



AGENDA
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, DECEMBER 06, 2022 - 6:00 PM

ROLL CALL:

INVOCATION OR MOMENT OF SILENCE: led by Commissioner Sarah Malega

PLEDGE OF ALLEGIANCE: led by Vice Mayor Christopher McVoy

AGENDA - Additions / Deletions / Reordering:

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

- A. Presentation of the Bus Shelter Improvement Program by Clinton Forbes, Executive Director of Palm Tran Public Transportation
- B. Update by the Education Task Force

COMMISSION LIAISON REPORTS AND COMMENTS:

CITY MANAGER'S REPORT:

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA:

APPROVAL OF MINUTES:

- A. [Work Session - November 7, 2022](#)
- B. [Regular Meeting - November 15, 2022](#)

UNFINISHED BUSINESS:

- A. [Discussion of proposed Request for Proposal \(RFP\) regarding the Housing Crisis](#)

NEW BUSINESS:

- A. [Presentation of conceptual design for the pool by CPZ Architects, Inc.](#)
- B. [Ordinance 2022-20 – First Reading – Amending Chapter 23 “Land Development Regulations,” Article 3 “Zoning Districts,” Division 7 “Public Districts,” Section 23.3-26 “P- Public,” and Section 23.3-27 “PROS – Public Recreation and Open Space” for consistency with the use tables in Section 23.3-6 and clarifying the approval process for uses in the public districts; and Division 8 “Conservation District,” Section 23.3-28 “C- Conservation,” for consistency with the use tables in Section 23.3-6, correcting a scrivener’s error and modifying the approval process to require conditional use approval for new uses; and Division 1 “Generally,” Section 23.3-6 “Use Tables,” to remove the P, PROS, and C zoning districts from all use categories in the use tables in this section except from the “Temporary Uses” category](#)

- C. [Ordinance No. 2022-24 – First Reading – Providing for the City’s Consent to the Inclusion of the City of Lake Worth Beach Into the Palm Beach County’s Fire/Rescue Municipal Service Taxing Unit for Fire-Rescue, Fire Protection, Advanced Life Support, Fire Code Enforcement and Other Necessary and Incidental Services and Providing for Effectiveness and Duration of Consent and Acknowledging Ad Valorem Millage Rate Limitation.](#)
- D. [Ordinance No. 2022-25 – First Reading – Amending Chapter 9 “Buildings and Structural Regulations” of the City’s Code of Ordinance to provide for a Required Thirty-Year Recertification for Buildings and Other Building Code Issues](#)
- E. [Ordinance No. 2022-26 – First Reading – Amending Subsection \(g\) "Maintenance Requirements" of Section 2-75.11 "Foreclosed, Vacant and Unimproved Property Registration Program" of Article VII "Abatement of Nuisances" of Chapter 2 "Administration"](#)
- F. [Resolution No. 88-2022 – Acknowledging City Commission’s Continued Commitment to Enforcement of Laws to Protect Public Safety while Respecting First Amendment Rights](#)
- G. [Ordinance No. 2022-27 – First Reading – Amending Chapter 14 "Business Tax Receipts and Business Regulations", Section 14-5 "Application for Local Business Tax Receipt of the City's Code of Ordinances to Provide for a Local Contact for All Rental Properties and to Repeal Article III " Adult Moving Picture Show or Theater, Indoor or Drive-In" and Repeal Article VI "Vehicles for Hire"](#)
- H. [Professional Services Agreement with NexAir LLC](#)
- I. [Amendment One to the Bohemian Economic Incentive Agreement](#)

CITY ATTORNEY'S REPORT:

UPCOMING MEETINGS AND WORK SESSIONS:

Regular Meeting - January 3 @ 6 PM
Pre-agenda Work Session - January 11 @ 9 AM

ADJOURNMENT:

The City Commission has adopted Rules of Decorum for Citizen Participation (See Resolution No. 81-2022). The Rules of Decorum are posted within the City Hall Chambers, City Hall Conference Room, posted online at: <https://lakeworthbeachfl.gov/government/virtual-meetings/>, and available through the City Clerk’s office. Compliance with the Rules of Decorum is expected and appreciated.

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

**MINUTES
CITY OF LAKE WORTH BEACH
CITY COMMISSION WORK SESSION – HOUSING CRISIS
CITY HALL COMMISSION CHAMBER
MONDAY, NOVEMBER 07, 2022 - 5:00 PM**

The meeting was called to order by Mayor Resch on the above date at 5:03 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:39) Present were Mayor Betty Resch; Vice Mayor Christopher McVoy and Commissioners Sarah Malega, Kimberly Stokes, and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Elizabeth Lenihan and City Clerk Melissa Ann Coyne.

PLEDGE OF ALLEGIANCE: (1:00) led by Vice Mayor Christopher McVoy.

UPDATES / FUTURE ACTION / DIRECTION: (1:24)

A. Discussion of Request for Proposal (RFP) regarding the Housing Crisis

Action:

Consensus for the Scope of Services to include the following:

1. Open to academics/universities as well as consultants (ensure inclusive language)
2. Add qualitative data collection showing effects of quantitative data on community, including on education, public safety, social services and any other ripple/secondary effects
3. Add “creativity” section allowing response and points available for the vendor to include things the City may be interested in but not thought of
4. Required deliverables (report, presentation to Commission and community engagement)
5. Option to assist in implementation of report/plan
6. Estimated budget of \$50k
7. Include quantitative data for number of affordable/workforce housing in community currently, in pipeline, rental versus owned, and end date for restrictions in place
8. Data to be used for planning, budgeting, regulations, and grant applications; responses may include planning suggestion to fill other/related needs within areas where there is a hole that may be working against housing affordability (such as food desert).

Action:

Consensus for the city to proceed with foreclosure of non-homestead, vacant/abandoned properties subject to code enforcement liens. (54:27)

ADJOURNMENT: (1:08:29)

The meeting adjourned at 6:11 PM.

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Minutes Approved: December 6, 2022

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

**MINUTES
CITY OF LAKE WORTH BEACH
REGULAR CITY COMMISSION MEETING
CITY HALL COMMISSION CHAMBER
TUESDAY, NOVEMBER 15, 2022 – 6:00 PM**

The meeting was called to order by Mayor Resch on the above date at 6:04 PM in the City Commission Chamber located at City Hall, 7 North Dixie Highway, Lake Worth Beach, Florida.

ROLL CALL: (0:15) Present were Mayor Betty Resch, Vice Mayor Christopher McVoy, Commissioners Sarah Malega, Kimberly Stokes and Reinaldo Diaz. Also present were City Manager Carmen Davis, City Attorney Glen Torcivia and City Clerk Melissa Ann Coyne.

INVOCATION OR MOMENT OF SILENCE: (0:32) was led by Commissioner Reinaldo Diaz.

PLEDGE OF ALLEGIANCE: (1:32) was led by Mayor Betty Resch.

ADDITIONS/DELETIONS/REORDERING:

There were no changes to the agenda.

PRESENTATIONS: (2:14) (there is no public comment on Presentation items)

- A. Proclamation declaring November 2022 as Lung Cancer Awareness Month (2:24)
- B. Proclamation declaring November 12-20, 2022 as National Hunger & Homelessness Week (5:32)
- C. Proclamation declaring November 14-18, 2022 as American Education Week (7:37)
- D. Proclamation declaring November 20, 2022 as Transgender Day of Remembrance (13:18)
- E. Proclamation declaring November 26, 2022 as Small Business Day (14:43)

COMMISSION LIAISON REPORTS AND COMMENTS: (17:13)

CITY MANAGER'S REPORT: (36:34)

City Manager Davis provided the following report:

- gave a preliminary update on the impacts of Hurricane Nicole on the city: three trees were downed (one each at Bryant Park, Sunset Ridge and the Northwest Ballfields) and at the pier, the canopy, 25 panels, portions of the railing and electrical components underneath would have to be replaced at a cost of \$60,000 with the work being done internally
- expressed appreciation to the teams within the city who worked around the clock addressing the storm-related issues

- thanked the commission for having allowed her to attend the Symposium for the National Forum of Black Administrators in Athens, Georgia

PUBLIC PARTICIPATION OF NON-AGENDAED ITEMS AND CONSENT AGENDA: (44:57)

APPROVAL OF MINUTES: (1:11:30)

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Stokes to approve the following minutes:

- A. Regular Meeting - October 18, 2022
- B. Pre-agenda Work Session - October 26, 2022
- C. Regular Meeting - November 1, 2022

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

CONSENT AGENDA: (1:23:18) (public comment allowed during Public Participation of Non-Agendaed items)

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

- A. Lease Renewal with FDOT for the Sidewalk Café Permits

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

NEW BUSINESS: (1:23:26)

- A. Resolution No. 87-2022 – FY23 Refuse Fund Budget Amendment

City Attorney Torcivia did not read the resolution.

RESOLUTION NO. 87-2022 OF THE CITY OF LAKE WORTH BEACH, FLORIDA, TO ADOPT A BUDGET AMENDMENT TO INCREASE \$127,000 OF EXPENDITURES FOR THE HIRING OF TWO ADDITIONAL EMPLOYEES WITHIN THE REFUSE FUND BUDGET FOR THE FISCAL YEAR 2023 BEGINNING OCTOBER 1, 2022 AND ENDING SEPTEMBER 30, 2023; AND PROVIDING FOR AN EFFECTIVE DATE

Action: Motion made by Vice Mayor McVoy and seconded by Commissioner Malega to approve Resolution No. 87-2022 – FY23 Refuse Fund Budget Amendment.

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

CITY ATTORNEY'S REPORT: (1:35:46)

City Attorney Torcivia provided the following report:

- wished everyone a Happy Thanksgiving.

UPCOMING MEETINGS AND WORK SESSIONS:

Utility Meeting - November 29 @ 6 PM
Work Session – December 5 @ 5 PM
Regular Meeting - December 6 @ 6 PM

ADJOURNMENT: (1:38:08)

Action: Motion made by Commissioner Malega and seconded by Commissioner Stokes to adjourn the meeting at 7:43 PM.

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

Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

Minutes approved December 6, 2022.

Item time stamps correspond to the video recordings of the meetings on YouTube.

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: City Manager

TITLE:

Discussion of proposed Request for Proposal (RFP) regarding the Housing Crisis

SUMMARY:

The City of Lake Worth Beach will discuss the proposed request for proposals from qualified consultants to provide a housing emergency study.

BACKGROUND AND JUSTIFICATION:

The City Commission recognizes the existing housing crisis and declared a Housing Crisis State of Emergency at its August 16, 2022 meeting. A housing study is needed in order to decide on potential next steps to address the issue.

DIRECTION:

TBD

ATTACHMENT(S):

Fiscal Impact Analysis – N/A



REQUEST FOR PROPOSALS

Housing Emergency Study and Rent Control Ordinance Analysis

RFP NO. 23-200



Financial Services
7 North Dixie Highway
Lake Worth Beach, FL 33460
561.586.1770

RFP#23-200

Housing Emergency Study and Rent Control Ordinance Analysis

The City of Lake Worth Beach, Florida, is requesting proposals from qualified consultants for the preparation of a housing emergency study and rent control ordinance analysis. A complete scope of work is attached as **Exhibit "A"** and incorporated into this Request for Proposals ("RFP").

Time is of the essence and any proposal received after **4:00 P.M., January 31, 2023**, whether by mail or otherwise may be rejected by the City. Proposals shall be placed in a sealed envelope, marked with the RFP number, title, and date and hour proposals are scheduled to be received. All persons or entities responding to the RFP (hereafter "Respondents") are responsible for insuring that their proposal is delivered to the City's Financial Services office address by the deadline indicated. The City reserves the right in its sole discretion to reject any or all proposals and/or to waive all nonmaterial irregularities on any and all proposals. All costs and expenses, including reasonable attorney's fees, incurred by any Respondent in preparing and/or responding to the RFP are the sole responsibility of the Respondent including without limitation any and all costs and fees related to a protest.

Interested persons or entities may obtain a copy of the RFP by contacting the Financial Services office at purchasing1@lakeworthbeachfl.gov or from lakeworthbeachfl.bidsandtenders.net. All Respondents shall have a Bidding System Vendor account and be registered as a Plan Taker for this RFP opportunity, which will enable the Respondents to download the Bid Call Document, to receive Addenda email notifications and download all documents without the watermark "preview" on them. To ensure receipt of the latest information and updates via email regarding this RFP, or if a Respondent has obtained this RFP Document from a third party, the onus is on the Respondent to create a Bidding System Vendor account and be register as a Plan Taker for the RFP opportunity.

All proposals must be mailed to:

**City of Lake Worth Beach
Financial Services/Procurement Division
7 North Dixie Highway, 2nd Floor
Lake Worth Beach, FL 33460**

ENVELOPE MUST BE IDENTIFIED AS RFP #23-200.

PUBLISHED: _____ *Palm Beach Post* and City's website

GENERAL INFORMATION

1. PROJECT OBJECTIVE

The City of Lake Worth Beach, Florida, is requesting proposals from qualified consultants, including but not limited to, firms, universities and other academic institutions, etc., to provide a housing emergency study and rent control ordinance analysis. A complete scope of work is attached as **Exhibit "A"** and incorporated into this Request for Proposals ("RFP").

2. SUBMITTAL OF PROPOSALS

Interested Respondents are invited to submit a complete proposal for consideration. The proposal must address the items requested, clearly and concisely.

Time is of the essence and any proposal received after **4:00 P.M., January 31, 2023**, whether by mail or otherwise may be rejected by the City. . **The City offices have limited access to the public at this time. Courier deliveries SHALL NOT require signature for the receipt. Respondents may deliver proposals directly to City Hall during regular business hours 8 a.m. to 5 p.m. Monday through Friday. If proposals are delivered in person, visitors shall ring the bell at the City Hall front entrance and wait for assistance or by contacting Procurement Division at (561) 586 – 1770 in advance.** The City will in no way be responsible for delays caused by any occurrence. **Proposals shall not be submitted and will not be accepted by telephone, telegram, facsimile or e-mail.** The time of receipt shall be determined by the time clock located in Financial Services. Proposals shall be placed in a sealed envelope, marked with the RFP number, title, and date and hour proposals are scheduled to be received. **Respondents are responsible for ensuring that their proposals are delivered to Financial Services address by the deadline indicated.**

The City reserves the right in its sole discretion to reject any or all proposals and/or to waive all nonmaterial irregularities on any and all proposals. All costs and expenses, including reasonable attorney's fees, incurred by any Respondent in preparing and responding to this RFP are the sole responsibility of the Respondent including without limitation any and all costs and fees related to a protest. The documents included or incorporated in this RFP constitute the complete set of instructions, scope, specification requirements and forms (unless supplemented by City issued addendum). It is the responsibility of the Respondent to ensure that all pages are included. Therefore, all Respondents are advised to closely examine this RFP. All proposals must be typed or written in ink, and must be signed in ink by an officer having authority to bind the Respondent. Signatures are required where indicated; failure to do so may be cause for rejection of a proposal.

3. CHANGES AND INTERPRETATIONS

Changes to this RFP will be made by written addendum. A written addendum is the only official method whereby interpretation, clarification or additional information can be given.

All questions regarding this RFP should be submitted in the bidding system at lakeworthbeachfl.bidsandtenders.net or in writing via e-mail to purchasing1@lakeworthbeachfl.gov and must be received by the date set forth below for questions from potential Respondents. Most questions will be answered via addenda; however, if a question is not answered, the Respondent should assume all relevant information is contained within this RFP or previous issued addendum (if any). The City will attempt to not issue an addendum within three (3) business days of the due date of proposals; however, the City reserves

the right to extend the due date of proposals and issue any addenda at any time prior to the revised due date for proposals.

4. PROPERTY OF THE CITY

All materials submitted in response to this RFP become the property of the City. The City has the right to use any or all ideas presented in any response to this RFP, whether amended or not, and selection or rejection of a proposal does not affect this right. No variances to this provision shall be accepted.

5. RFP TIMETABLE

The anticipated schedule for this RFP and contract approval is as follows:

- **Questions from Potential Respondents Due** **January 12, 2023 - 4:00 PM**
- **Proposal Due Date and Time** **January 31, 2023 - 3:00 PM**
- **Proposal Evaluation** **March, 2023**
- **Contract Negotiations/Approval** **March/April, 2023**

The City reserves the right to amend the anticipated schedule as it deems necessary.

6. VETERAN BUSINESS ENTERPRISE, SMALL BUSINESS AND LOCAL BUSINESS PREFERENCE

Section 2-117 of the City's Code of Ordinance shall govern the application of a Veteran Business Enterprise, Small Business and/or Local Business preference for this RFP. Documentation to support a Respondent as a Veteran Business Enterprise, Small Business and/or Local Business must be submitted with a bid in response to the RFP. Documentation submitted after the proposal deadline will be rejected.

The order and application of preferences is as follows: For all preferences set forth in this RFP, only one preference may be identified in a response to this solicitation. In an event of a tie, for the purpose of determining the best value in the award of an RFP where more than one Respondent identifies a preference, the Veteran Business Enterprise preference shall take precedence over the Local Business preference, and the Local Business preference shall take precedence over the Small Business preference.

7. CONE OF SILENCE

In accordance with the Palm Beach County Lobbyist Registration Ordinance and the City's procurement code, the City's procurement cone of silence will be in effect as of the deadline to submit a proposal in response to this RFP. A complete copy of the City's procurement code is available on-line at municode.com under the City's code of ordinances (sections 2-111 – 2-117). All Respondents are highly encouraged to review the same. In summary, the cone of silence prohibits communication between certain City officials, employees and agents and any entity or person seeking to be awarded a contract (including their lobbyists and potential subcontractors). The cone of silence terminates at the time of award, rejection of all proposals or some other action by the City to end the selection process.

8. ETHICS REQUIREMENT

This RFP is subject to the State of Florida Code of Ethics for Public Officers and Employees and the Palm Beach County Code of Ethics. Accordingly, there are prohibitions and limitations on the employment of City officials and employees and contractual relationships providing a benefit to the same. Respondents are highly encouraged to review both the Florida Code of Ethics and the Palm Beach County Code of Ethics in order to ensure compliance with the same.

Further, any Respondent coming before the City Commission for an award of a contract and who has made an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) to any elected official of the City Commission, who is a current sitting member of the Commission, must disclose such election campaign contribution, verbally and in writing, in their responsive proposal to this RFP. Therefore, all Respondents shall complete the City's Campaign Contribution Statement attached to this RFP as Exhibit "B". Failure to complete will result in rejection of the Respondent's proposal.

9. DISCLOSURE AND DISCLAIMER

The information contained herein is provided solely for the convenience of the Respondents. It is the responsibility of each Respondent to assure itself that information contained herein is accurate and complete. Neither the City nor its agents provide any assurances as to the accuracy of any information in this RFP. Any reliance on the contents of this RFP, or on any communications with City representatives or agents, shall be at each Respondent's own risk. Respondents should rely exclusively on their own investigations, interpretations and analyses in connection with this matter. This RFP is being provided by the City without any warranty or representation, express or implied, as to its content, accuracy or completeness and no Respondent or other party shall have recourse to the City if any information herein contained shall be inaccurate or incomplete. No warranty or representation is made by the City that any proposal conforming to these requirements will be selected for consideration, negotiation or approval.

In its sole discretion, the City may withdraw this RFP either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the non-material provisions of this RFP. Through its own investigation and in its sole discretion, the City may determine the qualifications, experience and acceptability of any Respondent submitting a proposal in response to this RFP. Following submission of a proposal, each Respondent agrees to promptly deliver such further details, information and assurances, including, but not limited to, financial and disclosure data, relating to the proposal and/or the Respondent, including the Respondent's affiliates, officers, directors, shareholders, partners and employees, as requested by the City. Any action taken by the City in response to proposals submitted in response to this RFP or in making any award or failure or refusal to make any award, or in any withdrawal or cancellation of this RFP, either before or after issuance of the notice of intent to make an award, shall be without any expense, liability or obligation on the part of the City, or their advisors.

Any recipient of this RFP who responds hereto fully acknowledges all the provisions of this Discloser and Disclaimer and agrees to be bound by the terms hereof. Any proposal submitted pursuant to this RFP is at the sole risk and responsibility of the party submitting such proposal.

10. CONTRACT AGREEMENT / COMPENSATION

The terms and conditions of the resulting contract will be negotiated with successful Respondent. If the City and the successful Respondent cannot agree on the terms and conditions of the resulting contract, the City reserves the right to terminate negotiations with the successful Respondent and move to the next ranked Respondent to commence negotiations. Negotiations

may continue in this process until the City is able to enter into a contract with a Respondent that best meets the needs of the City.

While the City anticipates awarding one contract, the City reserves the right to award to more than one Respondent if it is in the best interests of the City.

Awarded contracts which will cross fiscal-years are subject to the City's annual budget and appropriation process. If an awarded contract is not funded in whole or in part in a fiscal year, the City will have the right to terminate the contract without cause. The City need not include a lack of appropriations provision in the resulting contract to avail itself of such right.

11. INSURANCE REQUIREMENTS

Prior to execution of the resulting contract derived from this RFP, the selected Respondent shall obtain and maintain in force at all times during the term of the resulting contract insurance coverage as required herein. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the selected Respondent has obtained insurance of the type, amount, and classification as required for strict compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City. Compliance with the foregoing requirements shall not relieve the selected Respondent of its liability and obligations under the resulting contract.

- A. The selected Respondent shall maintain, during the term of the contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- B. The selected Respondent shall maintain, during the life of the contract, commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Respondent from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations and completed operations under the resulting contract, whether such operations be by the Respondent or by anyone directly or indirectly employed by or contracting with the Respondent.
- C. The selected Respondent shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.
- D. The selected Respondent shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Respondent or by anyone directly or indirectly employed by the Respondent.

All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the selected Respondent shall specifically include the CITY as an "Additional Insured" on a primary, non-contributing basis.

If the Respondent is a state agency or subdivision as defined in Section 768.28, Florida Statutes, the Respondent shall furnish the City with written verification of liability protection in accordance with Section 768.28, Florida Statutes.

12. EVALUATION AND AWARD

The City may assemble an Evaluation Committee to evaluate the proposals or may have the proposals evaluated by a designated City official, employee or agent. If an Evaluation Committee is utilized, it will convene for a meeting to evaluate and rank the most advantageous proposals and make a recommendation for contract award to the City Commission with or without discussions. The Purchasing Division will advertise the Evaluation Committee meeting in the appropriate media as directed by law. The City Commission is not bound by the recommendation of the Evaluation Committee and the City Commission may deviate from the recommendation in determining the best overall responsive proposal which is most advantageous and in the best interest of the City consistent with the evaluation criteria in this RFP. The selected Respondent will be notified in writing with an intent to award letter. Recommended awards will be made available for review by interested parties by Financial Services.

Each proposal will be evaluated individually and in the context of all other proposals. There is no obligation on the part of the City to award the proposal to the lowest priced Respondent, and the City reserves the right to award the contract to the Respondent submitting the best overall responsive proposal to a responsible Respondent which is most advantageous and in the best interest of the City consistent with the evaluation criteria. The City shall be the sole judge of the proposals that is in its best interests.

To be considered responsive, Respondent's response to this RFP shall substantially conform in all material respects to the requirements and criteria set forth in the RFP. This includes such aspects as following RFP instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions, qualifications and specification requirements as enumerated in the solicitation. Except where specifically authorized in this solicitation, a proposal that deprives the City of the assurance that the contract will be entered into in accordance with its terms will be considered non-responsive.

To be considered responsible, Respondent shall have the capability in all respects to fully perform the requirements identified in this RFP documents. Respondent shall have the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a city project or purchase. The term responsibility is not limited in its meaning to financial resources and ability. The City reserves the right to make the determination if Respondent is responsible by taking into consideration the Respondent's past performance on any contract involving similar work and/or services; the Respondent's skill and business judgment; the Respondent's experience and facilities for carrying out its responsibilities, its ability to thoroughly research and analyze the necessary data for the services required, to present the data and analysis and to make policy recommendations, and the ability to timely complete the services; and, any other relevant information which the City may obtain relating to the Respondent's, its proposed personnel's and subcontractor's ability to perform the solicited work and/or services.

At its sole option, for larger or more complex studies or projects, the City may select the top three to five Respondents and require presentations from each Respondent before making the final selection. This requirement is at the sole discretion of the City.

While the City allows Respondents to specify any desired variances to the RFP terms, conditions, and specifications, the number and extent of variances specified will be considered in determining the Respondent who is most advantageous to the City.

Evaluation Criteria and Scoring:

The evaluation of the proposals will be conducted in accordance with the following provisions. Scoring is based on a 100-point scale. The following guidelines will be used for the evaluations (with associated weighting). **To be considered “Qualified”, a Respondent must receive a minimum aggregate average of 70 points.**

EVALUATION CRITERIA	Points Awarded
<p>Responsiveness to RFP</p> <ol style="list-style-type: none"> 1. Comprehensiveness of proposal, Respondent clearly explained all services to be provided 2. Completeness of proposal, Respondent included all required documentation 	0 – 10 points
<p>Cost Effectiveness</p> <ol style="list-style-type: none"> 1. Hourly rate of personnel for services 2. Overall cost is reasonable for services provided and in line with the current market prices. Points are assigned based on the comparison to the rates provided by other respondents 3. Not to exceed price for services has been provided and includes all requested services 	0 - 25 points
<p>Successful Experience and Qualification of Respondent and Staff</p> <ol style="list-style-type: none"> 1. Experience with similar sized municipalities /public entities 2. Staff qualifications and subject knowledge 3. Evidence of experience and skill (heavy emphasis on housing related research, presentation of data and analysis, and policy recommendations) 4. Evidence of availability to deliver in the timeline 5. Successful past projects with the City 	0 - 30 points
<p>Similar Projects and References</p> <ol style="list-style-type: none"> 1. Prior experience with two (2) similar projects in past 5 years 2. References from at least (3) entities for similar projects or work 	0 – 25 points
<p>Veteran Business Enterprise, Small Business and Local Business Preference</p> <ol style="list-style-type: none"> 1. Respondent has provided supporting documentation claiming veteran business enterprise, small business or local business preference. 	0 - 5 points
<p>Default, Termination, Litigation, Debarment, etc.</p> <ol style="list-style-type: none"> 1. Instances of a default under a similar project or contract; 2. Instances of litigation related to a similar project or contract; 3. Instances of on any debarment by a local, state or federal governmental entity 	0 – 5 points

(Note: Respondents that do not address this item in their proposal will score 0 points)	
TOTAL	100 Points

In the event of a tie in the scoring, the City will provide a preference to the Respondent with a drug-free workplace policy.

13. PROPOSAL FORMAT

Each Respondent shall submit **one (1) original, one (1) copy, and one (1) electronic copy of their proposal**, in a clear, concise format, on 8 1/2" x 11" paper, in English. Electronic copy shall be provided on USB drive **maximum size of 10 Mb**.

Each proposal (and all copies) shall contain all the information required herein to be considered for award. Omission of required data may be cause for disqualification. Any other information thought to be relevant, but not applicable to the enumerated sections, should be provided as an appendix to the proposal. If publications are supplied by a Respondent to respond to a requirement, the response should include reference to the document number and page number. Proposals not providing this reference will be considered to have no reference materials included in the additional documents.

Proposals must be properly signed by the owner/principal having the authority to bind the Respondent in a resulting contract. **Signatures are required where indicated; failure to do so may be cause for rejection of proposal.**

Only one proposal may be submitted by each Respondent.

Proposals which do not contain or address key points or sufficiently document the requested information may be deemed non-responsive and rejected.

All proposals shall be submitted in the format identified below. Failure to submit the required documentation in the format identified may cause the proposal to be rejected.

Table of Contents

Outline in sequential order the sections of the proposal. The sections should match with the evaluation criteria.

Respondent Information Page

Exhibit "C" hereto.

Letter of Transmittal (not to exceed two pages)

This letter will summarize in a brief and concise manner the following:

- General summary of Respondent's business operation; how long in business; general approach to tasks and projects; and, why the Respondent should be selected.
- Respondent's understanding of the scope of services.
- The letter must name all persons or entities interested in the proposal as principals. Identify all of the persons authorized to make representations for the Respondent, including the titles, addresses, and telephone numbers of such persons.

- An authorized agent of the Respondent must sign the Letter of Transmittal and must indicate the agent's title or authority.
- The individual, university, or firm, etc. identified on the Letter of Transmittal will be considered the primary respondent.
- If more than one respondent is named on the Letter of Transmittal, a legal document showing the partnership, joint venture, corporation, etc. shall be submitted showing the legality of such. Submittal for Joint Venture to include executed Joint Venture agreement and if state law requires that the Joint Venture be registered, filed, funded, or licensed prior to submission of the proposal, then same shall be completed prior to submittal. Respondents shall make their own independent evaluation of the requirements of the state law. The City will not consider submittals that identify a joint partnership to be formed.

Proof of Licenses (unlimited)

Respondents shall provide proof of required licenses for the Respondent and its staff and the scope of services to be performed. This shall include:

- Proof of all applicable licenses for goods and/or services to be rendered (including registration with State of Florida Division of Corporations if applicable);
- Statement or proof of required insurance; and,
- Proof of Respondent's Business Tax Receipt (as applicable)
- Other Proof of Specific Qualifications as outlined in Scope of Services

Cost Effectiveness (unlimited)

Respondents shall provide the completed Pricing Form, **Exhibit "A1"**. The prices provided shall include all of the services described in the solicitation documents (except as otherwise noted). Respondent shall provide any additional relevant pricing information to meet all the requirements as defined in the solicitation document. Additional services will not be taken into consideration for evaluation purposes but City reserves the right to negotiate and include those services as an amendment to the Agreement with the successful respondent.

Successful Experience and Qualification of Respondent and Staff (limited to two pages plus resumes)

Respondents shall provide a two-page summary regarding their ability to deliver the requested services in the required timeframes and the technical approach to the study (including an outline of tasks). Respondents shall specifically include experience and qualifications related to their housing related research, presentations of data and analysis, and making policy recommendations. Information regarding dedicated staff and current workload should be provided.

Resumes of key personnel should also be included. Resumes should not exceed two-pages per person. Resumes should include a description of:

- Training, education and degrees.
- Related experience and for whom.
- Professional certifications, licenses and affiliations.

Similar Projects and References (unlimited)

Respondents shall provide a minimum of two (2) similar projects on the form provided and include whether the project was completed on time.

Respondents shall provide a minimum of three (3) references on the forms provided demonstrating their experience and/or skill with similar projects. Prior experience and skill with other Florida municipalities is desirable. Respondents are responsible for verifying correct phone numbers and contact information provided. Failure to provide accurate information may result in the reference not being obtained or considered.

Default, Termination, Litigation, Debarment, etc. (unlimited)

Respondents should provide a summary of any default, termination, litigation, debarment against or which named the Respondent in the past five (5) years which is related to the goods and/or services sought in this RFP or that Respondent otherwise provides in the regular course of business. The summary shall state the nature of the default, termination, litigation, debarment or a brief description of the outcome or projected outcome, and the monetary amount involved. ***if none, state as such.***

Appendix

Other Relevant and Supporting Documentation (optional).

14. REPRESENTATIONS BY SUBMITTAL OF PROPOSALS

By submitting a proposal, the Respondent warrants, represents and declares that:

A. Person(s) designated as principal(s) of the Respondent is named and that no other person(s) other than the person(s) mentioned has (have) any interest in the proposal or in the resulting contract.

B. The proposal is made without connection, coordination or cooperation with any other persons, company, firm or party submitting another proposal, and that the proposal submitted is, in all respects, fair and in good faith without collusion or fraud.

C. The Respondent understands and agrees to all elements of the proposal unless otherwise indicated or negotiated, and that the proposal may become part of any contract entered into between the City and the Respondent.

D. By signing and submitting a proposal, Respondent certifies that Respondent and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives thereof are not presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects.

E. Pursuant to 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted firm list maintained by the State of Florida may not submit a proposal to the City of Lake Worth Beach for 36 months following the date of being placed on the convicted firm list. Respondent certifies that submittal of its proposal does not violate this statute.

F. Respondent recognizes and agrees that the City will not be responsible or liable in any way for any losses that the Respondent may suffer from the disclosure or submittal of proposal information to third parties.

G. Respondent has carefully and to his/her full satisfaction examined the RFP, the attached Scope of Services and all required forms, and Respondent has received and read all addenda issued and has included their provisions in their proposal.

15. PROTESTS

Any actual Respondent who is aggrieved in connection with this RFP may protest such procurement. The protest must be filed with the City in accordance with the City's procurement code. A complete copy of the City's procurement code is available on-line at municode.com under the City's code of ordinances (sections 2-111 – 2-117). The protest procedures are set forth at section 2-115. There are strict deadlines for filing a protest. Failure to abide by the deadlines will result in a waiver of the protest.

16. EXHIBITS

This RFP consists of the following exhibits (which are incorporated herein by reference):

- A. Exhibit "A" Scope of Services
Exhibit "A1" Pricing Form **(MUST BE SUBMITTED WITH PROPOSAL TO BE CONSIDERED RESPONSIVE)**
- B. Exhibit "B" City's Campaign Contribution Statement (submit with proposal)
- C. Exhibit "C" Respondent Information Form (submit with proposal)
- D. Exhibit "D" Similar Projects (submit with proposal)
- E. Exhibit "E" References (submit with proposal)
- F. Exhibit "F" Drug Free Workplace Form (submit with proposal)
- G. Exhibit "G" Scrutinized Companies Certification
- H. Exhibit "H" Veteran Business Enterprise, Small Business and/or Local Business Preference Form

17. COMPLIANCE

All proposals received in accordance with this RFP shall be subject to applicable Florida Statutes governing public records including without limitation Chapter 119, Florida Statutes. If any Respondent believes its proposal contains exempt or confidential information, the Respondent must identify the same at the time of submission of its proposal. Failure to do so may result in the waiver of such exemption or confidentiality.

18. PUBLIC ENTITY CRIMES.

Pursuant to section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida may not submit a bid to the City for 36 months following the date of being placed on the convicted vendor list.

19. SCRUTINIZED COMPANIES

- A. Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the City may immediately terminate the resulting Agreement at its sole option if the Contractor or any of its subcontractors are found to have submitted a false certification; or if the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.
- B. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement.
- C. The Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the term of the Agreement, including any and all renewals.
- D. The Contractor agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the Contractor shall immediately notify the City of the same.
- E. As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

20. E-VERIFY

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

- A. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all contractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the contractors' newly hired employees;
- B. Secure an affidavit from all contractors (providing services or receiving funding under the resulting Agreement) stating that the contractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- C. Maintain copies of all contractor affidavits for the duration of the Agreement and provide the same to the City upon request;
- D. Comply fully, and ensure all contractor s comply fully, with Section 448.095, Florida Statutes;
- E. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of the Agreement; and,
- F. Be aware that if the City terminates the Agreement under Section 448.095(2)(c), Florida Statutes, the Respondent may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the City as a result of the termination of the Agreement.

END OF RFP
RFP EXHIBITS FOLLOW

EXHIBIT "A"

RFP# 23-200 / Housing Emergency Study and Rent Control Ordinance Analysis

SCOPE OF WORK/SERVICES

The City Commission is requesting proposals for the preparation of a housing emergency study and a rent control ordinance analysis (collectively, the "Study") as set forth below.

A housing crisis consisting of greatly increased house purchase prices and sharply increased monthly rents has been observed and formally recognized in the City of Lake Worth Beach. The City Commission ("the Commission") of Lake Worth Beach ("the City") recognizes that both sale prices and rental rates are set by the market and as such are generally beyond legislative control. Nevertheless, the Commission is alarmed at the steepness of the increases, and further alarmed that the rental and sales price increases are much steeper than local wage or income increases. These disproportionate increases in housing costs relative to income increases can be expected to lead to both increased housing insecurity and a substantial shift in the income distribution of city residents.

Lake Worth Beach has been known within the South Florida metropolis as an unusual community: a relaxed, creative, diverse beach town that has been welcoming to a diversity of cultures and incomes: artists, musicians, diverse ethnicities, and the LGBTQ+ community, including LGBTQ+ youth. That diversity, the city's history, and the income range present over the last several decades have likely all contributed to Lake Worth Beach's reputation for authenticity, for "realness." Many also believe that this city character or "flavor" is a key economic engine for the city, drawing in exceptionally creative businesses and residents, as well as attracting visitors from other parts of Palm Beach County and beyond.

It is therefore the Commission's desire to use all available means to protect the ability of people and families of income ranges historically present within Lake Worth Beach to find reasonable, healthy and positive housing here. While the need for a range of incomes is certainly acknowledged, it is explicitly not the desire of the Commission to create a bedroom community only available to those with substantial incomes.

The above focusses on a long-term vision for Lake Worth Beach. On a more immediate time scale, verbal testimony as well as interactions with Legal Aid of Palm Beach County suggest that there is an ongoing crisis among many renters in our city, with renters of a wide range of incomes being suddenly presented with rental increases of \$200 and \$300 per month, even \$600 and \$700 or more.

Other factors influencing or perceived to be influencing the higher costs of providing housing are the proliferation of short-term rentals, rising property insurance costs, property taxes, escalating cost of new construction and renovation, location of housing and its age, lack of housing options, scarcity of housing and in migration of new Florida residents. The root causes of the crisis are many but having a qualitative and quantitative understanding of their impacts is necessary in order to attempt to solve the problem.

The legislative steps that the City has recently taken (for example Ordinances 2022-12, -13, and -14) will help with the construction of new and alternate forms of housing, and are likely to increase the availability of housing affordable at various levels. That said, the Commission wishes to additionally pursue any other avenues that might provide more immediate relief from these types of rent increases.

This RFP is intended to gather the necessary data to form a defensible, quantitative picture of our community and its housing needs. We see an accurately and quantitatively constructed picture as the necessary foundation for the Commission to take informed action. Ideally, the data, analysis, and resulting picture additionally would be strong enough to provide a legal basis for asserting the presence of a “housing emergency so grave as to constitute a serious menace to the general public.” While the Commission recognizes that the relevant state statute from which this is drawn raises a very high and possibly unattainable legal bar, the Commission nevertheless feels that framing the study in this context is an approach that is likely to yield a strong and complete picture of our current situation. Therefore, the City Commission seeks, as part of the study and pursuant to Section 166.043, Florida Statutes, to secure the necessary data specific to the City of Lake Worth Beach (e.g., vacancy rates, rising rents, shortage of housing, increase in cost of living, inflation, etc.) and the opinion of a qualified professional to firmly establish, at a minimum, the following: (a) whether there exists within the City of Lake Worth Beach a “housing emergency so grave as to constitute a serious menace to the general public” (including an explanation of how the statistics and other data gathered establishes a “grave housing emergency”); (b) what impacts/effects the housing emergency is having on the general public’s health, safety and welfare (i.e., “serious menace to the general public”) (e.g., distress, extortion, increase of rents without legal process, evictions, homelessness, overcrowding, etc.); and (c) whether and how a rent control ordinance is “necessary and proper to eliminate such grave housing emergency” and the details/requirements of such an ordinance. For additional information on the Section 166.043, Florida Statutes, criteria analysis, the following Fifth District Court of Appeal Opinion may be found at the following link: <file:///G:/Clients/Lake%20Worth/Research/Rent%20Control%20Ordinance/Opinion%20-%205th%20DCA.pdf>. For additional information, the following documents are available from the City Clerk upon request: Orange County Attorney’s Memorandum regarding the legal history of rent control ordinances and the legal analysis of the same under the current statute, Orange County Rent Control Ordinance, and the Complaint challenging the Orange County Ordinance (without attachments).

The services may also include, as needed, advice and expert testimony of the successful Respondent in preparation for or as otherwise needed for the City’s defense of potential litigation based upon challenges to a rent control ordinance. Such testimony may include, but not be limited to, the factual basis to support the professional opinion that a rent control ordinance was warranted.

Goals. Overall, the Commission’s goals for this study are to:

- 1) Characterize the extent, scope and nature of housing crisis specifically in our city;
- 2) Characterize the secondary problems caused by the housing crisis;
- 3) Characterize the possible factors contributing to the crisis;

- 4) Provide appropriate data and opinions on Section 166.043, Florida Statutes' criteria (set forth in (a)-(c) above);
- 5) Suggest a range of possible solutions, along with timelines for providing relief; and
- 6) Gather and analyze sufficient data for the City to apply for external resources.

Collectively, it is hoped that a study meeting these goals will provide a strong, accurate and complete picture of the housing crisis present in Lake Worth Beach, and its effects. The Commission envisions a study that produces a complementary mix of qualitative and quantitative data. We envision qualitative descriptions or accounts that capture a representative variety of the housing problems encountered in our community, accompanied by quantitative measures that estimate how widespread these problems are, as well as the parts of the community affected.

Some example quantitative measures might include:

- Income distribution
- Income distribution in comparison to Palm Beach County
- Family size distribution
- Age distribution
- Distribution of Lake Worth Beach housing options
- Quantification and impact of short-term rentals, time trends in same
- Housing sales, including types of buyers, price increases
- Average and median rents compared to average and median incomes
- Average and median cost burdens of both rentals and home ownership
- Percentage of households spending more than 30% of gross income on housing broken out into percentiles of 5%
- Rental stress
- Jump in price during sale (with resultant effects on rent)
- Owner-occupied purchases vs. small investor purchases vs. corporate investor purchases
- Overall housing condition and quality
- Impacts of increasing property insurance and property taxes Impediments to production of new housing stock
- Impediments to renovation and expansion of existing housing stock

The Commission welcomes additional or alternative suggestions for how best to successfully understand and characterize the crisis.

EXHIBIT "A1"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

PRICING FORM

Failure to fully complete and sign this Pricing Form may result in rejection of the Proposal.

HOURLY RATES

Position	Hourly Rates
	\$
	\$
	\$
	\$
	\$

HOURLY RATE SPECIFIC TO EXPERT WITNESS SERVICES

Position	Hourly Rates
	\$
	\$

NOT TO EXCEED AMOUNTS

Tasks	Not to Exceed Amount
Completion of all Services as defined in solicitation document (not to include expert witness services)	\$

Name of Respondent: _____

Address: _____ ST _____ Zip _____

Phone: (____) _____ Email: _____

Print Name: _____ Title: _____

SIGNATURE: _____ **Date:** _____

EXHIBIT "B"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

CITY CAMPAIGN CONTRIBUTION STATEMENT

This RFP is subject to Section 2-101 of the City of Lake Worth Beach Code of Ordinances regarding campaign contributions which provides:

Sec. 2-101. - Additional and supplemental disclosures requirements.

- (a) Any elected official of the City of Lake Worth Beach, who is a current sitting member of the city commission and has accepted an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) from an individual or business entity having an interest in a matter before the city commission in which the city commission will take action, must publicly disclose, both verbally and in writing, such contribution prior to any discussion or vote on the matter. The written disclosure must be submitted to the city clerk.
- (b) Any applicant coming before the city commission for an award of a contract with the city and who has made an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) to any elected official of the city commission, who is a current sitting member of the commission, **must disclose such election campaign contribution, verbally and in writing, during the application or bidding process and before the award of the contract.**

Respondent to complete: Check which statement applies, fill in the requested information, if applicable, and sign below.

[] Neither the undersigned business nor any of its owners or officers contributed more than \$100.00 to the campaign of a sitting City Commission member. [If you checked this statement, you are done and may sign below.]

[] The undersigned business or one or more of its owners or officers contributed more than \$100.00 to the campaign of a sitting City Commission member. All such contributions are listed below and on the attached sheet of paper (if more room is needed). [If you checked this statement, please fill in the information requested below and sign below.]

1. _____ contributed a total of \$_____ to the campaign of City Commission member _____.
2. _____ contributed a total of \$_____ to the campaign of City Commission member _____.
3. _____ contributed a total of \$_____ to the campaign of City Commission member _____.
4. _____ contributed a total of \$_____ to the campaign of City Commission member _____.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

Print Title: _____

Print Name of Business: _____

Commissioner/Mayor to complete: Check which statement applies, fill in the requested information, if applicable, and sign below.

[] Neither the above referenced business nor any of its owners or officers contributed more than \$100.00 to my campaign. [If you checked this statement, you are done and may sign below.]

[] The above referenced business or one or more of its owners or officers contributed more than \$100.00 to my campaign. All such contributions are listed below and on the attached sheet of paper (if more room is needed). [If you checked this statement, please fill in the information requested below and sign below.]

_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

For City Clerk's Use Only.

THIS SECTION SHALL BE COMPLETED ONLY IF THERE IS A CAMPAIGN CONTRIBUTION LISTED ABOVE BY THE VENDOR OR COMMISSION MEMBER.

Applicable campaign contributions were disclosed in writing above, and prior to the award of the contract, the following statements were verbally made at the City Commission Meeting on the ____ day of _____, 202__.

Check all that apply.

_____ Commissioner/Mayor _____ verbally disclosed the campaign contribution(s) set forth above.
_____ Vendor, _____, verbally disclosed the campaign contribution(s) set forth above.

EXHIBIT "C"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

RESPONDENT INFORMATION PAGE

Company Name: _____

Authorized
Signature:

Signature

Print Name

Title: _____

Physical
Address:

Street

City State Zip Code

Telephone: _____ Fax: _____

Email Address: _____

Website (if applicable): _____

Federal Identification Number: _____

This is a requirement of every Respondent.

State of Incorporation: _____

EXHIBIT "D"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

SIMILAR PROJECTS

List two (2) similar projects successfully completed in the past five (5) years by the individual, university, firm, or project manager, etc. assigned to the project.

Completed Project #1:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ E-mail: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

Completed Project #2:

Agency/company: _____

Current contact person at agency/company: _____

Telephone: _____ Fax: _____ E-mail: _____

Address of agency/company: _____

Name of project: _____

Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____

Others: _____

EXHIBIT "E"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

REFERENCES

List below, or on an attached sheet, list references per RFP requirements for providing towing services. Provide the name, addresses and telephone numbers of organizations, governmental or private, for whom you now are, or have **within the past five (5) years** provided services. This form may be copied.

REFERENCE #1

Name of Client: _____

Address: _____

Phone: (_____) _____ Fax: (_____) _____

Contact Person: _____ Title: _____

Description of services: _____

REFERENCE #2

Name of Client: _____

Address: _____

Phone: (_____) _____ Fax: (_____) _____

Contact Person: _____ Title: _____

Description of services: _____

REFERENCE #3

Name of Client: _____

Address: _____

Phone: (_____) _____ Fax: (_____) _____

Contact Person: _____ Title: _____

Description of services: _____

DRAFT

EXHIBIT "F"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

CONFIRMATION OF DRUG-FREE WORKPLACE

In accordance with Section 287.087, Florida Statutes, whenever two or more proposals are equal with respect to price, quality, and service which are received by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement on behalf of _____, I certify that _____ complies fully with the above requirements.

Authorized Representative's Signature

Date

Print Name

Position

EXHIBIT "G"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

SCRUTINIZED COMPANIES CERTIFICATION FORM

By execution below, I, _____, on behalf of _____ (hereinafter, the "Contractor"), hereby swear or affirm to the following certifications:

The following certifications apply to all procurements:

1. The Contractor has reviewed section 215.4725, Florida Statutes, section 215.473, Florida Statutes and section 287.135, Florida Statutes, and understands the same.
2. The Contractor is not on the Scrutinized Companies that Boycott Israel List nor is the Contractor engaged in a boycott of Israel.
3. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
4. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the entire term of the contract, including any and all renewals.

If the contract awarded hereunder is for one million dollars or more, the following additional certifications apply:

1. The Contractor is not on the Scrutinized Companies with Activities in Sudan List.
2. The Contractor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
3. The Contractor is not engaged in business operations in Cuba or Syria.
4. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
5. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the entire term of the contract, including any and all renewals.

CONTRACTOR:

By: _____

Name: _____

Title: _____ Date: _____

STATE OF _____)

COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____ 2022, by _____, as the _____ [title] of _____ [vendor's name], a _____ [corporate description], who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:

Notary Public Signature

EXHIBIT "H"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

**VETERAN BUSINESS ENTERPRISE, SMALL BUSINESS AND
LOCAL BUSINESS PREFERENCE FORM**

Section 2-117 of the City's Code of Ordinances shall govern the application of a Veteran Business Enterprise, Small Business and/or Local Business preference for this RFP.

The undersigned Respondent, hereby claims the following preference:

- Veteran Business Enterprise
- Small Business
- Local Business

Documentation to support a Respondent as a Veteran Business Enterprise, Small Business and/or Local Business must be submitted with a bid in response to the RFP and attached to this form. Documentation submitted after the bid deadline will be rejected.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

Print Title: _____

Print Name of Business: _____



REQUEST FOR PROPOSALS

Housing Emergency Study and Rent Control Ordinance Analysis

RFP NO. 23-200



Financial Services
7 North Dixie Highway
Lake Worth Beach, FL 33460
561.586.1654**1770**

RFP #23-200

Housing Emergency Study and Rent Control Ordinance Analysis

The City of Lake Worth Beach, Florida, is requesting proposals from qualified consultants for the preparation of a housing emergency study and rent control ordinance analysis. A complete scope of work is attached as **Exhibit "A"** and incorporated into this Request for Proposals ("RFP").

Time is of the essence and any proposal received after **4:00 P.M., ~~October 27, 2022~~ January 31, 2023**, whether by mail or otherwise may be rejected by the City. Proposals shall be placed in a sealed envelope, marked with the RFP number, title, and date and hour proposals are scheduled to be received. All persons or entities responding to the RFP (hereafter "Respondents") are responsible for insuring that their proposal is delivered to the City's Financial Services office address by the deadline indicated. The City reserves the right in its sole discretion to reject any or all proposals and/or to waive all nonmaterial irregularities on any and all proposals. All costs and expenses, including reasonable attorney's fees, incurred by any Respondent in preparing and/or responding to the RFP are the sole responsibility of the Respondent including without limitation any and all costs and fees related to a protest.

Interested persons or entities may obtain a copy of the RFP by contacting the Financial Services office at purchasing1@lakeworthbeachfl.gov or from lakeworthbeachfl.bidsandtenders.net. All Respondents shall have a Bidding System Vendor account and be registered as a Plan Taker for this RFP opportunity, which will enable the Respondents to download the Bid Call Document, to receive Addenda email notifications and download all documents without the watermark "preview" on them. To ensure receipt of the latest information and updates via email regarding this RFP, or if a Respondent has obtained this RFP Document from a third party, the onus is on the Respondent to create a Bidding System Vendor account and be register as a Plan Taker for the RFP opportunity.

All proposals must be mailed to:

**City of Lake Worth Beach
Financial Services/Procurement Division
7 North Dixie Highway, 2nd Floor
Lake Worth Beach, FL 33460**

ENVELOPE MUST BE IDENTIFIED AS RFP #23-200.

PUBLISHED: _____ *Palm Beach Post* and City's website

GENERAL INFORMATION

1. PROJECT OBJECTIVE

The City of Lake Worth Beach, Florida, is requesting proposals from qualified consultants, including but not limited to, firms, universities and other academic institutions, etc., to provide a housing emergency study and rent control ordinance analysis. A complete scope of work is attached as **Exhibit "A"** and incorporated into this Request for Proposals ("RFP").

2. SUBMITTAL OF PROPOSALS

Interested Respondents are invited to submit a complete proposal for consideration. The proposal must address the items requested, clearly and concisely.

Time is of the essence and any proposal received after **4:00 P.M., January 31, 2023, whether by mail or otherwise may be rejected by the City. . The October 27, 2022, whether by mail or otherwise may be rejected by the City.** City offices have limited access to the public at this time. Courier deliveries SHALL NOT require signature for the receipt. Respondents may deliver proposals directly to City Hall during regular business hours 8 a.m. to 5 p.m. Monday through Friday. If proposals are delivered in person, visitors shall ring the bell at the City Hall front entrance and wait for assistance or by contacting Procurement Division at (561) 586 – 1770 in advance. The City will in no way be responsible for delays caused by any occurrence. **Proposals shall not be submitted and will not be accepted by telephone, telegram, facsimile or e-mail.** The time of receipt shall be determined by the time clock located in Financial Services. Proposals shall be placed in a sealed envelope, marked with the RFP number, title, and date and hour proposals are scheduled to be received. **Respondents are responsible for ensuring that their proposals are delivered to Financial Services address by the deadline indicated.**

The City reserves the right in its sole discretion to reject any or all proposals and/or to waive all nonmaterial irregularities on any and all proposals. All costs and expenses, including reasonable attorney's fees, incurred by any Respondent in preparing and responding to this RFP are the sole responsibility of the Respondent ~~firm~~ including without limitation any and all costs and fees related to a protest. The documents included or incorporated in this RFP constitute the complete set of instructions, scope, specification requirements and forms (unless supplemented by City issued addendum). It is the responsibility of the Respondent to ensure that all pages are included. Therefore, all Respondents are advised to closely examine this RFP. All proposals must be typed or written in ink, and must be signed in ink by an officer having authority to bind the Respondent. Signatures are required where indicated; failure to do so may be cause for rejection of a proposal.

3. CHANGES AND INTERPRETATIONS

Changes to this RFP will be made by written addendum. A written addendum is the only official method whereby interpretation, clarification or additional information can be given.

All questions regarding this RFP should be submitted in the bidding system at lakeworthbeachfl.bidsandtenders.net or in writing via e-mail to purchasing1@lakeworthbeachfl.gov and must be received by the date set forth below for questions from potential Respondents. Most questions will be answered via addenda; however, if a question is not answered, the Respondent should assume all relevant information is contained within this RFP or previous issued addendum (if any). The City will attempt to not issue an addendum within three (3) business days of the due date of proposals; however, the City reserves

the right to extend the due date of proposals and issue any addenda at any time prior to the revised due date for proposals.

4. PROPERTY OF THE CITY

All materials submitted in response to this RFP become the property of the City. The City has the right to use any or all ideas presented in any response to this RFP, whether amended or not, and selection or rejection of a proposal does not affect this right. No variances to this provision shall be accepted.

5. RFP TIMETABLE

The anticipated schedule for this RFP and contract approval is as follows:

- **Questions from Potential Respondents Due** ~~October~~January 12, ~~2022~~2023 - 4:00 PM
- **Proposal Due Date and Time** ~~October 27, 2022~~January 31, 2023 - 3:00 PM
- **Proposal Evaluation** ~~October 31, 2022~~March, 2023
- **Contract Negotiations/Approval** ~~November 1, 2022~~March/April, 2023

The City reserves the right to amend the anticipated schedule as it deems necessary.

6. VETERAN BUSINESS ENTERPRISE, SMALL BUSINESS AND LOCAL BUSINESS PREFERENCE

Section 2-117 of the City's Code of Ordinance shall govern the application of a Veteran Business Enterprise, Small Business and/or Local Business preference for this RFP. Documentation to support a Respondent as a Veteran Business Enterprise, Small Business and/or Local Business must be submitted with a bid in response to the RFP. Documentation submitted after the proposal deadline will be rejected.

The order and application of preferences is as follows: For all preferences set forth in this RFP, only one preference may be identified in a response to this solicitation. In an event of a tie, for the purpose of determining the best value in the award of an RFP where more than one Respondent identifies a preference, the Veteran Business Enterprise preference shall take precedence over the Local Business preference, and the Local Business preference shall take precedence over the Small Business preference.

7. CONE OF SILENCE

In accordance with the Palm Beach County Lobbyist Registration Ordinance and the City's procurement code, the City's procurement cone of silence will be in effect as of the deadline to submit a proposal in response to this RFP. A complete copy of the City's procurement code is available on-line at municode.com under the City's code of ordinances (sections 2-111 – 2-117). All Respondents are highly encouraged to review the same. In summary, the cone of silence prohibits communication between certain City officials, employees and agents and any entity or person seeking to be awarded a contract (including their lobbyists and potential subcontractors). The cone of silence terminates at the time of award, rejection of all proposals or some other action by the City to end the selection process.

8. ETHICS REQUIREMENT

This RFP is subject to the State of Florida Code of Ethics for Public Officers and Employees and the Palm Beach County Code of Ethics. Accordingly, there are prohibitions and limitations on the employment of City officials and employees and contractual relationships providing a benefit to the same. Respondents are highly encouraged to review both the Florida Code of Ethics and the Palm Beach County Code of Ethics in order to ensure compliance with the same.

Further, any Respondent coming before the City Commission for an award of a contract and who has made an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) to any elected official of the City Commission, who is a current sitting member of the Commission, must disclose such election campaign contribution, verbally and in writing, in their responsive proposal to this RFP. Therefore, all Respondents shall complete the City's Campaign Contribution Statement attached to this RFP as Exhibit "B". Failure to complete will result in rejection of the Respondent's proposal.

9. DISCLOSURE AND DISCLAIMER

The information contained herein is provided solely for the convenience of the Respondents. It is the responsibility of each Respondent to assure itself that information contained herein is accurate and complete. Neither the City nor its agents provide any assurances as to the accuracy of any information in this RFP. Any reliance on the contents of this RFP, or on any communications with City representatives or agents, shall be at each Respondent's own risk. Respondents should rely exclusively on their own investigations, interpretations and analyses in connection with this matter. This RFP is being provided by the City without any warranty or representation, express or implied, as to its content, accuracy or completeness and no Respondent or other party shall have recourse to the City if any information herein contained shall be inaccurate or incomplete. No warranty or representation is made by the City that any proposal conforming to these requirements will be selected for consideration, negotiation or approval.

In its sole discretion, the City may withdraw this RFP either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the non-material provisions of this RFP. Through its own investigation and in its sole discretion, the City may determine the qualifications, experience and acceptability of any Respondent submitting a proposal in response to this RFP. Following submission of a proposal, each Respondent agrees to promptly deliver such further details, information and assurances, including, but not limited to, financial and disclosure data, relating to the proposal and/or the Respondent, including the Respondent's affiliates, officers, directors, shareholders, partners and employees, as requested by the City. Any action taken by the City in response to proposals submitted in response to this RFP or in making any award or failure or refusal to make any award, or in any withdrawal or cancellation of this RFP, either before or after issuance of the notice of intent to make an award, shall be without any expense, liability or obligation on the part of the City, or their advisors.

Any recipient of this RFP who responds hereto fully acknowledges all the provisions of this Discloser and Disclaimer and agrees to be bound by the terms hereof. Any proposal submitted pursuant to this RFP is at the sole risk and responsibility of the party submitting such proposal.

10. CONTRACT AGREEMENT / COMPENSATION

The terms and conditions of the resulting contract will be negotiated with successful Respondent.

If the City and the successful Respondent cannot agree on the terms and conditions of the resulting contract, the City reserves the right to terminate negotiations with the successful Respondent and move to the next ranked Respondent to commence negotiations. Negotiations may continue in this process until the City is able to enter into a contract with a Respondent that best meets the needs of the City.

While the City anticipates awarding one contract, the City reserves the right to award to more than one Respondent if it is in the best interests of the City.

Awarded contracts which will cross fiscal-years are subject to the City's annual budget and appropriation process. If an awarded contract is not funded in whole or in part in a fiscal year, the City will have the right to terminate the contract without cause. The City need not include a lack of appropriations provision in the resulting contract to avail itself of such right.

11. INSURANCE REQUIREMENTS

Prior to execution of the resulting contract derived from this RFP, the selected Respondent shall obtain and maintain in force at all times during the term of the resulting contract insurance coverage as required herein. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the selected Respondent has obtained insurance of the type, amount, and classification as required for strict compliance with this provision and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the City. Compliance with the foregoing requirements shall not relieve the selected Respondent of its liability and obligations under the resulting contract.

- A. The selected Respondent shall maintain, during the term of the contract, standard Professional Liability Insurance in the minimum amount of \$1,000,000.00 per occurrence.
- B. The selected Respondent shall maintain, during the life of the contract, commercial general liability, including public and contractual liability insurance in the amount of \$1,000,000.00 per occurrence (\$2,000,000.00 aggregate) to protect the Respondent from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations and completed operations under the resulting contract, whether such operations be by the Respondent or by anyone directly or indirectly employed by or contracting with the Respondent.
- C. The selected Respondent shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.
- D. The selected Respondent shall maintain comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Respondent or by anyone directly or indirectly employed by the Respondent.

All insurance, other than Professional Liability and Workers' Compensation, to be maintained by the selected Respondent shall specifically include the CITY as an "Additional Insured" on a primary, non-contributing basis.

If the Respondent is a state agency or subdivision as defined in Section 768.28, Florida Statutes, the Respondent shall furnish the City with written verification of liability protection in accordance with Section 768.28, Florida Statutes.

12. EVALUATION AND AWARD

The City may assemble an Evaluation Committee to evaluate the proposals or may have the proposals evaluated by a designated City official, employee or agent. If an Evaluation Committee is utilized, it will convene for a meeting to evaluate and rank the most advantageous proposals and make a recommendation for contract award to the City Commission with or without discussions. The Purchasing Division will advertise the Evaluation Committee meeting in the appropriate media as directed by law. The City Commission is not bound by the recommendation of the Evaluation Committee and the City Commission may deviate from the recommendation in determining the best overall responsive proposal which is most advantageous and in the best interest of the City consistent with the evaluation criteria in this RFP. The selected Respondent will be notified in writing with an intent to award letter. Recommended awards will be made available for review by interested parties by Financial Services.

Each proposal will be evaluated individually and in the context of all other proposals. There is no obligation on the part of the City to award the proposal to the lowest priced Respondent, and the City reserves the right to award the contract to the Respondent submitting the best overall responsive proposal to a responsible Respondent which is most advantageous and in the best interest of the City consistent with the evaluation criteria. The City shall be the sole judge of the proposals that is in its best interests.

To be considered responsive, Respondent's response to this RFP shall substantially conform in all material respects to the requirements and criteria set forth in the RFP. This includes such aspects as following RFP instructions for proper submittal, completing all necessary forms included with the solicitation, providing information required by the solicitation, and complying with all terms, conditions, qualifications and specification requirements as enumerated in the solicitation. Except where specifically authorized in this solicitation, a proposal that deprives the City of the assurance that the contract will be entered into in accordance with its terms will be considered non-responsive.

To be considered responsible, Respondent shall have the capability in all respects to fully perform the requirements identified in this RFP documents. Respondent shall have the experience, capacity, facilities, equipment, credit, sufficient qualified personnel, and record of timely and acceptable past performance that will assure good faith performance for a city project or purchase. The term responsibility is not limited in its meaning to financial resources and ability. The City reserves the right to make the determination if Respondent is responsible by taking into consideration the Respondent's past performance on any contract involving similar work and/or services; the Respondent's skill and business judgment; the Respondent's experience and facilities for carrying out its responsibilities, ~~timely completion and responding to complaints~~its ability to thoroughly research and analyze the necessary data for the services required, to present the data and analysis and to make policy recommendations, and the ability to timely complete the services; and, any other relevant information which the City may obtain relating to the Respondent's, its proposed personnel's and subcontractor's ability to perform the solicited work

and/or services.

At its sole option, for larger or more complex studies or projects, the City may select the top three to five Respondents and require presentations from each Respondent before making the final selection. This requirement is at the sole discretion of the City.

While the City allows Respondents to specify any desired variances to the RFP terms, conditions, and specifications, the number and extent of variances specified will be considered in determining the Respondent who is most advantageous to the City.

Evaluation Criteria and Scoring:

The evaluation of the proposals will be conducted in accordance with the following provisions. Scoring is based on a 100-point scale. The following guidelines will be used for the evaluations (with associated weighting). **To be considered “Qualified”, a Respondent must receive a minimum aggregate average of 70 points.**

EVALUATION CRITERIA	Points Awarded
Responsiveness to RFP 1. Comprehensiveness of proposal, <u>Respondent clearly explained all services to be provided</u> 2. Completeness of proposal, <u>Respondent included all required documentation</u>	0 – 10 points
Cost Effectiveness 1. Hourly rate of personnel for services 2. <u>Overall cost is reasonable for services provided and in line with the current market prices. Points are assigned based on the comparison to the rates provided by other respondents</u> 2-3. <u>Not to exceed pricesprice for services has been provided and includes all requested services</u>	0 - 25 points
Successful Experience and Qualification of FirmRespondent and Staff 1. Experience with similar sized <u>citiesmunicipalities</u> /public entities 2. Staff qualifications and subject knowledge 3. Evidence of experience and skill <u>(heavy emphasis on housing related research, presentation of data and analysis, and policy recommendations)</u> 4. Evidence of availability to deliver in the timeline 5. Successful past projects with the City	0 - 30 points
Similar Projects and References 1. Prior experience with two (2) similar projects <u>in past 5 years</u> 2. References from at least (3) entities for similar projects or work	0 – 25 points
Veteran Business Enterprise, Small Business and Local Business Preference 1. Respondent has provided supporting documentation claiming veteran business enterprise, small business or local business preference.	0 - 5 points

<p>Default, Termination, Litigation, Debarment, etc.</p> <ol style="list-style-type: none"> 1. Instances of a default under a similar project or contract; 2. Instances of litigation related to a similar project or contract; 3. Instances of on any debarment by a local, state or federal governmental entity <p><u>(Note: Respondents that do not address this item in their proposal will score 0 points)</u></p>	<p>0 – 5 points</p>
<p>TOTAL</p>	<p>100 Points</p>

In the event of a tie in the scoring, the City will provide a preference to the Respondent with a drug-free workplace policy.

13. PROPOSAL FORMAT

Each Respondent shall submit **one (1) original, one (1) copy, and one (1) electronic copy of their proposal**, in a clear, concise format, on 8 1/2" x 11" paper, in English. Electronic copy shall be provided on USB drive: **maximum size of 10 Mb.**

Each proposal (and all copies) shall contain all the information required herein to be considered for award. Omission of required data may be cause for disqualification. Any other information thought to be relevant, but not applicable to the enumerated sections, should be provided as an appendix to the proposal. If publications are supplied by a Respondent to respond to a requirement, the response should include reference to the document number and page number. Proposals not providing this reference will be considered to have no reference materials included in the additional documents.

Proposals must be properly signed by the owner/principal having the authority to bind the Respondent in a resulting contract. **Signatures are required where indicated; failure to do so may be cause for rejection of proposal.**

Only one proposal may be submitted by each Respondent.

Proposals which do not contain or address key points or sufficiently document the requested information may be deemed non-responsive and rejected.

All proposals shall be submitted in the format identified below. Failure to submit the required documentation in the format identified may cause the proposal to be rejected.

Table of Contents

Outline in sequential order the sections of the proposal. The sections should match with the evaluation criteria.

Respondent Information Page

Exhibit "C" hereto.

Letter of Transmittal (not to exceed two pages)

This letter will summarize in a brief and concise manner the following:

- General summary of Respondent's business operation; how long in business; general approach to tasks and projects; and, why the Respondent should be selected.
- Respondent's understanding of the scope of services.
- The letter must name all persons or entities interested in the proposal as principals. Identify all of the persons authorized to make representations for the Respondent, including the titles, addresses, and telephone numbers of such persons.
- An authorized agent of the Respondent must sign the Letter of Transmittal and must indicate the agent's title or authority.
- The individual, university, or firm, etc. identified on the Letter of Transmittal will be considered the primary firmrespondent.
- If more than one firmrespondent is named on the Letter of Transmittal, a legal document showing the partnership, joint venture, corporation, etc. shall be submitted showing the legality of such. Submittal for Joint Venture to include executed Joint Venture agreement and if state law requires that the Joint Venture be registered, filed, funded, or licensed prior to submission of the proposal, then same shall be completed prior to submittal. Respondents shall make their own independent evaluation of the requirements of the state law. The City will not consider submittals that identify a joint partnership to be formed.

Proof of Licenses (unlimited)

Respondents shall provide proof of required licenses for the firmRespondent and its staff and the scope of services to be performed. This shall include:

- Proof of all applicable licenses for goods and/or services to be rendered (including registration with State of Florida Division of Corporations if applicable);
- Statement or proof of required insurance; and,
- Proof of Respondent's Business Tax Receipt (as applicable)
- Other Proof of Specific Qualifications as outlined in Scope of Services

Cost Effectiveness (unlimited)

Respondents shall provide the completed Pricing Form, **Exhibit "A1"**. The prices provided shall include all of the services described in the solicitation documents (except as otherwise noted). Respondent shall provide any additional relevant pricing information to meet all the requirements as defined in the solicitation document. Additional services will not be taken into consideration for evaluation purposes but City reserves the right to negotiate and include those services as an amendment to the Agreement with the successful respondent.

Successful Experience and Qualification of FirmRespondent and Staff (limited to two pages plus resumes)

Respondents shall provide a two-page summary regarding their ability to deliver the requested services in the required timeframes and the technical approach to the study (including an outline of tasks). Respondents shall specifically include experience and qualifications related to their housing related research, presentations of data and analysis, and making policy recommendations. Information regarding dedicated staff and current workload should be provided.

Resumes of key personnel should also be included. Resumes should not exceed two-pages per person. Resumes should include a description of:

- Training, education and degrees.
- Related experience and for whom.
- Professional certifications, licenses and affiliations.

Similar Projects and References (unlimited)

Respondents shall provide a minimum of two (2) similar projects on the form provided and include whether the project was completed on time.

Respondents shall provide a minimum of three (3) references on the forms provided demonstrating their experience and/or skill with similar projects. Prior experience and skill with other Florida municipalities is desirable. Respondents are responsible for verifying correct phone numbers and contact information provided. Failure to provide accurate information may result in the reference not being obtained or considered.

Default, Termination, Litigation, Debarment, etc. (unlimited)

Respondents should provide a summary of any default, termination, litigation, debarment against or which named the Respondent in the past five (5) years which is related to the goods and/or services sought in this RFP or that Respondent otherwise provides in the regular course of business. The summary shall state the nature of the default, termination, litigation, debarment or a brief description of the outcome or projected outcome, and the monetary amount involved. **If none, state as such.**

Appendix

Other Relevant and Supporting Documentation (optional).

14. REPRESENTATIONS BY SUBMITTAL OF PROPOSALS

By submitting a proposal, the Respondent warrants, represents and declares that:

- A. Person(s) designated as principal(s) of the Respondent is named and that no other person(s) other than the person(s) mentioned has (have) any interest in the proposal or in the resulting contract.
- B. The proposal is made without connection, coordination or cooperation with any other persons, company, firm or party submitting another proposal, and that the proposal submitted is, in all respects, fair and in good faith without collusion or fraud.
- C. The Respondent understands and agrees to all elements of the proposal unless otherwise indicated or negotiated, and that the proposal may become part of any contract entered into between the City and the Respondent.
- D. By signing and submitting a proposal, Respondent certifies that Respondent and any parent corporations, affiliates, subsidiaries, members, shareholders, partners, officers, directors or executives thereof are not presently debarred, proposed for debarment or declared ineligible to bid or participate in any federal, state or local government agency projects.
- E. Pursuant to 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted firm list maintained by the State of Florida may not submit a proposal to the City of Lake Worth Beach for 36 months following the date of being placed on the convicted firm list.

Respondent certifies that submittal of its proposal does not violate this statute.

F. Respondent recognizes and agrees that the City will not be responsible or liable in any way for any losses that the Respondent may suffer from the disclosure or submittal of proposal information to third parties.

G. Respondent has carefully and to his/her full satisfaction examined the RFP, the attached Scope of Services and all required forms, and Respondent has received and read all addenda issued and has included their provisions in their proposal.

15. PROTESTS

Any actual Respondent who is aggrieved in connection with this RFP may protest such procurement. The protest must be filed with the City in accordance with the City's procurement code. A complete copy of the City's procurement code is available on-line at municode.com under the City's code of ordinances (sections 2-111 – 2-117). The protest procedures are set forth at section 2-115. There are strict deadlines for filing a protest. Failure to abide by the deadlines will result in a waiver of the protest.

16. EXHIBITS

This RFP consists of the following exhibits (which are incorporated herein by reference):

- A. Exhibit "A" Scope of Services
- Exhibit "A1" Pricing Form **(MUST BE SUBMITTED WITH PROPOSAL TO BE CONSIDERED RESPONSIVE)**
- B. Exhibit "B" City's Campaign Contribution Statement (submit with proposal)
- C. Exhibit "C" Respondent Information Form (submit with proposal)
- D. Exhibit "D" Similar Projects (submit with proposal)
- E. Exhibit "E" References (submit with proposal)
- F. Exhibit "F" Drug Free Workplace Form (submit with proposal)
- G. Exhibit "G" Scrutinized Companies Certification
- H. Exhibit "H" Veteran Business Enterprise, Small Business and/or Local Business Preference Form

17. COMPLIANCE

All proposals received in accordance with this RFP shall be subject to applicable Florida Statutes governing public records including without limitation Chapter 119, Florida Statutes. If any Respondent believes its proposal contains exempt or confidential information, the Respondent must identify the same at the time of submission of its proposal. Failure to do so may result in the waiver of such exemption or confidentiality.

18. PUBLIC ENTITY CRIMES.

Pursuant to section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list maintained by the State of Florida may not submit a bid to the City for 36 months following the date of being placed on the convicted vendor list.

19. SCRUTINIZED COMPANIES

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

the Contractor or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

B. The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under the Agreement.

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

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

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

20. E-VERIFY

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

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

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

C. Maintain copies of all contractor affidavits for the duration of the Agreement and provide the same to the City upon request;

D. Comply fully, and ensure all contractor s comply fully, with Section 448.095, Florida Statutes;

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

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

END OF RFP
RFP EXHIBITS FOLLOW

EXHIBIT "A"

RFP# 23-200 / Housing Emergency Study and Rent Control Ordinance Analysis

SCOPE OF WORK/SERVICES

The City Commission is requesting proposals for the preparation of a housing emergency study and a rent control ordinance analysis (collectively, the "Study") as set forth below.

A housing crisis consisting of greatly increased house purchase prices and sharply increased monthly rents has been observed and formally recognized in the City of Lake Worth Beach. The City Commission ("the Commission") of Lake Worth Beach ("the City") recognizes that both sale prices and rental rates are set by the market and as such are generally beyond legislative control. Nevertheless, the Commission is alarmed at the steepness of the increases, and further alarmed that the rental and sales price increases are much steeper than local wage or income increases. These disproportionate increases in housing costs relative to income increases can be expected to lead to both increased housing insecurity and a substantial shift in the income distribution of city residents.

Lake Worth Beach has been known within the South Florida metropolis as an unusual community: a relaxed, creative, diverse beach town that has been welcoming to a diversity of cultures and incomes: artists, musicians, diverse ethnicities, and the LGBTQ+ community, including LGBTQ+ youth. That diversity, the city's history, and the income range present over the last several decades have likely all contributed to Lake Worth Beach's reputation for authenticity, for "realness." Many also believe that this city character or "flavor" is a key economic engine for the city, drawing in exceptionally creative businesses and residents, as well as attracting visitors from other parts of Palm Beach County and beyond.

It is therefore the Commission's desire to use all available means to protect the ability of people and families of income ranges historically present within Lake Worth Beach to find reasonable, healthy and positive housing here. While the need for a range of incomes is certainly acknowledged, it is explicitly not the desire of the Commission to create a bedroom community only available to those with substantial incomes.

The above focusses on a long-term vision for Lake Worth Beach. On a more immediate time scale, verbal testimony as well as interactions with Legal Aid of Palm Beach County suggest that there is an ongoing crisis among many renters in our city, with renters of a wide range of incomes being suddenly presented with rental increases of \$200 and \$300 per month, even \$600 and \$700 or more.

Other factors influencing or perceived to be influencing the higher costs of providing housing are the proliferation of short-term rentals, rising property insurance costs, property taxes, escalating cost of new construction and renovation, location of housing and its age, lack of housing options, scarcity of housing and in migration of new Florida residents. The root causes of the crisis are many but having a qualitative and quantitative understanding of their impacts is necessary in order to attempt to solve the problem.

The legislative steps that the City has recently taken (for example Ordinances 2022-12, -13, and -14) will help with the construction of new and alternate forms of housing, and are likely to increase the availability of housing affordable at various levels. That said, the Commission wishes to additionally pursue any other avenues that might provide more immediate relief from these types of rent increases.

This RFP is intended to gather the necessary data to form a defensible, quantitative picture of our community and its housing needs. We see an accurately and quantitatively constructed picture as the necessary foundation for the Commission to take informed action. Ideally, the data, analysis, and resulting picture additionally would be strong enough to provide a legal basis for asserting the presence of a "housing emergency so grave as to constitute a serious menace to the general public." While the Commission recognizes that the relevant state statute from which this is drawn raises a very high and possibly unattainable legal bar, the Commission nevertheless feels that framing the study in this context is an approach that is likely to yield a strong and complete picture of our current situation. Therefore, the City Commission seeks, as part of the study and pursuant to Section 166.043, Florida Statutes, to secure the necessary data specific to the City of Lake Worth Beach (e.g., vacancy rates, rising rents, shortage of housing, increase in cost of living, inflation, etc.) and the opinion of a qualified professional to firmly establish, at a minimum, the following: (4a) whether there exists within the City of Lake Worth Beach a "housing emergency so grave as to constitute a serious menace to the general public" (including an explanation of how the statistics and other data gathered establishes a "grave housing emergency"); (2b) what impacts/effects the housing emergency is having on the general public's health, safety and welfare (i.e., "serious menace to the general public") (e.g., distress, extortion, increase of rents without legal process, evictions, homelessness, overcrowding, etc.); and (3c) whether and how a rent control ordinance is "necessary and proper to eliminate such grave housing emergency" and the details/requirements of such an ordinance. For additional information on the Section 166.043, Florida Statutes, criteria analysis, the following Fifth District Court of Appeal Opinion may be found at the following link: <file:///G:/Clients/Lake%20Worth/Research/Rent%20Control%20Ordinance/Opinion%20-%205th%20DCA.pdf>. For additional information, the following documents are available from the City Clerk upon request: Orange County Attorney's Memorandum regarding the legal history of rent control ordinances and the legal analysis of the same under the current statute, Orange County Rent Control Ordinance, and the Complaint challenging the Orange County Ordinance (without attachments).

The services may also include, as needed, advice and expert testimony of the successful Respondent in preparation for or as otherwise needed for the City's defense of potential litigation based upon challenges to a rent control ordinance. Such testimony may include, but not be limited to, the factual basis to support the professional opinion that a rent control ordinance was warranted.

Goals. Overall, the Commission's goals for this study are to:

- 1) Characterize the extent, scope and nature of housing crisis specifically in our city;
- 2) Characterize the secondary problems caused by the housing crisis;
- 3) Characterize the possible factors contributing to the crisis;

- 4) Provide appropriate data and opinions on Section 166.043, Florida Statutes' criteria (set forth in (a)-(c) above):
- 5) Suggest a range of possible solutions, along with timelines for providing relief; and
- 6) Gather and analyze sufficient data for the City to apply for external resources.

Collectively, it is hoped that a study meeting these goals will provide a strong, accurate and complete picture of the housing crisis present in Lake Worth Beach, and its effects. The Commission envisions a study that produces a complementary mix of qualitative and quantitative data. We envision qualitative descriptions or accounts that capture a representative variety of the housing problems encountered in our community, accompanied by quantitative measures that estimate how widespread these problems are, as well as the parts of the community affected.

Some example quantitative measures might include:

- Income distribution
- Income distribution in comparison to Palm Beach County
- Family size distribution
- Age distribution
- Distribution of Lake Worth Beach housing options
- Quantification and impact of short-term rentals, time trends in same
- Housing sales, including types of buyers, price increases
- Average and median rents compared to average and median incomes
- Average and median cost burdens of both rentals and home ownership
- Percentage of households spending more than 30% of gross income on housing broken out into percentiles of 5%
- Rental stress
- Jump in price during sale (with resultant effects on rent)
- Owner-occupied purchases vs. small investor purchases vs. corporate investor purchases
- Overall housing condition and quality
- Impacts of increasing property insurance and property taxes Impediments to production of new housing stock
- Impediments to renovation and expansion of existing housing stock

The Commission welcomes additional or alternative suggestions for how best to successfully understand and characterize the crisis.

~~**Part I of the Study.** Section 166.043, Florida Statutes (attached), authorizes the adoption of a rent control ordinance only when the local government “makes and recites in such measure its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.” See §166.043(5), Fla. Stat. Presently, the median household income for the City of Lake Worth Beach at roughly \$40,000 for a household of four (4) is less than half of that for Palm Beach County, which stands at nearly \$90,000. Rental rates have increased and vacancies decreased across the County with no appreciation for current housing issue. In addition, the cost to construct new residential units has risen consistently and rather dramatically over the past few years. With the household incomes in Lake Worth Beach at the very low end for the County, the rental rate increases due to lack of supply and the rents~~

necessary to cover the cost of new construction, housing costs far exceed the ability of most residents to afford a home. Data regarding how this disparity has worsened over the past several years would need to be provided. ~~., The statute exempts the following categories of residential accommodations from a rent control ordinance: (1) seasonal or tourist unit; (2) second housing unit; and (3) luxury apartment buildings.” §166.043(4), Fla. Stat. Therefore, the City Commission seeks~~

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It is uncertain what factual findings and data would be considered adequate today to establish “a housing emergency so grave as to constitute a serious menace to the general public” because the statute has not yet been interpreted by the courts in Florida since its adoption. However, the United States Supreme Court has upheld the finding that a New York rent control ordinance was warranted to address a housing emergency “so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace of a large part of the people of the state.” This housing emergency was based upon findings of fact “That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent.” See *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 246 (1922).

Part I of the Study must be completed and presented to the City on or before **November 28, 2022**. The successful Respondent shall present the written Study to the Commission at its Commission meeting on **December 6, 2022**. This date is subject to change at the discretion of the City.

Part I of the Study For additional information, the following document is attached: Orange County Attorney’s Memorandum regarding the legal history of rent control ordinances and the legal analysis of the same under the current statute. Further, the following additional documents are available from the City Clerk upon request: (1) Orange County Rent Control Ordinance; and (2) Complaint challenging the Orange County Ordinance (without attachments).

Part II of the Study. The Study will also include an assessment of existing housing conditions, demographic and market demands, and identify critical housing gaps and issues. It should identify any current and anticipated unmet housing needs and provide an outlook towards anticipated housing demands over the next 10 years. This should be a data driven study that identifies citywide and neighborhood focused housing priorities and provides policy alternatives and strategies to guide the City in decision making for addressing current and future housing needs.

Part II of the Study must be completed and presented to the City on or before **February 6, 2023**. The successful Respondent shall present the written Part II of the Study to the Commission at its Commission meeting on **February 21, 2023**. This date is subject to change in the discretion of the City.

Potential Additional Services. After Part I and Part II of the Study are completed, the City Commission may request additional consulting services from the Respondent to address a

~~broader sociological study and analysis of the effects of housing issues on the community. A detailed scope of services will be provided to the Respondent if the Commission chooses to move forward with these additional services and the price for such services shall be based upon the hourly rates established in the Agreement.~~

DRAFT

EXHIBIT "A1"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

PRICING FORM

Failure to fully complete and sign this Pricing Form may result in rejection of the Proposal.

HOURLY RATES

Position	Hourly Rates
	\$
	\$
	\$
	\$
	\$

HOURLY RATE SPECIFIC TO EXPERT WITNESS SERVICES

Position	Hourly Rates
	\$
	\$

NOT TO EXCEED AMOUNTS

<u>Study Parts Tasks</u>	Not to Exceed Amount
<u>Part I of the Study (not including expert witness testimony) Completion of all Services as defined in solicitation document (not to include expert witness services)</u>	\$
<u>Part II of the Study</u>	\$

ABILITY TO MEET ESTABLISHED DEADLINES

<u>Study Parts</u>	<u>Deadlines</u>	<u>Ability to Meet Deadline (Yes or No)</u>
<u>Part I of the Study</u>	<u>November 28, 2022</u>	
<u>Part II of the Study</u>	<u>February 6, 2023</u>	

Name of Respondent: _____

Address: _____ ST _____ Zip _____

Phone: (____) _____ Email: _____

Print Name: _____ Title: _____

SIGNATURE: _____ **Date:** _____

DRAFT

EXHIBIT "B"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

CITY CAMPAIGN CONTRIBUTION STATEMENT

This RFP is subject to Section 2-101 of the City of Lake Worth Beach Code of Ordinances regarding campaign contributions which provides:

Sec. 2-101. - Additional and supplemental disclosures requirements.

- (a) Any elected official of the City of Lake Worth Beach, who is a current sitting member of the city commission and has accepted an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) from an individual or business entity having an interest in a matter before the city commission in which the city commission will take action, must publicly disclose, both verbally and in writing, such contribution prior to any discussion or vote on the matter. The written disclosure must be submitted to the city clerk.
- (b) Any applicant coming before the city commission for an award of a contract with the city and who has made an election campaign contribution in an amount that is more than one hundred dollars (\$100.00) to any elected official of the city commission, who is a current sitting member of the commission, **must disclose such election campaign contribution, verbally and in writing, during the application or bidding process and before the award of the contract.**

Respondent to complete: Check which statement applies, fill in the requested information, if applicable, and sign below.

Neither the undersigned business nor any of its owners or officers contributed more than \$100.00 to the campaign of a sitting City Commission member. [If you checked this statement, you are done and may sign below.]

The undersigned business or one or more of its owners or officers contributed more than \$100.00 to the campaign of a sitting City Commission member. All such contributions are listed below and on the attached sheet of paper (if more room is needed). [If you checked this statement, please fill in the information requested below and sign below.]

1. _____ contributed a total of \$ _____ to the campaign of City Commission member _____.
2. _____ contributed a total of \$ _____ to the campaign of City Commission member _____.
3. _____ contributed a total of \$ _____ to the campaign of City Commission member _____.
4. _____ contributed a total of \$ _____ to the campaign of City Commission member _____.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

Print Title: _____

Print Name of Business: _____

Commissioner/Mayor to complete: Check which statement applies, fill in the requested information, if applicable, and sign below.

[] Neither the above referenced business nor any of its owners or officers contributed more than \$100.00 to my campaign. [If you checked this statement, you are done and may sign below.]

[] The above referenced business or one or more of its owners or officers contributed more than \$100.00 to my campaign. All such contributions are listed below and on the attached sheet of paper (if more room is needed). [If you checked this statement, please fill in the information requested below and sign below.]

_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.
_____ contributed a total of \$ _____ to my campaign.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

For City Clerk's Use Only.

THIS SECTION SHALL BE COMPLETED ONLY IF THERE IS A CAMPAIGN CONTRIBUTION LISTED ABOVE BY THE VENDOR OR COMMISSION MEMBER.

Applicable campaign contributions were disclosed in writing above, and prior to the award of the contract, the following statements were verbally made at the City Commission Meeting on the ____ day of _____, 202__.

Check all that apply.

_____ Commissioner/Mayor _____ verbally disclosed the campaign contribution(s) set forth above.
_____ Vendor, _____, verbally disclosed the campaign contribution(s) set forth above.

EXHIBIT "C"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

RESPONDENT INFORMATION PAGE

Company Name: _____

Authorized
Signature:

Signature

Print Name

Title: _____

Physical
Address:

Street

City State Zip Code

Telephone: _____ Fax: _____

Email Address: _____

Website (if applicable): _____

Federal Identification Number: _____

This is a requirement of every Respondent.

State of Incorporation: _____

EXHIBIT "D"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

SIMILAR PROJECTS

List two (2) similar projects successfully completed in the past five (5) years by the individual, university, firm, or project manager, etc. assigned to the project.

Completed Project #1:

Agency/company: _____
Current contact person at agency/company: _____
Telephone: _____ Fax: _____ E-mail: _____
Address of agency/company: _____
Name of project: _____
Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____
Others: _____

Completed Project #2:

Agency/company: _____
Current contact person at agency/company: _____
Telephone: _____ Fax: _____ E-mail: _____
Address of agency/company: _____
Name of project: _____
Description: _____

Project value: _____ Start date: _____ Completion date: _____
(month/year) (month/year)

Name(s) of assigned personnel:

Project manager: _____
Others: _____

EXHIBIT "E"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

REFERENCES

List below, or on an attached sheet, list references per RFP requirements for providing towing services. Provide the name, addresses and telephone numbers of organizations, governmental or private, for whom you now are, or have **within the past five (5) years** provided services. This form may be copied.

REFERENCE #1

Name of Client: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

Contact Person: _____ Title: _____

Description of services: _____

REFERENCE #2

Name of Client: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

Contact Person: _____ Title: _____

Description of services: _____

REFERENCE #3

Name of Client: _____

Address: _____

Phone: (____) _____ Fax: (____) _____

Contact Person: _____ Title: _____

Description of services: _____

DRAFT

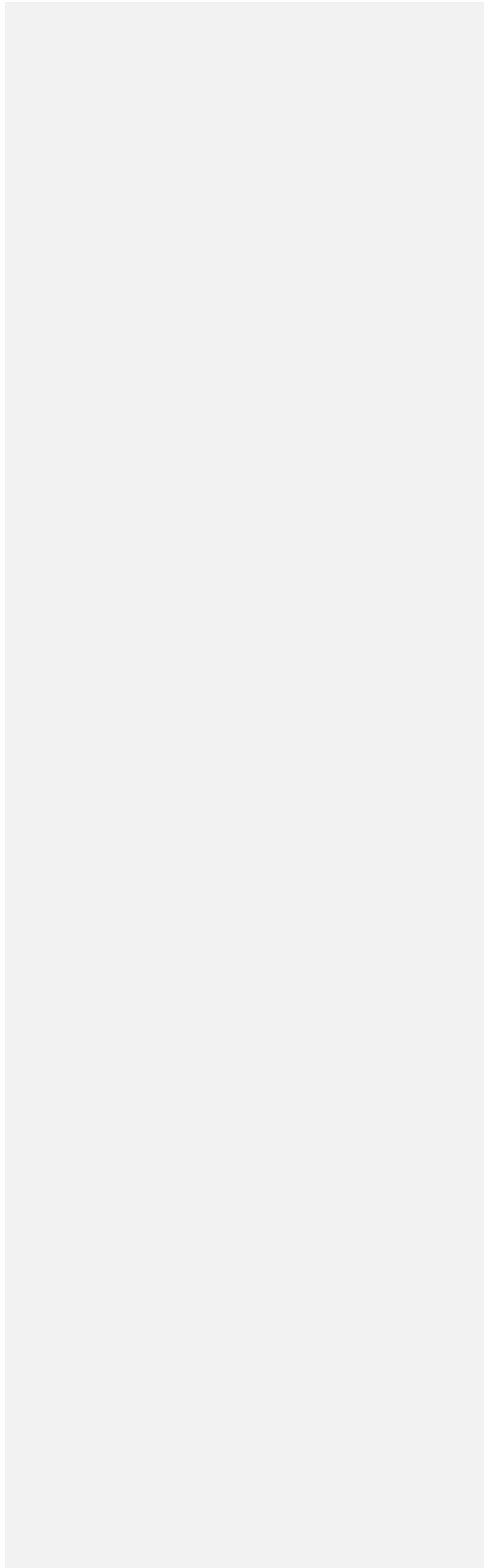


EXHIBIT "F"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

CONFIRMATION OF DRUG-FREE WORKPLACE

In accordance with Section 287.087, Florida Statutes, whenever two or more proposals are equal with respect to price, quality, and service which are received by any political subdivision for the procurement of commodities or contractual services, a proposal received from a business that certifies that it has implemented a drug-free workplace program shall be given preference in the award process. In order to have a drug-free workplace program, a business shall:

(1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.

(2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.

(3) Give each employee engaged in providing the commodities or contractual services that are under proposal a copy of the statement specified in subsection (1).

(4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under proposal, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than 5 days after such conviction.

(5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community by, any employee who is so convicted.

(6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign this statement on behalf of _____, I certify that _____ complies fully with the above requirements.

Authorized Representative's Signature

Date

Print Name

Position

EXHIBIT "G"
RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

SCRUTINIZED COMPANIES CERTIFICATION FORM

By execution below, I, _____, on behalf of _____ (hereinafter, the "Contractor"), hereby swear or affirm to the following certifications:

The following certifications apply to all procurements:

1. The Contractor has reviewed section 215.4725, Florida Statutes, section 215.473, Florida Statutes and section 287.135, Florida Statutes, and understands the same.
2. The Contractor is not on the Scrutinized Companies that Boycott Israel List nor is the Contractor engaged in a boycott of Israel.
3. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
4. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the entire term of the contract, including any and all renewals.

If the contract awarded hereunder is for one million dollars or more, the following additional certifications apply:

1. The Contractor is not on the Scrutinized Companies with Activities in Sudan List.
2. The Contractor is not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.
3. The Contractor is not engaged in business operations in Cuba or Syria.
4. If awarded a contract, the Contractor agrees to require these certifications for applicable subcontracts entered into for the performance of work/services under this procurement.
5. If awarded a contract, the Contractor agrees that the certifications in this section shall be effective and relied upon by the City for the entire term of the contract, including any and all renewals.

CONTRACTOR:

By: _____

Name: _____

Title: _____ Date: _____

STATE OF _____)

COUNTY OF _____)

THE FOREGOING instrument was acknowledged before me by means of • physical presence or • online notarization on this ____ day of _____, 2022, by _____, as the _____ [title] of _____ [vendor's name], a _____ [corporate description], who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal:

Notary Public Signature

EXHIBIT "H"

RFP# 23-200 Housing Emergency Study and Rent Control Ordinance Analysis

**VETERAN BUSINESS ENTERPRISE, SMALL BUSINESS AND
LOCAL BUSINESS PREFERENCE FORM**

Section 2-117 of the City's Code of Ordinances shall govern the application of a Veteran Business Enterprise, Small Business and/or Local Business preference for this RFP.

The undersigned Respondent, hereby claims the following preference:

- Veteran Business Enterprise
- Small Business
- Local Business

Documentation to support a Respondent as a Veteran Business Enterprise, Small Business and/or Local Business must be submitted with a bid in response to the RFP and attached to this form. Documentation submitted after the bid deadline will be rejected.

Signature:

I hereby certify that the above statements are true and correct to the best of my knowledge and I understand that a false or inaccurate statement may result in the rejection of this bid/proposal/submittal or the immediate termination of any resulting agreement with the City of Lake Worth Beach.

By: _____

Print Name: _____

Print Title: _____

Print Name of Business: _____

TORCIVIA, DONLON, GODDEAU & RUBIN, P.A.

701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407-1950
561-686-8700 Telephone / 561-686-8764 Facsimile
www.torcivialaw.com

Glen J. Torcivia
Lara Donlon
Christy L. Goddeau*
Leonard G. Rubin*

Jennifer H.R. Hunecke
Susan M. Garrett
Elizabeth V. Lenihan*
Denise A. Mutamba
Kara L. Land

*FLORIDA BAR BOARD CERTIFIED
CITY COUNTY AND LOCAL GOVERNMENT ATTORNEY

December 2, 2022

Via E-Mail Only

Mayor and Commissioners
City of Lake Worth Beach
7 N. Dixie Highway
Lake Worth Beach, FL 33460

RE: RFP No. 23-200 – Housing Emergency Study and Rent Control Ordinance Analysis

Dear Mayor and Commissioners:

Based on prior discussions of the City Commission, the draft Request for Proposals No. 23-200 “Housing Emergency Study and Rent Control Ordinance Analysis” (the “RFP”) has been revised and is attached for your review. The revisions contain language to ensure that the RFP is drafted to include all potential respondents, including but not limited to, consulting firms, universities, other academic entities, etc. and include Vice Mayor McVoy’s rewrite of the Scope of Services found in Exhibit A. The Scope of Services touched on the need for an analysis of the rent control ordinance statutory criteria but did not outline the specific criteria and evidence required. This information has been added to the Scope of Services.

Regarding the RFP’s rent control ordinance analysis, as previously discussed, Section 166.043, Florida Statutes, requires that a municipality establish evidence to support the three statutory criteria needed to adopt a rent control ordinance: (1) the existence of a housing emergency; (2) that such emergency is “so grave as to constitute a serious menace to the general public”; and (3) that a rent control ordinance is “necessary and proper to eliminate” the emergency. As you are aware, Orange County’s rent control ordinance was challenged in a lawsuit filed by the Florida Association of Realtors and the Florida Apartment Association, Inc. Recently, the Fifth District Court of Appeals issued an opinion (attached) in that litigation which finds that the ordinance failed to meet the statutory criteria.

As previously acknowledged, the statutory criteria impose a high threshold for municipalities to legally justify a rent control ordinance, and the Fifth DCA’s opinion confirms and, arguably, heightens that characterization. Essentially, the Fifth DCA’s opinion found that a “housing emergency” under the rent control ordinance should be understood as “sudden or unexpected, creating a temporary condition necessitating immediate or quick action.” The Orange County ordinance included legislative findings addressing such things as “population increases over the past decade, longstanding housing shortages, and a study finding an affordable housing crisis in May 2018...” The court found that these findings “primarily refer to historical structural issues rather than a ‘sudden’ or ‘unexpected’ occurrence.” The court acknowledged that there were also other legislative findings that addressed “more recent circumstances,

like the COVID-19 pandemic worsening the housing crisis, resulting in spiraling inflation, housing prices, and rental rates.” However, the court pointed out that the Florida Supreme Court has held that an “increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation.” The court also mentioned the testimony from the county’s consultant “that numerous other market conditions and social indicators” were at work, including “a low unemployment rate, high rental occupancy, a high home sale rate, and the regular retirement of stably paid workers.” The court concluded that based on this information, Orange County “cannot prove the ‘existence in fact’ of a ‘housing emergency’ sufficient to justify the ordinance...”

The court went on to analyze whether the ordinance adequately established that the housing situation “is so grave as to constitute a serious menace to the general public.” The court pointed out that testimony indicated that “there was no evidence that rents had become so high that ‘essential workers couldn’t afford to live and work in this community’...”; that there was “no evidence that the homeless population had become so great that it ‘overwhelmed public services’ and ‘the general public didn’t have access’...”; that there was “no evidence that the ‘rent issue’ poses any danger to ‘people who aren’t renters themselves.’” The court also mentioned that the legislative findings did not include factors listed in *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242 (1922) (e.g., great shortage in housing, shortage caused widespread distress, extortion, flagrant rent profiteering, legal process being abused, high eviction rate, unreasonable increases in rent led to 2 or more families living together, overcrowding, unsanitary conditions, disease, immorality, widespread social discontent, etc.). Relying on the *Levy* case (1922) and the testimony described above, the court found that the evidence was insufficient to establish “a serious menace to the general public.” Finally, the court found that Orange County’s legislative findings “do not even suggest that the Ordinance will ‘eliminate’ a housing emergency.” The court also cited to testimony and other evidence that “control measures are ‘not likely to have much of an effect on rental conditions in the market...’” and “that rent control measures may actually hurt rental conditions by ‘impeding the objective of speeding overall housing deliveries as well as creating a number of unintended consequences.’” The court’s analysis resulted in its opinion that the Orange County ordinance was “insufficient under the law to support a rent control measure.”

Based upon the Fifth DCA’s recent opinion and its analysis of the statutory criteria, we are seeking the Commission’s direction on whether or not to remove the Section 166.043 criteria analysis services ((1) – (3) above) from the RFP’s Scope of Services. Please let us know if you have any questions or additional revisions to the RFP.

Sincerely,



Glen J. Torcivia
City Attorney
Enclosures

c: Carmen Davis, City Manager
Juan Ruiz, Assistant City Manager
William Waters, Community Sustainability Director
Valentina Sustaita, Assistant Finance Director

M A N D A T E

from

**DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT**

THIS CAUSE HAVING BEEN BROUGHT TO THIS COURT BY APPEAL OR BY PETITION, AND AFTER DUE CONSIDERATION THE COURT HAVING ISSUED ITS OPINION OR DECISION;

YOU ARE HEREBY COMMANDED THAT FURTHER PROCEEDINGS AS MAY BE REQUIRED BE HAD IN SAID CAUSE IN ACCORDANCE WITH THE RULING OF THIS COURT AND WITH THE RULES OF PROCEDURE AND LAWS OF THE STATE OF FLORIDA.

WITNESS THE HONORABLE BRIAN D. LAMBERT, CHIEF JUDGE OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH DISTRICT, AND THE SEAL OF THE SAID COURT AT DAYTONA BEACH, FLORIDA ON THIS DAY.

DATE: November 02, 2022

FIFTH DCA CASE NO.: 5D 22-2277

CASE STYLE: FLORIDA REALTORS AND FLORIDA APARTMENT ASSOCIATION, INC. v. ORANGE COUNTY, FLORIDA AND BILL COWLES, IN HIS OFFICIAL CAPACITY AS ORANGE COUNTY SUPERVISOR OF ELECTIONS

COUNTY OF ORIGIN: Orange

TRIAL COURT CASE NO.: 2022-CA-007552-O

I hereby certify that the foregoing is
(a true copy of) the original Court mandate.

Sandra B. Williams



SANDRA B. WILLIAMS, CLERK

Mandate and Opinion to: Orange Cty Circuit Ct Clerk

cc: (without attached opinion)

Benjamin Gibson

Carly J. Schrader

Carol B. Shannin

Daniel Nordby

Dylan Schott

Elizabeth Ellis

Eric M. Yesner

Erik Francis Szabo

Gregory T. Stewart

Jeffrey J. Newton
Nicholas A. Shannin

Kirsten H. Mood
Scott A. Glass

Matthew J. Conigliaro

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

FLORIDA ASSOCIATION OF REALTORS
D/B/A FLORIDA REALTORS AND FLORIDA
APARTMENT ASSOCIATION, INC.,

Appellants/Cross-Appellees,

v.

Case No. 5D22-2277
LT Case No. 2022-CA-007552-O

ORANGE COUNTY, FLORIDA

Appellee/Cross-Appellant,

AND

BILL COWLES, IN HIS OFFICIAL CAPACITY
AS ORANGE COUNTY SUPERVISOR OF
ELECTIONS,

Appellee.

_____ /

Opinion filed October 27, 2022

Nonfinal Appeal from the Circuit Court
for Orange County,
Jeffrey L. Ashton, Judge.

Scott A. Glass and Erik F. Szabo, of Shutts &
Bowen LLP, Orlando, and Daniel E. Nordby,
Benjamin Gibson, and Eric Yesner, of Shutts &

Bowen LLP, Tallahassee, for Appellants/Cross-Appellees.

Matthew J. Conigliaro, of Carlton Fields, P.A., Tampa, Amicus Curiae, for National Association of Realtors, for Appellants/Cross-Appellees.

Carly J. Schrader, Gregory T. Stewart, Elizabeth Desloge Ellis, and Kirsten H. Mood, of Nabors, Giblin & Nickerson, P.A., and Dylan Schott and Jeffrey J. Newton, of Orange County Attorney's Office, for Appellee/Cross-Appellant, Orange County, Florida.

Nicholas A. Shannin and Carol B. Shannin, of Shannin Law Firm, P.A., Orlando, for Appellee, Bill Cowles, in his Official Capacity as Orange County Supervisor of Elections.

TRAVER, J.

Florida Association of Realtors and Florida Apartment Association, Inc. (collectively, "the Association") and Orange County, Florida ("the County") both appeal the trial court's non-final order denying the Association's motion for temporary injunction to enjoin the County and the Orange County Supervisor of Elections Bill Cowles from implementing and enforcing the contents of a rent control ordinance. We have jurisdiction. See Fla. R. App. P. 9.130(a)(3)(B). The trial court correctly concluded that the Association had a substantial likelihood of success on the merits of its two-pronged challenge to the County's rent control ordinance and the corresponding ballot summary. But it erred by allowing the matter to remain on the ballot for the

people of Orange County to vote on an unconstitutional ordinance described by a misleading ballot summary. We therefore reverse the trial court's denial of the Association's motion for temporary injunction and remand this matter for its immediate entry.

I. Overview

Before we discuss the factual background of this matter, some discussion of the Florida Constitution and the specific law involved in this case is appropriate. The Florida Constitution "is the paramount expression of the law by the people of this State." See *N. Fla. Women's Health & Counseling Servs., Inc. v. State*, 866 So. 2d 612, 658 (Fla. 2003) (Quince, J., concurring). Accordingly, if a law is inconsistent with our constitution, it must fail. See *Holley v. Adams*, 238 So. 2d 401, 405 (Fla. 1970).

Florida counties that operate under county charters—like the one in this case—have the power of self-government. See Art. 8, § 1(g), Fla. Const. But the Florida Constitution limits this power. For example, local governments cannot pass an ordinance that is inconsistent with general and special laws enacted by the Florida Legislature. See *id.* Such an ordinance, by its nature, would be unconstitutional.

In 1977, the Florida Legislature passed a law limiting the ability of local governments to pass any measure imposing "controls on rents." See §

125.0103(2), Fla. Stat. (1977). This law remains in effect today, and it sets an extremely high bar if a local government wishes to pass a rent control measure. First, if a local government wants to impose rent controls, it must find and determine “that such controls are necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.” *Id.* Second, any such measure may not be imposed for longer than one year. *Id.* § 125.0103(3). Third, certain types of properties, like second homes, are completely exempted from rent controls. *Id.* § 125.0103(4).

The law also requires a regimented process before a local government can pass a rent control ordinance. *Id.* § 125.0103(5). The local government’s governing body must duly adopt the ordinance after notice and public hearing. *Id.* § 125.0103(5)(a). In the resulting ordinance, the local government must recite “its findings establishing the existence in fact of a housing emergency so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.” *Id.* § 125.0103(5)(b). Finally, the local government’s voters must approve the measure. *Id.* § 125.0103(5)(c). If the ordinance is ever challenged in court, the local government bears the burden of upholding its validity. *Id.* § 125.0103(6). So, in this case, the County must

establish that its rent control ordinance is valid, even though the Association sued to enjoin its place on the ballot and its ultimate enforcement. With that overview, we turn to the matter at hand.

II. **Background**

In April 2022, the County Commission discussed a proposal from one of its commissioners to enact a rent control measure. Thereafter, the County hired Community Solutions Group of GAI Consultants, Inc. (“GAI”) to evaluate county housing costs and the effectiveness of rent control measures. Specifically, the County asked GAI to: 1) evaluate and document local housing conditions to determine whether they rise to the level of a housing emergency; 2) estimate the number of units that could be affected by rent control measures; and 3) comment on the likely effectiveness of those measures if implemented.

In June 2022, GAI presented its findings at a public meeting. GAI concluded that Orange County faced several pressing challenges relating to housing. For example, its population was growing, its housing inventory was falling, and its prices were increasing—all beyond historic levels. In addition, rents rose more than 25% from 2020 to 2021, and rental vacancy rates were at 5.2%, the lowest since 2000. GAI noted that rents were “spiking,” and that Orange County’s least affluent citizens bore a disproportionate resulting

burden. It recognized that a significant portion of Orange County's population was spending a large percentage of income on housing costs.

But the County's hired consultant did not find a "housing emergency," which we have explained is one of several mandatory findings necessary for a local government to impose rent controls. GAI concluded that the issues driving rising housing costs in Orange County were "deeply structural and a product of regional and national market influences, likely beyond the control of local regulation," stemming mostly from "inadequate housing production over years which a temporary rent ceiling would do little to correct." GAI opined that if the County passed such a measure, it "may impede the objective of speeding overall housing deliveries as well as create a number of unintended consequences," rather than fulfilling its goal of eliminating a housing crisis. Instead, GAI recommended a well-funded, continuing, and comprehensive strategic approach to address these concerns. After this presentation, GAI had no further participation in the legislative process.

The County Mayor also directed the County Attorney to prepare an advisory legal opinion on the issues surrounding rent control ordinances in Florida. The County Attorney advised that Florida law imposed strict limits on the County's ability to enact such a measure, and that it was "unlikely that

findings of an increase in the cost of living or inflation alone will be sufficient to meet the requirements of [section 125.0103, Florida Statutes].”

The County held three additional meetings to consider additional information that would ultimately inform the findings in its rent control ordinance. This additional information included data about evictions and home sale costs. The County also entertained public comment.

In August 2022, following a public meeting, the County adopted Ordinance 2022-29 (“the Ordinance”) by a 3–2 vote. As required by section 125.0103(5)(b), the Ordinance listed findings supporting its contention that a housing emergency existed in Orange County “so grave as to constitute a serious menace to the general public and that such controls are necessary and proper to eliminate such grave housing emergency.”

Specifically, the Ordinance described a housing shortage of 26,500 units in Orange County, and a population increase of 25% from 2010 to 2020. It noted that 39% of the housing units in Orange County are occupied by renters, and the current 5.2% rental vacancy rate is the lowest since 2000. It declared that “inflation, housing prices, and rental rates in Orange County are increasing, accelerating, and spiraling,” citing a 43% increase in median home sales price from May 2020 to May 2022 and a 25% increase in asking rent per unit from 2020 to 2021, the highest increase since 2006 when it was

6.7%. It recited that 80.3% of households earning at or below the average median income in Orange County pay more than 30% of their household income for housing and may have difficulty affording other life necessities such as food, clothing, transportation, and medical care. It stated that Orange County has been in a housing crisis since before the pandemic. But the pandemic had worsened the housing crisis; the State awarded Orange County the most funds from its now-ended COVID-19 emergency rental assistance program, and the housing conditions continue to deteriorate. Finally, it disclosed 6,970 eviction case filings in the first half of 2022, a 70.1% increase over the same period in 2021.

To eliminate this stated housing emergency, the Ordinance outlined a rent control measure limiting the frequency and amount of rent increases. First, it would prevent any landlord from demanding, charging, or accepting a rent increase from a residential tenant more than once in a twelve-month period. Second, it would preclude any landlord from demanding, charging, or accepting a rent increase on any residential unit greater than the existing rent multiplied by the Consumer Price Index. The Ordinance also includes a process by which landlords can request exceptions to receive a fair and reasonable return on investment and lists factors for deviations from the limitation on rent increases. Likewise, it provides several exemptions,

including those required by various state and federal statutes. The Ordinance further provides for civil and criminal enforcement pursuant to existing Florida law: a landlord who violates it is subject to potential civil citations and fines imposed by the County's code enforcement board of up to \$15,000 per violation, and potential criminal prosecution resulting in a fine up to \$500 and 60 days in jail.

Finally, as section 125.0103(5)(c) requires, the Ordinance provides that it will be placed on the ballot of the November 2022 general election for consideration and action by the Orange County electorate. The Ordinance contains the following ballot title and summary statement:

**Rent Stabilization Ordinance to
Limit Rent Increase for Certain
Residential Rental Units**

Shall the Orange County Rent Stabilization Ordinance, which limits rent increases for certain residential rental units in multifamily structures to the average annual increase in the Consumer Price Index, and requires the County to create a process for landlords to request an exception to the limitation on the rent increase based on an opportunity to receive a fair and reasonable return on investment, be approved for a period of one year?

Six days later, the Association sued the County to declare the Ordinance unconstitutional and the ballot summary invalid. The Association also sought injunctive relief preventing the County from enforcing the Ordinance and preventing the Orange County Supervisor of Elections from

conducting or certifying the November 2022 referendum election. In September 2022, the Association moved for a temporary injunction seeking this relief, and both sides filed detailed legal memoranda supporting their positions. The trial court quickly convened a five-hour evidentiary hearing, at which the Association and the County called witnesses, introduced exhibits, and made legal arguments. The Supervisor of Elections also explained potential ways in which he could implement an order directing removal of the issue from the ballot.

In its prompt and detailed order, the trial court denied the Association's request for a temporary injunction. But it concluded that the Association had a substantial likelihood of succeeding in its challenges against the Ordinance and the ballot summary. In support of this conclusion, the trial court recognized that section 125.0103(5)(b) required the County to make findings supporting the existence of a housing emergency. It found that the County's findings fell short of this high bar. It further acknowledged that a ballot summary cannot mislead on a proposed law's true effect. The trial court determined the ballot summary was misleading because it did not include potential criminal penalties for landlords who violated the Ordinance.

The trial court rationalized its decision to leave the initiative on the ballot even though it was likely doomed to ultimate failure for three reasons.

First, it reasoned that nobody would suffer any harm if the voters rejected the Ordinance at the polls. Second, it explained that even if the Ordinance passed, aggrieved landlords could fight its enforcement and appeal any adverse ruling. Third, it noted that a temporary injunction would not serve the public interest. The trial court observed that even though the County had advanced an initiative that violated the law, there was value in allowing the public to “exercise their right to express their opinion on this issue, even if that is all it will ever be, an opinion.”

Both the Association and the County appealed the trial court’s order denying the temporary injunction. We expedited briefing in this case due to the upcoming election. The Association suggests that the trial court erred by denying its request for temporary injunctive relief. The County takes no issue with the denial, but it disputes the trial court’s conclusion that it will likely not succeed in upholding the Ordinance or defending the ballot summary. The Association is correct.

III. Standard of Review

We review the trial court’s denial of the Association’s motion for temporary injunction in a “hybrid” manner. See *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1258 (Fla. 2017) (citations omitted). We give great deference to its factual findings, evaluating them for an abuse of

discretion. *See id.* A trial court only abuses its discretion if no reasonable person could adopt its view. *See Canakaris v. Canakaris*, 382 So. 2d 1197, 1203 (Fla. 1980). By contrast, we examine the trial court's legal conclusions de novo, which means that we review it anew, as if it had never been heard before. *See Gainesville Woman Care, LLC*, 210 So. 3d at 1258; *Lee v. St. Johns Cnty. Bd. of Cnty. Comm'rs*, 776 So. 2d 1110, 1113 (Fla. 5th DCA 2001).

The Florida Supreme Court has imposed a four-part test on the issuance of a temporary injunction. *See Naegele Outdoor Advert. Co. v. City of Jacksonville*, 659 So. 2d 1046, 1047 (Fla. 1995). To obtain this relief, the party seeking it must establish: 1) a substantial likelihood of success on the merits; 2) the likelihood of irreparable harm; 3) the lack of an adequate legal remedy; and 4) that the public interest supports the injunction. *Id.* The injunction's proponent must establish each element with competent substantial evidence. *See Concerned Citizens for Jud. Fairness, Inc. v. Yacucci*, 162 So. 3d 68, 72 (Fla. 4th DCA 2014). If any element is missing, a trial court cannot enter an injunction. *See Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1111 (Fla. 2021).

The trial court properly applied this four-part test, also correctly identifying that the County had the burden to establish the Ordinance's

validity. See § 125.0103(6). Indeed, the parties do not dispute the trial court's methodology, only its factual findings and legal conclusions. We assess these findings and conclusions for both the Association's request to enjoin the Ordinance's enforcement and to remove the question of its adoption from the ballot, discussing the four-part test for each issue.

IV. Analysis

The trial court correctly concluded that the Association was substantially likely to succeed on the merits of its claims against the Ordinance and the ballot summary. By contrast, we find that the trial court erred in determining that the Association did not suffer irreparable harm, it had an adequate remedy at law, and the public interest supported a public vote on a misleading ballot summary of an unconstitutional ordinance.

1. Likelihood of Success on the Merits

To establish a substantial likelihood of success on the merits of its claims, the Association had to advance more than just a colorable claim. See *Scott v. Trotti*, 283 So. 3d 340, 343 (Fla. 1st DCA 2018). Instead, it must illustrate "a clear legal right to relief requested." See *Mid-Fla. at Eustis, Inc. v. Griffin*, 521 So. 2d 357, 357 (Fla. 5th DCA 1988). The Association easily meets this standard for both its challenges.

a. *The Ordinance*

First, the trial court properly determined the Association is likely to succeed on the merits of its claim that the Ordinance is facially invalid under section 125.0103, Florida Statutes, and Article VIII, § 1(g) of the Florida Constitution. As we discussed at the outset of this opinion, the County has “all powers of local self-government not inconsistent with general law.” See Art. VIII, § 1(g), Fla. Const. Our constitutional structure therefore empowers the County to enact ordinances provided they are “not inconsistent with general law.” In other words, the County may legislate in areas in which the Florida Legislature has not “preempted” its authority.

We begin our analysis of this issue by examining the law in question. Originally enacted in 1977, section 125.0103(2) currently outlines three significant requirements before a county may adopt a rent control measure:

No law, ordinance, rule, or other measure which would have the effect of imposing controls on rents shall be adopted or maintained in effect except as provided herein and unless it is found and determined, as hereinafter provided, that such controls are *necessary and proper to eliminate an existing housing emergency which is so grave as to constitute a serious menace to the general public.*

(Emphasis added).

As illustrated, this statute requires the County to prove the “existence in fact” of its adopted legislative findings establishing: 1) a “housing

emergency”; 2) that is “so grave as to constitute a serious menace to the general public”; and 3) that the proposed rent control measures are both “necessary” and “proper” to “eliminate” the grave housing emergency. See § 125.0103(2), (5)(b), (6). By examining each of the statute’s requirements, we conclude that the Ordinance fails to identify or support any one of these three requirements.

i. “[H]ousing emergency.”

First, the Ordinance’s findings do not illustrate “an existing housing emergency,” as is required by section 125.0103(2) and (5)(b). We note that the statute does not define “housing emergency,” but we can ascertain its meaning by considering its plain and ordinary public meaning at the time of enactment. In doing so, we must consider the term in context, “‘exhaust[ing] all the textual and structural clues’ that bear on the meaning of a disputed text.” *Conage v. United States*, 47 Fla. L. Weekly S199, S200 (Fla. Aug. 25, 2022) (quoting *Alachua Cnty. v. Watson*, 333 So. 3d 162, 169 (Fla. 2022)).

Typically, the best evidence of what a contested term meant when enacted comes from a dictionary published close to that time. *Id.* at S201. And here, dictionaries demonstrate that an “emergency” was commonly understood to mean “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” *Emergency, Webster’s*

Seventh New Collegiate Dictionary (1967); *Emergency*, *Webster's Third New International Dictionary* (1961).¹

The context in which the statute uses “housing emergency” provides additional clues to its meaning. Indeed, the Florida Supreme Court discussed and defined a “housing emergency” before the Florida Legislature adopted the term in 1977. Specifically, in evaluating multiple cases from the United States Supreme Court, the Florida Supreme Court concluded that an emergency was “[t]he only justification” for a rent control measure. *City of Miami Beach v. Fleetwood Hotel, Inc.*, 261 So. 2d 801, 804 (Fla. 1972). The *Fleetwood* Court noted that “emergency” had “been narrowly defined” in this context. *Id.* It declared that “[a]n increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation which limits the amount of rent which a tenant may be required to pay.” *Id.* In other words, “[t]he mere inability by a group of tenants to meet rent payments is not such

¹ We review dictionaries published close to the time of enactment because sometimes a word’s usage evolves or changes. For example, depending on the context, “spam” might or might not mean something completely different now than it did fifty years ago. Here, “emergency” has the same definition today as it did in 1977. See *Emergency*, *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/emergency> (defining “emergency” as “an unforeseen combination of circumstances or the resulting state that calls for immediate action”). The dictionary definitions of the other terms we define in this opinion also have not changed.

an emergency as to justify government controls which are suitable to that group of tenants but which would render investments in housing projects far less attractive and in some instances lead to bankruptcy.” *City of Miami Beach v. Forte Towers, Inc.*, 305 So. 2d 764, 771–72 (Fla. 1974) (Roberts, J., concurring in part and dissenting in part).

Given this precedent, we may reasonably conclude that the Legislature’s use of “emergency” in section 125.0103(2) and (5)(b) carried a similar meaning, especially considering the United State Supreme Court’s admonition that rent control legislation was only permitted in the face of an “emergency.” See, e.g., *Conage*, 47 Fla. L. Weekly at S201 (noting that existing precedent would inform reader of legislature’s work product, and legislature itself, as to meaning of term).

Section 125.0103’s structure provides further evidence as to the scope of the term “housing emergency.” Section 125.0103(3) provides that any rent control ordinance “shall terminate and expire within 1 year” and cannot be extended unless the county adopts a new measure meeting all of section 125.0103’s requirements.

Considering the ordinary meaning of the term “housing emergency” in context, we conclude—as the trial court did—that the type of housing emergency contemplated by section 125.0103 is sudden or unexpected,

creating a temporary condition necessitating immediate or quick action. A decision otherwise would require us to overlook the background in which the term was adopted, dispense with dictionary definitions, and disregard the structure of section 125.0103, which contemplates only a year-long enactment.

The legislative findings in the Ordinance contradict the ordinary meaning of “housing emergency” as used in this context. The Ordinance’s findings, which cite population increases over the past decade, longstanding housing shortages, and a study finding an affordable housing crisis in May 2018, primarily refer to historical structural issues rather than a “sudden” or “unexpected” occurrence. Other findings addressed more recent circumstances, like the COVID-19 pandemic worsening the housing crisis, resulting in spiraling inflation, housing prices, and rental rates. But the Florida Supreme Court has held that an “increase in the cost of living (an inflationary spiral) alone is not a justification for rent control legislation.” *Fleetwood Hotel*, 261 So. 2d at 804. The County Attorney warned the County that these factors would be legally insufficient before it enacted the Ordinance.

The County suggests that structural issues that are not an emergency can reach a “tipping point” that makes them one. But the trial court found

otherwise, which is supported by the testimony of Dr. Owen Beitsch, the leader of GAI's consulting team. In testifying for the Association at the temporary injunction hearing, Dr. Beitsch opined that numerous other market conditions and social indicators in Orange County belied this point. These include a low unemployment rate, high rental occupancy, a high home sale rate, and the regular retirement of stably paid workers.

Ultimately, in applying the ordinary meaning of a "housing emergency," as understood in the context of section 125.0103, we conclude that Orange County cannot prove the "existence in fact" of a "housing emergency" sufficient to justify the Ordinance under section 125.0103(2) and 5(b). Accordingly, the trial court correctly determined that the Association is substantially likely to succeed on the merits of its challenge to the Ordinance's validity.

- ii. "[S]o grave as to constitute a serious menace to the general public."

Even if the County could prove the existence of a "housing emergency," section 125.0103 requires another showing it cannot make. Specifically, the statute also requires that emergency be "so grave as to constitute a serious menace to the general public." § 125.0103(2), (5)(b). The terms in this phrase are also undefined, so we again consider the ordinary meaning of the terms in context.

“Menace,” used as a noun, generally means someone or something that represents a threat or danger. See *Menace, Webster’s Seventh New Collegiate Dictionary* (1967); *Menace, Webster’s Third New International Dictionary* (1961). “Public” generally means the people as a whole, populace, or masses. See *Public, Webster’s Seventh New Collegiate Dictionary* (1967); *Public, Webster’s Third New International Dictionary* (1961). Taken together, the statute requires that the County demonstrate a housing emergency that constitutes a grave threat or danger to the Orange County citizens *as a whole*.

We again find support for this interpretation in precedent. The United State Supreme Court determined that states had the authority to limit rents based upon the justification of “a social emergency.” *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 245 (1922). The *Levy* Court described this as an emergency that was not only caused by “an insufficient supply of dwelling houses and apartments,” but one that was “so grave that it constituted a serious menace to the health, morality, comfort, and even to the peace *of a large part of the people of the state*.” *Id.* (emphasis added). In *Levy*, the State of New York cited numerous conditions that affected a large part of its populace. *Id.* at 245–46. These included a shortage of housing that was causing “widespread distress”; rent profiteering so oppressive and flagrant

that it amounted to extortion; never-before-seen abuse of legal process solely for the purpose of increasing rents; and a crisis of multi-family living situations in apartments adequate for only one family. These conditions, the evidence supported, were causing overcrowding and “insanitary conditions, disease, immorality, discomfort, and widespread social discontent.” *Id.*

Here, the County’s legislative findings are virtually devoid of findings that the allegedly existing housing emergency is “so grave as to constitute a serious menace to the general public.” § 125.0103(2). At most, the County cites to a low rental vacancy rate and low availability of affordable housing. Both the trial court’s order and its questioning of Dr. Beitsch at the evidentiary hearing demonstrates it was properly focused on this issue. In response to the trial court’s questions, Dr. Beitsch testified that there was no evidence that rents had become so high that “essential workers couldn’t afford to live and work in this community.” He explained that he found no evidence that the homeless population had become so great that it “overwhelmed public services” and “the general public didn’t have access.” He concluded there was no evidence that the “rent issue” poses any danger to “people who aren’t renters themselves.” While we do not minimize the evidence supporting a complex, multifaceted housing issue affecting *renters* in Orange County, it was insufficient under the law to support a rent control measure. These are

not the sort of factors the United States Supreme Court described in *Levy*, nor do they establish any sort of grave threat or danger to the people as a *whole*, as contemplated by section 125.0103.

Therefore, applying the ordinary meaning of “so grave as to constitute a serious menace to the general public” as understood in the context of section 125.0103, we conclude that Orange County cannot meet the statute’s requirements, even if it were to establish a “housing emergency.” The trial court correctly determined that the Association is substantially likely to succeed on the merits of its challenge to the Ordinance’s validity in this aspect as well.

- iii. “[N]ecessary” and “proper” to “eliminate” any grave housing emergency.

A final and significant aspect of section 125.0103 further demonstrates the Ordinance’s invalidity. Section 125.0103 states that even if there is a “housing emergency,” and even if it is “so grave as to constitute a serious menace to the general public,” counties still must demonstrate that the ordinance is “necessary and proper to eliminate such grave housing emergency.” § 125.0103(5)(b).

Dictionaries published close in time to the legislative enactment illuminate the ordinary meaning of the word “eliminate,” demonstrating it means to “get rid of,” expel, or eradicate. *Eliminate*, *Webster’s Seventh New*

Collegiate Dictionary (1967); *Eliminate*, *Webster's Third New International Dictionary* (1961). The County suggests we should not view "eliminate" in this manner because it contemplates an "impossible standard." Instead, it effectively suggests we view "eliminate" as synonymous with terms "ameliorate," "lessen," or "mitigate."

We cannot accept this suggestion for at least three reasons. First, "eliminate" does not and has never meant this. The County's legislative findings do not even suggest that the Ordinance will "eliminate" a housing emergency in Orange County. Second, the trial court received competent, substantial evidence showing the opposite. Dr. Beitsch testified that rent control measures are "not likely to have much of an effect on rental conditions in the market." GAI's report, admitted into evidence without objection, concluded that rent control measures may actually hurt rental conditions by "imped[ing] the objective of speeding overall housing deliveries as well as creat[ing] a number of unintended consequences." Third, and perhaps most importantly, the County's inability to demonstrate this factor illustrates the difference between a housing crisis based on long-term systemic factors, some of which may not be unique to Orange County, and a housing emergency that a rent control measure may eliminate. The County urges us to ignore the extremely high bar section 125.0103 imposes to allow

enforcement of a rent control measure that may potentially make a housing shortage worse. In sum, for this third and independent reason, the trial court correctly concluded that the Association satisfied its burden to demonstrate a substantial likelihood of success on the merits of its challenge to the Ordinance's validity.²

b. *The Ballot Summary*

The trial court also correctly ruled the Association was likely to succeed on its ballot summary claim, although not for the reason it found.³ The ballot

² We reject the County's complaint that the trial court improperly excluded most of its expert testimony at the injunction hearing. The trial court did not err in doing so, reasoning that the County did not have the benefit of the information when it enacted the Ordinance. This information could not have informed the County's mandated legislative findings because it did not know the information existed. See § 125.0103(5)(b).

But even if this testimony had informed the County's legislative findings, or if the County could introduce this information at trial, it would make no difference. This reflects just one of the many elements that make section 125.0103 a unique and distinct statute. To satisfy it, the County had to outline specific facts—in the form of legislative findings in the Ordinance—that supported its contention that it met all three of the significant requirements set forth in section 125.0103(5)(b). Because we conclude that these findings did not meet a single one of them, additional testimony about the legislative findings in the Ordinance—no matter what it was—would have no effect.

³ This presents no issue for us because the Florida Supreme Court has ruled that a trial court's decision is primarily what matters, not the reasoning it used. See *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979). "Even when based on erroneous reasoning, a conclusion or decision of a trial court will generally be affirmed if the evidence or an

summary is misleading because it only describes one of the two ways in which the County will control rent. Stated differently, a voter reviewing the summary might be able to ascertain that the County wished to impose rent control, but he or she would be misled as to how the County would effectuate it.

We review de novo the trial court's determination that the ballot summary was invalid. See *City of Riviera Beach v. Riviera Beach Citizens Task Force*, 87 So. 3d 18, 21 (Fla. 4th DCA 2012). In so doing, we must evaluate whether the ballot language satisfies the requirements of section 101.161, Florida Statutes. See *Fla. Educ. Ass'n v. Fla. Dep't of State*, 48 So. 3d 694, 700 (Fla. 2010). This statute requires that a ballot summary "shall be an explanatory statement, not exceeding 75 words in length, of the chief purpose of the measure." § 101.161(1). The ballot title "shall consist of a caption, not exceeding 15 words in length, by which the measure is commonly referred to or spoken of." *Id.*

These requirements are designed to provide fair notice of a proposed law's content, so that a voter can cast an intelligent and informed vote and not be misled as to the proposed law's purpose. See *Advisory Op. to Att'y*

alternative theory supports it." *Id.* (citations omitted); see also *Dade Cnty. Sch. Bd. v. Radio Station WQBA*, 731 So. 2d 638, 644–45 (Fla. 1999).

Gen. re Use of Marijuana for Debilitating Med. Conditions, 181 So. 3d 471, 478 (Fla. 2015) (quoting *Advisory Op. to Att’y Gen. re Term Limits Pledge*, 718 So. 2d 798, 803 (Fla. 1998)). Indeed, voters must be able to understand how far a proposed law sweeps from the ballot title and summary, so that the proposed law “is neither less nor more extensive than it appears to be.” See *Smathers v. Smith*, 338 So. 2d 825, 829 (Fla. 1976). A ballot title and summary do not have to explain every detail of the proposed law, but rather its chief purpose. *City of Riviera Beach*, 87 So. 3d at 21.

In determining whether section 101.161’s requirements are satisfied, we consider two questions: “(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters.” *Advisory Op. to Att’y Gen. re Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, & Other Restrictions*, 320 So. 3d 657, 667–68 (Fla. 2021) (quoting *Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions*, 132 So. 3d 786, 797 (Fla. 2014)). Indeed, a ballot summary may be defective if it “omits material facts necessary to make the summary not misleading.” *Advisory Op. to Att’y Gen.—Ltd. Pol. Terms in Certain Elective Offs.*, 592 So. 2d 225, 228 (Fla. 1991).

The ballot title and summary state:

**Rent Stabilization Ordinance to
Limit Rent Increase for Certain
Residential Rental Units**

Shall the Orange County Rent Stabilization Ordinance, which limits rent increases for certain residential rental units in multifamily structures to the average annual increase in the Consumer Price Index, and requires the County to create a process for landlords to request an exception to the limitation on the rent increase based on an opportunity to receive a fair and reasonable return on investment, be approved for a period of one year?

The summary is misleading not because of what it says, but because of what it does not say. Critically, the Ordinance purports to control rent in two ways. The first restricts the frequency of rental increases to one time per twelve-month period. The second limits the amount of these increases by tying them to the Consumer Price Index. The ballot summary, however, only advises the voter about the amount of rent control, but not its frequency. This omission is confusing because the chief purpose of the initiative is rent control, but the ballot summary misleads on how the Ordinance will effectuate this purpose. It does not, in other words, accurately advise a voter about the Ordinance's scope, thus, portraying the measure as "less . . . extensive than it appears to be." See *Smathers*, 338 So. 2d at 829. The Ordinance does not provide, and would be completely different, for allowing landlords to raise rent on month-to-month leases every month for the year it

was in effect, provided all twelve increases were tied to the Consumer Price Index.

This fatal omission is also completely avoidable. We can conceive of several alterations that would fully inform voters while still satisfying the word limit. Florida law does not require a ballot summary to explain every detail in the seventy-five-word limit. See *Advisory Op. to the Att’y Gen. re Prohibiting Pub. Funding of Pol. Candidates’ Campaigns*, 693 So. 2d 972, 975 (Fla. 1997); see also *Matheson v. Miami-Dade Cnty.*, 187 So. 3d 221, 225–26 (Fla. 3d DCA 2015) (“Florida courts have previously held that section 101.161(1) does not require excessive detail.”). But it cannot mislead with what it does say. See *Armstrong v. Harris*, 773 So. 2d 7, 21 (Fla. 2000) (concluding that “ballot language in the present case is defective for what it does not say”); *Askew v. Firestone*, 421 So. 2d 151, 156 (Fla. 1982) (“The problem, therefore, lies not with what the summary says, but, rather, with what it does not say.”). For this reason, although it employed a different rationale, the trial court correctly determined that the Association was substantially likely to succeed in its efforts to remove the referendum on the Ordinance from the ballot.

2. Irreparable Harm & No Adequate Legal Remedy

The trial court erred, however, when it concluded it should not afford the Association temporary relief because it had not been irreparably harmed and the Association had an adequate legal remedy. The concepts of irreparable harm and no adequate legal remedy are distinct prongs of the temporary injunction test, but they are related to one another. See, e.g., *Corp. Mgmt. Advisors, Inc. v. Boghos*, 756 So. 2d 246, 247 (Fla. 5th DCA 2000) (citations omitted) (“The question of whether the injury is ‘irreparable’ turns on whether there is an adequate remedy available.”). Accordingly, we discuss them together.

“Irreparable” means an injury cannot be adequately repaired or redressed in a court of law by an award of money damages. *Air Ambulance Network, Inc. v. Floribus*, 511 So. 2d 702, 702 (Fla. 3d DCA 1987). An injury is not irreparable if it is “doubtful, eventual or contingent.” *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So. 2d 372, 373 (Fla. 1st DCA 1986) (citation omitted). Further, irreparable injury will never be found “when a plaintiff’s right to recover is based upon a future event” or the alleged injury is speculative. *Biscayne Park, LLC v. Wal-Mart Stores E., LP*, 34 So. 3d 24, 26 (Fla. 3d DCA 2010). Instead, the irreparable injury must be “actual and imminent.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000). It

is an injury of such a “peculiar nature” that money cannot adequately “atone for it.” *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 738 (Fla. 3d DCA 1982) (citation omitted).

An “adequate remedy at law” refers to a litigant’s ability to obtain a monetary judgment, and not whether that judgment will be collectible once obtained. *Holland M. Ware Charitable Found. v. Tamez Pine Straw, LLC*, 343 So. 3d 1285, 1289–90 (Fla. 1st DCA 2022); see *Am. Sur. Co. of N.Y. v. Murphy*, 13 So. 2d 442, 443 (Fla. 1943) (stating general proposition that party will not be able to assert equitable claims if it has “a complete and adequate remedy at law”).

The Association suffered—and continues to suffer—irreparable harm because the County enacted an unconstitutional law. A county ordinance that conflicts directly with a state statute is unconstitutional. See *Miami-Dade Cnty. v. Miami Gardens Square One, Inc.*, 314 So. 3d 389, 392–93 (Fla. 3d DCA 2020). And “a continuing constitutional violation, in and of itself, constitutes irreparable harm.” *Bd. of Cnty. Comm’rs, Santa Rosa Cnty. v. Home Builders Ass’n of W. Fla.*, 325 So. 3d 981, 985 (Fla. 1st DCA 2021) (quoting *Fla. Dep’t of Health v. Florigrown, LLC*, 320 So. 3d 195, 200 (Fla. 1st DCA 2019), *quashed on other grounds by* 317 So. 3d 1101 (Fla. 2021)). The Ordinance plainly falls short of section 125.0103’s high bar, and thus, it

is unconstitutional. Because we presume the Association suffers irreparable harm in this situation, the trial court erred by finding otherwise.

The Association has also suffered a different type of irreparable harm in connection with both the Ordinance and the misleading ballot summary. Here, the trial court erred by overlooking unrebutted evidence on this point. Two Association executives testified that its members were having difficulty obtaining loans because lenders had grown more apprehensive about investing in the commercial rental market due to the possibility of rent control. Further, the Association has had to devote all its resources to defeating the measure before its enactment. The County made no effort to challenge this testimony on cross-examination. The attested injuries are actual, and they are neither speculative nor compensable. In this sense, competent, substantial evidence does not support the trial court's finding that the Association's harm would be mooted if voters rejected this measure on Election Day, and we must therefore reject it.

This evidence also shows the Association has no adequate legal remedy. The County is protected by sovereign immunity, and neither the Association nor its members could recover damages for the harm it has and will incur even if those damages were quantifiable. Separately, the only remedy for a misleading ballot measure is its removal from the ballot. See

Let Miami Beach Decide v. City of Miami Beach, 120 So. 3d 1282, 1292 (Fla. 3d DCA 2013); see also *Detzner v. League of Women Voters of Fla.*, 256 So. 3d 803 (Fla. 2018) (affirming entry of permanent injunction enjoining secretary of state from placing misleading proposed constitutional revision on ballot). In this sense, the Association has no other remedy, much less an adequate remedy at law, for the County's misleading ballot summary.

3. The Public Interest

Finally, the public interest supports the issuance of the Association's temporary injunction. The trial court reasoned that no harm could come of the public offering its opinion on a measure that had no likelihood of legal success, and that it would not substitute its judgment for that of Orange County's elected representatives. Respectfully, we disagree.

No public interest can be served by allowing the potential enforcement of a rent control ordinance that fails to meet the facial requirements of section 125.0103, and Article 8, section 1 of the Florida Constitution. We recognize that a local government's aim to enact legislation to address a complex, multifaceted issue is noble, and citizens might believe that rent control is a harmless way to accomplish that aim. But as we stated at the outset of this opinion, the power of local government is limited, and a critical limitation on this power is the Florida Constitution.

Similarly, no public interest can be served by having the electorate vote on a misleading ballot measure. Our constitution already reflects this concern. It requires the Florida Supreme Court to render an advisory opinion on the validity of any proposed amendment to our constitution via initiative petition before it appears on the ballot. See Art. 4, § 10; Art. 5, § 3, Fla. Const. While we cannot, and do not, evaluate such a proposed amendment, we see no reason why the same principle should not apply here. Stated differently, there is no defensible reason to determine a ballot initiative is misleading, yet still have the electorate vote on it, only then informing them that we knew it was an unenforceable opinion poll all along. We recognize that the removal of the County's ballot initiative is a significant remedy, and we do not exercise it lightly. But it is the only remedy available, and the law requires we impose it. See *Let Miami Beach Decide*, 120 So. 3d at 1292.

V. Conclusion

For these reasons, the trial court erred in denying the Association's motion for temporary injunction. We reverse and remand for its immediate issuance. We have considered the Supervisor of Elections' arguments about his available options given this determination and the timing of its issuance. Based on the Florida Constitution's admonition about the separation of powers, we decline to dictate precisely *how* the Supervisor of Elections

should effectuate the relief imposed by the temporary injunction vis-à-vis the November 2022 election. See Art. II, § 3, Fla. Const. We anticipate at a minimum, however, that the results of the ballot initiative will not be certified.

AFFIRMED in Part; REVERSED in Part; and REMANDED WITH INSTRUCTIONS.

SASSO, J., concurs.

COHEN, J., dissents, with opinion.

Case No. 22-2277
LT Case No. 2022-CA-007552-O

COHEN, J., dissenting with opinion.

In this appeal, we are asked to review nearly 100 years of law, state statutes, and multiple briefs, and to provide an analysis in just a few days.¹ I commend the majority's work in this case, as that is no easy task. However, I cannot agree with the majority's result, which effectively removes from the ballot an ordinance proposed by a duly elected body, the County Commissioners of Orange County ("the County").

The procedural posture of this case has import. The case comes to us on appeal from the denial of a temporary injunction. Before reaching the crux of the matter, it is instructive to remember that the appellants, Florida Realtors and Florida Apartment Association, Inc. (collectively, "Realtors"), must establish: (1) a substantial likelihood of success on the merits, (2) a lack of an adequate remedy at law, (3) the likelihood of irreparable harm absent the entry of an injunction, and (4) that injunctive relief will serve the public interest. Gainesville Woman Care, LLC v. State, 210 So. 3d 1243, 1258 (Fla. 2017) (citing Reform Party of Fla. v. Black, 885 So. 2d 303, 305 (Fla. 2004)). Despite the trial court's ruling that Realtors did not establish the

¹ This case was not perfected until October 11, 2022.

last three of the four elements, the majority reverses that ruling by utilizing, in part, the trial court's finding as to the first element—a substantial likelihood of success on the merits—to support its conclusions that Realtors had also satisfied the remaining elements.

The County presented a plethora of facts supporting its position that a housing crisis exists in Orange County, an emergency so grave as to constitute a serious menace to the general public. § 125.0103(2), (5)(b), Fla. Stat. For the most part, Realtors did not dispute those facts. As a result, our review should be limited to whether those facts are sufficient to fulfill the statutory requirements.

There was scant law to assist the trial court (or this Court) in making that determination. As such, the trial court relied on the facts outlined in Edgar A. Levy Leasing Co. v. Siegel, 258 U.S. 242 (1922), the seminal case on rent control from the United States Supreme Court.² The Supreme Court noted the circumstances that existed in New York in the early twentieth century:

That there was a very great shortage in dwelling house accommodations in the cities of the state to which the acts apply; that this condition was causing widespread distress; that extortion in most oppressive forms was flagrant in rent profiteering; that, for the purpose of increasing rents, legal

² The pertinent language of section 125.0103 mirrors that of Siegel.

process was being abused and eviction was being resorted to as never before; and that unreasonable and extortionate increases of rent had frequently resulted in two or more families being obliged to occupy an apartment adequate only for one family, with a consequent overcrowding, which was resulting in insanitary conditions, disease, immorality, discomfort, and widespread social discontent.

Siegel, 258 U.S. at 246.

Nowhere in Siegel, or throughout the intervening years, does the Supreme Court suggest that the facts present in Siegel should be considered the baseline or measuring stick for establishing what constitutes a housing emergency necessitating the enactment of rent control ordinances; we would hardly expect the circumstances of Siegel to be identically replicated since that time. Thus, the trial court's use of the specific factual circumstances in Siegel as setting some sort of baseline to demonstrate an emergency was misplaced.

That is not to say that Siegel is wholly inapplicable. Importantly, in affirming the New York rent control laws at issue, the Supreme Court noted the "very great respect which courts must give to the legislative declaration that an emergency existed." Id. We should do the same. After all, the judiciary's statutorily mandated review is to determine whether the County has met its burden of establishing a grave housing emergency sufficient to

enact a rent control ordinance, and we should give deference to the County's factual findings substantiating that need. See id.

Just as Siegel considered the circumstances facing the residents of New York, we must look at the circumstances particular to Orange County residents. Orange County is facing an issue found virtually nowhere else among the 67 counties in Florida.³ Its economy is based in large part upon tourism, and it is well documented that a significant portion of Orange County's population is employed in associated low-paying jobs in that industry. Over 80% of households in Orange County are earning at or below the average median income. Those households spend more than 30% of their household income on rent and are having difficulty affording other life necessities such as food, clothing, transportation, and medical care. It is within that context that the County examined the current housing market.⁴

Moreover, approximately 40% of Orange County's population are renters. The legislative factual findings also noted that inflation, housing prices, and rental rates in Orange County are "increasing, accelerating, and spiraling." There has been a 43% increase in median home sales prices from

³ Osceola County is similarly situated.

⁴ During the pandemic, Orange County received more funds from the State's now-terminated COVID-19 emergency rental assistance program than any other county in Florida.

May 2020 to May 2022, signaling that the percentage of renters is likely to continue to increase as fewer residents become able to afford to purchase their own homes. At the same time, there has been a 25% increase in asking rent per unit from 2020 to 2021, the highest increase since 2006 when it was only 6.7%. All the while, the population of Orange County continues to grow, with a population increase of 25% from 2010 to 2020, further exacerbating the housing crisis, especially when there is a documented shortage of approximately 26,500 housing units in the county.

More and more residents in Orange County are unable to afford even the most basic housing, resulting in a dramatic increase in evictions: through the first half of 2022, there have been nearly 7,000 eviction cases filed, representing a 70% increase when compared to the same time frame in 2021. Contrary to the position taken by Realtors, these circumstances reflect more than a mere inflationary spiral.

Realtors do not dispute that, as a result of the affordable housing shortage, families are struggling to afford essential life necessities, from food and utilities to medical expenses, at the same time that the decreased ability to pay for transportation affects employment opportunities. These are not simply statistics; these factual findings reflect real people facing rent hikes

that are not only historic, but which dwarf prior records and show no signs of abating given the undisputed population growth and housing shortage.

Realtors posit that the dire economic straits of a significant portion of Orange County residents do not rise to the level of a housing emergency justifying a rent control ordinance—one that is limited in scope and duration and which provides exemptions to ensure that rental property owners retain the right to receive a fair and reasonable return on investment.⁵ While Realtors are naturally advocating for the financial interests of their members, the County has a broader perspective. The County, having examined all the facts, which objectively could be characterized as a perfect storm, decided to act.⁶ It determined that Orange County is in the midst of a grave housing emergency, constituting a serious menace to the general public. § 125.0103(2), (5)(b), Fla. Stat.

Accordingly, I would find that, as a matter of law, the County has met its burden under section 125.0103. I would therefore affirm the trial court's

⁵ The ordinance would only be applicable to certain residential units in multi-family structures and would not impact individuals who own single-family rental properties.

⁶ As a legislative body, the County was not bound by the opinions of its consultant as to the ultimate determination of whether the facts as established constituted a grave housing emergency.

denial of temporary injunctive relief and allow the residents of Orange County to vote on the ordinance in the upcoming election.

Turning to the ballot summary aspect of this case, I agree with the majority that the trial court's basis for concluding that the ballot language was defective was flawed, i.e., that it failed to "inform the public that the ordinance would criminalize previously lawful conduct." However, I disagree with the majority's conclusion that the ballot language was nonetheless defective because it "only describes one of the two ways in which the County will control rent." All that Florida law requires is that the language used to summarize the ordinance "give the voters 'fair notice' of the decision they must make." Dep't of State v. Fla. Greyhound Ass'n, Inc., 253 So. 3d 513, 519 (Fla. 2018) (citing Miami Dolphins, Ltd. v. Metro. Dade Cnty., 394 So. 2d 981, 987 (Fla. 1981)). Under Florida law, the ballot summary is limited to 75 words, must be "printed in clear and unambiguous language on the ballot," and "shall be an explanatory statement . . . of the chief purpose of the measure." § 101.161(1), Fla. Stat. (2022). The ballot summary does not have to "explain every detail or ramification of the proposed amendment." City of Riviera Beach v. Riviera Beach Citizens Task Force, 87 So. 3d 18, 21 (Fla. 4th DCA 2012) (quoting Fla. Educ. Ass'n v. Fla. Dep't of State, 48 So. 3d 694, 700 (Fla. 2010)).

In determining whether the statutory requirements are satisfied, this Court considers two questions: “(1) whether the ballot title and summary, in clear and unambiguous language, fairly inform the voters of the chief purpose of the amendment; and (2) whether the language of the ballot title and summary, as written, will be affirmatively misleading to voters.” Advisory Op. to Att’y Gen. re Regulate Marijuana in a Manner Similar to Alcohol to Establish Age, Licensing, & Other Restrictions, 320 So. 3d 657, 667–68 (Fla. 2021) (quoting Advisory Op. to Att’y Gen. re Use of Marijuana for Certain Med. Conditions, 132 So. 3d 786, 797 (Fla. 2014)).

Here, the ballot summary clearly sets out the main purpose of the ordinance—to limit rent increases for certain residential rental units to not exceed the Consumer Price Index. The frequency with which such rent can be increased over the one-year time frame allowed by law is not the chief purpose of the ordinance; nor does the absence of those details render the summary misleading. Simply put, under Florida law, the ballot summary did not have to contain every detail or ramification of the ordinance to provide its chief purpose within the 75-word limit. I also respectfully dissent from the majority’s view on the propriety of Orange County’s ballot summary.

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: City Manager

TITLE:

Presentation of conceptual design for the pool by CPZ Architects, Inc.

SUMMARY:

CPZ Architects, Inc. was selected on October 12, 2017 to provide professional services for the Lake Worth Beach Complex Design Phase for replacement of the pool.

BACKGROUND AND JUSTIFICATION:

Possible design options for the pool were presented by CPZ Architects, Inc. at the August 7, 2018 commission meeting. At the July 5, 2022 commission meeting, Task Order No. 3 was approved for the preparation of a final conceptual design of the pool area only as outlined in the previously provided conceptual design drawings.

MOTION:

Direction sought from the commission regarding the design for the pool.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A



**CITY OF LAKE WORTH
LAKE WORTH BEACH COMPLEX
10 S OCEAN BLVD
LAKE WORTH, FLORIDA 33460**

**CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
ORDER OF MAGNITUDE
October 24, 2022**

**PREPARED FOR:
CPZ ARCHITECTS**

**PREPARED BY:
CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
CMS FILE # 2333 ORDER OF MAGNITUDE**

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
 1115 HERON BAY BLVD, SUITE 204
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 (954) 481-1611
 CMS FILE # 2333 ORDER OF MAGNITUDE

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CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

SCHEDULE OF VALUES - CONCEPT A

DIVISION	DESCRIPTION	CONCEPT A - BASE	CONCEPT A - LIFEGUARD OFFICE	CONCEPT A - PUBLIC RESTROOMS	CONCEPT A - TACO BAR	CONCEPT A - ADMIN PORTION OF TACO BAR	CONCEPT A - SPLASH PAD	CONCEPT A - EXTERIOR PAVING IMPROVEMENTS
		AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
01000	GENERAL CONDITIONS - SEE BREAKOUT BELOW	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
02000	SITE WORK / DEMOLITION	\$ 928,931	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
03000	CONCRETE	\$ 752,188	\$ 196,875	\$ 94,875	\$ 70,500	\$ 52,031	\$ 56,400	\$ -
04000	MASONRY	\$ 54,600	\$ 19,688	\$ 9,488	\$ 8,813	\$ 5,203	\$ -	\$ -
05000	METALS	\$ 27,228	\$ 13,125	\$ 6,325	\$ 5,875	\$ 3,469	\$ -	\$ -
06000	WOOD AND PLASTICS	\$ 14,294	\$ 6,563	\$ 3,163	\$ 2,938	\$ 1,734	\$ -	\$ -
07000	THERMAL / MOISTURE PROTECTION	\$ 86,981	\$ 39,375	\$ 18,975	\$ 17,625	\$ 10,406	\$ -	\$ -
08000	DOORS AND WINDOWS	\$ 110,250	\$ 39,375	\$ 18,975	\$ 17,625	\$ 10,406	\$ -	\$ -
09000	FINISHES	\$ 142,938	\$ 65,625	\$ 31,625	\$ 29,375	\$ 17,344	\$ -	\$ -
10000	SPECIALTIES / SIGNAGE	\$ 36,700	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11000	EQUIPMENT	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12000	FURNISHINGS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13000	SPECIAL CONSTRUCTION	\$ 1,201,883	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14000	CONVEYING SYSTEMS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21000	FIRE	\$ 25,729	\$ 11,813	\$ 5,693	\$ 5,288	\$ 3,122	\$ -	\$ -
22000	PLUMBING	\$ 161,500	\$ 18,500	\$ 59,500	\$ 18,213	\$ -	\$ 51,700	\$ -
23000	HVAC	\$ 68,610	\$ 42,000	\$ 20,240	\$ 18,800	\$ 11,100	\$ -	\$ -
26000	ELECTRICAL	\$ 199,720	\$ 63,000	\$ 30,360	\$ 28,200	\$ 16,650	\$ 51,700	\$ -
27000	TECHNOLOGY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
28000	ELECTRONIC SAFETY & SECURITY	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
31000	EARTHWORK	\$ 749,476	\$ -	\$ -	\$ -	\$ -	\$ 56,400	\$ -
32000	EXTERIOR IMPROVEMENTS	\$ 564,610	\$ -	\$ -	\$ 126,000	\$ -	\$ -	\$ 47,250
33000	SITE UTILITIES	\$ 207,920	\$ -	\$ -	\$ -	\$ -	\$ 37,600	\$ -
	SUBTOTALS: DIRECT/HARD COSTS	\$ 5,333,556	\$ 515,938	\$ 299,218	\$ 349,250	\$ 131,466	\$ 253,800	\$ 47,250
12.00%	GENERAL CONDITIONS	\$ 640,027	\$ 61,913	\$ 35,906	\$ 41,910	\$ 15,776	\$ 30,456	\$ 5,670
	SUBTOTAL	\$ 5,973,583	\$ 577,850	\$ 335,124	\$ 391,160	\$ 147,242	\$ 284,256	\$ 52,920
4.00%	G.C. OVERHEAD	\$ 238,943	\$ 23,114	\$ 13,405	\$ 15,646	\$ 5,890	\$ 11,370	\$ 2,117
	SUBTOTAL	\$ 6,212,527	\$ 600,964	\$ 348,529	\$ 406,806	\$ 153,131	\$ 295,626	\$ 55,037
6.00%	G.C PROFIT	\$ 372,752	\$ 36,058	\$ 20,912	\$ 24,408	\$ 9,188	\$ 17,738	\$ 3,302
	SUBTOTAL	\$ 6,585,278	\$ 637,022	\$ 369,440	\$ 431,215	\$ 162,319	\$ 313,364	\$ 58,339
1.29%	G.C. P&P BOND	\$ 84,950	\$ 8,218	\$ 4,766	\$ 5,563	\$ 2,094	\$ 4,042	\$ 753
	SUBTOTAL	\$ 6,670,228	\$ 645,239	\$ 374,206	\$ 436,777	\$ 164,413	\$ 317,406	\$ 59,092
15.00%	ESCALATION (ALLOWANCE)	\$ 1,000,534	\$ 96,786	\$ 56,131	\$ 65,517	\$ 24,662	\$ 47,611	\$ 8,864
	SUBTOTAL	\$ 7,670,762	\$ 742,025	\$ 430,337	\$ 502,294	\$ 189,075	\$ 365,017	\$ 67,955
20.00%	CONTINGENCY	\$ 1,534,152	\$ 148,405	\$ 86,067	\$ 100,459	\$ 37,815	\$ 73,003	\$ 13,591
	TOTAL PROBABLE CONSTRUCTION COST	\$ 9,204,915	\$ 890,430	\$ 516,404	\$ 602,753	\$ 226,890	\$ 438,021	\$ 81,546

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
 1115 HERON BAY BLVD, SUITE 204
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 CMS FILE # 2333 ORDER OF MAGNITUDE

CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

SCHEDULE OF VALUES - CONCEPT B

DIVISION	DESCRIPTION	CONCEPT B - BASE	CONCEPT B - LIFEGUARD OFFICES	CONCEPT B - PUBLIC RESTROOMS	CONCEPT B TACO BAR	CONCEPT B ADMIN PORTION OF TACO BAR	CONCEPT B SPLASH PAD	CONCEPT B EXTERIOR PAVING IMPROVEMENTS
		AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT
01000	GENERAL CONDITIONS - SEE BREAKOUT BELOW	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
02000	SITE WORK / DEMOLITION	928,931	0	0	0	0	\$ -	\$ -
03000	CONCRETE	708,313	208,594	94,875	70,500	52,031	\$ 76,350	\$ -
04000	MASONRY	54,600	20,859	9,488	8,813	5,203	\$ -	\$ -
05000	METALS	31,480	13,906	6,325	5,875	3,469	\$ -	\$ -
06000	WOOD AND PLASTICS	14,294	6,953	3,163	2,938	1,734	\$ -	\$ -
07000	THERMAL / MOISTURE PROTECTION	81,581	41,719	18,975	17,625	10,406	\$ -	\$ -
08000	DOORS AND WINDOWS	85,763	41,719	18,975	17,625	10,406	\$ -	\$ -
09000	FINISHES	142,938	69,531	31,625	29,375	17,344	\$ -	\$ -
10000	SPECIALTIES / SIGNAGE	36,700	0	0	0	0	\$ -	\$ -
11000	EQUIPMENT	0	0	0	0	0	\$ -	\$ -
12000	FURNISHINGS	0	0	0	0	0	\$ -	\$ -
13000	SPECIAL CONSTRUCTION	1,255,568	0	0	0	0	\$ -	\$ -
14000	CONVEYING SYSTEMS	0	0	0	0	0	\$ -	\$ -
21000	FIRE	25,729	12,516	5,693	5,288	3,122	\$ -	\$ -
22000	PLUMBING	161,500	18,500	59,500	18,213	0	\$ 69,988	\$ -
23000	HVAC	68,610	44,500	20,240	18,800	11,100	\$ -	\$ -
26000	ELECTRICAL	199,720	66,750	30,360	28,200	16,650	\$ 69,988	\$ -
27000	TECHNOLOGY	0	0	0	0	0	\$ -	\$ -
28000	ELECTRONIC SAFETY & SECURITY	0	0	0	0	0	\$ -	\$ -
31000	EARTHWORK	756,996	0	0	0	0	\$ 76,350	\$ -
32000	EXTERIOR IMPROVEMENTS	529,341	0	0	0	0	\$ -	\$ 47,250
33000	SITE UTILITIES	207,920	0	0	0	0	\$ 50,900	\$ -
	SUBTOTALS: DIRECT/HARD COSTS	\$ 5,289,982	\$ 545,547	\$ 299,218	\$ 223,250	\$ 131,466	\$ 343,575	\$ 47,250
12.00%	GENERAL CONDITIONS	\$ 634,798	\$ 65,466	\$ 35,906	\$ 26,790	\$ 15,776	\$ 41,229	\$ 5,670
	SUBTOTAL	\$ 5,924,780	\$ 611,013	\$ 335,124	\$ 250,040	\$ 147,242	\$ 384,804	\$ 52,920
4.00%	G.C. OVERHEAD	\$ 236,991	\$ 24,441	\$ 13,405	\$ 10,002	\$ 5,890	\$ 15,392	\$ 2,117
	SUBTOTAL	\$ 6,161,771	\$ 635,453	\$ 348,529	\$ 260,042	\$ 153,131	\$ 400,196	\$ 55,037
6.00%	G.C. PROFIT	\$ 369,706	\$ 38,127	\$ 20,912	\$ 15,602	\$ 9,188	\$ 24,012	\$ 3,302
	SUBTOTAL	\$ 6,531,478	\$ 673,580	\$ 369,440	\$ 275,644	\$ 162,319	\$ 424,208	\$ 58,339
1.29%	G.C. P&P BOND	\$ 84,256	\$ 8,689	\$ 4,766	\$ 3,556	\$ 2,094	\$ 5,472	\$ 753
	SUBTOTAL	\$ 6,615,734	\$ 682,269	\$ 374,206	\$ 279,200	\$ 164,413	\$ 429,680	\$ 59,092
15.00%	ESCALATION (ALLOWANCE)	\$ 992,360	\$ 102,340	\$ 56,131	\$ 41,880	\$ 24,662	\$ 64,452	\$ 8,864
	SUBTOTAL	7,608,094	784,610	430,337	321,080	189,075	\$ 494,132	\$ 67,955
20.00%	CONTINGENCY	\$ 1,521,619	\$ 156,922	\$ 86,067	\$ 64,216	\$ 37,815	\$ 98,826	\$ 13,591
	TOTAL PROBABLE CONSTRUCTION COST	\$ 9,129,712	\$ 941,532	\$ 516,404	385,296	226,890	\$ 592,959	\$ 81,546

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CPZ ARCHITECTS

CONCEPT A - BASE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ 928,931
		MOBILIZATION	1	LS	\$ 50,000.00	\$ 50,000
		MOT - MAINTENANCE OF TRAFFIC	1	LS	\$ 50,000.00	\$ 50,000
		EROSION CONTROL				
		SF - INSTALL SILT FENCE	1,200	LF	\$ 2.50	\$ 3,000
		CL - CHAIN LINK FENCE RENTAL	1,200	LF	\$ 11.85	\$ 14,220
		CHAIN LINK FENCE GATE RENTAL	2	EA	\$ 697.50	\$ 1,395
		CE - CONSTRUCTION ENTRANCE	2,500	SF	\$ 1.25	\$ 3,125
		FS - FILTER SACK INLET/CATCH BASIN PROTECTION	14	EA	\$ 73.13	\$ 1,024
		DEMO. POOL				
		DEMO POOL DECK & SLAB	11,892	SF	\$ 17.36	\$ 206,458
		DEMO POOL BOTTOM SLAB	12,628	SF	\$ 17.36	\$ 219,236
		DEMO POOL WALLS	4,820	SF	\$ 17.36	\$ 83,681
		DEMO WADING POOL/DECK	4,820	SF	\$ 17.36	\$ 83,681
		DEMO WADING POOL WALLS	464	SF	\$ 17.36	\$ 8,056
		DEMO. BUILDINGS				
		DEMO POOL MAINTENANCE BUILDING (WEST SIDE)	1,603	SF	\$ 10.56	\$ 16,932
		DEMO POOL BUILDING	5,705	SF	\$ 10.56	\$ 60,259
		DEMO RETAINING WALL	433	LF	\$ 56.00	\$ 24,248
		DEMO. PAVING, BASE, HAUL				
		POOL MAINTENANCE PARKING LOT (WEST OF POOL)	3,127	SF	\$ 7.50	\$ 23,453
		SIDEWALK ADJACENT TO EXISTING ROAD (EAST OF POOL)	4,000	SF	\$ 7.50	\$ 30,000
		DEMO. MISCELLANEOUS				
		REMOVE MISC/INKNOWN	1	LS	\$ 50,000.00	\$ 50,000
03	03 00 00	CONCRETE				\$ 752,188
		CAST IN PLACE CONCRETE I/C SLAB ON GRADE AND ELEVATED SLAB (CHANGING ROOMS + RR'S)	4,574	SF	\$ 93.75	\$ 428,813
		12' RETAINING WALL	430	LF	\$ 650.00	\$ 279,500
		6' RETAINING WALL (E SIDE @ DUNE PLANTING)	90	LF	\$ 487.50	\$ 43,875
04	04 0 00	MASONRY				\$ 54,600
		MASONRY (CHANGING ROOMS + RR'S)	3,120.00	SF	\$ 17.50	\$ 54,600
05	05 00 00	METALS				\$ 27,228
		42" RAILING (TOP OF RETAINING WALL N, W, S & E SIDE)	345	LF	\$ 74.00	\$ 25,530
		8' ENTRY GATE	14	LF	\$ 121.25	\$ 1,698
06	06 00 00	WOOD & PLASTICS				\$ 14,294

CONCEPT A - BASE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
		WOOD & PLASTICS (CHANGING ROOMS + RR'S)	4,574	SF	\$ 3.13	\$ 14,294
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 86,981
		ROOFING & INSULATION (CHANGING ROOMS + RR'S)	2,287.00	SF	\$ 18.75	\$ 42,881
		WATERPROOFING AT RETAINING WALL	5,880.00	SF	\$ 7.50	\$ 44,100
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 110,250
		OPENINGS (DOORS & WINDOWS)				
		OPENINGS (DOORS & WINDOWS)	5,880	SF	\$ 18.75	\$ 110,250
09	09 00 00	FINISHES				\$ 142,938
		2 STORY RESTROOM BUILDING. GROUND FLOOR EQUIPMENT ROOM AND RESTROOMS UP TOP AT POOL LEVEL				
		STUCCO, DRYWALL, INSULATION, CEILINGS, FLOORING, PAINTING, ETC	4,574	SF	\$ 31.25	\$ 142,938
10	10 00 00	SPECIALTIES & SIGNAGE				\$ 36,700
		SIGNAGE ALLOWANCE	1	LS	\$ 10,000.00	\$ 10,000
		LOCKERS	72	EA	\$ 350.00	\$ 25,200
		BENCHES	2	EA	\$ 750.00	\$ 1,500
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ 1,201,883
		MAIN POOL				
		MAIN POOL	3,494	SF	\$ 281.25	\$ 982,688
		POOL DECK				
		POOL DECK	4,871	SF	\$ 45.00	\$ 219,195
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ 25,729
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	4,574	SF	\$ 5.63	\$ 25,729
22	22 00 000	PLUMBING				\$ 161,500
		STORM WATER DRAINAGE				
		STORM WATER DRAINAGE	1	LS	\$ 10,000.00	\$ 10,000
		PLUMBING FIXTURES				
		WC	7	EA	\$ 5,000.00	\$ 35,000
		UR	3	EA	\$ 3,500.00	\$ 10,500
		LAV	6	EA	\$ 3,500.00	\$ 21,000
		SHWR	6	EA	\$ 7,500.00	\$ 45,000
		SHWR ADA	2	EA	\$ 7,500.00	\$ 15,000
		EWC	1	EA	\$ 5,000.00	\$ 5,000
		FLOOR DRAIN	4	EA	\$ 2,500.00	\$ 10,000
		WATER HEATERS				
		WATER HEATERS	1	LS	\$ 10,000.00	\$ 10,000
23	23 00 00	HVAC				\$ 68,610
		HVAC	4,574	SF	\$ 15.00	\$ 68,610
26	26 00 000	ELECTRICAL				\$ 199,720
		ELECTRICAL	4,574	SF	\$ 30.00	\$ 137,220
		SITE LIGHTING	1	LS	\$ 62,500.00	\$ 62,500

CONCEPT A - BASE						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ 749,476
		EXCAVATION & BACKFILL				
		EXCAVATE POOL AREA	4,677	CY	\$ 7.50	\$ 35,078
		BACK FILL POOL AREA	5,846	CY	\$ 21.50	\$ 125,695
		EXCAVATE SITE	5,678	CY	\$ 9.38	\$ 53,228
		BACK FILL SITE	14,194	CY	\$ 26.88	\$ 381,468
		6"LIMEROCK BASE	5,678	SY	\$ 21.06	\$ 119,586
		12"STAB.SUBGRD.	5,678	SY	\$ 6.06	\$ 34,421
32	32 00 00	SITE EXTERIOR IMPROVEMENTS/GATES				\$ 564,610
		PAVING				
		EAST SIDE ADJACENT TO EXISTING ROAD	6,230	SF	\$ 45.00	\$ 280,350
		SHADE STRUCTURE/COVERED GATHERING SPACE				
		TENSIONED FABRIC STRUCTURE	490	SF	\$ 50.00	\$ 24,500
		LANDSCAPE				
		ARTIFICIAL TURF (INCL CONC BASE)	6,978	SF	\$ 20.45	\$ 142,700
		PLANTING	15,608	SF	\$ 7.50	\$ 117,060
33	33 00 00	SITE UTILITIES				\$ 207,920
		UTILITIES - ALLOWANCES				
		STORM DRAINAGE	1	ALW	\$ 50,000.00	\$ 50,000
		SITE WATER UTILITIES	1	ALW	\$ 50,000.00	\$ 50,000
		FIRE	1	ALW	\$ 50,000.00	\$ 50,000
		SANITARY SEWER	1	ALW	\$ 50,000.00	\$ 50,000
		GAS	300	LF	\$ 26.40	\$ 7,920
		SUBTOTAL				\$ 5,333,556
	12.00%	GENERAL CONDITIONS				\$ 640,027
		SUBTOTAL				\$ 5,973,583
	4.00%	G.C. OVERHEAD				\$ 238,943
		SUBTOTAL				\$ 6,212,527
	6.00%	G.C. PROFIT				\$ 372,752
		SUBTOTAL				\$ 6,585,278
	1.29%	BOND				\$ 84,950
		SUBTOTAL				\$ 6,670,228
	15.00%	ESCALATION (ALLOWANCE)				\$ 1,000,534
		SUBTOTAL				\$ 7,670,762
	20.00%	CONTINGENCY				\$ 1,534,152
		TOTAL PROBABLE CONSTRUCTION COST				\$ 9,204,915

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
1115 HERON BAY BLVD, SUITE 204
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(954) 481-1611
CMS FILE # 2333 ORDER OF MAGNITUDE

CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

CONCEPT A - LIFEGUARD OFFICE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS/DEMOLITION				\$ -
03	03 00 00	CONCRETE				\$ 196,875
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	2,100	SF	\$ 93.75	\$ 196,875
04	04 0 00	MASONRY				\$ 19,688
		MASONRY	2,100	SF	\$ 9.38	\$ 19,688
05	05 00 00	METALS				\$ 13,125
		METALS	2,100	SF	\$ 6.25	\$ 13,125
06	06 00 00	WOOD & PLASTICS				\$ 6,563
		WOOD & PLASTICS	2,100	SF	\$ 3.13	\$ 6,563
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 39,375
		ROOFING & INSULATION	2,100	SF	\$ 18.75	\$ 39,375
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 39,375
		OPENINGS (DOORS & WINDOWS)	2,100	SF	\$ 18.75	\$ 39,375
09	09 00 00	FINISHES				\$ 65,625
		FINISHES	2,100	SF	\$ 31.25	\$ 65,625
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ 11,813
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	2,100	SF	\$ 5.63	\$ 11,813
22	22 00 000	PLUMBING				\$ 18,500
		WC	1	EA	\$ 5,000.00	\$ 5,000
		LAV	1	EA	\$ 3,500.00	\$ 3,500
		SHWR ADA	1	EA	\$ 7,500.00	\$ 7,500
		FLOOR DRAIN	1	EA	\$ 2,500.00	\$ 2,500
23	23 00 00	HVAC				\$ 42,000

CONCEPT A - LIFEGUARD OFFICE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
		HVAC	2,100	SF	\$ 20.00	\$ 42,000
26	26 00 000	ELECTRICAL				\$ 63,000
		ELECTRICAL	2,100	SF	\$ 30.00	\$ 63,000
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	SITE EXTERIOR IMPROVEMENTS/GATES				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 515,938
	12.00%	GENERAL CONDITIONS				\$ 61,913
		SUBTOTAL				\$ 577,850
	4.00%	G.C. OVERHEAD				\$ 23,114
		SUBTOTAL				\$ 600,964
	6.00%	G.C. PROFIT				\$ 36,058
		SUBTOTAL				\$ 637,022
	1.29%	BOND				\$ 8,218
		SUBTOTAL				\$ 645,239
	15.00%	ESCALATION (ALLOWANCE)				\$ 96,786
		SUBTOTAL				\$ 742,025
	20.00%	CONTINGENCY				\$ 148,405
TOTAL PROBABLE CONSTRUCTION COST						\$ 890,430

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CONCEPT A - PUBLIC RESTROOMS

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ -
03	03 00 00	CONCRETE				\$ 94,875
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	1,012	SF	\$ 93.75	\$ 94,875
04	04 0 00	MASONRY				\$ 9,488
		MASONRY	1,012	SF	\$ 9.38	\$ 9,488
05	05 00 00	METALS				\$ 6,325
		METALS	1,012	SF	\$ 6.25	\$ 6,325
06	06 00 00	WOOD & PLASTICS				\$ 3,163
		WOOD & PLASTICS	1,012	SF	\$ 3.13	\$ 3,163
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 18,975
		ROOFING & INSULATION	1,012	SF	\$ 18.75	\$ 18,975
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 18,975
		OPENINGS (DOORS & WINDOWS)	1,012	SF	\$ 18.75	\$ 18,975
09	09 00 00	FINISHES				\$ 31,625
		FINISHES	1,012	SF	\$ 31.25	\$ 31,625
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ 5,693
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	1,012	SF	\$ 5.63	\$ 5,693
22	22 00 000	PLUMBING				\$ 59,500
		WC	5	EA	\$ 5,000.00	\$ 25,000
		UR	1	EA	\$ 3,500.00	\$ 3,500
		LAV	6	EA	\$ 3,500.00	\$ 21,000
		FLOOR DRAIN	2	EA	\$ 2,500.00	\$ 5,000
		EWC	1	EA	\$ 5,000.00	\$ 5,000

CONCEPT A - PUBLIC RESTROOMS						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
23	23 00 00	HVAC				\$ 20,240
		HVAC	1,012	SF	\$ 20.00	\$ 20,240
26	26 00 000	ELECTRICAL				\$ 30,360
		ELECTRICAL	1,012	SF	\$ 30.00	\$ 30,360
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	SITE EXTERIOR IMPROVEMENTS/GATES				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 299,218
	12.00%	GENERAL CONDITIONS				\$ 35,906
		SUBTOTAL				\$ 335,124
	4.00%	G.C. OVERHEAD				\$ 13,405
		SUBTOTAL				\$ 348,529
	6.00%	G.C. PROFIT				\$ 20,912
		SUBTOTAL				\$ 369,440
	1.29%	BOND				\$ 4,766
		SUBTOTAL				\$ 374,206
	15.00%	ESCALATION (ALLOWANCE)				\$ 56,131
		SUBTOTAL				\$ 430,337
	20.00%	CONTINGENCY				\$ 86,067
		TOTAL PROBABLE CONSTRUCTION COST				\$ 516,404

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CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
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 CPZ ARCHITECTS

CONCEPT A - TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ 70,500
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	940	SF	\$ 75.00	\$ 70,500
04	04 0 00	MASONRY				\$ 8,813
		MASONRY	940	SF	\$ 9.38	\$ 8,813
05	05 00 00	METALS				\$ 5,875
		METALS	940	LF	\$ 6.25	\$ 5,875
06	06 00 00	WOOD & PLASTICS				\$ 2,938
		WOOD & PLASTICS	940	SF	\$ 3.13	\$ 2,938
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 17,625
		ROOFING & INSULATION	940	SF	\$ 18.75	\$ 17,625
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 17,625
		OPENINGS (DOORS & WINDOWS)	940	SF	\$ 18.75	\$ 17,625
09	09 00 00	FINISHES				\$ 29,375
		FINISHES	940	SF	\$ 31.25	\$ 29,375
10	10 00 00	SPECIALTIES & SIGNAGE				
11	11000	EQUIPMENT				
12	12 00 00	FURNISHINGS				
13	13 00 00	SPECIAL CONSTRUCTION				
14	14 00 00	CONVEYING SYSTEMS				
21	21 00 00	FIRE				\$ 5,288
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	940	SF	\$ 5.63	\$ 5,288
22	22 00 000	PLUMBING				\$ 18,213
		PLUMBING	940	SF	\$ 19.38	\$ 18,213

CONCEPT A - TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
23	23 00 00	HVAC				\$ 18,800
		HVAC	940	SF	\$ 20.00	\$ 18,800
26	26 00 000	ELECTRICAL				\$ 28,200
		ELECTRICAL	940	SF	\$ 30.00	\$ 28,200
27	27 00 00	TECHNOLOGY				
28	28 00 00	ELECTRONIC SAFETY & SECURITY				
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ 126,000
		TIKI AREA - DECK	2,520	SF	\$ 50.00	\$ 126,000
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 349,250
	12.00%	GENERAL CONDITIONS				\$ 41,910
		SUBTOTAL				\$ 391,160
	4.00%	G.C. OVERHEAD				\$ 15,646
		SUBTOTAL				\$ 406,806
	6.00%	G.C. PROFIT				\$ 24,408
		SUBTOTAL				\$ 431,215
	1.29%	BOND				\$ 5,563
		SUBTOTAL				\$ 436,777
	15.00%	ESCALATION (ALLOWANCE)				\$ 65,517
		SUBTOTAL				\$ 502,294
	20.00%	CONTINGENCY				\$ 100,459
TOTAL PROBABLE CONSTRUCTION COST						\$ 602,753

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CONCEPT A - ADMINISTRATION PORTION OF THE TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ 52,031
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	555	SF	\$ 93.75	\$ 52,031
04	04 0 00	MASONRY				\$ 5,203
		MASONRY	555	SF	\$ 9.38	\$ 5,203
05	05 00 00	METALS				\$ 3,469
		METALS	555	SF	\$ 6.25	\$ 3,469
06	06 00 00	WOOD & PLASTICS				\$ 1,734
		WOOD & PLASTICS	555	SF	\$ 3.13	\$ 1,734
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 10,406
		THERMAL & MOISTURE PROTECTION	555	SF	\$ 18.75	\$ 10,406
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 10,406
		OPENINGS (DOORS & WINDOWS)	555	SF	\$ 18.75	\$ 10,406
09	09 00 00	FINISHES				\$ 17,344
		FINISHES	555	SF	\$ 31.25	\$ 17,344
10	10 00 00	SPECIALTIES & SIGNAGE				
11	11000	EQUIPMENT				
12	12 00 00	FURNISHINGS				
13	13 00 00	SPECIAL CONSTRUCTION				
14	14 00 00	CONVEYING SYSTEMS				
21	21 00 00	FIRE				\$ 3,122
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	555	SF	\$ 5.63	\$ 3,122
22	22 00 000	PLUMBING				\$ -

CONCEPT A - ADMINISTRATION PORTION OF THE TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
23	23 00 00	HVAC				\$ 11,100
		HVAC	555	SF	\$ 20.00	\$ 11,100
26	26 00 000	ELECTRICAL				\$ 16,650
		ELECTRICAL	555	SF	\$ 30.00	\$ 16,650
27	27 00 00	TECHNOLOGY				
28	28 00 00	ELECTRONIC SAFETY & SECURITY				
31	31 00 00	EARTHWORK				
32	32 00 00	EXTERIOR IMPROVEMENTS				
33	33 00 00	SITE UTILITIES				
		SUBTOTAL				\$ 131,466
	12.00%	GENERAL CONDITIONS				\$ 15,776
		SUBTOTAL				\$ 147,242
	4.00%	G.C. OVERHEAD				\$ 5,890
		SUBTOTAL				\$ 153,131
	6.00%	G.C. PROFIT				\$ 9,188
		SUBTOTAL				\$ 162,319
	1.29%	BOND				\$ 2,094
		SUBTOTAL				\$ 164,413
	15.00%	ESCALATION (ALLOWANCE)				\$ 24,662
		SUBTOTAL				\$ 189,075
	20.00%	CONTINGENCY				\$ 37,815
		TOTAL PROBABLE CONSTRUCTION COST				\$ 226,890

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CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
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CONCEPT A - SPLASH PAD

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ 56,400
		SPLASH PAD	752	SF	\$ 75.00	\$ 56,400
04	04 0 00	MASONRY				\$ -
05	05 00 00	METALS				\$ -
06	06 00 00	WOOD & PLASTICS				\$ -
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ -
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ -
09	09 00 00	FINISHES				\$ -
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ -
22	22 00 000	PLUMBING				\$ 51,700
		SPLASH PAD	752	SF	\$ 68.75	\$ 51,700
23	23 00 00	HVAC				\$ -
26	26 00 000	ELECTRICAL				\$ 51,700
		SPLASH PAD	752	SF	\$ 68.75	\$ 51,700

CONCEPT A - SPLASH PAD

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ 56,400
		SPLASH PAD	752	SF	\$ 75.00	\$ 56,400
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ 37,600
		SPLASH PAD	752	SF	\$ 50.00	\$ 37,600
		SUBTOTAL				\$ 253,800
	12.00%	GENERAL CONDITIONS				\$ 30,456
		SUBTOTAL				\$ 284,256
	4.00%	G.C. OVERHEAD				\$ 11,370
		SUBTOTAL				\$ 295,626
	6.00%	G.C. PROFIT				\$ 17,738
		SUBTOTAL				\$ 313,364
	1.29%	BOND				\$ 4,042
		SUBTOTAL				\$ 317,406
	15.00%	ESCALATION (ALLOWANCE)				\$ 47,611
		SUBTOTAL				\$ 365,017
	20.00%	CONTINGENCY				\$ 73,003
		TOTAL PROBABLE CONSTRUCTION COST				\$ 438,021

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 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

CONCEPT A - EXTERIOR PAVING IMPROVEMENTS

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ -
03	03 00 00	CONCRETE				\$ -
04	04 0 00	MASONRY				\$ -
05	05 00 00	METALS				\$ -
06	06 00 00	WOOD & PLASTICS				\$ -
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ -
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ -
09	09 00 00	FINISHES				\$ -
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ -
22	22 00 000	PLUMBING				\$ -
23	23 00 00	HVAC				\$ -
26	26 00 000	ELECTRICAL				\$ -
27	27 00 00	TECHNOLOGY				\$ -

CONCEPT A - EXTERIOR PAVING IMPROVEMENTS						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ 47,250
		REMOVE AND REPLACE ASPHALT PAVING AT SERVICE ACCESS AREA (WEST SIDE)	3,150	SF	\$ 15.00	\$ 47,250
		EXISTING ASPHALT AT OCEAN BLVD (EAST SIDE)				NIC
33	33 00 00	SITE UTILITIES				
		SUBTOTAL				\$ 47,250
	12.00%	GENERAL CONDITIONS				\$ 5,670
		SUBTOTAL				\$ 52,920
	4.00%	G.C. OVERHEAD				\$ 2,117
		SUBTOTAL				\$ 55,037
	6.00%	G.C. PROFIT				\$ 3,302
		SUBTOTAL				\$ 58,339
	1.29%	BOND				\$ 753
		SUBTOTAL				\$ 59,092
	15.00%	ESCALATION (ALLOWANCE)				\$ 8,864
		SUBTOTAL				\$ 67,955
	20.00%	CONTINGENCY				\$ 13,591
		TOTAL PROBABLE CONSTRUCTION COST				\$ 81,546

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
1115 HERON BAY BLVD, SUITE 204
CORAL SPRINGS, FL 33076
(954) 481-1611
CMS FILE # 2333 ORDER OF MAGNITUDE

CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

CONCEPT B - BASE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ 928,931
		MOBILIZATION	1	LS	\$ 50,000.00	\$ 50,000
		MOT - MAINTENANCE OF TRAFFIC	1	LS	\$ 50,000.00	\$ 50,000
		EROSION CONTROL				
		SF - INSTALL SILT FENCE	1,200	LF	\$ 2.50	\$ 3,000
		CL - CHAIN LINK FENCE RENTAL	1,200	LF	\$ 11.85	\$ 14,220
		CHAIN LINK FENCE GATE RENTAL	2	EA	\$ 697.50	\$ 1,395
		CE - CONSTRUCTION ENTRANCE	2,500	SF	\$ 1.25	\$ 3,125
		FS - FILTER SACK INLET/CATCH BASIN PROTECTION	14	EA	\$ 73.13	\$ 1,024
		DEMO. POOL				
		DEMO POOL DECK & SLAB	11,892	SF	\$ 17.36	\$ 206,458
		DEMO POOL BOTTOM SLAB	12,628	SF	\$ 17.36	\$ 219,236
		DEMO POOL WALLS	4,820	SF	\$ 17.36	\$ 83,681
		DEMO WADING POOL/DECK	4,820	SF	\$ 17.36	\$ 83,681
		DEMO WADING POOL WALLS	464	SF	\$ 17.36	\$ 8,056
		DEMO. BUILDINGS				
		DEMO POOL MAINTENANCE BUILDING (WEST SIDE)	1,603	SF	\$ 10.56	\$ 16,932
		DEMO POOL BUILDING	5,705	SF	\$ 10.56	\$ 60,259
		DEMO RETAINING WALL	433	LF	\$ 56.00	\$ 24,248
		DEMO. PAVING, BASE, HAUL				
		POOL MAINTENANCE PARKING LOT (WEST OF POOL)	3,127	SF	\$ 7.50	\$ 23,453
		SIDEWALK ADJACENT TO EXISTING ROAD (EAST OF POOL)	4,000	SF	\$ 7.50	\$ 30,000
		DEMO. MISCELLANEOUS				
		REMOVE MISC/INKNOWN	1	LS	\$ 50,000.00	\$ 50,000
03	03 00 00	CONCRETE				\$ 708,313
		CAST IN PLACE CONCRETE I/C SLAB ON GRADE AND ELEVATED SLAB (CHANGING ROOMS + RR'S)	4,574	SF	\$ 93.75	\$ 428,813
		12' RETAINING WALL	430	LF	\$ 650.00	\$ 279,500
04	04 0 00	MASONRY				\$ 54,600
		MASONRY (CHANGING ROOMS + RR'S)	3,120.00	SF	\$ 17.50	\$ 54,600
05	05 00 00	METALS				\$ 31,480
		42" RAILING (TOP OF RETAINING WALL N, W & S SIDE)	255	LF	\$ 74.00	\$ 18,870
		8' FENCE (E SIDE, INCLS ENTRY GATE)	104	LF	\$ 121.25	\$ 12,610
06	06 00 00	WOOD & PLASTICS				\$ 14,294
		WOOD & PLASTICS (CHANGING ROOMS + RR'S)	4,574	SF	\$ 3.13	\$ 14,294
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 81,581
		ROOFING & INSULATION (CHANGING ROOMS + RR'S)	2,287.00	SF	\$ 18.75	\$ 42,881
		WATERPROOFING AT RETAINING WALL	5,160.00	SF	\$ 7.50	\$ 38,700
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 85,763
		OPENINGS (DOORS & WINDOWS)				
		OPENINGS (DOORS & WINDOWS)	4,574	SF	\$ 18.75	\$ 85,763

CONCEPT B - BASE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
09	09 00 00	FINISHES				\$ 142,938
		2 STORY RESTROOM BUILDING. GROUND FLOOR EQUIPMENT ROOM AND RESTROOMS UP TOP AT POOL LEVEL STUCCO, DRYWALL, INSULATION, CEILINGS, FLOORING, PAINTING, ETC	4,574	SF	\$ 31.25	\$ 142,938
10	10 00 00	SPECIALTIES & SIGNAGE				\$ 36,700
		SIGNAGE ALLOWANCE	1	LS	\$ 10,000.00	\$ 10,000
		LOCKERS	72	EA	\$ 350.00	\$ 25,200
		BENCHES	2	EA	\$ 750.00	\$ 1,500
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ 1,255,568
		MAIN POOL MAIN POOL	3,090	SF	\$ 281.25	\$ 869,063
		POOL DECK POOL DECK	8,589	SF	\$ 45.00	\$ 386,505
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ 25,729
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	4,574	SF	\$ 5.63	\$ 25,729
22	22 00 000	PLUMBING				\$ 161,500
		STORM WATER DRAINAGE STORM WATER DRAINAGE	1	LS	\$ 10,000.00	\$ 10,000
		PLUMBING FIXTURES				
		WC	7	EA	\$ 5,000.00	\$ 35,000
		UR	3	EA	\$ 3,500.00	\$ 10,500
		LAV	6	EA	\$ 3,500.00	\$ 21,000
		SHWR	6	EA	\$ 7,500.00	\$ 45,000
		SHWR ADA	2	EA	\$ 7,500.00	\$ 15,000
		EWC	1	EA	\$ 5,000.00	\$ 5,000
		FLOOR DRAIN	4	EA	\$ 2,500.00	\$ 10,000
		WATER HEATERS WATER HEATERS	1	LS	\$ 10,000.00	\$ 10,000
23	23 00 00	HVAC				\$ 68,610
		HVAC	4,574	SF	\$ 15.00	\$ 68,610
26	26 00 000	ELECTRICAL				\$ 199,720
		ELECTRICAL	4,574	SF	\$ 30.00	\$ 137,220
		SITE LIGHTING	1	LS	\$ 62,500.00	\$ 62,500
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ 756,996
		EXCAVATION & BACKFILL EXCAVATE POOL AREA	4,677	CY	\$ 9.38	\$ 43,847
		BACK FILL POOL AREA	5,846	CY	\$ 26.88	\$ 157,119
		EXCAVATE SITE	5,363	CY	\$ 9.38	\$ 50,274
		BACK FILL SITE	13,406	CY	\$ 26.88	\$ 360,297
		6" LIMEROCK BASE	5,363	SY	\$ 21.06	\$ 112,949
		12" STAB. SUBGRD.	5,363	SY	\$ 6.06	\$ 32,510
32	32 00 00	SITE EXTERIOR IMPROVEMENTS				\$ 529,341
		PAVING EAST SIDE ADJACENT TO EXISTING ROAD	6,462	SF	\$ 45.00	\$ 290,790

CONCEPT B - BASE						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
		SHADE STRUCTURE/COVERED GATHERING SPACE TENSIONED FABRIC STRUCTURE (2 EA)	873	SF	\$ 50.00	\$ 43,650
		LANDSCAPE				
		ARTIFICIAL TURF (INCL CONC BASE)	2,807	SF	\$ 20.45	\$ 57,403
		PLANTING	18,333	SF	\$ 7.50	\$ 137,498
33	33 00 00	SITE UTILITIES				\$ 207,920
		UTILITIES - ALLOWANCES				
		STORM DRAINAGE	1	ALW	\$ 50,000.00	\$ 50,000
		SITE WATER UTILITIES	1	ALW	\$ 50,000.00	\$ 50,000
		FIRE	1	ALW	\$ 50,000.00	\$ 50,000
		SANITARY SEWER	1	ALW	\$ 50,000.00	\$ 50,000
		GAS	300	LF	\$ 26.40	\$ 7,920
		SUBTOTAL				\$ 5,289,982
	12.00%	GENERAL CONDITIONS				\$ 634,798
		SUBTOTAL				\$ 5,924,780
	4.00%	G.C. OVERHEAD				\$ 236,991
		SUBTOTAL				\$ 6,161,771
	6.00%	G.C. PROFIT				\$ 369,706
		SUBTOTAL				\$ 6,531,478
	1.290%	BOND				\$ 84,256
		SUBTOTAL				\$ 6,615,734
	15.00%	ESCALATION (ALLOWANCE)				\$ 992,360
		SUBTOTAL				\$ 7,608,094
	20.00%	CONTINGENCY				\$ 1,521,619
		TOTAL PROBABLE CONSTRUCTION COST				\$ 9,129,712

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 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
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 CPZ ARCHITECTS

CONCEPT B - LIFEGUARD OFFICE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		BUILDING GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ -
03	03 00 00	CONCRETE				\$ 208,594
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	2,225	SF	\$ 93.75	\$ 208,594
04	04 00 00	MASONRY				\$ 20,859
		MASONRY	2,225	SF	\$ 9.38	\$ 20,859
05	05 00 00	METALS				\$ 13,906
		METALS	2,225	SF	\$ 6.25	\$ 13,906
06	06 00 00	WOOD & PLASTICS				\$ 6,953
		WOOD & PLASTICS	2,225	SF	3.13	\$ 6,953
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 41,719
		THERMAL & MOISTURE PROTECTION	2,225	SF	18.75	\$ 41,719
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 41,719
		OPENINGS (DOORS & WINDOWS)	2,225	SF	18.75	\$ 41,719
09	09 00 00	FINISHES				\$ 69,531
		FINISHES	2,225	SF	\$ 31.25	\$ 69,531
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11 00 00	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE SUPPRESSION				\$ 12,516
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	2,225	SF	\$ 5.63	\$ 12,516

CONCEPT B - LIFEGUARD OFFICE						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
22	22 00 00	PLUMBING				\$ 18,500
		WC	1	EA	\$ 5,000.00	\$ 5,000
		LAV	1	EA	\$ 3,500.00	\$ 3,500
		SHWR ADA	1	EA	\$ 7,500.00	\$ 7,500
		FLOOR DRAIN	1	EA	\$ 2,500.00	\$ 2,500
23	23 00 00	HVAC				\$ 44,500
		HVAC	2,225	SF	\$ 20.00	\$ 44,500
26	26 00 00	ELECTRICAL				\$ 66,750
		ELECTRICAL	2,225	SF	\$ 30.00	\$ 66,750
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 545,547
	12.00%	GENERAL CONDITIONS				\$ 65,466
		SUBTOTAL				\$ 611,013
	4.00%	G.C. OVERHEAD				\$ 24,441
		SUBTOTAL				\$ 635,453
	6.00%	G.C. PROFIT				\$ 38,127
		SUBTOTAL				\$ 673,580
	1.29%	BOND				\$ 8,689
		SUBTOTAL				\$ 682,269
	15.00%	ESCALATION (ALLOWANCE)				\$ 102,340
		SUBTOTAL				\$ 784,610
	20.00%	CONTINGENCY				\$ 156,922
TOTAL PROBABLE CONSTRUCTION COST						\$ 941,532

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CONCEPT B - PUBLIC RESTROOMS

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS / DEMOLITION				
03	03 00 00	CONCRETE				\$ 94,875
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	1,012	SF	\$ 93.75	\$ 94,875
04	04 0 00	MASONRY				\$ 9,488
		MASONRY	1,012	SF	\$ 9.38	\$ 9,488
05	05 00 00	METALS				\$ 6,325
		METALS	1,012	SF	\$ 6.25	\$ 6,325
06	06 00 00	WOOD & PLASTICS				\$ 3,163
		WOOD & PLASTICS	1,012	SF	3.13	\$ 3,163
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 18,975
		THERMAL & MOISTURE PROTECTION	1,012	SF	18.75	\$ 18,975
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 18,975
		OPENINGS (DOORS & WINDOWS)	1,012	SF	18.75	\$ 18,975
09	09 00 00	FINISHES				\$ 31,625
		FINISHES	1,012	SF	\$ 31.25	\$ 31,625
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11000	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE				\$ 5,693
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	1,012	SF	\$ 5.63	\$ 5,693

CONCEPT B - PUBLIC RESTROOMS						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
22	22 00 000	PLUMBING				\$ 59,500
		WC	5	EA	\$ 5,000.00	\$ 25,000
		UR	1	EA	\$ 3,500.00	\$ 3,500
		LAV	6	EA	\$ 3,500.00	\$ 21,000
		FLOOR DRAIN	2	EA	\$ 2,500.00	\$ 5,000
		EWC	1	EA	\$ 5,000.00	\$ 5,000
23	23 00 00	HVAC				\$ 20,240
		HVAC	1,012	SF	\$ 20.00	\$ 20,240
26	26 00 000	ELECTRICAL				\$ 30,360
		ELECTRICAL	1,012	SF	\$ 30.00	\$ 30,360
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	SITE EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 299,218
	12.00%	GENERAL CONDITIONS				\$ 35,906
		SUBTOTAL				\$ 335,124
	4.00%	G.C. OVERHEAD				\$ 13,405
		SUBTOTAL				\$ 348,529
	6.00%	G.C. PROFIT				\$ 20,912
		SUBTOTAL				\$ 369,440
	1.29%	BOND				\$ 4,766
		SUBTOTAL				\$ 374,206
	15.00%	ESCALATION (ALLOWANCE)				\$ 56,131
		SUBTOTAL				\$ 430,337
	20.00%	CONTINGENCY				\$ 86,067
		TOTAL PROBABLE CONSTRUCTION COST				\$ 516,404

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CONCEPT B - TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ 70,500
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	940	SF	\$ 75.00	\$ 70,500
04	04 00 00	MASONRY				\$ 8,813
		MASONRY	940	SF	\$ 9.38	\$ 8,813
05	05 00 00	METALS				\$ 5,875
		METALS	940	SF	\$ 6.25	\$ 5,875
06	06 00 00	WOOD & PLASTICS				\$ 2,938
		WOOD & PLASTICS	940	SF	\$ 3.13	\$ 2,938
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 17,625
		THERMAL & MOISTURE PROTECTION	940	SF	18.75	\$ 17,625
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 17,625
		OPENINGS (DOORS & WINDOWS)	940	SF	18.75	\$ 17,625
09	09 00 00	FINISHES				\$ 29,375
		FINISHES	940	SF	\$ 31.25	\$ 29,375
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11 00 00	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE SUPPRESSION				\$ 5,288

CONCEPT B - TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	940	SF	\$ 5.63	\$ 5,288
22	22 00 00	PLUMBING				\$ 18,213
		PLUMBING	940	SF	\$ 19.38	\$ 18,213
23	23 00 00	HVAC				\$ 18,800
		HVAC	940	SF	\$ 20.00	\$ 18,800
26	26 00 00	ELECTRICAL				\$ 28,200
		ELECTRICAL	940	SF	\$ 30.00	\$ 28,200
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 223,250
	12.00%	GENERAL CONDITIONS				\$ 26,790
		SUBTOTAL				\$ 250,040
	4.00%	G.C. OVERHEAD				\$ 10,002
		SUBTOTAL				\$ 260,042
	6.00%	G.C. PROFIT				\$ 15,602
		SUBTOTAL				\$ 275,644
	1.29%	BOND				\$ 3,556
		SUBTOTAL				\$ 279,200
	15.00%	CONTINGENCY				\$ 41,880
		SUBTOTAL				\$ 321,080
	20.00%	CONTINGENCY				\$ 64,216
		TOTAL PROBABLE CONSTRUCTION COST				\$ 385,296

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CONCEPT B - ADMINISTRATION PORTION OF TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		BUILDING GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				\$ -
03	03 00 00	CONCRETE				\$ 52,031
		CAST IN PLACE CONCRETE INCLUDING SLAB ON GRADE	555	SF	\$ 93.75	\$ 52,031
04	04 00 00	MASONRY				\$ 5,203
		MASONRY	555	SF	\$ 9.38	\$ 5,203
05	05 00 00	METALS				\$ 3,469
		METALS	555	SF	\$ 6.25	\$ 3,469
06	06 00 00	WOOD & PLASTICS				\$ 1,734
		WOOD & PLASTICS	555	SF	\$ 3.13	\$ 1,734
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ 10,406
		THERMAL & MOISTURE PROTECTION	555	SF	\$ 18.75	\$ 10,406
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ 10,406
		OPENINGS (DOORS & WINDOWS)	555	SF	\$ 18.75	\$ 10,406
09	09 00 00	FINISHES				\$ 17,344
		FINISHES	555	SF	\$ 31.25	\$ 17,344
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11 00 00	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE SUPPRESSION				\$ 3,122

CONCEPT B - ADMINISTRATION PORTION OF TACO BAR

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
		WET PIPE SPRINKLER SYSTEM (ORDINARY HAZARD)	555	SF	\$ 5.63	\$ 3,122
22	22 00 00	PLUMBING				\$ -
23	23 00 00	HVAC				\$ 11,100
		HVAC	555	SF	\$ 20.00	\$ 11,100
26	26 00 00	ELECTRICAL				\$ 16,650
		ELECTRICAL	555	SF	\$ 30.00	\$ 16,650
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 131,466
	12.00%	GENERAL CONDITIONS				\$ 15,776
		SUBTOTAL				\$ 147,242
	4.00%	G.C. OVERHEAD				\$ 5,890
		SUBTOTAL				\$ 153,131
	6.00%	G.C. PROFIT				\$ 9,188
		SUBTOTAL				\$ 162,319
	1.29%	BOND				\$ 2,094
		SUBTOTAL				\$ 164,413
	15.00%	ESCALATION (ALLOWANCE)				\$ 24,662
		SUBTOTAL				\$ 189,075
	20.00%	CONTINGENCY				\$ 37,815
		TOTAL PROBABLE CONSTRUCTION COST				\$ 226,890

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
1115 HERON BAY BLVD, SUITE 204
CORAL SPRINGS, FL 33076
(954) 481-1611
CMS FILE # 2333 ORDER OF MAGNITUDE

CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

CONCEPT B - SPLASH PAD + WATER FEATURE

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		BUILDING GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ 76,350
		SPLASH PAD I/C WATER FEATURE	1,018	SF	\$ 75.00	\$ 76,350
04	04 00 00	MASONRY				\$ -
05	05 00 00	METALS				\$ -
06	06 00 00	WOOD & PLASTICS				\$ -
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ -
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ -
09	09 00 00	FINISHES				\$ -
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11 00 00	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE SUPPRESSION				\$ -
22	22 00 00	PLUMBING				\$ 69,988
		SPLASH PAD I/C WATER FEATURE	1,018	SF	\$ 68.75	\$ 69,988
23	23 00 00	HVAC				\$ -

CONCEPT B - SPLASH PAD + WATER FEATURE						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
26	26 00 00	ELECTRICAL				\$ 69,988
		SPLASH PAD I/C WATER FEATURE	1,018	SF	\$ 68.75	\$ 69,988
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ 76,350
		SPLASH PAD I/C WATER FEATURE	1,018	SF	\$ 75.00	\$ 76,350
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ -
33	33 00 00	SITE UTILITIES				\$ 50,900
		SPLASH PAD I/C WATER FEATURE	1,018	SF	\$ 50.00	\$ 50,900
		SUBTOTAL				\$ 343,575
	12.00%	GENERAL CONDITIONS				\$ 41,229
		SUBTOTAL				\$ 384,804
	4.00%	G.C. OVERHEAD				\$ 15,392
		SUBTOTAL				\$ 400,196
	6.00%	G.C. PROFIT				\$ 24,012
		SUBTOTAL				\$ 424,208
	1.29%	BOND				\$ 5,472
		SUBTOTAL				\$ 429,680
	15.00%	ESCALATION (ALLOWANCE)				\$ 64,452
		SUBTOTAL				\$ 494,132
	20.00%	CONTINGENCY				\$ 98,826
TOTAL PROBABLE CONSTRUCTION COST						\$ 592,959

CMS-CONSTRUCTION MANAGEMENT SERVICES, INC.
1115 HERON BAY BLVD, SUITE 204
CORAL SPRINGS, FL 33076
(954) 481-1611
CMS FILE # 2333 ORDER OF MAGNITUDE

CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460

CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022

PREPARED FOR:
 CPZ ARCHITECTS

CONCEPT B - EXTERIOR PAVING IMPROVEMENTS

DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
01	01 00 00	GENERAL CONDITIONS				\$ -
		BUILDING GENERAL CONDITIONS				SEE BELOW
02	02 00 00	EXISTING CONDITIONS /DEMOLITION				
03	03 00 00	CONCRETE				\$ -
04	04 00 00	MASONRY				\$ -
05	05 00 00	METALS				\$ -
06	06 00 00	WOOD & PLASTICS				\$ -
07	07 00 00	THERMAL & MOISTURE PROTECTION				\$ -
08	08 00 00	OPENINGS (DOORS & WINDOWS)				\$ -
09	09 00 00	FINISHES				\$ -
10	10 00 00	SPECIALTIES & SIGNAGE				\$ -
11	11 00 00	EQUIPMENT				\$ -
12	12 00 00	FURNISHINGS				\$ -
13	13 00 00	SPECIAL CONSTRUCTION				\$ -
14	14 00 00	CONVEYING SYSTEMS				\$ -
21	21 00 00	FIRE SUPPRESSION				\$ -
22	22 00 00	PLUMBING				\$ -
23	23 00 00	HVAC				\$ -

CONCEPT B - EXTERIOR PAVING IMPROVEMENTS						
DIVISION	#	DESCRIPTION	QUANTITY	UNIT	\$/UNIT	AMOUNT
26	26 00 00	ELECTRICAL				\$ -
27	27 00 00	TECHNOLOGY				\$ -
28	28 00 00	ELECTRONIC SAFETY & SECURITY				\$ -
31	31 00 00	EARTHWORK				\$ -
32	32 00 00	EXTERIOR IMPROVEMENTS				\$ 47,250
		REMOVE AND REPLACE ASPHALT PAVING AT SERVICE ACCESS AREA (WEST SIDE)	3,150	SF	\$ 15.00	\$ 47,250
		EXISTING ASPHALT AT OCEAN BLVD (EAST SIDE)				NIC
33	33 00 00	SITE UTILITIES				\$ -
		SUBTOTAL				\$ 47,250
	12.00%	GENERAL CONDITIONS				\$ 5,670
		SUBTOTAL				\$ 52,920
	4.00%	G.C. OVERHEAD				\$ 2,117
		SUBTOTAL				\$ 55,037
	6.00%	G.C. PROFIT				\$ 3,302
		SUBTOTAL				\$ 58,339
	1.29%	BOND				\$ 753
		SUBTOTAL				\$ 59,092
	15.00%	ESCALATION (ALLOWANCE)				\$ 8,864
		SUBTOTAL				\$ 67,955
	20.00%	CONTINGENCY				\$ 13,591
		TOTAL PROBABLE CONSTRUCTION COST				\$ 81,546

**CMS-Construction Management Services, Inc.
 1115 HERON BAY BLVD, SUITE 204
 CORAL SPRINGS, FL 33076
 954-481-1611
 CMS FILE # 2333 ORDER OF MAGNITUDE**

**CITY OF LAKE WORTH
 LAKE WORTH BEACH COMPLEX
 10 S OCEAN BLVD
 LAKE WORTH, FLORIDA 33460**

**CPZ DRAWINGS - SHEET NO. LC-101 & LC-102
 ORDER OF MAGNITUDE
 October 24, 2022**

**PREPARED FOR:
 CPZ ARCHITECTS**

QUALIFICATIONS

- | | |
|----|---|
| 1 | This estimate assumes a CM-At-Risk Contract basis. |
| 2 | This estimate is based on order of magnitude drawings Concept A - LC-101 & Concept B - LC-102 provided by CPZ Architects. |
| 3 | Due to the present volatile nature of the construction market, construction material cost could change substantially prior to construction. |
| 4 | Utility Connection and Impact Fees are assumed to be BY OWNER and are NOT INCLUDED. |
| 5 | Off-site Storage is NOT INCLUDED. |
| 6 | Night Watchman/Security Guard Services are NOT INCLUDED. |
| 7 | Testing is NOT INCLUDED. |
| 8 | Asbestos and Lead Paint Abatement/Removal is NOT INCLUDED. |
| 9 | Petroleum or contaminate abatement / removal is NOT INCLUDED. |
| 10 | Contaminated soil or water, removal or processing is NOT INCLUDED. |
| 11 | Assumed electrical, sewer, water drainage are existing & available for use on this project. |
| 12 | Unknown Conditions including muck/demucking, rerouting of major utilities (water, sewer, drainage, electrical) are NOT INCLUDED. |
| 13 | FF&E NOT INCLUDED. |
| 14 | Kitchen equipment NOT INCLUDED. |

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Community Sustainability

TITLE:

Ordinance 2022-20 – First Reading – amending Chapter 23 “Land Development Regulations,” Article 3 “Zoning Districts,” Division 7 “Public Districts,” Section 23.3-26 “P- Public,” and Section 23.3-27 “PROS – Public Recreation and Open Space” for consistency with the use tables in Section 23.3-6 and clarifying the approval process for uses in the public districts; and Division 8 “Conservation District,” Section 23.3-28 “C- Conservation,” for consistency with the use tables in Section 23.3-6, correcting a scrivener’s error and modifying the approval process to require conditional use approval for new uses; and Division 1 “Generally,” Section 23.3-6 “Use Tables,” to remove the P, PROS, and C zoning districts from all use categories in the use tables in this section except from the “Temporary Uses” category

SUMMARY:

The proposed amendment would allow indoor storage (warehouse) in the Public (P) zoning district as consistent with existing and proposed (Education Foundation) uses on publicly owned lands. The amendment would also remove public and conservation districts from the use table, and clarify the list of permitted uses and required review processes in the zoning district sections to enhance clarity and ease of use of use of the Land Development Regulations (LDR) for these zoning districts. This amendment is a housekeeping item that would also correct a scrivener’s error in addition to providing clarity to the zoning district sections.

BACKGROUND AND JUSTIFICATION:

A portion of the subject amendment to the City’s Land Development Regulations (LDRs) was drafted based on City Commission direction to staff to allow for indoor storage (warehouse) in the Public (P) zoning district to reflect existing uses on City properties and to facilitate the development of a vacant parcel on Barton Road owned by the PBC School District for an Education Foundation teacher supply and training center. In preparation of that text amendment, it was determined that removal of the public and conservation districts from the use table and clarification of the permitted uses and review processes in those zoning districts sections would enhance the ease of use and clarity of the LDR. Additional minor housekeeping items were also addressed.

The Historic Resources Preservation Board (HRPB) voted to recommend approval (4-1) of the proposed text amendment to the City Commission at the October 12, 2022 meeting. The Planning & Zoning Board (PZB) unanimously voted to recommend approval of the proposed text amendment to the City Commission at its October 19, 2022 meeting*.

MOTION:

Move to approve/disapprove Ordinance 2022-20 on First Reading, and to schedule second reading for January 2023.

ATTACHMENT(S):

Draft Ordinance 2022-20
PZHP Staff Report

**Note: draft meeting minutes were not available upon publication of this staff report.*

1
2
3 **ORDINANCE 2022-20 - AN ORDINANCE OF THE CITY OF LAKE**
4 **WORTH BEACH, FLORIDA, AMENDING CHAPTER 23 “LAND**
5 **DEVELOPMENT REGULATIONS,” ARTICLE 3 “ZONING DISTRICTS,”**
6 **DIVISION 7 “PUBLIC DISTRICTS,” SECTION 23.3-26 “P-PUBLIC” AND**
7 **SECTION 23.3-27 “PROS – PUBLIC RECREATION AND OPEN SPACE,”**
8 **FOR CONSISTENCY WITH THE USE TABLES IN SECTION 23.3-6 AND**
9 **CLARIFYING THE APPROVAL PROCESS FOR USES IN THE PUBLIC**
10 **DISTRICTS; AMENDING ARTICLE 3 “ZONING DISTRICTS,” DIVISION 8**
11 **“CONSERVATION DISTRICT” SECTION 23.3-28 “C –**
12 **CONSERVATION” FOR CONSISTENCY WITH THE USE TABLES IN**
13 **SECTION 23.3-6, CORRECTING A SCRIVENER’S ERROR AND**
14 **MODIFYING THE APPROVAL PROCESS TO REQUIRE CONDITIONAL**
15 **USE APPROVAL FOR NEW USES; AND AMENDING ARTICLE 3**
16 **“ZONING DISTRICTS,” DIVISION 1 “GENERALLY” SECTION 23.3-6**
17 **“USE TABLES” BY REMOVING THE “P,” “PROS” AND “C” ZONING**
18 **DISTRICTS FROM ALL USE CATEGORIES IN THE USE TABLE**
19 **EXCEPT FROM THE “TEMPORARY USES” CATEGORY; AND**
20 **PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND**
21 **AN EFFECTIVE DATE**
22

23 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted
24 municipality having such power and authority conferred upon it by the Florida Constitution
25 and Chapter 166, Florida Statutes; and
26

27 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State
28 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the
29 “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct
30 municipal government, perform municipal functions, and render municipal services, and
31 may exercise any power for municipal purposes, except as expressly prohibited by law;
32 and
33

34 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing
35 body of each municipality in the state has the power to enact legislation concerning any
36 subject matter upon which the state legislature may act, except when expressly prohibited
37 by law; and
38

39 **WHEREAS**, the City wishes to amend Chapter 23 “Land Development
40 Regulations,” Article 3 “Zoning Districts,” Division 7 “Public Districts,” Section 23.3-26 “P-
41 Public,” and Section 23.3-27 “PROS – Public Recreation and Open Space” for
42 consistency with the use tables in Section 23.3-6 and clarifying the approval process for
43 uses in the public districts; and
44

45 **WHEREAS**, the City wishes to amend Chapter 23 “Land Development
46 Regulations,” Article 3 “Zoning Districts,” Division 8 “Conservation District,” Section 23.3-
47 28 “C- Conservation,” for consistency with the use tables in Section 23.3-6, correcting a
48 scrivener’s error and modifying the approval process to require conditional use approval
49 for new uses; and
50

51 **WHEREAS**, the City wishes to amend Chapter 23 “Land Development
52 Regulations,” Article 3 “Zoning Districts,” Division 1 “Generally,” Section 23.3-6 “Use
53 Tables,” to remove the P, PROS, and C zoning districts from all use categories in the use
54 tables in this section except from the “Temporary Uses” category; and

55
56 **WHEREAS**, the Planning and Zoning Board, in its capacity as the local planning
57 agency, considered the proposed amendments at a duly advertised public hearing; and

58
59 **WHEREAS**, the Historic Resources Preservation Board, in its capacity as the local
60 planning agency, considered the proposed amendments at a duly advertised public
61 hearing; and

62
63 **WHEREAS**, the City Commission finds and declares that the adoption of this
64 ordinance is appropriate, and in the best interest of the health, safety and welfare of the
65 City, its residents and visitors.

66
67 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
68 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**

69
70 **Section 1:** The foregoing “WHEREAS” clauses are ratified and confirmed as
71 being true and correct and are made a specific part of this ordinance as if set forth herein.

72
73 **Section 2:** Chapter 23 “Land Development Regulations,” Article 3 “Zoning
74 Districts,” Division 7 “Public Districts,” Section 23.3-26 “P- Public,” is hereby amended to
75 read as follows:
76

77 **Sec. 23.3-26. P—Public.**

78 a) *Intent.* The "public district" designates locations for public schools and municipal facilities
79 including City Hall, City Hall Annex, Lake Worth Public Library, Pine Crest Cemetery and
80 the reclaimed landfill site at the southern city limits. It also provides for publicly owned utility
81 facilities. Because of the diverse variety of uses permitted in the "public district" and the
82 mapping of the district throughout the city, all uses are permitted as conditional uses. The
83 P public district implements the P public land use category of the Lake Worth
84 Comprehensive Plan.

85 b) *Use restrictions.* Uses permitted by right and as conditional uses shall be subject to the
86 applicable provisions of Article 4, Development Standards. ~~Refer to the permitted use table~~
87 ~~at section 23.3-6 for a complete list of uses.~~

88 1. *Principal uses permitted by right in P public district.* No uses are permitted by right
89 in the P public district. All principal uses shall be subject to conditional use review.

90 2. *Principal uses permitted as ~~either administrative or conditional~~ uses in P public*
91 *district.*

92 A. Office uses - low to high intensity.

93 B. Institutional uses - low to high intensity.

94 C. Public uses, including recreational facilities - low to high intensity.

95 D. Cultural & Artisanal uses, including radio and television broadcasting studios &
96 assembly uses such as a performing arts theater - low to high intensity.

97 E. Vehicular & Industrial uses in support of governmental & school/educational
98 operations, including warehouse (indoor storage) and repair and maintenance
99 facilities - low to high intensity.

100 F. Heavy utility facilities.

101 G. Light utility facilities.

102 H. Marinas.

103 I. Power plants generation facilities & substations.

104 J. Public safety facilities, including fire stations and police stations.

105 K. Water towers.

106 L. Essential services.

107 M. Communication towers.

108 N. Radio and television broadcasting studios

109 O. Cemetery

110 P. Community facilities such as community centers, nature centers, community
111 gardens, libraries, museums, and ballroom, banquet, and meeting rooms.

112 Q. Outdoor Markets & Mobile Food Vending Courts

113 3. *Accessory uses permitted as either administrative or conditional uses in P public*
114 *district. Any use accessory to and customarily incidental to a permitted principal use,*
115 *including commercial, retail and educational uses, permitted as either an*
116 *administrative if less than 2,500 sf, or as a conditional use if greater than 2,500 sf.*

117 c) *Development regulations for P public district sites which lie adjacent to land zoned for*
118 *residential use. P public district sites which lie adjacent to any parcel zoned with a district*
119 *with the term "residential" in its name shall be subject to minimum development regulations*
120 *as set forth below, or by higher development regulations if determined necessary pursuant*
121 *to conditional use review and approval. All new public buildings shall use green/sustainable*
122 *building design and obtain LEED certification.*

123 1. *Minimum lot dimension for P public district.*

124 A. Minimum lot area: Six thousand five hundred (6,500) square feet.

125 B. Minimum lot width: Fifty (50) feet.

126 2. *Maximum height of buildings in P public district.*

127 A. Principal building: Sixty-five (65) feet.

128 B. Garages and other accessory buildings: Twenty-five (25) feet.

129 3. *Minimum setbacks for building in P public district.*

130 A. Minimum front setback: Twenty (20) feet.

131 B. Minimum side setback:

132 (1) From street side lot lines: Twenty (20) feet.

133 (2) From interior side lot lines adjacent to land zoned in any district other than
134 a district with the term "residential" in its name: none.

135 (3) From interior side lot lines adjacent to land zoned in any district with the
136 term "residential" in its name: Ten (10) feet.

137 C. Minimum rear setback: Ten (10) feet.

- 138 D. Buildings in excess of thirty-five (35) feet in height shall provide an additional
139 front and rear setback of between eight (8) and twelve (12) feet to the minimum
140 required front and rear setbacks.
- 141 4. *Floor area ratio.* The maximum FAR is 2.0.
- 142 5. *Maximum impermeable surface for use in P public district.* The maximum permitted
143 impermeable surface for nonresidential uses in the P public district shall be sixty-
144 five (65) percent.
- 145 d) *Development regulations for P public district sites which do not lie adjacent to land zoned*
146 *for residential use.* P public district sites which do not lie adjacent to any parcel zoned with
147 a district with the term "residential" in its name shall be subject to minimum development
148 regulations as set forth in the most restrictive adjacent district.
- 149 e) *Supplemental regulations for the P public district.* ~~Uses permitted by right and uses~~
150 ~~permitted as either administrative or conditional~~ All uses shall be subject to applicable
151 provisions of Article 4, Development Standards.

152
153 **Section 3:** Chapter 23 "Land Development Regulations," Article 3 "Zoning
154 Districts," Division 7 "Public Districts," Section 23.3-27 "PROS—Public recreation and
155 open space," is hereby amended to read as follows:
156

157 **Sec. 23.3-27. PROS—Public recreation and open space.**

- 158 a) *Intent.* The public recreation and open space district designates locations for parks and
159 other outdoor open space areas intended for active and passive use. The district
160 implements the public recreation and open space land use category in the Lake Worth
161 Comprehensive Plan.
- 162 b) *Use restrictions.* Uses permitted by right and as conditional uses shall be subject to the
163 applicable provisions of Article 4, Development Standards. ~~Refer to the permitted use table~~
164 ~~at section 23.3-6 for a complete list of uses.~~
- 165 1. *Principal uses permitted by right in PROS district.*
- 166 A. Parks and other outdoor open space areas intended for passive use.
- 167 B. Essential services.
- 168 2. *Principal uses permitted as ~~either administrative or conditional~~ uses.*
- 169 A. Public uses - medium to high intensity.
- 170 B. Institutional uses - medium to high intensity.
- 171 C. Cemetery.
- 172 D. Gymnastic studios / training facilities & gym/studio for dance or fitness
- 173 E. Ballroom, banquet and meeting rooms
- 174 F. Governmental Administrative Office
- 175
- 176 3. *Accessory uses permitted by right.* Any use accessory to and customarily incidental
177 to a principal use permitted by right.
- 178 4. *Accessory uses permitted as either administrative or conditional uses in PROS*
179 *district.* Any use accessory to and customarily incidental to a principal use permitted

as a conditional use shall be permitted as either an administrative use if less than 2,500 sf, or as a conditional use if greater than 2,500 sf.

c) *Development regulations.*

- 1. Height: Thirty-five (35) feet.
- 2. Setback: Twenty (20) feet from all lot lines.
- 3. Floor area ratio: Maximum FAR of 0.1.

Section 4: Chapter 23 “Land Development Regulations,” Article 3 “Zoning Districts,” Division 8 “Conservation District,” Section .3-28 “C—Conservation,” is hereby amended to read as follows:

Sec. 23.3-28. C—Conservation.

a) *Intent.* The C conservation district is intended to provide standards for the protection and preservation of areas having natural beauty and to mitigate the effects of development on the environment. A conservation area designation can be applied to a tract of land to provide protected status in order to ensure that natural features or biota are safeguarded. A conservation area may be a nature reserve, a park, a land reclamation project or other area.

b) *Use restrictions.* Uses permitted by right and as either administrative or conditional uses shall be subject to the applicable provisions of Article 4, Development Standards. ~~Refer to the permitted use table at section 23.3-6 for a complete list of uses.~~

1. *Permitted uses by right.* No uses are permitted by right in the C – conservation district. ~~P-public district.~~ All uses shall be subject to conditional use review.

2. *Principal u*Uses permitted as either administrative or conditional uses.

- A. Botanical research and education.
- B. Marine uses, kayak, canoe and other non-motorized watercraft.
- C. Marine research and education.
- D. Marinas and associated uses.
- E. Limited dockage.
- F. Nature, foot and bicycle trails.
- G. Public and private nature preserves.
- H. Public parks.
- I. Water conservation areas, reservoirs and control structures.
- J. Accessory structures not exceeding five hundred (500) square feet.
- K. Accessory uses in support of the intent of the district that facilitate public access to the conservation area, including nature and welcome centers.

c) *Prohibited uses.* The following uses are prohibited in the CON conservation district:

- 1. Wheeled or tracked vehicles, prop (agitation) dredging and airboats are prohibited. Government and emergency vehicles are exempt.
- 2. Any use which has an adverse impact upon the habitat, bird roosting areas, archaeological sites, endangered or threatened wildlife species causing the

221 deterioration of the habitat, physical alteration of the environment, or prohibiting the
222 propagation or causing the extermination thereof is prohibited.

223 d) *Development regulations.*

- 224 1. Height: Thirty-five (35) feet.
225 2. Setback: Twenty (20) feet from all lot lines.

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227

228 **Section 5:** Chapter 23 “Land Development Regulations,” Article 3 “Zoning
229 Districts,” Division 1 “Generally,” Section 23.3-6 “Use Tables,” is hereby amended to
230 remove the P, PROS, and C zoning districts from all use categories in the use tables
231 except from the “Temporary Uses” category.

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233

234 **Section 6:** Severability. If any section, subsection, sentence, clause, phrase or
235 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
236 competent jurisdiction, such portion shall be deemed a separate, distinct, and
237 independent provision, and such holding shall not affect the validity of the remaining
238 portions thereof.

239

240 **Section 7:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
241 conflict herewith are hereby repealed to the extent of such conflict.

242

243 **Section 8:** Codification. The sections of the ordinance may be made a part of
244 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
245 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
246 any other appropriate word.

247

248 **Section 9:** Effective Date. This ordinance shall become effective 10 days after
249 passage.

250

251 The passage of this ordinance on first reading was moved by
252 _____, seconded by _____, and upon
253 being put to a vote, the vote was as follows:

254

255 Mayor Betty Resch
256 Vice Mayor Christopher McVoy
257 Commissioner Sarah Malega
258 Commissioner Kimberly Stokes
259 Commissioner Reinaldo Diaz

260

261 The Mayor thereupon declared this ordinance duly passed on first reading on the
262 _____ day of _____, 2022.

263
264

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

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Mayor Betty Resch
Vice Mayor Christopher McVoy
Commissioner Sarah Malega
Commissioner Kimberly Stokes
Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2022.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk



DATE: October 5, 2022

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

FROM: William Waters, Director Community Sustainability

MEETING: October 12 and October 19, 2022

SUBJECT: **Ordinance 2022-20:** Consideration of an ordinance amending Chapter 23 “Land Development Regulations,” Article 3 “Zoning Districts,” Division 7 “Public Districts,” Section 23.3-26 “P- Public,” and Section 23.3-27 “PROS – Public Recreation and Open Space” for consistency with the use tables in Section 23.3-6 and clarifying the approval process for uses in the public districts; and Division 8 “Conservation District,” Section 23.3-28 “C- Conservation,” for consistency with the use tables in Section 23.3-6, correcting a scrivener’s error and modifying the approval process to require conditional use approval for new uses; and Division 1 “Generally,” Section 23.3-6 “Use Tables,” to remove the P, PROS, and C zoning districts from all use categories in the use tables in this section except from the “Temporary Uses” category.

PROPOSAL / BACKGROUND/ ANALYSIS:

The subject amendment to the City’s Land Development Regulations (LDR) was drafted based on City Commission direction to staff to allow for indoor storage (warehouse) in the Public (P) Zoning District as consistent with existing and proposed uses on publicly owned lands. In preparation of the subject text amendment, it was determined that removal of the public and conservation districts from the use table and clarification of the permitted uses and review processes in those zoning districts sections would enhance the ease of use and clarity of the LDR.

The proposed amendments would add a new section to the LDR in Chapter 23 of the City’s Code of Ordinances:

- Article 3 “Zoning Districts,” Section 23.3-26 - P- Public,
- Article 3 “Zoning Districts,” Section 23.3-27 - PROS – Public Recreation and Open Space
- Article 3 “Zoning Districts,” Section 23.3-28 - C- Conservation
- Article 3 “Zoning Districts,” Section 23.3-6 - Use Tables

STAFF RECOMMENDATION:

Staff recommends that the Planning and Zoning Board and Historic Resources Preservation Board recommend that the City Commission adopt Ordinance 2022-20.

POTENTIAL MOTION:

I move to RECOMMEND/NOT RECOMMEND TO THE CITY COMMISSION **TO ADOPT** the proposed LDR text amendments included in Ordinance 2022-20.

Attachments

- A. Draft Ordinance 2022-20

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: City Attorney

TITLE:

Ordinance No. 2022-24 – Providing for the City’s Consent to the Inclusion of the City of Lake Worth Beach Into the Palm Beach County’s Fire/Rescue Municipal Service Taxing Unit for Fire-Rescue, Fire Protection, Advanced Life Support, Fire Code Enforcement and Other Necessary and Incidental Services and Providing for Effectiveness and Duration of Consent and Acknowledging Ad Valorem Millage Rate Limitation.

SUMMARY:

An ordinance extending the City’s consent to remain within the Palm Beach County’s Fire/Rescue Municipal Service Taxing Unit through September 30, 2026.

BACKGROUND AND JUSTIFICATION:

Pursuant to subsections 125.01(q) and (r), Florida Statutes, Palm Beach County established a Municipal Service Taxing Unit (MSTU) for fire/rescue services. The City, in accordance with subsection 125.01(q), Florida Statutes, provided its consent to be included within the MSTU through the adoption of an ordinance. The City’s consent expires on December 31, 2022 and the MSTU services will end 7:30 a.m. on October 1, 2023. According to the County, the City’s consent adheres to the end of the tax year (December 31st) and the services provided coincides with the end of the fiscal year (October 1, 2023). The City Commission wishes to continue its consent to be included within the MSTU through December 31, 2025, which will result in the City receiving fire-rescue services until 7:30 a.m. on October 1, 2026. The City also wishes to provide for the authority to repeal this Ordinance and the consent provided therein if the County transfers or assigns the fire/rescue MSTU or its duties thereunder to any other entity. The City is required to give 30 days’ prior written notice; however, due to the statutory requirements, the consent will terminate on December 31st of the applicable year and the MSTU services will continue through the following October 1st or the date of the assignment or transfer of the MSTU, whichever occurs sooner. Finally, the ordinance provides that the City, by opting into the MSTU, cannot levy an annual ad valorem millage rate that would exceed the 10 mill cap for municipal purposes when combined with the Fire/Rescue MSTU annual ad valorem millage rate.

MOTION:

Move to approve/disapprove Ordinance No. 2022-24 on first reading and setting the second reading and public hearing for January 3, 2023.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2022-24

1
2
3 **ORDINANCE 2022-24 – AN ORDINANCE OF THE CITY COMMISSION**
4 **OF THE CITY OF LAKE WORTH BEACH, FLORIDA; PROVIDING FOR**
5 **THE CITY’S CONSENT TO THE INCLUSION OF THE ENTIRE**
6 **TERRITORY WITHIN THE CITY OF LAKE WORTH BEACH MUNICIPAL**
7 **BOUNDARIES INTO PALM BEACH COUNTY’S FIRE/RESCUE**
8 **MUNICIPAL SERVICE TAXING UNIT FOR FIRE-RESCUE, FIRE**
9 **PROTECTION, ADVANCED LIFE SUPPORT (OR SIMILAR**
10 **EMERGENCY SERVICES), FIRE CODE ENFORCEMENT AND OTHER**
11 **NECESSARY AND INCIDENTAL SERVICES; PROVIDING FOR INTENT,**
12 **PURPOSE AND CONSENT; PROVIDING FOR EFFECTIVENESS AND**
13 **DURATION OF CONSENT; PROVIDING FOR EFFECTIVENESS OF**
14 **REPEAL; ACKNOWLEDGING AD VALOREM MILLAGE RATE**
15 **LIMITATION; AND PROVIDING FOR REPEAL OF CONFLICTING**
16 **ORDINANCES, SEVERABILITY, CODIFICATION, CAPTIONS, AND AN**
17 **EFFECTIVE DATE.**

18
19 **WHEREAS**, pursuant to Section 125.01(1)(q) and (r), Florida Statutes, the Florida
20 Legislature has empowered counties to establish Municipal Service Taxing Units
21 (“MSTU”s), whereby a county may levy a tax within the MSTU for certain essential
22 municipal services, including the provision of fire-rescue services; and

23
24 **WHEREAS**, pursuant to Section 125.01(1)(q), Florida Statutes, a municipality may
25 be included within an MSTU, subject to approval by ordinance of the governing body of
26 the municipality giving consent either annually or for a term of years; and

27
28 **WHEREAS**, Palm Beach County (“County”) established an MSTU known as the
29 Fire/Rescue MSTU to provide fire protection, fire rescue, advanced life support (or similar
30 emergency services), code enforcement and other services necessary and incidental to
31 the purpose for which the MSTU was created; and

32
33 **WHEREAS**, the City of Lake Worth Beach (“City”) by Ordinance No. 2008-26
34 consented to its inclusion in the County’s Fire/Rescue MSTU for a ten (10) year term
35 through December 31, 2018, as a mechanism to receive and fund County fire-rescue
36 services through September 30, 2019; and

37
38 **WHEREAS**, the County by Ordinance No. 2008-62 amended the boundaries of
39 the Fire/Rescue MSTU to include the City for the duration of the term identified in City
40 Ordinance No. 2008-26, as such term may be extended by the City from time to time; and

41
42 **WHEREAS**, City Ordinance No. 2011-14 affirmed, continued and extended the

43 City's consent and inclusion in the County's Fire/Rescue MSTU through December 31,
44 2020, and further provided that said consent and inclusion shall be deemed to continue
45 through 7:30 a.m. on October 1, 2021, to the extent necessary to enable the County to
46 provide within the City fire-rescue and related services funded by tax year 2020, including
47 but not limited to the enforcement of applicable laws and regulations; and

48
49 **WHEREAS**, City Ordinance No. 2021-17 affirmed, continued and extended the
50 City's consent and inclusion in the County's Fire/Rescue MSTU through December 31,
51 2022, and further provided that said consent and inclusion shall be deemed to continue
52 through 7:30 a.m. on October 1, 2023, to the extent necessary to enable the County to
53 provide within the City fire-rescue and related services funded by tax year 2022, including
54 but not limited to the enforcement of applicable laws and regulations; and

55
56 **WHEREAS**, the City Commission hereby desires to extend, through December 31,
57 2025, its consent to the inclusion of all the territory lying within the municipal boundaries
58 of the City into the County's Fire/Rescue MSTU for County fire-rescue and related
59 services within the City until 7:30 a.m. on October 1, 2026, and believes that such
60 inclusion is in the best interest of the health, safety and welfare of the citizens of the City.

61
62 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
63 **CITY OF LAKE WORTH BEACH, FLORIDA, THAT:**

64
65 **Section 1: Intent, Purpose and Consent:** It is the intent, purpose and effect
66 of this Ordinance to comply with the provisions of Section 125.01(1)(q), Florida Statutes.
67 The City Commission hereby affirms, extends and consents to the inclusion of all territory
68 within the incorporated municipal boundaries of the City, as may be amended from time
69 to time, within the County's Fire/Rescue Municipal Service Taxing Unit (the "Fire/Rescue
70 MSTU"), which was established pursuant to enabling legislation adopted by the Board of
71 County Commissioners of Palm Beach County. The purpose of the enactment of this
72 Ordinance is to extend the City's consent to be included in the County's Fire/Rescue
73 MSTU in order to enable the County to fund and provide fire-rescue and related services
74 within the territorial limits of the City including, but not limited to, the County's enforcement
75 of the Florida Fire Prevention Code and Palm Beach County Local Amendments thereto
76 (collectively "Fire Code") and any other laws and regulations applicable within the
77 Fire/Rescue MSTU.

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107 Should the City intend to repeal its consent to be included in the Fire/Rescue MSTU based
108 upon the County's assignment or transfer of the Fire/Rescue MSTU, or its duties
109 thereunder, to any other entity, the City shall provide a minimum of thirty (30) days prior
110 written notice to the County. The City shall adopt an ordinance to repeal this Ordinance
111 and the consent provided herein and shall provide a certified copy of the repealing

112 ordinance to the County and to the Property Appraiser after adoption. The city's
113 inclusion in the County's Fire/Rescue MSTU shall terminate on the date set forth in the
114 repealing ordinance which shall coincide with December 31st at the end of a given tax
115 year; provided, however, that the City's inclusion in the Fire/Rescue MSTU shall be
116 deemed to continue through the following October 1st at 7:30 a.m. or the date of the
117 assignment or transfer of the Fire/Rescue MSTU, whichever occurs sooner, to the extent
118 necessary to enable the County to provide within the City fire rescue and related services
119 funded by the final tax year, including but not limited to the County's enforcement of the
120 Fire Code and any other laws and regulations applicable within the Fire/Rescue MSTU.

121
122 **Section 4: Ad Valorem Millage Rate Limitation:** The City acknowledges that
123 by opting into the MSTU, it cannot levy an annual ad valorem millage rate that would
124 exceed the ten (10) mill cap for municipal purposes when combined with the Fire/Rescue
125 MSTU's annual ad valorem millage rate.

126
127 **Section 5: Repeal of Conflicting Ordinances:** All other City ordinances and
128 parts of ordinances in conflict with any provisions of this Ordinance are hereby repealed
129 to the extent of the conflict. Notwithstanding the above, Ordinance No. 2021-17 shall not
130 be deemed repealed by this Ordinance and shall expire as provided for therein; provided,
131 however, that Ordinance No. 2021-17 and the term of consent identified therein shall be
132 deemed to be extended to the extent necessary to enable the County to provide within
133 the City fire-rescue and related services funded by the final tax year thereunder.

134
135 **Section 6: Severability:** If any section, paragraph, sentence, clause, phrase,
136 or word of this Ordinance is for any reason held by a court of competent jurisdiction to be
137 invalid, unconstitutional, inoperative or void, such holding shall not affect the remainder
138 of this Ordinance.

139
140 **Section 7: Codification:** The provisions of this Ordinance may become and
141 be made a part of the code of ordinances of the City. The sections of this Ordinance
142 may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be
143 changed to "section", "article", or other appropriate word.

144
145 **Section 8: Captions:** The captions, section headings, and section
146 designations used in this Ordinance are intended only for the convenience of users and

147 shall have no effect on the interpretation of the provisions of this Ordinance.

148

149 **Section 9: Effective Date:** This Ordinance shall be effective retroactively to
150 December 31, 2022. Notwithstanding anything here to the contrary, the City’s continuing
151 participation in the MSTU is contingent upon the County maintaining an ordinance
152 including the City within the Fire/Rescue MSTU.

153

154 The passage of this ordinance on first reading was moved by
155 _____, seconded by _____,

156 and upon being put to a vote, the vote was as follows:

157

- 158 Mayor Betty Resch
- 159 Vice Mayor Christopher McVoy
- 160 Commissioner Sarah Malega
- 161 Commissioner Kimberly Stokes
- 162 Commissioner Reinaldo Diaz

163

164 The Mayor thereupon declared this ordinance duly passed on first reading on the
165 _____ day of _____, 2022.

166

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

170

- 171 Mayor Betty Resch
- 172 Vice Mayor Christopher McVoy
- 173 Commissioner Sarah Malega
- 174 Commissioner Kimberly Stokes
- 175 Commissioner Reinaldo Diaz

176

177 The Mayor thereupon declared this ordinance duly passed on the _____ day of
178 _____, 2023.

179

180

LAKE WORTH BEACH CITY COMMISSION

181

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183

By: _____
Betty Resch, Mayor

184

185

186

187 ATTEST:

188

189

190

191 _____
Melissa Ann Coyne, City Clerk

192

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Community Sustainability

TITLE:

Ordinance No. 2022-25 – First Reading - Amending Chapter 9 “Buildings and Structural Regulations” of the City’s Code of Ordinance to provide for a Required Thirty-Year Recertification for Buildings and Other Building Code Issues

SUMMARY:

Florida Statutes now requires that all condominiums and cooperatives that are three (3) stories or more have a building recertification every thirty (30) years and then every ten (10) years thereafter. Ordinance incorporates these new requirements in the City’s Code of Ordinances as well as other issues affecting the Florida Building Code.

BACKGROUND AND JUSTIFICATION:

In response to the City of Surfside building collapse, the Florida Legislature approved changes to Florida Statutes that require all condominiums and cooperatives with three (3) or more stories to undergo a formal “milestone inspection” to assess the structural integrity of the structures as well as other life safety issues. A private provider must undertake the inspection with the resulting report provided to both the owners and the City for review and filing. Should the inspection uncover “substantial structural deterioration” or other life safety issues, repairs will need to be undertaken within a 365-day timeframe. Should they not be addressed, the building may be assessed penalties and fines. Should severe issues be documented, buildings may have to be vacated until further investigation and assessments are undertaken with subsequent repairs made prior to the residents being allowed to return.

Within the City of Lake Worth Beach, there are several dozen buildings that are thirty (30) years of age or older, which will require inspections and the provision of a report to the City. The City will notify all properties that must comply and provide for a timeframe under which the report must be completed, reviewed and filed. A fee for this endeavor was adopted as part of the City’s official Schedule of Fees and Charges to process the reports. The minimum fee for filing of the reports is \$500.

MOTION:

Move to approve/disapprove Ordinance No. 2022-25 on first reading and schedule the second reading and public hearing for January 3, 2023.

ATTACHMENT(S):

Fiscal Impact Analysis
Ordinance 2022-25
Exhibit A

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	\$15,000	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	0	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	\$15,000	0	0	0	0
No. of Addn'l Full-Time Employee Positions	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation	
	Expenditure
Department	
Division	
GL Description	
GL Account Number	
Project Number	
Requested Funds	

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ORDINANCE 2022-25 – AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING CHAPTER 9 “BUILDINGS AND STRUCTURAL REGULATIONS,” ARTICLE I “IN GENERAL,”; AMENDING SECTION 9-2.1 “CITY OF LAKE WORTH BEACH ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODES ADOPTED,” BY ADOPTING BY REFERENCE AMENDMENTS TO THE CITY OF LAKE WORTH BEACH ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE 2020 EDITION; PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

WHEREAS, the City of Lake Worth Beach, Florida (the “City”) is a duly constituted municipality having such home rule power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, pursuant to Ordinance No. 2020-19, the City adopted the 2020 Edition of the Florida Building Code and its administrative amendments thereto; and

WHEREAS, the Florida Legislature adopted Senate Bill 4-D (effective date May 26, 2022) which includes mandatory structural inspections for condominium and cooperative buildings (new Section 553.899, Florida Statutes) and amends Section 553.844, Florida Statutes, regarding windstorm loss mitigation and requirements for roofs and opening protection; and

WHEREAS, the City wishes to amend its administrative amendments to the Florida Building Code to include these legislative changes as set forth in **Exhibit A** which is attached hereto and incorporated herein; and

WHEREAS, the City Commission finds and declares that the adoption of these legislative changes into the City’s administrative amendments serves the public interest by strengthening and clarifying the proper administration of the Florida Building Code for the health, safety and welfare of the City, its residents and visitors.

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

Section 1: The foregoing “WHEREAS” clauses are incorporated into this Ordinance as true and correct findings of the City Commission.

Section 2: Chapter 9 “Buildings and Structural Regulations,” Article I “In General,” Section 9-2.1 “City of Lake Worth administrative amendments to the Florida Building Codes adopted” is hereby amended to read as follows:

48 **Sec. 9-2.1. – City of Lake Worth Beach administrative amendments to the Florida**
49 **Building Codes adopted.**

50 The City of Lake Worth Beach hereby adopts the Florida Building Code, 2020 Edition,
51 with administrative amendments as set forth in **Exhibit A** of Ordinance 2020-19, as
52 amended by **Exhibit A** of Ordinance 2022-25, which shall be in full force and effect as if
53 fully set out in this section.

54
55 **Section 3:** Directions to Clerk. In accordance with Section 553.73(4)(a), Florida
56 Statutes, if the City Commission adopts this Ordinance, the City Clerk is directed to
57 transmit a copy of this fully executed Ordinance along with **Exhibit A** to the Florida
58 Building Commission within thirty (30) days of adoption by the City Commission.

59
60 **Section 4:** Severability. If any section, subsection, sentence, clause, phrase or
61 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
62 competent jurisdiction, such portion shall be deemed a separate, distinct, and
63 independent provision, and such holding shall not affect the validity of the remaining
64 portions thereof.

65
66 **Section 5:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
67 conflict herewith are hereby repealed to the extent of such conflict.

68
69 **Section 6:** Codification. The sections of the ordinance may be made a part of
70 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
71 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
72 any other appropriate word.

73
74 **Section 7:** Effective Date. This ordinance shall become effective 10 days after
75 passage.

76
77 The passage of this ordinance on first reading was moved by
78 _____, seconded by _____, and upon being
79 put to a vote, the vote was as follows:

- 80
81 Mayor Betty Resch
82 Vice Mayor Christopher McVoy
83 Commissioner Sarah Malega
84 Commissioner Kimberly Stokes
85 Commissioner Reinaldo Diaz

86
87 The Mayor thereupon declared this ordinance duly passed on first reading on the
88 _____ day of _____, 2022.

89
90
91 The passage of this ordinance on second reading was moved by
92 _____, seconded by _____, and upon being put to a vote,
93 the vote was as follows:

- 94
- 95 Mayor Betty Resch
- 96 Vice Mayor Christopher McVoy
- 97 Commissioner Sarah Malega
- 98 Commissioner Kimberly Stokes
- 99 Commissioner Reinaldo Diaz

100
 101 The Mayor thereupon declared this ordinance duly passed on the _____ day of
 102 _____, 2023.

103
 104

LAKE WORTH BEACH CITY COMMISSION

105
 106

By: _____
 Betty Resch, Mayor

107
 108

111 ATTEST:

109
 110

112
 113
 114 _____
 115 Melissa Ann Coyne, City Clerk
 116

2022 Supplement to the 7th Edition (2020) Florida Building Code

(Supplement 2)

7th Edition (2020) Florida Building Code – Building

(Code language for consistency with SB 4-D – bill effective date May 27, 2022)

CHAPTER 1 SCOPE AND ADMINISTRATION

Add a new section 110.9 to read as follows:

110.9 Mandatory structural inspections for condominium and cooperative buildings.

110.9.1 General. The Legislature finds that maintaining the structural integrity of a building throughout its service life is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

110.9.2. As used in this section, the terms:

(a) “Milestone inspection” means a structural inspection of a building, including an inspection of load-bearing walls and the primary structural members and primary structural systems as those terms are defined in s. 627.706, Florida Statutes, by a licensed architect or engineer authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.

(b) “Substantial structural deterioration” means substantial structural distress that negatively affects a building’s general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

110.9.3. A condominium association under chapter 718, Florida Statutes, and a cooperative association under chapter 719, Florida Statutes, must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline as defined in s. 376.031, Florida

Statutes, the condominium association or cooperative association must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. The condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the inspection. This subsection does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

110.9.4. If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

110.9.5. Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association by certified mail, return receipt requested.

110.9.6. Within 180 days after receiving the written notice under Section 110.9.5, the condominium association or cooperative association must complete phase one of the milestone inspection. For purposes of this section, completion of phase one of the milestone inspection means the licensed engineer or architect who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

110.9.7. A milestone inspection consists of two phases:

110.9.7.1. For phase one of the milestone inspection, a licensed architect or engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in Section 110.9.7.2, is not required. An architect or engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.9.7.2. A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is

structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to Section 110.9.8.

110.9.8. Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

(a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

110.9.9. The association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector- prepared summary on the association's website, if the association is required to have a website.

110.9.10. A local enforcement agency may prescribe timelines and penalties with respect to compliance with this section.

110.9.11. A board of county commissioners may adopt an ordinance requiring that a condominium or cooperative association schedule or commence repairs for substantial

structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

(Code language for consistency with SB 4-D - bill effective date May 27, 2022)

CHAPTER 15 ROOF ASSEMBLIES AND ROOFTOP STRUCTURES

Revise section 1511.1.1 to read as follows:

1511.1.1 Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.

Exception: If an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. Pursuant to s. 553.844(5), Florida Statutes, a local government may not adopt by ordinance an administrative or technical amendment to this exception.

Revise section 1521.4 to read as follows:

1521.4 Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.

Exception: If an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. Pursuant to s. 553.844(5), Florida Statutes, a local government may not adopt by ordinance an administrative or technical amendment to this exception.

(Code language for consistency with SB 4-D - bill effective date May 27, 2022)

7th Edition (2020) Florida Building Code – Existing Building

CHAPTER 1 SCOPE AND ADMINISTRATION

Add a new section 101.9 to read as follows:

101.9 Mandatory structural inspections for condominium and cooperative buildings.

101.9.1 Refer to Section 110.9 of the Florida Building Code, Building.

CHAPTER 7 ALTERATIONS—LEVEL 1

Revise section 706.1.1 to read as follows:

706.1.1 Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to requirements of this code.

Exception: If an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. Pursuant to s. 553.844(5), Florida Statutes, a local government may not adopt by ordinance an administrative or technical amendment to this exception.

(Code language for consistency with SB 4-D - bill effective date May 27, 2022)

7th Edition (2020) Florida Building Code – Residential

CHAPTER 9 ROOF ASSEMBLIES

Revise section 908.1.1 to read as follows:

R908.1.1 Not more than 25 percent of the total roof area or roof section of any existing building or structure shall be repaired, replaced or recovered in any 12-month period unless the entire existing roofing system or roof section is replaced to conform to the requirements of this code.

Exception: If an existing roofing system or roof section was built, repaired, or replaced in compliance with the requirements of the 2007 Florida Building Code, or any subsequent editions of the Florida Building Code, and 25 percent or more of such roofing system or roof section is being repaired, replaced, or recovered, only the repaired, replaced, or recovered portion is required to be constructed in accordance with the Florida Building Code in effect, as applicable. Pursuant to s. 553.844(5), Florida Statutes, a local government may not adopt by ordinance an administrative or technical amendment to this exception.



STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Community Sustainability

TITLE:

Ordinance No. 2022-26 - Amending Subsection (g) "Maintenance Requirements" of Section 2-75.11 "Foreclosed, Vacant and Unimproved Property Registration Program" of Article VII "Abatement of Nuisances" of Chapter 2 "Administration"

SUMMARY:

Ordinance serves as a clean up item to remove the allowance for artificial turf on vacant, unimproved lots so that there is consistency with the City's Landscape Regulations of Chapter 23 - Land Development Regulations

BACKGROUND AND JUSTIFICATION:

With the City's adoption of updated Landscape Regulations in August 2013 and additional amendments over the past several years, a conflict between these regulations and those governing foreclosed, vacant and unimproved properties became apparent. In Chapter 2 "Administration", artificial turf is listed as an acceptable material for use on vacant lots. Subsequently, the adoption of the landscape regulations, which prohibits the use of artificial turf, resulted in a conflict that is now being corrected. Since the landscape regulations were adopted after the vacant lot maintenance requirements, the prohibition of artificial turf takes precedence. The removal of "artificial turf" will bring consistency and clarity to the Code of Ordinances.

MOTION:

Move to approve/disapprove Ordinance No. 2022-26 on first reading and to schedule the second reading and public hearing on January 3, 2023.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2022-26

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ORDINANCE 2022-26 – AN ORDINANCE OF THE CITY OF LAKE WORTH BEACH, FLORIDA, AMENDING SUBSECTION (g) “MAINTENANCE REQUIREMENTS” OF SECTION 2-75.11 “FORECLOSED, VACANT AND UNIMPROVED PROPERTY REGISTRATION PROGRAM” OF ARTICLE VII “ABATEMENT OF NUISANCES” OF CHAPTER 2 “ADMINISTRATION,” PROVIDING FOR CONSISTENCY OF REGULATIONS REGARDING USE OF ARTIFICIAL TURF; AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION AND AN EFFECTIVE DATE

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

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

WHEREAS, the City wishes to amend Subsection 2-75.11(g) “Maintenance Requirements” related to properties that are registered under the City’s foreclosed, vacant and unimproved property registration program to provide yard maintenance standards that are consistent with the City’s landscaping requirements in Section 23.6-1(k) “Landscape design standards”, which does not include the use of artificial turf; and

WHEREAS, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted municipality having such power and authority conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

WHEREAS, the City Commission finds and declares that the adoption of this ordinance is appropriate, and in the best interest of the health, safety and welfare of the City, its residents and visitors.

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

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

Section 2: Subsection (g) “Maintenance requirements” of Section 2-75.11 “Foreclosed, vacant and unimproved property registration program” of Article VII “Abatement of Nuisances” of Chapter 2 “Administration,” is hereby amended to read as follows:

(g) *Maintenance requirements.*

- 51 (1) Properties subject to this section shall be kept free of weeds, overgrown brush,
52 dead vegetation, trash, junk, debris, building materials, any accumulation of
53 newspapers, circulars, flyers, notices, except those required by federal, state, or
54 local law, discarded personal items including, but not limited to, furniture, clothing,
55 large and small appliances, or any other items that give the appearance that the
56 property is abandoned or not being properly maintained. Grass over twelve (12)
57 inches tall is prohibited.
- 58
- 59 (2) The property shall be maintained free of graffiti or similar markings by removal or
60 painting over such graffiti or markings with an exterior grade paint that matches
61 the color of the exterior structure.
- 62
- 63 (3) Yards shall be landscaped and maintained pursuant to the standards set forth in
64 the ordinances of the city. Landscaping shall include, but shall not be limited to,
65 grass, ground cover, bushes, shrubs, hedges or similar plantings, decorative rock
66 or bark, ~~artificial turf~~ or sod designed specifically for residential, commercial or
67 industrial installation, as applicable. Landscaping shall not include weeds, gravel,
68 broken concrete, asphalt or similar material. Maintenance shall include, but shall
69 not be limited to, watering, irrigation, cutting and mowing of required landscape
70 and removal of all trimmings and weeds.
- 71
- 72 (4) Pools and spas shall be kept in a safe and sanitary order so that pool and spa
73 water remains free and clear of pollutants and debris. Pools and spas shall comply
74 with the enclosure requirements of the city's ordinances and the Florida Building
75 Code.
- 76
- 77 (5) In the event that the National Weather Service, National Hurricane Center, or other
78 appropriate weather agency declares a hurricane warning for any portion of the
79 city, all materials, furnishings, and equipment at the property shall be secured,
80 stored, or removed so as to not create a safety hazard due to hurricane force
81 winds.
- 82
- 83 (6) Failure of the mortgagee and/or property owner of record to properly maintain the
84 property is a violation of the Code of Ordinances of the city. Pursuant to a finding
85 and determination by a special magistrate, the city may take the necessary action
86 to ensure compliance with its ordinances and place a lien or liens and a special
87 assessment on the property.

88

89 **Section 3: Severability.** If any section, subsection, sentence, clause, phrase or
90 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
91 competent jurisdiction, such portion shall be deemed a separate, distinct, and
92 independent provision, and such holding shall not affect the validity of the remaining
93 portions thereof.

94

95 **Section 4: Repeal of Laws in Conflict.** All ordinances or parts of ordinances in
96 conflict herewith are hereby repealed to the extent of such conflict.

97

Section 5: Codification. The sections of the ordinance may be made a part of the City Code of Laws and ordinances and may be re-numbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section", "division", or any other appropriate word.

Section 6: Effective Date. This ordinance shall become effective 10 days after passage.

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

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2022.

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

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: City Attorney

TITLE:

Resolution No. 88-2022 – Acknowledging City Commission’s Continued Commitment to Enforcement of Laws to Protect Public Safety while Respecting First Amendment Rights

SUMMARY:

A resolution acknowledging the City Commission’s continued commitment to enforce laws to protect public safety in light of the repeal of the City’s panhandling and solicitation ordinances due to recent Florida caselaw.

BACKGROUND AND JUSTIFICATION:

The current state of the law in Florida prohibits local governments from prohibiting the exercise of First Amendment rights that are associated with panhandling/solicitation; however, the City is committed to continuing the enforcement of laws that address threats to public safety. There are several state statutes that protect the safety of residents and visitors including, but not limited to, assault, battery, loitering, and impeding traffic. The City Commission and the Palm Beach County Sheriff’s Office remain steadfast in the continued enforcement of these laws and other applicable laws to ensure public safety and in their commitment to respect individuals who are lawfully exercising their First Amendment rights.

MOTION:

Move to approve/disapprove Resolution No. 88-2022 acknowledging the City Commission’s Continued Commitment to Enforcement of Laws to Protect Public Safety while Respecting First Amendment Rights.

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Resolution 88-2022

1
2
3 **RESOLUTION NO. 88-2022 OF THE CITY OF LAKE WORTH BEACH,**
4 **FLORIDA, ACKNOWLEDGING CITY COMMISSION'S CONTINUED**
5 **COMMITMENT TO ENFORCEMENT OF LAWS TO PROTECT PUBLIC**
6 **SAFETY WHILE RESPECTING FIRST AMENDMENT RIGHTS;**
7 **PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE**
8 **DATE**

9
10 **WHEREAS**, the City Commission is committed to its responsibility to its residents
11 and visitors to ensure public safety within the City; and

12
13 **WHEREAS**, the City Commission is also committed to upholding its residents and
14 visitors' First Amendment rights to free speech and complying with the caselaw governing
15 these rights; and

16
17 **WHEREAS**, the current state of the law in Florida prohibits local governments from
18 prohibiting the exercise of First Amendment rights that are associated with panhandling;
19 however, law enforcement may continue to enforce laws that address threats to public
20 safety; and

21
22 **WHEREAS**, there are several state statutes that protect residents and visitors and
23 these statutes have been and will continue to be enforced; and

24
25 **WHEREAS**, Section 784.011, Florida Statutes, prohibits the offense of an assault
26 which is "an intentional, unlawful threat by word or act to do violence to the person of
27 another, coupled with an apparent ability to do so, and doing some act which creates a
28 well-founded fear in such other person that such violence is imminent"; and

29
30 **WHEREAS**, Section 784.03, Florida Statutes, prohibits the offense of a battery
31 which "occurs when a person actually and intentionally touches or strikes another person
32 against the will of the other; or intentionally causes bodily harm to another person"; and

33
34 **WHEREAS**, Section 316.2045, Florida Statutes, prohibits a person, in certain
35 instances, from willfully "obstruct[ing] the free, convenient, and normal use of a public
36 street, highway, or road..."; and

37
38 **WHEREAS**, Section 856.021, Florida Statutes, provides that it is "unlawful for any
39 person to loiter or prowl in a place, at a time or in a manner not usual for law-abiding
40 individuals, under circumstances that warrant a justifiable and reasonable alarm or
41 immediate concern for the safety of person or property in the vicinity"; and

42
43 **WHEREAS**, the Palm Beach County Sheriff's Office remains steadfast in its
44 continued enforcement of the laws highlighted above and other applicable laws to ensure

45 the safety of residents and visitors of the City and to continue to respect individuals
46 lawfully exercising their First Amendment rights; and
47

48 **WHEREAS**, the City Commission finds that this resolution serves a public purpose
49 and is in the best interests of the City.
50

51 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF LAKE**
52 **WORTH BEACH, FLORIDA, that:**
53

54 **SECTION 1:** The foregoing recitals are incorporated into this Resolution as true
55 and correct findings of the City.
56

57 **SECTION 2:** The City Commission and the Palm Beach County Sheriff's Office
58 remain steadfast in their continued enforcement of the laws highlighted above and other
59 applicable laws to ensure the safety of residents and visitors of the City while respecting
60 the lawful exercise of First Amendment rights; and
61

62 **SECTION 3:** All resolutions or parts of resolutions in conflict with the provision of
63 this resolution are hereby repealed.
64

65 **SECTION 4:** In the event that any word, phrase, clause, sentence, or paragraph
66 hereof shall be held invalid by any court of competent jurisdiction, such holding shall not
67 affect any other word, clause, phrase, sentence, or paragraph hereof.
68

69 **SECTION 5:** This resolution shall become effective upon adoption.

70 The passage of this resolution was moved by Commissioner _____,
71 seconded by Commissioner _____, and upon being put to a vote, the vote
72 was as follows:

- 73 Mayor Betty Resch
- 74 Vice Mayor Christopher McVoy
- 75 Commissioner Sarah Malega
- 76 Commissioner Kimberly Stokes
- 77 Commissioner Reinaldo Diaz
- 78

79 The Mayor thereupon declared this resolution duly passed and adopted on the
80 _____ day of _____, 2022.

81 LAKE WORTH BEACH CITY COMMISSION

82
83
84 By: _____
85 Betty Resch, Mayor

86 ATTEST:

87
88 _____
89 Melissa Ann Coyne, CMC, City Clerk

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Community Sustainability

TITLE:

Ordinance No. 2022-27 – First Reading - Amending Chapter 14 "Business Tax Receipts and Business Regulations", Section 14-5 "Application for Local Business Tax Receipt of the City's Code of Ordinances to Provide for a Local Contact for All Rental Properties and to Repeal Article III " Adult Moving Picture Show or Theater, Indoor or Drive-In" and Repeal Article VI "Vehicles for Hire"

SUMMARY:

The Ordinance provides for a required local property manager contact for all rental properties within the City of Lake Worth Beach and repeals two outdated articles of Chapter 14 that are governed by County ordinance and regulations.

BACKGROUND AND JUSTIFICATION:

Due to numerous tenant inquiries and unresolved code compliance issues at both commercial and residential rental properties, the City Commission directed staff to bring forward an amendment to the City's Code of Ordinances to provide for a required local property manager contact at all rental properties. The proposed ordinance requires a 24-hour, seven (7) day a week, local contact for these properties. The contact information that must be provided is the name of the contact as well as mailing address, email address and phone number. City Staff already has requested this information to be provided on a voluntary basis as part of the Fiscal Year 2023 Business License Renewal. Should the ordinance be adopted, City Staff will include the requirement as part of all new business license applications moving forward as well as part of the formal Fiscal Year 2024 Business License Renewal.

In addition, two outdated, antiquated sections of Chapter 14 to repeal regulations governing adult moving picture shows or theaters and to repeal regulations governing vehicles for hire. Both activities are governed more stringently under County provisions that cover the City of Lake Worth Beach.

MOTION:

Move to approve/disapprove Ordinance No. 2022-27 on first reading and schedule the second reading and public hearing for January 3, 2023

ATTACHMENT(S):

Fiscal Impact Analysis – N/A
Ordinance 2022-27

1
2
3 **ORDINANCE 2022-27 - AN ORDINANCE OF THE CITY OF LAKE**
4 **WORTH BEACH, FLORIDA, AMENDING SECTION 14-5 “APPLICATION**
5 **FOR LOCAL BUSINESS TAX RECEIPT” OF ARTICLE I “LOCAL**
6 **BUSINESS TAX RECEIPT (BTR)” AND REPEALING ARTICLE III**
7 **“ADULT MOVING PICTURE SHOW OR THEATER, INDOOR OR DRIVE-**
8 **IN” AND ARTICLE VI “VEHICLES FOR HIRE” ALL OF CHAPTER 14**
9 **“BUSINESS TAX RECEIPTS AND BUSINESS REGULATIONS,”**
10 **PROVIDING FOR DESIGNATION OF A LOCAL PROPERTY MANAGER**
11 **ON APPLICATIONS FOR RENTAL OF PROPERTY AND REPEAL OF**
12 **REGULATIONS THAT ARE REGULATED BY PALM BEACH COUNTY;**
13 **AND PROVIDING FOR SEVERABILITY, CONFLICTS, CODIFICATION**
14 **AND AN EFFECTIVE DATE**

15
16 **WHEREAS**, as provided in Section 2(b), Article VIII of the Constitution of the State
17 of Florida, and Section 166.021(1), Florida Statutes, the City of Lake Worth Beach (the
18 “City”), enjoys all governmental, corporate, and proprietary powers necessary to conduct
19 municipal government, perform municipal functions, and render municipal services, and
20 may exercise any power for municipal purposes, except as expressly prohibited by law;
21 and

22
23 **WHEREAS**, as provided in Section 166.021(3), Florida Statutes, the governing
24 body of each municipality in the state has the power to enact legislation concerning any
25 subject matter upon which the state legislature may act, except when expressly prohibited
26 by law; and

27
28 **WHEREAS**, the City wishes to amend Section 14-5 “Application for Local Business
29 Tax Receipt” of Article I “Local Business Tax Receipt (BTR)” of Chapter 14 “Business Tax
30 Receipts and Business Regulations,” to require a property manager who is located in
31 Palm Beach County to be designated on all applications for a local business tax receipt
32 for rental of property; and

33
34 **WHEREAS**, the City wishes to repeal Article III “Adult Moving Picture Show or
35 Theater, Indoor or Drive-in” of Chapter 14 “Business Tax Receipts and Business
36 Regulations,” allowing for such businesses to be regulated Palm Beach County’s Adult
37 Entertainment Code, which was subsequently adopted and is effective in municipalities
38 within Palm Beach County unless the municipality opts out or is effective to the extent of
39 conflict with municipal ordinances; and

40
41 **WHEREAS**, the City wishes to repeal Article VI “Vehicles for Hire” of Chapter 14
42 “Business Tax Receipts and Business Regulations,” allowing for such businesses to be
43 regulated by the Palm Beach County Vehicle for Hire Ordinance, which was subsequently
44 adopted and is effective in the incorporated areas of Palm Beach County unless a
45 municipal exemption applies; and

46
47 **WHEREAS**, the City of Lake Worth Beach, Florida (the “City”), is a duly constituted
48 municipality having such power and authority conferred upon it by the Florida Constitution
49 and Chapter 166, Florida Statutes; and

51 **WHEREAS**, the City Commission finds and declares that the adoption of this
52 ordinance is appropriate, and in the best interest of the health, safety and welfare of the
53 City, its residents and visitors.

54
55 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE**
56 **CITY OF LAKE WORTH BEACH, FLORIDA, that:**

57
58 **Section 1:** The foregoing “WHEREAS” clauses are ratified and confirmed as
59 being true and correct and are made a specific part of this ordinance as if set forth herein.

60
61 **Section 2:** Section 14-5 “Application for Local Business Tax Receipt” of Article
62 I “Local Business Tax Receipt (BTR)” of Chapter 14 “Business Tax Receipts and
63 Business Regulations,” is hereby amended to read as follows:

64
65 **Sec. 14-5. – Application for local business tax receipt.**

66
67 An application for a local business tax receipt shall be filed on a standard application form
68 supplied by the city and such application shall not be processed until the application form
69 is completed and the corresponding tax, as set forth herein is paid. All applicants applying
70 for a local business tax receipt must submit a valid Florida driver’s license, registration or
71 other valid form of identification at the time of application. Applications for a local business
72 tax receipt for rental of property shall include the name, address, e-mail address, and 24-
73 hour contact telephone number of a property manager who is located in Palm Beach
74 County and will be responsible for the management of the property.

75
76 **Section 3:** Article III “Adult Moving Picture Show or Theater, Indoor or Drive-in”
77 of Chapter 14 “Business Tax Receipts and Business Regulations,” is hereby repealed in
78 its entirety.

79
80 **Section 4:** Article VI “Vehicles for Hire” of Chapter 14 “Business Tax Receipts
81 and Business Regulations,” is hereby repealed in its entirety.

82
83 **Section 5:** Severability. If any section, subsection, sentence, clause, phrase or
84 portion of this Ordinance is for any reason held invalid or unconstitutional by any court of
85 competent jurisdiction, such portion shall be deemed a separate, distinct, and
86 independent provision, and such holding shall not affect the validity of the remaining
87 portions thereof.

88
89 **Section 6:** Repeal of Laws in Conflict. All ordinances or parts of ordinances in
90 conflict herewith are hereby repealed to the extent of such conflict.

91
92 **Section 7:** Codification. The sections of the ordinance may be made a part of
93 the City Code of Laws and ordinances and may be re-numbered or re-lettered to
94 accomplish such, and the word “ordinance” may be changed to “section”, “division”, or
95 any other appropriate word.

96
97 **Section 8:** Effective Date. This ordinance shall become effective 10 days after
98 passage.

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

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on first reading on the _____ day of _____, 2022.

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

- Mayor Betty Resch
- Vice Mayor Christopher McVoy
- Commissioner Sarah Malega
- Commissioner Kimberly Stokes
- Commissioner Reinaldo Diaz

The Mayor thereupon declared this ordinance duly passed on the _____ day of _____, 2023.

LAKE WORTH BEACH CITY COMMISSION

By: _____
Betty Resch, Mayor

ATTEST:

Melissa Ann Coyne, City Clerk

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Electric Utility

TITLE:

Professional Services Agreement with NexAir LLC

SUMMARY:

Agreement with NexAir LLC for the purchase of various compressed gasses for the power plant with a total cost not to exceed Twenty-Five Thousand Dollars (\$25,000) per fiscal year.

BACKGROUND AND JUSTIFICATION:

Compressed gasses are vital to the operation and maintenance of the power plant. The power plant utilizes several gasses on a daily basis for testing; maintenance repairs as well as calibration and verification of air monitoring equipment. The agreement is for one (1) year with four (4) additional one (1) year renewal periods with a total cost not to exceed Twenty-Five Thousand Dollars (\$25,000) per fiscal year.

MOTION:

Move to approve/disapprove Professional Services Agreement with NexAir LLC with a total cost not to exceed Twenty-Five Thousand Dollars (\$25,000) per fiscal year.

ATTACHMENT(S):

Fiscal Impact Analysis
Service Agreement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	25,000	25,000	25,000	25,000	25,000
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000
Capital	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

Contract Award - Existing Appropriation	
	Expenditure
Department	Electric
Division	Power Plant
GL Description	Operating Supplies / Other
GL Account Number	401-6031-531.52-90
Project Number	
Requested Funds	\$25,000

**AGREEMENT FOR PURCHASE OF GOODS AND SERVICES
(Chemicals and Equipment for the Municipal Electric Plant)**

THIS AGREEMENT FOR PURCHASE OF GOODS AND SERVICES ("Agreement") is made this 17 day of Nov, 2022, between the **CITY OF LAKE WORTH BEACH**, Florida, a municipal corporation ("CITY") with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **NexAir LLC**, a Tennessee limited liability company authorized to do business in the State of Florida ("CONTRACTOR").

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, CONTRACTOR submitted a price proposal to provide necessary chemicals and equipment for the municipal electric plant; and

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal for CONTRACTOR to render the goods and services to the CITY as provided herein; and

WHEREAS, the CONTRACTOR is a sole-source provider of the necessary chemicals and equipment and the CITY is authorized under its Procurement Code and Policy to directly contract with the CONTRACTOR; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds entering into this Agreement for the goods and services described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term of this Agreement shall be for one (1) year, with the option to renew for four (4) additional one (1) year renewal periods upon the mutual written agreement of both parties and dependent on the annual appropriation of funds by the CITY's City Commission. The renewal term may be approved by the City Manager. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

2. SCOPE OF WORK

2.1 During the term of this Agreement, CITY shall purchase from CONTRACTOR and CONTRACTOR shall sell to CITY the chemical products and equipment set forth in the CONTRACTOR's price proposal, which is attached hereto as **Exhibit "A"**.

2.2 The CONTRACTOR represents to the CITY that the goods and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the materials shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the goods and services provided for herein in a professional and competent manner.

2.4 The goods and services to be provided under this Agreement shall be provided by the CONTRACTOR or under its supervision and all personnel engaged in performing said services shall be fully qualified and, if required, authorized or permitted under the state and local law to perform such services. All of the CONTRACTOR's personnel (and all subcontractors), while on CITY premises, shall comply with all CITY requirements governing safety, conduct and security.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any services performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the services.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the services hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

4. MATERIALS

4.1 The CONTRACTOR shall provide all materials as more specifically set forth in this Agreement or its exhibit.

5. FEE AND ORDERING MECHANISM

5.1 For goods and services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a fee for actual goods and services provided and accepted by the CITY, at the price as set forth in **Exhibit "A"**.

5.2 Should the CITY require additional materials or services, not included in this Agreement, fees and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code prior to any such additional materials or services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the goods and services (including each order of chemicals) under this Agreement will be by a City issued Purchase Order(s); however, the terms and conditions stated in a City Purchase Order(s) shall not apply. CONTRACTOR shall not provide goods or services under this Agreement without a City Purchase Order specifically for the stated goods or services. CONTRACTOR shall provide the amount of requested goods/services and price listed in each Purchase Order and not exceed amounts expressed on any Purchase Order. CONTRACTOR shall be liable for any excess goods or costs not specifically stated in the Purchase Order(s). The City's Fiscal Year ends on September 30th of each calendar year. The City cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the City Commission. Additionally, the City must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the City will issue a new Purchase Order(s) each Fiscal Year for required and approved goods.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total not to exceed cost to complete the requested goods and services under this Agreement is **Twenty Five Thousand Dollars (\$25,000.00) per fiscal year**, and no additional costs shall be authorized without prior written approval from the CITY.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for work.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the goods or services approved by a CITY purchase order or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely perform the requested goods and services or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the CITY Manager may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within 30 days or commence good faith steps to remedy the default to the reasonable satisfaction of the CITY Manager, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after ten (10) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the Project Manager, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

13. INSURANCE

13.1. Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation,

required hereunder shall specifically include the "CITY of Lake Worth" as an "Additional Insured", and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein and the CONTRACTOR's price proposal (**Exhibit "A"**). To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail with the **Exhibit "A"** next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

17. ASSIGNMENT

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

18. SUCCESSORS AND ASSIGNS

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

19. WAIVER OF TRIAL BY JURY

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

20.2 No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

21. TIME IS OF THE ESSENCE

21.1 Time is of the essence in the completion of the Scope of Work as specified herein.

22. NOTICES

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City of Lake Worth Beach
Attn: City Manager
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR address as follows:

NEXAIR, LLC
1350 Concourse Avenue, Ste 103
Memphis, Tennessee 38104
Attn: General Counsel

23. SEVERABILITY

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

24. DELAYS AND FORCES OF NATURE

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

24.2 Neither party shall be considered in default in the performance of its obligations hereunder or any of them, if such obligations were prevented or delayed by any cause, existing or future beyond the reasonable control of such party which include but are not limited to acts of God, labor disputes or civil unrest.

25. COUNTERPARTS

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

26. LIMITATIONS OF LIABILITY

26.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

27. PUBLIC ENTITY CRIMES

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid,

proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

28. PREPARATION

28.1 This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

29. PALM BEACH COUNTY INSPECTOR GENERAL

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

30. ENFORCEMENT COSTS

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

31. PUBLIC RECORDS

CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records

required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESGNEE AT THE CITY OF LAKE WORTH BEACH, ATTN: CITY CLERK, AT (561) 586-1660 [CITY CLERK@LAKEWORTHBEACHFL.GOV](mailto:CITYCLERK@LAKEWORTHBEACHFL.GOV), 7 NORTH DIXIE HIGHWAY, LAKE WORTH, FLORIDA 33460.

32. COPYRIGHTS AND/OR PATENT RIGHTS

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the CITY harmless from any and all liability, loss, or expense occasioned by any such violation.

33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this bid meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

34. FEDERAL AND STATE TAX

34.1 The CITY of Lake Worth Beach is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer. Vendors or contractors doing business with the CITY of Lake Worth Beach shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

35. PROTECTION OF PROPERTY

35.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

36. DAMAGE TO PERSONS OR PROPERTY

36.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

37. SAFETY: ACCIDENT PREVENTION.

37.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

37.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

37.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

38. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

38.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

39. SCRUTINIZED COMPANIES

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

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

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

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

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

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

40. E-VERIFY. Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

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

- b. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;
- c. Maintain copies of all subcontractor affidavits for the duration of this Agreement and provide the same to the CITY upon request;
- d. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- e. Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and,
- f. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, CONTRACTOR may not be awarded a contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

41. SURVIVABILITY

41.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Goods and Services (Chemicals and Equipment for the Municipal Electric Plant) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: NexAir, LLC

By: B. S. Y. _____

[Corporate Seal]

Print Name: Brian S. Yarmowich

Title: EVP, Business Development

STATE OF Tennessee)
COUNTY OF Shelby)

THE FOREGOING instrument was acknowledged before me by means of physical presence or online notarization on this 17th day of November 2022, by Brian Yarmowich, as the EVP, Business Development [title] of NexAir, LLC A Tennessee limited liability company, who is personally known to me or who has produced n/a as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

[Handwritten Signature]

Notary Public Signature

Notary Seal:



Exhibit "A"

Contractor's Price Proposal



Quote
 For Inquires Contact:
 Phone: (888) 639-2474
 callc@nexair.com

10/26/2022
Quote # : 8983950
 Page: 1

Customer #: P5743
 Address: Lake Worth, City Of
 Power Plant
 117 S College Street
 Lake Worth FL 33460-0000
 PO #: QUOTE

Attention:
 Terms: NET 30 DAYS
 Ship Method: OUR TRUCK
 Delivery: 10/11/2022

nexAir is pleased to quote the following:

Item Number	Qty	UOM	Description	Unit Price	Extended
HP HY-2	1.00	CYL	HYDROGEN	34.500	\$34.50
HP NI-3	1.00	CYL	NITROGEN CGA 580	36.060	\$36.06
HP AR-1	1.00	CYL	ARGON	66.730	\$66.73
LP AC-1	1.00	CYL	ACETYLENE SMALL PER CYLINDER CAP STYLE	64.490	\$64.49
LP AC-1WS	1.00	CYL	ACETYLENE WS SMALL (LINDE STYLE) FLAT TOP STYLE (PER CYLINDER)	91.160	\$91.16
HP AR-3	1.00	CYL	ARGON #3	77.310	\$77.31
HP OX-2	1.00	CYL	OXYGEN	19.590	\$19.59
LP AC-3WTL	1.00	CYL	ACETYLENE PER CYLINDER FLAT TOP STYLE	184.480	\$184.48
NEX DELIVERY	1.00	EA	DELIVERY FEE	49.000	\$49.00
NEX HAZMAT	1.00	EA	ENVIRONMENTAL COMPLIANCE	7.500	\$7.50
NEX SURCHARGE	1.00	EA	FUEL SURCHARGE	21.310	\$21.31
CYL RENT	1.00	EA	CYLINDER RENT	0.360	\$0.36
HP RENTAL PER DAY PER CYLINDER					
CYL RENT	1.00	EA	CYLINDER RENT	0.390	\$0.39
LP RENTAL PER DAY PER CYLINDER					
CYL RENT	1.00	EA	CYLINDER RENT	0.350	\$0.35
SG RENTAL PER DAY PER CYLINDER					
NEX HY2CHARGE	1.00	EA	HYDROGEN CONTINGENCY 8.65 PER CYLINDER	8.650	\$8.65
				Subtotal	661.88
				Grand Total	\$661.88

STAFF REPORT REGULAR MEETING

AGENDA DATE: December 6, 2022

DEPARTMENT: Community Sustainability

TITLE:

Amendment One to the Bohemian Economic Incentive Agreement

SUMMARY:

The purpose of the amendment to the approved Economic Incentive Agreement for The Bohemian Apartment to allow for the incentive payment to be paid after the first three years of active operations.

BACKGROUND AND JUSTIFICATION:

In 2020, the City entered into an Economic Development Incentive Agreement with The Bohemian to provide financial incentives for The Bohemian's 200-unit apartment community at 1017 Lake Avenue. Under the Agreement, the City agreed to pay \$89,066.48 to The Bohemian as an economic incentive based on the first three years of new revenue to the electric, water, sewer and stormwater enterprise funds generated by the project. The original agreement stipulated that the incentive would be dispersed at the time of a receipt of a final Certificate of Occupancy (CoA) predicated that a performance bond or other financial vehicle were posted to ensure that the new utility revenue projections were would be achieved. The developer has requested that the payment be made after the first three years of active operation are completed and the new utility revenue streams have been verified. The amendment to the original agreement would allow for this payment at the end of the initial three years of operation.

MOTION:

Move to approve/disapprove Amendment One for the Bohemian's Economic Incentive Agreement and to authorize the Mayor to sign the same.

ATTACHMENT(S):

Fiscal Impact Analysis
Amendment One
Original Economic Incentive Agreement

FISCAL IMPACT ANALYSIS

Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Inflows					
Current Appropriation	0	0	0	0	0
Program Income	0	0	0	0	0
Grants	0	0	0	0	0
In Kind	0	0	0	0	0
Outflows					
Operating	0	0	\$89,066.48	0	0
Capital	0	0	0	0	0
Net Fiscal Impact	0	0	\$89,066.48	0	0
No. of Addn'l Full-Time Employee Positions					
	0	0	0	0	0

New Appropriation Fiscal Impact:		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Budget Transfer Impact		
	Revenue Source	Expenditure
Department		
Division		
GL Description		
GL Account Number		
Project Number		
Requested Funds		

Contract Award - Existing Appropriation	
	Expenditure
Department	
Division	
GL Description	
GL Account Number	
Project Number	
Requested Funds	

**AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS AMENDMENT TO ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "**Amendment**") is made effective as of _____, 2022 (the "**Effective Date**") by CITY OF LAKE WORTH BEACH, FLORIDA, a Florida municipal corporation ("**City**") and 1017 LAKE AVE, LLC, a Florida limited liability company (the "**Owner**").

RECITALS:

A. City and Owner entered into that certain Economic Development Incentive Agreement dated effective as of June 9, 2020 (the "**Agreement**").

B. City and Owner desire to amend the Agreement to revise the payment of the Utility Incentive Fund as set forth herein.

C. City has determined that amending the Agreement as set forth herein serves a valid public purpose.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals; Defined Terms. The foregoing recitals are true and correct and are incorporated herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

2. Definitions.

a. Performance Bond. The defined term "Performance Bond" is hereby deleted in its entirety and of no further force and effect.

3. Utility Incentive Fund.

a. Section 6(b)(2) of the Agreement is hereby deleted in its entirety and replaced with the following:

(2) Payment of the Utility Incentive Fund. Based upon the Project Parameters in this Agreement, including without limitation the proposed size, number of units, square footage and amenities of the Project, and the City's current utility rate schedules, the City has calculated a reasonable rate of return that it should receive as a result of the estimated increase in utility revenues (the "**Utility Incentive Fund**"). The total Utility Incentive Fund amount to be paid by the City to the Owner is **Eighty Nine Thousand, Sixty-Six and 48/100 Dollars (\$89,066.48)** and is further broken down by utility as follows:

i. Electric Utility: A total amount of up to **Sixty-Nine Thousand Five Hundred Fifty and 25/100 Dollars (\$69,550.25)**.

ii. Water & Sewer Utilities: A total amount of up to **Fifteen Thousand One Hundred Seventy Four and 60/100 Dollars (\$15,174.60)**.

iii. Stormwater Utility: A total amount of up to **Four Thousand Three Hundred**

Forty-One and 63/100 Dollars (\$4,341.63).

The actual payment of the Utility Incentive Fund shall be a one-time payment made by the City based upon the As-Built Project Parameters, the July 29, 2022 utility rate schedules, and the calculations for the Utility Incentive Amount which are attached hereto as **Exhibit “D”** and incorporated herein. Within 90-days of the three (3) year anniversary of when the Project is deemed Placed-In-Service, the Owner shall request the disbursement of the Utility Incentive Fund and identify in its request to whom and where payment shall be made by the City. For purposes of this Amendment, the Project was “Placed-In-Service” on July 29, 2022.

- b. Section 6(b)(3) of the Agreement is hereby deleted in its entirety and replaced with the following:

Payment of the Utility Incentive Fund. Within sixty (60) days of the Owner’s request for the disbursement of the Utility Incentive Fund, the City shall calculate the Utility Incentive Fund and pay the calculated amount to the Owner in accordance with the Owner’s request. Notwithstanding anything in the Agreement to the contrary, the Owner, 1017 Lake Ave, LLC, shall have the exclusive right to (i) request payment of the Utility Incentive Fund and (ii) receive payment of the Utility Incentive Fund, irrespective of whether the Owner is the owner of the Project at the time the Owner submits the request for payment of the Utility Incentive Fund or when the Utility Incentive Fund is due and payable to the Owner.

4. Effect of this Amendment and the Effective Date. Except as expressly modified in this Amendment, the Agreement will continue in full force and effect according to its terms (as previously amended). This Amendment shall not become effective until approved by the City Commission.

5. Counterparts; Electronic Signatures. This Amendment may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Electronic signatures on this Amendment shall be valid and enforceable to the same extent as original signatures.

[INTENTIONALLY LEFT BLANK]

[CITY SIGNATURE PAGE TO AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT]

IN WITNESS WHEREOF, the parties have signed and delivered this Amendment to the Economic Development Incentive Agreement on the date first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

ATTEST:

By: _____
Betty Resch, Mayor

By: _____
Melissa Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL
SUFFICIENCY

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

[OWNER SIGNATURE PAGE TO AMENDMENT TO
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT]

OWNER:

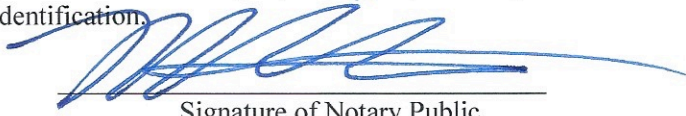
1017 LAKE AVE, LLC, a Florida limited liability company

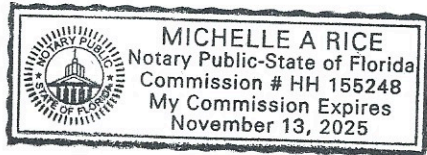
By: 
Jeffrey Burns, Authorized Signatory

STATE OF FLORIDA
COUNTY OF Broward

The foregoing instrument was acknowledged before me by means of physical presence on the 16 day of November, 2022 by Jeffrey Burns, as Authorized Signatory of 1017 LAKE AVE, LLC, a Florida limited liability company, on behalf of the company. He is personally known to me or [] produced a driver's license as identification.

(NOTARY SEAL)


Signature of Notary Public



Typed or Printed Name of Notary Michelle A. Rice
Commission No.: HH 155248
My Commission Expires: 11-13-2025

ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (“Agreement”) is made and entered into by and between the **City of Lake Worth Beach, Florida**, a Florida municipal corporation (“City”), **1017 Lake Ave, LLC**, a Florida limited liability company (“Owner”) effective as of the date the authorized representative for the City countersigns this Agreement (“Effective Date”).

RECITALS

WHEREAS, the Owner has a contract to purchase property generally located at 1017 Lake Avenue, located within the corporate limits of the City of Lake Worth Beach, as more particularly described by the legal description attached hereto as **Exhibit “A”** (“Property”); and

WHEREAS, the Owner intends to construct a multifamily rental development on the Property to be comprised of approximately 200 units within one building including lobby/amenity area, swimming pool, gym, a separate parking garage of approximately 320 spaces (with 120 dedicated public parking spaces) and an independent commercial building fronting Lake Avenue with the project description, conceptual site plan and renderings attached as **Exhibit “B”** (“Project”); and

WHEREAS, in order to develop the Property with the Project at the anticipated density, the Parties are pursuing an amendment to the City’s Comprehensive Plan, which should alleviate the need for the Owner to acquire additional property for the Project;; and

WHEREAS, the Owner is proposing to construct certain public improvements to serve the Project, and which may serve adjacent properties and the public, including street improvements and stormwater improvements (“Infrastructure Improvements”); and

WHEREAS, the City recognizes the positive impact that the Project will bring to the City through the timely development of new rental apartment housing in the Downtown on Lake Avenue which will provide much needed housing to existing residents, attract new residents and stimulate growth and development with the historic core of the City; and

WHEREAS, the City agrees to enter into this Agreement with Owner to advance the public purposes of developing the Project to provide new rental housing for existing residents, attract new residents to the City, stimulate growth and development within the historic core and cause an overall increase in the ad valorem and sales and use tax revenues and other revenues to the City; and

WHEREAS, in consideration of the aforementioned public purposes, the City desires to enter into this Agreement as an economic development incentive for the Owner to develop, finance and construct the Project; and

WHEREAS, to ensure that the incentives the City provides under this Agreement are utilized in a manner consistent with the aforementioned public purposes, Owner has agreed that its receipt of such incentives shall be conditioned upon its satisfaction of its obligations enumerated herein, including performance standards and timeframes relating to the construction of the Project; and

WHEREAS, the City has determined and hereby finds that this Agreement promotes economic development in the City and, as such, is in the best interests of the City of Lake Worth and serves a valid public purpose.

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the City and Owner agree as follows:

1. **RECITALS.** The foregoing Recitals are incorporated into this Agreement as true and correct statements and binding on the parties.

2. **DEFINITIONS.** The following words shall have the following meanings when used in this Agreement.

(a) **Agreement.** The word “Agreement” means this Economic Development Incentive Agreement, together with all exhibits attached hereto from time to time, if any.

(b) **As-Built Project Parameters.** The phrase “As-Built Project Parameters” shall mean the actual final, as-built Project Parameters at the time the Project is placed in-service.

(c) **City.** The word “City” means the City of Lake Worth Beach, Florida.

(d) **Commencement Date.** The phrase “Commencement Date” means the date by which construction of the Project shall commence, which is on or before 720 calendar days after the Effective Date of this Agreement (subject to both the Force Majeure clause set forth herein and the authority of the City Manager to extend such Date up to a maximum of 180 days).

(e) **Owner.** The word “Owner” means 1017 Lake Ave, LLC, its successors, grantees, and permitted transferees and assignees.

(f) **Infrastructure Improvements.** The phrase “Infrastructure Improvements” means those improvements identified in the Recitals and as further described in this Agreement and **Exhibit “C”**.

(g) **Infrastructure Improvement Fund.** The phrase “Infrastructure Improvement Fund” means that portion of the Project Fund to be paid by the City and used by the Owner for the design and construction costs of the Infrastructure Improvements, including any related City of Lake Worth Beach permit fees or development-related fees, with all payments being equal to **Three Hundred Thousand Dollars (\$300,000)**.

(h) **Outside Completion Date.** The phrase “Outside Completion Date” means the date by which the Project is to be fully completed and Placed-In-Service, which is on or before 720 calendar days after the Commencement Date (subject to both the Force Majeure clause set forth herein and the authority of the City Manager to extend such Date up to a maximum of 180 days).

(i) **Performance Bond.** The phrase “Performance Bond” shall mean a performance bond secured and paid for by or on behalf of Owner as a means of guaranteeing repayment to City of Utility Incentive Fund payment by the City if the Project does not produce anticipated Utility revenues as calculated in Exhibit “D”. The Performance Bond shall continue to exist until the City has conducted the true-up of the Utility Incentive Fund that the City paid against the actual utility revenue received and all amounts owed to the City based upon the true-up (if any) have been paid by the Owner.

(j) **Placed-In-Service.** The phrase “Placed-In-Service” shall mean the time when the City has received written notice and supporting documentation from the Owner that all tasks and obligations of the Owner under this Agreement have been fully satisfied. The supporting documentation shall include the final certificate of occupancy, certificates of completion and the executed bill of sale and utility and maintenance/access easements (as applicable). The City shall be afforded thirty (30) days to independently verify Owner’s compliance with the foregoing.

(k) **Project.** The word “Project” is as defined in the Recitals and as shown in **Exhibit “B”**.

(l) Project Fund. The phrase “Project Fund” means the aggregate amount of funding to be provided by the City as the Infrastructure Improvements Fund and Utility Incentive Fund, which is **Three Hundred Eighty-Nine Thousand, Sixty-Six and 48/100 Dollars (\$389,066.48)**, subject to changes in the Utility Incentive Fund amount as stated herein.

(m) Project Parameters. The phrase “Project Parameters” means the proposed parameters of the Project which the City utilized to calculate the Utility Incentive Fund identified in this Agreement which includes, but is not limited to, the total unit number and size of each unit of the Project, the total square footage for commercial space within the Project, and the total square footage for the clubhouse within the Project.

(n) Property. The word “Property” is as defined in the Recitals and described in **Exhibit “A”**.

(o) Utility Incentive Fund. The phrase “Utility Incentive Fund” means **Eighty-Nine Thousand, Sixty-Six and 48/100 Dollars (\$89,066.48)**, which is based upon the City’s calculation of what should be a reasonable rate of return to the City for the estimated increased utility revenues from the Project Parameters and the City’s current rate schedules. The City’s calculations for the Utility Incentive Fund are shown in **Exhibit “D”**. If the As-Built Project Parameters differ from the Project Parameters and/or the City’s current rate schedule(s) changes, the Utility Incentive Fund amount paid by the City to the Owner will be revised to be an estimate based upon the As-Built Project Parameters and the then current rate schedule(s).

3. GENERAL CONVENANTS.

(a) The parties hereto acknowledge and agree that this Agreement has been negotiated at arm’s length. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. In the event any claim is made relating to any conflict, omission or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be construed, interpreted or implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.

(b) Owner represents, warrants and covenants to the City that:

1. It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of Owner’s organizational documents, any applicable laws or regulations, or any agreements with third parties;

2. It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;

3. This Agreement is the legal, valid and binding obligation of Owner, in accordance with its terms, and all requirements have been met and procedures have been followed by Owner to ensure the enforceability of the Agreement;

4. The individual executing this Agreement on behalf of Owner has full rights and ability and all necessary approvals to bind Owner to this Agreement;

5. To Owner’s best knowledge, there is no pending or threatened suit, action, litigation or proceeding against or affecting Owner that affects the validity or enforceability of this Agreement;

6. It is duly authorized to do business in Palm Beach County and the City of Lake Worth Beach; and,

7. The Owner has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on the City in this regard.

(c) In the performance of all obligations under this Agreement, the Owner shall comply with all applicable federal, state and local laws, regulations and policies.

(d) The Owner may request that the City Manager revise this Agreement based upon written requirements from the Owner's first mortgage lender or in order to accommodate a tax preferred structure for the Owner. The City Manager will review the written requirements from the Owner's first mortgage lender and/or any request to accommodate a tax preferred structure, and, if agreeable in consultation with the City Attorney, revise this Agreement through a written amendment signed by the Owner and the City Manager. The City Manager's agreement to the written requirements from the Owner's first mortgage lender or to accommodate a tax preferred structure will not be unreasonably withheld; however, if in the City Manager's opinion, the written requirements from the Owner's first mortgage lender and/or the accommodation for a tax preferred structure involve an adverse change to the terms and conditions of this Agreement for the City, the City Manager reserves the right to bring the matter before the City Commission for its review.

(e) This Agreement is subject to review by the City's City Commission and shall not become effective until approved by the City Commission and executed by the Mayor and City Clerk.

(f) In connection with the construction financing for the Project, Owner's construction lender (as more particularly described below, along with its successors and assigns the "Lender") requires that this Agreement be collaterally assigned to it. Accordingly, Owner shall have the right to collaterally assign its rights and obligations under this Agreement (as amended herein and subsequently amended from time to time by written amendment executed by City and Owner or Lender) to Lender by Owner's execution of a "collateral assignment" document and other ancillary documents as required by Lender from time to time, pursuant to terms acceptable to Owner and otherwise reasonably customary for the Southeast Florida commercial loan industry (collectively, the "Collateral Assignment"). Owner and City agree as follows:

1. The Owner shall remain fully liable for all obligations under this Agreement following the Collateral Assignment (and the enforcement thereof by Lender, if applicable).
2. Should the Lender exercise its rights under the Collateral Assignment and there is no default hereunder (following all applicable notice and cure periods), then the rights, obligations and benefits of this Agreement shall run to the benefit of the Lender, and the City shall, in good faith, perform all of its obligations hereunder pursuant to the terms hereof and Lender shall, in good faith, perform all of the Owner's obligations hereunder pursuant to the terms hereof. Upon such exercise, the Lender shall be jointly and severally liable for all of Owner's responsibilities and obligations under the Agreement. Lender shall promptly provide written notice to City if and when Lender exercises its rights under the Collateral Assignment, such notice to include notice information in conformance with Section 24 below (to the extent Lender's notice information is different than set forth below).
3. Lender shall be notified at the address designated below (or such other address as may be designated in writing by Lender from time to time) of any default under this Agreement which would entitle the City to revoke or terminate this Agreement or the funding obligations of the City hereunder. The City agrees that, notwithstanding any provisions of this Agreement to the contrary, no such revocation or termination will be effective against Lender unless Lender is afforded the same notice as provided herein and right to

cure as Owner under Section 18 of this Agreement (including, without limitation, the time frames provided therein); provided, however, that that should Owner and Lender be afforded notice pursuant to the terms herein, then such notice and cure periods shall run concurrently.

4. The Infrastructure Improvement Fund, at Owner's (or Lender's, if Lender exercises its rights under the Collateral Assignment) direction, may be funded to a Lender controlled account pursuant to a separate agreement between Owner and Lender; provided that such funding shall otherwise be in conformance with, and subject to, all of the terms and conditions of this Agreement. Owner, or Lender if after exercising its rights under the Collateral Assignment, shall provide the City with no less than ten (10) business days' written notice of the request to provide the funds to the Lender controlled account.

4. **TITLE TO PROPERTY MUST BE ESTABLISHED.** The Owner represents and warrants that it currently has a contract to purchase the Property in fee simple. In order for the City to be obligated under this Agreement for payment of all or any portion of the Project Fund, the Owner must close on the purchase of the Property and become the fee simple owner. The Owner shall provide the City with evidence of fee simple ownership of the Property by tender of a title policy indicating the Owner as fee simple owner of the Property. Such evidence shall be provided to the City within five (5) days following the Owner's financial closing for the Project.

5. **DEVELOPMENT AGREEMENT.** If a development agreement (or similar agreement) is required by the City of Lake Worth Beach Code of Ordinances for the Project, this Agreement shall be incorporated by reference into the development agreement and made a part thereof.

6. **OBLIGATIONS OF THE PARTIES.**

(a) **Obligations of Owner.** In addition to the Owner's other obligations set forth in this Agreement, the Owner shall:

- (1) Demonstrate sufficient sources of funding to pay for Project costs, which may include, without limitation, construction financing from a Lender.
- (2) Close on the Lake Worth Beach Community Redevelopment Agency Funding for the Project.
- (3) Close on first mortgage financing for the Project.
- (4) Close on the Property purchase.
- (5) Provide the City with proof of all insurance required herein or as may be amended in writing by the City and Owner.
- (6) Upon submittal for Project site plan approval to the City of Lake Worth Beach (in its role as a governmental jurisdiction for site plan approval), Owner shall provide plans and specifications detailing the Infrastructure Improvements as described in **Exhibit "C"** (the "Design & Engineering Documents"). The Design & Engineering Documents must include all information typically required to obtain customary site plan approval and typically required in order to commence preparing the construction plans and drawings. The City shall be afforded at least twenty (20) days to review the Design & Engineering Documents from the date of Site Plan submittal. All deficiencies noted by the City in the Design & Engineering Documents shall be remedied to the City's satisfaction. If all deficiencies have been corrected, the City's Water, Sewer, Stormwater and Electric Utility

Directors shall sign off on the Design & Engineering Documents as approved.

(7) In addition to its application for the necessary building permits from the City of Lake Worth Beach (in its role as a governmental jurisdiction for construction of the Project) and all regulatory permits, the Owner shall provide the City with the 100% complete construction documents based upon the approved Design & Engineering Documents for the Infrastructure Improvements (the "Construction Documents"). If all Infrastructure Improvements are shown on the plans submitted for the building permits, a second set of plans is not required to be submitted to the City under this section. The Construction Documents must include all information typically required in order to construct the Infrastructure Improvements and obtain any necessary permits or regulatory approvals. The City shall be afforded at least twenty (20) days to review the Construction Documents from the date of submittal. All deficiencies noted by the City in the Construction Documents shall be remedied to the City's reasonable satisfaction. If all deficiencies have been corrected, the City's Water, Sewer, Stormwater and Electric Utility Directors shall sign off on the Construction Documents as approved.

(8) Subject to the Force Majeure clause set forth herein, Owner shall commence construction of the Project within 720 calendar days after the Effective Date of this Agreement ("Commencement Date") and have the Project Placed-In-Service on or before 720 days from the Commencement Date ("Outside Project Completion Date"). Independent of Force Majeure, the City Manager is authorized to extend the timeframes set forth herein by written amendment to this Agreement up to a maximum of 180 days. All further time extensions must be approved by the City Commission.

(9) As identified in **Exhibit "C"**, prior to or upon receiving the certificate(s) of completion for the Infrastructure Improvements, execute all documents reasonably necessary to transfer ownership of the Infrastructure Improvements to the City in order for the City to own and maintain as a part of the City's overall utility systems including, without limitation, a City approved bill of sale and utility and maintenance/access easements. Prior to transfer of ownership, it shall be Owner's sole responsibility to insure there are no liens or other encumbrances on or related to the Infrastructure Projects which would cloud the City's ownership of the same. The Owner shall continue to maintain the required insurance to cover the Infrastructure Improvements until the Project is Placed-In-Service and shall be fully responsible at its sole cost and expense for any damage to the Infrastructure Improvements by the Owner, its contractors, subcontractors, consultants and/or agents until the Project is Placed-In-Service.

(10) Pay all necessary capacity and connection charges for the Electric, Water and Sewer services and commence utility service to the Project.

(11) Perform, or cause to be performed, all of its obligations and duties under this Agreement with that degree of skill, care and diligence normally shown by (and generally accepted as being appropriate for) State of Florida recognized design, engineering, and construction professionals performing services and work of a scope, purpose and magnitude comparable with its required tasks and duties. Owner will furnish efficient administration, supervision, and superintendence of the Infrastructure Improvements and overall Project's construction and will use commercially reasonable efforts to complete said construction in an expeditious and economical manner. All construction shall be performed in accordance with all applicable federal, state, county and local laws, statutes, codes, regulations and ordinances and Owner is solely responsible for all permit and regulatory requirements associated with the Project and Infrastructure Improvements.

(12) Owner shall pay all Project costs not paid for by Project Fund as set forth herein.

(13) The Owner expressly acknowledges that by entering into this Agreement, the Owner, its successors, permitted assignees and transferees, vendors, grantees, and/or trustees, shall not construe any language contained herein or in any Exhibits attached hereto as waiving any of the requirements of the City's Code of Ordinances, Comprehensive Plan or other regulation, policy or rule applicable to the Project at the time of development.

(14) Notwithstanding the fact that the Owner's contracted cost of developing the Project will exceed the amount of the Project Fund, the City shall have no obligation to provide any monetary support to the Owner or for the Project above or beyond the Project Fund as set forth herein unless otherwise provided for in a separate written agreement between the City and Owner.

(15) The Project Fund shall be utilized solely by the Owner for the design and construction of the Project and/or to pay-off or reduce any debt associated with the design and construction of the Project.

(16) Once the Owner becomes fee simple owner of the Property and for the duration of this Agreement, the Owner shall maintain the Property consistent with the City's Code of Ordinances.

(17) Prior to any payment of the Infrastructure Improvements Fund or commencement of construction of the Infrastructure Improvements, the Owner shall provide evidence of an executed and recorded construction bond (or letter of credit) in the full amount of the Infrastructure Improvements Fund securing the obligation of the Owner to construct the Infrastructure Improvements and the payment of all or any claims or liens. The form of the proposed bond (or letter of credit) shall be in a form acceptable to the Owner's first mortgage lender and shall be subject to the City's review and acceptance, which acceptance shall not be unreasonably withheld or delayed. The bond (or letter of credit) shall state that it is to be construed in accordance with section 255.05, Florida Statutes, for all matters related to or arising from the Infrastructure Improvements. Alternatively, if the Owner elects not to provide the bond directly, the Owner may have its construction contractor provide the bond with the City named as a dual obligee on the bond. The bond shall otherwise comply with section 255.05, Florida Statutes, as a public construction bond, and a recorded copy of the bond must be provided to the City prior to the commencement of the Infrastructure Improvements.

(b) Obligations of City.

(1) Upon the Owner's receipt of the necessary building permits to commence construction of the Infrastructure Improvements and the City's approval of the Construction Documents, the Owner may submit a payment disbursement request to the City for fifty percent (50%) of the Infrastructure Improvements Fund. Along with the payment disbursement request, the Owner shall provide the fully executed and recorded copy of the Owner's public construction bond. Within thirty (30) days following the City's receipt of Owner's payment disbursement request and bond, the City shall verify the application for the building permits and, if verified, pay the Owner fifty percent (50%) of the Infrastructure Improvements Fund. Upon the receipt of a certificate(s) of completion for the Infrastructure Improvements or other confirmation of completion of the Infrastructure Improvements as agreed to by the City, the Owner may submit a payment disbursement request to the City for the remaining Infrastructure Improvement Fund.

Within thirty (30) days following the City's receipt of Owner's payment disbursement request, the City shall verify that the Infrastructure Improvements have been completed and, if verified, pay the Owner the remainder of the Infrastructure Improvement Fund. Notwithstanding the foregoing, if the Owner's construction contractor provides the public construction bond, the Infrastructure Improvement Fund shall be paid by the City upon the City's receipt of a certificate(s) of completion for the Infrastructure Improvements, or other confirmation of completion of the Infrastructure Improvements as agreed to by the City, and receipt of the Owner's payment disbursement request to the City for the Infrastructure Improvement Fund. Within thirty (30) days following the City's receipt of the foregoing, the City shall verify that the Infrastructure Improvements have been completed and, if verified, pay the Owner the Infrastructure Improvement Fund.

(2) Payment of the Utility Incentive Fund. Based upon the Project Parameters in this Agreement, including without limitation the proposed size, number of units, square footage and amenities of the Project, and the City's current utility rate schedules, the City has calculated a reasonable rate of return that it should receive as a result of the estimated increase in utility revenues (the "Utility Incentive Fund"). The total Utility Incentive Fund amount to be paid by the City to the Owner is **Eighty-Nine Thousand, Sixty-Six and 48/100 Dollars (\$89,066.48)** and is further broken down by utility as follows:

- i. Electric Utility: A total amount of up to **Sixty Nine Thousand Five Hundred Fifty and 25/100 Dollars. (\$69,550.25).**
- ii. Water & Sewer Utilities: A total amount of up to **Fifteen Thousand One Hundred Seventy-Four and 60/100 Dollars (\$15,174.60).**
- iii. Stormwater Utility: A total amount of up to **Four Thousand Three Hundred Forty-One and 63/100 Dollars (\$4,341.63).**

The actual payment of the Utility Incentive Fund shall be a one-time estimated payment made by the City based upon the As-Built Project Parameters. Once the Project is Placed-In-Service, the Owner shall request the disbursement of the Utility Incentive Fund along with a copy of the fully executed Performance Bond. If the Project Parameters have changed and/or the City's utility rate schedule(s) have changed when the Project is Placed-In-Service, the City will re-calculate the Utility Incentives Fund amount based upon the As-Built Project Parameters and the then current rate schedule(s). The Utility Incentive Amount will be increased or decreased in accordance with the calculations and As-Built Project Parameters and current rate schedule(s). The calculations for the Utility Incentive Amount are attached hereto as **Exhibit "D"** and incorporated herein.

(3) True-Up of the Utility Incentive Fund. Within sixty (60) days of the three (3) year anniversary that occurs after the City's payment of the Utility Incentive Fund based upon the As-Built Project Parameters, the City will conduct a true-up of the actual revenue that the City received from the Project for each of the utilities described in Exhibit "D" (Water & Sewer, Stormwater, and Electric Utility) over the three (3) year period ("True-up Amount"). If the True-up Amount establishes that the City did not receive the amount of revenue it used to calculate the Utility Incentive Fund over the three (3) year period, the Owner shall pay the City the difference between what was paid by the City and what was actually received for each of the respective utilities' contribution to the Utility Incentive Fund. Payment shall be made by the Owner to the City within 30 days of the Owner's receipt of written notice from the City. Failure of the Owner to pay the City the amount due under this provision will result in the City collecting the amount due from the Performance Bond. If the City is not able to collect the amount due from the Performance Bond within sixty

(60) days of the City's notice to the Performance Bond surety, the City may treat the amount due as a delinquent utility bill and shall have all rights associated with a delinquent utility bill including, without limitation, a utility lien on the Property which will remain on the Property and accrue interest at the statutory amount until paid in full.

(4) Budget and Appropriation of Project Fund. Based upon the timeframes set forth in this Agreement, the City agrees to propose in each applicable fiscal year budget an amount to cover the City's obligations as stated herein commencing with the Fiscal Year 2021-2022 budget; however, the City's funding obligations as stated herein are all subject to the City's annual budgeting and appropriation process. The Owner understands and agrees that the City's funding obligations hereunder are payable exclusively from duly appropriated or otherwise legally available funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither the City nor the State of Florida nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Agreement.

(c) Approval of Changes to City Comprehensive Plan. The Parties acknowledge that the Project will require an amendment to the City's comprehensive development plan, which will require the approval of the City Commission and the appropriate agency of the State of Florida (the "Requisite Plan Changes"). Owner agrees to use its commercially reasonable efforts to obtain such Requisite Plan Changes. The Parties' respective obligations hereunder are conditioned upon obtaining the Requisite Plan Changes.

7. RIGHT TO AUDIT. On reasonable advance notice and at reasonable times, the City shall have the right at its expense to conduct a financial systems analysis and/or an audit of the Owner either by the City's own employee(s) or by an independent auditing firm employed by the City as may be reasonably required in order to determine if the Project is being fiscally managed so as to meet all of the Owner's obligations as stated herein and within the timeframes set forth herein. Failure of the Owner to reasonably cooperate with the City in the analysis and/or fiscally manage the Project so as to meet all of the Owner's obligations as stated herein and within the timeframes set forth herein will be grounds for asserting a breach of this Agreement in accordance with the terms of Section 18 hereof.

8. WARRANTY. Owner and on behalf of its consultants, contractors and subcontractors warrants to the City that: (i) unless otherwise agreed in writing, the work, materials and equipment installed for the Infrastructure Improvements will be of good quality and new; (ii) the Infrastructure Improvements will be free from faults and defects not inherent in the quality required or permitted; (iii) the Infrastructure Improvements materials, equipment and construction work will conform with the requirements of this Agreement, City Approved Products and Construction Standard Details, specifications and regulatory requirements; and, (iv) the Infrastructure Improvements will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to City. If, at any time prior to the expiration of one (1) year following the Project being Placed-In-Service, the City discovers any failure or breach of Owner's warranties or Owner discovers any failure or breach of Owner's warranties, Owner will, upon written notice from City or of its own accord, at Owner's sole cost and expense, promptly correct such failure or breach (which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement, reassembly, retesting, and/or re-inspection of any part or portion of the work and any other property damaged or affected by such failure, breach, or corrective action). Owner will remedy any such failure or breach so, to the extent reasonably possible, to avoid disruptions to the operations of City. In the event Owner fails to initiate and diligently pursue corrective action within thirty (30) days of Owner's receipt of City's notice or Owner's discovery of the same, City may undertake such corrective action at Owner's expense. With regard to the Infrastructure Improvements, the Owner's obligations under this section shall be limited to the cost of repair of the faulty or defective condition. The Owner's warranty excludes remedy for damage or defect to the extent caused by (i) modifications by City not approved or

executed by Owner or its subcontractors; (ii) the City's failure to properly maintain the Infrastructure Improvements; (iii) damage to the Infrastructure Improvements caused by the City or, (iv) normal wear and tear. Repaired or replaced equipment, materials or work will be warranted hereunder for a one (1) year warranty period. Owner's obligations contained in this provision shall survive termination of this Agreement. The Owner shall be fully responsible for ensuring it receives the same warranty as set forth herein from its contractors, consultants and subcontractors for the Project.

9. NON-DISCRIMINATION POLICY. The Owner warrants and represents that all of its employees, subconsultants and subcontractors are treated equally during selection, employment and/or engagement without regard to race, color, religion, disability, sex, age, national origin, ancestry, political affiliation, marital status, handicap, or sexual orientation. Further, the Owner shall not discriminate or permit discrimination against any employee or an applicant for employment on the basis of race, color, sex, religion, political affiliation, natural origin, ancestry, marital status, sexual orientation or handicap.

10. OPPORTUNITIES FOR CITY OF LAKE WORTH BEACH RESIDENTS AND BUSINESSES. The Owner shall make commercially reasonable efforts consistent with applicable law to provide City of Lake Worth Beach residents with opportunities for training and employment in connection with the Project. The Owner shall also make commercially reasonable efforts consistent with applicable law to provide City of Lake Worth Beach business concerns with opportunities in connection with the Project, including the utilization of small business and minority/women-owned business enterprises.

11. EVALUATION AND MONITORING. The Owner agrees that the City, outside of its role as a governing jurisdiction for the Project, will carry out periodic monitoring and evaluation activities as determined necessary by the City to ensure satisfactory performance and compliance by the Owner in performing its duties and obligations under this Agreement. The Owner agrees to furnish upon request to the City copies of transcriptions of such records and information as is reasonably determined necessary by City to establish satisfactory performance and/or compliance. The City may request and Owner shall provide up to three (3) public presentations on the status of the Project after the effective date of this Agreement. The Owner acknowledges and agrees that any review, approval, monitoring, comment or evaluation by the City of any plans, drawings, specifications or other documents prepared by or on behalf of the Owner, including but not limited to the Design & Engineering Documents, or of any activities, tasks or work of Owner is solely for City's determining for its own satisfaction Owner's compliance with this Agreement, and may not be relied upon by the Owner, its subcontractors, or any other third party as a substantive review thereof. The City, in reviewing, approving, monitoring, commenting on or evaluating any plans, drawings, specifications or other documents, or activities, tasks or work of the Owner, will have no responsibility or liability for the accuracy or completeness of such documents, activities, tasks or work or for any defects, deficiencies or inadequacies therein or for any failure of the same to comply with the requirements set forth in this Agreement or with applicable law; the responsibility for all of the foregoing matters being the sole obligation of Owner. In no event will any review, approval, comment or evaluation by City relieve Owner of any liability or responsibility under this Agreement, it being understood that City is at all times ultimately relying upon Owner's skill, knowledge and professional training and experience in preparing any plans, drawings, specifications or other documents and in accomplishing any obligations, activities, tasks or work under this Agreement.

12. DATA BECOMES CITY PROPERTY. All reports, plans, surveys, as-built drawings, information, documents, maps, and other data procedures developed, prepared, assembled, or completed by the Owner, its contractors, consultants, subcontractors, subsidiaries or agents for the Infrastructure Improvements shall be made available to the City at any time upon request by the City. Upon completion of the Infrastructure Improvements, copies of all documents and records relating to the Infrastructure Improvements shall be surrendered to the City upon request. In any event, the Owner shall keep all documents and records related to the Infrastructure Improvements for five (5) years after the termination or expiration of this Agreement.

13. INDEMNIFICATION. The Owner agrees to assume all liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents and attorneys of, from, and against all liability and expense, including reasonable attorney's fees (at all levels), in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use, which arise from or are related to a breach by Owner of Owner's obligations, tasks and performance under this Agreement or which arise from or relate to the Owner's, its contractors, subcontractors, consultants or agents negligent acts or omissions. The Owner's liability hereunder shall include all reasonable attorney's fees and costs incurred by the City in the enforcement of this indemnification provision at all levels. This provision includes claims made by the employees, consultants, contractors, subconsultants or subcontractors of the Owner against the City. The Owner's obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under this Agreement.

Subject to the limitations set forth in this section, the Owner shall assume control of the defense of any claim, actions, causes of action, and suits in equity of whatever kind or nature, asserted by a third party against the City, which arise from or are related to a breach by Owner of Owner's obligations, tasks and performance under this Agreement or which arise from or relate to the Owner's, its contractors, subcontractors, consultants or agents negligent acts or omissions and, in connection with such defense, shall appoint lead counsel, in each case at Owner's expense. The City shall have the right, at its option and expense, to participate in the defense of the same without relieving Owner of any of its obligations hereunder. If Owner assumes control of the defense of any such third party action in accordance with this section, Owner shall obtain the prior written consent of the City before entering into any settlement of such action, such consent not to be unreasonably withheld or delayed. Notwithstanding anything to the contrary in this section, Owner shall not assume or maintain control of the defense of any third party action, but shall pay the reasonable fees of counsel retained by the City and all other reasonable expenses, including experts' fees, if (i) an adverse determination with respect to the third party action would, in the reasonable good faith judgment of the City, be detrimental in any material respect to the City's reputation; (ii) the third party action seeks an injunction or equitable relief against the City; and/or, (iii) the Owner has failed or is failing to prosecute or defend vigorously the third party action after ten (10) day written notice thereof and ten (10) day opportunity to cure). The Owner and City shall cooperate, and cause its agents to cooperate, in the defense or prosecution of any third party action and shall furnish or cause to be furnished such records and information, and attend such conferences, discovery proceedings, hearings, trials, or appeals, as may be reasonably requested in connection therewith.

14. INSURANCE AND RISK OF LOSS

(a) **Insurance.** Prior to any payment being made by the City under this Agreement and throughout the life of this Agreement at the Owner's sole expense, the Owner shall obtain the following insurance coverage from insurance companies licensed to do business in the State of Florida and in a form reasonably satisfactory to City. The insurance coverage shall add the City as an "Additional Insured" to each policy on a primary, non-contributing basis, other than Workers' Compensation, and shall require notice to the City prior to the cancellation, non-renewal or material modification of any such policies. If the Owner fails to furnish and maintain the insurance required by this section, the City may immediately terminate this Agreement. The City Manager may agree in writing to tailor the insurance requirements in order to satisfy the requirements of the Owner's first mortgage lender and may agree to revise the insurance requirements for the Owner if the City is identified as an additional insured on the Owner's general contractor's similar insurance for all Infrastructure Improvements.

(1) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.

- (2) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
- (3) Owner shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering Owner's operations and for completed works providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for
 - Products and Completed Operation
 - Contractual Liability insuring the obligations assumed by Owner in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:

Limits of liability shall be \$1,000,000 per occurrence and \$3,000,000 aggregate.

- (4) Owner shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of Owner providing insurance for bodily injury liability and property damage liability for the limits of \$1,000,000 per occurrence/aggregate.
- (5) Owner shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of \$5,000,000 per occurrence/aggregate.

The insurance coverage afforded under the policies described in this section shall be primary and non-contributing with respect to any insurance carried independently by the City.

- (b) Risk of Loss. Risk of loss of the Infrastructure Improvements and Project shall, regardless of passage of title (if any), remain with Owner until the City pays the Utility Incentive Fund amount unless the damage is due to acts or omissions of the City. The foregoing shall not waive or otherwise impact Owner's warranties under this Agreement.

15. CONFLICT OF INTEREST. The Owner represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and Palm Beach County's Code of Ethics. Owner further represents that no person having any such conflicting interest shall be employed for said performance. Owner shall promptly notify the City, in writing, of all potential conflicts of interest for any prospective business association, interest or other circumstance which may influence or appear to influence Owner's judgment or quality of performance being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that Owner may undertake and request an opinion of the City as to whether the association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Owner. The City agrees to notify Owner of its opinion within thirty (30) days of receipt of notification by Owner. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by Owner, the City shall so state in the notification and Owner may, at its option, enter into said association, interest or circumstance.

16. RECOGNITION. When reasonably acceptable to the City and Owner, the Owner will include a reference to the financial support herein provided by the City in all publications and publicity related to the Project.

17. TIME OF PERFORMANCE. The effective date of this Agreement shall be the date this Agreement is approved by the City's City Commission and executed by the Mayor and City Clerk ("Effective Date"). Subject to Force Majeure, time is of the essence for the performance of all obligations under this Agreement. Unless otherwise agreed in a written amendment to this Agreement or as a consequence of Force Majeure, this Agreement will expire if construction has not started by the Commencement Date. Independent of the occurrence of any Force Majeure events, the timeframes set forth herein for the Owner's obligations may be extended in writing by the City Manager up to a maximum of 180 calendar days. Beyond 180 calendar days, a written amendment to this Agreement with City Commission approval will be required.

18. TERMINATION AND SUSPENSION.

- (a) 30-day Termination. If, through any cause, Owner fails to fulfill any of its obligations with regards to closing on the Property, obtaining and maintaining a construction bond, obtaining and maintaining insurance and/or fails to timely reach the Commencement Date or the Outside Completion Date set forth in this Agreement (including any extensions as a result of Force Majeure or as otherwise authorized under this Agreement) or Owner fails to fulfill any of its obligations as set forth in Part I, Section A.1.E or the first sentence of Section A.2, or Article 5 of the parties' Letter of Intent (dated February 18, 2020) (the "Surviving LOI Provisions"), the City may in its sole discretion provide the Owner with a thirty day notice of termination and identify the ground(s) for termination consistent with this section. The City may also, in its sole discretion, suspend payment of the Project Fund, in whole or part, upon sending the 30-day notice of termination. If the Owner fails to cure the ground(s) for termination within thirty (30) days after the receipt of the City's notice, this Agreement will terminate thirty (30) days after the receipt of the notice from the City without any further action by either party. The notice from the City under this provision may be provided by the City Manager.
- (b) 60-day Termination. If, through any cause, Owner shall fail to fulfill in a timely and/or proper manner its duties, tasks or obligations under this Agreement (including those in section 18(a) above should the City decide not to send a 30-day notice of termination), or if Owner shall violate any of the covenants, conditions or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement and/or suspend payment of the Project Fund, in whole or part, by giving 60 days' written notice to Owner of such termination and/or suspension. The notice from the City under this provision may be provided by the City Manager and shall state the ground(s) for termination. The Owner shall then have 60 days to cure the ground(s) for termination upon receipt of the City's notice. If the ground(s) for termination cannot reasonably be cured within 60 days, the City shall reasonably extend the time for termination if the Owner makes a request for an extension of time within the 60 day timeframe and promptly takes reasonable action to remedy the ground(s) for termination and continues with such reasonable action for the extended timeframe granted by the City. The Owner shall provide the City with a detailed written explanation of all reasonable action to be taken to remedy the ground(s) for termination and timeframes to achieve the same in order to be eligible for an extension of the time for termination. If the extension of time is granted, the City will provide the Owner with a reasonable new time for termination based on the Owner's detailed written explanation.

Other grounds for termination for cause under this Section 18(b) are as follows:

- (1) False Statements. Any representation or statement of a material fact made or furnished to the City by or on behalf of the Owner through an authorized representative in this Agreement or in any other agreement between the City and the Owner is false or

misleading in any material respect, at the time made or furnished, or if the Owner learns that any such representation or statement of a material fact has become false or misleading in any material respect since the time it was made, and the Owner fails to provide written notice to the City of the false or misleading nature of such representation or statement within ten (10) days after the Owner learns of its false or misleading nature. The notice from the City under this provision may be provided by the City Manager and shall state the ground(s) for termination. The Owner shall then have 60 days to cure the ground(s) for termination upon receipt of the City's notice.

(2) Insolvency. The dissolution or termination of the Owner's existence as a business, the Owner's insolvency, appointment of a receiver for any part of the Owner's property, any assignment of all or substantially all of the assets of the Owner for the benefit of creditors of the Owner, any type of creditor workout for the Owner, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Owner unless, in the case of involuntary proceedings, such proceedings are discharged within ninety (90) days after filing, any of which occur prior to the Project being placed in-service.

(3) Property Taxes. Prior to the Project being placed in-service, the Owner allows its property taxes applicable to the Property to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure within ninety (90) days after written notice thereof from the Palm Beach County Tax Collector.

19. FORCE MAJEURE. If by reason of Force Majeure, it is impossible for the Owner in whole or in part, despite commercially reasonable efforts, to carry out any of its obligations contained herein, the Owner shall not be deemed in breach of its obligations during the continuance of such Force Majeure event. Such Force Majeure event does not affect any obligations of the Owner other than the timing of performance of such obligations. The term "Force Majeure" as used herein means any of the following events or conditions or any combination thereof: acts of God, acts of the public enemy, riot, insurrection, war, act of terrorism, pestilence, archaeological excavations required by law, unavailability of materials, epidemics (including, without limitation, cases of illness or condition, communicable or non-communicable, caused by bioterrorism, pandemic influenza, or novel and highly infectious viruses, agents or biological toxins), pandemics, disease, quarantine restrictions, freight embargoes, fire, lightning, hurricanes, earthquakes, tornadoes, floods, abnormal and highly unusual inclement weather (as indicated by the records of the local weather bureau for a five-year period preceding the Effective Date), strikes or labor disturbances, restoration in connection with any of the foregoing or any other cause beyond the reasonable control of the party performing the obligation in question, including, without limitation, such causes as may arise from the act of the other party to this Agreement; or acts of any Governmental Authority (except that acts of the City shall not constitute a Force Majeure event with respect to performance by the City). The Owner agrees, however, to use commercially reasonable efforts to remedy the cause or causes preventing the Owner from timely carrying out its obligations under this Agreement. The Owner shall provide the City with written notice of any Force Majeure event within ten (10) days of Owner's knowledge of the occurrence of such event. Failure to properly notice the City will result in the Owner's waiver of the Force Majeure event as cause for delay in the Owner's performance of its obligations herein until written notice is provided to the City.

Due to the pending COVID-19 pandemic existing prior to and at the Effective Date, the parties recognize and agree that a thirty (30) day extension of the timeframes set forth herein under the City Manager's authorization to extend this Agreement by 180 days is an acceptable and agreeable timeframe to address the COVID-19 pandemic. If the COVID-19 pandemic continues to exist after the Effective Date, the parties agree to treat COVID-19 as a Force Majeure event and the Owner may provide one or more notices to the City consistent with the Force Majeure provision, except that due to the uncertainty regarding the ongoing

nature and impact of the COVID-19 pandemic any such notices need not be tied to any particular ten (10) day occurrence of an event.

20. SEVERABILITY OF PROVISIONS. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

21. BINDING NATURE AND NON-ASSIGNMENT. The Owner binds itself, its successors and permitted assignees and/or transferees with respect to all covenants, agreements and obligations contained in this Agreement. The Owner shall not assign or transfer this Agreement without the prior written consent of City, which the City may not unreasonably withhold. Notwithstanding the foregoing, the Owner may assign this Agreement to any corporation, limited partnership, limited liability company, general partnership, or other legal business entity authorized to do business in the State of Florida, in which the Owner is the general partner or has a controlling interest and maintains such controlling interest for the term of this Agreement (such entities being referred to in this Agreement as an "affiliate" of Owner); provided, however, that notice of such assignment shall be given by the Owner to the City at least ten (10) business days before such assignment becomes effective and the assignee shall be bound by the terms of this Agreement to the same extent as would the Owner in the absence of such assignment. If the affiliate is not a wholly-owned subsidiary of the Owner or otherwise owned, directly or indirectly, solely by the existing owners of Owner, then the Owner shall also include in such notice the names of any other persons having an ownership interest in such affiliate so that the City may notify the Owner within ten (10) business days of receipt of such notice whether it believes any such other person presents a conflict of interest of the type contemplated by Section 15 hereof. In the event the City reasonably timely objects to an assignment to an affiliate as a result of such a conflict of interest, then the Owner shall not make such assignment. Unless otherwise agreed by the City, the Owner shall not be released of its obligations under this Agreement in connection with an assignment to an affiliate. If this Agreement is to be assigned or transferred by the Owner, such assignment or transfer shall be of the full Agreement and not any portion or part thereof (unless otherwise approved by the City); it being the intent of the parties that there shall only be two (2) parties to this Agreement at any given time.

22. GOVERNING LAW, VENUE AND WAIVER OF JURY TRIAL. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Each of the Parties irrevocably submits to the jurisdiction of any Florida State or Federal court sitting in Palm Beach County, Florida, in any action or proceeding arising out of or relating to this Agreement. The Parties hereby each irrevocably agree that all claims in respect of any such action or proceeding may be heard and determined in any such Florida State court or in such Federal court and irrevocably waive, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such action or proceeding. EACH PARTY WAIVES ANY RIGHTS THAT EACH OF THEM MAY HAVE TO A TRIAL BY JURY FOR ANY DISPUTE WHICH ARISES OUT OF OR IS RELATED TO THIS AGREEMENT BETWEEN THE PARTIES.

23. AMENDMENTS. Prior to the issuance of the applicable building permits for the Project and regardless of expense to Owner, the City may, at its discretion, amend this Agreement to conform to changes required by federal, state, county or local law and any applicable guidelines, directives and objectives including, without limitation, any changes in the applicable building codes or applicable utility regulations. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the City's City Manager. The Owner's failure to approve such an amendment will be deemed a breach of this Agreement. Except as otherwise provided herein, no amendment to this Agreement shall be binding on either party unless in writing, approved by the City's City Commission and the Owner, and signed by both parties.

24. NOTICES. All notices required to be given under this Agreement shall be sufficient when sent by certified mail (return receipt requested) or by nationally recognized overnight courier or by hand-delivery with a signed receipt and addressed as follows:

For the City:

City of Lake Worth Beach
Attn: City Manager
7 N. Dixie Highway
Lake Worth Beach, FL 33460

With copy to:

City of Lake Worth Beach
Attn: City Attorney
7 N. Dixie Highway
Lake Worth Beach, FL 33460

For Owner:

1017 Lake Ave, LLC
Attn: Jeff Burns
414 N. Andrews Ave.
Fort Lauderdale, FL 33301

With copy to:

Stearns, Weaver, Miller, Weissler, Alhadeff and Sitterson, P.A.
Attn: Brian McDonough
150 West Flagler Street, Suite 2200
Miami, FL 33130

If to Lender:

With a Copy to:

Either party may amend this provision by written notice to the other party. Notice will be deemed received on the fifth day after mailing if sent by certified mail or the next day after mailing if sent by overnight courier or if by hand delivery.

25. INDEPENDENT CONTRACTOR. The Owner agrees that, in all matters relating to this Agreement, it will be acting as an independent contractor with exclusive control of the manner and means of performing its obligations and tasks in accordance with the requirements of this Agreement. The Owner has no authority to act or make any agreements or representations on behalf of the City. This Agreement is not intended, and shall not be construed to create, between the City and the Owner, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of Owner shall be, or shall be deemed to be, an employee or agent of City.

26. **NO FORFEITURE OR WAIVER.** The rights of the City under this Agreement shall be cumulative and failure on the part of the City to promptly exercise or enforcement any rights given hereunder shall not operate to forfeit or waive any of the City's rights.

27. **PUBLIC ENTITY CRIMES.** As provided in section 287.133, Florida Statutes, by entering into this Agreement or performing any of its obligations and tasks in furtherance hereof, Owner certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by section 287.133 (3)(a), Florida Statutes. Owner is under a continuing obligation for the term of this Agreement to immediately notify the City of any violation of this provision.

28. **PALM BEACH COUNTY OFFICE OF THE INSPECTOR GENERAL.** Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes, but is not limited to, the power to review past, present and proposed City contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the City and its agents in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a breach of this Agreement and may result in termination of this Agreement or other sanctions or penalties as set forth in the Palm Beach County Code.

29. **EXCLUSION OF THIRD PARTY BENEFICIARIES.** No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizens, residents or employees of the City or Owner.

30. **INCORPORATION BY REFERENCE.** Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

31. **COUNTERPARTS OF THE AGREEMENT.** This Agreement, which include the Exhibits referenced herein, shall be executed in counterparts, each of which shall be deemed to be an original, and such counterparts will constitute one and the same instrument.

32. **ENTIRE UNDERSTANDING.** This Agreement and its provisions merge any prior agreements, including without limitation the Letter of Intent dated February 18, 2020 (other than the Surviving LOI Provisions) between the parties hereto with respect to the City's provision of an economic investment incentive and infrastructure investment incentive for the Project and constitute the entire understanding. The parties hereby acknowledge that there have been and are no representations, warranties, covenants, or undertakings other than those expressly set forth herein with respect to the City's provision of an economic investment incentive and infrastructure investment incentive for the Project.

33. **PUBLIC RECORDS.** The Owner shall comply with Florida's Public Records Act, Chapter 119, Florida Statutes, to the extent applicable to any public records related to or arising from this Agreement.

34. **CONFIDENTIAL INFORMATION.** If during the term of this Agreement, either party is provided access to any records or other information that is confidential or proprietary in nature, the other party shall maintain the confidentiality of such information consistent with Florida's Public Records laws including, but not limited to, any building plans or GIS information provided to or by the Owner, its contractors, subcontractors, consultants or agents. The Owner shall ensure its contractors, subcontractors, consultants or agents are also contractually required to maintain the confidentiality of such information.

IN WITNESS our Hands and Seals on this 9th day of June, 2020.



ATTEST:

CITY OF LAKE WORTH BEACH

By: Deborah M. Andrea
Deborah M. Andrea, City Clerk

By: Michael Bernstein
Michael Bernstein,
City Manager

Approved for legal sufficiency:

Approved for financial sufficiency:

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

By: Bruce T. Miller
Bruce T. Miller, Financial Services Director

OWNER: 1017 Lake Avenue, LLC

By: _____

Print Name: Jeff Burns

Title: President

[Corporate Seal]

STATE OF Florida
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 2nd day of June, 2020, by Jeffrey Burns who was physically present, as President (title), of 1017 Lake Avenue LLC, which is authorized to do business in the State of Florida, and who is personally known to me or who has produced the following N/A as identification.

Notary Public:

Michelle A Rice
Print Name: Michelle A Rice
My commission expires: 11-13-2021

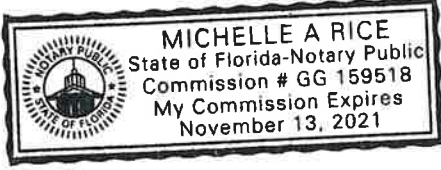


EXHIBIT "A"
PROPERTY LEGAL DESCRIPTION

The land referred to herein below is situated in the County of Palm Beach, State of Florida, and is described as follows:

PARCEL A – 1017 Lake Avenue (PCN: 38-43-44-21-15-500-0030)
Town of Lake Worth, Northerly 320.42 ft of Block 500

PARCEL B – 101 South East Coast Street (PCN: 38-43-44-21-15-500-0010)
Town of Lake Worth, North 320 ft of South 1840 ft of Block 500 in Section 28

PARCEL C – Portion of 201 South East Coast Street (comprised of approximately 8,000 square feet)
(PCN: 38-43-44-28-44-001-0000)
Replat of Pt of Block 500, Palm Beach Farms Co Pl No 2 Lucerne Townsite

EXHIBIT “B”
PROJECT DESCRIPTION, CONCEPTUAL SITE PLAN & RENDERINGS

Project Description:

The BOHEMIAN is a multifamily, rental apartment project that will feature approximately 200 total units within one (1) building, including lobby/amenity area, a separate parking garage with approximately 320 parking spaces (with 120 dedicated public parking spaces), and an independent commercial building fronting Lake Avenue.

Each residence will have quartz counter-tops, energy-efficient stainless steel appliances, plank flooring and upscale bathroom finishes. The Project’s amenity spaces will include a swimming pool and gym.

The Conceptual Site Plan and Renderings are on file with the City’s Community Sustainability Department*.

* At its meeting of May 27, 2020, the Lake Worth Beach Planning & Zoning Board unanimously voted to recommend approval to the City Commission for the Project known as The Bohemian. The Project will be heard before the City Commission on June 9, 2020. If approved during this first hearing, the City Commission will hold a public hearing for the project on June 30, 2020 for final approval. The City Commission’s Project Approval is separate and apart from the changes to the City’s Comprehensive Plan for the Project.

EXHIBIT “C”
INFRASTRUCTURE IMPROVEMENTS

The Infrastructure Improvements identified below demonstrate the basic scope of the infrastructure work required of the Owner for the Project (both on and off the Property). The final detailed scope of work to be performed for the Infrastructure Improvements shall be based upon the final approved Construction Documents for the Project. The Infrastructure Improvements have been broken down by utility below and each utility has provided an estimated amount of the percentage of the amount to be allocated for infrastructure work on and off the Property. The City and Owner agree to finalize these percentages based on the approved Construction Documents and address any budgetary issues at that time.

Street Improvements:

The Infrastructure Improvement Fund amount designated for the City’s Street Improvements (\$250,000) is for the infrastructure required to repair/enhance the South East Coast Street. South East Coast Street shall be milled and resurfaced from Lake Avenue south to the southern Property line of the Project. In addition, streetscaping, curbing, sidewalk and landscaping as well as Stormwater conveyance improvements will be installed per a plan that is yet to be finalized.

Public Services estimates 100% of the amount set forth above will be for off-Property Infrastructure Improvements.

Stormwater:

The Infrastructure Improvement Fund amount designated for the City’s Stormwater Utility (\$50,000) is for the portion of infrastructure required to provide a stormwater collection and management systems to serve the Project’s proposed multifamily with commercial use space of approximately 2 acres. The improvement will be to serve the property bounded by Lake Avenue, East Coast Street and the FEC Right of Way.

The Stormwater Utility estimates 100% of the amount set forth above will be for off-Property Infrastructure Improvements.

EXHIBIT “D”
Calculations for Utility Incentive Fund

Utility revenue incentives are based on an average 620 sq. ft. residential unit and 2,455 sq. ft. of commercial space. Final incentives will be based on entitled, approved project average unit size and commercial area.

1. Water and Sewer Calculation:

Water/Sewer – \$0.12 per sq. ft. (based on the projected Water/Sewer Utility revenues from the Project Transaction of \$15,174.60 in aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit).

2. Stormwater Calculation:

Stormwater - \$0.03 per sq. ft. (based on projected Stormwater Utility revenues from the Project Transaction of \$4,341.63 in aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit).

3. Electric Utility Calculation:

Electric – \$0.55 per sq. ft. (based on projected Electric Utility revenues from the Project Transaction of \$69,550.25 in aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit).

LETTER OF INTENT

This Letter of Intent (the “**LOI**”) is entered into as of the 18th day of February 2020 (the “**Effective Date**”) between the **City of Lake Worth Beach**, a municipality duly constituted under Florida law, and having its offices at 7 North Dixie Highway, Lake Worth Beach, Florida 33460 (“**City**”) and **1017 Lake Ave, LLC**, a limited liability company authorized to do business in the State of Florida (“**Developer**”) with an address of 414 North Andrews Avenue, Ft. Lauderdale, Florida 33301. The City and Developer are jointly referred to as the “**Parties**” and individually as a “**Party**”.

The purpose of this LOI is to set forth provisions pertaining to the conceptualization, planning, entitlement, funding, development, implementation, construction and operation of The Bohemian, a proposed residential rental unit project containing approximately 200 apartment units with commercial space and a parking garage with 120 dedicated public parking spaces in downtown Lake Worth Beach (the “**Project Transaction**”), and any activities ancillary to these opportunities that may be agreed upon by the Parties (collectively, the “**Work**”).

PART I

The following paragraphs reflect the Parties’ current understanding of the matters described to be included in the Definitive Agreements, but are not legally binding until such time the Definitive Agreements are final. Each Party will work in good faith to negotiate or conclude the Project Transaction on such terms. This is not a complete statement of all terms and conditions of the Project Transaction, but provides a basis for further discussions and negotiations.

A. Project Transaction. The City and Developer are considering the Project Transaction whereby the City would provide financial incentives, density bonuses and other legal considerations in exchange for the Developer to develop, construct and operate the project to be known as The Bohemian to be located at 1017 Lake Avenue, Lake Worth Beach, Florida. The Parties understand that additional discussions and negotiations with respect to the Project Transaction will be required, and that neither Party will be bound to proceed with the Project Transaction unless and until the City and the Developer negotiate, approve and execute mutually acceptable definitive agreements and related documentation (the “**Definitive Agreements**”) and related documents and terms and conditions that are negotiated, approved and executed and certain other conditions precedent as described in this LOI (including, without limitation, city commission and other governing body approvals) are obtained. However, to facilitate further such discussions and negotiations, the Parties desire to set forth the basic proposed terms of the Project Transaction and their understandings with respect thereto:

1. The Parties acknowledge and agree that the City intends to provide to the Developer certain financial incentives and density bonuses, which shall include:
 - A. Providing a 50.8975 unit planned development density bonus and a 20.359 unit transfer development right bonus for the original 2.0359 acre site located at 1017 Lake Avenue, Lake Worth Beach, Florida.

- B. Providing for the legal transfer through sale to the Developer and grant of an easement by the Developer to the City for City's perpetual use of and access to the City's Electric Utility ("Electric Utility") site of 0.3468 acre located at 1109 1st Avenue South, Lake Worth Beach, Florida ("East Switching Station"), which will provide a total of 27 residential units through a combination of by right density, planned development density bonus and transfer development right bonus (land value \$390,150, transfer development right value \$9,102). Notwithstanding anything contained herein, should another form of conveyance be required for tax or liability purposes, or as a requirement of the Developer's Lender, the Parties will work in good faith to accommodate a different structure that accomplishes the same mutual benefit to each Party. If the East Switching Station site is conveyed to the Developer, the Developer will be required to provide a unity of title for the East Switching Station site and the property at 1017 Lake Avenue. The Parties understand that the City's Electric Utility may need to make improvements to the East Switching Station site in the future and the finalized structure related to the East Switching Station site must ensure the Electric Utility's ability to make such future improvements above, below and within the site. Any improvements to the East Switching Station site by the Developer will be subject to City Commission review and approval.
- C. Providing an economic investment incentive of at least \$89,066.48 requiring a performance bond and payable at time of Certificate of Occupancy based on 200 residential units averaging 620 sq. ft. and 2,455 sq. ft. of commercial space with the following rates (final amount may be adjusted based on final unit number, sizes, and commercial space).
1. Electric – \$0.55 per sq. ft. (based on projected Electric Utility revenues from the Project Transaction of \$92,450 annually or \$277,350 in aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit).
 2. Water/Sewer – \$0.12 per sq. ft. (based on the projected revenues from the Project Transaction with the minimum annual or aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit, to be set forth in the Definitive Agreement(s)).
 3. Stormwater - \$0.12 per sq. ft. (based on the projected revenues from the Project Transaction with the minimum annual or aggregate for the first three years, each beginning on the date of issue of Certificate of Occupancy of the residential unit project and commercial unit, to be set forth in the Definitive Agreement(s)).
-).

- D. Providing an infrastructure investment incentive of \$300,000 payable via two payments requiring the Developer to provide a section 255.05, Florida Statutes, compliant performance and payment bond (or letter of credit) (“Bond”) to insure and protect the City’s investment of funds for public infrastructure. The first half payment will be paid after the City approves the construction documents and issuance of permits. The second half payment will be paid after the issuance of a certificate(s) of completion for the infrastructure improvements. Alternatively, if the Bond cannot be provided by the Developer, the Developer may have its construction contractor provide the Bond with the City named as a dual obligee on the Bond. However, payment of the infrastructure investment incentive of \$300,000 will be after issuance of the certificate(s) of completion, or such other form agreed by the Parties evidencing completion, for the infrastructure improvements.
1. Streets - \$250,000
 2. Stormwater - \$50,000.
- E. Signing a Parking Garage Master Lease (the “Lease Agreement”) for 120 parking spaces for public use in the parking garage, under the following terms and conditions:
1. **Landlord:** Developer (1017 Lake Ave, LLC)
 2. **Tenant:** City (City of Lake Worth Beach)
 3. **Parking Garage:** Approximate six (6) levels precast parking garage structure consisting of approximately 360 parking spaces with 120 public parking spaces to be leased to the City and approximately 240 to be for Developer’s use. The City’s 120 parking spaces will be located on the first two levels of the parking garage structure. The Developer’s parking levels will be exclusively for its other tenants and the Developer will refer all others in need of parking in the Parking Garage to the City.
 4. **Tenant Demised Premises:** 120 parking spaces and shared common areas as further detailed in a parking garage plan to be attached to the Lease Agreement.
 5. **Lease Term:** 35 years
 6. **Renewal Option:** 1 30-year option at the end of the initial Lease Term, years 36-65 (the “First Option Term), 1 30-year option at the end of the First Option Term, years 66-95 (the “Second Option Term”). Together the Lease Term, First Option Term and Second Option Term shall be referred to as the “Lease Term”.
 7. **Effective Date:** Date the Lease Agreement is signed by all parties (prior to Financial Closing).
 8. **Construction Commencement Date:** The date a notice of commencement has been filed with the appropriate governing authority allowing work to begin pursuant to a building permit to construct the Parking Garage, which shall occur within 720 days from the Effective Date. The City Manager may elect to

approve any extensions of the Construction Commencement Date for a period of time up to 180 days. Any extensions of time beyond 180 days shall require the approval of the City Commission.

9. **Substantial Completion Date:** The date that the following have all been achieved: a temporary certificate of occupancy (or its equivalent) has been issued by the appropriate governing authority for the Parking Garage; a notice of commencement has been filed with the appropriate governing authority allowing work to begin pursuant to a building permit(s) to construct the residential rental unit project containing approximately 200 apartment units with commercial space; and, the improved access to the Parking Garage is completed.
10. **Commencement Date:** The term of this Lease shall commence on the Substantial Completion Date, which shall occur on or before 24 months from the Construction Commencement Date. Year 1 Annual Base Rent shall become immediately due and payable to Developer within 10 days from written notice to City demonstrating the Substantial Completion Date.
11. **Base Building Improvements:** The Parking Garage shall be constructed in accordance with the permitted set of plans, which shall be in accordance with the Parking Garage floor plan to be attached to the Lease Agreement as Exhibit A
12. **Landlord Work:** Developer shall be responsible for completing the Base Building Improvements, which will be defined in the Lease Agreement.
13. **Tenant Work:** City shall be responsible for completing any improvements to the Tenant Demised Premises that exceed the Base Building Improvements, such as parking meters, signage and safety monitoring. All such City improvements, including all subsequent alterations or additions, shall require the express written approval from Developer, which shall not be unreasonably delayed or withheld and shall be at City's sole cost.
14. **Annual Base Rent:**
Year 1 = \$2,458,958
Year 2 - Year 8 = \$72,000/yr
Year 9 - Year 35 = \$144,000/yr
First Option Term = CAM only (not to exceed \$72,000/yr.).
Second Option Term = CAM only (not to exceed \$72,000/yr.).
15. **Annual Base Rent Increases:** None, other than as provided for herein.
16. **CAM & Operating Costs:** In addition to Annual Base Rent, City shall be responsible for the payment of common area maintenance and operating expenses, which shall include but not be limited to: security, general parking systems, cleaning,

utilities, maintenance and repairs, elevator maintenance, pest control, fire safety, insurance, management fees, licenses and fees, supplies, general signage, landscaping, administrative and professional costs, industry standard repair and replacement reserves (“Reserves” herein), and applicable real estate taxes (“CAM” herein). CAM shall not include costs and expenses directly related to the parking provided to Developer’s other tenants including but not limited to: parking meters or system, signage and safety monitoring. CAM is anticipated to be \$21,000 per year. At no time shall City be responsible for CAM that exceeds 50% of the Annual Base Rent). CAM will be based on actual costs, but may grow concurrently with the Consumer Price Index.

17. **Tenant’s Percentage Share:** The City’s Percentage Share in CAM shall be based upon the total number of spaces in the Demised Premises divided by the total number of spaces in the Parking Garage (i.e., $120/360 = 33.33\%$, Total CAM = \$50,000 * 33.33% = \$16,666.66 (Tenant’s Percentage Share).
18. **Management & Operations:** Developer, or the Developer’s designee and/or management company, shall be responsible to manage, operate and maintain the Parking Garage and Tenant Demised Premises for the Lease Term in a manner comparable to other similar parking garages in Palm Beach County, Florida.

2. The Parties acknowledge and agree that the Developer intends to pursue the requisite approvals to develop The Bohemian at 1017 Lake Avenue, Lake Worth Beach, Florida, which at a minimum will include the approval of a Planned Mixed-Use Development order by the City’s City Commission. The Parties understand that all such Definitive Agreements will need to be final no later than April 10, 2020, except for Part I, Section (A)(1)(A) and (B) of this LOI, which shall be finalized at the conclusion of the land use entitlement process and requisite approvals, which shall be no later than September 30, 2020. Approval of all such development is an independent legal process that is not governed by this LOI nor guaranteed by this LOI.

ARTICLE 1. GOOD FAITH NEGOTIATIONS

Section 1.1 **Good Faith Negotiations.** Subject to the conditions set forth in this LOI, the City and the Developer agree to coordinate and negotiate in good faith through April 10, 2020 (the “**Negotiation Period**”), unless this LOI is earlier terminated pursuant to Article 2, below, to attempt to execute and deliver the Definitive Agreements with respect to the Project Transaction. The Negotiation Period may be extended pursuant to Section 11.6.

ARTICLE 2. TERMINATION

Section 2.1 This LOI shall terminate on the earlier of: (i) execution of the Definitive Agreements including those related to Part I, Section (A)(1)(A) of this LOI, (ii) the expiration of the Negotiation Period, unless Parties are still actively involved in negotiations and pursuing final Definitive Agreements, which shall cause for the Negotiation Period to be extended pursuant to Section 11.6, or (iii) termination by a Party by written notice to the other Party.

Section 2.2 Upon the termination of this LOI, the Parties shall have no further obligation hereunder; provided, however, that the terms and provisions set forth in Articles 3 through 10 shall survive the termination of this LOI.

ARTICLE 3. EFFECT OF THIS LOI

Section 3.1 This LOI:

- (a) does not constitute a legally binding agreement;
- (b) does not constitute an exclusive agreement and the City of Lake Worth Beach reserves the right to enter similar LOIs with other private and public entities and persons;
- (c) does not contain all of the material terms of the Proposed Transactions, including those to be set forth in the Definitive Agreements; and
- (d) shall not constitute the basis for an agreement by estoppel or otherwise.

Rather, the Parties hereby agree that this LOI is intended as a statement of the Parties' good faith, mutual intent and understanding as of the date hereof to proceed with the negotiation of the terms of the Project Transaction and the Definitive Agreement during the Negotiation Period. Any actions taken by a Party or any other person in reliance on the terms expressed in this LOI or statements made (whether orally or in writing) during the negotiations between the Parties shall be at that Party's own risk. Unless and until the Definitive Agreements have been duly authorized, executed and delivered by the Parties, no Party shall have any legal obligations to the other, expressed or implied, or arising in any other manner under this LOI or in the course of negotiations as contemplated by this LOI.

Any transaction which might arise from the activities of the Parties as contemplated by this LOI shall be contingent upon the due authorization, execution and delivery by the Parties of the Definitive Agreements, including without limitation the obtaining by each Party of all management or applicable governing board approvals and all other authorizing actions required to be taken by each Party under its organizational documents and consistent with this LOI. No binding commitment shall arise prior to then even if the Parties reach some understanding(s) or agreement(s) in principle.

ARTICLE 4. COSTS AND EXPENSES

Section 4.1 Each Party shall bear its own costs and expenses (including fees of counsel and outside advisors) in connection with the preparation, negotiation and execution of this LOI (whether or not the Project Transaction is consummated), in connection with the Project Transaction, and in connection with the negotiation, authorization, execution and delivery of the Definitive Agreements.

ARTICLE 5. CONFIDENTIALITY

Section 5.1 The Parties acknowledge and agree that the City of Lake Worth Beach is subject to Florida's Public Records Act, Chapter 119, Florida Statutes. Except for the City's City Commission approval of this LOI, the Parties further acknowledge and agree that the Parties do not intend to make a public announcement (whether in the form of a press release or otherwise) directly or indirectly with respect to the subject matter of this LOI until such time as the Project Transaction has been more thoroughly vetted by each Party. Once the Project Transaction is more thoroughly vetted by each Party (or at such other time agreed to by the Parties), then the Parties may agree in writing to permit such public announcement to be made, which permission shall not be unreasonably withheld. Any public announcement made as permitted under this Section 5.1 shall be made only in accordance with a mutually agreed upon press release or other public communication by the Parties. At a minimum, the subject matter shall not be deemed to have been thoroughly vetted as contemplated hereby until Definitive Agreements have been entered into by the Parties relating thereto.

Section 5.2 In the course of this LOI it may be necessary for one Party ("**Disclosing Party**") to release certain Confidential Information (as defined below) to the other Party ("**Receiving Party**"). All Confidential Information must be marked as "Confidential" in order to avoid any arguments that the confidentiality of such information has been waived.

Section 5.3 "**Confidential Information**" shall mean all information, regardless of the form in which it is communicated or maintained (whether oral, written, electronic or visual) and whether prepared by Disclosing Party or otherwise, which is disclosed to Receiving Party, regardless of whether such information is disclosed intentionally or inadvertently, before, during or after the execution of the LOI, in connection with discussions and negotiations surrounding the Work that is the subject of the Project Transaction and including all reports, analyses, notes or other information that are based on, contain or reflect any such Confidential Information; however, Confidential Information shall not include: (i) information which is or becomes publicly available other than as a result of a violation of this Agreement; (ii) information which is or becomes available on a non-confidential basis from a source which is not known to the Receiving Party to be prohibited from disclosing such information pursuant to a legal, contractual or fiduciary obligation to the Disclosing Party; or (iii) information which the Receiving Party can demonstrate was legally in its possession prior to disclosure by the Disclosing Party.

Section 5.4 Confidential Information shall not be used for any purpose other than to analyze, implement or complete the Project Transaction or necessary for a party to fulfill its obligations hereunder, which includes, without limitation, the Parties' applications for governmental grants. Confidential Information shall be held in strict confidence by Receiving

Party and shall not be disclosed without prior written consent of the Disclosing Party, except to those advisors, affiliates, agents, assigns, attorneys, employees, directors, officers and/or members (“**Agents**”) with a need-to-know the Confidential Information for the purposes of analyzing, implementing or completing the Project Transaction or a Party’s obligations hereunder. The Receiving Party shall require all recipients of the Confidential Information to be bound by the terms of the LOI. The Receiving Party shall be responsible for any breach of the LOI by the Receiving Party or its Agents. The Receiving Party shall use the same degree of care to protect the Confidential Information as the Receiving Party employs to protect its own information of like importance, but in no event less than a reasonable degree of care based on industry standard.

Section 5.5 In the event that Receiving Party is requested or required by legal or regulatory authority to disclose any Confidential Information, the Receiving Party shall promptly notify the Disclosing Party of such request or requirement prior to disclosure, if permitted by law, so that Disclosing Party may seek an appropriate protective order and/or waive compliance with the terms of the LOI. In the event that a protective order or other remedy is not obtained, or the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is consistent with the scope of the subpoena or demand, and to exercise reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

Section 5.6 The Receiving Party agrees that monetary damages would not be a sufficient remedy for any breach of the LOI and that the Disclosing Party shall be entitled to injunctive or other equitable relief to remedy or prevent any breach or threatened breach of the LOI. Such remedy shall not be the exclusive remedy for any breach of the LOI, but shall be in addition to all other rights and remedies available at law or in equity.

Section 5.7 It is understood that nothing contained in the LOI shall be construed as granting or conferring rights by license or otherwise in any Confidential Information disclosed to the Receiving Party hereunder.

Section 5.8 Promptly following any decision by the Receiving Party to terminate or suspend the Negotiation Period, in whole or in part, terminate this LOI as permitted hereunder, or at any other time upon the Disclosing Party’s written request, the Receiving Party shall return or destroy, at the Receiving Party’s option, all written Confidential Information of the Disclosing Party, including that portion of such Confidential Information that may be found in analyses, compilations, studies or other documents prepared by, or for, the Receiving Party, and the Receiving Party and its Agents shall not retain any copies of such written Confidential Information. At any time after which the Receiving Party has been required to return or destroy the Confidential Information in its possession in accordance with the preceding sentence, the Receiving Party shall, upon written request of the Disclosing Party, cause one of its duly authorized representatives or officers to certify in writing to the Disclosing Party that the requirements of the preceding sentence have been satisfied in full.

ARTICLE 6. LIMITATION ON LIABILITY.

Section 6.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES FOR ANY SPECIAL, INDIRECT, NON-COMPENSATORY, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY TYPE OR ANY LOST PROFITS, LOSS OF BUSINESS OPPORTUNITY OR BUSINESS INTERRUPTIONS WHETHER ARISING IN CONTRACT OR TORT (INCLUDING NEGLIGENCE, WHETHER SOLE, JOINT OR CONCURRENT OR STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS LOI.

ARTICLE 7. NO THIRD-PARTY BENEFICIARIES

Section 7.1 This LOI is intended for the benefit of the Parties hereto and is not intended to and does not confer any benefit on third parties.

ARTICLE 8. CHOICE OF LAW

Section 8.1 This LOI shall be governed by the laws of the State of Florida without regard to its conflicts of laws principles. Any disputes resulting in litigation between the Parties shall be conducted in the state or federal courts of the State of Florida located in West Palm Beach, Florida.

Section 8.2 IN ANY LITIGATION ARISING FROM OR RELATED TO THIS LOI, THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS LOI, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS LOI. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS LOI.

ARTICLE 9. ASSIGNMENT

Section 9.1 No assignment or transfer hereunder shall be made by either Party without the prior written consent of the other Party.

ARTICLE 10. COUNTERPARTS

Section 10.1 This LOI may be executed in counterparts, each of which shall have the effect of and be considered as an original of this LOI.

ARTICLE 11. MISCELLANEOUS

Section 11.1 The Parties acknowledge that the consummation of the Project Transaction, completion of any associated Work, and the effectiveness of the Definitive Agreements may be contingent upon obtaining any necessary approvals from local, state and federal agencies. Nothing herein is intended to create obligations on the part of either Party that would require it to take actions that are inconsistent with such regulatory compliance.

Section 11.2 This LOI constitutes the entire agreement between the Parties with respect to the subject matter hereof. There are no other oral understandings, terms or conditions with respect to the subject matter of this LOI, and neither Party has relied upon any representation, express or implied, not contained in this LOI.

Section 11.3 If any one or more of the provisions of this LOI should be ruled illegal, wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction under present or future laws, then: (i) the validity and enforceability of all provisions of this LOI not ruled to be invalid or unenforceable shall be unaffected and remain in full force and effect; (ii) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling; (iii) the provision(s) held illegal, wholly or partly invalid or unenforceable shall be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties' intent as manifested herein.

Section 11.4 Each Party acknowledges that it has actively participated in the negotiation and preparation of this LOI, and that accordingly this LOI and any uncertainty or ambiguity contained herein shall not be construed against any one Party as drafter. The descriptive headings of this LOI are inserted for convenience only and do not constitute a substantive part of this LOI.

Section 11.5 The obligations of the Parties hereunder which by their nature survive the termination of the LOI, shall survive and inure to the benefit of the Parties. Those provisions of the LOI which provide for the limitation of or protection against liability shall apply to the full extent permitted by law and shall survive termination of the LOI.

Section 11.6 This LOI may be amended only by a writing signed by each Party hereto. The City's City Manager is authorized to extend the timeframes set forth herein without City Commission approval for no more than 120 days. The failure of a Party to enforce, insist upon, or comply with any of the terms, conditions or covenants of this LOI, or a Party's waiver of the same in any instance or instances shall not be construed as a general waiver or relinquishment of any such terms, conditions or covenants, but the same shall be and remain at all times in full force and effect.

Section 11.7 This LOI sets forth the mutual understandings and intentions relating to the Project Transaction based upon the terms and conditions set forth herein.

Section 11.8 The City Commission has delegated the authority to the City Manager to execute the Definitive Agreements, if agreeable in consultation with the City Attorney and the City Financial Services Director. However, if in the City Manager's opinion, the Definitive Agreement(s) involves a material or adverse change to the terms and conditions of this LOI, the City Manager reserves the right to bring the matter before the City Commission for its review.

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SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have caused this LOI to be executed by their duly authorized representatives on the first date written above.

1017 Lake Avenue, LLC
a Florida Limited Liability Corporation

By: _____

Name: _____

Title: _____

[Corporate Seal]

City of Lake Worth Beach
By: _____
Michael Bornstein, City Manager

ATTEST:

By: _____
Deborah M. Andrea, City Clerk



Approved as to form and legal sufficiency:

By: _____ FOR
Glen J. Torcivia, City Attorney

Approved for financial sufficiency:

By: _____
Bruce T. Miller,
Financial Services Director