilities. Lines will be painted on the ground or pin flags set to show said lines on the surface.

CAS'S Lump Sum (LS) Fee for Task S85 shall be.....\$3,360.00

S86 MAP OF SPECIFIC PURPOSE SURVEY

Survey will physically locate all above ground, visible improvements and visible utilities within the existing right of way corridors as described in the narrative (per above) as well as utility surface markings performed by Craig A. Smith & Associates Utility Locating Department. Up to five (5) utility test holes will be located and the information for each shown per Test Hole Reports provided to the Surveyor. Visible structures will be located, and rim elevations shown for each. A base line will be established, and cross sections taken every 100 feet. All elevations shown will be relative to North American Vertical Datum of 1988 (NAVD '88). Trees 3" or greater in diameter within the corridor will be located and shown by common name (if known) with the size ABH (at breast height). A search will be made for the existing water meters if they fall in the rear easements of applicable lots and they will be shown as available on a separate map. A Map of Specific Purpose Survey will be created for the overall survey. A base map will be provided to the Client and CAS engineering, as

well as said Map of Specific Purpose Survey for submittal to entities of interest in .PDF format.

CAS'S Lump Sum (LS) Fee for Task S86 shall be..... \$12,155.00

S90 UTILITY TEST HOLES (SOFT DIGS)

Utility test holes (soft digs) will be performed and reports provided for each with utility depth, elevation, size, material and type. The test holes will be performed based on the direction of the project engineer and limited to five (5) test holes per this request.

CAS'S Fee for Task S90 shall be billed on a per hole basis with an estimate of 5 Holes.....TEST HOLES (5) \$2,475.00 (NOT TO EXCEED)

ENGINEERING DESIGN TASKS

E53 FINAL ENGINEERING DESIGN (90-100% COMPLETE)

Subsequent to completion of Survey and Locates Tasks S85, S86 and S90 mentioned above and upon written authorization to proceed from the CITY, CAS shall modify the existing approved Lake Osborne Estates Water Main Improvements Project Phase I engineering design plans to include the additional expanded project areas outlined in this proposal.

Note: 1. Profiles of the proposed water main will not be included or anticipated.
2. Property easements or acquisitions are not anticipated.

1. CAS shall submit four (4) sets of 90% construction plans (to include CD) to the CITY. The 90% submittal documents will include an Engineer's Opinion of Probable Cost for the proposed 90% construction plans.
2. After QA/QC review by the CITY, CAS will revise the 90% construction plans and submit the construction plans for permitting.
3. Once permit approvals have been obtained, CAS shall submit four (4) sets of 100% construction plans (to include CD) and Engineers Opinion of Probable Cost to the CITY for Construction.

CAS'S Lump Sum (LS) Fee for Task E53A shall be.....\$18,330.00

Note: Offsite improvements beyond the project limits described are not included in this proposal.

E61A PERMITTING SERVICES

CAS will provide technical criteria, written description and design data for use in filing applications for permit modifications relative to CAS's scope of services with the governmental agencies having jurisdiction to review the design of the project. CAS will use the 90% Design plans as detailed in Task E53 to file for applications with the permitting agencies listed below. Permit fees are the responsibility of the CITY and are not included within this agreement. The following regulatory agency permit application submittals are anticipated:

- Palm Beach County Engineering and Public Works Department-Land Development Division
- Palm Beach County Health Department

CAS'S Fee for Task E61 shall be billed on a time and materials (T&M) basis with an estimated budget of.....\$10,080.00

Note: Construction dewatering (if proposed) or FDEP Notice of Intent - National Pollution Discharge Elimination Systems permitting are considered by CAS as contractor-type permits and shall be made part of the construction contract and the responsibility of the contractor.

E61B BUILDING PERMITS FOR WATER SERVICES – HEALTH DEPARTMENT

CAS has been instructed to assist in obtaining Palm Beach County Department of Health permit approvals for the proposed water service connections on private property to be installed by the Contractor. CAS's scope will include the following:

- Developing site plan templates to be used to depict the existing locations of the septic tank and drainfields on each private property (estimated at approximately 245 properties).
- Completion of Palm Beach County Department of Health permit applications for all 245 properties. This work will require researching each property address on the Palm Beach County property appraiser website in order to determine information needed for completion of the permit applications (i.e, folio#, building square footage, property lot size, lot/block#, etc.)
- Provide utility location and verification services within the area requested for locating the limits and locations of the existing septic tank and drainfields and then sketching the information on the site plan templates. Locating services will use AWPA standards for marking. A sub-surface ground penetrating radar (GPR) unit shall be used in addition to electromagnetic induction (EM) to verify horizontal locations of the septic tanks and drainfields. Lines will be painted on the ground or pin flags set to show said lines on the surface.
- After locates work is completed, the completed site plan templates will be QA/QC'd by the CAS Project engineer. Once the CAS review is completed, the

permit applications and site plans for each property will be provided to the Contractor to complete so he can file for building plumbing permits through Palm Beach County Health Department and Pam Beach County Building Department.

CAS'S Lump Sum (LS) Fee for Task E61B shall be\$50,000.00

Note: This task will address one (1) submittal to the Palm Beach County Health Department to be made by the Contractor. Any permit related comments requiring revisions be made by CAS relating to this Task will be considered additional services.

SUMMARY OF COSTS

CAS proposes to accomplish the professional services listed for the following total lump sum and time and materials fees, which is the sum of the fees for each phase and its specific work tasks:

<u>SURVEY TASKS AND LOCATES TASKS</u>	
UTILITY LOCATES – GPR/EM SERVICES	\$3,360.00
MAP OF SPECIFIC PURPOSE SURVEY	\$12,155.00
UTILITY TEST HOLES ("SOFT DIGS")	\$2,475.00
SUBTOTAL	\$17,990.00
<u>ENGINEERING DESIGN TASKS</u>	
FINAL ENGINEERING DESIGN (90-100% COMPLETE)	\$18,330.00
PERMITTING SERVICES	\$10,080.00
BUILDING PERMITS FOR WATER SERVICES – HEALTH DEPARTMENT	\$50,000.00
SUBTOTAL	\$78,410.00

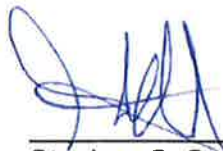
GRAND TOTAL (LS and T&M): \$96,400.00

Lake Osborne Estates Water Main Replacement Project - Phase I Expansion
April 17, 2020
Proposal P3849
Page 6 of 6

Your endorsement of this letter will be understood as CAS's Notice to Proceed with the project. If there are any questions, please feel free to contact Stephen Smith at (954) 815-4111 (email: ssmith@craigasmith.com).

Thank you for your time and effort in supporting this project. We appreciate your business.

AGREED TO AND ACCEPTED BY:



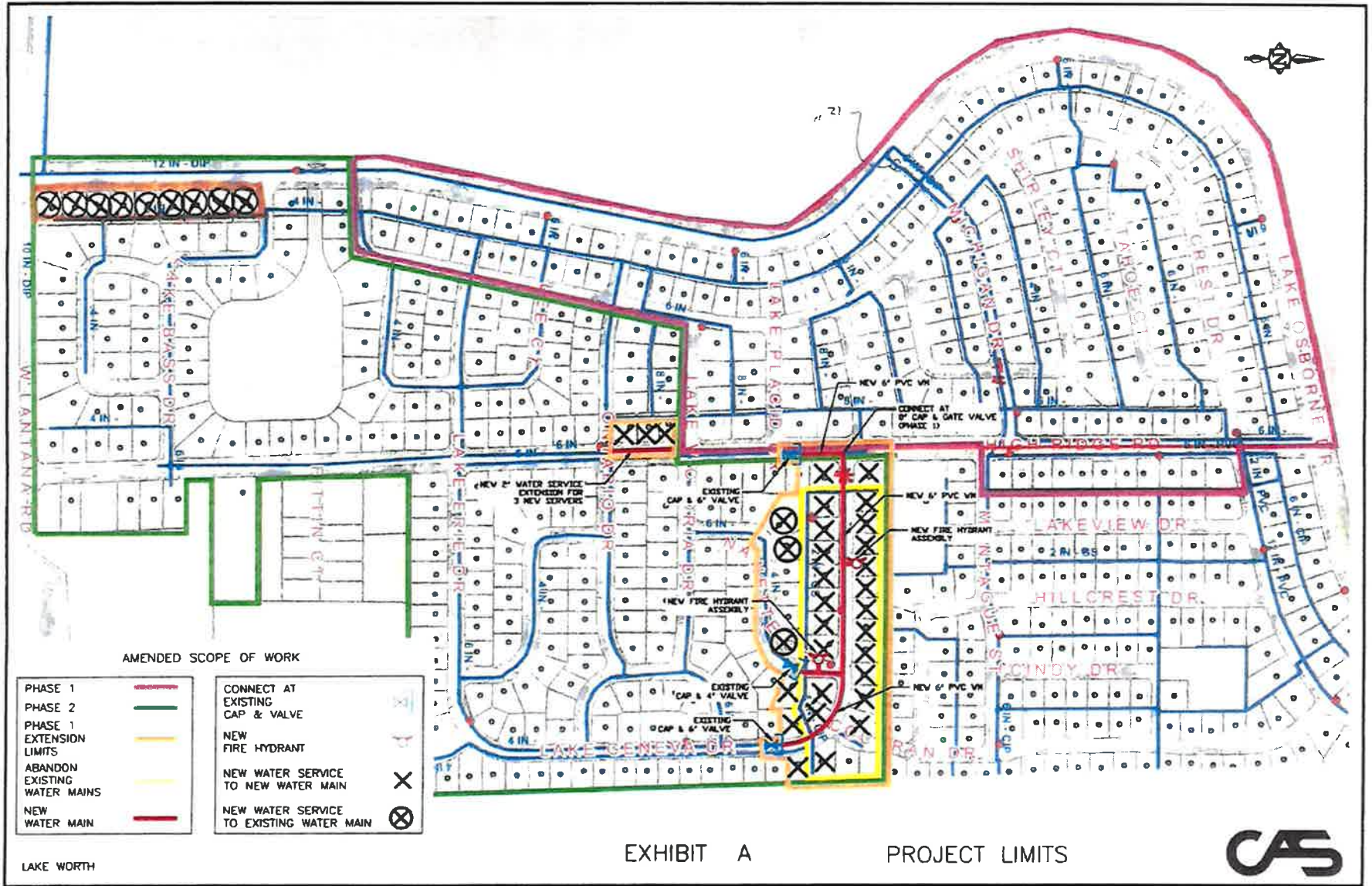
Stephen C. Smith, P.E.
Senior Vice President

Signature

Print Name

Date

cc: File





BUDGET TRANSFER REQUEST

(replaces Budget Appropriation Form)

Accounting Period:	Accounting Month/Year:	Journal Entry:
DEPARTMENT:		DATE:
FROM ACCOUNT # (Note 1)	ACCOUNT DESCRIPTION	AMOUNT
422-7034-533.63-60	Improve Other than Build / Infrastructure	\$96,400.00
TO ACCOUNT # (Note 1)	ACCOUNT DESCRIPTION	AMOUNT
422-7034-533.63-15 (WT1803)	Improve Other than Build / Mains	\$96,400.00
Explanation required:		
Budget transfer to cover new Amendment 1 for Craig A Smith additional engineering on Lake Osborne Estates Water Main Replacment.		
REQUESTED BY (Originator)		Title
Print Name: Julie Parham		Asst. Water Utility Dir.
Telephone Ext. 1798		
Signature: <i>Julie Parham</i> Julie Parham 2020.04.23 12:25:27 -04'00'		
APPROVED BY DEPARTMENT DIRECTOR		Title
Print Name: Brian Shields		Water Utility Dir.
Telephone Ext. 1675		
Signature: <i>Brian Shields</i> 4/23/20		
* * * * FINANCE USE ONLY * * * *		
FINANCE APPROVED	Name	Date
Signature:		
FINANCE POSTED	Name	Date
Signature:		

**Note 1: Account Master AAA-BBCC-DDD.EE.FF
 AAA and BB need to agree in "From Account #" and "To Account #" box**

Attach supporting documentation (i.e. resolution, ordinance, minutes, etc.).

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: Commissioner Robinson

TITLE:

Consideration of a vote to utilize the Snook Islands docks brought forward by Commissioner Robinson

SUMMARY:

Commissioner Robinson has brought forward an idea to allow The Sailing Club to partner with the City to help lease the docks at Snook Island on the north side of the bridge at the Intracoastal Waterway and is asking for the Commission to direct City staff to look into this possibility as another possible revenue stream for the City.

BACKGROUND AND JUSTIFICATION:

In 2008 Palm Beach County was given a Grant from the Florida Inland Navigation District ("FIND") to build docks in the Snook Island area. At that time, the Florida Department of Environmental Protection issued a permit that the boat slips were for day use only in the Palm Beach County Natural Areas of which Snook Island is a part and they do not allow for overnight use. The Grant requires that the project be equally available to all of the member counties and that the slip may not be reserved or set aside for a special use.

FIND, as a major funding entity, does not believe that a more commercial operation mode is within the scope of the original grant therefore charging, regulating and staffing a mini marina is not possible at this time. These docks do not provide any amenities or basics such as water and electricity and the limited number of slips makes it impossible to create a revenue stream from rentals that would cover the costs of running the docks.

MOTION:

Move to approve/disapprove directing staff to explore the possibility of partnering with The Sailing Club to open up the Snook Island docks for the use for boat storage or overnight parking of boats.

ATTACHMENT(S):

Fiscal Impact Analysis – n/a

EXECUTIVE BRIEF REGULAR MEETING

AGENDA DATE: May 5, 2020

DEPARTMENT: City Manager

TITLE:

Discussion to ascertain Commission direction on how to address the impacts of the COVID-19 pandemic as it relates to the businesses who lease facilities from the City at the Beach/Casino and Golf Course

SUMMARY:

Staff is seeking direction on the lease payments at the Beach/Casino and the Golf Course in order to address issues caused by the COVID-19 pandemic and its effects on business operations. The Commission discussed this and provided input at the last Commission meeting and is incorporated into this item.

BACKGROUND AND JUSTIFICATION:

Due to the COVID-19 crisis and the resulting Executive Orders and Administrative Orders issued by the State and the County, businesses are experiencing serious negative impacts. The City has six tenants within facilities located at the Beach/Casino and the Golf Course. Restrictions put in place to comply with social distancing coupled with the fact that they are located within City parks; the ability to maintain a flow of business activity was severely limited. The City Manager had conversations with several private sector landlords who own highly visible businesses within the downtown area. For the most part these landlords are working with their tenants to provide flexibility and options in order to help their tenant through this difficult period.

At the last meeting the Commission discussed various options, ideas, and concerns including:

- Partial Abatement of lease payment(s)
- Deferment of lease payment(s)
- Combination of both Abatement and Deferment
- Create several options to choose from based on above
- Tailor City's assistance based on need
- Assistance with loan/grant applications
- Payback period during the tourist season
- Utility assistance
- Require keeping employees

The following two options are based on the input and discussion provided by the Commission. The options are not a final recommendation but represent the next step in determining what the final assistance package will include and how it will function. Both options include:

- A determination of the affected days to be made by the Commission designed as the Effective Period of Impact (EPI)
- Determining if the business has applied for and/or has received assistance from the government in the form of loans/grants,
- Ascertaining if a business continued to operate or was completely closed at any time during the EPI,
- Exclusion of any business who is involved in a potential sale of their lease and/or a declaration of bankruptcy,
- The Season is defined as the period between December 1 and April 1
- Interest will be calculated on both the Abatement and the Deferment and added to the payback

OPTION 1:

100% Deferment of lease payments during the days included in the EPI with a payback prorated over one (1) Season.

OPTION 2:

25% Abatement and a 75% Deferment of lease payments for the days included in the EPI with a payback prorated for five (5) months starting one (1) month after complete re-opening of parks and businesses.

ALTERNATIVE:

Businesses that completely closed during the EPI may qualify for a 50% Abatement and a 50% Deferment of lease payments for the days included in the EPI with a payback prorated over one (1) Season.

MOTION:

Move to Direct staff to incorporate changes and bring back at the May 19 Commission meeting for consideration.

ATTACHMENT(S):

Fiscal Impact Analysis – n/a